

1 MORGAN, LEWIS & BOCKIUS LLP  
REBECCA EISEN, STATE BAR NO. 96129  
2 One Market, Spear Street Tower  
San Francisco, CA 94105-1126  
3 Telephone: 415.442.1000; Facsimile: 415.442.1001  
E-mail: reisen@morganlewis.com  
4

MORGAN, LEWIS & BOCKIUS LLP  
5 MICHAEL J. PUMA (admitted *pro hac vice*)  
1701 Market Street  
6 Philadelphia, PA 19103  
Telephone: 215.963.5000; Facsimile: 215.963.5001  
7 Email: mpuma@morganlewis.com

8 Counsel for Defendant, The Hershey Company  
9

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
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13

14 RYAN ZULEWSKI, et al.,

15 Plaintiffs,

16 v.

17 THE HERSHEY COMPANY,

18 Defendant.

**CASE NO.: 3-11-CV-05117-BZ**

**STIPULATED PROTECTIVE ORDER  
REGARDING CONFIDENTIAL  
DOCUMENTS AND INFORMATION**

19 **STIPULATED PROTECTIVE ORDER**  
20

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

22 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiffs and Defendant,  
23 through their respective counsel, that, during this action, all documents, information, tangible  
24 items, and testimony designated as Confidential by the producing party in the above matter be,  
25 and hereby are, subject to the following terms and conditions.

26 1. **PURPOSES AND LIMITATIONS**  
27

28 Disclosure and discovery activity in this action are likely to involve production of

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

11 2. DEFINITIONS

12 2.1 Party: any party to this action, including all of its officers, directors, employees,  
13 consultants, retained experts, and outside counsel (and their support staff).

14 2.2 Disclosure or Discovery Material: all items or information, regardless of the  
15 medium or manner generated, stored, or maintained (including, among other things, testimony,  
16 transcripts, or tangible things) that are produced or generated in disclosures or responses to  
17 discovery in this matter.

18 2.3 "Confidential" Information or Items: information (regardless of how generated,  
19 stored or maintained) or tangible things that qualify for protection under standards developed  
20 under F.R.Civ.P. 26(c).

21 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
22 Producing Party.

23 2.5 Producing Party: a Party or non-party that produces Disclosure or Discovery  
24 Material in this action.

25 2.6 Designating Party: a Party or non-party that designates information or items that it  
26 produces in disclosures or in responses to discovery as "Confidential."  
27

1           2.7    Protected Material: any Disclosure or Discovery Material that is designated as  
2 “Confidential.”

3           2.8    Outside Counsel: attorneys who are not employees of a Party but who are retained  
4 to represent or advise a Party in this action.

5           2.9    House Counsel: attorneys who are employees of a Party.

6           2.10   Counsel (without qualifier): Outside Counsel and House Counsel (as well as their  
7 support staffs).

8           2.11   Expert: a person with specialized knowledge or experience in a matter pertinent to  
9 the litigation who has been retained by a Party or its Counsel to serve as an expert witness or as a  
10 consultant in this action and who is not a past or current employee of a Party or of a competitor of  
11 a Party and who, at the time of retention, is not anticipated to become an employee of a Party or a  
12 competitor of a Party. This definition includes a professional jury or trial consultant retained in  
13 connection with this litigation.

14           2.12   Professional Vendors: persons or entities that provide litigation support services  
15 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,  
16 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

17   3.    SCOPE

18           The protections conferred by this Stipulation and Order cover not only Protected Material  
19 (as defined above), but also any information copied or extracted therefrom, as well as all copies,  
20 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by  
21 parties or Counsel to or in Court or in other settings that might reveal Protected Material.  
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23   4.    DURATION

24           Even after the termination of this litigation, the confidentiality obligations imposed by this  
25 Order shall remain in effect until a Designating Party agrees otherwise in writing or a Court order  
26 otherwise directs.  
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1     **5.     DESIGNATING PROTECTED MATERIAL**

2             **5.1     Exercise of Restraint and Care in Designating Material for Protection.** Each Party  
3 or non-party that designates information or items for protection under this Order must take care to  
4 limit any such designation to specific material that qualifies under the appropriate standards. A  
5 Designating Party must take care to designate for protection only those parts of material,  
6 documents, items, or oral or written communications that qualify — so that other portions of the  
7 material, documents, items, or communications for which protection is not warranted are not  
8 swept unjustifiably within the ambit of this Order.

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

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

17             **5.2     Manner and Timing of Designations.** Except as otherwise provided in this Order  
18 (see, e.g., second paragraph of section 5.2(a), and sections 5.2(b) and (c), below), or as otherwise  
19 stipulated or ordered, material that qualifies for protection under this Order must be clearly so  
20 designated before the material is disclosed or produced.

21             Designation in conformity with this Order requires:

22             (a)     for information in documentary form (apart from transcripts of depositions  
23 or other pretrial or trial proceedings), that the Producing Party affix the legend  
24 “CONFIDENTIAL” on each page that contains protected material.

25             A Party or non-party that makes original documents or materials available for inspection  
26 need not designate them for protection until after the inspecting Party has indicated which  
27 material it would like copied and produced. During the inspection and before the designation, all  
28 of the material made available for inspection shall be deemed CONFIDENTIAL. After the

1 inspecting Party has identified the documents it wants copied and produced, the Producing Party  
2 must determine which documents, or portions thereof, qualify for protection under this Order.  
3 Then, before producing the specified documents, the Producing Party must affix the legend  
4 “CONFIDENTIAL” at the top of each page that contains Protected Material. If only a portion or  
5 portions of the material on a page qualifies for protection, the Producing Party also must clearly  
6 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

7 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
8 that Counsel for the deponent or witness providing testimony, within thirty (30) days after the  
9 final version of the transcript has been received by such Counsel, designate any portions of the  
10 transcript which contain testimony concerning CONFIDENTIAL information. Upon the request  
11 of Counsel on the record (i.e., before the deposition or proceeding is concluded), deposition or  
12 hearing testimony in its entirety shall be treated as CONFIDENTIAL until expiration of the 30-  
13 day designation period.

14 (c) for information produced in some form other than documentary, and for  
15 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
16 container or containers in which the information or item is stored the legend “CONFIDENTIAL.”  
17 If only portions of the information or item warrant protection, the Producing Party, to the extent  
18 practicable, shall identify the protected portions.

19 5.3 Need for Higher Level of Confidentiality. In the event the Producing Party  
20 believes that material to be produced, or testimony to be given, is deserving of a higher-level of  
21 confidentiality than the protections provided herein for “Confidential” materials, the Producing  
22 Party shall contact the Party to whom disclosure would otherwise be made to explain the need for  
23 and the specifics of the higher level of protection. The Parties shall meet and confer in good faith  
24 to come to agreement on the designation and its scope. If the Parties cannot agree, the Producing  
25 Party shall submit the matter to the Court for resolution per paragraph 6.3 of this Order, and shall  
26 not be required to produce the material in question until the Court issues a decision.

27 5.4 Inadvertent Failures to Designate. If corrected, an inadvertent failure to designate  
28 qualified information or items as “Confidential” or as some other level of confidentiality, does

1 not, standing alone, waive the Designating Party's right to secure protection under this Order for  
2 such material. If material is appropriately designated as "Confidential" or as some other level of  
3 confidentiality after the material was initially produced, the Receiving Party, on notification of  
4 the designation, must make reasonable efforts to assure that the material is treated in accordance  
5 with the provisions of this Order.

6 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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8 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's  
9 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
10 economic burdens, or a later significant disruption or delay of the litigation, a Party does not  
11 waive its right to challenge a confidentiality designation by electing not to mount a challenge  
12 promptly after the original designation is made.

13 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating  
14 Party's confidentiality designation must do so in good faith and must begin the process by  
15 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)  
16 with counsel for the Designating Party. In conferring, the challenging Party must explain the  
17 basis for its belief that the confidentiality designation was not proper and must give the  
18 Designating Party an opportunity to review the designated material, to reconsider the  
19 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
20 designation. A challenging Party may proceed to the next stage of the challenge process only if it  
21 has engaged in this meet and confer process first.

22 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality  
23 designation after considering the justification offered by the Designating Party may file and serve  
24 a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)  
25 that identifies the challenged material and sets forth in detail the basis for the challenge. Each  
26 such motion must be accompanied by a competent declaration that affirms that the movant has  
27 complied with the meet and confer requirements imposed in the preceding paragraph and that sets  
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1 forth with specificity the justification for the confidentiality designation that was given by the  
2 Designating Party in the meet and confer dialogue.

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

6 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

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8 7.1 **Basic Principles.** A Receiving Party may use Protected Material that is disclosed  
9 or produced by another Party or by a non-party in connection with this case only for prosecuting,  
10 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only  
11 to the categories of persons and under the conditions described in this Order. When the litigation  
12 has been terminated, a Receiving Party must comply with the provisions of section 11, below  
13 (FINAL DISPOSITION).

14 Protected Material must be stored and maintained by a Receiving Party at a location and  
15 in a secure manner that ensures that access is limited to the persons authorized under this Order.

16 7.2 **Disclosure of "CONFIDENTIAL" Information or Items.** Unless otherwise  
17 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party and/or a  
18 Receiving Party's Outside Counsel may disclose any information or item designated  
19 CONFIDENTIAL only to:

20 (a) the Receiving Party and the Receiving Party's Counsel, subject to the  
21 exception in paragraph 7.2(h) below, as well as employees of the Receiving Party's Counsel to  
22 whom it is reasonably necessary to disclose the information for this litigation and who have  
23 signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

24 (b) the officers, directors, and employees of the Receiving Party to whom  
25 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
26 Bound by Protective Order" (Exhibit A);

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

4 (d) the Court and its personnel;

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

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

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

12 (h) with respect to employee or personnel records, only the employees or  
13 former employees (i.e., named plaintiffs) who are the subject of said records, and not to other  
14 persons, employees or former employees (i.e., other named plaintiffs), unless the Receiving  
15 Party’s Outside Counsel has the consent of the subject of said records to further disclose those  
16 records.

17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
18 LITIGATION.

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

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

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

9 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
11 Material to any person or in any circumstance not authorized under this Stipulated Protective  
12 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
13 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)  
14 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
15 Order, and (d) request such person or persons to execute the “Agreement to Be Bound by  
16 Protective Order” that is attached hereto as Exhibit A.

17  
18 10. FILING PROTECTED MATERIAL.

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

23 11. FINAL DISPOSITION.

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

13 In addition, at Hershey's expense, an archival copy of all Protected Material it produces in  
14 this case shall be retained by Outside Counsel for Hershey for a period of four years from the date  
15 of final disposition of this case. If Plaintiffs' Counsel needs access to any of said Protected  
16 Material within the four year term, they may serve a written request upon Hershey's Outside  
17 Counsel setting forth the reasons for needing access to the Protected Material. Hershey's Outside  
18 Counsel shall timely respond to such a request and shall not unreasonably decline Plaintiffs'  
19 Counsel's request to access the Protected Material. In the event Hershey's Outside Counsel does  
20 not agree to allow Plaintiffs' Counsel access to the Protected Material, Plaintiffs' Counsel may  
21 submit the matter to the Court for resolution. If the Court determines that the reasons set forth by  
22 Plaintiffs' Counsel for needing access to the Protected Material are justified, it shall order Outside  
23 Counsel for Hershey to provide Plaintiffs' Counsel with access to the Protected Material, and,  
24 once received, Plaintiffs' Counsel shall treat the Protected Material in accordance with the terms  
25 of this Protective Order.

1 12. MISCELLANEOUS

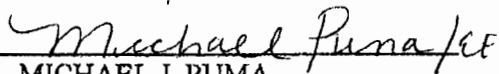
2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
3 seek its modification by the Court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
5 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
6 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
7 Party waives any right to object on any ground to use in evidence of any of the material covered  
8 by this Protective Order.

9 Respectfully submitted,

10  
11 Dated: April 10, 2012.

MORGAN, LEWIS & BOCKIUS LLP  
REBECCA EISEN  
MICHAEL J. PUMA

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13  
14 By:   
MICHAEL J. PUMA

15  
16 Attorneys for Defendant  
THE HERSHEY COMPANY

17 Dated: April 10, 2012.

18 THE BRANDI LAW FIRM  
19 THOMAS J. BRANDI  
BRIAN J. MALLOY

20 HOBAN & FEOLA LLC  
21 DAVID C. FEOLA

22 By:   
BRIAN J. MALLOY

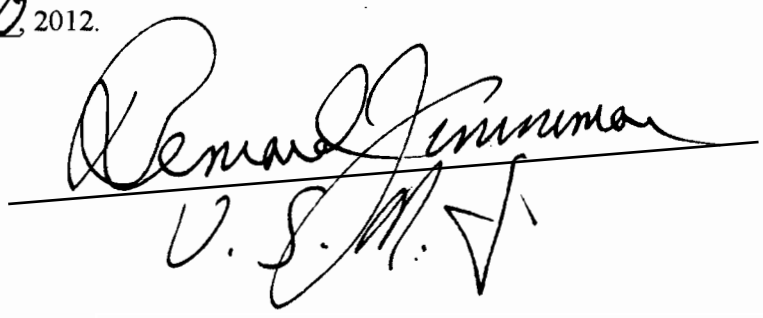
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24 Attorneys for Named Plaintiffs

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**ORDER**

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

Dated: April 10, 2012.



A handwritten signature in cursive script, reading "Bernard Zimmerman", is written over a horizontal line. Below the line, the initials "U.S.M.J." are written in a stylized, blocky font.

Bernard Zimmerman, United States Magistrate Judge

**EXHIBIT A**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RYAN ZULEWSKI, et al.,  
Plaintiffs,  
v.  
THE HERSHEY COMPANY,  
Defendant.

Case No.: 3-11-CV-05117-BZ  
**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)