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13 *Attorneys for Class Representatives John V. and JoAnn M. Ferris*

14 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

16 JOHN V. FERRIS and JOANN M. FERRIS,  
 Individually and on Behalf of All Others  
 17 Similarly Situated,

18 Plaintiffs,

19 v.

20 WYNN RESORTS LIMITED, et al.,

21 Defendants.

Case No. 2:18-CV-00479-APG-BNW

**CLASS REPRESENTATIVES' MOTION  
 FOR AN EXTENSION OF DISCOVERY  
 DEADLINES AND MEMORANDUM OF  
 POINTS AND AUTHORITIES IN  
 SUPPORT**

**[FIRST REQUEST]**

28 {00599473;7 }

MOTION FOR AN EXTENSION OF DISCOVERY DEADLINES

1 Pursuant to LR IA 6-1 and LR 26-3 Class Representatives John V. Ferris, JoAnn M. Ferris,  
2 and Jeffrey Larsen (“Plaintiffs”), by and through their attorneys of record, hereby respectfully  
3 request that the Court: (a) extend the fact discovery deadline set forth in the Stipulated Discovery  
4 Plan and Scheduling Order Pursuant to the Court’s April 6, 2023 Motion Hearing Order (ECF No.  
5 302) (the “Scheduling Order”) to the later of (1) ninety (90) days after the Court’s ruling on  
6 Plaintiffs’ Motion to Compel (ECF No. 327) (the “Motion to Compel”) and Defendants Wynn  
7 Resorts Limited (“Wynn” or the “Company”) and Matthew Maddox’s (collectively, “Defendants”)   
8 Motion for a Protective Order (ECF No. 329) (the “Motion for Protective Order”) (collectively,  
9 the “Pending Motions”), or (2) ninety (90) days after the current fact discovery deadline, May 31,  
10 2024; and (b) permit the parties to submit a proposed revised Scheduling Order within ten (10)  
11 days of its ruling on the Pending Motions. This is the first request for an extension of the  
12 Scheduling Order, this request is being made more than 21 days before the expiration of the  
13 discovery deadlines that Plaintiffs seek to modify, and for the reasons set forth below, there is good  
14 cause for the requested extension.

### 15 **INTRODUCTION**

16 Plaintiffs’ requested extension is warranted because the discovery deadlines have been  
17 impacted by the two Pending Motions: Plaintiffs’ Motion to Compel and Defendants’ related  
18 Motion for Protective Order.

19 The Motion to Compel asks the Court to compel Defendants to apply Plaintiffs’ requested  
20 search terms, produce pre-Class Period and post-Class Period discovery, produce documents from  
21 twenty-six (26) additional custodians,<sup>1</sup> and produce documents responsive to certain disputed  
22 requests for production. ECF No. 327 at 22.<sup>2</sup> Defendants’ Motion for Protective Order asks the

23 \_\_\_\_\_  
24 <sup>1</sup> Defendants originally only agreed to produce documents for seven (7) custodians. ECF No. 327  
25 at 3. After Plaintiffs moved to compel, Defendants agreed to search the custodial files of twelve  
26 (12) additional custodians. ECF No. 328 at 20. Fourteen (14) custodians still remain in dispute.

27 <sup>2</sup> Plaintiffs also opposed Defendants’ motion for partial summary judgment related to the February  
28 12, 2018 corrective disclosures on the grounds that Defendants refused to produce documents from  
after February 12, 2018 and such documents are necessary to defend against the motion. ECF No.  
335 at 22-28.

1 Court to deny the relief that Plaintiffs sought in the Motion to Compel, require Plaintiffs to  
2 negotiate a fact stipulation, and permit Defendants to hide the identities of Mr. Wynn’s accusers  
3 from Plaintiffs. ECF. No. 329 at 14-21.

4 The Court’s ruling on the Pending Motions could require Defendants to search for and  
5 produce documents for over a dozen additional custodians, applying broader search terms, and for  
6 a broader time period than the circumscribed period roughly mirroring the Class Period that  
7 Defendants searched. Although Plaintiffs have diligently served notices of depositions while the  
8 motions have been pending, multiple deponents have indicated their unavailability on the noticed  
9 dates. *See* Declaration of Murielle J. Steven Walsh (“MJSW Decl.”), ¶ 18. Further, proceeding  
10 with depositions before the Court rules on the Pending Motions would be inefficient because if  
11 Defendants are ordered to produce these substantial additional documents, it could result in  
12 Plaintiffs having to reexamine witnesses already deposed based on the new information and  
13 documents available. Accordingly, good cause exists for the requested extension.

14 **DISCOVERY COMPLETED TO DATE**

15 The Court bifurcated discovery into two phases: Phase One, involving class certification  
16 issues, and Phase Two, involving merits and damages issues. ECF No. 184. The parties completed  
17 Phase One discovery and the Court certified the Class on March 1, 2023. ECF No. 283.

18 Since then, the parties have been engaged in Phase Two discovery. Defendants served  
19 amended responses to Plaintiffs’ first request for the production of documents, and the parties met  
20 and conferred on several occasions regarding their responses, as well as the appropriate scope of  
21 discovery. MJSW Decl. ¶¶4-5. Ultimately, Defendants produced a total of 3,896 documents.

22 Plaintiffs served document subpoenas on the Nevada Gaming Control Board (“NGCB”),  
23 the Massachusetts Gaming Commission (“MGC”); Elaine Wynn; Joele Frank, Wilkinson Brimmer  
24 Katcher (“Joele Frank”); and Kevin Tourek. MJSW Decl. ¶¶7-8, 10, 12, 14. The MGC and NGCB  
25 collectively produced 357 documents. MJSW Decl. ¶9. Ms. Wynn objected and refused to  
26 produce any documents. MJSW Decl. ¶¶11. Joele Frank served objections to the document  
27 subpoena and has not produced any documents to date. MJSW Decl. ¶13. Mr. Tourek responded

1 that he did not have any responsive materials in his possession, custody, or control. MJSW Decl.  
2 ¶15.

3 Plaintiffs also served deposition subpoenas on Joele Frank and Kevin Tourek, but the  
4 depositions have not yet been scheduled. MJSW Decl. ¶¶12, 14, 16. In addition, Plaintiffs served  
5 notices of deposition on Michael Weaver and Defendants Matthew Maddox, Stephen Wynn,  
6 Stephen Cootey, and Kimmarie Sinatra with tentative deposition dates, but counsel for Mr. Wynn,  
7 Mr. Maddox, Mr. Weaver, Ms. Sinatra, and Mr. Cootey have indicated they are not available on  
8 the noticed dates.<sup>3</sup> MJSW Decl. ¶18. Plaintiffs also notified Defendants that they anticipate  
9 needing to take more than ten depositions, but Defendants were not willing to stipulate to Plaintiffs  
10 taking additional depositions beyond the ten allotted to Plaintiffs until they have (1) taken 10  
11 depositions, and (2) made a particularized showing of need for additional depositions. MJSW  
12 Decl. ¶¶19-20.

13 In addition, Defendants produced a privilege log on January 31, 2024, a supplemental  
14 privilege log on February 7, 2024, and a second supplemental privilege log on March 5, 2024 that  
15 contains over 2,470 entries. MJSW Decl. ¶21. Plaintiffs wrote Defendants regarding certain  
16 deficiencies with Defendants' privilege log, and the parties met and conferred regarding the issues.  
17 MJSW Decl. ¶¶22-23.

### 18 **REMAINING DISCOVERY TO BE COMPLETED**

19 Insofar as the Court rules in Plaintiffs' favor on the Pending Motions, Defendants will be  
20 required to make additional document productions. In addition, while the parties are still  
21 endeavoring to resolve the issues with Defendants' privilege log without Court intervention, they  
22 appear to be at an impasse on certain issues, and Plaintiffs anticipate filing a motion to compel the  
23 production of documents improperly withheld as privileged.<sup>4</sup> Plaintiffs also intend to serve  
24 additional deposition subpoenas and deposition notices – which may require Court approval

25 <sup>3</sup> They did not propose any alternative dates when notifying Plaintiffs of their unavailability.  
26 MJSW Decl. ¶20.

27 <sup>4</sup> Plaintiffs will likely need to seek another extension to allow for the adjudication of the parties'  
28 privilege log disputes, given the substantial number of entries at issue.

1 insofar as Defendants refuse to stipulate to Plaintiffs exceeding the ten depositions allotted under  
2 the federal rules – and intend to depose the witnesses already subpoenaed or served with deposition  
3 notices.

4 In addition, the parties may conduct other discovery permitted under Federal Rules of Civil  
5 Procedure 26, 30, 33, 34, and 36.

#### 6 **REASON FOR EXTENSION**

7 A request for an extension “must . . . be supported by a showing of good cause for the  
8 extension.” LR 26-3. “Good cause to extend a discovery deadline exists ‘if it cannot reasonably  
9 be met despite the diligence of the party seeking the extension.’” *Victor v. Walmart, Inc.*, 2021  
10 WL 3745190, at \*2 (D. Nev. Apr. 8, 2021) (quoting *Johnson v. Mammoth Recreations, Inc.*, 975  
11 F.2d 604, 609 (9th Cir. 1992)).

12 Here, as explained above, the extension is necessary to allow the parties sufficient time to  
13 complete fact discovery following the Court’s ruling on the Pending Motions. Plaintiffs diligently  
14 raised the issue of Defendants’ insufficient document production with the Court on November 23,  
15 2023. ECF No. 327. Defendants then asked the Court to consider the Motion to Compel in  
16 parallel with their Motion for Protective Order. ECF No. 329 at 4. The Pending Motions were  
17 fully briefed as of January 5, 2024, and the Court held a hearing on February 12, 2024. ECF Nos.  
18 354, 359. The Court has not yet ruled on the Pending Motions.

19 Based on Defendants’ own representations, a ruling in Plaintiffs’ favor could require them  
20 to review over 870,000 additional documents. ECF No. 329 at 3. Defendants will presumably  
21 need additional time to conduct their pre-production privilege and relevance review, and Plaintiffs  
22 will need additional time to review any forthcoming productions and prepare for depositions.  
23 Regardless of how the Court rules, depositions have been delayed during the pendency of the  
24 motions. Plaintiffs served deposition notices, designating deposition dates in April and May.  
25 Counsel for Defendants and for Mr. Weaver have indicated that they are unavailable on those dates  
26 but have not proposed any alternative dates. Counsel for Defendants also expressed an  
27 unwillingness to stipulate to additional depositions until Plaintiff has exhausted their ten (10)

1 allotted depositions and shown a particularized need for additional depositions. Thus, the parties  
2 will likely need additional time to meet and confer about this dispute. Further, the parties will  
3 likely need additional time to resolve their disputes regarding Defendants' privilege log.  
4 Accordingly, despite Plaintiffs' diligence in pursuing discovery, the current fact discovery  
5 deadline cannot reasonably be met.

6 **PROPOSED REVISED DEADLINES**

7 Plaintiffs propose that the fact discovery deadline set forth in the Scheduling Order be  
8 extended from May 31, 2024 until the later of (1) ninety (90) days after the Court's ruling on the  
9 Pending Motions, or (2) ninety (90) days after the current fact discovery deadline, May 31, 2024.  
10 In addition, Plaintiffs propose that the Court allow the parties to submit a proposed revised  
11 Scheduling Order, resetting the remaining deadlines in the Scheduling Order, within ten (10) days  
12 of its ruling on the Pending Motions.

13 **DEFENDANTS' POSITION ON THE REQUESTED EXTENSION**

14 On March 20, 2024, counsel for Plaintiffs emailed counsel for the Company, Mr. Maddox,  
15 Mr. Wynn, Mr. Cootey, and Ms. Sinatra to ask their position on Plaintiffs' requested extension.  
16 MJSW Decl. ¶24. Plaintiffs requested a response by close of business on March 21, 2024. MJSW  
17 Decl. ¶24. On March 21, 2024, counsel for Plaintiffs emailed counsel for the Company, Mr.  
18 Maddox, Mr. Wynn, Mr. Cootey, and Ms. Sinatra to correct an omission in the original extension  
19 proposal circulated. MJSW Decl. ¶25. Counsel for Mr. Cootey and counsel for Ms. Sinatra did  
20 not respond on March 21, 2024, nor have they responded as of the time of filing this Motion.  
21 MJSW Decl. ¶26. Counsel for Mr. Wynn responded that Mr. Wynn does not oppose the proposed  
22 extension. MJSW Decl. ¶27. Counsel for the Company and Mr. Maddox responded on March  
23 21, 2024, asking the basis for the Motion. MJSW Decl. ¶28. Counsel for Plaintiffs explained that  
24 Plaintiffs are seeking an extension because Defendants have represented that they may have to  
25 review over 800,000 documents if the Court grants the pending motion to compel, and in order to  
26 avoid deposing the same witness multiple times, Plaintiffs cannot proceed with depositions until  
27 document production is substantially complete. MJSW Decl. ¶29. On March 25, 2024, Counsel

1 for the Company and Mr. Maddox responded that they “will agree to extend the fact deposition  
2 deadline until August 31, in case the Court grants Plaintiffs’ pending motion to compel,” but “by  
3 agreeing to extend the deadline, [they] are not in any way agreeing that Plaintiffs taking more than  
4 10 depositions is appropriate.” MJSW Decl. ¶30.

5 **CONCLUSION**

6 For the foregoing reasons, good cause exists for the requested extension, and Plaintiffs  
7 respectfully request that the Court grant the Motion.

8 Dated: March 25, 2024

**POMERANTZ LLP**

9 By */s/ Murielle J. Steven Walsh*  
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13 **IT IS SO ORDERED**

14 **DATED:** 10:58 am, March 26, 2024

15 

16 **BRENDA WEKSLER**  
17 **UNITED STATES MAGISTRATE JUDGE**

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*Additional Counsel*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on March 25, 2024, a copy of the foregoing was filed electronically  
3 and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent  
4 by e-mail to all parties by operation of the Court’s electronic filing system or by mail to anyone  
5 unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access  
6 this filing through the Court’s CM/ECF System.

7 */s/ Murielle J. Steven Walsh*  
8 Murielle J. Steven Walsh