

**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

Judge Emmet G. Sullivan

**ORDER GOVERNING  
PROCEDURES FOR USE OF CONFIDENTIAL INFORMATION AT TRIAL**

The purpose of this Order is to (a) facilitate an efficient trial, (b) ensure that the trial and related judicial records are available to the public, and (c) protect trade secrets or other confidential research, development or commercial information, from improper disclosure or use. Accordingly, the Court hereby **ORDERS** that all Parties and any non-Party receiving notice of this Order shall comply with the directives set forth below.

This Order supersedes any previous order or agreement governing the use at trial of any documents, information, or testimony for which protection has been sought in this civil action. To the extent this Order is inconsistent with any previous order or agreement in this action, this Order governs.

**I. Definitions**

A. The term “Confidential Information” has the meaning set forth in the Second Amended Protective Order Regarding Confidentiality, entered by this Court on October 5, 2015 (Dkt. Entry 140) (“Amended Protective Order”).

B. The term “days” means calendar days.

C. The term “Complete Non-Disclosure” means that the restriction ordered by the Court applicable to the information shall be as follows: (1) all persons, except the following persons, must leave the courtroom during any use of the information: (a) the Court and all persons assisting the Court in this action, (b) the 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; (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) Testifying experts; (e) Defendants’ in-house counsel to whom the Court has granted access to Confidential Information under the terms of the Amended Protective Order; (f) the Protected Person seeking the restriction and the Person’s counsel; (g) any witness being examined with respect to such information and the witness’s counsel; and (2) any examination relating to such information shall be sealed from the public record.

D. The term “Partial Non-Disclosure” means that the restriction ordered by the Court applicable to the information shall be as follows: (1) there shall be no display of documents or deposition testimony containing the Confidential Information to anyone other than the persons listed in Section I.C.1.a-g above; and (2) any examination relating to such information shall be sealed from the public record.

E. The term “Party” means Plaintiff or any Defendant. The term “Parties” means Plaintiff and all Defendants.

F. The term “Protected Person” means any person (including a Party) that has designated any document, information, or testimony as Confidential Information in this action.

G. The term “New Witness” means any person identified on any Party’s final trial witness list that was not identified on any Party’s initial trial witness list.

## II. Schedule

<b>Event</b>	<b>Deadline</b>
Notice to non-Party Protected Persons (except New Witnesses) of trial exhibits containing Confidential Information	October 13, 2015
Protected Persons (except New Witnesses) must file motions to seal trial exhibits	October 16, 2015
Responses to motions to seal trial exhibits (except New Witnesses)	October 19, 2015
Notice to non-Party Protected Persons (except New Witnesses) of trial deposition designations (including counter designations and counter-counter-designations) containing Confidential Information	October 20, 2015
Notice to New Witnesses of trial exhibits containing Confidential Information	Date to be agreed by the Parties but not later than October 26, 2015
Notice to New Witnesses of trial deposition designations (including counter designations and counter-counter designations) containing Confidential Information	Date to be agreed by the Parties
New Witnesses must file motions to seal trial exhibits	October 30, 2015
Responses to motion to seal trial exhibits of New Witnesses	November 3, 2015

**III. Use of Exhibits and Deposition Testimony at Trial**

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 with the procedures established by this Order.

**IV. Exhibits and Depositions that Contain Confidential Information**

A. If a Protected Person believes that a trial exhibit or deposition testimony should not be used in open court and should be filed under seal, the Protected Person bears the burden of proving that such treatment is consistent with this Court's rules and caselaw.

B. To streamline the proceedings, the following is Ordered for the limited purpose of filing motions contemplated by this Order: (1) such motions and all exhibits thereto may be filed under seal without further Order by this Court and shall be accepted for filing under seal by the Clerk of the Court; (2) third parties may file such motions without filing a motion to intervene; and (3) counsel for third parties need not be admitted to this Court's bar and need not file a motion for leave to appear pro hac vice, so long as the signature block of the motion contains the counsel's state of admission and bar number.

C. For trial exhibits that do not pertain to New Witnesses:

1. No later than the deadline prescribed in Section II above, each Party must notify each non-party Protected Person of all exhibits appearing on the Party's trial exhibit list that contain information that the non-party Protected Person has previously designated as Confidential Information.

2. Any Protected Person seeking to protect from public disclosure all or any part of an exhibit that contains information that the Protected Person has previously designated as Confidential Information must file a motion to seal no later than the deadline prescribed in Section II above. The motion must set forth specific information by exhibit number that the Protected Person seeks to protect, and for each exhibit specified, state whether the restriction sought is either Complete Non-Disclosure or Partial Non-Disclosure. The motion must also explain all reasons for the relief it seeks, and must include a redacted version of each affected exhibit that can be used publicly. Responses, if any, are due no later than the deadline prescribed in Section II above. No replies are permitted.

D. For trial exhibits pertaining to New Witnesses:

1. No later than the deadline prescribed in Section II above, each Party must notify each non-party Protected Person of all exhibits appearing on the Party's exhibit list that contain information that the non-party Protected Person has previously designated as Confidential Information.

2. Any Protected Person seeking to protect from public disclosure information it has designated as Confidential Information must file a motion to seal no later than the deadline prescribed in Section II above. The motion must set forth specific information by exhibit number that the Protected Person seeks to protect, and for each exhibit specified, state whether the restriction sought is either Complete Non-Disclosure or Partial Non-Disclosure. The motion must also explain all reasons for the relief it seeks, and must include a redacted version of each affected exhibit that can be used publicly.

3. Responses, if any, are due no later than the deadline prescribed in Section II above. No replies are permitted.

E. For deposition designations, counter-designations, and counter-counter designations:

1. No later than the deadline prescribed in Section II above, each Party must notify each non-party Protected Person of the deposition testimony (including deposition exhibits) that the non-party Protected Person has previously designated as Confidential Information appearing on such Party's list of designations.

2. The Parties shall meet and confer and submit a recommended order, if any, further outlining the procedures to govern confidentiality of designated deposition testimony. It is not contemplated that designated deposition testimony shall be publicly read during the course of the trial but, instead, will be submitted to the Court as part of the evidentiary record in those instances where the witness does not appear live.

**V. Use of other Documents and Testimony Containing Confidential Information**

For the use of deposition testimony that contains Confidential Information or any document that that contains Confidential Information not appearing on any Party's exhibit list:

A. If the Protected Person with respect to such document or testimony is a Party, the Protected Person may, at the time of the document's or testimony's use, request that the Court provide either Partial Non-Disclosure or Complete Non-Disclosure.

B. If the Protected Person with respect to such document or testimony is a non-Party and the document or deposition testimony is being used in the examination of the Protected Person, counsel for that non-Party Protected Person may, at the time of the document's or testimony's use, request that the Court provide either Partial Non-Disclosure or Complete Non-Disclosure.

C. If the Protected Person with respect to such document or testimony is a non-Party that is not present in Court at the time of the use of the document or testimony, counsel for the Party seeking to use the document or testimony must request a sidebar during which counsel must proffer a description of the Confidential Information to be disclosed to enable the Court to determine whether to permit public disclosure, Partial Non-Disclosure, or Complete Non-Disclosure. Within 24 hours of the use of the document or testimony, the Party who used the document or testimony must notify the non-party Protected Person of the document or testimony and the Court's determination. Within four (4) days of such notice, the Protected Person must file a motion to seal. If the Protected Person does not file such a motion, the document or testimony, and any related trial testimony, shall be publicly disclosed.

#### **VI. Confidential Information not used at Trial**

This Order governs documents, information, and deposition testimony that the Parties identify for use at trial. Any documents, information, and deposition testimony containing Confidential Information not used at trial shall be governed by the "Scope of Disclosure of Confidential Information" provisions in paragraphs 10-13 of the Amended Protective Order.

#### **VII. Notice of this Order**

Within five days of the entry of this Order, the Parties shall provide this Order to all non-party Protected Persons.

**SO ORDERED.**

**Signed: Emmet G. Sullivan  
United States District Judge  
October 13, 2015**