

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE THE HOME DEPOT, INC.
SHAREHOLDER DERIVATIVE
LITIGATION

LEAD CASE
NO. 1:15-CV-2999 TWT

STIPULATION OF SETTLEMENT AND RELEASE AGREEMENT

This Stipulation of Settlement and Release Agreement (“Agreement” or “Settlement Agreement” or “Stipulation”) is made and entered into on April 21, 2017, by and among the following parties, each by and through respective counsel: (1) Cora Frohman (“Frohman”) and Mary Lou Bennek (“Bennek”) (collectively, “Plaintiffs”); (2) Nominal Defendant The Home Depot, Inc. (“Home Depot” or the “Company”); (3) Berel Rosenfeld, as Trustee of the LR Trust (“Rosenfeld,” and collectively with the Plaintiffs, the “Shareholders”); and (4) Individual Defendants Francis S. Blake, Mathew A. Carey, Craig A. Menear, Ari Bousbib, Gregory D. Brenneman, J. Frank Brown, Albert P. Carey, Armando Codina, Helena B. Foulkes, Karen L. Katen, Mark Vadon, Bonnie G. Hill, and F. Duane Ackerman (collectively, “Individual Defendants” and together with the parties enumerated above, the “Parties”). This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof.

I. RECITALS

A. Frohman's Demand for the Inspection of Books and Records.

1. In September 2014, Home Depot announced that its payment data systems had been breached, which could potentially impact customers who had used their debit and credit cards to make purchases at Home Depot stores located in the United States (the "Data Breach").

2. Frohman has been a shareholder of record of the Company at all times relevant to this matter.

3. On September 30, 2014, Frohman made a demand for the inspection of certain books and records of The Home Depot, Inc. related to the Data Breach, pursuant to 8 Del. C. § 220.

4. In response to Frohman's demand, the Company produced certain responsive, non-privileged minutes and materials from the Company's official board files concerning, among other things, the Data Breach and the Company's cybersecurity controls, processes, policies and procedures.

5. Following additional communications between Frohman and the Company concerning the parameters of the Company's production, on June 8, 2015, Frohman filed a Verified Complaint pursuant to 8 Del. C. § 220 to Compel Inspection of Books and Records in the Court of Chancery of the State of Delaware (the "Delaware Action"). Specifically, Frohman sought inspection of certain highly sensitive materials concerning the Company's cybersecurity systems, which materials had been redacted in the Company's prior productions.

6. The Company subsequently agreed to permit counsel's in-person inspection of the highly sensitive materials, and on January 8, 2016, the parties to the Delaware Action filed a Notice of Voluntary Dismissal by Stipulation.

B. Bennek's Demand for the Inspection of Books and Records.

1. Bennek has been a shareholder of record of the Company at all times relevant to this matter.

2. On April 20, 2015, Bennek also made a demand for the inspection of certain books and records of The Home Depot, Inc. related to the Data Breach, pursuant to 8 Del. C. § 220 (collectively, with Frohman's demand for the inspection of books and records, the "Section 220 Demands").

3. In response to Bennek's demand, the Company produced certain responsive, non-privileged minutes and materials from the Company's official board files concerning, among other things, the Data Breach and the Company's cybersecurity controls, processes, policies and procedures.

C. Derivative Actions in the Northern District of Georgia.

1. On August 25, 2015, Bennek filed a Verified Shareholder Derivative Complaint in the Northern District of Georgia, captioned *Bennek v. Ackerman, et al.*, 15-CV-2999-TWT.

2. On October 15, 2015, Frohman filed a Verified Shareholder Derivative Complaint in the Northern District of Georgia, captioned *Frohman v. Bousbib, et al.*, 15-CV- 3650-TWT.

3. On January 4, 2016, Plaintiffs Bennek and Frohman filed an Unopposed Motion to Consolidate Related Actions, Appoint Co-Lead Plaintiffs and Approve Counsel (the "Motion to Consolidate"). The Motion to Consolidate noted that both Plaintiffs asserted claims arising

from the Data Breach and alleged claims against certain current and former Home Depot officers and directors.

4. On January 20, 2016, the Court held a hearing on the Motion to Consolidate during which the “Court inquired if there were any present that opposed the consolidation of cases and appointment of lead plaintiffs and appointment of counsel. There was no opposition.” See Minute Sheet for proceedings held In Open Court on 1/20/2016, 15-CV-2999-TWT Dkt. No. 33.

5. Following the hearing, on January 20, 2016, the Court granted the Motion to Consolidate. The Order consolidated the *Bennek* and *Frohman* actions into a single action captioned *In re The Home Depot, Inc. Shareholder Derivative Litigation*, Lead Case No. 15-CV-2999 (the “Consolidated Action”). The Order additionally appointed Bennek and Frohman as Co-Lead Plaintiffs, appointed Schubert Jonckheer & Kolbe LLP and Faruqi & Faruqi LLP as Co-Lead Counsel, and appointed Holzer & Holzer, LLC to act as Liaison Counsel. The Order “shall apply to ... any and all cases that are subsequently filed in this Court or transferred to this Court, which is brought against the defendants and/or any other past or present employee or agent of any defendant, which is brought on behalf of Home Depot and arises out of the 2014 data breach at Home Depot.”

6. On February 29, 2016, Plaintiffs in the Consolidated Action filed a Verified Consolidated Shareholder Derivative Complaint (the “Complaint”). The Complaint alleged claims on behalf of Home Depot against the Individual Defendants for breach of fiduciary duty, waste of corporate assets, and violation of § 14(a) of the Securities Exchange Act in connection with the Company’s 2014 and 2015 proxy statements. The Complaint contained a number of allegations arising out of the documents provided to Plaintiffs in response to their respective

Section 220 Demands. Plaintiffs sought, among other things, monetary damages and certain corporate governance reforms.

7. On April 14, 2016, the Individual Defendants and the Company (the “Defendants”) filed a Motion to Dismiss the Complaint for failure to state a claim under Rule 12(b)(6) and for failure to make a pre-suit demand on the Company’s board or to plead particularized facts to show that such a demand would be futile, as required by Rule 23.1 and Delaware Court of Chancery Rule 23.1.

8. On June 30, 2016, Plaintiffs filed their Opposition to Defendants’ Motion to Dismiss. Plaintiffs conceded that they had not made a pre-suit demand under Rule 23.1, but argued that a majority of the Company’s board faced a substantial likelihood of liability, and that demand was therefore excused as futile.

9. On November 30, 2016, the Court granted Defendants’ Motion to Dismiss and held that Plaintiffs failed to show that demand was futile as to any of the claims alleged (the “MTD Order”). The Court entered a judgment dismissing the action with prejudice.

10. On December 28, 2016, Plaintiffs filed their Notice of Appeal to the United States Court of Appeals for the Eleventh Circuit.

D. Rosenfeld’s Demand on the Board.

1. The LR Trust has been a shareholder of record of the Company at all times relevant to this matter.

2. On September 22, 2014, Rosenfeld – in his capacity as trustee of the LR Trust – made a formal written demand on the Board of Directors of The Home Depot, Inc. (the “Board”)

to investigate the Data Breach and to “institute claims on behalf of the Company against any person responsible for causing damage to the Company” (the “Investigation Demand”).

3. Upon receiving the Investigation Demand, the Board appointed a Demand Review Committee (the “DRC”) consisting of three non-executive directors, which retained independent outside counsel to assist in the DRC’s review of the issues raised in the Investigation Demand (“DRC Counsel”).

4. On September 14, 2015, DRC Counsel sent a letter to Rosenfeld’s counsel, informing them that the DRC had made its recommendation to the Board after completing a thorough investigation and considering potential claims against directors, officers, non-officer employees, and third-parties. The letter further stated that after evaluation and discussion of the DRC’s findings and recommendations, and in light of applicable legal principles, the Board had adopted the DRC’s recommendations and determined that it was not in the Company’s or its stockholders’ best interests to pursue claims raised in the Investigation Demand against any Home Depot director, officer, or associate. The Board additionally adopted the DRC’s recommendation to direct management to make the final determination whether pursuing potential claims against any third-parties would be in the Company’s best interests.

5. On November 23, 2015, DRC counsel and counsel for the Company met with Rosenfeld’s counsel to discuss the Investigation Demand, the DRC’s recommendations, and the Board’s final determination.

6. Following the Board’s receipt of the Investigation Demand, the Company and the Board have implemented and enhanced a number of remedial cybersecurity measures, including:

- a. Significantly increasing the budget for IT security;

- b. Enhanced recruitment and retention of cybersecurity talent;
- c. Enhanced detection to distinguish between normal and abnormal activities;
- d. Directing the Company's Chief Information Security Officer ("CISO") to report directly to the Chief Information Officer;
- e. Granting the CISO the right and obligation to contact one or more members of the Board when warranted;
- f. Additional security training of the Company's Associates;
- g. Re-certified compliance with PCI DSS; and
- h. Enhanced third-party access controls.

E. Settlement Discussions.

1. In an effort to reach an amicable conclusion to both the Consolidated Action and the Investigation Demand, the Company and its counsel arranged for a meeting between: counsel for Rosenfeld and his consulting expert in cybersecurity; counsel for Plaintiffs and their consulting expert in cybersecurity; the Company's CISO; its Senior Director of Information Security; and its Director of Information Security. The various constituents met for several hours in August 2016 and discussed the Company's ongoing cybersecurity policies and procedures.

2. On September 8 and September 22, 2016, the Parties, along with Shareholders' cyber security experts, engaged in two mediation sessions with experienced mediator Ralph B. Levy, Esq., concerning the Consolidated Action and the Investigation Demand. The Parties thereafter communicated with one another and with Mr. Levy on several occasions.

3. The Parties now agree to settle the Consolidated Action and any claims that may or could arise out of the Investigation Demand.

II. CLAIMS AND POTENTIAL CLAIMS OF THE SHAREHOLDERS AND BENEFITS OF SETTLEMENT.

Plaintiffs believe that the claims asserted in the Consolidated Action on behalf of Home Depot have merit. Rosenfeld additionally believes that he may have meritorious claims arising out of his Investigation Demand. Shareholders, however, recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Consolidated Action and/or any action arising out of the Investigation Demand. Shareholders and their counsel have also taken into account the uncertain outcome and the risk of continued litigation, especially in light of the MTD Order, as well as the difficulties and delays inherent in such litigation.

Based on their evaluation, Shareholders and their counsel have determined that the Settlement set forth in this Agreement is in the best interests of Home Depot. Shareholders and their counsel also believe that the Settlement set forth in this Agreement confers substantial benefits upon Home Depot and its stockholders. They base this conclusion upon, among other things, their investigation during the development, prosecution, and settlement of the Consolidated Action and the Investigation Demand, which included, *inter alia*: (i) inspecting, reviewing, and analyzing the Company's filings with the Securities and Exchange Commission ("SEC"); (ii) inspecting, reviewing, and analyzing the thousands of pages of documents produced by the Company in response to the Shareholders' Section 220 Demands; (iii) retaining two cybersecurity consulting experts who additionally analyzed the thousands of pages of documents produced by the Company in response to the Shareholders' Section 220 Demands; (iv) meeting with the Shareholders' cybersecurity experts and the Company's cybersecurity management team, including its CISO; (v) participating in multiple mediation sessions; (vi) reviewing all shareholder demands for investigation arising out of the Data Breach and submitted to the Board, minutes of every DRC meeting, all DRC resolutions and recommendations to the

Board, and all Board resolutions adopting the same; (vii) Rosenfeld's meetings and communications with DRC Counsel; (viii) researching corporate governance issues; and (ix) researching the applicable law with respect to the claims asserted in the Consolidated Action and any claims that could arise out of the Investigation Demand, and any potential defenses thereto.

III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY.

Defendants have denied, and continue to deny, each and all of the claims and contentions alleged by the Plaintiffs in the Consolidated Action and the Investigation Demand and maintain furthermore that they have meritorious defenses. Defendants expressly have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Consolidated Action and the Investigation Demand, and Defendants contend that they have numerous defenses to the allegations in the Consolidated Action and the Investigation Demand. Defendants also have denied and continue to deny, among other allegations, the allegations that Home Depot or its stockholders have suffered damage or that Home Depot or its stockholders were harmed in any way by the conduct alleged in the Consolidated Action and the Investigation Demand or otherwise arising out of the Data Breach. Defendants have further asserted and continue to assert that at all times they acted in good faith and in a manner they reasonably believed to be, and that was, in the best interests of Home Depot and its stockholders. Pursuant to the terms set forth below, this Agreement shall in no event be construed as or deemed to be evidence of an admission or concession by Defendants with respect to any claim of fault, liability, wrongdoing, or damage whatsoever.

Nonetheless, Defendants have concluded that further litigation would be protracted and expensive and that it is desirable that the Consolidated Action and any claims that may arise out of the Investigation Demand be fully and finally settled in the manner and upon the terms and conditions set forth in the Agreement. Defendants have also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like the Consolidated Action and potential claims arising out of the Investigation Demand. Defendants have, therefore, determined that it is desirable that the Consolidated Action and the Investigation Demand be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement.

IV. TERMS OF SETTLEMENT AGREEMENT AND RELEASE.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, it is hereby stipulated and agreed by the Parties that the Consolidated Action and any claims that may or could arise out of the Investigation Demand be finally and fully, compromised, and released, and the Consolidated Action shall be dismissed with prejudice and with full preclusive effect, upon and subject to the terms and conditions of the Agreement, as set forth below:

A. Definitions

In addition to the terms defined at various points within this Agreement, the following defined terms apply throughout this Agreement:

1. *Bennek* Action means the shareholder derivative action filed by Mary Lou Bennek on August 25, 2015, in the N.D. Ga., captioned *Bennek v. Ackerman, et al.*, 15-CV-2999-TWT.
2. “Board” means the Board of Directors of The Home Depot, Inc.

3. “Co-Lead Counsel” means Schubert Jonckheer & Kolbe LLP and Faruqi & Faruqi LLP.

4. “Consolidated Action” means the consolidated derivative action pending in the N.D. Ga. styled *In re The Home Depot, Inc., Shareholder Derivative Litigation*, No. 15-CV-2999-TWT, which consists of the *Bennek* Action and the *Frohman* Action.

5. “Corporate Governance Reforms” means the corporate governance reforms detailed in Section IV.B.1.-9, below, that shall be adopted, implemented, and/or maintained by Home Depot pursuant to this Agreement.

6. “Court” means the United States District Court for the Northern District of Georgia.

7. “Current Home Depot Stockholder” means any Person who owned Home Depot common stock as of the date of the execution of the Agreement and who continues to hold such Home Depot common stock as of the date of the Settlement Hearing.

8. “Data Breach” means the data breach disclosed by Home Depot in 2014, including but not limited to in the Company’s Form 8-Ks filed on September 8, September 18, and November 6, 2014.

9. “Defendants” means the Individual Defendants and nominal defendant Home Depot.

10. “Director” means an individual member of the Board of Directors of Home Depot.

11. “Effective Date” means the first date by which all of the events and conditions specified in Section IV.F.1 of this Agreement have been met and have occurred.

12. “Fee and Expense Award” means the agreed-upon amount to be paid to Shareholder Counsel for their attorneys’ fees and expenses in an amount not to exceed \$1,125,000 subject to review and approval by the Court, in recognition of the substantial benefits conferred on the Company and its shareholders by the Settlement. Such amount shall include all attorneys’ fees and expenses that may be due any counsel or party who has asserted or participated in the assertion of derivative claims and/or the Investigation Demand or any other demand made on the Board of Directors of the Company and any service award by the Court to any Shareholders in an amount not to exceed \$1,500 each for their participation in the Consolidated Action and/or Investigation Demand (the award to Shareholders is also referred to as the “Service Award”).

13. “Final” with respect to the Order and Final Judgment to be entered pursuant to this Agreement, occurs on the first business day following the date the Order and Final Judgment becomes final and unappealable, whether by expiration of time to appeal, affirmance on any appeal taken, or exhaustion of any possible appeal or review, writ of certiorari, lapse of time, or otherwise. For purposes of this paragraph, an “appeal” shall not include any appeal that concerns only the issue of the Fee and Expense Award. The failure of the Court to approve the Fee and Expense Award in whole or in part shall not in any way delay or preclude the Order and Final Judgment from becoming Final.

14. *Frohman* Action means the shareholder derivative action filed by Cora Frohman on October 15, 2015, in the N.D. Ga., captioned *Frohman v. Bousbib, et al.*, 15-CV-3650-TWT.

15. “Home Depot” or the “Company” means The Home Depot, Inc., including, but not limited to, its predecessors, successors, controlling stockholders, partners, joint venturers, subsidiaries, affiliates, divisions and assigns.

16. “Individual Defendants” means defendants Francis S. Blake, Mathew A. Carey, Craig A. Menear, Ari Bousbib, Gregory D. Brenneman, J. Frank Brown, Albert P. Carey, Armando Codina, Helena B. Foulkes, Karen L. Katen, Mark Vadon, Bonnie G. Hill, and F. Duane Ackerman.

17. “Investigation Demand” means the formal written demand sent by Rosenfeld in his capacity as trustee of the LR Trust to the Board on September 22, 2014.

18. “Judgment” or “Order and Final Judgment” means the final judgment and order of dismissal with prejudice to be rendered by the Court that contains all material terms of the proposed form of order attached hereto as Exhibit D.

19. “Liaison Counsel” means Holzer & Holzer, LLC.

20. “Notice” or “Notice of Proposed Settlement” means the notice of this Agreement to be posted on thdderiv.com, on <http://www.faruqilaw.com/settlement-notice>, and on <http://www.classactionlawyers.com> substantially in the form attached hereto as Exhibit C.

21. “Notices” refers collectively to the Notice and the Summary Notice (defined herein).

22. “Person” means an individual, corporation, limited liability corporation, professional corporation, partnership, limited partnership, limited liability partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government, or any political subdivision or agency thereof.

23. “Plaintiffs” means Cora Frohman and Mary Lou Bennek.

24. “Plaintiffs’ Counsel” means Schubert Jonckheer & Kolbe LLP, Faruqi & Faruqi LLP, Holzer and Holzer, LLC, Ken Hodges Law and any other law firm that appeared for the Plaintiffs in the Consolidated Action.

25. “Preliminary Approval Order” means the order to be rendered by the Court preliminarily approving the Settlement, substantially in the form of the attached Exhibit A.

26. “Related Persons” means each of the Defendants and their past or present agents, officers, directors, attorneys, accountants, auditors, advisors, insurers (and insurers’ respective past and present officers, directors, employees, agents, affiliates, parents, subsidiaries, divisions, attorneys, accountants, auditors, advisors, underwriters, insurers, co-insurers, re-insurers, heirs, executors, personal representatives, estates, administrators, trusts, predecessors, successors, and assigns), co-insurers, reinsurers, spouses, immediate family members, heirs, executors, personal representatives, estates, administrators, trusts, predecessors, successors, and assigns, each other individual or entity in which any of the Defendants has a controlling interest, and each and all of their respective past and present officers, directors, employees, agents, affiliates, parents, subsidiaries, divisions, attorneys, accountants, auditors, advisors, insurers, co-insurers, re-insurers, heirs, executors, personal representatives, estates, administrators, trusts, predecessors, successors, and assigns.

27. “Released Claims” means any and all actions, suits, claims, demands, rights, liabilities, matters, issues, and causes of action, including, but not limited to, those arising under contract, statute, or common law, including both known claims and Unknown Claims (as defined herein), whether fixed or contingent or absolute, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, discoverable or undiscoverable, concealed or hidden, that have been, could have been, or in the future might be asserted by

Plaintiffs (both individually and derivatively on behalf of Home Depot) and/or any Home Depot stockholder derivatively on behalf of Home Depot against any Released Persons based upon, arising out of, or related to (a) the Data Breach; (b) the allegations, facts, transactions, events, occurrences, acts, disclosures, statements, representations, omissions, or failures to act relating to all matters involved, set forth, referred to, or alleged in any complaint(s) filed in the Consolidated Action; (c) the allegations, facts, transactions, events, occurrences, acts, disclosures, statements, representations, omissions, or failures to act relating to all matters involved, set forth, referred to, or alleged in the Investigation Demand and any other demand on the Board arising out of the Data Breach; (d) any allegations related to or arising out of the purchase or sale of Home Depot stock by any Individual Defendant based upon his or her alleged knowledge of material non-public information concerning the Company's cybersecurity; (e) the defense or settlement of the Consolidated Action, the Investigation Demand and any other demand on the Board arising out of the Data Breach, and/or the Released Claims, including the payments provided for herein. "Released Claims" shall not include any claims to enforce this Agreement.

28. "Released Persons" shall mean and include Home Depot, each of the Individual Defendants, and each and all of the foregoing individuals' and entities' Related Persons.

29. "Releasing Parties" means Shareholders (both individually and derivatively on behalf of Home Depot), any other Home Depot stockholder on behalf of Home Depot, and Shareholder Counsel.

30. "Shareholder Counsel" means Schubert Jonckheer & Kolbe LLP, Faruqi & Faruqi LLP, Holzer and Holzer, LLC, Weiss Law LLP, and Ken Hodges Law.

31. “Shareholders” means Cora Frohman, Mary Lou Bennek, and Berel Rosenfeld as Trustee for the LR Trust.

32. “Settlement” means the settlement documented in this Settlement Agreement.

33. “Settlement Hearing” means a hearing before the Court to consider and determine whether to approve the terms of the Settlement as fair, reasonable, and adequate, and in the best interests of Home Depot.

34. “Summary Notice” means the Summary Notice to Current Home Depot Stockholders, substantially in the form of Exhibit B attached hereto.

35. “Unknown Claims” means any Released Claim(s) that the Releasing Parties do not know of or suspect to exist in their favor at the time of the release of the Released Persons, including claims that, if known by them, might have affected their settlement with and release of the Released Persons, or might have affected their decision not to object to this settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date, the Parties expressly waive the provisions, rights, and benefits conferred by or under California Civil Code section 1542, or any other law of the United States or any state or territory of the United States, or principle of common law that is similar, comparable, or equivalent to §1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Releasing Parties acknowledge that they may hereafter discover facts in addition to or different from those now known or believed to be true by them, with respect to the subject matter

of the Released Claims, but it is the intention of the Releasing Parties to completely, fully, finally, and forever compromise, settle, release, discharge, relinquish, and extinguish any and all Released Claims, known or unknown, suspect or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, which do now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. The Parties acknowledge that the foregoing waiver was separately bargained for and is a key element of the Agreement of which this release is a part.

B. Settlement Consideration.

In consideration of the full settlement and release of all Released Claims against Defendants and the other Released Parties, Home Depot agrees to adopt and/or maintain the following measures with respect to its U.S. stores, within thirty (30) days of the Effective Date. The Corporate Governance Reforms shall be maintained through at least January 1, 2020, subject to either: (a) a determination by a majority of the non-executive Directors that the measure is no longer in the best interest of the Company; (b) a determination by the CISO and approved by a majority of the members of the Audit Committee that the measure is no longer in the best interest of the Company; or (c) modifications which the Company reasonably believes are required by applicable law or regulation.

1. The Company shall document the duties and responsibilities of the CISO and shall provide such documentation to Shareholder Counsel;

2. The Company shall periodically conduct Table Top Cyber Exercises to validate the Company's processes and procedures, test the readiness of its response capabilities, raise organizational awareness and train its personnel, and create remediation plans for issues and problem areas;

3. The Company shall monitor and periodically assess key indicators of compromise on computer network endpoints;

4. The Company shall maintain and periodically assess partnership with a dark web mining service to search for Home Depot information;

5. The Company shall maintain the executive-level “Data Security and Privacy Governance Committee” or a comparable executive-level committee focused on the Company’s data security, shall document the duties and responsibilities of the committee, and shall provide such documentation to Shareholder Counsel;

6. The Board shall receive periodic reports from management regarding the amount of the Company’s IT budget and what percentage of the IT budget is spent on cybersecurity measures;

7. The Company shall maintain the Incident Response Team and the Incident Response Plan to address crises or disasters and periodically re-evaluate the Plan;

8. The Company shall maintain membership in at least one Information Sharing and Analysis Centers (ISACs) or Information Sharing and Analysis Organizations (ISAOs); and

9. The Board and the Audit Committee shall be authorized to retain their own IT, data and security experts and consultants as they deem necessary.

C. Procedure for Implementing the Settlement

1. Promptly after execution of the Agreement, Plaintiffs and Defendants shall jointly request that the Eleventh Circuit stay the appeal in the Consolidated Action in order for the District Court to consider preliminarily approval of the Settlement and thereafter, if preliminary approval is granted, to consider final approval of the Settlement.

2. Plaintiffs shall submit the Agreement together with its exhibits to the Court and shall file an unopposed consented to motion and apply for entry of a Preliminary Approval Order, substantially in the form of Exhibit A hereto, requesting, *inter alia*: (i) the preliminary approval of the Settlement set forth in the Agreement; (ii) approval of the forms and manner of the dissemination of the Notice and Summary Notice to Current Home Depot Stockholders; and (iii) a date for the Settlement Hearing, pursuant to Federal Rule of Civil Procedure 23.1, for the Court to consider and determine whether to approve the terms of the Settlement as fair, reasonable, and adequate, including the payment of attorneys' fees and expenses in the amount separately negotiated by the Parties.

3. Notice to Current Home Depot Stockholders shall consist of the Notice of Proposed Settlement, which includes the general terms of the Settlement set forth in the Agreement and the date of the Settlement Hearing, substantially in the form attached hereto as Exhibit C and the Summary Notice substantially in the form attached hereto as Exhibit B.

4. Within fifteen (15) business days after the entry of the Preliminary Approval Order, Home Depot shall cause the Notice and a copy of the Agreement to be posted on thdderiv.com. Additionally, within fifteen (15) business days after the entry of the Preliminary Approval Order, Home Depot shall cause the Summary Notice to be published one time in *Investor's Business Daily*. Prior to the Settlement Hearing, Defendants' Counsel shall file with the Court an appropriate affidavit or declaration with respect to posting and publishing the Notices. Home Depot shall be solely responsible for paying the costs and expenses related to providing such Notices to its stockholders.

5. Within fifteen (15) business days after the entry of the Preliminary Approval Order, Shareholder Counsel shall cause the Notice and a copy of the Agreement to be posted on

the websites of Faruqi & Faruqi LLP, at www.faruqilaw.com/settlement-notice and Schubert Jonckheer & Kolbe LLP, at www.classactionlawyers.com. Prior to the Settlement Hearing, Shareholder Counsel shall file with the Court an appropriate affidavit or declaration with respect to posting the Notice and Agreement.

D. Releases.

1. Upon the Effective Date, the Releasing Parties shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever waived, released, relinquished, and discharged the Released Claims (including Unknown Claims) against the Released Persons, and shall be permanently barred and enjoined from instituting, commencing, or prosecuting the Released Claims against the Released Persons. Nothing herein shall in any way impair or restrict the rights of any Party to enforce the terms of this Agreement.

2. Upon the Effective Date, the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged Shareholders and Shareholders' Counsel from all claims (including Unknown Claims), arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Released Claims. Nothing herein shall in any way impair or restrict the rights of any Party to enforce the terms of this Agreement.

E. Shareholder Counsel's Attorneys' Fees and Expenses and Shareholders' Service Awards.

1. After negotiation of the principal terms of the Settlement set forth herein, Shareholder Counsel and Defendants separately negotiated at arm's-length the amount of attorneys' fees and expenses to be paid to Shareholder Counsel. As a result of these negotiations, Defendants agreed to cause an award of attorneys' fees and expenses to be paid to

Shareholder Counsel in an amount not to exceed \$1,125,000, subject to approval of the Court. The Parties mutually agree that the Fee and Expense Award is fair and reasonable in light of the substantial benefits conferred upon Home Depot and its stockholders by this Agreement. The Fee and Expense Award shall constitute final and complete payment for Shareholder Counsel's fees and expenses that have been incurred or will be incurred in connection with the Consolidated Action and the Investigation Demand. The Service Award shall be paid from the Fee and Expense Award.

2. The Fee and Expense Award shall be made payable via wire payment to Faruqi & Faruqi LLP, with such written payment instructions to be supplied by Faruqi & Faruqi, LLP to Defendants' counsel.

3. Payment of the Fee and Expense Award shall be made by Home Depot as specified above within fifteen (15) business days after (i) the date of the entry of the Preliminary Approval Order or (ii) the date on which Shareholder Counsel provides sufficient written payment instructions to Defendants' Counsel (whichever is later), and shall be immediately releasable to Shareholder Counsel upon the entry of the Order and Final Judgment, notwithstanding the existence of any collateral attacks on the Settlement and/or the Fee and Expense Award, including, without limitation, any objections or appeals. Any reduction, modification, or non-approval of the Fee and Expense Award shall not in any way delay or preclude the Order and Final Judgment from becoming Final.

4. In the event the Judgment fails to become Final as defined in Section IV.A.13 herein, then it shall be the obligation of Shareholder Counsel to make appropriate refunds or repayments to the Defendants of any attorneys' fees and expenses previously paid within ten (10)

business days from receiving notice from Defendants' counsel or from a court of appropriate jurisdiction.

5. Upon receipt of the Fee and Expense Award, Shareholder Counsel shall pay or cause to be paid an amount not to exceed \$1,500 to each of the Shareholders who petition the Court for a Service Award. The Service Award shall be subject to Court review and approval and paid from the Fee and Expense Award amount, in consideration of the respective Shareholder's service in the Consolidated Action or the Investigation Demand.

6. Except as expressly provided herein, Shareholders and Shareholder Counsel shall bear their own fees, costs, and expenses, and no Released Person shall assert any claim for expenses, costs, or fees against Shareholders or Shareholder Counsel.

7. It is the intention of the Parties that none of the Released Persons shall have any liability whatsoever for amounts owed for taxes by Shareholders or Shareholder Counsel on account of the payments made or to be made under this Agreement. All tax liability (if any) in connection with this Agreement shall be borne solely and exclusively by Shareholders or Shareholder Counsel.

F. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination.

1. The Effective Date of the Agreement shall be conditioned on the occurrence of all of the following events:

- a. Home Depot's Board has approved the Agreement within thirty (30) days of execution of the Agreement;
- b. The Preliminary Approval Order has been entered by the Court substantially in the form of Exhibit A;

- c. The Order and Final Judgment has been entered by the Court substantially in the form of Exhibit D hereto;
- d. The Fee and Expense Award has been paid; and
- e. The Order and Final Judgment has become Final.

2. If any of the conditions specified above are not met, then this Agreement shall be cancelled and terminated unless the Parties mutually agree in writing, by and through their respective counsel, to proceed with the Agreement.

3. In the event that the Agreement or Settlement is not approved by the Court, or the Settlement is terminated for any reason, the Parties shall be restored to their respective positions in the Consolidated Action and with respect to the Investigation Demand of the last date before the execution of this Agreement, and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Parties, shall not be deemed or construed to be an admission by any Party of any act, matter, or proposition, and shall not be used in any manner for any purpose in any subsequent proceeding in the Consolidated Action or in any other action or proceeding, including any action or proceeding arising out of the Investigation Demand. In such event, the terms and provisions of the Agreement, shall have no further force and effect with respect to the Parties and shall not be used in the Consolidated Action or in any other proceeding for any purpose, including in any proceeding arising out of the Investigation Demand, and any judgment or orders entered by the Court in accordance with the terms of the Agreement shall be treated as vacated, *nunc pro tunc*.

G. Miscellaneous Provisions.

1. The Parties (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement.

2. The Parties intend this Settlement to be a final and complete resolution of all disputes between Shareholders, the Individual Defendants, and Home Depot with respect to the Consolidated Action and any claim or action arising out of the Investigation Demand. The Settlement shall not be deemed an admission by any Party as to the merits of any claim, allegation, or defense. The Parties further agree that the claims are being settled voluntarily after consultation with competent legal counsel.

3. The provisions contained in this Agreement (including any exhibits attached hereto) shall not be deemed a presumption, concession, or admission by any Party of any fault, liability, or wrongdoing, or lack of merit as to any facts or claims alleged or asserted in the Consolidated Action or in any other action or proceeding, either presently known or unknown, and shall not be interpreted, construed, deemed, invoked, offered, or received into evidence or otherwise used by any person in the Consolidated Action or in any other action or proceeding, whether civil, criminal, or administrative, and whether presently known or unknown, except in connection with any proceeding to enforce the terms of the Settlement. The Released Persons may file the Agreement and/or the Order and Final Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

4. The exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

5. The Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

6. This Agreement and the exhibits attached hereto constitute the entire agreement among the Parties and no representations, warranties, or inducements have been made to any Party concerning the Agreement or any of its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. Except as otherwise provided herein, each Party shall bear its own costs.

7. This Agreement may be executed in one or more counterparts. A faxed or pdf signature shall be deemed an original signature for the purposes of this Agreement. All executed counterparts, and each of them, shall be deemed to be one and the same instrument. A complete set of counterparts, either originally executed or copies thereof, shall be filed with the Court.

8. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties and the Released Persons.

9. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Agreement, and the Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Agreement.

10. This Agreement and the exhibits attached hereto shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Georgia, and the rights and obligations of the parties to this Agreement shall be construed and enforced in

accordance with, and governed by, the internal, substantive laws of the State of Georgia without giving effect to that state's choice-of-law principles.

11. Shareholders have not assigned, encumbered, or in any manner transferred in whole or in part any of the Released Claims.

12. All agreements made and orders entered during the course of the Consolidated Action, the Investigation Demand, and the various Section 220 Demands relating to the confidentiality of information shall survive this Agreement.

13. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Agreement.

14. The Agreement shall be deemed drafted equally by all parties hereto.

15. In the event that there exists a conflict or inconsistency between the terms of this Agreement and the terms of any exhibit hereto, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the Parties have caused the Stipulation to be executed by their duly authorized attorneys and dated April 21, 2017.

[SIGNATURE PAGE TO FOLLOW]

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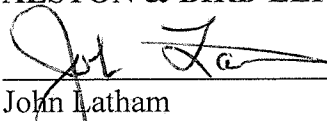
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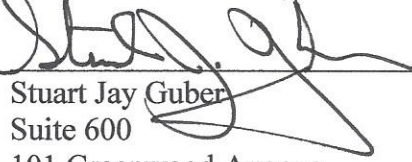
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w/permission*

*Counsel for Berel Rosenfeld as
Trustee of the LR Trust*