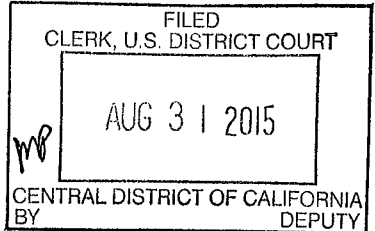


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NOTE CHANGES MADE BY THE COURT

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NOTE CHANGES MADE BY THE COURT

14 Attorneys for Plaintiff
 15 JAKE BRUANER

17 UNITED STATES DISTRICT COURT
 18 CENTRAL DISTRICT OF CALIFORNIA
 19 WESTERN DIVISION – LOS ANGELES

21 JAKE BRUANER and ADRIEL
 22 ZAGHI, on behalf of themselves and
 23 purportedly all others similarly
 24 situated,
 Plaintiff,
 25 v.
 26 MUSCLEPHARM CORPORATION,
 and DOES 1 through 50, inclusive,
 27 Defendants.
 28

Case No. 2:14-cv-08869-FMO-AGR
 Honorable Fernando M. Olguin
~~PROPOSED~~ STIPULATED
 PROTECTIVE ORDER FOR
 LITIGATION INVOLVING HIGHLY
 SENSITIVE CONFIDENTIAL
 INFORMATION AND/OR TRADE
 SECRETS
 Date Complaint Filed: 11/14/14
 FAC Filed: 03/02/15
 SAC Filed: 06/17/15
 TAC Filed: 08/17/15

Fact Discovery Cutoff: 09/09/15
Expert Discovery Cutoff: 11/23/15
Trial Date: None Set

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4 **1. PURPOSES AND LIMITATIONS**

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

19 **2. DEFINITIONS**

20 2.1 Challenging Party: a Party or Non-Party that challenges the
21 designation of information or items under this Order.

22 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
23 how it is generated, stored or maintained) or tangible things that qualify for
24 protection under Federal Rule of Civil Procedure 26(c).

25 2.3 Counsel: Outside Counsel of Record and In-House Counsel (as well as
26 their respective support staff).

27 2.4 Designating Party: a Party or Non-Party that designates information or
28 items that it produces in disclosures or in responses to discovery as

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

3 2.5 Disclosure or Discovery Material: all items or information, regardless
4 of the medium or manner in which it is generated, stored, or maintained (including,
5 among other things, testimony, transcripts, and tangible things), that are produced
6 or generated in disclosures or responses to discovery in this matter.

7 2.6 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
9 serve as an expert witness or as a consultant in this action, (2) is not a past or
10 current employee of a Party or of a Party’s competitor, and (3) at the time of
11 retention, is not anticipated to become an employee of a Party or of a Party’s
12 competitor.

13 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
14 Information or Items: extremely sensitive “Confidential Information or Items,”
15 disclosure of which to another Party or Non-Party would create a substantial risk of
16 serious harm that could not be avoided by less restrictive means.

17 2.8 In-House Counsel: attorneys (as well as support staff) who are
18 employees of a party to this action. In-House Counsel does not include Outside
19 Counsel of Record or any other outside counsel.

20 2.9 Non-Party: any natural person, partnership, corporation, association, or
21 other legal entity not named as a Party to this action.

22 2.10 Outside Counsel of Record: attorneys (as well as support staff) who
23 are not employees of a party to this action but are retained to represent or advise a
24 party to this action and have appeared in this action on behalf of that party or are
25 affiliated with a law firm which has appeared on behalf of that party.

26 2.11 Party: any party to this action, including all of its officers, directors,
27 employees, consultants, retained experts, and Outside Counsel of Record.

28

1 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
2 Discovery Material in this action.

3 2.13 Professional Vendors: persons or entities that provide litigation
4 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
5 demonstrations, and organizing, storing, or retrieving data in any form or medium)
6 and their employees and subcontractors.

7 2.14 Protected Material: any Disclosure or Discovery Material that is
8 designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL –
9 ATTORNEYS' EYES ONLY."

10 2.15 Receiving Party: a Party that receives Disclosure or Discovery
11 Material from a Producing Party.

12 **3. SCOPE**

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

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

5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.

6 Designation in conformity with this Order requires:

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

15 A Party or Non-Party that makes original documents or materials available
16 for inspection need not designate them for protection until after the inspecting Party
17 has indicated which material it would like copied and produced. During the
18 inspection and before the designation, all of the material made available for
19 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
20 ONLY.” After the inspecting Party has identified the documents it wants copied
21 and produced, the Producing Party must determine which documents, or portions
22 thereof, qualify for protection under this Order. Then, before producing the
23 specified documents, the Producing Party must affix the appropriate legend
24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
25 ONLY” to each page that contains Protected Material. If only a portion or portions
26 of the material on a page qualifies for protection, the Producing Party also must
27 clearly identify the protected portion(s) (e.g., by making appropriate markings in
28

1 the margins) and must specify, for each portion, the level of protection being
2 asserted.

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

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

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25 ^{Deposition}
26 Transcripts containing Protected Material shall have an obvious legend
27 on the title page that the transcript contains Protected Material, and the title
28 page shall be followed by a list of all pages (including line numbers as
appropriate) that have been designated as Protected Material and the level of

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1 protection being asserted by the Designating Party. The Designating Party
2 shall inform the court reporter of these requirements. Any transcript that is
3 prepared before the expiration of a 21-day period for designation shall be
4 treated during that period as if it had been designated “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
6 otherwise agreed. After the expiration of that period, the transcript shall be
7 treated only as actually designated.

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

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

21 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
 2 resolution process by providing written notice of each designation it is challenging
 3 and describing the basis for each challenge. To avoid ambiguity as to whether a
 4 challenge has been made, the written notice must recite that the challenge to
 5 confidentiality is being made in accordance with this specific paragraph of the
 6 Protective Order. The parties shall attempt to resolve each challenge in good faith
 7 and must begin the process by conferring directly (in voice to voice dialogue; other
 8 forms of communication are not sufficient) within 14 days of the date of service of
 9 notice. In conferring, the Challenging Party must explain the basis for its belief that
 10 the confidentiality designation was not proper and must give the Designating Party
 11 an opportunity to review the designated material, to reconsider the circumstances,
 12 and, if no change in designation is offered, to explain the basis for the chosen
 13 designation. A Challenging Party may proceed to the next stage of the challenge
 14 process only if it has engaged in this meet and confer process first or establishes
 15 that the Designating Party is unwilling to participate in the meet and confer process
 16 in a timely manner.

17 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
 18 court intervention, the Designating Party shall file and serve a motion to retain
 19 confidentiality under Civil Local Rule ³⁷ (and in compliance with Civil Local Rule
 20 79-5, if applicable) ~~within 21 days of the initial notice of challenge or within 14~~
 21 ~~days of the parties agreeing that the meet and confer process will not resolve their~~
 22 ~~dispute, whichever is earlier.~~ Each such motion must be accompanied by a
 23 competent declaration affirming that the movant has complied with the meet and
 24 confer requirements imposed in the preceding paragraph. Failure by the
 25 Designating Party to ^{Send its portion of the joint stipulation under local Rule 37-2.2} ~~make such a motion~~ including the required declaration within
 26 21 days ^{of the initial notice} (or 14 days, if applicable) shall automatically waive the confidentiality
 27 designation ^{after conferring with opposing counsel} for each challenged designation. In addition, the Challenging Party may
 28 file a motion ^{under local Rule 37} challenging a confidentiality designation at any time if there is good

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1 cause for doing so, including a challenge to the designation of a deposition
2 transcript or any portions thereof. Any motion brought pursuant to this provision
3 must be accompanied by a competent declaration affirming that the movant has
4 complied with the meet and confer requirements imposed by the preceding
5 paragraph.

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

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

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

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

25 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
26 otherwise ordered by the court or permitted in writing by the Designating Party, a
27 Receiving Party may disclose any information or item designated
28 "CONFIDENTIAL" only to:

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

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

10 (c) Experts (as defined in this Order) of the Receiving Party to whom
11 disclosure is reasonably necessary for this litigation and who have signed the
12 "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
20 to Be Bound" (Exhibit A), **unless otherwise agreed by the Designating Party or**
21 **ordered by the court.** Pages of transcribed deposition testimony or exhibits to
22 depositions that reveal Protected Material must be separately bound by the court
23 reporter and may not be disclosed to anyone except as permitted under this
24 Stipulated Protective Order.

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 in

1 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
12 in 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 In-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 In-House Counsel
25 any information or item that has been designated “HIGHLY CONFIDENTIAL –
26 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first identify the In-
27 House Counsel to the Designating Party that (1) sets forth the full name of the
28 Designated In-House Counsel and the city and state of his or her residence, and (2)

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

5 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
6 Designating Party, a Party that seeks to disclose to an Expert (as defined in this
7 Order) any information or item that has been designated "HIGHLY
8 CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to paragraph 7.3(c)
9 first must make a written request to the Designating Party that (1) identifies the
10 general categories of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
11 ONLY" information that the Receiving Party seeks permission to disclose to the
12 Expert, (2) sets forth the full name of the Expert and the city and state of his or her
13 primary residence, (3) attaches a copy of the Expert's current resume, (4) identifies
14 the Expert's current employer(s), (5) identifies each person or entity from whom the
15 Expert has received compensation or funding for work in his or her areas of
16 expertise or to whom the expert has provided professional services, including in
17 connection with a litigation, at any time during the preceding five years, and (6)
18 identifies (by name and number of the case, filing date, and location of court) any
19 litigation in connection with which the Expert has offered expert testimony,
20 including through a declaration, report, or testimony at a deposition or trial, during
21 the preceding five years.

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

27 (c) A Party that receives a timely written objection must meet and confer
28 with the Designating Party (through direct voice to voice dialogue) to try to resolve

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1 the matter by agreement within seven days of the written objection. If no agreement
2 is reached, the Party seeking to make the disclosure to Designated In-House
3 Counsel or the Expert may file a motion as provided in Civil Local Rule ³⁷ 7 (and in
4 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the
5 court to do so. Any such motion must describe the circumstances with specificity,
6 set forth in detail the reasons why the disclosure to Designated In-House Counsel or
7 the Expert is reasonably necessary, assess the risk of harm that the disclosure would
8 entail, and suggest any additional means that could be used to reduce that risk. In
9 addition, any such motion must be accompanied by a competent declaration
10 describing the parties' efforts to resolve the matter by agreement (i.e., the extent
11 and the content of the meet and confer discussions) and setting forth the reasons
12 advanced by the Designating Party for its refusal to approve the disclosure.

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

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

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

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

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

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

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

14 **9. A NON-PARTY'S PROTECTED MATERIAL**

15 **SOUGHT TO BE PRODUCED IN THIS LITIGATION**

16 *AGR*

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

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

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

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

4 3. make the information requested available for inspection by the
5 Non-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
11 is subject to the confidentiality agreement with the Non-Party before a
12 determination by the court. Absent a court order to the contrary, the Non-Party
13 shall bear the burden and expense of seeking protection in this court of its Protected
14 Material.

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

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
20 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
21 person or persons to whom unauthorized disclosures were made of all the terms of
22 this Order, and (d) request such person or persons to execute the "Acknowledgment
23 and Agreement to Be Bound" that is attached hereto as Exhibit A.

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

26 When a Producing Party gives notice to Receiving Parties that certain
27 inadvertently produced material is subject to a claim of privilege or other
28 protection, the obligations of the Receiving Parties are those set forth in Federal

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

8 **12. MISCELLANEOUS**

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
10 person to seek its modification by the court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this
12 Protective Order no Party waives any right it otherwise would have to object to
13 disclosing or producing any information or item on any ground not addressed in
14 this Stipulated Protective Order. Similarly, no Party waives any right to object on
15 any ground to use in evidence of any of the material covered by this Protective
16 Order.

17 12.3 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. Protected Material may only be filed under seal
22 pursuant to a court order authorizing the sealing of the specific Protected Material
23 at issue. ~~Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a~~
24 ~~request establishing that the Protected Material at issue is privileged, protectable as~~
25 ~~a trade secret, or otherwise entitled to protection under the law.~~ If a Receiving
26 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-
27 5(e) is denied by the court, then the Receiving Party may file the Protected Material
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1 in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise
2 instructed by the court.

3 12.4 Remedies for Breach. The Parties intend this Stipulated Protective
4 Order to address the terms under which confidential matter may be used and shared
5 in this lawsuit, and to limit the use of confidential matter to the prosecution and
6 defense of this lawsuit. The parties do not intend this Stipulated Protective Order to
7 be enforced by a private right of action in another lawsuit. Therefore, the Parties
8 agree that the remedy for a breach of this Stipulated Protective Order shall be
9 limited to sanctions imposed by the court at any stage of this proceeding, which
10 sanctions shall be determined by and in the discretion of the court in this
11 proceeding, ^{The parties agree not to seek more than} ~~but shall be limited to~~ liquidated damages in an amount of \$5,000 for
12 each intentional occurrence of a breach, or for each unintentional occurrence of a
13 breach that, after notice, is not cured by the provisions set forth above.

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14 **13. FINAL DISPOSITION**

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

1 reports, attorney work product, and consultant and expert work product, even if
2 such materials contain Protected Material. Any such archival copies that contain or
3 constitute Protected Material remain subject to this Protective Order as set forth in
4 Section 4 (DURATION).

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6 Dated: August 27, 2015

Respectfully Submitted,

7 /s/ Jonathan J. Delshad
8 JONATHAN J. DELSHAD [SBN 246176]
9 jdeshad@delshadlegal.com
10 Law Offices of Jonathan Delshad
11 1663 Sawtelle Blvd., Suite 220
12 Los Angeles, CA 90025
13 Telephone: (424) 255-8376

Attorneys for Plaintiff
JAKE BRUANER

13 Dated: August 27, 2015

Respectfully Submitted,

14 /s/ Michael J. Suffern
15 Michael J. Suffern (*admitted pro hac vice*)
16 msuffern@ulmer.com
17 ULMER & BERNE LLP
18 600 Vine Street, Suite 2800
19 Cincinnati, Ohio 45202
20 Telephone: (513) 698-5064
21 Facsimile: (513) 698-5065

Attorneys for Defendant
MUSCLEPHARM CORPORATION

22 PURSUANT TO STIPULATION, IT IS SO ORDERED.

23 DATED: 8/31/15

Alicia G. Rosenberg
~~Honorable Fernando M. Olguin~~
United States District Judge
Magistrate

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ATTESTATION RE AUTHORIZATION

I, Michael J. Suffern, hereby declare as follows:

1. Pursuant to Local Rule 5-4.3.4(a)(2)(i), as the filer of the document entitled STIPULATED PROTECTIVE ORDER FOR LITIGATION INVOLVING HIGHLY SENSITIVE CONFIDENTIAL INFORMATION AND/OR TRADE SECRETS, I hereby attest that concurrence in the filing of the document has been obtained from Plaintiff's counsel Jonathan J Delshad, who concurs in the filing's content and has authorized the filing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of August 2015, in Cincinnati, Ohio.

/s/ Michael J. Suffern
Michael J. Suffern

msuffern@ulmer.com
Telephone: (513) 698-5064

1 EXHIBIT A – ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

2 I, _____ [print or type full
3 name], of _____

4 [print or type full address], declare under penalty of perjury under the laws of the
5 United States that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Central
7 District of California on January 28, 2015, in the case of Bruaner vs. MusclePharm
8 Corporation, Case No. 2:14-cv-08869-FMO-AGR.

9 I agree to comply with and to be bound by all the terms of this Stipulated
10 Protective Order and I understand and acknowledge that failure to so comply could
11 expose me to sanctions and punishment in the nature of contempt. I solemnly
12 promise that I will not disclose in any manner any information or item that is
13 subject to this Stipulated Protective Order to any person or entity except in strict
14 compliance with the provisions of this Order.

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15 I further agree to submit to the jurisdiction of the United States District Court
16 for the ^{Central}~~Northern~~ District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action.

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

24 City and State where sworn and signed: _____

25 Printed name: _____
26 [printed name]

27 Signature: _____
28 [signature]