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ERVIN COHEN & JESSUP^{LLP}

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JAMES H. DONELL, as Permanent Receiver for NewPoint Financial Services, Inc.,

Plaintiff,

v.

NIXON PEABODY LLP,

Defendant.

Case No. CV-12-04084-DDP (JEMx)

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Judge: Hon. John E. McDermott
Date: n/a
Time: n/a
Crtrm.: C

Discovery Cutoff: Not Set
Motion Cutoff: Not Set
Trial Date: Not Set

On consideration of the Stipulation for Protection of Confidential Materials submitted by the parties, and it appearing to the Court that such a Protective Order is necessary and appropriate and will facilitate discovery,

IT IS THEREFORE ORDERED that:

1. Designation of Confidential Information and Items. This Protective Order designates as “CONFIDENTIAL” information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under F. R. Civ. P. 26(c). Extremely sensitive “Confidential Information or Items” whose disclosure to another party or nonparty would create a substantial

1 risk of serious injury that could not be avoided by less restrictive means is
2 designated as “HIGHLY CONFIDENTIAL.” It is anticipated that the parties will
3 rarely designate documents or other materials as Highly Confidential, and that any
4 party making such a designation must be prepared to demonstrate a clear and
5 particularized risk of harm from disclosure of any materials so designated. The
6 primary distinction between “Confidential” and “Highly Confidential” items is that
7 the former may be filed with the Court or referred to in briefs or declarations filed
8 with the Court without filing under seal. Highly Confidential items may only be
9 filed or referred to in documents filed with the Court under seal in accordance with
10 the procedures set forth in Civil Local Rule 79-5.

11 2. Definitions

12 (a) Action. As used herein, “Action” shall refer to the above-
13 captioned action styled *Donell v. Nixon Peabody*, USDC C.D. Cal. case no. CV-12-
14 04084-DDP (JEMx).

15 (b) Party. Each of the following is a “Party,” and all taken together
16 are the “Parties”: (i) James Donell, as permanent receiver (hereinafter, the
17 “Receiver”) for Newpoint Financial Services, Inc. and related entities (“Newpoint”),
18 the Receiver’s staff, consultants, accountants, and attorneys, and any of the
19 employees or support staff of any of them; (ii) Nixon Peabody LLP and its partners,
20 consultants, accountants, attorneys, and insurers, and any of the employees or
21 support staff of any of them.

22 (c) Disclosure or Discovery Material. As used herein, “Disclosure
23 or Discovery Material” shall mean all items or information, regardless of the
24 medium or manner generated, stored, or maintained (including, among other things,
25 testimony, transcripts, or tangible things) that are produced or generated in
26 disclosures or responses to discovery in this matter, including information
27 voluntarily disclosed by one Party to the other for use in connection with the Action.
28

1 (d) Receiving Party. As used herein, “Receiving Party” shall mean a
2 Party that receives Disclosure or Discovery Material from a Producing Party.

3 (e) Producing Party. As used herein, “Producing Party” shall mean
4 a Party or non-party that produces Disclosure or Discovery Material in this Action.

5 (f) Designating Party. As used herein, “Designating Party” shall
6 mean a Party or non-party that designates information or items that it produces in
7 disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
8 CONFIDENTIAL.”

9 (g) Protected Material. As used herein, “Protected Material” shall
10 mean any Disclosure or Discovery Material that is designated as
11 “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL,” and all information
12 derived therefrom as more fully described in paragraph 3, below.

13 3. Scope. The protections conferred by this Order cover not only
14 Protected Material, but also any information copied or extracted therefrom, as well
15 as all copies, excerpts, summaries, descriptions or compilations thereof, plus
16 testimony, conversations, or presentations by parties or counsel to or in court or in
17 other settings that might reveal Protected Material.

18 4. Duration. Even after the termination of this litigation, the
19 confidentiality obligations imposed by this Order shall remain in effect until a
20 Designating Party agrees otherwise in writing or a court order otherwise directs.

21 5. Exercise of Restraint and Care in Designating Material for Protection.
22 Each Party or non-party that designates information or items for protection under
23 this Order must take care to limit any such designation to specific material that
24 qualifies under the appropriate standards. A Designating Party must take care to
25 designate for protection only those parts of material, documents, items, or oral or
26 written communications that qualify, so that other portions of the material,
27 documents, items, or communications for which protection is not warranted are not
28 swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or

1 routinized designations are prohibited. Designations that are shown to be clearly
2 unjustified, or that have been made for an improper purpose (e.g., to unnecessarily
3 encumber or retard the case development process, or to impose unnecessary
4 expenses and burdens on other parties) expose the Designating Party to sanctions. If
5 it comes to a Party's or a non-party's attention that information or items that it
6 designated for protection do not qualify for protection at all, or do not qualify for the
7 level of protection initially asserted, that Party or non-party must promptly notify all
8 other parties that it is withdrawing the mistaken designation.

9 6. Manner and Timing of Designations. Except as otherwise provided in
10 this Order, or as otherwise stipulated or ordered, material that qualifies for
11 protection under this Order must be clearly so designated before the material is
12 disclosed or produced. Designations shall be made as follows:

13 (a) Information in documentary form. Apart from transcripts of
14 depositions or other pretrial or trial proceedings, the Producing Party must affix
15 the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" at the top or
16 bottom of each page that contains protected material. If only a portion or portions
17 of the material on a page qualifies for protection, the Producing Party also must
18 clearly identify the protected portion(s) (e.g., by making appropriate markings in
19 the margins) and must specify, for each portion, the level of protection being
20 asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL"). A Party
21 or non-party that makes original documents or materials available for inspection
22 need not designate them for protection until after the inspecting Party has
23 indicated which material it would like copied and produced. During the
24 inspection and before the designation, all of the material made available for
25 inspection shall be deemed "HIGHLY CONFIDENTIAL." After the inspecting
26 Party has identified the documents it wants copied and produced, the Producing
27 Party must determine which documents, or portions thereof, qualify for protection
28 under this Order, then, before producing the specified documents, the Producing

1 Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
2 CONFIDENTIAL”) at the top of each page that contains Protected Material. If
3 only a portion or portions of the material on a page qualifies for protection, the
4 Producing Party also must clearly identify the protected portion(s) (e.g., by
5 making appropriate markings in the margins) and must specify, for each portion,
6 the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY
7 CONFIDENTIAL”).

8 (b) Testimony given in deposition or in other pretrial or trial
9 proceedings. A Designating Party asserting that any deposition testimony
10 includes or discloses Protected Material must, before the close of the deposition,
11 hearing, or other proceeding, assert that claim. Upon asserting that a deposition
12 discloses Protected Material, a Designating Party will have up to 20 days to
13 identify the specific portions of the testimony as to which protection is sought and
14 to specify the level of protection being asserted (“CONFIDENTIAL” or
15 “HIGHLY CONFIDENTIAL”). In the interim, the court reporter will make
16 available to all parties any draft transcripts that may be utilized to make such a
17 designation. Only those portions of the testimony that are appropriately
18 designated for protection within the 20 days shall be covered by the provisions of
19 this Stipulated Protective Order. Transcript pages containing Protected Material
20 must be separately bound by the court reporter, who must affix to the top of each
21 such page the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” as
22 instructed by the Party or nonparty offering or sponsoring the witness or
23 presenting the testimony.

24 (c) Information produced in some form other than documentary,
25 and for any other tangible items. The Producing Party must affix in a prominent
26 place on the exterior of any disk, disk drive, container or other medium in which
27 the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
28 CONFIDENTIAL.” If only portions of the information or item warrant

1 protection, the Producing Party, to the extent practicable, shall identify the
2 protected portions, specifying whether they qualify as “Confidential” or as
3 “Highly Confidential.”

4 7. Inadvertent Failures to Designate. If timely corrected, an inadvertent
5 failure to designate qualified information or items as “Confidential” or “Highly
6 Confidential” does not, standing alone, waive the Designating Party’s right to secure
7 protection under this Order for such material. If material is appropriately designated
8 as “Confidential” or “Highly Confidential” after the material was initially produced,
9 the Receiving Party, on timely notification of the designation, must make reasonable
10 efforts to assure that the material is treated in accordance with the provisions of this
11 Order.

12 8. Timing of Challenges. Unless a prompt challenge to a Designating
13 Party’s confidentiality designation is necessary to avoid foreseeable substantial
14 unfairness, unnecessary economic burdens, or a later significant disruption or delay
15 of the litigation, a Party does not waive its right to challenge a confidentiality
16 designation by electing not to mount a challenge promptly after the original
17 designation is disclosed.

18 9. Meet and Confer. A Party that elects to initiate a challenge to a
19 Designating Party’s confidentiality designation must do so in good faith and must
20 begin the process by conferring directly (in voice to voice dialogue; other forms of
21 communication are not sufficient) with counsel for the Designating Party. In
22 conferring, the challenging Party must explain the basis for its belief that the
23 confidentiality designation was not proper and must give the Designating Party an
24 opportunity to review the designated material, to reconsider the circumstances, and,
25 if no change in designation is offered, to explain the basis for the chosen
26 designation. A challenging Party may proceed to the next stage of the challenge
27 process only if it has engaged in this meet and confer process first.
28

1 10. Judicial Intervention. A Party that elects to press a challenge to a
2 confidentiality designation after considering the justification offered by the
3 Designating Party may file and serve a motion under Civil Local Rule 7 that
4 identifies the challenged material and sets forth in detail the basis for the challenge.
5 Each such motion must be accompanied by a competent declaration that affirms that
6 the movant has complied with the meet and confer requirements imposed in the
7 preceding paragraph and that sets forth with specificity the justification for the
8 confidentiality designation that was given by the Designating Party in the meet and
9 confer dialogue. The burden of persuasion in any such challenge proceeding shall
10 be on the Designating Party. Until the court rules on the challenge, all parties shall
11 continue to afford the material in question the level of protection to which it is
12 entitled under the Producing Party’s designation.

13 11. Access and Use of Protected Material. A Receiving Party may use
14 Protected Material that is disclosed or produced by another Party or by a non-party
15 in connection with this Action only for prosecuting, defending, or attempting to
16 settle this litigation. Such Protected Material may be disclosed only to the
17 categories of persons and under the conditions described in this Order. When the
18 litigation has been terminated, a Receiving Party must comply with the provisions of
19 paragraph 16, below. Protected Material must be stored and maintained by a
20 Receiving Party at a location and in a secure manner that ensures that access is
21 limited to the persons authorized under this Order.

22 12. Disclosure of “CONFIDENTIAL” Information or Items. Unless
23 otherwise ordered by the court or permitted in writing by the Designating Party, a
24 Receiving Party may disclose any information or item designated CONFIDENTIAL
25 only to:

- 26 (a) a Party (as that term is defined in Section 2. (b))
27 (b) the Court and its personnel, including by being filed
28 electronically as an exhibit and by being referenced in a brief or declaration, to the

1 extent reasonably relevant to an issue presented to the Court (however, nothing in
2 this stipulation relieves any party of its duty to redact from documents filed with
3 the Court the social security numbers of any individuals identified in any
4 documents);

5 (c) court reporters, their staffs, and professional vendors to whom
6 disclosure is reasonably necessary for this litigation;

7 (d) the author of the document or the original source of the
8 information; and

9 (e) during their depositions, witnesses in the Action to whom
10 disclosure is reasonably necessary, but copies may not be retained by those
11 witnesses or their counsel.

12 13. Disclosure of "HIGHLY CONFIDENTIAL" Information or Items.

13 Unless otherwise ordered by the court or permitted in writing by the Designating
14 Party, a Receiving Party may disclose any information or item designated
15 "HIGHLY CONFIDENTIAL" only to the persons identified in paragraph 12, above,
16 but such Highly Confidential items may be filed with the Court, or the contents
17 disclosed in a filing with the Court, only in a filing made under seal, in accordance
18 with Local Civil Rule 79-5.

19 14. Protected Material Subpoenaed or Ordered Produced in Other

20 Litigation. If a Receiving Party is served with a subpoena or an order issued in
21 other litigation that would compel disclosure of any information or items designated
22 in this Action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" the
23 Receiving Party must so notify the Designating Party, in writing (by email, if
24 possible) immediately and in no event more than three court days after receiving the
25 subpoena or order. Such notification must include a copy of the subpoena or court
26 order. The Receiving Party also must immediately inform in writing the Party who
27 caused the subpoena or order to issue in the other litigation that some or all the
28 material covered by the subpoena or order is the subject of this Protective Order. In

1 addition, the Receiving Party must deliver a copy of this Stipulated Protective Order
2 promptly to the Party in the other action that caused the subpoena or order to issue.
3 The purpose of imposing these duties is to alert the interested parties to the existence
4 of this Protective Order and to afford the Designating Party in this case an
5 opportunity to try to protect its confidentiality interests in the court from which the
6 subpoena or order issued. The Designating Party shall bear the burdens and the
7 expenses of seeking protection in that court of its confidential material - and nothing
8 in these provisions should be construed as authorizing or encouraging a Receiving
9 Party in this Action to disobey a lawful directive from another court.

10 15. Unauthorized Disclosure of Protected Material. If a Receiving Party
11 learns that, by inadvertence or otherwise, it has disclosed Protected Material to any
12 person or in any circumstance not authorized under this Stipulated Protective Order,
13 the Receiving Party must immediately (a) notify in writing the Designating Party of
14 the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the
15 Protected Material, (c) inform the person or persons to whom unauthorized
16 disclosures were made of all the terms of this Order, and (d) request such person or
17 persons to execute the “Confidentiality Materials Receipt and Agreement” that is
18 attached hereto as Exhibit A.

19 16. Final Disposition. Unless otherwise ordered or agreed in writing by the
20 Producing Party, within sixty days after the final termination of this Action, each
21 Receiving Party must return all Protected Material to the Producing Party. As used
22 in this subdivision, “all Protected Material” includes all copies, abstracts,
23 compilations, summaries or any other form of reproducing or capturing any of the
24 Protected Material. With permission in writing from the Designating Party, the
25 Receiving Party may destroy some or all of the Protected Material instead of
26 returning it. Whether the Protected Material is returned or destroyed, the Receiving
27 Party must submit a written certification to the Producing Party (and, if not the same
28 person or entity, to the Designating Party) by the sixty day deadline that identifies

1 (by category, where appropriate) all the Protected Material that was returned or
 2 destroyed and that affirms that the Receiving Party has not retained any copies,
 3 abstracts, compilations, summaries or other forms of reproducing or capturing any
 4 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
 5 retain an archival copy of all pleadings, motion papers, transcripts, legal
 6 memoranda, correspondence or attorney work product, even if such materials
 7 contain Protected Material. Any such archival copies that contain or constitute
 8 Protected Material remain subject to this Protective Order as set forth in paragraph
 9 14, above.

10 17. Right to Further Relief. Nothing in this Order abridges the right of any
 11 person to seek its modification by the Court in the future.

12 18. Right to Assert Other Objections. By stipulating to the entry of this
 13 Protective Order no Party waives any right it otherwise would have to object to
 14 disclosing or producing any information or item on any ground not addressed in this
 15 Stipulated Protective Order. Similarly, no Party waives any right to object on any
 16 ground to use in evidence of any of the material covered by this Protective Order.

17 IT IS SO ORDERED.

18 Dated this 26th day of December, 2012.

19
 20 /s/John E. McDermott
 21 HON. JOHN E. MCDERMOTT,
 22 UNITED STATES MAGISTRATE JUDGE
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ATTACHMENT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES H. DONELL, as Permanent Receiver for NewPoint Financial Services, Inc.,

Plaintiff,

v.

NIXON PEABODY LLP,

Defendant.

Case No. CV-12-04084-DDP (JEMx)

CONFIDENTIALITY MATERIALS
RECEIPT AND AGREEMENT

I, _____, state:

1. I reside at _____.

2. My present employer is _____

_____.

3. My present occupation or job description is _____

_____.

4. I have received a copy of the Stipulated Protective Order in this Action, and have read and understand its provisions. As a condition precedent to receiving any PROTECTED MATERIAL, as defined in the Stipulated Protective Order, I agree to abide by all provisions of the Stipulated Protective Order and to subject myself to the personal jurisdiction of the United States District Court for the Central District of California with respect to the application and enforcement of the provisions of the Stipulated Protective Order. I understand that I am obligated, under the Stipulated Protective Order, to hold in confidence and not

1 disclose any PROTECTED MATERIAL except as permitted by the Stipulated
2 Protective Order.

3 5. I understand that I am to retain all copies of any documents
4 designated as PROTECTED MATERIAL in a secure manner, and that all copies are to
5 remain in my personal custody until I have completed my assigned duties,
6 whereupon the copies and any writings prepared by me containing any
7 PROTECTED MATERIAL is to be returned to counsel who provided me with such
8 material.

9 6. I will not divulge to persons other than those specifically authorized
10 by the Stipulated Protective Order, and will not copy or use except solely for the
11 purpose of this Litigation, any information obtained pursuant to the Stipulated
12 Protective Order, except as provided therein. I also agree to notify any secretarial,
13 clerical, or supporting personnel who are required to assist me of the terms of the
14 Stipulated Protective Order and to take steps to ensure their compliance with the
15 terms of the Stipulated Protective Order.

16 7. I understand that if I violate the provisions of the Stipulated
17 Protective Order, I will be in violation of a Court order and subject to sanctions or
18 other remedies that may be imposed by the Court and potentially liable in a civil
19 action or proceeding for damages.

20 8. I declare under penalty of perjury that the foregoing is true and
21 correct.

22 Executed on _____, 20__.

23 At _____.

24 _____.