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VITAMIN WORLD, INC.

16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

18
19 VINCENT JUAREZ,

20 Plaintiff,

21 v.

22 VITAMIN WORLD, INC., a Delaware
23 corporation; PURITAN'S PRIDE,
24 INC., New York corporation; and
DOES 1 through 20, Inclusive,

25 Defendants.
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Case No. 5:16-00705 JAK (SKx)

**STIPULATED PROTECTIVE
ORDER**

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1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

B. GOOD CAUSE STATEMENT

Defendant asserts that this action involves confidential and proprietary company information and documents, and private personal information related to Vitamin World, Inc. and its employees for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Defendant asserts that such material and information consists of, among other things, internal company policies, procedures, and training material relating to store operations, third-party information, including personal contact information, generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under applicable state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation

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2 of the litigation, and serve the ends of justice, the Parties agree to enter into a
3 protective order. It is the intent of the Parties that information will not be designated
4 as confidential for tactical reasons and that nothing be so designated without a good
5 faith belief that it has been maintained in a confidential, non-public manner, and there
6 is good cause why it should not be a part of the public record of this case.

7 2. DEFINITIONS

8 2.1 Action: *Vincent Juarez v. Vitamin World, Inc., et al.*, Case No. 5:16-00705
9 JAK (SKx).

10 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
11 information or items under this Order.

12 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
13 is generated, stored or maintained) or tangible things that qualify for protection under
14 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
15 Statement.

16 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
17 support staff).

18 2.5 Designating Party: a Party or Non-Party that designates information or
19 items that it produces in disclosures or in responses to discovery as
20 “CONFIDENTIAL.”

21 2.6 Disclosure or Discovery Material: all items or information, regardless of the
22 medium or manner in which it is generated, stored, or maintained (including, among
23 other things, testimony, transcripts, and tangible things), that are produced or
24 generated in disclosures or responses to discovery in this matter.

25 2.7 Expert: a person with specialized knowledge or experience in a matter
26 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
27 expert witness or as a consultant in this Action.

28 2.8 House Counsel: attorneys who are employees of a party to this Action.
House Counsel does not include Outside Counsel of Record or any other outside

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2 counsel.

3 2.9 Non-Party: any natural person, partnership, corporation, association, or
4 other legal entity not named as a Party to this action.

5 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
6 this Action but are retained to represent or advise a party to this Action and have
7 appeared in this Action on behalf of that party or are affiliated with a law firm which
8 has appeared on behalf of that party, and includes support staff.

9 2.11 Party: any party to this Action, including all of its officers, directors,
10 employees, consultants, retained experts, and Outside Counsel of Record (and their
11 support staffs).

12 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
13 Discovery Material in this Action.

14 2.13 Professional Vendors: persons or entities that provide litigation support
15 services (e.g., photocopying, videotaping, translating, preparing exhibits or
16 demonstrations, and organizing, storing, or retrieving data in any form or medium)
17 and their employees and subcontractors.

18 2.14 Protected Material: any Disclosure or Discovery Material that is
19 designated as "CONFIDENTIAL."

20 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
21 from a Producing Party.

22 **3. SCOPE**

23 The protections conferred by this Stipulation and Order cover not only
24 Protected Material (as defined above), but also (1) any information copied or extracted
25 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
26 Protected Material; and (3) any testimony, conversations, or presentations by Parties
27 or their Counsel that might reveal Protected Material.

28 Any use of Protected Material at trial shall be governed by the orders of the trial
judge. This Order does not govern the use of Protected Material at trial.

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4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party’s attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated

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2 or ordered, Disclosure or Discovery Material that qualifies for protection under this
3 Order must be clearly so designated before the material is disclosed or produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (e.g., paper or electronic documents,
6 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
7 Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter
8 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
9 portion or portions of the material on a page qualifies for protection, the Producing
10 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
11 markings in the margins).

12 A Party or Non-Party that makes original documents available for inspection
13 need not designate them for protection until after the inspecting Party has indicated
14 which documents it would like copied and produced. During the inspection and before
15 the designation, all of the material made available for inspection shall be deemed
16 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
17 copied and produced, the Producing Party must determine which documents, or
18 portions thereof, qualify for protection under this Order. Then, before producing the
19 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”
20 to each page that contains Protected Material. If only a portion or portions of the
21 material on a page qualifies for protection, the Producing Party also must clearly
22 identify the protected portion(s) (e.g., by making appropriate markings in the
23 margins).

24 (b) for testimony given in depositions that the Designating Party identify the
25 Disclosure or Discovery Material on the record, before the close of the deposition all
26 protected testimony.

27 (c) for information produced in some form other than documentary and for any
28 other tangible items, that the Producing Party affix in a prominent place on the
exterior of the container or containers in which the information is stored the legend

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2 “CONFIDENTIAL.” If only a portion or portions of the information warrants
3 protection, the Producing Party, to the extent practicable, shall identify the protected
4 portion(s).

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
6 to designate qualified information or items does not, standing alone, waive the
7 Designating Party’s right to secure protection under this Order for such material.
8 Upon timely correction of a designation, the Receiving Party must make reasonable
9 efforts to assure that the material is treated in accordance with the provisions of this
10 Order.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
13 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
15 process under Local Rule 37.1 et seq.

16 6.3 The burden of persuasion in any such challenge proceeding shall be on the
17 Designating Party. Frivolous challenges, and those made for an improper purpose
18 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
19 expose the Challenging Party to sanctions. Unless the Designating Party has waived or
20 withdrawn the confidentiality designation, all parties shall continue to afford the
21 material in question the level of protection to which it is entitled under the Producing
22 Party’s designation until the Court rules on the challenge.

23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is
25 disclosed or produced by another Party or by a Non-Party in connection with this
26 Action only for prosecuting, defending, or attempting to settle this Action. Such
27 Protected Material may be disclosed only to the categories of persons and under the
28 conditions described in this Order. When the Action has been terminated, a Receiving
Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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2 Protected Material must be stored and maintained by a Receiving Party at a
3 location and in a secure manner that ensures that access is limited to the persons
4 authorized under this Order.

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
6 ordered by the court or permitted in writing by the Designating Party, a Receiving
7 Party may disclose any information or item designated “CONFIDENTIAL” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
9 well as employees of said Outside Counsel of Record to whom it is reasonably
10 necessary to disclose the information for this Action;

11 (b) the officers, directors, and employees (including House Counsel) of
12 the Receiving Party to whom disclosure is reasonably necessary for this Action;

13 (c) Experts (as defined in this Order) of the Receiving Party to whom
14 disclosure is reasonably necessary for this Action and who have signed the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (d) the court and its personnel;

17 (e) court reporters and their staff;

18 (f) professional jury or trial consultants, mock jurors, and Professional
19 Vendors to whom disclosure is reasonably necessary for this Action and who have
20 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (g) the author or recipient of a document containing the information or a
22 custodian or other person who otherwise possessed or knew the information;

23 (h) during their depositions, witnesses ,and attorneys for witnesses, in the
24 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
25 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
26 not be permitted to keep any confidential information unless they sign the
27 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
28 by the Designating Party or ordered by the court. Pages of transcribed deposition
testimony or exhibits to depositions that reveal Protected Material may be separately

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2 bound by the court reporter and may not be disclosed to anyone except as permitted
3 under this Stipulated Protective Order; and

4 (i) any mediator or settlement officer, and their supporting personnel,
5 mutually agreed upon by any of the parties engaged in settlement discussions.

6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
7 OTHER LITIGATION

8 If a Party is served with a subpoena or a court order issued in other litigation
9 that compels disclosure of any information or items designated in this Action as
10 “CONFIDENTIAL,” that Party must:

11 (a) promptly notify in writing the Designating Party. Such notification shall
12 include a copy of the subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order to
14 issue in the other litigation that some or all of the material covered by the subpoena or
15 order is subject to this Protective Order. Such notification shall include a copy of this
16 Stipulated Protective Order; and

17 (c) cooperate with respect to all reasonable procedures sought to be pursued by
18 the Designating Party whose Protected Material may be affected.

19 If the Designating Party timely seeks a protective order, the Party served with
20 the subpoena or court order shall not produce any information designated in this
21 action as “CONFIDENTIAL” before a determination by the court from which the
22 subpoena or order issued, unless the Party has obtained the Designating Party’s
23 permission. The Designating Party shall bear the burden and expense of seeking
24 protection in that court of its confidential material and nothing in these provisions
25 should be construed as authorizing or encouraging a Receiving Party in this Action to
26 disobey a lawful directive from another court.

27 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
28 THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-

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2 Party in this Action and designated as “CONFIDENTIAL.” Such information
3 produced by Non-Parties in connection with this litigation is protected by the
4 remedies and relief provided by this Order. Nothing in these provisions should be
5 construed as prohibiting a Non-Party from seeking additional protections.

6 (b) In the event that a Party is required, by a valid discovery request, to produce
7 a Non-Party’s confidential information in its possession, and the Party is subject to an
8 agreement with the Non-Party not to produce the Non-Party’s confidential
9 information, then the Party shall:

10 (1) promptly notify in writing the Requesting Party and the Non-Party
11 that some or all of the information requested is subject to a confidentiality agreement
12 with a Non-Party;

13 (2) promptly provide the Non-Party with a copy of the Stipulated
14 Protective Order in this Action, the relevant discovery request(s), and a reasonably
15 specific description of the information requested; and

16 (3) make the information requested available for inspection by the Non-
17 Party, if requested.

18 (c) If the Non-Party fails to seek a protective order from this court within 14
19 days of receiving the notice and accompanying information, the Receiving Party may
20 produce the Non-Party’s confidential information responsive to the discovery request.
21 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
22 any information in its possession or control that is subject to the confidentiality
23 agreement with the Non-Party before a determination by the court. Absent a court
24 order to the contrary, the Non-Party shall bear the burden and expense of seeking
25 protection in this court of its Protected Material.

26 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
28 Protected Material to any person or in any circumstance not authorized under this
Stipulated Protective Order, the Receiving Party must immediately (a) notify in

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2 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
3 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
4 persons to whom unauthorized disclosures were made of all the terms of this Order,
5 and (d) request such person or persons to execute the “Acknowledgment and
6 Agreement to Be Bound” that is attached hereto as Exhibit A.

7 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
8 PROTECTED MATERIAL

9 When a Producing Party gives notice to Receiving Parties that certain
10 inadvertently produced material is subject to a claim of privilege or other protection,
11 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
12 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
13 may be established in an e-discovery order that provides for production without prior
14 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
15 parties reach an agreement on the effect of disclosure of a communication or
16 information covered by the attorney-client privilege or work product protection, the
17 parties may incorporate their agreement in the stipulated protective order submitted to
18 the court.

19 12. MISCELLANEOUS

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
21 person to seek its modification by the Court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this
23 Protective Order no Party waives any right it otherwise would have to object to
24 disclosing or producing any information or item on any ground not addressed in this
25 Stipulated Protective Order. Similarly, no Party waives any right to object on any
26 ground to use in evidence of any of the material covered by this Protective Order.

27 12.3 Filing Protected Material. A Party that seeks to file under seal any
28 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
only be filed under seal pursuant to a court order authorizing the sealing of the

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2 specific Protected Material at issue. If a Party's request to file Protected Material
3 under seal is denied by the court, then the Receiving Party may file the information in
4 the public record unless otherwise instructed by the court.

5 **13. FINAL DISPOSITION**

6 After the final disposition of this Action, as defined in paragraph 4,
7 within 60 days of a written request by the Designating Party, each Receiving Party
8 must return all Protected Material to the Producing Party or destroy such material. As
9 used in this subdivision, "all Protected Material" includes all copies, abstracts,
10 compilations, summaries, and any other format reproducing or capturing any of the
11 Protected Material. Whether the Protected Material is returned or destroyed, the
12 Receiving Party must submit a written certification to the Producing Party (and, if not
13 the same person or entity, to the Designating Party) by the 60 day deadline that (1)
14 identifies (by category, where appropriate) all the Protected Material that was returned
15 or destroyed and (2) affirms that the Receiving Party has not retained any copies,
16 abstracts, compilations, summaries or any other format reproducing or capturing any
17 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
18 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
19 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
20 reports, attorney work product, and consultant and expert work product, even if such
21 materials contain Protected Material. Any such archival copies that contain or
22 constitute Protected Material remain subject to this Protective Order as set forth in
23 Section 4 (DURATION).

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2 14. Any violation of this Order may be punished by any and all appropriate
3 measures including, without limitation, contempt proceedings and/or monetary
4 sanctions.

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6 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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8 Dated: August 11, 2016

9 /s/ Bryan L. McNally
10 DAREN H. LIPINSKY
11 BRYAN L. MCNALLY
12 DANIELLE AL-CHALATI
13 BROWN & LIPINSKY LLP
14 Attorneys for Plaintiff
15 VINCENT JUAREZ

16
17 Dated: August 11, 2016

18 /s/ Jamie Chu
19 ROBERT W. CONTI
20 JAMIE CHU
21 LITTLER MENDELSON, P.C.
22 Attorneys for Defendant
23 VITAMIN WORLD, INC.

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25 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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27 Dated: August 16, 2016

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HONORABLE STEVE KIM
UNITED STATES MAGISTRATE
JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of _____ *VINCENT JUAREZ v. VITAMIN WORLD, INC., et al.*, Case No. 5:16-CV-00705-JAK (SKx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____