

1 CHARLES D. MAY, ESQ.; STATE BAR NO.: 129663
2 STEPHANIE FORMAN, ESQ.; STATE BAR NO.: 195757
3 DIANA M. RIVERA, ESQ.; STATE BAR NO.: 222025

3 **THARPE & HOWELL, LLP**
4 **15250 Ventura Blvd., Ninth Floor**
5 **Sherman Oaks, California 91403**
6 **(818) 205-9955; (818) 205-9944 fax**
7 **E-Mail: cmay@tharpe-howell.com**
8 **E-Mail: sforman@tharpe-howell.com**
9 **E-Mail: drivera@tharpe-howell.com**

7 Attorneys for Defendant,
8 LOWE'S HOME CENTERS, LLC,

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA (SACRAMENTO DIVISION)

12 PAULO POSTIGLIONE, M.D. and
13 SAYDA POSTIGLIONE,

14 Plaintiff,

15 v.

16 LOWE'S HOME CENTERS, LLC,
17 dba LOWE'S HOME
18 IMPROVEMENT; and DOES 1
19 through 100, Inclusive,

20 Defendants.

CASE NO.: 2:18-CV-00320-KJM-EFB

(Placer County Superior Court Case No.:
SCV0040617)

**[PROPOSED] STIPULATED PROTECTIVE
ORDER**

20 Plaintiffs PAULO POSTIGLIONE and SAYDA POSTIGLIONE ("Plaintiffs")
21 and Defendant LOWE'S HOME CENTERS, LLC ("Lowe's" or "Defendant") jointly
22 submit this Stipulated Protective Order pursuant to Federal Rules of Civil Procedure,
23 Rule 26(c)(1) limiting the use and disposition of certain information and documents
24 during litigation of this matter. The parties agree that discovery in this action may
25 yield documents and information of a sensitive and confidential nature, including but
26 not limited to, Defendant's proprietary policies and procedures, personnel files of
27 present and former employees, and other confidential information that may be subject
28 to discovery in the proceedings in this matter but which should not be made available

THARPE & HOWELL, LLP
15250 Ventura Boulevard, Ninth Floor
Sherman Oaks, California 91403-3221

1 to the public generally (the “Confidential Documents”).

2 As a result, the parties have agreed to this jointly submitted Stipulated Protective
3 Order and request that it be adopted by order of this Court.

4 **Good Cause Statement**

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

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

25 Defendant derives economic value from maintaining the secrecy of its
26 Confidential Documents. If disclosed to the public, the trade secret information
27 contained in defendant’s Confidential Documents would reveal defendant’s internal
28 operations and could potentially be used by competitors as a means to compete for its

1 customers, interfere with its business plans and thereby gain unfair business
2 advantages. If Defendant's safety protocol were revealed to the general public, it
3 would hinder Defendant's ability to effectively resolve and minimize liability claims,
4 and its goal of protecting its customers and employees from theft and other crimes.
5 Unrestricted or unprotected disclosure of such information would result in prejudice
6 or harm to Defendant by revealing Lowe's competitive confidential information,
7 which has been developed at the expense of Lowe's and which represents valuable
8 tangible and intangible assets. Accordingly, the parties respectfully submit that there
9 is good cause for the entry of this Protective Order.

10 **Purpose and Limitation**

11 As mentioned above, disclosure and discovery activity in this action are likely
12 to involve production of confidential, proprietary, or private information for which
13 special protection from public disclosure and from use for any purpose other than
14 prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate
15 to and petition the court to enter the following Stipulated Protective Order.

16 The disclosure of any of the foregoing categories of information and/or
17 documentation protected by this Order, including confidential business and financial
18 information identified above, will have the effect of causing harm to the competitive
19 and financial position of the person, firm, partnership, corporation, or to the
20 organization from which the information was obtained. Unprotected disclosure of any
21 of the above-identified confidential information may further expose Defendant to
22 unwarranted annoyance, embarrassment, and/or oppression.

23 The parties acknowledge that this Protective Order does not confer blanket
24 protections on all disclosures or responses to discovery and that the protection it
25 affords from public disclosure and use extends only to the limited information that is
26 entitled to confidential treatment under the applicable legal principles. The parties
27 further acknowledge that this Protective Order does not entitle them to file confidential
28 information under seal. Local Rule 141 sets forth the procedures that must be followed

1 and the standards that will be applied when a party seeks permission from the court to
2 file material under seal.

3 The parties having agreed to the following terms governing the treatment of
4 confidential information, and the Court having found that good cause exists for
5 issuance of an appropriately-tailored confidentiality order governing the pre-trial
6 phase of this action, it is HEREBY ORDERED as follows:

7 1. All documents produced or information disclosed and any other
8 documents or records designated as “CONFIDENTIAL” by the Defendant shall be
9 revealed only to a settlement officer, Plaintiffs, counsel of record in this case,
10 paralegals and secretarial employees under counsel’s direct supervision, and such
11 persons as are employed by counsel to act as experts in this action. The information
12 designated as “CONFIDENTIAL” and disclosed only in accord with the terms of this
13 paragraph may include, without limitation, documents and information containing
14 Defendant’s policies and procedures, as well as personnel records, including
15 disciplinary records, identity, information relating to the processes, operations, type of
16 work, or apparatus, or the production, sales, shipments, transfers, identification of
17 customers, inventories, amount or source of income, profits, losses, expenditures, or
18 any research, development, or any other commercial information supplied by the
19 Defendant in response to Plaintiff’s Interrogatories or Requests for Production.
20 Information and documentation considered “CONFIDENTIAL” are subject to
21 protection under the Local Rules of the U.S. District Court – Eastern District of
22 California, Rule 26 of the Federal Rules of Civil Procedure, and under other provisions
23 of Federal law.

24 2. Counsel for Plaintiffs shall use all documents and information produced
25 or disclosed by the Defendant solely for the purposes of preparation for and trial of
26 this action. Under no circumstances shall information or materials covered by this
27 Protective Order be disclosed to anyone other than Plaintiffs’ counsel of record in this
28 action, paralegals, secretarial employees under counsel’s direct supervision, such

1 persons employed to act as experts in this action, and the court and its personnel. At
2 the conclusion of the proceedings in this action, all documents and information subject
3 to this Order, including any copies or extracts or summaries thereof, or documents
4 containing information taken therefrom, shall be returned to counsel for the Defendant,
5 at defense counsel's written request.

6 3. Prior to disclosure of any documents designated as "confidential" to
7 paralegals or secretarial employees of counsel for Plaintiffs, counsel for Plaintiffs shall
8 require such employees to read this Protective Order and agree to be bound by its
9 terms.

10 4. If counsel for Plaintiffs determines that for purposes of this action,
11 documents or information produced by the Defendant and designated as "confidential"
12 must be revealed to a person employed to act as an expert in this action, then counsel
13 may reveal the designated documents or information to such person, after first
14 complying with the following:

- 15 (a) Counsel for the Plaintiffs shall have the expert read this Order and shall
16 explain the contents thereof to such expert.
- 17 (b) Counsel for the Plaintiffs shall require such expert to sign a copy of this
18 protective order that states: "I have read and understood the terms of this
19 protective order. I further agree to be bound by its terms." Nothing in
20 this paragraph shall be deemed to enlarge the right of Defendant to
21 conduct discovery of any of Plaintiffs' experts, except solely with respect
22 to the ability of such expert to protect confidential information and
23 documents from re-disclosure.

24 5. ~~In accordance with Local Rule 141, if any papers to be filed with the~~
25 ~~Court contain information and/or documents that have been designated as~~
26 ~~"Confidential," the proposed filing shall be accompanied by a "Notice of Request to~~
27 ~~Seal Documents."~~ For motions, the parties shall publicly file a redacted version of the
28 ~~motion and supporting papers, in accordance with Local Rule 140.~~ Without written

1 permission from the party that designated the material as confidential or a court order secured after
2 appropriate notice to all interested persons, a party may not file in the public record in this action any
3 Protected Material. Rather, Protected Material may only be filed under seal pursuant to a court order
4 authorizing the sealing of the specific Protected Material at issue. However, the designation of
5 material as confidential, without more, is insufficient to obtain a sealing order. Any party that seeks
6 to file Protected Material under seal must comply with Local Rule 141, which governs motions for
7 a sealing order. As provided in Local Rule 141, a sealing order will issue only upon a request
8 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
9 otherwise entitled to protection under the law. Further, the briefing on the motion for a sealing order
10 shall address U.S. Supreme Court and Ninth Circuit standards for whether the material may be filed
11 under seal. Regardless of which party files the motion for a sealing order, the party that designated
12 the material as confidential shall file a brief addressing those standards, and shall have the burden of
13 establishing that the Protected Material should be filed but not made publicly available. If a motion
14 to file Protected Material under seal pursuant to Local Rule 141 is denied by the court, the moving
15 party may file the material in the public record, unless instructed differently by the court.

16 6. The Court’s Order is subject to revocation and modification by Order of
17 the Court upon written stipulation of the parties, or upon motion and reasonable notice,
18 including opportunity for hearing and presentation of evidence.

19 7. This Order does not apply to the Court and court personnel, who are
20 subject only to the Court’s internal procedures regarding the handling of material filed
21 or lodged, including material filed or lodged under seal.

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

24 Based on the foregoing, Plaintiffs PAULO POSTIGLIONE and SAYDA
25 POSTIGLIONE, and Defendant LOWE’S HOME CENTERS, LLC hereby request
26 that this Court issue a protective order governing the treatment of confidential
27 information in this matter.

28 **IT IS SO STIPULATED.**

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Dated: Law Offices of Steven H. Schultz

By: signature on original

Steven H. Schultz
Attorney for Plaintiffs,
PAULO POSTIGLIONE and
SAYDA POSTIGLIONE

Dated: Tharpe & Howell, LLP

By: signature on original

Charles D. May
Stephanie Forman
Diana M. Rivera
Attorneys for Defendant,
LOWE'S HOME CENTERS, LLC

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: June 15, 2018.



EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE