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15
 16 **UNITED STATES DISTRICT COURT**
 17 **CENTRAL DISTRICT OF CALIFORNIA**

18 MARILYN COCHOIT, on behalf of
 19 herself, all others similarly situated,
 and the general public,

20 Plaintiff,

21 v.

22 SCHIFF NUTRITION
 23 INTERNATIONAL INC., SCHIFF
 24 NUTRITION GROUP INC.,
 25 GANEDEN BIOTECH, INC.,
 RECKITT BENCKISER LLC.,

26 Defendants.
 27
 28

Case No.: 8:16-cv-01371 CJC (KESx)

CLASS ACTION

**STIPULATED PROTECTIVE
 ORDER**

[Discovery Document: Referred to
 Magistrate Judge Karen E. Scott]

1 **1. A. PURPOSES AND LIMITATIONS**

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

16 **B. GOOD CAUSE STATEMENT**

17 This action is likely to involve trade secrets, customer and pricing lists,
18 sales data, advertising and marketing strategies, product testing, product
19 research and development, and other valuable commercial, financial, technical
20 and/or proprietary information for which special protection from public
21 disclosure and from use for any purpose other than prosecution of this action is
22 warranted. Such confidential and proprietary materials and information consist
23 of, among other things, confidential business or financial information,
24 information regarding confidential business practices, or other confidential
25 research, development, or commercial information (including information
26 implicating privacy rights of third parties), information otherwise generally
27 unavailable to the public, or which may be privileged or otherwise protected
28 from disclosure under state or federal statutes, court rules, case decisions, or
common law. Accordingly, to expedite the flow of information, to facilitate the
prompt resolution of disputes over confidentiality of discovery materials, to

1 adequately protect information the parties are entitled to keep confidential, to
2 ensure that the parties are permitted reasonable necessary uses of such material
3 in preparation for and in the conduct of trial, to address their handling at the end
4 of the litigation, and serve the ends of justice, a protective order for such
5 information is justified in this matter. It is the intent of the parties that
6 information will not be designated as confidential for tactical reasons and that
7 nothing be so designated without a good faith belief that it has been maintained
8 in a confidential, non-public manner, and there is good cause why it should not
9 be part of the public record of this case.

10 **2. DEFINITIONS**

11 **2.1 Action:** This pending federal lawsuit, entitled *Marilyn Cochoit v.*
12 *Schiff Nutrition International Inc., et al.*, United States District Court for the
13 Central District of California Case No. 8:16-cv-01371-CJC-KES.

14 **2.2 Challenging Party:** A Party or Non-Party that challenges the
15 designation of information or items under this Order.

16 **2.3 “CONFIDENTIAL” Information or Items:** information (regardless
17 of how it is generated, stored or maintained) or tangible things that qualify for
18 protection under Federal Rule of Civil Procedure 26(c), and as specified above
19 in the Good Cause Statement.

20 **2.4 Counsel:** Outside Counsel of Record and House Counsel (as well as
21 their support staff).

22 **2.5 Designating Party:** a Party or Non-Party that designates information
23 or items that it produces in disclosures or in responses to discovery as
24 “CONFIDENTIAL.”

25 **2.6 Disclosure or Discovery Material:** all items or information,
26 regardless of the medium or manner in which it is generated, stored, or
27 maintained (including, among other things, testimony, transcripts, and tangible
28 things), that are produced or generated in disclosures or responses to discovery
in this matter.

1 **2.7** Expert: a person with specialized knowledge or experience in a
2 matter pertinent to the litigation who has been retained by a Party or its counsel
3 to serve as an expert witness or as a consultant in this Action.

4 **2.8** House Counsel: attorneys who are employees of a party to this
5 Action. House Counsel does not include Outside Counsel of Record or any
6 other outside counsel.

7 **2.9** Non-Party: any natural person, partnership, corporation,
8 association, or other legal entity not named as a Party to this action.

9 **2.10** Outside Counsel of Record: attorneys who are not employees of a
10 party to this Action but are retained to represent or advise a party to this Action
11 and have appeared in this Action on behalf of that party or are affiliated with a
12 law firm which has appeared on behalf of that party, and includes support staff.

13 **2.11** Party: any party to this Action, including all of its officers,
14 directors, employees, consultants, retained experts, and Outside Counsel of
15 Record (and their support staffs). “Party” shall include any named plaintiff, but
16 shall not include any other putative class member. If a class is certified in the
17 Action, then a member of the class who is not a named plaintiff may see
18 Protected Material only if he or she reviews and signs Exhibit A hereto, and
19 agrees to be bound by the terms of this Order.

20 **2.12** Producing Party: a Party or Non-Party that produces Disclosure or
21 Discovery Material in this Action.

22 **2.13** Professional Vendors: persons or entities that provide litigation
23 support services (e.g., photocopying, videotaping, translating, preparing exhibits
24 or demonstrations, and organizing, storing, or retrieving data in any form or
25 medium) and their employees and subcontractors.

26 **2.14** Protected Material: any Disclosure or Discovery Material that is
27 designated as “CONFIDENTIAL” or “ATTORNEYS EYES ONLY.”

28 **2.15** Receiving Party: a Party that receives Disclosure or Discovery
Material from a Producing Party.

1 **3. SCOPE**

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.

7 Any use of Protected Material at trial shall be governed by the orders of
8 the trial judge. This Order does not govern the use of Protected Material at trial.

9 **4. DURATION**

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

18 **5. DESIGNATING PROTECTED MATERIAL**

19 **5.1 Exercise of Restraint and Care in Designating Material for**
20 **Protection.** Each Party or Non-Party that designates information or items for
21 protection under this Order must take care to limit any such designation to
22 specific material that qualifies under the appropriate standards. The Designating
23 Party must designate for protection only those parts of material, documents,
24 items, or oral or written communications that qualify so that other portions of
25 the material, documents, items, or communications for which protection is not
26 warranted are not swept unjustifiably within the ambit of this Order.

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

1 expose the Designating Party to sanctions.

2 If it comes to a Designating Party's attention that information or items
3 that it designated for protection do not qualify for protection, that Designating
4 Party must promptly notify all other Parties that it is withdrawing the
5 inapplicable designation.

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

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic
13 documents, but excluding transcripts of depositions or other pretrial or trial
14 proceedings), that the Producing Party affix at a minimum, the legend
15 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
16 contains protected material. If only a portion or portions of the material on a
17 page qualifies for protection, the Producing Party also must clearly identify the
18 protected portion(s) (e.g., by making appropriate markings in the margins).

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

1 (b) for testimony given in depositions that the Designating Party
2 identify the protected testimony and/or exhibits that are protected on the record
3 before the close of the deposition whenever possible. A Party may also
4 designate such testimony and exhibits after transcription of the proceedings; a
5 Party shall have until twenty (20) days after receipt of the deposition transcript
6 to inform the other Party or Parties of the portions of the transcript so
7 designated.

8 (c) for information produced in some form other than documentary
9 and for any other tangible items, that the Producing Party affix in a prominent
10 place on the exterior of the container or containers in which the information is
11 stored the legend "CONFIDENTIAL." If only a portion or portions of the
12 information warrants protection, the Producing Party, to the extent practicable,
13 shall identify the protected portion(s).

14 **5.3 Inadvertent Failures to Designate.** If timely corrected, an
15 inadvertent failure to designate qualified information or items does not, standing
16 alone, waive the Designating Party's right to secure protection under this Order
17 for such material. Upon timely correction of a designation, the Receiving Party
18 must make reasonable efforts to assure that the material is treated in accordance
19 with the provisions of this Order.

20 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

21 **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a
22 designation of confidentiality at any time that is consistent with the Court's
23 Scheduling Order.

24 **6.2 Meet and Confer.** The Challenging Party shall initiate the dispute
25 resolution process (and, if necessary, file a discovery motion) under Local Rule
26 37.1 et seq.

27 **6.3** The burden of persuasion in any such challenge proceeding shall be
28 on the Designating Party. Frivolous challenges, and those made for an improper
purpose (e.g., to harass or impose unnecessary expenses and burdens on other
parties) may expose the Challenging Party to sanctions. Unless the Designating

1 Party has waived or withdrawn the confidentiality designation, all parties shall
2 continue to afford the material in question the level of protection to which it is
3 entitled under the Producing Party’s designation until the Court rules on the
4 challenge.

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

6 **7.1 Basic Principles.** A Receiving Party may use Protected Material
7 that is disclosed or produced by another Party or by a Non-Party in connection
8 with this Action only for prosecuting, defending, or attempting to settle this
9 Action. Such Protected Material may be disclosed only to the categories of
10 persons and under the conditions described in this Order. When the Action has
11 been terminated, a Receiving Party must comply with the provisions of section
12 13 below (FINAL DISPOSITION).

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

16 **7.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless
17 otherwise ordered by the court or permitted in writing by the Designating Party,
18 a Receiving Party may disclose any information or item designated
19 “CONFIDENTIAL” only to:

20 (a) the Receiving Party’s Outside Counsel of Record in this
21 Action, as well as employees of said Outside Counsel of Record to whom it is
22 reasonably necessary to disclose the information for this Action;

23 (b) the officers, directors, and employees (including House
24 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
25 this Action;

26 (c) Experts (as defined in this Order) of the Receiving Party to
27 whom disclosure is reasonably necessary for this Action and who have signed
28 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staff;

1 (f) professional jury or trial consultants, mock jurors, and
2 Professional Vendors to whom disclosure is reasonably necessary for this Action
3 and who have signed the “Acknowledgment and Agreement to Be Bound”
4 (Exhibit A);

5 (g) the author or recipient of a document containing the
6 information or a custodian or other person who otherwise possessed or knew the
7 information;

8 (h) during their depositions, witnesses, and attorneys for
9 witnesses, in the Action to whom disclosure is reasonably necessary provided:

10 (1) the deposing party requests that the witness sign the form attached as Exhibit
11 A hereto; and (2) they will not be permitted to keep any confidential information
12 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit
13 A), unless otherwise agreed by the Designating Party or ordered by the court.

14 Pages of transcribed deposition testimony or exhibits to depositions that reveal
15 Protected Material may be separately bound by the court reporter and may not
16 be disclosed to anyone except as permitted under this Stipulated Protective
17 Order; and

18 (i) any mediator or settlement officer, and their supporting
19 personnel, mutually agreed upon by any of the parties engaged in settlement
20 discussions.

21 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
22 **PRODUCED IN OTHER LITIGATION**

23 If a Party is served with a subpoena or a court order issued in other
24 litigation that compels disclosure of any information or items designated in this
25 Action as “CONFIDENTIAL,” that Party must:

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

28 (b) promptly notify in writing the party who caused the
subpoena or order to issue in the other litigation that some or all of the material
covered by the subpoena or order is subject to this Protective Order. Such

1 notification shall include a copy of this Stipulated Protective Order; and

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

4 If the Designating Party timely seeks a protective order, the Party served
5 with the subpoena or court order shall not produce any information designated in
6 this action as “CONFIDENTIAL” before a determination by the court from
7 which the subpoena or order issued, unless the Party has obtained the
8 Designating Party’s permission. The Designating Party shall bear the burden
9 and expense of seeking protection in that court of its confidential material and
10 nothing in these provisions should be construed as authorizing or encouraging a
11 Receiving Party in this Action 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 Order are applicable to information produced
15 by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such
16 information produced by Non-Parties in connection with this litigation is
17 protected by the remedies and relief provided by this Order. Nothing in these
18 provisions should be construed as prohibiting a Non-Party from seeking
19 additional protections.

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

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

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

1 (3) make the information requested available for inspection
2 by the Non-Party, if requested.

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

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

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

22 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
23 **OTHERWISE PROTECTED MATERIAL**

24 When a Producing Party gives notice to Receiving Parties that certain
25 inadvertently produced material is subject to a claim of privilege or other
26 protection, the obligations of the Receiving Parties are those set forth in Federal
27 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
28 whatever procedure may be established in an e-discovery order that provides for
production without prior privilege review. The Parties further agree to be bound
by the requirements of Federal Rule of Evidence 502, and hereby incorporate by

1 reference the provisions of Federal Rule of Evidence 502.

2 **12. MISCELLANEOUS**

3 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of
4 any person to seek its modification by the Court in the future.

5 **12.2 Right to Assert Other Objections.** By stipulating to the entry of
6 this Protective Order no Party waives any right it otherwise would have to object
7 to disclosing or producing any information or item on any ground not addressed
8 in this Stipulated Protective Order. Similarly, no Party waives any right to object
9 on any ground to use in evidence of any of the material covered by this
10 Protective Order.

11 **12.3 Filing Protected Material.** A Party that seeks to file under seal any
12 Protected Material must comply with Civil Local Rule 79-5.¹ Protected Material
13 may only be filed under seal pursuant to a court order authorizing the sealing of
14 the specific Protected Material at issue. If a Party's request to file Protected
15 Material under seal is denied by the court, then the Receiving Party may file the
16 information in the public record unless otherwise instructed by the court.

17 **13. FINAL DISPOSITION**

18 After the final disposition of this Action, as defined in paragraph 4, within
19 60 days of a written request by the Designating Party, each Receiving Party
20 must return all Protected Material to the Producing Party or destroy such
21 material. As used in this subdivision, "all Protected Material" includes all
22 copies, abstracts, compilations, summaries, and any other format reproducing or
23 capturing any of the Protected Material. Whether the Protected Material is
24 returned or destroyed, the Receiving Party must submit a written certification to
25 the Producing Party (and, if not the same person or entity, to the Designating
26 Party) by the 60 day deadline that (1) identifies (by category, where appropriate)
27 all the Protected Material that was returned or destroyed and (2) affirms that the

28 _____
¹ The Parties are directed to the Central District's "Guide to Electronically Filing Under-Seal Documents in Civil Cases" (revised November 2015).

1 Receiving Party has not retained any copies, abstracts, compilations, summaries
2 or any other format reproducing or capturing any of the Protected Material.
3 Notwithstanding this provision, Counsel are entitled to retain an archival copy of
4 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
5 memoranda, correspondence, deposition and trial exhibits, expert reports,
6 attorney work product, and consultant and expert work product, even if such
7 materials contain Protected Material. Any such archival copies that contain or
8 constitute Protected Material remain subject to this Protective Order as set forth
9 in Section 4 (DURATION).

10 **14. WILLFUL VIOLATION OF ORDER**

11 Any willful violation of this Order may be punished by civil or criminal
12 contempt proceedings, financial or evidentiary sanctions, reference to
13 disciplinary authorities, or other appropriate action at the discretion of the Court.
14
15

16 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**
17
18

19 Dated: February 3, 2017

LAW OFFICES OF RONALD A. MARRON

/s/ Michael T. Houchin _____

MICHAEL T. HOUCHIN

Attorneys for Plaintiff and the Proposed Class

24 Dated: February 3, 2017

MANATT, PHELPS & PHILLIPS, LLP

/s/ Adrienne E. Marshack _____

ADRIANNE E. MARSHACK

Attorneys for Defendant

RECKITT BENCKISER LLC

1 **SIGNATURE CERTIFICATION**

2 Pursuant to Section 2(f)(4) of the Electronic Filing Administrative
3 Policies and Procedures Manual, I hereby certify that the content of this
4 document is acceptable to Michael T. Houchin, counsel for Plaintiff, and that I
5 have obtained Mr. Houchin's authorization to affix his electronic signature to
6 this document.

7 Dated: February 3, 2017

MANATT, PHELPS & PHILLIPS, LLP

8 By: /s/ Adrienne E. Marshack
9 Adrienne E. Marshack

10 *Attorneys for Defendant*
11 RECKITT BENCKISER LLC
12
13

14 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

15
16 DATED: February 07, 2017

17 *Karen E. Scott*

18 Honorable Karen E. Scott
19 United States Magistrate Judge
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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [full name], of
4 _____ [full address],

5 declare under penalty of perjury that I have read in its entirety and understand
6 the Stipulated Protective Order that was issued by the United States District
7 Court for the Central District of California on [date] in the case of *Cochoit v.*
8 *Schiff Nutrition International Inc., et al.* 8:16-cv-01371-CJC-KES (C.D. Cal.
9 Filed July 25, 2016). I agree to comply with and to be bound by all the terms of
10 this Stipulated Protective Order and I understand and acknowledge that failure
11 to so comply could expose me to sanctions and punishment in the nature of
12 contempt. I solemnly promise that I will not disclose in any manner any
13 information or item that is subject to this Stipulated Protective Order to any
14 person or entity except in strict compliance with the provisions of this Order.

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

19 _____ [full name] of _____
20 _____ [full address and telephone

21 **number]** as my California agent for service of process in connection with this
22 action or any proceedings related to enforcement of this Stipulated Protective
23 Order.

24
25 Date: _____

26 City and State where signed: _____

27 Printed name: _____

28 Signature: _____