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7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION  
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10 HERMOSA ON METROPOLE, LLC, a  
11 California limited liability company,

12 Plaintiff,

13 v.

14 CITY OF AVALON, a municipal  
15 corporation; and DOES 1-25,

16 Defendant.

Case No. CV13-2439 ABC (FFMx)

Assigned to: Hon. Audrey B. Collins  
Hon. Frederick F. Mumm (Discovery)

17 **[PROPOSED] ORDER ENTERING**  
18 **STIPULATED CONFIDENTIALITY**  
19 **ORDER**

**Note Changes Made by Court.**

Trial: January 28, 2014

20 **[PROPOSED] ORDER**

21 This action involves allegations concerning financial harm to Plaintiff  
22 Hermosa On Metropole, LLC ("Hermosa") stemming from the Defendant City of  
23 Avalon's ("City") (collectively, the "Parties") alleged deprivation of Hermosa's civil  
24 rights. Discovery in this action will involve the disclosure of private, privileged,  
25 proprietary, and confidential information, including without limitation the  
26 following:

- 27 A) Confidential and non-public financial records and tax  
28 information;
- B) Proprietary and confidential business information, including  
leases and rental rates; and

1 C) Confidential and private information of individuals who are not  
2 parties to this litigation.

3 Pursuant to FED. R. CIV. P. 26(c) and 29, good cause therefore exists for  
4 entry of this Order because the Parties to this action (a) either have sought or might  
5 seek the discovery of certain information in this action that the Parties believe is  
6 sensitive or confidential, (b) believe that unrestricted disclosure or dissemination of  
7 such information could cause them some business or commercial injury, (c) desire  
8 an efficient and practicable means to designate such information as confidential and  
9 control its disclosure or dissemination, and (d) have agreed to such means as set  
10 forth herein.

11 The Court hereby ORDERS THAT:

12 1. During the course of this litigation, all documents and  
13 information that a party considers to contain or to constitute confidential, trade  
14 secrets, proprietary and/or financial information including but not limited to:  
15 (a) financial statements and tax documents; (b) transient occupancy tax forms;  
16 (c) leases; (d) property and business valuations; (e) third party tax and financial  
17 information; (f) data derived from such confidential information, including any  
18 summaries, compilations, quotes, or paraphrases thereof; and (g) any other oral,  
19 written, or recorded material which consists of or contains confidential financial  
20 information, trade secret, or commercial information or information subject to a  
21 claim of right to privacy and that has been designated by the producing party as  
22 confidential by stamping or writing "CONFIDENTIAL" on the face of the  
23 document, or alternatively, on the portion thereof containing the confidential  
24 information, shall be handled in accordance with this Confidentiality Order.

25 2. Any designating party shall have the right to designate as  
26 "CONFIDENTIAL" any information and/or document it believes in good faith  
27 embodies trade secret, or other confidential research, confidential development, or  
28 confidential commercial information, financial, proprietary or personal information.

1           3.     In the case of documents or information produced by third  
2 parties, any third party hereto shall also have the right to designate said information  
3 and/or documents as being "CONFIDENTIAL" as necessary.

4           4.     A designation of "CONFIDENTIAL" pursuant to this  
5 Confidentiality Order shall not be construed as a concession by any party that such  
6 information is relevant or material to any issue, or is in fact confidential, proprietary,  
7 privileged, or a trade secret.

8           5.     CONFIDENTIAL information shall be held in confidence by  
9 each person to whom it is disclosed, shall be used only for purposes of this action,  
10 shall not be used for any other business purpose, and shall not be disclosed to any  
11 person who is not a qualified recipient, except as hereinafter provided.

12           6.     With respect to information and/or documents designated as  
13 "CONFIDENTIAL," "qualified recipient" shall mean:

- 14           A)     The Court and those employed by the Court, and court reporters  
15                   and those employed by court reporters to transcribe, record or  
16                   videotape testimony in this litigation;
- 17           B)     The parties to this case, including officers, employees and/or  
18                   directors of the receiving party responsible for handling and/or  
19                   directly participating in the prosecution and defense of this  
20                   litigation on behalf of the receiving party.
- 21           C)     The outside attorneys and in-house counsel (collectively  
22                   "attorneys") of the receiving party in connection with this action.
- 23           D)     Members of the paralegal, secretarial and clerical staff (including  
24                   short hand reporters) employed by the receiving party or its  
25                   attorneys.
- 26           E)     Members of the data entry and data processing staff employed by  
27                   the receiving party's attorneys in assisting in the development  
28                   and/or the data retrieval systems in connection with the action.

1 F) The expert witnesses or consultants, if any, employed by the  
2 receiving party and/or its attorneys for the assistance in this  
3 action.

4 7. All qualified recipients specified in Paragraph 6 (B) through (E)  
5 shall, before any CONFIDENTIAL information or documents are disclosed to them,  
6 be advised of the provisions of the Confidentiality Order by disclosing counsel and  
7 such persons must agree to be bound by the terms hereof and maintain said  
8 information or documents in confidence, and not disclose said information or  
9 documents to anyone other than in accordance with the terms of this Confidentiality  
10 Order. Any qualified recipients specified in Paragraph 6 (F) shall be required to  
11 sign the certificate of confidentiality attached as Exhibit "A" hereto prior to  
12 receiving any confidential information or documents subject to this Confidentiality  
13 Order. Copies of executed certificates of confidentiality shall be maintained by each  
14 party. In the event of a dispute regarding disclosure of CONFIDENTIAL  
15 information, copies of the certificates shall be provided to opposing parties' counsel  
16 upon request.

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18 8. Persons who are not qualified recipients under this  
19 Confidentiality Order may be examined as witnesses at depositions concerning  
20 CONFIDENTIAL information if such persons have prior knowledge of such  
21 CONFIDENTIAL information, or they agree to sign the certificate of confidentiality  
22 attached as Exhibit "A" hereto or to the terms thereof on the record.

23 9. Should a party find it necessary in preparation for trial or other  
24 proceedings in this action to disclose an adversary's CONFIDENTIAL information  
25 to any person who is not a qualified recipient under the terms of this Order, a notice  
26 shall be served on the designating party identifying the person or persons to whom  
27 disclosure is to be made together with the designation of the specific documents or  
28 contents thereof to be disclosed to each such person and a statement of the necessity

1 for such disclosure. Such notice shall be accompanied by a written  
2 acknowledgment by each such person to whom disclosure is to be made, stating that  
3 he or she has read and understands this Order and agrees to be bound by its terms.  
4 If the designating party objects to the proposed disclosure, it shall state its objections  
5 and the reasons therefor in writing within ten (10) days of the receipt of the notice.  
6 If objected to, the disclosure shall not be made except upon further order of this  
7 Court.

8                   **9.5 If a party to whom CONFIDENTIAL material has been**  
9 **produced is subpoenaed or ordered by another court or administrative agency**  
10 **to produce information that is subject to this protective order, such party shall**  
11 **notify promptly the party who produced the material of the pending subpoena**  
12 **or order. It is the producing party's responsibility to take whatever action it**  
13 **deems appropriate to challenge the subpoena or order in the issuing court or**  
14 **agency. The party subject to the subpoena or order shall not produce any**  
15 **CONFIDENTIAL materials in advance of the date required by the subpoena**  
16 **or order. Nothing herein shall be construed as relieving anyone subject to this**  
17 **order from any obligation to comply with a validly issued subpoena or order.**  
18 **(FFM)**

19                   10. In the case of depositions, the provisions of this Order may be  
20 invoked by (a) declaring on the record at the deposition that the information that is  
21 disclosed is CONFIDENTIAL, with instructions that those portions of the transcript  
22 containing such information be separately bound, or (b) designating specific pages  
23 as CONFIDENTIAL and serving such designations within 30 days of receipt of the  
24 transcript of the deposition in which the designations are made.

25                   11. CONFIDENTIAL information shall not be copied or otherwise  
26 reproduced by the receiving party, except for transmission to qualified recipients,  
27 without the written permission of the producing party, or, in the alternative, by  
28 further order of the Court. Nothing herein shall, however, restrict a qualified

1 recipient from making working copies, abstracts and digests of CONFIDENTIAL  
2 information for use in connection with this action, and such working copies,  
3 abstracts and digests of CONFIDENTIAL information shall be deemed  
4 CONFIDENTIAL under the terms of this Confidentiality Order. Further, nothing  
5 herein shall restrict a qualified recipient from converting or translating  
6 CONFIDENTIAL information into machine readable form for incorporation in a  
7 data retrieval system used in connection with this action, provided such converted or  
8 translated information shall be considered CONFIDENTIAL and that access to  
9 CONFIDENTIAL information in whatever form stored or reproduced, shall be  
10 limited to qualified recipients.

11           12. Any party seeking to file with the Court any document or thing  
12 designated under this Confidentiality Order by that party as CONFIDENTIAL may,  
13 at that party's option, seek to have the document or thing filed under seal in  
14 accordance with the procedures of C.D. Cal. Local Rule 79-5.1. Any party seeking  
15 to file with the Court any document or thing designated under this Confidentiality  
16 Order by any other party as CONFIDENTIAL shall file that document under seal  
17 under seal in accordance with the procedures of C.D. Cal. Local Rule 79-5.1 unless  
18 the designating party provides prior written consent to waiver of this Paragraph with  
19 respect to the subject filing. Where one party wishes to file or lodge any documents  
20 or things with the Court under seal, the other party shall not unreasonably withhold  
21 agreement to such filing or lodging under seal. If such agreement is provided, the  
22 Parties shall submit to the Court **an application pursuant to Local Rule 79-5.1**  
23 **along with the** stipulation and proposed order for such filing or lodging under seal.  
24 If no such agreement is provided, then the filing or lodging party shall submit an  
25 application and proposed order to the Court pursuant to C.D. CAL. LOCAL RULE 79-  
26 5.1. **(FFM)**

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1           13. By entering into this Stipulation, the receiving parties do not  
2 concede that the marking of any document as "CONFIDENTIAL" by the producing  
3 parties causes that document or the information contained in that document to  
4 become confidential trade secrets, proprietary and/or financial information. The  
5 receiving party reserves its/his right to move the Court with appropriate notice to  
6 remove the "CONFIDENTIAL" designation from any information or documents  
7 designated by the producing parties. In such case, designating party shall bear the  
8 burden of proving that the designation is justified. The parties shall meet and confer  
9 in good faith prior to the filing of any motion to de-designate any material  
10 designated as "CONFIDENTIAL."

11           14. The restrictions and obligations relating to documents and  
12 information protected by this Confidentiality Order shall not apply (a) to any such  
13 document or information which both parties agree, or which the Court rules is  
14 already public knowledge or becomes public knowledge other than as a result of  
15 disclosure by the receiving party, or (b) to any document or information as to which  
16 receiving party demonstrates that it had prior knowledge independently of the  
17 producing party.

18           15. Any inadvertent production of documents containing privileged  
19 information shall not constitute a waiver of the attorney-client privilege, work  
20 product doctrine or any other applicable privilege or doctrine. All parties  
21 specifically reserve the right to demand the return of any privileged documents that  
22 it may produce inadvertently during discovery if the producing party determines that  
23 such documents contain privileged information. Upon request by the producing  
24 party for return of any such documents designated as within the attorney-client,  
25 privilege, work product doctrine, or any other applicable privilege or doctrine, the  
26 receiving party immediately shall return to the producing party all copies of such  
27 documents. Nothing herein shall prevent the receiving party from challenging the  
28 propriety of the attorney-client privilege, work product doctrine, or any other

1 applicable privilege or doctrine designation by filing an appropriate motion with the  
2 court. If any party inadvertently fails to designate a document or information as  
3 CONFIDENTIAL, that party may subsequently do so in writing and that material  
4 shall be deemed CONFIDENTIAL from the date of such designation. Upon  
5 receiving such notice, all receiving parties shall employ reasonable efforts to ensure  
6 that all inadvertently disclosed information is subsequently treated as confidential  
7 pursuant to the terms of this Stipulated Confidentiality Order.

8           16. Prior to trial, the parties shall meet and confer after the pretrial  
9 conference concerning appropriate methods for dealing with material designated as  
10 CONFIDENTIAL at trial.

11           17. Upon final termination of this action, including all appeals, each  
12 party shall return all materials produced and designated as CONFIDENTIAL to the  
13 producing party or shall certify the destruction of such materials, in whatever form  
14 stored or reproduced, including all working copies, abstracts and digests thereof.  
15 The attorneys representing each party in this action shall be entitled to retain file  
16 copies, in whatever form stored or reproduced, including all other materials  
17 including, but not limited to, court filings, discovery responses and documents,  
18 deposition and court transcripts, correspondence, memoranda, notes and other work  
19 product materials, which contain or refer to CONFIDENTIAL information. Any  
20 such materials which are not returned or destroyed shall remain subject to this  
21 Confidentiality Order, and the Court shall retain jurisdiction to ensure that the terms  
22 hereof are not violated.

23           18. The Court can modify this Order in the interest of justice or for  
24 good cause shown.

25           19. Good cause exists for this Order. This action involves the  
26 proprietary business and financial information of the Parties and third-parties, and  
27 discovery in this action will involve the disclosure of private, privileged,  
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proprietary, and confidential information, including without limitation the following:

- A) Confidential and non-public financial records and tax information;
- B) Proprietary and confidential business information, including leases and rental rates; and
- C) Confidential and private information of individuals who are not parties to this litigation.

The Stipulated Confidentiality Order submitted by the parties is hereby entered.

IT IS SO ORDERED.

Dated: August 29, 2013

By /S/ FREDERICK F. MUMM  
Hon. Frederick F. Mumm  
United States Magistrate Judge