

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer
7 blanket protections on all disclosures or responses to discovery and that the protection
8 it affords from public disclosure and use extends only to the limited information or items
9 that are entitled to confidential treatment under the applicable legal principles. The
10 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
11 Protective Order does not entitle them to file confidential information under seal; Civil
12 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
13 will be applied when a party seeks permission from the court to file material under seal.

14 B. GOOD CAUSE STATEMENT

15 This action is likely to involve confidential and proprietary information for which
16 special protection from public disclosure and from use for any purpose other than
17 prosecution of this action is warranted. Such confidential and proprietary materials and
18 information consist of, among other things, confidential business or financial
19 information, information regarding confidential business practices, or other confidential
20 research, development, or commercial information (including information implicating
21 privacy rights of third parties), information otherwise generally unavailable to the
22 public, or which may be privileged or otherwise protected from disclosure under state
23 or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite
24 the flow of information, to facilitate the prompt resolution of disputes over
25 confidentiality of discovery materials, to adequately protect information the parties are
26 entitled to keep confidential, to ensure that the parties are permitted reasonably
27 necessary uses of such material in preparation for and in the conduct of trial, to address
28 their handling at the end of the litigation, and serve the ends of justice, a protective order

1 for such information is justified in this matter. It is the intent of the parties that
2 information will not be designated as confidential for tactical reasons and that nothing
3 be so designated without a good faith belief that it has been maintained in a confidential,
4 non-public manner, and there is good cause why it should not be part of the public
5 record of this case.

6 2. DEFINITIONS

7 2.1 Action: this pending federal law suit.

8 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
9 information or items under this Order.

10 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
11 it is generated, stored or maintained) or tangible things that qualify for protection under
12 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
13 Statement.

14 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
15 support staff).

16 2.5 Designating Party: a Party or Non-Party that designates information or
17 items that it produces in disclosures or in responses to discovery as
18 “CONFIDENTIAL.”

19 2.6 Disclosure or Discovery Material: all items or information, regardless of
20 the medium or manner in which it is generated, stored, or maintained (including, among
21 other things, testimony, transcripts, and tangible things), that are produced or generated
22 in disclosures or responses to discovery in this matter.

23 2.7 Expert: a person with specialized knowledge or experience in a matter
24 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
25 expert witness or as a consultant in this Action and who shall be required to sign the
26 Acknowledgment and Agreement to Be Bound (Exhibit “A”)

27 2.8 House Counsel: attorneys who are employees of a party to this Action.
28 House Counsel does not include Outside Counsel of Record or any other outside

1 counsel.

2 2.9 Non-Party: any natural person, partnership, corporation, association, or
3 other legal entity not named as a Party to this action.

4 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
5 this Action but are retained to represent or advise a party to this Action and have
6 appeared in this Action on behalf of that party or are affiliated with a law firm which
7 has appeared on behalf of that party, and includes support staff.

8 2.11 Party: any party to this Action, including all of its officers, directors,
9 employees, consultants, retained experts, and Outside Counsel of Record (and their
10 support staffs).

11 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
12 Discovery Material in this Action.

13 2.13 Professional Vendors: persons or entities that provide litigation support
14 services (e.g., photocopying, videotaping, translating, preparing exhibits or
15 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
16 their employees and subcontractors.

17 2.14 Protected Material: any Disclosure or Discovery Material that is
18 designated as “CONFIDENTIAL.”

19 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
20 from a Producing Party.

21 3. SCOPE

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

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

1 4. DURATION

2 Once a case proceeds to trial, all of the information that was designated as
3 confidential or maintained pursuant to this protective order may become public and may
4 be presumptively available to all members of the public, including the press, unless
5 compelling reasons supported by specific factual findings to proceed otherwise are
6 made to the trial judge in advance of the trial. See Kamakana v. City and County of
7 Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause”
8 showing for sealing documents produced in discovery from “compelling reasons”
9 standard when merits-related documents are part of court record). Accordingly, the
10 terms of this protective order do not extend beyond the commencement of the trial.

11 Even after final disposition of this litigation, the confidentiality obligations
12 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
13 in writing or a court order otherwise directs. Final disposition shall be deemed to be the
14 later of (1) dismissal of all claims and defenses in this Action, with or without prejudice;
15 and (2) final judgment herein after the completion and exhaustion of all appeals,
16 rehearings, 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 Protection.

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

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

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

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

7 5.2 Manner and Timing of Designations. Except as otherwise provided in this
8 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
9 or ordered, Disclosure or Discovery Material that qualifies for protection under this
10 Order must be clearly so designated before the material is disclosed or produced.

11 Designation in conformity with this Order requires:

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

19 A Party or Non-Party that makes original documents available for
20 inspection need not designate them for protection until after the inspecting Party has
21 indicated which documents it would like copied and produced. During the inspection
22 and before the designation, all of the material made available for inspection shall be
23 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it
24 wants copied and produced, the Producing Party must determine which documents, or
25 portions thereof, qualify for protection under this Order. Then, before producing the
26 specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to
27 each page that contains Protected Material. If only a portion or portions of the material
28 on a page qualifies for protection, the Producing Party also must clearly identify the

1 protected portion(s) (e.g., by making appropriate markings in the margins).

2 (b) for testimony given in depositions that the Designating Party identify
3 the Disclosure or Discovery Material on the record, before the close of the deposition.

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

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive the
12 Designating Party's right to secure protection under this Order for such material. Upon
13 timely correction of a designation, the Receiving Party must make reasonable efforts to
14 assure that the material is treated in accordance with the provisions of this Order.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
17 designation of confidentiality at any time that is consistent with the Court's Scheduling
18 Order.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
20 resolution process under Local Rule 37.1 et seq.

21 6.3 The burden of persuasion in any such challenge proceeding shall be on the
22 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
23 to harass or impose unnecessary expenses and burdens on other parties) may expose the
24 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
25 the confidentiality designation, all parties shall continue to afford the material in
26 question the level of protection to which it is entitled under the Producing Party's
27 designation until the Court rules on the challenge.

28 7. ACCESS TO AND USE OF PROTECTED MATERIAL

1 7.1 Basic Principles. A Receiving Party may use Protected Material that is
2 disclosed or produced by another Party or by a Non-Party in connection with this Action
3 only for prosecuting, defending, or attempting to settle this Action. Such Protected
4 Material may be disclosed only to the categories of persons and under the conditions
5 described in this Order. When the Action has been terminated, a Receiving Party must
6 comply with the provisions of section 13 below (FINAL DISPOSITION).

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

10 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
11 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
12 may disclose any information or item designated “CONFIDENTIAL” only to:

13 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
14 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
15 disclose the information for this Action;

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

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

21 (d) the court and its personnel;

22 (e) court reporters and their staff;

23 (f) professional jury or trial consultants, mock jurors, and Professional
24 Vendors to whom disclosure is reasonably necessary for this Action and who have
25 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

26 (g) the author or recipient of a document containing the information or
27 a custodian or other person who otherwise possessed or knew the information;

28 (h) during their depositions, witnesses, and attorneys for witnesses, in

1 the Action to whom disclosure is reasonably necessary provided: (1) the deposing party
2 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will
3 not be permitted to keep any confidential information unless they sign the
4 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
5 by the Designating Party or ordered by the court. Pages of transcribed deposition
6 testimony or exhibits to depositions that reveal Protected Material may be separately
7 bound by the court reporter and may not be disclosed to anyone except as permitted
8 under this Stipulated Protective Order; and

9 (i) any mediator or settlement officer, and their supporting personnel,
10 mutually agreed upon by any of the parties engaged in settlement discussions.

11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
12 OTHER LITIGATION

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

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

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

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

24 If the Designating Party timely seeks a protective order, the Party served
25 with the subpoena or court order shall not produce any information designated in this
26 action as “CONFIDENTIAL” before a determination by the court from which the
27 subpoena or order issued, unless the Party has obtained the Designating Party's
28 permission. The Designating Party shall bear the burden and expense of seeking

1 protection in that court of its confidential material and nothing in these provisions
2 should be construed as authorizing or encouraging a Receiving Party in this Action to
3 disobey a lawful directive from another court.

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

6 (a) The terms of this Order are applicable to information produced by a
7 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
8 produced by Non-Parties in connection with this litigation is protected by the remedies
9 and relief provided by this Order. Nothing in these provisions should be construed as
10 prohibiting a Non-Party from seeking 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 is subject
13 to an agreement with the Non-Party not to produce the Non-Party's confidential
14 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 reasonably
20 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 within
24 14 days of receiving the notice and accompanying information, the Receiving Party may
25 produce the Non-Party's confidential information responsive to the discovery request.
26 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
27 any information in its possession or control that is subject to the confidentiality
28 agreement with the Non-Party before a determination by the court. Absent a court order

1 to the contrary, the Non-Party shall bear the burden and expense of seeking protection
2 in this court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

12 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
13 PROTECTED MATERIAL

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

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
26 person to seek its modification by the Court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this
28 Protective Order no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in this
2 Stipulated Protective Order. Similarly, no Party waives any right to object on any
3 ground to use in evidence of any of the material covered by this Protective Order.

4 12.3 Filing Protected Material. A Party that seeks to file under seal any
5 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
6 only be filed under seal pursuant to a court order authorizing the sealing of the specific
7 Protected Material at issue. If a Party's request to file Protected Material under seal is
8 denied by the court, then the Receiving Party may file the information in the public
9 record unless otherwise instructed by the court.

10 13. FINAL DISPOSITION

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

28 14. Any violation of this Order may be punished by any and all appropriate measures

1 including, without limitation, contempt proceedings and/or monetary sanctions.

2 Dated: November 21,2017 RUTAN & TUCKER, LLP

3
4 By /s/ Proud Usahacharoenporn
5 Stephen A. Ellis
6 Proud Usahacharoenporn
7 Attorneys for Plaintiff,
8 ANDERSEN HOTELS, INC.
9 DBA HOTEL LAGUNA

10 Dated: November 21, 2017 SONGSTAD RANDALL
11 COFFEE & HUMPHREY LLP

12 By /s/ Janet E. Humphrey
13 Janet E. Humphrey
14 William D. Coffee
15 Attorneys for Defendants,
16 JOE HANAUER,
17 GREG MACGILLIVRAY,
18 JAMES “WALKIE” RAY and
19 KIMBARK GROUP, LLC
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1 Dated: November 21, 2017 LANG,RICHERT & PATCH, P.C.

2
3 By /s/ Kimberly L. Mayhew

4 Robert K. Hillison
5 Kimberly L. Mayhew
6 Attorneys for Defendants, E.W. MERRITT
7 FARMS and EARL MERRITT

8 Dated: November 21, 2017 HALL HUGUENIN LLP

9 By /s/ Michael A. Erlinger

10 Howard D. Hall
11 Markus D. Self
12 Michael A. Erlinger
13 Attorneys for Defendants, E.W. MERRITT
14 FARMS and EARL MERRITT

15 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

16 DATED: NOVEMBER 22, 2017

17 
18 _____
19 JOHN D. EARLY
20 United States Magistrate Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print
4 or type full address], declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States District
6 Court for the Central District of California on November 22, 2017, in the case of
7 Andersen Hotels, Inc. dba Hotel Laguna, a California corporation v. E. W. Merritt
8 Farms, a California partnership; Earl Merritt, a California resident; Joe Hanauer, a
9 California resident; Greg MacGillivray, a California resident; James "Walkie" Ray, a
10 California resident; Kimbark Group LLC, a Delaware limited liability company; and
11 Does 1 through 25, inclusive, case number 8:117-cv-01785-JLS-JDE. I agree to comply
12 with and to be bound by all the terms of this Stipulated Protective Order and I
13 understand and acknowledge that failure to so comply could expose me to sanctions and
14 punishment in the nature of contempt. I solemnly promise that I will not disclose in any
15 manner any information or item that is subject to this Order to any person or entity
16 except in strict compliance with the provisions of this Order.

17 I further agree to submit to the jurisdiction of the United States District Court for
18 the Central District of California for the purpose of enforcing the terms of this Stipulated
19 Protective Order, even if such enforcement proceedings occur after termination of this
20 action. I hereby appoint _____ [print or type full name] of
21 _____ [print or type full address and telephone number] as my
22 California agent for service of process in connection with this action or any proceedings
23 related to enforcement of this Stipulated Protective Order.

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____

28