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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ANDREW MURTOMAKI,  
Plaintiff,  
v.  
TARGET CORPORATION, et al.,  
Defendants.

Case No.: 20cv2178-BEN-LL

**ORDER GRANTING JOINT MOTION  
FOR PROTECTIVE ORDER WITH  
MODIFICATIONS**

**[ECF No. 10]**

On January 8, 2021, the Parties filed a “Joint Motion for Protective Order.” ECF No. 10. The Court has considered the stipulated protective order (attached as Exhibit A) and, for good cause shown, the joint motion is **GRANTED** with the following modifications:

1. Paragraph 8 should read as follows: “Information designated ‘CONFIDENTIAL-FOR COUNSEL ONLY’ must be viewed only by counsel (as defined in paragraph 3) of the receiving party, court personnel, and by independent experts under the conditions set forth in this Paragraph. The right of any independent expert to receive any confidential information will be subject to the advance approval of such expert by the producing party or by permission of the Court. The party seeking approval of an independent expert must provide the producing party with the name and curriculum vitae

1 of the proposed independent expert, in advance of providing any confidential information  
2 of the producing party to the expert. Any objection by the producing party to an  
3 independent expert receiving confidential information must be made in writing within  
4 fourteen (14) days following receipt of the identification of the proposed expert.  
5 Confidential information may be disclosed to an independent expert if the fourteen (14)  
6 day period has passed and no objection has been made. The approval of independent  
7 experts must not be unreasonably withheld.”

8         2. Paragraph 12 should read as follows: “Before any materials produced in  
9 discovery, answers to interrogatories, responses to requests for admissions, deposition  
10 transcripts, or other documents which are designated as confidential information are filed  
11 with the Court for any purpose, the party seeking to file such material must seek  
12 permission of the Court to file the material under seal. No document shall be filed under  
13 seal, and the Court shall not be required to take any action, without separate prior order  
14 by the judge before whom the hearing or proceedings will take place, after application by  
15 the affected party with appropriate notice to opposing counsel. The parties shall follow  
16 and abide by applicable law, including Civil Local Rule 79.2, Section 2.j of the  
17 Electronic Case Filing Administrative Policies and Procedures, and the Chambers Rules  
18 of the applicable judge, with respect to filing documents under seal. A sealing order may  
19 issue only upon a request that establishes that the document, or portions thereof, is  
20 privileged or otherwise subject to protection under the law. The request must be narrowly  
21 tailored to seek sealing only of sensitive personal or confidential information. An  
22 unredacted version of the document, identifying the portions subject to the motion to seal,  
23 must be lodged with the motion to seal. A redacted version of the document must be  
24 publicly filed simultaneously with the motion or ex parte application to file under seal.”

25         3. Paragraph 13 should read as follows: “At any stage of these proceedings,  
26 any party may object to a designation of the materials as confidential information. The  
27 party objecting to confidentiality must notify, in writing, counsel for the designating party  
28 of the objected-to materials and the grounds for the objection. If the dispute is not

1 resolved consensually between the parties within seven (7) days of receipt of such a  
2 notice of objections, the objecting party may move the Court for a ruling on the  
3 objection. The motion must be in conformance with any requirements set forth in the  
4 Local Rules and the Chambers Rules of the applicable Judge. The material at issue must  
5 be treated as confidential information, as designated by the designating party, until the  
6 Court has ruled on the objection or the matter has been otherwise resolved.”

7 **IT IS SO ORDERED.**

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9 Dated: January 11, 2021

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12 Honorable Linda Lopez  
13 United States Magistrate Judge  
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# **EXHIBIT A**

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ANDREW MURTOMAKI,  
Plaintiff,  
v.  
TARGET CORPORATION,  
Defendant.

Case No.: 3:20-cv-02178-BEN-LL

**PROTECTIVE ORDER**

The Court recognizes that at least some of the documents and information (“materials”) being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order (“Order”) in this action.

The materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, technical, cost, price, marketing or other commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(1)(G). The purpose of this Order is to protect the confidentiality of such materials as much as practical during the litigation.

THEREFORE:

DEFINITIONS

1. The term “confidential information” will mean and include information



1 a. Designation as “CONFIDENTIAL”: Any party may designate  
2 information as “CONFIDENTIAL” only if, in the good faith belief of such party and  
3 its counsel, the unrestricted disclosure of such information could be potentially  
4 prejudicial to the business or operations of such party.

5 b. Designation as “CONFIDENTIAL - FOR COUNSEL ONLY”: Any  
6 party may designate information as “CONFIDENTIAL - FOR COUNSEL ONLY”  
7 only if, in the good faith belief of such party and its counsel, the information is among  
8 that considered to be most sensitive by the party, including but not limited to trade  
9 secret or other confidential research, development, financial or other commercial  
10 information.

11 5. In the event the producing party elects to produce materials for  
12 inspection, no marking need be made by the producing party in advance of the initial  
13 inspection. For purposes of the initial inspection, all materials produced will be  
14 considered as “CONFIDENTIAL - FOR COUNSEL ONLY,” and must be treated as  
15 such pursuant to the terms of this Order. Thereafter, upon selection of specified  
16 materials for copying by the inspecting party, the producing party must, within a  
17 reasonable time prior to producing those materials to the inspecting party, mark the  
18 copies of those materials that contain confidential information with the appropriate  
19 confidentiality marking.

20 6. Whenever a deposition taken on behalf of any party involves a disclosure  
21 of confidential information of any party:

22 a. the deposition or portions of the deposition must be designated as  
23 containing confidential information subject to the provisions of  
24 this Order; such designation must be made on the record whenever  
25 possible, but a party may designate portions of depositions as  
26 containing confidential information after transcription of the  
27 proceedings; [A] party will have until fourteen (14) days after  
28 receipt of the deposition transcript to inform the other party or

1 parties to the action of the portions of the transcript to be  
2 designated “CONFIDENTIAL” or “CONFIDENTIAL - FOR  
3 COUNSEL ONLY.”

4 b. the disclosing party will have the right to exclude from attendance  
5 at the deposition, during such time as the confidential information  
6 is to be disclosed, any person other than the deponent, counsel  
7 (including their staff and associates), the court reporter, and the  
8 person(s) agreed upon pursuant to paragraph 8 below; and

9 c. the originals of the deposition transcripts and all copies of the  
10 deposition must bear the legend “CONFIDENTIAL” or  
11 “CONFIDENTIAL - FOR COUNSEL ONLY,” as appropriate,  
12 and the original or any copy ultimately presented to a court for  
13 filing must not be filed unless it can be accomplished under seal,  
14 identified as being subject to this Order, and protected from being  
15 opened except by order of this Court.

16 7. All confidential information designated as “CONFIDENTIAL” or  
17 “CONFIDENTIAL FOR COUNSEL ONLY” must not be disclosed by the receiving  
18 party to anyone other than those persons designated within this order and must be  
19 handled in the manner set forth below and, in any event, must not be used for any  
20 purpose other than in connection with this litigation, unless and until such designation  
21 is removed either by agreement of the parties, or by order of the Court.

22 8. Information designated “CONFIDENTIAL - FOR COUNSEL ONLY”  
23 must be viewed only by counsel (as defined in paragraph 3) of the receiving party,  
24 and by independent experts under the conditions set forth in this Paragraph. The right  
25 of any independent expert to receive any confidential information will be subject to  
26 the advance approval of such expert by the producing party or by permission of the  
27 Court. The party seeking approval of an independent expert must provide the  
28 producing party with the name and curriculum vitae of the proposed independent



1 expert, in advance of providing any confidential information of the producing party  
2 to the expert. Any objection by the producing party to an independent expert receiving  
3 confidential information must be made in writing within fourteen (14) days following  
4 receipt of the identification of the proposed expert. Confidential information may be  
5 disclosed to an independent expert if the fourteen (14) day period has passed and no  
6 objection has been made. The approval of independent experts must not be  
7 unreasonably withheld.

8 9. Information designated “confidential” must be viewed only by counsel  
9 (as defined in paragraph 3) of the receiving party, by independent experts (pursuant  
10 to the terms of paragraph 8), by court personnel, and by the additional individuals  
11 listed below, provided each such individual has read this Order in advance of  
12 disclosure and has agreed in writing to be bound by its terms:

- 13 a) Executives who are required to participate in policy decisions with  
14 reference to this action;
- 15 b) Technical personnel of the parties with whom Counsel for the  
16 parties find it necessary to consult, in the discretion of such  
17 counsel, in preparation for trial of this action; and
- 18 c) Stenographic and clerical employees associated with the  
19 individuals identified above.

20 10. With respect to material designated “CONFIDENTIAL” or  
21 “CONFIDENTIAL – FOR COUNSEL ONLY,” any person indicated on the face of  
22 the document to be its originator, author or a recipient of a copy of the document, may  
23 be shown the same.

24 11. All information which has been designated as “CONFIDENTIAL” or  
25 “CONFIDENTIAL -FOR COUNSEL ONLY” by the producing or disclosing party,  
26 and any and all reproductions of that information, must be retained in the custody of  
27 the counsel for the receiving party identified in paragraph 3, except that independent  
28 experts authorized to view such information under the terms of this Order may retain

1 custody of copies such as are necessary for their participation in this litigation.

2 12. Before any materials produced in discovery, answers to interrogatories,  
3 responses to requests for admissions, deposition transcripts, or other documents which  
4 are designated as confidential information are filed with the Court for any purpose,  
5 the party seeking to file such material must seek permission of the Court to file the  
6 material under seal.

7 13. At any stage of these proceedings, any party may object to a designation  
8 of the materials as confidential information. The party objecting to confidentiality  
9 must notify, in writing, counsel for the designating party of the objected-to materials  
10 and the grounds for the objection. If the dispute is not resolved consensually between  
11 the parties within seven (7) days of receipt of such a notice of objections, the objecting  
12 party may move the Court for a ruling on the objection. The materials at issue must  
13 be treated as confidential information, as designated by the designating party, until  
14 the Court has ruled on the objection or the matter has been otherwise resolved.

15 14. All confidential information must be held in confidence by those  
16 inspecting or receiving it, and must be used only for purposes of this action. Counsel  
17 for each party, and each person receiving confidential information must take  
18 reasonable precautions to prevent the unauthorized or inadvertent disclosure of such  
19 information. If confidential information is disclosed to any person other than a person  
20 authorized by this Order, the party responsible for the unauthorized disclosure must  
21 immediately bring all pertinent facts relating to the unauthorized disclosure to the  
22 attention of the other parties and, without prejudice to any rights and remedies of the  
23 other parties, make every effort to prevent further disclosure by the party and by the  
24 person(s) receiving the unauthorized disclosure.

25 15. No party will be responsible to another party for disclosure of  
26 confidential information under this Order if the information in question is not labeled  
27 or otherwise identified as such in accordance with this Order.

28 16. If a party, through inadvertence, produces any confidential information

1 without labeling or marking or otherwise designating it as such in accordance with  
2 this Order, the designating party may give written notice to the receiving party that  
3 the document or thing produced is deemed confidential information, and that the  
4 document or thing produced should be treated as such in accordance with that  
5 designation under this Order. The receiving party must treat the materials as  
6 confidential, once the designating party so notifies the receiving party. If the receiving  
7 party has disclosed the materials before receiving the designation, the receiving party  
8 must notify the designating party in writing of each such disclosure. Counsel for the  
9 parties will agree on a mutually acceptable manner of labeling or marking the  
10 inadvertently produced materials as “CONFIDENTIAL” or “CONFIDENTIAL -  
11 FOR COUNSEL ONLY” - SUBJECT TO PROTECTIVE ORDER.

12 17. Nothing within this order will prejudice the right of any party to object  
13 to the production of any discovery material on the grounds that the material is  
14 protected as privileged or as attorney work product.

15 18. Nothing in this Order will bar counsel from rendering advice to their  
16 clients with respect to this litigation and, in the course thereof, relying upon any  
17 information designated as confidential information, provided that the contents of the  
18 information must not be disclosed.

19 19. This Order will be without prejudice to the right of any party to oppose  
20 production of any information for lack of relevance or any other ground other than  
21 the mere presence of confidential information. The existence of this Order must not  
22 be used by either party as a basis for discovery that is otherwise improper under the  
23 Federal Rules of Civil Procedure.

24 20. Nothing within this order will be construed to prevent disclosure of  
25 confidential information if such disclosure is required by law or by order of the Court.

26 21. Upon final termination of this action, including any and all appeals,  
27 counsel for each party must, upon request of the producing party, return all  
28 confidential information to the party that produced the information, including any

1 copies, excerpts, and summaries of that information, or must destroy same at the  
2 option of the receiving party, and must purge all such information from all machine-  
3 readable media on which it resides. Notwithstanding the foregoing, counsel for each  
4 party may retain all pleadings, briefs, memoranda, motions, and other documents filed  
5 with the Court that refer to or incorporate confidential information, and will continue  
6 to be bound by this Order with respect to all such retained information. Further,  
7 attorney work product materials that contain confidential information need not be  
8 destroyed, but, if they are not destroyed, the person in possession of the attorney work  
9 product will continue to be bound by this Order with respect to all such retained  
10 information.

11       22. The restrictions and obligations set forth within this order will not apply  
12 to any information that: (a) the parties agree should not be designated confidential  
13 information; (b) the parties agree, or the Court rules, is already public knowledge; (c)  
14 the parties agree, or the Court rules, has become public knowledge other than as a  
15 result of disclosure by the receiving party, its employees, or its agents in violation of  
16 this Order; or (d) has come or will come into the receiving party's legitimate  
17 knowledge independently of the production by the designating party. Prior knowledge  
18 must be established by pre-production documentation.

19       23. The restrictions and obligations within this order will not be deemed to  
20 prohibit discussions of any confidential information with anyone if that person  
21 already has or obtains legitimate possession of that information.

22       24. Transmission by email or some other currently utilized method of  
23 transmission is acceptable for all notification purposes within this Order.

24       25. This Order may be modified by agreement of the parties, subject to  
25 approval by the Court.

26       26. The Court may modify the terms and conditions of this Order for good  
27 cause, or in the interest of justice, or on its own order at any time in these proceedings.  
28 The parties prefer that the Court provide them with notice of the Court's intent to

1 modify the Order and the content of those modifications, prior to entry of such an  
2 order.

3 IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

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6 Judge, United States District Court  
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