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The Procter & Gamble Company

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WEBCELEB, INC.,
Plaintiff,

v.

THE PROCTER & GAMBLE
COMPANY,
Defendant.

Case No.: 10-cv-2318 DMS (NLS)

Honorable Dana M. Sabraw

PROTECTIVE ORDER

[Doc. No. 30.]

THE PROCTER & GAMBLE
COMPANY,
Counter-complainant,

v.

WEBCELEB, INC.,
Counter-defendant.

[PROPOSED] PROTECTIVE ORDER

1 In connection with the production of confidential documents and other
2 confidential information in this action, defendant and counter-claimant The Procter &
3 Gamble Company (“P&G”) and plaintiff and counter-defendant Webceleb, Inc.
4 (“Webceleb”), through their respective counsel (collectively, the “Parties” or
5 individually, “Party”), have jointly moved for entry of this Protective Order
6 (“Stipulated Protective Order”).
7

8 **I. PURPOSE OF THIS PROTECTIVE ORDER**

9 The purpose of this Stipulated Protective Order is to provide a means for
10 limiting access to and use and disclosure of confidential documents or information that
11 are produced in this action. Any unauthorized disclosure of confidential documents or
12 information in violation of this Order may be subject to discipline by the contempt
13 powers of this Court.

14 **II. DESIGNATION OF “CONFIDENTIAL” OR “ATTORNEYS’ EYES**
15 **ONLY” DOCUMENTS OR INFORMATION**

16 The Parties may designate such documents or information as “Confidential” or
17 “Attorneys’ Eyes Only” in accordance with the following procedures:
18

19 **A. “Confidential” and “Attorneys’ Eyes Only” Documents or**
20 **Information.**

21 Either Party may designate documents or information as “Confidential” if it has
22 a reasonable good faith belief that the disclosure of said documents or information
23 absent the protections of this order will have the effect of causing harm to the
24 producing party’s competitive position or privacy interests or a third party’s privacy
25 interests because the documents or information embody (a) sensitive, competitive or
26 other confidential business information; (b) sensitive financial information; (c)
27 sensitive product information; (d) sensitive personal information; (e) other sensitive
28 material that the Party does not customarily disclose to the public; or (f) documents or

1 information that the Party currently maintains as Confidential and is seeking to
2 maintain as Confidential for purposes of this action.

3 Either Party may designate documents or information as “Attorneys’ Eyes Only”
4 if it has a reasonable good faith belief that such documents or information meets the
5 requirements for Confidential documents or information within the meaning of this
6 Stipulated Protective Order, and additionally constitutes highly confidential financial
7 information.
8

9 **B. Time of Designation**

10 Unless otherwise agreed between counsel for the Parties, the designation of
11 Confidential or Attorneys’ Eyes Only Documents or Information shall be made at the
12 time of the production of documents.

13 **C. Manner of Designation**

14 The designation of Confidential or Attorneys’ Eyes Only Documents or
15 Information (“Designated Documents or Information”) shall be made in the following
16 manner:

- 17 1. For documents, by placing the notation “Confidential” or “Attorneys’
18 Eyes Only” on each page of such document;
- 19 2. For tangible items, including any documents or information produced on
20 magnetic disks or other computer related media, by placing the notation “Confidential”
21 or “Attorneys’ Eyes Only” on the object and, if applicable, on the container thereof or
22 if such are not practicable, as otherwise agreed by the Parties. In the event either Party
23 generates any “hard copy” or printout from any such materials, that Party must
24 immediately stamp each page “Confidential” or “Attorneys’ Eyes Only” as appropriate,
25 and the hard copy or printout shall be treated as “Confidential” or “Attorneys’ Eyes
26 Only” pursuant to this Stipulated Protective Order.
27
28

1 **D. Retroactive Designation**

2 1. Inadvertent production of any Designated Documents or Information
3 without a designation of confidentiality will not be deemed to waive a later claim as to
4 confidentiality or privilege, or prevent the Party claiming said confidentiality from re-
5 designating such documents or information as “Confidential” or “Attorneys’ Eyes
6 Only” promptly after discovery of the inadvertent production.

7 2. Within a reasonable time after production, either Party may retroactively
8 designate (or withdraw a designation) of Designated Documents or Information,
9 regarding any material that it has produced, provided however, that such retroactive
10 designation (or withdrawal) shall be in accordance with the terms of this Order. Such
11 retroactive designation (or withdrawal) shall be accomplished by notifying counsel for
12 the non-designating Party in writing of such retroactive designation (or withdrawal).
13 Upon receipt of any such written re-designation, counsel (i) shall not make any further
14 disclosure or communication of such retroactively designated material except as
15 provided for in this Order; (ii) shall take reasonable steps to notify all persons known
16 to have possession of any retroactively designated material of the effect of such re-
17 designation under this Order; and (iii) shall take reasonable steps to procure all copies
18 of such retroactively designated material from any persons known to have possession
19 of any such retroactively designated material who are not entitled to receipt under this
20 Order.

21
22 **E. Resolution of Disputes Regarding Designation**

23 If either Party, at any time, wishes to have the “Confidential” or “Attorneys’
24 Eyes Only” designation of any particular Designated Documents or Information
25 removed or changed, that Party shall first request in writing that the Party having made
26 the designation at issue change its designation. Thereafter, the Parties shall make good
27 faith efforts to resolve the dispute. If the designating Party refuses to agree to remove
28 or change the designation, then the Party that requests that the designation be so

1 removed may make a motion before this Court for an order removing or changing the
2 designation; provided, however, that the designating Party shall have the burden of
3 proving that such particular Designated Document or Information are properly
4 designated as “Confidential” or “Attorneys’ Eyes Only” pursuant to paragraph III. At
5 all times during the process of challenging a designation, the Parties shall treat the
6 Designated Documents or Information as originally designated until a change is agreed
7 to or the motion is decided by the Court and written notice of such decision is served
8 on the Parties.

9 Any motion filed with respect to this Stipulated Protective Order or documents
10 labeled “Confidential” or “Attorneys’ Eyes Only” must comply with the Local Rules of
11 this Court and Chambers’ Rules.

12
13 **F. Designation of Third Party Documents.**

14 Documents and/or information produced by a third party in response to a
15 subpoena or during deposition in the course of this litigation may involve receipt of
16 information, documents, things or testimony which include, contain or comprise
17 protected information that may or may not be appropriate for “Confidential” or
18 “Attorneys’ Eyes Only” designation under this Order. Unless otherwise agreed in
19 writing between counsel for the parties, documents and information so produced by a
20 third party shall be treated as follows: First of all, all such documents and information
21 shall automatically be deemed to be and shall be treated as “Attorneys’ Eyes Only” for
22 five [5] business days following their actual receipt by both counsel for Plaintiffs and
23 counsel for Defendant in this action, in order to enable each such counsel to determine
24 whether in their view any protected information is embodied therein. If no designation
25 of the information as “Confidential” or “Attorneys’ Eyes Only” by the Designating
26 Party is received by the non-Designating Party within five [5] business days after said
27 production, then the information will not be protected by this Protective Order except
28 pursuant to subsequent designation by a party hereto or pursuant to a subsequent

1 agreement of the parties or Court order; if however a written designation of
2 “Confidential” or “Attorneys’ Eyes Only” is made by a Designating Party and is
3 received by the non-Designating Party within five [5] business days after said
4 production of documents or information by the non-party, then the information will be
5 subject to this Protective Order and will be deemed to be “Confidential” or “Attorneys’
6 Eyes Only” (as requested by the Designating Party); provided, however, that the
7 designation may be challenged as any such designation.

8 Lastly, to the extent third party documents or information contain information
9 that is confidential and/or proprietary to the third party, said third party can avail itself
10 of the protections set forth in this Order and designate documents and/or information it
11 produces accordingly by executing this Order and agreeing to be bound by its terms.

12
13 **III. PERSONS TO WHOM DESIGNATED DOCUMENTS OR**
14 **INFORMATION MAY BE DISCLOSED**

15 **A. Disclosure of Documents or Information Designated as “Confidential”**

16 Documents or Information designated as “Confidential” may be disclosed and
17 copies may be provided only to:

- 18 1. Counsel of record;
 - 19 2. Expert witnesses or consultants retained by the Parties or their respective
20 counsel in connection with this action who have complied with paragraph IV(D),
21 below;
 - 22 3. Outside court reporting services and court reporters as may be reasonably
23 necessary in connection with the preparation or conduct of this action;
 - 24 4. This Court and its personnel, or any other tribunal of competent
25 jurisdiction having involvement in this matter and its personnel; and
 - 26 5. Any mediator or arbitrator selected by the Parties to mediate or arbitrate
27 this action.
- 28

1 6. The following Designated Representatives of the Parties upon compliance
2 with paragraph IV(D) below: Scott Fetters and Alex Rolek of Webceleb, and Rich
3 Delcore of P&G.

4 7. In-house Counsel for P&G, and attorney and Webceleb board member,
5 Jill Southworth, upon compliance with paragraph IV(D) below.

6
7 **B. Disclosure of Documents or Information Designated as “Attorneys’**
8 **Eyes Only”**

9 Documents or Information designated as “Attorneys’ Eyes Only” may be
10 disclosed and copies may be provided only to:

- 11 1. Counsel of record;
- 12 2. Expert witnesses or consultants retained by the Parties or their respective
13 counsel in connection with this action who have complied with paragraph IV(D),
14 below;
- 15 3. Outside court reporting services and court reporters as may be reasonably
16 necessary in connection with the preparation or conduct of this action;
- 17 4. This Court and its personnel, or any other tribunal of competent
18 jurisdiction having involvement in this matter and its personnel; and
- 19 5. Any mediator or arbitrator selected by the Parties to mediate or arbitrate
20 this action.

21 6. In-house Counsel for P&G, and attorney and Webceleb board member,
22 Jill Southworth, upon compliance with paragraph IV(D) below.

23 **C. Additional Authorized Disclosure of Designated Documents or**
24 **Information**

25 Notwithstanding anything to the contrary in paragraphs IV(A) and IV(B) above,
26 particular Designated Documents or Information may be disclosed and copies may be
27 provided:
28

1 1. To Persons who are explicitly named on the document as the authors or
2 addressees or to persons who may be shown to be an author or recipient of any
3 particular document;

4 2. To any other persons with the prior written consent of the designating
5 Party; and

6 3. To any other persons with the prior authorization of this Court or any
7 other tribunal of competent jurisdiction having involvement in this matter.

8 4. If a document designated as “Confidential” or “Attorneys’ Eyes Only”
9 refers to the conduct or affairs of a potential witness, the Party’s counsel of record may
10 and shall discuss such conduct or affairs with such person without revealing the
11 existence of the document, or its authors or source.

12
13 **D. Disclosure to Experts, Consultants, Inside Counsel or Designated**
14 **Representatives**

15 Prior to disclosing or providing copies of any Designated Documents or
16 Information to any expert, consultant, Inside Counsel or Designated Representative
17 pursuant to paragraphs IV(A), IV(B) or IV (C), above, the Parties shall first obtain the
18 agreement of the person to whom such disclosure will be made to be bound by the
19 terms of this Stipulated Protective Order as set forth in the attached “Acknowledgment
20 and Agreement To Be Bound.” Specifically, the person shall acknowledge that, during
21 the course of his or her retention or work on this case they may have access to, and
22 become acquainted with Designated Documents or Information, which are regularly
23 used in the operation of the businesses of the designating Party and in which the
24 designating Party has an expectation of confidentiality. The person shall agree not to
25 disclose such Designated Documents or Information, directly or indirectly, to any
26 person or entity not subject to this Stipulated Protective Order or use them in any way
27 outside the specific scope of his/her retention or work on this case, or at any time
28 thereafter.

1 **E. Return of Designated Documents or Information by Experts and**
2 **Consultants**

3 Designated Documents or Information disclosed to any expert or consultant may
4 be retained by such expert or consultant provided that such expert or consultant
5 subsequently destroys any and all copies of such Designated Documents or
6 Information upon the termination of their engagement.
7

8 **IV. USE OF DESIGNATED DOCUMENTS OR INFORMATION**

9 **A. Use of Designated Documents or Information Generally**

10 Designated Documents or Information shall only be used by the Parties, their
11 respective agents, and any other persons to whom such Designated Documents or
12 Information may be disclosed pursuant to this Stipulated Protective Order: (1) in this
13 action; (2) as otherwise compelled by lawful process (provided the designating Party is
14 given a reasonable notice to object); or (3) as otherwise required by law.

15 Notwithstanding the foregoing, nothing in this Stipulated Protective Order shall
16 prevent or limit the designating Party from disclosing Designated Documents or
17 Information they so designate.
18

19 **B. Use of Designated Documents or Information in the Conduct of this**
20 **Action**

21 1. Designated Documents or Information may be used by counsel for the
22 non-designating Party in good faith in connection with investigating this action,
23 provided that the Designated Documents or Information are protected pursuant to the
24 terms and conditions of this Stipulated Protective Order.

25 2. The terms of this Stipulated Protective Order do not apply to evidence
26 presented at court proceedings and/or trial in this matter. Any protective measures
27 relating to Designated Documents or Information should be taken up with the judicial
28 officer conducting the particular proceeding at the appropriate time.

1 **3.** If either Party seeks to file pleadings or other documents with this Court
2 that contains the other Party's Designated Documents or Information, it may do so only
3 if: (a) reasonably necessary to the proceeding; (b) the filing Party informs the
4 designating Party of such filing concurrently with the filing of such documents with the
5 Court; and (c) the filing Party moves to file the relevant pleadings or documents under
6 seal.
7

8 **V. RETURN OF DESIGNATED DOCUMENTS, TESTIMONY, OR**
9 **INFORMATION**

10 Upon written request after the final conclusion of this action, the Parties shall:

11 **A.** Return to the other Party any and all Designated Documents or
12 Information so designated by that Party and all copies thereof in its possession, custody
13 and control or otherwise destroy such documents;

14 **B.** Ensure that all Designated Documents or Information in the possession,
15 custody or control of any permitted parties or third parties are returned to the
16 designating Party or are otherwise destroyed; and

17 **C.** Destroy all notes, memoranda or other documents that contain excerpts
18 from any of the Designated Documents or Information. Notwithstanding the
19 foregoing, attorney work product, attorney-client communications, and information
20 derived from Designated Documents or Information may be retained by the non-
21 designating Party and its counsel.

22 **VI. PUBLIC DOCUMENTS**

23 None of the restrictions set forth in this Stipulated Protective Order shall apply
24 to any documents or other information that become public knowledge by means not in
25 violation of the provisions of this Stipulated Protective Order. Nothing in this
26 Stipulated Protective Order shall prevent either Party from using any information that it
27 properly possessed prior to receipt of any Designated Documents or Information from
28

1 the designating Party or that is discovered independently by the non-designating Party.
2 The terms for the treatment of Designated Documents or Information pursuant to the
3 Stipulated Protective Order shall be effective only upon the entry of this Stipulated
4 Protective Order.
5

6 **VII. NO PROBATIVE VALUE**

7 This Stipulated Protective Order shall not aggregate or diminish any contractual,
8 statutory or other legal obligation or right of any party or person with respect to any
9 Designated Documents or Information. The fact that information is designated
10 “Confidential” or “Attorneys’ Eyes Only” under the Stipulated Protective Order shall
11 not be deemed to be determinative of what a trier of fact may determine to be
12 confidential or proprietary. This Stipulated Protective Order shall be without prejudice
13 to the right of any party to bring information before this Court, regardless of (a)
14 whether any particular material is or is not confidential, or (b) whether any particular
15 information or material is or is not entitled to a greater or lesser degree of protection
16 under the terms of this Stipulated Protective Order, provided that in doing so, the party
17 complies with the procedures set forth herein. The fact that any information is
18 disclosed, used, or produced in any proceeding in this action shall not be offered in any
19 other action or proceeding before this or any other Court, agency or tribunal as
20 evidence of or concerning whether or not such information is admissible, confidential
21 or proprietary.

22 **VIII. NO IMPLIED WAIVER OF ADMISSION**

23 No party shall be obligated to challenge the proprietary nature of any designation
24 of “Confidential” or “Attorneys’ Eyes Only” information, and the failure to do so shall
25 not constitute a waiver or otherwise preclude a subsequent challenge to the designation.
26
27
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1 **IX. MODIFICATION OF THIS STIPULATED PROTECTIVE ORDER**

2 The Parties hereto may modify the terms of this Stipulated Protective Order by
3 further stipulation. However, no modification by the parties shall have the force or
4 effect of a court order unless the Court approves the modification. Alternatively, any
5 party hereto may seek an order of this Court to modify the terms of this Stipulated
6 Protective Order. Any motion seeking such modification must be served upon all
7 counsel of record and filed in accordance with this Court's filing procedures.
8

9 **X. MANDATORY TERMS PER MAGISTRATE JUDGE STORMES**

10
11 The parties will follow and abide by applicable law, including Civ. L.R. 79.2,
12 with respect to filing documents under seal in this Court. If a party wishes to
13 submit to the Court any document or material that comprises, embodies,
14 summarizes, discusses, or quotes from "Confidential" or "Highly Confidential"
15 material, the party seeking to file such material shall seek permission of the
16 Court to file said material under seal.
17

18 The party seeking to file under seal must electronically file a "Motion to File
19 Documents Under Seal" and electronically lodge the said documents using a
20 new event called "Sealed Lodged Proposed Document." The System will inform
21 the party that the documents will be sealed and only available to court staff. The
22 Clerk's Office will indicate on the public docket that proposed sealed documents
23 were lodged. A party need only submit a courtesy copy of the documents to
24 chambers if the documents exceed 20 pages in length. If the court grants the
25 motion to seal, the docket entry and documents will be sealed and designated on
26 the docket as filed on the order date. If the court denies the motion to seal, the
27 lodged documents will remain lodged under seal absent an order to the contrary.
28

1 A redacted version of the document sought to be filed under seal shall be filed
2 and made part of the public record. The document shall be titled to show that it
3 corresponds to an item filed under seal, e.g., "Redacted Copy of Sealed
4 Declaration of John Smith in Support of Motion for Summary Judgment."
5

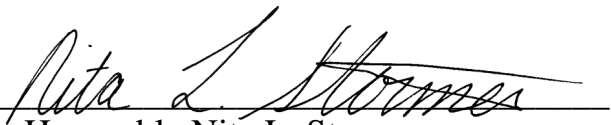
6 The Court may modify the protective order in the interests of justice or for
7 public policy reasons.

8 **XI. EXECUTION AND COUNTERPART**

9 This Stipulated Protective Order may be executed in one or more counterparts,
10 each of which shall be deemed to be an original, but all of which together shall
11 constitute one and the same instrument. Email or facsimile signatures shall be binding
12 upon the Parties hereto and may be submitted and considered as originals.
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14 **IT IS SO ORDERED.**

15 Dated: July 22, 2011

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The Honorable Nita L. Stormes
United States Magistrate Judge
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ACKNOWLEDGED AND AGREED:

Name: _____

Address: _____

Employer: _____

Title: _____

Dated: _____