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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

15 MUSTAFA YOUSIF and SHARONE
16 WALKER on behalf of themselves and all
others similarly situated,

17 Plaintiffs,

18 vs.

19 LAS VEGAS SAND CORP.; THE
20 VENETIAN CASINO RESORT, LLC; and
DOES 1 through 50, inclusive,

21 Defendants.
22

Case No.: 2:16-cv-02941-RFB-NJK

**STIPULATION AND ORDER TO EXTEND
TIME TO RESPOND TO PLAINTIFFS'
MOTION FOR CLASS CERTIFICATION
UNDER RULE 23 OF THE FEDERAL
RULES OF CIVIL PROCEDURE**

(First Request)

23 Pursuant to Local Rules IA 6-1, IA 6-2 and LR 7-1, Defendant Venetian Casino Resort, LLC
24 (“Defendant”), and Plaintiffs Mustafa Yousif and Sharone Walker (collectively referred to as
25 “Plaintiffs”) hereby request a three-week extension of time, up to and including, May 13, 2019, for
26 Defendant to file its Response to Plaintiffs’ Motion for Class Certification.¹ Plaintiffs filed their
27

28 ¹ Las Vegas Sands Corp. was dismissed from this matter on October 10, 2018. (ECF No. 113.)

1 Motion for Class Certification on April 1, 2019 (“Motion”). (ECF No. 126.) The present deadline
2 for Defendant to file its Response to the Motion is April 22, 2019. This is Defendant’s first request
3 for an extension of time to file its Response.

4 This Stipulation is not intended for delay, and is made in good faith so the parties may
5 conclude a meet-and-confer regarding evidence submitted by Plaintiffs in support of their Motion.
6 Specifically, Plaintiffs rely on the purported expert testimony of analyst James R. Toney in their
7 Motion. (ECF No. 126, p. 26.) However, Defendants believe that Plaintiffs should have disclosed
8 Mr. Toney as a witness under Fed. R. Civ. Pro. 26(a)(1), or as an expert witness under Fed. R. Civ.
9 Pro. 26(a)(2), prior to using his testimony in support of their Motion. “Expert reports are required
10 in order to eliminate ‘unfair surprise to the opposing party and [to conserve] resources.’” Williams
11 v. University Medical Center of Southern Nev., 2010 WL 2802214 (D. Nev. July 14, 2010) (citing
12 Elgas v. Colorado Belle Corp., 179 F.R.D. 296, 299 (D. Nev. 1998)). Further, while the original
13 Discovery Plan and Scheduling Order (“DPSO”) did not set a date for disclosure of experts or the
14 close of discovery, it did set forth a two-phase discovery structure whereby the first phase of
15 discovery “will focus on the appropriate scope of any motion for conditional and/or class
16 certification and Plaintiffs’ individual claims for all (3) classes.” (ECF No. 42 at section
17 G.) Because Plaintiffs knew they would use Mr. Toney’s analysis in their Motion for Class
18 Certification, it was within the scope of discovery and should have been disclosed under the DPSO.
19 Moreover, at the class certification stage, any proffered expert testimony must undergo an analysis
20 under Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 591, 113 S. Ct. 2786 (1993) to
21 test the evidence for scientific reliability and relevance. See Ellis v. Costco Wholesale Corp., 657
22 F.3d 970, 982 (9th Cir. 2011). Plaintiffs’ failure to disclose Mr. Toney or his report deprived
23 Defendants of the opportunity to depose Mr. Toney and to test the reliance of his opinions. See
24 Brown v. Wal-Mart Store, Inc., 2018 WL 2011935 (N. D. Cal. 2018) (Court reiterated that Wal-
25 Mart’s failure to disclose the identities of fifteen declarants before filing an opposition to Plaintiff’s
26 motion for class certification “deprived [Plaintiffs] of the opportunity to depose these declarants”
27 and that the exclusion of this evidence was justified (noting that the Ninth Circuit upheld the
28 imposition of that sanction on appeal).)

1 Plaintiffs disagree due to the facts that (1) no expert disclosure deadline has been set by the
2 Court, and (2) no trial dates have been set. See *Torres v. White*, 685 F. Supp. 2d 1283, 1286 (N.D.
3 Okla. 2010) (“Plaintiff’s expert report was timely disclosed under the Federal Rules of Civil
4 Procedure as this court did not set a specific time frame for the identification of expert witnesses or
5 the exchange of witness reports. Absent a specific date set by the court or a stipulation by the parties,
6 Fed. R. Civ. P. 26(b)(2)(C)(i) dictates that disclosure of experts must be made 90 days before trial.
7 Since there was no trial date set in this matter, plaintiff’s disclosure was timely.”); see also, *Minebea*
8 *Co. Ltd. v. Papst*, 231 F.R.D. 3, 6-7 (D.D.C. 2005) (“Purpose of rule requiring that expert reports be
9 disclosed at least 90 days before the trial date or as directed by the court is to prevent unfair surprise
10 at trial and to permit the opposing party to prepare rebuttal reports, to depose the expert in advance
11 of trial, and to prepare for depositions and cross-examination at trial.”).

12 On April 9, 2019, Defendant’s counsel contacted Plaintiffs’ counsel to meet-and-confer
13 regarding Plaintiffs’ reliance on Mr. Toney’s testimony, their failure to disclose him as a witness,
14 and their failure to disclose his expert report. Counsel for Plaintiffs responded that they do not
15 believe they were required to disclose Mr. Toney prior to relying on his expert testimony but that
16 they would provide a position on the propriety of Mr. Toney’s analysis by Friday, April 12, 2019 or
17 Monday, April 15, 2019. Counsel also stated they would be available to discuss this matter after
18 Defendants’ counsel has had an opportunity to review their response. On April 15, 2019, Plaintiffs’
19 counsel sent correspondence to Defendant’s counsel regarding why it did not believe an expert
20 disclosure prior to filing their Motion was required. Further, Plaintiffs’ counsel indicated that they
21 anticipated providing Defendant with Plaintiffs’ Expert Disclosure for Mr. Toney “likely before the
22 end of the week, 4/19/19”.

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1 As a result, the parties respectfully request a three-week extension of time for Defendant to
2 respond to Plaintiffs' Motion and to allow for a meet-and-confer with Plaintiffs to be fully
3 conducted, to review and analyze Mr. Toney's expert report, to determine whether a rebuttal expert
4 is necessary at this time, and to explore whether and to what extent a Motion to Strike Mr. Toney is
5 appropriate.

6 DATED this 17th day of April, 2019.

DATED this 17th day of April, 2019.

7 THIERMAN BUCK LLP

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P.C.

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18 **ORDER**

19 IT IS SO ORDERED.



20 RICHARD F. BOULWARE, II
21 UNITED STATES DISTRICT JUDGE

22 April 18, 2019

23 DATED