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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NICO WORLDWIDE, INC., and NICO
CONSUMER HEALTH PRODUCTS,
LLC,

Plaintiffs,

v.

AMERICAN GREEN PRODUCTS,
LLC; JOSEPH ROBERT KNIGHT;
SIMON LU; and DOES 1-10, inclusive,

Defendants.

AMERICAN GREEN PRODUCTS,
LLC; JOSEPH ROBERT KNIGHT;
SIMON LU; and DOES 1-10, inclusive

Counterclaimants,

v.

NICO WORLDWIDE, INC., and NICO
CONSUMER HEALTH PRODUCTS,
LLC,

Counterclaim Defendants.

Case No. 11-CV-10709-ODW-E

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

The Honorable CHARLES F. EICK

Complaint Filed: December 27, 2011
Trial Date: May 28, 2013

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28**1.**
PURPOSES AND LIMITATIONS

The present action involves claims of patent infringement, trade secret misappropriation, copyright infringement and unfair competition. Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 13.4, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5.1 and General Order No. 02-14 set forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the Court to file material under seal.

2.**DEFINITIONS**

2.1 Challenging Party: A Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: Information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without Qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: A Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY.”

3 **2.6 Disclosure or Discovery Material:** All items or information,
4 regardless of the medium or manner in which it is generated, stored, or maintained
5 (including, among other things, testimony, transcripts, and tangible things), that are
6 produced or generated in disclosures or responses to discovery in this matter.

7 **2.7 Expert:** A person with specialized knowledge or experience in a matter
8 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve
9 as an expert witness or as a consultant in this action, (2) is not a past or current
10 employee of a Party or of a Party’s competitor, and (3) at the time of retention, is not
11 anticipated to become an employee of a Party or of a Party’s competitor.

12 **2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”**
13 **Information or Items:** Extremely sensitive “Confidential Information or Items,”
14 disclosure of which to another Party or Non-Party would create a substantial risk of
15 serious harm that could not be avoided by less restrictive means.

16 **2.9 Non-Party:** Any natural person, partnership, corporation, association,
17 or other legal entity not named as a Party to this action.

18 **2.10 Outside Counsel of Record:** Attorneys who are not employees of a
19 party to this action but are retained to represent or advise a party to this action and
20 have appeared in this action on behalf of that party or are affiliated with a law firm
21 which has appeared on behalf of that party.

22 **2.11 Party:** Any party to this action, including all of its officers, directors,
23 employees, consultants, retained experts, and Outside Counsel of Record (and their
24 support staffs).

25 **2.12 Producing Party:** A Party or Non-Party that produces Disclosure or
26 Discovery Material in this action.

27 **2.13 Professional Vendors:** Persons or entities that provide litigation
28 support services (e.g., photocopying, videotaping, translating, preparing exhibits or

1 demonstrations, and organizing, storing, or retrieving data in any form or medium)
2 and their employees and subcontractors.

3 **2.14 Protected Material:** Any Disclosure or Discovery Material that is
4 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –
5 ATTORNEYS’ EYES ONLY.”

6 **2.15 Receiving Party:** A Party that receives Disclosure or Discovery
7 Material from a Producing Party.

8 **3.**

9 **SCOPE**

10 The protections conferred by this Stipulation and Order cover not only
11 Protected Material (as defined above), but also: (1) any information copied or
12 extracted from Protected Material; (2) all copies, excerpts, summaries, or
13 compilations of Protected Material; and (3) any testimony, conversations, or
14 presentations by Parties or their Counsel that might reveal Protected Material.
15 However, the protections conferred by this Stipulation and Order do not cover the
16 following information: (a) any information that is in the public domain at the time of
17 disclosure to a Receiving Party or becomes part of the public domain after its
18 disclosure to a Receiving Party as a result of publication not involving a violation of
19 this Order, including becoming part of the public record through trial or otherwise;
20 and (b) any information known to the Receiving Party prior to the disclosure or
21 obtained by the Receiving Party after the disclosure from a source who obtained the
22 information lawfully and under no obligation of confidentiality to the Designating
23 Party. Any use of Protected Material at trial shall be governed by a separate
24 agreement or order.

25 **4.**

26 **DURATION**

27 Even after final disposition of this litigation, the confidentiality obligations
28 imposed by this Order shall remain in effect until a Designating Party agrees

1 otherwise in writing or a court order otherwise directs. Final disposition shall be
2 deemed to be the later of: (1) dismissal of all claims and defenses in this action, with
3 or without prejudice; and (2) final judgment herein after the completion and
4 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
5 including the time limits for filing any motions or applications for extension of time
6 pursuant to applicable law.

7 5.

8 DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for

10 **Protection.** Each Party or Non-Party that designates information or items for
11 protection under this Order must take care to limit any such designation to specific
12 material that qualifies under the appropriate standards. To the extent it is practical to
13 do so, the Designating Party must designate for protection only those parts of
14 material, documents, items, or oral or written communications that qualify – so that
15 other portions of the material, documents, items, or communications for which
16 protection is not warranted are not swept unjustifiably within the ambit of this Order.

17 Mass, indiscriminate, or routinized designations are prohibited. Designations
18 that are shown to be clearly unjustified or that have been made for an improper
19 purpose (e.g., to unnecessarily encumber or retard the case development process or
20 to impose unnecessary expenses and burdens on other parties) may expose the
21 Designating Party to sanctions.

22 If it comes to a Designating Party's attention that information or items that it
23 designated for protection do not qualify for protection at all or do not qualify for the
24 level of protection initially asserted, that Designating Party must promptly notify all
25 other parties that it is withdrawing the mistaken designation.

26 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
27 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
28 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection

1 under this Order must be clearly so designated before the material is disclosed or
2 produced.

3 Designation in conformity with this Order requires:

4 **(a) For information in documentary form** (e.g., paper or electronic
5 documents, but excluding transcripts of depositions or other pretrial or trial
6 proceedings), that the Producing Party affix the legend “CONFIDENTIAL – CV11-
7 10709-OWD (Ex)” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
8 ONLY– CV11-10709-OWD (Ex)” to each page that contains protected material. If
9 only a portion or portions of the material on a page qualifies for protection, the
10 Producing Party also must clearly identify the protected portion(s) (e.g., by making
11 appropriate markings in the margins) and must specify, for each portion, the level of
12 protection being asserted.

13 A Party or Non-Party that makes original documents or materials available for
14 inspection need not designate them for protection until after the inspecting Party has
15 indicated which material it would like copied and produced. During the inspection
16 and before the designation, all of the material made available for inspection shall be
17 deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
18 inspecting Party has identified the documents it wants copied and produced, the
19 Producing Party must determine which documents, or portions thereof, qualify for
20 protection under this Order. Then, before producing the specified documents, the
21 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
22 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that
23 contains Protected Material. If only a portion or portions of the material on a page
24 qualifies for protection, the Producing Party also must clearly identify the protected
25 portion(s) (e.g., by making appropriate markings in the margins) and must specify,
26 for each portion, the level of protection being asserted.

27 **(b) For testimony given in deposition or in other pretrial or trial**
28 **proceedings**, that the Designating Party identify on the record, before the close of

1 the deposition, hearing, or other proceeding, all protected testimony and specify the
2 level of protection being asserted. When it is impractical to identify separately each
3 portion of testimony that is entitled to protection and it appears that substantial
4 portions of the testimony may qualify for protection, the Designating Party may
5 invoke on the record (before the deposition, hearing, or other proceeding is
6 concluded) a right to have up to 21 days to identify the specific portions of the
7 testimony as to which protection is sought and to specify the level of protection
8 being asserted. Only those portions of the testimony that are appropriately
9 designated for protection within the 21 days shall be covered by the provisions of
10 this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
11 the deposition or up to 21 days afterwards if that period is properly invoked, that the
12 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

14 Parties shall give the other parties notice if they reasonably expect a
15 deposition, hearing or other proceeding to include Protected Material so that the
16 other parties can ensure that only authorized individuals who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
18 proceedings. The use of a document as an exhibit at a deposition shall not in any
19 way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
20 ATTORNEYS’ EYES ONLY.”

21 Transcripts containing Protected Material shall have an obvious legend on the
22 title page that the transcript contains Protected Material, and the title page shall be
23 followed by a list of all pages (including line numbers as appropriate) that have been
24 designated as Protected Material and the level of protection being asserted by the
25 Designating Party. The Designating Party shall inform the Court reporter of these
26 requirements. Any transcript that is prepared before the expiration of a 21-day
27 period for designation shall be treated during that period as if it had been designated
28 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless

1 otherwise agreed. After the expiration of that period, the transcript shall be treated
2 only as actually designated.

3 **(c) for information produced in some form other than documentary**
4 **and for any other tangible items**, that the Producing Party affix in a prominent
5 place on the exterior of the container or containers in which the information or item
6 is stored the legend “CONFIDENTIAL– CV11-10709-OWD (Ex)” or “HIGHLY
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY– CV11-10709-OWD (Ex).” If
8 only a portion or portions of the information or item warrant protection, the
9 Producing Party, to the extent practicable, shall identify the protected portion(s) and
10 specify the level of protection being asserted.

11 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent
12 failure to designate qualified information or items does not, standing alone, waive
13 the Designating Party’s right to secure protection under this Order for such material.
14 Upon timely correction of a designation, the Receiving Party must make reasonable
15 efforts to assure that the material is treated in accordance with the provisions of this
16 Order.

17 6.

18 CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a
20 designation of confidentiality at any time. Unless a prompt challenge to a
21 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
22 substantial unfairness, unnecessary economic burdens, or a significant disruption or
23 delay of the litigation, a Party does not waive its right to challenge a confidentiality
24 designation by electing not to mount a challenge promptly after the original
25 designation is disclosed.

26 **6.2 Meet and Confer.** The Challenging Party shall initiate the dispute
27 resolution process by providing written notice of each designation it is challenging
28 and describing the basis for each challenge. To avoid ambiguity as to whether a

1 challenge has been made, the written notice must recite that the challenge to
2 confidentiality is being made in accordance with this specific paragraph of the
3 Protective Order. The parties shall attempt to resolve each challenge in good faith
4 and comply with Civil Local Rule 37-1 (“Pre-Filing Conference of Counsel”). In
5 conferring, the Challenging Party must explain the basis for its belief that the
6 confidentiality designation was not proper and must give the Designating Party an
7 opportunity to review the designated material, to reconsider the circumstances, and,
8 if no change in designation is offered, to explain the basis for the chosen designation.
9 A Challenging Party may proceed to the next stage of the challenge process only if it
10 has engaged in this meet and confer process first or establishes that the Designating
11 Party is unwilling to participate in the meet and confer process in a timely manner.

12 **6.3 Judicial Intervention.** If the Parties cannot resolve a challenge without
13 Court intervention, the Challenging Party may file and serve a motion challenging a
14 confidentiality designation under Civil Local Rule 7 (and in compliance with Civil
15 Local Rule 79-5.1 and General Order No. 02-14) within 21 days of the initial notice
16 of challenge or within 14 days of the parties agreeing that the meet and confer
17 process will not resolve their dispute, whichever is earlier. Each such motion must
18 be in compliance with Civil Local Rules 37-1 and 37-2 and must be accompanied by
19 a competent declaration affirming that the movant has complied with the meet and
20 confer requirements of Civil Local Rule 7-3.

21 The burden of persuasion in any such challenge proceeding shall be on the
22 Designating Party. However, frivolous challenges and those made for an improper
23 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
24 parties) may expose the Challenging Party to sanctions. All parties shall continue to
25 afford the material in question the level of protection to which it is entitled under the
26 Producing Party’s designation until the Court rules on the challenge.

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7.

ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner¹ that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom

¹ It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected Material in password-protected form.

1 disclosure is reasonably necessary for this litigation and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the Court and its personnel, who need not sign the “Acknowledgment
4 and Agreement to Be Bound” (Exhibit A);

5 (e) Court reporters and their staff, professional jury or trial consultants, and
6 Professional Vendors to whom disclosure is reasonably necessary for this litigation
7 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
8 A);

9 (f) during their depositions, witnesses in the action to whom disclosure is
10 reasonably necessary and who have signed the “Acknowledgment and Agreement to
11 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
12 by the Court. Pages of transcribed deposition testimony or exhibits to depositions
13 that reveal Protected Material must be separately bound by the court reporter and
14 may not be disclosed to anyone except as permitted under this Stipulated Protective
15 Order.

16 (g) the author or recipient of a document containing the information or a
17 custodian or other person who otherwise possessed or knew the information.

18 **7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES**
19 **ONLY.”** Unless otherwise ordered by the Court or permitted in writing by the
20 Designating Party, a Receiving Party may disclose any information or item
21 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

22 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
23 as employees of said Outside Counsel of Record to whom it is reasonably necessary
24 to disclose the information for this litigation and who have signed the
25 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
26 A;

27 (b) Experts of the Receiving Party: (1) to whom disclosure is reasonably
28 necessary for this litigation, (2) who have signed the “Acknowledgment and

1 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in
2 paragraph 7.4(a)(2), below, have been followed;

3 (c) the Court and its personnel, who need not sign the “Acknowledgment
4 and Agreement to Be Bound” (Exhibit A);

5 (d) Court reporters and their staff, professional jury or trial consultants, and
6 Professional Vendors to whom disclosure is reasonably necessary for this litigation
7 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
8 A); and

9 (e) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information.

11 **7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY**
12 **CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to**
13 **Experts.**

14 (a) Unless otherwise ordered by the Court or agreed to in writing by the
15 Designating Party, a Party that seeks to disclose to an Expert (as defined in this
16 Order) any information or item that has been designated “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b)
18 first must make a written request to the Designating Party that (1) identifies the
19 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
20 information that the Receiving Party seeks permission to disclose to the Expert, (2)
21 sets forth the full name of the Expert and the city and state of his or her primary
22 residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the
23 Expert’s current employer(s), (5) identifies each person or entity from whom the
24 Expert has received compensation or funding for work in his or her areas of expertise
25 or to whom the expert has provided professional services, including in connection
26 with a litigation, at any time during the preceding five years,² and (6) identifies (by

27 _____
28 ² If the Expert believes any of this information is subject to a confidentiality
obligation to a third-party, then the Expert should provide whatever information the

1 name and number of the case, filing date, and location of court) any litigation in
2 connection with which the Expert has offered expert testimony, including through a
3 declaration, report, or testimony at a deposition or trial, during the preceding five
4 years.

5 (b) A Party that makes a request and provides the information specified in
6 the preceding paragraph may disclose the subject Protected Material to the identified
7 Expert unless, within seven (7) calendar days of delivering the request, the Party
8 receives a written objection from the Designating Party. Any such objection must
9 set forth in detail the grounds on which it is based.

10 (c) A Party that receives a timely written objection must meet and confer
11 with the Designating Party, in compliance with Civil Local Rule 37-1, to try to
12 resolve the matter by agreement within seven (7) calendar days of the written
13 objection. If no agreement is reached, the Party seeking to make the disclosure to the
14 Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with
15 Civil Local Rule 79-5 and General Order 62, if applicable) seeking permission from
16 the Court to do so. Any such motion must describe the circumstances with
17 specificity, set forth in detail the reasons why the disclosure to the Expert is
18 reasonably necessary, assess the risk of harm that the disclosure would entail, and
19 suggest any additional means that could be used to reduce that risk. In addition, any
20 such motion must be accompanied by a Joint Stipulation, as provided in Civil Local
21 Rule 37-2, along with a competent declaration describing the parties' efforts to
22 resolve the matter by agreement (i.e., the extent and the content of the meet and
23 confer discussions) and setting forth the reasons advanced by the Designating Party
24 for its refusal to approve the disclosure.

25
26
27 Expert believes can be disclosed without violating any confidentiality agreements,
28 and the Party seeking to disclose to the Expert shall be available to meet and confer
with the Designating Party regarding any such engagement.

1 In any such proceeding, the Party opposing disclosure to the Expert shall bear
2 the burden of proving that the risk of harm that the disclosure would entail (under the
3 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
4 Material to its Expert.

5 **8.**

6 **PROTECTED MATERIAL SUBPOENAED**
7 **OR ORDERED PRODUCED IN OTHER LITIGATION**

8 If a Party is served with a subpoena or a court order issued in other litigation
9 that compels disclosure of any information or items designated in this action as
10 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
11 ONLY" that Party must:

12 (a) Promptly notify in writing the Designating Party. Such notification
13 shall include a copy of the subpoena or court order;

14 (b) Promptly notify in writing the party who caused the subpoena or order
15 to issue in the other litigation that some or all of the material covered by the
16 subpoena or order is subject to this Protective Order. Such notification shall include
17 a copy of this Stipulated Protective Order; and

18 (c) Cooperate with respect to all reasonable procedures sought to be
19 pursued by the Designating Party whose Protected Material may be affected.

20 If the Designating Party timely seeks a protective order, the Party served with
21 the subpoena or court order shall not produce any information designated in this
22 action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
23 EYES ONLY" before a determination by the Court from which the subpoena or
24 order issued, unless the Party has obtained the Designating Party's permission. The
25 Designating Party shall bear the burden and expense of seeking protection in that
26 court of its confidential material – and nothing in these provisions should be
27 construed as authorizing a Receiving Party in this action to disobey a lawful
28 subpoena issued in another action.

9.

**A NON-PARTY'S PROTECTED MATERIAL
SOUGHT TO BE PRODUCED IN THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and
3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this Court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination

1 by the Court. Absent a court order to the contrary, the Non-Party shall bear the
2 burden and expense of seeking protection in this Court of its Protected Material.

3 **10.**

4 **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
6 Protected Material to any person or in any circumstance not authorized under this
7 Stipulated Protective Order, the Receiving Party must immediately: (a) notify in
8 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
9 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
10 persons to whom unauthorized disclosures were made of all the terms of this Order,
11 and (d) request such person or persons to execute the "Acknowledgment and
12 Agreement to Be Bound" that is attached hereto as Exhibit A.

13 **11.**

14 **INADVERTENT PRODUCTION OF PRIVILEGED**
15 **OR OTHERWISE PROTECTED MATERIAL**

16 If information is produced in discovery that is subject to a claim of privilege or
17 of protection as trial-preparation material, the party making the claim may notify any
18 party that received the information of the claim and the basis for it. After being
19 notified, a party must promptly return or destroy the specified information and any
20 copies it has and may not sequester, use or disclose the information until the claim is
21 resolved. This includes a restriction against presenting the information to the court
22 for a determination of the claim.

23 When a Producing Party gives notice to Receiving Parties that certain
24 inadvertently produced material is subject to a claim of privilege or other protection,
25 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
26 Procedure 26(b)(5)(B). However, a Receiving Party who receives such notice may
27 not use, in any way, the document(s) claimed to be privileged or otherwise protected
28 from disclosure pending resolution of a challenge to the claim of privilege or other

1 protection.

2 This provision is not intended to modify whatever procedure may be
3 established in an e-discovery order that provides for production without prior
4 privilege review.

5 **12.**

6 **MISCELLANEOUS**

7 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of
8 any person to seek its modification by the Court in the future.

9 **12.2 Modifications Require Court Approval.** No modification of this
10 Order shall have the force or effect of a court order unless the Court approves the
11 medication.

12 **12.3 Right to Assert Other Objections.** By stipulating to the entry of this
13 Protective Order no Party waives any right it otherwise would have to object to
14 disclosing or producing any information or item on any ground not addressed in this
15 Stipulated Protective Order. Similarly, no Party waives any right to object on any
16 ground to use in evidence of any of the material covered by this Protective Order.

17 **12.4 Filing Protected Material.** Without written permission from the
18 Designating Party or a court order secured after appropriate notice to all interested
19 persons, a Party may not file in the public record in this action any Protected
20 Material. A Party that seeks to file under seal any Protected Material must comply
21 with Civil Local Rule 79-5.1 and General Order No. 02-14. The proposed filing
22 shall be accompanied by an application to file the papers (or the portion thereof
23 containing the Protected Material, if such portion is segregable) under seal. The
24 application shall be directed to the judge to whom the papers are directed. For such
25 motions, the parties shall also file a redacted version of the motion and supporting
26 papers. Protected Material may only be filed under seal pursuant to a court order
27 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil
28 Local Rule 79-5.1 and General Order No. 02-14, a sealing order will issue only upon

1 a request establishing that the Protected Material at issue is privileged, protectable as
2 a trade secret, or otherwise entitled to protection under the law. If a Receiving
3 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-
4 5.1 and General Order No. 02-14 is denied by the Court, then the Receiving Party
5 may file the Protected Material in the public record pursuant to Civil Local Rule 79-
6 5.1 unless otherwise instructed by the Court.

7 **13.**

8 **FINAL DISPOSITION**

9 Within 60 days after the final disposition of this action, as defined in
10 paragraph 4, each Receiving Party must return all Protected Material to the
11 Producing Party or destroy such material. As used in this subdivision, "all Protected
12 Material" includes all copies, abstracts, compilations, summaries, and any other
13 format reproducing or capturing any of the Protected Material. Whether the
14 Protected Material is returned or destroyed, the Receiving Party must submit a
15 written certification to the Producing Party (and, if not the same person or entity, to
16 the Designating Party) by the 60-day deadline that (1) identifies (by category, where
17 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
18 that the Receiving Party has not retained any copies, abstracts, compilations,
19 summaries or any other format reproducing or capturing any of the Protected
20 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
21 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
22 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
23 work product, and consultant and expert work product, even if such materials contain

24 ///

25 ///

1 Protected Material. Any such archival copies that contain or constitute Protected
2 Material remain subject to this Protective Order as set forth in Section 4.
3

4 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

5 DATED: June 4, 2012

LAPPLE IP LAW, P.C.

6
7 By: /s/ Matthew C. Lapple
8 Matthew C. Lapple

9 Attorneys for Plaintiffs NICO WORLDWIDE,
10 INC., and NICO CONSUMER HEALTH
PRODUCTS, LLC

11 DATED: June 4, 2012

LAW OFFICES OF JOEL BENNETT

12
13 By: /s/ Joel R. Bennett
14 Joel R. Bennett

15 Attorneys for Defendants AMERICAN
16 GREEN PRODUCTS, LLC, JOSEPH
ROBERT KNIGHT, and SIMON LU

17 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

18
19 DATED: 6/5, 2012



20 THE HONORABLE CHARLES F. EICK
21 UNITED STATES MAGISTRATE JUDGE

22 4823-1499-3167, v. 1