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7 *Co-Lead and Liaison Counsel for Plaintiffs*

8 UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 SHANTELL OLVERA, on behalf of herself
 and all others similarly situated,

11 Plaintiff,

12 v.

13 DRIVEN SPORTS, a New York corporation;
 14 and DOES 1 through 10, inclusive,

15 Defendants.

Consolidated No. 3:13-cv-04830-EMC

16 **[PROPOSED] STIPULATED**
 17 **PROTECTIVE ORDER**

18 CLASS ACTION

19 JURY TRIAL DEMAND

20 The Honorable Edward M. Chen

21 Complaint Filed: October 17, 2013

22 MARCUS WAGNER, an individual, on
 23 behalf of himself and all others similarly
 24 Situated,

25 Plaintiff,

26 v.

27 DRIVEN SPORTS, INC., GENERAL
 NUTRITION CENTERS, INC., and DOES 1
 through 50, inclusive,

Defendants.

Case No. 3:13-cv-05239-EMC

JURY TRIAL DEMAND

The Honorable Edward M. Chen

Complaint Filed: November 12, 2013

1 **A. PURPOSES AND LIMITATIONS**

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

14 **B. DEFINITIONS**

15 1. Challenging Party:

16 A Party or Non-Party that challenges the designation of information or items under this
17 Order.

18 2. “CONFIDENTIAL” Information or Items:

19 A Producing Party may designate Discovery Material as “CONFIDENTIAL” if it
20 contains or reflects confidential, proprietary, commercially sensitive and/or private information
21 of an individual or entity.

22 3. Counsel (without qualifier):

23 Outside Counsel of Record and House Counsel (as well as their support staff).

24 4. Designating Party:

25 A Party or Non-Party that designates information or items that it produces in disclosures
26 or in responses to discovery as “CONFIDENTIAL.”

1 5. Disclosure or Discovery Material:

2 All items or information, regardless of the medium or manner in which it is generated,
3 stored, or maintained (including, among other things, testimony, transcripts, and tangible
4 things), that are produced or generated in disclosures or responses to discovery in this matter.

5 6. Expert:

6 A person with specialized knowledge or experience in a matter pertinent to the litigation
7 who has been retained by a Party or its counsel to serve as an expert witness or as a consultant
8 in this action.

9 7. House Counsel:

10 Attorneys who are employees of a party to this action. House Counsel does not include
11 Outside Counsel of Record or any other outside counsel.

12 8. Non-Party:

13 Any natural person, partnership, corporation, association, or other legal entity not
14 named as a Party to this action.

15 9. Outside Counsel of Record:

16 Attorneys who are not employees of a party to this action but are retained to represent
17 or advise a party to this action and have appeared in this action on behalf of that party or are
18 affiliated with a law firm which has appeared on behalf of that party, including contract
19 attorneys that may be hired by the law firm to review materials under the supervision of the law
20 firm.

21 10. Party:

22 Any party to this action, including all of its officers, directors, employees, consultants,
23 retained experts, and Outside Counsel of Record (and their support staffs).

24 11. Producing Party:

25 A Party or Non-Party that produces Disclosure or Discovery Material in this action.
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1 12. Professional Vendors:

2 Persons or entities that provide litigation support services (e.g., photocopying,
3 videotaping, translating, preparing exhibits or demonstrations, and processing, hosting,
4 organizing, storing, or retrieving data in any form or medium) and their employees and
5 subcontractors.

6 13. Protected Material:

7 Any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

8 14. Receiving Party:

9 A Party that receives Disclosure or Discovery Material from a Producing Party.

10 **C. SCOPE**

11 The protections conferred by this Stipulation and Order cover not only Protected
12 Material (as defined above), but also (1) any information copied or extracted from Protected
13 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
14 testimony, conversations, or presentations by Parties or their Counsel that might reveal
15 Protected Material. However, the protections conferred by this Stipulation and Order do not
16 cover the following information: (a) any information that is in the public domain at the time of
17 disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a
18 Receiving Party as a result of publication not involving a violation of this Order, including
19 becoming part of the public record through trial or otherwise; and (b) any information known to
20 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the
21 disclosure from a source who obtained the information lawfully and under no obligation of
22 confidentiality to the Designating Party. Any use of Protected Material at trial shall be
23 governed by a separate agreement or order.

24 **D. DURATION**

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

6 **E. DESIGNATING PROTECTED MATERIAL**

7 1. Exercise of Restraint and Care in Designating Material for Protection.

8 To the extent reasonably possible, each Party or non-party that designates information
9 or items for protection under this Order must take care to limit any such designation to specific
10 material that qualifies under the appropriate standards.

11 2. Manner and Timing of Designations.

12 Except as otherwise provided in this Order (*see*, e.g., second paragraph of section 5.2(a)
13 below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies
14 for protection under this Order must be clearly so designated before the material is disclosed or
15 produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic documents,
18 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
19 Producing Party affix the legend “CONFIDENTIAL” to each page that contains protected
20 material. If only a portion or portions of the material on a page qualifies for protection, the
21 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
22 markings in the margins).

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

8 (b) for testimony given in deposition or in other pretrial or trial proceedings,
9 that the Designating Party identify on the record, before the close of the deposition, hearing, or
10 other proceeding, all protected testimony.

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

16 3. Inadvertent Failures to Designate.

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

22 **F. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

23 1. Timing of Challenges.

24 Any Party or Non-Party may challenge a designation of confidentiality at any time.
25 Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to
26 avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant
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1 disruption or delay of the litigation, a Party does not waive its right to challenge a
2 confidentiality designation by electing not to mount a challenge promptly after the original
3 designation is disclosed.

4 2. Meet and Confer.

5 The Challenging Party shall initiate the dispute resolution process by providing written
6 notice of each designation it is challenging and describing the basis for each challenge. To
7 avoid ambiguity as to whether a challenge has been made, the written notice must recite that
8 the challenge to confidentiality is being made in accordance with this specific paragraph of the
9 Protective Order. The parties shall attempt to resolve each challenge in good faith and must
10 begin the process by conferring directly (in voice to voice dialogue; other forms of
11 communication are not sufficient) within 14 days of the date of service of notice. In conferring,
12 the Challenging Party must explain the basis for its belief that the confidentiality designation
13 was not proper and must give the Designating Party an opportunity to review the designated
14 material, to reconsider the circumstances, and, if no change in designation is offered, to explain
15 the basis for the chosen designation. A Challenging Party may proceed to the next stage of the
16 challenge process only if it has engaged in this meet and confer process first or establishes that
17 the Designating Party is unwilling to participate in the meet and confer process in a timely
18 manner.

19 3. Judicial Intervention.

20 If the Parties cannot resolve a challenge without court intervention, the Designating Party
21 shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in compliance
22 with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or
23 within 14 days of the parties agreeing that the meet and confer process will not resolve their
24 dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration
25 affirming that the movant has complied with the meet and confer requirements imposed in the
26 preceding paragraph. Failure by the Designating Party to make such a motion including the
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1 required declaration within 21 days (or 14 days, if applicable) shall automatically waive the
2 confidentiality designation for each challenged designation. In addition, the Challenging Party
3 may file a motion challenging a confidentiality designation at any time if there is good cause for
4 doing so, including a challenge to the designation of a deposition transcript or any portions
5 thereof. Any motion brought pursuant to this provision must be accompanied by a competent
6 declaration affirming that the movant has complied with the meet and confer requirements
7 imposed by the preceding paragraph.

8 The burden of persuasion in any such challenge proceeding shall be on the Designating
9 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
10 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
11 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
12 file a motion to retain confidentiality as described above, all parties shall continue to afford the
13 material in question the level of protection to which it is entitled under the Producing Party's
14 designation until the court rules on the challenge.

15 **G. ACCESS TO AND USE OF PROTECTED MATERIAL**

16 1. Basic Principles.

17 A Receiving Party may use Protected Material that is disclosed or produced by another
18 Party or by a Non-Party in connection with this case only for prosecuting, defending, or
19 attempting to settle this litigation. Such Protected Material may be disclosed only to the
20 categories of persons and under the conditions described in this Order. When the litigation has
21 been terminated, a Receiving Party must comply with the provisions of section 13 below
22 (FINAL DISPOSITION).

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

1 2. Disclosure of “CONFIDENTIAL” Information or Items.

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

5 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
6 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose
7 the information for this litigation and who have signed the “Acknowledgment and Agreement
8 to Be Bound” that is attached hereto as Exhibit A;

9 (b) the officers, directors, and employees (including House Counsel) of the
10 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
11 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

15 (d) the court and its personnel;

16 (e) court reporters and their staff, professional jury or trial consultants, mock
17 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation
18 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (f) during their depositions, witnesses in the action to whom disclosure is
20 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
21 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court.

22 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected
23 Material must be separately bound by the court reporter and may not be disclosed to anyone
24 except as permitted under this Stipulated Protective Order.

25 (g) the author or recipient of a document containing the information or a
26 custodian or other person who otherwise possessed or knew the information.

1 (h) contract attorneys hired by the Receiving Party’s Outside Counsel of Record
2 in this action who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
3 A); and

4 (i) vendors hired to load, store and host data produced by the Producing party.

5 **H. 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
8 compels disclosure of any information or items designated in this action as
9 “CONFIDENTIAL,” that Party must:

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

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

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

18 If the Designating Party timely seeks a protective order, the Party served with the
19 subpoena or court order shall not produce any information designated in this action as
20 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
21 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party
22 shall bear the burden and expense of seeking protection in that court of its confidential material
23 – and nothing in these provisions should be construed as authorizing or encouraging a
24 Receiving Party in this action to disobey a lawful directive from another court.
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1 **I. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
2 **THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced by a Non-Party in
4 this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties
5 in connection with this litigation is protected by the remedies and relief provided by this Order.
6 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
7 additional protections.

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

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

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

17 (3) make the information requested available for inspection by the Non-Party.

18 (c) If the Non-Party fails to object or seek a protective order from this court within 14
19 days of receiving the notice and accompanying information or a longer period if such longer
20 period is required under the Nondisclosure Agreement with the Non-Party, the Receiving Party
21 may produce the Non-Party’s confidential information responsive to the discovery request, if
22 such production will not violate the provisions of the Nondisclosure Agreement. If the Non-
23 Party timely seeks a protective order, the Receiving Party shall not produce any information in
24 its possession or control that is subject to the confidentiality agreement with the Non-Party
25 before a determination by the court. Absent a court order or provisions in the Nondisclosure
26 Agreement to the contrary, the Non-Party shall bear the burden and expense of seeking
27 protection in this court of its Protected Material.

1 **J. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
3 Material to any person or in any circumstance not authorized under this Stipulated Protective
4 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
5 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
6 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
7 made of all the terms of this Order, and (d) request such person or persons to execute the
8 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9 **K. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
10 PROTECTED MATERIAL**

11 In the event that a document protected by the attorney-client privilege, the attorney
12 work product doctrine or other applicable privilege or protection is unintentionally produced by
13 any party to this proceeding, the producing party may request that the document be returned. In
14 the event that such a request is made, all parties to the litigation and their counsel shall
15 promptly return all copies of the document in their possession, custody, or control to the
16 producing party and shall not retain or make any copies of the document or any documents
17 derived from such document. The producing party shall promptly identify the returned
18 document on a privilege log. The unintentional disclosure of a privileged or otherwise protected
19 document shall not constitute a waiver of the privilege or protection with respect to that
20 document or any other documents involving the same or similar subject matter.

21 **L. MISCELLANEOUS**

22 1. Right to Further Relief.

23 Nothing in this Order abridges the right of any person to seek its modification by the
24 court in the future.

25 2. Right to Assert Other Objections.

26 By stipulating to the entry of this Protective Order no Party waives any right it otherwise
27 would have to object to disclosing or producing any information or item on any ground not

1 addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on
2 any ground to use in evidence of any of the material covered by this Protective Order.

3 3. Filing Protected Material.

4 a. As applied to documents, materials or other papers filed with the Court
5 that have been designated CONFIDENTIAL, the parties shall seal such documents (or any
6 portion thereof), by following the protocols for electronic filings in this District. If a Party
7 believes that material has been designated as CONFIDENTIAL and cannot or should not be
8 sealed, pursuant to the protocols and rules in this District, then the Party wishing to file the
9 materials shall particularly identify the documents or information that it wishes to file to the
10 Producing Party, in writing. The Parties will then meet and confer, in a good faith effort to
11 resolve the dispute. Failing agreement, the Party wishing to file the materials must request a
12 ruling from the Court on whether the Discovery Material in question must be submitted under
13 seal. The Producing Party shall have the burden of justifying that the materials must be
14 submitted under seal. Absent written permission from the Producing Party or a court Order
15 denying a motion to seal, a Receiving Party may not file in the public record any Protected
16 Material.

17 b. The use of Protected Material during the pre-trial hearing shall be
18 determined by agreement of the parties or by Order of the Court.

19 **M. FINAL DISPOSITION**

20 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
21 Receiving Party must return all Protected Material to the Producing Party or destroy such
22 material and certify such destruction in writing. As used in this subdivision, "all Protected
23 Material" includes all copies, abstracts, compilations, summaries, and any other format
24 reproducing or capturing any of the Protected Material. Whether the Protected Material is
25 returned or destroyed, the Receiving Party must submit a written certification to the Producing
26 Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline
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1 that (1) identifies (by category, where appropriate) all the Protected Material that was returned
2 or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,
3 compilations, summaries or any other format reproducing or capturing any of the Protected
4 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
5 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
6 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
7 consultant and expert work product, even if such materials contain Protected Material. Any
8 such archival copies that contain or constitute Protected Material remain subject to this
9 Protective Order as set forth in Section 4 (DURATION).

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12 DATED: May 29, 2014.

/s/ Mary B. Reiten, CSB #203142
Attorneys for Plaintiff

14 DATED: May 29, 2014.

/s/ Edward P. Garson, CSB #96786
Attorneys for Defendant Driven Sports

16 DATED: May 29, 2014.

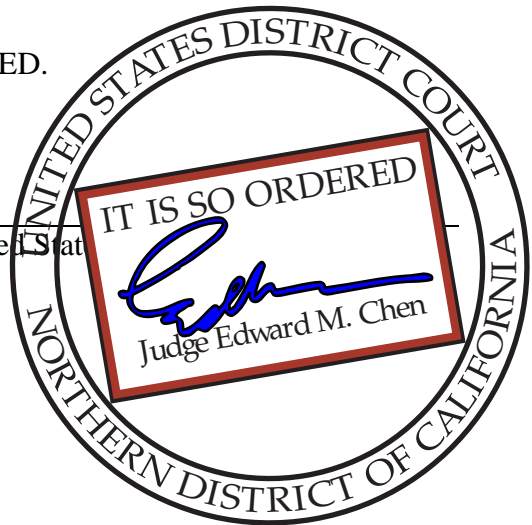
/s/ A. Brooks Gresham, CSB #155954
Attorneys for Defendant GNC

18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

20 May 30, 2014

21 DATED: _____

United States



1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States District Court
6 for the Northern District of California on [date] in the case of _____ **[insert formal**
7 **name of the case and the number and initials assigned to it by the court]**. I agree to comply
8 with and to be bound by all the terms of this Stipulated Protective Order and I understand and
9 acknowledge that failure to so comply could expose me to sanctions and punishment in the
10 nature of contempt. I solemnly promise that I will not disclose in any manner any information
11 or item that is subject to this Stipulated Protective Order to any person or entity except in strict
12 compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Northern District of California for the purpose of enforcing the terms of this Stipulated
15 Protective Order, even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of
17 _____ [print or type full address and telephone
18 number] as my California agent for service of process in connection with this action or any
19 proceedings related to enforcement of this Stipulated Protective Order.

20 Date: _____

21 City and State where sworn and signed: _____

22 Printed name: _____

23 Signature: _____

CERTIFICATE OF SERVICE

I, Mary B. Reiten, hereby certify that on May 29, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Edward P. Garson, CSB #96786
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Attorneys for Defendant General Nutrition Centers, Inc.

1 DATED this 29th day of May, 2014.

2 TERRELL MARSHALL DAUDT & WILLIE PLLC

3
4 By: /s/ Mary B. Reiten, CSB #203142
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11 *Co-Lead Counsel Plaintiffs*