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8 **LOWE'S HOME CENTERS, LLC**

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**

11 **BEVERLY LYNN BRUCE,**
12 **Plaintiff(s),**

13 **v.**

14 **LOWE'S HOME CENTERS, LLC;**
15 **and DOES 1 through 30, Inclusive,**
16 **Defendant(s).**

CASE NO.: 5:15-CV-02632-RGK-KK
(Riverside County Superior Court Case No.
PSC 1504610)

STIPULATED PROTECTIVE ORDER
Discovery Matter
Hon. Kenly Kiya Kato
U.S. Magistrate Judge

THARPE & HOWELL, LLP
15250 Ventura Boulevard, Ninth Floor
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17 Plaintiff BEVERLY LYNN BRUCE (“Plaintiff”) and Defendant LOWE’S
18 HOME CENTERS, LLC (“Defendant”) jointly submit this Stipulated Protective
19 Order pursuant to Federal Rules of Civil Procedure, Rule 26(c)(1) limiting the use
20 and disposition of certain information and documents during litigation of this matter.
21 The parties agree that discovery in this action may yield documents and information
22 of a sensitive and confidential nature, including but not limited to, Defendant’s
23 proprietary policies and procedures, personnel files of present and former employees,
24 and other confidential information that may be subject to discovery in the
25 proceedings in this matter but which should not be made available to the public
26 generally. As a result, the parties have agreed to this jointly submitted Stipulated
27 Protective Order and request that it be adopted by order of this Court.

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1 **1. A. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be
5 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter
6 the following Stipulated Protective Order. The parties acknowledge that this Order
7 does not confer blanket protections on all disclosures or responses to discovery and
8 that the protection it affords from public disclosure and use extends only to the
9 limited information or items that are entitled to confidential treatment under the
10 applicable legal principles. The parties further acknowledge, as set forth in Section
11 12.3, below, that this Stipulated Protective Order does not entitle them to file
12 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
13 that must be followed and the standards that will be applied when a party seeks
14 permission from the court to file material under seal.

15 **B. GOOD CAUSE STATEMENT**

16 In light of the nature of the claims and allegations in this case and the parties’
17 representations that discovery in this case will involve the production of confidential
18 records, and in order to expedite the flow of information, to facilitate the prompt
19 resolution of disputes over confidentiality of discovery materials, to adequately
20 protect information the parties are entitled to keep confidential, to ensure that the
21 parties are permitted reasonable necessary uses of such material in connection with
22 this action, to address their handling of such material at the end of the litigation, and
23 to serve the ends of justice, a protective order for such information is justified in this
24 matter. Federal Rules of Civil Procedure, Rule 26(c)(1) states in pertinent part, that
25 the Court, upon a showing of good cause may “issue an order to protect a party from
26 annoyance, embarrassment, oppression, or undue burden or expense.” Fed.R.Civ.P.
27 26(c)(1). In the instant matter, Defendant’s Confidential Documents contain
28 proprietary and confidential trade secret information relating to defendant’s business

1 practices and its safety protocol. Defendant derives independent economic value
2 from maintaining the confidentiality of the policies and procedures set forth in these
3 Confidential Documents.

4 Defendant is a retailer in the home improvement industry and has conducted
5 business in California since 1998. The home improvement retail industry is very
6 competitive. As a result of years of investing time and money in research and
7 investigation, defendant developed the policies contained in the Confidential
8 Documents for the purposes of maintaining the security and accessibility of its
9 merchandise, providing quality customer service, and ensuring the safety of its
10 employees and customers. These policies and procedures, as memorialized in the
11 Confidential Documents, were created and generated by Lowe's for Lowe's, and are
12 used for the purposes of maintaining safety at its stores and creating efficient and
13 organized work environments for its employees. As a result, defendant is able to
14 minimize the waste of any resources, which is a key factor in generating profitability
15 for its business.

16 Defendant derives economic value from maintaining the secrecy of its
17 Confidential Documents. If disclosed to the public, the trade secret information
18 contained in defendant's Confidential Documents would reveal defendant's internal
19 operations and could potentially be used by competitors as a means to compete for
20 its customers, interfere with its business plans and thereby gain unfair business
21 advantages. If defendant's safety protocol were revealed to the general public, it
22 would hinder defendant's ability to effectively resolve and minimize liability claims,
23 and its goal of protecting its customers and employees from theft and other crimes.
24 Unrestricted or unprotected disclosure of such information would result in prejudice
25 or harm to Defendant by revealing Lowe's competitive confidential information,
26 which has been developed at the expense of Lowe's and which represents valuable
27 tangible and intangible assets. Accordingly, the parties respectfully submit that there
28 is good cause for the entry of this Protective Order.

STIPULATED PROTECTIVE ORDER

1 The parties shall not designate any information/documents as confidential
2 without a good faith belief that such information/documents have been maintained in
3 a confidential, non-public manner, and that there is good cause or a compelling
4 reason why it should not be part of the public record of this case.

5 **2. DEFINITIONS**

6 2.1 Action: The instant action: *Beverly Lynn Bruce v. Lowe’s Home Centers,*
7 *LLC; Does 1 to 30, inclusive,* Case No. 5:15-CV-02632-RGK-KK (Riverside County
8 Superior Court Case No.: PSC 1504610).

9 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
10 information or items under this Order.

11 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
12 it is generated, stored or maintained) or tangible things that qualify for protection
13 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
14 Cause Statement.

15 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
16 support staff).

17 2.5 Designating Party: a Party or Non-Party that designates information or
18 items that it produces in disclosures or in responses to discovery as
19 “CONFIDENTIAL.”

20 2.6 Disclosure or Discovery Material: all items or information, regardless of
21 the medium or manner in which it is generated, stored, or maintained (including,
22 among other things, testimony, transcripts, and tangible things), that are produced or
23 generated in disclosures or responses to discovery in this matter.

24 2.7 Expert: a person with specialized knowledge or experience in a matter
25 pertinent to the litigation who has been retained by a Party or its counsel to serve as
26 an expert witness or as a consultant in this Action.

27 2.8 House Counsel: attorneys who are employees of a party to this Action.
28 House Counsel does not include Outside Counsel of Record or any other outside

1 counsel.

2 2.9 Non-Party: any natural person, partnership, corporation, association, or
3 other legal entity not named as a Party to this action.

4 2.10 Outside Counsel of Record: attorneys who are not employees of a party
5 to this Action but are retained to represent or advise a party to this Action and have
6 appeared in this Action on behalf of that party or are affiliated with a law firm which
7 has appeared on behalf of that party, and includes support staff.

8 2.11 Party: any party to this Action, including all of its officers, directors,
9 employees, consultants, retained experts, and Outside Counsel of Record (and their
10 support staffs).

11 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
12 Discovery Material in this Action.

13 2.13 Professional Vendors: persons or entities that provide litigation support
14 services (e.g., photocopying, videotaping, translating, preparing exhibits or
15 demonstrations, and organizing, storing, or retrieving data in any form or medium)
16 and their employees and subcontractors.

17 2.14 Protected Material: any Disclosure or Discovery Material that is
18 designated as “CONFIDENTIAL.”

19 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
20 from a Producing Party.

21 **3. SCOPE**

22 The protections conferred by this Order cover not only Protected Material (as
23 defined above), but also (1) any information copied or extracted from Protected
24 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
25 and (3) any deposition testimony, conversations, or presentations by Parties or their
26 Counsel that might reveal Protected Material, other than during a court hearing or at
27 trial. Any use of Protected Material during a court hearing or at trial shall be
28 governed by the orders of the presiding judge. This Order does not govern the use of

1 Protected Material during a court hearing or at trial.

2 **4. DURATION**

3 Even after final disposition of this litigation, the confidentiality obligations
4 imposed by this Order shall remain in effect until a Designating Party agrees
5 otherwise in writing or a court order otherwise directs. Final disposition shall be
6 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
7 or without prejudice; and (2) final judgment herein after the completion and
8 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
9 including the time limits for filing any motions or applications for extension of time
10 pursuant to applicable law.

11 **5. DESIGNATING PROTECTED MATERIAL**

12 5.1 Exercise of Restraint and Care in Designating Material for Protection.

13 Each Party or Non-Party that designates information or items for protection under
14 this Order must take care to limit any such designation to specific material that
15 qualifies under the appropriate standards. The Designating Party must designate for
16 protection only those parts of material, documents, items, or oral or written
17 communications that qualify so that other portions of the material, documents, items,
18 or communications for which protection is not warranted are not swept unjustifiably
19 within the ambit of this Order.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations
21 that are shown to be clearly unjustified or that have been made for an improper
22 purpose (e.g., to unnecessarily encumber the case development process or to impose
23 unnecessary expenses and burdens on other parties) may expose the Designating
24 Party to sanctions.

25 If it comes to a Designating Party's attention that information or items that it
26 designated for protection do not qualify for protection, that Designating Party must
27 promptly notify all other Parties that it is withdrawing the inapplicable designation.
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1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (e.g., paper or electronic documents,
8 but excluding transcripts of depositions), that the Producing Party affix at a
9 minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”),
10 to each page that contains protected material. If only a portion or portions of the
11 material on a page qualifies for protection, the Producing Party also must clearly
12 identify the protected portion(s) (e.g., by making appropriate markings in the
13 margins).

14 A Party or Non-Party that makes original documents available for inspection
15 need not designate them for protection until after the inspecting Party has indicated
16 which documents it would like copied and produced. During the inspection and
17 before the designation, all of the material made available for inspection shall be
18 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
19 it wants copied and produced, the Producing Party must determine which documents,
20 or portions thereof, qualify for protection under this Order. Then, before producing
21 the specified documents, the Producing Party must affix the “CONFIDENTIAL
22 legend” to each page that contains Protected Material. If only a portion or portions of
23 the material on a page qualifies for protection, the Producing Party also must clearly
24 identify the protected portion(s) (e.g., by making appropriate markings in the
25 margins).

26 (b) for testimony given in depositions that the Designating Party identifies on
27 the record, before the close of the deposition as protected testimony.

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(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court’s Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37-1 et seq.

6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party’s designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this

1 Action only for prosecuting, defending, or attempting to settle this Action. Such
2 Protected Material may be disclosed only to the categories of persons and under the
3 conditions described in this Order. When the Action has been terminated, a
4 Receiving Party must comply with the provisions of Section 13 below.

5 Protected Material must be stored and maintained by a Receiving Party at a
6 location and in a secure manner that ensures that access is limited to the persons
7 authorized under this Order.

8 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
9 ordered by the court or permitted in writing by the Designating Party, a Receiving
10 Party may disclose any information or item designated “CONFIDENTIAL” only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
12 employees of said Outside Counsel of Record to whom it is reasonably necessary to
13 disclose the information for this Action;

14 (b) the officers, directors, and employees (including House Counsel) of the
15 Receiving Party to whom disclosure is reasonably necessary for this Action;

16 (c) Experts (as defined in this Order) of the Receiving Party to whom
17 disclosure is reasonably necessary for this Action;

18 (d) the court and its personnel;

19 (e) court reporters and their staff;

20 (f) the author or recipient of a document containing the information or a
21 custodian or other person who otherwise possessed or knew the information;

22 (g) during their depositions, witnesses, and attorneys for witnesses, in the
23 Action to whom disclosure is reasonably necessary; and

24 (h) any mediator or settlement officer, and their supporting personnel,
25 mutually agreed upon by any of the parties engaged in settlement discussions.

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1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall
7 include a copy of the subpoena or court order unless prohibited by law;

8 (b) promptly notify in writing the party who caused the subpoena or order to
9 issue in the other litigation that some or all of the material covered by the subpoena
10 or order is subject to this Protective Order. Such notification shall include a copy of
11 this Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued by
13 the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with
15 the subpoena or court order shall not produce any information designated in this
16 action as “CONFIDENTIAL” before a determination by the court from which the
17 subpoena or order issued, unless the Party has obtained the Designating Party’s
18 permission, or unless otherwise required by the law or court order. The Designating
19 Party shall bear the burden and expense of seeking protection in that court of its
20 confidential material and nothing in these provisions should be construed as
21 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
22 directive from another court.

23 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
24 **PRODUCED IN THIS LITIGATION**

25 (a) The terms of this Order are applicable to information produced by a Non-
26 Party in this Action and designated as “CONFIDENTIAL.” Such information
27 produced by Non-Parties in connection with this litigation is protected by the
28 remedies and relief provided by this Order. Nothing in these provisions should be

1 construed as prohibiting a Non-Party from seeking additional protections.

2 (b) In the event that a Party is required, by a valid discovery request, to
3 produce a Non-Party's confidential information in its possession, and the Party is
4 subject to an agreement with the Non-Party not to produce the Non-Party's
5 confidential information, then the Party shall:

6 (1) promptly notify in writing the Requesting Party and the Non-Party
7 that some or all of the information requested is subject to a confidentiality
8 agreement with a Non-Party;

9 (2) promptly provide the Non-Party with a copy of the Protective Order
10 in this Action, the relevant discovery request(s), and a reasonably specific
11 description of the information requested; and

12 (3) make the information requested available for inspection by the Non-
13 Party, if requested.

14 (c) If a Non-Party represented by counsel fails to commence the process called
15 for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the notice and
16 accompanying information or fails contemporaneously to notify the Receiving Party
17 that it has done so, the Receiving Party may produce the NonParty's confidential
18 information responsive to the discovery request. If an unrepresented Non-Party fails
19 to seek a protective order from this court within 14 days of receiving the notice and
20 accompanying information, the Receiving Party may produce the Non-Party's
21 confidential information responsive to the discovery request. If the Non-Party timely
22 seeks a protective order, the Receiving Party shall not produce any information in its
23 possession or control that is subject to the confidentiality agreement with the Non-
24 Party before a determination by the court unless otherwise required by the law or
25 court order. Absent a court order to the contrary, the Non-Party shall bear the burden
26 and expense of seeking protection in this court of its Protected Material.

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1 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this
4 Protective Order, the Receiving Party must immediately (a) notify in writing the
5 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
6 all unauthorized copies of the Protected Material, (c) inform the person or persons to
7 whom unauthorized disclosures were made of all the terms of this Order, and (d)
8 request such person or persons to execute the “Acknowledgment and Agreement to
9 Be Bound” that is attached hereto as Exhibit A.

10 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
11 **OTHERWISE PROTECTED MATERIAL**

12 When a Producing Party gives notice to Receiving Parties that certain
13 inadvertently produced material is subject to a claim of privilege or other protection,
14 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
15 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
16 may be established in an e-discovery order that provides for production without prior
17 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
18 parties reach an agreement on the effect of disclosure of a communication or
19 information covered by the attorney-client privilege or work product protection, the
20 parties may incorporate their agreement into this Protective Order.

21 **12. MISCELLANEOUS**

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
23 person to seek its modification by the Court in the future.

24 12.2 Right to Assert Other Objections. No Party waives any right it otherwise
25 would have to object to disclosing or producing any information or item on any
26 ground not addressed in this Protective Order. Similarly, no Party waives any right to
27 object on any ground to use in evidence of any of the material covered by this
28 Protective Order.

1 12.3 Filing Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent
3 orders of the assigned District Judge and Magistrate Judge, including any procedures
4 adopted under the Pilot Project for the Electronic Submission and Filing of Under
5 Seal Documents. Protected Material may only be filed under seal pursuant to a court
6 order authorizing the sealing of the specific Protected Material at issue. If a Party's
7 request to file Protected Material under seal is denied by the court, then the
8 Receiving Party may file the information in the public record unless otherwise
9 instructed by the court.

10 **13. FINAL DISPOSITION**

11 After the final disposition of this Action, as defined in Section 4, within 60
12 days of a written request by the Designating Party, each Receiving Party must return
13 all Protected Material to the Producing Party or destroy such material. As used in this
14 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
15 summaries, and any other format reproducing or capturing any of the Protected
16 Material. Whether the Protected Material is returned or destroyed, the Receiving
17 Party must submit a written certification to the Producing Party (and, if not the same
18 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
19 (by category, where appropriate) all the Protected Material that was returned or
20 destroyed and (2) affirms that the Receiving Party has not retained any copies,
21 abstracts, compilations, summaries or any other format reproducing or capturing any
22 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
23 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
24 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
25 reports, attorney work product, and consultant and expert work product, even if such
26 materials contain Protected Material. Any such archival copies that contain or
27 constitute Protected Material remain subject to this Protective Order as set forth in
28 Section 4.

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14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

Dated: JACOB REGAR LAW

By: _____
JACOB REGAR
Attorney for Plaintiff,
BEVERLY LYNN BRUCE

Dated: THARPE & HOWELL, LLP

By: _____
CHARLES D. MAY
BRIAN J. KIM
Attorneys for Defendant,
LOWE'S HOME CENTERS

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Date: July 12, 2106



HON. KENLY KIYA KATO
U.S. MAGISTRATE JUDGE