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INTERIM CLASS COUNSEL

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE FERRERO LITIGATION

CASE NO. 3:11-CV-00205-H-CAB

ATHENA HOHENBERG & LAURA RUDE-
BARBATO, individually and on behalf of all
others similarly situated,

**PLAINTIFFS' UNOPPOSED *EX PARTE*
APPLICATION TO FILE DOCUMENTS
UNDER SEAL**

Judge: The Honorable Marilyn L. Huff

Plaintiffs,

v.

FERRERO U.S.A, INC., a foreign corporation,

Defendant.

1 Plaintiffs Athena Hohenberg and Laura Rude-Barbato hereby respectfully apply for permission
2 to file the following documents under seal, pursuant to the Protective Order filed in this action, and
3 signed by Magistrate Judge Cathy Ann Bencivengo on April 29, 2011 (Dkt. No. 32). Ferrero does not
4 oppose this application. These documents are being submitted as part of the Declaration of Jack
5 Fitzgerald in Opposition to Ferrero's Motion to Transfer Venue (Dkt. No. 19). The documents
6 requested to be filed under seal are as follows:

7 **Fitzgerald Dec. Exhibit B:** Excerpts from the deposition transcript of Ferrero's CEO,
8 Bernard Kreilmann, that Ferrero designated "Confidential."

9 **Fitzgerald Dec. Exhibit C:** Document produced by Ferrero in response to Interrogatories
10 detailing Ferrero's net sales of Nutella from January 2007 through February 2011, which Ferrero
11 designated "Confidential."

12 **Fitzgerald Dec. Exhibit D:** Document produced by Ferrero in response to Interrogatories
13 detailing Ferrero's Unit and Dollar sales of Nutella in the United States and California from 2007 to
14 2010, and for the 12 weeks ending March 20, 2011, which Ferrero designated "Confidential."

15 **Fitzgerald Dec. Exhibit E:** Printout of native Microsoft Excel file produced by Ferrero on a
16 CD marked FERRERO001234-001270, and further marked "CONFIDENTIAL." The document
17 shows underlying and summary Nutella sales data for "mass" stores Wal-Mart and Target, and "club"
18 stores Costco and Sams.

19 **Fitzgerald Dec. Exhibit F:** First 10 pages of a document produced by Ferrero bearing
20 production numbers FERRERO000134-001128, showing every point Ferrero shipped Nutella to from
21 January 2007 through March 2011, which Ferrero designated "Confidential."

22 **Fitzgerald Dec. Exhibit J:** Table created by Plaintiffs concerning possible third-party
23 witnesses. Plaintiffs seek to file under seal information derived from sources Ferrero designated
24 "Confidential."

25 For the foregoing reasons, Plaintiffs' respectfully request the Court permit them to file the
26 foregoing exhibits under seal.¹ If the Court finds any documents sought to be filed under seal are not

27 _____
28 ¹ Per the Court's instructions, Plaintiffs are delivering to Chambers two hard copies of each document
sought to be filed under seal, pending resolution of this Motion.

1 confidential, Plaintiffs respectfully request a specific finding that they are not subject to the Protective
2 Order.

3
4 Dated: May 2, 2011

Respectfully submitted,

5 By: /s/ Jack Fitzgerald

6 Jack Fitzgerald
7 Gregory S. Weston
8 **THE WESTON FIRM**

9 Ronald A. Marron
10 **LAW OFFICES OF RONALD A.
11 MARRON, APLC**

INTERIM CLASS COUNSEL