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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

Hunton & Williams LLP  
550 South Hope Street, Suite 2000  
Los Angeles, California 90071-2627

ROBERT ROBB

Plaintiff,

v.

LOWE'S HIW, INC., a business entity,  
exact form unknown; and Does 1  
through 100, inclusive,,

Defendants.

Case No.: CV13-03752-GHK-RZ

**[PROPOSED] ORDER**

Hon. George King  
Magistrate Judge Ralph Zarefsky

**[PROPOSED] ORDER**

Pursuant to the stipulation by the Parties and good cause appearing therefor, the Court HEREBY ENTERS the Parties' STIPULATED PROTECTIVE ORDER, the pertinent elements of which are as follows:

**1.0 Definitions.**

1.1 Party: Any party to this action, including all of its officers, directors, employees, and in-house counsel (and their support staff).

1.2 Disclosures or Discovery Material: All items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, documents or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

1.3 "Confidential" Information or Items:

(i) Information that is a "trade secret" as that term is defined in 18 U.S.C. § 1839;

(ii) Confidential and proprietary business and/or financial information;

(iii) Non-public information about any individual or individuals, including personnel records, evaluations, compensation levels, databases, surveys, statistical analysis, analyses of personnel practices, or other information incorporating or aggregating information pertaining to individuals; and/or

(iv) Information alleged in good faith by a Party to be subject to protection under the Federal Rules of Evidence and/or information that is confidential, of commercial value, and falling into one or more of the following categories:

a. Lowe's HIW, Inc.'s policies and procedures for operating its stores;

b. Documents that reflect the implementation of Lowe's HIW, Inc.'s policies and procedures for operating its stores;

1 c. Information that is protected against disclosure by a  
2 written confidential information agreement between a third party and Plaintiff or  
3 Defendants; and

4 d. Business plans, models, marketing analyses, sales and  
5 financial statements.

6 1.4 Designating Party: A Party or non-party that designates its  
7 Disclosures or Discovery Material as “Confidential.”

8 1.5 Receiving Party: A Party that receives Disclosures or  
9 Discovery Material from a Designating Party.

10 1.6 Protected Material: Any Disclosures or Discovery Material  
11 that is designated as “Confidential.”

12 1.7 Outside Counsel: Attorneys who are not employees of a  
13 Party but who are retained to represent or advise a Party in this action.

14 1.8 In-House Counsel: Attorneys who are employees of a Party.

15 1.9 Counsel (without qualifier): Outside Counsel and In-House  
16 Counsel (as well as their support staffs).

17 1.10 Expert: A person with specialized knowledge or experience  
18 in a matter pertinent to the litigation who has been retained by a Party or its Counsel  
19 to serve as an expert witness or as a consultant in this litigation; and who is not a past  
20 or a current employee of a Party and who, at the time of retention, was not anticipated  
21 to become an employee of a Party. This definition includes a professional jury or trial  
22 consultant retained in connection with this litigation.

23 1.11 Professional Vendors: Persons or entities that provide  
24 litigation support services (*e.g.*, photocopying, videotaping, translating, preparing  
25 exhibits or demonstrations, organizing, storing, retrieving data in any form or  
26 medium; etc.) and their employees and subcontractors.

1                   **2.0 Scope.**

2                   The protections conferred by this Protective Order cover not only  
3 Protected Material (as defined above), but also any information copied or extracted  
4 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus  
5 testimony, conversations, or presentations by parties or counsel to or in court or in  
6 other settings that would reveal Protected Material.

7                   **3.0 Duration.**

8                   The Parties hereby voluntarily agree to comply with the terms of this  
9 Order immediately upon its execution by all parties hereto, and they shall continue to  
10 comply with its terms regardless of when or whether it is entered by the Court.  
11 Further, even after the termination of this litigation, the confidentiality obligations  
12 imposed by this Protective Order shall remain in effect until a Designating Party  
13 agrees otherwise in writing or a Court orders otherwise.

14                   **4.0 Designating Protected Material.**

15                   4.1 Exercise of Restraint and Care in Designating Disclosures or  
16 Discovery Material for Protection: Each Party or non-party that designates  
17 Disclosures or Discovery Material for protection under this Order must take care to  
18 limit any such designation to specific Disclosures or Discovery Material that qualifies  
19 under the appropriate confidentiality standard. A Designating Party must take care to  
20 designate for protection only those parts of the Disclosures or Discovery Material, so  
21 that other portions of the Disclosures or Discovery Material for which protection is  
22 not warranted are not swept unjustifiably within the ambit of this Protective Order. If  
23 it comes to a Designating Party's attention that Disclosures or Discovery Material that  
24 that Party designated for protection does not qualify for protection at all, or does not  
25 qualify for the level of protection initially asserted, that Designating Party must  
26 promptly notify all other parties that it is withdrawing the improper designation.

27                   4.2 Manner and Timing of Designations: Except as otherwise  
28 provided in this Protective Order (*see, e.g.*, second paragraph of section 4.2(a),

1 below), or as otherwise stipulated or ordered, Disclosures or Discovery Material that  
2 qualifies for protection under this Protective Order must be clearly so designated  
3 before such material is produced. Designation in conformity with this Protective  
4 Order requires:

5 4.2(a) For Disclosures or Discovery Material in documentary form  
6 (apart from transcripts of depositions or other pretrial proceedings), that the  
7 Designating Party affix the legend “CONFIDENTIAL” prominently on each page that  
8 contains Protected Material. If only a portion or portions of a document or material on  
9 a page qualifies for protection, the Designating Party also must clearly identify the  
10 protected portion(s) (e.g., by making appropriate markings in the margins).

11 A Party or non-party that makes original Disclosures or Discovery  
12 Material available for inspection need not designate them for protection until after the  
13 inspecting Party has indicated which Disclosures or Discovery Material it seeks to  
14 have copied and produced. During the inspection and before the designation, all of  
15 the Disclosures or Discovery Material made available for inspection shall be deemed  
16 “Confidential.” After the inspecting Party has identified the Disclosures or Discovery  
17 Material it seeks to have copied and produced, the Designating Party must determine  
18 which, if any, Disclosures or Discovery Material, or portions thereof, qualify for  
19 protection under this Protective Order. Prior to producing the specified Disclosures or  
20 Discovery Material, the Designating Party must affix the appropriate “Confidential”  
21 legend prominently on each page as set forth above.

22 4.2(b) For Disclosures or Discovery Material in the form of  
23 testimony given in deposition or in other pretrial proceedings, that the Party or non-  
24 party offering the testimony identify on the record, before the close of the deposition,  
25 hearing, or other proceeding, all protected testimony, and further specify any portions  
26 of the testimony that qualify as “Confidential” information.

27 Any Party may also designate testimony that is entitled to  
28 protection by notifying all Parties in writing within twenty (20) days of receipt of the

1 transcript, of the specific pages and lines of the transcript that should be treated as  
2 “Confidential” thereafter. Each Party shall attach a copy of such written notice or  
3 notices to the face of the transcript and each copy thereof in its possession, custody, or  
4 control. Unless otherwise indicated, all deposition transcripts shall be treated as  
5 “Confidential” for a period of twenty (20) days after the receipt of the transcript. This  
6 preliminary treatment, however, shall not limit a deponent’s right to review the  
7 transcript of his or her deposition under Federal Rule of Civil Procedure 30(e)(1).

8 Transcript pages containing Protected Material must be separately  
9 bound by the court reporter, who must prominently affix on each such page the legend  
10 “Confidential” as instructed by the Party or non-party offering or sponsoring the  
11 witness or presenting the testimony.

12 4.2(c) For Disclosures or Discovery Material produced other than  
13 in documentary or testimony form, and for any other tangible items, that the  
14 Designating Party affix in a prominent place on the exterior of the container in which  
15 or disk (or similar device) on which the information or item is stored the legend  
16 “Confidential.” If only portions of the information or item warrant protection, the  
17 Designating Party, to the extent practicable, shall identify the protected portions,  
18 specifying whether they qualify as “Confidential.”

19 4.3 Inadvertent Failures to Designate: An inadvertent failure to  
20 designate qualified information or items as “Confidential” does not, standing alone,  
21 waive the Designating Party’s right to secure protection under this Protective Order  
22 for such material. If any Disclosures or Discovery Material is appropriately  
23 designated as “Confidential” after the material was initially produced, the Receiving  
24 Party, on notification of the designation, must make reasonable efforts to assure that  
25 the material is treated in accordance with the provisions of this Protective Order.

26 4.4 Nonparty Designations During Deposition: During the  
27 deposition of any nonparty, the nonparty may designate any Disclosures or Discovery  
28 Material as “Confidential” so long as it is conducted in good faith. Further, any

1 nonparty seeking to invoke any protection accorded by the Protective Order must  
2 either provide a copy of the “Agreement to Be Bound by Protective Order” (attached  
3 as Exhibit A) executed by the nonparty to all counsel of record for the Parties or so  
4 agree on the record during the deposition.

5 **5.0 Access To And Use Of Protected Material.**

6 5.1 Basic Principles: A Receiving Party may use Protected  
7 Material that is disclosed or produced by another Party or by a non-party in  
8 connection with this case only for prosecuting, defending, or attempting to settle this  
9 litigation. Such Protected Material may be disclosed only to the categories of persons  
10 and under the conditions described in this Protective Order. When the litigation has  
11 been terminated, a Receiving Party must comply with the provisions of Section 10  
12 below. Protected Material must be maintained by a Receiving Party at a location and  
13 in a secure manner that ensures that access is limited to persons authorized under this  
14 Protective Order.

15 5.2 Disclosure of “Confidential” Information or Items: Unless  
16 otherwise ordered by the Court, or permitted in writing by the Designating Party, a  
17 Receiving Party may disclose any information or item designated “Confidential” only  
18 to the following:

19 5.2(a) The Receiving Party, who may share confidential  
20 information and items with its officers, directors, and employees (including In-House  
21 Counsel) to whom disclosure is reasonably necessary for this litigation;

22 5.2(b) Outside Counsel in this litigation, as well as its employees to  
23 whom it is reasonably necessary to disclose the information for this litigation;

24 5.2(c) Experts (as defined in this Protective Order) of the Receiving  
25 Party to whom disclosure is reasonably necessary for this litigation and who have  
26 signed the “Agreement to Be Bound by Protective Order” (attached as Exhibit A);

27 5.2(d) The Court and its personnel;

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1           5.2(e) Court reporters, their staffs, and professional vendors to whom  
2 disclosure is reasonably necessary for this litigation;

3           5.2(f) During their depositions, witnesses in the action to whom  
4 disclosure is reasonably calculated to lead to discovery of admissible evidence. Pages  
5 of transcribed deposition testimony or exhibits to depositions that contain Protected  
6 Material must be separately bound by the court reporter and may not be disclosed to  
7 anyone except as permitted under this Protective Order.

8           5.2(g) The author of or recipient of the Protected Material or the  
9 original source of the information.

10          5.2(h) Professional vendors.

11          5.2(i) The Parties to this litigation and their current directors, officers  
12 and employees to whom disclosure is reasonably necessary for this litigation.

13          5.2(j) Any mediators or arbitrators utilized in this litigation.

14          5.2(k) Witnesses who are being prepared by counsel to give testimony at  
15 a deposition or at trial, or who are being examined by counsel at a deposition or at  
16 trial.

17          5.2(l) The Jury.

18                   **6.0 Protected Material Subpoenaed Or Ordered Produced**  
19 **In Other Litigation.**

20           If a Receiving Party is served with a subpoena or a Court order issued in  
21 other litigation that would compel disclosure of any information or items designated  
22 in this action as “Confidential,” the Receiving Party must immediately notify the  
23 Designating Party, in writing and in no event more than five (5) court days after  
24 receiving the subpoena or Court order. Such notification must include a copy of the  
25 subpoena or Court order. If Plaintiff is the Designating Party, notice shall be sent to  
26 counsel for Plaintiff at Sottile Baltaxe, 4333 Park Terrace Drive, Suite 160, Westlake  
27 Village, CA 91361. If Defendant is the Designating Party, notice shall be sent to  
28 Hunton & Williams LLP, 500 South Hope St., Suite 2000, Los Angeles, CA 90071.



1           The Receiving Party also must immediately inform in writing the Party  
2 who caused the subpoena or order to issue in the other litigation that some or all the  
3 Protected Material covered by the subpoena or order is the subject of this Protective  
4 Order. In addition, the Receiving Party must deliver a copy of this Protective Order  
5 promptly to the Party in the other action that caused the subpoena or order to issue.

6           The purpose of imposing these duties is to alert the interested parties to  
7 the existence of this Protective Order and to afford the Designating Party in this case  
8 an opportunity to try to protect its confidentiality interests in the Court from which the  
9 subpoena or order issued. The Designating Party shall bear the burdens and the  
10 expenses of seeking protection in that court of its Protected Material – and nothing in  
11 these provisions should be construed as authorizing or encouraging a Receiving Party  
12 in this action to disobey a lawful directive from another Court.

13           **7.0 Unauthorized Disclosure Of Protected Material.**

14           If a Receiving Party learns that, by inadvertence or otherwise, it has  
15 disclosed Protected Material to any person or in any circumstance not authorized  
16 under this Protective Order, the Receiving Party must immediately (a) notify in  
17 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
18 to retrieve all copies of the Protected Material, (c) inform the person or persons to  
19 whom unauthorized disclosures were made of all the terms of this Order, and (d)  
20 request such person or persons to execute the “Acknowledgment and Agreement to Be  
21 Bound” (attached as Exhibit A).

22           **8.0 Filing Protected Material.**

23           In the event that counsel for any party desires to file with the Court any  
24 document which includes any Protected Material, an application to file such  
25 document(s) under seal shall be filed pursuant to the relevant Local Rules. This  
26 Section shall not apply to the Parties’ submission of exhibits in connection with a  
27 hearing or for trial, nor the handling of exhibits during the hearing or trial, without  
28 further order of the Court.

1                   **9.0 Final Disposition.**

2                   Unless otherwise ordered or agreed in writing by the Designating Party,  
3 after the final termination of this litigation, including any appeals, if a Designating  
4 Party requests in writing the return or destruction of any or all of its Protected  
5 Material to the Receiving Party, within thirty (30) days of such request, the Receiving  
6 Party must submit a written certification, under penalty of perjury, to the Designating  
7 Party that all Protected Material was returned or destroyed, including any copies,  
8 abstracts, compilations, summaries or other forms of reproducing or capturing any of  
9 the Protected Material. Notwithstanding this provision, Outside Counsel may retain  
10 an archival set of copies of Protected Material. Any such archival copies that contain  
11 or constitute Protected Material remain subject to this Protective Order.

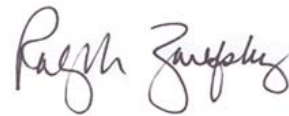
12                   **10.0 Miscellaneous.**

13                   10.1 Right to Further Relief: Nothing in this Protective Order  
14 abridges the right of any person to seek its modification by the Court in the future.

15                   10.2 Right to Assert Other Objections: By stipulating to the entry  
16 of this Protective Order, no Party waives any right it otherwise would have to object  
17 to producing any Disclosures or Discovery Material on any ground not addressed in  
18 this Protective Order. Similarly, no Party waives any right to object on any ground to  
19 use in evidence of any of the Disclosures or Discovery Material covered by this  
20 Protective Order.

21                   **IT IS SO ORDERED.**

22  
23 DATED: February 7, 2014



24                   \_\_\_\_\_  
25 UNITED STATES DISTRICT  
26 JUDGE