

1 LYNNE C. HERMLE (State Bar No. 99779)
 JOSEPH C. LIBURT (State Bar No. 155507)
 2 CHRISTIAN N. BROWN (State Bar No. 233147)
 ORRICK, HERRINGTON & SUTCLIFFE LLP
 3 1000 Marsh Road
 Menlo Park, CA 94025
 4 Telephone: (650) 614-7400 Fax: (650) 614-7401

5 Attorneys for Defendants
 SEARS HOLDINGS CORPORATION and SEARS,
 6 ROEBUCK AND CO.

7 LOUIS M. MARLIN (State Bar No. 54053)
 STANLEY D. SALTZMAN (State Bar No. 90058)
 8 MARLIN & SALTZMAN
 3200 El Camino Real, Suite 100
 9 Irvine, CA 92602
 Telephone: (714) 669-4900 Fax: (714) 669-4750

10 MARCUS J. BRADLEY
 11 SCHWARTZ, DANIELS AND BRADLEY
 29229 Canwood Street, Suite 208
 12 Agoura Hills, CA 91301
 Telephone: (310) 478-5838 Fax: (310) 478-1232

13 PETER M. HART
 14 LAW OFFICES OF PETER M. HART
 13952 Bora Bora Way, F-320
 15 Marina Del Rey, CA 90292
 Telephone: (310) 478-5789 Fax: (310) 561-6441

16
 17 Attorneys for Plaintiff TRACY COUGHLIN and
 PROPOSED CLASS

18 UNITED STATES DISTRICT COURT
 19 CENTRAL DISTRICT OF CALIFORNIA
 20

21 TRACY COUGHLIN, as an individual
 22 and on behalf of all others similarly
 situated,

23 Plaintiff,

24 v.

25 SEARS HOLDINGS CORPORATION,
 26 a corporation; SEARS, ROEBUCK
 AND CO., a corporation,

27 Defendants.
 28

Case No. SACV 08-00015 CJC
 (RNBx)

**STIPULATION AND
 PROTECTIVE ORDER RE USE
 OF CONFIDENTIAL
 DOCUMENTS AND
 INFORMATION**

1 Pursuant to Federal Rule of Civil Procedure 26(c), it is hereby
2 stipulated and agreed by and between the parties that the terms and conditions of
3 this stipulated protective order shall govern the handling of documents, answers to
4 interrogatories, depositions, pleadings, exhibits, and all other information
5 exchanged between the parties in this action that contains confidential, commercial,
6 financial, competitive, proprietary and/or personal information. The parties hereby
7 submit the following stipulation and move the Court to approve the Stipulation as a
8 Protective Order.

9 **STIPULATION**

10 This case is a purported class action alleging that Defendants caused
11 accrued and unused vacation time to be forfeited by their employees, and that
12 Defendants improperly denied compensation for such forfeited vacation time in
13 violation of California law. The parties anticipate that, given the nature of this case,
14 certain documents, things and information disclosed may constitute or contain trade
15 secrets, or other proprietary, private, or confidential information. This information
16 may include, but is not limited to, (i) private personnel data of current and former
17 employees, (ii) compensation information, (iii) employee training materials, (iv)
18 confidential and proprietary business policies and procedures, and (v) confidential
19 agreements and/or documents related to the corporate structure of the Defendants.
20 Defendants consider such information confidential and proprietary, take reasonable
21 steps to protect the confidential nature of this information, and the public disclosure
22 of such information could place Defendants at a competitive disadvantage.

23 Thus, subject to and without waiving any objections any party may
24 have as to the discoverability of any information, and without waiving any
25 objections or legal claims any party may have (including but not limited to any
26 objections or legal claims arising out of the acquisition, retention, or other handling
27 of documents containing confidential or proprietary information), and solely for the
28 purpose of providing procedures for the handling and protection of "Confidential

1 Information" and "Highly Confidential Information" as defined herein, the parties
2 to this action hereby agree on the following procedures for handling such
3 Confidential Information and Highly Confidential Information.

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

7 **A. DEFINITION OF CONFIDENTIAL INFORMATION**

8 1. "Confidential Information," as used herein, means any type or
9 classification of information, whether it be a document, information contained in a
10 document, information revealed during a deposition, information revealed in an
11 interrogatory answer, or otherwise, which (i) is designated when it is produced as
12 "Confidential" by the supplying party, or (ii) which is designated by a receiving
13 party as "Confidential" by stating in writing the specific pages of the information to
14 be so designated, within twenty (20) business days after receipt of the information
15 for which the designation is proposed. In designating information as Confidential
16 Information, the party so designating will make such designation only as to that
17 information which it believes contains secret, confidential, private, and/or
18 proprietary information and must be protected against disclosure to non-parties.
19 Each party shall exercise good faith in designating information as Confidential
20 Information.

21 2. "Highly Confidential Information" as used herein, means any
22 type or classification of information, whether it be a document, information
23 contained in a document, information revealed during a deposition, information
24 revealed in an interrogatory answer, or otherwise, which (i) is designated when it is
25 produced as "Highly Confidential Information" by the supplying party, or (ii)
26 which is designated by a receiving party as "Highly Confidential Information" by
27 stating in writing the specific pages of the information to be so designated, within
28 twenty (20) business days after receipt of the information for which the designation

1 is proposed. In designating information as Highly Confidential Information, the
2 party so designating will make such designation only as to that information which it
3 believes contains confidential and private compensation and/or performance data of
4 putative class members and must be protected against disclosure to non-parties or to
5 individuals other than to those to whom the confidential and private compensation
6 and/or performance data relates. Each party shall exercise good faith in designating
7 information as Highly Confidential Information.

8 **B. PROCEDURE FOR DESIGNATING MATERIAL AS**
9 **CONFIDENTIAL INFORMATION OR HIGHLY**
10 **CONFIDENTIAL INFORMATION**

11 1. Confidential Information or Highly Confidential Information
12 shall include all documents provided by a party which have been designated as
13 confidential by marking the page: “CONFIDENTIAL INFORMATION” or
14 “HIGHLY CONFIDENTIAL INFORMATION.” In lieu of marking the original of
15 documents, the party may mark the copies that are produced or exchanged.

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

21 3. The identification of information as Confidential Information or
22 Highly Confidential Information by a receiving party shall be made in writing
23 within twenty (20) business days of such receipt by stating in writing which
24 specific pages are to be marked Confidential Information or Highly Confidential
25 Information. No Confidential Information or Highly Confidential Information may
26 be read by anyone other than the individuals identified in section C1 or C2 below,
27 during said twenty (20) business day period. Every party shall in such cases mark
28 every page so identified in his or her possession, custody or control with an

1 appropriate marking identifying the information as Confidential Information or
2 Highly Confidential Information.

3 4. Information disclosed at a deposition may be designated as
4 confidential by either (a) indicating on the record at the deposition that the
5 testimony is Confidential Information or Highly Confidential Information and
6 subject to the provisions of this Order or (b) by notifying the opposing party in
7 writing within twenty (20) business days of the receipt of the transcript of those
8 pages and lines or exhibits that contain Confidential Information or Highly
9 Confidential Information. No Confidential Information or Highly Confidential
10 Information may be read by anyone other than attorneys for the named parties and
11 their employees, experts and consultants, and the deponent during said twenty (20)
12 business day period. Upon being informed that certain portions of a deposition
13 disclose Confidential Information or Highly Confidential Information, each party
14 must cause each copy in their possession, custody or control to be so marked
15 immediately.

16 5. If any party believes that a document or other information,
17 which has been designated as Confidential Information or Highly Confidential
18 Information, should not properly be treated so designated within this protective
19 order, that party will notify the disclosing party of its disagreement with the
20 confidential designation. Counsel for the parties will then endeavor to reach an
21 agreement regarding the status of that document or information. If no agreement
22 can be reached, the party seeking to challenge the designation of the document shall
23 file a motion for relief. Until the Court resolves the motion, the document will be
24 treated as designated subject to the terms of this protective order. The provisions of
25 this paragraph provide procedures in addition to, not in lieu of, compliance with
26 Central District Local Rule 37.

1 **C. QUALIFIED PERSONS WITH ACCESS TO CONFIDENTIAL**
2 **INFORMATION**

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

8 (a) outside counsel of parties in this action and their related entities
9 and regular and temporary employees of such counsel to whom it is necessary that
10 the information or material be shown for the purposes of this litigation;

11 (b) parties and employees of the parties whose assistance to counsel
12 is necessary for the purposes of this litigation, subject to and in compliance with
13 Section D herein;

14 (c) Consultants and experts retained or employed to assist the
15 attorneys of named parties in the preparation of this litigation for trial, such as
16 statisticians, economists, accountants, or other technical or legal experts or
17 consultants, subject to and in compliance with Section D herein.

18 (d) the Court;

19 (e) court reporters and videographers employed in connection with
20 this action;

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

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

28 (h) any other person only upon order of the Court or upon prior

1 written consent of the party who designated the information or material
2 confidential, subject to and conditioned upon compliance with Section D herein.

3 2. Information or material designated as “Highly Confidential
4 Information” or copies or extracts therefrom and compilations and summaries
5 thereof, may be disclosed, summarized, described, characterized, or otherwise
6 communicated or made available in whole or in part only to the following Qualified
7 Persons:

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

12 (b) Consultants and experts retained or employed to assist the
13 attorneys of named parties in the preparation of this litigation for trial, such as
14 statisticians, economists, accountants, or other technical or legal experts or
15 consultants, subject to and in compliance with Section D herein;

16 (c) the Court;

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

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

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

26 (g) to the extent the Highly Confidential Information is an individual
27 plaintiff’s or putative class member’s own private compensation or performance data,
28 he or she may also have access to such information, subject to and conditioned upon

1 compliance with Section D herein;

2 (h) any other person only upon order of the Court or upon written
3 consent of the party who designated the information or material confidential,
4 subject to and conditioned upon compliance with Section D herein.

5 All persons listed in Section C1(b), (c), (f), (g) and (h) and in Section
6 C2(b), (e), (f), (g) and (h) above may be given access to information or material
7 designated as “Confidential Information” or “Highly Confidential Information”
8 provided that they first confirm their understanding and agreement to abide by the
9 terms of this Protective Order by completing and signing a copy of an undertaking
10 in the form attached hereto as Exhibit A.

11 3. Any person may be examined as a witness during a deposition
12 concerning any information or material designated as “Confidential Information” or
13 “Highly Confidential Information” to which that person had lawfully received or
14 authored prior to and apart from this action. During examination, any such witness
15 may be shown information or material designated as “Confidential Information” or
16 “Highly Confidential Information” by a party which appears on its face or from
17 other documents or testimony to have been received or authored by that witness
18 from, or communicated to that witness by, that same party or otherwise appears on
19 its face to contain information about which it appears reasonably likely that the
20 witness has discoverable information, provided that the examining party obtains the
21 witness’ compliance with Section D.

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

24 1. Any information designated as Confidential Information shall
25 not 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,
27 have knowledge of the designated Confidential Information or Highly Confidential
28 Information shall not suffer or permit its disclosure or that of any information

1 obtained, derived, compiled, or ascertained therefrom, to any person or persons not
2 entitled under this Protective Order to receive such information.

3 2. Disclosure of all items designated as Confidential Information
4 or Highly Confidential Information in this action shall be solely for the purposes of
5 this action, (i.e., *Coughlin v. Sears Holdings Corp. et al.*, United States District
6 Court, Central District of California, No. SACV 08-00015 CJC (RNBx)) unless and
7 until such designation is removed either by stipulation by attorneys for the named
8 parties or by order of the Court.

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

13 4. Any party wishing to file under seal any document or other item
14 designated “CONFIDENTIAL INFORMATION” or “HIGHLY CONFIDENTIAL
15 INFORMATION” shall present the document to the Court, along with a written
16 application and a proposed order pursuant to Civil Local Rule 79-5.1. The
17 documents shall be submitted in an appropriate envelope labeled with the case
18 name and number and the title of the documents. All envelopes containing any
19 Confidential Information or Highly Confidential Information which are submitted
20 to the Court shall carry the following notation on the cover:

21 **CONFIDENTIAL - THIS DOCUMENT IS SUBJECT TO A PROTECTIVE**
22 **ORDER ISSUED BY THE COURT AND MAY NOT BE EXAMINED**
23 **OR COPIED EXCEPT IN COMPLIANCE WITH THAT ORDER.**

24 When applying to file any document under seal, or lodging a document under
25 seal, the moving party shall also file a public version of the document with a
26 redaction of the confidential material.

27 5. In the event an attorney to this litigation seeks to show any
28 documents or other information denominated as Confidential Information or Highly
Confidential Information to anyone other than a Qualified Person, that attorney

1 shall first advise opposing counsel at least five (5) days in advance, and seek to
2 reach an informal resolution of such matters. In the event that agreement cannot be
3 reached, the party seeking to show the Confidential Information or Highly
4 Confidential Information shall apply to the Court for relief from this Protective
5 Order. The provisions of this paragraph provide procedures in addition to, not in
6 lieu of, compliance with Central District Local Rule 37.

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

8 The terms of this Order shall continue to apply during the time period
9 in which the trial of this action occurs, but shall not apply to the trial itself, as all
10 decisions concerning the conduct of the trial shall be made by the trial judge. Any
11 party may, at or before the time of trial, seek an order of the Court to restrict access
12 to particular documents or testimony in the trial.

13 **F. NO ADMISSION OR WAIVERS**

14 The execution of this Order shall not:

- 15 1. constitute a waiver of any party's right to seek from the Court at
16 a future time an order which provides greater, lesser or no restriction of access to
17 Confidential or Highly Confidential documents or information; or
- 18 2. be construed as an admission or agreement that any document or
19 information designated as Confidential or Highly Confidential is, in fact,
20 confidential or otherwise entitled to any protective relief whatsoever.

21 **G. INADVERTENT DISCLOSURE**

22 Any inadvertent production of documents containing privileged
23 information shall not be deemed a waiver of the attorney-client privilege, work
24 product doctrine, or any other applicable privilege or doctrines protecting against
25 disclosure of confidential information or other third party private information. All
26 parties specifically reserve the right to demand the return of any and all privileged
27 documents that it may produce inadvertently during discovery if the producing
28 party determines that such documents contain privileged information. After

1 receiving notice of such inadvertent production by the producing party, the
2 receiving party agrees to make reasonable and good faith efforts to immediately
3 locate and return to the producing party all such inadvertently produced documents.
4 Additionally, the receiving party agrees to identify all unqualified persons having
5 received all such inadvertently produced documents. Additionally, the receiving
6 party agrees to identify all unqualified persons having received such inadvertently
7 produced documents.

8 **H. RETURN OF DOCUMENTS**

9 1. Unless a party requests that any documents containing such
10 Confidential Information or Highly Confidential Information (including any copies
11 thereof) be returned to that party, the parties shall destroy any such documents
12 produced to it by the other party within sixty (60) days of final termination of this
13 litigation. Nothing in this paragraph would require a party to destroy its own
14 documents.

15 2. In addition, within sixty (60) days of final termination of this
16 litigation, either party may file a motion requesting that any attorney work product
17 documents which incorporate or reference particular Confidential Information or
18 Highly Confidential Information pursuant to this Protective Order be: (1)
19 destroyed; (2) redacted to delete all references to the Confidential Information or
20 Highly Confidential Information; and/or (3) sealed for a specified period of time
21 and subsequently destroyed. The other party shall have the right to oppose that
22 motion, any other provision of this Stipulation and Protective Order
23 notwithstanding. The Court shall retain jurisdiction after termination of this action
24 to hear any such motion and to enforce any order or ruling issued in connection
25 with such a motion.
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1 Dated: , 2008

LYNNE C. HERMLE
JOSEPH C. LIBURT
CHRISTIAN N. BROWN
KATINA M. MINER
ORRICK, HERRINGTON & SUTCLIFFE LLP

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4

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Christian N. Brown
Attorneys for Defendants

6

7 Dated: , 2008

LOUIS M. MARLIN
STANLEY D. SALTZMAN
MARLIN & SALTZMAN

8

9

10

Louis M. Marlin
Attorneys for Plaintiff and Proposed Class

11

12 Dated: , 2008

ARNOLD W. SCHWARTZ
MARCUS J. BRADLEY
SCHWARTZ, DANIELS, & BRADLEY

13

14

15

Marcus J. Bradley
Attorneys for Plaintiff and Proposed Class

16

17 Dated: , 2008

PETER M. HART
LAW OFFICES OF PETER M. HART

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Peter M. Hart
Attorneys for Plaintiff and Proposed Class

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ORDER

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24 **IT IS SO ORDERED.**

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26 Dated: November 17, 2008

Honorable Robert N. Block
United States Magistrate Judge

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EXHIBIT A

LYNNE C. HERMLE (State Bar No. 99779)
JOSEPH C. LIBURT (State Bar No. 155507)
CHRISTIAN N. BROWN (State Bar No. 233147)
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
Menlo Park, CA 94025
Telephone: (650) 614-7400 Fax: (650) 614-7401

Attorneys for Defendants
SEARS HOLDINGS CORPORATION and SEARS,
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LOUIS M. MARLIN (State Bar No. 54053)
STANLEY D. SALTZMAN (State Bar No. 90058)
MARLIN & SALTZMAN
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Marina Del Rey, CA 90292
Telephone: (310) 478-5789 Fax: (310) 561-6441

Attorneys for Plaintiff TRACY COUGHLIN and
PROPOSED CLASS

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

TRACY COUGHLIN, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

v.

SEARS HOLDINGS CORPORATION,
a corporation; SEARS, ROEBUCK
AND CO., a corporation,

Defendants.

Case No. SACV08-00015 CJC
(RNBx)

**STIPULATION AND
PROTECTIVE ORDER RE USE
OF CONFIDENTIAL
DOCUMENTS AND
INFORMATION**

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I hereby certify that I have carefully read the Stipulation and Protective Order Re Use of Confidential Documents and Information in the above-captioned case, and that I fully understand the terms of the Court’s Order. I recognize that I am bound by the terms of that Order, and I agree to comply with those terms. I hereby consent to be subject to the personal jurisdiction of the United States District Court for the Central District of California in respect to any proceedings relative to the enforcement of that Order, including any proceeding related to contempt of court.

Dated this _____ day of _____, 200____. Executed at _____ (city and state).

Print Name

Signature

Name:
Affiliation:
Business Address:
Home Address: