

1 the long run that really matters.

2 So I'm not saying that the casino wins or loses
3 in the long run. I'm saying when you analyze a customer,
4 the long run matters.

5 Q It's the goal of the casino, as you understand
6 it, that it wants to have a relationship with the players
7 where the players come back month after month and year
8 after year and continue to game at the resort?

9 A Yes.

10 Q And have you ever done a study for the Grand
11 Sierra Resort of the lifetime value of a guest based upon
12 rating or anything else?

13 A No, I have not.

14 Q And you have not reviewed this chart for these
15 particular guests, which is found in Exhibit B?

16 A No, I have not.

17 Q And no one's asked you to review the Harvard
18 study or this chart or the application of that
19 methodology on these players and critique it?

20 A No, I have not.

21 Q Exhibit C is, basically, a narrative of the
22 methodology that was employed to arrive at the chart that
23 we've just looked at.

24 Again, you have not reviewed this document?

25 A No, I have not.

1 Q So you've not been asked to critique it and you
2 can offer no opinion today as to whether you think it's
3 appropriate or inappropriate?

4 A Yes.

5 Q Exhibit D after the narrative, one of the claims
6 for damage of my client is based upon a modification of
7 the -- well, a similar database as the Grand Sierra
8 Resort's, which we see in Exhibit 18, addresses, e-mails,
9 contact information.

10 And are you aware that that is a claim that's
11 being made in this case?

12 A No.

13 Q Just to paraphrase it for you, looking at
14 Exhibit 10, as I understand what the testimony in
15 evidence will be in this case, is there came a point in
16 time after Ms. Islam left the Atlantis and went on to the
17 Grand Sierra where guests began to complain that they
18 weren't receiving their offers. An audit was conducted
19 and it was revealed there were a number of modifications
20 to the database made just prior to Ms. Islam's departure.
21 The summary is found in Exhibit 10. Have you ever seen
22 this?

23 A No.

24 Q So nobody has asked you to review it or critique
25 it?

1 A No.

2 Q Exhibit 11 demonstrates the discrete
3 modifications that were made to, I think these
4 approximately 87 guests.

5 Again, have you ever seen this document?

6 A No, I have not.

7 Q And based upon your reaction, you were unaware
8 that this was a claim in this lawsuit until I've just
9 told you about it?

10 A Yes.

11 Q And going back to the Exhibit 34, the
12 attachment -- no, you're right. It was right in front of
13 you. These are foundational questions.

14 The attachment Exhibit D shows the number of
15 hours and the personnel at the Atlantis that was involved
16 in correcting those modifications.

17 Have you been asked to critique or render an
18 opinion as to whether these expenses were reasonable and
19 necessary?

20 A No.

21 Q Exhibit E, once -- I'll make a representation to
22 you that, once the -- "sabotage" is the word I've used,
23 but perhaps it's inflammatory. Once the modifications
24 were known and the Atlantis was concerned that the
25 information was also being -- guest information was being

1 added to the Grand Sierra database, there was a
2 mitigation program employed, and this document, as I
3 understand it, documents the expenses incurred in that.

4 Have you reviewed the mitigation program and
5 been asked to render an opinion to say whether it was
6 necessary or appropriate or whether these expenses were
7 reasonable?

8 A No.

9 MR. DOTSON: Let's take a short break. I know
10 I'll have additional questions, but I think it'll be most
11 efficient to me to look at my outline.

12 (Recess taken.)

13 BY MR. DOTSON:

14 Q Just a few additional questions, sir. The
15 quarterly analysis that you compile, how is it different
16 than Bates Stamp 3 where it says "Net theo, net
17 win/loss"? Obviously, I mean, the quarterly analysis
18 reviewing the hosts.

19 A Let me see.

20 Q And this is Exhibit 45.

21 A 45? So, obviously, this is a full year
22 look-back -- well, by definition it's a quarterly.

23 Q So the quarterly would only be January, February
24 and March?

25 A Right. So you'd be looking at their -- we have

1 transcript and make modifications.

2 If you make a substantive modification, that's
3 something that myself or counsel may comment on at a
4 later time.

5 Is there anything before we take a break --
6 because it's easier to fix it now -- any answers you want
7 to augment or modify?

8 A No.

9 MR. DOTSON: Okay. Counsel, do you have any
10 questions?

11 MR. JOHNSON: No.

12 MR. DOTSON: All right. Thank you, sir.

13 And for signature, Mr. Ambrose asked that we
14 send his copy to counsel and he will get it to you for
15 review.

16 Is the same procedure acceptable in your case?

17 THE WITNESS: Yes.

18 MR. DOTSON: Thank you very much.

19 (Whereupon, deposition was concluded at 3:37
20 p.m.)

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BILL SINGH

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CERTIFICATE OF WITNESS

I hereby certify under penalty of perjury that I have read the foregoing deposition, made the changes and corrections that I deem necessary, and approve the same as now true and correct.

Dated this _____ day of _____, 2013.

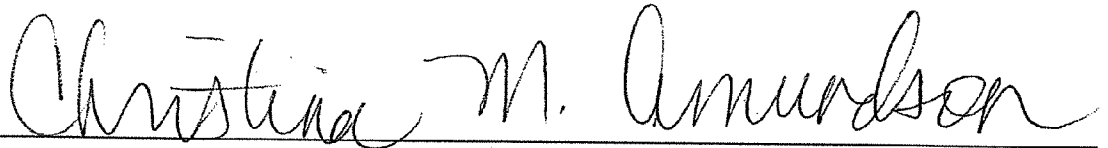
-o0o-

1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)
4

5 I, CHRISTINA MARIE AMUNDSON, a Certified Court
6 Reporter in and for the States of Nevada and California do
7 hereby certify:

8 That I was personally present for the purpose of
9 acting as Certified Court Reporter in the matter entitled
10 herein; that the witness was by me duly sworn;

11 That said transcript which appears hereinbefore was
12 taken in verbatim stenotype notes by me and thereafter
13 transcribed into typewriting as herein appears to the best
14 of my knowledge, skill, and ability and is a true record
15 thereof.

16 
17

18 Christina Marie Amundson, CCR #641 (NV), CSR #11883, (CA)

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1 **2245**
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8 Attorneys for Defendant SUMONA ISLAM

9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11
12 IN AND FOR THE COUNTY OF WASHOE

13 GOLDEN ROAD MOTOR INN, INC.,
14 a Nevada Corporation, d/b/a ATLANTIS
15 CASINO RESORT SPA,

16 Plaintiff,

Case No. CV12-01171

17 vs.

Dept. B7

18 SUMONA ISLAM, an individual;
19 NAV-RENO-GS, LLC, a Nevada
20 limited liability company, d/b/a
21 GRAND SIERRA RESORT; ABC
22 CORPORATIONS; XYZ PARTNERSHIPS;
23 AND JOHN DOES I through X,
24 inclusive,

25 Defendants.

26 **MOTION IN LIMINE**

27 Defendant Sumona Islam moves *in limine* for the Court to order that the Atlantis
28 cannot present evidence of alleged damages.

1 **1. Summary of Grounds**

2 The motion *in limine* is made on grounds that the Atlantis is attempting to offer
3 evidence of theoretical losses instead of proving from actual records that should have
4 been produced to all the parties that the Atlantis had any actual damages. The motion
5 also is made on grounds that the Atlantis has refused to produce records of alleged actual
6 damages despite the existence of a stipulated protective order and despite the defendants'
7 requests for such records.

8 **2. Authority for In Limine Motion**

9 A pretrial motion to determine admissibility of evidence is authorized by NRCP
10 16(c)(3) and Nevada case law. *State ex. rel. Dept. of Highways v. Nevada Aggregate and*
11 *Asphalt Co.*, 92 Nev. 370, 551 P.2d 1095 (1976) (motions in limine within the district
12 court's discretionary powers); *Nevada Civil Practice Manual*, 5th ed., Sec. 18.02 (2006)
13 (discussing the use of motions *in limine*).

14 **3. Purpose of Awarding Damages**

15 Damages are not awarded just because a claim has been made against the
16 opposing side, but where an award of damages is necessary to make the alleged
17 aggrieved party whole. *Hanneman v. Downer*, 110 Nev. 163, 172, 871 P.2d 279, 283
18 (1994). Many of the claims against Islam arise out of alleged breaches of agreements,
19 and the rule in such actions is the same: "[t]he purpose of money damages is to put the
20 injured party in as good a position as that in which full performance would have put
21 him." *Fuller v. United Electric Co.*, 70 Nev. 448, 452, 273 P.2d 136, 137 (1954).

22 **4. Proof Required for Award of Damages**

23 Like any other part of the case, there must be an evidentiary basis for damages. In
24 *Frantz v. Johnson*, 116 Nev. 455, 469, 999 P.2d 351, 360 (2000), the court stated:

25 With respect to proof of damages, we have held that a party seeking damages has
26 the burden of providing the court with an evidentiary basis upon which it may
27 properly determine the amount of damages. See *Mort Wallin v. Commercial*
28 *Cabinet*, 105 Nev. 855, 857, 784 P.2d 954, 955 (1989). Further, we have noted
that damages need not be proven with mathematical exactitude, and that the mere
fact that some uncertainty exists as to the actual amount of damages sustained will

1 not preclude recovery. See *Mort Wallin*, 105 Nev. at 857, 784 P.2d at 955. Finally,
2 this court has held that to meet this burden of proof, a party seeking damages may
3 utilize an expert economist to assist in the calculation of the total damages
4 sustained, provided this expert testimony is not speculative but is instead based on
5 facts known to the expert at the time. See *Freeman v. Davidson*, 105 Nev. 13, 16,
6 768 P.2d 885, 887 (1989); see also *Gramanz v. T-Shirts and Souvenirs, Inc.*, 111
Nev. 478, 485, 894 P.2d 342, 347 (1995) (holding that it is an abuse of discretion
for an expert to give an opinion on facts beyond his knowledge).

7 In *Clark County Sch. Dist. v. Richardson Constr., Inc.*, 123 Nev. 382, 397, 168 P.3d 87,
8 97 (2007), the Supreme Court reiterated these principles, stating as follows:

9
10 The plaintiff has the burden to prove the amount of damages it is seeking.
11 Although the amount of damages need not be proven with mathematical certainty,
12 testimony on the amount may not be speculative. Courts placing this burden on
13 the plaintiff generally maintain that an allegation that the plaintiff's damages are
14 speculative or not supported by proof need not be pleaded as an affirmative
defense because the plaintiff's burden of proving damages necessarily puts at issue
whether the damages are speculative.

15 See also, *Alper v. Stillings*, 80 Nev. 84, 87, 389 P.2d 239, 241 (1964) (damages for
16 alleged lost profits properly denied where the very existence of lost profits is uncertain);
17 *Central Bit Supply v. Waldrop Drilling & Pump*, 102 Nev. 139, 142, 717 P.2d 35,
18 37(1986) (a party seeking damages need not prove its damages with mathematical
19 precision, but it must establish a reasonable basis for ascertaining those damages).

20 **5. The Atlantis Improperly Intends to Offer Testimony of Theoretical**
21 **and Speculative Losses Which Are Not Reasonably Certain**

22 The Atlantis alleges “general and special damages in an amount in excess of
23 \$10,000” as a result of the alleged breach of contract, conversion, interference with
24 contractual relations, and misappropriation of alleged trade secrets by Islam. Islam has
25 denied the material allegations of the complaint, including the damages allegations.

26 The Atlantis claims it was damaged when Islam left in January 2012 to take a job
27 at the Grand Sierra. But the Atlantis can’t prove it, or, won’t produce the records to
28 prove it. Instead, the Atlantis is playing the odds. It argues that the odds are that it was
damaged, or would be damaged, over time, if players that were introduced to the Grand

1 Sierra by Islam stopped playing at the Atlantis, if any of them did, and if any of them
2 stopped playing over a long period of time.

3 Rather than attempt to describe the alleged “damages” claimed by the Atlantis
4 further, the following is a quote from the opposition filed by the Atlantis last week to the
5 Grand Sierra’s motion to compel documents concerning damages, in which the Atlantis
6 sets forth the rationale of its damage claims:

7
8 First, Atlantis utilized a theoretical analysis rather than actual gaming
9 analysis because actual gaming analysis contains too many variables including
10 free play, comps and the random chance noted by GSR. Gaming theoretical is the
11 amount of money that a guest will theoretically lose to the casino based on the
12 amount they wagered and the games that they played – it is calculated by using the
13 house advantage for each particular type of game. Atlantis then projected
14 theoretical for the time period in question which is a measure of expected revenue
15 based on historical play patterns, as defined by historical visitation frequency
16 multiplied by ADT (average daily theoretical) and compared that to the previous
17 year’s theoretical in order to determine the theoretical difference. This is the
18 variance between the anticipated gaming win had there been no interference
19 versus the anticipated gaming win after the relationship between Atlantis and these
20 guests had been impacted. As such, the actual gaming records of these 202 guests
21 are irrelevant to Plaintiff’s damage calculations and therefore GSR’s defenses.

22 Second, whether 46 of these 202 guests played at GSR is also irrelevant and
23 frankly has does nothing to support GSR’s purported need for gaming records.

24 Third, Plaintiff’s damage analysis is based on the average daily theoretical
25 win/loss of these 202 guests. Using an average is a statistically sound measure as
26 it weeds out the highs and lows. GSR appears to advocate using only the outliers
27 and only those that it believes would support its defense that Atlantis sustained no
28 damages. Such an argument is simply illogical. Moreover, contrary to GSR’s
allegation, the calculation does make allowance for those guests who played more
days at Atlantis in 2012 as opposed to 2011. A careful analysis of Exhibit A to the
Computation of Damages shows that some players did play more days in 2012 and
therefore those additions reduce the total days lost for these players and the 202
players as a whole. Moreover, Atlantis did not compute theoretical for guests who
gained trips as this would have increased its damages calculation.

Fourth, the win/lost history of these 202 players, as explained above has no
value because the real numbers are not used due to too many variables.

1
2 Fifth, "comps" and free play have already been deducted and taken into
3 consideration in calculating the theoretical. This is consistent with industry
4 standard.

5 Sixth, Atlantis has not assumed that every player coded to GSR by Islam
6 has abandoned the Atlantis and will never return. Rather, Atlantis calculated its
7 past lost revenue by two alternative damage methodologies for the time period of
8 2/1/12-8/31/12: (1) lost revenue and (2) gaming days lost. In order to access
9 future damages, or alternatively, as a reasonable royalty substitute for the above
per NRS 600A.050, Atlantis offered a Customer Lifetime Value Analysis for these
202 guests as supported by a study published by Harvard University. As
explained in Exhibit C to the Computation of Damages:

10 The "customer lifetime value" sheet is a computation of the total
11 customer lifetime value of each of the 202 guests that were identified as
12 being established in GSR's database after Sumona Islam was hired at GSR.
13 The columns in this sheet consist of a list of guest rating that were affected,
14 the total guest count, the average Customer lifetime value by Segment
15 (Rating) and the computation of the total count of guests affected by the
average customer lifetime value by segment. The guest rating and guest
count columns are a summation from the "Supporting data" worksheet.

16 Customer lifetime value is a metric used to evaluate and understand
17 the overall value of our customer base. This analysis was utilized by the
18 Atlantis before this incident and we believe it allows us to estimate the cost
19 of acquiring a customer in comparison to the overall benefit of maintaining
20 that customer throughout their gaming life. The analysis was conducted
21 using a study published in the Harvard business school titled "Customer
22 Lifetime Value Analysis". We were able to assign a customer lifetime
23 value to each of the ratings used in this analysis. The customer lifetime
value analysis and the values assigned are represented in the column
"Customer lifetime value by segment." The calculations for Customer
lifetime value by each individual segment were tabulated July 13, 2011.

24 The column "Count* CLV", is a product of the total guest count by
25 rating and the customer lifetime value by segment. The result is an
26 indication of total value of each customer and their expected theoretical as a
total of their gaming life.

27 Thus, as represented by Atlantis, CLV is an *indication* of the total value of
28 each of the 202 customers and their expected theoretical throughout their gaming
life. The court may feel it appropriate to apply a discount factor if it believes that

1 Atlantis may retain some of these guests and their play throughout their lifetime.
2 As such, CLV was provided as an evidentiary tool for the court to measure future
3 damages and apply a reasonable royalty.

4
5 The Atlantis damages model rests on the principle that actual gaming numbers for
6 the affected players are “irrelevant,” while theoretical numbers are the only numbers that
7 count. Even though the Atlantis has actual records for the affected players that it could
8 produce, the Atlantis refuses to produce them, arguing that its damages models based on
9 gaming theory and marketing strategy make only theoretical numbers, as opposed to
10 actual numbers, relevant.¹ This model leads the Atlantis to argue that all the affected
11 players would have gambled a certain amount, all of them would have lost (there are no
12 winners allowed), and the Atlantis therefore would have received profits from each
13 affected player accordingly. These results then are blown up to purportedly show years
14 of projected losses and millions of dollars in alleged “damages.”

15 The Atlantis has misplaced the important principle that the purpose of damages is
16 to make a party whole. *Hanneman, supra*. At this trial, the Atlantis will not be
17 attempting to offer evidence to compensate itself for any actual loss, but rather, to
18 compensate itself for a theoretical profit it would have made using a statistical game
19 called the “house advantage” which assumes losses occurred, assumes that no player ever
20 wins at any time at any game in a casino, and assumes that no player ever plays at more
21 than one casino. Replacing actual facts of what took place in 2012 with a theory about
22 what should have, or could have, taken place, is not allowed in a court of law. There
23 must be an evidentiary basis for damages, like any other element of a claim. *Frantz,*
24 *supra*. By avowedly rejecting actual facts in favor of theories, and refusing to produce
25 evidence of actual facts in lieu of theories, the Atlantis should be precluded as a matter of
26

27 ¹ The Atlantis does not acknowledge that the defendants might disagree with the
28 damages model of the Atlantis and the defendants might be entitled to present their own
evidence as to lack of damages using actual numbers.

1 law from seeking an award of alleged theoretical damages that it will not, and cannot,
2 prove with admissible evidence.

3 **6. Refusal to Produce Evidence Requested by the Defense**

4 The Atlantis chose to file this action claiming that customers were drawn away to
5 the Grand Sierra. The identity of those customers, whether they were in fact drawn away,
6 and whether their gaming changed as a direct and proximate cause of anything that was
7 wrongfully done by Islam are directly at issue in this case. If the Atlantis did not want
8 these issues litigated, it should not have filed this case.

9 On August 27, 2012, the Atlantis obtained a stipulated protective order covering
10 all information that was to be used in this action. The stipulated protective order included
11 "attorneys eyes only" documents for those documents that the Atlantis might find
12 particularly sensitive.

13 It might be expected that armed with this protective order, the Atlantis would then
14 produce the actual documents showing the gaming by the players in question.
15 Unfortunately, that was not the case. Merely for example, to rebut the claim that the
16 players went over to the Grand Sierra and no longer patronized the Atlantis, Islam asked
17 for records showing which executive casino hosts at the Atlantis are now servicing these
18 same players. The Atlantis refused this request with the argument that by giving up this
19 information, it would be giving up the very trade secret information it is trying to protect.
20 By way of another example, the Grand Sierra asked for the actual money wagered and
21 won by the players in question, and the Grand Sierra received a similar objection from
22 the Atlantis.

23 Obviously, if the Atlantis did not wish to produce the information to back up its
24 claims, it should not have filed this lawsuit. The Atlantis has refused to turn over records
25 that show what actually transpired with respect to these players. Its persistent refusal to
26 cough up the information, and its dogged insistence that only theoretical information is
27 relevant, leads to a plausible inference that if disclosed, the actual numbers would show
28 that the Atlantis was not damaged by anything done by Islam or by Grand Sierra.

1 To compound the unfairness of the Atlantis position in obtaining a protective order
2 for confidential information and then refusing to disclose actual gaming numbers because
3 they are allegedly confidential, the Atlantis has demonstrated over and over again that the
4 information being requested is literally at its fingertips, and could be turned over to the
5 defense quite easily, simply by inputting the proper search query into the Atlantis
6 computer system. The Atlantis will only input queries that the Atlantis believes will help
7 the Atlantis, however. The process of selective disclosure by the Atlantis ultimately has
8 led to many attempts by counsel to resolve the discovery disputes through meet and
9 confer communications, and arguments to and fro about whether certain documents are
10 "relevant" or "trade secret," even though it cannot reasonably be disputed that from the
11 standpoint of the defense, the information being requested is at the heart of the case.

12 The discovery process is now over, and the bottom line is that after bringing this
13 action over a year ago claiming that it was damaged "in an amount in excess of \$10,000"
14 by alleged disclosure of trade secret and confidential information, the Atlantis has refused
15 to produce records of any actual damage from alleged disclosure of trade secret and
16 confidential information. Having refused to produce actual information on these alleged
17 damages, the Atlantis should be precluded from offering theoretical numbers in lieu of
18 actual evidence of damages. The Court should grant this motion *in limine*, permitting the
19 Atlantis to present evidence on its claims for injunctive and declaratory relief and none
20 other.

21 DATED: May 28, 2013 LAW OFFICES OF MARK WRAY

22
23 By 
24 MARK WRAY
25 Attorney for Defendant SUMONA ISLAM
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CERTIFICATE OF SERVICE

The undersigned employee of the Law Offices of Mark Wray certifies that a true copy of the foregoing document was sealed in an envelope with first class postage prepaid thereon and deposited in the U.S. Mail at Reno, Nevada on

May 28, 2013 addressed as follows:

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Mark Wray

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AFFIRMATION

The undersigned certifies that this document does not contain the Social Security number of any person.

DATED: May 28, 2013


MARK WRAY

1 regarding many statements. In addition, the facts in the Opposition are told in the third-person,
 2 whereas an affidavit recites the facts from a first-person perspective, thus allowing counsel to
 3 cite to those facts; not vice versa. Set forth below is a listing of each statement that fails to
 4 comply with the rules for affidavits as well as the reasons:
 5

No.	Statement	Page	Objection
1.	"Sumona believes that Debra Robinson, the Atlantis in-house counsel, reviewed the contract."	8 lines 1-2	Speculation, Foundation
2.	"Sumona believes that in-house counsel Robinson handled the response to Harrah's letter."	8 lines 13-14	Speculation, Foundation
3.	"Santos informed her that Baly's list had been cherry picked by every host at the Atlantis already, including Santos, and for Sumona not to expect anything."	8 lines 19-20	Hearsay
4.	"Sumona learned that the home-grown Atlantis Executive Casino Hosts, like Susan Moreno, disliked the Executive Casino Hosts that came over from Harrah's."	9 lines 17-18	Speculation, Foundation, Relevance, Opinion/Conclusion
5.	"Moreno would not even exchange 'hellos'."	9 line 18-19	Foundation, relevance
6.	"Sumona felt like an outcast and commiserated with Santos"	9 line 19-20	Relevance, Opinion
7.	"Sumona knew that as an Executive Casino Host for the Atlantis, most of the time her numbers were better than other team members."	10 lines 4-5	Foundation
8.	"And even though she qualified for a bonus many times..."	10 lines 7-8	Foundation
9.	"Sumona was not impressed by that response, knowing that the Atlantis was buying a property in Colorado, and having heard John Farahi brag openly about how he had paid \$50 million cash toward the expansion of the Atlantis without having to borrow like the Peppermill had for its expansion"	10 lines 10-14	Foundation, Hearsay, Relevance, Opinion
10.	"Sumona felt trapped, angry and betrayed"	11 line 1	Relevance, Opinion
11.	"However, her daughter didn't want to move because her father lives in Reno and she had a new baby step-brother"	11 lines 9-10	Relevance
12.	"Antonetti said she did not want to take any more abuse from the Atlantis and she was trying to get a job somewhere else."	11 lines 13-14	Hearsay, Bolstering, Relevance
13.	"Antonetti suggested that when they both leave, they should take their players with them, meaning, change some of the contact information in the	11 lines 14-18	Hearsay, Bolstering, Relevance

1		program they used to keep track of their players, so it would not be so easy for Susan Moreno or Eden Moore to pirate their customer lists once Antonetti and Sumona were gone.”		
2	14	“...consistent with Sumona’s experience that players from the Atlantis gamble at other casinos.”	12 lines 26-27	Foundation, Speculation
3	15.	“In her experience, no casino owns exclusive rights to any player, and players gamble at more than one casino and have hosts at various casinos.”	12 lines 27-28	Foundation, Speculation
4	16.	“Sumona is the eldest daughter in her family. Her father had a heart attack and died four years ago at 52. Sumona’s mother had never worked in her life; Sumona now has responsibility for the welfare of her mother and daughter. The preliminary injunction and the maintenance of this lawsuit against her in general are substantial hardships on the sole wage earner of a household who needs to work in her field in order to save the book of business in which she invested her life for the past seven years.”	13 line 25 to 14 line 2	Relevance, Argument

Based on the foregoing objections, the Court should disregard ISLAM’s affidavit in full or in part.

C. There are no genuine disputed issues of material fact with regard to liability on Plaintiff’s claim for Breach of Contract—Confidentiality Agreements

Although ISLAM admits that she executed the Online System User Agreement, the Business Ethics Policy and Code of Conduct Agreement and the Trade Secret Agreement, all of the agreements in issue,¹⁷ she now disputes that these contracts were valid. First, she argues that the information concisely described in these agreements is not confidential as it is readily accessible to a reasonably diligent competitor. Second, she argues that ATLANTIS breached the employment agreement first by not giving her bonuses and merit increases that she was allegedly promised, thus justifying her breaches.

As to the first argument, the confidential nature of the information, ISLAM confuses whether there was a meeting of the minds when she signed the agreements (which is what is

¹⁷ See Amended Answer of Islam at ¶ 3.

1 required for a contract to exist) versus what must be shown for a trade secret to exist. In Nevada,
2 confidential information that does not rise to the level of a trade secret may nonetheless be
3 protected from disclosure by contract and breach of such a contract is an independent basis to
4 obtain relief. *See Finkel v. Cashman Professional, Inc.*, 128 Nev. Adv. Rep. 6, 237 P.3d 1259
5 (March 1, 2012)¹⁸ and NRS 600A.090.¹⁹ Simply put, ISLAM's answer and her deposition
6 testimony establish liability (validity and breach) on these three contracts. ISLAM admitted to
7 executing these agreements and admitted complaint allegation 13 that:
8

9 [t]hroughout ISLAM's employment at ATLANTIS she had access to and worked
10 with highly sensitive trade secrets and proprietary and confidential information of
11 the ATLANTIS, both online and offline, including but not limited to customer
12 lists or customer information or data (such as player tracking or club information),
13 related to matters of ATLANTIS' business.

14 ISLAM Answer at ¶ 3. She also admitted that she knew that ATLANTIS treated this
15 information confidential and that she never told ATLANTIS that she disputed these
16 agreements.²⁰ ISLAM cannot sign a contract to obtain the benefits and then contest the same
17 after violation by stating that the terms were not agreed to in her mind.

18 Furthermore, ISLAM's conclusory affidavit which states without any foundation that in
19 her experience, players gamble at more than one casino and have hosts at various casinos and
20 that no casino owns exclusive rights to any player simply does not establish that the information
21 sought to be protected in the agreements is available to the competitors of ATLANTIS. Indeed,
22 this is the subject of a discovery dispute in this matter. GSR has requested detailed player
23 tracking information on the guests for which ATLANTIS seeks damages. If this information
24 was in the hands of GSR, a competitor, than it would not be confidential and GSR would not
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27 ¹⁸ Finkel's conduct likely breached multiple provisions of the party's *Agreement* which could cause irreparable
28 harm.

¹⁹ This section provides that this chapter does not affect contractual remedies, whether or not based upon
misappropriation of a trade secret or other civil remedies that are not based upon misappropriation of a trade secret.

²⁰ *See* Exhibit 1 to motion (Islam Deposition 96:1-23, 215:9-216:13 and 220:21-23.)

1 have to ask for it. The fact remains that very detailed information related to persons who play at
2 ATLANTIS is maintained by the ATLANTIS in confidence and for its exclusive use and
3 commercial advantage. This information has great value to the ATLANTIS or to GSR and any
4 other competitor who could use it to target the ATLANTIS' highest ranked players. Moreover, it
5 is not the players themselves that are proprietary and confidential, but rather the information of
6 their identity and the corresponding information that ATLANTIS collects about them including
7 their play habits, rating, likes, dislikes, marketing incentives etc, which has value and is
8 proprietary and confidential information. ATLANTIS maintains this information in its database
9 for use in marketing to and maintaining its relationship with its guests. GSR does the same so
10 ISLAM's argument simply lacks adequate merit to create an issue of material fact.²¹

12 ISLAM's second argument that ATLANTIS breached first is neither a genuine issue of
13 disputed fact, nor a material one. ISLAM was an at-will employee who was hired at a salary of
14 \$60,000 with certain days off and certain benefits. She does not dispute that these terms were
15 provided to her by ATLANTIS. Bonuses and merit increases, consistent with industry standard
16 for at will employees, are subjective and were not guaranteed.²² ISLAM was employed for
17 nearly four years and has not brought an action for violation of her agreed to compensation, nor
18 has she filed a counterclaim. This is because her claim lacks merit. In fact, she can point to no
19 documents which guarantee what she is claiming. Rather, the only document available
20 evidences the contrary.²³ In fact, ISLAM was treated similar to other ATLANTIS employees in
21 this case. No bonuses were paid during the same time frame to either her supervisor, Frank
22 DeCarlo or for that matter the General Counsel of the ATLANTIS due to the economic times.²⁴
23 Surely, if her bonuses were guaranteed, someone as sophisticated as ISLAM would have had the
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27 ²¹ See Exhibit 8 to motion (GSR 4—GSR confidentiality agreement.)

²² See Exhibit 1 (Robinson Deposition 84:6-7.)

²³ See Exhibit 10 (Deposition Exhibit 22--ATL 210--email confirming Islam hiring, salary and vacation benefits and that bonuses were not guaranteed.)

²⁴ See Exhibit 5 (DeCarlo deposition 128:6-22) and Exhibit 1 (Robinson Deposition 83:20-23.)

1 ATLANTIS confirm such guaranteed bonuses and raises in writing just like she had GSR
2 memorialize that it would defend her.

3 Most importantly, ISLAM's at will employment was independent of her obligations
4 contained in the three agreements she signed.²⁵ Those agreements essentially provide that in
5 consideration for her acknowledgement that ATLANTIS owns the information and data and her
6 ability to use such information in the context of her employment with ATLANTIS, she agreed to
7 keep the information confidential both during and after her employment. Thus, the issue of pay
8 raises and bonuses are not tied or causally related to her performance of these agreements.
9 ISLAM's option, if indeed she had not been paid the compensation she desired, much less
10 guaranteed bonuses and raises, was to quit and/or litigate but it did not excuse her performance
11 under the confidentiality agreements. Remarkably, it is apparently ISLAM's argument that since
12 she was subjectively not satisfied with her compensation, though she accepted her pay and
13 continued to work, she need not comply with the agreements she signed. She offers no support
14 for this novel theory of contract. As such, there is no genuine factual or legal dispute regarding
15 this claim and summary judgment as to liability is appropriate.
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18 **D. There are no genuine disputed issues of material fact with regard to**
19 **liability on Plaintiff's claim for Breach of Contract—Non-Compete Agreement**

20 ISLAM admits that she executed the Non-Compete Agreement²⁶ but now disputes that
21 this contract was valid on various grounds: public policy, that she was under duress when she
22 signed it and that ATLANTIS breached the employment agreement first by not giving her
23 bonuses and merit increases that she was allegedly promised. None of these are genuine issues
24 of material fact.
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28 ²⁵ See Exhibits 4, 5 and 6 to motion.

²⁶ See Amended Answer of Islam at ¶ 3.

1 As to the first argument, the terms of the subject agreement are clearly well within the
2 legal limits of such agreements in Nevada and ISLAM has cited to no legal authority suggesting
3 that a one year period and 150 miles are legally improper in Nevada. Thus, there is no genuine
4 legal issue. Indeed, the Court in this case through two separate Judges has already made a
5 preliminary decision on this issue and granted a TRO against ISLAM.²⁷ Moreover, the parties
6 stipulated to a Preliminary Injunction that extends the terms of the TRO against both ISLAM and
7 GSR which is currently in place and is also the subject of ISLAM's Motion to Dissolve on the
8 grounds that the one year period following ISLAM's termination has expired. Thus, both the
9 parties and the Court have previously recognized the validity of the Non-Compete's terms with
10 relationship to the legal, public policy issues ISLAM now raises and that she has breached.²⁸
11 Although there is a current dispute as to whether ATLANTIS is entitled to one full year of
12 ISLAM not competing with it and the damages associated with the violation, those are not
13 material disputes that impact liability.
14

15
16 ISLAM's second argument, that she signed the agreement under duress, while disputed is
17 neither a genuine nor material issue of fact. ISLAM acknowledged that if she did not sign the
18 agreement she would be terminated.²⁹ Thus, her claim, if taken literally, is that she signed the
19 document under duress in order to keep her job. This is precisely the consideration for the
20 agreement and is virtually always present as it is generally the consideration in support of such
21 agreements. Indeed, without that consideration the agreement might not be enforceable.
22 Conversely, absent the alleged duress, ISLAM essentially argues that she would not have signed
23 the document, thereby terminating her employment at ATLANTIS at a time when she was
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27 ²⁷ Even if a term of the Non-Compete Agreement is overbroad, the Court has the power to uphold the agreement
and modify such a term. *See Ellis v. McDaniel*, 95 Nev. 455, 459-460, 595 P.2d 222, 225-226 (1990).

28 ²⁸ Why else would ISLAM and GSR stipulate to extend the terms of the TRO which, among other things,
prevented ISLAM from "being employed by GSR or any other competitor of ATLANTIS within 12 months of her
resignation from ATLANTIS." *See* May 5, 2012 TRO against ISLAM.

²⁹ *See* Exhibit 1 to motion (Islam Deposition 75:4-76:16 and 85:25-86:3.)

1 unhappy with her pay. This argument is illogical. Rather, what possibly occurred is that she
2 suffered duress from being presented with the option of signing the Non-Compete Agreement
3 versus termination when she did not have another job secured. That is not the type of duress that
4 voids the agreement.

5
6 ISLAM's final argument, that ATLANTIS breached the employment agreement first
7 such that she need not abide by the terms of the Non-Compete Agreement is also neither a
8 genuine nor material fact in dispute and has previously been addressed in the section
9 immediately above. Therefore this illogical argument will not be further addressed here.

10 Simply stated, there is no genuine dispute regarding any issue of fact or law impacting
11 this claim and summary judgment as to liability is therefore appropriate.

12 **E. There are no genuine disputed issues of material fact with regard to liability on**
13 **Plaintiff's claim for Conversion of Property** .

14 ISLAM is correct that conversion is generally a question of fact with, of course, one
15 caveat. It is not a question of fact when it is admitted. ISLAM's own testimony establishes that
16 she purposefully made false entries into the ATLANTIS database for a wrongful purpose³⁰ in
17 direct contravention of both the Online System User Agreement³¹ and the Business Ethics Policy
18 and Code of Conduct Agreement wherein she agreed that ATLANTIS' online systems are
19 ATLANTIS' property, were provided to her for business purposes and her use to increase
20 production and effectiveness and that she was not to profit from confidential information of the
21 ATLANTIS and not to make false or artificial entries in the books and records of the company
22 for any reason.³² ISLAM again admits this in her Opposition to this motion.³³ How could her
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26 ³⁰ See Exhibit 1 to motion (Islam Deposition 175:20-176:20, 180:1-24, 182:21-22, 184:23-185:3, 189:24-190:16,
27 194:18-195:7 and 293:22-294:6.)

³¹ The stated purpose of this Agreement was to ensure use of ATLANTIS' online systems in a productive manner.
28 See Exhibit 4 to motion (Deposition Exhibit 1.)

³² Moreover, ISLAM admitted in her Answer that she had access to and worked with highly sensitive trade secrets
and proprietary and confidential information of the ATLANTIS, both online and offline, including but not limited to

1 false entries into the database of the ATLANTIS for a wrongful purpose not be a distinct act of
2 dominion wrongfully exerted over another's personal property in defiance of its rights? *M.C.*
3 *Multi Family Development, L.L.C. v. Crestdale Associates Ltd.*, 124 Nev. 901, 910, 196 P.3d
4 536 (2008) citing *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048
5 (2000).³⁴
6

7 The testimony of the ATLANTIS is that players informed their hosts that they were not
8 getting offers from ATLANTIS and once ATLANTIS investigated, it learned that the changes
9 were widespread involving 87 guests and cost in excess of \$2,000 to repair the database.³⁵ This
10 does not even consider, nor is it relevant to this motion, the lost revenue caused by the
11 conversion. Plaintiff argues it was only 87 guests out of hundreds and therefore this is not severe
12 or major enough.³⁶ ATLANTIS submits that even if it were just one guest whose data was
13 modified, it is conversion as a matter of law and the issue ISLAM raises goes to the extent of the
14 damage not the validity of the claim and this motion. There is no genuine factual dispute
15 regarding the liability issue of this claim and summary judgment on conversion is appropriate.
16

17 **F. There are no genuine disputed issues of material fact with regard to**
18 **liability on Plaintiff's claim for Tortious Interference with Prospective Economic**
19 **Advantage**

20 In its motion, ATLANTIS claimed that ISLAM tortiously interfered with ATLANTIS'
21 prospective economic advantage and moved for partial summary judgment thereon. ISLAM
22 argues that there is no proof that ATLANTIS had a prospective contractual relationship between
23 ATLANTIS and its players or that ISLAM was aware of same, no proof of any intent by ISLAM
24

25 customer lists or customer information or data (such as player tracking or club information), related to matters of
26 ATLANTIS' business. See ISLAM Answer at ¶ 3.

27 ³³ See Islam Opposition at 11:19-28.

28 ³⁴ Conversion is an act of general intent which does not require wrongful intent and is not excused by care, good
faith or lack of knowledge. *Id.*

³⁵ See Exhibit 5 (DeCarlo Deposition 180:5-181:12, 186:8-187:7), Exhibit 1 (Robinson Deposition 78:13-79:5),
Exhibits 16 and 17 to motion and Exhibit 11 (attachment D to Plaintiff's computation of damages representing the
cost to repair database changes made by ISLAM.)

³⁶ See Islam Opposition at 22:8-13.

1 to harm and that a question of fact exists as to whether ISLAM had a privilege or justification for
2 what she did.

3 ISLAM would apparently like to ignore the supporting evidence which includes her very
4 own deposition testimony. First, a *prospective* contractual relationship exists between
5 ATLANTIS and its established guests who are included in the ATLANTIS players club and its
6 database. The Affidavit of Steve Ringkob states that “[k]nown gaming guests of the Atlantis,
7 such as those tracked in its club or player database, are responsible for a large majority of
8 Atlantis’ overall revenue.”³⁷ This contention is undisputed by ISLAM and it is this premise that
9 is the purpose for the position of host and the marketing plan for all casinos. As ISLAM
10 explains in her deposition, basically, a player agrees to sign up for ATLANTIS’ right to track
11 their play and earn free offers based on that play.³⁸ This is a contract which is prospective as to
12 each new offer and each time the person accepts the offer and stays or plays there has been a
13 contract, an offer and acceptance and mutual performance. Additionally, ISLAM admitted that it
14 was her job as an ATLANTIS Executive Casino Host to produce for ATLANTIS by bringing in
15 guests and to keep them happy while they are there so they will gamble.³⁹

16 Second, ISLAM is aware of this prospective contractual relationship by virtue of her
17 employment as a casino host for approximately seven years and from being employed in the
18 gaming industry for 16 years.⁴⁰ To oppose this motion on this basis flies in the face of her own
19 testimony about her former position and the reason for it. She testified that casino hosts are
20 supposed to bring in new players as well as take care of the existing players, maintaining them
21 and developing them to become better players.⁴¹

22 ³⁷ See Exhibit 10 to motion.

23 ³⁸ See Exhibit 1 to motion (Islam Deposition 44:3-57:23.)

24 ³⁹ See Exhibit 1 to motion (Islam Deposition 17:14-18:12 and 53:11-57:23.)

25 ⁴⁰ See Exhibit 1 to motion (Islam Deposition 29:24-25, 31:3-12, 38:3-5.)

26 ⁴¹ See Exhibit 1 to motion (Islam Deposition 38:10-14.)

1 Third, ISLAM admits in her Opposition that she intended to harm the ATLANTIS by
2 preventing this relationship between ATLANTIS and certain guests to continue when she
3 falsified guest data in the ATLANTIS database.⁴² ISLAM's actions had the intended effect of
4 preventing the offers from reaching the guest. Obviously, by preventing the offer from reaching
5 the intended recipient, her action prevented acceptance. She testified that she made these false
6 changes because she was angry and after she left she wanted to make it more difficult for the
7 hosts that took over the players that had been coded to her.⁴³ These actions had the effect of
8 these guests not receiving ATLANTIS offers or communications thereby harming the
9 ATLANTIS just as she intended.⁴⁴ ISLAM's violation and intent to harm is further proven by
10 the fact that she sent at least some of these guests offers of free play from GSR in violation of her
11 contractual and legal obligations.⁴⁵

12
13 Finally, ISLAM had no justification or privilege for the database changes. Her testimony
14 that she made these changes, falsifying the contact information, because she was angry with the
15 ATLANTIS and wanted to prevent the remaining ATLANTIS casino hosts from accessing her
16 assigned guests after she left the ATLANTIS demonstrates that her intent was wrongful and to
17 interfere.⁴⁶ ISLAM advances no legal support for her claim of privilege and surely none exists.
18 As such liability for this claim is established as a matter of law and summary judgment is
19 appropriate.
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⁴² See Islam Opposition at 11:19-28 and 23:23-26.

⁴³ See Exhibit 1 to motion (Islam Deposition 182: 21-22, 184:23-185:18 and 293:22-25.)

⁴⁴ See Exhibit 1 to motion (Islam Deposition 189:21-190:11; 294:1-3.)

⁴⁵ See Exhibit 21 to motion (Verified Amended Complaint at ¶ 38 and 40), Exhibits 16-17 to motion (Deposition Exhibits 10-11), Exhibit 11 to motion, Exhibits 12-15 to motion (Deposition Exhibits 12-15) and Exhibit 1 to motion (Islam Deposition 175:20-176:20, 180:1-24, 182:21-22, 184:23-185:3, 189:24-190:16; 194:18-195:7; 293:22-294:6.)

⁴⁶ See Exhibit 1 to motion (Islam Deposition 189:13-190:11; 194:18-195:7 and 293:22-294:6.)

1 **G. There are no genuine disputed issues of material fact with regard to**
2 **liability on Plaintiff's claim for Violation of Uniform Trade Secret Act, NRS**
3 **600A.010 et. seq.**

4 ISLAM essentially disputes that the information and data claimed by ATLANTIS is its
5 trade secret. All other disputed elements of this claim necessarily flow from whether a trade
6 secret exists in favor of ATLANTIS.⁴⁷ Generally, whether a trade secret exists is a question of
7 fact but here, however, all GSR witnesses identified by GSR, save two who have yet to be
8 deposed, admit that such information/data is confidential and proprietary when it is in the hands
9 of GSR.⁴⁸ This includes all of GSR's non-retained damage experts, Shelly Hadley, Christian
10 Ambrose and William Singh. Also, the player identities, lists and corresponding information and
11 data about them and their habits maintained by ATLANTIS meet the definition of trade secret
12 under the Act--deriving economic value from not being generally known to the public.⁴⁹ This is
13 demonstrated by the very reason that GSR hired ISLAM--to derive economic benefit from her
14 knowledge and information regarding established ATLANTIS guests.⁵⁰ It is also demonstrated
15 by the fact that most casinos, including GSR, have their own tracked player clubs in order to
16 incentivize their players to continue to play and perhaps play more.⁵¹ As shown below, this
17 information/data is also the subject of reasonable efforts by ATLANTIS to maintain secrecy.
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23 ⁴⁷ For example, if there is no trade secret then Islam cannot have misappropriated it.

24 ⁴⁸ See Exhibit 9 to motion (Flaherty Deposition at p. 52:8-11, 22:14-24:4), Exhibit 22 to motion (Lundgren
25 Deposition at p. 46:12-15), Exhibit 4 (Hadley Deposition 12:9-14, 17:21-19:9), Exhibit 12 (Deposition of Christian
26 Ambrose 34:14-20) and Exhibit 13 (Deposition of Bill Singh 20:21-21:15.)

27 ⁴⁹ See *Franz v. Johnson*, 116 Nev. 455, 467, 999 P.2d 351, 358 (2000), wherein the Court held that customer and
28 pricing information for distributor of plastic gaming cards were trade secrets. See also, *Finkel v. Cashman
Professional, Inc.*, 128 Nev. Adv. Rep. 6, 270 P.3d 1259 (March 1, 2012) (substantial evidence supported district
court's conclusion that information allegedly misappropriated would likely be confidential trade secrets including
customer lists.)

⁵⁰ See Exhibit 9 to motion (Flaherty Deposition 28:11-30:7, 38:1-15, 40:7-25, 44:7-45:3.)

⁵¹ See Exhibit 9 to motion (Flaherty Deposition 38:24-40:25), Exhibit 4 (Hadley Deposition 36:14-40:16), Exhibit
10 to motion (Ringkob Affidavit), Exhibit 12 (Deposition of Christian Ambrose 15:1-25:21, 28:15-29:2, 30:10-
31:19, 50:9-52:13) and Exhibit 1 to motion (Islam Deposition 17:14-18:12, 44:3-52:14, 56:12-58:2.)

1 Consideration of the four *Franz* factors raised by ISLAM also militates in favor of
2 ATLANTIS.⁵² *Franz*, *supra*, 116 Nev. at 467, 999 P.2d at 358-59. With regard to the first
3 factor, the extent to which others outside ATLANTIS know the information (or could properly
4 acquire it) is low and near impossible. While the identity of some players at the ATLANTIS
5 may also be in other casino's databases as active or inactive players, such as with GSR,⁵³ the
6 extent that competitors of ATLANTIS know the identity of ATLANTIS' guests, their play habits
7 at the ATLANTIS and ATLANTIS' successful marketing incentives to those guests is virtually
8 non-existent. This is because ATLANTIS and casinos in general regard this information as
9 confidential and proprietary and take steps to secure it.⁵⁴

11 The second factor is also met. With the exception of ISLAM's self-serving and
12 contradictory testimony, the evidence in this case is uncontroverted that information of this type
13 is confidential and secret both at the ATLANTIS and at other casinos where it is uniformly
14 regarded within the industry as confidential or secret.⁵⁵ Even GSR admits that the same
15 information is confidential or secret when in its hands.

17 The third factor has been met as ATLANTIS guarded the secrecy of this information.
18 The ATLANTIS takes extreme efforts to maintain the secrecy of this information and data.
19 First, the ATLANTIS has its casino hosts sign four separate agreements concerning the
20 confidentiality of certain information available to them.⁵⁶ One of these agreements, the Non-
21 Compete Agreement, even restricts the ability of the casino host to work within a 150 mile radius
22 in any gaming establishment for one year in order to preserve its investment in employee capital
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25 ⁵² See Islam Opposition at 24:17-25.

26 ⁵³ See Exhibit 4 (Hadley deposition 36:10-38:3.)

27 ⁵⁴ See Exhibit 9 to motion (Flaherty Deposition at p. 52:8-11, 22:14-24:4), Exhibit 22 to motion (Lundgren
28 Deposition at p. 46:12-15), Exhibit 4 (Hadley Deposition 12:9-14, 17:21-19:9), Exhibit 12 (Deposition of Christian
Ambrose 34:14-20) and Exhibit 13 (Deposition of Bill Singh 20:21-21:15.)

⁵⁵ See Exhibit 9 to motion (Flaherty Deposition at p. 52:8-11, 22:14-24:4), Exhibit 22 to motion (Lundgren
Deposition at p. 46:12-15), Exhibit 4 (Hadley Deposition 12:9-14, 17:21-19:9), Exhibit 12 (Deposition of Christian
Ambrose 34:14-20) and Exhibit 13 (Deposition of Bill Singh 20:21-21:15.)

⁵⁶ See Exhibit 10 to motion.

1 and confidential information. Second, and contrary to the argument of ISLAM in her
2 Opposition, ATLANTIS further maintains its secrecy by restricting the ability to copy the guest
3 information/data maintained on its database. For example, it does not provide casino hosts with
4 a USB port to download information, does not provide a printer to print out information and only
5 allows certain database access to casino hosts.⁵⁷

6
7 The fourth factor, the former employee's knowledge of customers and whether this
8 information is known by the employer's competitors also indisputably favors ATLANTIS.
9 ISLAM knows the ATLANTIS' players gaming habits, many of their identities and their contact
10 information and other player data only as a consequence of her employment with ATLANTIS
11 and that information is unknown to the competitors. It is undisputed that the information which
12 she took from ATLANTIS, was not known to GSR until ISLAM brought it. Indeed, ISLAM in
13 her Opposition admits she added 100-200 players to the GSR database that she had copied by
14 hand from the ATLANTIS database.⁵⁸ Again, the number is not relevant for this motion, the
15 addition of one guest and their data is sufficient to support this motion for liability. It is
16 undisputed that ISLAM added players to the GSR database and started marketing to them based
17 on her knowledge and information improperly taken from her employment with ATLANTIS.⁵⁹

18
19 Thus, whether the information and data at issue is a trade secret is not a genuinely
20 disputed question of fact in this case as borne out by the testimony of the parties.
21 Further, ISLAM clearly misappropriated information of the ATLANTIS by wrongfully
22 copying down by hand guest information/data from the ATLANTIS database into spiral
23 binders prior to leaving the ATLANTIS and using that intellectual property to her benefit
24 and the detriment of the ATLANTIS while employed at GSR, in violation of the three
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28 ⁵⁷ See Exhibit 1 to motion (Islam Deposition 93:24-96:21, 131:15-134:9.)

⁵⁸ See Islam Opposition at 12:18-20, 13:1-4.

⁵⁹ See Exhibit 4 (Hadley deposition 50:24-51:21.)

1 confidentiality agreements that she signed at the ATLANTIS. These acts are, without
2 dispute, misappropriation as defined by the statute ISLAM cites.⁶⁰ Thus, summary
3 judgment as to liability is appropriate.

4 **H. The Equitable Defenses of ISLAM are not relevant to this motion**

5 In this motion, ATLANTIS sought partial summary judgment on its legal claims only. It
6 did not seek summary judgment on its claim for declaratory relief or injunctive relief and as such
7 ISLAM's equitable defense of unclean hands is not at issue here.⁶¹ Additionally, whether
8 ATLANTIS has unclean hands is an issue that truly relates to the damages perspective of this
9 case which is not before the Court in this motion nor is it part of any equitable claim alleged by
10 ATLANTIS. For example, if ATLANTIS does not claim damages for any of the players which
11 ISLAM claims that she introduced to ATLANTIS using information she obtained from her
12 employment at Harrah's, then ISLAM has no such equitable defense.

13 In any event, "[t]he doctrine of unclean hands derives from the equitable maxim
14 that 'he who comes into equity must come with clean hands.'" *Truck Ins. Exch. v.*
15 *Swanson*, 124 Nev. 629, 637, 189 P.3d 656, 662 (2008), citing *Omega Industries, Inc. v.*
16 *Raffaele*, 894 F. Supp. 1425, 1431 (D. Nev. 1995); *see also Las Vegas Fetish & Fantasy*
17 *Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 275, 182 P.3d 764, 767
18 (2008). Importantly, the alleged bad faith giving rise to unclean hands must relate to the
19 matter in which the plaintiff is seeking relief. *See Raffaele*, 894 F. Supp. at 1431; *see*
20 *also Swanson*, 124 Nev. at 637-638, 189 P.3d at 662 ("the alleged inequitable conduct
21 relied upon must be connected with the matter in litigation, otherwise the doctrine is not
22 available as a defense").

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28 ⁶⁰ See, NRS 600A.032(2)(a) and NRS 600A.032(2)(c).

⁶¹ ISLAM posits that a question of fact exists as to whether the inequitable conduct of the Atlantis bars its equitable claims for relief. *See Opposition* at p. 2 lines 18-19.

1 In *Gravelle v. Burchett*, 73 Nev. 333, 342 319 P.2d 140, 145 (1957), the Nevada Supreme
2 Court declined to allow the defense of unclean hands, as the alleged inequitable conduct, even if
3 true, “did not affect the relations between the parties,” and “in no way involved the subject
4 matter of the action.” It seems clear that the inequitable conduct must result in prejudice to the
5 defendant, not some third party, in order for it to apply. *See Mattco Forge, Inc. v. Arthur Young*
6 *& Co.*, 52 Cal. App. 4th 820, 846 (Cal. App. 2d Dist. 1997). Because ISLAM claims that
7 ATLANTIS’ unclean hands arises out of the fact that it allegedly competed unfairly with
8 Harrah’s by misappropriating Harrah’s trade secrets when it hired ISLAM in 2008, the defense
9 appears inapplicable, as the present suit has nothing to do with Harrah’s trade secrets or the
10 ATLANTIS’ alleged misappropriation of them, which would only result in prejudice to Harrah’s.
11 Indeed, such a claim would be Harrah’s and not ISLAM’s. In other words, since any alleged
12 misconduct on the part of the ATLANTIS did not affect the relations between the ATLANTIS
13 and ISLAM, the doctrine of unclean hands should not apply.
14
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16 IV.

17 CONCLUSION

18 Based on the foregoing, ATLANTIS respectfully requests that this Court grant partial
19 summary judgment on ATLANTIS’ five claims for relief against ISLAM as to liability only.
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Affirmation Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the
social security number of any person.

Dated this 22nd day of March, 2013.

LAXALT & NOMURA, LTD.



ROBERT A. DOTSON

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Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of LAXALT &
3 NOMURA, LTD., and that on this date, I caused to be served a true and correct copy of the
4 foregoing by:

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

9 ☒ By electronic service by filing the foregoing with the Clerk of Court using the E-
Flex system, which will electronically mail the filing to the following individuals.

10 ☐ (BY PERSONAL DELIVERY) by causing a true copy thereof to be hand
11 delivered this date to the address(es) at the address(es) set forth below.

12 ☐ (BY FACSIMILE) on the parties in said action by causing a true copy thereof to
be telecopied to the number indicated after the address(es) noted below.

13 ☐ Reno/Carson Messenger Service.

14 ☒ By email to the email addresses below.

15 addressed as follows:

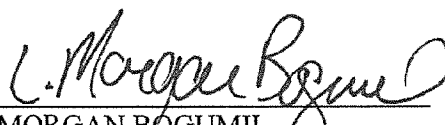
16 Steven B. Cohen, Esq.
17 Stan Johnson, Esq.
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18 255 E. Warm Springs Rd, Ste 100
Las Vegas, NV 89119

Mark Wray, Esq.
Law Office of Mark Wray
608 Lander Street
Reno, NV 89509

mwray@markwraylaw.com

19 scohen@cohenjohnson.com
20 sjohnson@cohenjohnson.com

21 DATED this 22nd day of March, 2013.

22 
23 L. MORGAN BOGUMIL

INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION	PAGES
1	Deposition of Debra B. Robinson dated January 22, 2013 [partial]	9
2	Islam's employment agreement with Harrah's received from Islam	12
3	Islam's employment agreement with Harrah's received from Harrah's This Exhibit is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012	12
4	Deposition of Shelly Hadley dated August 13, 2012 [partial]	22
5	Deposition of Francis X. DeCarlo, Jr. dated October 19, 2012 [partial]	12
6	January 10, 2012 offer letter from GSR	3
7	January 18, 2012 offer letter from GSR	3
8	Grand Sierra Resort suspension document	2
9	Criminal Complaint against Sumona Islam	4
10	ATL 210--email confirming Islam salary and vacation benefits and that bonuses were not guaranteed	2
11	Attachment D to Plaintiff's computation of damages, representing the cost to repair database changes made by Sumona Islam	2
12	Deposition of Christian Ambrose dated January 18, 2013 [partial]	24
13	Deposition of Bill Singh dated January 18, 2013 [partial]	7

1 **1030**
2 ROBERT A. DOTSON, ESQ.
3 Nevada State Bar No. 5285
4 rdotson@laxalt-nomura.com
5 ANGELA M. BADER, ESQ.
6 Nevada State Bar No. 5574
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8 LAXALT & NOMURA, LTD.
9 9600 Gateway Drive
10 Reno, Nevada 89521
11 Tel: (775) 322-1170
12 Fax: (775) 322-1865
13 Attorneys for Plaintiff

9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR THE COUNTY OF WASHOE**

11 GOLDEN ROAD MOTOR INN, INC., a Nevada
12 Corporation, d/b/a ATLANTIS CASINO
13 RESORT SPA

Case No.: CV12-01171

Dept No.: B7

14 Plaintiff,

15 vs.

16 SUMONA ISLAM, an individual; NAV-RENO-
17 GS, LLC, a Nevada limited liability company,
18 d/b/a GRAND SIERRA RESORT; ABC
19 CORPORATIONS; XYZ PARTNERSHIPS;
20 AND JOHN DOES I through X, inclusive.

21 Defendants.

22 **AFFIDAVIT OF COUNSEL IN SUPPORT**
23 **OF PLAINTIFF'S REPLY TO ISLAM'S OPPOSITIONS**
24 **TO MOTION FOR PARTIAL SUMMARY JUDGMENT**

25 STATE OF NEVADA)
26) ss.
27 COUNTY OF WASHOE)

28 ANGELA M. BADER hereby affirms, under penalty of perjury, that the assertions
contained herein are true;

1. I am an attorney licensed to practice law in the State of Nevada and represent the
Plaintiff, Golden Road Motor Inn, Inc., a Nevada corporation d/b/a Atlantis Casino Resort Spa
("Plaintiff"), in this action.

1 2. Attached to Plaintiff's Reply to Islam's Oppositions to Motion For Partial
2 Summary Judgment, as Exhibit 1, is a true and correct certified copy of partial excerpts from the
3 Deposition of Debra B. Robinson dated January 22, 2013.

4 3. Attached to Plaintiff's Reply to Islam's Oppositions to Motion For Partial
5 Summary Judgment, as Exhibit 4, is a true and correct certified copy of partial excerpts from the
6 Deposition of Shelly Hadley dated August 13, 2012.

7 4. Attached to Plaintiff's Reply to Islam's Oppositions to Motion For Partial
8 Summary Judgment, as Exhibit 5, is a true and correct certified copy of partial excerpts from the
9 Deposition of Francis X. DeCarlo, Jr. dated October 19, 2012.

10 5. Attached to Plaintiff's Reply to Islam's Oppositions to Motion For Partial
11 Summary Judgment, as Exhibit 6, is a true and correct copy of the January 10, 2012 offer letter
12 from Grand Sierra Resort as produced by Grand Sierra Resort.

13 6. Attached to Plaintiff's Reply to Islam's Oppositions to Motion For Partial
14 Summary Judgment, as Exhibit 7, is a true and correct copy of the January 18, 2012 offer letter
15 from Grand Sierra Resort as produced by Grand Sierra Resort.

16 7. Attached to Plaintiff's Reply to Islam's Oppositions to Motion For Partial
17 Summary Judgment, as Exhibit 8, is a true and correct copy of the Grand Sierra Resort
18 suspension document as produced by Grand Sierra Resort.

19 8. Attached to Plaintiff's Reply to Islam's Oppositions to Motion For Partial
20 Summary Judgment, as Exhibit 9, is a true and correct copy of the Criminal Complaint against
21 Sumona Islam, a public document.

22 9. Attached to Plaintiff's Reply to Islam's Oppositions to Motion For Partial
23 Summary Judgment, as Exhibit 11, is a true and correct copy of Attachment D to Plaintiff's
24 computation of damages, representing the cost to repair database changes made by Sumona
25 Islam.

26 10. Attached to Plaintiff's Reply to Islam's Oppositions to Motion For Partial
27 Summary Judgment, as Exhibit 12, is a true and correct certified copy of partial excerpts from
28 the Deposition of Christian Ambrose dated January 18, 2013.

1 11. Attached to Plaintiff's Reply to Islam's Oppositions to Motion For Partial
2 Summary Judgment, as Exhibit 13, is a true and correct certified copy of partial excerpts from
3 the Deposition of Bill Singh dated January 18, 2013.

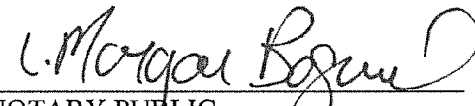
4 **Affirmation Pursuant to NRS 239B.030**

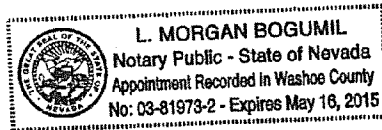
5 The undersigned does hereby affirm that the preceding document does not contain the
6 social security number of any person.

7 FURTHER YOUR AFFIANT SAYETH NAUGHT.

8
9 
10 **ANGELA M. BADER**

11 SUBSCRIBED and SWORN to before me
12 this 22 day of March, 2013.

13 
14 **NOTARY PUBLIC**



1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of LAXALT &
3 NOMURA, LTD., and that on this date, I caused to be served a true and correct copy of the
4 foregoing by:

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

9 ☒ By electronic service by filing the foregoing with the Clerk of Court using the E-
Flex system, which will electronically mail the filing to the following individuals.

10 ☐ (BY PERSONAL DELIVERY) by causing a true copy thereof to be hand
11 delivered this date to the address(es) at the address(es) set forth below.

12 ☐ (BY FACSIMILE) on the parties in said action by causing a true copy thereof to
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15 addressed as follows:

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18 255 E. Warm Springs Rd, Ste 100
Las Vegas, NV 89119

Mark Wray, Esq.
Law Office of Mark Wray
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Reno, NV 89509

mwray@markwraylaw.com

19 scohen@cohenjohnson.com
20 sjohnson@cohenjohnson.com

21 DATED this 22 day of March, 2013.

22 
23 L. MORGAN BOGUMIL
24
25
26
27
28

1 **1030**
2 ROBERT A. DOTSON, ESQ.
3 Nevada State Bar No. 5285
4 rdotson@laxalt-nomura.com
5 ANGELA M. BADER, ESQ.
6 Nevada State Bar No. 5574
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8 LAXALT & NOMURA, LTD.
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12 Fax: (775) 322-1865
13 Attorneys for Plaintiff

9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR THE COUNTY OF WASHOE**

11 GOLDEN ROAD MOTOR INN, INC., a Nevada
12 Corporation, d/b/a ATLANTIS CASINO
13 RESORT SPA

Case No.: CV12-01171

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14 Plaintiff,

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16 SUMONA ISLAM, an individual; NAV-RENO-
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22 **AFFIDAVIT OF DEBRA ROBINSON IN SUPPORT**
23 **OF PLAINTIFF'S REPLY TO ISLAM'S OPPOSITIONS**
24 **TO MOTION FOR PARTIAL SUMMARY JUDGMENT**

25 STATE OF NEVADA)
26) ss.
27 COUNTY OF WASHOE)

28 DEBRA ROBINSON hereby affirms, under penalty of perjury, that the assertions
contained herein are true;

1. I am General Counsel for the Plaintiff, Golden Road Motor Inn, Inc., a Nevada
corporation d/b/a Atlantis Casino Resort Spa ("Plaintiff").

2. The documents referenced below were received or generated by Plaintiff and

1 were maintained by it in the ordinary course of business.

2 3. Attached to Plaintiff's Reply to Islam's Oppositions to Motion For Partial
3 Summary Judgment, as Exhibit 2, is a true and correct copy of Sumona Islam's employment
4 agreement with Harrah's, which Plaintiff received from Sumona Islam.

5 4. Attached to Plaintiff's Reply to Islam's Oppositions to Motion For Partial
6 Summary Judgment, as Exhibit 3, is a true and correct copy of Sumona Islam's employment
7 agreement with Harrah's, which Plaintiff received from Harrah's.

8 5. Attached to Plaintiff's Reply to Islam's Oppositions to Motion For Partial
9 Summary Judgment, as Exhibit 10, is a true and correct copy of ATL 210, an email confirming
10 Sumona Islam's hire, salary and vacation benefits and that bonuses were not guaranteed.

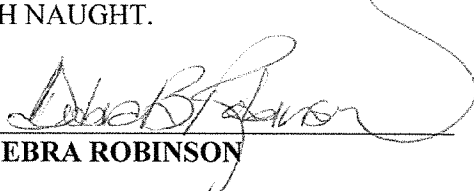
11 **Affirmation Pursuant to NRS 239B.030**

12 The undersigned does hereby affirm that the preceding document does not contain the
13 social security number of any person.

14 FURTHER YOUR AFFIANT SAYETH NAUGHT.

15

16


DEBRA ROBINSON

17

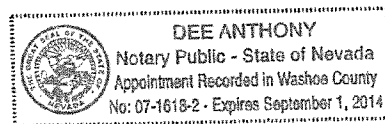
18 SUBSCRIBED and SWORN to before me
19 this 21st day of March, 2013.

19

20


NOTARY PUBLIC

21



22

23

24

25

26

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28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), I hereby certify that I am an employee of LAXALT &
3 NOMURA, LTD., and that on this date, I caused to be served a true and correct copy of the
4 **AFFIDAVIT OF DEBRA ROBINSON IN SUPPORT OF PLAINTIFF'S REPLY TO**
5 **ISLAM'S OPPOSITIONS TO MOTION FOR PARTIAL SUMMARY JUDGMENT** by:

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

10 ☒ By electronic service by filing the foregoing with the Clerk of Court using the E-
Flex system, which will electronically mail the filing to the following individuals.

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Mark Wray, Esq.
Law Office of Mark Wray
608 Lander Street
Reno, NV 89509

mwwray@markwraylaw.com

20 scohen@cohenjohnson.com
21 sjohnson@cohenjohnson.com

22 DATED this 22 day of March, 2013.

23 
24 L. MORGAN BOGUMIL
25
26
27
28

1 **2200**
2 ROBERT A. DOTSON, ESQ.
3 Nevada State Bar No. 5285
4 rdotson@laxalt-nomura.com
5 ANGELA M. BADER, ESQ.
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13 Attorneys for Plaintiff

9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

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11 GOLDEN ROAD MOTOR INN, INC., a Nevada
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Case No.: CV12-01171

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14 Plaintiff,

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17 GS, LLC, a Nevada limited liability company,
18 d/b/a GRAND SIERRA RESORT; ABC
19 CORPORATIONS; XYZ PARTNERSHIPS;
20 AND JOHN DOES I through X, inclusive.

21 Defendants.

22 **REPLY TO GSR'S OPPOSITIONS TO**
23 **MOTION FOR PARTIAL SUMMARY JUDGMENT**

24 Plaintiff GOLDEN ROAD MOTOR INN, INC., a Nevada corporation d/b/a ATLANTIS
25 CASINO RESORT SPA ("ATLANTIS"), by and through its attorneys, Laxalt & Nomura, Ltd.,
26 hereby files its Reply to Defendant NAV-RENO-GS, LLC, d/b/a GRAND SIERRA RESORT'S
27 ("GSR") Opposition and Supplemental Opposition to its Motion for Partial Summary Judgment
28 as to liability.

1 This Reply is made and based on NRCP 56, NRS 600A.030, the pleadings on file and
2 incorporated herein, the attached Memorandum of Points and Authorities, Affidavit and Exhibits
3 thereto as well as the arguments and evidence to be made at any hearing convened to consider
4 this motion.¹

5 Dated this 22nd day of March, 2013.

6 LAXALT & NOMURA, LTD.

7
8 
9 ROBERT A. DOTSON
10 Nevada State Bar No. 5285
11 ANGELA M. BADER
12 Nevada State Bar No. 5574
13 9600 Gateway Drive
14 Reno, Nevada 89521
15 (775) 322-1170
16 Attorneys for Plaintiff

17 **MEMORANDUM POINTS AND AUTHORITIES**

18 **I.**

19 **INTRODUCTION**

20 GSR rides on the heels of ISLAM in opposing the motion so much so that it fails to set
21 forth its own statement of facts and instead simply adopts ISLAM's. Unfortunately for GSR,
22 ISLAM portrays herself as a victim of a series of unfortunate life events as set forth in the
23 statement of facts drafted by her attorney and allegedly supported by her conclusory affidavit
24 which surprisingly contains no material factual assertions. In truth, however, she is an educated
25 and sophisticated saleswoman who uses manipulation and misrepresentation to obtain what she
26 wants. Indeed her Opposition makes it clear that following her resignation, ISLAM was well
27 aware of ATLANTIS' intentions to enforce the agreements that she had signed with it and made

28 ¹ As many of the arguments raised in Defendants' Oppositions are similar or repetitive, ATLANTIS incorporates
herein its Reply to ISLAM's Oppositions to Motion for Partial Summary Judgment.

1 sure that before taking a position with GSR, in violation of those obligations, she had a legal
2 commitment that GSR would defend her in any resulting litigation and support her financially
3 through the process.² In any event, ISLAM's personal circumstances are irrelevant to the causes
4 of action at issue in this motion. Indeed, ISLAM has admitted to sabotaging the ATLANTIS
5 database, she has admitted to taking information she agreed was not hers to take, she has
6 admitted to using that information in connection with her employment with GSR and she, as well
7 as GSR, has obviously profited from it.³

9 GSR raises five main issues in an attempt to avoid summary judgment on liability. These
10 are: (1) whether ISLAM signed the Non-Compete Agreement with ATLANTIS under duress;
11 (2) whether the Non-Compete Agreement is valid and enforceable; (3) whether GSR had the
12 requisite intent for the tortious interference claims pled against it; (4) whether GSR's actions are
13 privileged due to competition; and (5) whether the information at issue is confidential,
14 proprietary and a trade secret. However, many of these issues are neither material nor genuine
15 and others capture the heart of the litigation to which the Court has already indicated its
16 favorable opinion in granting the Temporary Restraining Order ("TRO") and to which GSR
17 tacitly agreed through stipulation. Regarding the fifth issue, the information/data which
18 ATLANTIS claims is confidential, proprietary and trade secret, GSR purposefully overlooks the
19 concept of intellectual property, and instead adopts ISLAM's disingenuous argument that no one
20 owns the people, the guests/players at issue.⁴ While the players themselves are not intellectual
21 property, it is their identity and the corresponding information that ATLANTIS collects and
22 develops about them including their play habits, rating, likes, dislikes, marketing incentives etc,
23 which have value and are proprietary and confidential. ATLANTIS maintains this information
24
25
26

27 ² See Islam Opposition at 10:25-27, 11:6-10, 12:10-13, 12:4-9, 14-17, 13:21-24.

28 ³ See Islam Opposition at 11:19-28, 12:18-20, 13:1-4.

⁴ Intellectual property is defined by Black's Law Dictionary (6th Ed. 1990) as "[p]roperty which cannot be touched because it has no physical existence such as claims, interests and rights."

1 in its database for use in marketing to and maintaining its relationship with its guests as does
2 GSR.

3 As such, summary judgment should be entered as a matter of law on liability for the
4 claims against GSR with the exception of a permanent injunction which, for the reasons implied
5 above and in the Opposition, was not the subject of the motion.
6

7 II.

8 STATEMENT OF FACTS

9 The statement of facts submitted by ISLAM is conclusory, largely unsupported, mostly
10 irrelevant and contains hearsay and other inadmissible statements. In an effort to provide the
11 Court with a more balanced view, ATLANTIS offered an undisputed statement in response to
12 the ISLAM Opposition and that is incorporated here by reference. Certain addition facts are
13 however raised by GSR's Opposition.
14

15 III.

16 ARGUMENT

17 A. Disputed issues of fact must be material and genuine

18 "The substantive law controls which factual disputes are material and will preclude
19 summary judgment; other factual disputes are irrelevant." *Wood v. Safeway, Inc.*, 121 Nev. 724,
20 731, 121 P.3d 1026, 1031 (2005), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106
21 S. Ct. 2505, 2510, 91 L. Ed. 2d 202, 211 (1986).
22

23 As to materiality, the substantive law will identify which facts are material. Only
24 disputes over facts that might affect the outcome of the suit under the governing law
25 will properly preclude the entry of summary judgment. Factual disputes that are
26 irrelevant or unnecessary will not be counted. This materiality inquiry is independent
27 of and separate from the question of the incorporation of the evidentiary standard into
28 the summary judgment determination. That is, while the materiality determination
rests on the substantive law, it is the substantive law's identification of which facts
are critical and which facts are irrelevant that governs. Any proof or evidentiary
requirements imposed by the substantive law are not germane to this inquiry, since
materiality is only a criterion for categorizing factual disputes in their relation to the

1 legal elements of the claim and not a criterion for evaluating the evidentiary
2 underpinnings of those disputes.

3 *Liberty Lobby*, 477 U.S. at 248 (emphasis added) (internal citations omitted).

4 Accordingly, a dispute over facts which does not affect the ability to prove or disprove
5 the elements of Plaintiff's causes of action is irrelevant, and does not preclude entry of summary
6 judgment. This includes, for example, factual disputes raised by GSR that relate to damages and
7 not liability.

8
9 Additionally "[a] factual dispute is genuine when the evidence is such that a rational trier
10 of fact could return a verdict for the nonmoving party." *Wood*, citing *Matsushita Elec. Indus.*
11 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538, 552
12 (1986) ("Where the record taken as a whole could not lead a rational trier of fact to find for the
13 nonmoving party, there is no 'genuine issue for trial'"); *Posadas v. City of Reno*, 109 Nev. 448,
14 452, 851 P.2d 438, 441-441 (1993).

15
16 It is true that the issue of material fact required by Rule 56(c) to be present to
17 entitle a party to proceed to trial is not required to be resolved conclusively in
18 favor of the party asserting its existence; rather, all that is required is that
19 sufficient evidence supporting the claimed factual dispute be shown to require a
20 jury or judge to resolve the parties' differing versions of the truth at trial.

21
22 *Liberty Lobby*, 477 U.S. at 248-249.

23 For a factual issue to be genuine there must sufficient evidence favoring the nonmoving
24 party for a jury to return a verdict; it is not sufficient if the evidence is "merely colorable" or is
25 not "significantly probative." *Id.* at 249-250, citing *First National Bank of Arizona v. Cities*
26 *Service Co.*, 391 U.S. 253, 88 S. Ct. 1575, 20 L. Ed. 2d 569 (1968); *Dombrowski v. Eastland*,
27 387 U.S. 82, 87 S. Ct. 1425, 18 L. Ed. 2d 577 (1967). *Liberty Lobby* also suggests that
28 determining whether an issue of fact is genuine mirrors the standard for a directed verdict under

1 FRCP 50(a), which states that if reasonable minds could differ, a verdict should not be entered.

2 *Liberty Lobby*, 477 U.S. at 250-251.

3 Thus, issues of fact do not need to be completely resolved; a factual dispute is only
4 genuine when the jury could still find for the nonmoving party. If GSR presents evidence, but it
5 is not sufficient to overcome more compelling evidence of ATLANTIS, or if it is inadmissible
6 evidence, or reasonable minds could not differ, summary judgment should be entered in favor of
7 ATLANTIS.
8

9 **B. The Declarations and Exhibits to the motion are adequate**

10 The Declarations and Exhibits to ATLANTIS' motion consist of the following:

- 11 1) Amended *Verified* Complaint for Damages;
12 2) Certified copies of deposition testimony of parties and party witnesses taken in this case;
13 3) Affidavits and Exhibits supporting the TRO granted by the Court
14 4) Atlantis personnel file documents for ISLAM
15 5) GSR's initial list of witnesses and documents containing what GSR represents is
16 6) Examples of GSR solicitations to ATLANTIS guests⁵
17 7) Changes and summary of changes made by ISLAM to ATLANTIS database
18 8) ISLAM's answer to Amended Verified Complaint for Damages

19 Unfortunately, GSR does not address what supporting evidence it believes is inadequate. Such a
20 conclusory argument without specific analysis simply holds no teeth. Moreover, all Exhibits
21 were attached to the Affidavit of Counsel setting forth that they are indeed what they purport to
22 be.⁶ Aside from the certified deposition transcript copies which have their own authentication by
23 the certified court reporter, the *verified* pleading of ATLANTIS and pleadings of Defendants, the
24 parties have produced all other documentation and it has been the subject of numerous
25 depositions. Not once has GSR indicated that any of these documents are not authentic.

26 Moreover, the actions of GSR in this case are not consistent with its Opposition. Indeed, it even
27

28 ⁵ Exhibits 12 and 13 are attached to the Moreno affidavit.

⁶ NRS 52.015 requires a showing sufficient to support a finding that the matter in question is what its proponent claims.

1 stipulated to a Preliminary Injunction that would continue the terms of the TRO against it that
2 was largely supported by the Affidavits and Exhibits that are attached to this motion. In her
3 deposition, ISLAM was also shown and testified to signing all of the relevant agreements
4 attached to the motion (Exhibits 4-7).⁷ GSR's unspecified conclusory objections appear to be
5 illusory and must therefore fail.⁸

6
7 **C. There are no genuine disputed issues of material fact or law with regard to**
8 **liability on Plaintiff's claim for Tortious Interference with Contractual Relations**
9 **and Prospective Economic Advantage**

10 In its motion, ATLANTIS claimed that GSR tortiously interfered with the contractual
11 relations of ATLANTIS by hiring ISLAM in violation of her Non-Compete Agreement as well
12 as tortiously interfered with ATLANTIS' prospective economic advantage by utilizing player
13 information and data it obtained from ISLAM which belonged to ATLANTIS, that it knew or
14 should have known ISLAM had wrongfully obtained from ATLANTIS, to solicit players of
15 ATLANTIS that were not already in its database.

16 1. Tortious Interference with Contractual Relations

17 GSR contends that the Non-Compete Agreement is unenforceable due to duress,
18 unconscionability and public policy. It also contends that it did not have the requisite intent and
19 that its actions are protected by the privilege of competition.⁹

20 GSR's first argument, that ISLAM signed the agreement under duress, while disputed, is
21 neither a genuine nor material issue of fact. ISLAM acknowledged that if she did not sign the
22 agreement she would be terminated.¹⁰ Thus, her claim, if taken literally, is that she signed the
23 document under duress in order to keep her job. This is precisely the consideration for the
24

25
26 ⁷ See motion at page 2, ¶ 2, 3, 4 and 5 to Statement of Facts.

27 ⁸ Moreover, the documents referenced in subsection 7 above are relevant only to the conversion claim against
28 ISLAM.

⁹ GSR also argues that causation of damages has not been established but damages were never within the scope of
this motion. This is a Motion for Partial Summary Judgment as to liability only.

¹⁰ See Exhibit 1 to motion (Islam Deposition 75:4-76:16 and 85:25-86:3.)

1 agreement and is virtually always present as it is generally the consideration in support of such
2 agreements. Indeed, without that consideration the agreement might not be enforceable.
3 Conversely, absent the alleged duress, ISLAM essentially argues that she would not have signed
4 the document, thereby terminating her employment at ATLANTIS at a time when she was
5 unhappy with her pay. This argument is illogical. Rather, what possibly occurred is that she
6 suffered duress from being presented with the option of signing the Non-Compete Agreement
7 versus termination when she did not have another job secured. That is not the type of duress that
8 voids the agreement.
9

10 The two California cases cited by GSR are readily distinguishable. The case of *Rich &*
11 *Whillock*, 157 Cal.App.3d 1154, 1159 (Cal. App. 4th Dist. 1984) held that signing a release to
12 accept only partial payment when all payment was due under a contractual obligation and was
13 threatened to be withheld was the product of economic duress. GSR's reliance on this case is
14 misplaced, as *Rich & Whillock* makes it clear that economic duress hinges on the doing of a
15 "wrongful act which is sufficiently coercive." *Id.* at 1158 (emphasis added). This would include
16 "[t]he assertion of a claim known to be false or a bad faith threat to breach a contract or to
17 withhold a payment..." *Id.* at 1159. Accordingly, it was clear in that case that the defendant had
18 engaged in a wrongful act.¹¹ Here, conversely, ATLANTIS was offering continued employment
19 in exchange for the signing of a Non-Compete Agreement which is lawful in this at-will
20 situation. Moreover, ISLAM correctly understood what her choices were and made a decision
21 accordingly.
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26 ¹¹ In *Synnex Corp. v. Wattles*, 2012 U.S. Dist. LEXIS 162996 (N.D. Cal. 2012), the Court distinguished the
27 wrongful acts in *Rich & Willock* from the facts of that case, where one party had requested guarantees as a condition
28 of extending credit because it was "a common business practice." *Synnex Corp.*, 2012 U.S. Dist. LEXIS 162996 at
* 20. Another court distinguished *Rich & Willock* because there was "no evidence of wrongful conduct by the
Plaintiff." *ConocoPhillips Co. v. Milestone Pac. Props., LLC*, 2010 U.S. Dist. LEXIS 95250, *19-20 (N.D. Cal.
Sept. 13, 2010).

1 The second case cited by GSR also requires that “the evidence must show some wrongful
2 act...” in order to support a finding of economic duress. *Thompson Crane & Trucking Co. v.*
3 *Eyman*, 123 Cal. App. 2d 904, 908 (Cal. App. 1954). In the instant matter, there are no facts that
4 establish a “wrongful act” on the part of the ATLANTIS in requiring termination if ISLAM did
5 not sign the agreement. Indeed, one of the cases cited by GSR demonstrates that Nevada has
6 adopted the majority rule in this regard, “which states that an at-will employee’s continued
7 employment is sufficient consideration for enforcing a non-competition agreement. *Camco, Inc.*
8 *v. Baker*, 113 Nev. 512, 517, 936 P.2d 829, 832 (1997), citing *Mattison v. Johnston*, 152 Ariz.
9 109, 730 P.2d 286, 288-90 (Ariz. Ct. App. 1986) (holding that “the continued employment of a
10 terminable-at-will employee is sufficient consideration to support a restrictive covenant);
11 *Machen, Inc. v. Aircraft Design, Inc.*, 65 Wash. App. 319, 828 P.2d 73, 80 (Wash. Ct. App.
12 1992) (holding that continued employment is sufficient consideration in support of non-
13 competition or confidentiality agreement).¹²

14
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16 As to GSR’s second argument, unconscionability and public policy, the terms of the
17 subject agreement are well within the legal limits of such agreements in Nevada and ISLAM and
18 GSR have cited to no legal authority suggesting that a one year period and 150 miles are legally
19 improper in Nevada. Thus, there is no genuine legal issue. Indeed, the Court in this case
20 through two separate Judges has already made a preliminary decision on this issue and granted a
21 TRO against ISLAM and GSR.¹³ Moreover, the parties stipulated to a Preliminary Injunction
22 that extends the terms of the TRO against both ISLAM and GSR which is currently in place and
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25 ¹² GSR’s citation to *S. J. Amoroso Constr. Co. v. Lazovich & Lazovich*, 107 Nev. 294, 810 P.2d 775 (1991) is
26 simply incorrect. GSR states that in that case, the “[j]ury found three unsigned releases were not enforceable
27 because they were signed under duress, in fear that Amoroso would withhold payment on other current projects.”
28 (Opp. at 7:2-6.) However, the case simply states that this was one of the allegations in L&L’s lawsuit against
Amoroso, and does not provide any analysis or holding on it. See *S.J. Amoroso Constr. Co.*, 107 Nev. at 295, 810
P.2d at 776. Although the jury in that case awarded damages for breach of contract, it did not award any for fraud.
Id.

¹³ Even if a term of the Non-Compete Agreement is overbroad, the Court has the power to uphold the agreement
and modify such a term. See *Ellis v. McDaniel*, 95 Nev. 455, 459-460, 595 P.2d 222, 225-226 (1990).

1 is also the subject of ISLAM's Motion to Dissolve on the grounds that the one year period
2 following Islam's termination has expired. Thus, both the parties and the Court have previously
3 recognized the validity of the Non-Compete's terms with relationship to the legal, public policy
4 issues ISLAM and GSR now raise and that ISLAM has breached.¹⁴ Although there is a current
5 dispute as to whether ATLANTIS is entitled to one full year of ISLAM not competing with it
6 and the damages associated with the violation, those are not material disputes that impact
7 liability.
8

9 GSR's third argument is that it did not have the requisite intent for this cause of action.
10 In *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 71 P.3d 1264 (2003), the Nevada Supreme Court
11 confirmed that a plaintiff must prove that the intentional acts by the Defendant were intended to
12 disrupt Plaintiff's contractual relation. In order to do so, a plaintiff "must establish that the
13 defendant had a motive to induce breach of the contract with the third party." *Id.*, 119 Nev. at
14 275, 71 P.3d at 1268.
15

16 The fact of a general intent to interfere, under a definition that includes imputed
17 knowledge of consequences, does not alone suffice to impose liability. *Inquiry*
18 *into the motive or purpose of the actor is necessary*. The inducement of a breach,
19 therefore, does not always vest third or incidental persons with a tort action
20 against the one who interfered. Where the actor's conduct is not criminal or
fraudulent, and absent some other aggravating circumstances, it is necessary to
identify those whom the actor had a specific motive or purpose to injure by his
interference and to limit liability accordingly.

21 *Id.* (emphasis in original), citing *Las Vegas Investors v. Pacific Malibu Dev. Corp.*, 867 F. Supp.
22 920, 925 (D. Nev. 1994). Here, it is clear from the deposition testimony of Tom Flaherty that
23 GSR's motive in hiring ISLAM away from ATLANTIS in violation of her Non-Compete
24 Agreement was to divert ATLANTIS players to it, thereby benefitting GSR while naturally
25 injuring ATLANTIS:
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28 ¹⁴ Why else would ISLAM and GSR stipulate to extend the terms of the TRO which, among other things,
prevented ISLAM from "being employed by GSR or any other competitor of ATLANTIS within 12 months of her
resignation from ATLANTIS." See May 5, 2012 TRO against ISLAM.

1 Q: What information, if anything, did the Grand Sierra Resort ask Miss Islam to
2 bring with her?
3 A: Just bring herself and her knowledge, and her knowledge of gaming and her
4 relationships.
5 Q: Now, you mentioned previous relationships. Did you discuss with her her
6 clientele at the Atlantis?
7 A: No, not specifically.
8 Q: Not in any of the interviews?
9 A: We discussed her relationship with players that she had knowledge of.
10 Q: What was the extent of that discussion?
11 A: Well, it was pretty much to see what – what her capabilities are and abilities to
12 produce revenue.
13 Q: Did you ask her, for example, how much revenue or play was engaged in by
14 the persons she hosted during the last 12 months?
15 A: We asked her what her estimate of the potential revenue that she could
16 produce.
17 Q: What was her response?
18 A: I believe it was around a million.
19 Q: And on your salary of – do you have a salary formula, or how did you
20 determine the 80,000 dollars?
21 A: It was a number of factors. Based on her previous salary, what we thought it
22 would take to her to make a move, and what we – what we wanted to spend.
23 Q: And did that million dollars of revenue have a role in the decision to offer her
24 80,000 dollars?
25 A: Of course.
26 Q: But it's not a sheer objective formula that you'd add or multiply 80,000 –
27 A: No.

* * *

17 Q: Was it understood that she believed that a number of players would follow her
18 to the property?
19 A: Yes.¹⁵

19 Flaherty also testified that he expected Islam to peruse GSR's database looking for stronger
20 players at other properties to which she had knowledge and then send them a letter to try to get
21 them to come to GSR in order to "convert them or try to get them to be – to share business or get
22 their business."¹⁶ GSR, on the other hand, has not cited to any evidence in support of its claims
23 regarding its intentions in hiring ISLAM vis-a-vis her Non-Compete Agreement. The claim that
24 GSR did not believe the Non-Compete Agreement was valid and enforceable is not supported by
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28 ¹⁵ See Exhibit 9 to motion (Flaherty deposition 28:13-30:7.)

¹⁶ See Exhibit 9 to motion (Flaherty deposition 39:23-40:25)

1 any evidence except inadmissible hearsay contained in ISLAM's statement of facts as written by
2 her counsel.

3 The remaining cases cited by GSR are inapposite. *JBL Enterprises Inc. v. Jhirmack*
4 *Enterprises, Inc.*, 698 F.2d 1011, 1019 (9th Cir. Cal. 1983) is distinguishable as it involved a
5 Defendant that did not know of the existence of the contract that it allegedly induced the breach
6 of. GSR, on the other hand, was well aware of ISLAM's Non-Compete Agreement with
7 ATLANTIS. Lastly, *Straube v. Larson*, 287 Ore. 357 (Or. 1979) is cited by GSR in support of
8 the claim that one whose actions interfere is not subject to liability if he did not intend the result.
9 This is only half accurate, as the full cite provides:
10

11 If the person whose actions interfere does not have the intent to cause the result,
12 his conduct does not subject him to liability. However, even if he does not act for
13 the purpose of interfering or does not desire it but knows that the interference is
14 substantially certain to occur from his action and is a necessary consequence
thereof, his interference is intentional as contemplated by the rule.

15 *Id.* at 360-361 (emphasis added), *citing* Restatement (Second) of the Law of Torts § 766,
16 comments (h) and (j). Therefore, even though GSR claims, without supporting evidence, that it
17 did not specifically intend to interfere, it is liable as ATLANTIS has established that GSR knew
18 and even expected that interference was likely to occur.

19 GSR's last argument against tortious interference with contractual relations is the
20 privilege of competition. However, it is clear that:

21 [w]hile the Nevada Supreme Court has held that free competition is a significant
22 privilege or justification for interference with prospective economic advantage,
23 the court has not given competitors carte blanche in their dealings with each other.
24 The *Crockett* court held that the gravamen of this cause of action is that the
25 interference be unlawful or resort to improper means. Thus, a competitor is
privileged to divert business to itself by all fair and reasonable means. Therefore,
26 a plaintiff must show that the means used to divert the prospective advantage was
unlawful, improper or was not fair and reasonable.

27 *Custom Teleconnect, Inc. v. Int'l Tele-Services, Inc.*, 254 F. Supp. 2d 1173, 1181 (D. Nev. 2003)
28 (emphasis added) (internal citations omitted), *citing Crockett*, 95 Nev. 197, 591 P.2d at 1136-

1 1137. In *Custom Teleconnect, Inc.*, the Court found that an alleged breach of an agreement
2 which directly led to the diversion of the economic advantage would constitute conduct that was
3 improper, unfair, and unreasonable. *Id.* This is exactly what occurred here. GSR tortiously
4 interfered with the contractual relations between ATLANTIS and ISLAM which led to the
5 diversion of economic advantage. Thus, the privilege of competition is a defense applicable only
6 to tortious interference with prospective economic advantage.

8 2. Tortious Interference with Prospective Economic Advantage

9 As to this claim, GSR argues that it did not have the requisite intent, is privileged by
10 competition, and that the information at issue is not confidential and not the property of the
11 ATLANTIS.¹⁷

12 As to intent, ATLANTIS adopts its argument set forth above for tortious interference of
13 contractual relations which applies with equal force to this claim.

14 Regarding the privilege of competition, as also set forth above, ATLANTIS has shown
15 that the means used by GSR to divert the prospective economic advantage was improper or was
16 not fair and reasonable. It purposefully hired ISLAM in violation of her contract with
17 ATLANTIS so that it could acquire and utilize her knowledge to solicit ATLANTIS players.
18 Not only is this tortious, but it is unlawful under the Uniform Trade Secret Act as discussed
19 below. As with *Custom Teleconnect, supra*, it is admitted here that it was ISLAM's breach of
20 her agreement with the ATLANTIS, and GSR's inducement to her to breach that agreement, that
21 allowed GSR to gain access to the identity of guest and players that were in the ATLANTIS
22 database.

23 Next GSR argues that the information concisely described in the relevant agreements that
24 ISLAM signed, such as "guests or perspective guests of Atlantis, customer lists or customer
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28 ¹⁷ GSR also argues that causation of damages has not been established but damages were never within the scope of
this motion. This is a Motion for Partial Summary Judgment as to liability only.

1 information (such as player tracking or club information) and hotel or casino customer/guest lists
2 with facts about those customers' preferences, histories and other personal or business
3 information," is not confidential as it is readily accessible from public sources yet GSR fails to
4 state or provide evidence of what public sources contain this information. Moreover, in Nevada,
5 confidential information that does not rise to the level of a trade secret may nonetheless be
6 protected from disclosure by contract and breach of such a contract is an independent basis to
7 obtain relief. *See Finkel v. Cashman Professional, Inc.*, 128 Nev. Adv. Rep. 6, 237 P.3d 1259
8 (March 1, 2012)¹⁸ and NRS 600A.090.¹⁹ In her answer, ISLAM admitted to executing these
9 agreements and admitted complaint allegation 13 that:

11 [t]hroughout ISLAM's employment at ATLANTIS she had access to and worked
12 with highly sensitive trade secrets and proprietary and confidential information of
13 the ATLANTIS, both online and offline, including but not limited to customer
14 lists or customer information or data (such as player tracking or club information),
related to matters of ATLANTIS' business.

15 ISLAM Answer at ¶ 3. She also admitted that she knew that ATLANTIS treated this
16 information confidential and that she never told ATLANTIS that she disputed these
17 agreements.²⁰

18 Furthermore, Islam's conclusory affidavit which states without any foundation that in her
19 experience, players gamble at more than one casino and have hosts at various casinos and that no
20 casino owns exclusive rights to any player simply does not establish that the information sought
21 to be protected in the agreements is available to the public or to competitors of ATLANTIS.
22 Indeed, this is the subject of a discovery dispute. GSR has requested detailed player tracking
23 information on the guests for which ATLANTIS seeks damages. If this information was in the
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27 ¹⁸ Finkel's conduct likely breached multiple provisions of the party's *Agreement* which could cause irreparable
harm.

28 ¹⁹ This section provides that this chapter does not affect contractual remedies, whether or not based upon
misappropriation of a trade secret or other civil remedies that are not based upon misappropriation of a trade secret.

²⁰ See Exhibit 1 to motion (Islam Deposition 96:1-23, 215:9-216:13 and 220:21-23.)

1 hands of GSR, a competitor, then it would not be confidential and GSR would not have to ask for
2 it. The fact remains that very detailed information related to persons who play at ATLANTIS is
3 maintained by the ATLANTIS in confidence and for its exclusive use and commercial
4 advantage. This information has great value to ATLANTIS or to GSR and any other competitor
5 who could use it to target the ATLANTIS' highest ranked players. Moreover, it is not the
6 players themselves that are proprietary and confidential, but rather the information of their
7 identity and the corresponding information that ATLANTIS collects about them including their
8 play habits, rating, likes, dislikes, marketing incentives etc, which has value and is proprietary
9 and confidential. ATLANTIS maintains this information in its database for use in marketing to
10 and maintaining its relationship with its guests. GSR does the same so its argument simply lacks
11 adequate merit to create an issue of material fact.²¹ Lastly, the argument is belied by the
12 testimony of the GSR Executive Director of Marketing, Christian Ambrose.²² Ambrose testified
13 at length regarding ISLAM providing his department a list of guests that were to be provided
14 special offers, that were better than what that person's play as it was independently known to the
15 GSR would have justified.²³ In other words these were not solicitations to publicly known
16 customers in the normal course of business as GSR suggests.²⁴ Indeed, Ambrose stated this
17 request from management was a first in his career.²⁵ GSR attempts to raise a liability issue
18 where none can reasonably exist.

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23 ²¹ See Exhibit 8 to motion, (GSR 4—GSR confidentiality agreement).

24 ²² See Exhibit 1 (Deposition of Christian Ambrose 34:14-20--where he testified that GSR and his prior casino
25 employer Hooters considered such information to be proprietary to it.)

26 ²³ See Exhibit 1 (Ambrose Deposition 74:16 – 79:21.)

27 ²⁴ See GSR Opposition at 11:16-18.

28 ²⁵ See Exhibit 1 (Ambrose Deposition 76:16 – 77:1 and 78:13-22.)

1 **D. There are no genuine disputed issues of material fact with regard to**
2 **liability on Plaintiff's claim for Violation of Uniform Trade Secret Act, NRS**
3 **600A.010 et. seq.**

4 ATLANTIS claims that GSR misappropriated the trade secrets of ATLANTIS as it knew
5 or should have known that ISLAM, on its behalf, was wrongfully utilizing this information and
6 data belonging to the ATLANTIS while performing her position as a Casino Host for GSR.
7 GSR disputes that the information and data claimed by ATLANTIS is its trade secret, that it
8 misappropriated the information and that it had the requisite intent.

9 Generally, whether a trade secret exists is a question of fact but here, however, all GSR
10 witnesses identified by GSR, save two who have yet to be deposed, admit that such
11 information/data is confidential and proprietary when it is in the hands of GSR.²⁶ This includes
12 all of GSR's non-retained damage experts, Shelly Hadley, Christian Ambrose and William
13 Singh. Also, the player identities, lists and corresponding information and data about them and
14 their habits maintained by ATLANTIS meet the definition of trade secret under the Act--deriving
15 economic value from not being generally known to the public.²⁷ This is demonstrated by the
16 very reason that GSR hired ISLAM--to derive economic benefit from her knowledge and
17 information regarding established ATLANTIS guests.²⁸ It is also demonstrated by the fact that
18 most casinos, including GSR, have their own tracked player clubs in order to incentivize their
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25 ²⁶ See Exhibit 9 to motion (Flaherty Deposition at p. 52:8-11, 22:14-24:4), Exhibit 22 to motion (Lundgren
Deposition at p. 46:12-15), Exhibit 2 (Hadley Deposition 12:9-14, 17:21-19:9), Exhibit 1 (Deposition of Christian
Ambrose 34:14-20) and Exhibit 3 (Deposition of Bill Singh 20:21-21:15.)

26 ²⁷ See *Fran v. Johnson*, 116 Nev. 455, 467, 999 P.2d 351, 358 (2000), wherein the Court held that customer and
pricing information for distributor of plastic gaming cards were trade secrets. See also, *Finkel v. Cashman*
27 *Professional, Inc.*, 128 Nev. Adv. Rep. 6, 270 P.3d 1259 (March 1, 2012) (substantial evidence supported district
court's conclusion that information allegedly misappropriated would likely be confidential trade secrets including
28 customer lists).

²⁸ See Exhibit 9 to motion (Flaherty Deposition at p. 28:11-30:7, 38:1-15, 40:7-25, 44:7-45:3).

1 players to play and perhaps play more.²⁹ As shown below, this information/data is also the
2 subject of reasonable efforts by ATLANTIS to maintain secrecy.

3 Consideration of four *Franz* factors also militates in favor of ATLANTIS. *Franz, supra.*,
4 116 Nev. at 467, 999 P.2d at 358-59. With regard to the first factor, the extent to which others
5 outside ATLANTIS know the information (or could properly acquire it) is low and near
6 impossible. While the identity of some players at ATLANTIS may also be in other casino's
7 databases as active or inactive players, such as with GSR,³⁰ the extent that competitors of
8 ATLANTIS know the identity of ATLANTIS' guests, their play habits at the ATLANTIS and
9 ATLANTIS' successful marketing incentives to those guests is virtually non-existent. This is
10 because ATLANTIS and casinos in general regard this information as confidential and
11 proprietary and take steps to secure it.³¹

12
13 The second factor is also met. With the exception of ISLAM's self serving and
14 contradictory testimony, the evidence in this case is uncontroverted that information of this type
15 is confidential and secret both at ATLANTIS and at other casinos where it is uniformly regarded
16 within the industry as confidential or secret.³² Even GSR admits that the same information is
17 confidential or secret when in its hands.

18
19 The third factor has been met as ATLANTIS guarded the secrecy of this information.
20 ATLANTIS takes extreme efforts to maintain the secrecy of this information and data. First,
21 ATLANTIS has its casino hosts sign four separate agreements concerning the confidentiality of
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25 ²⁹ See Exhibit 9 to motion (Flaherty Deposition 38:24-40:25), Exhibit 2 (Hadley Deposition 36:14-40:16), Exhibit
26 10 to motion (Ringkob Affidavit), Exhibit 1 (Ambrose Deposition 15:1-25:21, 28:15-29:2, 30:10-31:19, 50:9-52:13)
27 and Exhibit 1 to motion (Islam Deposition 17:14-18:12, 44:3-52:14, 56:12-58:2.)

28 ³⁰ See Exhibit 2 (Hadley Deposition 36:10-38:3.)

³¹ See Exhibit 9 to motion (Flaherty Deposition at p. 52:8-11, 22:14-24:4), Exhibit 22 to motion (Lundgren
Deposition at p. 46:12-15), Exhibit 2 (Hadley Deposition 12:9-14, 17:21-19:9), Exhibit 1 (Ambrose Deposition
34:14-20) and Exhibit 3 (Singh Deposition 20:21-21:15.)

³² See Exhibit 9 to motion (Flaherty Deposition at p. 52:8-11, 22:14-24:4), Exhibit 22 to motion (Lundgren
Deposition at p. 46:12-15), Exhibit 2 (Hadley Deposition 12:9-14, 17:21-19:9), Exhibit 1 (Ambrose Deposition
34:14-20) and Exhibit 3 (Singh Deposition 20:21-21:15.)

1 certain information made available to them.³³ One of these agreements, the Non-Compete
2 Agreement, even restricts the ability of the casino host to work within a 150 mile radius in any
3 gaming establishment for one year in order to preserve its investment in employee capital and
4 confidential information. Second, ATLANTIS further maintains its secrecy by restricting the
5 ability to copy the guest information/data maintained on its database. For example, it does not
6 provide casino hosts with a USB port to download information, does not provide a printer to
7 print out information and only allows certain database access to casino hosts.³⁴

9 The fourth factor, the former employee's knowledge of customers and whether this
10 information is known by the employer's competitors also indisputably favors ATLANTIS.
11 ISLAM knows the ATLANTIS' player gaming habits. Many of their identities and their contact
12 information and other player data only as a consequence of her employment with ATLANTIS
13 and that information is unknown to the competitors. It is undisputed that the information which
14 she took from ATLANTIS was not known to GSR until ISLAM brought it. Indeed, ISLAM in
15 her Opposition admits she added 100-200 players to the GSR database that she had copied by
16 hand from the ATLANTIS database.³⁵ The number is not relevant for this motion as the addition
17 of one guest and their data is sufficient to support this motion for liability. It is undisputed that
18 ISLAM added players to the GSR database and started marketing to them based on her
19 knowledge and information improperly taken from her employment with ATLANTIS.³⁶

22 Thus, whether the information and data at issue is a trade secret is not a genuinely
23 disputed question of fact in this case as borne out by the testimony of the parties. Further, GSR
24 misappropriated the trade secrets of ATLANTIS by: (a) acquiring the trade secrets of the
25 Atlantis by *improper means* (hiring ISLAM in violation of the Non-Compete Agreement in order

27 ³³ See Exhibit 10 to motion.

28 ³⁴ See Exhibit 1 to motion (Islam Deposition 93:24-96:21, 131:15-134:9).

³⁵ See Islam Opposition at 12:18-20, 13:1-4.

³⁶ See Exhibit 2 (Hadley Deposition 50:24-51:21.)

1 to access and use the trade secrets of ATLANTIS that ISLAM acquired through her employment
2 by ATLANTIS), (b) acquiring the trade secrets of the ATLANTIS from ISLAM who knew or
3 had reason to know that the trade secrets were acquired by *improper means* and/or (c) use of the
4 trade secrets of the ATLANTIS (without express or implied consent of ATLANTIS) from
5 ISLAM who (1) used *improper means* to acquire knowledge of the trade secret, (2) at the time of
6 disclosure or use, knew or had reason to know that her knowledge of the trade secret was: (i)
7 derived from her use of *improper means* to acquire it; (ii) acquired under circumstances giving
8 rise to a duty to maintain its secrecy or limit its use; and/or (iii) derived in violation of the duty
9 she owed to the ATLANTIS to maintain its secrecy or limit its use. *See* NRS 600.030 *et al.*

11 NRS 600.030(1) defines *improper means* as, without limitation, (a) theft; (b) bribery; (c)
12 misrepresentation; (d) willful breach or willful inducement of breach of a duty to maintain
13 secrecy; (e) willful breach or willful inducement of a breach of duty imposed by common law,
14 statute, contract, license, protective order or other court or administrative order; and (f)
15 espionage through electronic or other means.

17 Thus by clear statutory definition, GSR's willful inducement of breach of ISLAM's Non-
18 Compete Agreement is a duty imposed by contract that subjects GSR to liability under the
19 UTSA. Additionally, ISLAM essentially thieved the information and data from ATLANTIS
20 which is also a willful breach imposed by the contracts she signed as well as by statute (UTSA).
21 In fact, her admission to copying the information of hundreds of ATLANTIS' guests by hand
22 from her computer would also appear to qualify under the espionage definition. Regardless, the
23 issue of impropriety does not appear to be reasonably in play. Moreover, GSR's and ISLAM's
24 conduct is willful in that GSR and ISLAM's actions were intentional and deliberate and both
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1 were both aware of the consequences of their actions.³⁷ After all, they executed an agreement as
2 to what would take place in the event litigation was filed.³⁸ GSR's claims that it felt the Non-
3 Compete Agreement was invalid and unenforceable and that it did not tell ISLAM to bring any
4 information with her does not immunize GSR. GSR runs the risk of the consequences if it is
5 wrong.
6

7 Furthermore, for GSR to sit idly by and accept information when it knew or had reason to
8 know that the information was wrongfully in its hands is unacceptable under the UTSA. GSR
9 took no affirmative conduct to ensure that the information ISLAM brought to it was not trade
10 secret.³⁹ The Non-Compete Agreement provided to GSR by ISLAM even stated that
11 ATLANTIS "has a legitimate interest in effectively competing in the marketplace and protecting
12 its investment in employee capital and confidential information."⁴⁰ GSR was also on notice that
13 ISLAM would be subject to confidential information as it also has a confidentiality agreement
14 that it requires all its hosts to sign, including ISLAM⁴¹ and most importantly, GSR regards as
15 confidential and proprietary the very information/data that this lawsuit is about when in its
16 hands.⁴² Finally at a minimum, GSR was put on notice on April 6, 2012 that the information
17 ISLAM brought to them was wrongfully obtained.⁴³ Rather than take precautionary measures,
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22 ³⁷ Although willful is not defined in NRS 600A.010 *et. seq.*, willful is generally known to mean "[p]roceed from a
23 conscious motion of the will; voluntary; knowingly; deliberate. Intending the result which actually comes to pass;
designed; intentional; purposeful; not accidental or involuntary." Black's Law Dictionary (6th Ed. 1990).

24 ³⁸ See, Exhibit 1 to motion (Islam Deposition 147:17 to 151:20 and 153:9 to 156:1), Exhibit 6 to Reply to Islam
Opposition (January 10, 2012 offer letter from GSR) and Exhibit 7 to Reply to Islam Opposition (January 19 offer
letter from GSR.)

25 ³⁹ See Exhibit to motion 9 (Flaherty Deposition 21:42-23:1, 24:5-25:11, 38:1-15, 41:20-25) and Exhibit 2 (Hadley
Deposition 17:10-24, 21:11-19, 50:21-51:21, 73:9-75:10.)

26 ⁴⁰ See Exhibit 7 to motion.

27 ⁴¹ See Exhibit 8 to motion, (GSR 4—GSR confidentiality agreement) and Exhibit 9 to motion (Flaherty Deposition
22:14-23:1, 51:21-52:11.)

28 ⁴² See Exhibit 9 to motion (Flaherty Deposition at p. 52:8-11, 22:14-24:4), Exhibit 22 to motion (Lundgren
Deposition at p. 46:12-15), Exhibit 2 (Hadley Deposition 12:9-14, 17:21-19:9), Exhibit 1 (Ambrose Deposition
34:14-20) and Exhibit 3 (Singh Deposition 20:21-21:15.)

⁴³ See Exhibit 18 to motion.

1 GSR denied all wrongdoing⁴⁴ and continued to use the information presumably until the TRO
2 was entered against it on July 5, 2012.

3 IV.

4 CONCLUSION

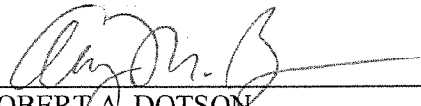
5 Based on the foregoing, ATLANTIS respectfully requests that this Court grant partial
6 summary judgment on ATLANTIS' three claims for relief against GSR as to liability only.

7 **Affirmation Pursuant to NRS 239B.030**

8 The undersigned does hereby affirm that the preceding document does not contain the
9 social security number of any person.

10 Dated this 22nd day of March, 2013.

11 LAXALT & NOMURA, LTD.

12
13 
14 ROBERT A. DOTSON
15 Nevada State Bar No. 5285
16 ANGELA M. BADER
17 Nevada State Bar No. 5574
18 9600 Gateway Drive
19 Reno, Nevada 89521
20 (775) 322-1170
21 Attorneys for Plaintiff

22
23
24
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26
27
28 ⁴⁴ See Exhibit 19 to motion.

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of LAXALT &
3 NOMURA, LTD., and that on this date, I caused to be served a true and correct copy of the
4 foregoing by:

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

9 ☒ By electronic service by filing the foregoing with the Clerk of Court using the E-
Flex system, which will electronically mail the filing to the following individuals.

10 ☐ (BY PERSONAL DELIVERY) by causing a true copy thereof to be hand
11 delivered this date to the address(es) at the address(es) set forth below.

12 ☐ (BY FACSIMILE) on the parties in said action by causing a true copy thereof to
be telecopied to the number indicated after the address(es) noted below.

13 ☐ Reno/Carson Messenger Service.

14 ☒ By email to the email addresses below.

15 addressed as follows:

16 Steven B. Cohen, Esq.
17 Stan Johnson, Esq.
Cohen/Johnson
18 6293 Dean Martin Drive, Ste G
19 Las Vegas, NV 89118

Mark Wray, Esq.
Law Office of Mark Wray
608 Lander Street
Reno, NV 89509

mwray@markwraylaw.com

20 scohen@cohenjohnson.com
21 sjohnson@cohenjohnson.com

22 DATED this 22nd day of March, 2013.

23 
24 L. MORGAN BOCUMIL
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INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION	PAGES
1	Deposition of Christian Ambrose dated January 18, 2013 [partial]	30
2	Deposition of Shelly Hadley dated August 13, 2012 [partial]	19
3	Deposition of Bill Singh dated January 18, 2013 [partial]	7

1 **1030**
2 ROBERT A. DOTSON, ESQ.
3 Nevada State Bar No. 5285
4 rdotson@laxalt-nomura.com
5 ANGELA M. BADER, ESQ.
6 Nevada State Bar No. 5574
7 abader@laxalt-nomura.com
8 LAXALT & NOMURA, LTD.
9 9600 Gateway Drive
10 Reno, Nevada 89521
11 Tel: (775) 322-1170
12 Fax: (775) 322-1865
13 Attorneys for Plaintiff

9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR THE COUNTY OF WASHOE**

11 GOLDEN ROAD MOTOR INN, INC., a Nevada
12 Corporation, d/b/a ATLANTIS CASINO
13 RESORT SPA

Case No.: CV12-01171

Dept No.: B7

14 Plaintiff,

15 vs.

16 SUMONA ISLAM, an individual; NAV-RENO-
17 GS, LLC, a Nevada limited liability company,
18 d/b/a GRAND SIERRA RESORT; ABC
19 CORPORATIONS; XYZ PARTNERSHIPS;
20 AND JOHN DOES I through X, inclusive.

21 Defendants.

22 **AFFIDAVIT OF COUNSEL IN SUPPORT**
23 **OF PLAINTIFF'S REPLY TO GSR'S OPPOSITIONS**
24 **TO MOTION FOR PARTIAL SUMMARY JUDGMENT**

25 STATE OF NEVADA)
26) ss.
27 COUNTY OF WASHOE)

28 ANGELA M. BADER hereby affirms, under penalty of perjury, that the assertions
contained herein are true;

1. I am an attorney licensed to practice law in the State of Nevada and represent the
Plaintiff, Golden Road Motor Inn, Inc., a Nevada corporation d/b/a Atlantis Casino Resort Spa
("Plaintiff"), in this action.

2. Attached to Plaintiff's Reply to GSR's Oppositions to Motion For Partial Summary Judgment, as Exhibit 1, is a true and correct certified copy of partial excerpts from the Deposition of Christian Ambrose dated January 18, 2013.

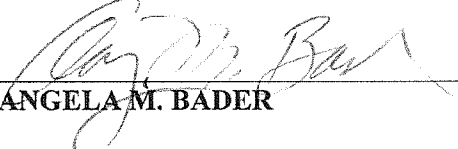
3. Attached to Plaintiff's Reply to GSR's Oppositions to Motion For Partial Summary Judgment, as Exhibit 2, is a true and correct certified copy of partial excerpts from the Deposition of Shelly Hadley dated August 13, 2012.

4. Attached to Plaintiff's Reply to GSR's Oppositions to Motion For Partial Summary Judgment, as Exhibit 3, is a true and correct certified copy of partial excerpts from the Deposition of Bill Singh dated January 18, 2013.

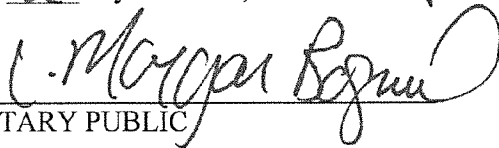
Affirmation Pursuant to NRS 239B.030

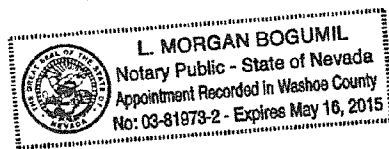
The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

FURTHER YOUR AFFIANT SAYETH NAUGHT.


ANGELA M. BADER

SUBSCRIBED and SWORN to before me
this 22 day of March, 2013.


NOTARY PUBLIC



1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of LAXALT &
3 NOMURA, LTD., and that on this date, I caused to be served a true and correct copy of the
4 foregoing by:

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

9 ☒ By electronic service by filing the foregoing with the Clerk of Court using the E-
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10 ☐ (BY PERSONAL DELIVERY) by causing a true copy thereof to be hand
11 delivered this date to the address(es) at the address(es) set forth below.

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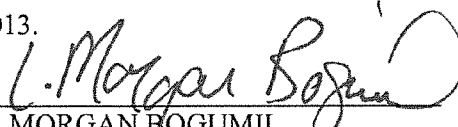
16 Steven B. Cohen, Esq.
17 Stan Johnson, Esq.
Cohen-Johnson, LLC
18 255 E. Warm Springs Rd, Ste 100
Las Vegas, NV 89119

Mark Wray, Esq.
Law Office of Mark Wray
608 Lander Street
Reno, NV 89509

mwray@markwraylaw.com

19 scohen@cohenjohnson.com
20 sjohnson@cohenjohnson.com

21 DATED this 22 day of March, 2013.

22 
23 L. MORGAN BOGUMIL

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

GOLDEN ROAD MOTOR INN, INC.,
a Nevada corporation, dba ATLANTIS
CASINO RESORT SPA,

Plaintiff,

vs.

Case No.: CV12-01171

SUMONA ISLAM, an individual,
NAV-RENO-GS, LLC, a Nevada
limited liability company, dba GRAND
SIERRA RESORT; ABC
CORPORATIONS; XYZ
PARTNERSHIPS; and JOHN DOES I
through X, inclusive,

Dept. No.: 7

Defendants.

ORDER

On February 7, 2013, Defendant, SUMONA ISLAM, filed her *Motion to Dissolve Preliminary Injunction*. On February 12, 2013, Defendant, GSR ENTERPRISES, LLC, dba GRAND SIERRA RESORT, filed its *Non-Opposition to Motion to Dissolve Preliminary Injunction*

Having reviewed the papers and pleadings on file herein, and good cause appearing,

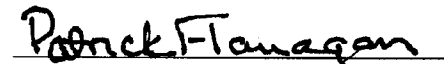
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IT IS HEREBY ORDERED THAT Defendant, SUMONA ISLAM's *Motion to Dissolve Preliminary Injunction* is hereby **GRANTED**, and the *Preliminary Injunction* entered August 24, 2012, is hereby **DISSOLVED**.

DATED this 25 day of *APRIL*, 2013.


Patrick Flanagan
DISTRICT COURT JUDGE

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Robert Dotson, Esq. for Golden Road Motor Inn, Inc.,
Mark Wray, Esq. for Sumona Islam, and
H. Johnson, Esq. for GSR Enterprises

Laura J. Lind
Judicial Assistant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

GOLDEN ROAD MOTOR INN, INC.,
a Nevada corporation, dba ATLANTIS
CASINO RESORT SPA,

Plaintiff,

vs.

Case No.: CV12-01171

SUMONA ISLAM, an individual,
NAV-RENO-GS, LLC, a Nevada
limited liability company, dba GRAND
SIERRA RESORT; ABC
CORPORATIONS; XYZ
PARTNERSHIPS; and JOHN DOES I
through X, inclusive,

Dept. No.: 7

Defendants.

ORDER

On February 7, 2013, Defendant, SUMONA ISLAM, filed her *Motion to Dissolve Preliminary Injunction*. On February 12, 2013, Defendant, GSR ENTERPRISES, LLC, dba GRAND SIERRA RESORT, filed its *Non-Opposition to Motion to Dissolve Preliminary Injunction*. On February 22, 2013, Plaintiff, GOLDEN ROAD MOTOR INN, INC. filed its *Opposition to Motion to Partially Dissolve Preliminary Injunction and Countermotion to Continue Preliminary Injunction*. On February 25, 2013, Defendant, SUMONA ISLAM, filed her *Reply and Opposition to Motion to Continue Injunction*. On March 4, 2013, Plaintiff filed

1 its *Reply in Support of Plaintiff's Motion to Continue Preliminary Injunction* and the
2 matter was submitted for decision. On April 25, 2013, this Court entered its *Order*
3 granting Defendant's *Motion to Dissolve Preliminary Injunction*. On April 29, 2013,
4 a hearing was had in the above matter, and good cause appearing, the *Order*
5 entered April 25, 2013, is hereby **VACATED**.

6 Dated this 30 day of April, 2013.

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8 Patrick Flanagan
9 Patrick Flanagan
10 DISTRICT COURT JUDGE
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Robert Dotson, Esq. for Golden Road Motor Inn, Inc.,
Mark Wray, Esq. for Sumona Islam, and
H. Johnson, Esq. for GSR Enterprises


Judicial Assistant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

GOLDEN ROAD MOTOR INN, INC.,
a Nevada Corporation, d/b/a ATLANTIS
CASINO RESORT SPA,

Plaintiff,

Case No. CV12-01171

vs.

Dept. B7

SUMONA ISLAM, an individual;
NAV-RENO-GS, LLC, a Nevada
limited liability company, d/b/a
GRAND SIERRA RESORT; ABC
CORPORATIONS; XYZ PARTNERSHIPS;
AND JOHN DOES I through X,
inclusive,

Defendants.

ORDER

On February 7, 2013, Defendant, SUMONA ISLAM, filed her Motion to Dissolve Preliminary Injunction. On February 12, 2013, Defendant, NAV-RENO-GS, LLC, dba GRAND SIERRA RESORT, filed its Non-Opposition to Motion to Dissolve Preliminary Injunction. On February 22, 2013, Plaintiff, GOLDEN ROAD MOTOR INN, INC., dba ATLANTIS CASINO RESORT SPA, filed its Opposition to Motion to

1 Partially Dissolve Preliminary Injunction and Countermotion to Continue Preliminary
2 Injunction. On February 25, 2013, Defendant, SUMONA ISLAM, filed her Reply in
3 Support of Motion to Partially Dissolve Preliminary Injunction and Opposition to
4 Countermotion to Continue Preliminary Injunction. On March 4, 2013, ATLANTIS
5 CASINO RESORT SPA, filed its Reply in Support of Countermotion to Continue
6 Preliminary Injunction.

7 Having reviewed the papers and pleadings on file herein, conducted a telephonic
8 hearing April 29, 2013 to hear the oral arguments of counsel, and good cause appearing,

9 **IT IS HEREBY ORDERED THAT** Defendant SUMONA ISLAM's Motion to
10 Dissolve Preliminary Injunction is hereby **GRANTED**. That portion of the Preliminary
11 Injunction entered August 24, 2012 that enjoins ISLAM from working as a casino host is
12 hereby **DISSOLVED**. In all other respects, the preliminary injunction order of August
13 24, 2012 remains in effect.

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15 
16 PATRICK FLANAGAN
District Judge

17 DATED: MAY 2, 2013
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

GOLDEN ROAD MOTOR INN, INC.,
a Nevada corporation, dba ATLANTIS
CASINO RESORT SPA,

Case No.: CV12-01171

Dept. No.: 7

Plaintiff,

vs.

SUMONA ISLAM, an individual,
NAV-RENO-GS, LLC, a Nevada
limited liability company, dba GRAND
SIERRA RESORT; ABC
CORPORATIONS; XYZ
PARTNERSHIPS; and JOHN DOES I
through X, inclusive,

Defendants.

ORDER

This civil dispute arises from Defendant Sumona Islam's decision to leave her position as an Executive Casino Host at Atlantis Casino Resort and Spa for a similar position at Grand Sierra Resort. Atlantis maintains by doing so Islam breached a non-compete agreement, a confidentiality agreement, and a trade-secrets agreement, converted Atlantis' property, interfered with Atlantis' contractual relations, and stole Atlantis' trade secrets. Currently before the court is Plaintiff's *Motion for Partial Summary Judgment*, seeking judgment on all claims as to liability but not damages.

1 Summary judgment is proper only if no genuine issue of material fact exists
2 and the moving party is entitled to judgment as a matter of law. NRCP 56(c); see
3 *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). A issue of
4 material fact is genuine “when the evidence is such that a rational trier of fact could
5 return a verdict for the nonmoving party.” *Id.* at 731. The moving party bears the
6 initial burden of proving there is no genuine issue of material fact. *Maine v.*
7 *Stewart*, 109 Nev. 721, 726-27, 857 P.2d 755, 758 (1993). Once the moving party
8 satisfies this burden, however, the burden shifts to the nonmoving party to show
9 the existence of a genuine issue of material fact. *Id.* at 727. While the pleadings
10 and the record must be construed in the light most favorable to the nonmoving
11 party, that party must do more than simply show there is some metaphysical doubt
12 as to the operative facts. *Wood*, 121 Nev. at 729. To avoid having summary
13 judgment entered against it, the party must, by affidavit or otherwise, set forth
14 specific facts demonstrating the existence of a genuine issue for trial. *Id.*

15 After a review of the evidence in this case, and viewing that evidence in the
16 light most favorable to the non-moving party, in this case Defendants, the court
17 finds that a genuine issue of material fact exists as to each and every one of
18 Plaintiff's claims, thus precluding summary adjudication.

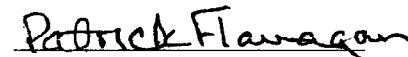
19 As to Plaintiff's contractually based claims, Islam's affidavit in opposition to
20 the motion creates a genuine issue of material fact as to the validity of the contract.
21 Islam alleges she signed the contract under duress and that the contract was not
22 based upon consideration as it was signed after she had accepted employment. As to
23 the claims for conversion and violation of the Uniform Trade Secrets Act, Islam
24 maintains that any information she took from Atlantis was information she had
25 brought with her to Atlantis when she began her employment. Thus, Islam
26 establishes a genuine issue of material fact as to whether or not the items she took
27 with her were the property of Atlantis or her own personal property which she had
28 been using for Atlantis' benefit during her employment. Finally, as to Plaintiff's

1 claim for interference with contractual relations, Plaintiff fails to establish it had an
2 exclusive right to contract with any of the casino guests. Indeed, the evidence
3 indicates the guests contracted with multiple casinos in the area.

4 Accordingly, Plaintiff's *Motion for Partial Summary Judgment* is **DENIED**.

5 **IT IS SO ORDERED.**

6 **DATED** this 7 day of May, 2013.

7
8 
9 PATRICK FLANAGAN
District Judge

1 CERTIFICATE OF SERVICE

2
3 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
4 Judicial District Court of the State of Nevada, County of Washoe; that on this
5 7 day of May, 2013, I electronically filed the following with the Clerk of the
6 Court by using the ECF system which will send a notice of electronic filing to the
7 following:

8 Robert Dotson, Esq. for Golden Road Motor Inn, Inc.,

9 Mark Wray, Esq. for Sumona Islam, and

10 H. Johnson, Esq. for GSR Enterprises

11 I deposited in the Washoe County mailing system for postage and mailing
12 with the United States Postal Service in Reno, Nevada, a true copy of the attached
13 document addressed to:

14
15 
16 Judicial Assistant
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FILED

Electronically

05-28-2013:04:05:32 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3750330

1 2245

ROBERT A. DOTSON, ESQ.

2 Nevada State Bar No. 5285

3 rdotson@laxalt-nomura.com

ANGELA M. BADER, ESQ.

4 Nevada State Bar No. 5574

abader@laxalt-nomura.com

5 LAXALT & NOMURA, LTD.

9600 Gateway Drive

6 Reno, Nevada 89521

7 Tel: (775) 322-1170

8 Fax: (775) 322-1865

Attorneys for Plaintiff

9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR THE COUNTY OF WASHOE**

11 GOLDEN ROAD MOTOR INN, INC., a
12 Nevada Corporation, d/b/a ATLANTIS
13 CASINO RESORT SPA

Case No.: CV12-01171

Dept No.: B7

14 Plaintiff,

15 vs.

16 SUMONA ISLAM, an individual; NAV-
17 RENO-GS, LLC, a Nevada limited liability
18 company, d/b/a GRAND SIERRA RESORT;
19 ABC CORPORATIONS; XYZ
20 PARTNERSHIPS; AND JOHN DOES I
through X, inclusive.

Defendants.

21 **PLAINTIFF'S MOTIONS IN LIMINE**

22 Plaintiff, GOLDEN ROAD MOTOR INN, INC. d/b/a ATLANTIS CASINO RESORT
23 SPA ("Plaintiff" and/or "ATLANTIS"), by and through its counsel, Laxalt & Nomura, Ltd.,
24 hereby moves this honorable Court for its order in limine instructing Defendants, their counsel,
25 and all witnesses to be called on their behalf, that no evidence of any form, whether it be oral,
26 written, documented, or otherwise, may be offered or received related to the objectionable
27 matters set forth herein.
28

1 I.

2 **FACTUAL BACKGROUND**

3 This is a contract, tort and trade secret case against Defendant NAV-RENO-GS, LLC
4 d/b/a GRAND SIERRA RESORT ("GSR") and its current employee, SUMONA ISLAM
5 ("ISLAM"), which arises out of ISLAM's theft and wrongful use of confidential intellectual
6 property belonging to the ATLANTIS to which ISLAM was given access by virtue of her
7 employment at the ATLANTIS as an Executive Casino Host. Not only did ISLAM copy guest
8 information from the ATLANTIS database shortly before she quit her position at the
9 ATLANTIS and utilize that information in her new position as an Executive Casino Host at the
10 GSR to the detriment of the ATLANTIS (in violation of both common and statutory law as well
11 as her contractual obligations), but she also sabotaged contact information for certain
12 ATLANTIS guests in its database.¹ ISLAM also violated the Non-Compete Agreement wherein
13 she agreed that she could not "be employed by, in any way affiliated with, or provide any
14 services to any gaming business or enterprise" located within 150 miles of the ATLANTIS for
15 one full year after her termination.²
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17

18 II.

19 **ARGUMENT**

20 A. **Legal Authority Common to All Motions in Limine**

21 Evidence that does not have a tendency to make the existence of any fact that is of
22 consequence to the determination of the action more or less probable is not admissible. NRS §
23 48.025; NRS § 48.015. Moreover, evidence is not admissible if its probative value is
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27 ¹ Evidence supporting these facts is fully set forth in Atlantis' Motion for Partial Summary Judgment, filed August
28 23, 2012 and incorporated herein.

² See Non-Compete Agreement, Exhibit 7 to Motion For Partial Summary Judgment.

1 substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of
2 misleading the jury. NRS § 48.035.

3 **B. Expert Testimony**

4 **1. Defendant GSR's Non-Retained Experts Should Be Precluded From**
5 **Offering Any Expert Opinions.**

6 Per GSR's Expert Disclosure, its designated non-retained rebuttal experts Christian
7 Ambrose and William Singh are expected to provide expert witness opinions on the following
8 subjects: 1) amount of alleged damages (if any) incurred by Plaintiff ATLANTIS as a result of
9 the alleged actions of the Defendants; 2) the alleged changes in the theoretical play, or loss of
10 revenue, claimed by the Plaintiff; 3) the alleged expense incurred by Plaintiff to correct data
11 input into Plaintiff's database; 4) the alleged expense and marketing efforts related to mitigation
12 of the alleged solicitation efforts engaged in by Defendants. *See* GSR's Rebuttal Expert
13 Disclosure (without exhibits) attached hereto as Exhibit 1.
14

15 At the deposition of Christian Ambrose, Ambrose had not even reviewed Plaintiff's
16 Computation of Damages. *See* Exhibit 2 (Deposition of Christian Ambrose 104:17-106:25).
17 Moreover, he had not been asked by anybody to review or critique the Computation of Damages
18 or any supporting exhibits. Exhibit 2 (Ambrose Deposition 107:1-113:25). In sum, Mr.
19 Ambrose testified that he did not intend to offer any opinion as to what damage had been
20 incurred by the ATLANTIS as a consequence of ISLAM's behavior or the GSR's employment
21 of her. Exhibit 2 (Ambrose Deposition 114:1-5). Moreover, he had not undertaken any
22 examination of theoretical play of the guests which ATLANTIS contends were impacted by
23 ISLAM's and the GSR's actions. Exhibit 2 (Ambrose Deposition 114:20-24).
24

25 Similarly, Bill Singh testified that he had not seen Plaintiff's Computation of Damages
26 before his deposition and had not been asked to critique or render an opinion as to the accuracy
27 of that information. *See* Exhibit 3 (Deposition of Bill Singh 69:24-75:8).
28

1 Accordingly, GSR's non-retained experts, designated to testify and provide rebuttal
2 expert witness opinions as to the alleged damages incurred by ATLANTIS on the above
3 categories, should be precluded because they gave no opinions at their depositions and they can
4 demonstrate no evidentiary basis for any non-retained expert opinions.

5 Moreover, consistent with NRCP 16.1(a)(D), the parties must supplement disclosures
6 when required under Rule 26(e)(1). Under NRCP 26(e)(1):

7 A party is under a duty to supplement at appropriate intervals its disclosures under
8 Rule 16.1(a)... With respect to testimony of an expert from whom a report is
9 required under Rule 16.1(a)(2)(B) the duty extends both to information contained
10 in the report and to information provided through a deposition of the expert, and
any additions or other changes to this information shall be disclosed by the time
the party's disclosures under Rule 16.1(a)(3) are due.

11 Although a report is not required for a non-retained expert, supplementation is required if the
12 party learns that in some material respect the information disclosed is incomplete or incorrect
13 and if the additional or corrective information is not otherwise made known to the other parties
14 during the discovery process or in writing. GSR has not supplemented or produced to Plaintiff
15 any non-retained expert opinions that Mr. Ambrose or Mr. Singh may have.

16 Although these individuals are named by GSR as percipient witnesses, their testimony
17 should be limited to factual assertions only and no expert opinion allowed.

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III.

CONCLUSION

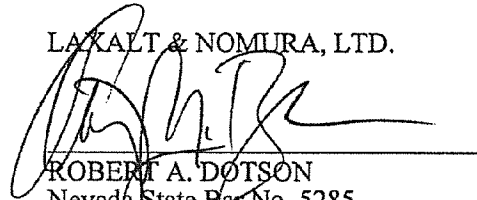
Based on the foregoing, Plaintiff requests this honorable Court's order excluding the evidence as described or otherwise directing the parties to act in accordance with this motion.

Affirmation Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 28th day of May, 2013.

LAXALT & NOMURA, LTD.



ROBERT A. DOTSON
Nevada State Bar No. 5285
ANGELA M. BADER, ESQ.
Nevada State Bar No. 5574
9600 Gateway Drive
Reno, Nevada 89521
(775) 322-1170
Fax: (75) 322-1865
Attorneys for Plaintiff

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of LAXALT &
3 NOMURA, LTD., and that on this date, I caused to be served a true and correct copy of the
4 foregoing by:

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

9 ☒ By electronic service by filing the foregoing with the Clerk of Court using the E-
Flex system, which will electronically mail the filing to the following individuals.

10 ☐ (BY PERSONAL DELIVERY) by causing a true copy thereof to be hand
11 delivered this date to the address(es) at the address(es) set forth below.

12 ☐ (BY FACSIMILE) on the parties in said action by causing a true copy thereof to
be telecopied to the number indicated after the address(es) noted below.

13 ☐ By Reno/Carson Messenger Service.

14 ☒ By email to the email addresses below.

15 addressed as follows:

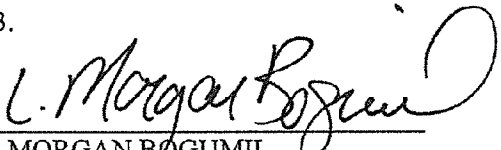
16 Steven B. Cohen, Esq.
17 Stan Johnson, Esq.
Cohen-Johnson, LLC
18 255 E. Warm Springs Rd, Ste 100
Las Vegas, NV 89119

Mark Wray, Esq.
Law Office of Mark Wray
608 Lander Street
Reno, NV 89509

mwrap@markwraylaw.com

19 scohen@cohenjohnson.com
20 sjohnson@cohenjohnson.com

21 DATED this 28 day of May, 2013.

22 
23 L. MORGAN BOGUMIL
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INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION	PAGES
1	Grand Sierra Resort's Rebuttal Expert Disclosure [without attachments]	5
2	Deposition of Christian Ambrose dated January 18, 2013 [partial]	16
3	Deposition of Bill Singh dated January 18, 2013 [partial]	12

EXHIBIT 1

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Joey Orduna Hastings
Clerk of the Court
Transaction # 3750330

EXHIBIT 1

COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

1 **COHEN-JOHNSON, LLC**
2 **H. STAN JOHNSON**
3 Nevada Bar No. 00265
4 **sjohnson@cohenjohnson.com**
5 **STEVEN B. COHEN, ESQ.**
6 Nevada Bar No. 2327
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8 255 E. Warm Springs Road, Suite 100
9 Las Vegas, Nevada 89119
10 Telephone: (702) 823-3500
11 Facsimile: (702) 823-3400
12 Attorneys for Grand Sierra Resort

13 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
14 **IN AND FOR THE COUNTY OF WASHOE**

15 **GOLDEN ROAD MOTOR INN, INC., a Nevada**
16 **Corporation, d/b/a ATLANTIS CASINO**
17 **RESORT SPA,**

18 **Plaintiff,**

19 **vs.**

20 **SUMONA ISLAM, an individual; GSR**
21 **ENTERPRISES, LLC, a Nevada limited liability**
22 **company, d/b/a GRAND SIERRA RESORT;**
23 **ABC CORPORATIONS; XYZ**
24 **PARTNERSHIPS; and JOHN DOES I through**
25 **X, inclusive,**

26 **Defendants.**

Case No.: CV12-01171
Dept. No.: 7

27 **GRAND SIERRA RESORT'S REBUTTAL EXPERT DISCLOSURE**

28 Defendant, GRAND SIERRA RESORT ("GSR" or "Defendant"), by and through its
counsel of record, Cohen-Johnson, LLC, hereby submits and identifies its rebuttal expert
witnesses and discloses the rebuttal expert report pursuant to NRCP 16.1(a)(2) in this matter as
follows:

I. **EXPERT WITNESSES**

A. Jeremy A. Aguero
Principal Analyst
Applied Analysis
6385 S. Rainbow Blvd., Suite 105
Las Vegas, Nevada 89118
(702) 937-3333

...

1 Jeremy Aguero is expected to testify regarding the Rebuttal Expert Witness Report
2 prepared by Applied Analysis, including opinions, data and any other information considered in
3 forming said report and opinions, his professional qualifications, and any other related matters.

4 Defendant reserves the right to supplement the expert witness disclosure as further
5 investigation and discovery may reveal additional information.

6 **II. NON-RETAINED EXPERTS**

7 **A. Shelley Hadley**

8 Ms. Hadley is a non-retained expert and currently holds the position of the Executive
9 Director of Casino Marketing for the Grand Sierra Resort.

10 **B. Christian Ambrose**

11 Mr. Ambrose is a non-retained expert and currently holds the position of the Executive
12 Director of Data Base Management for the Grand Sierra Resort.

13 **C. William Singh**

14 Mr. Singh is a non-retained expert and currently holds the position of the Director of
15 Analysis for the Grand Sierra Resort.

16 Ms. Hadley, Mr. Ambrose, and/or Mr. Singh may be called to testify and provide non-
17 retained rebuttal expert witness opinions on the following subjects:

18 1. The amount of alleged damages (if any) incurred by the Plaintiff Atlantis as a
19 result of the alleged actions of the defendants.

20 2. The alleged changes in theoretical play, or loss of revenue, claimed by the
21 Plaintiff.

22 3. The alleged expense incurred by the Plaintiff to correct data input into the
23 Plaintiff's data base.

24 4. The alleged expense and marketing efforts related to mitigation of the alleged
25 solicitation efforts engaged in by defendants.
26
27
28

1
2 The Non-Retained Experts are experts known to the Defendant at this time that
3 Defendant may or will call at the time of trial. Defendant reserves the right to supplement the
4 Non-Retained Experts as further investigation and discovery may reveal additional information.

5 **III. DOCUMENTS**

6 A. December 12, 2012 Expert Witness Report by Applied Analysis, Bates Stamped
7 GSREXP 0001 – GSREXP 0032.

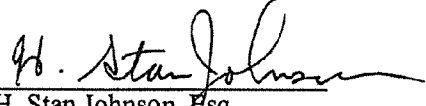
8 Defendant reserves the right to supplement the document disclosures as further
9 investigation and discovery may reveal additional information.

10 **Affirmation Pursuant to NRS 239B.030**

11
12 The undersigned does hereby affirm that the preceding document does not contain the
13 social security number of any person.

14 Dated this 19th day of December, 2012.

15 COHEN-JOHNSON, LLC

16
17 By: 

18 H. Stan Johnson, Esq.
19 Nevada Bar No. 60265
20 Steven B. Cohen, Esq.
21 Nevada Bar No. 2327
22 255 E. Warm Springs Road, Suite 100
23 Las Vegas, Nevada 89119
24 Attorneys for Grand Sierra Resort
25
26
27
28

COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of December, 2012, I served a copy of the foregoing
GRAND SIERRA RESORT'S REBUTTAL EXPERT DISCLOSURE upon each of the
parties via email at email addresses provided below and by depositing a copy of the same in a
sealed envelope in the United States Mail, Las Vegas, Nevada, First-Class Postage fully prepaid,
and addressed to:

Robert A. Dotson, Esq.
Angela M. Bader, Esq.
Laxalt & Nomura, Ltd.
9600 Gateway Drive
Reno, Nevada 89521
rdotson@laxalt-nomura.com
abader@laxalt-nomura.com
mbogumil@laxalt-nomura.com
cbehling@laxalt-nomura.com
Attorney for Plaintiff

Mark Wray, Esq.
Law Office of Mark Wray
608 Lander Street
Reno, Nevada 89509
mwrap@markwraylaw.com
apeterson@markwraylaw.com
Attorney for Sumona Islam

and that there is a regular communication by mail between the place of mailing and the places so
addressed.

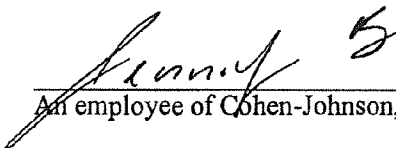

An employee of Cohen-Johnson, LLC

EXHIBIT 2

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Transaction # 3750330

EXHIBIT 2

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IN THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

-o0o-

GOLDEN ROAD MOTOR INN, INC.,
a Nevada corporation, DBA
ATLANTIS CASINO RESORT SPA,

Plaintiff,

Case No. CV12-01171

vs.

Dept. No. B7

SUMONA ISLAM, an individual;
NAV-RENO-GS, LLC, a Nevada
limited liability company DBA
GRAND SIERRA RESORT; ABC
CORPORATIONS; XYZ PARTNERSHIPS;
and JOHN DOES I through X,
inclusive,

CERTIFIED COPY

Defendants.

Pages 1 to 172, inclusive.

DEPOSITION OF CHRISTIAN AMBROSE

Friday, January 18, 2013
Reno, Nevada

REPORTED BY:

CHRISTINA AMUNDSON
CCR #641 (Nevada)
CSR #11883 (California)

1 Q Or to whom they went?

2 A Exactly.

3 Q Is there any way to track response to these
4 sorts of solicitations and marketing attempts?

5 A It's not a function of my department. Nothing
6 obviously trackable about this letter, about the language,
7 just more information.

8 Q Unless they stopped in at the VIP lounge and you
9 track who shows up, I guess. That's my question.

10 A Yes.

11 Q You wouldn't necessarily turn in your letter.
12 You might just visit. True?

13 A Yeah. But you couldn't say that was a result of
14 the letter.

15 Q Could be just word of mouth?

16 A Yeah. Saw my TV commercial, whatever it is.

17 (Deposition Exhibit 32 marked for
18 identification.)

19 BY MR. DOTSON:

20 Q I'll hand you what's been marked as Exhibit 32.
21 This is the Grand Sierra -- it's a pleading styled "Grand
22 Sierra Resort's Rebuttal Expert Disclosure."

23 Are you aware that you've been designated as a
24 non-retained expert?

25 A Yes.

1 Q And I want to ask you a few questions about
2 that. What information have you reviewed in relation to
3 this designation or any expert opinions you may offer?
4 Anything in addition to what we've already talked about, I
5 guess is my point?

6 A Nothing I can think of.

7 Q All right. I'm going -- we'll mark as Exhibit
8 33 -- this is also a pleading.

9 (Deposition Exhibit 33 marked for
10 identification.)

11 MR. DOTSON: We'll mark the next one too.

12 (Deposition Exhibit 34 marked for
13 identification.)

14 BY MR. DOTSON:

15 Q So I've marked as Exhibit 33 and Exhibit 34 two
16 documents, both legal pleadings, "Plaintiff's Tenth
17 Supplemental NRCP 16.1 Disclosure" and "Plaintiff's
18 Eleventh Supplemental NRCP 16.1 Disclosure."

19 Have you ever received or reviewed these
20 documents?

21 A I'm looking at them quickly here.

22 Q And I want you to do that.

23 (Witness reviewing document.)

24 BY MR. DOTSON:

25 Q In particular, the first part is a pleading

1 which, you will appreciate as you compare the tenth to the
2 eleventh, is largely duplicative. What occurs is the new
3 information is placed in italics -- or at least that's the
4 intent.

5 And usually you look at the attachment, and the
6 attachments are spreadsheets in this case mostly. But I
7 believe there's also a resume of -- I don't see it here --
8 Brandon McNealy in one of them, but mostly they are
9 spreadsheets. Have you seen these before today?

10 A No, not to the best of my knowledge.

11 Q Go to Exhibit 34, which is the Eleventh
12 supplemental. Let's just -- because this will be the most
13 recent iteration. Okay?

14 A Okay.

15 Q And the pleading itself, you have not reviewed
16 this before?

17 A No.

18 Q Going to page 8 of 10 --

19 A They're not --

20 Q They are on the bottom. If you go to page 8 of
21 10, there's a section large case C, "NRCP 16.1(a) (1) (c)
22 Computation of Damages Claimed by Disclosing Party. And
23 it says, "Plaintiff calculates its past lost revenue by
24 the following two alternative methods," and then there's a
25 footnote that explains that.

1 Have you reviewed this before?

2 A No.

3 Q Have you been asked by anyone to provide an
4 analysis or review or critique of this, you know -- these
5 statements or any of the exhibits? We'll go through each
6 of them so you don't think I'm trying to trick you -- that
7 are attached hereto?

8 A No.

9 Q Let's go through each exhibit to be sure. The
10 first Exhibit A is basically a summary-type document.

11 Have you ever seen this before?

12 A No.

13 Q The next is the supporting data for the summary
14 document, and it shows it is a list of -- I think a little
15 over 202 discrete guests and has gaming information on it.

16 Have you ever reviewed this document?

17 A No.

18 Q Exhibit B -- you will note, by the way, sir,
19 that all of the documents, the attachments here, all
20 contain what is probably the same sort of confidentiality
21 designation as the documents we're about to look at
22 produced by the Grand Sierra Resort.

23 In other words, paraphrasing, for the purposes
24 of litigation we understand that information has to be
25 shared. However, this information cannot be utilized

1 absent legal repercussion for business purposes other
2 than -- some people might consider litigation business
3 purposes, but for purposes outside of litigation, for any
4 purpose outside of litigation. And, indeed, the
5 information will be re-exchanged and destroyed at the
6 conclusion of the litigation.

7 You should also understand that so you can have
8 a certain amount of comfort level in knowing that you're
9 about to hand me some spreadsheets that also contain, I'm
10 sure, what you consider proprietary information, just as
11 the Atlantis considers this proprietary information.

12 A I understand.

13 Q And, lastly, the Atlantis -- you do not know
14 this, I guess, because you haven't received this. But let
15 me ask you: The Atlantis, one of the methods that it
16 utilizes to review players is based upon a Harvard study
17 of an average customer lifetime value of -- well, it can
18 be applied to many industries, but they're applying it to
19 the gaming industry.

20 Are you familiar with that type of analysis?

21 A I am not.

22 Q Exhibit B, I'll represent to you, shows several
23 guest ratings at the Atlantis and then is a calculation
24 based upon that.

25 You have not reviewed the Harvard study of which

1 I speak, nor are you familiar with this sort of analysis?

2 A That's correct.

3 Q And, therefore, you've not been asked to render
4 any opinions about it?

5 A No.

6 Q Let's go to Exhibit C. Exhibit C is, basically,
7 an oration of the methodology that was employed by the
8 Atlantis in -- although it says, "Three methods to look at
9 damages," I think there are actually three or four,
10 depending on how you view it and count it.

11 But have you ever seen this narrative or this
12 methodology?

13 A No.

14 Q And, therefore, I assume you've not been asked
15 to review it or render any opinion in critique of it?

16 A That's correct.

17 Q Flipping back, I guess four pages, you will find
18 Exhibit D. You may not be aware of this: One of the
19 allegations that has been raised by the Atlantis in this
20 lawsuit is that following Ms. Islam's departure -- and I'm
21 paraphrasing -- the Atlantis learned that the addresses,
22 contact information of certain guests -- valued guests,
23 obviously -- had been modified by Ms. Islam prior to her
24 departure. In other words, false information was inserted
25 to where there previously had been useful information.

1 Are you aware of that contention?

2 A I've had a one-sentence conversation in
3 reference to that.

4 Q Okay. You understand, based upon your
5 experience in marketing, how it would render the marketing
6 effort of the casino useless if the mailer, for example,
7 goes to the wrong address?

8 A It would be frustrating, yes.

9 Q Well, that piece of mailer, unless that -- I
10 guess, depending on who received it, if anyone received
11 it, anyone lived at that address, it may be entirely
12 wasted?

13 A Perhaps.

14 Q Similarly, in an email there is no address,
15 usually, of an incorrect email, and so an email that is
16 sent is, therefore, you know, a lost email?

17 A Unless the person who receives it forwards it to
18 the person it belongs to, yes.

19 Q And, similarly, a wrong telephone number --
20 somebody called me the other day and wants to buy a car.
21 Unless I happen to have a car for sale, it's of no use to
22 me to receive that phone call nor use to the person who's
23 making the phone call.

24 A Yes.

25 Q This listing identifies the persons who were

1 involved in correcting the false information that was, we
2 contend, placed in the database by Ms. Islam. And I'll
3 represent to you that, similar to the Grand Sierra's
4 system -- it sounds like, anyway -- the Atlantis system
5 tracks who makes the changes.

6 Have you ever reviewed this itemization of the
7 costs and the number of hours it took to correct what I
8 would have referred to as the sabotage of the database?

9 A I have not reviewed this document.

10 Q And are you in a position to make any critique,
11 therefore, as to how long it should have taken to correct
12 the information?

13 A No. Because you don't know how many records
14 this refers to.

15 Q Exactly. Now, if you turn to Exhibit 11, have
16 you ever seen -- actually, go back one more. Go to
17 Exhibit 10. Have you ever seen this document?

18 A No.

19 Q It's a multipage document.

20 A I have not.

21 Q And Exhibit 11 shows the ancillary and discrete
22 modifications to the database.

23 Have you ever reviewed that?

24 A No.

25 Q Having just reviewed it -- of course you don't

1 know the larger base that was reviewed to determine which
2 ones were modified, I guess, do you?

3 A Correct.

4 Q So it still doesn't help you to render an
5 opinion as to how long it would take?

6 A You can see an account of rows here.

7 Q Right. Do you know how many had been modified?

8 A You're saying this is the sum total?

9 Q This is the sum total of --

10 A It looks like four pages.

11 Q 87 unique guest changes.

12 A Okay.

13 Q Assuming the summary is correct, that were
14 eventually discovered as being modified.

15 Do you have any opinion as to how long that
16 would take or do you have any basis to form such an
17 opinion?

18 A You mean if the same set of circumstances
19 happened at the Grand Sierra Resort?

20 Q No. I mean, with the Atlantis system, for
21 example.

22 A No.

23 Q You don't have the foundational information to
24 tell us, because you don't know which system the Atlantis
25 uses.

1 A Exactly.

2 Q You presume they're not still using an abacus,
3 but you don't know?

4 A I would hope that they are.

5 Q All right. Let's go to E.

6 A Okay.

7 Q I will represent to you that, once it was
8 discovered that -- well, the Atlantis received calls from
9 guests that were used to receiving their marketing and
10 they weren't receiving it. That's how this was
11 discovered.

12 A Okay.

13 Q At least to my understanding. And once that was
14 discovered, there was a mitigation program that was
15 employed by the Atlantis, and this document, as I
16 understand it, represents the expenses that were incurred
17 in that mitigation program. In other words, offers that
18 were actually redeemed for that.

19 Again, have you ever seen this document before?

20 A No.

21 Q Were you aware, prior to my description of it
22 just now, that there was a mitigation program employed by
23 the Atlantis?

24 A No.

25 Q And you don't know what that program was or

1 whether these expenses are reasonable or not?

2 A No.

3 Q Do you intend to offer any opinion as to what
4 damage has been incurred by the Atlantis as a consequence
5 of Ms. Islam's behavior or the Grand Sierra's employment
6 of Ms. Islam?

7 A No.

8 Q Do you intend to offer any opinion as to what
9 the modification -- what's theoretical play, actually? We
10 better put a definition here.

11 A Okay. Theoretical play is -- for want of a
12 better description, imagine Lady Luck was not a factor in
13 a gaming decision. So if you're flipping a coin, almost
14 half of the time it would be heads and half of the time it
15 would be tails and sometimes it might land on its edge.
16 And so you would be able to say in theory the theoretical
17 is almost half heads, half tails in the long run.

18 Q Okay. So as long as you don't play against my
19 daughter, that's how it should happen. Counsel is making
20 note to make sure my daughter gets on the black list for
21 each property.

22 So have you undertaken any examination of the
23 theoretical play of the guests which the Atlantis contends
24 were impacted by Ms. Islam's and the Grand Sierra's
25 actions?

1 review the transcript?

2 MR. JOHNSON: Yes.

3 THE WITNESS: Yes.

4 MR. DOTSON: And would you like us to send it to
5 counsel and have him provide it to you?

6 THE WITNESS: Yes.

7 MR. DOTSON: Counsel, do you have any questions?

8 MR. JOHNSON: No.

9 (Whereupon, deposition was concluded at 7:13
10 p.m.)

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CHRISTIAN AMBROSE

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CERTIFICATE OF WITNESS

I hereby certify under penalty of perjury that I have read the foregoing deposition, made the changes and corrections that I deem necessary, and approve the same as now true and correct.

Dated this _____ day of _____, 2013.

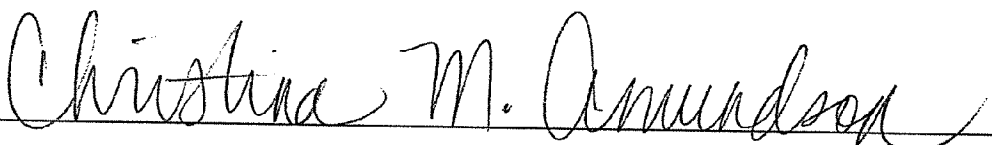
-o0o-

1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)
4

5 I, CHRISTINA MARIE AMUNDSON, a Certified Court
6 Reporter in and for the States of Nevada and California do
7 hereby certify:

8 That I was personally present for the purpose of
9 acting as Certified Court Reporter in the matter entitled
10 herein; that the witness was by me duly sworn;

11 That said transcript which appears hereinbefore was
12 taken in verbatim stenotype notes by me and thereafter
13 transcribed into typewriting as herein appears to the best
14 of my knowledge, skill, and ability and is a true record
15 thereof.

16 
17

18 Christina Marie Amundson, CCR #641 (NV), CSR #11883, (CA)

19 -oOo-
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EXHIBIT 3

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Joey Orduna Hastings
Clerk of the Court
Transaction # 3750330

EXHIBIT 3

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IN THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

-oOo-

GOLDEN ROAD MOTOR INN, INC.,
a Nevada corporation, DBA
ATLANTIS CASINO RESORT SPA,

Plaintiff,

Case No. CV12-01171

vs.

Dept. No. B7

SUMONA ISLAM, an individual;
NAV-RENO-GS, LLC, a Nevada
limited liability company DBA
GRAND SIERRA RESORT; ABC
CORPORATIONS; XYZ PARTNERSHIPS;
and JOHN DOES I through X,
inclusive,

CERTIFIED COPY

Defendants.

Pages 1 to 84, inclusive.

DEPOSITION OF BILL SINGH

Friday, January 18, 2013
Reno, Nevada

REPORTED BY: CHRISTINA AMUNDSON
CCR #641 (Nevada)
CSR #11883 (California)

1 Q -- as well. Exhibit 32 is a designation of
2 experts, and you've been designated as a rebuttal expert
3 for the Grand Sierra Resort. Are you aware of that?

4 A Yes.

5 Q And what information have you reviewed in
6 relation to the expert opinions you might offer in this
7 case? In other words, what have you looked at?

8 A Basically, from a data standpoint, I've just
9 looked at the analysis that I provided to you guys. I
10 don't know which exhibit that is.

11 Q Well, we've had multiple. There's 31 and also
12 45.

13 A 45 is what I looked at.

14 Q And the information upon which it is based.
15 True?

16 A Yes.

17 Q Looking at Exhibit 34 and Exhibit 33, are these
18 documents you've ever seen? I'll tell you they start
19 with a legal pleading and then there's, basically, two
20 iterations of damages calculations derived by the
21 Atlantis' staff afterwards.

22 Have you reviewed that information?

23 A No, I've never seen it before.

24 Q I know it's painful, but to make the record
25 clear, just looking at Exhibit 34, it's the newer of the

1 two, and that will suffice. The pleading is marked by
2 numbers. If you go to page 8 of 10, there's a Section C
3 which says "NRCP 16.1(a) (1) (c) Computation of damages,"
4 and you've not ever seen this document?

5 A No, I have not.

6 Q And so have you asked to critique or render an
7 opinion as to the accuracy of this information?

8 A No. No.

9 Q Going to the exhibits, Exhibit A, is a damage
10 summary document.

11 And have you ever seen this document before?

12 A No, I have not.

13 Q Actually, this one here (indicating)?

14 A No.

15 Q Okay. And, therefore, I take it you have not
16 been asked to review it and critique it?

17 A No.

18 Q Going to the next page of that is the backup
19 supporting data --

20 A Okay.

21 Q -- which, I believe, has the information for
22 202, I think it is, guests.

23 And you have not reviewed this information
24 either, then?

25 A No, I have not.

1 Q Going to Exhibit B, the Atlantis, I'll represent
2 to you, if we had taken the time to review the narrative
3 that we looked at in this pleading, there are a few
4 methodologies that are being advanced by the Atlantis to
5 try to determine the damage that it believes it has
6 experienced as a consequence of the -- well, the issues
7 that have been raised in this case, multiple ones.

8 A Okay.

9 Q And with regard to revenue, and gaming revenue
10 in particular, one of the things that the Atlantis
11 reviews as, not just a measure of damage in this case but
12 in general to do the type of work that you do, is based
13 upon a Harvard study that, to paraphrase, looks at the
14 average customer lifetime value.

15 Earlier today you talked about the lifetime
16 value -- in fact, just a few minutes ago -- of a guest.

17 A Uh-huh.

18 Q And you recognize that sometimes the guest may
19 win and sometimes the guest may lose, and it's the long
20 run where the casino wins.

21 A Well, what I said is it's the long run that
22 really matters. I think we were talking about negative
23 theo in one month, so I said you can't -- negative theo
24 in one month is not -- you can't look at that one month
25 to make a -- to have a judgment call on a player. It's

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

3 GOLDEN ROAD MOTOR INN, INC., a
4 Nevada Corporation d/b/a ATLANTIS
5 CASINO RESORT SPA,

6 Appellant/Cross-Respondent,
7 vs.

8 SUMONA ISLAM, an individual,
9 Respondent/Cross-Appellant
10 and

11 MEI-GSR HOLDINGS LLC, a Nevada
12 limited liability company d/b/a GRAND
13 SIERRA RESORT which claims to be
14 the successor in interest to NAV-RENO-
15 GS, LLC,

16 Respondent.

17 SUMONA ISLAM, an individual,
18 Appellant
19 vs.

20 GOLDEN ROAD MOTOR INN, INC., a
21 Nevada Corporation d/b/a ATLANTIS
22 CASINO RESORT SPA,

23 Respondent.

24 MEI-GSR HOLDINGS LLC d/b/a
25 GRAND SIERRA RESORT,

26 Appellant/Cross-Respondent,
27 vs.

28 GOLDEN ROAD MOTOR INN, INC., a
Nevada Corporation d/b/a ATLANTIS
CASINO RESORT SPA,

Respondent/Cross-Appellant.

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**JOINT APPENDIX
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This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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VOLUME XII – FILED UNDER SEAL

This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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VOLUME XV – FILED UNDER SEAL

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VOLUME XVI – FILED UNDER SEAL

This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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VOLUME XVII – FILED UNDER SEAL

This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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8 **This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).**

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9	This Volume is filed under seal pursuant to the Stipulated Protective Order	
10	entered on August 27, 2012 by the district court (2 App. 347-357) and by	
11	order of the district court during trial (19 App. 3948:12-13).	
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10	<u>VOLUME XXIII – FILED UNDER SEAL</u>	
11	This Volume is filed under seal pursuant to the Stipulated Protective Order	
12	entered on August 27, 2012 by the district court (2 App. 347-357) and by	
13	order of the district court during trial (19 App. 3948:12-13).	
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30	Portions of Lilia Santos’ personnel file,	
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33	<u>VOLUME XXIV – FILED UNDER SEAL</u>	
34	This Volume is filed under seal pursuant to the Stipulated Protective Order	
35	entered on August 27, 2012 by the district court (2 App. 347-357) and by	
36	order of the district court during trial (19 App. 3948:12-13).	
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14 Compilation of GSR/Islam
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15 **VOLUME XXV – FILED UNDER SEAL**

16 **This Volume is filed under seal pursuant to the Stipulated Protective Order**
17 **entered on August 27, 2012 by the district court (2 App. 347-357) and by**
18 **order of the district court during trial (19 App. 3948:12-13).**

19 [Continued] Trial Exhibit 77
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20 Trial Exhibit 78
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22 and Code of Conduct Agreement
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23 Trial Exhibit 80
24 Full handwritten client list produced by Islam
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VOLUME XXVI – FILED UNDER SEAL

This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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This Volume is filed under seal pursuant to the Stipulated Protective Order entered on August 27, 2012 by the district court (2 App. 347-357) and by order of the district court during trial (19 App. 3948:12-13).

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9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11
12 IN AND FOR THE COUNTY OF WASHOE

13 GOLDEN ROAD MOTOR INN, INC.,
14 a Nevada Corporation, d/b/a ATLANTIS
15 CASINO RESORT SPA,

16 Plaintiff,

Case No. CV12-01171

17 vs.

Dept. B7

18 SUMONA ISLAM, an individual;
19 NAV-RENO-GS, LLC, a Nevada
20 limited liability company, d/b/a
21 GRAND SIERRA RESORT; ABC
22 CORPORATIONS; XYZ PARTNERSHIPS;
23 AND JOHN DOES I through X,
24 inclusive,

25 Defendants.
26 _____ /

27 **SUPPLEMENTAL OPPOSITION OF SUMONA ISLAM TO ATLANTIS**
28 **MOTION FOR PARTIAL SUMMARY JUDGMENT**

29 Defendant Sumona Islam already filed her opposition to this motion in September
30 2012, but she thought her opposition should be supported by more than just her own
31 declaration. Her original opposition contained a motion under NRCP 56(f) to take

1 depositions. The Atlantis stipulated to her request, and Islam took depositions of two
2 Atlantis employees, Frank DeCarlo and Patricia Robinson. Mr. DeCarlo was Islam's
3 direct supervisor and Ms. Robinson is general counsel for the Atlantis. Excerpts of their
4 depositions are attached as Exhibits 1 and 2, respectively.

5 With the addition of evidence from Mr. DeCarlo's and Ms. Robinson's
6 depositions, Islam presents the following amended separate statement of material issues
7 of fact. Changes and additions are in bold.

8 **AMENDED SEPARATE STATEMENT OF MATERIAL ISSUES OF FACT**

9 Based on the applicable law, the declaration of Islam, and the testimony of Mr.
10 DeCarlo and Ms. Robinson, the following genuine issues of material fact, at a minimum,
11 preclude partial summary judgment for the Atlantis:

12 1. Is there a valid confidentiality or non-compete agreement between Islam
13 and the Atlantis. *See Islam Affidavit, attached, and Deposition of Sumona Islam, Ex. 1 to*
14 *Plaintiff's Motion; the Atlantis concedes that the player information that Islam brought*
15 *from Harrah's was not confidential when she gave it to the Atlantis, but makes the*
16 *claim that the information became "confidential" merely because the Atlantis*
17 *downloaded it onto its computer system (Robinson pp. 74-75, 142)*

18 2. Is any alleged confidentiality or non-compete agreement unenforceable due
19 to failure of performance by the Atlantis or failure of conditions. *Id; while disputing*
20 *what the promises were, the Atlantis admits it had the obligation to perform promises it*
21 *made to Islam (Robinson p. 87); she was told she would get a salary, raises and*
22 *bonuses (DeCarlo pp. 37-40, 49); she got no raises and only one quarterly bonus*
23 *(DeCarlo 167); she also was told she would get a players list that had been coded to*
24 *Mr. Bali, the person she was succeeding (DeCarlo p. 131), but she was not told that all*
25 *the other casino hosts would be allowed to cherry pick Bali's list before it was turned*
26 *over to her (DeCarlo pp. 49-50)*

27 3. Is the restraint on trade in the Atlantis non-compete agreement
28 unreasonable or in violation of public policy. *Id; the Atlantis generally hires its*

1 *executive casino hosts from outside the Atlantis (DeCarlo pp. 187-193), including*
2 *hires Santos, Law and Islam from Harrah's, each of whom was hired initially as*
3 *"concierge manager" for 6 months before being given the title executive casino host*
4 *(DeCarlo p. 36, 45-47)*

5 4. Is the conduct alleged against Islam an act of conversion. *Id; the alleged*
6 *"conversion" was not a permanent taking of property but rather changes to some*
7 *information about 87 players on one of several Atlantis customer databases, which was*
8 *detected and fixed (Robinson pp. 65-66)*

9 5. Was any property of the Atlantis converted. *Id; the Atlantis claims the list*
10 *of players that Islam brought to the Atlantis from Harrah's as its own property*
11 *(Robinson pp. 58-59) that the Atlantis downloaded onto its computer (DeCarlo p. 64);*
12 *the Atlantis general counsel states she was still unaware when this lawsuit was filed*
13 *that the Atlantis had taken Islam's players list from Harrah's and placed it on the*
14 *Atlantis computer (Robinson p. 139) yet the Atlantis intentionally hired her to bring*
15 *her players with her from Harrah's (DeCarlo p. 82)*

16 6. Who, if anyone, owns the list of players that Islam developed while at
17 Harrah's, the Atlantis and Grand Sierra. *Id; the Atlantis hired Islam to get her players*
18 *(DeCarlo p. 129) and expecting the players she had at Harrah's would become players*
19 *at Atlantis (DeCarlo p. 85-86); Islam's players list from Harrah's was downloaded onto*
20 *the Atlantis computer (DeCarlo p. 64, 68) and a large number of the players were*
21 *already in the Atlantis computer (Robinson p. 60)*

22 7. Is there a contractual relationship with players that supports the Atlantis
23 claim against Islam for interference with prospective economic advantage. *Id; there is*
24 *no contractual relationship (Robinson pp. 62-63); players go to various casinos and*
25 *casinos compete for them with offers of free play and comps (Robinson p. 61); players*
26 *can gamble wherever they want, they are not property of the Atlantis (DeCarlo p. 89-*
27 *90).*

1 8. Do Islam and Grand Sierra have knowledge of a contractual relationship.
2 *No casino owns the players (DeCarlo p. 91)*
3 9. Is there privilege justification for Islam changing information on her
4 players list on the Acres system. *Id.*
5 10. Is the players list a trade secret. *Id; the value to the casino is not the list*
6 *itself, but the development of the personal relationship with the players (DeCarlo pp.*
7 *70, 84); hosts coming from other casinos bring their own players (DeCarlo p. 69)*
8 11. Was there a misappropriation of an alleged trade secret. *Id.*
9 12. Is the Atlantis guilty of unclean hands. *Id; the Atlantis has a moral*
10 *obligation not to cause harm to a person it is hiring (DeCarolo p. 135); the Atlantis*
11 *hires hosts from other casinos at least in part to obtain the knowledge they have from*
12 *working with certain players (DeCarlo p. 197); the Atlantis hired Islam to be an*
13 *executive casino host from Harrah's but gave her the job title "concierge manager" to*
14 *evade the non-compete she had with Harrah's (Robinson pp. 92-94); the Atlantis then*
15 *took Islam's players list from Harrah's and downloaded it onto its computer (Robinson*
16 *p. 24, 94); when Harrah's complained, twice, in writing, about their confidential*
17 *information being misappropriated, the Atlantis ignored Harrah's and called it "sabre*
18 *rattling"(Robinson pp. 95-100); the Atlantis never erased the information from its*
19 *database despite the letters from Harrah's (Robinson p. 110); while suing Islam*
20 *allegedly for violating the Atlantis confidentiality agreements, the Atlantis filed Islam's*
21 *personnel file and credit report as exhibits in the public record, despite the written*
22 *policy that states the Atlantis shall protect and keep strictly confidential all confidential*
23 *information obtained from employees (Robinson pp. 88-89).*
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As supplemented, Islam submits her opposition for decision and requests that the motion be denied for the reasons stated in the original opposition.

DATED: Feb. 19, 2013 LAW OFFICES OF MARK WRAY

By 
MARK WRAY
Attorney for Defendant SUMONA ISLAM

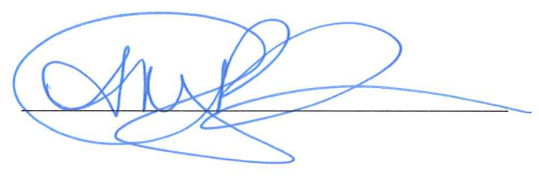
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CERTIFICATE OF SERVICE

The undersigned employee of the Law Offices of Mark Wray certifies that a true copy of the foregoing document was sent to counsel for the parties via email and also sealed in an envelope with first class postage prepaid thereon and deposited in the U.S. Mail at Reno, Nevada on February 19, 2013 addressed as follows:

Robert A. Dotson
Angela M. Bader
Laxalt & Nomura, Ltd.
9600 Gateway Drive
Reno, Nevada 89521

Steven B. Cohen
Stan Johnson
Cohen/Johnson
6293 Dean Martin Drive, Ste G
Las Vegas, Nevada 89118



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AFFIRMATION

The undersigned certifies that this document does not contain the Social Security number of any person.

DATED: Feb. 19, 2013 
MARK WRAY

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INDEX OF EXHIBITS

Exhibit 1- Excerpts of Deposition of Frank DeCarlo

Exhibit 2 – Excerpts of Deposition of Debra Robinson

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9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR THE COUNTY OF WASHOE**

11 GOLDEN ROAD MOTOR INN, INC., a Nevada
12 Corporation, d/b/a ATLANTIS CASINO
13 RESORT SPA

Case No.: CV12-01171

Dept No.: B7

13 Plaintiff,

14 vs.

15 SUMONA ISLAM, an individual; NAV-RENO-
16 GS, LLC, a Nevada limited liability company,
17 d/b/a GRAND SIERRA RESORT; ABC
18 CORPORATIONS; XYZ PARTNERSHIPS;
19 AND JOHN DOES I through X, inclusive.

20 Defendants.

21 **PLAINTIFF'S OPPOSITION TO DEFENDANT SUMONA ISLAM'S**
22 **MOTION TO PARTIALLY DISSOLVE PRELIMINARY INJUNCTION**
23 **AND COUNTERMOTION TO CONTINUE PRELIMINARY INJUNCTION**

24 Plaintiff, GOLDEN ROAD MOTOR INN, INC. d/b/a ATLANTIS CASINO RESORT
25 SPA ("Plaintiff" or "ATLANTIS"), by and through its counsel of record, Laxalt & Nomura, Ltd.,
26 hereby opposes Defendant SUMONA ISLAM'S Motion to *partially* dissolve the Preliminary
27 Injunction currently in place through the end of the previously scheduled March 25, 2013 trial
28 date and further requests that this be considered a Counter Motion to continue the current
injunction to the completion of trial now scheduled for June 10, 2013. This
Opposition/Counter motion is made and based upon the pleadings and papers on file herein, the

1 Memorandum of Points and Authorities, the attached Affidavit of Counsel and Exhibits thereto,
2 and any additional argument the Court should elect to consider.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I.**

5 **FACTS**

6 This is a contract, tort and trade secret case against Defendant NAV-RENO-GS, LLC
7 d/b/a GRAND SIERRA RESORT ("GSR") and its current employee, SUMONA ISLAM
8 ("ISLAM"), which arises out of ISLAM's theft and wrongful use of confidential intellectual
9 property belonging to the ATLANTIS to which ISLAM was given access by virtue of her
10 employment at the ATLANTIS as an Executive Casino Host. Not only did ISLAM copy guest
11 information from the ATLANTIS database shortly before she quit her position at the
12 ATLANTIS and utilize that information in her new position as an Executive Casino Host at the
13 GSR to the detriment of the ATLANTIS (in violation of both common and statutory law as well
14 as her contractual obligations), but she also sabotaged contact information for certain
15 ATLANTIS guests in its database.¹ ISLAM also signed a Non-Compete Agreement pursuant to
16 which she agreed that she could not "be employed by, in any way affiliated with, or provide any
17 services to any gaming business or enterprise" located within 150 miles of the ATLANTIS for
18 one full year after her termination. See Exhibit 1 to Affidavit of Counsel, Non-Compete
19 Agreement.

20 It is undisputed that ISLAM resigned employment with ATLANTIS on January 19, 2012
21 after she had accepted an Executive Casino Host position (the same position she held at
22 Atlantis) with GSR that same day. From the documentation produced by GSR in this case and
23 the testimony of ISLAM and GSR representatives, it appears that ISLAM began working for
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28 ¹ Evidence supporting these facts is fully set forth in Atlantis' Motion for Partial Summary Judgment, filed August 23, 2012 and incorporated herein.

1 GSR by at least January 31, 2012 (perhaps as early as January 25, 2012) and that she was
2 suspended on May 3, 2012, with pay, pending the investigation of the allegations made by the
3 ATLANTIS.² See Exhibit 3 to Affidavit of Counsel, Suspension Document.³ The one year non-
4 compete period would have expired by its terms on January 19, 2013 had ISLAM abided by it
5 and not worked for GSR during the year following her termination from the ATLANTIS.
6

7 Plaintiff filed this action against Defendants ISLAM and GSR on April 27, 2012,
8 amended its Complaint naming the correct GSR entity on May 7, 2012 and obtained an Ex-Parte
9 Motion For Temporary Restraining Order (“TRO”) against Defendant ISLAM on May 9, 2012,
10 serving Notice of Entry on May 10, 2012. This TRO provided that ISLAM was enjoined from
11 “further breaching the NON-COMPETE/NON-SOLICITATION AGREEMENT” and “by being
12 employed by GSR or any other competitor of ATLANTIS within 12 months of her resignation
13 from ATLANTIS.”
14

15 Of critical concern to ATLANTIS in this case is the misappropriation of intellectual
16 property (trade secrets) to GSR by ISLAM. In particular, ATLANTIS is concerned that player
17 information not previously held by GSR was taken from ATLANTIS by ISLAM, brought to and
18 used by and for the benefit of GSR and incorporated into the GSR database, where it still resides
19 today.
20

21 On July 5, 2012, the initial TRO was extended as against ISLAM and a TRO was
22 entered against GSR. This Order provided that GSR, among other things, “not cooperate with
23 Defendant SUMONA ISLAM in any way or communicate with her concerning any confidential
24 and proprietary trade secret information of the ATLANTIS” and “to the extent GSR has not
25 already done so, it shall cease employing Defendant SUMONA ISLAM as a Casino Host.” This
26

27
28 ² Shelly Hadley, Executive Director of Casino Marketing at GSR, testified that Islam began working at GSR on
January 25, 2012. See Exhibit 2 to Affidavit of Counsel, Deposition of Shelly Hadley at page 26.

³ This document also states that ISLAM was hired on January 25, 2012.

1 TRO was to remain in effect until the conclusion of a bench trial that was scheduled to proceed
2 on August 27, 2012. In discovery, GSR has admitted that due to the circumstance that
3 marketing solicitations are deployed several weeks before the effective date for the solicitation,
4 players incorporated into the GSR database by ISLAM were effectively solicited by her through
5 the month of August.⁴ These solicitations also utilized the intellectual property of ATLANTIS
6 by making offers to players, even existing players, that were not otherwise supported by the
7 information then held by GSR.⁵

9 The parties subsequently continued that trial date to March 25, 2013 and stipulated to a
10 Preliminary Injunction ("PI") that would continue the terms of the TRO entered against
11 Defendants ISLAM and GSR to and including the conclusion of the March 25, 2013 trial. This
12 stipulation was granted on August 24, 2012. On February 12, 2013, the parties filed a
13 stipulation to continue the March 25, 2013 trial date to June 10, 2013, as a number one business
14 court civil set, due to Defendants' request for further discovery regarding Plaintiff's damages.
15 This stipulation was granted by the Court on February 13, 2013.

17 II.

18 OPPOSITION TO MOTION TO DISSOLVE PRELIMINARY INJUNCTION

19 ISLAM's motion is short on both points and authorities and pins its entire argument on
20 only one cited case, *Finkel*. See *Finkel v. Cashman Profl, Inc.*, 128 Nev. Adv. Opinion 6, 270
21 P.3d 1259 (Nev. 2012). However, *Finkel* is inapposite, as it does not even address the known
22 relevant dispute between these parties as to the restrictive covenant--the appropriate duration of
23 the Preliminary Injunction regarding the Non-Compete Agreement in light of ISLAM's previous
24 active employment and continued passive employment by GSR.
25
26

27 ⁴ Deposition of Christian Ambrose, GSR's Executive Director of Marketing, Exhibit 4 to Affidavit of Counsel, at
28 74-84.

⁵ *Id.*

1 **A. Atlantis Is Contractually Entitled To The Full Benefit Of Its Restrictive Covenant**

2 As indicated by the undisputed facts in this matter, ISLAM actively worked for GSR in
3 violation of the Non-Compete Agreement from, at a minimum, January 31, 2012 until May 3,
4 2012 and the impact from her employment lasted for at least for several months thereafter. In
5 fact, currently both ISLAM and GSR are in violation of the Non-Compete Agreement and the
6 Preliminary Injunction as ISLAM is still “employed by or affiliated with” GSR and GSR has not
7 “ceased to employ” her as a Casino Host.⁶ Indeed, discovery has confirmed that although
8 ISLAM may not be working at GSR on a daily basis, the information she took from her
9 employment with ATLANTIS was incorporated into the GSR data base and in the words of the
10 GSR Executive Director of Marketing, the “last impact” was the end of August. Thus, by
11 GSR’s own admission, the intellectual property brought to GSR was still being used until the
12 end of August.⁷ Notably, this was almost four months after the suspension and initial TRO
13 related to ISLAM and almost two months after this Court’s Order was entered. Thus, although
14 ISLAM may not have been working at the GSR, the harm from her actions continued to be
15 visited upon ATLANTIS for almost four additional months.

16
17
18 ATLANTIS is contractually entitled to the full benefit of its restrictive covenant which is
19 one full year of the employee (in this case ISLAM) not competing with the ATLANTIS. As
20 such, ATLANTIS is entitled to a minimum of an additional 94 days following January 19, 2013,
21 which equates to enforcing the Preliminary Injunction on the restrictive covenant through at
22 least April 23, 2013.⁸ To do otherwise would encourage the violation of this Non-Compete
23

24
25
26 ⁶ ISLAM has been paid an annual salary of \$80,000 per year since her date of hire by GSR as an Executive Casino
27 Host, and she has continued to receive said salary from GSR through this litigation. *See* Exhibit 2 to Affidavit of
28 Counsel, Deposition of Shelly Hadley at pages 25 and 63-64.

⁷ Ambrose testified that the lead time for deployment of a non-local mailer is 5-6 weeks minimum and a local solicitation is 10 days before the end of the month. *See* Exhibit 4 to Affidavit of Counsel, Deposition of Christian Ambrose at 83-84.

⁸ If this calculation is based upon the January 25, 2012 hire date, a minimum of six additional days should be added and if you consider the impact of her actions, seven months should be added.

1 Agreement and others like it.⁹ It would be inequitable for this Court to sanction no adverse
2 consequence for the period of time that ISLAM and GSR were in violation of the Non-Compete
3 Agreement before ATLANTIS successfully obtained the Temporary Restraining
4 Order/Preliminary Injunction to halt the violating employment and before the actions already
5 taken had run. Simply stated, equity dictates that the violator should not be unjustly enriched by
6 the time it takes to identify the violation and take reasonable steps to investigate, issue cease and
7 desist letters, file litigation, and obtain a Temporary Restraining Order and enforce the
8 agreement.

10 **B. The *Finkel* Case Is Distinguishable**

11 ISLAM cites to a single case, *Finkel*, in support of her argument that once a period of
12 limitation or non-compete expires, the agreement is unenforceable. The *Finkel* case, however,
13 dealt with a consulting agreement that was entered into by the parties which also included a
14 restrictive covenant that was only enforceable while the consulting agreement was in effect.
15 *Finkel v. Cashman Profl, Inc.*, 128 Nev. Adv. Opinion 6 at 4-5, 11, 270 P.3d 1259, 1261-1262
16 (Nev. 2012). Once either party terminated the consulting agreement, the non-compete was no
17 longer enforceable by its terms.¹⁰ In stark contrast, ISLAM's Non-Compete Agreement became
18 enforceable only after she terminated her employment with the ATLANTIS and by its terms was
19 to last for a period of one year thereafter. The obligations here are not tied to an agreement that
20 is terminable at will or at separation of employment, rather it is designed and intended to survive
21 termination of the employment relationship.

24 The Court in *Finkel* did acknowledge, however, that the disclosure of trade secrets is "the
25 precise sort of conduct that could cause a business irreparable harm," *Finkel*, 270 P.3d at 1263,

27 ⁹ In other words, if an employee and successive employer can effectively shorten the length of a covenant by the
28 time it takes to enforce the covenant, then violation would be encouraged as a litigation tactic. Clearly, that is not a
policy that should be promoted by Nevada courts.

¹⁰ *Finkel* terminated the agreement making the restrictive covenant unenforceable. *Id.*

1 and that injunctive relief, even under the facts of that case, was still appropriate under the
2 Uniform Trade Secrete Act (“UTSA”), and should terminate when the trade secret ceases to
3 exist. *Id.* at 9-12, 1265. In fact, an injunction can be extended for a reasonable period of time in
4 order to “eliminate commercial or other advantage that otherwise would be derived from the
5 misappropriation.” *Id.*, citing NRS 600A.040(1). Thus, Nevada case law plainly recognizes that
6 even where the underlying agreement in this case no longer provides a basis for enjoining
7 ISLAM’s employment with GSR, it is not necessary that the entire injunction be dissolved.

8
9 In *Economics Laboratory, Inc. v. Donnolo*, 612 F.2d 405, 408 (9th Cir. Nev. 1979), a
10 case relied upon by the *Finkel* court, the Ninth Circuit found that it was inappropriate to issue an
11 injunction when the time period for which the defendants had agreed to be bound had expired
12 before the injunctive relief was even sought. *Id.* Such is not the case here where Atlantis
13 learned of the violation, attempted to resolve the issue without litigation and when that failed,
14 filed suit and briskly moved and succeeded in obtaining a TRO and then PI well within the time
15 period of restriction. This is consistent with other cases relying upon *Donnolo*. In *MedX, Inc.*
16 *v. Ranger*, 788 F. Supp. 288, 291 n.14 (E.D. La. 1992), the court distinguished *Donnolo*, stating
17 that its relevance was limited by the fact that in *Ranger*, the non-compete period had not yet
18 expired. Thus, the reasoning in *Finkel* is not applicable to the facts of the case at bar.
19

20
21 **C. Equity Dictates That, As To The Restrictive Covenant, The Preliminary Injunction**
22 **Be Extended At A Minimum, For The Length Of Time That Islam Worked For**
23 **GSR, Or More Appropriately, Until The Completion Of The Trial In Order To**
24 **Maintain The Status Quo**

25 A number of courts have determined it appropriate to extend the term of a Non-Compete
26 Agreement and/or Preliminary Injunction beyond the agreed-to terms of a non-compete due to
27 equitable considerations.

28 In *Polaris Pool Sys. v. Great Am. Waterfall Co.*, 2006 U.S. Dist. LEXIS 7220 (M.D. Fla.
Feb. 7, 2006), a federal court in Florida refused to dissolve or alter a preliminary injunction

1 which was to run through trial, although the paragraph sought to be dissolved was extended
2 beyond the expiration date of the restrictive covenant. That Court cited to the case of
3 *N. Am. Prods. Corp. v. Moore*, 196 F. Supp. 2d 1217 (M.D. Fla. 2002), where an employee had
4 entered into a restrictive covenant for a period of 365 days. The employee resigned on April 1,
5 2001 and immediately began competing. The Magistrate Judge in *Moore* entered a
6 recommended order for injunctive relief for the period of 365 days starting on April 1, 2001.
7 However, by the time this occurred, it was already February 6, 2002, meaning that by its terms,
8 the preliminary injunction would expire in less than two months.

10 The recommendation was objected to, and the Judge adopted the Magistrate's
11 recommendation, but changed the length of the term of the injunction to be 360 days from the
12 date of the Order. *See Moore*, 196 F. Supp. 2d at 1219-1220. Applying this analysis, the *Polaris*
13 court found it appropriate to enforce a two year restrictive covenant not from the date that the
14 employment ended, but from the date the Preliminary Injunction was entered. *See Polaris Pool*
15 *Sys.*, 2006 U.S. Dist. LEXIS 7220 at *16. The Court observed that it had taken nearly 10 months
16 to have the injunction put in place to begin with, and that "[t]he plaintiff should not be denied a
17 substantial portion of his right to compliance with the non-compete because of this failure." *Id.*
18 at *17. This is consistent with the case at bar and the request of this counter motion to extend the
19 restriction on employment with the GSR until the trial on the merits or at least for the additional
20 time necessary to obtain the benefit of the bargained for restriction.

23 This reasoning has been applied in other jurisdictions as well. In *Guy Carpenter & Co. v.*
24 *Provenzale*, 334 F.3d 459, 464 (5th Cir. Tex. 2003), in response to an argument that the
25 injunctive relief sought was moot due to the expiration of the term of the non-solicitation
26 covenant, the 5th Circuit adopted appellant's assertion that "injunctions are equitable in nature
27 and that district courts may impose injunctions that last beyond a contract provision's expiration
28

1 date.” In fact, such equitable power was especially appropriate where there was a significant
2 delay before the ruling. *Id.* at 464.

3 In *Premier Industrial Corp. v. Texas Industrial Fastener Co.*, 450 F.2d 444 (5th Cir.
4 1971), the Court ruled that as to a covenant found to be valid and enforceable, it was appropriate
5 to enjoin the appellants beyond the time specified in the contract. The stay of the injunctions
6 below pending appeal had essentially allowed the enjoined party to continue to reap the benefit
7 of its non-compliance. As a result, the Court stated:

9 It would be pointless to affirm the court below, only to have that court’s relief
10 terminate in January, 1972, a few months hence. We therefore sustain appellee’s
11 right to enjoyment of its injunctive relief for a meaningful period of time, and
12 direct the trial court to modify the judgment below so as to extend the injunctions
granted to a time one year from the date of that court’s judgment enforcing our
mandate.

13 *Id.* at 448.

14 In *Travelhost, Inc. v. Modglin*, 2012 U.S. Dist. LEXIS 78539, 15-16 (N.D. Tex. June 6,
15 2012), a Texas district court exercised its equitable powers and extended a non-compete for an
16 additional two years where the violations of the covenant were “continuous and persistent.”

17 In *Omaha Indemnity Co. v. Wining*, the Eighth Circuit noted that a district court “is not
18 bound by a strict standard of changed circumstances but is authorized to make any changes in the
19 injunction that are equitable in light of subsequent changes in the facts or the law.” *Omaha*
20 *Indem. Co. v. Wining*, 949 F.2d 235, 239-40 (8th Cir. 1991). Thus, in *Wining*, the Eighth Circuit
21 affirmed a district court’s strengthening of a preliminary injunction where the defendant’s
22 subsequent conduct suggested the defendant intentionally ignored or sought to circumvent the
23 original preliminary injunction.
24

25
26 Notably, the Iowa Supreme Court has taken a position which is instructive in this case:

27 Usually, an injunction such as this one would take effect on the date of the
28 employee’s termination and would continue for the length of time specified in the
restrictive covenant. In the present case, however, the two-year period of
restraint, if measured from the time Ewing was terminated, will end shortly after

1 this appeal is completed. Hence, Presto-X would actually have the benefit of an
2 injunction for only a fraction of the two years specified in the covenant.

3 We think it is necessary in such circumstances to use our equitable powers
4 to extend the restraint period, so as to accomplish full and complete justice
5 between the parties. In granting injunctive relief, our goal is to impose such terms
6 and conditions as the justice and equities of the case require. We are not
7 restrained by the strict legal rights of the parties.

8 Applying these principles, we hold that the injunction against Ewing shall
9 be effective for one year from the date of this opinion. The equities of this case
10 suggest three reasons for such an extension of the restraint period.

11 First, the integrity of the judicial process must be protected. Were we not
12 to extend the restraint period, defendants in similar cases would be encouraged to
13 inject delay into their litigation with the purpose of using up as much of the
14 original restraint period as possible. Allowing judicial extension of the restraint
15 period will deter delays intended for such a purpose. We have no evidence that
16 Ewing intended any delay here, but, as noted above, the original restraint period
17 in this case will expire shortly after this appeal. Even if Ewing did not intend any
18 undue delay, it would be unfair for him to benefit from the normal delays of the
19 judicial process.

20 Second, for the same reasons, we think a time extension is necessary to
21 protect the usefulness of such restrictive covenants. Ewing's case is a good
22 example of how the effective restraint period of a restrictive covenant can become
23 sharply attenuated by delays that are either inherent in the judicial process or
24 intended by the defendant.

25 Third, the extra restraint time is necessary to give Presto-X an opportunity
26 to regain the customers it would not have lost had Ewing not violated the
27 covenant. We have said before that when an employee has had close contact with
28 the employer's customers, as Ewing did, "it is only fair, on termination of [the]
employment, [that] there be an interval when the new employee will be able to get
acquainted with the customers." *Mutual Loan Co. v. Pierce*, 245 Iowa 1051,
1058, 65 N.W.2d 405, 409 (1954) (in "route cases," restrictions on former
employees are often upheld). Presto-X deserves such an interval of time here to
get reacquainted with the customers it lost to Ewing. We think one year is
sufficient for that purpose.

24 *Presto-X-Company v. Ewing*, 442 N.W.2d 85, 89-90 (Iowa 1989) (internal citations omitted).

25 Likewise, in the case at bar, equity favors extension of the PI through the close of trial.
26 Here such an extension is necessary to accomplish full and complete justice and to discourage
27 intentional violations of clear agreements in order to utilize the unavoidable delay of the
28 enforcement to the advantage of the violating party. Such an extension here protects the interests

1 of justice and the usefulness of such agreements. Additionally, ISLAM continues to receive
2 compensation from GSR in the amount of \$80,000 annually. *See* fn. 6. Under these facts,
3 ISLAM cannot claim to be unfairly prejudiced by the continuation of the Preliminary Injunction
4 through the June trial. ATLANTIS respectfully submits that it was the original intention of the
5 Court and parties at the time that the TRO and subsequent Preliminary Injunction were entered
6 that the prohibition against ISLAM's performance of host services was to continue until
7 conclusion of the trial. *See* TRO and PI. The recent continuation of the trial date from March to
8 June was at the request of Defendants ISLAM and GSR. ATLANTIS stipulated to the
9 continuance as an accommodation to the Defendants and, in equity, ATLANTIS should not incur
10 prejudice from the consequence of ISLAM prematurely returning to work before this matter is
11 decided. Especially where ISLAM is not prejudiced because she continues to receive her
12 handsome salary, equity favors that the status quo be maintained and that all terms of the
13 Preliminary Injunction, including the non-compete terms, be extended through the new trial date.

14
15
16 For all the foregoing reasons, equity dictates in this case that Preliminary Injunction as to
17 the restrictive covenant be at a minimum, extended for the length of time that ISLAM worked for
18 GSR (at least 94 days) and, ATLANTIS believes more appropriately, until the completion of the
19 trial, thus maintaining the status quo and as a penalty for the continued employment of ISLAM
20 by the GSR.

21 22 **III.**

23 **MOTION TO CONTINUE PRELIMINARY INJUNCTION**

24 For the reasons stated above, the Preliminary Injunction as to the restrictive covenant
25 should continue through completion of the trial, and if not, then at least to April 23, 2013. The
26 remaining terms of the Preliminary Injunction should continue through the completion of trial
27 now scheduled for June 10, 2013 in order to maintain the status quo, which includes, among
28 other things, GSR not cooperating with ISLAM other than through this litigation. Given the

1 current trial date, ATLANTIS is simply asking that the Preliminary Injunction be extended from
2 March 29, 2013 to June 15, 2013, a period of at most 77 days.

3
4 **IV.**

5 **CONCLUSION**

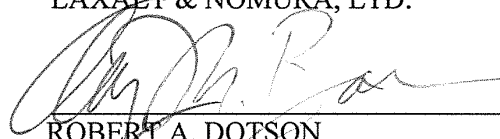
6 Based on the foregoing, ATLANTIS respectfully requests that the Court deny ISLAM's
7 Motion to partially dissolve the Preliminary Injunction and affirmatively continue the terms of
8 the Preliminary Injunction as set forth above.

9 **Affirmation Pursuant to NRS 239B.030**

10 The undersigned does hereby affirm that the preceding document does not contain the
11 social security number of any person.

12 Dated this 22nd day of February, 2013.

13 LAXALT & NOMURA, LTD.

14
15 

16 ROBERT A. DOTSON
17 Nevada State Bar No. 5285
18 ANGELA M. BADER
19 Nevada State Bar No. 5574
20 9600 Gateway Drive
21 Reno, Nevada 89521
22 (775) 322-1170
23 Attorneys for Plaintiff
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of LAXALT &
3 NOMURA, LTD., and that on this date; I caused to be served a true and correct copy of the
4 foregoing by:

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

9 ☒ By electronic service by filing the foregoing with the Clerk of Court using the E-
Flex system, which will electronically mail the filing to the following individuals.

10 ☐ (BY PERSONAL DELIVERY) by causing a true copy thereof to be hand
11 delivered this date to the address(es) at the address(es) set forth below.

12 ☐ (BY FACSIMILE) on the parties in said action by causing a true copy thereof to
be telecopied to the number indicated after the address(es) noted below.

13 ☐ Reno/Carson Messenger Service.

14 ☒ By email to the email addresses below.

15 addressed as follows:

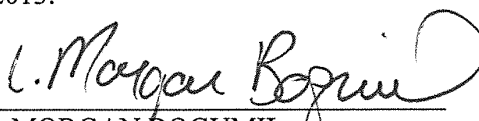
16 Steven B. Cohen, Esq.
17 Stan Johnson, Esq.
Cohen-Johnson, LLC
18 255 E. Warm Springs Rd, Ste 100
Las Vegas, NV 89119

Mark Wray, Esq.
Law Office of Mark Wray
608 Lander Street
Reno, NV 89509

mwray@markwraylaw.com

19 scohen@cohenjohnson.com
20 sjohnson@cohenjohnson.com

21 DATED this 22nd day of February, 2013.

22 
23 L. MORGAN BOGUMIL
24
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28

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INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION	PAGES
1	Affidavit of Counsel in Support of Plaintiff's Opposition to Defendant Sumona Islam's Motion to Partially Dissolve Preliminary Injunction and Countermotion to Continue Preliminary Injunction	30

FILED

Electronically

02-22-2013:02:37:54 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3549709

EXHIBIT 1

EXHIBIT 1

1 **1030**
2 ROBERT A. DOTSON, ESQ.
3 Nevada State Bar No. 5285
4 rdotson@laxalt-nomura.com
5 ANGELA M. BADER, ESQ.
6 Nevada State Bar No. 5574
7 abader@laxalt-nomura.com
8 LAXALT & NOMURA, LTD.
9 9600 Gateway Drive
10 Reno, Nevada 89521
11 Tel: (775) 322-1170
12 Fax: (775) 322-1865
13 Attorneys for Plaintiff

9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR THE COUNTY OF WASHOE**

11 GOLDEN ROAD MOTOR INN, INC., a Nevada
12 Corporation, d/b/a ATLANTIS CASINO
13 RESORT SPA

Case No.: CV12-01171

Dept No.: B7

14 Plaintiff,

15 vs.

16 SUMONA ISLAM, an individual; NAV-RENO-
17 GS, LLC, a Nevada limited liability company,
18 d/b/a GRAND SIERRA RESORT; ABC
19 CORPORATIONS; XYZ PARTNERSHIPS;
20 AND JOHN DOES I through X, inclusive.

21 Defendants.

22 **AFFIDAVIT OF COUNSEL IN SUPPORT OF**
23 **PLAINTIFF'S OPPOSITION TO DEFENDANT SUMONA ISLAM'S**
24 **MOTION TO PARTIALLY DISSOLVE PRELIMINARY INJUNCTION**
25 **AND COUNTERMOTION TO CONTINUE PRELIMINARY INJUNCTION**

26 STATE OF NEVADA)
27) ss.
28 COUNTY OF WASHOE)

29 ANGELA M. BADER hereby affirms, under penalty of perjury, that the assertions
30 contained herein are true;

31 1. I am an attorney licensed to practice law in the State of Nevada and represent the

1 Plaintiff, Golden Road Motor Inn, Inc., a Nevada corporation d/b/a Atlantis Casino Resort Spa
2 ("Plaintiff"), in this action.

3 2. Attached hereto as Exhibit 1 is a true and correct copy of the Non-Compete/Non-
4 Solicitation Agreement dated February 26, 2010 which was attached to Plaintiff's Amended
5 Complaint to which Islam admitted executing in her Amended Answer filed on June 1, 2012.

6 3. Attached hereto as Exhibit 2 is a true and correct certified copy of partial excerpts
7 from the Deposition of Shelly Hadley dated August 13, 2012.

8 4. Attached hereto as Exhibit 3 is a true and correct copy of GSR's Performance
9 Improvement Notice for Sumona Islam dated May 3, 2012, which was produced on August 13,
10 2012 by GSR's Custodian of Records.

11 5. Attached hereto as Exhibit 4 is a true and correct certified copy of partial excerpts
12 from the Deposition of Christian Ambrose dated January 18, 2013.

13 FURTHER YOUR AFFIANT SAYETH NAUGHT.

14
15 
ANGELA M. BADER

16 SUBSCRIBED and SWORN to before me
17 this 22 day of February, 2013.

18 
19 NOTARY PUBLIC

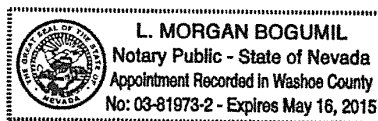


EXHIBIT 1

EXHIBIT 1

NON-COMPETE/NON-SOLICITATION AGREEMENT

WHEREAS, Golden Road Motor Inn, Inc. dba Atlantis Casino Resort Spa (hereinafter "Atlantis") has a legitimate business interest in effectively competing in the marketplace and protecting its investment in employee capital and confidential information; and

WHEREAS, Sumona Islam (hereinafter "Team Member") desires to have employment or continue employment with Atlantis and enjoy the compensation and other benefits associated with said employment;

IN CONSIDERATION there for, Team Member HEREBY AGREES as follows:

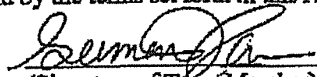
Non-Compete. In the event that the employment relationship between Atlantis and Team Member ends for any reason, either voluntary or non-voluntary, Team Member agrees that (s)he will not, without the prior written consent of Atlantis, be employed by, in any way affiliated with, or provide any services to, any gaming business or enterprise located within 150 miles of Atlantis Casino Resort for a period of one (1) year after the date that the employment relationship between Atlantis and Team Member ends.

Non-Solicitation. In the event that the employment relationship between Atlantis and Team Member ends for any reason, either voluntary or non-voluntary, Team Member agrees that (s)he will not, at any time prior to two (2) years from the date that the employment relationship ends, either directly or indirectly, induce, persuade or attempt to induce any other Atlantis employee to leave or abandon employment with the Atlantis for any reason whatsoever.

Injunctive Relief. Team Member agrees that the Non-Compete and Non-Solicitation Clauses above are the minimum necessary to protect the Atlantis in the use and enjoyment of the confidential information and the good will of the business of the Atlantis. Team member further agrees that damages cannot fully and adequately compensate Atlantis in the event of a breach or violation of said clauses and that, without limiting the right of Atlantis to seek all other legal and equitable remedies available to it, Atlantis shall be entitled to injunctive relief, including but not limited to a temporary restraining order, temporary injunction and permanent injunction to prevent any such violations or any continuation of such violations. The granting of injunctive relief will not act as a waiver by Atlantis to pursue any and all remedies.

Employment At-Will. This Agreement does not create an obligation of continued employment on the part of either Team Member nor Atlantis. Nothing in this Agreement is intended to, nor does, alter the employment at-will relationship between Atlantis and Team Member.

By signing below, Team Member acknowledges his intent and agreement to be legally bound by the terms set forth in this Agreement.


(Signature of Team Member)

Date: 2/26/10

Exhibit 4

ATL 0022

EXHIBIT 2

EXHIBIT 2

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

-oOo-

GOLDEN ROAD MOTOR INN, :
INC., a Nevada :
corporation, dba ATLANTIS :
CASINO RESORT SPA, :
Plaintiff, :

vs. : Case No. CV12-01171

: Department No. B7

SUMONA ISLAM, an :
individual; NAV-RENO-GS, :
LLC, a Nevada limited :
liability company, dba :
GRAND SIERRA RESORT; et :
al., :
Defendants.

=====

DEPOSITION OF SHELLY HADLEY

MONDAY, AUGUST 13, 2012

RENO, NEVADA

REPORTED BY: ERIN T. FERRETTO, CCR #281, RPR

JOB NO. 163886-B



1 already made quite a bit.

2 Q Oh, she indicated how much she made at the
3 Atlantis?

4 A Yeah.

5 Q What did she tell you in that -- with regards to
6 how much her current compensation package was?

7 A She said that she made \$70,000.

8 Q So you wanted to make it higher than that,
9 obviously?

10 A Right.

11 Q Okay. So was that the primary -- basically it was
12 negotiation then that got her to the \$80,000?

13 A Correct.

14 Q Was her salary contingent upon any production
15 during that first "X" number of months or years?

16 A No.

17 Q Did she have an employment contract with the Grand
18 Sierra Resort?

19 A No.

20 Q Did she ever execute a non-compete with the Grand
21 Sierra Resort?

22 A No.

23 Q Why not; do you know?

24 A No, I don't know.

25 Q Did you hire any other new hosts in that same

1 period of time?

2 A Yes.

3 Q Were they asked to execute non-competes?

4 A No.

5 Q No, or --

6 A They were not asked to exercise non-competes.

7 Q And was that your decision or someone else's?

8 A That would be someone else's.

9 Q Whose decision was that?

10 A That would be Tom Flarerty.

11 Q It would be a decision you would make now?

12 A Yes.

13 Q Because you have Mr. Flarerty's old job, correct?

14 A I do.

15 Q And did Ms. Islam, in fact, begin work at the
16 Grand Sierra Resort on January 25th?

17 A Yes.

18 Q On exactly that day?

19 A I believe so.

20 Q Okay. I don't mean to imply that that's not
21 correct, I'm just -- a lot of things in this world,
22 particularly lately, don't seem to happen exactly on
23 schedule so I just wanted to confirm that.

24 Prior to making the offer of employment to
25 Ms. Islam, did you or anyone, to your knowledge, on

1 Q Is that who made the decision, Mr. Santos?

2 A Yes.

3 Q Had you talked to Mr. Santos about this hire at
4 all prior to the filing of this complaint?

5 A Well, we had no knowledge of her doing anything at
6 that point.

7 Q I understand, but you knew that there was a
8 non-compete agreement, for example?

9 A Oh, yes.

10 Q Did you personally have any conversations with
11 Mr. -- is it Santo or Santos?

12 A Santo.

13 Q Santo -- with Mr. Santo about the non-compete
14 agreement?

15 A Yes. We said that she brought it in, we told him
16 that she brought it in.

17 Q Other than the existence of it, did you have any
18 discussions with him about it?

19 A No. It got forwarded to attorneys.

20 Q Kind of left your hands and that was the end of
21 it, basically?

22 A (No audible response.)

23 Q And that's a "yes"?

24 A Yes.

25 Q Do you know why it was decided to suspend her

1 rather than terminate her?

2 A It was pending investigation and how -- how this
3 all played out.

4 Q And she's on paid leave today?

5 A She is.

6 Q These reports -- well, the revenue reports that we
7 don't have but hopefully we'll receive --

8 A Right.

9 Q -- do you continue -- does the Grand Sierra Resort
10 continue to create a revenue report related to those
11 guests that are coded to Ms. Islam?

12 A Yes.

13 Q And if -- so she's suspended, call it
14 approximately May 2nd?

15 A Right.

16 Q If a guest comes in June 2nd that was previously a
17 prospect --

18 A Yes.

19 Q -- but now shows up and games with an offer from
20 Ms. Islam, is it changed -- is the coding changed from
21 "prospect" to "Sumona"?

22 A No, nothing has been changed.

23 Q So at least in so far that first column and their
24 designation, even if they've shown up it's still listed
25 as --

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss.
WASHOE COUNTY)

I, ERIN T. FERRETTO, Certified Court
Reporter for the State of Nevada, do hereby certify;

That on MONDAY, AUGUST 13TH, 2012, at
Laxalt & Nomura, 9600 Gateway Drive, Reno, Nevada,
personally appeared SHELLY HADLEY, who was duly sworn by
me to testify the truth, the whole truth and nothing but
the truth, and thereupon was deposed in the matter
entitled herein;

That said deposition was taken in verbatim
stenotype notes by me, and thereafter transcribed into
typewriting as herein appears; that the foregoing
transcript, consisting of pages 1 through 81, is a full,
true and correct transcription of my stenotype notes of
said deposition.

That I am not related to or employed by any
parties or attorneys herein, nor financially interested
in the outcome of these proceedings;

DATED: This 20th day of August, 2012.

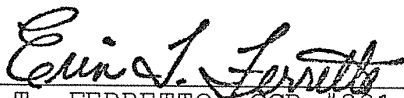

ERIN T. FERRETTO, CCR #281, RPR

EXHIBIT 3

EXHIBIT 3



PERFORMANCE IMPROVEMENT NOTICE

EMPLOYEE NAME: Sumona Islam		POSITION: Exec. Casino Host	DATE OF INCIDENT: 5/3/2012
DEPT./GAME: Cas. Mktg	MANAGER: Shelly Hadley	D.O.H. 1/25/2012	I.D.# 95398

YOUR CONDUCT AND / OR PERFORMANCE IS UNSATISFACTORY FOR THE FOLLOWING REASON:

- 1 ☐ RECORD OF PROCEDURAL ERROR
R.O.P.E.
2 ☐ EMPLOYMENT RULES VIOLATION
E.R.V.
3 ☒ OTHER DISCIPLINARY ACTION

DESCRIBE THE UNSATISFACTORY CONDUCT OR PERFORMANCE:

WITNESS(S) INVOLVED:

PREVIOUS INCIDENT(S):

CORRECTIVE ACTION TAKEN: (Indicate specific program for improvement, correction of deficiencies, measurement criteria, and consequences if improvement is not achieved and continued. Failure to remedy any deficiency may result in your termination.)

☐ VERBAL WARNING

☐ PROBATION

☐ WRITTEN WARNING

☒ INVESTIGATORY SUSPENSION

☐ DISCIPLINARY SUSPENSION

List date(s) of suspension paid investigatory suspension

Date of return: _____

The above performance improvements are required immediately or by _____ thereafter

_____ and are expected to continue (Date)

I have read and discussed the above and received a copy:
(SIGNATURE ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTICE.)

X

Employee's Signature

X

Supervisor's Signature

EMPLOYEE COMMENTS (continue on reverse side, if needed):

ORIGINAL: HR Administration COPY: Office COPY: Employee COPY: Union

(Rev. 10/2004)

EXHIBIT 4

EXHIBIT 4

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IN THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

-o0o-

GOLDEN ROAD MOTOR INN, INC.,
a Nevada corporation, DBA
ATLANTIS CASINO RESORT SPA,

Plaintiff,

Case No. CV12-01171

vs.

Dept. No. B7

SUMONA ISLAM, an individual;
NAV-RENO-GS, LLC, a Nevada
limited liability company DBA
GRAND SIERRA RESORT; ABC
CORPORATIONS; XYZ PARTNERSHIPS;
and JOHN DOES I through X,
inclusive,

CERTIFIED COPY

Defendants.

Pages 1 to 172, inclusive.

DEPOSITION OF CHRISTIAN AMBROSE

Friday, January 18, 2013
Reno, Nevada

REPORTED BY: CHRISTINA AMUNDSON
CCR #641 (Nevada)
CSR #11883 (California)

1 A No.

2 Q Can you tell from the database at all?

3 A Well, when you say "the database," you mean the
4 CMS database?

5 Q Yes.

6 A It would keep a record of -- there's like a log
7 of who creates accounts.

8 Q And who makes changes to accounts as well?

9 A Yes, it's part of the log, yes. It's not every
10 single field in the entire database. It's fields of
11 designated importance.

12 Q Okay. So if the guest has a nice dinner at the
13 steakhouse, at Charlie Palmer, they just make a notation,
14 "Liked Charlie Palmer," something like that?

15 A It would be great if that happened, yes.

16 Q I might be expecting too much?

17 A Yes.

18 Q Okay. The role that you have, then, in
19 developing the offer that would go to any of these
20 individuals, did it come to pass during the spring of last
21 year that Ms. Islam would request that a particular guest
22 who was coded to her received an offer that was better
23 than what that person's play as it existed prior to her
24 presentation at the GSR would normally allow?

25 A Yes, it did.

1 Q And how did those requests occur? In other
2 words, were they emails, verbal requests?

3 A I like to do stuff in writing, so it was
4 probably by email.

5 Q And to your recollection, knowing that your
6 emails are out of the room right now, did this just come
7 in a list of these are my guests and I'd like them -- how
8 did that happen?

9 A I should expand on this by saying I spend many
10 hours a week not at my desk but in meetings, so, actually,
11 my assistant first communicated me this and they went
12 through her.

13 Q Okay. So understanding that your assistant,
14 whose name is --

15 A Marie.

16 Q -- Marie, may have been involved in this, how
17 generally did this occur?

18 A She gave her a list of customer numbers and then
19 the versions of the mailers she would like them to
20 receive.

21 Q Okay. And putting names to the pronouns there,
22 the "she's" and the "hers" --

23 A Sorry. Sumona.

24 Q She, Ms. Islam, would provide a list of guests
25 and then a level of promotional material that she would

1 like those guests to receive?

2 A To Marie.

3 Q And then Marie would comply or Marie would ask
4 your approval before compliance?

5 A This is somewhat a complex request and it was
6 harder than Marie's skill set, so she forwarded it to me.

7 Q And then would you always comply with the
8 request or would you make a determination, or what
9 happened next?

10 A I had sort of a blanket statement from Shelly
11 that whatever requests Sumona made as the versions to
12 implement that.

13 Q And how did that request from Shelly Hadley take
14 its form?

15 A To the best of my recollection -- I can't
16 remember.

17 Q It was probably verbal?

18 A Probably. I should expand and say the hosts ask
19 me for a lot of things. I don't take direction from the
20 hosts. They have wishes that may or may not be in the
21 best interest of the property.

22 Q And there's an email here where I think there's
23 actually the word "special" used. This was an unusual
24 instruction from Ms. Hadley?

25 A I have not done that before.

1 Q Okay. And I think that's the definition of
2 "unique." True? This is the first time it's happened?

3 A Yes.

4 Q And do you know how many guests were offered
5 promotional marketing -- I hate to use the word "offer"
6 twice, I hate that -- but in excess of what they would be
7 normally set to receive?

8 A Those would be in the reports.

9 Q Oh. Well, let's not speculate and try to
10 remember to ask that later.

11 I'm going to ask you a question now that I want
12 to admonish you first of all to tell you that as I ask you
13 these series of questions, I'm not seeking to learn
14 conversations you had with counsel. And so to the extent
15 it may be easier to say, well, this is what Mr. Johnson or
16 Mr. Cohen told me, I would like you not to answer that
17 way. I want to know what you did. Okay?

18 A Okay.

19 Q All right. Prior to May 1st, 2012, did you
20 receive any instruction and did you modify the marketing
21 offers to guests coded to Sumona Islam?

22 A Could you rephrase that?

23 Q Yes. Let me put it this way: Up until
24 April 1st, were the guests that were coded to Ms. Islam,
25 did all of those guests receive marketing materials from

1 Grand Sierra Resort?

2 A Possibly. The only reason you get marketing
3 material is if you meet a certain value to the property in
4 combination with a date range. So, for example, to give
5 you -- if the first gentleman, Larry Brinkley, had died in
6 1987, he's coded to Sumona. I would not have messaged him
7 because I would have known he was dead.

8 Q And you wouldn't have sent him a mailer either?

9 A Right.

10 Q But is there -- maybe it's on the documents that
11 are out of the room right now. Is there a list of guests
12 who had received solicitations from the Grand Sierra
13 Resort?

14 A There's a list, yes.

15 Q Okay. At some point in time did you receive
16 instruction from management to cease sending solicitations
17 to the persons who had been coded to Ms. Islam?

18 A Yes. Not every host -- not every guest is coded
19 to Ms. Islam.

20 Q Right. What did you do?

21 A You mean at the time?

22 Q Yes.

23 A I was told to stop messaging them out of our
24 normal course of business.

25 Q Okay. In other words, what did you actually do?

1 That's why I asked you what did you do, not what were you
2 told to do.

3 A I was running my normal reports. And then when
4 this request to move people to tiers that they may not
5 have otherwise belonged in, that's additional work for me.
6 And then when this request came to stop doing that, I
7 stopped doing it. I went back to the normal course of
8 business.

9 Q Okay. So at that point in time they would
10 receive the offer that they were naturally set to receive,
11 rather than a special offer?

12 A Yes. Normal business practices, yes.

13 Q Okay. And prior to that the offer that they
14 were receiving was based on what Ms. Islam had requested?

15 A Well, in some cases they qualified for something
16 maybe more than she requested.

17 Q And then what did they get?

18 A They would get that offer because that would be
19 best business practices.

20 Q All right. But barring that caveat, did any of
21 the -- as you call it -- you say the standard business
22 practice is what it reverted to.

23 A Yes.

24 Q Did you ever cease soliciting anyone that had
25 been coded to Ms. Islam?

1 A Well, for a variety of reasons we cease
2 communicating to people, so could you narrow the question?

3 Q I mean, for example -- let me put it this way.
4 Turning to page 7, Mr. Texley, did there ever come a point
5 in time where -- well, let me do this a different way. I
6 think I have a better way to do this.

7 Using this book in front of you, go to Exhibit
8 17. Exhibit 17 is a document that's called a "temporary
9 restraining order." It's a legal document.

10 Have you ever seen this document before?

11 A No.

12 Q You can see it's dated July 5th, 2012, on the
13 file stamp on the upper right-hand corner.

14 A Yes.

15 Q Do you see that?

16 Did you on or about that date -- it would have
17 been after that date, obviously -- receive any instruction
18 from Grand Sierra Resort management to modify marketing
19 efforts towards guests as a consequence of this order?

20 A Yes, in a roundabout way.

21 Q Explain that.

22 A Ms. Hadley's department can reclassify certain
23 customers as not marketable. And I believe that's what
24 happened. She or her people reclassified a set of Sumona
25 Islam's patrons as non-marketable, and then I would comply

1 with that.

2 Q And do you know how she determined who was
3 reclassified as non-marketable?

4 A I think she used some kind of date parameter.

5 Q Okay. And are the documents that are out of the
6 room right now going to describe to us who was determined
7 to be non-marketable or designated as non-marketable?

8 A No. Because these documents are from before
9 that time.

10 Q Okay. Is that list of persons that are
11 non-marketable still in existence someplace?

12 A I would presume so, yes.

13 Q And so in answer to my earlier questions, you
14 didn't take any action with regard to the order. You
15 simply complied with a modification of the database as to
16 whom could be marketed?

17 A Yes. I'm actually unaware that any CMS user can
18 change details. I just pick up the collective wisdom of
19 these changes. I'm not notified when they get done.

20 Q You were not asked to ensure that any guest
21 information -- for example, if Mr. Texley is a guest that
22 was added to the database by Sumona Islam -- and I am
23 presuming that to be case for the purposes of this
24 question -- were you asked to ensure that the Grand Sierra
25 Resort did not market to Mr. Texley?

1 A I think I was copied. I'm going from memory
2 here. I was copied on a memo, perhaps, of a list of
3 players that were not supposed to be marketed to.

4 Q You didn't make any determination as to which
5 players went on that list, however?

6 A No.

7 Q And you were not party to conversations, if such
8 existed, where that determination was made?

9 A Correct.

10 Q Do you know who made that determination and who
11 created that list?

12 A To the best of my recollection, Shelly Hadley
13 asked me for a list of Sumona's -- which I believe could
14 be Exhibit 18, so I would guess as a result of that.

15 Q So if we wanted to find out if any of the
16 players on Exhibit 18 were marketed to after July 5th,
17 2012, how would I do that?

18 A I maintain complete records of who was marketed
19 to.

20 Q And those were not amongst the documents that
21 have been produced today, though?

22 A Correct.

23 Q And the records that you have as to who was
24 marketed to includes --

25 A I'm sorry. What was the date? I should clarify

1 that.

2 Q July 5th, 2012.

3 A So the complication is when I messaged somebody

4 for July, I would have actually messaged them two months

5 prior.

6 Q I was going to get to that. I assume for

7 mailers it's even a farther lead time.

8 A Yes.

9 Q So let's explain, because you and I are having

10 an inside baseball conversation right now.

11 The mailers and the database of persons to whom

12 mailers will be sent is created in advance.

13 A Correct.

14 Q And it's sent in bulk mail, so it takes even

15 longer than a normal letter would take?

16 A Yes.

17 Q And, consequently, the monthly mailer for July

18 is actually created and sent when?

19 A In my ideal world, it would be at least created

20 by May.

21 Q Okay. And then the recipients would receive it

22 when?

23 A The end of May, in the ideal world, so five, six

24 weeks minimum.

25 Q So they have to keep that piece of paper for six

1 weeks?

2 A Actually, if you get too close to the time, they
3 haven't had time to make their plans, ask their boss for
4 time off, book their airfare.

5 Q Is the lead time for a local mailer less?

6 A Yes.

7 Q What's the lead time for a local mailer?

8 A Typically in my ideal world it's ten days before
9 the beginning of the month.

10 Q And so by the time this order was entered in
11 July, the mailers for locals that would be impacted would
12 be the August mailer?

13 A Yes.

14 Q And the mailer for non-locals that would be
15 impacted would be what? The September mailer?

16 A Yes. We actually -- the end of August we had a
17 little -- we had a transition period. The owners were
18 doing a grand reopening for the end of August, so we did a
19 mini mailer, of course to complicate matters, for the last
20 two weeks of August, so that was probably the last impact,
21 yes.

22 Q You mentioned a memo you received. Do you know
23 who's the author of the memo?

24 A Which memo was this?

25 Q Do you recall receiving a memo related to this

1 review the transcript?

2 MR. JOHNSON: Yes.

3 THE WITNESS: Yes.

4 MR. DOTSON: And would you like us to send it to
5 counsel and have him provide it to you?

6 THE WITNESS: Yes.

7 MR. DOTSON: Counsel, do you have any questions?

8 MR. JOHNSON: No.

9 (Whereupon, deposition was concluded at 7:13
10 p.m.)

11 -o0o-

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CHRISTIAN AMBROSE

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1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)
4

5 I, CHRISTINA MARIE AMUNDSON, a Certified Court
6 Reporter in and for the States of Nevada and California do
7 hereby certify:

8 That I was personally present for the purpose of
9 acting as Certified Court Reporter in the matter entitled
10 herein; that the witness was by me duly sworn;

11 That said transcript which appears hereinbefore was
12 taken in verbatim stenotype notes by me and thereafter
13 transcribed into typewriting as herein appears to the best
14 of my knowledge, skill, and ability and is a true record
15 thereof.

16 Christina M. Amundson
17

18 Christina Marie Amundson, CCR #641 (NV), CSR #11883, (CA)

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1 **3795**
2 MARK WRAY, #4425
3 LAW OFFICES OF MARK WRAY
4 608 Lander Street
5 Reno, Nevada 89509
6 (775) 348-8877
7 (775) 348-8351 fax
8 Attorneys for Defendant SUMONA ISLAM

9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11
12 IN AND FOR THE COUNTY OF WASHOE

13 GOLDEN ROAD MOTOR INN, INC.,
14 a Nevada Corporation, d/b/a ATLANTIS
15 CASINO RESORT SPA,

16 Plaintiff,

Case No. CV12-01171

17 vs.

Dept. B7

18 SUMONA ISLAM, an individual;
19 NAV-RENO-GS, LLC, a Nevada
20 limited liability company, d/b/a
21 GRAND SIERRA RESORT; ABC
22 CORPORATIONS; XYZ PARTNERSHIPS;
23 AND JOHN DOES I through X,
24 inclusive,

25 Defendants.

26
27 **REPLY IN SUPPORT OF MOTION TO DISSOLVE PRELIMINARY**
28 **INJUNCTION AND OPPOSITION TO MOTION TO CONTINUE INJUNCTION**

If the Atlantis wishes to criticize Islam's motion for being too simple and straightforward, so be it. Nevada law states that a non-compete terminates according to its terms. *Finkel v. Cashman Prof'l, Inc.*, 270 P.3d 1259, 1265 (Nev. 2012) (once the

1 period of limitation in a non-compete expires, the agreement is unenforceable and the
2 court should dissolve the preliminary injunction). The Atlantis non-compete terminated
3 January 19, 2013. That portion of the injunction that prevents Islam from working should
4 be dissolved and she should be allowed to return to work.

5 In a valiant attempt at grammatical dissection¹, the Atlantis tries to distinguish
6 *Finkel*, but *Finkel* is on point. *Finkel* even disposes of the argument by the Atlantis that
7 this Court should borrow law from minority jurisdictions like Iowa, Florida and Texas,
8 which extend non-competes beyond their express terms. *Finkel* states “**the majority of**
9 **courts** that have considered this matter have declined to enforce an agreement not to
10 compete after the period set forth in the agreement had expired.” *Id.* at 1265 (emphasis
11 supplied).

12 If the Court were inclined to ignore *Finkel* and borrow from other states’ public
13 policy on non-competes, the Court need not look as far away as Florida and Texas. Next
14 door, in California, non-competes are *per se* void as a matter of public policy. Cal. Bus.
15 & Prof. Code §16600 (“Except as provided in this chapter, every contract by which
16 anyone is restrained from engaging in a lawful profession, trade, or business of any kind
17 is to that extent void.”)

18 The common law rule in Nevada, which reflects our state’s public policy, states an
19 agreement not to compete is in restraint of trade, cannot be enforced unless reasonable,
20 and will not be enforced beyond its terms. *Hansen v. Edwards*, 83 Nev. 189, 191, 426
21 P.2d 792, 793 (1967) (covenant invalidated as too restrictive); *Finkel, supra*.

22 By Nevada law, the non-compete is only enforceable according to its terms, and
23 its terms provide that it terminated one year after Islam left. Therefore, it terminated
24 January 19, 2013. The non-compete portion of the injunction must now be dissolved.

25 Concerning the Atlantis counter-motion to continue the preliminary injunction
26 until completion of the trial, the position of Islam is that the parties’ existing stipulation

27 ¹ *United States v. Petri*, No. 11-30337, Slip Op. at p. 9 (9th Cir. Feb. 8, 2013).
28

1 and the Court's existing order of Aug. 24, 2013 already provide that unless modified, the
2 preliminary injunction remains in effect pending completion of the trial. Until
3 completion of the trial, now scheduled to commence June 10, 2013, those portions of the
4 preliminary injunction relating to disclosure or use of any alleged trade secrets or alleged
5 confidential information, and those portions relating to cooperation between the Grand
6 Sierra and Islam, remain in effect.² It is unnecessary for another order to be issued
7 extending the preliminary injunction. Therefore, the counter-motion should be denied as
8 moot.

9 DATED: Feb. 25, 2013 LAW OFFICES OF MARK WRAY

10
11 By Mark Wray
12 MARK WRAY
13 Attorney for Defendant SUMONA ISLAM
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28 ² See page 3, line 14 through page 4, line 3 of the July 5, 2012 temporary restraining
order for the terms that should remain in effect pending completion of trial.

CERTIFICATE OF SERVICE

The undersigned employee of the Law Offices of Mark Wray certifies that a true copy of the foregoing document was sealed in an envelope with first class postage prepaid thereon and deposited in the U.S. Mail at Reno, Nevada on February 25, 2013 addressed as follows:

Robert A. Dotson
Angela M. Bader
Laxalt & Nomura, Ltd.
9600 Gateway Drive
Reno, Nevada 89521

Stan Johnson
Cohen/Johnson
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119



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AFFIRMATION

The undersigned certifies that this document does not contain the Social Security number of any person.

DATED: Feb. 25, 2013 Mark Wray
MARK WRAY

3785

ROBERT A. DOTSON, ESQ.

Nevada State Bar No. 5285

rdotson@laxalt-nomura.com

ANGELA M. BADER, ESQ.

Nevada State Bar No. 5574

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LAXALT & NOMURA, LTD.

9600 Gateway Drive

Reno, Nevada 89521

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Attorneys for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

GOLDEN ROAD MOTOR INN, INC., a
Nevada Corporation, d/b/a ATLANTIS
CASINO RESORT SPA

Case No.: CV12-01171

Dept No.: B7

Plaintiff,

vs.

SUMONA ISLAM, an individual; NAV-
RENO-GS, LLC, a Nevada limited liability
company, d/b/a GRAND SIERRA RESORT;
ABC CORPORATIONS; XYZ
PARTNERSHIPS; AND JOHN DOES I
through X, inclusive.

Defendants.

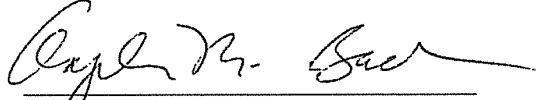
REPLY IN SUPPORT OF PLAINTIFF'S
MOTION TO CONTINUE PRELIMINARY INJUNCTION

Plaintiff Golden Road Motor Inn, Inc. dba Atlantis Casino Resort Spa ("Plaintiff" or
"ATLANTIS"), by and through undersigned counsel, Laxalt & Nomura, hereby files this Reply
in support of its to Motion to Continue the Preliminary Injunction. This Reply is made and
based on the papers and pleadings on file herein, the Memorandum of Points and Authorities,
and any argument the Court should choose to consider.

///

1 DATED this 4th day of March, 2013.

2 LAXALT & NOMURA, LTD.

3 

4 ROBERT A. DOTSON

5 Nevada State Bar No. 5285

6 ANGELA M. BADER

7 Nevada State Bar No. 5574

8 9600 Gateway Drive

9 Reno, Nevada 89521

10 (775) 322-1170

11 Attorneys for Plaintiff

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I.**

14 **ARGUMENT**

15 Sumona Islam ("ISLAM") takes the position in her Opposition to the Motion to Continue
16 the Preliminary Injunction that all terms contained in the Preliminary Injunction, except those
17 related to the Non-Compete Agreement, continue in effect pending completion of trial,
18 notwithstanding that trial has now been continued to June 10, 2013. However, the Stipulation
19 For Preliminary Injunction continues the terms of the Temporary Restraining Order ("TRO")
20 entered against Defendants ISLAM and NAV-Reno-GS, LLC d/b/a Grand Sierra Resort ("GSR")
21 on July 5, 2012 "until otherwise modified pursuant to stipulation or Order of the Court or to
22 completion of the trial on the merits scheduled for March 25, 2013." Thus, as a housekeeping
23 matter and for clarity, the Court should enter a Stipulation or Order continuing the Preliminary
24 Injunction through June 10, 2013.

25 Moreover, there are terms from the May 9, 2012 TRO against ISLAM not referenced in
26 footnote 2 of ISLAM's Opposition that are still in effect and should continue to the completion
27 of the June 10, 2013 trial:

28 ///

1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that ISLAM is
2 hereby restrained, enjoined, and otherwise prohibited from further breaching the
3 NON-COMPETE/NON-SOLICITATION AGREEMENT and the ATLANTIS
4 COMPANY POLICY REGARDING COMPANY PROPERTY PROPRIETARY
5 INFORMATION AND TRADE SECRETS by being employed by GSR or any
6 other competitor of ATLANTIS' within 12 months of her resignation from
7 ATLANTIS.

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that ISLAM is
9 restrained, enjoined, and otherwise prohibited from utilizing and/or disclosing in
10 any way the confidential, proprietary and trade secret information of ATLANTIS.

11 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that ISLAM is
12 restrained, enjoined, and otherwise prohibited from contacting or soliciting the
13 customers of ATLANTIS.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that ISLAM shall
15 immediately identify and return to ATLANTIS any confidential, proprietary,
16 trade secret information/data of ATLANTIS and further purge it from her files.¹

17 See May 9, 2012 TRO against ISLAM.

18 II.

19 CONCLUSION

20 Wherefore, Plaintiff requests that the Court enter a Stipulation or Order extending the
21 Preliminary Injunction to and including the completion of trial scheduled for June 10, 2013.

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28 ///

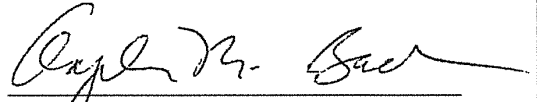
¹ The underlined items are to be decided by the Court pursuant to ISLAM's Motion to Dissolve those portions of the Preliminary Injunction.

Affirmation Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 4th day of March, 2013.

LAXALT & NOMURA, LTD.



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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of LAXALT & NOMURA, LTD., and that on this date; I caused to be served a true and correct copy of the foregoing by:

- ☒ (BY MAIL) on all parties in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At the Law Offices of Laxalt & Nomura, mail placed in that designated area is given the correct amount of postage and is deposited that same date in the ordinary course of business, in a United States mailbox in the City of Reno, County of Washoe, Nevada.
- ☒ By electronic service by filing the foregoing with the Clerk of Court using the E-Flex system, which will electronically mail the filing to the following individuals.
- ☐ (BY PERSONAL DELIVERY) by causing a true copy thereof to be hand delivered this date to the address(es) at the address(es) set forth below.
- ☐ (BY FACSIMILE) on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the address(es) noted below.
- ☐ Reno/Carson Messenger Service.
- ☒ By email to the email addresses below.

addressed as follows:

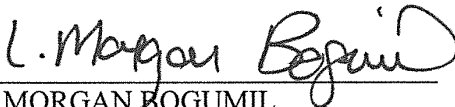
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DATED this 4 day of March, 2013.


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9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR THE COUNTY OF WASHOE**

11 GOLDEN ROAD MOTOR INN, INC., a Nevada Corporation, d/b/a ATLANTIS CASINO
12 RESORT SPA
13 Case No.: CV12-01171
14 Dept No.: B7

13 Plaintiff,

14 vs.

15 SUMONA ISLAM, an individual; NAV-RENO-
16 GS, LLC, a Nevada limited liability company,
17 d/b/a GRAND SIERRA RESORT; ABC
18 CORPORATIONS; XYZ PARTNERSHIPS;
19 AND JOHN DOES I through X, inclusive.

19 Defendants.

20 **REPLY TO ISLAM'S OPPOSITIONS TO**
21 **MOTION FOR PARTIAL SUMMARY JUDGMENT**

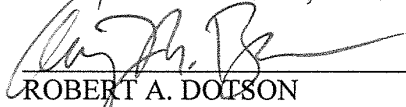
22 Plaintiff GOLDEN ROAD MOTOR INN, INC., a Nevada corporation d/b/a ATLANTIS
23 CASINO RESORT SPA ("ATLANTIS"), by and through its attorneys, Laxalt & Nomura, Ltd.,
24 hereby files its Reply to Defendant SUMONA ISLAM'S ("ISLAM") Opposition and
25 Supplemental Opposition to its Motion for Partial Summary Judgment as to liability.

26 This Reply is made and based on NRCP 56, NRS 600A.030, the pleadings on file and
27 incorporated herein, the attached Memorandum of Points and Authorities, Affidavits and
28

1 Exhibits as well as the arguments and evidence to be made at any hearing convened to consider
2 this motion.¹

3 Dated this 22nd day of March, 2013.

4 LAXALT & NOMURA, LTD.

5 
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14 **MEMORANDUM POINTS AND AUTHORITIES**

15 **I.**

16 **INTRODUCTION**

17 This motion is no longer premature as initially advocated by ISLAM. Rather, per the
18 stipulation of ATLANTIS, ISLAM has completed all requested discovery in order to oppose the
19 motion and the motion is now ripe for decision. In fact, trial is scheduled for June 10, 2013.

20 ISLAM would like to portray herself as a victim of a series of unfortunate life events as
21 set forth in the statement of facts drafted by her attorney and allegedly supported by her
22 conclusory affidavit which surprisingly contains no material factual assertions. In truth,
23 however, she is an educated and sophisticated saleswoman who uses manipulation and
24 misrepresentation to obtain what she wants. Indeed, her Opposition makes it clear that following
25 her resignation, ISLAM was well aware of ATLANTIS' intentions to enforce the agreements
26 that she had signed with it and made sure that before taking a position with GSR, in violation of
27 those obligations, she had a legal commitment that GSR would defend her in any resulting

28 ¹ As many of the arguments raised in Defendants' Oppositions are similar or repetitive, ATLANTIS incorporates herein its Reply to GSR's Oppositions to Motion for Partial Summary Judgment.

1 litigation and support her financially through the process.² In any event, her personal
2 circumstances are largely irrelevant to the causes of action at issue in this motion. Indeed,
3 ISLAM has admitted to sabotaging the ATLANTIS database, she has admitted to taking
4 information she agreed was not hers to take, she has admitted to using that information in
5 connection with her employment with Defendant NAV-RENO-GS, LLC d/b/a GRAND SIERRA
6 RESORT (“GSR”) and she, as well as GSR, has obviously profited from her actions.³

8 ISLAM raises five main issues in an attempt to avoid summary judgment on liability.
9 These are: (1) whether ISLAM was guaranteed bonuses and raises and if so, whether the failure
10 to pay such is a breach of her employment justifying ISLAM’s failure to abide by the many
11 contractual agreements she signed upon and during her employment with ATLANTIS; (2)
12 whether ATLANTIS engaged in inequitable conduct via-a-vis Harrah’s, ISLAM’s prior
13 employer, that would bar its claims for equitable relief; (3) whether ISLAM signed the Non-
14 Compete Agreement with ATLANTIS under duress; (4) whether the Non-Compete Agreement is
15 valid and enforceable; and (5) whether the information at issue is confidential, proprietary and a
16 trade secret. However, many of these issues are neither material nor genuine and the last two
17 capture the heart of the litigation to which the Court has already indicated its favorable opinion
18 in granting the Temporary Restraining Order (“TRO”). Regarding the fifth issue, the
19 information/data which ATLANTIS claims is confidential, proprietary and trade secret, ISLAM
20 purposefully overlooks the concept of intellectual property, focusing instead on the disingenuous
21 argument that no one owns the people, the guests/players at issue.⁴ It is not the players
22 themselves that are intellectual property, but rather their identity and the corresponding
23 information that ATLANTIS collects and develops about them including their play habits, rating,
24
25
26

27 ² See Islam Opposition at 10:25-27, 11:6-10, 12:10-13, 12:4-9, 14-17, 13:21-24.

28 ³ See Islam Opposition at 11:19-28, 12:18-20, 13:1-4.

⁴ Intellectual property is defined by Black’s Law Dictionary (6th Ed. 1990) as “[p]roperty which cannot be touched because it has no physical existence such as claims, interests and rights.”

1 likes, dislikes, response to marketing incentives etc, which have value and are proprietary and
2 confidential. ATLANTIS maintains this information in its database for use in marketing to and
3 maintaining its relationship with its guests.

4 As such, summary judgment should be entered as a matter of law on liability for the
5 claims against ISLAM with the exception of a permanent injunction which was not the subject of
6 the motion.
7

8 II.

9 STATEMENT OF FACTS

10 The statement of facts submitted by ISLAM is conclusory, largely unsupported, mostly
11 irrelevant and contains hearsay and other inadmissible statements. In an effort to provide the
12 Court with a more balanced view, ATLANTIS offers the following undisputed facts from
13 ISLAM's deposition testimony or her own writings as well as additional witness testimony on
14 certain topics she addressed in her Opposition.
15

16 ISLAM is a well educated woman who in 2007 obtained her Bachelor's of Science
17 Degree in Business Administration from the University of Nevada, Reno, majoring in Business
18 Management and minoring in Human Resource Management.⁵ She is a United States citizen but
19 admits that her ability to read and write English, her second language, is far superior then her
20 ability to speak it.⁶
21

22 In an effort to obtain a better paying job with ATLANTIS, ISLAM misrepresented to
23 ATLANTIS that she was earning \$44,000 in salary at Harrah's when she was actually earning
24 \$36,000, a maneuver which earned her a bump in salary to \$60,000 when hired by ATLANTIS.⁷
25

26 ⁵ See Exhibit 1 to motion (Deposition of Islam 24:10-17) and ATL 0082 (contained in Exhibit 3 to motion.)

27 ⁶ See Exhibit 1 to motion (Islam Deposition 188:12-24 and 25:20-23.)

28 ⁷ It appears Islam modified her agreement with Harrah's in order to misrepresent her previous compensation. See Exhibit 1 to motion (Islam Deposition, 126:4-6), Exhibit 1 (Deposition of Debra Robinson 152:1-21), Exhibit 2 (Deposition Exhibit 51--Islam's employment agreement with Harrah's received from Islam) and Exhibit 3 (Deposition Exhibit 46--Islam's employment agreement with Harrah's received from Harrah's.)

1 Seeing how this worked so well before, ISLAM did the same thing when negotiating with GSR.
2 She represented to GSR that she was earning \$70,000 at ATLANTIS when she was actually
3 earning \$60,000.⁸ This move netted her a salary increase to \$80,000 when hired by GSR.⁹

4 ISLAM was also well aware of ATLANTIS' intent to enforce its Non-Compete
5 Agreement as this was communicated to her when she resigned.¹⁰ She informed ATLANTIS
6 that she would be taking a job out of the area but then accepted a position with GSR.¹¹ She also
7 made doubly sure that GSR would defend her on the Non-Compete Agreement should
8 ATLANTIS litigate it.¹² As a result, ISLAM has been earning a salary of \$80,000 since at least
9 January 31, 2012 and beginning May 3, 2012, after her suspension with pay, she has not had to
10 work to receive her salary from GSR.¹³ Additionally, per the agreement in Exhibit 7, GSR is
11 also paying for her defense.¹⁴

12 While admitting all critical facts to support this Motion for Partial Summary Judgment,
13 ISLAM downplays her sabotage of the information on the ATLANTIS database by stating that
14 "her emotions got the best of her" and that the changes she made were not critical as another
15 system had accurate information.¹⁵ Notwithstanding these admitted acts, ISLAM fails to note
16 that she committed a crime when she engaged in these acts and that she is being criminally
17 prosecuted for it.¹⁶ To ATLANTIS, this sabotage is a "big deal." Although she contends she
18 was unhappy, had not received a raise and had received only one quarterly bonus in years of
19 employment, she agreed to all terms of employment that the Atlantis requested (including those
20
21
22

23 ⁸ See Exhibit 1 to motion (Islam Deposition, 126:4-6) and Exhibit 4 (Deposition of Shelly Hadley 24:1-25; 25:13.)

24 ⁹ See Exhibit 1 to motion (Islam Deposition 126: 2-6) and Exhibit 4 (Hadley Deposition 25:11-13.)

25 ¹⁰ See Islam Opposition at page 10:26-28 and Exhibit 5 (Deposition of Frank DeCarlo 177:16-25; 178:1-2.)

26 ¹¹ See Exhibit 5 (DeCarlo Deposition 177:24-25 and 178:1-11.)

27 ¹² See Exhibit 1 to motion (Islam Deposition 147:17 to 151:20 and 153:9 to 156:1), Exhibit 6 (Deposition Exhibit
28 16--January 10, 2012 offer letter from GSR) and Exhibit 7 (Deposition Exhibit 11--January 18, 2012 offer letter
from GSR.)

¹³ See Exhibit 4 (Hadley Deposition 21:22 to 22:3, 25:11-13, 26:15-17 and 63:25 to 64:5) and Exhibit 8 (GSR
suspension document.)

¹⁴ See Exhibit 1 to motion (Islam Deposition 156:8-13.)

¹⁵ See Islam Opposition at p. 11: 19-23 and 12:1-3.

¹⁶ See Exhibit 9 (criminal complaint against Islam.)

1 terms in the multiple agreements), accepted her paychecks, and did not leave employment for
2 several years until she had a better offer and means to capitalize on the information she had
3 access to at the ATLANTIS.

4 ISLAM cannot have it both ways. If she wants to misrepresent and manipulate
5 information, violate agreements she executed, and commit crimes in order to better her situation
6 and eliminate competition, then she must live by the consequences of her actions. The “poor
7 me” story is not persuasive especially for someone as educated and sophisticated as ISLAM.
8 Her plea for pity is even more distasteful when you consider the undisputed evidence of her
9 unethical and morally corrupt acts. Most importantly, her excuse or justification for her acts is
10 not legally material to these claims.
11

12 III.

13 ARGUMENT

14 A. Disputed issues of fact must be material and genuine

15 “The substantive law controls which factual disputes are material and will preclude
16 summary judgment; other factual disputes are irrelevant.” *Wood v. Safeway, Inc.*, 121 Nev. 724,
17 731, 121 P.3d 1026, 1031 (2005), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106
18 S. Ct. 2505, 2510, 91 L. Ed. 2d 202, 211 (1986).
19

20 As to materiality, the substantive law will identify which facts are material. Only
21 disputes over facts that might affect the outcome of the suit under the governing law
22 will properly preclude the entry of summary judgment. Factual disputes that are
23 irrelevant or unnecessary will not be counted. This materiality inquiry is independent
24 of and separate from the question of the incorporation of the evidentiary standard into
25 the summary judgment determination. That is, while the materiality determination
26 rests on the substantive law, it is the substantive law’s identification of which facts
27 are critical and which facts are irrelevant that governs. Any proof or evidentiary
28 requirements imposed by the substantive law are not germane to this inquiry, since
materiality is only a criterion for categorizing factual disputes in their relation to the
legal elements of the claim and not a criterion for evaluating the evidentiary
underpinnings of those disputes.

Liberty Lobby, 477 U.S. at 248 (emphasis added) (internal citations omitted).

1 Accordingly, a dispute over facts which does not affect the ability to prove or disprove
2 the elements of Plaintiff's causes of action is irrelevant, and does not preclude entry of summary
3 judgment. This includes, for example, factual disputes raised by ISLAM that relate to damages
4 and not liability.

5 Additionally "[a] factual dispute is genuine when the evidence is such that a rational trier
6 of fact could return a verdict for the nonmoving party." *Wood*, citing *Matsushita Elec. Indus.*
7 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538, 552
8 (1986) ("Where the record taken as a whole could not lead a rational trier of fact to find for the
9 nonmoving party, there is no 'genuine issue for trial'"); *Posadas v. City of Reno*, 109 Nev. 448,
10 452, 851 P.2d 438, 441-441 (1993).

11 It is true that the issue of material fact required by Rule 56(c) to be present to
12 entitle a party to proceed to trial is not required to be resolved conclusively in
13 favor of the party asserting its existence; rather, all that is required is that
14 sufficient evidence supporting the claimed factual dispute be shown to require a
15 jury or judge to resolve the parties' differing versions of the truth at trial.

16 *Liberty Lobby*, 477 U.S. at 248-249.

17 For a factual issue to be genuine there must sufficient evidence favoring the nonmoving
18 party for a jury to return a verdict; it is not sufficient if the evidence is "merely colorable" or is
19 not "significantly probative." *Id.* at 249-250, citing *First National Bank of Arizona v. Cities*
20 *Service Co.*, 391 U.S. 253, 88 S. Ct. 1575, 20 L. Ed. 2d 569 (1968); *Dombrowski v. Eastland*,
21 387 U.S. 82, 87 S. Ct. 1425, 18 L. Ed. 2d 577 (1967). *Liberty Lobby* also suggests that
22 determining whether an issue of fact is genuine mirrors the standard for a directed verdict under
23 FRCP 50(a), which states that if reasonable minds could differ, a verdict should not be entered.
24 *Liberty Lobby*, 477 U.S. at 250-251.

25 Thus, issues of fact do not need to be completely resolved; a factual dispute is only
26 genuine when the jury could still find for the nonmoving party. If ISLAM presents evidence, but
27
28

1 it is not sufficient to overcome more compelling evidence of ATLANTIS, or if it is inadmissible
2 evidence, or reasonable minds could not differ, summary judgment should be entered in favor of
3 ATLANTIS.

4 **B. ISLAM's Affidavit is inadmissible and should be disregarded or stricken**

5 The Nevada Supreme Court has held that "a district court's reliance upon an affidavit
6 which does not comply with the rule may constitute reversible error." *Havas v. Hughes Estate*,
7 98 Nev. 172, 173, 643 P.2d 1220, 1221 (1982). NRCP 56(e) requires that affidavits "shall be
8 made on personal knowledge, shall set forth such facts as would be admissible in evidence, and
9 shall show affirmatively that the affiant is competent to testify to the matters stated therein."
10 *Gunlord Corp. v. Bozzano*, 95 Nev. 243, 245, 591 P.2d 1149, 1150 (1979) (emphasis added).

11 In *Saka v. Sahara-Nevada Corp.*, 92 Nev. 703, 705-706, 558 P.2d 535, 536-537 (1976),
12 the Nevada Supreme Court held that an affidavit was insufficient because it did not make a
13 showing of personal knowledge of the facts stated therein, or of the competence of the affiant to
14 testify, and thus failed to raise a genuine issue of fact that otherwise would have been raised. *See*
15 *also Daugherty v. Wabash Life Ins. Co.*, 87 Nev. 32, 38, 482 P.2d 814, 818 (1971) ("When
16 affidavits are offered in support of a motion for summary judgment, they must present
17 admissible evidence, and must not only be made on the personal knowledge of the affiant, but
18 must show that the affiant possesses the knowledge asserted") (emphasis added).

19 In *Catrone v. 105 Casino Corp.*, 82 Nev. 166, 170-171, 414 P.2d 106, 108-109 (Nev.
20 1966), the Nevada Supreme Court also found that opposing affidavits failed to meet the
21 requirements of NRCP 56(e). Specifically, the Court found the affidavits to be improper where
22 they made conclusions without factual support in the record, and where the affiant's statement
23 would not be admissible evidence at trial. *Id.*

24 ISLAM's affidavit contains mostly conclusory and irrelevant personal facts, opinions and
25 argument, contains inadmissible statements and does not show that she is competent to testify
26