

HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THOMAS PEARCE,

Plaintiff

v.

IRWIN NATURALS, registered in the State of  
Nevada as a Domestic Corporation; and a  
California State Foreign company, doing  
business in Washington State,

Defendant.

And

VITAMIN SHOPPE, INC. ("The Parent"), and  
VITAMIN SHOPPE INDUSTRIES, INC. (the  
"Company"), a New Jersey based corporation  
dba SUPER SUPPLEMENTS, in the State of  
Washington,

Defendant.

NO. 2:17-CV-00630 TSZ

STIPULATED PROTECTIVE ORDER

1       1.       PURPOSES AND LIMITATIONS

2           Discovery in this action is likely to involve production of confidential, proprietary, or  
3 private information for which special protection may be warranted. Accordingly, the parties  
4 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The  
5 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket  
6 protection on all disclosures or responses to discovery, the protection it affords from public  
7 disclosure and use extends only to the limited information or items that are entitled to  
8 confidential treatment under the applicable legal principles, and it does not presumptively entitle  
parties to file confidential information under seal.

9       2.       "CONFIDENTIAL" MATERIAL

10          "Confidential" material shall include the following documents and tangible things  
11 produced or otherwise exchanged: Plaintiff's medical records; any information; material or  
12 document that constitutes or reveals a trade secret; financial; proprietary or commercial  
13 information; specifically including Serious Adverse Event Reports (SAERs) and Adverse Event  
Reports (AERs); proprietary formula data; and the contract between the defendants.

14       3.       SCOPE

15          The protections conferred by this agreement cover not only confidential material (as  
16 defined above), but also (1) any information copied or extracted from confidential material; (2)  
17 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
18 conversations, or presentations by parties or their counsel that might reveal confidential material.

19          However, the protections conferred by this agreement do not cover information that is in  
20 the public domain or becomes part of the public domain through trial or otherwise.

21       4.       ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

22          4.1      Basic Principles. A receiving party may use confidential material that is disclosed  
or produced by another party or by a non-party in connection with this case only for prosecuting,

1 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
2 the categories of persons and under the conditions described in this agreement. Confidential  
3 material must be stored and maintained by a receiving party at a location and in a secure manner  
4 that ensures that access is limited to the persons authorized under this agreement.

5 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
6 ordered by the court or permitted in writing by the designating party, a receiving party may  
7 disclose any confidential material only to:

8 (a) the receiving party's counsel of record in this action, as well as employees  
9 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

10 (b) the officers, directors, and employees (including in house counsel) of the  
11 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
12 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
13 designated;

14 (c) experts and consultants to whom disclosure is reasonably necessary for  
15 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit  
16 A);

17 (d) the court, court personnel, and court reporters and their staff;

18 (e) copy or imaging services retained by counsel to assist in the duplication of  
19 confidential material, provided that counsel for the party retaining the copy or imaging service  
20 instructs the service not to disclose any confidential material to third parties and to immediately  
21 return all originals and copies of any confidential material;

22 (f) during their depositions, witnesses in the action to whom disclosure is  
reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
(Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
transcribed deposition testimony or exhibits to depositions that reveal confidential material must

1 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
2 under this agreement;

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 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
6 referencing such material in court filings, the filing party shall confer with the designating party  
7 to determine whether the designating party will remove the confidential designation, whether the  
8 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
9 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
10 standards that will be applied when a party seeks permission from the court to file material under  
11 seal.

## 12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
14 or non-party that designates information or items for protection under this agreement must take  
15 care to limit any such designation to specific material that qualifies under the appropriate  
16 standards. The designating party must designate for protection only those parts of material,  
17 documents, items, or oral or written communications that qualify, so that other portions of the  
18 material, documents, items, or communications for which protection is not warranted are not  
19 swept unjustifiably within the ambit of this agreement.

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

1 If it comes to a designating party's attention that information or items that it designated  
2 for protection do not qualify for protection, the designating party must promptly notify all other  
3 parties that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
5 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
6 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
7 be clearly so designated before or when the material is disclosed or produced.

8 (a) Information in documentary form: (*e.g.*, paper or electronic documents  
9 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
10 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that  
11 contains confidential material. If only a portion or portions of the material on a page qualifies for  
12 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by  
making appropriate markings in the margins).

13 (b) Testimony given in deposition or in other pretrial proceedings: the parties  
14 and any participating non-parties must identify on the record, during the deposition or other  
15 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other  
16 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after  
17 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the  
18 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect  
confidential information at trial, the issue should be addressed during the pre-trial conference.

19 (c) Other tangible items: the producing party must affix in a prominent place  
20 on the exterior of the container or containers in which the information or item is stored the word  
21 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,  
22 the producing party, to the extent practicable, shall identify the protected portion(s).

1           5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
2 designate qualified information or items does not, standing alone, waive the designating party's  
3 right to secure protection under this agreement for such material. Upon timely correction of a  
4 designation, the receiving party must make reasonable efforts to ensure that the material is  
5 treated in accordance with the provisions of this agreement.

6           6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

7           6.1     Timing of Challenges. Any party or non-party may challenge a designation of  
8 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
10 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
original designation is disclosed.

12          6.2     Meet and Confer. The parties must make every attempt to resolve any dispute  
13 regarding confidential designations without court involvement. Any motion regarding  
14 confidential designations or for a protective order must include a certification, in the motion or in  
15 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
16 conference with other affected parties in an effort to resolve the dispute without court action. The  
17 certification must list the date, manner, and participants to the conference. A good faith effort to  
confer requires a face-to-face meeting or a telephone conference.

18          6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
19 intervention, the designating party may file and serve a motion to retain confidentiality under  
20 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
21 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
22 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on

1 other parties) may expose the challenging party to sanctions. All parties shall continue to  
2 maintain the material in question as confidential until the court rules on the challenge.

3 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
4 LITIGATION

5 If a party is served with a subpoena or a court order issued in other litigation that compels  
6 disclosure of any information or items designated in this action as "CONFIDENTIAL," that  
7 party must:

8 (a) promptly notify the designating party in writing and include a copy of the  
9 subpoena or court order;

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

13 (c) cooperate with respect to all reasonable procedures sought to be pursued  
14 by the designating party whose confidential material may be affected.

15 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
17 material to any person or in any circumstance not authorized under this agreement, the receiving  
18 party must immediately (a) notify in writing the designating party of the unauthorized  
19 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,  
20 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
21 this agreement, and (d) request that such person or persons execute the "Acknowledgment and  
22 Agreement to Be Bound" that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
MATERIAL

1 When a producing party gives notice to receiving parties that certain inadvertently  
2 produced material is subject to a claim of privilege or other protection, the obligations of the  
3 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
4 provision is not intended to modify whatever procedure may be established in an e-discovery  
5 order or agreement that provides for production without prior privilege review. The parties  
6 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

7 10. NON TERMINATION AND RETURN OF DOCUMENTS

8 Within 60 days after the termination of this action, including all appeals, each receiving  
9 party must return all confidential material to the producing party, including all copies, extracts  
10 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
destruction.

11 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
12 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
13 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
work product, even if such materials contain confidential material.

14 The confidentiality obligations imposed by this agreement shall remain in effect until a  
15 designating party agrees otherwise in writing or a court orders otherwise.

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 LAW OFFICE OF CORNELIA CLARK

18 DATED: 7/27/2017

s/Cornelia Clark  
CORNELIA CLARK, WSBA #26824  
321 Burnett Ave S., Suite 201  
Renton, WA 98057  
*corneliac Clark@seanet.com*  
Attorneys for Plaintiff

ANDREWS SKINNER, P.S.

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**Andrews • Skinner, P.S.**  
645 Elliott Ave. W., Ste. 350  
Seattle, WA 98119  
Tel: 206-223-9248 • Fax: 206-623-9050

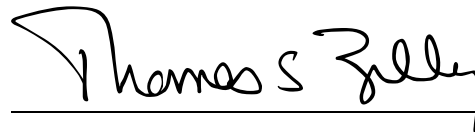
1 DATED: 7/27/2017

s/Pamela M. Andrews  
PAMELA M. ANDREWS, WSBA #14248  
645 Elliott Ave. W., Suite 350  
Seattle, WA 98119  
206-223-9248 | Fax: 206-623-9050  
*Pamela.andrews@andrews-skinner.com*  
Attorneys for Defendant

5 PURSUANT TO STIPULATION, IT IS SO ORDERED

6 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
7 documents in this proceeding shall not, for the purposes of this proceeding or any other  
8 proceeding in any other court, constitute a waiver by the producing party of any privilege  
9 applicable to those documents, including the attorney-client privilege, attorney work-product  
10 protection, or any other privilege or protection recognized by law.

11 DATED this 14th day of August, 2017.

13 

14 Thomas S. Zilly  
15 United States District Judge