

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DARYL S. LANDY, State Bar No. 136288
MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear Street Tower
San Francisco, CA 94105-1126
Tel: 415.442.1000
Fax: 415.442.1001
Email: dlandy@morganlewis.com

THE BRANDI LAW FIRM
THOMAS J. BRANDI, SBN 53208
BRIAN J. MALLOY, SBN 234882
354 Pine Street, Third Floor
San Francisco, CA 94104
Telephone: 415.989.1800;
Facsimile: 415.707.2024
E-mail: tjb@brandilaw.com

MICHAEL J. PUMA (admitted *pro hac vice*)
BRANDON BRIGHAM (admitted *pro hac vice*)
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Tel: 215.963.5000
Fax: 215.963.5001
Email: mpuma@morganlewis.com
bbrigham@morganlewis.com

HOBAN & FEOLA, LLC
DAVID C. FEOLA (CO Bar No. 18789)
(admitted *pro hac vice*)
1626 Wazee Street, Suite 2A
Denver, Colorado 80202
Telephone: 303.674.7000;
Facsimile: 303.382.4685
E-mail: David @Feolalaw.com

Attorneys for Defendant
THE HERSHEY COMPANY

Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

GREGORY P. BARNES, et al.,

Plaintiffs,

vs.

THE HERSHEY COMPANY,

Defendant.

Case No. 12-cv-01334-CRB

**STIPULATION AND ORDER
CONTINUING TRIAL**

Defendant The Hershey Company (“Hershey”) and Plaintiffs (collectively, the “Parties”), by and through their respective counsel, pursuant to Civil Local Rules 6-2, 7-12, and 40-1 of the Northern District of California, jointly request an order continuing trial, and aver as follows:

WHEREAS on January 16, 2015, the Court set a trial date of August 17, 2015 and a pretrial conference for August 4, 2015, ECF 217;

1 WHEREAS on March 27, 2015, Hershey filed a Motion for Partial Summary Judgment
2 seeking dismissal of all claims brought by Plaintiffs David Bolle, Lori DeLaRue, Mary Frazier,
3 Richard Nelson, Mary Wasson, Mary Weeks, and James Bombeck (collectively, “Release
4 Plaintiffs”), ECF 150;

5 WHEREAS on April 3, 2015, Plaintiffs filed a Motion for Partial Summary Judgment
6 seeking summary judgment on Hershey’s Tenth Affirmative Defense, of waiver, ECF 236;

7 WHEREAS, the Parties’ cross-Motions remain pending, ECF 268;

8 WHEREAS, no deadline for summary judgment exists and Hershey has informed
9 Plaintiffs that it will move for summary judgment on and/or to sever the remaining claims alleged
10 by Plaintiffs and/or for decertification and Plaintiffs take no position at this time as to the
11 propriety of those proposed motions and waive no rights or arguments regarding those motions,

12 WHEREAS, the earliest hearing date for any additional motion is July 17, 2015;

13 WHEREAS, based on the current pre-trial schedule, the Parties must serve motions *in*
14 *limine* two days prior to that hearing date and submit their other pre-trial filings less than two
15 weeks later, which would require the Parties to draft pre-trial filings and prepare for trial without
16 knowing the scope of trial;

17 WHEREAS, the Parties will promptly engage in discussions, including regarding
18 mediation, to determine if a resolution of this litigation can be reached upon receiving a ruling on
19 the pending cross-motions for partial summary judgment, and Hershey will file its remaining
20 summary judgment motions subsequent to these efforts, in September 2015, Plaintiffs shall have
21 21 days to file their opposition[s], and Hershey shall have 14 days for its reply(ies);

22 WHEREAS, the Parties seek a continuance of trial in order to facilitate a potential
23 resolution of this matter and to conserve the resources of the Court and the Parties, as well as to
24 provide adequate time to complete expert disclosures and discovery and to obtain a ruling on any
25 additional motions in advance of trial and related pre-trial deadlines, and the Parties do not seek
26 this continuance for the purpose of delay;

27 WHEREAS, Hershey has advised Plaintiffs that due to the seasonal demands of
28

1 Halloween and the importance of this season to its business, Hershey's witnesses' availability is
2 severely limited in October;

3 WHEREAS, Plaintiffs' and Defendant's counsel have a trial scheduled to begin in this
4 Court in a separate matter on November 9, 2015, and defense counsel has a federal court trial
5 scheduled for December 8, 2015 in another matter;

6 WHEREAS, all parties and their counsel are available for trial during the weeks of
7 January 18, 2016 through March 14, 2016;

8 WHEREAS, the Parties agree that this Stipulation and the fact of entering into this
9 Stipulation is without prejudice to any rights, position or arguments the Parties may make in this
10 Action and that nothing in this Stipulation or the fact of entering into this Stipulation shall be
11 construed as an admission by either Party or otherwise prejudice either Party's position in any
12 further litigation;

13 IT IS HEREBY STIPULATED pursuant to Local Rule 6-2 and 40-1 by and between the
14 Parties hereto, through their respective attorneys of record, to the extension of certain deadlines as
15 follows:

16 Event	17 Current Deadline	18 Proposed Deadline
19 Affirmative Expert Disclosures, If Any	20 June 12, 2015	21 July 31, 2015
22 Rebuttal Expert Disclosures	23 July 13, 2015	24 August 28, 2015
25 Final Pretrial Conference	26 August 4, 2015	27 January 7, 2016
28 Trial to Commence	August 17, 2015	January 19, 2016

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Pursuant to L.R. 5-1(i)(3) regarding signatures, I, Brandon J. Brigham, attest that
concurrence in the filing of this document has been obtained from each of the other signatories. I
declare under penalty of perjury under the laws of the United States of America that the foregoing
is true and correct. Executed this 10th day of June, 2015.

/s/ Brandon J. Brigham

Brandon J. Brigham

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: June 10, 2015

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Brandon J. Brigham
Brandon J. Brigham

Attorneys for Defendant
THE HERSHEY COMPANY

Dated: June 10, 2015


THE BRANDI LAW FIRM

By: /s/ Brian J. Malloy
Brian J. Malloy

Attorneys for Plaintiffs

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: June 12, 2015

By: 
Honorable Charles R. Breyer
United States District Judge