

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 Stewart, Esq. (admitted pro hac vice)
Georgia Bar No. 681149
david.stewart@alston.com
Nadya Munasifi, Esq. (admitted pro hac vice)
Georgia Bar No. 156051
nadya.sand@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-cv00536-GMN-CWH

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

**SPECIAL SCHEDULING REVIEW
REQUESTED**

(FOURTH REQUEST)

Plaintiff Caesars World, Inc. ("Caesars") submits this Motion to Extend Fact Discovery Deadline (the "Motion") pursuant to Rule 16(b) of the Federal Rules of Civil Procedure and Local Rule 26-4 out of an abundance of caution following the Court's hearing this morning wherein Caesars made a similar request by oral motion. Essentially, Caesars respectfully moves

1 the Court to extend the deadline to complete fact discovery by sixty (60) days, to Friday, June
2 15, 2012 due to the issues involving Caesars' efforts to complete the deposition of Defendant
3 Marcel July ("July"), which the Court has taken under advisement following the hearing on
4 Caesars' Emergency Motion to Compel. Caesars therefore requests that the Court enter the
5 Fourth Amended Discovery Plan and Scheduling Order, attached hereto as Exhibit A, which
6 reflects a sixty (60) day fact discovery extension and like extensions for the remaining deadlines
7 in the case. Caesars requests that this extension be reviewed on an expedited basis pursuant to
8 L.R. 6.1.

9 I. BACKGROUND

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

11 Caesars and Defendants have served their initial disclosures on one another. (*See*
12 Scheduling Order, Dkt. 34.) Caesars served its First Set of Interrogatories and First Requests for
13 Production on July on September 2, 2011. (Dkt. 42, Exh. 1, Munasifi Decl., ¶ 4.) July's
14 responses were due by October 2, 2011. (*Id.*) Caesars served its First Set of Interrogatories and
15 First Requests for Production on OTLLC on September 8, 2011. (*Id.* at ¶ 5.) OTLLC's
16 responses were due by October 11, 2011. (*Id.*) By agreement, Caesars agreed to extend the
17 deadlines for Defendants' responses to October 28, 2011. (*Id.* at ¶ 9.) Defendants failed to
18 respond to Caesars' discovery by this date. (*Id.* at ¶ 10.) Caesars filed a motion to compel
19 responses to its discovery, and, in an Order dated December 19, 2011, the Court ordered
20 Defendants to respond to Caesars' requests by January 18, 2012. (Dkt. 49.) In response to the
21 Court's Order, Defendants served their interrogatory responses on Caesars on January 17, 2012,
22 and sent Caesars documents. (Dkt. 56, Exh. B.)

23 On January 19, 2012, Caesars' counsel requested that July's counsel provide dates when
24 he and his client would be available for July's deposition in Las Vegas. (Dkt. 61, Ex. A,
25 ¶ 4.) After two weeks of trying to get dates from July, and with the then impending discovery
26 cutoff deadline of February 15, 2012, Caesars was left with no choice but to notice July's
27 deposition for February 15. (*Id.* at ¶ 7) Caesars, however, informed July's counsel that if the
28 Court extended the discovery period, Caesars would be willing to push the date back. (*Id.* at ¶

1 8.) The Court granted Caesars' extension on February 7, 2012, extending discovery until April
2 16, 2012. (Dkt. 60.) On February 9, 2012, still not having received any dates from July or his
3 counsel, Caesars re-noticed the deposition for February 24, 2012, in Las Vegas, Nevada, giving
4 July more than two weeks notice of the deposition. (Dkt. 61, Exh. A, ¶ 9.) July did not appear
5 for his deposition on February 24, 2012. (Dkt. 61, Ex. C, at ¶ 4.) On February 28, 2012, Caesars
6 therefore filed a motion to compel July's deposition. (Dkt. 61.) In response, July filed a
7 response brief as well as a countermotion for entry of a protective order on March 16, 2012.
8 (Dkt. No. 65). Caesars filed its reply and response to July's countermotion on March 23, 2012.
9 (Dkt. No. 69). The Court heard oral argument on both the motion to compel and the
10 countermotion for protective order on March 26, 2012.

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

14 **B. Discovery Deadlines.**

15 On September 13, 2011, the Court entered the parties' First Amended Stipulated
16 Discovery Plan and Scheduling Order ("Revised Scheduling Order"), which the parties requested
17 to allow them time to focus on efforts to settle the case without the need to engage concurrently
18 in fact and expert discovery. (Dkt. 34.) The parties were unable to reach settlement;
19 accordingly, the parties continued their discovery efforts. (*See* Scheduling Order, Dkt. 41.)

20 Defendants' responses to Caesars first set of document requests and interrogatories were
21 due on October 2, 2011, and October 8, 2011. (Dk. 42, Exh. 1, Munasifi Decl., ¶¶ 4,5.)
22 Defendants requested an extension of time until October 28, 2011 to respond to the requests. (*Id.*
23 at ¶ 9.) Caesars consented to the request, conditioned upon the defendants' agreement that they
24 would provide full and complete responses by that date. (*Id.*) As a result of the extension,
25 Caesars would not have had sufficient time to complete its discovery efforts under the discovery
26 deadline then in effect in the case. (Scheduling Order, Dkt. 41, p. 2.) Accordingly, the parties
27 submitted a Second Amended Stipulated Discovery Plan and Scheduling Order, which the Court
28 entered on November 1, 2011. (Dkt. 41.) The revised scheduling order extended fact discovery

1 to February 15, 2012, giving Caesars two and a half months to complete its discovery efforts
2 after receipt of Defendants' discovery responses. (*Id.*) Caesars noted in the Second Amended
3 Stipulated Discovery Plan and Scheduling Order that it believed the extensions requested therein
4 would give Caesars sufficient time to complete its discovery efforts, provided that Defendants
5 timely responded to Caesars' outstanding discovery requests. (*Id.* at p. 5.)

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

15 After the meet and confer process proved fruitless, Caesars filed a Motion to Compel on
16 November 17, 2011. (Dkt. 42.) Defendants did not respond to Caesars' Motion. However, on
17 December 2, 2011, while the Motion was pending, July served Caesars with unverified responses
18 to Caesars' interrogatories and OTLLC produced a DVD of documents responsive to Caesars'
19 document requests. (Notice of Non-Opposition, Dk. 46, p. 2.) OTLLC did not supplement its
20 interrogatory responses, and neither party responded in writing to Caesars' document requests.
21 (*Id.*) Caesars filed a Notice of Defendants' Non-Opposition to Plaintiff's Motion to Compel,
22 identifying for the Court examples of the deficiencies in July's interrogatory responses. (Dkt 46.)

23 The Court granted Caesars' Motion to Compel on December 19, 2011, and ordered
24 Defendants to respond to Caesars' discovery requests by January 18, 2012. (Dkt. 49.) In
25 response to the Court's Order, July and OTLLC served amended and verified interrogatory
26 responses on January 17, 2012. (*See* Dkt. 56, Exh. B.) Defendants' counsel also emailed
27 Caesars additional documents.
28

1 Even though Caesars did not believe Defendants had fully responded to Caesars'
2 discovery requests, in order to advance the case to dispositive motions and trial, Caesars had no
3 choice but to move forward with July's deposition, and any third party discovery that resulted
4 from his deposition. (Dkt. 56, p. 5.) Caesars requested that it be provided dates when July can
5 be available for deposition, but Caesars received no response to date. (Dkt. 61, Exh. 1 ¶¶ 4-7.)
6 Caesars requested that Defendants stipulate to a discovery extension request. (Dkt. 56, p. 5.)
7 Defendants, however, declined to consent to the extension. (*Id.*)

8 Caesars filed a Motion to Extend Fact Discovery Deadline on January 25, 2012,
9 requesting a sixty-day extension of time to allow Caesars to take July's deposition, and conduct
10 any discovery of third parties July identified in his deposition as allegedly having been confused
11 by Caesars' use of the mark OCTAVIUS TOWER. (Dkt. 56.) Caesars further needed the
12 extension if further discovery revealed the need for additional document requests and
13 interrogatories that need to be served on Defendants, and requests for admission on Defendants
14 to narrow the issues for dispositive motions and trial. (*Id.*) The Court granted Caesars' extension
15 on February 7, 2012. (Dkt. 60.)

16 Caesars certifies that it personally requested that Defendants stipulate to the discovery
17 extension requested herein. Defendants have not responded to Caesars' requests. The parties are
18 therefore unable to resolve this matter without court action.

19 II. MEMORANDUM OF POINTS AND AUTHORITIES

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

26 Caesars is, and has been, actively and diligently pursuing discovery in this case, including
27 serving interrogatories and document requests upon Defendants, serving three expert witness
28 reports, filing a motion to compel to attempt to get responses to its discovery, and filing a motion

1 to compel July's deposition. Caesars' attempts to complete its discovery have been thwarted by
2 Defendants at every stage of discovery. Had July appeared for his deposition, a further
3 discovery extension likely would not have been necessary.

4 With regard to discovery left to be completed, Caesars stands in the same position it did
5 when the Court granted Caesars' discovery extension on February 7, 2012 (Dkt. 60.)
6 Specifically, Caesars first needs to take the deposition of July. Caesars has moved to compel
7 July's deposition, which motion is currently under advisement.

8 In addition to July's deposition, Caesars will also need to conduct discovery of any third
9 parties July identifies as allegedly having been confused by Caesars' use of the mark
10 OCTAVIUS TOWER. Once Caesars has this information, it will need time to locate these
11 individuals and take their depositions. Based upon the documents Defendants have produced to
12 date, it appears that the only contact information Defendants have for any alleged third-party
13 confusion witnesses they may identify are Facebook User IDs and e-mail addresses. (*See* Dk. 42,
14 Exh. 1, Munasifi Decl., Exh. A, Interrog. Resp. No. 15; Exh. B Interrog. Resp. No. 15.) In order
15 to locate these individuals and subpoena them for deposition, Caesars will first need to subpoena
16 Facebook and the e-mail providers for the individuals' names and addresses. Completing this
17 discovery could therefore take some time as two rounds of subpoenas will be necessary.

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

22 III. CONCLUSION

23 Based upon the foregoing, Caesars respectfully requests that the Court extend the existing
24 discovery period by 60 days to and including June 15, 2012, and extend all remaining deadlines
25 in the case by a like period. The requested extension will preserve to Caesars the time it would
26 have had to complete discovery under the current scheduling order had July appeared for his
27 noticed deposition. Caesars does not believe that any further extensions will be necessary,
28 providing that Defendants comply with their discovery obligations. A proposed Fourth

1 Amended Discovery Plan and Scheduling Order is attached for the Court's consideration.

2 Respectfully submitted, this 26th day of March, 2012.

3
4 /s James D. Boyle

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

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

13 **ALSTON & BIRD LLP**

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

20 *Admitted Pro Hac Vice*


21 *Attorneys for Caesars World, Inc.*
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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I certify that on the 26th day of March, 2012, I caused the document entitled **PLAINTIFF CAESARS WORLD, INC.'S MOTION TO EXTEND FACT DISCOVERY DEADLINE**, 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 26th day of March, 2012.



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EXHIBIT A

EXHIBIT A

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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-cv00536-GMN-CWH

**THIRD AMENDED DISCOVERY PLAN
SCHEDULING ORDER**

I. AMENDED SCHEDULING ORDER PURSUANT TO LR 26-1(e).

(a) **Fed. R. Civ. P. 26(f) Conference:** On June 7, 2011, the parties scheduled a telephonic conference to discuss issues required by Fed. R. Civ. P. 26(f). James D. Boyle, Esq. of the law firm Santoro, Driggs, Walch, Kearney, Holley & Thompson and David J. Stewart, Esq. of the law firm Alston & Bird LLP appeared for Caesars. Michael W. Sanft, Esq. of Sanft Law Group appeared on behalf of Defendants. This Court will now adopt the following deadlines:

1. **Discovery Cut-Off Date:** OTLLC answered Caesars' Complaint on May 3, 2011 (Docket No. 12). Mr. July subsequently answered Caesars' Complaint and asserted counterclaims on May 19, 2011 (Docket No. 15). Because the primary defendant to this action, Mr. July, was then located in The Netherlands, the parties requested that a date for completion of discovery be set one hundred eighty (180) days from the date that Mr. July filed his Answer and Counterclaim, to wit November 15, 2011. The Court entered the Parties' initial Scheduling Order and Discovery Plan on June 13, 2011 (Docket No. 21) (the "Scheduling Order"). On September 12,

1 2011, the Parties filed their Revised Scheduling Order and requested that
2 the date for completion of discovery be extended by sixty (60) days, until
3 January 16, 2012 (Docket No. 32). The Court entered the parties'
4 Revised Scheduling Order on September 13, 2011 (Docket No. 34). On
5 October 27, 2011, the Parties filed their Second Revised Stipulated
6 Scheduling Order and requested that the date for completion of discovery
7 be extended by thirty (30) days, until February 15, 2012 (Docket No. 40).
8 The Court entered the parties' Second Revised Scheduling Order on
9 November 1, 2011 (Docket 41). On January 25, 2012, Caesars moved the
10 Court to extend fact discovery by sixty (60) days, until April 16, 2012.
11 (Docket 56.) The Court granted Caesars' motion on February 7, 2012.
12 (Docket. 60.) For good cause shown, the Court grants Caesars' Motion
13 for Extension to Extend Fact Discovery Deadline. The fact discovery
14 deadline is hereby extended to and including **Friday, June 15, 2012.**

- 15 2. **Amending the Pleadings and Adding Parties:** Pursuant to the Revised
16 Scheduling Order, the last day to amend the pleadings and add parties was
17 August 17, 2011, which date was ninety (90) days prior to the initially
18 scheduled discovery cutoff deadline. The parties have previously agreed
19 that no extension to this deadline is necessary.
- 20 3. **Fed. R. Civ. P. 26(a)(2) Disclosures (Experts):** Pursuant to the Second
21 Revised Scheduling Order, the last day to disclose experts was December
22 16, 2011. And, the last day to disclose rebuttal experts was January 16,
23 2012. No extension to these deadlines is necessary.
- 24 4. **Dispositive Motions:** Pursuant to the Third Revised Scheduling Order,
25 the last day to file dispositive motions is May 16, 2012. Pursuant to LR
26 26-1(e)(4), the last day to file a dispositive motion is thirty (30) days after
27 the discovery cut-off date. The deadline to file dispositive motions is
28 hereby extended to an including **Monday, July 16, 2012.**

- 1 5. **Pretrial Order:** Pursuant to the Third Revised Scheduling Order, the last
2 day to file the pretrial order is June 15, 2012. Pursuant to LR 26-1(e)(5),
3 the last day to file a pretrial order is thirty (30) days after the date set for
4 filing dispositive motions. The deadline to file the pretrial order is hereby
5 extended to and including **Wednesday, August 15, 2012.** In the event
6 dispositive motions are filed, the date for filing the joint pretrial order
7 shall be suspended until thirty (30) days after the decision on the
8 dispositive motion or upon further order by the Court extending the time
9 period in which to file the joint pretrial order. The parties shall include the
10 disclosures required by Fed. R. Civ. P. 26(a)(3), and any objections
11 thereto, with the joint pretrial order.
- 12 6. **Extension of Scheduled Deadlines:** Pursuant to LR 26-4, the last day to
13 make a request to the extension of the discovery deadlines is twenty one
14 (21) days before the discovery cut-off date. The revised deadline to make
15 any further request to the extension of discovery deadlines is **Friday, May**
16 **25, 2012.**
- 17 7. **Interim Status Report:** Caesars submitted its interim status report
18 required by LR 26-3 on December 16, 2011 (Docket No. 48).
- 19 (b) **Fed R. Civ. P. 26(f)(2) Scope of Discovery:** Discovery should extend to the full
20 extent allowed by the Federal Rules of Civil Procedure and that discovery should not be limited
21 to any particular issues.
- 22 (c) **Fed. R. Civ. P. 26(f)(3) Changes:** No changes should be made to the limitations
23 on discovery imposed by Fed. R. Civ. P. 26 or LR 26-1.
- 24 (d) **Fed. R. Civ. P. 26(f)(4) Schedules:** At this time, an expedited schedule pursuant
25 to Fed. R. Civ. P. 26(f)(4) is not necessary. The parties reserve their respective rights to request
26 relief under Fed. R. Civ. P. 26(f)(4).

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28 IT IS SO ORDERED:

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UNITED STATES MAGISTRATE JUDGE

DATED: March 27, 2012