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 6 *Schur Consumer Products, Inc.*

7 **UNITED STATES DISTRICT COURT**
 8 **DISTRICT OF NEVADA**

10	MARTHA LAMPLEY and REGINALD)	
	HAYES,)	Case No.: 2:15-cv-01289-RFB-NJK
11)	
	Plaintiffs,)	STIPULATION AND PROTECTIVE
12)	ORDER GOVERNING
	vs.)	CONFIDENTIALITY OF
13)	DOCUMENTS AND OTHER
	SMITH'S FOOD AND DRUG CENTERS, INC.,)	INFORMATION
14	a corporation; SCHUR CONSUMER)	
	PRODUCTS, INC., a foreign corporation; DOES)	<u>AS AMENDED</u>
15	I through X; and ROE ENTITIES I through X,)	
)	
16	Defendants.)	

17 The parties by and through their respective undersigned counsel to hereby stipulate and
 18 agree that the Court may enter a Protective Order Governing Confidentiality of Documents and
 19 Other Information to expedite the flow of discovery material, facilitate the prompt resolution of
 20 disputes over confidentiality; protect adequately material entitled to be kept confidential and
 21 privileged as proprietary or otherwise considered confidential or privileged company policies
 22 and procedures and to ensure that protection is afforded only to material or information so
 23 entitled.

1 It is, pursuant to the Court's authority under Fed. R. Civ. P. 26(c) and with the consent
2 of the parties, hereby stipulated and agreed that the following terms and conditions applicable to
3 discovery in this matter be entered by order of the Court:

4 **A. NONDISCLOSURE OF STAMPED CONFIDENTIAL DOCUMENTS.**

5 Except with the prior written consent of the party or other person originally designating
6 a document to be stamped as a confidential document, or as hereinafter provided under this
7 order, no stamped confidential document may be disclosed to any person, except as authorized
8 by this Order.

9 A "stamped confidential document" means any document which bears the legend or which
10 shall otherwise have had the legend recorded upon it in any way that brings to the attention of a
11 reasonable examiner. "*Confidential-Subject to Protective Order*" signifies that the document so
12 marked contains the information believed to be subject to a protection under Federal Rules of
13 Civil Procedure ~~N.R.C.P.~~ ^{F.R.C.P.} 26(c), under the various policies of the affected companies or agencies
14 whose documents or information is being produced, or otherwise under federal or state law. For
15 purposes of this order, the term "document" means all written, recorded or graphic material,
16 whether produced or created by a party or another person pursuant to Rule 34, subpoena, by
17 agreement or otherwise. Interrogatory answers, responses to requests for admissions, deposition
18 transcripts and exhibits, pleadings, motions, affidavits and briefs that summarize or contain
19 materials entitled to protection that may be accorded status as a stamped confidential document,
20 but, to the extent feasible, shall be prepared in such a manner that the confidential information is
21 bound separately from that not entitled to protection. In the event a party examines or inspects
22 the processes or equipment operations of a company, the notes, data compilations, photographs,
23 videotaping or other type of recordation shall be deemed a document as defined herein.

21 **B. PERMISSIBLE DISCLOSURES.**

22 Notwithstanding paragraph A, stamped confidential documents may be disclosed to the
23 parties and counsel for the parties in the action who are effectively engaged in the conduct of
this litigation; to the partners, associates, secretaries, paralegals, assistants and employees of

1 such counsel to the extent reasonably necessary to render professional services in the litigation;
2 to persons with prior knowledge of the documents or the confidential information contained
3 therein, and their agents; and to Court officials involved in this litigation (including Court
4 reporters, persons operating video recording equipment at depositions, and any special master
5 appointed by the Court). Subject to the provisions of paragraph (c) below, such documents may
also be disclosed:

6 (a) To any person designated by the Court in the interest of justice, upon
7 such terms as the Court may deem proper;

8 (b) To persons noticed for depositions or designated as trial witnesses to the
9 extent reasonably necessary in preparing to testify; to outside consultants or experts retained for
10 the purpose of assisting counsel in litigation; to employees and parties involved solely in one or
11 more aspects of organizing, filing, coding, converting, storing, or retreating data or designating
12 programs for data connected with these actions, including the performance of such duties in
13 relation to a computerized litigation support system; and to employees at third-party vendors to
14 perform one or more of these functions; provided, however, that in all such cases the individual
to whom disclosure is to be made has signed and submitted to counsel who provides the
15 stamped confidential document a form (see Appendix A) containing:

- 16 (1) a recital that the signatory has read and understands this order;
- 17 (2) a recital that the signatory understands that unauthorized
disclosures of the stamped confidential documents constitute contempt of Court;
- 18 (3) a statement that the signatory consents to submit to the personal
19 jurisdiction of this Court for enforcement of this stipulation and order.

20
21 **C. DECLASSIFICATION.**

22 The parties shall meet and confer in a good faith effort to resolve any dispute concerning
the propriety of marking documents as *Confidential-Subject to Protective Order* without court
23 intervention. However, if the parties are unable to agree, a party (or entity permitted by the Court to

1 intervene for such purposes) may apply to the Court by ruling that a document (or categories of
2 documents) stamped as confidential is not entitled such status and protection. The party or other
3 person that designated the document as confidential shall be given notice of the application and an
4 opportunity to respond. To maintain confidential status, the proponent of the confidentiality shall,
5 by a preponderance of evidence, establish that there is good cause for the document to have such
6 protection.

7 **D-1. CONFIDENTIAL INFORMATION IN DEPOSITIONS.**

8 (a) A deponent may during the deposition be shown and examined about
9 stamped confidential documents. Deponents shall not retain or copy portions of a transcript of their
10 depositions that contain confidential information not provided by them or the entities that they
11 represent unless they sign the form described in paragraph B(b). A deponent who is not a party or
12 a representative of a party shall be furnished a copy of this order before being examined about or
13 asked to produce, potentially confidential documents.

14 (b) Parties (and deponents) may, within fifteen (15) days after first receiving a
15 deposition transcript, in any form, including electronic or hard copy, designate pages of the
16 transcript (and exhibits thereto) as confidential. Confidential information within the deposition
17 transcript may be designated by underlining the portions of the pages that are confidential and
18 marking such pages with a following legend: "*Confidential Subject to Protection Order.*" Absent
19 an agreement otherwise, until expiration of the fifteen (15) day period, the entire deposition will be
20 treated as subject to protection against disclosure under this order. If no party or deponent timely
21 designates confidential information in a deposition, then neither the transcript nor any of the
22 exhibits thereto will be treated as confidential, except that any exhibit to such transcript, if a
23 stamped confidential document prior to the taking of the subject deposition, will remain
confidential; if timely designation is made, the confidential portions and exhibits shall be filed or
held under seal separate from the portions and exhibits not so marked.

D-2. CONFIDENTIAL INFORMATION AT TRIAL OR HEARINGS.

~~Confidential information at trial subject to Federal rules of evidence, stamped confidential~~

1 ~~documents and other confidential information may be offered into evidence at trial or any Court~~
2 ~~hearing, provided the party submitting the evidence does so under seal.~~

3 **E. SUBPOENA BY OTHER COURTS OR AGENCIES.**

4 If another Court or administrative agency subpoenas or orders production of stamped
5 confidential documents that a party has obtained under the terms of this order, such parties shall
6 forthwith promptly notify the counsel for the party who designated the document as confidential of
7 the pendency of such subpoena or order.

7 **F. FILING.**

8 ~~Stamped confidential documents may not be filed with the clerk except when required in~~
See order issued ~~with filings or other matters pending before the Court. If filed, they shall be filed under~~
concurrently herewith ~~SEAL and shall remain SEALED while in the office of the clerk so long as they retain their status~~
10 ~~as stamped confidential documents.~~

11 **G. CLIENT REVIEW.**

12 The parties to this action are permitted to examine all confidential documents, but agree not
13 to divulge or use the same unless otherwise permitted by this stipulation and order.

14 **H. PROHIBITIVE COPYING.**

15 If a document contains information so sensitive that it should not be copied by anyone,
16 including counsel or counsel representatives for the parties, it shall bear the additional legend
17 “*Copying Prohibited.*” Application for relief from this restriction against copying may be made to
18 the Court with notice to counsel so designating the document.

18 **I. USE.**

19 Persons obtaining access to stamped confidential documents under this order shall use the
20 information only for preparation in trial of this specific litigation (including appeals and re-trials),
21 and shall not use such information for any other purpose, including, but not limited to, business,
22 personal, separate litigation, or judicial procedures.

22 **J. NON-TERMINATION.**

23 The provisions of this order shall not terminate at the conclusion of this action. Within 60

1 days after the final conclusion of all aspects of this litigation, stamped confidential documents and
2 all copies of the same shall be returned to the counsel for the party that produced such documents,
3 or, at the option of the holder of the documents destroyed. All counsel of record shall submit
4 certification of compliance herewith and shall deliver the same to counsel for the party who
5 produced the documents, not more than 60 days after the final termination of this litigation.

6 **K. MODIFICATION PERMITTED.**

7 Nothing in this order shall prevent any party or other person seeking modification of this
8 order or from objecting to discovery that it believes to be otherwise improper.

9 **L. RESPONSIBILITY OF ATTORNEYS.**

10 The attorneys of record are responsible for employing reasonable measures, consistent with
11 this order, to control duplication of, access to, and distribution of copies of stamped confidential
12 documents. Parties shall not duplicate any stamped confidential documents except for working
13 copies, copies for deposition exhibits and copies for filing with the Court under SEAL.

14 **M. NO WAIVER.**

15 (a) Review of confidential documents and information by any persons pursuant
16 to this Order shall not waive the confidentiality of the documents or objections to production.

17 (b) The inadvertent, unintentional, or in camera disclosure of confidential
18 documents and information shall not, under any circumstances, be deemed a waiver in whole or
19 in part, of any persons claim of confidentiality.

20 **N. OBJECTIONS RESERVED.**

21 Nothing contained in this confidentiality order and no action taken pursuant to it shall
22 prejudice the right to any party to contest alleged relevancy, admissibility, or discoverability of
23 confidential documents and information sought.

DATED this 17 ^{February} day of ~~January~~, 2016.

BACKUS, CARRANZA & BURDEN

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By: Tess Johnson
Leland Eugene Backus, Esq.
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Tess E. Johnson, Esq.
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Attorneys for Defendant
Schur Consumer Products, Inc.

DATED this 15 day of Feb January, 2016.

TANNER LAW FIRM
[Signature]
By: _____
David A. Tanner, Esq.
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8635 S. Eastern Avenue
Las Vegas, NV 89123
(702) 987-8888
Attorney for Plaintiffs
Martha Lampley and Reginald Hayes

DATED this ____ day of January, 2016

COOPER LEVENSON, P.A.
[Signature]
By: _____
Jerry S. Busby
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(702) 366-1125
Attorneys for Defendant
Smith's Food & Drug Centers, Inc.

ORDER

The parties jointly submitted a Stipulation and Proposed Protective Order Governing Confidential Documents and Other Information the terms and conditions of which the Court

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By: _____
Leland Eugene Backus, Esq.
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Tess E. Johnson, Esq.
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3050 South Durango Drive
Las Vegas, Nevada 89117
Attorneys for Defendant
Schur Consumer Products, Inc.

DATED this ____ day of January, 2016.

TANNER LAW FIRM

By: _____
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8635 S. Eastern Avenue
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(702) 987-8888
Attorney for Plaintiffs
Martha Lampley and Reginald Hayes

DATED this 17th ^{February} day of ~~January~~, 2016

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(702) 366-1125
Attorneys for Defendant
Smith's Food & Drug Centers, Inc.

ORDER

The parties jointly submitted a Stipulation and Proposed Protective Order Governing Confidential Documents and Other Information the terms and conditions of which the Court

1 reviewed and does hereby approve and order adopted under Fed. R. Civ. P. 26(c).

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Dated February 18, 2016



NANCY J. KOPPE
UNITED STATES MAGISTRATE JUDGE

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APPENDIX A TO STIPULATION

I, _____, have received, read, understand, and hereby agree to be bound by the terms of, the foregoing Stipulation (and any Court Order entered on the Stipulation), which I acknowledge have been provided to me. I agree not to disclose, discuss, or otherwise use any confidential document or information (as defined in the Stipulation) except to the extent allowed under, and in compliance with, the Stipulation. I further agree to take reasonable precautions to ensure that any confidential document or information provided to me remains in a secure and confidential location so as to prevent unauthorized access to such material.

I understand that my access to confidential document or information in this case is solely as a result of, and conditioned upon, my acceptance of, and agreement to be bound by, the terms of this Stipulation. I recognize that any failure to comply with the Stipulation, and any Court Order entered thereon, may result in action being taken against me. I hereby consent to the jurisdiction of the United States District Court for Nevada, for the sole purpose of enforcing the Stipulation and any Court Order entered thereon.

Dated: _____

Signed: _____

Print name: _____