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 ELECTROLUX HOME PRODUCTS, INC.

15
 16 **IN THE UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
 17 **WESTERN DIVISION**

18 GLENN AND DEIRDRE
 19 DICKERSON, TAMMY FOX-
 ISICOFF, JOHN AND SAMANTHA
 20 EDDY, GARY FRUTKOFF,
 DANIEL AND SHELENA
 21 HUNTER, CHARLES AND
 ROSEMARY OVERLY, STEVE
 22 AND JENNIFER SCHRODER, AND
 ISAAC AND GAIL WALKOVER,
 23 individually and on behalf of all
 others similarly situated,

24 Plaintiffs,

25 v.

26 ELECTROLUX HOME
 27 PRODUCTS, INC.,

28 Defendant.

CASE NO.: CV-10-5163-R-(JEMx)

**STIPULATED PROTECTIVE ORDER
 GOVERNING CONFIDENTIAL
 INFORMATION**

Hon. Manuel L. Real
 Action Filed: July 14, 2010

1 **[PROPOSED] STIPULATED PROTECTIVE ORDER**
2 **GOVERNING CONFIDENTIAL INFORMATION**

3 Plaintiffs Glenn and Deirdre Dickerson, Tammy Fox-Isicoff, John and
4 Samantha Eddy, Gary Frutkoff, Daniel and Shelena Hunter, Charles and Rosemary
5 Overly, Steve and Jennifer Schroder, and Isaac and Gail Walkover and Defendant
6 Electrolux Home Products, Inc. (“Electrolux”), through their attorneys, have
7 stipulated and agreed to the entry of this Stipulated Protective Order to govern the
8 limitation of disclosure of certain information to be produced in this litigation that
9 contains trade secrets or other confidential research, development, or sensitive
10 commercial information. Accordingly, the Court finds that good cause supports the
11 entry of this Stipulated Protective Order.

12 IT IS HEREBY ORDERED, pursuant to Rule 26 of the Federal Rules of Civil
13 Procedure, that the information, testimony, documents and other things, including
14 the substance and content thereof, produced or otherwise disclosed by any party or
15 non-party in discovery in this litigation shall be subject to the terms and provisions
16 of this Stipulated Protective Order as set forth below.

17 Subject to and without waiving any objections any party may have as to the
18 discoverability of any information, and without waiving any objections or legal
19 claims any party may have (including but not limited to any objections or legal
20 claims arising out of the acquisition, retention, or other handling of documents
21 containing confidential or proprietary information), and solely for the purpose of
22 providing procedures for the handling and protection of “Confidential Information”
23 as defined herein, the parties to this action hereby agree on the following procedures
24 for handling such Confidential Information.

25 The parties hereby agree that access to and use of such documents, things and
26 information shall be governed and limited by the provisions of this Stipulated
27 Protective Order as set forth herein, subject to the approval of the Court.
28

1 **A. DEFINITION OF CONFIDENTIAL INFORMATION**

2 Confidential Information, as used herein, means any type or classification of
3 information, whether it be a document, information contained in a document,
4 information revealed during a deposition, information revealed in an interrogatory
5 answer, or otherwise, which (i) is designated when it is produced as “Confidential”
6 by the supplying party. In designating information as Confidential Information, the
7 party so designating will make such designation only as to that information which
8 has not been made public or published that contains trade secret, confidential,
9 private, and/or proprietary information. By designating a document, thing, material,
10 testimony or other information Confidential Information, under the terms of this
11 Order, the party making the designation is certifying to the Court that there is a good
12 faith basis both in law and in fact for the designation within the meaning of Federal
13 Rule of Civil Procedure 26(g).

14 If a party considers any document, information or thing that the other party
15 possesses by means other than its production pursuant to discovery in this action to
16 be Confidential Information, the party which considers such document, information
17 or thing to be Confidential Information shall notify the other party of the designation.
18 If the parties cannot agree whether such document, information or thing constitutes
19 Confidential Information, the party which considers the document, information or
20 thing to be Confidential Information shall bear the burden of seeking relief from the
21 Court within 30 days after the parties meet and confer, during which period the
22 document, information or thing will be treated as Confidential Information.

23 **B. PROCEDURE FOR DESIGNATING MATERIAL**
24 **AS CONFIDENTIAL INFORMATION**

25 1. Confidential Information shall include all documents provided by
26 a party which have been designated as Confidential Information by marking the
27 page: “CONFIDENTIAL.” In lieu of marking the original of documents, the party
28 may mark the copies that are produced or exchanged.

1 2. The identification of information as Confidential Information by
2 a supplying party shall be made at a time when an answer to an interrogatory or an
3 answer to a request for admission is served, when a copy of a document is provided
4 to the other party, and when an inspection of premises or tangible things is made.

5 3. Information provided by oral testimony given in a deposition may
6 be designated as Confidential Information by indicating on the record at the
7 deposition the testimony which the designating party claims is Confidential
8 Information. Subject to the provisions of this Order, no Confidential Information
9 may be read by anyone other than a Qualified Person. The parties will inform the
10 court reporter who is stenographically recording said testimony to mark those
11 portions of the testimony they assert is Confidential Information. The party that
12 requests a portion of the deposition testimony be marked as Confidential Information
13 shall pay all amounts that the court reporter charges for marking portions of the
14 deposition transcript as Confidential Information.

15 4. In the event a designation is challenged, the parties shall attempt
16 to resolve the dispute in good faith on an expedited and informal basis. If the
17 challenge cannot be informally resolved within five (5) business days of a party's
18 written challenge to the designation, the designating party will move for an
19 appropriate ruling upon filing a formal motion from this Court within ten (10)
20 business days of the written challenge. The material shall continue to be treated as
21 Confidential Information until the expiration of ten (10) business days from the date
22 of the challenging party's written challenge to the designation. If a motion is made
23 by the designating party, the material will continue to be treated as Confidential
24 Information until the Court rules. The party requesting Confidential Information
25 treatment shall have the burden of establishing that designation under California
26 law. If no motion is made, the challenged Confidential Information shall lose its
27 status as Confidential Information.

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C. QUALIFIED PERSONS WITH ACCESS TO CONFIDENTIAL INFORMATION

1. Information or material designated as Confidential Information, or copies or extracts therefrom and compilations and summaries thereof, may be disclosed, summarized, described, characterized, or otherwise communicated or made available in whole or in part only to the following Qualified Persons:

(a) counsel of record of parties in this action and their related entities and regular and temporary employees of such counsel to whom it is necessary that the information or material be shown for the purposes of this litigation, and defendant’s in-house counsel;

(b) a party, or a present or former officer, director, employee, of a party deemed necessary by counsel to aid in the prosecution, defense, or settlement of this action;

(c) consultants and experts retained or employed to assist the attorneys of named parties in the prosecution, defense, or settlement of this action;

(d) court reporters and videographers employed in connection with this action;

(e) graphics or design services retained by counsel for a party for the sole purposes of preparing demonstrative or other exhibits for deposition, trial, or other court proceedings in this action, subject to and conditioned upon compliance with Section D herein;

(f) non-technical jury or trial consulting services retained by counsel for a party, subject to and conditioned upon compliance with Section D herein; and

(g) any other person only upon order of the Court or upon prior written consent of the party who designated the information or material Confidential Information, subject to and conditioned upon

1 compliance with Section D herein.

2 2. All persons listed in Section C(1)(c), (e), (f) and (g) above may
3 be given access to information or material designated as Confidential Information
4 provided that they first confirm their understanding and agreement to abide by the
5 terms of this Stipulated Protective Order by completing and signing a copy of an
6 undertaking in the form attached hereto as **Exhibit A**. However, as to deposition
7 witnesses, a party's attorney may show a witness, who comes within the description
8 of Section C(1)(b) above, this Stipulated Protective Order and Exhibit A thereto and
9 have them orally agree to Exhibit A.

10 3. Any person may be examined as a witness during a deposition
11 concerning any information or material designated as Confidential Information to
12 which that person had lawfully received or authored prior to and apart from this
13 action. During examination, any such witness may be shown information or material
14 designated as Confidential Information by a party which appears on its face or from
15 other documents or testimony to have been received or authored by that witness
16 from, or communicated to that witness by, that same party or otherwise appears on
17 its face to contain information about which it appears reasonably likely that the
18 witness has discoverable information, provided that the examining party's attorney
19 may show a witness, who comes within the description of Section C(1)(b) above, this
20 Stipulated Protective Order and Exhibit A thereto and have them orally agree to
21 Exhibit A.

22 **D. RESTRICTIONS ON THE USE AND DISCLOSURE**
23 **OF CONFIDENTIAL INFORMATION**

24 1. Any information designated as Confidential Information shall not
25 be made available or disclosed to any person other than the Qualified Persons
26 identified in Section C. Persons who, by virtue of the conduct of this litigation, have
27 knowledge of the designated Confidential Information shall not offer or permit its
28 disclosure or that of any information obtained, derived, compiled, or ascertained

1 therefrom, to any person or persons not entitled under this Stipulated Protective
2 Order to receive such information.

3 2. Disclosure of all items designated as Confidential Information in
4 this action shall be solely for the purposes of this action, United States District Court,
5 Central District of California, Case No. CV-10-5163-R-(JEMx), unless and until
6 such designation is removed either by stipulation by attorneys for the named parties
7 or by order of the Court.

8 3. With respect to information designated as Confidential
9 Information, no copies of documents, testimony, or other information shall be
10 received, kept, or maintained by individuals other than the Qualified Persons as
11 defined above.

12 4. Any document designated as Confidential Information shall be
13 filed with the Court only if it is under seal. Any party wishing to file under seal any
14 document or other item designated Confidential Information shall do so in
15 compliance with Civil Local Rule 79-5.1.

16 5. In the event an attorney to this litigation seeks to show any
17 documents or other information designated as Confidential Information to anyone
18 other than a Qualified Person, that attorney shall first advise opposing counsel at
19 least five (5) business days in advance, and seek to reach an informal resolution of
20 such matters. In the event that agreement cannot be reached, the party seeking to
21 show the Confidential Information shall apply to the Court for relief from this
22 Stipulated Protective Order.

23 **E. NON-APPLICABILITY TO THE TRIAL OF THIS ACTION**

24 The terms of this Order shall continue to apply during the time period in
25 which the trial of this action occurs, but shall not apply to the trial itself. Any party
26 may, at or before the time of trial, seek an Order of the Court to restrict access to
27 particular documents or testimony in the trial.

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1 **F. NO ADMISSION OR WAIVERS**

2 The execution of this Order shall not:

3 1. constitute a waiver of any party’s right to seek from the Court at a
4 future time an order which provides greater, lesser or no restriction of access to
5 Confidential Information; or

6 2. be construed as an admission or agreement that any information
7 designated as Confidential Information is, in fact, confidential or otherwise entitled
8 to any protective relief whatsoever.

9 **G. INADVERTENT DISCLOSURE**

10 Inadvertent disclosure of documents or information claimed to be
11 privileged or protected by the producing party shall be treated according to the
12 requirements of FRCP 26(b)(5)(B).

13 **H. RETURN OR DESTRUCTION OF DOCUMENTS**

14 1. Within sixty (60) calendar days of final termination of this
15 litigation, the parties and their attorneys shall return to the producing party or its
16 counsel all Confidential Information produced pursuant to this Stipulated Protective
17 Order, and all summaries, reproductions, notes, extracts and excerpts therefrom. The
18 parties shall further request all of their witnesses, potential witnesses, experts and
19 consultants to return, and such persons shall be obligated to return, all Confidential
20 Information produced or disclosed to them pursuant to this Stipulated Protective
21 Order, and all notes, reproductions, summaries, extracts and excerpts prepared
22 therefrom. Alternatively, the parties, their counsel, witnesses, potential witnesses ,
23 experts and consultants may certify to the producing party within the same period
24 that the “Confidential Information” in every form produced or recorded has been
25 destroyed.

26 2. To the extent that Confidential Information becomes known to
27 other than Qualified Persons, is published or becomes known to the public,
28 documents and things that contain Confidential Information will not have to be

1 returned or destroyed as stated in Section H(1).

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CONFIDENTIALITY DECLARATION

I hereby declare that I am to receive information, designated as Confidential Information pursuant to the terms of the Stipulated Protective Order Governing Confidential Information entered the _____ day of _____, 2011, in the case styled *Dickerson et al. v. Electrolux Home Products, Inc.*, Case No. CV-10-5163-R- (JEMx), pending in the United States District Court for the Central District of California. I further declare that I have read a copy of the Stipulated Protective Order Governing Confidential Information, and I agree to be bound by all terms set forth therein. I acknowledge my obligation to return or destroy all Confidential Information in accordance with Section H thereof, and I hereby submit to the jurisdiction of the aforesaid Court for the limited purpose of any proceeding to enforce the terms of the Stipulated Protective Order Governing Confidential Information.

Date Signed

Declarant's Signature

Printed Name

Address

City, State, Zip Code

1 AGREED MARCH 16, 2011:

2
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Attorneys for Defendant
ELECTROLUX HOME
PRODUCTS, INC.

23 IT IS SO ORDERED.

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26 Dated: ___March 17, 2011_



Hon. Manuel L. Real
UNITED STATES DISTRICT
COURT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2011, a copy of the foregoing [Proposed] Stipulated Protective Order Governing Confidential Information was filed electronically through the Court’s electronic filing system, which will send notice of this filing to counsel for the parties.

s/ J. Russell Jackson _____
One of the Attorneys for Defendant