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11 LOWE'S HOME CENTERS, LLC

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 PATRICIA MCCONNELL,
15 PLAINTIFF,

16 V.

17 LOWE'S HOME CENTERS, LLC,
18 AND DOES 1 TO 50, INCLUSIVE,
19 DEFENDANTS.

CASE NO. 5:17-cv-1356-JGB (SPx)

Hon. Jesus G. Bernal

~~[PROPOSED]~~ STIPULATED
PROTECTIVE
ORDER

**[Discovery Matter: Referred to
Magistrate Judge Sheri Pym]**

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22 1. A. PURPOSES AND LIMITATIONS

23 Discovery in this action is likely to involve production of confidential,
24 proprietary, or private information for which special protection from public disclosure
25 and from use for any purpose other than prosecuting this litigation may be warranted.
26 Accordingly, the parties hereby stipulate to and petition the Court to enter the
27 following Stipulated Protective Order. The parties acknowledge that this Order does
28 not confer blanket protections on all disclosures or responses to discovery and that

1 the protection it affords from public disclosure and use extends only to the limited
2 information or items that are entitled to confidential treatment under the applicable
3 legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
4 that this Stipulated Protective Order does not entitle them to file confidential
5 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
6 followed and the standards that will be applied when a party seeks permission from
7 the court to file material under seal.

8 B. GOOD CAUSE STATEMENT

9 The parties submit that good cause exists for the issuance of this Protective
10 Order for the following reasons:

- 11 (i) Discovery obtained in the above-captioned action may involve
12 disclosure of non-public, confidential, proprietary, commercially sensitive and/or
13 trade secret information. Disclosure of this information to persons who are not
14 entitled to it carries the danger of compromising the competitive business interests
15 of Defendant, and also risks invasion of legitimate personal privacy interests of
16 Plaintiff and non-parties;
- 17 (ii) Defendant anticipates that it may need to produce material that contains
18 proprietary information concerning its business practices and procedures for the
19 operation of its stores that may be of value to a competitor or may cause harm to its
20 legitimate business interests in the marketplace;
- 21 (iii) Defendant further anticipates that it may need to produce non-public
22 information concerning Plaintiff or non-parties that is personal in nature and/or
23 protected by the right of privacy;
- 24 (iv) The issuance of this Protective Order will allow for efficiency in the
25 discovery process and provide a mechanism by which discovery of relevant
26 confidential information may be obtained in a manner that protects against risk of
27 disclosure of such information to persons not entitled to such information; and
28

1 (v) The issuance of this Protective Order will protect the parties' interests
2 by providing the parties recourse in this Court in the event that a party or non-party
3 improperly handles non-public, confidential, proprietary, commercially sensitive
4 and/or trade secret information that the parties have had to exchange in the course of
5 discovery propounded and depositions taken in this action.

6 (vi) Accordingly, to expedite the flow of information, to facilitate the
7 prompt resolution of disputes over confidentiality of discovery materials, to
8 adequately protect information the parties are entitled to keep confidential, to ensure
9 that the parties are permitted reasonable necessary uses of such material in
10 preparation for and in the conduct of trial, to address their handling at the end of the
11 litigation, and serve the ends of justice, a protective order for such information is
12 justified in this matter. It is the intent of the parties that information will not be
13 designated as confidential for tactical reasons and that nothing be so designated
14 without a good faith belief that it has been maintained in a confidential, non-public
15 manner, and there is good cause why it should not be part of the public record of
16 this case.

17
18 **2. DEFINITIONS**

19 2.1. Action: This pending federal law suit, *Patricia McConnell v. Lowe's*
20 *Home Centers, LLC*, Case No.: 5:17-cv-1356-JGB (SPx).

21 2.2. Challenging Party: a Party or Non-Party that challenges the designation
22 of information or items under this Order.

23 2.3. "CONFIDENTIAL" Information or Items: information (regardless of
24 how it is generated, stored or maintained) or tangible things that qualify for protection
25 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
26 Cause Statement.

27 2.4. Counsel: Outside Counsel of Record and House Counsel (as well as their
28 support staff).

1 2.5. Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.6. Disclosure or Discovery Material: all items or information, regardless of
5 the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are produced or
7 generated in disclosures or responses to discovery in this matter.

8 2.7. Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as
10 an expert witness or as a consultant in this Action.

11 2.8. House Counsel: attorneys who are employees of a party to this Action.
12 House Counsel does not include Outside Counsel of Record or any other outside
13 counsel.

14 2.9. Non-Party: any natural person, partnership, corporation, association, or
15 other legal entity not named as a Party to this action.

16 2.10. Outside Counsel of Record: attorneys who are not employees of a party
17 to this Action but are retained to represent or advise a party to this Action and have
18 appeared in this Action on behalf of that party or are affiliated with a law firm which
19 has appeared on behalf of that party, and includes support staff.

20 2.11. Party: any party to this Action, including all of its officers, directors,
21 employees, consultants, retained experts, and Outside Counsel of Record (and their
22 support staffs).

23 2.12. Producing Party: a Party or Non-Party that produces Disclosure or
24 Discovery Material in this Action.

25 2.13. Professional Vendors: persons or entities that provide litigation support
26 services (e.g., photocopying, videotaping, translating, preparing exhibits or
27 demonstrations, and organizing, storing, or retrieving data in any form or medium)
28 and their employees and subcontractors.

1 2.14. Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL.”

3 2.15. Receiving Party: a Party that receives Disclosure or Discovery Material
4 from a Producing Party.

5
6 3. SCOPE

7 The protections conferred by this Stipulation and Order cover not only
8 Protected Material (as defined above), but also (1) any information copied or
9 extracted from Protected Material; (2) all copies, excerpts, summaries, or
10 compilations of Protected Material; and (3) any testimony, conversations, or
11 presentations by Parties or their Counsel that might reveal Protected Material.

12 Any use of Protected Material at trial shall be governed by the orders of the
13 trial judge. This Order does not govern the use of Protected Material at trial.

14
15 4. DURATION

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

24
25 5. DESIGNATING PROTECTED MATERIAL

26 5.1. Exercise of Restraint and Care in Designating Material for Protection.

27 Each Party or Non-Party that designates information or items for protection
28 under this Order must take care to limit any such designation to specific material that

1 qualifies under the appropriate standards. The Designating Party must designate for
2 protection only those parts of material, documents, items, or oral or written
3 communications that qualify so that other portions of the material, documents, items,
4 or communications for which protection is not warranted are not swept unjustifiably
5 within the ambit of this Order.

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

11 If it comes to a Designating Party's attention that information or items that it
12 designated for protection do not qualify for protection, that Designating Party must
13 promptly notify all other Parties that it is withdrawing the inapplicable designation.

14 5.2. Manner and Timing of Designations. Except as otherwise provided in
15 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
16 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
17 under this Order must be clearly so designated before the material is disclosed or
18 produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (e.g., paper or electronic
21 documents, but excluding transcripts of depositions or other pretrial or trial
22 proceedings), that the Producing Party affix at a minimum, the legend
23 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
24 contains protected material. If only a portion or portions of the material on a page
25 qualifies for protection, the Producing Party also must clearly identify the protected
26 portion(s) (e.g., by making appropriate markings in the margins).

27 A Party or Non-Party that makes original documents available for inspection
28 need not designate them for protection until after the inspecting Party has indicated

1 which documents it would like copied and produced. During the inspection and before
2 the designation, all of the material made available for inspection shall be deemed
3 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
4 copied and produced, the Producing Party must determine which documents, or
5 portions thereof, qualify for protection under this Order. Then, before producing the
6 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”
7 to each page that contains Protected Material. If only a portion or portions of the
8 material on a page qualifies for protection, the Producing Party also must clearly
9 identify the protected portion(s) (e.g., by making appropriate markings in the
10 margins).

11 (b) for testimony given in depositions that the Designating Party
12 identify the Disclosure or Discovery Material on the record, before the close of the
13 deposition all protected testimony. Any Party may also designate testimony that is
14 entitled to protection by notifying all Parties in writing within twenty (20) days of
15 receipt of the transcript, of the specific pages and lines of the transcript that should be
16 treated as “Confidential” thereafter. Each Party shall attach a copy of such written
17 notice or notices to the face of the transcript and each copy thereof in its possession,
18 custody, or control. Unless otherwise indicated, all deposition transcripts shall be
19 treated as “Confidential” for a period of twenty (20) days after the receipt of the
20 transcript. This preliminary treatment, however, shall not limit a deponent’s right to
21 review the transcript of his or her deposition. This preliminary treatment shall not
22 limit a Party's use of any deposition transcript or exhibits, which have not previously
23 been expressly designated for protection under this order, from using such transcript
24 or exhibits in filings concerning any motion or at any subsequent deposition,
25 settlement conference, mediation or other proceeding related to the Action.

26 (c) for information produced in some form other than documentary and
27 for any other tangible items, that the Producing Party affix in a prominent place on
28 the exterior of the container or containers in which the information is stored the legend

1 “CONFIDENTIAL.” If only a portion or portions of the information warrants
2 protection, the Producing Party, to the extent practicable, shall identify the protected
3 portion(s).

4 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
5 failure to designate qualified information or items does not, standing alone, waive the
6 Designating Party’s right to secure protection under this Order for such material.
7 Upon timely correction of a designation, the Receiving Party must make reasonable
8 efforts to assure that the material is treated in accordance with the provisions of this
9 Order.

10
11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
13 designation of confidentiality at any time that is consistent with the Court’s
14 Scheduling Order.

15 6.2. Meet and Confer. The Challenging Party shall initiate the dispute
16 resolution process under Local Rule 37.1 et seq.

17 6.3. The burden of persuasion in any such challenge proceeding shall be on
18 the Designating Party. Frivolous challenges, and those made for an improper purpose
19 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
20 expose the Challenging Party to sanctions. Unless the Designating Party has waived
21 or withdrawn the confidentiality designation, all parties shall continue to afford the
22 material in question the level of protection to which it is entitled under the Producing
23 Party’s designation until the Court rules on the challenge.

24
25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1. Basic Principles. A Receiving Party may use Protected Material that is
27 disclosed or produced by another Party or by a Non-Party in connection with this
28 Action only for prosecuting, defending, or attempting to settle this Action. Such

1 Protected Material may be disclosed only to the categories of persons and under the
2 conditions described in this Order. When the Action has been terminated, a Receiving
3 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

7 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless
8 otherwise ordered by the court or permitted in writing by the Designating Party, a
9 Receiving Party may disclose any information or item designated
10 “CONFIDENTIAL” only to:

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

14 (b) the officers, directors, and employees (including House Counsel)
15 of the 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 and who have signed the
18 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (d) the court and its personnel;

20 (e) court reporters and their staff;

21 (f) professional jury or trial consultants, mock jurors, and Professional
22 Vendors to whom disclosure is reasonably necessary for this Action and who have
23 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (g) the author or recipient of a document containing the information or
25 a custodian or other person who otherwise possessed or knew the information;

26 (h) during their depositions, witnesses, and attorneys for witnesses, in
27 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
28 party requests that the witness sign the form attached as Exhibit A hereto; and (2) they

1 will not be permitted to keep any confidential information unless they sign the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
3 agreed by the Designating Party or ordered by the court. Pages of transcribed
4 deposition testimony or exhibits to depositions that reveal Protected Material may be
5 separately bound by the court reporter and may not be disclosed to anyone except as
6 permitted under this Stipulated Protective Order; and

7 (i) any mediator or settlement officer, and their supporting personnel,
8 mutually agreed upon by any of the parties engaged in settlement discussions.
9

10 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
11 IN OTHER LITIGATION

12 If a Party is served with a subpoena or a court order issued in other litigation
13 that compels disclosure of any information or items designated in this Action as
14 “CONFIDENTIAL,” while such materials remain under the protection of this order,
15 that Party must:

16 (a) promptly notify in writing the Designating Party. Such notification
17 shall include a copy of the subpoena or court order;

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

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

24 If the Designating Party timely seeks a protective order, the Party served with
25 the subpoena or court order shall not produce any information designated in this
26 action as “CONFIDENTIAL” before a determination by the court from which the
27 subpoena or order issued, unless the Party has obtained the Designating Party’s
28 permission. The Designating Party shall bear the burden and expense of seeking

1 protection in that court of its confidential material and nothing in these provisions
2 should be construed as authorizing or encouraging a Receiving Party in this Action to
3 disobey a lawful directive from another court.
4

5 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
6 PRODUCED IN THIS LITIGATION

7 (a) The terms of this Order are applicable to information produced by
8 a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
9 produced by Non-Parties in connection with this litigation is protected by the
10 remedies and relief provided by this Order. Nothing in these provisions should be
11 construed as prohibiting a Non-Party from seeking additional protections.

12 (b) In the event that a Party is required, by a valid discovery request,
13 to produce a Non-Party’s confidential information in its possession, and the Party is
14 subject to an agreement with the Non-Party not to produce the Non-Party’s
15 confidential information, then the Party shall:

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

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

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

24 (c) If the Non-Party fails to seek a protective order from this court
25 within 14 days of receiving the notice and accompanying information, the Receiving
26 Party may produce the Non-Party’s confidential information responsive to the
27 discovery request. If the Non-Party timely seeks a protective order, the Receiving
28 Party shall not produce any information in its possession or control that is subject to

1 the confidentiality agreement with the Non-Party before a determination by the court.
2 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
3 of seeking protection in this court of its Protected Material.
4

5 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
7 Protected Material to any person or in any circumstance not authorized under this
8 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
9 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
10 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
11 persons to whom unauthorized disclosures were made of all the terms of this Order,
12 and (d) request such person or persons to execute the “Acknowledgment and
13 Agreement to Be Bound” that is attached hereto as Exhibit A.
14

15 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
16 PROTECTED MATERIAL

17 When a Producing Party gives notice to Receiving Parties that certain
18 inadvertently produced material is subject to a claim of privilege or other protection,
19 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
20 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
21 may be established in an e-discovery order that provides for production without prior
22 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
23 parties reach an agreement on the effect of disclosure of a communication or
24 information covered by the attorney-client privilege or work product protection, the
25 parties may incorporate their agreement in the stipulated protective order submitted
26 to the court.
27
28

1 12. MISCELLANEOUS

2 12.1. Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

4 12.2. Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in this
7 Stipulated Protective Order. Similarly, no Party waives any right to object on any
8 ground to use in evidence of any of the material covered by this Protective Order.

9 12.3. Filing Protected Material. A Party that seeks to file under seal any
10 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
11 only be filed under seal pursuant to a court order authorizing the sealing of the specific
12 Protected Material at issue. If a Party’s request to file Protected Material under seal
13 is denied by the court, then the Receiving Party may file the information in the public
14 record unless otherwise instructed by the court.

15
16 13. FINAL DISPOSITION

17 After the final disposition of this Action, as defined in paragraph 4, within 60
18 days of a written request by the Designating Party, each Receiving Party must return
19 all Protected Material to the Producing Party or destroy such material. As used in this
20 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
21 summaries, and any other format reproducing or capturing any of the Protected
22 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
23 must submit a written certification to the Producing Party (and, if not the same person
24 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
25 category, where appropriate) all the Protected Material that was returned or destroyed
26 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
27 compilations, summaries or any other format reproducing or capturing any of the
28 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an

1 archival copy of all pleadings, motion papers, trial, deposition, and hearing
2 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
3 reports, attorney work product, and consultant and expert work product, even if such
4 materials contain Protected Material. Any such archival copies that contain or
5 constitute Protected Material remain subject to this Protective Order as set forth in
6 Section 4 (DURATION).

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

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11 DATED February 7, 2018

CONSUMER LAW OFFICE OF
ROBERT STEMLER, APC

LAW OFFICES OF LARRY R.
HODDICK, P.C.

Attorneys for Plaintiff

By: /s/ Larry R. Hoddick

LARRY R HODDICK
Patricia McConnell

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17 DATED February 7, 2018

HUNTON & WILLIAMS LLP

By: /s/ Matthew I. Bobb

Emily Burkhardt Vicente
Matthew I. Bobb
Attorneys for Defendant
Lowe's Home Centers, LLC

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22
23 **Attestation Pursuant to Local Rule 5-4.3.4(a)(2)(i)**

24 I, Matthew I. Bobb, attest that all other signatories listed, and on whose behalf
25 this filing is submitted, concur in the filing's content and have authorized the filing.
26

27 By: /s/ Matthew I. Bobb

Matthew I. Bobb

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FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED February 9, 2018



Honorable Sheri Pym
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 Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [____](date) in the case of *Patricia McConnell v. Lowe's Home Centers, LLC*, Case No.: 5:17-CV-1356-JGB-SPx). 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. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____