

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

YWS Architects, LLC, d/b/a YWS Design & Architecture, a Nevada limited liability company,

Plaintiff,

v.

ALON LAS VEGAS RESORT, LLC, a Delaware limited liability company, ALON LAS VEGAS LANDCO, LLC, a Delaware limited liability company; TISHMAR, LLC, a Nevada limited liability company;

Defendants.

AND RELATED COUNTERCLAIMS

Case No. 2:17-cv-01417-RFB-VCF

JOINT STIPULATION AND
~~**PROPOSED**~~ **PROTECTIVE ORDER**
REGARDING THE
CONFIDENTIALITY OF DISCOVERY
DOCUMENTS AND INFORMATION

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Plaintiff/Counter-Defendant YWS Architects, LLC and Tom Wucherer (collectively, “YWS”) and Defendant/Counter-Claimants Alon Las Vegas Resort, LLC and Alon Leisure Management, LLC (collectively, “Alon”), by and through their respective counsel, and subject to approval of the Court, hereby stipulate to the following proposed stipulated protective order relating to confidential information. YWS and Alon are referred to collectively as the “Parties.”

1. Purpose.

The Parties recognize that preparation and trial of this action may require the discovery of certain records and other materials claimed by one or more of the parties to contain confidential business, commercial, financial, or personal information. Specifically, preparation and trial of this action may require the production or disclosure of:

(a) Agreements, drafts, term sheets, contracts, and other documents that contain commercially-sensitive information or other confidential terms, including agreements with third parties;

1 (b) Financial information about the parties or third parties that is not publicly disclosed,
2 including compensation terms and revenue figures;

3 (c) Documents constituting or referring to business planning and strategy that, if disclosed,
4 would competitively prejudice one or more of the parties or third parties;

5 (d) Other private or commercially-sensitive documents that would prejudice the parties' or
6 third parties' legitimate business interests if publicly disclosed; and

7 (e) Individuals' personal, private information, including telephone numbers, e-mail
8 addresses, home addresses, and other medical and/or financial information.

9 The parties desire to litigate this action without jeopardizing their business and commercial
10 interests, any individuals' legitimate privacy interests, or any third party interests in the
11 confidentiality of this information, and so enter this proposed stipulated protective order ("Order").

12 **2. Designation of Confidentiality.**

13 Designation of any materials as "Confidential" or "Highly Confidential –Attorneys Eyes
14 Only" shall be a representation that the designating party's counsel, in good faith, believes that the
15 designated material comprises or contains information falling into one of the categories described
16 above. The protection of this Order may be invoked with respect to any testimony, deposition, court
17 filing, or discovery request (or response thereto), documents, records, or tangible things – and any
18 copies, abstracts, excerpts, or analyses thereof – used, served, or produced by any party in this action
19 which contain information falling into any of the categories described above.

20 **Documents.** With respect to documents, the copy of the document when produced shall bear
21 the clear and legible designation "Confidential" or "Highly Confidential – Attorneys Eyes Only," as
22 the case may be.

23 **Interrogatories or Request for Admissions.** With respect to responses to interrogatories or
24 requests for admission, the specific pages of the responses containing "Confidential" or "Highly
25 Confidential – Attorneys Eyes Only" information shall be so marked.

26 **Depositions.** In order to obtain confidential or highly confidential treatment of a deposition,
27 the designating party must designate the specific testimony to be maintained as "Confidential" or
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1 “Highly Confidential – Attorneys Eyes Only” within seven (7) business days of receipt of the
2 deposition transcript. All deposition testimony shall be treated as “Highly Confidential - Attorneys
3 Eyes Only” until such time as the designation deadline has passed.

4 ***Documents Produced by Third Parties.*** The parties shall have the right to designate
5 materials produced by third parties in this action as “Confidential” or “Highly Confidential –
6 Attorneys Eyes Only” within seven (7) business days of the production of such materials in this
7 action. All such documents shall be treated as “Highly Confidential - Attorneys Eyes Only” until
8 such time as the designation deadline has passed.

9 ***Inadvertent Disclosure.*** The inadvertent or unintentional disclosure of confidential business,
10 commercial, financial or personal information without a designation as “Confidential” or “Highly
11 Confidential – Attorneys Eyes Only” shall not be deemed a waiver, either in whole or in part, of a
12 party’s claim that the specific information disclosed, any related information, or any information on
13 the same or a related subject matter is confidential and subject to this Order. Upon discovery of an
14 inadvertent or unintentional disclosure of such confidential information, counsel for the parties
15 should, to the extent possible, cooperate to restore the confidentiality of any such information that
16 was inadvertently or unintentionally disclosed.

17 ***Documents Previously Produced.*** Documents previously produced in this case shall not be
18 treated as “Confidential” or “Highly Confidential – Attorneys Eyes Only” under this Order unless so
19 designated within seven (7) business days of notice of entry of this Order.

20 **3. Limited Disclosure of Designated Documents.**

21 All materials designated “Confidential” and “Highly Confidential – Attorneys Eyes Only”
22 shall be used solely in the preparation for trial, trial of this action and/or appeal, shall not be used at
23 any time for any other purpose whatsoever, and shall not be disclosed to or made accessible to any
24 person except as specifically permitted by this Order.

- 25 a. Materials designated as “Confidential” by any party, may be disclosed only to:
- 26 i. The Court, its staff, clerks, law clerks, and jurors in the manner set
27 forth in paragraph 7 below.

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ii. Any person who is designated to receive specific material or information by order of this Court. Any person so designated shall execute an undertaking in the form attached hereto as Exhibit A prior to disclosure, and shall agree to be bound by this Order.

iii. Deposition and court reporters and their support personnel, for purposes of preparing transcripts only.

iv. Attorneys in a law firm appearing of record for a party in this action, all parties' in-house counsel, and their respective employed secretaries, paralegals, legal assistants, and independent contractors performing basic office services (such as outside copying services) whose work on this case requires access to "Confidential" materials (this category hereinafter collectively referred to as "Attorneys").

v. Any individual party or any officer, director or employee of a party assisting counsel in the preparation of the case to the extent necessary to enable the parties to prepare for trial, to try this action, or to engage in appellate proceedings herein.

vi. Any expert or consultant who is retained or sought to be retained by any of the parties in this action to assist in this litigation, and any employee of such an expert (this category hereinafter collectively referred to as "Experts"). Any Expert wanting access to "Confidential" material shall execute an undertaking in the form attached hereto as Exhibit A prior to disclosure, and shall agree to be bound by this Order.

vii. Any person called to testify as a witness either at a deposition or court proceeding in this action to the extent the "Confidential" information is relevant to the subject matter of which the deponent would likely have knowledge or on which the trial witness may be questioned, but only for the purpose of assisting in the preparation or examination of the witness. Such persons receiving access to "Confidential" material under this sub-paragraph shall execute an undertaking in the

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form attached hereto as Exhibit A prior to disclosure, and shall agree to be bound by this Order.

viii. Any mediator or arbitrator that the parties have agreed in writing to use in connection with this action, or that the parties have been ordered to use in connection with this action, provided that any such person receiving “Confidential” material under this sub-paragraph must sign an undertaking in the form attached hereto as Exhibit A prior to disclosure, and shall agree to be bound by this Order.

ix. With respect to any particular material, the author or addressee of that material, as well as any person who prepared, received, or reviewed that material prior to the date this action was filed, or a corporate designee of such a person.

x. Other persons approved in writing by the producing party.

b. Materials designated as “Highly Confidential – Attorneys Eyes Only” by any party may be disclosed only to:

i. The Court, its staff, clerks and law clerks in the matter set forth in paragraph 7 below.

ii. Deposition and court reporters and their support personnel, for purposes of preparing transcripts only.

iii. Attorneys as defined in paragraph 3(a)(iv), but excluding independent contractors performing basic office services.

iv. Any expert or consultant who is retained or sought to be retained by any of the parties in this action to assist in this litigation, and any employee of such an expert (this category hereinafter collectively referred to as “Experts”). Any Expert wanting access to “Highly Confidential – Attorneys Eyes Only” material shall execute an undertaking in the form attached hereto as Exhibit A prior to disclosure, and shall agree to be bound by this Order. Competitors or employees, officers, directors, principals or agents of a Non-producing Party or competitors to a Party shall not be deemed experts or consultants for purposes of this provision.

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v. Deponents and trial witnesses where the “Highly Confidential – Attorneys Eyes Only” material is relevant to a subject matter of which the deponent would likely have knowledge or on which the trial witness may be questioned, and provided that (a) each such person execute an undertaking in the form attached hereto as Exhibit A prior to disclosure, and (b) the terms of subparagraph 3(c) below have been followed. Competitors or employees, officers, directors, principals or agents of a Non-producing Party or competitors to a Party shall not be deemed deponents or trial witnesses for purposes of this provision.

vi. With respect to any particular material, the author or addressee of that material, as well as any person who prepared, received, or reviewed that material prior to the date this action was filed.

vii. Other persons approved in writing by the producing party.

c. Copies of any executed Exhibit A undertaking shall be retained by counsel disclosing “Confidential” or “Highly Confidential – Attorneys Eyes Only” material to such persons. All executed undertakings shall be disclosed to a party whose designated material has been disclosed upon order by the Court that such disclosure shall be made.

4. Procedures for Challenges.

A party shall not be obligated to challenge the propriety of a “Confidential” or “Highly Confidential –Attorneys Eyes Only” designation at the time such a designation is made, and a failure to do so shall not preclude a subsequent challenge to that designation. Any challenge to the designation of material as “Confidential” or “Highly Confidential –Attorneys Eyes Only,” and any objection to disclosing “Highly Confidential – Attorneys Eyes Only” material to a deponent not resolved by agreement of counsel, will be resolved according to the procedures set forth in Federal Rule of Civil Procedure 37. Payment of attorneys’ fees expended in connection with any dispute over the application of this Order will be governed by Federal Rule of Civil Procedure 37(a)(5)(A). Until the challenge is resolved, the designated material shall maintain and be treated as “Confidential” or “Highly Confidential – Attorneys Eyes Only,” as the case may be.

1 **5. Handling and Disposition of Materials; Handling at Conclusion of Case.**

2 All material designated “Confidential” or “Highly Confidential – Attorneys Eyes Only” shall
3 remain in the possession of the counsel of record to whom such material is produced, and they shall
4 not permit any such materials to leave their possession, except that copies of such materials may be
5 made for purposes of disclosures permitted under this Stipulation, and copies may be submitted to
6 the Court under seal as necessary.

7 Within sixty (60) days after such time as this action is concluded, whether by final
8 adjudication on the merits from which there remains no right of appeal, or by other means, any party
9 producing “Confidential” or “Highly Confidential – Attorneys Eyes Only” material may require the
10 return of all documents and copies containing “Confidential” or “Highly Confidential – Attorneys
11 Eyes Only” materials (including but not limited to copies in the possession or control of any Expert
12 or employee) to the party who produced them. A party receiving such a request may also satisfy its
13 obligations by destroying the designated documents within thirty (30) days of receipt of the request,
14 and providing a written statement under penalty of perjury to the requesting party confirming the
15 destruction of all such documents and information.

16 **6. Further Application.**

17 Nothing in this Order shall preclude any party from applying to the Court for additional or
18 different protective provisions with respect to specific material if the need should arise during this
19 litigation. The Court shall retain jurisdiction over the parties, and over any person executing an
20 undertaking to be bound by the terms of this Order, during the pendency of this action and for such
21 time thereafter as is needed to carry out the terms of this Order.

22 **7. Filing in Court.**

23 No “Confidential” or “Highly Confidential –Attorneys Eyes Only” materials shall be filed in
24 the public record of this action. If a party wants to file with the Court a document constituting or
25 containing “Confidential” or “Highly Confidential – Attorneys Eyes Only” material, such papers
26 shall be filed or lodged in a sealed envelope and kept under seal by the Clerk of this Court, unless
27 otherwise ordered by the Court. If materials are lodged under seal for the limited purpose of
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1 assisting the Court in its consideration of a particular motion, unless otherwise ordered by the Court
2 those materials shall be returned to the lodging party by the Clerk of this Court once that motion has
3 been adjudicated. Where possible, only “Confidential” or “Highly Confidential–Attorneys Eyes
4 Only” portions of filings with the Court shall be filed under seal.

5 To facilitate compliance with this Order by the Clerk’s office, material filed under these
6 designations shall be contained in a sealed envelope bearing the appropriate designation on its front
7 face. In addition, the envelope shall bear the caption of the case, shall contain a concise, non-
8 disclosing inventory of its contents for docketing purposes, and shall state thereon that it is filed
9 under the terms of this Order. If any Court document to be filed by either party contains any
10 “Confidential” or “Highly Confidential – Attorneys Eyes Only” material, the proposed filing and
11 lodging shall be accompanied by an application to file or lodge the document or the portion(s)
12 thereof including “Confidential” or “Highly Confidential – Attorneys Eyes Only” material (if such
13 portion(s) is/are segregable) under seal pursuant to the Federal Rules of Civil Procedure, local rules,
14 and the District Court’s standing order.

15 **8. Modification By Parties.**

16 This Order may be modified or amended by the parties, subject to approval of the Court,
17 provided it is in the form of a stipulation that shall be filed and made part of the record in this case.

18 **9. Reservation of Rights.**

19 By designating any material “Confidential” or “Highly Confidential – Attorneys Eyes Only”
20 the parties do not acknowledge that any such material is relevant, discoverable, or admissible in this
21 action. All parties reserve the right to seek discovery of, or alternatively to resist discovery of, such
22 material in this action. Designations of “Confidential” or “Highly Confidential – Attorneys Eyes
23 Only” shall not be made known to the jury.

24 **10. Use of Own Materials.**

25 Notwithstanding the foregoing, any party may use any materials or information designated
26 by it for any purpose whatsoever.

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1 **11. Independently Discovered Material.**

2 Nothing herein shall impose any restrictions on the use or disclosure by a party of material
3 obtained by such party independent of discovery in this action, whether or not such material is also
4 obtained through discovery in this action.

5 **12. Additional Disclosures.**

6 Nothing herein shall prevent any party who has received “Confidential” or “Highly
7 Confidential — Attorneys Eyes Only” information pursuant to this Order from producing such
8 information in response to a lawful subpoena or other compulsory process; provided that any party
9 receiving such subpoena or process shall, as soon as reasonably practical, provide notice to the
10 designating party by telephone or facsimile in order to allow such designating party a reasonable
11 opportunity to seek a protective order or similar relief from the Court.

12

13 SO STIPULATED
14 DATED this 24th day of January, 2018.
15 GREENBERG TRAURIG, LLP
16 /s/ Shauna L. Norton
17 MARK G. TRATOS, ESQ.
18 Nevada Bar No. 1086
19 DONALD L. PRUNTY, ESQ.
20 Nevada Bar No. 8230
21 SHAUNA L. NORTON, ESQ.
22 Nevada Bar No. 11320
23 3773 Howard Hughes Parkway, Suite 400 N
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26 Nevada State Bar No. 5757
27 ROURKE LAW FIRM
28 10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

*Counsel for YWS Architects, LLC
and Tom Wucherer*

SO STIPULATED
DATED this 24th day of January, 2018.
MEAD LAW GROUP

/s/ Sarah A. Mead
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*Counsel for Alon Las Vegas Resort, LLC, Alon
Las Vegas Landco, LLC and Alon Leisure
Management, LLC*

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ORDER

For good cause shown, IT IS HEREBY ORDERED that this Joint Stipulation Regarding the Confidentiality of Discovery Documents and Information be treated as the Order of this Court.

DATED this 24th day of January 2018.



The Honorable Cam Ferenbach
United States Magistrate Judge

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EXHIBIT A

NON-DISCLOSURE AGREEMENT

I, _____, do solemnly swear that I have read and am fully familiar with the terms of the Protective Order Regarding the Confidentiality of Discovery Documents and Information entered in this action. I hereby agree to comply with and be bound by the terms and conditions of that Protective Order unless and until modified by further order of that Court. I hereby consent to the jurisdiction of that Court for purposes of enforcing this Order.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this ___ day of _____, 201__ at _____.

Signed: _____

Employer: _____

Business Address: _____
