

No. DC-12-08956

JENNIFER FOY, individually and on behalf of §
all others similarly situated, §

IN THE DISTRICT COURT

Plaintiff, §

vs. §

DON A. BUCHHOLZ, LARRY A. JOBE, §
KENNETH W. MURPHY, RICHARD W. §
GRINER, MURRAY H. GROSS, U.S. HOME §
SYSTEMS, INC., THD AT-HOME §
SERVICES, INC. and UMPIRE §
ACQUISITION CORP., §

I-162ND JUDICIAL DISTRICT

Defendants. §

DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL CLASS ACTION PETITION

Plaintiff, Jennifer Foy, by her attorneys, on behalf of herself and those similarly situated, files this action against the defendants, and alleges upon information and belief, except for those allegations that pertain to her, which are alleged upon personal knowledge, as follows:

DISCOVERY LEVEL

1. Pursuant to Rule 190.3 of the Texas Rules of Civil Procedure, Plaintiff alleges that this case should be controlled under Level 2.

SUMMARY OF THE ACTION

2. Plaintiff brings this shareholder class action on behalf of herself and all other public shareholders of U.S. Home Systems, Inc. ("USHS" or the "Company"), against USHS, its Board of Directors (the "Board" or the "Individual Defendants), THD At-Home Services, Inc., a wholly owned subsidiary of Home Depot ("Home Depot") and Umpire Acquisition Corp.

(“Merger Sub”) (Home Depot and Merger Sub are sometimes collectively referred to as “Home Depot”) (collectively, the “Defendants”), arising out of a transaction in which Home Depot will acquire each share of USHS’ common stock for \$12.50 (the “Proposed Acquisition”). The Proposed Acquisition is valued at approximately \$93.8 million. In approving the Proposed Acquisition, however, the Individual Defendants have breached their fiduciary duties of loyalty, good faith, due care and disclosure by, *inter alia*, (i) agreeing to sell USHS without first taking steps to ensure that Plaintiff and Class members (defined below) would obtain adequate, fair and maximum consideration under the circumstances; and (ii) engineering the Proposed Acquisition to benefit themselves and/or Home Depot without regard for USHS’ public shareholders. Moreover, as alleged further herein, Home Depot aided and abetted the Individual Defendants’ breaches of fiduciary duty. Accordingly, this action seeks to enjoin the Proposed Acquisition and compel the Individual Defendants to properly exercise their fiduciary duties to USHS’ shareholders.

PARTIES

3. Plaintiff is a resident of New Jersey. She has been a shareholder of USHS at all relevant times and continues to be a shareholder at all times relevant thereto.

4. Defendant USHS is a Delaware corporation whose principal executive offices are located at 2951 Kinwest Parkway, Irving, Texas. USHS engages in the design, manufacture, procurement, sale, and installation of custom specialty home improvement products in the United States. The Company’s products and installed services are marketed through Home Depot stores under a service provider agreement and a product supply agreement. As of August 9, 2012, USHS had approximately 7.47 million outstanding shares of its common stock. USHS’ common stock is publicly traded on NASDAQ under the symbol “USHS.”

5. Defendant Larry A. Jobe ("Jobe") has served as a member of the Board of Directors since June 2003 and is Chairman of the Audit Committee, and a member of the Nominating/Corporate Governance and Compensation Committees. According to the Company's April 24, 2012 Definitive Proxy Statement, Jobe is the beneficial owner of 72,559 shares which includes 52,460 shares directly owned by Jobe, 2,000 shares which may be purchased upon presently exercisable stock options and 18,099 shares which are held in his IRA account. In connection with the Proposed Acquisition, Jobe entered into a voting agreement with Home Depot pursuant to which he has agreed to vote all shares beneficially owned by him in favor of the Proposed Acquisition and against any competing transaction.

6. Defendant Richard W. Griner ("Griner") has served as a member of the Board of Directors since August 2007 and is a member of the Audit Committee. According to the Company's April 24, 2012 Definitive Proxy Statement, Griner is the beneficial owner of 30,075 shares which includes 28,075 shares directly owned by Griner and 2,000 shares which may be purchased upon presently exercisable stock. In connection with the Proposed Acquisition, Griner entered into a voting agreement with Home Depot pursuant to which he has agreed to vote all shares beneficially owned by him in favor of the Proposed Acquisition and against any competing transaction.

7. Defendant Murray H. Gross ("Gross") has served as USHS' President since February 2009 and as the Company's Chief Executive Officer and the Chairman of the Board of Directors since 2001. Gross was elected to the Board of Directors in 2001. Gross previously served as President from 2001 to March 2007. In February 2009 Gross was re-elected President to replace a former officer who had resigned as president and chief operating officer. According to the Company's April 24, 2012 Definitive Proxy Statement, Gross is the beneficial owner of

528,450 shares which includes 314,493 shares of common stock held by About Face Limited, 180,690 shares held by BLG Partners, 13,600 shares directly owned by Gross, 14,000 shares held in his IRA account and 5,667 shares which may be purchased upon presently exercisable stock options. About Face Limited, Inc. is a family limited partnership, the partners of which are Murray H. Gross and his wife Barbara Gross, each of whom own a 49.5% interest in the partnership. GP About Face Ltd. is the general partner of the partnership and owns a 1% interest in the partnership. Gross is the president of the general partner. BLG Partners is a general partnership of which Murray H. Gross and his spouse Barbara Gross are partners. Gross has sole investment and voting power over the shares of our common stock held by both partnerships. In total, Gross beneficially owns approximately 7.1% of all USHS outstanding shares. Gross' son, Steven L. Gross, is the Company's Executive Vice President and Chief Marketing Officer. Steven L. Gross beneficially owns 168,841 shares of USHS stock which includes 161,015 shares of common stock held by SSTCJ LLC, a limited liability company of which Steven L. Gross is a member/manager and his wife Susan M. Gross is a member, 1,743 shares owned directly by Steven L. Gross and 6,083 shares which may be purchased upon presently exercisable stock options. Pursuant to Gross' employment agreement with the Company, upon a change in control of the company, Gross is entitled to the Severance Payment (as defined in the April 24, 2012, Definitive Proxy Statement) regardless of whether his employment is terminated or not in connection with the change in control. Gross' Severance Payment upon a change in control is equal to \$1,197,132. Pursuant to Steven L. Gross's employment contract with the Company, if terminated upon a change in control of the Company, Steven L. Gross is entitled to a lump sum payment equal to \$248,788. In connection with the Proposed Acquisition, Gross and Steven L. Gross entered into voting agreements with Home

Depot pursuant to which they have agreed to vote all shares beneficially owned by them in favor of the Proposed Acquisition and against any competing transaction.

8. Defendant Don A. Buchholz (“Buchholz”) was elected to the Board of Directors in June 2002, and serves as Chairman of the Compensation and Nominating/Corporate Governance Committees, and as a member of the Audit Committee. According to the Company’s April 24, 2012 Definitive Proxy Statement, Buchholz is the beneficial owner of 160,710 shares which includes 50,000 shares held by Union Hill Investments, 77,000 shares held by Union Hill Property Company Ltd., 25,710 shares directly owned by Buchholz, 8,000 shares which may be purchased upon presently exercisable stock options. Union Hill Investments is a general partnership, the partners of which are Don A. Buchholz, his wife, Ruth Buchholz, his adult son, Robert Buchholz and his adult daughter, Chrystine B. Roberts. Union Hill Property Company Ltd. is a limited partnership, the partners of which are Don A. Buchholz and his wife, Ruth Buchholz. A Buchholz family limited liability company is the general partner of Union Hill Property Company, Ltd. Don A. Buchholz has voting and investment power with regard to the company’s shares of common stock owned by the partnership. In total, Buchholz beneficially owns approximately 2.2% of all USHS outstanding shares. In connection with the Proposed Acquisition, Buchholz entered into a voting agreement with Home Depot pursuant to which he has agreed to vote all shares beneficially owned by him in favor of the Proposed Acquisition and against any competing transaction.

9. Defendant Kenneth W. Murphy (“Murphy”) was elected to the Board in July 2004 and serves as a member of the Compensation Committee. According to the Company’s April 24, 2012 Definitive Proxy Statement, Murphy is the beneficial owner of 53,301 shares which includes 2,000 shares held by the Estate of Shirley Murphy Trust of which Kenneth W.

Murphy is the Trustee and controls the voting of such shares, 43,301 shares directly owned by Murphy, and 8,000 shares which may be purchased upon presently exercisable stock options. In connection with the Proposed Acquisition, Murphy entered into a voting agreement with Home Depot pursuant to which he has agreed to vote all shares beneficially owned by him in favor of the Proposed Acquisition and against any competing transaction.

10. Individual Defendants Larry A. Jobe, Richard W. Griner, Murray H. Gross, Don A. Buchholz and Kenneth W. Murphy are, and at all times relevant hereto have been, directors of USHS.

11. The Defendants named in paragraphs 6-10 are referred to herein as "Individual Defendants" or "Director Defendants."

12. By reason of their positions as officers and/or directors of the Company, the Individual Defendants named above are in a fiduciary relationship with Plaintiff and the other public shareholders of USHS and owe them the highest duties of good faith, loyalty and due care, as set forth in further detail herein.

13. Defendant THD At-Home Services, Inc. is a Delaware corporation and a wholly owned subsidiary of Home Depot. Home Depot is the world's largest home improvement specialty retailer, with 2,255 retail stores in all 50 states, the District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, 10 Canadian provinces, Mexico and China. In fiscal 2011, Home Depot had sales of \$70.4 billion and earnings of \$3.9 billion. Home Depot employs more than 300,000 associates. Home Depot's stock is traded on the New York Stock Exchange (NYSE: HD) and is included in the Dow Jones industrial average and Standard & Poor's 500 index.

14. Defendant Merger Sub is a Delaware Corporation and wholly-owned subsidiary of Home Depot.

JURISDICTION AND VENUE

15. This Court has jurisdiction over USHS because the Company is a resident of the State of Texas and may be served in the State of Texas through its president or any vice-president. To the extent the Individual Defendants and/or Home Depot are not residents of the State of Texas, they have purposely availed themselves of the privilege of conducting activities in the State of Texas and engaged in the conduct more particularly described herein thereby subjecting themselves to the jurisdiction of the Texas courts.

16. Venue is proper in Dallas County, Texas pursuant to sections 15.002 and 15.005 of the Texas Civil Practice and Remedies Code because USHS has its principal offices in Dallas County, Texas and all claims which are the subject of this suit arise out of the same transaction, occurrence or series of transactions of occurrences.

SUBSTANTIVE ALLEGATIONS

17. The seeds of this transaction were sowed long ago as the Company's products and installed services are marketed through Home Depot stores under a service provider agreement and a product supply agreement. As Kevin Hofmann, senior vice president-Home Services of Home Depot said in the press release announcing the Proposed Acquisition:

The Home Depot has had a long-standing relationship with USHS. By formally bringing USHS into The Home Depot family, we expect to further enhance our customers' home service experience.

18. With Home Depot's insider relationship with USHS as prelude, on August 7, 2012, USHS and Home Depot jointly issued a press release announcing that they had agreed to the Proposed Acquisition. The press release which was filed with the SEC in connection with the Definitive Agreement and Plan of Merger (the "Merger Agreement") provides, in relevant part, as follows:

DALLAS, TEXAS and ATLANTA, GEORGIA, August 7, 2012 — The Home Depot® and U.S. Home System, Inc. (“USHS”) today announced a definitive merger agreement for The Home Depot to acquire USHS. USHS, based in Irving, Texas, is currently an exclusive provider of kitchen and bath refacing products and services as well as closet and garage organizational systems to The Home Depot.

Under the terms of the agreement, The Home Depot will acquire USHS for \$12.50 per share in cash which represents an approximately 38% premium over USHS’ closing price on The NASDAQ Global Market on August 6, 2012. The agreement was unanimously approved by USHS’s board of directors. The acquisition is expected to close by the end of the calendar year, and is subject to approval by USHS stockholders, applicable regulatory approval and customary closing conditions.

“The Home Depot has had a long-standing relationship with USHS. By formally bringing USHS into The Home Depot family, we expect to further enhance our customers’ home service experience,” said Kevin Hofmann, senior vice president-Home Services, The Home Depot.

“The USHS board of directors conducted a thorough review of the company’s alternatives to enhance stockholder value, and we are pleased that this transaction appropriately recognizes the value of USHS’ relationships and solutions, while providing our stockholders with an attractive cash premium for their investment,” said Murray H. Gross, president, CEO & chairman, USHS.

Bryant Park Capital Securities, Inc. is acting as exclusive financial advisor to USHS. Bryant Park Capital Valuation Services LLC (an affiliate of Bryant Park Capital Securities, Inc.) has rendered a fairness opinion to the Board of Directors of USHS in connection with the transaction. Jackson Walker L.L.P. is acting as legal advisor to USHS.

J.P. Morgan Securities LLC is serving as The Home Depot’s exclusive financial advisor and King & Spalding LLP is acting as legal advisor to The Home Depot.

19. Further in the Merger Agreement filed with the SEC on August 6, 2012, the Company claimed that the Board of Directors has, “(i) unanimously determined that the transactions contemplated by this Agreement, including the Merger (the “Transactions”), are fair to and in the best interests of the Company and its stockholders, (ii) unanimously approved and declared advisable this Agreement, the Merger and the other Transactions, and (iii) subject to the other terms and conditions of this Agreement, unanimously resolved to recommend that the

Company's stockholders adopt this Agreement and approve the Merger and the other Transactions."

20. However, the USHS Board suffers significant conflicts. There are only five (5) members of the USHS Board, none of which are truly independent and each stand to realize benefits not shared equally by Plaintiff and class members. As CEO and father of USHS senior executive officer Steven L. Gross, Defendant Gross is clearly not independent. That leaves the remaining four (4) members of the Board. These four members, Defendants Griner, Murphy, Jobe and Buchholz constitute the membership of each committee of the Board – compensation, audit and corporate governance and nominations. Significantly, Defendant Buchholz has a long standing relationship with Defendant Jobe as both are members of the board of directors of SWS Group, Inc. Each of the Individual Defendants is the beneficial owner of significant USHS share holdings and each Individual Defendant has options which will fully vest upon consummation of the proposed acquisition. Moreover, in connection with the Merger Agreement, Home Depot entered into a voting agreement with each member of USHS' senior management, Gross, Steven L. Gross, Buchholz, Larry A. Jobe, Murphy, Griner and certain of their affiliates pursuant to which they have agreed to vote (a) in favor of the adoption of the Merger Agreement and approval of the Merger and the other transactions contemplated by the Merger Agreement, (b) against any action or agreement that would result in any of the conditions set forth in the Merger Agreement not being fulfilled or satisfied, and (c) against any Acquisition Proposal or any agreement related thereto or any other action, agreement or transaction that is intended, or would reasonably be expected to, materially impede, interfere with, delay, postpone, adversely affect or prevent the Merger or any other transaction contemplated by the Merger Agreement. The Voting Stockholders beneficially owned an aggregate of 1,125,213 shares of Common

Stock, including shares of Common Stock which may be acquired within 60 days pursuant to stock options, or 15.1% of the outstanding shares of Common Stock, on August 6, 2012.

21. Additionally, pursuant to their employment agreements with the Company, Gross will receive \$1,197,132 in change in control compensation regardless of whether his employment is terminated or not in connection with the consummation of the Proposed Acquisition while Steven L. Gross will receive \$248,788 in change in control compensation if his employment is terminated following consummation of the Proposed Acquisition.

22. It is clear that the significant inter-relationships among and between USHS and Home Depot and the conflicted relationships existing on the Board could not have allowed for a proper vetting of the Proposed Acquisition.

23. The conflicted nature of the entire deal process speaks volumes to the fact that the Proposed Acquisition undervalues the deal and fails to provide USHS shareholders with an adequate share price for the surrender of their shares.

24. Indeed, it is clear that the Company is poised for growth. Specifically, in November 2011, the Company announced positive results for the third quarter of 2011, with Defendant Gross stating, in relevant part (emphasis added):

Revenues increased 10% in the third quarter reflecting higher backlog at the beginning of the period coupled with a faster sale-to-completion cycle time and continued strength in new orders during the quarter. Our new orders in the third quarter were \$40.9 million, our third strongest quarter on record. This resulted in record net income, far exceeding our guidance. Our operating margin in the quarter increased to 6.3% from 2.7% of revenues in the third quarter last year. We're continuing to emphasize cost control and efficiency programs to gain further leverage over fixed overhead costs.

In June our Board of Directors approved our first cash dividend reflecting the Company's long term value and its commitment to promoting long-term investment in our common stock. The Board's decision to initiate and declare a quarterly dividend was a result of the Company's strong financial foundation and the Board's confidence in the Company's future performance. I am pleased

to announce that the Board has authorized our third quarterly dividend, increasing the quarterly dividend from \$0.015 per share to \$0.02 per share. The dividend is payable December 13, 2011 to stockholders of record at the close of business on November 23, 2011. We believe the payment of dividends will provide us with an additional means of creating value for our stockholders as we continue to pursue growth opportunities.

25. In the Q4 2011 earnings press release on March 27, 2012, Defendant Gross continued to emphasize the significant financial results achieved by the Company and once again increased the quarterly dividend by 50%. For example, Defendant Gross stated (emphasis added):

In the fourth quarter we continued to deliver solid operating performance and financial results. Our new orders in the fourth quarter 2011 were \$37.9 million, up from \$37.2 million in the fourth quarter last year, driving a year-over-year increase in revenues. Basic EPS was \$0.13 for the fourth quarter and diluted EPS was \$0.12 as compared with our guidance of \$0.13 per diluted share. The difference in diluted EPS to our guidance is largely in the rounding reflecting a slight increase in dilutive shares resulting from the increase in the stock price. Our backlog of uncompleted orders at December 31, 2011 was \$21.2 million as compared to \$20.1 million last year.

During the fourth quarter 2011 we developed a new line of Martha Stewart Living™ kitchen cabinet refacing products. *Due to the popularity and reputation for style and quality inherent in the Martha Stewart brand, this exciting line of replacement kitchen cabinets has been well-received by customers of The Home Depot.* Our line of Martha Stewart Living™ cabinet refacing products provides a ‘refacing’ solution to The Home Depot customers who prefer the look of the Martha Stewart Living™ line of cabinetry in a refacing product. *We commenced offering these products to our The Home Depot customers in late January 2012.* We believe the Martha Stewart Living™ line of kitchen refacing products will be an exciting extension to our kitchen refacing product portfolio.

Also during the fourth quarter 2011, we and The Home Depot agreed to test a new ‘installed’ product category, ‘Replacement Kitchen Remodeling’. The pilot program commenced in March 2012 in two markets in Florida. In connection with the test pilot, we will re-market customers who expressed an interest in kitchen refacing, however did not purchase our refacing products. We believe that these customers may be more interested in replacing their complete kitchen cabinetry rather than installing a refacing product.

We overcame economic challenges, and issues related to lower credit approval rates for our customers to deliver another year of increased new orders during 2011. Resolving the credit approval rate remains a top priority. *Nevertheless we are very confident that we will continue to deliver solid performance in 2012.*

26. Net income continued to increase, by 52%, and revenues increased to 8% during Q1 2012. On May 15, 2012, Defendant Gross summarized Q1 2012 as follows (emphasis added):

I am pleased to report we had two new records this quarter. First, a record new order input for any quarter in our history and second, record revenue for a first quarter, both which significantly exceeded our expectations. I want to recognize our strategic partner, The Home Depot, whose marketing initiatives continue to drive demand.

In January we launched our new line of Martha Stewart Living™ kitchen cabinet refacing products. Due to the popularity and reputation for style and quality inherent in the Martha Stewart brand replacement kitchen cabinets, we developed a line of refacing products which provide a ‘refacing’ solution to The Home Depot customers who prefer the look of the Martha Stewart Living™ line of cabinetry in a refacing product. We are very excited about the reception of these products by our customers. This line of new refacing products contributed to our record new order input in the quarter. We believe the Martha Stewart Living™ line of kitchen refacing products will be an exciting extension to our kitchen refacing product portfolio.

March we launched the ‘Replacement Kitchen Remodeling’ test pilot in two markets in Florida. Under this program, we are re-marketing customers who expressed an interest in kitchen refacing, however did not purchase our refacing products. We believe that these customers may be more interested in replacing their complete kitchen cabinetry rather than installing a refacing product. We believe customers have responded favorably to our product offering during the first month of this pilot, and based on the early success, in April The Home Depot agreed to expand the pilot program to all our Florida markets except Jacksonville. We are very excited about this program.

27. Despite the record setting financial results of 2012, the Company entered into the Proposed Acquisition for the wholly inadequate consideration of \$12.50 per share. Significantly, as recently as March 12, 2012, USHS stock traded for \$12.50 per share and on March 2, 2012, USHS stock traded as high as \$14.81 per share. Additionally, of the two Yahoo! Finance

analysts following the Company, both have listed price targets in excess of the offer price, \$13.00 and \$14.50 per share respectively. Moreover, over the last four months, all three Thomson/First Call analysts following the Company have recommended it as either a “Strong Buy” and/or “Buy.”

28. Continuing its run of stellar earnings results, following the announcement of the Proposed Acquisition, on August 8, 2012, the Company reported Q2 2012 results which, according to Gross, were “once again ... solid.” Gross continued:

We continued to maintain a strong balance sheet with approximately \$14.6 million in cash and marketable securities and no debt at June 30, 2012.

Our key operating metrics continued to exemplify strength in the second quarter. Our sales performance metrics increased as compared to the same quarter last year as well as consecutively from the first quarter of this year, which we attribute largely to The Home Depot’s emphasis of our product category in their marketing initiatives. Our manufacturing and operations teams met the challenge delivering record output and revenues in the quarter, while maintaining superior Voice Of The Customer satisfaction ratings. Based on our financial results for the quarter, our Board declared a regular quarterly cash dividend of \$0.03 per share.

29. As such, the Proposed Acquisition will allow Home Depot to purchase USHS at an unfairly low price while availing itself of USHS’ significant value and upside or long-term potential.

30. The Merger Agreement contains certain provisions that unduly benefit Home Depot by making an alternative transaction either prohibitively expensive or otherwise impossible. For example, the Merger Agreement contains a termination fee provision that requires USHS to pay \$2,866,000.00 to Home Depot if the Merger Agreement is terminated under certain circumstances.

31. The termination fee payable under this provision will make the Company that much more expensive to acquire for potential purchasers, while resulting in a corresponding decline in the amount of consideration payable to USHS' shareholders.

32. After providing for a brief "go shop" period, the Merger Agreement also contains a "no shop" provision that restricts USHS from considering alternative acquisition proposals by, *inter alia*, constraining USHS's ability to solicit or communicate with potential acquirers or consider their proposals. Specifically, Section 6.4(b) of the Merger Agreement provides, as follows:

From and after 12:00 a.m. (Eastern time) on September 6, 2012 (the "No-Shop Period Start Date"), the Company will not, nor shall it authorize or permit any of its Subsidiaries or any of its or their respective officers, directors, employees and other Representatives to, directly or indirectly (i) initiate, solicit, or take any action to knowingly facilitate or knowingly encourage any Acquisition Proposal, or participate or engage in any negotiations, inquiries or discussions with respect to any Acquisition Proposal, (ii) in connection with any potential Acquisition Proposal, disclose or furnish any information or data to any Person or afford any Person other than Parent or its Representatives access to its properties, books, or records, (iii) enter into or execute, or propose to enter into or execute, any agreement relating to an Acquisition Proposal, (iv) grant any waiver or release under any standstill or similar agreement with respect to any class of equity securities of the Company or any of its Subsidiaries, (v) approve any transaction under, or any Person becoming an "interested stockholder" under, Section 203 of the DGCL or (vi) approve, endorse, recommend or make or authorize any public statement, recommendation, or solicitation in support of any Acquisition Proposal or any offer or proposal relating to an Acquisition Proposal other than with respect to the Merger. Without limiting the foregoing, it is agreed that any violation of the restrictions set forth in the preceding sentence by any Representative of the Company or any of its Subsidiaries shall be a breach of this Section 6.4(b) by the Company. From and after the No-Shop Period Start Date, the Company will, and will direct its Representatives to, (A) immediately cease and cause to be terminated all discussions and negotiations with any Person regarding any proposal that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal and (B) promptly after the date hereof request the prompt return or destruction of all confidential information previously provided to any such Person(s) within the last twelve (12) months. Notwithstanding the commencement of the obligations of the Company under this Section 6.4(b), from and after the No-Shop Period Start Date through September 15, 2012 (the "Cutoff Date"), the Company may continue to engage in the actions described in clause

(ii) and clause iii) of Section 6.4(a) with a Qualified Go-Shop Bidder (for so long as such Person or group is a Qualified Go-Shop Bidder). Notwithstanding the foregoing, a Person or group shall cease to be a Qualified Go-Shop Bidder when such Person or group, as of the No-Shop Period Start Date, ceases to provide (directly or indirectly) at least 50% of the equity financing (measured by voting power and value) of such Person or group at any time following the No-Shop Period Start Date and the Company receives notice or knowledge thereof.

33. The Board may only consider an *unsolicited* proposal if it constitutes or is reasonably calculated to lead to a "Superior Proposal" as defined in the Merger Agreement. However, even the Board's consideration of unsolicited proposal is restricted: prior to considering any such proposal, the Board must determine, in consultation with its financial advisors, that its fiduciary duties *require* it to consider the proposal. Thus, the Board cannot consider alternative proposals even if it reasonably believes that any such proposal would be beneficial to shareholders.

34. Further, the Agreement further reduces the possibility of a topping offer from an unsolicited purchaser. Here, Defendants agreed to provide Home Depot information in order to match any other offer, thus providing Home Depot access to the unsolicited bidder's financial information and giving Home Depot the ability to top the superior offer. Thus, a rival bidder is not likely to emerge with the cards stacked so much in favor of Home Depot.

35. Accordingly, the Company's true value is compromised by the consideration offered in the Proposed Acquisition and the Proposed Acquisition is the product of the Board's breaches of fiduciary duty, aided and abetted by Home Depot and USHS.

THE INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES

36. In any situation where the directors of a publicly traded corporation undertake a transaction that will result in either a change in corporate control or a break-up of the corporation's assets, the directors have an affirmative fiduciary obligation to act in the best interests of the company's shareholders, including the duty to obtain maximum value under the

circumstances. To diligently comply with these duties, the directors may not take any action that:

- (a) adversely affects the value provided to the corporation's shareholders;
- (b) will discourage or inhibit alternative offers to purchase control of the corporation or its assets;
- (c) contractually prohibits them from complying with their fiduciary duties; and/or
- (d) will provide the directors, executives or other insiders with preferential treatment at the expense of, or separate from, the public shareholders, and place their own pecuniary interests above those of the interests of the company and its shareholders.

37. In accordance with their duties of loyalty and good faith, the Individual Defendants, as directors and/or officers of USHS, are obligated to refrain from:

- (a) participating in any transaction where the directors' or officers' loyalties are divided;
- (b) participating in any transaction where the directors or officers are entitled to receive a personal financial benefit not equally shared by the public shareholders of the corporation; and/or
- (c) unjustly enriching themselves at the expense or to the detriment of the public shareholders.

38. Plaintiff alleges herein that the Individual Defendants, separately and together, in connection with the Proposed Acquisition, violated, and are violating, the fiduciary duties they owe to Plaintiff and the other public shareholders of USHS, including their duties of loyalty,

good faith, candor, and due care. As a result of the Individual Defendants' divided loyalties, Plaintiff and Class members will not receive adequate, fair or maximum value for their USHS common stock in the Proposed Acquisition.

39. As a result of these breaches of fiduciary duty, the Company's public shareholders will not receive adequate or fair value for their common stock in the Proposed Acquisition.

CLASS ACTION ALLEGATIONS

40. Plaintiff brings this action as a class action, individually and on behalf of all holders of USHS common stock who are being and will be harmed by the Individual Defendants' actions, described herein (the "Class"). Excluded from the Class are Defendants and any person, firm, trust, corporation or other entity related to or affiliated with any Defendant.

41. This action is properly maintainable as a class action because, *inter alia*:

(a) The Class is so numerous that joinder of all members is impracticable. USHS' stock is publicly traded on the Nasdaq and Plaintiff believes that there are hundreds if not thousands of holders of such shares. As of August 9, 2012, USHS had approximately 7.47 million outstanding shares of its common stock. Moreover, the holders of these shares are geographically dispersed throughout the United States;

(b) There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions include, *inter alia*: (i) whether the Individual Defendants have engaged in self-dealing, to the detriment of USHS' public shareholders; (ii) whether the Proposed Acquisition is unfair to the Class, in that the price is inadequate and is not the fair value that could be obtained under the circumstances; (iii) whether Home Depot and/or USHS aided and abetted the Individual

Defendants' breaches of fiduciary duty; and (iv) whether the Class is entitled to injunctive relief and/or damages as a result of the wrongful conduct committed by Defendants;

(c) Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. The claims of Plaintiff are typical of the claims of the other members of the Class and plaintiff has the same interests as the other members of the Class. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class;

(d) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; and

(e) Defendants have acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class and, therefore, preliminary and final injunctive relief on behalf of the Class as a whole is appropriate.

FIRST COUNT

Breach of Fiduciary Duty against the Individual Defendants

42. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

43. As alleged herein, Defendants have initiated a process to sell USHS that undervalues the Company and vests them with benefits that are not shared equally by USHS' public shareholders. In addition, by agreeing to the Proposed Acquisition, Defendants have

capped the price of USHS at a price that does not adequately reflect the Company's true value. Moreover, Defendants failed to sufficiently inform themselves of USHS' value, or disregarded the true value of the Company, in an effort to benefit themselves and Home Depot. Furthermore, any alternate acquirer will be faced with engaging in discussions with a management team and board that is committed to the Proposed Acquisition.

44. As such, unless the Individual Defendants' conduct is enjoined by the Court, they will continue to breach their fiduciary duties to Plaintiff and the other members of the Class, and will further a process that inhibits the maximization of shareholder value and the disclosure of material information.

45. Plaintiff and the members of the Class have no adequate remedy at law.

SECOND COUNT

Aiding and Abetting the Board's Breaches of Fiduciary Duty against Defendants USHS, Home Depot and Merger Sub

46. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

47. Defendants Home Depot, Merger Sub and USHS knowingly assisted the Individual Defendants' breaches of fiduciary duty in connection with the Proposed Acquisition, which, without such aid, would not have occurred. In connection with discussions regarding the Proposed Acquisition, Home Depot obtained sensitive non-public information concerning USHS' operations and thus had the advantage to acquire the Company at an unfair price.

48. As a result of this conduct, Plaintiff and the other members of the Class have been and will be damaged in that they have been and will be prevented from obtaining a fair price for their shares.

49. Plaintiff and the members of the Class have no adequate remedy at law.

WHEREFORE, Plaintiff demands injunctive relief, in his favor and in favor of the Class, and against the Defendants, as follows:

A. Declaring that this action is properly maintainable as a class action, certifying Plaintiff as Class representative and certifying his counsel as class counsel;

B. Declaring and decreeing that the Proposed Acquisition was entered into in breach of the fiduciary duties of the Individual Defendants and is therefore unlawful and unenforceable, and rescinding and invalidating any merger agreement or other agreements that Defendants entered into in connection with, or in furtherance of, the Proposed Acquisition;

C. Preliminarily and permanently enjoining Defendants, their agents, counsel, employees and all persons acting in concert with them from consummating the Proposed Acquisition;

D. Directing the Individual Defendants to exercise their fiduciary duties to obtain a transaction that is in the best interests of USHS' shareholders;

E. Imposing a constructive trust, in favor of Plaintiff and the Class, upon any benefits improperly received by Defendants as a result of their wrongful conduct;

F. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and

G. Granting such other and further equitable relief as this Court may deem just and proper.

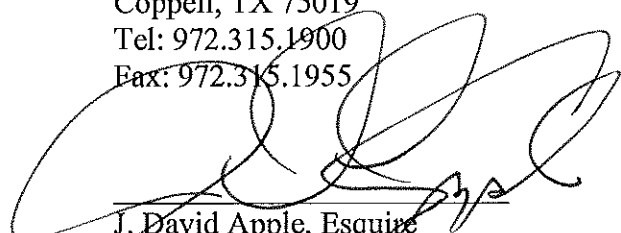
JURY DEMAND

Plaintiff hereby demands trial by jury of all claims so triable.

Dated: August 10, 2012

Respectfully submitted,

APPLE & FINK, LLP
735 Plaza Blvd., Suite 200
Coppell, TX 75019
Tel: 972.315.1900
Fax: 972.315.1955



J. David Apple, Esquire
State Bar No. 01278850

Local Counsel for Plaintiff

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(610) 667-6200
(610) 667-9029 (fax)

Counsel for Plaintiff

CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

STYLED: JENNIFER FOY, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, V. DON A. BUCHHOLZ, ET AL
(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing. This sheet, approved by the Texas Judicial Council, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:	Names of parties in case:	Person or entity completing sheet is:
Name: _____ Email: _____ J. David Apple jdapple@applefinklaw.com Address: _____ Telephone: _____ Apple & Fink, LLP 972-315-1900 ext. 223 735 Plaza Blvd, Suite 200 Coppell, TX 75019 Fax: _____ Signature: _____ 972-315-1955 State Bar No: 01278850	Plaintiff(s)/Petitioner(s): Jennifer Foy, individually and on behalf of all others similarly situated Defendant(s)/Respondent(s): Don A. Buchholz, Larry A. Jobe, Kenneth W. Murphy, Richard W. Griner, Murray H. Gross, U.S. Home Systems, Inc., THD At-Home Services, Inc. and Umpire Acquisition Corp. [Attach additional page as necessary to list all parties]	X Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____

2. Indicate case type, or identify the most important issue in the case (select only 1):				
Civil			Family Law	
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)
<input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ <input type="checkbox"/> Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ X Other Injury or Damage: Breach of Fiduciary Duty; Tortious Interference	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocal (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____
Employment	Other Civil			
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property	<input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____		
Tax	Probate & Mental Health			
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings	<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____		

3. Indicate procedure or remedy, if applicable (may select more than 1):		
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari X Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover