

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

H&R BLOCK, INC.;
2SS HOLDINGS, INC.; and
TA IX L.P.,

Defendants.

Civil Action No. 11-00948 (BAH)
Judge Beryl A. Howell

STIPULATED PROTECTIVE ORDER

THIS MATTER having come before the Court upon the stipulation of the parties for the entry of a protective order regarding the confidentiality of information that is subject to discovery or testimony in this action and that may contain any trade secret, or other confidential research, development, or commercial information. In the interest of expediting discovery and permitting it to proceed without delay occasioned by possible disputes regarding such claims of confidentiality pertaining to voluminous document productions, the parties have agreed to provide access to and accept such confidential information subject to the provisions set forth below. Good cause having been shown, the Court ORDERS as follows:

I. DEFINITIONS

1. As used in this Order:

- (a) “Confidential Information” means any trade secret or other confidential research, development, or commercial information, as such terms are used in Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, or any document, testimony,

or other material, including deposition transcripts, affidavits, and written responses to discovery requests, containing such information.

- (b) “Disclosed” means shown, divulged, revealed, produced, described, transmitted, or otherwise communicated, in whole or in part.
- (c) “Defendants” means (i) H&R Block, Inc., its divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing; (ii) 2SS Holdings, Inc., its divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing; and (iii) TA IX L.P., its divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.
- (d) “Document” means documents or electronically stored information as defined in Fed. R. Civ. P. 34(a).
- (e) “Highly Confidential Information” means any Confidential Information which the Protected Person, as defined herein, reasonably believes to be so competitively sensitive that it is entitled to extraordinary protections.
- (f) “Investigation” means the Department of Justice’s pre-Complaint inquiry into the matters at issue in this action.
- (g) “Investigation Materials” means (i) documents, testimony, or other materials that any non-party provided to any Party either voluntarily or under compulsory process during the Investigation; (ii) documents constituting any communication between any Party and any non-party during the Investigation; and/or (iii)

documents, testimony, or other materials that any Defendant has provided to Plaintiff during the Investigation.

- (h) “Litigation Materials” means (i) documents, testimony, or other materials that any non-party provided to any Party either voluntarily or under compulsory process during this Action; (ii) documents constituting any communication between any Party and any non-Party during this Action; and/or (iii) documents, testimony, or other materials that any Defendant has provided to Plaintiff during this Action.
- (i) “Outside Counsel of Record” means the firm(s) of attorneys, or sole practitioner(s) as the case may be, representing a Party in this proceeding, provided that the Outside Counsel of Record is not involved in competitive decision-making.
- (j) “Person” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or trust.
- (k) “Personally Identifying Information” or “PII” means any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, date and place of birth, mother’s maiden name, biometric records, etc., including any other personal information which is linked or linkable to a specific individual. United States Office of Management and Budget Memoranda M-06-19 n.1 (July 12, 2006).
- (l) “Party” means Plaintiff or any and all Defendants. “Parties” means Plaintiff and Defendants.

(m) “Plaintiff” means the United States of America, the Antitrust Division of the Department of Justice, and all employees, agents, and representatives of the Antitrust Division of the Department of Justice.

(n) “Protected Person” means any person (including a Party) that has provided Investigation Materials or that, voluntarily or under compulsory process, provides any documents, testimony, or other materials in this action.

(o) “This Action” means the above-captioned action pending in this Court, including any pretrial, trial, post-trial, or appellate proceedings.

II. DESIGNATION OF CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION

2. Within three business days after the Court’s entry of this Order, each Party shall send by email, facsimile, or overnight delivery a copy of this Order to each non-party Protected Person (or, if represented by counsel, the Protected Person’s counsel) that provided Investigation Materials to that Party.

3. A Protected Person may designate as “Confidential Information” any Investigation Materials or Litigation Materials, to the extent such information constitutes Confidential Information as defined in paragraph 1(a) of this Order. Such designations constitute a representation to the Court that such Protected Person believes, in good faith, that the information so designated constitutes Confidential Information. Any production of documents, testimony, or other materials not designated as Confidential Information will not be deemed a waiver of any future claim of confidentiality concerning such information if it is later designated Confidential Information pursuant to paragraph 8 of this Order. However, any such subsequent

designation will not retroactively prohibit the disclosure of any information for which disclosure was proper when made.

4. A Protected Person may designate as “Highly Confidential Information” any Investigation Materials or Litigation Materials, to the extent such information constitutes Highly Confidential Information as defined in paragraph 1(e) of this Order. Such designations constitute a representation to the Court that such Protected Person believes, in good faith, that the information so designated constitutes Highly Confidential Information. Any production not designated as Highly Confidential Information will not be deemed a waiver of any future claim of confidentiality concerning such information if it is later designated Highly Confidential Information pursuant to paragraph 8 of this Order. However, any such subsequent designation will not retroactively prohibit the disclosure of any information for which disclosure was proper when made.

5. Designation as Confidential Information or Highly Confidential Information of Investigation Materials and Litigation Materials produced prior to entry of this Order is governed as follows:

- (a) All transcripts of depositions taken by Plaintiff during the Investigation or during this Action prior to entry of this Order will be treated as Highly Confidential Information in their entirety for 30 days after entry of this Order. At any time during the 30-day period, each Protected Person may designate as Confidential Information, in compliance with paragraph 3 of this Order, or Highly Confidential, in compliance with paragraph 4 of this Order, any portion of the transcript, by page and line, and any accompanying exhibits produced by the Protected Person. Within five days following the 30-day period, Plaintiff shall

transmit to Defendants all deposition confidentiality designations received from non-parties.

- (b) All documents produced by Protected Persons to Plaintiff (i) during the Investigation, or (ii) during this Action prior to entry of this Order, will be treated as Highly Confidential Information in their entirety for 30 days after entry of this Order. At any time during the 30-day period, any Protected Person may designate as Confidential Information, in compliance with paragraph 3 of this Order, or Highly Confidential, in compliance with paragraph 4 of this Order, any document or portion of a document produced to Plaintiff by providing Plaintiff with document-production page numbers or other means of easily identifying the designated documents. Within five days following the 30-day period, Plaintiff shall transmit to Defendants all confidentiality designations received from non-parties. If a Protected Person has previously labeled, identified or otherwise designated information produced to Plaintiff during the Investigation as confidential, and does not re-designate the information as Confidential Information or Highly Confidential Information pursuant to this Order, the information shall be treated as Confidential Information pursuant to this Order.

6. Designation as Confidential Information or Highly Confidential Information of Litigation Materials produced after entry of this Order is governed as follows:

- (a) Whenever discovery is sought by subpoena from a non-party in this action after entry of this Order, a copy of this Order shall accompany the subpoena.
- (b) All transcripts of depositions taken in this Action after entry of this Order will be treated as Highly Confidential Information in their entirety for 14 days after the

date a copy of the final transcript has been made available to the Protected Person for review. Within three days of receipt of the final transcript, the Party that noticed the deposition shall provide the final transcript to the Protected Person. At any time during the 14-day period, the Protected Person may designate testimony as Confidential Information, in compliance with paragraph 3 of this Order, or Highly Confidential Information, in compliance with paragraph 4 of this Order. Such designations (with reference to the page(s) and line(s) of the final transcript) must be provided in writing by the person making such designations to Plaintiff and Defendants' counsel.

- (c) A Protected Person that designates as Confidential Information or Highly Confidential Information any document produced in this action after entry of this Order must stamp or label each confidential page of each document with the designation "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL — OUTSIDE COUNSEL ONLY." If the entire document is not Confidential Information or Highly Confidential Information, the Protected Person shall stamp or label only those pages that contain Confidential Information or Highly Confidential Information. Where Confidential Information is produced in electronic format on a disk or other medium that contains exclusively Confidential Information, the "CONFIDENTIAL" designation may be placed on the disk or other medium. Where Highly Confidential Information is produced in electronic format on a disk or other medium that contains exclusively Highly Confidential Information, the "HIGHLY CONFIDENTIAL — OUTSIDE COUNSEL ONLY" designation may be placed on the disk or other medium. Where Confidential Information and

Highly Confidential Information is produced together in electronic format on a disk or other medium that contains both types of information, such disk or other medium should be designated “CONFIDENTIAL INFORMATION AND HIGHLY CONFIDENTIAL INFORMATION — OUTSIDE COUNSEL ONLY.”

7. If a Protected Person inadvertently fails to designate as Confidential Information or Highly Confidential Information any documents, testimony, or other materials, it may later so designate by notifying the Parties in writing. After receiving such notice, the Parties shall thereafter treat the newly designated information as Confidential Information or Highly Confidential Information. No prior disclosure of newly designated Confidential Information or Highly Confidential Information shall violate this Order and the Parties have no obligations regarding such prior disclosures, if any.

8. If a Party receives a confidentiality waiver to allow a deponent that is not related to the waiving Party to be questioned on information that would otherwise be Confidential Information or Highly Confidential Information, that waiver (including identifying the specific Confidential Information or Highly Confidential Information to which it pertains) must be disclosed to counsel for all other Parties as soon as practicable, but no later than two business days prior to the deposition of the witness in question, unless good cause for a later disclosure is shown.

**III. SCOPE OF DISCLOSURE OF CONFIDENTIAL AND HIGHLY
CONFIDENTIAL INFORMATION**

9. Except as authorized by this Order, information designated as Confidential Information pursuant to this Order shall not be disclosed to any person other than the persons set forth below, and may be disclosed to and used by the persons set forth below only in this action:

- (a) the Court and all persons assisting the Court in this action, including law clerks, court reporters, and stenographic or clerical personnel;
- (b) United States Department of Justice attorneys and employees, and independent contractors retained by the United States Department of Justice to assist in the prosecution of this litigation or otherwise assist in its work (including testifying or consulting experts and their support staff);
- (c) Outside Counsel of Record for Defendants, that counsel's employees, and independent contractors assisting such outside counsel in the defense of this Action;
- (d) testifying or consulting experts retained by a Defendant to assist outside counsel in the prosecution or defense of this action, including employees of the firm with which the expert or consultant is associated to the extent necessary to assist the expert's work in this action, provided that such experts and employees are not employed or affiliated in any other way with Defendants;
- (e) authors, addressees, and recipients of particular information designated as Confidential Information solely to the extent that they have previously had lawful access to the particular information disclosed or to be disclosed;

(f) persons (and their counsel) whom Plaintiff or Defendants believe(s), in good faith, to have had prior access to the Confidential Information, or who have been participants in a communication that is the subject of the Confidential Information and from whom verification of or other information about that access or participation is sought, solely to the extent of disclosing such information to which they may have had access or that is the subject of the communication in which they may have participated; provided that, unless and until the person or counsel for the person confirms that the person had access or was a participant, only as much of the information may be disclosed as may be necessary to confirm the person's access or participation; and

(g) the following in-house counsel for Defendants, so long as none of these counsel is involved in any way in competitive decision making:

- i. James M. Ash;
- ii. Gina G. Srivastava;
- iii. Andrew Somora; and
- iv. Derek R. Gamble.

In the event that any of these in-house counsel become involved in any way in competitive decision making, Defendants shall cease to provide that counsel with access to any Confidential Information.

10. Except as authorized by this Order, information designated as Highly Confidential Information pursuant to this Order shall not be disclosed to any person other than the persons set forth in subparagraphs 9(a) through (f) of this Order, and may be disclosed to and used by those persons only in this Action.

11. Before any information designated as Confidential Information or Highly Confidential Information may be disclosed to any person described in paragraphs 9 or 10 of this Order, he or she must first read this Order or must have otherwise been instructed on his or her obligations under the Order by this Court or counsel for a Party, and any testifying or consulting experts and their employees as described in subparagraphs 9(b) and (d) of this Order shall have executed the appropriate agreement included as Appendix A or Appendix B hereto. Counsel for the Party making the disclosure must retain the original of such executed agreement for a period of at least one year following the final resolution of this action. Each person described in paragraphs 9 or 10 of this Order to whom information designated as Confidential Information or Highly Confidential Information is disclosed must not disclose that Confidential Information or Highly Confidential Information to any other person, except as provided in this Order.

12. Notwithstanding paragraphs 9 and 10 of this Order, nothing in this Order:

- (a) limits a Protected Person's use or disclosure of its own information designated as Confidential Information or Highly Confidential Information;
- (b) prevents disclosure of Confidential Information or Highly Confidential Information by any Party to any current employee of the person that designated the Confidential Information or Highly Confidential Information;
- (c) prevents disclosure of Confidential Information or Highly Confidential Information by any Party with the consent of the person that designated the Confidential Information or Highly Confidential Information;
- (d) prevents Plaintiff, subject to taking appropriate steps to preserve the further confidentiality of such information, from disclosing Confidential Information or Highly Confidential Information (i) to duly authorized representatives of the

Executive Branch of the United States Government; (ii) in the course of any other legal proceedings in which the United States is a party; (iii) to secure compliance with a Final Judgment that is entered in this action; (iv) for law enforcement purposes, or (v) as may be required by law; or

(e) prohibits the discussion of issues with witnesses simply because those issues are discussed in confidential information, provided that the witness in question had lawful access to the particular information being discussed.

IV. USE OF CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION

13. If any documents, testimony, or other materials designated under this Order as Confidential Information or Highly Confidential Information is included in any pleading, motion, exhibit, or other paper to be filed with the Court, the Party seeking to file such material shall follow the procedures set forth in LCvR 5.1(j). Nothing in this Order shall restrict any person from challenging the filing of any Confidential Information or Highly Confidential Information material under seal. Within four business days of filing any paper containing Confidential Information or Highly Confidential Information, the filing Party shall file on the public record a copy of the paper with the Confidential Information redacted.

14. The provisions of this Order govern the disclosure of Confidential Information or Highly Confidential Information in pre-trial proceedings only. The disclosure of Confidential Information or Highly Confidential Information at trial shall be subject to separate order of the Court.

V. DISCLOSURE OF DOCUMENTS CONTAINING PERSONALLY IDENTIFYING INFORMATION

15. In the course of the Investigation, the Defendants and non-parties produced documents and data to Plaintiff that contain PII. Plaintiff has taken a series of steps to protect that PII from unnecessary disclosure. In the event that any Defendant makes a valid discovery request upon Plaintiff for documents and information that contains PII, Plaintiff shall produce such materials in a manner to be agreed upon with the Defendants that does not disclose PII, unless by order of the Court.

VI. PROCEDURES UPON TERMINATION OF THIS ACTION

16. Within 90 days after receiving notice of the entry of an order, judgment, or decree terminating this action, all persons having received information designated as Confidential Information or Highly Confidential Information must either make a good faith effort to return such material and all copies thereof to the Protected Person (or the person's counsel if represented by counsel), or destroy all such Confidential Information or Highly Confidential Information and certify that fact in writing to that Protected Person. Counsel for Plaintiff and Defendants will be entitled to retain court papers, deposition and trial transcripts and exhibits, and work product, provided that Plaintiff's employees and Defendants' counsel and such counsel's employees do not disclose the portions of court papers, deposition and trial transcripts and exhibits, or work product containing information designated as Confidential Information or Highly Confidential Information to any person except pursuant to Court order or agreement with the Protected Person that produced the information designated as Confidential Information or Highly Confidential Information. All Confidential Information or Highly Confidential Information returned to the Parties or their counsel by the Court likewise must be disposed of in

accordance with this Paragraph. Nothing in this Paragraph, however, restricts the rights of the Plaintiff under paragraph 12(d) of this Order to retain and use Confidential Information or Highly Confidential Information for law enforcement purposes or as otherwise required by law.

VII. RIGHT TO SEEK MODIFICATION OF THIS ORDER

17. Nothing in this Order prevents any person, including members of the public, from seeking modification of this Order, upon motion made pursuant to the rules of this Court.

SO ORDERED:

Dated this ____ day of _____ 2011.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

H&R BLOCK, INC.;
2SS HOLDINGS, INC.; and
TA IX L.P.,

Defendants.

Civil Action No. 11-00948 (BAH)
Judge Beryl A. Howell

APPENDIX A
AGREEMENT CONCERNING CONFIDENTIALITY

I, _____, am employed as _____
by _____. I hereby certify that:

1. I have read the Stipulated Protective Order (“Protective Order”) entered in the above-captioned action, and understand its terms.

2. I agree to be bound by the terms of the Protective Order and agree to use information, designated as Confidential Information, provided to me only for the purpose of this litigation.

3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.

4. I submit to the jurisdiction of the United States District Court for the District of Columbia solely for the purpose of enforcing the terms of the Protective Order entered in the

above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

5. I make this certificate this _____ day of _____, 201_.

(SIGNATURE)

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

H&R BLOCK, INC.;
2SS HOLDINGS, INC.; and
TA IX L.P.,

Defendants.

Civil Action No. 11-00948 (BAH)
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APPENDIX B
AGREEMENT CONCERNING CONFIDENTIALITY

I, _____, am employed as _____
by _____. I hereby certify that:

1. I have read the Stipulated Protective Order (“Protective Order”) entered in the above-captioned action, and understand its terms.

2. I agree to be bound by the terms of the Protective Order and agree to use information, designated as Highly Confidential Information, provided to me only for the purpose of this litigation.

3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.

4. I submit to the jurisdiction of the United States District Court for the District of Columbia solely for the purpose of enforcing the terms of the Protective Order entered in the

above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

5. I make this certificate this _____ day of _____, 201_.

(SIGNATURE)