

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

10 DAVID SPEARS,

11 Plaintiff,

12 v.

13 LOWE'S HOME CENTERS, LLC,

14 Defendant.
15
16

Case No. 1:21-cv-00590-DAD-SAB

ORDER ENTERING STIPULATED
PROTECTIVE ORDER

(ECF No. 6)

17 **STIPULATED PROTECTIVE ORDER**

18 1. A. PURPOSES AND LIMITATIONS

19 Discovery in this action is likely to involve production of confidential, proprietary, or
20 private information for which special protection from public disclosure and from use for any
21 purpose other than prosecuting this litigation may be warranted. Accordingly, the parties
22 acknowledge that this Order does not confer blanket protections on all disclosures or responses
23 to discovery and that the protection it affords from public disclosure and use extends only to the
24 limited information or items that are entitled to confidential treatment under the applicable legal
25 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Order
26 does not entitle them to file confidential information under seal. Rather, when the parties seek
27 permission from the court to file material under seal, the parties must comply with Civil Local
28 Rule 141 and with any pertinent orders of the assigned District Judge and Magistrate Judge.

1 B. GOOD CAUSE STATEMENT

2 Federal Rules of Civil Procedure, Rule 26(c)(1) states in pertinent part, that the Court,
3 upon a showing of good cause may “issue an order to protect a party from annoyance,
4 embarrassment, oppression, or undue burden or expense.” Fed.R.Civ.P. 26(c)(1). In the instant
5 matter, Defendant Lowe’s Home Centers, LLC’s Confidential Documents contain proprietary
6 and confidential trade secret information relating to Defendant Lowe’s Home Centers, LLC’s
7 business practices and its safety protocol. Defendant Lowe’s Home Centers, LLC. (“Defendant”
8 or “Lowe’s”) derives independent economic value from maintaining the confidentiality of the
9 policies and procedures set forth in these Confidential Documents.

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

20 Defendant derives economic value from maintaining the secrecy of its Confidential
21 Documents. If disclosed to the public, the trade secret information contained in Defendant’s
22 Confidential Documents would reveal Defendant’s internal operations and could potentially be
23 used by competitors as a means to compete for its customers, interfere with its business plans
24 and thereby gain unfair business advantages. If Defendant’s safety protocol were revealed to the
25 general public, it would hinder Defendant’s ability to effectively resolve and minimize liability
26 claims, and its goal of protecting its customers and employees from theft and other crimes.
27 Unrestricted or unprotected disclosure of such information would result in prejudice or harm to
28

1 Defendant by revealing Lowe's competitive confidential information, which has been developed
2 at the expense of Lowe's and which represents valuable tangible and intangible assets.
3 Accordingly, the parties respectfully submit that there is good cause for the entry of this
4 Protective Order.

5 2. DEFINITIONS
6

7 2.1 Action: The instant action: David Spears v. Lowe's Home Centers, LLC, Case
8 No: 1:21-CV-00590-DAD-SAB.

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 it is
12 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
13 of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

14 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support
15 staff).
16

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

19 2.6 Disclosure or Discovery Material: all items or information, regardless of the
20 medium or manner in which it is generated, stored, or maintained (including, among other things,
21 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
22 responses to discovery in this matter.

23 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent
24 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as
25 a consultant in this Action.

26 2.8 House Counsel: attorneys who are employees of a party to this Action. House
27 Counsel does not include Outside Counsel of Record or any other outside counsel.

28 2.9 Non-Party: any natural person, partnership, corporation, association, or other

1 legal entity not named as a Party to this action.

2 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
3 Action but are retained to represent or advise a party to this Action and have appeared in this
4 Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
5 that party, and includes support staff.

6 2.11 Party: any party to this Action, including all of its officers, directors, employees,
7 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

8 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
9 Material in this Action.

10 2.13 Professional Vendors: persons or entities that provide litigation support services
11 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
12 organizing, storing, or retrieving data in any form or medium) and their employees and
13 subcontractors.

14 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
15 “CONFIDENTIAL.”

16 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
17 Producing Party.

18 3. SCOPE

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

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

25 4. DURATION

26
27 Even after final disposition of this litigation, the confidentiality obligations imposed by
28 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court

1 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
2 claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after
3 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
4 Action, including the time limits for filing any motions or applications for extension of time
5 pursuant to applicable law.

6 5. DESIGNATING PROTECTED MATERIAL
7

8 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
9 or Non-Party that designates information or items for protection under this Order must take care
10 to limit any such designation to specific material that qualifies under the appropriate standards.
11 The Designating Party must designate for protection only those parts of material, documents,
12 items, or oral or written communications that qualify so that other portions of the material,
13 documents, items, or communications for which protection is not warranted are not swept
14 unjustifiably within the ambit of this Order.

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

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

22 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
23 (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered,
24 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
25 designated before the material is disclosed or produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic documents, but
28

1 excluding transcripts of depositions), that the Producing Party affix at a minimum, the legend
2 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that contains
3 protected material. If only a portion or portions of the material on a page qualifies for protection,
4 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
5 appropriate markings in the margins).

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

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

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

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
24 designate qualified information or items does not, standing alone, waive the Designating Party’s
25 right to secure protection under this Order for such material. Upon timely correction of a
26 designation, the Receiving Party must make reasonable efforts to assure that the material is
27 treated in accordance with the provisions of this Order.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
3 confidentiality at any time that is consistent with the Court's Scheduling Order.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
5 process under Local Rule 251et seq.

6 6.3 The burden of persuasion in any such challenge proceeding shall be on the
7 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass
8 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party
9 to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality
10 designation, all parties shall continue to afford the material in question the level of protection to
11 which it is entitled under the Producing Party's designation until the Court rules on the
12 challenge.

13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
15 or produced by another Party or by a Non-Party in connection with this Action only for
16 prosecuting, defending, or attempting to settle this Action. Such Protected Material may be
17 disclosed only to the categories of persons and under the conditions described in this Order.
18 When the Action has been terminated, a Receiving Party must comply with the provisions of
19 Section 13 below.

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

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
23 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
24 disclose any information or item designated "CONFIDENTIAL" only to:

25 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
26 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
27 information for this Action;
28

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

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

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

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

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the “Acknowledgment and Agreement to Be Bound” form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” attached as Exhibit A, unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Protective Order; and

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

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

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

1 Party must:

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

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

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

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

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

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

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

27 (1) promptly notify in writing the Requesting Party and the Non-Party that some
28

1 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

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

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

7 (c) If a Non-Party represented by counsel fails to commence the process called for by
8 Local Rule 251, et seq. within 14 days of receiving the notice and accompanying information or
9 fails contemporaneously to notify the Receiving Party that it has done so, the Receiving Party
10 may produce the Non-Party's confidential information responsive to the discovery request. If an
11 unrepresented Non-Party fails to seek a protective order from this court within 14 days of
12 receiving the notice and accompanying information, the Receiving Party may produce the Non-
13 Party's confidential information responsive to the discovery request. If the Non-Party timely
14 seeks a protective order, the Receiving Party shall not produce any information in its possession
15 or control that is subject to the confidentiality agreement with the Non-Party before a
16 determination by the court unless otherwise required by the law or court order. Absent a court
17 order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in
18 this court of its Protected Material.

19 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
21 Material to any person or in any circumstance not authorized under this Protective Order, the
22 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
23 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material,
24 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
25 this Order, and (d) request such person or persons to execute the "Acknowledgment and
26 Agreement to Be Bound" that is attached hereto as Exhibit A.
27
28

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
2 MATERIAL

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

11 12. MISCELLANEOUS

12
13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
14 seek its modification by the Court in the future.

15 12.2 Right to Assert Other Objections. No Party waives any right it otherwise would
16 have to object to disclosing or producing any information or item on any ground not addressed in
17 this Protective Order. Similarly, no Party waives any right to object on any ground to use in
18 evidence of any of the material covered by this Protective Order.

19 12.3 Filing Protected Material. A Party that seeks to attach Protected Material to a
20 motion or otherwise file Protected Material with the court must submit a request to file the
21 Protected Material under seal. Any request to seal documents or other materials must comply
22 with Civil Local Rule 141 and with any pertinent orders of the assigned District Judge and
23 Magistrate Judge. If a Party's request to file Protected Material under seal is denied by the court,
24 then the Receiving Party may file the information in the public record unless otherwise instructed
25 by the court.

26 13. FINAL DISPOSITION

27 After the final disposition of this Action, as defined in Section 4, within 60 days of a
28

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

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

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4
5 I, _____ [print or type full name], of
6 _____ [print or type full
7 address], declare under penalty of perjury that I have read in its entirety and understand the
8 Protective Order that was issued by the United States District Court for the Eastern District of
9 California on _____ in the case of David Spears v. Lowe's Home
10 Centers, LLC, Case No: 1:21-CV-00590-DAD-SAB. I agree to comply with and to be bound by
11 all the terms of this Protective Order and I understand and acknowledge that failure to so comply
12 could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that
13 I will not disclose in any manner any information or item that is subject to this Protective Order
14 to any person or entity except in strict compliance with the provisions of this Order.

15
16 I further agree to submit to the jurisdiction of the United States District Court for the
17 Eastern District of California for the purpose of enforcing the terms of this Protective Order,
18 even if such enforcement proceedings occur after termination of this action. I hereby appoint
19 _____ [print or type full name] of
20 _____ [print or type full address and
21 telephone number] as my California agent for service of process in connection with this action or
22 any proceedings related to enforcement of this Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27 Signature: _____

1 **COURT ORDER ENTERING STIPULATED PROTECTIVE ORDER**

2 Pursuant to the stipulation of the parties, IT IS HEREBY ORDERED that:

- 3 1. The above stipulated protective order is entered;
- 4 2. The parties are advised that pursuant to the Local Rules of the United States
5 District Court, Eastern District of California, any documents which are to be filed
6 under seal will require a written request which complies with Local Rule 141;
- 7 3. The party making a request to file documents under seal shall be required to show
8 good cause for documents attached to a nondispositive motion or compelling
9 reasons for documents attached to a dispositive motion, Pintos v. Pacific Creditors
10 Ass'n, 605 F.3d 665, 677-78 (9th Cir. 2009); and
- 11 4. If a party's request to file Protected Material under seal is denied by the Court, then
12 the previously filed material shall be immediately accepted by the court and
13 become information in the public record and the information will be deemed filed
14 as of the date that the request to file the Protected Information under seal was
15 made.

16
17 IT IS SO ORDERED.

18 Dated: **June 4, 2021**

19
20
21
22
23
24
25
26
27
28


UNITED STATES MAGISTRATE JUDGE