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 13 AARON LEWIS

14 **UNITED STATES DISTRICT COURT**  
 15 **NORTHERN DISTRICT OF CALIFORNIA**

17 AARON LEWIS,  
 18  
 Plaintiff,  
 19  
 v.  
 20 HOME DEPOT U.S.A., INC., a  
 21 corporation, ELENA PEREZ, an  
 individual, and DOES 1-20,  
 22  
 Defendants.

Case No.: CV 12-06354 EMC  
**STIPULATED PROTECTIVE ORDER**  
 Action filed: November 15, 2012

1           **IT IS HEREBY STIPULATED** by and between Plaintiff Aaron Lewis (hereinafter  
2 referred to as “Plaintiff” and/or “Lewis”) and Defendant Home Depot U.S.A., Inc. (hereinafter  
3 referred to as “Defendant” and/or “Home Depot”), through their respective attorneys of record,  
4 that a Protective Order be entered by this Court as follows:

5           This Stipulation and Protective Order shall be applicable to and shall apply to the  
6 production and exchange of all document requests and documents, interrogatories and answers  
7 to interrogatories, depositions, request for admissions, and responses to requests for admissions,  
8 exhibits, and pleadings and all other information exchanged and furnished in this Action by the  
9 Parties that the parties customarily treat as confidential, proprietary, and/or a trade secret as  
10 defined by California Civil Code section 3426.1.

11           **1.     SCOPE**

12           (a)     The parties acknowledge that discovery may require disclosure of information  
13 that is private and personal or confidential and proprietary, specifically, including, but not  
14 limited to personnel records, personnel policies, employment offers, competitive analyses,  
15 income statements, employee, client, or customer personal information (including, but not  
16 limited to medical, age, and contact information), medical records, and financial records and  
17 statements, along with other trade secret information as defined in California Civil Code  
18 section 3426.1. As a result, the parties agree to enter into a Protective Order on the following  
19 terms to ensure the continuing confidentiality of such information. The parties further  
20 acknowledge that this Order does not confer blanket protections on all disclosures or responses  
21 to discovery and that the protection it affords extends only to the limited information or items  
22 that are entitled under the applicable legal principles to treatment as confidential.

23           (b)     This Protective Order shall limit the use or disclosure of documents, deposition  
24 testimony, and related information which are or which embody or disclose any information  
25 falling within the scope of Paragraph (1)(a) and designated hereunder as “Confidential,” and shall  
26 apply to:

27                   (i)     All such documents, including those produced by third parties,  
28 designated as “Confidential” in accordance with the terms of this Protective Order and the

1 applicable legal standards;

2 (ii) Portions of deposition testimony and transcripts and exhibits thereto  
3 which include, refer or relate to any Confidential Information;

4 (iii) All information, copies, extracts and complete or partial summaries  
5 prepared or derived from Confidential Information; and

6 (iv) Portions of briefs, memoranda or any writing filed with or otherwise  
7 supplied to the Court, which include or refer to any such Confidential Information.

8 (c) Any person designating documents, testimony, or other information as  
9 "Confidential" hereunder asserts that he or she believes in good faith that such material is  
10 Confidential Information which falls within the scope of Section (1)(a) and is not otherwise  
11 available to the public generally. Each party or non-party that designates information or items  
12 for protection under this Order must take care to limit any such designation to specific material  
13 that qualifies under the appropriate standards. A Designating Party must take care to designate  
14 for protection only those parts of material, documents, items, or oral or written communications  
15 that qualify so that other portions of the material, documents, items, or communications for  
16 which protection is not warranted are not swept unjustifiably within the ambit of this Order.

17 **2. DESIGNATION OF DOCUMENTS AND DEPOSITIONS**

18 (a) Designation of a document as "Confidential" shall be made by stamping or  
19 writing CONFIDENTIAL on the document(s). Alternatively, the parties may designate  
20 documents as "Confidential" by producing the documents with a letter designating the  
21 documents by Bates number as "Confidential." The parties shall make all reasonable effort to  
22 designate as "Confidential" only those documents that they reasonably believe constitute  
23 personnel records, personnel policies, employment offers, competitive analyses, income  
24 statements, employee, client or customer personal information, medical records, financial  
25 records and statements, and trade secret information as defined in California Civil Code section  
26 3426.1. The failure to designate documents as "Confidential" at the time of production shall not  
27 constitute a waiver of the protection of this Order and any party may, at any time up to 30 days  
28 before the actual trial date in this action, designate any documents or information produced as

1 “Confidential” that have not as yet been so designated. Stamping the legend “Confidential” on  
2 the cover of any multi-page document shall designate all pages of the document as confidential,  
3 unless otherwise indicated by the Designating Party, but only if the entire document is produced  
4 in a bound or otherwise intact manner.

5 (b) Designation of a deposition or other pretrial testimony, or portions thereof, as  
6 “Confidential” shall be made by a statement on the record by counsel for the party or other  
7 person making the claim of confidentiality at the time of such testimony. The portions of  
8 depositions so designated as “Confidential” shall be taken only in the presence of persons  
9 qualified to receive such information pursuant to the terms of this Protective Order: the parties  
10 and their attorneys and staff, the court reporter, videographer, the deponent, and the deponent’s  
11 attorney. Failure of any other person to comply with a request to leave the deposition room will  
12 constitute sufficient justification for the witness to refuse to answer any question calling for  
13 disclosure of Confidential Information so long as persons are in attendance who are not entitled  
14 by this Protective Order to have access to such information. The parties may, but need not in  
15 order to designate material as Confidential Information, instruct the court reporter to segregate  
16 such portions of the deposition in a separate transcript designated as “Confidential.” Portions of  
17 such deposition transcripts shall be clearly marked as “Confidential” on the cover or on each  
18 page, as appropriate.

19 (c) Any party may designate documents produced or portions of depositions taken as  
20 containing Confidential Information even if not initially marked as “Confidential” in accordance  
21 with the terms of this Protective Order by so advising counsel for each other party in writing  
22 and by reproducing said documents with the required confidential designation. Thereafter, each  
23 such document or transcript shall be treated in accordance with the terms of this Protective  
24 Order; provided, however, that there shall be no liability for any disclosure or use of such  
25 documents or transcripts, or the Confidential Information contained therein, which occurred  
26 prior to actual receipt of such written notice. Any person who receives actual notice of any such  
27 designation of previously produced documents or deposition transcripts as containing  
28

1 Confidential Information shall thereafter treat such information as if it had been designated as  
2 “Confidential” at the time he, she, or it first received it in connection with this matter.

3 (d) Inadvertent failure to designate Confidential Information shall not be construed  
4 as a waiver, in whole or in part, and may be corrected by the producing party by designating  
5 documents produced or portions of depositions taken as containing Confidential Information,  
6 even if not initially marked as “Confidential,” in accordance with the terms of this Protective  
7 Order and, specifically, Paragraph 2(c) above.

8 **3. LIMITATIONS ON DISCLOSURE OF CONFIDENTIAL INFORMATION**

9 (a) No Confidential Information shall be disclosed by anyone receiving such  
10 information to anyone other than those persons designated herein. In no event shall  
11 Confidential Information be used, either directly or indirectly, by anyone receiving such  
12 information for any business, commercial or competitive purpose or for any purpose whatsoever  
13 other than the direct furtherance of the litigation of this action in accordance with the provisions  
14 of this Protective Order.

15 (b) Confidential Information shall not be disclosed by any person who has received  
16 such information through discovery in this action to any other person, except to:

17 (i) The parties;

18 (ii) Attorneys of record for the parties and their firms’ associates, clerks and  
19 other employees involved in the conduct of this litigation, and any court reporters,  
20 videographers, or interpreters engaged to assist the parties in discovery;

21 (iii) Home Depot’s subsidiaries’, or its affiliates’ in-house counsel;

22 (iv) Non-party experts and consultants engaged by counsel for the purpose of  
23 preparing or assisting in this litigation, and those experts’ respective clerks and employees  
24 involved in assisting them in this litigation, to the extent deemed necessary by counsel;

25 (v) The Court, its officers, Court reporters and similar personnel, provided  
26 further that Confidential Information lodged with the Court under seal is subject to further  
27 evaluation by the Court;

28

1 (vi) Any person as to which it is apparent from the face of a document was  
2 either an author, recipient, had knowledge of the contents therein, or was otherwise entitled to  
3 view the Confidential Information prior to the intended disclosure in this action; and

4 (vii) Any other potential witnesses whose testimony may be used in  
5 connection with the present case who has complied with Paragraph 3(c) immediately below.

6 (c) Before any person described in Paragraphs 3(b)(iv) and (vii) receives or is shown  
7 any document or information which has been designated as Confidential, such person shall be  
8 given a copy of this Protective Order and shall agree in writing, in the form of the  
9 Acknowledgment and Agreement attached hereto as Exhibit A, to be bound by the terms hereof.  
10 The original of each such Acknowledgment and Agreement shall be maintained by counsel and,  
11 if a witness appears at deposition or at trial and represents that he or she previously executed an  
12 Acknowledgment, it shall be produced for inspection by opposing counsel upon request. Any  
13 counsel may require the other counsel to provide a copy of the Acknowledgment and  
14 Agreement signed by a witness at a deposition before the witness is deposed with regard to any  
15 Confidential Information.

16 (d) Nothing in this Protective Order shall be construed to require execution of the  
17 written Acknowledgment and Agreement referred to in Paragraph 3(c) above, or to prevent  
18 disclosure of Confidential Information, by the party producing and designating such  
19 Confidential Information, or by any employee of such party.

20 (e) The substance or content of Confidential Information, as well as all notes and  
21 memoranda relating thereto, shall not be disclosed to anyone other than as set forth in  
22 Paragraphs 3(b)(i)-(vii) above.

23 **4. FILING DOCUMENTS UNDER SEAL**

24 (a) If a Party wishes to submit a document to the Court which the other Party has  
25 designated as Confidential or which contains Confidential Information and which has not been  
26 successfully challenged under Paragraph 5 below, the submitting Party shall notify the  
27 Designating Party of the exact material which the Party intends to submit to the Court at least 15  
28 days prior to the date on which the Party intends to make the submission, so as to provide the

1 Designating Party sufficient time to determine whether it needs to bring a motion ordering that  
2 the material be filed under seal, except that if the designating party cannot provide notice within  
3 seven days prior to submission it will provide notice as soon as practicable. Any such motion  
4 must comply with the procedures set forth in Civil Local Rule 79-5 General Order 62, and must  
5 also comply with Federal Rule of Civil Procedure 26(c)(1). The written application and  
6 proposed order shall be presented to the judge along with the document intended to be  
7 submitted for filing under seal. The original and judge's copy of the document shall be sealed  
8 in separate envelopes with a copy of the title page attached to the front of each envelope. If  
9 only a portion of the document is sealable, then both the copy lodged with the Clerk and the  
10 judge's copy shall have the sealable portions identified by notation or highlighting of the text.

11 The Application and Order to Seal, along with the material to be placed under seal, shall  
12 not be electronically filed but shall be filed manually in the manner prescribed by Civil Local  
13 Rule 79-5 and General Order 62. A Notice of Manual Filing shall also be electronically filed,  
14 identifying all materials being manually filed.

15 (b) Any party requesting that a record be filed under seal must comply with Civil  
16 Local Rule 79-5 and General Order 62. The Parties agree and recognize that Confidential  
17 Information or any paper containing Confidential Information cannot be filed under seal based  
18 solely upon this stipulated Protective Order.

19 **5. CHALLENGE TO CONFIDENTIALITY DESIGNATION**

20 Any party or non-party may challenge a designation of confidentiality at any time.  
21 Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to  
22 avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant  
23 disruption or delay of the litigation, a Party does not waive its right to challenge a  
24 confidentiality designation by electing not to mount a challenge promptly after the original  
25 designation is disclosed.

26 The Designating Party may, for good cause shown, bring a motion before the Court  
27 requesting that the Court confirm the designation of any document or information as  
28 "Confidential." The party asserting the designation as "Confidential" shall have the burden of

1 establishing good cause for the designation in any such motion. However, the Court shall be  
2 authorized to award the moving party attorneys' fees as a sanction if the challenge to the  
3 "Confidential" designation was made in bad faith or was frivolous. The interested parties or  
4 other persons shall attempt to resolve such disagreements before submitting them to the Court  
5 pursuant to Civil Local Rule 37-1.

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

14 Unless the Designating Party has waived the confidentiality designation by failing to file  
15 a motion to retain confidentiality as described above, pending resolution of any dispute  
16 concerning such designation, all parties and persons governed by this Protective Order shall  
17 treat all documents and information previously designated as "Confidential" as protected from  
18 further disclosure by this Protective Order.

19 **6. SURVIVAL OF ORDER - RETURN OF DOCUMENTS**

20 (a) The provisions of this Order shall continue in effect until otherwise ordered by  
21 the Court, or after notice and an opportunity to be heard is afforded to the parties to this action.  
22 The final determination or settlement of this action shall not relieve any person who has  
23 received Confidential Information or agreed to be bound by the terms of this Protective Order of  
24 his, her, or its obligations under this stipulation and Order. The Court shall retain jurisdiction  
25 after such final determination or settlement to enforce the provisions of this Order. Upon  
26 completion of the litigation, all documents (including copies of documents) containing  
27 Confidential Information shall be destroyed or returned to counsel for the producing party,  
28 except that (a) documents on which any person has made notations may be destroyed and not

1 returned, and (b) the parties' respective attorneys of record may retain one copy of each such  
2 document for use in connection with any disputes which may arise under the Court's retention  
3 of jurisdiction as provided for herein. Within sixty days (60) of the conclusion of this litigation,  
4 and written request by the producing party, the attorneys for the receiving party shall provide  
5 the attorneys for the producing party a certificate representing that such return or destruction  
6 was made.

7 (b) Except as provided in Paragraphs 4 or 6 hereof, documents or things containing  
8 the other party's Confidential Information shall at all times be in the physical possession of  
9 those persons qualifying under Paragraph 3 hereunder, or kept by counsel of record at the  
10 premises regularly maintained by such counsel of record as and for their respective law offices.

11 **7. USE OF DOCUMENTS AT TRIAL**

12 This Stipulation and Protective Order, except as provided in Paragraph 4, shall not apply  
13 to information designated or marked Confidential hereunder which is used at any evidentiary  
14 hearing or trial in this action. The parties hereby reserve their rights to use, or seek to limit the  
15 disclosure of, confidential information at any such hearing or trial.

16 **8. USE OF OWN DOCUMENTS BY PRODUCING PARTY**

17 Nothing in this Protective Order shall limit the use by any party, person or entity of his,  
18 her, or its own document or information for legitimate business purposes unrelated to this  
19 litigation, even if such documents or information have been designated as "Confidential."

20 **9. APPLICATIONS TO COURT**

21 (a) This Protective Order shall not preclude or limit any party's right to oppose or  
22 object to discovery on any ground which would be otherwise available. This Protective Order  
23 shall not preclude or limit any party's right to seek *in camera* review or to seek further and  
24 additional protection against or limitation upon production or dissemination of information  
25 produced in response to discovery, including documents and their contents.

26 (b) Any person to or by whom disclosure or inspection is made in violation of this  
27 Protective Order, and who has knowledge of this Protective Order, shall be bound by the terms  
28 hereof.

1 (c) The parties hereto, and all other persons who receive Confidential Information  
2 pursuant hereto, agree that any party or other person injured by a violation of this Order does  
3 not have an adequate remedy at law and that an injunction against such violation is an  
4 appropriate remedy. In the event any person shall violate or threaten to violate any terms of this  
5 Order, the parties agree that the aggrieved party may immediately apply to obtain injunctive  
6 relief against any such person. In the event the aggrieved party shall do so, the responding  
7 person subject to the provisions of this Order shall not employ as a defense thereto the claim  
8 that the aggrieved party has an adequate remedy at law. Any persons subject to the terms of this  
9 Order agree that the Court shall retain jurisdiction over it and them for the purposes of enforcing  
10 this Order, including but not limited to issuing an injunction. In addition to injunctive relief, as  
11 specified herein, the Court may impose monetary and/or issue sanctions, as well as other relief  
12 deemed appropriate under the circumstances for a violation of this Protective Order.

13 (d) If any deponent required under the terms of this Protective Order to execute the  
14 written Acknowledgment and Agreement described in Paragraph 3(c) above refuses to do so,  
15 the parties may complete the deposition on other matters and/or adjourn it and move the Court  
16 for any appropriate relief, including (without limitation) relief from this Protective Order as to  
17 that deponent, or an order that the deponent shall execute the written agreement described in  
18 Paragraph 3(c) above, or an order that deponent shall be bound by the terms of this Protective  
19 Order, or any other order that the Court deems just. Any non-party whose Confidential  
20 Information is the subject of such a motion shall be given notice thereof.

21 **10. AGREEMENT TO COOPERATE**

22 The parties hereto and their respective attorneys of record agree that, when one party's  
23 attorney requests a deponent to sign the written Acknowledgment and Agreement described in  
24 Paragraph 3(c) above, the other party's attorney will join in such request, unless that attorney  
25 has a good faith basis for refusing to join in such a request; provided, however, that this  
26 requirement shall not apply with respect to any deponent who is represented at his or her  
27 deposition by an attorney of record for any party hereto (including any member or associate of  
28 their respective law firms). An attorney's request to sign such Acknowledgment pursuant to

1 this Paragraph shall not be construed to constitute legal advice to the deponent, but shall and  
2 may be stated to be simply a request to facilitate discovery in this action.

3 **11. NO ADMISSIONS**

4 Neither entering into this Stipulation for Protective Order, nor receiving any documents  
5 or other information designated as “Confidential” shall be construed as an agreement or  
6 admission: (1) that any document or information designated as “Confidential” is in fact  
7 Confidential Information; (2) as to the correctness or truth of any allegation made or position  
8 taken relative to any matter designated as “Confidential”; or (3) as to the authenticity,  
9 competency, relevancy or materiality of any information or document designated as  
10 “Confidential.”

11 **12. NO WAIVER OF PRIVILEGES OR OBJECTIONS TO ADMISSIBILITY**

12 Nothing in this Protective Order shall be construed as requiring disclosure of  
13 Confidential Information, including, but not limited to, materials subject to protection under the  
14 attorney-client privilege and/or attorney work product doctrine, the trade secrets privilege, or  
15 under any other applicable privileges or rights of privacy, or requiring disclosure of  
16 Confidential Information that is otherwise beyond the scope of permissible discovery. Further,  
17 nothing in this Protective Order shall be construed as either a bar to admission or a waiver by  
18 a party of any objections that might be raised as to the admissibility at trial of any evidentiary  
19 materials.

20 **13. DISCLOSURE IN VIOLATION OF ORDER**

21 If any Confidential Information is disclosed to any person other than in the manner  
22 authorized by this Protective Order, the party responsible for the disclosure must immediately,  
23 upon learning of that Confidential Information has been disclosed, in writing, notify the  
24 opposing party and the Designating Party of all pertinent facts relating to such disclosure, and  
25 without prejudice to the rights and remedies of the Designating Party, make every effort to  
26 prevent further unauthorized disclosure.

27 **14. MODIFICATION - FURTHER AGREEMENTS**

28 Nothing contained herein shall preclude any party from seeking from a Court

1 modification of this Stipulated Protective Order upon proper notice, nor shall anything  
2 contained herein be construed as to preclude the parties from entering into other written  
3 agreements designed to protect Confidential Information.

4 **15. COUNTERPARTS**

5 This Stipulation for Protective Order may be executed in counterparts, each of which  
6 shall be deemed an original and which together shall constitute one instrument.

7 DATED: April 3, 2013

LAW OFFICES OF ALAN F. COHEN

8

9

By: /s/ Alan Frederick Cohen  
Alan Frederick Cohen  
Law Offices of Alan F. Cohen  
Attorneys for Plaintiff  
AARON LEWIS

12 DATED: April 3, 2013

OGLETREE, DEAKINS, NASH, SMOAK  
& STEWART, P.C.

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14

By: /s/ Gregory C. Cheng  
GREGORY C. CHENG  
LAUREN M. COOPER  
Attorneys for Defendants  
HOME DEPOT U.S.A., INC.

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17 **[PROPOSED] ORDER**

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19 **GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED THAT**

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the provisions of the concurrently-filed stipulation between the parties regarding the use and  
protection of Confidential Information (the "Stipulated Protective Order") shall be entered as  
the Order of the Court and be binding upon the parties. In all other respects, the parties must  
comply with the procedures set forth in Local Rule 79-5, General Order 62 and must also  
comply with Federal Rule of Civil Procedure 26(c)(1).

25 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

26

27

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DATED: 4/5, 2013

THE HONORABLE JUDGE OF THE DISTRICT COURT



**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_, hereby certify that:

1. My present address is \_\_\_\_\_.

2. My present employer is \_\_\_\_\_.

3. My present occupation or job description is \_\_\_\_\_.

4. I have received a copy of the Protective Order in the above-captioned case and agree to be bound by the terms of the Protective Order.

5. I have carefully read and understand the provisions of the Protective Order.

6. I will hold in confidence and not disclose to anyone not qualified under the Protective Order, any Confidential Information or any portion or substance thereof provided to me in the course of this litigation.

7. I will return all materials containing Confidential Information or any portions or copies, summaries, abstracts or indices thereof, which come into my possession, and documents or things that I prepared relating thereto and containing such Confidential Information, to counsel for the party by whom I am retained or employed, or to counsel by whom I am retained or employed, when my services in this matter have been concluded.

8. I understand that if I violate the provisions of this Protective Order, I may be subject to sanctions by the Court, among other things.

9. I hereby submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcement of this Protective Order against me.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Dated: \_\_\_\_\_ Signature: \_\_\_\_\_