

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

8 David Stewart, Esq. (admitted pro hac vice)
 Georgia Bar No. 681149
 david.stewart@alston.com
 9 Nadya Munasifi, Esq. (admitted pro hac vice)
 Georgia Bar No. 156051
 nadya.sand@alston.com
 10 ALSTON & BIRD LLP
 11 1201 West Peachtree Street
 12 Atlanta, Georgia 30309-3424
 Telephone: 404/881-7000
 13 Facsimile: 404/881-7777

14 *Attorneys for Caesars World, Inc.*

15
 16 **UNITED STATES DISTRICT COURT**
 17 **DISTRICT OF NEVADA**

18 CAESARS WORLD, INC., a Florida
 19 corporation,

20 Plaintiff,

21 v.

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

25 Defendants.

CASE NO.: 2:11-cv00536-GMN-CWH

**PLAINTIFF CAESARS WORLD, INC.'S
 MOTION TO EXTEND FACT
 DISCOVERY DEADLINE**

**SPECIAL SCHEDULING REVIEW
 REQUESTED**

(THIRD REQUEST)

26 Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure and Local Rule 26-4,
 27 Plaintiff Caesars World, Inc. ("Caesars") respectfully moves the Court to extend the deadline to
 28 complete fact discovery by sixty (60) days, to Monday, April 16, 2012. Caesars further requests

1 that the Court enter the Third Amended Discovery Plan and Scheduling Order, attached hereto as
2 Exhibit A, which reflects a sixty (60) day fact discovery extension and like extensions for the
3 remaining deadlines in the case. Caesars requests that this extension be reviewed on an
4 expedited basis pursuant to L.R. 6.1.

5 I. BACKGROUND

6 A. Statement Specifying Completed Discovery Per Local Rule 26-4.

7 Caesars and Defendants have served their initial disclosures on one another. (*See*
8 Scheduling Order, Dkt. 34.) Caesars served its First Set of Interrogatories and First Requests for
9 Production on July on September 2, 2011. (Dkt. 42, Exh. 1, Munasifi Decl., ¶ 4.) July's
10 responses were due by October 2, 2011. (*Id.*) Caesars served its First Set of Interrogatories and
11 First Requests for Production on OTLLC on September 8, 2011. (*Id.* at ¶ 5.) OTLLC's
12 responses were due by October 11, 2011. (*Id.*) By agreement, Caesars agreed to extend the
13 deadlines for Defendants' responses to October 28, 2011. (*Id.* at ¶ 9.) Defendants failed to
14 respond to Caesars' discovery by this date. (*Id.* at ¶ 10.) Caesars filed a motion to compel
15 responses to its discovery, and, in an Order dated December 19, 2011, the Court ordered
16 Defendants to respond to Caesars' requests by January 18, 2012. (Dkt. 49.) In response to the
17 Court's Order, Defendants served their interrogatory responses on Caesars on January 17, 2012.
18 (*See* Defendants' interrogatory responses attached hereto as Exhibit B.) These responses, as
19 described more fully below, remain deficient. Defendants failed to serve written responses to
20 Caesars' document requests pursuant to the Court's Order.

21 In addition to fact discovery, Caesars has served three expert reports on Defendants.
22 Defendants have not identified any experts. The expert disclosure deadlines have passed, and
23 Caesars does not seek extensions to these deadlines.

24 B. Discovery Deadlines.

25 On September 13, 2011, the Court entered the parties' First Amended Stipulated
26 Discovery Plan and Scheduling Order ("Revised Scheduling Order"), which the parties requested
27 to allow them time to focus on efforts to settle the case without the need to engage concurrently
28 in fact and expert discovery. (Dkt. 34.) The parties were unable to reach settlement;

1 accordingly, the parties continued their discovery efforts. (*See* Scheduling Order, Dkt. 41.)

2 Defendants' responses to Caesars first set of document requests and interrogatories were
3 due on October 2, 201. (Dk. 42, Exh. 1, Munasifi Decl., ¶ 4.) Defendants requested an
4 extension of time until October 28, 2011 to respond to the requests. (*Id.* at ¶ 9.) Caesars
5 consented to the request, conditioned upon the defendants' agreement that they would provide
6 full and complete responses by that date. (*Id.*) As a result of the extension, Caesars would not
7 have had sufficient time to complete its discovery efforts under the discovery deadline then in
8 effect in the case. (Scheduling Order, Dkt. 41, p. 2.) Accordingly, the parties submitted a Second
9 Amended Stipulated Discovery Plan and Scheduling Order, which the Court entered on
10 November 1, 2011. (Dkt. 41.) The revised scheduling order extended fact discovery to February
11 15, 2012, giving Caesars two and a half months to complete its discovery efforts after receipt of
12 Defendants' discovery responses. (*Id.*) Caesars noted in the Second Amended Stipulated
13 Discovery Plan and Scheduling Order that it believed the extensions requested therein would
14 give Caesars sufficient time to complete its discovery efforts, provided that Defendants timely
15 responded to Caesars' outstanding discovery requests. (*Id.* at p. 5.)

16 Neither Defendant responded to Caesars' discovery requests by the extended October 28
17 deadline. (Dkt. 42, Exh.1, Munasifi Decl., ¶ 10.) While Caesars was scheduling a meet and
18 confer, OTLLC served interrogatory responses to Caesars on November 4, 2011, but these
19 responses were incomplete and unverified. (Dkt. 42, p. 15.) July did not provide any responses
20 to Caesars' interrogatories. (Dkt. 42, Exh. 1, Munasifi Decl. ¶ 18.) A few days later, Caesars
21 received some documents from Defendants, but Caesars did not receive written responses to its
22 document requests from either of the Defendants. (*Id.* at ¶¶ 16-17.) Accordingly, Caesars could
23 not verify whether it had received all documents that Defendants intended to produce, or whether
24 Defendants were withholding documents for any reason. (Dkt. 42, pp. 10-11.)

25 After the meet and confer process proved fruitless, Caesars filed a Motion to Compel on
26 November 17, 2011. (Dkt. 42.) Defendants did not respond to Caesars' Motion. However, on
27 December 2, 2011, while the Motion was pending, Mr. July served Caesars with unverified
28 responses to Caesars' interrogatories and OTLLC produced a DVD of documents responsive to

1 Caesars' document requests. (Notice of Non-Opposition, Dk. 46, p. 2.) OTLLC did not
2 supplement its interrogatory responses, and neither party responded in writing to Caesars'
3 document requests. (*Id.*) Caesars filed a Notice of Defendants' Non-Opposition to Plaintiff's
4 Motion to Compel, identifying for the Court examples of the deficiencies in July's interrogatory
5 responses. (Dkt 46.)

6 The Court granted Caesars' Motion to Compel on December 19, 2011, and ordered
7 Defendants to respond to Caesars' discovery requests by January 18, 2012. (Dkt. 49.) In
8 response to the Court's Order, July and OTLLC served amended and verified interrogatory
9 responses on January 17, 2012. (*See* Exhibit B.) Defendants' counsel also emailed Caesars
10 additional documents. Nevertheless, Defendants still have not fully responded to Caesars'
11 discovery requests. Defendants have not yet provided written responses to Caesars' document
12 requests (as they were expressly ordered to do), and Defendants have not fully responded to
13 Caesars' interrogatories. One example of this non-compliance is Defendants' response to
14 Interrogatory No. 15, which requests that Defendants "[i]dentify and describe in detail all
15 instances of actual confusion you contend have occurred as a result of Caesars' use of the
16 Caesars OT Marks, including without limitation the phone calls and emails referenced in
17 Paragraph 95 of your Answer and Counterclaims." (Dk. 42, Exh. 1, Munasifi Decl., Exh. A,
18 Interrog. No. 15.) In response, July produced certain emails and Facebook postings. (*Id.*; Exh. B
19 Interrog. Resp. No. 15.) However, July did not identify which of these emails and postings he
20 contends constitute actual confusion, and many of the postings plainly do not constitute evidence
21 of actual confusion, including a posting that states "Hy you wellcome .greetings from Germany
22 :)" (Facebook posting). (*See* Notice of Non-Opposition, Dkt. 46, Exh. A, Interrog. Resp. No.
23 15.)

24 Pursuant to the Court's instructions at the hearing held on January 19, 2012, Caesars is
25 attempting to meet and confer with Defendants' regarding these discovery deficiencies; however,
26 Defendants have not yet responded to Caesars' in person and e-mail requests for a meet and
27 confer conference regarding these issues. Accordingly, Caesars is still awaiting full and
28 complete responses to the discovery requests it served the first week of September.

1 Caesars certifies that it personally requested that Defendants stipulate to the discovery
2 extension requested herein. Defendants have declined to consent to the extension. The parties
3 are therefore unable to resolve this matter without court action.

4 II. MEMORANDUM OF POINTS AND AUTHORITIES

5 Rule 16(b)(4) and Local Rule 26-4 allow for judicial modification of a schedule for good
6 cause. Fed. R. Civ. P. 16(b)(4); L.R. 26-4 (“Applications to extend any date set by the discovery
7 plan, scheduling order, or other order must, in addition to satisfying the requirements of LR 6-1,
8 be supported by a showing of good cause for the extension”). “Rule 16(b)’s ‘good cause’
9 standard primarily considers the diligence of the party seeking the amendment.” *Johnson v.*
10 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

11 Caesars is, and has been, actively and diligently pursuing discovery in this case, including
12 serving interrogatories and document requests upon Defendants, serving three expert witness
13 reports, and filing a motion to compel to attempt to get responses to its discovery. Caesars’
14 attempts to complete its discovery have been thwarted by Defendants’ refusal to properly
15 respond to Caesars’ outstanding discovery requests. Had Defendants timely responded to
16 Caesars’ discovery requests, a further discovery extension likely would not have been necessary.

17 With regard to discovery left to be completed, Caesars first needs to take the deposition
18 of Marcel July. Until Caesars receives full and complete responses to its discovery requests from
19 Defendants, Caesars is unable to do so without running the risk that it will have to reconvene the
20 deposition after getting such responses from Defendants. Defendants will presumably also
21 benefit by the deposition taking place after they have produced complete responses to Caesars’
22 discovery requests because Mr. July resides in Germany; therefore, a second trip to the United
23 States to sit for deposition would be expensive and time consuming for him. In order to advance
24 the case to dispositive motions and trial, Caesars has no choice at this point but to move forward
25 with Mr. July’s deposition. Caesars has requested that it be provided dates when Mr. July can be
26 available for deposition, but Caesars has received no response to date.

27 In addition to Mr. July’s deposition, Caesars will also need to conduct discovery of any
28 third parties Defendants identify as allegedly having been confused by Caesars’ use of the mark

1 OCTAVIUS TOWER. Because Defendants have not yet properly identified which third parties
2 they contend have been confused, Caesars is not in a position to conduct this discovery. If
3 Defendants will not voluntarily provide this information, Caesars will have to get it through Mr.
4 July's deposition. Once Caesars has this information, it will need time to locate these individuals
5 and take their depositions. Based upon the documents Defendants have produced to date, it
6 appears that the only contact information Defendants have for any alleged third-party confusion
7 witnesses they may identify are Facebook User IDs and e-mail addresses. (See Dk. 42, Exh. 1,
8 Munasifi Decl., Exh. A, Interrog. Resp. No. 15; Exh. B Interrog. Resp. No. 15.) In order to
9 locate these individuals and subpoena them for deposition, Caesars will first need to subpoena
10 Facebook and the e-mail providers for the individuals' names and addresses. Completing this
11 discovery could therefore take some time as two rounds of subpoenas will be necessary.

12 Finally, further discovery may reveal the need for additional document requests and
13 interrogatories that need to be served on Defendants, and Caesars anticipates that, after
14 completing the foregoing discovery, it will serve requests for admission on Defendants to narrow
15 the issues for dispositive motions and trial.

16 Based upon the foregoing, Caesars respectfully requests that the Court extend the existing
17 discovery period by 60 days to and including April 16, 2012, and extend all remaining deadlines
18 in the case by a like period. The requested extension will preserve to Caesars less time than it
19 would have had to complete discovery under the current scheduling order had Defendants timely
20 responded to Caesars' discovery requests by October 28, 2011, as they promised to do. Caesars
21 does not believe that any further extensions will be necessary. A proposed Third Amended
22 Discovery Plan and Scheduling Order is attached for the Court's consideration.

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1 Respectfully submitted, this 25th day of January, 2012.

2
3 /s/ Nadya Munasifi

4 **SANTORO, DRIGGS, WALCH,**
5 **KEARNEY, HOLLEY & THOMPSON**

6 NICHOLAS J. SANTORO, ESQ.
7 Nevada Bar No. 00532
8 JAMES D. BOYLE, ESQ.
9 Nevada Bar No. 08384
10 400 South Fourth Street, Third Floor
11 Las Vegas, Nevada 89101

12 **ALSTON & BIRD LLP**

13 DAVID J. STEWART, ESQ.
14 Georgia Bar. No. 681149
15 NADYA MUNASIFI, ESQ.
16 Georgia Bar No. 156051
17 1201 West Peachtree Street
18 Atlanta, Georgia 30309-3424

19 *Admitted Pro Hac Vice*

20 *Attorneys for Caesars World, Inc.*

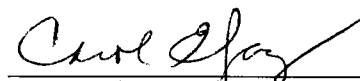
1 **CERTIFICATE OF SERVICE**

2 Pursuant to Fed. R. Civ. P. 5(b), I certify that on the 25th day of January, 2012, I caused
3 the document entitled **PLAINTIFF CAESARS WORLD, INC.'S MOTION TO EXTEND**
4 **FACT DISCOVERY DEADLINE**, to be served as follows:

5

Attorneys of Record	Parties Represented	Method of Service
8 Michael W. Sanft, Esq. 9 Sanft Law Group 10 520 South Fourth St. 11 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

12 DATED this 25th day of January, 2012.

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15 
16 An Employee of Santoro, Driggs, Walch, Kearney,
17 Holley & Thompson