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

17
 18 In re TAHOE RESOURCES, INC. SECURITIES
 19 LITIGATION

Case No. 2:17-cv-01868-RFB-NJK

20 **JOINT STIPULATION AND**
[PROPOSED] ORDER TO EXTEND
DOMESTIC FACT DISCOVERY
DEADLINE

21
 22 **(Fifth Request)**

23 This Document Relates to: All Actions

24
 25 Pursuant to Local Rule IA 6-1 and Local Rule 26-3, Plaintiff Kevin Nguyen (“Plaintiff”)
 26 and Defendants Tahoe Resources, Inc. (“Tahoe”), C. Kevin McArthur, Ronald W. Clayton, Mark
 27 T. Sadler, and Edie Hofmeister (collectively, “Defendants” and together, with Plaintiff, the
 28

1 “Parties”), by and through their undersigned counsel, hereby stipulate, subject to Court approval,
2 to extend the **Phase I domestic fact discovery deadline of November 1, 2021 to January 7,**
3 **2022 to address certain non-party discovery issued within the existing discovery deadline,**
4 and in support hereof submit the following:

5 **1. The Requested Extension Does Not Impact Any Other Deadlines And Is Proposed**
6 **To Provide The Parties Reasonable Time To Obtain Documents From Domestic**
7 **Non-Party Witnesses That Have Been Subpoenaed By Plaintiff, To Address**
8 **Potential Privilege Claims That May Be Asserted By Defendants And Potentially**
9 **Subject To Challenge By Plaintiff, And To Allow Plaintiff To Take A Deposition Of**
10 **A Representative Of A Non-Party**

11 The Parties seek, through this Joint Stipulation, to extend the completion date of domestic
12 fact discovery (Phase 1 Discovery)¹ from November 1, 2021 to January 7, 2022.² The basis for
13 this request is as follows:

14 Plaintiff has served Fed. R. Civ. P. 45 subpoenas on two non-party entities which
15 performed consulting work for Defendant Tahoe Resources Inc. (“Tahoe”) with respect to the
16 Escobal mine. The two non-party entities are Avanzar, LLC and Business for Social
17 Responsibility (“BSR”). The Avanzar subpoena sought the production of documents only. The
18 BSR subpoena sought the production of documents and a deposition from a representative
19 regarding the work performed for Tahoe.

20 Plaintiff has discussed the production with Avanzar, BSR (which is represented by
21 outside counsel) and Defendants. Defendants informed Plaintiff that they contend the production
22 from Avanzar and BSR may contain privileged information which privileges they seek to assert,
23 and have accordingly proposed a mechanism by which Defendants may review the production
24 first and then produce these documents with Defendants’ claimed privileges to Plaintiff.³

25 ¹ See Stipulated Discovery Plan. ECF. No. 86, as modified at ECF No. 111.

26 ² The Court approved the Parties’ Joint Stipulation to Extend Fact Discovery (4th Request)
27 to November 1, 2021 on September 8, 2021. ECF No. 156.

28 ³ The Avanzar production was made to Plaintiff and Plaintiff served that production on
Defendants. Upon learning that Defendants claim there is potential privileged information in the
Avanzar production, Plaintiff has sequestered the production and has not reviewed the
production pending a final agreement on the protocol for the review of claimed privileged
information.

1 Defendants have agreed to complete the review of these productions and serve the documents on
2 Plaintiff, with claimed privileged information redacted and with a privilege log, within 28 days.

3 Plaintiff does not oppose this approach *if* an extension of time is granted. Without an
4 extension of time, under this approach Plaintiff would be unable to complete his review of these
5 document productions, assert any challenges to redacted information, and conduct the deposition
6 of the BSR witness by the current deadline for Phase I Discovery of November 1, 2021. The
7 Parties therefore seek this extension of the Phase I Discovery deadline to provide Defendants a
8 reasonable amount of time to review the Avanzar and BSR document productions, permit
9 Plaintiff to conduct his review of the productions and assert his potential challenges to
10 Defendants' privilege claims, and to conduct the deposition of the BSR deponent. The requested
11 extension of approximately sixty (60) days would allow the Parties sufficient time to do this.

12 In addition, Plaintiff has served Fed. R. Civ. P. 45 subpoenas on two other non-party
13 entities which opposed the Escobal mine. These two non-party entities are the Network in
14 Solidarity with the People of Guatemala ("NISGUA"), and the Progressive Leadership Alliance
15 of Nevada ("PLAN"). Both subpoenas seek the production of documents only. While neither
16 subpoena seeks potentially privileged information, the Plaintiff reasonably believes that both
17 parties may not be able to complete their responses to the subpoenas before the current Phase I
18 Discovery deadline.

19 No extension is being sought by the Parties for Phase II foreign fact discovery, and if the
20 requested extension is granted, this extension would not change the overall deadline for
21 completing fact discovery by June 30, 2022. Moreover, other than the extension of the filing of
22 the remaining briefing regarding Plaintiff's Motion for Class Certification (ECF No. 153), the
23 remaining schedule and deadlines will remain the same.⁴

24 ⁴ The Parties note that foreign travel, including specifically travel to Canada and
25 Guatemala, where a significant number of additional fact witnesses reside, is still subject to
26 significant restrictions due to the COVID-19 pandemic. The U.S. State Department and the
27 Centers for Disease Control and Prevention (CDC) issued a Level 3 Travel Health Notice due to
28 COVID-19 for both Canada and Guatemala. These travel restrictions may continue to hamper
the Parties' ability to proceed with Phase II discovery.
(<https://wwwnc.cdc.gov/travel/notices/covid-3/coronavirus-guatemala>)

1 In support of this Joint Stipulation and to show good cause for granting this extension, the
2 Parties set forth the following:

3 **2. Discovery Completed**

4 The issues in this case are broad and complex. The operative complaint alleges five
5 different categories of misleading statements over a four-year class period, including specifically
6 allegations about the operations and risks associated with the Escobal mine operated by a Tahoe
7 subsidiary in San Rafael Las Flores, Guatemala, and legal risks associated with the exploitation
8 license issued to the mine by Guatemala. Defendants deny Plaintiff's allegations.

9 The original Stipulated Discovery Plan and Scheduling Order was entered on July 8,
10 2019. ECF No. 86. Thereafter, the Parties agreed to extend the deadlines set forth in that Order.
11 On February 21, 2020, the Court entered the Amended Discovery Scheduling Order. ECF No.
12 111. As of August 2020, Defendants had produced approximately 40,000 documents and
13 informed Plaintiff that they intended to produce substantially more documents by the end of
14 September 2020. The Parties agreed to extend the deadlines in the Amended Discovery
15 Scheduling Order to account for Defendants' production schedule. On August 22, 2020, the
16 Court entered the Second Amended Discovery Scheduling Order. ECF No. 120.

17 Between August 17, 2020 and September 18, 2020, Defendants produced approximately
18 108,000 additional documents. Those documents came from Tahoe's files in the United States,
19 Canada, and Guatemala and from twenty-nine (29) employee custodians, including five in-house
20 attorneys. At least twenty five percent (25%) of the documents are written primarily in Spanish.
21 On September 18, 2020, Defendants also produced their log of documents redacted or withheld
22 pursuant to a claim of attorney-client privilege or the work product doctrine, which contains
23 134,161 entries (the "Privilege Log"). On December 18, 2020, Plaintiff served a second set of
24 interrogatories on Defendants, and on February 12, 2021, Defendants served their first set of
25 interrogatories and document requests on Plaintiff. Plaintiff has responded to Defendants'
26 discovery requests and produced responsive documents.

27 On March 23, 2021, the Court granted in part and denied in part the Parties' Joint
28

1 Stipulation and [Proposed] Order to Alter Discovery Deadlines (ECF No. 133) and set the
2 following deadlines:

- 3 • Class Certification motion: July 1, 2021
- 4 • End of Phase I Discovery (United States): September 1, 2021
- 5 • End of Phase II Discovery (Foreign) and Fact Discovery: June 30, 2022
- 6 • Amend pleadings/add parties: August 1, 2022
- 7 • Initial expert reports: August 22, 2022
- 8 • Opposing expert reports: September 21, 2022
- 9 • Rebuttal expert reports: October 21, 2022
- 10 • Close of discovery: November 21, 2022
- 11 • Dispositive motions: December 21, 2022
- 12 • Joint proposed pretrial order: January 20, 2023, or 30 days after resolution
13 of any dispositive motions.

14 ECF No. 133 (the “Operative Scheduling Order”).

15 On September 8, 2021, the Court granted the Parties’ Joint Stipulation and [Proposed]
16 Order to Extend Domestic Fact Discovery Deadline (filed on August 30, 2021 (ECF No. 152)
17 and revised pursuant to Court order on September 7, 2021 (ECF No. 155)) to November 1, 2021
18 (“Revised Domestic Fact Discovery Schedule”). ECF No. 156.

19 The Parties have worked cooperatively to complete the Phase I Discovery by the
20 November 1, 2021 deadline reflected in the Operative Scheduling Order and the Revised
21 Domestic Fact Discovery Schedule. As the Parties have previously reported to the Court, the
22 scheduling of depositions of United States witnesses has been complicated and delayed because
23 a majority of those witnesses are former employees of Defendant Tahoe and third parties who
24 reside outside of Nevada and whose residences were unknown to Plaintiff. Plaintiff has had to
25 invest time and resources to attempt to locate and serve Rule 45 subpoenas on former employees
26 and third parties. In some cases, the witnesses’ availability for depositions has been impacted by
27 the COVID-19 pandemic.

1 Plaintiff has made significant progress towards completing Phase I Discovery:

2 **Depositions:**

3 The following depositions have been conducted since the Revised Domestic Fact
4 Discovery Schedule was entered:

- 5 • **Donald Gray:** The deposition of Donald Gray, a former Tahoe employee,
6 pursuant to a Rule 45 subpoena, was completed in Nashville, Tennessee, on
7 October 1, 2021.
- 8 • **Ellen Moore:** The deposition of Ellen Moore, a non-party working for a non-
9 governmental organization in Guatemala during parts of the relevant time
10 period in this case, pursuant to a Rule 45 subpoena, was completed remotely
11 on October 8, 2021;
- 12 • **M3 Engineering & Technology Corp. (“M3”):** The deposition of a
13 representative of M3, former consultant of Tahoe with respect to the Escobal
14 mine, was completed remotely on October 25, 2021.

15 **Document Production:**

16 As previously reported to the Court, a document production from Avanzar was made to
17 Plaintiff on August 26, 2021, which contains over 2,000 documents. As indicated above,
18 Defendants assert that information within this product may be privileged and seek to review this
19 production and redact information under a claim of privilege prior to Plaintiff reviewing said
20 production. Lead Plaintiff has generally agreed to this protocol, which is one of the reasons for
21 this proposed domestic fact discovery cutoff extension.

22 The BSR production has not been made yet, but is near ready to be made, according to
23 email communications from BSR’s outside counsel. BSR is aware of Defendants’ assertion of
24 potential privileged information and the potential protocol discussed by the Parties.

25 The subpoenas for documents served on NISGUA and PLAN were served before the
26 Phase I Discovery deadline based in part to follow up on recent deposition testimony. Based on
27 a meet-and-confer Plaintiff’s counsel had with NISGUA’s recently retained counsel, NISGUA’s
28

1 ability to respond to the subpoena *duces tecum* will extend past the current November 1, 2021
2 deadline. Plaintiff's counsel similarly expects for PLAN to respond to its subpoena *duces tecum*
3 after the current November 1, 2021 Phase I discovery deadline.

4 **Class Certification Discovery:**

5 Plaintiff filed his Motion for Class Certification on July 1, 2021, supported by the expert
6 opinion of Dr. Zachary Nye Ph.D. (ECF No. 142) and thereafter produced documents relevant to
7 his Motion for Class Certification on July 19, 2021. Defendants took the deposition of the Lead
8 Plaintiff, Kevin Nguyen and Dr. Nye on August 3 and 4, 2021 in San Francisco, California.

9 Defendants served their opposition to Plaintiff's Motion for Class Certification on
10 September 29, 2021 supported by the expert opinion of Dr. Paul A. Gompers. ECF No. 159.
11 Plaintiff has scheduled to take the deposition of Dr. Gompers on November 5, 2021. Plaintiff
12 will file his reply in further support of his Motion for Class Certification, supported by the reply
13 expert report of Dr. Nye on November 30, 2021.

14 **Outstanding Discovery Issues with Defendants:**

15 Plaintiff and Defendants have endeavored to resolve Plaintiff's objections to Defendants'
16 document production and certain privilege claims identified in Defendants' privilege log,
17 through: (i) exchange of letters setting out the Parties' respective positions regarding the
18 privilege logs; (ii) a telephonic meet and confer held on July 16, 2021; (iii) production by
19 Defendants of 296 documents (constituting 1,292 pages) on August 11, 2021 in a supplemental
20 document production and service of a revised privilege log. Plaintiff has reviewed the
21 supplemental document production and the revised privilege log and continues to believe that
22 certain privilege claims are unfounded.

23 Plaintiff will review any additional assertions of privilege by Defendants in the Avanzar
24 and BSR production and will engage in good faith attempt to resolve any disputes.

25 **3. Phase I Discovery that Remains to be Completed**

26 The outstanding Phase I Discovery at this time that Plaintiff seeks to complete through
27 this extension includes the following:
28

1 **Depositions:**

- 2 • **BSR:** Plaintiff seeks to take the deposition of a BSR representative on a date
3 to be agreed upon with BSR and Defendants pending completion of the
4 review of the BSR production under the protocol discussed herein.

5 **Document Production:**

- 6 • **BSR:** Plaintiff served a Rule 45 subpoena duces tecum on BSR, to which
7 BSR, through counsel, responded and objected. Plaintiff has been in
8 communication with BSR to negotiate the production of responsive
9 documents. Tahoe also has asserted that numerous documents that may be
10 produced by BSR may be privileged and the Parties have agreed in principal
11 to a mechanism for Tahoe to review the BSR documents prior to production
12 so that any claims of privilege can be preserved.
- 13 • **Avanzar:** As discussed above, Avanzar has produced documents responsive
14 to Plaintiff's Rule 45 subpoena, subject to review pursuant to the proposed
15 protocol discussed herein.
- 16 • **NISGUA and PLAN:** As discussed above, Plaintiff has served subpoenas for
17 documents on both entities, but has not yet received responses.

18 **4. Good Cause**

19 The Parties submit that good cause to extend the domestic Phase I fact discovery deadline
20 to January 7, 2022 exists. If extended to January 7, 2022, completion of the Phase I Discovery
21 would proceed contemporaneously with the commencement of the second phase of discovery,
22 which was allowed to begin on September 1st. No extension is being sought by the Parties for
23 Phase II Discovery, and if the extension sought here is granted, this extension would not change
24 the Phase II deadline. Moreover, other than the extension of the filing of the remaining briefing
25 regarding Plaintiff's motion for Class Certification, which was approved by the Court on August
26 31, 2021 (ECF No. 153), the remaining schedule and deadlines will remain the same and are
27 unaffected by the brief extension of Phase I Discovery.

28

1 The cooperation of Plaintiff and Defendants notwithstanding, there have been many
2 logistical issues in coordinating the numerous non-party depositions of potentially unrepresented
3 witnesses residing throughout the United States. *See e.g., Willing v. Arms*, No. 2:14-cv-01122-
4 APG-PAL, 2015 WL 5554128, at *2 (D. Nev. Sept. 21, 2015) (Defendant Health Care Partners’
5 Motion to Stay or Extend Discovery granted based on good cause where “several Defendants
6 have not been served or filed responsive pleadings and, if those parties appear, they will need to
7 conduct discovery”); *Keller-McIntyre v. Coll. of Health & Human Servs.*, No. C-06-3209 MMC
8 (EMC), 2006 WL 3093692 (N.D. Cal. Oct. 31, 2006) (Plaintiff filed a motion asking for
9 discovery to be extended in order to obtain documents she subpoenaed from the defendant, a
10 college. Plaintiff argued that there was good cause for the discovery extension because the
11 personnel documents she was seeking were “‘relevant and vital’ to her case.” *Id.* at *1. The
12 Court found there was good cause for the extension and granted it, reasoning that “given the
13 extended pretrial schedule, Defendant will not be prejudiced by the brief extension in discovery
14 for the limited purpose allowed herein. . . . enforcing the subpoena.”). *Id.* Plaintiff has had to
15 invest time and resources to attempt to locate and serve Rule 45 subpoenas on former employees
16 and third parties for whom the company could not provide current contact information. Further,
17 in some cases the availability of former employees and third parties for their depositions has
18 been impacted by the COVID 19 pandemic, work schedules and as described above for one non-
19 party witness, negotiating an additional stipulation to cover potentially sensitive and confidential
20 information.

21 Based on the progress in completing the Phase I domestic fact discovery, the issues
22 Plaintiff has faced in serving and scheduling depositions and document production from non-
23 party witnesses, the limited outstanding domestic fact discovery that remains, the Parties, in good
24 faith, view a two-month extension of time for Plaintiff to complete Phase I domestic fact
25 discovery to January 7, 2022 as reasonable and necessary to the efficient administration of the
26 case.

1 **5. Proposed Schedule for Completing Remaining Phase I Discovery**

2 Based on the above circumstances, the Parties have agreed to an extension for the
3 completion of Phase I Discovery, from November 1, 2021, to January 7, 2022. Accordingly,
4 January 7, 2022 is the proposed deadline for completion of Phase 1 Discovery, with the
5 remaining deadlines in the Operative Scheduling Order (ECF No. 133) unaffected.

6 NOW, THEREFORE, the Parties request that this Court extend the deadline for the
7 completion of Phase I Discovery to January 7, 2022.

8 **IT IS SO STIPULATED.**

9 Dated: October 28, 2021

Respectfully submitted,


10 By: /s/ James M. Wilson, Jr.
11 James M. Wilson, Jr.

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18 IT IS SO ORDERED.

19 Dated: October 28, 2021

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21 
22 _____
23 Nancy J. Koppe
24 United States Magistrate Judge

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26 Dated: October 28, 2021

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