

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

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document relates to all actions.

AVENUE TERM LENDERS' JOINDER IN BANK OF AMERICA N.A.'S MOTION FOR
A DETERMINATION OF FONTAINEBLEAU RESORTS' WAIVER OF
PRIVILEGE FOR ITS E-MAIL SERVER DOCUMENTS

Avenue Term Lenders¹ hereby join in Bank of America, N.A.'s Motion for a
Determination of Fontainebleau Resorts' Waiver of Privilege for its E-Mail Server Documents,
dated February 23, 2011 [D.E. # 215].

Dated: February 28, 2011

Respectfully submitted,

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¹ The Avenue Term Lenders consist of the plaintiffs in the case captioned *Avenue CLO Fund, Ltd., et al. v. Bank of America, et al.*, Case No. 09-CV-23835-GOLD/GOODMAN (S.D. Fla.).

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **AVENUE TERM LENDERS' JOINDER IN BANK OF AMERICA N.A.'S MOTION FOR A DETERMINATION OF FONTAINEBLEAU RESORTS' WAIVER OF PRIVILEGE FOR ITS E-MAIL SERVER DOCUMENTS** 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: February 28, 2011

/s/ Lorenz M. Prüss, Esq.
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO 09-MD-02106-CIV-GOLD/GOODMAN

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document applies to:

Case No. 09-CV-23835-ASG.

Case No. 10-CV-20236-ASG.

**MDL ORDER NUMBER 45;
GRANTING MOTIONS TO APPEAR *PRO HAC VICE*,
CONSENT TO DESIGNATION, AND REQUEST TO ELECTRONICALLY
RECEIVE NOTICES OF ELECTRONIC FILINGS [ECF Nos. 210, 211, 213, 214]**

THIS CAUSE is before the Court upon four Motions to Appear *Pro Hac Vice*, Consent to Designation and Request to Electronically Receive Notices of Electronics Filings (“Motions”) [ECF Nos. 210, 211, 213, 214], requesting, pursuant to the Special Rules Governing the Admission and Practice of Attorneys in the United States District Court for the Southern District of Florida, permission for a limited appearance of Kenneth Murata [ECF No. 210], Asher L. Rivner [ECF No. 211], Peter J. Most [ECF No. 213], and C. Dana Hobart [ECF No. 214] in this matter and to electronically receive notice of electronic filings. Having considered the Motions and being otherwise fully advised, it is hereby

ORDERED and ADJUDGED that:

1. The Motions to Appear *Pro Hac Vice*, Consent to Designation and Request to Electronically Receive Notices of Electronics Filings [ECF Nos. 210, 211, 213, 214] are GRANTED.

2. Kenneth Murata, Asher L. Rivner, Peter J. Most, and C. Dana Hobart are permitted to appear and participate in this action for purposes of limited appearances in the above-referenced action.

3. The Clerk shall provide electronic notification of all electronic filings to Kenneth Murata at kmurata@omm.com, Asher L. Rivner at arivner@omm.com, Peter J. Most at most@hdlitigation.com, and C. Dana Hobart at hobart@hdlitigation.com.

DONE AND ORDERED in Chambers at Miami, Florida, this 28th day of February, 2011.



THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT COURT JUDGE

cc: U.S. Magistrate Judge Jonathan Goodman
Counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MASTER CASE No. 09-MD- 2106-CIV-GOLD/GOODMAN

In Re: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to all actions.

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**THIRD PARTY, FONTAINEBLEAU RESORTS, LLC'S RESPONSE IN
OPPOSITION TO BANK OF AMERICA'S MOTION FOR A DETERMINATION
OF WAIVER OF PRIVILEGE FOR ITS E-MAIL SERVER DOCUMENTS**

Third Party, Fontainebleau Resorts, LLC ("FBR") respectfully submits this Response in Opposition to Defendant Bank of America, N.A.'s ("BOA") Motion for a Determination of FBR's Waiver of Privilege for its E-Mail Server Documents [D.E. 215]:

I. BACKGROUND

BOA served FBR with its subpoenas *duces tecum* on September 2, 2010, seeking fifty-seven categories of documents. FBR timely responded to the subpoenas. Shortly thereafter, FBR worked collaboratively with BOA and the other subpoenaing entities to develop a list of search terms and date range to arrive at a realistic means of identifying and producing responsive documents from its e-mail server. FBR respectfully emphasizes to the Court that the scope of this undertaking was immense, particularly for a non-party, which has no large firm "litigation support group." *See BOA's Declaration*, ¶ 6. Nonetheless, FBR agreed to apply these terms and parameters at its own expense.

To do so, FBR hired a third party vendor, Ikon, to conduct the requested search of the e-mail server. FBR then conducted an internal privilege review of the search results performed by Ikon and produced what it believed and intended to be only non-privileged e-mails. While FBR's privilege

review may not have been perfect, it never intended to waive its privilege with respect to its e-mail server. Rather, after its production, FBR continued to work with BOA once it was discovered that potentially privileged materials had in fact been inadvertently produced.

For example, on December 9, 2010, BOA first notified FBR that it had identified potentially privileged e-mails produced in response to the subpoena. It provided FBR with copies of the *nine* e-mail strings and asked that privilege with respect to those e-mails be asserted by December 13, 2010. On December 13, 2010, FBR provided its privilege log with respect to those e-mail strings which were, in fact, privileged. On December 20, 2010, BOA again notified FBR that it had identified a number of additional potentially privileged e-mails (fourteen e-mail strings) and asked FBR for a response by December 23, 2010. FBR again timely responded on December 21, 2010, and provided another privilege log with these additional e-mails.

Then, during a January 13, 2010 telephone conference, BOA informed FBR that it would no longer be identifying potentially privileged e-mails in the manner described above, despite FBR's timely compliance with each request from BOA.¹ At this time, FBR was first informed of the extent of its inadvertent production of potentially privileged e-mails. BOA asked what steps FBR would take to rectify the situation. FBR first requested that BOA continue the above-described process of identifying potentially privileged e-mails and affording FBR a reasonable amount of time to respond. BOA refused. FBR then undertook a further effort to identify potentially privileged e-mails.

On January 18, 2011, FBR again retained Ikon to assess its options and to determine the cost of further privilege review. This inquiry alone cost FBR \$1,500. Over the next week, and after

¹ FBR has also consistently notified the bank that it in no way intended, or requested, that the Bank's discovery efforts in the case be prejudiced or delayed.

consulting further with Ikon's electronic discovery experts, Ikon provided FBR with a cost estimate and a proposed work order, detailing the methods that would be used to conduct a further privilege review of the e-mail hard drive.² FBR hired Ikon for this purpose in the beginning of February at a cost of \$12,500.00 to undertake this process. Since then, FBR has worked diligently to complete the process and expects to produce a comprehensive list of privileged e-mails which may have inadvertently produced.³ FBR further relies on the attached Declaration of Stephen Thacker.

II. FBR DID NOT WAIVE ITS PRIVILEGE WITH RESPECT TO ANY E-MAILS

The drastic relief sought by BOA must be considered against the well established precept:

The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law. Its purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.

Upjohn Company v. United States, 449 U.S. 383, 389 (1981), *internal citations omitted*.

Under Federal Rule of Evidence 502(b), the disclosure of privileged information does not waive the privilege if: (1) the disclosure is inadvertent; (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and (3) the holder promptly took reasonable steps to rectify the error. In addition to these factors, the Court may also consider: (1) the reasonableness of precautions taken to prevent inadvertent disclosure, (2) the amount of time it took the producing party to realize its error, (3) the scope of the production, (4) the extent of the inadvertent disclosure,

² Part of the discussions with Ikon entailed a manner of identifying potentially privileged e-mails in a format that would be more workable to the bank, i.e. using, BOA's own assigned document numbering system.

³ Again, BOA was concurrently made aware of FBR's efforts in this regard as well as its progress with respect to Ikon. BOA was also informed on February 3, 2011, that FBR "do[es] not intend to delay BOA's case in any way."

and (5) the overriding interest of fairness and justice. *United States Fid. & Guar. Co. v. Liberty Surplus Ins. Corp.*, 630 F.Supp.2d 1332, 1336 (M.D.Fla. 2007). These factors weigh in favor FBR and against the relief sought by BOA, particularly under the circumstances described above.

First, there is nothing to suggest that FBR's production of potentially privileged e-mails was intentional. To the contrary, the foregoing demonstrates FBR's intent and efforts to consistently maintain its privilege, while at the same time, timely complying with the subpoenas.⁴ BOA's attempt to speak for FBR's "state of mind" is simply incorrect. *Motion*, p. 5.

FBR also took reasonable precautions to avoid any inadvertent disclosure. After FBR's vendor applied the agreed upon search terms, FBR initially conducted an internal privilege review of those results using a list of its former and current attorneys' names and reviewed each e-mail identified as being potentially privileged. Thereafter, FBR served BOA and others with a privilege log and produced the remaining contents of the e-mail hard drive.⁵ FBR also filed with this Court a Motion for Confidentiality Order prior to the disclosure of the e-mail hard drive. While this request was denied, it nonetheless is reflective of FBR's precautions to protect and maintain its privileges.

In addition, as soon BOA notified FBR of the extent of its inadvertent production of potentially privileged e-mails, FBR took prompt steps to rectify the situation. Given its limited internal capabilities, FBR immediately contacted Ikon to provide an assessment of the production

⁴ The only Eleventh Circuit case cited by BOA, *United States v. Suarez*, 820 F.2d 1158 (11th Cir. 1987), is readily distinguishable and lends no support to BOA. In *Suarez*, the court held that an attorneys' prior testimony at an evidentiary hearing as to communications with his client (with the client's consent and pursuant to an express waiver) constituted a waiver of the privilege for the same testimony at trial. Here, FBR is not seeking to use its privilege in such a "sword and shield" manner and it is not asking that it be "rewarded" for anything.

⁵ FBR has provided *three* privilege logs during the course of these events.

and to verify BOA's notification. Ikon subsequently provided FBR with its proposed work order. Within a week of receiving the proposal, FBR hired Ikon to conduct a comprehensive analysis and further privilege review of the e-mail hard drive. That process is substantially complete and FBR expects to produce to BOA and others a comprehensive list of the privileged e-mails contained on the hard drive. Again, BOA was kept abreast of FBR's ongoing efforts in this regard. This too refutes BOA's unsupported contention that "FBR has not taken any independent action to recall allegedly inadvertently produced privileged documents." *Motion, p. 7*. Clearly it has.

The scope of production also weighs in favor of FBR. The e-mail hard drive included approximately 200,000 e-mails, the vast majority of which are not privileged. BOA acknowledges that the e-mail hard drive also includes over 30,000 e-mails from its in-house counsel alone. Clearly, under these circumstances, the overriding interests of fairness and justice weigh in favor of FBR, a third party, who has already incurred significant expense in complying with BOA's subpoena.

While there should be no finding of a wholesale waiver of privilege with respect to its e-mail server, FBR alternatively proposes a workable, less-drastic solution. First, FBR asks for a reasonable amount of time to complete the presently on-going task of conducting a refined analysis of potentially privileged e-mails. Once that process has been completed, FBR will identify any inadvertently produced e-mails using BOA's document identifying method. In the meantime, FBR is not seeking to shoulder BOA with the responsibility of, in essence, conducting a privilege review for FBR. Nor is FBR asking to delay in any manner the ongoing discovery in this case. Rather, FBR simply asks that BOA notify FBR of any privileged e-mails identified in its ongoing discovery (such as deposition preparation), until the full review process can be completed.

For these reasons, FBR respectfully requests that BOA's Motion be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 1, 2011, 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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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MASTER CASE NO. 09-MD- 2106-CIV-GOLD/GOODMAN

In Re: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION.

MDL NO. 2106

This document relates to all actions.

DECLARATION OF STEPHEN THACKER

I, Stephen Thacker, declare as follows:

1. I am the Director of Electronic Discovery - Southeast, for IKON Office Solutions, Inc. ("IKON"). I have personal knowledge of the facts set forth in this Declaration and know them to be true and correct.

2. The following is a list of dates and events relating IKON's work with Fontainebleau Resorts, LLC ("FBR"), either directly, or through its counsel, in connection with what we have identified as the Cataphora solution. All of these dates and events listed below are subsequent to IKON's initial assistance in conducting a search of FBR's e-mail server and post-delivery of the results of those searches.

3. On January 12, 2011, IKON was contacted by FBR through its counsel to determine if IKON had maintained FBR's data from prior work performed by IKON on IKON's server.

4. On January 13, 2011, IKON was provided a list of custodian names that were identified as attorneys to be used for additional searches for potentially privileged materials in

order for IKON to provide an estimated cost.

5. On January 17, 2011, IKON provided FBR with its quote for this proposed work. Based on FBR's request through its counsel, this quote reflected the estimated costs for performing a search to develop a base-line, using the list of names that had been provided.

6. On January 18, 2011, IKON received approval to proceed with the search described in paragraphs 4 and 5 above.

7. On January 19, 2011, IKON provided its results of the baseline search, which resulted in approximately 37,000 "hits." FBR, through its counsel, then inquired of IKON as to what could be done to limit this number and/or refine the search.

8. On January 20, 2011, IKON participated in a conference call with FBR's counsel, and representatives of Cataphora, a third-party vendor that provides linguistic-based technology, to discuss possible next steps in the search process.

9. On January 25, 2011, IKON received a proposal from Cataphora for the proposed solution and pricing discussed on the January 20, 2011 call. I then provided Cataphora's proposal to FBR.

10. On February 3, 2011, IKON received FBR's approval of this proposal.

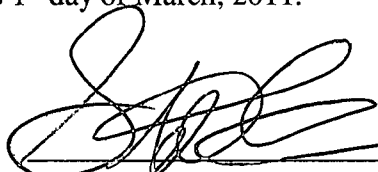
11. On February 7, IKON received the signed Statement of Work from FBR.

12. IKON and Cataphora are currently in the process of completing work pursuant to the Statement of Work referred to in paragraph 11, which includes sampling and reviewing of what we refer to as "tiered document sets."

I declare under penalty of perjury under the laws of the State of Florida that the foregoing is true and correct.

MASTER CASE NO.: 09-MD- 2106-CIV-GOLD/GOODMAN

Executed in Miami, Florida, on this 1st day of March, 2011.


03-01-2011
STEPHEN THACKER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO 09-MD-02106-CIV-GOLD/GOODMAN

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document applies to:

Case No. 09-CV-23835-ASG.

Case No. 10-CV-20236-ASG.

_____ /

MDL ORDER NUMBER 46; SETTING ORAL ARGUMENT

THIS CAUSE is before the Court upon Plaintiffs' Motion for Order Dismissing Aurelius Action Without Prejudice ("Motion") [**ECF No. 212**]. Having reviewed the Motion and the record, I conclude that oral argument is necessary. Accordingly, it is hereby:

ORDERED AND ADJUDGED that:

1. Oral argument on Plaintiffs' Motion for Order Dismissing Aurelius Action Without Prejudice [**ECF No. 212**] is hereby set before the Honorable Alan S. Gold, at the United States District Courthouse, Courtroom 11-1, Eleventh Floor, 400 North Miami Avenue, Miami, Florida, 33128 on **Friday, April 8, 2011 at 3:00 p.m.** Please notify the Court immediately at (305) 523-5580 of any disposition or settlement of this case or resolution of the scheduled Motion.
2. To assist the Court, the parties are ORDERED to deliver to the undersigned's Chambers a Joint Binder containing tabbed and indexed courtesy copies of the motion and any responses, replies, exhibits, and memoranda of law related to the motions, including tabbed and indexed copies of all case law and authorities cited

therein, by **Friday, March 25, 2011 at 5:00 p.m.** The courtesy copies shall include a table of contents and shall indicate the docket entry number of each document contained therein.

DONE and ORDERED in Chambers in Miami, Florida, this 1st day of March,
2011.



THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc: U.S. Magistrate Judge Jonathan Goodman
Counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

In Re: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to all actions.

NOTICE OF UNAVAILABILITY

THE UNDERSIGNED respectfully gives notice that she will be out of the country and unavailable for the period of Thursday, March 10, 2011 through Monday, March 21, 2011 due to a longstanding, prepaid vacation. While undersigned counsel represents third party, Fontainebleau Resorts, LLC (“FBR”), we are providing this Notice only as it relates to FBR and in an abundance of caution. Due to undersigned counsel’s status as the attorney with the most knowledge of FBR, relating to subpoenas served on it in this action, FBR respectfully requests that all parties refrain from conducting any proceedings related to FBR during this period.

Respectfully submitted,

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By: /s Sarah J. Springer

Glenn J. Waldman
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MASTER CASE No.: 09-MD- 2106-CIV-GOLD/GOODMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 3, 2011, 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/GOODMAN

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

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

In re:

FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to:

ALL ACTIONS

**BANK OF AMERICA, N.A.'S REPLY IN FURTHER SUPPORT OF ITS
MOTION FOR A DETERMINATION OF FONTAINEBLEAU RESORTS'
WAIVER OF PRIVILEGE FOR ITS E-MAIL SERVER DOCUMENTS**

FBR's Response demonstrates that the privilege has been waived for its e-mail server documents. Based on the facts disclosed in its response, there can be no dispute that FBR either knowingly waived the privilege or carelessly handled potentially privileged e-mails before production, and failed to act promptly to identify and recall them after production.

I. FBR's Production of Privileged E-Mails Was Not Inadvertent.

FBR's Response demonstrates that, despite its arguments to the contrary, its production of privileged e-mails was not inadvertent. FBR makes no attempt to explain or disavow its December 20, 2010 statement that "[a]dmittedly, due to the time and financial constraints FBR was under, *not all privileged e-mails were withheld from production.*" (Murata Decl. at ¶ 8 (emphasis added).) And FBR's admission that it actually conducted a privilege review "using a list of its former and current attorneys' names and reviewed *each e-mail identified as being potentially privileged*" (Response at 4 (emphasis added)) confirms that its production of

privileged e-mails was deliberate. This is a clear waiver.

But even without FBR's admissions, FBR's careless handling of privileged e-mails precludes a finding of inadvertence. *See Conceptus, Inc. v. Hologic, Inc.*, 2010 WL 3911943 (N.D. Cal. Oct. 5, 2010) ("If a party carelessly produced a privileged document, the privilege associated with that document is waived.") FBR's conclusory assertion that it took "reasonable precautions" in producing its e-mails is belied by the obviously privileged nature of the e-mails at issue, and the volume of potentially privileged e-mails it produced. (Response at 4.) FBR offers no explanation for how more than 30,000 e-mails listing its principal in-house counsel as senders or recipients slipped through its privilege review process, and its failure to hold back such a large volume of obviously potentially privileged e-mails is *prima facie* evidence of carelessness. Moreover, FBR's admission that it actually identified and reviewed these e-mails (*id.*) demonstrates that FBR had all the information it needed to conduct a privilege review, yet failed to withhold obviously privileged e-mails.

II. FBR Did Not Act Promptly to Rectify its Inadvertent Production

FBR does not dispute that it has yet to identify a single privileged e-mail more than five weeks after being alerted to the fact that there may have been an inadvertent production. This delay is inexcusable and compels a waiver finding. FBR did not need a month to identify its inadvertently produced privileged e-mails. Indeed, FBR has represented to this Court that a privilege review could be completed in a day.¹ Indeed, if FBR were serious about determining whether it inadvertently produced privileged e-mail, it would have started a rolling privilege review weeks ago to identify inadvertently produced documents. And it would not have waited

¹ *See* Order on Motion for Determination of Waiver of Privilege, at 8 (Jan. 7, 2011) (DE# 199) ("Fontainebleau then advised the Court that it would take less than a day to review the email server for privilege once it came up with a list of privilege search terms--a list primarily consisting of the names of lawyers and law firms.").

nearly a week to hire Ikon after receiving Ikon's privilege review process proposal. (Response at 5; *see also* Thacker Decl. at ¶¶ 9, 10 (reflecting that FBR received a proposal from Ikon on January 25, 2011, but did not accept Ikon's proposal until February 3, 2011).)

III. Fairness Weighs in Favor of a Waiver Ruling

FBR's appeal to fairness and justice should be rejected in view of its pattern of delay in complying with its subpoena response obligations. (Response at 5.) FBR's delay in responding to BANA's subpoena gave it ample time to conduct a thorough privilege review.² Indeed, FBR agreed to search terms on September 14, 2010, and did not produce the e-mails until October 25, 2010. The Court should not reward FBR's pattern of delay by allowing it to preserve the privilege over the e-mails produced in response to BANA's subpoena. Moreover, FBR does not dispute that its delay is prejudicing the MDL Litigation parties by hampering their deposition preparation efforts. The prejudice is real—the parties to the MDL Litigation are about to depose several former FBR executives.

IV. FBR's Request for Additional Time Should be Rejected

The Court should deny FBR's request for additional time to perform a privilege review. The record is clear that BANA afforded FBR every opportunity to address its inadvertent production. BANA first raised this issue with FBR in December 2010, and then again on January 12, 2011, before filing this motion on February 23. Enough is enough. BANA

² *See* Order on Motion for Sanctions, at 2 (Oct. 18, 2010) (DE# 167) (concluding that "Fontainebleau is not in compliance with the order requiring it to produce the subpoenaed files and a privilege log")

respectfully requests an order that FBR has waived any and all otherwise applicable privileges and protections that may have attached to the e-mails it produced from its e-mail server.

Dated: March 4, 2011

By: /s/ Craig V. Rasile

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Bank of America, N.A.'s Reply in Further Support of its Motion for a Determination of Fontainebleau Resorts' Waiver of Privilege For Its E-mail Server Documents 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: March 4, 2011

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

CASE NO.: 09-02106-MD-GOLD/GOODMAN

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

**ORDER ON MOTION FOR DETERMINATION OF WAIVER OF PRIVILEGE
FOR FONTAINEBLEAU'S E-MAIL SERVER DOCUMENTS**

This matter is before the Court on Defendant Bank of America, N.A.'s Motion for a Determination of Fontainebleau Resorts' Waiver of Privilege for its E-Mail Server Documents. (DE# 215).¹ I have reviewed the motion, the Response in Opposition (DE# 219) and BANA's Reply (DE# 222).

Given BANA's representation that it needs a decision in connection with upcoming depositions (which, according to BANA, began on February 17, 2011) and the April 15, 2011 discovery cutoff, the Parties are in need of a timely ruling.

In its Response (p. 3), Fontainebleau Resorts, LLC contends that it has "worked diligently to complete the process" [of facilitating an additional privilege review of potentially privileged e-mails with a third party information technology expert – IKON] and "expects to produce a comprehensive list of privileged e-mails which may have inadvertently produced." [sic].

In support of its Opposition to the Motion, FBR attached the declaration of Stephen Thacker, IKON's Director of Electronic Discovery for the Southeast.

Mr. Thacker's relatively succinct declaration explains that IKON received a signed work order from FBR on February 7, 2011 (almost a month ago) and that IKON and "Cataphora," which is described as a "third-party vendor that provides linguistic-based technology," are "currently in the process of completing work pursuant to the

¹ The Avenue Term Lenders, who describe themselves at the plaintiffs in *Avenue CLO Fund, Ltd., et al. v. Bank of America, et al.*, Case No. 09-CV-23835-GOLD/GOODMAN (S.D. Fla.), have joined in the motion. (DE# 217).

Statement of Work ..., which includes sampling and reviewing of what we refer to as “tiered document sets.” (DE# 219-1).

Mr. Thacker’s declaration, however, does not further explain “tiered document sets.”

More significantly, neither Mr. Thacker’s declaration nor FBR’s response provides any notice about **when** the additional privilege review is expected to be completed. In fact, neither document even makes a ballpark *prediction* of when the privilege review is expected to be completed.

In the meantime, of course, time, as it always does, is passing.

Given the procedural history here, it is inequitable to permit FBR to prejudice BANA’s ability to effectively take depositions by keeping it and other parties in the dark about which emails are actually privileged even though they were produced months ago.

On the other hand, FBR is technically a non-party to this litigation and has taken *some* steps to protect the privilege.

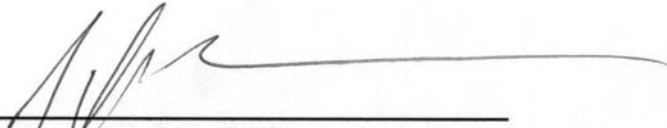
Therefore, FBR (and its third party vendors) shall have until 5:00 p.m. on Monday March 14, 2011 to provide BANA with a final privilege log for its email server. If FBR does not meet this deadline, then it shall be deemed to have waived all privileges concerning the email server documents -- and BANA and any other party are free to use any document produced, notwithstanding its privileged or arguably privileged status. This ruling does not cover emails which FBR previously produced but later “recalled” after BANA advised it of the privileged status of certain email documents. In other words, those recalled emails will remain privileged (subject to later substantive challenge) even if FBR fails to timely provide the supplemental, final privilege log.

If FBR timely provides a final privilege log, then BANA and other parties may not use the emails listed as privileged absent further order from the Court.

FBR’s supplemental, final privilege log must be sufficiently detailed to provide BANA with the ability to determine whether to challenge a particular email document as privileged. At a minimum, therefore, the privilege log must provide the date of the email, a description of the subject, a document identifier (such as a “Bates” number), a list of all recipients (including “CC” recipients and “BCC” recipients, if known) and a list of all attorneys involved in the email communications (as either a sender or a recipient). The

list of attorneys shall also designate the identities of the clients represented by the attorneys. This master list of attorneys need only be provided once and it need not be on the privilege log itself (e.g., it might, for example, be on a separate, master list of attorneys).

DONE AND ORDERED, in Chambers, at Miami, Florida, this 4th day of March, 2011.



Jonathan Goodman
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
All counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

In re:

FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to all actions.

**BANK OF AMERICA, N.A. AND MERRILL LYNCH CAPITAL
CORPORATION'S RESPONSE TO MOTION FOR ORDER
DISMISSING AURELIUS ACTION WITHOUT PREJUDICE**

Bank of America, N.A. and Merrill Lynch Capital Corporation take no position with respect to the pending Motion for Order Dismissing Aurelius Action Without Prejudice [D.E. #212].

Dated: March 7th, 2011

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The undersigned hereby certifies that a copy of the foregoing Bank of America, N.A. and Merrill Lynch Capital Corporation's Response to Motion for Order Dismissing Aurelius Action Without Prejudice 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: March 7th, 2011

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:09-md-2106-GOLD/GOODMAN

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document relates to:

Case No. 09-cv-23835-ASG

Case No. 10-cv-20236-ASG

**REVOLVING LENDERS' OPPOSITION TO
AVENUE AND AURELIUS PLAINTIFFS' MOTION FOR AN ORDER
DISMISSING AURELIUS PLAINTIFFS' ACTION WITHOUT PREJUDICE**

Defendants Barclays Bank PLC, Deutsche Bank Trust Company Americas, JPMorgan Chase Bank, N.A., The Royal Bank of Scotland plc, HSH Nordbank AG, New York Branch, Bank of Scotland PLC, MB Financial Bank, N.A., Sumitomo Mitsui Banking Corporation, and Camulos Master Fund, L.P. (collectively, "Revolving Lenders") respectfully submit this opposition to the motion of plaintiffs in *Avenue CLO Fund, Ltd., et al. v. Bank of America, N.A., et al.*, Case No. 09-cv-23835-ASG (the "Avenue Plaintiffs" and "Avenue Action") and *ACP Master, Ltd., et al. v. Bank of America, N.A., et al.*, Case No. 10-cv-20236-ASG (the "Aurelius Plaintiffs" and "Aurelius Action") (collectively, "Plaintiffs") for an Order dismissing the Aurelius Action without prejudice and approving the terms of Plaintiffs' proposed stipulation (the "Dismissal Motion").

PRELIMINARY STATEMENT

The Dismissal Motion is a procedurally flawed application that asks this Court to enter an Order dismissing *without prejudice* claims that it has already dismissed *with prejudice* and over which the Court no longer has jurisdiction. In its May 28, 2010 decision, this Court dismissed with prejudice the claims in the Aurelius and Avenue Actions against the Revolving Lenders. Thereafter, at the request of the Aurelius and Avenue Plaintiffs, this Court entered a partial final judgment with respect to those claims to enable the Aurelius and Avenue Plaintiffs to pursue an appeal. The Aurelius and Avenue Plaintiffs have since filed notices of appeal of that final judgment. As a result, this Court does not have jurisdiction to grant the Dismissal Motion.

The Dismissal Motion should be denied for the additional reason that Plaintiffs' proposed stipulation, which they ask the Court to order, is unfairly prejudicial to the Revolving Lenders in that (a) it effectively seeks to modify the Court's previous dismissal order to provide for dismissal of the claims against the Revolving Lenders without prejudice instead of with prejudice, (b) it would require the Revolving Lenders to waive potential statute of limitations defenses, and (c) it effectively seeks to obtain a change in venue of millions of dollars of claims with no showing that the District of Nevada, the forum selected by the Avenue Plaintiffs, is an appropriate or more convenient forum than the forum selected by the Aurelius Plaintiffs. Contrary to Plaintiffs' suggestion, there was nothing unreasonable about the Revolving Lenders' unwillingness to enter into the stipulation proposed by Plaintiffs, nor is there any basis to impose its terms on Defendants by court order. Moreover, while chastising the Revolving Lenders for not agreeing to their proposed terms, Plaintiffs fail to mention that *Plaintiffs* rejected an alternative proposal by the Revolving Lenders that provided, among other things, that the trial, if

any, of the claims in the Avenue and Aurelius Actions, take place in this Court, along with the claims in the related Fontainebleau case.

ARGUMENT

I. THE COURT LACKS JURISDICTION TO ENTER AN ORDER WITH RESPECT TO CLAIMS AGAINST THE REVOLVING LENDERS THAT ARE CURRENTLY THE SUBJECT OF APPEAL

This Court lacks jurisdiction to modify its prior Order and Entry of Partial Final Judgment to now dismiss the Aurelius Action without prejudice. The Avenue and Aurelius Plaintiffs filed notices of appeal on January 19, 2011 and February 11, 2011, respectively, of this Court's Partial Final Judgment dismissing their claims against the Revolving Lenders with prejudice. As a result, this Court was divested of jurisdiction and cannot enter an Order modifying its prior ruling or otherwise adjudicate the same Aurelius claims against the Revolving Lenders that are involved in the pending appeals.

The filing of a notice of appeal "is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over the aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982); *see also Weaver v. Florida Power & Light Co.*, 172 F.3d 771, 773 (11th Cir. 1999) ("It is well-settled law that the filing of a notice of appeal divests the district court of jurisdiction over a case"); *Abrahams v. Incorporated Village of Hempstead*, 2010 WL 3025191, *1 (2d Cir. Aug. 4, 2010) ("The dismissal of the complaint while the appeal was pending was error. A notice of appeal divests a district court of jurisdiction.").

While the Court may enter orders relating to the Aurelius Plaintiffs' claims against Bank of America as Disbursement Agent under the Disbursement Agreement – claims which were not dismissed and are not subject to a pending appeal, and which the Plaintiffs have

described as entirely distinct from their claims against the Revolving Lenders (*see* Plaintiff Term Lenders’ Joint Motion for Partial Final Judgment, Docket No. 151, at 2) – the Court of Appeals now has sole jurisdiction over all aspects of the Aurelius Plaintiffs’ claims for breach of the Credit Agreement, including all claims against the Revolving Lenders.

II. DISMISSING THE AURELIUS ACTION WITHOUT PREJUDICE AND PROCEEDING WITH ALL CLAIMS IN THE AVENUE ACTION WOULD UNFAIRLY PREJUDICE THE REVOLVING LENDERS

Plaintiffs claim that granting the Dismissal Motion and approving Plaintiffs’ proposed stipulation will not prejudice the Revolving Lenders and that counsel for the Revolving Lenders failed to identify any such prejudice during discussions concerning the proposed stipulation. These assertions are wrong on several counts.

First, as was conveyed to counsel for the Avenue Plaintiffs, the Revolving Lenders object to and would clearly be prejudiced by a dismissal of the Aurelius Action without prejudice.¹ Declaration of David J. Woll (“Woll Decl.”), ¶ 5. This Court has already dismissed the Aurelius Plaintiffs’ claims against the Revolving Lenders *with prejudice*. Apart from the jurisdictional issue raised above, it is hard to imagine why any defendant would agree to convert a dismissal with prejudice to a dismissal without prejudice while receiving no benefit or concession in return. Furthermore, even if the Court had not already dismissed the claims against the Revolving Lenders with prejudice, the claims of the Aurelius Plaintiffs would now be subject to a dismissal *with prejudice* if, as Plaintiffs represent, the Aurelius Plaintiffs have sold all of their interests in the Credit Agreement to the Avenue Plaintiffs. *See, e.g., Serefex Corp. v. Hickman Holdings, LP*, 695 F. Supp. 2d 1331, 1344 (M.D. Fla. 2010) (dismissing claim with

¹ The stipulation proposed by the Avenue Plaintiffs provides that “[t]he Aurelius Action shall be dismissed without prejudice as to claims arising out of or related to any Aurelius Notes that are purchased by any of the [Avenue Plaintiffs].” Dillman Decl., Ex. A ¶ 1.

prejudice where plaintiff lacked standing to challenge validity of a contract to which it was not a party).²

Second, as was also conveyed to counsel for the Avenue Plaintiffs, the Revolving Lenders object to the proposed stipulation, which Plaintiffs have asked the Court to order, to the extent that it requires the Revolving Lenders to waive potential statute of limitations defenses. Woll Decl., ¶ 5. The stipulation proposed by the Avenue Plaintiffs provides that “[f]or purposes of computing time periods pursuant to any applicable statutes of limitations or repose, the time for filing the claims asserted in the Aurelius Action shall be deemed to have been tolled at all times during the pendency of the Aurelius Action.” Dillman Decl., Ex. A ¶ 3. Whether and to what extent periods of limitation or repose for a particular claim are tolled by the pendency of the Aurelius Action is a legal question that can be resolved, if necessary, as and when it arises. If such periods are tolled for a particular claim by operation of law, there is no need for a stipulation “deeming” that to be the case. If they are not, there is no reason why the Revolving Lenders should be expected to waive a potential defense in a stipulation, the sole purpose of which is to assist the Avenue Plaintiffs in buying claims against the Revolving Lenders from the Aurelius Plaintiffs.

² Of course, there is no evidence in the record that any of the Aurelius Plaintiffs’ claims have been effectively sold and assigned to the Avenue Plaintiffs; only statements to the effect that the Avenue Plaintiffs have “purchased all of the Term Loan Notes previously held by the [Aurelius Plaintiffs]” in a declaration from counsel. Dillman Decl., ¶ 2. *See Morgan v. Sec. of Health & Human Servs.*, 2007 WL 5161614, at *3 (Fed.Cl. Apr. 2, 2007) (“[A]ssertions of counsel are not evidence.”); *see also Sesostris, S.A.E. v. Transportes Navales, S.A.*, 727 F. Supp. 737, 743 (D.Mass. 1989) (“attorney’s affidavit does not provide sufficient proof of ownership [of disputed cargo ship]”). The Credit Agreement contains various requirements that a party must comply with to effectively transfer its interests under the Credit Agreement, and Plaintiffs do not even try to demonstrate that these requirements have been met.

Third, and as was also conveyed to counsel for the Avenue Plaintiffs, the Revolving Lenders object to the Avenue Plaintiffs' attempt to fold the Aurelius Action into their own action without addressing issues regarding the ultimate venue for trial, if any. Woll Decl., ¶ 6. The Avenue and Aurelius Plaintiffs chose to file their actions in Nevada and New York, respectively. Since the Avenue Plaintiffs claim to be purchasing the Aurelius Plaintiffs' litigation position and "succeed[ing] to all claims asserted in the Aurelius Action" (Avenue Motion at 2), they are merely stepping into the shoes of the Aurelius Plaintiffs. While this might entitle them to substitute in as plaintiffs in the New York action, it does not entitle them to treat the Aurelius Plaintiffs' claims as if they were originally filed in Nevada. Pursuant to MDL procedures, if the Aurelius Plaintiffs' claims against the Revolving Lenders are revived, those claims would be remanded to the Southern District of New York for trial, if necessary.³ Conspicuously absent from the Dismissal Motion is any mention of the proposal that the Revolving Lenders made to address this venue issue. The Revolving Lenders proposed that the parties stipulate that any trial in the Aurelius, Avenue and Fontainebleau Actions take place in the Southern District of Florida. That procedure, which would promote "efficient case management" and avoid "splitting claims" far more than anything contained in the stipulation proposed by Plaintiffs, was rejected out of hand by Plaintiffs. Instead, Plaintiffs sought a one-sided stipulation that the Revolving Lenders had every right to reject.

³ In fact, in briefing before the Judicial Panel on Multidistrict Litigation regarding consolidated pre-trial proceedings for these and the Fontainebleau actions, the Avenue Plaintiffs agreed with the Aurelius Plaintiffs that *all* actions should be transferred for pretrial purposes to New York on the basis that, among other reasons, the parties to the Credit Agreement at issue selected New York as the preferred forum and agreed New York law governs, and the majority of the parties, witnesses and counsel are located in the New York area. Woll Decl., Ex. A and B.

CONCLUSION

For the foregoing reasons, the Revolving Lenders respectfully request that the Court deny the Plaintiffs' motion to dismiss the Aurelius action without prejudice and Plaintiffs' request that the Court approve their proposed stipulation.

Respectfully submitted,

Date: March 7, 2011

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 7, 2011, a copy of the foregoing REVOLVING LENDERS’ OPPOSITION TO AVENUE AND AURELIUS PLAINTIFFS’ MOTION FOR AN ORDER DISMISSING AURELIUS PLAINTIFFS’ ACTION WITHOUT PREJUDICE and the accompanying DECLARATION OF DAVID J. WOLL were filed with the Clerk of the Court using CM/ECF and that they are being served this day on the following counsel of record 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 Notices of Electronic Filing.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:09-md-2106 -GOLD/GOODMAN

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document relates to:

Case No. 09-cv-23835-ASG
Case No. 10-cv-20236-ASG

**DECLARATION OF DAVID J. WOLL
IN SUPPORT OF THE REVOLVING LENDERS' OPPOSITION TO
AVENUE AND AURELIUS PLAINTIFFS' MOTION FOR AN ORDER
DISMISSING AURELIUS PLAINTIFFS' ACTION WITHOUT PREJUDICE**

I, David J. Woll, declare as follows:

1. I am a partner in the law firm of Simpson Thacher & Bartlett LLP, counsel for Defendants Barclays Bank PLC, Deutsche Bank Trust Company Americas, JPMorgan Chase Bank N.A., and The Royal Bank of Scotland plc, four of the Revolving Lender Defendants in the above-captioned actions. I am fully familiar with the matters stated herein based on my personal knowledge or familiarity with the records in the above-captioned proceedings.

2. I submit this Declaration in support of the Revolving Lenders' opposition to the motion of plaintiffs in *Avenue CLO Fund, Ltd., et al. v. Bank of America, N.A., et al.*, Case No. 09-cv-23835-ASG (the "Avenue Plaintiffs" and "Avenue Action") and *ACP Master, Ltd., et al. v. Bank of America, N.A., et al.*, Case No. 10-cv-20236-ASG (the "Aurelius Plaintiffs" and "Aurelius Action") (collectively, "Plaintiffs") for an Order dismissing the Aurelius Action without prejudice and approving the terms of Plaintiffs' proposed stipulation.

3. On January 25, 2011, Kirk Dillman, counsel for the Avenue Plaintiffs, sent me a draft Stipulation (the "Stipulation") regarding dismissal of the Aurelius Action without prejudice and asked that I coordinate review and comment among the Revolving Lenders.

4. On February 7, 2011, I spoke with Kirk Dillman and Daniel Cantor, counsel for Bank of America, N.A., about the Stipulation. During that call, I conveyed several issues the Revolving Lenders had with the Stipulation and explained that the Revolving Lenders did not see why they should agree to the various waivers and concessions contemplated in the Stipulation without getting any benefit or concession in return.

5. Among other things, I explained that the Revolving Lenders objected to dismissal of the Aurelius Action without prejudice and would require any stipulation to state that the claims are dismissed with prejudice. Indeed, the Court has already dismissed the Aurelius Plaintiffs' claims against the Revolving Lenders with prejudice. I also explained that the Revolving Lenders objected to the Stipulation to the extent that it required the Revolving Lenders to waive potential statute of limitations defenses.

6. In addition, in order to address the trial venue issue created by the fact that the Aurelius, Avenue and Fontainebleau Actions were originally filed in New York, Nevada and Florida, respectively, I proposed that the trial, if any, in all three cases take place in the Southern District of Florida. Mr. Dillman rejected this proposal.

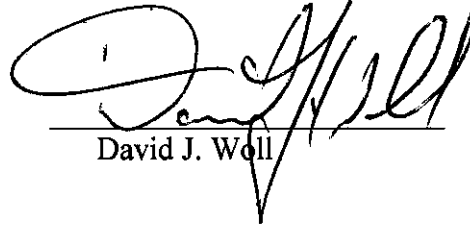
7. Attached hereto as Exhibit A is a true and correct copy of the Aurelius Plaintiffs' Memorandum in Response to Plaintiffs' Motion for Consolidation and Transfer, dated September 23, 2009, which was submitted to the Judicial Panel on Multidistrict Litigation.

8. Attached hereto as Exhibit B is a true and correct copy of the Avenue Plaintiffs' Memorandum in Response to Aurelius's Memorandum in Response to Plaintiffs'

Motion for Consolidation and Transfer, dated October 2, 2009, which was submitted to the Judicial Panel on Multidistrict Litigation.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 7, 2011



David J. Well

EXHIBIT A

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In Re: Fontainebleau Las Vegas Litigation

MDL Docket No. 2106

INTERESTED PARTY AURELIUS'S MEMORANDUM IN RESPONSE TO
PLAINTIFFS' MOTION FOR CONSOLIDATION AND TRANSFER

INTRODUCTION

Consolidated pretrial proceedings are warranted in these actions. However, the panel should transfer the actions to the Southern District of New York—where ACP Master, Ltd. and Aurelius Capital Master, Ltd. (“Aurelius”) have filed their action¹—rather than to the Southern District of Florida. First, the vast majority of parties, witnesses, and counsel are located in and around New York and there is virtually no connection to Florida. Second, Judge Laura Taylor Swain,² United States District Judge of the Southern District of New York is well experienced in disputes involving multi-billion dollar loan facilities and disputes among lenders in those facilities. Third, the parties to the contracts have agreed that New York federal or state court is the preferred forum and have selected New York law to govern their obligations.

¹ *ACP Master, Ltd., et al. v. Bank of America, N.A., et al.*, pending in the United States District Court for the Southern District of New York, Case No. 09-CIV-8064. (See Ex. A)

² The Honorable Judge Swain is currently presiding over *ACP Master, Ltd., et al. v. Bank of America, N.A., et al.*, Case No. 09-CIV-8064.

ARGUMENT

I. The Location and Convenience of the Parties, Witnesses, and Counsel Strongly Favor the Southern District of New York.

The Panel typically seeks to place an MDL in a convenient location. *See In re Cardiac Devices Qui Tam Litig.*, 254 F. Supp. 2d 1370, 1373 (J.P.M.L. 2003) (transferring to the District of Connecticut because “most of the parties in this litigation are in the eastern part of the United States, and thus the Connecticut district will prove to be convenient for many of the litigants”). As set forth below, the vast majority of parties, witnesses and counsel are located in or around New York.

A. New York is convenient to the parties while Florida is not.

Only three of over one hundred parties in the cases to be consolidated are located in Florida. Those three parties are Jeffrey Soffer, Turnberry Residential Limited Partners, L.P., and Fontainebleau Las Vegas LLC (which is purportedly headquartered in Florida but which, as the name suggests, is building a casino and hotel in Nevada).³

The defendants in the related cases are primarily located in and around New York.

- Defendant Bank of America, N.A. is a nationally chartered bank with its main office in Charlotte, North Carolina, but with a headquarters in New York.
- Defendant Merrill Lynch Capital Corporation is a Delaware corporation, with its principal place of business in New York.
- Defendant JPMorgan Chase Bank, N.A. is a nationally chartered bank with its main office in Columbus, Ohio, with major headquarters in New York.

³ Fontainebleau Las Vegas LLC is a Nevada company with its principal place of business in Nevada. Fontainebleau Las Vegas LLC is a successor by merger to Fontainebleau Las Vegas II, LLC. Fontainebleau Las Vegas II, LLC was a Florida limited liability company.

- Defendant Barclays Bank PLC is a public limited company in the United Kingdom with its principal place of business in London, England, with New York offices.
- Defendant Deutsche Bank Trust Company Americas is a New York State-chartered bank with its principal office in New York.
- Defendant The Royal Bank of Scotland PLC is a banking association organized under the laws of the United Kingdom, with offices in New York.
- Defendant Sumitomo Mitsui Banking Corporation is a Japanese corporation with offices in New York.
- Defendant Bank of Scotland is chartered under the laws of Scotland, with its principal place of business in Edinburgh, Scotland, with offices in New York.
- Defendant HSH Nordbank AG is a German banking corporation with a branch in New York.
- Defendant Camulos Master Fund, L.P. is a Delaware corporation with its principal place of business in Stamford, Connecticut just outside New York.

Because the vast majority of parties have no connection to Florida and are primarily located in and around New York, Florida is not convenient to the parties.

B. The majority of witnesses are located in New York.

The cases turn primarily on the actions and knowledge of witnesses who are located in and around New York with respect to the Fontainebleau credit agreement. The offering memorandum to the Fontainebleau credit agreement is instructive in demonstrating the location of potential witnesses and documents. (See Ex. B.) The memorandum shows that over thirty potential witnesses are located in New York. (See

Ex. B at 6-10.) The memorandum also notes that the parties held a key meeting in New York to market and sell the Fontainebleau debt. (See Ex. B at 13.) The fact that this meeting was held in New York (not Florida) indicates the location of the key players in the related cases.

The central issue in three of these litigations and an important issue in the others is whether a subset of Fontainebleau's lenders wrongfully failed to honor a borrowing request made on March 2, 2009, to the detriment of other lenders and the borrower. That very day, the Fontainebleau lenders held a conference call to discuss that borrowing request. The conference call participation list reveals the location of those lender witnesses by area code. (See Ex. C) The area codes of these witnesses establish that the vast majority are located in an around New York. Not a single area code is located in Florida.

Important third-party witnesses and documents are also located in and around New York. For example, the construction consultant, Inspection & Valuation International, Inc., is located in White Plains, New York. (See Ex. D)

The Southern District of New York is more centrally located to the vast majority of party and third-party witnesses than is the Southern District of Florida.

C. Almost all counsel are located in New York.

None of the lead lawyers in the present actions is based in Florida. All parties appearing to date are represented primarily by New York counsel, or other counsel located outside of Florida as shown in the chart below.

Case(s)	Party	Lead Counsel
<i>Fontainebleau Las Vegas LLC, Case 09-cv-21897-ASG</i>	Fontainebleau Las Vegas LLC	Kasowitz Benson Torres & Friedman LLP New York, New York
<i>Fontainebleau Las Vegas LLC, Case 09-cv-21897-ASG; Avenue CLO Fund, Ltd., et al., Case 09-cv-1047-KJD; Deutsche Bank Trust Co. Americas, Case 09-cv-7089</i>	Bank of America, N.A.	O'Melveny & Myers LLP New York, New York
<i>Fontainebleau Las Vegas LLC, Case 09-cv-21897-ASG; Avenue CLO Fund, Ltd., et al., Case 09-cv-1047-KJD</i>	Merrill Lynch Capital Corp.	O'Melveny & Myers LLP New York, New York
<i>Fontainebleau Las Vegas LLC, Case 09-cv-21897-ASG; Avenue CLO Fund, Ltd., et al., Case 09-cv-1047-KJD</i>	JPMorgan Chase Bank, N.A.	Simpson Thatcher & Bartlett LLP New York, New York
<i>Fontainebleau Las Vegas LLC, Case 09-cv-21897-ASG; Avenue CLO Fund, Ltd., et al., Case 09-cv-1047-KJD</i>	Barclays Bank PLC	Simpson Thatcher & Bartlett LLP New York, New York
<i>Fontainebleau Las Vegas LLC, Case 09-cv-21897-ASG; Avenue CLO Fund, Ltd., et al., Case 09-cv-1047-KJD; Deutsche Bank Trust Co. Americas, Case 09-cv-7089</i>	Deutsche Bank Trust Company Americas	Simpson Thatcher & Bartlett LLP New York, New York -and- LeClair Ryan New York, New York
<i>Fontainebleau Las Vegas LLC, Case 09-cv-21897-ASG; Avenue CLO Fund, Ltd., et al., Case 09-cv-1047-KJD</i>	Royal Bank of Scotland PLC	Simpson Thatcher & Bartlett New York, New York
<i>Fontainebleau Las Vegas LLC, Case 09-cv-21897-ASG; Avenue CLO Fund, Ltd., et al., Case 09-cv-1047-KJD</i>	Bank of Scotland	Katten Muchin Rosenman LLP New York, New York

Case(s)	Party	Lead Counsel
<i>Fontainebleau Las Vegas LLC, Case 09-cv-21897-ASG Avenue CLO Fund, Ltd., et al., Case 09-cv-1047-KJD</i>	Sumitomo Mitsui Banking Corporation	Mayer Brown LLP New York, New York
<i>Fontainebleau Las Vegas LLC, Case 09-cv-21897-ASG; Avenue CLO Fund, Ltd., et al., Case 09-cv-1047-KJD</i>	HSH Nordbank AG	Kaye Scholer LLP New York, New York
<i>Fontainebleau Las Vegas LLC, Case 09-cv-21897-ASG; Avenue CLO Fund, Ltd., et al., Case 09-cv-1047-KJD</i>	MB Financial Bank, N.A.	Shaw Gussis Fishman Flantz Wolfson & Towbin LLC Chicago, Illinois
<i>Avenue CLO Fund, Ltd., et al., Case 09-cv-1047-KJD</i>	Avenue CLO Fund, Ltd., and all plaintiffs	Hennigan, Bennett & Dorman, LLP Los Angeles, California
<i>Avenue CLO Fund, Ltd., et al., Case 09-cv-1047-KJD</i>	Camulos Master Fund, L.P.	Santoro, Driggs, Walch, Kearney, Johnson & Thompson Las Vegas, Nevada
<i>Deutsche Bank Trust Co. Americas, Case 09-cv-7089</i>	Turnberry Residential Limited Partner, L.P.	Kasowitz Benson Torres & Friedman LLP New York, New York
<i>Deutsche Bank Trust Co. Americas, Case 09-cv-7089</i>	Jeffrey Soffer	Kasowitz Benson Torres & Friedman LLP New York, New York
<i>ACP Master, Ltd. et al., Case No. 09-cv-8064</i>	ACP Master, Ltd. and Aurelius Capital Master, Ltd.	Bartlit Beck Herman Palenchar & Scott LLP Chicago, Illinois

If this litigation were located in Miami, the vast majority of the parties, witnesses and counsel would face substantial inconveniences. Transferring these cases to the Southern District of New York would avoid much of these burdens.

II. The Southern District of New York, Specifically The Honorable Judge Laura Swain, Is Best Suited to Handle this Complex Financial Litigation.

The Honorable Judge Laura Swain, a former bankruptcy judge, has extensive experience dealing with the types of issues presented in these related cases and with their broader implications for the financial industry. Most recently, Judge Swain presided over the Enron bank debt litigation with claims totaling over \$3 billion. In *UniCredito Italiano SpA v. JPMorgan Chase Bank*, 288 F. Supp. 2d 485, 491 (S.D.N.Y. 2003), Judge Swain had before her a case involving a subset of lenders suing other lenders related to \$3 billion in syndicated loan facilities, similar to two of the present cases.

Transfer to Judge Swain would place these cases in the hands of a judge that is highly experienced in the litigation of billion dollar credit agreements.

III. The Parties to the Fontainebleau Credit Agreement Expressly Chose New York as their Preferred Forum Because it is Most Experienced in the Application of New York Law.

Finally, the parties to the credit agreement and disbursement agreement at issue in these cases selected New York courts and the Southern District of New York as the preferred state and federal venues, respectively. *See* excerpts of the Credit Agreement, § 10.12, attached hereto as Exhibit E and excerpts of the Master Disbursement Agreement, § 11.11, attached hereto as Exhibit F. None of the parties to these agreements had any reasonable expectation that a Florida court would decide their disputes that are governed by New York law.

New York is the hub of financial industry litigation. *Cf. Granite Partners, L.P. v. Bear, Stearns & Co.*, 17 F. Supp. 2d 275, 306 n.16 (S.D.N.Y. 1998) (choosing New York law in a choice of law analysis in part because “the financial industry ... is centered in

New York” and the case was “vitally important” to the financial industry). All of the cases proposed for consolidation deal with the nuances of complex financial contracts and transactions between financial industry participants under New York law.

Transfer of this case to the Southern District of New York would place it in the courts that are most highly experienced in applying New York law to disputes among sophisticated parties that contracted under New York law.

CONCLUSION

If this Panel issues an order transferring these actions pursuant to 28 U.S.C. § 1407 for pretrial coordination and consolidation, Aurelius respectfully requests that these actions be transferred to the Southern District of New York.

DATED: September 23, 2009

Respectfully submitted,

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EXHIBIT B

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

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

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MDL No. 2106

**THE TERM LENDER PLAINTIFFS' MEMORANDUM IN RESPONSE TO
INTERESTED PARTY AURELIUS'S MEMORANDUM IN RESPONSE TO
PLAINTIFFS' MOTION FOR CONSOLIDATION AND TRANSFER**

Plaintiffs Avenue CLO Fund, Ltd., *et al.* (the "Term Lender Plaintiffs"),¹ parties to *Avenue CLO Fund, Ltd., et al. v. Bank of America, N.A., et al.*, No. 09-cv-01047-KJD-PAL (D. Nev.), respectfully submit this Memorandum in response to and in support of the Memorandum of Interested Parties ACP Master, Ltd. and Aurelius Capital Master, Ltd. ("Aurelius") for an Order directing transfer of all related actions to the Honorable Laura Taylor Swain of the United States District Court for the Southern District of New York for consolidated pre-trial proceedings.

¹ Subsequent to the filing of the Term Lender Plaintiffs' Motion for Transfer of Related Actions, the following parties have been dismissed without prejudice from the Nevada District Court action: Babson CLO Ltd. 2004-I; Babson CLO Ltd. 2004-II; Babson CLO Ltd. 2005-I; Babson CLO Ltd. 2005-II; Babson CLO Ltd. 2005-III; Babson CLO Ltd. 2006-I; Babson CLO Ltd. 2006-II; Babson CLO Ltd. 2007-I; Artus Loan Fund 2007-I Ltd.; Babson Loan Opportunity CLO, Ltd.; JFIN CLO 2007 Ltd.; Sapphire Valley CDO I, Ltd.; Jefferies Finance CP Funding LLC; Halcyon Loan Investors CLO I Ltd.; Halcyon Loan Investors CLO II Ltd.; Halcyon Structured Asset Management Long Secured/Short Unsecured CLO 2006-1 Ltd.; Halcyon Structured Asset Management European CLO 2008-II B.V.; Halcyon Structured Asset Management CLO I Ltd.; Halcyon Structured Asset Management Long Secured/Short Unsecured 2007-1 Ltd.; Halcyon Structured Asset Management Long Secured/Short Unsecured 2007-2 Ltd.; Halcyon Structured Asset Management Long Secured/Short Unsecured 2007-3 Ltd.; and Carlyle Loan Investment, Ltd.

INTRODUCTION

The Term Lender Plaintiffs previously moved the Judicial Panel on Multidistrict Litigation for an Order directing transfer of their action to the Southern District of Florida for pre-trial coordination with *Fontainebleau Las Vegas LLC v. Bank of America, N.A., et al.*, No. 09-cv-21879-ASG (S.D. Fl.), as both actions involve common defendants Bank of America, N.A.; Merrill Lynch Capital Corporation; JPMorgan Chase Bank, N.A.; Barclays Bank PLC; Deutsche Bank Trust Company Americas; The Royal Bank of Scotland plc; Sumitomo Mitsui Banking Corporation New York; Bank of Scotland plc; HSH Nordbank AG, New York Branch; and MB Financial Bank, N.A. (“Defendants” or “Revolver Banks”)² and have at their core a common lending agreement, disbursement agreement and supporting lending documentation concerning construction and development of the proposed multi-billion dollar Fontainebleau Las Vegas hotel and casino destination resort in Las Vegas, Nevada (the “Project”).

At the time the Term Lender Plaintiffs moved the MDL Panel in early August, no action was then pending in the United States District Court for the Southern District of New York. Subsequently, on September 21, 2009, Aurelius filed its action in the Southern District of New York alleging the Revolver Banks breached the same lending agreement, disbursement agreement and supporting lending documentation pertaining to the Project, which action is now pending before Judge Laura Taylor Swain.³

In consideration of the recent filing in the Southern District of New York and for the reasons set forth below, the Term Lender Plaintiffs join Aurelius in moving the MDL Panel to

² In addition to the common defendants, the Term Lender Plaintiffs also name defendant Camulos Master Fund, L.P. as a party to the Nevada District Court action.

³ *ACP Master, Ltd., et al. v. Bank of America, N.A., et al.*, pending in the United States District Court for the Southern District of New York, Case No. 09-CIV-8064.

transfer all Related Actions, as well as all subsequently filed related actions, to the United States District Court for the Southern District of New York for consolidated pre-trial proceedings before the Honorable Laura Taylor Swain.

ARGUMENT

In accord with Aurelius, the Term Lender Plaintiffs note substantial grounds to transfer the Related Actions to the Southern District of New York. In order to avoid repetition, the Term Lender Plaintiffs note their concurrence with and adoption of the arguments set forth in Aurelius's Memorandum. First, the parties to the agreements at issue selected New York as the preferred forum and agreed New York law governs. (*See* Aurelius's Memorandum, pp. 7-8.) Second, the majority of the parties, witnesses, and counsel are located in the New York area. (*See* Aurelius's Memorandum, pp. 2-7.) Third, Judge Swain is highly respected and experienced in determining multi-billion dollar financing disputes. (*See* Aurelius's Memorandum, p. 7.)

In sum, for the reasons detailed in Aurelius's Memorandum, the Term Lender Plaintiffs concur that the MDL Panel should transfer all Related Actions to the United States District Court for the Southern District of New York for consolidated pre-trial proceedings before the Honorable Laura Taylor Swain.

CONCLUSION

Plaintiffs Avenue CLO Fund, Ltd., *et al.* concur with Aurelius and respectfully request that the MDL Panel issue an order transferring the Related Actions, as well as all subsequently

filed related actions, to the United States District Court for the Southern District of New York for consolidated pre-trial proceedings before the Honorable Laura Taylor Swain.

Dated: October 2, 2009

Respectfully submitted,



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*HIGHLAND LOAN FUNDING V, LTD.;
HIGHLAND OFFSHORE PARTNERS, L.P.;
JASPER CLO, LTD.; LIBERTY CLO, LTD.; LOAN
FUNDING IV LLC; LOAN FUNDING VII LLC;
LOAN STAR STATE TRUST; LONGHORN
CREDIT FUNDING, LLC; RED RIVER CLO,
LTD.; ROCKWALL CDO LTD.; ROCKWALL CDO
II, LTD.; SOUTHFORK CLO, LTD.; STRATFORD
CLO, LTD.; WESTCHESTER CLO, LTD.; ING
PRIME RATE TRUST; ING SENIOR INCOME
FUND; ING INTERNATIONAL (II) - SENIOR
BANK LOANS EURO; ING INTERNATIONAL (II) -
SENIOR BANK LOANS USD; ING INVESTMENT
MANAGEMENT CLO I, LTD.; ING INVESTMENT
MANAGEMENT CLO II, LTD.; ING INVESTMENT
MANAGEMENT CLO III, LTD.; ING
INVESTMENT MANAGEMENT CLO IV, LTD.;
ING INVESTMENT MANAGEMENT CLO V, LTD.;
ENCORE FUND LP; NUVEEN FLOATING RATE
INCOME FUND; FORTISSIMO FUND; NUVEEN
FLOATING RATE INCOME OPPORTUNITY
FUND; NUVEEN SENIOR INCOME FUND;
SYMPHONY CREDIT OPPORTUNITY FUND,
LTD.; SYMPHONY CLO I, LTD.; SYMPHONY
CLO II, LTD.; SYMPHONY CLO III, LTD.;
SYMPHONY CLO IV, LTD.; SYMPHONY CLO V,
LTD.; CARLYLE HIGH YIELD PARTNERS 2008-1,
LTD.; CARLYLE HIGH YIELD PARTNERS VI,
LTD.; CARLYLE HIGH YIELD PARTNERS VII,
LTD.; CARLYLE HIGH YIELD PARTNERS VIII,
LTD.; CARLYLE HIGH YIELD PARTNERS IX,
LTD.; CARLYLE HIGH YIELD PARTNERS X,
LTD.; CENTURION CDO VI, LTD.; CENTURION
CDO VII, LTD.; CENTURION CDO 8, LIMITED;
CENTURION CDO 9, LIMITED; CENT CDO 10
LIMITED; CENT CDO XI LIMITED; CENT CDO
12 LIMITED; CENT CDO 14 LIMITED; CENT
CDO 15 LIMITED; VENTURE II CDO 2002,
LIMITED; VENTURE III CDO LIMITED;
VENTURE IV CDO LIMITED; VENTURE V CDO
LIMITED; VENTURE VI CDO LIMITED;
VENTURE VII CDO LIMITED; VENTURE VIII
CDO LIMITED; VENTURE IX CDO LIMITED;
VISTA LEVERAGED INCOME FUND; VEER
CASH FLOW CLO, LIMITED; DUANE STREET
CLO I, LTD.; DUANE STREET CLO II, LTD.;*

***DUANE STREET CLO III, LTD.; DUANE STREET
CLO IV, LTD.; DUANE STREET CLO V, LTD.;
JAY STREET MARKET VALUE CLO I, LTD.; RIVA
RIDGE MASTER FUND, LTD.; MARINER LDC;
GENESIS CLO 2007-1 LTD.; ARES ENHANCED
LOAN INVESTMENT STRATEGY III, LTD.;
PRIMUS CLO I, LTD.; PRIMUS CLO II, LTD.;
WEXFORD SPECTRUM INVESTORS LLC; and
DEBELLO INVESTORS LLC***

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MASTER CASE NO. 09-MD- 2106-CIV-GOLD/GOODMAN

In Re: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

M.L. NO. 2106

This document relates to all actions.

**FONTAINEBLEAU RESORTS, LLC'S MOTION FOR EXTENSION OF TIME TO
COMPLY WITH ORDER DATED MARCH 4, 2011, AND TO SERVE PRIVILEGE LOG**

Third Party, Fontainebleau Resorts, LLC ("FBR"), by and through its undersigned counsel, pursuant to Fed.R.Civ.P. 6(b) and S.D. Fla. L.R. 7.1, moves for a two-week extension of time to comply with the Court's Order dated March 4, 2011 [D.E.223] and to serve its final privilege log. As grounds and good cause for this request, FBR respectfully submits:

1. FBR is mindful of the time sensitive nature of the matters attendant to the Court's March 4, 2011 Order. In the Order, the Court has allowed FBR until 5:00 p.m., March 14, 2011, to provide Bank of America ("BANA") (and other parties as applicable) with its final privilege log for its e-mail server.

2. Since receiving the Court's Order, FBR has been diligently working to prepare and finalize its final privilege log. While FBR will try to summarize its efforts in doing so, it will provide some detail to apprise the Court of those efforts and why additional time is needed.

3. FBR retained two IT vendors to assist in the process of searching its e-mail server as previously provided to BANA to identify additional, potentially privilege e-mails. That process identified many thousands of e-mails. Those results were then sorted into "tiers" in order to

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characterize the e-mails from “highly likely” to be privileged to “highly unlikely.” There were approximately 8,400 e-mails in the “highly likely tier.” Given the time and financial restraints, FBR has focused primarily on this tier of e-mails.

4. While the logistics that were applied to identify this set of e-mails were largely successful, there were instances where certain e-mails were not privileged (based on other outside recipients, for example). Thus, FBR has undertaken, and is in the process, of manually reviewing and confirming privilege for as many of the 8,400 e-mails as possible. It is clear, however, that additional time is needed given the number of e-mails and other practical IT limitations. FBR is hopeful that any additional time that may be afforded will allow it to reduce the number of e-mails identified as being privileged and, in doing so, impose less of a burden upon any of the parties who may use or need FBR’s responsive and non-privileged e-mails. In other words, FBR anticipates that the additional time sought will allow it to reduce the number of e-mails to be included on its privilege log.

5. In addition, the deadline set forth in the Court’s Order coincides with the undersigned’s wedding date and one-week honeymoon. While we recognize that this alone may not constitute good cause, the undersigned has previously had primary involvement with these matters and at least some additional time is needed for others within the firm to assist.

6. In accordance with *S.D. Fla. L.R. 7.1.A.3*, the undersigned counsel certifies that she has conferred with counsel for BANA and the Term Lenders. BANA has indicated that it would not oppose FBR’s requested extension provided the Court agrees to extend the discovery schedule (and other corresponding deadlines based on the discovery extension) by one month. The Term Lenders

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oppose any extension of the discovery schedule but have not responded further with respect to the particular relief sought herein.

7. In addition, pursuant to *S.D. Fla. L.R. 7.A.2*, attached is a proposed Order granting this Motion.

WHEREFORE, Third Party, Fontainebleau Resorts, LLC, respectfully requests that this Court enter an Order extending the time for compliance with the Court's March 4, 2011 Order and to serve its final privilege log for the e-mail server through 5:00 p.m., March 28, 2011, or whatever different or additional relief the Court may deem appropriate.

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By: /s Sarah J. Springer

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 9, 2011, 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/GOODMAN

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<p>Aaron Rubinstein, Esq. W. Stewart Wallace, Esq. Steven C. Chin, Esq. Philip A. Geraci, Esq. KAYE SCHOLER LLP 425 Park Avenue New York, NY 10022-3598 Tel: 212.836.8000/Fax: 212.836.8689</p>	<p>HSH Nordbank AG, New York Branch</p>
<p>Aruthur Halsey Rice, Esq. RICE PUGATCH ROBINSON & SCHILLER 101 NE 3rd Avenue, Suite 1800 Fort Lauderdale, FL 33301 Tel: 305.379.3121/Fax: 305.379.4119</p>	<p>HSH Nordbank AG, New York Branch</p>

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

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

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

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MASTER CASE NO. 09-MD- 2106-CIV-GOLD/GOODMAN

In Re: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

M.L. NO. 2106

This document relates to all actions.

**ORDER ON FONTAINEBLEAU RESORTS, LLC'S MOTION FOR
EXTENSION OF TIME TO COMPLY WITH ORDER DATED
MARCH 4, 2011, AND TO SERVE PRIVILEGE LOG**

THIS CAUSE came before the Court on Non-Party Fontainebleau Resorts, LLC's Motion for Extension of Time to Comply with Order Dated March 4, 2011, and to Serve Privilege Log. The Court, having considered the Motion, finding good cause for the requested relief, and being otherwise duly advised in the premises, it is hereupon

ORDERED and ADJUDGED that Fontainebleau Resorts, LLC's Motion is granted. Fontainebleau Resorts, LLC, shall have until March 28, 2011 at 5:00 p.m. to comply with the Court's Order dated March 4, 2011 and to serve its final privilege log as to the e-mail server.

DONE and ORDERED in Chambers, at Miami, Florida, on this ____ day of March, 2011.

Jonathan Goodman
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
All counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

MASTER CASE No.: 09-MD- 02106-CIV-GOLD/GOODMAN

In Re: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to all actions.

**THIRD PARTY, FONTAINEBLEAU RESORTS, LLC'S
NOTICE OF COMPLIANCE WITH COURT ORDERS
AND NOTICE OF SERVING ADDITIONAL PRIVILEGE LOG**

Third Party, Fontainebleau Resorts ("FBR"), respectfully give notice of compliance with the Court's Orders dated March 4, 2011 [D.E. 223] and March 9, 2011 [D.E. 227] and gives notice of serving its privilege log to the interested parties.¹

Respectfully submitted,

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By: /s Douglas T. Marx

Douglas T. Marx
Florida Bar No. 0089834
Sarah J. Springer
Florida Bar No. 0070747

¹ FBR reserves its right to seek reimbursement of its costs pursuant to Federal Rule of Civil Procedure 45(c).

MASTER CASE No.: 09-MD- 02106-CIV-GOLD/GOODMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 16, 2011, 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- 02106-CIV-GOLD/GOODMAN

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MASTER CASE No.: 09-MD- 02106-CIV-GOLD/GOODMAN

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MASTER CASE No.: 09-MD- 02106-CIV-GOLD/GOODMAN

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MASTER CASE No.: 09-MD- 02106-CIV-GOLD/GOODMAN

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MASTER CASE No.: 09-MD- 02106-CIV-GOLD/GOODMAN

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

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document relates to all actions.

**TERM LENDERS' REPLY IN SUPPORT OF MOTION FOR ORDER DISMISSING
AURELIUS ACTION WITHOUT PREJUDICE**

The Avenue plaintiffs have purchased all Term Loan Notes previously owned by the Aurelius plaintiffs.¹ They seek a dismissal of the Aurelius Action without prejudice so that they may pursue all of their claims in a single action rather than splitting claims in multiple proceedings. Bank of America, N.A. stipulated to this requested relief,² and thus all parties currently before the Court concur.

Rule 41 of the Federal Rules of Civil Procedure permits dismissal without prejudice if stipulated to by “all parties who have appeared.” In an effort to avoid burdening this Court with unnecessary motion practice, plaintiffs sought the agreement of the Revolving Lenders to the requested relief. The Revolving Lenders refused, stating that they “were not getting anything in return.”³ What they demanded “in return” for the obvious efficiencies of consolidating all claims

¹ Declaration of Kirk D. Dillman in support of Motion for Order Dismissing Aurelius Action Without Prejudice, ¶ 2.

² *Id.* at ¶ 3.

³ *Id.* at ¶ 4.

in a single action was for the plaintiffs to abandon their chosen home forum and, contrary to the rules governing these MDL proceedings,⁴ transfer their claims to this Court for all purposes.⁵

At no point did the Revolving Lenders cite the lack of jurisdiction of this Court as an issue. Indeed, the Revolving Lenders acknowledge that, despite the fact that the claims against the Revolving Lenders were then on appeal, they agreed to the relief sought by this motion so long as plaintiffs agreed to their extortive demands.⁶ Only when that failed did the Revolving Lenders retreat to the position that such relief was jurisdictionally barred.

Regardless of the Revolving Lenders' motives, however, they are correct that the Court lost jurisdiction over Aurelius' claims against the Revolving Lenders once the Order dismissing those claims was appealed. Accordingly, until that Order is reversed and the claims are returned to this Court for further proceedings, plaintiffs acknowledge that the Court lacks jurisdiction to impose the efficiencies sought by this motion with respect to the claims against the Revolving Lenders.

The appeal of Aurelius's claims against the Revolving Lenders, however, has no bearing on this Court's continuing jurisdiction over the remaining claims against Bank of America.⁷ The

⁴ 28 USCS § 1407 ("Each action so transferred shall be remanded by the panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred...."); *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 28, 40 (U.S. 1998) (holding 28 U.S.C. § 1407(a) "imposes a duty on the Panel to remand any such action to the original district "at or before the conclusion of such pretrial proceedings," which bars the Panel "recognizing any self-assignment power in a transferee court").

⁵ Revolving Lenders' Opposition to Avenue and Aurelius Plaintiffs' Motion for an Order Dismissing Aurelius Plaintiffs' Action Without Prejudice ("Opp."), p. 6; Declaration of David J. Woll in support of the Revolving Lenders' Opposition to Avenue and Aurelius Plaintiffs' Motion for an Order Dismissing Aurelius Plaintiffs' Action Without Prejudice, ¶ 6.

⁶ Opp., p. 6.

⁷ "Appellate jurisdiction over an appeal from an interlocutory decision certified under Rule 54(b) is limited to the rulings or orders certified by the district court." *Edwards v. Prime Inc.*, 602 F.3d

Revolving Lenders agree: “[T]he Court may enter orders relating to the Aurelius Plaintiffs’ claims against Bank of America ... under the Disbursement Agreement – claims which were not dismissed and are not subject to a pending appeal...”⁸ All parties to those claims have stipulated to the relief. Accordingly, plaintiffs request that the Court dismiss the remaining claims against Bank of America in the Aurelius Action without prejudice and enter the Stipulation with respect to those claims.⁹

Dated: March 17, 2011

Respectfully submitted,

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1276, 1288 (11th Cir. 2010). *See also United States v. Fundes Described in Attachment A to the Complaint for Forfeiture in Rem, et al.*, 2008 WL 479997 *2 (M.D. Fla. Feb 19, 2008) (explaining a notice of appeal “divests the district court of its control over those aspects of the case involved in the appeal” but that “[i]n collateral matters not involved in the appeal ... the district court retains jurisdiction.”).

⁸ Opp., p. 4.

⁹ If and when the Eleventh Circuit reinstates the claims against the Revolving Lenders, jurisdiction will return to this Court, and the common sense relief which the plaintiffs seek can be ordered. Plaintiffs will address at that time the Revolving Lenders’ make-weight arguments that they would somehow be prejudiced if all claims were pursued in a single action rather than split between multiple courthouses across the country. Opp., pp. 4-6.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **TERM LENDERS' REPLY IN SUPPORT OF THEIR MOTION FOR ORDER DISMISSING AURELIUS ACTION WITHOUT PREJUDICE** 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: March 17, 2011

/s/ Lorenz M. Prüss, Esq.

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

MAGISTRATE JUDGE GOODMAN'S DISCOVERY PROCEDURES

The following discovery procedures apply to all civil cases assigned to United States District Judge Alan S. Gold.

OVERALL STATEMENT

The procedures are designed to help the Parties and the Court work **together** to timely resolve discovery disputes without undue delay and unnecessary expense.

MEET AND CONFER

Counsel **must** actually confer (in person or via telephone) and engage in reasonable compromise in a genuine effort to resolve their discovery disputes **before** filing discovery motions. In other words, there must be **an actual conversation** before a discovery motion is filed. If counsel refuses to participate in a conversation, then the movant shall so state in the required certificate of conference and outline the efforts made to have a conversation.

The Court may impose sanctions, monetary or otherwise, if it determines discovery is being improperly sought, is being withheld in bad faith or if a party fails to confer in good faith. Sending an email or telefax to opposing counsel with a demand that a discovery response or position be provided on the same day will rarely, if ever, be deemed a good faith effort to confer before filing a discovery motion.

DISCOVERY MOTIONS

If, after conferring, the parties are unable to resolve their discovery disputes without Court intervention, then the moving party shall file a motion, **no longer than 5 pages** (not counting the signature block and certificate of service).

The 5-page limit does not mean that parties are expected to file a motion of 5 pages. Instead, the parties should be governed by the "less-is-more" philosophy. The purpose of the motion is merely to frame the discovery issues and succinctly explain the dispute.

The moving party may attach as exhibits to the motion materials relevant to the discovery dispute. For example, if the dispute concerns interrogatories, the interrogatory responses (that restate the interrogatories) shall be filed, with some indication of which interrogatories remain in dispute. Because the parties may attach relevant discovery as an exhibit to the motion, compliance with the requirement (in Local Rule 26.1(h) (2) or (3)) to state the specifics of the written discovery requests at issue is **not required**. The movant shall include in the motion a certificate of good faith that complies with S.D. Fla. L. R. 7.1 (A) (3). **Counsel shall also deliver a courtesy hard copy of the motion and tabbed exhibits to Judge Goodman's chambers at the time of filing.**

Once a discovery motion is filed, the Court will review the motion and either order a response, schedule the motion for a discovery conference/hearing or enter a ruling. **No written responses to the motion are permitted absent specific court order.**

The Court will designate one day per week for a discovery calendar and will therefore usually be able to timely schedule a hearing/conference (if one is appropriate).

RESPONSES TO MOTIONS

If the Court decides that a response is appropriate, then the responding party shall file a response to the discovery motion within the time frame ordered by the Court, or, if the Court sets the motion for a discovery conference, no later than the close of business three business days before the discovery conference noticed by the Court. The response shall be limited to **3 pages** (not counting the signature block and certificate of service). The responding party may attach as exhibits materials relevant to the discovery dispute, as referenced above. **Counsel shall also deliver a courtesy hard copy of the response and tabbed exhibits to Judge Goodman's chambers at the time of filing.**

No reply memoranda are permitted absent specific court order. The Court anticipates that it will rarely conclude that a reply may be filed.

These procedures do not relieve parties from the requirements of any Federal Rule of Civil Procedure or Local Rule, except as noted above.

HEARINGS

Counsel must provide opposing counsel with citations to all cases and other authority which counsel intends to cite at the hearing at least **2 business days before the hearing**. If a hearing/conference is scheduled, then the Court anticipates that it will be able to do so within 7 to 10 days of receiving a hard copy of the motion.

PRE-HEARING DISCUSSIONS

The mere fact that the Court has scheduled a discovery hearing/conference does not mean that the parties should no longer try to resolve the dispute. To the contrary, the parties are encouraged to continually pursue settlement of disputed discovery matters. If those efforts are successful, then counsel should **contact Judge Goodman's chambers** as soon as practicable so that the hearing can be timely canceled. Alternatively, if the parties resolve some, but not all, of their issues before the hearing, then counsel shall also timely **contact chambers** and provide notice about those issues which are no longer in dispute (so that the Court and its staff do not unnecessarily work on matters which became moot).

EXPENSES, INCLUDING ATTORNEY'S FEES

The Court reminds the parties and counsel that Fed. R. Civ. Pro. 37 (a) (5) requires the Court to award expenses, including fees, unless an exception (such as the existence of a substantially justified, albeit losing, discovery position) applies to the discovery dispute and ruling.

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

CASE NO 09-MD-02106-CIV-GOLD/GOODMAN

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

MDL No. 2106

This document relates to all actions.

**NOTICE OF FILING [PROPOSED] ORDER GRANTING IN PART
MOTION FOR ORDER DISMISSING AURELIUS ACTION WITHOUT PREJUDICE**

Term Lenders hereby file this Notice of Filing [PROPOSED] ORDER GRANTING IN PART MOTION FOR ORDER DISMISSING AURELIUS ACTION WITHOUT PREJUDICE, which is being submitted in connection with the Term Lenders' Motion for Order Dismissing Aurelius Action Without Prejudice [DE #212] in that matter styled In re Fontainebleau Las Vegas Contract Litigation, 09-md-2106.

Dated: April 12, 2011

Respectfully submitted,

By: /s/ Lorenz Michel Prüss
Lorenz Michel Prüss, Esq.
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Fla. Bar No.: 056881
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*Attorneys for Plaintiffs ACP Master, Ltd. and
Aurelius Capital Master, Ltd.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing 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: April 12, 2011

By: /s/ Lorenz Michel Prüss
Lorenz Michel Pruss

SERVICE LIST

Attorneys:	Representing:
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Brett Michael Amron BAST AMRON LLP 150 West Flagler Street Penthouse 2850 Miami, FL 33130 Tele: (305) 379-7905	Plaintiffs ACP Master, Ltd. Aurelius Capital Master, Ltd.

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

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document relates to all actions.

**[PROPOSED] ORDER GRANTING IN PART
MOTION FOR ORDER DISMISSING AURELIUS ACTION WITHOUT PREJUDICE**

The Court has been apprised by counsel for the Term Lenders¹ that the Term Lenders are withdrawing without prejudice their Motion For Order Dismissing Aurelius Action Without Prejudice [D.E. # 212] to the extent that it applies to the claims against the Revolver Lenders (Counts I and II of the Amended Complaint filed in the Aurelius Action (“Aurelius Complaint”)) that are currently on appeal before the 11th Circuit. [D.E. # 208.] The Court has further been apprised that all remaining parties have stipulated to the dismissal of the Aurelius Action without prejudice in accordance with and as evidenced by the Stipulation and Order attached as Exhibit A to the Declaration of Kirk D. Dillman in Support of Motion for Order Dismissing Aurelius Action Without Prejudice (hereinafter “Stipulation”). [D.E. # 212-1.]

The Court, having reviewed the submission in this matter and the pleadings on file, and for good cause having been shown, hereby Orders that the claims against Bank of America, N.A. currently pending before this Court in the Aurelius Action (Count III of the Aurelius Complaint)

¹ The Term Lenders are comprised of the plaintiffs in the cases captioned *Avenue CLO Fund, Ltd., et al. v. Bank of America, N.A., et al.*, Case No. 09-cv-23835-ASG (the “Avenue Action”), and *ACP Master, Ltd., et al. v. Bank of America, N.A., et al.*, Case No. 10-cv-20236-ASG (the “Aurelius Action”).

are Dismissed Without Prejudice in accordance with the Stipulation and hereby enters the Stipulation to the extent applicable to those claims only. Neither this Order nor the Stipulation shall apply to the claims asserted against any other party.

Dated: April , 2011.

By _____
Hon. Alan S. Gold
United States District Court Judge

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

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document relates to all actions.

**SUPPLEMENTAL NOTICE REGARDING PROPOSED ORDER GRANTING IN PART
MOTION FOR ORDER DISMISSING AURELIUS ACTION WITHOUT PREJUDICE**

PLEASE TAKE NOTICE that all parties to these actions have agreed to the form and contents of the [Proposed] Order Granting In Part Motion for Order Dismissing Aurelius Action Without Prejudice. [D.E. # 233-1.]

Dated: April 12, 2011

Respectfully submitted,

/s/ Lorenz M. Prüss

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **NOTICE OF NAME CHANGE OF AVENUE TERM LENDERS' COUNSEL** 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: April 12, 2011.

/s/ Lorenz M. Prüss
Lorenz M. Prüss, Esq.

SERVICE LIST

Attorneys:	Representing:
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Attorneys:	Representing:
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Andrew B. Kratenstein, Esq. Michael R. Huttenlocher, Esq. MCDERMOTT WILL & EMERY LLP 340 Madison Avenue New York, NY 10173 Tele: (212) 547-5400	Defendant Camulos Master Fund, L.P.
Raquel A. Rodriguez MCDERMOTT WILL & EMERY LLP 201 S. Biscayne Blvd. Suite 2200 Miami, FL 33131 Tele: (305) 358-3500 Fax: : (305) 347-6500	Defendant Camulos Master Fund, L.P.
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Attorneys:	Representing:
Jeffrey I. Snyder, Esq. Scott L. Baena, Esq. BILZIN SUMBERG BAENA PRICE & AXELROD 200 S Biscayne Blvd., Suite 2500 Miami, FL 33131-2336 Tele: (305) 375-6148 Fax: (305) 351-2241	Plaintiff Fontainebleau Las Vegas LLC
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James B. Heaton, Esq. John D. Byars, Esq. Steven James Nachtwey, Esq. Vincent S. J. Buccola, Esq. BARTLIT BECK HERMAN PALENCHAR & SCOTT 54 West Hubbard St. Suite 300 Chicago, IL 60654 Tele: (312) 494-4400	Plaintiffs ACP Master, Ltd. Aurelius Capital Master, Ltd.
Brett Michael Amron BAST AMRON LLP SunTrust International Center One Southeast Third Avenue Suite 1440 Miami, FL 33131 Tele: 305.379.7904 Fax: 305.379.7905	Plaintiffs ACP Master, Ltd. Aurelius Capital Master, Ltd.

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

In re:
FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to: All Actions

**NOTICE OF REQUEST FOR TERMINATION OF
APPEARANCE OF ATTORNEY**

Pursuant to Local Rule 11.1(D)(3), Barclays Bank PLC, Deutsche Bank Trust Company Americas, JPMorgan Chase Bank, N.A., and The Royal Bank of Scotland plc, by and through their undersigned counsel, hereby give notice of this request to the Clerk of Courts that Steven S. Fitzgerald, Esq. be terminated from the service list for the above-referenced actions. Mr. Fitzgerald is no longer associated with the law firm of Simpson Thacher & Bartlett LLP.

Respectfully submitted,

By: 

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of Scotland plc*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 14th, 2011, a copy of the foregoing NOTICE OF REQUEST FOR TERMINATION OF APPEARANCE OF ATTORNEY was filed with the Clerk of the Court using CM/ECF and that it is being served this day on the following counsel of record 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 Notices of Electronic Filing.

By:  _____

<p>James B. Heaton Steven J. Nachtwey BARTLIT BECK HERMAN PALENCHAR & SCOTT 54 West Hubbard Street, Suite 300 Chicago, IL 60610 Telephone: (312) 494-4400 Facsimile: (312) 494-4400</p> <p>Brett Michael Amron BAST AMRON LLP 150 West Flagler Street Penthouse 2850 Miami, FL 33130 Telephone: (305) 379-7905 Facsimile: (305) 379-7905</p> <p><i>Attorneys for ACP Master, Ltd. & Aurelius Capital Master, Ltd.</i></p>	<p>J. Michael Hennigan Kirk D. Dillman HENNIGAN DORMAN LLP 865 South Figueroa Avenue, Suite 2900 Los Angeles, CA 90017 Telephone: (213) 694-1200 Facsimile: (213) 694-1234</p> <p>David A. Rothstein Lorenz M. Pruss DIMOND KAPLAN & ROTHSTEIN, P.A. 2665 South Bayshore Drive, PH-2B Miami, FL 33133 Telephone: (305) 374-1920 Facsimile: (305) 374-1961</p> <p><i>Attorneys for Avenue CLO, et al. Plaintiffs</i></p>
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FILING FEE	
PAID _____	
Pro hac _____	17333
Vice _____	Steven M. Larimore, Clerk

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

FILED by <u>AB</u> D.C.
APR 14 2011
STEVEN M. LARIMORE CLERK U. S. DIST. CT. S. D. of FLA. - MIAMI

In re:
FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to: All Actions

**MOTION TO APPEAR *PRO HAC VICE*,
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 *pro hac vice* of Peri L. Zelig, an associate with the law firm of Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017, 212-455-3293, for purposes of limited appearance as co-counsel on behalf of Barclays Bank PLC, Deutsche Bank Trust Company Americas, JPMorgan Chase Bank, N.A., and The Royal Bank of Scotland plc, in the above-styled case only, and pursuant to Rule 2B, Southern District of Florida, CM/ECF Administrative Procedures, to permit Peri L. Zelig to receive electronic filings in this case, and in support thereof states as follows:

1. Peri L. Zelig is not admitted to practice in the Southern District of Florida, is a member in good standing of the New York bar and is admitted to practice before the U.S.

District Court for the Southern District of New York.

2. Movant John B. Hutton, Esquire, of the law firm of Greenberg Traurig, P.A.,

1221 Brickell Ave., Miami, FL, 305-579-0500, 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 2B of the CM/ECF Administrative Procedures.

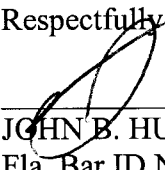
3. In accordance with the local rules of this Court, Peri L. Zelig has made payment of this Court's \$75 admission fee. A certification in accordance with Rule 4(b) is attached hereto.

4. Peri L. Zelig, by and through designated counsel and pursuant to Section 2B, Southern District of Florida, CM/ECF Administrative Procedures, hereby requests the Court to provide Notice of Electronic Filings to Peri L. Zelig at the following e-mail address: pzelig@stblaw.com.

WHEREFORE, John B. Hutton moves this Court to enter an Order permitting Peri L. Zelig to appear before this Court on behalf of Barclays Bank PLC, Deutsche Bank Trust Company Americas, JPMorgan Chase Bank, N.A., and The Royal Bank of Scotland plc for all purposes relating to the proceedings in the above-styled matter, and directing the Clerk to provide notice of electronic filings to Peri L. Zelig.

Dated: April 14, 2011

Respectfully submitted,



JOHN B. HUTTON

Fla. Bar ID No. 902160

huttonj@gtlaw.com

GREENBERG TRAUIG, P.A.

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Miami, Florida 33131

Telephone: (305) 579-0500

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Attorneys for Defendants Barclays Bank PLC,
Deutsche Bank Trust Company Americas,
JPMorgan Chase Bank, N.A., and The Royal
Bank of Scotland plc

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

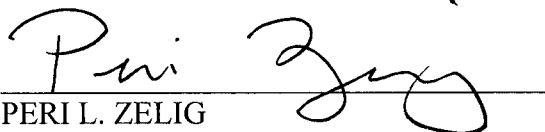
In re:
FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to: All Actions

CERTIFICATION OF PERI L. ZELIG

Peri L. Zelig, Esquire, pursuant to Rule 4B of the Special Rules Governing the Admission and Practice of Attorneys, hereby certifies 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 New York bar and the U.S. District Court for the Southern District of New York.


PERI L. ZELIG

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

In re:
FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to: All Actions

**ORDER GRANTING MOTION TO APPEAR *PRO HAC VICE* OF PERI L. ZELIG,
CONSENT TO DESIGNATION AND REQUEST TO
ELECTRONICALLY RECEIVE NOTICES OF ELECTRONIC FILINGS**

THIS CAUSE having come before the Court on the Motion to Appear *pro hac vice* of Peri L. Zelig and Consent to Designation, requesting, pursuant to Rule 4(b) of the Special Rules Governing the Admission and Practice of Attorneys in the United States District Court for the Southern District of Florida, permission for a limited appearance of Peri L. Zelig in this matter and request to electronically receive notice of electronic filings. This Court having considered the motion and all other relevant factors, it is hereby

ORDERED and ADJUDGED that:

The Motion to Appear *pro hac vice*, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings is GRANTED. Peri L. Zelig is granted leave to appear and participate in this action on behalf of Barclays Bank PLC, Deutsche Bank Trust Company Americas, JPMorgan Chase Bank, N.A., and The Royal Bank of Scotland plc. The Clerk shall provide electronic notification of all electronic filings to Peri L. Zelig at pzelig@stblaw.com.

DONE AND ORDERED in Chambers at Miami, Southern District of Florida, this _____
day of _____, 2011.

United States District Judge

Copies furnished to:
All Counsel of Record

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing MOTION TO APPEAR *PRO HAC VICE*, CONSENT TO DESIGNATION, AND REQUEST TO ELECTRONICALLY RECEIVE NOTICES OF ELECTRONIC FILINGS was served by mail on April 4, 2011, on all counsel or parties of record listed below.

By:  _____

<p>James B. Heaton Steven J. Nachtwey BARTLIT BECK HERMAN PALENCHAR & SCOTT 54 West Hubbard Street, Suite 300 Chicago, IL 60610 Telephone: (312) 494-4400 Facsimile: (312) 494-4400</p> <p>Brett Michael Amron BAST AMRON LLP 150 West Flagler Street Penthouse 2850 Miami, FL 33130 Telephone: (305) 379-7905 Facsimile: (305) 379-7905</p> <p><i>Attorneys for ACP Master, Ltd. & Aurelius Capital Master, Ltd.</i></p>	<p>J. Michael Hennigan Kirk D. Dillman HENNIGAN DORMAN LLP 865 South Figueroa Avenue, Suite 2900 Los Angeles, CA 90017 Telephone: (213) 694-1200 Facsimile: (213) 694-1234</p> <p>David A. Rothstein Lorenz M. Pruss DIMOND KAPLAN & ROTHSTEIN, P.A. 2665 South Bayshore Drive, PH-2B Miami, FL 33133 Telephone: (305) 374-1920 Facsimile: (305) 374-1961</p> <p><i>Attorneys for Avenue CLO, et al. Plaintiffs</i></p>
<p>David M. Friedman Jed I. Bergman Seth A. Moskowitz KASOWITZ, BENSON, TORRES & FRIEDMAN, LLP 1633 Broadway New York, New York 10019 Telephone: (212) 506-1740 Facsimile: (212) 506-1800</p> <p><i>Attorneys for Fontainebleau Las Vegas LLC</i></p>	<p>Russell M. Blain Harley E. Riedel Susan Heath Sharp STICHTER, RIEDEL, BLAIN & PROSSER, P.A. 110 East Madison Street, Suite 200 Tampa, Florida 33602 Telephone: (813) 229-0144 Facsimile: (813) 229-1811</p> <p><i>Attorneys for Soneet R. Kapila, Chapter 7 Trustee for Fontainebleau Las Vegas Holdings, LLC, et al.</i></p>

<p>Daniel L. Cantor Bradley J. Butwin Jonathan Rosenberg William J. Sushon O'MELVENY & MYERS LLP 7 Times Square New York, New York 10036 Telephone: (212) 326-2000 Facsimile: (212) 326-2061</p> <p>Craig V. Rasile HUNTON & WILLIAMS LLP 1111 Brickell Avenue, Suite 2500 Miami, Florida 33131 Telephone: (305) 810-2500 Facsimile: (305) 810-1669</p> <p><i>Attorneys for Bank of America, N.A. and Merrill Lynch Capital Corporation</i></p>	<p>Kenneth E. Noble Anthony L. Paccione KATTEN MUCHIN ROSENMAN LLP 575 Madison Avenue New York, New York 10022 Telephone: (212) 940-8800 Facsimile: (212) 940-8776</p> <p>Harold D. Moorefield, Jr. Drew M. Dillworth STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, PA Museum Tower 150 West Flagler Street, Suite 2200 Miami, Florida 33130 Telephone: (305) 789-3200 Facsimile: (305) 789-3395</p> <p><i>Attorneys for Bank of Scotland PLC</i></p>
<p>Aaron Rubinstein Phillip A. Geraci KAYE SCHOLER LLP 425 Park Avenue New York, New York 10022 Telephone: (212) 836-8000 Facsimile: (212) 836-8689</p> <p>Arthur Halsey Rice RICE PUGATCH ROBINSON & SCHILLER, P.A. 101 Northeast Third Avenue, Suite 1800 Fort Lauderdale, Florida 33301 Telephone: (954) 462-8000 Facsimile: (954) 462-4300</p> <p><i>Attorneys for HSH Nordbank AG, New York Branch</i></p>	<p>Jean-Marie L. Atamian Jason I. Kirschner MAYER BROWN LLP 1675 Broadway New York, New York 10019-5820 Telephone: (212) 506-2500 Facsimile: (212) 262-1910</p> <p>Robert G. Fracasso SHUTTS & BOWEN LLP 1500 Miami Center 201 South Biscayne Boulevard Miami, Florida 33131 Telephone: (305) 358-6300 Facsimile: (305) 347-7802</p> <p><i>Attorneys for Sumitomo Mitsui Banking Corporation</i></p>
<p>Robert W. Glantz Peter J. Roberts SHAW GUSSIS FISHMAN GLANTZ WOLFSON & TOWBIN LLC 321 North Clark St., Suite 800 Chicago, IL 60654 Telephone: (312) 541-0151</p>	<p>Andrew B. Kratenstein Michael R. Huttenlocher MCDERMOTT WILL & EMERY LLP 340 Madison Avenue New York, NY 10171 Telephone: (212) 574-5400</p>

<p>Facsimile: (312) 980-3888</p> <p>Gregory S. Grossman ASTIGARRAGA DAVIS MULLINS & GROSSMAN, PA 701 Brickell Avenue, 16th Floor Miami, Florida 33131 Telephone: (305) 372-8282 Facsimile: (305) 372-8202</p> <p><i>Attorneys for MB Financial Bank, N.A.</i></p>	<p>Raquel A. Rodriguez MCDERMOTT WILL & EMERY LLP 201 S. Biscayne Blvd. Suite 220 Miami, Florida 33131 Telephone: (305) 358-3500 Facsimile: (305) 347-6500</p> <p><i>Attorneys for Camulos Master Fund, L.P.</i></p>
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FILING FEE	
PAID _____	
Pro hac Vice _____	17334
Steven M. Larimore, Clerk	

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

FILED by _____	D.C.
APR 14 2011	
STEVEN M. LARIMORE CLERK U.S. DIST. CT. S. D. of FLA. - MIAMI	

In re:
FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to: All Actions

**MOTION TO APPEAR *PRO HAC VICE*,
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 *pro hac vice* of Donald D. Conklin, an associate with the law firm of Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017, 212-455-2299, for purposes of limited appearance as co-counsel on behalf of Barclays Bank PLC, Deutsche Bank Trust Company Americas, JPMorgan Chase Bank, N.A., and The Royal Bank of Scotland plc, in the above-styled case only, and pursuant to Rule 2B, Southern District of Florida, CM/ECF Administrative Procedures, to permit Donald D. Conklin to receive electronic filings in this case, and in support thereof states as follows:

1. Donald D. Conklin is not admitted to practice in the Southern District of Florida, is a member in good standing of the New York bar and is admitted to practice before the U.S. District Courts for the Southern and Eastern Districts of New York.
2. Movant John B. Hutton, Esquire, of the law firm of Greenberg Traurig, P.A.,

1221 Brickell Ave., Miami, FL, 305-579-0500, 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 2B of the CM/ECF Administrative Procedures.

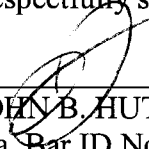
3. In accordance with the local rules of this Court, Donald D. Conklin has made payment of this Court's \$75 admission fee. A certification in accordance with Rule 4(b) is attached hereto.

4. Donald D. Conklin, by and through designated counsel and pursuant to Section 2B, Southern District of Florida, CM/ECF Administrative Procedures, hereby requests the Court to provide Notice of Electronic Filings to Donald D. Conklin at the following e-mail address: dconklin@stblaw.com.

WHEREFORE, John B. Hutton moves this Court to enter an Order permitting Donald D. Conklin to appear before this Court on behalf of Barclays Bank PLC, Deutsche Bank Trust Company Americas, JPMorgan Chase Bank, N.A., and The Royal Bank of Scotland plc for all purposes relating to the proceedings in the above-styled matter, and directing the Clerk to provide notice of electronic filings to Donald D. Conklin.

Dated: April 14, 2011

Respectfully submitted,



JOHN B. HUTTON

Fla. Bar ID No. 902160

huttonj@gtlaw.com

GREENBERG TRAURIG, P.A.

333 Avenue of the Americas

Miami, Florida 33131

Telephone: (305) 579-0500

Facsimile: (305) 579-0717

Attorneys for Defendants Barclays Bank PLC,

Deutsche Bank Trust Company Americas,

JPMorgan Chase Bank, N.A., and The Royal

Bank of Scotland plc

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

In re:
FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to: All Actions

CERTIFICATION OF DONALD D. CONKLIN

Donald D. Conklin, Esquire, pursuant to Rule 4B of the Special Rules Governing the Admission and Practice of Attorneys, hereby certifies 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 New York bar and the U.S. District Courts for the Southern and Eastern Districts of New York.


DONALD D. CONKLIN

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

In re:
FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to: All Actions

**ORDER GRANTING MOTION TO APPEAR *PRO HAC VICE* OF
DONALD D. CONKLIN, CONSENT TO DESIGNATION AND REQUEST TO
ELECTRONICALLY RECEIVE NOTICES OF ELECTRONIC FILINGS**

THIS CAUSE having come before the Court on the Motion to Appear *pro hac vice* of Donald D. Conklin and Consent to Designation, requesting, pursuant to Rule 4(b) of the Special Rules Governing the Admission and Practice of Attorneys in the United States District Court for the Southern District of Florida, permission for a limited appearance of Donald D. Conklin in this matter and request to electronically receive notice of electronic filings. This Court having considered the motion and all other relevant factors, it is hereby

ORDERED and ADJUDGED that:

The Motion to Appear *pro hac vice*, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings is GRANTED. Donald D. Conklin is granted leave to appear and participate in this action on behalf of Barclays Bank PLC, Deutsche Bank Trust Company Americas, JPMorgan Chase Bank, N.A., and The Royal Bank of Scotland plc. The Clerk shall provide electronic notification of all electronic filings to Donald D. Conklin at dconklin@stblaw.com.

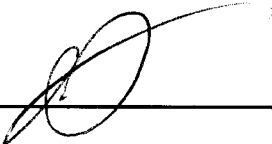
DONE AND ORDERED in Chambers at Miami, Southern District of Florida, this _____
day of _____, 2011.

United States District Judge

Copies furnished to:
All Counsel of Record

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing MOTION TO APPEAR *PRO HAC VICE*, CONSENT TO DESIGNATION, AND REQUEST TO ELECTRONICALLY RECEIVE NOTICES OF ELECTRONIC FILINGS was served by mail on April 14, 2011, on all counsel or parties of record listed below.

By:  _____

<p>James B. Heaton Steven J. Nachtwey BARTLIT BECK HERMAN PALENCHAR & SCOTT 54 West Hubbard Street, Suite 300 Chicago, IL 60610 Telephone: (312) 494-4400 Facsimile: (312) 494-4400</p> <p>Brett Michael Amron BAST AMRON LLP 150 West Flagler Street Penthouse 2850 Miami, FL 33130 Telephone: (305) 379-7905 Facsimile: (305) 379-7905</p> <p><i>Attorneys for ACP Master, Ltd. & Aurelius Capital Master, Ltd.</i></p>	<p>J. Michael Hennigan Kirk D. Dillman HENNIGAN DORMAN LLP 865 South Figueroa Avenue, Suite 2900 Los Angeles, CA 90017 Telephone: (213) 694-1200 Facsimile: (213) 694-1234</p> <p>David A. Rothstein Lorenz M. Pruss DIMOND KAPLAN & ROTHSTEIN, P.A. 2665 South Bayshore Drive, PH-2B Miami, FL 33133 Telephone: (305) 374-1920 Facsimile: (305) 374-1961</p> <p><i>Attorneys for Avenue CLO, et al. Plaintiffs</i></p>
<p>David M. Friedman Jed I. Bergman Seth A. Moskowitz KASOWITZ, BENSON, TORRES & FRIEDMAN, LLP 1633 Broadway New York, New York 10019 Telephone: (212) 506-1740 Facsimile: (212) 506-1800</p> <p><i>Attorneys for Fontainebleau Las Vegas LLC</i></p>	<p>Russell M. Blain Harley E. Riedel Susan Heath Sharp STICHTER, RIEDEL, BLAIN & PROSSER, P.A. 110 East Madison Street, Suite 200 Tampa, Florida 33602 Telephone: (813) 229-0144 Facsimile: (813) 229-1811</p> <p><i>Attorneys for Soneet R. Kapila, Chapter 7 Trustee for Fontainebleau Las Vegas Holdings, LLC, et al.</i></p>

<p>Daniel L. Cantor Bradley J. Butwin Jonathan Rosenberg William J. Sushon O'MELVENY & MYERS LLP 7 Times Square New York, New York 10036 Telephone: (212) 326-2000 Facsimile: (212) 326-2061</p> <p>Craig V. Rasile HUNTON & WILLIAMS LLP 1111 Brickell Avenue, Suite 2500 Miami, Florida 33131 Telephone: (305) 810-2500 Facsimile: (305) 810-1669</p> <p><i>Attorneys for Bank of America, N.A. and Merrill Lynch Capital Corporation</i></p>	<p>Kenneth E. Noble Anthony L. Paccione KATTEN MUCHIN ROSENMAN LLP 575 Madison Avenue New York, New York 10022 Telephone: (212) 940-8800 Facsimile: (212) 940-8776</p> <p>Harold D. Moorefield, Jr. Drew M. Dillworth STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, PA Museum Tower 150 West Flagler Street, Suite 2200 Miami, Florida 33130 Telephone: (305) 789-3200 Facsimile: (305) 789-3395</p> <p><i>Attorneys for Bank of Scotland PLC</i></p>
<p>Aaron Rubinstein Phillip A. Geraci KAYE SCHOLER LLP 425 Park Avenue New York, New York 10022 Telephone: (212) 836-8000 Facsimile: (212) 836-8689</p> <p>Arthur Halsey Rice RICE PUGATCH ROBINSON & SCHILLER, P.A. 101 Northeast Third Avenue, Suite 1800 Fort Lauderdale, Florida 33301 Telephone: (954) 462-8000 Facsimile: (954) 462-4300</p> <p><i>Attorneys for HSH Nordbank AG, New York Branch</i></p>	<p>Jean-Marie L. Atamian Jason I. Kirschner MAYER BROWN LLP 1675 Broadway New York, New York 10019-5820 Telephone: (212) 506-2500 Facsimile: (212) 262-1910</p> <p>Robert G. Fracasso SHUTTS & BOWEN LLP 1500 Miami Center 201 South Biscayne Boulevard Miami, Florida 33131 Telephone: (305) 358-6300 Facsimile: (305) 347-7802</p> <p><i>Attorneys for Sumitomo Mitsui Banking Corporation</i></p>
<p>Robert W. Glantz Peter J. Roberts SHAW GUSSIS FISHMAN GLANTZ WOLFSON & TOWBIN LLC 321 North Clark St., Suite 800 Chicago, IL 60654 Telephone: (312) 541-0151</p>	<p>Andrew B. Kratenstein Michael R. Huttenlocher MCDERMOTT WILL & EMERY LLP 340 Madison Avenue New York, NY 10171 Telephone: (212) 574-5400</p>

Facsimile: (312) 980-3888

Gregory S. Grossman
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Attorneys for MB Financial Bank, N.A.

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Attorneys for Camulos Master Fund, L.P.

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

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document relates to all actions.

**MDL ORDER NO. 47 GRANTING IN PART MOTION FOR
ORDER DISMISSING AURELIUS ACTION WITHOUT PREJUDICE [ECF NO. 212]**

THIS CAUSE is before the Court upon Plaintiffs' Motion for Order Dismissing Aurelius Action Without Prejudice ("Motion") [ECF No. 212]. The Court has been apprised by counsel for the Term Lenders¹ that the Term Lenders are withdrawing without prejudice the Motion to the extent that it applies to the claims against the Revolver Lenders (Counts I and II of the Amended Complaint filed in the Aurelius Action ("Aurelius Complaint")) that are currently on appeal before the Eleventh Circuit. [ECF No. 208]. The Court has further been apprised that all remaining parties have stipulated to the dismissal of the Aurelius Action without prejudice in accordance with and as evidenced by the Stipulation and Order attached as Exhibit A to the Declaration of Kirk D. Dillman in Support of Motion for Order Dismissing Aurelius Action Without Prejudice ("Stipulation"). [ECF No. 212-2].

On April 12, 2011, the Term Lenders filed a Notice of Filing [Proposed] Order Granting In Part Motion for Order Dismissing Aurelius Action Without Prejudice


¹ The Term Lenders are comprised of the plaintiffs in the cases captioned *Avenue CLO Fund, Ltd., et al. v. Bank of America, N.A., et al.*, Case No. 09-cv-23835-ASG (the "Avenue Action"), and *ACP Master, Ltd., et al. v. Bank of America, N.A., et al.*, Case No. 10-cv-20236-ASG (the "Aurelius Action").

("Notice"). **[ECF No. 233]**. Also on April 12, 2011, Plaintiffs filed a Supplemental Notice Regarding Proposed Order Granting in Part Motion for Order Dismissing Aurelius Action Without Prejudice ("Supplemental Notice"). **[ECF No. 234]**. The Supplemental Notice indicates that "all parties to these actions have agreed to the form and contents of the [Proposed] Order." *Id.* Accordingly, having reviewed the Motion, Stipulation, Notice, Supplemental Notice, and the record, it is hereby

ORDERED AND ADJUDGED that

1. Plaintiffs' Motion for Order Dismissing Aurelius Action Without Prejudice **[ECF No. 212]** is GRANTED IN PART.
2. The claims against Bank of America, N.A. currently pending before this Court in *ACP Master, Ltd., et al. v. Bank of America, N.A., et al.*, Case No. 10-cv-20236 (the "Aurelius Action") (Count III of the Aurelius Complaint) are DISMISSED WITHOUT PREJUDICE in accordance with the Stipulation and the Stipulation is hereby entered to the extent applicable to those claims only.
3. Neither this Order nor the Stipulation shall apply to the claims asserted against any other party.

DONE and ORDERED IN CHAMBERS at Miami, Florida this 19 day of April, 2011.


THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc: Magistrate Judge Jonathan Goodman
Counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-MD-02106-CIV-ASG

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This Document Relates to: No. 09-cv-23835-ASG

**NOTICE OF APPEARANCE OF
MICHAEL G. AUSTIN
OF McDERMOTT WILL & EMERY LLP AS COUNSEL
FOR DEFENDANT CAMULOS MASTER FUND, L.P.**

PLEASE TAKE NOTICE that the undersigned hereby appears in this proceeding as counsel for Camulos Master Fund, L.P., and requests that all papers be served upon the undersigned at the address provided below.

Dated: Miami, Florida

April 25, 2011

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

/s/ Michael G. Austin
Michael G. Austin (Fla. Bar # 0457205)
201 South Biscayne Boulevard, Suite 2200
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maustin@mwe.com

Andrew B. Kratenstein, Esq.*
Michael R. Huttenlocher, Esq.*
McDermott Will & Emery LLP
340 Madison Avenue
New York, New York 10173
(212) 547-5400 (tel)
(212) 547-5444 (fax)
akratenstein@mwe.com
mhuttenlocher@mwe.com

Attorneys for Defendant Camulos Master Fund, L.P.

* Admitted pro hac vice.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 25, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify the foregoing document is being served this day on all counsel of record identified on the attached list reflecting the Court's Mailing Information for this Case (retrieved from CM/ECF on this date), 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 Notice of Electronic Filing.

/s/Michael G. Austin

Michael G. Austin

Mailing Information for a Case 1:09-MD-02106-ASG

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case:

- **Brett Michael Amron**
bamron@bastamron.com,kparrales@bastamron.com,ashaheed@bastamron.com
- **Jean-Marie L. Atamian**
jatamian@mayerbrown.com
- **Jed I. Bergman**
jbergman@kasowitz.com
- **Bruce Judson Berman**
bberman@mwe.com,wjanke@mwe.com
- **Mark David Bloom**
bloomm@gtlaw.com,miaecfbky@gtlaw.com,phillipsj@gtlaw.com,
MiaLitDock@gtlaw.com
- **Vincent S. J. Buccola**
vincent.buccola@bartlit-beck.com
- **Bradley J. Butwin**
bbutwin@omm.com
- **Daniel L. Cantor**
dcantor@omm.com
- **Steven C. Chin**
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- **Kirk Dillman**
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- **Steven S. Fitzgerald**
sfitzgerald@stblaw.com
- **Robert Gerald Fracasso , Jr**
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- **Gregory Stewart Grossman**
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- **J. Michael Hennigan**
hennigan@hbdlawyers.com
- **Michael R. Huttenlocher**
mhuttenlocher@mwe.com
- **John Blair Hutton , III**
huttonj@gtlaw.com,thompsonc@gtlaw.com
- **Frederick D. Hyman**
fhyman@mayerbrown.com
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- **Arthur S. Linker**
arthur.linker@kattenlaw.com
- **Robert W. Mockler**
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DM_US 28139440-1.075895.0010

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

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

MDL No. 2106

This document relates to all cases.

**NOTICE OF REQUEST FOR TERMINATION OF
APPEARANCE OF ATTORNEY ON SERVICE LIST**

Camulos Master Fund L.P., by and through the undersigned counsel, hereby give notice of this request to the Clerk of Courts that the following person be terminated from the Service

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Dated: Miami, Florida
April 25, 2011

Respectfully submitted,

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The undersigned hereby certifies that a copy of the foregoing **NOTICE OF REQUEST FOR TERMINATION OF APPEARANCE OF ATTORNEY ON SERVICE LIST** 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: April 25, 2011.

/s/ Michael G. Austin

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DM_US 28139402-1.075895.0010

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

In re:

FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to:

ALL ACTIONS

JOINT MOTION FOR EXTENSION OF CERTAIN PRE-TRIAL DEADLINES

Plaintiffs in *Avenue CLO Fund, Ltd. v. Bank of America, NA.*, 09-CV-1047 (D. Nev.) (the “*Avenue Action*”), and defendant Bank of America, N.A. (“BANA”) 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 [ECF No. 10] (the “Scheduling Order”), which established certain pre-trial deadlines; and

WHEREAS, on May 24, 2010, the Court issued MDL Order Number 16 [ECF No. 76] (“Amended Scheduling Order”), which revised the pre-trial deadlines established in the Scheduling Order;

WHEREAS, on September 21, 2010, the Court issued MDL Order Number 33 [ECF No. 134], which revised the pre-trial deadlines established in the Amended Scheduling Order; and

WHEREAS, the parties have reached an agreement on the revision of the pre-trial deadlines 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 parties respectfully request that the dates for completing expert discovery be revised as follows:

Action	Current Date under MDL Order No. 16	Proposed Date
The parties shall comply with S.D. Fla. L.R. 16.1(K) concerning the exchange of expert witness summaries and reports.	By 5-2-2011	By 5-23-2011
Rebuttal expert reports shall be filed.	By 6-1-2011	By 6-22-2011

2. The parties respectfully request that the Court extend the cutoff for fact discovery deadline from April 14, 2011 to, and including, May 6, 2011, with respect to any non-expert depositions noticed on or before April 14, 2011.

Dated: April 25, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Joint Motion for Extension of Certain Pre-Trial Deadlines 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: April 25, 2011

By: /s/ David E. Bane
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

In re:

FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to:

ALL ACTIONS

**[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 *Avenue CLO Fund, Ltd. v. Bank of America, NA.*, 09-CV-1047 (D. Nev.) and Defendant Bank of America, N.A. 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 fact discovery for all depositions noticed on or before April 14, 2011, is extended from April 14, 2011 to, and including, May 6, 2011.

3. The following time schedule shall govern expert discovery:

Date	Action
By 5-23-2011	The parties shall comply with S.D. Fla. L. R. 16.1(K) concerning the exchange of expert witness summaries and reports.
By 6-22-2011	Rebuttal expert reports shall be filed.

4. All other pretrial deadlines contained in MDL Order Nos. 16 and 33 [ECF Nos. 76 and 140] remain in full force and effect.

DONE and ORDERED in Chambers in Miami, Florida this ____ day of _____, 2011.

THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO 09-MD-02106-CIV-GOLD/GOODMAN

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document applies to:

Case No. 09-CV-23835-ASG.

Case No. 10-CV-20236-ASG.

_____ /

**MDL ORDER NUMBER 48;
GRANTING MOTIONS TO APPEAR *PRO HAC VICE*,
CONSENT TO DESIGNATION, AND REQUEST TO ELECTRONICALLY
RECEIVE NOTICES OF ELECTRONIC FILINGS [ECF Nos. 236, 237]**

THIS CAUSE is before the Court upon two Motions to Appear *Pro Hac Vice*, Consent to Designation and Request to Electronically Receive Notices of Electronics Filings (“Motions”) **[ECF Nos. 236, 237]**, requesting, pursuant to the Special Rules Governing the Admission and Practice of Attorneys in the United States District Court for the Southern District of Florida, permission for a limited appearance of Peri L. Zelig **[ECF No. 236]** and Donald D. Conklin **[ECF No. 237]** in this matter and to electronically receive notice of electronic filings. Having considered the Motions and being otherwise fully advised, it is hereby

ORDERED and ADJUDGED that:

1. The Motions to Appear *Pro Hac Vice*, Consent to Designation and Request to Electronically Receive Notices of Electronics Filings **[ECF Nos. 236, 237]** are GRANTED.
2. Peri L. Zelig and Donald D. Conklin are permitted to appear and participate in this

action for purposes of limited appearances in the above-referenced action.

3. The Clerk shall provide electronic notification of all electronic filings to Peri L. Zelig at pzelig@stblaw.com and Donald D. Conklin at dconklin@stblaw.com.

_____ DONE AND ORDERED in Chambers at Miami, Florida, this 28th day of April, 2011.



THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc: U.S. Magistrate Judge Jonathan Goodman
Counsel of record

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

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

MDL No. 2106

This document relates 09-CV-23835-ASG.

**AVENUE TERM LENDERS' MOTION TO VOLUNTARILY DISMISS WITHOUT
PREJUDICE AS TO CERTAIN PLAINTIFFS**

Pursuant to Federal Rule of Civil Procedure 41(a)(2), the Avenue Term Lenders, by and through their undersigned counsel, hereby move this Court for an order dismissing plaintiffs Canyon Capital CLO 2004-1 Ltd.; Canyon Capital CLO 2006-1 Ltd; Canyon Capital CLO 2007-1 Ltd.; Caspian Corporate Loan Fund, LLC; and Mariner Opportunities Fund, LP (the "Selling Plaintiffs") without prejudice. This voluntary dismissal by the Dismissing Plaintiffs in no way modifies or affects the remaining plaintiffs' prosecution of their claims against Bank of America.¹

I. BACKGROUND

The Avenue Term Lenders are lenders under a credit facility (the "Credit Agreement") for the financing of the construction of the Fontainebleau Resort and Casino in Las Vegas. The Selling Plaintiffs have sold the Term Loans that form the basis for the claims at issue in this action to certain of the other Avenue Term Lenders who are pursuing such claims in their own name (the "Purchasing Appellants"). (Dillman Decl., ¶¶ 2-3.) Accordingly, in order to ensure that the claims associated with those Term Loans are pursued by the proper parties, the Selling

¹ The Avenue Term Lenders are simultaneously filing an identical motion to dismiss these five plaintiffs in the Court of Appeals for the Eleventh Circuit.

Plaintiffs seek to dismiss their action without prejudice to the right of the Purchasing Appellants to pursue such action in their own names.

II. DISMISSAL WITHOUT PREJUDICE SHOULD BE GRANTED

As a result of their sale of their Term Loans and the assignment of related claims to certain other Avenue Term Lenders, the Selling Plaintiffs have no remaining interest in this case, other than to ensure that the Purchasing Plaintiffs are not precluded from pursuing claims arising out of such Term Loans. (Dillman Decl., ¶ 3.) The Purchasing Plaintiffs are already parties to this action and thus the dismissal of the Selling Plaintiffs will not necessitate the substitution of any new parties, will not increase the total amount of damages at issue in the case, and will not otherwise impact this case or the parties thereto. (*Id.*) Accordingly, dismissal of these plaintiffs without prejudice is appropriate. F.R.C.P. 41(a)(2).

III. CONCLUSION

For the foregoing reasons, the Avenue Term Lenders respectfully request that this Court enter an Order dismissing plaintiffs Canyon Capital CLO 2004-1 Ltd., Canyon Capital CLO 2006-1 Ltd., Canyon Capital CLO 2007-1 Ltd., Caspian Corporate Loan Fund, LLC, and Mariner Opportunities Fund, LP without prejudice.

Dated: May 9, 2011

Respectfully submitted,

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Attorneys:	Representing:
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Attorneys:	Representing:
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Brett Michael Amron BAST AMRON LLP SunTrust International Center One Southeast Third Avenue Suite 1440 Miami, FL 33131 Tele: 305.379.7904 Fax: 305.379.7905	Plaintiffs ACP Master, Ltd. Aurelius Capital Master, Ltd.

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

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document relates to 09-CV-23835-ASG.

**DECLARATION OF KIRK D. DILLMAN IN SUPPORT OF AVENUE TERM LENDERS'
MOTION TO VOLUNTARILY DISMISS WITHOUT PREJUDICE AS TO CERTAIN
PLAINTIFFS**

I, Kirk D. Dillman, declare as follows:

1. I am a partner in the firm of Hennigan Dorman LLP, counsel for the Avenue Term Lenders that are plaintiffs in this action. Except where otherwise indicated, I have personal knowledge of the facts stated herein and, if called as a witness, could and would competently testify thereto. I submit this declaration in support of the Avenue Term Lenders' Motion to Voluntarily Dismiss Without Prejudice as to Certain Plaintiffs.

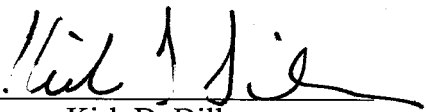
2. In my role as counsel for the Avenue Term Lenders, I have reviewed Assignment and Assumption documents that establish that Plaintiffs Canyon Capital CLO 2004-1 Ltd., Canyon Capital CLO 2006-1 Ltd, Canyon Capital CLO 2007-1 Ltd., Caspian Corporate Loan Fund, LLC, and Mariner Opportunities Fund, LP (the "Selling Plaintiffs") have sold all of their interests in the obligations under the Credit Agreement and assigned all related rights to certain of the other Avenue Term Lenders (the "Purchasing Plaintiffs").

3. As a result of these sales, the Selling Plaintiffs have no remaining interest in this case, other than to ensure that the Purchasing Plaintiffs are not precluded from pursuing claims arising out of such Term Loans. The Purchasing Plaintiffs are already parties to this action and

thus the dismissal of the Selling Plaintiffs will not necessitate the substitution of any new parties, will not increase the total amount of damages at issue in the case, and will not otherwise impact this case or the parties thereto.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 6th day of May, 2011 at Los Angeles, California.


Kirk D. Dillman

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **DECLARATION OF KIRK D. DILLMAN IN SUPPORT OF AVENUE TERM LENDERS' MOTION TO VOLUNTARILY DISMISS WITHOUT PREJUDICE AS TO CERTAIN PLAINTIFFS** 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: May 6, 2011.

/s/ Lorenz M. Prüss
Lorenz M. Prüss, Esq.

SERVICE LIST

Attorneys:	Representing:
<p>Bradley J. Butwin, Esq. Daniel L. Cantor, Esq. Jonathan Rosenberg, Esq. William J. Sushon, Esq. Ken Murata, Esq. Asher Rivner, Esq. O'MELVENY & MYERS LLP Times Square Tower 7 Times Square New York, NY 10036 Tele: (212) 326-2000 Fax: (212) 326-2061</p>	<p>Defendants Bank of America, N.A. Merrill Lynch Capital Corporation</p>
<p>Craig V. Rasile, Esq. Kevin Michael Eckhardt, Esq. HUNTON & WILLIAMS 1111 Brickell Avenue Suite 2500 Miami, FL 33131 Tele: (305) 810-2579 Fax: (305) 810-2460</p>	<p>Defendants Bank of America, N.A. Merrill Lynch Capital Corporation</p>
<p>David J. Woll, Esq. Lisa H. Rubin, Esq. Thomas C. Rice, Esq. Peri L. Zelig, Esq. Donald D. Conklin, Esq. SIMPSON THACHER & BARTLETT LLP 425 Lexington Avenue New York, NY 10017-3954 Tele: (212) 455-3040 Fax: (212) 455-2502</p>	<p>Defendants JP Morgan Chase Bank, N.A. Barclays Bank PLC Deutsche Bank Trust Company Americas The Royal Bank of Scotland PLC</p>
<p>John Blair Hutton III, Esq, Mark D. Bloom, Esq. GREENBERG TAURIG 1221 Brickell Avenue Miami, FL 33131 Tele: (305) 579-0788 Fax: (305) 579-0717</p>	<p>Defendants JP Morgan Chase Bank, N.A. Barclays Bank PLC Deutsche Bank Trust Company Americas The Royal Bank of Scotland PLC</p>

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Attorneys:	Representing:
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Michael g. Austin, Esq. MCDERMOTT WILL & EMERY LLP 201 S. Biscayne Blvd. Suite 2200 Miami, FL 33131 Tele: (305) 358-3500 Fax: : (305) 347-6500	Defendant Camulos Master Fund, L.P.
David M. Friedman, Esq. Jed I. Bergman, Esq. Seth A. Moskowitz KASOWITZ BENSON TORRES & FRIEDMAN 1633 Broadway, 22nd Floor New York, NY 10019-6799 Tele: (212) 506-1700 Fax: (212) 506-1800	Plaintiff Fontainebleau Las Vegas LLC

Attorneys:	Representing:
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<p>Harold Defore Moorefield Jr., Esq. STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON 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>
<p>James B. Heaton, Esq. John D. Byars, Esq. Steven James Nachtwey, Esq. Vincent S. J. Buccola, Esq. BARTLIT BECK HERMAN PALENCHAR & SCOTT 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 SunTrust International Center One Southeast Third Avenue Suite 1440 Miami, FL 33131 Tele: 305.379.7904 Fax: 305.379.7905</p>	<p>Plaintiffs ACP Master, Ltd. Aurelius Capital Master, Ltd.</p>

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

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document applies to:

Case No. 09-CV-23835-ASG.

Case No. 10-CV-20236-ASG.

**MDL ORDER NUMBER 49; GRANTING JOINT MOTION FOR
EXTENSION OF CERTAIN PRE-TRIAL DEADLINES [ECF No. 241]**

THIS CAUSE is before the Court upon Plaintiffs in *Avenue CLO Fund, Ltd., et al. v. Bank of America, N.A., et al.*, Case No. 09-23835 and Defendant Bank of America, N.A.'s Joint Motion for Extension of Certain Pre-trial Deadlines ("Motion") **[ECF Nos. 241]**. Having reviewed the Motion, the record, and being otherwise duly advised, it is hereby

ORDERED and ADJUDGED that:

1. The Joint Motion for Extension of Certain Pre-trial Deadlines **[ECF Nos. 241]** is GRANTED.
2. The parties shall comply with S.D. Fla. L.R. 16.1(K) concerning the exchange of expert witness summaries and reports **no later than Monday, May 23, 2011**.
3. Rebuttal expert reports shall be filed **no later than Wednesday, June 22, 2011**.
4. Fact discovery for all depositions noticed on or before April 14, 2011 is extended from April 14, 2011 to, and including, **Friday, May 6, 2011**.

5. All other dates and requirements in MDL Order No. 16; Second Amended Order Resetting Certain Pretrial Deadlines [**ECF No. 76**] not revised herein, or by court order, shall remain in full force and effect.

_____ DONE AND ORDERED in Chambers at Miami, Florida, this 10th day of May, 2011,
nunc pro tunc.



THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc: U.S. Magistrate Judge Jonathan Goodman
Counsel of record

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

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

MDL No. 2106

This document relates to 09-CV-23835-ASG.

**STIPULATION FOR ENTRY OF [PROPOSED] ORDER GRANTING AVENUE TERM
LENDERS' MOTION FOR AN ORDER DISMISSING THE ACTIONS OF CERTAIN
PLAINTIFFS WITHOUT PREJUDICE**

WHEREAS, on May 9, 2011 Plaintiffs Avenue Term Lenders filed a Motion for an Order Dismissing the Actions of Certain Plaintiffs Without Prejudice [D.E. 243];

WHEREAS, Defendant Bank of America has no objection to the relief sought in the Motion;

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, counsel of record, that Plaintiffs Canyon Capital CLO 2004-1 Ltd., Canyon Capital CLO 2006-1 Ltd., Canyon Capital CLO 2007-1 Ltd., Caspian Corporate Loan Fund, LLC, and Mariner Opportunities Fund, LP can and should be dismissed without prejudice pursuant to the [Proposed] Order Granting Avenue Term Lenders' Motion for an Order Dismissing the Actions of Certain Plaintiffs Without Prejudice, attached hereto as Exhibit A.

Respectfully submitted,

Dated: May , 2011

By: /s/ Lorenz Michel Prüss

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*Attorneys for Plaintiffs Avenue CLO Fund,
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Attorneys for Bank of America, N.A.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **STIPULATION FOR ENTRY OF [PROPOSED] ORDER GRANTING AVENUE TERM LENDERS' MOTION FOR AN ORDER DISMISSING THE ACTIONS OF CERTAIN PLAINTIFFS WITHOUT PREJUDICE** 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: May , 2011.

/s/ Lorenz M. Prüss
Lorenz M. Prüss, Esq.

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Attorneys:	Representing:
Bradley J. Butwin, Esq. Daniel L. Cantor, Esq. Jonathan Rosenberg, Esq. William J. Sushon, Esq. Ken Murata, Esq. Asher Rivner, Esq. O'MELVENY & MYERS LLP Times Square Tower 7 Times Square New York, NY 10036 Tele: (212) 326-2000 Fax: (212) 326-2061	Defendants Bank of America, N.A. Merrill Lynch Capital Corporation
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John Blair Hutton III, Esq, Mark D. Bloom, Esq. GREENBERG TAURIG 1221 Brickell Avenue Miami, FL 33131 Tele: (305) 579-0788 Fax: (305) 579-0717	Defendants JP Morgan Chase Bank, N.A. Barclays Bank PLC Deutsche Bank Trust Company Americas The Royal Bank of Scotland PLC

Attorneys:	Representing:
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<p>Robert Gerald Fracasso, Jr. SHUTTS & BOWEN 201 S Biscayne Boulevard Suite 1500 Miami Center Miami, FL 33131 Tele: (305) 358-6300 Fax: (305) 381-9982</p>	<p>Defendant Sumitomo Mitsui Banking Corporation</p>
<p>Phillip A. Geraci, Esq. Steven C. Chin, Esq. Aaron Rubinsten, Esq. W. Stewart Wallace, Esq. KAYE SCHOLER LLP 425 Park Avenue New York, NY 10022-3598 Tele: (212) 836-8000 Fax: (212) 836-8689</p>	<p>Defendant HSH Nordbank AG, New York Branch</p>
<p>Arthur Halsey Rice, Esq. RICE PUGATCH ROBINSON & SCHILLER 101 NE 3 Avenue Suite 1800 Fort Lauderdale, FL 33301 Tele: (305) 379-3121 Fax: (305) 379-4119</p>	<p>Defendant HSH Nordbank AG, New York Branch</p>
<p>Gregory S. Grossman, Esq. ASTIGARRAGA DAVIS MULLINS & GROSSMAN 701 Brickell Avenue, 16th Floor Miami, FL 33131-2847 Tele: (305) 372-8282 Fax: (305) 372-8202</p>	<p>Defendant MB Financial Bank, N.A.</p>

Attorneys:	Representing:
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Peter J. Roberts, Esq. SHAW GUSSIS FISHMAN FLANTZ WOLFSON & TOWBIN LLC 321 N Clark Street, Suite 800 Chicago, IL 60654 Tele: (312) 276-1322 Fax: (312) 275-0568	Defendant MB Financial Bank, N.A.
Anthony L. Paccione, Esq. Arthur S. Linker, Esq. Kenneth E. Noble KATTEN MUCHIN ROSENMAN LLP 575 Madison Avenue New York, NY 10022-2585 Tele: (212) 940-8800 Fax: (212) 940-8776	Defendant Bank of Scotland plc
Andrew B. Kratenstein, Esq. Michael R. Huttenlocher, Esq. MCDERMOTT WILL & EMERY LLP 340 Madison Avenue New York, NY 10173 Tele: (212) 547-5400	Defendant Camulos Master Fund, L.P.
Michael G. Austin, Esq. MCDERMOTT WILL & EMERY LLP 201 S. Biscayne Blvd. Suite 2200 Miami, FL 33131 Tele: (305) 358-3500 Fax: : (305) 347-6500	Defendant Camulos Master Fund, L.P.
Harold Defore Moorefield Jr., Esq. STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON Museum Tower 150 W Flagler Street, Suite 2200 Miami, FL 33130 Tele: (305) 789-3467 Fax: (305) 789-3395	Defendant Bank of Scotland plc

EXHIBIT A

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

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

MDL No. 2106

This document relates to 09-CV-23835-ASG.

**[PROPOSED] ORDER GRANTING AVENUE TERM LENDERS' MOTION FOR AN
ORDER DISMISSING THE ACTIONS OF CERTAIN PLAINTIFFS WITHOUT
PREJUDICE**

THIS CAUSE is before the Court upon the Avenue Term Lenders' Motion for an Order Dismissing the Actions of Certain Plaintiffs against Defendant Bank of America without Prejudice. For the reasons set forth in the Motion, it is hereby

ORDERED AND ADJUDGED that:

1. The Motion is GRANTED with respect to Counts I and V asserted against Defendant Bank of America. This Order has no effect on claims asserted against any other parties.
2. The following parties are hereby DISMISSED WITHOUT PREJUDICE from this action against Defendant Bank of America:
 - a. Canyon Capital CLO 2004-1 Ltd.
 - b. Canyon Capital CLO 2006-1 Ltd
 - c. Canyon Capital CLO 2007-1 Ltd.
 - d. Caspian Corporate Loan Fund, LLC
 - e. Mariner Opportunities Fund, LP

3. The clerk is directed to correct the docket so that the above-referenced parties are no longer listed as plaintiffs in this action.

DONE AND ORDERED in Chambers at Miami, Florida, this ___ day of May, 2011.

THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT COURT JUDGE

cc: Magistrate Judge Goodman
All Counsel of Record

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

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document relates to 09-CV-23835-ASG.

**MDL ORDER NUMBER 50;
GRANTING AVENUE TERM LENDERS' MOTION TO VOLUNTARILY
DISMISS WITHOUT PREJUDICE AS TO CERTAIN PLAINTIFFS [ECF NO. 243]**

THIS CAUSE is before the Court upon the Avenue Term Lenders' Motion to Voluntarily Dismiss Without Prejudice as to Certain Plaintiffs ("Motion") [ECF No. 243]. Pursuant to Federal Rule of Civil Procedure 41(a)(2), the Avenue Term Lenders seek to dismiss Plaintiffs Canyon Capital CLO 2004-1 Ltd.; Canyon Capital CLO 2006-1 Ltd; Canyon Capital CLO 2007-1 Ltd.; Caspian Corporate Loan Fund, LLC; and Mariner Opportunities Fund, LP (collectively "Selling Plaintiffs") without prejudice. No party has filed responses to the Motion, and the time for doing so has expired.

On May 31, 2011, Plaintiffs and Defendant Bank of America, N.A. filed a Stipulation for Entry of [Proposed] Order Granting Avenue Term Lenders' Motion for an Order Dismissing the Actions of Certain Plaintiffs Without Prejudice. [ECF No. 245]. In the stipulation, the parties agreed that the Selling Plaintiffs should be dismissed without prejudice.

Accordingly, having reviewed the Motion, Stipulation, and the record, it is hereby
ORDERED AND ADJUDGED that

1. The Motion is GRANTED with respect to Counts I and V asserted against Defendant Bank of America, N.A.. This Order has no effect on claims asserted against any other parties.
2. The following parties are hereby DISMISSED WITHOUT PREJUDICE from this action against Defendant Bank of America:
 - a. Canyon Capital CLO 2004-1 Ltd.
 - b. Canyon Capital CLO 2006-1 Ltd
 - c. Canyon Capital CLO 2007-1 Ltd.
 - d. Caspian Corporate Loan Fund, LLC
 - e. Mariner Opportunities Fund, LP
3. The Clerk is directed to correct the docket so that the above-referenced parties are no longer listed as plaintiffs in this action.

DONE AND ORDERED in Chambers at Miami, Florida, this 20 day of June, 2011.



THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc: U.S. Magistrate Judge Jonathan Goodman
Counsel of record

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

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

In re:

FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to:

ALL ACTIONS

JOINT MOTION FOR EXTENSION OF CERTAIN PRE-TRIAL DEADLINES

Plaintiffs in *Avenue CLO Fund, Ltd. v. Bank of America, N.A.*, 09-CV-1047 (D. Nev.) (the “*Avenue Action*”), and defendant Bank of America, N.A. (“BANA”) submit this joint motion respectfully requesting that the Court modify certain pre-trial deadlines.

WHEREAS, on January 8, 2010, the Court entered MDL Order Number 3 [ECF No. 10] (the “Scheduling Order”), which established certain pre-trial deadlines; and

WHEREAS, on May 24, 2010, the Court entered MDL Order Number 16 [ECF No. 76] (“Amended Scheduling Order”), which revised the pre-trial deadlines established in the Scheduling Order;

WHEREAS, on September 21, 2010, the Court entered MDL Order Number 33 [ECF No. 134], which revised the pre-trial deadlines established in the Amended Scheduling Order;

WHEREAS, on May 11, 2011, the Court entered MDL Order Number 49 [ECF No. 244], which further revised the pre-trial deadlines established in the Amended Scheduling Order; and

WHEREAS, the parties have reached an agreement on the revision of the pre-trial deadlines 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 parties respectfully request that the Court extend the date for filing rebuttal expert reports from June 22, 2011, to June 29, 2011.

2. The parties respectfully request that the Court extend the deadline to complete expert discovery, including depositions, from July 15, 2011, to July 29, 2011.

3. The parties respectfully request that the Court extend the date for filing motions to strike in whole or in part expert testimony (other than expert affidavits filed in support of a motion for summary judgment) from July 29, 2011, to December 13, 2011, the date by which the joint pretrial stipulation and *motions in limine* shall be filed. This will conform the Amended Scheduling Order to the Court's default Order Requiring Compliance With Local Rule 16.1 of the United States District Court for the Southern District of Florida.

4. The parties respectfully request that the Court extend the briefing schedule for pre-trial dispositive motions such that the date for filing a pre-trial dispositive motion is extended from July 29, 2011, to August 5, 2011; the date for filing an opposition is extended from August 30, 2011, to September 9, 2011; and the date for filing a reply is extended from September 15, 2011, to September 27, 2011.

Dated: June 22, 2011

Respectfully submitted,

By: /s/ Andrew Kamensky

HUNTON & WILLIAMS LLP
Andrew Kamensky
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

In re:

FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to:

ALL ACTIONS

**[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 *Avenue CLO Fund, Ltd. v. Bank of America, NA.*, 09-CV-1047 (D. Nev.) and Defendant Bank of America, N.A. 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 filing rebuttal expert reports is extended from June 22, 2011, to June 29, 2011.
3. The date for completion of expert discovery, including depositions, is extended from July 15, 2011, to July 29, 2011.
4. The date for filing motions to strike in whole or in part expert testimony (other than expert affidavits filed in support of a motion for summary judgment) is extended from July 29, 2011, to December 13, 2011.

5. The following briefing schedule shall govern pre-trial dispositive motions:

Date	Action
By 08-05-2011	Pre-trial dispositive motions and memoranda of law shall be filed.
By 09-09-2011	Oppositions to pre-trial dispositive motions shall be filed, including any motions to strike expert affidavits, in whole or part, supporting a pre-trial dispositive motion.
By 09-27-2011	Replies in support of pre-trial dispositive motions shall be filed.

6. All other pretrial deadlines contained in MDL Order Nos. 16, 33, and 49 [ECF Nos. 76, 140, and 244] remain in full force and effect.

DONE and ORDERED in Chambers in Miami, Florida this ____ day of _____, 2011.

THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE