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 RADIOSHACK CORPORATION
17

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20

21 WILLIAM HAMILTON,

22 Plaintiff,

23 v.

24 RADIOSHACK CORPORATION and DOES 1
25 through 25,

26
27 Defendant(s).
28

Case No.: C 11-00888 LB

STIPULATED PROTECTIVE ORDER

Complaint filed: January 20, 2011

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

14
15 2. DEFINITIONS

16 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
17 information or items under this Order.

18 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
19 generated, stored or maintained) or tangible things that qualify for protection under Federal
20 Rule of Civil Procedure 26(c).

21 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
22 (as well as their support staff).

23 2.4 Designating Party: a Party or Non-Party that designates information or
24 items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

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

1 2.6 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
3 expert witness or as a consultant in this action.

4 2.7 House Counsel: attorneys who are employees of a party to this action.
5 House Counsel does not include Outside Counsel of Record or any other outside counsel.

6 2.8 Non-Party: any natural person, partnership, corporation, association, or
7 other legal entity not named as a Party to this action.

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

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

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

17 2.12 Professional Vendors: persons or entities that provide litigation support
18 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations,
19 and 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
22 designated as "CONFIDENTIAL."

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

25
26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only Protected
28 Material (as defined above), but also (1) any information copied or extracted from Protected

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

12
13 4. DURATION

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

21
22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
24 Party or Non-Party that designates information or items for protection under this Order must
25 take care to limit any such designation to specific material that qualifies under the appropriate
26 standards. The Designating Party must designate for protection only those parts of material,
27 documents, items, or oral or written communications that qualify – so that other portions of the
28

1 material, documents, items, or communications for which protection is not warranted are not
2 swept unjustifiably within the ambit of this Order.

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

8 If it comes to a Designating Party's attention that information or items that it
9 designated for protection do not qualify for protection, that Designating Party must promptly
10 notify all other Parties that it is withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this
12 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
13 ordered, Disclosure or Discovery Material that qualifies for protection under this Order must
14 be clearly so designated before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

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

22 A Party or Non-Party that makes original documents or materials available for
23 inspection need not designate them for protection until after the inspecting Party has indicated
24 which material it would like copied and produced. During the inspection and before the
25 designation, all of the material made available for inspection shall be deemed
26 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied
27 and produced, the Producing Party must determine which documents, or portions thereof,
28 qualify for protection under this Order. Then, before producing the specified documents, the

1 Producing Party must affix the "CONFIDENTIAL" legend to each page that contains Protected
2 Material. If only a portion or portions of the material on a page qualifies for protection, the
3 Producing Party also must clearly identify the protected portion(s) (e.g., by making
4 appropriate markings in the margins).

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

8 (c) for information produced in some form other than documentary and for any
9 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
10 container or containers in which the information or item is stored the legend
11 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
12 the Producing Party, to the extent practicable, shall identify the protected portion(s).

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
14 to designate qualified information or items does not, standing alone, waive the Designating
15 Party's right to secure protection under this Order for such material. Upon timely correction of
16 a designation, the Receiving Party must make reasonable efforts to assure that the material is
17 treated in accordance with the provisions of this Order.

18
19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
21 of confidentiality at any time. Unless a prompt challenge to a Designating Party's
22 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
23 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party
24 does not waive its right to challenge a confidentiality designation by electing not to mount a
25 challenge promptly after the original designation is disclosed.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
27 process by providing written notice of each designation it is challenging and describing the
28 basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the

1 written notice must recite that the challenge to confidentiality is being made in accordance
2 with this specific paragraph of the Protective Order. The parties shall attempt to resolve each
3 challenge in good faith and must begin the process by conferring directly (in voice to voice
4 dialogue; other forms of communication are not sufficient) within 14 days of the date of
5 service of notice. In conferring, the Challenging Party must explain the basis for its belief that
6 the confidentiality designation was not proper and must give the Designating Party an
7 opportunity to review the designated material, to reconsider the circumstances, and, if no
8 change in designation is offered, to explain the basis for the chosen designation. A
9 Challenging Party may proceed to the next stage of the challenge process only if it has
10 engaged in this meet and confer process first or establishes that the Designating Party is
11 unwilling to participate in the meet and confer process in a timely manner.

12 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
13 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
14 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days
15 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
16 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
17 accompanied by a competent declaration affirming that the movant has complied with the
18 meet and confer requirements imposed in the preceding paragraph. Failure by the
19 Designating Party to make such a motion including the required declaration within 21 days (or
20 14 days, if applicable) shall automatically waive the confidentiality designation for each
21 challenged designation. In addition, the Challenging Party may file a motion challenging a
22 confidentiality designation at any time if there is good cause for doing so, including a
23 challenge to the designation of a deposition transcript or any portions thereof. Any motion
24 brought pursuant to this provision must be accompanied by a competent declaration affirming
25 that the movant has complied with the meet and confer requirements imposed by the
26 preceding paragraph.

27 The burden of persuasion in any such challenge proceeding shall be on the
28 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to

1 harass or impose unnecessary expenses and burdens on other parties) may expose the
2 Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality
3 designation by failing to file a motion to retain confidentiality as described above, all parties
4 shall continue to afford the material in question the level of protection to which it is entitled
5 under the Producing Party's designation until the court rules on the challenge.
6

7 7. ACCESS TO AND USE OF PROTECTED MATERIAL

8 7.1 Basic Principles. A Receiving Party may use Protected Material that is
9 disclosed or produced by another Party or by a Non-Party in connection with this case only for
10 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
11 disclosed only to the categories of persons and under the conditions described in this Order.
12 When the litigation has been terminated, a Receiving Party must comply with the provisions of
13 section 13 below (FINAL DISPOSITION).

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

17 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
18 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
19 disclose any 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
22 the information for this litigation and who have signed the "Acknowledgment and Agreement
23 to Be 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 and who have
26 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
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1 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
2 is reasonably necessary for this litigation and who have signed the "Acknowledgment and
3 Agreement to Be Bound" (Exhibit A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants, mock
6 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
7 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
8 A);

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

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

17
18 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
19 OTHER LITIGATION

20 If a Party is served with a subpoena or a court order issued in other litigation
21 that compels disclosure of any information or items designated in this action as
22 "CONFIDENTIAL," that Party must:

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

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

1 (c) cooperate with respect to all reasonable procedures sought to be pursued
2 by the Designating Party whose Protected Material may be affected.
3 If the Designating Party timely seeks a protective order, the Party served with the subpoena
4 or court order shall not produce any information designated in this action as
5 "CONFIDENTIAL" before a determination by the court from which the subpoena or order
6 issued, unless the Party has obtained the Designating Party's permission. The Designating
7 Party shall bear the burden and expense of seeking protection in that court of its confidential
8 material – and nothing in these provisions should be construed as authorizing or encouraging
9 a Receiving Party in this action to disobey a lawful directive from another court.
10

11 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
12 THIS LITIGATION

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

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

22 1. promptly notify in writing the Requesting Party and the Non-Party
23 that some or all of the information requested is subject to a confidentiality agreement with a
24 Non-Party;

25 2. promptly provide the Non-Party with a copy of the Stipulated
26 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
27 description of the information requested; and
28

1 3. make the information requested available for inspection by the
2 Non-Party.

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

11
12 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

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 Procedure
6 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established
7 in an e-discovery order that provides for production without prior privilege review. Pursuant to
8 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
9 effect of disclosure of a communication or information covered by the attorney-client privilege
10 or work product protection, the parties may incorporate their agreement in the stipulated
11 protective order submitted to the court.

12
13 12. MISCELLANEOUS

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

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

21 12.3 Filing Protected Material. Without written permission from the Designating
22 Party or a court order secured after appropriate notice to all interested persons, a Party may
23 not file in the public record in this action any Protected Material. A Party that seeks to file
24 under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material
25 may only be filed under seal pursuant to a court order authorizing the sealing of the specific
26 Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only
27 upon a request establishing that the Protected Material at issue is privileged, protectable as a
28 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to

1 file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court,
2 then the Receiving Party may file the information in the public record pursuant to Civil Local
3 Rule 79-5(e) unless otherwise instructed by the court.

4
5 13. FINAL DISPOSITION

6 Within 60 days after the final disposition of this action, as defined in
7 paragraph 4, each Receiving Party must return all Protected Material to the Producing Party
8 or destroy such material. As used in this subdivision, "all Protected Material" includes all
9 copies, abstracts, compilations, summaries, and any other format reproducing or capturing
10 any of the Protected Material. Whether the Protected Material is returned or destroyed, the
11 Receiving Party must submit a written certification to the Producing Party (and, if not the
12 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
13 category, where appropriate) all the Protected Material that was returned or destroyed and
14 (2)affirms that the Receiving Party has not retained any copies, abstracts, compilations,
15 summaries or any other format reproducing or capturing any of the Protected Material.
16 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
17 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
18 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
19 work product, even if such materials contain Protected Material. Any such archival copies that
20 contain or constitute Protected Material remain subject to this Protective Order as set forth in
21 Section 4 (DURATION).

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that I have
5 read in its entirety and understand the Stipulated Protective Order that was issued by the
6 United States District Court for the Northern District of California on [date] in the case of
7 WILLIAM HAMILTON v. RADIOSHACK CORPORATION and DOES 1-25 United States
8 District Court, Northern District of California, Case Number Case No.: C 11-00888 CW. I
9 agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to sanctions and
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in any
12 manner any information or item that is subject to this Stipulated Protective Order to any
13 person or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for
15 the 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 action.

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

21
22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____
25 [printed name]

26 Signature: _____
27 [signature]