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IN THE SUPREME COURT OF THE STATE OF NEVADA

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

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

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

Case No.: 64349

FILED

NOV 07 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

Case No.: 64452

Case No.: 65497

**JOINT APPENDIX
VOLUME IX – 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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26 **This Volume is filed under seal pursuant to the Stipulated Protective Order
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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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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	Example of GSR solicitations (ATL 0051)	App.4334-4335
9	Trial Exhibit 13	
10	Example of GSR solicitations (ATL 0052)	App. 4336-4337
11	Trial Exhibit 14	
12	Offer letter and draft offer letter (GSR 00026 - 00027 and GSR 0007 - 0008)	App. 4338-4342
13	Trial Exhibit 15	
14	GSR Confidentiality and Non-Disclosure Agreement (GSR 00004)	App. 4343-4344
15	Trial Exhibit 16	
16	GSR Database Agreement (GSR 00005)	App. 4345-4346
17	Trial Exhibit 17	
18	Remainder of employment file of Sumona Islam (GSR 00001 – 00003, 00006, 00009 – 00025, 00028 - 00029)	App. 4347-4370
19		
20	Trial Exhibit 18	
21	Order Granting Golden Road Motor Inn, Inc.'s Motion For Temporary Restraining Order Against Defendant Sumona Islam and Agreement Between Defendant Nav-Reno-GS, LLC dba Grand Sierra Resort and Golden Road Motor Inn Inc., entered on July 5, 2012.....	App. 4371-4375
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24	GSR list of guests coded to Islam at GSR (GSR 00740-00752)	App. 4376-4389
25	Trial Exhibit 20	
26	Atlantis' job description for Executive Casino Host (ATL 0284 – 0285)	App. 4390-4392
27	Trial Exhibit 21	
28	Atlantis' job description for Concierge Manager (ATL 0286)	App. 4393-4394

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2	Emails to / from Rackenberg/ DeCarlo	
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7	Trial Exhibit 25	
8	Frank DeCarlo's sent email	
	(ATL 0492).....	App. 4401-4402
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10	Frank DeCarlo's deleted email	
	(ATL 0321).....	App. 4403-4404
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1	Trial Exhibit 35 Spreadsheet for offer dated April 24- May 23 Non-Locals Duplicates (GSR-AMBROSE 0016-0018).....	App. 4478-4481
3	Trial Exhibit 36 Spreadsheet for offer dated May 24 – June 19 Non-locals (GSR-AMBROSE 0092-0121).....	App. 4482-4512
5	<u>VOLUME XXII – FILED UNDER SEAL</u>	
6	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).	
8	Trial Exhibit 37 Spreadsheet for offer dated June20 – July17 Non-Locals (GSR-AMBROSE 0062-0091).....	App. 4513-4543
10	Trial Exhibit 38 Spreadsheet for offer dated April 1- 23 Locals (GSR-AMBROSE 0032-0051).....	App. 4544-4564
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18	Trial Exhibit 42 Revenue Spreadsheets (GSR-Singh 0001-0007).....	App. 4619-4626
20	Trial Exhibit 43 Harrah’s June 26, 2008 letter to Islam (ATL 0266 – 0279).....	App. 4627-4641
22	Trial Exhibit 44 Harrah’s October 22, 2009 letter to Islam (ATL 0280, ATL 0283 and ATL 0283a).....	App. 4642-4645
24	Trial Exhibit 45 Email from Tomelden 1/19/12 and from DeCarlo to Finn 1/20/12 and privileged emails (ATL 0281 – 0282).....	App. 4646-4648
26	Trial Exhibit 46 Correspondence between Atlantis and counsel for Fitzgeralds related to Chau non-compete (ATL 0604–0625).....	App. 4649-4671

1	Trial Exhibit 47 Harrah's Employment Agreement provided to Atlantis by Sumona Islam (ATL 0628-0638).....	App. 4672-4683
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7	Trial Exhibit 50 Hadley emails GSR 2029 - 2033.....	App. 4736-4741
9	<u>VOLUME XXIII - FILED UNDER SEAL</u>	
10	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).	
12	Trial Exhibit 51 Hadley emails GSR 1982 - 2028	App. 4742-4789
14	Trial Exhibit 52 Grand Sierra Resort Employee Handbook (GSR 02034 - 2064).....	App. 4790-4821
16	Trial Exhibit 53 Resume of Abraham Pearson	App. 4822-4824
18	Trial Exhibit 54 Concierge Lounge Schedules (ATL 0137 - 0151).....	App. 4825-4840
20	Trial Exhibit 55 March 12, 2010 memo re Host Internet Access Agreement (ATL 0153).....	App. 4841-4842
22	Trial Exhibit 56 Network Access Requests signed by Sumona Islam (ATL 0154-0165).....	App. 4843-4855
24	Trial Exhibit 57 Online System User Agreement signed by Sumona Islam (ATL 0166 - 0169).....	App. 4856-4860
26	Trial Exhibit 58 Grand Sierra Flyer (ATL 0626 - 0627).....	App. 4861-4863
28	Trial Exhibit 59 Plaintiff's Seventeenth Supplemental NRCP 16.1 Disclosure.....	App. 4864-4899

1	Trial Exhibit 60	
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5	Trial Exhibit 62	
6	Black’s Law Dictionary and Webster’s Dictionary definition of “sabotage” (ATL 0995 – 1000).....	App. 4923-4929
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9	Guest contact list prepared by Frank DeCarlo at the direction of Debra Robinson (ATL 1609).....	App. 4930-4931
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13	Email string dated 4/10/12 regarding guest Davidson (ATL 1619 – 1620).....	App. 4935-4937
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18		
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20	Portions of Lilia Santos’ personnel file, redacted as to Social Security number (ATL 1682 – 1695).....	App. 4956-4970
21	<u>VOLUME XXIV – FILED UNDER SEAL</u>	
22	This Volume is filed under seal pursuant to the Stipulated Protective Order	
23	entered on August 27, 2012 by the district court (2 App. 347-357) and by	
24	order of the district court during trial (19 App. 3948:12-13).	
25	Trial Exhibit 69	
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1	Trial Exhibit 71 IT Help Desk Notes for Frank DeCarlo's email (ATL 1786 – 1798).....	App. 5010-5023
2		
3	Trial Exhibit 72 Internet Authorization Form signed by Sumona Islam (ATL 0152).....	App. 5024-5025
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5	Trial Exhibit 73 Transcript of May 3, 2012 GSR Investigatory Interview Recording with Sumona Islam (GSR02130 – GSR02133).....	App. 5026-5030
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10	Trial Exhibit 75 Islam's Book of Trade produced to Atlantis with notes from Atlantis (ATL 0213 – 0265).....	App. 5037-5090
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16	<u>VOLUME XXV – FILED UNDER SEAL</u>	
17	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).	
18	[Continued] Trial Exhibit 77 Compilation of GSR/Islam Emails in chronological order.....	App. 5221-5428
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22		
23	Trial Exhibit 80 Full handwritten client list produced by Islam (ISLAM 1- 276).....	App. 5436-5470
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25	///	
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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).

[Continued] Trial Exhibit 80

Full handwritten client list produced by Islam
(ISLAM 1- 276).....App. 5471-5712

Trial Exhibit 81

Letter to Mark Wray, Esq. from
Angela Bader, Esq. dated 10/15/12App. 5713-5718

VOLUME XXVII – 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).

Trial Exhibit 82

Email from Frank DeCarlo filed 2/22/11
and Declining Player Report as of 12/21/11.....App. 5719-5729

Trial Exhibit 83

Copy of handwritten client list
produced by Islam with notations
made during review on July 6-7, 2013App. 5730-5968

VOLUME XXVIII – 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).

[Continued] Trial Exhibit 83

Copy of handwritten client list
produced by Islam with notations
made during review on July 6-7, 2013App. 5969-6020

Trial Exhibit 84

Defendant’s Responses to Plaintiff’s
First Set of Request for Admission to Defendant
Nav-Reno-GS, LLC dba Grand Sierra Resort.....App. 6021-6049

Trial Exhibit 85

Handwritten note of Lilia Santos.....App. 6050-6052

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 Corporation, d/b/a ATLANTIS CASINO
12 RESORT SPA Case No.: CV12-01171
13 Dept No.: B7

14 Plaintiff,

15 vs.

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

22 Defendants.

23 **AFFIDAVIT OF COUNSEL IN SUPPORT OF**
24 **PLAINTIFF'S OPPOSITION TO GSR'S MOTION**
25 **FOR AWARD OF ATTORNEY'S FEES AND COSTS**

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
32 Plaintiff, Golden Road Motor Inn, Inc., a Nevada corporation d/b/a Atlantis Casino Resort Spa

1 ("Plaintiff"), in this action.

2 2. Attached hereto as Exhibit 1 is a true and correct copy of the Order Granting
3 Golden Road Motor Inn, Inc.'s Motion For Temporary Restraining Order Against Defendant
4 Sumona Islam and Agreement Between Defendant Nav-Reno-GS, LLC d/b/a Grand Sierra
5 Resort and Golden Road Motor Inn, Inc. entered on July 5, 2012.

6 3. Attached hereto as Exhibit 2 is a true and correct copy of the Order on Stipulation
7 For Preliminary Injunction entered on August 24, 2012.

8 4. Attached hereto as Exhibit 3 is a true and correct copy of a Partial Transcript of
9 Proceedings – Trial (Decision of the Court) July 18, 2013.

10 5. Attached hereto as Exhibit 4 is a true and correct copy of the Findings of Fact and
11 Conclusions of Law and Order entered on August 26, 2013.

12 6. Attached hereto as Exhibit 5 is a true and correct copy of the Nevada Secretary of
13 State Business Entity Search For Nav-Reno, GS, LLC.

14 7. Attached hereto as Exhibit 6 are true and correct copies of the Stipulation To
15 Substitute Defendant and Change Caption filed on June 21, 2013 and the Order Substituting
16 Defendant and Changing Caption entered on July 1, 2013.

17 8. Attached hereto as Exhibit 7 is a true and correct copy of a letter from Terry
18 Kinnally addressed to Angela Bader and dated April 12, 2013.

19 9. Attached hereto as Exhibit 8 is a true and correct copy of the gaming license
20 information for Grand Sierra Resort.

21 10. Attached hereto as Exhibit 9 are true and correct copies of emails between Laxalt
22 & Nomura and Cohen Johnson regarding stipulating to correct the name of the appropriate Grand
23 Sierra Resort entity.

24 ///

25 ///

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27 ///

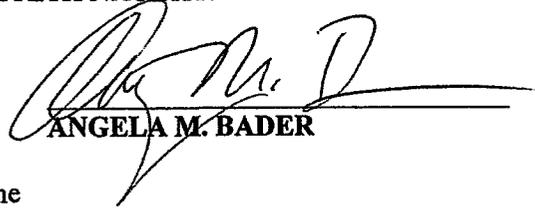
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Affirmation Pursuant to NRS 239B.030

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

FURTHER YOUR AFFIANT SAYETH NAUGHT.


ANGELA M. BADER

SUBSCRIBED and SWORN to before me this 4 day of November, 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-
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.
18 Terry Kinnally, Esq.
19 Cohen-Johnson, LLC
20 255 E. Warm Springs Rd, Ste 100
21 Las Vegas, NV 89119

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

mwray@markwraylaw.com

scohen@cohenjohnson.com
sjohnson@cohenjohnson.com
tkinnally@cohenjohnson.com

22 DATED this 4 day of November, 2013.

23 
24 L. MORGAN BOGUMIL
25

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Joey Orduna Hastings
Clerk of the Court
Transaction # 4112373

EXHIBIT 1

EXHIBIT 1

FILED

Electronically

07-05-2012:11:36:08 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3061306

1 ROBERT A. DOTSON, ESQ.

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6 Tel: (775) 322-1170

7 Fax: (775) 322-1865

Attorneys for Plaintiff

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

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

10
11 GOLDEN ROAD MOTOR INN, INC., a Nevada
12 Corporation, d/b/a ATLANTIS CASINO
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,
d/b/a GRAND SIERRA RESORT; ABC
17 CORPORATIONS; XYZ PARTNERSHIPS;
AND JOHN DOES I through X, inclusive.

18 Defendants.

19
20 **ORDER GRANTING GOLDEN ROAD MOTOR INN, INC'S MOTION**
21 **FOR TEMPORARY RESTRAINING ORDER AGAINST DEFENDANT SUMONA**
22 **ISLAM AND AGREEMENT BETWEEN DEFENDANT NAV-RENO-GS, LLC, d/b/a**
23 **GRAND SIERRA RESORT AND GOLDEN ROAD MOTOR INN, INC.**

24 Laxalt & Nomura, Ltd., counsel for GOLDEN ROAD MOTOR INN, INC. d/b/a
25 ATLANTIS CASINO RESORT SPA ("PLAINTIFF" or "ATLANTIS"), has filed an *Ex-Parte*
26 *Motion For Temporary Restraining Order and Motion for Preliminary Injunction* asking this
27 Court to enjoin the defendants, SUMONA ISLAM ("ISLAM") and NAV-RENO-GS, LLC d/b/a
28 GRAND SIERRA RESORT ("GSR") from particular actions alleged to be in violation of several
agreements signed by ISLAM as a condition to her employment with ATLANTIS. This motion
for Temporary Restraining Order came on before the Court (Department 6) on Monday May 7,

LAXALT & NOMURA, LTD.
ATTORNEYS AT LAW
9600 GATEWAY DRIVE
RENO, NEVADA 89521

Page 1 of 4

App. 1838

1 2012, the honorable Brent Adams, District Judge, presiding, Plaintiff ATLANTIS appeared
2 through Robert Dotson of the law firm of Laxalt & Nomura, and Defendant GSR appeared
3 through Steven Cohen and Stan Johnson of the law firm Cohen Johnson. Sumona Islam did not
4 appear. Based upon review of the Verified Complaint, the Ex Parte Motion, the Verified
5 Amended Complaint and the affidavits attached thereto, and the arguments of counsel, the Court
6 granted the Motion as requested as to ISLAM and in a more narrowed scope as to GSR. An
7 Order was entered as to ISLAM on May 9, 2012. Shortly thereafter, the case was transferred
8 multiple times and has now been reassigned to this department. This Court convened a status
9 check on June 20, 2012.

10 This Court has reviewed all of the pleadings on file (including the Verified Complaint,
11 the Ex Parte Motion, the Verified Amended Complaint and the affidavits attached thereto, the
12 partial transcript from the May 7th hearing, and the Answers filed by each Defendant) considered
13 the arguments of counsel and has solicited and considered the proposed Orders from each party
14 and finds as follows:

15 1. ISLAM appears to have been, prior to the entry of the initial TRO, in violation of
16 at least some provisions of the various agreements regarding the use and dissemination or
17 proprietary information and trade secrets and of the non-compete agreement which were signed
18 as a condition of her employment with the ATLANTIS by having accepted employment with
19 GSR and soliciting customers of the ATLANTIS.

20 2. Based on the Affidavits of Steve Ringkob and Susan Moreno, it appears that
21 ISLAM is in possession of trade secrets and confidential information that ATLANTIS considers
22 valuable and proprietary, and that ISLAM has utilized or is likely to utilize that information in
23 her employment with GSR.

24 3. The letter from counsel for GSR indicates that GSR was in fact employing
25 ISLAM, despite having notice of the non-compete agreement.

26 4. The facts shown by affidavit and the Verified Complaint demonstrate that
27 immediate and irreparable injuries are likely to occur, or perhaps already have occurred, and that
28 the Defendants' actions must be enjoined in order to prevent further harm.

1 5. Plaintiff's counsel made reasonable efforts to notify all opposing parties of the Ex
2 Parte Motion, and Counsel for GSR did in fact receive notice and attended the May 7th hearing.
3 Since that time both Defendants have made appearances in the case and counsel for each has
4 attended the June 20th hearing, counsel for GSR by telephonic means.

5 6. Because of the likelihood that immediate and irreparable injury will occur absent
6 a temporary restraining order, and because it appears that Plaintiff is likely to succeed on the
7 merits, the Court previously granted the Motion for Temporary Restraining Order as to
8 Defendant SUMONA ISLAM and now extends the previously entered Order as to Defendant
9 Islam.

10 Accordingly, it is hereby

11 ORDERED, ADJUDGED AND DECREED that the Order entered on May 9, 2012 is
12 extended and will now, by stipulation of the Parties, expire at the conclusion of the bench trial
13 currently set to begin on August 27, 2012.

14 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant NAV-
15 RENO-GS, LLC dba GRAND SIERRA RESORT ("GSR") shall not directly or indirectly, or
16 through any third parties, knowingly receive any information of any nature which it has any
17 reason to believe was acquired by Defendant SUMONA ISLAM, directly or indirectly through
18 PLAINTIFF, or make use of any such information, or make use of any information which it
19 knows has been the product of information Defendant SUMONA ISLAM brought to GSR
20 through her employment;
21

22 1. Defendant NAV-RENO-GS, LLC dba GRAND SIERRA RESORT ("GSR")
23 agrees that it shall not directly or indirectly, knowingly receive any proprietary information
24 concerning any customer, customer activity, customer identity or address from Defendant
25 SUMONA ISLAM, which she obtained during her employment with the Atlantis or make use of
26 any proprietary information which it knows is proprietary information Defendant SUMONA
27 ISLAM brought to GSR through her employment;
28

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Joey Orduna Hastings
Clerk of the Court
Transaction # 4112373

EXHIBIT 2

EXHIBIT 2

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08-24-2012:02:26:34 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3174446

1 3370
2 ROBERT A. DOTSON, ESQ.
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4 rdotson@laxalt-nomura.com
5 ANGELA M. BADER, ESQ.
6 Nevada State Bar No. 5574
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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 **ORDER ON STIPULATION FOR PRELIMINARY INJUNCTION**

23 Pursuant to the Stipulation For Preliminary Injunction, on file herein, and good cause

24 appearing,

25 ///

26 ///

27 ///

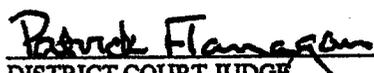
28 ///

LAXALT & NOMURA, LTD.
ATTORNEYS AT LAW
9600 GATEWAY DRIVE
RENO, NEVADA 89521

Page 1 of 2

1 IT IS HEREBY ORDERED that a Preliminary Injunction shall issue in favor of Plaintiff,
2 on the terms of the Temporary Restraining Order entered on July 5, 2012, and be in effect until
3 otherwise modified pursuant to stipulation or Order of the Court or to the completion of the trial
4 on the merits scheduled for March 25, 2013.

5 Dated this 24 day of AUGUST, 2012.

6
7 
8 PATRICK FLANAGAN
DISTRICT COURT JUDGE

9 Respectfully submitted,
10 LAXALT & NOMURA, LTD

11
12 By: 
13 ROBERT A. DOTSON (NSB # 5285)
14 ANGELA M. BADER, ESQ. (NSB #5574)
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EXHIBIT 4

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Clerk of the Court
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EXHIBIT 4

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

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

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

Case No.: CV12-01171

Dept No.: B7

13 Plaintiff,

14 vs.

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

18 Defendants.
19

20 **PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER**

21 This matter came on for a non-jury trial on July 1, 2013 before the Court, Honorable
22 Patrick Flanagan, District Judge, presiding. The Court heard evidence for 9 days and the
23 arguments of counsel on the 10th day of trial. The Court, having carefully considered all of the
24 exhibits in evidence, the testimony of the witnesses, trial statements of the parties, and the
25 arguments of counsel, hereby issues the following Findings of Fact and Conclusions of Law:

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1 **Findings of Fact**

2 1. On or about April 15, 2008, ISLAM became an employee of the Golden Road
3 Motor Inn, Inc., dba Atlantis Casino Resort Spa ("ATLANTIS").

4 2. On April 15, 2008, ISLAM executed the ATLANTIS Online System User
5 Agreement ("Online System User Agreement"). Among other terms, the Online System User
6 Agreement prohibits unauthorized downloading or uploading of software and information.

7 3. On April 15, 2008, in conjunction with her employment with ATLANTIS,
8 ISLAM also executed an agreement with ATLANTIS concerning its Business Ethics Policy
9 and Code of Conduct Acknowledgement and Conflicts of Interest Statement. This agreement
10 ("Business Ethics Policy"), was again signed by ISLAM on January 23, 2009, February 26,
11 2010 and January 19, 2011. This policy in section 3.1 identifies confidential information as all
12 nonpublic information regarding the company's operation and business activities and those of
13 its customers and suppliers. Nonpublic means any information that is not officially disclosed
14 through means such a press releases or other forms of publication, where it is not common
15 knowledge. Section 4.4 prohibits the disclosure of inside information to persons outside the
16 company or other persons within the company who are not authorized to receive such
17 information. Pursuant to the terms of the Business Ethics Policy, ISLAM agreed not to disclose
18 confidential information including customer lists or customer information (such as player
19 tracking or club information) to any unauthorized persons, either during or after her
20 termination, and not to take any documents or records belonging to ATLANTIS after her
21 departure. She also agreed not to profit from confidential information of ATLANTIS.
22 ISLAM's agreement to the terms of this contract was a condition of her employment with
23 ATLANTIS.

24 4. On April 15, 2008, in conjunction with commencing her employment with
25 ATLANTIS, ISLAM executed the ATLANTIS Company Policy regarding Company Property,
26 Proprietary Information, and Trade Secrets (hereinafter referred to as "Trade Secret
27 Agreement"). This agreement, including any updates, was again signed by ISLAM on January
28 23, 2009, February 26, 2010 and January 19, 2011. This agreement provides that any improper

1 use or dissemination of ATLANTIS intellectual property is a breach of the policy and may be a
2 violation of state and federal trade secrets laws and also warns that such violation is punishable
3 both civilly and criminally.

4 5. ISLAM was hired to be an Executive Casino Host at ATLANTIS. When she
5 was hired, she was under a contractual obligation to her former employer, Harrah's, which
6 prohibited her from working in a same or similar position within six months after separation
7 from employment at Harrah's. In order to honor this obligation, ATLANTIS placed her in the
8 position of concierge manager. She worked in the hotel side of the operation of the
9 ATLANTIS and not in the gaming side of the operation until the expiration of the six month
10 restriction imposed by her agreement with Harrah's. Thereafter, she was transferred to the
11 gaming operation and began her employment as a host.

12 6. When ISLAM began to work as a host at ATLANTIS, she brought with her
13 what she claimed to be her personal book of trade. ISLAM has identified Exhibits 75 and 80
14 as her book of trade.

15 7. Steve Ringkob, indeed almost every witness, testified that there were certain
16 items that hosts were entitled to take with them from property to property and that a host's
17 book of trade is the host's property and "nothing is wrong with her taking this information
18 wherever she goes." However, he also testified that the player's gaming history and tracking at
19 the ATLANTIS would become proprietary information.

20 8. Although the term "casino host book of trade" has been defined variously, it has
21 generally been defined as those names and contact information of guests with whom the host
22 has developed relationships through their own efforts. Ringkob defined it as those guests with
23 whom the host has developed a relationship and it was not information coming from the casino.

24 9. The evidence is clear that ISLAM intentionally downloaded, by hand copying
25 from the ATLANTIS computer screen, players' names, contact information, level of play,
26 game preferences and other proprietary information from the ATLANTIS Casino's, casino
27 management system, Patron Management Program.

28

1 10. On February 26, 2010, ISLAM signed a Non-Compete/Non-Solicitation
2 Agreement with ATLANTIS ("Non-Compete Agreement"). Pursuant to the terms of the Non-
3 Compete Agreement, ISLAM agreed that she would not, without the prior written consent of
4 ATLANTIS, be employed by, in any way affiliated with, or provide services to any gaming
5 operation located within 150 miles of ATLANTIS for a cooling off period of one year after the
6 date that the employment relationship between she and the ATLANTIS ended.

7 11. During ISLAM'S employment at ATLANTIS, she had access to and worked
8 with highly sensitive trade secrets and proprietary and confidential information of the
9 ATLANTIS. This information included customer and guest lists, customer information and
10 data including player contact information, tracking and club information, guest preferences and
11 gaming tendencies of the guests. This information included not just the information for guests
12 assigned to her, but also information for guests assigned to other hosts.

13 12. Before and during ISLAM'S employment, ATLANTIS undertook significant
14 precautions to maintain the secrecy of its confidential information. These efforts included
15 disabling USB ports in the computers at ATLANTIS, not providing or allowing printers, and
16 monitoring all emails that are sent to recipients off property.

17 13. Despite the precautions taken to protect ATLANTIS' confidential trade secret
18 information, during her employment at ATLANTIS ISLAM copied guest information by hand
19 from the screen of the ATLANTIS computer onto spiral note pads. Ms. ISLAM, in her
20 handwritten notes in spiral notebooks, which she identified as hers, copied players' names,
21 contact information and also the designation of whether or not they played table games or slots.
22 The information copied had the notation of the guests' marker information, for purposes of
23 knowing what their credit limit was. Some notations included information regarding previous
24 gaming results and losses incurred by that player. This is information Ms. ISLAM testified that
25 she wrote down from the ATLANTIS computer. A copy of some of those spirals is found in
26 Exhibit 80.

27 14. Ms. ISLAM testified that in the fall of 2011, she was becoming dissatisfied with
28 her employment at the ATLANTIS. She testified that she had not been given a raise, that she

1 had only been given one bonus and not the quarterly bonuses that she states were promised to
2 her, she felt isolated in her interpersonal relationships with other employees at the ATLANTIS
3 and she had come to a point in her career where she believed that if she was ever going to make
4 more money, she would have to seek employment elsewhere.

5 15. The evidence is that on or around October, Ms. ISLAM learned from Ms.
6 Antonetti that the Grand Sierra Resort ("GSR") was hiring new employees. Through an online
7 application, ISLAM applied for and interviewed with the GSR to obtain a position as a host.

8 16. At about that time, Ms. ISLAM asked Mr. DeCarlo for a copy of her Non-
9 Compete Agreement with the ATLANTIS.

10 17. Sometime in December and January, two interviews took place. The first was
11 with Ms. Hadley, at the GSR. Ms. Hadley testified that she was impressed with Ms. ISLAM.
12 She testified she did not ask for ISLAM's book of business at that time.

13 18. A second interview was arranged between ISLAM and Hadley and Flaherty of
14 the GSR. At that time, a more in-depth discussion took place relative to Ms. ISLAM's book of
15 business. Mr. Flaherty testified and it's confirmed by the transcript of a subsequent interview
16 that he told Ms. ISLAM not to bring anything from the ATLANTIS to the GSR, to bring
17 nothing, but herself and her relationships.

18 19. During the course of the interview process, ISLAM and representatives of GSR
19 discussed the fact that ISLAM was subject to an agreement restricting her employment with a
20 competitor of ATLANTIS and ISLAM provided GSR with a copy of the Non-Compete
21 Agreement. This conduct is consistent with ISLAM's testimony of her behavior when applying
22 for the position with the ATLANTIS. She testified that she provided a copy of the Harrah's
23 Non-Compete to the ATLANTIS prior to their offering of employment to her.

24 20. The testimony is that GSR then passed the ATLANTIS Non-Compete
25 Agreement to its legal counsel. Legal counsel apparently reviewed that and gave the green
26 light to hire Ms. ISLAM.

27
28

1 21. Ms. ISLAM was concerned that ATLANTIS would initiate litigation against her
2 and sought assurances that GSR would provide legal representation to her should there be
3 litigation over the Non-Compete. GSR agreed.

4 22. ISLAM terminated her employment as an Executive Casino Host with the
5 ATLANTIS on January 19, 2012 and accepted an offer with GSR as an Executive Casino Host
6 on the same day.

7 23. ISLAM began work at GSR at the end of January, 2012.

8 24. The ATLANTIS alleges that soon after ISLAM terminated her employment,
9 ATLANTIS employees discovered that ISLAM had falsely modified, destroyed, falsely
10 changed and/or sabotaged confidential, proprietary, trade secret information of ATLANTIS,
11 including customer data belonging to the ATLANTIS on its online system to her benefit and
12 the benefit of GSR and to the detriment of ATLANTIS.

13 25. The evidence adduced in this matter by Ms. ISLAM herself and other witnesses
14 of the Plaintiff is that Ms. ISLAM did change the addresses, telephone number and/or the email
15 addresses of guests that had been coded to her in the ATLANTIS' casino customer or guest
16 database.

17 26. The evidence shows that shortly after Ms. ISLAM left the employ of the
18 ATLANTIS, the guests who had been assigned to her at the ATLANTIS were distributed
19 amongst the remaining ATLANTIS hosts who attempted to contact those guests to maintain
20 and establish a continued relationship with the ATLANTIS. Shortly thereafter, those hosts
21 reported difficulty, indeed inability to contact the guests. It quickly became apparent that the
22 contact information had been sabotaged. ATLANTIS staff testified that they restored old
23 copies of the Patron Management data to a location in the computer system where the auditors
24 could access the information and the information was restored to the Patron Management
25 Program, the guest marketing database, in a relatively short period of time.

26 27. Additionally, the evidence showed that none of the information was changed in
27 the LMS database, which is the database known as the Lodging Management System that
28 controls the hotel operations.

1 28. ISLAM testified that she did not show either Ms. Hadley or Mr. Flaherty the
2 spiral notebooks which contained the information she had wrongfully taken from the
3 ATLANTIS' database. Nevertheless, after her employment by the GSR began, Ms. ISLAM
4 began to input that information, the information taken from the ATLANTIS and contained on
5 the spiral notebooks, into the GSR database.

6 29. The testimony from the GSR representatives is that the database fields accessed
7 and completed by ISLAM are limited. They restrict the information that a host could input to
8 name, address, telephone number and contact information. There are no fields for a host to
9 themselves input information regarding a player's gaming history, level of play or preference of
10 game.

11 30. Both Ms. Hadley and Mr. Flaherty testified they never saw the spiral notebooks
12 containing the information ISLAM had wrongfully taken from the ATLANTIS' database.

13 31. After the database sabotage was discovered by the ATLANTIS, ATLANTIS'
14 general counsel, Debra Robinson, wrote a letter to GSR advising them that Ms. ISLAM was
15 subject to a Non-Compete, Non-Disclosure Agreement and that she may have confidential
16 information and ATLANTIS demanded the GSR cease and desist from the use of that
17 information and return it forthwith.

18 32. In response to the cease and desist letter from ATLANTIS to the GSR and Ms.
19 ISLAM relating to the ATLANTIS' concerns about ISLAM's employment, the counsel for the
20 GSR sent a letter rejecting the assertions of the ATLANTIS and essentially maintaining that
21 there was nothing confidential or proprietary that had been acquired by GSR and that all
22 information provided by Ms. ISLAM came from her own personal relationships and her book
23 of business.

24 33. The ATLANTIS reasonably initiated litigation.

25 34. On April 27, 2012, ATLANTIS filed its Complaint for relief with seven causes
26 of action.

27 35. On May 9, 2012, this Court, through its sister Department, entered a Temporary
28 Restraining Order barring Ms. ISLAM from any employment with GSR. That Order was

1 extended by Order of this Court dated July 5, 2012 which also applied to GSR. Thereafter, the
2 parties stipulated to a Preliminary Injunction ending this case pending the case's resolution.

3 36. To the extent appropriate and to give intent to this order, any finding of fact
4 should be found to be a conclusion of law. Similarly, to the extent appropriate any conclusion
5 of law shall be deemed a finding of fact.

6 **CONCLUSIONS OF LAW**

7 **Breach of Contract – Online Systems User Agreement, Business Ethics Policy, Trade**
8 **Secrets Agreement as to ISLAM**

9 1. The elements for establishing a breach of contract claim are: (1) A valid and
10 existing contract was entered into between Plaintiff and Defendant; (2) Plaintiff performed or
11 was excused from performance of the contract; (3) Defendant breached; and (4) Plaintiff
12 sustained damages as a result of the breach. *Reichert vs. General Insurance Co. of Amer.*, 68
13 Cal. 2d 822, 69 Cal. Rptr. 321, 442 P.2d 377 (1968); *Marwan Ahmed Harara vs. Conoco*
14 *Phillips Co.*, 375 F. Supp. 2d 905, 906 (9th Cir. 2005).

15 2. In order to succeed on a breach of contract claim in Nevada, a plaintiff must
16 show "(1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a
17 result of the breach." *Saini v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 919-920 (D. Nev. 2006),
18 citing *Richardson v. Jones*, 1 Nev. 405, 405 (1865).

19 3. In its first cause of action the Plaintiff alleges the violation of three contracts.
20 These are the Online User Agreement, the Business Ethics Policy, and the Trade Secrets
21 Agreement. These agreements were signed by Defendant ISLAM and a representative of
22 Plaintiff, ATLANTIS. This Court finds that these are valid contracts. The Court further finds
23 that the Defendant ISLAM breached these contracts.

24 4. Based upon the fact that ISLAM downloaded players' names, contact
25 information, level of play, game preferences and other proprietary information from the
26 ATLANTIS Casino's, casino management system, Patron Management Program, the Court
27 finds that she has breached these contracts and that the ATLANTIS has suffered damages as a
28

1 result of the breach. Consequently, the Court finds in favor of the Plaintiff and against
2 Defendant Sumona ISLAM on the first cause of action.

3 5. The Court finds that damages should be awarded in favor of ATLANTIS and
4 against ISLAM on this claim. These are made up of compensatory damages of \$10,941 plus an
5 additional \$2,119 to repair the database, totaling \$13,060.

6 **Breach of Contract—Non-Compete Agreement as to ISLAM**

7 6. The Non-compete/Non-solicitation Agreement was signed by ISLAM and a
8 representative of ATLANTIS in 2010. The law presumes that all parties have the freedom to
9 contract and establish the terms of employment between themselves. However, restrictive
10 covenants are not favored in the law. The determination of the validity of such a contract as
11 written is governed by whether or not it imposes upon the employee any greater restraint than
12 is reasonably necessary to protect the business and the goodwill of the employer.

13 7. A restraint of trade is unreasonable if it is greater than that required to protect
14 the person for whose benefit the restraint is imposed or imposes an undue hardship on the
15 person restricted. *Hansen v. Edwards*, 83 Nev. 189, 426 P.2d 792 (1967). *See also, Jones v.*
16 *Deeter*, 112 Nev. 291, 294, 913 P.2d 1272, 1274 (1996).

17 8. The public has an interest in seeing that competition is not unreasonably limited
18 or restricted.

19 9. In the instant matter, this Court finds that the term restricting employment for a
20 period of one year is reasonable and necessary to protect the interests of the ATLANTIS.

21 10. This Court finds that the term restricting employment within 150 miles from
22 ATLANTIS is reasonable. It encompasses the markets of Sacramento and the evidence
23 supports the threat that Thunder Valley and indeed other Northern California casinos pose to
24 the casinos of Northern Nevada.

25 11. The Court finds, however, that the total exclusion from employment with a
26 competitor is unreasonable. This Court finds that excluding the employment of an individual
27 such as Ms. ISLAM, who has attempted to create a career in this industry from any role in any
28 casino in any capacity is an unreasonable restraint on her and it imposes an undue hardship on

1 Ms. ISLAM and it is a restraint that is greater than that required for the protection of the person
2 for whose benefit the restraint is imposed, the ATLANTIS. Therefore, the Court finds the
3 Non-Competition contract unenforceable and dismisses the second cause of action related to
4 breach of that contract.

5 **Conversion of Property as to ISLAM**

6 12. The elements of conversion are that a defendant exercises an act of dominion
7 wrongfully exerted over the personal property of another in denial of or inconsistent with title
8 rights therein, or in derogation, exclusion or defiance of such rights. *M.C. Multi Family*
9 *Development, L.L.C. v. Crestdale Associates Ltd.*, 124 Nev. 901, 910, 196 P.3d 536 (2008)
10 *citing Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000).

11 13. The caselaw here states that conversion generally is limited to those severe,
12 major and important interferences with the right to control personal property that justified
13 requiring the actor to pay the property's full value. Courts have noted that this remedy in
14 general is harsh and is reserved for the most severe interferences with personal property.
15

16 14. The Court finds that the evidence adduced shows that the interference with the
17 property of the ATLANTIS was not severe, that the information, although altered, was not lost
18 and was easily restored. One measure of that is the fact that the damages sought for the
19 restoration expense is de minimus in light of the value of not only Ms. ISLAM's book of trade,
20 which she estimated at \$3.5 to \$4 million, but the operation of the ATLANTIS itself.
21 Therefore, this Court finds that the Plaintiff has failed to establish the elements of conversion
22 and the third cause of action is therefore dismissed.
23

24 **Tortious Interference with Contractual Relations and Prospective Economic Advantage as**
25 **to ISLAM**

26 15. To establish intentional interference with contractual relations, ATLANTIS
27 must show: (1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3)
28 intentional acts intended or designed to disrupt the contractual relationship; (4) actual

1 disruption of the contract; and (5) resulting damage. *Sutherland v. Gross*, 105 Nev. 192, 772
2 P.2d 1287, 1290 (1989).

3 16. The elements of the tort of wrongful interference with a prospective economic
4 advantage are: (1) a prospective contractual relationship between the plaintiff and a third
5 party; (2) the defendant's knowledge of this prospective relationship; (3) the intent to harm the
6 plaintiff by preventing the relationship; (4) the absence of a privilege or justification by the
7 defendant; and, (5) actual harm to the plaintiff as a result of the defendant's conduct. *Leavitt v.*
8 *Leisure Sports, Inc.*, 103 Nev. 81, 88, 734 P.2d 1221, 1225 (1987); *Las Vegas-Tonopah-Reno*
9 *Stage v. Gray Line*, 106 Nev. 283, 792 P.2d 386, 388 (1990).

10 17. Based upon the Nevada Supreme Court's decision in *Frantz v. Johnson*, 116
11 Nev. 455, 999 P.2d 351(2000), this Court is directed to look to the specific evidence adduced at
12 trial to determine whether or not the acts of a defendant are more appropriately adjudicated
13 under the Uniform Trade Secrets Act than under a claim for tortious interference with contract
14 or prospective economic advantage. In an examination of the facts here, this Court has
15 determined that the facts adduced in this trial make it more appropriate that the claim against
16 Sumona ISLAM be adjudicated under the Uniform Trade Secrets Act.

17 **Violation of Uniform Trade Secret Act, NRS 600A.010 et. seq. as to ISLAM and GSR**

18 18. To establish a misappropriation claim under NRS § 600A.010 et. seq., the
19 plaintiff must show: (1) a valuable trade secret; (2) misappropriation¹ of the trade secret
20

21 ¹ "Misappropriation" per NRS 600A.030(2) means:

- 22 (a) Acquisition of the trade secret of another by a person by improper means;
23 (b) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was
24 acquired by improper means; or
25 (c) Disclosure or use of a trade secret of another without express or implied consent by a person who:
26 (1) Used improper means to acquire knowledge of the trade secret;
27 (2) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade
28 secret was:
(I) Derived from or through a person who had used improper means to acquire it;
(II) Acquired under circumstances giving rise to a duty to maintain its secrecy or limits its
use; or
(III) Derived from or through a person who owed a duty to the person seeking relief to
maintain its secrecy or limit its use; or
(3) Before a material change of his or her position, knew or had reason to know that it was a trade secret
and that knowledge of it had been acquired by accident or mistake.

1 through use, disclosure, or nondisclosure of the use of the trade secret; and (3) the requirement
2 that the misappropriation be wrongful because it was made in breach of an express or implied
3 contract or by a party with a duty not to disclose. *Frantz v. Johnson*, 116 Nev. 455, 466, 999
4 P.2d 351, 358 (2000).

5 19. A trade secret is information that derives independent economic value, actual or
6 potential, from not being generally known to and not being readily ascertainable by proper
7 means by the public, as well as information that is subject to efforts that are reasonable under
8 the circumstances to maintain its secrecy. NRS 600A.040.

9 20. The determination of what is a trade secret is a question of fact for the trier of
10 fact. *Frantz*, 116 Nev. at 466, 999 P.2d at 358. The caselaw indicates that contractual
11 restrictions alone or designations alone do not control whether or not a particular design,
12 compilation, or mechanism is a trade secret. To determine whether or not an item is a trade
13 secret, the Court considers these factors. First, the extent to which the information is known
14 outside the business and the ease or difficulty with which the information could be properly
15 acquired by others. Second, whether the information was confidential or secret. Third, the
16 extent and manner in which the employer guarded the secrecy of the information. Fourth, the
17 former employee's knowledge of the customer's buying habits and other customer data and
18 whether this information is known by the employer's competitors.

19 21. There was a consensus amongst all the witnesses that in the case of a customer
20 with whom a host has established a relationship, that customer's name, address, contact
21 information is not a trade secret. All of the witnesses here have identified certain items that
22 they consider trade secrets in the gaming industry and these are well-qualified witnesses who
23 have spent decades in this industry. Those items have been identified as, (1) player tracking
24 records; (2) other hosts' customers; (3) initial buy-ins; (4) level of play; (5) whether the player
25 plays table games or slots; (6) time of play; (7) customers' personal information that is personal
26 to them, such as a Social Security number; (8) customers' casino credit; (9) customer's location,
27 whether they are an international, regional or local player; (10) marketing strategy; (11)
28 customers' birth date, which one witness testified was critical for credit accounts; (12) tier

1 levels, which is different than player ratings, they are more specific in terms of measurement;
2 (13) comp information for the player; (14) players' history of play; (15) players' demographics;
3 (16) players' financial information; (17) the company's financial information; (18) the
4 company's marketing strategy; (19) other employees' information and customer information.
5 The Court does not by this list deem this list to be exclusive. There may be other instances and
6 other items that are properly designated as trade secrets, however, this was the evidence
7 adduced in this trial.

8 22. This Court finds that this information is not known outside of the business of the
9 ATLANTIS. Indeed, the previous 19 items are not easy to learn, in fact, it is difficult to
10 acquire this information properly.

11 23. This Court further finds that there is no question that this information was
12 confidential within the ATLANTIS and that has been demonstrated amply by the extent and
13 manner in which the ATLANTIS took steps to guard the secrecy of this information.
14 Specifically, Mr. Woods testified that there were no printers and that the USB ports on the
15 computers were restricted, that the hosts had no ability to print or download guest lists. He
16 further explained that security access was determined by the job designation. There was
17 testimony that the passwords for this access were changed frequently and therefore it has been
18 established beyond any reasonable doubt that the ATLANTIS considered all of this
19 information a trade secret and this Court does so find.

20 24. This Court finds that the information written down in the spiral notebooks
21 which Ms. ISLAM identified as hers was taken from the ATLANTIS' computer and is not
22 information open to the public.

23 25. This Court finds that Ms. ISLAM has violated not only the terms and conditions
24 of her contract, but also has committed a violation of the Uniform Trade Secrets Act.

25 26. This Court finds that Damages are appropriately awarded against ISLAM for
26 violation of the Uniform Trade Secrets Act and awards damages totaling \$10,814.

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1 **Declaratory Relief**

2 27. The sixth cause of action filed by the Plaintiff is a request for declaratory relief.
3 The Courts grants and denies this claim as follows.

4 28. This Court finds that the Online System User Agreement is a valid contract.
5 This Court finds that the Business Ethics Policy and Code of Conduct Agreement is a valid
6 contract. This Court finds that the Trade Secrets Agreement is a valid contract. This Court
7 finds that the Non-compete Agreement is overbroad and unenforceable. This Court also finds
8 that those contracts have been breached.

9 29. This Court finds that the Defendant has violated the Uniform Trade Secrets Act
10 and that the Plaintiff has suffered damages.

11 **Proof of Damages**

12 30. There are two distinct damage models proffered in this case. One is based on
13 theoretical win based upon a customer lifetime value analysis proffered by the Plaintiff. The
14 other is a damage analysis based on actual win - loss proffered by the Defendants in this case.

15 31. This Court has examined all of the exhibits in support of both models. This
16 Court has listened to the testimony of Brandon McNeely, who testified on behalf of the
17 Plaintiff in support of a valuation based upon theoretical wins. This Court finds that the
18 customer lifetime value analysis is a solid one and is supported by scholarly research and
19 empirical data.

20 32. This Court has also considered Mr. Aguero's testimony and reviewed his expert
21 report, which is Exhibit 32. The Court has also reviewed Brandon McNeely's reports and the
22 Exhibits included within Exhibit 59, A, B, C, D and E.

23 33. The Court has also considered the testimony of Mr. Frank DeCarlo when he
24 testified about the mitigation marketing costs, and Lilia Santos, who testified to the loss of
25 guests of the ATLANTIS to the GSR.

26 34. Having considered both models, this Court feels the more appropriate model in
27 this particular case is the actual win-loss model. That model is based upon the data provided by
28

1 both parties, the hard data and an analysis that is well reasoned and supported not only by the
2 evidence, but scholarly review.

3 35. Therefore, the compensatory damages as to Defendant ISLAM, as previously
4 described will be on the first count for breach of contract, \$10,941 plus an additional \$2,119.
5 As to the violation of the Uniform Trade Secret Act, judgment will be in favor of Plaintiff,
6 against Defendant ISLAM in the amount of \$10,814.

7 **Punitive Damages**

8 36. The Plaintiff has requested punitive damages be awarded in this case and this
9 Court finds that punitive damages are warranted here.

10 37. Ms. ISLAM testified that her actions were malicious, as they were intended to
11 hurt the ATLANTIS. Despite whatever reason she may have felt justified her actions, her
12 actions were unjustified, they were willful, they were malicious, and they were intentional.

13 38. Punitive damages have a two-pronged effect. One is to punish the transgressor
14 and the other is to serve as an example to deter others similarly situated from engaging in the
15 same conduct. Therefore, there are several factors to be taken into consideration, including the
16 willfulness of the conduct, the public interest that is at stake, and not the least of which is the
17 Defendant's financial condition. Ms. ISLAM testified that she makes \$80,000 per year. This
18 Court is assessing significant compensatory damages against her. However, the Court feels
19 that a significant punitive damage is necessary in order to deter others from violating those
20 contracts between the ATLANTIS and its employees. This Court therefore has determined that
21 a punitive damage award of \$20,000, representing one quarter of her annual salary, is an
22 appropriate punishment to Ms. ISLAM.

23 **Attorney Fee Award**

24 39. The Uniform Trade Secrets Act also provides for the award of Attorney's fees in
25 the case of willful and malicious misappropriation.

26 40. Having found in favor of the Plaintiff as the prevailing party against the
27 Defendant ISLAM, under the circumstances of this case, this Court will award attorney's fees
28

1 and litigation costs. Those fees will be awarded after appropriate affidavit of fees and the
2 memorandum of costs are timely submitted.

3 **Injunctive Relief**

4 41. This Court further finds that this is an appropriate matter in which to impose a
5 Permanent Injunction, pursuant to NRS 600A.040, prohibiting ISLAM from any further use of
6 the trade secret information at issue until such time as the information becomes ascertainable
7 by proper means by the public or is otherwise no longer a Trade Secret as defined by NRS
8 600A.030(5). In this regard, ISLAM is Ordered to destroy any and all customer lists obtained
9 from or originating from ATLANTIS, including specifically the spiral notebooks, copies of
10 which have been marked at trial as Exhibits 6, 80 and 81. Further, ISLAM is Ordered to purge
11 from any electronic record or physical records, any and all information (including any
12 information not previously produced by her in the litigation which is subsequently located)
13 which has been identified in this decision as a trade secret, originating from the ATLANTIS.

14 **CONCLUSION**

15
16 42. Judgment in favor of ATLANTIS against Defendant ISLAM.

17 DATED AND DONE this 21st day of AUGUST, 2013.

18 
19 DISTRICT JUDGE

20 Respectfully submitted,
21 LAXALT & NOMURA, LTD

22
23 By: _____
24 ROBERT A. DOTSON (NSB # 5285)
25 ANGELA M. BADER, ESQ. (NSB #5574)
26 9600 Gateway Dr.
27 Reno, NV 89521
28 T: (775) 322-1170
F: (775) 322-1865

EXHIBIT 5

FILED
Electronically
11-04-2013:04:42:01 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4112373

EXHIBIT 5

NAV-RENO-GS, LLC

Business Entity Information			
Status:	Merge Dissolved	File Date:	5/12/2005
Type:	Domestic Limited-Liability Company	Entity Number:	E0288172005-4
Qualifying State:	NV	List of Officers Due:	5/31/2013
Managed By:	Managers	Expiration Date:	
NV Business ID:	NV20051308603	Business License Exp:	5/31/2013

Additional Information	
Central Index Key:	

Registered Agent Information			
Name:	H. STAN JOHNSON	Address 1:	255 E WARM SPRINGS RD STE 100
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89119
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent		
Status:	Active		

Financial Information			
No Par Share Count:	0	Capital Amount:	\$ 0
No stock records found for this company			

Officers		<input type="checkbox"/> Include Inactive Officers	
Manager - ANTHONY SANTO			
Address 1:	1 MAIN STREET	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89101	Country:	USA
Status:	Active	Email:	

Actions\Amendments			
Action Type:	Articles of Organization		
Document Number:	20050177570-44	# of Pages:	3
File Date:	5/12/2005	Effective Date:	
P/U 051305 RSS			
Action Type:	Initial List		
Document Number:	20050204172-13	# of Pages:	1
File Date:	5/26/2005	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		

Document Number:	20060177200-95	# of Pages:	1
File Date:	3/21/2006	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20070264656-68	# of Pages:	1
File Date:	4/16/2007	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20080208152-18	# of Pages:	1
File Date:	3/25/2008	Effective Date:	
08/09			
Action Type:	Registered Agent Name Change		
Document Number:	20080440795-09	# of Pages:	2
File Date:	6/30/2008	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20090432886-52	# of Pages:	1
File Date:	5/19/2009	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20100221294-53	# of Pages:	1
File Date:	4/7/2010	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20110308422-73	# of Pages:	1
File Date:	4/26/2011	Effective Date:	
(No notes for this action)			
Action Type:	Amended List		
Document Number:	20110578100-95	# of Pages:	1
File Date:	8/4/2011	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20120143134-01	# of Pages:	1
File Date:	2/29/2012	Effective Date:	
(No notes for this action)			
Action Type:	Amended List		
Document Number:	20120144147-76	# of Pages:	1
File Date:	2/29/2012	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Change		
Document Number:	20120620773-50	# of Pages:	1
File Date:	9/10/2012	Effective Date:	
(No notes for this action)			
Action Type:	Merge Out		
Document Number:	20120673051-37	# of Pages:	6
File Date:	10/1/2012	Effective Date:	10/1/2012
(No notes for this action)			

EXHIBIT 6

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Transaction # 4112373

EXHIBIT 6

1 4050
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 **STIPULATION TO SUBSTITUTE DEFENDANT AND CHANGE CAPTION**

23 Plaintiff, GOLDEN ROAD MOTOR INN, INC. d/b/a ATLANTIS CASINO RESORT
24 SPA ("Plaintiff" or "ATLANTIS"), by and through its counsel, Laxalt & Nomura, and
25 Defendants, SUMONA ISLAM ("ISLAM"), by and through her counsel, Mark Wray, and NAV-
26 RENO-GS, LLC d/b/a GRAND SIERRA RESORT ("GSR"), by and through its counsel,
27 Cohen/Johnson, hereby stipulate that pursuant to the merger of Defendant, NAV-RENO-GS,
28 LLC into MEI-GSR HOLDINGS, LLC in October, 2012, MEI-GSR HOLDINGS, LLC should
be substituted as the appropriate Defendant entity doing business as GRAND SIERRA
RESORT. MEI-GSR HOLDINGS, LLC stipulates that it is responsible for and has assumed all

1 liabilities of NAV-RENO-GS, LLC including those alleged by Plaintiff in this action to include
2 compensatory and punitive damages as well as equitable and injunctive relief. The parties agree
3 that with this binding stipulation and order of the Court, the caption may be changed to substitute
4 MEI-GSR HOLDINGS, LLC in place of NAV-RENO-GS, LLC.

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

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

8 Dated this 21st day of June, 2013.

Dated this 20th day of June, 2013.

9 LAXALT & NOMURA, LTD.

COHEN/JOHNSON

10 

10 

11 ROBERT A. DOTSON
12 Nevada State Bar No. 5285
13 ANGELA M. BADER, ESQ.
14 Nevada State Bar No. 5574
15 9600 Gateway Drive
16 Reno, Nevada 89521
17 *Attorneys for Plaintiff*

11 STEVEN B. COHEN
12 Nevada State Bar No. 2327
13 STAN JOHNSON
14 Nevada State Bar No. 265
15 TERRY KINNALLY
16 Nevada State Bar No. 6379
17 255 E. Warm Springs Rd, Ste 100
18 Las Vegas, NV 89119
19 *Attorneys for Defendant*
20 *Grand Sierra Resort*

21 Dated this _____ day of June, 2013.

22 LAW OFFICE OF MARK WRAY

23 _____
24 MARK WRAY
25 Nevada State Bar No. 4425
26 608 Lander Street
27 Reno, NV 89509
28 *Attorneys for Defendant Sumona Islam*

1 liabilities of NAV-RENO-GS, LLC including those alleged by Plaintiff in this action to include
2 compensatory and punitive damages as well as equitable and injunctive relief. The parties agree
3 that with this binding stipulation and order of the Court, the caption may be changed to substitute
4 MEI-GSR HOLDINGS, LLC in place of NAV-RENO-GS, LLC.

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

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

8 Dated this ____ day of June, 2013.

Dated this ____ day of June, 2013.

9 LAXALT & NOMURA, LTD.

COHEN/JOHNSON

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ROBERT A. DOTSON
Nevada State Bar No. 5285
ANGELA M. BADER, ESQ.
Nevada State Bar No. 5574
9600 Gateway Drive
Reno, Nevada 89521
Attorneys for Plaintiff

STEVEN B. COHEN
Nevada State Bar No. 2327
STAN JOHNSON
Nevada State Bar No. 265
TERRY KINNALLY
Nevada State Bar No. 6379
255 E. Warm Springs Rd, Ste 100
Las Vegas, NV 89119
*Attorneys for Defendant
Grand Sierra Resort.*

Dated this 20th day of June, 2013.

LAW OFFICE OF MARK WRAY


MARK WRAY
Nevada State Bar No. 4425
608 Lander Street
Reno, NV 89509
Attorneys for Defendant Sumona Islam

1 ROBERT A. DOTSON, ESQ.
2 Nevada State Bar No. 5285
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9 Reno, Nevada 89521
10 Tel: (775) 322-1170
11 Fax: (775) 322-1865
12 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 Corporation, d/b/a ATLANTIS CASINO
12 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.

Defendants.

20 **ORDER SUBSTITUTING DEFENDANT AND CHANGING CAPTION**

21 Pursuant to the Stipulation To Substitute Defendant and Change Caption, on file herein,
22 and good cause appearing,

23 ///

24 ///

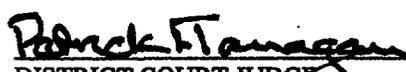
25 ///

26 ///

1 IT IS HEREBY ORDERED that MEI-GSR HOLDINGS, LLC is substituted in place of
2 NAV-RENO-GS, LLC as the appropriate Defendant entity doing business as GRAND SIERRA
3 RESORT as it is responsible for and has assumed all liabilities of Defendant NAV-RENO-GS,
4 LLC pursuant to a merger in October, 2012.

5
6 IT IS FURTHER ORDERED THAT the caption may be changed to substitute MEI-GSR
7 HOLDINGS, LLC in place of NAV-RENO-GS, LLC.

8 Dated this 1 day of July, 2013.

9
10 
11 DISTRICT COURT JUDGE

12 Respectfully submitted,
13 LAXALT & NOMURA, LTD

14
15 By: 
16 ROBERT A. DOTSON (NSB # 5285)
17 ANGELA M. BADER, ESQ. (NSB #5574)
18 9600 Gateway Dr.
19 Reno, NV 89521
20 Attorneys for Plaintiff

EXHIBIT 7

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Clerk of the Court
Transaction # 4112373

EXHIBIT 7

COHEN | JOHNSON
ATTORNEYS & COUNSELORS AT LAW

Terry Kinnally, Esq.
tkinnally@cohenjohnson.com

255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
702-823-3500 tel
702-823-3400 fax

April 12, 2013

Via Email: abader@laxalt-nomura.com

Angela Bader, Esq.
Laxalt & Nomura, Ltd.
9600 Gateway Drive
Reno, Nevada 89521

Re: Golden Road Motor Inn, Inc., et al v. Sumona Islam, et al.
Case No.: CV12-01171
File No.: 120123

Dear Angie

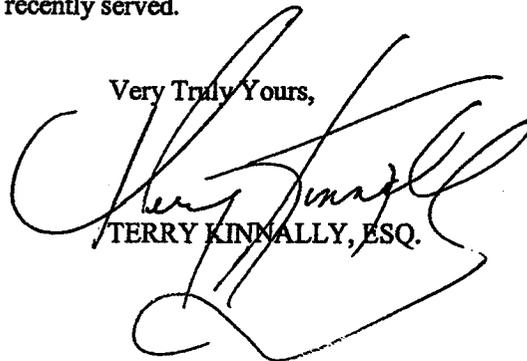
Please be advised that Tony Santo is no longer associated with Grand Sierra Resort and therefore we cannot produce him for his deposition which has been scheduled for April 19, 2013 at 9:00 a.m.

Here is his last known address:

Tony Santo
1243 Jessie Road
Henderson, Nevada 89002-9213

I will also be calling you next week to see if we can finally resolve our discovery questions. Please let me know when it would be convenient to schedule the call. I am currently reviewing the supplemental responses you recently served.

Very Truly Yours,



TERRY KINNALLY, ESQ.

MTK/jsr
cc: Mark Wray
via email: mwray@markwraylaw.com

EXHIBIT 8

FILED
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11-04-2013:04:42:01 PM
Joey Orduna Hastings
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Transaction # 4112373

EXHIBIT 8

EXHIBIT 9

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Joey Orduna Hastings
Clerk of the Court
Transaction # 4112373

EXHIBIT 9

Angie Bader

From: Terry Kinnally <tkinnally@cohenjohnson.com>
Sent: Tuesday, May 07, 2013 12:08 PM
To: Angie Bader
Subject: Re: depositions

I will, I'll get the stip over to you today, and the depositions would be Tuesday at 9 30 am and 1 p.m and Monday at 9:30 (if you remember we adjusted them due to the Stan flying in that morning. If this is a problem let me know.

On Tue, May 7, 2013 at 11:35 AM, Angie Bader <abader@laxalt-nomura.com> wrote:
This works. How about the same timing as the last time they were set. Also, can you send over a proposed stipulation correcting the name of the appropriate GSR entity. Thanks.
Angie

From: Terry Kinnally [mailto:tkinnally@cohenjohnson.com]
Sent: Tuesday, May 07, 2013 10:10 AM
To: Angie Bader
Subject: depositions

I just heard back from Jeremy's office and he has a problem with Friday. Can we do your witnesses on Tuesday, and then do Jeremy on Monday the 20th. He is free that day. It would also give us the chance to get him your witnesses depositions for review, as Rob asked. Let me know if that works, and what times are good.

Morgan Bogumil

From: Morgan Bogumil
Sent: Monday, June 10, 2013 12:08 PM
To: scohen@cohenjohnson.com; Stan Johnson; Terry Kinnally; jrussell@cohenjohnson.com; 'Mark Wray'; 'Angeline Peterson'
Cc: Rob Dotson; Angie Bader; 'Debra Robinson'
Subject: Atlantis Casino Resort Spa v. Sumona Islam, et al.
Importance: High
Attachments: Stipulation To Substitute Defendant.pdf

Counsel,

Attached please find a proposed Stipulation to Substitute Defendant and Change Caption, which will be discussed today at the Pretrial Conference.

L. Morgan Bogumil
Assistant to Robert A. Dotson, Esq.
and Angela M. Bader, Esq.
Laxalt & Nomura, Ltd.
Phone: (775) 322-1170, x 137
Fax: (775) 322-1865
mbogumil@laxalt-nomura.com

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10/30/2013

App. 1903

Morgan Bogumil

From: Rob Dotson
Sent: Tuesday, June 18, 2013 2:52 PM
To: Stan Johnson
Cc: Mark Wray; Angie Bader; Morgan Bogumil
Subject: Stipulation

Stan - Do you have authority to enter into the stipulation to substitute parties or do you have any edits you would propose. If you are unable to stipulate please simply advise me of that and I will file a motion. However, given the date we are going to need to bring a motion on Order shortening time. - Rob

10/30/2013

App. 1904

Morgan Bogumil

From: Rob Dotson
Sent: Wednesday, June 19, 2013 6:53 PM
To: Debra Robinson; Angie Bader
Cc: Morgan Bogumil
Subject: FW: Stipulation

FYI

From: Rob Dotson
Sent: Wednesday, June 19, 2013 6:44 PM
To: Stan Johnson
Subject: RE: Stipulation

Will do. It will be in the morning.

[REDACTED]

From: Stan Johnson [sjohnson@cohenjohnson.com]
Sent: Wednesday, June 19, 2013 6:29 PM
To: Rob Dotson
Subject: Re: Stipulation

I can sign it; please resend.
Stan

Sent from my iPhone

On Jun 19, 2013, at 3:55 PM, Rob Dotson <rdotson@laxalt-nomura.com> wrote:

- > What is the status of authority on the stipulation?
- >
- > Robert Dotson
- > Reno Office : 775.322.1170
- > Las Vegas : 702.388.1551
- > Cell : 775.560.7622

Morgan Bogumil

From: Morgan Bogumil
Sent: Thursday, June 20, 2013 8:50 AM
To: Stan Johnson; Terry Kinnally; jrussell@cohenjohnson.com; 'Mark Wray'; 'Angeline Peterson'
Cc: Rob Dotson; Angie Bader; 'Debra Robinson'
Subject: Atlantis Casino Resort Spa v. Sumona Islam, et al.
Attachments: Stipulation To Substitute Defendant.pdf

Counsel,

Attached please find the Stipulation to Substitute Defendant and Change Caption. Please review, sign where indicated and return your signature page to our office via email. If you have any questions, please contact me.

L. Morgan Bogumil
Assistant to Robert A. Dotson, Esq.
and Angela M. Bader, Esq.
Laxalt & Nomura, Ltd.
Phone: (775) 322-1170, x 137
Fax: (775) 322-1865
mbogumil@laxalt-nomura.com

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10/30/2013

1 **2190**
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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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; MEI-GSR
17 HOLDINGS LLC, a Nevada limited liability
18 company, d/b/a GRAND SIERRA RESORT;
19 ABC CORPORATIONS; XYZ
20 PARTNERSHIPS; AND JOHN DOES I through
21 X, inclusive.

22 Defendants.

23 **PLAINTIFF'S MOTION TO STAY ENFORCEMENT**
24 **OF JUDGMENT AND FOR INJUNCTION PENDING APPEAL**

25 Plaintiff GOLDEN ROAD MOTOR INN, INC. d/b/a ATLANTIS CASINO RESORT
26 SPA ("Plaintiff" and/or "ATLANTIS"), by and through its attorneys, Laxalt & Nomura, Ltd.,
27 files this Motion to Stay Enforcement of Judgment and For Injunction Pending Appeal. This
28 Motion is made and based upon, NRCP 62, the pleadings and papers on file herein, the evidence

1 presented at trial, the attached Memorandum of Points and Authorities and any argument the
2 Court should choose to hear¹.

3 **MEMORANDUM POINTS AND AUTHORITIES**

4 **I.**

5 **INTRODUCTION**

6
7 This Motion follows the trial of the ATLANTIS' claims against Defendants SUMONA
8 ISLAM ("ISLAM") and MEI-GSR HOLDINGS LLC d/b/a GRAND SIERRA RESORT
9 ("GSR"). Following a bench trial, this Court provided a decision from the bench, in favor of
10 Plaintiff and against Defendant ISLAM and in favor of Defendant GSR. The Court ordered that
11 its decisions be memorialized into Findings of Fact and Conclusions of Law, directing that
12 counsel for ATLANTIS prepare those findings related to the claims against ISLAM and that
13 counsel for GSR provide those findings with regard to the claims against ATLANTIS. Those
14 Orders were entered by the Court on August 26, 2013 and September 27, 2013, respectively.
15 Written Notice of Entry of Order of each occurred on October 1, 2013 and these two documents
16 collectively represent the decision of the Court following the trial which began on July 1 and
17 concluded on July 18, 2013. For the convenience of the Court, copies of the written Notice of
18 Entry of Findings of Fact and Conclusions of Law and Order and Notice of Entry of Findings of
19 Fact and Conclusions of Law and Judgment are attached hereto as Exhibit 1. The ATLANTIS
20 filed notice of Appeal on October 30, 2013.

21
22
23 The purpose of this Motion is first, to seek from the District Court a stay of the Judgment
24 and Orders representing the decision of the Court pending appeal to the Supreme Court of
25

26
27 ¹ By this reference ATLANTIS formally requests the incorporation herein and the consideration by this Court of the
28 evidence presented at trial including the exhibits admitted and the testimony received.

1 Nevada and second, to obtain an injunction precluding the GSR from utilizing what the
2 ATLANTIS contends to be its intellectual property pending the appeal.

3 It is the position of the ATLANTIS that the decision of the Court represents clear error.
4 Specifically, ATLANTIS contends the decision is internally irreconcilable, in conflict with itself,
5 and contrary to Nevada law as well as, in some regards, unsupported by the undisputed facts
6 adduced at trial. ATLANTIS contends the practical impact is that the Judgment should be stayed
7 while the decision is reviewed by the Nevada Supreme Court and further that GSR should be
8 enjoined from utilizing the information which, in the decision in favor of ATLANTIS was
9 determined to be ATLANTIS' intellectual property, pending the contemplated appellate review.
10 Such an Order would maintain the status quo as it existed prior to the Court's decision, as the
11 parties had stipulated to a preliminary injunction that was in effect until the bench trial was
12 completed and would be consistent with Nevada Statute.

13 **II.**

14 **ARGUMENT**

15 **A. The Decision Of The Court Is Irreconcilably In Conflict With Itself As The Decision**
16 **In Favor Of GSR Is Illogical In The Shadow Of The Decision In Favor Of**
17 **Atlantis And Against Islam.**

18 In the view of ATLANTIS, the decision in its favor and against ISLAM was appropriate
19 and supported by virtually undisputed evidence and interpretation of law. The Court primarily
20 relied upon the testimony and admitted actions of ISLAM herself to reach its decision.
21 However, the decision against ISLAM and its component parts, is in conflict and irreconcilable
22 with the Court's decision in favor of GSR. Based upon this observation, ATLANTIS has filed
23 an appeal of the Court's decisions, seeking review by the Nevada Supreme Court. There are
24 three primary issues thus far identified to be addressed on appeal which ATLANTIS contends
25 support and warrant the entry of this Stay.
26

27 ///

28 ///

1 **1. The Court's Enforcement Of The Uniform Trade Secret Act Is Inconsistent**
2 **And Contrary To Established Nevada Law That Generally**
3 **Finds Customer Lists To Be Trade Secrets.**

4 The District Court appropriately enforced the Uniform Trade Secret Act ("UTSA")
5 against ISLAM, finding that trade secrets existed and that ISLAM had inappropriately
6 downloaded trade secrets belonging to ATLANTIS.² On the basis of her misappropriation, the
7 Court awarded damages, including punitive damages, and a permanent injunction regarding
8 ISLAM's use and further misappropriation of that information.³ In contrast, when deciding the
9 same issue with regard to the GSR, this Court found that the information unlawfully taken by
10 ISLAM from ATLANTIS and downloaded into the GSR database, which undisputedly included
11 the customers' names, address, telephone number and contact information, was not a trade secret
12 and therefore its use was not a violation of the same statutes, the UTSA.

13 ATLANTIS contends that the Court was correct in finding a violation of the UTSA had
14 occurred with regard to ISLAM's actions and, moreover, that it was correct in finding her actions
15 to have been unjustified, willful, malicious and intentional. In reaching its determination, the
16 Court concluded that information regarding a customer, **with whom a host had an established**
17 **relationship**, such as the customer's name, address and contact information, was not a trade
18 secret and set forth a non-exhaustive list of 19 items that were trade secrets (emphasis added).
19 Amongst this list, and relevant to the appeal, are that the Court found that other hosts' customers,
20 customers' personal information that is personal to them, Customer's location and customer
21 information are all trade secrets.⁴ Based upon these findings, it is clear that the Court found that
22 a customer list which consists of no more than the customer's name, address and contact
23 information are all trade secrets.⁴ Based upon these findings, it is clear that the Court found that
24 a customer list which consists of no more than the customer's name, address and contact
25 information are all trade secrets.⁴ Based upon these findings, it is clear that the Court found that

26 ² See Exhibit 2 (July 18, 2013 Decision of the Court) at p. 20:9-14.

27 ³ It is implicit in the Court's ruling is that the customer lists and contact information downloaded by ISLAM
28 constituted trade secrets of ATLANTIS.

⁴ See Exhibit 2 at p. 12:3-13:4, Exhibit 3 (August 26, 2013 Findings of Fact and Conclusions of Law and Order) at
 p. 12:19-13:4 and Exhibit 4 (September 27, 2013 Findings of Fact and Conclusions of Law and Judgment) at p.
 2:28-3:18.

1 information was not a trade secret as to a host, so long as the host had an established relationship
2 with the customer, but that the same information did constitute a trade secret if it belonged to
3 another host's customer or to a customer with whom the host had no host/guest relationship.⁵ In
4 this case it is undisputed, indeed central to the Court's determination, that the hundreds of names
5 and related information downloaded by ISLAM from the ATLANTIS database included many
6 persons with whom ISLAM did not have a host relationship.⁶ It is for this reason, and because of
7 the other trade secret information that ISLAM had taken, that the Court imposed a permanent
8 injunction upon ISLAM, directing that she destroy all customer lists obtained from or originating
9 from the ATLANTIS, including specifically, the spiral notebooks onto which she downloaded
10 the customer information, copies of which have been marked as trial exhibits 6, 80 and 83. This
11 is also consistent with well-founded Nevada law that customer lists are trade secrets.⁷ In the case
12 at bar, although there may have been testimony supporting the argument that certain customer
13 lists were not trade secrets with regard to ISLAM, as they were persons with whom ISLAM had
14 a host relationship before she began working at the ATLANTIS, the testimony from the
15 executives from both casino properties supported the conclusion that customer lists generally are
16 considered proprietary in the gaming industry and, in particular, such lists are considered
17 proprietary and trade secrets by both of the gaming establishments party to the litigation. This is
18 also consistent with the Supreme Court's finding in the case of *Frantz v. Johnson*, 116 Nev. 455,
19 467, 999 P.2d 351, 359 (2000), where the Court found that the customer and pricing list in that
20 case was a protected trade secret.
21
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24 In contrast and in direct incongruence with the above decision, this Court determined that
25 GSR had not violated the UTSA and that a customer's name, address and contact information are
26

27 ⁵ See Exhibit 3 at p. 12:19-24 and Exhibit 2 at p. 12:3-14.

28 ⁶ As the Court will recall in Ex. 59 ATALANTIS witness McNeely took the names from Ex. 19 of the persons GSR contended ISLAM added to the GSR marketing data base and described which of these over 200 guests were hosted by persons other than ISLAM at the time that she terminated her employment with ATLANTIS.

⁷ See *Finkel v. Cashman Professional Inc.*, 128 Nev. Adv. Rep. 6, 11-14, 270 P.3d 1259, 1264 (2012).

1 not trade secrets.⁸ The Court goes on in the September 27, 2013 Order to enumerate the same
2 list of 19 items that it finds to be trade secrets in this case, including "other hosts customers."⁹
3 The clear implication of the September 27, 2013 Order favoring GSR is that customer lists are
4 not trade secrets. Yet that holding is in direct contradiction to findings even within the same
5 paragraph where "other hosts customers" are listed as being a trade secret. Thus, the September
6 27, 2013 Order and the decision of the Court on August 26, 2013 appear to be inconsistent and in
7 direct conflict. The question is begged how the information can be a trade secret when it is
8 illegally downloaded by ISLAM, but once it has been added to the GSR database, it ceases to be
9 a trade secret and can therefore be used by GSR. Nevertheless, that is the finding of this Court,
10 as any other finding would necessarily be supportive of a finding of a violation of the UTSA by
11 GSR at least in so far as GSR would necessarily have been found to have "used" the trade secret
12 of the ATLANTIS without the express or implied consent of the ATLANTIS.¹⁰ In fact, as GSR
13 continues to use this information, ATLANTIS contends that the violation, and therefore damage,
14 continues. In other words, if indeed the information taken by ISLAM from ATLANTIS and then
15 provided by ISLAM to the GSR, as supported by the Court's August 26, 2013 Order, is trade
16 secret information protected under Nevada law, its use must be a violation of the UTSA.¹¹ The
17 use of trade secret information is also supported by other substantial and undisputed testimony at
18 trial including exhibits 19, 31, 33-40, 41, 42, 48, 49, 50, 51, 59, 66, 77 and the testimony related
19 to them. By this reference ATLANTIS hereby incorporates the Opposition to GSR's motion for
20 Attorney's fees filed on November 4, 2013 wherein ATLANTIS sets forth some of the
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26 ⁸ See Exhibit 4, finding generally that "a customer's name, address and contact information are not trade secrets."
27 See also Exhibit 2 at p. 2:25.

28 ⁹ See Exhibit 4 at p. 2:28.

¹⁰ NRS 600A.030(2)(c).

¹¹ For this reason, this Motion includes a request that the Court reinstate the injunction in place before trial, prohibiting the use by the GSR of information placed into its marketing database and shared by ISLAM with GSR.

1 information which is of a type and character that the Court found it to be a trade secret and
2 demonstrates the evidence of the use of that information by the GSR.

3 **2. The District Court's Determination That Atlantis' Non-Competition**
4 **/Non-Solicitation Agreement Was Overbroad Is A Finding Representing**
5 **Clear Error and Is Unsupported By Substantial Evidence.**

6 Although finding all other contracts (three in all) between ISLAM and ATLANTIS to
7 have been valid and also to have been breached, the Court found that the fourth contract between
8 ISLAM and ATLANTIS, the Non-Competition/Non-Solicitation Agreement, was overbroad and
9 unenforceable.¹² The Court concluded that the contract's complete prohibition from employment
10 with a competitor was unreasonable. The Court grounded its decision on the fact that ISLAM
11 had attempted to create a career in the gaming industry and that therefore a prohibition from any
12 role in any casino, in any capacity, was an unreasonable restraint on trade and greater than is
13 required to protect ATLANTIS.¹³

14
15 On appeal, ATLANTIS will contend that this determination is an erroneous application
16 of Nevada law in that it creates an exclusion which swallows the rule. Virtually all employees
17 who seek to defeat an otherwise sound contract containing a non-competition agreement or
18 restrictive covenant, have made a living or are attempting to create a career in the industry of
19 their employer.¹⁴ Similarly, virtually all non-competes and restrictive covenants preclude
20 employment with any direct competitor.¹⁵ Here, the facts are undisputed that GSR was a direct
21 competitor of ATLANTIS and that ISLAM took a job and began working at GSR in precisely
22 the same position and in the exact same capacity as she had worked at ATLANTIS. Therefore,
23
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25

26 ¹² See Exhibit 3 at p. 9:25-10:4.

27 ¹³ *Id.*

28 ¹⁴ Indeed, many involve licensed professionals with advanced degrees and training making them particularly suited only for their chosen career.

¹⁵ The law, of course, requires that the prohibition be reasonable in time and geographic scope which were elements that this Court found to be met in this instance.

1 ATLANTIS contends that this Court's ruling is also unsupported by the undisputed facts and in
2 error.

3 The ATLANTIS has approximately twenty employees who are subject to the same or
4 substantially the same contract as is ISLAM.¹⁶ By way of this Motion, ATLANTIS seeks a Stay
5 of enforcement and application of this finding in any subsequent matter. During the pendency of
6 this appeal, it is quite possible that Atlantis employees who have signed this Non-Compete
7 Agreement may be offered or may seek gaming employment within 150 miles of ATLANTIS. If
8 it should eventually be determined that the Court's decision striking the contract as overbroad is
9 overturned, then these employees and their new employer, whether it be GSR or another entity,
10 would have breached a valid contract based upon erroneous reliance on this ruling. For all of
11 these reasons, ATLANTIS contends that a Stay is appropriate and each subsequent dispute, if
12 they should occur, should be determined by the facts of that case and not on reliance on the
13 ruling in this matter.
14
15

16 **3. The District Court's Sua Sponte Award Of GSR's Attorney's Fees Is**
17 **Unsupported By Statute And The District Court's Own Findings.**

18 The third primary issue on appeal for which the ATLANTIS seeks a stay of the
19 enforcement of the Court's Judgment is the award of attorney's fees against the ATLANTIS and
20 in favor of the GSR. In the Court's decision from the bench on July 18, 2013, Judge Flanagan
21 had left the courtroom, but returned a minute later, stating simply "back on the record judgment
22 in favor of GSR, fees and costs of litigation against the Plaintiff."¹⁷ No basis for this award was
23 stated by the Court and no request had been made by GSR at trial or in argument. The question
24 on appeal will be the appropriateness of this sua sponte award of attorney's fees.
25
26
27

28 ¹⁶ See Exhibit 5 (Affidavit of Debra Robinson).

¹⁷ See Exhibit 2 at p. 24:7.

1 The Court's September 27, 2013 Findings of Fact and Conclusions of Law and Judgment
2 favoring GSR supports the sua sponte award of attorney's fees, citing to NRS 600A.060, which
3 allows for an award of attorney's fees if a claim of misappropriation is made in bad faith. The
4 Court makes the bad faith finding on page 6, lines 6-16 of that Order. However, this finding of
5 bad faith must be squared on appeal with the background and history of the case as well as the
6 evidence adduced at trial. This case history includes the entry of the Temporary Restraining
7 Order which was entered against the GSR by this Court, and thereafter the Preliminary
8 Injunction which was stipulated to by GSR and remained in place through this trial. Also inuring
9 against a finding that the claim and its pursuit were in bad faith, is the determination by the Court
10 in this same case and same decision that the ATLANTIS reasonably initiated litigation.¹⁸ This
11 statement was made by the Court in its decision from the bench while discussing the claims
12 against the GSR.¹⁹ Based upon the circumstances surrounding this determination, the
13 ATLANTIS respectfully requests a stay as to the attorney's fee award against ATLANTIS be
14 entered pending the appeal of the Court's decision.

17 **B. The Request For Stay And Injunction Should Be Granted Or The Subject Of The**
18 **Appeal Will Be Defeated.**

19 By way of this Motion, ATLANTIS seeks a stay of the enforcement of the Judgment and
20 the restoration of the injunction previously in place, and previously stipulated to by GSR,
21 prohibiting the use of the information which the Court has now determined was illegally taken
22 by ISLAM from ATLANTIS and shared by ISLAM or downloaded into the GSR's marketing
23 database. If GSR is allowed to continue using this information which the ATLANTIS contends
24 is a trade secret during the pendency of the appeal, by the time the appeal is determined, the
25 information will no longer hold its value to ATLANTIS which derives from its secrecy, and the
26

27
28 ¹⁸ See Exhibit 3 at p. 7:24.

¹⁹ See Exhibit 2 at p. 22:10.

1 damages which arise from its use, as shown through this litigation and the Court's decision, will
2 be difficult if not impossible to measure and prove. As set forth above, the information provided
3 by ISLAM to GSR both by downloading information of the guests, the majority of whom were
4 persons with whom ISLAM either had no host relationship when she came to work for
5 ATLANTIS or with whom she had no host relationship even while employed with ATLANTIS,
6 as well as the information shared verbally and through emails by ISLAM with the marketing
7 staff of GSR, constitutes misappropriation as defined by NRS 600A.030(2)(c).
8

9 Similarly, if the Judgment striking the Non-Compete as overbroad is not stayed thus
10 allowing that Judgment to apply to other identically phrased contracts, the impact is to strike as
11 overbroad all of the Non-Competes currently in place with virtually all of the hosts and some
12 management level persons employed by ATLANTIS. It is quite probable that during the
13 pendency of this appeal, an ATLANTIS employee who would otherwise be subject to an
14 enforceable restrictive covenant will leave the employment of ATLANTIS and become
15 employed by GSR or another direct competitor of ATLANTIS in direct contravention of the
16 Non-Compete Agreement that is the subject of appeal. For these reasons, the stay and injunction
17 is appropriate under NRCP 62 and also consistent with the intent of NRAP 8.
18

19 **C. The Motion for Stay and Injunction Is Appropriate Here As If It Is Not Granted**
20 **Atlantis Will Suffer Irreparable Injury.**

21 In this case, not only would the purpose of the appeal largely be defeated if no stay and
22 injunction is entered, but, moreover, the injury to the ATLANTIS caused by such a failure would
23 be irreparable. As described above and herein and as undisputed by the evidence at trial,
24 Defendant ISLAM downloaded hundreds of names, illegally, improperly and in violation of her
25 contractual obligations to ATLANTIS, from the ATLANTIS database onto a series of spiral
26 notebooks. ISLAM then became employed by GSR and uploaded onto the GSR database over
27 200 of those names and contact information. The evidence at trial was similarly undisputed that
28

1 ISLAM shared with GSR, both through email and verbal direction and request, marketing,
2 information she had obtained through her employment at ATLANTIS regarding the types and
3 level of marketing solicitations which would be effective for those known casino guests of the
4 ATLANTIS, some of whose information had been downloaded by hand onto the spiral
5 notebooks. Some of this information is of a type and character that has been specifically found
6 to be a trade secret by this Court. Specifically, among the non-exclusive list of 19 types of trade
7 secrets, the Court found that whether a player preferred "table games" or slots, whether a player
8 was local or non-local, credit information, and birth dates were all trade secrets in this industry.

9
10 This Court entered first a Temporary Restraining Order prohibiting the use of this
11 information and thereafter extended that Order, by stipulation of GSR, through a Preliminary
12 Injunction to trial. Through this Motion, ATLANTIS seeks to have that injunction restored
13 during the pendency of the appeal. If the injunction is not restored, the trade secret information
14 of ATLANTIS, which was the subject of the Temporary Restraining Order and thereafter the
15 Preliminary Injunction of this District Court, will be irreparably lost and ATLANTIS' injury in
16 this regard will be irreparable and not easily characterized. Thus, an injunction pending the
17 appeal is appropriate pursuant to NRCPC 62(c), as well as NRAP 8.

18
19 ATLANTIS will also likely suffer irreparable injury if the application of the Judgment is
20 not stayed. Specifically, the determination of the Court that the Non-Competition Agreement
21 between the ATLANTIS and ISLAM, the language of which is similar if not identical to many
22 agreements between the ATLANTIS and its other hosts, as well as some management level
23 persons, will have a far reaching effect beyond the subject matter litigation. Based upon the
24 current Judgment, ATLANTIS employees may argue that their Non-Competition Agreements
25 already have been found by a Court to have been overbroad and therefore unenforceable. If the
26 Appellate Court should subsequently determine that ruling to be improper, ATLANTIS may very
27 well have lost all benefit of its non-compete agreement resulting in compounded damages and
28

1 another dimension of irreparable injury. Therefore, a stay of the enforcement and application of
2 the Judgment in this case is appropriate.

3 **D. Supersedeas Bond.**

4 Should the Court grant this Motion, it is appropriate that a supersedeas bond be filed, the
5 amount of which should be determined by the Court. In this case, the ATLANTIS has filed its
6 Cost Bond pursuant to NRAP 7 in the amount of \$500 and has previously posted bond in District
7 Court related to the injunction in the amount of \$5,000 that remains available. The ATLANTIS
8 proposes that the bond previously posted regarding the injunction be treated as the supersedeas
9 bond for this appeal and that no additional sum be required.
10

11 **III.**

12 **CONCLUSION**

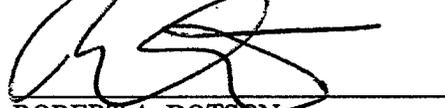
13
14 For the reasons stated above, the ATLANTIS requests that this Court grant a stay of the
15 Judgment pending appeal and restore the prior injunction regarding the use of information
16 improperly taken by ISLAM and provided to the GSR during the pendency of the appeal.

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

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

20 Dated this 1 day of November, 2013.

21 LAXALT & NOMURA, LTD.

22 

23 ROBERT A. DOTSON
24 Nevada State Bar No. 5285
25 ANGELA M. BADER
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27 9600 Gateway Drive
28 Reno, Nevada 89521
(775) 322-1170
Attorneys for Plaintiff

1 CERTIFICATE OF SERVICE

2 Pursuant to NRC P 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
9 ordinary course of business, in a United States mailbox in the City of Reno,
10 County of Washoe, Nevada.
- 11 By electronic service by filing the foregoing with the Clerk of Court using the E-
12 Flex system, which will electronically mail the filing to the following individuals.
- 13 (BY PERSONAL DELIVERY) by causing a true copy thereof to be hand
14 delivered this date to the address(es) at the address(es) set forth below, where
15 indicated.
- 16 (BY FACSIMILE) on the parties in said action by causing a true copy thereof to
17 be telecopied to the number indicated after the address(es) noted below.
- 18 Reno/Carson Messenger Service.
- 19 By email to the email addresses below.

20 addressed as follows:

21 Steven B. Cohen, Esq.
22 Stan Johnson, Esq.
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27 DATED this 4 day of November, 2013.

28 
L. MORGAN BOGUMIL

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FILED
Electronically
11-04-2013:04:45:19 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4112405

EXHIBIT 1

EXHIBIT 1

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Electronically
10-01-2013:02:40:57 PM
Joey Orduna Hastings
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Transaction # 4034875

1 2540
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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; MEI-GSR
17 HOLDINGS LLC, a Nevada limited liability
18 company, d/b/a GRAND SIERRA RESORT;
19 ABC CORPORATIONS; XYZ
20 PARTNERSHIPS; AND JOHN DOES I through
21 X, inclusive.

22 Defendants.

23 **NOTICE OF ENTRY OF FINDINGS OF**
24 **FACT AND CONCLUSIONS OF LAW AND ORDER**

25 PLEASE TAKE NOTICE, that a Findings of Fact and Conclusions of Law and Order
26 was entered on August 26, 2013. A copy of said Findings of Fact and Conclusions of Law and
27 Order is attached hereto as Exhibit 1.

28 ///

///

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ATTORNEYS AT LAW
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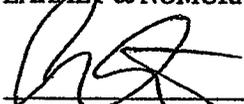
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Affirmation Pursuant to NRS 239B.030

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

Dated this 1 day of October, 2013.

LAXALT & NOMURA, LTD.



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Attorneys for Plaintiff

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ATTORNEYS AT LAW
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1 CERTIFICATE OF SERVICE

2 Pursuant to NRCPC 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
9 ordinary course of business, in a United States mailbox in the City of Reno,
10 County of Washoe, Nevada.
- 11 By electronic service by filing the foregoing with the Clerk of Court using the E-
12 Flex system, which will electronically mail the filing to the following individuals.
- 13 (BY PERSONAL DELIVERY) by causing a true copy thereof to be hand
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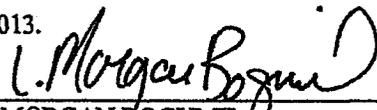
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27 DATED this 17 day of October, 2013.


28 L. MORGAN BOGUMIL

INDEX OF EXHIBITS

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EXHIBIT	DESCRIPTION	PAGES
1	Findings of Fact and Conclusions of Law and Order	17

EXHIBIT 1

FILED
Electronically
10-01-2013:02:40:57 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4034875

EXHIBIT 1

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7 Attorneys for Plaintiff

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

10 GOLDEN ROAD MOTOR INN, INC., a Nevada 11 Corporation, d/b/a ATLANTIS CASINO 12 RESORT SPA	Case No.: CV12-01171 Dept No.: B7
13 <p style="text-align: center;">Plaintiff,</p>	
14 vs.	
15 SUMONA ISLAM, an individual; MEI-GSR 16 HOLDINGS LLC, a Nevada limited liability company, d/b/a GRAND SIERRA RESORT; 17 ABC CORPORATIONS; XYZ PARTNERSHIPS; AND JOHN DOES I through 18 X, inclusive.	
19 <p style="text-align: center;">Defendants.</p>	

20 **PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER**

21 This matter came on for a non-jury trial on July 1, 2013 before the Court, Honorable
22 Patrick Flanagan, District Judge, presiding. The Court heard evidence for 9 days and the
23 arguments of counsel on the 10th day of trial. The Court, having carefully considered all of the
24 exhibits in evidence, the testimony of the witnesses, trial statements of the parties, and the
25 arguments of counsel, hereby issues the following Findings of Fact and Conclusions of Law:

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Findings of Fact

1. On or about April 15, 2008, ISLAM became an employee of the Golden Road Motor Inn, Inc., dba Atlantis Casino Resort Spa ("ATLANTIS").

2. On April 15, 2008, ISLAM executed the ATLANTIS Online System User Agreement ("Online System User Agreement"). Among other terms, the Online System User Agreement prohibits unauthorized downloading or uploading of software and information.

3. On April 15, 2008, in conjunction with her employment with ATLANTIS, ISLAM also executed an agreement with ATLANTIS concerning its Business Ethics Policy and Code of Conduct Acknowledgement and Conflicts of Interest Statement. This agreement ("Business Ethics Policy"), was again signed by ISLAM on January 23, 2009, February 26, 2010 and January 19, 2011. This policy in section 3.1 identifies confidential information as all nonpublic information regarding the company's operation and business activities and those of its customers and suppliers. Nonpublic means any information that is not officially disclosed through means such a press releases or other forms of publication, where it is not common knowledge. Section 4.4 prohibits the disclosure of inside information to persons outside the company or other persons within the company who are not authorized to receive such information. Pursuant to the terms of the Business Ethics Policy, ISLAM agreed not to disclose confidential information including customer lists or customer information (such as player tracking or club information) to any unauthorized persons, either during or after her termination, and not to take any documents or records belonging to ATLANTIS after her departure. She also agreed not to profit from confidential information of ATLANTIS. ISLAM's agreement to the terms of this contract was a condition of her employment with ATLANTIS.

4. On April 15, 2008, in conjunction with commencing her employment with ATLANTIS, ISLAM executed the ATLANTIS Company Policy regarding Company Property, Proprietary Information, and Trade Secrets (hereinafter referred to as "Trade Secret Agreement"). This agreement, including any updates, was again signed by ISLAM on January 23, 2009, February 26, 2010 and January 19, 2011. This agreement provides that any improper

1 use or dissemination of ATLANTIS intellectual property is a breach of the policy and may be a
2 violation of state and federal trade secrets laws and also warns that such violation is punishable
3 both civilly and criminally.

4 5. ISLAM was hired to be an Executive Casino Host at ATLANTIS. When she
5 was hired, she was under a contractual obligation to her former employer, Harrah's, which
6 prohibited her from working in a same or similar position within six months after separation
7 from employment at Harrah's. In order to honor this obligation, ATLANTIS placed her in the
8 position of concierge manager. She worked in the hotel side of the operation of the
9 ATLANTIS and not in the gaming side of the operation until the expiration of the six month
10 restriction imposed by her agreement with Harrah's. Thereafter, she was transferred to the
11 gaming operation and began her employment as a host.

12 6. When ISLAM began to work as a host at ATLANTIS, she brought with her
13 what she claimed to be her personal book of trade. ISLAM has identified Exhibits 75 and 80
14 as her book of trade.

15 7. Steve Ringkob, indeed almost every witness, testified that there were certain
16 items that hosts were entitled to take with them from property to property and that a host's
17 book of trade is the host's property and "nothing is wrong with her taking this information
18 wherever she goes." However, he also testified that the player's gaming history and tracking at
19 the ATLANTIS would become proprietary information.

20 8. Although the term "casino host book of trade" has been defined variously, it has
21 generally been defined as those names and contact information of guests with whom the host
22 has developed relationships through their own efforts. Ringkob defined it as those guests with
23 whom the host has developed a relationship and it was not information coming from the casino.

24 9. The evidence is clear that ISLAM intentionally downloaded, by hand copying
25 from the ATLANTIS computer screen, players' names, contact information, level of play,
26 game preferences and other proprietary information from the ATLANTIS Casino's, casino
27 management system, Patron Management Program.

28

1 10. On February 26, 2010, ISLAM signed a Non-Compete/Non-Solicitation
2 Agreement with ATLANTIS ("Non-Compete Agreement"). Pursuant to the terms of the Non-
3 Compete Agreement, ISLAM agreed that she would not, without the prior written consent of
4 ATLANTIS, be employed by, in any way affiliated with, or provide services to any gaming
5 operation located within 150 miles of ATLANTIS for a cooling off period of one year after the
6 date that the employment relationship between she and the ATLANTIS ended.

7 11. During ISLAM'S employment at ATLANTIS, she had access to and worked
8 with highly sensitive trade secrets and proprietary and confidential information of the
9 ATLANTIS. This information included customer and guest lists, customer information and
10 data including player contact information, tracking and club information, guest preferences and
11 gaming tendencies of the guests. This information included not just the information for guests
12 assigned to her, but also information for guests assigned to other hosts.

13 12. Before and during ISLAM'S employment, ATLANTIS undertook significant
14 precautions to maintain the secrecy of its confidential information. These efforts included
15 disabling USB ports in the computers at ATLANTIS, not providing or allowing printers, and
16 monitoring all emails that are sent to recipients off property.

17 13. Despite the precautions taken to protect ATLANTIS' confidential trade secret
18 information, during her employment at ATLANTIS ISLAM copied guest information by hand
19 from the screen of the ATLANTIS computer onto spiral note pads. Ms. ISLAM, in her
20 handwritten notes in spiral notebooks, which she identified as hers, copied players' names,
21 contact information and also the designation of whether or not they played table games or slots.
22 The information copied had the notation of the guests' marker information, for purposes of
23 knowing what their credit limit was. Some notations included information regarding previous
24 gaming results and losses incurred by that player. This is information Ms. ISLAM testified that
25 she wrote down from the ATLANTIS computer. A copy of some of those spirals is found in
26 Exhibit 80.

27 14. Ms. ISLAM testified that in the fall of 2011, she was becoming dissatisfied with
28 her employment at the ATLANTIS. She testified that she had not been given a raise, that she

1 had only been given one bonus and not the quarterly bonuses that she states were promised to
2 her, she felt isolated in her interpersonal relationships with other employees at the ATLANTIS
3 and she had come to a point in her career where she believed that if she was ever going to make
4 more money, she would have to seek employment elsewhere.

5 15. The evidence is that on or around October, Ms. ISLAM learned from Ms.
6 Antonetti that the Grand Sierra Resort ("GSR") was hiring new employees. Through an online
7 application, ISLAM applied for and interviewed with the GSR to obtain a position as a host.

8 16. At about that time, Ms. ISLAM asked Mr. DeCarlo for a copy of her Non-
9 Compete Agreement with the ATLANTIS.

10 17. Sometime in December and January, two interviews took place. The first was
11 with Ms. Hadley, at the GSR. Ms. Hadley testified that she was impressed with Ms. ISLAM.
12 She testified she did not ask for ISLAM's book of business at that time.

13 18. A second interview was arranged between ISLAM and Hadley and Flaherty of
14 the GSR. At that time, a more in-depth discussion took place relative to Ms. ISLAM's book of
15 business. Mr. Flaherty testified and it's confirmed by the transcript of a subsequent interview
16 that he told Ms. ISLAM not to bring anything from the ATLANTIS to the GSR, to bring
17 nothing, but herself and her relationships.

18 19. During the course of the interview process, ISLAM and representatives of GSR
19 discussed the fact that ISLAM was subject to an agreement restricting her employment with a
20 competitor of ATLANTIS and ISLAM provided GSR with a copy of the Non-Compete
21 Agreement. This conduct is consistent with ISLAM's testimony of her behavior when applying
22 for the position with the ATLANTIS. She testified that she provided a copy of the Harrah's
23 Non-Compete to the ATLANTIS prior to their offering of employment to her.

24 20. The testimony is that GSR then passed the ATLANTIS Non-Compete
25 Agreement to its legal counsel. Legal counsel apparently reviewed that and gave the green
26 light to hire Ms. ISLAM.

27
28

1 21. Ms. ISLAM was concerned that ATLANTIS would initiate litigation against her
2 and sought assurances that GSR would provide legal representation to her should there be
3 litigation over the Non-Compete. GSR agreed.

4 22. ISLAM terminated her employment as an Executive Casino Host with the
5 ATLANTIS on January 19, 2012 and accepted an offer with GSR as an Executive Casino Host
6 on the same day.

7 23. ISLAM began work at GSR at the end of January, 2012.

8 24. The ATLANTIS alleges that soon after ISLAM terminated her employment,
9 ATLANTIS employees discovered that ISLAM had falsely modified, destroyed, falsely
10 changed and/or sabotaged confidential, proprietary, trade secret information of ATLANTIS,
11 including customer data belonging to the ATLANTIS on its online system to her benefit and
12 the benefit of GSR and to the detriment of ATLANTIS.

13 25. The evidence adduced in this matter by Ms. ISLAM herself and other witnesses
14 of the Plaintiff is that Ms. ISLAM did change the addresses, telephone number and/or the email
15 addresses of guests that had been coded to her in the ATLANTIS' casino customer or guest
16 database.

17 26. The evidence shows that shortly after Ms. ISLAM left the employ of the
18 ATLANTIS, the guests who had been assigned to her at the ATLANTIS were distributed
19 amongst the remaining ATLANTIS hosts who attempted to contact those guests to maintain
20 and establish a continued relationship with the ATLANTIS. Shortly thereafter, those hosts
21 reported difficulty, indeed inability to contact the guests. It quickly became apparent that the
22 contact information had been sabotaged. ATLANTIS staff testified that they restored old
23 copies of the Patron Management data to a location in the computer system where the auditors
24 could access the information and the information was restored to the Patron Management
25 Program, the guest marketing database, in a relatively short period of time.

26 27. Additionally, the evidence showed that none of the information was changed in
27 the LMS database, which is the database known as the Lodging Management System that
28 controls the hotel operations.

1 28. ISLAM testified that she did not show either Ms. Hadley or Mr. Flaherty the
2 spiral notebooks which contained the information she had wrongfully taken from the
3 ATLANTIS' database. Nevertheless, after her employment by the GSR began, Ms. ISLAM
4 began to input that information, the information taken from the ATLANTIS and contained on
5 the spiral notebooks, into the GSR database.

6 29. The testimony from the GSR representatives is that the database fields accessed
7 and completed by ISLAM are limited. They restrict the information that a host could input to
8 name, address, telephone number and contact information. There are no fields for a host to
9 themselves input information regarding a player's gaming history, level of play or preference of
10 game.

11 30. Both Ms. Hadley and Mr. Flaherty testified they never saw the spiral notebooks
12 containing the information ISLAM had wrongfully taken from the ATLANTIS' database.

13 31. After the database sabotage was discovered by the ATLANTIS, ATLANTIS'
14 general counsel, Debra Robinson, wrote a letter to GSR advising them that Ms. ISLAM was
15 subject to a Non-Compete, Non-Disclosure Agreement and that she may have confidential
16 information and ATLANTIS demanded the GSR cease and desist from the use of that
17 information and return it forthwith.

18 32. In response to the cease and desist letter from ATLANTIS to the GSR and Ms.
19 ISLAM relating to the ATLANTIS' concerns about ISLAM's employment, the counsel for the
20 GSR sent a letter rejecting the assertions of the ATLANTIS and essentially maintaining that
21 there was nothing confidential or proprietary that had been acquired by GSR and that all
22 information provided by Ms. ISLAM came from her own personal relationships and her book
23 of business.

24 33. The ATLANTIS reasonably initiated litigation.

25 34. On April 27, 2012, ATLANTIS filed its Complaint for relief with seven causes
26 of action.

27 35. On May 9, 2012, this Court, through its sister Department, entered a Temporary
28 Restraining Order barring Ms. ISLAM from any employment with GSR. That Order was

1 extended by Order of this Court dated July 5, 2012 which also applied to GSR. Thereafter, the
2 parties stipulated to a Preliminary Injunction ending this case pending the case's resolution.

3 36. To the extent appropriate and to give intent to this order, any finding of fact
4 should be found to be a conclusion of law. Similarly, to the extent appropriate any conclusion
5 of law shall be deemed a finding of fact.

6 CONCLUSIONS OF LAW

7 Breach of Contract – Online Systems User Agreement, Business Ethics Policy, Trade
8 Secrets Agreement as to ISLAM

9
10 1. The elements for establishing a breach of contract claim are: (1) A valid and
11 existing contract was entered into between Plaintiff and Defendant; (2) Plaintiff performed or
12 was excused from performance of the contract; (3) Defendant breached; and (4) Plaintiff
13 sustained damages as a result of the breach. *Reichert vs. General Insurance Co. of Amer.*, 68
14 Cal. 2d 822, 69 Cal. Rptr. 321, 442 P.2d 377 (1968); *Marwan Ahmed Harara vs. Conoco*
15 *Phillips Co.*, 375 F. Supp. 2d 905, 906 (9th Cir. 2005).

16 2. In order to succeed on a breach of contract claim in Nevada, a plaintiff must
17 show "(1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a
18 result of the breach." *Saini v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 919-920 (D. Nev. 2006),
19 citing *Richardson v. Jones*, 1 Nev. 405, 405 (1865).

20 3. In its first cause of action the Plaintiff alleges the violation of three contracts.
21 These are the Online User Agreement, the Business Ethics Policy, and the Trade Secrets
22 Agreement. These agreements were signed by Defendant ISLAM and a representative of
23 Plaintiff, ATLANTIS. This Court finds that these are valid contracts. The Court further finds
24 that the Defendant ISLAM breached these contracts.

25 4. Based upon the fact that ISLAM downloaded players' names, contact
26 information, level of play, game preferences and other proprietary information from the
27 ATLANTIS Casino's, casino management system, Patron Management Program, the Court
28 finds that she has breached these contracts and that the ATLANTIS has suffered damages as a

1 result of the breach. Consequently, the Court finds in favor of the Plaintiff and against
2 Defendant Sumona ISLAM on the first cause of action.

3 5. The Court finds that damages should be awarded in favor of ATLANTIS and
4 against ISLAM on this claim. These are made up of compensatory damages of \$10,941 plus an
5 additional \$2,119 to repair the database, totaling \$13,060.

6 Breach of Contract—Non-Compete Agreement as to ISLAM

7 6. The Non-compete/Non-solicitation Agreement was signed by ISLAM and a
8 representative of ATLANTIS in 2010. The law presumes that all parties have the freedom to
9 contract and establish the terms of employment between themselves. However, restrictive
10 covenants are not favored in the law. The determination of the validity of such a contract as
11 written is governed by whether or not it imposes upon the employee any greater restraint than
12 is reasonably necessary to protect the business and the goodwill of the employer.

13 7. A restraint of trade is unreasonable if it is greater than that required to protect
14 the person for whose benefit the restraint is imposed or imposes an undue hardship on the
15 person restricted. *Hansen v. Edwards*, 83 Nev. 189, 426 P.2d 792 (1967). *See also, Jones v.*
16 *Deeter*, 112 Nev. 291, 294, 913 P.2d 1272, 1274 (1996).

17 8. The public has an interest in seeing that competition is not unreasonably limited
18 or restricted.

19 9. In the instant matter, this Court finds that the term restricting employment for a
20 period of one year is reasonable and necessary to protect the interests of the ATLANTIS.

21 10. This Court finds that the term restricting employment within 150 miles from
22 ATLANTIS is reasonable. It encompasses the markets of Sacramento and the evidence
23 supports the threat that Thunder Valley and indeed other Northern California casinos pose to
24 the casinos of Northern Nevada.

25 11. The Court finds, however, that the total exclusion from employment with a
26 competitor is unreasonable. This Court finds that excluding the employment of an individual
27 such as Ms. ISLAM, who has attempted to create a career in this industry from any role in any
28 casino in any capacity is an unreasonable restraint on her and it imposes an undue hardship on

1 Ms. ISLAM and it is a restraint that is greater than that required for the protection of the person
2 for whose benefit the restraint is imposed, the ATLANTIS. Therefore, the Court finds the
3 Non-Competition contract unenforceable and dismisses the second cause of action related to
4 breach of that contract.

5 Conversion of Property as to ISLAM

6 12. The elements of conversion are that a defendant exercises an act of dominion
7 wrongfully exerted over the personal property of another in denial of or inconsistent with title
8 rights therein, or in derogation, exclusion or defiance of such rights. *M.C. Multi Family*
9 *Development, L.L.C. v. Crestdale Associates Ltd.*, 124 Nev. 901, 910, 196 P.3d 536 (2008)
10 *citing Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000).

12 13. The caselaw here states that conversion generally is limited to those severe,
13 major and important interferences with the right to control personal property that justified
14 requiring the actor to pay the property's full value. Courts have noted that this remedy in
15 general is harsh and is reserved for the most severe interferences with personal property.

17 14. The Court finds that the evidence adduced shows that the interference with the
18 property of the ATLANTIS was not severe, that the information, although altered, was not lost
19 and was easily restored. One measure of that is the fact that the damages sought for the
20 restoration expense is de minimus in light of the value of not only Ms. ISLAM's book of trade,
21 which she estimated at \$3.5 to \$4 million, but the operation of the ATLANTIS itself.
22 Therefore, this Court finds that the Plaintiff has failed to establish the elements of conversion
23 and the third cause of action is therefore dismissed.

25 Tortious Interference with Contractual Relations and Prospective Economic Advantage as
26 to ISLAM

27 15. To establish intentional interference with contractual relations, ATLANTIS
28 must show: (1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3)
intentional acts intended or designed to disrupt the contractual relationship; (4) actual

1 disruption of the contract; and (5) resulting damage. *Sutherland v. Gross*, 105 Nev. 192, 772
2 P.2d 1287, 1290 (1989).

3 16. The elements of the tort of wrongful interference with a prospective economic
4 advantage are: (1) a prospective contractual relationship between the plaintiff and a third
5 party; (2) the defendant's knowledge of this prospective relationship; (3) the intent to harm the
6 plaintiff by preventing the relationship; (4) the absence of a privilege or justification by the
7 defendant; and, (5) actual harm to the plaintiff as a result of the defendant's conduct. *Leavitt v.*
8 *Leisure Sports, Inc.*, 103 Nev. 81, 88, 734 P.2d 1221, 1225 (1987); *Las Vegas-Tonopah-Reno*
9 *Stage v. Gray Line*, 106 Nev. 283, 792 P.2d 386, 388 (1990).

10 17. Based upon the Nevada Supreme Court's decision in *Frantz v. Johnson*, 116
11 Nev. 455, 999 P.2d 351(2000), this Court is directed to look to the specific evidence adduced at
12 trial to determine whether or not the acts of a defendant are more appropriately adjudicated
13 under the Uniform Trade Secrets Act than under a claim for tortious interference with contract
14 or prospective economic advantage. In an examination of the facts here, this Court has
15 determined that the facts adduced in this trial make it more appropriate that the claim against
16 Sumona ISLAM be adjudicated under the Uniform Trade Secrets Act.

17 **Violation of Uniform Trade Secret Act, NRS 600A.010 et. seq. as to ISLAM and GSR**

18 18. To establish a misappropriation claim under NRS § 600A.010 et. seq., the
19 plaintiff must show: (1) a valuable trade secret; (2) misappropriation¹ of the trade secret
20

21 ¹ "Misappropriation" per NRS 600A.030(2) means:

- 22 (a) Acquisition of the trade secret of another by a person by improper means;
23 (b) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was
24 acquired by improper means; or
25 (c) Disclosure or use of a trade secret of another without express or implied consent by a person who:
26 (1) Used improper means to acquire knowledge of the trade secret;
27 (2) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade
28 secret was:
(I) Derived from or through a person who had used improper means to acquire it;
(II) Acquired under circumstances giving rise to a duty to maintain its secrecy or limits its
use; or
(III) Derived from or through a person who owed a duty to the person seeking relief to
maintain its secrecy or limit its use; or
(3) Before a material change of his or her position, knew or had reason to know that it was a trade secret
and that knowledge of it had been acquired by accident or mistake.

1 through use, disclosure, or nondisclosure of the use of the trade secret; and (3) the requirement
2 that the misappropriation be wrongful because it was made in breach of an express or implied
3 contract or by a party with a duty not to disclose. *Frantz v. Johnson*, 116 Nev. 455, 466, 999
4 P.2d 351, 358 (2000).

5 19. A trade secret is information that derives independent economic value, actual or
6 potential, from not being generally known to and not being readily ascertainable by proper
7 means by the public, as well as information that is subject to efforts that are reasonable under
8 the circumstances to maintain its secrecy. NRS 600A.040.

9 20. The determination of what is a trade secret is a question of fact for the trier of
10 fact. *Frantz*, 116 Nev. at 466, 999 P.2d at 358. The caselaw indicates that contractual
11 restrictions alone or designations alone do not control whether or not a particular design,
12 compilation, or mechanism is a trade secret. To determine whether or not an item is a trade
13 secret, the Court considers these factors. First, the extent to which the information is known
14 outside the business and the ease or difficulty with which the information could be properly
15 acquired by others. Second, whether the information was confidential or secret. Third, the
16 extent and manner in which the employer guarded the secrecy of the information. Fourth, the
17 former employee's knowledge of the customer's buying habits and other customer data and
18 whether this information is known by the employer's competitors.

19 21. There was a consensus amongst all the witnesses that in the case of a customer
20 with whom a host has established a relationship, that customer's name, address, contact
21 information is not a trade secret. All of the witnesses here have identified certain items that
22 they consider trade secrets in the gaming industry and these are well-qualified witnesses who
23 have spent decades in this industry. Those items have been identified as, (1) player tracking
24 records; (2) other hosts' customers; (3) initial buy-ins; (4) level of play; (5) whether the player
25 plays table games or slots; (6) time of play; (7) customers' personal information that is personal
26 to them, such as a Social Security number; (8) customers' casino credit; (9) customer's location,
27 whether they are an international, regional or local player; (10) marketing strategy; (11)
28 customers' birth date, which one witness testified was critical for credit accounts; (12) tier

1 levels, which is different than player ratings, they are more specific in terms of measurement;
2 (13) comp information for the player; (14) players' history of play; (15) players' demographics;
3 (16) players' financial information; (17) the company's financial information; (18) the
4 company's marketing strategy; (19) other employees' information and customer information.
5 The Court does not by this list deem this list to be exclusive. There may be other instances and
6 other items that are properly designated as trade secrets, however, this was the evidence
7 adduced in this trial.

8 22. This Court finds that this information is not known outside of the business of the
9 ATLANTIS. Indeed, the previous 19 items are not easy to learn, in fact, it is difficult to
10 acquire this information properly.

11 23. This Court further finds that there is no question that this information was
12 confidential within the ATLANTIS and that has been demonstrated amply by the extent and
13 manner in which the ATLANTIS took steps to guard the secrecy of this information.
14 Specifically, Mr. Woods testified that there were no printers and that the USB ports on the
15 computers were restricted, that the hosts had no ability to print or download guest lists. He
16 further explained that security access was determined by the job designation. There was
17 testimony that the passwords for this access were changed frequently and therefore it has been
18 established beyond any reasonable doubt that the ATLANTIS considered all of this
19 information a trade secret and this Court does so find.

20 24. This Court finds that the information written down in the spiral notebooks
21 which Ms. ISLAM identified as hers was taken from the ATLANTIS' computer and is not
22 information open to the public.

23 25. This Court finds that Ms. ISLAM has violated not only the terms and conditions
24 of her contract, but also has committed a violation of the Uniform Trade Secrets Act.

25 26. This Court finds that Damages are appropriately awarded against ISLAM for
26 violation of the Uniform Trade Secrets Act and awards damages totaling \$10,814.

27 ///

28 ///

1 Declaratory Relief

2 27. The sixth cause of action filed by the Plaintiff is a request for declaratory relief.
3 The Courts grants and denies this claim as follows.

4 28. This Court finds that the Online System User Agreement is a valid contract.
5 This Court finds that the Business Ethics Policy and Code of Conduct Agreement is a valid
6 contract. This Court finds that the Trade Secrets Agreement is a valid contract. This Court
7 finds that the Non-compete Agreement is overbroad and unenforceable. This Court also finds
8 that those contracts have been breached.

9 29. This Court finds that the Defendant has violated the Uniform Trade Secrets Act
10 and that the Plaintiff has suffered damages.

11 Proof of Damages

12 30. There are two distinct damage models proffered in this case. One is based on
13 theoretical win based upon a customer lifetime value analysis proffered by the Plaintiff. The
14 other is a damage analysis based on actual win - loss proffered by the Defendants in this case.

15 31. This Court has examined all of the exhibits in support of both models. This
16 Court has listened to the testimony of Brandon McNeely, who testified on behalf of the
17 Plaintiff in support of a valuation based upon theoretical wins. This Court finds that the
18 customer lifetime value analysis is a solid one and is supported by scholarly research and
19 empirical data.

20 32. This Court has also considered Mr. Aguero's testimony and reviewed his expert
21 report, which is Exhibit 32. The Court has also reviewed Brandon McNeely's reports and the
22 Exhibits included within Exhibit 59, A, B, C, D and E.

23 33. The Court has also considered the testimony of Mr. Frank DeCarlo when he
24 testified about the mitigation marketing costs, and Lilia Santos, who testified to the loss of
25 guests of the ATLANTIS to the GSR.

26 34. Having considered both models, this Court feels the more appropriate model in
27 this particular case is the actual win-loss model. That model is based upon the data provided by
28

1 both parties, the hard data and an analysis that is well reasoned and supported not only by the
2 evidence, but scholarly review.

3 35. Therefore, the compensatory damages as to Defendant ISLAM, as previously
4 described will be on the first count for breach of contract, \$10,941 plus an additional \$2,119.
5 As to the violation of the Uniform Trade Secret Act, judgment will be in favor of Plaintiff,
6 against Defendant ISLAM in the amount of \$10,814.

7 Punitive Damages

8 36. The Plaintiff has requested punitive damages be awarded in this case and this
9 Court finds that punitive damages are warranted here.

10 37. Ms. ISLAM testified that her actions were malicious, as they were intended to
11 hurt the ATLANTIS. Despite whatever reason she may have felt justified her actions, her
12 actions were unjustified, they were willful, they were malicious, and they were intentional.

13 38. Punitive damages have a two-pronged effect. One is to punish the transgressor
14 and the other is to serve as an example to deter others similarly situated from engaging in the
15 same conduct. Therefore, there are several factors to be taken into consideration, including the
16 willfulness of the conduct, the public interest that is at stake, and not the least of which is the
17 Defendant's financial condition. Ms. ISLAM testified that she makes \$80,000 per year. This
18 Court is assessing significant compensatory damages against her. However, the Court feels
19 that a significant punitive damage is necessary in order to deter others from violating those
20 contracts between the ATLANTIS and its employees. This Court therefore has determined that
21 a punitive damage award of \$20,000, representing one quarter of her annual salary, is an
22 appropriate punishment to Ms. ISLAM.

23 Attorney Fee Award

24 39. The Uniform Trade Secrets Act also provides for the award of Attorney's fees in
25 the case of willful and malicious misappropriation.

26 40. Having found in favor of the Plaintiff as the prevailing party against the
27 Defendant ISLAM, under the circumstances of this case, this Court will award attorney's fees
28

1 and litigation costs. Those fees will be awarded after appropriate affidavit of fees and the
2 memorandum of costs are timely submitted.

3 Injunctive Relief

4 41. This Court further finds that this is an appropriate matter in which to impose a
5 Permanent Injunction, pursuant to NRS 600A.040, prohibiting ISLAM from any further use of
6 the trade secret information at issue until such time as the information becomes ascertainable
7 by proper means by the public or is otherwise no longer a Trade Secret as defined by NRS
8 600A.030(5). In this regard, ISLAM is Ordered to destroy any and all customer lists obtained
9 from or originating from ATLANTIS, including specifically the spiral notebooks, copies of
10 which have been marked at trial as Exhibits 6, 80 and 81. Further, ISLAM is Ordered to purge
11 from any electronic record or physical records, any and all information (including any
12 information not previously produced by her in the litigation which is subsequently located)
13 which has been identified in this decision as a trade secret, originating from the ATLANTIS.

14 CONCLUSION

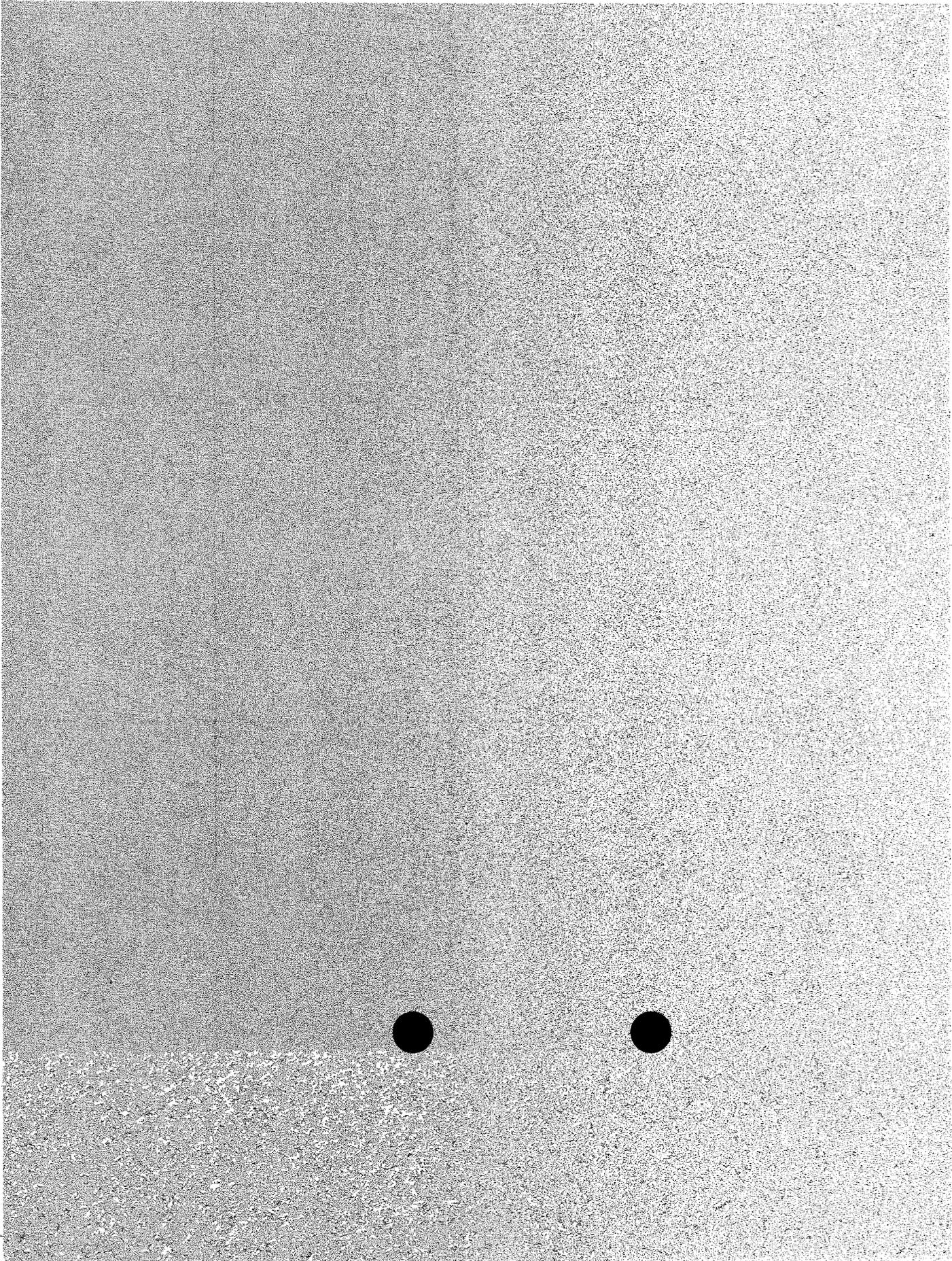
15
16 42. Judgment in favor of ATLANTIS against Defendant ISLAM.

17 DATED AND DONE this 26 day of August, 2013.

18 Patrick Stangan
19 DISTRICT JUDGE

20 Respectfully submitted,
21 LAXALT & NOMURA, LTD
22

23 By: _____
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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

14 Plaintiff,

15 vs.

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

22 Defendants.

21 **NOTICE OF ENTRY OF FINDINGS OF**
22 **FACT AND CONCLUSIONS OF LAW AND JUDGMENT**

23 PLEASE TAKE NOTICE, that a Findings of Fact and Conclusions of Law and Judgment
24 was entered on September 27, 2013. A copy of said Findings of Fact and Conclusions of Law
25 and Judgment is attached hereto as Exhibit 1.

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28 ///

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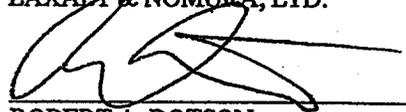
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Affirmation Pursuant to NRS 239B.030

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

Dated this 1 day of October, 2013.

LAXALT & NOMURA, LTD.



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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, where
indicated.

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

14 Reno/Carson Messenger Service.

15 By email to the email addresses below.

16 addressed as follows:

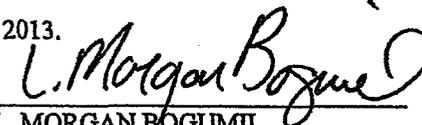
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23 DATED this 1st day of October, 2013.

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25 L. MORGAN BOGUMIL

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INDEX OF EXHIBITS

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EXHIBIT 1

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Transaction # 4034881

EXHIBIT 1

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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; MEI-GSR**
21 **HOLDINGS LLC d/b/a GRAND SIERRA**
22 **RESORT; et.al.**

23 **Defendants.**

Case No.: CV12-01171

Dept. No.: B7

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND
JUDGMENT**

24 This matter came on for a non-jury trial on July 1, 2013 before the Honorable Patrick
25 Flanagan, District Judge, presiding. The Court having heard the testimony of witnesses, reviewed
26 the exhibits submitted into evidence and having heard the argument of Counsel finds in favor of
27 the Defendant MEI-GSR HOLDINGS, LLC, d/b/a GRAND SIERRA RESORT on all causes of
28 action alleged against it and awards Defendant MEI-GSR HOLDINGS LLC d/b/a GRAND
SIERRA RESORT attorneys' fees pursuant to NRS 600A.060 and costs pursuant to NRS 18.110
and further makes the following findings of fact and conclusions of law

FINDINGS OF FACTS:

1. That in 2005 Sumona Islam became a casino host for Harrah's Casino in Reno.
2. That during the course of her employment with Harrah's she developed a list of players with information concerning those players commonly known as her "book of trade"
3. In April 2008 Sumona Islam left Harrah's and became employed by Plaintiff

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1 Golden Road Motor Inn as a host at the Atlantis Casino.

2 4. At the time of her employment at Atlantis, Sumona provided a copy of her "book
3 of trade" to Atlantis which was incorporated into the Atlantis data base. During her employment
4 with Atlantis, she obtained additional players whom she included in her "book of trade".

5 5. In January 2011 Sumona Islam entered into a non-competition agreement with the
6 Atlantis which provided that she could not be employed by any casino in any capacity within 150
7 mile radius for one year from her termination of employment with Atlantis.

8 6. In January 2012 she applied for a position as an executive casino host with GSR,
9 a hotel casino in Reno owned by Defendant MEI-GSR HOLDINGS INC.

10 7. She informed GSR of her non-competition agreement with Atlantis and provided
11 a copy of that document to GSR. GSR sent the document to its counsel for review and received
12 an opinion that the agreement was unenforceable as written.

13 8. At the time of her hiring GSR through its agents told Sumona Islam not to bring
14 any information from Atlantis, except for herself and her relations.

15 9. Although Ms. Islam was in possession of spiral notebooks in which she had
16 copied information from the Atlantis' data base, she did not give or show those notebooks to
17 anyone at GSR.

18 10. Upon her hiring in January 2012, Sumona entered certain information from her
19 "book of trade" into the GSR database. This consisted of approximately 200 guests, that she
20 wished to be assigned to her as a host based on her statement that she had prior relationships with
21 these individuals.

22 11. The GSR database restricted the information which could be inputted by hosts to
23 a player's name, address telephone number and contract information and has no fields in which
24 Sumona could have inputted player ratings, casino credit history, or player history.

25 12. A customer's name, address and contact information are not trade secrets.

26 For purposes of this litigation it was determined that the following would constitute a trade secret

27 a) player tracking records;

28 b) other hosts customers;

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- 1 c) initial buy-ins;
- 2 d) level of play;
- 3 e) table games;
- 4 f) time of play;
- 5 g) customer's personal information such as a Social Security number
- 6 h) customer's casino credit;
- 7 i) customer's location, whether they're international, regional or local player beyond
- 8 any information contained within the customer's address;
- 9 j) marketing strategy;
- 10 k) customer's birth date;
- 11 l) customer's tier ratings;
- 12 m) comp information ;
- 13 n) player's history of play;
- 14 o) player's demographics;
- 15 p) players' financial information;
- 16 q) company's financial information;
- 17 r) company's marketing strategy;
- 18 s) other employee's information and customer information.

19 13. In April 2012 house counsel for Atlantis sent a letter to GSR stating that Sumona
20 had taken proprietary information from the Atlantis computers and changed other customer
21 information in the Atlantis database.

22 14. Counsel for GSR informed plaintiff that Ms. Islam denied taking any proprietary
23 information from Atlantis and requested Atlantis to provide the information which it believed
24 had been misappropriated by Ms. Islam. Plaintiff did not provide any information.

25 15. Atlantis filed suit against Ms. Islam and GSR alleging that GSR had tortuously
26 interfered with Atlantis' non-competition agreement, tortuously interfered with a prospective
27 economic advantage belonging to Atlantis and violation of NRS 600A.010 commonly known as
28 the Nevada Trade Secret Act.

1 16. Plaintiff sought a preliminary injunction which enjoined GSR from using any
2 information provided to it from Sumona Islam. GSR took reasonable steps to insure good faith
3 and timely compliance with the injunction.

4 17. Atlantis knew that among the names it claimed were misappropriated were names
5 which were legally and properly included in Ms. Islam's "book trade" but despite this knowledge
6 brought and obtained an injunction preventing GSR from marketing to these individuals from
7 August 27, 2012 through the trial of this matter in 2013.

8 18. Atlantis presented no credible evidence that GSR had a duty to investigate the
9 names in Ms. Islam's "book of trade" beyond making inquiries of Ms. Islam. To the contrary
10 there was credible testimony that casinos have a right to rely on the host's statements.

11 19. GSR provided a list of all the names and information concerning those individuals
12 added to the GSR data base by Ms. Islam which showed that the information was limited to the
13 individual player's name, address and contact information. None of which constitutes a trade
14 secret under NRS 600A .10.

15 20. Atlantis presented no credible evidence that GSR had tortuously interfered with
16 its non-competition agreement with Islam. Atlantis knew that GSR had hired Ms. Islam based on
17 its attorneys legal opinion that the agreement was overly broad in denying Ms. Islam the right to
18 work in any capacity in any casino. Atlantis further knew or should have known that the non-
19 competition agreement was overly broad and unenforceable and unenforceable as a matter of law
20 but continued to prosecute the claim.

21 21. Atlantis presented no credible evidence that GSR misappropriated any
22 information constituting a trade secret and in fact maintained the litigation and the injunction to
23 include names of persons which it knew and admitted at trial were legally in Ms. Islam's book of
24 business and that she was entitled to provide to GSR.

25 22. Atlantis continued and maintained the litigation against GSR for misappropriation
26 of trade secrets even when it knew that GSR was acting in good faith by relying on Ms. Islam's
27 assertions concerning her "book of trade" and knew that the customer information provided by
28 Ms. Islam was limited to the customers' name, address, telephone number and contact

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1 information.

2 23. GSR did not misappropriate a trade secret belonging to Atlantis;

3 24. GSR did not tortuously interfere with a contract between Sumona Islam and
4 Atlantis.

5 25. GSR did not interfere with a prospective economic advantage belonging to
6 Atlantis.

7 26. There is a lack of any evidence in the record that supports the claim of Atlantis
8 that GSR misappropriated Atlantis' trade secrets and therefore, Atlantis has failed to meet its
9 burden of proof.

10 27. That early on in the litigation Defendant Islam admitted that she had taken certain
11 information from ATLANTIS in the form certain spiral notebooks.

12 28. That early on in the litigation Defendant Islam testified that she had not shown the
13 information in the form of the spiral notebooks to any representative of GRS.

14 29. That early on in the litigation Defendant Islam testified and confirmed that she
15 was told by the representatives of GSR not to bring anything with her except for herself and her
16 relationships.

17 30. That early on in the litigation Defendant Islam testified and confirmed that she
18 had told representatives of GSR that she did not bring trade secret information with her or that
19 she had information belonging to ATLANTIS.

20

21 **CONCLUSIONS OF LAW:**

22 1. The non-competition agreement between Sumona Islam and Atlantis, in
23 prohibiting casino employment in any capacity was overly broad and unenforceable as a matter
24 of law.

25 2. That absent an enforceable employment contract or non-competition agreement
26 with Atlantis, GSR could not as a matter of law, interfere with contractual relations between
27 Sumona and Atlantis.

28 3. A customer's name address, and contact information is not a trade secret under

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1 NRS 600A.010. GSR did not misappropriate any trade secrets which belonged to Atlantis by
2 allowing Sumona Islam to upload this information into its data base.

3 4. GSR did not improperly obtain the information concerning players listed above as
4 set forth in 600A.030 and had a good faith reliance on Ms. Islam's assurances that all the names
5 provided were part of her personal "book of trade"

6 5. The failure of Atlantis to produce any credible evidence at trial that GSR
7 misappropriated trade secrets belonging to Atlantis constitutes ~~"objective speciousness"~~. ~~That~~ ^{that}
8 ~~subjective~~-bad faith is shown by the Plaintiff's knowledge of certain facts as set forth in the
9 findings of facts above; the decision to move forward against GSR and the extent of the litigation
10 against GSR despite a lack of direct evidence against GSR. This is a sufficient basis for an
11 award of attorney fees pursuant to NRS 600.060. Defendants are not required to prove a
12 negative and under the objective specious standard a lack of evidence in the record of
13 misappropriation; in addition to the actions as set forth above; is enough to show that the claim
14 of misappropriation was made in bad faith (*Sasco v. Rosendin Electric Inc.*, 143 Cal. Rptr. 3d
15 828, 207 Cal. App 4th 837 (CA 2012)) and entitles GSR to Attorney's fees and costs in this
16 matter.

17 6. That Atlantis sought, obtained, and maintained a preliminary injunction in this
18 matter that included names which Atlantis knew were not trade secrets under NRS 600A.010 and
19 continued to maintain that injunction even when it knew that those names were art of Sumona
20 Islam's personal book of trade in order to thwart competition for those players from GSR and
21 said conduct is evidence of bad faith entitling GSR to an award of attorney's fees and costs.

22 7. That the claims against GSR are dismissed and judgment entered in favor of the
23 Defendant GSR and GSR is entitled to an award of costs pursuant to NRS 18.110.

24 8. GSR is also entitled to bring an appropriate motion for fees and costs pursuant to
25 an offer of judgment dated May 20, 2013 under NRCF 68 and NRS 17.115.

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CONCLUSION

9. Judgment in favor of Defendant GSR against Plaintiff ATLANTIS.

DATED THIS 27 DAY OF SEPTEMBER 2013

Barck Flanagan
DISTRICT JUDGE

Submitted by:

/s/ H. Stan Johnson

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EXHIBIT 3

EXHIBIT 3

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

10 GOLDEN ROAD MOTOR INN, INC., a Nevada
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Dept No.: B7

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14 vs.

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

18 Defendants.
19

20 **PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER**

21 This matter came on for a non-jury trial on July 1, 2013 before the Court, Honorable
22 Patrick Flanagan, District Judge, presiding. The Court heard evidence for 9 days and the
23 arguments of counsel on the 10th day of trial. The Court, having carefully considered all of the
24 exhibits in evidence, the testimony of the witnesses, trial statements of the parties, and the
25 arguments of counsel, hereby issues the following Findings of Fact and Conclusions of Law:

26 ///

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1 **Findings of Fact**

2 1. On or about April 15, 2008, ISLAM became an employee of the Golden Road
3 Motor Inn, Inc., dba Atlantis Casino Resort Spa ("ATLANTIS").

4 2. On April 15, 2008, ISLAM executed the ATLANTIS Online System User
5 Agreement ("Online System User Agreement"). Among other terms, the Online System User
6 Agreement prohibits unauthorized downloading or uploading of software and information.

7 3. On April 15, 2008, in conjunction with her employment with ATLANTIS,
8 ISLAM also executed an agreement with ATLANTIS concerning its Business Ethics Policy
9 and Code of Conduct Acknowledgement and Conflicts of Interest Statement. This agreement
10 ("Business Ethics Policy"), was again signed by ISLAM on January 23, 2009, February 26,
11 2010 and January 19, 2011. This policy in section 3.1 identifies confidential information as all
12 nonpublic information regarding the company's operation and business activities and those of
13 its customers and suppliers. Nonpublic means any information that is not officially disclosed
14 through means such a press releases or other forms of publication, where it is not common
15 knowledge. Section 4.4 prohibits the disclosure of inside information to persons outside the
16 company or other persons within the company who are not authorized to receive such
17 information. Pursuant to the terms of the Business Ethics Policy, ISLAM agreed not to disclose
18 confidential information including customer lists or customer information (such as player
19 tracking or club information) to any unauthorized persons, either during or after her
20 termination, and not to take any documents or records belonging to ATLANTIS after her
21 departure. She also agreed not to profit from confidential information of ATLANTIS.
22 ISLAM's agreement to the terms of this contract was a condition of her employment with
23 ATLANTIS.

24 4. On April 15, 2008, in conjunction with commencing her employment with
25 ATLANTIS, ISLAM executed the ATLANTIS Company Policy regarding Company Property,
26 Proprietary Information, and Trade Secrets (hereinafter referred to as "Trade Secret
27 Agreement"). This agreement, including any updates, was again signed by ISLAM on January
28 23, 2009, February 26, 2010 and January 19, 2011. This agreement provides that any improper

1 use or dissemination of ATLANTIS intellectual property is a breach of the policy and may be a
2 violation of state and federal trade secrets laws and also warns that such violation is punishable
3 both civilly and criminally.

4 5. ISLAM was hired to be an Executive Casino Host at ATLANTIS. When she
5 was hired, she was under a contractual obligation to her former employer, Harrah's, which
6 prohibited her from working in a same or similar position within six months after separation
7 from employment at Harrah's. In order to honor this obligation, ATLANTIS placed her in the
8 position of concierge manager. She worked in the hotel side of the operation of the
9 ATLANTIS and not in the gaming side of the operation until the expiration of the six month
10 restriction imposed by her agreement with Harrah's. Thereafter, she was transferred to the
11 gaming operation and began her employment as a host.

12 6. When ISLAM began to work as a host at ATLANTIS, she brought with her
13 what she claimed to be her personal book of trade. ISLAM has identified Exhibits 75 and 80
14 as her book of trade.

15 7. Steve Ringkob, indeed almost every witness, testified that there were certain
16 items that hosts were entitled to take with them from property to property and that a host's
17 book of trade is the host's property and "nothing is wrong with her taking this information
18 wherever she goes." However, he also testified that the player's gaming history and tracking at
19 the ATLANTIS would become proprietary information.

20 8. Although the term "casino host book of trade" has been defined variously, it has
21 generally been defined as those names and contact information of guests with whom the host
22 has developed relationships through their own efforts. Ringkob defined it as those guests with
23 whom the host has developed a relationship and it was not information coming from the casino.

24 9. The evidence is clear that ISLAM intentionally downloaded, by hand copying
25 from the ATLANTIS computer screen, players' names, contact information, level of play,
26 game preferences and other proprietary information from the ATLANTIS Casino's, casino
27 management system, Patron Management Program.

28

1 10. On February 26, 2010, ISLAM signed a Non-Compete/Non-Solicitation
2 Agreement with ATLANTIS ("Non-Compete Agreement"). Pursuant to the terms of the Non-
3 Compete Agreement, ISLAM agreed that she would not, without the prior written consent of
4 ATLANTIS, be employed by, in any way affiliated with, or provide services to any gaming
5 operation located within 150 miles of ATLANTIS for a cooling off period of one year after the
6 date that the employment relationship between she and the ATLANTIS ended.

7 11. During ISLAM'S employment at ATLANTIS, she had access to and worked
8 with highly sensitive trade secrets and proprietary and confidential information of the
9 ATLANTIS. This information included customer and guest lists, customer information and
10 data including player contact information, tracking and club information, guest preferences and
11 gaming tendencies of the guests. This information included not just the information for guests
12 assigned to her, but also information for guests assigned to other hosts.

13 12. Before and during ISLAM'S employment, ATLANTIS undertook significant
14 precautions to maintain the secrecy of its confidential information. These efforts included
15 disabling USB ports in the computers at ATLANTIS, not providing or allowing printers, and
16 monitoring all emails that are sent to recipients off property.

17 13. Despite the precautions taken to protect ATLANTIS' confidential trade secret
18 information, during her employment at ATLANTIS ISLAM copied guest information by hand
19 from the screen of the ATLANTIS computer onto spiral note pads. Ms. ISLAM, in her
20 handwritten notes in spiral notebooks, which she identified as hers, copied players' names,
21 contact information and also the designation of whether or not they played table games or slots.
22 The information copied had the notation of the guests' marker information, for purposes of
23 knowing what their credit limit was. Some notations included information regarding previous
24 gaming results and losses incurred by that player. This is information Ms. ISLAM testified that
25 she wrote down from the ATLANTIS computer. A copy of some of those spirals is found in
26 Exhibit 80.

27 14. Ms. ISLAM testified that in the fall of 2011, she was becoming dissatisfied with
28 her employment at the ATLANTIS. She testified that she had not been given a raise, that she

1 had only been given one bonus and not the quarterly bonuses that she states were promised to
2 her, she felt isolated in her interpersonal relationships with other employees at the ATLANTIS
3 and she had come to a point in her career where she believed that if she was ever going to make
4 more money, she would have to seek employment elsewhere.

5 15. The evidence is that on or around October, Ms. ISLAM learned from Ms.
6 Antonetti that the Grand Sierra Resort ("GSR") was hiring new employees. Through an online
7 application, ISLAM applied for and interviewed with the GSR to obtain a position as a host.

8 16. At about that time, Ms. ISLAM asked Mr. DeCarlo for a copy of her Non-
9 Compete Agreement with the ATLANTIS.

10 17. Sometime in December and January, two interviews took place. The first was
11 with Ms. Hadley, at the GSR. Ms. Hadley testified that she was impressed with Ms. ISLAM.
12 She testified she did not ask for ISLAM's book of business at that time.

13 18. A second interview was arranged between ISLAM and Hadley and Flaherty of
14 the GSR. At that time, a more in-depth discussion took place relative to Ms. ISLAM's book of
15 business. Mr. Flaherty testified and it's confirmed by the transcript of a subsequent interview
16 that he told Ms. ISLAM not to bring anything from the ATLANTIS to the GSR, to bring
17 nothing, but herself and her relationships.

18 19. During the course of the interview process, ISLAM and representatives of GSR
19 discussed the fact that ISLAM was subject to an agreement restricting her employment with a
20 competitor of ATLANTIS and ISLAM provided GSR with a copy of the Non-Compete
21 Agreement. This conduct is consistent with ISLAM's testimony of her behavior when applying
22 for the position with the ATLANTIS. She testified that she provided a copy of the Harrah's
23 Non-Compete to the ATLANTIS prior to their offering of employment to her.

24 20. The testimony is that GSR then passed the ATLANTIS Non-Compete
25 Agreement to its legal counsel. Legal counsel apparently reviewed that and gave the green
26 light to hire Ms. ISLAM.

27

28

1 21. Ms. ISLAM was concerned that ATLANTIS would initiate litigation against her
2 and sought assurances that GSR would provide legal representation to her should there be
3 litigation over the Non-Compete. GSR agreed.

4 22. ISLAM terminated her employment as an Executive Casino Host with the
5 ATLANTIS on January 19, 2012 and accepted an offer with GSR as an Executive Casino Host
6 on the same day.

7 23. ISLAM began work at GSR at the end of January, 2012.

8 24. The ATLANTIS alleges that soon after ISLAM terminated her employment,
9 ATLANTIS employees discovered that ISLAM had falsely modified, destroyed, falsely
10 changed and/or sabotaged confidential, proprietary, trade secret information of ATLANTIS,
11 including customer data belonging to the ATLANTIS on its online system to her benefit and
12 the benefit of GSR and to the detriment of ATLANTIS.

13 25. The evidence adduced in this matter by Ms. ISLAM herself and other witnesses
14 of the Plaintiff is that Ms. ISLAM did change the addresses, telephone number and/or the email
15 addresses of guests that had been coded to her in the ATLANTIS' casino customer or guest
16 database.

17 26. The evidence shows that shortly after Ms. ISLAM left the employ of the
18 ATLANTIS, the guests who had been assigned to her at the ATLANTIS were distributed
19 amongst the remaining ATLANTIS hosts who attempted to contact those guests to maintain
20 and establish a continued relationship with the ATLANTIS. Shortly thereafter, those hosts
21 reported difficulty, indeed inability to contact the guests. It quickly became apparent that the
22 contact information had been sabotaged. ATLANTIS staff testified that they restored old
23 copies of the Patron Management data to a location in the computer system where the auditors
24 could access the information and the information was restored to the Patron Management
25 Program, the guest marketing database, in a relatively short period of time.

26 27. Additionally, the evidence showed that none of the information was changed in
27 the LMS database, which is the database known as the Lodging Management System that
28 controls the hotel operations.

1 28. ISLAM testified that she did not show either Ms. Hadley or Mr. Flaherty the
2 spiral notebooks which contained the information she had wrongfully taken from the
3 ATLANTIS' database. Nevertheless, after her employment by the GSR began, Ms. ISLAM
4 began to input that information, the information taken from the ATLANTIS and contained on
5 the spiral notebooks, into the GSR database.

6 29. The testimony from the GSR representatives is that the database fields accessed
7 and completed by ISLAM are limited. They restrict the information that a host could input to
8 name, address, telephone number and contact information. There are no fields for a host to
9 themselves input information regarding a player's gaming history, level of play or preference of
10 game.

11 30. Both Ms. Hadley and Mr. Flaherty testified they never saw the spiral notebooks
12 containing the information ISLAM had wrongfully taken from the ATLANTIS' database.

13 31. After the database sabotage was discovered by the ATLANTIS, ATLANTIS'
14 general counsel, Debra Robinson, wrote a letter to GSR advising them that Ms. ISLAM was
15 subject to a Non-Compete, Non-Disclosure Agreement and that she may have confidential
16 information and ATLANTIS demanded the GSR cease and desist from the use of that
17 information and return it forthwith.

18 32. In response to the cease and desist letter from ATLANTIS to the GSR and Ms.
19 ISLAM relating to the ATLANTIS' concerns about ISLAM's employment, the counsel for the
20 GSR sent a letter rejecting the assertions of the ATLANTIS and essentially maintaining that
21 there was nothing confidential or proprietary that had been acquired by GSR and that all
22 information provided by Ms. ISLAM came from her own personal relationships and her book
23 of business.

24 33. The ATLANTIS reasonably initiated litigation.

25 34. On April 27, 2012, ATLANTIS filed its Complaint for relief with seven causes
26 of action.

27 35. On May 9, 2012, this Court, through its sister Department, entered a Temporary
28 Restraining Order barring Ms. ISLAM from any employment with GSR. That Order was

1 extended by Order of this Court dated July 5, 2012 which also applied to GSR. Thereafter, the
2 parties stipulated to a Preliminary Injunction ending this case pending the case's resolution.

3 36. To the extent appropriate and to give intent to this order, any finding of fact
4 should be found to be a conclusion of law. Similarly, to the extent appropriate any conclusion
5 of law shall be deemed a finding of fact.

6 **CONCLUSIONS OF LAW**

7 **Breach of Contract – Online Systems User Agreement, Business Ethics Policy, Trade**
8 **Secrets Agreement as to ISLAM**

9 1. The elements for establishing a breach of contract claim are: (1) A valid and
10 existing contract was entered into between Plaintiff and Defendant; (2) Plaintiff performed or
11 was excused from performance of the contract; (3) Defendant breached; and (4) Plaintiff
12 sustained damages as a result of the breach. *Reichert vs. General Insurance Co. of Amer.*, 68
13 Cal. 2d 822, 69 Cal. Rptr. 321, 442 P.2d 377 (1968); *Marwan Ahmed Harara vs. Conoco*
14 *Phillips Co.*, 375 F. Supp. 2d 905, 906 (9th Cir. 2005).

15 2. In order to succeed on a breach of contract claim in Nevada, a plaintiff must
16 show "(1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a
17 result of the breach." *Saini v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 919-920 (D. Nev. 2006),
18 citing *Richardson v. Jones*, 1 Nev. 405, 405 (1865).

19 3. In its first cause of action the Plaintiff alleges the violation of three contracts.
20 These are the Online User Agreement, the Business Ethics Policy, and the Trade Secrets
21 Agreement. These agreements were signed by Defendant ISLAM and a representative of
22 Plaintiff, ATLANTIS. This Court finds that these are valid contracts. The Court further finds
23 that the Defendant ISLAM breached these contracts.

24 4. Based upon the fact that ISLAM downloaded players' names, contact
25 information, level of play, game preferences and other proprietary information from the
26 ATLANTIS Casino's, casino management system, Patron Management Program, the Court
27 finds that she has breached these contracts and that the ATLANTIS has suffered damages as a
28

1 result of the breach. Consequently, the Court finds in favor of the Plaintiff and against
2 Defendant Sumona ISLAM on the first cause of action.

3 5. The Court finds that damages should be awarded in favor of ATLANTIS and
4 against ISLAM on this claim. These are made up of compensatory damages of \$10,941 plus an
5 additional \$2,119 to repair the database, totaling \$13,060.

6 **Breach of Contract—Non-Compete Agreement as to ISLAM**

7 6. The Non-compete/Non-solicitation Agreement was signed by ISLAM and a
8 representative of ATLANTIS in 2010. The law presumes that all parties have the freedom to
9 contract and establish the terms of employment between themselves. However, restrictive
10 covenants are not favored in the law. The determination of the validity of such a contract as
11 written is governed by whether or not it imposes upon the employee any greater restraint than
12 is reasonably necessary to protect the business and the goodwill of the employer.

13 7. A restraint of trade is unreasonable if it is greater than that required to protect
14 the person for whose benefit the restraint is imposed or imposes an undue hardship on the
15 person restricted. *Hansen v. Edwards*, 83 Nev. 189, 426 P.2d 792 (1967). *See also, Jones v.*
16 *Deeter*, 112 Nev. 291, 294, 913 P.2d 1272, 1274 (1996).

17 8. The public has an interest in seeing that competition is not unreasonably limited
18 or restricted.

19 9. In the instant matter, this Court finds that the term restricting employment for a
20 period of one year is reasonable and necessary to protect the interests of the ATLANTIS.

21 10. This Court finds that the term restricting employment within 150 miles from
22 ATLANTIS is reasonable. It encompasses the markets of Sacramento and the evidence
23 supports the threat that Thunder Valley and indeed other Northern California casinos pose to
24 the casinos of Northern Nevada.

25 11. The Court finds, however, that the total exclusion from employment with a
26 competitor is unreasonable. This Court finds that excluding the employment of an individual
27 such as Ms. ISLAM, who has attempted to create a career in this industry from any role in any
28 casino in any capacity is an unreasonable restraint on her and it imposes an undue hardship on

1 Ms. ISLAM and it is a restraint that is greater than that required for the protection of the person
2 for whose benefit the restraint is imposed, the ATLANTIS. Therefore, the Court finds the
3 Non-Competition contract unenforceable and dismisses the second cause of action related to
4 breach of that contract.

5 **Conversion of Property as to ISLAM**

6 12. The elements of conversion are that a defendant exercises an act of dominion
7 wrongfully exerted over the personal property of another in denial of or inconsistent with title
8 rights therein, or in derogation, exclusion or defiance of such rights. *M.C. Multi Family*
9 *Development, L.L.C. v. Crestdale Associates Ltd.*, 124 Nev. 901, 910, 196 P.3d 536 (2008)
10 *citing Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000).

11 13. The caselaw here states that conversion generally is limited to those severe,
12 major and important interferences with the right to control personal property that justified
13 requiring the actor to pay the property's full value. Courts have noted that this remedy in
14 general is harsh and is reserved for the most severe interferences with personal property.
15

16 14. The Court finds that the evidence adduced shows that the interference with the
17 property of the ATLANTIS was not severe, that the information, although altered, was not lost
18 and was easily restored. One measure of that is the fact that the damages sought for the
19 restoration expense is de minimus in light of the value of not only Ms. ISLAM's book of trade,
20 which she estimated at \$3.5 to \$4 million, but the operation of the ATLANTIS itself.
21 Therefore, this Court finds that the Plaintiff has failed to establish the elements of conversion
22 and the third cause of action is therefore dismissed.
23
24

25 **Tortious Interference with Contractual Relations and Prospective Economic Advantage as**
26 **to ISLAM**

27 15. To establish intentional interference with contractual relations, ATLANTIS
28 must show: (1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3)
intentional acts intended or designed to disrupt the contractual relationship; (4) actual

1 disruption of the contract; and (5) resulting damage. *Sutherland v. Gross*, 105 Nev. 192, 772
2 P.2d 1287, 1290 (1989).

3 16. The elements of the tort of wrongful interference with a prospective economic
4 advantage are: (1) a prospective contractual relationship between the plaintiff and a third
5 party; (2) the defendant's knowledge of this prospective relationship; (3) the intent to harm the
6 plaintiff by preventing the relationship; (4) the absence of a privilege or justification by the
7 defendant; and, (5) actual harm to the plaintiff as a result of the defendant's conduct. *Leavitt v.*
8 *Leisure Sports, Inc.*, 103 Nev. 81, 88, 734 P.2d 1221, 1225 (1987); *Las Vegas-Tonopah-Reno*
9 *Stage v. Gray Line*, 106 Nev. 283, 792 P.2d 386, 388 (1990).

10 17. Based upon the Nevada Supreme Court's decision in *Frantz v. Johnson*, 116
11 Nev. 455, 999 P.2d 351(2000), this Court is directed to look to the specific evidence adduced at
12 trial to determine whether or not the acts of a defendant are more appropriately adjudicated
13 under the Uniform Trade Secrets Act than under a claim for tortious interference with contract
14 or prospective economic advantage. In an examination of the facts here, this Court has
15 determined that the facts adduced in this trial make it more appropriate that the claim against
16 Sumona ISLAM be adjudicated under the Uniform Trade Secrets Act.

17 **Violation of Uniform Trade Secret Act, NRS 600A.010 et. seq. as to ISLAM and GSR**

18 18. To establish a misappropriation claim under NRS § 600A.010 et. seq., the
19 plaintiff must show: (1) a valuable trade secret; (2) misappropriation¹ of the trade secret

20
21 ¹ "Misappropriation" per NRS 600A.030(2) means:

- 22 (a) Acquisition of the trade secret of another by a person by improper means;
23 (b) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was
24 acquired by improper means; or
25 (c) Disclosure or use of a trade secret of another without express or implied consent by a person who:
26 (1) Used improper means to acquire knowledge of the trade secret;
27 (2) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade
28 secret was:
(I) Derived from or through a person who had used improper means to acquire it;
(II) Acquired under circumstances giving rise to a duty to maintain its secrecy or limits its
use; or
(III) Derived from or through a person who owed a duty to the person seeking relief to
maintain its secrecy or limit its use; or
(3) Before a material change of his or her position, knew or had reason to know that it was a trade secret
and that knowledge of it had been acquired by accident or mistake.

1 through use, disclosure, or nondisclosure of the use of the trade secret; and (3) the requirement
2 that the misappropriation be wrongful because it was made in breach of an express or implied
3 contract or by a party with a duty not to disclose. *Frantz v. Johnson*, 116 Nev. 455, 466, 999
4 P.2d 351, 358 (2000).

5 19. A trade secret is information that derives independent economic value, actual or
6 potential, from not being generally known to and not being readily ascertainable by proper
7 means by the public, as well as information that is subject to efforts that are reasonable under
8 the circumstances to maintain its secrecy. NRS 600A.040.

9 20. The determination of what is a trade secret is a question of fact for the trier of
10 fact. *Frantz*, 116 Nev. at 466, 999 P.2d at 358. The caselaw indicates that contractual
11 restrictions alone or designations alone do not control whether or not a particular design,
12 compilation, or mechanism is a trade secret. To determine whether or not an item is a trade
13 secret, the Court considers these factors. First, the extent to which the information is known
14 outside the business and the ease or difficulty with which the information could be properly
15 acquired by others. Second, whether the information was confidential or secret. Third, the
16 extent and manner in which the employer guarded the secrecy of the information. Fourth, the
17 former employee's knowledge of the customer's buying habits and other customer data and
18 whether this information is known by the employer's competitors.

19 21. There was a consensus amongst all the witnesses that in the case of a customer
20 with whom a host has established a relationship, that customer's name, address, contact
21 information is not a trade secret. All of the witnesses here have identified certain items that
22 they consider trade secrets in the gaming industry and these are well-qualified witnesses who
23 have spent decades in this industry. Those items have been identified as, (1) player tracking
24 records; (2) other hosts' customers; (3) initial buy-ins; (4) level of play; (5) whether the player
25 plays table games or slots; (6) time of play; (7) customers' personal information that is personal
26 to them, such as a Social Security number; (8) customers' casino credit; (9) customer's location,
27 whether they are an international, regional or local player; (10) marketing strategy; (11)
28 customers' birth date, which one witness testified was critical for credit accounts; (12) tier

1 levels, which is different than player ratings, they are more specific in terms of measurement;
2 (13) comp information for the player; (14) players' history of play; (15) players' demographics;
3 (16) players' financial information; (17) the company's financial information; (18) the
4 company's marketing strategy; (19) other employees' information and customer information.
5 The Court does not by this list deem this list to be exclusive. There may be other instances and
6 other items that are properly designated as trade secrets, however, this was the evidence
7 adduced in this trial.

8 22. This Court finds that this information is not known outside of the business of the
9 ATLANTIS. Indeed, the previous 19 items are not easy to learn, in fact, it is difficult to
10 acquire this information properly.

11 23. This Court further finds that there is no question that this information was
12 confidential within the ATLANTIS and that has been demonstrated amply by the extent and
13 manner in which the ATLANTIS took steps to guard the secrecy of this information.
14 Specifically, Mr. Woods testified that there were no printers and that the USB ports on the
15 computers were restricted, that the hosts had no ability to print or download guest lists. He
16 further explained that security access was determined by the job designation. There was
17 testimony that the passwords for this access were changed frequently and therefore it has been
18 established beyond any reasonable doubt that the ATLANTIS considered all of this
19 information a trade secret and this Court does so find.

20 24. This Court finds that the information written down in the spiral notebooks
21 which Ms. ISLAM identified as hers was taken from the ATLANTIS' computer and is not
22 information open to the public.

23 25. This Court finds that Ms. ISLAM has violated not only the terms and conditions
24 of her contract, but also has committed a violation of the Uniform Trade Secrets Act.

25 26. This Court finds that Damages are appropriately awarded against ISLAM for
26 violation of the Uniform Trade Secrets Act and awards damages totaling \$10,814.

27 ///

28 ///

1 **Declaratory Relief**

2 27. The sixth cause of action filed by the Plaintiff is a request for declaratory relief.
3 The Courts grants and denies this claim as follows.

4 28. This Court finds that the Online System User Agreement is a valid contract.
5 This Court finds that the Business Ethics Policy and Code of Conduct Agreement is a valid
6 contract. This Court finds that the Trade Secrets Agreement is a valid contract. This Court
7 finds that the Non-compete Agreement is overbroad and unenforceable. This Court also finds
8 that those contracts have been breached.

9 29. This Court finds that the Defendant has violated the Uniform Trade Secrets Act
10 and that the Plaintiff has suffered damages.

11 **Proof of Damages**

12 30. There are two distinct damage models proffered in this case. One is based on
13 theoretical win based upon a customer lifetime value analysis proffered by the Plaintiff. The
14 other is a damage analysis based on actual win - loss proffered by the Defendants in this case.

15 31. This Court has examined all of the exhibits in support of both models. This
16 Court has listened to the testimony of Brandon McNeely, who testified on behalf of the
17 Plaintiff in support of a valuation based upon theoretical wins. This Court finds that the
18 customer lifetime value analysis is a solid one and is supported by scholarly research and
19 empirical data.

20 32. This Court has also considered Mr. Agüero's testimony and reviewed his expert
21 report, which is Exhibit 32. The Court has also reviewed Brandon McNeely's reports and the
22 Exhibits included within Exhibit 59, A, B, C, D and E.

23 33. The Court has also considered the testimony of Mr. Frank DeCarlo when he
24 testified about the mitigation marketing costs, and Lilia Santos, who testified to the loss of
25 guests of the ATLANTIS to the GSR.

26 34. Having considered both models, this Court feels the more appropriate model in
27 this particular case is the actual win-loss model. That model is based upon the data provided by
28

1 both parties, the hard data and an analysis that is well reasoned and supported not only by the
2 evidence, but scholarly review.

3 35. Therefore, the compensatory damages as to Defendant ISLAM, as previously
4 described will be on the first count for breach of contract, \$10,941 plus an additional \$2,119.
5 As to the violation of the Uniform Trade Secret Act, judgment will be in favor of Plaintiff,
6 against Defendant ISLAM in the amount of \$10,814.

7 **Punitive Damages**

8 36. The Plaintiff has requested punitive damages be awarded in this case and this
9 Court finds that punitive damages are warranted here.

10 37. Ms. ISLAM testified that her actions were malicious, as they were intended to
11 hurt the ATLANTIS. Despite whatever reason she may have felt justified her actions, her
12 actions were unjustified, they were willful, they were malicious, and they were intentional.

13 38. Punitive damages have a two-pronged effect. One is to punish the transgressor
14 and the other is to serve as an example to deter others similarly situated from engaging in the
15 same conduct. Therefore, there are several factors to be taken into consideration, including the
16 willfulness of the conduct, the public interest that is at stake, and not the least of which is the
17 Defendant's financial condition. Ms. ISLAM testified that she makes \$80,000 per year. This
18 Court is assessing significant compensatory damages against her. However, the Court feels
19 that a significant punitive damage is necessary in order to deter others from violating those
20 contracts between the ATLANTIS and its employees. This Court therefore has determined that
21 a punitive damage award of \$20,000, representing one quarter of her annual salary, is an
22 appropriate punishment to Ms. ISLAM.

23 **Attorney Fee Award**

24 39. The Uniform Trade Secrets Act also provides for the award of Attorney's fees in
25 the case of willful and malicious misappropriation.

26 40. Having found in favor of the Plaintiff as the prevailing party against the
27 Defendant ISLAM, under the circumstances of this case, this Court will award attorney's fees
28

1 and litigation costs. Those fees will be awarded after appropriate affidavit of fees and the
2 memorandum of costs are timely submitted.

3 **Injunctive Relief**

4 41. This Court further finds that this is an appropriate matter in which to impose a
5 Permanent Injunction, pursuant to NRS 600A.040, prohibiting ISLAM from any further use of
6 the trade secret information at issue until such time as the information becomes ascertainable
7 by proper means by the public or is otherwise no longer a Trade Secret as defined by NRS
8 600A.030(5). In this regard, ISLAM is Ordered to destroy any and all customer lists obtained
9 from or originating from ATLANTIS, including specifically the spiral notebooks, copies of
10 which have been marked at trial as Exhibits 6, 80 and 81. Further, ISLAM is Ordered to purge
11 from any electronic record or physical records, any and all information (including any
12 information not previously produced by her in the litigation which is subsequently located)
13 which has been identified in this decision as a trade secret, originating from the ATLANTIS.

14 **CONCLUSION**

15
16 42. Judgment in favor of ATLANTIS against Defendant ISLAM.

17 DATED AND DONE this 26 day of AUGUST, 2013.

18 
19 DISTRICT JUDGE

20 Respectfully submitted,

21 LAXALT & NOMURA, LTD

22
23 By:

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EXHIBIT 4

FILED
Electronically
11-04-2013:04:45:19 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4112405

EXHIBIT 4

FILED

Electronically

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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,**

Case No.: CV12-01171

Dept. No.: B7

18 **Plaintiff,**

19 vs.

20 **SUMONA ISLAM, an individual; MEI-GSR**
21 **HOLDINGS LLC d/b/a GRAND SIERRA**
22 **RESORT; et.al.**

FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND
JUDGMENT

23 **Defendants.**

24 This matter came on for a non-jury trial on July 1, 2013 before the Honorable Patrick
25 Flanagan, District Judge, presiding. The Court having heard the testimony of witnesses, reviewed
26 the exhibits submitted into evidence and having heard the argument of Counsel finds in favor of
27 the Defendant MEI-GSR HOLDINGS, LLC, d/b/a GRAND SIERRA RESORT on all causes of
28 action alleged against it and awards Defendant MEI-GSR HOLDINGS LLC d/b/a GRAND
SIERRA RESORT attorneys' fees pursuant to NRS 600A.060 and costs pursuant to NRS 18.110
and further makes the following findings of fact and conclusions of law

FINDINGS OF FACTS:

1. That in 2005 Sumona Islam became a casino host for Harrah's Casino in Reno.
2. That during the course of her employment with Harrah's she developed a list of players with information concerning those players commonly known as her "book of trade"
3. In April 2008 Sumona Islam left Harrah's and became employed by Plaintiff

COHEN-JOHNSON, LLC

255 E. Warm Springs Road, Suite 100

Las Vegas, Nevada 89119

(702) 823-3500 FAX: (702) 823-3400

1 Golden Road Motor Inn as a host at the Atlantis Casino.

2 4. At the time of her employment at Atlantis, Sumona provided a copy of her "book
3 of trade" to Atlantis which was incorporated into the Atlantis data base. During her employment
4 with Atlantis, she obtained additional players whom she included in her "book of trade".

5 5. In January 2011 Sumona Islam entered into a non-competition agreement with the
6 Atlantis which provided that she could not be employed by any casino in any capacity within 150
7 mile radius for one year from her termination of employment with Atlantis.

8 6. In January 2012 she applied for a position as an executive casino host with GSR,
9 a hotel casino in Reno owned by Defendant MEI-GSR HOLDINGS INC.

10 7. She informed GSR of her non-competition agreement with Atlantis and provided
11 a copy of that document to GSR. GSR sent the document to its counsel for review and received
12 an opinion that the agreement was unenforceable as written.

13 8. At the time of her hiring GSR through its agents told Sumona Islam not to bring
14 any information from Atlantis, except for herself and her relations.

15 9. Although Ms. Islam was in possession of spiral notebooks in which she had
16 copied information from the Atlantis' data base, she did not give or show those notebooks to
17 anyone at GSR.

18 10. Upon her hiring in January 2012, Sumona entered certain information from her
19 "book of trade" into the GSR database. This consisted of approximately 200 guests, that she
20 wished to be assigned to her as a host based on her statement that she had prior relationships with
21 these individuals.

22 11. The GSR database restricted the information which could be inputted by hosts to
23 a player's name, address telephone number and contract information and has no fields in which
24 Sumona could have inputted player ratings, casino credit history, or player history.

25 12. A customer's name, address and contact information are not trade secrets.
26 For purposes of this litigation it was determined that the following would constitute a trade secret

- 27 a) player tracking records;
28 b) other hosts customers;

- 1 c) initial buy-ins;
- 2 d) level of play;
- 3 e) table games;
- 4 f) time of play;
- 5 g) customer's personal information such as a Social Security number
- 6 h) customer's casino credit;
- 7 i) customer's location, whether they're international, regional or local player beyond
- 8 any information contained within the customer's address;
- 9 j) marketing strategy;
- 10 k) customer's birth date;
- 11 l) customer's tier ratings;
- 12 m) comp information ;
- 13 n) player's history of play;
- 14 o) player's demographics;
- 15 p) players' financial information;
- 16 q) company's financial information;
- 17 r) company's marketing strategy;
- 18 s) other employee's information and customer information.

19 13. In April 2012 house counsel for Atlantis sent a letter to GSR stating that Sumona
20 had taken proprietary information from the Atlantis computers and changed other customer
21 information in the Atlantis database.

22 14. Counsel for GSR informed plaintiff that Ms. Islam denied taking any proprietary
23 information from Atlantis and requested Atlantis to provide the information which it believed
24 had been misappropriated by Ms. Islam. Plaintiff did not provide any information.

25 15. Atlantis filed suit against Ms. Islam and GSR alleging that GSR had tortuously
26 interfered with Atlantis' non-competition agreement, tortuously interfered with a prospective
27 economic advantage belonging to Atlantis and violation of NRS 600A.010 commonly known as
28 the Nevada Trade Secret Act.

1 16. Plaintiff sought a preliminary injunction which enjoined GSR from using any
2 information provided to it from Sumona Islam. GSR took reasonable steps to insure good faith
3 and timely compliance with the injunction.

4 17. Atlantis knew that among the names it claimed were misappropriated were names
5 which were legally and properly included in Ms. Islam's "book trade" but despite this knowledge
6 brought and obtained an injunction preventing GSR from marketing to these individuals from
7 August 27, 2012 through the trial of this matter in 2013.

8 18. Atlantis presented no credible evidence that GSR had a duty to investigate the
9 names in Ms. Islam's "book of trade" beyond making inquiries of Ms. Islam. To the contrary
10 there was credible testimony that casinos have a right to rely on the host's statements.

11 19. GSR provided a list of all the names and information concerning those individuals
12 added to the GSR data base by Ms. Islam which showed that the information was limited to the
13 individual player's name, address and contact information. None of which constitutes a trade
14 secret under NRS 600A .10.

15 20. Atlantis presented no credible evidence that GSR had tortuously interfered with
16 its non-competition agreement with Islam. Atlantis knew that GSR had hired Ms. Islam based on
17 its attorneys legal opinion that the agreement was overly broad in denying Ms. Islam the right to
18 work in any capacity in any casino. Atlantis further knew or should have known that the non-
19 competition agreement was overly broad and unenforceable and unenforceable as a matter of law
20 but continued to prosecute the claim.

21 21. Atlantis presented no credible evidence that GSR misappropriated any
22 information constituting a trade secret and in fact maintained the litigation and the injunction to
23 include names of persons which it knew and admitted at trial were legally in Ms. Islam's book of
24 business and that she was entitled to provide to GSR.

25 22. Atlantis continued and maintained the litigation against GSR for misappropriation
26 of trade secrets even when it knew that GSR was acting in good faith by relying on Ms. Islam's
27 assertions concerning her "book of trade" and knew that the customer information provided by
28 Ms. Islam was limited to the customers' name, address, telephone number and contact

1 information.

2 23. GSR did not misappropriate a trade secret belonging to Atlantis;

3 24. GSR did not tortuously interfere with a contract between Sumona Islam and
4 Atlantis.

5 25. GSR did not interfere with a prospective economic advantage belonging to
6 Atlantis.

7 26. There is a lack of any evidence in the record that supports the claim of Atlantis
8 that GSR misappropriated Atlantis' trade secrets and therefore, Atlantis has failed to meet its
9 burden of proof.

10 27. That early on in the litigation Defendant Islam admitted that she had taken certain
11 information from ATLANTIS in the form certain spiral notebooks.

12 28. That early on in the litigation Defendant Islam testified that she had not shown the
13 information in the form of the spiral notebooks to any representative of GRS.

14 29. That early on in the litigation Defendant Islam testified and confirmed that she
15 was told by the representatives of GSR not to bring anything with her except for herself and her
16 relationships.

17 30. That early on in the litigation Defendant Islam testified and confirmed that she
18 had told representatives of GSR that she did not bring trade secret information with her or that
19 she had information belonging to ATLANTIS.

20
21 **CONCLUSIONS OF LAW:**

22 1. The non-competition agreement between Sumona Islam and Atlantis, in
23 prohibiting casino employment in any capacity was overly broad and unenforceable as a matter
24 of law.

25 2. That absent an enforceable employment contract or non-competition agreement
26 with Atlantis, GSR could not as a matter of law, interfere with contractual relations between
27 Sumona and Atlantis.

28 3. A customer's name address, and contact information is not a trade secret under

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

1 NRS 600A.010. GSR did not misappropriate any trade secrets which belonged to Atlantis by
2 allowing Sumona Islam to upload this information into its data base.

3 4. GSR did not improperly obtain the information concerning players listed above as
4 set forth in 600A.030 and had a good faith reliance on Ms. Islam's assurances that all the names
5 provided were part of her personal "book of trade"

6 5. The failure of Atlantis to produce any credible evidence at trial that GSR
7 misappropriated trade secrets belonging to Atlantis constitutes ~~"objective speciousness"~~. ~~That~~ PF
8 ~~subjective~~ bad faith ^{that} is shown by the Plaintiff's knowledge of certain facts as set forth in the
9 findings of facts above; the decision to move forward against GSR and the extent of the litigation
10 against GSR despite a lack of direct evidence against GSR. This is a sufficient basis for an
11 award of attorney fees pursuant to NRS 600.060. Defendants are not required to prove a
12 negative and under the objective specious standard a lack of evidence in the record of
13 misappropriation; in addition to the actions as set forth above; is enough to show that the claim
14 of misappropriation was made in bad faith (*Sasco v. Rosendin Electric Inc.*, 143 Cal. Rptr. 3d
15 828, 207 Cal. App 4th 837 (CA 2012)) and entitles GSR to Attorney's fees and costs in this
16 matter.

17 6. That Atlantis sought, obtained, and maintained a preliminary injunction in this
18 matter that included names which Atlantis knew were not trade secrets under NRS 600A.010 and
19 continued to maintain that injunction even when it knew that those names were art of Sumona
20 Islam's personal book of trade in order to thwart competition for those players from GSR and
21 said conduct is evidence of bad faith entitling GSR to an award of attorney's fees and costs.

22 7. That the claims against GSR are dismissed and judgment entered in favor of the
23 Defendant GSR and GSR is entitled to an award of costs pursuant to NRS 18.110.

24 8. GSR is also entitled to bring an appropriate motion for fees and costs pursuant to
25 an offer of judgment dated May 20, 2013 under NRCP 68 and NRS 17.115.

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255 E. Warm Springs Road, Suite 100
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(702) 823-3500 FAX: (702) 823-3400

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CONCLUSION

9. Judgment in favor of Defendant GSR against Plaintiff ATLANTIS.

DATED THIS 27 DAY OF SEPTEMBER 2013

Barck Flanagan
DISTRICT JUDGE

Submitted by:

/s/ H. Stan Johnson
H. Stan Johnson, Esq.
Nevada Bar No. 00265
Terry Kinnally, Esq.
Nevada Bar No. 06379
COHEN JOHNSON, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
Attorneys for MEI-GSR HOLDINGS LLC

EXHIBIT 5

FILED
Electronically
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Joey Orduna Hastings
Clerk of the Court
Transaction # 4112405

EXHIBIT 5

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

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

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

Case No.: CV12-01171

Dept No.: B7

19 Plaintiff,

20 vs.

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

26 Defendants.

27 **AFFIDAVIT OF DEBRA ROBINSON IN SUPPORT**
28 **OF PLAINTIFF'S MOTION TO STAY ENFORCEMENT**
29 **OF JUDGMENT AND FOR INJUNCTION PENDING APPEAL**

30 STATE OF NEVADA)
31) ss.
32 COUNTY OF WASHOE)

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

35 1. That I am General Counsel for the Plaintiff, Golden Road Motor Inn, Inc d/b/a
36 Atlantis Casino Resort Spa.

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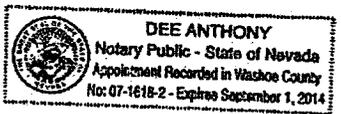
- 2. That I have personal knowledge of the information contained herein.
- 3. That approximately twenty current Atlantis employees are subject to the same Non-Competition/Non-Solicitation Agreement as was Defendant Sumona Islam.

FURTHER YOUR AFFIANT SAYETH NAUGHT.


 DEBRA ROBINSON

SUBSCRIBED and SWORN to before me this 4th day of November, 2013.


 NOTARY PUBLIC



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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, d/b/a/
ATLANTIS CASINO RESORT SPA,

Case No.: CV12-01171
Dept. No.: B7

Plaintiff,

vs.

SUMONA ISLAM, an individual;
MEI-GSR HOLDINGS LLC d/b/a
GRAND SIERRA RESORT; et al,

Defendants.

ORDER

On October 19, 2013, Defendant, GRAND SIERRA RESORT (GSR), filed its *Motion for Award of Attorney's Fees and Costs to Defendant GSR Pursuant to NRS 600A.060, NRCP 68, and NRS 17.115*. In support of its *Motion*, counsel for GSR submitted invoices of the attorney's fees and costs associated with the litigation of this case.

To award attorney fees pursuant to NRS 600A.060(3), NRCP 68(f)(2), or NRS 17.115(4)(d)(3), a court must review the fees incurred for reasonableness. To determine what is or is not reasonable, specificity is required. Upon reviewing the invoices, this Court is unable to determine the reasonableness of the attorney's fees and costs incurred by GSR due to a lack of specificity in the billing statements.

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CERTIFICATE OF SERVICE

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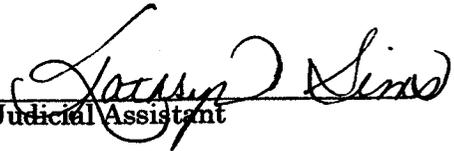
Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 6 day of November, 2013, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic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

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

Mark Wray, Esq., for Sumona Islam; and

H. Johnson, Esq., for GSR Enterprises LLC

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


Judicial Assistant

1 **2610**
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 **MEI-GSR HOLDINGS, 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 **NOTICE OF APPEAL**

27 **TO ALL INTERESTED PARTIES:**

28 **PLEASE TAKE NOTICE that Defendant Sumona Islam hereby appeals to the**
Nevada Supreme Court from the Findings of Fact and Conclusions of Law and Order

1 entered August 26, 2013, of which the Notice of Entry was served on October 1, 2013
2 and from which Plaintiff Golden Road Motor Inn, Inc. dba Atlantis Casino Resort Spa
3 appealed to this Court on October 31, 2013.

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DATED Nov. 8, 2013 LAW OFFICES OF MARK WRAY

By: Mark Wray
MARK WRAY
Attorney for Defendant SUMONA ISLAM

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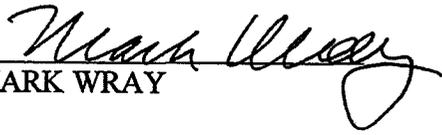
AFFIRMATION

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: Nov. 8, 2013

LAW OFFICES OF MARK WRAY

By 
MARK WRAY

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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,

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 August 5, 2013, Plaintiff, GOLDEN ROAD MOTOR INN, INC., dba
ATLANTIS CASINO RESORT SPA (hereafter Atlantis), filed its *Verified*
Memorandum of Costs. On August 7, 2013 Defendant, SUMONA ISLAM (hereafter
Islam), filed her *Motion to Retax Costs*. On August 19, 2013, Atlantis filed its
Opposition to Defendant Sumona Islam's Motion to Retax Costs and Affidavit of
Counsel in Support of Plaintiff's Opposition to Defendant Sumona Islam's Motion to
Retax Costs. On September 3, 2013, Islam filed her *Reply in Support of Motion to*
Retax Costs.

1 On August 21, 2013, Atlantis filed its *Motion for Costs and Attorney's Fees*,
2 and *Affidavit of Counsel in Support of Plaintiff's Motion for Costs and Attorney's*
3 *Fees*. On September 3, 2013, Islam filed her *Opposition to Atlantis' Motion for*
4 *Attorney's Fees and Costs*. On September 10, 2013, Atlantis filed its *Reply and*
5 *Affidavit of Counsel in Support of Plaintiff's Reply to Motion* and submitted the
6 matter for decision.

7 On September 30, 2013, Defendant, MEI-GSR HOLDINGS LLC dba GRAND
8 SIERRA RESORT (hereafter Grand Sierra), filed its *Memorandum of Costs*. On
9 October 3, 2013, Atlantis filed its *Motion to Retax Costs of Defendant Grand Sierra*
10 *Resort*. On October 9, 2013, Grand Sierra filed its *Reply to Plaintiff's Objection to*
11 *Defendant GSR's Memorandum of Costs*. On October 17, 2013, Atlantis filed its
12 *Reply in Support of Plaintiff's Motion to Retax Costs of Defendant Grand Sierra*
13 *Resort* and submitted the matter for decision.

14 On October 19, 2013, Grand Sierra filed its *Motion for Attorney's Fees*. On
15 November 1, 2013, Islam filed her *Response to Grand Sierra's Motion for Attorney's*
16 *Fees*. On November 4, 2013, Atlantis filed its *Opposition to GSR's Motion for Award*
17 *of Attorney's Fees and Costs and Affidavit of Counsel in Support of Plaintiff's*
18 *Opposition to GSR's Motion for Award of Attorney's Fees and Costs*.

19 Costs: Atlantis

20 The Atlantis seeks recovery of \$17,130.61 in costs pursuant to NRS 18.020.
21 This court has reviewed the invoices filed in support of the requests for cost
22 reimbursement. This court finds the costs expended by the Plaintiff in this matter
23 to be both reasonable and necessary. This Court has also reviewed the
24 documentation and billing to determine the allocation of costs attributable to work
25 performed against Defendant Islam and co-defendant Grand Sierra. This court finds
26 that all but \$60.00 is attributed to Ms. Islam. Therefore, Plaintiff is hereby awarded
27 costs in the amount of \$17,070.61.
28

1 Costs: Grand Sierra

2 Grand Sierra seeks recovery of \$37,009.74 in costs pursuant to NRS 18.110.
3 Included in the request is \$18,026.15 in expert witness fees for Mr. Aguero. This
4 request is extraordinary. This requests is deficient in itemization and justification.
5 This court has reviewed Mr. Aguero's report.(Ex. 37) The majority of his report
6 consists of his resume. While this court relied upon Mr. Aguero's report in
7 formulating its finding, this resulted in an award of damages of \$23,874.00.¹ Based
8 upon the court's review of the expert report, the witness' testimony and the final
9 award, the court reduces the award of expert witness fees to \$3,000.00.

10 Grand Sierra seeks an award of \$2,073.24 for two volumes of the trial
11 transcripts. While undoubtedly of some assistance to trial counsel, this expense is
12 not a necessary cost of litigation.

13 Grand Sierra seeks \$11,337.79 in travel and lodging expenses for counsel.
14 Grand Sierra is seeking to recoup the expenses of air, rental car, meals and lodging
15 for both Mr. Johnson and Mr. Cohen.² Mr. Johnson represented the Grand Sierra
16 at trial, giving the opening statement, cross-examining witnesses, presenting the
17 Grand Sierra's case-in-chief and closing arguments. While Mr. Cohen undoubtedly
18 provided some assistance to Grand Sierra, his participation was more opaque.³ This
19 court is without any information as to Mr. Cohen's participation in pretrial
20 proceedings or incurred other expenses involved in this litigation. Grand Sierra
21 provides scant documentation and itemization to support these expenses. As such,
22 this court finds an award for costs of travel and lodging for Mr. Johnson to be more
23 appropriate in this case. This court will excise the \$4,369.50 sought for Mr. Cohen's
24 airfare travel to Reno. Therefore, Defendant Grand Sierra Resort is awarded costs
25 in the amount of \$15,540.85.

26
27
28 ¹ The final award of \$43,874 included \$20,000 in punitive damages not attributable to Mr. Aguero's work.

² Defendant Grand Sierra Resorts employed Johnson/Cohen, a Las Vegas firm whose principals attended every day of trial. Any adjustment in the award of costs is no reflection on the client's choice of Las Vegas counsel.

³ Mr. Cohen did raise one objection at trial, which was sustained.

1 **The Award of Attorney's Fees**

2 Generally speaking, the district court may not award attorneys' fees absent
3 authority under statute, rule, or contract.⁴ The Nevada Supreme Court has upheld
4 an award of attorney's fees to a "prevailing party."⁵ After weighing all the relevant
5 factors, the district court may award up to the full amount of fees requested.

6 On the other hand, where the court has failed to consider many factors,
7 and/or has made no findings based upon the evidence that the attorney's fees are
8 reasonable and justified, it is an abuse of discretion for the court to award the full
9 amount of fees requested. *Beattie v. Thomas*, 99 Nev. 579, 588, 688 P.2d 268, 274
10 (1983); *but see MRO Communications, Inc. v. AT&T Co.*, 197 F.3d 1276, 1284 (9th
11 Cir. 1999)(where affidavits and exhibits submitted in support, and in opposition to,
12 the motion for attorneys' fees were sufficient to enable a court to consider each of
13 the four factors outlined in *Beattie* and conclude the amount of fees was reasonable
14 and justified, the court did not abuse its discretion in awarding attorney's fees
15 without making specific findings on the four factors).

16 In this case, this court presided over this entire litigation, culminating in a
17 multi-week bench trial. As such, this court is familiar with the quality of the
18 advocacy of the attorneys, the character of the work performed by the lawyers and
19 the result of those efforts. The court has considered the *Beattie* factors in reaching
20 its findings.

21 This court has also considered Defendant Islam's objections and request for
22 apportionment of fees between herself and co-defendant Grand Sierra Resort. This
23 court has reviewed plaintiff's billing invoices in an attempt to allocate fees between
24 the co-defendants. This court has reviewed, *in camera*, the billing statements of
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27 ⁴ See *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 132 P.3d 1022, 1028 (2006), *citing State Department of*
Human Resources v. Fowler, 109 Nev. 782, 784, 858 P.2d 375,376 (1993).

28 ⁵ For attorneys' fees purposes, a plaintiff is prevailing if he succeeds on any significant issue in litigation which
achieves some of the benefit he sought in bringing the suit. See *Women's Federal Savings & Loan Association v.*
Nevada National Bank, 623 F.Supp. 401, 404 (D. Nev. 1987).

1 counsel for the Atlantis and Grand Sierra. This court finds apportionment of fees
2 sought by Atlantis against Ms. Islam to be appropriate in this case.

3 **The Atlantis Attorney's Fees**

4 The Atlantis seeks an award of \$364,422.00 in attorney's fees against Ms.
5 Islam. In reviewing the invoices of Atlantis counsel, this court finds that 84.71% of
6 the fees in this matter were expended toward the claims asserted against Ms.
7 Islam. This court finds the fees to be reasonable and justified. Based upon said
8 review, Plaintiff is hereby awarded attorney's fees in the amount of **\$308,711.00**.

9 **The Grand Sierra Resort Attorney's Fees**

10 By separate *Order* dated November 6, 2013, this court has directed counsel
11 for the Grand Sierra to submit a more detailed billing statement in support of their
12 *Motion for Attorney's Fees*. Therefore, at this time, Grand Sierra's *Motion for*
13 *Attorney's Fees* is **DENIED without prejudice**.

14 **IT IS ORDERED:**

15 Plaintiff Atlantis is awarded **\$17,070.61** in costs and **\$303,711.00** in
16 attorney's fees.

17 Defendant Grand Sierra is awarded **\$15,540.85** in costs. Grand Sierra's
18 *Motion for Attorney's Fees* is **DENIED without prejudice**.

19 DATED this 8 day of October, 2013.

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Patrick Flanagan
DISTRICT COURT JUDGE

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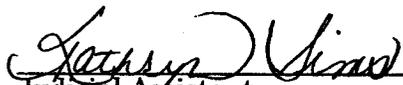
Pursuant to NRCF 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 8 day of November, 2013, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

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

Mark Wray, Esq. for Sumona Islam; and

H. Johnson, Esq. for GSR Enterprises

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



Judicial Assistant

1 **1830**
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 MEI-GSR HOLDINGS, 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 **DEFENDANT SUMONA ISLAM'S MOTION FOR ORDER TO FILE**
28 **ATTORNEYS FEES RECORDS OF ATLANTIS IN THE OFFICIAL COURT**
RECORD

Defendant Sumona Islam moves for an order directing to the Clerk to file and maintain as official records of the Court the attorneys fees billings and other information of the Plaintiff Golden Road Motor Inn, Inc., dba Atlantis Casino Resort

1 Spa, which are documents that apparently were submitted for *in camera* review before
2 the Court issued its order on November 8, 2013 awarding attorneys fees of \$308,711
3 against Islam.

4 This motion is made on grounds that Due Process involves notice and an
5 opportunity to be heard. *J.D. Constr., Inc. v. IBEX Int'l Group, LLC*, 240 P.3d 1033,
6 1040 (Nev. 2010) (in determining whether a procedure meets the due process
7 requirements of notice and an opportunity to be heard, due process is flexible and calls
8 for such procedural protections as the particular situation demands); *Mathews v.*
9 *Eldridge*, 424 U.S. 319, 349, 96 S.Ct. 893, 47 L.Ed. 18 (1976) (due process is satisfied
10 by giving both parties a meaningful opportunity to present their case). In any appeal of
11 this action concerning the subject of attorneys fees, Islam will need to have as complete
12 a record as possible regarding how this *ex parte* fee request was handled, and to have
13 available for review the evidence that she was deprived of when the award of attorneys
14 fees was made against her.

15 Islam has tried to preserve the record of these proceedings and defend her rights
16 by objecting to the submission of the Atlantis billing records for *in camera* review, on
17 grounds that copies of the records were never provided to Islam so that she could
18 respond to the alleged "evidence" against her. See *Islam's Objections to Submission of*
19 *Atlantis Attorneys Fees Records for In Camera Review Only*, filed Oct. 2, 2013. The
20 Court's order of November 8, 2013 states that the Court considered "objections" filed
21 by Islam, yet the Court's order does not rule on any of her objections specifically.¹ In
22 addition, there is nothing in the record finding the existence of any alleged attorney-
23 client privilege as to any billings records, and no findings as to any reasons why *alleged*
24 attorney-client matters could not be redacted. In short, Islam has been deprived of the
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27 ¹ In reciting in its November 8, 2013 order all the documents considered by the Court
28 prior to awarding fees and costs, the filings that the Court does *not* mention include the
Atlantis' notice of lodging its attorneys fees documents for in camera review on Oct. 1,
2013; Islam's objections to the in camera review, filed Oct. 2, 2013 and Islam's response
to the Grand Sierra's motion for attorneys fees filed Nov. 1, 2013.

1 opportunity to view the evidence against her without any excuse or explanation for this
2 wholesale deprivation of Due Process.

3 Islam's concern is heightened by the fact that the notice of submission of the
4 billings records by the Atlantis on October 1, 2013 states that the billings "are not part
5 of the file in this case and are only being provided to the Court in camera pursuant to its
6 request so as not to waive privilege." Accordingly, the Atlantis expects that the billings
7 are to be reviewed by the Court as the basis for awarding fees but not made a part of the
8 file.

9 Compounding the concerns of Islam is that the Court's order of November 8,
10 2013 does not state whether the billings statements were admitted as evidence, were
11 made part of the records of the Court, or were even kept in the possession of the Court.
12 In the event of an appeal of the order awarding fees, Islam could be in the position of
13 arguing against alleged "evidence" she never saw that was never admitted and that is
14 not in the records of the Court. Failing to maintain the attorneys fees billings in the
15 Court's official records so that they are available in the event this matter is
16 subsequently reviewed would exacerbate the unfair prejudice to Islam, beyond the
17 unfair prejudice she already has incurred by being refused notice and an opportunity to
18 be heard in the first place.

19 This motion also is made on grounds that NRCPP 5 and NRCPP 54(d)(2) require
20 documentation in support of a fee request to be both served on an opposing party and
21 filed with the Court, neither of which has occurred in this case. Under NRCPP 1, all the
22 rules are to be construed to effect a *just* determination of every action, and Rule
23 54(d)(2) can only be fairly and justly construed as requiring documentation on
24 attorneys fees to be served and filed on the opposing party against whom fees are
25 sought.

26 Based on the foregoing, it is respectfully requested that the Court immediately
27 issue an order preserving intact as records of the Court any and all attorneys fees
28 billings and other information that was submitted to the Court by the Atlantis. If the

1 records submitted by the Atlantis already have been destroyed, returned to the Atlantis,
2 or otherwise disposed of, it is respectfully requested that the Court notify Islam
3 accordingly and disclose the reason for such disposition.

4 DATED: November 13, 2013 LAW OFFICES OF MARK WRAY

5
6 By 
7 MARK WRAY
8 Attorney for Defendant SUMONA ISLAM
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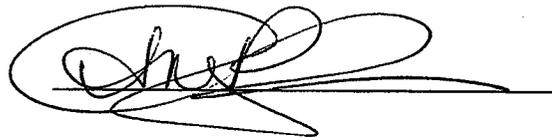
1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b) the undersigned employee of the Law Offices of Mark
3 Wray certifies that a true copy of the foregoing document was sealed in an envelope with
4 prepaid postage affixed and deposited in the U.S. Mail in Reno, Nevada on
5 NOVEMBER 13, 2013 addressed to the following:
6

7 Robert A. Dotson
8 Angela M. Bader
9 Laxalt & Nomura, Ltd.
10 9600 Gateway Drive
11 Reno, Nevada 89521

12 Robert Eisenberg
13 Lemons Grundy & Eisenberg
14 6005 Plumas Street, 3rd Floor
15 Reno, Nevada 89509

16 Stan Johnson
17 Cohen/Johnson
18 255 E. Warm Springs Road, Suite 100
19 Las Vegas, Nevada 89119

20 A handwritten signature in black ink, appearing to be 'Mark Wray', is written over a horizontal line. The signature is enclosed in a large, loopy oval shape.

1 Motor Inn, Inc. dba Atlantis Casino Resort Spa ("Atlantis") appealed to this Court on
2 October 31, 2013.

3 After the Notice of Appeal was filed on November 8, 2013, the District Court
4 entered an Order granting attorney's fees and costs to the Atlantis

5 Defendant Islam hereby amends her Notice of Appeal to add to her appeal the
6 Order entered on November 8, 2103 awarding fees and costs to the Atlantis.

7

8

DATED Nov. 15, 2013 LAW OFFICES OF MARK WRAY

9

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By: 
MARK WRAY
Attorney for Defendant SUMONA ISLAM

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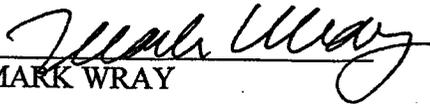
AFFIRMATION

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: Nov. 15, 2013

LAW OFFICES OF MARK WRAY

By 
MARK WRAY