

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

STARWOOD HOTELS & RESORTS  
WORLDWIDE, INC.,

Plaintiff,

- *against* -

HILTON HOTELS CORPORATION N/K/A  
HILTON WORLDWIDE, ROSS KLEIN AND  
AMAR LALVANI

Defendants.

No. 09-cv-3862 (SCR) (ECF Case)

**STIPULATED ORDER**  
**REGARDING DISCOVERY OF**  
**NON-PARTIES**

WHEREAS, in connection with the above-captioned action (the "Action"), Plaintiff Starwood Hotels & Resorts Worldwide, Inc. ("Starwood") and Defendants Hilton Hotels Corporation, n/k/a Hilton Worldwide ("Hilton"), Ross Klein ("Klein") and Amar Lalvani ("Lalvani") have subpoenaed or may in the future subpoena non-parties who may have in their possession documents that contain confidential or proprietary information of another party, or for which a party may have a claim of privilege or other immunity from production; and

WHEREAS, on ~~May~~ <sup>June</sup> 30, 2010, the Court entered an amended stipulated protective order (the "Amended Stipulated Protective Order") governing, among other things, the designation, production and use in the Action of documents containing Confidential and Highly Confidential information, as those terms are defined therein; and

WHEREAS, the parties wish to facilitate discovery while assuring that Starwood, Hilton, Klein and Lalvani each have the opportunity to make appropriate designations of confidentiality or claims of privilege with respect to documents or information in the possession of a subpoenaed non-party (the "Subpoenaed Non-Party" and, collectively, the "Subpoenaed Non-Parties"); and

WHEREAS, it is the intention of this stipulated order that each party will utilize the process set forth herein only for the good faith assertion of its/his own claims of confidentiality

and/or privilege and that, for example, defendants Klein and Lalvani will assert such claims only with respect to his own personal privileged or confidential information and will not purport to assert confidentiality rights or privileges belonging to Hilton or Starwood; and

**IT IS HEREBY STIPULATED** by and between the parties hereto, through their respective counsel, subject to approval of the Court, that an Order as set forth hereinafter be entered.

**IT IS HEREBY ORDERED THAT:**

1. This Order shall govern the production of documents in this Action by all Subpoenaed Non-Parties, including the production of electronically stored information.

2. In the first instance, Subpoenaed Non-Parties shall produce documents and electronically stored information to TransPerfect Translations International, Inc. or another outside vendor with sufficient capabilities to perform the tasks set forth herein that is mutually acceptable to Starwood, Hilton, Klein and Lalvani (the "Outside Vendor"). The Outside Vendor shall submit to the jurisdiction of this Court, and shall maintain all documents and information received by it pursuant to this Order in confidence to be used solely as provided herein and for no other purpose.

3. If a Subpoenaed Non-Party wishes to designate documents pursuant to the Amended Stipulated Protective Order as "Confidential" or "Highly Confidential", the Subpoenaed Non-Party shall provide this information to the Outside Vendor. Further, to the extent that a Subpoenaed Non-Party needs assistance with copying or other technical aspects of their production, the Outside Vendor may provide those services as well. In the first instance, Starwood and Hilton hereby agree to split evenly the costs of the Outside Vendor. For good cause shown, the Court can reallocate the costs of the Outside Vendor.

4. Upon receipt of documents provided by a Subpoenaed Non-Party in the Action, the Outside Vendor shall Bates stamp images of the documents, employing a unique prefix for each Subpoenaed Non-Party.

5. With respect to documents provided by a Subpoenaed Non-Party in response to a subpoena from Hilton, Klein and/or Lalvani, the Outside Vendor shall host the documents on line accessible to counsel for Starwood only. Similarly, with respect to documents provided by a Subpoenaed Non-Party in response to a subpoena from Starwood, the Outside Vendor shall host the documents online accessible to counsel for Hilton, Klein, and/or Lalvani (as appropriate, depending on whose information is being sought from among these three defendants) only. The online hosting by the Outside Vendor shall be such as to allow counsel for Starwood, Hilton, Klein and/or Lalvani (as the case may be) to designate on a document by document basis levels of confidentiality under the Amended Stipulated Protective Order, with an endorsement of confidentiality designated on each page of the document, and to designate entire documents or portions thereof as privileged or immune from production.

6. Within seven (7) business days of its access to the documents of a given Subpoenaed Non-Party hosted on line by the Outside Vendor pursuant to paragraph 5 hereof, counsel for Starwood, Hilton, Klein and/or Lalvani (as the case may be) shall designate appropriate levels of confidentiality under the Amended Stipulated Protective Order and shall identify those documents (or portions thereof) that are privileged or immune from production.

7. Once the designations pursuant to paragraph 6 hereof have been made, the Outside Vendor shall, as soon as practicable, produce a copy of the Bates stamped images (along with other metadata as agreed-upon by the parties), on DVD or other electronic media, to all parties and the Subpoenaed Non-Party in accordance with the instructions and designations provided to the Outside Vendor pursuant to paragraphs 3 and 6 hereof. For all documents designated as Confidential or Highly Confidential pursuant to the Amended Stipulated Protective Order, the Outside Vendor shall provide all parties and the Subpoenaed Non-Party with

information regarding which party made the designation in question. Images for documents withheld based on claim of privilege or other immunity from production shall be replaced with placeholder images indicating that the documents were withheld. Only non-privileged metadata as agreed upon among the parties shall be provided for these documents.

8. Within ten (10) business days after providing the designations and identifications pursuant to paragraph 6 hereof, counsel for Starwood, Hilton, Klein and/or Lalvani (as the case may be) shall provide counsel for all other parties and the Subpoenaed Non-Party with (i) redacted replacement images for any documents which were originally removed from the production but need not be withheld in their entirety; and (ii) a privilege log with respect to any documents being withheld based on a claim of privilege or other immunity, or any documents being redacted based on a claim of privileged or other immunity.

9. If counsel for Starwood, Hilton, Klein and/or Lalvani (as the case may be) cannot comply with any of the time frames set forth herein, the parties shall confer as to a reasonable extension of time.

10. All documents designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL shall be governed by the terms of the Amended Stipulated Protective Order. Any challenges to designations of documents as CONFIDENTIAL or HIGHLY CONFIDENTIAL shall be made in accordance with the procedures specified in the Amended Stipulated Protective Order.

11. In the event that a Subpoenaed Non-Party delivers documents directly to the party that issued the subpoena, rather than complying with the procedures set forth herein, the party to whom the documents are delivered shall not review the materials received and shall, with copy to all parties of transmittal letter only, provide the entire delivery to the Outside Vendor, which will then comply with the procedures set forth herein.

12. The parties agree to reserve all rights, remedies, claims and defenses in the Action, and nothing in this Order may be construed as an admission or waiver of any right,

remedy, claim or defense, including, without limitation, the right to contest that particular documents, materials or information are in fact confidential, proprietary or trade secret, or that adequate efforts were undertaken to keep such materials or information confidential from competitors, customers or the public at large. Additionally, the designation of CONFIDENTIAL or HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY made by any party, and the objection or non-objection to any such designation by any party, shall not be relevant or admissible to the determination of whether documents, materials or information are confidential, proprietary or trade secret at trial, whether adequate efforts were undertaken to keep such materials or information confidential from competitors, customers or the public at large, or whether documents, materials or information may be relevant or admissible at trial. The parties shall act in good faith in designating material as CONFIDENTIAL or HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY. In that regard: (a) the receipt of any material designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY from the producing party shall not be construed as agreement by the receiving party that any such material is in fact confidential, and shall not operate as a waiver of the receiving party's right to challenge any such designation as provided herein; (b) none of the parties hereto shall be obligated to challenge the propriety or correctness of the designation of material as CONFIDENTIAL or HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY and a failure to do so shall not preclude a subsequent challenge to such status. The burden of proof with respect to the propriety or correctness in the designation of material as CONFIDENTIAL or HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY shall rest on the designating party.

13. The parties agreement to and compliance with the procedures set forth in this Order, including without limitation, a Subpoenaed Non-Party's delivery of documents to the Outside Vendor shall not constitute or ever be argued to constitute any waiver of privilege or other immunity from production.

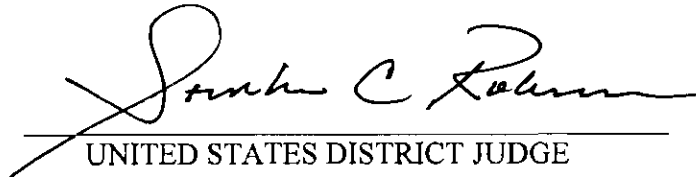
14. The parties agree that, in light of the number of non-party subpoenas in this Action and the ongoing discussions as to the proper scopes of those subpoenas, the time for any party or non-party to move to quash or object to non-party subpoenas is extended to thirty (30) days from the date of service of the non-party subpoena or the submission of this Order, whichever is later. The party causing a non-party subpoena to issue shall immediately, in writing with copy to all parties, so inform the Subpoenaed Non-Party, and provide each Subpoenaed Non-Party with a complete copy of this Order. A complete copy of this Order shall be included in the service of any future non-party subpoenas. The parties further agree that any objections or motions to quash may be presented to and decided by this Court pursuant to the Court's inherent power to oversee and control discovery in this Action.

15. This Order is without prejudice to the right of a party hereto to seek relief from the Court, upon good cause shown, from any of the provisions or restrictions provided herein.

This Order shall become effective immediately, and shall remain in effect during the pendency of this suit unless otherwise ordered by the Court.

**SO ORDERED:**

*June 30*  
May \_\_, 2010

  
UNITED STATES DISTRICT JUDGE

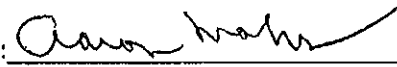
**AGREED AS TO FORM AND SUBSTANCE:**

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