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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

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11 CAPBRAN HOLDINGS, LLC, a
12 California LLC, and NTRIBULLET,
13 LLC, a California LLC,

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Plaintiffs,

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v.

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FIREMALL LLC, a New York LLC,
and MITCHEL BERKOWITZ, an
individual,

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Defendants.

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AND RELATED COUNTERCLAIMS

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CASE NO. 2:16-cv-02980-DSF(AFMx)

**[PROPOSED] STIPULATED
JUDGMENT FOR TRADEMARK AND
TRADE DRESS INFRINGEMENT,
COPYRIGHT INFRINGEMENT, AND
DESIGN PATENT INFRINGEMENT**

The Hon. Judge Dale S. Fischer

1 The Parties having so stipulated and good cause appearing, the Court enters
2 Judgement in accordance with the following terms.

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JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

- (1) Judgment is entered in favor of Capbran Holdings, LLC and NutriBullet, LLC and against Firemall, LLC as to Plaintiff's claims against Firemall, LLC for trademark and trade dress infringement, copyright infringement, and design patent infringement in the amount of \$1,000,000. It is declared that Capbran's registered trade dress, U.S. Reg. No. 4,416,702, for a blender base with a wave shaped rim is determined to be distinctive and not functional. It is also declared that the Plaintiffs Capbran's design patents, U.S. Design Patent Nos. D554,427, D500,633, and D532,255, are valid and are not functional. These findings are the results of a fully litigated case over a course of seventeen (17) months in which full discovery was conducted, cross motions for summary judgment were filed and ruled upon;
- (2) All claims against Mitchel Berkowitz are hereby DISMISSED WITHOUT PREJUDICE until the monetary judgment against Firemall has been fully satisfied pursuant to the Settlement Agreement of the Parties. If Firemall shall default on any payment pursuant to the Settlement Agreement of the Parties, Capbran may refile its claims against Berkowitz and Berkowitz Entities and the judgment shall be amended upon request against Berkowitz, personally, and Berkowitz Entities in the amount of \$500,000 plus any remaining balance pursuant to the Parties' Settlement Agreement. Upon full satisfaction

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of the Judgment against Firemall, Capbran’s claims against Mitchel Berkowitz are to be DISMISSED WITH PREJUDICE;

- (3) Firemall, LLC, Berkowitz, and other entities in which Berkowitz retains any ownership interest, either directly or through his family or agents are permanently enjoined from infringing any of Capbran’s trademarks, trade dress, copyrights, and design patents, including but not limited to any future sales of counterfeit products of Capbran or its related entities;
- (4) Each Party shall bear its own costs and attorneys’ fees; and
- (5) This Court shall retain jurisdiction of this case to enforce the Judgment and Settlement Agreement between the Parties.

IT IS SO ORDERED.

9/25/17



Dated: _____

Hon. Dale S. Fischer
United States District Judge