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6
7 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

8 KANIE KASTROLL, on her own behalf and
9 on behalf of all others similarly situated,

10 Plaintiff,

11 v.

12 WYNN RESORTS, LTD, a Nevada
13 Corporation d/b/a WYNN LAS VEGAS,

14 Defendant.

Case No. 09-cv-2034-LDG-LRL

**STIPULATED DISCOVERY PLAN
AND SCHEDULING ORDER**

**SPECIAL SCHEDULING REVIEW
REQUESTED**

15
16 Pursuant to Local Rule 26-1 and Federal Rule of Civil Procedure 26(f), the Parties
17 through their respective attorneys of record submit their Stipulated Discovery Plan and
18 Scheduling Order ("Discovery Plan") for this Court's review and approval. The Parties
19 respectfully request the Court's approval to deviate from the default dates of Local Rule 26-
20 1(e) to account for the procedural posture of this case, including Defendant's request to
21 bifurcate discovery into the class and merits issues, discussed more below.

22 Pursuant to Federal Rule of Civil Procedure 26(f), a conference was held on
23 November 5, 2010. Steven Lezell, Esq., from the law firm EDELSON MCGUIRE, LLC,
24 appeared on behalf of Plaintiff Kanie Kastroll and the putative class ("Plaintiff" and/or
25 "Kastroll"), and Debra L. Spinelli, Esq., of the law firm PISANELLI BICE PLLC appeared on
26 behalf of Defendant Wynn Resorts, Ltd. d/b/a Wynn Las Vegas ("Defendant" and/or
27 "Wynn").

1 **1. Discovery Cut-Off Date:**

2 Defendant filed its Answer to Plaintiff's Complaint on October 8, 2010. The Parties
3 held their Rule 26(f) conference on November 5, 2010. Defendant proposed at the
4 conference that discovery in this case should be bifurcated between the class certification
5 issues and the issues pertaining to the merits of the case. Plaintiff does not object to such
6 bifurcation. Provided that the Court's schedule will allow for entry of this Discovery Plan on
7 or before December 1, 2010, the Parties propose the following discovery schedule:

8 Class certification discovery cut-off	180 days from the entry of this Discovery Plan by the Court or May 30, 9 2011
10 Plaintiff's class expert disclosures due	60 days prior to class discovery cut-off or March 31, 2011
11 Defendant's rebuttal expert disclosures due	30 days prior to class discovery cut-off 12 or April 29, 2011
13 Briefing on the class certification motion	to follow class discovery
14 Merits discovery cut-off	150 days after the Court's ruling on the 15 motion for class certification
16 Amending pleadings / adding parties deadline	90 days prior to merits discovery cut-off
17 Merits experts' disclosures due	90 days prior to merits discovery cut-off
18 Rebuttal merits experts' disclosures due	60 days prior to merits discovery cut-off
19 Dispositive motions due	30 days after merits discovery cut-off

20 **2. Amending the Pleadings and Adding Parties:**

21 The Parties propose that the deadline for filing motions to amend pleadings or to add
22 parties shall be no later than ninety (90) days prior to the close of merits discovery.

23 **3. Fed. R. Civ. P. 26(a)(2) Disclosures (Experts):**

24 The Parties propose that the class certification experts' disclosures should be made
25 not later than 60 days prior to the class discovery cut-off, and the rebuttal experts' disclosures
26 should be made not later than 30 prior to the class discovery cut-off. The Parties further
27

1 propose that the merits experts' disclosures should be due 90 days prior to the merits
2 discovery cut-off, with the rebuttal experts' disclosures due 60 days prior to the merits
3 discovery cut-off.

4 **4. Dispositive Motions:**

5 The Parties agree that the dispositive motions shall be filed not later than thirty (30)
6 days after the merits discovery cut-off date.

7 **5. Pretrial Order:**

8 The Parties anticipate that dispositive motions will be filed in this case. The Parties
9 agree that the due date for filing the joint pretrial order shall be suspended until thirty (30)
10 days after this Court's ruling on the dispositive motions or further order of the Court.

11 **6. Fed. R. Civ. P. 26(a)(3) Disclosures:**

12 The Parties agree that Fed. R. Civ. P. 26(a)(3) disclosures shall be included by the
13 Parties in their joint Pretrial Order.

14 **7. Fed. R. Civ. P. 26(f)(3)(A) – Rule 26(a) initial disclosures:**

15 The Parties agree to exchange their Rule 26(a)(1) initial disclosures on or before
16 November 29, 2010.

17 **8. Fed. R. Civ. P. 26(f)(3)(B) – subjects, scope, and phases of discovery:**

18 **A. Phases of Discovery**

19 Wynn's Position:

20 As stated above, Wynn proposes that discovery should be conducted in two phases:
21 (1) class certification; and (2) merits. Bifurcation of discovery is consistent with the District
22 Court's September 23, 2010 Order on Wynn's motion to dismiss for lack of subject matter
23 jurisdiction or, in the alternative motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6),
24 Specifically, in deciding whether the "home state controversy" exception to the Class Action
25
26
27
28

1 Fairness Act mandates dismissal of this action,¹ the District Court stated that "[a]lthough this
2 court acknowledges the novel issues raised by Wynn's argument, later litigation stages more
3 naturally facilitate a determination of the proper scope of Kastroll's proposed class.
4 Accordingly, the court will further entertain arguments regarding the proper scope of
5 Kastroll's proposed class during later stages of this action." (Doc. No. 24.)

6 By conducting discovery limited to the proposed class, the parties can engage in
7 discovery pertinent to class certification, brief the issue for the District Court, and have the
8 Court resolve whether it can exercise jurisdiction over this action before embarking on
9 invasive merits-based discovery. Wynn further suggests that the second phase of discovery
10 should not begin until the Court rules on Plaintiff's anticipated motion for class certification.

11 Plaintiff's Position:

12 Plaintiff does not object to bifurcation between class and merits issues.

13 **B. Subjects and Scope of Discovery**

14 1. Plaintiff anticipates discovery into the following subjects:

- 15 - Statistical data and information regarding Defendant's former and current employees;
- 16 - Defendant's policies regarding smoking inside the casino;
- 17 - Defendant's policies regarding employees' handling of the patrons' smoke;
- 18 - Defendant's procedures regarding addressing employees' complaints about the
19 smoke;
- 20 - Defendant's efforts in alleviating the effect of the second hand smoke on its
21 employees;
- 22 - Defendant's testing and sampling the air quality inside the gaming areas of the

24 ¹ The Home State Controversy exception mandates dismissal of actions where "two-
25 third or more of the members of the proposed plaintiff classes in the aggregate, and the
26 primary defendants, are citizens of the State in which the action was originally filed." Wynn
27 is a Nevada entity with its principal place of business in Nevada. Kastroll is a Nevada
resident. And, Kastroll purports to bring this action for injunctive relief only on behalf of all
past, present, and future employees of Wynn.

1 casino; and other subjects.

2 2. Defendant anticipates discovery will be necessary on the class
3 certification issue, whether the Plaintiff can assert any claims on behalf of the defined class,
4 whether this Court can exercise subject matter jurisdiction under the Class Action Fairness
5 Act, and (should this matter get passed the class certification stage), on all of Plaintiff's
6 claims and related defenses.

7 **9. Fed. R. Civ. P. 26(f)(3)(C) – discovery of electronically stored information**
8 **(“ESI”):**

9 The Parties do not anticipate that any ESI issues would be implicated in this case at
10 this time. The Parties reserve the right to adjust their respective positions regarding the ESI
11 as discovery progresses.

12 **10. Fed. R. Civ. P. 26(f)(3)(D) – privilege issues:**

13 Prior to discovery responses becoming due from either Party, the Parties agree to
14 resolve whether a confidentiality agreement and protective order is necessary and present it
15 to the Court for review and approval.

16 **11. Fed. R. Civ. P. 26(f)(3)(E) – changes to discovery limitations:**

17 Plaintiff anticipates requesting leave to propound interrogatories in excess of the
18 maximum number allowed by the Rules of Civil Procedure. Defendant reserves its right to
19 seek such leave should the need arise.

20 **12. Fed. R. Civ. P. 26(f)(3)(F) – other Court orders:**

21 The Parties do not anticipate the need for any Court Orders at this time.

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ORDER

IT IS SO ORDERED.

UNITED STATES MAGISTRATE JUDGE

DATED: _____

CASE NO.: 09-cv-2034-LDG-LRL