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 17 *Office of Education, Baldwin Park Unified*  
 18 *School District, Merced Union High School*  
*District, Monrovia Unified School District,*  
*Rowland Unified School District, and Stockton*  
*Unified School District; and for Qui Tam*  
*Plaintiff David Sherwin*

19 UNITED STATES DISTRICT COURT  
 20 CENTRAL DISTRICT OF CALIFORNIA  
 21 WESTERN DIVISION

22 STATE OF CALIFORNIA *et al.*, *ex*  
 23 *rel.*

DAVID SHERWIN,

24 Plaintiff,

25 v.

26 OFFICE DEPOT, INC.,

27 Defendant.

Case No.: 2:12-cv-09952-FMO-AJWx  
 Hon. Andrew J. Wistrich

**PROTECTIVE ORDER**

Date: N/A (no hearing requested)

1 Pursuant to Fed. R. Civ. P. 26(c) trade secret or other confidential  
2 information be disclosed only in designated ways:

3 1. As used in the Protective Order, these terms have the following  
4 meanings:

5 a. “Action” means the above-referenced consolidated matter  
6 entitled *State of California et al., ex rel. David Sherwin v.*  
7 *Office Depot, Inc.*, No. 12-CV-9952.

8 b. “Confidential” documents are documents designated pursuant  
9 to paragraph 2. Confidential information includes, but is not  
10 limited to, nonpublic information such as financial data, trade  
11 secrets, and other operational, proprietary, or technological  
12 information relating to Defendant’s business that is not publicly  
13 available or known, consistent with the definition of “trade  
14 secrets” set forth in Cal. Civ. Code § 3426.1(d), such as  
15 customer lists, contracts, and internal discussions of strategy  
16 relating to marketing, pricing, and contract negotiations.

17 c. “Confidential – Attorneys’ Eyes Only” documents are  
18 documents designated pursuant to paragraph 5.

19 d. “Documents” means all originals and copies of records, books,  
20 papers, documents, and tangible things, including but not  
21 limited to agreements, appointment books, bank checks, bank  
22 records, books, books of account, business records, calendars,  
23 charge slips, charts, computer print-outs, contracts,  
24 correspondence, credit card statements, diaries, drafts,  
25 electronic or computerized data, e-mails, facsimiles, files,  
26 invoices, journals, legal pleadings, letters, licenses, memoranda,  
27 meta-data, notes, papers, promissory notes, receipts, statements,  
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1 studies, surveys, telegrams, testimony (or summaries thereof),  
2 trading records, transcripts, voice mails, vouchers, and all  
3 communicative materials of any kind, and copies of all drafts,  
4 notes, or any preparatory material concerned with any of the  
5 foregoing in the possession, custody, or control of either Party  
6 or any of their respective agents, servants, or employees. The  
7 term “documents,” as used herein, shall also be understood to  
8 encompass the contents of such Confidential materials,  
9 summaries, or abstracts thereof, notes taken thereon, or like  
10 recapitulations thereof.

11 2. A Party may designate as Confidential any document that it in good  
12 faith contends contains or discloses Confidential information.

13 3. All documents designated as Confidential, along with the information  
14 contained in the documents, shall be used solely for the purpose of this Action, and  
15 no person receiving such documents shall, directly or indirectly, communicate,  
16 disclose, or transfer in any way the documents or their contents to any person other  
17 than those specified in paragraph 4.

18 4. Access to any Confidential document by any individual other than the  
19 Producing Party shall be limited to:

- 20 a. the Parties;
- 21 b. the Court, including judicial employees, judges, magistrates,  
22 special masters, and all other personnel necessary to assist the  
23 Court in its function;
- 24 c. counsel of record for the Parties, including their partners,  
25 employees, and contractors to whom it is necessary that  
26 Confidential information be shown for purposes of this Action;

- 1 d. Court reporters, stenographic reporters, videographers, and all of  
2 their personnel necessary to assist them in their functions;  
3 e. Defendant’s agents, employees, directors, insurers, officers, and  
4 representatives;  
5 f. Defendant’s former agents, employees, directors, insurers, officers,  
6 and representatives who have executed the Agreement annexed  
7 hereto as Exhibit A;  
8 g. outside independent persons who are retained by a Party or its  
9 attorneys to furnish technical or expert services, or to provide  
10 assistance as mock jurors or focus group members or the like,  
11 and/or to give testimony in this Action and who have executed the  
12 Agreement annexed hereto as Exhibit A;  
13 h. during their depositions, persons to whom disclosure is reasonably  
14 necessary, in the reasonable judgment of the examining Party, and  
15 who have signed the Agreement annexed hereto as Exhibit A; and  
16 i. copy or computer services or litigation support for the purpose of  
17 copying or indexing documents or providing litigation support,  
18 provided that all documents are retrieved by the Receiving Party  
19 upon completion of service.

20 5. The Parties contend that some of the documents and information  
21 sought in this litigation are confidential documents and information relating to the  
22 business of the Parties, which are or contain trade secrets or highly confidential  
23 business information protected by applicable law, the disclosure of which (to the  
24 Parties or otherwise) could substantially jeopardize the business of the Producing  
25 Party and its competitive position in the marketplace, such as internal cost, profit,  
26 and margin information and agreements with vendors. No other information shall  
27 be designated “Confidential – Attorneys’ Eyes Only.” Accordingly, except as  
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1 provided in paragraph 6, all documents and information produced by either Party  
2 in this litigation which are labeled in good faith by the Producing Party's counsel  
3 as "Confidential – Attorneys' Eyes Only," within the meaning of Fed. R. Civ. P.  
4 26(c), shall be conspicuously marked and maintained confidentially and used  
5 solely for the purposes of this Action and not for any business, competitive, or  
6 other purpose, and shall not be disclosed by the Parties' respective counsel to  
7 anyone, and shall not be used or referenced for any purpose other than counsel's  
8 review and information consistent with the specific purposes of this Action, subject  
9 to the provisions of this Order.

10 6. Access to and disclosure of information and/or documents designated  
11 as "Confidential – Attorneys' Eyes Only" pursuant to paragraph 5 shall be limited  
12 to:

- 13 a. trial counsel and/or in-house counsel for the Receiving Party and  
14 their respective staffs;
- 15 b. outside experts or outside consultants of the Receiving Party  
16 whose advice and consultation are being or will be used in  
17 connection with preparation for the litigation or the litigation of  
18 this case, subject to the limitations in paragraph 7;
- 19 c. a witness, deponent, or potential witness or deponent, and his/her  
20 counsel, during the course of or in preparation for this litigation;  
21 provided that such individual does not retain the "Confidential –  
22 Attorneys' Eyes Only" materials or any notes related to them,  
23 subject to the limitations in paragraph 7;
- 24 d. the Court, including judicial employees, judges, magistrates,  
25 special masters, and all other personnel necessary to assist the  
26 Court in its function;

- 1 e. Court reporters, stenographic reporters, videographers, and all of  
2 their personnel necessary to assist them in their functions; and  
3 f. copy or computer services or litigation support for the purpose of  
4 copying or indexing documents or providing litigation support,  
5 provided that all documents are retrieved by the Receiving Party  
6 upon completion of service.  
7 g. trial or in-house counsel for the Parties may not disclose any  
8 documents or information designated as “Confidential – Attorneys’  
9 Eyes Only” to the Parties, but they may provide the Parties with  
10 summaries of the documents or information; a Party will be subject  
11 to sanctions if it discloses any information designated as  
12 “Confidential – Attorneys’ Eyes Only” to anyone other its than  
13 trial or in-house counsel.

14 7. Individuals other than those set forth in Paragraph 6(a), (d), (e), and  
15 (f) to whom such “Confidential – Attorneys’ Eyes Only” documents or information  
16 are shown, furnished, or otherwise disclosed, shall be first shown a copy of this  
17 Order and shall sign the document in the form of Exhibit A hereto.

18 8. Third parties producing documents in the course of this Action may  
19 also designate documents as Confidential or “Confidential – Attorneys’ Eyes  
20 Only” subject to the same protections and constraints as the Parties to the Action.  
21 A copy of the Protective Order shall be served along with any subpoena served in  
22 connection with this Action. All documents produced by such third parties shall be  
23 treated as “Confidential – Attorneys’ Eyes Only” for a period of 15 days from the  
24 date of their production, and during that period any Party may designate such  
25 documents as Confidential or “Confidential – Attorneys’ Eyes Only” pursuant to  
26 the terms of the Protective Order.  
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1           9. As to each person required to execute an Agreement in the form  
2 attached as Exhibit A, and who is known or suspected to be an employee or agent  
3 of, or consultant to, any competitor in the industry of a Party, opposing counsel  
4 shall be notified at least 10 days prior to disclosure of Confidential or  
5 “Confidential – Attorneys’ Eyes Only” documents or information to any such  
6 person. Such notice shall provide a reasonable description of the outside  
7 independent person to whom disclosure is sought sufficient to permit objection to  
8 be made. If a Party objects in writing to such disclosure within 15 days after  
9 receipt of notice, no disclosure shall be made until the Party seeking disclosure  
10 obtains the approval of the Court or the objecting Party. Such disclosure shall not  
11 waive the right of any Party to object to discovery from the identified individual  
12 pursuant to Rule 26(b)(4)(B).

13           10. Except as otherwise provided in this Order, or as otherwise stipulated  
14 or ordered, disclosure or discovery material that qualifies for protection under this  
15 Order must be clearly so designated, subject to paragraph 12. Designation in  
16 conformity with this Order requires:

- 17           a. For information in documentary form (e.g., paper or electronic  
18 documents, but excluding transcripts of depositions or other  
19 pretrial or trial proceedings), that the Producing Party affix the  
20 legend “Confidential” to each page that contains protected  
21 material. If only a portion or portions of the material on a page  
22 qualifies for protection, the Producing Party also must clearly  
23 identify the protected portion(s) (e.g., by making appropriate  
24 markings in the margins). A Party or non-party that makes original  
25 documents or materials available for inspection need not designate  
26 them for protection until after the inspecting Party has indicated  
27 which material it would like copied and produced. During the  
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1 inspection and before the designation, all of the material made  
2 available for inspection shall be deemed Confidential. After the  
3 inspecting Party has identified the documents it wants copied and  
4 produced, the Producing Party must determine which documents,  
5 or portions thereof, qualify for protection under this Order. Then,  
6 before producing the specified documents, the Producing Party  
7 must affix the “Confidential” legend to each page that contains  
8 Protected Material. If only a portion or portions of the material on  
9 a page qualifies for protection, the Producing Party also must  
10 clearly identify the protected portion(s) (e.g., by making  
11 appropriate markings in the margins).

- 12 b. For testimony given in deposition or in other pretrial or trial  
13 proceedings, by the Designating Party identifying on the record,  
14 before the close of the deposition, hearing, or other proceeding, all  
15 protected testimony or by written notice to the other Party within  
16 30 days of receipt of the transcript identifying all protected  
17 testimony. If only a portion or portions of the testimony qualifies  
18 as confidential, the Party must so indicate at the time of  
19 designation. Unless otherwise agreed, depositions shall be treated  
20 as “Confidential – Attorneys’ Eyes Only” during the 30-day period  
21 following receipt of the transcript. The deposition of any witness  
22 (or any portion of such deposition) that encompasses Confidential  
23 information shall be taken only in the presence of persons who are  
24 qualified to have access to such information.
- 25 c. For information produced in some form other than documentary  
26 and for any other tangible items, that the Producing Party affix in a  
27 prominent place on the exterior of the container or containers in  
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1 which the information or item is stored the legend “Confidential.”

2 If only a portion or portions of the information or item warrant  
3 protection, the Producing Party, to the extent practicable, shall  
4 identify the protected portion(s).

5 11. Confidential or “Confidential – Attorneys’ Eyes Only” documents and  
6 information used at depositions, hearings or other public or quasi-public  
7 proceedings, other than the trial of this cause, shall not be attached to transcripts or  
8 other documents memorializing such proceedings, except by agreement of the  
9 Parties. Confidential and “Confidential – Attorneys’ Eyes Only” documents and  
10 information shall not be appended to memoranda, briefs, or other documents or  
11 pleadings which will be reviewed by persons other than the persons designated  
12 herein or otherwise permitted access thereto under the terms of this Order.  
13 Alternatively, Confidential and “Confidential – Attorneys’ Eyes Only” documents  
14 and information may be attached to such transcripts, memoranda, pleadings, briefs  
15 and the like provided that they shall be collectively maintained in an envelope or  
16 other protective covering which bears on its front and back the following label:

17 CONTAINS CONFIDENTIAL [– ATTORNEYS’ EYES ONLY]  
18 INFORMATION SUBJECT TO A PROTECTIVE ORDER. TO BE  
19 OPENED ONLY BY OR AS DIRECTED BY THE COURT OR BY  
20 WRITTEN AGREEMENT OF THE PARTIES.

21 12. Under no circumstances shall a Party’s inadvertent failure to  
22 designate Confidential material as such (whether written discovery responses,  
23 documents, or testimony) be deemed a waiver of said protection. Any Party who  
24 inadvertently fails to identify documents as Confidential or “Confidential –  
25 Attorneys’ Eyes Only” shall promptly, upon discovery of its oversight, provide  
26 written notice of the error and substitute appropriately designated documents. Any  
27 Party receiving such inadvertently unmarked or improperly designated documents  
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1 shall retrieve such documents from persons not entitled to receive those documents  
2 and, upon receipt of the substitute documents, shall return or destroy the  
3 improperly designated documents within 10 days of receiving such a written  
4 request.

5 13. Any Party who, through inadvertence, produces documents or  
6 information that are privileged or otherwise immune from discovery shall,  
7 promptly upon discovery of such inadvertent disclosure, so advise the Receiving  
8 Party in writing and request that the documents be returned. The Receiving Party  
9 shall return such inadvertently produced documents, including all copies, within 10  
10 days of receiving such a written request. The Party returning such inadvertently  
11 produced documents may thereafter seek re-production of any such documents  
12 pursuant to applicable law. Pursuant to Federal Rule of Evidence 502(d) and (e),  
13 the parties agree that if any material as to which a party claims privilege or other  
14 protection is inadvertently produced during discovery in this proceeding, such  
15 inadvertent production shall not be a waiver of any claim of privilege or other  
16 protection by the asserting party.

17 14. Without written permission from the Designating Party or a court  
18 order secured after appropriate notice to all interested persons, a Party may not file  
19 in the public record in this Action any Protected Material. Pursuant to Local Rule  
20 79-5, Protected Material may only be filed under seal pursuant to a court order  
21 authorizing the sealing of the specific Protected Material at issue, unless the court  
22 denies the motion to seal, in which case such material may be filed in the public  
23 record. If a Receiving Party seeks to file under seal any Protected Material, the  
24 Receiving Party shall state in its motion to file under seal that the Designating  
25 Party, pursuant to the Parties' agreement, shall have seven (7) days to file a  
26 response, to give the Designating Party an opportunity further to explain the basis  
27 for the Confidentiality designation.  
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1           15. No items will be filed under seal without a prior application to, and  
2 order from the judge presiding over the hearing or trial. Only when the judge  
3 presiding over the hearing or trial permits filing an item or items under seal may  
4 confidential material filed with the Court be filed in a sealed envelope or the  
5 container marked on the outside with the caption of this action and the following  
6 statement:

7                           “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.”

8           If any person fails to file protected documents or information under seal, any  
9 party to this lawsuit may request that the Court place the filing under seal.

10           Whenever the Court grants a party permission to file an item under seal, a  
11 duplicate disclosing all nonconfidential information shall be filed and made part of  
12 the public record. The item may be redacted to eliminate confidential material  
13 from the public document. The public document shall be titled to show that it  
14 corresponds to an item filed under seal, e.g., “Redacted Copy of Sealed  
15 Declaration of John Smith in Support of Motion for Summary Judgment.” The  
16 sealed and redacted documents shall be filed simultaneously.

17           16. In the event disclosure of information or documents covered by this  
18 Order is sought by a non-party through any means that may legally require  
19 production, such as through a subpoena, discovery in other litigation, or via a  
20 request for public records pursuant to any applicable state or local law (“Third  
21 Party Request”), the counsel and/or the Party receiving the Third Party Request  
22 shall first notify the Producing Party and provide the Producing Party an  
23 opportunity to take appropriate measures to protect against the disclosure. No  
24 disclosure of information or documents covered by this Order shall be made to a  
25 non-party through a Third Party Request absent agreement of the Producing Party  
26 or court order compelling disclosure.

1           17. Acceptance by a Receiving Party of information, documents, or things  
2 identified or marked as Confidential or “Confidential – Attorneys’ Eyes Only”  
3 hereunder by the Producing Party shall not constitute a concession that such  
4 information, documents or things in fact are or include protected material of such  
5 disclosing Party. Nothing in this Order shall be deemed a waiver of any Party’s  
6 right to object to production of any documents or other tangible things or answers  
7 to interrogatories for lack of timeliness, relevance or materiality, or as a privileged  
8 communication, or as trial preparation materials, or as not reasonably calculated to  
9 lead to the discovery of admissible evidence. The existence of this Order must not  
10 be used by either Party as a basis for discovery that is otherwise improper under  
11 the Federal Rules of Civil Procedure.

12           18. Any Party or non-party may challenge a designation of confidentiality  
13 at any time prior to the commencement of trial. Unless a prompt challenge to a  
14 Designating Party’s confidentiality designation is necessary to avoid foreseeable,  
15 substantial unfairness, unnecessary economic burdens, or a significant disruption  
16 or delay of the litigation, a Party does not waive its right to challenge a  
17 confidentiality designation by electing not to mount a challenge promptly after the  
18 original designation is disclosed. All challenges to confidentiality must be  
19 undertaken pursuant to Local Rule 37 and this Court’s individual rules. The page  
20 limit on supplemental memoranda relating to motions for declassification of  
21 materials designated as Confidential or Highly Confidential or motions seeking  
22 modification of the protective order is 30 pages.

- 23           a. The Challenging Party shall initiate the dispute resolution process  
24 by providing written notice of each designation it is challenging  
25 and describing the basis for each challenge. To avoid ambiguity as  
26 to whether a challenge has been made, the written notice must  
27 recite that the challenge to confidentiality is being made in  
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1 accordance with this specific paragraph of the Protective Order.  
2 The Parties shall attempt to resolve each challenge in good faith  
3 and must begin the process by conferring directly (via telephone or  
4 in person) within 10 days of the date of service of notice. In  
5 conferring, the Challenging Party must explain the basis for its  
6 belief that the confidentiality designation was not proper and must  
7 give the Designating Party an opportunity to review the designated  
8 material, to reconsider the circumstances, and, if no change in  
9 designation is offered, to explain the basis for the chosen  
10 designation. A Challenging Party may proceed to the next stage of  
11 the challenge process only if it has engaged in this meet and confer  
12 process first or establishes that the Designating Party is unwilling  
13 to participate in the meet and confer process in a timely manner.

14 b. If the Parties cannot resolve a challenge without court intervention,  
15 the Parties shall file and serve a joint stipulation on behalf of both  
16 Parties in compliance with Local Rule 37. Each such motion must  
17 be accompanied by a competent declaration affirming that the  
18 Parties have complied with the meet and confer requirements of  
19 Local Rule 37-1.

20 c. The burden of persuasion in any such challenge proceeding shall  
21 be on the Designating Party.

22 19. Within 60 days of the termination of this Action, including any  
23 appeals, any and all documents and information designated by the opposing Party  
24 as Confidential or “Confidential – Attorneys’ Eyes Only,” and any copies or  
25 reproductions thereof, and all extracts and/or data taken from such documents,  
26 shall be returned to counsel who produced them or certified by the receiving  
27 counsel as destroyed.  
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1           20. Any Party may apply to the Court for a modification of the Protective  
2 Order, and nothing in the Protective Order shall be construed to prevent a Party  
3 from seeking such further provisions enhancing or limiting confidentiality as may  
4 be appropriate.

5           21. No action taken in accordance with the Protective Order shall be  
6 construed as a waiver of any claim or defense in the Action or of any position as to  
7 discoverability or admissibility of evidence.

8           22. This Order shall survive the termination of this litigation.

9           23. The Parties have good cause for stipulating to confidential treatment  
10 of these documents. The CONFIDENTIAL designation shall be limited to  
11 information that, if disclosed publicly, could harm the Parties' business including  
12 financial data, trade secrets and other operational, proprietary, or technological  
13 information relating to the Parties' business. The designation of  
14 CONFIDENTIAL—ATTORNEYS' EYES ONLY shall be limited to documents  
15 which are or contain trade secrets or highly confidential business information  
16 protected by applicable law, the disclosure of which (to the Parties or otherwise)  
17 could substantially jeopardize the business of the Producing Party and its  
18 competitive position in the marketplace. Trade secrets shall be defined  
19 consistently with California law as information of "independent economic value,  
20 actual or potential, from not being generally known to the public or to other  
21 persons who can obtain economic value from its disclosure or use" and that is the  
22 subject of reasonable efforts to maintain its secrecy. Cal. Civ. Code § 3426.1(d).  
23 The parties acknowledge that this Order does not confer blanket protections on all  
24 disclosures or responses to discovery and that the protection it affords from public  
25 disclosure and use extends only to the limited information or items that are entitled  
26 to confidential treatment under the applicable legal principles. Both parties shall  
27 exercise restraint and care in designating material for protection and take care to  
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limit any such designation to specific material that qualifies under the appropriate standards.

IT IS ORDERED.

Dated: July 29, 2013

/s/ Andrew J. Wistrich

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Hon. Andrew J. Wistrich  
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury  
that I have read in its entirety and understand the Protective Order that was issued  
by the United States District Court for the Central District of California on [date]  
in the case of *State of California ex rel. Sherwin v. Office Depot, Inc.*, Case No.:  
2:12-cv-09952-FMO-AJWx. I agree to comply with and to be bound by all the  
terms of this Stipulated Protective Order and I understand and acknowledge that  
failure to so comply could expose me to sanctions and punishment in the nature of  
contempt. I solemnly promise that I will not disclose in any manner any  
information or item that is subject to this Stipulated Protective Order to any person  
or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District  
Court for the Central District of California for the purpose of enforcing the terms  
of this Stipulated Protective Order, even if such enforcement proceedings occur  
after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

[printed name]

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

[signature]