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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

**STIPULATED JOINT MOTION TO  
FILE DEBTOR'S ENGAGEMENT  
AGREEMENT WITH COLUMBIA  
WEST CAPITAL UNDER SEAL**

13 Debtor, the Official Unsecured Creditor's Committee (the "**Committee**") and the  
14 Office of the United States Trustee (the "**U.S. Trustee**") hereby jointly move the Court,  
15 pursuant to 11 U.S.C. § 107, Bankruptcy Rule 9018 and Local Rule of Bankruptcy  
16 Procedure 5005-2(b), to authorize Debtor to file a copy of its engagement agreement with  
17 Columbia West Capital ("**Columbia**") under seal and to authorize the Committee and the  
18 U.S. Trustee to file any objection that they may have to Debtor's second application to  
19 employ Columbia under seal. This motion is supported by the following Memorandum of  
20 Points and Authorities.

21 MEMORANDUM OF POINTS AND AUTHORITIES.

22 Background.

23 1. The court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 527 and  
24 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).  
25

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

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

5           The Pending Application to Employ Columbia.

6           4.       The Court previously authorized Debtor's employment of Columbia to  
7 perform a valuation of Debtors affiliates: Rice Science, LLC and RiceRx, LLC (the "**Rice**  
8 **Affiliates**"). The appraisal was completed in June and placed the value of the Rice  
9 Affiliates at between \$6.6 million and \$32.2 million, collectively.

10          5.       Contemporaneously with the filing of this motion, Debtor has filed a second  
11 application (the "**Application**") to employ Columbia, in which it seeks authority to  
12 employ Columbia to act as its exclusive agent in the private placement of securities  
13 and/or the arrangement of licensing, distribution and/or similar arrangements for the Rice  
14 Affiliates.

15          6.       Debtor and the Committee jointly filed a disclosure statement and plan of  
16 reorganization on June 24, 2010 (Dkt. Nos. 443 and 444). One of the alternatives being  
17 pursued for funding the plan and paying unsecured creditors is a capital raise at the Rice  
18 Affiliates level. Because the effective date of the plan must occur by no later than  
19 November 30, 2010, it is imperative that the Application be approved and Columbia's  
20 engagement commence at the earliest possible time.

21           Confidentiality of Portions of the Engagement Agreement.

22          7.       Under the terms of the engagement agreement, Columbia will receive a  
23 non-refundable retainer upon court approval of the Application and will receive a fixed  
24 percentage fee, subject to a minimum dollar amount, if its efforts are successful. It will  
25 receive the success fee if a transaction is arranged during the term of the engagement or

1 within the specified “tail” period. It will receive a smaller fee in a specified dollar  
2 amount if an alternative transaction is concluded by Debtor within a specified time  
3 period. Columbia’s reasonable out-of-pocket and incidental expenses will also be  
4 reimbursed. Debtor is not obligated to enter into any transaction presented to it by  
5 Columbia.

6 8. A negotiated term of Debtor’s agreement with Columbia is that the details  
7 of its compensation arrangement will not be made a part of the public record, and Debtor  
8 has committed to withdraw the Application if it would otherwise be required to publicly  
9 disclose the details of the compensation arrangement. Accordingly, Debtor attached a  
10 redacted version of the engagement agreement as Exhibit A-1 to the Application. Debtor  
11 also redacted the targeted amount of the equity raise and the list of investors that it has  
12 already approached, because such information is proprietary and confidential.

13 9. Debtor has provided the Committee with an un-redacted copy of the  
14 engagement agreement.

15 10. Debtor is prepared to provide the U.S. Trustee with an un-redacted copy of  
16 the engagement agreement upon entry of an order authorizing it to file the agreement  
17 under seal.

18 The Court has Statutory Authority to Authorize the filing of the Engagement  
19 Agreement under Seal.

20 11. The Bankruptcy Code broadly provides for public access to documents filed  
21 with the Clerk. 11 U.S.C. § 107(a). However, it also gives the court discretion to enter  
22 orders protecting the confidentiality of commercial information. 11 U.S.C. § 107(b)(1).  
23 Bankruptcy Rule 9018 also provides for the entry of orders necessary to protect  
24 confidential commercial information.

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Conclusion.

For all the reasons set forth above, movants request that the court enter an order authorizing Debtor to file a copy of its engagement agreement with Columbia West Capital under seal, and authorizing the Committee and the U.S. Trustee to file any objection that they may have to the Application under seal. Pursuant to Local Bankruptcy Rule 5005-2(b) a paper copy of such order will be attached to any documents delivered to the clerk for filing under seal.

DATED this 9<sup>th</sup> day of July, 2010.

FORRESTER AND WORTH, PLLC

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UNITED STATES TRUSTEE  
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**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 7/9/2010 at 12:05 PM AZ and filed on 7/9/2010

**Case Name:** Nutracea, a California corporation**Case Number:** [2:09-bk-28817-CGC](#)**Document Number:** [461](#)**Docket Text:**

Stipulated Motion to File Under Seal *Stipulated Joint Motion to File Debtor's Engagement Agreement With Columbia West Capital Under Seal* filed by S. CARY FORRESTER of FORRESTER & WORTH, PLLC on behalf of Nutracea, a California corporation (related document(s)[460] Application to Employ). (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\Debt Raise\For Filing 7-9-10\Motion to File Under Seal.pdf

**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=875559564 [Date=7/9/2010] [FileNumber=18474068-0]  
[4dfa2ef31c77cdcaf022ad6eee8531909ebba2415e17796041191e7a010bddd091be  
bd80d4b74d573898ccf779b994e80bad5dd54d4d92ee359233b87af66c13]]

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