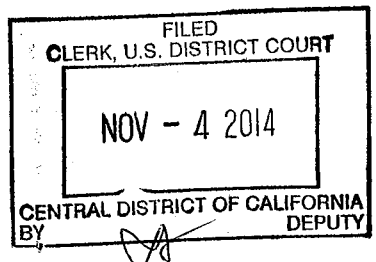


1 Jeffrey L. Fillerup (SBN 120543)
 2 jfillerup@mckennalong.com
 3 Jennifer C. Hayes (SBN 197252)
 4 jhayes@mckennalong.com
 5 McKENNA LONG & ALDRIDGE LLP
 6 Spear Tower, One Market Plaza, 24th Floor
 San Francisco, California 94105
 Telephone: 415.267.4000
 Facsimile: 415.267.4198



7 Attorneys for Plaintiff and
 8 Counterdefendant Bioriginal Food &
 Science Corp.

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA

11 BIORIGINAL FOOD & SCIENCE
 12 CORPORATION, a Canadian
 13 corporation,

Case No. 13-CV-05704-CAS (Ex)

**ORDER APPROVING STIPULATION
 FOR PROTECTIVE ORDER**

14 Plaintiff,

15 v.

16 BIOTAB NUTRACEUTICALS, INC.,
 17 a California corporation, and GLOBAL
 18 PRODUCT MANAGEMENT, INC., a
 California corporation,

19 Defendants.

20 BIOTAB NUTRACEUTICALS, INC.,
 21 a California corporation, and GLOBAL
 22 PRODUCT MANAGEMENT, INC. a
 California corporation,

23 Counterclaimants,

24 v.


25 BIORIGINAL FOOD & SCIENCE
 26 CORPORATION, a Canadian
 corporation,

27 Counterdefendant.
 28

1 Upon due consideration and based upon the Stipulation For Protective Order
2 entered into by and between Plaintiff and Counterdefendant Bioriginal Food &
3 Science Corporation (“Plaintiff”) and Defendants and Counterclaimants Biotab
4 Nutraceuticals, Inc. and Global Product Management, Inc. (together, the
5 “Defendants”) and filed on November 3, 2014, the Court hereby orders as follows:

6 Pursuant to Federal Rule of Civil Procedure 26(c), the Stipulation For
7 Protective Order, attached as **Exhibit A**, is approved in its entirety and is
8 incorporated herein by reference.

9
10 Dated: 11/4/14


CHRISTINA A. SNYDER CHARLES F. EICK
U.S. District Judge
U.S. Magistrate Judge

13 USW 804759983.1

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1 Jeffrey L. Fillerup (SBN 120543)
jfillerup@mckennalong.com
2 Jennifer C. Hayes (SBN 197252)
3 jhayes@mckennalong.com
McKENNA LONG & ALDRIDGE LLP
4 Spear Tower, One Market Plaza, 24th Floor
San Francisco, California 94105
5 Telephone: 415.267.4000
6 Facsimile: 415.267.4198

7 Attorneys for Plaintiff and
Counterdefendant Bioriginal Food &
8 Science Corp.

9 Michael A. Trauben (SBN 277557)
10 mtrauben@singhtraubenlaw.com
SINGH, SINGH & TRAUBEN, LLP
11 400 South Beverly Dr., Suite 400
Beverly Hills, CA 90212
12 Telephone: 310.856.9705
13 Facsimile: 888.734.3555

14 Attorneys for Defendants and
Counterclaimants Biotab Nutraceuticals,
15 Inc. and Global Product Management, Inc.

16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

18 BIORIGINAL FOOD & SCIENCE
19 CORPORATION, a Canadian
20 corporation,

21 Plaintiff,

22 v.

23 BIOTAB NUTRACEUTICALS, INC.,
a California corporation, and GLOBAL
24 PRODUCT MANAGEMENT, INC., a
California corporation,

25 Defendants.

26 AND RELATED CROSS-CLAIM
27
28

Case No. 13-CV-05704-CAS (Ex)

STIPULATION FOR PROTECTIVE ORDER

1 Plaintiff and Counterdefendant Bioriginal Food & Science Corporation
2 (“Plaintiff”) and Defendants and Counterclaimants Biotab Nutraceuticals, Inc. and
3 Global Product Management, Inc. (together, the “Defendants”), by their undersigned
4 counsel, hereby stipulate to entry of a protective order as follows:

5 **1. PURPOSES AND LIMITATIONS**

6 Disclosure and discovery activity in this action are likely to involve
7 production of confidential, proprietary, or private information for which special
8 protection from public disclosure and from use for any purpose other than
9 prosecuting this litigation may be warranted. Accordingly, the parties hereby
10 stipulate to and petition the Court to enter the following Stipulated Protective Order.
11 The parties acknowledge that this Stipulated Protective Order does not confer
12 blanket protections on all disclosures or responses to discovery and that the
13 protection it affords from public disclosure and use extends only to the limited
14 information or items that are entitled to confidential treatment under the applicable
15 legal principles. The parties further acknowledge, as set forth in Section 12.3,
16 below, that this Stipulated Protective Order does not entitle them to file confidential
17 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
18 followed and the standards that will be applied when a party seeks permission from
19 the court to file material under seal.

20 **2. DEFINITIONS**

21 2.1 Challenging Party: a Party or Non-Party that challenges the designation
22 of information or items under this Stipulated Protective Order.

23 2.2 “HIGHLY CONFIDENTIAL” Information or Items: information
24 (regardless of how it is generated, stored or maintained) or tangible things that
25 qualify for protection under Federal Rule of Civil Procedure 26(c). “HIGHLY
26 CONFIDENTIAL” includes documents marked as “CONFIDENTIAL”. “HIGHLY
27 CONFIDENTIAL” and “CONFIDENTIAL” mean the same thing for purposes of
28 this Stipulated Protective Order.

1 2.3 Counsel (without qualifier): Outside Counsel of Record and House
2 Counsel (as well as their support staff).

3 2.4 Designating Party: a Party or Non-Party that designates information or
4 items that it produces in disclosures or in responses to discovery as “HIGHLY
5 CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY”

7 2.5 Disclosure or Discovery Material: all items or information, regardless
8 of the medium or manner in which it is generated, stored, or maintained (including,
9 among other things, testimony, transcripts, and tangible things), that are produced or
10 generated in disclosures or responses to discovery in this matter.

11 2.6 Expert: a person with specialized knowledge or experience in a matter
12 pertinent to the litigation who (1) has been retained by a Party or its Counsel to
13 serve as an expert witness or as a consultant in this action, (2) is not a past or current
14 employee of a Party or of a Party’s competitor, and (3) at the time of retention, is
15 not anticipated to become an employee of a Party or of a Party’s competitor.

16 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
17 Information or Items: extremely sensitive “Confidential Information or Items,”
18 disclosure of which to another Party or Non-Party would create a substantial risk of
19 serious harm that could not be avoided by less restrictive means.

20 2.8 House Counsel: attorneys who are employees of a party to this action.
21 House Counsel does not include Outside Counsel of Record or any other outside
22 counsel.

23 2.9 Non-Party: any natural person, partnership, corporation, association, or
24 other legal entity not named as a Party to this action.

25 2.10 Outside Counsel of Record: attorneys who are not employees of a party
26 to this action but are retained to represent or advise a party to this action and have
27 appeared in this action on behalf of that party or are affiliated with a law firm which
28 has appeared on behalf of that party.

1 2.11 Party: any party to this action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in this action.

6 2.13 Professional Vendors: persons or entities that provide litigation support
7 services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)
9 and their employees and subcontractors.

10 2.14 Protected Material: any Disclosure or Discovery Material that is
11 designated as “HIGHLY CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –
12 ATTORNEYS’ EYES ONLY.”

13 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
14 from a Producing Party.

15 **3. SCOPE**

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

1 confidentiality to the Designating Party. Any use of Protected Material at trial shall
2 be governed by a separate agreement or order.

3 **4. DURATION**

4 Even after “Final Disposition” of this litigation, the confidentiality obligations
5 imposed by this Stipulated Protective Order shall remain in effect until a
6 Designating Party agrees otherwise in writing or a court order otherwise directs.
7 “Final Disposition” shall be deemed to be the later of (1) dismissal of all claims and
8 defenses in this action, with or without prejudice; and (2) final judgment herein after
9 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews
10 of this action, including the time limits for filing any motions or applications for
11 extension of time pursuant to applicable law.

12 **5. DESIGNATING PROTECTED MATERIAL**

13 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

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

22 Mass, indiscriminate, or routinized designations are prohibited. Designations
23 that are shown to be clearly unjustified or that have been made for an improper
24 purpose (e.g., to unnecessarily encumber or retard the case development process or
25 to impose unnecessary expenses and burdens on other parties) are not permitted. If
26 this occurs, the parties will meet and confer regarding a retraction of such improper
27 or unjustified designations. The parties reserve their rights to seek sanctions for
28 designations believed to have been unjustified or made for an improper purpose.

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

5 5.2 Manner and Timing of Designations. Except as otherwise provided in
6 this Stipulated Protective Order (*see, e.g.*, second paragraph of section 5.2(a)
7 below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that
8 qualifies for protection under this Order must be clearly so designated before the
9 material is disclosed or produced. Designation in conformity with this Stipulated
10 Protective Order requires:

11 (a) for information in documentary form (*e.g.*, paper or electronic documents,
12 but excluding transcripts of depositions or other pretrial or trial proceedings), that
13 the Producing Party affix the legend "HIGHLY CONFIDENTIAL" or "HIGHLY
14 CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains
15 protected material. If only a portion or portions of the material on a page qualifies
16 for protection, the Producing Party also must clearly identify the protected portion(s)
17 (*e.g.*, by making appropriate markings in the margins) and must specify, for each
18 portion, the level of protection being asserted.

19 A Party or Non-Party that makes original documents or materials available for
20 inspection need not designate them for protection until after the inspecting Party has
21 indicated which material it would like copied and produced. During the inspection
22 and before the designation, all of the material made available for inspection shall be
23 deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the
24 inspecting Party has identified the documents it wants copied and produced, the
25 Producing Party must determine which documents, or portions thereof, qualify for
26 protection under this Stipulated Protective Order. Then, before producing the
27 specified documents, the Producing Party must affix the appropriate legend
28 ("HIGHLY CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'

1 EYES ONLY” to each page that contains Protected Material. If only a portion or
2 portions of the material on a page qualifies for protection, the Producing Party also
3 must clearly identify the protected portion(s) (e.g., by making appropriate markings
4 in the margins) and must specify, for each portion, the level of protection being
5 asserted.

6 (b) for testimony given in deposition or in other pretrial or trial proceedings,
7 that the Designating Party identify on the record, before the close of the deposition,
8 hearing, or other proceeding, all protected testimony and specify the level of
9 protection being asserted. When it is impractical to identify separately each portion
10 of testimony that is entitled to protection and it appears that substantial portions of
11 the testimony may qualify for protection, the Designating Party may invoke on the
12 record (before the deposition, hearing, or other proceeding is concluded) a right to
13 have up to 21 days to identify the specific portions of the testimony as to which
14 protection is sought and to specify the level of protection being asserted. Only those
15 portions of the testimony that are appropriately designated for protection within the
16 21 days shall be covered by the provisions of this Stipulated Protective Order.
17 Alternatively, a Designating Party may specify, at the deposition or up to 21 days
18 afterwards if that period is properly invoked, that the entire transcript shall be
19 treated as “HIGHLY CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
20 ATTORNEYS’ EYES ONLY.”

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

28 Transcripts containing Protected Material shall have an obvious legend on the

1 title page that the transcript contains Protected Material, and the title page shall be
2 followed by a list of all pages (including line numbers as appropriate) that have been
3 designated as Protected Material and the level of protection being asserted by the
4 Designating Party. The Designating Party shall inform the court reporter of these
5 requirements. Any transcript that is prepared before the expiration of a 21-day
6 period for designation shall be treated during that period as if it had been designated
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
8 otherwise agreed. After the expiration of that period, the transcript shall be treated
9 only as actually designated.

10 (c) for information produced in some form other than documentary and for
11 any other tangible items, that the Producing Party affix in a prominent place on the
12 exterior of the container or containers in which the information or item is stored the
13 legend “HIGHLY CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or
15 item warrant protection, the Producing Party, to the extent practicable, shall identify
16 the protected portion(s) and specify the level of protection being asserted.

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
18 failure to designate qualified information or items does not, standing alone, waive
19 the Designating Party’s right to secure protection under this Order for such material.
20 Upon timely correction of a designation, the Receiving Party must make reasonable
21 efforts to assure that the material is treated in accordance with the provisions of this
22 Stipulated Protective Order.

23 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

24 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
25 designation of confidentiality at any time. Unless a prompt challenge to a
26 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
27 substantial unfairness, unnecessary economic burdens, or a significant disruption or
28 delay of the litigation, a Party does not waive its right to challenge a confidentiality

1 designation by electing not to mount a challenge promptly after the original
2 designation is disclosed.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
4 resolution process by providing written notice of each designation it is challenging
5 and describing the basis for each challenge. To avoid ambiguity as to whether a
6 challenge has been made, the written notice must recite that the challenge to
7 confidentiality is being made in accordance with this specific paragraph of this
8 Stipulated Protective Order. The parties shall attempt to resolve each challenge in
9 good faith and must begin the process by conferring directly (in voice to voice
10 dialogue; other forms of communication are not sufficient) within 14 days of the
11 date of service of notice. In conferring, the Challenging Party must explain the basis
12 for its belief that the confidentiality designation was not proper and must give the
13 Designating Party an opportunity to review the designated material, to reconsider
14 the circumstances, and, if no change in designation is offered, to explain the basis
15 for the chosen designation. A Challenging Party may proceed to the next stage of
16 the challenge process only if it has engaged in this meet and confer process first or
17 establishes that the Designating Party is unwilling to participate in the meet and
18 confer process in a timely manner.

19 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
20 court intervention, the Designating Party shall file and serve a motion to retain
21 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
22 79-5) within 21 days of the initial notice of challenge or within 14 days of the
23 parties agreeing that the meet and confer process will not resolve their dispute,
24 whichever is earlier. Each such motion must be accompanied by a competent
25 declaration affirming that the movant has complied with the meet-and-confer
26 requirements imposed in the preceding paragraph. Failure by the Designating Party
27 to make such a motion including the required declaration within 21 days (or 14
28 days, if applicable) shall automatically waive the confidentiality designation for

1 each challenged designation. In addition, the Challenging Party may file a motion
2 challenging a confidentiality designation at any time if there is good cause for doing
3 so, including a challenge to the designation of a deposition transcript or any portions
4 thereof. Any motion brought pursuant to this provision must be accompanied by a
5 competent declaration affirming that the movant has complied with the meet and
6 confer requirements imposed by the preceding paragraph.

7 The burden of persuasion in any such challenge proceeding shall be on the
8 Designating Party. Unless the Designating Party has waived the confidentiality
9 designation by failing to file a motion to retain confidentiality as described above,
10 all parties shall continue to afford the material in question the level of protection to
11 which it is entitled under the Producing Party's designation until the court rules on
12 the challenge. The parties reserve their rights to seek sanctions for frivolous
13 challenges or those made for an improper purpose (*e.g.*, to harass or impose
14 unnecessary expense and burdens on other parties).

15 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a Non-Party in connection with this
18 case only for prosecuting, defending, or attempting to settle this litigation. Such
19 Protected Material may be disclosed only to the categories of persons and under the
20 conditions described in this Stipulated Protective Order. When the litigation has
21 been terminated, a Receiving Party must comply with the provisions of section 13
22 below (FINAL DISPOSITION).

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

26 7.2 Disclosure of "HIGHLY CONFIDENTIAL" Information or Items.

27 Unless otherwise ordered by the court or permitted in writing by the Designating
28 Party, a Receiving Party may disclose any information or item designated

1 “HIGHLY CONFIDENTIAL” only to:

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

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

10 (c) Experts (as defined in this Stipulated Protective Order) of the Receiving
11 Party to whom disclosure is reasonably necessary for this litigation and who have
12 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (d) the Court and its personnel;

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

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

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

27 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
28 ONLY” Information or Items. Unless otherwise ordered by the Court or permitted

1 in writing by the Designating Party, a Receiving Party may disclose any information
2 or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
3 only to:

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

9 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
10 necessary for this litigation, (2) who have signed the “Acknowledgment and
11 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in
12 paragraph 7.4(a)(2), below, have been followed];

13 (c) the Court and its personnel;

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

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

20 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to
22 Designated House Counsel or Experts.

23 (a)(1) Unless otherwise ordered by the Court or agreed to in writing by the
24 Designating Party, a Party that seeks to disclose to Designated House Counsel any
25 information or item that has been designated “HIGHLY CONFIDENTIAL –
26 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3 first must make a written
27 request to the Designating Party that (A) sets forth the full name of the Designated
28 House Counsel and the city and state of his or her residence, and (B) describes the

1 Designated House Counsel's current and reasonably foreseeable future primary job
2 duties and responsibilities in sufficient detail to determine if House Counsel is
3 involved, or may become involved, in any competitive decision-making.

4 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
5 Designating Party, a Party that seeks to disclose to an Expert (as defined in this
6 Order) any information or item that has been designated "HIGHLY
7 CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to paragraph 7.3 first
8 must make a written request to the Designating Party that (A) identifies the general
9 categories of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
10 information that the Receiving Party seeks permission to disclose to the Expert, (B)
11 sets forth the full name of the Expert and the city and state of his or her primary
12 residence, (C) attaches a copy of the Expert's current resume, (D) identifies the
13 Expert's current employer(s), (E) identifies each person or entity from whom the
14 Expert has received compensation or funding for work in his or her areas of
15 expertise or to whom the expert has provided professional services, including in
16 connection with a litigation, at any time during the preceding five years, and (F)
17 identifies (by name and number of the case, filing date, and location of court) any
18 litigation in connection with which the Expert has offered expert testimony,
19 including through a declaration, report, or testimony at a deposition or trial, during
20 the preceding five years.

21 (b) A Party that makes a request and provides the information specified in the
22 preceding respective paragraphs may disclose the subject Protected Material to the
23 identified Designated House Counsel or Expert unless, within 14 days of delivering
24 the request, the Party receives a written objection from the Designating Party. Any
25 such objection must set forth in detail the grounds on which it is based.

26 (c) A Party that receives a timely written objection must meet and confer with
27 the Designating Party (through direct voice-to-voice dialogue) to try to resolve the
28 matter by agreement within seven days of the written objection. If no agreement is

1 reached, the Party seeking to make the disclosure to Designated House Counsel or
2 the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance
3 with Civil Local Rule 79-5) seeking permission from the court to do so. Any such
4 motion must describe the circumstances with specificity, set forth in detail the
5 reasons why the disclosure to Designated House Counsel or the Expert is reasonably
6 necessary, assess the risk of harm that the disclosure would entail, and suggest any
7 additional means that could be used to reduce that risk. In addition, any such motion
8 must be accompanied by a competent declaration describing the parties' efforts to
9 resolve the matter by agreement (*i.e.*, the extent and the content of the meet and
10 confer discussions) and setting forth the reasons advanced by the Designating Party
11 for its refusal to approve the disclosure.

12 In any such proceeding, the Party opposing disclosure to Designated House
13 Counsel or the Expert shall bear the burden of proving that the risk of harm that the
14 disclosure would entail (under the safeguards proposed) outweighs the Receiving
15 Party's need to disclose the Protected Material to its Designated House Counsel or
16 Expert.

17 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
18 **PRODUCED IN OTHER LITIGATION**

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

23 (a) promptly notify in writing the Designating Party. Such notification shall
24 include a copy of the subpoena or court order;

25 (b) promptly notify in writing the party who caused the subpoena or order to
26 issue in the other litigation that some or all of the material covered by the subpoena
27 or order is subject to this Protective Order. Such notification shall include a copy of
28 this Stipulated Protective Order; and

1 (c) cooperate with respect to all reasonable procedures sought to be pursued
2 by the Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served with
4 the subpoena or court order shall not produce any information designated in this
5 action as “HIGHLY CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY” before a determination by the court from which the
7 subpoena or order issued, unless the Party has obtained the Designating Party’s
8 permission. The Designating Party shall bear the burden and expense of seeking
9 protection in that court of its confidential material – and nothing in these provisions
10 should be construed as authorizing or encouraging a Receiving Party in this action
11 to disobey a lawful directive from another Court.

12 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
13 **PRODUCED IN THIS LITIGATION**

14 (a) The terms of this Stipulated Protective Order are applicable to
15 information produced by a Non-Party in this action and designated as “HIGHLY
16 CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
17 ONLY.” Such information produced by Non-Parties in connection with this
18 litigation is protected by the remedies and relief provided by this Stipulated
19 Protective Order. Nothing in these provisions should be construed as prohibiting a
20 Non-Party from seeking additional protections.

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

25 (i) promptly notify in writing the Requesting Party and the Non-Party
26 that some or all of the information requested is subject to a confidentiality
27 agreement with a Non-Party;
28

1 (ii) promptly provide the Non-Party with a copy of this Stipulated
2 Protective Order in this litigation, the relevant discovery request(s), and a
3 reasonably specific description of the information requested; and

4 (iii) make the information requested available for inspection by the Non-
5 Party.

6 (c) If the Non-Party fails to object or seek a protective order from this
7 court within 14 days of receiving the notice and accompanying information, the
8 Receiving Party may produce the Non-Party's confidential information responsive
9 to the discovery request. If the Non-Party timely seeks a protective order, the
10 Receiving Party shall not produce any information in its possession or control that is
11 subject to the confidentiality agreement with the Non-Party before a determination
12 by the court. Absent a court order to the contrary, the Non-Party shall bear the
13 burden and expense of seeking protection in this court of its Protected Material.

14 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

15
16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
17 Protected Material to any person or in any circumstance not authorized under this
18 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
19 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
20 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
21 persons to whom unauthorized disclosures were made of all the terms of this
22 Stipulated Protective Order, and (d) request such person or persons to execute the
23 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
24 A.

25 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
26 **PROTECTED MATERIAL**

27 When a Producing Party gives notice to Receiving Parties that certain
28 inadvertently produced material is subject to a claim of privilege or other protection,

1 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
2 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
3 procedure may be established in an e-discovery order that provides for production
4 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
5 (e), insofar as the parties reach an agreement on the effect of disclosure of a
6 communication or information covered by the attorney-client privilege or work
7 product protection, the parties may incorporate their agreement in the stipulated
8 protective order submitted to the Court.

9 **12. MISCELLANEOUS**

10 12.1 Right to Further Relief. Nothing in this Stipulated Protective Order
11 abridges the right of any person to seek its modification by the court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this
13 Stipulated Protective Order, no Party waives any right it otherwise would have to
14 object to disclosing or producing any information or item on any ground not
15 addressed in this Stipulated Protective Order. Similarly, no Party waives any right
16 to object on any ground to use in evidence of any of the material covered by this
17 Stipulated Protective Order.

18 12.3 Filing Protected Material. Without written permission from the
19 Designating Party or a Court order secured after appropriate notice to all interested
20 persons, a Party may not file in the public record in this action any Protected
21 Material. A Party that seeks to file under seal any Protected Material must comply
22 with Civil Local Rule 79-5. Protected Material may only be filed under seal
23 pursuant to a Court order authorizing the sealing of the specific Protected Material
24 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
25 request establishing that the Protected Material at issue is privileged, protectable as
26 a trade secret, or otherwise entitled to protection under the law. If a Receiving
27 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-
28 5 is denied by the Court, then the Receiving Party may file the Protected Material in

1 the public record unless otherwise instructed by the Court.

2

3 **13. FINAL DISPOSITION**

4 Within 60 days after the Final Disposition of this action, as defined in Section
5 4 (DURATION), each Receiving Party must return all Protected Material to the
6 Producing Party or destroy such material. As used in this subdivision, "all Protected
7 Material" includes all copies, abstracts, compilations, summaries, and any other
8 format reproducing or capturing any of the Protected Material. Whether the
9 Protected Material is returned or destroyed, the Receiving Party must submit a
10 written certification to the Producing Party (and, if not the same person or entity, to
11 the Designating Party) by the 60-day deadline that (1) identifies (by category, where
12 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
13 that the Receiving Party has not retained any copies, abstracts, compilations,
14 summaries or any other format reproducing or capturing any of the Protected
15 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
16 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
17 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
18 work product, and consultant and expert work product, even if such materials
19 contain Protected Material. Any such archival copies that contain or constitute
20 Protected Material remain subject to this Stipulated Protective Order as set forth in
21 Section 4 (DURATION).

22 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

23

24

25

26

27

28

1 DATED: November 3, 2014

McKENNA LONG & ALDRIDGE LLP

2

3

4

By: /s/Jennifer C. Hayes

5

Jeffrey L. Fillerup

6

Jennifer C. Hayes

7

Attorneys for Plaintiff and

8

Counterdefendant Bioriginal Food &

9 DATED: November 3, 2014

Science Corporation

SINGH, SINGH & TRAUBEN, LLP

10

11

By: /s/Michael A. Trauben

12

Michael A. Trauben

13

Attorneys for Defendants and

14

Counterclaimants Biotab Nutraceuticals,

15

Inc. and Global Product Management, Inc.

16

USW 804710159.3

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the Central
District of California on [_____] in the case of *Bioriginal Food &
Science Corporation v. Biotab Nutraceuticals, Inc. and Global Product Management,
Inc.*, Case No. 2:13-CV-05704-CAS (Ex). I agree to comply with and to be bound by
all the terms of this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Stipulated Protective Order.

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

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with this
action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]