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13 ENHANCED ATHLETE, INC.

14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA

16 NUTRITION DISTRIBUTION, LLC, an
Arizona limited liability company,
17
Plaintiff,
18
vs.
19
20 ENHANCED ATHLETE, INC., a Wyoming
corporation, and DOES 1 through 10,
inclusive,
21
Defendants.

Case No. 2:17-cv-01491-TLN-KJN

Magistrate Judge Kendall J. Newman

**STIPULATED PROTECTIVE ORDER;
ORDER**

Action filed: 7/17/17

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1 **1. INTRODUCTION**

2 **PURPOSES AND LIMITATIONS.** Discovery in this action is likely to involve the
3 production of confidential, proprietary, or private information for which special protection from
4 public disclosure and from use for any purpose other than prosecuting this litigation may be
5 warranted. In addition, plaintiff Nutrition Distribution, LLC contends that it is a competitor of
6 defendant Enhanced Athlete, Inc. in the supplement industry. Discovery may, accordingly,
7 involve confidential and non-public sensitive competitive business information eligible for
8 protection under this Order, including but not limited to customer information, cost and net sales
9 information for goods sold, and agreements with third parties containing confidentiality
10 provisions. (See L.R. 141.1(c)(1) and (2).) Private information of the parties in this action who are
11 individuals, the principals and employees of the entity parties, and their legal counsel, including
12 personal address, telephone number and related information, would also be subject to protection
13 under this protective order. In addition, because Plaintiff contends the parties are competitors, and
14 are currently involved in multiple lawsuits, a protective order, and not just a private agreement
15 among the parties is needed. (L.R. 141.1(c)(3).)

16 The parties, accordingly, stipulate to and petition the Court to enter the following
17 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
18 protections on all disclosures or responses to discovery and that the protection it affords from
19 public disclosure and use extends only to the limited information or items that are entitled to
20 confidential treatment under the applicable legal principles. The parties further acknowledge, as
21 set forth in Section 12.3 below, that this Stipulated Protective Order does not entitle them to file
22 confidential information under seal, and that the parties must comply with Local Rule 141 with
23 respect to filing documents under seal.

24 **2. DEFINITIONS**

25 2.1 **Action:** *Nutrition Distribution, LLC v. Enhanced Athlete, Inc.*, Case No.
26 2:17-cv-01491-TLN-KJN (E.D. Cal.).

27 2.2 **Challenging Party:** A Party or Non-Party that challenges the designation of
28 information or items under this Order.

1 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is
2 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
3 of Civil Procedure 26(c).

4 2.4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
5 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
6 Party or Non-Party would create a substantial risk of serious harm that cannot be avoided by less
7 restrictive means, including information on the parties respective customers, and sales, revenue,
8 costs and expenses.

9 2.5 Counsel: Outside Counsel of Record as well as their support staff.

10 2.6 Designating Party: A Party or Non-Party that designates information or items that
11 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

13 2.7 Disclosure or Discovery Material: All items or information, regardless of the
14 medium or manner in which it is generated, stored, or maintained (including, among other things,
15 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
16 responses to discovery in this matter.

17 2.8 Expert: A person with specialized knowledge or experience in a matter pertinent to
18 the litigation who has been retained by a Party or its Counsel to serve as an expert witness or as a
19 consultant in this Action.

20 2.9 Non-Party: Any natural person, partnership, corporation, association, or other legal
21 entity not named as a Party to this action.

22 2.10 Outside Counsel of Record: Attorneys who are not employees of a Party to this
23 Action, but are retained to represent or advise a party to this Action and have appeared in this
24 Action on behalf of that Party or are affiliated with a law firm which has appeared on behalf of
25 that Party, and includes support staff. Neither defendant Charles Anthony Hughes nor any
26 attorneys at Hughes Financial Law shall be considered Outside Counsel of Record in this Action
27 for any defendant for purposes of this Protective Order, and accordingly neither Hughes nor any

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1 other attorney at Hughes Financial Law may be given access to HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY Information in this Action.

3 2.11 Party: Any party to this Action, including all of its officers, directors, employees,
4 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

5 2.12 Producing Party: A Party or Non-Party that produces Disclosure or Discovery
6 Material in this Action.

7 2.13 Professional Vendors: Persons or entities that provide litigation support services
8 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstratives, and organizing,
9 storing, or retrieving data in any form or medium) and their employees and subcontractors.

10 2.14 Protected Material: Any Disclosure or Discovery Material that is designated as
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

12 2.15 Receiving Party: A Party that receives Disclosure or Discovery Material from a
13 Producing Party.

14 **3. SCOPE**

15 The protections conferred by this Stipulation and Order cover not only Protected Material
16 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
17 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
18 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
19 Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order
20 does not govern the use of Protected Material at trial. The parties will meet and confer before the
21 final status conference concerning the use of Protected Material at trial, including specific types of
22 Protected Material, and make a joint proposal to the Court, or, if no agreement, make separate
23 proposals to the Court concerning the use of Protected Material at trial.

24 **4. DURATION**

25 Even after final disposition of this litigation, the confidentiality obligations imposed by this
26 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
27 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
28 and defenses in this Action, with or without prejudice; and (2) final judgment herein after the

1 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
2 including the time limits for filing any motions or applications for extension of time pursuant to
3 applicable law.

4 **5. DESIGNATING PROTECTED MATERIAL**

5 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
6 or Non-Party that designates information or items for protection under this Order must take care to
7 limit any such designation to specific material that qualifies under the appropriate standards. The
8 Designating Party must designate for protection only those parts of material, documents, items, or
9 oral or written communications that qualify so that other portions of the material, documents,
10 items, or communications for which protection is not warranted are not swept unjustifiably within
11 the ambit of this Order. Mass, indiscriminate, or routinized designations are prohibited.
12 Designations that are shown to be clearly unjustified or that have been made for an improper
13 purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary
14 expenses and burdens on other parties) may expose the Designating Party to sanctions. If it comes
15 to a Designating Party's attention that information or items that it designated for protection do not
16 qualify for protection, that Designating Party must promptly notify all other Parties that it is
17 withdrawing the inapplicable designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
19 (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
20 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly
21 designated before the material is disclosed or produced. Designation in conformity with this
22 Order requires:

23 (a) for information in documentary form (e.g., paper or electronic documents,
24 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
25 Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL
26 legend") or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" (hereinafter the "AEO
27 legend"), to each page that contains protected material. If only a portion or portions of the

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1 material on a page qualifies for protection, the Producing Party also must clearly identify the
2 protected portion(s) (e.g., by making appropriate markings in the margins).

3 A Party or Non-Party that makes original documents available for inspection (as opposed
4 to producing them to the Receiving Party without the Receiving Party first reviewing them) need
5 not designate them for protection until after the Receiving Party has indicated which documents it
6 would like copied and produced. During the inspection and before the designation, all of the
7 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY.” After the Receiving Party has identified the documents it wants
9 copied and produced, the Producing Party must determine which documents, or portions thereof,
10 qualify for protection under this Order. Then, before producing the specified documents, the
11 Producing Party must affix either the “CONFIDENTIAL legend” or “AEO legend” to each page
12 that contains Protected Material. If only a portion or portions of the material on a page qualifies
13 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
14 making appropriate markings in the margins). If the Producing Party is a Non-Party and is asked
15 to produce (e.g., by subpoena) the Discovery Material that contains the information of a Party
16 (e.g., customer lists, bank account or merchant service account information, information on goods
17 ordered and sold), and does not separately designate Discovery Material as Protected Material,
18 then all of the Discovery Material that Non-Party produces shall be treated as Protected Material
19 for a period of 21 days following the production to all Parties to allow the Party whose
20 information was produced to review the Discovery Material, and to designate it as Protected
21 Material, as appropriate.

22 (b) for testimony given in depositions, that the Designating Party identify the
23 Disclosure or Discovery Material on the record before the close of the deposition. When it is
24 impractical to identify separately each portion of testimony that is entitled to protection and it
25 appears that substantial portions of the testimony may qualify for protection, the Designating Party
26 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
27 to have up to 30 days to identify the specific portions of the testimony as to which protection is
28 sought and to specify the level of protection being asserted. Only those portions of the testimony

1 that are appropriately designated for protection within the 30 days shall be covered by the
2 provisions of this Order. Alternatively, a Designating Party may specify, at the deposition or up to
3 30 days afterwards if that period is properly invoked, that the entire transcript shall be treated as
4 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

5 Parties shall give the other parties notice if they reasonably expect a deposition to include
6 Protected Material so that the other parties can ensure that only authorized individuals who have
7 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
8 proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its
9 designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY.”

11 Transcripts containing Protected Material shall have an obvious legend on the title page
12 that the transcript contains Protected Material, and the title page shall be followed by a list of all
13 pages (including line numbers as appropriate) that have been designated as Protected Material and
14 the level of protection being asserted by the Designating Party. The Designating Party shall
15 inform the court reporter of these requirements. Any transcript that is prepared before the
16 expiration of a 30-day period for designation shall be treated during that period as if it had been
17 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
18 otherwise agreed. After the expiration of that period, the transcript shall be treated only as
19 actually designated.

20 (c) for information produced in some form other than documentary and for any
21 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
22 container or containers in which the information is stored the legend “CONFIDENTIAL” or
23 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of
24 the information warrants protection, the Producing Party, to the extent practicable, shall identify
25 the protected portion(s).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
27 designate qualified information or items does not, standing alone, waive the Designating Party’s
28 right to secure protection under this Order for such material. Upon timely correction of a

1 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
2 in accordance with the provisions of this Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
5 confidentiality at any time that is consistent with the Court's forthcoming Scheduling Order in this
6 Action.

7 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
8 process under Local Rule 251 (Motions Dealing with Discovery Matters). Additionally, upon
9 either court order or agreement among the Parties, the Parties shall utilize magistrate Judge
10 Kendall J. Newman's process for Informal Telephonic Conferences re Discovery Disputes to
11 resolve disputes concerning the designation of Protected Material, including Judge Newman's
12 process for meeting and conferring, with the exception of those challenges that impact the ability
13 of the parties to de-designate protected material in advance of the trial in this matter.

14 6.3 If the material designated is new information that has not been disclosed to the
15 public and in the opinion the Challenging Party poses a risk to public safety, for example by
16 disclosing that products labeled as SARMS are in fact prohormones, that Party may forego the
17 process for Telephonic Conferences and file its challenge by filing a motion under seal with
18 Magistrate Judge Newman on the normal three week notice schedule.

19 6.4 The burden of persuasion in any such challenge proceeding shall be on the
20 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass
21 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party
22 to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality
23 designation, all parties shall continue to afford the material in question the level of protection to
24 which it is entitled under the Producing Party's designation until the Court rules on the challenge.

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

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
27 produced by another Party or by a Non-Party in connection with this Action only for prosecuting,
28 defending, or attempting to settle this Action. Such Protected Material may be disclosed only to

1 the categories of persons and under the conditions described in this Order. When the Action has
2 been terminated, a Receiving Party must comply with the provisions of Section 13 below (FINAL
3 DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a
4 location and in a secure manner that ensures that access is limited to the persons authorized under
5 this Order.

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. The parties anticipate this
7 category will primarily consist of: (1) financial information of the litigants; (2) information on the
8 parties’ suppliers and business relationships (e.g., material suppliers, manufacturers, distribution
9 partners), and (3) information identified as confidential by way of agreements with third parties.

10 Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
11 Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

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

15 (b) the officers, directors, and employees of the Receiving Party to whom
16 disclosure is reasonably necessary for this Action, and who may not reveal the contents of the
17 CONFIDENTIAL information to anyone in their organization, or otherwise disseminate the
18 CONFIDENTIAL information to any third party or public forum;

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

22 (d) the Court and its personnel;

23 (e) court reporters and their staff;

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

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

3 (h) during their depositions, witnesses, and attorneys for witnesses, in the
4 Action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment
5 and Agreement to Be Bound” (Exhibit A to this Protective Order), unless otherwise agreed by the
6 Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits
7 to depositions that reveal Protected Material may be separately bound by the court reporter and
8 may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

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

11 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

12 Information or Items. The parties anticipate this category will primarily consist of
13 (1) customer/consumer information, (2) financial arrangements with business partners (e.g.,
14 manufacturers and distributors) to the extent it contains competitive information such as
15 negotiated pricing information, and (3) confidential product formulations (including combinations
16 of ingredients, but not including the existence or omission of ingredients), and (4) personal
17 information of the parties and their counsel. Unless otherwise ordered by the court or permitted in
18 writing by the Designating Party, a Receiving Party may disclose any information designated
19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

23 (b) Experts (as defined in this Order) of the Receiving Party to whom
24 disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and
25 Agreement to Be Bound” (Exhibit A to this Protective Order) and the “Certification of
26 Consultant” (Exhibit B to this Protective Order);

27 (c) the Court and its personnel;

28 (d) court reporters and their staff;

1 (e) the author or recipient of a document containing the information or a
2 custodian who otherwise possessed or knew the information; and

3 (f) any mediator or settlement officer, and their supporting personnel, mutually
4 agreed upon by any of the parties engaged in settlement discussions.

5 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
6 **OTHER LITIGATION**

7 If a Party is served with a subpoena or a court order issued in other litigation that compels
8 disclosure of any information or items designated in this Action as “CONFIDENTIAL” or
9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that Party must:

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

12 (b) promptly notify in writing the party who caused the subpoena or order to
13 issue in the other litigation that some or all of the material covered by the subpoena or order is
14 subject to this Protective Order. Such notification shall include a copy of this Stipulated
15 Protective Order; and

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

18 If the Designating Party timely seeks a protective order, the Party served with the subpoena
19 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
20 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the
21 court from which the subpoena or order issued, unless the Party has obtained the Designating
22 Party’s permission. The Designating Party shall bear the burden and expense of seeking
23 protection in that court of its confidential material and nothing in these provisions should be
24 construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful
25 directive from another court.

26 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
27 **THIS LITIGATION**

28 9.1 The terms of this Order are applicable to information produced by a Non-Party in

1 this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
2 connection with this litigation is protected by the remedies and relief provided by this Order.
3 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
4 additional protections.

5 9.2 In the event that a Party is required, by a valid discovery request, to produce a
6 Non-Party’s confidential information in its possession, and the Party is subject to an agreement
7 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

8 (a) promptly notify in writing the Requesting Party and the Non-Party that
9 some or all of the information requested is subject to a confidentiality agreement with a
10 Non-Party;

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

14 (c) make the information requested available for inspection by the Non-Party, if
15 requested.

16 9.3 If the Non-Party fails to seek a protective order from this court within 14 days of
17 receiving the notice and accompanying information, the Receiving Party may produce the
18 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely
19 seeks a protective order, the Receiving Party shall not produce any information in its possession or
20 control that is subject to the confidentiality agreement with the Non-Party before a determination
21 by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and
22 expense of seeking protection in this court of its Protected Material.

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

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
25 Material to any person or in any circumstance not authorized under this Stipulated Protective
26 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
27 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
28 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the

1 terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and
2 Agreement to Be Bound” that is attached hereto as Exhibit A.

3 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
4 **PROTECTED MATERIAL**

5 When a Producing Party gives notice to Receiving Parties that certain inadvertently
6 produced material is subject to a claim of privilege or other protection, the obligations of the
7 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
8 provision is not intended to modify whatever procedure may be established in an e-discovery order
9 that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
10 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
11 communication or information covered by the attorney-client privilege or work product protection,
12 the parties may incorporate their agreement in the stipulated protective order submitted to the
13 court.

14 **12. MISCELLANEOUS**

15 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
16 seek its modification by the Court in the future.

17 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
18 Order no Party waives any right it otherwise would have to object to disclosing or producing any
19 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
20 Party waives any right to object on any ground to use in evidence of any of the material covered
21 by this Protective Order.

22 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
23 Material must comply with the Eastern District Local Rules, including Local Rule 141 (Sealing of
24 Documents). Protected Material may only be filed under seal pursuant to a court order authorizing
25 the sealing of the specific Protected Material at issue.

26 **13. FINAL DISPOSITION**

27 After the final disposition of this Action, as defined in Section 4, within 60 days of a
28 written request by the Designating Party, each Receiving Party must return all Protected Material

1 to the Producing Party or destroy such material. As used in this subdivision, “all Protected
2 Material” includes all copies, abstracts, compilations, summaries, and any other format
3 reproducing or capturing any of the Protected Material. Whether the Protected Material is
4 returned or destroyed, the Receiving Party must submit a written certification to the Producing
5 Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that
6 (1) identifies (by category, where appropriate) all the Protected Material that was returned or
7 destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,
8 compilations, summaries or any other format reproducing or capturing any of the Protected
9 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
10 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
11 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
12 consultant and expert work product, even if such materials contain Protected Material. Any such
13 archival copies that contain or constitute Protected Material remain subject to this Protective Order
14 as set forth in Section 4 (DURATION).

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1 **14. VIOLATIONS**

2 Any violation of this Order may be punished by any and all appropriate measures
3 including, without limitation, contempt proceedings and/or monetary sanctions.

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

5 Dated: March 6, 2018

TAULER | SMITH LLP

6
7 By: /s/ Robert Tauler

8 Robert Tauler
9 Attorneys for Plaintiff
NUTRITION DISTRIBUTION, LLC

10 Dated: March 6, 2018

RUTAN & TUCKER, LLP

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12 By: /s/ Damon Mircheff


13 Damon D. Mircheff
14 Attorneys for Defendants
15 ENHANCED ATHLETE, INC.

16 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED**, with the following amendments
17 and clarifications:

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19 1. Nothing in this order limits the testimony of parties or non-parties, or the use of certain
20 documents, at any court hearing or trial—such determinations will only be made by the
21 court at the hearing or trial, or upon an appropriate motion.

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23 2. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over enforcement
24 of the terms of this stipulated protective order after the action is terminated.

25 Dated: March 9, 2018

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28 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print full name], of _____
_____ [print full address], declare under penalty of perjury that I have
read in its entirety and understand the Stipulated Protective Order that was issued by the United
States District Court for the Eastern District of California on _____ in the case of
Nutrition Distribution, LLC v. Enhanced Athlete, Inc., Case No. 2:17-cv-01491-TLN-KJN (E.D.
Cal.). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order
and I understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action. I hereby
appoint _____ [print full name] of _____
[print full address and telephone number] as my California agent for service of process in
connection with this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

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EXHIBIT B
CERTIFICATION OF CONSULTANT

I, _____ [print or type full name], of _____, am not an employee of a competitor of Nutrition Distribution, LLC (“Nutrition Distribution”) or Enhanced Athlete, LLC (“Enhanced Athlete”), nor do I presently have plans to become employed by or otherwise perform work for a competitor of Nutrition Distribution or Enhanced Athlete. I understand and agree that upon reviewing “Highly Confidential – Attorneys’ Eyes Only” information, I may not become employed by or otherwise perform work for a competitor of Nutrition Distribution or Enhanced Athlete, or subsidiary or affiliate of, or successor in interest to, either Nutrition Distribution or Enhanced Athlete, during the pendency of this action, including any appeals.

I state under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signed by: _____
Type/Print Name: _____
Dated: _____