

1 Andrew B. Downs, SBN 111435
 E-Mail: andy.downs@bullivant.com
 2 BULLIVANT HOUSER BAILEY PC
 601 California Street, Suite 1800
 3 San Francisco, California 94108
 Telephone: 415.352.2700
 4 Facsimile: 415.352.2701

5 Attorneys for Plaintiff United States Fire
 Insurance Company

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 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION

11 UNITED STATES FIRE INSURANCE
 12 COMPANY, a corporation,

13 Plaintiff,

14 vs.

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

17 Defendants.

Case No.: C 09 02388 JW PVT

**STIPULATION AND ORDER FOR
 DISMISSAL OF CLAIMS AGAINST
 DEFENDANT SAMUEL HENKA,
 WITHOUT PREJUDICE**

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 19 Plaintiff United States Fire Insurance Company and defendant Samuel Henka stipulate
 20 as follows:

21 1. On May 27, 2010, the Court entered an Order on various motions including U.S.
 22 Fire's Motion for Judgment on the Pleadings against Henka's Counterclaim (Docket # 181).
 23 That Order dismissed Henka's Counterclaim against U.S. Fire with prejudice and operated to
 24 resolve or render moot all claims between Henka and U.S. Fire.

25 2. In order to streamline the litigation of the remaining issues in this action and to
 26 avoid litigating issues that are moot at the present time, Henka and U.S. Fire desire to have U.S.
 27 Fire's claims against Henka dismissed without prejudice to the positions of either party
 28 following any future appellate review.

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3. Accordingly, Henka and U.S. Fire request that the court dismiss U.S. Fire's claims against Henka without prejudice, pursuant to Federal Rule of Civil Procedure 41, with each party to bear its own costs and attorney's fees.

DATED: October 29, 2010

BULLIVANT HOUSER BAILEY PC

By /s/ Andrew B. Downs
Andrew B. Downs, SBN 111435

Attorneys for Plaintiff United States Fire Insurance Company

DATED: 10/29/10

HOLLISTER & BRACE

By /s/ Peter L. Candy (by e-mail authorization)
Robert L. Brace, SBN 122240
Peter L. Candy, SBN 149976

Attorneys for Thomas Dillon, Court-Appointed Receiver for defendant Vesta Strategies, LLC and for defendant Samuel Henka

ORDER

The parties having stipulated and good cause appearing,

IT IS HEREBY ORDERED that plaintiff United States Fire Insurance Company's First Amended Complaint is dismissed without prejudice as to defendant Samuel Henka only, with each party to bear its own costs and attorney's fees.

DATED: November 2, 2010


United States District Judge

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