

JOSHUA S. GOODMAN , ESQUIRE – State Bar #116576  
 PAIGE P. YEH, ESQUIRE - State Bar #229197  
 JENKINS GOODMAN NEUMAN & HAMILTON LLP  
 417 Montgomery Street, 10<sup>th</sup> Floor  
 San Francisco, California 94104  
 Telephone: (415) 705-0400  
 Facsimile: (415) 705-0411

Attorneys for Defendant  
 HOME DEPOT U.S.A., INC.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION

THOMAS R. MCCLEAN,

Plaintiff,

vs.

HOME DEPOT U.S.A., INC.,

Defendants.

No. 2:08-CV-2235-LKK-KJM

**STIPULATED PROTECTIVE ORDER  
 AND ORDER**

Plaintiff THOMAS R. MCCLEAN (“Plaintiff”), by and through his undersigned counsel,  
 and Defendant HOME DEPOT U.S.A., INC. (“Defendant”), by and through its undersigned  
 counsel, have met and conferred and hereby stipulate as follows:

**1. DEFINITIONS**

**1.1 Party:** any party to this action, including all of its officers, directors,  
 employees, consultants, retained experts, and outside counsel (and their support staff).

**1.2 Disclosure or Discovery Material:** all items or information, regardless of the  
 medium or manner generated, stored, or maintained (including, among other things, testimony,  
 transcripts, or tangible things) that are produced or generated in disclosures or responses to  
 discovery in this matter.

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1                   **1.3 “Confidential” Information or Items:** information (regardless of how  
2 generated, stored or maintained) or tangible things that qualify for protection under standards  
3 developed under F.R.Civ.P. 26(c) or as elaborated herein. “Highly Confidential – Attorneys’ Eyes  
4 Only” Material: extremely sensitive “Confidential Information or Items” whose disclosure to  
5 another Party or nonparty would create a substantial risk of serious injury that could not be  
6 avoided by less restrictive means.

7                   **1.4 Receiving Party:** a Party that receives Disclosure or Discovery Material from  
8 a Producing Party.

9                   **1.5 Producing Party:** a Party or non-party that produces Disclosure or Discovery  
10 Material in this action.

11                   **1.6 Designating Party:** a Party or non-party that designates information or items  
12 that it produces in disclosures or in responses to discovery as “Confidential” or “Highly  
13 Confidential — Attorneys’ Eyes Only.”

14                   **1.7 “Confidential Material”:** any Disclosure or Discovery Material that is  
15 designated or understood to be “Confidential” or as “Highly Confidential – Attorneys’ Eyes  
16 Only.” A Party may produce documents which it considers to be proprietary and confidential.  
17 Such documents may include, but are not limited to, business, competitive, proprietary, trade  
18 secret or other information of a sensitive nature about the Party (or of another person which  
19 information the party is under a duty to maintain in confidence), store maps, manuals, written  
20 policies and procedures, training materials, claims information, lead details, emails,  
21 correspondence, contracts with third parties, criminal background check reports, drug test results,  
22 witness statements, and/or inspection or accident reports. This Stipulated Protective Order is  
23 intended to cover, and apply to, any and all documents produced by a Party in this litigation, and  
24 any information contained in those documents, but also any information copied or extracted  
25 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,

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1 conversations, or presentations by Parties or counsel to or in court or in other settings that might  
2 reveal.

3 **1.8 Expert:** a person with specialized knowledge or experience in a matter  
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
5 witness or as a consultant in this action and who is not a past or a current employee of a Party or  
6 of a competitor of a Party's and who, at the time of retention, is not anticipated to become an  
7 employee of a Party or a competitor of a Party's. This definition includes a professional jury or  
8 trial consultant retained in connection with this litigation.

9 **1.9 Professional Vendors:** persons or entities that provide litigation support  
10 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
11 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
12 subcontractors.

## 13 **2. DURATION**

14 Even after the termination of this litigation, the confidentiality obligations imposed by this  
15 Stipulated Protective Order shall remain in effect until a Designating Party agrees otherwise in  
16 writing or a court order otherwise directs.

## 17 **3. ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

18 Prior to receiving any Confidential Material, any Experts, consultants or Professional  
19 Vendors retained by counsel for Receiving Party shall be provided with a copy of this Stipulated  
20 Protective Order and shall execute an "Acknowledgement and Agreement to be Bound"  
21 nondisclosure agreement in the form of Exhibit A, a copy of which shall be provided to counsel  
22 for the Designating Party at the same time and along with any disclosure of expert witness  
23 information.

## 24 **4. SCOPE OF ORDER**

25 Confidential Material may be used only in connection with the prosecution and defense of  
26 this action, and not for any other purpose. Confidential Material produced pursuant to this

1 Stipulated Protective Order may not be disclosed or made available to any person or entity other  
2 than Receiving Party, Receiving Party's counsel (including the paralegal, clerical and secretarial  
3 staff employed by such counsel and working on this case), and Experts, consultants or  
4 Professional Vendors retained by that counsel, subject to the other requirements of this Stipulated  
5 Protective Order. Use of Confidential Material is permitted at depositions of Parties or their  
6 experts or in motions filed with the court, subject to the requirements of paragraph 5, 7, 8, and 9.

7 **5. EFFORTS TO PREVENT DISCLOSURE**

8 In making use of any Confidential Material, counsel for Receiving Party is required by this  
9 Stipulated Protective Order to make reasonable and good faith efforts to prevent the disclosure of  
10 any Confidential Material to any person or entity not specified in section 1 and 4, above. These  
11 efforts shall include taking steps to ensure that Confidential Material used during a deposition, in  
12 connection with a motion, or at trial is used under seal or in some other manner which prevents its  
13 disclosure to any person or entity not specified in section 1 and 4, above. The Parties agree to  
14 meet and confer in a good faith effort to address any issues related to the use of Confidential  
15 Material at depositions, in court filings, or otherwise.

16 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 Before filing any Confidential Material with the court, the Parties agree to give  
18 Designating Party sufficient advance notice of their intention to do so for Designating Party to  
19 make a motion for an order that such Confidential Material be filed under seal.

20 **6.1 Timing of Challenges.** Unless a prompt challenge to a Designating Party's  
21 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
22 economic burdens, or a later significant disruption or delay of the litigation, a Party does not  
23 waive its right to challenge a confidentiality designation by electing not to mount a challenge  
24 promptly after the original designation is disclosed.

25 **6.2 Meet and Confer.** A Party that elects to initiate a challenge to a Designating  
26 Party's confidentiality designation must do so in good faith and must begin the process by

1 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)  
2 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis  
3 for its belief that the confidentiality designation was not proper and must give the Designating  
4 Party an opportunity to review the designated material, to reconsider the circumstances, and, if no  
5 change in designation is offered, to explain the basis for the chosen designation. A challenging  
6 Party may proceed to the next stage of the challenge process only if it has engaged in this meet  
7 and confer process first.

8 **6.3 Judicial Intervention.** A Party that elects to press a challenge to a  
9 confidentiality designation after considering the justification offered by the Designating Party may  
10 file and serve a motion that identifies the challenged material and sets forth in detail the basis for  
11 the challenge. Each such motion must be accompanied by a competent declaration that affirms  
12 that the movant has complied with the meet and confer requirements imposed in the preceding  
13 paragraph and that sets forth with specificity the justification for the confidentiality designation  
14 that was given by the Designating Party in the meet and confer dialogue.

15 Until the court rules on the challenge, all parties shall continue to afford the material in  
16 question the level of protection to which it is entitled under the Producing Party's designation.

17 **7. MAINTAINING CONFIDENTIALITY**

18 In the event that any Confidential Material is used in any court proceeding in this action, it  
19 shall not lose its confidential status through such use, and the Party using such shall take all  
20 reasonable steps to maintain its confidentiality during such use.

21 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Confidential  
23 Material to any person or in any circumstance not authorized under this Stipulated Protective  
24 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
25 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)  
26 inform the person(s) to whom unauthorized disclosures were made of all the terms of this

1 Stipulated Protective Order, and (d) request such person(s) execute the “Acknowledgment and  
2 Agreement to be Bound” that is attached hereto as Exhibit A.

3 **9. FILING PROTECTED MATERIAL**

4 Without written permission from the Designating Party or a court order secured after  
5 appropriate notice to all interested persons, a Party may not file in the public record in this action  
6 any Confidential Material. A Party that seeks to file under seal any Protected Material must  
7 comply with Civil Local Rules 39-140 and 39-141. This Order shall be without prejudice to the  
8 right of the parties (i) to bring before the court at any time the question of whether any particular  
9 document or information is confidential or whether its use should be restricted, or (ii) to present a  
10 motion to the court for a separate protective order as to any particular document or information,  
11 including restrictions differing from those as specified herein. This Order shall not be deemed to  
12 prejudice the parties in any way in any future application for modification of this Stipulated  
13 Protective Order.

14 If any Confidential Material is introduced during a deposition, such Confidential Material  
15 must be bound separately from the deposition transcript. Furthermore, Receiving Party must  
16 demand of the court reporter that he or she return any and all copies of said Confidential Material  
17 after the completion of the deposition transcript(s) and related volume(s) of exhibits.

18 **10. FINAL DISPOSITION - RETURN OF DOCUMENTS**

19 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
20 after the final termination of this action, each Receiving Party must return to the Producing Party  
21 all Confidential Material, which includes all copies, abstracts, compilations, summaries or any  
22 other form of reproducing or capturing any of the Confidential Material. With permission in  
23 writing from the Designating Party, the Receiving Party may destroy some or all of the  
24 Confidential Material in lieu of returning it. Whether the Confidential Material is returned or  
25 destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if  
26 not the same person or entity, to the Designating Party) by the sixty day deadline that identifies

(by category, where appropriate) all the Confidential Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Confidential Material.

Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Confidential Material. Any such archival copies that contain or constitute Confidential Material remain subject to this Stipulated Protective Order.

**11. CONTEMPT OF COURT AND REMEDIES**

Any disclosure of Confidential Material other than is permitted by this Stipulated Protective Order shall be a contempt of court. No Party is waiving any other rights or remedies under the law for violations of this Stipulated Protective Order.

**12. WAIVER**

A Party shall not be deemed to have waived any terms of this Stipulated Protective Order, including this paragraph, except by express written waiver of counsel.

**13. MODIFICATION**

This stipulation is reached without prejudice to later modification by agreement of the Parties, or by order of the court upon a showing of good cause.

IT IS SO STIPULATED.

Dated: March 31, 2009

Dated: April 2, 2009

ZINK & LENZY

JENKINS GOODMAN NEUMAN &  
HAMILTON

By                     /s/                      
J.D. Zink  
Attorney for Plaintiff  
THOMAS R. MCCLEAN

By                     /s/                      
Paige P. Yeh  
Attorneys for Defendant  
HOME DEPOT U.S.A., INC.

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Jenkins Goodman  
Neuman & Hamilton  
LLP  
417 Montgomery St.  
10<sup>th</sup> Floor  
San Francisco, CA  
94104

**ORDER**

The foregoing stipulation is approved to the extent it is not inconsistent with the Federal Rules of Civil Procedure, this court's Local Rules, and applicable Supreme Court and Ninth Circuit precedent. To the extent there is any inconsistency with the cited authorities, the authorities control and their application shall be determined by the court in its sole discretion.

SO ORDERED.

Dated: April 14, 2009.

  
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U.S. MAGISTRATE JUDGE