

E-Filed 10/12/11

1 Phillip J. Eskenazi (State Bar No. 158976)
 peskenazi@hunton.com
 2 Jason J. Kim (State Bar No. 221476)
 kimj@hunton.com
 3 HUNTON & WILLIAMS LLP
 550 South Hope Street, Suite 2000
 4 Los Angeles, California 90071-2627
 Telephone: (213) 532-2000
 5 Facsimile: (213) 532-2020

6 Attorneys for Defendant LOWE’S HIW, INC.

7
8 [Additional Plaintiffs’ Counsel Listed on Signature Page]

9 Gene J. Stonebarger (State Bar No. 209461)
 gstonebarger@stonebargerlaw.com
 10 Richard D. Lambert (State Bar No. 251148)
 rlambert@stonebargerlaw.com
 11 STONEBARGER LAW, APC
 75 Iron Point Circle, Suite 145
 12 Folsom, California 95630
 Telephone (916) 235-7140
 13 Facsimile (916) 235-7141

14 Attorneys for Plaintiffs CHARLEEN SWANEY and JOSEPH SARASUA

15
 16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18

19 MARTIN PETERSEN, an individual;
20 and on behalf of himself and all others
similarly situated,

21 Plaintiff,

22 v.

23 LOWE’S HIW, INC. a Washington
Corporation; and DOES 2 through 50,
inclusive,

24 Defendants.
25

Related Case No. CV-11-01996 RS

CLASS ACTION

**STIPULATION AND [PROPOSED]
ORDER REGARDING THE
EXCHANGE OF CONFIDENTIAL
MATERIAL**

26
27
28 STIPULATION AND [PROPOSED] ORDER

RELATED CASE No. 11-CV-01996 RS
RELATED CASE No. 11-CV-03231 RS
RELATED CASE No. 11-CV-02193 RS

1 CHARLEEN SWANEY, an individual;
2 and JOSEPH SARASUA, an
3 individual; on
4 behalf of themselves and all others
5 similarly situated,

6 Plaintiffs,

7 v.

8 LOWE'S HIW, INC. a Washington
9 Corporation; and DOES 2 through 50,
10 inclusive,

11 Defendants.

Case No.: C 11-03231-RS

12 SUSAN HURTADO, an individual;
13 and on behalf of herself and all others
14 similarly situated,

15 Plaintiff,

16 v.

17 LOWE'S HIW, INC. a Washington
18 Corporation; and DOES 2 through 50,
19 inclusive,

20 Defendants.

Case No.: C 11-02193-RS

21 **WHEREAS**, the discovery phase of the above-entitled related actions
22 (collectively, the "Litigation") may include the disclosure of information claimed by a
23 party or non-party to be confidential, proprietary, commercially sensitive and/or trade
24 secret information; accordingly, it is the parties' intention, pursuant to Rule 26(c) of
25 the Federal Rules of Civil Procedure ("FRCP"), to provide a mechanism by which
26 discovery of relevant confidential information may be obtained in a manner that
27 protects against the risk of disclosure of such information to persons not entitled to
28 such information; and

WHEREAS, good cause exists for the issuance of this Order Regarding the
Exchange of Confidential Material ("Protective Order") and such issuance would be

1 in the furtherance of justice because, among other things: (i) the Litigation involves
2 complex litigation; (ii) the issuance of this Protective Order will allow for efficiency
3 in the discovery process; (iii) discovery obtained in the Litigation may involve
4 disclosure of nonpublic, confidential, proprietary, commercially sensitive and/or trade
5 secret or otherwise privileged information; (iv) disclosure of this information to
6 persons who are not entitled to such information carries the danger of compromising
7 the competitive business interests of Defendant Lowe's HIW, Inc.; and (v) discovery
8 obtained in the Litigation also may involve disclosure of documents containing private
9 information, including financial information, of individual persons, including both
10 parties and non-parties, the disclosure of which may invade their legitimate personal
11 privacy interests; and

12
13 **WHEREAS**, pursuant to Rule 29 of the FRCP, the parties have stipulated to the
14 procedures set forth below regarding the use of material disclosed as part of the
15 discovery process in the Litigation; and

16
17 **WHEREAS**, the procedures set forth below do not purport to modify or alter
18 local rules or this Court's standing orders regarding the filing of documents under
19 seal; and

20
21 **WHEREAS**, the parties hereto, having stipulated and agreed, by and through
22 their respective counsel, to the entry of this Protective Order in the Litigation and the
23 Court having approved the same.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS HEREBY ORDERED THAT:

1. All items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, documents or tangible things) that are produced, generated, or exchanged in the Litigation in disclosures, responses to discovery, or in voluntary productions for settlement purposes are referred to herein as “Disclosure or Discovery Material.”

2. Any party to the Litigation, including all of its officers, directors, employees, and in-house counsel (and their support staff) is referred to herein as a “Party.”

3. A Party or non-party that designates its Disclosures or Discovery Material as “Confidential” is referred to herein as the “Designating Party.”

4. A Party that receives Disclosure or Discovery Material from a Designating Party is referred to herein as the “Receiving Party.”

5. “Confidential” information or items as referred to herein shall mean:

- (i) Information that is a “trade secret” as that term is defined in 18 U.S.C. § 1839;
- (ii) Confidential and proprietary business and/or financial information;
- (iii) Non-public information invasive of legitimate privacy interests of the party or other persons;
- (iv) Information alleged in good faith by a Party to be subject to protection under the Federal Rules of Evidence, California law, and/or information that is confidential and/or of commercial value.

6. Any Disclosure or Discovery Material that is designated as “Confidential” shall constitute “Protected Material” under this Protective Order.

1 **DURATION**

2 14. Even after the termination of this Litigation, the confidentiality
3 obligations imposed by this Protective Order shall remain in effect until all Parties
4 agree otherwise in writing or a Court of competent jurisdiction orders otherwise.

5 **DESIGNATING PROTECTED MATERIAL**

6 15. Exercise of Restraint and Care in Designating Disclosure or Discovery
7 Material for Protection. Each Party or non-party that designates Disclosure or
8 Discovery Material for protection under this Order must take care to limit any such
9 designation to specific Disclosure or Discovery Material that qualifies under the
10 appropriate confidentiality standard. A Designating Party must take care to designate
11 for protection only those parts of Disclosure or Discovery Material, so that other
12 portions of the Disclosure or Discovery Material for which protection is not warranted
13 are not swept unjustifiably within the ambit of this Protective Order.

14 If it comes to a Designating Party’s attention that Disclosure or Discovery
15 Material that that Party designated for protection does not qualify for protection at all,
16 or does not qualify for the level of protection initially asserted, that Designating Party
17 must promptly notify all other parties that it is withdrawing the improper designation.

18 16. Manner and Timing of Designations. Except as otherwise provided in
19 this Protective Order, or as otherwise stipulated or ordered, Disclosure or Discovery
20 Material that qualifies for protection under this Protective Order must be clearly so
21 designated before such material is disclosed or produced.

22 Designation in conformity with this Protective Order requires:

- 23 (a) For Disclosure or Discovery Material in documentary form (apart
24 from transcripts of depositions or other pretrial proceedings), that the
25 Designating Party affix the legend “CONFIDENTIAL” prominently on
26 each page that contains Protected Material. If only a portion or portions
27

1 of a document or material on a page qualifies for protection, the
2 Designating Party also must clearly identify the protected portion(s) (*e.g.*,
3 by making appropriate markings in the margins) and must specify, for
4 each portion, the level of protection being asserted (“Confidential”).

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

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

24 Any Party may also designate testimony that is entitled to
25 protection by notifying all Parties in writing within twenty (20) days of
26 receipt of the transcript, of the specific pages and lines of the transcript
27

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

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

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

21 17. Inadvertent Failures to Designate. An inadvertent failure to designate
22 qualified information or items as “Confidential” does not, standing alone, waive the
23 Designating Party’s right to secure protection under this Protective Order for such
24 material. If any Disclosure or Discovery Material is appropriately designated as
25 “Confidential” after the material was initially produced, the Receiving Party, on
26

1 notification of the designation, must make reasonable efforts to assure that the
2 material is treated in accordance with the provisions of this Protective Order.

3 18. Non-party Designations During Deposition. During the deposition of any
4 non-party, the non-party may designate any Disclosure or Discovery Material as
5 “Confidential” so long as it is conducted in good faith. Further, any non-party seeking
6 to invoke any protection accorded by the Protective Order must either provide a copy
7 of the “Agreement to Be Bound by Protective Order” (attached as Exhibit A) executed
8 by the non-party to all counsel of record for the Parties, or so agree on the record
9 during the deposition.

10 **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11 19. Timing of Challenges. Unless a prompt challenge to a Designating
12 Party’s confidentiality designation is necessary to avoid foreseeable substantial
13 unfairness, unnecessary economic burdens, or a later significant disruption or delay of
14 the Litigation, a Party does not waive its right to challenge a confidentiality
15 designation by electing not to mount a challenge promptly after the original
16 designation is disclosed.

17 20. Meet and Confer. A Party that elects to initiate a challenge to a
18 Designating Party’s confidentiality designation must first meet and confer in good
19 faith with counsel for the Designating Party. In conferring, the challenging Party must
20 explain the basis for its belief that the confidentiality designation was not proper and
21 must give the Designating Party an opportunity to review the designated material, to
22 reconsider the circumstances, and, if no change in designation is offered, to explain
23 the basis for the chosen designation. A challenging Party may proceed to the next
24 stage of the challenge process only if it has first engaged in this meet and confer
25 process.

- (a) The Receiving Party, including its officers, directors, and employees (including In-House Counsel) to whom disclosure is reasonably necessary for this Litigation and who have signed the “Agreement to Be Bound by Protective Order” (attached as Exhibit A);
- (b) Outside Counsel in this Litigation, as well as its employees to whom it is reasonably necessary to disclose the information for this Litigation;
- (c) Experts (as defined in this Protective Order) of the Receiving Party to whom disclosure is reasonably necessary for this Litigation and who have signed the “Agreement to Be Bound by Protective Order” (attached as Exhibit A);
- (d) The Court and its personnel;
- (e) Court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this Litigation;
- (f) During their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order” (attached as Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that contain Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Protective Order.
- (g) The author of or recipient of the Protected Material or the original source of the information.

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

3 25. If a Receiving Party is served with a subpoena or a Court order issued in
4 other litigation that would compel disclosure of any information or items designated
5 in this action as “Confidential,” the Receiving Party must immediately notify the
6 Designating Party, in writing and in no event more than five (5) court days after
7 receiving the subpoena or Court order. Such notification must include a copy of the
8 subpoena or Court order.

9 26. The Receiving Party also must immediately inform in writing the Party
10 who caused the subpoena or order to issue in the other litigation that some or all the
11 Protected Material covered by the subpoena or order is the subject of this Protective
12 Order. In addition, the Receiving Party must deliver a copy of this Protective Order
13 promptly to the Party in the other action that caused the subpoena or order to issue.

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

21 **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

22 28. If a Receiving Party learns that, by inadvertence or otherwise, it has
23 disclosed Protected Material to any person or in any circumstance not authorized
24 under this Protective Order, the Receiving Party must immediately (a) notify in
25 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
26 to retrieve all copies of the Protected Material, (c) inform the person or persons to
27

1 whom unauthorized disclosures were made of all the terms of this Order, and (d)
2 request such person or persons to execute the “Acknowledgment and Agreement to Be
3 Bound” (attached as Exhibit A).

4 **FILING PROTECTED MATERIAL**

5 29. In the event that counsel for any party desires to file with the Court any
6 document which includes any Protected Material, such document shall be filed
7 separately in a sealed envelope and include a written application and proposed order
8 in conformity with Northern District Local Rule 79-5. If the party making the filing is
9 a Receiving Party, then the written application shall state that the documents sought to
10 be sealed are subject to the Court’s Protective Order and that pursuant to that Order,
11 the Designating Party shall have seven days to file with the Court supporting
12 documents necessary to make a factual showing establishing that the Protected
13 Material is sealable, and that the Court should therefore abstain from making a ruling
14 on the Written Application to provide the Designating Party with sufficient
15 opportunity to make this showing. The Receiving Party should then provide written
16 email notification to the Designating Party on the date of filing of the bates-ranges and
17 title of the Protected Material to be filed under seal so as to give the Designating Party
18 sufficient opportunity to make its factual showing.

19 **FINAL DISPOSITION**

20 30. Unless otherwise ordered or agreed in writing by the Designating Party,
21 after the final termination of this Litigation, including any appeals, if a Designating
22 Party requests in writing the return or destruction of any or all of its Protected
23 Material to the Receiving Party, within thirty (30) days of such request, the Receiving
24 Party must submit a written certification, under penalty of perjury, to the Designating
25 Party that all Protected Material was returned or destroyed, including any copies,
26 abstracts, compilations, summaries or other forms of reproducing or capturing any of
27

1 the Protected Material. Notwithstanding this provision, Outside Counsel may retain
2 an archival set of copies of Protected Material. Any such archival copies that contain
3 or constitute Protected Material remain subject to this Protective Order as set forth
4 above.

5 **INADVERTENT PRODUCTION OF PRIVILEGED DOCUMENTS**

6 31. Inadvertent production of any document or information that a Party later
7 claims should not have been produced because of a privilege, including but not limited
8 to attorney-client or work product privilege (“Inadvertently Produced Privileged
9 Document”), will not be deemed to waive any privilege. A Party may request the
10 return of any Inadvertently Produced Privileged Document. A request for the return
11 of an Inadvertently Produced Privileged Document shall identify the document
12 inadvertently produced and the basis for withholding such document from production.
13 If a Party requests the return, pursuant to this paragraph, of any Inadvertently
14 Produced Privileged Document then in the custody of another party, the possessing
15 party shall within three (3) days return to the requesting Party the Inadvertently
16 Produced Privileged Document and all copies thereof and shall not make use of such
17 documents or information in this proceeding or otherwise. The Party returning such
18 material may then move the Court for an order compelling production of the
19 documents or information, but said party shall not assert as a ground for entering such
20 an order the fact or circumstances of the inadvertent production.

21 **MISCELLANEOUS**

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

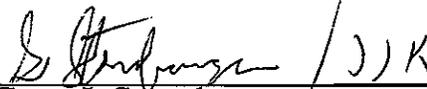
24 33. Right to Assert Other Objections. By stipulating to the entry of this
25 Protective Order, no Party waives any right it otherwise would have to object to
26 disclosing or producing any Disclosure or Discovery Material on any ground not
27

1 addressed in this Protective Order. Similarly, no Party waives any right to object on
2 any ground to use in evidence of any of the Disclosure or Discovery Material covered
3 by this Protective Order.

4 SO STIPULATED.

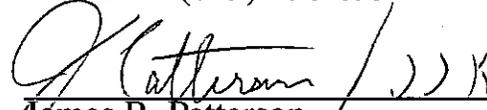
5
6 Dated: October 12, 2011

STONEBARGER LAW, APC
7 GENE J. STONEBARGER (SBN 209461)
RICHARD D. LAMBERT (SBN 251148)

8 
9 Gene J. Stonebarger

10 Attorneys for Plaintiffs
11 CHARLEEN SWANEY and JOSEPH
SARASUA

12
13 PATTERSON LAW GROUP, APC
James R. Patterson (SBN 211102)
14 jim@pattersonlawgroup.com
402 West Broadway, 29th Floor
15 San Diego, CA 92101
Telephone (619) 756-6990
16 Facsimile (619) 756-6991

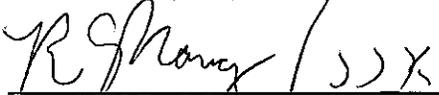
17 
18 James R. Patterson

19 Attorney for Plaintiff MARTIN PETERSEN

20 Jared E. Peterson (SBN 49700)
21 Email: jaredep@pacbell.net
LAW OFFICES OF JARED E. PETERSON
22 2017 Lincoln Street
Berkeley, CA 94709
23 Telephone (510) 841-4462
Facsimile (510) 841-4464

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AIMAN-SMITH & MARCY
Randell B. Aiman-Smith (SBN 124599)
Reed W.L. Marcy (SBN 191531)
Hallie Von Rock (SBN 233152)
7677 Oakport Street, Ste. 1020
Oakland, CA 94621
Telephone (510) 562-6800
Facsimile (510) 562-6830


Reed W.L. Marcy

Attorneys for Plaintiff SUSAN HURTADO

HUNTON & WILLIAMS LLP
Phillip J. Eskenazi (SBN 158976)
Jason J. Kim (SBN 221476)


Jason J. Kim

Attorneys for Defendant
LOWE'S HIW, INC.

ORDER

Based on the foregoing stipulation of the Parties, and Good Cause having been shown,

IT IS SO ORDERED.

Dated: 10/12/11



Richard Seeborg
United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

Agreement To Be Bound By Protective Order

I, _____, do solemnly swear that I am fully familiar with the terms of the Protective Order entered in *Martin Petersen v. Lowe's HIW, Inc.* Related Case No. CV-11-1996-RS, *Susan Hurtado v. Lowe's HIW, Inc.*, Case No. C 11-2193-RS, and *Charleen Swaney and Joseph Sarasua v. Lowe's HIW, Inc.*, Case No. C 11-03231-RS, and hereby agree to comply with and be bound by the terms and conditions of the Protective Order unless and until modified by further order of the Parties or this Court. I hereby consent to the jurisdiction of said Court for purposes of enforcing this Protective Order.

Signature: _____

Printed Name: _____

Dated: _____