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

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 11 CAPSTACK PARTNERS, LLC, a
 Delaware limited liability company,
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 Plaintiff,
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 v.
 14 CAPSTAK, INC., a Delaware corporation,
 15
 Defendant.
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CASE NO.: 3:18-cv-00007-RCJ-WGC

STIPULATED
PROTECTIVE ORDER

17 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, and with the consent of the
 18 parties to this action, IT IS HEREBY ORDERED:

19 1. All documents, materials, items, and/or information which are designated as
 20 confidential under the terms of this Protective Order, and contain or comprise confidential and
 21 sensitive research, development or commercial information produced either by a party or by a
 22 non-party shall be governed by this Protective Order.

23 2. Any information produced by any party or non-party as part of discovery in this
 24 action may be designated by any party or the producing non-party as (1) "Confidential" or (2)
 25 "Confidential-Attorneys' Eyes Only." As a general guideline, materials designated "Confidential"
 26 shall be those confidential and sensitive things that may be disclosed to the parties for the purpose
 27 of the litigation, but which must be protected against disclosure to third parties. As a general
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1 guideline, materials designated "Confidential-Attorney's Eyes Only" shall be those confidential
2 and sensitive things of a financial, commercial, proprietary or technical nature which might be of
3 value to others, and which must be protected from disclosure to such party and/or third parties.
4 Absent a specific order by this Court, or written permission from the designating party,
5 information once designated as "Confidential" or "Confidential-Attorney's Eyes Only" shall be
6 used by parties solely in connection with this litigation, and not for any other purpose, including,
7 but not limited to, business, competitive, or governmental purpose or function, and such
8 information shall not be disclosed to anyone except as provided herein.

9 3. Any party or non-party wishing to come within the provisions of this Protective
10 Order shall designate, in writing, the documents, information, or portions thereof which he, she or
11 it considers confidential at the time such documents are produced or such information is
12 disclosed, or as soon thereafter as the person or entity seeking protection becomes aware of the
13 nature of the information or materials disclosed and sought to be protected hereunder. In the
14 instance of documents, the items produced must be marked "Confidential" or "Confidential-
15 Attorneys' Eyes Only" by the producing party or non-party. In the instance of depositions,
16 counsel may, in the record of the deposition, designate the transcript or portion thereof as
17 "Confidential" or "Confidential-Attorneys' Eyes Only," and only the parties identified in
18 paragraphs 4 and 5 may then be present in the depositions. The witness under deposition or his
19 counsel may invoke the provisions of this Protective Order in a timely manner, giving adequate
20 warning to counsel for the party or non-party that testimony about to be given is deemed
21 "Confidential" or "Confidential-Attorneys' Eyes Only." The designations should be made on the
22 record whenever possible, but a party may designate portions of a deposition either
23 "Confidential" or "Confidential-Attorney's Eyes Only" provided written notice of such
24 designation is given to each party no later than (10) ten days following receipt of the deposition
25 transcript by the designating party.

26 4. Documents, deposition testimony, or answers to interrogatories stamped
27 "Confidential," or copies or extracts therefrom, and compilations and summaries thereof, and the
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1 information therein, may be given, shown, made available to, or communicated in any way only
2 to the Court (including, but not limited to, the presiding judge, clerks, and court staff) and to the
3 attorneys of McDonald Carano and Brownstein Hyatt Farber Schreck, LLP and their full time
4 staff representing the parties hereto.

5 5. Documents, deposition testimony, or answers to interrogatories stamped
6 "Confidential-Attorneys' Eyes Only" or copies or extracts therefrom, and summaries and
7 compilations thereof, and the information therein, may be given, shown, made available to, or
8 communicated in any way only to (a) the Court (including, but not limited to, the presiding judge,
9 clerks, and court staff) as provided in Paragraphs 9 and 13; (b) the trial counsel designated on the
10 pleadings from the law firms of McDonald Carano and Brownstein Hyatt Farber Schreck, LLP
11 and their full time staff to whom it is necessary that the materials be shown for the purposes of
12 this litigation; (c) consultants as defined in Paragraph 6 hereof and pursuant to the provisions on
13 Paragraph 7 hereof.

14 6. For purposes of Paragraph 5(c) hereof, a consultant shall be defined as a person
15 who is not an employee of a party nor anticipated to become an employee in the near future, and
16 who is retained or employed as a bona fide consultant or expert for purposes of this litigation,
17 whether full or part-time, by or at the direction of counsel for a party.

18 7. The procedure for having a consultant approved for access to information
19 designated "Confidential-Attorneys' Eyes Only" shall be as follows:

20 (a) The party seeking to have a consultant, as defined in Paragraph 6 hereof, approved
21 shall provide the producing party with:

- 22 i) the name of the designated person;
- 23 ii) the present employer and title of said designated person;
- 24 iii) a resume or curriculum vitae of said designated person;
- 25 iv) a written acknowledgment, in the form of Attachment A hereto, signed by
26 the designated person for whom approval is sought, that the person has
27 read this Protective Order and agrees to be bound by its terms.
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1 (b) Within five (5) calendar days after emailing the information (if to Brownstein
2 Hyatt Farber Schreck, to all of the following: mfrancis@bhfs.com; azorio@bhfs.com;
3 nlindsley@bhfs.com; and RenoIDFilings@bhfs.com; if to McDonald Carano, to all of the
4 following: jwoelfel@mcdonaldcarano.com; sferguson@mcdonaldcarano.com;
5 ehelms@mcdonaldcarano.com) the information and written acknowledgment described in
6 subparagraph (a), along with a notice quoting this Section 7 in the body of the email, the
7 producing party may object to the person proposed for approval if the producing party has
8 genuine reason to believe that there is a reasonable possibility that the designated person may use
9 information designated "Confidential-Attorneys' Eyes Only" for purposes other than the
10 preparation or trial of this case or that the person proposed is in a competitive position or works
11 for a competitor of the producing party such that they cannot avoid possible use of the protected
12 information. Objections must be based upon a legitimate good faith belief and shall not be made
13 for purposes of delaying approval of said designated person. If an objection is found not to be
14 made in good faith by the court, then the party whom the objection was made shall be entitled to
15 reasonable attorneys' fees and costs. Failure to object within five (5) calendar days to a person
16 proposed shall be deemed approval, but shall but not preclude a producing party from objecting to
17 continued access by that person where facts suggesting a basis for objection are subsequently
18 learned by the producing party or its counsel.

19 (c) If the producing party so objects, the producing and requesting party shall, within
20 five (5) calendar days from the date of emailing a notice of objection in the same manner and to
21 the adverse email addresses listed in Section (7)(b) above, demand that the other party confer and
22 attempt to resolve the dispute. At the conference, which must take place as soon as possible after
23 the demand therefore is served, the producing party shall inform the requesting party of its
24 reasons for objecting to the designated person. If the parties cannot resolve the dispute, or if the
25 conference does not take place, then the producing party may move the Court for an order that
26 access to information designated "Confidential-Attorneys' Eyes Only" be denied to the designated
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1 person. The time periods are not to restrict either party from moving for a court order earlier if
2 the circumstances so require.

3 (d) The parties agree that the information identified above in subparagraph 7(a) in
4 most cases constitutes sufficient information from which to approve said designated person, but a
5 party may seek production of additional information if reasonably necessary to determine whether
6 to approve the designated person.

7 8. All “Confidential” and “Confidential – Attorneys’ Eyes Only” information
8 covered by this order shall be kept in secure facilities at trial counsel's offices and in no event be
9 taken to or stored on the premises of a party without having first received written permission from
10 the party designating the document confidential, and access to those facilities shall be permitted
11 only to those designated persons set forth in Paragraphs 4, 5, and 6 of this Protective Order as
12 persons properly having access thereto under the appropriately designated degree of
13 confidentiality. The foregoing sentence does not restrict trial counsel from sending emails
14 containing “Confidential” information to their clients named in the above-entitled action or those
15 designated persons set forth in Paragraphs 4, 5, and 6 of this Protective Order. All counsel for the
16 parties who have access to “Confidential” or “Confidential – Attorneys’ Eyes Only” information
17 and documentation under this Protective Order acknowledge they are bound by this Order and
18 submit to the jurisdiction of this Court for purposes of enforcing this Order.

19 9. No party or non-party may file any document containing any information or
20 exhibits designated by another party or non-party as “Confidential” or “Confidential - Attorneys’
21 Eyes Only” within the scope of this Order unless it is filed under seal. No party or non-party may
22 file any document containing any information or exhibits designated by the filing party as
23 “Confidential” or “Confidential -- Attorneys’ Eyes Only” within the scope of this Order unless
24 the party concurrently or in advance of the filing seeks leave of Court. Notwithstanding any
25 agreement among the parties, the party seeking to file a paper under seal bears the burden of
26 overcoming the presumption in favor of public access to papers filed in court.
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1 10. If any document or information designated to be "Confidential" or "Confidential-
2 Attorneys' Eyes Only" pursuant to this Protective Order is used during the course of a deposition
3 herein, that portion of the deposition record reflecting such confidential information shall be
4 sealed and stamped with the designated degree of confidentiality, and access thereto shall be
5 limited pursuant to the other terms of this Protective Order.

6 11. A party should designate as “Confidential” or “Confidential-Attorneys’ Eyes
7 Only” only such information or documents as the party reasonably and in good faith believes
8 require and justify protection under this Protective Order. If, at any time during the pendency or
9 trial of this action, counsel for any party claims that counsel for any other party is unreasonably
10 claiming certain information produced herein to be confidential, objecting counsel may make an
11 appropriate application to this Court, with confidential portions thereof to be kept under seal,
12 requesting that specifically identified documents, information, and/or deposition testimony be
13 excluded from the provisions of this Protective Order or downgraded in terms of the degree of
14 protection provided. Before filing any such application, the party seeking relief shall confer with
15 the other party to determine whether the matter can be resolved by agreement. The prevailing
16 party in such a dispute shall be entitled to reasonable attorneys’ fees and costs pursuant to Federal
17 Rules of Civil Procedure 37(a)(5).

18 12. The pretrial order submitted by the parties in this action shall address the treatment
19 at trial of documents, information or testimony designated "Confidential" or "Confidential-
20 Attorneys' Eyes Only" pursuant to this Protective Order unless the confidentiality of such
21 information has been removed by agreement of counsel or by this Court in accordance with the
22 provisions of Paragraph 11 of this Protective Order.

23 13. At any hearing relating to this litigation prior to trial before any judicial officer,
24 subject to the rules of evidence and order of the Court, a party may use any “Confidential” or
25 “Confidential-Attorneys’ Eyes Only” information or documents for any purpose, provided that
26 adequate prior notice of such use is given to counsel for the opposing party to permit the opposing
27 party the opportunity to obtain appropriate protection from the Court, including a request to the
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1 Court that the courtroom be cleared and that the court employees be advised as to the terms of
2 this Protective Order. If any party reasonably anticipates that “Confidential” or “Confidential-
3 Attorneys’ Eyes Only” information or documents will be presented in any hearing in this
4 litigation, it may request that the Court close the courtroom during such presentation. If the Court
5 denies any such request, the use of the “Confidential” or “Confidential-Attorneys’ Eyes Only”
6 information or documents in Court shall not affect its coverage by this Protective Order or
7 constitute a waiver of confidentiality with respect thereto.

8 14. The terms of this Protective Order shall apply to all manner and means of
9 discovery, including entry onto land or premises and inspection of books, records, documents,
10 and tangible things.

11 15. Unless otherwise permitted by statute, rule or prior court order, papers filed with
12 the Court under seal shall be accompanied by a contemporaneous motion for leave to file those
13 documents under seal, and shall be filed consistent with the court’s electronic filing procedures in
14 accordance with Local Rule 10-5(b). Notwithstanding any agreement among the parties, the
15 party seeking to file a paper under seal bears the burden of overcoming the presumption in favor
16 of public access to papers filed in court. *Kamakana v. City and County of Honolulu*, 447 F.2d
17 1172 (9th Cir. 2006).

18 16. The terms of this Protective Order do not preclude, limit, restrict, or otherwise
19 apply to the use of documents at trial.

20 17. Nothing herein shall be deemed to waive any applicable privilege or work product
21 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material
22 protected by privilege or work product protection.

23 18. Any witness or other person, firm or entity from which discovery is sought may be
24 informed of and may obtain the protection of this Protective Order by written advice to the
25 parties’ respective counsel or by oral advice at the time of any deposition or similar proceeding.

26 19. This Protective Order shall be effective on the date entered by the Court.
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1 20. All provisions of this Protective Order restricting the communication or use of
2 “Confidential” and “Confidential – Attorneys’ Eyes Only” information and documentation shall
3 continue to be binding after the conclusion of this action, unless otherwise agreed or ordered.
4 Upon conclusion of the litigation, a party in the possession of “Confidential” and/or “Confidential
5 – Attorneys’ Eyes Only” information and documentation other than that which is contained in
6 pleadings, correspondence, and deposition transcripts, shall either (a) return such documents no
7 later than thirty (30) days after conclusion of this action to counsel for the party or nonparty who
8 provided such information, or (b) destroy such documents within the time period upon consent of
9 the party who provided the information and certify in writing within thirty (30) days that the
10 documents have been destroyed.

11 **IT IS SO STIPULATED:**

12 DATED this 13th day of February, 2018
13 BROWNSTEIN HYATT FARBER
14 SCHRECK, LLP

DATED this 13th day of February, 2018
MCDONALD CARANO

16 By: /s/ Matthew D. Francis
17 MATTHEW D. FRANCIS
18 ARTHUR A. ZORIO
19 5371 Kietzke Lane
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Attorneys for CapStack Partners, LLC

Attorneys for Capstak, Inc.

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ORDER

Paragraphs 9, 11 and 15 are modified to reflect that any motion to file documents under seal must also comply with *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092 (2016).

Paragraph 20 is modified to reflect that although the parties may agree to be bound by the confidentiality terms of this Order beyond the conclusion of this lawsuit, the dismissal of this action will terminate the jurisdiction of this Court.

IT IS SO ORDERED.

DATED: February 14, 2018.

William G. Cobb

WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE

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Attachment A

NONDISCLOSURE AGREEMENT

I, _____, do solemnly swear that I am fully familiar with the terms of the Stipulated Protective Order entered in *CapStack Partners, LLC v. Capstak, Inc.*, United States District Court for the District of Nevada, 3:18-cv-00007-RCJ-WGC and hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further Order of this Court. I hereby consent to the jurisdiction of said Court for purposes of enforcing this order.

Dated: _____

Signed: _____