

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

MAMI NUTRACEUTICALS, LLC,
Plaintiff,

v.

NATIONAL MERCHANT CENTER,
INC., et al.,
Defendants.

Case No. 8:16-cv-01308-JVS-JCG

**STIPULATED PROTECTIVE
ORDER**

Date: June 14, 2017
Judge: Hon. James V. Selna

WHEREAS, in the course of discovery, it may be necessary for the parties or third parties to disclose personal, proprietary, or confidential information or trade secrets; and

WHEREAS, the parties do not wish to unreasonably impede or burden the discovery process, and wish to ensure the reasonable protection of such personal, proprietary, or confidential information or trade secrets; and

WHEREAS, the parties consent and stipulate that, with the approval of this Court, this Order should issue to preserve and protect the confidentiality of documents referenced, disclosed, and produced in this litigation (“Litigation”);

IT IS THEREFORE STIPULATED as follows:

1. The terms and conditions of this Order shall govern the handling of documents, depositions, deposition exhibits, interrogatory responses, admissions and any other information produced (including, but not limited to, inspections, videos, photographs or imaging of a party’s data, processes, premises or property), given or exchanged by and among any and all of the parties and non-parties to this Litigation in connection with discovery or voluntary exchange of information in this Litigation (“Discovery Material”).

2. The term “Designating Party” as used herein shall mean the person or party who produces the Discovery Material or the party who chooses to designate

1 Discovery Material produced by or originating with any non-party. The
2 Designating Party shall have the right to designate any Discovery Material as
3 “Confidential,” to the extent that it believes in good faith that such Discovery
4 Material contains or reflects non-public, confidential, proprietary, financial,
5 technical, or commercially or legally sensitive or protected information
6 (“Confidential Material”).

7 3. Confidential Material shall be designated as follows:

8 (a) In the case of documents, designation shall be made by placing the
9 legend “Confidential” on each page containing Confidential Material prior to
10 production. Documents that are made available for inspection in response to a
11 request for production need not be marked with the confidentiality legend. The
12 Designating Party shall, however, mark with the confidentiality legend the first
13 page of the document and each page that contains Confidential Material that is
14 identified for copying and then copied. Where a document is produced in a
15 magnetic or electronic medium (such as a computer disk or tape), the disk,
16 cartridge, reel or medium container shall be marked as set forth above. In the case
17 of documents produced by a non-party, either party may designate the documents
18 as Confidential Material by (i) placing the legend “Confidential” on each page
19 containing Confidential Material after receiving the production from the non-party
20 or the party who directly receives the production from the non-party; or (ii)
21 identifying in writing, by bates number, the documents to be treated as
22 Confidential Material. The failure of a non-party to designate a document it
23 produces as Confidential Material shall in no way affect the right of either party to
24 so designate the document.

25 (b) In the case of depositions, designation of the transcript or the portion of
26 the transcript (including exhibits) which contains Confidential Material shall be
27 made by a statement on the record during the course of the deposition as to which
28 portion(s) are being designated, or by a statement in writing sent to all counsel of

1 record within thirty (30) business days after the receipt of the transcript of the
2 deposition. If the designation is made during the course of the deposition, the
3 reporter attending such deposition shall place the legend “Contains Confidential
4 Material Subject to a Court Order” on the cover of the transcript. If the designation
5 is made after receipt of the transcript, the Designating Party shall identify which
6 pages of the transcript contain Confidential Material. The parties may modify this
7 procedure for any particular deposition through agreement on the record at such
8 deposition, without further court order.

9 4. All portions of briefs, pleadings or other filings with the Court that
10 contain or refer to Confidential Material shall be filed under seal in accordance
11 with the procedures of the Court. Such submissions shall remain under seal until
12 further order of this Court.

13 5. If any party elects to challenge the designation of any Discovery
14 Material as Confidential Material, such party (“Challenging Party”) shall do so in
15 good faith and must begin the process by a letter directed to counsel for the
16 Designating Party. In conferring, the Challenging Party must explain the basis for
17 its belief that the confidentiality designation was not proper and must give the
18 Designating Party a reasonable opportunity to review the designated material, to
19 reconsider the circumstances, and, if no change in designation is offered, to explain
20 the basis for the chosen designation. A Challenging Party may proceed to the next
21 stage of the challenge process only if it has completed this meet and confer process
22 first.

23 6. If the Designating Party does not explain the basis for the designation
24 and/or any challenge to a confidentiality designation cannot be resolved by
25 agreement, the Challenging Party may file a motion with the Court for an order
26 removing that designation. Each such motion shall specify the challenged material
27 and set forth in detail the basis for the challenge. Each such motion also shall be
28 accompanied by a competent declaration that affirms that the Challenging Party

1 has complied with the meet and confer requirements imposed by the preceding
2 paragraph and that sets forth with specificity the justification for the confidentiality
3 designation that was given by the Designating Party in the meet and confer
4 process.

5 7. Notwithstanding any challenge to the designation of material as
6 Confidential Material, all Discovery Material shall be treated as Confidential
7 Material unless and until one of the following occurs:

8 (a) the Designating Party who claims that the Discovery Material is
9 Confidential Material withdraws such designation in writing; or

10 (b) the Court rules the Discovery Material is not Confidential Material.

11 8. If it comes to a Designating Party's attention that information or items
12 that it designated for protection do not qualify for protection, the Designating Party
13 shall promptly notify all other parties in writing that it is withdrawing the
14 designation and shall authorize all parties to remove the "Confidential" legend
15 from such material.

16 9. Information designated as "Confidential Material" may be disclosed
17 only to the following persons:

18 (a) counsel of record in this Litigation, and attorneys, paralegals and other
19 support staff employed by such counsel who are assisting in the conduct of this
20 Litigation;

21 (b) the parties in this Litigation, including their present officers, directors
22 and employees deemed necessary to aid counsel in the prosecution or defense of
23 this Litigation;

24 (c) the Court, court personnel, court reporters (including stenographers and
25 video technicians) and the jury in this Litigation;

26 (d) interpreters, translators, copy services, document imaging services, and
27 database coding services employed in connection with this Litigation, provided
28

1 that these individuals or an appropriate company official executes an Agreement to
2 Maintain Confidentiality attached hereto as Exhibit A;

3 (e) experts or consultants (and employees of such experts or consultants)
4 retained by any party or attorney to assist with the Litigation, provided that such
5 expert or consultant executes an Agreement to Maintain Confidentiality attached
6 hereto as Exhibit A;

7 (f) any mediator agreed upon by the parties, provided such person executes
8 an Agreement to Maintain Confidentiality attached hereto as Exhibit A;

9 (g) noticed or subpoenaed witnesses (and their counsel) at any deposition or
10 trial in this Litigation or in preparation for their testimony at deposition or trial;

11 (h) all authors and recipients of an item of Confidential Material, including
12 all addressees, persons listed as receiving copies or blind copies, and persons who
13 counsel believes in good faith would have received copies in the ordinary course of
14 business, provided that such persons execute an Agreement to Maintain
15 Confidentiality attached hereto as Exhibit A;

16 (i) prospective witnesses who may be required to testify in this Litigation on
17 facts contained in the Confidential Material, provided that such witnesses execute
18 an Agreement to Maintain Confidentiality attached hereto as Exhibit A;

19 (j) in the case of Confidential Material produced by or originating with a
20 non-party, the non-party who produced the Confidential Material; and

21 (k) other persons to whom the Court specifically allows disclosure, after
22 application by the party seeking such disclosure and an opportunity to reply by the
23 Designating Party.

24 10. Persons identified in Paragraphs 9(d), (e), (f), (h) and (i) above shall
25 not be granted access to Confidential Material until such persons have read this
26 Order and agreed to be bound by its provisions as set forth in the Agreement to
27 Maintain Confidentiality attached hereto as Exhibit A. Counsel for the party
28 providing such persons with access to Confidential Material shall be responsible

1 for maintaining copies of the Agreement to Maintain Confidentiality executed by
2 them. The names of such persons who have executed the Agreement to Maintain
3 Confidentiality attached hereto as Exhibit A shall not be discoverable except upon
4 a showing of good cause and by order of the Court, or as required by the Federal
5 Rules of Civil Procedure.

6 11. All information designated as Confidential Material in accordance
7 with the terms of this Order and produced or exchanged in the course of this
8 Litigation shall be used or disclosed solely for the purpose of this Litigation and in
9 accordance with the provisions of this Order. Such Confidential Material shall not
10 be used for any business purpose, or in any other litigation or other proceeding, or
11 for any other purpose, except by Court Order or otherwise required by law.

12 12. Nothing in this Order shall prevent a Designating Party, in good faith,
13 from designating or redesignating Discovery Material that already has been
14 produced as Confidential Material, provided that the Designating Party promptly
15 advises the party or parties to which production is being made that it has
16 designated or redesignated the Discovery Material as Confidential Material. In the
17 event that two copies of the same document or information are produced by
18 different parties, the more restrictive designation shall govern. If material is
19 appropriately designated as Confidential Material after the material was initially
20 produced, the receiving party, on timely notification of the designation, must make
21 reasonable efforts to assure that the material is treated in accordance with the
22 provisions of this Order.

23 13. Any party who receives Confidential Material may request at any time
24 permission to disclose such material to a person other than those permitted by
25 paragraph 9 above by serving a written request upon counsel for the Designating
26 Party. This request shall state the specific information or material the party wishes
27 to disclose and the person or entity to whom the party wishes to disclose the
28 information or material. If consent is withheld, or if the requesting party and

1 Designating Party are unable to agree on the terms and conditions of disclosure,
2 the requesting party may seek judicial intervention to resolve the dispute.
3 Disclosure shall be prohibited unless and until such request is granted by the Court.

4 14. In the event that any person not named in paragraph 9 requests the
5 disclosure of Confidential Material through subpoena or other compulsory process,
6 the person receiving such subpoena or compulsory process (the “Receiving Party”)
7 shall give notice in writing to counsel for the Designating Party identifying the
8 information sought and enclosing a copy of the subpoena or compulsory process.
9 Such notice shall be delivered in writing at least fourteen (14) days prior to the
10 proposed disclosure; if the request is received less than fourteen (14) days prior to
11 the proposed disclosure, notice shall be given immediately by telephone, as well as
12 in writing. The Designating Party shall have the sole responsibility to obtain a
13 court order to preclude or restrict production of any Confidential Material
14 requested pursuant to a subpoena or other compulsory process. In the event that the
15 Designating Party advises the Receiving Party that it intends to promptly move for
16 such an order and the Designating Party moves prior to the proposed production
17 date, the Receiving Party shall not produce or divulge the contents of any
18 Confidential Material until such motion is resolved.

19 15. If Confidential Material is disclosed to any person other than in the
20 manner authorized by this Order, the party responsible for the disclosure must
21 immediately bring all pertinent facts relating to such disclosure to the attention of
22 the Designating Party, and without prejudice to the rights and remedies of the
23 Designating Party, make every effort to retrieve the improperly disclosed material
24 and to prevent further unauthorized disclosure on its own part or on the part of the
25 recipient of such information or material.

26 16. This Order, insofar as it restricts the communication and use of
27 Confidential Material, shall continue to be binding throughout and after the
28 conclusion of this Litigation, including any appeals. After final termination of this

1 Litigation, the outside counsel for a named party may (but is not required to) retain
2 one copy of deposition transcripts and exhibits, court transcripts and exhibits, and
3 documents and other materials submitted to the Court. Any such retained
4 documents shall continue to be treated in accordance with this Order. Nothing
5 herein shall require the return or destruction of attorney work product. Upon
6 written notice of counsel, within 90 days after final termination of this Litigation,
7 counsel for the parties shall return all additional Confidential Material to the
8 Designating Party or destroy all additional Confidential Material, including copies
9 thereof and documents reflecting same, and shall provide a sworn certification to
10 the Designating Party that all such Confidential Material has been returned or
11 destroyed; provided, however, that to the extent the Confidential Material exists in
12 whole or in part on computer backup tapes, information from such tapes does not
13 need to be restored for purposes of destroying or returning Confidential Material to
14 the Designating Party but such retained information shall continue to be treated in
15 accordance with this Order. Nothing in this paragraph shall operate to require a
16 party to retain documents after the termination of the Litigation.

17 17. Nothing in this Protective Order shall operate to require the
18 production of information or documents that are privileged or otherwise protected
19 from discovery.

20 18. The inadvertent production of any Discovery Material shall be
21 without prejudice to any claim that such Discovery Material is privileged or
22 protected from discovery as attorney work-product or by reason of any other
23 applicable privilege, protection or immunity, including without limitation the
24 attorney-client privilege, and no party or non-party shall be held to have waived
25 any rights by such inadvertent production. If a claim of inadvertent production is
26 made pursuant to this Paragraph 18 with respect to information then in the custody
27 of another party, such party shall immediately return to the claiming party or
28 person that Material as to which the claim of inadvertent production has been made

1 and all copies thereof (including any and all copies from any litigation-support or
2 other database), and the receiving party shall destroy all notes or other work
3 product reflecting the contents of such Material, and shall not use such information
4 for any purpose other than in connection with a motion to compel. The party
5 returning such Material may then move the Court for an Order compelling
6 production of the Material, but said motion shall not assert as a ground for entering
7 said Order the fact or circumstance of the inadvertent production. If the party
8 receiving notice of inadvertent production does elect to move the Court for an
9 Order compelling production, that party may keep one copy of the inadvertently
10 produced Discovery Material to be used only in connection with that motion. The
11 parties and non-parties agree that permission to keep the one copy for the sole
12 purpose of that motion shall not be grounds for arguing that the document is not
13 privileged or that any privilege was waived. Pending the Court's ruling, a receiving
14 party shall not make any use of such documents or information.

15 19. Nothing in this Order shall prevent any Designating Party from using
16 or disclosing his, her or its own documents or information, and any such use or
17 disclosure shall not automatically be deemed a waiver of that Designating Party's
18 rights under this Order. Nothing in this paragraph, however, shall prevent any party
19 from asserting that a Designating Party's use of such information is inconsistent
20 with its designation as Confidential Material.

21 20. Nothing in this Order shall be construed to be an admission of
22 relevance to affect in any way the admissibility of any document, testimony or
23 other evidence in this Litigation.

24 21. This Order may be amended only by written agreement of counsel for
25 all parties hereto or upon a motion seeking relief from or modification of this
26 Order from the Court. Nothing in this Order shall be construed to prevent a
27 Designating Party from seeking such further provisions regarding confidentiality as
28 it deems appropriate, or to prevent the parties from seeking relief from this Order.

1 22. Nothing in this Order shall affect any privilege or right which any
2 Designating Party might otherwise have against the discovery of any materials
3 sought by any party hereto. Notwithstanding this Order, any Designating Party
4 may move the Court for an order imposing additional restrictions upon discovery
5 of documents or other material, including, but not limited to, an order that
6 discovery therefore not be had.

7 23. All notices required by the Protective Order are to be served via email
8 and by U.S. mail to the attorneys of record for the party receiving the notice.

9 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD**

10 DATED: June 14, 2017

POLSINELLI PC

11
12 By: /s/ John W. Peterson
John W. Peterson
13 Attorney for Defendant, WELLS
FARGO BANK, N.A.
14

15 DATED: June 14, 2017

ALPERT LAW GROUP, APC

16
17 By: /s/ Jeffrey Alpert
Jeffrey Alpert
18 Attorney for Defendant, NATIONAL
MERCHANT CENTER, INC.
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20 DATED: June 14, 2017

KAPLAN YOUNG & MOLL
PARRON, PLLC

21
22 By: /s/ Derek Young
Derek Young
23 Attorney for Plaintiff

24 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED**

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26 DATED: June 30, 2017


27 JAY C. GANDHI
UNITED STATES MAGISTRATE JUDGE
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Exhibit A – Agreement to Maintain Confidentiality

I hereby acknowledge that I will be receiving Confidential Material pursuant to the terms of a Confidentiality Stipulation and Protective Order entered by the Court in the action entitled *Mami Nutraceuticals, LLC v. National Merchant Center, Inc., et al.* I have been given a copy of, and have read and understand, the Confidentiality Stipulation and Protective Order and I agree to be bound by the terms and conditions of that Order. I understand that (1) I am to make no copies of any such Confidential Material except as necessary for use in the above-captioned actions, and (2) such Confidential Material and any copies thereof must remain in my custody until I have completed my assigned duties, whereupon they are to be returned to counsel who provided me with such Confidential Material. I agree not to disseminate any information derived from such Confidential Material to anyone, or make any disclosure of any such information, except for the purposes of the above-captioned action or as permitted by the Confidentiality Stipulation and Protective Order or by further order of the Court.

Signature: _____
Print Name: _____
Date: _____