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 7 HYATT CORPORATION dba  
 8 HYATT REGENCY MAUI RESORT & SPA,  
 9 and MAUI BOAT CO.

10 UNITED STATES DISTRICT COURT  
 11 EASTERN DISTRICT OF CALIFORNIA

12 In the matter of HYATT CORPORATION dba )  
 13 HYATT REGENCY MAUI RESORT & SPA, )  
 14 a Delaware corporation, as pro hac vice owner, )  
 15 and MAUI BOAT CO., a Delaware )  
 16 corporation, as owner of M/S KIELE V, O.N. )  
 17 628114, for exoneration from or limitation of )  
 18 liability )  
 )  
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Case No. 2:09-cv-1220 JAM DAD

**STIPULATED PROTECTIVE ORDER**

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Complaint filed: May 4, 2009  
 Trial Date: December 6, 2010  
 Honorable John A. Mendez

19 1. PURPOSES AND LIMITATIONS

20 Disclosure and discovery activity in this action involves production of confidential,  
 21 proprietary, or private information for which special protection from public disclosure and from  
 22 use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the  
 23 parties hereby stipulate to and petition the court to enter the following Stipulated Protective  
 24 Order. The parties acknowledge that this Order does not confer blanket protections on all  
 25 disclosures or responses to discovery and that the protection it affords extends only to the limited  
 26 information or items that are confidential and produced subject to this Stipulated Protective  
 27 Order.

28 ///

1           2. SCOPE

2           The protections conferred by this Stipulation and Order cover not only Protected  
3 Material, but also any information copied or extracted therefrom, as well as all copies, excerpts,  
4 summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or  
5 counsel to or in court or in other settings that might reveal Protected Material.

6           3. DURATION

7           Even after the termination of this litigation, the confidentiality obligations imposed by  
8 this Order shall remain in effect until a designating party agrees otherwise in writing or a court  
9 order otherwise directs.

10          4. DESIGNATING PROTECTED MATERIAL

11               4.1 Manner and Timing of Designations. Except as otherwise provided in this  
12 Order (see, e.g., second paragraph of section 4.1(a), below), or as otherwise stipulated or  
13 ordered, material that qualifies for protection under this Order must be clearly so designated  
14 before the material is disclosed or produced.

15                       Designation in conformity with this Order requires:

16                       (a) for information in documentary form (apart from transcripts of  
17 depositions or other pretrial or trial proceedings), that the producing party affix the legend  
18 “PRODUCED SUBJECT TO PROTECTIVE ORDER” on each page that contains protected  
19 material.

20                       A party or non-party that makes original documents or materials available  
21 for inspection need not designate them for protection until after the inspecting party has indicated  
22 which material it would like copied and produced. During the inspection and before the  
23 designation, all of the material made available for inspection shall be considered Protected  
24 Material.

25                       (b) for testimony given in deposition or in other pretrial or trial  
26 proceedings, that the party or non-party offering or sponsoring the testimony identify on the  
27 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,  
28 and further specify any portions of the testimony that qualify as “PRODUCED SUBJECT TO  
PROTECTIVE ORDER.” When it is impractical to identify separately each portion of testimony

1 that is entitled to protection, and when it appears that substantial portions of the testimony may  
2 qualify for protection, the party or non-party that sponsors, offers, or gives the testimony may  
3 invoke on the record (before the deposition or proceeding is concluded) a right to have up to 20  
4 days to identify the specific portions of the testimony as to which protection is sought and to  
5 specify the level of protection being asserted (“PRODUCED SUBJECT TO PROTECTIVE  
6 ORDER”). Only those portions of the testimony that are appropriately designated for protection  
7 within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

8 Transcript pages containing Protected Material must be separately bound  
9 by the court reporter, who must affix to the top of each such page the legend “PRODUCED  
10 SUBJECT TO PROTECTIVE ORDER,” as instructed by the party or nonparty offering or  
11 sponsoring the witness or presenting the testimony.

12 4.2 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
13 to designate qualified information or items as “PRODUCED SUBJECT TO PROTECTIVE  
14 ORDER” does not, standing alone, waive the designating party’s right to secure protection under  
15 this Order for such material. If material is appropriately designated as “PRODUCED SUBJECT  
16 TO PROTECTIVE ORDER” after the material was initially produced, the receiving party, on  
17 timely notification of the designation, must make reasonable efforts to assure that the material is  
18 treated in accordance with the provisions of this Order.

## 19 5. ACCESS TO AND USE OF PROTECTED MATERIAL

20 5.1 Basic Principles. A receiving party may use Protected Material that is  
21 disclosed or produced by another party or by a non-party in connection with this case only for  
22 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
23 disclosed only to the categories of persons and under the conditions described in this Order.  
24 When the litigation has been terminated, a receiving party must comply with the provisions of  
25 section 9, below (FINAL DISPOSITION).

26 Protected Material must be stored and maintained by a receiving party at a  
27 location and in a secure manner that ensures that access is limited to the persons authorized  
28 under this Order.

1                   5.2 Disclosure of Information or Items PRODUCED SUBJECT TO  
2 PROTECTIVE ORDER. Unless otherwise ordered by the court or permitted in writing by the  
3 designating party, a receiving party may disclose any information or item designated as  
4 PRODUCED SUBJECT TO PROTECTIVE ORDER only to:

5                   (a) the receiving party's outside counsel of record in this action who have  
6 signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A, as  
7 well as employees of said counsel to whom it is reasonably necessary to disclose the information  
8 for this litigation; and

9                   (b) experts of the receiving party to whom disclosure is reasonably  
10 necessary for this litigation and who have signed the "Agreement to Be Bound by Protective  
11 Order" (Exhibit A);

12                   (c) the Court and its personnel;

13                   (d) court reporters, their staffs, and professional vendors to whom  
14 disclosure is reasonably necessary for this litigation;

15                   (e) during their depositions, witness in the action to whom disclosure is  
16 reasonably necessary;

17                   (f) the author of the document or the original source of the information.

18                   6. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
19 OTHER LITIGATION.

20                   If a receiving party is served with a subpoena or an order issued in other litigation that  
21 would compel disclosure of any information or items designated in this action as "PRODUCED  
22 SUBJECT TO PROTECTIVE ORDER," the receiving party must so notify the designating  
23 Party, in writing (by fax, if possible) immediately and in no event more than three court days  
24 after receiving the subpoena or order. Such notification must include a copy of the subpoena or  
25 court order.

26                   The receiving party also must immediately inform in writing the party who caused the  
27 subpoena or order to issue in the other litigation that some or all the material covered by the  
28 subpoena or order is the subject of this Protective Order. In addition, the receiving party must

1 deliver a copy of this Stipulated Protective Order promptly to the party in the other action that  
2 caused the subpoena or order to issue.

3 The purpose of imposing these duties is to alert the interested parties to the existence of  
4 this Protective Order and to afford the designating party in this case an opportunity to try to  
5 protect its confidentiality interests in the court from which the subpoena or order issued. The  
6 designating party shall bear the burdens and the expenses of seeking protection in that court of its  
7 confidential material – and nothing in these provisions should be construed as authorizing or  
8 encouraging a receiving party in this action to disobey a lawful directive from another court.

9 7. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.

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

17 8. FILING PROTECTED MATERIAL.

18 Without written permission from the designating party or a court order secured after  
19 appropriate notice to all interested persons, a party may not file in the public record in this action  
20 any Protected Material. A party that seeks to file under seal any Protected Material must comply  
21 with California Civil Rules of Court Rule 2.551.

22 9. FINAL DISPOSITION.

23 Unless otherwise ordered or agreed in writing by the producing party, within sixty days  
24 after the final termination of this action, each receiving party must return all Protected Material  
25 to the producing party. As used in this subdivision, “all Protected Material” includes all copies,  
26 abstracts, compilations, summaries or any other form of reproducing or capturing any of the  
27 Protected Material. With permission in writing from the designating party, the receiving party  
28 may destroy some or all of the Protected Material instead of returning it. Whether the Protected

1 Material is returned or destroyed, the receiving party must submit a written certification to the  
2 producing party (and, if not the same person or entity, to the designating party) by the sixty day  
3 deadline that identifies (by category, where appropriate) all the Protected Material that was  
4 returned or destroyed and that affirms that the receiving party has not retained any copies,  
5 abstracts, compilations, summaries or other forms of reproducing or capturing any of the  
6 Protected Material. Notwithstanding this provision, counsel are entitled to retain an archival  
7 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney  
8 work product, even if such materials contain Protected Material. Any such archival copies that  
9 contain or constitute Protected Material remain subject to this Protective Order as set forth in  
10 Section 3 (DURATION), above.

11 10. MISCELLANEOUS.

12 10.1 Right to Further Relief. Nothing in this Order abridges the right of any  
13 person to seek its modification by the Court in the future.

14 10.2 Right to Assert Other Objections. By stipulating to the entry of this  
15 Protective Order no party waives any right it otherwise would have to object to disclosing or  
16 producing any information or item on any ground not addressed in this Stipulated Protective  
17 Order. Similarly, no party waives any right to object on any ground to use in evidence of any of  
18 the material covered by this Protective Order.

19  
20 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

21  
22 DATED: February 2, 2010

S/ MARKER E. LOVELL, JR.

Attorneys for Petitioners

23  
24 DATED: January 18, 2010

S/ ANDREW E. BAKOS

Attorneys for Claimants

(original signature retained by attorney Marker E. Lovell, Jr.)

25  
26 PURSUANT TO STIPULATION, IT IS SO ORDERED.

27  
28 DATED: February 8, 2010

/s/ John A. Mendez

Honorable John A. Mendez

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of

4 \_\_\_\_\_  
5 [print or type full address], declare under penalty of perjury that I have read in its entirety and  
6 understand the Stipulated Protective Order that was issued by the Superior Court of the State of  
7 California in and for the County of Alameda on \_\_\_ [date] in the case of **In the matter of**  
8 **HYATT CORPORATION dba HYATT REGENCY MAUI RESORT & SPA, and MAUI**  
9 **BOAT CO., Case No. 2:09-cv-1220 JAM DAD.** I agree to comply with and to be bound by all  
10 the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so  
11 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly  
12 promise that I will not disclose in any manner any information or item that is subject to this  
13 Stipulated Protective Order to any person or entity except in strict compliance with the  
14 provisions of this Order.

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

19 I hereby appoint \_\_\_\_\_ [print or type full name] of

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

24 Date: \_\_\_\_\_

25 City and State where sworn and signed: \_\_\_\_\_

26 Printed name: \_\_\_\_\_

27 [printed name]

28 Signature: \_\_\_\_\_

[signature]