

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 CERTIFIED NUTRACEUTICALS, INC.,
12 Plaintiff,

13 v.

14 THE CLOROX COMPANY, a Delaware
15 corporation; NEOCELL
16 CORPORATION, a California
17 corporation; NEOCELL HOLDING
18 COMPANY, a Delaware limited liability
19 company; NUTRANEXT, a Delaware
20 corporation; AVICENNA
21 NUTRACEUTICAL, LLC, a Georgia
22 limited liability company,
23 Defendants.

Case No.: 3:18-cv-00744-W-KSC

**ORDER ON JOINT MOTION FOR
DETERMINATION OF DISCOVERY
DISPUTE; ORDER DENYING AS
MOOT MOTION TO SEAL
[Doc. Nos. 93, 94, 95]**

24 Before the Court is the parties' Joint Motion for Determination of Discovery
25 Dispute Regarding Plaintiff's Interrogatories 13-17 to Clorox, Interrogatories 16-19 to
26 Nutranext, Requests for Production 26-30 to Clorox, and Requests for Production 34-38
27 to Nutranext (the "Joint Motion"). Doc. Nos. 94 (under seal), 95 (public version). The
28 Court held conferences with counsel regarding the present dispute on June 5, 2020, and

1 June 22, 2020. Pursuant to the Court’s order (Doc. No. 86), the parties then submitted
2 the Joint Motion on June 30, 2020, wherein plaintiff moves to compel further responses
3 to interrogatories and requests for production. Plaintiff also moves for an award of his
4 attorneys’ fees incurred in bringing the Joint Motion. The parties jointly move to seal
5 several exhibits to their Joint Motion, and portions of the Joint Motion which describe or
6 quote from those exhibits (the “Motion to Seal”). Doc. No. 93. Having considered the
7 parties’ submissions, and for the reasons set forth below, the Court DENIES plaintiffs’
8 Motion to Compel further discovery responses; DENIES plaintiff’s request for attorneys’
9 fees; and DENIES AS MOOT the parties’ Motion to Seal. Within 4 days of the date of
10 this Order, defendants may file a renewed motion to seal as set forth herein.

11 I. DISCOVERY DISPUTE

12 A. Background

13 Plaintiff Certified Nutraceuticals, Inc. (“plaintiff”) imports, sells, licenses and
14 distributes ingredients for nutraceutical companies, among which are collagen products,
15 and in particular a type of collagen ingredient known as Chicken Sternum Collagen Type
16 II. *See* Third Amended Complaint (the “Complaint”), Doc. No. 50, ¶14. According to
17 plaintiff, Chicken Sternum Collagen II has unique properties that lend themselves to
18 therapeutic and nutritional uses. *Id.*, ¶16. Plaintiff alleges that defendants deceptively
19 market and falsely label products made from inferior-quality, lower-priced chicken
20 carcasses as containing Chicken Sternum Collagen Type II, in violation of the Lanham
21 Act. *Id.*, ¶¶1, 2, 18-22; 30-40.

22 Plaintiff served interrogatories and requests for production on defendants Clorox
23 Company (“Clorox”) and Nutranext (“Nutranext,” and, with Clorox, “defendants”)¹ on
24 April 10, 2020. The discovery requests at issue are included verbatim in the Joint
25

26
27 ¹ Also named in the Complaint are Avicenna Nutraceutical, LLC, a supplier of raw ingredients, and
28 Neocell Corporation and Neocell Holding Company, which were acquired by Nutranext and, later,
Clorox. These defendants are not parties to the present discovery dispute.

1 Motion, so the Court will not reproduce them here.² *See* Jt. Mot. at 2-3. Broadly, plaintiff
2 seeks information and documents related to defendants’ unit sales, revenues, profits, costs
3 and expenses related to the sale of the deceptively-labeled collagen products. *Id.*
4 According to plaintiff, this information is “directly relevant” to its ability to establish
5 damages, because “defendant’s profits” are recoverable under the Lanham Act. *Id.* at 4
6 (citing 15 U.S.C. §1117(a)).

7 Defendants served objections and verified responses to plaintiff’s discovery on
8 May 11, 2020. Defendants objected that the discovery was cumulative, duplicative,
9 disproportional to the needs of the case, and overbroad. Defendants also represented that
10 plaintiff sought information that did not exist – specifically, plaintiff had requested
11 financial information “by product line,” but defendants did not maintain their financial
12 records at that level of detail. *Id.* at 16-17. Notwithstanding their objections, defendants
13 compiled a spreadsheet of financial information which was produced to plaintiff shortly
14 after the parties’ first conference with the Court. *Id.* at 17. Defendants represent that the
15 spreadsheet encompasses all the financial information in their control, which begins with
16 Clorox’s acquisition of Nutranext in April 2018. *Id.* at 17.

17 **B. Legal Standard**

18 “Unless otherwise limited by court order, the scope of discovery is as follows:
19 Parties may obtain discovery regarding any non-privileged matter that is relevant to any
20 party’s claim or defense and proportional to the needs of the case, considering the
21 importance of the issues at stake in the action, the amount in controversy, the parties’
22 relative access to relevant information, the parties’ resources, the importance of the
23 discovery in resolving the issues and whether the burden or expense of the proposed
24 discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

25 If a party fails to answer written interrogatories or produce documents in response
26

27
28 ² The parties also lodged the subject discovery directly with this Court’s chambers.

1 to written requests, the party seeking discovery may move for an order compelling
2 disclosure. Fed. R. Civ. P. 37(a)(3) & (4). “While the party seeking to compel discovery
3 has the burden of establishing that its request satisfies relevancy requirements, the party
4 opposing discovery bears the burden of showing that discovery should not be allowed,
5 and of clarifying, explaining, and supporting its objections with competent evidence.”
6 *Lofton v. Verizon Wireless (VAW) LLC*, 308 F.R.D. 276, 281 (N.D. Cal. 2015). The
7 Court “must limit” any proposed discovery if it determines that the discovery sought is
8 “unreasonably cumulative or duplicative” or “outside the scope permitted by Rule
9 26(b)(1),” or where the propounding party “has had ample opportunity to obtain the
10 information by discovery in the action.” Fed. R. Civ. P. 26(b)(2)(C)(i)-(iii). “District
11 courts have broad discretion” in making this determination. *Survivor Media, Inc. v.*
12 *Survivor Prods.*, 406 F.3d 625, 635 (9th Cir. 2005); *see also U.S. Fid. and Guar. Co. v.*
13 *Lee Inv. LLC*, 641 F.3d 1126, 1136 n. 10 (9th Cir. 2011) (“District courts have wide
14 latitude in controlling discovery[.]”) (citation omitted).

15 **C. Discussion**

16 ***1. Timeliness of the Joint Motion***

17 Defendants raise two arguments regarding the timeliness of the Joint Motion. First,
18 Defendants request that the Motion to Compel be denied in its entirety because “this
19 discovery dispute was brought to the [C]ourt after the discovery cutoff of June 15, 2020.”
20 Jt. Mot. at 10 n.23. That is incorrect. The Court’s first pre-motion conference with the
21 parties concerning this dispute took place on June 5, 2020, ten days before the deadline to
22 complete fact discovery. Furthermore, the discovery at issue was served on April 10,
23 2020, well before the fact discovery cutoff. *See Jensen v. BMW of North America, LLC*,
24 No. 18-cv-103-WQH-NLS, 2018 WL 5389628, at *1 (S.D. Cal. Oct. 29, 2018) (finding
25 discovery dispute raised after the fact discovery cutoff was timely where “the discovery
26 itself was timely”). Accordingly, the Court will not deny the Motion on this basis.

27 Defendants’ second timeliness argument is that plaintiff waived its right to compel
28 responses to Interrogatories Nos. 13, 14, 15, and 17 to Clorox, Interrogatories Nos. 16,

1 17, 18 and 20 to Nutranext and all of the disputed Requests for Production (Nos. 26-30 to
2 Clorox and Nos. 34-38 to Nutranext), because these discovery requests “duplicate”
3 plaintiff’s first set of interrogatories and first set of requests for production, both served
4 on January 23, 2020 (the “January Discovery Requests”).³ Jt. Mot. at 11-12; Young
5 Decl., Doc. No. 97, ¶6. Defendants assert that after serving plaintiff with their responses
6 and objections to the January Discovery Requests on February 24, 2020, plaintiff did not
7 meet and confer with them or pursue any relief from the Court, thereby waiving the right
8 to the relief plaintiff now seeks. Jt. Mot. at 11; Young Decl, ¶¶7-8. Plaintiff does not
9 deny that it did not move to compel further responses to the January Discovery Requests
10 but asserts that the requests are “not duplicative” because the discovery requests at issue
11 in the Joint Motion “were prepared after Plaintiff had engaged an expert on damages.” Jt.
12 Mot. at 5.

13 The Court agrees with defendants. Pursuant to Section VIII.B. of this Court’s
14 Civil Chambers Rules, discovery disputes are to be raised “within 30 days of the event
15 giving rise to the dispute” – in this case, service of the initial responses to plaintiff’s
16 interrogatories and requests for production. *See* Chambers Rules and Civil Pretrial
17 Procedures for the Honorable Karen S. Crawford, § VIII.B.2. The Court has reviewed
18 the January Discovery Requests and is persuaded that the requests to which plaintiff now
19 moves to compel responses are “substantially similar to [plaintiff’s] previous demands”
20 such that they did “not re-start the clock for filing a discovery motion.” *Bird v. PSC*

21
22
23 ³ The January Discovery Requests are attached as Exhibit D to the Declaration of Christopher M. Young
24 in Support of Joint Motion for Determination of Discovery Dispute (“Young Decl.,” Doc. No. 97). *See*
25 Doc. No. 97-4. The requests include: Plaintiff Certified Nutraceuticals, Inc.’s First Set of Special
26 Interrogatories to Defendant The Clorox Company (“First Interrogatories to Clorox,” *id.* at 2-7);
27 Plaintiff Certified Nutraceuticals, Inc.’s First Set of Requests for Production to Defendant The Clorox
28 Company (“First RFPs to Clorox,” *id.* at 8- 17); Plaintiff Certified Nutraceuticals, Inc.’s First Set of
Special Interrogatories to Defendant Nutranext (“First Interrogatories to Nutranext,” *id.* at 18-24); and
Plaintiff Certified Nutraceuticals, Inc.’s First Set of Requests for Production to Defendant Nutranext
 (“First RFPs to Nutranext,” *id.* at 25-34). Where a specific request within the January Discovery
Requests is referenced herein, the Court will refer to it by the foregoing short titles and the number of
the request.

1 *Holdings I, LLC*, No. 12-cv-1528-W(NLS), 2013 WL 1120659, at *1 (S.D. Cal. Mar. 18,
2 2013).

3 For example, plaintiff moves to compel further responses to Interrogatory No. 13
4 to Clorox (and to the identical Interrogatory No. 16 to Nutranext), which requests the
5 following:

6 For each type of the COLLAGEN PRODUCTS that YOU sold
7 during the RELEVANT TIME PERIOD, state the actual number
8 of units sold by NUTRANEXT during each calendar year and
quarter. (Jt. Mot. at 2.)

9 The Court cannot discern a meaningful difference between the foregoing
10 interrogatory and these January Discovery Requests:

11 State the number of units of the COLLAGEN PRODUCTS that
12 YOU have sold during each year of the RELEVANT PERIOD.
13 (See First Interrogatories to Clorox, No. 4; First Interrogatories
to Nutranext, No. 4.)

14 As a further example, plaintiff moves to compel further responses to Request for
15 Production No. 28 to Clorox (and to the identical Request for Production No. 36 to
16 Nutranext), which requests the following:

17 All [CLOROX/ NUTRANEXT] profit & loss statements,
18 prepared on an annual and quarterly basis, that contain,
19 memorialize or concern its sales revenues, costs of sales,
20 expenses, and resulting earnings from its COLLAGEN
21 PRODUCTS transactions during the RELEVANT TIME
PERIOD. (Jt. Mot. at 3.)

22 Yet, in the January Discovery Requests, plaintiff requested the following
23 documents from defendants:

24 Any and all DOCUMENTS referring or relating to YOUR gross
25 revenue from the sale of the COLLAGEN PRODUCTS during
26 the RELEVANT PERIOD. (See First RFPs to Clorox, No. 6;
27 RFPs to Nutranext, No. 8.)
28

1 Any and all DOCUMENTS referring or relating to YOUR profits
2 from the sales of the COLLAGEN PRODUCTS during the
3 RELEVANT PERIOD. (See First RFPs to Clorox, No. 7; First
4 RFPs to Nutranext, No. 9.)

5 All of YOUR quarterly and annual financial statements for the
6 RELEVANT PERIOD, including balance sheets, income
7 statements, and profit and loss statements regarding the
8 COLLAGEN PRODUCTS. (See First RFPs to Clorox, No. 17;
9 First RFPs to Nutranext, No. 21.)

10 Any and all DOCUMENTS referring or relating to YOUR costs
11 of goods of the COLLAGEN PRODUCTS during the
12 RELEVANT PERIOD. (See First RFPs to Nutranext, No. 10.)

13 The Court has carefully compared the discovery requests which are the subject of
14 the Joint Motion to the January Discovery Requests and finds them to be impermissibly
15 duplicative. “[C]ourts in this district ... routinely reject” motions to compel responses to
16 such duplicative discovery as improper “attempts to circumvent discovery deadlines[.]”
17 *Jensen*, 2018 WL 5389628, at *2; *see also Cruz v. United States*, No. 14-cv-2956-LAB
18 (DHB), 2016 WL 727066, at *2 (S.D. Cal. Feb. 24, 2016) (denying motion to compel
19 where discovery “requested a specific subset of the documents” encompassed by
20 discovery previously served). Specifically, the Court finds the following discovery
21 requests to which plaintiff demands further responses to be duplicative of one or more of
22 the January Discovery Requests:

<u>Request No.</u>	<u>Duplicative January Discovery Request(s)</u>
Interrogatories to Clorox	
13	First Interrogatories to Clorox, No. 4
14	First Interrogatories to Clorox, No. 5
15	First Interrogatories to Clorox, No. 2
16	First Interrogatories to Clorox, No. 2

17	First Interrogatories to Clorox, No. 5
Interrogatories to Nutranext	
16	First Interrogatories to Nutranext, No. 4
17	First Interrogatories to Nutranext, No. 6
18	First Interrogatories to Nutranext, No. 5
19	First Interrogatories to Nutranext, Nos. 2,5
20	First Interrogatories to Nutranext, No. 6
Requests for Production to Clorox	
26	First RFPs to Clorox, Nos. 6, 17
27	First RFPs to Clorox, Nos. 5, 11, 13
28	First RFPs to Clorox, Nos. 7, 17
29	First RFPs to Clorox, Nos. 7, 17
30	First RFPs to Clorox, Nos. 5, 6, 13, 17
Requests for Production to Nutranext	
34	First RFPs to Nutranext, Nos. 8, 9
35	First RFPs to Nutranext, Nos. 6, 7, 10, 14, 16, 17
36	First RFPs to Nutranext, Nos. 8, 9, 10, 21
37	First RFPs to Nutranext, Nos. 8, 9, 10, 21
38	First RFPs to Nutranext, Nos. 8, 9, 10, 21

Plaintiff’s argument that its demonstrably repetitive discovery is “not duplicative” because the later-served requests were “prepared after [p]laintiff had engaged an expert on damages” is not persuasive. *Jt. Mot.* at 5. Plaintiff does not cite any authority that permits the Court to overlook unreasonably duplicative discovery requests so long as they were drafted with input from an expert consultant. To the contrary, Federal Rule of Civil Procedure 26(b) *requires* the Court to “limit” such discovery. *See Fed. R. Civ. P.* 26(b)(2)(C)(i) (directing that the court “must limit” unreasonably duplicative discovery); *see also Bird*, 2013 WL 1120659, at *1 (finding that propounding “substantially similar” discovery requests may justify issuance of a protective order).

1 Furthermore, the Court’s review revealed that an overwhelming number of the
2 interrogatories and document requests served in April were nearly identical to the January
3 Discovery Requests on a broad range of topics, including but not limited to damages.
4 Although these other requests are not the subject of the Joint Motion, the fact that
5 plaintiff served so many substantially similar requests, and on a wide range of subjects,
6 undermines its position that the later-served discovery merely reflects input from its
7 damages expert. If plaintiff belatedly concluded that defendants’ responses to the
8 January Discovery Requests were insufficient, the proper course would have been to
9 petition the Court for more time to meet and confer and pursue relief – not to “attempt to
10 revive the filing deadline” by propounding duplicative discovery requests. *Cruz*, 2016
11 WL 727066, at *3 (S.D. Cal. Feb. 24, 2016); *see also Ramirez v. Zimmerman*, No. 3:17-
12 cv-1230-BAS-NLS, 2019 WL 2179538, at *7 (S.D. Cal. May 20, 2019) (denying motion
13 to compel as untimely because “[p]laintiff’s re-issuance of a discovery request does not
14 re-start the clock”).

15 Accordingly, the Court further finds that because the discovery requests at issue in
16 the Joint Motion are duplicative of the January Discovery Requests, the Joint Motion is
17 untimely. *See Pac. Marine Propellers, Inc. v. Wartsila Defense, Inc.*, No. 17cv555 BEN
18 (NLS), 2018 WL 1605177, at *3 (S.D. Cal. Apr. 3, 2018) (denying as untimely motion to
19 compel responses to document request that sought “substantially similar” information as
20 earlier-served discovery, and collecting cases). To hold otherwise would reward plaintiff
21 for its “own lack of due diligence” and undermine the Court’s ability to enforce the
22 discovery deadlines clearly set out in its Chambers Rules. *ViaSat, Inc. v. Space*
23 *Systems/Loral Inc.*, No. 12–CV–0260–H (WVG), 2013 WL 3467413, at *6 (S.D. Cal.
24 July 10, 2013). This Court “is not inclined to indicate to these parties, or any parties, that
25 they will be allowed to do an end run” around those deadlines. *Id.*

26 **2. Defendants’ Other Objections**

27 Although the Court finds the Joint Motion untimely, it will nevertheless address
28 defendants’ other objections. Preliminarily, the Court rejects defendants’ argument that

1 the discovery requests seek “wholly irrelevant” information. Jt. Mot. at 15. Defendants’
2 position is that because plaintiff’s Complaint identifies only one product by name –
3 Collagen 2 Joint Complex – that they are only required to produce responsive
4 information related to that product. Jt. Mot. at 13.

5 The Court disagrees. Under Rule 26, relevance is “construed broadly” and
6 “[d]iscovery is not limited to the issues raised only in the pleadings but rather it is
7 designed to define and clarify the issues.” *Hampton v. City of San Diego*, 147 F.R.D.
8 227, 229 (S.D. Cal. 1993); *see also Gonzales v. Google, Inc.*, 234 F.R.D. 674, 679-80
9 (N.D. Cal. 2006) (noting that “[r]elevancy, for the purposes of discovery, is defined
10 broadly, although it is not without ‘ultimate and necessary boundaries’”) (citation
11 omitted). Plaintiff’s Complaint alleges that defendants “have purposely made false and
12 misleading descriptions of fact concerning the nature, characteristics and qualities of its
13 Chicken Collagen Type II products. For example and without limitation, Neocell
14 Collagen2 Joint Complex ...” Complaint, ¶31; *see also id.*, ¶39 (“Defendants have
15 misrepresented the nature, characteristics, and qualities of their Chicken Collagen Type II
16 products ...”). The discovery at issue requests documents and information regarding
17 defendants’ “COLLAGEN PRODUCTS,” which term is defined as “collectively, any
18 product or ingredient manufactured and/or sold by YOU containing type II collagen.
19 YOUR production and sale of COLLAGEN PRODUCTS is the subject of this action.”⁴
20 The Court cannot conclude that the discovery seeks a “broad swath of ... financial
21 information” untethered to plaintiff’s claims. *In re Wells Fargo Residential Mortg.*
22 *Lending Discrimination Litig.*, 2009 WL 1771368, at *5 (N.D. Cal. June 19, 2009)
23 (denying motion to compel).⁵

24
25
26 ⁴ The Court takes no position, however, on whether documents and testimony submitted by plaintiff
“show[]” that Joint Complex 2 is “not the only product” that meets this definition. Jt. Mot. at 8.

27 ⁵ Defendants also briefly assert that the discovery is also “not proportional to the needs of the case.” Jt.
28 Mot. at 13. That argument appears to be predicated on defendants’ position that the information and
documents sought are not relevant, and for the reasons discussed above, the Court rejects it.

1 Nevertheless, defendants represent to the Court that notwithstanding their
2 objections, they have already “produced all documents within their control which are
3 responsive to the subject requests and pertain to the product at issue.” Jt. Mot. at 16.
4 Defendants further explain that Nutranext acquired Neocell (the original retailer of the
5 allegedly falsely-labeled product) in July 2017, and then Clorox acquired Nutranext in
6 April 2018. *Id.* Neither Clorox nor Nutranext has financial information predating
7 Nutranext’s acquisition of Neocell in July 2017, and the financial records they do possess
8 were not maintained at the level of detail plaintiff seeks. *Id.* Defendants’ Rule 30(b)(6)
9 designees confirmed, under oath, the lack of responsive documents and information and
10 that the reason no documents existed was because neither Clorox nor Nutranext
11 maintained pre-acquisition financial records. Doc. No. 96 at 5:20-6:22; Doc. No. 96-1, at
12 5:17-24; 6:18-21; 7:16-8:5; 11:7-24.⁶

13 It is well-established that “[t]he Court cannot compel production of that which
14 does not exist or is not in the possession and control of [defendants].” *Acosta v. JY*
15 *Harvesting, Inc.*, No. 17-CV-1225-CAB-WVG, 2017 WL 3437654, at *3 (S.D. Cal. Aug.
16 10, 2017) (collecting cases). Defendants have made a representation to the Court,
17 corroborated by the under-oath testimony of their corporate designees, that all available
18 information and documents have been produced. Plaintiff is skeptical, but “[a] plaintiff’s
19 mere suspicion that additional documents must exist is an insufficient basis to grant a
20 motion to compel.” *In re Rivera*, No. CV 16-4676 JAK (SSx), 2017 WL 5163695, at *3
21 (E.D. Cal. Apr. 14, 2017) (*citing Bethea v. Comcast*, 218 F.R.D. 328, 329 (D.D.C. 2003)).
22 Plaintiff points to testimony from defendants’ witnesses in which they disclaim
23 knowledge of whether additional documents exist. Jt. Mot. at 9-10. However, a careful
24

25
26 Furthermore, defendants did not submit a declaration or other “competent evidence” supporting their
objection, as they were required to do. *See Lofton*, 308 F.R.D. at 281.

27 ⁶ Working from the information that was available, however, defendants compiled and produced to
28 plaintiff a “financial spreadsheet providing detailed estimates, on a quarterly basis, of costs and profit
for the product at issue” for the period April 2018 to the date of production. Jt. Mot. at 17.

1 reading of the testimony shows that the witnesses confirmed that the documents plaintiff
2 seeks likely do not exist, for the reasons defendants have explained in the Joint Motion.
3 Thus, plaintiff has not established that there is reason to doubt defendants’ representation
4 that they have produced all responsive documents in their possession or control. *See*
5 *Garcia v. Blahnik*, No. 14cv875-LAB-BGS, 2016 WL 385584, at *3 (S.D. Cal. July 15,
6 2016) (denying motion to compel where responding party “confirmed under oath that
7 they provided all available information, and the Court ha[d] no reason to question that
8 claim”). Accordingly, even if the Joint Motion were timely, the Court would deny
9 plaintiff’s Motion to Compel further responses to its document requests on the alternative
10 basis that the Court cannot compel defendants to produce nonexistent documents.

11 **II. MOTION TO SEAL**

12 **A. Preliminary Statement**

13 At the outset, the Court notes that the parties’ many procedural steps have made it
14 difficult for the Court to discern what information is subject to a request to seal, and the
15 basis of that request. For example, this Court’s Civil Chambers Rules state that all
16 “necessary and relevant exhibits” should be attached to the Joint Motion. Chambers
17 Rules and Civil Pretrial Procedures for the Honorable Karen S. Crawford, § VIII.E.1.c.
18 Instead, plaintiff and defendants filed a single Motion to Seal (Doc. No. 93), but
19 inexplicably filed their supporting exhibits – some of them duplicates – separately. *See*
20 Doc. Nos. 94, 96, 97. Both parties filed excerpts of the depositions of Rule 30(b)(6)
21 witnesses Daulerio and Brown, although the pages excerpted from the transcripts varied
22 between the parties. Pursuant to the Court’s order (Doc. No. 86), plaintiff lodged the
23 subject discovery directly with Chambers – yet also attempted to file it under seal, but
24 instead placed the redacted copies of the exhibits on the Court’s docket twice. For their
25 part, Defendants did not lodge any documents, successfully filed exhibits under seal, but
26 failed to file or otherwise provide the Court with proposed redactions to the under-seal
27 exhibits. These procedural choices caused needless confusion and inefficiency. The

28 //

1 parties are requested to meet and confer going forward to organize their exhibits for a
2 single, joint filing.

3 **B. Legal Standard**

4 “[T]he courts of this country recognize a general right to inspect and copy public
5 records and documents, including judicial records and documents.” *Nixon v. Warner*
6 *Comm’ns, Inc.*, 435 U.S. 589, 597 (1978). “Unless a particular court record is one
7 ‘traditionally kept secret,’ a ‘strong presumption in favor of access’ is the starting point.”
8 *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citing *Foltz*
9 *v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). ““The
10 presumption of access is ‘based on the need for federal courts, although independent—
11 indeed, particularly because they are independent—to have a measure of accountability
12 and for the public to have confidence in the administration of justice.’” *Ctr. for Auto*
13 *Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016) (quoting *United States*
14 *v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995)). The party requesting that documents be
15 sealed bears the burden of overcoming the strong presumption of access. *Foltz*, 331 F.3d
16 at 1135. Where, as here, the documents to be sealed are attached to a non-dispositive
17 discovery motion, the party requesting sealing must make a “‘particularized showing’” of
18 “‘good cause.’” *Kamakana*, 447 F.3d at 1180 (quoting *Foltz*, 331 F.3d at 1137). “Good
19 cause exists where the party seeking protection shows that specific prejudice or harm will
20 result” if the request to seal is denied. *Anderson v. Marsh*, 312 F.R.D. 584, 594 (E.D.
21 Cal. 2015).

22 **C. Discussion**

23 In support of the Motion to Seal, plaintiff represents that the exhibits attached to
24 his declaration were designated “confidential” or “highly confidential” pursuant to the
25 blanket protective order in place in the action. Doc. No. 93 at 2-3. Defendants filed their
26 exhibits as related to the Motion to Seal but did not state any additional reasons why the
27 proposed exhibits should be sealed. Doc. No 96. In this Circuit, however, that does not
28 suffice to establish good cause. See *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470,

1 476 (9th Cir. 1992) (noting that blanket protective orders are “by nature overinclusive”
2 and do not require a “‘good cause’ showing under [Rule] 26”); *see also Small v. Univ.*
3 *Med. Ctr. of S. Nevada*, No. 2:13-cv-00298-APG-PAL, 2015 WL 1281549, at *3 (D.
4 Nev. Mar. 20, 2015) (*citing Kamakana*, 447 F.3d at 1183) (noting that “[b]lanket
5 protective orders are entered to facilitate the exchange of discovery documents” and do
6 not make any “findings that a particular document is confidential or that a document’s
7 disclosure would cause harm.”). The fact that defendants designated documents and
8 testimony confidential is not, “[s]tanding alone,” sufficient to establish good cause for
9 sealing them. *Benchmark Young Adult School, Inc. v. Launchworks Life Svcs., LLC*, No.
10 12-cv-02953-BAS(BGS), 2015 WL 2062046, at *2 (S.D. Cal. Apr. 30, 2015). Because
11 the Court finds that neither party has made the requisite “particularized showing,” the
12 Court cannot seal the documents as requested.

13 However, the Court observes that the exhibits to plaintiff’s counsel’s declaration,
14 which were lodged with chambers but not filed on the docket, were neither relevant nor
15 necessary to the Court’s determination of this dispute. To the extent the Court did not
16 rely on the exhibits (and counsel’s verbatim recitation of them in his declaration), there is
17 no need to further burden the Court’s docket with superfluous documents. These
18 documents will be returned to plaintiff’s counsel. Conversely, a review of the subject
19 discovery requests was critical to the Court’s determination that the Joint Motion was
20 untimely. These documents were also lodged with chambers, but not filed on the docket,
21 leaving the record incomplete. The Court also relied on the deposition excerpts
22 submitted by defendants in determining that defendants had produced all responsive
23 documents. Doc. Nos. 96, 96-1. These excerpts were filed under seal, and, consistent with
24 the terms of the protective order, the Court will allow defendants 4 days from the date of
25 this Order to make a showing that those transcript excerpts should remain under seal. If
26 defendants choose to do so, they are advised to keep the above principles in mind, as well
27 as the Court’s responsibility to ensure that *only* the information that is necessary to
28 protect defendants from harm is sealed. *See In re Roman Catholic Archbishop of*

1 *Portland in Or.*, 661 F.3d 417, 425 (9th Cir. 2011) (in determining whether to seal
2 documents, “a court must still consider whether redacting portions of the discovery
3 material will nevertheless allow disclosure”).

4 **ORDER**

5 For the foregoing reasons, the Court hereby ORDERS that:

- 6 1. Plaintiff’s Motion to Compel further responses to Interrogatories No. 13-17 to
7 Clorox; Interrogatories No. 16-19 to Nutranext; Requests for Production No.
8 26-30 to Clorox; and Requests for Production No. 34-38 to Nutranext is
9 DENIED;
- 10 2. Plaintiff’s request for his expenses, including attorneys’ fees, is DENIED;
- 11 3. The parties’ Motion to Seal (Doc. No. 93) is DENIED AS MOOT;
- 12 4. Within 4 days of the date of this Order, plaintiff **shall** file on the public docket
13 the following discovery requests, dated April 10, 2020:
- 14 • Plaintiff Certified Nutraceuticals, Inc.’s Second Set of Requests for
15 Production of Documents to Defendant The Clorox Company;
 - 16 • Plaintiff Certified Nutraceuticals, Inc.’s Second Set of Requests for
17 Production of Documents to Defendant Nutranext;
 - 18 • Plaintiff Certified Nutraceuticals, Inc.’s Second Set of Interrogatories to
19 Defendant The Clorox Company;
 - 20 • Plaintiff Certified Nutraceuticals, Inc.’s Second Set of Interrogatories to
21 Defendant Nutranext;

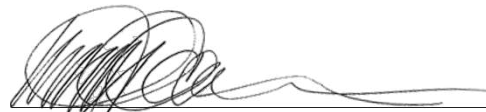
21 and

22 //
23 //
24 //
25 //
26 //
27 //
28 //

1 5. Within 4 days of the date of this Order, defendants **shall** either file Documents
2 96 and 96-1 (Exhibits B and C to the Young Declaration) on the public docket;
3 **OR** move to seal Documents 96 and 96-1, which motion shall be accompanied
4 by proposed redactions to the documents and be supported by a declaration or
5 other competent evidence of the potential harm from disclosure of the
6 information.

7 **IT IS SO ORDERED.**

8 Dated: July 28, 2020

A handwritten signature in black ink, appearing to read 'Karen S. Crawford', written over a horizontal line.

Hon. Karen S. Crawford
United States Magistrate Judge

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28