

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

RICKY B. PERRITT, Individually; §
The Cupcakery, LLC, a Texas Limited §
Liability Company; Buster Baking, LLC, §
a Texas Limited Liability Company; and the §
Woodlands Baking, LLC, a Texas Limited §
Liability Company, §

Plaintiffs §

CAUSE NO. 4:11-CV-23

v. §

PAMELA F. JENKINS, Individually; and §
The Cupcakery, LLC, a Nevada Limited §
Liability Company, §

Defendants. §

**ORDER GRANTING DEFENDANTS’ MOTION FOR ENTRY OF
PROTECTIVE ORDER REGARDING CONFIDENTIAL INFORMATION**

On this day, the Court considered Defendant Pamela F. Jenkins (“Jenkins”) and Defendant The Cupcakery, LLC, a Nevada Limited Liability Company’s (“Nevada Cupcakery”) (collectively, the “Defendants”) Motion for Entry of Protective Order Regarding Confidential Information. Having considered the Motion and any response from Plaintiffs, the Court hereby GRANTS Defendants’ Motion. Therefore, pursuant to Federal Rule of Civil Procedure 26(c), and good cause having been shown, IT IS ORDERED THAT:

1. **Applicability.** This Protective Order Regarding Confidential Information (referred to herein as the “Protective Order”) shall govern the disclosure, distribution, and use of all Confidential Material, as defined herein, produced by Plaintiffs Ricky B. Perritt (“Perritt”),

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The Cupcakery, LLC, a Texas Limited Liability Company (the “Texas Cupcakery”), Buster Baking, LLC, a Texas Limited Liability Company (“BLLC”), the Woodlands Baking, LLC, a Texas Limited Liability Company’s (“WLLC”), and Custom Version Corporation, a Texas Corporation (“CVC”) (collectively, Perritt, Texas Cupcakery, BLLC, WLLC, and CVC are the “Plaintiffs”) and Defendant Pamela F. Jenkins (“Jenkins”) and Defendant The Cupcakery, LLC, a Nevada Limited Liability Company (“Nevada Cupcakery”) (collectively, Jenkins and The Nevada Cupcakery are the “Defendants”) (Plaintiffs and Defendants shall be referred to collectively as “parties”).

2. **Scope.** Any party, to the extent set forth in this Protective Order, may designate as “Confidential” or “Attorneys Eyes Only” all or any part of the following discovery material: (i) answers to interrogatories (ii) transcripts of depositions; (iii) documents produced by it or made available for inspection; and (iv) any other information produced or disclosed during the course of this litigation. The material designated as either “Confidential” or “Attorneys Eyes Only” is referred to herein as the “Confidential Material.” Material designated as “Confidential” shall include only that material which the designating party believes in good faith constitutes a trade secret, proprietary business or financial information, or other confidential information, including research, development, and/or commercial information. Material designated as “Attorneys Eyes Only” shall include only that material which the designating party believes in good faith cannot be disclosed to non-attorney employees or representatives of Plaintiffs or Defendants without impairing the disclosing party’s legitimate interest in the designated material.

3. **Designation of Confidential Material.** The designation of material as “Confidential” or “Attorneys Eyes Only” shall be made either: (i) by stamping or otherwise

marking such materials “Confidential” or “Attorneys Eyes Only,” or the equivalent, in a manner such that the legend is capable of being reproduced in the normal process of photocopying and will not interfere with the legibility of the document; or (ii) by notifying counsel of record for the parties in writing specifically identifying the material to be designated as “Confidential” or “Attorneys Eyes Only.”

All information and/or documents that are inadvertently produced by either of the parties in connection with discovery proceedings in the lawsuit, which but for such inadvertent production would otherwise have been entitled to be protected from discovery by any privilege or immunity, shall continue to be protected by such privilege or immunity, subject to specific objections to the contrary that may be filed by the parties, and such inadvertent production shall not be deemed to be a waiver of any such privilege or immunity. Upon identification of any inadvertently produced information and/or documents, the producing party shall provide to the other party written notification identifying the document that has been inadvertently produced and stating the privilege or immunity under which such document is allegedly protected. Upon receipt of such written notification from the producing party, the other party shall, within seven (7) business days, return to the producing party each inadvertently produced document or item containing the information and any and all copies made of such document or item. To the extent that prior to such notice a party receiving the material may have disclosed it to persons other than authorized persons pursuant to this Protective Order, the party shall not be deemed to have violated this Protective Order in any respect, but the party shall make every reasonable effort to retrieve any such material promptly from such persons and to limit any further disclosure pursuant to this Protective Order. The return of inadvertently produced documents shall not prevent any party from asserting specific

objections to any claims of privilege or immunity regarding such documents as would normally be made.

4. **Depositions.** Deposition transcripts (or portions thereof) may be designated “Confidential” or “Attorneys Eyes Only” by any party or third-party either: (i) during the deposition; or (ii) by written notice to the reporter and to all counsel of record given within twenty (20) days after the deposition transcript is received by the deponent or the deponent’s counsel, whichever is earlier. Pending the expiration of twenty (20) days after a deposition transcript is received by the deponent or the deponent’s counsel, all parties and persons shall treat the deposition transcript as if it has been designated “Confidential.”

5. **Restrictions on Use of Material.** Confidential Material produced by the parties shall be used and disclosed solely for the prosecution or defense of the claims in this action and any appeal thereof, and shall not be used or disclosed except by the party who produced such Confidential Material, for any business, commercial, competitive, personal, or other purpose unless otherwise agreed by the parties.

Notwithstanding anything to the contrary contained in this Protective Order, it is controllingly provided that nothing in this Protective Order shall apply to or restrict the use or disclosure of any Confidential Material which is obtained pursuant to any discovery under the Texas or Federal Rules of Evidence in any other lawsuit or any legal duties of disclosure owed by either party.

6. **Access to Discovery Materials.** Confidential Material shall be maintained in confidence by the party to whom such material is produced or disclosed solely for use as provided in Paragraph 5 of this Protective Order and shall not be disclosed to any person except:

- a. The Court and its staff, which shall include the trial court and any appellate court, as well as any court reporters, stenographers, and video equipment operators who are retained for use in this case including for depositions;
 - b. Counsel of record and employees of counsel of record;
 - c. In-house counsel for a party and in-house counsel staff working on this litigation, provided that said counsel and staff members are not involved in the competitive activities of their company, and provided that they have signed a Certificate of Acknowledgment in the form of Exhibit “A” hereto;
 - d. Plaintiff, Defendant, and their partners, members, agents, officers, directors, and employees;
 - e. Persons not employees of any party who are expressly retained to assist such party’s counsel in the preparation of this action for trial and who have signed a Certificate of Acknowledgment in the form of Exhibit “A” hereto;
 - f. Deponents not otherwise authorized by this Protective Order to the extent necessary to prepare the person for deposition or to depose the person;
 - g. Material third-party witnesses who have signed a Certificate of Acknowledgment in the form of Exhibit “A” hereto;
 - h. The members of the jury venire, members of the jury, including any alternates, and such other persons as ordered by the Court; and
 - i. Any mediator agreed to by the parties or appointed by the Court.
7. **Access to “Attorneys Eye Only” Materials.** Discovery materials designated “Attorneys Eyes Only” shall be maintained in confidence for use by counsel who must have access to such documentation solely for use as provided in Paragraph 5 of this Protective Order

and shall not be disclosed to any persons other than those identified in subparagraphs 6(a)-(c), (e) and (g)-(i) above.

8. **Copies and Summaries.** Any person who obtains access to material designated as “Confidential” or “Attorneys Eyes Only” under this Protective Order shall not make copies, abstracts, extracts, analyses summaries, or other materials which contain, reflect or disclose Confidential Material, except for use in this litigation, and each such copy, abstract, extract analysis, summary, or other material which contains, reflects or discloses Confidential Material, is to be treated in accordance with the provisions of this Protective Order. All copies of material stamped “Confidential” or “Attorneys Eyes Only” in accordance with Paragraph 3 of this Protective Order shall again be stamped with the respective designation if the original stamp was not reproduced in the duplicating process.

9. **Filing Confidential Material.** A party shall give written notice to each of the other parties’ counsel at least seven (7) business days, excluding legal holidays, before filing any “Confidential” or “Attorneys Eyes Only” material with the Court, so as to give such parties an opportunity to seek a temporary or permanent sealing order, if desired. This Protective Order shall neither apply to nor restrict the use or disclosure of any “Confidential” or “Attorneys Eyes Only” material as an exhibit at any hearing, the trial or any appeal in this litigation.

10. **Procedure for Contesting Designation of Confidential Material.** A party shall not be obligated to challenge the designation of material as confidential at the time the designation is made, and a failure to do so shall not preclude a subsequent challenge to the designation. In the event of a dispute with respect to the designation of any discovery material as “Confidential” or “Attorneys Eyes Only,” counsel shall attempt to resolve the dispute on an informal basis before presenting the matter to the Court for resolution. The party challenging

any confidential designation shall notify the designating party in writing, stating that the confidential designation is being challenged, naming the specific material for which the designation is being challenged. Within five (5) business days of the designating party's receipt of such written notice, the parties shall confer in an attempt to reach an agreement regarding the disputed designation. In the event that no agreement is reached, the designating party shall have ten (10) days thereafter within which to move the Court to maintain the confidential designation, whether "Confidential" or "Attorneys Eyes Only." In the event that the party that made the confidential designation does not so move the Court within such ten (10) days, then the confidential designation will automatically terminate and be of no force or effect as to the material described in the notice. The party challenging any confidential designation shall identify the subject material by its document identification number (its Bates number) or by other reasonable means of identification. Such "Confidential" or "Attorneys Eyes Only" information shall be maintained in accordance with this Protective Order until such time as the challenge is resolved either by agreement of the parties, by the expiration of the ten (10) day period provided above, or by the Court.

11. **Maintenance of Confidential Material.** All "Confidential" or "Attorneys Eyes Only" material produced by a party and delivered to another party shall be maintained under the control of each counsel of record who has received such material and who shall be responsible for preventing any disclosure thereof, except as permitted hereunder.

12. **Request for Disclosure of Confidential Materials in Another Proceeding.** If any party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, or other process or otherwise in connection with any investigation or litigation) to disclose any Confidential Material produced by another

party hereto pursuant to this Protective Order, such party shall provide to the other parties hereto prompt notice of any such request or requirement, unless otherwise prohibited by law. Court ordered disclosure of any information protected under this Protective Order shall not be considered a breach hereof.

13. **Protective Orders.** This Protective Order shall be without prejudice to the rights of the parties or third-parties to present a motion to the Court for a protective order as to any particular material, including a request for restrictions or disclosures that differ from those supplied herein. This Protective Order shall not be deemed to prejudice the parties or third-parties in any way in any motion or application for modification of this Protective Order.

14. **Disposition of Confidential Material After the Case.** Following the final adjudication, or resolution through settlement, of this case, counsel for the parties shall, within thirty (30) days from counsel's receipt of written request, assemble and return to each other all documents, materials, and deposition transcripts for which a confidential designation is maintained hereunder through such date, and all copies of same, or shall certify the destruction thereof; provided, however, that counsel for any party shall be entitled to retain pleadings, memoranda, declarations, motions, exhibits, affidavits or deposition transcripts, which attach, contain or refer to such designated material, but only to the extent necessary to preserve a file with respect to this action.

15. **No Waiver of Rights.** This Protective Order shall not be deemed a waiver of:

- a. Any party's right to object to any discovery requests on any ground;
- b. Any party's right to seek an order compelling discovery with respect to any discovery request;

- c. Any party's right at any proceeding herein to object to the admission of any evidence on any ground;
- d. Any party's right to use its own documents with complete discretion;
- e. Any party's right to move the Court to revoke or amend any portion of this Protective Order;
- f. Any party's right to present a motion to the Court for a protective order; or
- g. Any party's right to use any Confidential Material as an exhibit at any hearing, the trial or any appeal in this litigation.

16. **Use of Material at Trial.** Nothing herein prohibits the use at any hearing trial or appeal of any material designated pursuant to this Protective Order as "Confidential" or "Attorneys Eyes Only," or affects or prohibits the admissibility of any Confidential Material as evidence.

17. **Use of Material at Depositions.** Confidential Material shall not lose its protected status simply because the documents are designated as exhibits to a deposition, regardless of whether the deposition or deposition transcript is later designated, in whole or in part, as Confidential Material.

18. **Restricting Attendance at Depositions.** At the request of any party, attendance at depositions may be restricted to persons qualified to see Confidential Material under Paragraph 6 and the attorney for the deponent during the disclosure of Confidential Material.

19. **Duration.** This Protective Order shall survive the final termination of this action, to the extent that the material contained in "Confidential" or "Attorneys Eyes Only" material is not or does not become known to the public other than in breach of any agreement between the

parties or contrary to the terms of this Protective Order, and the Court shall retain jurisdiction to resolve any dispute concerning the use of material disclosed hereunder.

EXHIBIT "A"

CERTIFICATE OF ACKNOWLEDGMENT
CONCERNING CONFIDENTIAL INFORMATION

I declare that:

I have been given a copy of and have read Protective Order Regarding Confidential Information (hereinafter the "Protective Order"), relating to the case, *Ricky B. Perritt, et al. v. Pamela F. Jenkins, et al.*, Civil Action No. 4:11-CV-23, pending in the United States District Court for the Eastern District of Texas, Sherman Division. I agree to abide by the terms of the Protective Order and not to reveal or otherwise communicate to anyone or else any of the material designated as "Confidential" or "Attorneys Eyes Only" that is disclosed to me except in accordance with the terms of the Protective Order or as may be authorized by the Court. I acknowledge that any violation of the Protective Order may be punishable for contempt of court, and I agree to submit to the jurisdiction of the United States District Court for the Eastern District of Texas, Sherman Division, for all matters relating to such the Protective Order.

Dated: _____

Signature of Declarant

Printed Name

Street Address

City/State

Telephone Number

