

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

AARON HASTINGS,  
  
Plaintiff,  
  
vs.  
  
HOME DEPOT U.S.A., INC.,  
TRICAM INDUSTRIES, INC., et al.,  
  
Defendants.

No. 2:17-cv-01268-KJM-DB  
**STIPULATED PROTECTIVE ORDER**

**1. PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rules 140, 141 and 141.1 set forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

Goodman  
Neuman  
Hamilton LLP  
417 Montgomery St.  
10<sup>th</sup> Floor  
San Francisco, CA  
94104  
Tel.: (415) 705-0400

1 **2. DEFINITIONS**

2 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
3 information or items under this Order.

4 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it  
5 is generated, stored or maintained) or tangible things that qualify for protection under  
6 Federal Rule of Civil Procedure 26(c).

7 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel  
8 (as well as their support staff).

9 2.4 Designating Party: a Party or Non-Party that designates information or  
10 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

11 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
12 medium or manner in which it is generated, stored, or maintained (including, among other  
13 things, testimony, transcripts, and tangible things), that are produced or generated in  
14 disclosures or responses to discovery in this matter.

15 2.6 Expert: a person with specialized knowledge or experience in a matter  
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
17 expert witness or as a consultant in this action.

18 2.7 House Counsel: attorneys who are employees of a party to this action.  
19 House Counsel does not include Outside Counsel of Record or any other outside counsel.

20 2.8 Non-Party: any natural person, partnership, corporation, association, or  
21 other legal entity not named as a Party to this action.

22 2.9 Outside Counsel of Record: attorneys who are not employees of a party to  
23 this action but are retained to represent or advise a party to this action and have appeared  
24 in this action on behalf of that party or are affiliated with a law firm which has appeared  
25 on behalf of that party.

26 2.10 Party: any party to this action, including all of its officers, directors,  
27 employees, consultants, retained experts, and Outside Counsel of Record (and their  
28 support staffs).

1           2.11 Producing Party: a Party or Non-Party that produces Disclosure or  
2 Discovery Material in this action.

3           2.12 Professional Vendors: persons or entities that provide litigation support  
4 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
5 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
6 their employees and subcontractors.

7           2.13 Protected Material: any Disclosure or Discovery Material that is designated  
8 as “CONFIDENTIAL.”

9           2.14 Receiving Party: a Party that receives Disclosure or Discovery Material  
10 from a Producing Party.

11 **3. SCOPE**

12           The protections conferred by this Stipulation and Order cover not only Protected  
13 Material (as defined above), but also (1) any information copied or extracted from  
14 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
15 Material; and (3) any testimony, conversations, or presentations by Parties or their  
16 Counsel that might reveal Protected Material. However, the protections conferred by this  
17 Stipulation and Order do not cover the following information: (a) any information that is  
18 in the public domain at the time of disclosure to a Receiving Party or becomes part of the  
19 public domain after its disclosure to a Receiving Party as a result of publication not  
20 involving a violation of this Order, including becoming part of the public record through  
21 trial or otherwise; and (b) any information known to the Receiving Party prior to the  
22 disclosure or obtained by the Receiving Party after the disclosure from a source who  
23 obtained the information lawfully and under no obligation of confidentiality to the  
24 Designating Party. Any use of Protected Material at trial shall be governed by a separate  
25 agreement or order.

26 **4. DURATION**

27           Even after final disposition of this litigation, the confidentiality obligations  
28 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in

1 writing or a court order otherwise directs. Final disposition shall be deemed to be the later  
2 of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2)  
3 final judgment herein after the completion and exhaustion of all appeals, rehearings,  
4 remands, trials, or reviews of this action, including the time limits for filing any motions  
5 or applications for extension of time pursuant to applicable law.

6 **5. DESIGNATING PROTECTED MATERIAL**

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
8 Party or Non-Party that designates information or items for protection under this Order  
9 must take care to limit any such designation to specific material that qualifies under the  
10 appropriate standards. The Designating Party must designate for protection only those  
11 parts of material, documents, items, or oral or written communications that qualify – so  
12 that other portions of the material, documents, items, or communications for which  
13 protection is not warranted are not swept unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
15 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,  
16 to unnecessarily encumber or retard the case development process or to impose  
17 unnecessary expenses and burdens on other parties) expose the Designating Party to  
18 sanctions.

19 If it comes to a Designating Party's attention that information or items that it  
20 designated for protection do not qualify for protection, that Designating Party must  
21 promptly notify all other Parties that it is withdrawing the mistaken designation.

22 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
23 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
24 ordered, Disclosure or Discovery Material that qualifies for protection under this Order  
25 must be clearly so designated before the material is disclosed or produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic documents, but  
28 excluding transcripts of depositions or other pretrial or trial proceedings), that the

1 Producing Party affix the legend “CONFIDENTIAL” to each page that contains protected  
2 material. If only a portion or portions of the material on a page qualifies for protection, the  
3 Producing Party also must clearly identify the protected portion(s) (e.g., by making  
4 appropriate markings in the margins). A Party or Non-Party that makes original documents  
5 or materials available for inspection need not designate them for protection until after the  
6 inspecting Party has indicated which material it would like copied and produced. During  
7 the inspection and before the designation, all of the material made available for inspection  
8 shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the  
9 documents it wants copied and produced, the Producing Party must determine which  
10 documents, or portions thereof, qualify for protection under this Order. Then, before  
11 producing the specified documents, the Producing Party must affix the  
12 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a  
13 portion or portions of the material on a page qualifies for protection, the Producing Party  
14 also must clearly identify the protected portion(s) (e.g., by making appropriate markings  
15 in the margins).

16 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
17 Designating Party identify on the record, before the close of the deposition, hearing, or other  
18 proceeding, all protected testimony.

19 (c) for information produced in some form other than documentary and for any other  
20 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
21 or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a  
22 portion or portions of the information or item warrant protection, the Producing Party, to the  
23 extent practicable, shall identify the protected portion(s).

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
25 to designate qualified information or items does not, standing alone, waive the  
26 Designating Party’s right to secure protection under this Order for such material. Upon  
27 timely correction of a designation, the Receiving Party must make reasonable efforts to  
28 assure that the material is treated in accordance with the provisions of this Order.

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation  
3 of confidentiality at any time. Unless a prompt challenge to a Designating Party's  
4 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
5 unnecessary economic burdens, or a significant disruption or delay of the litigation, a  
6 Party does not waive its right to challenge a confidentiality designation by electing not to  
7 mount a challenge promptly after the original designation is disclosed.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
9 process by providing written notice of each designation it is challenging and describing  
10 the basis for each challenge. To avoid ambiguity as to whether a challenge has been made,  
11 the written notice must recite that the challenge to confidentiality is being made in  
12 accordance with this specific paragraph of the Protective Order. The parties shall attempt  
13 to resolve each challenge in good faith and must begin the process by conferring directly  
14 (in voice to voice dialogue; other forms of communication are not sufficient) within 14  
15 days of the date of service of notice. In conferring, the Challenging Party must explain the  
16 basis for its belief that the confidentiality designation was not proper and must give the  
17 Designating Party an opportunity to review the designated material, to reconsider the  
18 circumstances, and, if no change in designation is offered, to explain the basis for the  
19 chosen designation. A Challenging Party may proceed to the next stage of the challenge  
20 process only if it has engaged in this meet and confer process first or establishes that the  
21 Designating Party is unwilling to participate in the meet and confer process in a timely  
22 manner.

23 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
24 intervention, the Designating Party shall file and serve a motion to retain confidentiality  
25 under Civil Local Rules 140, 141, and 141.1 (and in compliance with Civil Local Rule  
26 230, if applicable) within 21 days of the initial notice of challenge or within 14 days of the  
27 parties agreeing that the meet and confer process will not resolve their dispute, whichever  
28 is earlier. Each such motion must be accompanied by a competent declaration affirming

1 that the movant has complied with the meet and confer requirements imposed in the  
2 preceding paragraph. Failure by the Designating Party to make such a motion including  
3 the required declaration within 21 days (or 14 days, if applicable) shall automatically  
4 waive the confidentiality designation for each challenged designation. In addition, the  
5 Challenging Party may file a motion challenging a confidentiality designation at any time  
6 if there is good cause for doing so, including a challenge to the designation of a deposition  
7 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
8 accompanied by a competent declaration affirming that the movant has complied with the  
9 meet and confer requirements imposed by the preceding paragraph.

10 The burden of persuasion in any such challenge proceeding shall be on the  
11 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to  
12 harass or impose unnecessary expenses and burdens on other parties) may expose the  
13 Challenging Party to sanctions. Unless the Designating Party has waived the  
14 confidentiality designation by failing to file a motion to retain confidentiality as described  
15 above, all parties shall continue to afford the material in question the level of protection to  
16 which it is entitled under the Producing Party's designation until the court rules on the  
17 challenge.

18 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

19 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
20 disclosed or produced by another Party or by a Non-Party in connection with this case  
21 only for prosecuting, defending, or attempting to settle this litigation. Such Protected  
22 Material may be disclosed only to the categories of persons and under the conditions  
23 described in this Order. When the litigation has been terminated, a Receiving Party must  
24 comply with the provisions of section 13 below (FINAL DISPOSITION).  
25 Protected Material must be stored and maintained by a Receiving Party at a location and  
26 in a secure manner that ensures that access is limited to the persons authorized under this  
27 Order.

28 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise

1 ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
2 may disclose any information or item designated “CONFIDENTIAL” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
4 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
5 disclose the information for this litigation and who have signed the “Acknowledgment and  
6 Agreement to Be Bound” that is attached hereto as Exhibit A;

7 (b) the officers, directors, and employees (including House Counsel) of the  
8 Receiving Party to whom disclosure is reasonably necessary for this litigation and who  
9 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
11 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
12 Agreement to Be Bound” (Exhibit A);

13 (d) the court and its personnel;

14 (e) court reporters and their staff, professional jury or trial consultants, mock  
15 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this  
16 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
17 (Exhibit A);

18 (f) during their depositions, witnesses in the action to whom disclosure is  
19 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be  
20 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the  
21 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
22 Protected Material must be separately bound by the court reporter and may not be  
23 disclosed to anyone except as permitted under this Stipulated Protective Order.

24 (g) the author or recipient of a document containing the information or a custodian  
25 or other person who otherwise possessed or knew the information.

26 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
27 **OTHER LITIGATION**

28 If a Party is served with a subpoena or a court order issued in other litigation that



1 compels disclosure of any information or items designated in this action as  
2 “CONFIDENTIAL,” that Party must:

3 (a) promptly notify in writing the Designating Party. Such notification shall  
4 include a copy of the subpoena or court order;

5 (b) promptly notify in writing the party who caused the subpoena or order to issue  
6 in the other litigation that some or all of the material covered by the subpoena or order is  
7 subject to this Protective Order. Such notification shall include a copy of this Stipulated  
8 Protective Order; and

9 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
10 Designating Party whose Protected Material may be affected.

11 If the Designating Party timely seeks a protective order, the Party served with the  
12 subpoena or court order shall not produce any information designated in this action as  
13 “CONFIDENTIAL” before a determination by the court from which the subpoena or  
14 order issued, unless the Party has obtained the Designating Party’s permission. The  
15 Designating Party shall bear the burden and expense of seeking protection in that court of  
16 its confidential material – and nothing in these provisions should be construed as  
17 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive  
18 from another court.

19 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
20 **PRODUCED IN THIS LITIGATION**

21 (a) The terms of this Order are applicable to information produced by a Non-Party  
22 in this action and designated as “CONFIDENTIAL.” Such information produced by Non-  
23 Parties in connection with this litigation is protected by the remedies and relief provided  
24 by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party  
25 from seeking additional protections.

26 (b) In the event that a Party is required, by a valid discovery request, to produce a  
27 Non-Party’s confidential information in its possession, and the Party is subject to an  
28 agreement with the Non-Party not to produce the Non-Party’s confidential information,

1 then the Party shall:

2 (1) promptly notify in writing the Requesting Party and the Non-Party that some or  
3 all of the information requested is subject to a confidentiality agreement with a Non-Party;

4 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order  
5 in this litigation, the relevant discovery request(s), and a reasonably specific description of  
6 the information requested; and

7 (3) make the information requested available for inspection by the Non-Party.

8 (c) If the Non-Party fails to object or seek a protective order from this court within  
9 14 days of receiving the notice and accompanying information, the Receiving Party may  
10 produce the Non-Party's confidential information responsive to the discovery request. If  
11 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any  
12 information in its possession or control that is subject to the confidentiality agreement  
13 with the Non-Party before a determination by the court. Absent a court order to the  
14 contrary, the Non-Party shall bear the burden and expense of seeking protection in this  
15 court of its Protected Material.

16 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
18 Protected Material to any person or in any circumstance not authorized under this  
19 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing  
20 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all  
21 unauthorized copies of the Protected Material, (c) inform the person or persons to whom  
22 unauthorized disclosures were made of all the terms of this Order, and (d) request such  
23 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is  
24 attached hereto as Exhibit A.

25 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
26 **PROTECTED MATERIAL**

27 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
28 produced material is subject to a claim of privilege or other protection, the obligations of

1 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).  
2 This provision is not intended to modify whatever procedure may be established in an e-  
3 discovery order that provides for production without prior privilege review. Pursuant to  
4 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the  
5 effect of disclosure of a communication or information covered by the attorney-client  
6 privilege or work product protection, the parties may incorporate their agreement in the  
7 stipulated protective order submitted to the court.

8 **12. MISCELLANEOUS**

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
10 person to seek its modification by the court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
12 Protective Order no Party waives any right it otherwise would have to object to disclosing  
13 or producing any information or item on any ground not addressed in this Stipulated  
14 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
15 evidence of any of the material covered by this Protective Order.

16 12.3 Filing Protected Material. Without a court order a Party may not file in the  
17 public record in this action any Protected Material. A Party that seeks to file under seal  
18 any Protected Material must comply with Civil Local Rules 140, 141 and 141.1.  
19 Protected Material may only be filed under seal pursuant to a court order authorizing the  
20 sealing of the specific Protected Material at issue. If a Receiving Party's request to file  
21 Protected Material under seal pursuant to Civil Local Rules 140, 141 and 141.1 is denied  
22 by the court, then the Receiving Party may file the information in the public record  
23 pursuant to Civil Local Rules 140, 141 and 141.1, unless otherwise instructed by the court.

24 **13. FINAL DISPOSITION**

25 Within 60 days after the final disposition of this action, as defined in paragraph 4,  
26 each Receiving Party must return all Protected Material to the Producing Party or destroy  
27 such material. As used in this subdivision, "all Protected Material" includes all copies,  
28 abstracts, compilations, summaries, and any other format reproducing or capturing any of



1 However, a mere request to seal is not enough under the local rules. In particular, Local Rule  
2 141(b) requires that “[t]he ‘Request to Seal Documents’ shall set forth the statutory or other  
3 authority for sealing, the requested duration, the identity, by name or category, of persons to be  
4 permitted access to the document, and all relevant information.” L.R. 141(b) (emphasis added).

5 3. A request to seal material must normally meet the high threshold of showing that  
6 “compelling reasons” support secrecy; however, where the material is, at most, “tangentially  
7 related” to the merits of a case, the request to seal may be granted on a showing of “good cause.”  
8 Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1096-1102 (9th Cir. 2016);  
9 Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1178-80 (9th Cir. 2006).

10 4. Nothing in this order shall limit the testimony of parties or non-parties, or the use of  
11 certain documents, at any court hearing or trial – such determinations will only be made by the  
12 court at the hearing or trial, or upon an appropriate motion.

13 5. With respect to motions regarding any disputes concerning this protective order which  
14 the parties cannot informally resolve, the parties shall follow the procedures outlined in Local  
15 Rule 251. Absent a showing of good cause, the court will not hear discovery disputes on an ex  
16 parte basis or on shortened time.

17 6. The parties may not modify the terms of this Protective Order without the court’s  
18 approval. If the parties agree to a potential modification, they shall submit a stipulation and  
19 proposed order for the court’s consideration.

20 7. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over enforcement  
21 of the terms of this Protective Order after the action is terminated.

22 8. Any provision in the parties’ stipulation that is in conflict with anything in this order is  
23 hereby DISAPPROVED.

24 Dated: February 14, 2018



26 DEBORAH BARNES  
27 UNITED STATES MAGISTRATE JUDGE

28 DLB:6  
DB\orders\orders.civil\hastings1268.stip.prot.ord

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of

4 \_\_\_\_\_  
5 [print or type full address], declare under penalty of perjury that I have read in its entirety  
6 and understand the Stipulated Protective Order that was issued by the United States  
7 District Court for the Eastern District of California on \_\_\_\_\_ in the case of **Aaron**  
8 **Hastings v. Home Depot U.S.A., Inc., and Tricam Industries, Inc., United States**  
9 **District Court Eastern District of California Case No. 2:17-CV-01268-KJM-DB. I**

10 agree to comply with and to be bound by all the terms of this Stipulated Protective Order  
11 and I understand and acknowledge that failure to so comply could expose me to sanctions  
12 and punishment in the nature of contempt. I solemnly promise that I will not disclose in  
13 any manner any information or item that is subject to this Stipulated Protective Order to  
14 any person or entity except in strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for  
16 the Eastern District of California for the purpose of enforcing the terms of this Stipulated  
17 Protective Order, even if such enforcement proceedings occur after termination of this  
18 action.

19 I hereby appoint \_\_\_\_\_ [print or type full name] of

20 \_\_\_\_\_  
21 [print or type full address and telephone number] as my California agent for service of  
22 process in connection with this action or any proceedings related to enforcement of this  
23 Stipulated Protective Order.

24 Date: \_\_\_\_\_

25 Printed name: \_\_\_\_\_

26  
27 Signature: \_\_\_\_\_

28 City and State where sworn and signed: \_\_\_\_\_