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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

THE SCHWARTZ E LIQUID, a  
California Corporation, and THUY  
NGUYEN, an individual,

Plaintiffs,

v.

TSJ SIMPLY NAKED, LLC, a  
California Limited Liability  
Company; A/K/A SIMPLY NAKED  
THC; A/K/A NAKED THC; and  
DOES 1 through 10, inclusive.,

Defendants.

Case No. 8:18-cv-00692 CJC (FFMx)

PROTECTIVE ORDER PURSUANT TO  
STIPULATION

1. 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

1 under the applicable legal principles. The parties further acknowledge, as set forth  
2 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to  
3 file confidential information under seal; Civil Local Rule 79-5 sets forth the  
4 procedures that must be followed and the standards that will be applied when a  
5 party seeks permission from the court to file material under seal.

6 **B. GOOD CAUSE STATEMENT**

7 This action is likely to involve trade secrets, customer and pricing lists and  
8 other valuable research, development, commercial, financial and/or technical  
9 information for which special protection from public disclosure and from use for  
10 any purpose other than prosecution of this action is warranted. Such confidential  
11 materials and information consist of, among other things, confidential business or  
12 financial information, information regarding purchase and sale prices of materials  
13 by suppliers, manufacturers, importers or distributors, information regarding  
14 business practices, information regarding the creation, purchase or sale of consumer  
15 products, or other confidential commercial information (including information  
16 implicating privacy rights of third parties), information generally unavailable to the  
17 public, or which may be privileged or otherwise protected from disclosure under  
18 state or federal rules, court rules, case decisions, or common law. Accordingly, to  
19 expedite the flow of information, to facilitate the prompt resolution of disputes over  
20 confidentiality of discovery materials, to adequately protect information the parties  
21 are entitled to keep confidential, to ensure that the parties are permitted reasonable  
22 necessary uses of such material in preparation for and in the conduct of trial, to  
23 address their handling at the end of the litigation, and serve the ends of justice, a  
24 protective order for such information is justified in this matter. It is the intent of the  
25 parties that information will not be designated as confidential for tactical reasons  
26 and that nothing be so designated without a good faith belief that it has been  
27 maintained in a confidential, non-public manner, and there is good cause why it  
28 should not be part of the public record of this case.

1     2.     DEFINITIONS

2             2.1     Action: This pending federal law suit.

3             2.2     Challenging Party: a Party or Non-Party that challenges the  
4 designation of information or items under this Order.

5             2.3     “CONFIDENTIAL” Information or Items: information (regardless of  
6 how it is generated, stored or maintained) or tangible things that qualify for  
7 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
8 the Good Cause Statement.

9             2.4     “ATTORNEYS EYES ONLY” Information or Items: information  
10 (regardless of how it is generated, stored or maintained) or tangible things that  
11 qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified  
12 above in the Good Cause Statement that, due to the inherent trade secret nature and  
13 competitive advantage maintained by one or both parties is only viewable by  
14 counsel for the parties and other persons specified below.

15            2.5     Counsel: Outside Counsel of Record and House Counsel (as well as  
16 their support staff).

17            2.6     Designating Party: a Party or Non-Party that designates information or  
18 items that it produces in disclosures or in responses to discovery as  
19 “CONFIDENTIAL” or “ATTORNEYS EYES ONLY.”

20            2.7     Disclosure or Discovery Material: all items or information, regardless  
21 of the medium or manner in which it is generated, stored, or maintained (including,  
22 among other things, testimony, transcripts, and tangible things), that are produced  
23 or generated in disclosures or responses to discovery in this matter.

24            2.8     Expert: a person with specialized knowledge or experience in a matter  
25 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
26 an expert witness or as a consultant in this Action.

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1           2.9    House Counsel: attorneys who are employed as in-house counsel to a  
2 party to this Action. House Counsel does not include Outside Counsel of Record or  
3 any other outside counsel.

4           2.10 Non-Party: any natural person, partnership, corporation, association, or  
5 other legal entity not named as a Party to this action.

6           2.11 Outside Counsel of Record: attorneys who are not employees of a  
7 party to this Action but are retained to represent or advise a party to this Action and  
8 have appeared in this Action on behalf of that party or are affiliated with a law firm  
9 which has appeared on behalf of that party, and includes support staff.

10          2.12 Party: any party to this Action, including all of its officers, directors,  
11 employees, consultants, retained experts, and Outside Counsel of Record (and their  
12 support staffs).

13          2.13 Producing Party: a Party or Non-Party that produces Disclosure or  
14 Discovery Material in this Action.

15          2.14 Professional Vendors: persons or entities that provide litigation  
16 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
17 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
18 and their employees and subcontractors.

19          2.15 Protected Material: any Disclosure or Discovery Material that is  
20 designated as “CONFIDENTIAL” or “ATTORNEYS EYES ONLY.”

21          2.16 Receiving Party: a Party that receives Disclosure or Discovery  
22 Material from a Producing Party.

### 23    3.    SCOPE

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

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

3 4. DURATION

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

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

1           5.2 Manner and Timing of Designations. Except as otherwise provided in  
2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
4 under this Order must be clearly so designated before the material is disclosed or  
5 produced.

6           Designation in conformity with this Order requires:

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

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

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

4 (c) for information produced in some form other than documentary and  
5 for any other tangible items, that the Producing Party affix in a prominent place on  
6 the exterior of the container or containers in which the information is stored the  
7 legend “CONFIDENTIAL” or “ATTORNEYS EYES ONLY.” If only a portion or  
8 portions of the information warrants protection, the Producing Party, to the extent  
9 practicable, shall identify the protected portion(s).

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

## 16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
18 designation of confidentiality at any time that is consistent with the Court’s  
19 Scheduling Order.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
21 resolution process under Local Rule 37.1, et seq. Any discovery motion must  
22 strictly comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

23 6.3 Burden. The burden of persuasion in any such challenge proceeding  
24 shall be on the Designating Party. Frivolous challenges, and those made for an  
25 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
26 other parties) may expose the Challenging Party to sanctions. Unless the  
27 Designating Party has waived or withdrawn the confidentiality designation, all  
28 parties shall continue to afford the material in question the level of protection to

1 which it is entitled under the Producing Party’s designation until the Court rules on  
2 the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
5 disclosed or produced by another Party or by a Non-Party in connection with this  
6 Action only for prosecuting, defending, or attempting to settle this Action. Such  
7 Protected Material may be disclosed only to the categories of persons and under the  
8 conditions described in this Order. When the Action has been terminated, a  
9 Receiving Party must comply with the provisions of section 13 below (FINAL  
10 DISPOSITION).

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

14 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
15 otherwise ordered by the court or permitted in writing by the Designating Party, a  
16 Receiving Party may disclose any information or item designated  
17 “CONFIDENTIAL” only to:

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

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

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

26 (d) the court and its personnel;

27 (e) court reporters and their staff;

28 (f) professional jury or trial consultants, mock jurors, and Professional



1 Vendors to whom disclosure is reasonably necessary for this Action and who have  
2 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

5 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
6 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
7 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they  
8 will not be permitted to keep any confidential information unless they sign the  
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
10 agreed by the Designating Party or ordered by the court. Pages of transcribed  
11 deposition testimony or exhibits to depositions that reveal Protected Material may  
12 be separately bound by the court reporter and may not be disclosed to anyone  
13 except as permitted under this Stipulated Protective Order; and

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

16 7.3 Disclosure of “ATTORNEYS EYES ONLY” Information or Items.

17 Unless otherwise ordered by the court or permitted in writing by the Designating  
18 Party, a Receiving Party may disclose any information or item designated  
19 “ATTORNEYS EYES ONLY” only to:

20 (a) the Receiving Party’s Outside Counsel of Record in this Action;

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

24 (c) the court and its personnel;

25 (d) court reporters and their staff;

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

1 (f) the author or recipient of a document containing the information or a  
2 custodian or other person who otherwise possessed or knew the information;

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

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

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

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

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

16 (c) cooperate with respect to all reasonable procedures sought to be pursued  
17 by the Designating Party whose Protected Material may be affected. If the  
18 Designating Party timely seeks a protective order, the Party served with the  
19 subpoena or court order shall not produce any information designated in this action  
20 as “CONFIDENTIAL” or “ATTORNEYS EYES ONLY” before a determination  
21 by the court from which the subpoena or order issued, unless the Party has obtained  
22 the Designating Party’s permission. The Designating Party shall bear the burden  
23 and expense of seeking protection in that court of its confidential material and  
24 nothing in these provisions should be construed as authorizing or encouraging a  
25 Receiving Party in this Action to disobey a lawful directive from another court.

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

3 (a) The terms of this Order are applicable to information produced by a Non-  
4 Party in this Action and designated as “CONFIDENTIAL” or “ATTORNEYS  
5 EYES ONLY.” Such information produced by Non-Parties in connection with this  
6 litigation is protected by the remedies and relief provided by this Order. Nothing in  
7 these provisions should be construed as prohibiting a Non-Party from seeking  
8 additional protections.

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

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

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

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

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

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
3 Protected Material to any person or in any circumstance not authorized under this  
4 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
5 writing the Designating Party of the unauthorized disclosures, (b) use its best  
6 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the  
7 person or persons to whom unauthorized disclosures were made of all the terms of  
8 this Order, and (d) request such person or persons to execute the “Acknowledgment  
9 and Agreement to Be Bound” that is attached hereto as Exhibit A.

10 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
11 PROTECTED MATERIAL

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

22 12. MISCELLANEOUS

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
24 person to seek its modification by the Court in the future.

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

1 any ground to use in evidence of any of the material covered by this Protective  
2 Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any  
4 Protected Material must comply with Civil Local Rule 79-5. Protected Material  
5 may only be filed under seal pursuant to a court order authorizing the sealing of the  
6 specific Protected Material at issue. If a Party's request to file Protected Material  
7 under seal is denied by the court, then the Receiving Party may file the information  
8 in the public record unless otherwise instructed by the court.

9 13. FINAL DISPOSITION

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

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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 *The Schwartz E Liquid et al. v. TSJ Simply Naked, LLC*.  
*8:18-cv-00692 CJC (FFMx)*. 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: \_\_\_\_\_