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10  
11 **UNITED STATES BANKRUPTCY COURT**  
12 **DISTRICT OF ARIZONA**

13 In re:  
14 NUTRACEA, a California corporation,  
15 Debtor.

Chapter 11

2:09-bk-28817-CGC

**MOTION FOR ORDER APPROVING  
DISCLOSURE STATEMENT AND  
PROCEDURES FOR PLAN  
CONFIRMATION**

18 Debtor and the Official Committee of Unsecured Creditors (the “**Committee**”) move the  
19 Court for entry of an order approving: (a) the Disclosure Statement Accompanying Plan of  
20 Reorganization Proposed by Debtor and the Unsecured Creditors Committee dated June 24, 2010  
21 (the “**Disclosure Statement**”); (b) the notice and objection procedures for confirmation of the  
22 Plan, as set forth below; and (c) the procedures to be implemented for the solicitation and  
23 tabulation of votes on the Plan. This Motion is filed pursuant to 11 U.S.C. §§ 1124-1129,  
24 Bankruptcy Rules 2002, 3016-3018, and 3020, and Local Bankruptcy Rule 3018-2. The  
25 Proponents request that a hearing on this Motion be set for the week of August 10, 2009. That

1 will provide them with sufficient time to provide notice to approximately 15,000 shareholders, as  
2 required by Bankruptcy Rules 2002(b) and 3017. This Motion is more fully set forth and  
3 supported in the accompanying Memorandum of Points and Authorities.

#### 4 **MEMORANDUM OF POINTS AND AUTHORITIES**

##### 5 **Background**

6 1. Debtor is a publicly traded health-science company that develops and distributes  
7 stabilized rice bran and proprietary rice bran formulations. Its products include food supplements  
8 and medical foods for humans and animals based on stabilized rice bran, rice bran derivatives,  
9 and rice bran oils.

10 2. On November 10, 2009, Debtor filed its voluntary petition for relief under Chapter  
11 11 of the Bankruptcy Code. Pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code, it is  
12 managing its assets and properties as debtor-in-possession.

13 3. The Committee was appointed on November 19, 2009 and subsequently retained  
14 Jennings, Strouss & Salmon, PLC, as counsel.

##### 15 **The Plan and Disclosure Statement**

16 4. On June 24, 2010, Proponents filed the Plan of Reorganization Proposed by  
17 Debtor and the Unsecured Creditors Committee, dated June 23, 2010 (the “**Plan**”), and the  
18 accompanying Disclosure Statement.

##### 19 **The Disclosure Statement Should be Approved**

20 5. Under Bankruptcy Code § 1125, the Proponents must provide creditors and  
21 interest holders with “adequate information” regarding the proposed plan.

22 “[A]dequate information” means information of a kind, and in sufficient  
23 detail, as far as is reasonably practicable in light of the nature and history of  
24 the debtor and the condition of the debtor’s books and records, including a  
25 discussion of the potential material Federal tax consequences of the plan to  
the debtor, any successor to the debtor, and a hypothetical investor typical of  
the holders of claims or interests in the case, that would enable such a

1 hypothetical investor of the relevant class to make an informed judgment  
2 about the plan ... 11 U.S.C. § 1125(a)(1).

3 6. The Disclosure Statement contains adequate information within the meaning of 11  
4 U.S.C. § 1125, including complete discussions of: (a) the features, terms, and provisions of the  
5 Plan; (b) significant events preceding the Chapter 11 case; (c) significant events during the  
6 Chapter 11 case; (d) the operation of Debtor's businesses before and during the case; (e) how and  
7 when distributions will be made to holders of allowed claims and the source of those  
8 distributions; (f) the nature, value and disposition of the assets of the estate; (g) the nature and  
9 extent of claims that are likely to be allowed; (h) certain risks attendant to the Plan; (i) an analysis  
10 of the estimated return to creditors; and (i) the federal tax consequences of the Plan.

11 **Procedures for Notice of the Confirmation Hearing**

12 7. Bankruptcy Rule 2002(b) and (d) require not less than 28 days' notice by mail to  
13 all creditors, indenture trustees, and equity security holders of the time set for filing objections to,  
14 and the hearing to consider, confirmation of a Chapter 11 plan.

15 8. In accordance with Bankruptcy Rules 2002 and 3017(d), the Proponents propose  
16 to provide all creditors and equity security holders with a notice of: (a) the deadline for voting  
17 and filing objections to confirmation; and (b) the time, date, and place of the Confirmation  
18 Hearing. Except as set forth below, the notice will be accompanied by the Solicitation Package,  
19 as defined below. The Proponents request that the court, in the exercise of its discretion under  
20 Bankruptcy Rule 3017(d), not require the distribution of a Solicitation Package to shareholders,  
21 who are unimpaired under the Plan. Shareholders would only receive the notice.

22 **Procedures for Objecting to Confirmation**

23 9. Under Bankruptcy Rule 3020(b)(1), objections to confirmation must be filed and  
24 served "within a time fixed by the court." The Proponents request that the Court direct that any  
25 objections to confirmation: (a) be in writing; (b) state the name and address of the objecting

1 party and the nature and amount of the claim or interest of that party; (c) state the basis and nature  
2 of the objection; and (d) be filed and served so that they are received five business days prior to  
3 the confirmation hearing. The Proponents request that they be authorized to serve replies to any  
4 objections no later than one day before the confirmation hearing.

5 **Solicitation Package**

6 10. Bankruptcy Rule 3017(d) sets forth the materials that must be provided to holders  
7 of claims and equity interests for purposes of soliciting their votes and providing adequate notice  
8 of the hearing on confirmation of a plan:

9 Upon approval of a disclosure statement, – except to the extent that the court  
10 orders otherwise with respect to one or more unimpaired classes of creditors  
11 or equity security holders – the debtor in possession, trustee, proponent of  
12 the plan, or clerk as the court orders shall mail to all creditors and equity  
security holders, and in a chapter 11 reorganization case shall transmit to the  
United States trustee,

- 13 (1) the plan, or a court approved summary of the plan;  
14 (2) the disclosure statement approved by the court;  
15 (3) notice of the time within which acceptances and rejection of the  
plan may be filed; and  
16 (4) any other information as the court may direct, including any court  
17 opinion approving the disclosure statement or a court approved summary of  
18 the opinion. In addition, notice of the time fixed for filing objections and the  
19 hearing on confirmation shall be mailed to all creditors and equity security  
20 holders in accordance with Rule 2002(b), and a form of ballot conforming to  
the appropriate Official Form shall be mailed to creditors and equity security  
holders entitled to vote on the plan.

21 Fed. R. Bankr. P. 3017(d).

22 11. After the Court approves the Disclosure Statement, the Proponents propose to  
23 mail a package (the “**Solicitation Package**”) comprised of: (a) a CD-ROM with electronic  
24 copies of (i) the order granting this Motion; (ii) the notice of the confirmation hearing; and (iii)  
25 the Disclosure Statement and Plan with all exhibits; (b) paper copies of the appropriate Ballot; (c)

1 a contents sheet describing the contents of the CD-ROM and advising recipients how they may  
2 obtain paper copies of the contents; and (d) such other materials as the Court may direct. The use  
3 of CD-ROMs in this fashion has become increasingly more common in Chapter 11 cases in this  
4 District and throughout the country.

5 12. Except as described below, a Solicitation Package will be mailed to: (a) all  
6 persons or entities that have filed proofs of claim on or before the date of mailing; (b) all persons  
7 or entities listed in the Debtor's schedules of liabilities; (c) any other known holders of claims;  
8 (d) any entity that has filed with the Court and served a notice of transfer of claim on or before  
9 the date of mailing; (e) all parties in interest that have filed a notice in accordance with  
10 Bankruptcy Rule 2002 in this Chapter 11 case on or before the date of mailing; (f) the Securities  
11 Exchange Commission; (g) the Internal Revenue Service; and (h) the United States Trustee.

12 13. With the Solicitation Package, the Proponents propose to provide holders of  
13 claims in classes entitled to vote to accept or reject the Plan: (a) an appropriate form of Ballot  
14 and a return envelope; and (b) such other materials as the Court may direct.

15 **Classes Not Entitled to Vote**

16 14. Consistent with Bankruptcy Code §§ 1126(f) and (g) and Bankruptcy Rule  
17 3017(d), the Solicitation Package sent to holders of claims against or interests in the Debtors  
18 within a class that is deemed to accept or reject the Plan under Bankruptcy Code § 1126(f) or (g)  
19 will not include a Ballot.

20 15. Classes that are unimpaired under the Plan include the following classes: Class 1  
21 (priority claims other than tax claims); Class 2 (priority tax claims); Class 3 (Wells Fargo's  
22 secured claim); Class 8(a)(securities claims subject to the class action settlement); 8(b)(other  
23 securities claims and those who opt out of class action settlement); and Class 9 (Debtor's equity  
24 security holders). Through this Motion, the Proponents are requesting that the court make a  
25 finding and conclusion that Classes 1-3, 8(a), 8(b) and 9 are unimpaired.

1           16. As to Class 9, Debtor's equity security holders, the Proponents request that the  
2 Court order that the Solicitation Package need not be mailed to them. This will save the estate  
3 the cost of preparing and mailing the Solicitation Package to more than 15,000 shareholders.  
4 Instead, they will receive a copy of the order granting this Motion and the notice of the  
5 confirmation hearing. The notice will also advise them that copies of the plan and disclosure  
6 statement may be viewed on Debtor's website: [nutracea.com](http://nutracea.com).

7           17. The Court has discretion to waive the mailing of the Solicitation Package to  
8 unimpaired classes under Bankruptcy Rule 3017(d), as quoted above. According to the Advisory  
9 Committee Note to the 1991 Amendment to Rule 3017(d):

10                   Subdivision (d) is amended to give the court discretion to direct that one or  
11 more unimpaired classes shall not receive disclosure statements, plans, or  
12 summaries of plans. Members of unimpaired classes are not entitled to vote  
13 on the plan. Although disclosure statements enable members of unimpaired  
14 classes to make informed judgments as to whether to object to confirmation  
15 because of lack of feasibility or other grounds, in an unusual case the court  
16 may direct that disclosure statements shall not be sent to such classes if to so  
17 would not be feasible considering the size of the unimpaired classes and the  
18 expenses of printing and mailing.

19           18. In the present case, the cost of the CD's to be mailed to the shareholders would be  
20 more than \$11,250, and there would be additional postage and handling charges. This money  
21 would be better spent discharging Debtor's monetary obligations under the Plan. Shareholders  
22 who are truly interested would have the option of viewing the Plan and Disclosure Statement on  
23 Debtors website.

24                   **Record Date**

25           19. Proponents request that the Court set June 23, 2010 as the record date for all  
26 notices and solicitations to shareholders in connection with the Plan and Disclosure Statement.

          20. The Court previously authorized Debtor to continue using the procedures for  
providing notices to shareholders that it used before the petition was filed. This involves

1 obtaining a mailing list from American Stock Transfer & Trust Company, LLC for all  
2 shareholders who hold in their own names, and using the services of Broadridge and Mediant  
3 Communications LLC (“**Mediant**”) to mail notices to those who hold in street names.

4 21. Broadridge and Mediant have been instructed to use a record date of June 23,  
5 2010, for the notice of hearing on the Disclosure Statement. If another record date is used for the  
6 notice of the Plan confirmation hearing, a delay of up to two weeks is anticipated, and there will  
7 be additional fees. Accordingly, in order to facilitate the mailing of the notice while minimizing  
8 the cost to the estate, the Proponents request that the Court order that the notice of the Plan  
9 confirmation hearing be mailed only to shareholders of record as of June 23, 2010.

10 22. Under Rule 3018(a), the Court has discretion to fix a date other than the date that  
11 the order approving the disclosure statement is entered, provided that good cause is shown. For  
12 the reasons set forth above, the Proponents submit that good cause has been shown.

13 **Returned Mail**

14 23. The Proponents anticipate that a number of notices of the Disclosure Statement  
15 hearing will be returned by the U.S. Postal Service as undeliverable. The Proponents believe that  
16 it would be unduly costly and wasteful to mail Solicitation Packages to the same addresses to  
17 which undeliverable notices were mailed. Therefore, the Proponents seek the Court’s approval  
18 for a departure from the strict notice rule, excusing them from mailing Solicitation Packages to  
19 those with undeliverable addresses.

20 24. The Proponents respectfully submit that the foregoing procedures regarding notice  
21 of the confirmation hearing and related matters comply with Bankruptcy Rules 2002 and 3017.  
22 Accordingly, the Proponents request that such proposed notice be deemed adequate.

23 **Balloting**

24 25. Bankruptcy Rule 3017(d) requires the Proponents to mail a form of ballot  
25 substantially conforming to Official Form No. 14 only to “creditors and equity security holders

1 entitled to vote on the plan.” The Proponents propose to distribute Ballots to all creditors in  
2 Classes 4-7. A form (or forms) of the Ballot will be filed with the Court prior to the disclosure  
3 statement hearing.

4 26. Creditors in Classes 1-3 and 8-9 are unimpaired under the Plan and are deemed to  
5 have accepted it under Bankruptcy Code § 1126(f). Thus, solicitation of Classes 1-3 and 8-9 is  
6 not required and will not be undertaken.

7 27. Bankruptcy Rule 3017(c) provides that, on or before approval of a disclosure  
8 statement, the Court may fix a time within which the holders of claims or equity interests may  
9 accept or reject a plan. The Proponents propose that, in order to be counted, all Ballots must be  
10 properly executed, completed and delivered to counsel for Debtor by one of the following  
11 methods: (a) first-class mail, in the return envelope provided with the Solicitation Packages; (b)  
12 overnight courier; (c) personal delivery; (d) facsimile; or (e) email transmission of a pdf  
13 document; so that counsel for Debtor **receives** the Ballots no later than 5:00 p.m. Arizona time  
14 five court days before the confirmation hearing (the “**Voting Deadline**”).

15 **Procedures for Vote Tabulation**

16 28. The Proponents propose that: (a) any Ballot that is properly completed, executed,  
17 and timely returned but does not indicate an acceptance or rejection of the Plan be deemed to be a  
18 vote to accept the Plan; (b) whenever a creditor casts more than one Ballot voting the same claim  
19 before the Voting Deadline, the last Ballot received before the Voting Deadline be deemed to  
20 reflect the creditor’s intent and thus to supersede any prior Ballots; and (c) creditors be required  
21 to vote all of their claims within a particular class under the Plan either to accept or reject the  
22 Plan and not be permitted to split their vote, and thus, a Ballot that partially rejects and partially  
23 accepts the Plan not be counted.

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**Conclusion**

For the foregoing reasons, the Proponents respectfully request entry of an Order granting the relief requested in this Motion and any additional relief the Court deems appropriate.

Dated June 24, 2010.

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