

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

MASTER CASE No.: 09-MD- 2106-CIV-GOLD/BANDSTRA

In Re: FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION

MDL NO. 2106

This document relates to all actions.

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**FONTAINEBLEAU RESORTS, LLC, FONTAINEBLEAU RESORTS HOLDINGS, LLC  
AND FONTAINEBLEAU RESORTS PROPERTIES I, LLC'S MOTION TO QUASH  
DEFENDANTS' SUBPOENAS DATED MAY 4, 2010**

Fontainebleau Resorts, LLC, Fontainebleau Resorts Holdings, LLC and Fontainebleau Resorts Properties I, LLC (collectively, "The FBR Entities"), by and through their undersigned counsel, and pursuant to *Fed. R. Civ. P.* 45, hereby serve their Motion to Quash Defendants, JP Morgan Chase Bank, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas and The Royal Bank of Scotland PLC's Subpoenas, dated May 4, 2010 (the "Subpoenas"), and would state:

1. On May 4, 2010, Defendants served each of The FBR Entities with the Subpoenas. The Subpoenas each contain fifty-one categories of documents which the Defendants seek to obtain from The FBR Entities. These extremely broad Subpoenas generally seek the production of a wide variety of documents which relate to the Fontainebleau project in Las Vegas. For example, request no. 9 seeks "[a]ll [d]ocuments [c]oncerning [c]ommunications between Fontainebleau Resorts and Fontainebleau, its shareholders, management, members, financial advisors, board of directors, auditors or

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accounts [c]oncerning the Project.”

2. Responding to just this one, overbroad request would cause an undue burden or expense to The FBR Entities as it asks for every communication between The FBR Entities and Fontainebleau Las Vegas, LLC, Fontainebleau Las Vegas II, LLC, Fontainebleau Las Vegas Holdings, LLC, Fontainebleau Las Vegas Retail, LLC and/or Fontainebleau Las Vegas Capital Corporation (the “Debtors”) and each of their predecessors, successors, affiliates, divisions, subsidiaries, parents, members, officers, representatives, agents and/or employees, including without limitation, their attorneys, investment bankers and advisers acting or purporting to act on its or their behalf regarding a multibillion dollar development which was years in the making – literally and figuratively.

3. Responding to the Subpoenas would further cause an undue burden on The FBR Entities because of the recent conversion of the Fontainebleau Las Vegas Bankruptcy action from Chapter 11 to Chapter 7<sup>1</sup>. The Trustee has recently taken possession of the computer servers which are owned by Fontainebleau Resorts, LLC (one of The FBR Entities) but which contain documents belonging to various Fontainebleau and Turnberry Construction entities, including the Debtors. As such, The FBR Entities do not have possession of or control over those computer servers which, upon information and belief, contain the vast majority of the documents sought in the Subpoenas.

4. Undersigned counsel and counsel for the other Fontainebleau-related

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<sup>1</sup> Undersigned counsel is referring to the matter titled In re: Fontainebleau Las Vegas Holdings, LLC, et al. presently pending before Judge Cristol in the United States Bankruptcy Court of the Southern District of Florida (Case No. 09-21481-AJC).

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entities have been in contact with the Trustee and the Trustee's counsel, Russel Blain, in attempts to coordinate the removal of each entity's information from the servers. In connection therewith, the Trustee has decided that each entity will receive a full copy of each of the servers. Each entity will then have to review all of the documents on the servers to determine which documents belong to them, which documents belong to multiple entities, which documents are privileged and which documents are responsive to any outstanding discovery requests or subpoenas, as here. Deciding which documents belong to which entities will be a time-consuming undertaking due to the number of documents as well as anticipated disputes over ownership of the documents.

5. After this sorting process is complete, if any of the entities with information on the servers wish to produce documents in response to discovery requests or subpoenas, they will have to provide each entity which received a copy of the servers with an opportunity to examine what is being produced in order to confirm that documents belonging to the non-producing entity are not being produced.

6. Due to the number of parties involved and despite the best efforts of undersigned counsel, the servers have not even been copied yet. Thus, it is unknown how many documents are on the servers or how long it will take to complete the above described process.

7. In addition to the overbreadth of the documents requested and the production problems raised by the recent conversion to Chapter 7 of the bankruptcy action, the subpoenas are also objectionable in that Defendants ask The FBR Entities produce the documents for inspection and copying at the offices of Simpson Thacher & Bartlett LLP in

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New York, New York. The FBR Entities are based in South Florida where this action is pending. Due to the number of documents sought, it would be overly burdensome to produce the documents in New York. The FBR Entities have not been requested, and do not agree, to produce documents in New York or in any other foreign location purely for the convenience of Defendants' attorney.

8. With respect to non-party discovery, Florida law states that the court must

“weigh factors such as relevance, the need of the party for the documents, the breadth of the document request, the time period covered by the document requests and the particularity with which the documents are described against the burden imposed on a person ordered to produce the desired information. Courts must also consider the status of a witness as a non-party when determining the degree of the burden; the status of a person as a non-party is a factor often weighing against disclosure.”

*United Technologies Corp. v. Mazer*, WL788877, S.D. Fla. March 14, 2007. The FBR Entities are not parties to this litigation. The breadth of the subpoenas themselves – at fifty-one items, each – and the breadth of each of the items requested<sup>2</sup> also weighs against disclosure. These factors, combined with the Trustee's plan for the servers which, upon information and belief, contain the vast majority of the documents requested, demonstrate that The FBR Entities would be subjected to an enormous burden should the subpoenas not be quashed.

9. In accordance with *S.D. Fla. L.R. 7.1A.3(a)*, counsel for FBR has conferred

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<sup>2</sup> For example, item no. 26 asks for “[a]ll [d]ocuments [c]oncerning [y]our [c]ommunications with Fontainebleau relating to this [a]ction” and “[a]ll [d]ocuments [c]oncerning [c]ommunications with, to or from Turnberry West, or any general contractor concerning the Project.”

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with counsel for Defendants in an effort to resolve by agreement the issues raised in this Motion prior to filing same but counsel were unable to resolve same.

WHEREFORE, Third Parties, Fontainebleau Resorts, LLC, Fontainebleau Resorts Holdings, LLC and Fontainebleau Resorts Properties I, LLC, respectfully request this Honorable Court enter an Order quashing the Subpoena dated May 4, 2010 consistent herewith.

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Glenn J. Waldman  
Florida Bar No. 374113  
Sarah J. Springer  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 6, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on the attached service list through transmission of Notices of Electronic Filing generated by CM/ECF.

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MASTER CASE No.: 09-MD- 2106-CIV-GOLD/BANDSTRA

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO 09-MD-02106-CIV-GOLD/BANDSTRA**

**IN RE: FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION**

**MDL No. 2106**

This document relates to 09-23835-CIV-  
GOLD/BANDSTRA.

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**JOINT MOTION TO ADD PLAINTIFFS TO THE ACTION**

Plaintiffs and Defendants submit this Joint Motion to add as plaintiffs to this action Sola Ltd, Solus Core Opportunities Fund Ltd and Caspian Solitude Master Fund, L.P., and in support thereof, state as follows.

WHEREAS, Sola Ltd, Solus Core Opportunities Fund Ltd and Caspian Solitude Master Fund, L.P. wish to join in the claims asserted by the Plaintiffs in the Second Amended Complaint [D.E. 15] filed on January 15, 2010; and

WHEREAS, Defendants, while not conceding or admitting in any way that the claims of Sola Ltd, Solus Core Opportunities Fund Ltd and Caspian Solitude Master Fund, L.P. or any of the other Plaintiffs are meritorious, nonetheless agree to the addition of Sola Ltd, Solus Core Opportunities Fund Ltd and Caspian Solitude Master Fund, L.P. as plaintiffs to this action pursuant to the following terms.

NOW, THEREFORE, the parties hereby respectfully request that this Court approve the following terms agreed to by the parties in this action:

1. Sola Ltd, Solus Core Opportunities Fund Ltd and Caspian Solitude Master Fund, L.P. will be added to this action without the need of filing a separate complaint.

2. Sola Ltd, Solus Core Opportunities Fund Ltd and Caspian Solitude Master Fund, L.P. shall be bound by all existing case deadlines.

3. Sola Ltd, Solus Core Opportunities Fund Ltd and Caspian Solitude Master Fund, L.P. shall be bound by Amended MDL Order Number Eighteen Granting in Part and Denying in Part Motions to Dismiss [D.E. 108].

4. Sola Ltd, Solus Core Opportunities Fund Ltd and Caspian Solitude Master Fund, L.P. shall file Corporate Disclosure Statements pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Initial Disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, and written responses to all outstanding discovery requests within 14 days of entry of an order adding them to this action.

Respectfully submitted,

By: /s/ Lorenz Michel Prüss

By: /s/ Craig V. Rasile

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Ltd., et. al.*

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on July 10 2010, a copy of the foregoing **JOINT MOTION TO ADD PLAINTIFFS TO THE ACTION** was filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically the Notice of Electronic Filing.

By: /s/ Lorenz Michel Prüss

Lorenz Michel Prüss

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**CASE NO 09-MD-02106-CIV-GOLD/BANDSTRA**

**IN RE: FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION**

**MDL No. 2106**

This document relates to 09-23835-CIV-  
GOLD/BANDSTRA.

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**[PROPOSED] ORDER GRANTING JOINT MOTION TO ADD ADDITIONAL  
PLAINTIFFS TO THE ACTION**

THIS CAUSE is before the Court on the Joint Motion to Add Additional Plaintiffs to the Action submitted by Plaintiffs and Defendants. For the reasons set forth in the Motion, it is hereby

ORDERED AND ADJUDGED that

1. The Motion is GRANTED.
2. Sola Ltd, Solus Core Opportunities Fund Ltd and Caspian Solitude Master Fund, L.P. are hereby added as plaintiffs to this action and join in the claims asserted by the Plaintiffs in the Second Amended Complaint [D.E. 15] filed January 15, 2010 without the need of filing a separate complaint.
3. Sola Ltd, Solus Core Opportunities Fund Ltd and Caspian Solitude Master Fund, L.P. shall be bound by all existing case deadlines.
4. Sola Ltd, Solus Core Opportunities Fund Ltd and Caspian Solitude Master Fund, L.P. shall be bound by Amended MDL Order Number Eighteen Granting in Part and Denying in Part Motions to Dismiss [D.E. 108].

5. Sola Ltd, Solus Core Opportunities Fund Ltd and Caspian Solitude Master Fund, L.P. shall file Corporate Disclosure Statements pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Initial Disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, and written responses to all outstanding discovery requests within 14 days of entry of this Order.

DONE AND ORDERED in Chambers at Miami, Florida, this \_\_\_ day of July, 2010.

---

THE HONORABLE ALAN S. GOLD  
UNITED STATES DISTRICT COURT JUDGE

cc: Magistrate Judge Bandstra  
All Counsel of Record

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 09-MD-2106-CIV-GOLD/BANDSTRA

*In re:*

FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION

Debtors.

\_\_\_\_\_/

This Document Relates to All Actions

\_\_\_\_\_ /

**CHAPTER 7 TRUSTEE'S MOTION FOR BRIEF  
EXCUSAL OF COMPLIANCE WITH SECOND  
AMENDED ORDER RESETTING CERTAIN PRETRIAL  
DEADLINES, REFERRING DISCOVERY MOTIONS,  
DIRECTING PARTIES TO MEDIATION, AND  
ESTABLISHING PRETRIAL DATES AND PROCEDURES**

Soneet R. Kapila, as the duly appointed Trustee in the underlying bankruptcy cases (the "Chapter 7 Trustee" or the "Trustee"), by and through his undersigned attorneys, and pursuant to S.D. Fla. L.R. 7.1, hereby files this motion seeking a brief excusal of compliance from the Seconded Amended Order resetting certain deadlines (D.E. 76) (the "Second Amended Order") while working out certain logistical and proprietary issues relating to the production of documents with the help of the parties and the assistance of the Court (the "Request") and respectfully states as follows:

1. On June 9, 2009, certain of the Debtors<sup>1</sup> filed voluntary petitions for relief, and on November 25, 2009, others of the Debtors filed voluntary petitions, all under Chapter 11 of the Bankruptcy Code. By order of the bankruptcy court, all of the Debtors' cases have been jointly administered. This adversary proceeding was commenced on June 10, 2009.

2. Ultimately, on April 12, 2010, all six of these cases were converted from cases under Chapter 11 to cases under Chapter 7 by order of the bankruptcy court. By notice dated April 20, 2010, the United States Trustee appointed Soneet R. Kapila as the Chapter 7 Trustee. The Chapter 7 Trustee has employed and retained the law firm of Stichter, Riedel, Blain & Prosser, P.A., of Tampa as his general counsel. The Trustee is also contemplating the employment and retention of Kasowitz, Benson, Torres & Friedman LLP of New York as his special counsel.

3. Prior to the conversion of these cases to Chapter 7, the Debtors had been authorized under Section 1108 of the Bankruptcy Code to operate their businesses as debtors in possession.

4. On January 8, 2010, prior to the Chapter 7 Trustee's appointment, this Court entered an Order (D.E. 121) (the "Amended Order"), requiring all parties in these consolidated pre-trial proceedings to produce documents in response to initial requests for production by March 1, 2010, which by agreement between the parties, other than the Chapter 7 Trustee, further extended the production of document deadlines.

5. On May 24, 2010, the Court amended its Order in the Second Amended

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<sup>1</sup> The Debtors comprise (a) Fontainebleau Las Vegas Holdings, LLC (Case No. 09-21481-BKC-AJC); (b) Fontainebleau Las Vegas, LLC (Case No. 09-21482-BKC-AJC); (c) Fontainebleau Las Vegas Capital Corp. (Case No. 09-21483-BKC-AJC); (d) Fontainebleau Las Vegas Retail Parent, LLC (Case No. 09-36187-AJC); (e) Fontainebleau Las Vegas Retail Mezzanine, LLC (Case No. 09-36191-BKC-AJC); and (f) Fontainebleau Las Vegas Retail, LLC (Case No. 09-36197-BKC-AJC).

Order, requiring all parties, including the Chapter 7 Trustee, to produce documents in response to initial Requests for Production by July 12, 2010.

6. The Chapter 7 Trustee has filed his motion to approve his substitution as the Plaintiff for Fontainebleau Las Vegas, LLC, in these cases (D.E. 92). At the Court's direction, the Trustee is presently seeking the consent of all parties to this substitution.

***Request for Brief Extension of Time to Respond to Second Amended Order***

7. By this Motion, the Chapter 7 Trustee respectfully requests a brief extension of time within which to work out logistic and proprietary issues relating to the production of documents to the Term Lenders<sup>2</sup> and Revolving Lenders, for reasons that are stated in the following paragraphs.

8. First, since the Debtors are no longer functioning as going concerns, the Chapter Trustee has access to only a handful of employees retained as independent contractors on a part-time basis from whom to ascertain the identity and location of documents responsive to the pending Revolver Bank request to produce and to the subpoena issued by the Term Lenders.

9. Second, the Chapter 7 Trustee faces potential legal hurdles in the production of documents since Fontainebleau Resorts, LLC, Fontainebleau Resorts Holdings, LLC, and Fontainebleau Resorts Properties I, LLC (collectively the "FBR Entities")—entities over which the Chapter 7 Trustee has no control—are claiming that certain documents in the Chapter 7 Trustee's possession are owned by the FBR Entities. These entities have asserted ownership interests in these computer servers and have made

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<sup>2</sup> The Term Lenders include the plaintiffs in the cases captioned *Avenue CLO Fund, LTD., et al. v. Bank of America, N.A., et al.*, Case No. 09-cv-1047-KJD-PAL (D.Nev.) and *ACP Master, Ltd., et al v. Bank of America, N.A., et al.*, Case No. 09-cv-8064-LTS/THK (S.D.N.Y.).



known their intention to protect those interests.

10. Prior to the conversion to Chapter 7, the Debtors and the FBR Entities shared computer servers, and the Chapter 7 Trustee understands that many of the same employees did work concerning both the Fontainebleau Las Vegas and other unrelated Fontainebleau projects. The Chapter 7 Trustee is attempting to coordinate with the FBR Entities to proceed with the extraction of each entity's information from the servers. Determining which documents belong to which entities will be a time-consuming and expensive undertaking due to the number of documents as well as anticipated disputes over ownership of the documents.

11. Since the Chapter 7 Trustee's appointment, he has engaged in general case management of the estates and asset investigation, and has worked diligently to bring himself up to speed on all issues addressing the estates, including issues in connection with contested matters in the former Chapter 11 cases which have been carried forward to the Chapter 7 cases, records retention and production, the logistics of the Debtors' collocation facility and computer servers, and the general subject matters of the litigation in these cases. Among other things, the Chapter 7 Trustee has, since his April 20, 2010 appointment:

- (a) Met with available former employees and current consultants in an effort to get up to speed on the matters facing the estates and in connection with the bankruptcy cases;
- (b) Worked with litigation counsel in an effort to effectively undertake the representation of the bankruptcy estates in connection with the subject litigation;
- (c) Began independent investigations into assets of the estate and has actively sought the return of various deposits and refunds due to the estates;

- (d) Engaged in active discussions with all involved parties in connection with working through the document server issues, discussed below; and,
- (e) Generally utilized all avenues available in order to ensure the maximum return to creditors in these bankruptcy cases.

12. Given his recent appointment and his lack of access to first-hand knowledge, the Chapter 7 Trustee is in need of additional time within which to evaluate the position of the bankruptcy estates.

13. When this lawsuit was filed by the Debtors, the relief sought appears to have been intended to assist in finishing the Las Vegas project. The legal and factual landscape in connection with these cases, however, has changed dramatically since the Debtors originally filed their lawsuit. The Debtors were ultimately unsuccessful in completing the project, the bulk of the assets that were to compose the project have been sold, the Debtors' Chapter 11 cases have been converted to Chapter 7 cases, and the Debtors have ceased to manage operations or to maintain control of the companies. This lawsuit is now simply one seeking money damages. Discovery will impose substantial expenses and burdens on an extremely limited bankruptcy estate. The Chapter 7 Trustee needs additional time within which to evaluate estate's causes of action asserted made in the litigation and to further decide how best to proceed to ensure a maximum recovery of money for distribution to creditors of the Debtors

14. This litigation in which the Debtors were involved is complex and may require substantial time to evaluate and determine a strategy that would maximize recovery to the estates. The Chapter 7 Trustee in this instance believes that, given the conversion of the bankruptcy cases and his recent appointment as Chapter 7 Trustee, he will require additional time to work with other parties to resolve the issues with the FBR

servers, and to produce the documents in connection with the requests for production, while at the same time satisfying his fiduciary duties to creditors.

15. The Chapter 7 Trustee has made an initial investigation and has consulted with counsel to the Revolver Banks and Term Lenders, counsel to the Debtors, and counsel to various of the other parties to these cases. Until today, the Chapter 7 Trustee had thought that a consensual extension was agreeable to all parties. The Trustee has had amicable and productive conversations with counsel to the parties, and most of the parties have in fact agreed to the proposed extension, but as of the filing of this Motion, not all parties had consented to the proposed extension.

16. The Chapter 7 Trustee has agreed promptly to file a motion seeking the scheduling of a discovery conference to resolve issues that impact upon the Chapter 7 Trustee and the bankruptcy estates. The Trustee anticipates filing that motion within the immediate week. The Trustee believes that the issues raised by discovery compliance can be resolved by such a hearing or consensually.

17. The Chapter 7 Trustee requests that, under these circumstances, the Court extend the time within which to respond to its Order. The Chapter 7 Trustee respectfully submits that justice so requires, that good cause exists, and that an extension of time will not cause undue prejudice to other parties.

*Prayer for Relief*

WHEREFORE, the Chapter 7 Trustee respectfully requests that this Court (A) approve his substitution for the Debtors in these cases, as requested by prior motion; (B) extend until such date as is set by the Court following the proposed discovery conference the deadline for the Chapter 7 Trustee to comply with the requests for production; and (C) grant such other and further relief as is just and proper.

Respectfully submitted,

*/s/ Susan Heath Sharp*

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**ATTORNEYS FOR SONEET R. KAPILA,  
CHAPTER 7 TRUSTEE**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that true and correct copies of the foregoing Chapter 7 Trustee's Motion for Brief Excusal of Compliance with Second Amended Order Resetting Certain Pretrial Deadlines, Referring Discovery Motions, Directing Parties to Mediation, and Establishing Pretrial Dates and Procedures have been furnished by the Court's CM/ECF system or U.S. Mail to the persons listed on the attached Service List on this 12<sup>th</sup> day of July, 2010.

*/s/ Susan Heath Sharp*  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 09-MB-02106-CIV-GOLD/BANSTRA

*In re:*

FONTAINEBLEAU LAS VEGAS  
HOLDINGS, LLC, *et al.*,

Debtors.

---

This Document Relates to: 09-CV-21879

**[Proposed] ORDER GRANTING CHAPTER 7  
TRUSTEE'S MOTION FOR BRIEF EXCUSAL OF  
COMPLIANCE WITH SECOND AMENDED ORDER  
RESETTING CERTAIN PRETRIAL DEADLINES,  
REFERRING DISCOVERY MOTIONS, DIRECTING  
PARTIES TO MEDIATION, AND ESTABLISHING  
PRETRIAL DATES AND PROCEDURES**

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THIS CAUSE came before the Court on the *Chapter 7 Trustee's Motion for Brief Excusal of Compliance with Second Amended Order Resetting Certain Pretrial Deadlines, Referring Discovery Motion, Directing Parties to Mediation, and Establishing Pretrial Dates and Procedures* (D.E. \_\_\_\_\_) (the "**Motion**"). The Court, being fully advised, it is

**ORDERED AND ADJUDGED** as follows:

1. The Motion is granted.
2. The Chapter 7 Trustee is excused from compliance with the document production dates set forth in the Court's discovery order.
3. Upon the Chapter 7 Trustee's filing of a motion to schedule discovery conference, the Court will schedule an expedited discovery conference at which to

resolve discovery issues related to the Trustee.

**DONE AND ORDERED** in Chambers at Miami, Florida, this \_\_\_\_ day of July,  
2010.

---

**ALAN S. GOLD**  
**UNITED STATES DISTRICT JUDGE**

cc: Counsel of Record



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

MASTER CASE NO. 09-2106-MD-GOLD/BANDSTRA

In re:

FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION

MDL NO. 2106

This document relates to:

09-CV-23835-ASG  
10-CV-20236-ASG

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**JOINT MOTION FOR EXTENSION OF CERTAIN PRE-TRIAL DEADLINES**

Plaintiffs in *ACP Master, Ltd. v. Bank of America, NA.*, 09-CV-08064 (S.D.N.Y.) (the “ACP Action”) and *Avenue CLO Fund, Ltd. v. Bank of America, NA.*, 09-CV-1047 (D. Nev.) (the “Avenue Action”), and defendants Bank of America, N.A. (“BANA”) and Merrill Lynch Capital Corporation (“Merrill”) submit this joint motion respectfully requesting that the Court modify certain pre-trial deadlines.

WHEREAS, on January 8, 2010, the Court issued MDL Order Number 3 [DE 10] (the “Scheduling Order”), which established certain pre-trial deadlines; and

WHEREAS, on May 24, 2010, the Court issued MDL Order Number 16 [DE 76] (“Amended Scheduling Order”), which revised the pre-trial deadlines established in the Scheduling Order;

WHEREAS, the parties reached an agreement on search terms and custodians for their responses to the Initial Requests for Production, and are conducting an extensive search for and review of potentially responsive documents from numerous custodians; and

WHEREAS, BANA and Merrill have requested, and the parties to the *ACP* and *Avenue* Actions have consented to, the extension requested in this motion.

NOW, THEREFORE, the undersigned parties hereby respectfully request that this Court approve the following extensions to the deadlines set forth in the Amended Scheduling Order:

1. The Amended Scheduling Order currently provides that the deadline for completion of document productions in response to Initial Requests for Production is July 12, 2010. The parties respectfully request that the date for completing document production be extended to and including Monday, August 16, 2010.

2. The parties respectfully request that the Court direct the parties to commence rolling production of documents in response to the Initial Requests for Production on July 12, 2010, in accordance with the following schedule:

<b>July 12, 2010</b>	BANA shall substantially complete production of documents from seven custodians.  Plaintiffs shall substantially complete document production for sixteen percent of their custodians.
<b>July 19, 2010</b>	BANA shall substantially complete production of documents from seven custodians.  Plaintiffs shall substantially complete document production for sixteen percent of their custodians.
<b>July 26, 2010</b>	BANA shall substantially complete production of documents from seven custodians.  Plaintiffs shall substantially complete document production for seventeen percent of their custodians.
<b>August 2, 2010</b>	BANA shall substantially complete production of documents from nine custodians.  Plaintiffs shall substantially complete document production for seventeen percent of their custodians.

<b>August 9, 2010</b>	BANA shall substantially complete production of documents from nine custodians.  Plaintiffs shall substantially complete document production for seventeen percent of their custodians.
<b>August 16, 2010</b>	The parties shall substantially complete their entire document productions in response to the Initial Requests for Production.

Dated: July 12, 2010

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing document was filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service list either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically the Notice of Electronic Filing.

Dated: July 12, 2010

By: /s/ Craig V. Rasile  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

MASTER CASE NO. 09-2106-MD-GOLD/BANDSTRA

In re:

FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION

MDL NO. 2106

This document relates to:

09-CV-23835-ASG  
10-CV-20236-ASG

---

**[PROPOSED] ORDER EXTENDING  
CERTAIN PRE-TRIAL DEADLINES**

THIS MATTER came before the Court for consideration upon the Joint Motion for Extension of Certain Pretrial Deadlines [DE \_\_] (the "Motion") filed by Plaintiffs in *ACP Master, Ltd. v. Bank of America, NA.*, 09-CV-08064 (S.D.N.Y.) and *Avenue CLO Fund, Ltd. v. Bank of America, NA.*, 09-CV-1047 (D. Nev.) and Defendants Bank of America, N.A. and Merrill Lynch Capital Corporation. The Court, having considered the Motion, the record, and the representations of counsel, finds good cause to grant the Motion.

Accordingly, it is hereby ORDERED AND ADJUDGED that:

1. The Motion [DE \_\_] is GRANTED.
2. The date for completing document production in response to Initial Requests for Production is extended from July 12, 2010 to Monday, August 16, 2010.
3. The parties shall commence rolling document production in response to Initial Requests for Production on July 12, 2010, in accordance with the following schedule:

<b>July 12, 2010</b>	<p>BANA shall substantially complete production of documents from seven custodians.</p> <p>Plaintiffs shall substantially complete document production for sixteen percent of their custodians.</p>
<b>July 19, 2010</b>	<p>BANA shall substantially complete production of documents from seven custodians.</p> <p>Plaintiffs shall substantially complete document production for sixteen percent of their custodians.</p>
<b>July 26, 2010</b>	<p>BANA shall substantially complete production of documents from seven custodians.</p> <p>Plaintiffs shall substantially complete document production for seventeen percent of their custodians.</p>
<b>August 2, 2010</b>	<p>BANA shall substantially complete production of documents from nine custodians.</p> <p>Plaintiffs shall substantially complete document production for seventeen percent of their custodians.</p>
<b>August 9, 2010</b>	<p>BANA shall substantially complete production of documents from nine custodians.</p> <p>Plaintiffs shall substantially complete document production for seventeen percent of their custodians.</p>
<b>August 16, 2010</b>	<p>The parties shall substantially complete their entire document productions in response to the Initial Requests for Production.</p>

4. All other pretrial deadlines contained in MDL Order Number 16 [DE 76] remain in full force and effect.

DONE and ORDERED in Chambers in Miami, Florida this \_\_\_ day of \_\_\_, 2010.

\_\_\_\_\_  
 THE HONORABLE ALAN S. GOLD  
 UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 09-MD-2106-CIV-GOLD/BANDSTRA

In re:

FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION

Debtors.

---

AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Chapter 7 Trustee's Motion for Brief Excusal of Compliance with Second Amended Order Resetting Certain Pretrial Deadlines, Referring Discovery Motions, Directing Parties to Mediation, and Establishing Pretrial Dates and Procedures has been furnished by the Court's CM/ECF system or U.S. Mail to the persons listed on the attached Service List on this 13<sup>th</sup> day of July, 2010.

/s/ Susan H. Sharp

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO 09-MD-02106-CIV-GOLD/BANDSTRA**

**IN RE: FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION**

**MDL No. 2106**

This document relates to 09-23835-CIV-  
GOLD/BANDSTRA.

---

**AMENDED JOINT MOTION TO ADD PLAINTIFFS TO THE ACTION**

Plaintiffs and Defendants submit this Amended Joint Motion, which supersedes the prior motion filed on July 10, 2010,<sup>1</sup> to add as plaintiffs to this action Sola Ltd, Solus Core Opportunities Master Fund Ltd and Caspian Solitude Master Fund, L.P., and in support thereof, state as follows.

WHEREAS, Sola Ltd, Solus Core Opportunities Master Fund Ltd and Caspian Solitude Master Fund, L.P. wish to join in the claims asserted by the Plaintiffs in the Second Amended Complaint [D.E. 15] filed on January 15, 2010; and

WHEREAS, Defendants, while not conceding or admitting in any way that the claims of Sola Ltd, Solus Core Opportunities Master Fund Ltd and Caspian Solitude Master Fund, L.P. or any of the other Plaintiffs are meritorious, nonetheless agree to the addition of Sola Ltd, Solus Core Opportunities Master Fund Ltd and Caspian Solitude Master Fund, L.P. as plaintiffs to this action pursuant to the following terms.

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<sup>1</sup> The parties submit this Amended Joint Motion to correct an inadvertent error in identifying the name of one new plaintiff. [D.E. 95]. Solus Core Opportunities Master Fund Ltd was incorrectly listed as Solus Core Opportunities Fund Ltd.

NOW, THEREFORE, the parties hereby respectfully request that this Court approve the following terms agreed to by the parties in this action:

1. Sola Ltd, Solus Core Opportunities Master Fund Ltd and Caspian Solitude Master Fund, L.P. will be added to this action without the need of filing a separate complaint.

2. Sola Ltd, Solus Core Opportunities Master Fund Ltd and Caspian Solitude Master Fund, L.P. shall be bound by all existing case deadlines.

3. Sola Ltd, Solus Core Opportunities Master Fund Ltd and Caspian Solitude Master Fund, L.P. shall be bound by Amended MDL Order Number Eighteen Granting in Part and Denying in Part Motions to Dismiss [D.E. 108].

4. Sola Ltd, Solus Core Opportunities Master Fund Ltd and Caspian Solitude Master Fund, L.P. shall file Corporate Disclosure Statements pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Initial Disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, and written responses to all outstanding discovery requests within 14 days of entry of an order adding them to this action.

Respectfully submitted,

Dated: July 14, 2010

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on July 14, 2010, a copy of the foregoing **AMENDED JOINT MOTION TO ADD PLAINTIFFS TO THE ACTION** was filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically the Notice of Electronic Filing.

By: /s/ Lorenz Michel Prüss

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**CASE NO 09-MD-02106-CIV-GOLD/BANDSTRA**

**IN RE: FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION**

**MDL No. 2106**

This document relates to 09-23835-CIV-  
GOLD/BANDSTRA.

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**[PROPOSED] ORDER GRANTING AMENDED JOINT MOTION TO ADD  
ADDITIONAL PLAINTIFFS TO THE ACTION**

THIS CAUSE is before the Court on the Amended Joint Motion to Add Additional Plaintiffs to the Action submitted by Plaintiffs and Defendants. For the reasons set forth in the Motion, it is hereby

ORDERED AND ADJUDGED that

1. The Motion is GRANTED.
2. Sola Ltd, Solus Core Opportunities Master Fund Ltd and Caspian Solitude Master Fund, L.P. are hereby added as plaintiffs to this action and join in the claims asserted by the Plaintiffs in the Second Amended Complaint [D.E. 15] filed January 15, 2010 without the need of filing a separate complaint.
3. Sola Ltd, Solus Core Opportunities Master Fund Ltd and Caspian Solitude Master Fund, L.P. shall be bound by all existing case deadlines.
4. Sola Ltd, Solus Core Opportunities Master Fund Ltd and Caspian Solitude Master Fund, L.P. shall be bound by Amended MDL Order Number Eighteen Granting in Part and Denying in Part Motions to Dismiss [D.E. 108].

5. Sola Ltd, Solus Core Opportunities Master Fund Ltd and Caspian Solitude Master Fund, L.P. shall file Corporate Disclosure Statements pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Initial Disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, and written responses to all outstanding discovery requests within 14 days of entry of this Order.

DONE AND ORDERED in Chambers at Miami, Florida, this \_\_\_ day of July, 2010.

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THE HONORABLE ALAN S. GOLD  
UNITED STATES DISTRICT COURT JUDGE

cc: Magistrate Judge Bandstra  
All Counsel of Record

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO 09-MD-02106-CIV-GOLD/BANDSTRA

IN RE: FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION

MDL No. 2106

*This document relates to all actions.*

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**MDL ORDER NUMBER 23<sup>1</sup>; GRANTING JOINT MOTION FOR EXTENSION  
OF TIME TO COMPLETE DISCOVERY [DE 97]; SETTING TELEPHONE STATUS  
CONFERENCE ON CHAPTER 7 TRUSTEE'S DISCOVERY MOTION [DE 96]**

THIS CAUSE is before the Court upon a Joint Motion for Extension of Time **[DE 97]** and the Chapter 7 Trustee's Motion to be Excused from Complying with this Court's Second Amended Scheduling Order **[DE 96]**. Having considered the motions, the record, and being otherwise duly advised, it is hereby ORDERED AND ADJUDGED that:

1. The Joint Motion **[DE 97]** is GRANTED.
  - a. The date for completing document production in response to Initial Requests for Production in Case Nos.: 09-CV-23835 and 10-CV-20236 is hereby EXTENDED from July 12, 2010 until **Monday, August 16, 2010**.
  - b. The parties shall commence rolling document production in response to Initial Requests for Production on July 12, 2010 in accordance with the following schedule:
    - i. By July 19, 2010, Bank of America ("BANA") shall substantially complete production of documents from seven custodians and

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<sup>1</sup> Although not labeled as such, MDL Order Numbers 21 and 22 appear at Docket Entries 91 and 94, respectively.

Plaintiffs shall substantially complete document production for sixteen percent of their custodians.

- ii. By July 26, 2010, BANA shall substantially complete production of documents from seven custodians, and Plaintiffs shall substantially complete document production for seventeen percent of their custodians.
- iii. By August 2, 2010, BANA shall substantially complete production of documents from nine custodians and Plaintiffs shall substantially complete document production for seventeen percent of their custodians.
- iv. By August 9, 2010, BANA shall substantially complete production of documents from nine custodians and Plaintiffs shall substantially complete document production for seventeen percent of their custodians.
- v. By August 16, 2010, the parties shall substantially complete their entire document productions in response to the Initial Requests for Production.


2. A telephonic status conference on the Chapter 7 Trustee's Discovery Motion **[DE 96]** is HEREBY SET before the Honorable Alan S. Gold, at the United States District Court, Courtroom 11-1, Eleventh Floor, 400 North Miami Avenue, Miami, Florida, on **Tuesday, July 20, 2010 at 11:00 a.m.** **All parties shall call 1-888.684.8852 five minutes before the scheduled start time. Refer to access code 8321924 and security code 5050. Please be prompt.**

a. Any party opposing the Chapter 7 Trustee's Discovery Motion **[DE 96]**

shall have until **Monday July 19, 2010 at 12:00 noon.** to respond.

Failure to respond will be construed as a waiver of any objections to the relief requested. No replies will be permitted.

DONE and ORDERED IN CHAMBERS at Miami, Florida this 15th day of July,  
2010.

  
\_\_\_\_\_  
THE HONORABLE ALAN S. GOLD  
UNITED STATES DISTRICT JUDGE

cc: Magistrate Judge Bandstra  
Counsel of record



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**MASTER CASE NO. 09-2106-MD-GOLD/BANDSTRA**

In re:

FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION

MDL NO. 2106

This document relates to:

09-CV-21879-ASG

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**JOINT MOTION FOR EXTENSION OF CERTAIN PRE-TRIAL DEADLINES**

Plaintiff in *Fontainebleau Las Vegas LLC v. Bank of America, N.A., et al.*, and defendants Bank of America, N.A. (“BANA”) and Merrill Lynch Capital Corporation (“Merrill”) submit this joint motion respectfully requesting that the Court modify certain pre-trial deadlines.

WHEREAS, on January 8, 2010, the Court issued MDL Order Number 3 [DE 10] (the “Scheduling Order”), which established certain pre-trial deadlines; and

WHEREAS, on May 24, 2010, the Court issued MDL Order Number 16 [DE 76] (“Amended Scheduling Order”), which revised the pre-trial deadlines established in the Scheduling Order;

WHEREAS, the parties reached an agreement on search terms and custodians for their responses to the Initial Requests for Production, and BANA and Merrill have represented that they are conducting an extensive search for and review of thousands of potentially responsive documents from more than 40 custodians; and

WHEREAS, counsel for plaintiff informed BANA and Merrill on July 12, 2010 that it is unable to produce documents in response to defendants’ requests because of the Chapter 7

Trustee's recent appointment, and that it intends file a motion with this Court seeking a conference concerning among other things, its production of documents;

NOW, THEREFORE, the undersigned parties hereby respectfully request that this Court approve the following extensions to the deadlines set forth in the Amended Scheduling Order:

1. The Amended Scheduling Order currently provides that the deadline for completion of document productions in response to Initial Requests for Production is July 12, 2010. Movants respectfully request that BANA and Merrill's date for completing document production be extended to and including the later of (a) Monday, August 16, 2010, or (b) such other date as this Court may set for plaintiff to complete its production of documents.

Dated: July 15, 2010

Respectfully submitted,

By: /s/ Craig V. Rasile

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing document was filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service list either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically the Notice of Electronic Filing.

Dated: July 15, 2010

By: /s Craig V. Rasile  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

MASTER CASE NO. 09-2106-MD-GOLD/BANDSTRA

In re:

FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION

MDL NO. 2106

This document relates to:

09-CV-23835-ASG  
10-CV-20236-ASG

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**[PROPOSED] ORDER EXTENDING  
CERTAIN PRE-TRIAL DEADLINES**

THIS MATTER came before the Court for consideration upon the Joint Motion for Extension of Certain Pretrial Deadlines [DE \_\_] (the "Motion") filed by Plaintiffs in *ACP Master, Ltd. v. Bank of America, NA.*, 09-CV-08064 (S.D.N.Y.) and *Avenue CLO Fund, Ltd. v. Bank of America, NA.*, 09-CV-1047 (D. Nev.) and Defendants Bank of America, N.A. and Merrill Lynch Capital Corporation. The Court, having considered the Motion, the record, and the representations of counsel, finds good cause to grant the Motion.

Accordingly, it is hereby ORDERED AND ADJUDGED that:

1. The Motion [DE \_\_] is GRANTED.
2. The date for completing document production in response to Initial Requests for Production is extended from July 12, 2010 to and including the later of (a) Monday, August 16, 2010, or (b) the date plaintiff completes its document production.
3. All other pretrial deadlines contained in MDL Order Number 16 [DE 76] remain in full force and effect.

DONE and ORDERED in Chambers in Miami, Florida this \_\_\_ day of \_\_\_, 2010.

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THE HONORABLE ALAN S. GOLD  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

MASTER CASE NO. 09-2106-MD-GOLD/BANDSTRA

In re:

FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION

MDL NO. 2106

This document relates to:

All Actions.

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**CONFIDENTIALITY STIPULATION AND PROTECTIVE ORDER**

**WHEREAS**, the parties to *Fontainebleau Las Vegas, LLC v. Bank of America, N.A.*, et al., Case No. 1:09-cv-21879-ASG (S.D. Fla.); and the parties and former parties to *Avenue CLO Fund, Ltd.*, et al. v. *Bank of America, N.A.*, et al., Case No. 1:09-cv-23835-ASG (S.D. Fla.); and *ACP Master, Ltd.*, et ano. v. *Bank of America, N.A.*, et al., Case No. 1:10-cv-20236-ASG (S.D. Fla.), all of which have been consolidated for pre-trial purposes under the caption *In re Fontainebleau Las Vegas Contract Litigation*, MDL No. 2106 (together, the “Parties,” or individually, a “Party”), seek to enter into a confidentiality stipulation and protective order to govern discovery and the use of discoverable materials or information in the above-captioned cases and in any other related proceeding hereafter transferred to and consolidated therewith (collectively, the “MDL Actions”);



**WHEREAS**, the Parties have conferred and agree that the MDL Actions may require the discovery, production, disclosure, and use of certain documents, information and other materials that contain information that is confidential, proprietary or otherwise inappropriate for public disclosure, and, in certain instances, disclosure directly to the Parties; and

**WHEREAS**, the Parties desire to be protected against potential disadvantage, financial loss, hardship and/or substantial prejudice that may result from the unauthorized or inappropriate disclosure of confidential proprietary documents, or other information, or materials;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between the Parties through their undersigned counsel, and;

**IT IS HEREBY ORDERED** that this Confidentiality Stipulation and Protective Order (the “Order”) shall govern the use and handling of documents, including deposition testimony and transcripts, deposition notices and exhibits, interrogatories and interrogatory responses, requests for admissions and responses, and any other information or material provided, disclosed, produced, given, or exchanged by, between, and among the parties and any non-parties in connection with proceedings in the MDL Actions (such information or material hereinafter referred to as “Covered Material”) and any briefs, affidavits or other court documents containing or otherwise disclosing such Covered Material:

1. Any Party or non-party to the MDL Actions disclosing, producing, giving or exchanging any documents, information or material in connection with proceedings in the MDL Actions, or whose documents, information, or material is being disclosed, produced, given, or exchanged by another Party or non-party in connection with the MDL Actions (the “Disclosing Party”), may designate any Covered Material as “Confidential” under the terms of this Order if such party in good faith reasonably believes that such Covered Material contains confidential,

proprietary or commercially or personally sensitive information that requires the protections provided in this Order (“Confidential Information”).

2. Any Disclosing Party may designate any Covered Material as “Highly Confidential” under the terms of this Order if such party in good faith reasonably believes that such Covered Material consists of highly sensitive information, the disclosure of which to the adverse party, even subject to the terms governing Confidential Information under this Order, is substantially likely to cause competitive business injury (“Highly Confidential Information”); provided, however, that only that portion of Covered Material that contains Highly Confidential Information shall be designated Highly Confidential.

3. Nothing herein precludes any Party from challenging a designation of Covered Material as Confidential or Highly Confidential, or constitutes an acknowledgement that any Covered Material or category of Covered Material (including those set forth above) are discoverable or appropriate for designation as Confidential or Highly Confidential. If any Party objects to or disagrees with a Disclosing Party’s designation of Covered Material as Confidential or Highly Confidential, they shall confer with the Disclosing Party and the parties shall attempt to resolve the objection or disagreement. To the extent the parties are not able to resolve any objection or disagreement, the provisions of paragraph 23 of this Order will apply; provided, however, that it is contemplated that every effort shall be made to resolve a dispute of a designation as Confidential or Highly Confidential within two (2) business days.

4. The designation by any Disclosing Party of Covered Material as Confidential or Highly Confidential shall constitute a representation that such Confidential Information has been reviewed by an attorney (which, for purposes of this paragraph, includes contract attorneys reviewing documents under the supervision of outside counsel) for the Disclosing Party and that

there is a reasonable good-faith basis for such designation.

5. For the purposes of this Order, any Disclosing Party may apply, upon notice, for an order to supplement the foregoing categories of Confidential or Highly Confidential information.

6. Covered Material, or information contained therein or derived therefrom, shall be used solely for prosecution and/or defense of the MDL Actions or any appeals therefrom, and shall not be used for any other purpose, including, without limitation, any business or commercial purposes or any other litigation or proceeding.

7. The designation of Covered Material as Confidential or Highly Confidential for purposes of this Order shall be made in the following manner by any Disclosing Party:

(a) For documents or other materials (apart from depositions or other pretrial testimony), by affixing the legend "Confidential" or "Highly Confidential" to each page containing any Confidential or Highly Confidential information; provided that the failure to designate a document (or a portion of a document) as Confidential or Highly Confidential shall not constitute a waiver of such claim, and a Disclosing Party may so designate a document thereafter by providing written notice to all other parties together with properly designated copies of said document within five (5) business days of becoming aware of such failure to designate, with the effect that such document is thereafter (including previously produced copies) subject to the protections of this Order. In the case of Confidential or Highly Confidential documents or materials that are inadvertently produced without the appropriate designation, but that were otherwise intended to be produced, the Disclosing Party shall deliver to each party to whom the Confidential or Highly Confidential documents or materials were inadvertently produced copies of the Confidential or Highly Confidential documents or material

containing the appropriate designation and each such party shall return or destroy the Confidential or Highly Confidential documents or materials that were produced without the appropriate designation;

(b) For depositions or other pretrial testimony, (i) by a statement on the record, by counsel, at the time of such disclosure; or (ii) by written notice, sent to all parties within ten (10) business days after receiving a copy of the final certified transcript thereof, and in both of the foregoing instances, by directing the court reporter that the appropriate confidentiality legend be affixed to all pages of the original and all copies of the transcript containing any Confidential or Highly Confidential information. Until expiration of the ten (10) business day period, all deposition testimony shall be deemed Confidential and treated as if so designated. The Parties may modify this procedure for any particular deposition, through agreement on the record at such deposition, without further order of the Court; and

(c) For Covered Material that is disclosed or produced in a non-paper medium (e.g., videotape, DVD, CD, audiotape, computer disks, etc.), by affixing the legend “Confidential” or “Highly Confidential” on the medium, if possible, and its container, if any, so as to clearly give notice that the medium contains Confidential and/or Highly Confidential information. Documents produced in PDF or TIFF image format on a CD-ROM or other non-paper medium shall be marked in the manner provided for in paragraph 7(a) above.

8. Except as specifically provided for in this Order or subsequent Court orders or stipulations among the Parties (and the relevant non-party if the Confidential information in question was produced by a non-party), Covered Material produced in the MDL Actions and designated Confidential may be disclosed, summarized, described, characterized or otherwise communicated or made available in whole or in part only to the following persons:

(a) Outside counsel for the Parties in the MDL Actions, and regular and temporary employees, including clerical, paralegal and secretarial staff, and service vendors of such counsel (including outside copying and litigation support services including, without limitation, contract attorneys) assisting in the conduct of the MDL Actions for use in accordance with this Order;

(b) The parties to the MDL Actions, which for any Party that is an entity means any of its current directors, officers, in-house counsel, employees and general or limited partners who are actively participating in or assisting those parties in the MDL Actions;

(c) Experts, advisors, or consultants (together with their staff) assisting the Parties or their counsel in the MDL Actions; provided that any report created by such expert, advisor or consultant relying on or incorporating Confidential Information, in whole or in part, shall be designated Confidential;

(d) Any person indicated on the face of a document to be the author, addressee, or a copy recipient of the document, or as to whom there has been deposition or trial testimony that the person was the author or a recipient of the document;

(e) Subject to and in accordance with paragraph 9, witnesses or deponents and their counsel, during the course of and, to the extent necessary, in preparation for depositions or testimony in the MDL Actions; provided, however, that no copies or notes relating to the Confidential Information shall be made by such person;

(f) The Court and its employees; and

(g) Court reporters employed in connection with the MDL Actions.

9. Except as specifically provided for in this Order or subsequent Court orders or stipulations among the Parties (and the relevant non-party if the Highly Confidential information in question was produced by a non-party), Covered Material produced in the MDL Actions and designated Highly Confidential may be disclosed, summarized, described, characterized or otherwise communicated or made available in whole or in part only to the following persons:

(a) Outside counsel for the Parties in the MDL Actions, and regular and temporary employees, including clerical, paralegal and secretarial staff, and service vendors of such counsel (including outside copying and litigation support services including, without limitation, contract attorneys) assisting in the conduct of the MDL Actions for use in accordance with this Order;

(b) Experts, advisors, or consultants (together with their staff) assisting the Parties or their counsel in the MDL Actions; provided that any report created by such expert, advisors or consultant relying on or incorporating Highly Confidential Information, in whole or in part, shall be designated Highly Confidential;

(c) Any person indicated on the face of a document to be the author, addressee, or a copy recipient of the document, or as to whom there has been deposition or trial testimony that the person was the author or a recipient of the document;

(d) The Court and its employees; and

(e) Court reporters employed in connection with the MDL Actions;

10. Persons identified in paragraphs 8(c), 8(e), and 9(b) above who do not fall within the descriptions in paragraph 8(b) and to whom Confidential and/or Highly Confidential Information is disclosed shall prior to such disclosure be required to sign an undertaking (a “Confidentiality Undertaking”) in the form attached as Exhibit A hereto, agreeing in writing to

be bound by the terms and conditions of this Order, consenting to the jurisdiction of the Court for purposes of the enforcement of this Order, and agreeing not to disclose or use any Confidential and/or Highly Confidential information in a manner or for purposes other than those permitted hereunder; provided, however, that a non-party witness to whom Confidential and/or Highly Confidential information is first disclosed at deposition need not be required to sign a copy of the Confidentiality Undertaking in order to be bound by the terms hereof. Showing a Confidential or Highly Confidential document to a deponent does not waive the confidentiality protections otherwise afforded that document. The attorneys of record making Confidential and/or Highly Confidential information available to any person required to execute a copy of the Confidentiality Undertaking pursuant to this paragraph shall be responsible for obtaining such signed undertaking and for maintaining all original, executed copies of such Confidentiality Undertakings. Copies of any executed Confidentiality Undertaking shall be disclosed to counsel for the Disclosing Party upon agreement of the parties, which agreement shall not be unreasonably withheld, or upon further Court order. The requirements of this provision are not applicable to non-testifying, consulting experts.

11. To the extent non-parties are authorized by Court order or consent of all Parties hereto to attend a deposition or otherwise participate in discovery in this Action that may involve Confidential and/or Highly Confidential Information, such non-party must sign a Confidentiality Undertaking in the form attached as Exhibit A hereto, agreeing in writing to be bound by the terms and conditions of this Order, consenting to the jurisdiction of the Court for purposes of the enforcement of this Order, and agreeing not to disclose or use any Confidential and/or Highly Confidential Information in a manner or for purposes other than those permitted hereunder.



12. Every person given access to Confidential or Highly Confidential Information shall be advised that the information is being disclosed pursuant and subject to the terms of this Order and may not be disclosed other than pursuant to the terms hereof.

13. Any Party seeking discovery from a non-party shall provide a copy of this Order to the non-party and notify the non-party that the protections of this Order are available to such non-party. Any non-party from whom discovery is sought in the MDL Actions may obtain the protection of this Order by signing and providing to outside counsel for the party seeking the discovery a certification and agreement, substantially in the form attached hereto as Exhibit B, stating that the non-party has read the Order, understands the terms of the Order, agrees to be fully bound by the Order, submits to the jurisdiction of this Court for purposes of enforcement of the Order, and understands that any violation of the terms of the Order shall be punishable by relief deemed appropriate by the Court.

14. Counsel for any Disclosing Party shall have the right to exclude from depositions any person who is not authorized by this Order to receive documents or information designated Confidential or Highly Confidential. Such right of exclusion shall be applicable only during periods of examination or testimony directed to or comprising information which is Confidential or Highly Confidential.

15. Counsel for any party wishing to file documents of any nature, including briefs, which have been designated as Confidential or Highly Confidential, or that would disclose information from a document that has either been designated as Confidential or Highly Confidential, or would otherwise be required to be filed under seal, shall move to file such documents with the Court under seal and, providing that the Court approves the motion to file under seal, a statement shall be endorsed on the cover:



**“CONFIDENTIAL – SUBJECT TO COURT ORDER”**

It is understood that all such materials so filed shall be maintained by the Clerk separate from public records and shall be released only upon further Order of this Court in accordance with Local Rule 5.4. Upon the conclusion of any of the MDL Actions, any party may seek the return or destruction of documents it has filed under seal pursuant to this paragraph. Any such documents shall remain subject to the provisions of this Order.

16. Entering into, agreeing to and/or producing or receiving Confidential or Highly Confidential Information pursuant to or otherwise complying with the terms of this Order shall not:

(a) Operate as an admission that any discovery is appropriate or warranted in the MDL Actions, or an admission or waiver as to the proper scope of discovery in the MDL Actions;

(b) Operate as an admission that any document designated Confidential or Highly Confidential contains or reflects trade secrets or any other type of Confidential Information;

(c) Prejudice in any way the rights of any Party or non-party to object to the production of documents they consider not subject to discovery, or operate as an admission by any Party or non-party that the restrictions and procedures set forth herein constitute adequate protection for any particular information deemed by any Party to be Confidential or Highly Confidential Information;

(d) Prevent the Parties to this Order from agreeing to alter or waive the provisions or protections provided herein with respect to any particular Covered Material;

(e) Prejudice in any way the rights of any Party to object to the authenticity or admissibility into evidence of any document, testimony or other evidence subject to this Order;

(f) Prejudice in any way the right of any Party or non-party to seek a determination by the Court whether any Confidential or Highly Confidential Information should be subject to the terms of this Order;

(g) Prejudice in any way the right of any Party or non-party to petition the Court for a further protective order relating to any purportedly confidential information;

(h) Waive, supersede, or amend the provisions of any prior confidentiality agreement between and/or among defendants, any of the Parties or non-parties, and/or any other person; and

(i) Be construed or operate as a waiver of any claim of privilege or immunity with respect to the production of any document.

(j) This Order has no effect upon, and shall not apply to, the Parties' or non-parties' use of their own Confidential or Highly Confidential Information for any purpose. Nothing herein shall prevent or in any way limit disclosure, use or dissemination of any information or documents that are in the public domain through no violation of this Order. The following shall not constitute Confidential documents or material for purposes of this Order: (i) information that is or becomes generally available to the public other than as a result of a violation of this Order; (ii) information that was already in the files of a Party, other than the Disclosing Party, on a non-confidential basis prior to being produced to such Party; (iii) information that becomes available to any Party on a non-confidential basis if the source was not, to the best of the receiving Party's knowledge, subject to any prohibition against transmitting the information to it; or (iv) information independently developed by any Party, other than the Disclosing Party, without use of Confidential documents or material. Nothing herein shall impose any restriction on the use or disclosure by a party of documents, materials or information

designated as “Confidential” or “Highly Confidential” that have been obtained lawfully by such party independently of the discovery proceedings in the MDL Actions.

17. The production, transmission, or disclosure of any material that is arguably or actually subject to a claim of privilege or of protection as trial preparation material (“Privileged Covered Material”) shall not prejudice, or constitute a waiver (either as to the specific document disclosed or as to other documents or communications concerning the same subject matter) of, or estop a party from asserting, any claim of privilege, work product or other ground for withholding production of that material. This “non-waiver” provision shall be construed in a manner consistent with Federal Rule of Evidence 502(b). If Privileged Covered Material has been produced, transmitted, or disclosed, the party making the claim of privilege, work product or other ground for withholding may notify the receiving party and state the basis for the claim. After being notified, the receiving Party (i) must promptly return or destroy the Privileged Covered Material and any copies (paper or electronic) the receiving Party has of it and (ii) may not make any disclosure of the Privileged Covered Material or use the Privileged Covered Material, or information gleaned from Privileged Covered Material, in connection with the MDL Actions or for any other purpose until the claim is resolved (even if such a disclosure were otherwise permissible hereunder); provided, however, that a receiving Party may retain one copy of the Privileged Covered Material solely for purposes of submitting the Privileged Covered Material to the Court under seal for a determination of the claim of privilege. If a receiving Party disclosed the Privileged Covered Material before being notified, the receiving Party must make reasonable steps to retrieve it. This provision is intended to facilitate the production of electronic or paper records. No Party or non-party, by virtue of agreeing to this paragraph, is assuming any obligation, or in any way undertaking, to produce privileged matter, and no Party

or non-party is agreeing to waive any applicable privilege.

18. In the event additional Parties join or intervene in any of the MDL Actions, including proceedings consolidated with the existing MDL Actions after the entry of this Order, such Parties shall not have access to Confidential or Highly Confidential Information until counsel for each newly joined or intervening party has executed a Confidentiality Undertaking evidencing the newly joined or intervening party's intent to be bound by this Order, which shall be filed with the Court promptly.

19. The Parties agree to be bound by the terms of this Order pending the entry by the Court of this Order and any violation of its terms shall be subject to the same sanctions and penalties, as if this Order had been entered by the Court.

20. The attorneys of record shall take reasonable measures, consistent with this Order, to prevent the unauthorized disclosure or use of Confidential or Highly Confidential information and are responsible for employing reasonable measures to control the duplication of, access to, and distribution of, Confidential and Highly Confidential information.

21. The provisions of this Order shall, absent written permission of the Disclosing Party or further order of the Court, continue to be binding throughout and after the conclusion of any and all of the MDL Actions, including, without limitation, any appeals therefrom. Within ninety (90) days after receiving notice of the entry of an order, judgment or decree finally disposing of any of the MDL Actions, including the exhaustion of all possible appeals, all persons having received Confidential or Highly Confidential Information shall either return such material and all copies thereof (including summaries and excerpts) to counsel for the Disclosing Party or destroy all such Confidential or Highly Confidential Information, and, in either case, certify that fact to counsel for the Producing Party. Outside counsel for the Parties shall be

entitled to retain court papers, depositions and trial transcripts and attorney work product (including discovery material containing Confidential or Highly Confidential Information); provided, that such outside counsel, and employees of such outside counsel, shall maintain the confidentiality thereof and shall not disclose such court papers or attorney work product to any person except pursuant to court order or agreement by the Disclosing Party.

22. After the termination of any or all of the MDL Actions, this Order shall continue to be binding upon the Parties hereto, and upon all persons to whom Confidential or Highly Confidential Information has been disclosed or communicated, and this Court shall retain jurisdiction over all such Parties and persons for enforcement of its provisions.

23. During the pendency of the MDL Actions, any party objecting to the designation of any Covered Material or testimony as Confidential or Highly Confidential or the application of any provision of this Order may, after making a good-faith effort to resolve any such objection with opposing counsel, move promptly for an order vacating the designation or the application of said provision. While such an application is pending, the Covered Material or testimony in question shall continue to be treated as Confidential or Highly Confidential pursuant to this Order. Nothing in this Order is intended to shift the burden of establishing confidentiality which, at all times, remains upon the Disclosing Party.

24. Counsel shall confer on such procedures that are necessary to protect the confidentiality of any documents, information and transcripts used in the course of any court proceedings. In the event that any Confidential or Highly Confidential information is used in any court proceeding in the MDL Actions or any appeal therefrom, such Confidential or Highly Confidential information shall not lose its status as Confidential or Highly Confidential information through such use.

25. If any person receiving documents covered by this Order (the "Receiver") is subpoenaed or receives other compulsory process in another action or proceeding or is served with a document demand, and such subpoena, process or document demand seeks Covered Material which was produced or designated as Confidential or Highly Confidential by someone other than the Receiver, the Receiver shall (i) give written notice by e-mail, hand or facsimile transmission within five (5) business days of receipt of such subpoena, process or document demand to those who produced or designated the information Confidential or Highly Confidential, and which notice shall include or attach a complete copy of the subpoena or other discovery request, unless prohibited by law, and (ii) refrain from producing any Covered Material that has been designated Confidential or Highly Confidential in response to such a subpoena or document demand until the earlier of (a) receipt of written notice from the Disclosing Party that such party does not object to production of the designated Covered Material, or (b) resolution of any objection asserted by the Disclosing Party either by agreement or by final order of the Court with jurisdiction over the objection of the Disclosing Party, unless prohibited by law; provided, however, that the burden of opposing the enforcement of the subpoena or document demand shall fall solely upon the party who produced or designated the Confidential or Highly Confidential information, and unless the party who produced or designated the Confidential or Highly Confidential Information submits a timely objection seeking an order that the subpoena or document demand not be complied with, and serves such objection upon the Receiver by e-mail, hand or facsimile prior to production pursuant to the subpoena or document demand, the Receiver shall be permitted without violating this Order to produce documents responsive to the subpoena or document demand on the response date. Compliance by the Receiver with any order directing production pursuant to the subpoena or

document demand of any Confidential or Highly Confidential Information shall not constitute a violation of this Order. Nothing herein shall be construed as requiring the Receiver or anyone else covered by this Order to challenge or appeal any order directing production of Confidential or Highly Confidential Information covered by this Order, or to subject himself or itself to any penalties for non-compliance with a legal process or order, or to seek any relief from this Court.

26. Nothing in this Order shall preclude any Party from seeking judicial relief, upon notice to the other Parties, with regard to any provision hereof.

27. This agreement may be executed in counterparts each of which shall be deemed an original, but all of which shall constitute one and the same agreement.



Dated: July \_\_, 2010

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing document was filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service list either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically the Notice of Electronic Filing.

Dated: July 15, 2010

By: /s Craig V. Rasile  
Craig V. Rasile

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**EXHIBIT A**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**MASTER CASE NO. 09-2106-MD-GOLD/BANDSTRA**

In re:

FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION

MDL NO. 2106

This document relates to:

All Actions.

\_\_\_\_\_ /

**CERTIFICATION RE: CONFIDENTIAL  
AND HIGHLY CONFIDENTIAL INFORMATION**

I, \_\_\_\_\_, hereby certify (i) my understanding that Covered Material and/or Confidential or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Confidentiality Stipulation and Protective Order (the "Order") entered by the United States District Court, Southern District of Florida, Miami Division in the above-captioned actions, and (ii) that I have read the Order.

I understand the terms of the Order, I agree to be fully bound by the Order, and I hereby submit to the jurisdiction of the United States District Court, Southern District of Florida, Miami Division for purposes of enforcement of the Order. I understand that any violation of the terms of the Order shall be punishable by relief deemed appropriate by the Court.

Signature: \_\_\_\_\_

*Please Print or Type the Following*

Name: \_\_\_\_\_

Title and Affiliation: \_\_\_\_\_

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**EXHIBIT B**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**MASTER CASE NO. 09-2106-MD-GOLD/BANDSTRA**

In re:

FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION

MDL NO. 2106

This document relates to:

All Actions.

\_\_\_\_\_ /

**CERTIFICATION RE: CONFIDENTIAL  
AND HIGHLY CONFIDENTIAL INFORMATION**

I, \_\_\_\_\_, hereby certify, on behalf of \_\_\_\_\_, that  
(i) \_\_\_\_\_ is producing Covered Material and/or Confidential or Highly  
Confidential Information in the above-captioned actions, that (ii) \_\_\_\_\_ seeks to  
obtain the protections provided by the Confidentiality Stipulation and Protective Order (the  
“Order”) entered by the United States District Court, Southern District of Florida, Miami  
Division in the above-captioned action, and (iii) I am authorized to execute this certification on  
\_\_\_\_\_’s behalf.

I hereby further certify that (i) I have read the Order, understand the terms of the Order,  
and agree to be fully bound by the Order, and (ii) \_\_\_\_\_ hereby submit to the  
jurisdiction of the United States District Court, Southern District of Florida, Miami Division for  
purposes of enforcement of the Order. On behalf of \_\_\_\_\_, I further certify my



understanding that any violation of the terms of the Order shall be punishable by relief deemed appropriate by the Court.

Signature: \_\_\_\_\_

*Please Print or Type the Following*

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**CASE NO 09-MD-02106-CIV-GOLD/BANDSTRA**

**IN RE: FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION**

**MDL No. 2106**

This document relates to 09-23835-CIV-  
GOLD/BANDSTRA.

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**ORDER GRANTING UNOPPOSED AMENDED JOINT MOTION TO ADD PLAINTIFFS  
[DE 99] ; DIRECTING CLERK TO CORRECT DOCKETS**

THIS CAUSE is before the Court on the Amended Joint Motion to Add Additional Plaintiffs to the Action submitted by Plaintiffs and Defendants. For the reasons set forth in the Motion, it is hereby

ORDERED AND ADJUDGED that

1. The Motion [DE 99] is GRANTED.
2. Sola Ltd, Solus Core Opportunities Master Fund Ltd and Caspian Solitude Master Fund, L.P. are hereby added as plaintiffs to this action and join in the claims asserted by the Plaintiffs in the Second Amended Complaint [D.E. 15] filed January 15, 2010 without the need of filing a separate complaint.
3. Sola Ltd, Solus Core Opportunities Master Fund Ltd and Caspian Solitude Master Fund, L.P. shall be bound by all existing case deadlines.
4. Sola Ltd, Solus Core Opportunities Master Fund Ltd and Caspian Solitude Master Fund, L.P. shall be bound by Amended MDL Order Number Eighteen Granting in Part and Denying in Part Motions to Dismiss [D.E. 108].
5. Sola Ltd, Solus Core Opportunities Master Fund Ltd and Caspian Solitude Master Fund, L.P. shall file Corporate Disclosure Statements pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Initial Disclosures pursuant to Rule 26(a)(1) of the

Federal Rules of Civil Procedure, and written responses to all outstanding discovery requests within 14 days of entry of this Order.

DONE AND ORDERED in Chambers at Miami, Florida, this 15th day of July, 2010.

  
\_\_\_\_\_  
THE HONORABLE ALAN S. GOLD  
UNITED STATES DISTRICT JUDGE

cc: Magistrate Judge Bandstra  
All Counsel of Record

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

MASTER CASE NO. 09-2106-MD-GOLD/BANDSTRA

In re:

FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION

MDL NO. 2106

This document relates to Case Number:

09-CV-21879-ASG

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**OPPOSITION OF CERTAIN REVOLVING LENDERS TO THE CHAPTER 7  
TRUSTEE'S MOTION FOR AN EXTENSION OF DISCOVERY DEADLINES**

Defendants Barclays Bank PLC, Deutsche Bank Trust Company Americas, JPMorgan Chase Bank, N.A., The Royal Bank of Scotland plc, Sumitomo Mitsui Banking Corporation, Bank of Scotland plc, HSH Nordbank AG, and MB Financial Bank, N.A. (collectively the "Revolving Lender Defendants") by and through their undersigned counsel, hereby submit this memorandum in opposition to the Chapter 7 Trustee's Motion for Brief Excusal of Compliance with Second Amended Order Resetting Certain Pretrial Deadlines, Referring Discovery Motions, Directing Parties To Mediation [DKT #96] (the "Motion for Excusal").

**PRELIMINARY STATEMENT**

The Trustee's Motion for Excusal was filed late in the evening on the Court-ordered due date for document production, after tens of thousands of documents had already been produced by Defendants. The motion asks the Court to excuse Plaintiff Fontainebleau Las Vegas LLC ("Fontainebleau") from complying with the Court's Scheduling Order and to extend for an unspecified period of time Plaintiff's time in which to produce documents. The stated grounds for this belated request are purported difficulties flowing from the fact that Fontainebleau is in

liquidation and has requested and obtained the appointment of a Chapter 7 Trustee. This Court, however, has already admonished Fontainebleau that the appointment of a Chapter 7 Trustee would not relieve it of its obligation to obey Court orders or provide discovery. During an April 16, 2010 teleconference, Fontainebleau argued that it should not be required to negotiate search terms with the other parties or otherwise participate in the discovery process until the Trustee had been appointed. The Court categorically rejected this position and ordered that “[a]ll parties, including Fontainebleau, shall negotiate search terms . . . which search terms will be binding on any Chapter 7 Trustee(s) that may be appointed by the Bankruptcy Court.” Exhibit 1 (the “Search Term Order”).

Nonetheless, Fontainebleau once again raises the previously-rejected contention that it is entitled to special treatment because it is in liquidation and under the control of a Trustee. The Motion for Excusal does not merely ask for additional time to complete the production of documents, to which Defendants would have gladly agreed. In addition to refusing to produce *a single document* by the Court-ordered deadline, Plaintiff states that it does not intend to search for, review and produce documents in the format requested by the Revolving Lender Defendants because “conventional compliance” with the Revolving Lender Defendants’ discovery requests would be too expensive. This position is completely unjustified. Fontainebleau filed this action and, if it plans to prosecute it, it should abide by the Court’s orders and fully participate in the discovery process—including conducting the same searches for and review of responsive documents that Defendants have had to undertake—and produce all responsive documents without further delay.

## BACKGROUND

From the outset of this case, Plaintiff has pursued a strategy of trying to prosecute claims seeking hundreds of millions of dollars in damages without providing any discovery to Defendants. Plaintiff sought and obtained expedited treatment of its Motion for Partial Summary Judgment, filed the day after this lawsuit was commenced. As a result, Defendants were required to respond to that motion without the benefit of any discovery. Following removal of this case from the Bankruptcy Court, this Court denied that motion in an August 26, 2010 Decision, holding that, *inter alia*, Defendants had “plainly demonstrate[d],” even without the benefit of discovery, genuine issues of fact as to whether Fontainebleau had defaulted under the Credit Agreement on which it bases its claims. Following this ruling, Plaintiff on at least three occasions sought to stay or otherwise limit its discovery obligations, so that it would not have to produce documents further evidencing Fontainebleau’s material breach of the Credit Agreement.<sup>1</sup>

The Court rejected these stay requests and on January 8, 2010, issued MDL Order Number 3 (the “Scheduling Order”) which, *inter alia*, established May 13, 2010 as the date for substantial completion of document productions in response to initial requests for production. Fontainebleau then employed another discovery-avoidance maneuver. In a letter to counsel dated March 25, 2010, Fontainebleau suggested that the Scheduling Order’s discovery deadlines be extended by sixty days because it intended to convert the underlying Chapter 11 bankruptcy

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<sup>1</sup> On September 11, 2009, Fontainebleau asked the Court to include language in the Court’s scheduling order allowing Fontainebleau to modify the schedule if it “failed to secure sufficient financing to defray” the costs of discovery. The Court declined to do so. In its motion for certification of interlocutory appeal filed on October 30, 2009, Fontainebleau asked for a stay of discovery. Then, during a scheduling conference on December 4, 2009, Fontainebleau asked for a stay once more. After submission of a joint statement, the Court denied Fontainebleau’s requests for a stay of discovery.

cases to cases under Chapter 7 and have a Chapter 7 trustee appointed. Fontainebleau stated that it was “waiting for instructions from the trustee regarding the timing and manner of document productions in these cases.” *See* Exhibit 2. Subsequently, in early April 2010, Fontainebleau announced that it would not participate in discovery until a trustee was appointed and directed them to do so. In response, Defendants asked the Court to order Fontainebleau to participate in discovery, notwithstanding the pendency of its conversion motion. *See* Exhibit 3 at 3. All parties also asked for an extension of the May 13, 2010 production date to July 12, 2010. *Id.* at 3-5.

On April 12, 2010, the Bankruptcy Court issued a conditional order converting Fontainebleau’s cases to Chapter 7 proceedings and providing for the appointment of a Chapter 7 trustee after a seven-day notice period. During a teleconference with the parties on April 16, 2010, the Court made it clear that Fontainebleau was obligated to participate in discovery in good faith and comply with the Court’s orders regarding discovery. The Court stated that the Chapter 7 trustee was also obligated to comply with the Court’s orders and participate in discovery. On April 19, 2010, the Court issued the Search Term Order providing that “[a]ll parties, including Fontainebleau, shall negotiate search terms . . . which search terms *will be binding on any Chapter 7 Trustee(s) that may be appointed by the Bankruptcy Court.*” Exhibit 1 (emphasis added).<sup>2</sup> On April 20, 2010 Soneet R. Kapila was appointed Chapter 7 trustee for Fontainebleau (the “Trustee”).

Prior to July 12, the Trustee did not seek relief from the Court’s orders regarding discovery or otherwise petition the Court to relieve Fontainebleau of its discovery obligations. Neither Fontainebleau nor the Trustee produced a single document on July 12 as required under

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<sup>2</sup> On May 24, 2010, the Court issued MDL Order Number 16 [DKT # 76] extending the date for production until July 12, 2010. Exhibit 4.

the Scheduling Order, making virtually no effort to comply with the Court's Search Term Order or the Scheduling Order or to participate in the discovery process.<sup>3</sup> Counsel for certain Revolving Lender Defendants had several discussions with counsel for Fontainebleau and the Trustee prior to the July 12 deadline, but Fontainebleau refused to agree that it would search for and produce relevant documents.

On June 29, 2010, Counsel for the Revolving Lender Defendants contacted Fontainebleau and asked that Fontainebleau (i) commit to undertake a rolling production to all parties in this MDL consistent with proposals that have been made during meet and confer teleconferences between the Revolving Lender Defendants and the Term Lender Plaintiffs; or (ii) grant the Revolving Lender Defendants an extension of time to produce documents irrespective of whether other parties in the MDL were willing to grant Fontainebleau an extension. Counsel for Fontainebleau indicated that he would need to confer with others as to the possibility of a rolling production, but felt confident that Fontainebleau was not interested in granting the Revolving Lender Defendants an extension unless Fontainebleau could be assured that all the parties to the MDL would grant Fontainebleau an extension.

On July 8, 2010, counsel for Fontainebleau and the Trustee advised the Revolving Lender Defendants that Fontainebleau would not agree to undertake a rolling production consistent with what all other parties in the MDL had agreed to do. In fact, Fontainebleau made it clear that it

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<sup>3</sup> In light of this Court's Amended MDL Order Number 18 dismissing certain claims previously asserted in this MDL and consequently narrowing the scope of discovery, the parties to this MDL, except Fontainebleau, engaged in a productive meet and confer process. Pursuant to an agreement among the parties, the Revolving Lender Defendants and other MDL parties commenced a substantial rolling production of documents on July 12, 2010, which will be completed in a matter of weeks and no later than August 16, 2010. The Revolving Lender Defendants previously asked Fontainebleau to commit to review and produce documents within this time frame but Fontainebleau has declined to do so, preferring instead to seek an order from the Court relieving them from "conventional compliance with discovery demands."



had not begun to search for responsive documents and had no intention of producing any documents in the format requested by the Revolving Lender Defendants on July 12, in mid-August or, for that matter, *ever*. Instead, counsel for Fontainebleau and the Trustee indicated that they would seek an order from the Court that relieves them of any obligation to participate in “conventional” discovery so that the burden of searching for responsive documents would be imposed upon Defendants. Yet Fontainebleau and the Trustee nevertheless asked the Revolving Lender Defendants for an extension of Fontainebleau’s time to produce. Given that Fontainebleau had clearly indicated that it was unwilling to commit to participate in discovery, the request was denied.<sup>4</sup>

Fontainebleau has also claimed that Fontainebleau’s corporate affiliate, Fontainebleau Resorts, LLC, has asserted a proprietary interest that has somehow hamstrung Fontainebleau’s discovery efforts. However, according to Fontainebleau Resorts, the Trustee is the party that has impeded discovery in this case. After Fontainebleau claimed in its March 25 letter that it could not access many of its documents because certain officers of Fontainebleau Las Vegas were technically employed by Fontainebleau Resorts, *see* Exhibit 2, certain Revolving Lender Defendants issued subpoenas to Fontainebleau Resorts. In a letter dated June 9, 2010, counsel for Fontainebleau Resorts stated:

In order to respond to your subpoenas, Fontainebleau Resorts needs access to their computer servers which house both e-mails and documents. However, because these servers contain information belonging to the debtors or the servers themselves belong to the debtors, the Trustee has either taken possession these [sic] servers or is aware of the servers and will not allow the removal of any information at this time.”

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<sup>4</sup> In its Motion for Excusal, Fontainebleau asserts that until July 12 “the Chapter 7 Trustee has thought a consensual extension was agreeable to all parties.” Motion for Excusal at 6. In light of the facts discussed above, it is not clear how the Trustee could have held such a belief.

Exhibit 5. Fontainebleau Resorts has moved to quash the subpoenas in part because the Trustee “has recently taken possession of the servers” and “the servers have not even been copied yet.”

Exhibit 6 at 2-3. This Court referred Fontainebleau Resorts’ motion to quash to Magistrate Judge Bandstra.

## ARGUMENT

### I. Fontainebleau’s Extension Request Should Be Denied

In its Motion for Excusal, Fontainebleau asks for a unilateral stay relieving Fontainebleau of its discovery obligations in the action it commenced while requiring the Defendants it sued to continue to engage in costly discovery. Respectfully, the Court should deny this request and order Fontainebleau (once again) to properly participate in the discovery process. *See, e.g., Alliance For Global Justice v. District of Columbia*, No. CV.A.01-0811 PLF/JMF, 2005 WL 469593, at \*3 (D.D.C., Feb. 7, 2005) (“[P]laintiffs, represented by sophisticated counsel, surely had to appreciate when they began this lawsuit that they would have to undertake significant discovery obligations. It is simply unfair to allow plaintiffs to walk away from these obligations when it appears that they have information pertinent to the case that they initiated and that defendants must continue to defend.”); *Salinas v. Select Portfolio Servicing, Inc.*, No. 2:05-CV-00975 PGC, 2007 WL 2956329, at \*7 (D. Utah, Oct. 5, 2007) (having initiated a lawsuit against defendants, it is Plaintiffs’ “responsibility to fully prosecute their case and actively participate in discovery, including complying with discovery requests, the Federal Rules of Civil Procedure, and court orders...Defendants are entitled to discover the factual support for the claims against them and to prepare a defense.”).

Throughout this case, Fontainebleau repeatedly has attempted to evade its discovery obligations. Fontainebleau has asked this Court to stay discovery or otherwise limit its discovery

obligations on three separate occasions and was denied each time. Fontainebleau has also argued that it is not required to meet and confer with the parties regarding discovery or agree to use search terms to collect electronic documents. The Court rejected this assertion and on April 19 issued the Search Term Order providing that “[a]ll parties, including Fontainebleau, shall negotiate search terms . . . which search terms *will be binding on any Chapter 7 Trustee(s) that may be appointed by the Bankruptcy Court.*” Exhibit 1 (emphasis added). The clear import of this order is that Fontainebleau was required to work with the parties toward a mutually acceptable list of search terms (or seek Court intervention should that be impossible) and use those search terms to limit the cost of the collection, review and production of responsive documents that Fontainebleau was required to undertake.

Flouting the Court’s directives, Fontainebleau has granted itself a unilateral stay from discovery, refusing to produce a single document on July 12. It appears clear that in the three months after the Court issued its Search Term Order, Fontainebleau has made no attempt to collect and review responsive documents for production.

Fontainebleau’s excuses for non-compliance are unavailing. Fontainebleau argues that it could not comply because the Trustee could not “work out logistic and proprietary issues” relating to an asserted ownership interest by Fontainebleau Resorts in documents in the Trustee’s possession. *See* Motion for Excusal at 3. However, Fontainebleau Resorts asserts that the Trustee, not Fontainebleau Resorts, has made production impossible. Exhibit 5 (Fontainebleau Resorts’ letter dated June 9, 2010, indicating that it could not access its servers because “the Trustee has either taken possession these [sic] servers or is aware of the servers and will not allow the removal of any information at this time.”). Fontainebleau Resorts has moved to quash the subpoena in large part because the Trustee has supposedly not made the servers available to

Fontainebleau Resorts, while the Trustee is arguing that Plaintiff cannot produce documents because Fontainebleau Resorts controls the servers.<sup>5</sup> Fontainebleau has in any event had months to work out any such issues and could and should have done so.

Fontainebleau appears to be engaged in a shell game, attempting to hide documents that show that it defaulted long before the Revolving Lender Defendants' termination of their commitments on April 20, 2009—documents which the Revolving Lender Defendants first expressed a need for over a year ago in connection with Fontainebleau's Motion for Partial Summary Judgment. For its part, Fontainebleau asserts that it cannot produce documents in its possession because some of the individuals who worked on the Fontainebleau Las Vegas project were technically employed by Fontainebleau Resorts rather than Fontainebleau Las Vegas. *See* Exhibit 2. Now that certain of the Revolving Lender Defendants have issued subpoenas to Fontainebleau Resorts,<sup>6</sup> Fontainebleau Resorts claims the Trustee will not allow it to produce documents. It is time for Fontainebleau to conduct an appropriate search pursuant to the discovery protocol, and review and produce the responsive documents in the requested format as is required under Federal Rule of Civil Procedure 34(b)(2)(E)(ii).

Fontainebleau further argues that an extension is appropriate because:

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<sup>5</sup> As noted, this court referred Fontainebleau Resorts' motion to quash to Magistrate Judge Bandstra. Defendants will be responding separately to that motion.

<sup>6</sup> The assertion that Fontainebleau Resorts and Fontainebleau Las Vegas are separate entities is a dubious claim which we understand is currently being litigated in multiple forums. *See CCCS International v. Fontainebleau Las Vegas, LLC*, 2:09-cv-00853-KJD-PAL, at ¶ 5 (D. Nev. May 12, 2009) (“Upon information and belief, Defendant Fontainebleau Resorts, LLC is a parent company, and/or is an alter ego of the Fontainebleau Las Vegas, LLC ...”); Amended Complaint, *Fidelity Nat'l Title Ins. Co. v. Fontainebleau Resorts, LLC*, No. 09-75602-CA-15, at ¶ 15, 18 (Fla. Miami-Dade County Ct. Nov. 16, 2009) (“the assets and management of the various entities have been intermingled, formalities have not been maintained, and the assets have been manipulated by and among the defendants (including undercapitalization) to assist them in evading obligations and debt payments.”).

Discovery will impose substantial expenses and burdens on an extremely limited bankruptcy estate. The Chapter 7 Trustee needs additional time within which to evaluate [sic] estate's causes of action asserted [sic] made in the litigation and to further decide how best to proceed to ensure a maximum recovery of money for distribution to creditors of the debtors.

Motion for Excusal at 5. Fontainebleau concedes that the Trustee was appointed on April 20, 2010. He has had approximately three months to decide whether to voluntarily dismiss Fontainebleau's meritless claims or engage in discovery as is required under the Federal Rules of Civil Procedure. Indeed, he has had three months to seek relief from the Court's Search Term Order or seek some other form of relief from the Court. Instead, while Defendants spent substantial sums of money reviewing and producing documents, Fontainebleau let the July 12 deadline pass without producing a single document and has refused to commit to review and produce documents on any time frame.

Fontainebleau's claim of poverty is also misleading. If the Trustee thinks the case is worth pursuing, he can seek authority from the Bankruptcy Court to spend the money needed to do so. In any event, Fontainebleau's financial situation cannot be used to deprive Defendants of the discovery to which they are entitled in order to defend against the claims that Fontainebleau has chosen to assert. *See In re Lawrence*, 227 B.R. 907, 915 (Bankr. S.D. Fla. 1998) ("The Debtor has an affirmative obligation to participate in discovery in an honest, non-evasive and complete manner."); *see also Antonio-Candelaria v. Gibbs Farms, Inc.*, No. 1:06-CV-39 (WLS), 2008 WL 623211, at \*9 (M.D. Ga., Mar. 4, 2008) ("While the Court recognizes that the Plaintiffs are essentially indigent, they are still bound by the rules and case law that govern the practice and procedure in the federal courts. Plaintiffs have an affirmative obligation under the rules to participate in discovery and not delay discovery.").

## **II. The Court Should Not Shift the Costs of Fontainebleau's Document Search and Production to Defendants**

The Revolving Lender Defendants would have consented to a reasonable extension if Fontainebleau had committed to search for documents pursuant to the agreed upon discovery protocol, review those documents and produce the responsive documents in an appropriate format. However, counsel for Fontainebleau and the Trustee have indicated that Fontainebleau does not intend to engage in such "conventional" discovery. Instead, Fontainebleau has indicated that it intends to seek a Court order that effectively shifts the burdens and costs of Fontainebleau's document search and production to Defendants.

The type of document dump that Fontainebleau has alluded to in discussions with counsel is not sufficient to satisfy Fontainebleau's discovery obligations under the Federal Rules of Civil Procedure. *See, e.g., In re Adelpia Communications Corp.*, 338 B.R. 546, 551 (Bankr. S.D.N.Y. 2005) (refusing to "endorse a method of document production that merely gives the requesting party access to a 'document dump,' with an instruction to the party to 'go fish.'") (citations omitted); *Wagner v. Dryvit Systems, Inc.*, 208 F.R.D. 606, 610 (D. Neb. 2001) ("producing large amounts of documents in no apparent order does not comply with a party's obligations under Rule 34"). A primary purpose of Rule 34(b) is to avoid a scenario in which the requesting party is left to find a "needle in a haystack" where responsive and unresponsive documents are haphazardly mixed together. *In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 351, 364 (N.D. Ill. 2005).

Beyond indicating that it maintained trailers full of documents in the desert, Fontainebleau has not made any concrete proposals relating to the document dump to which they have alluded. Accordingly, the Revolving Lender Defendants reserve the right to submit







**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Opposition of Certain Revolving Lenders to the Chapter 7 Trustee's Motion for an Extension of Discovery Deadlines was furnished via e-mail (where an e-mail address is listed) or First Class U.S. Mail to those on the attached service list on July 19, 2010.

By: /s/ John B. Hutton  
John B. Hutton

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# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO.: 09-MD-2106-CIV-GOLD/MCALILEY

In re:

FONTAINEBLEAU LAS VEGAS CONTRACT  
LITIGATION,

MDL No. 2106

*This document relates to all actions.*

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MDL ORDER NUMBER THIRTEEN: REQUIRING SUBMISSION

THIS CAUSE is before the Court following a telephonic status conference on the Parties' Joint Statement Regarding Search Terms and Pre-Trial Deadlines [DE 59]. For the reasons stated of record, which I incorporate by reference into this Order, it is hereby

ORDERED AND ADJUDGED that:

1. All parties, including Fontainebleau, shall negotiate search terms **no later than Wednesday April 21, 2010 at 10:00 a.m.**, which search terms will be binding on any Chapter 7 Trustee(s) that may be appointed by the Bankruptcy Court.
  - a. Should Fontainebleau refuse to negotiate search terms in good faith, such refusal will be construed as a waiver of any objections Fontainebleau may have to the search terms upon which the remaining parties agree.
2. **No later than Thursday April 22, 2010 at 12:00 p.m.**, the parties shall file a Motion for Extension of Pre-Trial Deadlines specifically identifying the pre-trial deadline modifications the parties are requesting.

DONE AND ORDERED in Chambers at Miami, Florida, this 16 day of April, 2010.

  
\_\_\_\_\_  
THE HONORABLE ALAN S. GOLD  
UNITED STATES DISTRICT COURT JUDGE

cc: Magistrate Judge Bandstra  
All Counsel of Record

**EXHIBIT 2**

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March 25, 2010

By Email

Steven S. Fitzgerald  
Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, New York 10017-3954

Re: In re Fontainebleau Las Vegas Contract Litigation,  
09-MD-02106-CIV-Gold/Bandstra

Dear Steven:

We write in response to your March 17, 2010 letter.

First, we do not represent any of the affiliates listed in your letter in connection with these lawsuits, the Fontainebleau bankruptcy proceedings or generally. However, we have communicated with the debtors' bankruptcy counsel on the issues raised in your letter. We have been advised that the paper and electronic documents potentially relevant to these litigations have been fully preserved both for plaintiff Fontainebleau Las Vegas, LLC, and for the bankrupt affiliates identified in your letter.<sup>1</sup> *See* Ex. A. Subject to the trustee's instructions (see below), we are agreeable to making the non-privileged, responsive documents from these entities available for inspection and copying.

As for the non-bankrupt affiliates listed in your letter -- Fontainebleau Resorts, LLC; Fontainebleau Resorts Holdings, LLC; and Fontainebleau Resort Properties I, LLC -- we are unaware of what (if any) document preservation measures these entities have taken in connection with these litigations or the Fontainebleau bankruptcy proceedings. It is our understanding, however, that each entity has retained Glen Waldman of the Waldman Law Firm in Weston, Florida in connection with the debtors' bankruptcy proceedings. The debtors' counsel has sent

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<sup>1</sup> Such entities are: Fontainebleau Las Vegas Holdings, LLC; Fontainebleau Las Vegas Capital Corp.; Fontainebleau Las Vegas Retail Parent, LLC; Fontainebleau Las Vegas Retail Mezzanine, LLC; Fontainebleau Las Vegas Retail, LLC; and Fontainebleau Las Vegas II, LLC.

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

Steven S. Fitzgerald  
Simpson, Thacher & Bartlett LLP  
March 25, 2010  
Page 2

Mr. Waldman a copy of your letter, and will forward to you any relevant response we receive from him.

Second, we do not represent in these lawsuits, the Fontainebleau bankruptcy proceedings or generally the following non-parties identified in your letter: Turnberry Associates, Turnberry West Construction, Inc., Turnberry Residential Limited Partner, LP, Moelis & Company, LLC ("Moelis"), and Citadel Investment Group, LLP ("Citadel").<sup>2</sup> As such, we are unaware of what (if any) document preservation measures these entities have taken in connection with these litigations or the Fontainebleau bankruptcy proceedings. But we have been advised that the Turnberry entities retained David Reimer of Reimer & Rosenthal in Weston, Florida in connection with the debtors' bankruptcy proceedings. The debtors' counsel has sent Mr. Reimer a copy of your letter, and will forward to you any relevant response we receive from him. We do not know who represents either Moelis or Citadel, but a copy of your letter has been forwarded to their principals.

Third, as we have repeatedly informed you, the debtors have very limited resources remaining. As we also informed you, we anticipate that the debtors' bankruptcy proceedings will be converted to a Chapter 7 and a trustee will be appointed early next month. At that time, it is our understanding that, among other things, the debtors' documents will become the property of the trustee. For these reasons, among others, we are waiting for instructions from the trustee regarding the timing and manner of document productions in these cases. Given that the timing of the trustee's appointment may impact Fontainebleau's completion of document production in these lawsuits, we suggest, subject to the Court's approval, that the parties agree to extending the deadline by 60 days. Please let us know whether you and counsel for the other defendants and term lenders are agreeable to that proposal.

Sincerely,

  
Seth A. Moskowitz

cc: All Counsel of Record

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<sup>2</sup> This firm does represent Turnberry Residential Limited Partner, L.P. ("Turnberry Residential") in an action that is pending in New York Supreme Court, with a jurisdictional appeal pending in the Second Circuit Court of Appeals. Turnberry Residential has been issued a litigation hold in that case, and to the extent non-privileged documents subject to that hold are responsive in these cases, they will be made available for inspection and copying.

# **Exhibit**

# **A**





Scott L. Baena, Esq.  
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sbaena@bilzin.com

March 24, 2010

**Via E-mail & U.S. Mail**

Robert W. Mockler, Esq. (mocklerr@hbdlawyers.com)  
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Los Angeles, CA 90017

**Re: Fontainebleau Bankruptcy**

Dear Mr. Mockler:

We write in response to your letter dated March 16, 2010.

While your requests and inquiries of Ms. Thier are exceedingly broad and generalized, by the following response we have endeavored to provide the information we believe you seek taking into account our prior discussions with Sid Levinson.

First, the Debtors have historically maintained virtually all of their physical records in Las Vegas, Nevada. In contemplation of the impending conversion of the cases to chapter 7, in order to facilitate the transition to the chapter 7 Trustees, those records have been moved into one central location at a warehouse facility in Las Vegas. As you know, certain members of the Board of Managers of Fontainebleau Resorts, LLC ("FBR") were or are based in South Florida. Thus, we have requested those managers, as well as professionals formerly engaged by the Debtors, to deliver to us any of the Debtors' records they may have in their possession. We are in the process of collecting such records and they will likewise be indexed and placed in the storage facility.

Second, the Debtors have historically maintained their electronic records on two servers; one dedicated to department and user files (the "Department File Server") and the other dedicated to electronic mail records (the "Email Server"). The Department File Server is housed in a co-location facility in Las Vegas, Nevada and is a shared server that includes records of FBR and its parents and subsidiaries entirely unrelated to the Debtors. The Email Server is housed in Miami Beach, Florida and includes electronic mail records of FBR and the Fontainebleau Miami Beach, entirely unrelated to the Debtors. As FBR asserts rights of privacy as to records which do not pertain to the Debtors, we have been endeavoring to resolve retrieval issues precipitated by the fact of employment of common servers.

The Debtors and FBR (and its parents and subsidiaries) also utilized the following databases: Timberline; Infinium, Image Logix, HR Logix, and Red Rock. Similar privacy issues pertain to such information and records and we are likewise endeavoring to resolve the same.

In addition, the Debtors continue to maintain the RR Donnelly electronic dataroom that was established and maintained as part of the section 363 sale process. After a conversion of

*Robert W. Mockler, Esq.*  
*Hennigan, Bennett & Dorman LLP*  
*March 24, 2010*  
*Page 2 of 2*

the cases, the Trustees will need to determine whether to keep that dataroom up and running or to copy all of the data onto portable media.

Third, while your request is exceedingly broad, the following is a non-exclusive list of present or former employees, officers or directors of the Debtors or FBR who may have knowledge of the subjects listed in your third bullet point:

Bill Bewley James Freeman Bernie Glanister Kathy Hernandez Howard Karawan Devendra Kumar Albert E. Kotite Devendra Kumar Mark Lefever Jaclyn Miller Lauren Oberg	Audrey Oswell Ray Parelo Amie Sabo Eric Salzinger Glenn Schaeffer Jeffrey Soffer Whitney Thier Brian Turpin Dave Walker Bruce Weiner Richard C. White
--	---

As for your request to interview Ms. Thier, please be advised that given Ms. Thier's role as general counsel, not only to the Debtors but to FBR as well until after the Debtors' chapter 11 filings, she is unwilling to grant informal interviews at this time. Moreover, Ms. Thier is one of only three remaining officers who are actively handling the preparations for conversion to chapter 7 and we do not wish to distract her in the limited time remaining to accomplish essential pre-conversion tasks.

Sincerely yours,



Scott L. Baera

SLB/rar

cc: Mr. Howard Karawan  
Whitney Thier, Esq.  
Jay M. Sakalo, Esq.

MIAMI 2108936.1 7650831854

## **EXHIBIT 3**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

MASTER CASE NO. 09-2106-MD-GOLD/BANDSTRA

In re:

FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION

MDL NO. 2106

This document relates to all actions.

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**JOINT STATEMENT REQUESTED BY THE COURT IN MDL ORDER NUMBER 12**

Plaintiffs in *ACP Master, Ltd v. Bank of America, N.A.*, 09-CV-08064 (S.D.N.Y.) and *Avenue CLO Fund, Ltd. v. Bank of America, N.A.*, 09-CV-1047 (D. Nev.) (collectively the "Term Lender Plaintiffs"), Plaintiff Fontainebleau Las Vegas, LLC ("Fontainebleau") and Defendants, as required by MDL Order Number 12, submit this joint statement summarizing the current discovery dispute and the parties' respective positions relating thereto in advance of the status teleconference scheduled for Friday, April 16, 2010 at 1:30 p.m.

**DEFENDANTS' STATEMENT**

On January 8, 2010, the Court issued MDL Order Number 3 (the "Scheduling Order") which, *inter alia*, established May 13, 2010 as the date for the completion of document productions in response to initial requests for production. On March 15, the parties held a teleconference to discuss discovery issues, including the use of search terms to collect electronic documents and the identity of individuals whose documents would be searched and collected for production. On March 19, Defendants sent proposed search terms for the collection of electronic documents to both the Term Lender Plaintiffs and Fontainebleau. On March 25, the Term Lender Plaintiffs forwarded to both Defendants and Fontainebleau a search term counter-

proposal. Fontainebleau did not forward any counter proposal. In a letter dated March 25, Fontainebleau suggested that the Scheduling Order's discovery deadlines be extended by sixty days because "we are waiting for instructions from the trustee regarding the timing and manner of document productions in these cases." *See* Exhibit A.

Subsequently, on April 2, Fontainebleau indicated that it was not willing to participate in a teleconference to negotiate search terms because it would be seeking to convert the underlying Chapter 11 bankruptcy cases to cases under Chapter 7 and did not believe discussion of search terms would be appropriate until a Chapter 7 trustee was appointed. In response, Defendants asked Fontainebleau to meet and confer regarding its refusal to negotiate search terms and Fontainebleau's request for a sixty day extension. During an April 7 call, Fontainebleau reiterated its refusal to negotiate search terms with the parties or otherwise participate in discovery, pending conversion of the bankruptcy cases to Chapter 7 and the appointment of a Chapter 7 trustee. Fontainebleau also refused to agree to be bound by any search terms that Defendants negotiated with the Term Lender Plaintiffs and reserved the right to demand that Defendants run additional search terms at a later date. Accordingly, on April 9, Defendants and the Term Lender Plaintiffs requested a conference with the Court. Later that day, Fontainebleau filed a motion in the Bankruptcy Court seeking to convert all of the related Chapter 11 cases to cases under Chapter 7, which conversion would lead automatically to the appointment of a Chapter 7 Trustee. On April 12, the Bankruptcy Court conditionally granted Fontainebleau's motion to convert, subject to a negative notice period which expires on April 19. In so doing, Judge Cristol suggested that "it would be prudent for the United States Trustee to await the expiration of the negative notice period before appointing a trustee." Accordingly, no trustee has yet been appointed.

On two prior occasions, Fontainebleau has asked this Court for a stay of discovery – once in connection with the Scheduling Order’s entry and once in connection with its request for certification of an interlocutory appeal. The Court denied both requests. Now, Fontainebleau effectively seeks to grant itself a stay by refusing to negotiate search terms or other aspects of discovery while, at the same time, refusing to be bound by any agreements reached by the other parties to these MDL proceedings. Fontainebleau’s position is unjustified and highly prejudicial to the Defendants. The appointment of a Chapter 7 trustee does not excuse Fontainebleau from its obligations under the Scheduling Order. When a trustee is appointed, he or she will be bound by Fontainebleau’s conduct and positions to date. Fontainebleau’s suggestion that it can stop making decisions or taking necessary actions (*e.g.*, complying with the Scheduling Order) because a trustee may be appointed is completely unfounded.

Fontainebleau sought and obtained accelerated treatment of this case when it suited its purposes and should not now be allowed unilaterally to bring everything to a grinding halt, especially given the Court’s previous rejections of Fontainebleau’s stay requests. Fontainebleau’s position frustrates the MDL proceeding’s primary purpose – coordinating pre-trial discovery. Moreover, Defendants should not have to incur the burden and expense of conducting multiple and costly searches for electronic documents, just because Fontainebleau will neither negotiate search terms nor agree to be bound by the terms negotiated by the other parties. Fontainebleau should be directed to participate in discovery, notwithstanding its conversion motion. At a minimum, Fontainebleau should be precluded from asking Defendants to use any search terms that are not part of the search term list negotiated between Defendants and the Term Lender Plaintiffs.

Defendants also seek a sixty-day extension of the deadline for the production of documents. The delay occasioned by Fontainebleau's actions has undermined the ability of all parties to comply with the Court-ordered May 13 deadline. Even if the Term Lenders and Defendants were able to meet that deadline at this point, it seems clear that Fontainebleau, which has the greatest volume of documents to be produced by any party, will not meet the May 13 deadline. Defendants further request the same sixty-day extension of the commencement of fact depositions and identification of expert witnesses. Defendants do not request an extension of any other deadlines.

#### **THE TERM LENDER PLAINTIFFS' POSITION**

The Term Lender Plaintiffs respectfully ask the court to direct Fontainebleau to participate in discovery, notwithstanding its conversion motion. Given Fontainebleau's refusal to participate in discovery to date, the Term Lenders regrettably concur with Defendants that a sixty-day extension of the deadlines for the production of documents, the commencement of fact depositions and identification of expert witnesses is required. The Term Lenders object to any additional extensions of time with respect to those deadlines and further object to any extension of time with respect to the other deadlines in these coordinated matters.

#### **FONTAINEBLEAU'S POSITION**

Fontainebleau agrees, subject to Court approval, to the 60-day extension of deadlines now sought by all parties. Fontainebleau also is agreeable to any search terms that Defendants may agree to with the Term Lender Plaintiffs, albeit without waiver of and expressly preserving the rights of a Chapter 7 Trustee to seek additional discovery. Fontainebleau is not in a position to agree to search terms with respect to its own documents at this time because, as set forth below, those documents will shortly become the property of a Chapter 7 Trustee.

Fontainebleau also responds to several of the points raised above. First, the present application appears to seek an order requiring Fontainebleau to comply with the Scheduling Order. But Fontainebleau has not “refus[ed] to participate in discovery”; it has complied with the Scheduling Order to date, and intends to comply with its obligations going forward. That is why Fontainebleau initially requested, subject to Court approval, a 60-day extension. *See* Exhibit A. Until this filing, Defendants and the Term Lender Plaintiffs had rejected that request.

Second, Fontainebleau on several occasions advised counsel for Defendants and the Term Lender Plaintiffs of its impending Chapter 7 conversion motion. That motion has now been granted, subject to a short negative notice period that expires on April 19. Notably, the only negative notices filed to date seek to have the conversion order require Fontainebleau to preserve its paper and electronic documents. As set forth in Exhibit A hereto, Fontainebleau has already taken extensive measures in this regard.

Third, upon appointment of a trustee, Fontainebleau’s documents will become property of the trustee. The conversion order expressly requires the Debtors to “turnover to the chapter 7 trustee all records and property of the estate under its custody and control as required by Bankruptcy Rule 1019(4).” Fontainebleau’s counsel cannot bind a trustee to search terms that could cost the estate hundreds of thousands of dollars (if not more) without prior consultation -- and the trustee has not yet been appointed.

Finally, Fontainebleau’s election not to negotiate search terms at this time did not “bring everything to a grinding halt.” Nothing in the Scheduling Order requires the parties to agree to search terms, and Fontainebleau recognizes fully that in the event those deadlines are not extended, it will be required to complete its document production on May 13. Fontainebleau intends to continue to comply with its obligations.



Dated: April 15, 2010

By: /s/ John B. Hutton

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**EXHIBIT 4**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 09-2106-MD-GOLD/BANDSTRA  
CASE NO.: 09-21879-CIV-GOLD/BANDSTRA [Related Case]  
CASE NO.: 09-23835-CIV-GOLD/BANDSTRA[Related Case]

IN RE:

FONTAINBLEAU LAS VEGAS  
CONTRACT LITIGATION

MDL NO. 2106

This document relates to all actions

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**MDL ORDER NUMBER SIXTEEN; SECOND AMENDED ORDER  
RESETTING CERTAIN PRETRIAL DEADLINES, REFERRING DISCOVERY  
MOTIONS, DIRECTING PARTIES TO MEDIATION, AND ESTABLISHING  
PRETRIAL DATES AND PROCEDURES**

Based upon the parties' Joint Motion for Extension of Certain Pretrial Deadlines, [DE 62], certain pretrial deadlines are reset. However, dates for the pretrial conference, oral arguments, calendar call, and trial of this case remain as previously scheduled. Counsel shall carefully review and comply with the following requirements concerning the pretrial conference.

**Pretrial Conference and Trial Date**

1. The parties' Joint Motion for Extension of Certain Pretrial Deadlines, [DE 62] is Granted as follows. The pretrial conference is set pursuant to Fed.R.Civ.P. 16 for **January 13, 2012 at 2:00 p.m.** Unless instructed otherwise by subsequent order, the trial and all other proceedings shall be conducted at **400 North Miami Avenue, Courtroom 11-1, Miami, Florida 33128.** Pursuant to S.D.Fla.L.R. 16.1(C), each party shall be represented at the pretrial conference and at the meeting required by S.D.Fla.L.R. 16.1(D) by the attorney who will conduct the trial, except for good cause shown.

2. Trial is set for the two-week calendar commencing **Monday, February 13, 2012**. Counsel for all parties shall appear at a Calendar Call on **Wednesday, February 8, 2012 at 1:30 p.m.**

#### **Referral**

3. Pursuant to 28 U.S.C. § 636 and the Magistrate Judge Rules of the Local Rules of the Southern District of Florida, all discovery pretrial motions in the above-captioned cause, except all motions for extension of time which could affect the dates set forth below, are hereby referred to United States Magistrate Judge Bandstra to take all necessary and proper action as required by law. This referral shall expire on the date of the pretrial conference. Upon expiration, all matters pending before the United States Magistrate Judge shall remain before the Magistrate Judge for resolution, and all new matters shall be filed for consideration by the undersigned.

#### **Mediation**

4. The parties shall participate in mediation in accordance with the schedule below. The appearance of counsel and each party or representative of each party with full settlement authority is mandatory. If insurance is involved, an adjuster with full authority up to the policy limits or the most recent demand, whichever is lower, shall attend.

5. All discussions made at the mediation conference shall be confidential and privileged.

6. The mediator shall be compensated in accordance with the standing order of the Court entered pursuant to Rule 16.2(B)(6), or as agreed to in writing by the parties and mediator. The parties shall share equally the cost of mediation unless otherwise ordered by the Court. All payments shall be remitted to the mediator within 30 days of the date of the bill. The parties shall notify the mediator of cancellation two full business days in advance. Failure to do so will result in imposition of a fee for one hour.

7. If a full or partial settlement is reached, counsel shall promptly notify the Court of settlement within ten days of the mediation conference in accordance with Local Rule 16.2(F).

8. **Within five days** following mediation, the mediator shall file a Mediation Report indicating whether the parties were present and recommending sanctions for non-attendance. The Report shall also state whether the case settled (in full or in part), was continued with the parties' consent, or whether the mediator declared an impasse.

9. If mediation is not conducted, the case may be stricken from the trial calendar, and other sanctions may be imposed.

#### **Pretrial Schedule and Pretrial Stipulation**

10. All counsel shall comply with S.D.Fla.L.R. 16.1(D) regarding the preparation of the joint Pretrial Statement. **The court will not accept unilateral pretrial stipulations, and will strike *sua sponte*, any such submissions.** Should any of the parties fail to cooperate in the preparation of the joint stipulation, all other parties shall file a certification with the court stating the circumstances. The non-cooperating party may be held in contempt, and sanctions may be imposed, for failure to comply with the court's order.

#### **Filing Procedures**

11. For the convenience of the parties and the Court, the Clerk will maintain a master docket with a single docket number and master record under the style: "In re Fontainebleau Las Vegas Contract Litigation" Master Case No. 09-2106-MD-GOLD/MCALILEY. When a document is filed and docketed in the master case, it shall be deemed filed and docketed in each individual case to the extent applicable and will not ordinarily be separately docketed or physically filed in any individual cases. However, the caption may also contain a notation



indicating whether the document relates to all cases or only to specified cases, as described below.

All Orders, papers, motions and other documents served or filed in this Consolidated Action shall bear the same caption as this Order. If the document(s) is generally applicable to all consolidated actions, the caption shall include the notation: "This Document Relates to All Actions," and the Clerk will file and docket the document(s) only in the master record. However, if a document is intended to apply only to a particular case, the caption shall include the notation "This Document Relates to [case number of the case(s) to which it applies]". The original of this Order shall be filed by the Clerk in each of the Fontainebleau actions pending in this Court and a copy thereof shall be filed in each subsequently filed or transferred action, which is related to and consolidated with this action for pretrial purposes. The Clerk of Court will maintain docket and case files under this caption."

**Time Schedule and Requirements**

12. The following time schedule shall govern unless modified by court order after a showing of compelling circumstances (e.g., delay in transfer of tag-along-action). Absent a court order, a motion to dismiss shall not stay discovery.

	<u>DATE</u>	<u>ACTION</u>
By	7-12-2010	Document productions in response to initial Requests for Production to be completed.
By	8-30-2010	Commencement of fact depositions.

By	9-15-2010	All non-dispositive, non-discovery related pretrial motions (including motions pursuant to Fed. R. Civ. P. 14, 15, 18 through 22, and 42 motions) shall be filed. Any motion to amend or supplement the pleadings filed pursuant to Fed. R. Civ. P. 15(a) or 15(d) shall comport with S.D. Fla. L.R. 15.1 and shall be accompanied by the proposed amended or supplemental pleading and a proposed order as required. <b>When filing non-dispositive motions, the filing party must attach a proposed order to the motion well as emailing the proposed order to gold@flsd.uscourts.gov. Failure to provide the proposed order may result in denial of the motion without prejudice.</b> Please refer to the docket entry number on the proposed order. The Complete CM/ECF Administrative Procedures are available on the Court's Website at <a href="http://www.flsd.uscourts.gov">www.flsd.uscourts.gov</a> .
By	11-29-2010	Plaintiff shall furnish opposing counsel with a written list containing the names and addresses of all expert witnesses intended to be called at trial and only those expert witnesses so listed shall be permitted to testify.
By	12-31-2010	Defendant shall furnish opposing counsel with a written list containing the names and addresses of all expert witnesses intended to be called at trial and only those expert witnesses so listed shall be permitted to testify.
By	1-31-2011	Final date to exchange written discovery demands, including Requests for Production, Requests for Admission and Interrogatories.
By	4-14-2011	Conclusion of fact discovery.
By	5-2-2011	The parties shall comply with S.D. Fla. L.R. 16.1(K) concerning the exchange of expert witness summaries and reports. This date shall supersede any other date in Local Rule 16.1(K).
By	6-1-2011	Rebuttal expert reports shall be filed.
By	7-15-2011	All expert discovery, including depositions, shall be completed.
By	7-29-2011	All dispositive pretrial motions, including motions to strike in whole or in part expert testimony, and memoranda of law must be filed. <b>If any party moves to strike an expert affidavit filed in support of a motion for summary judgment</b> [for reasons stated in <i>Daubert v. Merrill Dow Pharmaceuticals, Inc</i> , 509 U.S.

		579, 125 L.Ed. 2d 469, 113 S.Ct. 2786 (1993) and <i>Kumho Tire Company, Ltd. v. Carmichael</i> , 526 U.S. 137, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999)], <b>the motion to strike shall be filed with that party's responsive memorandum.</b> Please carefully review the instructions for filing motions for summary judgment.
By	8-30-2011	Opposition to any dispositive motions to be filed.
By	9-15-2011	Replies, if any, to dispositive motions to be filed.
By	12-13-2011	<b>Pretrial Stipulation and Motions in Limine.</b> The joint pretrial stipulation shall be filed pursuant to S.D. Fla. L.R. 16.1(E). In conjunction with the Joint Pretrial Stipulation, the parties shall file their motions in limine.
ON	11-18-2011 @ 9:00 a.m.	<b>Oral argument will be heard on any motions for summary judgment that may be filed.</b>

DONE and ORDERED in Chambers in Miami, Florida this 21st day of May, 2010.



THE HONORABLE ALAN S. GOLD  
UNITED STATES DISTRICT JUDGE

## **EXHIBIT 5**

Rec'd Mail  
6/15/10  
②

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**WALDMAN TRIGOBOFF**  
**HILDEBRANDT MARX & CALNAN, P.A.**  
ATTORNEYS AT LAW

---

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June 9, 2010

**VIA U.S. MAIL & FACSIMILE**

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Re: *In re: Fontainebleau Las Vegas Contract Litigation*, Master Case No. 09-2106-MD-Gold/Bandstra

Dear Gentlemen:

This firm represents Fontainebleau Resorts, LLC in connection with other matters presently pending in the Southern District of Florida. In addition, we may shortly be retained to represent Fontainebleau Resorts, LLC, Fontainebleau Resorts Holdings, LLC and Fontainebleau Resorts Properties I, LLC (collectively, "Fontainebleau Resorts") in connection with the above referenced matter.

As you are probably aware, the Fontainebleau Las Vegas bankruptcy case was recently converted to Chapter 7 and a Trustee has been appointed. While Fontainebleau Resorts is not in bankruptcy and is not a party to any of the bankruptcy litigation, Fontainebleau Resorts has been making every effort to coordinate with the Trustee regarding some issues that have arisen as a result of the conversion to Chapter 7. As explained below, these issues will affect Fontainebleau Resorts' response to your subpoenas dated May 4, 2010.

In order to respond to your subpoenas, Fontainebleau Resorts needs access to their computer servers which house both e-mails and documents. However, because these servers contain information belonging to the debtors or the servers themselves belong to the debtors, the Trustee has either taken possession these servers or is aware of the servers and will not allow the removal of any information at this time. I have spoken with the Trustee regarding the outstanding discovery which is owed to you and others. The

Trustee and I (as well as all other Fontainebleau entities with information on these servers) are in the process of coordinating the removal of information from the servers. However, due to the number of parties and the interests involved, this could take some time.

As such, and in the hopes of avoiding unnecessary litigation over matters which are out of Fontainebleau Resorts' control, I would ask that your clients be patient while Fontainebleau Resorts makes every effort to follow bankruptcy procedures.

Please contact me upon receipt of this letter so we can discuss this matter further.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sarah J. Springer". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Sarah J. Springer

cc: Fontainebleau Resorts, LLC Board of Managers

**EXHIBIT 6**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

MASTER CASE No.: 09-MD- 2106-CIV-GOLD/BANDSTRA

In Re: FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION

MDL NO. 2106

This document relates to all actions.

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**FONTAINEBLEAU RESORTS, LLC, FONTAINEBLEAU RESORTS HOLDINGS, LLC  
AND FONTAINEBLEAU RESORTS PROPERTIES I, LLC'S MOTION TO QUASH  
DEFENDANTS' SUBPOENAS DATED MAY 4, 2010**

Fontainebleau Resorts, LLC, Fontainebleau Resorts Holdings, LLC and Fontainebleau Resorts Properties I, LLC (collectively, "The FBR Entities"), by and through their undersigned counsel, and pursuant to *Fed. R. Civ. P.* 45, hereby serve their Motion to Quash Defendants, JP Morgan Chase Bank, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas and The Royal Bank of Scotland PLC's Subpoenas, dated May 4, 2010 (the "Subpoenas"), and would state:

1. On May 4, 2010, Defendants served each of The FBR Entities with the Subpoenas. The Subpoenas each contain fifty-one categories of documents which the Defendants seek to obtain from The FBR Entities. These extremely broad Subpoenas generally seek the production of a wide variety of documents which relate to the Fontainebleau project in Las Vegas. For example, request no. 9 seeks "[a]ll [d]ocuments [c]oncerning [c]ommunications between Fontainebleau Resorts and Fontainebleau, its shareholders, management, members, financial advisors, board of directors, auditors or



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accounts [c]oncerning the Project.”

2. Responding to just this one, overbroad request would cause an undue burden or expense to The FBR Entities as it asks for every communication between The FBR Entities and Fontainebleau Las Vegas, LLC, Fontainebleau Las Vegas II, LLC, Fontainebleau Las Vegas Holdings, LLC, Fontainebleau Las Vegas Retail, LLC and/or Fontainebleau Las Vegas Capital Corporation (the “Debtors”) and each of their predecessors, successors, affiliates, divisions, subsidiaries, parents, members, officers, representatives, agents and/or employees, including without limitation, their attorneys, investment bankers and advisers acting or purporting to act on its or their behalf regarding a multibillion dollar development which was years in the making – literally and figuratively.

3. Responding to the Subpoenas would further cause an undue burden on The FBR Entities because of the recent conversion of the Fontainebleau Las Vegas Bankruptcy action from Chapter 11 to Chapter 7<sup>1</sup>. The Trustee has recently taken possession of the computer servers which are owned by Fontainebleau Resorts, LLC (one of The FBR Entities) but which contain documents belonging to various Fontainebleau and Turnberry Construction entities, including the Debtors. As such, The FBR Entities do not have possession of or control over those computer servers which, upon information and belief, contain the vast majority of the documents sought in the Subpoenas.

4. Undersigned counsel and counsel for the other Fontainebleau-related

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<sup>1</sup> Undersigned counsel is referring to the matter titled In re: Fontainebleau Las Vegas Holdings, LLC, et al. presently pending before Judge Cristol in the United States Bankruptcy Court of the Southern District of Florida (Case No. 09-21481-AJC).

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entities have been in contact with the Trustee and the Trustee's counsel, Russel Blain, in attempts to coordinate the removal of each entity's information from the servers. In connection therewith, the Trustee has decided that each entity will receive a full copy of each of the servers. Each entity will then have to review all of the documents on the servers to determine which documents belong to them, which documents belong to multiple entities, which documents are privileged and which documents are responsive to any outstanding discovery requests or subpoenas, as here. Deciding which documents belong to which entities will be a time-consuming undertaking due to the number of documents as well as anticipated disputes over ownership of the documents.

5. After this sorting process is complete, if any of the entities with information on the servers wish to produce documents in response to discovery requests or subpoenas, they will have to provide each entity which received a copy of the servers with an opportunity to examine what is being produced in order to confirm that documents belonging to the non-producing entity are not being produced.

6. Due to the number of parties involved and despite the best efforts of undersigned counsel, the servers have not even been copied yet. Thus, it is unknown how many documents are on the servers or how long it will take to complete the above described process.

7. In addition to the overbreadth of the documents requested and the production problems raised by the recent conversion to Chapter 7 of the bankruptcy action, the subpoenas are also objectionable in that Defendants ask The FBR Entities produce the documents for inspection and copying at the offices of Simpson Thacher & Bartlett LLP in

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New York, New York. The FBR Entities are based in South Florida where this action is pending. Due to the number of documents sought, it would be overly burdensome to produce the documents in New York. The FBR Entities have not been requested, and do not agree, to produce documents in New York or in any other foreign location purely for the convenience of Defendants' attorney.

8. With respect to non-party discovery, Florida law states that the court must

“weigh factors such as relevance, the need of the party for the documents, the breadth of the document request, the time period covered by the document requests and the particularity with which the documents are described against the burden imposed on a person ordered to produce the desired information. Courts must also consider the status of a witness as a non-party when determining the degree of the burden; the status of a person as a non-party is a factor often weighing against disclosure.”

*United Technologies Corp. v. Mazer*, WL788877, S.D. Fla. March 14, 2007. The FBR Entities are not parties to this litigation. The breadth of the subpoenas themselves – at fifty-one items, each – and the breadth of each of the items requested<sup>2</sup> also weighs against disclosure. These factors, combined with the Trustee's plan for the servers which, upon information and belief, contain the vast majority of the documents requested, demonstrate that The FBR Entities would be subjected to an enormous burden should the subpoenas not be quashed.

9. In accordance with *S.D. Fla. L.R. 7.1A.3(a)*, counsel for FBR has conferred

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<sup>2</sup> For example, item no. 26 asks for “[a]ll [d]ocuments [c]oncerning [y]our [c]ommunications with Fontainebleau relating to this [a]ction” and “[a]ll [d]ocuments [c]oncerning [c]ommunications with, to or from Turnberry West, or any general contractor concerning the Project.”

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with counsel for Defendants in an effort to resolve by agreement the issues raised in this Motion prior to filing same but counsel were unable to resolve same.

WHEREFORE, Third Parties, Fontainebleau Resorts, LLC, Fontainebleau Resorts Holdings, LLC and Fontainebleau Resorts Properties I, LLC, respectfully request this Honorable Court enter an Order quashing the Subpoena dated May 4, 2010 consistent herewith.

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By: /s Sarah J. Springer  
Glenn J. Waldman  
Florida Bar No. 374113  
Sarah J. Springer  
Florida Bar No. 0070747

MASTER CASE No.: 09-MD- 2106-CIV-GOLD/BANDSTRA

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 6, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on the attached service list through transmission of Notices of Electronic Filing generated by CM/ECF.

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MASTER CASE No.: 09-MD- 2106-CIV-GOLD/BANDSTRA

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MASTER CASE No.: 09-MD- 2106-CIV-GOLD/BANDSTRA

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MASTER CASE No.: 09-MD- 2106-CIV-GOLD/BANDSTRA

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## MASTER CASE No.: 09-MD- 2106-CIV-GOLD/BANDSTRA

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MASTER CASE No.: 09-MD- 2106-CIV-GOLD/BANDSTRA

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO 09-MD-02106-CIV-GOLD/BANDSTRA**

**IN RE: FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION**

**MDL No. 2106**

This document relates to all actions.

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**TERM LENDER PLAINTIFFS' RESPONSE TO CHAPTER 7 TRUSTEE'S MOTION  
FOR BRIEF EXCUSAL OF COMPLIANCE WITH SECOND AMENDED ORDER  
RESETTING CERTAIN PRETRIAL DEADLINES, REFERRING DISCOVERY  
MOTIONS, DIRECTING PARTIES TO MEDIATION,  
AND ESTABLISHING PRETRIAL DATES AND PROCEDURES**

Plaintiffs in *ACP Master, Ltd. v. Bank of America, N.A.*, 09-CV-08064 (S.D.N.Y.) and *Avenue CLO Fund, Ltd. v. Bank of America, N.A.*, 09-CV-1047 (D. Nev.) (collectively the "Term Lender Plaintiffs") submit this response to the Chapter 7 Trustee's Motion for Brief Excusal of Compliance with Second Amended Order Resetting Certain Pretrial Deadlines, Referring Discovery Motions, Directing Parties to Mediation, and Establishing Pretrial Dates and Procedures:

1. Term Lender Plaintiffs do not oppose the Trustee's request for a brief extension of his time to produce documents in these coordinated matters so long as any such extension will not require or result in the extension of any other deadlines set by the Court in MDL Order Number Sixteen; Second Amended Order Resetting Certain Pretrial Deadlines, Referring Discovery Motions, Directing Parties to Mediation and Establishing Pretrial Dates and Procedures [Docket 76].

2. Term Lender Plaintiffs understand that the Trustee intends shortly to file a motion that will detail the issues that have caused the Trustee to file its Motion for Brief Excusal and

will propose a plan for resolving such issues expeditiously. Term Lender Plaintiffs will comment on any such motion when it is filed.

Dated: July 19, 2010.

Respectfully submitted:

HENNIGAN, BENNETT & DORMAN LLP

BARTLIT BECK HERMAN  
PALENCHAR & SCOTT LLP

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Attorneys for Plaintiffs  
AVENUE CLO FUND, LTD., et al.

Attorneys for Plaintiffs  
ACP MASTER, LTD., et al.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing **TERM LENDER PLAINTIFFS' RESPONSE TO CHAPTER 7 TRUSTEE'S MOTION FOR BRIEF EXCUSAL OF COMPLIANCE WITH SECOND AMENDED ORDER RESETTING CERTAIN PRETRIAL DEADLINES, REFERRING DISCOVERY MOTIONS, DIRECTING PARTIES TO MEDIATION, AND ESTABLISHING PRETRIAL DATES AND PROCEDURES** was filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically the Notice of Electronic Filing.

Dated: July 19, 2010.

By: /s/ Lorenz Michel Prüss

Lorenz Michel Prüss

## SERVICE LIST

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Attorneys:	Representing:
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<p>Jeffrey I. Snyder, Esq.                      Scott L. Baena, Esq.  <b>BILZIN SUMBERG BAENA PRICE                      &amp; AXELROD</b>                      200 S Biscayne Blvd., Suite 2500                      Miami, FL 33131-2336                      Tele: (305) 375-6148                      Fax: (305) 351-2241</p>	<p>Plaintiff                      Fontainebleau Las Vegas LLC</p>
<p>Harold Defore Moorefield Jr., Esq.  <b>STEARNS WEAVER MILLER WEISSLER                      ALHADEFF &amp; SITTERSON</b>                      Museum Tower                      150 W Flagler Street, Suite 2200                      Miami, FL 33130                      Tele: (305) 789-3467                      Fax: (305) 789-3395</p>	<p>Defendant                      Bank of Scotland PLC</p>

Attorneys:	Representing:
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<p>James B. Heaton, Esq.                      John D. Byars, Esq.                      Steven James Nachtwey, Esq.                      Vincent S. J. Buccola, Esq.  <b>BARTLIT BECK HERMAN PALENCHAR &amp; SCOTT</b>                      54 West Hubbard St.                      Suite 300                      Chicago, IL 60654                      Tele: (312) 494-4400</p>	<p>Plaintiffs                      ACP Master, Ltd.                      Aurelius Capital Master, Ltd.</p>
<p>Brett Michael Amron                      Bast Amron LLP                      150 West Flagler Street                      Penthouse 2850                      Miami, FL 33130                      Tele: (305) 379-7905</p>	<p>Plaintiffs                      ACP Master, Ltd.                      Aurelius Capital Master, Ltd.</p>

**FILING FEE**  
PAID \$75.00  
Pro hac Vice FLS100003865  
Steven M. Larimore, Clerk

FILED by WS D.C.  
JUL 16 2010  
STEVEN M. LARIMORE  
CLERK U. S. DIST. CT.  
S. D. of FLA. - MIAMI

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 09-MD-2106-CIV-GOLD/BANDSTRA

In re:

FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION

MDL NO. 2106

**MOTION FOR LIMITED APPEARANCE, CONSENT TO DESIGNATION AND  
REQUEST TO ELECTRONICALLY RECEIVE NOTICES OF ELECTRONIC FILINGS**

In accordance with Local Rule 4(B) of the Special Rules Governing the Admission and Practice of Attorneys of the United States District Court for the Southern District of Florida, the undersigned respectfully moves for the admission of Vincent Buccola of the firm of Bartlit Beck Herman Palenchar & Scott LLP, 54 W. Hubbard Street, Suite 300, Chicago, IL 60654, for purposes of limited appearance as counsel on behalf of ACP Master, Ltd. and Aurelius Capital Master, Ltd. herein, in the above-styled case only, and pursuant to Rule 2(B), Southern District of Florida, CM/ECF Administrative Procedures, to permit Vincent Buccola, Esq. to receive electronic filings in this case, and in support thereof states as follows:

1. Vincent Buccola, Esq. is not admitted to practice in the Southern District of Florida but is a member in good standing of the Bar of Illinois, the United States District Court for the Northern District of Illinois, and the United States Court of Appeals for the 11<sup>th</sup> Circuit.

2. Movant, Brett M. Amron, Esq., of the law firm of Bast Amron LLP, One Southeast Third Avenue, Suite 1440, Miami, FL, telephone: (305) 379-7904, is a member in good standing of the Florida Bar and the United States District Court for the Southern District of Florida, maintains an office in this State for the practice of law, and is authorized to file through the Court's electronic filing system. Movant consents to be designated as a member of the Bar

of this Court with whom the Court and opposing counsel may readily communicate regarding the conduct of the case, upon whom filings shall be served, who shall be required to electronically file all documents and things that may be filed electronically, and who shall be responsible for filing documents in compliance with the CM/ECF Administrative Procedures. See Section 2(B) of the CM/ECF Administrative Procedures.

3. In accordance with the local rules of this Court, Vincent Buccola, Esq. has made payment of this Court's \$75 admission fee. A certification in accordance with Rule 4(B) is attached hereto.

4. Vincent Buccola, Esq., by and through designated counsel and pursuant to Section 2(B), Southern District of Florida, CM/ECF Administrative Procedures, hereby requests the Court to provide Notice of Electronic Filings to Vincent Buccola at email address: [vincent.buccola@bartlit-beck.com](mailto:vincent.buccola@bartlit-beck.com).

WHEREFORE, Brett M. Amron moves this Court to enter an Order permitting Vincent Buccola, Esq. to appear before this Court on behalf of Aurelius Capital Management, LP for all purposes relating to the proceedings in the above-styled matter and directing the Clerk to provide notice of electronic filings to Vincent Buccola.

Respectfully submitted,

BAST AMRON LLP  
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Aurelius Capital Master, Ltd.*  
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By: /s/ Brett M. Amron  
Brett M. Amron, Esq.  
Florida Bar No. 148342

**CERTIFICATION OF VINCENT BUCCOLA**

I, Vincent Buccola, Esquire, pursuant to Rule 4(B) of the Special Rules Governing the Admission and Practice of Attorneys, hereby certify that: (1) I have studied the Local Rules of the United States District Court for the Southern District of Florida; and (2) I am a member in good standing of the Bar of Illinois, the United States District Court for the Northern District of Illinois, and the United States Court of Appeals for the 11<sup>th</sup> Circuit.

V. J. Buccola  
Vincent Buccola, Esq.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Court's CM-ECF system, where available, on this the 13<sup>th</sup> day of July, 2010 to:

/s/ Brett M. Amron  
Brett M. Amron

**Service List**

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<p>Arthur S. Linker                  Kenneth E. Noble                  Anthony L. Paccione  <b>Katten Muchin Rosenman LLP</b>                  575 Madison Ave.                  New York, NY 10022-2585                  Telephone: (212) 940-8800                  Facsimile: (212) 940-8776  <i>Attorneys for Bank of Scotland plc</i></p>	<p>Harold D. Moorefield, Jr.  <b>Stearns Weaver Miller Weissler                  Alhadeff &amp; Sitterson, P.A.</b>                  Museum Tower                  150 W. Flagler St., Suite 2200                  Miami, FL 33130                  Telephone: (305) 789-3200                  Facsimile: (305) 789-3395  <i>Attorneys for Bank of Scotland plc</i></p>
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