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Attorneys for Defendant, FUNCTIONAL BRANDS, LLC

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

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**THRESHOLD ENTERPRISES LTD., a**  
Delaware corporation,

Plaintiff,

vs.

**FUNCTIONAL BRANDS, LLC, a**  
Michigan limited liability company; et al.,

Defendants.

Case No. C-07-01400 BZ

**NOTICE OF ADMINISTRATIVE  
MOTION AND ADMINISTRATIVE  
MOTION FOR ORDER SEALING  
DOCUMENTS AND GRANTING IN  
CAMERA REVIEW OF THEREOF;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF; DECLARATION IN  
SUPPORT THEREOF; ~~PROPOSED~~  
ORDER**

Date: In Chambers

The Honorable Bernard Zimmerman

Case No. C-07-01400 BZ

**NOTICE OF MOTION AND MOTION FOR IN  
CAMERA REVIEW; MPA & DECLARATION**

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT pursuant to 79-5 (“Local Rule 79-5”) and the inherent  
3 authority of the Court to administer justice, Kronenberger Burgoyne, LLP  
4 (“Kronenberger”), counsel of record for defendant Functional Brands, LLC (“Functional  
5 Brands”), hereby moves the Court for an order: 1) sealing documents filed by  
6 Kronenberger Burgoyne, LLP (“Kronenberger”) in support of its Motion to Withdraw as  
7 Counsel of Record; and 2) granting an *in camera* review of the sealed documents and/or  
8 an *in camera* hearing regarding Kronenberger’s Motion to Withdraw. This Motion is  
9 necessary to preserve privileged communications between Kronenberger and Functional  
10 Brands. Such communications describe some of the bases for Kronenberger’s Motion to  
11 Withdraw as Counsel of Record.

12 This Motion is based on Kronenberger’s Memorandum of Points and Authorities  
13 set forth below; the Declaration of Karl S. Kronenberger in Support of this Motion set forth  
14 below; and all pleadings on file in this case.

15  
16 Dated: January 30, 2008

17 Karl S. Kronenberger  
18 Henry M. Burgoyne, III  
19 Jeffrey M. Rosenfeld  
20 Kronenberger Burgoyne, LLP

21 By: \_\_\_\_\_ /s/  
22 Karl S. Kronenberger

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28 Attorneys for Functional Brands, LLC

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **BACKGROUND**

3 Kronenberger Burgoyne, LLP (“Kronenberger”) has served as counsel of record  
4 for defendant Functional Brands, LLC (“Functional Brands”) since the inception of this  
5 lawsuit. Over the past two months, however, certain conflicts have developed between  
6 Kronenberger and Functional Brands, which make it impossible for Kronenberger to  
7 continue to represent Functional Brands. As a result, Kronenberger is moving the Court  
8 to withdraw as Functional Brands’ counsel.

9 In support of its Motion to Withdraw, Kronenberger seeks to describe certain  
10 privileged communications between itself and Functional brands. These communications  
11 evidence some of the conflicts at issue and provide good cause for Kronenberger’s  
12 Motion to Withdraw. Accordingly, in order to preserve the sanctity of the attorney-client  
13 relationship, Kronenberger seeks an order sealing the documents that describe these  
14 communications and granting an *in camera* review of these documents and/or an *in*  
15 *camera* hearing of Kronenberger’s Motion to Withdraw.

16 **ARGUMENT**

17 Pursuant to Local Rule 79-5 and the inherent authority of the Court to administer  
18 justice, Kronenberger seeks an order sealing portions of documents and granting an *in*  
19 *camera* review of these documents, which contain descriptions of privileged  
20 communications between Kronenberger and Functional Brands. These descriptions,  
21 contained in Kronenberger’s Memorandum of Points and Authorities in support of its  
22 Motion to Withdraw and the declaration of Karl S. Kronenberger in support of  
23 Kronenberger’s Motion to Withdraw, explain the bases for Kronenberger’s Motion to  
24 Withdraw.

25 The Court has the authority to conduct an *in camera* review of privileged  
26 documents in order to preserve the attorney-client privilege. *See American Nat. Bank*  
27 *and Trust Co. of Chicago v. Equitable Life Assur. Soc. of U.S.*, 406 F.3d 867, 878-79 (7th  
28 Cir. 2005) (finding that court abused its discretion when it refused to conduct a full *in*

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1 *camera* inspection of the documents at issue and compelled their disclosure); see also  
2 *U.S. v. Zolin*, 491 U.S. 554, 565 (1989) (finding that *in camera* review may be used to  
3 determine whether allegedly privileged attorney-client communications fall within crime-  
4 fraud exception; *Beatty v. Stewart*, 303 F.3d 975, 989 (9th Cir. 2002) (holding *in camera*  
5 hearing to evaluate counsel’s motion to withdraw).

6 Without an *in camera* review of documents evidencing the communications  
7 between Kronenberger and Functional Brands, Kronenberger cannot provide the Court  
8 with a complete explanation of the bases for its need to withdraw. If Kronenberger were  
9 to disclose these communications to the Court through traditional filing procedures, it  
10 could potentially breach its obligations to preserve the confident of client  
11 communications. Moreover, the portions of the documents in support of Kronenberger’s  
12 Motion to Withdraw that contain confidential information are limited in scope, and the *in*  
13 *camera* review of this information will not affect the administration of justice.

14 **CONCLUSION**

15 Based on the foregoing, Kronenberger respectfully requests that the Court issue  
16 an order sealing portions of Kronenberger’s Memorandum of Points and Authorities in  
17 support of its Motion to Withdraw as well as the declaration of Karl S. Kronenberger in  
18 support of Kronenberger’s Motion to Withdraw. Kronenberger also respectfully requests  
19 that the Court grant an *in camera* review and/or hearing regarding these documents.

20 Kronenberger herewith submits, the entirety of these documents to be filed under  
21 seal, and the redacted versions to be filed in the public record.

22 Dated: January 30, 2008

23 Karl S. Kronenberger  
24 Henry M. Burgoyne, III  
25 Jeffrey M. Rosenfeld  
26 Kronenberger Burgoyne, LLP

27 By: \_\_\_\_\_ /s/  
Karl S. Kronenberger

28 Attorneys for Functional Brands, LLC

**DECLARATION IN SUPPORT OF MOTION TO SEAL**

I, Karl S. Kronenberger declare as follows:

1. I am an attorney admitted to practice in the State of California and the United States District Court for the Northern District of California. I am a partner at the law firm of Kronenberger Burgoyne, LLP (“Kronenberger”), counsel of record for Defendant Functional Brands, LLC (“Functional Brands”). Unless otherwise stated, I have personal knowledge of the facts stated herein.

2. Portions of Kronenberger’s Memorandum of Points and Authorities in support of its Motion to Withdraw as Counsel of Record describe communications between Kronenberger and Functional Brands protected by the attorney-client privilege.

3. Portions of the Declaration of Karl S. Kronenberger in support of Kronenberger’s Motion to Withdraw as Counsel of Record describe communications between Kronenberger and Functional Brands protected by the attorney-client privilege.

4. Submitted herewith by manual filing is a true and correct copy of Kronenberger’s Memorandum of Points and Authorities in support of its Motion to Withdraw as Counsel of Record.

5. Submitted herewith by manual filing is a true and correct copy of the Declaration of Karl S. Kronenberger in support of Kronenberger’s Motion to Withdraw as Counsel of Record.

6. Submitted herewith by electronic filing is a redacted version of Kronenberger’s Memorandum of Points and Authorities in support of its Motion to Withdraw as Counsel of Record.

7. Submitted herewith by electronic filing is a redacted version of the Declaration of Karl S. Kronenberger in support of Kronenberger’s Motion to Withdraw as Counsel of Record.

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1 I declare under penalty of perjury under the laws of the United States that the  
2 foregoing is true and correct and that this Declaration was executed this 30<sup>th</sup> day of  
3 January 2008, at San Francisco, California.

4 \_\_\_\_\_ /s/  
5 Karl S. Kronenberger  
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PROPOSED ORDER

1  
2 Having considered Kronenberger Burgoyne, LLP's ("Kronenberger")  
3 Administrative Motion for Order Sealing Documents and Granting in Camera Review  
4 Thereof, and good cause having been shown,

5 IT IS HEREBY ORDERED that Kronenberger's Motion is GRANTED.

6 IT IS HEREBY FURTHER ORDERED that the designated portions of  
7 Kronenberger's Memorandum of Points and Authorities in support of its Motion to  
8 Withdraw as Counsel of Record shall be filed under seal.  
9

10 IT IS HEREBY FURTHER ORDERED that the designated portions of the  
11 Declaration of Karl S. Kronenberger in support of Kronenberger's Motion to Withdraw as  
12 Counsel of Record shall be filed under seal.

13 IT IS HEREBY FURTHER ORDERED this Court shall conduct an *in camera*  
14 review of the above-designated documents and/or an *in camera* hearing of  
15 Kronenberger's Motion to Withdraw as Counsel of Record.  
16

17 IT IS SO ORDERED.

18  
19 Dated: 2/4/2008

  
\_\_\_\_\_  
HONORABLE BERNARD ZIMMERMAN

Magistrate Judge, United States District  
Court for the Northern District of California

