

- 1 (c) Doing business as RAINBOW CLUB AND CASINO located at 122 Water Street,  
2 Henderson, Nevada as a Nonrestricted licensee;  
3 (d) Doing business as RAINBOW CASINO located at 1045 Wendover Boulevard, West  
4 Wendover, Nevada as a Nonrestricted licensee;  
5 (e) Doing business as PEPPERMILL INN & CASINO located at 100 West Wendover  
6 Boulevard, West Wendover, Nevada as a Nonrestricted licensee.  
7 Items (a)-(e) above are hereinafter collectively referred to as "PEPPERMILL CASINOS."

8 **RELEVANT LAW**

- 9 3. The Nevada Legislature has declared under NRS 463.0129(1) that:

10 (a) The gaming industry is vitally important to the economy  
11 of the State and the general welfare of the inhabitants.

12 (b) The continued growth and success of gaming is  
13 dependent upon public confidence and trust that licensed gaming  
14 and the manufacture, sale and distribution of gaming devices and  
15 associated equipment are conducted honestly and competitively,  
16 that establishments which hold restricted and nonrestricted licenses  
17 where gaming is conducted and where gambling devices are  
18 operated do not unduly impact the quality of life enjoyed by  
19 residents of the surrounding neighborhoods, that the rights of the  
20 creditors of licensees are protected and that gaming is free from  
21 criminal and corruptive elements.

22 (c) Public confidence and trust can only be maintained by  
23 strict regulation of all persons, locations, practices, associations  
24 and activities related to the operation of licensed gaming  
25 establishments, the manufacture, sale or distribution of gaming  
26 devices and associated equipment and the operation of inter-  
27 casino linked systems.

28 (d) All establishments where gaming is conducted and  
where gaming devices are operated, and manufacturers, sellers  
and distributors of certain gaming devices and equipment, and  
operators of inter-casino linked systems must therefore be  
licensed, controlled and assisted to protect the public health,  
safety, morals, good order and general welfare of the inhabitants of  
the State, to foster the stability and success of gaming and to  
preserve the competitive economy and policies of free competition  
of the State of Nevada.

(e) To ensure that gaming is conducted honestly,  
competitively and free of criminal and corruptive elements, all  
gaming establishments in this state must remain open to the  
general public and the access of the general public to gaming  
activities must not be restricted in any manner except as provided  
by the Legislature.

NRS 463.0129(1).

1 4. The Nevada Gaming Commission has full and absolute power and authority to limit,  
2 condition, restrict, revoke or suspend any license, or fine any person licensed, for any cause  
3 deemed reasonable. See NRS 463.1405(4).

4 5. The BOARD is authorized to observe the conduct of licensees in order to ensure that  
5 the gaming operations are not being conducted in an unsuitable manner. See  
6 NRS 463.1405(1).

7 6. This continuing obligation is repeated in Nevada Gaming Commission Regulation  
8 5.040, which provides as follows:

9 A gaming license is a revocable privilege, and no holder  
10 thereof shall be deemed to have acquired any vested rights therein  
11 or thereunder. The burden of proving his qualifications to hold any  
12 license rests at all times on the licensee. The board is charged by  
13 law with the duty of observing the conduct of all licensees to the  
14 end that licenses shall not be held by unqualified or disqualified  
15 persons or unsuitable persons or persons whose operations are  
16 conducted in an unsuitable manner.

17 Nev. Gaming Comm'n Reg. 5.040.

18 7. Nevada Gaming Commission Regulation 5.010(2) further provides that  
19 "[r]esponsibility for the employment and maintenance of suitable methods of operation rests  
20 with the licensee, and willful or persistent use or toleration of methods of operation deemed  
21 unsuitable will constitute grounds for license revocation or other disciplinary action."

22 8. NRS 463.170 provides in relevant part the following:

23 2. An application to receive a license or be found suitable  
24 must not be granted unless the Commission is satisfied that the  
25 applicant is:

- 26 (a) A person of good character, honesty and integrity;  
27 (b) A person whose prior activities, criminal record, if any,  
28 reputation, habits and associations do not pose a threat to the  
public interest of this State or to the effective regulation and control  
of gaming or charitable lotteries, or create or enhance the dangers  
of unsuitable, unfair or illegal practices, methods and activities in  
the conduct of gaming or charitable lotteries or in the carrying on of  
the business and financial arrangements incidental thereto; and  
(c) In all other respects qualified to be licensed or found  
suitable consistently with the declared policy of the State.

....

8. Any person granted a license or found suitable by the  
Commission shall continue to meet the applicable standards and

1 qualifications set forth in this section and any other qualifications  
2 established by the Commission by regulation. The failure to  
3 continue to meet such standards and qualifications constitutes  
4 grounds for disciplinary action.

5 NRS 463.170(2) and (8).

6 9. Nevada Gaming Commission Regulation 5.011 states, in relevant part, as follows:

7 The board and the commission deem any activity on the part  
8 of any licensee, his agents or employees, that is inimical to the  
9 public health, safety, morals, good order and general welfare of the  
10 people of the State of Nevada, or that would reflect or tend to  
11 reflect discredit upon the State of Nevada or the gaming industry, to  
12 be an unsuitable method of operation and shall be grounds for  
13 disciplinary action by the board and the commission in accordance  
14 with the Nevada Gaming Control Act and the regulations of the  
15 board and the commission. Without limiting the generality of the  
16 foregoing, the following acts or omissions may be determined to be  
17 unsuitable methods of operation:

18 1. Failure to exercise discretion and sound judgment to  
19 prevent incidents which might reflect on the reputé of the State of  
20 Nevada and act as a detriment to the development of the industry.

21 . . . .

22 10. Failure to conduct gaming operations in accordance  
23 with proper standards of custom, decorum and decency, or permit  
24 any type of conduct in the gaming establishment which reflects or  
25 tends to reflect on the reputé of the State of Nevada and act as a  
26 detriment to the gaming industry.

27 Nev. Gaming Comm'n Regs. 5.011(1), and (10).

28 10. Nevada Gaming Commission Regulation 5.030 provides as follows:

*Violation of any provision of the Nevada Gaming Control Act  
or of these regulations by a licensee, his agent or employee shall  
be deemed contrary to the public health, safety, morals, good order  
and general welfare of the inhabitants of the State of Nevada and  
grounds for suspension or revocation of a license. Acceptance of a  
state gaming license or renewal thereof by a licensee constitutes  
an agreement on the part of the licensee to be bound by all of the  
regulations of the commission as the same now are or may  
hereafter be amended or promulgated. It is the responsibility of the  
licensee to keep himself informed of the content of all such  
regulations, and ignorance thereof will not excuse violations.*

Nev. Gaming Comm'n Reg. 5.030 (emphasis added).

. . . .

. . . .

1 11. NRS 463.310(4)(d)(2) states in relevant part that the Commission may:

2 (d) Fine each person or entity or both, who was licensed,  
3 registered or found suitable pursuant to this chapter or chapter 464  
4 of NRS or who previously obtained approval for any act or  
5 transaction for which Commission approval was required or  
6 permitted under the provisions of this chapter or chapter 464 of  
7 NRS;

8 . . . .

9 (2) Except as otherwise provided in subparagraph  
10 (1), not more than \$100,000 for each separate violation of the  
11 provisions of this chapter or chapter 464 or 465 of NRS or of the  
12 regulations of the Commission which is the subject of an initial  
13 complaint and not more than \$250,000 for each separate violation  
14 of the provisions of this chapter or chapter 464 or 465 of NRS or of  
15 the regulations of the Commission which is the subject of any  
16 subsequent complaint.

17 . . . .

18 NRS 463.310(4)(d)(2).

#### 19 BACKGROUND

20 12. On or about July 12, 2013, Ryan Tors, while employed by PEPPERMILL CASINOS  
21 as a corporate analyst and while in the course and scope of his employment, entered the  
22 premises of the Grand Sierra Resort and Casino in Reno, Nevada.

23 13. While on the premises of the Grand Sierra Resort and Casino, Mr. Tors possessed  
24 and inserted a slot machine "reset" key into several Grand Sierra Resort and Casino slot  
25 machines.

26 14. A slot machine "reset" key, such as the one Mr. Tors possessed and used, enables  
27 the person using it to place slot machines into and out of service, to clear period meters, and to  
28 adjust sound set up. Further, the "reset" key allows access to theoretical hold percentage  
(also known as "par") information, diagnostic information, play history, event logs, and game  
configuration.

15 15. On or about July 12, 2013, representatives of the Grand Sierra Resort and Casino  
16 detained Mr. Tors and contacted the BOARD, which initiated an investigation.

17 . . . .

18 . . . .



1 16. The BOARD's investigation revealed that, on or about July 12, 2013, Mr. Tors used  
2 his slot machine "reset" key to obtain theoretical hold percentage information for several Grand  
3 Sierra Resort and Casino slot machines.

4 17. The BOARD's investigation further revealed that, over a period of time beginning in  
5 at least 2011, Mr. Tors, while in the course and scope of his employment, had used a slot  
6 machine "reset" key to obtain theoretical hold percentage information from slot machines  
7 belonging to and on the premises of numerous casinos in addition to the Grand Sierra Resort  
8 and Casino including, but not limited to, the following casinos:

- 9 (a) Eldorado Hotel and Casino, Reno, Nevada;  
10 (b) Circus Circus Hotel/Casino, Reno, Nevada;  
11 (c) Siena Hotel Spa Casino, Reno, Nevada;  
12 (d) Tamarack Junction, Reno, Nevada;  
13 (e) Wendover Nugget Hotel & Casino, Wendover, Nevada;  
14 (f) Red Garter Hotel & Casino, Wendover, Nevada;  
15 (g) Atlantis Casino Resort, Reno, Nevada;  
16 (h) Hobey's Casino, Sun Valley, Nevada;  
17 (i) Rall City Casino, Sparks, Nevada; and  
18 (j) Baldini's Sports Casino, Sparks, Nevada.

19 18. The BOARD'S investigation revealed that PEPPERMILL CASINOS' management  
20 knew of, approved of, and directed Mr. Tors' conduct of obtaining theoretical hold percentage  
21 information from the slot machines of other casinos using a "reset" key.

22 **COUNT ONE**  
23 **VIOLATION OF NEVADA REVISED STATUTE 463.170 and/or**  
**NEVADA GAMING COMMISSION REGULATIONS 5.011, 5.011(1) and/or 5.011(10)**

24 19. Complainant BOARD realleges and incorporates by reference as though set forth in  
25 full herein paragraphs 1 through 18 above.

26 20. A PEPPERMILL CASINOS employee, while in the course and scope of his  
27 employment, possessed and used a slot machine "reset" key to access and obtain theoretical  
28 ....

1 hold percentage information from slot machines belonging to the Grand Sierra Resort and  
2 Casino, a competitor of PEPPERMILL CASINOS.

3 21. PEPPERMILL CASINOS is responsible for the actions of its agents and employees.

4 22. PEPPERMILL CASINOS knew, or should have known, of the above-described  
5 conduct and failed to prevent it from occurring.

6 23. The actions, as set forth herein, constitute a failure by PEPPERMILL CASINOS to  
7 continue to meet the applicable standards and qualifications necessary to hold a gaming  
8 license in violation of Nevada Revised Statute 463.170(8).

9 24. The actions, as set forth herein, constitute activity by PEPPERMILL CASINOS that  
10 is inimical to the public health, safety, morals, good order and general welfare of the people of  
11 the State of Nevada, or activity that would reflect or tend to reflect discredit upon the State of  
12 Nevada or the gaming industry in violation of Nevada Gaming Commission Regulation 5.011.

13 25. The actions, as set forth herein, constitute a failure by PEPPERMILL CASINOS to  
14 exercise discretion and sound judgment to prevent incidents which might reflect on the reputation  
15 of the State of Nevada and act as a detriment to the development of the industry in violation of  
16 Nevada Gaming Commission Regulation 5.011(1).

17 26. The actions, as set forth herein, constitute a failure by PEPPERMILL CASINOS to  
18 conduct gaming operations in accordance with proper standards of custom, decorum and  
19 decency and/or reflect or tend to reflect on the reputation of the State of Nevada and act as a  
20 detriment to the gaming industry in violation of Nevada Gaming Commission  
21 Regulation 5.011(10).

22 27. The failure to comply with NRS 463.170 and/or Nevada Gaming Commission  
23 Regulations 5.011(1), and/or 5.011(10) is an unsuitable method of operation and is grounds for  
24 disciplinary action against Respondent, PEPPERMILL CASINOS. See Nev. Gaming Comm'n  
25 Regs. 5.010(2) and 5.030.

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**COUNT TWO**  
**VIOLATION OF NEVADA REVISED STATUTE 463.170 and/or**  
**NEVADA GAMING COMMISSION REGULATIONS 5.011, 5.011(1) and/or 5.011(10)**

28. Complainant BOARD realleges and incorporates by reference as though set forth in full herein paragraphs 1 through 27 above.

29. Over a period of time beginning in at least 2011, a PEPPERMILL CASINOS employee, while in the course and scope of his employment, possessed and used a slot machine "reset" key to access and obtain theoretical hold percentage information from slot machines belonging to at least ten (10) casinos that are competitors of PEPPERMILL CASINOS.

30. PEPPERMILL CASINOS is responsible for the actions of its agents and employees.

31. PEPPERMILL CASINOS knew, or should have known, of the above-described conduct and failed to prevent it from occurring.

32. The actions, as set forth herein, constitute a failure by PEPPERMILL CASINOS to continue to meet the applicable standards and qualifications necessary to hold a gaming license in violation of Nevada Revised Statute 463.170(8).

33. The actions, as set forth herein, constitute activity by PEPPERMILL CASINOS that is inimical to the public health, safety, morals, good order and general welfare of the people of the State of Nevada, or activity that would reflect or tend to reflect discredit upon the State of Nevada or the gaming industry in violation of Nevada Gaming Commission Regulation 5.011.

34. The actions, as set forth herein, constitute a failure by PEPPERMILL CASINOS to exercise discretion and sound judgment to prevent incidents which might reflect on the reputation of the State of Nevada and act as a detriment to the development of the industry in violation of Nevada Gaming Commission Regulation 5.011(1).

35. The actions, as set forth herein, constitute a failure by PEPPERMILL CASINOS to conduct gaming operations in accordance with proper standards of custom, decorum and decency and/or reflect or tend to reflect on the reputation of the State of Nevada and act as a detriment to the gaming industry in violation of Nevada Gaming Commission Reg. 5.011(10).

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36. The failure to comply with Nevada Revised Statute 463.170 and/or Nevada Gaming Commission Regulations 5.011(1), and/or 5.011(10) is an unsuitable method of operation and is grounds for disciplinary action against Respondent, PEPPERMILL CASINOS. See Nev. Gaming Comm'n Regs. 5.010(2) and 5.030.

**COUNT THREE**  
**VIOLATION OF NEVADA REVISED STATUTE 463.170 and/or**  
**NEVADA GAMING COMMISSION REGULATIONS 5.011, 5.011(1) and/or 5.011(10)**

37. Complainant BOARD realleges and incorporates by reference as though set forth in full herein paragraphs 1 through 36 above.

38. The management of PEPPERMILL CASINOS, knew of and instructed a PEPPERMILL CASINOS employee to use a slot machine "reset" key to access and obtain theoretical hold percentage information from slot machines belonging to one or more casinos that are competitors of PEPPERMILL CASINOS.

39. PEPPERMILL CASINOS is responsible for the actions of its agents and employees.

40. PEPPERMILL CASINOS knew, or should have known, of the above-described conduct and failed to prevent it from occurring.

41. The actions, as set forth herein, constitute a failure by PEPPERMILL CASINOS to continue to meet the applicable standards and qualifications necessary to hold a gaming license in violation of Nevada Revised Statute 463.170(8).

42. The actions, as set forth herein, constitute activity by PEPPERMILL CASINOS that is inimical to the public health, safety, morals, good order and general welfare of the people of the State of Nevada, or activity that would reflect or tend to reflect discredit upon the State of Nevada or the gaming industry in violation of Nevada Gaming Commission Regulation 5.011.

43. The actions, as set forth herein, constitute a failure by PEPPERMILL CASINOS to exercise discretion and sound judgment to prevent incidents which might reflect on the reputation of the State of Nevada and act as a detriment to the development of the industry in violation of Nevada Gaming Commission Regulation 5.011(1).

44. The actions, as set forth herein, constitute a failure by PEPPERMILL CASINOS to conduct gaming operations in accordance with proper standards of custom, decorum and

1 decency and/or reflect or tend to reflect on the repute of the State of Nevada and act as a  
2 detriment to the gaming industry in violation of Nevada Gaming Commission  
3 Regulation 5.011(10).

4 45. The failure to comply with NRS 463.170 and/or Nevada Gaming Commission  
5 Regulations 5.011(1), and/or 5.011(10) is an unsuitable method of operation and is grounds for  
6 disciplinary action against Respondent, PEPPER MILL CASINOS. See Nev. Gaming Comm'n  
7 Regs. 5.010(2) and 5.030.

8 WHEREFORE, based upon the allegations contained herein which constitute  
9 reasonable cause for disciplinary action against Respondent, pursuant to Nevada Revised  
10 Statute 463.310, and Nevada Gaming Commission Regulations 5.010, 5.011 and 5.030, the  
11 STATE GAMING CONTROL BOARD prays for the relief as follows:

12 1. That the Nevada Gaming Commission serve a copy of this Complaint on  
13 Respondent pursuant to Nevada Revised Statute 463.312(2);

14 2. That the Nevada Gaming Commission fine Respondent a monetary sum pursuant to  
15 the parameters defined at Nevada Revised Statute 463.310(4) for each separate violation of  
16 the provisions of the Nevada Gaming Control Act or the Regulations of the Nevada Gaming  
17 Commission;

18 3. That the Nevada Gaming Commission take action against Respondent's licenses  
19 pursuant to the parameters defined in Nevada Revised Statute 463.310(4); and

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1 4. For such other and further relief as the Nevada Gaming Commission may deem just  
2 and proper.

3 DATED this 13<sup>th</sup> day of February, 2014.

4 STATE GAMING CONTROL BOARD

5   
6 A.G. BURNETT, Chairman


7   
8 SHAWN R. REID, Member

9  
10 TERRY JOHNSON, Member  
11

12 Submitted by:

13 CATHERINE CORTEZ MASTO  
14 Attorney General

15 By:

16   
17 MICHAEL P. SOMPS  
18 Senior Deputy Attorney General  
19 Gaming Division  
20 (775) 850-4152  
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Gaming Division  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511

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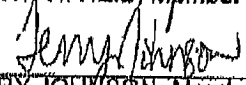
4. For such other and further relief as the Nevada Gaming Commission may deem just and proper.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

STATE GAMING CONTROL BOARD

A.G. BURNETT, Chairman

  
SHAWN R. REID, Member

  
TERRY JOHNSON, Member

Submitted by:

CATHERINE CORTEZ MASTO  
Attorney General

By:

MICHAEL P. SOMPS  
Senior Deputy Attorney General  
Gaming Division  
(775) 850-4152

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Transaction # 4483704 : mcholico



Office of the Attorney General  
Gaming Division  
6420 Kietzke Lane, Suite 202  
Reno, Nevada 89511

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STATE OF NEVADA

BEFORE THE NEVADA GAMING COMMISSION

STATE GAMING CONTROL BOARD,

Complainant,

vs.

PEPPERMILL CASINOS, INC., dba

PEPPERMILL HOTEL & CASINO;  
WESTERN VILLAGE;  
RAINBOW CLUB AND CASINO;  
RAINBOW CASINO; and  
PEPPERMILL INN & CASINO,

Respondent.

STIPULATION FOR SETTLEMENT  
AND ORDER

The State of Nevada, on relation of its STATE GAMING CONTROL BOARD (BOARD), Complainant herein, filed a Complaint, NGC Case No. 13-23, against the above-captioned RESPONDENT, PEPPERMILL CASINOS, INC., dba PEPPERMILL HOTEL & CASINO, WESTERN VILLAGE, RAINBOW CLUB AND CASINO, RAINBOW CASINO, and PEPPERMILL INN & CASINO, alleging certain violations of the Nevada Gaming Control Act and Regulations of the Nevada Gaming Commission.

IT IS HEREBY STIPULATED AND AGREED to by the BOARD and RESPONDENT that the Complaint, NGC Case No. 13-23, filed against RESPONDENT in the above-entitled case shall be settled on the following terms and conditions:

1. RESPONDENT admits each and every allegation set forth in the Complaint, NGC Case No. 13-23.

2. RESPONDENT fully understands and voluntarily waives the right to a public hearing on the charges and allegations set forth in the Complaint, the right to present and cross-examine witnesses, the right to a written decision on the merits of the Complaint, which must

1 contain findings of fact and a determination of the issues presented, and the right to obtain  
2 judicial review of the Nevada Gaming Commission's decision.

3 3. RESPONDENT agrees to pay a fine in the total amount of ONE MILLION DOLLARS  
4 and NO CENTS (\$1,000,000.00) electronically transferred to the *STATE OF NEVADA-NEVADA*  
5 *GAMING COMMISSION* on or before the date this Stipulation for Settlement is accepted by the  
6 Nevada Gaming Commission. Interest on the fine shall accrue at 5.25 percent per annum on  
7 any unpaid balance computed from the date payment is due until payment is made in full.

8 4. RESPONDENT requested, and the Board agreed, that the following statements be  
9 incorporated into this Stipulation for Settlement:

10 a. RESPONDENT cooperated with the BOARD during its investigation of this matter,  
11 provided requested documentation and facilitated interviews with executives and employees.

12 b. Within the scope of the BOARD'S investigation into this matter and as represented  
13 by RESPONDENT, there was no evidence that RESPONDENT changed the theoretical hold  
14 percentages of its slot machines based on it obtaining, through Mr. Tors, theoretical hold  
15 percentage information from other casinos.

16 5. RESPONDENT acknowledges that should the BOARD subsequently come into  
17 possession of evidence from any source that RESPONDENT changed the theoretical hold  
18 percentages of its slot machines or altered its operations in any way to gain a competitive  
19 advantage based on it obtaining, through Mr. Tors, theoretical hold percentage information  
20 from other casinos, separate grounds for a subsequent Complaint against RESPONDENT will  
21 exist and the BOARD may pursue such a Complaint at its discretion and nothing in the  
22 Complaint, NGC Case No. 13-23, or in this Stipulation for Settlement shall be construed to  
23 preclude such a Complaint.

24 6. In consideration for the execution of this Stipulation for Settlement, RESPONDENT,  
25 for itself, its heirs, executors, administrators, successors, and assigns, hereby releases and  
26 forever discharges the State of Nevada, the Nevada Gaming Commission, the Nevada  
27 Gaming Control Board, the Nevada Attorney General and each of their members, agents, and  
28 employees in their individual and representative capacities, from any and all manner of

1 actions, causes of action, suits, debts, judgments, executions, claims, and demands  
2 whatsoever known or unknown, in law and equity, that RESPONDENT ever had, now has,  
3 may have, or claim to have against any and all of the persons or entities named in this  
4 paragraph arising out of, or by reason of, the investigation of the allegations in the Complaint  
5 and this disciplinary action, NGC Case No. 13-23, or any other matter relating thereto.

6 7. In consideration for the execution of this Stipulation for Settlement, RESPONDENT  
7 hereby indemnifies and holds harmless the State of Nevada, the Nevada Gaming  
8 Commission, the State Gaming Control Board, the Nevada Attorney General, and each of their  
9 members, agents, and employees in their individual and representative capacities against any  
10 and all claims, suits and actions, brought against the persons named in this paragraph by  
11 reason of the investigation of the allegations in the Complaint, filed in this disciplinary action,  
12 NGC Case No. 13-23, and all other matters relating thereto, and against any and all expenses,  
13 damages, charges and costs, including court costs and attorney fees, which may be sustained  
14 by the persons and entities named in this paragraph as a result of said claims, suits and  
15 actions.

16 8. RESPONDENT enters into this Stipulation for Settlement freely and voluntarily and  
17 with the assistance of legal counsel. RESPONDENT further acknowledges that this  
18 Stipulation for Settlement is not the product of force, threats, or any other form of coercion or  
19 duress, but is the product of discussions between RESPONDENT and the attorney for the  
20 BOARD.

21 9. RESPONDENT affirmatively represents that if RESPONDENT, this Stipulation for  
22 Settlement and Order, and/or any amounts distributed under this Stipulation for Settlement and  
23 Order are subject to, or will become subject to, the jurisdiction of any bankruptcy court, the  
24 bankruptcy court's approval is not necessary for this Stipulation for Settlement and Order to  
25 become effective, or that the bankruptcy court has already approved this Stipulation for  
26 Settlement and Order.

27 10. RESPONDENT and the BOARD acknowledge that this Stipulation for Settlement is  
28 made to avoid litigation and economize resources. The parties agree and understand that this

1 Stipulation for Settlement is intended to operate as full and final settlement of the Complaint.  
2 filed against RESPONDENT in the above-entitled disciplinary case, NGC Case No. 13-23.

3 11. RESPONDENT and the BOARD recognize and agree that the Nevada Gaming  
4 Commission has the sole and absolute discretion to determine whether to accept this  
5 Stipulation for Settlement. RESPONDENT and the BOARD hereby waive any right they may  
6 have to challenge the impartiality of the Nevada Gaming Commission to hear the above-  
7 entitled case on the matters embraced in the Complaint if the Nevada Gaming Commission  
8 determines not to accept this Stipulation for Settlement. If the Nevada Gaming Commission  
9 does not accept the Stipulation for Settlement, it shall be withdrawn as null and void and  
10 RESPONDENT'S admissions, if any, that certain violations of the Nevada Gaming Control Act  
11 and the Regulations of the Nevada Gaming Commission occurred shall be withdrawn.

12 12. RESPONDENT and the BOARD agree and understand that this Stipulation for  
13 Settlement is intended to operate as full and final settlement of the Complaint filed in NGC  
14 Case No. 13-23. The parties further agree and understand that any oral representations are  
15 superseded by this settlement agreement and that only those terms memorialized in writing  
16 herein shall be effective.

17 13. RESPONDENT agrees and understands that although this Stipulation for  
18 Settlement, if approved by the Nevada Gaming Commission, will settle the Complaint filed in  
19 NGC Case No. 13-23, that the allegations contained in the Complaint filed in NGC Case No.  
20 13-23 and the terms of this Stipulation for Settlement may be considered by the BOARD  
21 and/or the Nevada Gaming Commission, with regards to any and all applications by  
22 RESPONDENT that are currently pending before the BOARD or the Nevada Gaming  
23 Commission, or that are filed in the future with the BOARD.

24 14. RESPONDENT and the BOARD shall each bear their own costs incurred in this  
25 disciplinary action, NGC Case No. 13-23.

26 15. RESPONDENT, by executing this Stipulation for Settlement, affirmatively waives all  
27 notices required by law for this matter including, but not limited to, notices concerning  
28 consideration of the character or misconduct of a person (NRS 241.033), notices concerning

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1 consideration of administrative action against a person (NRS 241.034), and notices concerning  
2 hearings before the Nevada Gaming Commission (NRS 463.312). Regardless of the waiver of  
3 legal notice requirements, the BOARD and Nevada Gaming Commission will attempt to  
4 provide reasonable notice of the time and place of the hearing. Further, in negotiating this  
5 Stipulation for Settlement, RESPONDENT acknowledges that the BOARD has provided  
6 RESPONDENT with the date and time of the Nevada Gaming Commission hearing during  
7 which the BOARD anticipates the Nevada Gaming Commission will consider approving this  
8 settlement.

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Office of the Attorney General  
Gaming Division  
6420 Kierke Lane, Suite 202  
Reno, Nevada 89511

16. This Stipulation for Settlement shall become effective immediately upon approval by the Nevada Gaming Commission.

DATED this 13<sup>th</sup> day of February, 2014.

PEPPERMILL CASINOS, INC.

STATE GAMING CONTROL BOARD

By:

WILLIAM A. PAGANETTI, JR.  
President, Peppermill Casinos, Inc.,  
dba  
Peppermill Hotel & Casino;  
Western Village;  
Rainbow Club and Casino;  
Rainbow Casino; and  
Peppermill Inn & Casino

A.G. BURNETT, Chairman

SHAWN R. REID, Member

TERRY JOHNSON, Member

BROWNSTEIN HYATT  
FARBER SCHRECK, LLP

FRANK A. SCHRECK, Esq.  
Attorneys for Respondent

Submitted by:

CATHERINE CORTEZ MASTO  
Attorney General

By:

MICHAEL P. SOMPS  
Senior Deputy Attorney General  
Gaming Division

Attorneys for State Gaming Control Board

ORDER

IT IS SO ORDERED in NGC Case No. 13-23.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

NEVADA GAMING COMMISSION

PETER BERNHARD, Chairman

Office of the Attorney General  
Gaming Division  
5420 Kieboke Lane, Suite 202  
Reno, Nevada 89511

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3 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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Western Village;  
Rainbow Club and Casino;  
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Peppermill Inn & Casino

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SHAWN R. REID, Member

TERRY JOHNSON, Member

10 BROWNSTEIN HYATT  
11 FARBER SCHRECK, LLP

12 FRANK A. SCHRECK, Esq.  
13 Attorneys for Respondent

14  
15 Submitted by:

16 CATHERINE CORTEZ MASTO  
17 Attorney General

18 By:

19 MICHAEL P. SOMPS  
20 Senior Deputy Attorney General  
Gaming Division  
Attorneys for State Gaming Control Board

21  
22 ORDER

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24 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

25 NEVADA GAMING COMMISSION

26  
27 PETER BERNHARD, Chairman  
28


Office of the Attorney General  
Gaming Division  
5420 Kietzke Lane, Suite 202  
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STATE GAMING CONTROL BOARD


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TERRY JOHNSON, Member

10 BROWNSTEIN HYATT  
11 FARBER SCHRECK, LLP

12   
13 FRANK A. SCHRECK, Esq.  
14 Attorneys for Respondent

15 Submitted by:

16 CATHERINE CORTEZ MASTO  
17 Attorney General

18 By:   
19 MICHAEL P. SOMPS  
20 Senior Deputy Attorney General  
Gaming Division  
Attorneys for State Gaming Control Board

21  
22 **ORDER**

23 IT IS SO ORDERED in NGC Case No. 13-23.

24 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

25 NEVADA GAMING COMMISSION

26  
27 PETER BERNHARD, Chairman  
28



**Exhibit “9”**

**Exhibit “9”**

1 4185  
2 STEPHANIE KOETTING  
3 CCR #207  
4 75 COURT STREET  
5 RENO, NEVADA  
6

7 IN THE SECOND JUDICIAL DISTRICT COURT  
8 IN AND FOR THE COUNTY OF WASHOE  
9 THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

10 --oOo--

11 MEI-GSR HOLDINGS,	)	
	)	
12 Plaintiffs,	)	
	)	
13 vs.	)	Case No. CV13-01704
	)	
14 PEPPERMILL CASINOS, et	)	Department 7
15 al.,	)	
	)	
16 Defendants.	)	

---

17  
18 TRANSCRIPT OF PROCEEDINGS

19 STATUS HEARING

20 June 26th, 2014

21 1:15 p.m.

22 Reno, Nevada

23  
24 Reported by: STEPHANIE KOETTING, CCR #207, RPR  
Computer-Aided Transcription

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APPEARANCES:

For the Plaintiff:

COHEN & JOHNSON  
By: TERRY KINNALLY, ESQ.  
255 E. Warm Springs  
Las Vegas, Nevada

For the Defendant:

ROBISON, BELAUSTEGUI, SHARP & LOW  
By: KENT ROBISON, ESQ.  
By: THERESE SHANKS, ESQ.  
75 Washington  
Reno, Nevada

GUNDERSON LAW FIRM  
By: MARK GUNDERSON, ESQ.  
By: JOHN FUNK, ESQ.  
3895 Warren Way  
Reno, Nevada

HOLLEY, DRIGGS, WALCH, PUZEY &  
THOMPSON  
By: CLARK VELLIS, ESQ.  
800 South Meadows Parkway  
Reno, Nevada

1 RENO, NEVADA, July 10, 2014, 2:30 p.m.

2  
3 --oOo--

4 THE CLERK: Case number CV13-01704, MEI-GSR  
5 Holdings versus Peppermill Casinos. Matter set for status  
6 hearing. Counsel, please state your appearance beginning  
7 with counsel on the phone.

8 MS. KINNALLY: This is Terry Kinnally from Cohen  
9 Johnson representing the plaintiff Grand Sierra Resort.

10 THE COURT: Thank you.

11 MR. ROBISON: Kent Robison, your Honor, one of the  
12 attorneys for Peppermill Casinos, Inc..

13 MS. SHANKS: Therese Shanks attorney for  
14 Peppermill Casinos.

15 MR. VELLIS: Clark Vellis, your Honor, on behalf  
16 of Peppermill.

17 THE COURT: Thank you. Mr. Gunderson.

18 MR. GUNDERSON: Mark Gunderson on behalf of  
19 defendant Ryan Tors, your Honor.

20 THE COURT: Thank you, counsel. I set this status  
21 hearing just to keep this matter on track. There are a  
22 number of outstanding motions, but they haven't finished  
23 their pleadings cycle, haven't been submitted. Apparently,  
24 there seems to be a logjam with respect to discovery in terms

1 of a confidentiality agreement. Mr. Robison.

2 MR. ROBISON: Thank you, your Honor. It is clear  
3 to us, we've hired several experts, a gaming economist, a  
4 gaming expert who has written books on probabilities and  
5 pars, and another expert who professes to be an expert in  
6 marketing. She's a Ph.D. at UNLV. They have told us what  
7 they need to determine whether or not the Grand Sierra  
8 sustained any damages whatsoever as a result of the keying  
9 activities.

10 The plaintiff has objected. The plaintiff has  
11 filed a motion for protective order. It is a protective  
12 order that seeks an order that we not get the information  
13 that we requested in three different discovery instruments.

14 First, your Honor, we served a notice of  
15 deposition under 30(b)(6) for the Grand Sierra to produce  
16 primarily their witnesses most knowledgeable about their  
17 marketing, about their strategies with respect to whether or  
18 not they lost money because of this keying incident and it is  
19 an exhaustive list that our expert gave us to ask for. That  
20 motion is pending.

21 One of the problems with that motion is that  
22 there's a deposition date set. And the plaintiff says, wait  
23 a minute, can we first decide what, if anything, you get  
24 before you go to that date? We're okay with that, your

1 Honor. We would stipulate to vacate the deposition date  
2 hoping that discovery matter can be resolved.

3 Part of the objection is that the material, the  
4 witnesses that were requested show up as the persons most  
5 knowledgeable, the documents that we have requested in our  
6 request for production of documents and the answers that we  
7 expect to get to our interrogatories are, according to the  
8 Grand Sierra, confidential and proprietary. Well, this is  
9 not the Court's first rodeo nor ours with regards to trade  
10 secrets and antitrust and proprietary information. And that  
11 is so typically handled by a court approved confidentiality  
12 agreement, it's almost custom and habit in this jurisdiction.

13 GSR says, we're not interested. I asked them  
14 twice to look at a confidentiality agreement that we have  
15 used in this department quite successfully without  
16 confidential matter being published to anybody. We've  
17 offered them the opportunity that anything delivered would be  
18 for attorneys' eyes only, which means only lawyers and  
19 experts can see it, not parties. And instead they've asked  
20 for a special master to regulate, I don't know, regulate  
21 something, because they don't trust us. They think we're  
22 destroying documents.

23 We're prepared to argue that, but not today. We  
24 would just point out to the Court, your Honor, that

1 confidentiality of this material on both sides needs  
2 protection. And it's customary and it's appropriate to do so  
3 by a Court approved confidentiality agreement. We don't  
4 understand the resistance, but once that's resolved, I think  
5 discovery will flow with some controversy and some need to  
6 have issues resolved, but nonetheless it's a starting point  
7 for us to get going on this case.

8 THE COURT: Thank you. Mr. Gunderson.

9 MR. GUNDERSON: I don't disagree, your Honor. My  
10 major concern is scheduling and timing of discovery. There's  
11 going to be a great deal of discovery. There's going to a  
12 large number of depositions scheduled and they need to be  
13 calendared, they need to be calendared way in advance. I  
14 have no reluctance to agree with Mr. Robison and take the  
15 deposition off calendar, but I don't want to set it until  
16 further notice. I want to have dates certain. Because  
17 everyone has difficult calendars and timing with other trials  
18 and other cases.

19 So I want to be able to sit down with counsel and  
20 hammer out discovery dates and times. Locations is another  
21 issue that is going to come up. But I think that ought to be  
22 all hammered out. I just want to get finality and certainty  
23 with the order in which the depositions and the discovery  
24 goes forward and then have these dates set. I'm just not a

1 fan of putting things off and saying you'll do it at some  
2 other point, because all that does is cause more problems  
3 downstream.

4           So I think there needs to be active participation  
5 by all the parties and maybe to the extent the Court needs to  
6 get involved to do so, but we're not getting off on the right  
7 foot here. This is not a case that is, from my perspective,  
8 all that complex. This information is readily available.  
9 And I agree wholeheartedly, I think it would be a mistake to  
10 have a special master. Just creates another layer of  
11 problems that the Court would have to sort out in any event.

12           I think Mr. Robison is absolutely right, we've  
13 used these on a number of occasions, both in state and  
14 federal court where confidentiality agreements have been  
15 worked out. The only question that comes up is over  
16 designation and what ought to be or ought not to be  
17 attorneys' eyes only. Those are easy issues for the Court to  
18 decide. I think having a master involved is just a layer we  
19 don't have to have.

20           THE COURT: All right. Mr. Vellis.

21           MR. VELLIS: Nothing, your Honor. Thank you.

22           THE COURT: Thank you, Ms. Kinnally, any thoughts?

23           MS. KINNALLY: Yes, your Honor. First, let me  
24 clarify, the reason we're seeking a special master is not to



1 focus the discovery, which should have been produced long ago  
2 under 16.1 by the Peppermill, but because they have produced  
3 no substantive documents and no privilege log as to why they  
4 won't produce those documents.

5 We filed a motion to get records directly from the  
6 gaming board, because we're concerned that the gaming board  
7 may have obtained information from nonparties that may be  
8 privileged. That's our recommendation that the gaming board  
9 records, before they be produced to us, be reviewed by a  
10 special master to make sure that trade secrets of other  
11 parties are not inadvertently disclosed.

12 As to the issue on the confidentiality for the  
13 trade secrets, our position is, quite frankly, Mr. Tors came  
14 on to our property and took pars. That's the issue in the  
15 case. Plaintiff says, our trade secrets, our marketing plans  
16 are irrelevant to those issues that -- and that the  
17 defendants' request for our marketing plans from 2009 to the  
18 present, our pars on all slot machines from 2009 to the  
19 present are totally inappropriate.

20 If he says his experts need this information, then  
21 I would recommend we have a hearing under our motion for  
22 protective order under NRS 600A.070 where the Court  
23 determines the need for any information related to the trade  
24 secrets before allowing discovery. I have received no letter

1 identifying any experts or explaining the theory under which  
2 they need this trade secret information in this matter.

3 Our damages are based on the statute, unjust  
4 enrichment and royalties. I don't know why our trade secrets  
5 are relevant to those issues. And I think that GSR as the  
6 plaintiff and as the victimized party in this matter  
7 shouldn't have to disclose our trade secrets, because the  
8 party who has already misappropriated our trade secrets says  
9 they need them without any justification or explanation.

10 THE COURT: All right. Thank you, counsel.

11 MR. ROBISON: May I respond?

12 THE COURT: Yes, Mr. Robison.

13 MR. ROBISON: The complaint reads that we violated  
14 a criminal trade secret act for which there is no civil  
15 remedy. Now, we know what they mean. We know they meant to  
16 sue under the civil remedy.

17 THE COURT: Just move the microphone a little bit  
18 closer to you so Ms. Kinnally can hear. Go ahead, sir.

19 MR. ROBISON: So the complaint, as best we can  
20 discern, says this, Mr. Tors acting within the scope of his  
21 employment used a master key to gain access to six penny  
22 slots at the GSR on July 13th, 2013. Now, we know that's not  
23 the only incident. So we have filed the motion to amend our  
24 complaint to show the actual dates of other visits by

1 Mr. Tors to the GSR property. And there's two other dates  
2 that precede the one in which the Gaming Control Board  
3 investigated.

4 With that in mind, they said, we have been damaged  
5 in excess of \$10,000, one, and, two, we're entitled to  
6 punitive damages. What is the damage? There is no royalty  
7 provision under the trade secret act and the other -- pardon  
8 me? The royalty theory on this case, your Honor, is exactly  
9 what our experts want to look at. So we need their  
10 information.

11 They say they lost money. Did they lose customers  
12 because of this keying? Did they lose money from their drop  
13 from this keying activity? Or now they're saying, wait a  
14 minute, we were damaged in an amount in excess of \$10,000 for  
15 unjust enrichment, but they have not pled unjust enrichment.  
16 If they want to bring that on, okay, that's going to reframe  
17 things. That means that we're not only going to be asking  
18 for, did the GSR sustain damages? And the next issue is, was  
19 the Peppermill unjustly enriched?

20 Then we have to sit down. We say this  
21 confidential information, what you claim is confidential is  
22 needed by the plaintiff's expert. She says we haven't  
23 designated experts. That's not due until March. But our  
24 experts need the material so that they can disclose in March

1 of 2015 the basis for their opinions.

2 And one opinion is going to be blatantly clear,  
3 they did not lose a dime. They did not lose a dime. They  
4 didn't lose one customer. They didn't lose one jackpot.  
5 They didn't lose one dime. Are we saying that the conduct  
6 was appropriate? No. Are we say the Peppermill authorized  
7 it? Yes. But we want to know how they were hurt.

8 Now, if they want to change the game now, a year  
9 later, almost a year after their complaint and say, well, we  
10 want unjust enrichment. So here's what the plaintiff is  
11 saying, Robison, you didn't produce under 16.1. Produce  
12 what? They've never done a Rule 34. She says, you know what  
13 you have to produce. Well, what I have to produce is what  
14 you're saying is confidential. So sign the confidentiality  
15 agreement. No, no, no, you produce.

16 We know that you know that you have something  
17 that's discoverable under Rule 26, so you produce it, because  
18 we don't know what it is. If you don't want to produce it,  
19 give us the privilege log. Privilege log is under Rule 34.  
20 Make the request, Rule 34. We'll give them a privilege log,  
21 we'll give them what we think is appropriate, but all of this  
22 stuff should be blessed by a confidentiality agreement  
23 approved by this Court.

24 THE COURT: All right. This is what we're going

1 to do is set a hearing on this confidentiality agreement. I  
2 agree with Mr. Gunderson, the sooner we settle this, the  
3 sooner we'll be able to get discovery on track and I don't  
4 want to wait too much longer to resolve this issue.

5 So, Ms. Clerk, let's look in like two weeks from  
6 now, three weeks. I know the problem with setting anything  
7 in July is it runs into people's personal schedules. But,  
8 Ms. Clerk, can we find something that's got at least a  
9 two-hour window.

10 THE CLERK: Your Honor, I'm looking at Tuesday,  
11 July 8th in the morning or we can do it in the afternoon at  
12 2:00.

13 THE COURT: Counsel, Ms. Kinnally, do you or do  
14 you have Mr. Johnson's schedule or it certainly sounds as  
15 if --

16 MS. KINNALLY: Yes, I do. I have our calendar.

17 THE COURT: It sounds like you're up-to-speed as  
18 well. How does that date sound, comport with your --

19 MS. KINNALLY: I'm afraid I didn't hear the date.

20 THE CLERK: How about July 8th at 2:00 in the  
21 afternoon?

22 MS. KINNALLY: Your Honor, that is a problem.  
23 Mr. Johnson has a trial and Mr. Cohen is having surgery. So  
24 that's just going to be a very bad couple of days here at the

1 office. Probably later in the week or the following week  
2 would be okay.

3 THE COURT: Ms. Clerk.

4 THE CLERK: Would Thursday the 10th be too soon in  
5 the afternoon at 2:30?

6 MS. KINNALLY: I'm pulling it up to double check.  
7 It doesn't look like there is anything that will be a problem  
8 on the 10th.

9 THE CLERK: Let's do it 2:30 on July 10th.

10 THE COURT: We'll give you the rest of the  
11 afternoon. How does that sound, Mr. Gunderson, Mr. Vellis?

12 MR. GUNDERSON: I'm in agreement.

13 MR. VELLIS: That's fine, your Honor.

14 THE COURT: Mr. Robison.

15 MR. ROBISON: That's fine for me and I appreciate  
16 the Court's consideration. We are arguing specifically what?

17 THE COURT: The difference between a  
18 confidentiality agreement and a special master and the need  
19 for either. We're going to resolve it. We're going to have  
20 either one or the other.

21 MR. ROBISON: We will brief accordingly.

22 THE COURT: I would appreciate to have briefs  
23 submitted. If you can just give it to us by the 7th, which  
24 is Monday.

1 MR. ROBISON: That's when our's are due.

2 THE COURT: Ms. Kinnally, is that all right with  
3 you?

4 MS. KINNALLY: That would be fine. My question,  
5 your Honor, is since you also want to discuss the special  
6 master, do you want the gaming board and the AG's office  
7 notified of this hearing?

8 THE COURT: No.

9 MS. KINNALLY: Because it's the gaming records  
10 that we want the special master for.

11 THE COURT: Let me hear from counsel.

12 MR. ROBISON: Let me clarify, if I may, your  
13 Honor. The plaintiff has filed a motion for an order to  
14 compel the Gaming Control Board to produce all of the  
15 documents it obtained, all of the documents it created and  
16 all of the documents it has relevant to its investigation of  
17 the Peppermill. The Gaming Control Board is going to oppose  
18 that vehemently under the statute. We are going to oppose  
19 that.

20 We believe that this is a discovery issue between  
21 the Peppermill and the Grand Sierra. We know what we gave  
22 Gaming Control Board, 40,000 e-mails. We know what we gave  
23 them. If we can work out the confidentiality agreement and  
24 if we can protect innocent third party properties, other

1 casinos, whose confidential information is part of this  
2 investigation, then we can go forward.

3           The Gaming Control Board will say, we're not  
4 producing the confidential information that we obtained,  
5 created for this investigation, but we will not stand in the  
6 way of the parties to exchange the information they agreed to  
7 under whatever confidential circumstances they agreed to. So  
8 does the Gaming Control Board have to be here? I'm not sure.  
9 I do know that they're going to vehemently oppose that  
10 motion.

11           THE COURT: All right. Thank you. Ms. Kinnally,  
12 I don't see the necessity at this stage for the Gaming  
13 Control Board's participation at this hearing. I certainly  
14 anticipate that may be an issue that will be raised in the  
15 future. But for our purposes in just trying to set up a  
16 structure under which we can operate, I don't believe they're  
17 necessary parties to this particular hearing on the 10th.

18           All right. But thank you very much, counsel, for  
19 bringing that to the Court's attention. All right. Thank  
20 you. We'll wait until the rest of the motions run through  
21 their cycle. Mr. Gunderson, you rise.

22           MR. GUNDERSON: The only point I have here is that  
23 Mr. Robison wants to take the depositions off calendar, has  
24 agreed to take them off calendar.



1 MS. KINNALLY: I'm sorry, your Honor, I can't  
2 hear.

3 THE COURT: Just a minute. We'll move the  
4 microphone closer to Mr. Gunderson.

5 MR. GUNDERSON: I said Mr. Robison has agreed and  
6 I concur with taking the depositions off calendar that are  
7 currently scheduled. I just want to ask that the Court order  
8 that those be rescheduled now. They may have to be  
9 rescheduled, but it's a matter of getting the calendars  
10 cleared, getting people to arrive and getting people around.  
11 I just hate taking things off calendar and just going off  
12 into the ozone.

13 THE COURT: Do you need this Court's participation  
14 in setting the calendar?

15 MR. GUNDERSON: I don't know.

16 THE COURT: When are the depos set for now?

17 MR. ROBISON: I think July 10th.

18 MR. GUNDERSON: They all start on the week of  
19 July 10th.

20 MS. KINNALLY: Actually, your Honor, part of the  
21 problem with that is problems with the notice itself. The  
22 notice sets depositions over four days with no attempt to  
23 notify us as to which of the 30 PMK's, according to topic  
24 they expect to take each day. So they expect us to have 30

1 witnesses on call for a week.

2 MR. GUNDERSON: Your Honor, that's not my issue.  
3 That can be resolved. I'm just saying, I don't want to go  
4 out a month and then have all of the lawyers that have to get  
5 involved trying to schedule all of these depositions.

6 THE COURT: All right. Mr. Robison.

7 MR. ROBISON: Your Honor, sometimes you try to do  
8 the nice thing and it comes back at you. They can pick which  
9 PMK's have knowledge about what topics and produce them on  
10 any date in that time frame they select. That was meant to  
11 be convenient for them.

12 Now, if they want me to renotice the 30(b)(6)  
13 depositions and say I want 1 through 4 on the 10th and 5  
14 through 9 on the 8th, I'll do that. But I don't think that's  
15 fair to them. I don't think they want that.

16 THE COURT: All right. How much time do you think  
17 you'll need following the hearing on the 10th to reset these  
18 depos? Do you want to set them for the week of the 21st, two  
19 weeks later?

20 MR. ROBISON: Your Honor, I think in all fairness  
21 to everybody, there's going to be some disputes about which  
22 of those PMK guys are going to have to testify and not, about  
23 what, so we might want to look at mid August.

24 MR. GUNDERSON: I'm fine with that. I just want a

1 date, so we have a date, so we all know what we're working  
2 back against.

3 THE COURT: That's fair enough. That's fair  
4 enough.

5 MR. GUNDERSON: But I'm okay with mid August.

6 THE COURT: All right. What about the week of  
7 August 18th?

8 MR. ROBISON: That's fine, your Honor.

9 THE COURT: Ms. Kinnally.

10 MS. KINNALLY: That would be fine, your Honor.

11 THE COURT: All right. Thank you. Mr. Vellis.

12 MR. VELLIS: That's absolutely okay, your Honor.  
13 Thank you very much.

14 MR. GUNDERSON: I asked for it and I agree those  
15 are good dates.

16 THE COURT: Thank you, counsel. I appreciate your  
17 hard work. All right. Look forward to the briefs and we'll  
18 see you on July 10th.

19 MR. ROBISON: Thank you, your Honor.

20 THE COURT: Ms. Kinnally, thank you very much for  
21 your participation.

22 MS. KINNALLY: Thank you, your Honor.

23 --oOo--  
24

1 STATE OF NEVADA       )  
                              ) ss.  
2 County of Washoe       )

3       I, STEPHANIE KOETTING, a Certified Court Reporter of the  
4 Second Judicial District Court of the State of Nevada, in and  
5 for the County of Washoe, do hereby certify;

6       That I was present in Department No. 7 of the  
7 above-entitled Court on June 26, 2014, at the hour of 1:15  
8 p.m., and took verbatim stenotype notes of the proceedings  
9 had upon the status hearing in the matter of MEI-GSR  
10 HOLDINGS, Plaintiff, vs. PEPPERMILL CASINOS, et al.;  
11 Defendants, Case No. CV13-01704, and thereafter, by means of  
12 computer-aided transcription, transcribed them into  
13 typewriting as herein appears;

14       That the foregoing transcript, consisting of pages 1  
15 through 19, both inclusive, contains a full, true and  
16 complete transcript of my said stenotype notes, and is a  
17 full, true and correct record of the proceedings had at said  
18 time and place.

19  
20       DATED: At Reno, Nevada, this 21st day of August 2014.

21  
22                               S/s Stephanie Koetting  
23                               STEPHANIE KOETTING, CCR #207  
24

**Exhibit “10”**

**Exhibit “10”**

CASE NO. CV13-01704

MEI-GSR HOLDINGS vs. PEPPERMILL CASINOS et al.

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

06/26/14

STATUS HEARING

HONORABLE

PATRICK

FLANAGAN

DEPT. NO. 7

K. Oates

(Clerk)

S. Koetting

(Reporter)

Terry Kinnally, Esq., was present in Court via Court Call on behalf of Plaintiff MSI-GSR Holdings, Inc., who was not present.

Kent Robison, Esq., Clark Vellis, Esq. and Therese Shanks, Esq. were present in Court on behalf of Defendant Peppermill Casinos, Inc., who was not present.

Mark Gunderson, Esq., was present in Court on behalf of Defendant Ryan Tors, who was not present.

1:14 p.m. — Court convened with Court and counsel present.

The Court advised respective counsel that he is aware of the filed Motions in this case, however, they have not been fully briefed. Counsel Robison addressed the Court and advised that experts have been hired as to gaming and marketing, and those experts have requested certain documentation be provided, however, Plaintiff's counsel objects, and is seeking a protective order. Further, counsel advised he has noticed NRCP 30(b)(6) depositions, but will stipulate to continue those depositions and await the Court's decision as to the Motion for Protective Order. Further, counsel advised that issues exist as the confidentiality of documents to be exchanged between the parties, to include that defense counsel suggested a confidentiality agreement be executed for the protection of all parties, however, the Plaintiff disagrees with a confidentiality agreement, and supports the appointment of a special master.

Counsel Gunderson addressed the Court and concurred with counsel Robison as to the necessity of a confidentiality agreement, and further had no objection to the depositions being vacated, however, counsel moved to have the depositions immediately re-calendared to allow for dates certain, locations and order of witnesses. Further, counsel argued that the Court may need to become more involved, this is not a complex case, and the services of a special master is not necessary.

Counsel Vellis addressed the Court and added nothing further.

Counsel Kinnally addressed the Court and argued that the Peppermill is seeking documentation from the Gaming Control

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

## APPEARANCES-HEARING

## CONTINUED TO

06/26/14

STATUS HEARINGHONORABLE  
PATRICK  
FLANAGAN  
DEPT. NO. 7  
K. Oates  
(Clerk)  
S. Koetting  
(Reporter)

Board, and a special master should be appointed to review this documentation. Further, counsel argued that trade secrets are an issue in this case, Defendant Tors took "pars" from slot machines belonging to the Plaintiff using a master key, and a Hearing should be conducted as to the Motion for Protective Order relating to defense experts being entitled to review documentation involving trade secrets.

Counsel Robinson responded and argued that the complaint reads that there was a violation of the criminal trade secrets act. Further, the Plaintiff is claiming damages in excess of ten thousand dollars, those damages should be proven, the defense experts need the discovery to properly assess the case, and a confidentiality agreement should be executed by the parties.

COURT ORDERED: A Hearing as to a Confidentiality Agreement/ Special Master will be held on July 10, 2014 at 2:30 p.m. with briefs filed no later than 5:00 p.m. on July 7, 2014.

Counsel Kinnally inquired if a representative of the Gaming Control Board should be present at the Hearing.

Counsel Robison responded that as to the Gaming Control Board documentation requested by the Plaintiff, both the Peppermill and the Gaming Control Board will oppose that request, however, the Gaming Control Board will take no position if the parties exchange the documentation between themselves, under the guise of a confidentiality agreement.

COURT ORDERED: The attendance of a representative of the Gaming Control Board at the Hearing scheduled for July 10, 2014 is not necessary.

Counsel Gunderson moved to reschedule the depositions that were vacated for the week of July 10, 2014.

Counsel Kinnally responded and argued that notice is an issue, in that, thirty NRCP 30(b)(6) depositions were noticed for one week.

Counsel Robison responded that the depositions were noticed for the Plaintiff's convenience and they can choose the most knowledgeable deponents.

Counsel Gunderson moved for deposition dates.

Counsel Robison responded a week in mid-August would work.

CASE NO. CV13-01704

MEI-GSR HOLDINGS vs. PEPPERMILL CASINOS et al.

Page Three

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

08/26/14  
HONORABLE  
PATRICK  
FLANAGAN  
DEPT. NO. 7

STATUS HEARING

COURT ORDERED: The depositions will be rescheduled to the  
week of August 18, 2014.  
1:37 p.m. – Court stood in recess.

K. Oates  
(Clerk)  
S. Koetting  
(Reporter)

RA 00671



**Exhibit “11”**

**Exhibit “11”**

1 4185  
2 STEPHANIE KOETTING  
3 CCR #207  
4 75 COURT STREET  
5 RENO, NEVADA  
6

7 IN THE SECOND JUDICIAL DISTRICT COURT  
8 IN AND FOR THE COUNTY OF WASHOE  
9 THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

10 --oOo--

11 MEI-GSR HOLDINGS,	)	
	)	
12 Plaintiffs,	)	
	)	
13 vs.	)	Case No. CV13-01704
	)	
14 PEPPERMILL CASINOS, et	)	Department 7
15 al.,	)	
	)	
16 Defendants.	)	

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17  
18 TRANSCRIPT OF PROCEEDINGS

19 STATUS HEARING

20 July 10, 2014

21 2:30 p.m.

22 Reno, Nevada

23  
24 Reported by: STEPHANIE KOETTING, CCR #207, RPR  
Computer-Aided Transcription

1 APPEARANCES:

2 For the Plaintiff:

3 COHEN & JOHNSON  
4 By: STAN JOHNSON, ESQ.  
5 By: TERRY KINNALLY, ESQ.  
255 E. Warm Springs  
Las Vegas, Nevada

6  
7 For the Defendant:

8 ROBISON, BELAUSTEGUI, SHARP & LOW  
9 By: KENT ROBISON, ESQ.  
By: THERESE SHANKS, ESQ.  
75 Washington  
Reno, Nevada

10 GUNDERSON LAW FIRM  
11 By: MARK GUNDERSON, ESQ.  
12 By: JOHN FUNK, ESQ.  
3895 Warren Way  
13 Reno, Nevada  
14  
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1 RENO, NEVADA, July 10, 2014, 2:30 p.m.

2  
3 --oOo--

4 THE CLERK: Case number CV13-01704, MEI-GSR  
5 Holdings versus Peppermill Casinos. Matter set for hearing.  
6 Counsel, please state your appearance.

7 MR. ROBISON: Good afternoon, your Honor. Kent  
8 Robison and Theres Shanks and Keegan Low for the Peppermill.

9 MR. GUNDERSON: Good afternoon, your Honor. Mark  
10 Gunderson and John Funk on behalf of Ryan Tors and Ryan Tors  
11 is here in the courtroom today.

12 THE COURT: Thank you. On the phone?

13 MR. JOHNSON: Good afternoon, your Honor. Stan  
14 Johnson and Terry Kinnally on behalf of the plaintiff.

15 THE COURT: Thank you very much. I set this  
16 hearing to give the parties some incentive to come together  
17 and attempt to work out the confidentiality agreement. And  
18 subsequent to that, just a few days ago, the parties have  
19 filed a stipulated confidentiality agreement and protective  
20 order.

21 There still seems to be quite a few outstanding  
22 motions, some of which may be mooted by the confidentiality  
23 agreement, although that seems to be a subject of dispute  
24 amongst itself. So let me hear from plaintiffs first.

1 Mr. Johnson.

2 MR. JOHNSON: Yes, thank you, your Honor.

3 MR. ROBISON: Can I just --

4 THE COURT: Hang on a second.

5 MR. JOHNSON: It's my understanding from the  
6 Court's minutes was that the hearing today would address the  
7 confidentiality agreement and the issue of the special master  
8 and whether that was necessary in view of a confidentiality  
9 agreement. As the Court indicated, we executed the  
10 confidentiality agreement a week ago. I hadn't known it had  
11 actually been filed, but in any event, we did agree to the  
12 form of the confidentiality agreement provided by counsel.  
13 To that extent, I think, you know, that issue is resolved.

14 The issue of the special master may still be an  
15 issue depending on what happens with our motion to have a  
16 turn over of the records from the Gaming Control Board, which  
17 hasn't been ruled on yet. The main purpose of the special  
18 master was to deal with those documents in the event that  
19 motion was granted and the special master could review those  
20 documents to see if there were certain ones that should be  
21 withheld, because they might be the trade secret information  
22 of other casinos, or some of the e-mails might be proper to  
23 be withheld. And that was really the basis for the request  
24 for the special master that would deal with those issues.

1 THE COURT: All right.

2 MR. JOHNSON: In some ways, it's not really  
3 connected with the protective order or confidentiality order.  
4 In looking at that, I felt what counsel had proposed was  
5 reasonable. And as the Court, I think, indicated the last  
6 time, there was going to be a confidentiality agreement  
7 necessary in the case, obviously. So to that extent, I think  
8 we've resolved that.

9 THE COURT: Thank you, Mr. Johnson. Mr. Robison.

10 MR. ROBISON: Thank you, your Honor. Counsel  
11 e-mailed us an executed copy of the confidentiality  
12 agreement. We asked that the original be sent to us with  
13 original signatures so that we could all file the stipulation  
14 with an order on with original signatures. I think that's  
15 required. And we have not yet received the original  
16 signatures from GSR. I'm not saying we're not going to. I  
17 just want to correct the record that it hasn't been filed  
18 yet.

19 THE COURT: So Mr. Johnson is correct, it hasn't  
20 been filed.

21 MR. ROBISON: It has not been filed. So when it  
22 is signed and filed, then I think we can get into some  
23 discovery issues. But I do agree with counsel that today's  
24 hearing was set to argue only the briefs that the Court

1 ordered at the status conference, which pertained to  
2 confidentiality special master.

3 I don't necessarily agree with GSR's counsel that  
4 the motion to compel Gaming Control Board to produce  
5 documents has much to do with it. And here's why. GSR has  
6 asked Gaming Control Board -- have asked you to order the  
7 Gaming Control Board to produce all documents that it  
8 created, that it scrutinized, examined and that it received  
9 from the Peppermill.

10 THE COURT: Regarding NGC 13-23.

11 MR. ROBISON: Correct. I know what we gave them.  
12 I know that with adequate assurances of trustworthiness and  
13 confidentiality, that that's probably going to be exchanged  
14 in this case as discovery. I don't know about what the  
15 Gaming Control Board generated. And I think the Gaming  
16 Control Board wants a seat at the table if that motion is  
17 going to be argued.

18 But with regard to a special master, let me point  
19 out, your Honor, that what has been produced in this case by  
20 Mr. Tors are the spreadsheets, the spreadsheets that were  
21 prepared that pertain to his visits, not only to the GSR, but  
22 to other properties in this community, 11 different casinos,  
23 I believe, is the number. There is an identification in the  
24 gaming control complaint of the gaming casinos that Mr. Tors

1 visited over this two-year period.

2 We are adamant, your Honor, we want to argue  
3 sincerely and emphatically that this case not involve par  
4 percentage or theoretical holds of parties not to this case.  
5 GSR has sued us, the Peppermill, for accessing its machines.  
6 Initially, it sued us for the access that occurred I think on  
7 July 13th, 2013. Well, that was taken over by the Gaming  
8 Control Board. It's moot.

9 But there were two other visits. There was one on  
10 December 29th, 2011 and June 14th, 2012. Now, they had asked  
11 us to just simply supplement 16.1 and produce that. They  
12 don't want there pars produced publically. So I'm not going  
13 to produce that. That's why we needed confidentiality. We  
14 don't need a special master.

15 With respect to the spreadsheets that indicate the  
16 machines that were accessed on those two occasions that I've  
17 mentioned, Gaming Control Board -- excuse me -- GSR already  
18 knows six machines were accessed on the dates that the Gaming  
19 Control Board was called in to initiate its investigation.  
20 So we'll produce those.

21 Now, Mr. Gunderson has produced the spreadsheets  
22 regarding the other properties in a redacted format, and  
23 appropriately so, because this case should not involve what  
24 the GSR says is confidential trade secret information of



1 Circus Circus, Eldorado, Atlantis, et cetera. So we're ready  
2 to play ball. We want to get that confidentiality agreement  
3 signed, have this Court order us to comply with it.

4 We will give them the schedules of Mr. Tors'  
5 visits to the GSR and we're going to be adamant that this not  
6 involve other casinos for many, many reasons. They're not  
7 here, they're not here to protect themselves, they're not  
8 here to defend themselves and they're not parties.

9 And the GSR has admitted, I think, we can't show  
10 in this case that we lost dollars or that we lost patrons.  
11 So we're going to ask that a different theory of damages be  
12 implemented.

13 THE COURT: The royalty.

14 MR. ROBISON: The royalty.

15 THE COURT: Correct.

16 MR. ROBISON: Now, our preliminary research, your  
17 Honor, shows that that theory of damages is based upon the  
18 value of the trade secret, i.e., par, theoretical hold  
19 setting, to GSR. So we've got to have some definitive  
20 guidelines on what this discovery is going to be about.  
21 Because if their theory is now royalties, we want to see how  
22 they set their machines and how they value their pars,  
23 because that might be a royalty damage model and that is  
24 exactly what we've asked for in our 30(b)(6).

1           I was 18 years old and hit a jackpot and ran.  
2   That's the last time I gambled. But I know more about slot  
3   machines the past four months talking to experts than I ever  
4   wanted to know about them. And this par thing is a very  
5   small part of the overall marketing program that results in  
6   money dropping from those slot machines.

7           So we got to get into that, and I don't know how  
8   this Court wants to get into that, but it's not a special  
9   master, it's a confidentiality agreement and I think meet and  
10   confers and a resolution through the discovery commissioner  
11   or this Court.

12           THE COURT: Well, I don't think we need to get  
13   into it today.

14           MR. ROBISON: Okay.

15           THE COURT: I don't want to get too far ahead of  
16   ourselves. I want to make sure we get this stipulated  
17   confidentiality agreement and protective order on file,  
18   executed by all parties and this Court. Have the parties  
19   begin the discovery process, see what shakes out, isolate  
20   those issues or items that are in contest and then we can  
21   address those.

22           But in terms of today's hearing, I'm pleased that  
23   the parties have made the progress they have made thus far.  
24   I don't think we need to address the special master at this

1 time. I'm persuaded by the Gaming Control Board's  
2 observation in its brief that perhaps most, if not all, the  
3 information that it has will be exchanged between parties  
4 under the rubric of the stipulated confidentiality agreement.  
5 If it isn't, if there's outliers out there and the parties  
6 want to bring that to our attention, then we have a more  
7 discreet discussion.

8 I think I share everybody's concern that this case  
9 does not involve mission creep into other properties. We'll  
10 have our hands full with these two good institutions and  
11 there will be challenging issues, as both counsel know,  
12 regarding damage models. And that's generally the hill that  
13 these battles are fought on.

14 But for our purposes here, I'm pleased to see that  
15 the parties have been able to come together at least with  
16 respect to this important document and that kick starts  
17 everything and let's go forward as fast as we can. I take  
18 that back. Let's just go forward.

19 MR. ROBISON: Just one scheduling issue. Your  
20 Honor, we have a 30(b)(6) deposition scheduled for  
21 August 25th, and we probably need a ruling at least on the  
22 protective order motion between now and then.

23 THE COURT: All right. Okay. Mr. Gunderson, I  
24 didn't want to cut you off, sir.

1 MR. GUNDERSON: That's fine.

2 THE COURT: Okay.

3 MR. GUNDERSON: It's a strange place to be at the  
4 wrong end of the table or the other end of the table. I just  
5 wanted to note for the record, we've not executed the  
6 confidentiality agreement. We're in agreement with the  
7 confidentiality agreement. We will sign it when it comes to  
8 my desk in original form.

9 THE COURT: Terrific. Thank you. Mr. Johnson.

10 MR. JOHNSON: Your Honor, yes, Stan Johnson. I  
11 just wanted to say that the original was put in the mail  
12 yesterday so they should have it very shortly.

13 THE COURT: Excellent. Thank you very much,  
14 counsel. All right. We're current with the pleadings that  
15 have been filed in this matter, up until, I think it was the  
16 8th was the last filing. We look for -- which was the  
17 plaintiff's reply to the defendant Peppermill's opposition to  
18 motion to compel documents, motion for protective order and  
19 request for gaming records. And we'll get the protective  
20 order out as soon as possible. Thank you very much.  
21 Anything further, Mr. Johnson, Ms. Kinnally?

22 MR. JOHNSON: I think that's all, your Honor.  
23 Thank you.

24 THE COURT: Thank you, counsel. Stay cool down

1 there. Mr. Robison.

2 MR. ROBISON: Nothing further, your Honor.

3 THE COURT: Mr. Gunderson, Mr. Funk, anything  
4 further?

5 MR. GUNDERSON: No, your Honor.

6 THE COURT: Good to see you, counsel. Court's in  
7 recess.

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1 STATE OF NEVADA       )  
                              ) ss.  
2 County of Washoe       )

3       I, STEPHANIE KOETTING, a Certified Court Reporter of the  
4 Second Judicial District Court of the State of Nevada, in and  
5 for the County of Washoe, do hereby certify;

6       That I was present in Department No. 7 of the  
7 above-entitled Court on July 10, 2014, at the hour of 2:30  
8 p.m., and took verbatim stenotype notes of the proceedings  
9 had upon the status hearing in the matter of MEI-GSR  
10 HOLDINGS, Plaintiff, vs. PEPPERMILL CASINOS, et al.,  
11 Defendant, Case No. CV13-01704, and thereafter, by means of  
12 computer-aided transcription, transcribed them into  
13 typewriting as herein appears;

14       That the foregoing transcript, consisting of pages 1  
15 through 13, both inclusive, contains a full, true and  
16 complete transcript of my said stenotype notes, and is a  
17 full, true and correct record of the proceedings had at said  
18 time and place.

19  
20       DATED: At Reno, Nevada, this 14th day of August 2014.

21  
22                               S/s Stephanie Koetting  
23                               STEPHANIE KOETTING, CCR #207  
24

**Exhibit “12”**

**Exhibit “12”**

1 STATE OF NEVADA                    )  
2    ) ss:  
3 COUNTY OF CLARK                    )

4                                   **AFFIDAVIT OF TERRY KINNALLY ESQ.,**

5 I, Terry Kinnally, Esq., being duly sworn on oath and under the penalty of perjury state that the  
6 following is true of my own personal knowledge and if called to testify in this matter would  
7 testify as follows

8 1 I am an attorney of record for MEI-GSR d/b Grand Sierra Resort in this matter.

9 2. I affirm that Exhibit 1 is a true and accurate copy of the letter received by me from Kent  
10 Robison, Esq. dated August 21, 2014.

11 3. I affirm that Exhibit 2 is a true and accurate copy of the Supplemental disclosure  
12 statement served by GSR on the Defendants dated July 8, 2014.

13 4. I affirm that Exhibit 3 is a true and accurate copy of the disclosure statement filed by the  
14 Peppermill on January 8, 2014.

15 5. I affirm that exhibit 4 is a true and accurate copy of the email I sent to Kent Robison,  
16 Esq. on June 15, 2014.

17 6. I affirm that Exhibit 5 is a true and accurate copy of the proceedings before the Nevada  
18 Gaming Commission dated February 20, 2014.

19 7. I affirm that Exhibit 6 is a true and accurate copy of the affidavit of David Schwartz,  
20 Plaintiff's retained expert in this matter and a true and correct copy of his C.V.

21 8. I affirm that Exhibit 7 is a true and accurate copy of the transcript of proceedings of the  
22 hearing in this matter held on June 26, 2014.

23 9. I affirm that Exhibit 8 is a true and accurate copy of the transcript of proceedings of the  
24 hearing in this matter held on July 10, 2014.

25 10. I affirm that all excerpts from exhibits filed by the Peppermill in this matter are true and  
26 accurate.

27 ...

28 ...



11. I state that at no time did Kent Robison Esq. or Mark Gunderson, Esq. call or inform Counsel for GSR in any manner that they had decided to no longer honor the agreement to continue the PMK depositions pending a ruling from the Court on the Plaintiff's protective order.

12. I state that at no time did Kent Robison, Esq. or Mark Gunderson, Esq. inform Counsel for GSR in any manner that they intended to proceed with the depositions of the PMKs despite or in disregard of the pending protective order.

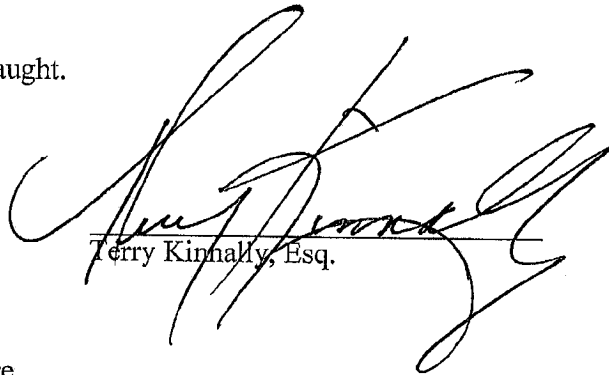
13. I state that at no time did Kent Robison, Esq. ever hold a dispute resolution conference with me to discuss the interrogatories or requests for production filed by Peppermill.

14. I state that even though a stipulated protective order was entered on July 17, 2014 the Peppermill has continued to refuse to produce any substantive documents under NRCP 16.1.

#### 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.

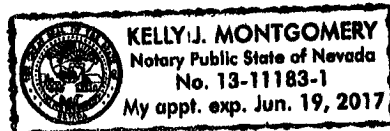
Further your Affiant sayeth naught.



Terry Kinhal, Esq.

SUBSCRIBED and SWORN to before  
me this 8<sup>th</sup> day of September, 2014.

  
NOTARY PUBLIC in and for said  
County and State



1 CODE NO. 1945

2  
3  
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5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \*

9 MEI-GSR HOLDINGS, LLC, a Nevada corporation,  
10 d/b/a GRAND SIERRA RESORT,

11 Plaintiff,

Case No. CV13-01704

12 vs.

Dept. No. B7

13 PEPPERMILL CASINOS, INC., a Nevada  
corporation, d/b/a PEPPERMILL CASINO, et al.,

14 Defendants.  
15 \_\_\_\_\_/

16 **RECOMMENDATION FOR ORDER**

17 Plaintiff MEI-GSR Holdings, LLC, doing business as Grand Sierra Resort, filed the complaint  
18 in this action on August 2, 2013. Essentially, Plaintiff alleges that Defendant Ryan Tors, while acting  
19 as an employee of Defendant Peppermill Casinos, Inc. ("Peppermill"), entered Plaintiff's premises  
20 and made unauthorized entry into certain slot machines to access confidential and proprietary  
21 information contained within those machines. Plaintiff states claims for relief based upon violations  
22 of Nevada's Uniform Trade Secrets Act and "vicarious liability/respondeat superior." It seeks  
23 compensatory and punitive damages, as well as injunctive relief.<sup>1</sup> Defendants deny any liability to  
24 Plaintiff.

25 \_\_\_\_\_  
26 <sup>1</sup> At the conclusion of a hearing on August 27, 2013, the Court enjoined Defendant Tors "from entering the Grand  
Sierra Resort to collect or use any information that he has previously obtained," and ordered him "to turn over any  
information gathered by him at the Grand Sierra Resort property, with the exception of the universal key(s)." No injunctive  
relief was provided with regard to Defendant Peppermill. The Court's written order regarding this injunctive relief was  
entered on November 15, 2013.

1 Counsel for all parties participated in an early case conference on December 5, 2013.  
2 Defendant Peppermill filed its individual case conference report on April 11, 2014; Plaintiff's report  
3 was filed on April 16, 2014; and the report of Defendant Tors was filed on May 22, 2014. The  
4 parties are scheduled to commence trial in this action on July 6, 2015.

5 On June 4, 2014, Defendant Peppermill filed *Defendant Peppermill Casinos, Inc.'s Motion to*  
6 *Dismiss Complaint*. Defendant Peppermill maintains that Plaintiff has violated NRCP 16.1(a)(1)(C)  
7 by improperly refusing to provide a calculation of its damages, and that the complaint should  
8 therefore be dismissed under NRCP 16.1(e)(3). On June 5, 2014, Defendant Tors filed a *Joinder to*  
9 *Motion to Dismiss Complaint*.

10 On June 18, 2014, Plaintiff filed *Plaintiff's Opposition to Defendants' Motion to Dismiss*  
11 *Complaint and Counter-Motion to Compel Disclosures Under NRCP 16.1*. Plaintiff asserts that  
12 Defendant Peppermill failed to confer about this matter prior to filing its motion, and that Peppermill's  
13 failure to comply with its NRCP 16.1 obligations precludes Plaintiff from providing a calculation of  
14 damages. It asks that the motion be denied until such time as Peppermill produces records showing  
15 the number of machines accessed by Mr. Tors and the number of times such access occurred. In  
16 its counter-motion, Plaintiff seeks an order compelling Defendant Peppermill to produce specified  
17 documents that it contends Peppermill was required to produce under NRCP 16.1. *Defendant*  
18 *Peppermill Casinos, Inc.'s Reply to Plaintiff's Opposition to Motion to Dismiss Complaint* was filed on  
19 June 30, 2014, and Defendant Tors filed a *Joinder to Defendant Peppermill Casinos, Inc.'s Reply to*  
20 *Plaintiff's Opposition to Motion to Dismiss Complaint* on that same date. On July 3, 2014, Defendant  
21 Peppermill filed its *Opposition to Plaintiff's Motion to Compel Peppermill's Production of*  
22 *Documents*.<sup>2</sup> *GSR's Reply to Peppermill's Opposition to Motion to Compel Documents Under 16.1*  
23 was filed on July 8, 2014.<sup>3</sup> The motion to dismiss and the counter-motion to compel were submitted  
24 for decision on July 15, 2014.

25 <sup>2</sup> This opposition was included as part of a filing including Defendant Peppermill's oppositions to other motions,  
26 and its brief in response to a Court order.

<sup>3</sup> This reply was included as part of a filing including Plaintiff's replies to the oppositions filed by Defendant Peppermill on July 3, 2014.

1 NRCP 16.1(a) requires any party seeking damages to provide all other parties with the  
2 following information:

3 A computation of any category of damages claimed by the disclosing party, making  
4 available for inspection and copying as under Rule 34 the documents or other  
5 evidentiary matter, not privileged or protected from disclosure, on which such  
computation is based, including materials bearing on the nature and extent of injuries  
suffered . . . .

6 NRCP 16.1(a)(1)(C). The rule also requires that this calculation be provided at or within fourteen  
7 days after the Rule 16.1(b) conference unless (a) a different time is set by stipulation or court order,  
8 or (b) a party objects during the conference that initial disclosures are not appropriate in the  
9 circumstances of the action and states the objection in the Rule 16.1(c) case conference report.  
10 This disclosure, like other initial disclosures, must be based on information that is reasonably  
11 available at the time of disclosure. A party "is not excused from making this disclosures because it  
12 has not fully completed its investigation of the case or because it challenges the sufficiency of  
13 another party's disclosures or because another party has not made its disclosures." See id.  
14 16.1(a)(1).

15 On January 3, 2014, Plaintiff served Defendants with "Plaintiff's Early Case Conference  
16 NRCP 16.1 Production of Documents." Section III of that disclosure addresses the computation of  
17 damages requirement. After quoting NRCP 16.1(a)(1)(C), Plaintiff states as follows: "Damages  
18 include general and special damages in an amount to be determined at trial." On January 27, 2014,  
19 Plaintiff served Defendants with "Plaintiff's First Supplemental Disclosure Pursuant to NRCP 16.1,"  
20 in which it states as follows with regard to the computation of damages requirement:

21 Damages will be computed based on the number of times Mr. Tors accessed  
22 machines at the GSR without permission, and the number of machines so accessed.  
23 Damage computations will also be based on the use to which Mr. Tors used the  
information so obtained. Said damages are expected to include general and special  
damages in an amount to be determined at trial.

24 The actual amount of these damages will be determined upon the examination  
25 of the information obtained by Mr. Tors and currently in the possession of the Nevada  
Gaming Control Board. Plaintiff reserves the right to supplement this production, as  
discovery is ongoing.

26 Defendant Peppermill maintains that this statement is insufficient under NRCP 16.1(a)(1)(C). It

1 therefore seeks dismissal of this action pursuant to NRCP 16.1(e)(3), which provides as follows:

2 If an attorney fails to reasonably comply with any provision of this rule, . . . the court,  
3 upon motion or upon its own initiative, shall impose upon a party or a party's attorney,  
4 or both, appropriate sanctions in regard to the failure(s) as are just, including the  
5 following:

6 (A) Any of the sanctions available pursuant to Rule 37(b)(2) and Rule 37(f).

7 (B) An order prohibiting the use of any witness, document or tangible thing  
8 which should have been disclosed, produced, exhibited, or exchanged pursuant to  
9 Rule 16.1(a).

10 In connection with this rule, Defendant Peppermill observes that dismissal is a sanction expressly  
11 authorized by NRCP 37(b)(2).

12 As an initial matter, Plaintiff argues that this motion should be denied because Defendant  
13 Peppermill's counsel failed to engage in prefiling consultation with Plaintiff's counsel regarding this  
14 issue. Nothing in NRCP 16.1 requires a party to engage in prefiling consultation before filing a  
15 motion under NRCP 16.1(e)(3). However, WDCR 12(6) provides that "[a]ll discovery motions shall  
16 include the certificate of moving counsel certifying that after consultation with opposing counsel, they  
17 have been unable to resolve the matter." This language begs the question of whether a motion to  
18 dismiss under NRCP 16.1(e)(3) constitutes a "discovery motion."

19 Although designated as a motion to dismiss, resolution of Defendant Peppermill's motion  
20 depends upon an analysis and application of NRCP 16.1, one of the two rules that "govern discovery  
21 in civil actions." See Mays v. Dist. Court, 105 Nev. 60, 62, 768 P.2d 877, 878 (1989). Our discovery  
22 rules expressly authorize the filing of a motion to compel when one party believes that an opposing  
23 party failed "to make a disclosure required by Rule 16.1(a)." See NRCP 37(a)(2)(A). The inclusion  
24 of such a provision in NRCP 37 arguably reflects the belief that the failure to make the disclosure  
25 required by NRCP 16.1(a)(1)(C) is a discovery matter. Significantly, any such motion to compel  
26 "must include a certification that the movant has in good faith conferred or attempted to confer with  
the party not making the disclosure in an effort to secure the disclosure without court action." See  
id. In addition, the fact that this motion was referred to the Discovery Commissioner strongly  
suggests that the Court views this matter as a discovery motion.

1       The Court also observes that NRCP 37(d) presents a situation similar to that presented in the  
2 pending motion. Under NRCP 37(d), if a party fails to serve a written response to interrogatories or  
3 a request for production of documents, the requesting party may seek the imposition of any sanction  
4 described in NRCP 37(b)(2), including dismissal of the action. However, any such motion "shall  
5 include a certification that the movant has in good faith conferred or attempted to confer with the  
6 party failing to answer or respond in an effort to obtain such answer or response without court  
7 action." See id. 37(d). This provision shows that the drafters of our rules believe consultation is  
8 appropriate prior to seeking sanctions for an opponent's failure to comply with its obligations to  
9 provide written discovery. It thus supports an interpretation of WDCR 12(6) that would require a  
10 party to consult with an opponent who has failed to provide the calculation of damages required by  
11 NRCP 16.1(a)(1)(C) before seeking relief from the Court.

12       Prefiling consultation is not always required before seeking relief for a party's failure to  
13 provide information required by NRCP 16.1. A party who seeks to use previously undisclosed  
14 evidence that should have been disclosed under NRCP 16.1 may be precluded from using that  
15 evidence under NRCP 37(c)(1). But the pending motion was not filed based upon Plaintiff's attempt  
16 to use a witness, information, or a document that should have been disclosed under NRCP 16.1 or  
17 NRCP 26(e). Rather, it was filed pursuant to NRCP 16.1(e)(3). For the reasons explained above,  
18 the Court finds that when a party believes an opponent has failed to make the disclosure required by  
19 NRCP 16.1(a)(1)(C), that party must consult with the opponent about that failure before seeking  
20 relief from the Court.

21       In any event, a motion to dismiss, or for the imposition of serious evidentiary sanctions, is not  
22 the appropriate first step to redress a party's refusal or failure to provide a calculation of damages  
23 under NRCP 16.1(a)(1)(C). As noted above, NRCP 37(a)(2)(A) expressly contemplates this  
24 situation and authorizes a motion to compel so that the party needing the information can obtain it.  
25 If a party fails to comply with an ensuing order directing the disclosure of information required by  
26 NRCP 16.1(a), then sanctions are directly available under NRCP 37(b)(2) (and indirectly available

1 under NRCP 16.1(e)(3)). The supreme court's adoption of NRCP 37(a)(2)(A) evinces an intention to  
2 treat the failure to make disclosures under NRCP 16.1(a) in the same manner as the failure to  
3 answer a deposition question, answer an interrogatory, or produce a requested document under  
4 NRCP 37(a)(2)(B). Even if parties have the right to file a motion for sanctions under NRCP  
5 16.1(e)(3) whenever a party fails to disclose information under NRCP 16.1(a), any order in that  
6 regard is a matter for the Court's discretion. In light of NRCP 37(a)(2)(A), dismissal of the action or  
7 imposition of other serious evidentiary sanctions under NRCP 16.1(e)(3) is not the appropriate first  
8 step for a plaintiff's failure to make the disclosures required by NRCP 16.1(a)(1)(C). Cf. Marais v.  
9 Chase Home Fin., LLC, Case No. 2:11-cv-314, 2014 WL 2515474, at \*14 (S.D. Ohio Jun. 4, 2014)  
10 (rejecting argument that failure to provide proper calculation of damages and supporting  
11 documentation automatically results in the exclusion of all damages-proving evidence).

12 Despite the designation of this motion as one seeking dismissal, the Court observes that the  
13 parties have an actual disagreement about whether the information provided by Plaintiff thus far is  
14 sufficient to satisfy the NRCP 16.1(a)(1)(C) mandate. Neither NRCP 16.1(a)(1)(C) nor its federal  
15 equivalent defines the specificity required in initial damages disclosures. But the purposes of initial  
16 disclosure obligations are to "accelerate the exchange of basic information" that is "needed in most  
17 cases to prepare for trial or make an informed decision about settlement," and to assist the parties in  
18 focusing and prioritizing their organization of discovery. See Memry Corp. v. Ky. Oil Tech., NV, No.  
19 C04-03843 RMW (HRL), 2007 WL 39373, at \*5 (N.D. Cal. Jan. 4, 2007); City & Cnty. of S.F. v.  
20 Tutor-Saliba Corp., 218 F.R.D. 219, 221 (N.D. Cal. 2003).

21 With such goals in mind, courts apply the initial disclosure obligations in a common sense  
22 fashion so as to avoid gamesmanship. In that regard, the 1993 commentary accompanying the  
23 original, equivalent federal rule—then known as Rule 26(a)(1)(C)<sup>4</sup>—provides, in pertinent part, as  
24 follows:

25 Subparagraph (C) imposes a burden of disclosure that includes the functional  
26 equivalent of a standing Request for Production under Rule 34. A party claiming

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<sup>4</sup> The requirement that a plaintiff disclose a calculation of damages and all supporting documentation is currently found at federal Rule 26(a)(1)(A)(iii).

1 damages or other monetary relief must, in addition to disclosing the calculation of  
2 such damages, make available the supporting documents for inspection and copying  
3 as if a request for such materials had been made under Rule 34. This obligation  
4 applies only with respect to documents then reasonably available to it and not  
privileged or protected as work product. Likewise, a party would not be expected to  
provide a calculation of damages which, as in many patent infringement actions,  
depends on information in the possession of another party or person.

5 In addition, a party may not need to disclose the method used to calculate a dollar amount where  
6 that method is properly the subject of expert evidence and the parties will be turning over expert  
7 evidence in the future. See Kingsway Fin. Servs., Inc. v. Pricewaterhouse-Coopers LLP, No. 03 Civ.  
8 5560 RMB HBP, 2006 WL 1520227, at \*1 (S.D.N.Y. Jun. 1, 2006); Pine Ridge Recycling, Inc. v.  
9 Butts Cnty., 889 F. Supp. 1526, 1527 (M.D. Ga. 1995). However, even if a complete calculation  
10 cannot be provided, a party nonetheless must initially “disclose to the other parties the best  
11 information then available to it concerning that claim, however limited and potentially changing it  
12 may be.” See U.S. Bank Nat’l Ass’n v. PHL Variable Ins. Co., Nos. 12 Civ. 6811(CM)(JCF), 13 Civ.  
13 1580(CM)(JCF), 2013 WL 5495542, at \*3 (S.D.N.Y. Oct. 3, 2013); Joseph v. Las Vegas Metro.  
14 Police Dep’t, No. 2:09-cv-00966-HDM-LRL, 2010 WL 3238992, at \*2 (D. Nev. Aug. 13, 2010);  
15 Memry Corp., 2007 WL 39373, at \*5; In re Oakwood Homes Corp., 340 B.R. 510, 539 (Bankr. D.  
16 Del. 2006); 6 James W. Moore et al., Moore’s Federal Practice § 26.22[4][c][ii] (Daniel R. Coquillette  
17 et al. eds., 3d ed. 2005).

18 The original statement offered by Plaintiff as its NRCP 16.1(a)(1)(C) disclosure—that  
19 “[d]amages include general and special damages in an amount to be determined at trial”—was  
20 deficient. Plaintiff thereafter supplemented that disclosure by providing a brief explanation of factors  
21 that will dictate its calculation of damages in this case—the number of times Mr. Tors accessed  
22 machines at the GSR without permission, the number of machines so accessed, and the use that  
23 Mr. Tors made of the information so obtained. Plaintiff also states that actual damages can only be  
24 determined after an examination of the information obtained by Mr. Tors and currently in the  
25 possession of the Nevada Gaming Control Board. But while Plaintiff believes that it needs to review  
26 information possessed by others, Plaintiff does not state that it completely lacks any information



1 bearing upon these factors. To the extent that it can provide a calculation of damages based upon  
2 its current information—however limited and potentially changing it may be—Plaintiff must do so.<sup>5</sup>  
3 Similarly, Plaintiff has not stated that it entirely lacks documents, electronically stored information, or  
4 tangible things that it is relying upon in support of its damages claim. If it has such materials, then it  
5 must so inform Defendants and make those materials available for inspection. If it entirely lacks any  
6 supporting materials (i.e., all such materials are possessed by other persons), then it must inform  
7 Defendants of that fact in its supplemental disclosure.

8 In its countermotion, Plaintiff complains that Defendant Peppermill has failed to comply with  
9 its NRCP 16.1 obligations. Specifically, Plaintiff believes that Defendant Peppermill is obligated to  
10 disclose (a) "documents regarding all visits to GSR by Ryan Tors where he accessed any slot  
11 machines and obtained PARs or any other information as a result of his accessing the machines";  
12 (b) "documents showing to whom this information was provided including emails, memos, texts,  
13 spreadsheets, etc."; and (c) some or all "documents concerning Ryan Tors which were produced to  
14 the Gaming Board." To the extent that Defendant Peppermill believes that any such documents are  
15 protected from disclosure, Plaintiff seeks a privilege log identifying all such documents.

16 In pertinent part, NRCP 16.1(a)(1)(B) provides that at the beginning of a civil action, in most  
17 cases, each party must do the following:

18 [A] party must, without awaiting a discovery request, provide to other parties:

19 . . . .  
20 (B) A copy of, or a description by category and location of, all documents, data  
compilations, and tangible things that are in the possession, custody, or control of the  
party and which are discoverable under Rule 26(b) . . . .

21 The rule also requires the disclosure of "[t]he name and, if known, the address and telephone  
22 number of each individual likely to have information discoverable under Rule 26(b), including for  
23 impeachment or rebuttal, identifying the subjects of the information." See NRCP 16.1(a)(1)(A).  
24 Further, a party must supplement its NRCP 16.1(a)(1) disclosures "if the party learns that in some

25 <sup>5</sup> If Plaintiff still believes that it lacks any additional information that will be used in calculating its damages, then it  
26 may so inform Defendants in its supplemental disclosure; but it must then identify the information needed, and must  
provide a more detailed explanation of how it will calculate damages (i.e., how information will be used).

1 material respect the information disclosed is incomplete or incorrect and if the additional or  
2 corrective information has not otherwise been made known to the other parties during the discovery  
3 process or in writing.” See id. 26(e)(1).

4 Plaintiff essentially argues that Defendant Peppermill was obligated under NRCP 16.1(a)(1)  
5 to identify or produce every reasonably available document containing any relevant information.  
6 However, the Court construes this rule as imposing an obligation on parties to identify or produce  
7 documents, tangible things, and data compilations—and identify individuals—that the disclosing  
8 party may use in support of its case. Irrespective of whether Defendant Peppermill failed to identify  
9 an individual or document, “there is no requirement to disclose anything that the disclosing party will  
10 not use.” See 8A Charles A. Wright et al., Federal Practice and Procedure § 2053, at 365 & n.41  
11 (3d ed. 2010 & Supp. 2014) [hereinafter Wright]; cf. In re Fort Totten Metrorail Cases, 279 F.R.D. 18,  
12 23 (D.D.C. 2011) (defendant had no responsibility to make initial disclosures of information or other  
13 materials regarding a defense that it was not asserting, even though that defense was asserted by  
14 another defendant). Plaintiff has not yet established that Defendant Peppermill failed to disclose any  
15 witness or document that Peppermill may use in the case (as opposed to witnesses or documents  
16 with relevant information that might prove useful to Plaintiff). Of course, Defendant Peppermill  
17 remains under a continuing duty to supplement earlier disclosures and discovery responses. See  
18 NRCP 26(e). But under NRCP 37(a)(2)(A), the Court cannot compel Defendant Peppermill to  
19 disclose information or documents that it was not required to disclose under NRCP 16.1(a)(1).

20 While the language of NRCP 16.1(a)(1) can be construed more broadly, the Court is not  
21 persuaded that a broader construction is correct or appropriate. NRCP 16.1(a) was amended in  
22 2005 “to conform to the 1993 and 2000 amendments to Rule 26(a) of the federal rules, with some  
23 notable exceptions.” See id. 16.1 (drafter’s note to 2004 amendments). One of the main purposes  
24 of the 2000 amendments to the Federal Rules of Civil Procedure was to address “what seemed the  
25 most vigorous and enduring criticism of disclosure [under the prior language]—that it might require a  
26 party to volunteer harmful material without a discovery request.” See 8A Wright § 2053, at 365.

1 Significantly, the analogous pre-2005 provisions in NRCP 16.1(b)(1) required parties to produce any  
2 documents “which are then contemplated to be used in support of the allegations or denials of the  
3 pleading filed by that party”—language that roughly parallels the standard adopted by federal  
4 authorities in the 2000 amendments to federal rule 26(a). This Court cannot accept the proposition  
5 that the language of NRCP 16.1(a)(1) adopted in the 2005 amendments was intended to be  
6 construed in accordance with the discredited federal standard in place prior to the 2000  
7 amendments to the Federal Rules of Civil Procedure (especially in the absence of any commentary  
8 reflecting such an intention). More fundamentally, and as noted by the Supreme Court:

9 [A] common law trial is and always should be an adversary proceeding. Discovery  
10 was hardly intended to enable a learned profession to perform its functions either  
without wits or on wits borrowed from the adversary.

11 Hickman v. Taylor, 329 U.S. 495, 516 (1947) (Jackson, J., concurring). An interpretation of NRCP  
12 16.1(a)(1)(A) and (B) that literally encompasses all “relevant” material—which effectively would  
13 require identification or production of documents that the other side has neither requested nor even  
14 contemplated—is not in keeping with the deep-rooted understanding that civil actions are adversary  
15 proceedings.

16 Significantly, the concept of “relevance” is a fundamental and continual source of good-faith  
17 disagreement between the parties engaged in discovery proceedings. The application of  
18 “relevance” as the measure of a party’s disclosure obligations often would beg the question of which  
19 side’s view of relevance is correct in a given case. The uncertainty attendant to whatever ruling the  
20 Court might ultimately make on that point would likely have the effect in many cases of promoting  
21 “over-production” by parties who believe certain information or documents are not relevant, but want  
22 to avoid the prospect of sanctions if the Court later disagrees with their view of relevance. Thus, an  
23 interpretation requiring production of all documents that are “relevant” would require each party to  
24 produce unrequested documents that the opposition neither needs nor wants, but which the  
25 disclosing party supposes might be relevant to the case in some way, no matter how trivial.<sup>6</sup> Indeed,

26 \_\_\_\_\_  
<sup>6</sup> Over-production could also encourage discovery abuse in the form of “dump truck” discovery, allowing the  
producing party to hide important documents among voluminous, relatively inconsequential documents that are arguably

1 it would require production of documents that the other side might never have even considered  
2 requesting. This kind of “over-production” would be an untoward consequence of a literal  
3 interpretation of disclosure obligations under NRCP 16.1(a)(1), especially when the propriety of the  
4 broad, traditional discovery standard has been questioned in recent years.

5 The argument that NRCP 16.1(a)(1) requires each party to identify every person who might  
6 have knowledge of any relevant matter—no matter how trivial or tenuous—and to identify or produce  
7 all documents that might conceivably be viewed in any way as “relevant”—not just to the disclosing  
8 party’s claims, defenses, or allegations, but to any matter falling within the very broad phrase “the  
9 subject matter involved in the pending action”—is not tenable. As explained by one court:

10 Discovery is not now and never was free. Discovery is expensive. The drafters of the  
11 1983 amendments to sections (b) and (g) of Rule 26 formally recognized that fact by  
12 superimposing the concept of proportionality on all behavior in the discovery arena. It  
13 is no longer sufficient, as a precondition for conducting discovery, to show that the  
14 information sought “appears reasonably calculated to lead to the discovery of  
15 admissible evidence.” After satisfying this threshold requirement counsel also must  
16 make a common sense determination, taking into account all the circumstances, that  
17 the information sought is of sufficient potential significance to justify the burden the  
18 discovery probe would impose, that the discovery tool selected is the most efficacious  
19 of the means that might be used to acquire the desired information (taking into  
20 account cost effectiveness and the nature of the information being sought), and that  
21 the timing of the probe is sensible, i.e., that there is no other juncture in the pretrial  
22 period when there would be a clearly happier balance between the benefit derived  
23 from and the burdens imposed by the particular discovery effort.

24 In re Convergent Techs. Secs. Litig., 108 F.R.D. 328, 331 (N.D. Cal. 1985); accord Pettit v. Pulte  
25 Mortg., LLC, No. 2:11-cv-00149-GMN-PAL, 2011 WL 5546422, at \*5 (D. Nev. Nov. 14, 2011) (“the  
26 United States Supreme Court and the Advisory Committee Notes to the 1983 and 2000  
Amendments to Rule 26 recognize that discovery is expensive and that although broad discovery is  
still the rule, trial courts should conduct a proportionality review of requested discovery when  
challenged, or on the court’s own motion”); see generally The Sedona Conference, The Sedona  
Conference Commentary on Proportionality in Electronic Discovery (2d ed. 2013) (discussing

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“relevant” in some way. See, e.g., CP Solutions PTE, Ltd. v. Gen. Elec. Co., No. 3:04cv2150(JBA)(WIG), 2006 WL  
1272615, at \*1 (D. Conn. Feb. 6. 2006) (noting that “dump truck” discovery tactics are used to “hide the proverbial ‘needle  
in the haystack’”).

1 principles of proportionality that should be applied by courts in dealing with electronic discovery),  
2 available at <https://thesedonaconference.org/publication/The%20Sedona%20Conference>  
3 [%20Commentary%20on%20Proportionality](https://thesedonaconference.org/publication/The%20Sedona%20Conference) (follow designated hyperlink for this publication); Paul  
4 W. Grimm, Model E-Discovery Order, Inst. for the Advancement of the Am. Legal Sys. §3,  
5 [http://iaals.du.edu/images/wygwam/documents/publications/Grimm\\_Discovery\\_Order.pdf](http://iaals.du.edu/images/wygwam/documents/publications/Grimm_Discovery_Order.pdf) (last  
6 visited Sept. 19, 2014) (requiring that counsel “work cooperatively during all aspects of discovery to  
7 ensure that the costs of discovery are proportional to what is at issue in the case”). Significantly,  
8 NRCP 16.1(a)(1)(B) refers to “Rule 26(b),” rather than only “Rule 26(b)(1).” While Rule 26(b)(1)  
9 articulates the scope of discovery, Rule 26(b)(2) provides limitations on discovery, including  
10 limitations designed to ensure that discovery is proportional to the case. See NRCP 26(b)(2)(iii).  
11 The Court is not persuaded that our high court intended to dispense with this salutary component of  
12 our discovery rules when it amended NRCP 16.1 in 2005.

13 For all of these reasons, the Court construes NRCP 16.1(a)(1) as requiring a party to identify  
14 or produce only information and documents that it may use in the case.<sup>7</sup> On that point, Plaintiff has  
15 not shown that Defendant Peppermill has failed to disclose any information or materials that it may  
16 use in the case. Further, as noted previously, if Defendant Peppermill attempts to use any witness  
17 or document not previously disclosed in accordance with NRCP 16.1(a)(1) and NRCP 26(e)(1),  
18 Plaintiff may seek any sanction authorized by NRCP 37(c)(1). But at this time, the Court cannot find  
19 that Defendant Peppermill violated NRCP 16.1(a)(1) by failing to disclose the records described by  
20 Plaintiff in its countermotion. Of course, Plaintiff is free to seek additional relevant documents  
21 through a request for production under NRCP 34.

22 ACCORDINGLY, *Defendant Peppermill Casinos, Inc.’s Motion to Dismiss Complaint* should  
23 be DENIED.

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24 <sup>7</sup> This Court does not view the concept “may use” as entirely subjective; rather, any delay in disclosure must be  
25 objectively reasonable under the circumstances. A party’s use of information or materials prior to actual disclosure under  
26 NRCP 16.1(a)(1) arguably would provide a basis for the opposing party to explore the circumstances under which the  
information or materials were acquired. An unreasonable delay in disclosing the information or materials would provide a  
basis for imposing sanctions under NRCP 16.1(e)(3) or NRCP 37(c)(1).

1 FURTHER, Plaintiff's *Counter-Motion to Compel Disclosures Under NRCP 16.1* should be  
2 DENIED.

3 IT SHOULD, THEREFORE, BE ORDERED that Plaintiff provide to Defendants, no later than  
4 September 30, 2014, an updated calculation of damages under NRCP 16.1(a)(1)(C), and identify  
5 and make available for inspection any documents, electronically stored information, or tangible  
6 things that it is relying upon in support of its damages claim, to the extent required by and in  
7 accordance with this decision.<sup>8</sup>

8 DATED: This 19<sup>th</sup> day of September, 2014.

9  
10   
11 WESLEY M. AYRES  
12 DISCOVERY COMMISSIONER  
13  
14  
15  
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21  
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25

26 <sup>8</sup> If Plaintiff has already produced some or all of these documents, it is not required to produce them a second time; it need only identify the specific documents required to be made available for inspection under NRCP 16.1(a)(1)(C).

1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV13-01704

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE  
4 OF NEVADA, COUNTY OF WASHOE; that on the 17<sup>th</sup> day of September, 2014, I electronically filed  
5 the **RECOMMENDATION FOR ORDER** with the Clerk of the Court by using the ECF system.

6 I further certify that I transmitted a true and correct copy of the foregoing document by the  
7 method(s) noted below:

8 **Electronically filed with the Clerk of the Court by using the ECF system which will send a**  
9 **notice of electronic filing to the following:**

10 H. STAN JOHNSON, ESQ. for MEI-GSR HOLDINGS, LLC

11 CLARK V. VELLIS, ESQ. for PEPPERMILL CASINOS, INC.

12 KENT RICHARD ROBISON, ESQ. for PEPPERMILL CASINOS, INC.

13 KEEGAN GRAHAM LOW, ESQ. for PEPPERMILL CASINOS, INC.

14 THERESE M. SHANKS, ESQ. for PEPPERMILL CASINOS, INC.

15 MARK HARLAN GUNDERSON, ESQ. for RYAN TORS

16 JOHN R. FUNK, ESQ. for RYAN TORS

17 **Deposited in the Washoe County mailing system for postage and mailing with the United**  
18 **States Postal Service in Reno, Nevada:**

19 Terry Kinnally, Esq.  
20 Steven B. Cohen, Esq.  
21 Cohen-Johnson, LLC  
22 255 E. Warm Springs Rd., Ste. 100  
23 Las Vegas, NV 89119-4275

24   
25 Greg Bartlett  
26 Court Clerk

1 CODE NO. 1945

2  
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5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \*

9 MEI-GSR HOLDINGS, LLC, a Nevada corporation,  
10 d/b/a GRAND SIERRA RESORT,

11 Plaintiff,

Case No. CV13-01704

12 vs.

Dept. No. B7

13 PEPPERMILL CASINOS, INC., a Nevada  
corporation, d/b/a PEPPERMILL CASINO, et al.,

14 Defendants.  
15 \_\_\_\_\_/

16 **RECOMMENDATION FOR ORDER**

17 This action arises out of allegations that Defendant Ryan Tors, acting on behalf of Defendant  
18 Peppermill Casinos, Inc., entered Plaintiff's premises for the specific purpose of accessing the  
19 diagnostic and payback percentages of certain slot machines.<sup>1</sup> On July 12, 2013, the date that  
20 Defendant Tors was detained on Plaintiff's premises, the Nevada Gaming Control Board ("GCB")  
21 initiated an investigation into these allegations. As a result of its investigation, GCB filed a complaint  
22 (initiating a proceeding designated as "NGC 13-23") against Defendant Peppermill (and others) with  
23 the Nevada Gaming Commission ("NGC"), alleging various violations of Nevada gaming laws  
24 relating to Defendant Tors' conduct at Plaintiff's property and several other gaming establishments in  
25 Nevada. In a "Stipulation for Settlement and Order" entered into on February 13, 2014, Defendant

26 \_\_\_\_\_  
<sup>1</sup> The background of this action is set forth in greater detail in previous decisions from the Court.



1 Peppermill admitted each allegation of the GCB complaint and agreed to pay a substantial fine. The  
2 agreement also reflects that Defendant Peppermill "cooperated with the Board during its  
3 investigation of this matter, provided requested documentation and facilitated interviews with  
4 executives and employees." The NGC approved this settlement on February 20, 2014.

5 On June 16, 2014, Plaintiff filed in this lawsuit a *Motion for Order Directing the Nevada*  
6 *Gaming Control Board to Produce All Documents and Other Evidence Pertaining to NGC 13-23*.  
7 Essentially, Plaintiff seeks from the GCB all documents and electronically stored information ("ESI")  
8 created or obtained in the course of its investigation pertaining to the NGC complaint against  
9 Defendant Peppermill described above. Plaintiff acknowledges that this information is confidential,  
10 but it maintains that it needs these GCB materials to ensure that Plaintiff receives all relevant  
11 information and to independently verify the accuracy of Defendants' discovery responses and  
12 disclosures. Plaintiff concedes that protection may be appropriate with regard to certain information  
13 contained within these materials, and it asks that a special master be appointed, at Defendant  
14 Peppermill's cost, to ensure that certain documents are appropriately protected.

15 On July 3, 2014, GCB and NGC (collectively, "GCB") filed *State Gaming Control Board's*  
16 *Opposition to Plaintiff's Motion for Order to Produce All Documents and Other Evidence Pertaining*  
17 *to NGC 13-23*. GCB argues that the materials requested by Plaintiff are protected from disclosure.  
18 Alternatively, it maintains that Plaintiff has not made the heightened showing necessary to support  
19 an order directing disclosure. In an *Opposition to Plaintiff's Motion to Compel Gaming Control Board*  
20 *to Produce Documents*, also filed on July 3, 2014, Defendant Peppermill similarly contends that  
21 Plaintiff has not made the requisite showing to support the order it seeks, and that the use of a  
22 special master is not warranted.<sup>2</sup> On July 8, 2014, Plaintiff filed *GSR's Reply to Peppermill's*  
23 *Opposition to . . . Request for Gaming Records*.<sup>3</sup> Plaintiff's *Reply to Opposition for Motion for Order*  
24 *Directing Nevada Gaming Control Board to Produce All Documents and Other Evidence Pertaining*

25 <sup>2</sup> This opposition was included as part of a filing including Defendant Peppermill's oppositions to other motions,  
26 and its brief in response to a Court order.

<sup>3</sup> This reply was included as part of a filing including Plaintiff's replies to the oppositions filed by Defendant Peppermill on July 3, 2014.

1 to NGC 13-23 was filed on July 14, 2014, and the motion was submitted for decision on July 15,  
2 2014.

3 Ordinarily, a state agency attempting to withhold its books and records from the public bears  
4 the burden of overcoming the presumption of openness by proving that the requested records are  
5 confidential. See PERS v. Reno Newspapers Inc., 129 Nev., Adv. Op. 88, at 3-4, 313 P.3d 221,  
6 223-24 (2013); see also NRS 239.010(1) (2013) (all public books and public records of  
7 governmental entities must remain open to the public, unless "otherwise declared by law to be  
8 confidential"). In this case, however, the requested GCB information and documents are expressly  
9 deemed confidential by statute:

10 Except as otherwise provided in this section, all information and data:

11 (e) Prepared or obtained by an agent or employee of the Board or  
12 Commission pursuant to an audit, investigation, determination or hearing,  
13 are confidential and may be revealed in whole or in part only in the course of the  
14 necessary administration of this chapter or upon the lawful order of a court of  
15 competent jurisdiction. The Board and Commission may reveal such information and  
16 data to an authorized agent of any agency of the United States Government, any  
17 state or any political subdivision of a state or the government of any foreign country.  
18 Notwithstanding any other provision of state law, such information may not be  
19 otherwise revealed without specific authorization by the Board or Commission.

20 NRS 463.120(4)(e) (2013).<sup>4</sup> To obtain information or documents falling within the confidentiality  
21 provision of this statute, a person must file and serve a motion and provide appropriate notice to the  
22 GCB, NGC, the Nevada Attorney General, and all persons who may be affected by the entry of such  
23 order. See id. 463.341.<sup>5</sup>

24 <sup>4</sup> Under NRS 463.3407, any communication or document made or transmitted to the GCB or the NGC is  
25 "absolutely privileged." However, that provision does not purport to create an evidentiary privilege; rather, it is intended to  
26 immunize individuals from liability in any civil action (e.g., defamation) based on communications or documents made or  
provided to the GCB or NGC. See NRS 463.3407(1) (2013). The statute also makes clear that if such a communication or  
document is subject to an evidentiary privilege, that protection is not lost as a result of disclosure to the GCB or the NGC.  
See id. 463.3407(2). Finally, the statute precludes the release or disclosure of documents otherwise subject to an  
evidentiary privilege "without the prior written consent of the applicant, licensee or affiliate, or pursuant to a lawful court  
order after timely notice of the proceedings has been given to the applicant, licensee or affiliate." See id. 463.3407(3)(a).  
The GCB and NGC must also maintain all privileged information in accordance with applicable procedures and regulations.  
See id.

<sup>5</sup> Even then, the GCB and the NGC "may refuse to reveal, in any court or administrative proceeding except a  
proceeding brought by the State of Nevada, the identity of an informant, or the information obtained from the informant, or  
both the identity and the information." See id. 463.144. The GCB, however, does not rely on this provision in opposing  
Plaintiff's motion.

1 As noted above, Plaintiff seeks all GCB documents and ESI created or obtained in the  
2 course of its investigation pertaining to the complaint against Defendant Peppermill. Thus, all  
3 documents sought by Plaintiff are expressly deemed confidential by statute, and cannot be obtained  
4 under Nevada's public records law. Instead, absent the GCB's agreement, they can be obtained  
5 only through a motion for production. The Nevada Supreme Court has not issued an opinion  
6 regarding the standard to be applied in determining whether GCB documents and ESI should be  
7 disclosed in a given case. Federal courts, however, have addressed this issue.

8 In Laxalt v. McClatchy, 116 F.R.D. 455 (D. Nev. 1986), a United States Senator filed a libel  
9 action against a newspaper and other defendants regarding a series of articles which allegedly  
10 connected plaintiff's hotel-casino with organized crime during the time of plaintiff's ownership.  
11 During that action, defendants filed a motion to compel GCB to produce three large boxes of  
12 documents. The magistrate judge ultimately ordered production of only some requested documents;  
13 other documents were either not discoverable, or would be subject to production only after sensitive  
14 material was redacted. Defendants objected to that order. See Laxalt, 116 F.R.D. at 456-57.

15 In reviewing the magistrate judge's order, the district court observed that although the scope  
16 of discovery is broad, and that "nonparties to litigation enjoy greater protection from discovery than  
17 normal parties." See id. at 458. The court found that the magistrate judge's determinations about  
18 relevance and redactions were not clearly erroneous or contrary to law.<sup>6</sup> See id. at 457-58. The  
19 court also reviewed the magistrate judge's conclusion that certain documents were protected by  
20 various government privileges, including the protection created by NRS 463.120(4) and the common  
21 law of executive privilege. It relied upon an analysis provided in FTC v. Warner Commc'ns, Inc., 742  
22 F.2d 1156 (9th Cir. 1984),<sup>7</sup> to the effect that "a litigant may obtain materials shielded by government

23  
24 <sup>6</sup> In fact, the Court essentially found that minimally relevant documents were beyond the scope of discovery from  
the GCB, "as these documents fail to meet even the threshold relevancy analysis for discovery of nonparty documents."  
See Laxalt, 116 F.R.D. at 458.

25 <sup>7</sup> In this case, the Federal Trade Commission sought to block a proposed joint venture between two record  
26 companies. In the course of litigation, the district court had ordered the government to produce two memoranda prepared  
by members of the Bureau of Economics. The Federal Trade Commission objected to this production order, contending  
that the documents were protected by the governmental deliberative process privilege. See FTC, 742 F.2d at 1161.

1 privilege only if the need for them and the need for accurate fact finding override the government's  
2 interest in non-disclosure." See Laxalt, 116 F.R.D. at 459; FTC, 742 F.2d at 1161.

3 To that end, the FTC court considered four factors: (a) the relevance of the evidence; (b) the  
4 availability of other evidence; (c) the government's role in the litigation; and (d) the extent to which  
5 disclosure would hinder frank and independent discussion regarding an agency's contemplated  
6 decisions and policies. See Laxalt, 116 F.R.D. at 459; FTC, 742 F.2d at 1161.<sup>8</sup> The appellate court  
7 found that although the requested documents were relevant, the information they contained was  
8 otherwise available to defendants. Nothing in the Federal Trade Commission's prior disclosures of  
9 documents evinced bad faith or misconduct on its behalf. In addition, the appellate court found that  
10 compelled disclosure of the requested documents would injure the quality of agency decisions, in  
11 that it would chill the frank and open discussion of future matters presented to the agency. See  
12 Laxalt, 116 F.R.D. at 459; FTC, 742 F.2d at 1162. The Laxalt court found that the magistrate judge  
13 had applied these factors, and that her findings in that regard were not clearly erroneous or contrary  
14 to law. See Laxalt, 116 F.R.D. at 459.

15 In the case at bar, the relevance of at least some (perhaps all) of the documents and ESI  
16 sought by Plaintiff cannot seriously be denied. These are records of the GCB's investigation into the  
17 same conduct that forms the basis for Plaintiff's lawsuit against Defendants. Even information  
18 concerning Defendant Tors' similar activities at other Nevada casinos would arguably be relevant to  
19 Plaintiff's claim for punitive damages.<sup>9</sup> This is not to suggest that all requested GCB materials are

---

21 <sup>8</sup> The district court noted that this balancing test had been applied by other courts as well:

22 The balancing test enunciated by the court in Federal Trade Commission, which was fleshed out by the  
23 four factors also stated in that case, has been used in all other forms of governmental privilege. See  
24 United States v. Reynolds, 345 U.S. 1, 11, 73 S. Ct. 528, 533-34, 97 L. Ed. 727 (1953) (under federal  
25 government documents privilege, a strong showing of necessity is required to overcome the privilege  
26 surrounding military documents); Nixon v. Sirica, 487 F.2d 700, 717 (D.C. Cir. 1973) (executive privilege  
will only recede upon a showing of need, established by unique circumstances such as a criminal  
investigation). It thus appears that in all types of governmental privileges, the balancing test must be  
applied.

25 Laxalt, 116 F.R.D. at 459.

26 <sup>9</sup> Punitive damages generally may be imposed where it is proven by clear and convincing evidence that the  
defendant has been guilty of oppression, fraud, or malice, express or implied. See NRS 42.005(1) (2013); see also id.  
42.001 (definitions of key terms relating to punitive damages). In that regard, the degree of reprehensibility concerning

1 necessarily discoverable. In the course of its investigation, the GCB might have requested and  
2 obtained information, documents, and ESI that fall outside the scope of discovery under NRCP  
3 26(b)(1), or that might be protected from disclosure in civil litigation for various reasons.  
4 Nevertheless, the Court may presume that most of the requested materials would fall within the  
5 broad scope of NRCP 26(b)(1).

6 The second factor, however, militates strongly against an order compelling production of the  
7 requested documents and ESI. NRCP 26(b)(1) allows Plaintiff to obtain discovery from other parties  
8 regarding any matter, not privileged, which is relevant to the subject matter involved in the pending  
9 action. Thus, to the extent that Plaintiff is seeking GCB information, documents, and ESI that were  
10 obtained from Defendants, Plaintiff presumably can obtain all relevant information, documents, and  
11 ESI by serving written discovery requests and taking depositions.<sup>10</sup> If the GCB obtained information,  
12 documents, and ESI from persons and entities other than Defendants, Plaintiff presumably could  
13 obtain relevant information from those nonparties as well through the subpoena process.<sup>11</sup> Of  
14 course, some GCB investigation-related documents and ESI within the scope of Plaintiff's request  
15 might have been created by the GCB. But the Court is not persuaded that the GCB's investigatory  
16 work product should be freely discoverable whenever an individual commences a civil action based  
17 upon the acts or omissions that were subject to the GCB investigation. Even if NRCP 26(b)(3) does  
18 not literally apply to these circumstances, the Court is inclined to adopt at least the same degree of

19 defendant's conduct is one factor to be considered, and repeated misconduct is relevant to that factor. See Wyeth v.  
20 Rowatt, 126 Nev., Adv. Op. 44, at 24-25, 244 P.3d 765, 784-85 (2010); see also Philip Morris USA v. Williams, 549 U.S.  
21 346, 355 (2007) (jury may consider evidence of actual harm to nonparties as part of its reprehensibility determination, but  
22 may not use a punitive damages verdict to punish a defendant directly for possible harm to nonparties); BMW of N. Am.,  
Inc. v. Gore, 517 U.S. 559, 576-77 (1996) (noting that "evidence that a defendant has repeatedly engaged in prohibited  
conduct while knowing or suspecting that it was unlawful would provide relevant support for an argument that strong  
medicine is required to cure the defendant's disrespect for the law," and that "repeated misconduct is more reprehensible  
than an individual instance of malfeasance").

23 <sup>10</sup> Defendant Peppermill suggests that Plaintiff is seeking the GCB materials to save time and money. The Court  
24 is not persuaded that the mere desire to avoid discovery-related costs is a sufficient basis for ordering the GCB to disclose  
its investigatory materials; however, Plaintiff has not asserted this argument in connection with this motion.

25 <sup>11</sup> In its reply brief, Plaintiff states, on information and belief, that the GCB "also seized hard drives from Tors and  
26 possibly other computers from Peppermill," and argues that it is entitled to the original hard drives "and not merely . . .  
second or third generation clones of the originals." Because this point was raised in the reply brief, neither the GCB nor  
Defendant Peppermill had the opportunity to address it. Therefore, the Court will not issue any order regarding production  
of hard drives. But nothing in this decision precludes Plaintiff from raising this issue anew in some future motion should it  
have evidence that the GCB has sole possession of relevant information contained on Defendants' hard drives, or that it  
requires access to the original hard drives for some other reason.

1 protection.<sup>12</sup> Since Plaintiff presumably can conduct its own investigation and analysis of the  
2 evidence concerning Defendants' actions, it does not have substantial need for investigation-related  
3 documents created by the GCB.

4 The third and fourth factors also favor the GCB's position. The GCB has no role in this  
5 litigation. It is neither a party nor a percipient witness regarding the activities of Defendant Tors or  
6 any alleged involvement of Defendant Peppermill in connection with those activities. It simply  
7 conducted an investigation in the course of acting as a regulatory agency charged with the  
8 enforcement of Nevada's gaming statutes and regulations.<sup>13</sup> In addition, its ability to perform  
9 necessary investigatory activities arguably is enhanced by the belief among gaming licensees that  
10 information provided to the GCB during an investigation generally will remain confidential. If  
11 investigatory materials were freely discoverable whenever a private litigant commenced a civil action  
12 based upon the conduct that is or was investigated, gaming licensees and related persons arguably  
13 would be less forthcoming with the GCB. Those individuals would need to consider the degree to  
14 which information, documents, or ESI provided to the GCB might prove useful to their current or  
15 future opponents in litigation. These concerns would be heightened, of course, if the opponent is a  
16 business competitor. The end result likely would be to make GCB investigations lengthier and more  
17 difficult, a result that is contrary to the public interest.

18 Plaintiff argues that it needs the GCB materials because Defendants have failed to disclose  
19 relevant information on their own: "Neither party has identified nor produced a single document

---

20 <sup>12</sup> Although the law is by no means clear on this issue, some authorities have directly applied the work product  
21 doctrine to materials prepared in the course of administrative adversarial proceedings. See In re Grand Jury Subpoena,  
22 220 F.R.D. 130, 146-47 (D. Mass. 2004) (noting that "litigation" includes adversarial proceedings before an administrative  
23 agency, and observing that "[m]any courts have held . . . that once a governmental investigation has begun, litigation is  
24 sufficiently likely to satisfy the 'anticipation' requirement"); United States v. Am. Tel. & Tel. Co., 86 F.R.D. 603, 627-29 &  
n.1 (D.D.C. 1979) (explaining that "litigation" includes "a proceeding in a court or administrative tribunal in which the parties  
have the right to cross-examine witnesses or to subject an opposing party's presentation of proof to equivalent  
disputation"); Restatement (Third) of the Law Governing Lawyers §87 cmt. h (2000) ("[l]itigation' includes civil and criminal  
trial proceedings, as well as adversarial proceedings before an administrative agency").

25 <sup>13</sup> Although Plaintiff seeks GCB materials pursuant to NRS 463.341, the Court observes that when parties seek  
26 documents from nonparties in civil actions through the subpoena process, "[a] party or an attorney responsible for the  
issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person  
subject to that subpoena." See NRCP 45(c)(1). Moreover, "[t]he court on behalf of which the subpoena was issued shall  
enforce this duty." See id. Arguably, if the same information, documents, or ESI are available from another party in the  
case and from a nonparty, NRCP 45(c)(1) requires that the party seeking documents first attempt to obtain them from the  
other party in most cases.

1 informative or evidencing the collection of PAR data from numerous casinos over the course of more  
2 than two years.” As explained in a previous decision, however, NRCP 16.1(a)(1)(B) only requires a  
3 party to disclose documents that it may use in the case; this rule does not require disclosure of  
4 documents that the party will not use, but which might be useful to another party.<sup>14</sup> Like any parties,  
5 Defendants generally must produce relevant documents and ESI within either party’s possession,  
6 custody, or control in response to an NRCP 34 request, but Plaintiff has not demonstrated that either  
7 Defendant has failed to do so. In any event, the remedy for a failure to make disclosures or produce  
8 requested documents is a motion to compel under NRCP 37(a)(2). If a party still fails to provide the  
9 requisite information or documents, then monetary or evidentiary sanctions are available under  
10 NRCP 37(b)(2).

11 Plaintiff also doubts whether it can rely on the completeness and accuracy of any production  
12 by Defendants unless it can use GCB materials to verify the disclosures:

13 This concern is based on the silence of the Peppermill at the hearing on the  
14 preliminary injunction where the Peppermill stood silent while Ryan Tors intentionally  
15 deceived the Court claiming that he was not acting within the course and scope of his  
16 employment with the Peppermill, nor at the direction of the Peppermill. The  
17 Peppermill’s failure to disclose this agency relationship with Mr. Tors, not only at the  
18 hearing, but in its answer to the complaint requires that Plaintiff seek to independently  
19 verify all information and documents provided by Defendants in this matter.

20 . . . Copies of all [GCB] records . . . are sought to insure that the information  
21 provided by Peppermill has not been improperly altered, emended or redacted. . . .

22 The Court appreciates that Plaintiff does not trust Defendant Peppermill to make complete  
23 disclosures, or to completely and accurately respond to discovery requests. But mere distrust is not  
24 a sufficient basis to warrant an order requiring the production of investigatory materials from the  
25 GCB. As explained above, Plaintiff has not established that either Defendant has previously  
26 provided incomplete or inaccurate information, documents, or ESI during discovery proceedings in  
this action. Plaintiff’s concerns about Defendants’ original unwillingness to admit that Defendant

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<sup>14</sup> In other Court filings, Defendant Peppermill has represented that it will disclose additional documentation upon Plaintiff’s agreement to a confidentiality order. While this representation suggests that Defendant Peppermill has possession of additional documents, things, and ESI that it is required to disclose under NRCP 16.1(a)(1)(B), it also is evidence that Defendant Peppermill ultimately will comply with its disclosure and discovery obligations—that is, it will comply with its obligations once an agreement has been reached regarding confidentiality, or the Court has resolved the parties’ dispute over confidentiality. In the event, a *Stipulated Confidentiality Agreement and Protective Order* was filed on July 17, 2014; however, the papers filed in connection with this motion do not reflect the extent to which additional disclosures were thereafter made by Defendant Peppermill.

1 Tors was acting within the course and scope of his employment are understandable; however,  
2 parties often change their positions during civil actions. Without more information, the Court is not  
3 willing to conclude that Defendants and their attorneys cannot be trusted to provide complete and  
4 accurate disclosures and discovery responses in this action.

5 For all of the foregoing reasons, the Court will not issue an order directing the GCB to  
6 produce the materials presently sought by Plaintiff. Although at least some of those documents  
7 undoubtedly contain relevant information, other factors militate against issuance of the requested  
8 order. Because the Court finds that the request must be denied under NRS 463.120(4), it need not  
9 address other claims of protection for these documents, or Plaintiff's request for appointment of a  
10 special master. Finally, with regard to Plaintiff's alternative request that Defendants be precluded  
11 from offering any witness testimony concerning the GCB's findings "that the misappropriated trade  
12 secrets were not actually used by Defendant Peppermill," the Court observes that this request was  
13 raised for the first time in Plaintiff's reply brief. Since Defendant Peppermill did not have an  
14 opportunity to address that request in its opposition, the Court will not grant that alternative relief at  
15 this time. However, nothing in this decision precludes Plaintiff from seeking that or other appropriate  
16 relief in a motion in limine.

17 ACCORDINGLY, Plaintiff's *Motion for Order Directing the Nevada Gaming Control Board to*  
18 *Produce All Documents and Other Evidence Pertaining to NGC 13-23* should be DENIED.

19 DATED: This 26<sup>th</sup> day of September, 2014.

20  
21   
22 WESLEY M. AYRES  
23 DISCOVERY COMMISSIONER  
24  
25  
26



**CERTIFICATE OF SERVICE**

CASE NO. CV13-01704

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 26<sup>th</sup> day of September, 2014, I electronically filed the **RECOMMENDATION FOR ORDER** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

**Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:**

H. STAN JOHNSON, ESQ. for MEI-GSR HOLDINGS, LLC

CLARK V. VELLIS, ESQ. for PEPPERMILL CASINOS, INC.

KENT RICHARD ROBISON, ESQ. for PEPPERMILL CASINOS, INC.

KEEGAN GRAHAM LOW, ESQ. for PEPPERMILL CASINOS, INC.

THERESE M. SHANKS, ESQ. for PEPPERMILL CASINOS, INC.

MARK HARLAN GUNDERSON, ESQ. for RYAN TORS

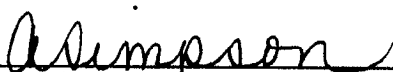
JOHN R. FUNK, ESQ. for RYAN TORS

MICHAEL SOMPS, ESQ. for NEVADA GAMING COMMISSION, STATE GAMING CONTROL BOARD

**Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada:**

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Annemarie Simpson  
Court Clerk

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23 *Inc., d/b/a Peppermill Casino*

24 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**

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

26 **MEI-GSR HOLDINGS, LLC, a Nevada**  
27 **Corporation, d/b/a/ GRAND SIERRA RESORT,**

28 **Plaintiff,**

29 **vs.**

**CASE NO.: CV13-01704**

**DEPT. NO.: B7**

**BUSINESS COURT DOCKET**

30 **PEPPERMILL CASINOS, INC., a Nevada**  
31 **Corporation, d/b/a/ PEPPERMILL CASINO;**  
32 **RYAN TORS, an individual; JOHN DOES I-X**  
33 **and JANE DOES I-X and CORPORATIONS I-X,**

34 **Defendant(s).**

35 **REQUEST FOR SUBMISSION**

36 It is requested that Defendant Peppermill Casinos, Inc.'s Motion for Terminating Sanctions or,  
37 In the Alternative, Motion to Compel Discovery, which was filed on August 25, 2014, in the above-  
38 entitled matter, and to which there has been no opposition filed thereto, be submitted for decision.

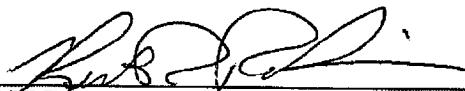
1 The undersigned attorney certifies that a copy of this Request has been served on all counsel of record.

2  
3 **AFFIRMATION**  
4 **Pursuant to NRS 239B.030**

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

7 DATED this 26<sup>th</sup> day of September, 2014.

8 ROBISON, BELAUSTEGUI, SHARP & LOW  
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14 THERESE M. SHANKS  
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& Thompson  
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP &  
3 LOW, and that on this date I caused to be served a true copy of the **REQUEST FOR SUBMISSION** on all  
parties to this action by the method(s) indicated below:

4        by placing an original or true copy thereof in a sealed envelope, with sufficient postage  
affixed thereto, in the United States mail at Reno, Nevada, addressed to:

5 X by using the Court's CM/ECF Electronic Notification System addressed to:

6 H. STAN JOHNSON, ESQ.  
7 TERRY KINNALLY, ESQ.  
8 Cohen-Johnson, LLC  
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18 Las Vegas, NV 89101-1068  
19 Email: [dcarus@ag.nv.gov](mailto:dcarus@ag.nv.gov) / [msomps@ag.nv.gov](mailto:msomps@ag.nv.gov)  
*Attorneys for Nevada Gaming Control Board*

20        by electronic email addressed to the above.

21        by personal delivery/hand delivery addressed to:

22        by facsimile (fax) addressed to:

23        by Federal Express/UPS or other overnight delivery addressed to:

24 DATED: This 26<sup>th</sup> day of September, 2014.

25   
26 V. JAYNE FERRETTO  
27  
28

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24 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**

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

26 **MEI-GSR HOLDINGS, LLC, a Nevada**  
27 **Corporation, d/b/a/ GRAND SIERRA RESORT,**

**CASE NO.: CV13-01704**

**DEPT. NO.: B7**

28 **Plaintiff,**

**vs.**

**BUSINESS COURT DOCKET**

29 **PEPPERMILL CASINOS, INC., a Nevada**  
30 **Corporation, d/b/a/ PEPPERMILL CASINO;**  
31 **RYAN TORS, an individual; JOHN DOES I-X**  
32 **and JANE DOES I-X and CORPORATIONS I-X,**

33 **Defendant(s).**

34 **DEFENDANT PEPPERMILL CASINOS, INC.'S**  
35 **OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE AND DISMISS**  
36 **DEFENDANT PEPPERMILL'S MOTION FOR CASE TERMINATING SANCTIONS**

37 **The Plaintiff has failed to respond to the Peppermill's Motion for Terminating Sanctions**  
38 **or, In the Alternative, Motion to Compel Discovery. The opposition to that motion was due to be**

1 filed on September 9, 2014. No opposition has been filed. As a result, Peppermill has submitted  
2 the Motion for Terminating Sanctions or, In the Alternative, Motion to Compel Discovery for  
3 submission. See **Exhibit 1**.

4 Peppermill respectfully submits the following as and for its opposition to the GSR's  
5 Motion to Strike and Dismiss Defendant's Motion for Case Terminating Sanctions.

6 **I. OVERVIEW.**

7 This case has been pending for nearly 14 months. During that period of time, GSR has  
8 continuously failed and refused to provide any discovery in response to NRCP 16.1, Requests for  
9 Production of Documents, Interrogatories and properly noticed depositions. GSR's refusal to  
10 engage in good faith discovery is typically based upon the assertion that the Peppermill has not  
11 produced documents pursuant to NRCP 16.1(a)(1). Whether Peppermill has produced documents  
12 under NRCP 16.1(a)(1) is completely and totally irrelevant to legitimate and proper discovery  
13 requests that the Peppermill has served on GSR. Moreover, the Discovery Commissioner has  
14 ruled that the GSR's accusations that the Peppermill has not produced documents is unwarranted  
15 and meritless.

16 The Discovery Commissioner's Recommendation for Order is attached hereto as **Exhibit 2**  
17 and incorporated herein. The significance of the Discovery Commissioner's Recommendation is  
18 two-fold. First, it has been determined that the GSR has improperly failed to produce documents  
19 under NRCP 16.1(a)(1)(C) concerning GSR's alleged damages. GSR has been ordered to produce  
20 all documents that pertain to its alleged damages on or before September 30, 2014. Second, the  
21 Discovery Commissioner has ruled that the Peppermill is not in violation of NRCP 16.1(a)(1).  
22 The Discovery Commissioner has ruled that GSR "**has not shown that Defendant Peppermill**  
23 **has failed to disclose any information or materials that it may use in this case.**" (Emphasis  
24 added.) **Exhibit 2**, p. 12, lns. 13-21. Further GSR rhetoric about the Peppermill's compliance  
25 with NRCP 16.1 is now unnecessary and inappropriate.

26 **II. GSR'S FAILURE TO PRODUCE DOCUMENTS.**

27 In addition to the documents that GSR has been ordered to produce, GSR is required to  
28 produce those documents requested in the Peppermill's Request for Production of Documents.

1 Exhibit 7 to the Peppermill's Motion is the Peppermill's Request for Production of Documents.  
2 The Requests ask for information more specific and in most instances unrelated to the documents  
3 that GSR has been ordered to produce.

4 GSR has now essentially admitted that the documents requested in the Peppermill's  
5 Request for Production of Documents are highly relevant and clearly discoverable. This is  
6 demonstrated by the Affidavit of GSR's newly identified expert, David G. Schwartz. Mr.  
7 Schwartz claims that GSR's "damages" can be based in part on the amount of money it would  
8 have taken a person to determine the par of the slot machine based on play. Mr. Schwartz further  
9 admits that the use to which the pars has been made is relevant to GSR's damages.

10 In this regard, GSR makes a faulty assumption. It assumes that only Mr. Schwartz can  
11 formulate a reasonable royalty calculation. That is untrue. Peppermill's experts are also entitled  
12 to obtain sufficient information to enable them to consider such things as GSR's development  
13 costs, use of par strategies, failure to safeguard par settings and other documents and information  
14 addressed in Peppermill's Request for Production of Documents so that the Peppermill's experts  
15 have sufficient information to verify and validate any assertion that the GSR's par settings have  
16 any value. Peppermill's expert, Dr. Anthony Lucas, has unequivocally stated that the documents  
17 requested in Request Nos. 2, 4, 5, 6, 7, 10, 11, 12, 20, 21, 22, 29 and 30 will assist Dr. Lucas in  
18 calculating or formulating a reasonable royalty damage calculation.

19 The Court is now confronted with GSR's unreasonable objections to Peppermill's Request  
20 for Production of Documents. GSR's objections are based on the fact that the requested  
21 documents contain trade secrets. Discovery cannot be frustrated by such unreasonable objection,  
22 particularly in light of the fact that the parties have stipulated to confidentiality in the Court-  
23 approved Confidentiality Agreement and Order Thereon filed in this matter. Hence, the objections  
24 are inappropriate and should be overruled.

### 25 **III. INTERROGATORIES.**

26 GSR's first assertion that the Peppermill "filed" Interrogatories is incorrect. Interrogatories  
27 were served and are not proper matters to be filed with the Court. GSR's defense to its complete  
28 failure to answer or object to the Interrogatories is confusing. It claims that because it brought a

1 motion for a protective order concerning Peppermill's noticed PMK depositions, it therefore  
2 inferentially objected to Interrogatories as well. A review of the GSR's Motion for Protective  
3 Order (Exhibit 8 to GSR's motions) shows that it does not even mention Interrogatories. It does  
4 not interpose objections to the Peppermill's Interrogatories. The Motion for Protective Order  
5 pertains exclusively to PMK depositions.

6 Nearly concealed in its Motion for Protective Order is a conclusory statement that  
7 Peppermill should be precluded from "seeking discovery" of GSR's trade secrets. Still, there is no  
8 objection to Peppermill's Interrogatories and there never has been an objection made to the  
9 Interrogatories. Rule 33 of the Nevada Rules of Civil Procedure requires that each interrogatory  
10 be answered separately and fully. Any objection must be stated with specific reasons and, even  
11 then, each interrogatory must be answered to the extent it is not objectionable. NRCP 31(b)(1).  
12 GSR has failed to state any objection to any Interrogatory with "required specificity". See NRCP  
13 33(b)(4). "Any ground not stated in a timely objection is waived unless the party's failure to  
14 object is excused by the court for good cause shown." *Id.*

15 Suggesting that a single sentence in a Motion for a Protective Order concerning PMK  
16 depositions complies with NRCP 33(b)(4) is ludicrous. There is no good cause for GSR to have  
17 simply ignored the Peppermill's Interrogatories and defiantly refused to respond in any way  
18 whatsoever.

#### 19 **IV. FAILURE TO APPEAR FOR DEPOSITIONS.**

20 First, Mark Robison does not represent the Peppermill. It is this type of confusion that is  
21 toxic to the Peppermill's ability to proceed in good faith with discovery.

22 The Peppermill served GSR with proper deposition notice for persons most knowledgeable  
23 pursuant to and in accordance with NRCP 30(b)(6). There has never been any order excusing  
24 GSR from producing the noticed witnesses. GSR mistakenly believes that a motion for a  
25 protective order is the legal equivalent to a protective order prohibiting the Peppermill from taking  
26 the PMK depositions.

27 The Peppermill did expressly stipulate to continue the deposition dates. Based upon  
28 discussions in open Court, all parties agreed to proceed with the PMK depositions the week of



1 August 18, 2014, unless otherwise prohibited by the Court's Order on GSR's Motion for  
2 Protective Order. The Court has not granted the Motion for Protective Order. Though all parties  
3 were hopeful that the Court would rule prior to August 25, 2014, that did not occur and the notice  
4 of NRCP 30(b)(6) depositions were scheduled to proceed accordingly. Not once did GSR suggest  
5 in any fashion whatsoever when it agreed to the August 25, 2014, PMK deposition date that its  
6 PMK witnesses would not show up on the date(s) scheduled for their depositions. This Court  
7 should find that the GSR's disobedience is flagrant. It warrants terminating sanctions.

8  
9 **V. DEMAND FOR DOCUMENTS RELEVANT TO A COMPUTATION OF DAMAGES.**

10 In Peppermill's Motion for Terminating Sanctions or, in the Alternative, Motion to  
11 Compel, it complained that GSR had not complied with NRCP 16.1 because it had failed to  
12 provide documents relevant to its computation of damages. That argument in GSR's response  
13 thereto have been rendered moot by the Discovery Commissioner's Recommendation for Order  
14 attached as **Exhibit 1**.

15 **VI. MOTION TO STRIKE.**

16 NRCP 12 governs motions to strike. NRCP 12(f) permits a party to make a motion to  
17 strike. If appropriate, "the court may order stricken from any **pleading** any insufficient defense or  
18 any redundant, immaterial, impertinent, or scandalous matter." *Id.* It is fundamental that there is  
19 no such thing as a motion to strike a motion.

20 The meet and confer requirements concerning discovery disputes were clearly met in this  
21 case. Peppermill's letter to GSR counsel (Exhibit 1 to GSR Motions) clearly sets forth  
22 Peppermill's contentions why the requested discovery should be provided. In response to  
23 Peppermill's invitation to meet and confer, GSR stated its position clearly. It took the position  
24 that the agreed upon Confidentiality Agreement (and Order Thereon) permits it to not provide  
25 discovery. The position taken is absurd. The parties' Confidentiality Agreement and the Court's  
26 Order Thereon was intended to facilitate discovery, not prevent it. Though the meet and confer  
27 requirements were met by the parties' letters, it was clear beyond question that GSR would not  
28 participate in good faith in discovery dispute resolution and that it would not be providing

1 responses to the Requests for Production of Documents. Again, GSR's refusal to provide the  
2 requested information was based in part on the contention that the Peppermill had not provided  
3 discovery. Accordingly, the meet and confer requirements were met and the Peppermill  
4 respectfully asks that the information disclosed and exchanged in the letters concerning the  
5 discovery dispute satisfy the requirement for a certificate that the parties were unable to resolve the  
6 matter.

7 **VII. MOTION TO DISMISS MOTION.**

8 Since this type of motion seems to be a procedural creation of GSR, not permitted by any  
9 rule of procedure, statute, or common law authority, it is nearly impossible to respond to a motion  
10 that asks that another motion be "dismissed". GSR has failed to cite any authority that would  
11 allow a court to grant a motion to dismiss a motion. Since a motion to dismiss a motion is  
12 something that cannot be addressed based upon legal authority, the Peppermill has no alternative  
13 but to simply incorporate its foregoing arguments as and for its opposition to the GSR's Motion to  
14 Dismiss Motion.

15 **VIII. CONCLUSION.**

16 GSR is making a mockery of the Rules of Civil Procedure. It has gone beyond the realm of  
17 imagination in creating superfluous and unreasonable arguments why it should not simply comply  
18 with the fundamental and rudimentary discovery requests. GSR's failure to participate in  
19 discovery is so flagrant that it warrants terminating sanctions, particularly in light of the fact that it  
20 has already been found to be noncompliant with NRCP 16.1. If terminating sanctions are not  
21 awarded, Peppermill respectfully requests that GSR be ordered to fully and completely comply  
22 with the discovery requests the Peppermill has served on the GSR.

23  
24 **AFFIRMATION**  
**Pursuant to NRS 239B.030**

25 The undersigned does hereby affirm that this document does not contain the social security

26 ///

27 ///

28 ///

1 number of any person.

2 DATED this 26<sup>th</sup> day of September, 2014.

3 ROBISON, BELAUSTEGUI, SHARP & LOW  
4 A Professional Corporation  
5 71 Washington Street  
6 Reno, Nevada 89503



7 KENT R. ROBISON  
8 KEEGAN G. LOW  
9 THERESE M. SHANKS  
10 Attorneys for Defendant  
11 Peppermill Casinos, Inc., d/b/a Peppermill Casino

12 IN ASSOCIATION WITH:

13 CLARK V. VELLIS, ESQ.  
14 Cotton, Driggs, Walch, Holley, Woloson  
15 & Thompson  
16 800 S. Meadows Parkway, Suite 800  
17 Reno, Nevada 89521



1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP &  
3 **LOW, and that on this date I caused to be served a true copy of the DEFENDANT**  
4 **PEPPERMILL CASINOS, INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE AND**  
5 **DISMISS DEFENDANT PEPPERMILL'S MOTION FOR CASE TERMINATING SANCTIONS**  
6 on all parties to this action by the method(s) indicated below:

7        by placing an original or true copy thereof in a sealed envelope, with sufficient  
8 postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

9   X   by using the Court's CM/ECF Electronic Notification System addressed to:

10 H. STAN JOHNSON, ESQ.  
11 TERRY KINNALLY, ESQ.  
12 Cohen-Johnson, LLC  
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15 Email: [sjohnson@cohenjohnson.com](mailto:sjohnson@cohenjohnson.com) / [tkinnally@cohenjohnson.com](mailto:tkinnally@cohenjohnson.com)  
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Attorneys for Nevada Gaming Control Board

       by electronic email addressed to the above.

       by personal delivery/hand delivery addressed to:

       by facsimile (fax) addressed to:

       by Federal Express/UPS or other overnight delivery addressed to:

29 DATED: This 26<sup>th</sup> day of September, 2014.

30   
31 V. JAYNE FERRETTO

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**EXHIBIT LIST**

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGES</u>
1	Request for Submission	4 pages
2	Recommendation for Order	14 pages

# EXHIBIT 1

# EXHIBIT 1

1 **3860**  
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16 *Attorneys for Defendant Peppermill Casinos,*  
17 *Inc., d/b/a Peppermill Casino*

18 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**

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

20 **MEI-GSR HOLDINGS, LLC, a Nevada**  
21 **Corporation, d/b/a/ GRAND SIERRA RESORT,**

**CASE NO.: CV13-01704**

**DEPT. NO.: B7**

22 **Plaintiff,**

23 **vs.**

**BUSINESS COURT DOCKET**

24 **PEPPERMILL CASINOS, INC., a Nevada**  
25 **Corporation, d/b/a/ PEPPERMILL CASINO;**  
26 **RYAN TORS, an individual; JOHN DOES I-X**  
27 **and JANE DOES I-X and CORPORATIONS I-X,**

28 **Defendant(s).**

**REQUEST FOR SUBMISSION**

It is requested that Defendant Peppermill Casinos, Inc.'s Motion for Terminating Sanctions or,  
In the Alternative, Motion to Compel Discovery, which was filed on August 25, 2014, in the above-  
entitled matter, and to which there has been no opposition filed thereto, be submitted for decision.



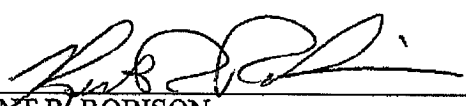
1 The undersigned attorney certifies that a copy of this Request has been served on all counsel of record.

2  
3 **AFFIRMATION**  
4 **Pursuant to NRS 239B.030**

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

7 DATED this 26<sup>th</sup> day of September, 2014.

8 ROBISON, BELAUSTEGUI, SHARP & LOW  
9 A Professional Corporation  
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12 KENT R. ROBISON  
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Attorneys for Defendant  
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15 IN ASSOCIATION WITH:

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& Thompson  
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1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP &  
3 LOW, and that on this date I caused to be served a true copy of the REQUEST FOR SUBMISSION on all  
parties to this action by the method(s) indicated below:

4 — by placing an original or true copy thereof in a sealed envelope, with sufficient postage  
affixed thereto, in the United States mail at Reno, Nevada, addressed to:

5 ☒ by using the Court's CM/ECF Electronic Notification System addressed to:

6 H. STAN JOHNSON, ESQ.  
7 TERRY KINNALLY, ESQ.  
Cohen-Johnson, LLC  
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19 *Attorneys for Nevada Gaming Control Board*

20 — by electronic email addressed to the above.

21 — by personal delivery/hand delivery addressed to:

22 — by facsimile (fax) addressed to:

23 — by Federal Express/UPS or other overnight delivery addressed to:

24 DATED: This 26<sup>th</sup> day of September, 2014.

25   
26 V. JAYNE FERRETTO  
27  
28

**Jayne Ferretto**

---

**From:** eflex@washocourts.us  
**Sent:** Friday, September 26, 2014 4:06 PM  
**To:** Kent Robison  
**Cc:** Jayne Ferretto  
**Subject:** Received Notice: Your filing, Re: CV13-01704 - Other Civil Filing: Other Civil Matters - GC - Request for Submission, was received

**To:** Kent R. Robison [krobison@rbslattys.com](mailto:krobison@rbslattys.com)  
**From:** [eflex@washocourts.us](mailto:eflex@washocourts.us)  
**Date:** 2014-09-26 16:03:44.0  
**Subject:** Your electronic filing, Re: CV13-01704 - Other Civil Filing: Other Civil Matters - GC - Request for Submission, was received by SECOND JUDICIAL DISTRICT COURT - STATE OF NEVADA.

Case Number: CV13-01704  
Case Type: Other Civil Filing: Other Civil Matters - GC  
Document Type: Request for Submission

# EXHIBIT 2

# EXHIBIT 2

1 CODE NO. 1945

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5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \*

9 MEI-GSR HOLDINGS, LLC, a Nevada corporation,  
10 d/b/a GRAND SIERRA RESORT,

11 Plaintiff,

Case No. CV13-01704

12 vs.

Dept. No. B7

13 PEPPERMILL CASINOS, INC., a Nevada  
corporation, d/b/a PEPPERMILL CASINO, et al.,

14 Defendants.  
15 \_\_\_\_\_/

16 **RECOMMENDATION FOR ORDER**

17 Plaintiff MEI-GSR Holdings, LLC, doing business as Grand Sierra Resort, filed the complaint  
18 in this action on August 2, 2013. Essentially, Plaintiff alleges that Defendant Ryan Tors, while acting  
19 as an employee of Defendant Peppermill Casinos, Inc. ("Peppermill"), entered Plaintiff's premises  
20 and made unauthorized entry into certain slot machines to access confidential and proprietary  
21 information contained within those machines. Plaintiff states claims for relief based upon violations  
22 of Nevada's Uniform Trade Secrets Act and "vicarious liability/respondeat superior." It seeks  
23 compensatory and punitive damages, as well as injunctive relief.<sup>1</sup> Defendants deny any liability to  
24 Plaintiff.

25 \_\_\_\_\_  
26 <sup>1</sup> At the conclusion of a hearing on August 27, 2013, the Court enjoined Defendant Tors "from entering the Grand  
Sierra Resort to collect or use any information that he has previously obtained," and ordered him "to turn over any  
information gathered by him at the Grand Sierra Resort property, with the exception of the universal key(s)." No injunctive  
relief was provided with regard to Defendant Peppermill. The Court's written order regarding this injunctive relief was  
entered on November 15, 2013.

1 Counsel for all parties participated in an early case conference on December 5, 2013.  
2 Defendant Peppermill filed its individual case conference report on April 11, 2014; Plaintiff's report  
3 was filed on April 16, 2014; and the report of Defendant Tors was filed on May 22, 2014. The  
4 parties are scheduled to commence trial in this action on July 6, 2015.

5 On June 4, 2014, Defendant Peppermill filed *Defendant Peppermill Casinos, Inc.'s Motion to*  
6 *Dismiss Complaint*. Defendant Peppermill maintains that Plaintiff has violated NRCP 16.1(a)(1)(C)  
7 by improperly refusing to provide a calculation of its damages, and that the complaint should  
8 therefore be dismissed under NRCP 16.1(e)(3). On June 5, 2014, Defendant Tors filed a *Joinder to*  
9 *Motion to Dismiss Complaint*.

10 On June 18, 2014, Plaintiff filed *Plaintiff's Opposition to Defendants' Motion to Dismiss*  
11 *Complaint and Counter-Motion to Compel Disclosures Under NRCP 16.1*. Plaintiff asserts that  
12 Defendant Peppermill failed to confer about this matter prior to filing its motion, and that Peppermill's  
13 failure to comply with its NRCP 16.1 obligations precludes Plaintiff from providing a calculation of  
14 damages. It asks that the motion be denied until such time as Peppermill produces records showing  
15 the number of machines accessed by Mr. Tors and the number of times such access occurred. In  
16 its counter-motion, Plaintiff seeks an order compelling Defendant Peppermill to produce specified  
17 documents that it contends Peppermill was required to produce under NRCP 16.1. *Defendant*  
18 *Peppermill Casinos, Inc.'s Reply to Plaintiff's Opposition to Motion to Dismiss Complaint* was filed on  
19 June 30, 2014, and Defendant Tors filed a *Joinder to Defendant Peppermill Casinos, Inc.'s Reply to*  
20 *Plaintiff's Opposition to Motion to Dismiss Complaint* on that same date. On July 3, 2014, Defendant  
21 Peppermill filed its *Opposition to Plaintiff's Motion to Compel Peppermill's Production of*  
22 *Documents*.<sup>2</sup> *GSR's Reply to Peppermill's Opposition to Motion to Compel Documents Under 16.1*  
23 was filed on July 8, 2014.<sup>3</sup> The motion to dismiss and the counter-motion to compel were submitted  
24 for decision on July 15, 2014.

25 <sup>2</sup> This opposition was included as part of a filing including Defendant Peppermill's oppositions to other motions,  
26 and its brief in response to a Court order.

<sup>3</sup> This reply was included as part of a filing including Plaintiff's replies to the oppositions filed by Defendant Peppermill on July 3, 2014.

1 NRCP 16.1(a) requires any party seeking damages to provide all other parties with the  
2 following information:

3 A computation of any category of damages claimed by the disclosing party, making  
4 available for inspection and copying as under Rule 34 the documents or other  
5 evidentiary matter, not privileged or protected from disclosure, on which such  
computation is based, including materials bearing on the nature and extent of injuries  
suffered . . . .

6 NRCP 16.1(a)(1)(C). The rule also requires that this calculation be provided at or within fourteen  
7 days after the Rule 16.1(b) conference unless (a) a different time is set by stipulation or court order,  
8 or (b) a party objects during the conference that initial disclosures are not appropriate in the  
9 circumstances of the action and states the objection in the Rule 16.1(c) case conference report.  
10 This disclosure, like other initial disclosures, must be based on information that is reasonably  
11 available at the time of disclosure. A party "is not excused from making this disclosures because it  
12 has not fully completed its investigation of the case or because it challenges the sufficiency of  
13 another party's disclosures or because another party has not made its disclosures." See id.  
14 16.1(a)(1).

15 On January 3, 2014, Plaintiff served Defendants with "Plaintiff's Early Case Conference  
16 NRCP 16.1 Production of Documents." Section III of that disclosure addresses the computation of  
17 damages requirement. After quoting NRCP 16.1(a)(1)(C), Plaintiff states as follows: "Damages  
18 include general and special damages in an amount to be determined at trial." On January 27, 2014,  
19 Plaintiff served Defendants with "Plaintiff's First Supplemental Disclosure Pursuant to NRCP 16.1,"  
20 in which it states as follows with regard to the computation of damages requirement:

21 Damages will be computed based on the number of times Mr. Tors accessed  
22 machines at the GSR without permission, and the number of machines so accessed.  
23 Damage computations will also be based on the use to which Mr. Tors used the  
information so obtained. Said damages are expected to include general and special  
damages in an amount to be determined at trial.

24 The actual amount of these damages will be determined upon the examination  
25 of the information obtained by Mr. Tors and currently in the possession of the Nevada  
Gaming Control Board. Plaintiff reserves the right to supplement this production, as  
discovery is ongoing.

26 Defendant Peppermill maintains that this statement is insufficient under NRCP 16.1(a)(1)(C). It

1 therefore seeks dismissal of this action pursuant to NRCP 16.1(e)(3), which provides as follows:

2 If an attorney fails to reasonably comply with any provision of this rule, . . . the court,  
3 upon motion or upon its own initiative, shall impose upon a party or a party's attorney,  
4 or both, appropriate sanctions in regard to the failure(s) as are just, including the  
5 following:

6 (A) Any of the sanctions available pursuant to Rule 37(b)(2) and Rule 37(f).

7 (B) An order prohibiting the use of any witness, document or tangible thing  
8 which should have been disclosed, produced, exhibited, or exchanged pursuant to  
9 Rule 16.1(a).

10 In connection with this rule, Defendant Peppermill observes that dismissal is a sanction expressly  
11 authorized by NRCP 37(b)(2).

12 As an initial matter, Plaintiff argues that this motion should be denied because Defendant  
13 Peppermill's counsel failed to engage in prefiling consultation with Plaintiff's counsel regarding this  
14 issue. Nothing in NRCP 16.1 requires a party to engage in prefiling consultation before filing a  
15 motion under NRCP 16.1(e)(3). However, WDCR 12(6) provides that "[a]ll discovery motions shall  
16 include the certificate of moving counsel certifying that after consultation with opposing counsel, they  
17 have been unable to resolve the matter." This language begs the question of whether a motion to  
18 dismiss under NRCP 16.1(e)(3) constitutes a "discovery motion."

19 Although designated as a motion to dismiss, resolution of Defendant Peppermill's motion  
20 depends upon an analysis and application of NRCP 16.1, one of the two rules that "govern discovery  
21 in civil actions." See Mays v. Dist. Court, 105 Nev. 60, 62, 768 P.2d 877, 878 (1989). Our discovery  
22 rules expressly authorize the filing of a motion to compel when one party believes that an opposing  
23 party failed "to make a disclosure required by Rule 16.1(a)." See NRCP 37(a)(2)(A). The inclusion  
24 of such a provision in NRCP 37 arguably reflects the belief that the failure to make the disclosure  
25 required by NRCP 16.1(a)(1)(C) is a discovery matter. Significantly, any such motion to compel  
26 "must include a certification that the movant has in good faith conferred or attempted to confer with  
the party not making the disclosure in an effort to secure the disclosure without court action." See  
id. In addition, the fact that this motion was referred to the Discovery Commissioner strongly  
suggests that the Court views this matter as a discovery motion.



1 The Court also observes that NRCP 37(d) presents a situation similar to that presented in the  
2 pending motion. Under NRCP 37(d), if a party fails to serve a written response to interrogatories or  
3 a request for production of documents, the requesting party may seek the imposition of any sanction  
4 described in NRCP 37(b)(2), including dismissal of the action. However, any such motion "shall  
5 include a certification that the movant has in good faith conferred or attempted to confer with the  
6 party failing to answer or respond in an effort to obtain such answer or response without court  
7 action." See id. 37(d). This provision shows that the drafters of our rules believe consultation is  
8 appropriate prior to seeking sanctions for an opponent's failure to comply with its obligations to  
9 provide written discovery. It thus supports an interpretation of WDCR 12(6) that would require a  
10 party to consult with an opponent who has failed to provide the calculation of damages required by  
11 NRCP 16.1(a)(1)(C) before seeking relief from the Court.

12 Prefiling consultation is not always required before seeking relief for a party's failure to  
13 provide information required by NRCP 16.1. A party who seeks to use previously undisclosed  
14 evidence that should have been disclosed under NRCP 16.1 may be precluded from using that  
15 evidence under NRCP 37(c)(1). But the pending motion was not filed based upon Plaintiff's attempt  
16 to use a witness, information, or a document that should have been disclosed under NRCP 16.1 or  
17 NRCP 26(e). Rather, it was filed pursuant to NRCP 16.1(e)(3). For the reasons explained above,  
18 the Court finds that when a party believes an opponent has failed to make the disclosure required by  
19 NRCP 16.1(a)(1)(C), that party must consult with the opponent about that failure before seeking  
20 relief from the Court.

21 In any event, a motion to dismiss, or for the imposition of serious evidentiary sanctions, is not  
22 the appropriate first step to redress a party's refusal or failure to provide a calculation of damages  
23 under NRCP 16.1(a)(1)(C). As noted above, NRCP 37(a)(2)(A) expressly contemplates this  
24 situation and authorizes a motion to compel so that the party needing the information can obtain it.  
25 If a party fails to comply with an ensuing order directing the disclosure of information required by  
26 NRCP 16.1(a), then sanctions are directly available under NRCP 37(b)(2) (and indirectly available

1 under NRCP 16.1(e)(3)). The supreme court's adoption of NRCP 37(a)(2)(A) evinces an intention to  
2 treat the failure to make disclosures under NRCP 16.1(a) in the same manner as the failure to  
3 answer a deposition question, answer an interrogatory, or produce a requested document under  
4 NRCP 37(a)(2)(B). Even if parties have the right to file a motion for sanctions under NRCP  
5 16.1(e)(3) whenever a party fails to disclose information under NRCP 16.1(a), any order in that  
6 regard is a matter for the Court's discretion. In light of NRCP 37(a)(2)(A), dismissal of the action or  
7 imposition of other serious evidentiary sanctions under NRCP 16.1(e)(3) is not the appropriate first  
8 step for a plaintiff's failure to make the disclosures required by NRCP 16.1(a)(1)(C). Cf. Marais v.  
9 Chase Home Fin., LLC, Case No. 2:11-cv-314, 2014 WL 2515474, at \*14 (S.D. Ohio Jun. 4, 2014)  
10 (rejecting argument that failure to provide proper calculation of damages and supporting  
11 documentation automatically results in the exclusion of all damages-proving evidence).

12 Despite the designation of this motion as one seeking dismissal, the Court observes that the  
13 parties have an actual disagreement about whether the information provided by Plaintiff thus far is  
14 sufficient to satisfy the NRCP 16.1(a)(1)(C) mandate. Neither NRCP 16.1(a)(1)(C) nor its federal  
15 equivalent defines the specificity required in initial damages disclosures. But the purposes of initial  
16 disclosure obligations are to "accelerate the exchange of basic information" that is "needed in most  
17 cases to prepare for trial or make an informed decision about settlement," and to assist the parties in  
18 focusing and prioritizing their organization of discovery. See Memry Corp. v. Ky. Oil Tech., NV, No.  
19 C04-03843 RMW (HRL), 2007 WL 39373, at \*5 (N.D. Cal. Jan. 4, 2007); City & Cnty. of S.F. v.  
20 Tutor-Saliba Corp., 218 F.R.D. 219, 221 (N.D. Cal. 2003).

21 With such goals in mind, courts apply the initial disclosure obligations in a common sense  
22 fashion so as to avoid gamesmanship. In that regard, the 1993 commentary accompanying the  
23 original, equivalent federal rule—then known as Rule 26(a)(1)(C)<sup>4</sup>—provides, in pertinent part, as  
24 follows:

25 Subparagraph (C) imposes a burden of disclosure that includes the functional  
26 equivalent of a standing Request for Production under Rule 34. A party claiming

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<sup>4</sup> The requirement that a plaintiff disclose a calculation of damages and all supporting documentation is currently found at federal Rule 26(a)(1)(A)(iii).

1 damages or other monetary relief must, in addition to disclosing the calculation of  
2 such damages, make available the supporting documents for inspection and copying  
3 as if a request for such materials had been made under Rule 34. This obligation  
4 applies only with respect to documents then reasonably available to it and not  
5 privileged or protected as work product. Likewise, a party would not be expected to  
6 provide a calculation of damages which, as in many patent infringement actions,  
7 depends on information in the possession of another party or person.

8 In addition, a party may not need to disclose the method used to calculate a dollar amount where  
9 that method is properly the subject of expert evidence and the parties will be turning over expert  
10 evidence in the future. See Kingsway Fin. Servs., Inc. v. Pricewaterhouse-Coopers LLP, No. 03 Civ.  
11 5560 RMB HBP, 2006 WL 1520227, at \*1 (S.D.N.Y. Jun. 1, 2006); Pine Ridge Recycling, Inc. v.  
12 Butts Cnty., 889 F. Supp. 1526, 1527 (M.D. Ga. 1995). However, even if a complete calculation  
13 cannot be provided, a party nonetheless must initially "disclose to the other parties the best  
14 information then available to it concerning that claim, however limited and potentially changing it  
15 may be." See U.S. Bank Nat'l Ass'n v. PHL Variable Ins. Co., Nos. 12 Civ. 6811(CM)(JCF), 13 Civ.  
16 1580(CM)(JCF), 2013 WL 5495542, at \*3 (S.D.N.Y. Oct. 3, 2013); Joseph v. Las Vegas Metro.  
17 Police Dep't, No. 2:09-cv-00966-HDM-LRL, 2010 WL 3238992, at \*2 (D. Nev. Aug. 13, 2010);  
18 Memry Corp., 2007 WL 39373, at \*5; In re Oakwood Homes Corp., 340 B.R. 510, 539 (Bankr. D.  
19 Del. 2006); 6 James W. Moore et al., Moore's Federal Practice § 26.22[4][c][ii] (Daniel R. Coquillette  
20 et al. eds., 3d ed. 2005).

21 The original statement offered by Plaintiff as its NRCP 16.1(a)(1)(C) disclosure—that  
22 "[d]amages include general and special damages in an amount to be determined at trial"—was  
23 deficient. Plaintiff thereafter supplemented that disclosure by providing a brief explanation of factors  
24 that will dictate its calculation of damages in this case—the number of times Mr. Tors accessed  
25 machines at the GSR without permission, the number of machines so accessed, and the use that  
26 Mr. Tors made of the information so obtained. Plaintiff also states that actual damages can only be  
determined after an examination of the information obtained by Mr. Tors and currently in the  
possession of the Nevada Gaming Control Board. But while Plaintiff believes that it needs to review  
information possessed by others, Plaintiff does not state that it completely lacks any information

1 bearing upon these factors. To the extent that it can provide a calculation of damages based upon  
2 its current information—however limited and potentially changing it may be—Plaintiff must do so.<sup>5</sup>  
3 Similarly, Plaintiff has not stated that it entirely lacks documents, electronically stored information, or  
4 tangible things that it is relying upon in support of its damages claim. If it has such materials, then it  
5 must so inform Defendants and make those materials available for inspection. If it entirely lacks any  
6 supporting materials (i.e., all such materials are possessed by other persons), then it must inform  
7 Defendants of that fact in its supplemental disclosure.

8 In its countermotion, Plaintiff complains that Defendant Peppermill has failed to comply with  
9 its NRCP 16.1 obligations. Specifically, Plaintiff believes that Defendant Peppermill is obligated to  
10 disclose (a) “documents regarding all visits to GSR by Ryan Tors where he accessed any slot  
11 machines and obtained PARs or any other information as a result of his accessing the machines”;  
12 (b) “documents showing to whom this information was provided including emails, memos, texts,  
13 spreadsheets, etc.”; and (c) some or all “documents concerning Ryan Tors which were produced to  
14 the Gaming Board.” To the extent that Defendant Peppermill believes that any such documents are  
15 protected from disclosure, Plaintiff seeks a privilege log identifying all such documents.

16 In pertinent part, NRCP 16.1(a)(1)(B) provides that at the beginning of a civil action, in most  
17 cases, each party must do the following:

18 [A] party must, without awaiting a discovery request, provide to other parties:

19 . . . .  
20 (B) A copy of, or a description by category and location of, all documents, data  
21 compilations, and tangible things that are in the possession, custody, or control of the  
22 party and which are discoverable under Rule 26(b) . . . .

21 The rule also requires the disclosure of “[t]he name and, if known, the address and telephone  
22 number of each individual likely to have information discoverable under Rule 26(b), including for  
23 impeachment or rebuttal, identifying the subjects of the information.” See NRCP 16.1(a)(1)(A).  
24 Further, a party must supplement its NRCP 16.1(a)(1) disclosures “if the party learns that in some

25 <sup>5</sup> If Plaintiff still believes that it lacks any additional information that will be used in calculating its damages, then it  
26 may so inform Defendants in its supplemental disclosure; but it must then identify the information needed, and must  
provide a more detailed explanation of how it will calculate damages (i.e., how information will be used).

1 material respect the information disclosed is incomplete or incorrect and if the additional or  
2 corrective information has not otherwise been made known to the other parties during the discovery  
3 process or in writing." See id. 26(e)(1).

4 Plaintiff essentially argues that Defendant Peppermill was obligated under NRCP 16.1(a)(1)  
5 to identify or produce every reasonably available document containing any relevant information.  
6 However, the Court construes this rule as imposing an obligation on parties to identify or produce  
7 documents, tangible things, and data compilations—and identify individuals—that the disclosing  
8 party may use in support of its case. Irrespective of whether Defendant Peppermill failed to identify  
9 an individual or document, "there is no requirement to disclose anything that the disclosing party will  
10 not use." See 8A Charles A. Wright et al., Federal Practice and Procedure § 2053, at 365 & n.41  
11 (3d ed. 2010 & Supp. 2014) [hereinafter Wright]; cf. In re Fort Totten Metrorail Cases, 279 F.R.D. 18,  
12 23 (D.D.C. 2011) (defendant had no responsibility to make initial disclosures of information or other  
13 materials regarding a defense that it was not asserting, even though that defense was asserted by  
14 another defendant). Plaintiff has not yet established that Defendant Peppermill failed to disclose any  
15 witness or document that Peppermill may use in the case (as opposed to witnesses or documents  
16 with relevant information that might prove useful to Plaintiff). Of course, Defendant Peppermill  
17 remains under a continuing duty to supplement earlier disclosures and discovery responses. See  
18 NRCP 26(e). But under NRCP 37(a)(2)(A), the Court cannot compel Defendant Peppermill to  
19 disclose information or documents that it was not required to disclose under NRCP 16.1(a)(1).

20 While the language of NRCP 16.1(a)(1) can be construed more broadly, the Court is not  
21 persuaded that a broader construction is correct or appropriate. NRCP 16.1(a) was amended in  
22 2005 "to conform to the 1993 and 2000 amendments to Rule 26(a) of the federal rules, with some  
23 notable exceptions." See id. 16.1 (drafter's note to 2004 amendments). One of the main purposes  
24 of the 2000 amendments to the Federal Rules of Civil Procedure was to address "what seemed the  
25 most vigorous and enduring criticism of disclosure [under the prior language]—that it might require a  
26 party to volunteer harmful material without a discovery request." See 8A Wright § 2053, at 365.

1 Significantly, the analogous pre-2005 provisions in NRCP 16.1(b)(1) required parties to produce any  
2 documents "which are then contemplated to be used in support of the allegations or denials of the  
3 pleading filed by that party"—language that roughly parallels the standard adopted by federal  
4 authorities in the 2000 amendments to federal rule 26(a). This Court cannot accept the proposition  
5 that the language of NRCP 16.1(a)(1) adopted in the 2005 amendments was intended to be  
6 construed in accordance with the discredited federal standard in place prior to the 2000  
7 amendments to the Federal Rules of Civil Procedure (especially in the absence of any commentary  
8 reflecting such an intention). More fundamentally, and as noted by the Supreme Court:

9 [A] common law trial is and always should be an adversary proceeding. Discovery  
10 was hardly intended to enable a learned profession to perform its functions either  
without wits or on wits borrowed from the adversary.

11 Hickman v. Taylor, 329 U.S. 495, 516 (1947) (Jackson, J., concurring). An interpretation of NRCP  
12 16.1(a)(1)(A) and (B) that literally encompasses all "relevant" material—which effectively would  
13 require identification or production of documents that the other side has neither requested nor even  
14 contemplated—is not in keeping with the deep-rooted understanding that civil actions are adversary  
15 proceedings.

16 Significantly, the concept of "relevance" is a fundamental and continual source of good-faith  
17 disagreement between the parties engaged in discovery proceedings. The application of  
18 "relevance" as the measure of a party's disclosure obligations often would beg the question of which  
19 side's view of relevance is correct in a given case. The uncertainty attendant to whatever ruling the  
20 Court might ultimately make on that point would likely have the effect in many cases of promoting  
21 "over-production" by parties who believe certain information or documents are not relevant, but want  
22 to avoid the prospect of sanctions if the Court later disagrees with their view of relevance. Thus, an  
23 interpretation requiring production of all documents that are "relevant" would require each party to  
24 produce unrequested documents that the opposition neither needs nor wants, but which the  
25 disclosing party supposes might be relevant to the case in some way, no matter how trivial.<sup>6</sup> Indeed,

26 <sup>6</sup> Over-production could also encourage discovery abuse in the form of "dump truck" discovery, allowing the  
producing party to hide important documents among voluminous, relatively inconsequential documents that are arguably

1 it would require production of documents that the other side might never have even considered  
2 requesting. This kind of "over-production" would be an untoward consequence of a literal  
3 interpretation of disclosure obligations under NRCP 16.1(a)(1), especially when the propriety of the  
4 broad, traditional discovery standard has been questioned in recent years.

5 The argument that NRCP 16.1(a)(1) requires each party to identify every person who might  
6 have knowledge of any relevant matter—no matter how trivial or tenuous—and to identify or produce  
7 all documents that might conceivably be viewed in any way as "relevant"—not just to the disclosing  
8 party's claims, defenses, or allegations, but to any matter falling within the very broad phrase "the  
9 subject matter involved in the pending action"—is not tenable. As explained by one court:

10 Discovery is not now and never was free. Discovery is expensive. The drafters of the  
11 1983 amendments to sections (b) and (g) of Rule 26 formally recognized that fact by  
12 superimposing the concept of proportionality on all behavior in the discovery arena. It  
13 is no longer sufficient, as a precondition for conducting discovery, to show that the  
14 information sought "appears reasonably calculated to lead to the discovery of  
15 admissible evidence." After satisfying this threshold requirement counsel also must  
16 make a common sense determination, taking into account all the circumstances, that  
17 the information sought is of sufficient potential significance to justify the burden the  
discovery probe would impose, that the discovery tool selected is the most efficacious  
of the means that might be used to acquire the desired information (taking into  
account cost effectiveness and the nature of the information being sought), and that  
the timing of the probe is sensible, i.e., that there is no other juncture in the pretrial  
period when there would be a clearly happier balance between the benefit derived  
from and the burdens imposed by the particular discovery effort.

18 In re Convergent Techs. Secs. Litig., 108 F.R.D. 328, 331 (N.D. Cal. 1985); accord Pettit v. Pulte  
19 Mortg., LLC, No. 2:11-cv-00149-GMN-PAL, 2011 WL 5546422, at \*5 (D. Nev. Nov. 14, 2011) ("the  
20 United States Supreme Court and the Advisory Committee Notes to the 1983 and 2000  
21 Amendments to Rule 26 recognize that discovery is expensive and that although broad discovery is  
22 still the rule, trial courts should conduct a proportionality review of requested discovery when  
23 challenged, or on the court's own motion"); see generally The Sedona Conference, The Sedona  
24 Conference Commentary on Proportionality in Electronic Discovery (2d ed. 2013) (discussing

25 "relevant" in some way. See, e.g., CP Solutions PTE, Ltd. v. Gen. Elec. Co., No. 3:04cv2150(JBA)(WIG), 2006 WL  
26 1272615, at \*1 (D. Conn. Feb. 6, 2006) (noting that "dump truck" discovery tactics are used to "hide the proverbial 'needle  
in the haystack'").

1 principles of proportionality that should be applied by courts in dealing with electronic discovery),  
2 available at <https://thesedonaconference.org/publication/The%20Sedona%20Conference>  
3 %20Commentary%20on%20Proportionality (follow designated hyperlink for this publication); Paul  
4 W. Grimm, Model E-Discovery Order, Inst. for the Advancement of the Am. Legal Sys. §3,  
5 [http://iaals.du.edu/images/wygwam/documents/publications/Grimm\\_Discovery\\_Order.pdf](http://iaals.du.edu/images/wygwam/documents/publications/Grimm_Discovery_Order.pdf) (last  
6 visited Sept. 19, 2014) (requiring that counsel "work cooperatively during all aspects of discovery to  
7 ensure that the costs of discovery are proportional to what is at issue in the case"). Significantly,  
8 NRCP 16.1(a)(1)(B) refers to "Rule 26(b)," rather than only "Rule 26(b)(1)." While Rule 26(b)(1)  
9 articulates the scope of discovery, Rule 26(b)(2) provides limitations on discovery, including  
10 limitations designed to ensure that discovery is proportional to the case. See NRCP 26(b)(2)(iii).  
11 The Court is not persuaded that our high court intended to dispense with this salutary component of  
12 our discovery rules when it amended NRCP 16.1 in 2005.

13 For all of these reasons, the Court construes NRCP 16.1(a)(1) as requiring a party to identify  
14 or produce only information and documents that it may use in the case.<sup>7</sup> On that point, Plaintiff has  
15 not shown that Defendant Peppermill has failed to disclose any information or materials that it may  
16 use in the case. Further, as noted previously, if Defendant Peppermill attempts to use any witness  
17 or document not previously disclosed in accordance with NRCP 16.1(a)(1) and NRCP 26(e)(1),  
18 Plaintiff may seek any sanction authorized by NRCP 37(c)(1). But at this time, the Court cannot find  
19 that Defendant Peppermill violated NRCP 16.1(a)(1) by failing to disclose the records described by  
20 Plaintiff in its counter-motion. Of course, Plaintiff is free to seek additional relevant documents  
21 through a request for production under NRCP 34.

22 **ACCORDINGLY, Defendant Peppermill Casinos, Inc.'s Motion to Dismiss Complaint should**  
23 **be DENIED.**

24 \_\_\_\_\_  
25 <sup>7</sup> This Court does not view the concept "may use" as entirely subjective; rather, any delay in disclosure must be  
26 objectively reasonable under the circumstances. A party's use of information or materials prior to actual disclosure under  
NRCP 16.1(a)(1) arguably would provide a basis for the opposing party to explore the circumstances under which the  
information or materials were acquired. An unreasonable delay in disclosing the information or materials would provide a  
basis for imposing sanctions under NRCP 16.1(e)(3) or NRCP 37(c)(1).



1 FURTHER, Plaintiff's *Counter-Motion to Compel Disclosures Under NRCP 16.1* should be  
2 DENIED.

3 IT SHOULD, THEREFORE, BE ORDERED that Plaintiff provide to Defendants, no later than  
4 September 30, 2014, an updated calculation of damages under NRCP 16.1(a)(1)(C), and identify  
5 and make available for inspection any documents, electronically stored information, or tangible  
6 things that it is relying upon in support of its damages claim, to the extent required by and in  
7 accordance with this decision.<sup>8</sup>

8 DATED: This 19<sup>th</sup> day of September, 2014.

9  
10   
11 WESLEY M. AYRES  
12 DISCOVERY COMMISSIONER  
13  
14  
15  
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26 <sup>8</sup> If Plaintiff has already produced some or all of these documents, it is not required to produce them a second time; it need only identify the specific documents required to be made available for inspection under NRCP 16.1(a)(1)(C).

1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV13-01704

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE  
4 OF NEVADA, COUNTY OF WASHOE; that on the 17<sup>th</sup> day of September, 2014, I electronically filed  
5 the **RECOMMENDATION FOR ORDER** with the Clerk of the Court by using the ECF system.

6 I further certify that I transmitted a true and correct copy of the foregoing document by the  
7 method(s) noted below:

8 **Electronically filed with the Clerk of the Court by using the ECF system which will send a**  
9 **notice of electronic filing to the following:**

10 H. STAN JOHNSON, ESQ. for MEI-GSR HOLDINGS, LLC

11 CLARK V. VELLIS, ESQ. for PEPPERMILL CASINOS, INC.

12 KENT RICHARD ROBISON, ESQ. for PEPPERMILL CASINOS, INC.

13 KEEGAN GRAHAM LOW, ESQ. for PEPPERMILL CASINOS, INC.

14 THERESE M. SHANKS, ESQ. for PEPPERMILL CASINOS, INC.

15 MARK HARLAN GUNDERSON, ESQ. for RYAN TORS

16 JOHN R. FUNK, ESQ. for RYAN TORS

17 **Deposited in the Washoe County mailing system for postage and mailing with the United**  
18 **States Postal Service in Reno, Nevada:**

19 Terry Kinnally, Esq.  
20 Steven B. Cohen, Esq.  
21 Cohen-Johnson, LLC  
22 255 E. Warm Springs Rd., Ste. 100  
23 Las Vegas, NV 89119-4275

24   
25 Greg Bartlett  
26 Court Clerk

1  
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4  
5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6  
7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \*

9 MEI-GSR HOLDINGS, LLC, a Nevada  
10 corporation,  
11 d/b/a GRAND SIERRA RESORT

12 Plaintiff,

Case No. CV13-01704

13 vs.

Dept. No. 7

14 PEPPERMILL CASINOS, INC., a Nevada  
15 corporation, d/b/a PEPPERMILL, et al.,

16 Defendants.  
17 \_\_\_\_\_/

18 **CONFIRMING ORDER**

19 On September 19, 2014, the Discovery Commissioner served a *Recommendation*  
20 *for Order* in this action. None of the parties to this action has filed an objection  
21 regarding that recommendation and the period for filing any objection concerning that  
22 recommendation has expired. See NRCP 16.1(d)(2).

23 ACCORDINGLY, the Court hereby CONFIRMS, APPROVES, and ADOPTS the  
24 Discovery Commissioner's Recommendation for Order served on September 7, 2014.

25 DATED this 1st day of October, 2014.

26 Barck Fleming  
DISTRICT JUDGE

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I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

ALISA NAVE-WORTH, ESQ., CLARK VELLIS, ESQ., and KENT ROBISON, ESQ. for  
PEPPERMILL CASINOS, INC.;

JOHN FUNK, ESQ. and MARK GUNDERSON, ESQ. for RYAN TORS; and

**Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada:**

Sathya Deva

1 CODE NO. 1945

2  
3  
4  
5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \*

9 MEI-GSR HOLDINGS, LLC, a Nevada corporation,  
10 d/b/a GRAND SIERRA RESORT,

11 Plaintiff,

Case No. CV13-01704

12 vs.

Dept. No. B7

13 PEPPERMILL CASINOS, INC., a Nevada  
corporation, d/b/a PEPPERMILL CASINO, et al.,

14 Defendants.  
15 \_\_\_\_\_/

16 **RECOMMENDATION FOR ORDER**

17 On June 4, 2014, Defendant Peppermill Casinos, Inc. ("Peppermill"), served Plaintiff with a  
18 notice that its deposition would be taken pursuant to NRCP 30(b)(6) on four consecutive days  
19 beginning June 30, 2014.<sup>1</sup> In an exhibit to that notice, Defendant identified thirty topics for which  
20 Plaintiff would be required to produce one or more witnesses. In an amended notice served on June  
21 11, 2014, Defendant changed the deposition dates to four consecutive days beginning July 21,  
22 2014.

23 On June 19, 2014, Plaintiff filed a *Motion for Protective Order on an Order Shortening Time*  
24 *and for Stay of Depositions Pending Hearing on the Matter*. Plaintiff contends that Defendant  
25 Peppermill's deposition notice is procedurally and substantively deficient for several reasons, and it

26 <sup>1</sup> The background of this action is set forth in greater detail in previous decisions from the Court.

1 seeks an order that precludes or restricts the requested deposition and addresses related concerns.  
2 On July 3, 2014, Defendant Peppermill served Plaintiff with a supplemental amended notice of  
3 depositions, in which it specifies a particular time and date for deposition with regard to each topic  
4 identified in that notice.<sup>2</sup> On that same date, Defendant Peppermill filed its *Opposition to Plaintiff's*  
5 *Motion for Protective Order*.<sup>3</sup> Plaintiff filed its reply to Defendant Peppermill's opposition on July 8,  
6 2014,<sup>4</sup> and this motion was submitted for decision on July 15, 2014.

7 A. Designation of Date and Time

8 Plaintiff first complains that the original and first amended deposition notices are inadequate  
9 because they merely indicate "that the depositions will take place over the course of several days  
10 without any indication as to what depositions topics are being scheduled on which day and at what  
11 time." After the motion was filed, Defendant Peppermill served its supplemental amended notice, in  
12 which it specifies the dates and times for examination regarding each of the topics identified in that  
13 notice. This point is not raised again in the reply brief, and the Court presumes that the  
14 supplemental notice rectified this problem. Therefore, the Court finds that this issue is moot.

15 B. Trade Secrets

16 Plaintiff contends that fifteen of the topics identified in the deposition notice—Topic Nos. 1, 2,  
17 3, 4, 5, 6, 10, 11, 12, 13, 26, 27, 28, 29, and 30—concern trade secrets and other information that it  
18 deems confidential and proprietary. Specifically, it observes that these topics cover "player tracking  
19 records," "level of play," "marketing strategy," history of play for individual players, Plaintiff's financial  
20 information, Plaintiff's customer information, and "PAR information."<sup>5</sup> Plaintiff maintains that these

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21 <sup>2</sup> The deposition was rescheduled to occur over four consecutive days beginning August 25, 2014.

22 <sup>3</sup> This opposition was included as part of a filing including Defendant Peppermill's oppositions to other motions,  
23 and its brief in response to a Court order.

24 <sup>4</sup> This reply was included as part of a filing including Plaintiff's replies to the oppositions filed by Defendant  
Peppermill on July 3, 2014.

25 <sup>5</sup> "Par" has been described by one source in this way:

26 In an effort to understand the popularity and addictiveness of slot machines, one approach is to  
investigate what potential effects the slot machine's structural characteristics have on the player. The  
underlying math and computer algorithms for the design of many of the structural characteristics, such  
as hit frequency, payback percentage, and odds of winning, are contained in the manufacturers' design

1 topics are irrelevant in this action, except to the extent trade secrets or other proprietary information  
2 was misappropriated by Defendants. It is concerned that Defendant Peppermill is improperly using  
3 this litigation as a means to obtain additional confidential information and trade secrets. At a  
4 minimum, it argues, these topics are overbroad.

5 Parties may obtain discovery regarding any matter, not privileged, which is relevant to the  
6 subject matter involved in the pending action. See NRCP 26(b)(1); see also NRS 48.015 (2013)  
7 (evidence is "relevant" if it has any tendency to make the existence of any fact that is of  
8 consequence to the determination of the action more or less probable than it would be without the  
9 evidence). Courts construe this language—and other discovery rules—broadly and liberally, to fulfill  
10 discovery's purposes of providing all parties with information essential to the proper litigation of all  
11 relevant facts, to eliminate surprise, and to promote settlement. See, e.g., Weiss v. Amoco Oil Co.,  
12 142 F.R.D. 311, 313 (S.D. Iowa 1992); see also Palmer v. Pioneer Inn Assocs., Ltd., 118 Nev. 943,  
13 952, 59 P.3d 1237, 1243 (2002) (discovery rules are designed to afford parties broad access to  
14 information). In light of the broad and liberal construction accorded Rule 26(b), courts have held that  
15 discovery should be permitted if there is any reasonable possibility that the desired information may  
16 be useful in the preparation of the case. See, e.g., Stabilus v. Haynesworth, Baldwin, Johnson &  
17 Greaves, 144 F.R.D. 258, 265 (E.D. Pa. 1992); see also Horizons Titanium Corp. v. Norton Co., 290  
18 F.2d 421, 425 (1st Cir. 1961) ("[t]his rule [26(b)] apparently envisions generally unrestricted access  
19 to sources of information, and the courts have so interpreted it"). Moreover, it is now well settled  
20 that to be discoverable, documents and information need only be relevant to the subject matter  
21 involved in the pending litigation; relevance is not restricted to the precise issues raised by the  
22 pleadings. See, e.g., In re Folding Carton Antitrust Litig., 76 F.R.D. 420, 425-26 (N.D. Ill. 1977). As  
23 stated by the Supreme Court:

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24 documents, called probability accounting reports (PAR Sheets; sometimes called payable and reel strips  
25 [PARS]). . . .

26 Kevin A. Harrigan & Mike Dixon, PAR Sheets, probabilities, and slot machine play: Implications for problem and  
non-problem gambling, J. Gambling Issues, Jun. 2009, at 81-82, available at  
<http://jgi.camh.net/doi/pdf/10.4309/jgi.2009.23.5>.

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of Robison, Belaustegui, Sharp & Low, and  
3 pursuant to NRAP 5(b)(2)(D) and N.E.F.C.R. 7, I caused the **RESPONDENT**  
4 **PEPPERMILL CASINOS, INC.'S ANSWERING BRIEF - APPENDIX**  
5 **VOLUME 3** to be filed electronically with the Clerk of the Nevada Supreme  
6 Court. Pursuant to N.E.F.C.R. 9, notice of an electronically filed document by the  
7 Court "shall be considered as valid and effective service of the document" on the  
8 below listed persons who are registered users.  
9

10  
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18 *Attorneys for Appellant*

19 DATED: This 8th day of May, 2017.

20   
21 V. JAYNE FERRETTO  
22 Employee of Robison, Belaustegui, Sharp & Low  
23  
24  
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Electronically Filed  
May 15 2017 03:17 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

vs. Appellant,

PEPPERMILL CASINOS, INC., a Nevada corporation, d/b/a/ PEPPERMILL CASINO;

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# APPENDIX VOLUME 3

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**RESPONDENT PEPPERMILL CASINOS, INC.'S ANSWERING BRIEF**

**APPENDIX – CHRONOLOGICAL TABLE OF CONTENTS**

<b>DOCUMENT</b>	<b>DATE FILED or ADMITTED</b>	<b>VOL. NO.</b>	<b>PAGE NO.</b>
<b>VOLUME 1</b>			
Defendant Peppermill Casinos, Inc.'s Motion to Dismiss Complaint	06/04/14	1	RA 00001 – 00024
Motion for Protective Order on an Order Shortening Time and for Stay of Depositions Pending Hearing on the Matter	06/19/14	1	RA 00025 – 00073
Defendant Peppermill Casinos, Inc.'s Reply to Plaintiff's Opposition to Motion to Dismiss Complaint	06/30/14	1	RA 00074 – 00087
Joinder to Defendant Peppermill Casinos, Inc.'s Reply to Plaintiff's Opposition to Motion to Dismiss Complaint	06/30/14	1	RA 00088 – 00091
Defendant Peppermill Casinos, Inc.'s Brief in Response to Court Order; Opposition to Plaintiff's Motion to Compel Gaming Control Board to Produce Documents; Opposition to Plaintiff's Motion to	07/03/14	1	RA 00092 – 00164

Compel Peppermill's Production of Documents; Opposition to Plaintiff's Motion for Protective Order			
GSR's Reply to Peppermill's Opposition to Motion to Compel Documents Under 16.1; Motion for a Protective Order, and Request for Gaming Records	07/08/14	1	RA 00165 – 00226
Request for Submission	07/15/14	1	RA 00227 – 00229
Peppermill Casinos, Inc.'s Amended Answer to Complaint	07/25/14	1	RA 00230 – 00240
Motion for Terminating Sanctions, Or, In the Alternative, Motion to Compel Discovery	08/25/14	1	RA 00241 – 00250
<b>VOLUME 2</b>			
Motion for Terminating Sanctions, Or, In the Alternative, Motion to Compel Discovery (Continued)	08/25/14	2	RA 00251 – 00345
Joinder to Motion for Terminating Sanctions, Or, In the Alternative, Motion to Compel Discovery	08/28/14	2	RA 00346 – 00348

Errata to Motion for Terminating Sanctions, Or, In the Alternative, Motion to Compel Discovery	09/03/14	2	RA 00349 – 00379
Plaintiff MEI-GSR Holdings, LLC, d/b/a Grand Sierra Resorts Motion to Strike and Dismiss Defendant Peppermill's Motion for Case Terminating Sanctions	09/09/14	2	RA 00380 – 00500
<b>VOLUME 3</b>			
Plaintiff MEI-GSR Holdings, LLC, d/b/a Grand Sierra Resorts Motion to Strike and Dismiss Defendant Peppermill's Motion for Case Terminating Sanctions (Continued)	09/09/14	3	RA 00501 – 00688
Recommendation for Order	09/19/14	3	RA 00689 – 00702
Recommendation for Order	09/26/14	3	RA 00703 – 00712
Request for Submission	09/26/14	3	RA 00713 – 00715
Defendant Peppermill Casinos, Inc.'s Opposition to Plaintiff's Motion to Strike and Dismiss Defendant Peppermill's Motion for Case Terminating Sanctions	09/26/14	3	RA 00716 – 00745

Confirming Order	10/01/14	3	RA 00746 – 00747
Recommendation for Order	10/02/14	3	RA 00748 – 00750
<b>VOLUME 4</b>			
Recommendation for Order (Continued)	10/02/14	4	RA 00751 – 00762
Objection to Commissioner's Recommendation Denying Plaintiff's Motion for a Protective Order and Request for a Stay of Depositions Pending the Hearing on the Objection	10/10/14	4	RA 00763 – 00770
Peppermill Casinos, Inc.'s Opposition to Plaintiff's Objection to Commissioner's Recommendation Denying Plaintiff's Motion for a Protective Order and Request for a Stay of Depositions Pending the Hearing on the Objection	10/24/14	4	RA 00771 – 00806
Defendant Peppermill Casinos, Inc.'s Motion for Order Compelling GSR to Show Cause Why It Not Be Held in Contempt	10/27/14	4	RA 00807 – 00825

Peppermill Casinos, Inc.'s Ex Parte Emergency Motion for Rule 16 Conference	11/12/14	4	RA 00826 – 00830
Peppermill Casinos Inc.'s Supplemental Motion for Terminating Sanctions Or, In the Alternative, For an Order to Show Cause Why Plaintiff Not Be Held In Contempt and Subjected to Severe Sanctions	11/12/14	4	RA 00831 – 00969
Order	11/13/14	4	RA 00970 – 00974
Opposition to Defendant's Motion for Order Compelling GSR to Show Cause Why It Should Not Be Held In Contempt	11/13/14	4	RA 00975 – 01000
<b>VOLUME 5</b>			
Opposition to Defendant's Motion for Order Compelling GSR to Show Cause Why It Should Not Be Held In Contempt (Continued)	11/13/14	5	RA 01001 – 01250

<b>VOLUME 6</b>			
Opposition to Defendant's Motion for Order Compelling GSR to Show Cause Why It Should Not Be Held In Contempt (Continued)	11/13/14	6	RA 01251 – 01316
Request for Submission	11/24/14	6	RA 01317 – 01319
Order	11/26/14	6	RA 01320 – 01330
Notice of Entry of Order	12/2/14	6	RA 01331 – 01344
Defendant Peppermill Casinos, Inc.'s Memorandum of Costs and Attorneys' Fees in Response to Court's Order of November 26, 2014	12/8/14	6	RA 01345 - 01379
Peppermill Casinos, Inc.'s Motion for Order Requiring GSR to Show Cause Why It Not be Held In Contempt, Sanctioned and Ordered to Produce Documents	12/17/14	6	RA 01380 – 01417
Plaintiff's Opposition to Defendant's Motion for Contempt	01/02/15	6	RA 01418 - 01451

Peppermill Casinos, Inc.'s Reply to Plaintiff's Opposition to Defendant's Memorandum of Fees and Costs	01/06/15	6	RA 01452 – 01461
Request for Submission	01/06/15	6	RA 01462 – 01464
Peppermill Casinos, Inc.'s Reply to Plaintiff's Opposition to Defendant's Motion For Contempt	01/08/15	6	RA 01465 – 01498
Request for Submission	01/08/15	6	RA 01499 – 01500
<b>VOLUME 7</b>			
Request for Submission (Continued)	01/08/15	7	RA 01501 – 01504
Order	01/20/15	7	RA 01505 - 01508
Notice of Entry of Order	01/21/15	7	RA 01509 – 01515
Ex Parte Motion for Protective Order on an Order Shortening Time and For Stay of Depositions Pending Hearing on the Matter	01/27/15	7	RA 01516 – 01620



Opposition to Plaintiff's Ex Parte Motion for Protective Order on an Order Shortening Time and For Stay of Depositions Pending Hearing on the Matter	02/04/15	7	RA 01621 – 01696
GSR's Reply to Peppermill's Opposition to GSR's Motion for Protective Order on an Order Shortening Time and For Stay of Depositions Pending a Hearing on the Matter	02/05/15	7	RA 01697 – 01750
<b>VOLUME 8</b>			
GSR's Reply to Peppermill's Opposition to GSR's Motion for Protective Order on an Order Shortening Time and For Stay of Depositions Pending a Hearing on the Matter (Continued)	02/05/15	8	RA 01751 – 01791
Minutes	02/10/15	8	RA 01792 – 01793
Order Granting in Part and Denying in Part Motion for Protective Order	03/04/15	8	RA 01794 – 01796

Defendant Peppermill's Emergency/Ex Parte Motion For a NRCP 16 Pretrial Conference	06/12/15	8	RA 01797 – 01840
Order	06/12/15	8	RA 01841 – 01842
Opposition to Peppermill's Emergency/Ex Parte Motion For a NRCP 16 Pretrial Conference	06/23/15	8	RA 01843 – 01881
Peppermill Casinos, Inc.'s Renewed Motion for Summary Judgment Regarding "Trade Secret"	11/13/15	8	RA 01882 – 02000
<b>VOLUME 9</b>			
Peppermill Casinos, Inc.'s Renewed Motion for Summary Judgment Regarding "Trade Secret" (Continued)	11/13/15	9	RA 02001 – 02250
<b>VOLUME 10</b>			
Peppermill Casinos, Inc.'s Renewed Motion for Summary Judgment Regarding "Trade Secret" (Continued)	11/13/15	10	RA 02251 – 02281

Peppermill Casinos, Inc.’s Renewed Motion for Partial Summary Judgment Regarding Damages	11/18/15	10	RA 02282 – 02500
<b>VOLUME 11</b>			
Peppermill Casinos, Inc.’s Renewed Motion for Partial Summary Judgment Regarding Damages (Continued)	11/18/15	11	RA 02501 – 02750
<b>VOLUME 12</b>			
Peppermill Casinos, Inc.’s Renewed Motion for Partial Summary Judgment Regarding Damages (Continued)	11/18/15	12	RA 02751 – 02785
Peppermill Casinos, Inc.’s Motion for Sanctions	11/20/15	12	RA 02786 – 02880
Peppermill Casinos, Inc.’s Supplement to Renewed Motion for Summary Judgment Regarding “Trade Secret”	11/25/15	12	RA 02881 – 02900
GSR’s Opposition to Peppermill Casinos, Inc.’s Motion for Sanctions With Respect to Gregory Gale. Request for Sanctions	12/14/15	12	RA 02901 – 02911

Peppermill's Reply to GSR's Opposition to Peppermill's Motion for Partial Summary Judgment Regarding Damages	12/15/15	12	RA 02912 – 02931
Reply in Opposition to Peppermill's Renewed Motion for Summary Judgment Regarding "Trade Secret" renewed	12/15/15	12	RA 02932 – 02990
Defendant Peppermill Casinos, Inc.'s Reply in Support of Motion for Sanctions	12/23/15	12	RA 02991 – 02995
Request for Submission	12/23/15	12	RA 02996 – 02998
Peppermill Casinos, Inc.'s Trial Statement	01/04/16	12	RA 02999 – 03000
<b>VOLUME 13</b>			
Peppermill Casinos, Inc.'s Trial Statement (Continued)	01/04/16	13	RA 03001 – 03200
Plaintiff, MEI-GSR Holdings, LLC d/b/a Grand Sierra Resort's Trial Statement	01/04/16	13	RA 03201 – 03218

Peppermill Casinos, Inc.'s Response to GSR's Motion to Clarify the Court's Order Filed December 22, 2015 Regarding Peppermill's Motions in Limine	01/04/16	13	RA 03219 – 03250
<b>VOLUME 14</b>			
Peppermill Casinos, Inc.'s Response to GSR's Motion to Clarify the Court's Order Filed December 22, 2015 Regarding Peppermill's Motions in Limine (Continued)	01/04/16	14	RA 03251 – 03257
Minutes	01/07/16	14	RA 03258 – 03259
Trial Exhibit 4 - GSR Billboard Photographs	01/11/16	14	RA 03260 – 03266
Trial Exhibit 5 – GSR Advertisements – “Loosest Buffalo”	01/11/16	14	RA 03267
Trial Exhibit 6 – 2341 Key on EBay	01/11/16	14	RA 03268 – 03280
Trial Exhibit 8 – 8:51 a.m. Tors Email	01/11/16	14	RA 03281 – 03282

Trial Exhibit 10 – Diagnostic Screen	01/11/16	14	RA 03283
Trial Exhibit 38 – “Reno Loosest Slots in the USA” Billboard by PM	01/11/16	14	RA 03284
Trial Exhibit 53 – 11/19/14 GSR Website Slots and Video Poker (Loosest Buffalo)	01/11/16	14	RA 03285
Trial Exhibit 54 – 11/07/14 & 11/17/14 List of games with par settings	01/11/16	14	RA 03286
Trial Exhibit 56 – Chart of GSR Earning Structure	01/11/16	14	RA 03287
Trial Exhibit 127 – GSR Buffalo Billboard	01/11/16	14	RA 03288
Trial Exhibit 154 – Casino Management Fee Information	01/11/16	14	RA 03289 – 03296
Trial Exhibit 166 – Report Entitled, “Slot Market Assessment” by Applied Analysis	01/11/16	14	RA 03297 – 03258
Trial Exhibit 188 – 02/03/15 Photocopy of Plaintiff MEI-GSR Holdings, LLC a Nevada Corporation d/b/a Grand Sierra Resorts Disclosure of Expert Witnesses	01/11/16	14	RA 03259 – 03361

Trial Exhibit 189 – 04/01/15 Grand Sierra Resort’s Rebuttal Expert Disclosure	01/11/16	14	RA 03362 – 03365
Trial Exhibit 214 – Parchanges.pdf	01/11/16	14	RA 03366 – 03382
Trial Exhibit 229 – GSR Wells Market Share Monthly Report, Percentage of Player for Peppermill v. GSR 2012 – 2013	01/11/16	14	RA 03383 – 03386
Trial Exhibit 240 – Correspondence from Gaming Control dated 7/31/2013 Re: Investigation of Ryan 01/11/16Tors activities; Peppermill Property Receipts	01/11/16	14	RA 03387 – 03391
Trial Exhibit 340.1 – Buffalo	01/11/16	14	RA 03392 – 03405
Trial Exhibit 340.2 – Cats	01/11/16	14	RA 03406 – 03407
Trial Exhibit 340.2A – Cleopatra	01/11/16	14	RA 03408
Trial Exhibit 340.3 – Ducks in a Row	01/11/16	14	RA 03409
Trial Exhibit 340.4 – Double Diamond 2000	01/11/16	14	RA 03410

Trial Exhibit 340.5 – Enchanted Unicorn	01/11/16	14	RA 03411
Trial Exhibit 340.6 – Horoscope	01/11/16	14	RA 03412
Trial Exhibit 340.7 – Lil Lady	01/11/16	14	RA 03413
Trial Exhibit 340.8 – Money Storm	01/11/16	14	RA 03414
Trial Exhibit 340.9 – Munsters	01/11/16	14	RA 03415
Trial Exhibit 340.10 – Texas Tea	01/11/16	14	RA 03416
Trial Exhibit 340.11 – Wolf Run	01/11/16	14	RA 03417
Trial Exhibit 14A – 07/12/13 Handwritten Key Sheet by Tors (Legible Copy)	01/13/16	14	RA 03418
Trial Exhibit 307 – 12/31/12 State Gaming Control Board Gaming Revenue Report	01/13/16	14	RA 03419 - 03466
Peppermill’s Objection to MEI-GSR Holdings, LLC’s (1) Proposed Jury Instructions and Verdict Forms, (2) Supplement to Proposed Jury Instructions, and (3) Supplemental Interim Jury Instructions	01/14/16	14	RA 03467 – 03500



<b>VOLUME 15</b>			
Peppermill's Objection to MEI-GSR Holdings, LLC's (1) Proposed Jury Instructions and Verdict Forms, (2) Supplement to Proposed Jury Instructions, and (3) Supplemental Interim Jury Instructions (Continued)	01/14/16	15	RA 03501 – 03596
Trial Exhibit 15 – 07/12/13 Tors Transcript from GSR re: Interview by GCB	01/14/16	15	RA 03597 – 033622
Trial Exhibit 16A – 01/02/13 11:24a.m. Tors email re: New Year's Eve shop	01/14/16	15	RA 03623 – 03624
Trial Exhibit 221B – Emails (with notations) from Tors to various parties with PAR information dated 12/29/2011 – 06/13/2013	01/14/16	15	RA 03625 - 03636
Trial Exhibit 74 – CDC Invoices to GSR	01/15/16	15	RA 03637 – 03645
Trial Exhibit 77 – 06/2014 CDC Report re: Free Play & Comp Rewards	01/15/16	15	RA 03646 – 03650
Trial Exhibit 78 – 07/2014 CDC Report re: Direct Mail	01/15/16	15	RA 03651 – 03700

Trial Exhibit 162 – Atlantis Advertisements	01/15/16	15	RA 03701 – 03704
Trial Exhibit 164 – Advertisement from El Cortez	01/15/16	15	RA 03705 – 03710
Trial Exhibit 82 – 11/2014 CDC Report re: Direct Mail	01/19/16	15	RA 03711 – 03750
<b>VOLUME 16</b>			
Trial Exhibit 82 – 11/2014 CDC Report re: Direct Mail (Continued)	01/19/16	16	RA 03751 – 03757
Trial Exhibit 20 – 09/2014 Affidavit of David Schwartz	01/20/16	16	RA 03758 - 03760
Trial Exhibit 35A – 11/03/14 GSR Answers to 2 <sup>nd</sup> Set of Interrogatories – REDACTED Interrogatory No. 14 and Response Only	01/21/16	16	RA 03761 – 03762
Objection to Peppermill’s Proposed Interim Jury Instructions	01/22/16	16	RA 03763 - 03816
Defendant’s NRCP 50 (a) Motion for Judgment as A Matter of Law	01/22/16	16	RA 03817 – 03831
Trial Exhibit 50 - GSR Slot Add Worksheet re: machine location and setting (including par) for certain machines	01/22/16	16	RA 03832 – 03850

Trial Exhibit 73 - Custodian of Records Statement	01/22/16	16	RA 03851 – 03852
Trial Exhibit 75 - 05/07/10 CDC Report re: Slot Comp	01/22/16	16	RA 03853 – 03858
Trial Exhibit 76 - 05/12/10 CDC Report re: Direct Mail	01/22/16	16	RA 03859 – 03864
Trial Exhibit 79 - 08/2014 CDC Report re: Direct Mail	01/22/16	16	RA 03865 – 03912
Trial Exhibit 80 - 09/2014 CDC Report re: Direct Mail	01/22/16	16	RA 03913 – 03957
Trial Exhibit 81 - 10/2014 CDC Report re: Direct Mail	01/22/16	16	RA 03958 - 04000
<b>VOLUME 17</b>			
Trial Exhibit 81 - 10/2014 CDC Report re: Direct Mail	01/22/16	17	RA 04001 – 04006
Trial Exhibit 83 - 12/2014 CDC Report re: Direct Mail	01/22/16	17	RA 04007 – 04051
Trial Exhibit 84 - 01/2015 CDC Report re: Direct Mail	01/22/16	17	RA 04052 – 04096
Trial Exhibit 85 - 05/14/14 CDC Contract with GSR (signed by Mimno)	01/22/16	17	RA 04097 – 04099
Trial Exhibit 121 - GSR Slots and Video Poker Website	01/22/16	17	RA 04100

Trial Exhibit 122 - 2010-2014 Penny Video and Reels Net Win, Gross Theo Free-Play Summary	01/22/16	17	RA 04101
Trial Exhibit 123 - 2009-2/2015 NGC Monthly Gross Revenue Reports (Highly Confidential)	01/22/16	17	RA 04102 – 04249
Trial Exhibit 126 - 06/2015 Gaming Abstract Page	01/22/16	17	RA 04250
<b>VOLUME 18</b>			
Trial Exhibit 149 - Friedman Rebuttal Report	01/22/16	18	RA 04251 – 04292
Trial Exhibit 150 - Lucas Rebuttal Report	01/22/16	18	RA 04293 - 04329
Trial Exhibit 151 - Tom Sullivan Player Cards	01/22/16	18	RA 04330
Trial Exhibit 153 - GSR Billboards “Best”	01/22/16	18	RA 04331 – 04336
Trial Exhibit 156 - 06/05/15 Errata to Plaintiff MEI-GSR Holdings, LLC, a Nevada Corporation, d/b/a Grand Sierra Resort’s Amended Disclosure of Expert Witness	01/22/16	18	RA 04337 - 04369

Trial Exhibit 157A – 08/28/15 Plaintiff MEI-GSR Holdings, LLC, a Nevada Corporation, d/b/a Grand Sierra Resort’s Supplemental Disclosure of Expert Witness – REDACTED	01/22/16	18	RA 04370 – 04405
Trial Exhibit 159 - Nevada Trade Secret Act	01/22/16	18	RA 04406 – 04409
Trial Exhibit 160 - Aguero Charts – No Correlation	01/22/16	18	RA 04410 – 04418
Trial Exhibit 169A - Expert Rebuttal Report, Applied Analysis – REDACTED	01/22/16	18	RA 04419 - 04421
Trial Exhibit 172 - 03/01/15 Expert Witness Report of Professor Anthony Lucas	01/22/16	18	RA 04422 - 04457
Trial Exhibit 186 - 11/03/15 Defendant Peppermills Casino’s Supplement to Disclosure of Rebuttal Expert Witnesses	01/22/16	18	RA 04458 – 04487
Trial Exhibit 201 - 09/06/15 Atlantis Newspaper Ad	01/22/16	18	RA 04488
Trial Exhibit 202 - 08/30/15 Atlantis Newspaper Ad	01/22/16	18	RA 04489 – 04490

Trial Exhibit 206 - 10/15/15 Salazar Rebuttal Expert Report	01/22/16	18	RA 04491 – 04500
<b>VOLUME 19</b>			
Trial Exhibit 206 - 10/15/15 Salazar Rebuttal Expert Report (Continued)	01/22/16	19	RA 04501 – 04545
Trial Exhibit 215A - Peppermill Casinos, Inc. Amended Answer to Complaint dated 7/25/2014 – REDACTED	01/22/16	19	RA 04546 – 04556
Trial Exhibit 239 A – Email from Ryan Tors to NB Partners and William Paganetti Dated 06/07/12	01/22/16	19	RA 04557
Trial Exhibit 300 - 2/2015 CDC Report	01/22/16	19	RA 04558 – 04648
Trial Exhibit 301 - 3/2015 CDC Report	01/22/16	19	RA 04649 – 04695
Trial Exhibit 302 - 4/2015 CDC Report	01/22/16	19	RA 04696 – 04741
Trial Exhibit 303 - 5/2015 CDC Report	01/22/16	19	RA 04742 – 04750

<b>VOLUME 20</b>			
Trial Exhibit 303 - 5/2015 CDC Report (Continued)	01/22/16	20	RA 04751 – 04788
Trial Exhibit 304 - 6/2015 CDC Report	01/22/16	20	RA 04789 – 04384
Trial Exhibit 305 - 12/31/10 State Gaming Control Board Gaming Revenue Report	01/22/16	20	RA 04385 – 04882
Trial Exhibit 306 - 12/31/11 State Gaming Control Board Gaming Revenue Report	01/22/16	20	RA 04883 – 04930
Trial Exhibit 308 - 12/31/13 State Gaming Control Board Gaming Revenue Report	01/22/16	20	RA 04931 – 04978
Trial Exhibit 309 - 12/31/14 State Gaming Control Board Gaming Revenue Report	01/22/16	20	RA 04979 - 05000

<b>VOLUME 21</b>			
Trial Exhibit 309 - 12/31/14 State Gaming Control Board Gaming Revenue Report (Continued)	01/22/16	21	RA 05001 - 05026
Trial Exhibit 310 - 08/31/15 State Gaming Control Board Gaming Revenue Report	01/22/16	21	RA 05027 – 05074
Trial Exhibit 311 - 2010 Partial Las Vegas Sands Corp	01/22/16	21	RA 05075 – 05089
Trial Exhibit 312 - 2010 Partial Las Vegas Sands Corp 10K/A	01/22/16	21	RA 05090 – 05101
Trial Exhibit 313 - 2011 Partial Las Vegas Sands Corp 10K	01/22/16	21	RA 05102 – 05115
Trial Exhibit 314 - 2012 Partial Las Vegas Sands Corp 10K	01/22/16	21	RA 05116 – 05130
Trial Exhibit 315 - 2013 Partial Las Vegas Sands Corp 10K	01/22/16	21	RA 05131 – 05146
Trial Exhibit 316 - 2014 Partial Las Vegas Sands Corp 10K	01/22/16	21	RA 05147 – 05162
Trial Exhibit 317 - 03/31/15 Partial Las Vegas Sands Corp 10Q	01/22/16	21	RA 05163 – 05172
Trial Exhibit 318 - 06/30/15 Partial Las Vegas Sands Corp 10Q	01/22/16	21	RA 05173 – 05189
Trial Exhibit 319 - 2010 Partial Wynn Resorts, Limited 10K	01/22/16	21	RA 05190 – 05203



Trial Exhibit 320 - 2011 Partial Wynn Resorts, Limited 10K	01/22/16	21	RA 05204 – 05216
Trial Exhibit 321 - 2011 Partial Wynn Resorts Limited 10K/A	01/22/16	21	RA 05217 – 05250
<b>VOLUME 22</b>			
Trial Exhibit 321 - 2011 Partial Wynn Resorts Limited 10K/A (Continued)	01/22/16	22	RA 05251 – 05256
Trial Exhibit 322 - 2012 Partial Wynn Resorts, Limited 10K	01/22/16	22	RA 05257 – 05266
Trial Exhibit 323 - 2013 Partial Wynn Resorts, Limited 10K	01/22/16	22	RA 05267 – 05280
Trial Exhibit 324 - 2014 Partial Wynn Resorts, Limited 10K	01/22/16	22	RA 05281 – 05293
Trial Exhibit 325 - 03/31/15 Partial Wynn Resorts, Limited 10Q	01/22/16	22	RA 05294 – 05302
Trial Exhibit 326 - 06/30/15 Partial Wynn Resorts, Limited 10Q	01/22/16	22	RA 05303 – 05315
Trial Exhibit 327 - 2010 Peppermill Reno 1C Video and Reel Analysis (Highly Confidential)	01/22/16	22	RA 05316 – 05317
Trial Exhibit 328 - 2011 Peppermill Reno 1C Video and Reel Analysis (Highly Confidential)	01/22/16	22	RA 05318 – 05319

Trial Exhibit 329 - 2012 Peppermill Reno 1C Video and Reel Analysis (Highly Confidential)	01/22/16	22	RA 05320 – 05321
Trial Exhibit 330 - 2013 Peppermill Reno 1C Video and Reel Analysis (Highly Confidential)	01/22/16	22	RA 05322 – 05323
Trial Exhibit 339 - Machine Performance Statistics	01/22/16	22	RA 05324
Opposition to Defendant's NRCP 50 (a) Motion for Judgment as A Matter of Law	01/24/16	22	RA 05325 – 05337
Defendant's Reply Brief in Support of NRCP 50(A) Motion for Judgment as A Matter of Law	01/25/16	22	RA 05338 - 05348
Trial Exhibit 220A – (PM part three.pdf) Emails from Ryan Tors to Other Parties Re: PAR Information Dated 03/28/2010 – 11/2010 – REDACTED	01/25/16	22	RA 05349 – 05350
Trial Exhibit 170 - Expert Rebuttal Report, Applied Analysis (with numbered paragraphs)		22	RA 05351 – 05353

Trial Exhibit 220 - (PM part three.pdf) Emails from Ryan Tors to other parties Re: PAR information dated 3/28/2010-11/2010		22	RA 05354 – 05360
Trial Exhibit 232 - Aristocrat “NOTICE OF CONFIDENTIALITY OF PAR SHEETS”		22	RA 05361
Trial Exhibit 241A - Emails dated 3/28/2010 – 11/2010 from Ryan Tors to other parties Re: PAR information (PM13272-13278) (PM13277, email between Tors and Scott Bean Re: Rail City comp reinvestment) - REDACTED		22	RA 05362 – 05368
Trial Exhibit 358 - Portions of the Deposition Transcript of Craig Robinson		22	RA 05369 – 05375
Trial Exhibit 359 - Portions of the Deposition Transcript of Terry Vavra		22	RA 05376 – 05384
Trial Exhibit 360 - Portions of the Deposition Transcript of Ralph Burdick		22	RA 05385 – 05398

Trial Exhibit 361 - Portions of the Deposition Transcript of Toby Taylor		22	RA 05399 – 05406
Trial Exhibit 362 - Portions of the Deposition Transcript of Toby Taylor		22	RA 05407 – 05413
Trial Exhibit 363 - Portions of the Deposition Transcript of Michael Draeger		22	RA 05414 – 05421
Trial Exhibit 364 - Portions of the Deposition Transcript of David Schwartz		22	RA 05422 – 05443
Portions of the Deposition of Tracy Mimno		22	RA 05444 - 05450

**RESPONDENT PEPPERMILL CASINOS, INC.'S ANSWERING BRIEF**

**APPENDIX – ALPHABETICAL TABLE OF CONTENTS**

<b>DOCUMENT</b>	<b>DATE FILED or ADMITTED</b>	<b>VOL. NO.</b>	<b>PAGE NO.</b>
Confirming Order	10/01/14	3	RA 00746 – 00747
Defendant Peppermill Casinos, Inc.'s Brief in Response to Court Order; Opposition to Plaintiff's Motion to Compel Gaming Control Board to Produce Documents; Opposition to Plaintiff's Motion to Compel Peppermill's Production of Documents; Opposition to Plaintiff's Motion for Protective Order	07/03/14	1	RA 00092 – 00164
Defendant Peppermill Casinos, Inc.'s Memorandum of Costs and Attorneys' Fees in Response to Court's Order of November 26, 2014	12/8/14	6	RA 01345 - 01379
Defendant Peppermill Casinos, Inc.'s Motion for Order Compelling GSR to Show Cause Why It Not Be Held in Contempt	10/27/14	4	RA 00807 – 00825

Defendant Peppermill Casinos, Inc.'s Motion to Dismiss Complaint	06/04/14	1	RA 00001 – 00024
Defendant Peppermill Casinos, Inc.'s Opposition to Plaintiff's Motion to Strike and Dismiss Defendant Peppermill's Motion for Case Terminating Sanctions	09/26/14	3	RA 00716 – 00745
Defendant Peppermill Casinos, Inc.'s Reply in Support of Motion for Sanctions	12/23/15	12	RA 02991 – 02995
Defendant Peppermill Casinos, Inc.'s Reply to Plaintiff's Opposition to Motion to Dismiss Complaint	06/30/14	1	RA 00074 – 00087
Defendant Peppermill's Emergency/Ex Parte Motion For a NRCP 16 Pretrial Conference	06/12/15	8	RA 01797 – 01840
Defendant's NRCP 50 (a) Motion for Judgment as A Matter of Law	01/22/16	16	RA 03817 – 03831
Defendant's Reply Brief in Support of NRCP 50(A) Motion for Judgment as A Matter of Law	01/25/16	22	RA 05338 - 05348

Errata to Motion for Terminating Sanctions, Or, In the Alternative, Motion to Compel Discovery	09/03/14	2	RA 00349 – 00379
Ex Parte Motion for Protective Order on an Order Shortening Time and For Stay of Depositions Pending Hearing on the Matter	01/27/15	7	RA 01516 – 01620
GSR's Opposition to Peppermill Casinos, Inc.'s Motion for Sanctions With Respect to Gregory Gale. Request for Sanctions	12/14/15	12	RA 02901 – 02911
GSR's Reply to Peppermill's Opposition to GSR's Motion for Protective Order on an Order Shortening Time and For Stay of Depositions Pending a Hearing on the Matter	02/05/15	7	RA 01697 – 01750
GSR's Reply to Peppermill's Opposition to GSR's Motion for Protective Order on an Order Shortening Time and For Stay of Depositions Pending a Hearing on the Matter (Continued)	02/05/15	8	RA 01751 – 01791

GSR's Reply to Peppermill's Opposition to Motion to Compel Documents Under 16.1; Motion for a Protective Order, and Request for Gaming Records	07/08/14	1	RA 00165 – 00226
Joinder to Defendant Peppermill Casinos, Inc.'s Reply to Plaintiff's Opposition to Motion to Dismiss Complaint	06/30/14	1	RA 00088 – 00091
Joinder to Motion for Terminating Sanctions, Or, In the Alternative, Motion to Compel Discovery	08/28/14	2	RA 00346 – 00348
Minutes	02/10/15	8	RA 01792 – 01793
Minutes	01/07/16	14	RA 03258 – 03259
Motion for Protective Order on an Order Shortening Time and for Stay of Depositions Pending Hearing on the Matter	06/19/14	1	RA 00025 – 00073
Motion for Terminating Sanctions, Or, In the Alternative, Motion to Compel Discovery	08/25/14	1	RA 00241 – 00250



Motion for Terminating Sanctions, Or, In the Alternative, Motion to Compel Discovery (Continued)	08/25/14	2	RA 00251 – 00345
Notice of Entry of Order	12/2/14	6	RA 01331 – 01344
Notice of Entry of Order	01/21/15	7	RA 01509 – 01515
Objection to Commissioner's Recommendation Denying Plaintiff's Motion for a Protective Order and Request for a Stay of Depositions Pending the Hearing on the Objection	10/10/14	4	RA 00763 – 00770
Objection to Peppermill's Proposed Interim Jury Instructions	01/22/16	16	RA 03763 - 03816
Opposition to Defendant's Motion for Order Compelling GSR to Show Cause Why It Should Not Be Held In Contempt	11/13/14	4	RA 00975 – 01000
Opposition to Defendant's Motion for Order Compelling GSR to Show Cause Why It Should Not Be Held In Contempt (Continued)	11/13/14	5	RA 01001 – 01250

Opposition to Defendant's Motion for Order Compelling GSR to Show Cause Why It Should Not Be Held In Contempt (Continued)	11/13/14	6	RA 01251 – 01316
Opposition to Defendant's NRCP 50 (a) Motion for Judgment as A Matter of Law	01/24/16	22	RA 05325 – 05337
Opposition to Peppermill's Emergency/Ex Parte Motion For a NRCP 16 Pretrial Conference	06/23/15	8	RA 01843 – 01881
Opposition to Plaintiff's Ex Parte Motion for Protective Order on an Order Shortening Time and For Stay of Depositions Pending Hearing on the Matter	02/04/15	7	RA 01621 – 01696
Order	11/13/14	4	RA 00970 – 00974
Order	11/26/14	6	RA 01320 – 01330
Order	01/20/15	7	RA 01505 - 01508

Order	06/12/15	8	RA 01841 – 01842
Order Granting in Part and Denying in Part Motion for Protective Order	03/04/15	8	RA 01794 – 01796
Peppermill Casinos Inc.'s Supplemental Motion for Terminating Sanctions Or, In the Alternative, For an Order to Show Cause Why Plaintiff Not Be Held In Contempt and Subjected to Severe Sanctions	11/12/14	4	RA 00831 – 00969
Peppermill Casinos, Inc.'s Amended Answer to Complaint	07/25/14	1	RA 00230 – 00240
Peppermill Casinos, Inc.'s Ex Parte Emergency Motion for Rule 16 Conference	11/12/14	4	RA 00826 – 00830
Peppermill Casinos, Inc.'s Motion for Order Requiring GSR to Show Cause Why It Not be Held In Contempt, Sanctioned and Ordered to Produce Documents	12/17/14	6	RA 01380 – 01417
Peppermill Casinos, Inc.'s Motion for Sanctions	11/20/15	12	RA 02786 – 02880

Peppermill Casinos, Inc.’s Opposition to Plaintiff’s Objection to Commissioner’s Recommendation Denying Plaintiff’s Motion for a Protective Order and Request for a Stay of Depositions Pending the Hearing on the Objection	10/24/14	4	RA 00771 – 00806
Peppermill Casinos, Inc.’s Renewed Motion for Partial Summary Judgment Regarding Damages	11/18/15	10	RA 02282 – 02500
Peppermill Casinos, Inc.’s Renewed Motion for Partial Summary Judgment Regarding Damages (Continued)	11/18/15	11	RA 02501 – 02750
Peppermill Casinos, Inc.’s Renewed Motion for Partial Summary Judgment Regarding Damages (Continued)	11/18/15	12	RA 02751 – 02785
Peppermill Casinos, Inc.’s Renewed Motion for Summary Judgment Regarding “Trade Secret”	11/13/15	8	RA 01882 – 02000
Peppermill Casinos, Inc.’s Renewed Motion for Summary Judgment Regarding “Trade Secret” (Continued)	11/13/15	9	RA 02001 – 02250

Peppermill Casinos, Inc.'s Renewed Motion for Summary Judgment Regarding "Trade Secret" (Continued)	11/13/15	10	RA 02251 – 02281
Peppermill Casinos, Inc.'s Reply to Plaintiff's Opposition to Defendant's Memorandum of Fees and Costs	01/06/15	6	RA 01452 – 01461
Peppermill Casinos, Inc.'s Reply to Plaintiff's Opposition to Defendant's Motion For Contempt	01/08/15	6	RA 01465 – 01498
Peppermill Casinos, Inc.'s Response to GSR's Motion to Clarify the Court's Order Filed December 22, 2015 Regarding Peppermill's Motions in Limine	01/04/16	13	RA 03219 – 03250
Peppermill Casinos, Inc.'s Response to GSR's Motion to Clarify the Court's Order Filed December 22, 2015 Regarding Peppermill's Motions in Limine (Continued)	01/04/16	14	RA 03251 – 03257

Peppermill Casinos, Inc.'s Supplement to Renewed Motion for Summary Judgment Regarding "Trade Secret"	11/25/15	12	RA 02881 – 02900
Peppermill Casinos, Inc.'s Trial Statement	01/04/16	12	RA 02999 – 03000
Peppermill Casinos, Inc.'s Trial Statement (Continued)	01/04/16	13	RA 03001 – 03200
Peppermill's Objection to MEI-GSR Holdings, LLC's (1) Proposed Jury Instructions and Verdict Forms, (2) Supplement to Proposed Jury Instructions, and (3) Supplemental Interim Jury Instructions	01/14/16	14	RA 03467 – 03500
Peppermill's Objection to MEI-GSR Holdings, LLC's (1) Proposed Jury Instructions and Verdict Forms, (2) Supplement to Proposed Jury Instructions, and (3) Supplemental Interim Jury Instructions (Continued)	01/14/16	15	RA 03501 – 03596

Peppermill's Reply to GSR's Opposition to Peppermill's Motion for Partial Summary Judgment Regarding Damages	12/15/15	12	RA 02912 – 02931
Plaintiff MEI-GSR Holdings, LLC, d/b/a Grand Sierra Resorts Motion to Strike and Dismiss Defendant Peppermill's Motion for Case Terminating Sanctions	09/09/14	2	RA 00380 – 00500
Plaintiff MEI-GSR Holdings, LLC, d/b/a Grand Sierra Resorts Motion to Strike and Dismiss Defendant Peppermill's Motion for Case Terminating Sanctions (Continued)	09/09/14	3	RA 00501 – 00688
Plaintiff, MEI-GSR Holdings, LLC d/b/a Grand Sierra Resort's Trial Statement	01/04/16	13	RA 03201 – 03218
Plaintiff's Opposition to Defendant's Motion for Contempt	01/02/15	6	RA 01418 - 01451
Portions of the Deposition of Tracy Mimno		22	RA 05444 - 05450
Recommendation for Order	09/19/14	3	RA 00689 – 00702

Recommendation for Order	09/26/14	3	RA 00703 – 00712
Recommendation for Order	10/02/14	3	RA 00748 – 00750
Recommendation for Order (Continued)	10/02/14	4	RA 00751 – 00762
Reply in Opposition to Peppermill’s Renewed Motion for Summary Judgment Regarding “Trade Secret” renewed	12/15/15	12	RA 02932 – 02990
Request for Submission	07/15/14	1	RA 00227 – 00229
Request for Submission	09/26/14	3	RA 00713 – 00715
Request for Submission	11/24/14	6	RA 01317 – 01319
Request for Submission	01/06/15	6	RA 01462 – 01464
Request for Submission	01/08/15	6	RA 01499 – 01500
Request for Submission (Continued)	01/08/15	7	RA 01501 – 01504
Request for Submission	12/23/15	12	RA 02996 – 02998



Trial Exhibit 10 – Diagnostic Screen	01/11/16	14	RA 03283
Trial Exhibit 121 - GSR Slots and Video Poker Website	01/22/16	17	RA 04100
Trial Exhibit 122 - 2010-2014 Penny Video and Reels Net Win, Gross Theo Free-Play Summary	01/22/16	17	RA 04101
Trial Exhibit 123 - 2009-2/2015 NGC Monthly Gross Revenue Reports (Highly Confidential)	01/22/16	17	RA 04102 – 04249
Trial Exhibit 126 - 06/2015 Gaming Abstract Page	01/22/16	17	RA 04250
Trial Exhibit 127 – GSR Buffalo Billboard :	01/11/16	14	RA 03288
Trial Exhibit 149 - Friedman Rebuttal Report	01/22/16	18	RA 04251 – 04292
Trial Exhibit 14A – 07/12/13 Handwritten Key Sheet by Tors (Legible Copy)	01/13/16	14	RA 03418
Trial Exhibit 15 – 07/12/13 Tors Transcript from GSR re: Interview by GCB	01/14/16	15	RA 03597 – 033622

Trial Exhibit 150 - Lucas Rebuttal Report	01/22/16	18	RA 04293 - 04329
Trial Exhibit 151 - Tom Sullivan Player Cards	01/22/16	18	RA 04330
Trial Exhibit 153 - GSR Billboards "Best"	01/22/16	18	RA 04331 – 04336
Trial Exhibit 154 – Casino Management Fee Information	01/11/16	14	RA 03289 – 03296
Trial Exhibit 156 - 06/05/15 Errata to Plaintiff MEI-GSR Holdings, LLC, a Nevada Corporation, d/b/a Grand Sierra Resort's Amended Disclosure of Expert Witness	01/22/16	18	RA 04337 - 04369
Trial Exhibit 157A – 08/28/15 Plaintiff MEI-GSR Holdings, LLC, a Nevada Corporation, d/b/a Grand Sierra Resort's Supplemental Disclosure of Expert Witness – REDACTED	01/22/16	18	RA 04370 – 04405
Trial Exhibit 159 - Nevada Trade Secret Act	01/22/16	18	RA 04406 – 04409
Trial Exhibit 160 - Aguero Charts – No Correlation	01/22/16	18	RA 04410 – 04418
Trial Exhibit 162 – Atlantis Advertisements	01/15/16	15	RA 03701 – 03704

Trial Exhibit 164 – Advertisement from El Cortez	01/15/16	15	RA 03705 – 03710
Trial Exhibit 166 – Report Entitled, “Slot Market Assessment” by Applied Analysis	01/11/16	14	RA 03297 – 03258
Trial Exhibit 169A - Expert Rebuttal Report, Applied Analysis – REDACTED	01/22/16	18	RA 04419 - 04421
Trial Exhibit 16A – 01/02/13 11:24a.m. Tors email re: New Year’s Eve shop	01/14/16	15	RA 03623 – 03624
Trial Exhibit 170 - Expert Rebuttal Report, Applied Analysis (with numbered paragraphs)		22	RA 05351 – 05353
Trial Exhibit 172 - 03/01/15 Expert Witness Report of Professor Anthony Lucas	01/22/16	18	RA 04422 - 04457
Trial Exhibit 186 - 11/03/15 Defendant Peppermills Casino’s Supplement to Disclosure of Rebuttal Expert Witnesses	01/22/16	18	RA 04458 – 04487

Trial Exhibit 188 – 02/03/15 Photocopy of Plaintiff MEI-GSR Holdings, LLC a Nevada Corporation d/b/a Grand Sierra Resorts Disclosure of Expert Witnesses	01/11/16	14	RA 03259 – 03361
Trial Exhibit 189 – 04/01/15 Grand Sierra Resort’s Rebuttal Expert Disclosure	01/11/16	14	RA 03362 – 03365
Trial Exhibit 20 – 09/2014 Affidavit of David Schwartz	01/20/16	16	RA 03758 - 03760
Trial Exhibit 201 - 09/06/15 Atlantis Newspaper Ad	01/22/16	18	RA 04488
Trial Exhibit 202 - 08/30/15 Atlantis Newspaper Ad	01/22/16	18	RA 04489 – 04490
Trial Exhibit 206 - 10/15/15 Salazar Rebuttal Expert Report	01/22/16	18	RA 04491 – 04500
Trial Exhibit 206 - 10/15/15 Salazar Rebuttal Expert Report (Continued)	01/22/16	19	RA 04501 – 04545
Trial Exhibit 214 – Parchanges.pdf	01/11/16	14	RA 03366 – 03382
Trial Exhibit 215A - Peppermill Casinos, Inc. Amended Answer to Complaint dated 7/25/2014 – REDACTED	01/22/16	19	RA 04546 – 04556

Trial Exhibit 220 - (PM part three.pdf) Emails from Ryan Tors to other parties Re: PAR information dated 3/28/2010-11/2010		22	RA 05354 – 05360
Trial Exhibit 220A – (PM part three.pdf) Emails from Ryan Tors to Other Parties Re: PAR Information Dated 03/28/2010 – 11/2010 – REDACTED	01/25/16	22	RA 05349 – 05350
Trial Exhibit 221B – Emails (with notations) from Tors to various parties with PAR information dated 12/29/2011 – 06/13/2013	01/14/16	15	RA 03625 - 03636
Trial Exhibit 229 – GSR Wells Market Share Monthly Report, Percentage of Player for Peppermill v. GSR 2012 – 2013	01/11/16	14	RA 03383 – 03386
Trial Exhibit 232 - Aristocrat “NOTICE OF CONFIDENTIALITY OF PAR SHEETS”		22	RA 05361
Trial Exhibit 239 A – Email from Ryan Tors to NB Partners and William Paganetti Dated 06/07/12	01/22/16	19	RA 04557

Trial Exhibit 240 – Correspondence from Gaming Control dated 7/31/2013 Re: Investigation of Ryan 01/11/16Tors activities; Peppermill Property Receipts	01/11/16	14	RA 03387 – 03391
Trial Exhibit 241A - Emails dated 3/28/2010 – 11/2010 from Ryan Tors to other parties Re: PAR information (PM13272-13278) (PM13277, email between Tors and Scott Bean Re: Rail City comp reinvestment) - REDACTED		22	RA 05362 – 05368
Trial Exhibit 300 - 2/2015 CDC Report	01/22/16	19	RA 04558 – 04648
Trial Exhibit 301 - 3/2015 CDC Report	01/22/16	19	RA 04649 – 04695
Trial Exhibit 302 - 4/2015 CDC Report	01/22/16	19	RA 04696 – 04741
Trial Exhibit 303 - 5/2015 CDC Report	01/22/16	19	RA 04742 – 04750
Trial Exhibit 303 - 5/2015 CDC Report (Continued)	01/22/16	20	RA 04751 – 04788

Trial Exhibit 304 - 6/2015 CDC Report	01/22/16	20	RA 04789 – 04384
Trial Exhibit 305 - 12/31/10 State Gaming Control Board Gaming Revenue Report	01/22/16	20	RA 04385 – 04882
Trial Exhibit 306 - 12/31/11 State Gaming Control Board Gaming Revenue Report	01/22/16	20	RA 04883 – 04930
Trial Exhibit 307 – 12/31/12 State Gaming Control Board Gaming Revenue Report	01/13/16	14	RA 03419 - 03466
Trial Exhibit 308 - 12/31/13 State Gaming Control Board Gaming Revenue Report	01/22/16	20	RA 04931 – 04978
Trial Exhibit 309 - 12/31/14 State Gaming Control Board Gaming Revenue Report	01/22/16	20	RA 04979 - 05000
Trial Exhibit 309 - 12/31/14 State Gaming Control Board Gaming Revenue Report (Continued)	01/22/16	21	RA 05001 - 05026

Trial Exhibit 310 - 08/31/15 State Gaming Control Board Gaming Revenue Report	01/22/16	21	RA 05027 – 05074
Trial Exhibit 311 - 2010 Partial Las Vegas Sands Corp	01/22/16	21	RA 05075 – 05089
Trial Exhibit 312 - 2010 Partial Las Vegas Sands Corp 10K/A	01/22/16	21	RA 05090 – 05101
Trial Exhibit 313 - 2011 Partial Las Vegas Sands Corp 10K	01/22/16	21	RA 05102 – 05115
Trial Exhibit 314 - 2012 Partial Las Vegas Sands Corp 10K	01/22/16	21	RA 05116 – 05130
Trial Exhibit 315 - 2013 Partial Las Vegas Sands Corp 10K	01/22/16	21	RA 05131 – 05146
Trial Exhibit 316 - 2014 Partial Las Vegas Sands Corp 10K	01/22/16	21	RA 05147 – 05162
Trial Exhibit 317 - 03/31/15 Partial Las Vegas Sands Corp 10Q	01/22/16	21	RA 05163 – 05172
Trial Exhibit 318 - 06/30/15 Partial Las Vegas Sands Corp 10Q	01/22/16	21	RA 05173 – 05189
Trial Exhibit 319 - 2010 Partial Wynn Resorts, Limited 10K	01/22/16	21	RA 05190 – 05203
Trial Exhibit 320 - 2011 Partial Wynn Resorts, Limited 10K	01/22/16	21	RA 05204 – 05216
Trial Exhibit 321 - 2011 Partial Wynn Resorts Limited 10K/A	01/22/16	21	RA 05217 – 05250



Trial Exhibit 321 - 2011 Partial Wynn Resorts Limited 10K/A (Continued)	01/22/16	22	RA 05251 – 05256
Trial Exhibit 322 - 2012 Partial Wynn Resorts, Limited 10K	01/22/16	22	RA 05257 – 05266
Trial Exhibit 323 - 2013 Partial Wynn Resorts, Limited 10K	01/22/16	22	RA 05267 – 05280
Trial Exhibit 324 - 2014 Partial Wynn Resorts, Limited 10K	01/22/16	22	RA 05281 – 05293
Trial Exhibit 325 - 03/31/15 Partial Wynn Resorts, Limited 10Q	01/22/16	22	RA 05294 – 05302
Trial Exhibit 326 - 06/30/15 Partial Wynn Resorts, Limited 10Q	01/22/16	22	RA 05303 – 05315
Trial Exhibit 327 - 2010 Peppermill Reno 1C Video and Reel Analysis (Highly Confidential)	01/22/16	22	RA 05316 – 05317
Trial Exhibit 328 - 2011 Peppermill Reno 1C Video and Reel Analysis (Highly Confidential)	01/22/16	22	RA 05318 – 05319
Trial Exhibit 329 - 2012 Peppermill Reno 1C Video and Reel Analysis (Highly Confidential)	01/22/16	22	RA 05320 – 05321
Trial Exhibit 330 - 2013 Peppermill Reno 1C Video and Reel Analysis (Highly Confidential)	01/22/16	22	RA 05322 – 05323

Trial Exhibit 339 - Machine Performance Statistics	01/22/16	22	RA 05324
Trial Exhibit 340.1 – Buffalo	01/11/16	14	RA 03392 – 03405
Trial Exhibit 340.10 – Texas Tea	01/11/16	14	RA 03416
Trial Exhibit 340.11 – Wolf Run	01/11/16	14	RA 03417
Trial Exhibit 340.2 – Cats	01/11/16	14	RA 03406 – 03407
Trial Exhibit 340.2A – Cleopatra	01/11/16	14	RA 03408
Trial Exhibit 340.3 – Ducks in a Row	01/11/16	14	RA 03409
Trial Exhibit 340.4 – Double Diamond 2000	01/11/16	14	RA 03410
Trial Exhibit 340.5 – Enchanted Unicorn	01/11/16	14	RA 03411
Trial Exhibit 340.6 – Horoscope	01/11/16	14	RA 03412
Trial Exhibit 340.7 – Lil Lady	01/11/16	14	RA 03413
Trial Exhibit 340.8 – Money Storm	01/11/16	14	RA 03414
Trial Exhibit 340.9 – Munsters	01/11/16	14	RA 03415

Trial Exhibit 358 - Portions of the Deposition Transcript of Craig Robinson		22	RA 05369 – 05375
Trial Exhibit 359 - Portions of the Deposition Transcript of Terry Vavra		22	RA 05376 – 05384
Trial Exhibit 35A – 11/03/14 GSR Answers to 2 <sup>nd</sup> Set of Interrogatories – REDACTED Interrogatory No. 14 and Response Only	01/21/16	16	RA 03761 – 03762
Trial Exhibit 360 - Portions of the Deposition Transcript of Ralph Burdick		22	RA 05385 – 05398
Trial Exhibit 361 - Portions of the Deposition Transcript of Toby Taylor		22	RA 05399 – 05406
Trial Exhibit 362 - Portions of the Deposition Transcript of Toby Taylor		22	RA 05407 – 05413
Trial Exhibit 363 - Portions of the Deposition Transcript of Michael Draeger		22	RA 05414 – 05421
Trial Exhibit 364 - Portions of the Deposition Transcript of David Schwartz		22	RA 05422 – 05443

Trial Exhibit 38 – “Reno Loosest Slots in the USA” Billboard by PM	01/11/16	14	RA 03284
Trial Exhibit 4 - GSR Billboard Photographs	01/11/16	14	RA 03260 – 03266
Trial Exhibit 5 – GSR Advertisements – “Loosest Buffalo”	01/11/16	14	RA 03267
Trial Exhibit 50 - GSR Slot Add Worksheet re: machine location and setting (including par) for certain machines	01/22/16	16	RA 03832 – 03850
Trial Exhibit 53 – 11/19/14 GSR Website Slots and Video Poker (Loosest Buffalo)	01/11/16	14	RA 03285
Trial Exhibit 54 – 11/07/14 & 11/17/14 List of games with par settings	01/11/16	14	RA 03286
Trial Exhibit 56 – Chart of GSR Earning Structure	01/11/16	14	RA 03287
Trial Exhibit 6 – 2341 Key on EBay	01/11/16	14	RA 03268 – 03280
Trial Exhibit 73 - Custodian of Records Statement	01/22/16	16	RA 03851 – 03852
Trial Exhibit 74 – CDC Invoices to GSR	01/15/16	15	RA 03637 – 03645

Trial Exhibit 75 - 05/07/10 CDC Report re: Slot Comp	01/22/16	16	RA 03853 – 03858
Trial Exhibit 76 - 05/12/10 CDC Report re: Direct Mail	01/22/16	16	RA 03859 – 03864
Trial Exhibit 77 – 06/2014 CDC Report re: Free Play & Comp Rewards	01/15/16	15	RA 03646 – 03650
Trial Exhibit 78 – 07/2014 CDC Report re: Direct Mail	01/15/16	15	RA 03651 – 03700
Trial Exhibit 79 - 08/2014 CDC Report re: Direct Mail	01/22/16	16	RA 03865 – 03912
Trial Exhibit 8 – 8:51 a.m. Tors Email	01/11/16	14	RA 03281 – 03282
Trial Exhibit 80 - 09/2014 CDC Report re: Direct Mail	01/22/16	16	RA 03913 – 03957
Trial Exhibit 81 - 10/2014 CDC Report re: Direct Mail	01/22/16	16	RA 03958 - 04000
Trial Exhibit 81 - 10/2014 CDC Report re: Direct Mail	01/22/16	17	RA 04001 – 04006
Trial Exhibit 82 – 11/2014 CDC Report re: Direct Mail	01/19/16	15	RA 03711 – 03750

Trial Exhibit 82 – 11/2014 CDC Report re: Direct Mail (Continued)	01/19/16	16	RA 03751 – 03757
Trial Exhibit 83 - 12/2014 CDC Report re: Direct Mail	01/22/16	17	RA 04007 – 04051
Trial Exhibit 84 - 01/2015 CDC Report re: Direct Mail	01/22/16	17	RA 04052 – 04096
Trial Exhibit 85 - 05/14/14 CDC Contract with GSR (signed by Mimno)	01/22/16	17	RA 04097 – 04099

1 lot of evidence that shows that it wasn't used, or if it was  
2 used, it would be there.

3 COMMISSIONER MORAN: Let me ask you one  
4 question on that, Mr. Schreck. This is really something  
5 that is on my mind as well.

6 MR. SCHRECK: Sure.

7 COMMISSIONER MORAN: Let's say the information  
8 which nobody disputes was obtained with a reset key over  
9 this period of time on a competitor. And as you are saying,  
10 it wasn't ever used.

11 MR. SCHRECK: Correct.

12 COMMISSIONER MORAN: But what if that  
13 information of that licensee Peppermill, for example, was  
14 that their slots were set for a hold in a certain percentage  
15 and that that percentage was lower than what some of their  
16 competitors out there were doing and they saw that, hey, we  
17 don't have to do anything to our slot machines because this  
18 information that we have obtained through our employee on  
19 the reset key demonstrates that this licensee over here down  
20 the street from where we are at, its machines are set at X  
21 and we are already below that, so we don't have to do  
22 anything to our machines to compete with them, and they by  
23 inaction on this information, they are in essence obtaining  
24 a competitive edge because they already know their machines  
25 are more favorable and are going to do better at the

1 percentage they are already set below what the competitor  
2 down the street is doing because they have obtained this  
3 competitive edge through the use of this key. Is that  
4 accurate or am I way off on that?

5 MR. SCHRECK: No, you are not way off  
6 conceptually. But the fact is, most people understand and  
7 know what the pars are. For example, the plaintiff in the  
8 lawsuit has billboards up in Reno that have a bunch of games  
9 on them, slot machines, and under it it says the lowest pay  
10 table available.

11 Now all you have to do as an owner of a casino,  
12 you get the manufacturer's pay tables, it will give you the  
13 pars. Pars aren't sacrosanct. I think everybody knows and  
14 recognizes by far the lowest pars in Northern Nevada are  
15 Peppermill's, and especially Western Village, they are the  
16 lowest pars in the state. They make a lot of money because  
17 they keep their pars low.

18 So they are not looking -- the competitive  
19 advantage wouldn't be that. What would be the competitive  
20 advantage is if let's take Western Village which has clearly  
21 the lowest pars probably clearly of anybody in the state,  
22 and dollar for dollar people understand it makes more money  
23 per square foot more than any other casino. It is sitting  
24 in a horrible place in Sparks, it's got no real big  
25 attractions, but it has the lowest pars and gives people



1 more time on the machines and they love it. There is no  
2 give-aways, no free play.

3 To get back to the pars where they keep them  
4 really low, there are no participation machines in  
5 Peppermill Casinos. There is no Megabucks, there is no  
6 Wheel of Fortune, none of those machines, and the reason  
7 why, they go against the Peppermill's determination that  
8 they are going to have the lowest pars and those  
9 participation machines are all double figure pars. They  
10 don't do that.

11 But if you were going to look at something,  
12 some of those casinos that were, say, keyed are not  
13 competitors of the Peppermill Casino, they are competitors  
14 of Western Village Casino. Now if you were going to obtain  
15 a competitive advantage or use this to make money, their  
16 pars are low, let's just say 4.5 percent. The other ones  
17 are going to be somewhere between 6.5 and 7.0 and way above.  
18 Let's just say 7.0 and 4.5.

19 As we told the Board and we told the  
20 investigators, and Mr. Paganetti said, if he sees one at  
21 seven percent, then he says, well, I can take mine from four  
22 and-a-half to five and-a-half percent, I'm still a percent  
23 and-a-half lower. So I'm still going to get the business.  
24 But that extra percent adds a hundred thousand dollars a  
25 week in revenue.

1           Now that is how he views it. The pars at the  
2           Western Village have never been changed in almost 25 years.  
3           So this information was not used.

4           You say how could this go on and on over this  
5           period of years. The reason -- and this wasn't a crime but  
6           it is felony stupid -- nobody realized that this was  
7           inappropriate. They knew that if you went over and they  
8           caught you, you could get 86ed, just like they shop other  
9           things. We had somebody from --

10           COMMISSIONER MORAN: Mr. Schreck, I hate to  
11           interrupt you. You made me think of something here. We  
12           have had many cases, quite a few cases where people have  
13           been employed by one hotel and have left with a customer  
14           list and have taken the customer list with them, which have  
15           been problems for those people. And you know, this is I  
16           think more egregious than something like that.

17           This is where they are accessing information  
18           about a gaming device belonging to a competitor at other  
19           locations. It is like it has a real bad smell factor. I  
20           don't think that your clients for a moment would be saying  
21           that what they did wasn't wrong.

22           MR. SCHRECK: They say it's wrong. That's why  
23           we have agreed to a million dollar fine.

24           COMMISSIONER MORAN: I just want to make sure  
25           that it isn't something a little different, but I thought

1       that is what had been admitted to in the stipulation.

2               MR. SCHRECK: Absolutely. I tried to preface  
3 my remarks that I'm not trying to make an excuse for their  
4 conduct, I'm not trying to diminish the seriousness of their  
5 conduct, but I think you have to put it in the perspective  
6 of what happened.

7               It was just abject stupidity on their part.  
8 They were doing things they thought other people were doing  
9 to them. They didn't think anything about. That is why it  
10 continued to go on.

11              If anybody on this Commission thinks for one  
12 second that if Mr. Bill Paganetti understood that that was a  
13 violation of gaming regulations, law or criminal, that that  
14 wouldn't have stopped, then they clearly don't know who  
15 Mr. Paganetti is. He had no clue. They thought everybody  
16 did it. They were going about it.

17              Now the investigating showed that everybody  
18 didn't do that. Everybody shops one another in different  
19 ways. What happened at the Peppermill is they took it to an  
20 unacceptable limit.

21              And that's why they have pled guilty to all of  
22 this, that is why they are willing to pay a huge fine, a  
23 million dollars for something like this. And I will  
24 reiterate, there is absolutely no evidence that any of this  
25 was ever used, and the evidence is to the contrary.

1                   COMMISSIONER MORAN: Let me ask Mr. Soms a  
2 question here. When you talk about the million dollar fine,  
3 Mr. Soms, and you are the attorney representing the State  
4 and its people and licensees, obviously, and you do a fine  
5 job of that, but what type of a dollar number do you think  
6 that these 11 licensees were cost? Did you ever put a  
7 number on that to get to the number Mr. Schreck and you have  
8 agreed to a million dollars?

9                   I mean, was the number based on some type of,  
10 since I wasn't privy to that and I don't have any  
11 information of that, but what type of losses were sustained  
12 that made you believe that a million dollars was fair? Was  
13 there a number you were looking at tied into some type of a  
14 formula as to the loss and damage done to these other  
15 licensees?

16                  MR. SOMPS: Thank you, Commissioner Moran. Let  
17 me try and explain the process as to how this amount was  
18 arrived at.

19                  Just as with any complaint that is brought  
20 before this Commission, one of the first things I and the  
21 Board do is to try and assess whether similar violations  
22 have occurred in the past with other licensees. In this  
23 particular case it's a unique set of facts, and the reality  
24 is that I'm not aware and I couldn't find any prior similar  
25 cases.

1           So we're left with coming up with a number that  
2     the Board feels is appropriate to address the misconduct, to  
3     prevent it from occurring again, and to send a message to  
4     the industry, and ultimately the Board through negotiations  
5     with Mr. Schreck and his client came to this number, and it  
6     is a number that the Board is very comfortable with that  
7     addresses the allegations in this complaint. And the  
8     allegations in this complaint the Board was prepared to  
9     prove.

10           These allegations are the guts of the  
11     misconduct. There is a pile of evidence that the Board  
12     would present to you if necessary that would support these  
13     allegations, but these are the allegations. They are very  
14     serious allegations and the Board views them very seriously.

15           The result is a million dollar fine. And the  
16     Board is comfortable with that sends a message not only to  
17     the Peppermill and Mr. Paganetti that this isn't going to  
18     occur again and it will deter him, but it is also a message  
19     to the industry regarding the use of these reset keys. The  
20     Industry is now on notice and will probably be provided  
21     further notice of the Board's view of these types of keys.

22           But just to summarize, in the Board's view, it  
23     is very comfortable with this fine amount.

24           Now I understand your concerns, and it is up to  
25     you whether you are comfortable with that based on what is

1 in the complaint. But I can represent to you that the Board  
2 is comfortable with this fine.

3 COMMISSIONER MORAN: Let me ask one question on  
4 that, Mr. Soms, since Mr. Schreck had volunteered that he  
5 thought that this should be half the amount of a million,  
6 because I'm concerned in both directions, like I said, going  
7 into this thing. I'm also looking at is a million the right  
8 number but should it be less or should it be more.

9 And Mr. Schreck has indicated, and I don't want  
10 to misquote you, Frank, but I believe you said it should be  
11 half of that, and I'm curious as to what is the case, what  
12 the State did go into the negotiations with an amount of  
13 that they were seeking.

14 MR. SOMPS: Well, I'm happy to confer with my  
15 client if they wanted to reveal that.

16 BOARD CHAIRMAN BURNETT: Commissioner Moran,  
17 maybe I can shed some light.

18 COMMISSIONER MORAN: I'm trying to get to a  
19 number, Mr. Chairman.

20 BOARD CHAIRMAN BURNETT: Maybe I can shed some  
21 light on how things unfolded and what happened here.

22 Upon the very moment that the Gaming Control  
23 Board was notified of what occurred, we began a formal  
24 investigation, which is always confidential, which is always  
25 private, and nothing is revealed unless and until the Gaming

1 Control Board reaches a decision that some form of  
2 disciplinary action should occur, be it an order to show  
3 cause, which we do quite frequently, or a complaint.

4 In this case what you have before you is the  
5 result of long, long discussions amongst the Gaming Control  
6 Board staff, specifically the Enforcement Division, who was  
7 the investigative side that worked on this case and  
8 presented evidence to each of the three Gaming Control Board  
9 members on an individual basis. Because of the Open Meeting  
10 Law we can't meet and confer and deliberate. But what  
11 occurs, Commissioner Moran, is each Gaming Control Board  
12 member receives a report from the investigating branch, be  
13 it the Corporate Securities -- the Investigations Division  
14 or the Enforcement Division. In this case it was the  
15 Enforcement Division. The results of that report are read  
16 and digested by the Gaming Control Board members who in turn  
17 confer with our counsel, Mr. Somps, individually as to how  
18 we should proceed. Of course, you can see in this matter  
19 the result was quite clearly that we need to go to a  
20 complaint.

21 At that point a decision must be made, and that  
22 decision is mine as to whether or not we will share that  
23 complaint with the other side or not. In certain cases we  
24 do not, and there are a myriad of reasons for that.

25 However, in most cases, particularly when there

1 will be a public outing of the conduct that's occurred, as a  
2 courtesy, we will, I will instruct our counsel to reach out  
3 to the other side, in this case Mr. Schreck, as a courtesy  
4 to go ahead and show Mr. Schreck and his client what we  
5 have. As Mr. Schreck has alluded to and I am in full  
6 agreement with, the Peppermill and Mr. Paganetti were fully  
7 compliant with us. They never offered any resistance or any  
8 roadblocks.

9 At that point discussions occur. And this is  
10 something that's occurred for probably 20 to 30 years. The  
11 first outreach is usually by Mr. Schreck as to is the Board  
12 amenable to a settlement. And I would be more than happy to  
13 confer with your privately as to how I arrived at the number  
14 that you see before you. But with the concurrence of my  
15 colleagues, this number came out.

16 This number was mine. It was not my original  
17 number. My number was based on EBITDA calculations --

18 COMMISSIONER: That's what I'm looking for, Mr.  
19 Chairman.

20 BOARD CHAIRMAN BURNETT: -- of Nevada revenue  
21 for the company over the calendar years of '12 and '13.

22 COMMISSIONER MORAN: Thank you.

23 BOARD CHAIRMAN BURNETT: However, I had no  
24 intention of harming this company beyond what we are doing  
25 today. I certainly did not have an intention to bankrupt



1     this company, nor do I think any of us have an intention to  
2     bankrupt the company or any of the gaming licensees unless,  
3     of course, it rises to a level of revocation, in which case  
4     that is what you would have before you.

5             COMMISSIONER MORAN: And I appreciate that, and  
6     I just want to -- you covered what I wanted to find out, if  
7     the number that you arrived at could have been possibly more  
8     than a million and whether or not that was tied to some type  
9     of a formula that would demonstrate that the State and you  
10    felt would be capable of being proven and you came back to  
11    that. Because I heard from Mr. Schreck who represents,  
12    obviously, the person who is complained against saying that  
13    he felt it was less. So I wanted to know if that was an  
14    arbitrary number, this million, or did it have some kind of  
15    a reason in law and fact.

16            BOARD CHAIRMAN BURNETT: Commissioner Moran,  
17    I'm happy to discuss with you my thought process. Again,  
18    originally I looked at the numbers that the corporations  
19    that you see before you as respondent have done in terms of  
20    net income. But that is not a determining factor. That is  
21    something that I went off in terms of my calculations.

22            I think that both counsel here today would  
23    represent to you that when you look at what perhaps might  
24    have been gained in terms of a competitive advantage, and I  
25    don't want my comments to be construed as affecting any

1 civil litigation in any way, shape or form, so I caveat  
2 that, but I would construe those as completely intangible  
3 damages that would be nearly impossible to assess if they  
4 existed at all.

5 However, being charged as the regulatory body  
6 in Nevada and as the Chairman of that body, I knew that the  
7 number had to be high and it had to be high enough to where  
8 it would send a message not only to the licensees that you  
9 have before you but to the entire industry.

10 As you will find out and I think that you have  
11 seen the 2341 key in action, this is not what we call a  
12 control key. It is a key that we have been aware of but we  
13 have not yet found a reason to regulate it, and that is  
14 simply because of what it can do and what it cannot do.

15 However, the actions, as Mr. Schreck has  
16 admitted to, of this licensee were egregious enough to where  
17 I and my two colleagues felt a need to raise this fine to a  
18 level to where it would send a huge message to the industry  
19 that we will not tolerate this type of behavior, that this  
20 type of behavior is not acceptable, yet again, it had to be  
21 a number that would not be unduly burdensome or  
22 inappropriate, but on the other hand, it could not be so  
23 small as to be a laughable amount.

24 COMMISSIONER MORAN: And you understand, and  
25 you hit the nail on the head for me, us as a Commission,

1 when I started out this morning, when we started out this  
2 discussion, again, we don't have the benefit of the  
3 investigative reports. What we have is the benefit of a  
4 complaint that is admitted to with a dollar amount, without  
5 us having any rhyme or reason as to how we reached that.

6 And that is why I wanted to find out,  
7 particularly when I heard Mr. Schreck say that it should be  
8 at least half that, I wanted to hear from who we look to,  
9 our guys in the trenches who are working and doing their job  
10 and investigating and have all the benefit of the interviews  
11 and the benefit of the investigative reports and the rest,  
12 that I wanted to make sure that we had a reason and you had  
13 a reason to ask us to stamp our approval on a million dollar  
14 settlement based on these facts, and I think I have a pretty  
15 good idea that the amount could have been more and that you  
16 feel comfortable with that.

17 BOARD CHAIRMAN BURNETT: Thank you,  
18 Commissioner Moran. And I appreciate that.

19 And I also want to make very very clear that my  
20 two colleagues and Mr. Soms were very very involved in this  
21 and many discussions took place with the licensee, and I  
22 think that Mr. Paganetti and Mr. Schreck will also agree  
23 with the fact that what has occurred prior to this date are  
24 many many very difficult discussions for them that they went  
25 through.

1                   COMMISSIONER MORAN: Thank you for sharing  
2 that. I don't have any other questions at this time, Mr.  
3 Chairman.

4                   MR. SCHRECK: Could I at least clarify  
5 something because I must not have been very articulate in  
6 discussing the fine. I indicated when I first looked at  
7 that, I thought maybe the maximum should be 500,000. I then  
8 indicated that after we had the discussions and we stepped  
9 back and viewed it as the casino industry reviewed, I agreed  
10 that the million dollar fine was sufficient. So it wasn't  
11 that I was insisting on half a million dollar fine.

12                  COMMISSIONER MORAN: When you threw the half  
13 out, I wanted to find out how we got there.

14                  MR. SCHRECK: You asked where did I start, and  
15 I kind of started thinking half a million.

16                  COMMISSIONER MORAN: I appreciate you sharing  
17 that. That helps a lot.

18                  At this time I have asked the questions I  
19 wanted to ask, and I'm ready to have somebody else ask.

20                  MR. SCHRECK: There is another major thing I  
21 need to respond to in the statements, and that is when you  
22 are talking about what you base it on, I'm just going to  
23 tell you, and I think Mr. Soms --

24                  COMMISSIONER MORAN: This is the fine that we  
25 are talking about.

1 MR. SCHRECK: It is how you get to the fine.  
2 There are no provable damages because this wasn't used. I  
3 don't want to play litigator in the other case, but I can  
4 tell you that after the period of time that's been filed and  
5 numerous requests from the civil litigation, they haven't  
6 been able to produce any type of damages because they can't.

7 COMMISSIONER MORAN: And I understand, Mr.  
8 Schreck, that is your position, and I heard you loud and  
9 clear the first time that you don't feel that there were any  
10 damages in terms of improper use of this information --

11 MR. SCHRECK: Exactly.

12 COMMISSIONER MORAN: -- that was obtained over  
13 this three year period. I understand your position on that.

14 MR. SCHRECK: And then one other thing when you  
15 read the language, and I think it will show you why we  
16 believe wholeheartedly when you talked about the ability --

17 COMMISSIONER MORAN: Are you talking about the  
18 regulation?

19 MR. SCHRECK: No, about the ability to file  
20 another complaint, that one. If you look, that is in  
21 response to 4 B where there is some exculpatory language  
22 saying that within the scope of the Board's investigation  
23 they did not find any evidence to support the fact that this  
24 information was used to adjust pars. The Board didn't feel  
25 comfortable.

1 COMMISSIONER MORAN: That is paragraph 5, page  
2 2 of the stipulation.

3 MR. SCHRECK: Paragraph 4 B. And then 5 is to  
4 modify that so that if in the course of anybody's litigation  
5 or something else, they find information that would show  
6 there was a competitive advantage or that this information  
7 was utilized, this par information, they can come back and  
8 file a complaint. We felt so comfortable with the fact that  
9 that will never occur, we agreed to put that in the  
10 stipulation.

11 COMMISSIONER MORAN: You agreed to that  
12 language. I'm glad you shared that and spread that on the  
13 information. I felt that was important if that comes to  
14 light, that you had agreed to do that and you would be  
15 subject to another complaint.

16 MR. SCHRECK: And we had no problems signing  
17 the stipulation with that in it because we know that will  
18 not occur.

19 COMMISSIONER MORAN: Thank you.

20 COMMISSIONER TOWNSEND: Dr. Alamo. Are you  
21 still awake? Let me jump start you. Gestalt.

22 COMMISSIONER ALAMO: I'm done. I mean, I got  
23 to start with two words. Amateur hour. Amateur hour.

24 I understand and I totally understand that my  
25 colleague to my left and the emotion in which he spoke the

1 last 42 minutes, because of frustration that he feels  
2 because we are held in the dark to the settlement agreement.

3 In fact, I'm going to tell you how I found out  
4 about this. The details of the settlement agreement first  
5 broke loose on the Internet when I read a reporter by the  
6 name of Howard Stutz, who sits in the back corner there, and  
7 I read his article, and his article is entitled Peppermill  
8 casino owners agree to one million fine over use of slot  
9 machine reset key. The infamous reset key 2341. That is  
10 how I found out about all this, and that is the way it is  
11 supposed to be because we are in a judiciary capacity and we  
12 are kept in the dark purposely because that is the way it  
13 should be.

14 So when I read the article, blown away that  
15 these keys even exist like this, I reached out to our  
16 Chairman, A. G. Burnett, and how can I get primered up  
17 technologically on what the heck this is all about. He  
18 makes the introduction with the Chief of Technology, Jim  
19 Barbee, and I have a private meeting with him, again, Open  
20 Meeting Law, so I had a private meeting just with him, and  
21 he took me through the Technology Division into a big room  
22 with every type of machine that exists and gave me one heck  
23 of a primer about these reset 2341 keys.

24 And unbelievable that 70 percent probably, 70  
25 to 75 percent of all the machines in Nevada choose this same

1 key. In fact, some manufacturers are a hundred percent. I  
2 believe maybe I think it is IGT or one of those, all their  
3 machines are these 2341 keys. So probably reaches out  
4 globally.

5 Don't know how that happened, have no idea why  
6 a slot manager of a property wouldn't have one day thought,  
7 you know, this does give some information. I mean, it stops  
8 the play of the machine. Somebody could run around and just  
9 start shutting machines down and resetting them. That can  
10 cause a hiccup in our revenues for that shift; right?

11 And then there is some proprietary information  
12 on these machines when you turn them, you pick up some, and  
13 this is what the debate has been for the last 47 minutes. I  
14 have no idea why properties haven't said, you know,  
15 mandating from our manufacturers, can we get our own key? I  
16 have no idea.

17 When asking the Chief of Technology what would  
18 that entail, I mean, obviously, it is easy when you buy a  
19 new machine, it probably doesn't cost anything to reset it  
20 to a new lock, and what would it probably cost to reset all  
21 the keys to existing machines, probably an hour worth of  
22 time on a technician's time, an hour's worth, \$50. So  
23 anyway, so shame on the other entities for not protecting  
24 themselves a little bit.

25 But that being said, I kind of see this as an



1 accounting department leaving the door open and a competitor  
2 kind of just saying, hey, the door is open, walk into the  
3 accounting department and look over all the win per units  
4 and all the proprietary information that a property might  
5 have and then walking out with it. And then your discussion  
6 or your part in this debate is, well, we didn't use any of  
7 that information.

8 But god, this is just an amazing egregious act  
9 to send your person in there just because, I guess, and  
10 again, I'm trying to get -- it is kind of like that kid who  
11 makes a little white lie, he lies a little bit, and then the  
12 lies get bigger and bigger and bigger, and then eventually  
13 he kind of calms himself into, well, it is okay to lie.

14 Again, these reset keys, everybody has them.  
15 You go on the Internet, you can get one for a couple bucks.

16 So then it kind of gets everybody comfortable  
17 saying this information is really not proprietary, it is  
18 just a key everybody has. We can go to other properties and  
19 try to download this stuff. I think this is what's happened  
20 here.

21 And it is egregious. You sent out, not you but  
22 your client, sent out an employee by the name of Tors on a  
23 mission to potentially, again, I use the example of an  
24 accounting department's door being open, he is walking in  
25 and looking on a desk and getting some proprietary

1 information and walking out with it.

2 I don't believe that the -- the information was  
3 never used or not used, then why was it done for so many  
4 years in so many different properties. It is information,  
5 and information is power. And that's why Tors went out  
6 there and got the information.

7 So that's a fact. Whether or not it was used  
8 or not, it was used somehow. It had to be worth something  
9 or Tors wouldn't be sent out on this mission.

10 So I appreciate my colleague Commissioner Moran  
11 in his line of questioning, because prior to his questioning  
12 I, too, was unsure of how we got this dollar value. I mean,  
13 we just came off a last meeting where Cantor got \$5  
14 and-a-half million fine for an action of an employee, though  
15 connections can never really be made at a supervisory level.  
16 Where this one falls a little different, I don't think the  
17 level of crime that that employee did for Cantor, that was  
18 probably more egregious than what this is happening, but  
19 where this one crosses over another barrier is a supervisor  
20 knew about it and he was on orders to do it. So that's the  
21 problem that bothers me.

22 So anyway, so we are here and Commissioner  
23 Moran vetted out what is the dollar value. I appreciate the  
24 Chairman and his detail which we brought now to my attention  
25 for the first time is how he picks this number. I think

1     these numbers need to say something, they need to make a  
2     point. For example, they are revenue for the State. But  
3     that is not really the goal, I think.

4             The goal of this is to punish somebody for  
5     something they did and to send a message to others out  
6     there, don't do this again.

7             I have used the word revocation. I would not  
8     want this to come before us from the Peppermill, similar,  
9     and whether or not it is reset keys or something else that  
10    we don't even know that you are sending people off on  
11    missions to get intel of proprietary stuff that short of  
12    walking into a casino and analyzing how you are setting the  
13    slot machines and looking at the table limits and getting  
14    information that any of the public can get, that is  
15    appropriate. And that should be done and it probably is  
16    done. But when you walk into somebody's machine or  
17    someone's opened back door of their house and you walk in  
18    there and maybe don't take anything because there was  
19    nothing really worth of value, you still went into  
20    somebody's house.

21            So does this dollar value, do I believe that  
22    the Peppermill and its people will do this again based on  
23    this dollar value? Well, now I feel more, my words, warm  
24    and fuzzy, my two words, warm and fuzzy that this money was  
25    based on an amount that our Chairman said, of course, didn't

1 want to crush the licensee, bankrupt the licensee, but made  
2 a point, and I feel that that did happen.

3 Do I want the industry to be aware of this?  
4 Absolutely. Will I think differently of another person or  
5 another licensee doing the same thing and be more harsh with  
6 them? Yeah, I will be because this Board made it clear they  
7 are going to make sure, they are going to reach out to the  
8 industry and make sure that they are made aware of all this.

9 The other side, the victims, again, the debate,  
10 were they victimized or not, let's just say the people that  
11 got their machines read, my god, let's change these keys.  
12 This is just basic stuff. I just can't believe that this  
13 has never been really thought of before.

14 It does have information. And if this  
15 information was not that valuable, then it should be a  
16 placard on every one of the machines, and it is not because  
17 it does have a value.

18 So anyway, where I am right now is the dollar  
19 value, I feel better, and I appreciate Commissioner Moran in  
20 his line of questioning because I wasn't comfortable when we  
21 first got here. I didn't know. I didn't know to issue  
22 revocation, less or more. But now with all this dialogue, I  
23 think this number accomplished what I think it needs to set  
24 out to do. But I can't wait to hear from my colleagues.  
25 Thank you.

1 COMMISSIONER TOWNSEND: Commissioner Brown.

2 COMMISSIONER BROWN: As is often the case, I  
3 have learned a lot just from my fellows on my left and the  
4 questions they have posed.

5 Ten days ago I knew nothing about a 2341 key,  
6 and I learned what I knew prior to going to see Jim Barbee  
7 on Tuesday myself, I learned it from Howard Stutz and from  
8 the newspaper reports. I heard Howard Stutz on NPR radio  
9 two days ago, I think it was two mornings ago where he said,  
10 and I was shocked, that it is not a crime. So that made me  
11 wonder what is this all about, why are they even  
12 complaining.

13 So I heard you, Mr. Soms, say a few minutes  
14 ago that you think that this has sent a message to the  
15 industry, and I ask, what message have you sent, that they  
16 shouldn't use reset keys, or that each property should use  
17 different ones, or that there should be legislation to make  
18 it a crime? If Washoe County doesn't think it is a crime,  
19 then why are we here?

20 Is it nothing other than impolite conduct from  
21 one operation to another like stepping on their shoes or  
22 something? Are you saying that the lawsuit is without merit  
23 if there is a private lawsuit?

24 BOARD CHAIRMAN BURNETT: Commissioner Brown,  
25 perhaps I can respond to that on behalf of the Board.

1 Mr. Soms can definitely respond probably better than I can.

2           However, to give you another piece of what we  
3 are doing, my colleague Member Johnson has crafted an  
4 industry notice that is going to go out sometime after this  
5 meeting. We wanted to wait until we heard from you  
6 gentlemen today in case there were any new items or areas  
7 that you touched upon that we hadn't thought about.

8           However, what Member Johnson has crafted is I think a very  
9 thorough notice to the industry indicating several things.

10           For example, this key is not to be used by  
11 nonemployees, make sure that your surveillance standards are  
12 up to par and that you do trespass or 86 anyone who is  
13 caught using the key. Because Commissioner Alamo is 100  
14 percent correct, some of the burden, in my mind, goes to  
15 those licensees who did not catch this employee.

16           But to further one of your comments or  
17 questions, I should say just now the message that's being  
18 sent is to protect the industry in accordance with what we  
19 see when we open up Chapter 463 and look in 463.0129, which  
20 is the public policy of the state. While there may be no  
21 criminal violation, there is nothing in 465 speaks to this.  
22 The D.A.'s office, my understanding, has declined any  
23 prosecution.

24           What we do find when we open up our statutes is  
25 together collectively our two bodies have to ensure public

1 confidence and trust is maintained in the gaming industry,  
2 and that is 100 percent the reason for the million dollar  
3 fine.

4 This key, as you saw yourself, cannot access  
5 the brain box of a slot machine. I think if the separate  
6 keys that can do that were accessed by a competitor and then  
7 utilized on a licensee's boxes, were obtained and that would  
8 be done, this would be clearly a revocation matter.  
9 However, as you saw and I think all of you saw, the 2341 key  
10 cannot be used in any way, shape or form to ever cheat, to  
11 ever change the game, to ever gain any kind of game  
12 advantage or compromise the integrity of the game itself.  
13 It can only be used to do those things which Mr. Soms and  
14 Mr. Schreck have alluded to.

15 I hope that helps, Commissioner.

16 COMMISSIONER BROWN: Yes, it does. I  
17 definitely when I walked in this room, I didn't feel that I  
18 was capable of properly discharging my duties to the State  
19 to make an informed decision, and I'm still not so sure that  
20 I can vote on this matter based on what I know because there  
21 is still so much that is foggy to me right now.

22 COMMISSIONER TOWNSEND: Can we hold everybody's  
23 thoughts? Everybody tends to forget about the most  
24 important person in the room.

25 (Off the record.)

1                   COMMISSIONER TOWNSEND: Any other questions,  
2 Commissioner Brown?

3                   COMMISSIONER BROWN: No.

4                   COMMISSIONER TOWNSEND: I'll go back to the  
5 other two before I go to mine. Any other? Dr. Alamo.

6                   COMMISSIONER ALAMO: I have a question to  
7 Commissioner Brown. Is it that you feel that there is just  
8 more information with this case that would kind of cause you  
9 concern to go forward with the settlement even though the  
10 settlement does say if something legal were to come from  
11 this, then another complaint could occur? I mean, it  
12 doesn't end here. It could continue with another complaint  
13 if there was other information.

14                   Because I understand what you are talking  
15 about.

16                   COMMISSIONER BROWN: No, that is true.

17                   COMMISSIONER ALAMO: Because we are in a  
18 judiciary capacity, we are held in the dark. And again, how  
19 I started this today, unclear if I felt this was enough, too  
20 much or revocation was indicated. I did get more into warm  
21 and fuzzy with the line of questioning, and of course, the  
22 job that our Chairman Burnett did in kind of analyzing,  
23 explaining how the dollar value came. That is what I wanted  
24 to know.

25                   COMMISSIONER BROWN: Learning recently that



1     this has been -- this is the way it's done for years, that  
2     everybody can access each other's information, you don't get  
3     into the brain box, I understand that, but you can still  
4     look into the accounting room, like you say, I wish I had  
5     had the advantage of this of talking to people like your  
6     father and other people, other operators in this business to  
7     learn more about the background of this. I don't know.

8                 COMMISSIONER TOWNSEND: Commissioner Moran.

9                 COMMISSIONER MORAN: Very briefly, I echo what  
10     my fellow Commissioners have to say here. You know, if we  
11     had the advantage of seeing some of the investigative  
12     reports and things of that nature before we got here today,  
13     it would make our job a lot easier and we would be able to  
14     really want, which we do, to do the right thing, whether it  
15     is more or less or is that the number. We'd be better  
16     positioned to do that rather than just taking the easy way  
17     out, like I said before, and saying, okay, that's fine,  
18     let's move on to the next case.

19                I quite frankly came into this meeting and  
20     after hearing both you gentlemen, I was prepared before that  
21     and until I heard from Chairman Burnett on behalf of the  
22     Board, I was prepared to say I'm not going forward with this  
23     settlement. I'm not going to endorse it, I'm not going to  
24     sanction it because I don't know if that number is right. I  
25     don't know how that number was arrived at. I don't know if

1 the licensee should in fact have his day in court to say all  
2 the things about why that doesn't apply to him or whether  
3 the State wanted to say why it all does.

4 But after hearing what we have done here today  
5 to try to get all of us onboard with the information and how  
6 the fine was arrived at, I'm prepared to go forward as it  
7 relates to the stipulation and get this going. I think that  
8 Chairman Burnett has clearly said on behalf of the Board and  
9 the State that we want a message to go out there that  
10 proprietary information is not out there for the picking and  
11 grabbing competitively, it has a smell factor to do that.

12 I would be prepared at some time in these  
13 proceedings to make an appropriate motion to accept the  
14 stipulation now that I know how it was arrived at and I have  
15 heard from the attorneys and I have heard particularly from  
16 the Board and the Board Chairman on how we got to this spot  
17 and why. That is all I have to say at this time.

18 COMMISSIONER TOWNSEND: Okay. It was so well  
19 covered by the three previous speakers, let me just wrap  
20 this up a little bit.

21 First of all, the biggest challenge we have is  
22 not just making a decision today about what is in front of  
23 us, because we are looking at how this Commission operates  
24 with all stipulations and complaints. So we have to try to  
25 make sure we operate within a standard, and that's been very

1 tough because of the things that Dr. Alamo and Commissioner  
2 Moran brought forward, which is we don't see anything until  
3 this thing drops on our desk.

4 But I think Chairman Burnett did an excellent  
5 job of trying to give us some comfort level with how he and  
6 the Board came up with their thought process. That helps  
7 us, even though we don't have access and the only way we  
8 would get access to all the reports would be to actually go  
9 to hearing.

10 In the complaint, if you read it, it is on page  
11 3, one of the things that it talks about is that the  
12 respondent and the Board acknowledged that the stipulation  
13 for settlement is made to avoid litigation in economies of  
14 resources. It is really important to understand that were  
15 we to go on any of these stipulations and turn them down,  
16 and that may occur because we get one it seems like every  
17 month, it is going to be a very long and costly process for  
18 the State and the respondent in this case.

19 So that is important and I'm glad it was in  
20 here.

21 I also am glad that Mr. Schreck pointed out the  
22 issue that this is more or less joint and several. If the  
23 Board and their staff find anything else, they can come back  
24 after this licensee if they so deem that that would be  
25 appropriate, and Mr. Schreck, you articulated that and I

1 thought that was very important.

2 I don't have a clue what the District  
3 Attorney's Office is doing in Reno. I don't know why he  
4 didn't want to prosecute or not.

5 Mr. Schreck, I'm going to ask you this  
6 question. Was anybody at the Peppermill relieved of any  
7 duty because of their responsibilities in this action?

8 MR. SCHRECK: Mr. Tors was put on suspension  
9 through this entire period of time, paid because, as you can  
10 see from the complaint, he didn't necessarily act  
11 independently all the time. So it would be probably  
12 inappropriate to terminate him for following orders in a lot  
13 of instances. So he's been on paid leave through this  
14 entire period of time.

15 We wanted to see how the administrative process  
16 was going to resolve itself. We wanted to see how the  
17 criminal process was going to resolve itself. And then a  
18 decision be made if he comes back.

19 COMMISSIONER TOWNSEND: I would hope that all  
20 licensees in the future, if this was known -- and this is  
21 something that is in the complaint on page 6, it talks about  
22 the Board's investigation believes the Peppermill Casino  
23 management knew of, approved and directed Mr. Tors. It's  
24 been testified to here today that although everybody knew  
25 this was going on and they wanted him to do it, they didn't

1 think it was illegal.

2 Well, either they didn't call your office, or  
3 they didn't use their in-house counsel or someone made an  
4 assumption. But we all know when we assume something what  
5 it does.

6 So I would hope it would send a message for all  
7 of our licensees, don't assume you think you know the law.  
8 Make sure you do. Otherwise it might be a company who can't  
9 afford to be put through an investigation.

10 I don't know how far up it goes. I have known  
11 Mr. Paganetti for 40 years, he and his family. He and I go  
12 so far back that not only was his hair dark, mine was to my  
13 shoulders, and I used to eat in his little steakhouse called  
14 Sirloins on South Virginia Street, and that's a long long  
15 time ago. That is long before the Peppermill ever came to  
16 an existence.

17 I have confidence having known him and  
18 interacted with him professionally for 30 years in my other  
19 job and having lived in the same community with him and  
20 interacted with his organization, that if he truly didn't  
21 believe there was anything nefarious going on, this is not  
22 coming from him. It may have come from somebody else, but  
23 it wasn't coming from him. It is not his style. It is not  
24 his reputation.

25 I hope he, shall we say, gets the attention of

1     those that might have known, should have known or directed  
2     that even though you don't think it's wrong, don't do it.  
3     If you got to think about it, it is probably not the right  
4     thing to do. It is kind of the way we tell our kids, if you  
5     have to stop for a second and say is this okay to do, you  
6     probably shouldn't.

7             Civil litigation is going to follow and we will  
8     find out where that goes.

9             I noticed, Mr. Somps, in here there is nothing  
10    that addresses what we see in most of our stipulations,  
11    which is how are you going to fix the problem. There is  
12    usually a paragraph or two or three that says they have  
13    agreed to do this, they have agreed to do this, they have  
14    agreed to do that. I know that is not in there. Is there a  
15    reason for that?

16            MR. SOMPS: Honestly, Mr. Vice Chairman, that  
17    wasn't something that the Board felt it needed to do given  
18    the message that is sent with the fine. I think that the  
19    Peppermill --

20            COMMISSIONER TOWNSEND: That is a fair answer.  
21    It is just that it is in every single one of your things. I  
22    know it is in your computer program. So I wanted to double  
23    check you.

24            MR. SOMPS: I'm sure that Mr. Schreck would  
25    represent for the Peppermill that this is not going to

1       happen again.

2                   COMMISSIONER TOWNSEND: I think I can look  
3       Mr. Paganetti in the eye and I know that is not going to  
4       happen.

5                   Lastly, I want you to know, Mr. Schreck, you  
6       and I have known each other for many many years, our wives  
7       have been best friends for many years, you did a remarkable  
8       job today in managing to make your client the victim instead  
9       of the perpetrator. A great job. You don't see that except  
10      on one of these nighttime TV things that we watch. But you  
11      both did a good job.

12                  Hopefully thanks to the articulation of the  
13      three other members of this Commission -- and I'm really  
14      sorry our Chairman was unable to participate for reasons  
15      that are obvious, because he is our Chairman and he is very  
16      articulate -- that this message that has been put out here  
17      by this Commission and by this Board is to all licensees.  
18      This is not just to this particular licensee. This is to  
19      all licensees. We take these things seriously, we are going  
20      to drill to the bottom of them, no matter how long it takes.  
21      And we will conclude with that.

22                  I will ask you two if there is any other thing  
23      you'd like to say before the Chair takes a motion.

24                  MR. SCHRECK: I know everybody has been waiting  
25      to finish the regulations.

1 COMMISSIONER TOWNSEND: We have that wonderful  
2 regulation.

3 MR. SCHRECK: I apologize for that. But first  
4 of all, I would like to acknowledge Justin Woods and Andrew  
5 Wright, who are the two Enforcement agents that handled this  
6 case. This was a very difficult case. There are a lot of  
7 emotions going back and forth with respect to it. I can  
8 tell you they handled it as professionally as anybody could  
9 ever handle it. They had very long interviews, they had  
10 very contentious issues to deal with. And they did the  
11 highest level of professionalism, and I was really proud to  
12 be associated with them in resolving this matter.

13 As a final thing, and it will be very short,  
14 and because he is very nervous and been devastated by this  
15 proceeding and the conduct of his company and himself,  
16 Mr. Paganetti would like to just read a short statement.

17 COMMISSIONER TOWNSEND: Sure.

18 MR. PAGANETTI: First of all, I wanted to  
19 apologize. I'm severely impaired, and that is why I'm going  
20 like this and I lip read. I have Lemierre's syndrome, and  
21 with age it is getting worse. If I'm leaning forward, I was  
22 moving seats.

23 COMMISSIONER MORAN: You might want to have him  
24 identify himself for the record.

25 MR. SCHRECK: Give your name for the record.



1 MR. PAGANETTI: I'm sorry. William Alford  
2 Paganetti, Jr. And so I use this for up and down, and it's  
3 a real clarity issue. So I apologize in I'm moving forward  
4 and looking at you.

5 This is a very -- I don't like to read  
6 statements, and I like to be out of the public limelight. I  
7 have turned down every interview, and I have had a lot of  
8 interviews because what we have done as a private company.  
9 But I'm really humbled today. And I am ashamed -- I hate to  
10 read but I'll read.

11 I am ashamed to appear before this Commission  
12 under these circumstances. I recognize and admit how  
13 inappropriate it was for me to allow the Peppermill to be  
14 involved in this type of conduct.

15 The conduct cited in the complaint has not only  
16 created the most embarrassment in my 75 years, it has been  
17 personally devastating to me and to my family.

18 I have been a licensee for right about 43  
19 years. I have always prided myself on conducting gaming  
20 operations with the utmost integrity. I have never had a  
21 material issue in the Gaming Control Board concerning the  
22 Peppermill gaming operations during the 43 years.

23 We have probably averaged about 5,000  
24 employees, we run six casinos, six of them for the last  
25 about 10 years as they have accumulated, and I hope that we

1 have been a benefit to the state. We took over, of the six  
2 casinos, and I probably I guess the statutes have run out,  
3 but when Randy was talking about the Sirloin Steakhouse and  
4 we opened the little Peppermill as a coffee shop, I bounced  
5 a \$250 check, that was the days before technology, I wrote  
6 \$250 that I didn't have to put in the cash register to get  
7 enough revenue to pay it back the next day.

8 I'm not asking for any sympathy, but I'm a  
9 sincere person and I have always prided myself on being an  
10 honest person and giving back to the community. This matter  
11 is totally inconsistent with the way I have conducted myself  
12 as a gaming licensee.

13 The only mitigating fact, that the information  
14 was never used by me or the Peppermill to gain competitive  
15 advantage over any casino. No casinos got victimized for  
16 one penny. They have a philosophy, we have a philosophy.

17 I was as dumb as a post to let this continue  
18 and believe in that everybody does this, you can buy it on  
19 the Internet, didn't take time to think of it, got an  
20 e-mail, threw it in the waste basket, because it wasn't  
21 going to change what we do, which has made us successful.

22 I have sent letters to casino operators  
23 identified in the complaint apologizing for our conduct. I  
24 was advised not to send one to the one we are in civil  
25 litigation with.

1 I'm meeting with Mike Ensign and David Ensign  
2 tomorrow and handing them, even though I don't have to  
3 because I called them, I called David and he told his dad --  
4 and I don't want this to sound wrong, they don't have an  
5 issue, but we have such a relationship. And I knew what  
6 their pars were anyway because you got three casinos, they  
7 have two, you take the abstract, you subtract what we have  
8 and you know what the pars are. I'm meeting with them  
9 tomorrow on another matter because we are trying to market  
10 Wendover maybe a little more together, then use our shuttle  
11 bus. We took a tremendous, when we went into Wendover --

12 MR. SCHRECK: People are waiting.

13 MR. PAGANETTI: Let me just finish.

14 The most important part is I want to rebuild  
15 the credibility with the Board and the Commission. That is  
16 my number one issue. I hope you believe me.

17 I also apologize to the Commission for the  
18 embarrassment of our action I have created. I pledge to you  
19 this conduct will never happen again. Thank you.

20 COMMISSIONER TOWNSEND: Thank you.

21 MR. PAGANETTI: I would be up here all day.

22 COMMISSIONER TOWNSEND: You have to leave to  
23 meet with the Ensigns eventually.

24 All right. Commissioner Moran.

25 COMMISSIONER MORAN: If the Chair is prepared

1 and my fellow Commissioners don't have any other further  
2 inquiry, I'm prepared to make a motion.

3 COMMISSIONER TOWNSEND: All right.

4 COMMISSIONER MORAN: Mr. Vice Chair. First of  
5 all, I appreciate you, sir, coming up to the microphone and  
6 giving us your thoughts. And everybody is entitled to a  
7 mistake, and I think that if you would have been probably  
8 correctly advised as to the law and what was actually going  
9 on there, you may not have gone down this road. But all I  
10 can tell you is you have a good reputation in the community  
11 with people I know, and your establishments are well  
12 respected and well thought of. So I wanted to let you know  
13 that, and I appreciate you coming down here.

14 After hearing all of this, and I appreciate the  
15 attorneys and particularly our staff and the Board for the  
16 hard work they do on these things, they have answered, all  
17 of you have answered most of my questions which really  
18 revolved around the facts of this matter and what gave rise  
19 to that amount. So having said all of that, I'm prepared to  
20 make a motion to approve the stipulation for settlement and  
21 order whereby respondent will pay a million dollars for the  
22 violations admitted to as outlined in the complaint, and  
23 part of my motion would also include authorizing the Vice  
24 Chair, Commissioner Townsend, Senator Townsend to execute  
25 the signature line on the stipulation for settlement and the

1 order.

2 COMMISSIONER TOWNSEND: Any discussion? All  
3 those in favor say aye. Any opposed.

4 COMMISSIONER BROWN: I abstain.

5 COMMISSIONER TOWNSEND: That is right.

6 Commissioner Brown abstains. So it's been accepted 3-0.

7 (Whereupon, the motion was put to a vote and  
8 carried unanimously.)

9	MR. ALAMO:	Aye.
10	MR. TOWNSEND:	Aye.
11	MR. MORAN:	Aye.

12 COMMISSIONER TOWNSEND: Thank you for the work.  
13 More importantly, thanks to the Board, thank all of your  
14 staff at every level, Chief Barbee, your investigators.  
15 Everyone did a remarkable job, particularly to inform all of  
16 us who weren't exactly experts on 2341 keys. That was a  
17 great experience, and we thank them and thank you for your  
18 remarkable work. State of Nevada doesn't pay enough, but  
19 you knew that when I was there. So we will get you there  
20 some day. You guys, all 400 of you do a remarkable job.

21 Thank you both very much. Mr. Schreck, thanks  
22 for your advocacy.

23 Mr. Soms, as usual, we got the most out of you  
24 for a dollar 75 an hour that we are paying you.

25 And that concludes this.

1                   So, Madam Secretary, I think we are going back  
2 to -- let's take three minutes so that we can take care of  
3 Mr. Nelson.

4                   (Recess taken at 3:42 p.m.)  
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1 STATE OF NEVADA, )  
2 ) ss.  
3 COUNTY OF WASHOE. )  
4

5 I, ERIC V. NELSON, Certified Court Reporter and  
6 a notary public in and for the County of Washoe, State of  
7 Nevada, do hereby certify:

8 That I was present at the meeting of the NEVADA  
9 STATE GAMING COMMISSION on Thursday, February 20, 2014, and  
10 thereafter took stenotype notes of the proceedings, and  
11 thereafter transcribed the same into typewriting as herein  
12 appears;

13 That the foregoing transcript is a full, true  
14 and correct transcription of my stenotype notes of said  
15 proceedings.

16 Dated at Reno, Nevada, this 25th day of  
17 February 2014.

18  
19  
20  
21 \_\_\_\_\_  
22 ERIC V. NELSON, CCR #57  
23  
24  
25

**Exhibit “7”**

**Exhibit “7”**



AFFIDAVIT OF DAVID G. SCHWARTZ, PH.D.

STATE OF NEVADA        )  
COUNTY OF CLARK        ) ss:

I, David G. Schwartz being duly sworn on oath and under the penalty of perjury state that the following is true of my own personal knowledge and if called to testify in this matter would testify as follows

1 I am a the Director of the Center for Gaming Research at the University of Nevada, Las Vegas.

My CV is attached hereto and incorporated herein as to my credentials.

2. I have been retained to offer expert testimony in the case of GSR v. Peppermill on the subject of damages sustained by GSR by the misappropriation of trade secrets by the Defendant Peppermill.

3. I will testify that GSR is seeking damages based on a royalty theory based on the value of the misappropriated trade secrets to Peppermill and the economic benefit obtained by Peppermill in not incurring the costs of obtaining such information by legal means.

4. These damages may be shown by two separate computational methodologies. The first is based on the use to which Peppermill put the misappropriated information consisting of the pars of several slot machines over time and would include the use of the information in Peppermill's marketing, advertising, promotion, or evaluating its own pars on similar slot machines.

5. The second and equally valid method of calculation of the damages is based upon the economic benefit obtained by Peppermill by having obtained the information through misappropriation and is based on what it would have cost Peppermill to obtain the information legally.

...

...

...

1           6.       This calculation is the amount of money it would have taken a person to have  
2 determined the par of a slot machine based on play. Play would be defined as playing the  
3 maximum coin value of the machine for a period sufficient to allow such a determination plus  
4 the related costs of the salary of the persons doing the playing.

5           7.       Based on a survey of the current academic literature, I estimate this accurately  
6 determining the par through simple observation (rather than using illicit means to discover that  
7 information) would entail in most penny machines a cost of \$4.00 per play for minimum of  
8 20,000 hours of continuous play at 500 spins per had for an estimate cost of \$600,000 per  
9 machine, exclusive of labor costs. One would also have to factor in a comparable wage to keep  
10 the machine staffed for 20,000 man-hours. At an assumed salary of \$9/hour, that gives an  
11 additional \$180,000, exclusive of benefits and other costs, bring the hypothetical costs at \$780,000.  
12 In addition, the simple act of playing the machine so intensively and for such a long period  
13 would trigger several flags, making it impossible to collect the information legally. For that  
14 reason, the value of gaining this information, which no other competitors would share, is likely  
15 higher than its hypothetical cost.

16           8.       I am unclear about why trade secrets disclosing GSR's methods of routine  
17 operation would be relevant to determine whether the Peppermill was unjustly enriched by its  
18 access to GSR's (and other casinos') par information. To my knowledge, GSR's internal  
19 communications, methods for setting par values, and marketing discussions have no bearing on  
20 the uses to which Peppermill put the par information, or Peppermill's rationale for collecting that  
21 information.

22           9.       In my opinion, to more precisely determine the full value and use of the  
23 information it will be necessary for me to obtain the names of all the slot machine illegally  
24 accessed, the dates of that access, and the casinos where the machines were located. The specific  
25 par information obtained from each machine is not necessary at this time and may be redacted;  
26 however, it would be of value to know the range of possible par settings for each machine.

27 ...

28 ...

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# David G. Schwartz, Ph.D.      Curriculum Vitae

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(702) 895-2242 | fax (702) 895-2253 | email: [dgs@unlv.nevada.edu](mailto:dgs@unlv.nevada.edu)

## Employment

### **Director, Center for Gaming Research**

University of Nevada, Las Vegas

January 2001-present

- Responsible for maintaining and enhancing the Gaming Collection, the world's largest collection of scholarly research and source documents on gaming and related areas
- Responsible for coordinating the Center's fellowship program and all public events
- Creator and manager of the Center's website, <http://gaming.unlv.edu>

### **Gaming and Hospitality Editor**

*Vegas Seven*, Las Vegas, Nevada

May 2012-present

- Author of *Green Felt Journal* gaming industry column, essays, and feature pieces
- From January 2010, freelance writer covering the same topics

### **Vice President of Research and Analytics**

Santo Gaming, Las Vegas, Nevada

January 2012-present

- Assist full-service management and consulting company in identifying and pursuing new business opportunities
- Create and use analytical tools and methods to help the company reach its objectives
- Help use insights to improve operational efficiencies

## Education

University of California, Los Angeles

**Ph.D in American History**, 2000

- Dissertation: *Suburban Xanadu: The Casino Resort on the Las Vegas Strip, 1945-1978*

University of Pennsylvania | Philadelphia, PA

**Bachelor of Arts** degrees in Anthropology and History, 1995, *magna cum laude*

**Master of Arts** degree in American History, 1995

- Masters Thesis: *Reflections in Blue: Jazz and Messianic and Quasi-Religious Movements*

Successfully completed training at Nevada Gaming Control Board Enforcement Academy  
03-04, "Protection of Games," Spring 2003.

## Courses Taught

- "The Faces of Las Vegas." HON 400.3. University of Nevada Las Vegas, Fall 2013.
- "The History of Casinos." HON 400.6 University of Nevada Las Vegas, Spring 2013.
- "Gambling and the Media." HON 400.1. University of Nevada Las Vegas, Fall 2012.
- "Creative Non-Fiction." HON 400.1. University of Nevada Las Vegas, Summer 2012.
- "The History of Casinos." HON 400.9 University of Nevada Las Vegas, Spring 2012.
- "Creative Non-Fiction." HON 400.1. University of Nevada Las Vegas, Summer 2011.
- "The History of Casinos." GAM 495.3. University of Nevada Las Vegas, Spring 2011.
- "Gambling and the Media." HON 400.1. University of Nevada Las Vegas, Summer 2010.
- "Crafting Creative Non-Fiction." HON 400.1. University of Nevada Las Vegas, Summer 2009.
- "Crafting Creative Non-Fiction." HON 400.1. University of Nevada Las Vegas, Summer 2008.
- "The History of Gambling." GAM 495/HIS 498 . University of Nevada Reno, Spring 2008.
- "Economic and Social Aspects of Gaming and Gambling." ECON 411/611. University of Nevada Reno, Fall 2007.
- "The History of Gambling." HON 400.3. University of Nevada Las Vegas, Spring 2007.
- "Writing True: Creative Non-Fiction." Workshop at Winter Getaway, Cape May, New Jersey, January 2007.
- "United States History, Colonial Period to 1865." HIS 101, Sections 11, 13. University of Nevada Las Vegas, Spring 2004.
- "Nevada and the Far West." HIS 404. University of Nevada Las Vegas, Fall 2003.
- "History of Casino Gaming in the United States." HMD 376b. University of Nevada Las Vegas, Fall 2003.
- "Hospitality Security and Asset Protection." HMD 410. University of Nevada Las Vegas, Spring 2003.
- "History of Casino Gaming in the United States." HMD 376b. University of Nevada Las Vegas, Fall 2002.
- "Communications for the Casino Management Professional." Fairleigh Dickinson University, Atlantic City Extension, Fall 2000.

"History of Casino Gaming in the United States." Fairleigh Dickinson University, Atlantic City Extension, Fall 2000.

"Casino Management: Economic and Social Approaches." Fairleigh Dickinson University, Atlantic City Extension, Fall 2000.

#### Legal Consulting: Clients

Ainsworth Game Technology

Schreck Brignone LLP

Mendel Blumenfeld LLP

Fenwick and West LLP

Gary, Williams, Parenti, Finney, Lewis, McManus, Watson, & Sperando LLP

Kirkland and Ellis LLP

Klasquist Sparkman LLP

O'Melveny & Myers LLP

Morris Pickering & Peterson LLP

Rembrandt IP Management

Cothorn Mackley, P.C.

#### Historical and Strategic Consulting: Clients

GSRAC Associates

Grand Sierra Resort

Venetian Casino, Hotel, and Resort

Global Gaming Asset Management

El Cortez

Las Vegas Hilton (Colony Capital, LLC)

Antigua and Barbuda

Atlas Media, producers of *Modern Marvels*

Game Tech, International

Simms Foundation

International Game Technology

Corum

United States Department of the Treasury

New Wave Entertainment

Floridians for Property Tax Relief

El Ad Properties

## Publications

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### Books

*Grandissimo: The First Emperor of Las Vegas*. Las Vegas: Winchester Books, 2013.

*Frontiers in Chance: Gaming Research across the Disciplines* (editor). Las Vegas: UNLV Gaming Press, 2013.

*Roll the Bones: The History of Gambling. Casino Edition*. Las Vegas: Winchester Books, 2013.

Pauliina Raento and David G. Schwartz, editors, *Gambling, Space, and Time: Shifting Boundaries and Cultures*. Reno: University of Nevada Press, 2011.

*Roll the Bones: The History of Gambling*. New York: Gotham Books, 2006.

*Cutting the Wire: Gambling Prohibition and the Internet*. Reno: University of Nevada Press, 2005.

*Suburban Xanadu: The Casino Resort on the Las Vegas Strip and Beyond*. New York: Routledge, 2003.

### Chapters in Books

"Gaming and Entertainment," in John R. Walker, ed., *Introduction to Hospitality*, 6th edition. Upper Saddle River, New Jersey: Pearson, 2013.

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"Moving the Line: A Postfrontier Reinterpretation of American Gambling." In Paulina Raento and David G. Schwartz, editors, *Gambling, Space, and Time: Shifting Boundaries and Cultures*. Reno: University of Nevada Press, 2011.

"Gambling," *Key Issues in Crime and Punishment. Volume One: Crime and Criminal Behavior*, edited by William Chambliss and J. Geoffrey Golson. Los Angeles: SAGE Publications, 2011.

## Research Reports

"Initial Competitive Analysis: Atlantic City Market." Prepared for the Meruelo Group, Atlantic City, New Jersey, 2013.

"Comparative Analysis: Phase II: Tier Structure and Tier Credit Design, Select Study of Grand Sierra Resort and Two Competitive Properties." Prepared for Grand Sierra Resort, Reno, Nevada, 2013.

"Initial Comparative Analysis: Tier Structure and Tier Credit Design, Select Study of Grand Sierra Resort and Three Competitive Properties." Prepared for Grand Sierra Resort, Reno, Nevada, 2012.

"Casino Gambling's Real Impact: Economic, Social, and Community Dividends." Prepared for Global Gaming Asset Management, Las Vegas, Nevada 2012.

"Tweeting to Win: Social Media and Casino Marketing." CLSA U Blue Book Series. New York: CLSA, 2010.

## Scholarly Articles (Refereed)

"Consolidation and Competition on the Las Vegas Strip." *Gaming Law Review and Economics*. (17, no. 9) November 2013 619-34.

"Attesting to Unique Attractions: The Significance of the President's Commission on Organized Crime (1984-1986) Gambling Hearings." *Gaming Law Review and Economics*. (17, no. 8) October 2013. 560-78.

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"Not Undertaking the Almost-Impossible Task: The 1961 Wire Act's Development, Initial Applications, and Ultimate Purpose." *Gaming Law Review and Economics* 14, no. 7 (2010): 533-540.



- "The Burger King Revolution: How Las Vegas Bounced Back, 1983-1989." *Gaming Law Review and Economics* 14, no. 4 (2010): 261-273.
- "Notes and Documents: Bookkeeper in a Gambling Joint." *Nevada Historical Society Quarterly* 47, no. 3 (Fall 2004): 215-222.
- "Carnival Entertainment: The Carnival Origins of Professional Wrestling and Casino Gambling, or 'Sports Entertainment' and 'Casino Entertainment.'" *Popular Culture Review* 14, no. 2 (Summer 2003): 5-14.
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- "A Fun Night Out:" Shifting Legal and Cultural Constructions of Gambling, the Slot Machine, and the Creation of the Casino Resort." *Gaming Law Review* 1, no. 4 (Winter 1997). 547-559.
- "Portrait of a Jazz Virtuoso: The Life, Music, and Legacy of Jimmy Blanton." *Penn History Review* 2, no. 1 (June 1994). 1-7.

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- "Tribute to the International Conference on Gambling and Risk-Taking." *UNLV Gaming Research and Review Journal*. 16, no. 2 (2012).
- "Seeking Value or Entertainment? The Evolution of Nevada Slot Hold, 1992-2009, and the Slot Players' Experience," Occasional Paper Series 1. Las Vegas: Center for Gaming Research, University Libraries, University of Nevada Las Vegas, 2010.
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Review of *Out of the Jungle: Jimmy Hoffa and the Remaking of the American Working Class*, by Thaddeus Russell, *Nevada Historical Society Quarterly*: 48, no. 3 (Fall 2005). 419-420.

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"Bible Slots, Flood Not Included." *Vegas Seven*. November 20, 2013.

"How Can We Keep Nightclubs Safe?" October 29, 2013.

"Forward to the Future at G2E." October 17, 2013.

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"How Jay Sarno Made Las Vegas." *Vegas Seven*. October 10, 2013.

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"For Linq's Future, Image Is Everything." *Vegas Seven*. September 11, 2013.

"The Green Felt Jungle and the Making of the Bugsy Myth." *Vegas Seven*. September 4, 2013.

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"Pin Interest." *Vegas Seven*. June 25, 2013.

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"The History of Our Future." *Vegas Seven*. May 15, 2013.

"Seven Questions for Linda Quinn, Discovery Children's Museum CEO." *Vegas Seven*. May 15, 2013.

"One Game's Wild Ride." *Vegas Seven*. May 8, 2013.

"Anatomy of a Nightclub." *Vegas Seven*. April 24, 2013.

"How to Get Spacey Without Going to Space." *Vegas Seven*. April 24, 2013.

"Vegas to the Moon!" *Vegas Seven*. April 24, 2013.

"MGM's Park, and Competition with Linq, Will Be Good for Vegas." *Vegas Seven*. April 24, 2013.

"Will Video Games Go Vegas?" *Vegas Seven*. April 17, 2013.

"The British Are Coming!" *Vegas Seven*. April 3, 2013.

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"A Game-Changing Scholar." *Vegas Seven*. February 21, 2013.

"The Long Shadows of Vegas Hubris." *Vegas Seven*. February 14, 2013.

"Rethinking the Transportation-Hospitality Complex." *Vegas Seven*. February 7, 2013.

"How Brits Gamble." *Vegas Seven*. February 7, 2013.

"Mobbing the Mob Museum." *Vegas Seven*. February 7, 2013.

"Are We Now Chasing Macau?" *Vegas Seven*. January 24, 2013.

"Adam Mizzi: The Prophet of Small." *Vegas Seven*. January 24, 2013.

"Bryan McCormick: The Sign Keeper." *Vegas Seven*. January 24, 2013.

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"Taking Pleasure in Pain." *Vegas Seven*. November 29, 2012.

"The New Road Starts Here." *Vegas Seven*. November 22, 2012.

"Inside the Trading Room." *Vegas Seven*. November 8, 2012.

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"Sport of Kings." *Casino Connection*, May 2006, 48.

"Last Frontier Stagecoach" *Casino Connection (Nevada)*, May 2006, 41.

"Jay Sarno's legacy stands tall on the Strip," *Las Vegas Business Press*, April 17, 2006.

"'Tacky' Vegas serves the city and people just fine," *Las Vegas Business Press*, April 3, 2006.

"Keeping Us Well." *Casino Connection*, April 2006, 62.

"'Back to Basics' might be next big Strip thing," *Las Vegas Business Press*, March 20, 2005.

"Oh, Canada, you're barking up the wrong tree," *Las Vegas Business Press*, March 6 2006.

"French Follies: How the Lido de Paris came to Las Vegas," *Casino Connection (Nevada)*, March 2006, 41.

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"Sports leagues can no longer stick their heads in the sand." *Las Vegas Business Press*, February 20, 2006.

"Legislating sports betting is not the impossible dream." *Las Vegas Business Press*, February 6, 2006.

"The El Morocco," *Casino Connection (Nevada)*, February 2006, 37.

"At the Curb: Club Harlem was the epicenter of the entertainment world on Kentucky Avenue." *Casino Connection*, February 2006, 54.

"Las Vegas Needs to Tread Carefully." *Las Vegas Business Press*, January 23, 2006.

"Wynn's Return a Defining Moment for the Strip." *Las Vegas Business Press*, January 9, 2006.

"The Arizona Club," *Casino Connection (Nevada)*, January 2006, 37.

"The Road Not Taken: Plans were made—and unmade—in the early days of gaming in Atlantic City." *Casino Connection*, January 2006, 70.

"Neighborhood Casinos: The next generation has arrived." *Las Vegas Business Press*, December 27, 2005.

"Atlantic City is really challenging Las Vegas." *Las Vegas Business Press*, December 12, 2005.

"Downtown's Development," *Casino Connection (Nevada)*, December 2005, 39.

"The Survivor," *Casino Connection*, December 2005, 72.

"Qatar May Show the Future of the Casino" *Las Vegas Business Press*, November 28, 2005.

"Casinos were never Hughes' Real Strength." *Las Vegas Business Press*, November 14, 2005.

"The Land Auction," *Casino Connection (Nevada)*, November 2005, 37.

"The real Bugsy Siegel? His era was very short-lived." *Las Vegas Business Press*, October 31, 2005.

"Religion has a very mixed-up view of gambling." *Las Vegas Business Press*, October 17, 2005.

"The Biggest and Brightest: The Traymore Hotel was Atlantic City's largest hotel and one that casts a big shadow," *Casino Connection*, October 2005, 70.

"Storm of the Century: The Hurricane of '44 pounded Atlantic City like no other storm," *Casino Connection*, September 2005, 70.

- "Water Marathon," *Casino Connection*, August 2005, 62.
- "Lighting the way: The Absecon Lighthouse dates back to the beginning of Atlantic City," *Casino Connection*, July 2005, 62.
- "Giving Back: Atlantic City Free Public Library celebrates 100 years," *Casino Connection*, June 2005, 62.
- "The fourth generation," *Casino Design, A Global Gaming Business Publication*. Annual supplement 2005, 56-9.
- "The Desert Inn was the real future of Las Vegas," *Las Vegas Business Press*, May 9, 2005.
- "Start Me Up: Memories of Memorial Day and the beginning of summers," *Casino Connection*, May 2005, 62.
- "I'll Remember April: One month in Atlantic City a century ago," *Casino Connection*, April 2005, 62.
- "Tracking Transportation: Trolleys give way to jitneys, making Atlantic City public transport unique," *Casino Connection*, March 2005, 62.
- "The Captain's Pier," *Casino Connection*, February 2005, 48.
- "Castle in the Sand: The Marlborough-Blenheim and its place in Atlantic City history," *Casino Connection*, January 2005, 48.
- "Christmas on the Boardwalk," *Casino Connection*, December 2004, 48.
- "Flying High: The Atlantic City Seagulls were the city's first hockey team," *Casino Connection*, November 2004, 46.
- "Conventional Wisdom: Boardwalk Hall celebrates its 75<sup>th</sup> anniversary," *Casino Connection*, October 2004, 44.
- "Pretty Girls & Business.: How Miss America was born and thrived in the early days of Atlantic City," *Casino Connection*, September 2004, 62.
- "The Great War: Atlantic City and World War I," *Casino Connection*, August 2004, 38.
- "Greetings from Slotsylvania," *Pittsburgh Post-Gazette*, July 11, 2004.
- "Beaten to the Punch: The original Brighton Hotel and its many claims to fame," *Casino Connection*, July 2004, 62.
- "Pier-less: The Steel Pier and its important place in the history of Atlantic City," *Casino Connection*, June 2004, 42.
- "First and Foremost: The United States Hotel was the first 'mega-resort' in Atlantic City," *Casino Connection*, May 2004, 42.
- "The Easter Parade: An Atlantic City tradition." *Casino Connection*, April 2004, 62.

- "A Mighty Wind: The Great Storm of 1962 and its impact on Atlantic City," *Casino Connection*, March 2004, 42.
- "Prohibition Party," *Casino Connection*, January 2004, 42.
- "Horse Rooms: Atlantic City's first destination gambling," *Casino Connection*, December 2003, 62.
- "Does the Casino Industry Really Destroy the Past?" *Global Gaming Business Weekly*, October 27, 2003, 15.
- "The Strip as Suburbia," *Global Gaming Business*, September 15, 2003, 23.
- "Gangs and Gambling," *Global Gaming Business*, March 15, 2003, 34.
- "Father of American Gambling?" *Global Gaming Business*, December 15, 2002, 15.
- "A Sign of the Times," *Las Vegas Magazine*, March/April 2002.
- "Architect Martin Stern dies after putting Strip on the map," *Las Vegas City Life*, August 2, 2001. 8.
- "Internet Gaming: All or Nothing at All?" *Las Vegas City Life*, July 5, 2001. 10.

#### Online Exhibits/Exhibitions

- "Sarno Awards for Lifetime Achievement." URL:  
<http://gaming.unlv.edu/sarnoawards/index.html>
- "The Gaming Hall of Fame." Exhibition for 2007 Global Gaming Expo, November 2007.  
Online at <http://gaming.unlv.edu/dining/index.html>.
- "Fifty Years of Dining on the Las Vegas Strip." Exhibition for 2006 Global Gaming Expo, November 2006. Online at <http://gaming.unlv.edu/dining/index.html>.
- "A Centennial Celebration of Gaming in Las Vegas." Exhibition for 2005 Global Gaming Expo, September 2005. Online at: <http://gaming.unlv.edu/centennial/index.html>.
- "Casino Carpet." Visual exploration of a unique art form. URL:  
<http://www.dieiscast.com/gallerycarpet.html>. Summer 2004.
- "Neon Survey: Las Vegas Strip from Sunset to Sahara." University of Nevada Las Vegas.  
URL: [http://gaming.unlv.edu/v\\_museum/neon\\_survey/index.html](http://gaming.unlv.edu/v_museum/neon_survey/index.html). Fall 2002.
- "World Series of Poker: A Retrospective," University of Nevada Las Vegas. URL:  
<http://gaming.unlv.edu/WSOP/casino.html>. Spring 2002.
- "Hotel El Rancho Vegas," University of Nevada Las Vegas. URL:  
<http://gaming.unlv.edu/ElRanchoVegas/casino.html>. Fall 2001.

"Gaming Art Gallery," University of Nevada Las Vegas. URL:  
<http://www.unlv.edu/centers/gaming/gallery/index.html>. Summer, 2001.

"Paradise Misplaced: The Xanadu Hotel and Casino" University of Nevada Las Vegas. URL:  
<http://www.unlv.edu/centers/gaming/Xanadu/index.html>. Spring, 2001.

## Presentations

### Academic Conferences

"Non-problem Gambling." Panel Moderator. 15<sup>th</sup> International Conference on Gaming and Risk-Taking. Las Vegas, Nevada. May 2013.

"Attesting to Unique Attractions: The Significance of the President's Commission on Organized Crime (1984-1986) Gambling Hearings." 15<sup>th</sup> International Conference on Gaming and Risk-Taking. Las Vegas, Nevada. May 2013.

"Organized Crime and Gambling in the United States." Panel Moderator. 15<sup>th</sup> International Conference on Gaming and Risk-Taking. Las Vegas, Nevada. May 2013.

"Publishing Your Work: Editor's Panel." Discussant. 15<sup>th</sup> International Conference on Gaming and Risk-Taking. Las Vegas, Nevada. May 2013.

"Concentration on the Las Vegas Strip." 15<sup>th</sup> International Conference on Gaming and Risk-Taking. Las Vegas, Nevada. May 2013.

"Upstarts to Emperors." Opening Keynote Address. 15<sup>th</sup> International Conference on Gaming and Risk-Taking. Las Vegas, Nevada. May 2013.

"Penny Wise, Player Foolish? State Regulation, Slot Hold, and Consumer Preference." Association of Private Enterprise Educators Annual Conference. Las Vegas, Nevada, April 2010.

"Brush with Gruffness: Dealing with Difficult Interviewees." Southwest Oral History Association Annual Conference. Boulder City, Nevada. April 2010.

"Studying Gambling: Resources and Strategies." Panel moderator, 14<sup>th</sup> International Conference on Gaming and Risk-Taking. Lake Tahoe, Nevada. May 2009.

"Analyzing Poker." Panel moderator, 14<sup>th</sup> International Conference on Gaming and Risk-Taking. Lake Tahoe, Nevada. May 2009.

"No More Full House: How Nevada Bounced Back in the 1980s." Presented at 14<sup>th</sup> International Conference on Gaming and Risk-Taking. Lake Tahoe, Nevada. May 2009.

- "Different Audiences, Different Approaches: Teaching Gambling Across the Colleges." Presented at 14<sup>th</sup> International Conference on Gaming and Risk-Taking. Lake Tahoe, Nevada. May 2009.
- Conferee, "Autonomy and Entanglement in Homer's Odyssey." Sponsored by the Liberty Fund. Hermosa Beach, California. May 2009.
- "Casino Culture for Anthropologists." Keynote address, Society for Cross-Cultural Research Annual Conference. Las Vegas, Nevada, February 2009.
- Conferee, "Property Rights and the Environment." Sponsored by the Liberty Fund and PERC. Big Sky, Montana. September 2008.
- "Free Market Casinos? Casino Regulation, Consumer Confidence, and Barriers to Entry." Association for Private Enterprise Education 2008 conference. Las Vegas, Nevada. April 2008.
- Conferee, "The Place of Liberty in the Processes of Economic and Institutional Change." Sponsored by the Liberty Fund. Hermosa Beach, California. November 2007.
- "The Revolutionary Ridotto." Presented at 13<sup>th</sup> International Conference on Gaming and Risk-Taking. Lake Tahoe, Nevada. May 2006.
- "The Life of a Carnival Con Artist: Honest John Kelly." Presented at 2006 Far West Popular and American Culture Associations Conference. Las Vegas, Nevada, January 2006.
- "Author Meets Critics: David G. Schwartz, Cutting the Wire." 2005 Social Science History Association Conference. Portland, Oregon, November 2005.
- "Art for Gamblers' Feet: Casino Carpet from Coast to Coast." Presented at 2005 Far West Popular and American Culture Associations Conference. Las Vegas, Nevada, February 2005.
- "Creating a Gaming Destination: Lessons from Monte Carlo, Las Vegas, and Atlantic City." Closing Keynote address, International Conference on Gaming Industry and Public Welfare. Macau, China. December 2004.
- Part of roundtable, "The Influence of Eric Monkkonen on Criminal Justice History." 29<sup>th</sup> Annual Meeting of the Social Science History Association. Chicago, Illinois. November 2004.
- "The Inherently Global Business of Gaming." Managing Globalization conference sponsored by University of Southern Mississippi. Long Beach, Mississippi. October 2004.
- "Moving the Line: A Post-Frontier Re-interpretation of American Gaming." Presentation at 2004 Western History Association Annual Meeting. Las Vegas, Nevada. October 2004.

"Suburban Xanadu: The Rise of the Las Vegas Strip and Urban Redevelopment."  
Presentation at 2004 Western Political Science Association Conference. Portland, Oregon.  
March 2004.

"Culture of Chance." Presentation at Nevada Library Association/Mountain Plains Library  
Association Conference 2003. Lake Tahoe, Nevada. November 2003.

"Creating an Enduring Tribute." Presentation at the 12<sup>th</sup> International Conference on  
Gambling and Risk Taking. Vancouver, BC, Canada. May 2003.

"Graduate Gaming Research." Symposium chaired at the 12<sup>th</sup> International Conference on  
Gambling and Risk Taking. Vancouver, BC, Canada. May 2003.

"God is Still in Control: Analyzing a Real Memorial at a Faux New York." Presentation at the  
2003 Popular Culture Association/American Cultural Association National Conference.  
New Orleans, LA. April 2003.

"Booking for the Marks: The Shared Carnival Roots of Casino Gambling and Professional  
Wrestling." Luncheon Keynote Address, 2003 Far West Popular Culture Association  
Conference. Las Vegas, NV, February 2003.

"Frank Sinatra and the Cool Consensus: Looking at the Rat Pack, Race, and America." 34<sup>th</sup>  
Annual Conference, American Italian Historical Association. Las Vegas, NV, October 2001.

"Welcome to Paradise." 11<sup>th</sup> International Conference on Gambling and Risk-Taking, Las  
Vegas, NV. June 2000

"A Fun Night Out: Shifting Cultural Constructions of Gambling, the Slot Machine, and the  
Casino Resort." 10<sup>th</sup> International Conference on Gambling and Risk-Taking, Montreal,  
Canada, May 1997.

### Gaming and Professional Conferences

"Table Game Trends and Analysis: The UNLV Center for Gaming Research 2nd Annual  
Table Games Report." Cutting Edge Table Games Conference. Las Vegas, Nevada,  
November 2013.

"Hot Attractions, Cool Amenities: What Works Best in What Situation?" Panel Moderator.  
Global Gaming Expo. Las Vegas, Nevada, October 2013.

"Big Wheel Keeps on Rolling: Linq Case Study." Panel Moderator. Retail, Dining, and  
Entertainment Experience. Las Vegas, Nevada, May 2013.

"Brand Within a Brand: Hotels & Restaurants on Their Own." Panel Moderator. Retail,  
Dining, and Entertainment Experience. Las Vegas, Nevada, May 2013.



- "Social Media as a Research Resource." Talk for 27th Annual Las Vegas Joint Chapter Conference. Las Vegas, Nevada, March 2013.
- "Table Games Trends and Analysis: The UNLV Center for Gaming Research Annual Table Games Report." Opening Signature Session, Raving's Cutting Edge Table Games Conference. Las Vegas, Nevada, December 2012.
- "Marketing to Non-Gaming Customers: Reaping the Rewards." Panelist. Global Gaming Expo. Las Vegas, Nevada, October 2012.
- Panel moderator, "What Happens In Vegas Happens Everywhere." Retail, Dining, and Entertainment Experience. Las Vegas, Nevada, May 2012.
- Panel moderator, "Technology." UNLV William S. Boyd School of Law Internet Gaming Regulation Symposium. Las Vegas, Nevada, May 2012.
- "The Future of Market Research" Superpanel discussion at Southwest Marketing Research Association conference. Las Vegas, Nevada, April 2012.
- "Social Media Insights Part III: ROI." Moderator. Global Gaming Expo. Las Vegas, Nevada, October 2011.
- "Lotteries and Social Media: A Frontier in Cyberspace." Lottery Expo. Las Vegas, Nevada, November 2010.
- "Built This City: Project CityCenter Case Study." Moderator. Global Gaming Expo. Las Vegas, Nevada, November 2010.
- "Creating Identity: Using F & B as a Marketing Tool." Panelist. Global Gaming Expo. Las Vegas, Nevada, November 2009.
- "Research and Ethnic Marketing." Co-presented with Bill Zender at Player Development Summit/Casino Marketing Conference 2009. Las Vegas, Nevada, July 2009.
- "Las Vegas, Gaming, and the New Media." The Digital Future Is Now Business Seminar, Presented by CBSRadio Digital Media. Las Vegas, Nevada, May 2009.
- "Analyzing the Costs and Benefits." NCRG at the Global Gaming Expo. Las Vegas, Nevada, November 2008.
- "Retail, Dining, and Entertainment: Striking a Balance." Global Gaming Expo. Las Vegas, Nevada, November 2008.
- "The Long Game: Gambling, Technology, and Change." Server-Based Gaming for Casinos USA. Las Vegas, Nevada. June 2008.
- "The Over/Under of Gaming Regulation." American Bar Association Section of Administrative and Regulatory Law, Spring Meeting. Las Vegas, Nevada. April 2008.

Panel Moderator, "Gaming Expansion: Push and Pull Factors in 2008 and Beyond." Global Gaming Expo. Las Vegas, Nevada, November 2007.

Panel Member, "The Casino Real Estate Macro Discussion." Casino Real Estate conference. Las Vegas, Nevada, June 2007.

Panel Member, "The Las Vegas Panel." Casino Real Estate conference. Las Vegas, Nevada, June 2007.

"Player Loyalty: Lessons from Gambling History." Chair's address for Casino Marketing: Creating Effective Player Loyalty Programs, Marketing, and Sponsorships. Las Vegas, Nevada, February 2007.

"Casino Marketing: Ancient History, Yesterday, and Today." Paper given in seminar on casino marketing at the Global Gaming Expo. Las Vegas, Nevada, November 2006.

"Looking to the Future: The Wire Act and Internet Gaming." Session chaired at Global Gaming Expo, Las Vegas, Nevada, September 2005.

"Legal Limbo: The Wire Act and Internet Gaming." Session chaired at Global Gaming Expo, Las Vegas, Nevada, September 2004.

"The Federalization of Gaming: A Historical Perspective." Paper given in seminar on the federal regulation of Internet gaming at the Global Gaming Expo. Las Vegas, NV September 2003.

"History of World Gaming, with a Focus on Australia." Chairman's address at 12th Annual Gaming and Casinos Australia Conference. Gold Coast, Australia, March, 2003.

"History of Gaming and Casinos." Chairman's address at 7th Annual Gaming and Casinos Asia Pacific Conference. Singapore, June, 2002.

"The Bugsy Myth" Paper presented at 23<sup>rd</sup> Annual Conference of the Southwest/Texas Popular Culture Association, Albuquerque, New Mexico. February 2002.

"Gaming History: Asset or Liability?" Seminar delivered at Global Gaming Expo Training and Development Institute. Las Vegas, Nevada, September 2001.

"History of the Las Vegas Strip." Lecture delivered at ALI-ABA Course of Study Conference "The Gaming Industry: Current Legal, Regulatory, and Social Issues." Las Vegas, NV, March 2001.

### Legislative Testimony

Committee on Business Regulation, Florida House of Representatives. Workshop on HJR 471. Tallahassee, Florida, March 29, 2007.

Committee to Study Gaming Options for New Hampshire. Special joint legislative committee. Concord, New Hampshire, October 11, 2005.

### Guest Lectures

"Betting on Gaming Documentation and History: Indian Country and the Commercial Casino Industry in Comparative Perspective." Newberry Consortium for Indian Studies Graduate Workshop in Research Methods. Las Vegas, March 2014.

"Seven Things You Should Know About Casinos." Cass Business School (London) Strategic Marketing in Action elective lecture, London, United Kingdom, January 2014.

"The Evolution of Las Vegas as Gaming Centre." Cass Business School (London) Strategic Marketing in Action elective lecture, London, United Kingdom, January 2014.

"The Recession's Impact on Las Vegas and Gaming." Cass Business School (London) Strategic Marketing in Action elective lecture, London, United Kingdom, January 2014.

"The Future of Las Vegas." Cass Business School (London) Strategic Marketing in Action elective lecture, London, United Kingdom, January 2014.

"On the Ground in Las Vegas." Cass Business School (London) Strategic Marketing in Action elective lecture, Las Vegas, Nevada, February 2013

"Six Things You Should Know About Casinos." Cass Business School (London) Strategic Marketing in Action elective lecture, London, United Kingdom, January 2013.

"The Evolution of Las Vegas as Gaming Centre." Cass Business School (London) Strategic Marketing in Action elective lecture, London, United Kingdom, January 2013.

"The Recession's Impact on Las Vegas and Gaming." Cass Business School (London) Strategic Marketing in Action elective lecture, London, United Kingdom, January 2013.

"Tweeting to Win: Social Media and Casino Marketing." Cass Business School (London) Strategic Marketing in Action elective lecture, London, United Kingdom, January 2013.

"The Future of Las Vegas." Cass Business School (London) Strategic Marketing in Action elective lecture, London, United Kingdom, January 2013.

"Screen for Deviance: Media Depictions of Problem Gambling." Lecture for HTM 370: Cross-Cultural Interpretations of Gambling Addiction, San Diego State University, November 2012.

"Two Hour History Lesson: Gambling, from Criminal to Corporate." Lecture for HTM 371: Tribal Casino Operations Management, San Diego State University, November 2012.

- "The Truth about Blackjack and Counting Cards." Lecture for HTM 372: Games Management, San Diego State University, November 2012.
- "Las Vegas Gaming Past and Present." Guest Lecture for Joasi University (Japan), visiting class in Las Vegas, September 2012.
- "The Gaming Industry in Las Vegas: A Snapshot." Lecture for Central Michigan University Hospitality & Tourism Society, Las Vegas, Nevada, March 2012.
- "Vegas Hospitality and Gaming Perspectives" lecture for Casino and Gaming Operations Management class, Southern New Hampshire University, Las Vegas, Nevada, March 2012.
- "Las Vegas Yesterday, Today, and Tomorrow" Keynote lecture for Cass Business School MBA program, Las Vegas, Nevada, February 2012.
- "Las Vegas Gaming Past and Present." Guest Lecture for Joasi University (Japan), visiting class in Las Vegas, September 2011.
- "Counting Cards, Skill Play, and Casino Gaming." Guest Lecture for HTM 371: Tribal Gaming: Casino Ops, San Diego State University, September 2011.
- "Gambling History in Two Hours," Guest Lecture for PFSA 281, San Diego State University, September 2011.
- "Where the Gaming Industry is Heading," Talk for UNLV Gaming Management Association. Las Vegas, Nevada, March 2011.
- "The Competitive Advantage of Las Vegas Casinos." Session for Cass Business School Executive MBA program. Las Vegas, Nevada, January 2011.
- "Gaming Development in Nevada." Session for the University of Nevada Reno's Gaming Management Program conducted for the Gaming Board of Sweden, Las Vegas, Nevada, November 2010.
- "The History of Casinos and Casino Employment." Guest Lecture for HTM 371: Tribal Gaming: Casino Ops, San Diego State University, October 2010.
- "The Development of Las Vegas Casinos." Guest Lecture for Joasi University (Japan), visiting class in Las Vegas, September 2010.
- "Casino History in Las Vegas." Guest Lecture for Transylvania University, visiting class in Las Vegas, May 2010.
- "History of Casino Design." Guest Lecture for undergraduate design students, Concordia University (Montreal, Canada). Las Vegas, Nevada, May 2010.

- "Las Vegas Casinos: History and Current Practices." Guest Lecture for visiting Sociology of Gambling class, George Brown College (Toronto, Ontario). Las Vegas, Nevada, March 2010.
- "The Truth About Blackjack and Counting Cards." Guest Lecture for HTM 371: Tribal Gaming: Casino Ops, San Diego State University, October 2009.
- "One Hour Gambling History." Guest Lecture for HTM 371: Tribal Gaming: Casino Ops, San Diego State University, October 2009.
- "Casino Crime: Swingers, Cheaters, and Scammers." Guest Lecture for HTM 596: Regulation of Indian Gaming in California, San Diego State University, October 2009.
- "Interactive Gambling History." Guest Lecture for SOC 442: Sociology of Gambling. University of Nevada, Las Vegas, September 2009.
- "The Industry: Historical and Statistical Background." Lecture for KDI group. Las Vegas, Nevada, July 2009.
- "Gambling Research: The Essential Resources." Talk for UNLV Gaming Management Association. Las Vegas, Nevada, April 2009.
- "From Cowboys to Caesars: The Evolution of Visual Culture on the Las Vegas Strip." Visual Culture Group. Las Vegas, Nevada, February 2009.
- "Gambling: Past, Present, and Future." Gaming Regulators Symposium. Las Vegas, Nevada, February 2009.
- "The History and Success of Las Vegas," Presentation for the Australia Club Managers Tour, Las Vegas, Nevada, November 2008.
- "They Did It Their Way: How Organized Crime Dominated and Departed the Gambling Business." First Monday Lecture for Liberty Fund. Indianapolis, Indiana, October 2008.
- "Ten Thousand Years of Gambling History in an Hour." Guest Lecture for SOC 442: Sociology of Gambling. University of Nevada, Las Vegas, September 2008.
- Instructor, 1-day gambling history/introduction, University of Macau academic program at UNLV International Gaming Institute. June 2007.
- "The History of Casino Hospitality," Guest Lecture for visiting group from Southern New Hampshire University. March 2008.
- Instructor, Kangwon Land Casino academic program at UNLV International Gaming Institute. December 2007.
- "The History and Success of Las Vegas," Presentation for the Australia Club Managers Tour, Las Vegas, Nevada, November 2007.

- "Gambling and Culture: A Brief Overview." Presentation for 2007 Anthropology Colloquium Series. University of Nevada, Las Vegas, October 2007.
- "Gambling History, Ancient and Recent." Guest Lecture for SOC 442: Sociology of Gambling. University of Nevada, Las Vegas, September 2007.
- "How Las Vegas Draws Tourists." Presented to visiting class from University of Hanover. July 2007.
- "The Past, Present, and Future of Las Vegas." Ainsworth technology program at UNLV International Gaming Institute. July 2007.
- Instructor, University of Macau academic program at UNLV International Gaming Institute. June 2007.
- "A Short History of Gambling." Guest Lecture for Transylvania University, visiting class in Las Vegas, May 2007.
- Instructor, Kangwon Land Casino academic program at UNLV International Gaming Institute. May 2007.
- "Learning in Las Vegas," Guest Lecture for January Term 131, St. Mary's College of California, visiting class in Las Vegas, January 2007.
- "The History and Success of Las Vegas," Presentation for the Australia Club Managers Tour, Las Vegas, Nevada, November 2006.
- "The History of Poker." Honors College Athenaeum series. University of Nevada Las Vegas. September 2006.
- Instructor, 2006 Casino Resort Academy, sponsored Korean Ministry of Culture and Tourism, Korean Casino Association and RCC company. June 2006.
- Instructor, University of Macau academic program at UNLV International Gaming Institute. June 2006.
- "Primary Research in Gaming." Presentation for GAM 474 (Gaming independent study), University of Nevada Las Vegas. January 2006.
- "All about Suburban Xanadu" Lecture for History 176 (United States since 1877), University of Missouri, Rolla. November 2005.
- "Building a Better Babylon: The Evolution of the Casino Resort." Lecture for Graduate Lecture Series. University of Nevada Las Vegas. October 2005.
- "Getting Started with Gaming Research." Guest Lecture for HOA 763, Graduate Seminar in Casino Topics. University of Nevada Las Vegas, September 2005.

- "History of Las Vegas Gaming." Guest Lecture for SOC 442: Sociology of Gambling. University of Nevada, Las Vegas, September 2005.
- "The Long History of Casinos" for visiting teachers from Macau Casino Career Center. Atlantic City, NJ. February 2005.
- "Gambling History. Guest Lecture for ECON 411/611: Casino Gaming. University of Nevada Reno, November 2004.
- "History of Gambling." Guest Lecture for SOC 442: Sociology of Gambling. University of Nevada, Las Vegas, September 2004.
- "Getting Started with Gaming Research." Guest Lecture for HOA 763, Graduate Seminar in Casino Topics. University of Nevada Las Vegas, September 2004.
- "Inventing the Las Vegas Strip." Guest lecture for GEO 312: Viva Las Vegas, Ryerson University class visiting Las Vegas, NV. September 2003.
- "Introduction to Gaming Research." Guest Lecture for HOA 763, Graduate Seminar in Casino Topics. University of Nevada Las Vegas, September 2003.
- "Goodfellas or Good Public Relations? Rethinking Las Vegas's Past." University Forum Lecture, University of Nevada, Las Vegas. February 2002.
- "How the Casino Resort Destroyed Las Vegas." Guest Lecture for Graduate School of Fine Arts, University of Pennsylvania, Philadelphia, PA. January, 2002.
- "Protecting the Casino." Guest Lecture delivered for PUA 735 (Public Regulation of Gaming), University of Nevada Las Vegas, October 2001.
- "Casino Gaming in Atlantic City, 1978-2001." Guest lecture delivered to PUA 736 (Public Impacts of Gaming), University of Nevada, Las Vegas. March 2001.
- "History of the Casino Resort" Guest lecture delivered to hospitality students at Atlantic County Vocational Technical School, Mays Landing, NJ, December 2000.
- "Casino Surveillance and Security" Guest lecture delivered to Casino Management class at School of Hotel Administration, University of New Hampshire, Durham, NH. November 2000.
- "Gambling History and Public Policy" Guest lecture delivered for Public Policy 10A, University of California, Los Angeles, October 1997.

### Community Outreach/Professional Speaking

"The Future of the Gaming Industry: Challenges and Opportunities." Congressional Black Caucus Political Education and Leadership Institute. Tunica, Mississippi 2014 Conference, August 2014.

"Downtown Vs. The Strip." Clark County Library, Las Vegas, Nevada, July 2014.

"How Jay Sarno Invented Modern Vegas." UNLV University Forum Lecture, Las Vegas, Nevada, April 2014.

"Memory and Writing: Why and How." Osher Lifelong Learning Institute, Las Vegas, Nevada, March 2014.

"Jay Sarno: A Roundtable Discussion." UNLV Lied Libraries, Las Vegas, Nevada, February 2014.

"Current Issues in Las Vegas and Gaming. Panel Discussant. ." Cass Business School (London) Strategic Marketing in Action elective lecture, Las Vegas, Nevada, February 2014.

"Author Talk," The Mob Museum. Las Vegas, Nevada, December 2013.

"How Jay Sarno Changed Casinos," Las Vegas Casino Chip and Gaming Token Collectors' Club. Las Vegas, Nevada, December 2013.

"The Life of Jay Sarno." Private Event, Beverly Hills, California, November 2013.

"How Las Vegas Became Las Vegas." Talk to Cass Business School Annual European Alumni Gathering. Monaco, September 2013.

UNLV TIES Trade and Industry Exchange Session 2013. Discussant. Las Vegas, Nevada, July 2013.

"Difficulties in Researching Gambling History." Casino Chip and Gaming Token Collectors' Club Annual Meeting, educational seminar. Las Vegas, Nevada, June 2013.

"What's Happening the Las Vegas Casino Business." Talk for Rotary Club of Green Valley," Henderson, Nevada, May 2013.

"How Bugsy Blew It: Leadership Lessons from a Made Man." Presentation for Hilton Grand Vacations sales professionals. Las Vegas, Nevada, April 2013.

"How Bugsy Blew It: Leadership Lessons from a Made Man." Presentation for MGM Resorts International sales professionals. Las Vegas, Nevada, April 2013.

"Preparing Research for Publication and Presentation." Presentation for the UNLV McNair Scholars Institute, Las Vegas, Nevada, March 2013.



"What You Should Know about Gambling Research." Lecture for Osher Lifelong Learning Institute Program. Las Vegas, Nevada. March 2013.

"Interesting Casino Research in Las Vegas." Talk for Southern Nevada Casino Collectibles Club. Las Vegas, Nevada, February 2013.

"Jewish Gamblers—from the Talmud to Today." Talk at Midbar Kodesh Temple, Las Vegas, Nevada, December 2012.

"Gaming/Hospitality Analytics: Where We Are, Where We're Going." Talk for Caesars Enterprise Analytics, Las Vegas, Nevada, November 2012.

"Inside Slot Machines." Talk for Siena Computer Club, Las Vegas, Nevada, November 2012.

"The Center for Gaming Research in the Community." Talk for Las Vegas International Women's Forum, Las Vegas, Nevada, September 2012.

"What's Happening in Vegas?" Talk for Las Vegas Kiwanis, Las Vegas, Nevada, August 2012.

"Jay Sarno and Caesars Palace." Casino Chip and Gaming Token Collectors' Club Annual Meeting, educational seminar. Las Vegas, Nevada, June 2012.

"Vegas—Beyond Gaming." Talk for Las Vegas Territory. Las Vegas, Nevada, March 2012.

Preparing Research for Publication and Presentation." Presentation for the UNLV McNair Scholars Institute, Las Vegas, Nevada, March 2012.

"Where is Vegas Going?" Talk for Yale Club of Nevada. Las Vegas, Nevada, October 2011.

"Five Things You Should Know About Las Vegas." Keynote dinner speech, Peace Hawks Reunion 2011, Las Vegas, Nevada, September 2011.

"Vegas Casino History," Talk for Men Enjoying Leisure (Jewish Community Center). Las Vegas, Nevada, September 2011.

Preparing Research for Publication and Presentation." Presentation for the UNLV McNair Scholars Institute, Las Vegas, Nevada, April 2011.

"Seven Things You Should Know About Casinos," Talk for Canadian Masonry Contractors Association. Las Vegas, Nevada, March 2011.

"Where is Las Vegas Gaming Going in 2011?" Talk for Las Vegas Rotary Club. Las Vegas, Nevada, February 2011.

"Five Things You Should Know about Casinos in 2011." Talk for Sun City Anthem Women's Club. Las Vegas, Nevada, January 2011.

- "Las Vegas Casinos: History and Current Outlook." Talk for Temple Sinai Men's Club. Las Vegas, Nevada, December 2010.
- "Gaming in Nevada: Development & Regulation." Presentation for Incheon Airport Corporation and the Incheon Free Economic Zone Authority, Las Vegas, Nevada, October 2010.
- "What's Happening in Las Vegas." Presentation for The Richman Group's Affordable Housing Corporations, Low-Income Housing Tax Credit Developers' Conference, Las Vegas, Nevada, October 2010.
- "Preparing Research for Publication and Presentation." Presentation for the UNLV McNair Scholars Institute, Las Vegas, Nevada, April 2010.
- "Half-Hour Gambling History." Presentation for American Technion Society. Las Vegas, Nevada, March 2010.
- "What's Happening in Las Vegas." Presentation for Israeli business editors. Las Vegas, Nevada, February 2010.
- "A Criminal Business: The History of Organized Crime." Lecture for Elderhostel program, University of Nevada, Las Vegas, February 2010.
- "Casinos in Las Vegas." Talk for Temple Bet Kennesset Bamidbar's Men's Club. Las Vegas, Nevada, January 2010.
- Featured theme enrichment lecturer, Crystal Serenity's "Adventures of Tycho" cruise. Venice, Italy, to Athens, Greece, September-October, 2009.
- "Seven Things You Should Know About Las Vegas." Keynote dinner speech, Peace Hawks Reunion 2009, Las Vegas, Nevada, September 2009.
- "Preparing Research for Publication and Presentation." Presentation for the UNLV McNair Scholars Institute, Las Vegas, Nevada, July 2009.
- "Inside Special Collections' Casino Collections." Casino Chip and Gaming Token Collectors' Club Annual Meeting, keynote presentation. Las Vegas, Nevada, June 2009.
- "Architecture and Neon in Las Vegas." Clark County Centennial Roundtable discussion. Las Vegas, Nevada, May 2009.
- "Recession Lessons in the Age of Malaise: The 1980s Comeback in Perspective." Las Vegas Visitors and Convention Authority Leisure Speakers Series. Las Vegas, Nevada, March 2009.
- "Three Days That Changed Vegas." Leadership Henderson. Las Vegas, Nevada. March 2009.

- "Gambling, History, and Technology." RAY group (Finnish gaming industry). Las Vegas, Nevada. January 2009.
- "Gambling History and Casino Security." "Professor's Choice" lecture for Osher Lifelong Learning Institute Program. Las Vegas, Nevada. October 2008.
- "Inside the Gaming Collection." Educational seminar presented at 16<sup>th</sup> Annual Convention of the Casino Chip and Gaming Token Collectors Club. Las Vegas, Nevada. June 2008.
- "Seven Quick Things You Should Know About Casinos," Text and Academic Authors Conference, Las Vegas, Nevada, June 2008.
- "Sports Betting in America," panelist for IRS Advanced Wagering Seminar, Las Vegas, Nevada, May 2008.
- "Seven Things You Should Know About Casinos," Meritum Conference, Las Vegas, Nevada, May 2008.
- "Careers in Academia," talk for Career Day, Gwendolyn Woolley Elementary School, North Las Vegas, Nevada, April 2008.
- "Gaming—Current Issues in Legislation and Regulation," panel moderator for Chamber of Commerce program, Las Vegas, Nevada, April 2008.
- "Seven Things You Should Know About Casinos," Presentation Radiological Emergency Preparedness Conference, Las Vegas, Nevada, April 2008.
- "Preparing Research for Publication and Presentation." Presentation for the UNLV McNair Scholars Institute, Las Vegas, Nevada, March 2008.
- "Seven Things You Should Know About Casinos," Presentation for National Association of Realtors, Las Vegas, Nevada, November 2007.
- "Seven Things You Should Know About Casinos," Presentation for Spring Manufacturers Institute Convention, Las Vegas, Nevada, October 2007.
- "Gambling History for the Casino Professional," executive seminar conducted for Tatts Pokies, Las Vegas, Nevada, September 2007.
- "Preparing Research for Publication and Presentation." Presentation for the UNLV McNair Scholars Institute, Las Vegas, Nevada, March 2007.
- "From Illegal Gambling to Gaming and Entertainment," Presentation for Nordic Frontiers, Las Vegas, Nevada, November 2006.
- "A Win/Wynn History" Presentation for Suzuki Motor Corporation of America Meeting, Las Vegas, Nevada, September 2006.

- "Research: Publications and Presentations." Presentation for the UNLV McNair Scholars Institute, Las Vegas, Nevada, April 2006.
- "A Brief History of Las Vegas: What Casinos Don't Want You to Know." Presentation for the Virginia Transportation Construction Alliance Winter Meeting. January 2006.
- "A Brief History of Gambling." Lecture sponsored by the University of Missouri, Rolla History and Political Science Department, November 2005.
- "Las Vegas Gaming History." Lecture for Elderhostel program, University of Nevada, Las Vegas, September 2005.
- "Research: Publications and Presentations." Presentation for the UNLV McNair Scholars Institute, Las Vegas, Nevada, April, 2005.
- "What You Don't Know about Las Vegas Gambling." Lecture for Elder Hostel program, University of Nevada, Las Vegas, April 2005.
- "Casino Surveillance and Security." Lecture for Elderhostel program, University of Nevada, Las Vegas, April 2005.
- Panel member for discussion of gambling history, Leadership Las Vegas. Las Vegas, NV. October 2004.
- "Rollers High and Low: The History of Gambling and Las Vegas." Presentation for Agenda Group. Las Vegas, NV. October 2004.
- "Building a Desert Xanadu: The History of the Las Vegas Strip." Presentation for 2004 Mensa Annual Gathering. Las Vegas, NV. July 2004.
- "Gambling on the Internet." Presentation for 2004 Mensa Annual Gathering. Las Vegas, NV. July 2004.
- "Photographic Documentation: The Best Way to Collect Neon?" Presentation at COLLECTING NEON: How, Why, and the Alternatives, sponsored by Nevada State Museum & Historical Society. Las Vegas, NV. April 2004.
- "Leadership and Innovation: The Strip as a Case Study." Presentation for Service Corps of Retired Executives. Las Vegas, NV. December 2003.
- "How the Strip Became a Road to Success." Presentation for Palmetto GBA Train the Trainer Seminar. Las Vegas, NV. October 2003.
- "Digital Dice and Virtual Bookies: The Challenges of Online Gaming." Presentation for Association of Information Technology Professionals meeting. Las Vegas, NV. July 2003.

- "UNLV Special Collections for Collectors." Educational seminar presented at 11<sup>th</sup> Annual Convention of the Casino Chip and Gaming Token Collectors Club. Las Vegas, NV. June 2003.
- "Gaming's Impact on Municipalities: Three Case Studies." Presentation to the Association for Government Leasing and Financing Spring Conference 2003. Las Vegas, NV. May 2003.
- "All about the Gaming Collection." Presentation at "Special Collections or Where to Go For the Weird Stuff," a panel sponsored by the Southern District of the Nevada Library Association. Las Vegas, NV. April 2003.
- "The Secret History of Las Vegas Casinos." Keynote address, 2003 Western Conference of Painting and Decorating Contractors of America Councils. Las Vegas NV. April 2003.
- "Betting on the Wire: How Gambling Has Kept Pace with Communications Technology." Keynote address, Third Annual Research and Ideas Conference, Las Vegas, NV. April 2003.
- "Learning the history of Las Vegas." Guest Lecture for Leadership Las Vegas Youth, "Living in Southern Nevada" program, Las Vegas, NV. February, 2003.
- "Research Ethics" and "Publishing a Good Research Paper." Presentations for the UNLV McNair Scholars Institute. Las Vegas, NV, March-April, 2002.
- "History of Las Vegas." Guest Lecture for Leadership Las Vegas Youth, "Living in Southern Nevada" program, Las Vegas, NV. February, 2002.
- "Growth of Casino Gaming in the United States." Lectures for Elder Hostel program, University of Nevada, Las Vegas. November and December, 2001.

### Professional Service

- Member, Nevada Gaming Policy Committee, 2014-
- Co-Chair, Search Committee, Head of Digital Scholarship Strategy, 2014
- University of Nevada Press, "Gambling" series editor 2013-
- Member, Search Committee, Head, Special Collections Technical Services, 2013
- Member, Events Steering Committee, University Libraries, 2013-
- Book manuscript reviewer, Chicago University Press, 2013
- Program co-chair, International Conference on Gambling and Risk-Taking, 2013
- Co-chair, search committee, Director of Special Collections, 2012

Book manuscript reviewer, Routledge Books, 2012

Book manuscript reviewer, University of Missouri Press, 2012

Journal article referee, Journal of Business Research, 2012

Journal article referee, Journal of Gambling Issues, 2012

University Libraries representative, Faculty Senate Academic Freedom, Tenure and Promotion Committee, 2011-2013

Journal article referee, Korea Legislation Research Institute Journal of Law and Legislation, 2012-13

Member, University Libraries Student Employee Mentorship Group, 2011-2012

Member, UNLV Web Forum, 2011-

Member, UNLV Faculty Senate Program Review Committee, 2010-11

Member of Editorial Board, Gaming Law Review and Economics, 2010-present

Member, UNLV Libraries Scholarship Criteria Review Committee, 2010

European Research Council, reviewer for research proposals, 2010

Book manuscript reviewer, Princeton University Press, 2010

Journal article referee, Thunderbird International Business Review, 2010

Co-chair, University Libraries Tenure and Promotion Committee, 2009-10

Member, Steering Committee, International Association of Gambling Researchers

Member, UNLV University Grievance Committee, 2008-2010

Book manuscript reviewer, Cornell University Press, 2008

Book manuscript reviewer, Baylor University Press, 2008

Member, University Libraries External Relations Committee, 2006-2008

Member, University Libraries Safety Committee, 2006-2007

Member, University Libraries Undergraduate Research Award Committee, 2005-7

Faculty Senator, University of Nevada Las Vegas, 2003-2006

Member, University Libraries Task Force on Faculty Workload, 2005

Mentor and speaker, UNLV McNair Scholars program, 2002-

Member, University Leadership Assessment and Campus Affairs committees, 2001-3

Member, University Libraries Professional Development Committee, 2001-2003; co-editor of semi-annual professional development newsletter

Member, search committee for Public Services Librarian in the Humanities, UNLV Libraries, 2002.

Member of Editorial Board, *Gaming Law Review and Economics*.

Member, Neon Museum Acquisitions Committee, Las Vegas, Nevada, 2001-2003; chair of subcommittee that undertook Neon Survey and administered \$10,000 in grant funds

Member, Las Vegas Centennial Celebration Commission, 2001-2005; advisor for historical issues

Updated 08.11.14

**Exhibit “8”**

**Exhibit “8”**



1 **COHEN-JOHNSON, LLC**  
2 H. STAN JOHNSON, ESQ.  
3 Nevada Bar No. 00265  
4 sjohnson@cohenjohnson.com  
5 TERRY KINNALLY, ESQ.  
6 Nevada Bar No. 6379  
7 tkinnally@cohenjohnson.com  
8 255 E. Warm Springs Road, Suite 100  
9 Las Vegas, Nevada 89119  
10 Telephone: (702) 823-3500  
11 Facsimile: (702) 823-3400  
12 Attorneys for Plaintiff

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

15 MEI-GSR HOLDINGS, LLC, a Nevada  
16 Corporation, d/b/a GRAND SIERRA RESORT,

17 Plaintiff,

18 v.

19 PEPPERMILL CASINOS, INC., a Nevada  
20 Corporation, d/b/a PEPPERMILL CASINO;  
21 RYAN TORS, an individual; JOHN DOES I-X  
22 and JANE DOES I-X; and ABC  
23 CORPORATIONS I-X,

24 Defendants.

Case No.: CV13-01704

Dept. No.: B7

BUSINESS COURT DOCKET

25 **MOTION FOR PROTECTIVE ORDER ON AN ORDER SHORTENING TIME AND**  
26 **FOR STAY OF DEPOSITIONS PENDING HEARING ON THE MATTER.**

27 Now comes Plaintiff by and through their attorneys H. Stan Johnson, Esq. and Terry Kinnally,  
28 Esq. of the law offices of Cohen Johnson LLC and requests this Honorable Court for a Protective  
Order pursuant to NRCP 26 (b)(5)(c) on an order shortening time and further asking that the  
taking of the depositions be stayed pending the Court's ruling on this matter.

This motion is made and based upon the pleadings and documents on file herein, the  
following points and authorities submitted in support hereof, declarations to be submitted, and  
oral arguments (if allowed) at the time of the hearing in this matter. This motion is being filed

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

1 concomitantly with an ex parte motion for an order shortening time and staying depositions in  
2 this matter.

3 Dated this 19<sup>th</sup> day of June 2014

4 COHEN-JOHNSON, LLC

5 By:

6 /s/ H. Stan Johnson

7 H. Stan Johnson, Esq.  
8 Nevada Bar No. 00265  
9 Terry Kinnally, Esq.  
10 Nevada Bar No. 06379  
11 255 E. Warm Springs Road, Suite 100  
12 Las Vegas, Nevada 89118  
13 Attorneys for Plaintiff

POINTS AND AUTHORITIES

**I. STATEMENT OF FACTS**

On July 12, 2013, and for a considerable period of time prior thereto, Defendant RYAN TORS, an employee of Defendant PEPPERMILL CASINO, entered the premises of the GRAND SIERRA RESORT and made an unauthorized entry into certain slot machines located upon the premises. Plaintiff alleges and Defendants deny that at the time of this and similar incidents, Mr. Tors was acting within the scope of his employment and at the direction of his employer. Defendant RYAN TORS illegally opened the machines numbered as #951, #440, #855, #486, #1646, and #20042 and unlawfully accessed the confidential and proprietary information contained within said machines, including each machine's diagnostic screens and payback percentages.

Defendant RYAN TORS is not an employee of the GRAND SIERRA RESORT and is not authorized to access the inner workings of any slot machine on the GRAND SIERRA RESORT's premises. RYAN TORS' conduct was observed and he was detained by GRAND SIERRA RESORT Security Personnel. The Nevada Gaming Control Board was called and notified of the incident and investigated. Defendant RYAN TORS stated he was the Corporate Analyst for the PEPPERMILL CASINO and that he entered onto the premises of the GRAND SIERRA RESORT for the specific purpose of accessing the diagnostic and payback percentages of certain slot machines belonging to the GRAND SIERRA RESORT. Defendant RYAN TORS further stated that this was not an isolated instance, but that he had been doing so at various casinos for the past year and especially at the GRAND SIERRA RESORT. He also stated that he, in collaboration with other executives of Defendant PEPPERMILL CASINO, he would make recommendations as to the payback percentages which PEPPERMILL CASINO would assign to its slot machines. After being interviewed by Nevada Gaming Control Board Agent Justin Woods, Defendant RYAN TORS was escorted from the premises of GRAND SIERRA RESORT and informed that if he returned to the property he would be trespassing under NRS 207.200 and would be prosecuted. RYAN TORS illegally accessed the following machines on the GRAND SIERRA RESORT casino floor:

1 #951 stand 061109 Sun & Moon (video)

2 #440 stand 040403 Ducks in a Row (video)

3 #855 stand 104604 Buffalo (video)

4 #486 stand 104603 Wings over Olympus (video)

5 #1646 stand 101607 Miss Red (video)

6 #20042 stand 102201 Hex Breaker

7 Defendant RYAN TORS also had a list showing that also intended to access the  
8 following machines:

9 #20375 stand 091007 Ducks in a Row

10 20050 stand 103304 Enchanted Unicorn

11 #127 stand 011802 Cats

12 The diagnostic screens and payback percentage information contained in each machine  
13 is proprietary and confidential and access is not permitted to any persons other than certain  
14 employees of the GRAND SIERRA RESORT and requires a key in order to access the  
15 information.

16 The GRAND SIERRA RESORT never authorized Defendant RYAN TORS to access said  
17 machines and never provided him with a key which would allow him to do so.

18 On August 27, 2013 a hearing was held on the Plaintiff's motion for an injunction in this  
19 matter. As a result of this hearing an injunction was entered against Ryan Tors and the Court  
20 made a finding that barring him from the premises of the Grand Sierra Resort. (a copy of the  
21 partial transcript of that proceeding is attached hereto as Exhibit "1") The Court also noted that  
22 Mr. Tors denied that his accessing the information was anything more than a prurient interest and  
23 that he did not directly implicate his employer (Peppermill) (*Exhibit 1 p. 4 ll 8-14*).

24 The Nevada Gaming Commission conducted an investigation of the claims and the  
25 investigation resulted in a fine in the amount of \$1,000,000.00 (one million dollars) being  
26 assessed against the Peppermill. During the Gaming Board Proceedings the Peppermill entered  
27 into a stipulation which admitted that in fact Mr. Tors was acting at the direction of the  
28 Peppermill and was in the course and scope of his employment. (See Exhibits "2" & "3")

1 Complaint and Stipulation before the Gaming Commission) As of the current date neither  
2 defendant has amended his answer acknowledging the admissions before the Nevada Gaming  
3 Commission.

4 On June 4, 2014 the Peppermill unilaterally served Notice of PMK depositions listing  
5 over 30 topics with the depositions to take place over 5 days from June 30, through July 3, 2014.  
6 The notice is requesting Persons Most Knowledgeable for GSR upon the following topics:

7  
8 *1. The Person Most Knowledgeable about the manner in which Defendant GSR  
9 tracks Players of slot machines at the Grand Sierra Resort for the period of time from January 1,  
2009 to and including the present, including online slot player tracking systems.*

10 *2. The Person Most Knowledgeable about the manner in which Defendant GSR  
11 tracks the play of each slot machine on the floor at GSR or utilized by GSR for the period of time  
from January 1, 2009 to the present.*

12 *3. The PAR settings for each slot machine utilized by GSR for a period of time from  
December 31, 2009 to the present.*

13 *4. The Person Most Knowledgeable about the changes utilized and implemented by  
14 GSR for changing the PAR settings for the period of time from December 31, 2009 to the  
present, including any scheduled or documents showing changes in the PAR settings and the  
reasons for the changes.*

15 *5. The Person Most Knowledgeable about the strategies involved in setting the pars  
16 for the machines untiled by GSR from December 31, 2009 to the present.*

17 *6. The Person Most Knowledgeable about the names and addresses of each and  
18 every slot customer of GSR who, since July 12, 2013 played slot machines at the Peppermills as  
a result of the activities of Ryan Tors described in the complaint on file in this matter.*

19 *7. The Person Most Knowledgeable about the use the Peppermill made of the  
20 information obtained by Ryan Tors on July 12, 2013.*

21 *8. The Person Most Knowledgeable about any financial loss and/or damages caused  
to the GSR by the activities of Ryan Tors described in the complaint on file herein.*

22 *9. The financial hard and/or damages caused to the GSR by the activities described  
23 in the complaint caused by the Peppermill, separate and distinct from the damages caused by  
Ryan Tors.*

24 *10. The Person Most Knowledgeable about GSR's marketing plans, promotions,  
25 program for market share for slot play and market strategies to attract slot customer to play slot  
machines at GSR for a period of time from January 1, 2012 to the present.*

26 *11. GSR's Person Most Knowledgeable about its own use of Master Key 2341 in or at  
27 the GSR and any other casino property from January 1, 2012 to the present.*

28 *12. The Person Most Knowledgeable concerning the player tracking and slot  
performance of GSR's slot machines 951, 855, 486, 1646, and 20042.*

13. The Person Most Knowledgeable about the specific customers and patrons who play the slot machines identifies as 951, 220, 855, 1646, and 20042.

14. The Person Most Knowledgeable about the use made of the information obtained by Ryan Tors by the Defendant.

15. The Person Most Knowledgeable about the statements made by Ryan Tors while on the GSR property on July 12, 2013.

16. The person most knowledgeable about the specific and precise accounting information obtained and data accessed by Ryan Tors at the GSR.

17. The Person Most Knowledgeable about the "diagnostics" received accessed or retrieved by Ryan Tors as a result of the activities described in GSR's Complaint on July 12, 2013.

18. The person most knowledgeable about all written, oral and documentary communications between GSR and other gaming properties in Washoe County concerning the activities of Ryan Tors as described in GSR's complaint since July 12, 2013.

19. The Person Most Knowledgeable about how, when and where the Peppermill made any use whatsoever of the data and diagnostics allegedly retrieved by Ryan Tors on July 12, 2013.

20. The Person Most Knowledgeable about the efforts made by the GSR to preserve the secrecy and alleged confidentiality of the par settings on the slot machines utilized by the GSR during the years 2009 through and including the present.

21. The Person Most Knowledgeable about the "independent economic value " of the information obtained by Ryan Tors on July 12, 2013.

22. The Person Most Knowledgeable about the allegation that the Peppermill will "likely continue to misappropriate trade secrets of the GSR.

23. The Person Most Knowledgeable about the allegation that the Peppermill intended to financially harm the GSR.

24. The Person Most Knowledgeable about GSR's allegation that the acts and conduct of Ryan Tors on July 13, 2013 were ratified and approved by management at the Peppermill.

25. The Person Most Knowledgeable about all investigative report generated by the GSR concerning the activities of Ryan Tors at the GSR on July 13, 2013.

26. The Person Most Knowledgeable about daily detailed slot machine performance data for each slot machine at GSR for each month from December 29, 2009 to the present, including for each slot machine the following:

27. The Person Most Knowledgeable about any audit performed on the slot machines and slot play from December 29, 2009 through and including the present.

28. The Person Most Knowledgeable about the NGC31 Monthly Gross Revenue Statistical Report submitted to the Nevada Gaming Authorities for the period of December 2009 through and including the present.

1  
2 29. *The Person Most Knowledgeable about the marketing reasons and business*  
3 *strategies for the GSR's advertisements that it has the "loosest Pay Tables Allowed" for the*  
4 *following slot games:*

- 5 a. *Lil' Red;*  
6 b. *Colossal Wizard;*  
7 c. *Giant's Gold;*  
8 d. *Forbidden Dragon;*  
9 e. *Spartacus;*  
10 f. *Tower of the Temple;*  
11 g. *Triton's Gold'*  
12 h. *Van Helsing (sic);*  
13 i. *Zodiac Sisters;*  
14 j. *Jundlge Wild II and*  
15 k. *Queen of the Wild II.*

16 30. *The Person Most Knowledgeable about all of GSR's marketing and advertising*  
17 *strategies to publicize loose pay table for its slot machines. (See Exhibit "4")*

18 On June 11, 2014 an amended notice was filed but the amendment was technical and did  
19 not change the substantive nature of the notice. Plaintiff is seeking a protective order regarding  
20 these depositions rescheduling the depositions for over 5 days from July 21, 2014 through July  
21 24, 2014.

## 22 II LAW AND ARGUMENT

23 Plaintiff is asking this Court to enter a Protective Order either denying or severely  
24 limiting the scope of the depositions noticed for the PMKs from GSR. There are multiple  
25 grounds for the relief sought. In the interest of judicial economy Plaintiff will address them in  
26 what appears to be related groupings where possible.

27 The granting of a protective order is governed by NRCP 26 which provides in pertinent  
28 part:

(c) **Protective Orders.** Upon motion by a party or by the person from  
whom discovery is sought, accompanied by a certification that the movant  
has in good faith conferred or attempted to confer with the other affected  
parties in an effort to resolve the dispute without court action, and for  
good cause shown, the court in which the action is pending may make any  
order which justice requires to protect a party or person from annoyance,  
embarrassment, oppression, or undue burden or expense, including one or  
more of the following:

(1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and  
conditions, including a designation of the time or place;

1 (3) that the discovery may be had only by a method of discovery  
2 other than that selected by the party seeking discovery;

3 (4) that certain matters not be inquired into, or that the scope of  
4 the discovery be limited to certain matters;

5 (5) that discovery be conducted with no one present except  
6 persons designated by the court;

7 (6) that a deposition after being sealed be opened only by order of  
8 the court;

9 (7) that a trade secret or other confidential research, development,  
10 or commercial information not be revealed or be revealed only in a  
11 designated way;

12 **A. The Notice Does Not Comply with NRCP 26 (c) (2).**

13 The Amended Notice of Deposition is inadequate on its face in that it has not properly  
14 designated a specific time or place as to each PMK, merely indicating that the depositions will  
15 take place over the course of several days without any indication as to what depositions topics  
16 are being scheduled on which day and at what time. The vagueness of the notice would require  
17 that all proposed PMK's be kept in readiness without having any idea of when they will be called  
18 to testify. This is an unconscionable imposition on the witnesses and also creates difficulties for  
19 Counsel to prepare and confer with the witnesses prior to their depositions. Plaintiff is asking  
20 this Court, as part of the Protective Order, to order Defendant provide a detailed schedule  
21 regarding what topics (assuming the Court will allow the depositions to proceed) will be taken  
22 on what date pursuant to NRCP 26 (c) (2).

23 **B. The Depositions seek to Discover Trade Secrets in Violation of Nevada Law.**

24 Topics numbered 1,2,3,4,5, 6, 10, 11, 12, 13, 26, 27, 28, 29, and 30 all seek information  
25 which is confidential and proprietary and constitutes trade secrets of the GSR. Last year a case  
26 alleging violation of the trade secrets act was tried before Judge Flanagan (Case No CV12-  
27 01171). At issue was what information constitutes trade secrets within the gaming industry. The  
28 Court sitting as the trier of fact found that the following qualify as trade secrets:

1. player tracking records ( Topics 1, 2, 6, 12,13
2. level of play (Topic 12, 13, 26
3. marketing strategy (Topic 10, 29 30)



4. Player's history of play(er) sic ( Topics 1, 2, 6, 12,13
5. Company's financial information (Topic 26, 27, 28,
5. Company's marketing strategy; (Topic 10, 29, 30)
6. customer information (Topic 6, 12, 13)
7. PAR information . (Topics 3, 4, 5,)

At the hearing for the Preliminary Injunction Judge Flanagan also found that PARs constitute a trade secret. As shown the topics upon which Peppermill is seeking testimony, constitute trade secrets and are not discoverable. This is especially true in this case since it is the Peppermill who made unauthorized forays into the GSR to obtain trade secret information. The GSR's trade secrets, except to the extent stolen by Peppermill are irrelevant to this action and the Defendant should not be allowed to try and obtain information through discovery that the Peppermill was unable to gather through illicit means. Peppermill seeks to justify these depositions by claiming that the information is necessary to establish that GSR has not suffered any damages. However, Peppermill has made no attempt to demonstrate what marketing, player history, etc. of the GSR has to do with Peppermill's misappropriation of trade secrets. The complaint make it clear that GSR did not know that Peppermill was misappropriating trade secrets until Ryan Tors was caught doing so. Therefore there is no relevance to the way in which GSR conducted its business prior to July 2013, making this requests overly broad and over reaching.. Even if there were some circumstances under which limited information on these topics might be discoverable, Peppermill has not demonstrated how the information sought refute claims that Peppermill misappropriated trade secrets, was unjustly enriched by the misappropriation, nor is not entitled to royalties for the misappropriation.

**C. The Depositions seek PMK information currently within the exclusive possession of Peppermill.**

The following topics seek information which is exclusively within the possession of the Peppermill (except to the extent that said information may have been provided to the Nevada Gaming Board) and as such are objected to, specifically

7. *The Person Most Knowledgeable about the use the Peppermill made of the*

1 information obtained by Ryan Tors on July 12, 2013.

2 8. The Person Most Knowledgeable about any financial loss and/or damages caused  
3 to the GSR by the activities of Ryan Tors described in the complaint on file heretn.

4 9. The financial hard and/or damages caused to the GSR by the activities described  
5 in the complatnt caused by the Peppermill, separate and distinct from the damages caused by  
6 Ryan Tors.

7 14. The Person Most Knowledgeable about the use made of the information obtained  
8 by Ryan Tors by the Defendant.

9 16. The person most knowledgeable about the specific and precise accounting  
10 information obtained and data accessed by Ryan Tors at the GSR.

11 17. The Person Most Knowledgeable about the "diagnostics" received accessed or  
12 retrieved by Ryan Tors as a result of the activities described in GSR's Complaint on July 12,  
13 2013.

14 19. The Person Most Knowledgeable about how, when and where the Peppermill  
15 made any use whatsoever of the data and diagnostics allegedly retrieved by Ryan Tors on July  
16 12, 2013.

17 21. The Person Most Knowledgeable about the "independent economic value " of the  
18 information obtained by Ryan Tors on July 12, 2013.

19 22. The Person Most Knowledgeable about the allegation that the Peppermill will  
20 "likely continue to misappropriate trade secrets of the GSR.

21 23. The Person Most Knowledgeable about the allegation that the Peppermill  
22 intended to financially hart the GSR.

23 24. The Person Most Knowledgeable about GSR's allegation that the acts and  
24 conduct of Ryan Tors on July 13, 2013 were ratified and approved by management at the  
25 Peppermill.

26 Peppermill's request for PMK depositions on these topics is disingenuous at best and  
27 at worst an illogical and misleading attempt that GSR sustained no damages. Until Peppermill  
28 makes disclosures of substantive information GSR cannot respond to these topics since  
Peppermill and Tors are the only sources of this information. This questionable attempt to deny  
GSR information to which it is entitled under NRCP 16.1 while seeking to bind the corporation  
through PMK testimony should be denied. Only the Peppermill, and its agents, including Ryan  
Tors know what information was taken; and how Peppermill used the information. It is equally  
impossible for GSR to provide testimony concerning the "independent economic value of the  
information obtained by Ryan Tors on July 12, 2013" until such time as GSR has the documents

1 showing what information has been misappropriated over the 4 years, since the independent  
2 economic value will be cumulative based on the total information misappropriated. Defendant is  
3 attempting to mislead the Court into assuming that the misappropriation was a single occurrence  
4 instead of the multiple violations disclosed to the Gaming Board (*See Exhibits "2" & "3"*). In  
5 view of the fact that Peppermill has refused to provide any information concerning the foregoing  
6 matters as part of the required disclosures under NRCP 16.1 to demand that GSR do so is  
7 ludicrous. GSR believes that once Peppermill is compelled to comply with NRCP 16.1 that the  
8 information described above will be ascertainable and upon evaluation GSR believes that it will  
9 probably be more appropriately addressed through expert testimony. Therefore GSR would ask  
10 Peppermill not be permitted to obtain this discovery. It should be further noted that while  
11 depositions of Peppermill PMKs on these topics would be relevant, the obverse is not true.

12 **D. Peppermill Is Seeking Documents Under The Guise Of PMK Designations.**

13 Many of the topics (specifically 1, 2, 3, 4, 5, 6, 10, 12, 13, 25, 26, 27, 28, 29, and  
14 30)above seek information which would require the PMK to testify from documents not from  
15 personal knowledge. In fact several of the topics request such documents However neither the  
16 Notice nor the Amended Notice include a Subpoena Duces Tecum as required by NRCP 30 (b)  
17 (5) and NRCP 34 specifying each category of document sought with reasonable particularity and  
18 also requiring the subpoena provide 30 days notice prior to the deposition. As shown by the  
19 nature of the topics the sheer volume of information requested would require a PMK to testify  
20 from documents. Peppermill will then simply request to see whatever documents the PMK  
21 relied upon in preparing his testimony and defeat the notice provisions of NRCP 30 and 34.  
22 This is improper discovery technique and therefore all PMK topics which even remotely involve  
23 a review of documents should be stricken and Peppermill ordered to not proceed with these  
24 depositions.

25 **E. Peppermill Is Seeking Percipient Witness Testimony Under The Guise Of PMK**  
26 **Designations.**

27 The following requests seek the testimony of percipient witnesses under the guise of  
28 PMK designations or are so vague that GSR cannot apprehend the information sought.. GSR

1 has produced all the investigative reports, as well as the video of Mr. Tors interview with an  
2 agent from the Nevada Gaming Board. The percipient witnesses, who prepared the reports, have  
3 all been identified. The reports and video speak for themselves. It appears that the Defendant is  
4 trying to transform percipient witness testimony into testimony binding upon GSR. This is  
5 improper as GSR cannot be held accountable for the personal knowledge and recollections of  
6 employees who are not officers, directors, or managers of GSR. Further objection and protection  
7 is sought because these designations, if not intended to elicit percipient testimony must be asking  
8 about the security procedures and systems at GSR including surveillance and this information is  
9 proprietary and confidential.

10 *15. The Person Most Knowledgeable about the statements made by Ryan Tors while*  
11 *on the GSR property on July 12, 2013.*

12 *25. The Person Most Knowledgeable about all investigative report generated by the*  
13 *GSR concerning the activities of Ryan Tors at the GSR on July 13, 2013.*

14 Therefore Plaintiff ask that Peppermill be precluded from seeking this testimony as PMK  
15 depositions instead of depositions of specifically designated individuals as previously identified  
16 by GSR.

17 **F. Peppermill Is Seeking Testimony Concerning Subsequent Remedial**  
18 **Measures In Violation Of NRS 48.095**

19 GSR seeks a protective order to preclude the following PMK depositions on the grounds  
20 that they are an improper attempt to obtain testimony concerning subsequent remedial measures.

21 *18. The person most knowledgeable about all written, oral and documentary*  
22 *communications between GSR and other gaming properties in Washoe County concerning the*  
23 *activities of Ryan Tors as described in GSR's complaint since July 12, 2013.*

24 *20. The Person Most Knowledgeable about the efforts made by the GSR to preserve*  
25 *the secrecy and alleged confidentiality of the par settings on the slot machines utilized by the*  
26 *GSR during the years 2009 through and including the present.*

26 These requests are subject to NRS 48.095 which provides:

27 NRS 48.095 Subsequent remedial measures.

28 1. When, after an event, measures are taken which, if taken previously,  
would have made the event less likely to occur, evidence of the subsequent

measures is not admissible to prove negligence or culpable conduct in connection with the event.

Request 18 seeks communication with any other casinos which may have been victimized by the Peppermill after the incident with Ryan Tors. These communications are irrelevant to the injuries sustained by GSR and have no evidentiary value as to either liability or damages, since they would involved only communications post event, and as such seeks information outside the scope of NRCP 16.1. Also the request is vague and ambiguous, specifically as to the term "documentary communications" and therefore Peppermill should be precluded from taking this deposition.

Likewise Request 20 seeks to compare pre-July 12, 2013 security measures with post July 12 security measures and clearly seeks information which is statutorily protected.

**G. Request 26 is incomplete and therefore vague ambiguous and improper.**

Peppermill is asking for the PMK who can testify concerning:

*26. The Person Most Knowledgeable about daily detailed slot machine performance data for each slot machine at GSR for each month from December 29, 2009 to the present, including for each slot machine the following:*

Peppermill's request is incomplete in both the original and amended notice, despite the fact the Counsel for Plaintiff's letter notified Peppermill of the inadequacies of this request. Without knowing exactly what is sought, GSR can only speculate that from the language included, Peppermill is seeking trade secret information concerning every slot machine whether or not it was accessed. Unless this is intended as a judicial admission that Mr. Tors at the direction of Peppermill accessed every machine at GSR since December 29, 2009 on a daily basis, Peppermill is also seeking information which is not reasonably calculated to lead to admissible evidence. Until such time as Peppermill provides the disclosures required under NRCP 16.1 showing which machines were accessed at Peppermill's direction and on what occasions and dates, GSR can only state that the request is not only overbroad, but highly burdensome and would be extremely expensive and time consuming to obtain information which appears to be irrelevant to the claims and defenses in this matter and in intended to harass and confuse the issues in this case.

1           **III     CONCLUSION**

2           An examination of the Notice and Amended Notice for PMK depositions show that the  
3 notice fails to comply with the applicable rules, including the lack of a specific time and date for  
4 each topic, and the omission of a Subpoena Duces Tecum even though documents are both  
5 implicitly and explicitly requested. Moreover the topic themselves seek to obtain Trade Secrets  
6 and proprietary information, are overly broad, and ambiguous and seek information which is  
7 outside the scope of discovery in this matter. Lastly the topics themselves are improper and  
8 many of them seek information which calls for testimony by percipient witnesses not PMKS and  
9 seeks information exclusively within the custody and control of Peppermill. This last is the most  
10 disturbing since it indicates that Peppermill's failure to produce any substantive documents under  
11 NRCP 16.1 is not inadvertent but intended to evade the requirements of NRCP 16.1 and deny  
12 GSR the information to which it is entitled. GSR was the victim of conduct by Peppermill which  
13 was so nefarious that it so shocked the Nevada Gaming Commission, that Peppermill was  
14 subjected to one of the largest fines in Gaming History. Now Peppermill is trying to evade the  
15 liability of its actions by attempting to subvert the fair and complete exchange of evidence under  
16 the Nevada Rules of Civil Procedure, by not only refusing to provide substantive documents  
17 under NRCP 16.1 but by implying that GSR is supposed to have obtained these documents by  
18 osmosis and therefore it has no obligation to provide this information. Peppermill is also seeking  
19 to harass GSR by filing this improper Notice of PMK depositions necessitating that GSR bring  
20 this protective order. Therefore GSR requests this honorable court to enter a Protective order:

- 21           1.     Vacating the Notice and Amended Notice of PMK depositions;
- 22           2.     Ordering Peppermill to Comply with 16.1 disclosure requirements prior to the  
23 noticing of any further depositions in this matter;
- 24           3.     Instructing Peppermill to limit any future depositions to topics which do not seek  
25 proprietary and trade secret information belonging to GSR without leave of court;
- 26           4.     Precluding Peppermill from taking any depositions seeking documents or  
27 testimony which would require the deponent to reference records without a proper Subpoena  
28 Duces Tecum;

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

5. Precluding Peppermill from seeking to take percipient witness testimony under the guise of PMK depositions;

6. Limiting any inquiries to the time frame in which Ryan Tors or other agents of Peppermill were accessing slot machines at GSR;

7. Precluding Peppermill from seeking information concerning subsequent remedial measures;

8. Ordering Peppermill to provide specific dates and times for any future depositions rather than group scheduling;

9. Precluding PMK depositions of GSR seeking information within the custody and control of Peppermill which Peppermill has not disclosed under NRCP 16.1;

10. For such other and further relief as this Court deems equitable and just;

Dated this 19<sup>th</sup> day of June 2014

COHEN-JOHNSON, LLC

By:

/s/ H. Stan Johnson

H. Stan Johnson, Esq.  
Nevada Bar No. 00265  
Terry Kinnally, Esq.  
Nevada Bar No. 06379  
255 E. Warm Springs Road, Suite 100  
Las Vegas, Nevada 89118  
Attorneys for Plaintiff

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

**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 19<sup>th</sup> day of June 2013.

COHEN-JOHNSON, LLC

By:

/s/ H. Stan Johnson

H. Stan Johnson, Esq.  
Nevada Bar No. 00265  
255 E. Warm Springs Road, Suite 100  
Las Vegas, Nevada 89118  
Attorneys for Plaintiff



**INDEX OF EXHIBITS**

Number	Description	Page(s)
1	Copy of Partial Transcript from Injunction Hearing conducted on August 17, 2013	4
2	Gaming Control Board Complaint against Peppermill Casinos Inc.	4,11
3	Stipulation and Settlement Order entered into between the Nevada Gaming Commission and Peppermill Casino's Inc.	4,11
4	Amended Notice of Taking Deposition of PMK all of GSR's marketing and advertising strategies	7

COHEN-JOHNSON, LLC  
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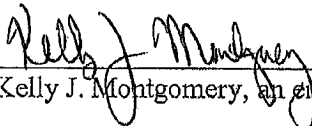
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 19<sup>th</sup> day of June, 2014, a true and correct copy of the foregoing Plaintiffs' Motion for Order Directing the Nevada Gaming Control Board to Produce All Documents and Other Relevant Evidence Pertaining to 13-23 was served by placing a copy thereof in the US Mail at Las Vegas, Nevada, with proper postage prepaid, addressed to the following:

COTTON, DRIGGS, WALCH, HOLLEY WOLOSON & THOMPSON  
C/o Clark V. Velis, Esq.  
800 S. Meadows Parkway, Suite 800  
Reno, Nevada 89501  
Attorney for the Defendant Peppermill

ROBINSON, BELAUSTEGUI, SHARP & LOW  
C/o Kent R. Robinson, Esq.  
71 Washington Street  
Reno, Nevada 89503  
Attorney for the Defendant Peppermill

GUNDERSON LAW FIRM  
C/o Mark H. Gunderson, Esq.  
3895 Warren Way  
Reno, Nevada 89509  
Attorney for Defendant Ryan Tors

  
Kelly J. Montgomery, an employee of COHEN|JOHNSON, LLC.

FILED  
Electronically  
2014-06-19 11:19:52 AM  
Joey Orduna Hastings  
Clerk of the Court  
Transaction # 4483704 : mcholico

1 4185  
2 STEPHANIE KOETTING  
3 CCR #207  
4 75 COURT STREET  
5 RENO, NEVADA  
6

7 IN THE SECOND JUDICIAL DISTRICT COURT  
8 IN AND FOR THE COUNTY OF WASHOE  
9 THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

10 --oOo--

11 MEI-GSR HOLDINGS, LLC.,	)	
	)	
12 Plaintiffs,	)	
	)	
13 vs.	)	Case No. CV13-01704
	)	
14 PEPPERMILL CASINOS, INC.,	)	Department 7
et al.,	)	
	)	
15 Defendants.	)	
	)	

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17  
18 PARTIAL TRANSCRIPT OF PROCEEDINGS  
19 PRELIMINARY INJUNCTION  
20 August 27, 2013  
21 9:00 a.m.  
22 Reno, Nevada  
23

24 Reported by: STEPHANIE KOETTING, CCR #207, RPR  
Computer-Aided Transcription

1 APPEARANCES:

2 For the Plaintiff:

3 COHEN & JOHNSON  
4 By: STAN JOHNSON, ESQ.  
255 E. Warm Springs Rd.  
5 Las Vegas, Nevada

6 For the Defendant:

7 BROWNSTEIN, HYATT, FARBER, SCHRECK  
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8 50 W. Liberty  
Reno, Nevada

9 O'MARA LAW FIRM  
10 By: DAVID O'MARA, ESQ.  
311 E. Liberty  
11 Reno, Nevada

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1 RENO, NEVADA, August 27, 2013, 9:00 a.m.

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4 THE COURT: Thank you, Mr. Johnson. All right.  
5 This matter came before this Court on the plaintiff's motion  
6 for a temporary restraining order, preliminary injunction  
7 filed August 9th, 2013.

8 The factors which a court must consider in  
9 determining whether or not a temporary restraining order is  
10 appropriate in any case, is, one, the threat of irreparable  
11 harm, harm that cannot be compensated through money. Second,  
12 it's the relative interests of the party or the prejudice to  
13 the party, prejudice to the plaintiff if a TRO is not entered  
14 and prejudice to the defendant if one is entered. Third, the  
15 Court has to consider whether or not the plaintiff is likely  
16 to succeed in its litigation in this case. Fourth, what is  
17 the public -- the Court should take into consideration the  
18 public's interest in this case.

19 Working in reverse order, the Court finds that it  
20 is in the interest of the public that there be fair, free  
21 competition amongst all businesses and industries and any  
22 attempts to undermine that core American economic principle  
23 is frowned upon and certainly this Court has a duty to  
24 intercede and to make sure that everybody operates on a level

1 playing field.

2 Third factor is the plaintiff's likelihood of  
3 success. This is a difficult factor, because there are two  
4 defendants in this case. The plaintiff's action against  
5 Mr. Tors is strong and the likelihood of them succeeding just  
6 at this basic level is a strong likelihood. The likelihood  
7 of success against the Peppermill is more problematic.

8 The evidence before the Court is based primarily  
9 on the DVD taken of Mr. Tors while on the property of the GSR  
10 and that Mr. Tors admits that he had been accessing this  
11 information for a considerable period of time. However, he  
12 denied that it was anything more than a prurient interest of  
13 his. And he did not in any way -- well, strike that. He did  
14 not directly implicate his employer in this case.

15 So this Court finds that the GSR is likely to  
16 succeed in its action against Mr. Tors, but not so likely at  
17 this stage based on this evidence to succeed against the  
18 Peppermill.

19 The relative prejudice to both sides, I think that  
20 bears equally on both sides. The GSR has been harmed and  
21 potentially could suffer significant economic damages through  
22 this sort of surreptitious surveillance. Also, the  
23 Peppermill would be severely curtailed in its efforts to  
24 compete on the open market if this Court were to enter a

1 temporary restraining order preventing them from advertising  
2 what their par is to the general public.

3           At this stage, it's hard to determine what impact,  
4 if any, Mr. Tors' activities has had within the Peppermill's  
5 operations. As both sides have said, this is early on in the  
6 litigation, the discovery hasn't occurred, but it is  
7 difficult for this Court to determine if there has been any  
8 infiltration of the Peppermill's operation by the information  
9 gathered -- excuse me -- operations by the information  
10 gathered by Mr. Tors. Much like dropping a drop of black ink  
11 into a glass of milk, it's very difficult to try to determine  
12 how it has impact, if any impact has happened, the operation  
13 of the Peppermill.

14           As far as the threat of irreparable harm is  
15 concerned, this is essentially, as the defense pointed out, a  
16 case of economic damages. This is not difficult for a Court  
17 or a jury to determine.

18           The factors the Court takes into consideration in  
19 determining whether or not to issue a preliminary injunction  
20 are three-fold. First, the Court has to determine whether  
21 the plaintiff is entitled to the relief requested and that  
22 includes restraining the commission of the complained of acts  
23 or actions. Second, whether or not the commission or the  
24 continuance of the act will produce greater irreparable harm.



1 And third, whether the defendant is doing some act in  
2 violation of the plaintiff's rights, which would render any  
3 judgment ineffectual.

4 Again, this Court must be careful in casting too  
5 wide a net. There are two defendants in this case. This  
6 Court finds that the GSR is entitled to the relief requested,  
7 including the restraining of the commission of the complained  
8 upon act. This Court finds that the commission or  
9 continuance of the act complained upon, that is, the  
10 unauthorized access to the GSR's confidential par information  
11 contained in the individual machines would produce great  
12 injury. And that the defendant, I'm speaking specifically of  
13 Tors and not of the Peppermill, was doing some act in  
14 violation of the defendant's rights.

15 Therefore, this Court finds that the temporary  
16 restraining order, the motion for a restraining order and  
17 preliminary injunction as to the defendant Peppermill is  
18 denied. The Court finds that the plaintiff has made a strong  
19 case against the defendant Tors. And, therefore, the motion  
20 for a temporary restraining order and preliminary injunction  
21 as to Mr. Tors is granted.

22 Mr. Tors is hereby enjoined from entering the  
23 property of the Grand Sierra Resort to collect or use any  
24 information that he had previously collected, that he is to

1 turn over any information, much along the lines that the  
2 Gaming Control Board has acquired, to the attorneys  
3 representing the Grand Sierra Resort with the exception of  
4 this universal key, which apparently is universal.

5           The bond posted, this Court will require security  
6 in the amount of \$5,000 to be posted with the Court before  
7 the preliminary injunction is in effect. And that will be  
8 the order of the Court. Thank you very much.

9                               --oOo--  
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1 STATE OF NEVADA           )  
                                  ) ss.  
2 County of Washoe        )

3       I, STEPHANIE KOETTING, a Certified Court Reporter of the  
4 Second Judicial District Court of the State of Nevada, in and  
5 for the County of Washoe, do hereby certify;

6       That I was present in Department No. 7 of the  
7 above-entitled Court on August 27, 2013, at the hour of 9:00  
8 a.m., and took verbatim stenotype notes of the proceedings  
9 had upon the preliminary injunction in the matter of MEI-GSR  
10 HOLDINGS, Plaintiff, vs. PEPPERMILL CASINOS, INC., et al.,  
11 Defendant, Case No. CV13-01704, and thereafter, by means of  
12 computer-aided transcription, transcribed them into  
13 typewriting as herein appears;

14       That the foregoing transcript, consisting of pages 1  
15 through 8, both inclusive, contains a full, true and complete  
16 transcript of my said stenotype notes, and is a full, true  
17 and correct record of the proceedings had at said time and  
18 place.

19  
20       DATED: At Reno, Nevada, this 3rd day of September, 2013.

21  
22                                   S/s Stephanie Koetting  
23                                   STEPHANIE KOETTING, CCR #207  
24

FILED  
Electronically  
2014-06-19 11:19:52 AM  
Joey Orduna Hastings  
Clerk of the Court  
Transaction # 4483704 : mcholino

1 NGC 13-23  
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4 STATE OF NEVADA

5 BEFORE THE NEVADA GAMING COMMISSION

6 STATE GAMING CONTROL BOARD,

7 Complainant,

8 vs.

9 PEPPERMILL CASINOS, INC., dba

10 PEPPERMILL HOTEL & CASINO;  
11 WESTERN VILLAGE;  
12 RAINBOW CLUB AND CASINO;  
13 RAINBOW CASINO; and  
14 PEPPERMILL INN & CASINO,

15 Respondent.

COMPLAINT

16 The State of Nevada, on relation of its State Gaming Control Board (BOARD),  
17 Complainant herein, by and through its counsel, CATHERINE CORTEZ MASTO, Attorney  
18 General, and MICHAEL P. SOMPS, Senior Deputy Attorney General, hereby files this  
19 Complaint for disciplinary action against Respondent pursuant to Nevada Revised Statute  
20 (NRS) 463.310(2) and alleges as follows:

21 1. Complainant, BOARD, is an administrative agency of the State of Nevada duly  
22 organized and existing under and by virtue of chapter 463 of NRS and is charged with the  
23 administration and enforcement of the gaming laws of this state as set forth in Title 41 of NRS  
24 and the Regulations of the Nevada Gaming Commission.

25 2. Respondent, PEPPERMILL CASINOS, INC., is licensed by the Nevada Gaming  
26 Commission to operate gaming in Nevada as follows:

27 (a) Doing business as PEPPERMILL HOTEL & CASINO located at 2707 South Virginia  
28 Street, Reno, Nevada as a Nonrestricted licensee;

(b) Doing business as WESTERN VILLAGE located at 815 Nichols Boulevard, Sparks,  
Nevada as a Nonrestricted licensee;