

1 **JOHN T. MORAN, JR., ESQ.**

Nevada Bar No. 2271

2 **JEFFERY A. BENDAVID, ESQ.**

Nevada Bar No. 6220

3 **JUSTIN W. SMERBER, ESQ.**

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4 **MORAN LAW FIRM, LLC**

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Attorney for Defendants,

WESTERN CAB COMPANY,

LUCKY CAB COMPANY OF NEVADA,

ON DEMAND SEDAN SERVICES, LLC,

9 BLS LIMOUSINE SERVICES OF LAS VEGAS, INC.,

10 DESERT CAB, INC., and SUN CAB, INC.

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 THEODORE TRAPP, on his own behalf) Case No: 2:09-CV-00995

And on behalf of all others similarly)

14 situated,)

)

15 Plaintiff,)

)

16 vs.)

17)

BIG POPPA’S, LLC, a Nevada limited)

18 Liability company d/b/a BADDA BING)

19 MEN’S CLUB; et al.,)

)

20 Defendants.)

21 **DEFENDANTS, WESTERN CAB COMPANY, LUCKY CAB COMPANY OF NEVADA,**
22 **ON DEMAND SEDAN SERVICES, LLC, BLS LIMOUSINE SERVICES OF LAS**
23 **VEGAS, INC., DESERT CAB, INC., AND SUN CAB, INC.’S OPPOSITION TO**
24 **PLAINTIFF’S AMENDED MOTION TO ENLARGE TIME TO RESPOND TO**
25 **DEFENDANTS’ MOTIONS TO DISMISS**

26 COMES NOW, Defendants, WESTERN CAB COMPANY, LUCKY CAB COMPANY
27 OF NEVADA, ON DEMAND SEDAN SERVICES, LLC, BLS LIMOUSINE SERVICES OF
28 LAS VEGAS, INC., DESERT CAB, INC., AND SUN CAB, INC., by and through their

1 attorneys of record, JOHN T. MORAN, JR., ESQ., JEFFERY A. BENDAVID, ESQ. and
2 JUSTIN W. SMERBER, ESQ. hereby submit the following Opposition to Plaintiff's Amended
3 Motion to Enlarge Time to Respond to Defendants' Motions to Dismiss.

4 This Opposition is made and based upon the Points and Authorities submitted herewith,
5 together with the papers and pleadings on file herein, and oral arguments at the time of Hearing.
6

7 Dated this 26th day of August, 2009.

8 **MORAN LAW FIRM, LLC**

9 **/s/JOHN T. MORAN, JR., ESQ.**

10 **JOHN T. MORAN, JR., ESQ.**

11 Nevada Bar No. 2271

12 **JEFFERY A. BENDAVID, ESQ.**

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19 *Attorneys for Opposing Defendant Cab/Limousine
20 Companies*

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **I. INTRODUCTION**

23 On June 3, 2009, Plaintiff filed a Complaint naming twenty-seven (27) Defendants and
24 alleging numerous claims for supposed violations of the Nevada RICO statute, NRS 207.400,
25 and for alleged violations of Nevada's Consumer Fraud statute, NRS 41.600. (See Complaint
26 generally on file herein as Document 1). On its face, Plaintiff's Complaint completely fails under
27 existing law, and Defendants, WESTERN CAB COMPANY, LUCKY CAB COMPANY OF
28 NEVADA, ON DEMAND SEDAN SERVICES, LLC, BLS LIMOUSINE SERVICES OF LAS
VEGAS, INC., DESERT CAB, INC., AND SUN CAB, INC. ("Defendants") filed a Motion to

1 Dismiss. Instead of filing a response, Plaintiff filed a Motion to Enlarge Time to Respond, which
2 was opposed by Defendants. In response to Defendants' Opposition, Plaintiff filed an Amended
3 Motion to Enlarge Time to Respond, thus requiring Defendants to submit the present Opposition.

4 Plaintiff's Motion and Amended Motion to Enlarge Time to Respond should be denied,
5 and Defendants' Motion to Dismiss should be granted based upon the following:
6

- 7 1. Plaintiff's Amended Motion to Enlarge was filed after the time period for
8 opposing Defendants' Motion to dismiss had expired. Accordingly, Plaintiff is
9 required under Local Rule 6-1 to demonstrate "excusable neglect" which
10 Plaintiff has not demonstrated;
- 11 2. As a result of Plaintiff's failure to file an Opposition to Defendants' Motion to
12 Dismiss within the time limits prescribed by Local Rule 7-2, Plaintiff has
13 consented to the granting of Defendants' Motion, and Defendants' Motion to
14 Dismiss should be granted accordingly; and
- 15 3. Plaintiff's filing of multiple and duplicative Motions to Enlarge, rather than an
16 appropriate Reply brief, has resulted in significant waste and prejudice to the
17 Defendants, while at the same time affording Plaintiff repeated extensions to
18 respond to Defendants' Motion to Dismiss.

19 Further, Defendants' Motion to Dismiss should be granted as a result of Plaintiff's failure
20 to file a response in accordance with Local Rule 7-2. Lastly, Plaintiff's continued refusal to file
21 a response to the pending Motions to Dismiss has caused unreasonable delay in this matter,
22 which has resulted in waste and prejudice to Defendants.

23 **II. FACTS**

24 The facts surrounding Plaintiff's Motion and Amended Motion to Enlarge Time to
25 Respond to Defendants' Motions to Dismiss are well documented in Defendants, WESTERN
26 CAB COMPANY, LUCKY CAB COMPANY OF NEVADA, ON DEMAND SEDAN
27 SERVICES, LLC, BLS LIMOUSINE SERVICES OF LAS VEGAS, INC., DESERT CAB,
28 INC., AND SUN CAB, INC. ("Defendants") initial Opposition. (*See* Opposition on file herein as
Document 166). However, Defendants feel it necessary to reiterate and clarify certain facts that

1 the Opposing Defendants feel are adding to the prejudice and judicial waste in this matter.

2 Specifically, Defendants call attention to the following:

- 3 • On June 3, 2009, Plaintiff filed its Complaint. (*See* Complaint generally on file herein as
4 Document 1);
- 5 • On July 31, 2009, Defendants filed a Motion to Dismiss Plaintiff’s Complaint, a response
6 to which was due on August 18, 2009 (*See* Motion to Dismiss on file herein as Document
7 161);
- 8 • On July 29, 2009, Plaintiff filed a Motion for an Enlargement of Time to Respond to all
9 Motions to Dismiss. (*See* Plaintiff’s Motion to Enlarge on file herein as Document 151);
- 10 • On August 5, 2009, Defendants filed an Opposition to Plaintiff’s Motion to Enlarge. (*See*
11 Opposition on file herein as Document 166);
- 12 • On August 21, 2009, Plaintiff filed an Amended Motion to Enlarge. Plaintiff’s Amended
13 Motion seeks to obtain an extension to September 24, 2009 to respond to Defendants’
14 Motions to Dismiss. (*See* Amended Motion to Enlarge on file herein as Document 187).

15 As of this date, Plaintiff has not filed any Opposition to Defendants’ Motion to Dismiss. The
16 Defendants now submit this Opposition to Plaintiff’s Amended Motion to Enlarge Time to
17 Respond to Defendants’ Motions to Dismiss.

18 **II. LEGAL ARGUMENT**

19 **A. Plaintiff’s Motion and Amended Motion to Enlarge Time to Respond to** 20 **Defendants’ Motions to Dismiss should be denied because Plaintiff has not** 21 **demonstrated excusable neglect as required by Local Rule 6-1.**

22 Plaintiff concedes that its initial Motion to Enlarge Time was improper as it sought to
23 enlarge Plaintiff’s time to respond until after all named Defendants have filed responsive
24 pleadings. (*See* Plaintiff’s Amended Motion p. 4, ll. 16-21, on file herein as Document 187).
25 Plaintiff acknowledges that this may “unreasonably delay” the “resolution of the pending
26 motions to dismiss.” *Id.* Accordingly, Plaintiff filed an Amended Motion on August 21, 2009
27 seeking an extension until September 24, 2009 to file a response to Defendant’s Motions to
28

1 Dismiss. *See Id.* at p. 4, ll. 18-20. Unfortunately, this Amended Motion was filed after Plaintiff's
2 response was due to the Opposing Defendant's Motions to Dismiss. According to Local Rule 6-
3 1, a Motion to Extend filed after the response period had expired requires the moving party or
4 attorney to demonstrate excusable neglect. *See* LR 6-1. Plaintiff has demonstrated no such
5 "excusable neglect" in its Amended Motion, and the Amended Motion must be denied
6 accordingly. (*See* Plaintiff's Amended Motion on file herein as Document 187).

7
8 As a result of Plaintiff's failure to demonstrate "excusable neglect," Plaintiff's Motion
9 and Amended Motion to Enlarge should be denied, and Defendants' Motion to Dismiss should
10 be granted as a result of Plaintiff's failure to file an Opposition to Defendants' Motion.

11 **B. Plaintiff's Motion to Enlarge is now moot, and Defendants' Motion to**
12 **Dismiss should be granted, because Plaintiff has failed to file a response as**
13 **required by Local Rule 7-2.**

14 Local Rule 7-2 provides the guidelines for the filing, opposing and replying of motions
15 before this Honorable Court. Local Rule 7-2 states that an opposition, with points and authorities
16 must be made to any motion within 15 days after service of the motion. *See* LR 7-2(b). Further,
17 Local Rule 7-2 provides that a failure to provide an opposition shall constitute consent to
18 granting the motion. *See* LR 7-2(d). In the present matter, Defendants filed a Motion to Dismiss,
19 with points and authorities, on July 31, 2009. (*See* Motion to Dismiss on file herein as Document
20 161). As of this date, Plaintiff has filed no opposition to Defendants' Motion to Dismiss.
21 Accordingly, Plaintiff has consented to the granting of Defendants' Motion to Dismiss pursuant
22 to Local Rule 7-2(d).

23
24
25 This Honorable Court has granted no extension of time to Plaintiff to file a response to
26 Defendants' Motion to Dismiss. Plaintiff appears to believe that merely filing a Motion to
27 Enlarge Time automatically tolls any timelines set forth by Local Rule 7-2. However, Plaintiff
28

1 has provided no such authority to this Honorable Court supporting that position. Further, if such
2 were the case, then any party would be permitted to avoid the timelines set forth in Local Rule 7-
3 2 by the mere filing of a Motion to Enlarge. Clearly, a party cannot simply toll the timelines set
4 forth in Local Rule 7-2 by the mere filing of a Motion to Enlarge, and as a result, Plaintiff has
5 failed to file a timely opposition to Defendants' Motion to Dismiss. Accordingly, this Honorable
6 Court should grant Defendants' Motion to Dismiss pursuant to Local Rule 7-2(d).
7

8 **C. Plaintiff's Motion to Enlarge and Amended Motion to Enlarge should be**
9 **denied because the Motions are causing significant waste and prejudice to**
10 **the Defendants**

11 As discussed above, Plaintiff's opposition to Defendants' Motion to Dismiss was due on
12 August 18, 2009. As of the date of this Opposition, Plaintiff has filed no Opposition to
13 Defendants' Motion. Rather, Plaintiff has filed a series of Motions to Enlarge in the hopes of
14 further delaying the hearing of Defendants' Motion to Dismiss. This has resulted in significant
15 waste of time and prejudice to the Defendants.

16 Initially, Plaintiff has filed a Motion to Enlarge and an Amended Motion to Enlarge. The
17 seeming intent of this is to further delay this Honorable Courts ruling on this matter, by requiring
18 the Defendants to file oppositions to the Amended Motion, and then allowing Plaintiff additional
19 time to file a Reply. Plaintiff should have filed a Reply to Defendants' Opposition, which would
20 allow for the motion to be ruled upon. However, Plaintiff's Amended Motion provides Plaintiff
21 with additional time to prepare oppositions to the Motions to Dismiss, while the Defendants are
22 required to prepare additional oppositions to Plaintiff's Amended Motion to Enlarge. The end
23 result is additional cost, expense and waste of time to all parties due to unnecessary and
24 duplicative motion practice.
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1 Additionally, Plaintiff is delaying the hearing of Defendants' Motion to Dismiss by
2 failing to file its Motion to Enlarge on an Order Shortening Time. Had Plaintiff filed its Motion
3 to Enlarge on an Order Shortening Time under Local Rules 6-1 and 6-2, then the Motion to
4 Enlarge would have already been resolved. However, Plaintiff did not even attempt to obtain an
5 Order Shortening Time, because Plaintiff wanted to stall these proceedings by filing its Motion
6 to Enlarge and its subsequent Amended Motion to Enlarge. As a result, Defendants have
7 prepared multiple oppositions to Plaintiff's Motions to Enlarge, and the Court has been plagued
8 with the burden of reviewing and ruling on multiple Motions and Oppositions from all interested
9 parties. To the contrary, Plaintiff is achieving its goal of obtaining an extended response period
10 by merely filing duplicative Motions to Enlarge.
11

12
13 Accordingly, the Court should deny Plaintiff's Motion and Amended Motion to Enlarge,
14 thus resulting in a failure of Plaintiff to file any response to Defendants' Motion to Dismiss. The
15 ultimate result being that this Honorable Court should grant Defendants' Motion to Dismiss.
16

17 **III. CONCLUSION**

18 Based upon the forgoing, Defendants, WESTERN CAB COMPANY, LUCKY CAB
19 COMPANY OF NEVADA, ON DEMAND SEDAN SERVICES, LLC, BLS LIMOUSINE
20 SERVICES OF LAS VEGAS, INC., DESERT CAB, INC., AND SUN CAB, INC. respectfully
21 request that this Honorable Court deny Plaintiff's Motion to Enlarge and Amended Motion to
22 Enlarge Time to Respond to Defendants' Motion to Dismiss, and thereby resulting in Plaintiff
23 failing to timely Oppose Defendants' Motion to Dismiss.
24

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1 As a result, Defendants request that in addition to denying Plaintiff's Motion and
2 Amended Motion to Enlarge, Defendants request that this Honorable Court Grant Defendants'
3 Motion to Dismiss.

4 Dated this 26th day of August, 2009.

5
6 **MORAN LAW FIRM, LLC**

7 **/s/JOHN T. MORAN, JR., ESQ.**

8 **JOHN T. MORAN, JR., ESQ.**

9 Nevada Bar No. 2271

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