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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CROSSFIT, INC., a Delaware
corporation,

Plaintiff,

v.

NATIONAL STRENGTH AND
CONDITIONING ASSOCIATION, a
Colorado corporation,

Defendant.

CASE NO. 14cv1191-JLS(KSC)

PROTECTIVE ORDER

Judge: The Honorable Janis L.
Sammartino

The Honorable Karen S.
Crawford

The Court recognizes that at least some of the documents and information (“materials”) being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order (“Order”) in this action.

The materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, technical, cost, price, marketing or other commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(1)(G). The purpose of this

1 Order is to protect the confidentiality of such materials as much as practical during
2 the litigation.

3 THEREFORE, the Court, after considering the parties' Joint Motion for
4 Entry of the Protective Order, hereby grants the motion. Accordingly, it is hereby
5 ordered that the following Protective Order will govern the production of material
6 in this case:

7 **DEFINITIONS**

8 **1.** The term "Confidential Information" will mean and include information
9 contained or disclosed in any materials, including documents, portions of
10 documents, answers to interrogatories, responses to requests for admissions, trial
11 testimony, deposition testimony, and transcripts of trial testimony and depositions,
12 including data, summaries, and compilations derived therefrom that is deemed to
13 be Confidential Information by any party to which it belongs.

14 **2.** The term "materials" will include, but is not limited to, electronically stored
15 information, documents, and e-mail.

16 **(a)** "Electronically Stored Information" or "ESI" carries its broadest
17 possible meaning consistent with Fed. R. Civ. P. 34(a) and Fed. R. Evid. 1001.

18 **(b)** "Document" carries its broadest meaning consistent with Fed. R. Civ.
19 P. 34 and includes both ESI and Paper Discovery.

20 **(c)** "E-mail" means an electronic means for communicating written
21 information through non-telephone systems that will send, store, process and
22 receive information.

23 **3.** The term "counsel" will mean outside counsel of record, in-house attorneys
24 for Plaintiff CrossFit, Inc. and in-house attorneys for Defendant National Strength
25 and Conditioning Association, and other attorneys, paralegals, secretaries, and
26 other support staff employed in the law firms identified below: Latham & Watkins
27 LLP and Manning & Kass, Ellrod, Ramirez, Trester LLP.
28

GENERAL RULES

1
2 **4.** Each party to this litigation that produces or discloses any materials, answers
3 to interrogatories, responses to requests for admission, trial testimony, deposition
4 testimony, and transcripts of trial testimony and depositions, or information that
5 the producing party believes should be subject to this Protective Order may
6 designate the same as “CONFIDENTIAL” or “CONFIDENTIAL - FOR
7 COUNSEL ONLY.”

8 (a) Designation as “CONFIDENTIAL”: Any party may designate
9 information as “CONFIDENTIAL” only if, in the good faith belief of such party
10 and its counsel, the unrestricted disclosure of such information could be
11 potentially prejudicial to the business or operations of such party.

12 (b) Designation as “CONFIDENTIAL - FOR COUNSEL ONLY”: Any
13 party may designate information as “CONFIDENTIAL - FOR COUNSEL
14 ONLY” only if, in the good faith belief of such party and its counsel, the
15 information is among that considered to be most sensitive by the party, including
16 but not limited to trade secret or other confidential research, development,
17 financial or other commercial information.

18 **5.** In the event the producing party elects to produce materials for inspection,
19 no marking need be made by the producing party in advance of the initial
20 inspection. For purposes of the initial inspection, all materials produced will be
21 considered as “CONFIDENTIAL - FOR COUNSEL ONLY,” and must be treated
22 as such pursuant to the terms of this Order. Thereafter, upon selection of specified
23 materials for copying by the inspecting party, the producing party must, within a
24 reasonable time prior to producing those materials to the inspecting party, mark the
25 copies of those materials that contain Confidential Information with the
26 appropriate confidentiality marking.

27 **6.** Whenever a deposition taken on behalf of any party involves a disclosure of
28 Confidential Information of any party:

(a) the deposition or portions of the deposition must be designated as containing Confidential Information subject to the provisions of this Order; such designation must be made on the record whenever possible, but a party may designate portions of depositions as containing Confidential Information after transcription of the proceedings; A party will have until fourteen (14) days after receipt of the deposition transcript to inform the other party or parties to the action of the portions of the transcript to be designated "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY."

(b) the disclosing party will have the right to exclude from attendance at the deposition, during such time as the Confidential Information is to be disclosed, any person other than the deponent, counsel (including their staff and associates), the court reporter, and the person(s) agreed upon pursuant to paragraph 8 below; and

(c) the originals of the deposition transcripts and all copies of the deposition must bear the legend "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY," as appropriate, and the original or any copy ultimately presented to a court for filing must not be filed unless it can be accomplished under seal, identified as being subject to this Order, and protected from being opened except by order of this Court.

7. All Confidential Information designated as "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY" must not be disclosed by the receiving party to anyone other than those persons designated within this order and must be handled in the manner set forth below and, in any event, must not be used for any purpose other than in connection with this litigation, unless and until such designation is removed either by agreement of the parties, or by order of the Court.

8. Information designated "CONFIDENTIAL - FOR COUNSEL ONLY" must be viewed only by counsel (as defined in paragraph 3) of the receiving party, and by independent experts under the conditions set forth in this Paragraph, provided

1 that such experts execute a copy of the form attached hereto as Exhibit A.

2 **9.** Information designated "CONFIDENTIAL" must be viewed only by
3 counsel (as defined in paragraph 3) of the receiving party, by independent experts
4 (pursuant to the terms of paragraph 8), and by the additional individuals listed
5 below, provided each such individual has read this Order in advance of disclosure
6 and has agreed in writing to be bound by its terms:

7 (a) Executives who are required to participate in policy decisions with
8 reference to this action;

9 (b) Persons being deposed or testifying at trial in this action and any other
10 witnesses or potential witnesses, to the extent such disclosure is deemed necessary
11 by counsel for the prosecution or defense of this action, during the course of
12 depositions or testimony in this action and, to the extent necessary, in preparation
13 for such depositions or testimony in this action, provided, however, that a person
14 identified solely in this subparagraph shall not be permitted to retain copies of
15 materials designated "CONFIDENTIAL";

16 (c) Technical personnel of the parties with whom Counsel for the parties
17 find it necessary to consult, in the discretion of such counsel, in preparation for
18 trial of this action; and

19 (d) Stenographic and clerical employees associated with the individuals
20 identified above.

21 **10.** With respect to material designated "CONFIDENTIAL" or
22 "CONFIDENTIAL - FOR COUNSEL ONLY," any person indicated on the face of
23 the document to be its originator, author or a recipient of a copy of the document,
24 may be shown the same.

25 **11.** All information which has been designated as "CONFIDENTIAL" or
26 "CONFIDENTIAL -FOR COUNSEL ONLY" by the producing or disclosing
27 party, and any and all reproductions of that information, must be retained in the
28 custody of the counsel for the receiving party identified in paragraph 3, except that

1 independent experts authorized to view such information under the terms of this
2 Order may retain custody of copies such as are necessary for their participation in
3 this litigation.

4 **12.** Before any materials produced in discovery, answers to interrogatories,
5 responses to requests for admissions, deposition transcripts, or other documents
6 which are designated as Confidential Information are filed with the Court for any
7 purpose, the party seeking to file such material must seek permission of the Court
8 to file the material under seal. Nothing shall be filed under seal, and the Court
9 shall not be required to take any action, without separate prior order by the Judge
10 before whom the hearing or proceeding will take place, after application by the
11 affected party with appropriate notice to opposing counsel. The parties shall follow
12 and abide by applicable law, including Civ. L.R. 79.2, ECF Administrative Policies
13 and Procedures, Section II.j, and the chambers' rules, with respect to filing
14 documents under seal.

15 **13.** At any stage of these proceedings, any party may object to a designation of
16 the materials as Confidential Information. The party objecting to confidentiality
17 must notify, in writing, counsel for the designating party of the objected-to
18 materials and the grounds for the objection. If the dispute is not resolved
19 consensually between the parties within seven (7) days of receipt of such a notice
20 of objections, the objecting party may move the Court for a ruling on the objection.
21 The materials at issue must be treated as Confidential Information, as designated
22 by the designating party, until the Court has ruled on the objection or the matter
23 has been otherwise resolved.

24 **14.** All Confidential Information must be held in confidence by those inspecting
25 or receiving it, and must be used only for purposes of this action. Counsel for each
26 party, and each person receiving Confidential Information must take reasonable
27 precautions to prevent the unauthorized or inadvertent disclosure of such
28 information. If Confidential Information is disclosed to any person other than a

1 person authorized by this Order, the party responsible for the unauthorized
2 disclosure must immediately bring all pertinent facts relating to the unauthorized
3 disclosure to the attention of the other parties and, without prejudice to any rights
4 and remedies of the other parties, make every effort to prevent further disclosure
5 by the party and by the person(s) receiving the unauthorized disclosure.

6 **15.** No party will be responsible to another party for disclosure of Confidential
7 Information under this Order if the information in question is not labeled or
8 otherwise identified as such in accordance with this Order.

9 **16.** If a party, through inadvertence, produces any Confidential Information
10 without labeling or marking or otherwise designating it as such in accordance with
11 this Order, the designating party may give written notice to the receiving party that
12 the document or thing produced is deemed Confidential Information, and that the
13 document or thing produced should be treated as such in accordance with that
14 designation under this Order. The receiving party must treat the materials as
15 confidential, once the designating party so notifies the receiving party. If the
16 receiving party has disclosed the materials before receiving the designation, the
17 receiving party must notify the designating party in writing of each such
18 disclosure. Counsel for the parties will agree on a mutually acceptable manner of
19 labeling or marking the inadvertently produced materials as "CONFIDENTIAL" or
20 "CONFIDENTIAL - FOR COUNSEL ONLY".

21 **17.** Nothing within this order will prejudice the right of any party to object to the
22 production of any discovery material on the grounds that the material is protected
23 as privileged or as attorney work product.

24 **18.** Nothing in this Order will bar counsel from rendering advice to their clients
25 with respect to this litigation and, in the course thereof, relying upon any
26 information designated as Confidential Information, provided that the contents of
27 the information must not be disclosed.

28 **19.** This Order will be without prejudice to the right of any party to oppose

1 production of any information for lack of relevance or any other ground other than
2 the mere presence of Confidential Information. The existence of this Order must
3 not be used by either party as a basis for discovery that is otherwise improper
4 under the Federal Rules of Civil Procedure.

5 **20.** Nothing within this order will be construed to prevent disclosure of
6 Confidential Information if such disclosure is required by law or by order of the
7 Court.

8 **21.** If a party (the "Disclosing Party") concludes that it has been compelled, by
9 subpoena or other form of judicial or other compulsory process, to disclose
10 information or Material designated as "CONFIDENTIAL" or "CONFIDENTIAL -
11 FOR COUNSEL ONLY" under the terms hereof to any person other than those to
12 whom disclosure is permitted in paragraphs 8, 9 or 10, the Disclosing Party shall as
13 promptly as possible provide written notice, and include a copy of the subpoena or
14 request, to counsel for the producing party of the Disclosing Party's intention to
15 disclose Confidential Information or Highly Confidential Information. The
16 purpose of this paragraph is to give the producing Party an opportunity to object to
17 the disclosure of such materials pursuant to compulsory process.

18 **22.** Upon final termination of this action, including any and all appeals, counsel
19 for each party must, upon request of the producing party, return all Confidential
20 Information to the party that produced the information, including any copies,
21 excerpts, and summaries of that information, or must destroy same at the option of
22 the receiving party, and must purge all such information from all machine-readable
23 media on which it resides. Notwithstanding the foregoing, counsel for each party
24 may retain all pleadings, briefs, memoranda, motions, and other documents filed
25 with the Court that refer to or incorporate Confidential Information, and will
26 continue to be bound by this Order with respect to all such retained information.
27 Further, attorney work product materials that contain Confidential Information
28 need not be destroyed, but, if they are not destroyed, the person in possession of

1 the attorney work product will continue to be bound by this Order with respect to
2 all such retained information.

3 **23.** The restrictions and obligations set forth within this order will not apply to
4 any information that: (a) the parties agree should not be designated Confidential
5 Information; (b) the parties agree, or the Court rules, is already public knowledge;
6 (c) the parties agree, or the Court rules, has become public knowledge other than as
7 a result of disclosure by the receiving party, its employees, or its agents in
8 violation of this Order; or (d) has come or will come into the receiving party's
9 legitimate knowledge independently of the production by the designating party.
10 Prior knowledge must be established by pre-production documentation.

11 **24.** The restrictions and obligations within this order will not be deemed to
12 prohibit discussions of any Confidential Information with anyone if that person
13 already has or obtains legitimate possession of that information.

14 **25.** Transmission by electronic mail is acceptable for all notification purposes
15 within this order.

16 **26.** This Order may be modified by agreement of the parties, subject to approval
17 by the Court.

18 **27.** The Court may modify the terms and conditions of this Order for good
19 cause, or in the interest of justice or for public policy reasons, or on its own order
20 at any time in these proceedings. The parties prefer that the Court provide them
21 with notice of the Court's intent to modify the Order and the content of those
22 modifications, prior to entry of such an order.

23 IT IS SO ORDERED.

24 Date: Aug. 11, 2014

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KAREN S. CRAWFORD
United States Magistrate Judge

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CROSSFIT, INC., a Delaware
corporation,

Plaintiff,

CASE NO. 14 CIV. 1191

vs.

**AGREEMENT REGARDING
COMPLIANCE WITH
PROTECTIVE ORDER**

NATIONAL STRENGTH AND
CONDITIONING ASSOCIATION, a
Nebraska corporation,

Defendant.

I, [●], declare and say that:

1. I am employed as [●] by [●].

2. I have read the Protective Order entered in [●] v. [●], Case No. [●], and have received a copy of the Protective Order.

3. I promise that I will use any and all "Confidential" or "Confidential - For Counsel Only" information, as defined in the Protective Order, given to me only in a manner authorized by the Protective Order, and only to assist counsel in the litigation of this matter.

4. I promise that I will not disclose or discuss such "Confidential" or "Confidential - For Counsel Only" information with anyone other than the persons described in paragraphs 3, 8 and 9 of the Protective Order.

5. I acknowledge that, by signing this agreement, I am subjecting myself

1 to the jurisdiction of the United States District Court for the Southern District of
2 California with respect to enforcement of the Protective Order.

3 6. I understand that any disclosure or use of "Confidential" or
4 "Confidential - For Counsel Only" information in any manner contrary to the
5 provisions of the Protective Order may subject me to sanctions for contempt of
6 court.

7
8 I declare under penalty of perjury that the foregoing is true and correct.

9
10 Date: _____

11
12 _____