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20 Attorneys for Defendant  
21 The Clorox Pet Products Company,  
22 improperly sued as The Clorox Company

23 **[Additional counsel appears on signature page.]**

24 UNITED STATES DISTRICT COURT  
25 NORTHERN DISTRICT OF CALIFORNIA

26 In re CLOROX CONSUMER LITIGATION

27 Master File No. 12-cv-00280-SC

28 This Document Relates To:

STIPULATED PROTECTIVE ORDER

ALL ACTIONS

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted.

1 Among other things, the parties have requested or may request the production of information that  
2 they in good faith believe to contain confidential, proprietary, or trade secret business  
3 information, including (a) proprietary marketing materials, (b) confidential sales and financial  
4 information, (c) information protected by confidentiality agreements with third-parties, and (d)  
5 other nonpublic, sensitive information.

6 Accordingly, the parties hereby stipulate to and petition the court to enter the following  
7 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket  
8 protections on all disclosures or responses to discovery and that the protection it affords from  
9 public disclosure and use extends only to the limited information or items that are the producing  
10 party or non-party believes are entitled to confidential treatment under the applicable legal  
11 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this  
12 Stipulated Protective Order does not entitle them to file confidential information under seal; Civil  
13 Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and the  
14 standards that will be applied when a party seeks permission from the court to file material under  
15 seal.

16 2. DEFINITIONS

17 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
18 information or items under this Order.

19 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
20 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
21 of Civil Procedure 26(c).

22 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
23 well as their support staff).

24 2.4 Designating Party: a Party or Non-Party that designates information or items that  
25 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

26 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
27 medium or manner in which it is generated, stored, or maintained (including, among other things,  
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1 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
2 responses to discovery in this matter.

3       2.6    Expert: a person with specialized knowledge or experience in a matter pertinent to  
4 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
5 consultant in this action.

6       2.7    House Counsel: attorneys who are employees of a party to this action. House  
7 Counsel does not include Outside Counsel of Record or any other outside counsel.

8       2.8    Non-Party: any natural person, partnership, corporation, association, or other legal  
9 entity not named as a Party to this action.

10       2.9    Outside Counsel of Record: attorneys who are not employees of a party to this  
11 action but are retained to represent or advise a party to this action and have appeared in this action  
12 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

13       2.10   Party: any party to this action, including all of its officers, directors, employees,  
14 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

15       2.11   Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
16 Material in this action.

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

21       2.13   Protected Material: any Disclosure or Discovery Material that is designated as  
22 “CONFIDENTIAL.”

23       2.14   Receiving Party: a Party that receives Disclosure or Discovery Material from a  
24 Producing Party.

25   3.    SCOPE

26       The protections conferred by this Stipulation and Order cover not only Protected Material  
27 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
28 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,

1 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
2 However, the protections conferred by this Stipulation and Order do not cover the following  
3 information: (a) any information that is in the public domain at the time of disclosure to a  
4 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
5 a result of publication not involving a violation of this Order, including becoming part of the  
6 public record through trial or otherwise; and (b) any information known to the Receiving Party  
7 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
8 obtained the information lawfully and under no obligation of confidentiality to the Designating  
9 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

10 4. DURATION

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

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
20 or Non-Party that designates information or items for protection under this Order must in good  
21 faith take care to limit any such designation to specific material that qualifies under the  
22 appropriate standards. The Designating Party must designate for protection only those parts of  
23 material, documents, items, or oral or written communications that qualify – so that other portions  
24 of the material, documents, items, or communications for which protection is not warranted are  
25 not swept unjustifiably within the ambit of this Order.  
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1 If it comes to a Designating Party's attention that information or items that it designated  
2 for protection do not qualify for protection, that Designating Party must promptly notify all other  
3 Parties that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
5 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
6 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
7 designated before the Disclosure or Discovery Material is disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic documents, but  
10 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
11 Party affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a  
12 portion or portions of the material on a page qualifies for protection, the Producing Party also  
13 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
14 margins).

15 A Party or Non-Party that makes original documents or materials available for inspection  
16 need not designate them for protection until after the inspecting Party has indicated which  
17 material it would like copied and produced. During the inspection and before the designation, all  
18 of the material made available for inspection shall be deemed "CONFIDENTIAL." After the  
19 inspecting Party has identified the documents it wants copied and produced, the Producing Party  
20 must determine which documents, or portions thereof, qualify for protection under this Order.  
21 Then, before producing the specified documents, the Producing Party must affix the  
22 "CONFIDENTIAL" legend to each page that contains Protected Material. If only a portion or  
23 portions of the material on a page qualifies for protection, the Producing Party also must clearly  
24 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

25 (b) for testimony given in deposition or in other pretrial or trial proceedings, that  
26 the Designating Party identify on the record all protected testimony at the deposition, hearing, or  
27 other proceeding, or within 20 days of receipt by the parties of the transcript of such testimony.

28 (c) for information produced in some form other than documentary and for any

1 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
2 container or containers in which the information or item is stored the legend “CONFIDENTIAL.”  
3 If only a portion or portions of the information or item warrant protection, the Producing Party, to  
4 the extent practicable, shall identify the protected portion(s).

5         5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
6 designate qualified information or items does not, standing alone, waive the Designating Party’s  
7 right to secure protection under this Order for such material. Upon timely correction of a  
8 designation, the Receiving Party must make reasonable efforts to assure that the material is  
9 treated in accordance with the provisions of this Order.

10     6.         CHALLENGING CONFIDENTIALITY DESIGNATIONS

11         6.1     Timing of Challenges. Any Party or Non-Party may challenge a designation of  
12 confidentiality at any time.

13         6.2     Meet and Confer. The Challenging Party shall initiate the dispute resolution  
14 process by providing written notice of each designation it is challenging and describing the basis  
15 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
16 notice must recite that the challenge to confidentiality is being made in accordance with this  
17 Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin  
18 the process by conferring directly (in voice to voice dialogue; other forms of communication are  
19 not sufficient) within 10 days of the date of service of notice. In conferring, the Challenging  
20 Party must explain the basis for its belief that the confidentiality designation was not proper and  
21 the Designating Party must, upon good faith consideration of the Challenging Party’s basis for  
22 the challenge, explain the basis for the chosen designation. A Challenging Party may proceed to  
23 the next stage of the challenge process only if it has engaged in this meet and confer process first  
24 or establishes that the Designating Party is unwilling to participate in the meet and confer process  
25 in a timely manner.

26         6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
27 intervention, the Challenging Party shall file and serve a motion to challenge confidentiality  
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1 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if  
2 applicable) within 21 days of the initial notice of challenge or within 14 days of the parties  
3 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. In its  
4 response, the Designating Party shall set forth why the designated documents are confidential and  
5 will have the burden of persuasion. Each such motion must be accompanied by a competent  
6 declaration affirming that the movant has complied with the meet and confer requirements  
7 imposed in the preceding paragraph.

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
10 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
11 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
12 the categories of persons and under the conditions described in this Order. When the litigation has  
13 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
14 DISPOSITION).

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

17 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
18 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
19 information or item designated “CONFIDENTIAL” only to:

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

24 (b) the officers, directors, and employees (including House Counsel) of the  
25 Receiving Party to whom disclosure is reasonably necessary for this litigation;

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

1 (d) the court and its employees, and Special Masters or Mediators engaged for this  
2 action;

3 (e) court reporters and their staff;

4 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to  
5 whom disclosure is reasonably necessary for this litigation and who have signed the  
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (g) during their depositions or at trial, witnesses in the action to whom disclosure  
8 is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be  
9 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court.  
10 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material  
11 must be separately bound by the court reporter and may not be disclosed to anyone except as  
12 permitted under this Stipulated Protective Order; and

13 (h) the author or recipient of a document containing the information or a custodian  
14 or other person who otherwise possessed or knew the information.

15 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
16 LITIGATION

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

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

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

26 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
27 the Designating Party whose Protected Material may be affected.  
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1           If the Designating Party timely seeks a protective order, the Party served with the  
2 subpoena or court order shall not produce any information designated in this action as  
3 “CONFIDENTIAL” before a determination by the court from which the subpoena or order  
4 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party  
5 shall bear the burden and expense of seeking protection in that court of its confidential material –  
6 and nothing in these provisions should be construed as authorizing or encouraging a Receiving  
7 Party in this action to disobey a lawful directive from another court.  
8

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

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

16                     (b)     In the event that a Party is required, by a valid discovery request, to  
17 produce a Non-Party’s confidential information in its possession, and the Party is subject to an  
18 agreement with the Non-Party not to produce the Non-Party’s confidential information, then the  
19 Party shall:

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

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

26                             (3)     make the information requested available for inspection by the  
27 Non-Party.  
28

1 (c) If the Non-Party fails to object or seek a protective order from this court  
2 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
3 produce the Non-Party's confidential information responsive to the discovery request. If the Non-  
4 Party timely seeks a protective order, the Receiving Party shall not produce any information in its  
5 possession or control that is subject to the confidentiality agreement with the Non-Party before a  
6 determination by the court.<sup>1</sup> Absent a court order to the contrary, the Non-Party shall bear the  
7 burden and expense of seeking protection in this court of its Protected Material.

8 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

16 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
17 MATERIAL

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

27 \_\_\_\_\_  
28 <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a  
Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 12. MISCELLANOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
3 seek its modification by the court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
5 Order, no Party waives any right it otherwise would have to object to disclosing or producing any  
6 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
7 Party waives any right to object on any ground to use in evidence of any of the material covered  
8 by this Protective Order.

9 12.3 Filing Protected Material. A party may file in the public record in this action any  
10 Protected Material with written permission from the Designating Party or a court order received  
11 after appropriate notice to all interested persons. If no written permission or court order is  
12 received, a Party may not file in the public record in this action any Protected Material. A Party  
13 that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5 and  
14 General Order 62. Protected Material may only be filed under seal pursuant to a court order  
15 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule  
16 79-5 and General Order 62, a sealing order will issue only upon a request establishing that the  
17 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to  
18 protection under the law. If a Receiving Party's request to file Protected Material under seal  
19 pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the court, then the  
20 Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5(e)  
21 unless otherwise instructed by the court.

22 12.4 Non-admission: The designation of materials as “CONFIDENTIAL” is not  
23 admissible before any trier of fact and in no way implies that the party so designating the  
24 materials believes such materials are of any significance to this litigation. Neither this Order nor  
25 any stipulation therefore, nor any disclosure or use of information or documents, in whatever  
26 form, pursuant to this Order, shall be deemed an admission, waiver, or agreement by any party  
27 that any information or documents designated as “CONFIDENTIAL” hereunder is or is not a  
28 trade secret or confidential information for purposes of determining the merits of any claims

1 either party may have against one another or a third party. Neither this Order nor any stipulation  
2 therefore shall be deemed to expand the scope of discovery in this action beyond the limits  
3 otherwise prescribed by law, nor to enlarge the scope of discovery to matters unrelated to this  
4 lawsuit. Furthermore, this Order shall not control the use of any evidence during the trial or any  
5 hearing of this case. Nor shall anything herein preclude any party or non-party from seeking the  
6 assistance of the Court in maintaining the confidential nature of any evidence that is presented at  
7 hearing or trial.

8 13. FINAL DISPOSITION

9 Within 60 days after the final disposition of this action, as defined in paragraph 4, and  
10 upon written request by the Producing Party, each Receiving Party must return all Protected  
11 Material to the Producing Party or destroy such material. As used in this subdivision, “all  
12 Protected Material” includes all copies, abstracts, compilations, summaries, and any other format  
13 reproducing or capturing any of the Protected Material. Whether the Protected Material is  
14 returned or destroyed, the Receiving Party must submit a written certification to the Producing  
15 Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline or  
16 the written request by the Producing Party, whichever occurs later, that affirms that the Receiving  
17 Party has not retained any copies, abstracts, compilations, summaries or any other format  
18 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel  
19 are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and  
20 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
21 reports, attorney work product, and consultant and expert work product, even if such materials  
22 contain Protected Material. Any such archival copies that contain or constitute Protected Material  
23 remain subject to this Protective Order as set forth in Section 4 (DURATION).

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: January 16, 2013

/s/ Greg Ascioffa

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DATED: January 16, 2013

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February 14, 2013

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read  
in its entirety and understand the Stipulated Protective Order that was issued by the United States  
District Court for the Northern District of California on [date] in the case of *In re Clorox  
Consumer Litigation*, Master File No. 3:12-cv-00280-SC. I agree to comply with and to be bound  
by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure  
to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly  
promise that I will not disclose in any manner any information or item that is subject to this  
Stipulated Protective Order to any person or entity except in strict compliance with the provisions  
of this Order.

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

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

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]