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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In the matter of the Complaint of
MARK S. FRANCIS and WENDY P.
FRANCIS, as owners of the vessel
"Fortuna,"

For exoneration from, or limitation of,
liability.

CASE NO.: 16-cv-1873 H (JMA)

**STIPULATED PROTECTIVE
ORDER¹**

¹ This Stipulated Protective Order is substantially based on the model protective order provided by the United States District Court, Southern District of California.

1 **I. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production
3 of confidential, proprietary, or private information for which special protection from
4 public disclosure and from use for any purpose other than prosecuting this litigation
5 may be warranted. The purpose of the Protective Order is to allow the parties to have
6 reasonable access to information from the other party with the means of limiting
7 access to, and disclosure of, Confidential Information that is protected in this lawsuit
8 without frequent resort to determinations of discoverability by the Court.

9 Accordingly, the parties hereby stipulate to and petition the court to enter the
10 following Stipulated Protective Order. The parties acknowledge that this Order does
11 not confer blanket protections on all disclosures or responses to discovery and that
12 the protection it affords from public disclosure and use extends only to the limited
13 information or items that are entitled to confidential treatment under the applicable
14 legal principles.

15 **II. DEFINITIONS**

16 1. When used in this Order, the word “documents” shall have the full
17 meaning ascribed to the term “writings” as set forth in Federal Rule of Evidence
18 1001(1) and shall include, without limitation, all originals written, recorded, or
19 graphic matters and all copies thereof.

20 2. The term “Confidential Information” will mean and include information
21 contained or disclosed in any materials, including documents, portions of documents,
22 answers to interrogatories, responses to requests for admissions, trial and deposition
23 testimony, and transcripts of trial testimony and depositions, including data,
24 summaries and compilations derived therefrom, that is deemed to be Confidential
25 Information by any party to which it belongs.

26 3. The term “Discovery Materials” will mean any document or portion(s)
27 thereof, testimony, or other information produced in this action through disclosure or
28 discovery procedures by any party.

1 4. The term “Confidential Discovery Materials” shall mean Discovery
2 Materials designated as “CONFIDENTIAL.”

3 **III. GENERAL RULES**

4 5. Each party to this litigation that produces or discloses any materials,
5 answers to interrogatories, responses to request for admissions, trial testimony,
6 deposition testimony and transcripts of trial testimony and depositions, or
7 information that the producing party believes should be subject to the Protective
8 Order may designate the same as “CONFIDENTIAL.”

9 6. All Confidential Discovery Materials (as defined in section II (4) above)
10 produced or disclosed in this action shall be used solely for the prosecution and/or
11 defense of any action between the parties. Any person who has been provided
12 Confidential Discovery Materials in this action shall maintain them in a reasonably
13 secure manner so as to avoid disclosure of their contents.

14 7. Discovery materials may be designated “CONFIDENTIAL” by the
15 producing party who believes in good faith that the unrestricted disclosure of such
16 information could be potentially prejudicial to the protected privacy rights, business,
17 or operations of such party and/or any party’s employees or clients.

18 8. Discovery Materials designated “CONFIDENTIAL” shall be referred to
19 herein as “Confidential Discovery Materials.” Confidential Discovery Materials
20 include materials and documents that constitute or reflect parties’ confidential
21 business and financial information, the disclosure of which may be prejudicial to
22 parties’ protected privacy rights, business or operations, and/or information that may
23 be protected by any third party’s right to privacy under the United States or California
24 Constitutions. Materials provided by one party to the other informally in the course
25 of this action may be brought within the terms of the Protective Order by written
26 notification to counsel receiving such Materials at the time of any such exchange.

27 9. The “CONFIDENTIAL” designation provided for in this Order may be
28 made at or prior to the time of production of documents by stamping the word

1 “Confidential” on each page of the matter disclosed or conspicuously on the front of
2 other media containing information (*e.g.*, CD or DVD), or, in the case of depositions,
3 as provided in section III(10) below. Inadvertent failure to designate materials as
4 “Confidential” at the time of production may be remedied thereafter by written notice
5 of supplemental production of the Discovery Materials with the “Confidential”
6 designation. Upon the service of such notice and supplemental production, the
7 Discovery Materials shall be subject to the Protective Order as if the materials had
8 been initially designated as “CONFIDENTIAL.”

9 10. Whenever a deposition taken on behalf of any party involves a
10 disclosure of Confidential Information of any party:

11 a. the deposition or portions of the deposition must be designated as
12 containing Confidential Information subject to the provisions of this
13 Order; such designation must be made on the record whenever
14 possible, but a party may designate portions of depositions as
15 containing Confidential Information after transcription of the
16 proceedings; A party will have until fourteen (14) days after receipt
17 of the deposition transcript to inform the other party or parties to the
18 action of the portions of the transcript to be designated
19 “CONFIDENTIAL.”

20 b. the disclosing party will have the right to exclude from attendance
21 at the deposition, during such time as the Confidential Information
22 is to be disclosed, any person other than the deponent, counsel
23 (including their staff and associates), the Court reporter, and the
24 person(s) agreed upon pursuant to paragraph 12 below; and

25 c. the originals of the deposition transcripts and all copies of the
26 deposition must bear the legend “CONFIDENTIAL,” and the
27 original or any copy ultimately presented to a Court for filing must
28 not be filed unless it can be accomplished under seal, identified as

1 being subject to this Order, and protected from being opened except
2 by order of this Court.

3 11. No Discovery Material designated as “CONFIDENTIAL” shall be
4 disclosed, directly or indirectly, by the receiving party in the action to anyone other
5 than those person designated within this order and must be handled in the manner set
6 forth below and, in any event, must not be used for any purpose other than in
7 connection with this litigation, unless and until such designation is removed either
8 by agreement of the parties, or by order of the Court.

9 12. Information designated “CONFIDENTIAL” must be viewed only by
10 the individual listed below, provided each such individual has read this Order in
11 advance of disclosure:

- 12 a. the Court, necessary Court personnel, and jurors;
- 13 b. the parties;
- 14 c. the partners, associates, and employees of the attorneys’ law firms
15 who are representing any named party in the action;
- 16 d. Court reporters transcribing depositions or testimony in the action
17 and administrative staff of Court reporting agencies as necessary
18 for the processing of the transcript;
- 19 e. any person who lawfully saw documents or information before its
20 designation as “CONFIDENTIAL;”
- 21 f. any expert retained or consulted by any party in connection with
22 this action, provided such persons sign an acknowledgment
23 substantially similar to **Exhibit “A”**;
- 24 g. non-party deponents at their depositions or non-party witnesses
25 at trial, but only to the extent reasonably necessary to give their
26 testimony;
- 27 h. copy services; and
- 28 i. any person whom a party intends, in good faith, to call as a

1 witness in any hearing or at trial in the litigation, and that person's
2 attorneys, if other than those described in subsection (c) above,
3 but only to the extent reasonably necessary to give testimony,
4 provided such persons shall not be entitled to keep copies of
5 Confidential Discovery Materials unless they sign an
6 acknowledgement substantially similar to **Exhibit "A."**

7 13. All persons to whom Confidential Discovery Materials are disclosed
8 pursuant to section III(12)(a)-(i) above shall be provided with a copy of the Protective
9 Order.

10 14. Before any materials produced in discovery, answers to interrogatories,
11 responses to requests for admissions, deposition transcripts, or other documents
12 which are designated as "CONFIDENTIAL" are filed with the Court for any purpose,
13 the party seeking file such material must seek permission of the Court to file the
14 material under seal. However, no document may be filed under seal without explicit
15 "authorization." In that respect, a party must file a "public" version of any document
16 that it seeks to file under seal. In the public version, the party may redact only that
17 information that is deemed "confidential." The party should file the redacted
18 document(s) simultaneously with a joint motion or *ex parte* application requesting
19 that the confidential portion of the document(s) be filed under seal and setting forth
20 good cause for the request. A party should submit the unredacted document(s)
21 directly to chambers.

22 15. Nothing shall be filed under seal, and the Court shall not be required to
23 take any action, without separate prior order by the Judge before whom the hearing
24 or proceeding will take place, after application by the affected party with appropriate
25 notice to opposing counsel. The parties shall follow and abide by applicable law,
26 including Civ. L.R. 79.2, ECF Administrative Policies and Procedures, Section II. j,
27 and the chambers rules, with respect to filing documents under seal.

28 16. If at any time any Confidential Discovery Materials governed by the

1 Protective Order are the subject of a subpoena issued to a party who has received
2 Confidential Discovery Materials in this action by any Court, administrative, or
3 legislative body, or by any other persons or entity purporting to have authority to
4 require the production of such information, the person to whom the subpoena is
5 directed shall promptly give written notice thereof, and include a copy of the
6 subpoena or request (unless providing disclosure of subpoena or request is prohibited
7 by law or Court order) to any person who has designated such information as
8 “CONFIDENTIAL.” After receipt of the notice specified under this paragraph, the
9 person seeking to maintain the “CONFIDENTIAL” designation shall have the sole
10 responsibility, if it believes it necessary to prevent disclosure of Confidential
11 Discovery Materials, for obtaining an order from a Court having appropriate
12 jurisdiction. Upon the filing of any such motion to maintain the confidentiality of
13 the materials sought (notice of which shall be given to the person to whom the
14 subpoena is directed), the person to whom the subpoena is directed shall respond
15 timely to the subpoena, but will not allow access to Confidential Discovery Materials
16 until such time as the Court has ruled on the motion filed by the person or entity
17 seeking to preserve the confidentiality of the Discovery Materials, unless otherwise
18 required by law to make an earlier production notwithstanding such motion. If the
19 person seeking to maintain confidentiality does not move for a protective order within
20 the time allowed for the discovery sought by the subpoena (or within such time as a
21 Court may direct or as may be agreed upon between the designating person and the
22 subpoenaing party) or give written notice of such motion to the subpoenaing party
23 and the person to whom the subpoena is directed, the person to whom the subpoena
24 or other request is directed may commence production in response thereto on the date
25 designated on the subpoena. If the Court grants an application to file documents
26 under seal, the Court’s mandatory paper chambers copies must include a complete
27 version of the documents with an appropriate notation identifying the document or
28 the portion of the document that has been filed under seal.

1 17. Nothing herein shall impose any restriction on the use or disclosure by
2 a party of documents or information created by or for such party, or obtained by such
3 party, independently of discovery proceedings herein.

4 18. Entry of this Order shall be without prejudice to any motion or ex parte
5 application for relief from the Court from any restriction hereof or for any other or
6 further restriction on the production, exchange, or use of any document, testimony,
7 or other information produced, given or exchanged in the course of pre-trial
8 discovery in this action. At any stage of these proceedings, any party may object to
9 a designation of the materials as “CONFIDENTIAL.” The party objecting to
10 confidentiality must notify, in writing, counsel for the designating party of the
11 objected-to materials and the grounds for the objection. If the dispute is not resolved
12 consensually between the parties within seven (7) days of receipt of such a notice of
13 objections, the objecting party may move the Court for a ruling on the objection. The
14 materials at issue must be treated as Confidential Information, as designated by the
15 designating party, until the Court has ruled on the objection or the matter has been
16 otherwise resolved.

17 19. Designated documents may be redacted to remove confidential portions
18 to allow the elimination or reduction of the designation. Any party making such a
19 redaction must notify the designating party of the redaction in writing. If at any time
20 a dispute with regard to the redaction of particular Confidential Discovery Material
21 arises, the parties shall meet and confer to resolve that issue within seven (7) Court
22 days. If the dispute is not resolve consensually between the parties within seven (7)
23 days of receipt of such a notice of objections, the redacting party may move the Court
24 for a ruling on the objection.

25 20. All Confidential Information must be held in confidence by those
26 inspecting or receiving it, and must be used only for purposes of this action. Counsel
27 for each party, and each person receiving Confidential Information must take
28 reasonable precautions to prevent the unauthorized or inadvertent disclosure of such

1 information. If Confidential Information is disclosed to any person other than a
2 person authorized by this Order, the party responsible for the unauthorized disclosure
3 must immediately bring all pertinent facts relating to the unauthorized disclosure to
4 the attention of the other parties and, without prejudice to any rights and remedies of
5 the other parties, make every effort to prevent further disclosure by the party and by
6 the person(s) receiving the unauthorized disclosure.

7 21. If a party, through inadvertence, produces any Confidential Information
8 without labeling or marking or otherwise designating it as such in accordance with
9 this Order, the designating party may give written notice to the receiving party that
10 the document or thing produced is deemed Confidential Information, and that the
11 document or thing produced should be treated as such in accordance with that
12 designation under this Order. The receiving party must treat the materials as
13 confidential, once the designating party so notifies the receiving party. If the
14 receiving party has disclosed the materials before receiving the designation, the
15 receiving party must notify the designating party in writing of each such disclosure.
16 Counsel for the parties will agree on a mutually acceptable manner of labeling or
17 marking the inadvertently produced materials as “CONFIDENTIAL.”

18 22. Nothing within this order will prejudice the right of any party to object
19 to the production of any discovery material on the grounds that the material is
20 protected as privileged or as attorney work product.

21 23. Original documents that have been filed under seal will not be returned
22 to the party who produced such documents in the action. However, a party may
23 obtain copies of any documents that party produced and filed under seal within ninety
24 (90) days after the final and non-appealable termination of this action.

25 24. This Order may be modified by agreement of the parties, subject to
26 approval by the Court.

27 25. The Court may modify the terms and conditions of this order in the
28 interest of justice or for public policy reasons at any time in these proceedings. The

1 Court acknowledges the parties prefer the Court provide them with notice of the
2 Court's intent to modify the order prior to entry of such an order.

3 26. Unless specifically provided in an order of this Court, this Order does
4 not change, amend, or circumvent any Court rule or local rule of this Court.

5 27. Nothing within this Order will be construed to prevent disclosure of
6 Confidential Discovery Materials if such disclosure is required by law or by order of
7 the Court.

8 28. This Order will be without prejudice to the right of any party to oppose
9 production of any information for lack of relevance or any other ground other than
10 the mere presence of Confidential Discovery Materials. The existence of the
11 Protective Order must not be used by either party as a basis for discovery that is
12 otherwise improper under the Federal Rules of Civil Procedure.

13 29. Subject to public policy, and further court order, nothing shall be filed
14 under seal, and the Court shall not be required to take any action, without separate
15 prior order by the Judge before whom the hearing or proceeding will take place, after
16 application by the affected party with appropriate notice to opposing counsel.

17 30. If the Court grants a party permission to file an item under seal, a
18 duplicate disclosing all nonconfidential information, if any, shall be filed and made
19 part of the public record. The item may be redacted to eliminate confidential material
20 from the document. The document shall be titled to show that it corresponds to an
21 item filed under seal, e.g., "Redacted Copy of Sealed Declaration of John Smith in
22 Support of Motion for Summary Judgment." The sealed and redacted documents
23 shall be filed simultaneously.

24 31. Even after final disposition of this action, the confidentiality obligations
25 imposed by this Order shall remain in effect until a designating party agrees
26 otherwise in writing or a court order otherwise directs. Final disposition shall be
27 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
28 or without prejudice; and (2) final judgment herein after the completion and

1 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
2 including the time limits for filing any motions or applications for extension of time
3 pursuant to applicable law.

4 32. After the final disposition of this action, as defined in Section III (32),
5 within 60 days of a written request by the designating party, each receiving party
6 must return all Confidential Information to the producing party or destroy such
7 material. As used in this subdivision, “all Confidential Information” includes all
8 copies, abstracts, compilations, summaries, and any other format reproducing or
9 capturing any of the Confidential Information. Whether the Confidential Information
10 is returned or destroyed, the receiving party must submit a written certification to the
11 producing party (and, if not the same person or entity, to the designating party) by
12 the 60 day deadline that (1) identifies (by category, where appropriate) all the
13 Confidential Information that was returned or destroyed and (2) affirms that the
14 receiving party has not retained any copies, abstracts, compilations, summaries or
15 any other format reproducing or capturing any of the Confidential Information.
16 Notwithstanding the foregoing, counsel for each party may retain all pleadings,
17 briefs, memoranda, motions, and other documents filed with the Court that refer to
18 or incorporate Confidential Information, and will continue to be bound by this Order
19 with respect to all such retained information. Further, attorney work product
20 materials that contain Confidential Information need not be destroyed, but, if they
21 are not destroyed, the person in possession of the attorney work product will continue
22 to be bound by this Order with respect to all such retained information.

23 33. Any violation of this Order may be punished by any and all appropriate
24 measures including, without limitation, contempt proceedings and/or monetary
25 sanctions. In the event motion practice is required to enforce the terms of this Order,
26 and a party is found by the Court to have willfully violated the terms of this Order,
27 the prevailing party on such a motion shall be awarded costs, expenses, and fees,
28 including attorney or other professional fees, incurred in connection with the

1 discovery of the violation and the preparation, filing, and arguing of the motion or
2 any other proceedings resulting from the violation.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 COX, WOOTTON, LERNER, GRIFFIN &
5 HANSEN LLP

6 Dated: November 21, 2017 By: s/ Alena A. Eckhardt, Esq.
7 Alena A. Eckhardt, Esq.
8 Attorneys for Plaintiffs-in-Limitation
9 MARK S. FRANCIS AND WENDY P.
10 FRANCIS
11 Email: aeckhardt@cwlfirm.com

12 Dated: November 21, 2017 LAW OFFICES OF ELLIOTT KANTER
13 /s/ Elliott N. Kanter
14 Elliott N. Kanter
15 Attorney for Claimant
16 JASON ANDERSON
17 Email: ekanter1@san.rr.com

18 Dated: November 21, 2017 LAW OFFICES OF STEVEN A. ELIA
19 /s/ Steven A. Elia
20 Steven A. Elia
21 Holly Attiq
22 Maura Griffin
23 Attorneys for Claimants
24 DALE and ANA ANDERSON
25 Email: Steve@EliaLaw.com

26 Dated: November 21, 2017 CHARMASSON BUCHACA & LEACH
27 /s/ Rob G. Leach
28 Rob G. Leach
Randy S. Perlman
Attorneys for Claimant
TATIANA SANCHEEVA
Email: rob@charmason.com

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PETTIT KOHN INGRASSIA LUTZ &
DOLIN PC

Dated: November 21, 2017 By: s/ Jennifer N. Lutz, Esq.
Jennifer N. Lutz, Esq.
Attorneys for Third Party
AQUANEERING, INC.
Email: jlutz@pettitkohn.com

PURSUANT TO STIPULATION AND FOR GOOD CAUSE SHOWN, IT IS SO
ORDERED.

DATED: November 22, 2017



Jan M. Adler
United States Magistrate Judge

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EXHIBIT "A"

***In The Matter Of The Complaint Of Mark S. Francis And Wendy P. Francis, As
Owners Of The Vessel "Fortuna"***
U.S. District Court Case No. 16-cv-1873 H (JMA)

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____, declare and say that:

1. I am employed as _____ by _____.

2. I declare that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Southern District of California in *In The Matter Of The Complaint Of Mark S. Francis And Wendy P. Francis, As Owners Of The Vessel "Fortuna"*, Case No. 16-cv-1873 H (JMA).

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

4. I further agree to submit to the jurisdiction of the United States District Court for the Southern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I declare under penalty of perjury that the foregoing is true and correct.

Date: _____
Printed Name: _____
Signature: _____