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 7 (erroneously sued as "BEST BUY CO., INC.")

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11 Attorney for Plaintiff

12 UNITED STATES DISTRICT COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA  
 14

15 SHAUN CHARLES,  
 16 Plaintiff,  
 17  
 18 v.  
 19 BEST BUY CO., INC., and DOES 1 to 50,  
 inclusive,  
 20 Defendants.

Case No. C 12-02934 MMC

**STIPULATED PROTECTIVE ORDER**

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1           1.        PURPOSE AND LIMITATIONS

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

13           2.        DEFINITIONS

14           2.1        Party: any party to this action, including all of its officers, directors,  
15 employees, consultants, retained experts, and outside counsel (and their support staff).

16           2.2        Disclosure or Discovery Material: all items or information, regardless of  
17 the medium or manner generated, stored, or maintained (including, among other things,  
18 testimony, transcripts, or tangible things) that are produced or generated in disclosures or  
19 responses to discovery in this matter.

20           2.3        “CONFIDENTIAL” Information or Items: information (regardless of how  
21 generated, stored or maintained) or tangible things that qualify for protection under standards  
22 developed under FRCP 26(c).

23           2.4        Receiving Party: a Party that receives Disclosure or Discovery Material  
24 from a Producing Party.

25           2.5        Producing Party: a Party that produces Disclosure or Discovery Material  
26 in this action.

27           2.6        Designating Party: a Party that designates information or items that it  
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1 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2           2.7     Protected Material: any Disclosure or Discovery Material that is  
3 designated as “CONFIDENTIAL.”

4           2.8     Outside Counsel: attorneys who are not employees of a Party but who are  
5 retained to represent or advise a Party in this action.

6           2.9     House Counsel: attorneys who are employees of a Party.

7           2.10    Counsel (without qualifier): Outside Counsel and House Counsel (as well  
8 as their support staffs).

9           2.11    Expert: a person with specialized knowledge or experience in a matter  
10 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
11 witness or as a consultant in this action and who is not a past or a current employee of a Party or  
12 of a competitor of a Party’s and who, at the time of retention, is not anticipated to become an  
13 employee of a Party or a competitor of a Party’s. This definition includes a professional jury or  
14 trial consultant retained in connection with this litigation.

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

19           3.     SCOPE

20           The protections conferred by this Stipulation and Order cover not only Protected Material  
21 (as defined above), but also any information copied or extracted therefrom, as well as all copies,  
22 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by  
23 parties or counsel to or in court or in other settings that might reveal Protected Material.

24           4.     DURATION

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

1           5.     DESIGNATING PROTECTED MATERIAL

2                   5.1     Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party that designates information or items for protection under this Order must take care to  
4 limit any such designation to specific material that qualifies under the appropriate standards. A  
5 Designating Party must take care to designate for protection only those parts of material,  
6 documents, items, or oral or written communications that qualify — so that other portions of the  
7 material, documents, items, or communications for which protection is not warranted are not  
8 swept unjustifiably within the ambit of this Order.

9                   Mass, indiscriminate, or routinized designations are prohibited. Designations  
10 that are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to  
11 unnecessarily encumber or retard the case development process, or to impose unnecessary  
12 expenses and burdens on other parties), expose the Designating Party to sanctions.

13                   If it comes to a Party’s attention that information or items that it designated for  
14 protection do not qualify for protection at all, or do not qualify for the level of protection initially  
15 asserted, that Party must promptly notify all other parties that it is withdrawing the mistaken  
16 designation.

17                   5.2     Manner and Timing of Designations. Except as otherwise provided in this  
18 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,  
19 material that qualifies for protection under this Order must be clearly so designated before the  
20 material is disclosed or produced.

21                   Designation in conformity with this Order requires:

22                           (a) for information in documentary form (apart from transcripts of  
23 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend  
24 “CONFIDENTIAL” at the top of each page that contains protected material. If only a portion or  
25 portions of the material on a page qualifies for protection, the Producing Party also must clearly  
26 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

27                   A Party that makes original documents or materials available for inspection  
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1 need not designate them for protection until after the inspecting Party has indicated which  
2 material it would like copied and produced. After the inspecting Party has identified the  
3 documents it wants copied and produced, the Producing Party must determine which documents,  
4 or portions thereof, qualify for protection under this Order. If only a portion or portions of the  
5 material on a page qualifies for protection, the Producing Party also must clearly identify the  
6 protected portion(s) (e.g., by making appropriate markings in the margins).

7 (b) for testimony given in deposition or in other pretrial or trial  
8 proceedings, that the Party offering or sponsoring the testimony identify on the record, before the  
9 close of the deposition, hearing, or other proceeding, all protected testimony. When it is  
10 impractical to identify separately each portion of testimony that is entitled to protection, and when  
11 it appears that substantial portions of the testimony may qualify for protection, the Party that  
12 sponsors, offers, or gives the testimony may invoke on the record (before the deposition or  
13 proceeding is concluded) a right to have up to 20 days to identify the specific portions of the  
14 testimony as to which protection is sought. Only those portions of the testimony that are  
15 appropriately designated for protection within the 20 days shall be covered by the provisions of  
16 this Stipulated Protective Order.

17 Transcript pages containing Protected Material must be separately bound  
18 by the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL.”

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

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
25 failure to designate qualified information or items as “CONFIDENTIAL” does not, standing  
26 alone, waive the Designating Party’s right to secure protection under this Order for such material.  
27 If material is appropriately designated as “CONFIDENTIAL” after the material was initially  
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1 produced, the Receiving Party, on timely notification of the designation, must make reasonable  
2 efforts to 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. Unless a prompt challenge to a Designating Party's  
5 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
6 economic burdens, or a later significant disruption or delay of the litigation, a Party does not  
7 waive its right to challenge a confidentiality designation by electing not to mount a challenge  
8 promptly after the original designation is disclosed.

9 6.2 Meet and Confer. A Party that elects to initiate a challenge to a  
10 Designating Party's confidentiality designation must do so in good faith and must begin the  
11 process by conferring directly (in voice to voice dialogue; other forms of communication are not  
12 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must  
13 explain the basis for its belief that the confidentiality designation was not proper and must give  
14 the Designating Party an opportunity to review the designated material, to reconsider the  
15 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
16 designation. A challenging Party may proceed to the next stage of the challenge process only if it  
17 has engaged in this meet and confer process first.

18 6.3 Judicial Intervention. A Party that elects to press a challenge to a  
19 confidentiality designation after considering the justification offered by the Designating Party  
20 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule  
21 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the  
22 challenge. Each such motion must be accompanied by a competent declaration that affirms that  
23 the movant has complied with the meet and confer requirements imposed in the preceding  
24 paragraph and that sets forth with specificity the justification for the confidentiality designation  
25 that was given by the Designating Party in the meet and confer dialogue.

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

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
5 disclosed or produced by another Party in connection with this case only for prosecuting,  
6 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
7 the categories of persons and under the conditions described in this Order. When the litigation has  
8 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL  
9 DISPOSITION).

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

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
14 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
15 disclose any information or item designated CONFIDENTIAL only to:

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

20 (b) the officers, directors, and employees (including House Counsel) of the  
21 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
22 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

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

26 (d) the Court and its personnel;

27 (e) court reporters, their staffs, and professional vendors to whom  
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1 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be  
2 Bound by Protective Order” (Exhibit A);

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

8 (g) the author of the document or the original source of the information.

9 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
10 OTHER LITIGATION.

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

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

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

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

9           10.       FILING PROTECTED MATERIAL. WITHOUT WRITTEN PERMISSION  
10 FROM THE DESIGNATING PARTY OR A COURT ORDER SECURED AFTER  
11 APPROPRIATE NOTICE TO ALL INTERESTED PERSONS, A PARTY MAY NOT FILE IN  
12 THE PUBLIC RECORD IN THIS ACTION ANY PROTECTED MATERIAL. A PARTY  
13 THAT SEEKS TO FILE UNDER SEAL ANY PROTECTED MATERIAL MUST COMPLY  
14 WITH CIVIL LOCAL RULE 79-5.

15           11.       FINAL DISPOSITION. UNLESS OTHERWISE ORDERED OR AGREED IN  
16 WRITING BY THE PRODUCING PARTY, WITHIN SIXTY DAYS AFTER THE FINAL  
17 TERMINATION OF THIS ACTION, EACH RECEIVING PARTY MUST RETURN ALL  
18 PROTECTED MATERIAL TO THE PRODUCING PARTY. AS USED IN THIS  
19 SUBDIVISION, “ALL PROTECTED MATERIAL” INCLUDES ALL COPIES, ABSTRACTS,  
20 COMPILATIONS, SUMMARIES OR ANY OTHER FORM OF REPRODUCING OR  
21 CAPTURING ANY OF THE PROTECTED MATERIAL, WITH PERMISSION IN WRITING  
22 FROM THE DESIGNATING PARTY, THE RECEIVING PARTY MAY DESTROY SOME  
23 OR ALL OF THE PROTECTED MATERIAL INSTEAD OF RETURNING IT. WHETHER  
24 THE PROTECTED MATERIAL IS RETURNED OR DESTROYED, THE RECEIVING  
25 PARTY MUST SUBMIT A WRITTEN CERTIFICATION TO THE PRODUCING PARTY  
26 (AND, IF NOT THE SAME PERSON OR ENTITY, TO THE DESIGNATING PARTY) BY  
27 THE SIXTY DAY DEADLINE THAT IDENTIFIES (BY CATEGORY, WHERE  
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1 APPROPRIATE) ALL THE PROTECTED MATERIAL THAT WAS RETURNED OR  
2 DESTROYED AND THAT AFFIRMS THAT THE RECEIVING PARTY HAS NOT  
3 RETAINED ANY COPIES, ABSTRACTS, COMPILATIONS, SUMMARIES OR OTHER  
4 FORMS OF REPRODUCING OR CAPTURING ANY OF THE PROTECTED MATERIAL.  
5 NOTWITHSTANDING THIS PROVISION, COUNSEL ARE ENTITLED TO RETAIN AN  
6 ARCHIVAL COPY OF ALL PLEADINGS, MOTION PAPERS, TRANSCRIPTS, LEGAL  
7 MEMORANDA, CORRESPONDENCE OR ATTORNEY WORK PRODUCT, EVEN IF SUCH  
8 MATERIALS CONTAIN PROTECTED MATERIAL. ANY SUCH ARCHIVAL COPIES  
9 THAT CONTAIN OR CONSTITUTE PROTECTED MATERIAL REMAIN SUBJECT TO  
10 THIS PROTECTIVE ORDER AS SET FORTH IN SECTION 4 (DURATION), ABOVE.

11 12. MISCELLANEOUS

12 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
13 person to seek its modification by the Court in the future.

14 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
15 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
16 producing any information or item on any ground not addressed in this Stipulated Protective  
17 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of  
18 the material covered by this Protective Order.

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: January 23, 2013

Respectfully submitted,  
SEYFARTH SHAW LLP

By: /s/ Eden Anderson  
\_\_\_\_\_  
Michael J. Burns  
Eden Anderson  
Attorneys for Defendant  
BEST BUY STORES, L.P.  
(erroneously sued as "BEST BUY CO., INC.")

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Attorney for Plaintiff

DATED: January 23, 2013

LAW OFFICES OF SHARON COHEN

By: /s/ Sharon Cohen  
\_\_\_\_\_  
Sharon Cohen  
Attorney for Plaintiff

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: January 30, 2013

  
\_\_\_\_\_  
United States District Judge

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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 *Shaun Charles v. Best Buy Co., Inc., et al.*, Case No. C 12-02934 MMC. 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]

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