

1 Kevin S. Sinclair
 Nevada State Bar No. 12277
 2 *ksinclair@earlysullivan.com*
 EARLY SULLIVAN WRIGHT
 3 GIZER & McRAE LLP
 3883 Howard Hughes Parkway, Suite 790
 4 Las Vegas, Nevada 89169
 Telephone: (702) 331-7593
 5 Facsimile: (702) 331-1652

6 Eric P. Early, California State Bar No. 166275
 (*Admitted Pro Hac Vice*)
 7 *early@earlysullivan.com*
 EARLY SULLIVAN WRIGHT
 8 GIZER & McRAE LLP
 6420 Wilshire Boulevard, 17th Floor
 9 Los Angeles, California 90048
 Telephone: (323) 301-4660
 10 Facsimile: (323) 301-4676

11 Attorneys for Plaintiff
 ANTHONY GUANCI

12 **UNITED STATES DISTRICT COURT**
 13 **DISTRICT OF NEVADA**

15 ANTHONY GUANCI, an individual,
 16
 17 Plaintiff,

18 vs.

19 JACK KESSLER, an individual, EUGENE
 KESSLER, an individual, STUART
 20 KESSLER, an individual, RAY PARELLO,
 an individual, and SALEM VEGAS
 21 INVESTMENTS, LLC, a Florida limited
 liability company,

22 Defendants.
 23

Case No.: 2:14-cv-01299-APG-GWF

**STIPULATION AND ORDER TO
 MODIFY SCHEDULING ORDER**

(FIRST REQUEST)



1 On October 12, 2014, ten days before the Court issued its Scheduling Order granting
2 the Parties' stipulated discovery plan (ECF No. 25.), Defendants Jack Kessler, Eugene
3 Kessler, Stuart Kessler, Ray Parello, and Salem Vegas Investments (collectively,
4 "Defendants") filed a motion to dismiss (ECF No. 23) Plaintiff Anthony Guanci's first
5 amended complaint. (ECF No. 19.) On October 27, 2014, Mr. Guanci filed his Response to
6 the motion. (ECF No. 26) On November 6, 2014, Defendants filed their Reply to the
7 Response. (ECF No. 27.) To date, the Defendants' motion remains under submission with
8 the Court.

9 Because Defendants' motion remains under submission, and this case is still at the
10 pleadings stage (among other things, Mr. Guanci is unaware of what affirmative defenses
11 Defendants intend to pursue, or whether Defendants intend to assert any counterclaims, as
12 Defendants have not yet been required to assert such pleadings), the Parties respectfully
13 submit that good cause exists for the Honorable Magistrate Judge to modify the existing
14 scheduling order, as it would be premature for the parties to, among other things, complete
15 expert discovery before they know what claims, defenses and counterclaims might be at
16 issue. Accordingly, Mr. Guanci and Defendants, by and through their respective counsel,
17 hereby stipulate and agree, pursuant to Local Rules 6-1 and 26-4, and subject to Court
18 approval, to modify the Court's October 20, 2014 Scheduling Order (ECF No. 25), and to
19 extend the deadlines set forth therein by approximately 180 days.

20 1. On October 20, 2014, the Honorable Magistrate Judge entered an Order (ECF
21 No. 25) which set the following deadlines:

- 22 • Discovery cutoff: April 1, 2015
- 23 • Initial expert designations: January 30, 2015
- 24 • Rebuttal expert designations: March 2, 2015
- 25 • Interim status report: January 30, 2015
- 26 • Dispositive motions: May 1, 2015

27 2. As set forth above, the Parties bring the instant stipulation to modify the
28 scheduling order because, at present, Defendants' motion to dismiss Mr. Guanci's first



1 amended complaint remains under submission, and the January 30, 2015 deadline for initial
2 expert designations is rapidly approaching. As a result, Defendants do not know what
3 claims will be asserted against them by Mr. Guanci, nor does Mr. Guanci know what
4 affirmative defenses or counterclaims will be asserted by Defendants. Written discovery is
5 currently pending in this action, and depositions of certain percipient witnesses and all
6 expert discovery will follow. As explained in greater detail below, the Parties respectfully
7 request a 180-day extension of the deadlines set forth in the current scheduling order
8 because the pleadings are currently in a state of flux, discovery is still ongoing, and the
9 Parties are loathe to incur the expense attendant with completing discovery before the
10 pleadings are even set.

11 3. On **October 12, 2014**, Defendants filed a motion to dismiss (ECF No. 23) Mr.
12 Guanci's first amended complaint. (ECF No. 19.) On **October 27, 2014** Mr. Guanci filed
13 his Response to the motion. (ECF No. 26) On **November 6, 2014** Defendants filed their
14 Reply to the Response. (ECF No. 27.) Pursuant to the current scheduling order, the Parties
15 have a January 30, 2015 deadline to make their initial expert disclosures. To date, the
16 motion remains under submission with the Court.

17 4. Because the pleadings are not set, under the current schedule, the Parties will
18 be forced to expend significant resources attempting to complete discovery (including in
19 particular the costs associated with retaining experts to analyze the case and prepare
20 reports), all without actually knowing what claims and defenses are being litigated (as there
21 is no operative complaint pending in this litigation). Additionally, there is little time to
22 prepare any expert reports for designation in advance of the approaching deadline –
23 especially with the pleadings in a state of flux. Accordingly, both sides agree that the most
24 prudent course of action would be to stipulate to an extension of the presently-pending
25 discovery deadlines, so that the Court can resolve this round of pleadings motions.

26 5. **Discovery In Progress:** As set forth above, written discovery between the
27 parties is currently pending, and additional discovery will likely be propounded once the
28 pleadings are set, and based on claims and defenses which the Parties have yet to assert.

1 6. **Discovery Remaining to be Completed:** In addition to the exchange of
2 expert disclosures and rebuttal expert disclosures, the Parties anticipate the depositions of
3 the individual parties to this action. The Parties recognize that the need for some of these
4 depositions might be obviated, and the need for other depositions might become apparent,
5 once the pleadings are settled.

6 7. **Reasons Why Discovery Will Not Be Completed Before the Expiration of**
7 **the Current Deadlines:** As set forth in the above paragraphs 1 through 4, the purpose of
8 this stipulation is to ensure that the proverbial cart does not come before the proverbial
9 horse – namely, that the pleadings will be set before the Parties (which have already
10 conducted significant threshold discovery) are forced to incur the significant expense of
11 expert discovery while the pleadings are unsettled and with the deadline quickly
12 approaching.

13 8. **Requested Modification to the Scheduling Order:** Based on the foregoing,
14 the Parties respectfully request that the current deadlines be modified as follows (or to such
15 other dates as the Honorable Magistrate Judge deems appropriate):

- 16 • Discovery cutoff: September 28, 2015
- 17 • Initial expert designations: July 29, 2015
- 18 • Rebuttal expert designations: August 31, 2015
- 19 • Interim status report: July 29, 2015
- 20 • Dispositive motions: October 28, 2015

21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

...
///
9. Good cause exists to extend the deadlines for the reasons discussed above.
Therefore, the Parties respectfully request that the Honorable Magistrate Judge approve this
Stipulation.

Respectfully submitted,

By: /s/ Kevin S. Sinclair
Kevin S. Sinclair
EARLY SULLIVAN WRIGHT
GIZER & MCRAE LLP
3883 Howard Hughes Parkway, Suite 790
Las Vegas, Nevada 89169
Attorneys for Plaintiff Anthony Guanci

By: /s/ Eduardo Rasco
Eduardo I. Rasco, Esq.
Steve Bimston, Esq.
ROSENTHAL, ROSENTHAL RASCO
KAPLAN, LLC
One Aventura, Suite 600
20900 Northeast 30th Avenue
Aventura, Florida 33180
*Attorneys for Defendants Jack Kessler,
Eugene Kessler, Stuart Kessler, Ray Parello,
and Salem Vegas Investments, LLC*

ORDER

IT IS SO ORDERED.

George Foley Jr.
UNITED STATES MAGISTRATE JUDGE

DATED: January 23, 2015

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on January 22, 2015, I caused to be served the foregoing **STIPULATION AND ORDER TO MODIFY SCHEDULING ORDER (FIRST REQUEST)** via electronic mail through the United States District Court’s CM/ECF system to the following at their last known electronic mail address:

David A. Carroll, Esq.
Rice Reuther Sullivan & Carroll
3800 Howard Hughes Parkway, Suite 1200
Las Vegas, Nevada 89169
dcarroll@rrsc-law.com

Eduardo I. Rasco, Esq.
Steve M. Bimston, Esq.
Rosenthal Rosenthal Rasco Kaplan, LLC
One Aventura, Suite 600
20900 Northeast 30th Avenue
Aventura, Florida 33180

Attorneys for Defendants

/s/ Kevin S. Sinclair
KEVIN S. SINCLAIR