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

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

Chapter 11

2:09-bk-28817-CGC

**MOTION TO APPROVE RENEWAL
AND EXTENSION OF DIP CREDIT
FACILITY WITH WELLS FARGO**

Hearing Date: TBD
Hearing Time: TBD
Hearing Place: TBD

14
15 Debtor hereby moves the court, pursuant to §§ 105, 361, 362, 363 and 364 of the United
16 States Bankruptcy Code, Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure,
17 and Rule 4001-4 of the Local Rules of Bankruptcy Procedure for the entry of an order: (a)
18 authorizing it to amend its DIP Credit Facility with Wells Fargo Bank, N. A., acting through its
19 Business Credit operating division (“**Wells Fargo**”), on the terms and subject to the conditions
20 set forth in the First Amendment to Senior Secured Super-Priority Debtor-in-Possession Credit
21 and Security Agreement, dated May 11, 2010 (the “**First Amendment**”), a copy of which is
22 attached hereto as Exhibit “A”; (b) finding that the Challenge Period specified in Paragraph 27 of
23 the final order approving the DIP Credit Facility has expired and that, accordingly, any challenge
24 to the validity, extent, priority, perfection, enforceability and allowability of Wells Fargo’s
25 prepetition loan and security documents and related liens and security interests is, therefore,

1 precluded; and, (c) reaffirming all provisions of the Final Order (a) Approving Senior Secured
2 Postpetition Financing, (b) Authorizing Use of Cash Collateral, (c) Granting Liens and Providing
3 Superpriority Administrative Expense Status and (d) Modifying Automatic Stay (Dkt. No. 89)
4 other than those expressly addressed by this motion. This motion is more fully set forth and
5 supported in the accompanying Memorandum of Points and Authorities.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **A. Jurisdiction and Venue**

8 1. The court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and
9 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409(a). This is a core
10 proceeding under 28 U.S.C. §§ 157(b)(2). The statutory predicates for the relief sought herein are
11 sections 105, 362, 363(c)(2), 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code and
12 Bankruptcy Rules 2002 and 4001.

13 **B. Background**

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

16 3. On November 10, 2009, Debtor filed its voluntary petition for relief under Chapter
17 11 of the Bankruptcy Code. Pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code, it is
18 managing its assets and properties as debtor-in-possession.

19 4. An official committee of unsecured creditors was appointed on November 19,
20 2009, and subsequently retained Jennings, Strouss & Salmon, P.L.C. as counsel.

21 5. Prior to its bankruptcy filing, Debtor relied upon financing provided by Wells
22 Fargo for much of its working capital needs. The Wells Fargo credit facility was secured by a
23 lien on substantially all of the Debtor's personal property, exclusive of intellectual property, and
24 by deeds of trust against the Phoenix Arizona and Dillon Montana production facilities. As of
25 the petition date, approximately \$3.6 million was owed to Wells Fargo.

1 **C. The DIP Credit Facility.**

2 6. On or about November 9, 2009, the Debtor and Wells Fargo entered into a Senior-
3 Secured Superpriority Debtor-in-Possession Credit and Security Agreement, together with certain
4 related agreements, instruments, and documents (collectively the “**DIP Credit Facility**”),
5 pursuant to which Wells Fargo provided Debtor with up to \$6.75 million in credit availability,
6 secured by substantially all of Debtor’s assets, exclusive of intellectual property, subject to a
7 \$500,000 carve-out from Debtor’s Louisiana assets for professional and statutory fees.

8 7. The DIP Credit Facility includes a Revolving Credit Facility and a Term Loan
9 Facility.

10 8. Under the Revolving Credit Facility, Wells Fargo provided Debtor with up to \$2.5
11 million in credit availability, determined by the amount of eligible accounts and inventory.

12 9. Under the Term Loan Facility, Wells Fargo provided Debtor with up to \$4.25
13 million in additional credit availability, determined by the appraised value of its real estate,
14 machinery and equipment.

15 10. There is currently no balance owing on the Revolving Credit Facility. A balance
16 of approximately \$2.012 million is owing on the Term Loan Facility.

17 11. The Court entered its interim order approving the DIP Credit Facility on
18 November 13, 2009 (Dkt. No. 28) and its final order on December 8, 2009 (Dkt. No. 89).

19 **D. The Amended DIP Facility.**

20 12. Under the original DIP Credit Facility, Debtor was granted an option to renew for
21 an additional six months when the loans matured on May 7, 2010, provided that there was no
22 default and that Debtor paid renewal fees totaling of \$67,500. The extended maturity date
23 specified in the DIP Credit Facility is November 5, 2010.

24 13. Debtor has not defaulted and has elected to renew both the Revolving Credit
25 Facility and the Term Loan Facility.

1 14. Debtor has requested that Wells Fargo extend the maturity of the Revolving Credit
2 Facility through December 31, 2010, and Wells Fargo has agreed to do so, on the terms and
3 subject to the conditions set forth in the First Amendment, including the payment of a \$10,000
4 extension fee.

5 15. Other amendments to the DIP Credit Facility set forth in the First Amendment
6 include:

- 7 (a) An amendment to Paragraph 7.1 to provide that, in the event Debtor sells any
8 assets other than those specified in Paragraphs 7.1(a)-(h), and in the event that the
9 Term Loan Facility has then been paid in full, 40% of the net proceeds will be
10 used first to fund the \$500,000 Carve-Out and then to reduce advances against
11 eligible inventory, with a corresponding reduction in the eligible inventory
12 borrowing base. Prior to the amendment, the Carve-Out was to be funded only
13 from Debtor's Louisiana assets and the specified proceeds from other asset sales
14 were to be applied to any advances under the Revolving Credit Facility with a
15 corresponding reduction in total availability, not just availability under the eligible
16 inventory borrowing base;
- 17 (b) An amendment to Paragraph 5.28 to lengthen the specified budget periods by two
18 weeks; and,
- 19 (c) A requirement that Debtor file a plan of reorganization by August 31, 2010.

20 **E. The Amendment Should Be Authorized.**

21 16. The Court has previously approved the DIP Credit Facility, including the renewal
22 provisions. No further approval would be required at this time but for the extension of the
23 Revolving Credit Facility for an additional two months, the associated amendments to the DIP
24 Credit Facility, and the payment of the \$10,000 fee. Debtor submits that the extended availability
25 of more than \$1 million in inventory and receivables financing will materially assist it in exiting

1 bankruptcy and that the terms of the extension, including the payment of the \$10,000 fee, are
2 reasonable and are within the valid exercise of its business judgment.

3 **F. Expiration of Challenge Period.**

4 17. As part of the DIP Credit Facility, Debtor stipulated to the validity, extent,
5 priority, perfection, enforceability and allowability of Wells Fargo's prepetition loan and security
6 documents and related liens and security interests and waived all claims and causes of action
7 against Wells Fargo, including, without limitation, avoidance claims under 11 U.S.C. §§ 544-
8 550.

9 18. Paragraph 27 of the final order approving the DIP Credit Facility provided that any
10 party in interest other than Debtor could challenge the validity, extent, priority, perfection,
11 enforceability and allowability of Wells Fargo's prepetition loan and security documents and
12 related liens and security interests, provided that any such challenge was brought within sixty
13 (60) calendar days after the formation of a Creditors' Committee (the "**Challenge Period**").

14 19. A Creditors' Committee was formed on November 19, 2009, and no challenge has
15 been filed by any party in interest. Accordingly, the Challenge Period has expired and Debtor
16 requests that the order approving the First Amendment include the following language:

17 Paragraph 27 of the Final Order (a) Approving Senior Secured Postpetition
18 Financing, (b) Authorizing Use of Cash Collateral, (c) Granting Liens and
19 Providing Superpriority Administrative Expense Status and (d) Modifying
20 Automatic Stay (Dkt. No. 89) established a Challenge Period within which any
21 Challenge to the validity, extent, priority, perfection, enforceability and allowability
22 of Wells Fargo's prepetition loan and security documents and related liens and
23 security interests was required to be filed. The Challenge Period has expired and no
24 Challenge has been filed. Accordingly, (i) any and all Challenges by any party are
25 deemed to be forever waived and barred, and (ii) all of Debtor's stipulations,
waivers, releases, affirmations and other stipulations as to the validity, extent,
priority, perfection, enforceability and allowability of Wells Fargo's prepetition
claims, liens, and interests shall be of full force and effect and forever binding upon
Debtor's estate and all creditors, interest holders, and other parties in interest in this
bankruptcy case and any successor case.

EXHIBIT “A”

**FIRST AMENDMENT TO SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-
POSSESSION CREDIT AND SECURITY AGREEMENT**

DATE: Effective as of May 11, 2010

PARTIES: Borrower: NUTRACEA, a California corporation, and
NUTRAPHOENIX, LLC, a Delaware limited liability company
(collectively, the "Company")

Lender: WELLS FARGO BANK, NATIONAL ASSOCIATION, acting
through its Wells Fargo Business Credit operating division ("Wells
Fargo")

RECITALS

Company and Wells Fargo are parties to a Senior Secured Super-Priority Debtor-in-Possession Credit and Security Agreement dated November 9, 2009 (the "Agreement"). Capitalized terms not otherwise defined in this First Amendment to Senior Secured Super-Priority Debtor-in-Possession Credit and Security Agreement (this "Amendment") have the meanings given to them in the Agreement.

Company has requested that Wells Fargo make certain modifications to the Agreement. Wells Fargo agrees to accommodate Company's request for certain modifications to the Agreement, so long as Company satisfies all of the conditions to modification set forth in this Amendment, and provided that Company complies with the terms of this Amendment and all other Obligations under the Loan Documents (as modified by this Amendment).

1. Incorporation of Recitals. The above recitals are hereby incorporated into and made a part of this Amendment.

2. Modification of Loan Documents. The Agreement is modified as follows:

(a) Maturity Date. Section 1.1(b) is hereby deleted in its entirety and replaced with the following: "Company may request Line of Credit Advances from the date that the conditions set forth in Section 3 are satisfied until the earlier of: (i) December 31, 2010, (ii) the date Company terminates the Line of Credit, or (iii) the date Wells Fargo terminates the Line of Credit following an Event of Default (the earliest of these three dates is the "**Termination Date**"). Provided no Event of Default has occurred and is continuing on May 7, 2010 (the "**Maturity Date**"), and provided that neither Company or Wells Fargo has terminated the Credit Facility pursuant to this Agreement, the Maturity Date will automatically extend until November 5, 2010 with respect to the Term Loan and until December 31, 2010 with respect to the Line of Credit."

(b) Sales of Collateral. Section 7.1(i) is hereby deleted in its entirety and replaced with the following, and Section 7.1(j) is hereby inserted, as follows:

"(i) Except as provided in Section 7.1(j) below, in the event Company sells any other of its assets (other than sales in the ordinary course of business), 25% of Company's net

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proceeds from such sale shall be paid by Company to Wells Fargo to repay the principal balance on the Term Loan and the remainder shall be released to the Company for working capital purposes.

“(j) In the event that the Term Loan is paid in full prior to the closing of any other sale of Company assets (other than sales in the ordinary course of business), 40% of Company’s net proceeds from such sale shall be paid by the Company first to fund the Carve-Out (subject to the \$500,000 cap on the Carve-Out pursuant to Paragraph 25 of the Final Order), and once the Carve-Out is funded, applied to reduce Advances against Eligible Inventory, provided however, that the Eligible Inventory sublimit as set forth in subsection 1.2(a)(ii) shall automatically be reduced by an amount equal to the balance applied to reduce Eligible Inventory Advances.

(c) Approved Budget Covenants. Effective May 9, 2010, the phrase “for an initial 6-week period, and “for each 4-week period thereafter in the Approved Budget” located in each of the first line of Section 5.28(a) of the Agreement and the first line of Section 5.28(b) of the Agreement shall be replaced with the following: “for an initial 10-week period beginning May 9, 2010, and for each 8-week period thereafter in the Approved Budget.”

(d) Plan of Reorganization. The following provision is hereby added as Section 5.32 to the Agreement:

“5.32 Filing of Plan of Reorganization. On or before August 31, 2010, Company shall file with the Bankruptcy Court its plan of reorganization in the Chapter 11 Case.”

(e) References. All references in the Agreement to “this Agreement” shall be deemed to refer to the Agreement as amended hereby; and any and all references in the Security Documents to the Agreement shall be deemed to refer to the Agreement as amended hereby.

(f) No Other Changes. Except as explicitly amended by this Amendment, all of the terms and conditions of the Agreement shall remain in full force and effect.

3. Amendment Fee. In addition to the other fees owed by Company to Wells Fargo, including without limitation the fees described in Section 1.8 of the Agreement, Company shall pay Wells Fargo a fee in the amount of \$10,000.00 the “**Amendment Fee,**” which Amendment Fee shall be due and payable upon Company’s execution of this Amendment.

4. Joint and Several Liability. The obligations pursuant to this Amendment, the Agreement and each other Loan Document for each of the persons or entities of which Company is comprised are joint and several.

5. Conditions Precedent. This Amendment shall be effective only upon satisfaction of the following conditions, each in form and substance acceptable to Wells Fargo in its sole discretion:

(a) Company shall have delivered to Wells Fargo a fully-executed original of this Amendment.

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(b) The Bankruptcy Court shall have issued an order approving this Amendment in its entirety.

(c) Company shall have paid the Amendment Fee.

(d) Company shall have submitted to Wells Fargo revised cash flow projections for 2010 in form and substance acceptable to Wells Fargo.

(e) Company shall have delivered to Wells Fargo such other documents and things as Wells Fargo may require.

6. Representations and Warranties. Company hereby represents and warrants to Wells Fargo as follows:

(a) Company has all requisite power and authority to execute this Amendment and any other agreements or instruments required hereunder and to perform all of its obligations hereunder, and this Amendment and all such other agreements and instruments have been duly executed and delivered by Company and constitute the legal, valid and binding obligation of Company, enforceable in accordance with its terms.

(b) The execution, delivery and performance by Company of this Amendment and any other agreements or instruments required hereunder have been duly authorized by all necessary corporate action and do not: (i) except for the approval of the Bankruptcy Court in the Chapter 11 Case, require any authorization, consent or approval by any governmental department, commission, board, bureau, agency, instrumentality, or court, domestic or foreign; (ii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect, having applicability to Company, or the constituent documents of Company; or (iii) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which Company is a party or by which it or its properties may be bound or affected.

(c) All of the representations and warranties contained in the Agreement are correct on and as of the date hereof as though made on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date.

7. No Waiver. The execution of this Amendment and the acceptance of all other agreements and instruments related hereto shall not be deemed to be a waiver of any Default or Event of Default under the Agreement or a waiver of any breach, default or event of default under any of the Security Documents or other document held by Wells Fargo, whether or not known to Wells Fargo and whether or not existing on the date of this Amendment.

8. Release. Company hereby absolutely and unconditionally releases and forever discharges Wells Fargo, and any and all participants, parent corporations, subsidiary corporations, affiliated corporations, insurers, indemnitors, successors and assigns thereof, together with all of the present and former directors, officers, agents, attorneys, and employees of any of the foregoing, from any and all claims, demands or causes of action of any kind, nature or description, whether arising in law or equity or upon contract or tort or under any state or federal law or otherwise, which Company has had, now has or has made claim to have against any such

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person for or by reason of any act, omission, matter, cause or thing whatsoever arising from the beginning of time to and including the date of this Amendment, whether such claims, demands and causes of action are matured or unmatured or known or unknown.

9. Costs and Expenses. Company hereby reaffirms its agreement under the Agreement to pay or reimburse Wells Fargo on demand for all costs and expenses incurred by Wells Fargo in connection with the Loan Documents, including without limitation all reasonable fees and disbursements of legal counsel. Without limiting the generality of the foregoing, Company specifically agrees to pay all fees and disbursements of counsel to Wells Fargo for the services performed by such counsel in connection with the preparation of this Amendment and the documents and instruments incidental hereto.

10. Counterparts; Copies of Signatures. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument. Facsimile or email transmitted copies of signatures may be accepted as originals.

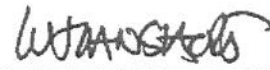
[Counterpart signature pages follow.]

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Counterpart signature page for the "First Amendment to Senior Secured Super-Priority Debtor-in-Possession Credit and Security Agreement" dated May 11, 2010, between: (i) Wells Fargo Bank, National Association, (ii) NutraCea, a California corporation, and (iii) NutraPhoenix, LLC, a Delaware limited liability company.

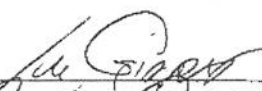
Date: May 11, 2010

NUTRACEA, a California corporation

By: 
Name: W JOHN SHORT
Its: Chairman & CEO

Date: May 11, 2010


NUTRAPHOENIX, LLC, a Delaware limited liability company

By: 
Name: P. SINGRAS
Its: COO + Secretary

Counterpart signature page for the "First Amendment to Senior Secured Super-Priority Debtor-in-Possession Credit and Security Agreement" dated May 11, 2010, between: (i) Wells Fargo Bank, National Association, (ii) NutraCea, a California corporation, and (iii) NutraPhoenix, LLC, a Delaware limited liability company.

Date: May 12, 2010

WELLS FARGO BANK, National Association,
acting through its Wells Fargo Business Credit
operating division

By: 
Name: SHANE LUKE
Its: Vice President

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 5/13/2010 at 8:55 AM AZ and filed on 5/13/2010

Case Name: Nutracea, a California corporation**Case Number:** [2:09-bk-28817-CGC](#)**Document Number:** [399](#)**Docket Text:**

Motion to Approve *Renewal and Extension of DIP Credit Facility with Wells Fargo* filed by S. CARY FORRESTER of FORRESTER & WORTH, PLLC on behalf of Nutracea, a California corporation (Attachments: # (1) Exhibit A). (FORRESTER, S.)

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

Document description:Main Document**Original filename:**N:\Word Docs\Cary\Active\NutraCea\DIP Renewal\For Filing 5-13-10\Motion for Apprv of Renewal and Ext of DIP Financing (FINAL).pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=875559564 [Date=5/13/2010] [FileNumber=17757773-0] [34e677b35967242e84ae478b5cfba5eb50c12aca0ac8f5aaeed969d5313425c1120349a1ed7b48a7b0101f838715b7ae17159242c5e63428e553f2eadd120f9b]]

Document description:Exhibit A**Original filename:**N:\Word Docs\Cary\Active\NutraCea\DIP Renewal\For Filing 5-13-10\Ex A.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=875559564 [Date=5/13/2010] [FileNumber=17757773-1] [8b7f92343fa23118d78ff4dca44ddb9714e4921d3375963accf108af20dabc14941af1f71d77e5021acbd42f1a49d866d7bdaeeaa28d8628471022ea938b94659]]

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

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