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5 ATTORNEYS FOR THE DEBTOR

6 **UNITED STATES BANKRUPTCY COURT**
7 **DISTRICT OF ARIZONA**

8 In re:
9 NUTRACEA, a California corporation,
10 Debtor.

Chapter 11

Case No. 2-09-bk-28817-CGC

**APPLICATION OF DEBTOR FOR
APPROVAL OF EMPLOYMENT
OF COLUMBIA WEST CAPITAL,
LLC ON A FIXED FEE BASIS
PURSUANT TO 11 U.S.C. § 328(a)**

15 Pursuant to 11 U.S.C. § 328(a) and Bankruptcy Rule 2014, Debtor hereby applies
16 for approval of its employment of Columbia West Capital, LLC (“**Columbia**”) to perform
17 a Full Service Business Valuation (the “**Valuation**”) of Debtor’s two affiliates: Rice
18 Science, LLC and RiceRx, LLC. Columbia is to be employed on a fixed fee basis,
19 subject only to the Court’s right of review under 11 U.S.C. § 328(a). Debtor requests that
20 it be authorized to pay Columbia’s fee without further order of the court. In support of
21 this application, Debtor states as follows:

22 1. The court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 527 and
23 1334. This is a core proceeding under 28 U.S.C. § 157(d)(2)(B) and (O).

24 2. Debtor filed its voluntary petition under Chapter 11 of the Bankruptcy Code
25 on November 10, 2009.

1 3. Debtor is a publicly traded health-science company that develops and
2 distributes stabilized rice bran and proprietary rice bran formulations.

3 4. Debtor requires the Valuation of Rice Science, LLC and RiceRx, LLC for
4 possible use in connection with one or more financing transaction and for use in
5 formulating a plan of reorganization.

6 5. Columbia has agreed to perform the Valuation for a fixed fee of \$20,000,
7 50% of which is to be paid upon court approval of its employment, with the balance to be
8 paid upon delivery of the Valuation report. A copy of Debtor's engagement agreement
9 with Columbia is attached as Exhibit "1" to the attached declaration of Guy Downing.

10 6. A declaration of disinterestedness by Columbia's Managing Director, Guy
11 Downing is attached hereto.

12 7. Debtor believes that Columbia's fee is reasonable and is comparable to fees
13 charged by other investment bankers for similar work.

14 8. Debtor requests that the court approve the payment of Columbia's fee under
15 § 328(a) of the Bankruptcy Code and that it be authorized to pay it without further order
16 of the court.

17 9. Pursuant to § 328(a) of the Code, Columbia's fee would remain subject to
18 adjustment if the court were to determine that the terms and conditions of its employment
19 were improvident in light of developments that could not have been anticipated at this
20 time.

21 WHEREFORE, Debtor requests that it be authorized to employ Columbia pursuant
22 to § 328(a) of the Bankruptcy Code and that it be authorized to pay its fee without further
23 order of the court.

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Dated this 26th day of May, 2010.

FORRESTER & WORTH, PLLC

/s/ SCF (006342)
S. Cary Forrester
Attorneys for Debtor

Copy emailed May 26, 2010 and/or
mailed May 27, 2010 to all those on the
Official Notice Service List.

/s/ Carrie A. Lawrence
Carrie A. Lawrence

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5 ATTORNEYS FOR THE DEBTOR

6 **UNITED STATES BANKRUPTCY COURT**
7 **DISTRICT OF ARIZONA**

8 In re:
9 NUTRACEA, a California corporation,
10
11 Debtor.

Chapter 11
Case No. 2-09-bk-28817-CGC

**DECLARATION OF GUY
DOWNING IN SUPPORT OF
APPLICATION OF DEBTOR FOR
APPROVAL OF EMPLOYMENT
OF COLUMBIA WEST CAPITAL,
LLC ON A FIXED FEE BASIS
PURSUANT TO 11 U.S.C. § 328(a)**

15 Pursuant to 11 U.S.C. § 327(a) and Bankruptcy Rule 2014(a) Guy Downing hereby
16 declares under penalty of perjury:

17
18 1. I am managing director of Columbia West Capital, LLC (“**Columbia**”), and
19 I am authorized to make this declaration on its behalf;

20 2. Columbia is located at 14646 N. Kierland Blvd., Suite 125, Scottsdale,
21 Arizona 85254;

22 3. To the best of my knowledge, information and belief, Columbia has no
23 connection with the Debtor, its creditors, any party in interest in this case, or their
24 respective attorneys and accountants, the United States Trustee, or any person employed
25 in the office of the United States Trustee;

1 4. Columbia and Debtor have entered into an engagement agreement (the
2 **“Agreement”**), a copy of which is attached as Exhibit 1 to this Declaration.

3 5. The services to be provided by Columbia under the Agreement include the
4 following:

- 5 a. Completing a detailed review of all relevant information regarding Debtor’s
- 6 two affiliates, Rice Science, LLC and RiceRx, LLC;
- 7 b. Assisting in development of 5-year financial projections including income
- 8 statement, balance sheet and cash flow statement;
- 9 c. Analysis and review of market and competitive situation; and
- 10 d. Review of other relevant items deemed necessary in the valuation process.

11 6. The only agreement or arrangement between Columbia and Debtor for
12 payment of fees and expenses is as set forth in the Agreement. Columbia has not agreed
13 to share any fees or expenses paid to it by or on behalf of Debtor except among members
14 of the firm. Columbia has received no payment from Debtor in connection with this
15 engagement and has entered into no agreement regarding payment except as disclosed
16 herein.

17 7. The Agreement specifies that Columbia will receive a fixed fee of \$20,000,
18 50% of which is to be paid upon court approval of the employment, with the balance to be
19 paid upon delivery of a valuation report. Debtor will also reimburse Columbia for its
20 reasonable out of pocket expenses on a monthly basis.

21 8. Columbia believes that the specified fee is fair and is typical of fees and
22 commissions charged in comparable transactions. Columbia recognizes that the payment
23 of its commission is, or may be, subject to court approval.


24 9. Columbia represents no interest adverse to Debtor or the estate.

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10. Columbia holds no claim against Debtor or the estate and is not a shareholder of Debtor.

Dated this 24th day of May, 2010.



Guy Downing

EXHIBIT “1”



COLUMBIA WEST
CAPITAL, LLC
INVESTMENT BANKING

Guy Downing
gdowning@columbiawestcap.com
(480) 664-3905

May 19, 2010

PERSONAL AND CONFIDENTIAL

NutraCea
6720 North Scottsdale Rd, Suite 390
Scottsdale, AZ 85253

Attention: W John Short
Chairman & CEO

Ladies and Gentlemen:

This letter agreement confirms our understanding of the engagement of Columbia West Capital, LLC ("CWC") by NutraCea (together with its subsidiaries and affiliates, the "Company") to perform a Full Service Business Valuation (the "Valuation") of the Company's two subsidiaries, Rice Science, LLC and RiceRx, LLC (the "Subsidiaries"). CWC acknowledges that the Company has filed for protection under chapter 11 of the United States Bankruptcy Code. The Company's Chapter 11 case, entitled In re NutraCea, a California corporation, Case No. 2:09-bk-28817-CGC (the "**Bankruptcy Case**") is currently pending before the United States Bankruptcy Court, District of Arizona-Phoenix Division (the "**Bankruptcy Court**"). This Agreement and the Company's obligations hereunder are subject to approval by the Bankruptcy Court in the Bankruptcy Case.

Services. CWC will complete a detailed review of all relevant information regarding the Subsidiaries; as well as assist in developing 5-year financial projections including income statement, balance sheet and cash flow statement; analysis and review of market and competitive situation; and review of other relevant items deemed necessary in the valuation process. Upon completion of the analysis, CWC will deliver a written Valuation Report that will summarize the valuation methodologies utilized and conclusions. If requested, CWC will also present and discuss the Valuation with the Board of Directors, senior management or shareholders, as deemed appropriate by the Company.

Compensation. In connection with this engagement, the Company agrees to pay CWC a Valuation Fee of \$20,000, of which 50% is payable in cash upon the later of execution of this letter agreement or court approval and the balance of which shall be payable upon delivery of the Valuation.

A finance charge of one and one-half percent (1½%) per month will be charged by CWC on any unpaid balance over ten (10) days past due. In addition, the Company will be charged for the reasonable costs CWC incurs in collecting the Company's account for compensation owed under this subpart titled "Compensation", which charges shall include the reasonable fees and costs of CWC's attorneys arising out of CWC's collection efforts. Deposition, courtroom testimony, and related preparation on the Company's behalf for any court proceedings or related inquiries will be based upon a professional fee of \$350 per hour or any part thereof, and to the extent greater than three hours on any given day are required, a daily fee of \$1,500 will be paid to CWC. These fees will be separate and in addition to the Valuation Fee.

14646 N. Kierland Blvd., Suite 125, Scottsdale, Arizona 85254
Phone: (480) 664-3949 Fax: (480) 664-3952

Indemnification. As CWC will be acting on your behalf, you agree to indemnify CWC and certain related parties in the manner set forth in Annex A which is attached and incorporated by reference in its entirety to this letter agreement.

Use of Information. The Company will furnish (or will cause others to furnish) to CWC such information as CWC reasonably requests for purposes of performing services under this letter agreement (the "Information"). The Company hereby agrees and represents that all Information relating to the Company furnished to CWC will be accurate and complete to the best of the Company's knowledge in all material respects at the time provided, and that, if the Company is aware of any Information becoming materially inaccurate, incomplete or misleading during the engagement hereunder, the Company will promptly advise CWC. The Company recognizes and confirms that CWC assumes no responsibility for the accuracy and completeness of the Information and will be using and relying on the Information (and information available from generally recognized public sources) without assuming responsibility for independent verification or independent evaluation of any of the assets or liabilities of the Company.

Independent Contractor. The Company acknowledges that in performing its services, CWC is acting as an independent contractor with duties owing solely to the Company.

Confidentiality. The Company further acknowledges that any service, information or advice provided by CWC to the Company in connection with this engagement is for the confidential use of the Board of Directors and senior management of the Company and may not, unless required by law, be disclosed or referred to publicly or to any third party, without our prior written consent, which consent will not be unreasonably withheld. CWC acknowledges that the Valuation Report is being provided for, among other things, possible use in connection with the Bankruptcy Case, and that expert testimony, pretrial or other conferences, depositions, court testimony and related services are within the scope of this engagement, subject to the payment of additional compensation as described above. CWC hereby consents to the disclosure of the Valuation Report in connection with the Bankruptcy Case only so long as the Valuation Report is not made publicly available. CWC agrees not to use or disclose any confidential information concerning the Company or any of its subsidiaries (including the Subsidiaries) provided to CWC by the Company in any manner or for any purposes other than those contemplated under this Agreement. CWC acknowledges that it is aware, and that CWC will advise its representatives who are informed of the matters that are the subject of this Agreement, that the United States Securities laws prohibit any person who has received from the issuer of such securities material, nonpublic information concerning the matters that are the subject hereof from purchasing or selling securities of such issuer or from communicating such information to any other person when it is reasonably foreseeable that such other person is likely to purchase or sell such securities in reliance upon such information, and CWC agrees that neither it nor its representatives will engage in such trading activities or communications.

Miscellaneous. This letter agreement will be governed by and construed in accordance with the laws of the State of Arizona applicable to agreements made and to be fully performed therein. The Company irrevocably submits to the jurisdiction of any court of the State of Arizona in the City of Phoenix for the purpose of any suit, action or other proceeding arising out of this letter agreement or our engagement hereunder.

Mr. W John Short
NutraCea
May 19, 2010

Page 3

Each of the Company and CWC hereby waives any right it may have to a trial by jury in respect of any claim brought by or on behalf of either party based upon, arising out of or in connection with this letter agreement, our engagement hereunder or the transactions contemplated hereby.

CWC may, at its own expense, place announcements or advertisements in financial newspapers and journals describing our services hereunder.

This letter agreement constitutes the entire agreement among CWC and the Company with respect to the subject matter hereof and supersedes all prior understandings, agreements or representations by or among CWC and the Company, or any of them, written or oral, to the extent they relate in any way to the subject matter hereof. This letter agreement may not be amended or modified except in writing signed by the party to be bound, and may be executed in two or more counterparts, each of which will be deemed to be an original, but all of which will constitute one and the same agreement. All rights, liabilities and obligations hereunder will be binding upon and inure to the benefit of the Company, CWC, each Indemnified Party (as defined in Annex A) and their respective successors and assigns.

Any term or provision of this letter agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

Please confirm our mutual understanding of this engagement by signing and returning to us the enclosed duplicate copy of this letter agreement. We are pleased that you have engaged us to act as your financial advisor and are looking forward to working with you on this assignment.


Very truly yours,

Columbia West Capital, LLC

By: 
Guy Downing
Managing Director

Agreed to and accepted as
of the above date.

NUTRACEA

By: 
W John Short
Chairman and CEO

target completion: 3 weeks - June 9, 2010

14646 N. Kierland Blvd., Suite 125, Scottsdale, Arizona 85254
Phone: (480) 664-3949 Fax: (480) 664-3952

ANNEX A: INDEMNIFICATION

A. To the fullest extent permitted by law, the Company, for itself and on behalf of its predecessors, successors, partners, members, boards, parent companies, subsidiaries, shareholders, affiliates, officers, directors, employees, attorneys, insurers, consultants, agents, representatives, assignors and assignees, past, present or future (each such person, including the Company, is also referred to herein as an "Indemnifying Party"), does hereby agree to indemnify, defend and hold harmless CWC, and each and every one of CWC's respective predecessors, successors, heirs, partners, members, boards, subsidiaries, affiliates, officers, directors, employees, attorneys, insurers, consultants, agents, representatives, assignors and assignees, past, present or future (each such person, including CWC, is also referred to herein as an "Indemnified Party") from any and all claims, actions, causes of action, at law or in equity, suits, debts, liens, contracts, covenants, agreements, promises, demands, benefits, compensation, sums of money, obligations, duties, liabilities, rights, costs, expenses, attorneys fees, experts witness fees, costs of suit, judgments, and damages of any kind whatsoever (the "Indemnified Claims"), that arise out of or result from any transaction, service, appraisal, opinion of fairness or consultation performed by CWC or any Indemnified Party under this letter agreement or any amendment or modification thereto.

B. Notwithstanding the foregoing and without waiver or limitation of the same, each Indemnified Party shall have the right to select counsel of their choice to defend them against any Indemnified Claim. In the event that an Indemnified Party selects their own counsel, the Indemnifying Parties, jointly and severally, agree that they will, upon demand by an Indemnified Party, reimburse each and every Indemnified Party for all fees and expenses (including attorney's fees, litigation costs, and expert witness fees) (collectively, "Expenses") as incurred by any Indemnified Party in connection with an Indemnified Party's investigating, preparing, pursuing or defending any threatened or pending claim, action, proceeding or investigation (collectively, the "Proceedings") of an Indemnified Claim, whether or not such Indemnified Party is a formal party to such Proceeding; however, the Company will only have a right of reimbursement of such Expenses if it is determined by a court of competent jurisdiction that an Indemnified Party is liable for an Indemnified Claim, which is determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted exclusively from the gross negligence or willful misconduct of the Indemnified Party seeking indemnification hereunder.

C. The Company also agrees that no Indemnified Party will have any liability (whether direct or indirect, in contract, tort or otherwise) to the Company or any person asserting claims on behalf of the Company arising out of or in connection with any transactions contemplated by this letter agreement or the engagement of or performance of services by any Indemnified Party thereunder except to the extent that an Indemnified Claim is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted exclusively from the gross negligence or willful misconduct of an Indemnified Party.

D. The indemnity, reimbursement and contribution obligations of the Company and/ or the Indemnifying Parties hereunder will be in addition to any liability which the Company and/ or the Indemnifying Parties may have at common law or otherwise to any Indemnified Party and will be binding upon any successors, assigns, heirs and personal representatives of the Company or an Indemnifying. The provisions of this Annex will survive the modification or termination of this letter agreement, any sale, merger or acquisition of the Company, its assets or a controlling interest of the Company's issued and outstanding common stock as of the date of this letter agreement.

E. If for any reason other than in accordance with this letter agreement, the indemnity provided herein and in Annex A is unavailable to any Indemnified Party or insufficient to hold an Indemnified Party harmless, then the Indemnifying Parties, jointly and severally, will contribute to the amount paid or payable by an Indemnified Party as a result of such Indemnified Claim(s) (including all Expenses incurred) by an Indemnified Party in such proportion as is appropriate to reflect the relative benefits to the Company and/or its stockholders on the one hand, and CWC on the other hand, in connection with the matters covered by this letter agreement or, if the foregoing allocation is not permitted by applicable law, not only such relative benefits but also the relative faults of such parties as well as any relevant equitable considerations. The Company agrees that for purposes of this paragraph the relative benefits to the Company and/or its stockholders and CWC in connection with the matters covered by this letter agreement will be deemed to be in the same proportion that the total value paid or received or to be paid or received by the Company and/or its stockholders in connection with the transactions contemplated by this letter agreement, whether or not consummated, bears to the fees paid to CWC under this letter agreement; provided, that in no event will the total contribution of all Indemnified Parties to all such Damages exceed the amount of fees actually received and retained by CWC under this letter agreement (excluding any amounts received by CWC as reimbursement of expenses). Relative fault shall be determined by reference to, among other things, whether any alleged untrue statement or omission or any alleged conduct relates to information provided by the Company or other conduct by the Company (or its employees or other agents) on the one hand, or by CWC, on the other hand.

F. The Company and the Indemnifying Parties, and each of them, agree not to enter into any waiver, release or settlement of any Proceeding (whether or not CWC or any other Indemnified Party is a formal party to such Proceeding) in respect of which indemnification may be sought hereunder without the prior written consent of CWC and each Indemnified Party (which consent will not be unreasonably withheld), unless such waiver, release or settlement (i) includes an unconditional release of CWC and each Indemnified Party from all liability arising out of such Proceeding and (ii) does not contain any factual or legal admission by or with respect to any Indemnified Party or any adverse statement with respect to the character, professionalism, expertise or reputation of any Indemnified Party or any action or inaction of any Indemnified Party.

File a Motion:[2:09-bk-28817-CGC Nutracea, a California corporation](#)

Type: bk

Chapter: 11 v

Office: 2 (Phoenix)

Assets: y

Judge: CGC

U.S. Bankruptcy Court**District of Arizona**

Notice of Electronic Filing

The following transaction was received from S. CARY FORRESTER entered on 5/26/2010 at 3:55 PM AZ and filed on 5/26/2010

Case Name: Nutracea, a California corporation**Case Number:** [2:09-bk-28817-CGC](#)**Document Number:** [409](#)**Docket Text:**

Application to Employ *Application of Debtor for Approval of Employment of Columbia West Capital, LLC on a Fixed Fee Basis Pursuant to 11 U.S.C. Section 328(a)* filed by S. CARY FORRESTER of FORRESTER & WORTH, PLLC on behalf of Nutracea, a California corporation. (FORRESTER, S.)

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**N:\Word Docs\Cary\Active\NutraCea\Pleadings\Professionals\Apps to Employ Professionals\Columbia\App to Employ Columbia with attachments.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=875559564 [Date=5/26/2010] [FileNumber=17928439-0] [64a8f7b8a842826a941a0a6f6e752e90ad28d9a3a3b57cd91ab30f8499abe65d4df9fbf62c08bd491f6caca05995bc76de51bcf8a8c229eaf64ff29c9adf0fb]]

2:09-bk-28817-CGC Notice will be electronically mailed to:

KEVIN J. BLAKLEY on behalf of Creditor GANADO PAINTING AND WALL COVERING, INC.
kblakley@gblaw.com

J. JAMES CHRISTIAN on behalf of Defendant Harvey Pensack
jjc@tblaw.com, jeg@tblaw.com;sab@tblaw.com

JOHN R. CLEMENCY on behalf of Creditor WELLS FARGO BANK, N.A.
john.clemency@gknet.com, donna.elliott@gknet.com;maricella.nunez@gknet.com

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RICHARD J. CUELLAR on behalf of U.S. Trustee U.S. TRUSTEE
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jpeters@powellgroup.com

LAURENCE M ROSEN on behalf of Plaintiff Harvey Pensack
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JULIE RYSTAD on behalf of Creditor WELLS FARGO BANK, N.A.
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CHAD L. SCHEXNAYDER on behalf of Creditor AVAZ, Inc. d/b/a Audio Video Resources
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gshelley@fclaw.com, hlahren@fclaw.com

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ttuggle@jsslaw.com

STEPHEN L WILLIAMSON on behalf of Creditor Farmers Rice Milling Company, Inc.
swilliamson@monbar.com, ymaranto@monbar.com