

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

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

AB ELECTROLUX, ELECTROLUX NORTH  
AMERICA, INC., and GENERAL ELECTRIC  
COMPANY,

*Defendants.*

Case No. 1:15-cv-01039-EGS

**INTERVENOR SAMSUNG ELECTRONICS AMERICA, INC.’S MOTION TO MODIFY  
PROTECTIVE ORDER**

Intervenor Samsung Electronics America, Inc. (“SEA”) respectfully moves to modify the Stipulated Protective Order Governing Confidentiality (Dkt. 29) in order to protect its confidential documents and data.

With the exception of the following three points, SEA joins the arguments raised by Whirlpool Corporation in its Motion to Amend and the accompanying Memorandum of Points and Authorities (Dkt. 57). First, there is no need in this case for confidential non-party information to be disclosed to any in-house counsel, and such disclosure should be prohibited. Second, even if in-house counsel is permitted limited access to confidential information from non-parties, the protective order’s grant of access goes too far, and the parties have not demonstrated that designated in-house counsel are divorced from competitive decision-making. Third, the protective order should require that the parties confidentially disclose the identities of any testifying and consulting experts who gain access to confidential non-party documents or

data, and such experts should only be permitted access if they are not now, or for the next two years, consulting in other matters in this industry.

### **BACKGROUND**

SEA competes with Defendants AB Electrolux, Electrolux North America, Inc., and General Electric Company for the sale of home appliances in the United States. SEA produced confidential and competitively-sensitive information to the Department of Justice pursuant to a Civil Investigative Demand and subpoena *ad testificandum* issued during the DOJ's investigation of Electrolux's proposed acquisition of General Electric's appliance business unit. On July 24, 2015, Electrolux served a sweeping subpoena *duces tecum* on SEA seeking nearly every document relating to SEA's home appliance business, including confidential and competitively-sensitive information such as SEA's forward-looking business plans, competitive strategies, product pricing terms, customer relationships, marketing initiatives, profitability analyses, customer contracts, financial data, and operational responses to the proposed transaction at issue in this litigation, among other things. Ex. A.

Following the commencement of this action, the DOJ and Defendants negotiated a stipulated protective order, which this Court entered on July 21, 2015. Dkt. 27; Dkt. 29; Minute Order (July 21, 2015). The parties did not consult SEA regarding its contents. The protective order allows disclosure of confidential information to up to four designated in-house counsel at each of GE and Electrolux as well as to unidentified outside experts. Protective Order ¶¶ 10(f) & 10(g).

SEA immediately sought to meet and confer with Defendants regarding the scope of the protective order and its protections for non-parties. Ex. B. The parties met and conferred by phone on July 28, 2015, during which SEA identified a number of concerns with the protective

order, including the ability of in-house counsel to access SEA's confidential material and the lack of notice regarding which third-party experts received SEA's documents and data. SEA also identified concerns similar to those described in Whirlpool's Memorandum of Points and Authorities. SEA asked for a response on July 30, August 4, and August 10, 2015 (*see* Ex. C<sup>1</sup>), but Defendants did not respond to SEA's substantive issues until August 11, 2015, when they proposed an amended protective order, incorporating several changes requested by Whirlpool. Ex. D. The proposed amended protective order did not modify the provision regarding disclosure to third-party experts and did not meaningfully address SEA's concerns regarding disclosure of confidential material to in-house counsel.

### ARGUMENT

#### **A. Defendants' In-House Counsel Should Not Have Access to the Confidential Material Produced by SEA and Other Non-Parties**

Because Defendants have failed adequately to explain why their in-house counsel needs access to SEA's confidential information, disclosure to any in-house counsel is inappropriate.

In-house counsel are not entitled to a competitor's confidential information just because they need to manage litigation. *Intel Corp. v. VIA Techs., Inc.*, 198 F.R.D. 525, 529 (N.D. Cal. 2000) ("[r]equiring a party to rely on its competent outside counsel does not create an undue and unnecessary burden" (quotation marks omitted)). Indeed, access to non-party documents is far from automatic. Protective orders regularly prohibit in-house counsel from accessing any confidential information. *See United States v. US Airways Grp.*, No. 13-cv-1236 (D.D.C. Aug.

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<sup>1</sup> During the course of the parties negotiations, the Court extend the period for non-parties to file objections to the protective order until August 14, 2015. *See* Minute Order (Aug. 4, 2015).

30, 2013), Dkt. 55; *FTC v. Ardagh Grp.*, No. 13-cv-1021 (D.D.C. July 9, 2013), Dkt. 9; *United States v. Anheuser-Busch InBEV SA/NV*, No. 13-cv-127 (D.D.C. Feb. 21, 2013), Dkt. 20.

In favor of access, Defendants claim only that their in-house counsel have indispensable knowledge of the Defendant companies and are better able to communicate with business colleagues than outside counsel. *See, e.g.*, Dkt. 30-1 at 3, Dkt. 31-1 at 3; *see also* Dkt. 27 (submitting motion for protective order without argument or evidence). But they have not explained what that specialized knowledge is and why it is necessary to aid experienced outside antitrust counsel in the preparation of this case. The fact that an employee knows a lot about her company is neither remarkable nor a sufficient basis to grant access to confidential non-party information, particularly when the products at issue are not overly technical in nature. *Compare Carpenter Tech. Corp. v. Armco, Inc.*, 132 F.R.D. 24, 28 (E.D. Pa. 1990) (granting access to an in-house attorney because of technical nature of case), *with Frank Brunckhorst Co., LLC v. Ihm*, No. 11-cv-1883, 2012 WL 684760, at \*5 (S.D. Cal. Mar. 2, 2012) (denying access because no complex technical determinations required). This case concerns the sale of home appliances. No party has suggested that the factual questions here are particularly complicated. Absent a clearly articulated basis for in-house disclosure, access to SEA's confidential material is inappropriate. *New York v. Microsoft Corp.*, No. 98-cv-1233, 2002 WL 31628219, at \*2 (D.D.C. Nov. 18, 2002); *United States v. Northwest Airlines Corp.*, No. 98-cv-74611, 1999 WL 34973961, at \*5 (E.D. Mich. May 21, 1999) (requiring a particularized showing of need).

SEA, moreover, produced competitively-sensitive information to the DOJ in reliance on the strict confidentiality laws and regulations governing that agency. 15 U.S.C. § 1313; 28 C.F.R. §§ 49.1-49.4; *see also* 15 U.S.C. § 1314(g). SEA reasonably believed that no competitor would see its confidential information as a result of the production. An entity's reliance on

confidentiality protections at the time of its original production is entitled to weight when evaluating later alterations to those protections. *Microsoft*, 2002 WL 31628219, at \*2. On the other side of the ledger, two of SEA’s largest competitors voluntarily have agreed to merge, and as part of that process, seek to see SEA’s most competitively-sensitive information. A non-party competitor who is not a party to the merger should not be subject to the competitive risks inherent in producing its most secret information to competitors.

Ultimately, the Court must weigh SEA’s interest “in avoiding the inadvertent use or disclosure of their confidential information” with Defendants’ “ability to prepare and present its defense.” *FTC v. Sysco Corp.*, No. 15-cv-256, 2015 WL 1120013, at \*2 (D.D.C. Mar. 12, 2015); *see also FTC v. Exxon Corp.*, 636 F.2d 1336, 1350 (D.C. Cir. 1980) (“The issue concerns not good faith but risk of inadvertent disclosure”). Both Electrolux and GE are represented by extraordinarily competent outside counsel. There is no need here to run the risk of inadvertent use or disclosure. In-house counsel can see non-confidential material; they can communicate with outside counsel; and they can communicate with their business colleagues—all without seeing the confidential information of their non-party competitors. Indeed, SEA is not suggesting that in-house counsel be precluded from managing and participating in the litigation. It is only suggesting that there is no need for in-house counsel to see competitively-sensitive information from its competitors to do so.

**B. Electrolux and GE Fail to Demonstrate That Designated In-House Counsel Should Have Access to Confidential Non-Party Information**

For the reasons described above, SEA strongly believes that no in-house counsel should have access to confidential non-party information. Further underscoring SEA’s concerns is the fact that Defendants have failed to demonstrate that their designated in-house counsel are

divorced from competitive decision-making. *See* Protective Order, Apps. X & Y. This is particularly true for in-house antitrust lawyers, of which there are at least four in the proposed list of in-house counsel to receive access. Antitrust attorneys are involved in pricing and market discussions on a day-to-day basis. While their declarations are carefully crafted to say (1) they do not advise the businesses regarding the formulation or implementation of strategies to compete with their competitors, and (2) they are not involved in decisions regarding pricing, marketing or distribution, antitrust counsel surely advise on the *lawfulness* of strategies, pricing, marketing and distribution, and that advice is part of the competitive decision-making process.

Antitrust attorneys also analyze potential mergers and acquisitions. If either Electrolux or GE pursues another merger (together or independently), a key aspect of that work will involve analyzing SEA's competitive strengths and weaknesses as well as SEA's intentions in the relevant market. Both analyses are necessary to determine whether the potential merger would be permitted under the antitrust laws. This is true no matter who Electrolux or GE seeks to merge with, as evidenced by SEA's involuntary participation in the current litigation.

In sum, antitrust counsel are surely involved in competitive decision-making. *U.S. Steel Corp. v. United States*, 730 F.2d 1465, 1468 & n.3 (Fed. Cir. 1984) (competitive decision-making is "shorthand for a counsel's activities, association, and relationship with a client that are such as to involve counsel's advice and participation in any or all of the client's decisions (pricing, product design, etc.) made in light of similar or corresponding information about a competitor"). Documents regarding SEA's competitive strengths and forward-looking strategies are among its most sensitive information. In-house antitrust counsel should not have access to such information under any circumstances. *Sysco*, 2015 WL 1120013, at \*2 (in-house attorney

was too close to competitive decision making because his work touched on pricing as well as mergers and acquisitions).

The same currently is true for Defendants' non-antitrust attorneys. Each of their declarations is nearly identical and, like the declarations of the antitrust attorneys, carefully crafted to disclaim involvement in business decisions but not legal advice regarding those business decisions. Indeed, non-antitrust counsel may be involved in Electrolux's or GE's next merger, just as they are involved in this merger. Without some explanation of why a specific in-house lawyer needs access to competitor information, disclosure to a platoon of competitor attorneys, even non-antitrust attorneys, is inappropriate. *Northwest Airlines*, 1999 WL 34973961, at \*5; *Carpenter Tech.*, 132 F.R.D. at 28-29 (favoring single recipient because "granting two persons access to such information[] increases the risk of inadvertent disclosure of sensitive materials").

**C. The Parties Should Disclose the Identities of All Experts and Consultants With Access to Confidential Material Produced by SEA and Other Non-Parties**

The protective order permits disclosure of confidential non-party documents to testifying and consulting experts. Protective Order ¶¶ 10(b) & 10(f). The protective order does not, however, require that the parties disclose the names of the experts to whom they are distributing the confidential information. In the case of consulting experts, that means that non-parties will never learn who has access to their confidential information. Failure to disclose the names of the experts who receive SEA's competitively-sensitive information is prejudicial and requires modification of the protective order.

SEA will be seriously harmed if this data is disclosed to an expert or consultant who is adverse to SEA in other litigation or has a relationship with a competitor. Put simply, "even with

a protective order in place, the disclosure of commercially sensitive information to reliable and well-intentioned experts can be harmful.” *Grand River Enters. Six Nations, Ltd. v. King*, No. 02-cv-5068, 2009 WL 222160, at \*3 (S.D.N.Y. Jan. 30, 2009) (rejecting arguments that experts can compartmentalize confidential information); *Litton Indus., Inc. v. Chesapeake & Ohio Ry. Co.*, 129 F.R.D. 528, 531 (E.D. Wis.1990) (noting that a protective order may not sufficiently maintain the confidential nature of sensitive information and stating, “If the expert is called upon two years after this litigation to assist a potential competitor in structuring its business, will he really be able to compartmentalize all he or she has learned and not use any of the information obtained from [the producing party]?”).

To address these concerns, SEA requested a modification to the protective order that would require the parties to provide confidential advance notice of the identities of any third-party experts or consultants receiving access to a non-party’s confidential information. The non-party would then have a reasonable opportunity to object to the disclosure. *See, e.g., Gerffert Co., Inc. v. Dean*, No. 09-cv-266, 2012 WL 2054243, at \*5 (E.D.N.Y. June 6, 2012); *Rywwin v. New York Blood Ctr.*, No. 95-cv-10008, 1999 WL 435242, at \*1 (S.D.N.Y. June 25, 1999) (“[B]ecause of the possibility that plaintiffs expert may have a relationship with one of [the party]’s competitors, the defendant was entitled to notice of the identity of each expert and an opportunity to object to disclosure to that individual”); *Biovail Corp. Int’l v. Hoechst Aktiengesellschaft*, No. 98-cv-1434, 1999 WL 33454801, at \*8 (D.N.J. Nov. 12, 1999) (disclosure of proprietary information required “at a minimum . . . that each side know at least the identity of an expert before the information covered by the Protective Order is provided”); *Bank of New York v. Meridien BIAO Bank Tanzania Ltd.*, 171 F.R.D. 135, 145 (S.D.N.Y. 1997) (same); *In re Neubauer*, 173 B.R. 505, 508 (D. Md. 1994) (same).



Finally, experts should be granted access to confidential non-party documents only if they are not now, or for the next two years, consulting on other matters in this industry. *See, e.g., Prolitec Inc. v. ScentAir Techs., Inc.*, 945 F. Supp. 2d 1007, 1009 (E.D. Wis. 2013) (protective order prevented experts from working on similar patent claims for two years); *Northrop Grumman Info. Tech., Inc. v. United States*, 74 Fed. Cl. 407, 411 n.3, 415 (Fed. Cl. 2006) (protective order prevented experts from working for a competitor for two years). This restriction would mirror the language in Defendants' proposed amended protective order that prohibits disclosure of confidential information to in-house counsel unless they are not now, or for the next two years, in a position to advise their companies about business decisions. Ex. D at 14. As with in-house counsel, once information is disclosed to an expert it is "not possible . . . to 'lock-up trade secrets in [her] mind.'" *Intel*, 198 F.R.D. at 531 (quoting *Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1471 (9th Cir. 1992); *see also Northwest Airlines*, 1999 WL 34973961, at \*3 (once information is disclosed, the recipient cannot "unlearn" it); *Litton*, 129 F.R.D. at 531 (similar). Good faith and "good intentions" on the part of an expert can be "insufficient to prevent inadvertent disclosure of confidential information." *Intel*, 198 F.R.D. at 531.<sup>2</sup>

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<sup>2</sup> The new protective order paragraph would read: "Unless otherwise ordered by the Court or agreed to in writing by the non-party Protected Person, a party that seeks to disclose to a third-party expert or consultant any document, information, or other item that is Confidential Information must provide confidential written notice to the non-party Protected Person that (1) sets forth the full name of the expert and the city and state of his or her primary residence, (2) attaches a copy of the expert's current resume, including the names of any competitors of the Protected Party for whom the expert is working and any companies that currently have an adverse relationship with the Protected Person, and (3) identifies the expert's current employer(s). Seven (7) calendar days after providing notice to the non-party Protected Person, a party may disclose the Confidential Information to the identified expert(s) unless, within the seven calendar days following notice, the non-party Protected Person objects in writing. Any

## CONCLUSION

For the foregoing reasons, SEA respectfully requests that the Court grant its Motion to Modify the Protective Order and thereby (1) prevent Defendants' in-house counsel from obtaining access to confidential non-party information and (2) provide the requested order provisions relating to experts and consultants. In other respects, SEA joins Whirlpool's arguments in its Motion to Amend.

Dated: August 14, 2015

Respectfully Submitted,

By: /s/ Courtney B. Dyer

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*Counsel for Samsung Electronics America, Inc.*

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such objection must set forth in detail the grounds on which it is based. Unless the parties resolve the dispute within ten days after service of the objection, the non-party Protected Person must move the Court for a ruling if it wishes to prevent disclosure. If relief is sought, the Confidential Information may not be disclosed to the expert or consultant without the Court's approval. Any expert or consultant granted access to Confidential Information shall not, for a period of two (2) years after the receipt of the Confidential Information, perform consulting services for a competitor of the Protected Person related to the products at issue in this litigation." *See generally RR Donnelley & Sons Co. v. Xerox Corp.*, No. 12-cv-6198, 2013 WL 6696652, at \*1 (N.D. Ill. Dec. 19, 2013).

**LOCAL CIVIL RULE 7(M) CERTIFICATION**

Pursuant to Local Civ. R. 7(m), undersigned counsel has conferred with counsel for the United States and Defendants AB Electrolux, Electrolux North America, Inc., and General Electric Company in a good faith effort to determine whether they oppose the relief sought in this motion and to narrow the areas of disagreement. Plaintiff generally supports modifying the protective order to address non-party concerns, but has reserved its specific position until reviewing all non-party motions. Counsel for Defendants oppose SEA's motion.

**CERTIFICATE OF SERVICE**

I hereby certify that on August 14, 2015, a true and correct copy of the foregoing Motion to Modify the Protective Order was served on all counsel of record via ECF.

/s/ Courtney B. Dyer  
Courtney B. Dyer

# **Exhibit A**

## JONES DAY

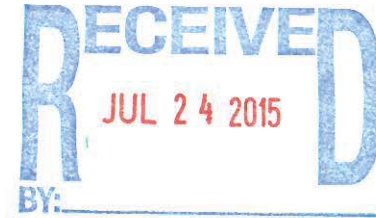
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DIRECT NUMBER: (202) 879-4676  
MRSHUMAKER@JONESDAY.COM

July 24, 2015

BY HAND

Samsung Electronics America, Inc.  
105 Challenger Road  
Ridgefield Park, NJ 07660



Re: United States v. AB Electrolux, et al., 1:15-cv-01039-EGS (D.D.C.)

Dear Samsung Electronics:

We write on behalf of AB Electrolux and Electrolux North America, Inc. ("Electrolux"), who are among the named defendants in *United States v. AB Electrolux, et al.* As you likely know, the U.S. Department of Justice ("DOJ") recently filed a complaint seeking to block Electrolux's acquisition of General Electric Company's appliance business, making General Electric Company ("GE") a co-defendant in the matter. Electrolux and GE strongly believe the acquisition will increase competition and provide our direct customers as well as consumers a greater choice of high quality products at a wider range of competitive prices. To ensure that the court has the information it needs to reach an informed decision on this point, the parties are reaching out to a number of third parties, including your company, for data and documents directly related to the allegations and defenses in the case.

Enclosed is a subpoena for certain data, documents, and information that has been served on you or your registered agent outlining the types of materials requested. The subpoena requests that all responsive material be produced by August 12, 2015. However, once you and/or your counsel have had an opportunity to review the requests, we hope to speak with you or your counsel soon after at your convenience to discuss ways in which the requests can be clarified or potentially revised to minimize the burden and expense of compliance. We are also in the process of reviewing information that the DOJ recently provided to Electrolux and GE to determine whether the enclosed requests can be narrowed further, but wanted to ensure that you received as much advance notice as possible regarding the types of information Electrolux and GE may need from you. We are happy to discuss the necessity of the information requested in the subpoena and any concerns you may have.

To protect any confidential information provided in response to these requests, the court has entered the enclosed Protective Order. This order governs all material produced in connection with the subpoena and *United States v. AB Electrolux, et al.*; as a non-party, you are

JONES DAY

Samsung Electronics America, Inc.  
July 24, 2015  
Page 2

entitled to designate certain responsive data and materials as "Confidential Information" to ensure they are protected from improper disclosure or use. We ask that you please sign and date the enclosed declaration and return it along with the responsive material.

We look forward to hearing from you or your counsel at your earliest convenience.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael R. Shumaker", written in a cursive style.

Michael R. Shumaker

Enclosures



AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

## UNITED STATES DISTRICT COURT

for the  
District of Columbia

United States

Plaintiff

v.

AB Electrolux, Electrolux North America, Inc., and  
General Electric Company

Defendant

Civil Action No. 1:15-cv-01039

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Samsung Electronics America, Inc.

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See attachment.

Place: Jones Day 51 Louisiana Avenue, NW Washington, DC 20001	Date and Time:  08/12/2015 5:30 pm
---------------------------------------------------------------------	------------------------------------------

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 07/24/2015

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) AB Electrolux and Electrolux North America, Inc., who issues or requests this subpoena, are:

Michael R. Shumaker, 51 Louisiana Avenue, NW, Washington, DC 20001, mrshumaker@jonesday.com, (202)879-4676

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 1:15-cv-01039

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_

on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:



**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**SUBPOENA ATTACHMENT**

Pursuant to Federal Rule of Civil Procedure 34 and 45, Defendants AB Electrolux, Electrolux North America, Inc. (collectively, “Electrolux”), and General Electric Company (“GE”) request that Samsung Electronics America, Inc. and its parent, Samsung Electronics, Co., Ltd. (collectively, “Samsung”), produce the documents and materials identified below to the extent that they have not already been produced to the Department of Justice pursuant to compulsory process. Please deliver the requested documents and material to the attention of Michael R. Shumaker, Esq., Jones Day, 51 Louisiana Avenue, N.W., Washington, DC, 20001 no later than 5:30 p.m. on August 12, 2015.

**REQUESTS FOR PRODUCTION**

**REQUEST NO. 1**

All documents that reflect Samsung’s business plans, strategic plans, forecasts, analyses, projections, pricing and promotional strategies related to the sale of appliances in the U.S. for the period January 1, 2012 onward.

**REQUEST NO. 2**

All documents relating to Samsung’s current and planned distribution, installation and service capabilities in the U.S. to support the sale of appliances.

**REQUEST NO. 3**

All documents relating to Samsung’s view or analysis of competition in the sale of appliances in the U.S.

**REQUEST NO. 4**

Documents sufficient to identify Samsung’s kitchen and laundry appliances offered for sale in the U.S. at any point from January 1, 2012 onward, including but not limited to appliances scheduled or otherwise expected to be introduced or offered for sale in the future.

**REQUEST NO. 5**

All documents related to any internal or external analyses or communications regarding the acquisition of GE’s appliances business by AB Electrolux.



**REQUEST NO. 6**

All documents and information provided to or received from the DOJ relating to the acquisition of GE's appliances business by AB Electrolux.

**REQUEST NO. 7**

Documents and data sufficient to show and understand (via instructions or related data dictionaries) Samsung's Sales Data for all appliances sold in the U.S., including the identity of all appliance customers to whom Samsung's appliances were sold.

**REQUEST NO. 8**

Separately by appliance category (*e.g.*, dishwasher, cooking tops, ranges, etc.), documents and data sufficient to show Samsung's aggregate sales in that category on a global basis for each of the years 2012-14 and for the first six months of 2015.

**REQUEST NO. 9**

Documents and data sufficient to show and understand (via instructions or related data dictionaries) Samsung's profitability by customer for the sale of Samsung's appliances in the U.S.

**REQUEST NO. 10**

Quarterly profit and loss statements (P&Ls) relating to the sale of Samsung's appliances in the U.S.

**REQUEST NO. 11**

All contracts and agreements with retail, builder, or contract customers relating to the purchase, sale, supply, distribution, or display of Samsung's appliances, including all documents relating to the negotiation thereof.

**REQUEST NO. 12**

All documents that reflect any requests for proposals or bids relating to all or any part of the period 2010-2017 for the sale, supply, distribution, display or purchase of Samsung's appliances in the U.S., including all related documents submitted in response to those requests for proposal or requests for bids.

**REQUEST NO. 13**

All documents and data relating to Samsung's tracking of "meeting competition" requests, "price exception requests" or similarly purposed requests for appliances sold or purchased in the U.S.

**REQUEST NO. 14**

One copy of each organizational chart for each of the company's facilities or divisions involved in or related to the manufacture, sale, distribution, and promotion of appliances for the period 2010 to the present.

**REQUEST NO. 15**

Documents sufficient to show and describe (i) Samsung's sales and service organizations for kitchen and laundry appliances, including the number and location of employees within those organizations and those employees' general duties and responsibilities, and (ii) Samsung's delivery and installation capabilities for kitchen and laundry appliances, as well as Samsung's process for delivering and installing kitchen and laundry appliances to consumers and other customers.

**REQUEST NO. 16**

All documents relating to Samsung's plans, strategies, and steps taken or proposed or considered to be taken to develop, grow, or increase its sales of appliances to the contract channel.

**REQUEST NO. 17**

Documents sufficient to show the trade, home, or appliances shows that Samsung attended or participated in since January 1, 2010 in connection with its appliance business and all presentations or handouts used by Samsung at those shows.

**REQUEST NO. 18**

All documents relating to Samsung's plans, strategies and steps taken or proposed or considered to be taken to develop, grow, or increase its capability to sell, market, or otherwise distribute cooking appliances in the U.S.

**REQUEST NO. 19**

All documents that identify retailers and other distributors that Samsung has targeted or upon which it has focused to sell, supply, or distribute its appliances for resale to the contract channel, and all documents relating to Samsung's efforts to sell, supply, or distribute its appliances in such channel.

**REQUEST NO. 20**

Documents sufficient to identify the entities or individuals with whom Samsung has a contract manufacturing relationship for appliances and all related contracts and agreements.

**REQUEST NO. 21**

Documents sufficient to show the location of all warehouses, call centers and related IT connectivity used by Samsung in the sale, supply, and distribution of appliances to U.S. customers.

**REQUEST NO. 22**

All documents relating to Samsung's efforts to increase its presence or other capabilities in any retailer in connection with appliances since January 1, 2010, including but not limited to any store-within-a-store program or efforts.

**REQUEST NO. 23**

Documents and data sufficient to show Samsung's estimates of capacity, capacity utilization, and excess (unutilized) capacity by manufacturing facility (located in the U.S. and worldwide), separately by appliance category.

**DEFINITIONS**

Unless the context indicates otherwise, the following definitions shall apply to these requests:

1. "AB Electrolux" (or "Electrolux") means AB Electrolux, and its predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents and representatives.
2. "All" (or "all") and "Each" (or "each"), as used herein, shall be construed as all and each.
3. "And" ("and") and "Or" ("or"), as used herein, shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed outside of its scope.
4. "Any" (or "any"), as used herein, means each and every.
5. "Appliances" (or "appliances") or "Appliance" (or "appliance") means all ranges, wall ovens, cook tops, refrigerators, dishwashers, clothes washers, clothes dryers, and freezers.



6. “Appliance Supplier” (or “appliance supplier”) means any person, company, or entity that manufactures appliances or owns an appliance brand.

7. “Bid” (or “bid”) means a proposal or offer to sell, supply, or purchase any relevant appliance product in a competitive commercial process.

8. “Builder or Contract Customer” means a professional builder or commercial customer who buys appliances for use in the Contract Channel; not a retail customer or individual residential end-user customer.

9. “Communication” (or “communication”), as used herein, means all modes of conveying information, including but not limited to telephone calls, e-mails and all other forms of electronic communication and electronic messaging, letters, conversations, interviews, meetings, hearings, and other written, electronic or spoken language or graphics between two or more persons, however transmitted or stored.

10. “Concerning” (or “concerning”), “Related to” (or “related to”), and “Regarding” (or “regarding”), as used herein, mean analyzing, alluding to, concerning, considering, commenting on, consulting, comprising, containing, describing, dealing with, evidencing, identifying, involving, reporting on, relating to, reflecting, referring to, regarding, studying, mentioning, or pertaining to, in whole or in part.

11. “Contract Channel” means the sale of Appliances to, or use of Appliances by, single-family and multi-family homebuilders, distributors (whether officially authorized or not), property managers of apartment and condominium buildings, hotels/motels, manufactured housing, and governmental entities.

12. “Cooking Appliances” (or “cooking appliances”) means ranges, wall ovens and cook tops.

13. “Document” (or “documents”) is defined as broadly as that term is construed under Rule 34 of the Federal Rules of Civil Procedure, and is meant to include, but is not limited to, all tangible and intangible modes of communicating, conveying or providing any information such as writings, correspondence, communications, notes, letters, memoranda, drawings, graphs, charts, photographs, discs, computer recordings, electronic mail, spreadsheets, data, databases, and any other data compilations from which information can be obtained.

14. “DOJ” means the Department of Justice, its employees, attorneys, accountants, economists, staff, consultants, experts, agents, and representatives, and specifically includes any third party representative or agent, wherever located, acting or purporting to act on behalf of or assisting the DOJ.

15. “General Electric Company” (or “GE”) means General Electric Company, and its predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents and representatives, including GE’s appliances business.

16. “Kitchen and Laundry Appliances” (or “kitchen and laundry appliances”) means ranges, wall ovens, cook tops, refrigerators, dishwashers, clothes washers, and clothes dryers.

17. “Person” (or “person”) means any natural person, corporation, association, organization, firm, company, partnership, joint venture, trust, estate, or other legal or governmental entity (*e.g.*, the U.S. Department of Justice, a state Department of Insurance, a state Attorney General, etc.), whether or not possessing a separate juristic existence.

18. “Pro Business” or “Contractor Business” means a retailers’ business unit, section or division that sells Appliances to builders and/or distributors and not to retail customers or individual residential end-users.

19. “Sales Data” means information that reflects all transactions for the sale of

appliances to your customers.

20. “Samsung” means Samsung Electronics America, Inc., its parent, Samsung Electronics, Co., Ltd., and all of its predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents and representatives, including Samsung’s appliances business and brands.

21. “SKU scanner data” or “SKU scanner-level data” means data or information that reflects the unique identifier, code, or stock keeping unit type, used to record and track specific products in inventory.

22. “Third party” (or “third party”) means any person other than DOJ, Electrolux, and GE, including but not limited to the Federal Trade Commission and Congress.

23. “This Litigation” means *United States of America v. AB Electrolux et al.*, No. 15-cv-01039 (D. D.C. July 1, 2015).

24. “Transaction” (or “transaction”), as used herein, means the proposed acquisition of GE’s appliances business by Electrolux.

25. “You” (or “you”) or “Yours” (or “yours”) means Samsung Electronics America, Inc., and its parent, Samsung Electronics, Co., Ltd., their managers, employees, attorneys, accountants, economists, staff, consultants, experts, agents, and representatives, and specifically includes any third party representative or agent, wherever located, acting or purporting to act on behalf of Samsung Electronics America, Inc. or Samsung Electronics, Co., Ltd.

### **INSTRUCTIONS**

1. Provide all responsive Documents in your possession, custody, or control or in the possession, custody or control of your representatives and agents.

2. Unless otherwise stated, the relevant time period for the requests is January 1,



2005 through the present.

3. If you do not produce certain documents or material because they were previously produced to the Department of Justice pursuant to compulsory process, please provide the Bates numbers or other identifying information for such materials.

4. For each request, you are to produce entire documents including all attachments, enclosures, cover letters, memoranda and appendices. Copies that differ in any respect from an original (because, by way of example only, handwritten or printed notations have been added) shall be treated as separate documents and produced separately. Each draft of a document is a separate document. A request for a document shall be deemed to include a request for any and all transmittal sheets, cover letters, exhibits, enclosures or attachments to the document, in addition to the document itself. For those documents written in a language other than English, please translate the document into English, and produce the foreign language document, with the English translation attached thereto.

5. Provide all electronically stored information ("ESI") in standard, single-page Group IV TIFF format with searchable text and metadata in a Concordance or similar load file. Also, provide any spreadsheet or presentation files, including Microsoft Access, Excel, and PowerPoint files, as well as audio, audiovisual, and video files, in their native formats. Provide all hard copy documents as image files with searchable OCR text and unitize the hard copy documents to the extent possible (i.e., multi-page documents shall be produced as a single document and not as several single-page documents). Hard copy documents shall be produced as they are kept, reflecting attachment relationships between documents and information about the file folders within which the document is found. Produce the metadata for any responsive ESI with the responsive data, including the following fields: custodian, author(s), recipient(s), copy

recipient(s), blind copy recipient(s), subject, file sent date/time, file creation date/time, file modification date/time, file last accessed data/time, beginning bates, ending bates, parent beginning bates, attachment(s) beginning bates, hash value, application type, file type, file name, file size, file path, and folder path. Documents produced in native format shall be accompanied by a native link field.

6. With regard to “Sales Data,” please provide SKU-level data by customer and date (month/year) that reflects all sales transactions for appliances for the relevant time period. If available, please also provide: (a) the customer name and address; (b) customer type classification (*e.g.*, retail, single-family builder, distributor, etc.); (c) SKU product description, brand, production date/model; (d) OEM, if different from Samsung; (e) appliance sub-type (*e.g.*, top-mount refrigerator, gas cook top, front loading washer, etc.); (f) number of units sold; (g) gross sales amount by unit in dollars; (h) any rebates, bonuses or incentive payments, discounts or deductions applied; (i) net sales amount by unit in dollars; (j) any freight or delivery charges paid by the customer; (k) ship-to location of delivery to the customer.

7. Where a claim of privilege or other protection from discovery is asserted in objecting to any request or sub-part thereof, and any document is withheld (in whole or in part) on the basis of such assertion, you shall provide a log (“Privilege Log”) in Microsoft Excel format that identifies where available:

- (a) The nature of the privilege or protection from discovery (including but not limited to attorney-client, work product, and deliberative process) that is being claimed with respect to each document;
- (b) The type of each document;
- (c) The date of each document;
- (d) The author of each document;
- (e) The addresses and recipients of each document (including those recipients

cc-ed or bcc-ed);

- (f) A description of each document containing sufficient information to identify the general subject matter of the document and to enable Defendants to assess the applicability of the privilege or protection claimed; and
- (g) The identity of and any production Bates number assigned to any attachment(s), enclosure(s), cover letter(s), or cover email(s) of each document, including the information outlined in subsections (a) through (g) above for each such attachment, enclosure, cover letter, or cover email.

Attachments, enclosures, cover letters, and cover emails shall be entered separately on the Privilege Log. The Privilege Log shall include the full name, title, and employer of each author, addressee, and recipient, denoting each attorney with the letters "ESQ." Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments, enclosures, cover letters, and cover emails) for which a claim of privilege is asserted, noting where redactions to the document have been made.

8. If you assert that part of the request is objectionable, respond to the remaining parts of the request to which you do not object. For those portions of any document request to which you object, please state the reasons for such objection and describe the documents or categories of documents that are not being produced.

9. These document requests shall not be deemed to call for identical copies of documents. "Identical" means precisely the same in all respects; for example, a document with handwritten notes or editing marks shall not be deemed identical to one without such notes or marks.

10. The documents responsive to these requests are to be produced as they were kept in the ordinary course of business and are to be labeled in such a way as to show which files and offices they came from.

11. The specificity of any single request shall not limit the generality of any other request.



12. Unless clearly indicated otherwise: (a) the use of a verb in any tense shall be construed as the use of that verb in all other tenses; (b) the use of the feminine, masculine, or neuter genders shall include all genders; and (c) the singular form of a word shall include the plural and vice versa.

13. These requests are continuing in nature, and you must supplement your responses pursuant to Federal Rule of Civil Procedure 26(e). Defendants specifically reserve the right to seek supplementary responses and the additional supplementary production of documents before trial.

DECLARATION OF CUSTODIAN  
OF RECORDS TO  
ACCOMPANY COPIES OF RECORDS

STATE OF \_\_\_\_\_ ) UNITED STATES V. AB ELECTROLUX, ET AL.,  
 ) Master File No. U.S. D. C. District of Columbia:  
COUNTY OF \_\_\_\_\_ ) 15-cv-01039  
Honorable Emmet G. Sullivan

I, \_\_\_\_\_, depose and say as follows:

- Initial: \_\_\_\_\_
1. I am the duly authorized Records Custodian for  
(\_\_\_\_\_) and have the authority to certify the Records  
attached hereto, if any, and I certify as follows:
  - \_\_\_\_\_ 2. The copies or originals of the Records attached to this Declaration are  
true and correct, and include all data, electronically-stored documents  
and other documents and information responsive to the Subpoena  
Duces Tecum, dated (\_\_\_\_); **and**
  - \_\_\_\_\_ 3. That the Records were prepared by the personnel of this business, or  
persons acting under their control, in the ordinary course of business at  
or near the time of the act, condition or event.

**OR**

- \_\_\_\_\_ 4. (\_\_\_\_\_) has none of the Records described in paragraph  
2 above.
- \_\_\_\_\_ A. Responsive Records were destroyed \_\_\_\_\_(date) in accord with  
our document retention policy. Records are discarded after \_\_\_\_ years.
- \_\_\_\_\_ B. No responsive documents exist.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: \_\_\_\_\_, 2015.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

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

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

AB ELECTROLUX,

ELECTROLUX NORTH AMERICA, INC.,

and

GENERAL ELECTRIC COMPANY,

*Defendants.*

Case No. 1:15-cv-01039-EGS

**STIPULATED PROTECTIVE ORDER REGARDING CONFIDENTIALITY**

In the interests of facilitating discovery by the parties litigating this Action and of protecting the parties' and non-parties' Confidential Information from improper disclosure or use, Plaintiff United States and Defendants AB Electrolux, Electrolux North America, Inc., and General Electric Company (collectively, "parties") have agreed to provide access to and accept such Confidential Information subject to the provisions set forth below. Upon good cause having been shown, the Court ORDERS, pursuant to Federal Rule of Civil Procedure 26(c)(1)(G), as follows:

**I. DEFINITIONS**

1. As used in this Order:

(a) "Action" means the above-captioned action pending in this Court, including any pretrial, trial, or post-trial proceedings.

(b) “Confidential Information” means the portions of any Investigation Materials, or any other document, information, or transcript of testimony that contain any trade secret or other confidential research, development, or commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(1)(G).

(c) “Defendants” means AB Electrolux and Electrolux North America, Inc. (collectively “Electrolux”) and the General Electric Company, their divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents (including counsel), and representatives of the foregoing.

(d) “Disclosed” means shown, divulged, revealed, produced, described, transmitted, or otherwise communicated, in whole or in part.

(e) “Document” means documents or electronically stored information as defined in Fed. R. Civ. P. 34(a).

(f) “Investigation” means the Department of Justice’s or Defendants’ inquiry into the competitive effects of the proposed acquisition by Electrolux of General Electric’s appliance business.

(g) “Investigation Materials” means (a) all documents, data, information, or transcripts of testimony that (i) any non-party provided to any party either voluntarily or under compulsory process preceding the filing of this action in the course of the parties’ inquiries into the competitive effects of the proposed acquisition or (ii) any party provided to any non-party preceding the filing of this action in the course of the parties’ inquiries into the competitive effects of the proposed acquisition; and (b) any witness statements, including affidavits, transcripts, or letters, whether in hard-copy or electronic form, sent or received by any party including its counsel to or from any non-party including its counsel, preceding the filing of this



action in the course of the parties' inquiries into the competitive effects of the proposed acquisition.

(h) "Party" means Plaintiff or any Defendant. "Parties" means Plaintiff and all Defendants.

(i) "Person" means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or trust.

(j) "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.

(k) "Protected Person" means any person (including a party) that has provided Investigation Materials or that, voluntarily or under compulsory process, provides any documents, information, or testimony in this Action.

## **II. DESIGNATION OF CONFIDENTIAL INFORMATION**

2. Any Investigation Materials submitted by a Protected Person during the Investigation that are entitled to confidentiality under the Antitrust Civil Process Act, 15 U.S.C. § 1313(c)(3), the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a(h), or any other federal or state statute, regulation, interpretation, or precedent concerning documents in the possession of Plaintiff, and any information taken from any portion of such document, shall be treated as "Confidential Information" that is limited to "outside counsel eyes only" until Defendants' in-house counsel satisfy Paragraph 10(g), and then access shall be limited only to that in-house counsel under the terms of Paragraph 10(g).

3. Within 2 business days after the Court's entry of this Order, the applicable party shall send by email, facsimile, or overnight delivery a copy of this Order, along with any exhibits



and appendices, to each non-party Protected Person (or, if represented by counsel, the Protected Person's counsel) that provided Investigation Materials. Any of the foregoing acts constitute notice of this Order to a Protected Person. If a non-party Protected Person determines that this Order does not adequately protect its confidential Investigation Materials, it may, after meeting and conferring with the parties and within 10 days after receipt of a copy of this Order, seek additional relief from the Court.

4. A Protected Person may designate as "Confidential Information" any document, information, or transcript of testimony that it provides to any party during this Action, to the extent such information constitutes Confidential Information as defined in Paragraph 1(b) 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 any document, information, or transcript of testimony not designated as Confidential Information will not be deemed a waiver of any future designation of such document, information, or transcript of testimony as Confidential Information. But any such subsequent designation will not retroactively prohibit the prior disclosure of any document, information, or transcript of testimony for which disclosure was proper when made.

5. Designation as Confidential Information of any document, information, or transcript of testimony produced during this Action is governed as follows:

(a) After this Order is entered, whenever discovery is sought by subpoena from a non-party in this Action, 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 Confidential Information in their entirety for 10 days after the date a copy of the final transcript has been made available to the deponent (or the deponent's counsel) for

review. If the final transcript is not otherwise provided to the deponent (or the deponent's counsel), then the party that noticed the deposition shall provide the final transcript to the deponent or the deponent's counsel within three days of receipt. At any time during the 10-day period following receipt of the final transcript, each Protected Person may designate any portion of testimony or any deposition exhibits produced by the deponent or the deponent's employer as Confidential Information. Such designations (with reference to page(s) and line(s) of the final transcript) must be provided in writing by the person making such designations to both Plaintiff's and Defendants' counsel. When a deponent's testimony discloses information contained in any exhibit designated by a different Protected Person as Confidential Information, all parties, and the deponent and his or her counsel, shall treat the exhibit and all testimony related to such an exhibit in accordance with the exhibit's confidential designation until 10 days after the party that noticed the deposition provides to the Protected Person who so designated the exhibit each portion of the transcript relating to the exhibit, during which time that Protected Person may designate those portions of the transcript as Confidential Information.

(c) A Protected Person that designates as Confidential Information any document produced in this Action after entry of this Order must stamp or label each page of each document containing Confidential Information with the designation "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER IN CASE NO. 15-1039-EGS (D.D.C.)." Where Confidential Information is produced in electronic format on a disk or other medium that contains exclusively Confidential Information, the "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER IN CASE NO. 15-1039-EGS (D.D.C.)." designation may be placed on the disk or other medium.

6. If a Protected Person inadvertently fails to designate as Confidential Information any document, information, or transcript of testimony, 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. No prior disclosure of newly designated Confidential Information shall violate this Order, and the parties have no obligations regarding such prior disclosures.

7. The parties will comply with Federal Rule of Civil Procedure 26(b)(5)(B) and any other applicable rules or orders.

8. If a party receives from a Protected Person a confidentiality waiver to allow a deponent that is not related to the waiving Protected Person to be questioned on any document, information, or transcript of testimony that would otherwise be Confidential Information that would not be permitted to be disclosed to the deponent, that waiver (including identification of the specific Confidential Information to which it pertains) must be disclosed by the party receiving the confidentiality waiver to counsel for all other parties as soon as practical, but no later than 24 hours before that witness's deposition. And if a party waives confidentiality of its own Confidential Information to allow a deponent that is not related to the party to be questioned on information that would otherwise be Confidential Information that would not be permitted to be disclosed to the deponent, that waiver (including identification of the specific Confidential Information to which it pertains) must be disclosed by the waiving party to counsel for all other parties as soon as practical, but no later than 24 hours before that witness's deposition.

### **III. PROCEDURE FOR CHALLENGE OF DESIGNATION OF CONFIDENTIAL INFORMATION**

9. Any party that objects to the designation as Confidential Information of any document, information, or transcript of testimony that it intends to disclose to a deponent, file



with the Court, or use at trial, shall notify the Protected Person in writing, copying all parties, identifying the specific document, information, or transcript of testimony they believe should not be designated as Confidential Information and the basis for their belief. Thereafter, within 3 business days the party objecting to the designation shall attempt to confer with the Protected Person by telephone to discuss their respective positions. Unless the Protected Person withdraws the designation(s) objected to, the Protected Person shall then have 5 business days from receipt of the written objection to any of its designation(s) of Confidential Information to file a motion seeking an order upholding the designation(s). The burden of proving that any designation is proper under Fed. R. Civ. P. 26(c)(1)(G) shall be upon the Protected Person seeking to uphold the designation. If a motion is filed, or if the parties have been notified that the Protected Person intends to file a motion, the parties shall continue to treat the designated Confidential Information at issue as Confidential Information at least until a ruling on the motion and afterward if the motion is granted. If the Protected Person does not seek an order within 5 business days of receiving the written objection to the designation(s), or if the Court determines the designation of Confidential Information to have been inappropriate, the challenged designation(s) shall no longer have any effect.

#### **IV. SCOPE OF DISCLOSURE OF CONFIDENTIAL INFORMATION**

10. Except as authorized by this Order, all documents, information, or transcripts of testimony 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 Action or otherwise assist in its work (including testifying or consulting experts and their support staff);

(c) outside counsel acting for Defendants in this Action, that counsel's employees, and independent contractors who are not employees of any Defendant, assisting such outside counsel in the defense of this Action;

(d) authors, addressees, and recipients of any particular document, information, or transcript of testimony designated as Confidential Information solely to the extent that they have previously had lawful access to the particular document, information, or transcript of testimony disclosed or to be disclosed;

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

(f) testifying or consulting experts who are not otherwise consultants to or employees of Defendants, retained by a party to assist in the prosecution or defense of this

Action, including employees of the firm with which the expert or consultant is associated or independent contractors who are not employees of any Defendants, who are necessary to assist the expert's work in this action; and

(g) Defendants' in-house counsel who are not positioned to advise the client about business decisions that the client would make regarding, for example, pricing, marketing, distribution, or product design issues. These counsel may access Confidential Information only in person at the offices of their outside counsel, or using a secure electronic data room or document review platform using individual login identifications and passwords. Defendants each may have no more than 4 in-house counsel with access to Confidential Information.

In-house counsel for the Electrolux defendants are named in Appendix X and in-house counsel for GE are named in Appendix Y. Each of the in-house counsel listed in Appendices X and Y will file a declaration that Defendants believe is sufficient to show that the in-house counsel satisfies the requirements of this Paragraph. The United States has 4 days from the date the declarations are filed to object to any in-house counsel listed in Appendices X and Y having access to Confidential Information. If the United States does not object, Defendants shall serve on all Protected Persons (1) a notice that names the in-house counsel and informs the Protected Persons that the named in-house counsel may have access to Confidential Information, and (2) copies of the declarations. In-house counsel shall not receive access to Confidential Information earlier than 12 days after Defendants serve notice to Protected Persons absent express written consent of the United States and the Protected Person. If the United States objects during the 4-day period, or a Protected Person objects during the subsequent 12-day period, to an in-house counsel having access to its Confidential Information, then that in-house counsel may not access that Protected Person's Confidential Information until all applicable objections are resolved.



11. Before any information designated as Confidential Information may be disclosed to any person described in Paragraphs 10(f) or (g) 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 shall have executed the agreement attached as Appendix A. Counsel for the party making the disclosure must retain a copy of such executed agreement for a period of at least one year following the final resolution of this Action. Each person described in Paragraph 10 of this Order to whom information designated as Confidential Information is disclosed must not disclose that Confidential Information to any other person, except as provided in this Order.

12. Nothing in this Order:

(a) subject to the notice requirement in Paragraph 8 in the case of a Party, limits a Protected Person's use or disclosure of its own documents, information, or transcripts of testimony designated as Confidential Information;

(b) prevents disclosure of Confidential Information by any party to any current employee of the Protected Person that designated the Confidential Information;

(c) subject to the notice requirements in Paragraph 8, prevents disclosure of Confidential Information by any party with the consent of the person that designated the Confidential Information;

(d) prevents disclosure by a party of Confidential Information that (i) has become publicly known through no fault of that party; (ii) was lawfully acquired or known to that party independently of receipt in discovery in this Action; (iii) was previously disclosed or provided to that party without an obligation of confidentiality and not by inadvertence or mistake; or (iv) pursuant to an order of a Court or as may be required by law; or

(e) prevents Plaintiff from disclosing Confidential Information, subject to taking appropriate steps to preserve its further confidentiality, (i) to secure compliance with a Final Judgment that is entered in this Action; or (ii) for law-enforcement purposes, including in the course of any such proceedings in which Plaintiff is a party; or (iii) as otherwise required by law.

#### **V. DISCLOSURE OF CONFIDENTIAL INFORMATION IN THIS ACTION**

13. If any document, information, or transcript of testimony designated under this Order as Confidential Information is included in any pleading, motion, non-trial exhibit, or other paper to be filed with the Court, the party seeking to file such designated Confidential Information shall follow the procedures set forth in Local Rule 5.1(h) if the Confidential Information was initially produced by it, or in the applicable following ways when the Confidential Information, such as non-party Investigation Materials or non-party productions in this action, was not initially produced by the party filing it under seal:

(a) If a party files under seal with the Court any Confidential Information produced initially by a non-party, the filing party shall notify the non-party of that filing (and what Confidential Information produced by that non-party was included in the filing) within one day after the filing. After receiving such notice, the non-party shall file a motion within seven days if it seeks to maintain sealing of its Confidential Information, which will remain sealed at least until the latter of the expiration of seven days or the resolution of any timely filed motion. In addition, parties shall provide a non-party Protected Person at least 24-hours notice before any pretrial court hearings or other court proceedings during which a non-party Protected Person's Confidential Information may be publicly disclosed. Nothing in this Order shall restrict any



person from challenging the sealing of any designated Confidential Information filed under seal to the extent such person is otherwise entitled to such challenge.

(b) If a party files under seal with the Court any Confidential Information produced by another party, the party that produced the sealed Confidential Information shall file a motion within three days if it seeks to maintain sealing of its Confidential Information, which will remain sealed at least until the latter of the expiration of three days or the resolution of any timely filed motion.

14. Disclosure at trial of documents, information, and testimony designated as Confidential Information will be governed pursuant to Court order. The parties shall meet and confer and submit a recommended order no later than 30 days before trial outlining those procedures. Absent a ruling by the Court to the contrary, any document, information, or transcript of testimony designated as Confidential Information by a Protected Person that appears on an exhibit list or in deposition designations, that is admitted into evidence at trial, will be disclosed on the public record, and any examination relating to such information will likewise be disclosed on the public record, after compliance processes established by this Court.

15. All Confidential Information produced by a Protected Person shall be used solely for purposes of this Action and shall not be used for any business, commercial, competitive, personal, or other purpose.

## **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 or after all appeals, if any, have been exhausted, all persons having received information designated as 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. Counsel for the parties will be entitled to retain court papers, deposition and trial transcripts and exhibits, expert reports and supporting documents, and work product (including compilations of documents), provided that Plaintiff's employees and Defendants' counsel and such counsel's employees do not disclose such materials to any person except pursuant to the terms of this Order or other Court order, or pursuant to written agreement with the Protected Person that produced the information designated as Confidential Information. All 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 restricts the rights of the Plaintiff under this Order to retain and use Confidential Information for law-enforcement purposes or as otherwise required by law.

17. This Order shall be binding on the parties to this Action, their attorneys, and their successors, personal representatives, administrators, assigns, parents, subsidiaries, divisions, affiliates, employees, agents, retained consultants and experts, and any persons or organizations over which they have direct control. The obligations imposed by this Order survive the termination of this litigation unless the Court, which shall retain jurisdiction to resolve any disputes arising out of this Order, orders otherwise.

## **VII. RIGHT TO SEEK MODIFICATION OF THIS ORDER**

18. 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.

Dated: July 16, 2015

Respectfully submitted,

/s/ Ethan C. Glass

Ethan C. Glass (D.D.C. Bar #MI0018)  
U.S. Department of Justice  
Antitrust Division, Litigation III Section  
450 Fifth Street, NW #4000  
Washington, D.C. 20530  
Telephone: (202) 305-1489  
Facsimile: (202) 514-7308  
ethan.glass@usdoj.gov

*Counsel for Plaintiff United States of America*

/s/ John M. Majoras

John M. Majoras (DDC No. 474267)  
Joe Sims (DDC No. 962050)  
Michael R. Shumaker (*admitted pro hac vice*)  
JONES DAY  
51 Louisiana Avenue, NW  
Washington, DC 20001  
Telephone: (202) 879-3939  
Facsimile: (202) 626-1700  
jmmajoras@jonesday.com  
jsims@jonesday.com  
mrshumaker@jonesday.com

Daniel E. Reidy (*admitted pro hac vice*)  
Paula W. Render (*admitted pro hac vice*)  
JONES DAY  
77 West Wacker Drive  
Chicago, IL 60601-1692  
Telephone: (312) 782-3939  
Facsimile: (312) 782-8585  
dereidy@jonesday.com  
prender@jonesday.com

Thomas Demitrack (*admitted pro hac vice*)  
JONES DAY  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114-1190  
Telephone: (216) 586-3939  
Facsimile: (216) 579-0212  
tdemitrack@jonesday.com

*Counsel for Defendants AB Electrolux and  
Electrolux North America, Inc.*

/s/ Paul H. Friedman

Paul T. Denis (DDC No. 437040)  
Paul H. Friedman (DDC No. 290635)  
Michael G. Cowie (DDC No. 432338)  
DECHERT LLP  
1900 K Street NW  
Washington, DC. 20006

Telephone: (202) 261-3300  
Facsimile: (202) 261-3333  
paul.denis@dechert.com  
paul.friedman@dechert.com  
mike.cowie@dechert.com

*Counsel for Defendant General Electric  
Company*

\* \* \*

IT IS SO ORDERED.

DATED: July \_\_\_\_\_, 2015

---

EMMET G. SULLIVAN  
UNITED STATES DISTRICT JUDGE



**APPENDIX A**  
**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

AB ELECTROLUX,

ELECTROLUX NORTH AMERICA, INC.,

and

GENERAL ELECTRIC COMPANY,

*Defendants.*

Case No. 1:15-cv-01039-EGS

**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\_\_.

Signed: \_\_\_\_\_

**APPENDIX Y**

**PARAGRAPH 10(G): IN-HOUSE COUNSEL AT GENERAL ELECTRIC**

BRADFORD A. BERENSON

AIMEE IMUNDO

SHARIS A. POZEN

ROLAND G. SCHROEDER

# **Exhibit B**

---

**From:** Friedman, Paul <paul.friedman@dechert.com>  
**Sent:** Monday, July 27, 2015 2:57 PM  
**To:** Antalics, Michael E.  
**Subject:** RE: Meet and confer

Mike,

Let's go with 1.

I will send you an invite.

Paul H. Friedman

Dechert LLP  
1900 K Street NW  
Washington, DC 20006  
+1 202 261 3398 Direct  
+1 202 261 3098 Fax  
+1 202 494 2263 Mobile  
[paul.friedman@dechert.com](mailto:paul.friedman@dechert.com)  
dechert.com

-----Original Message-----

From: Antalics, Michael E. [<mailto:mantalics@omm.com>]  
Sent: Monday, July 27, 2015 2:08 PM  
To: Friedman, Paul  
Subject: Meet and confer

Paul,

Thanks for your message. How about 1:00 or 3:00 tomorrow afternoon?

Mike

\*\*\*\*\*

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# **Exhibit C**

---

**From:** Antalics, Michael E.  
**Sent:** Monday, August 10, 2015 1:19 PM  
**To:** Friedman, Paul  
**Cc:** mrshumaker@jonesday.com; Falls, Craig  
**Subject:** RE: Protective Order issues

Paul and Mike,

Do you have responses yet to the concerns we raised in our July 28 meet and confer?

Thanks.

Mike

Michael E. Antalics  
O'Melveny & Myers LLP  
1625 Eye Street, N.W.  
Washington, D.C. 20006  
(202) 383-5343  
[mantalics@omm.com](mailto:mantalics@omm.com)

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-----Original Message-----

From: Friedman, Paul [<mailto:paul.friedman@dechert.com>]  
Sent: Wednesday, August 05, 2015 7:48 AM  
To: Antalics, Michael E.  
Cc: Friedman, Paul; [mrshumaker@jonesday.com](mailto:mrshumaker@jonesday.com); Falls, Craig  
Subject: Re: Protective Order issues

Mike:

The judge issued an order on Friday and clarified it yesterday setting a deadline of August 14<x-apple-data-detectors://0> for 3rd parties like Samsung to intervene to seek further protection.  
We hope to send you a proposed amended protective order shortly.

Best,  
Paul

Sent from my iPad  
Paul H. Friedman  
Dechert LLP  
1900 K Street NW

Washington, DC. 20006  
+1 202 261 3398 Direct  
+1 202 494 2263 Mobile  
[paul.friedman@dechert.com](mailto:paul.friedman@dechert.com)<<mailto:paul.friedman@dechert.com>>  
dechert.com<<http://dechert.com>>

On Aug 4, 2015, at 5:23 PM, Antalics, Michael E. <[mantalics@omm.com](mailto:mantalics@omm.com)<<mailto:mantalics@omm.com>>> wrote:

Paul and Mike,

We still have not heard a new proposal from you, and the extension until Friday is fast approaching. Will you agree not to make an untimely objection to the court within five business days after you provide us with your final proposal so that we have time to consider it and prepare, if necessary, to seek judicial relief?

Thanks.

Mike

-----Original Message-----

From: Friedman, Paul [<mailto:paul.friedman@dechert.com>]  
Sent: Friday, July 31, 2015 7:09 AM  
To: Antalics, Michael E.  
Cc: Friedman, Paul; [mrshumaker@jonesday.com](mailto:mrshumaker@jonesday.com)<<mailto:mrshumaker@jonesday.com>>  
Subject: Re: Protective Order issues

Mike

We would not object to a motion by your client for an extension to next Friday<x-apple-data-detectors://7> to object to the adequacy of the Protective Order so that we could have more time for our discussions.

Paul

Sent from my iPad  
Paul H. Friedman  
Dechert LLP  
1900 K Street NW  
Washington, DC. 20006  
+1 202 261 3398 Direct  
+1 202 494 2263 Mobile  
[paul.friedman@dechert.com](mailto:paul.friedman@dechert.com)<<mailto:paul.friedman@dechert.com>><<mailto:paul.friedman@dechert.com>>  
dechert.com<<http://dechert.com>><<http://dechert.com>>

On Jul 30, 2015, at 11:21 AM, Antalics, Michael E.  
<[mantalics@omm.com](mailto:mantalics@omm.com)<<mailto:mantalics@omm.com>><<mailto:mantalics@omm.com>>> wrote:

Paul and Mike,

Can we get (1) your responses to the substantive issues we raised in our Tuesday meet and confer and, importantly, (2) your response to our request that you not object to an untimely objection to the court within five business days after you get back to us on the substantive issues.

Thanks.

Mike

\*\*\*\*\*

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# **Exhibit D**

---

**From:** Antalics, Michael E.  
**Sent:** Tuesday, August 11, 2015 3:50 PM  
**To:** Schaeffer, Scott  
**Subject:** FW: Fw: Protective Order issues  
**Attachments:** Original PO vs proposed.pdf

**From:** Paula Render [mailto:[prender@JonesDay.com](mailto:prender@JonesDay.com)]  
**Sent:** Tuesday, August 11, 2015 3:46 PM  
**To:** Antalics, Michael E.  
**Cc:** Michael R. Shumaker; Thomas Demitrack; [paul.friedman@dechert.com](mailto:paul.friedman@dechert.com); [craig.falls@dechert.com](mailto:craig.falls@dechert.com)  
**Subject:** Re: Fw: Protective Order issues

Mike:

You have spoken with my partner Mike Shumaker about the Electrolux/GE protective order and the subpoena we served on Samsung. We received Samsung's objections to the scope of the subpoena, and Mike will be in touch regarding those objections. In the meantime, I am providing you with a version of the protective order that Defendants intend to propose to the Court to provide additional safeguards to third party information. We also propose to have the in-house counsel designees file new declarations making it clear that they are not involved in competitive decision-making for any Electrolux or GE business worldwide and that they will not do so for two years.

We would like to speak with you at your earliest convenience to understand if this addresses Samsung's concerns regarding the protective order. Please let me know some times that work for you.

Thank you,

Paula Render

Paula W. Render ([bio](#))  
Partner  
[JONES DAY® - One Firm Worldwide<sup>SM</sup>](#)  
77 West Wacker Drive  
Chicago, IL 60601  
1.312.269.1555  
[prender@jonesday.com](mailto:prender@jonesday.com)

**From:** Michael R. Shumaker/JonesDay  
**To:** Paula Render/JonesDay@JonesDay,  
**Date:** 08/10/2015 01:33 PM  
**Subject:** Fw: Protective Order issues

---

Paula, see below.

Michael R. Shumaker ([bio](#))  
Partner  
[JONES DAY® - One Firm Worldwide<sup>SM</sup>](#)  
51 Louisiana Avenue, NW  
Washington DC 20001-2113  
Office +1.202.879.4676  
[mrshumaker@jonesday.com](mailto:mrshumaker@jonesday.com)

----- Forwarded by Michael R. Shumaker/JonesDay on 08/10/2015 01:50 PM -----

From: "Antalics, Michael E." <[mantalics@omm.com](mailto:mantalics@omm.com)>  
To: "Friedman, Paul" <[paul.friedman@dechert.com](mailto:paul.friedman@dechert.com)>,  
Cc: "[mrshumaker@jonesday.com](mailto:mrshumaker@jonesday.com)" <[mrshumaker@jonesday.com](mailto:mrshumaker@jonesday.com)>, "Falls, Craig" <[craig.falls@dechert.com](mailto:craig.falls@dechert.com)>  
Date: 08/10/2015 01:23 PM  
Subject: RE: Protective Order issues

---

Paul and Mike,

Do you have responses yet to the concerns we raised in our July 28 meet and confer?

Thanks.

Mike

Michael E. Antalics  
O'Melveny & Myers LLP  
1625 Eye Street, N.W.  
Washington, D.C. 20006  
(202) 383-5343  
[mantalics@omm.com](mailto:mantalics@omm.com)

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To: Antalics, Michael E.  
Cc: Friedman, Paul; [mrshumaker@jonesday.com](mailto:mrshumaker@jonesday.com); Falls, Craig  
Subject: Re: Protective Order issues

Mike:

The judge issued an order on Friday and clarified it yesterday setting a deadline of August 14<x-apple-data-detectors://0> for 3rd parties like Samsung to intervene to seek further protection.

We hope to send you a proposed amended protective order shortly.

Best,  
Paul

Sent from my iPad

Paul H. Friedman  
Dechert LLP  
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paul.friedman@dechert.com<<mailto:paul.friedman@dechert.com>>  
dechert.com<<http://dechert.com>>

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<mantalics@omm.com<<mailto:mantalics@omm.com>>> wrote:

Paul and Mike,

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Thanks.

Mike

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To: Antalics, Michael E.  
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Mike

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Paul

Sent from my iPad  
Paul H. Friedman  
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1900 K Street NW  
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paul.friedman@dechert.com<<mailto:paul.friedman@dechert.com>><<mailto:paul.friedman@dechert.com>>  
dechert.com<<http://dechert.com>><<http://dechert.com>>

On Jul 30, 2015, at 11:21 AM, Antalics, Michael E.  
<mantalics@omm.com<<mailto:mantalics@omm.com>><<mailto:mantalics@omm.com>>> wrote:

Paul and Mike,

Can we get (1) your responses to the substantive issues we raised in our Tuesday meet and confer and, importantly, (2) your response to our request that you not object to an untimely objection to the court within five business days after you get back to us on the substantive issues.

Thanks.



Mike

\*\*\*\*\*

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=====

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

AB ELECTROLUX,

ELECTROLUX NORTH AMERICA, INC.,

and

GENERAL ELECTRIC COMPANY,

*Defendants.*

Case No. 1:15-cv-01039-EGS

**STIPULATED[PROPOSED] AMENDED PROTECTIVE ORDER REGARDING**

**CONFIDENTIALITY**

In the interests of facilitating discovery by the parties litigating this Action and of protecting the parties' and non-parties' Confidential Information from improper disclosure or use, Plaintiff United States and Defendants AB Electrolux, Electrolux North America, Inc., and General Electric Company (collectively, "parties") have agreed to provide access to and accept such Confidential Information subject to the provisions set forth below. Upon good cause having been shown, the Court ORDERS, pursuant to Federal Rule of Civil Procedure 26(c)(1)(G), as follows:

**I. DEFINITIONS**

1. As used in this Order:

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

(b) “Confidential Information” means the portions of any Investigation Materials, or any other document, information, or transcript of testimony that contain any trade secret or other confidential research, development, or commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(1)(G).

(c) “Defendants” means AB Electrolux and Electrolux North America, Inc. (collectively “Electrolux”) and the General Electric Company, their divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents (including counsel), and representatives of the foregoing.

(d) “Disclosed” means shown, divulged, revealed, produced, described, transmitted, or otherwise communicated, in whole or in part.

(e) “Document” means documents or electronically stored information as defined in Fed. R. Civ. P. 34(a).

(f) “Investigation” means the Department of Justice’s or Defendants’ inquiry into the competitive effects of the proposed acquisition by Electrolux of General Electric’s appliance business.

(g) “Investigation Materials” means (a) all documents, data, information, or transcripts of testimony that (i) any non-party provided to any party either voluntarily or under compulsory process preceding the filing of this action in the course of the parties’ inquiries into the competitive effects of the proposed acquisition or (ii) any party provided to any non-party preceding the filing of this action in the course of the parties’ inquiries into the competitive effects of the proposed acquisition; and (b) any witness statements, including

affidavits, transcripts, or letters, whether in hard-copy or electronic form, sent or received by any party including its counsel to or from any non-party including its counsel, preceding the filing of this action in the course of the parties' inquiries into the competitive effects of the proposed acquisition.

(h) "Party" means Plaintiff or any Defendant. "Parties" means Plaintiff and all Defendants.

(i) "Person" means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or trust.

(j) "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.

(k) "Protected Person" means any person (including a party) that has provided Investigation Materials or that, voluntarily or under compulsory process, provides any documents, information, or testimony in this Action.

## **II. DESIGNATION OF CONFIDENTIAL INFORMATION**

2. Any Investigation Materials submitted by a Protected Person during the Investigation that are entitled to confidentiality under the Antitrust Civil Process Act, 15 U.S.C. § 1313(c)(3), the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a(h), or any other federal or state statute, regulation, interpretation, or precedent concerning documents in the possession of Plaintiff, and any information taken from any portion of such document, shall be treated as "Confidential Information" that is limited to "outside counsel eyes only" until Defendants' in-house counsel satisfy Paragraph 10(g), and then access shall be limited only to that in-house counsel under the terms of Paragraph 10(g). [Such](#)



Investigation Materials shall be treated as Confidential Information regardless of whether or not they have been marked as such in accordance with Paragraph 5(c). To the extent that Investigation Materials are not stamped or labeled “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER IN CASE NO. 15-1039-EGS (D.D.C.)” prior to production by the DOJ to Defendants, Defendants will stamp or label all Investigation Materials (including all imaged documents stored on a document review platform) with the designation “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER IN CASE NO. 15-1039 (D.D.C.).”

3. Within 2 business days after the Court’s entry of this Order, the applicable party shall send by email, facsimile, or overnight delivery a copy of this Order, along with any exhibits and appendices, to each non-party Protected Person (or, if represented by counsel, the Protected Person’s counsel) that provided Investigation Materials. Any of the foregoing acts constitute notice of this Order to a Protected Person. If a non-party Protected Person determines that this Order does not adequately protect its confidential Investigation Materials, it may, after meeting and conferring with the parties and within 10 days after receipt of a copy of this Order, seek additional relief from the Court.

4. A Protected Person may designate as “Confidential Information” any document, information, or transcript of testimony that it provides to any party during this Action, to the extent such information constitutes Confidential Information as defined in Paragraph 1(b) 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 any document, information, or transcript of testimony not designated as Confidential Information will not be deemed a waiver of any future designation

of such document, information, or transcript of testimony as Confidential Information. But any such subsequent designation will not retroactively prohibit the prior disclosure of any document, information, or transcript of testimony for which disclosure was proper when made.

5. Designation as Confidential Information of any document, information, or transcript of testimony produced during this Action is governed as follows:

(a) After this Order is entered, whenever discovery is sought by subpoena from a non-party in this Action, 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 Confidential Information in their entirety for 10 days after the date a copy of the final transcript has been made available to the deponent (or the deponent's counsel) for review. If the final transcript is not otherwise provided to the deponent (or the deponent's counsel), then the party that noticed the deposition shall provide the final transcript to the deponent or the deponent's counsel within three days of receipt. At any time during the 10-day period following receipt of the final transcript, each Protected Person may designate any portion of testimony or any deposition exhibits produced by the deponent or the deponent's employer as Confidential Information. Such designations (with reference to page(s) and line(s) of the final transcript) must be provided in writing by the person making such designations to both Plaintiff's and Defendants' counsel. When a deponent's testimony discloses information contained in any exhibit designated by a different Protected Person as Confidential Information, all parties, and the deponent and his or her counsel, shall treat the exhibit and all testimony related to such an exhibit in accordance with the exhibit's confidential designation until 10 days after the party that noticed the deposition provides to the Protected Person who so designated the exhibit each portion of the transcript relating to

the exhibit, during which time that Protected Person may designate those portions of the transcript as Confidential Information.

(c) A Protected Person that designates as Confidential Information any document produced in this Action after entry of this Order must stamp or label each page of each document containing Confidential Information with the designation “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER IN CASE NO. 15-1039-EGS (D.D.C.).” Where Confidential Information is produced in electronic format on a disk or other medium that contains exclusively Confidential Information, the “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER IN CASE NO. 15-1039-EGS (D.D.C.)” designation may be placed on the disk or other medium.

6. If a Protected Person inadvertently fails to designate as Confidential Information any document, information, or transcript of testimony, 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. No prior disclosure of newly designated Confidential Information shall violate this Order, and the parties have no obligations regarding such prior disclosures.

7. The parties will comply with Federal Rule of Civil Procedure 26(b)(5)(B) and any other applicable rules or orders.

8. If a party receives from a Protected Person a confidentiality waiver to allow a deponent that is not related to the waiving Protected Person to be questioned on any document, information, or transcript of testimony that would otherwise be Confidential Information that would not be permitted to be disclosed to the deponent, that waiver (including identification of the specific Confidential Information to which it pertains) must be

disclosed by the party receiving the confidentiality waiver to counsel for all other parties as soon as practical, but no later than 24 hours before that witness's deposition. And if a party waives confidentiality of its own Confidential Information to allow a deponent that is not related to the party to be questioned on information that would otherwise be Confidential Information that would not be permitted to be disclosed to the deponent, that waiver (including identification of the specific Confidential Information to which it pertains) must be disclosed by the waiving party to counsel for all other parties as soon as practical, but no later than 24 hours before that witness's deposition.

### **III. PROCEDURE FOR CHALLENGE OF DESIGNATION OF CONFIDENTIAL INFORMATION**

9. Any party that objects to the designation as Confidential Information of any document, information, or transcript of testimony that it intends to disclose to a deponent, file with the Court, or use at trial, shall notify the Protected Person in writing, copying all parties, identifying the specific document, information, or transcript of testimony they believe should not be designated as Confidential Information and the basis for their belief. Thereafter, within 3 business days the party objecting to the designation shall attempt to confer with the Protected Person by telephone to discuss their respective positions. Unless the Protected Person withdraws the designation(s) objected to, the Protected Person shall then have 5 business days from receipt of the written objection to any of its designation(s) of Confidential Information to file a motion seeking an order upholding the designation(s). The burden of proving that any designation is proper under Fed. R. Civ. P. 26(c)(1)(G) shall be upon the Protected Person seeking to uphold the designation. If a motion is filed, or if the parties have been notified that the Protected Person intends to file a motion, the parties shall continue to treat the designated Confidential Information at issue as Confidential Information at least until



a ruling on the motion and afterward if the motion is granted. If the Protected Person does not seek an order within 5 business days of receiving the written objection to the designation(s), or if the Court determines the designation of Confidential Information to have been inappropriate, the challenged designation(s) shall no longer have any effect.

#### **IV. SCOPE OF DISCLOSURE OF CONFIDENTIAL INFORMATION**

10. Except as authorized by this Order, all documents, information, or transcripts of testimony 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 Action or otherwise assist in its work (including testifying or consulting experts and their support staff);

(c) outside counsel acting for Defendants in this Action, that counsel's employees, and independent contractors who are not employees of any Defendant, assisting such outside counsel in the defense of this Action;

(d) authors, addressees, and recipients of any particular document, information, or transcript of testimony designated as Confidential Information solely to the extent that they have previously had lawful access to the particular document, information, or transcript of testimony disclosed or to be disclosed;

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

(f) testifying or consulting experts who are not otherwise consultants to or employees of Defendants, retained by a party to assist in the prosecution or defense of this Action, including employees of the firm with which the expert or consultant is associated or independent contractors who are not employees of any Defendants, who are necessary to assist the expert's work in this action; and

(g) Defendants' in-house counsel who are not (and will not be before July 2017) positioned to advise the client about business decisions that the client would make regarding, for example, pricing, marketing, distribution, or product design issues. These in-house counsel may only access draft and final versions of pleadings, motions and other briefs, hearing transcripts, and expert reports – including portions of such filings, transcripts, or reports that quote or paraphrase “Confidential Information” – but not exhibits to such filings, transcripts or reports or underlying discovery material designated as “Confidential Information” pursuant to Paragraphs 2 or 5 of this Order. Provided, however, that these in-

house counsel may access selected exhibits or portions of exhibits and other selected Confidential Information that outside counsel reasonably deems necessary for assessment of the strengths and weaknesses of Defendants' case, with all non-relevant portions redacted or removed. These in-house counsel may access Confidential Information only in person at the offices of their outside counsel, or using a secure electronic data room or document review platform from which they cannot print, save, download or otherwise fix a copy of Confidential Information using individual login identifications and passwords. Defendants each may have no more than 4 in-house counsel with access to Confidential Information.

In-house counsel for the Electrolux defendants are named in Appendix X and in-house counsel for GE are named in Appendix Y. Each of the in-house counsel listed in Appendices X and Y will file a declaration that Defendants believe is sufficient to show that the in-house counsel satisfies the requirements of this Paragraph. The United States has 4 days from the date the declarations are filed to object to any in-house counsel listed in Appendices X and Y having access to Confidential Information. If the United States does not object, Defendants shall serve on all Protected Persons (1) a notice that names the in-house counsel and informs the Protected Persons that the named in-house counsel may have access to Confidential Information, and (2) copies of the declarations. In-house counsel shall not receive access to Confidential Information earlier than 12 days after Defendants serve notice to Protected Persons absent express written consent of the United States and the Protected Person. If the United States objects during the 4-day period, or a Protected Person objects during the subsequent 12-day period, to an in-house counsel having access to its Confidential Information, then that in-house counsel may not access that Protected Person's Confidential Information until all applicable objections are resolved.

11. Before any information designated as Confidential Information may be disclosed to any person described in Paragraphs 10(f) or (g) 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 shall have executed the agreement attached as Appendix A. Counsel for the party making the disclosure must retain a copy of such executed agreement for a period of at least one year following the final resolution of this Action. Each person described in Paragraph 10 of this Order to whom information designated as Confidential Information is disclosed must not disclose that Confidential Information to any other person, except as provided in this Order. Each person receiving access to Confidential Information under Paragraph 10 (g) is subject to the jurisdiction of the United States District Court for the District of Columbia.

12. If any party becomes aware of the unauthorized disclosure of Confidential Information, the party must notify the Protected Person in writing as soon as practicable.

~~12~~13. Nothing in this Order:

(a) subject to the notice requirement in Paragraph 8 in the case of a Party, limits a Protected Person's use or disclosure of its own documents, information, or transcripts of testimony designated as Confidential Information;

(b) prevents disclosure of Confidential Information by any party to any current employee of the Protected Person that designated the Confidential Information during a deposition or trial;

(c) subject to the notice requirements in Paragraph 8, prevents disclosure of Confidential Information by any party with the consent of the person that designated the Confidential Information;



(d) prevents disclosure by a party of Confidential Information that (i) has become publicly known through no fault of that party; (ii) was lawfully acquired or known to that party independently of receipt in discovery in this Action; (iii) was previously disclosed or provided to that party without an obligation of confidentiality and not by inadvertence or mistake; or (iv) pursuant to an order of a Court or as may be required by law; or

(e) prevents Plaintiff from disclosing Confidential Information, subject to taking appropriate steps to preserve its further confidentiality, (i) to secure compliance with a Final Judgment that is entered in this Action; or (ii) for law-enforcement purposes, including in the course of any such proceedings in which Plaintiff is a party; or (iii) as otherwise required by law.

#### **V. DISCLOSURE OF CONFIDENTIAL INFORMATION IN THIS ACTION**

**1314.** If any document, information, or transcript of testimony designated under this Order as Confidential Information is included in any pleading, motion, non-trial exhibit, or other paper to be filed with the Court, the party seeking to file such designated Confidential Information shall follow the procedures set forth in Local Rule 5.1(h) if the Confidential Information was initially produced by it, or in the applicable following ways when the Confidential Information, such as non-party Investigation Materials or non-party productions in this action, was not initially produced by the party filing it under seal:

(a) If a party files under seal with the Court any Confidential Information produced initially by a non-party, the filing party shall notify the non-party of that filing (and what Confidential Information produced by that non-party was included in the filing) within one day after the filing. After receiving such notice, the non-party shall file a motion within seven days if it seeks to maintain sealing of its Confidential Information, which will remain

sealed at least until the latter of the expiration of seven days or the resolution of any timely filed motion. In addition, parties shall provide a non-party Protected Person at least ~~24-~~ hourstwo business days notice before any pretrial court hearings or other court proceedings during which a non-party Protected Person's Confidential Information may be publicly disclosed. Nothing in this Order shall restrict any person from challenging the sealing of any designated Confidential Information filed under seal to the extent such person is otherwise entitled to such challenge.

(b) If a party files under seal with the Court any Confidential Information produced by another party, the party that produced the sealed Confidential Information shall file a motion within three days if it seeks to maintain sealing of its Confidential Information, which will remain sealed at least until the latter of the expiration of three days or the resolution of any timely filed motion.

~~14~~15. Disclosure at trial of documents, information, and testimony designated as Confidential Information will be governed pursuant to Court order. The parties shall meet and confer and submit a recommended order no later than 30 days before trial outlining those procedures. Each party that includes Confidential Information on an exhibit list or in deposition designations will immediately notify the Protected Person that produced such Confidential Information upon the exchange of such exhibit list or deposition designation, but in no event less than three business days before the Confidential Information is to be offered into evidence.

16. Absent a ruling by the Court to the contrary, any document, information, or transcript of testimony designated as Confidential Information by a Protected Person that appears on an exhibit list or in deposition designations, that is admitted into evidence at trial,

will be disclosed on the public record, and any examination relating to such information will likewise be disclosed on the public record, after compliance processes established by this Court.

~~15~~17. All Confidential Information produced by a Protected Person shall be used solely for purposes of this Action and shall not be used for any business, commercial, competitive, personal, or other purpose.

## **VI. PROCEDURES UPON TERMINATION OF THIS ACTION**

~~16~~18. Within 90 days after receiving notice of the entry of an order, judgment, or decree terminating this Action or after all appeals, if any, have been exhausted, all persons having received information designated as 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, and provide a certification to the Protected Persons that such return and/or destruction has been completed. Counsel for the parties will be entitled to retain court papers, deposition and trial transcripts and exhibits, expert reports and supporting documents, and work product (including compilations of documents), provided that Plaintiff's employees and Defendants' counsel and such counsel's employees do not disclose such materials to any person except pursuant to the terms of this Order or other Court order, or pursuant to written agreement with the Protected Person that produced the information designated as Confidential Information. All 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 restricts the rights of the Plaintiff under this Order to retain and use Confidential Information for law-enforcement purposes or as otherwise required by law.

~~17~~19. This Order shall be binding on the parties to this Action, their attorneys, and their successors, personal representatives, administrators, assigns, parents, subsidiaries, divisions, affiliates, employees, agents, retained consultants and experts, and any persons or organizations over which they have direct control. The obligations imposed by this Order survive the termination of this litigation unless the Court, which shall retain jurisdiction to resolve any disputes arising out of this Order, orders otherwise.

**VII. RIGHT TO SEEK MODIFICATION OF THIS ORDER**

~~18~~20. 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.

~~Dated: July 16, 2015~~

~~Respectfully submitted,~~

~~/s/ Ethan C. Glass~~

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~~Counsel for Defendant General Electric  
Company~~

~~\*\*\*~~

IT IS SO ORDERED.

DATED: ~~July~~August \_\_\_\_, 2015

\_\_\_\_\_  
EMMET G. SULLIVAN  
UNITED STATES DISTRICT JUDGE

**APPENDIX A**  
**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

AB ELECTROLUX,

ELECTROLUX NORTH AMERICA, INC.,

and

GENERAL ELECTRIC COMPANY,

*Defendants.*

Case No. 1:15-cv-01039-EGS

**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\_.

Signed: \_\_\_\_\_

**APPENDIX X**

**PARAGRAPH 10(G): IN-HOUSE COUNSEL AT ELECTROLUX DEFENDANTS**

MICHAEL BELL  
ULRIKA ELFING  
MIKAEL ÖSTMAN

**APPENDIX Y**

**PARAGRAPH 10(G): IN-HOUSE COUNSEL AT GENERAL ELECTRIC**

BRADFORD A. BERENSON  
AIMEE IMUNDO  
SHARIS A. POZEN  
ROLAND G. SCHROEDER