

1 A Mr. Cohen.

2 Q Were there any documents reviewed by you
3 and he in that meeting?

4 A No.

5 Q What else have you done to prepare for your
6 deposition here today, sir?

7 A I was provided via email the questions that
8 I have here in 8, 9, 21, 23.

9 Q Anything else?

10 A No.

11 Q Have you done any internal investigation at
12 the GSR to make you more prepared to answer questions
13 that pertain to these particular topics?

14 A No, sir.

15 Q Have you looked at any of the books and
16 records or financial reports of GSR to assist you with
17 your understanding of what money or damages GSR has
18 incurred in this case?

19 A During my daily duties I normally look at
20 the financial statements and understand the financial
21 and economics of the casino.

22 Q Other than that daily routine type of
23 endeavor, have you done anything unique to this case
24 and these questions to assist you with your testimony
25 today?

1 A Not outside my normal daily duties, no.

2 Q All right. So as I understand, sir, you've
3 been at the GSR for seven weeks.

4 Did you look at books and records that
5 would have reflected any change in financial
6 performance for, say, December 2011?

7 A During my normal daily duties I've reviewed
8 that information, yes.

9 Q So you go back?

10 A Yes.

11 Q Have you been tasked by anybody at GSR to
12 specifically look for evidence that GSR sustained any
13 damages as a result of the activities of Ryan Tors?

14 A No, sir.

15 Q When is the first time that you were
16 exposed to the fact that you would be deposed about
17 damages in this case?

18 A Last week.

19 Q Do you know how long this lawsuit has been
20 pending?

21 A I'm unclear. I don't know how long the
22 lawsuit has been pending, but I was aware of the
23 information regarding the case because it was industry
24 knowledge.

25 Q Sure.

1 The lawsuit was filed in August of 2013.
2 Between August of 2013 and last week, did you do
3 anything to determine what damages, if any, were
4 sustained by GSR?

5 A Not outside my normal daily duties.

6 Q And your normal daily duties are to look at
7 the financial reports?

8 A Read the financial reports.

9 Q When you say "financial reports," would you
10 please tell me what's included in that category.

11 MR. WRAY: At this point I would like to
12 make sure that we put on the record that we're
13 considering the information at this point forward to
14 be highly confidential.

15 (Pages 16 through 101 have been designated
16 as "Highly Confidential.")

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1 BY MR. ROBISON:

2 Q Please answer.

3 A The daily financial information and
4 financial reports include casino performance, property
5 expenses, daily financial situation of the casino and
6 related entities.

7 Q Casino performance, expenses. And the
8 third one, please?

9 A The overall financial situation of the
10 property.

11 Q That includes food and beverage, hotel, et
12 cetera?

13 A Yes.

14 Q Who is your immediate supervisor?

15 A The general manager.

16 Q Who's that?

17 A Tracy Mimno.

18 Q Do you provide these reports to her?

19 A Yes.

20 Q Are you -- have you prepared any reports or
21 summaries or prepared any communications which would
22 address the concept of damages that have been claimed
23 in this case by GSR?

24 A Not specifically.

25 Q Generally?

1 A That would be subject to interpretation.

2 Q Well, give me your best interpretation.

3 A Generally, I've produced reports that
4 analyze changes in business volumes.

5 Q When you say "business volumes," is that
6 head count?

7 A That would be head count, occupancy, covers
8 in the hotel or the casino -- or in the restaurants.

9 Q Understood.

10 Occupancy. Does that, as far as you know
11 as the CFO, have anything to do with damages claimed
12 in this case?

13 A Not to my knowledge.

14 Q Casino revenue. Does that have anything to
15 do with the damages being claimed in this case?

16 A Again, not to my knowledge.

17 Q Preservation or maintenance of client
18 relationships. Does that have anything to do with the
19 damages claimed in this case?

20 A I would not have that knowledge.

21 Q Okay. In the reports that you provide to
22 the general manager, do they show whether or not, in
23 your mind, there has been any damages sustained by GSR
24 as a result of Mr. Tors' activities?

25 A I have not looked at them in that -- with

1 that intent.

2 Q Have you made any comments verbally to the
3 GM or any other GSR representative that would reflect
4 your opinion or your position on whether or not GSR
5 lost any money because of Tors' activities?

6 A No.

7 Q And I take it that you have not been tasked
8 or assigned to do so?

9 A Correct.

10 Q Do you know of anybody that has?

11 A I'm not aware of anyone that has
12 specifically.

13 Q In your discussions with the general
14 manager or other executives at GSR, have you heard
15 about how the GSR intends to establish damages in this
16 case?

17 A I have not.

18 Q Have you developed any theories?

19 A Outside of tracking the hard costs
20 associated with activities that were -- with
21 activities that needed to transpire because of the
22 activities of Mr. Tors, outside of those hard dollar
23 costs, no.

24 Q Okay. Is there a report or a writing that
25 reflects your analysis of the hard costs for

1 activities that were incurred by GSR as a result of
2 Tors' activities?

3 A There is not a report that exists.

4 Q What kind of documents is there that you
5 would look at to ascertain or determine those hard
6 costs?

7 A Verbal discussion with counsel.

8 Q Is there any backup that would validate or
9 verify the number?

10 A There could be backup, but it has not been
11 formally produced.

12 Q What hard costs are you referring to?

13 A The costs of changing the locks on the slot
14 machines.

15 Q Have you looked at any documents to
16 determine what those costs are?

17 A I have not personally, no.

18 Q We heard yesterday those costs are in the
19 range of approximately 17,500. Is that consistent
20 with your understanding?

21 A From a hard dollar vendor cost, yes. There
22 would be --

23 Q I'm sorry.

24 A There would be payroll on top of that as
25 well.

1 Q Has that been tracked?

2 A I'm not the person most knowledgeable about
3 that.

4 Q I didn't say that you were. Has that been
5 tracked?

6 A Payroll is always tracked, yes.

7 Q Does the payroll identify what the
8 employees do? In other words, can you segregate? Can
9 you back out of the payroll numbers the man hours
10 needed or devoted to changing out the locks?

11 A I would need to speak with our slot
12 department about that.

13 Q As to whether or not that is done at the
14 slot department level?

15 A Correct.

16 Q In any event, the records that you see do
17 not break that out?

18 A Our timekeeping system does not.

19 Q Okay. Your timekeeping system is a little
20 bit public -- I don't know if you've changed it --
21 with regard to the class action filed against the GSR.
22 Are you involved in that case?

23 A No, sir.

24 Q Do you still use the Gatekeeper card swipe?

25 A We utilize an automated timekeeping system.

1 I cannot recall offhand exactly what the vendor is.

2 Q That simply logs time in, time out -- well,
3 actually time on property, correct, and then log in
4 your actual service time?

5 A Actual service time, yes.

6 Q And between service time and log-out, is
7 there any breakout as to what those particular
8 employees are doing?

9 A Above and beyond their job description, no.

10 Q All right. So as far as you know right
11 now, there is no way to break out how many hours it
12 took to rekey a particular machine?

13 A Dealing with the system that we're
14 discussing, no.

15 Q Is there another way to do that?

16 A Yes.

17 Q How?

18 A Manual tracking by the slot department.

19 Q How's that done? Explain what's done in
20 that regard.

21 A Simply putting together a log, if you will,
22 as to what their individual slot techs are doing.

23 Q So they -- your understanding is that the
24 slot department has records which would reflect what
25 the slot associates and the slot technicians are doing

1 on a daily basis event by event or hour by hour?

2 A That is not my understanding, because I
3 haven't seen the logs.

4 Q What is your understanding that the logs
5 then would reflect?

6 A I have not seen the logs, so I don't know
7 what they reflect, and I cannot testify that they
8 actually exist.

9 Q Okay.

10 A I'm talking about a general recordkeeping.

11 Q Okay. But this general recordkeeping that
12 you've described, is that something that you've
13 learned of in the industry?

14 A Yes.

15 Q But you don't know whether or not it has
16 been placed into effect or practice at the GSR?

17 A That is correct.

18 Q Who would be, as far as you know, most
19 knowledgeable about that?

20 A Our vice-president of casino operations.

21 Q What's the name of that person?

22 A Ralph Burdick.

23 Q All right. What documents or records is
24 there as far as you know that would verify this hard
25 cost of 17,500 for keys and locks?

1 A There would be an invoice from the vendor.

2 Q Who's the vendor?

3 A I do not know.

4 Q Those have not been produced in response to
5 what we call 16.1 initial disclosures. Have you been
6 asked to produce that material?

7 A I have not.

8 Q When were these hard costs incurred?

9 A I wouldn't have knowledge of that.

10 Q How did you acquire the understanding that
11 the approximate price was 17,500?

12 A From you.

13 Q Before I said that, did you have any
14 understanding how much GSR had incurred in replacing
15 the locks and keys?

16 A I had a general understanding that it was
17 in the range of 13- to 18,000, but I did not have an
18 exact number.

19 Q From what source did you get the
20 understanding that the range was from 13- to 18,000?

21 MR. WRAY: If this question requires any
22 attorney-client communications, I instruct you not to
23 answer. If there's some other source of that
24 information, then you may answer.

25 THE WITNESS: If it was -- if the

1 information came from a discussion with my outside
2 counsel? Is that what you're --

3 MR. WRAY: From counsel for the GSR, yes.

4 THE WITNESS: Okay.

5 MR. WRAY: So you may answer if it came
6 from some source other than an attorney for --

7 BY MR. ROBISON:

8 Q Well, let me ask you this. Where was the
9 source? Was it counsel or it was someone inside
10 that's not an attorney?

11 MR. WRAY: If he's asking you for a
12 communication about information with an attorney, I'm
13 instructing you not to answer it.

14 THE WITNESS: Okay.

15 MR. WRAY: If it's something other than
16 that, the source the information, then you may answer.

17 THE WITNESS: It was a conversation where
18 my attorney was present.

19 BY MR. ROBISON:

20 Q It depends on who else was present.

21 MR. WRAY: Well, if the purpose of the
22 other person being there was to also communicate with
23 the attorney about the same subject, then it still
24 applies, attorney-client. Do you understand?

25 THE WITNESS: Correct.

1 MR. WRAY: So please answer the question if
2 you can.

3 THE WITNESS: I cannot answer that
4 question.

5 BY MR. ROBISON:

6 Q Have you done any investigation as a result
7 of these communications that are privileged?

8 A I have not.

9 Q Are you going to?

10 A I can't say that I will at this point.

11 Q In other words, it's your understanding
12 that you're not going to be tasked with trying to
13 determine damages in this case?

14 A That's not what I said.

15 Q Are you tasked with trying to determine
16 damages in this case?

17 A I have not been tasked as of yet.

18 Q Do you know of anybody that has?

19 A Not -- not to my personal knowledge.

20 Q Other than attorneys, did you get this
21 information of 13,000 to 18,000 for hard costs from
22 any other source?

23 A No.

24 Q Have you done anything to verify that?

25 A I have not.

1 Q Do you know how this figure was derived?

2 A It was derived from a person that was
3 knowledgeable of -- I believe from a person that was
4 knowledgeable of the situation.

5 Q Is that person a lawyer?

6 A No.

7 Q Who is it?

8 A It was in discussions with my attorney and
9 other people.

10 Q I just need the identity, not the
11 communication.

12 THE WITNESS: Am I going to provide --
13 Okay. That was with Mr. Burdick.

14 BY MR. ROBISON:

15 Q When did that discussion occur?

16 A That was the night before last.

17 Q Before that had you acquired any
18 understanding whatsoever what the damages might be in
19 this case that were sustained by the GSR as a result
20 of Mr. Tors' activities?

21 A Just through discussion with counsel.

22 Q And when did that first happen?

23 A Last week.

24 Q So before last week you didn't know
25 anything about damages, correct?

1 A Correct.

2 Q And now you're being produced as the person
3 most knowledgeable about damages?

4 A Yes.

5 Q And what your knowledge is about damages
6 you've acquired during the last week?

7 A That is correct.

8 Q And that knowledge has been something
9 imparted to you from counsel?

10 A Through discussions with counsel, correct.

11 Q And other than that, you have no knowledge
12 other than what the attorney in this room told you,
13 correct?

14 A Other than my general knowledge of the
15 industry, no.

16 Q We received a computation of damages --

17 A Uh-huh.

18 Q -- from an expert whose name is David
19 Schwartz. Did you have any involvement with that?

20 A No.

21 Q Do you know who he is?

22 A I do not.

23 Q Have you been involved in any other
24 situations like this with your former employers to
25 determine losses or damages in lawsuits?

1 A Not this specific situation, no.

2 Q Well, I'm not saying about this specific.
3 I was asking any involvement whatsoever with any
4 former casino clients in which you were asked to help
5 determine damages.

6 MR. WRAY: In lawsuits?

7 MR. ROBISON: Well, that's where damages
8 are usually alleged.

9 BY MR. ROBISON:

10 Q Yes.

11 A In lawsuits, I have, yes.

12 Q Which ones?

13 A I don't recall offhand.

14 Q Which properties?

15 A I'd have to look at my records. I don't
16 recall the exact properties.

17 Q What records would you look at?

18 A My personal records.

19 Q What do they consist of?

20 A My personal records?

21 Q Yes.

22 A Would be possibly notes that I've taken
23 with previous employers.

24 Q About efforts to assist in calculation of
25 damages for litigation purposes?

1 A Correct.

2 Q What kind of damages do you recall were
3 sustained by these former employers?

4 MR. WRAY: Objection. This is not part of
5 the 30(b)(6).

6 You may answer.

7 THE WITNESS: It was adverse business
8 impact.

9 BY MR. ROBISON:

10 Q From what activities or conduct?

11 A Mostly from damages to property.

12 Q Physical damage?

13 A Physical damage to property, loss of use.

14 Q Do you have any experience in trying to
15 calculate damages based on business loss from gaming
16 activities?

17 A No.

18 Q All right. If we now go to Exhibit 31,
19 let's first talk about topic No. 8.

20 A Uh-huh.

21 Q You've been identified as the person most
22 knowledgeable among all the employees at GSR about any
23 financial loss or damages caused to the GSR by the
24 activities of Ryan Tors.

25 Is it true that you are aware of nobody

1 other than yourself most knowledgeable about those
2 losses and damages?

3 A Correct.

4 Q What is your knowledge, personal knowledge?

5 A Personal knowledge is of the hard dollar
6 costs as we discussed before.

7 Q I thought you heard that from counsel and
8 me.

9 A I have personal knowledge of it.

10 Q How?

11 A I have knowledge of it.

12 Q Okay. Tell me what knowledge you have
13 other than what you heard from me and counsel.

14 A What we specifically discussed was that
15 dollar figure.

16 Q No, your personal knowledge, sir. I don't
17 want to ask you about anything you heard from counsel
18 because that's not personal knowledge. Do you
19 understand?

20 MR. WRAY: Well, I'll object.

21 It's a legal conclusion that he's asking
22 you to make in order to answer the question.

23 BY MR. ROBISON:

24 Q Okay. Let's talk about what your lawyer
25 told you, then. What did your lawyer say?

1 MR. WRAY: Objection. Attorney-client
2 privilege.

3 MR. ROBISON: You can't have it both ways,
4 Mark.

5 MR. WRAY: Okay.

6 MR. ROBISON: If he's saying that's
7 personal knowledge, he's gotta tell me. If he has
8 personal knowledge, he has to answer the question. We
9 can get the commissioner on the line right now. If
10 you're going to put the privilege up, he must admit he
11 has no personal knowledge. It's one or the other.

12 MR. WRAY: Okay. He does not understand
13 your definition of "personal knowledge." If someone
14 told it to him in person, he's saying "I have personal
15 knowledge." You're saying, no, that's hearsay, but
16 you're asking a person --

17 MR. ROBISON: This is not brain surgery.
18 Hearsay is not personal knowledge. We all know that.

19 MR. WRAY: Do you understand that he's
20 saying if someone else told you it, that's not your
21 personal knowledge? You have to derive it independent
22 of someone telling you the information. That's his
23 question. Do you have personal knowledge of these
24 numbers is what --

25 THE WITNESS: I do not have personal

1 knowledge of the numbers.

2 BY MR. ROBISON:

3 Q So you showed up here as GSR's person most
4 knowledgeable without any personal knowledge, correct?

5 MR. WRAY: Objection. That's vague, and
6 that's an argument, and it's an unfair question.

7 BY MR. ROBISON:

8 Q All right. What personal knowledge do you
9 have of GSR's damages?

10 THE WITNESS: Do you want to take a quick
11 break?

12 MR. WRAY: No.

13 BY MR. ROBISON:

14 Q If you take a break while a question is
15 pending, you've waived the privilege.

16 MR. WRAY: Okay. Just a second.

17 Do you understand his question? Because he
18 said before if you don't understand the question, ask
19 him to repeat it or restate it. If you understand the
20 question, you can answer it.

21 THE WITNESS: Okay.

22 MR. WRAY: Do you have any personal
23 knowledge of the GSR's damages is his question.

24 BY MR. ROBISON:

25 Q I'm going to make this easy for you, sir.

1 Other than what you heard from counsel last
2 week or in the last week, what knowledge do you have
3 about GSR's damages?

4 A The knowledge I have about GSR's damages
5 are in the costs associated with responding to
6 Mr. Tors' activities.

7 Q And the only information you have on that
8 is what you received from Mr. Burdick and in the
9 presence of your attorney?

10 A And in discussions with Mr. Burdick about
11 other activities --

12 Q Okay. Let me interrupt you.

13 Discussions with Mr. Ralph Burdick outside
14 of the presence of counsel?

15 A They were outside the presence of counsel
16 and with the presence of counsel.

17 Q I want to talk to you now about the
18 conversations you've had with Ralph --

19 A Uh-huh.

20 Q -- when attorneys were not present. When
21 did those first occur?

22 A Last week.

23 Q What did Ralph say?

24 A We discussed other activities that needed
25 to happen to respond to Mr. Tors' activities.

1 Q What did Ralph say?

2 A I don't recall the exact words of the
3 discussion. However, we discussed the additional
4 security that was needed.

5 Q What did you say to Ralph about damages?

6 A We discussed other activities that needed
7 to happen to counteract Mr. Tors' activities.

8 Q So let me back up again, because you talked
9 about a discussion. I'm trying to figure out who said
10 what.

11 Please tell me what Ralph said.

12 MR. COHEN: Again --

13 MR. WRAY: Just a minute. It's okay.
14 Everything's fine. He's asking what Ralph said.

15 THE WITNESS: We discussed in general the
16 increased surveillance and security needed based on
17 the action of Mr. Tors.

18 BY MR. ROBISON:

19 Q So in November of 2014 or late October
20 2014, GSR discusses what security might be added at
21 GSR because of what Tors did in July of 2013? Is that
22 what your testimony is?

23 A Repeat that question again.

24 Q Sure.

25 In late October 2014 or early November

1 2014 --

2 A Uh-huh.

3 Q -- you and Ralph discuss what additional
4 security measures might be taken because of what Ryan
5 Tors did on July 12, 2013?

6 A Additional measures that were taken as a
7 result of his actions in 2013.

8 Q What additional measures were taken?

9 A The increase in surveillance coverage due
10 to the change in locks.

11 Q What additions were made, sir?

12 A I don't have the specifics on that.

13 Q Who does?

14 A That I can't answer. I don't know.

15 Q What additional surveillance did you hear
16 was put in place?

17 A Generally there was additional
18 surveillance. I don't know the specifics.

19 Q More cameras, more --

20 A I don't know the specifics.

21 Q More surveillance officers?

22 A I don't know the specifics.

23 Q More sophisticated technology?

24 A I don't know the specifics.

25 Q How much?

1 A I don't know the specifics, sir.

2 Q I'm sorry to be disagreeable this
3 morning --

4 A Uh-huh.

5 Q -- but you are here as the person most
6 knowledgeable, and you don't have any, do you?

7 A I had general discussions. We did not get
8 to those specifics. I'm sorry.

9 Q You don't have any personal knowledge about
10 any damages GSR sustained, do you?

11 A Other than what I've testified to here.

12 Q How much are the damages?

13 A I can't quantify that right now.

14 Q You don't know, do you?

15 A I cannot quantify that based on what I have
16 right now.

17 Q That is to say you don't know what the
18 damages are, correct?

19 MR. WRAY: Objection. Asked and answered.

20 MR. ROBISON: No, he hasn't answered it.

21 BY MR. ROBISON:

22 Q Go ahead.

23 MR. WRAY: You can answer again.

24 You don't like the answer.

25 But you can answer again --

1 THE WITNESS: Sure. I don't know.

2 MR. ROBISON: I don't like any answer
3 that's nonresponsive.

4 BY MR. ROBISON:

5 Q Is it true, sir, that you don't know what
6 the damages are?

7 A I don't have the information to calculate
8 that right now, no.

9 Q I said is it true that you don't know, and
10 you said no.

11 Is it true that you don't know what the
12 GSR's damages are?

13 MR. WRAY: Objection. Asked and answered.

14 BY MR. ROBISON:

15 Q Go ahead.

16 A Specifically, no.

17 Q Generally?

18 MR. WRAY: Same objection.

19 THE WITNESS: Generally, beyond the
20 discussion we've had, no.

21 BY MR. ROBISON:

22 Q And there's no quantification in the
23 discussions you've had with Mr. Burdick outside the
24 presence of counsel, is there?

25 A Other than -- no, other than the hard

1 dollar costs that we discussed, no.

2 Q That was in the presence of counsel, you've
3 told me.

4 A Other than the discussion regarding
5 additional security, additional surveillance, payroll
6 to deal with the situation, no.

7 Q So now you're telling me that there was
8 additional security and additional surveillance?
9 Both?

10 A I did not --

11 MR. WRAY: Objection. He's already
12 testified to that. Asked and answered.

13 MR. ROBISON: Please read that question
14 back -- that answer back. Excuse me.

15 (The answer was read by the reporter.)

16 BY MR. ROBISON:

17 Q So what I heard you say, sir, is that
18 there's additional security and additional
19 surveillance. Is that true?

20 A To deal with the situation, yes.

21 Q What additional security?

22 A I don't have the specifics.

23 Q Generally?

24 A I don't have the specifics.

25 Q You don't have any information about what

1 additional security was put in place as a result of
2 Mr. Tors' activities?

3 A Other than the fact that there was
4 additional security, no, I don't have the specifics.

5 Q By "additional security" are you referring
6 to manpower?

7 A Yes.

8 Q So more -- it's your testimony under oath
9 that more security officers were hired --

10 MR. WRAY: Objection. All of his testimony
11 is under oath, Counsel.

12 BY MR. ROBISON:

13 Q Is your testimony under oath that --

14 MR. WRAY: Objection. All of his testimony
15 is under oath.

16 BY MR. ROBISON:

17 Q Is it your testimony under oath --

18 MR. WRAY: Okay.

19 BY MR. ROBISON:

20 Q -- that additional security officers were
21 hired as a result of Mr. Tors' activities?

22 A I don't have that knowledge.

23 Q Okay. Is it your testimony today under the
24 oath that you've given that additional surveillance
25 equipment was acquired by GSR because of Mr. Tors'

1 activities?

2 A I don't have that knowledge.

3 Q Who does?

4 A I don't know.

5 Q Have you reviewed the payroll records to
6 make any determination of what additional security and
7 surveillance was put in place?

8 A I have not.

9 Q Did you do any research knowing that you
10 would be in front of me, giving answers under oath
11 about damages? Did you do anything to determine what
12 those damages were in light of that knowledge?

13 A Other than what I've testified to, no.

14 Q And that's talked to Mr. Burdick and talked
15 to Mr. Cohen, correct?

16 A And review of financial records during my
17 normal daily activities.

18 Q What did you see in the financial records
19 that reflected any increase in surveillance?

20 A Specifically, I was not looking for that.

21 Q What did you see in your daily review of
22 the financial records that showed any increase in
23 security?

24 A Specifically, I was not looking for that.

25 Q What were you looking for?

1 A Through my normal course of duties, I was
2 looking at the financial records in general for
3 accuracy.

4 Q Were you trying to answer today's call to
5 come here and testify about damages when you reviewed
6 these records, sir?

7 A No, sir.

8 Q That's just something you do every day as
9 part of your job, correct?

10 A That is correct.

11 Q Completely unrelated to this lawsuit?

12 A Correct.

13 MR. ROBISON: I think I have to go take a
14 break and let my blood pressure come down a bit.

15 BY MR. ROBISON:

16 Q All right. I've been using the word
17 "damages," and I don't want to the quibble with you,
18 but you're here also as the person most knowledgeable
19 about financial loss.

20 Are your answers any different with respect
21 to what financial loss was incurred by GSR as a result
22 of Mr. Tors' activities than those you had given me
23 with regard to damages?

24 A Other than what we have discussed?

25 Q I said is your answer any different. I

1 know what we discussed.

2 A No.

3 Q Who did you replace?

4 A My position was a newly created position at
5 GSR.

6 Q Who performed those functions before the
7 position was created?

8 A The vice-president of finance.

9 Q Who is that?

10 A Terry Vavra.

11 Q Is Terry still employed at GSR?

12 A He is.

13 Q Can you help us spell that last name,
14 please?

15 A I cannot.

16 Q Pronounce it phonetically as best you can.

17 A I believe it's Vavra, V-a-v-r-a.

18 Q What is Terry's duties and responsibilities
19 now?

20 A Vice-president of development.

21 Q What are his duties and responsibilities?

22 A He's responsible -- just like his title
23 says, he's responsible for the development activities.

24 Q Development financial? Is he on the
25 financial side?

1 A He's on, physically, the development side
2 into new ventures.

3 Q Okay. To your knowledge, based upon what
4 you know about his job, would he have any information
5 about these damages or financial loss?

6 A I can't speak to his knowledge.

7 Q Okay. Was he performing your duties and
8 functions before they created your position?

9 A I cannot testify to what his exact duties
10 were and how they -- how they were replaced or were
11 not replaced by my position.

12 Q Do you know the name of anybody that was
13 performing these reviews of daily financial records
14 prior to the time that you commenced your employment
15 at the GSR?

16 A Specifically -- specifically, no, because
17 it was before my time.

18 Q Are you aware of anybody that would have
19 seen in the financial records what alleged increases
20 there were in security and surveillance as a result of
21 reviewing these financial reports prior to your
22 employment at GSR?

23 A I don't have that knowledge.

24 Q The complaint filed in this complaint [sic]
25 says that the GSR sustained damages in excess of

1 \$10,000. Do you have any information about that,
2 other than this rekeying and relocking process that
3 you testified about?

4 A Other than the specific hard dollars that
5 they incurred?

6 Q Yeah.

7 A No.

8 Q Do you have any idea what the hard dollars
9 incurred were by this increase in security and
10 surveillance?

11 A Specifically, no.

12 Q Generally?

13 A Generally, no. I wouldn't have that
14 knowledge.

15 Q Well, in your review of financial records,
16 don't you see the expense side?

17 A Yes, sir.

18 Q And the payroll side?

19 A Yes, sir.

20 Q Do you see how many specific employees are
21 in security?

22 A Currently I do, yes.

23 Q And you have looked at records that predate
24 your employment at GSR?

25 A Correct.

1. Q Have you noticed any increases in security
2 and personal?

3 A I haven't looked at it in that detail.

4 Q Knowing that you're going to come here and
5 testify about damages, you didn't even look at that?

6 MR. WRAY: Objection. Argumentative.

7 Go ahead and answer.

8 BY MR. ROBISON:

9 Q Correct?

10 A No.

11 Q Why?

12 MR. WRAY: Same objection.

13 Go ahead and answer.

14 BY MR. ROBISON:

15 Q Why wouldn't you do something to be
16 knowledgeable about the issues that you're being
17 presented to be most knowledgeable about?

18 MR. WRAY: Same objection.

19 Go ahead.

20 THE WITNESS: The items that I'm most
21 knowledgeable about have to do with the business of
22 GSR, and I'm testifying to you to my knowledge level
23 of those items.

24 BY MR. ROBISON:

25 Q I had a different question. I'm going to

1 have it read back to you. I expect an answer to my
2 question.

3 A Okay.

4 MR. ROBISON: Please read it back.

5 (The question was read by the reporter.)

6 MR. WRAY: Same objection.

7 THE WITNESS: And I testified that outside
8 of my daily duties and the discussions with
9 Mr. Burdick that we have already gone over, I didn't
10 do anything other than that.

11 BY MR. ROBISON:

12 Q But my question is why wouldn't you try to
13 be knowledgeable about the things that you're being
14 presented to be most knowledgeable about?

15 MR. WRAY: Objection. Argumentative.

16 THE WITNESS: I can't answer that.

17 BY MR. ROBISON:

18 Q I mean, you were told that you were going
19 to be here facing a lawyer asking questions about
20 damages that you're presented as being the most
21 knowledgeable about. You knew that, right?

22 A Yes.

23 Q And did you purposefully elect to do
24 nothing to educate yourself?

25 MR. WRAY: Objection. Argumentative.

1 Go ahead.

2 THE WITNESS: No, sir. I did my daily
3 duties as a CFO to prepare --

4 BY MR. ROBISON:

5 Q In an effort to determine damages?

6 A Not in an effort to determine damages, no.

7 Q Do you have any explanation, sir, as to why
8 you wouldn't try to be knowledgeable about the things
9 that you are being presented in this lawsuit to be
10 most knowledgeable about?

11 MR. WRAY: Same objection.

12 Go ahead.

13 THE WITNESS: I did my normal daily duties.

14 BY MR. ROBISON:

15 Q That's it?

16 A That's correct.

17 Q Which have nothing to do with damages?

18 MR. WRAY: Objection. Argumentative.

19 BY MR. ROBISON:

20 Q Correct?

21 MR. WRAY: Same objection.

22 Go ahead.

23 THE WITNESS: Correct.

24 BY MR. ROBISON:

25 Q Let's move to item No. 9.

1 A Uh-huh.

2 Q Is your answer yes? You're using those
3 words that we're trying to avoid.

4 You are being presented as the person most
5 knowledgeable about the financial harm or damages
6 caused to the GSR by the activities described in the
7 complaint filed in this matter caused by the
8 Peppermill separate and distinct from damages caused
9 by Ryan Tors.

10 Were you aware before coming in here today
11 that you were going to be presented as a person most
12 knowledgeable about the topic described in item No. 9?

13 A Yes.

14 Q Did you do anything to ascertain what those
15 damages and losses might be?

16 A The damages and losses other than the hard
17 dollar costs are difficult to determine because it's
18 knowledge.

19 Q Different question. Please listen to my
20 question.

21 A Okay.

22 Q Did you do anything to prepare yourself to
23 be presented as a person most knowledgeable about the
24 topic described in item No. 9?

25 A Nothing specifically, no.

1 Q Generally what did you do to prepare
2 yourself for this deposition with respect to item
3 No. 9?

4 A Discussions and broaden my knowledge as a
5 CFO in the gaming industry.

6 Q Discussions with Ralph?

7 A Correct.

8 Q Outside the presence of counsel?

9 A As we discussed, yes.

10 Q Did you and he discuss specifically what
11 the Peppermill caused which may be distinct and
12 different from what Mr. Tors caused?

13 A We did not specifically discuss what the
14 Peppermill caused.

15 Q As distinguished from what Mr. Tors caused.
16 Do you understand that?

17 A Correct. Yes.

18 Q Okay. Do you know of any difference?

19 A Any difference that the Peppermill caused?

20 Q Yes.

21 A The only thing I'm aware of is that the
22 knowledge of the information that Mr. Tors gained is a
23 competitive disadvantage to my property.

24 Q Because the Peppermill learned of the
25 percentage hold on a machine?

1 A Yes.

2 Q Which machine?

3 A I don't know the specific machines.

4 Q How many machines?

5 A I do not know.

6 Q When?

7 A The date that Mr. Tors obtained it.

8 Q When was that?

9 A I cannot recall that exact date.

10 Q Have you seen the complaint?

11 A I have not.

12 Q Item 9 says "as described in the
13 complaint." So for you to be here as the person most
14 knowledgeable about the damages claimed in the
15 complaint, you didn't even look at the complaint?

16 MR. WRAY: Objection. Argumentative.

17 THE WITNESS: No, sir.

18 BY MR. ROBISON:

19 Q How did you feel that you could answer
20 these questions if you didn't know what damages were
21 alleged in the complaint?

22 MR. WRAY: Same objection.

23 THE WITNESS: Outside counsel informed me
24 of the damages alleged in the complaint.

25 /////

1 BY MR. ROBISON:

2 Q Before he did that this last week, did you
3 have any idea or knowledge about the damages alleged
4 in the complaint?

5 A No, sir.

6 Q What are the damages alleged in the
7 complaint?

8 A I do not know the exact damages other than
9 what you just said, which is damages in excess of
10 \$10,000.

11 Q Caused by whom?

12 A Caused by the actions of Mr. Tors.

13 Q Are you telling me you don't have any
14 personal knowledge of the financial harm caused by the
15 Peppermill separate and distinct from the activities
16 of Mr. Tors?

17 A The knowledge I have from my time in the
18 industry is the knowledge of what Mr. Tors gained is a
19 competitive advantage for whoever has it.

20 Q If it's used?

21 A Or if it's not used..

22 Q How is it if it's not used?

23 A If you have knowledge of the pars that are
24 on the casino floor, you can use that to either change
25 your marketing strategy --

1 Q Right.

2 A -- and your operating strategy --

3 Q Right.

4 A -- or you can use that to validate that
5 your current strategy is the most effective.

6 Q Do you think that the acquisition of the
7 par information without additional information might
8 be misleading?

9 MR. WRAY: I'm sorry. I was otherwise
10 engaged and didn't hear the question. Would you mind?
11 BY MR. ROBISON:

12 Q Do you think that the acquisition of par
13 information without additional information such as
14 free play, comp reinvestment, and those other
15 ingredients of marketing strategies might be
16 misleading?

17 A I'm not the right person to answer that.

18 Q Who is?

19 A Somebody who's knowledgeable of creation of
20 the market strategy.

21 Q You're not qualified to discuss that, then,
22 are you?

23 A On the marketing side?

24 Q Yes.

25 A No. On the financial side, yes.

1 Q So how many dollars can you tell us the GSR
2 lost because of the activities of the Peppermill
3 distinguished and separate from the activities of
4 Tors?

5 A I don't have the details needed to compute
6 that.

7 Q Where would you get them from?

8 A Peppermill.

9 Q Are any records available for you to look
10 at at the GSR to determine whether GSR lost money from
11 its revenue because of the Peppermill's activities
12 distinguished from those of Mr. Tors?

13 A It would be difficult to determine without
14 having the other side of the equation.

15 Q Is there any records or documents that you
16 would look at at the GSR to determine whether or not
17 it sustained any financial loss caused by Peppermill
18 separate and distinct from the activities of Mr. Tors?

19 A I can't answer that right now.

20 Q Why?

21 A From a detail knowledge standpoint, I
22 haven't reviewed the player and financial records in
23 that level of detail from when the event happened.

24 Q What financial records and player records
25 would you analyze, sir?

1 A From the GSR side, it would be detailed
2 confidential player records.

3 Q Let's stay on the financial records first.
4 What financial records would you analyze to make that
5 determination?

6 A Sir, I don't have the other side of the
7 equation.

8 Q No, I'm asking you the side that you do
9 have access to. That's GSR's. That was the question.
10 Please stay on task. Okay?

11 What financial --

12 MR. WRAY: I think he is, Counsel, staying
13 on task.

14 MR. ROBISON: No, he's not.

15 BY MR. ROBISON:

16 Q What financial records would you look at to
17 determine what GSR actually lost in terms of dollars
18 as a result of the activities of the Peppermill
19 distinguished from the actions of Mr. Tors?

20 A Sir, it's a two-sided equation.

21 Q I understand that.

22 A You have to understand what GSR lost and
23 what Peppermill gained.

24 Q I'm only asking you about GSR's loss.
25 Okay?

1 A Okay.

2 Q Let's stay on task. I'm only asking you
3 about GSR's loss. Okay?

4 A Uh-huh.

5 Q Do you understand that?

6 A Yes, sir.

7 Q What financial records would you look at?

8 A Sir, I would look at the player records
9 from GSR and the player records of Peppermill. It's a
10 two-sided equation.

11 Q All right. Now, let's talk about the
12 player records at GSR.

13 Tell me what you would look at with
14 specificity. You have a player tracking system, do
15 you not?

16 A Correct.

17 Q All right. What are we going to look at as
18 a result of bringing up the player tracking system?

19 A I would not know specifically what to look
20 at until I looked at the Peppermill records.

21 Q What would you want to look at of
22 Peppermill records?

23 A I would look at their increase in play.

24 Q Coin in?

25 A Specific customers possibly. I don't know

1 what they have.

2 Q Would you consider free play?

3 A I would look at everything.

4 Q Would you look at comp?

5 A I would look at everything.

6 Q Would you look at comp reinvestment?

7 A I would look at everything.

8 Q Would you look at head count?

9 A Sir, I'd look at everything.

10 Q You are aware, are you not, that GSR's head
11 count has gone up since Mr. Tors visited the GSR?

12 A And they've spent a significant amount of
13 money to do that.

14 Q And you're aware that the revenue --

15 MR. WRAY: The question was are you aware
16 of it.

17 THE WITNESS: Yes, I'm aware of it.

18 BY MR. ROBISON:

19 Q Why do you want to argue with me?

20 A I'm not, sir. I'm answering your
21 questions.

22 Q You're aware that the head count's gone
23 up --

24 A Yes, sir.

25 Q -- since -- you're aware that the head

1 count's gone up since the Meruelos took over, correct?

2 A Yes, sir.

3 Q And the revenue has gone up?

4 A Yes, sir.

5 Q In fact, for the first time in many years
6 GSR's positive EBITDA; is that correct?

7 A That's not public information.

8 Q I'm not saying it is. Answer my question.
9 You're here under highly confidential circumstances,
10 so please answer my question. Okay?

11 MR. WRAY: It's okay. Go ahead.

12 His question is did your EBITDA go up for
13 the first time in many years.

14 MR. ROBISON: No --

15 MR. WRAY: Positive.

16 MR. ROBISON: Okay.

17 MR. WRAY: Sorry. Was it positive for the
18 first time in many years?

19 THE WITNESS: I can't speak to before my
20 time. EBITDA is positive, yes.

21 BY MR. ROBISON:

22 Q Well, you tell me time and time again that
23 you've looked through these daily records over the
24 past years.

25 Now, looking from back history to the

1 present, the trend has gone upward at the GSR,
2 correct?

3 A The trend has gone upward, yes.

4 Q Are you involved in any of the shopping
5 activities the GSR does at the Peppermill?

6 A No, sir, I am not.

7 Q Are you aware that GSR has shopped the
8 Peppermill?

9 A I am aware, yes.

10 Q And has ascertained its pars?

11 A I was not aware of that, no.

12 Q Have you seen any reports to that effect
13 from Compton & Dancer?

14 A I have not, sir.

15 Q And do you know who they are?

16 A I do.

17 Q Who are they?

18 A Compton & Dancer is an outside company used
19 to shop competitors.

20 Q Are you aware the GSR has used them?

21 A I am.

22 Q And you've seen their reports?

23 A I have not.

24 Q For what purpose does GSR use Compton &
25 Dancer?

1 A To shop competitors.

2 Q For what purpose?

3 A To gain competitive information.

4 Q What kind?

5 A Publicly available.

6 Q What kind of information?

7 A I haven't seen the reports.

8 Q Well, you told me they go out and shop to
9 get information from casinos. You don't know what
10 kind of information?

11 A That is in the marketing division of our
12 business. I do not see the specific reports.

13 Q Are you involved in any of the meetings
14 with management to strategize marketing programs,
15 events, advertising, promotions?

16 MR. WRAY: Objection. This is the subject
17 of the pending motion and the minutes of the Court at
18 the hearing that I reflected in the transcript
19 yesterday afternoon.

20 This is a topic beyond the scope of the
21 30(b)(6) topics that we're supposed to be discussing
22 here today with this witness. Marketing strategy in
23 particular is one of those topics beyond the scope of
24 this 30(b)(6) deposition.

25 /////

1 BY MR. ROBISON:

2 Q Go ahead and answer.

3 A Yes, I'm in those meetings.

4 Q And with respect to those meetings, isn't
5 the practices and marketing of the Peppermill
6 discussed?

7 A Yes --

8 MR. WRAY: Objection --

9 Excuse me. Just wait a second when it
10 comes to a marketing question. I might have a
11 statement to make.

12 Objection. I object to this question for
13 the same reasons that I did to the prior question.

14 BY MR. ROBISON:

15 Q But you told me, did you not, sir, that for
16 you to make any determination of damages, you're going
17 to have to look at what goes on at the Peppermill in
18 terms of its marketing, correct?

19 A Yes, sir.

20 Q And you know that the Peppermill does that,
21 correct?

22 A Does marketing?

23 Q Shops the Peppermill's marketing
24 strategies.

25 MR. WRAY: You mean the GSR shops?

1 MR. ROBISON: Yes.

2 THE WITNESS: That's not what you said.

3 MR. WRAY: Go ahead. Answer.

4 THE WITNESS: Yeah.

5 BY MR. ROBISON:

6 Q Okay. So that's tied into damages, right?
7 You said you're going to have to know the other side
8 of the equation, what Peppermill does --

9 A Yes, sir.

10 Q -- to determine damages, correct?

11 A Yes, sir.

12 Q So now we're going to talk about marketing.

13 A Uh-huh.

14 MR. WRAY: Yeah, but you were talking about
15 GSR's marketing.

16 BY MR. ROBISON:

17 Q So when you look at the Peppermill's
18 marketing, what do you see?

19 A You're going to need to be more specific.

20 Q You mentioned that you had strategy
21 meetings in which the Peppermill's marketing
22 strategies are discussed.

23 A Uh-huh.

24 Q Your answer is yes?

25 A Yes.

1 Q Tell me about those discussions.

2 A In general, we talk about the types of
3 customers that they go after and we talk about their
4 concerts and promotions.

5 Q For what purpose?

6 A To understand what our competitive
7 landscape is.

8 Q You do the same with the Atlantis?

9 A Yes.

10 Q You shop them as well?

11 A That I'm not aware of.

12 Q Has there been discussions about the fact
13 that GSR has ascertained the free play and pars from
14 the Atlantis and Peppermill in their shopping
15 activity?

16 A There has been discussion that we have
17 estimates.

18 Q And you have modified the marketing
19 strategies of the GSR accordingly?

20 A That I can't speak to because I don't
21 modify the strategies.

22 Q Have you heard that that was done in your
23 meetings with management?

24 MR. WRAY: Objection. This is about GSR's
25 marketing strategies subject to the motion, and I'd

1 make the same objection I made before in yesterday's
2 deposition.

3 BY MR. ROBISON:

4 Q Go ahead.

5 A So marketing strategy is modified based on
6 the competitive landscape. Peppermill is one piece of
7 that; Atlantis is one piece of that.

8 Q How many pieces are there?

9 A Multiple pieces depending on -- we bring in
10 Northern California and talk about Reno in general.

11 Q So do you discuss the Peppermill's pars at
12 your meeting -- meetings?

13 A No meetings that I've been at.

14 Q Atlantis's?

15 A No meetings that I've been at.

16 Q Is free play discussed at either of those
17 two properties?

18 A We discuss free play strategy; no details.

19 Q The strategy is to be between the free play
20 provided by the Atlantis and the free play provided by
21 the Peppermill?

22 A In the meetings I've been at, that wasn't
23 discussed.

24 Q How many meetings have you attended?

25 A Marketing related, 10 to 14.

1 Q So about two a week?

2 A One to two a week.

3 Q With respect to item No. 9, is there any
4 way that you are here to quantify the financial harm
5 or damages caused by the GSR -- caused to the GSR?
6 Excuse me.

7 A Repeat the question again.

8 Q With respect to item No. 9 on Exhibit 1 to
9 Exhibit 31, can you testify or quantify the financial
10 harm or damages caused to the GSR by the activities of
11 the Peppermill or Tors?

12 A I don't have enough information to quantify
13 that.

14 Q And you've told me all the knowledge that
15 you have about that financial harm and damage?

16 A To the GSR?

17 Q Yes.

18 A Yes.

19 Q And it's unquantifiable by you right now?

20 A With the information I have, correct.

21 Q And you can't describe the areas of damages
22 other than surveillance, replacing the keys and locks,
23 and security?

24 A That is correct.

25 Q Any other areas that you're aware of other

1 than those three?

2 A Not that I'm aware of.

3 Q Have I exhausted all the knowledge,
4 personal knowledge, you have on these two topics in 8
5 and 9?

6 A I've answered all your questions.

7 Q Do you have any other knowledge that you
8 haven't provided me in response to my questions about
9 topics 8 and 9?

10 MR. WRAY: Objection. Speculation.
11 Hypothetical.

12 BY MR. ROBISON:

13 Q I'm not going to ask you to speculate about
14 your knowledge. I'm asking you to tell me what your
15 knowledge is because that's what GSR is obligated to
16 do in this deposition.

17 MR. WRAY: Objection. It's not a question;
18 it's a statement.

19 BY MR. ROBISON:

20 Q Go ahead and answer my question.

21 MR. WRAY: Objection to this question.
22 It's total speculation.

23 MR. ROBISON: It's in response to your
24 rhetoric.

25 /////

1 BY MR. ROBISON:

2 Q But go ahead and answer the question.

3 MR. WRAY: Objection. Argumentative.

4 THE WITNESS: Repeat the question.

5 BY MR. ROBISON:

6 Q Would you have any other information about
7 the source of damages GSR sustained other than the
8 hard costs for keys and locks, security, and
9 surveillance?

10 A With the information that we have, that I
11 have today --

12 Q You're here today because I've been trying
13 to get this --

14 MR. WRAY: Objection. He wasn't finished
15 with his response.

16 BY MR. ROBISON:

17 Q -- deposition for three months --

18 MR. WRAY: You're supposed to wait until he
19 finishes his response.

20 BY MR. ROBISON:

21 Q As of today, is there any other information
22 that you have?

23 A As of today -- are you done with the
24 question?

25 Q I am.

1 A Okay. As of today, I've given you what I
2 have. I don't have the other information needed, as
3 we discussed.

4 Q Do you have any other knowledge about the
5 damages sustained other than what you've stated?

6 A No, sir.

7 Q Moving to item No. 21 --

8 A Uh-huh.

9 Q -- you are being presented here as GSR's
10 person most knowledgeable about the independent
11 economic value of the information obtained by Mr. Tors
12 on July 13, 2013.

13 Right?

14 A Correct.

15 Q And you've known about you being this
16 person who is most knowledgeable for approximately one
17 week?

18 A That is correct.

19 Q And prior to October 15, 2014, did you have
20 any knowledge at all about the economic value of that
21 information obtained by Mr. Tors?

22 A The economic value of that information as
23 an industry trade secret is invaluable.

24 To answer your question, my knowledge of
25 the gaming industry followed me to last week, which

1 follows me today, which is that information to a
2 competitor is invaluable as you determine your
3 marketing strategy --

4 Q Unascertainable?

5 A Can I finish?

6 -- as you determine marketing strategy.

7 Q Is it unascertainable?

8 A I'm not -- I'm not the proper one to value
9 that intangible.

10 Q Well, I can't necessarily agree with that
11 because you've been produced as the person most
12 knowledgeable.

13 Do you know what the value is?

14 A It's invaluable.

15 Q Is it quantifiable?

16 A It is -- it's invaluable and very difficult
17 to quantify.

18 Q Have you made any efforts to do so?

19 A No, sir.

20 Q Over the past week when you knew that you
21 would be here as a person most knowledgeable about the
22 economic value of pars, what did you do to respond to
23 your duties to answer these questions truthfully?

24 A What we had discussed before.

25 Q Met with counsel and talked to Ralph?

1 A Yes.

2 Q What did Ralph say about the economic
3 value?

4 A We agreed that it was invaluable.

5 Q Any discussion about ascertainable?

6 A We discussed that it was incredibly hard to
7 value because the value of that information is of
8 value to the individuals that have it, not necessarily
9 the value of the individuals it was stolen from.

10 Q What's the value to the Atlantis of knowing
11 that you've set your Buffalos at the lowest par
12 available, 5.28?

13 A It's a small piece of the competitive
14 strategy.

15 Q What's the value?

16 MR. WRAY: Objection. He wasn't here to
17 talk about the Atlantis's value.

18 MR. ROBISON: He's talking about value of
19 pars. Let's talk..

20 MR. WRAY: Okay, but -- that's my
21 objection.

22 THE WITNESS: You'd have to ask the
23 Atlantis as to what that value is.

24 BY MR. ROBISON:

25 Q So the Atlantis knowing that the GSR has

1 published the fact that its Buffalos are set at 5.28,
2 the value of that knowledge can only be determined by
3 asking the Atlantis?

4 That was a bad question.

5 The value to the Atlantis can only be
6 ascertained by asking the Atlantis what value they get
7 from that?

8 A The value of that information is with the
9 person that holds that information. So that value
10 would be to the Atlantis.

11 Q GSR holds that information?

12 A Uh-huh.

13 Q The answer is yes?

14 A Correct.

15 Q The GSR knows it's set its Buffalo at 5.28,
16 lowest setting available on that Aristocrat machine,
17 correct?

18 A Uh-huh.

19 Q Your answer is yes?

20 A Sure, yeah. Yes.

21 Q I'm trying to get you to answer audibly.

22 And so anybody with a par sheet -- that
23 would be all your competitors -- knows what the lowest
24 setting is, correct?

25 A Yes.

1 Q And so all your competitors know that your
2 Buffalo is set at 5.28?

3 A Yes.

4 Q And the value of that to each of these
5 properties can only be ascertained by asking them what
6 that value is to them? Is that your testimony?

7 A Yes. Because you're asking what the value
8 is to them.

9 Q What's the value, the economic value, of
10 that?

11 A The economic value of that trade secret as
12 to what it is with the holder. So you would have to
13 ask them.

14 Q So the independent economic value of the
15 information concerning a par is something that is
16 determined by the holder of that information?

17 A Yes.

18 Q For example, what Ryan Tors got from the
19 GSR, the economic value of that can only be determined
20 by the Peppermill?

21 A The economic value of what that information
22 is worth.

23 Q Can only be determined --

24 A By the information -- by the individual
25 that uses that information.

1 Q In this case Peppermill?

2 A Yeah, Peppermill, Atlantis; whoever has the
3 information.

4 Q Well, Ryan Tors; do you know where the
5 information he got went?

6 A It went to the Peppermill.

7 Q The information that he got on July 13,
8 2012 -- excuse me, July 12, 2013?

9 A Sorry. I assume it went to the Peppermill
10 because he was an employee of the Peppermill.

11 Q Well, you know that Gaming detained him
12 that night and obtained the information?

13 A I know that he was detained. I don't know
14 what happened to the information.

15 Q What reason do you believe -- what reason
16 do you have to believe that the Peppermill ever got
17 that information from any source other than the GSR?

18 A I don't have any information on that.

19 Q So what economic value would the Peppermill
20 have received from that information if it got that
21 information from the GSR?

22 MR. WRAY: Objection. Hypothetical.

23 Go ahead.

24 THE WITNESS: If the GSR knowingly provided
25 the information that Ryan Tors stole, that would be

1 the GSR's decision to disclose that information.

2 BY MR. ROBISON:

3 Q I'm going to show you Exhibit 14. That was
4 the information that was written on a piece of paper
5 that the Gaming Control Board confiscated from
6 Mr. Tors on July 12, 2013.

7 Have you seen that before?

8 A No.

9 Q Do you know how we got that?

10 A I have no idea.

11 Q GSR produced it as a 16.1 disclosure.
12 What's the value of that information?

13 A I can't ascertain what the value of this
14 information is. I can't even read it.

15 Q All right. There are par settings for two
16 Buffalos and two other machines in the handwriting on
17 that.

18 A I can't determine the value of --

19 MR. WRAY: There's no question pending. He
20 just made a statement.

21 BY MR. ROBISON:

22 Q Knowing that, what's the value, then, the
23 economic value, of the two Buffalos written down by
24 Ryan Tors?

25 A First of all, I can't tell which are the

1 two Buffalos. But if I assume one of these is --

2 Q Let me give you a color copy of Exhibit 14.
3 It might assist you.

4 A Yeah, that's better.

5 Sir, repeat the question, please.

6 Q What's the economic value of the par
7 settings reflected for those two Buffalo machines on
8 Exhibit 14 as of July 12, 2013?

9 A Again, the economic value of this as a
10 trade secret on this day is invaluable to whoever has
11 it.

12 Q Even though it was published on your
13 website?

14 A GSR chose to publish those, though.

15 Q Right.

16 A They didn't choose to publish the
17 information that was stolen.

18 Q Will you listen?

19 The GSR chose to publish the pars on the
20 Buffalos, correct?

21 A That's my understanding, yes.

22 Q Well, you've seen your website, haven't
23 you?

24 A I haven't specifically looked for pars on
25 the Buffalo on the website.

1 Q Well, you are aware, are you not, as the
2 CFO that the GSR has published that its Buffalos are
3 set at the lowest setting available?

4 A I am aware of that, yes.

5 Q And that's been in existence for years?

6 A I'm aware of that, yes.

7 Q And Ryan Tors logs the pars for two Buffalo
8 on July 12, 2013, correct?

9 A I assume that's what this is.

10 Q Well, if he's logging the pars for the
11 Buffalo which the GSR has published on its website,
12 what economic value does that have to the Peppermill?

13 A The publicly disclosed pars are the pars
14 that GSR chose to provide.

15 Q We've got that.

16 A What you're telling me is these two Buffalo
17 machines are the same ones that they chose to provide.
18 Is that what you're telling me?

19 Q Well, do you have different settings for
20 different Buffalos?

21 A Well, you're making me draw an assumption
22 that this is the same machine that GSR chose to
23 disclose on their marketing.

24 Q No, are you aware of whether or not the GSR
25 has different par settings for different Buffalos on

1 July 12, 2013?

2 A I'm not aware.

3 Q Well, if they're advertising that their
4 Buffalo are set at the lowest par, why would they have
5 different pars on their Buffalo?

6 A I don't have knowledge of that. I can't
7 speak to it. I don't have knowledge to what the pars
8 were on the floor at that time.

9 Q You've indicated to me that for years GSR
10 has published the fact that their Buffalo was set at
11 the lowest par, correct?

12 A I told you I was aware of that, yes.

13 Q And so we know that those Buffalos, then,
14 are set at 5.28, correct?

15 A Again, the number that you mentioned, 5.28,
16 I am not aware of.

17 Q Well, whatever it is, all you have to do is
18 look at a par sheet -- and you know that your
19 competitors have the par sheets -- to determine what
20 that setting is, correct?

21 A Correct.

22 Q So what's the economic value of Ryan Tors
23 getting two Buffalo at 5.28 when the GSR has published
24 to its competitors that its Buffalos are at 5.28?

25 You can say "none."

1 A The economic value is hard to determine.
2 You're asking me what it's worth to someone else. I
3 can't value that.

4 Q I'm asking you as a person most
5 knowledgeable about the economic value of a par what
6 the value of that par is to the Peppermill when GSR
7 puts that information out on its website.

8 A And I will answer you that if that is the
9 same machine, if that is the same par as those that
10 are on the billboard --

11 Q That's not a billboard.

12 A Wherever it was disclosed.

13 Q Website.

14 A Okay.

15 Q You didn't know that?

16 A That GSR --

17 MR. WRAY: Excuse me. He's just finishing
18 his question. Then you can ask.

19 MR. ROBISON: Yeah.

20 THE WITNESS: If that's the same machine
21 and the same par that was disclosed on the billboard
22 and GSR knowingly, as a marketing strategy, disclosed
23 that on the billboard, then that specific par would
24 not have as much value as other pars that were
25 obtained.

1 BY MR. ROBISON:

2 Q Doesn't have any economic value, does it?

3 A I can't answer that.

4 Q What economic value would the Peppermill
5 get from obtaining par settings that the GSR made
6 public?

7 A For that specific machine? The information
8 is not worth --

9 Q Anything?

10 A -- too much at all.

11 Q Because you can drive by the billboard and
12 get the same information --

13 A For that specific machine.

14 Q Right. And we know that, as you've said,
15 the Buffalo has been advertised for years to be at its
16 lowest setting. If you look at the par sheet, that's
17 5.28.

18 So Ryan Tors goes in and finds out that the
19 Buffalo is at 5.28. What economic value does that
20 have?

21 A I can't quantify it.

22 Q You can't quantify what economic value
23 would be associated with determining that Ducks in a
24 Row is at 6.01?

25 A That's a different machine. And, no, I

1 can't determine what that is -- what that is worth to
2 the Peppermill or the market in general.

3 Q How about other machines? Wolf on the Row?
4 Cleopatra? Not Wolves in a Row. That's Ducks in a
5 Row.

6 Let's say with Cleopatra. What economic
7 value does a par setting have to the Peppermill for a
8 Cleopatra theme?

9 A That's part of setting the market strategy,
10 so that is invaluable.

11 Q If they use it?

12 A Or if they don't use it.

13 Q And if they don't use it -- do you think
14 the Peppermill is isolated on its marketing strategies
15 just on what the GSR does?

16 A I can't answer that.

17 Q Or what the Atlantis does?

18 A I can't answer that.

19 Q Or the Eldorado or other communities?

20 A I can't answer that.

21 Q Do you know how to ascertain pars by the
22 gaming abstracts?

23 A I know how to estimate.

24 Q The market?

25 A Estimate market, yes.

1 Q In fact, the --

2 A Never exact.

3 Q -- gaming abstracts publish the pars for
4 those casinos that have \$36 million a month and more,
5 correct?

6 A In general.

7 Q 7.28. Does that sound familiar?

8 A No.

9 Q Do you use the gaming abstracts to affect
10 the strategy decisions at the GSR?

11 A I do not use the pars or the hold
12 percentages that they note in the gaming abstract;
13 only the revenues.

14 Q How do you use the revenues?

15 A To determine market share.

16 Q And the market share has gone up for the
17 GSR since 2011?

18 THE WITNESS: Am I good to answer that?

19 MR. WRAY: No. It's part of a motion.
20 Thank you for reminding me. Sorry, I was listening to
21 the question.

22 MR. ROBISON: It's public information. We
23 all know that.

24 MR. WRAY: Well, I'm just going to make an
25 objection for the record, if you don't mind.

1 There's this motion pending, and the judge
2 has already heard part of it, and so has the Discovery
3 Commissioner. Until that motion is decided, our
4 objection is that this topic is subject to the
5 protective order that's being requested.

6 Now that I've said that -- thank you --
7 BY MR. ROBISON:

8 Q Let me ask some foundation --

9 MR. WRAY: -- please answer the question.

10 BY MR. ROBISON:

11 Q You see the gaming abstracts?

12 A Correct.

13 Q It shows revenue?

14 A (Nodding).

15 Q You see the Wells Report?

16 A Yes.

17 Q Okay. So you pretty much know what's going
18 on in the community --

19 A Uh-huh.

20 Q -- financially in revenue?

21 And please answer with words.

22 A The Wells Report is on head count, so in
23 head count, yes. The abstract is in general revenue,
24 so in general revenue, yes.

25 Q Coin in, other indicia of gaming activity

1 and performance, published by the Gaming Control Board
2 every month?

3 A Yes.

4 Q And you look at those to scrutinize what's
5 going on in the community?

6 A That is correct.

7 Q And you can determine generally what the
8 market pars are for the casinos, the properties that
9 generate more than \$36 million a month in slot
10 revenue?

11 A I don't specifically look at those numbers.

12 Q Okay. But you can?

13 A I can.

14 Q From that you can determine the market par?

15 A The market par, yes.

16 Q And you, of course, are concerned with the
17 market, as you've testified here today, are you not?

18 A That's one piece of what we look at.

19 Q You want to look at your competitors?

20 A Uh-huh. Yes, sir.

21 Q And your competitors are -- include at
22 least those properties that generate \$36 million and
23 more, correct?

24 A Fair statement. Yes.

25 Q And you can generate an average par for

1 those properties by looking at the gaming abstracts on
2 a monthly basis, correct?

3 A Yes.

4 MR. ROBISON: Let's take a 10-minute break.

5 (A recess was taken.)

6 MR. ROBISON: Back on the record.

7 BY MR. ROBISON:

8 Q We are still discussing, Mr. -- we're still
9 discussing topic No. 21.

10 Do you have that in front of you?

11 A Uh-huh.

12 Q The answer is yes?

13 A Yes.

14 Q Do you know what information Mr. Tors
15 obtained?

16 A I do not know exactly.

17 Q Do you know whether he accessed the
18 machines prior to July 12, 2013?

19 A I do not have that knowledge.

20 Q Do you know what information was obtained
21 by Mr. Tors specifically on July 13, 2013?

22 A Is this the exhibit that you showed me?

23 Q No. I'm looking at item No. 21.

24 A And I'm asking you, July 12, 2013, does
25 that relate to this exhibit you showed me earlier?

1 Q I'm asking the questions.

2 What information was obtained by Ryan Tors
3 on July 13, 2013?

4 A I don't know.

5 Q What information was obtained by Ryan Tors
6 on July 12, 2013?

7 A I do not know.

8 Q What information was obtained by Mr. Tors
9 on any date prior to July 12, 2013?

10 A I don't know.

11 Q What information was obtained by Mr. Tors
12 after July 12, 2013?

13 A I don't know specifically.

14 Q Generally?

15 A Trade secrets.

16 Q After July -- when?

17 A I'm aware that the knowledge stolen by
18 Mr. Tors generally was pars, which are trade secrets.

19 Q My question was when.

20 A I don't know the exact dates.

21 Q How long after July 13 did Mr. Tors acquire
22 information from the GSR?

23 A I do not know.

24 Q How many times after July 13, 2013, did
25 Mr. Tors obtain information?

1 A I don't have that knowledge.

2 Q What makes you believe that Mr. Tors
3 acquired information after July 13, 2013?

4 A I don't have that knowledge.

5 Q I didn't ask you --

6 A I'm not the right person to ask, sir.

7 Q What makes you testify that Mr. Tors
8 acquired information after July 13, 2013?

9 A What makes me testify --

10 Q Yeah.

11 A -- that he --

12 Q You said he accessed -- he got information
13 after July 13, 2013. I'm trying to ascertain why you
14 say that.

15 A It says on this document, "The information
16 obtained by Mr. Tors on July 12th." That's what I can
17 testify to.

18 Q Sir, I asked you what information did
19 Mr. Tors acquire from the GSR after July 13, 2013.

20 A I do not know.

21 Q Do you have any information that he
22 acquired any information after July 13, 2013?

23 A I don't have that information.

24 Q If you don't know what information Mr. Tors
25 obtained from GSR on July of 2013, how, then, can you

1 tell us as the person most knowledgeable what the
2 value of that information is?

3 MR. WRAY: Objection. Argumentative.
4 Go ahead.

5 THE WITNESS: My answer was I did not know
6 specifically the information; generally, par numbers
7 from slot machines, which are trade secrets.

8 BY MR. ROBISON:

9 Q What par information?

10 A Par information of slot machines as
11 selected by Mr. Tors.

12 Q Which machines?

13 A I do not have that information.

14 Q What pars?

15 A I don't have that information if I don't
16 know the machines.

17 Q How many machines?

18 A I don't have that information.

19 Q What was the location of the machines?

20 A I don't have that information.

21 Q Were the pars changed on those machines
22 within 30 days prior to July 13, 2013?

23 A I don't have that information.

24 Q Were the pars changed within 30 days after
25 July 13, 2013?

1 A I don't have that information.

2 Q How frequently were the pars changed on
3 these machines that Mr. Tors accessed?

4 A I don't have that information.

5 Q Do you have knowledge that they are changed
6 frequently?

7 A I have knowledge that they are changed. I
8 do not know how frequently.

9 Q Are you aware that GSR was in the process
10 of lowering its pars throughout July of 2013?

11 A I was not aware of that information.

12 Q Were you aware that the GSR was lowering
13 its pars during the year 2013?

14 A Not aware of that.

15 Q During the year 2012?

16 A I was not aware of that.

17 Q I'm sorry?

18 A I was not aware of that.

19 Q What was the par average for the floor in
20 July 2013?

21 A I don't have that information.

22 Q Do you have any information with respect to
23 the par average on the floor for the GSR for the year
24 2012 or any part thereof?

25 A I don't have that information.

1 Q What information did Mr. Tors receive other
2 than pars?

3 A I do not know.

4 Q Play history?

5 A I don't know, sir.

6 Q Free play?

7 A I don't know.

8 Q Comp reinvestment?

9 A I don't know.

10 Q Tier point ratios?

11 A I don't know.

12 Q Tier point to comp ratios?

13 A I don't know.

14 Q Comp points to theo?

15 A I don't know, sir.

16 Q Comps offered by mailings?

17 A I don't have that information.

18 Q Percentage reinvestment?

19 A I don't have that information.

20 Q Do you know why the phrase "independent
21 economic value" was used by the GSR in its complaint?

22 A Do I know the specific reason why?

23 Q Yes.

24 A No. The industry term "independent
25 economic value," though, is the value of that

1 knowledge outside of the entity that it resides:
2 independent economic value.

3 Q Would that mean, according to your
4 understanding, the value of a par outside of the GSR
5 property?

6 A Yes.

7 Q So that, again, makes us look at the
8 independent economic value that the par has to the
9 recipient of the par, the receiver of the par
10 information?

11 A Yes.

12 Q That can be ascertained only by looking at
13 the Peppermill, not the GSR?

14 A That is correct.

15 Q How does value to the Peppermill represent
16 damages to the GSR?

17 A The value of trade secrets determines the
18 modification of a marketing strategy or the
19 non-modification of a marketing strategy, whether they
20 have -- whether they choose to do something or not
21 choose to do something based on the knowledge of that
22 information.

23 Q Are you familiar with trade secret
24 legislation?

25 A Not in detail, no. I'm not an attorney.

1 Q In general?

2 A In general, yes.

3 Q Are you familiar with what damages are
4 available to a person who sustains damages as a result
5 of trade secret violations?

6 A In general, yes.

7 Q What? What's a reasonable royalty theory?

8 A I'm not qualified to quantify that.

9 Q Well, the statute in our state says that a
10 victim of trade secret violations is entitled to
11 reasonable royalty.

12 A Uh-huh.

13 Q Please assume that to be true.

14 Do you have any knowledge about what that
15 reasonable royalty theory is?

16 A No, I do not.

17 Q Was that discussed between you and
18 Mr. Burdick outside the presence of counsel?

19 A No, sir.

20 Q Are you aware that GSR has taken the
21 position in this case that it has no damages other
22 than reasonable royalty damages?

23 A I was not aware of that position, no.

24 Q Even though you have been presented as the
25 person most knowledgeable about damages, are you aware

1 of the statements that GSR has made in open court that
2 it has sustained no damages except for reasonable
3 royalty?

4 A I was not aware of that specific statement,
5 no.

6 Q How do you go about calculating a
7 reasonable royalty damage model?

8 A I am not the right person to calculate a
9 reasonable royalty.

10 Q Well, if they're claiming that's their
11 damages and you're most knowledgeable about damages,
12 how do you explain that?

13 A I'm most knowledgeable about the
14 independent economic value, which --

15 Q Which has been described by GSR as a
16 reasonable royalty.

17 What royalties are you aware of in this
18 case that GSR is entitled to?

19 MR. WRAY: Objection to the extent the
20 question asks the witness to use the information
21 provided by Mr. Robison as to what the GSR's position
22 is.

23 But if you understand it, you can answer
24 the question.

25 Object as vague.

1 THE WITNESS: I am not the person most
2 knowledgeable when it comes to calculating royalties.
3 BY MR. ROBISON:

4 Q David Schwartz has been retained as an
5 expert for the GSR?

6 A Uh-huh.

7 Q He, too, has stated that the damages is a
8 royalty formula. Are you aware of that?

9 A No, I'm not.

10 Q Do you know anything about his
11 calculations?

12 A No, sir. I have not seen it.

13 Q Have you ever done a reasonable royalty
14 damage model?

15 A No, sir, I have not.

16 Q In your experience as a CFO for gaming
17 properties, have you ever heard properties complain
18 that they are entitled to reasonable royalties based
19 upon trade secret violations?

20 A No, sir.

21 Q Are you aware of the law; I mean, what the
22 cases say about how reasonable royalty is determined?

23 A No, sir.

24 Q Have you been asked to compare your
25 thoughts about damages with those expressed by David

1 Schwartz?

2 A No, sir.

3 Q Moving to item No. 23, you have been
4 presented at this day, at this time, as GSR's person
5 most knowledgeable about the allegation that the
6 Peppermill intended to financially harm the GSR.

7 When did you first become aware that you
8 were the person at GSR most knowledgeable about that
9 topic?

10 A Last week.

11 Q What have you done to prepare yourself for
12 answering questions that are directed to this topic?

13 A Same as we discussed before. Discussed
14 with counsel.

15 Q And discussed with Mr. Burdick?

16 A And discussed with Mr. Burdick.

17 Q On how many occasions?

18 A Once with Mr. Burdick, once with counsel.

19 Q Same time?

20 A On this specific topic, yes.

21 Q So you had one meeting at which Mr. Burdick
22 and counsel were present where this topic was
23 discussed, and you were identified as a person most
24 knowledgeable for the GSR about Peppermill's
25 intentions?

1 A Yes.

2 Q Other than the discussions that occurred in
3 that particular conversation, what else did you learn
4 about this topic?

5 A Through my experience in the gaming
6 industry.

7 Q Have you experience with Peppermill's
8 intent?

9 A I have not experienced Peppermill's intent.

10 Q Have you ever --

11 A That I know of.

12 Q -- done any cases --

13 MR. WRAY: Excuse me.

14 Let him finish, please.

15 THE WITNESS: I've not experienced
16 Peppermill's intent, but I know what the intent would
17 be, based on my industry knowledge, of information
18 such as this.

19 BY MR. ROBISON:

20 Q How can you determine what a person's
21 intent is unless you know what that person's intent
22 is?

23 A I'm saying --

24 MR. WRAY: Objection. Vague.

25 Go ahead.

1 THE WITNESS: Okay.

2 I'm saying that dealing with gaming
3 properties as long as I've dealt with them, there's
4 one use and one use only for this information.

5 BY MR. ROBISON:

6 Q But you don't know what the Peppermill's
7 intent is; you can only opine on what you think other
8 people's intents are, correct?

9 A That is correct.

10 Q You don't know what happens at the
11 Peppermill with respect to this information, do you?

12 A I'm not aware of the specific actions they
13 took.

14 Q And you've never seen any dominants or any
15 correspondence or any exhibits to depositions from
16 which you can divine intent, correct?

17 A Correct.

18 Q You can only speculate as to what the
19 intent is, correct?

20 A That is correct.

21 Q We're done.

22 A Okay.

23 Q No further questions.

24 MR. FUNK: No questions.

25 MR. WRAY: No questions.

(Deposition ended at 10:48 a.m.)

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I, _____, do hereby swear or
affirm under penalty of perjury that the assertions
and/or answers of this affidavit/deposition are true.

CRAIG ROBINSON

Subscribed and sworn to before me
this ____ day of _____, 2014.

NOTARY PUBLIC

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, BECKY VAN AUKEN, a Certified Court Reporter in and for the County of Washoe, State of Nevada, do hereby certify:

That on Tuesday, November 4, 2014, at the offices of Robison, Belaustegui, Sharp & Low, 71 Washington Street, Reno, Nevada, I was present and took verbatim stenotype notes of the deposition of CRAIG ROBINSON, who personally appeared and was duly sworn by me and was deposed in the matter entitled herein; and thereafter transcribed the same into typewriting as herein appears;

That the foregoing transcript is a full, true and correct transcription of my stenotype notes of said deposition.

Dated at Reno, Nevada, this 5th day of November, 2014.

BECKY VAN AUKEN, CCR #418

DEPONENT'S CHANGES OR CORRECTIONS

Deponent: CRAIG ROBINSON

Date of Deposition: November 4, 2014

Note: If you are adding to your testimony, print the exact words you want to add. If you are deleting from your testimony, print the exact words you want to delete. Specify with "Add" or "Delete" and sign below.

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I hereby certify that I have read my deposition transcript, made those changes and corrections that I deem necessary, and approve the same as now true and correct.

Date: _____ Signature: _____

STATE OF _____)
COUNTY OF _____) ss.

I, _____, a notary
public in and for the County of _____,
State of _____, do hereby certify:

That on the _____ day of _____,
20____, before me personally appeared CRAIG ROBINSON,
whose deposition appears herein;

That any changes in form or substance
desired by the witness were entered upon the
deposition by the witness;

That the witness thereupon signed the
deposition under penalty of perjury.

Dated: At _____,
this _____ day of _____, 20____.

OFFICER'S ACTIONS RE SIGNING OF DEPOSITION
PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE

November 4, 2014

AT DIRECTION OF COUNSEL ORIGINAL
WAS SENT TO MR. COHEN ON 11/6/14

WITNESS SIGNED DEPO ON

ORIGINAL TO BE RETURNED TO MR. ROBISON
AFTER 30 DAYS OR UPON REVIEW AND SIGNATURE

OTHER ACTIONS

_____	_____
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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
10 corporation, dba GRAND SIERRA
RESORT,

Case No.: CV13-01704

Dept. No.: 7

11 Plaintiff,

12 vs.

13 PEPPERMILL CASINOS, INC., a Nevada
14 corporation, dba PEPPERMILL CASINO;
RYAN TORS, an individual; et al.,

15 Defendants.
16 _____ /

17 **ORDER**

18 Before the Court is Plaintiff MEI-GSR HOLDINGS, LLC's *Objection to Commissioner's*
19 *Recommendation Denying Plaintiff's Motion for a Protective Order and Request for a Stay of*
20 *Depositions Pending the Hearing on the Objection*, filed October 10, 2014. The underlying
21 discovery dispute arose on June 4, 2014, when Defendant PEPPERMILL CASINOS, INC.,
22 served Plaintiff with a notice of NRCP 30(b)(6) depositions. Defendant filed an amended
23 deposition notice on June 11, 2014 proposing different dates for the depositions. Plaintiff
24 refused to provide deponents as demanded in the notices and, on June 19, 2014, it filed a *Motion*
25 *for Protective Order on an Order Shortening Time and for Stay of Depositions Pending Hearing*
26 *on the Matter*. The issue was referred to the Discovery Commissioner. On October 2, 2014, the
27 Discovery Commissioner returned a *Recommendation for Order* denying protective orders for all
28 but one of the thirty identified topics in Peppermill's notice. Plaintiff filed its *Objection to the*

1 *Recommendation* on October 10, 2014 and Peppermill filed its *Opposition* to the *Objection* on
2 October 24, 2014. This *Order* follows.

3 **Legal Standard**

4 Upon receipt of a discovery commissioner's report and any objections thereto, a court
5 may affirm, reverse, or modify the commissioner's ruling, set the matter for a hearing, or remand
6 the matter to the commissioner for further action, if necessary. NRCP 16.1(d)(2).

7 **Analysis**

8 **a. Measure of damages**

9 Defendant's June 4, 2014 *Notice* demands that Plaintiff provide witnesses to testify on
10 thirty particular topics, including "player tracking records," "level of play," "marketing
11 strategy," "history of play for individual players, financial information, customer information,
12 and "PAR" information. Plaintiff argues in its *Motion for Protective Order* that these topics are
13 irrelevant and therefore undiscoverable. The Commissioner disagreed, finding that the topics are
14 relevant to damages. Plaintiff now argues that this conclusion was in error as it characterizes the
15 measure of damages as lost revenue rather than as the value of appropriated trade secrets to the
16 Defendant. Plaintiff maintains that it has not claimed any lost profits as damages, and that,
17 therefore, information pertaining only to such a calculation is irrelevant.

18 It is true that Plaintiff has not alleged any lost profits in this case. However, its argument
19 slightly mischaracterizes the Commissioner's finding. The *Recommendation* states that
20 information is relevant to this case so long as it pertains to the value of the appropriated trade
21 secrets to either Plaintiff or Defendant. As discussed herein, the value of a trade secret to one
22 party or another is often measured in ways other than calculation of lost profits stemming from
23 appropriation.

24 The Uniform Trade Secrets Act allows for several possible measures of damages,
25 including (1) loss caused by misappropriation, (2) unjust enrichment caused by misappropriation,
26 and (3) reasonable royalties for a misappropriator's unauthorized disclosure or use. NRS
27 600A.050. In its *Objection*, Plaintiff characterizes its measure of damages as "the value of the
28 information to the [Defendant] Peppermill and the uses to which Peppermill put [the]

1 information.” *Objection* at 4. Plaintiff’s damages expert, David G. Schwartz, Ph.D., states in an
2 affidavit that “GSR is seeking damages based on a royalty theory” *Opposition to Objection*
3 at Exhibit 3. Defendant maintains that the information sought is relevant to a calculation of both
4 unjust enrichment and reasonable royalty damages.

5 The Commissioner, in finding that the proposed deposition topics are relevant, cites *Univ.*
6 *Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d 518 (5th Cir. 1974) for guidance. There,
7 the court discussed several “flexible” approaches to calculating unjust enrichment and reasonable
8 royalties. *Id.* at 538. With respect to royalties, the court described one approach as requiring an
9 analysis of a fair licensing price for a trade secret, which in turn requires a review of “the total
10 value of the secret to the plaintiff, including the plaintiff’s development costs and the importance
11 of the secret to the plaintiff’s business.” *Id.* at 539. Under this reasoning, “any factor that might
12 reasonably impact the analysis regarding the value of the trade secret to either party would be
13 relevant for discovery purposes under the broad standard set by NRCP 26(b)(1).”
14 *Recommendation for Order* at 6.

15 Approaches to unjust enrichment also involve considerations of the information sought
16 here. Such calculations can involve a determination of the development cost avoided by the
17 party misappropriating a trade secret, which in turn may require an examination of the Plaintiff’s
18 own original development costs. *See Sperry Rand*, 447 F.2d at 1393. Here, as Defendant points
19 out in its *Opposition*, the Plaintiff alleges appropriation of slot machine par data. Any
20 information reasonably calculated to lead to evidence relevant to the development of that slot
21 machine par data would therefore be discoverable. This broadly includes the information in each
22 of the categories Plaintiff is disputing. Accordingly, the information Defendant seeks is
23 generally relevant to either measurement of damages Plaintiff may allege. The Court agrees with
24 the Commissioner’s conclusion that Plaintiff has not demonstrated its need for a protective order.

25 **b. Trade secrets**

26 Plaintiff argues that some of the information sought constitutes trade secrets and must
27 therefore be protected from disclosure. As is noted in the *Recommendation*, the parties have
28 already agreed to a *Stipulated Confidentiality Agreement and Protective Order* addressing these

1 concerns. It is therefore unnecessary for the Court to make a fact-specific determination as to
2 what information at issue is or is not a trade secret. All information is protected from harmful
3 disclosure under the *Confidentiality Agreement*.

4 **c. Motion for stay**

5 Plaintiff seeks a stay of the proposed depositions pending the Court's ruling on its
6 *Objection*. At a hearing on October 27, 2014, the parties acknowledged that they had scheduled
7 the undisputed depositions but would delay depositions that remained disputed. Accordingly,
8 Plaintiff's request for a stay is denied as moot.

9 **CONCLUSION**

10 Based on the foregoing, the Court hereby **CONFIRMS, APPROVES, and ADOPTS** the
11 Discovery Commissioner's *Recommendation for Order* served on October 2, 2014. Plaintiff's
12 motion for stay is **DENIED** as moot.

13 **IT IS HEREBY ORDERED.**

14 **DATED** this 13 day of November, 2014.

15 
16 PATRICK FLANAGAN
17 District Judge
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 13 day of November, 2014, I electronically filed this Order with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Kent Robison, Esq., for Peppermill Casinos, Inc.;

H. Johnson, Esq., for MEI-GSR Holdings, LLC;

John Funk, Esq., for Ryan Tors;

Michael Somps, Esq., for Nevada Gaming Commission, State Gaming Control Board;

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


Judicial Assistant

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

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MEI-GSR Holdings, LLC. d/b/a
Grand Sierra Resort

IN ASSOCIATION WITH

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MEI-GSR Holdings, LLC. d/b/a
Grand Sierra Resort

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Case No.: CV13-01704

Plaintiff,

Dept. No.: B7

v.

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

BUSINESS COURT DOCKET

Defendants.

**OPPOSITION TO DEFENDANTS MOTION FOR ORDER COMPELLING GSR TO
SHOW CAUSE WHY IT SHOULD NOT BE HELD IN CONTEMPT**

FILED UNDER SEAL

HIGHLY CONFIDENTIAL INFORMATION

HIGHLY CONFIDENTIAL-SUBJECT TO STIPULATED CONFIDENTIALITY

AGREEMENT AND PROTECTIVE ORDER FILED ON JULY 17, 2014

**To Be Opened Only Upon Further Order of This Court or for the Sole Use of the Court
and its Employees**

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MEI-GSR Holdings, LLC. d/b/a
Grand Sierra Resort

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

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

Plaintiff,

v.

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

Defendants.

Case No.: CV13-01704

Dept. No.: B7

BUSINESS COURT DOCKET

**OPPOSITION TO DEFENDANTS MOTION FOR ORDER COMPELLING GSR TO
SHOW CAUSE WHY IT SHOULD NOT BE HELD IN CONTEMPT**

Plaintiff, MEI-GSR HOLDINGS, LLC, d/b/a GRAND SIERRA RESORT (GRAND
SIERRA RESORT), by and through its counsel of record, Cohen-Johnson, LLC, hereby files its
Opposition to Peppermill's Motion for an Order to Compel GSR to show Cause Why It Should

1 Not be Held in Contempt and in support of this opposition states as follows:

2 This opposition is based upon the attached Memorandum of Points and Authorities,
3 Exhibits, attached hereto, as well as the arguments and evidence presented at any hearing
4 convened to consider these motions.

5 Dated this 13 day of November, 2014.

6 COHEN-JOHNSON, LLC

7
8 By: 

9 H. Stan Johnson, Esq.
10 Nevada Bar No. 00265
11 Terry Kinnally, Esq.
12 Nevada Bar No. 06379
13 255 E. Warm Springs Road, Suite 100
14 Las Vegas, Nevada 89118
15 Attorneys for MEI-GSR Holdings, LLC.
16 d/b/a Grand Sierra Resort
17
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POINTS AND AUTHORITIES

I. OVERVIEW

Throughout the pendency of this matter Peppermill has tried to obfuscate, and minimize it's conduct. In the stipulation entered into with the Nevada Gaming Board the Peppermill admitted that it spied on multiple Northern Nevada casinos by accessing slot machines using reset keys. They also admitted that this had been going on for a minimum of four years. (*See Complaint and Stipulation in Case No. NGC 13-23 attached hereto and incorporated herein as Exhibit 1*) resulting in Peppermill's paying a fine of One Million Dollars.

Peppermill has also attempted to limit the scope of this litigation to the information obtained solely from GSR ignoring the potential value and uses of the GSR information when used in connection with the information gleaned from the other casinos. Peppermill has also been very careful to deny that Peppermill used this information to change it's holds or pars. However that does not mean that Peppermill did not use this accumulated par information for other purposes. In fact at the Gaming Commission Hearing Commissioner Alamo stated:

I don't believe that the -- the information was never used or not used, then why was it done for so many years in so many different properties. It is information, and information is power. And that's why Tors went out there and got the information. So that's a fact. Whether or not it was used or not, it was used somehow. It had to be worth something or Tors wouldn't be sent out on this mission. (*See Transcript of Gaming Commission Hearing of February 20, 2014 attached hereto as incorporated herein as Exhibit 2*)

In fact however weak this argument is when used to justify Mr. Tors conduct it loses all credibility in view of Mr. Tors testimony that he started keying competitor's slot machines in 2008, long before MEI-GSR acquired the GSR casino. (*See Excerpt of partial deposition of Ryan Tors P. 131 attached hereto and incorporated herein as Exhibit 3*).

Peppermill has not yet produced any records showing the slot machines, and the various casinos keyed. Although GSR argued that such records should be produced under 16.1, at least to the extent of records provided to the Nevada Gaming Commission, the request was denied and discovery seeking this information is now pending. When that information is received

1 Plaintiff's experts will coordinate and determine the monetary benefit that Peppermill obtained
2 from obtaining and using this information.

3
4 **I. GSR PROVIDED A PROPER COMPUTATION OF DAMAGES**

5 On April 15, 2014 this Court entered a Scheduling Order in this matter which provided
6 that expert disclosures with reports were due on March 2, 2015. Despite this Peppermill Casino
7 deposed one of the Plaintiff's experts David G. Schwartz Ph.D. on October 21, 2014. (*See*
8 *Scheduling Order attached hereto and incorporated herein as Exhibit 4*) On September 30,
9 2014, in accordance with the Court's order Plaintiff produced a computation of damages which
10 stated:

11 Damages are sought pursuant to NRS 600A.050 (1) Damages will
12 be computed based on the number of times Mr. Tors accessed machines at
13 the GSR without permission, and the number of machines so accessed
14 based on the benefit obtained by the Peppermill from use of the illegally
15 obtained trade secret information based on the cost of legally and
16 legitimately obtaining the same information. Damages will also be sought
17 based on the use of the information obtained by GSR after being complied,
18 combined, or analyzed with information misappropriated from other Reno
19 Casinos over a 4 year period. (*See Third Supplemental 16.1 attached hereto*
20 *and incorporated herein as Exhibit 5*)

21 Which also attached the affidavit of David G. Schwartz PhD.

22 On November 6, 2014 a Fourth Supplemental 16.1 was served which provided an
23 updated computation of damages which added the additional information stating:

24 GSR has been forced to remove existing locks and replace 835 locks
25 for their gaming machines. The total cost of the locks and material
26 \$17,479.46. The labor to replace the locks is calculated as follows: it takes
27 15 minutes to remove and replace (4 per hour) and the average wage per
28 hour is \$20.00. Therefore, the total amount of costs associated with labor is
29 \$4,175.00.

30 Peppermill claims that the computation is inadequate and does not comply with the
31 Court's order. This is based on the erroneous assumption that GSR was obliged to obtain a copy
32 of its expert's working file and deliver said file to Peppermill. GSR provided the documents it
33 has in its possession, having produced those documents GSR complied with the Court's order.

34 While an expert's file may be provided upon the issuance of a subpoena duces tecum, no
35 such subpoena was served with the subpoena for the deposition of Dr. Schwarz by Peppermill.

1 In fact there was no request for Dr. Schwartz to produce any documents, which makes
2 Peppermill's scurrilous implication that GSR refused to produce the file, a blatant misstatement
3 of fact.

4 If in reviewing the computation any arithmetic deficiency exists it is solely the result of
5 the lack of information concerning the Peppermill's conduct. Peppermill has sole possession of
6 the essential information which will allow GSR and its experts to determine the number of
7 machines accessed and the use to which Peppermill put the misappropriated information. GSR
8 has filed discovery seeking this information which is not yet due. Until such time as the Plaintiff
9 has received this information, it cannot be more specific in setting a monetary amount
10 representing the unjust enrichment Peppermill received through its access of GSR's and other
11 Northern Reno Nevada Casino's slot machines. Dr. Schwartz testified:

12
13 4. Q. You mean GSR's counsel has not provided you that
14 5 information yet?

15 6 A. I've not seen a list this is how many slot
16 7 machines were accessed across the city.

17 8 Q. Have you asked for it?

18 9 A. Yes. (*See copy of Schwartz Deposition attached as Exhibit 6 p.*
19 72 ll 4-9)

20 Peppermill would like the Court to assume that this lack of information is due to
21 conduct by GSR rather than Peppermill's. However this is information which is known only to
22 Peppermill (and the Gaming Board) and has not yet been provided to GSR.

23 This motion also attacks the credibility of Dr. Schwartz which is improper, since the
24 credibility of a witness including an expert witness is a factual determination to be made by the
25 jury. It is also premature since the expert disclosure date is several months away. Counsel
26 attacked Dr. Schwartz by implying that Schwartz should have already prepared his final report,
27 which Dr. Schwartz has not. Dr. Schwartz's analysis was neither absurd nor ridiculous. He
28 based his initial opinion on hypotheticals concerning what it would cost to obtain the information
29 concerning pars without illegally using a key. The fact that the procedure would be cost
30 prohibited does not render his calculations false but demonstrates why Peppermill chose to

1 obtain the information by using a key and re-enforces the Plaintiff's theories concerning unjust
2 enrichment stating:

3 12. A. My cost model is based on my best understanding
4 13 of how you can get this information without having access
5 14 to that key.

6 15 Q. Which in fact you're saying is impossible to get
7 16 this information without using a key. That's what you're
8 17 saying.

9 18 A. Yes.

10 19 Q. Isn't it?

11 20 A. Yes.

12 21 Q. I want the record clear. You are essentially
13 22 saying that in this affidavit it is impossible to get the
14 23 hold percentage on a competitor's slot machine unless you
15 24 use a key?

16 25 A. I'm saying that the best way that I would know
17 P. 85

18 1 to get it would be to do this.

19 2 Q. But that's impossible.

20 3 A. And in the course of doing that, it would be
21 4 impossible to get that information legally. (*See copy of Schwartz*
22 *Deposition attached as Exhibit 6 P. 84 11, 12-15 and P.85 ll 1-4*)

23 He also testified that his method in preparing his affidavit was:

24 21 Q. So in performing your duties after you were
25 22 engaged, what did you do?

26 23 A. I did an analysis of the academic literature to
27 24 try to determine how you can determine the par setting of
28 25 a machine without having access to that data by use a key

29 13

30 1 or other means. (*See copy of Schwartz Deposition attached as Exhibit 6*
31 *P.12 ll 21 through P.13 ll1.*)

32 Nor is Dr. Schwartz's model inaccurate, it is merely incomplete. Again Dr. Schwartz testified:

33 Q. (By Mr. Robison) Number 10 is in evidence, and
34 22 I'll read it into the record so that there's no
35 23 accusation that I'm saying something that you didn't
36 24 say.

37 25 "While GSR's methods of operation do not, in my
38 1 opinion, have a bearing on Peppermill's admitted
39 2 collection of misappropriated par information, I believe
40 3 that Peppermill's motives for collecting the information
41 4 and any operational changes that the Peppermill made or
42 5 did not make with the benefit of the par information are
43 6 crucial to accuracy."

44 7 A. Correct.

8 Q. And you don't have either of those?
9 A. Correct.
10 Q. So your information is inherently inaccurate?
11 A. At this stage, yes. (emphasis added *See copy of Schwartz
Deposition attached as exhibit 6 P. 110 ll 22 through P. 111 ll 1-11*)

Nor did either Dr. Schwartz or GSR attempt to mislead the Court. When directly asked if
he intended to do so Dr. Schwartz testified:

20 Q. You weren't trying to mislead the Court?
21 A. Oh, no. (*See copy of Schwartz Deposition attached as Exhibit 6 P. 98
ll 20-21*)

He also explained his objectives as:

20. A. It's my understanding that they're seeking
21 damages based on the royalty model and that they are
22 saying that their information was taken and used without
23 their consent. So I'm trying to help them determine what
24 was the value of that and what, how much would it have
25 cost to get that data independent of using this scheme. (*See copy of Schwartz
Deposition attached as Exhibit 6 p. 48 ll 20-25*)

Dr. Schwartz's opinions cannot be subjected to criticism until he has prepared his final
report which will be based on the information identifying the total number of machines accessed
by Peppermill employees using keys and the uses to which Peppermill put the information.

Again Dr. Schwartz testified:

23 A. I have requested information that I've not
24 gotten yet.
25 Q. What have you asked for?
1 A. I asked for information about how many machines,
2 how often they were accessed, and what the par settings
3 of those machines are. (*See copy of Schwartz Deposition attached as
Exhibit 6 p. 114 ll 23-25 and P. 115 ll 1-3*)

and

10 A. As I said before, I would like to have more time
11 to refine this, and I did say that I needed more
12 information to refine it.
13 Q. Sure.
14 A. When I have that time, I have that information,
15 I will be able to deliver something that takes that into
16 account.

17 Q. Are you saying to the judge and to potentially
18 the jury, it's going to take 20,000 hours of play to
19 ascertain hold?

20 A. I'm saying that according to what I found, that
21 it would take 20,000 hours of play, 10 million spins for
22 this theoretical and the actual hold to converge, that's
23 what it would take. (See copy of Schwartz Deposition attached as
Exhibit 6 P. 109 ll 10- 23)

Peppermill is attempting to use Dr. Schwartz's preliminary opinions as though they were
a final report.

II. GSR HAS NOT VIOLATED A COURT ORDER OR REFUSED TO COMPLY WITH PROPER DISCOVERY REQUESTS.

Peppermill has also implied that GSR has refused to comply with discovery. GSR has
objected to discovery and those objections are still pending. GSR produced the non-objected to
PMKs for deposition, and where objections are pending Peppermill's comments are not only
inaccurate but clearly intended to try and prejudice the Court. Assuming that Peppermill truly
believes that discovery is not subject to objections, then clearly Peppermill will fully respond to
the discovery filed by GSR fully and without objection. Any objection, on any grounds by
Peppermill will more fully refute this argument than any written argument which GSR can
advance.

III. CONCLUSION

This motion is merely another in an unending attempt by Peppermill to redefine this
litigation in its own limited terms. It is significant, that rather than actual set forth the alleged
admissions by Dr. Schwartz the Peppermill has chosen to interpret them out of context, nor has
Peppermill chosen to attach the transcript as an exhibit. As a review of the entire deposition
shows, Dr. Schwartz's opinion are preliminary and require additional data. Data which is solely
within the possession of the Peppermill and which upon receipt will result in clarification and a
further evidentiary basis for the opinions of Dr. Schwartz. GSR has provided an adequate
computation of damages based on the information currently available.

Therefore GSR requests that the court deny this motion.

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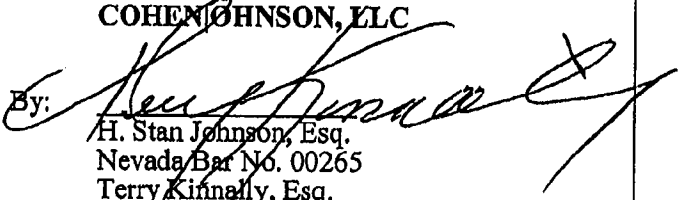
AFFIRMATION PURSUANT TO NRSB.030

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

Dated this 13th day of November, 2014.

COHEN-JOHNSON, LLC

By:


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 MEI-GSR Holdings, LLC.
d/b/a Grand Sierra Resort

INDEX OF EXHIBITS

Number	Description	Pages
1	Complaint and Stipulation Nevada Gaming Commission NGC-13-23	13
2	Transcript of Proceedings before Commission 2/20/14	65
3	Excerpt from partial transcript of deposition of Ryan Tors	2
4	Scheduling Order from April 15, 2014	5
5	GSR Third Supplemental Production of Documents	84
6	Deposition of David Schwartz, Ph.D.	162

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of COHEN|JOHNSON, LLC., and that on this date I caused to be served a true and correct copy of the **OPPOSITION TO DEFENDANTS MOTION FOR ORDER COMPELLING GSR TO SHOW CAUSE WHY IT SHOULD NOT BE HELD IN CONTEMPT** on all the parties to this action by the method(s) indicated below:

_____ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States Mail, Las Vegas, Nevada and addressed to:

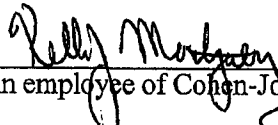
 x by using the Court's CM/ECF Electronic Notification System addressed to:

ROBISON, BELAUSTEGUI, SHARP & LOW
C/o Kent R. Robison, Esq.
71 Washington Street
Reno, Nevada 89503
KRobison@rbsllaw.com
Attorney for the Defendant Peppermill

GUNDERSON LAW FIRM
C/o Mark H. Gunderson, Esq.
3895 Warren Way
Reno, Nevada 89509
mgunderson@gundersonlaw.com
Attorney for Defendant Ryan Tors

 x by electronic email addressed to the above:
_____ by personal or hand/delivery addressed to:
_____ by facsimile(fax) addresses to:
_____ by Federal Express/UPS or other overnight delivery addressed to:

DATED the 13th day of November, 2014.

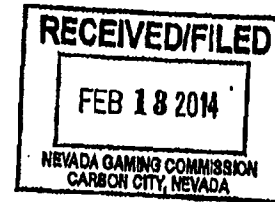


An employee of Cohen-Johnson, LLC

Exhibit “1”

Exhibit “1”

1 NGC 13-23



2
3
4 **STATE OF NEVADA**
5 **BEFORE THE NEVADA GAMING COMMISSION**

6 STATE GAMING CONTROL BOARD,

7 Complainant,

8 vs.

9 PEPPERMILL CASINOS, INC., dba

COMPLAINT

10 PEPPERMILL HOTEL & CASINO;
11 WESTERN VILLAGE;
12 RAINBOW CLUB AND CASINO;
13 RAINBOW CASINO; and
14 PEPPERMILL INN & CASINO,

Respondent.

14 The State of Nevada, on relation of its State Gaming Control Board (BOARD),
15 Complainant herein, by and through its counsel, CATHERINE CORTEZ MASTO, Attorney
16 General, and MICHAEL P. SOMPS, Senior Deputy Attorney General, hereby files this
17 Complaint for disciplinary action against Respondent pursuant to Nevada Revised Statute
18 (NRS) 463.310(2) and alleges as follows:

19 1. Complainant, BOARD, is an administrative agency of the State of Nevada duly
20 organized and existing under and by virtue of chapter 463 of NRS and is charged with the
21 administration and enforcement of the gaming laws of this state as set forth in Title 41 of NRS
22 and the Regulations of the Nevada Gaming Commission.

23 2. Respondent, PEPPERMILL CASINOS, INC., is licensed by the Nevada Gaming
24 Commission to operate gaming in Nevada as follows:

25 (a) Doing business as PEPPERMILL HOTEL & CASINO located at 2707 South Virginia
26 Street, Reno, Nevada as a Nonrestricted licensee;

27 (b) Doing business as WESTERN VILLAGE located at 815 Nichols Boulevard, Sparks,
28 Nevada as a Nonrestricted licensee;

- 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
grounds for disciplinary action.

4 NRS 463.170(2) and (8).

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

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

12 1. Failure to exercise discretion and sound judgment to
13 prevent incidents which might reflect on the repute of the State of
Nevada and act as a detriment to the development of the industry.

14

15 10. Failure to conduct gaming operations in accordance
16 with proper standards of custom, decorum and decency, or permit
17 any type of conduct in the gaming establishment which reflects or
tends to reflect on the repute of the State of Nevada and act as a
detriment to the gaming industry.

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

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

20 *Violation of any provision of the Nevada Gaming Control Act*
21 *or of these regulations by a licensee, his agent or employee shall*
22 *be deemed contrary to the public health, safety, morals, good order*
23 *and general welfare of the inhabitants of the State of Nevada and*
24 *grounds for suspension or revocation of a license. Acceptance of a*
25 *state gaming license or renewal thereof by a licensee constitutes*
26 *an agreement on the part of the licensee to be bound by all of the*
27 *regulations of the commission as the same now are or may*
28 *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.

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

27

28

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, 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) Rail 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 reput
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 reput
20 of the State of Nevada and act as a
21 detriment to the gaming industry in violation of Nevada Gaming Commission
22 Regulation 5.011(10).

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

27

28

....

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 repute 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 repute of the State of Nevada and act as a detriment to the gaming industry in violation of Nevada Gaming Commission Reg. 5.011(10).

....

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

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

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

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

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

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

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

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

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

28 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 reput 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);

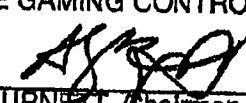
14 2. That the Nevada Gaming Commission fine Respondent a monetary sum pursuant to
15 the parameters defined at Nevada Revised Statute 463.310(4) for each separate violation of
16 the provisions of the Nevada Gaming Control Act or the Regulations of the Nevada Gaming
17 Commission;

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
20
21
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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 13th day of February, 2014.

4 STATE GAMING CONTROL BOARD

5 
6 A.G. BURNETT, Chairman

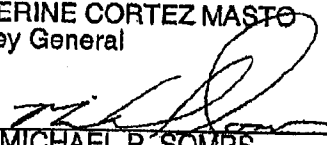
7 
8 SHAWN R. REID, Member

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

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

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

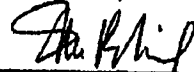
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4. For such other and further relief as the Nevada Gaming Commission may deem just and proper.

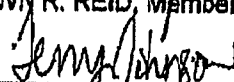
DATED this _____ day of _____, 2014.

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

Exhibit “2”

Exhibit “2”

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 4** 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
11 H. STAN JOHNSON, ESQ.
12 CHRIS DAVIS, ESQ.
13 Cohen Johnson Parker Edwards, LLC
14 255 E. Warm Springs Road, Suite 100
15 Las Vegas, NV 89119
16 Email: sjohnson@cohenjohnson.com
cdavis@cohenjohnson.com
17 *Attorneys for Appellant*

18
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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Supreme Court No. 70319

VS.

Respondent.

APPENDIX VOLUME 4

Attorneys for Respondent
Peppermill Casinos, Inc., d/b/a Peppermill Casino

RESPONDENT PEPPERMILL CASINOS, INC.'S ANSWERING BRIEF

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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
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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

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Trial Exhibit 319 - 2010 Partial Wynn Resorts, Limited 10K	01/22/16	21	RA 05190 – 05203
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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
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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
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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
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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
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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
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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

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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
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Trial Exhibit 82 – 11/2014 CDC Report re: Direct Mail	01/19/16	15	RA 03711 – 03750

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Trial Exhibit 85 - 05/14/14 CDC Contract with GSR (signed by Mimno)	01/22/16	17	RA 04097 – 04099

1 The key phrase in this definition [of Rule 26(b)(1)]—"relevant to the subject matter
2 involved in the pending litigation"—has been construed broadly to encompass any
3 matter that bears on, or that reasonably could lead to other matter that could bear on,
4 any issue that is or may be in the case. Consistently with the notice-pleading system
5 established by the Rules, discovery is not limited to issues raised by the pleadings,
6 for discovery itself is designed to help define and clarify the issues. . . .

7 Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978) (citation omitted).

8 In its opposition, Defendant Peppermill argues that Plaintiff "placed its trade secrets directly
9 into issue by instigating a lawsuit claiming that Peppermill allegedly misappropriated these secrets."
10 In particular, Defendant Peppermill claims that the information described in the specific topics of its
11 deposition notice is needed to establish that Plaintiff has not suffered any damages, or to enable
12 Defendant to determine any damages owed. In that regard, Plaintiff has informed Defendants that
13 its damages will be computed based on "the number of times Mr. Tors accessed machines at the
14 GSR without permission, and the number of machines so accessed based on the benefit obtained
15 by the Peppermill from use of the illegally obtained trade secret information based on the cost of
16 legally and legitimately obtaining the same information." Plaintiff also has informed Defendants that
17 NRS 600A.050(2) allows for an alternative measure of damages that it may pursue in this case—"a
18 reasonable royalty . . . for the unlawful acquisition and disclosure and potential use of said trade
19 secrets in an amount to be determined at trial." Defendant Peppermill acknowledges that a
20 reasonable royalty is a measure of damages available under the applicable statute. However, it
21 argues that a reasonable royalty "is that amount that represents the fair price of the secret allegedly
22 misappropriated," and that "[a] key and indispensable component of a reasonable royalty damage
23 model requires an analysis of GSR's business plans, financial models and development costs."

24 With regard to the information at issue, Defendant Peppermill contends that fair market value
25 in this context is determined by considering several factors: Whether the defendant used the secret;
26 whether the defendant disclosed the secret; whether the plaintiff lost revenue; whether the
27 defendant derived financial benefit; the plaintiff's development costs; the novelty and uniqueness of
28 the secret; the extent to which the information is known outside of the plaintiff's place of business;

1 the amount invested by the plaintiff in time, money, and effort to establish and protect the secret. In
2 part, Defendant Peppermill seeks the information described in the deposition notice because it is
3 unwilling to accept Plaintiff's assertion that it did not lose revenue (a fact that Defendant maintains
4 would preclude an award of damages based upon royalties). Assuming that Plaintiff is entitled to a
5 reasonable royalty, Defendant asserts that an analysis of Plaintiff's development costs is essential to
6 that theory of damages. Further, it must determine what a hypothetical buyer would pay a
7 hypothetical seller for the alleged secret (i.e., "the par settings on approximately 16 penny slot
8 machines located at the GSR"). Defendant Peppermill states that this determination will require an
9 analysis by its experts, who "must carefully examine all of the gaming strategies that influence the
10 revenue of each slot machine." Several factors influence that analysis:

- 11 1. Location;
- 12 2. Par settings on each machine on the bank where the subject machine was placed;
- 13 3. Revenue generated by each machine for each par setting;
- 14 4. Player theoretical hold percentages;
- 15 5. Benefits conferred;
- 16 6. All marketing efforts made to get customers to play the specific machines in
17 question;
- 18 7. Free play offered for those and competing machines;
- 19 8. Frequency settings;
- 20 9. Strategies in changing the pars at specific time intervals for each machine;
- 21 10. Customer tracking for the machines involved;
- 22 11. The performance of other nearby machines with the same or even different par
23 settings;
- 24 12. The revenue generated by machines on the GSR floor based on seasonal or
25 event specific trends; and
- 26 13. Others that tend to show whether the actual par settings have anything
whatsoever to do with net or gross revenue of each machine accessed by Mr. Tors.

20 Consequently, Defendant Peppermill maintains that its expert requires the information sought
21 through the NRCP 30(b)(6) deposition to conduct the required analysis.

22 In Univ. Computing Co. v. Lykes-Youngstown Corp., 504 F.2d 518 (5th Cir. 1974), the court
23 explained that every case based upon a misappropriation of trade secrets "requires a flexible and
24 imaginative approach to the problem of damages." See Univ. Computing, 504 F.2d at 538.

25 However, certain standards have emerged from cases in this area:

26 The defendant must have actually put the trade secret to some commercial use. The
law governing protection of trade secrets essentially is designed to regulate unfair

1 business competition, and is not a substitute for criminal laws against theft or other
2 civil remedies for conversion. If the defendant enjoyed actual profits, a type of
3 restitutionary remedy can be afforded the plaintiff—either recovering the full total of
4 defendant's profits or some apportioned amount designed to correspond to the actual
5 contribution the plaintiff's trade secret made to the defendant's commercial success.
6 Because the primary concern in most cases is to measure the value to the defendant
7 of what he actually obtained from the plaintiff, the proper measure is to calculate what
8 the parties would have agreed to as a fair price for licensing the defendant to put the
9 trade secret to the use the defendant intended at the time the misappropriation took
10 place.

11 In calculating what a fair licensing price would have been had the parties
12 agreed, the trier of fact should consider such factors as the resulting and foreseeable
13 changes in the parties' competitive posture; the prices past purchasers or licensees
14 may have paid; the total value of the secret to the plaintiff, including the plaintiff's
15 development costs and the importance of the secret to the plaintiff's business; the
16 nature and extent of the use the defendant intended for the secret; and finally
17 whatever other unique factors in the particular case which might have affected the
18 parties' agreement, such as the ready availability of alternative processes.

19 Id. at 539 (footnote and citation omitted) (emphases added). Thus, any factor that might reasonably
20 impact the analysis regarding the value of the trade secret to either party would be relevant for
21 discovery purposes under the broad standard set by NRCP 26(b)(1). Although some information
22 bearing on this issue might be viewed as confidential and proprietary—or even a trade secret—it is
23 nonetheless relevant for discovery purposes.

24 Plaintiff bears the burden of demonstrating that it is entitled to the protective order it seeks.
25 See, e.g., Hawley v. Hall, 131 F.R.D. 578, 583 (D. Nev. 1990). In that regard, Plaintiff did not
26 provide an individual relevance analysis for each of the fifteen topics that it identified as implicating
its trade secrets and other confidential business information. The Court nevertheless reviewed
these fifteen topics, but it cannot say that they are entirely unrelated to a determination of the value
of the allegedly misappropriated trade secrets. Presumably, those trade secrets—par settings for
certain slot machines—would be deemed valuable because they resulted in increased revenue for
Plaintiff. But Plaintiff's revenue could be impacted by myriad other factors as well, such as
marketing and promotions, and a hypothetical person contemplating a purchase of these trade
secrets reasonably would want to discern whether and to what extent increased revenue was due to
the trade secrets or to other factors. Some information about Plaintiff's customers would bear upon

1 the value of these trade secrets to Defendant; for example, if one or more of Plaintiff's regular
2 customers stopped playing at Plaintiff's casino and began playing at Peppermill during the period
3 when Defendant Tors was allegedly misappropriating these trade secrets. How often a machine is
4 played and its performance also would be relevant to the revenue generated by that machine. To be
5 clear, not every conceivable piece of information that might fall within one of these topics is
6 necessarily relevant in this case, even for discovery purposes. But the Court finds that Plaintiff has
7 not established that it is entitled to an order relieving it from having to provide a witness to answer all
8 questions concerning these topics.⁶

9 Plaintiff also specifically disputes the relevance of any requested information for the period
10 prior to July 12, 2013—the date when Defendant Tors was detained at Plaintiff's casino. However,
11 in the hypothetical situation in which the parties would have negotiated the sale of the allegedly
12 misappropriated trade secrets to Defendant, the value of those trade secrets would have been
13 based upon an analysis of pertinent factors for a reasonable period of time prior to July 12, 2013
14 (i.e., the date of the hypothetical sale). The Court finds that the periods of time set forth in these
15 topics are reasonable. For topics that contain no specific time limitation, Plaintiff should infer a
16 reasonable time period in view of the allegations of the complaint and the specific information sought
17 in those topics.

18 ⁶ To the extent that Plaintiff might be seeking protection for relevant information that it believes constitutes trade
19 secrets or other confidential business information, the *Stipulated Confidentiality Agreement and Protective Order* filed on
20 July 17, 2014, presumably addresses those concerns sufficiently. In fact, Section 4 specifically concerns the "Use of
21 Confidential Information in Depositions." The agreement also includes special protections, such as an "Attorney's Eyes
22 Only" provision, for information deemed "Highly Confidential." See *Taiyo Int'l. Inc. v. Phyto Tech Corp.*, 275 F.R.D. 497,
23 501 (D. Minn. 2011) ("[w]here the parties have agreed to a protective order, particularly one with 'Attorneys' Eyes Only'
24 designation, even a very sensitive trade secret will be sufficiently protected and should be produced if relevant"). In any
25 event, while protection is afforded trade secrets and confidential business information pursuant to NRS 49.325(1) and
26 NRCP 26(c)(7), those protections are not absolute. See NRS 49.325(2) (2013) (court may order disclosure of trade
secrets subject to "such protective measure as the interests of the holder of the privilege and of the parties and the
furtherance of justice may require"); NRCP 26(c) (allowing courts to "make any order which justice requires to protect a
party or person from annoyance, embarrassment, oppression, or undue burden or expense"); *Pub. Serv. Comm'n v. Dist.
Court*, 107 Nev. 680, 684, 818 P.2d 396, 399 (1991) ("a person does not have a right to refuse to disclose a trade secret[;]
... a person has only a conditional privilege not to disclose a trade secret if the non-disclosure would not work an
injustice"). Of course, the party seeking a protective order for trade secrets bears the burden of demonstrating that the
protection sought is necessary and appropriate. See, e.g., *Weaver v. Tampa Inv. Group, LLC*, No. CV-12-01117 EJD
(PSG), 2012 WL 4936052, at *2 (N.D. Cal. Oct. 16, 2012) (in applying essentially identical California law, "party claiming
the trade secrets privilege has the initial burden of showing the material it seeks to protect is, in fact, a trade secret," as
well as demonstrating that it is entitled to the degree of protection sought); 8A Charles A. Wright et al., *Federal Practice
and Procedure* § 2043, at 241-48 (3d ed. 2010 & Supp. 2014).

1 C. Information Within Exclusive Possession of Peppermill

2 With regard to Topic Nos. 7, 8, 9, 14, 16, 17, 19, 21, 22, 23, and 24, Plaintiff asserts that the
3 requested information is exclusively within Defendant Peppermill's possession. It adds that Plaintiff
4 cannot provide testimony regarding these topics until Defendant Peppermill has disclosed
5 documents showing the information that was misappropriated over a four-year period. As stated in
6 the motion, "[o]nly the Peppermill, and its agents, including Ryan Tors know what information was
7 taken; and how Peppermill used the information."

8 The purpose of an NRCP 30(b)(6) deposition is to obtain testimony on behalf of, and binding
9 upon, a corporation or other entity. Plaintiff may or may not have information pertaining to one or
10 more of these eleven topics. But even if it possesses no information, Defendant Peppermill is
11 entitled to Plaintiff's testimony to that effect, through one or more of its designated representatives.
12 Nothing precludes Plaintiff from appropriately explaining or qualifying any such answer. Therefore,
13 the Court finds that Plaintiff is not entitled to an order relieving it from having to provide a witness to
14 answer questions concerning these topics.

15 D. Efforts to Obtain Documents Through NRCP 30(b)(6) Deposition

16 Plaintiff states that Topic Nos. 1, 2, 3, 4, 5, 6, 10, 12, 13, 25, 26, 27, 28, 29, and 30 seek
17 information that would require the witness to testify from documents rather than from personal
18 knowledge. It is concerned that once the witness uses documents in connection with testifying,
19 Defendant Peppermill will request to see whatever documents the witness testified from or relied
20 upon in preparing to testify. Plaintiff maintains that this is an improper discovery technique because
21 it defeats the notice provisions of NRCP 30 and 34. It therefore seeks an order striking "all PMK
22 topics which even remotely involve a review of documents," and precluding any deposition thereon.

23 The abbreviation "PMK" presumably means "person most knowledgeable," and it is
24 commonly understood to refer to the individual designated to testify on behalf of an organization
25 under the procedure set forth at NRCP 30(b)(6). This term, however, is a misnomer; NRCP 30(b)(6)
26 does not require an organization to present its "person most knowledgeable" with regard to a subject

1 area identified in the deposition notice. See Cummings v. General Motors Corp., No. Civ.00-1562-
2 W, 2002 WL 32713320, at *2-*3 (W.D. Okla. Jun. 18, 2002). The party employing NRCP 30(b)(6)
3 identifies the subject areas for testimony, but it cannot require the organization to produce the
4 "person most knowledgeable" to testify on its behalf. The organization can designate virtually
5 anyone it likes to testify on its behalf, so long as that witness also satisfies the express and implied
6 requirements of this rule.

7 Although an NRCP 30(b)(6) deponent is not required to have personal knowledge of the
8 noticed topics, the organization is obligated to prepare is designated representative to speak on
9 those topics. See, e.g., TIG Ins. Co. v. Tyco Int'l Ltd., 919 F. Supp. 2d 439, 454 (M.D. Pa. 2013). A
10 corporate party has a duty to prepare its Rule 30(b)(6) deponent to the extent matters are
11 reasonably available, whether from documents, past employees, or other sources. See id. "Even if
12 the documents are voluminous and the review of documents would be burdensome, the deponents
13 are still required to review them in order to prepare themselves to be deposed." See id.; In re
14 Neurontin Antitrust Litig., MDL No. 1479, 2011 WL 2357793, at *5 (D.N.J. Jun. 9, 2011); Concerned
15 Citizens v. Belle Haven Club, 223 F.R.D. 39, 43 (D. Conn. 2004); see also Harris v. New Jersey, 259
16 F.R.D. 89, 92 (D.N.J. 2007) ("[t]he duty of preparation goes beyond matters personally known to the
17 designee or to matters in which the designee was personally involved, and if necessary the
18 deponent must use documents, past employees or other resources to obtain responsive
19 information").

20 Thus, the mere fact that a designated NRCP 30(b)(6) representative will need to review
21 documents in order to adequately prepare for the deposition is not a proper reason for issuance of
22 an order vacating that deposition. Indeed, depositions are a legitimate tool for determining the
23 existence of relevant documents; the representative's use of a document during preparation
24 indicates that the document contains relevant information, and is therefore discoverable. In fact, the
25 Nevada Supreme Court recently held that when a witness uses a document to refresh the memory
26 of that witness before or during a deposition, an adverse party is entitled to have the writing

1 produced at the deposition, irrespective of privilege, pursuant to NRS 50.125 and NRCP 30(c). See
2 L.V. Dev. Assocs. v. Dist. Court, 130 Nev., Adv. Op. 37, at 8, 325 P.3d 1259, 1264-65 (2014).

3 The Court appreciates that NRCP 30(b)(1) requires the party seeking a deposition to give
4 only fifteen days' notice to opposing parties, while NRCP 34 allows parties responding to a request
5 for production to take up to thirty days to produce requested documents.⁷ A party should not be
6 permitted use NRCP 30(b)(6) to avoid allowing the deposed party the thirty-day period ordinarily
7 afforded parties who are asked to produce documents. But not every NRCP 30(b)(6) witness needs
8 to review numerous documents prior to testifying. Thus, if the party to be deposed believes that it
9 has not be given enough time to prepare one or more witnesses to provide testimony under NRCP
10 30(b)(6), then it may request that the deposition be rescheduled. If the party seeking testimony is
11 unwilling to reschedule it, then the party to be deposed must seek an order changing the deposition
12 date. With a trial date of July 6, 2015, the Court presumes that the parties can reschedule the
13 NRCP 30(b)(6) deposition of Plaintiff in this case for dates and times that are mutually convenient to
14 all persons and that allow Plaintiff sufficient time to retrieve and review any documents needed to
15 prepare for the deposition.

16 E. Efforts to Obtain Percipient Witness Testimony Through NRCP 30(b)(6) Deposition

17 Plaintiff also requests that Defendant Peppermill be precluded from obtaining testimony on
18 the subject areas described in Topic Nos. 15 and 25—statements made by Defendant Tors at
19 Plaintiff's property on July 12, 2013, and investigative reports generated by Plaintiff concerning the
20 activities of Defendant Tors on July 13, 2013. Plaintiff states that it has produced all such
21 investigative reports and the video of an interview of Defendant Tors by the Nevada Gaming Control
22 Board, and that it has identified the percipient witnesses who prepared the reports. Plaintiff believes
23 that Defendant Peppermill is attempting to transform the testimony of those percipient witness into
24 statements that are binding upon Plaintiff. Alternatively, Plaintiff is concerned that Defendant

25 ⁷ A party is can require the production of documents at a deposition by serving a deposition notice accompanied
26 by an NRCP 34 request. However, in that event, "[t]he procedure of Rule 34 shall apply to the request," which effectively
requires that the deponent receive at least thirty days' notice of the deposition. See NRCP 30(b)(5).

1 Peppermill is attempting to obtain information regarding security and surveillance procedures and
2 systems on its property.

3 Plaintiff does not argue that these two topics are irrelevant; thus, Defendant Peppermill is
4 entitled to obtain testimony from Plaintiff on these topics. Certainly, Plaintiff could designate as its
5 NRCP 30(b)(6) witness one or more lower-level employees who were personally involved in these
6 events; however, it is not required to do so. So long as Plaintiff designates and produces one or
7 more representatives who are reasonably prepared to provide Plaintiff's knowledge about these
8 topics, Plaintiff will satisfy the requirements of NRCP 30(b)(6). In that regard, Plaintiff is not required
9 to adopt or be accountable for the knowledge and recollections of its lower-level employees who
10 were percipient witnesses. Indeed, Defendant Peppermill presumably is permitted to obtain
11 deposition testimony from all percipient witnesses; but that right does not preclude it from also
12 obtaining Plaintiff's testimony on topics addressed by one or more percipient witnesses. Moreover,
13 if Plaintiff has information that augments or contradicts the knowledge of lower-level employees who
14 were percipient witnesses, it would be required to provide the full extent of its relevant knowledge in
15 response to deposition questions.

16 Under these circumstances, the Court is not persuaded that Defendant Peppermill is
17 improperly attempting to force Plaintiff to be bound by the testimony of one or more percipient
18 witnesses. The Court similarly is unpersuaded that Defendant Peppermill is precluded from
19 deposing Plaintiff on these topics based on the possibility that Defendant might seek information
20 about security and surveillance procedures and systems on its property. Should such questions
21 arise during the deposition, nothing in this decision precludes Plaintiff from interposing any
22 appropriate objections or taking other actions authorized by the applicable rules.

23 F. Subsequent Remedial Measures

24 In Topic Nos. 18 and 20, Defendant Peppermill seeks Plaintiff's deposition testimony about
25 "communications between GSR and other gaming properties in Washoe County concerning the
26 activities of Ryan Tors as described in GSR's complaint since July 12, 2013," and "the efforts made

1 by the GSR to preserve the secrecy and alleged confidentiality of the par settings on the slot
2 machines utilized by the GSR during the years 2009 through and including the present." Plaintiff
3 argues that its "post-event" communications with other casinos are irrelevant to liability and
4 damages issues in this case, and would constitute evidence of subsequent remedial measures. It
5 further contends that any effort to compare pre-incident security measures with post-event security
6 measures would likewise implicate subsequent remedial measures.

7 NRS 49.095 provides as follows:

8 1. When, after an event, measures are taken which, if taken previously, would
9 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.

10 2. This section does not require the exclusion of evidence of subsequent
11 remedial measures when offered for another purpose, such as proving ownership,
control, feasibility of precautionary measures, or impeachment.

12 Significantly, NRS 48.095 limits the admissibility of subsequent remedial measures during trial, but
13 that statute does not purport to limit discovery of subsequent remedial measures. Cf. e.g., Eicholtz
14 v. J.C. Penney Co., No. 2:04-cv-00912-JCM-LRL, 2006 WL 2520321, at *1 (D. Nev. Aug. 29, 2006)
15 (analogous Federal Rule of Evidence 407 "governs the admissibility of subsequent remedial
16 measures; it does not preclude discovery"). In addition, NRCP 26(b)(1) provides that "[i]t is not
17 ground for objection that the information sought will be inadmissible at the trial if the information
18 sought appears reasonably calculated to lead to the discovery of admissible evidence." Under NRS
19 48.095, evidence of subsequent remedial measures is only inadmissible "to prove negligence or
20 culpable conduct in connection with the event." The statute expressly allows evidence of
21 subsequent remedial measures to be admitted at trial "when offered for another purpose, such as
22 proving ownership, control, feasibility of precautionary measures, or impeachment." In fact,
23 discovery of subsequent remedial measures, even in negligence cases, is supported by "the weight
24 of authority." See Caulk v. Balt. & Ohio R.R., 306 F. Supp. 1171, 1172 (D. Md. 1969); see also
25 Jumper v. Yellow Corp., 176 F.R.D. 282, 284 (N.D. Ill. 1997) (citing various additional authorities
26 adopting this view).

1 At a minimum, the extent to which Defendant Tors has continued to engage in activities of
2 the kind that form the basis for this lawsuit would be relevant to Plaintiff's claim for punitive
3 damages. Therefore, Defendant Peppermill is entitled to discovery regarding communications
4 between Plaintiff and other gaming properties on that subject. Those conversations also plausibly
5 could include statements by Plaintiff about the events giving rise to this lawsuit. As NRS 48.095(2)
6 makes clear, Plaintiff's post-incident statements and actions could be admissible for purposes of
7 impeachment.

8 In addition, Defendant Peppermill emphasizes that "[t]o be a trade secret, the holder thereof
9 must take appropriate measures to safeguard and protect the secret." Defendant maintains that
10 Plaintiff "did not protect what it wants to now characterize as secret," and "the efforts made by the
11 GSR to preserve the secrecy and alleged confidentiality of the par settings on the slot machines
12 utilized by the GSR during the years 2009 through and including the present" would be relevant to
13 that issue. Plaintiff's post-incident statements and actions could therefore be admissible to show the
14 feasibility of precautionary measures. For all of the foregoing reasons, the Court is not persuaded
15 that Plaintiff is entitled to an order precluding Defendant Peppermill from deposing Plaintiff on these
16 topics.

17 G. Incompleteness of Topic No. 26

18 In Topic No. 26, Defendant Peppermill states that it is seeking "daily detailed slot machine
19 performance data for each slot machine at GSR for each month from December 29, 2009 to the
20 present, including for each slot machine the following"; however, no additional information is
21 provided after the word "following." Plaintiff states that without the missing information, Defendant
22 Peppermill is seeking trade secret information concerning every slot machine whether or not it was
23 accessed by Defendant Tors. Plaintiff maintains that this topic, as drafted, is overbroad, and that
24 compliance would be burdensome, expensive, and time-consuming.


25 Topic No. 26 is incomplete on its face. In addition, Defendant Peppermill did not provide any
26 response in its opposition regarding this topic. With due regard to the need to establish the value of

1 the trade secrets at issue in this case, the Court is not persuaded that Defendant requires all
2 information that might conceivably qualify as "detailed slot machine performance data," for each of
3 Plaintiff's slot machines, for each day from December 29, 2009, to the present. Therefore, Plaintiff is
4 entitled to a protective order regarding Topic No. 26.

5 ACCORDINGLY, Plaintiff's *Motion for Protective Order on an Order Shortening Time and for*
6 *Stay of Depositions Pending Hearing on the Matter* should be GRANTED in part, and DENIED in
7 part.

8 IT SHOULD THEREFORE, BE ORDERED that Plaintiff designate and produce one or more
9 representatives to testify on its behalf pursuant to NRCP 30(b)(6) regarding the topics identified in
10 Defendant Peppermill's amended deposition notice served on June 11, 2014, to the extent required
11 by and in accordance with this decision; provided, however, that Plaintiff is not required to designate
12 or produce a representative to testify regarding Topic No. 26.

13 DATED: This 2nd day of October, 2014.

14
15 
16 WESLEY M. AYRES
17 DISCOVERY COMMISSIONER
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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 2nd day of October, 2014, I electronically filed the **RECOMMENDATION FOR ORDER** with the Clerk of the Court by using the ECF system.

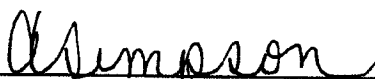
I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

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

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

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


Annemarie Simpson
Court Clerk

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Attorneys for Plaintiff

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

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

Plaintiff,

v.

Case No.: CV13-01704
Dept. No.: B7

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

Defendants.

BUSINESS COURT DOCKET

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

Plaintiff, MEI-GSR HOLDINGS, LLC, d/b/a GRAND SIERRA RESORT (GRAND SIERRA RESORT), by and through its counsel of record, Cohen-Johnson, LLC, hereby respectfully objects to the Recommendation for Order filed by Commissioner Ayres on October 2, 2014 denying Plaintiff's Motion for a Protective Order and in support of this objection states as follows:

This objection is made and based upon pleadings and papers filed in this matter, the attached Memorandum of Points and Authorities, as well as the arguments and evidence presented at any hearing convened to consider this motion.

...

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

1 Dated this 10th day of October 2014.

2 COHEN-JOHNSON, LLC

3 By: /s/ H. Stan Johnson
4 H. Stan Johnson, Esq.
5 Nevada Bar No. 00265
6 Terry Kinnally, Esq.
7 Nevada Bar No. 06379
8 255 E. Warm Springs Road, Suite 100
9 Las Vegas, Nevada 89118
10 *Attorneys for Plaintiff*
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

POINTS AND AUTHORITIES

On October 2, 2014 the Discovery Commissioner filed a recommendation denying the Plaintiff's Motion for a Protective Order. Plaintiff files this objection to that recommendation and asks the Court for a hearing and oral argument on the matter.

II.

**MOTION TO STAY THE DEPOSITIONS PENDING THE HEARING ON THE
OBJECTION**

Defendants have again unilaterally scheduled these proposed depositions over the course of several days October 28, October 2, November 3, and November 4, without consultation with the Plaintiff as to the convenience or availability of Counsel or witnesses. The last time this occurred Peppermill stated that it would continue the depositions pending the hearing on the protective order and the depositions were given a new date to accommodate scheduling. When no ruling on the Protective Order was received prior to the new date, Peppermill reneged on its agreement to stay and proceeding to take notices of non-appearance.

In order to insure that such a situation is not repeated GSR is asking this Court to stay the depositions pending the hearing and ruling on this objection and delay any rescheduling of the depositions until after the Court's order has been entered.

III

OBJECTION

A. The Proper Measure of Damages is the benefit accruing to the Peppermill not the loss to GSR

It is Plaintiff's position that the Commissioner has misapplied the basis for the damages in this case. Plaintiff has admitted that it did not lose revenue, therefore a loss of revenue is not at issue in this case. The fact that Defendant wishes to assert, against its own interest that Plaintiff did sustain a loss of revenue does not change the scope of the damage claim.

1 Peppermill seeks to obtain information to refute a claim which has not been made, and discovery
2 concerning this non-issue cannot lead to discoverable evidence. Defendant cannot refute a claim
3 that has not been made.

4 In determining the basis for damages the Commissioner relied upon the holding in
5 University Computing Co. v. Lyke-Youngstown Corp 504 F.2d 518 (GA 1974) however the
6 Commissioner focused on only part of the Court's ruling and failed to consider the Court's
7 determination that:

8 In some instances courts have attempted to measure the loss suffered by the
9 Plaintiff. While as a conceptual matter this seems to be a proper approach, in
10 most cases the defendant has utilized the secret to his advantage with no obvious
11 effect on the plaintiff save for the relative differences in their subsequent
12 competitive position. Largely as a result of this practical dilemma, normally the
13 value of the secret to the plaintiff is an appropriate measure of damages only
14 when the defendant has in some way destroyed the value of the secret. The most
15 obvious way this is done is through publication, so that no secret remains. **Where
16 the Plaintiff retains the use of the secret as here and where there has been no
17 effective disclosure of the secret through publication the total value of the
18 secret to the plaintiff is an inappropriate measure.**

19 Further unless some specific injury to the plaintiff can be established—such as lost
20 sales—the loss to the plaintiff is not a particularly helpful approach in assessing
21 damages.

22 **The second approach is to measure the value of the secret to the defendant.**
23 **This is usually the accepted approach where the secret has not been**
24 **destroyed and where the plaintiff is unable to prove specific injury.** In the
25 case before us then the “appropriate measure of damages by analogy to patent
26 infringement is not what plaintiff lost but rather the benefits, profits, or
27 advantages gained by the defendant in the use of the trade secret. Id p. 535-536.
28 (Emphasis added)

29 Plaintiff is making its claim for damages based on the value of the secret to the
30 Peppermill which can be shown, not by its value to the Plaintiff but based on the uses to which
31 the Defendant used the information. As in the Court's example above the Peppermill has not
32 published the information, and Plaintiff cannot establish a specific injury. Where there is no
33 ascertainable proof of loss to the Plaintiff then the appropriate measure of damages is the value
34 of the information to the Peppermill and the uses to which the Peppermill put that information.
35 This means that the value, use, or benefits provided to GSR are totally irrelevant, inadmissible
36 and cannot result is the disclosure of admissible evidence. The information sought by

1 Peppermill goes to the value of the information to GSR, but the only relevant damages issue is
2 the value of the information to Peppermill.

3 **B. The Information Sought Constitutes GSR's Trade Secrets**

4 The Commissioner also states that GSR did not establish that the information sought
5 constitutes a trade secret. This is not so. In prior litigation this court has held that the
6 information sought by the Peppermill constitutes a trade secret:

- 7 1. Player tracking records (Topics 1, 2, 6, 12, 13)
- 8 2. Level of play (Topic 12, 13, 26)
- 9 3. Marketing strategy (Topic 10, 29 30)
- 10 4. Player's history of play(er) sic (Topics 1, 2, 6, 12, 13)
- 11 5. Company's financial information (Topic 26, 27, 28)
- 12 5. Company's marketing strategy; (Topic 10, 29, 30)
- 13 6. Customer information (Topic 6, 12, 13)
- 14 7. PAR information. (Topics 3, 4, 5,)

15 The findings as to the first six topics were set forth in the Court's July 13, 2013 decision
16 in Golden Road v. Islam (Case No CV12-01171) where the Court found that these specific topics
17 were considered trade secrets in the gaming industry. At the hearing for a preliminary injunction
18 in this matter the Court also determined that that Par Information was also a trade secret. Nor is
19 there any evidentiary or discovery value to the disclosure of the proprietary and confidential
20 information since the only value of this information would be to allow Peppermill to dispute a
21 damage claim which does not exist. Likewise the scope of the information sought becomes
22 irrelevant when the information itself is not discoverable. As in the request for documents.

23 **C. PMK Depositions To Obtain Information Exclusively Within The Control Of**
24 **The Peppermill**

25 The Commissioner found that Peppermill should be able to inquire concerning
26 information which is exclusively in the possession of the Peppermill noting that the Plaintiff may
27 qualify or explain the answer. GSR while believing that these depositions on topics, 7, 8, 9, 14,
28 16, 17, 19, 21, 22, 23, and 24 will be futile and a waste of time, do not object to these depositions

1 proceeding and will provide deponents who will testify qualifying their testimony based on the
2 continuing of discovery and that additional information is anticipated on these topics throughout
3 the discovery process.

4 **D. Percipient Witness Testimony**

5 Again while Plaintiff feels that this testimony will be cumulative and should best be
6 sought through the depositions of the percipient witnesses, GSR does not object to this
7 recommendation and will provide a PMK to testify concerning these topics.

8 **E. Subsequent Remedial Measures**

9 GSR does not object to the recommendation that the deposition of a PMK as to
10 subsequent remedial measures and will provide a witness to testify on those topics. Nor does
11 GSR object to the Commissioner's recommendation concerning topic 26.

12 **IV**

13 **CONCLUSION**

14 GSR objects to the recommendation for the foregoing reasons and requests this
15 Honorable Court grant this objection and grant the protective order as to any PMK depositions
16 seeking testimony on the following topics constituting the trade secrets of the GSR:

- 17 1. Player tracking records (Topics 1, 2, 6, 12, 13)
- 18 2. Level of play (Topic 12, 13, 26)
- 19 3. Marketing strategy (Topic 10, 29 30)
- 20 4. Player's history of play(er) sic (Topics 1, 2, 6, 12, 13)
- 21 5. Company's financial information (Topic 26, 27, 28)
- 22 5. Company's marketing strategy; (Topic 10, 29, 30)
- 23 6. Customer information (Topic 6, 12, 13)
- 24 7. PAR information. (Topics 3, 4, 5,)

25 ...

26 ...

27 ...

28 ...

1 And entering an order:

- 2 1 Staying the proposed PMK deposition pending the Court's ruling on this
- 3 objection
- 4 2. Granting the protective order in regards to the topics listed above;
- 5 3. Adopting the Plaintiff's methodology for determining damages and
- 6 limiting discovery on damages to information relevant to Peppermill's use
- 7 of the information and benefits received as a result of its misappropriation;
- 8 4. For such other and further relief as this Court deems equitable and fair.

9 Dated this 10th day of October 2014.

10 COHEN-JOHNSON, LLC

11
12 By: /s/ H. Stan Johnson
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255 E. Warm Springs Road, Suite 100
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13
14
15
16
17 **Affirmation Pursuant to NRS 239B.030**

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

20 Dated this 10th day of October 2014.

21 COHEN-JOHNSON, LLC

22
23 By: /s/ H. Stan Johnson
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10th day of October 2014, a true and correct copy of the foregoing **MOTION TO STAY THE DEPOSITIONS PENDING THE HEARING ON THE OBJECTION** was served by placing a copy thereof in the US Mail at Las Vegas, Nevada, with proper postage prepaid, addressed to the following:

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Reno, Nevada 89509
Attorney for Defendant Ryan Tors

/s/ Kelly J. Montgomery
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Attorneys for Defendant Peppermill Casinos,
Inc., d/b/a Peppermill Casino

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

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

CASE NO.: CV13-01704

Plaintiff,

DEPT. NO.: B7

vs.

BUSINESS COURT DOCKET

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

Defendant(s).

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

I.
OVERVIEW

The Plaintiff ("GSR") has and continues to obstruct discovery. This contemptuous
obstruction is evidenced by the following.

1. NRCP 16.1(a)(1)(C) Computation of Damages.

GSR refused to provide the mandatory computation of damages. Peppermill was forced to

1 file a motion (opposed by GSR) to get the "computation". In the Order compelling GSR to
2 provide the computation of damages, GSR was also ordered to produce all documents and records
3 pertaining to the computation by September 30, 2014.¹ GSR FAILED and REFUSED to do so.
4 (See **Exhibit 1; Exhibit 2**). This refusal has been exacerbated by GSR's expert on damages who
5 testified on October 22, 2014, that he had given GSR's counsel his documents and records
6 concerning damages.

7 **2. Production of Documents.**

8 Peppermill served GSR with a Request for Production of Documents. GSR failed and
9 refused to produce any of the requested documents. Four GSR employees or former employees
10 have now been deposed. GSR's damage expert has been preliminarily deposed. All five witnesses
11 have testified about GSR's slot strategies, marketing policies and hold percentages. Yet, GSR
12 continues to refuse to produce documents that are relevant to the testimony given by GSR's named
13 witnesses.

14 **3. First Set of Interrogatories.**

15 Peppermill served its First Set of Interrogatories on GSR on June 4, 2014. GSR did not
16 object to a single Interrogatory. Instead, GSR simply FAILED and REFUSED to answer the
17 Interrogatories. To date, GSR has neither objected nor answered.

18 **4. Second Set of Interrogatories.**

19 With GSR's permission, Peppermill served GSR with a Second Set of Interrogatories on
20 September 30, 2014. To date, GSR has neither objected nor answered. The substance of the
21 Interrogatories has now been addressed and testified to, in part, by the five GSR witnesses thus far
22 deposed. Still, no answers to the Interrogatories.

23 **5. NRCP 30(b)(6) Depositions.** (See more detailed analysis herein.)

24 Peppermill served GSR with a Notice to take GSR's persons most knowledgeable about
25 various topics. Most of the topics have been addressed in part by GSR's witnesses who have been
26 deposed in part. After a status conference with the Court, the NRCP 30(b)(6) depositions were
27 rescheduled. Although GSR agreed to the dates, neither GSR nor its NRCP 30(b)(6) witnesses
28 appeared for the depositions.

GSR's excuse was that a Motion for Protective Order was pending. The Discovery
Commissioner ruled against GSR, except as to one topic. GSR objected. The Objection is in bad

¹ The Commissioner's September 19, 2014 Recommendation ordered GSR to produce all documents relevant to
GSR's damages by September 30, 2014, and Exhibit 1 sustains that Recommendation.

1 faith. GSR has allowed, without objection, five of its witnesses to testify in part about the topics
2 and subjects set forth in Peppermill's NRCP 30(b)(6) Notice.

3 **6. GSR Has Violated The Court's Order Regarding Damage Documents.**

4 The Discovery Commissioner recommended that GSR produce ALL documents and
5 records concerning its damages, whether related to unjust enrichment or otherwise. This Court
6 sustained the Recommendation and ordered GSR to produce all records and documents concerning
7 damages by September 30, 2014.

8 GSR has failed and refused to do so. GSR's counsel, however, admittedly has possession
9 of records and documents created by GSR's damage expert, David Schwartz. GSR has, once
10 again, shown a conscientious disregard for this Court's Order.

11 **7. False and Misleading Testimony.**

12 GSR made a feeble attempt to establish damages. It did so by attaching the Affidavit of
13 David Schwartz to its Objection to Commissioner's Recommendation Denying Plaintiff's Motion
14 for a Protective Order and Request for a Stay of Depositions Pending the Hearing on the
15 Objection. (See Exhibit 3.)

16 David Schwartz was deposed about that Affidavit on October 22, 2014. David Schwartz
17 admitted:

- 18 • He was retained in February 2014.
- 19 • He has "shopped" Peppermill to discover Peppermill's gaming strategies.
- 20 • His damage calculation for unjust enrichment is flawed, wrong, inaccurate,
21 misleading, incomplete and unreliable.
- 22 • His damage calculation for unjust enrichment is not realistic and is impossible to
23 implement.
- 24 • His damage model is inaccurate.
- 25 • His math is invalid.
- 26 • His assumptions are absurd and ridiculous.

27 Schwartz's concessions lead to the inescapable conclusion that GSR has made a
28 conscientious effort to mislead and deceive this Honorable Court.

II.

INTRODUCTION

By filing this action for misappropriation of trade secrets, GSR opened the door to

1 discovery regarding all things relevant to the purported trade secrets. GSR cannot be allowed to
2 continue to obstruct discovery. The Discovery Commissioner's Recommendation must be
3 adopted.

4 The above-entitled case involves unfortunate accusations against Defendant Peppermill
5 Casinos, Inc. ("Peppermill") and Co-Defendant Ryan Tors, which resulted in action by the Nevada
6 Gaming Control Board and a \$1,000,000 fine. Rather than allow Nevada's regulatory scheme to
7 mete out justice, GSR seeks to turn the Gaming Control Board's actions into easy cash by filing
8 the instant action for misappropriation of trade secrets against Peppermill and refusing to
9 meaningfully participate in the discovery process.

10 As one part of Peppermill's efforts to discover of the factual basis of GSR's trade secret
11 claims, Peppermill issued a Notice of Deposition under NRCP 30(b)(6) seeking information
12 regarding GSR's allegations and theory of damages. Peppermill renoticed the depositions twice.
13 GSR failed to appear for the depositions as scheduled. It has refused to offer alternative dates.
14 Instead, GSR filed a Motion for a Protective Order and Request for a Stay of Depositions Pending
15 the Hearing on the Objection. The Discovery Commissioner issued his recommendation for
16 and/or on GSR's Motion for a Protective Order and Request for a Stay of Depositions Pending the
17 Hearing on the Objection, granting it in part and denying it part. In keeping with its strategy of
18 obstructing discovery, GSR filed an unwarranted and frivolous objection to the Commissioner's
19 Recommendation for Order. The Objection is frivolous because GSR allows other witnesses to
20 testify about topics for the NRCP 30(b)(6) depositions.

21 Since filing the trade secret action against Peppermill, GSR has objected to all discovery
22 relevant to the allegedly misappropriated trade secrets, such as the nature of the secrets, measures
23 taken to protect those secrets, and damages that flow from appropriation of those secrets. As the
24 Discovery Commissioner acknowledged in his Recommendation, this line of inquiry is within the
25 scope of discovery. Despite the robust legal framework regarding discovery in trade secret cases,
26 GSR appears defiant as to why it must participate in discovery at all, and GSR's Motion for a
27 Protective Order is a result of that defiance. It is simple: GSR is apparently seeking \$11,700,000
28 for misappropriation of trade secrets. Accordingly, due process and NRCP 26 demand that

1 Peppermill be permitted to obtain “any matter, not privileged, which is relevant to the subject
2 matter in the pending action”

3 GSR bears a burden when pursuing litigation, chiefly among them are discovery
4 obligations related to its allegations. GSR must accept this burden; it opened the door by bringing
5 this suit.

6 III.

7 **RELEVANT FACTS AND PROCEDURAL HISTORY**

8 On July 12, 2013, Mr. Tors, an employee of Peppermill, was caught using a master key to
9 gain access to the diagnostic information of six slot machines at GSR. The Nevada Gaming
10 Control Board subsequently initiated an inquiry, which resulted in a fine against Peppermill.
11 Following the incident, GSR filed a Complaint against the Peppermill asserting claims for: (1)
12 misappropriation of trade secrets; (2) “respondeat superior/vicarious liability;” and (3) injunctive
13 relief (the “Complaint”). In the Complaint, GSR alleges that Tors’ conduct caused GSR to
14 “sustain damages in excess of \$10,000.” It’s now faulty and inaccurate damage model seeks in
15 excess of \$11,700,000.

16 **A. The NRCP 30(b)(6) Deposition Notices and Related Meet and Confer Efforts**

17 In order to discover information related to GSR’s allegations and basis for its damage
18 theory, Peppermill served a Notice of Taking Depositions of Plaintiff’s Person Most
19 Knowledgeable Pursuant to NRCP 30(b)(6) on June 4, 2014. The depositions described in the
20 notice were scheduled to take place from June 30 to July 3, 2014. The deposition notice sought
21 information related to thirty topics of inquiry, including the manner in which GSR tracks slot
22 machine players and the play of each slot machine, the par settings for each slot machine utilized
23 by GSR, the changes utilized and implemented by GSR for changing the par settings, the strategies
24 involved in setting the par for the machines utilized by GSR, any financial loss and/or damages
25 caused to the GSR by the activities of Ryan Tors, marketing plans, promotions, program for
26 market share for slot play, and market strategies to attract slot customers to play slot machines at
27 GSR, among other areas of inquiry. See **Exhibit 4**.

1 On June 11, 2014, Peppermill served an Amended Notice of Taking Depositions of
2 Plaintiff's Persons Most Knowledgeable Pursuant to NRCP 30(b)(6). In the amended notice, the
3 depositions were rescheduled to take place from July 21 through July 24, 2014. Rather than
4 submit to the properly noticed depositions, GSR filed a Motion for a Protective Order on June 19,
5 2014.

6 At the June 26, 2014 status conference in this action, the parties agreed to reschedule the
7 NRCP 30(b)(6) depositions for the week of August 18, 2014. Further, the parties agreed to
8 specific dates and times for each topic to be addressed by GSR's person or persons most
9 knowledgeable. Moreover, on July 17, 2014, the Court issued a Stipulated Order, whereby the
10 parties agreed to a confidentiality protocol aimed at protecting GSR's sensitive information.
11 Unfortunately, despite all of the aforementioned steps taken by the parties, GSR refused to produce
12 any deponent, despite agreeing to the dates for the depositions.

13 On September 30, 2014, Peppermill served a Second Supplemental Amended Notice of
14 Taking Depositions of Plaintiff's Persons Most Knowledgeable Pursuant to NRCP 30(b)(6).
15 According to the second amended deposition notice, each specific deposition topic has been
16 assigned a one hour block on October 28 and 29 and November 3 and 4. *See Exhibit 5*. GSR has
17 yet to confirm that it will produce a deponent for any of the deposition dates and times.

18 **B. The Commissioner's Recommendation**

19 On October 2, 2014, Discovery Commissioner Wesley M. Ayres issued a Recommendation
20 for Order (the "Recommendation") as to GSR's Motion for Protective Order. In the
21 Recommendation, the Commissioner granted GSR's Motion for Protective Order in part and
22 denied it in part. Specifically, the Commissioner granted the Motion for Protective Order as to
23 only Topic No. 26, due to a typographical error which left the topic incomplete. However, as to all
24 other subject matter topics, the Commissioner authorized the taking of the NRCP 30(b)(6)
25 depositions.

26 On October 10, 2014, GSR filed an objection to a portion of the Recommendation.
27 Specifically, GSR argues that an order should issue to protect GSR's confidential information,
28 because the proper measure of damages is the benefit accruing to Peppermill and not GSR's

1 losses. Further, GSR states that a protective order should issue, because the information that
2 Peppermill seeks to discovery in deposition actually constitute trade secrets. For reasons
3 explained below and in the Recommendation, GSR's arguments have no merit. Therefore, with
4 the depositions quickly approaching, Peppermill requests that the Court immediately adopt the
5 Recommendation so that discovery may move forward.

6 IV.

7 POINTS OF AGREEMENT AND DISAGREEMENT

8 As a preliminary matter, GSR agrees with the Recommendation as it relates to a protective
9 order as to Topic No. 26, and Peppermill concurs with GSR on this issue. *See* Objection to
10 Commissioner's Recommendation Denying Plaintiff's Motion for Protective Order and Request
11 for Stay ("Obj."), p. 6:10-11.

12 GSR only explicitly objects to the Recommendation as to Topic Nos. 1, 2, 3, 4, 5, 6, 10,
13 12, 13, 27, 28, 29, and 30. *See* Obj., p. 6:14-24. For reasons discussed below, Peppermill
14 disagrees with GSR's objections to the Recommendation.

15 It must be noted that GSR explicitly does not object to the Recommendation as to Topic
16 Nos. 7, 8, 9, 14, 16, 17, 19, 21, 22, 23, and 24. *See* Obj., p. 5:27-6:3. Moreover, GSR implicitly
17 accepts the Recommendation as to Topic Nos. 11, 15, 18, 20, and 25 by failing to reference these
18 topics in its objections. Therefore, irrespective of the Court's adoption or rejection of the
19 Recommendation, GSR is required to prepare and produce a deponent for Topic Nos. 7, 8, 9, 11,
20 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25. These depositions will proceed as noticed on the
21 following dates and times:

- 22 • For topic No. 7, 4:00p.m. on Tuesday, October 28, 2014;
- 23 • For topic No. 8, 9:00a.m. on Wednesday, October 29, 2014;
- 24 • For topic No. 9, 10:00 a.m. on Wednesday, October 29, 2014;
- 25 • For topic No. 11, 1:00 p.m. on Wednesday, October 29, 2014;
- 26 • For topic No. 14, 4:00p.m. on Wednesday, October 29, 2014;
- 27 • For topic No. 15, 8:30a.m. on Monday, November 3, 2014;
- 28 • For topic No. 16, 9:00a.m. on Monday, November 3, 2014;
- For topic No. 17, 10:00 a.m. on Monday, November 3, 2014;
- For topic No. 18, 11:00 a.m. on Monday, November 3, 2014;
- For topic No. 19, 1:00 p.m. on Monday, November 3, 2014;
- For topic No. 20, 1:30 p.m. on Monday, November 3, 2014;
- For topic No. 21, 2:30p.m. on Monday, November 3, 2014;

- For topic No. 22, 3:30p.m. on Monday, November 3, 2014;
- For topic No. 23, 4:00p.m. on Monday, November 3, 2014;
- For topic No. 24, 8:30a.m. on Tuesday, November 4, 2014;
- For topic No. 25, 9:00a.m. on Tuesday, November 4, 2014;

If GSR fails to appear for the depositions at the dates and times stated above, Peppermill will seek monetary, evidentiary, and termination sanctions against GSR.

V.

ARGUMENT

A. There Is No Basis to Stay the Depositions Pending Hearing of the Objection Because, According to the Rules of Practice, No Hearing Is Required.

In its objections, GSR requests that the Court “stay the depositions pending the hearing and ruling on this objection and delay any rescheduling of the deposition until after the Court’s order has been entered.” See Obj., p. 3:18-20. This request is nonsense in context of the Washoe District Court Rules (“WDCR”). Under the WDCR, there is no hearing on a motion. Indeed, decisions entered in the Second Judicial District “*shall be rendered without oral argument unless oral argument is ordered by the court*, in which event the individual court department shall set a date and time for hearing.” See WDCR 12(5) (emphasis added). Similarly, there is also no absolute right to a hearing before the Court on the Recommendation or any objections thereto. See WDCR 24(6). “When an objection [to a recommendation] has been filed, *the district judge shall have discretion* to determine the manner in which the [Commissioner’s] recommendation will be reviewed.” *Id* (emphasis added). Therefore, GSR is not entitled to a hearing on its objection, since the Court has discretion whether to even have a hearing.

Given that a hearing is not required to rule on the GSR’s objection or the underlying motion to compel, it makes no sense to seek a stay pending a hearing when there is no hearing. Accordingly, GSR’s request for a stay is misplaced and must be rejected. Moreover, a hearing would cause further delay.

B. Discovery Regarding the Value, Use, and Benefit of the Alleged Trade Secrets to GSR Is Required Under All Potential Theories of Damages in This Case.

In its objections, GSR argues that Peppermill is not entitled discovery regarding GSR’s loss of revenue related to the alleged misappropriation of trade secrets. GSR further argues the

1 alleged trade secrets' "value, use, or benefits [of the alleged trade secrets] provided to GSR are
2 totally irrelevant, inadmissible and cannot result is [sic] the disclosure of admissible evidence."
3 See Obj., p. 4:26-28. This position is erroneous, as it fails to grasp the theories of damages for
4 misappropriation of trade secrets and the evidence necessary to prove or disprove those theories.

5 Under the Uniform Trade Secrets Act, there are three possible measures of damages:
6 (1) "loss caused by misappropriation," (2) "unjust enrichment caused by misappropriation," and
7 (3) "a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret."
8 See NRS 600A.050. While GSR is precluding itself from seeking damages measured by its own
9 loss, Peppermill is not. Evidence regarding the value, use, or benefits of the alleged trade secrets
10 to GSR is also discoverable under both the unjust enrichment and reasonable royalty theories of
11 recovery. Also, Peppermill is entitled to determine itself whether GSR lost revenue.

12 In misappropriation of trade secret cases, unjust enrichment can be measured by an
13 increase in profit equal to research and development costs avoided by the party misappropriating a
14 trade secret. See *Sperry Rand Corp. v. A-T-O, Inc.*, 447 F.2d 1387, 1393 (4th Cir. 1971); *Servo*
15 *Corp. of Am. v. Gen. Elec. Co.*, 393 F.2d 551, 556 (4th Cir. 1968). Therefore, under an unjust
16 enrichment theory, Peppermill may discover all information regarding GSR's development of the
17 purported trade secret, which in this case is the slot machine par data. Accordingly, Peppermill is
18 entitled to related information that reasonably calculated to lead to the discovery of admissible
19 evidence, such as how GSR tracks its slot machine information, player information, and the use of
20 that information. This information is clearly relevant to development costs and research regarding
21 the strategical implication of setting various par percentages.

22 In contrast, reasonable royalties are damages measured what the defendant would have
23 negotiated to pay the plaintiff for a hypothetical license to use the trade secrets. See, e.g., *Secure*
24 *Energy, Inc. v. Coal Synthetics, LLC*, 708 F. Supp.2d 923, 931 ("In determining a reasonable
25 royalty, Plaintiffs must first create a hypothetical negotiation between the parties set at the time the
26 misappropriation began. [Citations omitted.] The parties then determine the royalty the parties
27 would have agreed to, taking into consideration the market at that time. [Citation omitted.]")
28 When damages are measured by a reasonable royalty, courts often turn to the *Georgia-Pacific*

1 factors. In *Georgia-Pacific v. U.S. Plywood Corp.*, the court enumerated certain factors to
2 consider when determining a reasonable royalty in patent cases. See 318 F. Supp. 1116, 1120
3 (S.D.N.Y. 1970) *modified sub nom. Georgia-Pac. Corp. v. U.S. Plywood-Champion Papers, Inc.*,
4 446 F.2d 295 (2d Cir. 1971). This multi-factor analysis has been expanded to trade secret cases.
5 See *Sw. Energy Prod. Co. v. Berry-Helfand*, 411 S.W.3d 581, 610 (Tex. App. 2013), reh'g
6 overruled (Nov. 4, 2013). The *Georgia-Pacific* factors include in relevant part:

7 ...

8 8. The established profitability of the product [subject to the
9 trade secret]; its commercial success; and its current popularity.

10 9. The utility and advantages of the [trade secret] over the old
11 modes or devices, if any, that had been used for working out
12 similar results.

13 10. The nature of [trade secret]; the character of the
14 commercial embodiment of it as owned and produced by the
15 licensor; and the benefits to those who have used the [trade secret].
16 ...

17 See *Georgia-Pacific v. U.S. Plywood Corp.*, 318 F. Supp. at 1120. Aside from the *Georgia-*
18 *Pacific* factors, courts will also consider a plaintiff's development costs. See *Secure Energy, Inc.*
19 *v. Coal Synthetics, LLC*, 708 F. Supp.2d at 931.

20 Here, according to its damage expert, GSR's damages are to be measured by reasonable
21 royalty for Peppermill's "use" of the alleged trade secret. Peppermill is still entitled to the
22 discovery sought in the deposition notice, because that discovery pertains to royalty-type damage
23 models.

24 Under the *Georgia-Pacific* test, profitability and commercial application of GSR's par
25 data, as well as its nature and utility, are factors that must be considered to establish a reasonable
26 royalty. Just as in the case of unjust enrichment, GSR's development costs related to the par data
27 are also discoverable. Accordingly, evidence of the value, use, and benefit of the par information
28 to GSR is within the scope of discovery. Therefore, Peppermill must discover the subject matter
sought in the deposition notice in order to defend itself against unfounded, false and inaccurate
reasonable royalty theories offered by GSR.

No matter what theory of trade secret damages GSR seeks in this case, the subject matter

1 sought in the deposition notice is within the appropriate scope of discovery. By placing its trade
2 secrets directly at issue in this case, GSR must provide deponents who are prepared to discuss all
3 aspects of GSR's par data, as well as slot marketing and operations. Therefore, the Court should
4 adopt the Recommendation and allow the depositions to proceed as notices.²

5 **C. GSR Has Not and Cannot Establish that the Proprietary Information at Issue**
6 **in This Case Constitutes Trade Secrets.**

7 As Peppermill noted in its opposition papers to GSR's motion for protective order,
8 "[T]here is no absolute privilege for trade secrets and similar confidential information." *Fed.*
9 *Open Mkt. Comm. Of Fed. Reserve Sys. v. Merrill*, 443 U.S. 340, 362 (1979); *see also Pub. Serv.*
10 *Comm'n v. Eighth Judicial Dist. Ct.*, 107 Nev. 680, 684, 818 P.2d 396, 399 (1991) (holding that,
11 even under NRS 49.235(1) which allows a person to refuse to disclose trade secrets in certain
12 circumstances, "a person does not have a right to refuse to disclose a trade secret.") Thus, even if
13 the proprietary information at issue constitutes trade secrets, GSR must still produce that
14 information. Indeed, the parties have already agreed and the Court has ordered that the parties
15 participate in a confidentiality protocol in order to protect GSR's purported trade secrets and still
16 allow discovery to go forward.

17 Despite the governing rule and the practical protections in place due to the Stipulated
18 Order, GSR attempts to assert that the proprietary information in this case has already been
19 established as trade secrets. *See* Obj., p. 5:4-22. GSR provides two flawed arguments to support
20 this conclusion: first, the type of information sought in this case was found by the Second Judicial
21 District Court to be trade secrets *in another case*; and second, the Court found that the information
22 at issue in this case was a trade secret *at the hearing for a preliminary injunction*. Each of these
23 arguments will be discussed in turn.

24 1. The Court's Findings in *Golden Road v. Islam* Are Irrelevant, Because
25 Determining Whether particular Information Is a Trade Secret Is a Fact-
26 Specific Analysis.

27 In its objections, GSR states that

28 In prior litigation this court has held that the information

2 Steve Rosen has been deposed. He is a former operator of GSR. He managed the marketing for GSR from 2011 through April 2014. Without objection, GSR allowed him to testify about pars and slot marketing.

sought by the Peppermill constitutes a trade secret:

1. Player tracking records (Topics 1, 2, 6, 12, 13)
2. Level of play (Topics 12, 13, 26)
3. Marketing strategy (Topics 10, 29, 30)
4. Player's history of play(er) sic (Topics 1, 2, 6, 12, 13)
5. Company's financial information (Topics 26, 27, 28)
- ...
6. Customer information (Topics 6, 12, 13)
- ...

The findings as to the first six topics were set forth in the Court's July 13, 2013 decision in *Golden Road v. Islam* (Case No CV12-01171) where the Court found that these specific topics were considered trade secrets in the gaming industry.

Obj., p. 5:5-17. There are several issues with GSR's reliance on the ruling in *Golden Road v. Islam*, a completely unrelated case. It is a question of fact whether certain information is a trade secret. See *Frantz v. Johnson*, 116 Nev. 455, 466, 999 P.2d 351, 358 (2000); see also *N. Elec. Co. v. Torma*, 819 N.E.2d 417, 425 (Ind. Ct. App. 2004) ("[A] determination of a trade secret is so fact-specific, 'the same information that qualifies as a trade secret under one set of facts may not be afforded protection under a different set of facts.'").

Factors to consider when determining whether specific information is a trade secret include

- (1) the extent to which the information is known outside of the business and the ease or difficulty with which the acquired information could be properly acquired by others; (2) whether the information was confidential or secret; (3) the extent and manner in which the employer guarded the secrecy of the information; and (4) the former employee's knowledge of customer's buying habits and other customer data and whether this information is known by the employer's competitors

Finkel v. Cashman Profl, Inc., 128 Nev. Adv. Op. 6, 270 P.3d 1259, 1264 (2012), reh'g denied (Apr. 27, 2012). Therefore, it is irrelevant whether the same *type* of information was found to be a trade secret in another case; *the specific information in this case* must be analyzed against each of the trade secret factors and placed within an appropriate context.

2. The Court's Findings in *Golden Road v. Islam* Are Not Subject to Claim of Issue Preclusion in This Case.

GSR also implies that the findings in *Golden Road v. Islam* are subject to claim or issue

1 preclusion. However, this position is unsupported for a failure to meet the necessary elements of
2 both claim preclusion and issue preclusion. Under Nevada law, in order to be entitled to claim
3 preclusion, the following three-part test must be satisfied:

4 (1) the parties or their privies are the same, (2) the final judgment
5 is valid, and (3) the subsequent action is based on the same claims
6 or any part of them that were or could have been brought in the
first case.

7 *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008) (citations
8 omitted). Here, the parties in *Golden Road v. Islam* are not the same parties to the instant action.
9 Further, present action between GSR and Peppermill is not based on the same set of circumstances
10 as *Golden Road v. Islam*. Indeed, the parties to *Golden Road v. Islam* include the Atlantis Casino
11 Resort Spa, who is not a party in this case. Moreover, *Golden Road v. Islam* involved conduct that
12 either took place or affected the Atlantis and did not involve any conduct that took place at Grand
13 Sierra Resort. Therefore, the claims in present could not have been litigated in *Golden Road v.*
14 *Islam*.

15 Furthermore, for issue preclusion to apply, the following four-part test must be satisfied:

16 '(1) the issue decided in the prior litigation must be identical to the
17 issue presented in the current action; (2) the initial ruling must
18 have been on the merits and have become final; ... (3) the party
19 against whom the judgment is asserted must have been a party or in
privity with a party to the prior litigation'; and (4) the issue was
actually and necessarily litigated.

20 *Five Star Capital Corp. v. Ruby*, 124 Nev. at 1055 (citations omitted). Here, the issues resolved in
21 *Golden Road v. Islam* are not identical to the issues in the present case. As noted above, *Golden*
22 *Road v. Islam* involved certain conduct that took place at the Atlantis and has no relationship to
23 the issues in this case.

24 In sum, *Golden Road v. Islam* has no bearing on this case. Finding that information
25 constitutes a trade secret is a fact intensive analysis unique to each case. Further, there is no basis
26 for the finding in *Golden Road* to be given preclusive effect, as the elements of claim and issue
27 preclusion cannot be shown here.
28

1 3. The Court's Finding of a Reasonable Likelihood of Success When Granting
2 a Preliminary Injunction Against Mr. Tors Is No Substitute for Proving the
3 Existence of a Trade Secret by the Preponderance of the Evidence.

4 GSR argues that "[a]t the hearing for a preliminary injunction in this matter the Court also
5 determined that that [sic] PAR Information was also a trade secret." Obj., p. 5:17-18. This
6 conclusion represents a massive overstatement of Nevada law and the law of the case.

7 Under Nevada law, a preliminary injunction may issue if the moving party can demonstrate
8 both that (1) the nonmoving party's conduct, if allowed to continue, will cause irreparable harm for
9 which compensatory relief is inadequate and (2) *that the moving party has a reasonable likelihood*
10 *of success on the merits.* See *Boulder Oaks Comm. Assoc. v. B&J Andrews Enterprises*, 125 Nev.
11 Adv. Rep. 33, 215 P.3d 27, 31 (2009). On November 15, 201, the Court denied GSR's motion for
12 preliminary injunction against Peppermill. However, the Court issued a preliminary injunction
13 against Mr. Tors, enjoining him from entering GSR and collecting or using any information
14 obtained at GSR. Therefore, at least as to Mr. Tors, GSR showed that there was a *reasonable*
15 *likelihood* that the information that Mr. Tors acquired were trade secrets. However, a legal
16 showing of a reasonable likelihood is not tantamount to carrying the burden of proof at trial.
17 Indeed, whether certain information constitutes a trade secret must be proven by the preponderance
18 of evidence. See, e.g., *Allied Erecting & Dismantling Co. v. Genesis Equip. & Mfg., Inc.*, 649 F.
19 Supp. 2d 702, 711-12 (N.D. Ohio 2009) ("In order to prevail on its misappropriation-of-trade-
20 secret claims, Allied 'must show by a preponderance of the evidence: (1) the existence of a trade
21 secret; (2) the acquisition of a trade secret as a result of a confidential relationship; (3) the
22 unauthorized use of a trade secret.'"); *U.S. Gypsum Co. v. LaFarge N. Am., Inc.*, 508 F. Supp. 2d
23 601, 623 (N.D. Ill. 2007) ("To prevail on any of its trade secret claims, USG must prove by a
24 preponderance of the evidence that (1) the information at issue was a trade secret; (2) the
25 information was misappropriated; and (3) the information was used in defendants' business.");
26 *Basic Chemicals, Inc. v. Benson*, 251 N.W.2d 220, 226 (Iowa 1977) ("The burden is upon plaintiff
27 to establish each of these elements [including the existence of a trade secret] by a preponderance of
28 the evidence."); *Minnesota Min. & Mfg. Co. v. Technical Tape Corp.*, 23 Misc. 2d 671, 678, 192
 N.Y.S.2d 102, 112 (N.Y. Sup. Ct. 1959) aff'd, 15 A.D.2d 960, 226 N.Y.S.2d 1021 (N.Y. App. Div.

1 1962) ("In order to meet the burden cast upon it, it was necessary for the plaintiff to establish by a
2 fair preponderance of the credible evidence, that the particular trade secrets which it claimed it
3 possessed were trade secrets in contemplation of law and that the same were misappropriated by
4 the defendants.").

5 GSR's attempt to conflate a preliminary finding of a likelihood of success as the equivalent
6 of proving that the par information is a trade secret by a preponderance of the evidence must fail.
7 GSR has a burden of proof to satisfy, and it must produce evidence to meet that burden. That
8 evidence and all related evidence within the scope of discovery must be produced. It is time for
9 GSR stop obstructing the discovery process and put its cards on the table. Although, GSR's
10 conduct through the discovery process would suggest that it has no cards at all.

11 4. GSR Has Admitted That Par Settings Are Not Secret.

12 On October 20, 2014, Peppermill took the deposition of GSR's controller, Michael
13 Draeger. Mr. Draeger has experience in verifying the performance of slot machines required by
14 the Gaming Control Board. He verified par performance. His candid and truthful testimony is
15 this: "par settings are not secret." See **Exhibit 2**.

16 This testimony destroys all of GSR's arguments suggesting that par settings are trade
17 secrets.

18 **VI.**

19 **CONCLUSION**

20 The Court should adopt the Recommendation. All three theories of recovery under the
21 Uniform Trade Secret Act requires discovery related to GSR's par information and gaming
22 strategies. Further, GSR is required to prove that its par information is actually a trade secret,
23 particularly in light of its admission that pars are not secret. GSR must litigate its cause and prove
24 that it is entitled to damages against Peppermill. Burdens of proof must be met. Discovery must
25 be provided. Litigation must proceed or GSR's Complaint must be dismissed.

26 **AFFIRMATION**

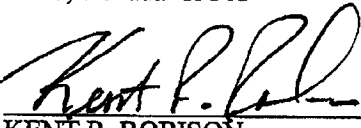
27 **Pursuant to NRS 239B.030**

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

1 number of any person.

2 DATED this 24th day of October, 2014.

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

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

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CERTIFICATE OF SERVICE

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

— 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:

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

H. STAN JOHNSON, ESQ.
TERRY KINNALLY, ESQ.
Cohen-Johnson, LLC
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Las Vegas, NV 89119
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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:

DATED: This 24th day of October, 2014.


V. JAYNE FERRETTO

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EXHIBIT LIST

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGES</u>
1	Confirming Order (10/1/14)	3
2	Declaration of Kent R. Robison	1
3	Affidavit of David G. Schwartz, Ph.D.	3
4	List of subject matter called for in Peppermill's NRCP 30(b)(6) Deposition Notices	4
5	Peppermill's Deposition Schedule	2

FILED
Electronically
2014-10-24 04:12:06 PM
Cathy Hill
Acting Clerk of the Court
Transaction # 4668666 : ylloyd

EXHIBIT 1

EXHIBIT 1

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

* * *

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

Plaintiff,

Case No. CV13-01704

vs.

Dept. No. 7

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

Defendants.

CONFIRMING ORDER

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

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

DATED this 1st day of October, 2014.

Patrick Flanagan
DISTRICT JUDGE

1 CERTIFICATE OF SERVICE

2 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the
3 STATE OF NEVADA, COUNTY OF WASHOE; that on the 15th day of OCTOBER, 2014, I
4 electronically filed the **CONFIRMING ORDER** with the Clerk of the Court by using the ECF
5 system.

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

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

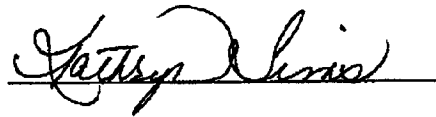
10 ALISA NAVE-WORTH, ESQ., CLARK VELLIS, ESQ., and KENT ROBISON, ESQ. for
11 PEPPERMILL CASINOS, INC.;

12 H. JOHNSON, ESQ. for MEI-GSR HOLDINGS, LLC;

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

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

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

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Jayne Ferretto

From: eflex@washoecourts.us
Sent: Wednesday, October 01, 2014 11:29 AM
To: Kent Robison
Cc: Jayne Ferretto
Subject: NEF: MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7): Order...: CV13-01704

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CV13-01704
Judge: HONORABLE PATRICK FLANAGAN

Official File Stamp: 10-01-2014:11:27:41
Clerk Accepted: 10-01-2014:11:28:26
Court: Second Judicial District Court - State of Nevada
Civil
Case Title: MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7)
Document(s) Submitted: Order...
Filed By: Judicial Asst. KSims

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If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

ALISA NAVE-WORTH, ESQ. for PEPPERMILL CASINOS, INC.
CLARK V. VELLIS, ESQ. for PEPPERMILL CASINOS, INC.
H. STAN JOHNSON, ESQ. for MEI-GSR HOLDINGS, LLC
THERESE M. SHANKS, ESQ. for PEPPERMILL CASINOS, INC.
KEEGAN GRAHAM LOW, ESQ. for PEPPERMILL CASINOS, INC.
KENT RICHARD ROBISON, ESQ. for PEPPERMILL CASINOS, INC.
JOHN R. FUNK, ESQ. for RYAN TORS
MICHAEL SOMPS, ESQ. for NEVADA GAMING COMMISSION, STATE
GAMING CONTROL BOARD
MARK HARLAN GUNDERSON, ESQ. for RYAN TORS

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

DARLENE B CARUSO, ESQ. for NEVADA GAMING COMMISSION,
STATE GAMING CONTROL BOARD

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2014-10-24 04:12:06 PM
Cathy Hill
Acting Clerk of the Court
Transaction # 4668666 : ylloyd

EXHIBIT 2

EXHIBIT 2

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1. I am counsel for Peppermill Casinos, Inc. in this action.
2. I took the deposition of GSR's controller on Monday, October 20, 2014. He testified that par settings are not "secret". He testified that par settings can easily be determined by an analysis of the machine itself and that Peppermill has employees sophisticated enough to determine the par settings on slot machines without utilizing a master key also referred to as a refit key.

4. He further testified that the math in paragraph 7 of his Affidavit was wrong, incorrect, flawed, unreliable and inaccurate.

6. He testified that the damage model as described in paragraph 7 is an impossibility, which is confirmed by a literal reading of the Affidavit itself.


KENT R. ROBISON

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Transaction # 4668666 : ylloyd

EXHIBIT 3

EXHIBIT 3

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.

...

...

...

6. This calculation is the amount of money it would have taken a person to have determined the par of a slot machine based on play. Play would be defined as playing the maximum coin value of the machine for a period sufficient to allow such a determination plus the related costs of the salary of the persons doing the playing.

7. Based on a survey of the current academic literature, I estimate this accurately determining the par through simple observation (rather than using illicit means to discover that information) would entail in most penny machines a cost of \$4.00 per play for minimum of 20,000 hours of continuous play at 500 spins per had for an estimate cost of \$600,000 per machine, exclusive of labor costs. One would also have to factor in a comparable wage to keep the machine staffed for 20,000 man-hours. At an assumed salary of \$9/hour, that gives an additional \$180,000, exclusive of benefits and other costs, bring the hypothetical costs at \$780,000. In addition, the simple act of playing the machine so intensively and for such a long period would trigger several flags, making it impossible to collect the information legally. For that reason, the value of gaining this information, which no other competitors would share, is likely higher than its hypothetical cost.

8. I am unclear about why trade secrets disclosing GSR's methods of routine operation would be relevant to determine whether the Peppermill was unjustly enriched by its access to GSR's (and other casinos') par information. To my knowledge, GSR's internal communications, methods for setting par values, and marketing discussions have no bearing on the uses to which Peppermill put the par information, or Peppermill's rationale for collecting that information.

9. In my opinion, to more precisely determine the full value and use of the information it will necessary for me to obtain the names of all the slot machine illegally accessed, the dates of that access, and the casinos where the machines were located. The specific par information obtained from each machine is not necessary at this time and may be redacted; however, it would be of value to know the range of possible par settings for each machine.

...

...

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

10. While GSR's methods of operation do not, in my opinion, have a bearing on Peppermill's admitted collection of the misappropriated par information, I believe that Peppermill's motives for collecting the information and any operational changes that he Peppermill made or did not make with the benefit of the par information are crucial to accurately determining damages.

Affirmation Pursuant to NRS 239 B.030

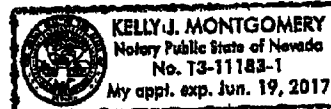
The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Further your Affiant sayeth naught.


David G. Schwartz PH.D.

SUBSCRIBED and SWORN to before
me this 9th day of September, 2014.


NOTARY PUBLIC in and for said
County and State



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Acting Clerk of the Court
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EXHIBIT 4

EXHIBIT 4

1 **EXHIBIT 4**

2 **The following is the list of subject matter called for in Peppermill's NRCP 30(b)(6)**

3 **Deposition Notices:**

4 1. The Person Most Knowledgeable about the manner in which Plaintiff GSR tracks
5 players of slot machines at the Grand Sierra Resort for the period of time from January 1, 2009, to
6 and including the present, including online slot player tracking systems.

7 2. The Person Most Knowledgeable about the manner in which Plaintiff GSR tracks
8 the play of each slot machine on the floor at GSR or utilized by GSR for the period of time from
9 January 1, 2009, to the present.

10 3. The PAR settings for each slot machine utilized by GSR for a period of time from
11 December 31, 2009, to the present.

12 4. The Person Most Knowledgeable about the changes utilized and implemented by
13 GSR for changing the PAR settings for the period of time from December 31, 2009, to the
14 present, including any schedules or documents showing changes in the PAR settings and the
15 reasons for the changes.

16 5. The Person Most Knowledgeable about the strategies involved in setting the PARs
17 for the machines utilized by GSR from December 31, 2009, to the present.

18 6. The Person Most Knowledgeable about the names and addresses of each and every
19 slot customer of GSR who, since July 12, 2013, played slot machines at the Peppermill as a result
20 of the activities of Ryan Tors described in the Complaint on file in this matter.

21 7. The Person Most Knowledgeable about the use the Peppermill made of the
22 information obtained by Ryan Tors on July 12, 2013.

23 8. The Person or Persons Most Knowledgeable about any financial loss and/or
24 damages caused to the GSR by the activities of Ryan Tors described in the Complaint on file
25 herein.

26 9. The financial harm and/or damages caused to the GSR by the activities described
27 in the Complaint filed in this matter caused by the Peppermill, separate and distinct from the
28 damages caused by Ryan Tors.

1 10. The Person Most Knowledgeable about GSR's marketing plans, promotions,
2 program for market share for slot play and market strategies to attract slot customers to play slot
3 machines at GSR for a period of time from January 1, 2011, to the present.

4 11. GSR's Person Most Knowledgeable about its own use of Master Key 2341 in or at
5 the GSR and any other casino property from January 1, 2012, to the present.

6 12. The Person Most Knowledgeable concerning the player tracking and slot
7 performance of GSR's slot machines 951, 440, 855, 486, 1646 and 20042.

8 13. The Person Most Knowledgeable about the specific customers and patrons who
9 play the slot machines identified as 951, 440, 855, 486, 1646 and 20042.

10 14. The Person Most Knowledgeable about the use made of the information obtained
11 by Ryan Tors by the Defendant Peppermill Casinos, Inc.

12 15. The Person Most Knowledgeable about the statements made by Ryan Tors while
13 on the GSR property on July 12, 2013.

14 16. The Person Most Knowledgeable about the specific and precise accounting
15 information obtained and data accessed by Ryan Tors at the GSR.

16 17. The Person Most Knowledgeable about the "diagnostics" received, accessed or
17 retrieved by Ryan Tors as a result of the activities described in GSR's Complaint on July 12, 2013.

18 18. The Person Most Knowledgeable about all written, oral and documentary
19 communications between GSR and other gaming properties in Washoe County concerning the
20 activities of Ryan Tors as described in GSR's Complaint since July 12, 2013.

21 19. The Person Most Knowledgeable about how, when and where the Peppermill made
22 any use whatsoever of the data and diagnostics allegedly retrieved by Ryan Tors on July 12, 2013.

23 20. The Person Most Knowledgeable about the efforts made by the GSR to preserve
24 the secrecy and alleged confidentiality of the PAR settings on the slot machines utilized by the
25 GSR during the years 2009 through and including the present.

26 21. The Person Most Knowledgeable about the "independent economic value" of the
27 information obtained by Ryan Tors on July 13, 2013.

28 22. The Person Most Knowledgeable about GSR's allegation that the Peppermill will

1 "likely continue to misappropriate trade secrets" of the GSR.

2 23. The Person Most Knowledgeable about the allegation that the Peppermill intended
3 to financially harm the GSR.

4 24. The Person Most Knowledgeable about GSR's allegation that the acts and conduct
5 of Ryan Tors on July 13, 2013, were ratified and approved by management at the Peppermill.

6 25. The Person Most Knowledgeable about all investigative reports generated by the
7 GSR concerning the activities of Ryan Tors at the GSR on July 13, 2013.

8 26. The Person Most Knowledgeable about daily detailed slot machine performance
9 data for each slot machine at GSR for each month from December 29, 2009, to the present,
10 including for each slot machine the following: [sic]

11 27. The Person Most Knowledgeable about any audit performed on the slot machines
12 and slot play from December 29, 2009, through and including the present.

13 28. The Person Most Knowledgeable about the NGC 31 Monthly Gross Revenue
14 Statistical Report submitted to the Nevada Gaming Authorities for the period December 2009
15 through and including the present.

16 29. The Person Most Knowledgeable about the marketing reasons and business
17 strategies for the GSR's advertisements that it has the "Loosest Pay Tables Allowed" for the
18 following slot games:

- 19 a. Lil' Red;
- 20 b. Colossal Wizard;
- 21 c. Giant's Gold;
- 22 d. Forbidden Dragon;
- 23 e. Spartacus;
- 24 f. Tower of the Temple;
- 25 g. Triton's Gold;
- 26 h. VanHesing;
- 27 i. Zodiac Sisters;
- 28 j. Jungle Wild II; and

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k. Queen of the Wild II.
30. The Person Most Knowledgeable about all of GSR's marketing and advertising strategies to publicize loose pay tables for its slot machines.

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Acting Clerk of the Court
Transaction # 4668666 : ylloyd

EXHIBIT 5

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The following is the deposition schedule as set forth in Peppermill's Second Supplemental Amended Notice of Taking Depositions of Plaintiff's Persons Most Knowledgeable Pursuant to NRCP 30(b)(6):

1. For topic #1 in Exhibit 1, 9:00a.m. on Tuesday, October 28, 2014;
2. For topic #2 in Exhibit 1, 10:00 a.m. on Tuesday, October 28, 2014;
3. For topic #3 in Exhibit 1, 11:00 a.m. on Tuesday, October 28, 2014;
4. For topic #4 in Exhibit 1, 1:00 p.m. on Tuesday, October 28, 2014;
5. For topic #5 in Exhibit 1, 2:00p.m. on Tuesday, October 28, 2014;
6. For topic #6 in Exhibit 1, 3:00p.m. on Tuesday, October 28, 2014;
7. For topic #7 in Exhibit 1, 4:00p.m. on Tuesday, October 28, 2014;
8. For topic #8 in Exhibit 1, 9:00a.m. on Wednesday, October 29, 2014;
9. For topic #9 in Exhibit 1, 10:00 a.m. on Wednesday, October 29, 2014;
10. For topic #10 in Exhibit 1, 11:00 a.m. on Wednesday, October 29, 2014;
11. For topic #11 in Exhibit 1, 1:00 p.m. on Wednesday, October 29, 2014;
12. For topic #12 in Exhibit 1, 2:00p.m. on Wednesday, October 29, 2014;
13. For topic #13 in Exhibit 1, 3:00p.m. on Wednesday, October 29, 2014;
14. For topic #14 in Exhibit 1, 4:00p.m. on Wednesday, October 29, 2014;
15. For topic #15 in Exhibit 1, 8:30a.m. on Monday, November 3, 2014;
16. For topic #16 in Exhibit 1, 9:00a.m. on Monday, November 3, 2014;
17. For topic #17 in Exhibit 1, 10:00 a.m. on Monday, November 3, 2014;
18. For topic #18 in Exhibit 1, 11:00 a.m. on Monday, November 3, 2014;
19. For topic #19 in Exhibit 1, 1:00 p.m. on Monday, November 3, 2014;
20. For topic #20 in Exhibit 1, 1:30 p.m. on Monday, November 3, 2014;
21. For topic #21 in Exhibit 1, 2:30p.m. on Monday, November 3, 2014;
22. For topic #22 in Exhibit 1, 3:30p.m. on Monday, November 3, 2014;
23. For topic #23 in Exhibit 1, 4:00p.m. on Monday, November 3, 2014;
24. For topic #24 in Exhibit 1, 8:30a.m. on Tuesday, November 4, 2014;

- 1 25. For topic #25 in Exhibit 1, 9:00a.m. on Tuesday, November 4, 2014;
- 2 26. For topic #26 in Exhibit 1, 10:00 a.m. on Tuesday, November 4, 2014;
- 3 27. For topic #27 in Exhibit 1, 11:00 a.m. on Tuesday, November 4, 2014;
- 4 28. For topic #28 in Exhibit 1, 1:00 p.m. on Tuesday, November 4, 2014;
- 5 29. For topic #29 in Exhibit 1, 2:00p.m. on Tuesday, November 4, 2014; and
- 6 30. For topic #30 in Exhibit 1, 3:30p.m. on Tuesday, November 4, 2014.

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KEEGAN G. LOW, ESQ. - NSB #307
klow@rbsllaw.com
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SCOTT L. HERNANDEZ, ESQ. - NSB #13147
shernandez@rbsllaw.com
Robison, Belaustegui, Sharp & Low
A Professional Corporation
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169

Attorneys for Defendant Peppermill Casinos,
Inc., d/b/a Peppermill Casino

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

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

CASE NO.: CV13-01704

DEPT. NO.: B7

Plaintiff,

vs.

BUSINESS COURT DOCKET

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

Defendant(s).

DEFENDANT PEPPERMILL CASINOS, INC.'S
MOTION FOR ORDER COMPELLING GSR TO SHOW CAUSE
WHY IT NOT BE HELD IN CONTEMPT


Peppermill and this Honorable Court have been victimized and abused by GSR's
contemptuous disregard for this Court's Order and by the filing of a false Affidavit regarding tis
alleged damages.

Accordingly, Peppermill moves this Honorable Court for its order requiring GSR and its
counsel to appear before the Court and show cause why they not be held in contempt.

This motion is based on the attached Points and Authorities and the pleadings and
documents filed herein.

1 DATED this 27th day of October, 2014.

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

6 
7 KENT R. ROBISON
8 KEEGAN G. LOW
9 THERESE M. SHANKS
10 SCOTT L. HERNANDEZ
11 Attorneys for Defendant
12 Peppermill Casinos, Inc., d/b/a Peppermill Casino

13 **POINTS AND AUTHORITIES**

14 **I.**
15 **OVERVIEW**

16 This Court is fully aware of GSR's contempt for and disregard of discovery requirements.
17 GSR's discovery obstruction is summarized as follows.

18 1. **NRCP 16.1(a)(1)(C) Computation of Damages.**

19 GSR refused to provide the mandatory computation of damages. Peppermill was forced to
20 file a motion (opposed by GSR) to get the "computation". In the Order compelling GSR to
21 provide the computation of damages, GSR was also ordered to produce all documents and records
22 pertaining to the computation by September 30, 2014.¹ GSR FAILED and REFUSED to do so.
23 (See Exhibit 1; Exhibit 2). This refusal has been exacerbated by GSR's expert on damages who
24 testified on October 21, 2014, that he had given GSR's counsel his documents and records
25 concerning damages.

26 2. **Production of Documents.**

27 Peppermill served GSR with a Request for Production of Documents. GSR failed and
28 refused to produce any of the requested documents. Four GSR employees or former employees
have now been deposed. GSR's damage expert has been preliminarily deposed. All five witnesses
have testified about GSR's slot strategies, marketing policies and hold percentages. Yet, GSR
continues to refuse to produce documents that are relevant to the testimony given by GSR's named
witnesses.

¹ The Commissioner's September 19, 2014 Recommendation ordered GSR to produce all documents relevant to
GSR's damages by September 30, 2014, and Exhibit 1 sustains that Recommendation.

1 3. **First Set of Interrogatories.**

2 Peppermill served its First Set of Interrogatories on GSR on June 4, 2014. GSR did not
3 object to a single Interrogatory. Instead, GSR simply FAILED and REFUSED to answer the
4 Interrogatories. To date, GSR has neither objected nor answered.

5 4. **Second Set of Interrogatories.**

6 With GSR's permission, Peppermill served GSR with a Second Set of Interrogatories on
7 September 30, 2014. To date, GSR has neither objected nor answered. The substance of the
8 Interrogatories has now been addressed and testified to, in part, by the five GSR witnesses thus far
deposed. Still, no answers to the Interrogatories.

9 5. **NRCP 30(b)(6) Depositions.** (See more detailed analysis herein.)

10 Peppermill served GSR with a Notice to take GSR's persons most knowledgeable about
11 various topics. Most of the topics have been addressed in part by GSR's witnesses who have been
12 deposed in part. After a status conference with the Court, the NRCP 30(b)(6) depositions were
13 rescheduled. Although GSR agreed to the dates, neither GSR nor its NRCP 30(b)(6) witnesses
14 appeared for the depositions.

15 GSR's excuse was that a Motion for Protective Order was pending. The Discovery
16 Commissioner ruled against GSR, except as to one topic. GSR objected. The Objection is in bad
17 faith. GSR has allowed, without objection, five of its witnesses to testify in part about the topics
and subjects set forth in Peppermill's NRCP 30(b)(6) Notice.

18 6. **GSR Has Violated The Court's Order Regarding Damage Documents.**

19 The Discovery Commissioner recommended that GSR produce ALL documents and
20 records concerning its damages, whether related to unjust enrichment or otherwise. This Court
21 sustained the Recommendation and ordered GSR to produce all records and documents concerning
damages by September 30, 2014.

22 GSR has failed and refused to do so. GSR's counsel, however, admittedly has possession
23 of records and documents created by GSR's damage expert, David Schwartz. GSR has, once
24 again, shown a conscientious disregard for this Court's Order.

25 7. **False and Misleading Testimony.**

26 GSR made a feeble attempt to establish damages. It did so by attaching the Affidavit of
27 David Schwartz to its Objection to Commissioner's Recommendation Denying Plaintiff's Motion
28 for a Protective Order and Request for a Stay of Depositions Pending the Hearing on the
Objection. (See Exhibit 3.)

1 David Schwartz was deposed about that Affidavit on October 21, 2014. David Schwartz
2 admitted:

- 3 • He was retained in February 2014.
- 4 • He has “shopped” Peppermill to discover Peppermill’s gaming strategies.
- 5 • His damage calculation for unjust enrichment is flawed, wrong, inaccurate,
6 misleading, incomplete and unreliable.
- 7 • His damage calculation for unjust enrichment is not realistic and is impossible to
8 implement.
- 9 • His damage model is inaccurate.
- 10 • His math is invalid.
- 11 • His assumptions are absurd and ridiculous.

12 Schwartz’s concessions lead to the inescapable conclusion that GSR has made a
13 conscientious effort to mislead and deceive this Honorable Court.

14 This motion is necessary because of the false Affidavit of David Schwartz (#7 above) and
15 the inexcusable disregard for and breach of this Court’s Order (#6 above).

16 **A. The False Affidavit.**

17 Fourteen months after GSR filed its complaint, and after repeated demands and motions
18 that GSR provide the NRCP 16.1(a)(1)(C) mandatory computation of damages, GSR filed the
19 Affidavit of David Schwartz. See **Exhibit 3**. Schwartz is GSR’s damage expert. His Affidavit
20 states that he was engaged to determine the damages sustained by GSR. *Id.*

21 At his October 21, 2014 deposition, Schwartz conceded and admitted that his Affidavit is
22 flawed, wrong, inaccurate, misleading, incomplete, unreliable and false. (See **Exhibit 2**). The
23 math in paragraph 7 of the Affidavit is a “mess”. He admits that the math makes no sense. He
24 admits that the damage theory of his Affidavit is impossible.

25 Simply stated, it is an outrageous insult to this Court that GSR would attempt to have the
26 Court rely on such a misleading and false statement of damages. GSR filed it. GSR did so with
27 the intent of having the Court believe the contents of the Affidavit. Doing so is worthy of an order
28 holding GSR and its counsel in contempt. Evidentiary, monetary and terminating sanctions are
warranted.

B. Defiance of the Court’s Order.

Attached as **Exhibit 1** is this Court’s Order of October 1, 2014. It sustains the Discovery
Commissioner’s Recommendation of September 19, 2014, ordering GSR to produce all records

1 and documents concerning its claimed damages by September 30, 2014.

2 Nearly a month has passed. Still, GSR continues to be in violation of the Order. It has not
3 produced a single document. This conduct is contemptuous. Some damage documents were
4 prepared by Schwartz and he provided those to GSR's counsel. GSR has not even produced
5 Schwartz's documents (**Exhibit 2**).

6 **C. Conclusion.**

7 GSR has demonstrated no respect for this Court and it has no respect for the fair, efficient
8 and economical administration of justice. Both warrant a finding of contempt. At the very least,
9 GSR, and its counsel, should be ordered to appear before this Court to show legitimate and sound
10 reasons why they should not be held in contempt.

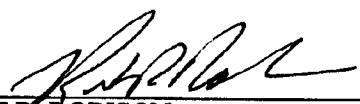
11 **AFFIRMATION**

12 **Pursuant to NRS 239B.030**

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

15 DATED this 27th day of October, 2014.

16 ROBISON, BELAUSTEGUI, SHARP & LOW
17 A Professional Corporation
71 Washington Street
Reno, Nevada 89503

18 
19 _____
20 KENT R. ROBISON
21 KEEGAN G. LOW
THERESE M. SHANKS
SCOTT L. HERNANDEZ

22 Attorneys for Defendant
23 Peppermill Casinos, Inc., d/b/a Peppermill Casino
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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 **Defendant Peppermill Casinos, Inc.'s**
4 **Motion for Order Compelling GSR to Show Cause Why It Not Be Held in Contempt** on all parties to
5 this action by the method(s) indicated below:

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

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

9 H. STAN JOHNSON, ESQ.
10 TERRY KINNALLY, ESQ.
11 Cohen-Johnson, LLC
12 255 E. Warm Springs Road, Suite 100
13 Las Vegas, NV 89119
14 Email: sjohnson@cohenjohnson.com / tkinnally@cohenjohnson.com
15 *Attorneys for Plaintiff*

16 MARK GUNDERSON, ESQ.
17 Gunderson Law Firm
18 3895 Warren Way
19 Reno, NV 89509
20 Email: mgunderson@gundersonlaw.com
21 *Attorneys for Defendant Ryan Tors*

22 MICHAEL P. SOMPS, ESQ.
23 DARLENE B. CARUSO, ESQ.
24 State Gaming Control Board
25 555 East Washington Avenue, Suite 3900
26 Las Vegas, NV 89101-1068
27 Email: dcaruso@ag.nv.gov / msomps@ag.nv.gov
28 *Attorneys for Nevada Gaming Control Board*

29 ☒ by electronic email addressed to the above.
30 — by personal delivery/hand delivery addressed to:
31 — by facsimile (fax) addressed to:
32 — by Federal Express/UPS or other overnight delivery addressed to:

33 DATED: This 27th day of October, 2014.

34 
35 V. JAYNE FERRETTO

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EXHIBIT LIST

<u>No.</u>	<u>Description</u>	<u>Pages</u>
1	Confirming Order – 10/01/14	3
2	Declaration of Kent R. Robison – 10/24/14	1
3	Affidavit of David G. Schwartz, Ph.D. dated 9/9/14	4

FILED
Electronically
2014-10-27 01:48:57 PM
Cathy Hill
Acting Clerk of the Court
Transaction # 4670215 : ylloyd

EXHIBIT 1

EXHIBIT 1

1
2
3
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,
d/b/a GRAND SIERRA RESORT

11 Plaintiff,

Case No. CV13-01704

12 vs.

Dept. No. 7

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

15 Defendants.
16

17 **CONFIRMING ORDER**

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

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

24 DATED this 15th day of October, 2014.

25 Patrick Flanagan
DISTRICT JUDGE
26

CERTIFICATE OF SERVICE

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 1st day of OCTOBER, 2014, I electronically filed the CONFIRMING 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:

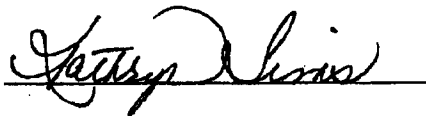
ALISA NAVE-WORTH, ESQ., CLARK VELLIS, ESQ., and KENT ROBISON, ESQ. for PEPPERMILL CASINOS, INC.;

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

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

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:



Jayne Ferretto

From: eflex@washoecourts.us
Sent: Wednesday, October 01, 2014 11:29 AM
To: Kent Robison
Cc: Jayne Ferretto
Subject: NEF: MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7): Order...: CV13-01704

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CV13-01704

Judge: HONORABLE PATRICK FLANAGAN

Official File Stamp: 10-01-2014:11:27:41
Clerk Accepted: 10-01-2014:11:28:26
Court: Second Judicial District Court - State of Nevada
Civil
Case Title: MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7)
Document(s) Submitted: Order...
Filed By: Judicial Asst. KSims

You may review this filing by clicking on the following link to take you to your [cases](#).

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If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

ALISA NAVE-WORTH, ESQ. for PEPPERMILL CASINOS, INC.
CLARK V. VELLIS, ESQ. for PEPPERMILL CASINOS, INC.
H. STAN JOHNSON, ESQ. for MEI-GSR HOLDINGS, LLC
THERESE M. SHANKS, ESQ. for PEPPERMILL CASINOS, INC.
KEEGAN GRAHAM LOW, ESQ. for PEPPERMILL CASINOS, INC.
KENT RICHARD ROBISON, ESQ. for PEPPERMILL CASINOS, INC.
JOHN R. FUNK, ESQ for RYAN TORS
MICHAEL SOMPS, ESQ. for NEVADA GAMING COMMISSION, STATE
GAMING CONTROL BOARD
MARK HARLAN GUNDERSON, ESQ. for RYAN TORS

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

DARLENE B CARUSO, ESQ for NEVADA GAMING COMMISSION,
STATE GAMING CONTROL BOARD

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2014-10-27 01:48:57 PM
Cathy Hill
Acting Clerk of the Court
Transaction # 4670215 : ylloyd

EXHIBIT 2

EXHIBIT 2

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1. I am counsel for Peppermill Casinos, Inc. in this action.
2. I took the deposition of GSR's controller on Monday, October 20, 2014. He testified that par settings are not "secret". He testified that par settings can easily be determined by an analysis of the machine itself and that Peppermill has employees sophisticated enough to determine the par settings on slot machines without utilizing a master key also referred to as a refit key.

4. He further testified that the math in paragraph 7 of his Affidavit was wrong, incorrect, flawed, unreliable and inaccurate.

6. He testified that the damage model as described in paragraph 7 is an impossibility, which is confirmed by a literal reading of the Affidavit itself.


KENT R. ROBISON

FILED
Electronically
2014-10-27 01:48:57 PM
Cathy Hill
Acting Clerk of the Court
Transaction # 4670215 : ylloyd

EXHIBIT 3

EXHIBIT 3

COHEN-JOHN, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
(702) 821-3500 FAX: (702) 823-3400

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 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 ...

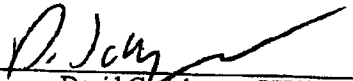
COHEN-JOHN, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

1 10. While GSR's methods of operation do not, in my opinion, have a bearing on
2 Peppermill's admitted collection of the misappropriated par information, I believe that
3 Peppermill's motives for collecting the information and any operational changes that he
4 Peppermill made or did not make with the benefit of the par information are crucial to accurately
5 determining damages.

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

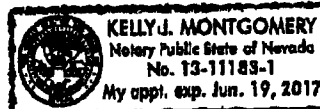
7 The undersigned does hereby affirm that the preceding document does not contain the
8 social security number of any person.

9 Further your Affiant sayeth naught.

10
11 
12 David G. Schwartz PH.D.

13
14
15 SUBSCRIBED and SWORN to before
me this 9th day of September, 2014.

16 
17 NOTARY PUBLIC in and for said
18 County and State



Kent Robison

From: eflex@washoecourts.us
Sent: Monday, October 27, 2014 4:22 PM
To: Kent Robison
Cc: Jayne Ferretto
Subject: NEF: MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7): Mtn to Compel: CV13-01704

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CV13-01704

Judge: HONORABLE PATRICK FLANAGAN

Official File Stamp: 10-27-2014:13:48:57
Clerk Accepted: 10-27-2014:16:21:06
Court: Second Judicial District Court - State of Nevada
Civil
Case Title: MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7)
Document(s) Submitted: Mtn to Compel
- **Continuation
- **Continuation
- **Continuation
Filed By: Kent R. Robison

You may review this filing by clicking on the following link to take you to your [cases](#).

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

ALISA NAVE-WORTH, ESQ. for PEPPERMILL CASINOS, INC.
H. STAN JOHNSON, ESQ. for MEI-GSR HOLDINGS, LLC
THERESE M. SHANKS, ESQ. for PEPPERMILL CASINOS, INC.
KEEGAN GRAHAM LOW, ESQ. for PEPPERMILL CASINOS, INC.
KENT RICHARD ROBISON, ESQ. for PEPPERMILL CASINOS, INC.
JOHN R. FUNK, ESQ. for RYAN TORS
MICHAEL SOMPS, ESQ. for NEVADA GAMING COMMISSION, STATE
GAMING CONTROL BOARD
MARK HARLAN GUNDERSON, ESQ. for RYAN TORS

The following people have not been served electronically and must be served by traditional means (see

Nevada Electronic Filing Rules.):

DARLENE B CARUSO, ESQ for NEVADA GAMING COMMISSION,
STATE GAMING CONTROL BOARD

1 **2490**
2 **KENT R. ROBISON, ESQ. - NSB #1167**
3 **krobison@rbsllaw.com**
4 **KEEGAN G. LOW, ESQ. - NSB #307**
5 **klow@rbsllaw.com**
6 **THERESE M. SHANKS, ESQ. - NSB # 12890**
7 **tshanks@rbsllaw.com**
8 **Robison, Belaustegui, Sharp & Low**
9 **A Professional Corporation**
10 **71 Washington Street**
11 **Reno, Nevada 89503**
12 **Telephone: (775) 329-3151**
13 **Facsimile: (775) 329-7169**
14 ***Attorneys for Defendant Peppermill Casinos,***
15 ***Inc., d/b/a Peppermill Casino***

10 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**

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

CASE NO.: CV13-01704

14 **Plaintiff,**

DEPT. NO.: B7

15 **vs.**

BUSINESS COURT DOCKET

16 **PEPPERMILL CASINOS, INC., a Nevada**
17 **Corporation, d/b/a/ PEPPERMILL CASINO;**
18 **RYAN TORS, an individual; JOHN DOES I-X**
19 **and JANE DOES I-X and CORPORATIONS I-X,**

20 **Defendant(s).**

21 **PEPPERMILL CASINOS, INC.'S**
22 **EX PARTE EMERGENCY MOTION FOR RULE 16 CONFERENCE**

23 Pursuant to Peppermill Casinos, Inc.'s ("Peppermill") request and the Court's Order of
24 October 27, 2014, the Peppermill moves this Honorable Court for a pretrial conference pursuant to
25 and in accordance with Rule 16 of the Nevada Rules of Civil Procedure. For the reasons stated in

26 **///**

27 **///**

28 **///**

///

///

1 the attached points and authorities, this motion is made on an emergency basis.

2 DATED this 10 day of November, 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
Attorneys for Defendant
Peppermill Casinos, Inc., d/b/a Peppermill Casino

10 **POINTS AND AUTHORITIES**

11 This case has been pending for nearly 16 months. The discovery process has been plagued
12 with an inexcusable defiance by the Plaintiff ("GSR"). Many outstanding discovery issues must
13 be immediately resolved. Several motions are pending that need resolution and the parties should
14 be required to appear before this Honorable Court so that the purposes of Rule 16 can be
15 immediately established and accomplished.

16 **A. Outstanding Discovery Problems.**

17 The following discovery problems exist in this case:

- 18 1. GSR refuses to answer the First Set of Interrogatories;
- 19 2. GSR refuses to answer the Second Set of Interrogatories. GSR has not objected to
20 any of the Interrogatories propounded in the Peppermill's First Set of Interrogatories, but still
21 refuses to respond;
- 22 3. GSR has failed and refused to provide a computation of damages and documents in
23 support thereof. GSR was ordered to produce all documents and records pertaining to its
24 computation of damages by September 30, 2014, and it has failed and refused to do so;
- 25 4. GSR refuses to produce documents that were requested in Peppermill's Request for
26 Production of Documents;
- 27 5. In August, GSR refused to appear for NRCP 30(b)(6) depositions;
- 28 6. In November, to the extent GSR did produce witnesses pursuant to the NRCP
30(b)(6) Notice, those witnesses had no knowledge about the topics they were designated to testify

1 about; and

2 7. GSR has provided this Court with a false and misleading affidavit concerning its
3 alleged damages. In his deposition, the affiant (David Schwartz) conceded that the computation of
4 damages provided to this Court is false, misleading, inaccurate, flawed and unreliable.

5 **B. Pending Motions.**

6 It is respectfully submitted that Court intervention is essential, and the Court's involvement
7 should occur as soon as the Court's calendar permits. Rule 16 allows the Court in its discretion to
8 direct all parties to appear before the Court for the following purposes:

- 9 1. Expediting the disposition of the action;
- 10 2. Establishing early and **continuing control** so that the case will not be protracted;
- 11 3. Discouraging wasteful pretrial activities;
- 12 4. Improving the quality of the trial through thorough preparation; and
- 13 5. Consideration of other matters appropriate in the circumstances of the case.

14 Rule 16 also provides this Court with an opportunity to consider the timing for disposition
15 of pending motions. Rule 16 also allows the Court to consider whether special procedures for
16 managing potentially difficult issues can be put in place. Finally, the Court can consider under
17 Rule 16 other matters that will facilitate the **just, speedy, and inexpensive disposition of the**
18 **action.**

19 Because this case is presently plagued with GSR's contemptuous disregard for discovery
20 obligations and duties, the Peppermill respectfully requests this Honorable Court to set a Rule 16
21 pretrial conference at the Court's earliest convenience.

22 This motion is based upon the facts, circumstances and arguments presented in the
23 Peppermill's Motion for Terminating Sanctions, Motion for an Order to Show Cause, and
24 Supplemental Motion for Terminating Sanctions or, in the Alternative, for an Order to Show
25 Cause Why Plaintiff Not be Held in Contempt and subjected to severe sanctions.

26 **AFFIRMATION**
27 **Pursuant to NRS 239B.030**

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

///

///

///

1 number of any person.

2 Respectfully submitted this 10 day of November, 2014.

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

7 
8 KENT R. ROBISON
9 KEEGAN G. LOW
10 THERESE M. SHANKS
11 Attorneys for Defendant
12 Peppermill Casinos, Inc., d/b/a Peppermill Casino
13
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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 PEPPERMILL CASINOS, INC.'S
4 MOTION FOR RULE 16 CONFERENCE on all parties to this action by the method(s) indicated below:

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

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

8 H. STAN JOHNSON, ESQ.
9 TERRY KINNALLY, ESQ.
10 Cohen-Johnson, LLC
11 255 E. Warm Springs Road, Suite 100
12 Las Vegas, NV 89119
13 Email: sjohnson@cohenjohnson.com / tkinnally@cohenjohnson.com
14 *Attorneys for Plaintiff*

15 MARK WRAY, ESQ.
16 608 Lander Street
17 Reno, NV 89509
18 Email: mwrap@markwray.law.com
19 *Attorneys for Plaintiff*

20 MARK GUNDERSON, ESQ.
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22 Gunderson Law Firm
23 3895 Warren Way
24 Reno, NV 89509
25 Email: mgunderson@gundersonlaw.com
26 jfunk@gundersonlaw.com
27 *Attorneys for Defendant Ryan Tors*

28 MICHAEL P. SOMPS, ESQ.
DARLENE B. CARUSO, ESQ.
State Gaming Control Board
555 East Washington Avenue, Suite 3900
Las Vegas, NV 89101-1068
Email: dcaruso@ag.nv.gov / msomps@ag.nv.gov
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:

DATED: This 12th day of November, 2014.

24 
25 V. JAYNE FERRETTO
26
27
28

2185
KENT R. ROBISON, ESQ. - NSB #1167
krobison@rbsllaw.com
KEEGAN G. LOW, ESQ. - NSB #307
klow@rbsllaw.com
THERESE M. SHANKS, ESQ. - NSB # 12890
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A Professional Corporation
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169

Attorneys for Defendant Peppermill Casinos,
Inc., d/b/a Peppermill Casino

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiff,

vs.

CASE NO.: CV13-01704

DEPT. NO.: B7

BUSINESS COURT DOCKET

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

Defendant(s).

**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**

FILED UNDER SEAL
HIGHLY CONFIDENTIAL INFORMATION

**CONFIDENTIAL - SUBJECT TO STIPULATED CONFIDENTIALITY AGREEMENT
AND PROTECTIVE ORDER FILED JULY 17, 2014**
To Be Opened Only Upon Further Order of This Court
Or for the Sole Use of the Court and its Employees

FILED

2014 NOV 12 AM 10:47

CLERK OF THE COURT
Y. Vitoria

1 2185
2 KENT R. ROBISON, ESQ. - NSB #1167
3 krobison@rbsllaw.com
4 KEEGAN G. LOW, ESQ. - NSB #307
5 klow@rbsllaw.com
6 THERESE M. SHANKS, ESQ. - NSB # 12890
7 tshanks@rbsllaw.com
8 Robison, Belaustegui, Sharp & Low
9 A Professional Corporation
10 71 Washington Street
11 Reno, Nevada 89503
12 Telephone: (775) 329-3151
13 Facsimile: (775) 329-7169

14 *Attorneys for Defendant Peppermill Casinos,
15 Inc., d/b/a Peppermill Casino*

16 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**
17 **IN AND FOR THE COUNTY OF WASHOE**

18 MEI-GSR HOLDINGS, LLC, a Nevada
19 Corporation, d/b/a/ GRAND SIERRA RESORT,

20 Plaintiff,

21 vs.

22 CASE NO.: CV13-01704

23 DEPT. NO.: B7

24 BUSINESS COURT DOCKET

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

Defendant(s).


29 **PEPPERMILL CASINOS, INC.'S SUPPLEMENTAL MOTION FOR TERMINATING**
30 **SANCTIONS OR, IN THE ALTERNATIVE, FOR AN ORDER TO SHOW CAUSE WHY**
31 **PLAINTIFF NOT BE HELD IN CONTEMPT AND**
32 **SUBJECTED TO SEVERE SANCTIONS**

33 Peppermill Casinos, Inc. ("Peppermill") has, once again, been victimized by the Plaintiff's
34 defiant refusal to participate in discovery. Accordingly, Peppermill again moves this Honorable
35 Court for its order dismissing the Plaintiff's Complaint with prejudice or, in the alternative, for an
36 order holding the Plaintiff in contempt and awarding severe and substantial sanctions against the
37 Plaintiff.

38 This motion is based upon the attached points and authorities, affidavits and exhibits
affixed thereto.

1 DATED this 12 day of November, 2014.

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

6 
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 **POINTS AND AUTHORITIES**

13 In support of its request that the Plaintiff's Complaint be dismissed with prejudice or, in
14 the alternative, that the Plaintiff be subjected to severe and substantial sanctions, Peppermill brings
15 the following matters to the Court's attention.

16 **I.**

17 **OVERVIEW**

18 This motion is made because, once again, the Plaintiff has shown a contemptuous disregard
19 for its obligation to participate in the discovery process in good faith. As shown below, the
20 Plaintiff agreed to produce persons "most knowledgeable" about certain topics set forth in the
21 Peppermill's Notice of Taking NRCP 30(b)(6) Depositions. Although Plaintiff produced
22 witnesses, the main witnesses produced had no knowledge about the topics for which they were
23 produced to testify. This cavalier and contemptuous disregard for the discovery process follows a
24 series of breaches by the Plaintiff of its discovery duties and responsibilities. Those breaches are
25 summarized as follows:

- 26 1. Plaintiff has continued to refuse to provide the mandatory computation of damages
27 required by NRCP 16.1(a)(1)(C).
- 28 2. Peppermill was required to file a motion to force Plaintiff to produce the NRCP
16.1(a)(1)(C) computation. In response, the Plaintiff provided the Affidavit of David Schwartz.
When deposed, Mr. Schwartz admitted that his Affidavit was false and misleading.

1 **3. Damage Documents.**

2 The Discovery Commissioner ruled that the Plaintiff was obligated to provide the
3 Peppermill with computation of damages and all documents pertinent and relevant thereto. This
4 Honorable Court affirmed and sustained the Discovery Commissioner's Recommendation. *See*
5 **Exhibit 1**. In the Court's Order, the Court required and instructed the Plaintiff to produce all
6 documents relevant to its computation of damages to the Plaintiff on or before September 30,
7 2014. The Plaintiff has ignored and disobeyed this Court's Order. Plaintiff continues to refuse to
8 produce any documents relevant to or which purportedly support GSR's computation of damages.
9 This contemptuous activity is subject to Peppermill's Motion for Order Compelling GSR to Show
10 Cause Why it Not be Held in Contempt filed in this matter on October 27, 2014.

11 **4. Production of Documents.**

12 Despite having been served with a Request for Production of Documents, the Plaintiff
13 continues to fail and refuse to produce the documents requested, notwithstanding this Court's
14 Order that the Peppermill is entitled to all documents which in any way pertain to or involve
15 Plaintiff's alleged damage theory or model. This refusal to produce documents is contemptuous
16 and defiant of the Court's Order and the rudimentary requirements of the discovery process.

17 **5. First Set of Interrogatories.**

18 Peppermill served Interrogatories on the Plaintiff on June 4, 2014. GSR did not object to a
19 single Interrogatory. Instead, GSR has failed and refused to answer any of the Interrogatories.

20 **6. Second Set of Interrogatories.**

21 With GSR's permission, the Peppermill served GSR with a Second Set of Interrogatories.
22 The Plaintiff has failed and refused to provide meaningful answers to the Second Set of
23 Interrogatories. GSR's "Responses" are attached hereto as **Exhibit 2**.

24 **7. NRCP 30(b)(6) Depositions.**

25 Peppermill served GSR with a Notice to Take Depositions of GSR's Persons Most
26 Knowledgeable about various topics. That Notice was served in June of 2014. GSR responded
27 with a Motion for Protective Order. As a result, the depositions were continued until late August
28 2014. The Discovery Commissioner ruled that GSR must produce all witnesses required by the

1 Notice, except as to one topic. GSR filed an objection to the Discovery Commissioner's
2 Recommendation. Although no protective order exists, GSR continues to refuse to produce NRCP
3 30(b)(6) persons most knowledgeable about various topics. Instead, GSR produced certain
4 witnesses, most importantly its person most knowledgeable about damages. As explained below,
5 that person has no knowledge about damages.

6 **8. False and Misleading Testimony.**

7 GSR responded to the Peppermill's demands that it be provided GSR's computation of
8 damages with the Affidavit of David Schwartz. The testimony of Mr. Schwartz as set forth in his
9 Affidavit are false. He was deposed on October 21, 2014. He admitted that his calculations were
10 erroneous, defective, flawed, inaccurate, misleading and unreliable. Despite Mr. Schwartz's
11 concession, GSR still has done nothing to correct the record and instead has taken the position that
12 this Court should rely on a false Affidavit.

13 **II.**

14 **REASONS FOR THIS MOTION**

15 When the NRCP 30(b)(6) depositions were continued to the week of August 25, 2014,
16 counsel for Peppermill prepared themselves to take those depositions. Without notice, comment
17 or explanation, no witnesses appeared at the properly scheduled time for Peppermill to take the
18 NRCP 30(b)(6) depositions. That caused Peppermill to make a Motion for Order to Show Cause
19 and for Terminating Sanctions.

20 The NRCP 30(b)(6) depositions were rescheduled for the week of October 27, 2014. The
21 parties appeared before this Honorable Court on October 27, 2014. It was agreed that the NRCP
22 30(b)(6) depositions would proceed on those topics to which GSR had not objected. The Court
23 indicated that it would soon rule on GSR's Motion for Protective Order on the topics to which
24 GSR had objected.

25 The agreed upon NRCP 30(b)(6) depositions proceeded on November 3 and November 4,
26 2014. Even though this case had been pending for nearly 16 months, the witnesses (for the most
27 part) produced as "persons most knowledgeable" had no knowledge about the topics for which
28 they were produced. A summary of this discovery debacle is as follows:

1 1. Deposition Testimony of Ralph Burdick.

2 The GSR produced Ralph Burdick as its witness most knowledgeable about the following
3 topics:

- 4 (a) Topic No. 7 requires testimony from GSR's person most knowledgeable
5 about the "use" the Peppermill made of the information obtained by Ryan Tors.
6 Although Ralph Burdick was produced, he admitted, conceded and testified that
7 he had no knowledge of any kind or nature about the use Peppermill made of
8 the information. The deposition was a complete and expensive waste of time.
- 9 (b) Topic No. 11 required GSR to produce its person most knowledgeable
10 about its own use of the 2341 key, which can be used to access diagnostic
11 information on slot machines. Mr. Burdick has only been employed by the
12 GSR since March of 2013. Accordingly, he has little, if any, information about
13 how GSR used its 2341 keys for the period of time from January 1, 2012,
14 through March of 2013. This information is vital to this case. GSR has
15 produced a witness with no knowledge about the topic that witness was
16 represented to be most knowledgeable about.
- 17 (c) GSR produced Mr. Burdick as the person most knowledgeable about the
18 "use" made of the information obtained by Mr. Tors. Burdick conceded,
19 admitted and testified that he had no knowledge whatsoever about that topic.
- 20 (d) GSR agreed to produce Mr. Burdick as the person most knowledgeable
21 about the "specific and precise accounting information" obtained by Mr. Tors.
22 Mr. Burdick admitted that he had no such knowledge.
- 23 (e) Topic No. 17 required GSR to produce its person most knowledgeable
24 about the "diagnostics" received, accessed or retrieved by Mr. Tors. Mr.
25 Burdick had no knowledge about this topic.
- 26 (f) GSR produced Mr. Burdick as its person most knowledgeable about Topic
27 No. 18, all written, oral or documentary communications between GSR and
28 other gaming properties about Mr. Tors' activities. Mr. Burdick testified that

1 there were none.

2 (g) Topic No. 19 required GSR to produce its person most knowledgeable
3 about how, when and where the Peppermill made any use of the data and
4 diagnostics retrieved by Mr. Tors. Mr. Burdick was produced and admitted,
5 conceded and testified that he had no knowledge whatsoever about that topic.

6 (h) Topic No. 20 required GSR to produce its person most knowledgeable
7 about the efforts made by GSR to preserve the secrecy and confidentiality of its
8 par settings for a period of time from 2009 through and including the present.
9 Mr. Burdick could only testify in vague and indefinite terms about the fact that
10 GSR changed locks and keys for its slot machines. He had little, if any,
11 definitive information about that topic.

12 (i) Topic No. 22 required the GSR to produce its person most knowledgeable
13 about its allegation that the Peppermill will "likely continue to misappropriate
14 trade secrets of the GSR". Mr. Burdick was produced and he had absolutely no
15 knowledge whatsoever that Peppermill would be or is likely to continue to
16 misappropriate trade secrets of GSR.

17 (j) Topic No. 24 required the GSR to produce its witness most knowledgeable
18 about the suggestion that the activities of Mr. Tors were ratified and approved
19 by the management of the Peppermill. Mr. Burdick had no personal knowledge.
20 The only knowledge he had was of the Decision and Order from the Nevada
21 Gaming Commission. Mr. Burdick, contrary to the requirements of the Notice,
22 had no knowledge concerning the acts and conduct of Mr. Tors on July 13,
23 2013.

24 2. Deposition Testimony of Toby Taylor.

25 Mr. Taylor was presented as a person most knowledgeable about certain topics in the
26 NRCP 30(b)(6) Notice to which GSR did not object. Mr. Taylor's testimony is summarized as
27 follows:

28 (a) Mr. Taylor was presented as a person most knowledgeable about the use of

1 the 2341 keys at GSR or any other casino. Mr. Taylor described a system
2 about how GSR used the 2341 key at the GSR, but had no knowledgeable about
3 the other information set forth in Topic No. 11.

4 (b) Mr. Taylor was presented as the witness most knowledgeable about Topic
5 No. 16, the specific and precise accounting information obtained and data
6 accessed by Mr. Tors. Mr. Taylor had no knowledge about this topic, though
7 produced as the person most knowledgeable.

8 (c) Topic No. 17 required GSR to produce its person most knowledgeable
9 about the "diagnostics" received, accessed, or retrieved by Mr. Tors on July 12,
10 2013. Mr. Taylor conceded, admitted and testified that he had no information
11 concerning this topic about which he was produced as being most
12 knowledgeable.

13 (d) Topic No. 20 obligated the GSR to produce its witness most knowledgeable
14 about the efforts made by GSR to preserve the secrecy and confidentiality of its
15 par settings from 2009 to the present. GSR did not produce a witness most
16 knowledgeable about this topic. Mr. Taylor has been employed by the GSR
17 since January 2012 and had no knowledge whatsoever about the period of time
18 from 2009 to 2012 as required by Topic No. 20. Mr. Taylor admitted that other
19 than the readily accessible and available 2341 key, GSR did nothing in addition
20 to preserve its alleged secrecy and confidentiality of its par setting.

21 3. Deposition Testimony of Craig Robinson.

22 The Court is well aware of the exhaustive efforts pursued by the Peppermill to obtain some
23 credible information from GSR about its damages. GSR has dodged, weaved, evaded and avoided
24 its obligation to produce damage information now for nearly 16 months. Despite GSR's evasive
25 conduct and belligerent breaches of its discovery duties, GSR produced Craig Robinson as the
26 person most knowledgeable about GSR's damages (Topic No. 8), financial harm (Topic No. 9),
27 economic value of the information obtained by Tors (Topic No. 21) and Peppermill's alleged
28 "intent" to harm GSR.

1 The use of Mr. Robinson is now clearly the most egregious breach of GSR's discovery
2 duties that has yet occurred in this case, though there are many. If it were not for the seriousness
3 of the accusations made by GSR, Mr. Robinson's testimony can only be considered laughable and
4 absurd.

5 First, Craig Robinson has only worked for the GSR for seven weeks. He is the GSR's
6 Chief Financial Officer. He was not notified that he would be the person most knowledgeable
7 about GSR's damages until the week of October 27, 2014. That is, he was told that he was most
8 knowledgeable about GSR's damages approximately one week before GSR produced him as the
9 person "most knowledgeable" about GSR's damages.

10 Mr. Robinson admitted that he did not do any investigation or research to determine what
11 GSR's damages are. He did nothing to prepare himself for the deposition. He did nothing to
12 determine what GSR's alleged damages are. He testified that he had no idea what damages were
13 sustained by GSR as a result of Mr. Tors' activities. He testified that he had no idea whatsoever
14 whether GSR sustained any financial harm as a result of Mr. Tors' activities. The person, Craig
15 Robinson, produced as GSR's person most knowledgeable had no knowledge whatsoever about
16 the topics he was produced to testify about.

17 The pertinent and appropriate substance of Mr. Robinson's testimony is attached as
18 **Exhibit 3**. On page 64, Robinson admits and concedes that he cannot and has not quantified any
19 financial harm or damages GSR sustained in this matter.¹

20 To compound the many violations of its discovery obligations, GSR has now ventured into
21 a new frontier of disobedience and defiance. It agreed to produce persons most knowledgeable
22 about damages. It produced a witness who has no knowledge whatsoever about damages. GSR
23 apparently believes that this Court has given GSR some type of immunity from being held
24 accountable for the type of conduct that has permeated this entire case, evidenced by GSR's
25 blatant and conscientious disregard for discovery requirements.

26 The topics about which Mr. Robinson was presented to testify (damages) was first served
27 on the GSR in June of 2014. Between June and 2014 and November 4, 2014, GSR did nothing but
28

¹ Because Mr. Robinson confirms his utter and complete lack of knowledge concerning damages, financial harm, and quantification of GSR's alleged damages, the entire transcript is attached.

1 disregard its obligation to produce a responsive witness about the topic of damages. The efforts
2 that the Peppermill has pursued to obtain this information have been substantial and extremely
3 expensive. GSR should be held accountable.

4 III.

5 AUTHORITY

6 NRCP 30(b)(6) provides the right to depose a corporation, as an entity, and the corporate
7 entity must produce the most qualified person to testify. The corporate designee must "testify as to
8 matters known or reasonably available to the organization." NRCP 30(b)(6). This rule is intended
9 to eliminate the problem of trying to identify the individual within the corporate hierarchy who has
10 information that the examiner is seeking and to place the burden on the entity, not the examiner, to
11 produce the appropriate witness. *See United States v. Taylor*, 166 F.R.D. 356, 360 (M.D.N.C.)
12 *aff'd*, 166 F.R.D. 367 (M.D.N.C. 1996) (Rule 30(b)(6) was promulgated in order "to avoid the
13 'bandying' by corporations where individual officers disclaim knowledge of facts clearly known to
14 the corporation . . .").

15 A designated witness "is not required to have personal knowledge on the designated
16 subject matter." *Great Am. Ins. Co. of New York v. Vegas Const. Co.*, 251 F.R.D. 534, 538 (D.
17 Nev. 2008). However, if the designee does not have personal knowledge of the facts, it is the
18 entity's obligation to ensure that the witness is fully prepared and educated as to relevant
19 information that is available to the deponent. *See, e.g., id* ("A corporation has a duty under Rule
20 30(b)(6) to provide a witness who is knowledgeable in order to provide 'binding answers on behalf
21 of the corporation.'"); *Marker v. Union Fid. Life Ins. Co.*, 125 F.R.D. 121, 126 (M.D.N.C. 1989)
22 ("The corporation then must not only produce such number of persons as will satisfy the request,
23 but more importantly, prepare them so that they may give complete, knowledgeable and binding
24 answers on behalf of the corporation.") Further, a designated witness must make a good-faith
25 effort to familiarize himself with the areas of designated testimony. *See, e.g., Brazos River Auth.*
26 *v. GE Ionics, Inc.*, 469 F.3d 416, 433 (5th Cir. 2006) ("The deponent must prepare the designee to
27 the extent matters are reasonably available, whether from documents, past employees, or other
28 sources."); *United States v. Taylor*, 166 F.R.D. at 361 ("[T]he duty to present and prepare a Rule

1 30(b)(6) designee goes beyond matters personally known to that designee or to matters in which
2 that designee was personally involved.”)

3 Producing an unprepared witness for a deposition noticed under NRCP 30(b)(6) is
4 “tantamount to a failure to appear.” *See United States v. Taylor*, 166 F.R.D. at 363. Accordingly,
5 a failure to prepare a designated witness subjects the deponent entity to immediate sanctions under
6 NCRP 37(d), including evidentiary, issue, and terminating sanctions. *See Black Horse Lane*
7 *Assoc., L.P. v. Dow Chem. Corp.*, 228 F.3d 275, 304 (3d Cir. 2000); *see also Great Am. Ins. Co. of*
8 *New York v. Vegas Const. Co.*, 251 F.R.D. at 542 (“[T]he failure to produce a Rule 30(b)(6)
9 designee who is adequately educated and prepared to testify on designated topics to bind the
10 corporation amounts to a nonappearance which could warrant the imposition of sanctions.”);
11 *Wilson v. Lakner*, 228 F.R.D. 524, 530 (D. Md. 2005) (holding that a failure to prepare a
12 designated witness in good faith will subject an organizational deponent to sanctions).

13 IV.

14 CONCLUSION

15 The time for GSR to be held accountable to this Honorable Court has long passed. So
16 long as GSR is allowed to thumb its nose at this discovery process, the Court’s Orders and its
17 duties to uphold and promote the fair, efficient and economical administration of justice, this case
18 will be in procedural chaos, unreasonably expensive and entirely adverse to fundamental notions
19 of fair play and justice.

20 AFFIRMATION

21 Pursuant to NRS 239B.030

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

23 ///

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25 ///

26 ///

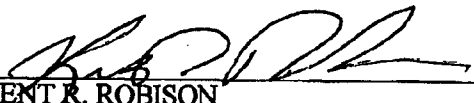
27 ///

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1 number of any person.

2 DATED this 12 day of November, 2014.

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

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

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

X 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:

H. STAN JOHNSON, ESQ.
TERRY KINNALLY, ESQ.
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Las Vegas, NV 89119
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State Gaming Control Board
555 East Washington Avenue, Suite 3900
Las Vegas, NV 89101-1068
Email: dcarus@ag.nv.gov / msomps@ag.nv.gov
Attorneys for Nevada Gaming Control Board

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

— 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:

DATED: This 12th day of November, 2014.


V. JAYNE FERRETTO

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EXHIBIT LIST

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGES</u>
1	Confirming Order	2
2	Plaintiff MEI-GSR Holdings LLC Responses to Defendant Peppermill Casino Inc.'s Second Set of Interrogatories	19
3	Partial Deposition Transcript of Craig Robinson of 11/04/14	101

EXHIBIT 1

EXHIBIT 1

1
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
10 corporation,
d/b/a GRAND SIERRA RESORT

11 Plaintiff,

Case No. CV13-01704

12 vs.

Dept. No. 7

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

15 Defendants.
16

17 **CONFIRMING ORDER**

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

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

24 DATED this 15th day of October, 2014.

25 Barack Flanagan
DISTRICT JUDGE
26

CERTIFICATE OF SERVICE

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 1st day of OCTOBER, 2014, I electronically filed the **CONFIRMING 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:

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

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

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

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:



EXHIBIT 2

EXHIBIT 2

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Attorneys for the Plaintiffs

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

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

Plaintiffs,

vs.

PEPPERMILL CASINO, INC., a Nevada
Corporation, d/b/a/ PEPPERMILL
CASINO; RYAN TORS, an individual; JOHN
DOES I-X AND CORPORATIONS I-X,

DEFENDANT(S).

Case No.: CV13-01704

Dept. No.: B7

BUSINESS COURT DOCKET

**PLAINTIFF MEI-GSR HOLDINGS LLC RESPONSES TO DEFENDANT
PEPPERMILL CASINO INC.'S SECOND SET OF INTERROGATORIES**

GENERAL OBJECTIONS

The following general objections are incorporated into each of Plaintiff's Responses to Defendant's Interrogatories

Wherever Plaintiff objects to an Interrogatory on the grounds that said Request is unduly burdensome and oppressive, Defendant's attention is directed to the following cases: *Riss & Co. v. Association of American Railroads*, 23 F.R.D. 211 (D.D.C. 1959); *United States v. Loew's, Inc.*, 23 F.R.D. 178 (S.D.N.Y. 1959); *Green v. Raymond*, 41 F.R.D. 11 (D. Colo. 1966); and *Flour Mills of America, Inc. v. Pace*, 75 F.R.D. 676 (D. Okla. 1977).

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1 Further, wherever Plaintiff objects to an Interrogatory on the grounds of vagueness and
2 over breadth, Defendant's attention is directed to the following cases: *Jewish Hospital Ass'n of*
3 *Louisville v. Struck Construction Co.*, 77 F.R.D. 59 (C.D. Ky. 1978); *Flour Mills of America,*
4 *Inc. v. Pace*, 75

5 F.R.D. 676 (D. Okla. 1977); and *Stovall v. Gulf & So. Am. S.S. Co.*, 30 F.R.D. 152 (D.
6 Tex. 1961).

7 Further, wherever Plaintiff objects to an Interrogatory on the grounds that the Request is
8 irrelevant and not calculated to lead to admissible evidence, Defendant's attention is directed to
9 the following cases: *Green v. Raymond*, 41 F.R.D. 11 (D. Colo. 1966); and *Burroughs v.*
10 *Warner Bros. Pictures*, 14 F.R.D. 165, 166 (D. Mass. 1963).

11 Further, wherever Plaintiff objects to an Interrogatory regarding trial preparation
12 materials on the ground that the propounding party has failed to show "good cause" under
13 FRCP 26(b)(3), Defendant's attention is directed to the following cases: *United States v.*
14 *Chatham City Corp.*, 72 F.R.D. 640 at 642-643 (S.D. Ga. 1976); and *First Wisconsin Mtg. v.*
15 *First Wisconsin Corp.*, 86 F.D.R. 160 at 165, 167 (E.D. Wisc. 1980).

16 Finally, wherever Plaintiff objects to an Interrogatory on the ground of attorney-client
17 privilege, Defendant's attention is directed to the following cases: *Sperry Rand Corp. v. IBM*,
18 45 F.R.D. 287 (D. Del. 1968); and *Jewish Hospital Ass'n of Louisville v. Struck Construction*
19 *Co.*, 77 F.R.D. 59 (C.D. Ky. 1978).

20 The following Responses to Requests for Interrogatories are based upon information and
21 documents presently available to and known by Plaintiff and disclose only those contentions
22 that are presently asserted, based upon presently available and known facts. It is anticipated
23 that further discovery investigation, legal research and analysis will reveal additional facts, add
24 meaning to known facts, and establish entirely new factual conclusions or legal contentions, all
25 of which may lead to additions to, changes in and variations from these contentions and
26 Responses.

27 All Responses are subject to these continuing objections.
28

DEFINITIONS OF SPECIFIC OBJECTIONS

As used in the specific responses below, the following terms include objections based upon their respective definitions:

A. "Vague and Ambiguous" is defined to mean: Plaintiff objects on the basis that the Request is vague, uncertain, and ambiguous.

B. "Overbroad" is defined to mean: Plaintiff objects on the basis that the Request is overbroad and calls for an expansive potential breadth of information that is unreasonable in scope and parameter.

C. "Irrelevant" is defined to mean: Plaintiff objects on the basis that the Request requests information irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

D. "Burdensome" is defined to mean: Plaintiff objects on the basis that the Request is so broad and uncertain that it creates an unreasonable and undue burden. "Burdensome" is also defined to mean that Plaintiff objects to the Request because the information sought is more readily available through some other, more convenient, less burdensome, and less expensive source or discovery procedure. See NRCP 26(b)(1).

E. "Privileged" is defined to mean: Plaintiff objects on the basis that the Request calls for information that is (1) protected by the work product doctrine; (2) protected by the attorney-client privilege; (3) protected because it consists, in whole or in part, of trial preparation materials and/or documents containing mental impressions, conclusions, opinions, or legal theories of counsel; (4) otherwise protected under NRCP 26(b); or (5) protected under any other valid privilege.

F. "Repetitious" is defined to mean: Plaintiff objects on the basis that the Response to the Request has already been given after similar documents were produced in response to a previous Request or another format through this proceeding.

• • •

• • •

...

1 G. The phrase "Without waiving the foregoing objections", or words having similar
2 effect, is defined to mean: While Plaintiff will produce the requested documents in response to
3 the Request, the documents sought by the Request that are covered by either a specific or
4 general objection will not be produced.

5 **RESPONSES TO SECOND SET OF INTERROGATORIES**

6 **INTERROGATORY NO. 1:**

7 Since July 2011, has the Grand Sierra Resort ("GSR") utilized the services of a
8 "shopper" to examine and investigate other casino properties in Washoe County? If your answer
9 is in the affirmative, please identify the shopper by name and address.

10 **RESPONSE NO. 1:**

11 Objection is made to this Interrogatory in that it requests information which is irrelevant
12 to the subject matter of the pending litigation and which is not reasonably calculated to lead to
13 the discovery of admissible evidence, thus rendering this request outside the scope of permissible
14 discovery as prescribed by NRCP 26 et seq. The use of shoppers is not improper and is
15 irrelevant to the claims of Peppermill accessing slot machines by use of a key and will lead to no
16 admissible evidence as to the claims in this matter. Without waiving said objection the GSR has
17 used "shoppers"

18 **INTERROGATORY NO. 2:**

19 Since July 2011, has the GSR ever utilized the services of CDC Consulting (also known
20 as Compton Dancer) to conduct any consulting services or shopping of other casinos in Washoe
21 County?

22 **RESPONSE NO. 2:**

23 Objection is made to this Interrogatory in that it requests information which is
24 irrelevant to the subject matter of the pending litigation and which is not reasonably calculated
25 to lead to the discovery of admissible evidence, thus rendering this request outside the scope of
26 permissible discovery as prescribed by NRCP 26 et seq. The use of a consulting service is not
27 improper and is irrelevant to the claims of Peppermill accessing slot machines by use of a key
28

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1 and will lead to no admissible evidence as to the claims in this matter. Without waiving said
2 objection the GSR has used the services of CDC Consulting.

3 **INTERROGATORY NO. 3:**

4 Has the GSR, since July 2011, conducted any research, shopping or other marketing
5 investigation concerning the Peppermill Hotel Casino?

6 **RESPONSE NO. 3:**

7 Objection is made to this Interrogatory in that it requests information which is
8 irrelevant to the subject matter of the pending litigation and which is not reasonably calculated
9 to lead to the discovery of admissible evidence, thus rendering this request outside the scope of
10 permissible discovery as prescribed by NRCP 26 et seq. The use of shoppers is not improper
11 and is irrelevant to the claims of Peppermill accessing slot machines by use of a key and will
12 lead to no admissible evidence as to the claims in this matter.

13 **INTERROGATORY NO. 4:**

14 Has the GSR conducted any investigations since July 2011 concerning the Peppermill's
15 comp strategies, reinvestment strategies or efforts to determine Peppermill's par settings, player
16 theoretical holds or other information pertinent to the Peppermill's gaming strategies for slot
17 machines?

18 **RESPONSE NO. 4:**

19 Objection is made to the term "investigations" as vague and ambiguous, without further
20 Objection is made to this Interrogatory in that it requests information which is irrelevant to the
21 subject matter of the pending litigation and which is not reasonably calculated to lead to the
22 discovery of admissible evidence, thus rendering this request outside the scope of permissible
23 discovery as prescribed by NRCP 26 et seq. . Without waiving said objection the GSR has
24 never conducted any "investigation" which would be deemed illegal or improper or sent persons
25 into casinos to access any information as set forth above by means of a reset key.

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1 **INTERROGATORY NO. 5:**

2 Have you received any reports, summaries, explanation or written material from any
3 shopper, consulting firm or consulting individual, that in any way provides an analysis of your
4 competitors' gaming strategies, marketing strategies and/or promotional activities?

5 **RESPONSE NO. 5:**

6 Objection is made to this Interrogatory in that it requests information which is irrelevant
7 to the subject matter of the pending litigation and which is not reasonably calculated to lead to
8 the discovery of admissible evidence, thus rendering this request outside the scope of permissible
9 discovery as prescribed by NRCP 26 et seq. Moreover this interrogatory is objected to in that it
10 seeks information concerning the trade secrets of GSR concerning marketing strategies.

11 **INTERROGATORY NO. 6:**

12 Have you utilizes the services of any consultants to compare GSR's player rewards
13 strategies with GSR's competitors in Washoe County?

14 **RESPONSE NO. 6:**

15 Objection is made to this Interrogatory in that it requests information which is
16 irrelevant to the subject matter of the pending litigation and which is not reasonably calculated to
17 lead to the discovery of admissible evidence, thus rendering this request outside the scope of
18 permissible discovery as prescribed by NRCP 26 et seq.

19 **INTERROGATORY NO. 7:**

20 Have you used consultants or employees to make visits to other casino properties in
21 Washoe County for the purposes of comparing players' activities and propensities and club card
22 procedures and operations?

23 **RESPONSE NO. 7:**

24 Objection is made to this Interrogatory in that it requests information which is irrelevant
25 to the subject matter of the pending litigation and which is not reasonably calculated to lead to
26 the discovery of admissible evidence, thus rendering this request outside the scope of permissible
27 discovery as prescribed by NRCP 26 et seq.

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INTERROGATORY NO. 8:

Have you received from any consultants or entities or persons who have attempted to compare your player reward strategy to other strategy to other casinos? Have you hired anyone for services resulting in a player club assessment report?

RESPONSE NO. 8:

Objection is made to this Interrogatory in that it requests information which is irrelevant to the subject matter of the pending litigation and which is not reasonably calculated to lead to the discovery of admissible evidence, thus rendering this request outside the scope of permissible discovery as prescribed by NRCP 26 et seq. Further objection is made in that this interrogatory seeks information concerning GSR's marketing strategies which constitute as trade secret.

INTERROGATORY NO. 9:

Have you received any reports, written documents or graphs that analyze the players' club of other casinos, club booth operations reward programs and/or overall players club rating scores of other casino properties in the Reno/Sparks area since July 2011?

RESPONSE NO. 9:

Objection is made to this Interrogatory in that it requests information which is irrelevant to the subject matter of the pending litigation and which is not reasonably calculated to lead to the discovery of admissible evidence, thus rendering this request outside the scope of permissible discovery as prescribed by NRCP 26 et seq. The use of shoppers is not improper and is irrelevant to the claims of Peppermill accessing slot machines by use of a key and will lead to no admissible evidence as to the claims in this matter.

INTERROGATORY NO. 10:

Have you made attempts to have consultants, employees or other entities or individuals analyze the cashback and visible comp reinvestment percentages of reel slots for other gaming properties in the Reno/Sparks area? If so, please explain in detail.

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1 **RESPONSE NO. 10:**

2 Objection is made to this Interrogatory in that it requests information which is irrelevant
3 to the subject matter of the pending litigation and which is not reasonably calculated to lead to
4 the discovery of admissible evidence, thus rendering this request outside the scope of permissible
5 discovery as prescribed by NRCP 26 et seq. The use of shoppers is not improper and is
6 irrelevant to the claims of Peppermill accessing slot machines by use of a key and will lead to no
7 admissible evidence as to the claims in this matter. Without waiving said objection the GSR has
8 used "shoppers"

9 **INTERROGATORY NO. 11:**

10 If your answer is in the affirmative to any of the foregoing Interrogatories, please identify
11 with specificity and particularity the name, address, and if possible, telephone number for each
12 individual involved in the analysis, investigation and reporting mention in the above
13 Interrogatories.

14 **RESPONSE NO. 11:**

15 Objection is made to this Interrogatory in that it requests information which is
16 irrelevant to the subject matter of the pending litigation and which is not reasonably calculated
17 to lead to the discovery of admissible evidence, thus rendering this request outside the scope of
18 permissible discovery as prescribed by NRCP 26 et seq. Objection is also made in that this
19 interrogatory seeks information concerning individuals who may have information concerning
20 GSR's trade secrets which are not relevant to this litigation.

21 **INTERROGATORY NO. 12:**

22 Please identify with specificity and particularity each and every report, analysis,
23 examination or documents that pertain in any way to the GSR's analysis of the Peppermill'

24 (a) Cash back and visible comp reinvestment percentage for reel slots:

25 (b) Cash back program reinvestment strategies;

26 (c) Visible comp program reinvestment;

27 (d) Reinvestment analysis of Peppermill's players clubs employees' attitude, training
28 and ability to solve problems;

- 1 (e) Peppermill's staffing levels;
- 2 (f) Booth location and design;
- 3 (g) Focus on guess [t] [spelling error] service through use of technology;
- 4 (h) Printed information and collateral available;
- 5 (i) Quantity and value of benefits;
- 6 (j) Quality of benefits;
- 7 (k) Benefits ease of use;
- 8 (l) Players club ratings score;
- 9 (m) Players club effectiveness;
- 10 (n) Cash back strategies; and
- 11 (o) Comparing strategies or programs.

12 **RESPONSE NO. 12:**

13 Objection is made to this Interrogatory in that it requests information which is irrelevant
14 to the subject matter of the pending litigation and which is not reasonably calculated to lead to
15 the discovery of admissible evidence, thus rendering this request outside the scope of
16 permissible discovery as prescribed by NRCP 26 et seq. The issue in this matter is
17 Peppermills use of an unauthorized key to access pars at GSR and the use to which the
18 Peppermill put the information so obtained.. Moreover, Peppermill claims that it last accessed
19 information from GSR on July 12, 2013 and therefore any of this information is irrelevant to
20 either liability or damages against Peppermill.

21 **INTERROGATORY NO. 13:**

22 Please identify with particularity and specificity the documents which you contend are in
23 the Peppermill's possession which would be in any way relevant to your contention that the
24 Peppermill was unjustly enriched by its possession and/or knowledge of GSR's par settings on
25 the slot machines allegedly by Ryan Tors.

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RESPONSE NO. 13:

See Tors supplemental disclosure statement TOR 001 and TOR 70-TOR71 and TOR 87 through TOR0096. These documents are also in the Peppermill's possession and demonstrate the method by which Peppermill combined information improperly acquired from multiple casinos including the GSR and used said information to gain an unfair economic advantage over its competitors including GSR which led to Peppermill's unjust enrichment.

INTERROGATORY NO. 14:

Please state with specificity and particularity how the GSR has, or intends to, determine what an appropriate royalty is as and for its alleged damages.

RESPONSE NO. 14:

GSR is relying on the holding in University Computing Co. v. Lyke-Youngstown Corp 504 F.2d 518 (GA 1974) where the court determined that:

In some instances courts have attempted to measure the loss suffered by the Plaintiff. While as a conceptual matter this seems to be a proper approach, in most cases the defendant has utilized the secret to his advantage with no obvious effect on the plaintiff save for the relative differences in their subsequent competitive position. Largely as a result of this practical dilemma, normally the value of the secret to the plaintiff is an appropriate measure of damages only when the defendant has in some way destroyed the value of the secret. The most obvious way this is done is through publication, so that no secret remains. Where the Plaintiff retains the use of the secret as here and where there has been no effective disclosure of the secret through publication the total value of the secret to the plaintiff is an inappropriate measure.

Further unless some specific injury to the plaintiff can be established—such as lost sales—the loss to the plaintiff is not a particularly helpful approach in assessing damages.

The second approach is to measure the value of the secret to the defendant. This is usually the accepted approach where the secret has not been destroyed and where the plaintiff is unable to prove specific injury. In the case before us then the "appropriate measure of damages by analogy to patent infringement is not what plaintiff lost but rather the benefits, profits, or advantages gained by the defendant in the use of the trade secret. Id p. 535-536. (emphasis added)

The royalty sought by GSR is based on the information improperly acquired by Peppermill and the uses to which said information was put. For each use of the information, either alone or in combination with information improperly obtained from other casinos. GSR

1 is asking the court to set a reasonable royalty based on the number of uses, and the value
 2 obtained by Peppermill through an economic advantage or in savings based on the cost of
 3 acquiring the information through proper and legal means.

4 **INTERROGATORY NO. 15:**

5 Please state with particularity and specificity the value that the GSR attributes to the par
 6 settings on the following slot machines on the date specified:

	Machine	Number	Location	As of Date
7	A Buffalo	440		12/19/2011
8	B Buffalo	21016		12/19/2011
9	C Ducks in a Row	440		12/29/2011
10	D Cleopatra	21016		12/29/2011
11	E Money Storm	571		12/29/2011
12	F Texas Tea	50060		12/29/2011
13	G Munsters			12/29/2011
14	H Double Diamond 2000			12/29/2011
15	I Lil Lady	358		12/29/2011
16	J Ducks in a Row	20375		06/14/2012
17	K Buffalo	1011		06/14/2012
18	L Enchanted Unicorn	20050		06/14/2012
19	M Cats	127		06/14/2012
20	N Horoscope	246		06/14/2012
21	O Wolf Run	937		06/14/2012
22	P Sun & Moon	951	061109	07/12/2013
23	Q Ducks in a Row	440	040403	07/12/2013
24	R Buffalo	885	104604	07/12/2013
25	S Wines Over Olympus	485	104603	07/12/2013
26	T Miss Red	1646	101607	07/12/2013
27	U Hex Breaker	20042	102201	07/12/2013
28	V Ducks in a Row	20375	091007	07/12/2013
	W Enchanted Unicorn	20050	1033304	07/12/2013
	X Cats	127	011802	07/12/2013

21 **RESPONSE NO. 15:**

22 Objection is made to this Interrogatory in that it requests information which is irrelevant
 23 to the subject matter of the pending litigation and which is not reasonably calculated to lead to
 24 the discovery of admissible evidence, thus rendering this request outside the scope of permissible
 25 discovery as prescribed by NRCP 26 et seq. Further objection is made in that this interrogatory
 26 seeks information concerning GSR's trade secrets. Further objection is made in that the value of
 27 the pars to GSR is irrelevant to this matter, it is the value of GSR's pars to Peppermill and the
 28

1 use to which Peppermill put the GSR pars either alone or in combination with other pars from
2 other casinos, which constitutes the value of the pars for purposes of this litigation.

3 **INTERROGATORY NO. 16:**

4 Please describe in detail with specificity and particularity the method by which the values
5 of the par setting for the machines listed in the above Interrogatory for the specific dates were
6 determined.

7 **RESPONSE NO. 16:**

8 Objection is made to this Interrogatory in that it requests information which is irrelevant
9 to the subject matter of the pending litigation and which is not reasonably calculated to lead to
10 the discovery of admissible evidence, thus rendering this request outside the scope of
11 permissible discovery as prescribed by NRCp 26 et seq. Further objection is made in that this
12 interrogatory seeks information concerning GSR's gaming strategies which constitute as trade
13 secret.

14 **INTERROGATORY NO. 17:**

15 Please state with specificity and particularity how the Peppermill used the par information
16 allegedly obtained by Ryan Tors from the following machines:

	Machine	Number	Location	As of Date
17	A Buffalo	440		12/19/2011
18	B Buffalo	21016		12/19/2011
19	C Ducks in a Row	440		12/29/2011
20	D Cleopatra	21016		12/29/2011
21	E Money Storm	571		12/29/2011
22	F Texas Tea	50060		12/29/2011
23	G Munsters			12/29/2011
24	H Double Diamond 2000			12/29/2011
25	I Lil Lady	358		12/29/2011
26	J Ducks in a Row	20375		06/14/2012
27	K Buffalo	1011		06/14/2012
28	L Enchanted Unicorn	20050		06/14/2012
	M Cats	127		06/14/2012
	N Horoscope	246		06/14/2012
	O Wolf Run	937		06/14/2012
	P Sun & Moon	951	061109	07/12/2013
	O Ducks in a Row	440	040403	07/12/2013
	R Buffalo	885	104604	07/12/2013
	S Wings Over Olympus	485	104603	07/12/2013
	T Miss Red	1646	101607	07/12/2013
	U Hex Breaker	20042	102201	07/12/2013

V	Ducks in a Row	20375	091007	07/12/2013
W	Enchanted Unicorn	20050	1033304	07/12/2013
X	Cats	127	011802	07/12/2013

RESPONSE NO. 17:

Discovery is ongoing and on information and belief Peppermill used this information in combination with pars improperly obtained from other casinos to adjust its own pars, and or marketing strategies, gaming strategies, comp reinvestment strategies, among other uses to gain a competitive advantage over GSR and other casinos in competition with Peppermill. Upon receipt of discovery responses from Peppermill and Tors and upon the completion of depositions GSR will be able to demonstrate the uses to which Peppermill used this information with greater specificity and supplement this response.

INTERROGATORY NO. 18:

Please state with specificity and particularity what the value to which the pars allegedly obtained by Ryan Tors was to the Peppermill and the methodology used to determine that value.

RESPONSE NO. 18:

Pending the receipt of discovery responses from Peppermill who has the sole possession of this information, the value will be determined by means of determining the benefits, profits, or advantages gained by the defendant in the use of the trade secret. This analysis will be performed by experts.

INTERROGATORY NO. 19:

Please state the amount of money the GSR would charge a competing casino for the par settings on the following machines on the specific date:

	Machine	Number	Location	As of Date
A	Buffalo	440		12/19/2011
B	Buffalo	21016		12/19/2011
C	Ducks in a Row	440		12/29/2011
D	Cleopatra	21016		12/29/2011
E	Money Storm	571		12/29/2011
F	Texas Tea	50060		12/29/2011
G	Munsters			12/29/2011
H	Double Diamond 2000			12/29/2011
I	Lil Lady	358		12/29/2011
J	Ducks in a Row	20375		06/14/2012

K	Buffalo	1011		06/14/2012
L	Enchanted Unicorn	20050		06/14/2012
M	Cats	127		06/14/2012
N	Horoscope	246		06/14/2012
O	Wolf Run	937		06/14/2012
P	Sun & Moon	951	061109	07/12/2013
O	Ducks in a Row	440	040403	07/12/2013
R	Buffalo	885	104604	07/12/2013
S	Wings Over Olympus	485	104603	07/12/2013
T	Miss Red	1646	101607	07/12/2013
U	Hex Breaker	20042	102201	07/12/2013
V	Ducks in a Row	20375	091007	07/12/2013
W	Enchanted Unicorn	20050	1033304	07/12/2013
X	Cats	127	011802	07/12/2013

RESPONSE NO. 19:

Objection is made to this Interrogatory in that it requests information which is irrelevant to the subject matter of the pending litigation and which is not reasonably calculated to lead to the discovery of admissible evidence, thus rendering this request outside the scope of permissible discovery as prescribed by NRCP 26 et seq. Further objection is made in that this interrogatory assumes that GSR would sell its pars to a competing casino and therefore assumes facts not in evidence and calls for a hypothetical response based on speculation. Without waiving the foregoing objections GSR would not sell its par information to any competing casino and therefore there is no basis for making such an evaluation.

INTERROGATORY NO. 20:

Concerning your answer to the above Interrogatory, please state with detail, specificity and particularity all components and considerations that were used to determine the "charge" for the par settings for the machines listed in the above Interrogatory for the specific dates.

RESPONSE NO. 20:

Objection is made to this Interrogatory in that it requests information which is irrelevant to the subject matter of the pending litigation and which is not reasonably calculated to lead to the discovery of admissible evidence, thus rendering this request outside the scope of permissible discovery as prescribed by NRCP 26 et seq. Further objection is made in that this interrogatory assumes that GSR would sell its pars to a competing casino and therefore assumes

facts not in evidence and calls for a hypothetical response based on speculation. Without waiving the foregoing objections GSR would not sell its par information to any competing casino and therefore there is no basis for making such an evaluation. GSR would not sell its par information to any competing casino and therefore there is no basis for making such an evaluation.

INTERROGATORY NO. 21:

Please state with particularity and specificity the "development costs" that were involved in establishing the par settings for the following slot machines on the specified dates:

	Machine	Number	Location	As of Date
A	Buffalo	440		12/19/2011
B	Buffalo	21016		12/19/2011
C	Ducks in a Row	440		12/29/2011
D	Cleopatra	21016		12/29/2011
E	Money Storm	571		12/29/2011
F	Texas Tea	50060		12/29/2011
G	Munsters			12/29/2011
H	Double Diamond 2000			12/29/2011
I	Lil Lady	358		12/29/2011
J	Ducks in a Row	20375		06/14/2012
K	Buffalo	1011		06/14/2012
L	Enchanted Unicorn	20050		06/14/2012
M	Cats	127		06/14/2012
N	Horoscope	246		06/14/2012
O	Wolf Run	937		06/14/2012
P	Sun & Moon	951	061109	07/12/2013
O	Ducks in a Row	440	040403	07/12/2013
R	Buffalo	885	104604	07/12/2013
S	Wings Over Olympus	485	104603	07/12/2013
T	Miss Red	1646	101607	07/12/2013
U	Hex Breaker	20042	102201	07/12/2013
V	Ducks in a Row	20375	091007	07/12/2013
W	Enchanted Unicorn	20050	1033304	07/12/2013
X	Cats	127	011802	07/12/2013

RESPONSE NO. 21:

Objection as to the term "development costs" as being vague and ambiguous since the manufacture determines a range of par settings and the casino determines which of the settings, if any to adopt. Further objection is made in that the determination of what par settings to apply to an particular machine on any particular date and the methodology employed to make that determination is a trade secret which is irrelevant to the claims against the Peppermill and will

1 not lead to any discoverable evidence under NRCP 26 et. seq.

2 **INTERROGATORY NO. 22:**

3 Please state in complete detail and with specificity and particularity the amount of money a
4 competing casino would pay to have knowledge of and/or access to the par settings for the slot
5 machines identified in the Interrogatory Nos. 15,17, 19, and 21 as of December 29, 2011, for the
6 first nine machines listed as of June 14, 2012, for the next six machines listed, and as of July 12,
7 2013, for the last nine machines listed.

8 **RESPONSE NO. 22:**

9 Objection is made to this Interrogatory in that it requests information which is irrelevant
10 to the subject matter of the pending litigation and which is not reasonably calculated to lead to
11 the discovery of admissible evidence, thus rendering this request outside the scope of permissible
12 discovery as prescribed by NRCP 26 et seq. Further objection is made in that this interrogatory
13 assumes that a competing casino would pay GSR to obtain its par settings and GSR is unaware
14 of any offers by any casinos to do so and therefore assume facts not in evidence and calls for a
15 hypothetical response based on speculation. Without waiving the foregoing objections GSR
16 would not sell its par information to any competing casino and therefore there is no basis for
17 making such an evaluation nor has any competing casino offered to pay for pars so there is no
18 basis for determining what any particular casino might be willing to offer for such information.
19 Without waiving the foregoing objections, on information and belief Peppermill believes said
20 information to be of great financial value as evidence by its theft of said information from GSR
21 and other casinos.

22 **INTERROGATORY NO. 23:**

23 With respect to the above Interrogatory and you answered hereto, please state in detail and
24 with particularity and specificity the exact formula, equation and all facts and circumstances
25 taken into consideration in establishing your opinion of what a competing casino would pay for
26 the pars for the machines listed in the above Interrogatory.

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1 **RESPONSE NO. 23:**

2 Objection is made to this Interrogatory in that it requests information which is irrelevant
3 to the subject matter of the pending litigation and which is not reasonably calculated to lead to
4 the discovery of admissible evidence, thus rendering this request outside the scope of permissible
5 discovery as prescribed by NRCF 26 et seq. Further objection is made in that this interrogatory
6 assumes that a competing casino would pay GSR to obtain its par settings and GSR is unaware
7 of any offers by any casinos to do so and therefore assume facts not in evidence and calls for a
8 hypothetical response based on speculation. Without waiving the foregoing objections GSR
9 would not sell its par information to any competing casino and therefore there is no basis for
10 making such an evaluation nor has any competing casino offered to pay for pars so there is no
11 basis for determining what any particular casino might be willing to offer for such information.
12 Without waiving the foregoing objections, on information and belief Peppermill believes said
13 information to be of great financial value as evidence by its theft of said information from GSR
14 and other casinos. Upon the receipt of discovery from Peppermill and Tors as to what
15 Peppermill paid Tors and others to improperly steal such information and other costs and
16 expenses related to these thefts, including the cost of analyzing said information, a base value
17 may be determined as to what Peppermill was willing to pay to improperly acquire this
18 information and may provide a baseline as to what Peppermill would be willing to pay to obtain
19 this information

20
21 Dated this 3rd day of November, 2014

22 **COHEN|JOHNSON**

23
24 By: 

25 H. Stan Johnson, Esq.
26 Nevada Bar No. 00265
27 Terry Kinnally, Esq.
28 Nevada Bar No.: 06379
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
Attorney for the Plaintiffs

VERIFICATION

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

Terry Vavra, of MEI-GSR HOLDINGS INC LLC d/b/a GRAND
SIERRA RESORT, being duly sworn, states that he is an authorized agent of the Defendant
Grand Sierra Resort in the above-entitled matter, that he has read the foregoing PLAINTIFF
MEI-GSR HOLDINGS LLC RESPONSES TO DEFENDANT PEPPERMILL CASINO INC.'S
SECOND SET OF INTERROGATORIES and that the same are true to the best of his
knowledge, except as to the matters set forth upon information and belief, and as to those
matters, he believe them to be true.

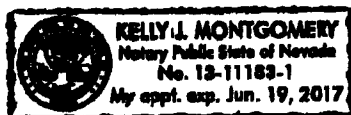
DATED this 3 day of November, 2014.



TERRY VAVRA, VICE-PRESIDENT, MEI-GSR
HOLDINGS, INC. LLC, D/B/A GRAND SIERRA
RESORT.

SUBSCRIBED AND SWORN to before me
this 3rd day of November 2014.

Kelly J. Montgomery
Notary Public



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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3rd day of October 2014, a true and correct copy of the foregoing MEI-GSR HOLDINGS, LLC.'s Responses to Defendant Peppermill's Second Set of Interrogatories was served by placing a copy thereof in the US Mail at Las Vegas, Nevada, with proper postage prepaid, addressed to the following and by facsimile:

ROBISON, BELAUSTEGUI, SHARP & LOW

C/o Kent R. Robison, Esq.

71 Washington Street

Reno, Nevada 89503

Facsimile (775) 329-7941

*Attorney for the Defendant Peppermill***GUNDERSON LAW FIRM**

C/o Mark H. Gunderson, Esq.

3895 Warren Way

Reno, Nevada 89509

Facsimile (775) 829-1226

Attorney for Defendant Ryan Tors/s/ Kelly J. Montgomery

Kelly J. Montgomery, an employee of COHEN|JOHNSON, LLC.

COHEN-JOHNSON, LLC
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EXHIBIT 3

HIGHLY CONFIDENTIAL INFORMATION

**CONFIDENTIAL-SUBJECT TO STIPULATED
CONFIDENTIALITY AGREEMENT AND PROTECTIVE
ORDER FILED JULY 17, 2014**

**To be Opened Only Upon Further Order of This Court
Or for the Sole Use of the Court and its Employees**

EXHIBIT 3

Case No. CV13-01704

Dept. No. B7

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

-oOo-

MEI-GSR HOLDINGS, LLC, a Nevada)
Corporation, d/b/a GRAND SIERRA RESORT,)

Plaintiff,)

-vs-)

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

RYAN TORS, an individual; JOHN DOES I-X,)
and JANE DOES I-X and CORPORATIONS I-X,)

Defendant(s).)

DEPOSITION OF CRAIG ROBINSON

(HIGHLY CONFIDENTIAL PAGES 16 - 101)

called for examination by counsel for Defendant Peppermill
Casinos, Inc., d/b/a Peppermill Casino pursuant to Notice, at
the offices of Robison, Belaustegui, Sharp & Low, 71
Washington Street, Reno, Nevada, at 9:00 a.m., Tuesday,
November 4, 2014, before Becky Van Auken, a Certified Court
Reporter.

Reported by: BECKY VAN AUKEN, CCR No. 418, RMR, CRR

CAPTIONS UNLIMITED OF NEVADA, INC. (775) 746-3534

RA 00869

APPEARANCES:

FOR THE PLAINTIFF:

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FOR DEFENDANT PEPPERMILL CASINOS, INC.,
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Reno, Nevada 89503

FOR DEFENDANT RYAN TORS:

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ALSO PRESENT:

JAMES STEWART, Paralegal
RYAN TORS
DENISE VESSIE
ANTHONY MORAN

I N D E X

ExaminationsPage

BY MR. ROBISON

4

E X H I B I T S

(No exhibits marked)

UNANSWERED QUESTIONSPage Line

23 19

24 8

1 RENO, NEVADA, TUESDAY, NOVEMBER 4, 2014, 9:00 A.M.

2 -000-

3
4 CRAIG ROBINSON,
5 having been sworn, testified as follows:

6
7 EXAMINATION

8
9 BY MR. ROBISON:

10 Q Could you please tell us your full name.

11 A Craig Robinson.

12 Q And what is your business or occupation?

13 A I'm a chief financial officer for the Grand
14 Sierra Resort.

15 MR. COHEN: Counsel, can we note the
16 appearances of your client, and then also we'll put on
17 the record about Anthony Moran.

18 MR. ROBISON: Denise Vessie is here as the
19 client representative for the Peppermill.

20 MR. FUNK: Ryan Tors is here representing
21 himself, and I'm here as counsel for Mr. Tors.

22 MR. ROBISON: Our next deposition this
23 afternoon is of --

24 Your name, please?

25 MR. MORAN: Anthony Moran.

1 MR. ROBISON: And we have waived any
2 objection to him sitting in this deposition.

3 MR. COHEN: Thank you.

4 BY MR. ROBISON:

5 Q Have you given a deposition before, sir?

6 A Yes, sir, I have.

7 Q In what cases?

8 A The exact names of the cases I don't
9 recall.

10 Q In what matters, generally speaking?

11 A I was working for a CPA firm.

12 Q Let me go over some admonishments or rules
13 that are typically given at depositions. And I can
14 tell right now that the important one for you and I to
15 get on the table is for me to complete my question
16 before you even start to answer so that we're not both
17 taking at the same time.

18 I'll try not to interrupt you, and then if
19 you could just please wait and give yourself a moment
20 until after I've completed my question, because
21 sometimes it sounds like I'm done and then I throw in
22 a couple extra words.

23 It makes it kind of awkward, but be patient
24 with me.

25 A Okay.

1 Q Also, if you have any confusion about my
2 question, please let me know. I will do my best to
3 restate the question and clarify my question so that
4 you understand it. That way we'll have accurate
5 dialogue.

6 Agreed?

7 A Agreed.

8 Q And, finally, please use words. The
9 gestures and the "uh-huh" and "huh-uh" doesn't work on
10 a deposition transcript. Please use and verbalize
11 your answers with words.

12 Agreed?

13 A Understood.

14 Q Okay. And getting back to the cases in
15 which you've given depositions, can you tell me
16 generally who the parties were?

17 A The parties were a CPA firm and their
18 clients.

19 Q As adversaries?

20 A Yes.

21 Q In this community?

22 A No.

23 Q What community?

24 A Las Vegas.

25 Q Any other cases in which you've given

1 depositions?

2 A Not that I recall.

3 Q How long have you been the CFO of GSR?

4 A I'm in my seventh week now.

5 Q Seventh week?

6 A Yes.

7 Q Okay. That puts us back mid September?

8 A Correct.

9 Q Before taking employment with GSR, can you
10 give me a general description of your employment
11 history going backwards?

12 A Sure.

13 Q Thank you.

14 A Previous to GSR I was an independent
15 consultant engaged primarily with the Cosmopolitan in
16 Las Vegas and Deutsche Bank. Prior to that I was with
17 Penn National Gaming.

18 Q I'm sorry, Penn, Pe- --

19 A Penn, P-e-n-n --

20 Q Thank you.

21 A -- National Gaming.

22 Q And how long were you with the -- serve as
23 a consultant to the Deutsche Bank/Cosmopolitan issue?

24 A I was at that specific client for five
25 months.

1 Q In what year?

2 A That would be this year, 2014.

3 Q Thank you.

4 And then the period of time with which you
5 were with Penn Gaming?

6 A That was from April of 2009 to October of
7 2013.

8 Q What were your duties and responsibilities
9 for Penn National Gaming?

10 A I was the chief financial officer for three
11 of their operating casinos.

12 Q Which three, please?

13 A Initially with Alton, Illinois -- Argosy
14 Casino in Alton, Illinois; subsequent to that with the
15 Hollywood in Aurora, Illinois; subsequent to that the
16 chief financial officer for the Hollywood Casino in
17 St. Louis, Missouri.

18 Q And then prior to that employment what was
19 your job and for whom did you work?

20 A Prior to that employment I was managing
21 director for a firm called Adams Harris.

22 Q What line of business are they involved in?

23 A Financial accounting, IT, and tax
24 consulting.

25 Q Okay. Gaming involvement with --

1 A Yes.

2 Q -- Adams & Harris?

3 A There was gaming involved with that as
4 well.

5 Q Please let me finish.

6 When I say "please let me finish," please
7 understand I'm not trying to be rude. I just want to
8 make sure this works for all three of us.

9 So Adams & Harris had casino clients for
10 which you provided accounting services?

11 A Yes.

12 Q How long were you with Adams & Harris?

13 A Six months.

14 Q Okay. And that was in approximately the
15 year 2009?

16 A 2008 into 2009, yes.

17 Q And prior to Adams & Harris, please tell me
18 for whom you worked.

19 A Managing director for Jefferson Wells.

20 Q What is Jefferson Wells?

21 A It is a similar consulting firm.

22 Q And was your work confined to or limited to
23 providing accounting services for casinos?

24 A No.

25 Q Broad range of clients?

1 A Broader range of clients, yes.

2 Q But did it include casinos?

3 A Yes, it did.

4 Q Which casinos would you provide services
5 for at Jeffrey Wells [sic], if you recall, please.

6 A The specific names of the casinos I don't
7 recall.

8 Q How about Adams & Harris?

9 A I don't recall the specific names.

10 Q Prior to Jeffrey & Wells [sic], what was
11 your job or occupation?

12 A Vice-president of internal audit for Argosy
13 Gaming Company.

14 Q And that was in Illinois?

15 A Correct.

16 Q How long were you employed in that
17 capacity?

18 A Five years.

19 Q That takes us back to approximately 2003?

20 A I was with Argosy --

21 Q I'm sorry to interrupt you. I negated to
22 figure out how long you were with Jeffrey Wells.

23 A Three years.

24 Q So that takes us back to 2005-ish?

25 A Yeah, early 2006.

1 Q Okay. And then how long and what years
2 were you with Argosy?

3 A 2001 to 2006.

4 Q Okay. What's your educational background,
5 please.

6 A I have a bachelor's in accounting and
7 computer information systems from the University of
8 Nevada.

9 Q Are you a CPA?

10 A Yes, sir.

11 Q How long have you been a CPA?

12 A Since 1996.

13 Q Okay. Do you know why you're here today?

14 A Yes, I do.

15 Q All right. I have before you the exhibits
16 we've marked for these depositions, Exhibit 31 and 32.
17 31 is what we refer to as a 30(b)(6) deposition
18 notice.

19 Have you seen this document, sir?

20 A I have not, sir.

21 Q All right. What is relevant about this
22 document is what is contained in Exhibit 1 of Exhibit
23 31. It lists a series of topics that I've asked GSR
24 to produce witnesses about who are most knowledgeable
25 about those topics.

1 Exhibit 32 is a letter we received from
2 GSR's counsel identifying witnesses that it will
3 produce responsive to the various topics. And I
4 believe you are identified on page 2 of Exhibit 32.
5 Would you take a look at that, please.

6 Can you determine which topics you have
7 been asked to testify about here today?

8 A Topics 8 and topics 9.

9 Q Okay. And then if you go to Exhibit 1 of
10 Exhibit 31, you'll see what the description of topics
11 8 and 9 are.

12 Wait a minute.

13 Going back to Exhibit 32, please, on the
14 second page, Tuesday, November 4, 2014, 9:00 a.m., I
15 see that you've been identified for topics 8, 9, 21
16 and 23.

17 See that?

18 A Yes.

19 Q Okay. Is that consistent with your
20 understanding?

21 A Yes.

22 Q Okay. What have you done to prepare for
23 today's deposition?

24 A I've met with counsel.

25 Q Which counsel?