

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

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**NOTICE OF PROPOSED SETTLEMENT**

**TO: ALL CURRENT RECORD HOLDERS AND BENEFICIAL OWNERS OF COMMON STOCK OF THE HOME DEPOT, INC. (“HOME DEPOT” OR THE “COMPANY”) AS OF APRIL 21, 2017 (“CURRENT HOME DEPOT STOCKHOLDERS”) (EXCLUDING DEFENDANTS) AND THEIR SUCCESSORS-IN-INTEREST.**

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT AND DISMISSAL OF SHAREHOLDER DERIVATIVE LITIGATION AND CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS. YOUR RIGHTS MAY BE AFFECTED BY LEGAL PROCEEDINGS IN THIS ACTION.**

**PLEASE NOTE THAT THIS ACTION IS NOT A “CLASS ACTION” AND NO INDIVIDUAL SHAREHOLDER HAS THE RIGHT TO BE COMPENSATED AS A RESULT OF THE SETTLEMENT OF THIS ACTION.**

YOU ARE HEREBY NOTIFIED, pursuant to an order of the United States District Court for the Northern District of Georgia (the “Court”) that a proposed Settlement<sup>1</sup> has been reached between and among the parties to a consolidated shareholder derivative action styled *In re The Home Depot, Inc. Shareholder Derivative Litigation*, Lead Case No. 15-CV-2999-TWT (the “Consolidated Action”) and an additional stockholder who is not a party to the Consolidated Action but who previously made a demand on the Company’s Board to investigate claims arising out of the 2014 third-party breach of the Company’s payment data systems (the “Investigation Demand”). This Notice is not an expression of any opinion by the Court with respect to the truth of the allegations in the Consolidated Action or the Investigation Demand or the merits of the claims or defenses asserted by or against any party. It is solely to notify you of the terms of the proposed Settlement, and your rights related thereto. The terms of the proposed Settlement Action are set forth in a Stipulation of Settlement and Release Agreement dated April 21, 2017 (the “Agreement” or “Settlement” or “Stipulation”). This summary should be read in conjunction with, and is qualified in its entirety by reference to, the text of the Agreement, which has been filed with the Court and is attached hereto.

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<sup>1</sup> All capitalized terms herein have the same meanings as set forth in the Agreement.

## **I. WHY THE COURT HAS ISSUED THIS NOTICE**

Your rights may be affected by the Settlement of the Consolidated Action and the Investigation Demand. The parties to the Consolidated Action and the Investigation Demand have agreed upon terms to settle those matters and have signed the Agreement setting forth the Settlement terms.

## **II. SUMMARY OF THE SHAREHOLDER MATTERS SUBJECT TO THE SETTLEMENT**

On September 22, 2014, Berel Rosenfeld – in his capacity as trustee of the LR Trust, a Home Depot stockholder – made a formal written demand on the Board of Directors of The Home Depot, Inc. to investigate the 2014 breach of the Company’s payment data systems (the “Data Breach”) and to “institute claims on behalf of the Company against any person responsible for causing damage to the Company” arising out of the Data Breach. 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”).

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 the Company’s 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 arising out of the Data Breach 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.

On August 25, 2015, Home Depot stockholder Mary Lou Bennek filed a Verified Shareholder Derivative Complaint in the Northern District of Georgia, captioned *Bennek v. Ackerman, et al.*, 15-CV-2999-TWT. On October 15, 2015, Home Depot stockholder Cora Frohman filed a Verified Shareholder Derivative Complaint in the Northern District of Georgia, captioned *Frohman v. Bousbib, et al.*, 15-CV- 3650-TWT. The Complaints filed in the *Bennek* and *Frohman* actions

challenged similar alleged misconduct by the Individual Defendants, and involved common questions of law and fact.

On January 4, 2016, the Plaintiffs in the *Bennek* and *Frohman* actions filed an Unopposed Motion to Consolidate Related Actions, Appoint Co-Lead Plaintiffs and Approve Counsel (the “Motion to Consolidate”). On January 20, 2016, the Court held a hearing and inquired if there were any present that opposed the Motion to Consolidate. There were not. Following the hearing, 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 Jonkheer & Kolbe LLP and Faruqi & Faruqi LLP as Co-Lead Counsel, and appointed Holzer & Holzer, LLC to act as Liaison Counsel.

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 of 1934 in connection with the Company’s 2014 and 2015 proxy statements.

On April 14, 2016, the Defendants filed a Motion to Dismiss the Complaint for failure state a claim under Fed.R.Civ.P. 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 Delaware Court of Chancery Rule 23.1.

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 their claims (the “MTD Order”). The Court entered a judgment dismissing the action with prejudice.

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

Commencing in or about September 2016, counsel for Home Depot and the Individual Defendants began discussions with counsel for Rosenfeld, Bennek, and Frohman (collectively, “Shareholder Counsel”) regarding a possible resolution of the Consolidated Action and the Investigation Demand. Thereafter, counsel for all parties reached an agreement to resolve those matters on the terms set forth in the Agreement.

### III. TERMS OF THE PROPOSED SETTLEMENT

The principal terms, conditions, and other matters that are part of the Settlement are subject to approval by the Court and a number of other conditions. This summary should be read in conjunction with, and is qualified in its entirety by reference to, the text of the Agreement, which has been filed with the Court and may be viewed at [thdderiv.com](http://thdderiv.com), [www.faruqilaw.com/settlement-notices](http://www.faruqilaw.com/settlement-notices), or [www.classactionlawyers.com](http://www.classactionlawyers.com). As set forth therein, the terms of the Settlement include the Company's adoption and/or maintenance of the following corporate governance measures, with respect to its U.S. stores, 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 Chief Information Security Officer ("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;
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;
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.

#### **IV. DISMISSAL OF CONSOLIDATED ACTION AND RELEASE OF CLAIMS**

The Agreement also provides for the entry of judgment dismissing the Consolidated Action on the merits with prejudice, the full release of any claims that may or could arise out of the Investigation Demand, and certain additional releases as detailed in the Agreement.

#### **V. PLAINTIFFS' ATTORNEY FEES AND EXPENSES AND SHAREHOLDERS' SERVICE AWARDS**

The maximum amount of aggregate fees and expenses that will be sought by Shareholder Counsel is \$1,125,000. To date, Shareholder Counsel have not received any payments for their efforts on behalf of Home Depot and its stockholders. Any fee awarded by the Court is designed to compensate Shareholder Counsel for the results achieved on behalf of the Company in response to the Consolidated Action and the Investigation Demand, and the costs associated with development, prosecution, and settlement of the Consolidated Action and the Investigation Demand. Shareholders will be seeking a Service Award in an amount up to \$1,500 each for their participation in the Consolidated Action or Investigation Demand. Such Service Awards shall be paid from the Fee and Expense Award to Shareholder Counsel.

#### **VI. REASONS FOR THE SETTLEMENT**

The Settling Parties have determined that it is desirable and beneficial that the Consolidated Action and the Investigation Demand, and all of their disputes related thereto, be fully and finally settled in the manner and upon the terms and conditions set forth in the Agreement.

##### **A. Why Did the Shareholders Agree to Settle?**

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. The 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 Court's 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 the Agreement is in the best interests of Home Depot. Shareholder Counsel believe that the Settlement set forth in the Agreement confers substantial benefits upon Home Depot and its stockholders.

### **B. Why Did the Defendants Agree to Settle?**

Defendants have denied, and continue to deny, each and all of the allegations made by the Plaintiffs in the Consolidated Action and by Rosenfeld in the Investigation Demand, and furthermore maintain that they have meritorious defenses. Defendants also have denied and continue to deny, among other allegations, the allegations that Home Depot or any its stockholders were harmed in any way as a result of the conduct of the Individual Defendants alleged in the Consolidated Action or the Investigation Demand. 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. Nonetheless, Defendants have concluded that further litigation may be protracted and expensive and 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 the Agreement. 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 the Agreement.

## **VII. SETTLEMENT HEARING**

On October 2, 2017 at 2 p.m., a hearing (the "Settlement Hearing") will be held before the United States District Court for the Northern District of Georgia, 75 Ted Turner Dr. NW, Courtroom 2108, Atlanta, GA 30303 to (i) determine whether the proposed Settlement of the Consolidated Action and the Investigation Demand on the terms and conditions provided for in the Agreement is fair, reasonable, and adequate and in the best interests of Home Depot and its stockholders; (ii) hear and rule on any objections to the proposed Settlement, the proposed Order and Final Judgment, the proposed Fee and Expense Award and proposed Service Awards; (iii) determine whether to approve the Fee and Expense Award and Service

Awards; and (iv) determine whether the Court should enter the Order and Final Judgment, attached as Exhibit D to the Agreement, which would dismiss with prejudice the Consolidated Action and release the Released Claims. If the Settlement is approved, you will be subject to and bound by the provisions of the Agreement, the releases contained therein, and by all orders, determinations, and judgments, including the Order and Final Judgment, concerning the Settlement, whether favorable or unfavorable to you or Home Depot.

Pending final determination of whether the Settlement should be approved, no Home Depot stockholder, either directly, representatively, derivatively, or in any other capacity, shall commence or prosecute against any of the Released Persons, an action or proceeding in any court, administrative agency, or other tribunal asserting any of the Released Claims.

### **VIII. RIGHT TO ATTEND FINAL HEARING**

You may enter an appearance in the Consolidated Action, at your own expense, individually or through counsel of your choice. If you want to object at the Final Hearing, then you must first comply with the procedures for objecting, which are set forth below. The Court has the right to change the hearing dates or times without further notice. Thus, if you are planning to attend the Final Hearing, you should confirm the date and time before going to the Court. If you have no objection to the Settlement, you do not need to appear at the Settlement Hearing or take any other action.

### **IX. THE PROCEDURES FOR OBJECTING TO THE SETTLEMENT**

Any Current Home Depot Stockholder may object to the Settlement of the Consolidated Action and the Investigation Demand, the proposed Order and Final Judgment, and/or the proposed Fee and Expense Award, and may also (but need not) appear in person or by his, her, or its attorney at the Settlement Hearing. To object, such stockholders must submit copies of: (a) a written statement identifying such person's or entity's name, address, and telephone number, and, if represented by counsel, the name, address, and telephone number of counsel; (b) proof of current ownership of Home Depot common stock, including the number of shares of Home Depot common stock and the date or dates of purchase; (c) a written statement explaining the person's or entity's objection and the reasons for such objection; and (d) any documentation in support of such objection. Any objection should not exceed twenty-five (25) pages in length. If the stockholder wishes to appear at the Settlement Hearing, he, she, or it must also include a statement of intention to appear at the Settlement Hearing. Such materials must be filed with



the Clerk of the United States District Court for the Northern District of Georgia and sent by first class mail to the following addresses and postmarked at least twenty-one (21) calendar days before the Settlement Hearing:

FARUQI & FARUQI, LLP  
Stuart J. Guber  
101 Greenwood Ave., Ste. 600  
Jenkintown, PA 19046

-and-

SCHUBERT JONCKHEER & KOLBE & LLP  
Willem F. Jonckheer  
3 Embarcadero Center, Ste. 1650  
San Francisco, CA 94111

-and-

HOLZER & HOLZER, LLC  
Corey D. Holzer  
1200 Ashwood Parkway, Ste. 410  
Atlanta, GA 30338

*Counsel for Plaintiffs in the Consolidated Action*

ALSTON & BIRD  
John L. Latham  
1201 West Peachtree Street NW  
Atlanta, GA 30309

*Counsel for Defendants*

Any person or entity who fails to object in the manner described above shall be: (i) deemed to have waived any objection to the Settlement, Order and Final Judgment, Fee and Expense Award, and Service Awards; (ii) barred from raising such objection in this Consolidated Action or any other action or proceeding; and (iii) bound by the Order and Final Judgment and the releases of claims therein.

Current Home Depot Stockholders that have no objection to the Settlement, Order and Final Judgment, Fee and Expense Award, and/or Service Awards do not need to appear at the Settlement Hearing or take any other action.

**X. HOW TO OBTAIN ADDITIONAL INFORMATION**

This Notice summarizes the Agreement. It is not a complete statement of the events of the Consolidated Action or the Investigation Demand, or the terms of the Settlement contained in the Agreement.

Inquiries about the Consolidated Action, the Investigation Demand or the Settlement may be made to Plaintiffs' Counsel: Stuart J. Guber, Faruqi & Faruqi, LLP 101 Greenwood Ave., Ste. 600, Jenkintown, PA 19046, (215)277-5770 and Willem F. Jonckheer, Schubert Jonckheer & Kolbe, LLP, 3 Embarcadero Center, Ste. 1650, San Francisco, CA 94111, (415) 788-4220.

DATED: July 14, 2017

BY ORDER OF THIS COURT  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA

**DO NOT CONTACT THE CLERK OF THE COURT**  
**REGARDING THIS NOTICE**