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6 Attorneys for Orchard Supply Hardware LLC.

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 8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**  
 10 **SAN FRANCISCO DIVISION**

<p>11 ORCHARD SUPPLY HARDWARE )          12 LLC, )          Plaintiff, )          13 Vs. )          14 HOME DEPOT USA, INC.; )          15 MILWAUKEE ELECTRIC TOOL )          CORPORATION; and MAKITA USA, )          16 INC., )          Defendants. )</p> <hr/>	<p>Case No. 12-cv-6361 JST          STIPULATION AND <del>PROPOSED</del>          ORDER (RE: NOTICE OF PRIVATE          MEDIATION AND REQUEST FOR          STAY OF PROCEEDINGS PENDING          MEDIATION)          The Hon. Jon S. Tigar          Complaint Filed: December 14, 2012          Trial Date: Not Set</p>
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 20 WHEREAS, on December 14, 2012, Plaintiff, Orchard Supply Hardware, LLC (“Orchard”),  
 21 filed its original complaint (Dkt. 1) against Defendants Home Depot USA, Inc. (“Home Depot”),  
 22 Milwaukee Electric Tool Corporation (“Milwaukee”), and Makita USA, Inc. (“Makita”); and

23 WHEREAS, the Court ruled on Defendants' challenges to the pleadings by its decision on  
 24 their second motion to dismiss (Dkt. 59), which it entered on September 19, 2013.; and

25 WHEREAS, Home Depot and Orchard have since conducted some settlement negotiations;  
 26 and

27 WHEREAS, Orchard represents that in June, 2013 it entered bankruptcy proceedings and,  
 28 while in bankruptcy, assigned its present claims to its “Senior Secured Term Loan Lenders,” who in

STIPULATION AND ~~PROPOSED~~ ORDER (RE: NOTICE OF PRIVATE  
 MEDIATION AND REQUEST FOR STAY OF PROCEEDINGS PENDING MEDIATION)

1 turn have designated Bradley Dietz as the “Responsible Person” charged with the authority and duty  
2 to “investigate, prosecute, settle, liquidate, dispose of, and/or abandon” Orchard’s present claims; and  
3 in addition Orchard and its lenders represent that Mr. Dietz has been properly designated as a  
4 representative of Orchard’s bankruptcy estate under 11 U.S.C. § 1123(b)(3)(B); and

5 WHEREAS, on March 5, 2014 the Court set a further case management conference in this  
6 case for March 21, 2014 at 9:00 a.m. in the Oakland Courthouse, unless by March 17, 2014 the  
7 parties gave notice that they had confirmed a private mediation, in which event the parties could  
8 request that Court continue this case management conference; and

9 WHEREAS, the parties have confirmed a private mediation of Orchard’s claims against Home  
10 Depot, and this mediation will be conducted in San Francisco, California on April 28, 2014 by the  
11 Honorable Fern Smith (ret.) of JAMS at its offices in San Francisco; and

12 WHEREAS, in light of the assignment of its claims, Orchard wishes to seek leave to amend its  
13 operative complaint to reflect that it has assigned its claims to its Senior Secured Term Loan Lenders;  
14 and

15 WHEREAS, Home Depot does not oppose the grant of this leave, but preserves all of its  
16 objections and defenses to the pleading of the assignment and to the legal consequences and effect of  
17 the assignment; and

18 WHEREAS, the parties request that case management conference set for March 21, 2014 be  
19 continued to May 7, 2014 at 2:00 p.m.

20 WHEREFORE, Orchard and Home Depot stipulate to the following arrangement, but subject  
21 to this Court's approval:

22 1. The scheduling conference set for March 21, 2014 at 9:00 a.m. in the Oakland  
23 Courthouse is continued to May 7, 2014 at 2:00 p.m., when it will be heard in Courtroom 9 of this  
24 Court.

25 2. The Court stays all proceedings in this case until the parties have completed their  
26 private mediation, which is scheduled to take place before the Honorable Fern Smith (Ret.) in San  
27 Francisco, California on April 28, 2014 at 9:00 a.m.

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3. Orchard is hereby given leave to file its third amended complaint, but only for the purpose of alleging the fact, circumstances, and effect of the assignment of its claims to its present assignee. A true and correct copy of this complaint is appended hereto and will be accepted for filing upon the Court's approval of this Stipulation.

4. Home Depot need not file an answer the third amended complaint, but rather the Court will set a deadline for its response after the mediation if any of Orchard's claims against Home Depot remains pending after the mediation.

**IT IS SO STIPULATED:**

DATED: March 14, 2014                      Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP

/s/ Roxane Polidora

By:

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 Roxane Polidora  
 Attorneys for Defendant  
 HOME DEPOT USA, INC.

DATED: March 14, 2014                      Respectfully submitted,

LAW OFFICES OF WILLIAM MARKHAM, P.C.

/s/ William Markham

By:

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 William A. Markham,  
 Attorneys for Plaintiff,  
 ORCHARD SUPPLY HARDWARE LLC.

**PURSUANT TO STIPULATION, AND IN ACCORDANCE WITH LOCAL RULE 7-12, IT IS SO ORDERED:**

DATED: March 18, 2014

Jon S. Tigar  
 United States

