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14 **UNITED STATES DISTRICT COURT**
 15 **DISTRICT OF NEVADA**

17 CAESARS WORLD, INC., a Florida
 corporation,
 18
 19 Plaintiff/Counter-Defendant,
 20 v.
 21 MARCEL JULY, an individual; and
 OCTAVIUS TOWER LLC, a Nevada limited
 22 liability company,
 23 Defendants/Counterclaimant.

CASE NO.: 2:11-cv-00536-GMN-(CWH)
**CAESARS WORLD, INC.'S REPLY IN
 SUPPORT OF ITS EMERGENCY
 MOTION TO COMPEL AND FOR
 SANCTIONS AND RESPONSE IN
 OPPOSITION TO DEFENDANT
 MARCEL JULY'S MOTION FOR
 PROTECTIVE ORDER**

25 Plaintiff and Counter-Defendant Caesars World, Inc. ("Caesars") hereby submits this
 26 Reply in support of its Motion to Compel Defendant Marcel July ("July") to personally appear in
 27 Las Vegas, Nevada for his deposition, and its response in opposition to July's Motion for
 28 Protective Order. In his Response and Motion (collectively, "Response"), July claims that he is

1 unable to personally attend his deposition in Las Vegas “at this time” because of unspecified
2 medications being taken for an unspecified medical condition. Such vague and conclusory
3 statements, without more, fail to articulate an “extreme hardship” that justifies relieving July
4 from personally appearing in Las Vegas for his deposition.

5 I. ARGUMENT

6 “[A]bsent extreme hardship, a nonresident plaintiff should appear for his deposition in
7 the chosen forum.” *U.S. v. Rock Springs Vista Devel.*, 185 F.R.D. 603, 604 (D. Nev. April 19,
8 1999). Conclusory assertions that travel results in severe financial hardship are insufficient to
9 meet this standard. *Joseph v. Las Vegas Metropolitan Police Dept.*, 2010 WL 3238992, *6. (D.
10 Nev. Aug. 13, 2010) (finding that plaintiffs failed to show extreme hardship by merely asserting
11 “that travel to Las Vegas would subject [plaintiff] to severe financial hardship and [plaintiff’s]
12 travel is limited by unspecified ailments”); *Rock Springs Vista Devel.*, 185 F.R.D. at 604 (mere
13 inconvenience or expense is not a legitimate reason to refuse to appear for a deposition). July
14 does not refute this authority. Moreover, with regard to his claim that it would be too expensive
15 to travel to Las Vegas, he provides no factual support of any kind for his claim. (Dkt. 65, p.3,
16 4.)¹

17 Indeed, July does not refute, or even address, the reasons set forth in Caesars’ motion that
18 he should be compelled to personally attend his deposition. These include that: (1) Caesars’
19 Notice of Deposition was valid; (2) July failed to seek a protective order prior to his noticed
20 deposition; (3) telephonic depositions are not an adequate substitute for in-person depositions in
21 general or in this case in particular; and (4) July is in the process of opening a new entertainment
22 center in Las Vegas less than three miles from the location of the noticed deposition. (Dkt. 61,
23 pp. 5-6.)

24 Rather, in his Response, July purports that he cannot personally attend his deposition in
25 Las Vegas because he is taking unspecified medications that prohibit commercial flight. (Dkt.

26 _____
27 ¹ In stark contrast to his claim that ticket prices are “quite high” or that he will suffer any financial harm traveling to
28 Las Vegas for his deposition, July is offering “Pre-paid [sic] Airplane-tickets to Las Vegas including Hotel-rooms
(max.5 pers.)” on his website in connection with his alleged launch of his new entertainment center. (Sand Second
Decl, Exh. B, Exh. 1.)

1 65 at p. 3.) It is unclear why he is taking these medications, but it appears from his response that
2 the unspecified medications treat anxiety, depression, or weight loss. (*Id.*)

3 Counsel for the parties conferred on three occasions before Caesars filed the present
4 motion to determine why he was not going to appear in Las Vegas for his deposition and when
5 he would be available for an in person deposition in Las Vegas. (*See* Stewart Second Decl., Exh.
6 A, ¶ 3; Sand Second Decl., Exh. B, ¶ 3; Dkt. 61, Sand Decl., Exh. 2.) At no time during any of
7 these communications did July’s counsel state or indicate in any way that their client could not
8 attend a deposition in the United States for medical reasons. (Stewart Second Decl., Exh. A, ¶ 4;
9 Sand Second Decl., Exh. B., ¶ 3). On the contrary, the *only* reason July gave for not attending a
10 deposition in Las Vegas was the “undue burden of personally appearing in Las Vegas, which
11 would require an expensive travel and stay” (Dkt. 61, Sand Decl., Exh. 2).

12 July’s newfound medical excuse seems highly suspect both from the standpoint of the
13 timing of its introduction and the fact that the allegations regarding his condition and medication
14 are shrouded in ambiguity. July’s response does not address (a) what medications he is taking,
15 (b) the dosages of the prescribed medications, (c) what illness or symptom the medications are
16 used to treat, (d) why the medication prohibits him from flying to Las Vegas, or (e) when he will
17 be able fly to Las Vegas for his deposition. His doctor’s note does nothing to answer these
18 questions, as it merely states that the medications “affect” his ability to travel on commercial
19 airlines “at this time.” Neither the doctor’s note nor July’s statements in his Response are sworn
20 statements under penalty of perjury and therefore do not constitute a legitimate defense for his
21 failure to attend his properly noticed deposition. *Hyde & Drath v. Baker*, 24 F.3d 1162 (9th Cir.
22 1994) (noting that defendant failed to submit evidence or a sworn affidavit that its Rule 30(b)(6)
23 deponent was too ill to travel). Moreover, because of the lack of any information regarding his
24 condition or medication, July has failed to demonstrate an “extreme hardship” sufficient to
25 support his decision to ignore the deposition subpoena served on him. *See Joseph v. Las Vegas*
26 *Metropolitan Police Dept.*, 2010 WL 3238992 at *6 (affidavit lacked support regarding illness,
27 and plaintiff failed to show extreme hardship by merely asserting “that travel to Las Vegas
28 would subject [plaintiff] to severe financial hardship and [plaintiff’s] travel is limited by



1 unspecified ailments.”); *see also Adriana Int’l Corp. v. Thoeren*, 913 F.2d 1406, 1411 (9th Cir.
2 1990) (noting that plaintiff unpersuasively used illness to try and justify failure to appear at
3 deposition). In short, July has provided this Court with no information sufficient to determine
4 the veracity of his claims, to support his opposition to Caesars’ motion, or to support his own
5 motion for a protective order.²

6 July claims that Caesars’ actions amount to “bullying,” but July once again conveniently
7 ignores the fact that he is the true plaintiff in this case and bears the burden of proof at trial. It
8 was his groundless threats against Caesars and his interference with Caesars’ business that led to
9 the filing of this lawsuit. Caesars’ actions are solely aimed at protecting its right to use its own
10 mark, not to stop July from using his for the services he identifies in his counterclaim. Having
11 decided to sue Caesars for trademark infringement in this forum, he cannot avoid coming to Las
12 Vegas for a deposition without a clear showing of extreme hardship, which he has not made.

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27 ² July’s claim that his medications prevents him from traveling by commercial airline seems suspect at best, but, if
28 the medications are so incapacitating that he cannot travel, he presumably also would not be sufficiently lucid while
on the medications to appear for a deposition. Nevertheless, July claims he is perfectly able to sit for a deposition
provided it is taken by telephone. He offers no explanation for this apparent inconsistency.



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II. CONCLUSION

Caesars has incurred significant expenses over the past two months attempting to secure July's deposition and filing its underlying motion, including now addressing an entirely new issue never raised in the meet and confer process or before July filed his response brief or motion for protective order. July has failed to provide this Court with sufficient facts to justify his clear discovery violation or to support his motion for a protective order. Caesars therefore requests that the Court deny July's motion, grant Caesars' motion and award Caesars the relief requested in its motion, with the exception that July be ordered to sit for deposition in Las Vegas or Atlanta on a date to be selected by Caesars that is between two and four weeks after the Court's Order on this Motion.

Dated this 23rd day of March, 2012.

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

/s/ James D. Boyle
JAMES D. BOYLE, ESQ.
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ALSTON & BIRD LLP
David Stewart, Esq.
Georgia Bar. No. 681149
Nadya Munasifi Sand, Esq.
Georgia Bar No. 156051

Admitted Pro Hac Vice

Attorneys for Caesars World, Inc.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Fed. R. Civ. P. 5(b), I certify that on the March 23, 2012, I served **CAESARS**
3 **WORLD, INC.'S REPLY IN SUPPORT OF ITS EMERGENCY MOTION TO COMPEL**
4 **AND FOR SANCTIONS AND RESPONSE IN OPPOSITION TO DEFENDANT**
5 **MARCEL JULY'S MOTION FOR PROTECTIVE ORDER** as follows:

6

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

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14 DATED this 23rd day of March, 2012.

15 _____
16 /s/ James D. Boyle
17 James D. Boyle

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

18 **SDW**
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EXHIBIT A



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13 *Attorneys for Caesars World, Inc.*

14 UNITED STATES DISTRICT COURT
15 DISTRICT OF NEVADA

16 CAESARS WORLD, INC., a Florida
17 corporation,

18 Plaintiff,

19 v.

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

23 Defendants.

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

**DECLARATION OF DAVID J. STEWART
IN SUPPORT OF CAESARS WORLD,
INC.'S REPLY IN SUPPORT OF ITS
EMERGENCY MOTION TO COMPEL
AND FOR SANCTIONS AND RESPONSE
IN OPPOSITION TO MARCEL JULY'S
MOTION FOR PROTECTIVE ORDER**

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

25
26 1. I am over eighteen years of age and suffer from no legal disability. I am familiar
27 with the facts and circumstances in this action and am personally knowledgeable of the matters
28



1 set forth in this declaration and, if called upon to do so, I could and would testify competently to
2 the facts set forth herein.

3 2. I am an attorney at Alston & Bird, LLP and lead counsel for Plaintiff Caesars
4 World, Inc. ("Caesars") in the above-captioned matter. I make this Declaration in support of
5 Caesars World, Inc.'s Reply in Support of Its Emergency Motion to Compel and For Sanctions
6 and Response in Opposition to Marcel July's Motion for Protective Order.

7 3. After learning that July was refusing to appear for his deposition, I had a
8 telephonic meet and confer conference with Mr. Sanft, July's counsel, on Thursday, February 23,
9 2012.

10 4. At no time during the telephonic conference did Mr. Sanft state or indicate in any
11 way that July could not attend a deposition in the United States for medical reasons.

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

13 Executed on this 23rd day of March, 2012.

A handwritten signature in black ink, appearing to read 'David J. Stewart', written over a horizontal line.

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16 DAVID J. STEWART

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EXHIBIT B



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11 Telephone: 404/881-7000
12 Facsimile: 404/881-7777

13 *Attorneys for Caesars World, Inc.*

14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF NEVADA**

17 CAESARS WORLD, INC., a Florida
corporation,
18
19 Plaintiff,
20 v.
21 MARCEL JULY, an individual; and
OCTAVIUS TOWER LLC, a Nevada limited
22 liability company,
23 Defendants.

CASE NO.: 2:11-cv-00536-GMN-(CWH)
**DECLARATION OF NADYA MUNASIFI
SAND IN SUPPORT OF CAESARS
WORLD, INC.'S REPLY IN SUPPORT OF
ITS EMERGENCY MOTION TO
COMPEL AND FOR SANCTIONS AND
RESPONSE IN OPPOSITION TO
MARCEL JULY'S MOTION FOR
PROTECTIVE ORDER**

24
25
26 Pursuant to 28 U.S.C. § 1746 and L.R. 26-7, I, Nadya Munasifi Sand, declare as follows:
27 1. I am over eighteen years of age and suffer from no legal disability. I am familiar
28 with the facts and circumstances in this action and am personally knowledgeable of the matters



1 set forth in this declaration and, if called upon to do so, I could and would testify competently to
2 the facts set forth herein.

3 2. I am an attorney at Alston & Bird, LLP and counsel for Plaintiff Caesars World,
4 Inc. ("Caesars") in the above-captioned matter. I make this Declaration in support of Caesars
5 World, Inc.'s Reply in Support of Its Emergency Motion to Compel and For Sanctions and
6 Response in Opposition to Marcel July's Motion for Protective Order.

7 3. On February 20, 2012, Mr. Bennett informed me that July had a conflict with
8 personally appearing for his deposition, but could appear by telephone on the scheduled
9 deposition date. At no time during this call did Mr. Bennett state or indicate in any way that July
10 could not attend a deposition in the United States for medical reasons.

11 4. Attached as Exhibit 1 is a true and correct copy of July's website, located at
12 <octaviustower.com>, taken by me on March 22, 2012.

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

14 Executed on this 23rd day of March, 2012.

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18 NADYA MUNASIF SAND

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EXHIBIT 1

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battling against the best unknown bands from the USA and CANADA.
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- 2) After receiving your friendship request post on our FACEBOOK site the phrase: "YES, WE FACE THE BATTLE OF BANDS"
- 3) Send us a short description of your Band & Band members as well as your detail contact address and info's,
with a Video (maximum 3 minutes long) from you playing to: Octavius.Tower@yahoo.com
- 4) You will receive your individual AUDITION NUMBER and ENTRANCE CONFIRMATION.
- 5) We will start our Video pre-audition on MARCH 01
- 6) On April 01 we will announce the winners of the pre-audition publicly and the finalists will receive a invitation to Las Vegas
to meet the other finalists from the USA & Canada
- 7) The BIG NIGHT for you all will be in June 2012. We start our "Live on Stage Concerts" with audience, phone and Internet
voting and your chance to become the winner of THE WORLD BATTLE OF THE BANDS AWARD WINNER 2012

***** Send us your Video (maximum 3 minutes long) to: Octavius.Tower@yahoo.com *****
***** Send us your Video (maximum 3 minutes long) to: Octavius.Tower@yahoo.de *****

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NOTE: BY SENDING US YOUR VIDEOS, YOU GIVE US PERMISSION TO USE THEM IN ANY MATTER AND PURPOSE.
ANY QUESTION: PLEASE FEEL FREE TO CONTACT US AT ANY TIME. WE WISH YOU ALL GOOD LUCK!

Octavius Tower

OCTAVIUS TOWER / Marcel July Live

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me the will to life and the strength I need to scream my
Heart out for you. Like most Artist, each song takes a
piece out of me and becomes a part of you. I like to thank you all for
the time you spend Listening to my Voice and the things I have to say.



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