

**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

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 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. Defendants shall disclose to a non-party Protected Person the identity of the firms that employ Defendants' experts who will access that non-party's Confidential Information, and the identities of those individual experts. Each such firm shall provide a declaration showing that those experts do not have any engagement that constitutes a conflict of interest. For one year after the receipt of that Confidential Information, those experts shall not perform consulting services in the appliances industry for any competitor of a non-party Protected Person in matters adverse to that non-party.

(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. The access in-house counsel may have to Confidential

Information is subject to reconsideration for good cause shown. 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 10(g) 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.

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

14. 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 two 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.

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.

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.

18. Any violation of this order may be deemed contempt and punished by a fine of up to \$250,000. Any imposed fine will be paid individually by the person who violates this Order. A violator may not seek to be reimbursed or indemnified for the payment the violator has made. If the violator is an attorney, the court may recommend to the appropriate professional disciplinary authority that the attorney be sanctioned, suspended or disbarred.

VI. PROCEDURES UPON TERMINATION OF THIS ACTION

19. 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.

20. 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

21. 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.

IT IS SO ORDERED.

s/ Emmet G. Sullivan

EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

DATED: September 15, 2015

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

APPENDIX Y

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

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