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(SPACE BELOW FOR FILING STAMP ONLY)

7 Attorneys Plaintiffs, Defendants and Cross-Defendants  
8 FOX HOLLOW OF TURLOCK OWNERS  
ASSOCIATION and CALIFORNIA EQUITY  
MANAGEMENT GROUP, INC. and Defendant and  
Cross-Defendant ANDREW KATAKIS  
9

10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF CALIFORNIA  
12

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

15 Plaintiffs,

16 v.

17 MAUCTRST LLC; et. al.,

18 Defendants.

19 AND CONSOLIDATED ACTIONS

20 Case No. 1:03-CV-05439-OWW-DLB

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

22 **STIPULATED PROTECTIVE ORDER RE  
UNION BANK; CHICAGO TITLE; AND  
BUDGET FINANCE COMPANY  
DOCUMENTS**

23 These consolidated proceedings include on the one hand, Plaintiffs, Defendants, and  
24 Cross-Defendants FOX HOLLOW OF TURLOCK OWNERS ASSOCIATION ("FHTOA"),  
25 CALIFORNIA EQUITY MANAGEMENT GROUP, INC. ("CEMG"), and Defendant and Cross-  
Defendant ANDREW KATAKIS ("Mr. Katakis") (collectively, the "CEMG/Fox Hollow  
Parties"); and on the other hand, Defendants and Cross-Complainants RICHARD SINCLAIR,  
GREGORY MAUCHLEY, BRANDON SINCLAIR, Defendant and Counterclaimant  
LAIRTRUST, LLC, and Defendants MAUCTRST LLC, STANLEY M. FLAKE (individually

and as trustee of the Julie Insurance Trust, and as Trustee of the Capstone Trust), and CAPSTONE, LLC (collectively, the "Defendants"):

## 1. **GOOD CAUSE STATEMENT**

Pursuant to the Order issued by this Court on May 6, 2011 [Doc. No. 570] following the hearing on Defendant RICHARD SINCLAIR'S Motions to Quash subpoenas for document production issued in March 2011 to Union Bank of California, N.A. ("Union Bank"), Chicago Title Insurance Co. ("Chicago Title") and Budget Finance Co. ("Budget Finance") (collectively, "Motions to Quash"), the Plaintiffs and Defendant RICHARD SINCLAIR (the "Parties") submit as follows:

## 2. PURPOSES AND LIMITATIONS

Disclosure of the documents produced pursuant to the subpoenas issued to Union Bank, Chicago Title and Budget Finance Company are likely to involve production of financial statements, tax returns and other financial documents pertaining to RICHARD SINCLAIR for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order relating to such documents produced under said subpoenas. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles with respect to the documents produced – namely, financial statements, tax returns and other financial documents – in response to the foregoing subpoenas to Union Bank, Chicago Title, and/or Budget Finance Company.

The parties further acknowledge that any party seeking to seal attachments to a motion for summary judgment or other dispositive motion or documents identified in any Joint Petrial Order shall be required to comply with Local Rule 141 (Fed. R. Civ. P. 39).

1                   3.     **DEFINITIONS**

2                   3.1 Challenging Party: a Party or Non-Party that challenges the designation of information  
3 or items under this Order.

4

5                   3.2 “CONFIDENTIAL” Information or Items: all financial statements, tax returns, and  
6 other financial documents pertaining to RICHARD SINCLAIR (regardless of how it is generated,  
7 stored or maintained) produced by Union Bank, Chicago Title, and/or Budget Finance Company  
8 under the subpoenas issued that qualify for protection under Federal Rule of Civil Procedure  
9 26(c).

10

11                  3.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as  
12 their support staff).

13

14                  3.4 Designating Party: a Party or Non-Party that designates information or items that it  
15 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

16

17                  3.5 Disclosed Financial Material: all financial statements, tax returns and other financial  
18 documents pertaining to RICHARD SINCLAIR, regardless of the medium or manner in which it  
19 is generated, stored, or maintained (including, among other things, testimony, transcripts, and  
20 tangible things), that are produced in response to the subpoenas issued to Union Bank, Chicago  
21 Title, and/or Budget Finance Company.

22

23                  3.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the  
24 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
25 consultant in this action.

26

27                  3.7 House Counsel: attorneys who are employees of a party to this action. House Counsel  
28 does not include Outside Counsel of Record or any other outside counsel.

29

30                  3.8 Non-Party: any natural person, partnership, corporation, association, or other legal  
31 entity not named as a Party to this action.

1           3.9 Outside Counsel of Record: attorneys who are not employees of a party to this action  
2 but are retained to represent or advise a party to this action and have appeared in this action on  
3 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

4           3.10 Party: any party to this action, including all of its officers, directors, employees,  
5 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

7           3.11 Producing Entity: shall mean Union Bank, Chicago Title, or Budget Finance  
8 Company that produces Disclosed Financial Material in this action under subpoena.

9           3.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,  
10 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
11 storing, or retrieving data in any form or medium) and their employees and subcontractors.

13           3.13 Protected Material: any Disclosed Financial Material that is designated as  
14 “CONFIDENTIAL.”

15           3.14 Receiving Party: a Party that receives Disclosed Financial Material from a Producing  
16 Entity.

17           4.       **SCOPE**

19           The protections conferred by this Stipulation and Order cover not only Protected Material  
20 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
21 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
22 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
23 However, the protections conferred by this Stipulation and Order do not cover the following  
24 information: (a) any information that is in the public domain at the time of disclosure to a  
25 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
26 a result of publication not involving a violation of this Order, including becoming part of the  
27 public record through trial or otherwise; and (b) any information known to the Receiving Party  
28 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who

obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

## 5. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

## 6. DESIGNATING PROTECTED MATERIAL

6.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party that designates information or items for protection under this Order must take care to limit any such designation to specific material – *i.e.*, financial statements, tax returns, or other financial documents - that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

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

1           6.2 Manner and Timing of Designations. Except as otherwise provided in this Order, or as  
2 otherwise stipulated or ordered, Disclosed Financial Material that qualifies for protection under  
3 this Order must be clearly so designated as such.

4           Designation in conformity with this Order requires:

5           (a) for information in documentary form (e.g., paper or electronic documents, but  
6 excluding transcripts of depositions or other pretrial or trial proceedings), that the Party asserting  
7 protection shall inform any other Party to this action of any items produced by a Producing Entity  
8 which it contends is CONFIDENTIAL, specifically identifying such material. Further, if only a  
9 portion or portions of the material on a page qualifies for protection, the Party asserting protection  
10 also must clearly identify the protected portion(s).

11           (b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party  
12 asserting protection identify on the record, before the close of the deposition, hearing, or other  
13 proceeding, all protected testimony.

14           (c) for information produced in some form other than documentary and for any other  
15 tangible items, that the Party asserting protection shall inform any other Party to this action of any  
16 items produced by a Producing Entity which it contends is CONFIDENTIAL, specifically  
17 identifying such material. Further, if only a portion or portions of the information or item warrant  
18 protection, the Party asserting protection, to the extent practicable, shall identify the protected  
19 portion(s).

20           6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
21 designate qualified information or items does not, standing alone, waive the Party seeking  
22 protection's right to secure protection under this Order for such material. Upon timely correction  
23 of a designation, the Receiving Party must make reasonable efforts to assure that the material is  
24 treated in accordance with the provisions of this Order.

1                   7. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2                   7.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
3 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
5 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
6 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
7 original designation is disclosed.

8                   7.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
9 by providing written notice of each designation it is challenging and describing the basis for each  
10 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
11 recite that the challenge to confidentiality is being made in accordance with this specific  
12 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good  
13 faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of  
14 communication are not sufficient) within 14 days of the date of service of notice. In conferring,  
15 the Challenging Party must explain the basis for its belief that the confidentiality designation was  
16 not proper and must give the Designating Party an opportunity to review the designated material,  
17 to reconsider the circumstances, and, if no change in designation is offered, to explain the basis  
18 for the chosen designation. A Challenging Party may proceed to the next stage of the challenge  
19 process only if it has engaged in this meet and confer process first or establishes that the  
20 Designating Party is unwilling to participate in the meet and confer process in a timely manner.

22                   7.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
23 intervention, the Designating Party shall file and serve a motion to retain confidentiality within 21  
24 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and  
25 confer process will not resolve their dispute, whichever is earlier. Each such motion must be  
26 accompanied by a competent declaration affirming that the movant has complied with the meet  
27 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
28

1 make such a motion including the required declaration within 21 days (or 14 days, if applicable)  
2 shall automatically waive the confidentiality designation for each challenged designation. In  
3 addition, the Challenging Party may file a motion challenging a confidentiality designation at any  
4 time if there is good cause for doing so, including a challenge to the designation of a deposition  
5 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
6 accompanied by a competent declaration affirming that the movant has complied with the meet  
7 and confer requirements imposed by the preceding paragraph.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled until the court rules on the challenge.

## 8. ACCESS TO AND USE OF PROTECTED MATERIAL

17       8.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
18 produced by a Producing Entity in connection with this case only for prosecuting, defending, or  
19 attempting to settle this litigation. Such Protected Material may be disclosed only to the  
20 categories of persons and under the conditions described in this Order. When the litigation has  
21 been terminated, a Receiving Party must comply with the provisions of section 12 below (FINAL  
22 DISPOSITION).

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

26       8.2 Disclosure and Use of “CONFIDENTIAL” Information or Items. Unless otherwise  
27 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
28 disclose any information or item designated “CONFIDENTIAL” only to:

1 (a) In accordance with the Court's May 18, 2011 Order [Doc. # 583], the Receiving  
2 Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of  
3 Record to whom it is reasonably necessary to disclose the information for this litigation and who  
4 have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as  
5 Exhibit A;

(b) In accordance with the Court's May 18, 2011 Order [Doc. # 583], Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

10 (c) In accordance with the Court's May 18, 2011 Order [Doc. # 583], use of Protected  
11 Material produced pursuant to the subpoenas to Union Bank, Chicago Title and Budget Finance  
12 are restricted to this action, which necessarily includes, but is not limited to use by:

25                   4.        the author or recipient of a document containing the information or a  
26                    custodian or other person who otherwise possessed or knew the information.

1                   9.    **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
2                   **IN OTHER LITIGATION**

3                   If a Party is served with a subpoena or a court order issued in other litigation that compels  
4                   disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party  
5                   must:

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

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

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

15                  If the Designating Party timely seeks a protective order, the Party served with the  
16                  subpoena or court order shall not produce any information designated in this action as  
17                  “CONFIDENTIAL” before a determination by the court from which the subpoena or order  
18                  issued, unless the Party has obtained the Designating Party’s permission. The Designating Party  
19                  shall bear the burden and expense of seeking protection in that court of its confidential material –  
20                  and nothing in these provisions should be construed as authorizing or encouraging a Receiving  
21                  Party in this action to disobey a lawful directive from another court.

22                  10.    **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

23                  If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
24                  Material to any person or in any circumstance not authorized under this Stipulated Protective  
25                  Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
26                  unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
27                  Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
28

1 made of all the terms of this Order, and (d) request such person or persons to execute the  
2 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

3       11. **MISCELLANEOUS**

4       11.1 **Right to Further Relief.** Nothing in this Order abridges the right of any person to seek  
5 its modification by the court in the future.

6       11.2 **Right to Assert Other Objections.** By stipulating to the entry of this Protective Order  
7 no Party waives any right it otherwise would have to object to disclosing or producing any  
8 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
9 Party waives any right to object on any ground to use in evidence of any of the material covered  
10 by this Protective Order.

11       11.3 **Filing Protected Material.** Without written permission from the Designating Party or  
12 a court order secured after appropriate notice to all interested persons, a Party may not file in the  
13 public record in this action any Protected Material. No party or non-party shall file or submit for  
14 filing as part of the court record any documents under seal without first obtaining leave of court.  
15 Notwithstanding any agreement among the parties, the party seeking to file a paper under seal  
16 bears the burden of overcoming the presumption in favor of public access to papers filed in court.

17       12. **FINAL DISPOSITION.** Within 60 days after the final disposition of this action, as  
18 defined in paragraph 5, each Receiving Party must destroy such material. As used in this  
19 subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and  
20 any other format reproducing or capturing any of the Protected Material. Notwithstanding this  
21 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,  
22 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial  
23 exhibits, expert reports, attorney work product, and consultant and expert work product, even if  
24 such materials contain Protected Material. Any such archival copies that contain or constitute  
25 Protected Material remain subject to this Protective Order as set forth in Section 5 (DURATION).

1 It is so stipulated through counsel of record.  
2

3 Dated: May 31, 2011

4

5 MCCORMICK, BARSTOW, SHEPPARD,  
6 WAYTE & CARRUTH LLP

7 By: /s/ Daniel S. Cho

8 D. Greg Durbin  
9 John M. Dunn  
10 Daniel S. Cho

11 Attorneys Plaintiffs, Defendants and Cross-  
12 Defendants FOX HOLLOW OF TURLOCK  
13 OWNERS ASSOCIATION and CALIFORNIA  
14 EQUITY MANAGEMENT GROUP, INC. and  
15 Defendant and Cross-Defendant ANDREW  
16 KATAKIS

17 Dated: May 27, 2011

18 By: /s/ Richard C. Sinclair

19 RICHARD C. SINCLAIR  
20 In Pro Per

21 It is so ORDERED.

22 Dated this 1<sup>st</sup> day of June, 2011.

23 /s/ Dennis L. Beck  
24 US MAGISTRATE JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_, [print or type full name], of \_\_\_\_\_  
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and  
5 understand the Stipulated Protected Order that was issued by the United States District Court,  
6 Eastern District of California, on \_\_\_\_\_ [date] in the case of FOX HOLLOW OF  
7 TURLOCK OWNERS' ASSOCIATION, et al. v. MAUCTRST, LLC et al., case no. 1:03-CV-  
8 05439-OWW-DLB (Consolidated with 1:03-CV-5774 OWW SMS and Stanislaus County  
9 Superior Court Case No. 322675).

10 I agree to comply with and to be bound by all the terms of this Stipulated Protective Order  
11 and I understand and acknowledge that failure to so comply could expose me to sanctions and  
12 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
13 any information or item that is subject to this Stipulated Protective Order to any person or entity  
14 except in strict compliance with the provisions of this Order.

15 I fully agree to submit to the jurisdiction of the United States District Court, Eastern  
16 District of California for the purpose of enforcing the terms of this Stipulated Protective Order,  
17 even if such enforcement proceedings occur after termination of this action.

18 I hereby appoint \_\_\_\_\_ [print or type full name] of  
19 \_\_\_\_\_ [print or type full address and telephone number] as my  
20 California agent for service of process in connection with this action or any proceedings related to  
21 enforcement of this Stipulated Protective Order.

22 Date: \_\_\_\_\_

23 City and State where sworn in signed: \_\_\_\_\_

24 Printed name: \_\_\_\_\_  
25 [printed name]

26 Signature: \_\_\_\_\_  
27 [signature]

28 12444/00001-1737527.v3