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15 GENERAL ELECTRIC COMPANY

16 **UNITED STATES DISTRICT COURT**
17 **EASTERN DISTRICT OF CALIFORNIA**

18 MID-CENTURY INSURANCE
19 COMPANY a/s/o Brooks Landing

20 Plaintiff,

21 v.

22 GENERAL ELECTRIC COMPANY;
23 ELECTROLUX HOME PRODUCTS,
24 INC.; and DOES 1- 10,

25 Defendants.

Case No.1:17-cv-00157-DAD-EPG

Judge: Honorable Erica P. Grosjean
Trial Date: February 12, 2019

STIPULATED PROTECTIVE ORDER

26 1. PURPOSES AND LIMITATIONS

27 The parties hereby petition the Court to enter the following Stipulated Protective
28 Order pursuant to Eastern District of California Local Rule 141.1, and hereby agree and
stipulate to the following facts:

a. Information To Be Protected from Disclosures

This case involves allegations that Defendants' residential clothes dryer, was
defective and said defect caused damage to Plaintiff's Insured's apartment complex;

Discovery in this matter, including document production and depositions, will
involve the production of trade secret and other confidential business, proprietary and

1 personal information related to Defendants' product, including product research,
2 development, analyses and testing; product design specifications and related documents;
3 manufacturing procedures, processes and related documents; third party identification
4 information; personnel or employment records of nonparties; confidential licensing,
5 distribution, financial, and insurance information; confidential claims procedures and
6 processes; confidential communications with third party agencies.

7 It may also include confidential proprietary and financial information produced by
8 third parties, including Plaintiff's Insured.

9 **b. Good Cause Exists for Protection from Disclosure**

10 There is a particularized need for protection of this information as disclosure of
11 this confidential, proprietary or trade secret information without the structure of a
12 protective order would present serious compromises to Defendants' business practices,
13 open them to theft of trade secrets, unfair competition, and possible economic injury.
14 *See In Re Jenoptik, AG*, 109 F. 3RD 721 (Fed. Cir. 1997).

15 **c. Good Cause Exists for the Entry of Court Order**

16 Protecting the confidentiality of documents and information via court order, as
17 opposed to private agreement, is necessary to ensure enforcement of the order and the
18 interest of judicial economy, especially as the production of the confidential information
19 is made only in the context of the litigation. If a court order is violated, the court has
20 jurisdiction and the parties have a remedy without filing a separate action. Conversely,
21 breach of a private agreement requires a separate action.

22 Good cause exists also exists for the issuance of this Order as the parties seek to
23 have reasonable and quick access to information relevant to liability and damages in this
24 lawsuit while providing them with a means for limiting access to, and disclosure of,
25 confidential, private, or trade secret information.

26 Further, the parties acknowledge that this Order does not confer blanket
27 protections on all document production, disclosures or responses to discovery, and that
28 the protection it affords from public disclosure and use extends only to the limited
information or items that are entitled to confidential treatment under the applicable legal
principles.

1 The parties further acknowledge, as set forth in Section 12.3, below, that this
2 Stipulated Protective Order does not entitle them to file confidential information under
3 seal; Civil Local Rule 141 sets forth the procedures that must be followed and the
4 standards that will be applied when a party seeks permission from the court to file
5 material under seal.

6 2. DEFINITIONS

7 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
8 information or items under this Order.

9 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how
10 it is generated, stored or maintained) or tangible things that qualify for protection under
11 Federal Rule of Civil Procedure 26(c), including but not limited to (a) information
12 protected from disclosure by statute; (b) information that reveals trade secrets; (c)
13 research, development, technical, commercial or financial information that the party has
14 maintained confidential, including information related to proprietary licensing,
15 distribution, marketing, product analyses, design, and manufacturing; (e) personal
16 identity information; or (f) personnel or employment records of a person who is not a
17 party to the case.

18 2.3 Counsel (without qualifier): Outside Counsel of Record and House
19 Counsel (as well as their support staff).

20 2.4 Designating Party: a Party or Non-Party that designates information or
21 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

22 2.5 Disclosure or Discovery Material: all items or information, regardless of
23 the medium or manner in which it is generated, stored, or maintained (including, among
24 other things, testimony, transcripts, and tangible things), that are produced or generated
25 in disclosures or responses to discovery in this matter.

26 2.6 Expert: a person with specialized knowledge or experience in a matter
27 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
28 expert witness or as a consultant in this action.

1 2.7 House Counsel: attorneys who are employees of a party to this action.
2 House Counsel does not include Outside Counsel of Record or any other outside
3 counsel.

4 2.8 Non-Party: any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this action.

6 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
7 this action but are retained to represent or advise a party to this action and have appeared
8 in this action on behalf of that party or are affiliated with a law firm which has appeared
9 on behalf of that party.

10 2.10 Party: any party to this action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their
12 support staffs).

13 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this action.

15 2.12 Professional Vendors: persons or entities that provide litigation support
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
18 their employees and subcontractors.

19 2.13 Protected Material: any Disclosure or Discovery Material that is designated
20 as "CONFIDENTIAL."

21 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
22 from a Producing Party.

23 3. SCOPE

24 The protections conferred by this Stipulation and Order cover not only Protected
25 Material (as defined above), but also (1) any information copied or extracted from
26 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
27 Material; and (3) any testimony, conversations, or presentations by Parties or their
28 Counsel that might reveal Protected Material. However, the protections conferred by this
Stipulation and Order do not cover the following information: (a) any information that is
in the public domain at the time of disclosure to a Receiving Party or becomes part of

1 the public domain after its disclosure to a Receiving Party as a result of publication not
2 involving a violation of this Order, including becoming part of the public record through
3 trial or otherwise; and (b) any information known to the Receiving Party prior to the
4 disclosure or obtained by the Receiving Party after the disclosure from a source who
5 obtained the information lawfully and under no obligation of confidentiality to the
6 Designating Party. Any use of Protected Material at trial shall

7 4. DURATION

8 Even after final disposition of this litigation, the confidentiality obligations
9 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
10 in writing or a court order otherwise directs. Final disposition shall be deemed to be the
11 later of (1) dismissal of all claims and defenses in this action, with or without prejudice;
12 and (2) final judgment herein after the completion and exhaustion of all appeals,
13 rehearings, remands, trials, or reviews of this action, including the time limits for filing
14 any motions or applications for extension of time pursuant to applicable law.

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
17 Party or Non-Party that designates information or items for protection under this Order
18 must take care to limit any such designation to specific material that qualifies under the
19 appropriate standards. To the extent practicable prior to production, the Designating
20 Party must designate for protection only those parts of material, documents, items, or
21 oral or written communications that qualify – so that other portions of the material,
22 documents, items, or communications for which protection is not warranted are not
23 swept unjustifiably within the ambit of this Order.

24 If advised that information or items designated for protection do not qualify for
25 protection, Designating Party must promptly notify all other Parties that it is
26 withdrawing the mistaken designation.

27 5.2 Manner and Timing of Designations. Except as otherwise provided in this
28 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
ordered, Disclosure or Discovery Material that qualifies for protection under this Order
must be clearly so designated before the material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic documents, but
3 excluding transcripts of depositions or other pretrial or trial proceedings), that the
4 Producing Party affix the legend “CONFIDENTIAL” to each page that contains
5 protected material. If only a portion or portions of the material on a page qualifies for
6 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
7 by making appropriate markings in the margins). A Party or Non-Party that makes
8 original documents or materials available for inspection need not designate them for
9 protection until after the inspecting Party has indicated which material it would like
10 copied and produced. During the inspection and before the designation, all of the
11 material made available for inspection shall be deemed “CONFIDENTIAL.” After the
12 inspecting Party has identified the documents it wants copied and produced, the
13 Producing Party must determine which documents, or portions thereof, qualify for
14 protection under this Order. Then, before producing the specified documents, the
15 Producing Party must affix the “CONFIDENTIAL” legend to each page that contains
16 Protected Material. If only a portion or portions of the material on a page qualifies for
17 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
18 by making appropriate markings in the margins).

19 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
20 the Designating Party identify on the record, before the close of the deposition, hearing,
21 or other proceeding, all protected testimony.

22 (c) for information produced in some form other than documentary and for any
23 other tangible items, that the Producing Party affix in a prominent place on the exterior
24 of the container or containers in which the information or item is stored the legend
25 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
26 protection, the Producing Party, to the extent practicable, shall identify the protected
27 portion(s).

28 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
failure to designate qualified information or items does not, standing alone, waive the
Designating Party’s right to secure protection under this Order for such material. Upon

1 timely correction of a designation, the Receiving Party must make reasonable efforts to
2 assure that the material is treated in accordance with the provisions of this Order.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
5 designation of confidentiality at any time. Unless a prompt challenge to a Designating
6 Party's confidentiality designation is necessary to avoid foreseeable, substantial
7 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
8 litigation, a Party does not waive its right to challenge a confidentiality designation by
9 electing not to mount a challenge promptly after the original designation is disclosed.

10 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
11 resolution process by providing written notice of each designation it is challenging and
12 describing the basis for each challenge. To avoid ambiguity as to whether a challenge
13 has been made, the written notice must recite that the challenge to confidentiality is
14 being made in accordance with this specific paragraph of the Protective Order. The
15 parties shall attempt to resolve each challenge in good faith and must begin the process
16 by conferring directly (in voice to voice dialogue; other forms of communication are not
17 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
18 Party must explain the basis for its belief that the confidentiality designation was not
19 proper and must give the Designating Party an opportunity to review the designated
20 material, to reconsider the circumstances, and, if no change in designation is offered, to
21 explain the basis for the chosen designation. A Challenging Party may proceed to the
22 next stage of the challenge process only if it has engaged in this meet and confer process
23 first or establishes that the Designating Party is unwilling to participate in the meet and
24 confer process in a timely manner.

25 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
26 intervention, the parties shall request an informal discovery dispute conference pursuant
27 to the undersigned Magistrate Judge's case management procedures. ~~If the Parties~~
28 ~~cannot resolve a challenge without court intervention, the Designating Party shall file~~
~~and serve a motion to retain confidentiality r within 14 days of the parties agreeing that~~
~~the meet and confer process will not resolve their dispute. Each such motion must be~~

1 ~~accompanied by a competent declaration affirming that the movant has complied with~~
2 ~~the meet and confer requirements imposed in the preceding paragraph. Failure by the~~
3 ~~Designating Party to make such a motion including the required declaration shall~~
4 ~~automatically waive the confidentiality designation for each challenged designation. In~~
5 ~~addition, the Challenging Party may file a motion challenging a confidentiality~~
6 ~~designation at any time if there is good cause for doing so, including a challenge to the~~
7 ~~designation of a deposition transcript or any portions thereof. Any motion brought~~
8 ~~pursuant to this provision must be accompanied by a competent declaration affirming~~
9 ~~that the movant has complied with the meet and confer requirements imposed by the~~
10 ~~preceding paragraph.~~

11 ~~The burden of persuasion in any such challenge proceeding shall be on the~~
12 ~~Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,~~
13 ~~to harass or impose unnecessary expenses and burdens on other parties) may expose the~~
14 ~~Challenging Party to sanctions. Unless the Designating Party has waived the~~
15 ~~confidentiality designation by failing to file a motion to retain confidentiality as~~
16 ~~described above, all parties shall continue to afford the material in question the level of~~
17 ~~protection to which it is entitled under the Producing Party's designation until the court~~
18 ~~rules on the challenge.~~

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is
21 disclosed or produced by another Party or by a Non-Party in connection with this case
22 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
23 Material may be disclosed only to the categories of persons and under the conditions
24 described in this Order. When the litigation has been terminated, a Receiving Party must
25 comply with the provisions of section 13 below (FINAL DISPOSITION).

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

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
3 may disclose any information or item designated “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to
6 disclose the information for this litigation and who have signed the “Acknowledgment
7 and Agreement to Be Bound” that is attached hereto as Exhibit A;

8 (b) the officers, directors, and employees (including House Counsel) of the
9 Receiving Party to whom disclosure is reasonably necessary for this litigation and who
10 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
12 is reasonably necessary for this litigation and who have signed the “Acknowledgment
13 and Agreement to Be Bound” (Exhibit A);

14 (d) the court and its personnel;

15 (e) court reporters and their staff, professional jury or trial consultants, mock
16 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
17 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
18 (Exhibit A);

19 (f) during their depositions, witnesses in the action to whom disclosure is
20 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
21 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the
22 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
23 Protected Material must be separately bound by the court reporter and may not be
24 disclosed to anyone except as permitted under this Stipulated Protective Order.

25 (g) the author or recipient of a document containing the information or a
26 custodian or other person who otherwise possessed or knew the information.

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1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation that
4 compels disclosure of any information or items designated in this action as
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall
7 include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to issue
9 in the other litigation that some or all of the material covered by the subpoena or order is
10 subject to this Protective Order. Such notification shall include a copy of this Stipulated
11 Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued by
13 the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with the
15 subpoena or court order shall not produce any information designated in this action as
16 “CONFIDENTIAL” before a determination by the court from which the subpoena or
17 order issued, unless the Party has obtained the Designating Party’s permission. The
18 Designating Party shall bear the burden and expense of seeking protection in that court
19 of its confidential material – and nothing in these provisions should be construed as
20 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
21 from another court.

22 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
23 IN THIS LITIGATION

24 (a) The terms of this Order are applicable to information produced by a Non-
25 Party in this action and designated as “CONFIDENTIAL.” Such information produced
26 by Non-Parties in connection with this litigation is protected by the remedies and relief
27 provided by this Order. Nothing in these provisions should be construed as prohibiting a
28 Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a
Non-Party’s confidential information in its possession, and the Party is subject to an

1 agreement with the Non-Party not to produce the Non-Party's confidential information,
2 then the Party shall:

3 (1) promptly notify in writing the Requesting Party and the Non-Party that
4 some or all of the information requested is subject to a confidentiality agreement with a
5 Non-Party;

6 (2) promptly provide the Non-Party with a copy of the Stipulated
7 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
8 specific description of the information requested; and

9 (3) make the information requested available for inspection by the Non-
10 Party.

11 (c) If the Non-Party fails to object or seek a protective order from this court
12 within 14 days of receiving the notice and accompanying information, the Receiving
13 Party may produce the Non-Party's confidential information responsive to the discovery
14 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not
15 produce any information in its possession or control that is subject to the confidentiality
16 agreement with the Non-Party before a determination by the court. Absent a court order
17 to the contrary, the Non-Party shall bear the burden and expense of seeking protection in
18 this court of its Protected Material.

19 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
21 Protected Material to any person or in any circumstance not authorized under this
22 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
23 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
24 all unauthorized copies of the Protected Material, (c) inform the person or persons to
25 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
26 such person or persons to execute the "Acknowledgment and Agreement to Be Bound"
27 that is attached hereto as Exhibit A.

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain
4 inadvertently produced material is subject to a claim of privilege or other protection, the
5 obligations of the Receiving Parties are those set forth in Federal Rule of Civil
6 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
7 may be established in an e-discovery order that provides for production without prior
8 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
9 parties reach an agreement on the effect of disclosure of a communication or information
10 covered by the attorney-client privilege or work product protection, the parties may
11 incorporate their agreement in the stipulated protective order submitted to the court.

12 12. MISCELLANEOUS

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
14 person to seek its modification by the court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this
16 Protective Order no Party waives any right it otherwise would have to object to
17 disclosing or producing any information or item on any ground not addressed in this
18 Stipulated Protective Order. Similarly, no Party waives any right to object on any ground
19 to use in evidence of any of the material covered by this Protective Order.

20 12.3 Filing Protected Material. Without written permission from the Designating
21 Party or a court order secured after appropriate notice to all interested persons, a Party
22 may not file in the public record in this action any Protected Material. A Party that seeks
23 to file under seal any Protected Material must comply with Civil Local Rule 141.

24 13. FINAL DISPOSITION

25 II. Within 60 days after the final disposition of this action, as defined in
26 paragraph 4, each Receiving Party must return all Protected Material to the Producing
27 Party or destroy such material. As used in this subdivision, "all Protected Material"
28 includes all copies, abstracts, compilations, summaries, and any other format
reproducing or capturing any of the Protected Material. Whether the Protected Material
is returned or destroyed, the Receiving Party must submit a written certification to the

1 **ORDER**

2 Pursuant to the parties' stipulation and the Court's modification to Paragraph 6.3
3 above, the stipulated protective order is hereby adopted.

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5 IT IS SO ORDERED.

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7 Dated: February 7, 2018

8 /s/ Eric P. Gray
9 UNITED STATES MAGISTRATE JUDGE
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety
5 and understand the Stipulated Protective Order that was issued by the United States District
6 Court for the Eastern District of California on [date] in the case of _Mid-Century Insurance
7 Company v. General Electric Company, Electrolux Home Products, Inc., Case No.1:17-cv-
8 00157-DAD-EPG . I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply
10 could expose me to sanctions and punishment in the nature of contempt. I solemnly
11 promise that I will not disclose in any manner any information or item that is subject to this
12 Stipulated Protective Order to any person or entity except in strict compliance with the
13 provisions of this Order.

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

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and telephone
20 number] as my California agent for service of process in connection with this action or any
21 proceedings related to enforcement of this Stipulated Protective Order.

22
23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27
28 Signature: _____