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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

LIONS GATE ENTERTAINMENT
INC., a Delaware corporation,

Plaintiff,

v.

TD AMERITRADE SERVICES
COMPANY, INC. a Delaware
corporation, TD AMERITRADE, INC.,
a New York corporation, AMERIVEST
INVESTMENT MANAGEMENT,
LLC, a Delaware limited liability
company, HAVAS WORLDWIDE
NEW YORK, INC., a Delaware
corporation, and DOES 1-10, inclusive,

Defendants.

Case No. 15-CV-05024-DDP-E

The Hon. Dean D. Pregerson

~~PROPOSED~~ PROTECTIVE
ORDER

Pursuant to Fed. R. Civ. P. 26(c), it is hereby stipulated and agreed, by and among, on the one hand, plaintiff Lions Gate Entertainment Inc. ("Lions Gate"), on the one hand, and defendants Havas Worldwide New York, Inc., TD Ameritrade Services Company, Inc., TD Ameritrade, Inc., and Amerivest Investment Management, LLC (collectively, "Defendants"), on the other hand, through the parties' respective counsel of record, that discovery in, and litigation of, this action and any further actions among these parties may involve requests for the production

1 of information and documents that the responding parties consider to be
2 confidential, proprietary or competitively sensitive. The parties believe that a
3 protective order restricting the use and dissemination of confidential, proprietary,
4 and competitively sensitive information and documents is necessary and appropriate
5 to facilitate discovery and litigation in this action. The parties also believe that such
6 an order is necessary and appropriate to enable the parties to conduct discovery of
7 non-parties that may have similar concerns regarding their confidential, proprietary
8 or competitively sensitive information and documents. The Court having found that
9 good cause exists for issuance of an appropriately tailored confidentiality order
10 governing the pre-trial phase of this action, it is therefore hereby:

11 ORDERED that any person subject to this Order—including without
12 limitation the parties to this action, their representatives, agents, experts and
13 consultants, all third parties providing discovery in this action, and all other
14 interested person with actual or constructive notice of this Order—shall adhere to
15 the following terms, upon pain of contempt:

16 1. Any confidential information or documents produced by or on behalf of
17 any party or non-party as part of discovery in this action may be designated by the
18 producing party(ies) as “Confidential” or “Confidential-Counsel Only” (referred to
19 herein as “Counsel Only”) Information designated as either “Confidential” or
20 “Confidential-Counsel Only” is referred to collectively herein as “Protected
21 Information.” As a general guideline, any information that is publicly available
22 should not be designated as Protected Information.

23 2. Information or documents may be designated “Confidential” when the
24 disclosing party or non-party believes in good faith that it contains or reflects non-
25 public business or personal information of a sensitive, confidential, proprietary,
26 technical, or private nature, including without limitation the following:

27 (a) material previously nondisclosed to the public relating to ownership or
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1 control of any non-public company;

2 (b) business plans, product development information, or marketing plans
3 previously nondisclosed to the public;

4 (c) any information of a personal or intimate nature regarding any
5 individual; and

6 (d) any other category of information herein after given "Confidential"
7 status by the Court.

8 2. Information or documents designated "Confidential-Counsel Only"
9 shall be limited to information or documents that the disclosing party or non-party
10 believes in good faith contains or reflects trade secrets, sensitive personally
11 identifiable information, information that is designated by regulation to require
12 notification in the event of an unauthorized access, marketing plans or strategies,
13 market surveys, business plans, pricing plans, strategic plans, license agreements or
14 negotiations, distribution agreements, manufacturing agreements, manufacturing
15 processes, manufacturing drawings, employee files, research and development or
16 merchandising of products and technical matters not yet released or sold, financial
17 information or projections, including, without limitation, profitability reports or
18 estimates, percentage fees, design fees, royalty rates, minimum guarantee payments,
19 sales reports, sales margins, budgets, net worth, identity of shareholders, or other
20 documents relating to total revenue earned, and asset information that is not public
21 knowledge.

22 3. Protected Information may be used only in connection with this
23 proceeding, and not for any other purpose. Such information may not be disclosed
24 to anyone except as provided in this Protective Order.

25 4. Any party or non-party wishing to come within the provisions of this
26 Protective Order may designate in writing the documents (as defined in Fed. R. Civ.
27 P. 34 and Fed. R. Evid. 1001) or portions thereof that it considers confidential at the
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1 time the documents are produced. Each page of the document must be marked
2 “Confidential” or “Counsel Only” by the producing party, and any confidential
3 documents exchanged prior to this Protective Order being entered by the Court
4 shall, within a reasonable time hereafter, be so marked on each such page, if such
5 markings do not include every such page. It is the intent of the parties that each
6 document previously designated as Protected Information and transmitted to the
7 respective other party, including any such documents and information exchanged for
8 settlement purposes, are to be covered by this Protective Order. Protected
9 Information that cannot be reasonably labeled pursuant to this paragraph shall be so
10 designated by the producing party by informing the receiving party in writing.

11 5. In the instance of deposition testimony, the witness under deposition or
12 his counsel shall invoke the provisions of this Protective Order in a timely manner
13 (*i.e.*, either on the record during the deposition or within fifteen (15) days of receipt
14 of the transcript) and designate the level of restriction. During the deposition,
15 parties shall be excluded from testimony designated “Counsel Only.” The witness
16 under deposition or his counsel shall have the right, within fifteen (15) calendar days
17 of receiving a transcript of the deposition, to designate, or change, the
18 confidentiality designation of the transcript or portions thereof. For depositions
19 containing some Protected Information and some non- Protected Information, a
20 separate confidential transcript marked “Confidential Information Governed by
21 Protective Order”, apart from the usual transcript, shall be prepared by the court
22 reporter. Counsel for the party asserting that certain documents or testimony is
23 Protected Information shall endeavor to characterize the level of confidentiality for
24 the confidential material or testimony during the deposition.

25 6. Any documents, discovery responses or deposition transcripts stamped
26 or marked “Counsel Only,” as well as any copies or excerpts thereof, or analyses or
27 reports that pertain thereto, and any deposition testimony or portion thereof marked
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1 as "Counsel Only" may be made available only to:

2 (a) Attorneys of record for the receiving party and employees of
3 such attorneys;

4 (b) In-house counsel who have supervisory responsibility for the case;

5 (c) Judges, law clerks and other personnel of the Court before which this
6 proceeding is pending;

7 (d) Independent experts retained by the attorneys for purposes of the
8 litigation that are not directly associated with a party, and whom the receiving party
9 identifies to the producing party seven calendar days prior to disclosure to such
10 expert, provided that such person has first executed a Non-Disclosure Agreement in
11 the form annexed hereto as **Exhibit A**;

12 (e) Court reporters and their staff that are required to transcribe
13 testimony; and

14 (f) Outside litigation support vendors, including commercial
15 photocopying vendors, data processing and hosting vendors, scanning services
16 vendors, coders and keyboard operators provided such vendors have first executed a
17 Non-Disclosure Agreement in the form annexed hereto as **Exhibit A**.

18 (g) Any person who is identified on the face of any designated
19 "Counsel Only" material as an author or recipient thereof; and

20 (h) Any person who is determined to have been an author and/or
21 previous recipient of "Counsel Only" designated material, but is not identified on
22 the face thereof, provided there is prior testimony of actual authorship or receipt of
23 the "Counsel Only" designated material by such person.

24 Notwithstanding the provisions of Paragraph 6, specifically identified
25 information, documents, testimony, or other confidential materials marked "
26 Counsel Only" may be disclosed to upper management and in-house counsel that
27 does not have supervisory responsibility for the case of the receiving party on a need
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1 to know basis. The parties recognize that the disclosure of such confidential
2 material to certain in-house counsel and upper management of the parties may be
3 critical to the ability to proceed in this case and analyze and participate in settlement
4 discussions.

5 7. Any documents, discovery responses or deposition transcripts stamped
6 "Confidential," as well as any copies or excerpts thereof, or analyses or reports that
7 pertain thereto, and any deposition testimony or portion thereof marked as
8 "Confidential," may be made available only to:

9 (a) Representatives of the parties to this action on a need to know
10 basis, and with respect to discovery designated as "Confidential" that was produced
11 by a non-party, also to such non-party;

12 (b) Attorneys of record for the receiving party and employees of
13 such attorneys, including any paralegal, clerical, or other assistant employed by such
14 counsel and assigned to this matter;

15 (c) Judges, law clerks and other personnel of the Court before which
16 this proceeding is pending;

17 (d) Independent experts retained by the attorneys for purposes of the
18 litigation that are not directly associated with a party, and whom the receiving party
19 identifies to the producing party seven calendar days prior to disclosure to such
20 expert, provided that such person has first executed a Non-Disclosure Agreement in
21 the form annexed hereto as **Exhibit A**;

22 (e) Any witness who counsel for a party in good faith believes may
23 be called to testify at trial or deposition in this action, and who the receiving party
24 identifies to the producing party seven (7) calendar days prior to disclosure to such
25 witness, provided such person has first executed a Non-Disclosure Agreement in the
26 form annexed hereto as **Exhibit A**.

27 (f) Court reporters and their staff that are required to transcribe
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1 testimony;

2 (g) Outside litigation support vendors, including commercial
3 photocopying vendors, digital processing and hosting vendors, scanning services
4 vendors, coders and keyboard operators, provided such vendors have first executed
5 the Non-Disclosure Agreement in the form annexed hereto as **Exhibit A**;

6 (h) Any person who is identified on the face of any designated
7 “Confidential” material as an author or recipient thereof; and

8 (i) Any person who is determined to have been an author and/or
9 previous recipient of “Confidential” designated material, but is not identified on the
10 face thereof, provided there is prior testimony of actual authorship or receipt of the
11 “Confidential” designated material by such person;

12 (j) Any other person whom the producing person, or other person
13 designating the material “Confidential,” agrees in writing may have access to such
14 discovery material.

15 8. Written notice of intention to Protected Information to experts pursuant
16 to Paragraphs 6(d) and 7(d) shall be provided by facsimile or email seven calendar
17 days before the intended disclosure and shall specify the identity of the individual(s)
18 to whom the intended disclosure will be made, and that person’s occupation and
19 employer. If there is a written objection within the seven-day period and the
20 objection is not resolved between counsel, the party seeking disclosure shall not
21 disclose the information or documents, but shall have the right to bring the dispute
22 before the Court for resolution. The parties shall not unreasonably object to the
23 disclosure of information and documents to experts pursuant to Paragraph 6(d) and
24 7(d). The party objecting to the disclosure shall have the burden of showing why
25 the information or documents should not be disclosed to the identified expert. The
26 parties further agree that an expert whose identity is disclosed pursuant to this
27 paragraph cannot be deposed regarding any subject related to this litigation, unless

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1 the expert has been designated as a testifying expert by the retaining party, and then
2 in a manner consistent with the Federal Rules of Civil Procedure governing expert
3 discovery.

4 9. For purposes of this Protective Order, an expert witness shall not be
5 deemed to be “independent” if he is (a) a party to this litigation, or an officer,
6 shareholder, owner, manager, partner, distributor, seller, advertiser, independent
7 contractor, affiliate, director, employee, former employee or contractor, or relative
8 of a party to this litigation, or a party’s parent, subsidiary, predecessor-in-interest,
9 successor-in-interest, related entity or affiliate; or (b) an officer, shareholder, owner,
10 manager, partner, distributor, seller, advertiser, independent contractor, affiliate,
11 director, employee, former employee or contractor, or relative of a direct competitor
12 to a party to this litigation, or the competitor’s parent, subsidiary, predecessor-in-
13 interest, successor-in-interest, related entity or affiliate.

14 10. Each person identified in Paragraphs 6(a), 6(d), 6(f), 7(a), 7(d), 7(e), or
15 7(g) permitted by the parties or their counsel to have access to Protected Information
16 under the terms of this Protective Order shall, prior to being given such access, be
17 provided with a copy of this Protective Order for review. Upon receiving this
18 Protective Order, each person shall sign a statement in the form of **Exhibit A** hereto
19 indicating that he has read the Protective Order and agrees to comply with its terms.
20 Counsel shall retain each signed Non-Disclosure Agreement, hold it in escrow, and
21 produce it to opposing counsel either prior to such person being permitted to testify
22 (at deposition or trial) or at the conclusion of the case, whichever comes first.

23 11. The restrictions set forth in this Protective Order shall not apply to
24 information that is known to the receiving party or the public before the date of its
25 transmission to the receiving party, or which becomes known to the public after the
26 date of its transmission to the receiving party, provided that such information does
27 not become publicly known by any act or omission of the receiving party, its
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1 employees, or its agents that would be in violation of this Protective Order.

2 12. If, in connection with this action, a producing party inadvertently
3 discloses information subject to a claim of attorney-client privilege, work product
4 immunity, or any other protection provided under the law (“Inadvertently Disclosed
5 Privileged Information”), the disclosure of the Inadvertently Disclosed Privileged
6 Information will not constitute or be deemed a waiver or forfeiture of any claim of
7 privilege, work product immunity, or any other protection that the producing party
8 would otherwise be entitled to assert with respect to the Inadvertently Disclosed
9 Privileged Information and its subject matter. If a claim of inadvertent disclosure is
10 made by a producing party with respect to Inadvertently Disclosed Privileged
11 Information, the receiving party: (a) will, within seven (7) business days, return or
12 destroy all copies of the Inadvertently Disclosed Privileged Information and certify
13 that all such Inadvertently Disclosed Privileged Information has been returned or
14 destroyed; and (b) must take reasonable steps to retrieve the information if the
15 receiving party disclosed it before being notified by the producing party. Within
16 seven (7) business days of the notification that such Inadvertently Disclosed
17 Privileged Information has been returned or destroyed, the disclosing party shall
18 produce a privilege log with respect to the Inadvertently Disclosed Privileged
19 Information. The receiving party may move the Court for an Order compelling
20 production of the Inadvertently Disclosed Privileged Information. The motion shall
21 be filed under seal, and shall not assert as a ground for entering such an Order the
22 fact of the inadvertent production. The disclosing party retains the burden of
23 establishing the privileged or protected nature of the Inadvertently Disclosed
24 Privileged Information. Nothing in this Order shall limit the right of any party to
25 request an *in camera* review of the Inadvertently Disclosed Privileged Information.

26 13. Any document or evidence that is designated as Protected Information
27 and that a party wishes to file with the Court shall be presented to the Court along
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1 with a written application and proposed order for filing under seal according to the
2 procedures set forth in Local Civil Rule 79-5. Any other party shall be permitted to
3 file a supporting or supplemental brief within four (4) business days of the initial
4 motion for filing under seal being filed. All papers and filings with the Court that
5 refer or rely upon any document or evidence filed under seal shall designate the
6 particular aspects that are confidential. The parties will use their best efforts to
7 minimize such sealing.

8 14. If, at any time during the preparation for trial, any party believes that
9 any other party or non-party has improperly designated certain information as
10 Privileged Information or believes that it is necessary to disclose Privileged
11 Information to persons other than those permitted by this Protective Order, and the
12 producing party does not agree to change the designation or to the further disclosure,
13 the objecting party may make an appropriate motion to the Court requesting that the
14 specifically identified documents, information and/or deposition testimony be
15 excluded from the provisions of this Protective Order or be available to specified
16 other persons. In that event, counsel for all affected persons will convene a joint
17 telephone call with the Court to obtain a ruling. It shall be the burden of the party
18 that makes the designation to demonstrate that the material or information at issue
19 was properly designated. It shall be the burden of the party seeking the disclosure to
20 persons other than those designated in this Protective Order to show that such
21 disclosure is necessary.

22 15. In the event that a party is served with a discovery request, subpoena,
23 or order by any person, firm, corporation, or other entity that is not a party to this
24 action, is not a signatory to this Protective Order or otherwise is not bound by this
25 Protective Order, that seeks to compel production of Protected Information, the
26 party upon whom the discovery request, subpoena, or order is served shall give
27 written notice of the discovery request, subpoena, or order to the party that has
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1 asserted that the information or documents subject to the subpoena are Protected
2 Information. The written notice required by this paragraph shall be given no later
3 than ten calendar days after receipt of the discovery request, subpoena, or order or
4 before the production date fixed by the applicable discovery rule, subpoena, or
5 order, whichever is earlier. The party who designated the subject information or
6 documents as Protected Information shall have the responsibility to obtain an order
7 from the Court quashing the subpoena, a protective order, and/or such other relief as
8 will protect the confidential nature of the subject information or documents. If such
9 a motion is filed before the requested production date, the party upon whom the
10 discovery request, subpoena, or order was served shall not produce the subject
11 information or documents requested in the discovery request, subpoena, or order
12 until after such time as the Court rules on the motion to quash the subpoena or
13 motion for protective order. If an order quashing the subpoena or motion for
14 protective order is obtained, the party upon whom the discovery request, subpoena,
15 or order was served shall comply with the order. If no motion to quash or motion
16 for protective order is filed before the scheduled production date fixed by the
17 applicable discovery rule, subpoena, or order, or if the motion to quash the subpoena
18 or motion for protective order is denied, the party upon whom the discovery request,
19 subpoena, or order was served may comply with the same without being deemed to
20 have violated this Protective Order.

21 16. Each person who has access to discovery material that has been
22 designated as "Confidential" or "Counsel Only" shall take all due precautions to
23 prevent the unauthorized or inadvertent disclosure of such material. The Protective
24 Order may be modified only in writing by the parties and approved by an order of
25 the Court, or by motion to the Court.

26 17. In the event that this case proceeds to trial, all information or
27 documents offered at trial that are designated as "Confidential" or "Counsel Only"

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1 will become public and presumptively available to all members of the public,
2 including the press, unless sufficient cause is shown in advance of trial to proceed
3 otherwise. The Court also retains discretion whether or not to afford confidential
4 treatment to any information or documents designated as "Confidential" or "Counsel
5 Only" submitted to the Court in connection with any motion, application, or
6 proceeding that may result in an order and/or decision by the Court.

7 18. Upon termination of this proceeding, unless the attorneys of record
8 otherwise agree in writing, each party shall within 30 days of final disposition: (a)
9 assemble and return all Protected Information, including copies, to the person(s) and
10 entity(ies) from whom the material was obtained; or (b) destroy all Protected
11 Information and provide the other party with written certification that such
12 destruction was made. The attorney of record may retain one copy of designated
13 materials containing attorney work product information, taking appropriate
14 precautions to keep the Protected Information confidential; all other copies must be
15 destroyed.

16 19. In the event any party discloses material containing Protected
17 Information, but that such party inadvertently did not designate as "Confidential" or
18 " Counsel Only," the receiving party agrees, upon request by the disclosing party, to
19 return the un-designated material promptly, for reproduction by the disclosing party
20 with the appropriate confidentiality, or to mark the material directly with the
21 confidentiality designation requested by the disclosing party. Such designated
22 portion(s) of the discovery material will thereafter be treated as "Confidential"
23 under the terms of this Order.

24 20. This Protective Order shall not prejudice the right of any party or non-
25 party to oppose production of any information on the ground of attorney-client
26 privilege, work product immunity, or any other protection provided under the law.

27 21. This Protective Order shall survive termination of the litigation.
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1 During the pendency of this case only, this Court shall retain jurisdiction over all
2 persons subject to this Order to the extent necessary to enforce any obligations
3 arising hereunder or to impose sanctions for any contempt thereof.

4 SO ORDERED.

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6 Dated: Los Angeles, California

7 March 7, 2016



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9 HON. DEAN D. PREGERSON
10 UNITED STATES DISTRICT JUDGE
11 *Charles F. Eick*
12 *United States Magistrate Judge*
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[Proposed] Order respectfully submitted by:
SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP

Dated: March 7, 2016

By

/s/ Jill M. Pietrini
JILL M. PIETRINI

Attorneys for Plaintiff

OLSHAN FROME WOLOSKY LLP

Dated: March 7, 2016

By

/s/ Kyle C. Bisceglie
KYLE C. BISCEGLIE

Attorneys for Defendants

CHRISTA & JACKSON

Dated: March 7, 2016

By

/s/ Laura K. Christa
LAURA K. CHRISTA

Attorneys for Defendants

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EXHIBIT A

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

LIONS GATE ENTERTAINMENT
INC., a Delaware corporation,

Plaintiff,

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TD AMERITRADE SERVICES
COMPANY, INC. a Delaware
corporation, TD AMERITRADE, INC.,
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INVESTMENT MANAGEMENT,
LLC, a Delaware limited liability
company, HAVAS WORLDWIDE
NEW YORK, INC., a Delaware
corporation and DOES 1-10, inclusive,

Defendants.

Case No. 15-CV-05024-DDP-E

The Hon. Dean D. Pregerson

NON DISCLOSURE AGREEMENT

1. I have been asked by _____ or its counsel to receive and review certain materials or testimony that have been designated as “Confidential” or “Counsel Only” within the terms of the Protective Order entered in the U.S. District Court for the Central District of California in the case entitled *Lions Gate Entertainment Inc. v. TD Ameritrade Holding Corp. et al.*, Case No. 15-CV-05024-DDP-E.

2. I have read the aforementioned Protective Order, and agree to be bound by it. I agree that I will not disclose any such “Confidential” or “Counsel Only” information to anyone other than for purposes of this litigation and as permitted under the Protective Order, and that at the conclusion of the litigation, I will return all discovery information to the party or attorney from whom I received it.

3. By acknowledging these obligations under the Protective Order, I understand that I am submitting myself to the jurisdiction of the United States

1 District Court for the Central District of California for the sole purpose of any issue
2 or dispute arising hereunder and that my willful violation of any term of the
3 Protective Order could subject me to punishment for contempt of Court.

4 4. I declare the foregoing is true under penalty of perjury under the laws
5 of the United States of America.

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7 Dated: _____

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9 Name: _____

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