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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MANUEL ESCAMILLA,

Plaintiff,

v.

LOWE'S HOME CENTERS, LLC,

Defendant.

Case No.: 21-cv-01383-MMA-JLB

**ORDER GRANTING JOINT
MOTION FOR THE ENTRY OF A
PROTECTIVE ORDER**

[ECF No. 11]

Before the Court is the parties' Joint Motion for Entry of a Protective Order. (ECF No. 11.) Good cause appearing, the Joint Motion is **GRANTED**, and the following Protective Order is entered:

PROTECTIVE ORDER

The Court recognizes that at least some of the documents and information ("materials") being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order ("Order") in this action.

The materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, technical, cost, price, marketing or other commercial information, as is contemplated by Federal Rule of Civil

1 Procedure 26(c)(1)(G). The purpose of this Order is to protect the confidentiality of such
2 materials as much as practical during the litigation. THEREFORE:

3 **DEFINITIONS**

4 1. The term “confidential information” will mean and include information
5 contained or disclosed in any materials, including documents, portions of documents,
6 answers to interrogatories and requests for admissions, trial testimony, deposition
7 testimony, and transcripts of trial testimony and depositions, including data, summaries,
8 and compilations derived therefrom that is deemed to be confidential information by any
9 party to which it belongs.

10 2. The term “materials” will include, but is not be limited to: documents;
11 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other
12 material that identify customers or potential customers; price lists or schedules or other
13 matter identifying pricing; minutes; telegrams; letters; statements; cancelled checks;
14 contracts; invoices; drafts; books of account; worksheets; notes of conversations; desk
15 diaries; appointment books; expense accounts; recordings; photographs; motion pictures;
16 compilations from which information can be obtained and translated into reasonably usable
17 form through detection devices; sketches; drawings; notes (including laboratory notebooks
18 and records); reports; instructions; disclosures; other writings; models, prototypes, and
19 other physical objects.

20 3. The term “Counsel” will mean outside counsel of record, and other attorneys,
21 paralegals, secretaries, and other support staff employed in the law firms identified below:
22 Casey, Gerry, Schenk, Francavilla, Blatt, & Penfield, LLP; and Tharpe & Howell, LLP.
23 “Counsel” also includes in-house attorneys for any party to this action.

24 **GENERAL RULES**

25 4. Each party to this litigation that produces or discloses any materials, answers
26 to interrogatories and requests for admission, trial testimony, deposition testimony, and
27 transcripts of trial testimony and depositions, or information that the producing party
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1 believes should be subject to this Order may designate the same as “CONFIDENTIAL” or
2 “CONFIDENTIAL – FOR COUNSEL ONLY.”

3 a. Designation as “CONFIDENTIAL”: A party or non-party subject to
4 this Order may only designate documents or other information in this action
5 as “CONFIDENTIAL” if the designating party or non-party has an
6 articulable, good faith basis to believe that each document or other
7 information designated as confidential qualifies for protection under Federal
8 Rule of Civil Procedure 26(c).

9 b. Designation as “CONFIDENTIAL – FOR COUNSEL ONLY”: Any
10 party may designate information as “CONFIDENTIAL – FOR COUNSEL
11 ONLY” only if, in the good faith belief of such party and its counsel, the
12 information is among that considered to be most sensitive by the party,
13 including but not limited to trade secret or other confidential research,
14 development, financial or other commercial information.

15 5. In the event the producing party elects to produce materials for inspection, no
16 marking need be made by the producing party in advance of the initial inspection. For
17 purposes of the initial inspection, all materials produced will be considered as
18 “CONFIDENTIAL – FOR COUNSEL ONLY,” and must be treated as such pursuant to
19 the terms of this Order. Thereafter, upon selection of specified materials for copying by
20 the inspecting party, the producing party must, within a reasonable time prior to producing
21 those materials to the inspecting party, mark the copies of those materials that contain
22 confidential information with the appropriate confidentiality marking.

23 6. Whenever a deposition taken on behalf of any party involves a disclosure of
24 confidential information of any party:

25 a. the deposition or portions of the deposition must be designated as
26 containing confidential information subject to the provisions of this Order; such
27 designation must be made on the record whenever possible, but a party may
28 designate portions of depositions as containing confidential information after

1 transcription of the proceedings; a party will have until 14 calendar days after receipt
2 of the deposition transcript to inform the other party or parties to the action of the
3 portions of the transcript to be designated “CONFIDENTIAL” or
4 “CONFIDENTIAL – FOR COUNSEL ONLY.”

5 b. the disclosing party will have the right to exclude from attendance at
6 the deposition, during such time as the confidential information is to be disclosed,
7 any person other than the deponent, counsel (including their staff and associates),
8 the court reporter, and the person(s) agreed upon pursuant to Paragraph 8 below; and

9 c. the originals of the deposition transcripts and all copies of the
10 deposition must bear the legend “CONFIDENTIAL” or “CONFIDENTIAL – FOR
11 COUNSEL ONLY,” as appropriate, and the original or any copy ultimately
12 presented to a court for filing must not be filed unless it can be accomplished under
13 seal, identified as being subject to this Order, and protected from being opened
14 except by order of the Court.

15 7. All confidential information designated as “CONFIDENTIAL” or
16 “CONFIDENTIAL – FOR COUNSEL ONLY” must not be disclosed by the receiving
17 party to anyone other than those persons designated within this Order and must be handled
18 in the manner set forth below and, in any event, must not be used for any purpose other
19 than in connection with this litigation, unless and until such designation is removed either
20 by agreement of the parties or by order of the Court.

21 8. Unless otherwise ordered by the court or permitted in writing by the producing
22 party, a receiving party may disclose any information or item designated “confidential”
23 only to:

24 a. Counsel (as defined in Paragraph 3):

25 b. Executives who are required to participate in policy decisions with
26 reference to this action;

27 c. Experts to whom disclosure is reasonably necessary for this action and
28 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

- 1 d. The court and its personnel;
- 2 e. Court reporters and their staff;
- 3 f. Professional jury or trial consultants, mock jurors, and professional
- 4 vendors to whom disclosure is reasonably necessary for this action and who have
- 5 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 6 g. During their depositions for this action, witnesses, provided that the
- 7 witness signs the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and
- 8 h. Any mediator or settlement officer, and their supporting personnel,
- 9 mutually agreed upon by any of the parties engaged in settlement discussions.

10 9. With respect to material designated “CONFIDENTIAL” or

11 “CONFIDENTIAL – FOR COUNSEL ONLY,” any person indicated on the face of the

12 document to be its originator, author, or a recipient of a copy of the document, may be

13 shown the same.

14 10. All information which has been designated as “CONFIDENTIAL” or

15 “CONFIDENTIAL – FOR COUNSEL ONLY” by the producing or disclosing party, and

16 any and all reproductions of that information, must be retained in the custody of the counsel

17 for the receiving party identified in Paragraph 3, except that independent experts authorized

18 to view such information under the terms of this Order may retain custody of copies such

19 as are necessary for their participation in this litigation.

20 11. Before any materials produced in discovery, answers to interrogatories or

21 requests for admissions, deposition transcripts, or other documents which are designated

22 as confidential information are filed with the Court for any purpose, the party seeking to

23 file such material must seek permission of the Court to file the material under seal. An

24 application to file a document under seal shall be served on opposing counsel, and on the

25 person or entity that has custody and control of the document, if different from opposing

26 counsel. If the application to file a document designated as confidential under seal is being

27 made by the non-designating party, then, upon request, the designating party must promptly

28 provide the applicant with a legal basis for the confidential designation to include in the

1 application. If opposing counsel, or the person or entity that has custody and control of the
2 document, wishes to oppose the application, he/she must contact the chambers of the judge
3 who will rule on the application, to notify the judge's staff that an opposition to the
4 application will be filed.

5 12. At any stage of these proceedings, any party may object to a designation of
6 materials as confidential information. The party objecting to confidentiality must notify,
7 in writing, counsel for the designating party of the objected-to materials and the grounds
8 for the objection. If the dispute is not resolved consensually between the parties after
9 meeting and conferring within 14 calendar days of receipt of such a notice of objections,
10 the parties may jointly request the Court's assistance with the dispute, in accordance with
11 Judge Burkhardt's Civil Chambers Rules. The materials at issue must be treated as
12 confidential information, as designated by the designating party, until the Court has ruled
13 on the objection or the matter has been otherwise resolved.

14 13. All confidential information must be held in confidence by those inspecting
15 or receiving it and must be used only for purposes of this action. Counsel for each party,
16 and each person receiving confidential information, must take reasonable precautions to
17 prevent the unauthorized or inadvertent disclosure of such information. If confidential
18 information is disclosed to any person other than a person authorized by this Order, the
19 party responsible for the unauthorized disclosure must immediately bring all pertinent facts
20 relating to the unauthorized disclosure to the attention of the other parties and, without
21 prejudice to any rights and remedies of the other parties, make every effort to prevent
22 further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

23 14. No party will be responsible to another party for disclosure of confidential
24 information under this Order if the information in question is not labeled or otherwise
25 identified as such in accordance with this Order.

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1 15. If a party, through inadvertence, produces any confidential information
2 without labeling or marking or otherwise designating it as such in accordance with this
3 Order, the designating party may give written notice to the receiving party that the
4 document or thing produced is deemed confidential information, and that the document or
5 thing produced should be treated as such in accordance with that designation under this
6 Order. The receiving party must treat the materials as confidential, once the designating
7 party so notifies the receiving party. If the receiving party has disclosed the materials
8 before receiving the designation, the receiving party must notify the designating party in
9 writing of each such disclosure.

10 16. Nothing within this Order will prejudice the right of any party to object to the
11 production of any discovery material on the grounds that the material is protected as
12 privileged or as attorney work product.

13 17. Nothing in this Order will bar counsel from rendering advice to their clients
14 with respect to this litigation and, in the course thereof, relying upon any information
15 designated as confidential information, provided that the contents of the information must
16 not be disclosed.

17 18. This Order will be without prejudice to the right of any party to oppose
18 production of any information for lack of relevance or any other ground other than the mere
19 presence of confidential information. The existence of this Order must not be used by
20 either party as a basis for discovery that is otherwise improper under the Federal Rules of
21 Civil Procedure.

22 19. Nothing within this Order will be construed to prevent disclosure of
23 confidential information if such disclosure is required by law or by order of the Court.

24 20. Upon final termination of this action, including any and all appeals, counsel
25 for each party must, upon request of the producing party, return all confidential information
26 to the party that produced the information, including any copies, excerpts, and summaries
27 of that information, or must destroy same at the option of the receiving party, and must
28 purge all such information from all machine-readable media on which it resides.

1 Notwithstanding the foregoing, counsel for each party may retain all pleadings, briefs,
2 memoranda, motions, and other documents filed with the Court that refer to or incorporate
3 confidential information, and will continue to be bound by this Order with respect to all
4 such retained information. Further, attorney work product materials that contain
5 confidential information need not be destroyed, but, if they are not destroyed, the person
6 in possession of the attorney work product will continue to be bound by this Order with
7 respect to all such retained information.

8 21. Absent an *ex parte* motion made within 10 calendar days of the termination
9 of the case, the parties understand that the Court will destroy any confidential documents
10 in its possession

11 22. The restrictions and obligations set forth within this Order will not apply to
12 any information that:

- 13 a. the parties agree should not be designated confidential information;
- 14 b. the parties agree, or the Court rules, is already public knowledge;
- 15 c. the parties agree, or the Court rules, has become public knowledge other
16 than as a result of disclosure by the receiving party, its employees, or its agents in
17 violation of this Order; or
- 18 d. has come or will come into the receiving party's legitimate knowledge
19 independently of the production by the designating party. Prior knowledge must be
20 established by pre-production documentation.

21 23. The restrictions and obligations within this Order will not be deemed to
22 prohibit discussions of any confidential information with anyone if that person already has
23 or obtains legitimate possession of that information.

24 24. Transmission by e-mail or some other currently utilized method of
25 transmission is acceptable for all notification purposes within this Order.

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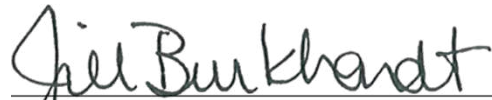
1 25. This Order may be modified by agreement of the parties, subject to approval
2 by the Court.

3 26. The Court may modify the terms and conditions of this Order for good cause,
4 or in the interest of justice, or on its own order at any time in these proceedings.

5 27. Without separate court order, this Order and the parties' stipulation do not
6 change, amend, or circumvent any court rule or local rule.

7 **IT IS SO ORDERED.**

8 Dated: October 1, 2021

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10 Hon. Jill L. Burkhardt
11 United States Magistrate Judge
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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ (name), of _____
4 (address), declare under penalty of perjury that I have read in its entirety and understand
5 the Protective Order (“Order”) that was issued by the United States District Court for the
6 Southern District of California on _____ (date), in the case of *Manuel Escamilla*
7 *v. Lowe’s Home Centers, LLC, Case No: v. Lowe’s Home Centers, LLC, Case No.: 21-*
8 *CV-1383 MMA JLB.* I agree to comply with and to be bound by all the terms of the Order,
9 and I understand and acknowledge that failure to so comply could expose me to sanctions
10 and punishment in the nature of contempt. I solemnly promise that I will not disclose in
11 any manner any information or item that is subject to the Order to any person or entity,
12 except in strict compliance with the provisions of the Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Southern District of California for the purpose of enforcing the terms of the Order, even if
15 such enforcement proceedings occur after termination of this action.

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17 Name: _____

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19 Signature: _____ Date: _____

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