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2 Including Professional Corporations
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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 SUMMIT ENTERTAINMENT, LLC, a
Delaware corporation,

12 Plaintiff,

13 v.
14

15 PREFERRED FRAGRANCE, INC., a
New York corporation, FRAGRANCE
ACQUISITIONS, LLC, a Delaware
16 limited liability company, EZRIEL
POLATSEK, an individual, and DOES
17 1-10, inclusive,

18 Defendants.

19 AND RELATED CROSS-CLAIMS.
20

Case No. 2:13-cv-04310-CAS-AJW

PROTECTIVE ORDER

Judge: Hon. Christina A. Snyder

Complaint Filed: June 19, 2013

First Amended Complaint Filed:
December 5, 2013

Trial Date: February 10, 2015

22 Pursuant to FRCP 26(c), it is hereby stipulated and agreed to by and among
23 plaintiff Summit Entertainment, LLC, defendant Preferred Fragrance, Inc.,
24 defendant Ezriel Polatsek, and cross-defendant Fragrance Acquisitions, LLC,
25 through the parties' respective counsel of record, that discovery in, and litigation of,
26 this action (and any further actions among these parties) may involve requests for
27 the production of information and documents that the responding parties consider to
28 be confidential, proprietary or competitively sensitive. The parties believe that a

1 protective order restricting the use and dissemination of confidential, proprietary,
2 and competitively sensitive information and documents is necessary and appropriate
3 to facilitate discovery and litigation in this action. The parties also believe that such
4 an order is necessary and appropriate to enable the parties to conduct discovery of
5 non-parties that may have similar concerns regarding their confidential, proprietary
6 or competitively sensitive information and documents.

7 Accordingly, the Court hereby orders the following:

8 1. Any confidential information or documents produced by or on behalf of
9 any party or non-party as part of discovery in this action may be designated by the
10 producing party(ies) as “Confidential” or “Confidential-Outside Counsel Only”
11 (referred to herein as “Outside Counsel Only”) (collectively, “Protected
12 Information”). As a general guideline, any information that is publicly available
13 should not be designated as Protected Information. A document should be
14 designated “Confidential” when it contains or reflects confidential business
15 information, relating to information which the disclosing party or non-party believes
16 in good faith contains, constitutes or reveals non-public customer lists, financial
17 information relating to sales, pricing, cost, gross revenue and profits for products
18 (whether actual or projected), research and development information, product
19 formulations and analysis, information qualifying as a trade secret, or other
20 information of a confidential, proprietary, private or personal nature.

21 2. Information or documents designated “Outside Counsel Only” shall be
22 limited to trade secrets as defined by Cal. Civil Code § 3426.1 or marketing plans or
23 strategies, market surveys, business plans, pricing plans, strategic plans, license
24 agreements or negotiations, distribution agreements, manufacturing agreements,
25 manufacturing processes, manufacturing drawings, employee files, merchandising,
26 research and development of products and technical matters not yet released or sold,
27 financial information or projections, including, without limitation, budgets, net
28 worth, identity of shareholders, or other documents relating to total revenue earned,

1 and asset information that is not public knowledge.

2 3. Protected Information may be used only in connection with this
3 proceeding, and not for any other purpose. Such information may not be disclosed
4 to anyone except as provided in this Protective Order.

5 4. Any party or non-party wishing to come within the provisions of this
6 Protective Order may designate in writing the documents (as defined in Fed. R. Civ.
7 P. 34 and Fed. R. Evid. 1001) or portions thereof that it considers confidential at the
8 time the documents are produced. Each page of the document must be marked
9 “Confidential” or “Outside Counsel Only” by the producing party, and any
10 confidential documents exchanged prior to this Protective Order being entered by
11 the Court shall, within a reasonable time hereafter, be so marked on each such page,
12 if such markings do not include every such page. It is the intent of the parties that
13 each document previously designated as Protected Information and transmitted to
14 the respective other party, including any such documents and information
15 exchanged for settlement purposes, are to be covered by this Protective Order.
16 Protected Information that cannot be reasonably labeled pursuant to this paragraph
17 shall be so designated by the producing party by informing the receiving party in
18 writing.

19 5. In the instance of deposition testimony, the witness under deposition or
20 his counsel shall invoke the provisions of this Protective Order in a timely manner
21 and designate the level of restriction. During the deposition, parties shall be
22 excluded from testimony designated “Outside Counsel Only.” The witness under
23 deposition or his counsel shall have the right, within fifteen calendar days of
24 receiving a transcript of the deposition, to designate, or change, the confidentiality
25 designation of the transcript or portions thereof. During the time between receipt of
26 the deposition transcript and any post-deposition confidentiality designation or
27 expiration of the fifteen-day period, whichever occurs first, the deposition transcript
28 shall be treated as if it is designated “Outside Counsel Only.” For depositions

1 containing some Protected Information and some non- Protected Information, a
2 separate confidential transcript, apart from the usual transcript, shall be prepared by
3 the court reporter. Counsel for the party asserting that certain documents or
4 testimony is Protected Information shall endeavor to characterize the level of
5 confidentiality for the confidential material or testimony during the deposition.

6 6. Unless otherwise ordered by the Court or permitted in writing by the
7 designating party, any documents, discovery responses or deposition transcripts
8 stamped or marked “Outside Counsel Only,” as well as any copies or excerpts
9 thereof, or analyses or reports that pertain thereto, and any deposition testimony or
10 portion thereof marked as “Outside Counsel Only” may be made available only to:

11 a. Attorneys of record for the receiving party and employees of
12 such attorneys on a need to know basis;

13 b. Judges, law clerks and other personnel of the Court before which
14 this proceeding is pending;

15 c. Independent experts retained by the attorneys for purposes of the
16 litigation that are not directly associated with a party, and whom the receiving party
17 identifies to the producing party seven calendar days prior to disclosure to such
18 expert;

19 d. Court reporters and their staff that are required to transcribe
20 testimony; and

21 e. Outside litigation support vendors, including commercial
22 photocopying vendors, scanning services vendors, coders and keyboard operators.

23 f. Any person who is identified on the face of any designated
24 “Outside Counsel Only” material as an author or recipient thereof; and

25 g. Any person who is determined to have been an author and/or
26 previous recipient of “Outside Counsel Only” designated material, but is not
27 identified on the face thereof, provided there is prior testimony of actual authorship
28 or receipt of the “Outside Counsel Only” designated material by such person.

1 Notwithstanding the provisions of Paragraph 6, specifically identified
2 information, documents, testimony, or other confidential materials marked "Outside
3 Counsel Only" may be disclosed to principals (including individual parties) or
4 general counsel of the receiving party on a need to know basis. The parties
5 recognize that the disclosure of such confidential material to the principals or
6 general counsel of the parties may be critical to the ability to proceed in this case
7 and analyze and participate in settlement discussions.

8 7. Unless otherwise ordered by the Court or permitted in writing by the
9 designating party, any documents, discovery responses or deposition transcripts
10 stamped "Confidential," as well as any copies or excerpts thereof, or analyses or
11 reports that pertain thereto, and any deposition testimony or portion thereof marked
12 as "Confidential," may be made available only to:

- 13 a. Representatives of the parties on a need to know basis;
- 14 b. Attorneys of record for the receiving party and employees of
15 such attorneys on a need to know basis;
- 16 c. Judges, law clerks and other personnel of the Court before which
17 this proceeding is pending;
- 18 d. Independent experts retained by the attorneys for purposes of the
19 litigation that are not directly associated with a party, and whom the receiving party
20 identifies to the producing party seven calendar days prior to disclosure to such
21 expert;
- 22 e. Court reporters and their staff that are required to transcribe
23 testimony;
- 24 f. Outside litigation support vendors, including commercial
25 photocopying vendors, scanning services vendors, coders and keyboard operators;
- 26 g. Any person who is identified on the face of any designated
27 "Confidential" material as an author or recipient thereof; and
- 28 h. Any person who is determined to have been an author and/or

1 previous recipient of “Confidential” designated material, but is not identified on the
2 face thereof, provided there is prior testimony of actual authorship or receipt of the
3 “Confidential” designated material by such person;

4 8. Written notice of intention to provide information or documents to
5 experts pursuant to Paragraphs 6(c) and 7(d), shall be provided by facsimile or email
6 seven calendar days before the intended disclosure and shall specify the identity of
7 the individual(s) to whom the intended disclosure will be made, and that person’s
8 occupation and employer. If there is a written objection within the seven-day period
9 and the objection is not resolved between counsel, the party seeking disclosure shall
10 not disclose the information or documents, but shall have the right to bring the
11 dispute before the Court for resolution. The parties shall not unreasonably object to
12 the disclosure of information and documents to experts pursuant to Paragraph 6(c)
13 and 7(d). The party objecting to the disclosure shall have the burden of showing
14 why the information or documents should not be disclosed to the identified expert.
15 The parties further agree that an expert whose identity is disclosed pursuant to this
16 paragraph cannot be deposed regarding any subject related to this litigation, unless
17 the expert has been designated as a testifying expert by the retaining party, and then
18 in a manner consistent with the Federal Rules of Civil Procedure governing expert
19 discovery.

20 9. For purposes of this Protective Order, an expert witness shall not be
21 deemed to be “independent” if he is (a) a party to this litigation, or an officer,
22 shareholder, owner, manager, partner, distributor, seller, advertiser, independent
23 contractor, affiliate, director, employee, former employee or contractor, or relative
24 of a party to this litigation, or a party’s parent, subsidiary, predecessor-in-interest,
25 successor-in-interest, related entity or affiliate; or (b) an officer, shareholder, owner,
26 manager, partner, distributor, seller, advertiser, independent contractor, affiliate,
27 director, employee, former employee or contractor, or relative of a direct competitor
28 to a party to this litigation, or the competitor’s parent, subsidiary, predecessor-in-

1 interest, successor-in-interest, related entity or affiliate.

2 10. Each person identified in Paragraphs 6(c), 7(a), or 7(d) permitted by the
3 parties or their counsel to have access to designated information or documents under
4 the terms of this Protective Order shall, prior to being given such access, be
5 provided with a copy of this Protective Order for review. Upon receiving this
6 Protective Order, each person shall sign a statement in the form of **Exhibit A** hereto
7 indicating that he or she has read the Protective Order and agrees to comply with its
8 terms.

9 11. The restrictions set forth in this Protective Order shall not apply to
10 information that is known to the receiving party or the public before the date of its
11 transmission to the receiving party, or which becomes known to the public after the
12 date of its transmission to the receiving party, provided that such information does
13 not become publicly known by any act or omission of the receiving party, its
14 employees, or its agents that would be in violation of this Protective Order.

15 12. If, in connection with this action, a producing party inadvertently
16 discloses information subject to a claim of attorney-client privilege, work product
17 immunity, or any other protection provided under the law (“Inadvertently Disclosed
18 Privileged Information”), the disclosure of the Inadvertently Disclosed Privileged
19 Information will not constitute or be deemed a waiver or forfeiture of any claim of
20 privilege, work product immunity, or any other protection that the producing party
21 would otherwise be entitled to assert with respect to the Inadvertently Disclosed
22 Privileged Information and its subject matter. If a claim of inadvertent disclosure is
23 made by a producing party with respect to Inadvertently Disclosed Privileged
24 Information, the receiving party: (a) will, within five (5) business days, return or
25 destroy all copies of the Inadvertently Disclosed Privileged Information and certify
26 that all such Inadvertently Disclosed Privileged Information has been returned or
27 destroyed; and (b) must take reasonable steps to retrieve the information if the
28 receiving party disclosed it before being notified by the producing party.

13. Any document or evidence that is designated as Protected Information and that a party wishes to file with the Court shall be presented to the Court along with a written application and proposed order for filing under seal according to the procedures set forth in Local Civil Rule 79-5.1. Furthermore, any such document or evidence so presented to the Court shall be placed in a sealed envelope or other appropriate sealed container marked on the outside with the title of the instant action, and a statement substantially in following form:

CONFIDENTIAL

This document is subject to a Protective Order issued by the Court and may not be examined or copied except in compliance with that Order.

Any other party shall be permitted to file a supporting or supplemental brief within four business days of the initial motion for filing under seal being filed. All papers and filings with the Court that refer or rely upon any document or evidence filed under seal shall designate the particular aspects that are confidential.

14. If, at any time during the preparation for trial, any party believes that any other party or non-party has improperly designated certain information as Privileged Information or believes that it is necessary to disclose Privileged Information to persons other than those permitted by this Protective Order, and the producing party does not agree to change the designation or to the further disclosure, the objecting party may make an appropriate motion to the Court requesting that the specifically identified documents, information and/or deposition testimony be excluded from the provisions of this Protective Order or be available to specified other persons. It shall be the burden of the party that makes the designation to demonstrate that the material or information at issue was properly designated. It shall be the burden of the party seeking the disclosure to persons other than those designated in this Protective Order to show that such disclosure is necessary.

15. In the event that a party is served with a discovery request, subpoena, or order by any person, firm, corporation, or other entity that is not a party to this

1 action, is not a signatory to this Protective Order or otherwise is not bound by this
2 Protective Order, that seeks to compel production of Protected Information, the
3 party upon whom the discovery request, subpoena, or order is served shall give
4 written notice of the discovery request, subpoena, or order to the party that has
5 asserted that the information or documents subject to the subpoena are Protected
6 Information. The written notice required by this paragraph shall be given no later
7 than ten calendar days after receipt of the discovery request, subpoena, or order or
8 before the production date fixed by the applicable discovery rule, subpoena, or
9 order, whichever is earlier. The party who designated the subject information or
10 documents as Protected Information shall have the responsibility to obtain an order
11 from the Court quashing the subpoena, a protective order, and/or such other relief as
12 will protect the confidential nature of the subject information or documents. If such
13 a motion is filed before the requested production date, the party upon whom the
14 discovery request, subpoena, or order was served shall not produce the subject
15 information or documents requested in the discovery request, subpoena, or order
16 until after such time as the Court rules on the motion to quash the subpoena or
17 motion for protective order. If an order quashing the subpoena or motion for
18 protective order is obtained, the party upon whom the discovery request, subpoena,
19 or order was served shall comply with the order. If no motion to quash or motion
20 for protective order is filed before the scheduled production date fixed by the
21 applicable discovery rule, subpoena, or order, or if the motion to quash the subpoena
22 or motion for protective order is denied, the party upon whom the discovery request,
23 subpoena, or order was served may comply with the same without being deemed to
24 have violated this Protective Order.

25 16. A copy of this Protective Order must be served with all discovery
26 requests served on third parties to this litigation, including without limitation,
27 subpoenas under Rule 45 of the Federal Rules of Civil Procedure.

28 17. The Protective Order may be modified only in writing by the parties

1 and approved by an order of the Court, or by motion to the Court.

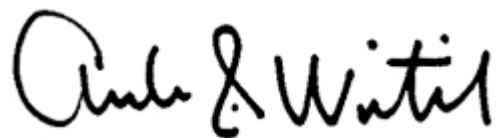
2 18. This Protective Order shall in no way affect or govern the use of
3 Protected Information at trial. Any concerns regarding confidential information and
4 procedures to be used at trial with respect thereto should be raised by the concerned
5 parties at or prior to the final Pretrial Conference and addressed by the Court.

6 19. Within sixty (60) days of final termination of this proceeding, including
7 all appeals, unless the attorneys of record otherwise agree in writing, each party
8 shall: (a) assemble and return all Protected Information, including copies, to the
9 person(s) and entity(ies) from whom the material was obtained; or (b) destroy all
10 Protected Information and provide the other party with written certification that such
11 destruction was made. The attorney of record may retain one archival copy of any
12 designated materials, to be kept confidentially, and retain all copies of designated
13 materials containing attorney work product information.

14 20. In the event any party discloses material containing Protected
15 Information, but that such party inadvertently did not designate as "Confidential" or
16 "Outside Counsel Only," the receiving party agrees, upon request by the disclosing
17 party, to return the un-designated material promptly, for reproduction by the
18 disclosing party with the appropriate confidentiality, or to mark the material directly
19 with the confidentiality designation requested by the disclosing party.

20 21. This Protective Order shall not prejudice the right of any party or non-
21 party to oppose production of any information on the ground of attorney-client
22 privilege, work product immunity, or any other protection provided under the law.

23 Ordered this 19th day of March, 2014.

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26 UNITED STATES MAGISTRATE
27 JUDGE
28

1 [Proposed] Order respectfully submitted by:

2 SHEPPARD, MULLIN, RICHTER &
3 HAMPTON LLP

4
5 Dated: March 17, 2014

By /s/ Jill M. Pietrini
JILL M. PIETRINI

6
7 Attorneys for Plaintiff
8 *Summit Entertainment, LLC*

9 SCHWARCZ, RIMBERG, BOYD & RADER LLP

10
11 Dated: March 17, 2014

By /s/ Jeff D. Neiderman
JEFF D. NEIDERMAN

12
13 Attorneys for Defendants
14 *Preferred Fragrance, Inc. and Ezriel Polatsek*

15 EPSTEIN TURNER WEISS LLP

16
17 Dated: March 17, 2014

By /s/ Michael R. Weiss
MICHAEL R. WEISS

18
19 Attorneys for Cross-Defendant
20 *Fragrance Acquisitions, LLC*

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EXHIBIT A

1 **CONFIDENTIALITY AGREEMENT FOR OTHERS**

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3 1. I have been asked by _____ or its counsel to receive

4 and review certain materials or testimony that have been designated as

5 “Confidential” or “Outside Counsel Only” within the terms of the Protective Order

6 entered in the U.S. District Court, Central District of California, case entitled

7 *Summit Entertainment, LLC v. Preferred Fragrance, Inc., et al.*, Case No. 2:13-cv-

8 04310-CAS-AJW.

9 2. I have read the aforementioned Protective Order, and agree to be bound

10 by it.

11 3. I declare the foregoing is true under penalty of perjury under the laws

12 of the United States of America.

13

14 Dated:_____

15

16 Name:_____

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18 SMRH:415860136.2

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