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**UNITED STATES DISTRICT COURT FOR THE
 EASTERN DISTRICT OF CALIFORNIA**

CYTOSPORT, INC., a California
 corporation,

Plaintiff,

vs.

SELECT MILK PRODUCERS, INC., a New
 Mexico corporation; and ATHLETE'S
 HONEY MILK, LLC, a Delaware limited
 liability company,

Defendants.

SELECT MILK PRODUCERS, INC., a New
 Mexico corporation; and FAIR OAK FARMS
 BRANDS, INC., a Delaware corporation,

Counterclaimant

vs.

CYTOSPORT, INC., a California
 corporation,

Counterclaim
 Defendant.

Case No. 2:11-cv-01705-MCE-JFM

STIPULATED PROTECTIVE ORDER

Complaint Filed: November 11, 2011
 Trial Date: Not Set



MILLSTONE
 PETERSON &
 WATTS, LLP

1 Plaintiff/Counterclaim Defendant CytoSport, Inc. (“CytoSport”) and
2 Defendants/Counterclaimants Select Milk Producers, Inc., Athlete’s Honey Milk, LLC, and Fair Oak
3 Farms Brands, Inc. (collectively “Select Milk”) jointly stipulate to entry by the Court of a Protective
4 Order as set forth below pursuant to Rule 26(c) of the Federal Rules of Civil Procedure.

5 Based on the stipulation of the Plaintiff and Defendants (individually a “party” and
6 collectively the “parties”) to entry of the following Protective Order pursuant to Rule 26(c), Federal
7 Rule of Civil Procedure, and for good cause shown,

8 IT IS HEREBY ORDERED THAT:

9 1. Any document, or portion thereof, and any other form of evidence or discovery
10 contemplated under Rules 26 through 36 of the Federal Rules of Civil Procedure which, in the good
11 faith opinion of a party contains any trade secret or other confidential development or commercial
12 information (“Confidential Information”), may be designated by the parties as “CONFIDENTIAL”
13 or “ATTORNEYS’ EYES ONLY” in accordance with the provisions of this Protective Order.

14 2. As a general guideline, Confidential Information should be designated
15 CONFIDENTIAL when it contains confidential business, technical or other information that may be
16 reviewed by the other party, the parties’ experts, and other representatives, but must be protected
17 against disclosure to third parties. Confidential Information may be designated ATTORNEYS
18 EYES ONLY when it contains highly sensitive information such as financial information, cost
19 information, pricing information, sales information, customer license, supplier, and vendor
20 information, software and firmware for a party’s products, technical and development information
21 about a party’s products, comparative product test results, business plans, marketing strategies, new
22 product plans and competitive strategies, or any other information that would put the producing
23 party at a competitive disadvantage if the information became known to employees of the other party
24 or third parties. Confidential Information shall be clearly marked, noticed or designated
25 “CONFIDENTIAL.” ATTORNEYS’ EYES ONLY information shall be clearly marked, noticed or
26 designated as “ATTORNEYS’ EYES ONLY.”

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1 3. Confidential Information must be designated as follows:

2 (a) Documents or copies provided to another party in response to discovery requests
3 containing Confidential Information may be designated by any party as either CONFIDENTIAL or
4 ATTORNEYS' EYES ONLY by marking the page or the pages on which the Confidential
5 Information appears with the legend "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."

6 (b) In lieu of marking the original of a document which contains Confidential
7 Information prior to inspection, a party may orally designate documents being produced for
8 inspection as CONFIDENTIAL or ATTORNEYS' EYES ONLY thereby making them subject to
9 this Protective Order. However, copies of such documents ultimately produced must be marked
10 CONFIDENTIAL or ATTORNEYS' EYES ONLY at the time any such documents are supplied to
11 inspecting counsel in order to make such copies subject to this Protective Order.

12 (c) Confidential Information disclosed at a deposition, whether by testimony or use of a
13 document or thing, may be designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY by
14 clearly indicating on the record at the deposition the specific testimony containing Confidential
15 Information that is to be made subject to the provisions of this Protective Order. Documents, things,
16 or information not designated on the record of the deposition as CONFIDENTIAL or
17 ATTORNEYS' EYES ONLY may thereafter be designated as such by notifying the other party in
18 writing within fourteen (14) days of the receipt of the transcript of such deposition. During that
19 fourteen (14) day period, the deposition transcript, and any documents, things, and information shall
20 be treated as ATTORNEYS' EYES ONLY. If a designation is made, each party shall attach a copy
21 of any such written notification to the face of the deposition transcript and each copy thereof in its
22 possession, custody or control.

23 (d) Confidential Information contained in responses to interrogatories, other discovery
24 requests or responses, affidavits, briefs, memoranda or other papers filed with the Court, may be
25 designated by prominently marking every page of such documents containing Confidential
26 Information with the legend CONFIDENTIAL or ATTORNEYS' EYES ONLY. Copies of such
27 items filed with the Court shall be maintained under seal pursuant to the provisions of Section 11
28 hereof.

1 (e) Tangible objects constituting or containing Confidential Information may be
2 designated by affixing to the object or its container a label or tag marked CONFIDENTIAL or
3 ATTORNEYS' EYES ONLY.

4 (f) Notwithstanding any other provisions of the Protective Order, any party may
5 designate as CONFIDENTIAL or ATTORNEYS' EYES ONLY any testimony of and/or documents
6 produced by that party's agent, sales representative, or technical or business consultant.

7 (g) Should any person or entity with access to documents, things or information
8 designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY make copies, extracts, summaries,
9 descriptions, projections and/or extrapolations of or from the documents, things or information
10 designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY or any portions thereof, such
11 copies, extracts, summaries, descriptions, projections and/or extrapolations shall be stamped
12 CONFIDENTIAL or ATTORNEYS' EYES ONLY consistent with the original information and
13 treated as Confidential Information pursuant to the provisions of this Protective Order.

14 4. Confidential Information designated ATTORNEYS' EYES ONLY shall only be
15 disclosed to and made available to the following:

16 (a) "Outside Trial Counsel" of record and employees of such attorneys to whom it is
17 necessary that the material be shown for purposes of this litigation; court reporters and
18 videographers receiving or transcribing the documents, things or information in connection with
19 official reporting (for example, at a deposition or a hearing); the Court; outside photocopy, imaging,
20 database, graphics, design, computer simulation modeling, or exhibit production services, to the
21 extent necessary to assist such Outside Trial Counsel for purposes of this litigation.

22 (b) Outside consultants, or expert witnesses who are not employees, directors, or officers
23 of any party, performing services solely in connection with the prosecution or defense of this
24 litigation together with their clerical or support personnel, provided that each consultant or expert
25 executes an acknowledgement pursuant to Section 6 herein.

26 (c) Witnesses who are expected to testify in Court or in a deposition only if such persons
27 have prior knowledge of the ATTORNEYS' EYES ONLY information.

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1 5. Confidential Information designated CONFIDENTIAL shall only be disclosed to and
2 made available to the following:

3 (a) The persons identified in Subsections 4(a), 4(b), and 4(c);

4 (b) The parties (i.e. employees of the corporate parties); and

5 (c) Witnesses who are expected to testify in court or in a deposition only if such persons
6 have prior knowledge of the CONFIDENTIAL information.

7 6. Prior to receiving Confidential Information, any person in subsections 4(b), 4(c), 5(b)
8 and 5(c) shall sign an acknowledgement in the form of Exhibit A attached hereto. Any individual
9 identified pursuant to this subsection who has executed Exhibit A shall be treated as subject to this
10 Protective Order. A willful violation of any material term of this Protective Order by any such
11 individual may be punishable as contempt of court.

12 7. If the party to whom CONFIDENTIAL or ATTORNEYS' EYES ONLY documents,
13 things or information has been produced believes that any of the documents, things or information
14 has been improperly designated, the receiving party may at any time request the party which made
15 the designation to cancel the designation with respect to any documents, things or information and to
16 agree that thereafter such document, thing or information will no longer be subject to certain or all of
17 the provisions of this Protective Order. Such request shall be in writing and shall particularly
18 identify the information that is contested, including the reasons supporting the contentions. If the
19 party which produced the documents, things, or information objects to the requested declassification,
20 it must, within two weeks of its receipt of the request to declassify or such other time as the parties
21 may mutually agree, file and serve a motion for a protective order supporting its classification. The
22 party claiming the higher designation of protection shall have the burden of establishing the status of
23 the particular document, thing, or information. If no such motion is timely filed, the party objecting
24 to the designation shall be entitled to treat the documents and/or information in accordance with the
25 written request of such party. If the producing party files such a motion, the document or
26 information at issue will continue to be entitled to the protections accorded by this Stipulated
27 Protective Order until and unless the Court rules otherwise.

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1 8. No copies of documents, things or information designated as CONFIDENTIAL or
2 ATTORNEYS' EYES ONLY shall be received, kept, or maintained by persons other than those
3 authorized to do so under this Protective Order.

4 9. When a party gives notice to another party that, during an oral deposition,
5 CONFIDENTIAL or ATTORNEYS' EYES ONLY documents, things or information are expected
6 to be produced, used or discussed during the deposition, then only persons authorized to receive such
7 information pursuant to this Protective Order will be allowed to attend that portion of the deposition
8 on behalf of the receiving party.

9 10. To the extent it is necessary to file with the Court any material containing or
10 materially referring to any CONFIDENTIAL or ATTORNEYS' EYES ONLY document(s),
11 thing(s), or information, the parties shall file such documents under seal.

12 11. Each party's production of any document(s), thing(s), or information designated as
13 CONFIDENTIAL or ATTORNEYS' EYES ONLY shall be solely for purposes of and use in this
14 action, and those documents, things and information shall not be used for any other purpose. If any
15 such document(s), thing(s), or information properly becomes a matter of public record without an
16 order of Court causing the same to be retained under seal or retained in an otherwise confidential
17 manner, then the parties will have the same rights to utilize the document, things, or information as
18 the public at large under the First Amendment.

19 12. Within one hundred twenty (120) days after the conclusion of this action and any
20 appeal taken here from, all documents, things, and other materials produced or designated as
21 containing Confidential Information, and all reproductions thereof, shall be returned to the party who
22 produced them except that counsel for each party may retain one entire set of pleadings and
23 depositions (including exhibits) in this case. Any party may, at their option, destroy annotated
24 copies or summaries of Confidential Information in lieu of returning those copies and summaries to
25 the producing party.

26 13. If another court or an administrative agency subpoenas or orders production of
27 stamped confidential documents that a party has obtained under the terms of this Protective Order,
28 such party shall promptly notify the party or other person who designated the document as

1 confidential of the pendency of such subpoena or order in sufficient time to allow for the designating
2 party to seek a protective order.

3 14. Nothing in this Protective Order shall prevent or otherwise restrict counsel from
4 rendering advice to their clients and, in the course thereof, relying generally on examination of
5 stamped confidential documents; provided, however, that in rendering such advice and otherwise
6 communicating with such clients, counsel shall not make specific disclosure of any item so
7 designated except pursuant to the provisions of this Protective Order.

8 15. Persons obtaining access to stamped confidential documents under this Protective
9 Order shall use the information only for preparation and trial of this litigation (including appeals and
10 retrials), and shall not use such information for any other purpose, including business, governmental,
11 commercial, administrative, or other judicial proceedings.

12 16. The attorneys of record are responsible for employing reasonable measures,
13 consistent with this Protective Order, to control duplication of, access to, and distribution of copies
14 of stamped confidential documents.

15 17. The disclosure of Confidential Information under the terms of the Protective Order
16 shall not constitute a waiver of confidentiality for the documents and things so designated.
17 Specifically:

18 (a) Review of the confidential documents and information by counsel, experts, or
19 consultants for the litigants in the litigation shall not waive the confidentiality of the documents or
20 objections to production.

21 (b) The inadvertent, unintentional, or in camera disclosure of confidential
22 documents and information shall not, under any circumstances, be deemed a waiver, in whole or in
23 part, of any party's claims of confidentiality. If a party through inadvertence or mistake produces
24 discovery of any Confidential Information without marking it with the legend CONFIDENTIAL or
25 ATTORNEYS EYES ONLY, or by designating it with the incorrect level of confidentiality, the
26 producing party may give written notice to the receiving party that the document or information
27 contains Confidential Information and should be treated as such. Upon receipt of such notice, and

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1 upon receipt of properly marked materials, the receiving party shall return or destroy said unmarked
2 or improperly marked materials and not retain copies thereof.

3 18. Notwithstanding the termination of this action, persons who have had access to
4 CONFIDENTIAL or ATTORNEYS' EYES ONLY documents, things or information shall remain
5 subject to the terms of this Protective Order.

6 19. This Protective Order may be modified by written agreement of the parties or by
7 further order of the Court. Each party shall also have the right to petition the Court to modify this
8 Protective Order or for additional protection under Fed.R.Civ.P. 26(c).

9 20. The terms of the this Protective Order are applicable to Confidential Information
10 produced by a non-party, such non-party may designate Confidential Information produced by it in
11 connection with this litigation, and the Confidential Information is protected by the remedies and
12 relief provided by the Protective Order.

13 **Date: 12/19/2012**

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16 UNITED STATES MAGISTRATE JUDGE

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18 Agreed to and Accepted by:

19 MILLSTONE PETERSON & WATTS, LLP

Date: December 12, 2012

20 /s/ Glenn W. Peterson

21 Glenn W. Peterson
22 Attorneys for Plaintiff

23 BEST BEST & KRIEGER LLP

Date: December 12, 2012

24 /s/ Susan L. Schoenig

25 Susan L. Schoenig
26 Attorneys for Defendants
(Signed by Filing Attorney with Permission of Defendant's Attorney)

EXHIBIT A

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

CYTOSPORT, INC., a California
corporation,

Plaintiff,

vs.

SELECT MILK PRODUCERS, INC., a New
Mexico corporation; and ATHLETE'S
HONEY MILK, LLC, a Delaware limited
liability company,

Defendants.

SELECT MILK PRODUCERS, INC., a New
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Case No. 2:11-cv-01705-MCE-JFM

STIPULATED PROTECTIVE ORDER

Complaint Filed: November 11, 2011

Trial Date: Not Set

This is to certify that I have read and understand the Stipulated Protective Order (the "Order") entered in the above-captioned action and agree: (a) to be bound by the terms and conditions set forth in the Order; (b) not to reveal to anyone, other than another persons listed in Section 6 of the Order, any documents, things or information designated under the Order as "Confidential"; (c) not to reveal to anyone, other than another persons identified in Section 5 of the Order, any documents, things or information designated under the Order as "ATTORNEYS' EYES ONLY" and (d) to utilize such documents, things and information solely for purposes of and in connection with the above-captioned action. In addition, I hereby consent to the jurisdiction of the

1 above-identified Court for purposes of enforcing the Order. I agree that a willful violation of any
2 material term of the Order may be punishable as contempt of court.

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4 Dated: _____

5 Signature

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7 Printed Name

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