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Attorneys for Defendant STANLEY FLAKE,
individually, as trustee of the Julie Insurance Trust,
and as trustee of the Capstone Trust

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- AWI-DLB

**STIPULATED PROTECTIVE ORDER
REGARDING PRODUCTION OF
DOCUMENTS BY STANLEY FLAKE,
CAPSTONE TRUST AND THE JULIE
INSURANCE TRUST**

AND CONSOLIDATED ACTIONS.

1. GOOD CAUSE STATEMENT

As the result of meet and confer discussions regarding production of documents by Stanley Flake in response to Plaintiffs' Request for Production of Documents and Tangible Things, Set One, the parties hereby stipulate and agree as follows:

2. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted.

1 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
2 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
3 all disclosures or responses to discovery and that the protection it affords from public disclosure
4 and use extends only to the limited information or items that are entitled to confidential treatment
5 under the applicable legal principles with respect to the documents produced – namely, financial
6 statements, tax returns and other financial documents.

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

10 3. DEFINITIONS

11 3.1 Challenging Party: a Party or Non-Party that challenges the designation of
12 information or items under this Order.

13 3.2 “CONFIDENTIAL” Information or Items: information (regardless of how
14 it is generated, stored or maintained) or tangible things that qualify for protection under Federal
15 Rule of Civil Procedure 26(c).

16 3.3 Counsel (without qualifier): Outside Counsel of Record and House
17 Counsel (as well as their support staff).

18 3.4 Designating Party: a Party or Non-Party that designates information or
19 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

20 3.5 Disclosure or Discovery Material: all items or information, regardless of
21 the medium or manner in which it is generated, stored, or maintained (including, among other
22 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
23 or responses to discovery in this matter.

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

27 3.7 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 counsel.

1 3.8 Non-Party: any natural person, partnership, corporation, association, or
2 other legal entity not named as a Party to this action.

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

7 3.10 Party: any party to this action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their support
9 staffs).

10 3.11 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this action.

12 3.12 Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
14 organizing, storing, or retrieving data in any form or medium) and their employees and
15 subcontractors.

16 3.13 Protected Material: any Disclosure or Discovery Material that is
17 designated "CONFIDENTIAL."

18 3.14 Receiving Party: a Party that receives Disclosure or Discovery Material
19 from a Producing Party.

20 4. SCOPE

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

1 public record through trial or otherwise; and (b) any information known to the Receiving Party
2 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
3 obtained the information lawfully and under no obligation of confidentiality to the Designating
4 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

5 5. DURATION

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

13 6. DESIGNATING PROTECTED MATERIAL

14 6.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

25 If it comes to a Designating Party's attention that information or items that
26 it designated for protection do not qualify for protection, that Designating Party must promptly
27 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
2 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
3 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
4 designated before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic
7 documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the
8 Producing Party affix the legend “CONFIDENTIAL” to each page that contains protected
9 material. If only a portion or portions of the material on a page qualifies for protection, the
10 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
11 markings in the margins).

12 A Party or Non-Party that makes original documents or materials available
13 for inspection need not designate them for protection until after the inspecting Party has indicated
14 which material it would like copied and produced. During the inspection and before the
15 designation, all of the material made available for inspection shall be deemed
16 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and
17 produced, the Producing Party must determine which documents, or portions thereof, qualify for
18 protection under this Order. Then, before producing the specified documents, the Producing
19 Party must affix the “CONFIDENTIAL” legend to each page that contains Protected Material. If
20 only a portion or portions of the material on a page qualifies for protection, the Producing Party
21 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
22 margins).

23 (b) for testimony given in deposition or in other pretrial or trial
24 proceedings, that the Designating Party identify on the record, before the close of the deposition,
25 hearing, or other proceeding, all protected testimony.

26 (c) for information produced in some form other than documentary and
27 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of
28 the container or containers in which the information or item is stored the legend

1 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
2 the Producing Party, to the extent practicable, shall identify the protected portion(s).

3 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
4 failure to designate qualified information or items does not, standing alone, waive the Designating
5 Party’s right to secure protection under this Order for such material. Upon timely correction of a
6 designation, the Receiving Party must make reasonable efforts to assure that the material is
7 treated in accordance with the provisions of this order.

8 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 7.1 Timing of Challenges. Any Party or Non-Party may challenge a
10 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s
11 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
12 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its
13 right to challenge a confidentiality designation by electing not to mount a challenge promptly
14 after the original designation is disclosed.

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

1 7.3 Judicial Intervention. If the Parties cannot resolve a challenge without
2 court intervention, the Designating Party shall file and serve a motion to retain confidentiality
3 under Civil Local Rule 230 (and in compliance with Civil Local Rule 141, if applicable) within
4 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet
5 and confer process will not resolve their dispute, whichever is earlier. Each such motion must be
6 accompanied by a competent declaration affirming that the movant has complied with the meet
7 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
8 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
9 shall automatically waive the confidentiality designation for each challenged designation. In
10 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
11 time if there is a good cause for doing so, including a challenge to the designation of a deposition
12 transcript or any portions thereof. Any motion brought pursuant to this provision must be
13 accompanied by a competent declaration affirming that the movant has complied with the meet
14 and confer requirements imposed by the preceding paragraph.

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

22 8. ACCESS TO AND USE OF PROTECTED MATERIAL

23 8.1 Basic Principles. A Receiving Party may use Protected Material that is
24 disclosed or produced by another Party or by a Non-Party in connection with this case only for
25 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
26 disclosed only to the categories of persons and under the conditions described in this Order.
27 When the litigation has been terminated, a Receiving Party must comply with the provisions of
28 section 13 below (FINAL DISPOSITION).

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

3 8.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
4 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
5 disclose any information or item designated "CONFIDENTIAL" only to:

6 (a) a Party and a Receiving Party's Outside Counsel of Record in this
7 action, as well as employees of said Outside Counsel of Record to whom it is reasonably
8 necessary to disclose the information for this litigation and who have signed the
9 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

10 (b) Experts (as defined in this Order) of the Receiving Party to whom
11 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment
12 and Agreement to be Bound" (Exhibit A);

13 (c) the court and its personnel;

14 (d) court reporters and their staff, professional jury or trial consultants,
15 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
16 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

17 (e) during their depositions, witnesses in the action to whom disclosure
18 is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be
19 Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court.

20 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
21 must be separately bound by the court reporter and may not be disclosed to anyone except as
22 permitted under this Stipulated Protective Order.

23 (f) the author or recipient of a document containing the information or
24 a custodian or other person who otherwise possessed or knew the information.

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

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

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

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

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

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

21 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
22 IN THIS LITIGATION

23 (a) The terms of this Order are applicable to information produced by a Non-
24 Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-
25 Parties in connection with this litigation is protected by the remedies and relief provided by this
26 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
27 additional protections.

1 (b) In the event that a Party is required, by a valid discovery request, to
2 produce a Non-Party's confidential information in its possession, and the Party is subject to an
3 agreement with the Non-Party not to produce the Non-Party's confidential information, then the
4 Party shall:

5 1. promptly notify in writing the Requesting Party and the Non-Party
6 that some or all of the information requested is subject to a confidentiality agreement with a Non-
7 Party;

8 2. promptly provide the Non-Party with a copy of the Stipulated
9 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
10 description of the information requested; and

11 3. make the information requested available for inspection by the
12 Non-Party.

13 (c) If the Non-Party fails to object or seek a protective order from this court
14 within 14 days of receiving the notice and accompanying information, the Receiving Party may
15 produce the Non-Party's confidential information responsive to the discovery request. If the
16 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information
17 in its possession or control that is subject to the confidentiality agreement with the Non-Party
18 before a determination by the court.¹ Absent a court order to the contrary, the Non-Party shall
19 bear the burden and expense of seeking protection in this court of its Protected Material.

20 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

27 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-
28 Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit “A”.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

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

12. MISCELLANEOUS

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

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

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.

13. FINAL DISPOSITION. Within 60 days after the final disposition of this action, as defined in paragraph 5, each Receiving Party must return all Protected Material to the

1 Producing Party or destroy such material. As used in this subdivision, "all Protected Material"
2 includes all copies, abstracts, compilations, summaries, and any other format reproducing or
3 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed,
4 the Receiving Party must submit a written certification to the Producing Party (and, if not the
5 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
6 category, where appropriate) all the Protected Material that was returned or destroyed and (2)
7 affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries
8 or any other format reproducing or capturing any of the Protected Material. Notwithstanding this
9 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,
10 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial
11 exhibits, expert reports, attorney work product, and consultant and expert work product, even if
12 such materials contain Protected Material. Any such archival copies that contain or constitute
13 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15 DATED: October 11, 2011

MCCORMICK, BARSTOW, SHEPPARD, WAYTE &
CARRUTH LLP

17 By: /s/ D. Greg Durbin

D. GREG DURBIN

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

22 DATED: October 11, 2011

DOWNEY BRAND LLP

24 By: /s/ Janlynn R. Fleener

JANLYNN R. FLEENER

Attorneys for Defendant

25 STANLEY FLAKE, INDIVIDUALLY, AS
26 TRUSTEE OF THE JULIE INSURANCE TRUST,
27 AND AS TRUSTEE OF THE CAPSTONE TRUST

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ORDER

IT IS SO ORDERED.

Dated: October 12, 2011

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE