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DBA JARDEN CONSUMER SOLUTIONS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHNS 1994 FAMILY TRUST, UTA)	CASE NO. 2:14-cv-02760-WBS-CMK
DATED JULY 13, 1994; STUART JOHNS,)	
INDIVIDUALLY AND AS, TRUSTEE OF)	
THE JOHNS FAMILY TRUST, UTA)	STIPULATED PROTECTIVE ORDER
DATED JULY 13, 1994)	
)	
Plaintiffs,)	
)	
vs.)	
)	
SUNBEAM PRODUCTS, INC. DBA)	
JARDEN CONSUMER SOLUTIONS;)	
PATTON, A BUSINESS ORGANIZATION,)	
FORM UNKNOWN; and DOES 1-30)	
)	
Defendants.)	

STIPULATED PROTECTIVE ORDER

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1 IT IS HEREBY STIPULATED AND AGREED by and between JOHNS 1994 FAMILY
2 TRUST, UTA DATED JULY 13, 1994; STUART JOHNS, INDIVIDUALLY AND AS,
3 TRUSTEE OF THE JOHNS FAMILY TRUST, UTA DATED JULY 13, 1994 and SUNBEAM
4 PRODUCTS, INC. DBA JARDEN CONSUMER SOLUTIONS by and through their
5 undersigned counsel that:

6 1. Proceedings and Information Governed

7 This Protective Order and any amendments or modifications hereto shall govern any
8 documents, information or thing furnished by any party, including third parties (hereafter
9 termed "conveying party"), to any other party (hereafter termed "receiving party") in connection
10 with the discovery and pretrial phase of this action.

11 This Protective Order shall not preclude any party from withholding any document,
12 information or thing on the basis of the attorney-client privilege or attorney work-product
13 doctrine, or otherwise affect any party's claim of privilege with respect to any such document,
14 information or thing. The inadvertent production of any privileged document, information or
15 thing shall not be deemed a waiver of such privilege or otherwise affect any party's right to seek
16 return of the inadvertently produced document, information or thing. Further, this Protective
17 Order shall not preclude any party from withholding any document, information or thing the
18 disclosure of which might constitute a breach of an agreement with a third party, nor shall it
19 preclude any party from moving the Court for an order directing the disclosure of such
20 materials.

21 This Protective Order does not govern proceedings during trial, nor does it prohibit
22 either party from seeking a protective order to govern proceedings during trial.

23 Subject to the terms set forth below, all information produced by a conveying party shall
24 be used by the parties receiving the information solely for the purposes of preparing for and
25 conducting this action, and the information shall not be used for any other purpose.

26 2. Definitions

27 "CONFIDENTIAL MATERIALS" are any documents, information or things that
28 constitute, reflect or contain trade secrets or other non-public, proprietary or business-sensitive

1 information or things, including, without limitation, confidential research, development,
2 financial, corporate, or other commercial information belonging to or concerning a party or
3 conveying party and that a party or conveying party designates as "CONFIDENTIAL" as
4 described below.

5 "Confidentiality Pledge" shall mean an undertaking, in the form attached hereto as
6 Exhibit A, to be bound by the provisions of this Protective Order.

7 "Inadvertent Production" shall mean unintentional or accidental production of privileged
8 documents, information or things for whatever reason irrespective of whether: (i) such
9 production was careless, reckless, or negligent; or (ii) the precautions taken to avoid such
10 inadvertent production were inadequate.

11 3. Designation of Confidential Information

12 a. Documents, information and things produced by a party during the course
13 of this litigation, including but not limited to responses to discovery requests and
14 interrogatories, may be designated by such party as "CONFIDENTIAL" at the time of
15 production. After such time, a document, information or thing may be designated as
16 "CONFIDENTIAL" in writing, by any party, provided that any such designation shall be within
17 a reasonable time after disclosure. In addition, within one month of the date of this Protective
18 Order, any party may designate as "CONFIDENTIAL" a document, information or thing
19 previously produced in this action.

20 b. Documents, information and things produced by a party during the course
21 of this litigation, including but not limited to responses to discovery requests and
22 interrogatories, shall be designated by the conveying party as containing "CONFIDENTIAL"
23 information by placing a "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER " legend
24 on each page and each thing, by so indicating in any other reasonable manner appropriate to the
25 form in which the documents, information or things are made available to the receiving party, or
26 alternatively, by advising the receiving party in writing as to the particular documents,
27 information or things designated "CONFIDENTIAL".
28

1 c. A party may designate information disclosed at a deposition, including
2 questions, testimony, documents or exhibits as "CONFIDENTIAL" by requesting that the
3 reporter so designate all or part of the deposition transcript at the time of the deposition or by
4 requesting such designation in writing within a reasonable time after receipt of the deposition
5 transcript. Where only a portion of a deposition transcript contains "CONFIDENTIAL"
6 information, only such portion of the transcript may be so designated. Any portions of a
7 deposition transcript designated "CONFIDENTIAL" and any deposition exhibits so designated
8 shall be bound separately and treated accordingly.

9 d. Any party invoking "CONFIDENTIAL" protection during a deposition
10 may exclude from the room any person who is not authorized under this Protective Order to
11 receive information designated "CONFIDENTIAL".

12 e. Any designation of discovery responses, motion papers, briefs,
13 memoranda or any other papers filed or lodged with the Court and/or served on opposing
14 counsel as "CONFIDENTIAL" shall be made when such papers are filed, lodged and/or served.
15 The filing or lodging with the Court of any document containing "CONFIDENTIAL"
16 information shall be done in conformance with Section 5 of this Protective Order.

17 f. A party may designate information disclosed at a hearing as
18 "CONFIDENTIAL" by requesting, at the time the information is proffered or adduced, that the
19 Court receive the information *in camera* and designate the transcript appropriately.

20 g. In the event that a party's motion papers, briefs, memoranda, discovery
21 requests, requests for admissions or other papers of any kind contain another party's
22 "CONFIDENTIAL" information, the papers shall be designated as "CONFIDENTIAL" and
23 shall be treated accordingly.

24 h. All documents, including attorneys notes and abstracts, that contain
25 another party's "CONFIDENTIAL" information shall be treated as if such documents were also
26 designated as "CONFIDENTIAL".
27
28

1 i. The parties shall use reasonable care to avoid designating as
2 "CONFIDENTIAL" any document, information or thing that is not entitled to such designation
3 under Fed. R. Civ. Pro. 26(c) (7) or that is generally available to the public.

4 4. Use of Confidential Information

5 a. Documents, information or things designated "CONFIDENTIAL" shall
6 not be made public by counsel or persons entitled access to such materials under this Protective
7 Order unless such materials become part of the public record of this action other than through a
8 violation of this Protective Order, and shall not be disclosed to anyone other than this Court and
9 the persons entitled access to such materials under this Protective Order.

10 b. All documents, information and things designated "CONFIDENTIAL"
11 may be used by persons to whom such documents, information and things are properly
12 disclosed pursuant to this Protective Order solely for purposes of pretrial preparation and
13 proceedings in this action, trial of this action and any appellate proceedings in this action. Such
14 documents, information and things shall be used for no other purpose unless and until agreed to
15 in writing by all parties to this action or authorized by order of the Court. No person who
16 receives any such document, information or thing shall disclose it to any person for any purpose
17 other than for pretrial preparation and proceedings in this action. Any such use of documents,
18 information, or things in any such action shall be subject to the terms and conditions of this
19 Protective Order unless and until a superseding order is entered.

20 c. Documents, information and things designated "CONFIDENTIAL" may
21 be disclosed by the receiving party only to: (i) officers and employees of the receiving party
22 who the receiving party reasonably and in good faith believes need to know in order for the
23 receiving party to prepare for this action; (ii) counsel in this action, and such counsel's
24 stenographic, clerical and paralegal employees whose functions require access to such
25 "CONFIDENTIAL" information; (iii) court reporters and stenographers engaged to transcribe
26 depositions or proceedings in this action; (iv) the Court and its employees; (v) employees of the
27 designating party during the course of a deposition or other proceeding in this action; (vi)
28 experts or consultants retained by the receiving party and whose advice and consultation are

1 being or will be used by the party in connection with this action, provided that such experts and
2 consultants have first executed a Confidentiality Pledge; (vii) any non-party witness or any
3 person reasonably anticipated to be a witness at a deposition or other proceeding in this action
4 provided such person has executed a Confidentiality Pledge; and (viii) any other person, with
5 the prior written approval of the designating party, provided such person has executed a
6 Confidentiality Pledge.

7 d. Any and all Confidentiality Pledges signed by experts or consultants shall
8 be maintained by the receiving counsel, but need not be produced to opposing counsel absent an
9 order of the Court. All such Confidentiality Pledges shall be maintained by the receiving party's
10 counsel. At such time that the parties identify experts pursuant to order of the Court or by
11 supplementation pursuant to Fed. R. Civ. P. 26, a copy of the Confidentiality Pledge with
12 respect to each identified expert shall be produced to the opposing counsel within ten days. At
13 the conclusion of the litigation, counsel for each party shall deliver to opposing counsel a copy
14 of each and every Confidentiality Pledge it obtained during the course of the litigation.

15 e. In the event that a party desires to provide access to or to disseminate
16 CONFIDENTIAL MATERIALS to any person not otherwise entitled to access under this
17 Protective Order, that party may move the Court for an Order that such person be given access
18 thereto. In the event that the motion is granted, such person may have access to
19 CONFIDENTIAL MATERIALS after first signing a Confidentiality Pledge, a copy of which
20 shall be forwarded promptly thereafter to opposing counsel.

21 f. Nothing herein shall restrict a party's use of its own materials that it
22 produces in discovery.

23 g. Nothing herein shall restrict a party's use of information which (i) the
24 conveying party agrees, or the Court rules, is already public knowledge, (ii) the conveying party
25 agrees, or the Court rules, has become public knowledge other than as a result of a violation of
26 this Protective Order or by any other unlawful means, (iii) was already known to the receiving
27 party under conditions such that its use and/or public disclosure by the receiving party would
28 not violate some obligation to another, which knowledge is established by pre-production

documentation, or (iv) has come or shall come into the receiving party's legitimate possession independently of the conveying party under conditions such that its use and/or public disclosure by the receiving party would not violate some obligation to another.

h. Nothing herein shall restrict or prohibit discussions with any person about CONFIDENTIAL MATERIALS if said person already has or obtains legitimate possession thereof, without restrictions which would independently prohibit such discussion.

5. Filing or Lodging Documents with the Court

Any document filed or lodged with the Court in connection with proceedings in this action that constitutes or contains "CONFIDENTIAL" documents, information or things shall be filed with the Clerk of the Court in a sealed envelope, prominently endorsed with the caption of the case, an indication of the general nature of the contents, and the following legend:

CONFIDENTIAL INFORMATION

This envelope is sealed pursuant to the May ____, 2015 Stipulated Protective Order in this action. It contains information designated as "CONFIDENTIAL" and is not to be opened or the contents revealed except by Order of the Court.

Notwithstanding the foregoing legend on envelopes containing "CONFIDENTIAL" documents filed with the Court, the Court may open such envelope for purposes of conducting an *in camera* review of such documents to determine whether the "CONFIDENTIAL" designation is appropriate.

6. Inadvertent Failure to Designate

In the event that a conveying party inadvertently fails to designate documents, information or things as "CONFIDENTIAL" the conveying party may later correct the error by notifying the receiving party of the error in writing and making the appropriate designation in accordance with paragraph 3 above. The receiving party shall thereafter treat the documents, information or things in accordance with the designation and shall take reasonable steps to ensure that any person to whom the receiving party has previously disclosed the documents, information or things treats them in accordance with the designation.

1 If the conveying party chooses to produce new copies of the documents, information or things
2 with the appropriate "CONFIDENTIAL" designation, the receiving party shall return any copies
3 of the documents, information or things that were inadvertently produced without the proper
4 "CONFIDENTIAL" designation to the conveying party without retaining any copies thereof.
5 The receiving party shall also make reasonable efforts to obtain and return any improperly
6 designated documents, information or things and preclude their dissemination and use by any
7 person to whom the receiving party has previously disclosed the improperly designated
8 documents, information or things.

9 7. Challenge to Designations

10 a. A party may challenge any other party's designation of any document,
11 information or thing as "CONFIDENTIAL" at any time. Failure of a party expressly to
12 challenge a designation shall not constitute a waiver by such party of the right to assert at a
13 subsequent time that the designation is not appropriate.

14 b. In case of disagreement with the designation of any document,
15 information or thing as "CONFIDENTIAL" a party may request in writing that the designating
16 party change the designation.

17 c. If a party denies a request to change the designation of any document,
18 information or thing as "CONFIDENTIAL" and the requesting party disagrees with the
19 designating party's reasons for such denial or the designating party fails to respond to the
20 request, the requesting party may apply to the Court, in a manner consistent with the Court's
21 Individual Rules applicable to discovery disputes, for an Order removing or changing the
22 designation in the manner stated in the request. On such application, the designating party shall
23 have the burden of proving that the material in question is within the scope of protection
24 afforded by Rule 26 (c) of the Federal Rules of Civil Procedure. No use or disclosure of any
25 document, information or thing designated "CONFIDENTIAL" shall be made, except as
26 otherwise authorized by this Protective Order, unless and until the parties agree or the Court
27 orders that the designation shall be removed.

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1 8. Inadvertent Disclosure

2 a. In the event of an inadvertent disclosure of a party's "CONFIDENTIAL"
3 documents, information or things to a person not authorized by this Protective Order to receive
4 such materials, the party making the inadvertent disclosure shall, upon learning of the
5 disclosure:

6 (i) promptly notify the person to whom the disclosure was made that
7 it contains "CONFIDENTIAL" information subject to this Protective Order;

8 (ii) promptly make reasonable efforts to obtain the return of the
9 "CONFIDENTIAL" documents, information, or things from and preclude its dissemination or
10 use by the person to whom disclosure was inadvertently made; and

11 (iii) within five (5) business days, serve the conveying party with a
12 written notice stating the identity of the person to whom the disclosure was made, the nature of
13 and circumstances surrounding the disclosure and the steps taken to obtain the return of the
14 improperly disclosed documents, information or things and to ensure against their further
15 dissemination or use.

16 9. Inadvertent Production of Privileged Documents, Information or Things

17 To facilitate the timely production of voluminous documents in compliance with the
18 parties' respective requests for production, the inadvertent production of any privileged
19 document, information or thing shall not be deemed a waiver of such privilege or otherwise
20 affect any party's right to seek return of the inadvertently produced document, information or
21 thing. The party receiving a document, information or thing that appears to be privileged shall
22 promptly notify the conveying party upon becoming aware that the document, information or
23 thing may have been inadvertently produced and, in any event, before making any use of said
24 document, information or thing in its submissions to the Court or otherwise. The fact that a
25 document, information or thing is listed on a party's privilege log shall be *prima facie* evidence
26 that such document, information or thing has been inadvertently produced, but the failure to list
27 such document, information or thing shall not preclude the conveying party from claiming that
28 the document, information or thing is privileged and was inadvertently produced.

1 In the event documents, information or things which are claimed to be privileged or
2 subject to the work product doctrine are inadvertently produced during discovery, such
3 documents, information or things shall be returned by the receiving party within two days of
4 any written request therefor, unless the receiving party challenges the privileged nature of the
5 documents, information or things in which case the conveying party shall be entitled to make an
6 application to the Court for the return of such documents, information or things. A claimed lack
7 of privilege (and not the inadvertent production) shall be the sole ground for refusing to return
8 inadvertently produced privileged documents, information or things and such documents,
9 information or things shall only be retained while an application to the court is pending. While
10 such application is pending, the receiving party shall not use or divulge the contents of such
11 documents, information or things except to the Court under seal. If the Court finds that the
12 documents, information or things in question are privileged, the receiving party shall promptly
13 return all copies of the inadvertently produced documents, information, or things and not retain
14 any copies, notes or summaries of said documents, information or things. The receiving party
15 shall also make reasonable efforts to obtain and return any inadvertently produced document(s),
16 information or thing(s) and preclude their dissemination and use by any person to whom the
17 receiving party has previously disclosed the inadvertently produced document(s), information or
18 thing(s).

19 10. Non-party Information

20 Discovery in this proceeding may involve disclosure by a non-party of its
21 "CONFIDENTIAL" documents, information or things. At the option of a non-party, such
22 documents, information or things may be produced subject to the provisions of this Protective
23 Order and, in that event, shall provide the non-party, with respect to the information produced
24 by such non-party in connection with the discovery and pre-trial phase of this action, with all of
25 the rights and obligations of a party as created by this Protective Order.

26 11. Subpoenas

27 a. In the event any person or party having possession, custody or control of
28 any document, information or thing designated as "CONFIDENTIAL" by another party

pursuant to the terms of this Protective Order receives a subpoena or other process or order to produce the document, information or thing, the subpoenaed person or party shall promptly (within five business days):

(i) give notification in writing of such fact to the attorneys of record of the designating party;

(ii) furnish such attorneys of record with a copy of such subpoenas, process or order; and

(iii) provide reasonable cooperation to the designating party with respect to any procedure instituted by the designating party to protect the confidentiality of the document, information or thing, including seeking all reasonable extensions to afford the disputing party an opportunity to obtain appropriate judicial relief;

(iv) provide the designated party reasonable time to seek appropriate judicial relief before complying with the subpoena.

b. If the designating party makes a motion to quash or modify the subpoena, process or order, the subpoenaed party shall not disclose, pursuant to the subpoena, process or order, any document, information or thing designated as "CONFIDENTIAL" by the designating party except as required by an order or other process of the court having jurisdiction over the matter, and then only in accordance with such order or process.

12. Modification

a. Nothing herein shall restrict the power of the Court to modify this Protective Order or any term hereof for good cause shown.

b. Nothing herein shall preclude any party from applying to the Court for relief from this Protective Order, or from applying to the Court for further or additional protective orders, or from agreeing between themselves in writing, to modification of this Protective Order, subject to the approval of this Court.

c. Nothing herein shall preclude any party from enforcing its rights against any other party or any non-party believed to be violating its rights.

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13. No Waiver

Neither the taking of, nor the failure to take, any action to enforce the provisions of this Protective Order, nor the exercise of, or failure to exercise, any rights created by this Protective Order, shall constitute a waiver of any right to seek or obtain protection or relief other than as specified herein or to pursue any claim or defense in this action or any other action. This Protective Order shall not affect the rights of the parties to object to discovery on grounds other than those related to trade secrets or confidential or proprietary information claims, nor shall it relieve a party of its obligation to respond properly to discovery requests.

14. Disposition of Documents at Termination of Litigation

a. At the conclusion of this action, each receiving party shall either return all CONFIDENTIAL MATERIALS of a conveying party in its possession, custody or control, and any copies thereof, to counsel for the conveying party, or shall otherwise dispose of such CONFIDENTIAL MATERIALS in a manner agreeable to both parties, except that trial counsel for the receiving party may retain work-product derived from the CONFIDENTIAL MATERIALS of a conveying party. With respect to any such retained work-product, and unless otherwise agreed to, this Protective Order shall survive the final termination of this action, except to the extent that the information in any CONFIDENTIAL MATERIALS is or becomes known to the public through no fault of the receiving party.

b. Sealed records which have been filed with the Clerk of Court shall be removed by the party submitting them (1) within ninety (90) days after a final decision is rendered if no appeal is taken, or (2) if an appeal is taken, within thirty (30) days after final disposition of the appeal. Parties failing to comply with this order shall be notified by the Clerk that, should they fail to remove the sealed records within thirty (30) days, the Clerk may dispose of them.

15. Violation of Order

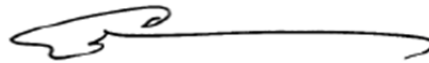
Any violation of this Stipulated Protective Order during the pendency of this action or thereafter may be punishable as a contempt of court and may be grounds for a Motion for Sanctions to be filed in the Federal District Court.

1 16. Approval By Court

2 The parties further agree that they will tender this Stipulated Protective Order to the
3 Court to be so ordered and that, prior to approval by the Court, this Stipulated Protective Order
4 shall be effective and binding on the parties hereto as if approved by the Court.

5
6 Dated: May 27, 2015

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and

11
12 

13 By: _____
14 CHARLES S. PAINTER (SBN 89045)
15 GRAHAM M. CRIDLAND (SBN 243646)
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23 Attorneys for Defendant SUNBEAM
24 PRODUCTS, INC. dba JARDEN CONSUMER
25 SOLUTIONS

26
27 Dated: May 27, 2015

28 /s/ Mark Arutti as authorized on 5/27/15

By _____
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Attorneys for Plaintiff

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IT IS SO ORDERED,

Dated: June 8, 2015


CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE

Exhibit A

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

JOHNS 1994 FAMILY TRUST, UTA)
DATED JULY 13, 1994; STUART JOHNS,)
INDIVIDUALLY AND AS, TRUSTEE OF)
THE JOHNS FAMILY TRUST, UTA)
DATED JULY 13, 1994)

CASE NO. 2:14-cv-02760-WBS-CMK

Plaintiff,

v.

SUNBEAM PRODUCTS, INC. DBA)
JARDEN CONSUMER SOLUTIONS;)
PATTON, A BUSINESS ORGANIZATION,)
FORM UNKNOWN; and DOES 1-30)

Defendants.)

CONFIDENTIALITY PLEDGE

I, _____, declare under penalty of perjury
under the laws of the United States that:

1. My present address is _____

_____.

2. My present employer is _____

_____ and the address of my present employer is

_____.

3. My present occupation or job description is _____

_____.

4. I have received a copy of the Protective Order in this action signed by the Court
and dated _____.

5. I have carefully read and understand the provisions of the Protective Order.

1 6. I will comply with and be bound by all of the provisions of the Protective Order
2 unless and until modified by Order of the Court.

3 7. I will hold in confidence and will not disclose to anyone not qualified under the
4 Protective Order and will use only for purposes of this action, any CONFIDENTIAL
5 MATERIALS which are disclosed to me. I will take appropriate steps and assume full
6 responsibility to assure that any other people, *e.g.*, clerical or secretarial personnel, working for
7 me will abide by the Protective Order.

8 8. I will return all CONFIDENTIAL MATERIALS that come into my possession,
9 and documents or things that I have prepared relating thereto, to counsel for the party by whom
10 I am employed or retained when requested to do so by that counsel.

11 9. I declare further that I understand that if I violate the provisions of the Protective
12 Order, I may be subject to sanctions by the Court and that any party may assert other remedies
13 against me. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of
14 the Protective Order in this action.

15
16 Executed on: _____

17
18 _____
[Signature]