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7
 8 **UNITED STATES DISTRICT COURT**
 9 **DISTRICT OF NEVADA**

10 BRET AXELROD, an individual,
 11
 12 Plaintiff,

Case No.: 2:13-cv-1289-JAD-VCF

13 vs.

**STIPULATED CONFIDENTIALITY
 AGREEMENT AND PROTECTIVE ORDER**

14 GEORGE L. KLANDER, an individual, and
 15 MONEY MANAGEMENT ADVISORY, INC., a
 Pennsylvania corporation; DOE INDIVIDUALS i
 16 through 10; and ROE CORPORATIONS 11
 through 20,
 17
 18 Defendants.

19
 20 In order to protect the confidentiality of confidential information obtained by the parties in
 21 connection with this case, the parties, by and through their respective counsel of record, hereby agree
 22 as follows:

23 1.

24 (a) Any party or non-party may designate as "Confidential Information" (by stamping the
 25 relevant document or other item with the legend "Includes CONFIDENTIAL INFORMATION") any
 26 document or response to discovery which that party or non-party considers in good faith to contain
 27 information involving trade secrets, confidential business or financial information, or the private
 28 information of third-parties to this action that is subject to protection under the Federal Rules of Civil
 Procedure or Nevada law ("Confidential Information"). Confidential information does not include
 information that is publically known or that could be ascertained from an inspection of publically

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1 available documents, materials or devices. Where a document or response consists of more than one
2 page, the first page and each page on which confidential information appears shall be so designated.
3 The parties agree that they will only designate information as Confidential Information if they have a
4 reasonable belief that the information should, in fact be so designated. Mass, indiscriminate or
5 routinized designations are prohibited.

6 (b) Except as to Confidential Information that has been designated as such on the basis that
7 it contains the protected private information of third-parties, Confidential Information shall not include
8 any information which: (i) is now, or hereafter becomes, through no act or failure to act on the part of
9 any party to this action, or their agents, generally known or available to the public; (ii) was lawfully
10 acquired by and furnished to, and in the possession of, a party prior to its designation by the producing
11 party as Confidential Information; (iii) is hereafter lawfully acquired by and furnished to a party by a
12 third party; or (iv) is information that a party can document/prove was lawfully and independently
13 developed by said party.

14 2. A party or non-party may designate information disclosed during a deposition or in
15 response to written discovery as Confidential Information by so indicating in said response or on the
16 record at the deposition and requesting the preparation of a separate transcript of such material.
17 Additionally a party or non-party may designate in writing, within twenty (20) days after receipt of said
18 responses or of the deposition transcript for which the designation is proposed, that specific pages of
19 the transcript and/or specific responses be treated as Confidential Information . Any other party may
20 object to such proposal, in writing or on the record. Upon such objection, the parties shall follow the
21 procedures described in paragraph 8 below. After any designation made according to the procedure set
22 forth in this paragraph, the designated documents or information shall be treated according to the
23 designation until the matter is resolved according to the procedures described in paragraph 8 below,
24 and counsel for all parties shall be responsible for marking all previously unmarked copies of the
25 designated material in their possession or control with the specified designation.

26 3. Except as provided herein, Confidential Information designated as provided herein shall
27 be used solely for the purposes of this action, shall not be disclosed to anyone other than those persons
28 identified herein in paragraph 4, below, and shall be handled according to the terms of this protective
order until such designation is removed by the designating party or by order of the Court. Nothing in
this protective order shall preclude a party from using its own Confidential Information.

1 4. Except with the prior written consent of other parties, or upon prior order of this Court
2 obtained upon notice to opposing counsel, Confidential Information shall not be disclosed to any
3 person other than:

- 4 a. counsel for the respective parties to this litigation, including in-house counsel
5 and co-counsel retained for this litigation;
6 b. employees of such counsel;
7 c. the plaintiff;
8 d. individual defendants, class representatives, any officer or employee of a party,
9 to the extent deemed necessary by Counsel for the prosecution or defense of this
10 litigation;
11 e. consultants or expert witnesses retained for the prosecution or defense of this
12 litigation, provided that each such person shall execute a copy of the
13 Certification ("Certification") annexed to this Order as Appendix A (which shall
14 be retained by
15 counsel to the party so disclosing the Confidential Information and made
16 available for inspection by opposing counsel during the pendency or after the
17 termination of the action only upon good cause shown and upon order of the
18 Court);
19 f. any authors or recipients of the Confidential Information;
20 g. the Court, Court personnel, and court reporters; and
21 h. witnesses (other than persons described in paragraph 4(f)). A witness shall sign
22 the Certification before being shown a confidential document. Confidential
23 Information may be disclosed to a witness who will not sign the Certification
24 only in a deposition at which the party who designated the Confidential
25 Information is represented or has been given notice that Confidential
26 Information shall be designated "Confidential" pursuant to paragraph 2 above.
27 Witnesses shown Confidential Information shall not be allowed to retain copies.
28

5. Any persons receiving Confidential Information shall not reveal or discuss such
information to or with any person who is not entitled to receive such information, except as set forth
herein.

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1 6. In the event that any Confidential Information is used: (a) in any pretrial proceeding,
2 including any hearings, in the action, or (b) included with, or the contents thereof are in any way
3 disclosed in, any pleading, motion, exhibit, deposition transcript, or other paper filed in any court
4 proceeding in the action, it shall not lose its confidential status through such use, and the party using
5 such Confidential Information shall take all reasonable steps consistent with Local Rule 10-5, this
6 protective order, and all other applicable rules, to maintain its confidentiality during such use. All
7 portions of briefs, pleadings, deposition transcripts, exhibits, correspondence, or other filings in the
8 action, which incorporate or disclose Confidential Information, shall be filed under seal pursuant to
9 applicable law, including, but not limited to, Local Rule 10-5. Unless otherwise permitted by statute,
10 rule or prior court order, papers filed with the court under seal shall be accompanied by a
11 contemporaneous motion for leave to file those documents under seal, and shall be filed consistent with
12 the court's electronic filing procedures in accordance with Local Rule 10-5(b). Notwithstanding the
13 foregoing, and/or any agreement among the parties, the party seeking to file a paper under seal bears
14 the burden of overcoming the presumption in favor of public access to papers filed in court. *Kamakana*
15 *v. City and County of Honolulu*, 447 F.2d 1172 (9th Cir. 2006).

16 7. A party may designate as "Confidential Information" documents or discovery materials
17 produced by a non-party by providing written notice to all parties of the relevant document numbers or
18 other identification within thirty (30) days after receiving such documents or discovery materials. Any
19 party or non-party may voluntarily disclose to others without restriction any information designated by
20 that party or non-party as confidential, although a document may lose its confidential status if it is
21 made public.

22 8. If a party contends that any material designated as Confidential Information is not
23 entitled to confidential treatment, such party may at any time give written notice to the party or non-
24 party who designated the material. The party or non-party who designated the material shall have
25 twenty-five (25) days from the receipt of such written notice to apply to the Court for an order
26 designating the material as confidential. The party or non-party seeking the order has the burden of
27 establishing that the document is entitled to protection.

28 9. Notwithstanding any challenge to the designation of material as Confidential
Information, all documents shall be treated as such and shall be subject to the provisions hereof unless
and until one of the following occurs:

- 1 a. the party or non-party claims that the material is Confidential Information
- 2 withdraws such designation in writing; or
- 3 b. the party or non-party who claims that the material is Confidential Information
- 4 fails to apply to the Court for an order designating the material confidential
- 5 within the time period specified above after receipt of a written challenge to such
- 6 designation; or
- 7 c. the Court rules the material is not confidential.

8 10. All provisions of this Order restricting the communication or use of Confidential
9 Information shall continue to be binding after the conclusion of this action, unless otherwise agreed or
10 ordered. Upon conclusion of the litigation, a party in the possession of Confidential Information, other
11 than that which is contained in pleadings, correspondence, and deposition transcripts, shall either (a)
12 return such documents no later than thirty (30) days after conclusion of this action to counsel for the
13 party or non-party who provided such information, or (b) destroy such documents within the time
14 period upon consent of the party who provided the information and certify in writing within thirty (30)
15 days that the documents have been destroyed.

16 11. Notwithstanding the provisions of paragraph 10, above, it is expressly understood and
17 agreed that counsel for each party shall be entitled to retain pleadings, motions and memoranda in
18 support thereof, declarations or affidavits, deposition transcripts and videotapes, or documents
19 reflecting attorney work product or consultant or expert work product, even if such material contains or
20 refers to Confidential Information ("Litigation File"), but only to the extent necessary to preserve a
21 litigation file with respect to this action. Although counsel for each party may retain a Litigation File,
22 counsel for each party may not disclose and/or disseminate any part, portion or aspect of the Litigation
23 File that contains Confidential Information to any third-parties, unless otherwise required by a court
24 order, subpoena, request for production of documents, deposition notice, or by other operation of law.
25 Before counsel for a party discloses any Confidential Information contained within its/their Litigation
26 File pursuant to a court order, subpoena, request for production of documents, deposition notice, or by
27 other operation of law, the counsel shall provide the other parties in this action with reasonable notice
28 and reasonable opportunity to object to or limit such disclosure. Nothing in this section shall be
construed as authorizing the Parties to disobey a lawful subpoena issued in another action or an order
of a Court of competent jurisdiction.

1 12. The parties each reserve (a) the right to seek or oppose additional or different protection
2 for particular information, documents, materials, items or things; and (b) the right to object to the
3 production, disclosure and/or use of any information, documents, materials, items and/or things that a
4 party designates as containing Confidential Information on any other ground(s) it may deem
5 appropriate, including, without limitation, on the ground of attorney-client privilege, work product,
6 and/or any other privilege or protection provided under applicable law.

7 13. The terms of this Order do not preclude, limit, restrict, or otherwise apply to the use of
8 documents at trial.

9 14. Nothing herein shall be deemed to waive any applicable privilege or work product
10 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material
11 protected by privilege or work product protection.

12 15. Any witness or other person, firm or entity from which discovery is sought may be
13 informed of and may obtain the protection of this Order by written advice to the parties' respective
14 counsel or by oral advice at the time of any deposition or similar proceeding.

15 16. This protective order may be signed in counterparts, and a fax or "PDF" signature shall
16 have the same force and effect as an original ink signature.

17 17. Notwithstanding any provisions contained herein, nothing in this protective order shall
18 be construed as authorizing any party to disobey a valid request for production of documents,
19 deposition notice, lawful subpoena issued in another action or an order of a Court of competent
20 jurisdiction. Accordingly, before a party discloses any Confidential Information pursuant to a court
21 order, subpoena, request for production of documents, deposition notice, or by other operation of law,
22 such party shall provide the party, or non-party, that designated such material as Confidential

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1 Information with reasonable notice and reasonable opportunity to object to or limit such disclosure.

2 DATED this 4th day of February, 2014.

3 MORRIS POLICH & PURDY LLP

REISMAN SOROKAC

4
5 By: 
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10 Attorneys for Defendants George Klander and
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By: 
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13 Nevada Bar No. 7152
14 ROBERT R. WARNS, III
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16 8965 South Eastern Avenue, Suite 382
17 Henderson, Nevada 89123
18 Attorneys for Plaintiff Bret Axelrod

19 **ORDER**

20 Good cause appearing therefore, IT IS SO ORDERED.

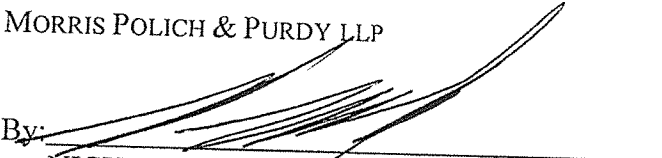
21 

22 U.S. DISTRICT COURT MAGISTRATE JUDGE

23 DATED: 2-5-2014

24 Respectfully Submitted by:

25 MORRIS POLICH & PURDY LLP

26 By: 
27 NICHOLAS M. WIECZOREK
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APPENDIX A
CERTIFICATION

I hereby certify my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulated Protective Order dated _____, 2014 in *Axelrod v. George L. Klander; Money Management Advisory, Inc.*, United States District Court Case No. 2:13-cv-1289-JAD-VCF. I have been given a copy of the Order and have read it. I agree to be bound by the Order. I will not reveal the Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information – including copies, notes, or other transcriptions made therefrom – in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information – including copies, notes or other transcriptions made therefrom – to the counsel who provided me with the Confidential Information. I hereby consent to the jurisdiction of the United States District Court for the purpose of enforcing the Stipulated Confidentiality Agreement and Protective Order.

DATED this _____ day of _____, 2014.

Print Name