

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

SDW

NICHOLAS J. SANTORO, ESQ.
Nevada Bar No. 00532
nsantoro@nevadafirm.com
JAMES D. BOYLE, ESQ.
Nevada Bar No. 08384
jboyle@nevadafirm.com
SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: 702/791-0308
Facsimile: 702/791-1912

DAVID J. STEWART, ESQ.
Georgia Bar. No. 681149
David.Stewart@alston.com
NADYA MUNASIFI, ESQ.
Georgia Bar No. 156051
Nadya.Munasifi@alston.com
ALSTON & BIRD LLP
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
Telephone: 404/881-7000
Facsimile: 404/881-7777

Attorneys for Caesars World, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CAESARS WORLD, INC., a Florida
corporation,

Plaintiff,

v.

MARCEL JULY, an individual; and
OCTAVIUS TOWER LLC, a Nevada limited
liability company,

Defendants.

CASE NO.: 2:11-cv-00536-GMN-(CWH)

**PLAINTIFF CAESARS WORLD, INC.'S
MOTION TO COMPEL DEFENDANTS
TO RESPOND TO CAESARS' FIRST SET
OF INTERROGATORIES AND
DOCUMENT REQUESTS**

Pursuant to Rule 37 of the Federal Rules of Civil Procedure and Local Rule 26-7,
Plaintiff Caesars World, Inc. ("Caesars") respectfully moves the Court to compel Defendant

1 Marcel July (“July”) to provide full and complete verified answers, without objections, to
2 Caesars’ First Set of Interrogatories and written responses and all documents responsive to
3 Caesars’ First Set of Request for Production of Documents and Things to him. Caesars further
4 moves the Court to compel Defendant Octavius Tower LLC (“OTLLC” and, collectively with
5 July, “Defendants”) to provide full and complete verified answers without objections to Caesars’
6 First Set of Interrogatories and written responses and all documents responsive to Caesars’ First
7 Set of Request for Production of Documents and Things to OTLLC. Caesars further requests
8 that the Court award Caesars recovery of the attorney’s fees and costs it has been forced to incur
9 in connection with this motion, and instruct Defendants that the Court will impose further
10 sanctions if Defendants fail to comply in full with the Court’s order on this motion.

11 This Motion is based upon the pleadings and records on file herein, the Memorandum of
12 Points and Authorities set forth below, the Declaration of Nadya Munasifi and Certification
13 Pursuant to L.R. 26-7 attached hereto and incorporated herein by this reference as Exhibit 1, and
14 any oral argument of counsel presented to this Court.

15 I. FACTUAL BACKGROUND

16 Caesars, through affiliates, owns and operates the world famous Caesars Palace hotel and
17 casino in Las Vegas. (Dkt. 1, ¶ 10; Dkt. 15, ¶ 6.) On July 19, 2007, Caesars announced plans for
18 a \$1 billion expansion of Caesars Palace, the centerpiece of which was the building of a new
19 hotel tower named OCTAVIUS TOWER. (Dkt. 1, ¶ 14; Dkt. 15, ¶ 8.) The tower opened on
20 September 11, 2009 with the launch of three luxury villas. (Dkt. 1, ¶ 16.) Completion of the
21 remainder of the tower is underway. (*Id.*) On December 14, 2010, Caesars filed an intent-to-use
22 trademark registration application for the OCTAVIUS TOWER mark with the U.S. Patent and
23 Trademark Office (“USPTO”). (*Id.* at ¶ 20.)

24 July is an individual who formerly resided in Florida but, upon information and belief,
25 now resides in the Netherlands. (Dkt. 1, ¶ 4; Dkt. 15, ¶¶ 2, 78.) July claims to have founded a
26 band in Germany in 1992 named the “Octavius Tower Band.” (Dkt. 15, ¶ 68.) July owns two
27 U.S. trademark registrations for the OCTAVIUS TOWER mark for entertainment services, both
28 of which July applied for after becoming aware of Caesars’ plans to open its Octavius Tower.

(See Dkt. 1, ¶¶ 21, 26, 29, 32, 35.) Defendant OTLLC is a Nevada corporation, and July is its sole member. (Dkt. 1, ¶ 3; Munasifi Decl., Ex. K, Interrog. Resp. No. 2.) OTLLC purports to have maintained the website located at <octaviustower.com> from 1996 through 2003, promoting the Octavius Tower Band and streaming videos. (Munasifi Decl., Ex. K, Interrog. Resp. No. 4.) It also purports to “provide[] entertainment services which included renting sound systems, stages, lighting and laser-light equipment and also setting up, testing and dismantling the stages and related equipment,” and to be engaged in discussions for opening a club in Las Vegas. (Munasifi Decl., Ex. K, Interrog. Resp. Nos. 4, 11.)

In March of 2011, counsel for July sent letters to Caesars demanding that it cease using the OCTAVIUS TOWER mark or face a lawsuit for trademark infringement.¹ (Dk. 1, ¶¶ 41, 43.) When Defendants rebuffed Caesars’ attempts to resolve the issues between the parties amicably, Caesars filed this action seeking a declaration of non-infringement of Defendants’ claimed rights in the OCTAVIUS TOWER mark, and seeking cancellation of July’s federal and state service mark registrations for the OCTAVIUS TOWER mark. (Dkt. 1, ¶¶ 42-43.) July responded to the lawsuit by filing counterclaims for trademark infringement and dilution under the federal Lanham Act on May 19, 2011. (Dkt. 15.) On May 20, 2011, July further filed a Motion for Preliminary Injunction. (Dkt. 16.) The Court denied this motion in full on October 24, 2011. (Dkt. 39.)

Caesars hand served its First Set of Interrogatories and First Requests for Production on July on September 2, 2011. (Munasifi Decl., ¶ 4.) July’s responses were due by October 2, 2011. (*Id.*) Caesars served its First Set of Interrogatories and First Requests for Production on OTLLC on September 8, 2011. (*Id.* at ¶ 5.) OTLLC’s responses were due by October 11, 2011. (*Id.*)

Neither Defendant responded to Caesars’ discovery requests in any manner by the relevant due dates, nor did either Defendants request an extension of time to respond. (*Id.* at ¶ 6.) On October 18, 2011, counsel for Caesars emailed Defendants’ German and local counsel

¹ The counsel who sent this letter is a German lawyer named Christian Kaldenhoff. Upon information and belief, Mr. Kaldenhoff has actively advised Defendants throughout this lawsuit.

1 noting Defendants' failure to respond to Caesars' discovery requests and requesting that
2 Defendants provide full responses by the end of the week. (*Id.* at ¶ 7.) Defendants' local
3 counsel called counsel for Caesars on October 19, 2011, and requested an extension of time until
4 October 28, 2011 to respond to the outstanding discovery requests. (*Id.* at ¶ 8.) Caesars agreed
5 to this extension in an email dated October 20, 2011, conditioned upon Defendants' agreement
6 that, by this date, Caesars would "receive complete answers to [its] interrogatories and all
7 documents responsive to [its] requests, and not just written objections." (*Id.* at ¶ 9.)

8 Despite their agreement to respond in full to Caesars' discovery requests by October 28,
9 2011, Defendants did not respond in any manner to Caesars' discovery by that date, nor did they
10 seek a further extension to respond to the requests. (*Id.* at ¶ 10.) Caesars contacted counsel for
11 Defendants four times between October 31, 2011 and November 3, 2011, three times via email
12 and once in a voicemail, to schedule a meet and confer to discuss Defendants' repeated failure to
13 timely respond to discovery. (*Id.* at ¶¶ 11-13.) Caesars did not receive any responses to these
14 communications until November 4, 2011. (*Id.* at ¶¶ 14-16.)

15 On Friday, November 4, 2011, Defendants' counsel faxed to Caesars' counsel OTLLC's
16 responses to Caesars' interrogatories. (*Id.* at ¶ 15.) As discussed in greater detail below, these
17 responses were incomplete, unverified, and contained inaccurate information. Defendants'
18 counsel did not forward interrogatory responses from July. (*Id.* at ¶ 18.)

19 On November 4, Defendants' counsel also faxed Caesars' counsel a document titled
20 "Response to Plaintiff Caesars World, Inc.'s First Request for Production of Documents and
21 Things to Octavius Tower LLC and Response to Plaintiff Caesars World, Inc.'s First Request for
22 Production of Documents and Things to Marcel July." (*Id.* at ¶ 16.) Purportedly attached to the
23 Response were "documents evidencing OTLLC's registration and Marcel July's ownership
24 thereof" and Exhibits A through O of Defendant July's Answer and Counterclaim. (*Id.*) No
25 documents were attached. (*Id.* at ¶ 15.) In a phone call with an assistant for Defendants'
26 counsel, Caesars was informed that the documents referenced in the Response were deposited on
27 the mail on November 4, 2011. (*Id.* at ¶ 17.) Caesars received the documents the following
28

1 week, but did not receive written responses to its document requests from either of the
2 Defendants. (*Id.* at ¶ 17.)

3 Based on Defendants' deficient discovery responses Caesars scheduled a telephonic meet
4 and confer conference for Monday, November 7, 2011 with Michael Sanft, counsel of record for
5 Defendants. (*Id.* at ¶ 19.) Mr. Sanft was unable to attend the conference; accordingly, Timothy
6 Bennett, Esq., who works with Mr. Sanft, attended the meet and confer on behalf of Defendants.
7 (*Id.* at ¶ 20.) Mr. Bennett has not made an appearance in this case and is not admitted to the
8 Nevada bar, but he represented that he was authorized to act on behalf of Mr. Sanft and
9 Defendants. (*Id.*) Mr. Bennett acknowledged that: (i) July had not responded to Caesars'
10 interrogatories, (ii) OTLLC's responses to Caesars' interrogatories were incomplete, and (iii)
11 July and OTLLC's responses to Caesars' request for production were incomplete. (*Id.* at ¶ 21.)
12 Mr. Bennett was unable to provide Caesars with more complete discovery responses, and did not
13 have any further information as to when or whether Caesars would receive further responses to
14 its written discovery requests or further responsive documents. (*Id.*)

15 During the meet and confer conference, Mr. Bennett indicated that Defendants' counsel
16 was having difficulty obtaining complete discovery responses from July, in part, because of his
17 wife's illness. (*Id.* at ¶ 22.) July's wife was diagnosed with breast cancer in July 2010. (Dk. 15,
18 ¶ 78). However, at no time previous to this call had Defendants or their counsel represented that
19 they could not provide complete discovery responses because of it. (Munasifi Decl., ¶ 22.)
20 Caesars' counsel expressed to Mr. Bennett its sincerest sympathies for July and his wife, but also
21 expressed doubt that this illness was the reason for Defendants' failure to respond to Caesars'
22 discovery requests. (*Id.* at ¶ 23.) Caesars noted that, despite July's wife's illness, July has: (i)
23 toured Europe with his band; (ii) caused his German counsel to send numerous threatening letters
24 to Caesars and third parties demanding that Caesars cease use of its mark or face litigation; (iii)
25 filed a counterclaim in this lawsuit; (iv) moved for a preliminary injunction against Caesars; and
26 (v) regularly updated his website about the status of the lawsuit. (*Id.* at ¶ 23; Dk. 15, ¶¶ 94-101.)
27 Caesars' counsel noted that, if Mr. July had time to do all these things, he clearly had time to
28 respond to Caesars' discovery requests. (Munasifi Decl., ¶ 23.) Mr. Bennett did not have a

1 response to this and did not further attempt to justify his clients' delay. (*Id.* at ¶ 24.) In recent
2 months, July has also (i) allegedly worked toward the opening of a new entertainment center in
3 Las Vegas; (ii) given interviews to the media about this case; (iii) filmed videos about this case
4 that he has posted to the Internet; and (iv) launched a Facebook page about this lawsuit. (*Id.* at ¶
5 25.)

6 After the meeting, Caesars' counsel emailed Mr. Sanft to confirm that Mr. Bennett was
7 authorized to participate in the meet and confer conference, to confirm that Caesars had
8 complied with its meet and confer obligations, and to request that Mr. Sanft contact Caesars by
9 the end of the day if he believed the parties had anything further to discuss before Caesars filed
10 its motion to compel. (*Id.* at ¶ 26.) Caesars did not receive a response. (*Id.* at ¶ 27.) Pursuant to
11 LR 26-7, attached is Caesars' certification that it has personally consulted with Defendants, with
12 sincere efforts, about its discovery dispute and that the parties are unable to resolve the matter
13 without Court action.

14 II. MEMORANDUM OF POINTS AND AUTHORITIES

15 A. Defendants Should be Compelled to Provide Good Faith Responses to Caesars' 16 Interrogatories.

17 A party responding to interrogatories must serve verified answers and objections within
18 30 days after service. Fed. R. Civ. P. 33, 33(b)(5) (interrogatory responses must be in writing
19 under oath). "Answers to interrogatories must be responsive, full, complete and unevasive. The
20 answering party cannot limit his answers to matters within his own knowledge and ignore
21 information immediately available to him or under his control." *General Cigar Co., Inc. v.*
22 *Cohiba Caribbean's Finest, Inc.*, 2007 WL 983855, *3 (D. Nev. March 30, 2007).

23 After the expiration of 30 days, a court may, upon motion, order a party to provide
24 complete, verified answers to interrogatories. Fed. R. Civ. P. 37(a)(3); *Sweeney v. UNLV*
25 *Research Foundation*, 2010 WL 1756875, *5 (D. Nev. April 30, 2010) (requiring plaintiff to
26 sign interrogatories under oath within seven days of order). These answers must be without
27 objection, unless the court for good cause excuses the failure to answer. Fed. R. Civ. P. 33(b)(4)
28 ("[a]ny ground not stated in a timely objection is waived unless the court, for good cause,

excuses the failure.”); *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir.1992) (“It is well established that a failure to object to discovery requests within the time required constitutes a waiver of any objection.”)

1. The Court Should Compel July to Provide Verified Answers, Without Objections, to Caesars’ Interrogatories.

As set forth above, July’s responses to Caesars’ interrogatories were due on or before October 2, 2011, yet July has failed to respond in any manner to the interrogatories, or even provide a date by which he intends to respond. His failure to timely cooperate with Caesars’ attempts to obtain the discovery it needs to defend July’s counterclaims is inexcusable. Caesars therefore requests that the Court compel July to provide complete, verified answers, without objections, to the interrogatories within seven days of the Court’s order on this motion.

2. The Court Should Compel OTLLC to Provide Complete Verified Answers, Without Objections, to Caesars’ Interrogatories.

Unlike July, OTLLC has responded to Caesars’ interrogatories. However, its responses were not only untimely but, as set forth below: (1) are incomplete, (2) contain inaccurate information, and (3) are not verified.

a. OTLLC Has Failed to Respond Substantively to Interrogatories 5-8 and 14.

July’s responses to Interrogatories 5-8 and 14 are incomplete. These interrogatories are set forth in full below.

INTERROGATORY NO. 5: For each product or service OTLLC has sold under any mark or name that includes the phrase OCTAVIUS TOWER in the United States, identify the date of the sale, the customer, and the revenue derived from the sale.

INTERROGATORY NO. 6: For each concert or show OTLLC identified in response to Interrogatory No. 4 above identify the date, location, venue and, to the extent the show was not live, the method of transmission of each show.

INTERROGATORY NO. 7: Identify and describe in detail all advertising, promotion or marketing done by OTLLC or any third party regarding any of the products/services identified in response to Interrogatory No. 4 above.

INTERROGATORY NO. 8: For any concerts or shows OTLLC has given in the

1 United States under a mark or name that includes the phrase OCTAVIUS
2 TOWER, identify the number of people (or, if unavailable, the approximate
3 number of people) in attendance at each show.

4 INTERROGATORY NO. 14: Identify and describe in detail all instances of
5 consumer confusion or inquiry OTLLC contends has occurred as a result of
6 Caesars' use of the OCTAVIUS TOWER mark, including identifying the date of
7 each instance and the name and all known contact information of each person
8 involved.

9 OTLLC responded to Interrogatory Nos. 5 and 14 by stating "Marcel July is presently
10 attempting to locate those records evidencing data in answer to this question. These records are
11 presently believed to be in storage in Germany. OTLLC will forward answers to this question as
12 soon as this data is located."

13 OTLLC's responses to Interrogatory Nos. 6-8 merely refer Caesars back to the answer to
14 Interrogatory No. 5, stating "Refer to Answer to Interrogatory No. 5, above."

15 OTLLC has had more than sixty days to locate and review any records that are in storage
16 in Germany in order to respond to Caesars' discovery, yet it has failed to do so. Moreover, to
17 secure an extension to respond to Caesars' interrogatories, OTLLC represented that it could and
18 would provide substantive responses to these interrogatories by October 28, 2011. That date
19 came and passed with no response from OTLLC and no indication that there were other records
20 that needed to be searched to respond to the interrogatories. OTLLC has also failed to provide
21 Caesars with any date by when it intends to review these alleged documents. OTLLC has
22 counsel in Germany who is actively involved in this case and who presumably could have
23 reviewed these documents at any time in the last sixty days. OTLLC's failure to review all
24 records necessary for it to timely respond to Caesars' interrogatories is thus without legitimate
25 excuse. Accordingly, Caesars requests that the Court compel OTLLC to provide complete,
26 verified answers, without objections, to Caesars' interrogatories Nos. 5-8, and 14 within seven
27 days of the Court's order on this motion.

28 **b. OTLLC's Responses to Interrogatories 4, 9 and 10 Contain False Information.**

Caesars served the following interrogatories on OTLLC:

1 INTERROGATORY NO. 4: Describe in detail each product or service OTLLC
2 has offered for sale or sold at any time in the United States under any mark or
name that includes the phrase OCTAVIUS TOWER.

3 INTERROGATORY NO. 9: Identify all domain names owned or used by
4 OTLLC that incorporate the term “octavius.”

5 INTERROGATORY NO. 10: Identify any websites used by OTLLC or any of
6 OTLLC’s licensees in connection with advertising, promoting, offering for sale,
or selling any goods or services sold under a mark or name that incorporates the
7 term “octavius.”

8 In response to Interrogatory No. 4, OTLLC responded, *inter alia*, that “[d]uring the years
9 1996 through 2003, Octavius Tower, LLC maintained the Website promoting concerts, bands,
10 and streaming videos of performances.”

11 In response to Interrogatories Nos. 9 and 10, OTLLC responded: “Octavius Tower, LLC
12 has used the domain name www.octaviustower.com.”

13 These answers are internally inconsistent and cannot be correct. OTLLC claims to have
14 operated a website from 1996-2003 under a mark or name that included the phrase “Octavius
15 Tower;” however, the only domain name he indicates that these services were operated under is
16 <octaviustower.com>. That domain name was not registered until two days after Caesars
17 announced the launch of its OCTAVIUS TOWER branded tower in 2007. (*See* Dk. 1, ¶ 21).
18 Therefore, either OTLLC’s response to Interrogatory No. 4 is incorrect in that OTLLC did not
19 maintain a website at <octaviustower.com> from 1996 through 2003, or its responses to
20 Interrogatory Nos. 9 and 10 are incorrect and OTLLC has not identified all domain names under
21 which it has offered services under the Octavius Tower mark or name. The Court should compel
22 OTLLC to provide Caesars with complete, verified answers, without objections, to
23 Interrogatories Nos. 4, 9, and 10 within seven days of the Court’s order of this motion.

24 **c. OTLLC Has not Verified its Responses.**

25 OTLLC has not verified its responses as required by Fed. R. Civ. P. 33(b)(5). Caesars
26 therefore requests that the Court compel OTLLC to verify its interrogatory responses within
27 seven days of the Court’s order on this motion.

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1 **3. The Court Should Compel Defendants to Properly Respond to Caesars’**
2 **Request for Production and Produce any Responsive Documents.**

3 A party responding to document requests must provide written responses within 30 days
4 after service. Fed. R. Civ. P. 34(b)(2)(A). “For each item or category, the response must either
5 state that inspection and related activities will be permitted as requested or state an objection to
6 the request, including the reasons.” *Id.* at 34(b)(2)(B). Evasive or incomplete responses are
7 considered a failure to respond. *Id.* at 37(a)(4); *Feldman v. PokerTek, Inc.* No. 2:09-cv-01598-
8 JCM-LRL, 2010 WL 4940059, at *2 (D. Nev. Nov. 30, 2010) (stating that “[a]n evasive or
9 incomplete response must be treated as a failure to respond”).

10 A party serving document requests may file a motion to compel discovery if, after 30
11 days, the responding party “fails to respond that inspection will be permitted-or fails to permit
12 inspection-as requested under Rule 34.” Fed. R. Civ. P. 37(a)(3)(B)(iv). Compelled responses
13 must then be served by the responding party without objections. *Feldman*, 2010 WL 4940059, at
14 *2 (ordering party to respond to requests for production without objection); *General Cigar Co.,*
15 *Inc. v. Cohiba Caribbean’s Finest, Inc.*, No.2:06-cv-0057-BES-GWF, 2007 WL 983855 at *2
16 (D. Nev. Mar. 30, 2007) (“As a general rule, the failure to make timely objection to a discovery
17 request waives the objection.”)

18 Defendants served a joint response to Caesars’ document requests. The totality of the
19 response is as follows:

20 Defendants Octavius Tower, LLC (hereafter “OTLLC”) and Marcel July
21 herewith submit the attached in response to Plaintiff Caesar’s World Inc.’s
22 First Requests for Production of Documents and Things upon each said
23 Defendant. The attached includes documents evidencing OTLLC’s
registration and Marcel July’s ownership thereof. Also submitted
generally are those exhibits A through O previously attached to Defendant
July’s Answer and Counterclaim.

24 No documents were attached to the Defendants’ response. However, Caesars’ counsel
25 received a few documents in response to the requests three days later.

26 Defendants’ response is deficient in two respects. First, Caesars is entitled to a written
27 response to each of its document requests so that it can determine whether Defendants have
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documents responsive to the requests. Fed. R. Civ. P. 34(b)(2)(B). Defendants have provided no such responses.

Second, the documents produced are incomplete. Request No. 45 to OTLLC requests that it produce “All documents and things OTLLC relied upon or referenced in responding to Caesars’ First Set of Interrogatories.” Request No. 55 to July requests that he similarly produce “All documents and things you relied upon or referenced in responding to Caesars’ First Set of Interrogatories.” As noted above, OTLLC responded to Caesars’ interrogatories by referring to documents in Germany that it needs to review to respond to Caesars’ interrogatories. If these documents are used in responding to interrogatories served upon either OTLLC or July, they are responsive and should be produced. The documents might also be responsive to other document requests, but, because Defendants have not reviewed or produced these documents, Caesars is unable to identify the additional requests to which they might be responsive.

Based on the foregoing, Caesars requests that this Court compel each Defendant to provide Caesars with full written responses, without objections, to each of Caesars’ document requests and to produce to Caesars all documents in Defendants’ possession, custody or control responsive to those requests within seven days of the Court’s order on this motion.

4. Defendants Should be Sanctioned for Failing to Comply with Their Discovery Obligations.

“The Court has broad discretion in imposing sanctions against a party for their failure to participate in discovery.” *Employer Painters Welfare Trust v. Atlas Drywall & Painting, LLC*, 2011 WL 5041215, at *2 (D. Nev. Oct. 24, 2011). The Court should impose sanctions upon Defendants pursuant to Fed. R. Civ. P. 37(d)(1)(A) for their unjustified failure to provide timely, good faith responses to Caesars’ discovery requests. Fed. R. Civ. P. 37(d)(3) provides that any of the sanctions listed in Fed. R. Civ. P. 37(b)(2)(A) can be entered for failure to timely serve answers or a written response to the opposing parties interrogatories or document requests, but that rule mandates an award of fees “unless the failure was substantially justified or other circumstances make an award of expenses unjust.” Fed. R. Civ. P. 37(d)(3); *see Employer Painters Welfare Trust v. Atlas Drywall & Painting, LLC*, 2011 WL 5041215 (D. Nev. Oct. 24,

2011) (awarding plaintiff reasonable attorney's fees and costs for Defendant's failure to participate in discovery, including failure to respond to interrogatories and requests for production); *Ziehlke v. City of Angels Camp*, 2009 WL 2424696, *3 (E.D. Cal. Aug. 7, 2009) ("An award of expenses does not require a showing of willfulness or improper intent; rather the standard is whether there was a substantial justification for the losing party's conduct.").

Defendants' discovery violations are wholly unjustified. Defendants recognize that they have failed to provide complete responses to Caesars' discovery requests and in many instances have failed to respond at all. (Munasifi Decl., ¶ 21.) Nevertheless, Defendants do not appear to have any intention of providing or supplementing their responses. (*Id.* at ¶ 23.) July's near complete failure to participate in the discovery process in this case is particularly egregious given that he is the counterclaim plaintiff in this lawsuit and given that it was his demands that Caesars immediately cease use of its OCTAVIUS TOWER mark that led to the filing of this case. July cannot be a plaintiff in this case yet fail to properly respond to discovery served on him.

The only attempt Defendants have made to justify their conduct is that July's wife is ill. (*Id.* at ¶ 22.) As noted above, Caesars' sincerest sympathies reach out to both July and his wife. (*Id.* at ¶ 23.) However, Caesars respectfully submits that July's wife's condition is not the reason July has failed to participate properly in discovery in this case. The Defendants never raised her illness as a reason for delayed responses before Defendants' discovery responses were due. It was not raised until the meet and confer call between the parties two months after Caesars' discovery requests were served. Moreover, despite his wife's condition, July was more than able to take a number of actions that belie any true limitation on his ability to act in this case. As noted above, these actions include touring Europe with his band. (*Id.* at ¶ 23.) They also include: (1) causing his German counsel to send numerous threatening letters to Caesars and third parties demanding that Caesars cease use of its mark; (2) filing a counterclaim; (3) moving for preliminary injunction; (4) launching a Facebook page about this lawsuit; (5) giving interviews to the media about this case; (6) filming videos about this case that he has posted to the Internet; and (7) regularly updating his website about the status of this lawsuit. (*Id.* at ¶¶ 23, 24.) If he has time for all of these actions, he has more than ample opportunity as counterclaim

1 plaintiff to respond to Caesars' discovery requests. July has simply chosen not to do so.
2 Accordingly, Caesars requests that the Court order Defendants to pay the reasonable fees and
3 costs they have forced Caesars to incur in attempting to secure Defendants' responses to Caesars'
4 discovery requests. If granted, Caesars will submit a fee petition and bill of costs within ten (10)
5 days of the Court's order on this motion, and Caesars requests that the Court order Defendants to
6 pay the awarded fees and costs within ten days after the Court's order on Caesars' fee petition.

7 In light of Defendants' knowing and willful failure to comply with their discovery
8 obligations in this case, Caesars further requests that the Court make clear in its order on this
9 motion that the Court will consider the entry of more severe sanctions in the event the
10 Defendants fail to comply in full with the Court's order on this motion, including entering any of
11 the sanctions listed in Fed. R. Civ. P. 37(b)(2)(A).

12 III. CONCLUSION

13 For the reasons set forth above, Caesars requests that this motion be granted and that the
14 Court order that, within seven (7) days of the Court's order on this motion:

15 (1) Marcel July provide Caesars with full and completed verified answers, without
16 objections, to Caesars First Interrogatories to July;

17 (2) OTLLC provide full and complete verified answers, without objections, to
18 Interrogatories Nos. 4-10 and 14 of Caesars' First Interrogatories to OTLLC;

19 (3) OTLLC verify its interrogatory responses to all responses to Caesars' First
20 Interrogatories to OTLLC;

21 (4) July and OTLLC provide written responses, without objections, to each of
22 Caesars' document requests;

23 (5) July and OTLLC produce all responsive documents in its possession, custody or
24 control, including any in storage in Germany, that are responsive to Caesars' First Document
25 Requests.

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1 Caesars further requests that the Court award Caesars its reasonable attorneys' fees and
2 costs incurred in connection with this motion and Caesars' efforts to obtain responses to its
3 discovery, and instruct Defendants that the Court will impose further sanctions under Rule
4 37(b)(2)(A)(i)-(vi) for any failure by Defendants to comply in full with the Court's order on this
5 motion.

6 DATED this 17th day of November, 2011.

7 **SANTORO, DRIGGS, WALCH,**
8 **KEARNEY, HOLLEY & THOMPSON**

9 /s/ James D. Boyle

10 NICHOLAS J. SANTORO, ESQ.
11 Nevada Bar No. 00532
12 JAMES D. BOYLE, ESQ.
13 Nevada Bar No. 08384
14 400 South Fourth Street, Third Floor
15 Las Vegas, Nevada 89101

16 **ALSTON & BIRD LLP**

17 DAVID J. STEWART, ESQ.
18 Georgia Bar. No. 681149
19 NADYA MUNASIFI, ESQ.
20 Georgia Bar No. 156051
21 1201 West Peachtree Street
22 Atlanta, Georgia 30309-3424

23 *Admitted Pro Hac Vice*

24 *Attorneys for Caesars World, Inc.*
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26
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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I certify that on the 17th day of November, 2011, I caused the document entitled **PLAINTIFF CAESARS WORLD, INC.'S MOTION TO COMPEL DEFENDANTS TO RESPOND TO CAESARS' FIRST SET OF INTERROGATORIES AND DOCUMENT REQUESTS**, to be served as follows:

Attorneys of Record	Parties Represented	Method of Service
Michael W. Sanft, Esq. Sanft Law Group 520 South Fourth St. Suite 320 Las Vegas, Nevada 89101		<input type="checkbox"/> Personal Service <input checked="" type="checkbox"/> Email/E-File <input type="checkbox"/> Fax Service <input type="checkbox"/> Mail Service

DATED this 17th day of November, 2011.

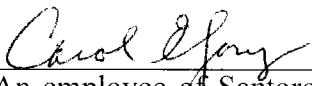

An employee of Santoro, Driggs, Walch, Kearney, Holley & Thompson

EXHIBIT 1

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1 NICHOLAS J. SANTORO, ESQ.
Nevada Bar No. 00532
2 nsantoro@nevadafirm.com
JAMES D. BOYLE, ESQ.
3 Nevada Bar No. 08384
jboyle@nevadafirm.com
4 SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON
5 400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
6 Telephone: 702/791-0308
7 Facsimile: 702/791-1912

8 DAVID J. STEWART, ESQ.
Georgia Bar. No. 681149
9 David.Stewart@alston.com
NADYA MUNASIFI, ESQ.
10 Georgia Bar No. 156051
Nadya.Munasifi@alston.com
11 ALSTON & BIRD LLP
12 1201 West Peachtree Street
Atlanta, Georgia 30309-3424
13 Telephone: 404/881-7000
14 Facsimile: 404/881-7777

15 *Attorneys for Caesars World, Inc.*

16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF NEVADA**

18 CAESARS WORLD, INC., a Florida corporation,

19 Plaintiff,

20 v.

21 MARCEL JULY, an individual; and OCTAVIUS
22 TOWER LLC, a Nevada limited liability
company,

23 Defendants.

CASE NO.: 2:11-cv-00536-GMN-(CWH)

**DECLARATION OF NADYA MUNASIFI
IN SUPPORT OF PLAINTIFF CAESARS
WORLD, INC.'S MOTION TO COMPEL
DEFENDANTS TO RESPOND TO
CAESARS' FIRST SET OF
INTERROGATORIES AND DOCUMENT
REQUESTS AND CERTIFICATION
PURSUANT TO L.R. 26-7**

24 Pursuant to 28 U.S.C. § 1746 and L.R. 26-7, I, Nadya Munasifi, declare as follows:

25 1. I am over eighteen years of age and suffer from no legal disability. I am familiar
26 with the facts and circumstances in this action and am personally knowledgeable of the matters
27 set forth in this declaration and, if called upon to do so, I could and would testify competently to
28 the facts set forth herein.

1 2. I am an attorney at Alston & Bird, LLP and counsel for Plaintiff Caesars World,
2 Inc. ("Caesars") in the above-captioned matter. I make this Declaration in support of Caesars'
3 Motion to Compel Defendants to Respond to Caesars' First Set of Interrogatories and Document
4 Requests.

5 3. I certify that after personal consultation and sincere efforts to do so, the parties
6 have been unable to resolve this matter without Court action.

7 4. Caesars hand served its First Set of Interrogatories and First Requests for
8 Production to Marcel July ("July") on Michael Sanft, Esq., July's counsel in Las Vegas, on
9 September 2, 2011. Attached as Exhibits A and B, respectively, are true and correct copies of
10 these interrogatories and document requests. July's responses to these discovery requests were
11 due by October 2, 2011.

12 5. Caesars served via mail its First Set of Interrogatories and First Requests for
13 Production to OTLLC on Mr. Sanft, attorney for Octavius Tower LLC ("OTLLC"), on
14 September 8, 2011. Attached as Exhibits C and D, respectively, are true and correct copies of
15 these interrogatories and document requests. OTLLC's responses to these requests were due by
16 October 11, 2011.

17 6. Neither July nor OTLLC (collectively, the "Defendants") provided responses to
18 Caesars' discovery requests by the respective due dates, nor did the Defendants request an
19 extension of time to respond.

20 7. On October 18, 2011, David J. Stewart, counsel for Caesars, emailed Defendants'
21 counsel (Michael Sanft, Defendants' counsel of record in this case, and Christian Kaldenhoff, a
22 German lawyer who is also representing Defendants) noting Defendants' failure to respond to
23 Caesars' discovery requests and requesting that Defendants provide full responses by the end of
24 the week. A true and correct copy of Mr. Stewart's email is attached as Exhibit E.

25 8. Mr. Sanft called me on October 19, 2011, and requested an extension of time until
26 October 28, 2011, for his clients to respond to all outstanding discovery requests.

27 9. I emailed Mr. Sanft on October 20, 2011, informing him that Caesars agreed to
28 the requested extension, conditioned upon receipt of substantive responses and all responsive

1 documents by that date. A true and correct copy of my email to Mr. Sanft is attached as Exhibit
2 F.

3 10. I did not receive any responses to Caesars' discovery requests from Defendants by
4 October 28, 2011, and Defendants did not seek a further extension to respond to the requests.

5 11. On October 31, 2011, I emailed Messrs. Sanft and Kaldenhoff to schedule a meet
6 and confer conference regarding Defendants' failure to respond to Caesars' discovery requests.
7 Attached as Exhibit G is a true and correct copy of my email.

8 12. Having not received a response to my October 31, 2011 email, I called Mr.
9 Sanft's office on November 1, 2011, and left him a voicemail about scheduling a meet and
10 confer to discuss Defendants' failure to respond to Caesars' discovery requests. That same day, I
11 emailed Mr. Sanft, with a copy to Mr. Kaldenhoff, to schedule a meet and confer conference. A
12 true and correct copy of my email is attached as Exhibit H.

13 13. Still having received no response to my prior correspondences, I sent a follow-up
14 email on November 3, 2011 to Messrs. Sanft and Kaldenhoff. A true and correct copy of my
15 email is attached as Exhibit I.

16 14. On Friday, November 4, 2011, Mr. Kaldenhoff sent me the email attached hereto
17 as Exhibit J.

18 15. On that same day, Defendants' counsel faxed to me OTLLC's responses to
19 Caesars interrogatories. A true and correct copy of this fax is attached as Exhibit K.

20 16. On November 4, 2011, Defendants' counsel also faxed me a document titled
21 "Response to Plaintiff Caesars World, Inc.'s First Request for Production of Documents and
22 Things to Octavius Tower LLC and Response to Plaintiff Caesars World, Inc.'s First Request for
23 Production of Documents and Things to Marcel July." A true and correct copy of this fax is
24 attached as Exhibit L. Purportedly attached to the Response were "documents evidencing
25 OTLLC's registration and Marcel July's ownership thereof" and Exhibits A through O of
26 Defendant July's Answer and Counterclaim. No documents were attached.

27 17. Later in the day on November 4, 2011, I received a phone call from Mr. Sanft's
28 assistant informing me that the documents referenced in the Response were deposited in the mail

1 that day. I received the documents the following week, but did not receive written responses to
2 Caesars' document requests from either of the Defendants.

3 18. As of the date of signature below, July has not responded to Caesars
4 interrogatories.

5 19. Based on Defendants' deficient discovery responses, I scheduled with Mr. Sanft's
6 assistant a telephonic meet and confer conference with Mr. Sanft for Monday, November 7,
7 2011.

8 20. I attended the meet and confer conference, along with Mr. Stewart, on behalf of
9 Caesars. Mr. Sanft was unable to attend the conference. Accordingly, Timothy Bennett, Esq.,
10 who works with Mr. Sanft, attended the meet and confer on behalf of Defendants. Mr. Bennett
11 has not made an appearance in this case and is not admitted to the Nevada bar, but he represented
12 that he was authorized to act on behalf of Mr. Sanft and Defendants.

13 21. Mr. Bennett acknowledged that: (a) July had not responded to Caesars'
14 interrogatories, (b) OTLLC's responses to Caesars' interrogatories were incomplete, and (c)
15 July's and OTLLC's responses to Caesars' requests for production were incomplete. Mr.
16 Bennett was unable to provide Caesars with more complete discovery responses and did not have
17 any further information as to when or whether Caesars would receive further responses to its
18 written discovery requests or further responsive documents.

19 22. During the meet and confer conference, Mr. Bennett stated that Defendants'
20 counsel was having difficulty obtaining complete discovery responses from July, in part, because
21 of July's wife's illness. However, at no time previous to this call had Defendants or their
22 counsel represented that they could not provide complete discovery responses because of it.

23 23. Mr. Stewart responded by expressing to Mr. Bennett Caesars' sincerest
24 sympathies for July and his wife, but he also expressed doubt that Mrs. July's illness was the
25 reason for Defendants' failure to respond to Caesars' discovery requests. Mr. Stewart noted that,
26 despite July's wife's illness, July has (a) toured Europe with his band; (b) caused his German
27 counsel to send numerous threatening letters to Caesars and third parties demanding that Caesars
28 cease use of its mark or face litigation; (c) filed a counterclaim in this lawsuit; (d) moved for a



1 preliminary injunction against Caesars; and (c) regularly updated his website about the status of
2 the lawsuit. Mr. Stewart noted that, if Mr. July had time to do all these things, he clearly had
3 time to respond to Caesars' discovery requests. Attached as Exhibit M is a true and correct
4 printout of the homepage of July's website, located at <octaviustower.com>, that I took on
5 November 16, 2011, which states that the OCTAVIUS TOWER band has nearly completed its
6 European Tour. I have also attached as Exhibit N a true and correct of a printout of the
7 homepage of July's website that I printed on May 2, 2011. A comparison of this version to the
8 prior version reflects meaningful changes in content regarding the litigation.

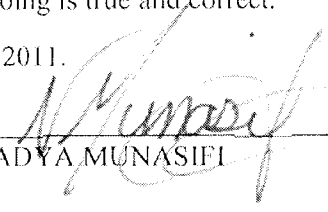
9 24. Mr. Bennett did not have a response to this and did not further attempt to justify
10 his clients' delay.

11 25. In recent months, July has also (a) allegedly worked toward the opening of a new
12 entertainment center in Las Vegas; (b) given interviews to the media about this case; (c) filmed
13 videos about this case that he has posted to the Internet; and (d) allegedly worked toward the
14 opening of a new entertainment center in Las Vegas. (See Ex. M.) July has further launched a
15 Facebook page about this lawsuit. Attached as Exhibit O is a true and correct printout of July's
16 Facebook page taken on November 16, 2011.

17 26. After the meet and confer conference on November 8, 2011, I emailed Mr. Sanft
18 to confirm that Mr. Bennett was authorized to participate in the meet and confer conference, to
19 confirm that Caesars had complied with its meet and confer obligations, and to request that Mr.
20 Sanft contact Caesars by the end of the day if he believed the parties had anything further to
21 discuss before Caesars filed its motion to compel. A true and correct copy of this email is
22 attached as Exhibit P.

23 27. I did not receive a response to my November 8, 2011, email to Mr. Sanft.
24 I declare under penalty of perjury that the foregoing is true and correct.

25 Executed on this 17th day of November, 2011.

26
27
28

NADYA MUNASIFI