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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14
15 AILEEN BERNARDINO, an individual, and all
16 others similarly situated;

17 Plaintiff,

18 vs.

19 TARGET CORPORATION, INC.; and DOES 1-
20 50, inclusive,

21 Defendants.

No. 12-CV-4639-YGR

**JOINT STIPULATION FOR PROTECTIVE
ORDER**



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1 **I. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure and from use for
4 any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby
5 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
6 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
7 discovery and that the protection it affords from public disclosure and use extends only to the limited
8 information or items that are entitled to confidential treatment under the applicable legal principles. The
9 parties further acknowledge, as set forth in Section XII.C., below, that this Stipulated Protective Order
10 does not entitle them to file confidential information under seal unless the Receiving Party seeks to file
11 them under seal pursuant to Civil Local Rule 79-5 and General Order 62.

12 **II. DEFINITIONS**

13 “CHALLENGING PARTY” means a Party or Non-Party that challenges the designation of
14 information or items under this Order.

15 “CONFIDENTIAL INFORMATION” or “CONFIDENTIAL ITEMS” mean information
16 (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection
17 under Federal Rule of Civil Procedure 26(c).

18 “COUNSEL” (without qualifier) means Outside Counsel of Record and House Counsel (as well
19 as their support staff).

20 “DESIGNATING PARTY” means a Party or Non-Party that designates information or items that
21 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

22 “DISCLOSURE” or “DISCOVERY MATERIAL” mean all items or information, regardless of
23 the medium or manner in which it is generated, stored, or maintained (including, among other things,
24 testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to
25 discovery in this matter.

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

1 “HOUSE COUNSEL” means attorneys who are employees of a party to this action. House
2 Counsel does not include Outside Counsel of Record or any other outside counsel.

3 “NON-PARTY” means any natural person, partnership, corporation, association, or other legal
4 entity not named as a Party to this action.

5 “OUTSIDE COUNSEL OF RECORD” means attorneys who are not employees of a party to this
6 action but are retained to represent or advise a party to this action and have appeared in this action on
7 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

8 “PARTY” means any party to this action, including all of its officers, directors, employees,
9 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

10 “PRODUCING PARTY” means a Party or Non-Party that produces Disclosure or Discovery
11 Material in this action.

12 “PROFESSIONAL VENDORS” means persons or entities that provide litigation support
13 services (*e.g.*, photocopying, videotaping, translating, preparing exhibits or demonstrations, and
14 organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

15 “PROTECTED MATERIALS” means any Disclosure or Discovery Materials that is designated
16 as “CONFIDENTIAL.”

17 “RECEIVING PARTY” means a Party that receives Disclosure or Discovery Material from a
18 Producing Party.

19 **III. SCOPE**

20 The protections conferred by this Stipulation and Order cover not only Protected Material (as
21 defined in Section II, above), but also (1) any information copied or extracted from Protected Material;
22 (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
23 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
24 However, the protections conferred by this Stipulation and Order do not cover the following
25 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
26 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
27 publication not involving a violation of this Order, including becoming part of the public record through
28 trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or

1 obtained by the Receiving Party after the disclosure from a source who obtained the information
2 lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected
3 Material at trial shall be governed by a separate agreement or order.

4 **IV. DURATION**

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

11 **V. DESIGNATING PROTECTED MATERIAL**

12 **A. Exercise of Restraint and Care in Designating Material for Protection**

13 Each Party or Non-Party that designates information or items for protection under this Order
14 must take care to limit any such designation to specific material that qualifies under the appropriate
15 standards. The Designating Party must designate for protection only those parts of material, documents,
16 items, or oral or written communications that qualify – so that other portions of the material, documents,
17 items, or communications for which protection is not warranted are not swept unjustifiably within the
18 ambit of this Order.

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

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

26 **B. Manner and Timing of Designations**

27 Except as otherwise provided in this Order (*see, e.g.*, second paragraph of Section V,
28 subsection B.1., below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that

1 qualifies for protection under this Order must be clearly so designated before the material is disclosed or
2 produced.

3 Designation in conformity with this Order requires the following:

- 4 1. For information the Producing Party intends to produce in documentary form (*e.g.*, paper
5 or electronic documents, but excluding transcripts of depositions or other pretrial or trial
6 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each page
7 that contains protected material. If only a portion or portions of the material on a page
8 qualifies for protection, the Producing Party also must clearly identify the protected
9 portion(s) (*e.g.*, by making appropriate markings in the margins). A Party or Non-Party
10 that makes original documents or materials available for inspection need not designate
11 them for protection until after the inspecting Party has indicated which material it would
12 like copied and produced. During the inspection and before the designation, all of the
13 material made available for inspection shall be deemed “CONFIDENTIAL.” After the
14 inspecting Party has identified the documents it wants copied and produced, the
15 Producing Party must determine which documents, or portions thereof, qualify for
16 protection under this Order. Then, before producing the specified documents, the
17 Producing Party must affix the “CONFIDENTIAL” legend to each page that contains
18 Protected Material. If only a portion or portions of the material on a page qualifies for
19 protection, the Producing Party also must clearly identify the protected portion(s) (*e.g.*,
20 by making appropriate markings in the margins).
- 21 2. For testimony given in deposition or in other pretrial or trial proceedings, that the
22 Designating Party identify on the record, before the close of the deposition, hearing, or
23 other proceeding, all protected testimony.
- 24 3. For information produced in some form other than documentary and for any other
25 tangible items, that the Producing Party affix in a prominent place on the exterior of the
26 container or containers in which the information or item is stored the legend
27 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
28

1 protection, the Producing Party, to the extent practicable, shall identify the protected
2 portion(s).

3 **C. Inadvertent Failures to Designate**

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

8 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9 **A. Timing of Challenges**

10 Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a
11 prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable,
12 substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the
13 litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to
14 mount a challenge promptly after the original designation is disclosed.

15 **B. Meet and Confer**

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

If the Parties cannot resolve a challenge without court intervention, the

1 by a Receiving Party at a location and in a secure manner that ensures that access is limited to the
2 persons authorized under this Order.

3 **B. Disclosure of “CONFIDENTIAL” Information or Items**

4 Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
5 Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

- 6 1. the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
7 Outside Counsel of Record to whom it is reasonably necessary to disclose the
8 information for this litigation and who have signed the “Acknowledgment and
9 Agreement to Be Bound” attached as Exhibit A (“Exhibit A”);
 - 10 2. the officers, directors, and employees (including House Counsel) of the Receiving Party
11 to whom disclosure is reasonably necessary for this litigation and who have signed
12 Exhibit A;
 - 13 3. Experts (as defined in this Order) of the Receiving Party to whom disclosure is
14 reasonably necessary for this litigation and who have signed Exhibit A;
 - 15 4. the Court and its personnel;
 - 16 5. court reporters and their staff, professional jury or trial consultants, mock jurors, and
17 Professional Vendors to whom disclosure is reasonably necessary for this litigation and
18 who have signed Exhibit A;
 - 19 6. during their depositions, witnesses in the action to whom disclosure is reasonably
20 necessary and who have signed Exhibit A, **unless otherwise agreed by the Designating**
21 **Party or ordered by the court.** Pages of transcribed deposition testimony or exhibits to
22 depositions that reveal Protected Material must be separately bound by the court reporter
23 and may not be disclosed to anyone except as permitted under this Stipulated Protective
24 Order.
 - 25 7. the author or recipient of a document containing the information or a custodian or other
26 person who otherwise possessed or knew the information.
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1 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
2 **LITIGATION**

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

- 5 1. promptly notify in writing the Designating Party. Such notification shall include a copy
6 of the subpoena or court order;
- 7 2. promptly notify in writing the party who caused the subpoena or order to issue in the
8 other litigation that some or all of the material covered by the subpoena or order is
9 subject to this Protective Order. Such notification shall include a copy of this Stipulated
10 Protective Order; and
- 11 3. cooperate with respect to all reasonable procedures sought to be pursued by the
12 Designating Party whose Protected Material may be affected.

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

20 **IX. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
21 **LITIGATION**

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

26 In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s
27 confidential information in its possession, and the Party is subject to an agreement with the Non-Party
28 not to produce the Non-Party’s confidential information, then the Party shall:

- 1 1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the
- 2 information requested is subject to a confidentiality agreement with a Non-Party;
- 3 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this
- 4 litigation, the relevant discovery request(s), and a reasonably specific description of the
- 5 information requested; and
- 6 3. make the information requested available for inspection by the Non-Party.

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

14 **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

21 **XI. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
22 **MATERIAL**

23 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
24 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are
25 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
26 whatever procedure may be established in an e-discovery order that provides for production without

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

1 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach
2 an agreement on the effect of disclosure of a communication or information covered by the attorney-
3 client privilege or work product protection, the parties may incorporate their agreement in the stipulated
4 protective order submitted to the court.

5 **XII. MISCELLANEOUS**

6 **A. Right to Further Relief**

7 Nothing in this Order abridges the right of any person to seek its modification by the court in the
8 future.

9 **B. Right to Assert Other Objections**

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

14 **C. Filing Protected Material**

15 Without written permission from the Designating Party or seeking a court order secured after
16 appropriate notice to all interested persons, a Party may not file in the public record in this action any
17 Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil
18 Local Rule 79-5 and General Order 62. Pursuant to Civil Local Rule 79-5 and General Order 62, a
19 sealing order will issue only upon a request establishing that the Protected Material at issue is privileged,
20 protectable as a trade secret, or otherwise entitled to protection under the law.

21 If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule
22 79-5(d) is denied, the documents shall be deemed filed and shall be considered by the court for any and
23 all purposes. Furthermore, the Designating Party will have five business days to file another application
24 with the court seeking to have the documents filed under seal.

25 **XIII. FINAL DISPOSITION**

26 Within 60 days after the final disposition of this action, as defined in Section IV, above, each
27 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As
28 used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries,

1 and any other format reproducing or capturing any of the Protected Material. Whether the Protected
2 Material is returned or destroyed, the Receiving Party must submit a written certification to the
3 Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline
4 that (1) identifies (by category, where appropriate) all the Protected Material that was returned or
5 destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations,
6 summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding
7 this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,
8 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
9 expert reports, attorney work product, and consultant and expert work product, even if such materials
10 contain Protected Material. Any such archival copies that contain or constitute Protected Material
11 remain subject to this Protective Order as set forth in Section IV, above.

12 The parties respectfully request the Court enter this Protective Order.

13 Dated: January 29, 2013.

14 SHAUN SETAREH
HAYLEY SCHWARTZKOPF
LAW OFFICES OF SHAUN SETAREH

15 DAVID SPIVAK
THE SPIVAK LAW FIRM

16 LOUIS BENOWITZ
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18 By: /s/ Shaun Setareh
19 Shaun Setareh
20 Attorneys for Plaintiff Aileen Bernardino

21 Dated: January 29, 2013.

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25 Jeffrey D. Wohl
26 Attorneys for Defendant Target Corporation
27
28

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AILEEN BERNARDINO, an individual, and all
others similarly situated;

Plaintiff,

vs.

TARGET CORPORATION, INC.; and DOES 1-
50, inclusive,

Defendants.

No. 12-CV-4639-YGR

**AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

1
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
5 have read in its entirety and understand the Stipulated Protective Order that was issued by the United
6 States District Court for the Northern District of California on [DATE] in the case of *Aileen Bernardino,*
7 *an individual; and all others similarly situated, Plaintiff v. Target Corporation, Inc.; and Does 1-50,*
8 *inclusive, Defendants,* U.S.D.C., N.D. Cal., No. 12-CV-4639-YGR (the “Action). I agree to comply
9 with and to be bound by all the terms of this Stipulated Protective Order and I understand and
10 acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of
11 contempt. I solemnly promise that I will not disclose in any manner any information or item that is
12 subject to this 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 Northern
15 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if
16 such enforcement proceedings occur after termination of this action.

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

21 I declare under penalty of perjury under the laws of the United States that the foregoing is true
22 and correct.

23 Executed on _____.

Signature

Print Name