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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NIKOLA LOVIG, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

SEARS, ROEBUCK & CO., a New
York Corporation; and DOES 1-50,
inclusive,

Defendants.

Case No. EDCV11-756 CJC (RNBx)

~~PROPOSED~~ PROTECTIVE
ORDER RE USE OF PRIVATE
AND CONFIDENTIAL
INFORMATION

CLASS ACTION

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OHS WEST:261306085.1

[PROPOSED] PROTECTIVE ORDER RE USE OF
PRIVATE AND CONFIDENTIAL INFORMATION

1 Plaintiff Nikola Lovig and Defendant Sears, Roebuck and Co. (collectively
2 “Stipulating Parties”), through their respective counsel of record, acknowledge and
3 agree that the prosecution and defense of this action is likely to require the
4 exchange of Confidential Information (as that term is defined below) the public
5 disclosure of which would cause irreparable harm to the Stipulating Parties,
6 including but not limited to former and current employees’ personnel data,
7 compensation information, and proprietary Sears, Roebuck and Co. information.
8 The Stipulating Parties also agree that public disclosure of Confidential Information
9 may violate former and current employees’ right of privacy by disclosing their
10 private personnel and financial data. In addition, public disclosure of Confidential
11 Information may also cause financial harm and injury to Sears, Roebuck and Co.’s
12 ability to compete in the marketplace by disclosing trade secret, proprietary and
13 commercial information that is not otherwise available to the public. Sears,
14 Roebuck and Co. treats its Confidential Information in a confidential manner and
15 has policies in place to limit the disclosure of this information.

16 As such, good cause appearing, the Court hereby approves and enters this
17 Protective Order relating to the use of private and confidential information,
18 stipulated, consented to and agreed by the Stipulating parties through their
19 respective counsel of record:

20 1. That the preparation of this action may require the discovery or
21 disclosure of documents, information or other material claimed by one or more of
22 the parties to this action or others to be confidential.

23 2. In order to expedite the flow of discovery materials, facilitate the
24 prompt resolution of disputes over confidentiality, adequately protect material
25 entitled to be kept confidential, and serve the ends of justice, a protective order for
26 such information is prudent and necessary.

27 3. Any Stipulating Party may designate as “Confidential” any documents
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1 or other information that contains “Confidential Information,” as that term is
2 defined in Paragraph 4 below, that a Stipulating Party has kept secret or
3 confidential, or information which, if disclosed, could place a Stipulating Party at a
4 competitive disadvantage in the marketplace or cause disclosure of private
5 information. Documents, depositions, and interrogatory responses or other papers
6 or electronic data shall be designated confidential by stamping the word
7 “Confidential” on each page of the document containing confidential information or
8 by a Stipulating Party advising the other Stipulating Party in writing that such
9 documents or data are deemed to be confidential. “Confidential Information”
10 includes documents or information that has not been made public or that a party in
11 good faith believes, if disclosed will cause harm to its competitive position.

12 4. “Confidential Information” includes documents or other information
13 relating to trade secrets, proprietary or other confidential commercial information
14 that belongs to Sears, Roebuck and Co. (“Sears”), including but not limited to the
15 following specific categories of documents: (1) documents that reveal confidential
16 employee information such as name, address, telephone number, demographic or
17 other personal information; (2) documents that reveals personal information
18 regarding Sears’ customers; (3) and documents that reveal confidential financial or
19 commercial information regarding Sears’ business that is not available to the public
20 or Sears’ competitors. “Confidential Information” also includes private and
21 confidential documents or information relating to Plaintiff Nikola Lovig or past and
22 present employees of Sears, including but not limited to private personnel or
23 financial information. Execution of this protective order shall not waive any right
24 otherwise available to the Stipulating Parties to object to the production of any such
25 requested information on privacy, attorney-client privilege, attorney work product,
26 relevancy or other grounds when the parties deem such an objection to be necessary
27 or appropriate.

1 5. Neither the provisions of this Stipulated Protective Order, nor any
2 designation or failure to designate any particular information, document or material
3 by a party as Confidential Information shall, in this litigation or any other litigation,
4 constitute a waiver of the rights of a party to assert confidentiality with respect to
5 any document, material or information meeting the definition of Confidential
6 Information in Paragraph 4 above. Upon discovery of an inadvertent or otherwise
7 non-designation, the discovering party will immediately notify the opposing party
8 and the information, document or material identified will be treated as if it had been
9 originally designated as Confidential Information and will be subject to the terms of
10 this Stipulated Protective Order.

11 6. All Confidential Information provided by the parties pursuant to
12 discovery or otherwise obtained in the course of this litigation shall be treated as
13 confidential and shall not be disseminated to any person not directly connected with
14 this specific litigation. Specifically, all Confidential Information listed in
15 Paragraph 4 that is obtained through discovery or otherwise from the parties in this
16 case shall not be disclosed to anyone other than:

17 (a) retained and corporate attorneys for any Stipulating Party who are
18 engaged in litigating this action and the employees, photocopy service providers,
19 and couriers of such attorneys;

20 (b) persons not employees of any Stipulating Party who serve as experts or
21 consultants (“outside experts”) to assist such Stipulating Party’s counsel in the
22 prosecution or defense of this action, including, but not limited to statisticians,
23 economists, attorneys and other experts, and the employees of such persons;

24 (c) a Stipulating Party, or principals, officers, employees, agents or
25 representatives of any Stipulating Party whose assistance or consultation is required
26 by counsel in connection with the prosecution or defense of this action;

27 (d) witnesses in any deposition or testimonial court proceeding in this
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1 litigation if the witness produced or otherwise has knowledge of the material in the
2 documents and only for the purpose of the prosecution or defense of this litigation;
3 or

4 (e) the Court and mediators, and the personnel of any of the foregoing.

5 7. No person shall make any disclosure of Confidential Information to
6 any person falling within categories (b) or (d) in Paragraph 6 without first obtaining
7 from any such person a signed statement in the form attached hereto as Exhibit "A."
8 Either party may request of the other, a copy (if any) of said signed statement(s) to
9 counsel. Subject to applicable privileges, the other party must promptly comply
10 with such a request by providing copies of the signed statement(s) by telecopier or
11 other appropriate means, and in no event beyond five (5) court days of such a
12 request. If a party objects to the disclosure of information to a particular person, the
13 Stipulating Party objecting to such disclosure shall have five days to both hold a
14 pre-filing conference as provided in Local Rule 37-1 and submit to the opposing
15 party a joint stipulation for a protective order from the Court barring such
16 disclosure and no such disclosure shall be made until further order of the Court.

17 8. No disclosure of Confidential Information shall be made except in
18 accordance with this Stipulation and Protective Order, and no use shall be made of
19 any Confidential Information except in accordance with this Stipulation and
20 Protective Order.

21 9. This order shall in no way impair the right of any party to raise or
22 assert a defense or objection, including but not limited to defenses or objections to
23 the production of documents or information and to the use, relevancy or
24 admissibility at the trial of this litigation of any evidence, whether or not comprised
25 of documents or information governed by this order.

26 10. All attempts to use any Confidential Material in connection with any
27 pleading, motion or as evidence shall be governed by the procedures set forth in
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1 Local Civil Rule 79-5. If any Stipulating Party intends to file or lodge with the
2 Court for any purpose any portion of any document, answer to interrogatory or
3 request for admission, or deposition transcript identified as containing information
4 that has been designated as Confidential Information by another Stipulating Party,
5 or any pleading, motion, brief, or declaration containing or disclosing information
6 that has been designated as Confidential Information by another Stipulating Party, it
7 will first provide the Designating Party no less than five court days' notice of such
8 intent. This notice will clearly identify, by Bates-stamp number or other detailed
9 description, the specific documents that are to be filed/lodged with the Court. This
10 minimum five-day notice period will enable the Designating Party an opportunity
11 to serve on the Stipulating Party that intends to file or lodge the Confidential
12 Information a written application and proposed order requesting that the pleading,
13 motion or evidence (or portion thereof) containing Confidential Information be
14 filed under seal, pursuant to Local Rule 79-5.1. The application must show good
15 cause for filing under seal. The Stipulating Party that lodges or files potentially
16 affected documents shall then present to the judge to whom the affected papers are
17 directed, along with the potentially affected documents, the Designating Party's
18 application and proposed order, pursuant to Local Rule 79-5.1. The Stipulating
19 Party that lodges or files potentially affected documents with the Court also will file
20 or lodge them in an envelope or container marked "CONDITIONALLY UNDER
21 SEAL" pending the Court's ruling on the Designating Party's application. The
22 Court's refusal to order certain documents sealed does not impact or abrogate any
23 party's designation of those documents as Confidential Information.

24 11. Nothing in this order shall preclude any party from using Confidential
25 Information at the trial of this litigation; provided, however, that prior to using such
26 material the party offering it advises the Court and all other parties so that steps can
27 be taken to ensure the preservation of the confidential nature of the information to
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1 be used, if deemed necessary and appropriate by the Court.

2 12. Should any Stipulating Party object to the Confidential treatment of
3 any information designated Confidential under the terms hereof, such Stipulating
4 Party shall, after meeting and conferring in good faith with the designating party as
5 required by Local Rule 37-1, move the Court consistent with the requirements of
6 Local Rule 37-1 for an order releasing the material from the designation as
7 Confidential.

8 13. Notwithstanding the foregoing provisions, any stipulating Party shall
9 have the right to redact from all documents produced in discovery any of the
10 following in accordance with Fed. R. Civ. P. 5.2: Social Security or taxpayer-
11 identification numbers; day and month of birth dates; names of minor children; all
12 but the last four digits of financial account numbers. If the Parties have a dispute
13 about the redaction of information, it shall be resolved in accordance with the
14 provisions of Paragraph 12.

15 14. Any Stipulating Party shall have the right to “claw back” (i.e., have
16 returned) from the receiving Party all documents produced which contain
17 information protected by the attorney-client privilege, attorney work product
18 doctrine, and any other applicable privilege or immunity. The Stipulating Party
19 must exercise its rights under this Paragraph by providing a written notice to the
20 receiving Party that it is invoking its right to claw back such documents and
21 identifying the documents to be returned. Upon receipt of such notice, the
22 receiving Party shall immediately cease any use, whatsoever, of such documents. If
23 the receiving Party challenges the designation of such documents as not being
24 subject to the attorney-client privilege, attorney work product doctrine, and any
25 other applicable privilege or immunity claimed by the designating Party, the parties
26 shall resolve their dispute in accordance with Paragraph 12, and the documents may
27 be reviewed by the Court, in camera, for inspection.

1 15. Nothing contained herein shall restrict in any way the rights of any
2 Stipulating Party producing Confidential Information to release that information or
3 otherwise make it non-Confidential.

4 16. All Confidential Information, including but not limited to documents
5 produced by Plaintiff or Sears, Roebuck and Co. that relate to Sears, Roebuck and
6 Co.'s trade secrets, proprietary or other confidential information, that belongs to
7 Sears, Roebuck and Co. shall remain the property of Sears, Roebuck and Co.,
8 together with all copies thereof, and shall be returned to counsel for Sears, Roebuck
9 and Co. at the conclusion of the litigation. Notes, summaries and other documents
10 protected by the work product doctrine shall remain subject to this Stipulation and
11 Protective Order.

12 17. Nothing in this Order shall be construed as authorizing a party to
13 disobey a lawful subpoena issued in another action.

14 18. This Stipulation and Protective Order shall not limit the right of any
15 party to apply for further protective orders as modifications or extensions of this
16 order, subject to Court approval, and shall not restrict the use by any party of its
17 own information.

18 19. Once protections in this Stipulation and Protective Order have attached
19 to a document, statement or item of information hereafter communicated, such
20 protections shall not be reduced or waived by further communicating, restating,
21 summarizing, discussing or referring to any such documents, statements or
22 information.

23 IT IS SO ORDERED:

24 Dated: September 12, 2011



Honorable Robert N. Block
United States Magistrate Judge

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EXHIBIT A
CERTIFICATION

I _____, hereby state and declare that I have read and understand the attached Protective Order re Private and Confidential Information (the “Protective Order”) in the matter of _____, United States District Court, Central District of California Case No. EDCV11-756 CJC (RNBx), and hereby agree to fully comply with the terms and conditions thereof. I hereby submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the Protective Order.

Executed this ___ day of _____ 20___, at _____.

(Signature)