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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

VITALYTE SPORTS NUTRITION
INC., a Nevada corporation,

Plaintiff,

v.

REVITALYTE LLC, a Minnesota
limited liability company; and DOES 1-
10, inclusive,

Defendants.

Case No. 3:21-cv-00880-JLS-BGS

**ORDER GRANTING JOINT
MOTION FOR ENTRY OF
STIPULATED PROTECTIVE
ORDER**

AND RELATED COUNTERCLAIMS.

The parties Joint Motion for Entry of Stipulated Protective Order is **GRANTED** and the parties Stipulated Protective Order is entered as follows:¹

The Court recognizes that at least some of the documents and information ("materials") being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order ("Order") in this action.

¹ The Stipulated Protective Order is modified only as to the addition of footnote two below.

1 The materials to be exchanged throughout the course of the litigation between
2 the parties may contain trade secret or other confidential research, technical, cost,
3 price, marketing or other commercial information, as is contemplated by Federal Rule
4 of Civil Procedure 26(c)(1)(G). The purpose of this Order is to protect the
5 confidentiality of such materials as much as practical during the litigation.

6 THEREFORE:

7 DEFINITIONS

8 1. The term "confidential information" will mean and include information
9 contained or disclosed in any materials, including documents, portions of documents,
10 answers to interrogatories, responses to requests for admissions, trial testimony,
11 deposition testimony, and transcripts of trial testimony and depositions, including
12 data, summaries, and compilations derived therefrom that is deemed to be confidential
13 information by any party to which it belongs.

14 2. The term "materials" will include, but is not be limited to: documents;
15 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or
16 other material that identify customers or potential customers; price lists or schedules
17 or other matter identifying pricing; minutes; telegrams; letters; statements; cancelled
18 checks; contracts; invoices; drafts; books of account; worksheets; notes of
19 conversations; desk diaries; appointment books; expense accounts; recordings;
20 photographs; motion pictures; compilations from which information can be obtained
21 and translated into reasonably usable form through detection devices; sketches;
22 drawings; notes (including laboratory notebooks and records); reports; instructions;
23 disclosures; other writings; models and prototypes and other physical objects.

24 3. The term "counsel" will mean outside counsel of record, and other
25 attorneys, paralegals, secretaries, and other support staff employed in the law firms
26 identified below:

27 Sheppard Mullin Richter & Hampton LLP

28 Snell & Wilmer L.L.P.

1 GENERAL RULES

2 4. Each party to this litigation that produces or discloses any materials,
3 answers to interrogatories, responses to requests for admission, trial testimony,
4 deposition testimony, and transcripts of trial testimony and depositions, or
5 information that the producing party believes should be subject to this Protective
6 Order may designate the same as "CONFIDENTIAL" or "CONFIDENTIAL - FOR
7 COUNSEL ONLY."

8 a. Designation as "CONFIDENTIAL": Any party may designate
9 information as "CONFIDENTIAL" only if, in the good faith belief of such party and
10 its counsel, the unrestricted disclosure of such information could be potentially
11 prejudicial to the business or operations of such party.

12 b. Designation as "CONFIDENTIAL - FOR COUNSEL ONLY": Any
13 party may designate information as "CONFIDENTIAL - FOR COUNSEL ONLY"
14 only if, in the good faith belief of such party and its counsel, the information is among
15 that considered to be most sensitive by the party, including but not limited to trade
16 secret or other confidential research, development, financial or other commercial
17 information.

18 5. In the event the producing party elects to produce materials for
19 inspection, no marking need be made by the producing party in advance of the initial
20 inspection. For purposes of the initial inspection, all materials produced will be
21 considered as "CONFIDENTIAL - FOR COUNSEL ONLY," and must be treated as
22 such pursuant to the terms of this Order. Thereafter, upon selection of specified
23 materials for copying by the inspecting party, the producing party must, within a
24 reasonable time prior to producing those materials to the inspecting party, mark the
25 copies of those materials that contain confidential information with the appropriate
26 confidentiality marking.

27 6. Whenever a deposition taken on behalf of any party involves a disclosure
28 of confidential information of any party:

- 1 a. the deposition or portions of the deposition must be designated as
2 containing confidential information subject to the provisions of
3 this Order; such designation must be made on the record whenever
4 possible, but a party may designate portions of depositions as
5 containing confidential information after transcription of the
6 proceedings; [A] party will have until fourteen (14) days after
7 receipt of the deposition transcript to inform the other party or
8 parties to the action of the portions of the transcript to be
9 designated "CONFIDENTIAL" or "CONFIDENTIAL - FOR
10 COUNSEL ONLY."
- 11 b. the disclosing party will have the right to exclude from attendance
12 at the deposition, during such time as the confidential information
13 is to be disclosed, any person other than the deponent, counsel
14 (including their staff and associates), the court reporter, and the
15 person(s) agreed upon pursuant to paragraph 8 below; and
- 16 c. the originals of the deposition transcripts and all copies of the
17 deposition must bear the legend "CONFIDENTIAL" or
18 "CONFIDENTIAL - FOR COUNSEL ONLY," as appropriate,
19 and the original or any copy ultimately presented to a court for
20 filing must not be filed unless it can be accomplished under seal,
21 identified as being subject to this Order, and protected from being
22 opened except by order of this Court.

23 7. All confidential information designated as "CONFIDENTIAL" or
24 "CONFIDENTIAL FOR COUNSEL ONLY" must not be disclosed by the receiving
25 party to anyone other than those persons designated within this order and must be
26 handled in the manner set forth below and, in any event, must not be used for any
27 purpose other than in connection with this litigation, unless and until such designation
28 is removed either by agreement of the parties, or by order of the Court.

1 8. Information designated "CONFIDENTIAL - FOR COUNSEL ONLY"
2 must be viewed only by counsel (as defined in paragraph 3) of the receiving party,
3 and by independent experts under the conditions set forth in this Paragraph. The right
4 of any independent expert to receive any confidential information will be subject to
5 the advance approval of such expert by the producing party or by permission of the
6 Court. The party seeking approval of an independent expert must provide the
7 producing party with the name and curriculum vitae of the proposed independent
8 expert, and an executed copy of the form attached hereto as Exhibit A, in advance of
9 providing any confidential information of the producing party to the expert. Any
10 objection by the producing party to an independent expert receiving confidential
11 information must be made in writing within fourteen (14) days following receipt of
12 the identification of the proposed expert. Confidential information may be disclosed
13 to an independent expert if the fourteen (14) day period has passed and no objection
14 has been made. The approval of independent experts must not be unreasonably
15 withheld.

16 9. Information designated "confidential" must be viewed only by counsel
17 (as defined in paragraph 3) of the receiving party, by independent experts (pursuant
18 to the terms of paragraph 8), by court personnel, and by the additional individuals
19 listed below, provided each such individual has read this Order in advance of
20 disclosure and has agreed in writing to be bound by its terms:

- 21 a. Executives who are required to participate in policy decisions with
22 reference to this action;
- 23 b. Technical personnel of the parties with whom Counsel for the
24 parties find it necessary to consult, in the discretion of such
25 counsel, in preparation for trial of this action; and
- 26 c. Stenographic and clerical employees associated with the
27 individuals identified above.

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1 10. With respect to material designated "CONFIDENTIAL" or
2 "CONFIDENTIAL – FOR COUNSEL ONLY," any person indicated on the face of
3 the document to be its originator, author or a recipient of a copy of the document, may
4 be shown the same.

5 11. All information which has been designated as "CONFIDENTIAL" or
6 "CONFIDENTIAL -FOR COUNSEL ONLY" by the producing or disclosing party,
7 and any and all reproductions of that information, must be retained in the custody of
8 the counsel for the receiving party identified in paragraph 3, except that independent
9 experts authorized to view such information under the terms of this Order may retain
10 custody of copies such as are necessary for their participation in this litigation.

11 12. Before any materials produced in discovery, answers to interrogatories,
12 responses to requests for admissions, deposition transcripts, or other documents which
13 are designated as confidential information are filed with the Court for any purpose,
14 the party seeking to file such material must seek permission of the Court to file the
15 material under seal. No document shall be filed under seal unless counsel secures a
16 court order allowing the filing of a document under seal. An application to file a
17 document under seal shall be served on opposing counsel, and on the person or entity
18 that has custody and control of the document, if different from opposing counsel. If
19 opposing counsel, or the person or entity who has custody and control of the
20 document, wishes to oppose the application, he/she must contact the chambers of the
21 judge who will rule on the application, to notify the judge's staff that an opposition to
22 the application will be filed.

23 13. At any stage of these proceedings, any party may object to a designation
24 of the materials as confidential information. The party objecting to confidentiality
25 must notify, in writing, counsel for the designating party of the objected-to materials
26 and the grounds for the objection. If the dispute is not resolved consensually between
27 the parties within seven (7) days of receipt of such a notice of objections, the objecting
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1 party may move the Court for a ruling on the objection.² The materials at issue must
2 be treated as confidential information, as designated by the designating party, until
3 the Court has ruled on the objection or the matter has been otherwise resolved.

4 14. All confidential information must be held in confidence by those
5 inspecting or receiving it, and must be used only for purposes of this action. Counsel
6 for each party, and each person receiving confidential information must take
7 reasonable precautions to prevent the unauthorized or inadvertent disclosure of such
8 information. If confidential information is disclosed to any person other than a person
9 authorized by this Order, the party responsible for the unauthorized disclosure must
10 immediately bring all pertinent facts relating to the unauthorized disclosure to the
11 attention of the other parties and, without prejudice to any rights and remedies of the
12 other parties, make every effort to prevent further disclosure by the party and by the
13 person(s) receiving the unauthorized disclosure.

14 15. No party will be responsible to another party for disclosure of
15 confidential information under this Order if the information in question is not labeled
16 or otherwise identified as such in accordance with this Order.

17 16. If a party, through inadvertence, produces any confidential information
18 without labeling or marking or otherwise designating it as such in accordance with
19 this Order, the designating party may give written notice to the receiving party that
20 the document or thing produced is deemed confidential information, and that the
21 document or thing produced should be treated as such in accordance with that
22 designation under this Order. The receiving party must treat the materials as
23 confidential, once the designating party so notifies the receiving party. If the
24 receiving party has disclosed the materials before receiving the designation, the
25 receiving party must notify the designating party in writing of each such disclosure.

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27 _____
28 ² Parties must comply with the procedures in Judge Skomal's Chambers Rules,
Section V to timely raise any dispute.

1 Counsel for the parties will agree on a mutually acceptable manner of labeling or
2 marking the inadvertently produced materials as "CONFIDENTIAL" or
3 "CONFIDENTIAL - FOR COUNSEL ONLY" - SUBJECT TO PROTECTIVE
4 ORDER.

5 17. Nothing within this order will prejudice the right of any party to object
6 to the production of any discovery material on the grounds that the material is
7 protected as privileged or as attorney work product.

8 18. Nothing in this Order will bar counsel from rendering advice to their
9 clients with respect to this litigation and, in the course thereof, relying upon any
10 information designated as confidential information, provided that the contents of the
11 information must not be disclosed.

12 19. This Order will be without prejudice to the right of any party to oppose
13 production of any information for lack of relevance or any other ground other than
14 the mere presence of confidential information. The existence of this Order must not
15 be used by either party as a basis for discovery that is otherwise improper under the
16 Federal Rules of Civil Procedure.

17 20. Nothing within this order will be construed to prevent disclosure of
18 confidential information if such disclosure is required by law or by order of the Court.

19 21. Upon final termination of this action, including any and all appeals,
20 counsel for each party must, upon request of the producing party, return all
21 confidential information to the party that produced the information, including any
22 copies, excerpts, and summaries of that information, or must destroy same at the
23 option of the receiving party, and must purge all such information from all machine-
24 readable media on which it resides. Notwithstanding the foregoing, counsel for each
25 party may retain all pleadings, briefs, memoranda, motions, and other documents filed
26 with the Court that refer to or incorporate confidential information, and will continue
27 to be bound by this Order with respect to all such retained information. Further,
28 attorney work product materials that contain confidential information need not be

1 destroyed, but, if they are not destroyed, the person in possession of the attorney work
2 product will continue to be bound by this Order with respect to all such retained
3 information.

4 22. Upon final termination of this action, including any and all appeals, the
5 Court shall destroy confidential and sealed documents ninety (90) days after this
6 action is closed. Any action by this Court must be preceded by an *ex parte* motion
7 for an order authorizing the return of all "CONFIDENTIAL" or "CONFIDENTIAL -
8 FOR COUNSEL ONLY" to the party that produced the information or the destruction
9 thereof.

10 23. The restrictions and obligations set forth within this order will not apply
11 to any information that: (a) the parties agree should not be designated confidential
12 information; (b) the parties agree, or the Court rules, is already public knowledge; (c)
13 the parties agree, or the Court rules, has become public knowledge other than as a
14 result of disclosure by the receiving party, its employees, or its agents in violation of
15 this Order; or (d) has come or will come into the receiving party's legitimate
16 knowledge independently of the production by the designating party. Prior
17 knowledge must be established by preproduction documentation.

18 24. The restrictions and obligations within this order will not be deemed to
19 prohibit discussions of any confidential information with anyone if that person
20 already has or obtains legitimate possession of that information.

21 25. Transmission by email or some other currently utilized method of
22 transmission is acceptable for all notification purposes within this Order.

23 26. This Order may be modified by agreement of the parties, subject to
24 approval by the Court.

25 27. The Court may modify the terms and conditions of this Order for good
26 cause, or in the interest of justice, or on its own order at any time in these proceedings.
27 The parties prefer that the Court provide them with notice of the Court's intent to
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1 modify the Order and the content of those modifications, prior to entry of such an
2 order.

3 28. Without separate court order, this Order and the parties' stipulation does
4 not change, amend, or circumvent any court rule or local rule.

5 **IT IS SO ORDERED.**

6 Dated: September 1, 2021

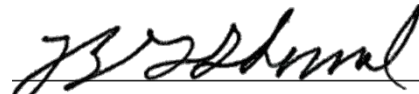
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8 Hon. Bernard G. Skomal
9 United States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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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 Southern District of California on
_____ [date] in the case of *Vitalyte Sports Nutrition Inc. v. Revitalyte LLC et*
al., Case No. 3:21-cv-00880-JLS-BGS. 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 Southern 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: _____