

**THE HONORABLE ROBERT S. LASNIK**

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

v.

THE HERSHEY COMPANY,

Defendant.

CASE NO. 2:17-cv-1092-RSL

**STIPULATION OF  
CONFIDENTIALITY  
AND PROTECTIVE  
ORDER**

**I. PURPOSES AND LIMITATIONS**

1. This Stipulation of Confidentiality and Proposed Protective Order (“Stipulation”) shall govern the use and disclosure of all “Discovery Materials,” as defined below, which are created or produced in connection with the above-captioned action. “Discovery Materials” shall include transcripts of depositions upon oral examination and exhibits thereto; transcripts of depositions upon written questions and exhibits thereto; answers to interrogatories; documents, data, or other things produced by any party to any other, whether or not pursuant to a formal request; answers to requests for admission; documents or things produced by any non-party

1 participating in this litigation (“non-party”) to any of the parties (defined below), whether or not  
2 pursuant to a subpoena; all information contained in any of the foregoing; and all copies,  
3 excerpts or summaries of any of the foregoing.

4         2.         The parties acknowledge that this agreement is consistent with LCR 26(c). It does  
5 not confer blanket protection on all disclosures or responses to discovery, the protection it  
6 affords from public disclosure and use extends only to the limited information or items that are  
7 entitled to confidential treatment under the applicable legal principles, and it does not  
8 presumptively entitle parties to file confidential information under seal.  
9

10 II.         “CONFIDENTIAL” MATERIAL

11         “Confidential” material shall include, but is not limited to, the following documents and  
12 tangible things produced whether by voluntary or compelled production or disclosure or in  
13 response to any formal discovery procedure or otherwise exchanged:

- 14             a.             Medical records and healthcare information pertaining to Charging Party  
15                             Kristina M. Williams (“Ms. Williams”), *e.g.*, EEOC000411-413,  
16                             EEOC000418-419.
- 17             b.             Any proprietary business information or commercial information entitled to  
18                             protection as now or hereafter interpreted by the Court, including product  
19                             information, customer and other commercial agreements, financial  
20                             information, sales information, pricing and promotion information, marketing  
21                             information, strategic and/or planning information, product innovation or  
22                             development information, and/or business reorganization information  
23                             concerning Defendant The Hershey Company (“Hershey” or “Defendant”) or  
24                             its affiliates, *e.g.*, customer lists, sales data, documents reflecting  
25                             merchandising strategy.  
26

1 c. Any personal or private information concerning Ms. Williams who Plaintiff  
2 EEOC seeks relief for or, any other former or current employees of Hershey,  
3 e.g., Social Security Numbers, date of birth, and personal financial  
4 information.

5 d. Defendant's tax records, tax returns, intellectual property including trade  
6 secrets.

7 e. Personnel records and information related to nonparties, e.g., performance  
8 evaluations like EEOC000220-226 or termination records.

9  
10 3. SCOPE

11 The protections conferred by this agreement cover not only confidential material (as  
12 defined above), but also (1) any information copied or extracted from confidential material; (2)  
13 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
14 conversations, or presentations by parties or their counsel that might reveal confidential material.

15 However, the protections conferred by this agreement do not cover information that is in  
16 the public domain or becomes part of the public domain through trial or otherwise.

17 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

18 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
19 or produced by another party or by a non-party in connection with this case only for prosecuting,  
20 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
21 the categories of persons and under the conditions described in this agreement. Confidential  
22 material must be stored and maintained by a receiving party at a location and in a secure manner  
23 that ensures that access is limited to the persons authorized under this agreement.

24 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
25 ordered by the court or permitted in writing by the designating party, a receiving party may  
26 disclose any confidential material only to:

1 (a) Outside and inside counsel who represent parties in this action, and regular  
2 and temporary employees of those counsel assisting in the conduct of this action, for use in  
3 accordance with this Stipulation;

4 (b) The officers, directors, and employees (including in house counsel) of the  
5 receiving party to whom disclosure is reasonably necessary for this litigation;

6 (c) Any outside independent consultant, mediator who the parties have jointly  
7 designated for purposes of attempting to resolve this case or experts assisting counsel for the  
8 parties in this action (including potential experts) who have signed the “Acknowledgment and  
9 Agreement to Be Bound” (Exhibit A);

10 (d) The Court and court reporters employed in connection with this action;

11 (e) Any independent copying or imaging services engaged by such attorneys,  
12 provided that the attorney engaging a copying or imaging service has no reason to believe that  
13 that service or any of its employees is likely to disclose or use any Confidential Discovery  
14 Material in a way that would violate this Stipulation;

15 (f) Actual deponents or trial witnesses in this action, and their counsel, to the  
16 extent necessary in preparation for deposition or trial testimony in this action, who have signed  
17 the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the  
18 designating party or ordered by the court, and that the producing party shall be entitled to review  
19 that record of Confidential Discovery Material disclosures upon a showing of a need for such  
20 information. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
21 confidential material must be separately bound by the court reporter and may not be disclosed to  
22 anyone except as permitted under this agreement;

23 (g) Authors and recipients of such materials;

24 (h) Any insurance company or business that may be liable to satisfy all or part  
25 of a possible judgment and/or the attorneys’ fees and costs arising from this action;

26 (i) Plaintiff;

1 (j) Charging Party Kristina Williams; and

2 (k) Any other individual agreed to in writing by the designating party.

3 4.3. Each person to whom Confidential Discovery Material Discovery Material, or  
4 data and information obtained, derived or generated from Confidential Discovery Material, is  
5 disclosed or made available, including Plaintiff, Claimant, and Hershey, and employees of  
6 Hershey and its affiliates, or experts or consultants retained by either party, shall first be advised  
7 of the existence and the contents of this Stipulation, and shall agree to comply with this  
8 Stipulation by first executing an Acknowledgement in the form of which is attached as Exhibit A  
9 to this Stipulation. No such person shall divulge any Confidential Discovery Material or any data  
10 and information obtained, derived, or generated from Confidential Discovery Material, to any  
11 other person, except as provided herein.

12 4.4. Filing Confidential Material. Before filing confidential material or discussing or  
13 referencing such material in court filings, the filing party shall confer with the designating party  
14 to determine whether the designating party will remove the confidential designation, whether the  
15 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
16 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
17 standards that will be applied when a party seeks permission from the court to file material under  
18 seal.

19 4.5. Notwithstanding the provisions of paragraphs 4.2, 4.3. and 4.4. this Stipulation  
20 has no effect upon, and shall not apply to, any producing party's use of its own lawfully and  
21 properly obtained Confidential Discovery Material for any purpose.

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23 5. DESIGNATING PROTECTED MATERIAL  
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25 5.1. Any party or non-party may designate any discovery material as Confidential  
26 Discovery Material in the following manner:

1 (a) Any discovery material may be designated Confidential Discovery Material  
2 either by: (i) marking, either before or as the document is produced, the word “Confidential” on  
3 each page of the document that contains Confidential Discovery Material, or (ii) if a document is  
4 produced not marked “Confidential” but later determined to be, notifying the other party in  
5 writing, either before or after the document is produced, of the “Bates” number (if such numbers  
6 have been placed on that document, and if not, otherwise identifying the document with  
7 specificity for the other party) of each page of the document that contains Confidential Discovery  
8 Material.

9 (b) Depositions or other pre-trial testimony by parties or non-parties may also be  
10 designated Confidential Discovery Material either by: (1) a statement by counsel on the record at  
11 the time of disclosure designating the matter Confidential Discovery Material, or (2) sending a  
12 statement to counsel for all parties and, if related to a deposition or pre-trial testimony of a non-  
13 party, the non-party’s counsel, in a writing served by hand delivery or facsimile within thirty  
14 (30) days after receipt that the deposition transcript or pre-trial testimony should be designated  
15 Confidential Discovery Material. In addition, counsel for any of the parties or participating non-  
16 parties may affix the legend “Confidential” to the first page and all subsequent pages of the  
17 original transcript that contains designated material, and to the first page, and all subsequent  
18 corresponding pages, of all copies of such transcript. Only those portions of each transcript  
19 designated as “Confidential” in this action shall be deemed “Confidential” material. All  
20 transcripts of depositions or other pre-trial testimony shall automatically be deemed to be  
21 “Confidential” until the end of the thirtieth (30) day after their receipt by counsel for the  
22 deponent or witness.

23 (c) To the extent that matter stored or recorded in the form of electronic or  
24 magnetic media (including information, files, e-mails, databases, or programs stored on any  
25 digital or analog machine-readable device, computers, discs, networks or tapes), the producing  
26 party or any non-party may designate such material as Confidential, as the case may be, by  
affixing a label on the media or its casing indicating such designation or, where not practical, by  
cover letter referring generally to such matter.

(d) Any discovery material already produced may be designated as Confidential  
Discovery Material by providing written notice of the same to all parties or non-parties to whom

1 it has been produced within thirty (30) days after production or Court approval of this  
2 Stipulation, whichever is earlier.

3 5.2. The designation of discovery materials as Confidential Discovery Material  
4 pursuant to this Stipulation shall not constitute a ruling that those materials actually contain  
5 Confidential Information.

6 5.3. Exercise of Restraint and Care in Designating Material for Protection. Each party  
7 or non-party that designates information or items for protection under this agreement must take  
8 care to limit any such designation to specific material that qualifies under the appropriate  
9 standards. The designating party must designate for protection only those parts of material,  
10 documents, items, or oral or written communications that qualify, so that other portions of the  
11 material, documents, items, or communications for which protection is not warranted are not  
12 swept unjustifiably within the ambit of this agreement.

13 Mass, indiscriminate, or routinized designations are prohibited.

14 If it comes to a designating party's attention that information or items that it designated  
15 for protection do not qualify for protection, the designating party must promptly notify all other  
16 parties that it is withdrawing the mistaken designation.

## 17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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19 6.1. If a party, or a non-party, objects to the designation of discovery materials or  
20 portions thereof designated Confidential Discovery Material by any other party or non-party  
21 because those discovery materials do not actually include Confidential Discovery Material and,  
22 therefore, do not warrant the protection claimed for them under this Stipulation, that objecting  
23 party or non-party may so notify all parties and any concerned non-party in writing and state the  
24 basis for its conclusion. Promptly after receipt of such notice, the attorneys for all concerned  
25 parties and non-parties shall confer in good faith in order to resolve the objection to the  
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1 designation of confidentiality. If it is not possible to resolve the objection within fifteen (15) days  
2 after service of the notice, then the designated discovery materials shall continue to be  
3 Confidential Discovery Material under this Stipulation, and the proponent of the Confidential  
4 Discovery Material designation being challenged shall present the grounds for the designation to  
5 the Court initially by telephone or letter before filing a formal motion for an Order regarding the  
6 propriety of the designation.  
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8         6.2     Judicial Intervention. If the parties cannot resolve a challenge without court  
9 intervention, the designating party may file and serve a motion to retain confidentiality under  
10 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
11 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
12 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
13 other parties) may expose the challenging party to sanctions. All parties shall continue to  
14 maintain the material in question as confidential until the court rules on the challenge.  
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17     7.     DISCLOSURE OF PROTECTED MATERIAL

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19         7.1.     If any party intends to offer in evidence at trial or in any other proceedings in  
20 open court any discovery materials designated Confidential Discovery Material, it shall serve  
21 reasonable advance notice thereof on all other parties and concerned non-parties, if any, in order  
22 to afford the parties and non-parties the opportunity to bring before the Court the matter of the  
23 protection of the confidentiality of those materials or that information.

24         7.2.     If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
25 confidential material to any person or in any circumstance not authorized under this agreement,  
26



1 the receiving party must immediately (a) notify in writing the designating party of the  
2 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
3 protected material, (c) inform the person or persons to whom unauthorized disclosures were  
4 made of all the terms of this agreement, and (d) request that such person or persons execute the  
5 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

6 7.3. If any Confidential Discovery Material produced by the designating party in this  
7 action and not already lawfully in the receiving party’s possession at the time of production,  
8 and/or data generated therefrom, is sought from the receiving party for use in any other judicial  
9 or administrative proceeding or otherwise during the course of this action by any person through  
10 formal discovery or otherwise, the receiving party shall immediately notify the designating party  
11 so as to permit the designating party to seek a protective order from the appropriate court. With  
12 respect to the notification required by this paragraph, Plaintiff or Claimant shall notify by e-mail  
13 Michael Puma of Morgan, Lewis & Bockius LLP at [michael.puma@morganlewis.com](mailto:michael.puma@morganlewis.com), and  
14 Defendant shall notify by e-mail John Stanley of the EEOC at [john.stanley@eeoc.gov](mailto:john.stanley@eeoc.gov).

17 8. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
18 MATERIAL

19 8.1. The inadvertent or unintentional production to a receiving party or to a non-party  
20 by either party of Confidential Discovery Material that was not so designated at the time of  
21 disclosure shall not be deemed a waiver in whole or in part of that party’s claim of  
22 confidentiality, either as to the specific information disclosed or as to any other information  
23 relating thereto or on the same or related subject matter and the obligations of the receiving  
24 parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not  
25 intended to modify whatever procedure may be established in an e-discovery order or agreement  
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1 that provides for production without prior privilege review. The parties agree to the entry of a  
2 non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

3 8.2. In the event that a producing party discovers that information or documents which  
4 are subject to attorney-client privilege or the work-product doctrine have been inadvertently  
5 produced, the producing party shall notify the receiving party within fourteen (14) days of  
6 discovery of the error and provide a privilege log to the receiving party that complies with the  
7 Federal Rules of Civil Procedure. The receiving party shall return all copies of the information or  
8 documents to the producing party within ten (10) days of receipt of such notice. However, within  
9 ten (10) days of receipt of such notice, if the receiving party wishes to challenge the producing  
10 party's assertion of privilege, the receiving party may, with notice to the producing party,  
11 provide the Court with one copy of the disputed privileged material for in camera review  
12 together with an explanation as to why the document should not be deemed privileged. The  
13 producing party shall then have ten (10) days to make a submission to the Court regarding why  
14 the disputed privileged material should be considered privileged. The fact that such privileged  
15 documents are produced, inadvertently or otherwise, shall not be construed as a waiver of any  
16 applicable attorney-client privilege and/or the work product doctrine. The fact that privileged  
17 documents are returned shall not be construed as an admission by the receiving party that the  
18 documents are in fact subject to the attorney-client privilege or the work-product doctrine.  
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23 9. NON TERMINATION AND RETURN OF DOCUMENTS

24 9.1. The provisions of this Stipulation shall not terminate at the conclusion of this  
25 action. Within 60 days after the termination of this action, including all appeals, the receiving  
26 party shall either destroy Confidential Discovery Material or return all Confidential Discovery

1 Material to the producing party, including all copies of such documents which may have been  
2 made, but not including any notes or other attorney work product that may have been placed  
3 thereon. At the request of the producing party, any copies of Confidential Discovery Material  
4 claimed to contain attorney work product shall be destroyed. In the event of destruction (as  
5 opposed to return), the receiving party or its counsel shall provide the producing party with a  
6 sworn declaration of such destruction.

7 9.2. Notwithstanding this provision, counsel are entitled to retain one archival copy of  
8 all documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
9 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
10 work product, even if such materials contain confidential material.

11 9.3. The confidentiality obligations imposed by this agreement shall remain in effect  
12 until a designating party agrees otherwise in writing or a court orders otherwise. Nothing in this  
13 Protective Order shall be interpreted as limiting or overriding the EEOC's obligation to maintain  
14 copies of files pursuant to the Federal Records Act.

15  
16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 ROBERTA STEELE  
18 Regional Attorney

19 JOHN F. STANLEY  
20 Supervisory Trial Attorney

21 DAMIEN A. LEE  
22 Senior Trial Attorney

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17 Attorneys for Defendant The Hershey Company

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20 PURSUANT TO STIPULATION, IT IS SO ORDERED

21 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
22 documents in this proceeding shall not, for the purposes of this proceeding or any other  
23 proceeding in any other court, constitute a waiver by the producing party of any privilege  
24 applicable to those documents, including the attorney-client privilege, attorney work-product  
25 protection, or any other privilege or protection recognized by law.  
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DATED: January 26, 2018

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of  
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
6 issued by the United States District Court for the Western District of Washington on [date] in the  
7 case of *EEOC v. The Hershey Co.*, No. 2:17-cv-1092-RSL (W.D. Wash.). I agree to comply with  
8 and to be bound by all the terms of this Stipulated Protective Order and I understand and  
9 acknowledge that failure to so comply could expose me to sanctions and punishment in the  
10 nature of contempt. I solemnly promise that I will not disclose in any manner any information or  
11 item that is subject to this Stipulated Protective Order to any person or entity except in strict  
12 compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the  
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated  
15 Protective Order, even if such enforcement proceedings occur after termination of this action.

16 Date: \_\_\_\_\_

17 City and State where sworn and signed: \_\_\_\_\_

18 Printed name: \_\_\_\_\_

19 Signature: \_\_\_\_\_

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