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12
13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15
16 CROSS-FIT, INC., a Delaware
corporation,

17 Plaintiff,

18 v.

19 NATIONAL STRENGTH AND
20 CONDITIONING ASSOCIATION, a
Colorado corporation,

21 Defendant.
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Case No. 14CV1191 JLS KSC

**DEFENDANT'S APPLICATION TO
FILE MATERIALS UNDER SEAL**

Judge: The Honorable Janis L.
Sammartino

Hearing date: June 16, 2016 at 1:30pm
Courtroom: 4A

Pursuant to Local Rule 79.2 and Chambers Rule IX, Defendant hereby applies to file certain documents, listed below, under seal (the “Application”). Redacted copies of these documents will be publicly filed.

1. Defendant's Memorandum of Points and Authorities in Support of Opposition to Plaintiff's Motion for Partial Summary Judgment on the Element of Falsity;

2. Defendant's Opposition to Plaintiff's Separate Statement of Undisputed Material Facts in Support of Motion for Partial Summary Judgment on the Element of Falsity;

3. Defendant's Request for Judicial Notice in Support of Opposition to Plaintiff's Motion for Partial Summary Judgment on the Element of Falsity;

4. Declaration of Kenneth S. Kawabata ("Kawabata Declaration") in support of Defendant's Opposition to Plaintiff's Motion for Partial Summary Judgment on the Element of Falsity; and

5. Exhibits 8 and 9 attached to the Kawabata Declaration.

This application is made on the grounds that “[c]ompelling reasons” exist to allow public filing of the redacted documents, and sealing of the unredacted versions. *Foltz v. State Farm Mut. Auto Ins Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003).

Specifically, Plaintiff has filed under seal its Memorandum of Points and Authorities, its Separate Statement, its supporting Nahama Declaration, and various exhibits (namely, Exhibits D through N, O, P, T, U, V, and KK), pursuant to confidentiality concerns regarding study participants' identifying information and documents marked "confidential" that were disclosed in discovery. Defendant has similar concerns. Although most of the exhibits attached to the Kawabata Declaration in support of Defendant's Opposition do not contain any confidential information, and thus are not subject to this Application, **(1) Defendant's Memorandum of Points and Authorities, (2) Defendant's Request for Judicial Notice, (3) Defendant's Opposition to Plaintiff's Separate Statement, (4) the Kawabata Declaration, and**

1 **(5) Exhibits 8 and 9 to the Kawabata Declaration** rely on Plaintiff's various
 2 documents filed under seal and/or are documents that themselves contain confidential
 3 information.

4 Accordingly, because this Court has already granted Plaintiff's Application,
 5 Defendant, out of an abundance of caution, seeks to file the aforementioned documents
 6 under seal. This Application balances the public's interest in disclosure by seeking
 7 primarily the redaction of names and limited substantive content. *See In re Midland*
 8 *Nat'l Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1120 (9th Cir. 2012)
 9 (ordering "the district court [to] permit the parties in the underlying cases to redact
 10 sensitive personal . . . information before unsealing the records"). Defendant requests
 11 that the Court enter an order permitting the above referenced documents to be filed
 12 under seal. A Proposed Order granting this Application has been submitted herewith.

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 15 DATED: May 5, 2016

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

16
 17
 18 By: /s/ Kenneth S. Kawabata
 19 Kenneth S. Kawabata
 20 Attorneys for Defendant NATIONAL
 21 STRENGTH AND CONDITIONING
 22 ASSOCIATION
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PROOF OF SERVICE

Cross-Fit, Inc. v. National Strength and Conditioning Association;
USDC Case No.: 14CV1191 JLS KSC

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 801 S. Figueroa St, 15th Floor, Los Angeles, CA 90017-3012.

On May 5, 2016, I served true copies of the following document(s) described as **DEFENDANT'S APPLICATION TO FILE MATERIALS UNDER SEAL** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Manning & Kass, Ellrod, Ramirez, Trester LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Los Angeles, California.

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

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

Executed on May 5, 2016, at Los Angeles, California.

_____/S/
Evelia Izaguirre

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW

SERVICE LIST

Cross-Fit, Inc. v. National Strength and Conditioning Association;
USDC Case No.: 14CV1191 JLS KSC

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