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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

CAESAR’S WORLD, INC., a Florida  
corporation,  
**Plaintiff,**  
**vs.**  
MARCEL JULY, an individual; and  
OCTAVIUS TOWER, LLC, a Nevada  
limited liability company,  
**Defendant.**

CASE NO. 2:11-CV-0536 GMN-PAL

**RESPONSE TO CAESAR’S WORLD,  
INC.’S EMERGENCY MOTION TO  
COMPEL AND FOR SANCTIONS**

**AND**

**MOTION FOR PROTECTIVE ORDER  
PURSUANT TO FED.R.CIV.PRO. 26(C)**

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Defendant Marcel July, by and through undersigned counsel, herewith responds to Plaintiff Caesar’s World, Inc.’s Emergency Motion to Compel and for Sanctions by asking this Honorable Court to deny Plaintiff’s relief sought insofar as Plaintiff seeks Defendant Marcel July’s *personal* appearance in Las Vegas for a deposition. Defendant further asks that this Honorable Court deny Plaintiff’s request for sanctions. Finally, Defendant moves this Honorable Court for a protective order pursuant to Fed.R.Civ.Pro. 26(c), narrowly tailored to require Defendant to participate in his deposition, but permitting Defendant to appear at the same telephonically or by some other means alternative to personally appearing in Las Vegas. This Response and Motion are supported by the following Memorandum of Points and Authorities, incorporated by reference herein.

MEMORANDUM OF POINTS AND AUTHORITIES

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At issue in Plaintiff Caesar’s World, Inc.’s, Motion to Compel and for Sanctions is whether this Honorable Court should compel Defendant Marcel July’s *personal* appearance in Las Vegas for deposition. In its Memorandum on these issues, Caesar’s rehearses what it continues to construe as some purported recalcitrance on Mr. July’s part to participate in disclosure, alleging “discovery violations” that are “well documented in this case.” In so rehearsing, Caesar’s seeks to cloak the accomplishments despite adverse circumstances Mr. July has eagerly made in terms of satisfying Plaintiff’s discovery expectations, as well as Mr. July’s desire to bear whatever reasonable and possible burdens are to satisfy the parties’ need to bring the truths of this matter to light.

As this Honorable Court now well knows, Mr. July lives in the Federal Republic of Germany. Mr. July did not relocate from the United States to Germany with the express purpose of frustrating Caesar’s discovery efforts, but to seek life-saving cancer treatments for his wife. Indeed, in so doing, the July family generally has indefinitely postponed many of their own plans and dreams that have centered around their erstwhile lives in America. Some of these plans and dreams have been directly related to Mr. July’s Octavius Tower band and its projects, which have been established since the early 1990’s, and present in the United States since 2003. But for these circumstances, the evidence and activity associated with Octavius Tower band would remain in the United States.

It is unfortunate that much of the evidence associated with this case, to the extent it can be located at all, is present in Europe, and that the same has caused some delays,

1 miscommunications, and misunderstandings. This, however, is not and never has been willful on  
2 Mr. July's part. As indicated at the 19 January 2012 show cause hearing, at this time, Mr. July  
3 has provided everything that he possibly can as to evidence that pre-exists this matter.

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5 A similar situation is present with respect to Mr. July's personal appearance in Las Vegas  
6 for deposition. Mr. July has no wish whatever to contend against Caesar's right to depose him.  
7 Mr. July proactively wishes such a deposition should take place. In communicating with Caesar's  
8 through counsel, Mr. July has only asked that such a deposition occur telephonically or by such  
9 other applicable means other than his personal appearance in Las Vegas.

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11 It is true, as Caesar's asserts in its Memorandum, that part of the reasons associated with  
12 this request is have to do with the relative benefits of his personal appearance versus the burdens  
13 of the same from a financial point of view: the costs associated with travel from Europe to Las  
14 Vegas, including lodgings, are quite high at the present time. However, the greater costs have at  
15 present more to do with Mr. July's own health.

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17 Since returning to Europe from the United States, Mr. July has been under tremendous  
18 personal strain. Aside from the financial strain of moving to Europe, the constant fear of losing  
19 his wife to her cancer, the affects on the July family's children, and facing a lawsuit brought  
20 against him by a powerful, multinational gaming concern, Mr. July has seen his own health  
21 decline. He has been treated for anxiety and depression; he has lost weight, and the medications  
22 he is now on prohibit commercial flight until his dosage might be reduced over time (*see Exhibit*  
23 *One*). However, that reduction cannot be undertaken lightly, or Mr. July would suffer the  
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1 untreated affects of his erstwhile physical condition. Simply expressed, Mr. July cannot fly to the  
2 United States in the short term for serious health among other reasons.

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4 LEGAL ARGUMENT

5 At the 19 January 2012, this Honorable Court expressed its opinion that most of such  
6 discovery concerns can and should be worked out among the parties. As Caesar's evidences in its  
7 copious exhibits, the parties have used every effort to work out these discovery concerns. To  
8 Caesar's continued cry against Mr. July's purported discovery violations, Mr. July continues to  
9 respond that he has done all he can possibly be realistically asked to do: any more seems to be an  
10 effort in bullying him to accomplish the impossible. Not as a first but as a last resort, Mr. July  
11 seeks the protection of this Honorable Court.

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14 Caesar's in its own brief makes mention of the applicability of Rule 26(c). Contrary to  
15 Caesar's assertions that Rule 26(c) might be inapplicable or untimely, Mr. July's situation seems  
16 to be one for which Rule 26(c) was designed:

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18 A party or any person from whom discovery is sought may move for a protective  
19 order in the court where the action is pending—or as an alternative on matters relating to  
20 a deposition, in the court for the district where the deposition will be taken. The motion  
21 must include a certification that the movant has in good faith conferred or attempted to  
22 confer with other affected parties in an effort to resolve the dispute without court action.  
23 The court may, for good cause, issue an order to protect a party or person from  
24 annoyance, embarrassment, oppression, or undue burden or expense.

25 In the present case, Mr. July is a "person from whom discovery is sought," namely a one whose  
26 deposition has been requested. Moreover, Mr. July, if he were required to travel personally from  
27 Germany to Las Vegas, would be subject to an undue burden and expense, not merely financially,  
28 but with respect to his health. Caesar's own Memorandum and attendant exhibits evidence the

1 good faith if otherwise short-falling efforts of the parties to resolve this dispute. However, having  
2 failed in all other efforts, it is simply the case that intervention of this Honorable Court is  
3 required: a protective order as outlined above is necessary to balance Caesar's discovery needs  
4 with those related to Mr. July's health.

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6 CONCLUSION

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8 The protective order requested should be narrowly tailored. Mr. July would repeat: he  
9 proactively wishes for his deposition to go forward. He feels such would be an opportunity to  
10 clarify to Caesar's the truth behind his claims. Mr. July hopes that such may lead to early  
11 resolution and settlement of these matters, if possible. Mr. July simply does not wish to become  
12 permanently injured in answering this desire. To this extent, a teleconference deposition, the  
13 logistics of which can be worked out among the parties, is appropriate, and should form the basis  
14 of whatever order would issue from this request. For these reasons, Mr. July respectfully requests  
15 that this Honorable Court deny Caesar's Motion to Compel and for Sanctions, but asks that a  
16 protective order issue as outline above.  
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20 DATED THIS 15<sup>TH</sup> DAY OF March 2012.

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22  
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