

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JAYME GORDON,

Plaintiff,

v.

DREAMWORKS ANIMATION SKG, INC.,  
DREAMWORKS ANIMATION LLC, and  
PARAMOUNT PICTURES, CORP.,

Defendants.

C.A. No. 1:11-cv-10255-JLT

**PROTECTIVE ORDER**

This protective order (“Protective Order”) is issued to expedite the flow of discovery materials, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that only materials the parties are entitled to keep confidential are subject to such treatment, and to ensure that the parties are permitted reasonable necessary uses of such materials in preparation for and in the conduct of trial, pursuant to Fed. R. Civ. P. 26(c) and any other applicable rule of this Court. Unless modified, superseded or terminated pursuant to the terms contained in this Order, this Protective Order shall remain in effect through the conclusion of this litigation and thereafter as set forth below.

In support of this Protective Order, the Court finds that:

1. Documents or information containing confidential business or commercial information or trade secrets within the meaning of Rule 26(c) (“Confidential Information”) is likely to be disclosed or produced during the course of discovery in this litigation;

2. The parties to this litigation may assert that public dissemination and disclosure of Confidential Information could injure or damage the party or a non-party disclosing or producing the Confidential Information and/or could place that party at a competitive disadvantage;

3. Counsel for the party or parties receiving Confidential Information are presently without sufficient information to accept the representation(s) made by the party or parties or non-parties producing Confidential Information as to the confidential, proprietary, and/or trade secret nature of such Confidential Information; and

4. To protect the respective interests of the parties and to facilitate the progress of disclosure and discovery in this case, the following Protective Order should issue.

**IT IS THEREFORE ORDERED THAT:**

1. This Protective Order shall apply to all information, documents and things subject to discovery in this Action produced either by a party or a non-party in discovery in this Action (“Action” shall include without limitation this litigation and any adjunct subpoena proceedings incident hereto before any tribunal) including, without limitation, testimony adduced at deposition upon oral examination or upon written questions, answers to interrogatories, documents and things produced, information obtained from inspection of premises or things, and answers to requests for admission, or information disclosed pursuant to subpoena under Fed. R. Civ. P. 45 (“Discovery Material”).

2. Discovery Material containing Confidential Information is referred to as “Confidential Material.” The following is not Confidential Material: (i) material which, on its face, shows or which, through other evidence, the receiving party can show has been published to the general public; (ii) information that the receiving party can show was lawfully in the receiving party's possession prior to being designated as Confidential Material in this litigation

and that the receiving party is not otherwise obligated to treat as confidential; (iii) information that the receiving party can show was obtained (without any benefit or use of Confidential Material) from a third party having the right to disclose such information to the receiving party without restriction or obligation of confidentiality; and (iv) information which, after its disclosure to a receiving party, is published to the general public by a party having the right to publish such information.

3. In determining the scope of information that a party or non-party may designate as its Confidential Material, each party acknowledges the importance of client access to information necessary to client decision-making in the prosecution or defense of litigation, and therefore agrees that designations of information as Confidential Material and responses to requests to permit further disclosure of Confidential Material shall be made in good faith and not (1) to impose burden or delay on an opposing party or (2) for tactical or other advantage in litigation.

4. The producing party shall label or mark each document and thing that it deems to constitute Confidential Materials with the following designation: "CONFIDENTIAL."

5. The parties may designate as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" those Confidential Materials that contain information that is especially sensitive and could cause significant competitive harm if disclosed to an unauthorized person falling into one of the following categories: (1) financial information; and (2) non-public artwork, story ideas, scripts, and analogous materials. This designation shall be made in good faith. The parties shall label or mark each such document or thing with the following phrase, or with a substantially similar phrase: "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." Materials so designated is referred to herein as Highly Confidential Materials.

6. The labeling or marking of a document or tangible thing with the designation “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall be made when a copy of the document or thing is provided to the receiving party by placing the required legend on the face of each such document or thing. In the case of documents containing Confidential Information, such legend shall be placed on every page of such document (except in the case of electronic documents produced in native format). Any such designation that is inadvertently omitted or mis-designated may be corrected if the producing party (a) notifies the receiving party of the inadvertent omission, and (b) re-produces properly designated documents and things. The receiving party shall thereafter treat the materials as Confidential Materials or Highly Confidential Materials as appropriate, and such material shall be subject to this Protective Order as if it had been initially so designated. If, prior to receiving such notice, the receiving party has disseminated the Confidential or Highly Confidential Material to individuals not authorized to receive it hereunder, it shall make a reasonable effort to retrieve the Confidential or Highly Confidential Material or to otherwise assure that the recipient(s) properly mark the Confidential or Highly Confidential Material and maintain the confidentiality of the Confidential or Highly Confidential Material, but shall have no other responsibility or obligation with respect to the information disseminated.

7. In the case of deposition upon oral examination or written questions, such testimony shall be deemed to constitute Confidential Materials until the expiration of thirty calendar days after the deponent’s receipt of the deposition transcript, unless otherwise designated at the time of the deposition or during the thirty day period. Pages or entire transcripts of testimony given at a deposition or hearing may be designated as containing Confidential Materials or Highly Confidential Materials by an appropriate statement either at the

time of the giving of such testimony or by written notification within thirty calendar days after the deponent's receipt of the deposition transcript. If the testimony is not designated at the time of the deposition or during the thirty day period after receipt of the deposition transcript, the automatic designation will expire at the end of the thirty day period.

8. In the case of written discovery responses and the information contained therein, the responses may be designated as containing Confidential Materials or Highly Confidential Materials by means of a statement at the conclusion of each response that contains such information specifying the level of designation of the Confidential Information and by placing a legend of the front page of such discovery responses stating: "CONTAINS CONFIDENTIAL INFORMATION" or "CONTAINS HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY INFORMATION," or a substantially similar designation. Any such designation that is inadvertently omitted or mis-designated may be corrected by written notification to counsel for the receiving party, and the receiving party shall thereafter mark and treat the materials as containing Confidential Materials or Highly Confidential Materials as appropriate, and such material shall be subject to this Protective Order as if it had been initially so designated. If, prior to receiving such notice, the receiving party has disseminated the Confidential Materials or Highly Confidential Materials to individuals not authorized to receive it hereunder, it shall make a reasonable effort to retrieve the Confidential or Highly Confidential Materials or to otherwise assure that the recipient(s) properly mark and maintain the confidentiality of the materials, but shall have no other responsibility or obligation with respect to the information disseminated.

9. In the case of Confidential Information not reduced to documentary or tangible form or which cannot be conveniently designated as set forth above, such information may be

designated as Confidential Material or Highly Confidential Material by informing the receiving party of the designation in writing at the time of transfer of such information.

10. Highly Confidential Materials and any information contained therein shall be disclosed only to the following persons:

a. Outside counsel of record in this Action for the receiving party, and in-house counsel employed by the Defendants who have responsibility for this litigation, all of whom shall be bound by this Protective Order;

b. Employees and agents of such counsel including paralegals, litigation support services, secretarial and clerical staff, all of whom shall be bound by this Protective Order;

c. The following categories of persons, provided that such persons have no involvement in addressing any matter regarding the substantive issues in the case, and provided that these persons execute appropriate agreements ensuring the confidentiality of the materials: outside copying or scanning vendors; independent legal translators retained to translate in connection with this Action; independent stenographic reporters and videographers retained to record and transcribe testimony in connection with this Action; graphics, translation, or design services retained by counsel of record for purposes of preparing demonstrative or other exhibits for deposition, trial, or other court proceedings in this Action; and jury or trial consulting services, including mock jurors;

d. The Court, its personnel and stenographic reporters;

e. Any person who authored, previously received, or was shown the materials and, subject to timely objection including objection that such person is not internally

authorized to receive such information, any person currently employed by the designating party; and

f. Any independent experts or consultants, and employees and assistants under the control of such expert or consultant, who (1) are engaged in connection with this Action, and (2) are not regularly employed by or associated with a party hereto, other than by the designating party, provided however that disclosure to such persons shall be made only on the conditions set forth in paragraph 12 below.

11. Confidential Materials and any information contained therein may be disclosed to the persons designated in paragraph 10 above and additionally may be disclosed to the parties and their officers, directors, managing agents, and employees, so long as such individuals are actively involved in the prosecution or defense of this litigation, and so long as such individuals agree to be bound by the provisions of this Protective Order.

12. A party desiring to disclose Confidential or Highly Confidential Materials to experts or consultants specified in paragraph 10(f) above shall first obtain a signed undertaking, as provided in Exhibit A attached hereto, from each such expert or consultant, and such party or its counsel shall retain in his/her files the original of each such signed undertaking.

13. The restrictions on the use of Confidential and Highly Confidential Materials established by this Protective Order are applicable only to the use of information received by a party from another party or from a non-party. A party is free to use its own information as it pleases.

14. Any party or non-party may seek permission to file Confidential Materials or Highly Confidential Materials with the Court under seal by following the procedure set out in

L.R. 7.2. No Confidential Materials or Highly Confidential Materials shall be publicly filed with the Court absent agreement of the producing party or Order of the Court.

15. The acceptance by a party of documents designated as Confidential Materials or Highly Confidential Materials shall not constitute an agreement, admission or concession, or permit an inference, that the material(s) are in fact properly the subject for protection under Fed. R. Civ. P.26 (c), or some other basis. Documents designated as Confidential Materials or Highly Confidential Materials shall be treated in accordance with the provisions of this Protective Order, except that any party may at any time seek an Order from the Court determining that specified information or categories of information are not properly designated as Confidential Materials or Highly Confidential Materials, provided that prior to making such a motion the parties shall meet and confer in good faith to resolve any differences over the designation. In response to the filing of such a motion, the party or non-party asserting confidentiality shall have the burden of proving that the Confidential or Highly Confidential Materials in question are protectable under Fed. R. Civ. P. 26(c) or otherwise. A party shall not be obligated to challenge the propriety of a designation of Confidential or Highly Confidential Materials at the time made, and failure to do so shall not preclude subsequent challenge. Should any party or non-party seek an Order from the Court to determine whether specified information or categories of information are not properly designated the claimed designation shall remain operative and respected by all the parties and non-parties pending the Court's ruling.

16. Nothing in this Protective Order shall require disclosure of material that a party or non-party contends is protected from disclosure by the attorney-client privilege, the attorney work-product immunity, or any other applicable privilege. This shall not preclude any party from moving the Court for an Order directing the disclosure of such material.



17. Production or disclosure of documents or information subject to the attorney-client privilege, work product immunity, or any other applicable privilege shall not constitute a waiver of, nor a prejudice to, any claim that such or related material is privileged or protected by the work product immunity or any other applicable privilege. A producing party may notify the receiving party in writing that produced documents or information are subject to the attorney-client privilege, work product immunity, or any other applicable privilege. Within five (5) calendar days of this notice, the receiving party shall return or destroy all such documents or information and all copies thereof, including those that have been shared with experts, consultants, and vendors, and confirm in writing that all such documents or information have been returned or destroyed. No use shall be made of such documents or information during depositions, through motion practice, or at trial. In the case of such returned production, the producing party shall provide a privilege log identifying such documents or information within ten (10) calendar days of its original notice to the receiving party. The receiving party may move the Court for an Order compelling production of any such documents or information in accordance with the Federal Rules of Civil Procedure. The motion shall be filed under seal and shall not assert as a ground for production the fact of the earlier production, nor shall the motion disclose or otherwise use the content of the previously produced and returned documents or information in any way (beyond any information appearing on the above-referenced privilege log).

18. In the event of any accidental or inadvertent disclosure of Confidential or Highly Confidential Material other than in a manner authorized by this Protective Order, counsel for the party responsible for the disclosure shall immediately notify counsel for the producing party of all the pertinent facts, and make every effort to prevent further unauthorized disclosure including

retrieving all copies of the Confidential or Highly Confidential Material from the recipient(s) thereof and securing the agreement of the recipients not to further disseminate the Confidential or Highly Confidential Material in any form. Compliance with the foregoing shall not prevent a party or non-party from seeking further relief from the Court.

19. The recipient of any Confidential or Highly Confidential Material shall maintain such information in a secure and safe place.

20. Each recipient of any Confidential or Highly Confidential Material shall be subject to the jurisdiction of this Court for purposes of the implementation and enforcement of this Protective Order.

21. This Protective Order shall not prevent the parties from applying to the Court for relief therefrom or modification thereto, or from applying to the Court for further or additional relief by way of protective orders or otherwise, or from agreeing between themselves to modifications of this Protective Order.

22. Confidential and Highly Confidential Materials shall be used solely for the purposes of this Action and shall not be used for any other purpose except as expressly provided herein or by further Order of the Court.

23. In the event that any discovery calls for the production of information that a party or non-party reasonably believes would breach an express or implied agreement with any third party to maintain such information in confidence, the party or non-party requested to produce the information shall, within seven calendar days of receipt of the discovery request, give written notice to the third party that its information is subject to discovery in this action, and shall provide the third party with a copy of this Stipulated Protective Order. The third party shall have twenty-one calendar days from receipt of the written notice to seek relief from the Court, if the

third party so desires. If the twenty-one calendar days elapse without the third party seeking relief from the Court, the requested information must immediately be produced in accordance with the terms of this Stipulated Protective Order.

24. In the event that a party or non-party desires to provide access to or disseminate Confidential or Highly Confidential Materials to any person not entitled to access under this Protective Order, it may move the Court for an order that such person be given access thereto if the parties cannot, after negotiating in good faith, agree to such additional access or dissemination.

25. Within sixty calendar days after the final conclusion of this Action (“Termination of Action”), including any appeals, all Confidential or Highly Confidential Materials produced by any party or non-party, and all copies of such information, shall be returned to the producing party, or counsel of record shall certify in writing that such material has been destroyed. Outside counsel of record may retain a copy of all correspondence, pleadings, motion papers, discovery responses, deposition and trial transcripts, legal memoranda, work product, and emails together with any attachments, provided that such retained material shall continue to be subject to the remaining provisions of this Protective Order.

26. This Protective Order shall survive the final termination of this Action with respect to any retained Confidential and Highly Confidential Materials.

27. Nothing in this Protective Order shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on Confidential or Highly Confidential Material; provided, however, that in rendering such advice counsel shall not disclose, reveal or describe any such materials except insofar as allowed (if allowed at all) under the terms of this Order. In addition, regardless of any designation pursuant to this Protective

Order, if a document or testimony makes reference to the actual or alleged conduct or statements of a person who is a potential witness, counsel may discuss such conduct or statements with such witness without revealing any portion of the document or testimony other than that which specifically refers to such conduct or statement, and such discussion shall not constitute disclosure in violation of this Protective Order.

28. No copy of any transcript of any deposition which is designated, in part or in whole, as including Confidential or Highly Confidential Material shall be furnished by the court reporter to any person other than to counsel of record and counsel for a non-party, if the furnished transcript is of the non-party's own deposition.

29. The terms of this Protective Order may be applied to the Confidential and Highly Confidential Materials of a non-party, as long as that non-party agrees in writing to be bound by the terms of this Protective Order.

30. By affixing their signatures below, the parties agree to abide by the terms of this Stipulation until this Protective Order or a further protective order is entered by the Court. Upon the signing of this Order by the District Court Judge, this Protective Order shall be effective as against all party signatories hereto as of the date of such signature of that party or party's representative, thereby rendering this Protective Order effective nunc pro tunc to the date of such party's signature.

Respectfully Submitted,

JAYME GORDON,

DREAMWORKS ANIMATION SKG, INC.,  
DREAMWORKS ANIMATION LLC, and  
PARAMOUNT PICTURES, CORP.

By his Attorneys,

By their Attorneys,

/s/ Thomas A. Brown

/s/ Julia Huston

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SO ORDERED:

  
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JOSEPH L. TAURO  
UNITED STATES DISTRICT JUDGE

6/29/11