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(SPACE BELOW FOR FILING STAMP ONLY)

Attorneys Plaintiffs, Defendants and Cross-Defendants
FOX HOLLOW OF TURLOCK OWNERS
ASSOCIATION and CALIFORNIA EQUITY
MANAGEMENT GROUP, INC. and Defendant and
Cross-Defendant ANDREW KATAKIS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FOX HOLLOW OF TURLOCK
OWNERS' ASSOCIATION, a California
Nonprofit Mutual Benefit Corporation; et
al.,

Plaintiffs,

v.

MAUCTRST LLC; et. al.,

Defendants.

Case No. CIV-F-03-5439 OWW DLB

(Consolidated with 1:03-CV-5774 OWW SMS
and Stanislaus County Superior Court Case No.
322675)

**EX PARTE APPLICATION TO TAKE
SETTLEMENT CONFERENCE OFF
CALENDAR TO BE LATER RE-SET; AND
ORDER THEREON**

AND CONSOLIDATED ACTIONS

For Settlement conference Set:

Date: January 19, 2011
Time: 10:00 am
Courtroom: 9

EX PARTE APPLICATION

I, D. Greg Durbin, do hereby declare and state:

1. Your declarant is a member of the law firm of McCormick, Barstow,
Sheppard, Wayte & Carruth LLP, attorneys of record herein for Plaintiffs, Defendants and Cross-
Defendants FOX HOLLOW OF TURLOCK OWNERS ASSOCIATION and CALIFORNIA

12444/00001-1670017.v1

EX PARTE APPLICATION TO TAKE SETTLEMENT CONFERENCE OFF CALENDAR

1 EQUITY MANAGEMENT GROUP, and Defendant and Cross-Defendant ANDREW KATAKIS
2 (collectively the “CEMG/Fox Hollow Parties”), and as such is a duly licensed and practicing
3 attorney before all courts in the state of California, and before this court.

4 2. The court, in its Supplemental Scheduling Conference Order entered herein
5 on August 20, 2010 [Docket # 430], set a settlement conference in the within action for January
6 19, 2011, at 10 am, in Courtroom 9, before the Honorable United States Magistrate Judge Dennis
7 Beck.

8 3. Your declarant has received a jury summons for this court to report for jury
9 duty on Monday morning, January 17, 2011.

10 4. By letter sent out on January 3, 2011, to all parties and their counsel, a
11 copy of which is attached hereto as Exhibit “A”, your declarant notified the other counsel and
12 parties of the scheduling conflict and asked whether any party or counsel had an objection to the
13 settlement conference currently set in this action being taken off calendar, to be re-set at a later
14 date, given such conflict as well as the fact that Defendants Gregory Mauchley and Brandon
15 Sinclair have yet to comply with the court’s direction in the Supplemental Scheduling Conference
16 Order to “notify the Court [by October 26, 2010] as to whether they will proceed in pro se or shall
17 designate counsel, who shall enter an appearance as counsel in this action for each individual
18 Defendant.” (Supplemental Scheduling Conference Order, 9:10-14; see also, Application For
19 Enforcement Of Order Regarding Representation Of Gregory Mauchley and Brandon Sinclair,
20 filed November 9, 2011 [Docket # 449].)

21 5. As also noted in such letter: “Please let me know by the close of business
22 on Wednesday, January 5, 2011, if any of you have an objection. If not I will notify the court that
23 the settlement conference should be taken off calendar for later rescheduling.”

24 6. Your declarant received an email from Mr. Sinclair, and a letter from Mr.
25 Stoker, advising that neither they nor the clients that they represent have any objection to the
26 settlement conference being taken off calendar, to be re-set at a later date. Copies of such email
27 and letter are attached hereto as Exhibit “B.” Your declarant received no response from Stanley
28 Flake, individually, as trustee of the Julie Insurance Trust and as trustee of the Capstone Trust,

1 who is the only party in the action.

2 7. Your declarant requests that the settlement conference be taken off
3 calendar to be re-set at a later date.

4 Your declarant declares under penalty of perjury that the foregoing is true and correct and
5 that this declaration is executed by him on this 6th day of January, 2011, at Fresno, California.

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/s/ D. Greg Durbin

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D. Greg Durbin

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ORDER

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Upon ex parte application by counsel for the CEMG/Fox Hollow Parties, and good cause appearing, it is hereby ordered that the settlement conference currently set in the within action for January 19, 2011 at 10 a.m., before the Honorable Dennis Beck, be and hereby is, taken off calendar, settlement conference may be re-set at a later date upon request of the parties.

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IT IS SO ORDERED.

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Dated: January 6, 2011

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/s/ Dennis L. Beck

UNITED STATES MAGISTRATE JUDGE

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