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7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA**

9 GARTH SHELTON, an individual,
10
Plaintiff,

CASE NO: 3:21-cv-121-HDM-WGC

11 vs.

12 **STIPULATED PROTECTIVE ORDER**
13 **Regarding**
14 **CONFIDENTIALITY OF DOCUMENTS**
15 **PRODUCED IN LITIGATION**

12 ELDORADO RESORTS, INC., a domestic
13 corporation; CAESAR’S ENTERTAINMENT,
INC., a foreign corporation.
14
Defendants.

16 Pursuant to Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 26(f) and U.S. District Court of
17 Nevada Rule (“Local Rule”) 26-1(a), the parties through their respective counsel, hereby submit the
18 following *Stipulated Protective Order*.

19 **I. RECITALS**

20 WHEREAS: the parties to the above-captioned litigation anticipate that discovery will require
21 the parties to disclose records and information that are confidential and sensitive; such records are
22 anticipated to include the parties’ private employment records, or any other personally identifiable
23 information subject to protection under the Federal Rules of Civil Procedure or Nevada law
24 (“Confidential Information”); and

25 WHEREAS: the parties seek to protect and prevent the improper dissemination of such
26 “Confidential Information” to third parties, during the course of litigation and after the litigation has
27 ended;

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1 **II. STIPLUATION**

2 THEREFORE: the parties, by and through their respective counsel of record, hereby stipulate
3 and request the Court issue an Order (“*Stipulated Protective Order*”), protecting the confidential nature
4 of certain records and information as may be produced during the course of the above-captioned matters,
5 as follows:

6 1. If any person or entity, whether or not a party to the instant action, produces or receives
7 answers to interrogatories, or documents or other things, which the producing or receiving person or
8 entity considers to be “Confidential Information,” as defined herein in § II(3)(A)(I) *infra*; or

9 2. If there is deposition testimony which any person or entity, whether or not a party to the
10 instant action, believes contains “Confidential Information,” as defined herein in § II(3)(A)(I) *infra*; or

11 3. Third parties produce information which the third-parties assert is confidential, the
12 following procedure shall govern pursuant to Fed. R. Civ. P. 26(c) *et. seq.*:

13 A. Any documents (and the contents thereof), things or information falling within the
14 definition of “Confidential Information,” set forth herein in § II(3)(A)(I) *infra*, that are produced may be
15 designated and marked, in whole or in part, without regard to whether redactions are made,
16 “Confidential” by the party producing the documents or information, at the time the documents are
17 delivered to or made available for inspection by any party;

18 I. “Confidential Information” is defined herein as: (a) employment records
19 of any employees or former employees of any party; (b) confidential notes, memoranda, and statements
20 regarding non-party employees; (c) confidential information concerning the discipline and/or
21 termination of non-party employees and former employees; (d) the production of information or
22 documents proprietary to any party, including by way of example and not limitation, tax records,
23 financial statements; (e) other private information of any party or non-party to the present litigation,
24 including consumer records, *e.g.*, phone bills; (f) financial records and business records of any person or
25 entity, whether a party or non-party to the present litigation; or (g) medical records, including medical
26 bills and psychological records, and medical information of any person, whether a party or non-party to
27 the present litigation.

28 B. If a party produces to another party items that contain Confidential Information as

1 defined above, that party may designate one or more documents, or a portion of a document, as
2 “Confidential” before producing that document to the other party. Such designation shall be made by
3 marking, stamping or typing the word “Confidential” on each page of the document at the time it is
4 produced to the receiving party’s counsel;

5 C. Any party may designate deposition testimony as “Confidential” by orally making
6 such a designation on the record either at the commencement of the deposition, at the time the testimony
7 is given, and/or before the end of that day's questioning. Following such a designation, the court
8 reporter shall mark “Confidential” on the transcript or the portion thereof containing the “Confidential”
9 testimony;

10 D. In addition, documents or items produced by one party may be designated
11 “Confidential” by the other party, *i.e.*, the receiving party, by:

12 I. marking the document, in whole or in part, “Confidential” in the same
13 manner as stated above; and

14 II. then forwarding a copy of the marked document back to the producing
15 party;

16 E. In this regard, the receiving party seeking the “Confidential” designation may
17 designate, by number, each document it believes should be “Confidential”;

18 F. If the receiving party has no objection to the “Confidential” designation made by
19 the producing party, the receiving party may either expressly notify the producing party or allow the ten
20 calendar-day objection period (set forth below) to lapse. Where there has been no written objection
21 made, once a document or item has been produced and designated as provided herein to the receiving
22 party, the document or item shall be treated as “Confidential,” respectively, pursuant to this *Stipulated*
23 *Protective Order*, until further order of the Court;

24 4. The following protocol shall apply in the event of an objection to a designation of
25 “Confidential”:

26 A. If there is an objection to the “Confidential” designation, the party so objecting
27 must notify the other party in writing of both the objection and the grounds for the objection within
28 twenty-five (25) calendar days from the date the designation was made or the document(s)/item(s)

1 received, whichever is later, and the procedure herein in § II(4)(B) *infra*, shall apply;

2 B. If the parties do not agree that the documents, information or testimony should
3 be treated as confidential, the parties shall attempt to resolve the issue by meeting and conferring. If a
4 resolution does not occur, either party may file a motion with the Court to resolve the dispute. Such
5 motion must be filed within thirty (30) calendar days of receipt of the written objection to the
6 designation, unless stipulated otherwise by counsel. If an objection has been raised, the documents,
7 testimony and/or information at issue shall be governed by §§ II (3)(A)-(F), inclusive, of this *Stipulated*
8 *Protective Order*, and treated and regarded as “Confidential” from the date of disclosure and/or
9 production until the dispute is resolved informally by the parties or a final order is issued by the Court
10 resolving the dispute. In the event of such motion, the parties having entered into this *Stipulation* and
11 the existence of the Court's *Order* entered thereon shall not affect the burden of proof on any such
12 motion, nor impose any burdens upon any party that would not exist had this *Stipulated Protective*
13 *Order* not been entered;

14 5. A document or testimony, or portion, summary, or abstract thereof, that is to be treated
15 “Confidential” pursuant to this *Stipulated Protective Order* shall not be disclosed to, revealed to or
16 discussed with any persons other than the parties, counsel of record for the parties, attorneys, legal
17 assistants and clerical personnel employed by them, and other persons to whom disclosure is necessary
18 for the purposes of this litigation. (This allows disclosure to the officers, directors, employees or former
19 employees of the parties, persons requested by counsel for any party to furnish technical or expert
20 service or to give expert testimony with regard to the subject matter of the document(s), item(s) or
21 expert testimony for the trial of this action). However, each such person to whom a party makes such
22 disclosure shall read this *Stipulated Protective Order* and acknowledge in writing that he/she is fully
23 familiar with the terms hereof and agrees to comply with, and be bound by, this *Stipulated Protective*
24 *Order* until modified by either further order of the Court or agreement of all the affected parties;

25 6. Anyone seeking to file any “Confidential” documents, testimony, or information or any
26 pleadings or memorandum purporting to reproduce or paraphrase all or any portion of such confidential
27 material with this Court must first attempt to make such filings confidentially, by seeking to obtain
28 prior leave of Court for filing the same under seal. Notwithstanding any agreement among the parties,

1 the party seeking to file a paper under seal bears the burden of overcoming the presumption in favor of
2 public access to papers filed in Court. Any motion regarding filing confidential information and
3 motions to seal shall comply with LR IA 10-5 and applicable law. *See generally Kamakana v. City &*
4 *Cty. of Honolulu*, 447 F.3d 1172 (9th Cir. 2006); *see also Ctr. for Auto Safety v. Chrysler Grp., LLC*,
5 809 F.3d 1092, 1097 (9th Cir. 2016). NOTE: If the document is filed electronically, the appropriate
6 protocol for that purpose will be utilized;

7 7. If such application for leave of Court to file any document(s) under seal is denied, then
8 the party who sought leave will be relieved, in that instance only, and only as to such documents for
9 which leave of Court was denied, from complying with this stipulation in relation to that filing;

10 8. Any documents, testimony, and/or information that has been rendered “Confidential”
11 under the parties’ *Stipulated Protective Order* and any other information produced or exchanged in the
12 course of this case (other than information that is publicly available) is to be used only in the above-
13 captioned action, and may not be used in any other action or for any other purpose unless the party
14 seeking to make such use has acquired the documents, testimony, and/or information from a source
15 independent of the above-captioned action;

16 9. Within forty-five (45) calendar days of the entry of the final order concluding this
17 judicial proceeding, all “Confidential” documents or things; any copies, summaries, and abstracts
18 thereof; or notes relating thereto, shall be returned to the producing party or destroyed by the receiving
19 party (including by being shredded), at the option of the receiving party, with proof or attestation of
20 such destruction of records being transmitted by the receiving party to the producing party, except as
21 otherwise ordered by the Court or stipulated in writing by the parties. Counsel of record shall obtain
22 return of such information, things, and/or documents from any person to whom that counsel has made
23 available the documents or information produced by the other party designated as “Confidential.”
24 Notwithstanding any other language contained in this *Order*, each party’s counsel of record shall be
25 allowed to retain for its files a copy of all pleadings, motions, exhibits, or other papers filed and/or
26 lodged with the Court, and of all documents designated by both parties or any non-party as
27 “Confidential” and/or summaries or abstracts thereof (including but not limited to documents of any
28 type prepared by a party and/or counsel that are subject to the attorney-client privilege and/or the

1 attorney work-product doctrine). All such documents and information retained by counsel of record
2 must be maintained in a confidential manner and used only in accordance with this *Order*.

3 10. This *Stipulated Protective Order* may be amended, without prior leave of the Court, by
4 the agreement of counsel for the parties in the form of a stipulation and order that shall be filed in this
5 case. Nothing herein shall be construed so as to prevent any party from seeking relief from this *Order*
6 at any time;

7 11. The terms of this *Stipulated Protective Order* do not preclude, limit, or otherwise apply
8 to the use of documents at trial;

9 12. Nothing herein shall be deemed to waive any applicable privilege or work product
10 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure or material
11 protected by privilege or the work product doctrine;

12 13. Any witness or other person, firm or entity from which discovery is sought may be
13 informed of and may obtain the protection of this *Stipulated Protective Order* by written advice of the
14 parties' respective counsel or by oral advice at the time of any deposition or similar proceeding; and

15 14. The parties reserve their rights to assert the confidentiality of documents and
16 information produced irrespective of their production pursuant to this *Stipulated Protective Order*.

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Dated: July 7, 2021

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Dated: July 7, 2021

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ORDER

THE COURT, having considered the preceding *Stipulation* and good cause appearing therefor,
HEREBY GRANTS the relief and protections requested therein. IT IS HEREBY ORDERED that the
preceding *Stipulation* and this *Stipulated Protective Order* shall be and remain in effect, as stipulated
therein.

IT IS SO ORDERED:


UNITED STATES MAGISTRATE JUDGE

DATED: July 8, 2021