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Note changes made by the Court.

7 Attorneys for Defendant
 8 ELECTROLUX HOME PRODUCTS,
 9 INCORPORATED

9 IN THE UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA
 11 SOUTHERN DIVISION

12 PATTY NEMETH,
 13 Plaintiff,
 14 v.
 15 ELECTROLUX HOME
 16 PRODUCTS, INCORPORATED,
 17 Defendants,

Case No. SACV 11-0864 JVS (RNBx)

**STIPULATION AND [PROPOSED]
 PROTECTIVE ORDER**

Complaint Filed: June 9, 2011

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1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation would be warranted. Accordingly, the parties hereby
6 stipulate to and petition the court to enter the following Stipulated Protective Order.
7 The parties acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords extends only
9 to the limited information or items that are entitled under the applicable legal
10 principles to treatment as confidential. The parties further acknowledge, as set
11 forth in Section 10, below, that this Stipulated Protective Order creates no
12 entitlement to file confidential information under seal; Civil Local Rule 79-5 sets
13 forth the procedures that must be followed and reflects the standards that will be
14 applied when a party seeks permission from the court to file material under seal.

15 2. DEFINITIONS

16 2.1 Party: any party to this action, including all of its officers,
17 directors, employees, consultants, retained experts, and outside counsel (and their
18 support staff).

19 2.2 Disclosure or Discovery Material: all items or information,
20 regardless of the medium or manner generated, stored, or maintained (including,
21 among other things, testimony, transcripts, or tangible things) that are produced or
22 generated in disclosures or responses to discovery in this matter.

23 2.3 “Confidential” Information or Items: information
24 (regardless of how generated, stored or maintained) or tangible things that have not
25 been made public and that contains trade secret, confidential, private or proprietary
26 information and that the Designating Party in good faith believes, if disclosed,
27 would harm its competitive position, and that otherwise qualify for protection under
28 F.R.Civ.P. 26(c) and appellate law interpreting said Rule.

1 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information
2 or Items: extremely sensitive “Confidential Information or Items” whose disclosure
3 to another Party or nonparty would create a substantial risk of serious injury that
4 could not be avoided by less restrictive means.

5 2.5 Receiving Party: a Party that receives Disclosure or
6 Discovery Material from a Producing Party.

7 2.6 Producing Party: a Party or non-party that produces
8 Disclosure or Discovery Material in this action.

9 2.7 Designating Party: a Party or non-party that designates
10 information or items that it produces in disclosures or in responses to discovery as
11 “Confidential” or “Highly Confidential — Attorneys’ Eyes Only.”

12 2.8 Protected Material: any Disclosure or Discovery Material
13 that is “Confidential” Information or Items and is designated as “Confidential” or as
14 “Highly Confidential – Attorneys’ Eyes Only.”

15 2.9 Outside Counsel: attorneys who are not employees of a
16 Party but who are retained to represent or advise a Party in this action.

17 2.10 House Counsel: attorneys who are employees of a Party.

18 2.11 Counsel (without qualifier): Outside Counsel and House
19 Counsel (as well as their support staffs).

20 2.12 Expert: a person with specialized knowledge or experience
21 in a matter pertinent to the litigation who has been retained by a Party or its counsel
22 to serve as an expert witness or as a consultant in this action and who is not a past
23 or a current employee of a Party or of a competitor of a Party’s and who, at the time
24 of retention, is not anticipated to become an employee of a Party or a competitor of
25 a Party’s. This definition includes a professional jury or trial consultant retained in
26 connection with this litigation.

27 3. SCOPE

28 The protections conferred by this Stipulation and Order cover not only

1 Protected Material (as defined above), but also any information copied or extracted
2 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
3 testimony, conversations, or presentations by parties or counsel to or in court or in
4 other settings that might reveal Protected Material.

5 4. DURATION

6 Even after the termination of this litigation, the confidentiality obligations
7 imposed by this Order shall remain in effect until a Designating Party agrees
8 otherwise in writing or a court order otherwise directs.

9 5. DESIGNATING PROTECTED MATERIAL

10 Exercise of Restraint and Care in Designating Material for Protection. Each
11 Party or non-party that designates Confidential Information or items as Protected
12 Material under this Order must take care to limit any such designation to specific
13 material that is Confidential Information (as defined above).

14 If it comes to a Party's or a non-party's attention that information or items
15 that it designated as "Confidential" or as "Highly Confidential – Attorneys' Eyes
16 Only." are in fact not Confidential Information or items, that Party or non-party
17 must promptly notify all other parties that it is withdrawing the mistaken
18 "Confidential" or as "Highly Confidential – Attorneys' Eyes Only" designation.

19 5.1 Manner and Timing of Designations. Except as otherwise
20 provided in this Order (see, e.g., second paragraph of section 5.2(a), below), or as
21 otherwise stipulated or ordered, material that qualifies as Protected Material under
22 this Order must be clearly marked with the words "Confidential" or as "Highly
23 Confidential – Attorneys' Eyes Only" before the material is disclosed or produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (apart from transcripts of
26 depositions or other pretrial proceedings), that the Producing Party affix the legend
27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
28 ONLY" on each page that contains protected material.

1 A Party or non-party that makes original documents or materials available for
2 inspection need not designate them for as Protected Material until after the
3 inspecting Party has indicated which material it would like copied and produced.
4 During the inspection and before the designation, all of the material made available
5 for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’
6 EYES ONLY.” After the inspecting Party has identified the documents it wants
7 copied and produced, the Producing Party can determine which documents, or
8 portions thereof, qualify for as Protected Material under this Order, affix the
9 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY”) on each page that it wants treated as Protected
11 Material.

12 (b) for testimony given in deposition, that the Party or non-party
13 offering or sponsoring the testimony identify, on the record and before the close of
14 the deposition all testimony it wants treated as Protected Material. When it is
15 impractical to identify separately each portion of testimony that the designating
16 party asserts is Protected Material, and when it appears that substantial portions of
17 the testimony are Protected Material, the Party or non-party that sponsors, offers, or
18 gives the testimony may invoke on the record (before the deposition is concluded) a
19 right to have up to 20 days after receipt of the transcript to identify the specific
20 portions of the testimony that the designating party claims is Protected Material and
21 shall also specify whether the subject testimony is to be treated as
22 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
23 ONLY.” Only those portions of the testimony that are appropriately designated for
24 protection within the 20 days of the receipt of the transcript shall be covered by the
25 provisions of this Stipulated Protective Order.

26 Transcript pages containing Protected Material must be separately bound by
27 the court reporter, who must affix to the top of each such page the legend
28 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

1 ONLY,” as instructed by the Party or nonparty offering or sponsoring the witness
2 or presenting the testimony. The party designating any deposition testimony as
3 Confidential Information shall bear any costs associated with the marking and
4 separate binding of those portions of a transcript.

5 (c) for information produced in some form other than documentary,
6 and for any other tangible items, that the Producing Party affix in a prominent
7 place on the exterior of the container or containers in which the information or item
8 is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY.” If only portions of the information or item warrant
10 protection, the Producing Party, to the extent practicable, shall identify only the
11 Protected Material portions and specify for each portion whether it qualifies as
12 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

13 5.2 Inadvertent Failures to Designate. If a Designating Party
14 fails to designate material as “Confidential” or “Highly Confidential – Attorneys’
15 Eyes Only” when it is initially produced, it shall have 120 days following said
16 material’s production (which deadline may be extended for good cause) to
17 designate said material as “Confidential” or “Highly Confidential – Attorneys’ Eyes
18 Only.” Such designation shall be made by serving the Receiving Party with notice
19 of the designation and, promptly thereafter, complete, legible, and accurate copies
20 of the subject material with the markings “Confidential” or “Highly Confidential –
21 Attorneys’ Eyes Only.” Upon receipt of notification of such designation, the
22 Receiving Party must make reasonable efforts to assure that the material is treated
23 in accordance with the provisions of this Order.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Unless a prompt challenge to a
26 Designating Party’s confidentiality designation is necessary to avoid foreseeable
27 substantial unfairness, unnecessary economic burdens, or a later significant
28 disruption or delay of the litigation, a Party does not waive its right to challenge a

1 confidentiality designation by electing not to mount a challenge promptly after the
2 original designation is disclosed.

3 6.2 Meet and Confer. A Party that elects to initiate a challenge
4 to a Designating Party's confidentiality designation, whether to an entire document
5 or to a portion of a document, must do so in good faith and must begin the process
6 by conferring directly with counsel for the Designating Party pursuant to Local
7 Rule 37-1. In conferring, the challenging Party must explain the basis for its belief
8 that the confidentiality designation of a document was not proper, or was not proper
9 as to a portion of the document, and must give the Designating Party an opportunity
10 to review the designated material, to reconsider the circumstances, and, if no
11 change in designation is offered, to explain the basis for the chosen designation.

12 6.3 Judicial Intervention. A Party that elects to press a
13 challenge to a confidentiality designation after considering the justification offered
14 by the Designating Party may file a discovery motion in compliance with Civil
15 Local Rules 37-2 and 79-5, if applicable, that identifies the challenged material and
16 sets forth in detail the basis for the challenge. Each such motion must be
17 accompanied by a competent declaration that affirms that the movant has complied
18 with the meet and confer requirements imposed in the preceding paragraph and that
19 sets forth with specificity the justification for the confidentiality designation that
20 was given by the Designating Party in the meet and confer dialogue.

21 The burden of persuasion in any such challenge proceeding shall be on the
22 Designating Party. Until the court rules on the challenge, all parties shall continue
23 to afford the material in question the level of protection to which it is entitled under
24 the Producing Party's designation.

25 6.4 ACCESS TO AND USE OF PROTECTED MATERIAL

26 6.5 Basic Principles. A Receiving Party may use Protected
27 Material that is disclosed or produced by another Party or by a non-party in
28 connection with this case only for prosecuting, defending, or attempting to settle the

1 above-captioned litigation. Such Protected Material may be disclosed only to the
2 categories of persons and under the conditions described in this Order. When the
3 litigation has been terminated, a Receiving Party must comply with the provisions
4 of Section 11, below (FINAL DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at a
6 location and in a secure manner that ensures that access is limited to the persons
7 authorized under this Order.

8 In the event a Receiving Party wishes to show any Protected Material to
9 anyone other than a Qualified Person, the Receiving Party shall seek to informally
10 resolve the matter through counsel. In the event that agreement cannot be reached,
11 the party seeking to disclose the Confidential Information shall apply to the Court
12 for relief from this Stipulated Protective Order.

13 6.6 Disclosure of “CONFIDENTIAL” Information or Items.

14 Unless otherwise ordered by the court or permitted in writing by the Designating
15 Party, a Receiving Party may disclose any information or item designated
16 CONFIDENTIAL only to:

17 (a) the Receiving Party’s Outside Counsel of record in this action,
18 as well as employees of said Counsel to whom it is reasonably necessary to disclose
19 the information for this litigation and who have signed the “Agreement to Be
20 Bound by Protective Order” that is attached hereto as Exhibit A;

21 (b) the Receiving Party, or a present or former officer, director, or
22 employees (including House Counsel) of the Receiving Party to whom disclosure is
23 reasonably necessary for this litigation and who have signed the “Agreement to Be
24 Bound by Protective Order” (Exhibit A);

25 (c) experts (as defined in this Order) of the Receiving Party to
26 whom disclosure is reasonably necessary for this litigation and who have signed the
27 “Agreement to Be Bound by Protective Order” (Exhibit A);

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1 (d) the Court and its personnel (under seal, unless otherwise ordered
2 by the Court) who need not sign the “Agreement to Be Bound by Protective Order”
3 (Exhibit A);

4 (e) during their depositions, witnesses in the action to whom
5 disclosure is reasonably necessary and who have signed the “Agreement to Be
6 Bound by Protective Order” (Exhibit A). Pages of transcribed deposition testimony
7 or exhibits to depositions that reveal Protected Material must be separately bound
8 by the court reporter and may not be disclosed to anyone except as permitted under
9 this Stipulated Protective Order.

10 (f) the author of the document or the original source of the
11 information.

12 6.7 Disclosure of “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by
14 the court or permitted in writing by the Designating Party, a Receiving Party may
15 disclose any information or item designated “HIGHLY CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY” only to:

17 (a) the Receiving Party’s House and Outside Counsel of record in
18 this action, as well as employees of said Counsel to whom it is reasonably
19 necessary to disclose the information for this litigation and who have signed the
20 “Agreement to Be Bound by Protective Order” that is attached hereto as Exhibit A;

21 (b) Experts (as defined in this Order) (1) to whom disclosure is
22 reasonably necessary for this litigation, (2) who have signed the “Agreement to Be
23 Bound by Protective Order” (Exhibit A);

24 (c) the Court and its personnel (under seal, unless otherwise ordered
25 by the Court) and who need not sign the “Agreement to Be Bound by Protective
26 Order” (Exhibit A);

27 (d) the author of the document or the original source of the
28 information.

1 (e) employees of the party that produced the “HIGHLY
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” material, including
3 presentation and use in deposition at percipient and 30(b)(6) depositions.

4 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
5 PRODUCED IN OTHER LITIGATION

6 If a Receiving Party is served with a subpoena or an order issued in other
7 litigation that would compel disclosure of any information or items designated in
8 this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY,” the Receiving Party must so notify the Designating
10 Party, in writing (by fax, if possible) immediately and in no event more than three
11 court days after receiving the subpoena or order. Such notification must include a
12 copy of the subpoena or court order.

13 The Receiving Party also must immediately inform in writing the Party who
14 caused the subpoena or order to issue in the other litigation that some or all the
15 material covered by the subpoena or order is the subject of this Protective Order. In
16 addition, the Receiving Party must deliver a copy of this Stipulated Protective
17 Order promptly to the Party in the other action that caused the subpoena or order to
18 issue.

19 The purpose of imposing these duties is to alert the interested parties to the
20 existence of this Protective Order and to afford the Designating Party in this case an
21 opportunity to try to protect its confidentiality interests in the court from which the
22 subpoena or order issued. The Designating Party shall bear the burdens and the
23 expenses of seeking protection in that court of its confidential material – and
24 nothing in these provisions should be construed as authorizing or encouraging a
25 Receiving Party in this action to disobey a lawful directive from another court.
26 Nothing in this Order shall be construed as authorizing a party to disobey a lawful
27 subpoena issued in another action.
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1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this
4 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
5 writing the Designating Party of the unauthorized disclosures, (b) use its best
6 efforts to retrieve all copies of the Protected Material, (c) inform the person or
7 persons to whom unauthorized disclosures were made of all the terms of this Order,
8 and (d) request such person or persons to execute the “Acknowledgment and
9 Agreement to Be Bound” that is attached hereto as Exhibit A.

10 9. FILING PROTECTED MATERIAL

11 In accordance with Local Rule 79-5.1, if any papers to be filed with the Court
12 contain information and/or documents that have been designated as “Confidential”
13 or “Highly Confidential - Attorneys’ Eyes Only,” the proposed filing shall be
14 accompanied by an application to file the papers or the portion thereof containing
15 the designated information or documents (if such portion is segregable) under seal;
16 and the application shall be directed to the judge to whom the papers are directed.
17 For motions, the parties shall publicly file a redacted version of the motion and
18 supporting papers.

19 10. FINAL DISPOSITION

20 Unless otherwise ordered or agreed in writing by the Producing Party, within
21 sixty days after the final termination of this action, each Receiving Party must
22 return all Protected Material to the Producing Party. As used in this subdivision,
23 “all Protected Material” includes all copies, abstracts, compilations, summaries or
24 any other form of reproducing or capturing any of the Protected Material. The
25 Receiving Party may in the alternative elect to destroy some or all of the Protected
26 Material instead of returning it. Whether the Protected Material is returned or
27 destroyed, the Receiving Party must submit a written certification to the Producing
28 Party (and, if not the same person or entity, to the Designating Party) by the sixty

1 day deadline that identifies (by category, where appropriate) all the Protected
2 Material that was returned or destroyed and that affirms that the Receiving Party
3 has not retained any copies, abstracts, compilations, summaries or other forms of
4 reproducing or capturing any of the Protected Material. Notwithstanding this
5 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
6 papers, transcripts, legal memoranda, correspondence or attorney work product,
7 even if such materials contain Protected Material. Any such archival copies that
8 contain or constitute Protected Material remain subject to this Protective Order as
9 set forth in Section 4 (DURATION), above.

10 11. PRODUCTION OF PRIVILEGED DOCUMENTS OR
11 INFORMATION

12 In the course of discovery in this litigation, in the event that any party
13 produces documents or information (whether designated as “CONFIDENTIAL” or
14 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or not), the fact of
15 such production itself shall not be deemed to waive whatever attorney-client
16 privilege, work product protection or other privilege or immunity that would
17 otherwise attach to the documents or information produced or to other documents
18 or other information, however, the parties reserve the right to raise all other grounds
19 in challenging assertions of privilege. The parties agree and acknowledge that
20 Federal Rule of Civil Procedure 26(b)(5)(B) shall govern production of documents
21 or information subject to a claim of privilege.

22 12. MISCELLANEOUS


23 12.1 Right to Further Relief. Nothing in this Order abridges the
24 right of any person to seek its modification by the Court in the future. No
25 modification of this Order, even if stipulated, shall have the effect of a Court order
26 until the Court approves the modification.

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12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to the use in evidence of any of the material covered by this Protective Order.

IT IS SO ORDERED,

Dated: October 17, 2011



Robert N. Block
United States Magistrate Judge

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Respectfully stipulated to and submitted by,

DATED: October 13, 2011 FARELLA BRAUN + MARTEL LLP

By: /s/ C. Brandon Wisoff
C. Brandon Wisoff

Attorneys for Defendant
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By: /s/ Stuart M. Eppsteiner
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EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PATTY NEMETH,
Plaintiffs,

v.

ELECTROLUX HOME PRODUCTS,
INCORPORATED,
Defendants,

Case No. SACV 11-0864 JVS (RNBx)

AGREEMENT CONCERNING
INFORMATION COVERED BY
STIPULATED PROTECTIVE ORDER

I, _____, hereby acknowledge that I have received a copy of the Stipulated Protective Order entered in this action (Case No. SACV 11-0864 JVS (RNBx) by the United States District Court for the Central District of California, Southern Division (hereinafter, “the Protective Order”).

I have either read the Protective Order or have had the terms of the Protective Order explained to me by my attorney.

I understand the terms of the Protective Order and agree to comply with and to be bound by such terms.

If I receive documents or information designated as Confidential Material or Highly Confidential Material, (as those terms are defined in the Protective Order), I understand that such information is provided to me pursuant to the terms and restrictions of the Protective Order.

I agree to hold in confidence and not further disclose or use for any purpose (other than is permitted by the Protective Order) any information disclosed to me pursuant to the terms of the Protective Order.

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If I am a Sharing Attorney as defined in paragraph 13 of the Protective Order, I recognize and agree that coordination of discovery is necessary to promote judicial economy and to avoid unnecessary costs and delays to the parties to this action (Case No. SACV 11-0864 JVS (RNBx), as well as to the parties to the action(s) in which I serve as counsel. Accordingly, I agree to use my best efforts to coordinate discovery in the action(s) in which I serve as attorney of record with this action.

I hereby submit myself to the jurisdiction of the United States District Court for the Central District of California for resolution of any matters pertaining to the Protective Order.

My address is _____

My present employer is _____

Dated: _____

Signature: _____