

**** E-filed August 30, 2010 ****

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6 Attorneys for Defendants
 SELECT BRANDS, INC. and
 7 TARGET CORPORATION

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10 THOMAS SPILSBURY, JR.)
 11 Plaintiff,)
 12 vs.)
 13)
 14 TARGET CORPORATION, SELECT)
 BRANDS, INC, and DOES 1-25, inclusive,)
 15 Defendants.)

Case No.: CV 09 5955 JW

**STIPULATED PROTECTIVE ORDER
 AS AMENDED BY THE COURT**

Complaint Filed: September 22, 2009

17 1. PURPOSES AND LIMITATIONS

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

and General Order 62

1 2. DEFINITIONS

2 2.1 Party: any party to this action, including all of its officers, directors, employees,
3 consultants, retained experts, and outside counsel (and their support staff).

4 2.2 Disclosure or Discovery Material: all items or information, regardless of the
5 medium or manner generated, stored, or maintained (including, among other things, testimony,
6 transcripts, or tangible things) that are produced or generated in disclosures or response to
7 discovery in this matter.

8 2.3 "Confidential" Information or Items: information (regardless of how generated,
9 stored or maintained) or tangible things that qualify for protection under standards developed
10 under F.R.Civ.P.26(c).

11 2.4 "Highly Confidential – Attorneys' Eyes Only" Information or Items: extremely
12 sensitive "Confidential Information or Items" whose disclosure to another Party or non-party
13 would create a substantial risk of serious injury that could not be avoided by less restrictive means.

14 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
15 Producing Party.

16 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
17 Material in this action.

18 2.7 Designating Party: a Party or non-party that designates information or items that it
19 produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential –
20 Attorneys' Eyes Only".

21 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
22 "Confidential" or "Highly Confidential – Attorneys' Eyes Only".

23 2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained
24 to represent or advise a Party in this action.

25 2.10 House Counsel: attorneys who are employees of a Party.

26 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
27 support staffs).

28

1 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to
2 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
3 consultant in this action and who is not a past or a current employee of a Party or of a competitor
4 of a Party's and who, at the time of retention, is not anticipated to become an employee of a Party
5 or a competitor of a Party's. This definition includes a professional jury or trial consultant retained
6 in connection with this litigation.

7 2.13 Professional Vendors: persons or entities that provide litigation support services
8 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
9 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

10 3. SCOPE

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

15 4. DURATION

16 Even after the termination of this litigation, the confidentiality obligations imposed by this
17 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
18 otherwise directs. **For a period of six (6) months after final termination of this action, this
19 court will retain jurisdiction to enforce the terms of this protective order.**

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
22 non-party that designates information or items for protection under this Order must take care to
23 limit any such designation to specific material that qualifies under the appropriate standards. A
24 Designating Party must take care to designate for protection only those parts of material,
25 documents, items, or oral or written communications that qualify – so that other portions of the
26 material, documents, items, or communications for which protection is not warranted are not swept
27 unjustifiably within the ambit of this Order.

28 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to

1 unnecessarily encumber or retard the case development process, or to impose unnecessary
2 expenses and burdens on other parties), expose the Designating Party to sanctions.

3 If it comes to a Party's or a non-party's attention that information or items that it
4 designated for protection do not qualify for protection at all, or do not qualify for the level of
5 protection initially asserted, the Party or non-party must promptly notify all other parties that it is
6 withdrawing the mistaken designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
8 (see e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, material
9 that qualified for protection under this Order must be clearly so designated before the material is
10 disclosed or produced.

11 Designation in conformity with this Order requires:

12 (a) For information in documentary form (apart from transcripts of depositions
13 or other pretrial or trial proceedings), that the Producing Party affix the legend
14 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top
15 of each page that contains protected material. If only a portion or portions of the material on a
16 page qualified for protection, the Producing Party also must clearly identify the protected
17 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
18 portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY
19 CONFIDENTIAL – ATTORNEYS' EYES ONLY").

20 A Party or non-party that makes original documents or materials available for
21 inspection need not designate them for protection until after the inspecting Party has indicated
22 which material it would like copied and produced. During the inspection and before the
23 designation, all of the material made available for inspection shall be deemed "HIGHLY
24 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the
25 documents it wants copied and produced, the Producing Party must determine which documents or
26 portions thereof, qualify for protection under this Order, then, before producing the specified
27 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or
28 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY") at the top of each page that

1 contained Protected Material. If only a portion or portions of the material on a page qualified for
2 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
3 appropriate markings in the margins) and must specify, for each portion, the level of protection
4 being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
5 EYES ONLY").

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

19 Transcript pages containing Protected Material must be separately bound by the
20 court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL or
21 HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," as instructed by the Party or non-
22 party offering or sponsoring the witness or presenting the testimony.

23 (c) For information produced in some form other than documentary, and for any
24 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
25 container or containers in which the information or item is stored the legend "CONFIDENTIAL or
26 HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only portions of the information
27 or item warrant protection, the Producing Party, to the extent practicable, shall identify the
28

1 protected portions, specifying whether they qualify as “Confidential” or as “Highly Confidential –
2 Attorneys’ Eyes Only.”

3 5.3 Inadvertent Failures to Designate. If timely correct, an inadvertent failure to
4 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’
5 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection
6 under this Order for such materials. If material is appropriately designated as “Confidential” or
7 “Highly Confidential – Attorneys’ Eyes Only” after the material was initially produced, the
8 Receiving party, on timely notification of the designation, must make reasonable efforts to assure
9 that the material is treated in accordance with the provisions of this Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
12 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
13 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
14 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
15 after the original designation is disclosed.

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

25 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
26 designation after considering the justification offered by the Designating Party may file and serve a
27 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that
28 identified the challenged material and sets forth in detail the basis for the challenge. Each such

1 motion must be accompanied by a competent declaration that affirms that the movant has complied
2 with the meet and confer requirements imposed in the preceding paragraph and that sets forth with
3 specificity the justification for the confidentiality designation that was given by the Designating
4 Party in the meet and confer dialogue.

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

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
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 11, below (FINAL
14 DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party at a location and in
16 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 Designation Party, a Receiving Party may disclose and
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 Counsel to whom it is reasonably necessary to disclose the information for this
22 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
23 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 "Agreement to Be Bound by Protective Order" (Exhibit A);

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 "Agreement to Be Bound by
3 Protective Order" (Exhibit A);

4 (d) The Court and its personnel;

5 (e) Court reporters, their staffs, and professional vendors to whom disclosure is
6 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound By
7 Protective Order" (Exhibit A);

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

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

14 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYE ONLY"
15 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
16 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
17 CONFIDENTIAL – ATTORNEYS' EYE ONLY" only to:

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

22 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably
23 necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective
24 Order" (Exhibit A), [*Optional:* and (3) as to whom the procedures set forth in paragraph 7.4,
25 below, have been followed];

26 (c) The Court and its personnel;

1 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
2 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to
3 Be Bound" that is attached hereto as Exhibit A.

4 10. FILING PROTECTED MATERIAL. Without written permission from the
5 Designating Party or a court order secured after appropriate notice to all interested persons, a Party
6 may not file in the public record in this action any Protected Material. A Party that seeks to file
7 under seal any Protected Material must comply with Civil Local Rule 79-5.

8 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
9 Producing Party, within sixty days after the final termination of this action, each Receiving Party
10 must return all Protected Material to the Producing Party. As used in this subdivision, "all
11 Protected Material" includes all copies, abstracts, compilations, summaries or any other form of
12 reproducing or capturing any of the Protected Material. With permission in writing from the
13 Designating Party, the Receiving Party must destroy some or all of the Protected Material instead
14 of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must
15 submit a written certification to the Producing Party (and, if not the same person or entity, to the
16 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the
17 Protected Material that was returned or destroyed and that affirms that the Receiving Party has not
18 retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing
19 any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
20 archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or
21 attorney work product, even if such materials contain Protected Material. Any such archival
22 copies that contain or constitute Protected Material remain subject to this Protective Order as set
23 forth in Section 4 (DURATION), above.

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
26 seek its modification by the Court in this future.


27 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
28 Order no Party waives any right it otherwise would have to object to disclosing or producing any

1 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
2 Party waives any right to object on any ground to use in evidence of any of the material covered by
3 this Protective Order.

4
5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.


6
7 DATED: 8-20-2010

CORSIGLIA, MCMAHON & ALLARD

8
9 By 
10 TIMOTHY D. MCMAHON
11 Attorneys for Plaintiff
THOMAS SPILSBURY, JR.

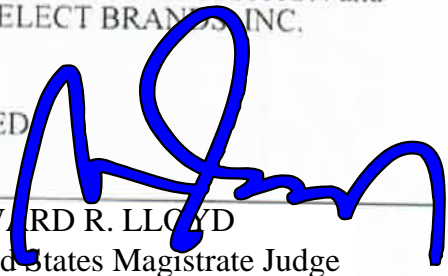
12 DATED: 8-23-10

STONE & ASSOCIATES

13
14 By 
15 JULIET MACMILLIN LOMPA
16 Attorneys for Defendant
17 TARGET CORPORATION and
SELECT BRANDS, INC.

18 PURSUANT TO STIPULATION, IT IS SO ORDERED

19 DATED: August 30, 2010

20 By 
21 HOWARD R. LLOYD
22 United States Magistrate 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 Thomas
Spilsbury v. Target Corporation, et al., Case No. C09-05955JW. 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: _____

Signature: _____

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CERTIFICATE OF SERVICE
(28 U.S.C. §1746)

I am employed in the County of Contra Costa, State of California. I am over the age of 18 years and not a party to the within action. My business address is 2125 Ygnacio Valley Road, Suite 101, Walnut Creek, California 94598.

On the date indicated below, at the above-referenced business location, I transmitted the document(s) referenced below to the email address of the person designated, or by electronically filing the documents on the Court's ECF system **STIPULATED PROTECTIVE ORDER**

:

Timothy D. McMahon, Esq.
CORSIGLIA, MCMAHON & ALLARD
96 N. Third Street, Suite 620
San Jose, CA 95112
Tel: 408-289-1417
Fax: 408-289-8127
Email: tcmahon@cmalaw.net

Attorney for Plaintiff

I declare under penalty of perjury that the foregoing is true and correct. Executed at Walnut Creek, California on August 24, 2010.



Celena Sepulveda