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Appointed Receiver for Defendant Vesta
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10 **UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 **SAN JOSE DIVISION**

12 UNITED STATES FIRE INSURANCE
COMPANY, a corporation,

13
14 Plaintiff,

15 vs.

16 VESTA STRATEGIES, LLC, a limited liability
company; SAMUEL W. HENKA, an individual,

17 Defendants.

Case No.: C 09-02388 JW PVT

**STIPULATION AND ORDER
TO SET ASIDE DEFAULT**

18
19 **STIPULATION**

20 Plaintiff United States Fire Insurance Company ("U.S. Fire") and defendant Vesta
21 Strategies, LLC ("Vesta"), by and through its Court-Appointed Receiver Thomas A. Dillon,
22 stipulate as follows:

23 1. Plaintiff U.S. Fire filed its First Amended Complaint ("FAC") on June 10, 2009.
24 (Docket No. 5.) Vesta was served with the FAC on June 30, 2009. (Docket No. 7.) At the time
25 of service, Vesta was not operating, and it did not take action to defend the lawsuit. On July 24,
26 2009, Vesta's default was entered. (Docket No. 10.) On September 10, 2009, U.S. Fire moved
27 the Court for entry of a default judgment against Vesta seeking rescission of the insurance
28 contracts. (Docket No. 18.)

1 2. Defendant Henka, together with the other claimants who had entrusted exchange
2 deposits to Vesta and had them stolen (collectively “Depositors”), filed opposition to U.S. Fire’s
3 motion for default judgment (Docket No. 70), and a motion seeking appointment of a receiver to
4 pursue first party insurance claims in Vesta’s name as the insured party under certain commercial
5 crime insurance policies. (Docket No. 75.) In light of these filings, the Court denied as
6 premature U.S. Fire’s motion for a default judgment against Vesta. (Docket No. 81.)

7 3. On December 16, 2009, the Court granted Depositors’ request for a receiver and
8 issued an order appointing Thomas A. Dillon as the receiver for Vesta (the “Receiver”). (Docket
9 No. 123.) The receivership took effect on January 13, 2010, following Depositors filing an
10 affidavit of the Receiver’s oath and the Court’s approval of the Receiver’s bond. (Docket No.
11 129.)

12 4. On September 23, 2010, the Court issued an order authorizing the law firm of
13 Hollister & Brace (“H&B”) to act as legal counsel to the Receiver (Docket No. 188). H&B has
14 been retained by the Receiver and is now prepared to enter an appearance on the Receiver’s
15 behalf.

16 5. Pursuant to Fed. R. Civ. P. 55(c), the parties believe good cause exists for setting
17 aside the default entered against Vesta. The parties request that the Court execute the attached
18 Order Setting Aside the Default, and further grant Vesta leave to file the answer and counter-
19 complaint attached hereto as Exhibit 1, within ten (10) days of the date of the Court’s Order.

20 Dated: October 20, 2010

HOLLISTER & BRACE

21
22 By: /s/

PETER L. CANDY

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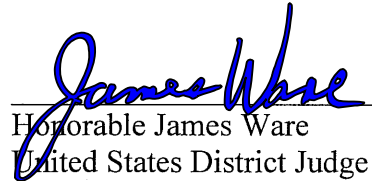
1 **ORDER**

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3 The parties having stipulated and good cause appearing due to the appointment of a
4 Receiver and the Receiver's recent appointment of counsel,

5 IT IS HEREBY ORDERED that

- 6 (1) Vesta's default, entered on July 24, 2009 (Docket No. 10), be immediately
7 set aside; and
8 (2) Vesta is granted ten (10) days leave from the date hereof to file the answer
9 and counter-complaint attached to the parties' stipulation as Exhibit 1.

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12 Dated: October 22, 2010



Honorable James Ware
United States District Judge