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 Counterclaimants WHACKO, INC.
 6 and CAROL BURNETT, and
 Counterclaimant MABEL CAT, INC.
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 9 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
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11 BOB BANNER ASSOCIATES, INC., a
 12 California corporation,

13 Plaintiff,

14 v.

15 WHACKO, INC., a California corporation;
 16 CAROL BURNETT, an individual; and
 DOES 1 through 100, inclusive,

17 Defendants.

18
 19 MABEL CAT, INC., a California
 corporation; WHACKO, INC., a California
 20 corporation; and CAROL BURNETT, an
 individual,

21 Counterclaimants,

22 v.

23 BOB BANNER ASSOCIATES, INC., a
 California corporation, LEGENDARY
 ENTERTAINMENT ALLIANCE, LLC, a
 24 California limited liability company,
 previously sued herein as ROE 1, and ROES
 25 2 - 100, inclusive,

26 Counterdefendants.
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CASE NO.: CV13-00083 R (VBKx)

**ORDER RE STIPULATION FOR
 PROTECTIVE ORDER**

1 This Court, having read and considered the Stipulation for Protective Order
2 submitted by Plaintiff and Counterdefendant Bob Banner Associates, Inc.,
3 Counterdefendant Legendary Entertainment Alliance, LLC, Defendants and
4 Counterclaimants Whacko, Inc. and Carol Burnett, and Counterclaimant Mabel Cat,
5 Inc., by their attorneys (collectively, the “Parties”), and finding good cause therefor,
6 orders that:

7 1. This Stipulation for Protective Order shall govern the production, use and
8 handling of confidential, proprietary and/or private documents and information
9 produced by parties in this litigation in response to written discovery and in initial
10 disclosures (collectively “Confidential Material” or “Material”). All Confidential
11 Material subject to this Protective Order shall be used solely for the prosecution,
12 defense or settlement of this action and shall not be used by any other party, other than
13 the party that produced it, in any other litigation, for business, competitive, or
14 publicity purposes, or for any other purpose whatsoever.

15 2. Any party responding to discovery or otherwise (“Designating Party”)
16 may designate Confidential Material by placing a “Confidential” stamp on each page
17 so designated, for each document or information that, in good faith, the party believes
18 is confidential, proprietary and/or private. Documents and written discovery
19 responses shall be designated as “Confidential” at the time of production. In addition,
20 if a party files or lodges papers with the Court that incorporate Confidential Material,
21 those unredacted papers, or the Confidential portions thereof, shall be treated as
22 Confidential Material.

23 3. The inadvertent production of any confidential, private or proprietary
24 material during the scope of this action, regardless of whether the material was
25 designated Confidential at the time of disclosure, shall not be deemed a waiver of a
26 party’s claim to confidentiality and shall not constitute a waiver of a party’s right to
27 subsequently designate such material as Confidential.

28 4. Confidential Material shall not include, and this Stipulation for Protective

1 Order shall not be construed to apply to, any information that: (a) is already public
2 knowledge or otherwise in the public domain; (b) has become public knowledge or
3 enters the public domain other than as a result of disclosure in violation of this
4 Stipulation; or (c) has come or shall come into a receiving party's possession from
5 sources other than the Designating Party.

6 5. Confidential Material shall not be shown, revealed, released, disclosed,
7 or communicated in any way to any person or entity, except those listed in Paragraph
8 6 below, without the advance written authorization of the party that produced it.

9 6. Confidential Material may only be disclosed to the following:

- 10 a. To the Court, subject to paragraph 7 below;
- 11 b. The attorneys of record for the parties to this litigation, their
12 respective associates, partners, clerks, paralegals, legal assistants,
13 secretaries, and other support staff who are actively engaged in
14 assisting such attorneys in the prosecution or defense of this
15 litigation or the related litigation;
- 16 c. Experts retained or consulted by any party or their counsel as
17 required to assist in the conduct of this litigation, provided that
18 prior to disclosure, any such expert is provided with a copy of this
19 Protective Order and acknowledges in writing that he or she agrees
20 to be bound by these terms;
- 21 d. The parties to this litigation, to the extent that such disclosure is
22 necessary for the prosecution, defense or settlement of this
23 litigation;
- 24 e. Clerical or ministerial service providers, including outside copying
25 services and court reporters, retained by a party's counsel to assist
26 such counsel in connection with this litigation; and
- 27 f. Authors, addressees or recipients of the Confidential Material; and
28 g. Any person of whom testimony is taken in this action, provided

1 that prior to disclosure, any such person who does not also fall into
2 another subcategory of this paragraph is provided with a copy of
3 this Protective Order and acknowledges in writing that he or she
4 agrees to be bound by these terms.

5 7. Prior to lodging or filing with the Court any Material that has been
6 designated Confidential, the party who wishes to lodge or file such Confidential
7 Material shall give written notice to the party who designated the Material as
8 Confidential. With respect to motion papers, the party who designated the Material as
9 Confidential shall have five (5) business days from the receipt of such written notice
10 to apply to the Court for an order sealing the Material. With respect to opposition or
11 reply papers, the party who designated the Material as Confidential shall have three
12 (3) business days from the receipt of such written notice to apply to the Court for an
13 order sealing the Material. The Material designated as Confidential may not be
14 lodged or filed with the Court by the non-designating party prior to the expiration of
15 the notice period or until the designating party has applied to the Court to have the
16 Material sealed, whichever comes first, unless the non-designating party chooses to
17 file an application to have the Material sealed for purposes of including the material
18 with an accompanying filing. However, once the application to have the Material
19 sealed is filed, and pending a resolution of the application, the Material designated as
20 Confidential may not be lodged or filed with the Court unless it is placed in a separate
21 sealed envelope or sealed container with the designation “CONDITIONALLY
22 UNDER SEAL.” Any party who stipulates to, fails to oppose, or files a motion to seal
23 does not waive its right to later object to or challenge any designation of the Material
24 as Confidential.

25 8. Any party to this stipulation has the right to challenge a designation of
26 information as “Confidential” pursuant to this Protective Order. A party shall not be
27 obligated to challenge the propriety of a designation as “Confidential” at the time such
28 designation is made, and a failure to do so shall not preclude a subsequent challenge

1 thereto.

2 (a) Any party may in good faith object to the designation of any material as
3 “Confidential” by providing written notice of such objections to the
4 Designating Party. The grounds for objection shall be stated with reasonable
5 particularity.

6 (b) The Parties shall thereafter make a reasonable and good faith attempt to
7 resolve the issue informally. If the dispute cannot be resolved within fourteen
8 (14) days, the Designating Party may, within fourteen (14) days thereafter,
9 apply to the Court for a protective order limiting the use and dissemination of
10 the challenged Material. The burden of proving that the challenged Material
11 has been properly designated as “Confidential” is on the Designating Party.
12 The challenged Material shall be treated as confidential until such time as the
13 Court has ruled on the motion for a protective order.

14 9. Within thirty (30) days of the conclusion of all proceedings, each party
15 shall return all Material designated Confidential to the party on whose behalf such
16 Material was produced, provided, however, that each Party’s outside counsel may
17 retain a copy of such material for its records if it deems such retention necessary.
18 With permission in writing from the Designating Party, a receiving party may destroy
19 some or all of the Confidential Material and provide a certification of such destruction
20 to the Designating Party, instead of returning it.

21 10. This Protective Order shall continue to be binding throughout this
22 litigation and after its conclusion. The final award in this action shall not relieve any
23 person to whom Confidential Material has been disclosed from the obligation of
24 maintaining the confidentiality of such information as set forth herein. However, this
25 Stipulation for Protective Order shall in no way govern the use of Confidential
26 Material at trial (“trial,” as used in this paragraph, does not include matters such as
27 pre-trial motions and motions in limine). Any concerns regarding confidential
28 information and procedures to be used at trial with respect thereto should be raised by

1 the concerned parties at or prior to the Final Pretrial Conference to be addressed by
2 the Court.

3 11. All disputes concerning matters falling within the scope of or relating to
4 the interpretation of this Stipulation for Protective Order shall be submitted for ruling
5 to the Court. At any hearing on such submitted matter, all persons not specifically
6 contemplated by Paragraph 6 shall be excluded from the hearing.

7 By entering into this Stipulation for Protective Order, the Parties do not waive any
8 right(s) to assert the attorney client privilege, work product doctrine, financial privacy
9 or any other objection that could be raised in response to any party's discovery
10 requests. Further, nothing in this Stipulation for Protective Order shall limit any
11 Party's right or ability to seek an amendment or adjustment of this Order from the
12 Court.

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14 **IT IS SO ORDERED.**

15 Dated: March 19, 2013



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18 UNITED STATES DISTRICT JUDGE
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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the
4 age of 18 years and not a party to the within action. My business address is **2049
Century Park East, Suite 3110, Los Angeles, California 90067-3274.**

5 On March 18, 2013, I served the foregoing document described as
6 **[PROPOSED] ORDER RE STIPULATION FOR PROTECTIVE ORDER** on the
interested parties in this action.

7 by placing the original and/or a true copy thereof enclosed in (a) sealed
8 envelope(s), addressed as follows:

9 David R. Schwarcz, Esq. *Counsel for Plaintiff and Counterdefendant*
Schwarcz, Rimberg, Boyd & Rader, LLP *Bob Banner Associates, Inc., and*
6310 San Vicente Boulevard, Suite 360 *Counterdefendant Legendary Entertainment*
10 Los Angeles, CA 90048 *Alliance, LLC*

11 **BY REGULAR MAIL:** I deposited such envelope in the mail at 2049 Century Park East,
12 Suite 3110, Los Angeles, California 90067-3274. The envelope was mailed with postage
thereon fully prepaid.

13 I am “readily familiar” with the firm’s practice of collection and processing correspondence
14 for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary
15 course of business. I am aware that on motion of the party served, service is presumed invalid
if postal cancellation date or postage meter date is more than one (1) day after date of deposit
for mailing in affidavit.

16 **BY FACSIMILE MACHINE:** I transmitted a true copy of said document(s) by facsimile
17 machine, and no error was reported. Said fax transmission(s) were directed as indicated on
the service list.

18 **BY ELECTRONIC MAIL:** I transmitted a true copy of said document(s) by electronic
19 mail, and no error was reported. Said electronic mail transmission(s) were directed as
indicated on the service list.

20 **BY OVERNIGHT MAIL:** I deposited such documents at the Federal Express Drop Box
21 located at 2049 Century Park East, Suite 3110, Los Angeles, California 90067-3274. The
envelope was deposited with delivery fees thereon fully prepaid.

22 **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above
23 addressee(s).

24 (Federal) I declare that I am employed in the office of a member of the Bar of
25 this Court, at whose direction the service was made. I declare under penalty of
perjury under the laws of the State of California that the foregoing is true and
correct.

26 Executed on March 18, 2013, at Los Angeles, California.

27 /s/

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Kathryn Toyama