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 21 THE HERSHEY COMPANY

22 **UNITED STATES DISTRICT COURT**
 23 **NORTHERN DISTRICT OF CALIFORNIA**
 24 **OAKLAND DIVISION**

25 **JULIE CAMPANELLI, SABRINA**
 26 **ANDERSON, NANCY SMITH,**
 27 **TARYN SEDGELEY, DANIEL**
 28 **GOLIN, FRANCIS MCKEEVER,**
BRYAN MILLER, JAMES
AMICARELLA, and JOSEPHINE
GODFREY on their own behalf and
on behalf of all others similarly
situated,

Case No. C 08-1862 WDB

STIPULATED PROTECTIVE ORDER
REGARDING CONFIDENTIAL
DOCUMENTS AND INFORMATION

Plaintiffs,

v.

THE HERSHEY COMPANY,

Defendant.

STIPULATED PROTECTIVE ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure,

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiffs and

1 Defendant, through their respective counsel, that, during this action, all documents,
2 information, tangible items, and testimony designated as Confidential by the producing
3 party in the above matter be, and hereby are, subject to the following terms and
4 conditions.

5 1. PURPOSES AND LIMITATIONS

6 Disclosure and discovery activity in this action are likely to involve production of
7 confidential, proprietary, or private information for which special protection from public
8 disclosure and from use for any purpose other than litigating this case would be
9 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the
10 following Stipulated Protective Order. The parties acknowledge that this Order does not
11 confer blanket protections on all disclosures or responses to discovery and that the
12 protection it affords extends only to the limited information or items that are entitled
13 under the applicable legal principles to treatment as confidential. The parties further
14 acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order
15 creates no entitlement to file confidential information under seal; Civil Local Rule 79-5
16 sets forth the procedures that must be followed and reflects the standards that will be
17 applied when a party seeks permission from the Court to file material under seal.

18 2. DEFINITIONS

19 2.1 Party: any party to this action, including all of its officers, directors,
20 employees, consultants, retained experts, and outside counsel (and their support staff).

21 2.2 Disclosure or Discovery Material: all items or information, regardless of the
22 medium or manner generated, stored, or maintained (including, among other things,
23 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
24 responses to discovery in this matter.

25 2.3 “Confidential” Information or Items: information (regardless of how
26 generated, stored or maintained) or tangible things that qualify for protection under
27 standards developed under F.R.Civ.P. 26(c).

28

1 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3 2.5 Producing Party: a Party or non-party that produces Disclosure or
4 Discovery Material in this action.

5 2.6 Designating Party: a Party or non-party that designates information or items
6 that it produces in disclosures or in responses to discovery as “Confidential.”

7 2.7 Protected Material: any Disclosure or Discovery Material that is designated
8 as “Confidential.”

9 2.8 Outside Counsel: attorneys who are not employees of a Party but who are
10 retained to represent or advise a Party in this action.

11 2.9 House Counsel: attorneys who are employees of a Party.

12 2.10 Counsel (without qualifier): Outside Counsel and House Counsel (as well
13 as their support staffs).

14 2.11 Expert: a person with specialized knowledge or experience in a matter
15 pertinent to the litigation who has been retained by a Party or its Counsel to serve as an
16 expert witness or as a consultant in this action and who is not a past or current employee
17 of a Party or of a competitor of a Party and who, at the time of retention, is not anticipated
18 to become an employee of a Party or a competitor of a Party. This definition includes a
19 professional jury or trial consultant retained in connection with this litigation.

20 2.12 Professional Vendors: persons or entities that provide litigation support
21 services (e.g., photocopying; videotaping; translating; preparing exhibits or
22 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their
23 employees and subcontractors.

24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only Protected
26 Material (as defined above), but also any information copied or extracted therefrom, as
27 well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
28 conversations, or presentations by parties or Counsel to or in Court or in other settings that

1 might reveal Protected Material.

2 4. DURATION

3 Even after the termination of this litigation, the confidentiality obligations imposed
4 by this Order shall remain in effect until a Designating Party agrees otherwise in writing
5 or a Court order otherwise directs.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
8 Party or non-party that designates information or items for protection under this Order
9 must take care to limit any such designation to specific material that qualifies under the
10 appropriate standards. A Designating Party must take care to designate for protection
11 only those parts of material, documents, items, or oral or written communications that
12 qualify — so that other portions of the material, documents, items, or communications for
13 which protection is not warranted are not swept unjustifiably within the ambit of this
14 Order.

15 Mass, indiscriminate, or routinized designations are prohibited. Designations that
16 are shown to be clearly unjustified, or that have been made for an improper purpose (e.g.,
17 to unnecessarily encumber or retard the case development process, or to impose
18 unnecessary expenses and burdens on other parties), expose the Designating Party to
19 sanctions.

20 If it comes to a Party's or a non-party's attention that information or items that it
21 designated for protection do not qualify for protection at all, or do not qualify for the level
22 of protection initially asserted, that Party or non-party must promptly notify all other
23 parties that it is withdrawing the mistaken designation.

24 5.2 Manner and Timing of Designations. Except as otherwise provided in this
25 Order (see, e.g., second paragraph of section 5.2(a), and sections 5.2(b) and (c), below), or
26 as otherwise stipulated or ordered, material that qualifies for protection under this Order
27 must be clearly so designated before the material is disclosed or produced.

28 Designation in conformity with this Order requires:

1 (a) for information in documentary form (apart from transcripts of
2 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
3 “CONFIDENTIAL” at the top of each page that contains protected material. If only a
4 portion or portions of the material on a page qualifies for protection, the Producing Party
5 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
6 in the margins).

7 A Party or non-party that makes original documents or materials available for
8 inspection need not designate them for protection until after the inspecting Party has
9 indicated which material it would like copied and produced. During the inspection and
10 before the designation, all of the material made available for inspection shall be deemed
11 CONFIDENTIAL. After the inspecting Party has identified the documents it wants
12 copied and produced, the Producing Party must determine which documents, or portions
13 thereof, qualify for protection under this Order. Then, before producing the specified
14 documents, the Producing Party must affix the legend “CONFIDENTIAL” at the top of
15 each page that contains Protected Material. If only a portion or portions of the material on
16 a page qualifies for protection, the Producing Party also must clearly identify the protected
17 portion(s) (e.g., by making appropriate markings in the margins).

18 (b) for testimony given in deposition or in other pretrial or trial
19 proceedings, that Counsel for the deponent or witness providing testimony, within twenty
20 (20) days after the final version of the transcript has been received by such Counsel,
21 designate any portions of the transcript which contain testimony concerning
22 CONFIDENTIAL information. Upon the request of Counsel on the record (i.e., before
23 the deposition or proceeding is concluded), deposition or hearing testimony in its entirety
24 shall be treated as CONFIDENTIAL until expiration of the 20-day designation period.

25 (c) for information produced in some form other than documentary, and
26 for any other tangible items, that the Producing Party affix in a prominent place on the
27 exterior of the container or containers in which the information or item is stored the
28 legend “CONFIDENTIAL.” If only portions of the information or item warrant

1 protection, the Producing Party, to the extent practicable, shall identify the protected
2 portions.

3 5.3 Need for Higher Level of Confidentiality. In the event the Producing Party
4 believes that material to be produced, or testimony to be given, is deserving of a higher-
5 level of confidentiality than the protections provided herein for “Confidential” materials,
6 the Producing Party shall contact the Party to whom disclosure would otherwise be made
7 to explain the need for and the specifics of the higher level of protection. The Parties shall
8 meet and confer in good faith to come to agreement on the designation and its scope. If
9 the Parties cannot agree, the Producing Party shall submit the matter to the Court for
10 resolution per paragraph 6.3 of this Order, and shall not be required to produce the
11 material in question until the Court issues a decision.

12 5.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
13 to designate qualified information or items as “Confidential” or as some other level of
14 confidentiality, does not, standing alone, waive the Designating Party’s right to secure
15 protection under this Order for such material. If material is appropriately designated as
16 “Confidential” or as some other level of confidentiality after the material was initially
17 produced, the Receiving Party, on timely notification of the designation, must make
18 reasonable efforts to assure that the material is treated in accordance with the provisions
19 of this Order.

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
22 confidentiality designation is necessary to avoid foreseeable substantial unfairness,
23 unnecessary economic burdens, or a later significant disruption or delay of the litigation, a
24 Party does not waive its right to challenge a confidentiality designation by electing not to
25 mount a challenge promptly after the original designation is made.

26 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
27 Party’s confidentiality designation must do so in good faith and must begin the process by
28 conferring directly (in voice to voice dialogue; other forms of communication are not

1 sufficient) with counsel for the Designating Party. In conferring, the challenging Party
2 must explain the basis for its belief that the confidentiality designation was not proper and
3 must give the Designating Party an opportunity to review the designated material, to
4 reconsider the circumstances, and, if no change in designation is offered, to explain the
5 basis for the chosen designation. A challenging Party may proceed to the next stage of the
6 challenge process only if it has engaged in this meet and confer process first.

7 6.3 Judicial Intervention. A Party that elects to press a challenge to a
8 confidentiality designation after considering the justification offered by the Designating
9 Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil
10 Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in
11 detail the basis for the challenge. Each such motion must be accompanied by a competent
12 declaration that affirms that the movant has complied with the meet and confer
13 requirements imposed in the preceding paragraph and that sets forth with specificity the
14 justification for the confidentiality designation that was given by the Designating Party in
15 the meet and confer dialogue.

16 The burden of persuasion in any such challenge proceeding shall be on the
17 Designating Party. Until the court rules on the challenge, all parties shall continue to
18 afford the material in question the level of protection to which it is entitled under the
19 Producing Party's designation.

20 7. ACCESS TO AND USE OF PROTECTED MATERIAL

21 7.1 Basic Principles. A Receiving Party may use Protected Material that is
22 disclosed or produced by another Party or by a non-party in connection with this case only
23 for prosecuting, defending, or attempting to settle this litigation. Such Protected Material
24 may be disclosed only to the categories of persons and under the conditions described in
25 this Order. When the litigation has been terminated, a Receiving Party must comply with
26 the provisions of section 11, below (FINAL DISPOSITION).

27 Protected Material must be stored and maintained by a Receiving Party at a
28 location and in a secure manner that ensures that access is limited to the persons

1 authorized under this Order.

2 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
3 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party
4 and/or a Receiving Party’s Outside Counsel may disclose any information or item
5 designated CONFIDENTIAL only to:

6 (a) the Receiving Party and the Receiving Party’s Outside Counsel of
7 record in this action, subject to the exception in paragraph 7.2(h) below, as well as
8 employees of said Counsel to whom it is reasonably necessary to disclose the information
9 for this litigation and who have signed the “Agreement to Be Bound by Protective Order”
10 that is attached hereto as Exhibit A;

11 (b) the officers, directors, and employees (including House Counsel) of
12 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who
13 have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

14 (c) experts (as defined in this Order) of the Receiving Party to whom
15 disclosure is reasonably necessary for this litigation and who have signed the “Agreement
16 to Be Bound by Protective Order” (Exhibit A);

17 (d) the Court and its personnel;

18 (e) court reporters, their staffs, and Professional Vendors to whom
19 disclosure is reasonably necessary for this litigation and who have signed the “Agreement
20 to Be Bound by Protective Order” (Exhibit A);

21 (f) during their depositions, witnesses in the action to whom disclosure
22 is reasonably necessary and who have signed the “Agreement to Be Bound by Protective
23 Order” (Exhibit A);

24 (g) the author of the document or the original source of the information;
25 and

26 (h) with respect to employee or personnel records, only the employees or
27 former employees (*i.e.*, named plaintiffs) who are the subject of said records, and not to
28 other persons, employees or former employees (*i.e.*, other named plaintiffs), unless the

1 Receiving Party’s Outside Counsel has the consent of the subject of said records to further
2 disclose those records.

3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
4 OTHER LITIGATION.

5 If a Receiving Party is served with a subpoena or an order issued in other litigation
6 that would compel disclosure of any information or items designated in this action as
7 “CONFIDENTIAL” or as some other level of confidentiality, the Receiving Party must so
8 notify the Designating Party, in writing (by fax, if possible) immediately and in no event
9 more than three court days after receiving the subpoena or order. Such notification must
10 include a copy of the subpoena or court order.

11 The Receiving Party also must immediately inform in writing the party who caused
12 the subpoena or order to issue in the other litigation that some or all the material covered
13 by the subpoena or order is the subject of this Protective Order. In addition, the Receiving
14 Party must deliver a copy of this Stipulated Protective Order promptly to the party in the
15 other action that caused the subpoena or order to issue.

16 The purpose of imposing these duties is to alert the interested parties to the
17 existence of this Protective Order and to afford the Designating Party in this case an
18 opportunity to try to protect its confidentiality interests in the court from which the
19 subpoena or order issued. The Designating Party shall bear the burdens and the expenses
20 of seeking protection in that court of its confidential material — and nothing in these
21 provisions should be construed as authorizing or encouraging a Receiving Party in this
22 action to disobey a lawful directive from another court.

23 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
25 Material to any person or in any circumstance not authorized under this Stipulated Protective
26 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
27 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
28 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of

1 this Order, and (d) request such person or persons to execute the “Agreement to Be Bound by
2 Protective Order” that is attached hereto as Exhibit A.

3 10. FILING PROTECTED MATERIAL.

4 Without written permission from the Designating Party or a court order secured
5 after appropriate notice to all interested persons, a Party may not file in the public record
6 in this action any Protected Material. A Party that seeks to file under seal any Protected
7 Material must comply with Civil Local Rule 79-5.

8 11. FINAL DISPOSITION.

9 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty
10 days after the final termination of this action, each Receiving Party must return all
11 Protected Material to the Producing Party. As used in this subdivision, “all Protected
12 Material” includes all copies, abstracts, compilations, summaries or any other form of
13 reproducing or capturing any of the Protected Material. With permission in writing from
14 the Designating Party, the Receiving Party may destroy some or all of the Protected
15 Material instead of returning it. Whether the Protected Material is returned or destroyed,
16 the Receiving Party must submit a written certification to the Producing Party (and, if not
17 the same person or entity, to the Designating Party) by the sixty day deadline that
18 identifies (by category, where appropriate) all the Protected Material that was returned or
19 destroyed and that affirms that the Receiving Party has not retained any copies, abstracts,
20 compilations, summaries or other forms of reproducing or capturing any of the Protected
21 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy
22 of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
23 work product, even if such materials contain Protected Material. Any such archival
24 copies that contain or constitute Protected Material remain subject to this Protective Order
25 as set forth in Section 4 (DURATION), above.

26 In addition, at Hershey’s expense, an archival copy of all Protected Material it
27 produces in this case shall be retained by Outside Counsel for Hershey for a period of four
28 years from the date of final disposition of this case. If Plaintiffs’ Counsel needs access to

1 any of said Protected Material within the four year term, they may serve a written request
2 upon Hershey's Outside Counsel setting forth the reasons for needing access to the
3 Protected Material. Hershey's Outside Counsel shall timely respond to such a request and
4 shall not unreasonably decline Plaintiffs' Counsel's request to access the Protected
5 Material. In the event Hershey's Outside Counsel does not agree to allow Plaintiffs'
6 Counsel access to the Protected Material, Plaintiffs' Counsel may submit the matter to the
7 Court for resolution. If the Court determines that the reasons set forth by Plaintiffs'
8 Counsel for needing access to the Protected Material are justified, it shall order Outside
9 Counsel for Hershey to provide Plaintiffs' Counsel with access to the Protected Material,
10 and, once received, Plaintiffs' Counsel shall treat the Protected Material in accordance
11 with the terms of this Protective Order.

12 12. MISCELLANEOUS

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
14 person to seek its modification by the Court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this
16 Protective Order no Party waives any right it otherwise would have to object to disclosing
17 or producing any information or item on any ground not addressed in this Stipulated
18 Protective Order. Similarly, no Party waives any right to object on any ground to use in
19 evidence of any of the material covered by this Protective Order.
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1 Respectfully submitted,

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5 Dated: March 11, 2009.

O'MELVENY & MYERS LLP
FRAMROZE M. VIRJEE
CHRIS A. HOLLINGER
MICHAEL W. GARRISON, JR.
ERIC J. KNAPP

8

9 By: /s/ CHRIS A. HOLLINGER
CHRIS A. HOLLINGER

10

Attorneys for Defendant
THE HERSHEY COMPANY

11

12

13 Dated: March 11, 2009.

BRANDI LAW FIRM
THOMAS J. BRANDI
TERRENCE D. EDWARDS
BRIAN J. MALLOY

14

LAW OFFICE OF DAVID C. FEOLA, P.C.
DAVID C. FEOLA

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18 By: /s/ THOMAS J. BRANDI
THOMAS J. BRANDI

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Attorneys for Named Plaintiffs

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ORDER

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22 Subject to the parties' stipulation, the foregoing Protective Order is
23 approved, and IT IS SO ORDERED.

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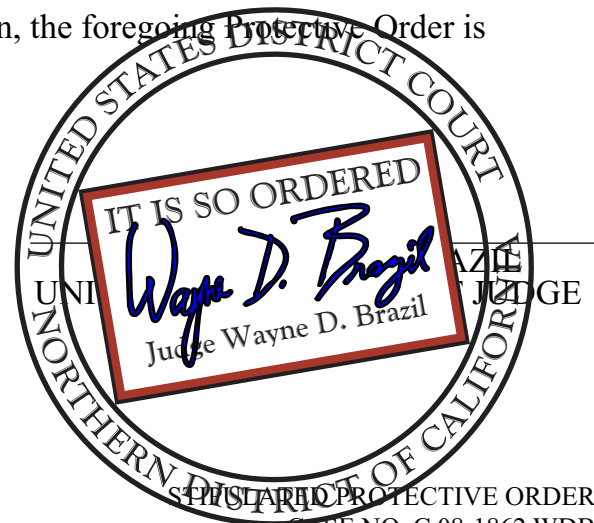
25 Dated: March 12, 2009.

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EXHIBIT A

EXHIBIT A

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EXHIBIT A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

**JULIE CAMPANELLI, SABRINA
ANDERSON, NANCY SMITH,
TARYN SEDGELEY, DANIEL
GOLIN, FRANCIS MCKEEVER,
BRYAN MILLER, JAMES
AMICARELLA, and JOSEPHINE
GODFREY on their own behalf and
on behalf of all others similarly
situated,**

Plaintiffs,

v.

**THE HERSHEY COMPANY,
Defendant.**

Case No. C 08-1862 WDB

CERTIFICATION

1. My name is _____.
I live at _____.
I am employed as (state position) _____
by (state name and address of employer) _____.

2. I have read the Confidentiality Order that has been entered in this case, and a copy of it has been given to me. I understand the provisions of this Order, and agree to comply with and to be bound by its provisions.

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

Executed on _____ (date)

by _____ (signature)