

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

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

TIFFANY BURTON an individual;) Case No.: 2:17-cv-03358-DDP-SS
CHARLES BURTON, an individual;) District Judge: Hon. Dean D. Pregerson
) Magistrate: Hon. Suzanne H. Segal
Plaintiffs,)

vs.) **PROTECTIVE ORDER**

NUTRIBULLET, L.L.C., a California)
Limited Liability Company;)
CAPITAL BRANDS, L.L.C., a)
California Limited Liability)
Company, HOMELAND)
HOUSEWARES, L.L.C., a California)
Limited Liability Company; CALL)
TO ACTION, L.L.C., a California)
Limited Liability Company;)
NUTRILIVING, L.L.C., a California)
Limited Liability Company; and)
DOES 1 through 10, inclusive,)
Defendants.)

PROTECTIVE ORDER

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiffs,
TIFFANY BURTON and CHARLES BURTON (Plaintiff(s)'), and Defendant(s)

1 NUTRIBULLET, LLC, CAPITAL BRANDS, LLC, HOMELAND HOUSEWARES,
2 LLC, CALL TO ACTION, LLC AND NUTRILIVING (“Defendants”) (collectively
3 the Plaintiffs and Defendant(s) are referred to as the “Parties” and each individually as a
4 “Party”), through their counsel, that this Stipulated Protective Order shall govern the
5 handling of any information produced or disclosed by any Party or non-Party in the
6 above captioned matter (“Action”), including documents, depositions, deposition
7 exhibits, interrogatory responses, responses to requests for admission, and other pretrial
8 proceedings.

9 **GOOD CAUSE STATEMENT:**

10 This action is likely to involve trade secrets and other valuable research,
11 development, commercial, financial, technical and/or proprietary information for which
12 special protection from public disclosure and from use for any purpose other than
13 prosecution of this action is warranted. Such confidential and proprietary materials and
14 information consist of, among other things, confidential business or financial
15 information, information regarding confidential business practices, or other confidential
16 research, development, or commercial information (including information implicating
17 privacy rights of third parties), information otherwise generally unavailable to the
18 public, or which may be privileged or otherwise protected from disclosure under state
19 or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite
20 the flow of information, to facilitate the prompt resolution of disputes over
21 confidentiality of discovery materials, to adequately protect information the parties are
22 entitled to keep confidential, to ensure that the parties are permitted reasonable
23 necessary uses of such material in preparation for and in the conduct of trial, to address
24 their handling at the end of the litigation, and serve the ends of justice, a protective
25 order for such information is justified in this matter. It is the intent of the parties that
26 information will not be designated as confidential for tactical reasons and that nothing
27 be so designated without a good faith belief that it has been maintained in a
28 confidential, non-public manner, and there is good cause why it should not be part of

1 the public record of this case.

2 1. Any Party or non-Party may designate as confidential any documents,
3 materials, or information which the designating Party considers in good faith to contain
4 non-public, confidential or trade secret (information and which is disclosed through
5 formal or informal discovery in this Action (hereinafter “Confidential Material”)
6 including, but not limited to, any written response to interrogatories and requests for
7 admission, documents produced in response to requests for production of documents or
8 subpoenas, deposition transcripts including exhibits, and all information contained in
9 those materials (collectively “Discovery Materials”). The Parties reserve their rights to
10 jointly amend this Stipulation and to supplement the above list as additional categories
11 of Confidential Materials arise through the course of discovery.

12 2. Documents produced or written responses served in this Action in response to
13 a request for production, or otherwise, relating to matters that the designating Party
14 deems to be Confidential Material shall be designated as such at the time of production
15 or service of the response(s). Each document or page of a written response so
16 designated shall be marked with the word “Confidential.”

17 3. Any Party may designate certain Discovery Materials as “Confidential –
18 Attorneys’ Eyes Only” (hereinafter, “Attorneys’ Eyes Only Material”). This
19 designation shall be limited to such Discovery Materials that the designating Party
20 believes, in good faith, contain highly sensitive information, the disclosure of which is
21 likely to cause harm to the competitive position of the designating Party or the broader
22 disclosure of which would violate any Party or third parties’ constitutional right to
23 financial privacy. All Attorneys’ Eyes Only Materials are included within the meaning
24 of “Confidential” information as used in this Protective Order and, except with respect
25 to the classes of individuals who may view Attorneys’ Eyes Only Materials, all the
26 provisions set forth in the Protective Order that apply to Confidential Materials also
27 apply to Attorneys’ Eyes Only Materials. Documents produced or written responses
28 served in this Action in response to a request for production, or otherwise, relating to

1 matters that the designating Party deems to be Attorneys' Eyes Only Material shall be
2 designated as such. Each document or page of a written response so designated shall be
3 marked with the words "Confidential – Attorneys' Eyes Only."

4 4. The production of any document, evidence or testimony not marked as
5 Confidential or Confidential – Attorneys' Eyes Only shall not constitute a waiver of any
6 claim of confidentiality that may attach to the document and such materials.

7 5. If any Party or non-Party inadvertently fails to designate any document(s) or
8 written response(s) to a discovery request as Confidential or Attorneys' Eyes Only
9 Material at the time of production or service of the response, it may correct its error by
10 notifying opposing counsel in writing and providing opposing counsel substitute copies
11 of any document(s) or response(s) appropriately marked as Confidential or Confidential
12 – Attorneys' Eyes Only. Within ten (10) days of receipt of the substitute copies, the
13 receiving Party shall return the previously unmarked items and all copies thereof.
14 Similarly, if any Party inadvertently designates any document(s) or written response(s)
15 as Confidential or Attorneys' Eyes Only Material, it may correct its error by notifying
16 opposing counsel in writing and providing opposing counsel with substitute copies of
17 the document(s) or response(s) without the Confidential or Confidential – Attorneys'
18 Eyes Only designation. Within ten (10) days of receipt of the substitute copies, the
19 receiving Party shall return the previously marked items and all copies thereof.

20 6. The receipt of any document, transcript, thing, or information designated
21 Confidential or Confidential – Attorneys' Eyes Only shall not be construed as an
22 agreement by the receiving Party that any such document, transcript, thing, or
23 information is in fact Confidential or Attorneys' Eyes Only Material, and shall not
24 operate as a waiver of the receiving Party's right to challenge any such designation as
25 provided herein.

26 7. A Party may designate as Confidential or Attorneys' Eyes Only Material, the
27 whole or a portion of any deposition testimony, regardless by whom given, which
28 contains or discloses Confidential or Attorneys' Eyes Only Material. The Party

1 designating any portion of a deposition as Confidential or Attorneys' Eyes Only
2 Material may do so on the record at the deposition or shall serve a written statement on
3 the Parties and court reporter specifying the portions of the deposition which are to be
4 designated as Confidential or Attorneys' Eyes Only Material within thirty (30) days
5 after receipt of the deposition transcript. Except as otherwise designated on the record,
6 the entire transcript shall be deemed Confidential prior to the expiration of the thirty-
7 day period. If a document designated as Confidential or Attorneys' Eyes Only Material
8 is used as an exhibit at a deposition, that document and the deposition testimony
9 concerning it shall be deemed Confidential or Attorneys' Eyes Only Material regardless
10 of whether a Party makes any formal designation thereof.

11 8. A Party shall have the right to have the following persons excluded from a
12 deposition before the taking of testimony designated as Confidential Material or before
13 the introduction of documents or exhibits designated as Confidential Material: all
14 persons except the court reporter, counsel of record, the Parties' experts, the deponent
15 and the Parties (or their representatives who are involved in the handling, prosecution or
16 defense of this Action). Additionally, a Party shall have the right to exclude the Parties
17 (or their representatives) before the taking of testimony designated as Attorneys' Eyes
18 Only or before introducing exhibits designated as Attorneys' Eyes Only.

19 9. Confidential Material may be disclosed, given, shown, made available, or
20 communicated only to the following individuals and entities (and then only for purposes
21 of mediation or the prosecution or defense of this Action):

- 22 (a) the Court and court personnel;
- 23 (b) mediators, referees, or other neutral designees of the Court or the Parties
24 for the purpose of dispute resolution;
- 25 (c) court reporters who record depositions or other testimony in this action;
- 26 (d) outside counsel of record for the Parties, as well as their paralegals,
27 secretarial and clerical assistants, and employees of such counsel who are
28 actively working on this matter, including independent contractors

1 providing copy services or litigation support for the Parties;

2 (e) the Parties and their employees and insurers who are actively involved in
3 the prosecution or defense of this Action;

4 (f) independent experts that have been retained by the Parties in connection
5 with this Action;

6 (g) any individual or entity expressly named in the particular Confidential
7 Material as having authored or received the information contained in that
8 Confidential Material; and

9 (h) any other person or Party upon the written agreement of the Party or non-
10 party that designated the Confidential Material (which agreement may be
11 recorded in a deposition or other transcript), or pursuant to court order after
12 regularly-noticed motion.

13 10. Attorneys' Eyes Only Material may be disclosed only to the following
14 persons:

15 (a) the Court and court personnel in accordance with paragraph 19 herein
16 below;

17 (b) mediators, referees, or other neutral designees of the Court or the Parties
18 for the purpose of dispute resolution;

19 (c) court reporters who record depositions or other testimony in this action;

20 (d) outside counsel of record for the Parties, as well as their paralegals,
21 secretarial and clerical assistants, and employees of such counsel who are
22 actively working on this matter,

23 (e) independent experts that have been retained by the Parties in connection
24 with this Action;

25 (f) any individual or entity expressly named in the particular Confidential
26 Material as having authored or received the information contained in that
27 Confidential Material; and

28 (g) any other person or Party upon the written agreement of the Party or non-

1 Party that designated the Attorneys' Eyes Only Material (which agreement
2 may be recorded in a deposition or other transcript), or pursuant to court
3 order after regularly-noticed motion.

4 11. In the event of a disclosure of Confidential or Attorneys' Eyes Only
5 Materials to a person not authorized to have had such disclosure made to him or her
6 under the provisions of this Stipulation and Protective Order, and in the event the Party
7 responsible for having made or allowed such disclosure becomes aware of such
8 disclosure, that Party shall immediately (a) notify in writing, counsel for the Party
9 whose Confidential or Attorneys' Eyes Only Material has thus been disclosed of all
10 relevant information concerning the nature and circumstances of such disclosure (b) use
11 its best efforts to retrieve all Confidential or Attorneys Eyes Only Materials (c) inform
12 the person or persons to whom unauthorized disclosures were made of all the terms of
13 this Order and (d) request such person or persons to execute "Exhibit A" that is attached
14 hereto. The responsible Party shall also take all reasonable measures promptly to
15 ensure that no further or greater unauthorized disclosure of Confidential or Attorneys'
16 Eyes Only Material is made by anyone.

17 12. Before Confidential or Attorneys' Eyes Only Material may be disclosed
18 to third-party consultants and independent experts that are being used or will be used in
19 connection with this Action, such persons must execute a written Confidentiality
20 Agreement, in the form set forth in Exhibit A attached hereto ("Confidentiality
21 Agreement"), acknowledging and agreeing not to discuss or otherwise disclose any
22 material designated Confidential or Confidential – Attorneys' Eyes Only with or to any
23 person except person permitted to receive such Discovery Materials pursuant hereto,
24 who if appropriate, has executed a Confidentiality Agreement. In the event that the
25 person executes the written agreement, the counsel disclosing the Confidential or
26 Attorneys' Eyes Only Materials shall maintain the executed written agreement.

27 13. All Confidential or Attorneys' Eyes Only Material provided in discovery
28 or otherwise in connection with the above-captioned Action shall be used for the

1 prosecution or defense of this Action, and for no other purpose. Confidential or
2 Attorneys' Eyes Only Material shall not be used or disclosed for any business,
3 commercial or competitive purpose.

4 14. Nothing herein shall prevent any of the Parties from using Confidential
5 or Attorneys' Eyes Only Material in any trial in this Action or from seeking further
6 protection with respect to the use of any Confidential or Attorneys' Eyes Only Material
7 in any trial in this Action. Means to preserve the confidentiality of Confidential or
8 Attorneys' Eyes Only Material presented at any trial shall be considered and, to the
9 extent reasonably possible, implemented in advance of such trial.

10 15. A Party shall not be obligated to challenge the designation of any
11 documents or information as Confidential or Attorneys' Eyes Only Material at the time
12 the designation is made, and a failure to do so shall not preclude a subsequent challenge
13 to the designation. In the event of a dispute with respect to the designation of any
14 discovery material as Confidential or Attorneys' Eyes Only Material, counsel shall
15 attempt to resolve the dispute on an informal basis before presenting the matter to the
16 Court for resolution. If a resolution cannot be reached, the Party challenging the
17 Confidential or Confidential – Attorneys' Eyes Only designation shall send a written
18 notice to the designating Party identifying the challenged Confidential or Attorneys'
19 Eyes Only Material, stating the reasons that the Confidential or Attorneys' Eyes Only
20 Material is being challenged, and giving notice that the Party will move the Court to
21 remove the designation of such information as "Confidential" or "Confidential –
22 Attorneys' Eyes Only." Until such time as the challenge is resolved, such Confidential
23 or Attorneys' Eyes Only Material shall be maintained in accordance with this Stipulated
24 Protective Order.

25 16. Nothing in this Stipulation and Protective Order shall be deemed in any
26 way to restrict the use of documents or information that are lawfully obtained or
27 publicly available to a Party independently from discovery in this action, whether or not
28 the same material has been obtained during the course of discovery in the action and

1 whether or not such documents or information have been designated as Confidential or
2 Confidential – Attorneys’ Eyes Only.

3 17. This Stipulated Protective Order may be modified at any time for good
4 cause shown, and shall not preclude any application to the Court seeking greater or
5 lesser protection for specific documents or seeking termination of the protection
6 provided hereunder for specific material or information.

7 18. Nothing in this Stipulated Protective Order shall limit or affect the right
8 of a Party to disclose or to authorize disclosure of Discovery Materials produced by that
9 Party.

10 19. All documents, transcripts, pleadings, motions, and other Discovery
11 Materials filed or lodged with the Court comprising, containing, or reflecting Attorneys’
12 Eyes Only Material shall be filed or lodged under seal pursuant to the Federal Rules of
13 Civil Procedure and or Local Rules, and shall designate the particular aspects of such
14 filings or lodging that contain Attorneys' Eyes Only Material.

15 20. The Parties shall meet and confer regarding the procedures for use of
16 any Confidential Materials or Attorney’s Eyes Only Materials at trial and shall move
17 the Court for entry of an appropriate order.

18 21. No later than thirty (30) days from the unappealed or unappealable final
19 resolution or settlement of this action, all Confidential and Attorneys’ Eyes Only
20 Material, including copies, extracts, or summaries of such materials, within the
21 possession, custody or control of counsel for a Party shall be delivered to counsel for
22 the Party who produced the Confidential or Attorneys’ Eyes Only Material, or in lieu
23 thereof, shall certify in writing that all Confidential or Attorneys’ Eyes Only Material
24 has been destroyed. Notwithstanding the above, counsel of record may retain a set of
25 pleadings, exhibits, and their own attorney and consultant work product for archival
26 purposes, including portions of any such papers that contain or disclose Confidential or
27 Attorneys’ Eyes Only Material. Any such archival copies that contain or constitute
28 Confidential or Attorneys’ Eyes Only Material remain subject to this Stipulated

1 Protective Order.

2 22. Nothing in this Stipulated and Protective Order shall be deemed to limit,
3 prejudice, or waive any right of the Parties: (a) to resist discovery with respect to, or to
4 seek to obtain additional or different protection for, material claimed to be protected
5 work product or privileged under federal or California law, material as to which a Party
6 claims a legal obligation not to disclose, or Material not required to be provided
7 pursuant to federal or California law; (b) to seek to modify or obtain relief from any
8 aspect of this Protective Order; (c) to object to the use, relevance or admissibility at trial
9 or otherwise of any material, whether or not designated in whole or in part as
10 Confidential Material governed by this Protective Order; or (d) otherwise to require that
11 discovery be conducted according to governing laws and rules.

12 23. This Stipulated Protective Order shall survive the final conclusion of this
13 Action and continue in full force and effect, and the Court shall retain jurisdiction to
14 enforce this Stipulated Protective Order.

15 By executing a copy of this Stipulated Protective Order, each of the attorneys
16 named below and the Parties they represent undertake to abide by and be bound by its
17 provisions.

18 24. The Defendants shall file a fully executed copy this Stipulated Protective
19 Order with the Court within five (5) court days of receipt of the executed Stipulated
20 Protective Order from Plaintiffs.

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

22
23
24
25
26
27
28

1 DATED: January 7, 2020

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

YOKA & SMITH, LLP

By: /s/ ALICE CHEN SMITH
Walter M. Yoka
David T. McCann
R. Bryan Martin
Alice Chen Smith
Davida M. Frieman

Attorneys for Defendants,
Nutribullet, LLC; Capital Brands, LLC;
Homeland Housewares, LLC; Call To
Action, LLC; and Nutriliving, LLC

ABIR COHEN TREYZON SALO, LLP

By: /s/ AARON LAVINE
Boris Treyzon
Douglas Rothen
Aaron Lavine
Attorneys for Plaintiff

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED

DATED: January 7, 2020



Judge Dean Pregerson
United States District Judge

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 4A

ACKNOWLEDGMENT OF AGREEMENT TO BE BOUND BY STIPULATION
AND PROTECTIVE ORDER

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 Protective Order that was issued by the United States District Court for the Central
District of California on _____[date] in the case of
_____ Case

No.: _____, I agree to comply with and to be bound by all
the terms of this Protective Order, and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment for contempt. I solemnly
promise that I will not disclose in any manner any information or item that is subject to
this Protective Order to any person or entity except in strict compliance with this 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 Order.

Date: _____

City and State sworn and signed: _____

Printed Name: _____

Signature: _____