

1 Howard E. Cole
 State Bar No. 4950
 2 Jennifer K. Hostetler
 State Bar No. 11994
 3 LEWIS ROCA ROTHGERBER CHRISTIE LLP
 3993 Howard Hughes Pkwy., Suite 600
 4 Las Vegas, NV 89169-5996
 Tel: 702.949.8200
 5 Fax: 702.949.8398
 E-mail: hcole@lrrc.com
 6 Email: jhostetler@lrrc.com

7 Kirstin E. Muller*
 California State Bar No. 186373
 8 Alison M. Hamer*
 California State Bar No. 258281
 9 Ferry E. Lopez*
 California State Bar No. 274080
 10 Benjamin J. Treger*
 California State Bar No. 285283
 11 HIRSCHFELD KRAEMER LLP
 233 Wilshire Boulevard, Suite 600
 12 Santa Monica, CA 90401
 Tel: 310.255.0705
 13 Fax: 310.266.0986
 E-mail: kmuller@hkemployment.com
 14 E-mail: ahamer@hkemploymentlaw.com
 E-mail: flopez@hkemploymentlaw.com
 15 E-mail: btreger@hkemploymentlaw.com
 *Has complied with LR IA 11-2

16 *Attorneys for Defendant*

17
 18 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

19
 20 ALBERTO DELARA, on behalf of himself
 and others similarly situated,

21 Plaintiffs,

22 vs.

23 DIAMOND RESORTS INTERNATIONAL
 24 MARKETING, INC.,

25 Defendant.

Case No. 2:19-cv-00022-APG-NJK

**DEFENDANTS' UNOPPOSED MOTION
 PURSUANT TO LOCAL RULE 7-3(C) TO
 FILE A SECOND MOTION FOR
 SUMMARY JUDGMENT THEREBY
 EXCEEDING LOCAL RULE 7-3(A)'S
 MOTION FOR SUMMARY JUDGMENT
 PAGE LIMIT**

1 Pursuant to Local Rule LR 7-3(c), Defendant Diamond Resorts International Marketing,
2 Inc. (“Defendant”) file this unopposed motion to file a second Motion for Summary Judgment on
3 grounds separate from its first Motion for Summary Judgment (“First Motion”) and thereby
4 exceed Local Rule LR 7-3(a)’s 30-page limit for motions for summary judgment. This motion is
5 accompanied by the required declaration, attached hereto as Exhibit A. The factors set forth in
6 the declaration, all of which are incorporated herein by reference, establish good cause to allow
7 Defendant to exceed the collective 30-page motion for summary judgment page limit. Thus,
8 Defendant requests the Court grant this motion.

9 This is a complex FLSA collective action involving 251 Opt-In Plaintiffs. On March 19,
10 2021, Defendant filed a Motion for Summary Judgment or in the alternative, Partial Summary
11 Judgment addressing Defendant’s procedural defenses relating to the named plaintiff and certain
12 Opt-In Plaintiffs. (ECF No. 141.) Specifically, Defendant’s First Motion addressed arguments
13 that: (1) numerous Opt-in Plaintiffs are barred from participating in this collective action due to
14 their involvement as class members in a prior wage and hour class action settlement that released
15 the federal wage and hour claims at issue in this action, (2) one Opt-in Plaintiff is contractually
16 barred from participating in this action by virtue of the individual release they entered into with
17 Defendant, (3) numerous Opt-in Plaintiffs are barred from participating in this collective action
18 because they were not employed by Defendant within the applicable statute of limitations, and (4)
19 the named Plaintiff and multiple Opt-in Plaintiffs are barred from participating in this action due
20 to judicial estoppel and/or a lack of standing because they filed for bankruptcy and did not report
21 their alleged entitlement to overtime wages from Defendant and only the bankruptcy trustee has
22 standing to pursue the claims at issue in this action. Because the foregoing defenses related to
23 numerous parties in this action and Defendant needed to set forth material facts relating to the
24 various individuals, as well as the applicable law, and apply that law, the First Motion required
25 Defendant to use 25-pages, thereby leaving 5 pages remaining on the limit LR 7-3(a) sets forth
26 for motions for summary judgment.

27 Defendant intends to file a second Motion for Summary Judgment relating to its wage and
28 hour exemption and good faith defenses – both of which are completely unrelated to the defenses

1 raised in its First Motion. As in the First Motion, Defendant will require adequate pages to
2 include a statement of material facts, the applicable law, and to set forth its legal arguments.
3 Although the motion is in draft form, Defendant anticipates the second Motion for Summary
4 Judgment will be 23-pages long. Because of the complex nature of this class and collective
5 action, as well as the level of factual detail and analysis needed to support Defendant's defenses,
6 Defendant could not have raised all of its defenses in a single motion confined to 30 pages.

7 Defendant values brevity and this Court's time. Defendant's need to exceed the page limit
8 is not due to unnecessarily verbose drafting; rather, it is required to allow Defendant the space
9 necessary to fully argue its defenses and explain why the Court should grant summary judgment
10 in Defendant's favor. Allowing Defendant to file a second motion for summary judgment and/or
11 exceed the page limit set forth in LR 7-3(a) also serves the interests of efficiency and judicial
12 economy by avoiding litigation of these defenses at trial.

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Based on the foregoing, good cause exists to permit two Motions for Summary Judgment,
2 which combined will exceed the 30-page limit set forth in LR 7-3(a). Defendant accordingly
3 requests permission to file a second Motion for Summary Judgment, which combined with
4 Defendant's First Motion will exceed LR 7-3(a)'s 30-page limit by approximately 18 pages.
5

6
7 Dated: April 23, 2021

HIRSCHFELD KRAEMER LLP

8
9 /s/ ALISON M. HAMER
KIRSTIN E. MULLER
(Admitted Pro Hac Vice)
California Bar No. 186373
ALISON M. HAMER
(Admitted Pro Hac Vice)
FERRY E. LOPEZ
(Admitted Pro Hac Vice)
California Bar No. 258281
BENJAMIN J. TREGER
(Admitted Pro Hac Vice)
California Bar No. 285283
Hirschfeld Kraemer LLP
233 Wilshire Boulevard, Suite 600
Santa Monica, CA 90401

10
11
12
13
14
15
16
17 HOWARD E. COLE
Nevada Bar No. 4950
JENNIFER K. HOSTETLER
Nevada Bar No. 11994
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

18
19
20 *Attorneys for Defendant*

21
22 IT IS SO ORDERED:

23 Dated: April 26, 2021

24
25 
26 ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on April 23, 2021, I caused a true and accurate copy of the foregoing,
3 **DEFENDANTS' UNOPPOSED MOTION PURSUANT TO LOCAL RULE 7-3(C) TO**
4 **FILE A SECOND MOTION FOR SUMMARY JUDGMENT THEREBY EXCEEDING**
5 **LOCAL RULE 7-3(A)'S MOTION FOR SUMMARY JUDGMENT PAGE LIMIT** to be
6 filed with the Clerk of the Court via the Court's CM/ECF system, which sent an electronic copy
7 of the same to the following counsel of record:

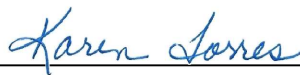
8
9 Michael N. Feder
10 DICKINSON WRIGHT PLLC
11 3883 Howard Hughes Parkway, Suite 800
12 Las Vegas, NV 89169
13 Phone: (702) 550-4440
14 Fax: (844) 670-6009
15 Email: mfeder@dickinson-wright.com

Martin D. Holmes
Peter F. Klett
DICKINSON WRIGHT PLLC
Fifth Third Center, Suite 800
424 Church Street
Nashville, TN 37219
Phone: (615) 244-6538
Fax: (844) 670-6009
Email: mdholmes@dickinsonwright.com
Email: pklett@dickinsonwright.com

16 Howard E. Cole
17 Jennifer K. Hostetler
18 LEWIS ROCA ROTHGERBER CHRISTIE LLP
19 3993 Howard Hughes Pkwy., Ste. 600
20 Las Vegas, NV 89169-5996
21 Phone: (702) 949-8200
22 Fax: (702) 949-8398
23 Email: hcole@lrrc.com; jhostetler@lrrc.com

Trevor W. Howell
Howell Law, PLLC
P.O. Box 158511
Nashville, TN 37215
Phone: (615) 406-1416
Email: trevor@howelllawfirmllc.com

24 Dated this 23rd day of April, 2021.

25
26
27
28


Karen Torres