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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

GOLDEN ROAD MOTOR INN, INC., a  
Nevada Corporation d/b/a ATLANTIS  
CASINO RESORT SPA,  
Appellant/Cross-Respondent,  
vs.  
SUMONA ISLAM, an individual,  
Respondent/Cross-Appellant  
and  
MEI-GSR HOLDINGS LLC, a Nevada  
limited liability company d/b/a GRAND  
SIERRA RESORT which claims to be  
the successor in interest to NAV-RENO-  
GS, LLC,  
Respondent.

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Case No.: 64349

SUMONA ISLAM, an individual,  
Appellant  
vs.  
GOLDEN ROAD MOTOR INN, INC., a  
Nevada Corporation d/b/a ATLANTIS  
CASINO RESORT SPA,  
Respondent.

Case No.: 64452

MEI-GSR HOLDINGS LLC d/b/a  
GRAND SIERRA RESORT,  
Appellant/Cross-Respondent,  
vs.  
GOLDEN ROAD MOTOR INN, INC., a  
Nevada Corporation d/b/a ATLANTIS  
CASINO RESORT SPA,  
Respondent/Cross-Appellant.

Case No.: 65497

**APPEAL FROM JUDGMENT AFTER BENCH TRIAL  
SECOND JUDICIAL DISTRICT COURT, WASHOE COUNTY, NEVADA  
HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE**

\*\*\*\*\*

**APPELLANT'S OPENING BRIEF**  
**REGARDING GRAND SIERRA RESORT**

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28   Nevada Corporation d/b/a ATLANTIS  
CASINO RESORT SPA,  
Respondent/Cross-Appellant.

29                                   **NRAP 26.1 DISCLOSURE**

30           The undersigned counsel of record certifies that the following are persons  
31   and entities as described in NRAP 26.1(a), and must be disclosed. These  
32   representations are made in order that the judges of this court may evaluate  
33   possible disqualification or recusal.



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1 **INTRODUCTION**<sup>1</sup>

2 In this brief, and in conformance with the June 20, 2014 order of this court  
3 ordering the Atlantis to file separate concurrent briefs dealing with the two  
4 respondents, Atlantis addresses the appellate issues associated with its appeal  
5 relative to respondent GSR Holdings LLC (GSR). This brief is  
6 contemporaneously filed with a brief addressing the issues related to respondent  
7 Sumona Islam (Islam). The facts relating to issues involving both respondents are  
8 inextricably intertwined, and there was one trial on all claims against both  
9 respondents. Accordingly, in the interests of judicial economy, this brief  
10 assimilates the facts set forth in our opening brief regarding Islam, and this brief is  
11 intended to be reviewed in conjunction with that brief. We recommend that the  
12 reader of this brief should first read our brief relating to Islam, before reading this  
13 one, to obtain a comprehensive understanding of the relevant facts and procedural  
14 history of the litigation.

15 Atlantis contends that the district court manifestly erred in ruling against  
16 Atlantis on the claims brought against the GSR. The information that Islam took  
17 from Atlantis was legally and contractually protected. GSR knew, or should have  
18 known, that Islam was misappropriating the information as she loaded it onto  
19 GSR’s computers and that GSR was likewise misappropriating the information by  
20 using the information provided by Islam both through its database and through the  
21 marketing and solicitation intelligence she was providing and GSR was using at  
22 the direction of management. The judgment in favor of GSR related to violation of  
23 the Uniform Trade Secret Act (“UTSA”) should be reversed.

24 In the companion brief, Atlantis addresses the district court’s error in its  
25 ruling against Atlantis on its claims against Islam for breach of the Non-

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26  
27 <sup>1</sup> For ease of reading, facts in this Introduction are being provided without  
28 appendix citations. The body of this brief will provide appropriate citations to  
such facts.

1 Compete/Non-Solicitation Agreement. If this court finds that agreement to have  
2 been breached, the district court's ruling in favor of the GSR related to that  
3 contract is likewise in error and should be reversed.

#### 4 **JURISDICTIONAL STATEMENT**

5 This is an appeal from a final judgment dated September 27, 2013 which  
6 forms the basis for the Nevada Supreme Court's appellate jurisdiction pursuant to  
7 NRAP 3A(b)(1). Notice of entry of this judgment was served on October 1, 2013  
8 and this appeal was timely filed on October 30, 2013. This appeal also concerns an  
9 order filed on March 14, 2014 with notice of entry served on April 11, 2014. An  
10 amended notice of appeal was timely filed on April 21, 2014.

#### 11 **STATEMENT OF THE ISSUES**

- 12 1. Whether the district court erred by making a ruling that represents an  
13 inappropriate and inconsistent application and enforcement of the Nevada  
14 Uniform Trade Secret Act.
- 15 2. Whether the district court erred in its determination of what is a trade secret.
- 16 3. Whether the district court erred in finding that GSR had not interfered with  
17 the contracts between Islam and Atlantis.
- 18 4. Whether the district court erred by making a *sua sponte* award of GSR's  
19 attorney's fees against Atlantis, and whether the award eventually entered is  
20 supported by law.

#### 21 **STATEMENT OF THE CASE**

22 This is a consolidated appeal of the decision of the district court following  
23 the bench trial of claims brought by Atlantis against a former employee Islam, and  
24 her new employer, GSR, related to the misappropriation and use of Atlantis  
25 intellectual property by Islam and GSR in contravention of Nevada law and  
26 contract. 6 App. 1295-1310 and 7 App. 1456-1462. Following the 11 day trial, the  
27 district court issued a decision from the bench in favor of Atlantis and against  
28 Islam, but also issued a decision in favor of GSR on the same and related claims

1 Atlantis brought against that entity. These decisions were memorialized in two  
2 written orders.

3 The decision in favor of Atlantis against Islam was entered August 26, 2013  
4 and is the subject of the companion brief.<sup>2</sup> 6 App. 1295-1310 and 7 App. 1566-  
5 1586. The decision in favor of GSR and against Atlantis was entered September  
6 27, 2013 and is addressed in this brief, filed separately by Atlantis pursuant to this  
7 court's order of June 20, 2014. 7 App. 1456-1462 and 7 App. 1587-1598.  
8 Additional orders have issued related to awards of costs and fees, and these have  
9 been the subject of appeal amendments.

10 It will be established through these consolidated appeals that the district  
11 court's decision is internally irreconcilable, in conflict with itself, contrary to  
12 Nevada law, as well as unsupported by the undisputed facts adduced at trial.

### 13 **STATEMENT OF FACTS**

14 In the interests of judicial economy, the Statement of Facts of the companion  
15 brief, being filed concurrently with this brief, related to the claims against Sumona  
16 Islam, is intended to be assimilated into the present brief. Those facts will  
17 therefore not be unnecessarily repeated here, except to the extent necessary for  
18 emphasis or to explain issues unique to the claim against the GSR.

### 19 **SUMMARY OF THE ARGUMENT**

20 The UTSA, which has been adopted by Nevada, clearly makes  
21 misappropriation of a trade secret illegal. Misappropriation is defined to include  
22 "Disclosure or **use** of a trade secret of another without express or implied  
23 consent..." (emphasis added). The evidence presented at trial was undisputed, and  
24 the district court found that Islam had an obligation to Atlantis to preserve its trade  
25 secrets, that Islam had covertly copied Atlantis trade secret information, and that  
26

27 \_\_\_\_\_  
28 <sup>2</sup> Islam has also appealed from this order. See 9 App. 2013-2016 and 9 App.  
2029-2032.

1 Islam had provided that information to GSR. It was similarly undisputed that GSR  
2 used the information provided by Islam in its solicitation and marketing efforts.  
3 The evidence of GSR's use was not just the approximately 220 guests whose  
4 contact information was admittedly added to the GSR database, but also the  
5 selection and guidance of solicitations specifying an amount of free play that likely  
6 would be accepted by the Atlantis guests targeted by GSR. The free play offer  
7 amount was determined directly through the misappropriation to GSR of the tier  
8 and gaming rating information for the involved Atlantis guests, which Islam copied  
9 from the Atlantis database and/or came to know due to her employment at Atlantis.

10 Although GSR claimed ignorance of Islam's improper actions, the evidence  
11 establishes that GSR had notice. Notice occurred pre-litigation when Atlantis  
12 attorney Debra Robinson wrote to GSR in April of 2012, or at the very latest when  
13 GSR was served with this action and consented to entry of a TRO against it.  
14 Despite knowing that it was using the trade secrets of Atlantis, GSR continued to  
15 use the information Islam had provided even in the face of the district court's  
16 restraining orders. In fact, based upon the documentary evidence and testimony at  
17 trial, GSR likely continues to use the information today.

18 Therefore, Atlantis contends that the district court committed reversible  
19 error in failing to find a violation of the UTSA by GSR, in failing to impose a  
20 permanent injunction which encompassed and prohibited GSR's continued use of  
21 the information, and in failing to direct the return of the information to Atlantis and  
22 the destruction or purging of the Atlantis information from the GSR database and  
23 records.<sup>3</sup> The district court also should have awarded damages to Atlantis under  
24 NRS 600A.050 as it was undisputed that GSR enjoyed revenue from the guests  
25 whose information had been misappropriated by Islam and GSR. Indeed, the

---

27 <sup>3</sup> Atlantis acknowledges the UTSA allows for an alternative of ordering the  
28 payment of a royalty based upon the value of the information misappropriated.  
That alternative was not adopted either. NRS 600A.050.

1 district court did award damages against Islam on the basis of that  
2 admission/evidence provided to the district court by GSR offered expert witness  
3 Aguero. 6 App. 1307:25-26 (Order); 19 App. 3895:13-3897:23 (Aguero); 21 App.  
4 4429 (Aguero Report) and 22 App. 4619-4626 (GSR Spreadsheet). In other words,  
5 the basis for the district court's award of damages against Islam for violation of the  
6 UTSA was the net profit that GSR contended it had reaped from the guests added  
7 to the GSR's marketing database by Islam.

8 In reaching its decision regarding the GSR, the district court committed  
9 further error in its determination of what information is a trade secret. Specifically,  
10 the court's rulings are inconsistent and utilized a varying standard between when  
11 the information is held by Islam versus when held and used by GSR. Particularly,  
12 the district court erroneously determined that Atlantis information held and used by  
13 GSR was not protected under the law despite determining that the same  
14 information was protected and could not be held and used by Islam. This  
15 determination is inconsistent and cannot be reconciled under the law. Under no  
16 rational circumstance can information be found to be a trade secret and protected  
17 when it is in the hands of the person who initially took the information, but no  
18 longer a trade secret and protected by the law after she has shared it with her new  
19 employer and that employer has used the information for profit. Yet that is  
20 precisely the effect of the district court's decision here.

21 As the district court's orders currently stand, GSR can continue to use the  
22 information Islam provided to it, but Islam, although still employed by GSR,  
23 cannot use the Atlantis information she actually added to the GSR database. If  
24 Islam were to use the information she added to the GSR database, she would  
25 violate the district court's decision imposing an injunction upon her use of that  
26 information. 6 App. 1310:4-13.

27 This appeal presents an issue of important public policy that squarely raises  
28 the question of whether customer lists, including names, addresses and telephone

1 and email contact information, when developed and treated as a trade secret,  
2 should be afforded trade secret protection.

3 Further, Atlantis contends the district court erred in finding GSR had not  
4 interfered with the Non-Compete Agreement in its decision to employ Islam, given  
5 its knowledge of that agreement and its encouragement of Islam to breach the  
6 agreement.

7 Finally, the district court erred by making a *sua sponte* award of GSR's  
8 attorney's fees against Atlantis, and the award of more than \$190,000 is legally and  
9 factually unsupportable.

### 10 ARGUMENT

#### 11 **A. The District Court's Decision Finding No Violation of the UTSA by GSR** 12 **is Erroneous**

13 It is clear that the trial court's decision in favor of Atlantis and against Islam,  
14 finding that she had violated the UTSA, was appropriate and supported by virtually  
15 undisputed evidence and Nevada law. In reaching that decision, the district court  
16 could rely upon the undisputed testimony of the witnesses, the uncontroverted  
17 documentary evidence of misappropriation of Atlantis trade secret information to  
18 GSR by Islam and the admitted actions of Islam herself.<sup>4</sup> However, the decision  
19 finding no violation of the UTSA by GSR is in conflict and irreconcilable with the  
20 trial court's decision against Islam.

21 As described herein and in the companion brief, and as undisputed by the  
22 evidence at trial, despite the multiple contractual prohibitions and state-of-the-art  
23 security measures employed by Atlantis, Islam hand copied from the Atlantis  
24 database confidential, proprietary and trade secret protected information related to  
25 hundreds of Atlantis guests. 14 App. 2973:21-2976:5, 2978:6-16, 2998:9-11 She  
26 did so secretly, illegally, improperly and in direct and knowing violation of her

27 \_\_\_\_\_  
28 <sup>4</sup> These issues are discussed in the companion briefs related to the claims against  
Islam.



1 contractual obligations to Atlantis. Islam accessed the information from the  
2 Atlantis marketing database and manually transferred it onto a series of spiral  
3 notebooks. 21 App. 4303-4313, 25 App. 5436- 26 App. 5712 and 14 App. 2973-  
4 2978. The guest information contained within those spiral notebooks varied by  
5 guest, but almost always included names, addresses, telephone numbers, and  
6 contact information such as emails. *Id.* It also typically listed other highly  
7 confidential and proprietary information regarding the rating that Atlantis had  
8 assigned to the player, sometimes based upon years of tracking the guest's  
9 gambling at Atlantis, credit and/or marker information, gaming preferences and  
10 recent loss or play history. *Id.* Although some of the players whose information  
11 Islam copied were coded to her as host, many were not and were hosted by other  
12 Atlantis hosts. 15 App. 3071-3084. Islam surreptitiously took these spiral  
13 notebooks with her from Atlantis to her new employer GSR, and transferred much  
14 of that information to the GSR. 14 App. 2976:13-19, 2977:15-21, 2978:17-2980:9,  
15 2981:15-18, 2990:19-23.

16 A matter of hours after Islam resigned from Atlantis, she became employed  
17 by GSR. During her employment with GSR, Islam uploaded confidential guest  
18 information from the spiral notebooks onto the GSR database, including over 200  
19 of the guest names and contact information she had improperly copied by hand  
20 from the secure Atlantis computer system. 14 App. 2978:22-2980:9, 2981:15-18,  
21 2988 (Islam) and 21 App. 4376-4389 (GSR list of guests coded to Islam at GSR).  
22 It was similarly undisputed by GSR management that Islam shared with GSR, both  
23 through email and verbal direction and request, rating, tier, and marketing  
24 information she had obtained through her employment at Atlantis. 16 App.  
25 3312:11-17 (Hadley) and 15 App. 3089-3091 (Islam).

26 This intelligence included the types and level of marketing solicitations  
27 which she knew from her employment with Atlantis would be effective for those  
28 known casino guests of the Atlantis who were the target of the GSR marketing

1 effort. 15 App. 3089-3091. Islam provided some of those guests' information to  
2 GSR. And while some guests' contact information already was known to GSR, the  
3 marketing insight Islam had gained through her employment at Atlantis and  
4 subsequently improperly disclosed to GSR was previously unknown to GSR.  
5 Atlantis contends, and it was undisputed, that this type of information, in addition  
6 to the names and contact information is a protected trade secret. 12 App. 2507:15-  
7 2508:22 (Ringkob); 13 App. 2667:13-2672:11, 2684:8-24, 2759:15-2760:12  
8 (DeCarlo) and 14 App. 2924:7-12 (Islam).

9         Despite the district court's ruling in favor of GSR, much of this information  
10 is of a type and character that was explicitly found to be a trade secret by the  
11 district court.<sup>5</sup> Specifically, among the non-exclusive list of 19 types of trade  
12 secrets, the district court found that whether a player preferred table games or slots,  
13 whether a player was local or non-local, credit information, the value or rating of a  
14 guest, and their gaming habits and birth dates were all trade secrets in this industry.  
15 20 App. 4250:10-4251:9; 6 App. 1306:23-1307:7 and 7 App. 1457:26-1458:18.  
16 The Atlantis submits, and the testimony at trial from the management of both  
17 casino properties supports, a conclusion that the district court was correct in  
18  
19

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20 <sup>5</sup> In its decision the district court delineated a list of nineteen non-exclusive items  
21 that if found are considered trade secrets in the gaming industry. 20 App. 4250:10-  
22 4251:9. Included in that list was: (1) player tracking records; (2) other hosts'  
23 customers; (3) initial buy-ins; (4) level of play; (5) table games; (6) time of play;  
24 (7) customers' personal information that is personal to them, such as a Social  
25 Security number; (8) customers' casino credit; (9) customer's location, whether  
26 they are international, regional or local players; (10) marketing strategy; (11)  
27 customer's birth date, which one witness testified was critical for credit accounts;  
28 (12) tier levels, which is different than player ratings, they are more specific in  
terms of measurement; (13) comp information; (14) players' history; (15) players'  
demographics; (16) players' financial information; (17) the company's financial  
information; (18) the company's marketing strategy; and (19) other employees'  
information and customer information.

1 determining that names and contact information regarding known high value  
2 gaming guests are also, indisputably, trade secrets in the gaming industry.<sup>6</sup>

3 **1. Standard of Review**

4 Although some findings in this case are fact dependent, those facts were  
5 undisputed or virtually so. Accordingly, the issues raised here primarily are legal  
6 ones deserving of de novo review, except as otherwise indicated below.

7 A district court's conclusions of law are reviewed de novo. *Casey v. Wells*  
8 *Fargo Bank*, 128 Nev. \_\_\_, 290 P.3d 265, 267 (2012). Contract interpretation is  
9 also subject to a de novo standard of review. *May v. Anderson*, 121 Nev. 668, 672,  
10 119 P.3d 1254 (2005). The legal validity of a covenant not to compete, based upon  
11 the scope of the covenant, is also reviewed de novo. *E.g., Hansen v. Edwards*, 83  
12 Nev. 189, 426 P.2d 792 (1967).

13 **2. Nevada Law Generally Finds a Customer List To Be a Trade**  
14 **Secret and This Type of Customer List (a List of Known High**  
15 **Value Gaming Guests) Guarded as it was, Should be Afforded**  
16 **Trade Secret Protection in Nevada**

17 Whether information is a trade secret in Nevada is generally a question for  
18 the fact-finder, with review by the court to assure that legal principles are applied  
19 accurately. *See Frantz v. Johnson*, 116 Nev. 455, 466, 999 P.2d 351, 358 (2000).  
20 In *Frantz*, this court found customer and pricing lists held by a plastic gaming card  
21 company to be trade secrets. *Id* at 467, 999 P.2d 359. In reaching that conclusion,  
22 this court noted the testimony at trial that the information was extremely  
23 confidential, its secrecy guarded and that the information was not readily available  
24 to others due to the highly specialized nature of the industry. *Id*. The same can be  
25 said of the industry and customer lists and information in question here.

26 <sup>6</sup> 18 App. 3790:4-18, 3793:1-5 (Ambrose); 16 App. 3380:4-10 (Lundgren); 17  
27 App. 3534:23-3535:5 (Flaherty); 16 App. 3308:10-22 (Hadley); 12 App. 2484:20-  
28 2486:15, 2490:22-2495:11 (Ringkob); 13 App. 2684:8-15, 2758-2762:1 (DeCarlo);  
19 App. 3960:8-13 (Robinson) and 17 App. 3458:15-19 (Moreno).

1 Here, the management witnesses for both casino parties agreed that customer  
2 guest lists such as those involved here (that is, lists of known gaming guests) were  
3 confidential, proprietary and believed to be trade secrets. *See* fn.7 *supra*.<sup>7</sup>

4 In *Frantz*, this court set out factors to consider in determining whether  
5 information is a trade secret. *Id.* at 467, 999 P.2d at 358-59. The factors include:  
6 1) the extent to which others outside the business know the information and the  
7 ease or difficulty with which others could acquire the information properly; 2)  
8 whether the information was confidential or secret; 3) the extent and manner to  
9 which employer guarded the information's secrecy, and 4) the former employee's  
10 knowledge of the customer's buying habits and other customer data and whether  
11 this information is known by competitors. *Id.*; *see also*, *Finkel v. Cashman*, 128  
12 Nev. \_\_\_, 270 P.3d 1259, 1264 (2012)(upholding a customer list of a photography  
13 business as a trade secret).

14 In its ruling from the bench, the district court here concluded that  
15 information regarding a customer, **with whom a host had an established**  
16 **relationship**, such as the customer's name, address and contact information, was  
17 not a trade secret, but set forth a non-exhaustive list of 19 items that were trade  
18

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19  
20 <sup>7</sup> Nevada's sister states (California, Iowa, Ohio, Pennsylvania, Texas and  
21 Washington) have also found customer lists to be deserving of protection under  
22 either common law or the UTSA. *See*, *ABBA Rubber Co. v. Seaquist*, 286 Cal.  
23 Rptr. 518, 526-28 (Ct. App. 1991)(a customer list can be a trade secret even  
24 though it is readily ascertainable so long as it has not yet been ascertained by  
25 others in the industry); *Basic Chemicals, Inc. v. Benson*, 251 N.W.2d 220 (Iowa  
26 1977)(information contained in stolen customer books belonged to Basic  
27 Chemicals not Benson and were trade secret); *Al Minor & Associates, Inc. v.*  
28 *Martin*, 881 N.E.2d 850, 855 (Ohio 2008)(even in absence of any employment  
contract or noncompete agreement, Ohio's UTSA will protect against the use  
and/or disclosure of trade secret information including, but not limited to client  
lists, whether the trade secret is maintained in physical form or merely committed  
to memory); *Ed Nowogrowski Ins., Inc. v. Rucker*, 971 P.2d 936, 948 (Wash.  
1999)(memorized customer lists may constitute trade secrets under UTSA).

1 secrets (emphasis added). 20 App. 4249:4-4251:4. This was confirmed and  
2 somewhat clarified in the Findings of Fact and Conclusions of Law that followed.  
3 6 App. 1305-1307.<sup>8</sup>

4 Included in the list of 19 items was the district court's finding that other  
5 hosts' customers, customers' personal information that is personal to them,  
6 customer's location and other employees' customer information are all trade  
7 secrets. 6 App. 1306:24-1307:4 (8/26 FFCL) and 7 App. 1457:28-1458:18 (9/27  
8 FFCL). Based upon these findings, it appears that the district court determined that  
9 a customer list which consists of no more than the customer's name, address and  
10 contact information was not a trade secret as to a host, so long as the host had an  
11 established relationship with the customer (presumably which predated  
12 employment with the employer seeking to claim ownership of the information), but  
13 that the same information did constitute a trade secret if it belonged to another  
14 host's customer or to a customer with whom the host had no host/guest relationship  
15 before employment.<sup>9</sup> In this case it is undisputed, indeed central to the district  
16 court's determination, that among the hundreds of names and related information  
17 hand-copied by Islam from the Atlantis database were persons with whom Islam  
18 had no host relationship. 6 App. 1297:12-27, 1298:7-12, 1301:18-23, 1306:19-24,  
19 1307:20-24, 1310:4-13.

20 Further, the district court received as evidence Exhibit 59, which identified  
21 the host assigned to each guest at the time of Islam's resignation. 23 App. 4884-  
22 4887 and 4892. Brandon McNeely, the author of the exhibit, testified that it had  
23 been created by taking the guests from Exhibit 19 who were added to the GSR  
24 database after Islam began her employment. 18 App. 3643:19-3645:11 and 21  
25

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26 <sup>8</sup> *But see*, 7 App. 1457:25.

27 <sup>9</sup> Such a determination would be consistent with NRS 600.500 establishing that  
28 the employer is the owner of trade secrets developed by employee during the  
course and scope of the employment.

1 App. 4376-4389. (GSR list of guests coded to Islam at GSR). One of the columns  
2 of that analysis indicated which of these over 200 guests were hosted by persons  
3 other than Islam at the time that she terminated her employment with Atlantis. 23  
4 App. 4884-4887 and 4892. It establishes that 99 of those 202 persons were “other  
5 hosts’ customers” when Islam terminated her employment with Atlantis. *Id.*  
6 Moreover, Islam herself testified that she had never hosted over 50 guests who  
7 were solicited by her while she was employed at GSR, using information she had  
8 gained through employment at Atlantis. 15 App. 3071:5-3083:7 and 3122:7-  
9 3154:14.

10 For this reason, and because of the other trade secret information that Islam  
11 had taken, the district court imposed a permanent injunction upon Islam, directing  
12 that she destroy all customer lists obtained from or originating from the Atlantis,  
13 including specifically, the spiral notebooks onto which she had written down the  
14 customer information from her Atlantis computer screen. 6 App. 1310:4-13. This  
15 is also consistent with well-founded Nevada law that customer lists are trade  
16 secrets. *Finkel v. Cashman Professional Inc.*, 128 Nev. \_\_\_, 11-14, 270 P.3d 1259,  
17 1264 (2012) and *Franz, supra*, 116 Nev. at 467.

18 In the case at bar, there may have been testimony supporting the argument  
19 that certain customer lists were not trade secrets with regard to Islam, because the  
20 lists identified persons with whom Islam had a host relationship before she began  
21 working at the Atlantis. But the testimony of the executives from both casinos  
22 mandated the conclusion that customer lists generally are considered proprietary in  
23 the gaming industry and that such lists are considered proprietary and trade secrets  
24 by both of the gaming establishments that were party to the litigation. *See* fn.7  
25 *supra*.

26 Despite this evidence, and in direct conflict with its own decision against  
27 Islam, the district court ruled that GSR had not violated the UTSA and that a  
28 customer’s name, address and contact information are not trade secrets. 7 App.

1 1457:25. Moreover, in that same September 27, 2013 order favoring GSR, the  
2 district court enumerated the same list of 19 items that it previously found to be  
3 trade secrets, including “other hosts customers.” 7 App. 1457:26-1458-18.

4 The premise of the September 27, 2013 order finding in favor of GSR,  
5 despite the fact that it was in knowing possession of Atlantis customer lists, is that  
6 customer lists held by the resorts and casinos of Nevada are not trade secrets. Yet  
7 that holding is in direct contradiction to findings even within the same paragraph  
8 where “other hosts’ customers” are listed as being a trade secret. Thus, the  
9 September 27, 2013 order (7 App. 1456-1462), the verbal decision of the district  
10 court at trial (20 App. 4249:11-4252:16, 4255:22-4259:7, 4261:8-21) and the  
11 August 26, 2013 findings and conclusions (6 App. 1295-1310) are inconsistent and  
12 in direct conflict. The district court’s conflicting orders necessarily result in the  
13 erroneous outcome that the very same information that was a trade secret when it  
14 was illegally copied by Islam, is not a trade secret after it was misappropriated to  
15 the GSR computer database, and therefore can be used without license or  
16 permission of Atlantis by its direct competitor, GSR. A consistent finding that the  
17 guest names and addresses were trade secrets both when uploaded to the GSR  
18 system and when used by GSR for marketing purposes necessarily would have  
19 resulted in finding a violation of the UTSA by GSR, at least in so far as GSR  
20 would necessarily have been found to have “used” trade secrets of the Atlantis  
21 without the express or implied consent of the Atlantis.<sup>10</sup>

22 The district court hinged its decision on the testimony of GSR witnesses that  
23 the database into which Islam had personally entered information from the spiral  
24 notebooks in order to create her GSR coded guest list contained fields for only a  
25 player’s name, address, telephone number and contact information. 7 App.  
26 1457:22-23. The district court apparently found this purported fact significant and  
27

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28 <sup>10</sup> NRS 600A.030(2)(c).

1 determined that because Islam did not herself type in the information regarding  
2 player ratings, casino credit history or play history, GSR had not used the  
3 information.<sup>11</sup> This was the court's finding despite testimony from Islam's direct  
4 supervisor that in addition to names and contact information, a host could add a  
5 remark, such as the latest efforts towards a player and that this was the information  
6 added by Islam. 16 App. 3357:13-3358:5. This also ignores the information  
7 misappropriated through other means, discussed below.

8 Applying the *Frantz* factors, Atlantis contends that the Atlantis guest list at  
9 issue here, as well as others held and adequately protected from disclosure by  
10 similarly situated casinos and gaming resorts in Nevada, should be found to be  
11 trade secrets and afforded protection. It is undisputed that Islam took a list of  
12 known active Atlantis players to the GSR and uploaded their names and contact  
13 information to the GSR database. At issue on appeal is whether the district court  
14 erred in holding that those names and associated contact information did not, in  
15 and of themselves, constitute trade secrets protected by the UTSA.

- 16 a) The extent to which others outside the business know the  
17 information and the ease or difficulty with which others could  
18 acquire the information properly

19 The identities and contact information of some Atlantis gaming guests are  
20 known outside the Atlantis since gamblers may frequent more than one casino.  
21 However, in that case, the guests have made themselves and their contact  
22 information known to the other casino, usually by signing up for the players club,  
23

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24 <sup>11</sup> In so finding, the district court must have rejected the admissions of Islam and  
25 GSR that information related to the tier status and rating of guests at Atlantis, and  
26 known to Islam from the information in the spirals or otherwise, was  
27 misappropriated to GSR verbally and through spread sheets and emails. If  
28 accepted as an exception to the law, this condones the misappropriation of trade  
secret information so long as the information is not physically entered onto the  
database by the former employee. Atlantis submits such an exception would  
swallow the rule and is nonsensical.



1 or otherwise literally handing the information to the casino. Alternatively, the  
2 casino may properly acquire the information through its independent general  
3 marketing efforts, which may or may not be successful. The fact that Islam picked  
4 these particular guests to enter into the GSR database not only improperly provided  
5 the guest name and contact information to GSR if the guest was not already listed  
6 in the GSR database, but also, at a minimum indicated to GSR that this individual  
7 was a valuable gaming customer, otherwise Islam surely would not have selected  
8 that guest to target.

9 Even if the guest contact information was already in the GSR database, GSR  
10 may not have known that this guest played at a valuable level at the Atlantis. Had  
11 GSR not improperly received the guest name and contact information from Islam,  
12 to properly acquire the information, GSR would have needed to have hoped to lure  
13 the guest to the GSR via non-targeted marketing. Acquiring the identity and  
14 contact information for active gamblers through proper marketing means is not  
15 sure, fast, or inexpensive. This is exactly why there was incentive on the parts of  
16 both Islam and GSR to cut corners and steal the information from Atlantis.

17 The evidence at trial was significant in supporting the proposition that there  
18 is value in knowing even the name and address of a gaming guest and that such  
19 cannot be easily obtained. 13 App. 2667:13-2669:11(DeCarlo). This testimony  
20 came not just from gaming executives, but also from other hosts. 17 App.  
21 3458:15-3460:12 (Moreno). It is one thing to see persons coming and going from  
22 a gaming business, it is quite another to know if they have gambled and who they  
23 are, where they live and their phone number or email address. Indeed, the district  
24 court acknowledged after listing the 19 items it found to be relevant trade secrets in  
25 the gaming industry that such information is not known outside of the business of  
26 the Atlantis and that it is not easy to learn and in fact, difficult to properly acquire  
27 this information. 6 App. 1307:8-10.

28 ///

1                   b)     Whether the information was confidential or secret

2                   Evidence established, without dispute, that Atlantis went to great lengths to  
3 protect the confidentiality of its guest lists and information. In addition to  
4 requiring Atlantis employees with access to the information (such as Islam and  
5 other casino hosts) to sign four different agreements in which the employees agree  
6 to keep this information confidential, Atlantis also goes to great lengths to protect  
7 the information within its record keeping systems. But for, an improper breach of  
8 these proactive protective measures, there is no evidence in the record that GSR or  
9 any other third party would have obtained the information at issue through proper  
10 means.

11                  The evidence at trial was uncontroverted that information of this type is  
12 confidential and secret both at Atlantis and at other casinos where it is uniformly  
13 regarded within the industry as confidential or secret. Even GSR admits that the  
14 same information is confidential or secret when held by it. 18 App. 3790:4-18  
15 (Ambrose); 16 App. 3380:4-10 (Lundgren); 17 App. 3534:23-3535:5 (Flaherty)  
16 and 16 App. 3308:10-22 (Hadley). The district court found that the information  
17 was confidential. 6 App. 1307:11-22.

18                   c)     The extent and manner to which employer guarded the  
19                             information's secrecy

20                  As recognized by the district court, Atlantis takes extreme efforts to  
21 maintain the secrecy of this information and data. 6 App. 1296:4- 1297:3, 1298:1-  
22 6, 1298:13-16, 1306:11-19. First, Atlantis has its casino hosts sign four separate  
23 agreements concerning the confidentiality of certain information made available to  
24 them. One of these agreements, the Non-Compete Agreement, even restricts the  
25 ability of the casino host to work within a 150 mile radius in any gaming  
26 establishment for one year in order to preserve its investment in employee capital  
27 and confidential information.

1 Second, Atlantis further maintains its secrecy by restricting the ability to  
2 copy the guest information/data maintained on its database. For example, it does  
3 not provide casino hosts with a USB port to download information, does not  
4 provide a printer to print out information, does not allow guest lists to be emailed  
5 and only allows certain database access to casino hosts. 14 App. 2941:12-13, 14  
6 App. 2954:6-22; 16 App. 3388:18-3398:6.

7 d) The former employee's knowledge of the customer's buying  
8 habits and other customer data and whether this information is  
9 known by competitors

10 Like the case at bar, in *Frantz*, the defendant had taken a customer list. This  
11 fourth factor demonstrates the court's recognition that when a customer list is  
12 coupled with the former employee's knowledge of the customer's buying habits  
13 and other information relevant to that customer, there is an increased reason to  
14 legally acknowledge that the list is a trade secret. Here, there is overwhelming  
15 evidence that Islam possessed, and provided to GSR, relevant information about  
16 the gaming habits, the monetary value of play related to guests she had added to  
17 the GSR database and also regarding guests whose names and contact information  
18 was known to GSR and further, that this information was used by GSR for the  
19 purpose of marketing to these guests. The district court correctly held this  
20 information was not known by the competitors. 6 App. 1306:21-1307:10. Indeed,  
21 the district court ruled that by taking and providing this information about the  
22 guest's gaming preferences and practices to GSR, Islam had violated the UTSA. 6  
23 App. 1307:11-24. Where the district court erred was in failing to recognize that  
24 the guest list and contact information, standing alone under these circumstances,  
25 additionally constituted UTSA protected trade secret information that both GSR  
26 and Islam improperly obtained and used.

26 ///

27 ///

28 ///

1                           **3. The District Court’s Enforcement Of The Uniform Trade**  
2                           **Secret Act In this Matter Is Inconsistent And Contrary To**  
3                           **Established Nevada Law**

4           The district court found Islam to have violated the UTSA in large measure  
5           for actions undertaken while and in furtherance of her employment with GSR, yet  
6           the court failed to find GSR to have violated the act despite its knowledge and  
7           active involvement in her actions. To establish a misappropriation claim under  
8           NRS § 600A.010 *et. seq.*, the plaintiff must show: (1) a valuable trade secret; (2)  
9           misappropriation<sup>12</sup> of the trade secret through use, disclosure, or nondisclosure of  
10          use of the trade secret; and (3) the misappropriation was wrongful because it was  
11          made in breach of an express or implied contract or by a party with a duty not to  
12          disclose. *Frantz v. Johnson*, 116 Nev. 455, 466, 999 P.2d 351, 358 (2000)  
(footnotes omitted). The Act defines a trade secret as:

13           information, including, without limitation, a formula, pattern,  
14           compilation, program, device, method, technique, product, system,  
15           process, design, prototype, procedure, computer programming  
16           instruction or code that:

16           (a)           Derives independent economic value, actual or  
17           potential, from not being generally known to, and not being  
18           readily ascertainable by proper means by the public or any other  
19           persons who can obtain commercial or economic value from its  
20           disclosure or use; and

21           (b)           Is the subject of efforts that are reasonable under the  
22           circumstances to maintain its secrecy.

23          NRS § 600A.030(5).

24           Here the district court appropriately enforced the UTSA against Islam,  
25           finding that valuable trade secrets existed and that Islam had inappropriately hand  
26           copied trade secrets belonging to Atlantis. 6 App. 1297:24-27, 1298:17-26,  
27           1305:17-1307:24. On the basis of her misappropriation, the court awarded  
28           damages against Islam, including punitive damages, and it imposed a permanent

<sup>12</sup> “Misappropriation” is defined by NRS 600A.030(2).

1 injunction regarding Islam's use and further misappropriation of that information.<sup>13</sup>  
2 6 App. 1307:25-26, 1308:11-1309:6, 1309:7-22 and 1310:3-13.

3 In stark contrast, when deciding the same issue with regard to the GSR, the  
4 district court amazingly found that the information unlawfully taken by Islam from  
5 Atlantis and provided by her to the GSR (loaded into the GSR database), which  
6 undisputedly included the customers' names, address, telephone number and  
7 contact information, was not a trade secret and therefore its use was not a violation  
8 of the UTSA. 7 App. 1459:28-1461:2.

9 The evidence demonstrated that GSR was in violation of the UTSA. In  
10 applying the test set forth by this court in *Frantz*, the actions of GSR meet the first  
11 prong in that it acquired valuable trade secrets of Atlantis. Based upon the  
12 evidence at trial, the district court was undeniably correct in finding that Islam had  
13 acquired the valuable trade secrets of Atlantis. 6 App. 1305:17-1307:24. It was  
14 the view of all of the gaming executives that testified, regardless of whether they  
15 worked for Atlantis or GSR, that a list of high value gaming guests was something  
16 that they understood to be proprietary and trade secret information of each  
17 property. *See* fn.7 *supra*. The information that Islam secretly copied onto the  
18 spiral notebooks constituted such a list. 6 App. 1307:20-22. Similarly, the other  
19 information enumerated by the district court in the list of 19 items of trade secrets  
20 in the gaming industry was admitted to have been taken by Islam from Atlantis and  
21 memorialized onto the spiral notebooks. 6 App. 1306:21-1307:19, 25 App. 5436-  
22 26 App. 5712 (handwritten list). Thus, there is no dispute regarding the first prong  
23 and the existence of valuable trade secrets.<sup>14</sup>

24  
25  
26 <sup>13</sup> Necessarily implicit in the trial court's ruling is the conclusion that the customer  
27 lists and contact information downloaded from the Atlantis database by Islam  
28 constituted trade secrets of Atlantis. *Id.*

<sup>14</sup> *See also* the analysis *supra* at heading 2, establishing that in addition, the list  
taken by Islam, itself, constituted a UTSA protected trade secret.

1 Misappropriation was also proven under the UTSA and the second prong of  
2 *Frantz*. The fact that GSR used the Atlantis trade secret information is clear. It  
3 was undisputed that the trade secret information of Atlantis had been provided to  
4 GSR by Islam and used by the GSR to successfully market and solicit highly  
5 valued Atlantis gaming guests. 14 App. 2966:4-2967:11, 2978:22-2979:1, 2980:1-  
6 9, 2981:15-18; 15 App. 3059-3064:11, 3089:13-20, 3090:7-3093:16, 3098:4-  
7 3099:23; 21 App. 4376-4389 (List of guests coded to Islam at GSR, including 220  
8 guests added to GSR database by her); 25 App. 5436- 26 App. 5712 (handwritten  
9 guest list produced by Islam from Atlantis Data); 21 App. 4451-22 App. 4579  
10 (GSR Spreadsheets evidencing special offers extended by GSR based upon  
11 information provided by Islam) and 22 App. 4688-4735 (GSR record of free play  
12 advanced including free play at Islam’s direction).

13 It was admitted that Islam had added approximately 220 guests to the GSR  
14 marketing database and that she had added not only persons known to her because  
15 they were assigned to her as a host at Atlantis, but also guests that were assigned to  
16 other Atlantis hosts. 15 App. 3071-3084 and 3110:17-3111:1. The district court  
17 found that “other hosts’ customers” were a trade secret. 6 App. 1306:24 (8/26  
18 FFCL) and 7 App. 1457:28 (10/1 FFCL). Thus, the transfer and use by GSR of the  
19 information related to those 50 to 100 guests establishes a violation of the UTSA.  
20 The district court erred in failing to hold GSR accountable for that violation.

21 There was also ample, undisputed evidence and examples, including the  
22 admissions of Islam and GSR, of the use of Atlantis trade secret information by  
23 GSR both through the direct efforts of Islam on behalf of GSR and also by GSR  
24 marketing and solicitation offers including offers of free play. Specifically,  
25 Christian Ambrose, GSR’s Director of Planning and Analysis, explained to the  
26 district court that GSR management dictated the value of the offers he was sending  
27 to Islam-identified guests based upon information provided by Islam. 18 App.  
28 3793:22-3794:11-3795:4, 3808:2-3809:2, 3823:8-3824:1 (Ambrose); 21 App.

1 4451-4513; 22 App. 4543 (GSR Spread sheets of Islam directed offers for April 1-  
2 23, April 24-May 23, May 24-June19, June 20-July 17 for Non-Locals) and 22  
3 App. 4544-4579 (GSR Spread sheets of Islam directed offers for April 1-23, April  
4 24-May 23, May 24-June19 for Locals). Ambrose further testified that the offers  
5 were outside the normal course of business and had values far in excess of what the  
6 play exhibited from the players would otherwise have justified under the existing  
7 GSR business practices. 18 App. 3812:2-3813:13, 3823:20-3824:1 (Ambrose).  
8 Plainly stated, GSR changed its marketing and offer formula because of  
9 information it learned from Islam about these Atlantis customers. 26 App.  
10 3314:11-14 (Hadley). Thus, it was admitted by GSR's head of marketing that it  
11 used the intelligence of Atlantis that it received from Islam to its commercial  
12 advantage.

13 A third use of the Atlantis trade secret information by GSR was in the form  
14 of the letters sent to individual guests with Islam's photo. 21 App. 4330-4337.  
15 Based upon an email sent by Islam to GSR counsel Steve Cohen, prior to the filing  
16 of the subject suit, it appears that approximately 350 of these marketing letters  
17 were sent. 15 App. 3164:9-3166:22 (Islam on letter solicitations) and 25 App.  
18 5320-5328 (April 12 emailed list to GSR counsel Steve Cohen). As with the other  
19 solicitations, Islam testified that she determined how much to offer the prospective  
20 guest based upon the value (worth) and play she was aware of due to her  
21 employment with Atlantis. Although the handwritten information within the spiral  
22 notebooks includes information regarding the tier rating and value of the guests  
23 and even credit or marker information and was the likely source, regardless of  
24 whether the information is coming from the notebooks or her memory, if that  
25 information is applied to formulate an offer that would not otherwise be extended  
26 by the GSR, it is the use of the information and a clear violation of the UTSA.  
27 *Frantz* at 467, 999 P.2d at 359.

1           The final *Frantz* requirement, that the misappropriation be wrongful, was  
2 also indisputably satisfied based upon the evidence at trial. There was not a shred  
3 of evidence, either direct or circumstantial, that Atlantis had authorized or  
4 consented to the use of any of the information which Islam provided to GSR.  
5 Rather, all evidence was the opposite. Islam was subject to numerous contracts  
6 prohibiting the transfer of the information and also a Non-Compete Agreement  
7 that, had it been observed, would have provided for a one year cool off period  
8 which was intended to extinguish the likelihood of improper information transfer  
9 between Islam and GSR. 21 App. 4264-4289. Lastly, the misappropriation by the  
10 GSR was wrongful as it occurred after a cease and desist letter had been received,  
11 after the lawsuit was instituted, and even after restraining orders were in place.<sup>15</sup>

12           As set forth in the plain terms of the statute, GSR has engaged in  
13 “misappropriation” because it, at the very least, used Atlantis trade secrets without  
14 the consent of Atlantis at times when it had reason to know that the trade secrets  
15 had been “derived from or through a person who owed a duty to the person  
16 seeking relief to maintain its secrecy or limit its use.” Even if the district court  
17 excused the use of the Atlantis trade secrets until the cease and desist letter on  
18 April 6, 2012, GSR used all of the information for at least the next four to five  
19 months, and the evidence establishes that the GSR was still using the information  
20 a year and three months after receiving the cease and desist letter. 22 App. 4736-  
21 4741 (email string between Ambrose and Hadley); 18 App. 3837:14-3849:4  
22 (Ambrose) and 16 App. 3332:6-3348:21 (Hadley).

23           Although only one impropriety need be shown, as set forth above, there is no  
24 question that Islam used *improper means* to acquire knowledge of the trade secret.  
25 Her behavior falls within the definition of NRS 600A.030 (1)(e) as the district  
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27 <sup>15</sup> See, NRS 600A.030 definitions which mirror these circumstances.  
28



1 court found Islam breached her contracts with Atlantis which were designed to  
2 maintain the secrecy of the information. Additionally, the information was derived  
3 through a person, Islam, in violation of the duty she owed to the Atlantis to  
4 maintain its secrecy or limit its use. *See* NRS 600.030(2)(c)(2)(III).

5 Although the above basis would be adequate to compel a finding against  
6 GSR, at trial Atlantis also established that GSR misappropriated Atlantis' trade  
7 secrets by improper means through hiring Islam in knowing violation of the Non-  
8 Compete Agreement, and that it did so in order to access and use the trade secrets  
9 of Atlantis that Islam acquired through her employment with Atlantis. If this court  
10 determines that GSR interfered with the Non-Compete Agreement, which is truly  
11 the case, that alone would form a separate basis for the finding of wrongful  
12 misappropriation.<sup>16</sup> In other words, pursuant to statute, if the Non-Compete  
13 Agreement is valid and GSR is found to have willfully induced its breach, that is  
14 an additional basis that subjects GSR to liability under the UTSA. NRS  
15 600A.030(1)(e) & NRS 600A.030(2)(c)(1).

16 **4. Actions Undertaken by GSR to Use Atlantis Trade Secrets**  
17 **Rather than to Ensure it was not Using the Trade Secrets of**  
18 **Atlantis**

19 The district court erred not only by failing to recognize that GSR had  
20 violated the UTSA, but also that the violation was intentional. GSR's willful intent  
21 was evident by its misrepresentation to Atlantis that it had conducted an  
22 investigation and identified no wrongdoing, as well as its continued use of Atlantis  
23 trade secrets even following the service of suit and the entry of injunctive orders  
24 precluding the use of the information. Atlantis contends those actions demonstrate  
25 a willful intent to violate the UTSA. In fact, because GSR likely continues to use  
26

27 \_\_\_\_\_  
28 <sup>16</sup> That finding would also establish a basis for reversal of the dismissed tortious  
interference with contract claim.

1 this information,<sup>17</sup> the violation, and therefore damage, likely continues. If indeed  
2 the information misappropriated by Islam from Atlantis and then provided by  
3 Islam to the GSR, as supported by the district court's August 26, 2013 Order, is  
4 trade secret information protected under Nevada law, its use by GSR must also be  
5 a violation of the UTSA.

6 GSR's affirmative use of Atlantis' trade secret information is established by  
7 the evidence already discussed and other substantial and undisputed evidence and  
8 testimony at trial including several trial exhibits. Principal among these were the  
9 following:

- 10 1. Exhibits 10-13, 21 App. 4330-4337 (Examples of GSR solicitations to  
11 Atlantis guests),
- 12 2. Exhibit 19, 21 App. 4376-4389 (GSR list of guests coded to Islam at  
13 GSR showing the addition of 220 guests during Islam's employment),
- 14 3. Exhibits 31 and 42, 21 App. 4413-4417 and 22 App. 4619-4626 (GSR  
15 Revenue reports for 2011 and 2012 exhibiting GSR's Revenue from  
16 guests added to marketing database by Islam and the growth in revenue  
17 from guests already known to GSR but now hosted by Islam),

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18  
19  
20 <sup>17</sup> GSR makes the rather dubious contention that once entered, the misappropriated  
21 information may not be capable of being removed from its computer database. 21  
22 App. 4376-4389 (Ex. 19); 18 App. 3804:20-3806:14(Ambrose); 16 App. 3337:7-  
23 13; 16 App. 3338:2-4 (Hadley). In August 2012, if guests coded to Islam were not  
24 designated as "do not invite" they would continue to receive monthly solicitations.  
25 16 App. 3347:1-5. Since the suspension of Islam, guests coded to her that she  
26 added to system could receive monthly solicitations if they continued to play. 16  
27 App. 3348:9-21. GSR continued to use all of the information for at least the next  
28 four to five months after the April 6, 2012 cease and desist letter, and the evidence  
establishes that the GSR was still using the information a year and three months  
after receiving the cease and desist letter. 22 App. 4736-4741 (email string  
between Ambrose and Hadley); 18 App. 3837:14-3849:4 (Ambrose) and 16 App.  
3332-3348 (Hadley).

- 1 4. Exhibit 32, 21 App. 4418-4450 (Expert report of GSR retained expert  
2 demonstrating revenue made by GSR from Islam coded guests and  
3 alternative methods to calculate damages to Atlantis for falsification of  
4 data and 202 guests identified by Atlantis as added to GSR database by  
5 Islam),
- 6 5. Exhibits 33-40, 21 App. 4451-22 App. 4579 (GSR spreadsheets  
7 exhibiting special, enriched, marketing offers extended by GSR to  
8 prospective guests based upon information provided by Islam to GSR  
9 marketing),
- 10 6. Exhibit 41, 22 App. 4581-4586, 4605, 4613-4618 (emails from Islam to  
11 GSR marketing directing offers be extended to particular guests and  
12 setting forth the level of the offer to be extended) 22 App. 4607-4610,  
13 4611-4612(emails from Ambrose to other GSR management related to  
14 the special offers, the precedent set and the fact that the offers were  
15 “outside of our [GSR’s] established criteria”),
- 16 7. Exhibit 48, 22 App. 4684-4687 (Emails from Islam to GSR staff  
17 requesting free play for groups of players),
- 18 8. Exhibit 49, 22 App. 4688-4735 (GSR chart recording redeemed free play  
19 for Islam coded players),
- 20 9. Exhibit 50, 22 App. 4736-4741 (Emails between GSR management  
21 demonstrating tardy compliance with district court’s injunctive order by  
22 adjusting solicitations to at most 39 guests),<sup>18</sup>
- 23 10. Exhibit 51, 23 App. 4742-4789 (emails related to Islam requests to  
24 modify or extend marketing offers to prospective guests often patently  
25 based upon Atlantis proprietary information),
- 26

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27 <sup>18</sup> Atlantis maintains that there were significantly more than these 39 guests who  
28 received improper GSR communications and who fell within the scope of the  
restraining order.

1 11.Exhibit 65, 23 App. 4936-4937 (email responding to offer made to  
2 Atlantis guest Mark D),

3 12.Exhibit 84, 28 App. 6021-6049 (GSR responses to requests for  
4 admission).

5 As described in these exhibits, many of the emails sent by Islam to GSR  
6 management, included information that was determined by the district court to be  
7 trade secrets of Atlantis. Through these emails Islam requested that GSR market to  
8 these players by enticing them with certain offers that would cause them to move  
9 their preferred gaming venue from Atlantis to GSR. The objective evidence of  
10 GSR's use of this information, that the Atlantis contends and the district court  
11 found to be its trade secret information, is undeniable and was admitted.

12 GSR admitted the incorporation and use of the information from Islam.  
13 Exhibit 19 contained a list of over 200 Atlantis guests added to the GSR database  
14 by Islam. Based upon the testimony of GSR witnesses Shelly Hadley and  
15 Christian Ambrose, this information is still held by the GSR. 21 App. 4376-4389  
16 (Ex. 19); 18 App. 3804:20-3806:22 (Ambrose) 16 App. 3337:7-13 and 16 App.  
17 3338:2-4 (Hadley). Exhibits 31 and 42 showed the "Net Win Loss" admitted by  
18 the GSR to be associated with these Islam guests. 21 App. 4413-4417; 22 App.  
19 4619-4626 and 19 App. 3895:13-3912:18 (Aguero). Exhibits 33-40 indicated the  
20 special offers (using intelligence from Atlantis to make offers in excess of GSR  
21 policy) extended by the GSR to guests and possible guests at the request of Islam.  
22 21 App. 4451-22 App. 4579. Exhibit 49 demonstrated the free play solicitations  
23 that Islam had sent by letter that had been redeemed by guests between Feb 25,  
24 2012 and May 1, 2012. 22 App. 4688-4735.

25 GSR also admitted that it did little to comply with the injunctive orders of  
26 the district court. Exhibit 50 and the related GSR employee testimony  
27 demonstrated the efforts of GSR in August 2012 to comply with the court's  
28 injunctive Order, thus further confirming use of the information by GSR. These

1 communications and related testimony indicated that GSR modified its marking to  
2 less than 40 guests. Yet the evidence proved that far greater number of guests had  
3 been impacted and that many of these were hosted by other persons at Atlantis and  
4 therefore not even an arguable part of Islam's book of trade. Exhibit 59, 23 App.  
5 4882-4895, and the testimony of Brandon McNeely, set forth the approximately  
6 200 guests which GSR identified in Exhibit 19 as having been added to the GSR  
7 database by Islam. Also included in the spreadsheet in Exhibit 59 is the identity of  
8 the Atlantis host for each guest when Islam terminated her employment with  
9 Atlantis as well as the change in revenue observed for each guest. Thus, Exhibits  
10 19 and 59 provided the district court with the identities of the "other host's guests"  
11 whose information had been provided by Islam to GSR.<sup>19</sup> The intentional nature  
12 of this conduct was also irrefutably evident. Trial exhibits 31, 41, 49 and 50  
13 further demonstrate the GSR's use of the information provided by Islam to directly  
14 market to Atlantis guests based upon information received from Islam and based  
15 upon knowledge obtained as a consequence of her employment with Atlantis.

16 The application of the UTSA and Nevada case law to the overwhelming  
17 evidence presented at trial establishes that the district court erred by dismissing all  
18 claims against GSR related to trade secret violations. GSR, in fact, violated the  
19 UTSA.

20 **B. The Trial Court's Dismissal of Atlantis' Claim of Tortious Interference**  
21 **was Improper**

22 If this court determines that the district court erred in its ruling that the Non-  
23 Compete Agreement between Islam and Atlantis was overly broad and entirely  
24 unenforceable as a matter of law, its dismissal of the claims related to interference  
25 with that contract is also erroneous and should be reversed. 7 App. 1460:22-27.

26  
27  
28 <sup>19</sup> This is significant as other hosts' guests were found by the district court to be a  
trade secret.

1 In its decision from the bench and in the findings and conclusions, the  
2 district court discussed and may have relied upon an affirmative defense of advice  
3 of counsel regarding the GSR's decision to employ Islam in the face of the Non-  
4 Compete Agreement. 7 App. 1457:11-12 (FFCL) and 20 App. 4260:10-16(Oral  
5 Decision). This affirmative defense was not raised in the GSR Answer pursuant to  
6 NRCPC 8(c), in any other fashion in advance of trial, and arguably was not even  
7 raised by GSR at trial. 1 App. 227-233. Nor was there adequate evidence to  
8 support such a defense. Despite this, the statements and findings of the district  
9 court erroneously reflect that such advice had been admitted when in fact no such  
10 evidence exists within the record, let alone was presented in trial. Therefore, to the  
11 extent the district court relied upon the defense of advice of counsel in reaching its  
12 decision, 20 App. 4259:17-19, 4260:10-16, it has erred. If the dismissal of any  
13 claim was based upon that mistaken affirmative defense, the decision in that regard  
14 should be reversed.

15 **C. The Trial Court's Sua Sponte Award of GSR's Attorney's Fees Is**  
16 **Unsupported By Statute and The District Court's Own Findings**

17 **1. The Record Does Not Support Awarding Attorney's Fees Under**  
18 **NRS 600A.060**

19 The award of attorney's fees against the Atlantis and in favor of the GSR (in  
20 the amount of \$190,124.50) is wholly unsupported and should be vacated. Upon  
21 announcing his decision from the bench on July 18, 2013, Judge Flanagan had  
22 fully exited the courtroom, but returned a minute later, stating simply "back on the  
23 record judgment in favor of GSR, fees and costs of litigation against the Plaintiff."  
24 20 App. 4262:7-8. No basis for this award was stated by the district court, no  
25 request for fees and costs had been made by GSR at trial or in argument, and  
26 Atlantis was not given notice and an opportunity to be heard on the attorneys' fee  
27 issue before the district court made the surprise afterthought ruling from the bench.

28 The district court's September 27, 2013 Findings of Fact and Conclusions of  
Law and Judgment favoring GSR belatedly attempted to support the *sua sponte*

1 award of attorney's fees, citing to NRS 600A.060, which allows for an award of  
2 attorney's fees if a claim of misappropriation of a trade secret is made in bad faith.  
3 7 App. 1461:3-25. However, this finding of bad faith cannot possibly be supported  
4 in light of the background and history of the case, as well as the evidence adduced  
5 at trial, the district court's multiple rulings in favor of Atlantis, and statements in  
6 its decision from the bench and findings elsewhere bearing on the issue.

7         The relevant case history includes the entry of a Temporary Restraining  
8 Order, which was entered in favor of Atlantis and against the GSR by the district  
9 court, and thereafter the Preliminary Injunction in favor of Atlantis, which was  
10 stipulated to by GSR and remained in place through the entire term of the litigation  
11 below. 2 App. 280-283 and 2 App. 329-337. These orders alone show an implicit  
12 finding by district court that Atlantis had a reasonable likelihood of success on the  
13 merits, and that the action was not brought in bad faith. *See e.g., Dixon v.*  
14 *Thatcher*, 103 Nev. 414, 415-17, 742 P.2d 1029, 1029-31 (1987)(party seeking  
15 preliminary injunction must establish reasonable likelihood of prevailing on  
16 merits); and *Sobol v. Capital Management Consultants, Inc.*, 102 Nev. 444, 446,  
17 726 P.2d 325, 337 (1986)(preliminary injunction is available upon a showing of a  
18 reasonable probability of success on the merits).

19         Additionally, claims against GSR by Atlantis were not defeated by any  
20 pretrial motions to dismiss or motions for summary judgment, and the claims were  
21 not dismissed at trial on any motions by GSR for judgment as a matter of law. *Cf.*  
22 *Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1354, 971 P.2d 383, 387 (1999)(survival of  
23 claims through pretrial proceedings and motions at trial tends to show that the  
24 claims were supported by evidence and were well-grounded, even though the  
25 claims ultimately failed).

26         Also in conflict with a finding that the claim against GSR and its pursuit  
27 was in bad faith, is the determination by the district court that “[t]he Atlantis  
28 **reasonably initiated litigation.**” *See* 6 App. 1301:24 (FFCL) and 20 App.

1 4260:10 (Oral Decision; emphasis added). This statement was made by the  
2 district court in its decision from the bench while discussing the claims against the  
3 GSR. If Atlantis “reasonably initiated litigation,” as the district court expressly  
4 found, it is axiomatic that Atlantis did not do so in bad faith.

5 The drafters of Uniform Trade Secret Act (“UTSA”), as well as the Nevada  
6 State Legislature adopting the uniform law, included the attorneys’ fee provision  
7 “as a deterrent to specious claims of misappropriation.” Unif. Trade Secrets Act,  
8 §4, Cmt. Specifically, it provides that the court *may* award *reasonable* attorneys’  
9 fees to the *prevailing party* if a claim of misappropriation is made in *bad faith*.  
10 Unif. Trade Secrets Act, § 4(i) and NRS 600A.060(1). The comments further  
11 specify that “patent law is followed in allowing the judge to determine whether  
12 attorneys’ fees should be awarded even if there is a jury, *compare* 35 U.S.C. § 285  
13 (1976).”

14 Since neither the UTSA, nor Nevada’s adoption of same in NRS 600A *et*  
15 *seq.* defines “bad faith,” it is appropriate to look to 35 U.S.C. § 285 which  
16 provides: “[t]he court in exceptional cases may award reasonable attorney’s fees to  
17 the prevailing party.” An exceptional case has been defined as “inequitable  
18 conduct, litigation misconduct, willful infringement or that the opposing party’s  
19 conduct was vexatious, frivolous or otherwise in bad faith.” *See Phonometrics,*  
20 *Inc. v. Westin Hotel Co.*, 350 F.3d 1242, 1246 (Fed. Cir. 2003). “‘Weak’  
21 allegations of infringement that aren’t in bad faith or otherwise frivolous have  
22 been not held to be ‘exceptional.’” *Porter v. Farmers Supply Service, Inc.*, 790  
23 F.2d 882, 886 (Fed. Cir. 1986). Typically, courts consider whether the parties  
24 acted in bad faith, whether the attorney used frivolous or abusive tactics, or  
25 whether the case was not close or otherwise meritless. *See Perricone v. Medicis*  
26 *Pharmaceutical Corp.*, 432 F.3d 1368, 1380 (Fed. Cir. 2005).

27 For attorney’s fees to be awarded under § 285, the Federal Circuit requires a  
28 prevailing defendant to prove both (1) that the litigation is brought in subjective



1 bad faith, and (2) the litigation is objectively baseless. *See ICU Medical, Inc. v.*  
2 *Alaris Medical Systems, Inc.*, 558 F.3d 1368, 1379-80 (Fed. Cir. 2009); *Wedgetail,*  
3 *Ltd. v. Huddleston Deluxe, Inc.*, 576 F.3d 1302, 1304-05 (Fed. Cir. 2009). Absent  
4 evidence of subjective bad faith, a prevailing defendant is not entitled to recover  
5 attorney’s fees. *Id.*; *Brooks Furniture Mfg., Inc. v. Dutailier Int’l, Inc.*, 393 F.3d  
6 1378, 1381 (Fed. Cir. 2005) (reversing exceptional case finding against plaintiff  
7 based on lack of proof of subjective bad faith).

8 Thus, in analyzing UTSA attorney’s fees under analogous patent law, none  
9 are awardable against Atlantis because the litigation was not brought in subjective  
10 bad faith, nor was it objectively baseless. “To be objectively baseless, the  
11 infringement allegations must be such that no reasonable litigant could reasonably  
12 expect success on the merits.” *See Gabriel Technologies Corp. v. Qualcomm Inc.*,  
13 2013 U.S. Dist. LEXIS 14105 (S.D. Cal Feb. 1, 2013) *citing Dominant*  
14 *Semiconductors Sdn. Bhd. v. OSRAM GmbH*, 524 F.3d 1254, 1260 (Fed. Cir.  
15 2008). In fact, the District Court, after a hearing, entered a Temporary  
16 Restraining Order (“TRO”) against GSR on July 5, 2012 by finding a likelihood of  
17 Plaintiff’s success on the merits. *See* 2 App. 280-283 (TRO). Furthermore, GSR  
18 would not have stipulated to a Preliminary Injunction on August 24, 2012, entered  
19 by the Court on that same day on the same terms as the TRO, if it felt that the  
20 litigation had been brought in subjective bad faith or was objectively baseless. *See*  
21 2 App 329-337 (Stipulation for Preliminary Injunction).

22 Finally, the Findings of Fact and the Conclusions of Law in favor of GSR  
23 cite to a failure of the Atlantis to prove any “credible evidence” at trial that GSR  
24 misappropriated trade secrets belonging to the Atlantis. Credibility is a question  
25 of fact to be decided only by the trier of fact. Since credibility is a subjective  
26 determination, it cannot be the foundation to find the litigation to be objectively  
27 baseless. “Furthermore, even if the claim is objectively baseless, it must be shown  
28 that lack of objective foundation for the claim ‘was either known or so obvious

1 that it should have been known' by the party asserting the claim.” *See Gabriel,*  
2 *supra, citing In re Seagate Tech., LLC*, 497 F.3d 1360, 1371 (Fed. Cir. 2007).

3 This requirement of subjective bad faith of Atlantis is also lacking. Indeed, the  
4 course of the litigation demonstrates that Atlantis believed and continues to  
5 believe that GSR is in violation of the UTSA.

6 Moreover, “bad faith” has been defined differently by states in interpreting  
7 their version of the UTSA to include, “brought without substantial justification,  
8 either in whole or in part” with the phrase “without substantial justification  
9 mean[ing] that the claim is frivolous, groundless in fact or in law, or vexatious, or  
10 interposed for any improper purpose. ...” *See Ex Parte Water Jet Sys., Inc.* 758  
11 So. 2d 505, 509 (Ala. 1999). Other courts have applied a subjective test for bad  
12 faith, holding that “bad faith could not exist where the claim has some legal and  
13 factual basis when considered in light of the reasonable belief of the individual  
14 making the claim.” *Russo v. Baxter Healthcare Corp.*, 51 F. Supp. 2d 70, 76  
15 (D.R.I. 1999).

16 Atlantis’ Complaint was not brought or maintained in bad faith as there was  
17 evidence presented at trial that GSR knew or had reason to know that the trade  
18 secrets of the Atlantis that it acquired and utilized (and continues to utilize) were  
19 acquired by Islam by improper means. NRS 600A.030(2). GSR was specifically  
20 given notice of this fact by certified letter from Atlantis General Counsel on April  
21 6, 2012, by the Verified Complaint filed on April 27, 2012 and by the May 3,  
22 2012 Ex Parte Application for TRO and the litigation that followed.

23 Furthermore, the evidence included emails sent by ISLAM to GSR  
24 management, which included information that was determined by the district court  
25 to be trade secrets of Atlantis. The objective evidence of GSR’s use of this  
26 information, that the Atlantis contends, and the district court found, to be its trade  
27 secret information, was admitted at trial in several trial exhibits and discussed at  
28 length above. The evidence is unequivocal that GSR was (and remains) in

1 possession of Atlantis trade secret information which it used to its commercial  
2 advantage. Atlantis' claim of trade secret misappropriation against GSR was not  
3 pursued in bad faith at trial or in this appeal.

4 It is only through the district court's factually erroneous and conflicting  
5 determination of what is a trade secret that GSR was immunized from a finding  
6 that it misappropriated trade secrets. It is the assertion of Atlantis in this appeal  
7 that the district court erred in so finding, and that the objective evidence at trial  
8 could only support a conclusion that GSR violated the UTSA.

9 Moreover, consistent with Nevada law and NRCP 11, the definition of bad  
10 faith in NRS 600A.060(1) should be compared to and applied consistent with  
11 sanctionable conduct under NRCP 11. Under NRCP 11, conduct is not  
12 sanctionable if it is: 1) not being presented for any improper purpose, such as to  
13 harass or to cause unnecessary delay or needless increase in the cost of litigation;  
14 2) the claims, defense and other legal contentions therein are warranted by existing  
15 law or by a non-frivolous argument for the extension, modification or reversal of  
16 existing law or the establishment of new law; 3) the allegations and other factual  
17 contentions have evidentiary support or, if specifically so identified, are likely to  
18 have evidentiary support after a reasonable opportunity for further investigation or  
19 discovery; and 4) the denials of factual contentions are warranted on the evidence  
20 or, if specifically so identified, are reasonably based on a lack of information or  
21 belief.

22 Thus, under NRCP 11, in order for Atlantis' claim of misappropriation by  
23 GSR to have been made in bad faith, it must be both baseless and made without a  
24 reasonable and competent inquiry. *See Bergmann v. Boyce*, 109 Nev. 670, 856  
25 P.2d 560 (1993). As indicated above, Atlantis' claim of misappropriation against  
26 GSR was not baseless as there is significant, indeed overwhelming, evidence in  
27 the record to support same. For these reasons, Atlantis submits that the court erred  
28

1 in finding its claim of misappropriation against GSR was made in bad faith and its  
2 award of fees under this statute was also error.

3 **2. Attorney's Fees Under The Offer Of Judgment Provisions**

4 The district court ultimately awarded GSR \$190,124.50 in attorney's fees  
5 against Atlantis based on Nav-Reno-GS, LLC's \$75,000 Amended Offer of  
6 Judgment served on May 20, 2013. 10 App. 2161-2163. As evidenced by the  
7 caption, Nav-Reno-GS, LLC is not a party to this litigation.

8 a. Nav-Reno-GS, LLC's Offer of Judgment is Invalid

9 The district court found the Offer of Judgment by the non-party was valid  
10 because the facts suggested that Atlantis was aware of the identity of the offeror.  
11 However, at the time that the Offer of Judgment was made on May 20, 2013, Nav-  
12 Reno-GS, LLC did not even exist (it had ceased to exist as of October 1, 2012),  
13 Nav-Reno-GS, LLC was not the real party in interest, and Nav-Reno-GS, LLC had  
14 no authority or legal standing to make such an offer. 10 App. 2203-2207 and 10  
15 2260-2261. As such, the Offer of Judgment was ephemeral, invalid, could not be  
16 accepted and enforced by Atlantis and therefore cannot form a basis for an award  
17 of costs and fees. For this reason alone, the district court erred in awarding  
18 attorney's fees based upon an invalid offer of judgment.

19 b. GSR Cannot Show That The *Beattie* Factors Militate In Favor  
20 Of A Discretionary Award of Attorney's Fees

21 Even if the offer of judgment by the non-party was somehow valid in form,  
22 an award of fees is not supported under the governing law. This court has  
23 established factors that must be considered by district courts in determining  
24 attorneys' fee awards based on offers of judgment. Those factors include: 1)  
25 whether the plaintiff's claim was brought in good faith; 2) whether the offer of  
26 judgment was reasonable and in good faith in both its timing and amount; 3)  
27 whether the decision to reject the offer and proceed to trial was grossly  
28 unreasonable or in bad faith; and 4) whether the fees sought by the offeror are

1 reasonable and justified in amount. *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668  
2 P.2d 268, 274 (1983). The purpose of the offer of judgment rule “is not to force  
3 plaintiffs unfairly to forego legitimate claims.” *Id.*

4 In determining whether an offeree acted in bad faith or was grossly  
5 unreasonable in rejecting an offer and proceeding to trial, the district court should  
6 consider whether sufficient information was available to the offeree to determine  
7 the merits of the offer. *See Trs. of Carpenters for S. Nev. Health & Welfare Trust*  
8 *v. Better Building Co.*, 101 Nev. 742, 746, 710 P.2d 1379, 1382 (1985).

9 1. Atlantis’ Claim Was Brought In Good Faith

10 As admitted by both the district court (as set forth above) and GSR (10 App.  
11 2153:12.), it is undisputed that Atlantis’ claims against GSR were brought in good  
12 faith.

13 2. The Offer of Judgment Was Not Reasonable or In Good  
14 Faith In Both Its Timing and Amount

15 The offer of judgment was served on May 20, 2013, shortly before the start  
16 of trial. By that late date Atlantis had incurred both substantial costs and fees in  
17 discovery and trial preparation. In addition thereto, by this time in the  
18 proceedings, Atlantis and its experts had calculated its damages in excess of  
19 \$300,000 and possibly far greater,<sup>20</sup> Atlantis’ case survived GSR’s Motion In  
20 Limine to exclude all of Plaintiff’s damage experts and their opinions and  
21 reports,<sup>21</sup> and Atlantis had received GSR’s own expert’s opinion contending that  
22 under one of Atlantis’ offered theories, Plaintiff’s damages were in the several  
23 hundred thousand dollar range, between \$138,374 and \$322,872. 10 App.  
24 2231:16-18 and 21 App. 4423. Given this information, the \$75,000 Offer of  
25 Judgment was not reasonable or in good faith in both its timing and amount.

26 ///

27 \_\_\_\_\_  
28 <sup>20</sup> 23 App. 4882-4899.

<sup>21</sup> 5 App. 1065-1066.





1 the customer lists and other Atlantis trade secret information and used the  
2 information for its business advantage.

3 3. Reversal of the district court's finding that Atlantis' Non-Compete  
4 Agreement with Islam is overbroad, and an affirmative ruling that said agreement  
5 is enforceable as written, or alternatively, that the district court erred in failing to  
6 modify the objectionably overbroad covenant in order to preserve the contract; and  
7 that under either scenario, by hiring Islam in violation of the enforceable  
8 geographic and duration restrictions, GSR tortiously interfered with the Non-  
9 Compete Agreement between Atlantis and Islam.

10 4. Reversal of the attorney's fees awarded in favor of GSR and against  
11 Atlantis.

12 5. Remand to the district court for the limited purpose of determining  
13 appropriate damages and relief to be awarded against GSR and in favor of Atlantis  
14 in light of the rulings above. Specifically, Atlantis seeks a remand of the matter to  
15 the district court with the directive that, pursuant to NRS 600A.040, the district  
16 court shall impose an injunction prohibiting the GSR's use of the information it has  
17 received from Islam until such information is publicly available. This order  
18 should, at a minimum, prohibit the use of the information which the district court  
19 previously determined was illegally taken by Islam from Atlantis and shared by  
20 Islam and/or downloaded into the GSR's marketing database. Atlantis further  
21 requests that the Order of remand direct the district court to hold an evidentiary  
22 hearing, after a brief discovery period, to determine if the information in question  
23 was used by GSR after the receipt of the April 6, 2012 cease and desist letter and if  
24 the guests involved continued to frequent the GSR, what damages are  
25 appropriately awarded to Atlantis from GSR pursuant to NRS 600A.050 or if a  
26 royalty is appropriate to compensate Atlantis for that use. Lastly, if this court  
27 determines, that GSR's conduct was willful and therefore deserving of exemplary  
28 damages, the appropriate amount of those damages.



1 Respectfully submitted this 29<sup>th</sup> day of August, 2014.

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**ATTORNEY'S CERTIFICATE OF  
COMPLIANCE FOR APPELLANT'S OPENING  
BRIEF REGARDING GRAND SIERRA RESORT**

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[x] This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point font and type style Times New Roman.

I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, and contains 11,574 words.

Finally, I hereby certify that I have read this Opening Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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1 I understand that I may be subject to sanctions in the event that the  
2 accompanying brief is not in conformity with the requirements of the Nevada  
3 Rules of Appellate Procedure.

4 DATED this 29<sup>th</sup> day of August, 2014.

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1 **CERTIFICATE OF SERVICE**

2 I certify that on this date, I served a copy of the foregoing document upon all  
3 counsel of record by:

4  Mail on all parties in said action, by placing a true copy thereof enclosed in a  
5 sealed envelope in a designated area for outgoing mail, addressed as set forth  
6 below. At the Law Offices of Laxalt & Nomura, mail placed in that  
7 designated area is given the correct amount of postage and is deposited that  
8 same date in the ordinary course of business, in a United States mailbox in  
9 the City of Reno, County of Washoe, Nevada.

10  By electronic service by filing the foregoing with the Clerk of Court using  
11 the E-Flex system, which will electronically mail the filing to the following  
12 individuals at the email addresses set for the below.

13  By email to the email addresses below.

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