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16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

19 NELSON LEVINE DE LUCA &
20 HAMILTON, LLC,
21 Plaintiff,
22 v.
23 LEWIS BRISBOIS BISGAARD &
24 SMITH LLP,
25 Defendant.

Case No. 14-CV-03994 FMO-SHx

STIPULATED PROTECTIVE ORDER
DISCOVERY MATTER

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1 A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production/disclosure of
3 confidential, proprietary, and/or private information, in the form of document
4 productions, discovery responses, and/or deposition testimony, for which
5 special protection from unnecessary public disclosure and from use for any
6 purpose other than prosecuting this litigation may be warranted. Accordingly,
7 the parties hereby stipulate to and petition the Court to enter the following
8 Stipulated Protective Order. The parties acknowledge that this Order does not
9 confer blanket protections on all disclosures or responses to discovery and that
10 the protection it affords from public disclosure and use extends only to the
11 limited information or items that are entitled to confidential treatment under the
12 applicable legal principles.

13 B. GOOD CAUSE STATEMENT

14 This action is likely to involve attorney-client communications, personal
15 identifiable information, trade secrets, and other valuable research,
16 development, commercial, financial, technical and/or proprietary information
17 for which special protection from unnecessary public disclosure and from use
18 for any purpose other than prosecution of this action is warranted. Such
19 confidential and proprietary materials and information may consist of, among
20 other things, confidential business or financial information, information
21 regarding confidential business practices, or other confidential research,
22 development, or commercial information (including information implicating
23 privacy rights of third parties), information otherwise generally unavailable to
24 the public, or which may be privileged or otherwise protected from disclosure
25 under state or federal statutes, court rules, case decisions, or common law.
26 Accordingly, to expedite the flow of information, to facilitate the prompt
27 resolution of disputes over confidentiality of discovery materials, to adequately
28 protect information the parties are entitled to keep confidential, to ensure that

1 the parties are permitted reasonable necessary uses of such material in
2 preparation for and in the conduct of trial, to address their handling at the end
3 of the litigation, and serve the ends of justice, a protective order for such
4 information is justified in this matter. It is the intent of the parties that
5 information will not be designated as confidential for tactical reasons and that
6 nothing be so designated without a good faith belief that it has been maintained
7 in a confidential, non-public manner.

8 2. DEFINITIONS

9 2.1 Action: The instant federal lawsuit entitled *Nelson Levine de Luca*
10 *Hamilton, LLC v. Lewis Brisbois Bisgaard & Smith, LLP, et al.*, United States
11 District Court, Central District of California, Case No. 14-CV-03994 FMO-
12 SHx.

13 2.2 Challenging Party: a Party or Non-Party that challenges the
14 designation of information or items under this Order.

15 2.3 “CONFIDENTIAL” Information or Items: information (regardless
16 of how it is generated, stored or maintained) or tangible things, that may be
17 disclosed in the form of document productions, discovery responses, and/or
18 deposition testimony, and that qualify for protection under Federal Rule of
19 Civil Procedure 26(c) and as specified above in the Good Cause Statement.

20 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
21 their support staff).

22 2.5 Designating Party: a Party or Non-Party that designates information
23 or items that it produces in disclosures or in responses to discovery as
24 “CONFIDENTIAL.”

25 2.6 Disclosure or Discovery Material: all items or information,
26 regardless of the medium or manner in which it is generated, stored, or
27 maintained (including, among other things, testimony, transcripts, and tangible
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1 things), that are produced or generated in disclosures or responses to discovery
2 in this matter.

3 2.7 Expert: a person with specialized knowledge or experience in a
4 matter pertinent to the litigation who has been retained by a Party or its counsel
5 to serve as an expert witness or as a consultant in this Action.

6 2.8 House Counsel: attorneys who are employees of a party to this
7 Action. House Counsel does not include Outside Counsel of Record or any
8 other outside counsel.

9 2.9 Non-Party: any natural person, partnership, corporation,
10 association, or other legal entity not named as a Party to this action.

11 2.10 Outside Counsel of Record: attorneys who are not employees of a
12 party to this Action but are retained to represent or advise a party to this Action
13 and have appeared in this Action on behalf of that party or are affiliated with a
14 law firm which has appeared on behalf of that party, and includes support staff.

15 2.11 Party: any party to this Action, including all of its officers,
16 directors, employees, consultants, retained experts, and Outside Counsel of
17 Record (and their support staffs).

18 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 2.13 Professional Vendors: persons or entities that provide litigation
21 support services (e.g., photocopying, videotaping, translating, preparing
22 exhibits or demonstrations, and organizing, storing, or retrieving data in any
23 form or medium) and their employees and subcontractors.

24 2.14 Protected Material: any Disclosure or Discovery Material that is
25 designated as “CONFIDENTIAL.”

26 2.15 Receiving Party: a Party that receives Disclosure or Discovery
27 Material from a Producing Party.

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1 3. SCOPE

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

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

9 4. DURATION

10 Even after final disposition of this litigation, the confidentiality
11 obligations imposed by this Order shall remain in effect until a Designating
12 Party agrees otherwise in writing or a court order otherwise directs.

13 Final disposition shall be deemed to be the later of (1) dismissal of all
14 claims and defenses in this Action, with or without prejudice; and (2) final
15 judgment herein after the completion and exhaustion of all appeals, rehearings,
16 remands, trials, or reviews of this Action, including the time limits for filing
17 any motions or applications for extension of time pursuant to applicable law.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for
20 Protection. Each Party or Non-Party that designates information or items for
21 protection under this Order must take care to limit any such designation to
22 specific material that qualifies under the appropriate standards. The Designating
23 Party must designate for protection only those parts of material, documents,
24 items, or oral or written communications that qualify so that other portions of
25 the material, documents, items, or communications for which protection is not
26 warranted are not swept unjustifiably within the ambit of this Order.

27 Mass, indiscriminate, or routinized designations are prohibited.
28 Designations that are shown to be clearly unjustified or that have been made for

1 an improper purpose (e.g., to unnecessarily encumber the case development
2 process or to impose unnecessary expenses and burdens on other parties) may
3 expose the Designating Party to sanctions.

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

8 5.2 Manner and Timing of Designations. Except as otherwise provided
9 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as
10 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies
11 for protection under this Order must be clearly so designated before the
12 material is disclosed or produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (e.g., paper or electronic
15 documents, but excluding transcripts of depositions or other pretrial or trial
16 proceedings), that the Producing Party affix at a minimum, the legend
17 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page
18 that contains protected material. If only a portion or portions of the material on
19 a page qualifies for protection, the Producing Party also must clearly identify
20 the protected portion(s) (e.g., by making appropriate markings in the margins).

21 A Party or Non-Party that makes original documents available for
22 inspection need not designate them for protection until after the inspecting
23 Party has indicated which documents it would like copied and produced.
24 During the inspection and before the designation, all of the material made
25 available for inspection shall be deemed "CONFIDENTIAL." After the
26 inspecting Party has identified the documents it wants copied and produced, the
27 Producing Party must determine which documents, or portions thereof, qualify
28 for protection under this Order. Then, before producing the specified

1 documents, the Producing Party must affix the “CONFIDENTIAL legend” to
2 each page that contains Protected Material. If only a portion or portions of the
3 material on a page qualifies for protection, the Producing Party also must
4 clearly identify the protected portion(s) (e.g., by making appropriate markings
5 in the margins).

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

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

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

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
23 designation of confidentiality at any time that is consistent with the Court’s
24 Scheduling Order.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
26 resolution process under Local Rule 37-1, *et seq.* or, if necessary, under Local
27 Rule 6-1, and 7-1, *et seq.*
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1 6.3 The burden of persuasion in any such challenge proceeding shall be
2 on the Designating Party. Frivolous challenges, and those made for an improper
3 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
4 parties) may expose the Challenging Party to sanctions. Unless the Designating
5 Party has waived or withdrawn the confidentiality designation, all parties shall
6 continue to afford the material in question the level of protection to which it is
7 entitled under the Producing Party’s designation until the Court rules on the
8 challenge.

9 7. ACCESS TO AND USE OF PROTECTED MATERIAL

10 7.1 Basic Principles. A Receiving Party may use Protected Material
11 that is disclosed or produced by another Party or by a Non-Party in connection
12 with this Action only for prosecuting, defending, or attempting to settle this
13 Action, and for no other purpose. Such Protected Material may be disclosed
14 only to the categories of persons and under the conditions described in Section
15 7.2 of this Order (“Qualified Person” or “Qualified Persons”) . No Qualified
16 Person who gains access to the Protected Material may disclose the Protected
17 Material, or their contents, to any other person without the written stipulation of
18 the Producing Party or by order of this Court. The Protected Material may be
19 used at trial or at depositions in accordance with the following safeguards. If
20 Protected Information is used in deposition, all portions of the transcript of such
21 deposition or exhibits thereto which refer to or relate to such Protected
22 Information shall themselves be considered as Confidential Documents.
23 When the Action has been terminated, a Receiving Party must comply with the
24 provisions of section 13 below (FINAL DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at
26 a location and in a secure manner that ensures that access is limited to the
27 persons authorized under this Order.
28

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the court or permitted in writing by the Designating Party,
3 a Receiving Party may disclose any information or item designated

4 “CONFIDENTIAL” only to:

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

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

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

14 (d) the Court and its personnel;

15 (e) court reporters and their staff;

16 (f) the jury;

17 (g) professional jury or trial consultants, mock jurors, and
18 Professional Vendors to whom disclosure is reasonably necessary for this
19 Action and who have signed the “Acknowledgment and Agreement to Be
20 Bound” (Exhibit A);

21 (h) the author or recipient of a document containing the
22 information or a custodian or other person who otherwise possessed or knew
23 the information;

24 (i) during their depositions, witnesses and attorneys for
25 witnesses, in the Action to whom disclosure is reasonably necessary provided:

26 (1) the deposing party requests that the witness sign the form attached as
27 Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential
28 information unless they sign the “Acknowledgment and Agreement to Be

1 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
2 ordered by the court. Pages of transcribed deposition testimony or exhibits to
3 depositions that reveal Protected Material may be separately bound by the court
4 reporter and may not be disclosed to anyone except as permitted under this
5 Stipulated Protective Order; and

6 (j) any mediator or settlement officer, and their supporting
7 personnel, mutually agreed upon by any of the parties engaged in settlement
8 discussions.

9 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
10 PRODUCED IN OTHER LITIGATION

11 If a Party is served with a subpoena or a court order issued in other
12 litigation that compels disclosure of any information or items designated in this
13 Action as “CONFIDENTIAL,” that Party must:

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

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

20 (c) cooperate with respect to all reasonable procedures sought to be
21 pursued by the Designating Party whose Protected Material may be affected.

22 If the Designating Party timely seeks a protective order, the Party served
23 with the subpoena or court order shall not produce any information designated
24 in this action as “CONFIDENTIAL” before a determination by the court from
25 which the subpoena or order issued, unless the Party has obtained the
26 Designating Party’s permission. The Designating Party shall bear the burden
27 and expense of seeking protection in that court of its confidential material and
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1 nothing in these provisions should be construed as authorizing or encouraging a
2 Receiving Party in this Action to disobey a lawful directive from another court.

3 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
4 PRODUCED IN THIS LITIGATION

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

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

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

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

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

23 (c) If the Non-Party fails to seek a protective order from this court
24 within 14 days of receiving the notice and accompanying information, the
25 Receiving Party may produce the Non-Party's confidential information
26 responsive to the discovery request. If the Non-Party timely seeks a protective
27 order, the Receiving Party shall not produce any information in its possession
28 or control that is subject to the confidentiality agreement with the Non-Party

1 before a determination by the court. Absent a court order to the contrary, the
2 Non-Party shall bear the burden and expense of seeking protection in this court
3 of its Protected Material.

4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

14 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE

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

25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of
27 any person to seek its modification by the Court in the future.
28

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in
4 this Stipulated Protective Order. Similarly, no Party waives any right to object
5 on any ground to use in evidence of any of the material covered by this
6 Protective Order.

7 12.3 Filing Protected Material. Nothing in this Order shall prohibit
8 either Party to file with the Court and/or present as evidence any Protected
9 Material as part of any motion or hearing. Any such use of Protected Material
10 shall not be considered violative of this Order.

11 13. FINAL DISPOSITION

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

1 copies that contain or constitute Protected Material remain subject to this
2 Protective Order as set forth in Section 4 (DURATION).

3 14. Any violation of this Order may be punished by any and all appropriate
4 measures including, without limitation, contempt proceedings and/or monetary
5 sanctions.

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7 DATED: March 13, 2015 BAKER & HOSTETLER LLP

8
9 By: /s/ Robert C. Welsh
10 Robert C. Welsh
11 Attorneys for Plaintiff
NELSON LEVINE DE LUCA &
HAMILTON, LLC

12 DATED: March 13, 2015 PARKER MILLS LLP

13
14 By: /s/ David D. Yang
15 David B. Parker
16 David D. Yang
Attorneys for Defendant
LEWIS BRISBOIS BISGAARD &
SMITH LLP

17
18 **ATTESTATION OF E-SIGNATURES RE: L.R. 5-4.3.4**

19 I, David D. Yang, attest that all signatories listed, and whose behalf the filing
20 is submitted, concur in the filings content and have authorized the filing.

21 DATED: March 13, 2015 **PARKER MILLS LLP**

22 By: /s/ David D. Yang
23 David D. Yang
24 Attorneys for Defendant
25 **LEWIS BRISBOIS BISGAARD &**
26 **SMITH LLP**

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FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: March 16, 2015



Hon. Stephen J. Hillman
United States Magistrate Judge

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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 entitled *Nelson Levine de
Luca Hamilton, LLC v. Lewis Brisbois Bisgaard & Smith, LLP, et al.*, filed in the United
States District Court, Central District of California, Case No. 14-CV-03994 FMO-SHx.
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: