

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCF 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI,
3 SHARP & LOW, and that on this date I caused to be served a true copy of the **PEPPERMILL**
4 **CASINOS, INC.'S MOTION FOR ORDER REQUIRING GSR TO SHOW CAUSE WHY IT**
NOT BE HELD IN CONTEMPT. SANCTIONED AND ORDERED TO PRODUCE
DOCUMENTS 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 ☒ 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
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Las Vegas, NV 89119
Email: sjohnson@cohenjohnson.com / tkinnally@cohenjohnson.com
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13 *Attorneys for Plaintiff*

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17 *Attorneys for Defendant Ryan Tors*

18 MICHAEL P. SOMPS, ESQ.
19 DARLENE B. CARUSO, ESQ.
State Gaming Control Board
555 East Washington Avenue, Suite 3900
Las Vegas, NV 89101-1068
20 Email: dcarus@ag.nv.gov / msomps@ag.nv.gov
21 *Attorneys for Nevada Gaming Control Board*

22 — by electronic email addressed to the above.

23 — by personal delivery/hand delivery addressed to:

24 — by facsimile (fax) addressed to:

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

26 DATED: This 17th day of December, 2014.

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28 V. JAYNE FERRETTO

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LIST OF EXHIBITS

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EXHIBIT 1

EXHIBIT 1

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

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

8 DATED: This 19th day of September, 2014.

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

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Jacqueline Bryant
Clerk of the Court
Transaction # 4741434 : melwood

EXHIBIT 2

EXHIBIT 2

1
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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. CV18-01704

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
Discovery Commissioner's Recommendation for Order served on September 7, 2014.

23 DATED this 1st day of October, 2014.

24 Barack Flanagan
25 DISTRICT JUDGE
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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 15th 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:

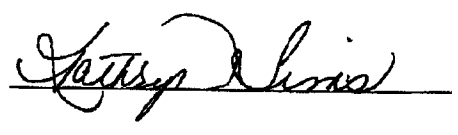
ALISA NAVE-WORTH, ESQ., CLARK VELLIS, ESQ., and KENT ROBISON, ESQ. for PEPPERMILL CASINOS, INC.;

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:



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EXHIBIT 3

EXHIBIT 3

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

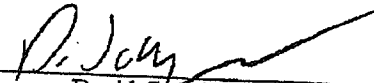
COHEN-JOHN, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

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

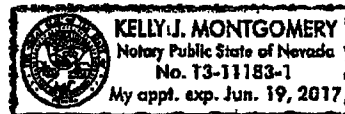
The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

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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EXHIBIT 4

EXHIBIT 4

Certified Copy

In the Matter Of:

MEI-OSR vs. PEPPERMILL

CV13-01704

DAVID G. SCHWARTZ, PH.D.

October 21, 2014

Confidential



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800.211.DEPO (3376)
EsquireSolutions.com

1 share?

2 A. I do not know the answer to that.

3 Q. Have you been asked to look into that?

4 A. I have not.

5 Q. Exhibit 21, sir, is a copy of your CV that was
6 attached to the affidavit. This is the CV that was
7 attached to the affidavit. Were you aware that this
8 affidavit was going to be filed in court?

9 A. Yes.

10 Q. For what purpose were you told that your
11 affidavit was necessary to be filed in court?

12 A. For the case.

13 Q. Well, I want you to assume that there's a rule
14 that says the plaintiff has to provide a computation of
15 damages early in the case, what we call a 16.1
16 disclosure. Were you asked to do that?

17 A. I was not.

18 Q. Were you ever asked to provide a computation of
19 damages prior to February?

20 A. No.

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

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



1 or other means.

2 Q. It would be pretty fair to say, would it not,
3 sir, that that was the first time you've ever involved
4 yourself in such an exercise?

5 A. To an extent, yes.

6 Q. Getting back to Exhibit 21, your CV.

7 A. Sure.

8 Q. You are primarily a historian?

9 A. Correct.

10 Q. That's the majority of your work in the gaming
11 industry is to document the history of gaming and such
12 matters like that; correct?

13 A. That's a large part of it, yes.

14 Q. And in your CV you indicate that you've had some
15 legal consulting clients?

16 A. Yes.

17 Q. Do you see those, page 3?

18 A. Yes.

19 Q. What do you do for Ainsworth? What have you
20 done for Ainsworth?

21 A. Ainsworth -- if it would make it easier, I can
22 kind of break this up. Or do you want me to go through
23 one by one?

24 Q. Whatever pleases you.

25 A. Sure. Ainsworth I did some prior art



1 understanding.

2 A. Okay.

3 Q. I promised you I would give you a break any time
4 you asked for it but not while a question is pending.

5 A. Sure. I understand that.

6 Q. Do you need a break?

7 A. I think I would like one.

8 Q. Okay.

9 (Break was taken.)

10 Q. (By Mr. Robison) Mr. Schwartz, we're back on the
11 record. And do you have documents that in any way
12 support the assertions you made in your affidavit?

13 A. I do have the survey of the literature I did, so
14 I have a number of articles.

15 Q. Okay. Survey of literature?

16 A. Yes.

17 Q. Do you have calculations?

18 A. I do have a couple of calculations that I did
19 based on that, which are reflected in this.

20 Q. Paragraph 7.

21 A. Reflected in paragraph 7.

22 Q. Sure. What else do you have? What documents do
23 you have that in any way supports or is the basis for
24 your computations?

25 A. Right now those are it.



1 Q. All right. Exhibit 24 is an order from the
2 court.

3 A. Okay.

4 Q. Judge Flanagan affirmed the discovery ruling
5 that required that GSR provide to myself and
6 Mr. Gunderson no later than September 30th an updated
7 calculation of damages. Is that what you've done?

8 A. I have calculated the amount of time and amount
9 of money it would take to try to determine pars.

10 Q. Are you of whether or not the GSR is in
11 compliance with this order?

12 A. I'm not aware of that.

13 Q. Have you done exactly what this court ordered?

14 A. I have. What I've done is what is in paragraph
15 7 here. That was the extent of my calculations.

16 Q. Well, are you aware of the fact that Judge
17 Flanagan ordered the GSR to give myself, counsel for the
18 Peppermill, and Mr. Gunderson, counsel for Mr. Tors, an
19 updated calculation of damages by September 30?

20 A. I'm not aware of that.

21 Q. No one told you that?

22 A. No.

23 Q. Is your affidavit a calculation of damages?

24 A. My affidavit contains a calculation of the
25 amount of money it would cost to try to determine this

1 data without using a key.

2 Q. Not to mince words too bad, but you indicated in
3 paragraph 2 you've been retained --

4 A. Yes.

5 Q. -- as an expert to offer expert testimony on the
6 subject of damages sustained by GSR. Have you done that?

7 A. What I've done is I've told them what I believe
8 it would take to try to determine this information
9 without using the key.

10 Q. Since you have been retained as an expert to
11 calculate the damages sustained by GSR, my simple
12 question is have you done that? Yes or no.

13 A. I have not yet done that.

14 Q. So then as far as we can tell, the GSR has not
15 complied to Judge Flanagan's order that I be given an
16 updated calculation of GSR's damages.

17 MR. JOHNSON: Objection. Calls for a legal
18 conclusion.

19 THE WITNESS: Yeah. I wouldn't -- again, I
20 wouldn't be comfortable giving an answer to that because
21 I don't know whether -- even if I'd seen the judge's
22 order, I'm not a lawyer, so I couldn't tell you whether
23 they're in compliance or not.

24 Q. (By Mr. Robison) All right. Let's get some
25 restraint here.



1 A. Sure.

2 Q. And I hate to put you in this position, because
3 I'm putting you right in kind of the legal cross hairs.

4 A. Sure.

5 Q. We have filed motion after motion insisting that
6 GSR give us a calculation of damages. Are you aware of
7 any calculation of damages that GSR now believes is
8 applicable in this case?

9 A. I can tell you that nobody shared anything with
10 me of this is the extent of the work I've done.

11 Q. Have you shared with the Court a calculation of
12 damages?

13 A. What I've shared with the Court is what is in my
14 affidavit.

15 Q. Do you believe, Mr. Schwartz, that what's in
16 your affidavit complies with this court order?

17 MR. JOHNSON: Objection. Calls for a legal
18 conclusion.

19 Q. (By Mr. Robison) Let me finish my question.
20 That by September 30th, almost a month ago, did GSR
21 provide me with an updated calculation of damages? Does
22 your affidavit serve that function?

23 MR. JOHNSON: Same objection.

24 THE WITNESS: I couldn't tell you that. I don't
25 know the answer. I'm not a lawyer, so I couldn't tell

1 Q. Where did you get that information?

2 A. That, okay, I believe it was in one of the
3 filings. I did look at a lot of papers.

4 Q. Well, what's in your file?

5 A. I recall that this had been happening since
6 2009.

7 Q. Okay. Mr. Schwartz, I want to get back to this
8 order that I put in front of you.

9 A. Sure.

10 Q. I've got to figure out whether or not you're the
11 damage guy or not, because I have to go to Judge Flanagan
12 and get this straightened out.

13 GSR has either complied with this order, albeit late
14 by your affidavit, or not. And Judge Flanagan said GSR
15 provide Robison with an updated calculation of damages by
16 September 30th. I need you to tell me so I can go to the
17 judge and get this clarified. Have you or have you not
18 done that?

19 A. What I've done is what's in this affidavit.
20 That is what I've done. I've not done any additional
21 calculations besides what's in this affidavit.

22 Q. Well, then, I'll have the judge ask GSR's
23 lawyers whether or not that's what they're intending to
24 do.

25 They also, the judge also asked GSR to identify and

1 make available for inspection any documents,
2 electronically stored information, or tangible things
3 that GSR is relying on in support of its damages. Have
4 you made the arrangements to get me your documents?

5 A. I have forwarded a few of the articles.

6 Q. To whom?

7 A. To Mr. Johnson.

8 Q. We haven't got them. Is there anything else
9 that would constitute a document, electronically stored
10 information, or tangible thing on which you looked at or
11 used to base your final answers in your affidavit?

12 A. Not that I'm aware of.

13 Q. Just those articles?

14 A. Yes.

15 Q. So I can safely tell the judge and my experts
16 that all you have relied on in doing that affidavit is
17 the articles that you provided to Mr. Johnson?

18 A. Yes. That's what I've done to date. I've used
19 those articles.

20 Q. Exhibit 26, sir, is the document that -- this
21 information came off the web. What is this?

22 A. This looks like it's my biography.

23 Q. And it's put on your web site?

24 A. Yes.

25 Q. I don't see anything in here that would suggest

1 Q. -- and you know what your hold is.

2 A. Yes.

3 Q. This is new for you, isn't it?

4 A. No.

5 Q. Well, what hold did you use to get 600,000; sir?

6 A. I can't remember off the top of my head.

7 Q. Well, you use 6. Go ahead, do 6.

8 A. All right. So I used 6. All right.

9 Q. What does that come out? It doesn't come out
10 600, does it?

11 A. No.

12 Q. That's because you didn't use \$4. You used \$1.
13 Why did you do that? This is a mathematical nightmare,
14 paragraph 7, isn't it?

15 A. It looks that way now.

16 Q. It's a mess; right?

17 A. I would like to have some more time to refine
18 this.

19 Q. You've had six months. Six months and you come
20 up with paragraph 7 which you admit is a mathematical
21 mess. Why is that?

22 MR. JOHNSON: Objection. Assumes facts not in
23 evidence. Vague and ambiguous.

24 Q. (By Mr. Robison) What fact is assumed that's
25 wrong, Mr. Schwartz? You've had this assignment since

1 February of 2014; correct?

2 A. Correct.

3 Q. This paragraph 7 doesn't work at \$4 a play, does
4 it?

5 A. It doesn't.

6 Q. And it doesn't work at \$4 a play with a 6 par or
7 6 hold, does it?

8 A. No.

9 Q. And this is a mathematical mess, isn't it,
10 paragraph 7?

11 A. It's not as accurate as I'd like it to be, and
12 I'd like to have a chance --

13 Q. Not as accurate? There's nothing accurate about
14 it, is there?

15 MR. JOHNSON: Objection. Harassment.

16 MR. ROBISON: Yeah, that's true. That's very
17 true. I'll back off.

18 Q. (By Mr. Robison) Why are there so many errors in
19 paragraph 7?

20 A. I couldn't tell you.

21 Q. You kind of failed your assignment, didn't you?

22 MR. JOHNSON: Objection. Harassment.

23 Q. (By Mr. Robison) Did you give GSR an accurate
24 analogy of what the cost is to obtain a par in paragraph
25 7?

1 A. I believe that I did at the time.

2 Q. And as you've now walked through the math you
3 admit that you did not; correct?

4 A. I would like to look at my calculations and see
5 if I made a mistake and if I did, where I made that
6 mistake.

7 Q. I'm here. You look at those numbers and you
8 tell me how they work.

9 A. That's -- I would like, I would like a chance to
10 look at my own calculations to see if I made a mistake
11 and where I did, and then I could give you a better
12 explanation.

13 Q. Why didn't you show up with your calculations?
14 You knew I was going to depose you on your affidavit.

15 A. I couldn't tell you the answer to that.

16 Q. As you sit here right now, can you give me any
17 explanation of why the math is so bad in paragraph 7 of
18 your affidavit?

19 A. No.

20 Q. You weren't trying to mislead the Court?

21 A. Oh, no.

22 Q. That was signed under penalty of perjury.

23 A. True.

24 Q. And it's inaccurate?

25 A. It is.

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, CHRISTINE M. JACOBS, a certified shorthand
reporter for the state of Nevada, do hereby certify:

That I reported the deposition of the witness, DAVID
G. SCHWARTZ, PH.D, commencing on October 21, 2014,
commencing at the hour of 9:27 a.m.

That prior to being examined, the witness was by me
duly sworn to testify to the truth, the whole truth, and
nothing but the truth;

That I thereafter transcribed my said shorthand
notes into typewriting and that the typewritten
transcription of said deposition is a complete, true and
accurate transcription of my said shorthand notes taken
down at said time. That review of the transcript was
requested.

I further certify that I am not a relative or
employee of an attorney or counsel involved in said
action.

IN WITNESS WHEREOF, I have hereunto set my hand
in my office in the County of Clark, State of Nevada,
this 31st day of October 2014.

Christine M. Jacobs
CHRISTINE M. JACOBS, CCR 455

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Transaction # 4741434 : melwood

EXHIBIT 5

EXHIBIT 5

1 On September 19, 2014, the Commissioner issued a *Recommendation for*
2 *Order* finding that GSR's calculation of damages as included in its initial
3 disclosures was deficient and that GSR should be compelled to provide an updated
4 calculation of damages, along with related documents, by September 30, 2014.
5 Neither party opposed the *Recommendation*. It was adopted by the Court on
6 October 1, 2014. Peppermill acknowledges that GSR has provided the requested
7 computation of damages in the form of an affidavit, dated September 9, 2014, from
8 Dr. David Schwartz, GSR's damages expert. Peppermill contends, however, that
9 the affidavit is false and misleading (see discussion below) and that GSR has
10 refused to produce related documents. GSR has not responded to this argument.

11 Any failure by GSR to identify and make available documents related to its
12 damages calculation is a violation of this Court's adopted *Order* of October 1, 2014.
13 GSR is hereby compelled to comply with that directive by December 15, 2014, if it
14 has not already done so by the time of this *Order*.

15 **b. Requests for Production of Documents**

16 Peppermill alleges that GSR has willfully failed to comply with requests for
17 production of documents in contravention of Court orders. Peppermill specifically
18 identifies the above-referenced documents pertaining to damages calculations
19 (*Motion for Sanctions* at 5; *Supplemental Motion* at 3) as well as other documents
20 related to testimony given by GSR's named witnesses at deposition (*Motion for*
21 *Order to Show Cause* at 2). It appears that all documents requested pertain in some
22 way to calculation of damages, i.e. "slot strategies, marketing policies, and hold
23 percentages." *Id.*; see also *Recommendation for Order* of October 2, 2014. As
24 described above, GSR is compelled to disclose those documents.

25 **c. False and misleading testimony**

26 Peppermill alleges that the calculations of GSR's damages expert, David
27 Schwartz, are admitted by him to be inaccurate, and that GSR has a duty to correct
28 the record accordingly. The Court is not in receipt of Dr. Schwartz' deposition, and

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EXHIBIT 6

EXHIBIT 6



ROBISON, BELAUSTEGUI, SHARP & LOW

December 4, 2014

ATTORNEYS:

Kent R. Robison
Thomas L. Belaustegui
E. DeArmond Sharp
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Barry L. Breslow
Mark C. Simons
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255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119

Via Email: mwrap@markwrap.law.com
Mark Wray, Esq.
608 Lander Street
Reno, NV 89509

Re: **GSR v. Peppermill/Tors**

Dear Counsel:

As you know, we have scheduled a series of NRCP 30(b)(6) depositions for December 18, 2014. The topics on which the GSR is required to produce knowledgeable witnesses about pertain to the playing activity of our expert, Stacy Friedman. To prevent the GSR from making unnecessary and inappropriate objections, I am providing herewith a properly executed and notarized Authorization for Release of Gaming Records executed by Mr. Friedman. Accordingly, there exists no ethical or procedural prohibitions preventing your NRCP 30(b)(6) witnesses from testifying completely and fully about the NRCP 30(b)(6) topics.

We still have not received responsive and complete answers to our First Set of Interrogatories. On November 26, 2014, Judge Flanagan ordered that you produce those answers "forthwith". Your delay is inexcusable. If we have not received full and complete answers to the First Set of Interrogatories on or before Wednesday, December 10, 2014, we will, once again, make a Motion for Order to Show Cause why GSR and its counsel not be sanctioned.

GSR is obligated to produce all documents responsive to our Request for Production of Documents and all documents that in any way pertain or relate to damages on or before December 15, 2014. This production must include the working file of David Schwartz, including all payments for his services, his work file, his notes, and any research to which he referred, including the article he referred to authored by Dr. Anthony Lucas.

Yours very truly,

KENT R. ROBISON

KRR:jf
Attachment

cc: Mark Gunderson, Esq. (w/attachment)

P 775-329-3451
F 775-329-7944

71 Washington Street
Reno, Nevada 89503

www.rbsllaw.com

J:\WPData\KRR\872.006-Peppermill-GSR vL-Johnson,Cohen,Kinnally,Wray.12-03-14.docx

RA 01414

AUTHORIZATION FOR RELEASE OF GAMING RECORDS

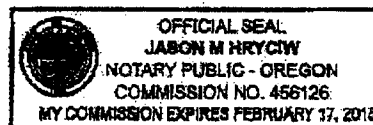
I, STACY FRIEDMAN, holder and owner of Grand Sierra Resort Player Card No. 200080747, do hereby permit, authorize and consent the Grand Sierra Resort to release my play records and information to Kent R. Robison, Esq., Robison, Belaustegui, Sharp & Low, 71 Washington Street, Reno, Nevada 89503, pursuant to and in accordance with the Notice of Taking Depositions of Plaintiff's Persons Most Knowledgeable Pursuant to NRCP 30(b)(6) dated November 24, 2014, filed in Case No. CV13-01704, in the Second Judicial District for the State of Nevada, in and for the County of Washoe.

Dated this 25th day of November, 2014.


STACY FRIEDMAN

Subscribed and Sworn to Before me
this 25th day of November, 2014, by
Stacy Friedman.


NOTARY PUBLIC



FILED
Electronically
2014-12-17 04:18:24 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4741434 : melwood

EXHIBIT 7

EXHIBIT 7

COHEN | JOHNSON
ATTORNEYS & COUNSELORS AT LAW

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

H. Stan Johnson, Esq.
sjohnson@cohenjohnson.com
cohenjohnsonlaw.com

**Sent Via U.S. Mail and e-mail krobison@rbsllaw.com and
mgunderson@gundersonlaw.com**

December 10, 2014

Robison, Belaustegui, Sharp, and Low
C/o Kent Robison, Esq.
71 Washington Street
Reno, Nevada 89503

Gunderson Law Firm
c/o Mark H. Gunderson, Esq.
3895 Warren Way
Reno Nevada 89509

**Re: Working file Of D. Schwartz and Freidman SDT
MEI-GSR Holdings, LLC vs. Peppermill
Case No.: CV-13-01704
Our File No.: 130133**

Dear Kent:

Apparently you have misunderstood the court's order, it did not require us to provide you with Dr. Schwartz' working file, including fees, but only documents in support of our claim for damages, which have been provided.

Apparently you also forgot that you withdrew the subpoena duces tecum you served. If you recall, I informed you that we were filing a motion to quash the subpoena for failure to comply with the applicable rules of civil procedure. You requested that we not file the motion and voluntarily withdrew the subpoena. If you like, I will be happy to provide you with a copy of the emails involved.

Very Truly Yours,

Terry Kinnally

Terry Kinnally, Esq.

cc. Mark Wray

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

2650
COHEN-JOHNSON, LLC
H. STAN JOHNSON, ESQ.
Nevada Bar No. 00265
sjohnson@cohenjohnson.com
TERRY KINNALLY, ESQ.
Nevada Bar No. 6379
tkinnally@cohenjohnson.com
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
Telephone: (702) 823-3500
Facsimile: (702) 823-3400
MEI-GSR Holdings, LLC. d/b/a
Grand Sierra Resort

IN ASSOCIATION WITH

MARK WRAY, ESQ.
Nevada Bar No.: 4425
608 Lander Street
Reno, Nevada 89509
Telephone: (775) 348-8877
Facsimile: (775) 348-8351
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

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR 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 Contempt and in support of this opposition states as

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

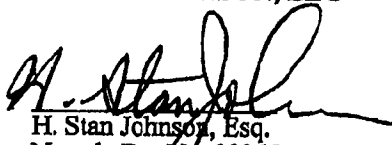
1 follows:

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 2nd day of January 2015.

6 COHEN-JOHNSON, LLC

7
8 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
Attorney for MEI-GSR Holdings, LLC. d/b/a
Grand Sierra Resort

MEMORANDUM OF POINTS AND AUTHORITIES

I. GSR HAS PRODUCED ALL DOCUMENTS SUPPORTING DAMAGES IN ITS POSSESSION

GSR was ordered to produce all documents in support of its computation of damages and did so. GSR produced all documents currently in its possession which supported its computation of damages; these were:

- a) Article written by Anthony Lucas GSR 00025 – GSR 00044
- b). Affidavit of David Schwartz GSR 00045 – GSR 00047
- c) Curriculum Vitae of David Schwartz, Ph.D. GSR 00048 – GSR 00099
- d). Invoices from VSR Industries, Inc. GSR 00100 – GSR102.
- e). Notes from David Schwartz Ph.D. re: Computation of Damages GSR 103.

(Copies of these documents are being provided to the Court attached to Plaintiff's Fifth Supplemental 16.1 Disclosure statement as Exhibit 1 1a-e)

Defendant however, has unilaterally decided that it is also entitled to the retainer agreement between GSR and Dr. Schwartz and a record of all of Dr. Schwartz's billings. Neither the retainer agreement nor Dr. Schwartz' billing set forth GSR's computation of damages and therefore are not encompassed by the Court's order. *(See Court's Order dated November 26, 2014 attached hereto as Exhibit 2)* While said documents will be produced in compliance with NRCP 26 as part of GSR's expert disclosures, Defendant has no right to those documents at this time. Nor does GSR have a duty to produce them prior to the March 2, 2015 expert disclosure date. To claim that the failure to prematurely disclose these documents constitutes contempt of Court is simply harassment by the Defendant. Defendant filed this motion on December 17, 2014 however, On December 10, 2014 Plaintiff's Counsel sent a letter informing Peppermill's counsel that all the documents in support of the claim for damages had been provided. *(See correspondence dated 12/10/14 attached hereto as Exhibit 3)* Despite knowing that all the documents had been provided Defendant filed this Motion. Moreover, Defendant deposed Dr. Schwartz who testified that his file contained a survey of literature and

1 some computations. (See Portion of Deposition of David Schwartz P. 50 ll 10 -25 dated October
2 21, 2014 and attached hereto as Exhibit 4) The article in question authored by Defendant's
3 expert was produced as GSR 25-44 and Dr. Schwartz's notes containing his literature survey and
4 computations were produced at GSR 103. There are no other documents at the present time.

5 This is not to say that in the future additional documents may not be obtained. GSR has
6 served requests for production on Peppermill, the responses were due on December 15, 2014, but
7 as of the present date Peppermill had refused to produce any of the documents requested, even
8 though GSR has produced over 16,000 documents in response to Peppermill's discovery
9 requests. GSR anticipated that additional documents will be discovered which will support its
10 damage claim and expects further evidence in support of its claims when the depositions of
11 William Paganetti, Billy Paganetti, John Hanson and David Halibuk, Rob Irwin, Dan Smerchia ,
12 Scot Bean and other witnesses identified by Mr. Tors as having knowledge of the Peppermill's
13 four year practice of keying slot machines at non-Peppermill controlled casinos.

14 GSR has fully complied with the Court's Order and produced all documents currently in
15 its possession which support its computation of damages. This motion is simply another attempt
16 by Peppermill to avoid providing discovery to the Plaintiff because Peppermill knows that the
17 documents it is refusing to produce will amply demonstrate the economic benefits and uses to
18 which Peppermill put the purloined information. GSR has no interest in not producing
19 documents which support its claims however Peppermill has a strong motive and incentive for
20 obscuring the issue to avoid complying with the discovery rules by bringing this frivolous
21 motion. Therefore Plaintiff is entitled to attorneys fees for having to respond to this baseless and
22 harassing motion under NRCP 37 (4) (B).

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II CONCLUSION

Peppermill's motion is unsupported by anything other than innuendo. GSR has produced all the documents supporting its computation of damages, including Dr. Schwartz's notes as ordered by the Court. Dr. Schwartz's retainer agreement and billings do not support his damage calculations and are not subject to the Court's order. Moreover Peppermill knew at the time that it brought this motion that the documents had already been produced, but chose to do so anyway. Therefore GSR requests this Honorable Court to enter an Order:

1. Denying Peppermill's Motion;
2. Finding that GSR has complied with the Court's Order of November 26, 2014;
3. Finding that the Peppermill's Motion was not substantially justified under NRCPC 37.
3. Awarding GSR attorneys fees for having to respond to this motion pursuant to NRCPC 37 (4)(B);
4. For such other and further relief as this Court deems necessary.

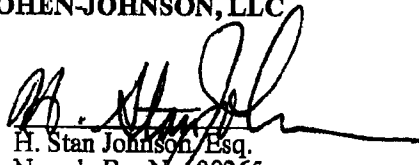
AFFIRMATION
Pursuant to NRS. §239B.030

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

Dated this 2nd day of January 2015

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
Attorney for MEL-GSR Holdings, LLC. d/b/a
Grand Sierra Resort

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

EXHIBIT LIST

Exhibit No:	Description	Pages
1	Plaintiff's Fifth Supplemental 16.1 Disclosure statement as Exhibit 1 1a-e)	9
2	Court Order Dated November 26, 2014	12
3	Correspondence Dated December 12, 2014	2
4	David Schwartz, Ph.D. Deposition	2

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

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 **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR CONTEMPT** on all the 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, Las Vegas, Nevada and addressed to:

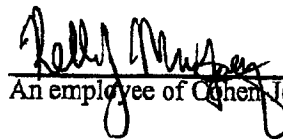
 x by using the Court's E-Flex Electronic Notification System addressed to:

ROBINSON, BELAUSTEGUI, SHARP & LOW
c/o Kent R. Robinson, Esq.
71 Washington Street
Reno, Nevada 89503
Email: krobison@rbsllaw.com
Attorney for the Defendant Peppermill

GUNDERSON LAW FIRM
c/o Mark H. Gunderson, Esq.
3895 Warren Way
Reno, Nevada 89509
Email: 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 2nd day of January, 2015.


An employee of Cohen Johnson, LLC

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2015-01-02 01:29:29 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4757630 : ylloyd

Exhibit "1"

Exhibit "1"

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

1 16.1
2 COHEN-JOHNSON, LLC
3 H. STAN JOHNSON, ESQ.
4 Nevada Bar No. 00265
5 sjohnson@cohenjohnson.com
6 TERRY KINNALLY, ESQ.
7 Nevada Bar No. 6379
8 tkinnally@cohenjohnson.com
9 255 E. Warm Springs Road, Suite 100
10 Las Vegas, Nevada 89119
11 Telephone: (702) 823-3500
12 Facsimile: (702) 823-3400
13 Attorneys for MEI-GSR Holdings, LLC,
14 d/b/a Grand Sierra Resort

15 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

16 IN AND FOR THE COUNTY OF WASHOE

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

Case No.: CV13-01704

19 Plaintiff,

Dept. No.: B7

20 v.

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

BUSINESS COURT DOCKET

26 Defendants.

27 PLAINTIFF'S FIFTH SUPPLEMENTAL DISCLOSURE PURSUANT TO NRCP 16.1

28 COMES NOW, the Plaintiff MEI-GSR HOLDINGS, LLC. ("GSR"), by and through its
counsel of record, H. Stan Johnson, Esq., of Cohen|Johnson LLC., hereby submits its' Third
supplemental Disclosure of Witnesses and Documents pursuant to NRCP 16.1 in this matter as
follows:

I. WITNESSES

1. Mike Draeger
c/o COHEN|JOHNSON, LLC
255 E. Warm Springs Rd., Suite 100
Las Vegas, Nevada 891189

1 Mr. Drager, is expected to testify as to his knowledge of the facts and circumstances
2 surrounding the claims and allegations which are the subject of this instant litigation including
3 his prior experiences and knowledge of Mr. Tors.

4 2. Janice Doreen Covington
5 c/o COHEN|JOHNSON, LLC
6 255 E. Warm Springs Rd., Suite 100
Las Vegas, Nevada 891189

7 This witness is expected to testify as to her knowledge as to the facts and circumstances
8 surrounding the claims and allegations which are the subject of this instant litigation.

9 3. Jason Wagner
c/o COHEN|JOHNSON, LLC
10 255 E. Warm Springs Rd., Suite 100
11 Las Vegas, Nevada 891189

12 This witness is expected to testify as to his knowledge as to the facts and circumstances
13 surrounding the claims and allegations which are the subject of this instant litigation.

14 4. Michael Altizer, Slot Manager
15 c/o COHEN|JOHNSON, LLC
16 255 E. Warm Springs Rd., Suite 100
Las Vegas, Nevada 891189

17 This witness is expected to testify as to his knowledge as to the facts and circumstances
18 surrounding the claims and allegations which are the subject of this instant litigation.

19 5. Ernie Reilly, Casino Shift Manager
20 c/o COHEN|JOHNSON, LLC
21 255 E. Warm Springs Rd., Suite 100
Las Vegas, Nevada 891189

22 This witness is expected to testify as to his knowledge as to the facts and circumstances
23 surrounding the claims and allegations which are the subject of this instant litigation.

24 6. Rakesh Sidher, Slot Manager
25 c/o COHEN|JOHNSON, LLC
26 255 E. Warm Springs Rd., Suite 100
Las Vegas, Nevada 891189

27 This witness is expected to testify as to his knowledge as to the facts and circumstances
28 surrounding the claims and allegations which are the subject of this instant litigation.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----

This witness is expected to testify as to his knowledge as to the facts and circumstances surrounding the claims and allegations which are the subject of this instant litigation.

This witness is expected to testify as to his knowledge as to the facts and circumstances
_____ regarding the claims and allegations which are the subject of this instant litigation.

This witness is expected to testify as to his knowledge as to the facts and circumstances surrounding the claims and allegations which are the subject of this instant litigation.

This witness is expected to testify as to his knowledge as to the facts and circumstances surrounding the claims and allegations which are the subject of this instant litigation.

This witness is expected to testify as to his knowledge as to the facts and circumstances surrounding the claims and allegations which are the subject of this instant litigation.

...

11. Person Most Knowledgeable of Peppermill Casinos, Inc. dba Peppermill Casino
c/o Clark V. Vellis, Esq.
50 West Liberty Street, Suite 1030
Reno, Nevada 89501

This witness is expected to testify as to his/her knowledge as to the facts and
circumstances surrounding the claims and allegations which are the subject of this instant
litigation.

12. Ryan Tors
c/o William M. Omara, Esq.
311 East Liberty Street
Reno, Nevada 89501

This witness is expected to testify as to his knowledge as to the facts and circumstances
surrounding the claims and allegations which are the subject of this instant litigation.

13. Billy Paganetti
c/o Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503

This witness is expected to testify as to his knowledge of the facts and circumstances
surrounding Mr. Tors conduct and the use to which the information was put.

14. William Paganetti
c/o Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503

This witness is expected to testify as to his knowledge of the facts and circumstances
surrounding Mr. Tors conduct and the use to which the information gathered from GSR and
other casinos was put.

15. Rob Erwin
c/o Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503

This witness is expected to testify as to his knowledge of the facts and circumstances
surrounding Mr. Tors conduct and the use to which the information gathered from GSR and
other casinos was put.

1 16. Dave Halabuk

2 This witness is expected to testify as to his knowledge of the facts and circumstances
3 surrounding Mr. Tors conduct and the use to which the information gathered from GSR and
4 other casinos was put.

5 17. Peter Batchelor
6 c/o Robison, Belaustegui, Sharp & Low
7 71 Washington Street
8 Reno, NV 89503

9 This witness is expected to testify as to his knowledge of the facts and circumstances
10 surrounding Mr. Tors conduct and the use to which the information gathered from GSR and
11 other casinos was put.

12 18. Aaron Robyns
13 c/o Robison, Belaustegui, Sharp & Low
14 71 Washington Street
15 Reno, NV 89503

16 This witness is expected to testify as to his knowledge of the facts and circumstances
17 surrounding Mr. Tors conduct and the use to which the information gathered from GSR and
18 other casinos was put.

19 19. Dan Smercina
20 c/o Robison, Belaustegui, Sharp & Low
21 71 Washington Street
22 Reno, NV 89503

23 This witness is expected to testify as to his knowledge of the facts and circumstances
24 surrounding Mr. Tors conduct and the use to which the information gathered from GSR and
25 other casinos was put.

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1 **II. DOCUMENTS**

- 2 1. Security files re Incident of July 12, 2014. Bates No. GRA0001 thru GRA00018
3 2. Affidavit of J. Covington Bates No. GRA00019 thru GRA00020.
4 3. Voluntary Statement J. Covington Bates No. GRA00021
5 4. Affidavit of J. Wagner Bates No. GRA00022 thru GRA00023
6 5. Surveillance Video of Ryan Tors GSR 00024
7 6. Article written by Anthony Lucas GSR 00025 – GSR 00044
8 7. Affidavit of David Schwartz GSR 00045 – GSR 00047
9 8. Curriculum Vitae of David Schwartz, Ph.D. GSR 00048 – GSR 00099
10 9. Invoices from VSR Industries, Inc. GSR 00100 – GSR102.
11 10. Notes from David Schwartz Ph.D. re: Computation of Damages GSR 103.

12 **III. COMPUTATION OF DAMAGES**

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

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

24 ///

25 ///

26 ///

27 ///

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

1 And/ or in the alternative the measure of damages Plaintiff claims a reasonable royalty
2 NR S 600A.050 (2) for the unlawful acquisition and disclosure and potential use of said trade
3 secrets in an amount to be determined at trial or a royalty in an amount to be determined at trial.
4 Said damages will be based on the testimony of GSR's experts.

5 Plaintiff also seeks punitive damages based on the willful nature of the conduct.

6 Plaintiff reserves the right to supplement this production, as discovery is ongoing.

7 **AFFIRMATION**

8 Pursuant to NRS §239B.030, the undersigned does hereby affirm that the preceding
9 document does not contain the social security numbers of any person.

10 Dated this 4th day of December, 2014.

11 **COHEN|JOHNSON, LLC.**

12
13 By: /s/ H. Stan Johnson
14 H. STAN JOHNSON, ESQ.
15 Nevada Bar No. 00265
16 TERRY KINNALLY, ESQ.
17 Nevada Bar No. 6379
18 255 E. Warm Springs Road, Suite 100
19 Las Vegas, Nevada 89119
20 Attorneys for MEI-GSR Holdings, LLC,
21 d/b/a Grand Sierra Resort
22
23
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25
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27
28

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

CERTIFICATE OF MAILING

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 **PLAINTIFF'S FIFTH SUPPLEMENTAL DISCLOSURE PURSUANT TO NRCP 16.1** on all the 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, Las Vegas, Nevada and addressed to:

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

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

 by using the Court's CM/ECF Electronic Notification System addressed to:
 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 4th day of December, 2014.

/s/ Kelly J. Montgomery
An employee of Cohen-Johnson, LLC

FILED
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2015-01-02 01:28:29 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4757630 : ylloyd

Exhibit "2"

Exhibit "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
10 Nevada corporation, dba GRAND
SIERRA RESORT,

Case No.: CV13-01704

Dept. No.: 7

11 Plaintiff,

12 vs.

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

16 Defendants.
17

18 **ORDER**

19 On August 25, 2014, Defendant PEPPERMILL CASINOS, INC., filed a
20 *Motion for Terminating Sanctions or, in the Alternative, Motion to Compel*
21 *Discovery*. Defendant RYAN TORS joined the *Motion* on August 28, 2014. On
22 September 9, 2014, Plaintiff MEI-GSR HOLDINGS, LLC filed its *Motion to Strike*
23 *and Dismiss Defendant Peppermill's Motion for Case Terminating Sanctions*, which
24 will be treated here as an opposition. Peppermill filed an *Opposition to Plaintiff's*
25 *Motion to Strike* on September 26, 2014, which will be treated here as a reply. The
26 *Motion* of August 25, 2014, was submitted for decision on October 14, 2014. On
27 October 27, 2014, Peppermill filed a *Motion for Order Compelling GSR to Show*
28 *Cause why it not be Held in Contempt*, which has not been opposed. On November

1 12, 2014, Peppermill filed a *Supplemental Motion for Terminating Sanctions or, in*
2 *the Alternative, for an Order to Show Cause why Plaintiff not be Held in Contempt*
3 *and Subjected to Severe Sanctions*, renewing several of its arguments in earlier
4 filings, on November 12, 2014. The Court will now take up all issues Peppermill
5 has raised in its motions for "terminating sanctions" from August 25, 2014, and
6 November 12, 2014, as well as in its *Motion for Order Compelling GSR to Show*
7 *Cause* from October 27, 2014. It should be noted that GSR has not responded to the
8 *Motion to Show Cause* or to the *Supplemental Motion*.

9 First, the Court notes that several collateral disputes have already been
10 resolved which are relevant to Peppermill's claims here. On June 4, 2014,
11 Peppermill filed a *Motion to Dismiss Complaint* alleging that GSR was refusing to
12 provide a calculation of damages. On June 18, 2014, GSR filed an *Opposition to*
13 *Defendants' Motion to Dismiss Complaint and Counter-Motion to Compel*
14 *Disclosures under NRCP 16.1* claiming that it was relieved from its obligation to
15 provide a calculation of damages because Peppermill had failed to confer about the
16 matter prior to filing the motion and that Peppermill must be compelled to provide
17 certain documents under NRCP 16.1. The discovery issues were referred to the
18 Discovery Commissioner, who issued an unopposed *Recommendation for Order* on
19 September 19, 2014. This Court adopted those recommendations on October 1,
20 2014, ordering GSR to provide to the Defendants, no later than September 30, 2014,
21 an updated calculation of damages under NCRP 16.1(a)(1)(C), and to identify and
22 make available for inspection any documents, electronically stored information, or
23 tangible things that it is relying upon in support of its damages claim.

24 A separate issue involving depositions has also been resolved. On June 4,
25 2014, Peppermill served GSR with a notice of NRCP 30(b)(6) depositions, with an
26 amended deposition notice on June 11, 2014. GSR refused to provide deponents as
27 demanded in the notice and, on June 19, 2014, it filed a *Motion for Protective Order*
28 *on an Order Shortening Time and for Stay of Depositions Pending Hearing on the*

1 *Matter.* The issue was referred to the Commissioner who returned a
2 *Recommendation for Order* on October 2, 2014. GSR filed an *Objection* on October
3 10, 2014 and Peppermill filed an *Opposition* to the *Objection* on October 24, 2014.
4 On November 13, 2014, the Court adopted the Commissioner's recommendation,
5 ordering GSR to designate and produce one or more representatives to testify on its
6 behalf pursuant to NRCP 30(b)(6) regarding the topics identified in Peppermill's
7 amended notice.¹

8 **Legal Standard**

9 Peppermill asks that GSR's complaint be dismissed with prejudice. Under
10 NRCP 37(b)(2)(C), a district court has discretion to issue sanctions, including case-
11 concluding sanctions, against a party for willful failure to comply with a discovery
12 order, or where the adversary process has been halted by actions of unresponsive
13 party. *GNLV Corp. v. Service Control Corp.*, 111 Nev. 866, 900 P.2d 323 (1995).
14 Fundamental notions of fairness and due process require that discovery sanctions
15 be just and that sanctions relate to the specific conduct at issue. *Id.*

16 **Analysis**

17 The Court will address each of the alleged discovery violations and motions to
18 compel before taking up the issue of whether GSR's conduct, as a whole, is
19 sanctionable.

20 **a. Computation of damages and related documents**

21 Peppermill alleges that GSR failed to reasonably provide a mandatory
22 computation of damages and related documents as required by NRCP 16.1(a)(1)(C)
23 and by orders of this Court. NRCP 16.1(a)(1)(C) states that, without awaiting a
24 discovery request, a party must provide a computation of damages, making
25 available for inspection and copying the documents or other evidentiary matter, not
26 privileged or protected from disclosure, on which the computation is based.

27
28 ¹ The recommendation excepted "Topic 26," which was determined to be overbroad and therefore
subject to a protective order.

1 On September 19, 2014, the Commissioner issued a *Recommendation for*
2 *Order* finding that GSR's calculation of damages as included in its initial
3 disclosures was deficient and that GSR should be compelled to provide an updated
4 calculation of damages, along with related documents, by September 30, 2014.
5 Neither party opposed the *Recommendation*. It was adopted by the Court on
6 October 1, 2014. Peppermill acknowledges that GSR has provided the requested
7 computation of damages in the form of an affidavit, dated September 9, 2014, from
8 Dr. David Schwartz, GSR's damages expert. Peppermill contends, however, that
9 the affidavit is false and misleading (see discussion below) and that GSR has
10 refused to produce related documents. GSR has not responded to this argument.

11 Any failure by GSR to identify and make available documents related to its
12 damages calculation is a violation of this Court's adopted *Order* of October 1, 2014.
13 GSR is hereby compelled to comply with that directive by December 15, 2014, if it
14 has not already done so by the time of this *Order*.

15 **b. Requests for Production of Documents**

16 Peppermill alleges that GSR has willfully failed to comply with requests for
17 production of documents in contravention of Court orders. Peppermill specifically
18 identifies the above-referenced documents pertaining to damages calculations
19 (*Motion for Sanctions* at 5; *Supplemental Motion* at 3) as well as other documents
20 related to testimony given by GSR's named witnesses at deposition (*Motion for*
21 *Order to Show Cause* at 2). It appears that all documents requested pertain in some
22 way to calculation of damages, i.e. "slot strategies, marketing policies, and hold
23 percentages." *Id.*; see also *Recommendation for Order* of October 2, 2014. As
24 described above, GSR is compelled to disclose those documents.

25 **c. False and misleading testimony**

26 Peppermill alleges that the calculations of GSR's damages expert, David
27 Schwartz, are admitted by him to be inaccurate, and that GSR has a duty to correct
28 the record accordingly. The Court is not in receipt of Dr. Schwartz' deposition, and

1 therefore can make no determination as to his alleged admissions concerning his
2 affidavit. Moreover, any issue as to inconsistency in Dr. Schwartz' statements is an
3 issue of weight and credibility, not of compliance with the rules of discovery. GSR
4 has provided its expert's damages calculations as directed. The reliability of those
5 calculations is an issue for trial.

6 **d. Interrogatories**

7 Peppermill alleges that GSR has failed to provide meaningful answers to two
8 separate sets of interrogatories, served June 4, 2014 and September 30, 2014,
9 respectively. GSR argues that it did not file a response to the first set because it
10 was understood that its *Motion for a Protective Order*, filed June 19, 2014, was to
11 serve as a general objection to the interrogatories. The parties agree that GSR
12 responded to the second set on November 3, 2014, although Peppermill claims that
13 the responses are generally unsatisfactory.

14 The Court denied in part GSR's *Motion for a Protective Order* on October 1,
15 2014, thereby overruling GSR's general objection with respect to most if not all of
16 the first set of interrogatories. GSR is directed to respond forthwith to the first set
17 of interrogatories to the extent that the answers are not subject to the partial
18 protective order.

19 The Court has reviewed GSR's untimely responses to the second set of
20 interrogatories. While GSR objects to nearly every request, it properly states
21 reasons for the objections and otherwise answers to the extent the interrogatories
22 are not objectionable. See NRCP 33(b)(1). In response to the objections, Peppermill
23 moves to compel disclosure under NRCP 33(b)(5). It fails, however, to identify
24 which of GSR's objections it is challenging or to cite specific authority compelling
25 disclosure. Absent more, an order compelling discovery is not appropriate.

26 **e. Depositions**

27 On November 3 and 4, Peppermill deposed several of GSR's witnesses
28

1 pursuant to NRCP 30(b)(6).² Peppermill complains that, while GSR provided
2 witnesses for the topics identified, the witnesses generally lacked the knowledge
3 necessary to answer questions posed at deposition. Peppermill claims that,
4 pursuant to NRCP 30(b)(6), it is entitled to depose the "person most knowledgeable"
5 or "PMK" on each identified topic. Failure to provide such a witness or to
6 adequately prepare a witness for deposition, Peppermill contends, is "tantamount to
7 failure to appear" and is subject to immediate sanction. *Supplemental Motion* at 10
8 (citing *United States v. Taylor*, 166 F.R.D. 356, 363 (M.D.N.C. 1996); *Wilson v.*
9 *Lakner*, 228 F.R.D. 524, 530 (D. Md. 2005)).

10 The Discovery Commissioner addressed the issue of PMK depositions in his
11 *Recommendation for Order* of October 2, 2014 (see pages 8-9). Therein, the
12 Commissioner noted that an organization is not actually required to provide the
13 "person most knowledgeable" on a topic, only a witness adequately prepared to
14 speak on corporate knowledge of the subject. *Id.* (citing *Cummings v. General*
15 *Motors Corp.*, No. Civ. 00-1562-W, 2002 WL 32713320 (W.D. Okla. Jun. 18, 2002)).
16 The testimony of the Rule 30(b)(6) designee is deemed to be the testimony of the
17 corporation itself, not of the individual deponent. *Great American Insurance Co. of*
18 *New York v. Vegas Const. Co., Inc.*, 251 F.R.D. 534, 538 (D. Nev. 2008).

19 Peppermill takes issue with the testimony of three of GSR's witnesses: Ralph
20 Burdick, Toby Taylor, and Craig Robinson. They claim each was woefully
21 underprepared to be deposed on the topics designated, thereby wasting time and
22 money. It complains of Mr. Robinson's testimony in particular, describing it as
23 "clearly the most egregious breach of discovery duties that has yet occurred in this
24 case." *Supplemental Motion* at 8.

25
26 ² Peppermill notes that depositions had previously been scheduled for the end of August, but that
27 GSR had failed to appear for those depositions without notice. GSR argues that the parties had an
28 understanding that the depositions would not proceed if the Court had not yet ruled on GSR's *Motion*
for a *Protective Order*, which it had not. Regardless of the circumstances, the parties are encouraged
to communicate in advance of an approaching deadline, no matter how tenuous, so as not to waste
one another's time over a misunderstanding.

1 Mr. Robinson is GSR's Chief Financial Officer. *Supplemental Motion, Ex. 3,*
2 *Deposition of Craig Robinson* at 4. Peppermill sought to depose him on the issues of
3 (1) damages, (2) the "independent economic value" of the information obtained by
4 Ryan Tors, and (3) the allegations of Peppermill's intent to financially harm GSR.
5 At the time of his deposition, he had been working for GSR for approximately seven
6 weeks. *Id.* at 11. He acknowledged that he had not reviewed any documents or done
7 any internal investigation to prepare himself for his deposition, and that he was
8 instead relying entirely on his day-to-day familiarity with GSR's financial records in
9 answering the questions posed. *Id.* at 13-15; 40.

10 The text of Mr. Robinson's deposition reveals that, because of this, he was
11 unprepared to provide meaningful answers. Robinson admitted that he had no
12 specific knowledge as to damages or the independent value of appropriated
13 information until a week before the deposition. *Id.* at 26-27. He further conceded
14 that the lion's share of his specific knowledge had been obtained through
15 discussions with counsel, creating privilege issues and limiting his possible
16 testimony. *Id.* at 26-27, 67-68. Robinson had never read the *Complaint*. *Id.* at 49-
17 50. Robinson had never met with GSR's damages expert or reviewed that expert's
18 affidavit. *Id.* at 26-27, 92-93. He was therefore unfamiliar with the exact amounts
19 of damages claimed or how they were calculated. *Id.* at 26-27; 53; 64, 90-91. In
20 general, he was unable to identify anyone else who might have knowledge as to
21 damages. *Id.* at 35, 43. With respect to the appropriated information, Robinson
22 was unaware exactly what had been obtained. *Id.* at 86, 88. As to its value he was
23 able to opine only that confidential par settings acquired from competitors are
24 generally "invaluable." *Id.* at 68, 74-79. The information sought on these topics is
25 clearly within the scope of GSR's corporate knowledge, as it forms the basis for the
26 instant suit. It was clearly not within Mr. Robinson's knowledge, however, making
27 him ineffective as an NRCP 30(b)(6) witness. As the court in *Great American Ins.*
28 *Co.* indicated, the failure to produce a Rule 30(b)(6) designee who is adequately

1 educated and prepared to testify on designated topics amounts to a nonappearance
2 which could warrant the imposition of sanctions. *Great American Ins. Co. of New*
3 *York*, 251 F.R.D. at 542.

4 With respect to Mr. Burdick and Mr. Taylor, Peppermill notes that each was
5 unable to provide information related to several of the noticed topics. In contrast
6 with Mr. Robinson, however, the topics for which Mr. Burdick and Mr. Taylor had
7 no knowledge focus mainly on things that may plausibly be outside GSR's corporate
8 knowledge. Mr. Burdick and Mr. Taylor were unable to answer questions about the
9 use the Peppermill made of the information obtained by Mr. Tors, the specific and
10 precise accounting information and diagnostics obtained by Mr. Tors. Mr. Burdick
11 was unable to answer questions about whether Peppermill "will likely continue to
12 misappropriate trade secrets of the GSR." *Supplemental Motion* at 7. These topics
13 involve information which GSR was no doubt hoping to obtain through its own
14 discovery. The deponents' failure to have that information is therefore not
15 necessarily indicative of a failure to prepare. Without a copy of either deposition,
16 the Court is unable to verify what steps they did, in fact, take in preparation to
17 testify. Without more, it is not clear that Mr. Burdick and Mr. Taylor were
18 ineffective as an NRCP 30(b)(6) witnesses.

19 **f. Sanctionable Conduct and Sanctions**

20 Two items of GSR's conduct are of particular concern: (1) its failure to
21 adequately prepare Craig Robinson to testify as an NRCP (30)(b)(6) witness; and (2)
22 its failure to produce documents related to its calculation of damages, in violation of
23 this Court's *Order*. As stated, NRCP 37(b)(2)(C), provides courts with discretion to
24 issue sanctions, including case-concluding sanctions, against a party for willful
25 failure to comply with a discovery rule or order, or where the adversary process has
26 been halted by actions of unresponsive party. *GNLV Corp. v. Service Control Corp.*,
27 111 Nev. 866, 900 P.2d 323 (1995). However, rules of fairness and of due process
28 require that the sanctions be fair and be tailored to the specific conduct at issue. *Id.*

1 None of the issues here are so severe or so related to the case's foundations
2 that case-terminating sanctions are warranted. This is not to say, that GSR's
3 misconduct has been harmless. The effects of its failure to prepare Mr. Robinson to
4 be deposed are easily measured: Peppermill was forced to incur the costs of
5 preparing to depose and deposing a witness who had admittedly done no
6 preparation to speak on corporate knowledge of the topics identified. Peppermill
7 was then forced to file its *Supplemental Motion for Sanctions* raising this issue.
8 GSR is hereby sanctioned and ordered to pay Peppermill's reasonable costs and fees
9 incurred in deposing Mr. Robinson and in filing its *Supplemental Motion*. It is
10 further compelled to provide and *adequately prepare*, in accordance with the
11 strictures of NRCP 30(b)(6), an alternate deponent for the topics identified for Mr.
12 Robinson.

13 The effects of GSR's failure to provide documents related to its computation
14 of damages are more difficult to quantify. Its action fits with what appears to be a
15 pattern of resistance throughout the discovery process in this case. The suit is now
16 over a year old. As time passes and as both sides experience changes in personnel,
17 it will only become more difficult for meaningful evidence to be uncovered. GSR
18 failed to identify its precise claim for damages until ordered to do so and the
19 resulting hardship is compounded by its failure to also produce the documentary
20 support for its calculations. As a result of GSR's foot-dragging, Peppermill has been
21 forced to incur expenses seeking redress from this Court. GSR is hereby sanctioned
22 and ordered to pay Peppermill's reasonable costs and fees incurred in filing its
23 *Motion for Terminating Sanctions or, in the Alternative, Motion to Compel Discovery*
24 and in responding to objections thereto. As noted above, GSR is further compelled
25 to provide the documents at issue by December 15, 2014, or risk the imposition of
26 meaningful economic sanctions.

27 //

28 //

1 **CONCLUSION**

2 Based on the foregoing, Defendant's *Motion for Terminating Sanctions or, in*
3 *the Alternative, Motion to Compel Discovery*, as well as its *Supplemental Motion for*
4 *Terminating Sanctions or, in the Alternative, for an Order to Show Cause Why*
5 *Plaintiff Not be Held in Contempt and Subjected to Severe Sanctions* are
6 **GRANTED** in part and **DENIED** in part in accordance with this *Order*.
7 Defendant's *Motion for Order Compelling GSR to Show Cause why it not be Held in*
8 *Contempt* is **DENIED**. Plaintiff is hereby compelled to provide discovery as
9 described herein.

10 Further, Plaintiff is hereby sanctioned and ordered to pay to Defendant
11 Peppermill the reasonable costs and attorney's fees incurred in filing its *Motion for*
12 *Terminating Sanctions* and its *Supplemental Motion for Terminating Sanctions*, as
13 well as the responses thereto, as well as the reasonable costs and attorney's fees
14 incurred in preparing to depose and deposing Craig Robinson on November 4, 2014.
15 Defendant is ordered to submit memoranda of the above costs within ten (10) days.
16 Plaintiff will have ten (10) days to serve and file written responses thereto.
17 Defendant may then serve and file a reply within five (5) days.

18 **IT IS HEREBY ORDERED.**

19 **DATED** this 26 day of November, 2014.

20
21 
22 **PATRICK FLANAGAN**
23 District Judge
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
3 Judicial District Court of the State of Nevada, County of Washoe; that on this
4 24 day of November, 2014, I electronically filed the following with the Clerk of
5 the Court by using the ECF system which will send a notice of electronic filing to
6 the following:

7 Alisa Nave-Worth, Esq., for Peppermill Casinos, Inc.;

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

9 John Funk, Esq., for Ryan Tors;

10 Michael Soms, Esq., for Nevada Gaming Commission, State Gaming Control
11 Board;

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

15 
16 Judicial Assistant
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FILED
Electronically
2015-01-02 01:29:29 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4757630 : ylloyd

Exhibit "3"

Exhibit "3"

COHEN | JOHNSON
ATTORNEYS & COUNSELORS AT LAW

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

H. Stan Johnson, Esq.
sjohnson@cohenjohnson.com
cohenjohnsonlaw.com

**Sent Via U.S. Mail and e-mail krobison@rbsllaw.com and
mgunderson@gundersonlaw.com**

December 10, 2014

Robison, Belaustegui, Sharp, and Low
C/o Kent Robison, Esq.
71 Washington Street
Reno, Nevada 89503

Gunderson Law Firm
c/o Mark H. Gunderson, Esq.
3895 Warren Way
Reno Nevada 89509

**Re: Working file Of D. Schwartz and Freidman SDT
MEI-GSR Holdings, LLC vs. Peppermill
Case No.: CV-13-01704
Our File No.: 130133**

Dear Kent:

Apparently you have misunderstood the court's order, it did not require us to provide you with Dr. Schwartz' working file, including fees, but only documents in support of our claim for damages, which have been provided.

Apparently you also forgot that you withdrew the subpoena duces tecum you served. If you recall, I informed you that we were filing a motion to quash the subpoena for failure to comply with the applicable rules of civil procedure. You requested that we not file the motion and voluntarily withdrew the subpoena. If you like, I will be happy to provide you with a copy of the emails involved.

Very Truly Yours,

Terry Kinnally

Terry Kinnally, Esq.

cc. Mark Wray

RA 01447

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2015-01-02 01:29:29 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4757630 : ylloyd

Exhibit "4"

Exhibit "4"

1 understanding.

2 A. Okay.

3 Q. I promised you I would give you a break any time
4 you asked for it but not while a question is pending.

5 A. Sure. I understand that.

6 Q. Do you need a break?

7 A. I think I would like one.

8 Q. Okay.

9 (Break was taken.)

10 Q. (By Mr. Robison) Mr. Schwartz, we're back on the
11 record. And do you have documents that in any way
12 support the assertions you made in your affidavit?

13 A. I do have the survey of the literature I did, so
14 I have a number of articles.

15 Q. Okay. Survey of literature?

16 A. Yes.

17 Q. Do you have calculations?

18 A. I do have a couple of calculations that I did
19 based on that, which are reflected in this.

20 Q. Paragraph 7.

21 A. Reflected in paragraph 7.

22 Q. Sure. What else do you have? What documents do
23 you have that in any way supports or is the basis for
24 your computations?

25 A. Right now those are it.

Jayne Ferretto

From: eflex@washoecourts.us
Sent: Friday, January 02, 2015 1:34 PM
To: Kent Robison
Cc: Jayne Ferretto
Subject: NEF: MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7): Opposition to: 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: 01-02-2015:13:29:29
Clerk Accepted: 01-02-2015:13:33:04
Court: Second Judicial District Court - State of Nevada
Civil
Case Title: MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7)
Document(s) Submitted: Opposition to
- **Continuation
- **Continuation
- **Continuation
- **Continuation
Filed By: H. Stan Johnson

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.
MARK DOUGLAS WRAY, ESQ. for MEI-GSR HOLDINGS, LLC
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**

3790
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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

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).

**PEPPERMILL CASINOS, INC.'S REPLY TO PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MEMORANDUM OF FEES AND COSTS**

Peppermill Casinos, Inc. ("Peppermill") submits the following as and for its reply to the
Plaintiff's Opposition to Defendant's Memorandum of Fees and Costs.

I.

OVERVIEW

The Plaintiff ("GSR") admits that an award of at least \$13,430 should be made in favor of
the Peppermill because of GSR's blatant refusal to participate in good faith in discovery
procedures. However, that is not an appropriate amount to reimburse Peppermill for the costs and
fees Peppermill has incurred as a result of GSR's refusals to participate in discovery.

1 On November 26, 2014, this Court entered its Order in which it addressed GSR's refusal to
2 participate in discovery. Although the Court ruled that none of GSR's violations were so severe as
3 to justify case-terminating sanctions, the Court did acknowledge that GSR's conduct has not been
4 harmless. The Court recognized that GSR's failure to prepare Craig Robinson for his deposition
5 forced Peppermill to incur costs of "preparing to depose" a witness who had done no preparation
6 whatsoever concerning the topics he was identified to testify about. The Court also found that
7 GSR's misconduct forced Peppermill to file a *Motion for Terminating Sanctions or, in the*
8 *Alternative, Motion to Compel Discovery* and its *Supplemental Motion for Sanctions*. The Court
9 sanctioned GSR and ordered GSR to pay Peppermill's reasonable costs and fees incurred in
10 deposing Mr. Robinson and in filing these motions.

11 Mr. Robinson was named as a crucial witness. He was identified as GSR's person most
12 knowledgeable about crucial aspects of this case. Mr. Robinson was identified as a person most
13 knowledgeable about "financial loss and/or damages" incurred by GSR. GSR and this Honorable
14 Court know how difficult it has been for GSR to identify any financial loss or damage caused by
15 the activities described in GSR's Complaint. Mr. Robinson was also described as GSR's most
16 knowledgeable witness about the "financial hardship and/or damages caused to the GSR" by the
17 activities described in GSR's Complaint that were separate and distinct from Defendant Tors'
18 conduct. Mr. Robinson was also identified as GSR's most knowledgeable witness concerning the
19 "independent economic value" of the information obtained by Defendant Tors. Finally, Mr.
20 Robinson was identified as the witness most knowledgeable concerning its allegation that the
21 Peppermill "intended" to financially harm the GSR.

22 The importance of Mr. Robinson's anticipated testimony cannot be understated. He was
23 identified as the witness most knowledgeable about GSR's damages. He was identified as the
24 person most knowledgeable about damages after the Peppermill had exhausted tremendous
25 resources, costs and fees in trying to determine whether GSR had any damages whatsoever. GSR
26 knew that the Peppermill's focus on the damage issue was one of extreme importance and the
27 Peppermill has made it clear time and time again that there is no evidence that GSR has sustained
28 any damages whatsoever. Even though GSR knew of the Peppermill's adamance on this issue,

1 GSR agreed to produce Mr. Robinson as the witness most knowledgeable about damages.
2 Needless to say, the Peppermill took Mr. Robinson's deposition as a serious development in the
3 case and prepared accordingly.

4 The primary argument in GSR's *Opposition to Peppermill's Memorandum of Fees and*
5 *Costs* pertains to time expended associated with Peppermill's *Supplemental Motion* and time
6 expended to *prepare* for Mr. Robinson's deposition. Both must be put in context.

7 **II.**

8 **PEPPERMILL'S SUPPLEMENTAL MOTION**

9 On August 25, 2014, Peppermill filed its *Motion for Terminating Sanctions or, in the*
10 *Alternative, Motion to Compel Discovery*. The motion involved several issues. It complained
11 about GSR's failure to comply with mandatory pretrial discovery requirements mandated by
12 NRCP 16.1. It complained about GSR's failure to provide discoverable documents required by
13 NRCP 16.1(a)(1)(B). It complained that GSR had ignored and failed to respond to interrogatories.
14 This motion further addressed GSR's refusal to produce documents pursuant to Peppermill's
15 Request for Production of Documents. Also, this motion addressed GSR's failure and refusal to
16 appear for properly noticed NRCP 30(b)(6) depositions. In the Court's Order, GSR was
17 sanctioned and ordered to pay Peppermill's reasonable costs and fees incurred in filing its *Motion*
18 *for Terminating Sanctions or, in the Alternative, Motion to Compel Discovery*.

19 On their face, the motions were clear. Peppermill was asking for terminating sanctions
20 because of GSR's repeated failure and refusal to provide discovery. Complications arose because
21 of GSR's bizarre responses. Rather than filing an opposition, GSR took a novel approach to
22 motion practice. It filed a *Motion to Strike and Dismiss Peppermill's Motion for Terminating*
23 *Sanctions*. This motion to dismiss motion exacerbated the problem. Peppermill was now
24 confronted with having to file an opposition to a motion to strike and an opposition to a motion to
25 dismiss motion rather than simply file a reply to what should have been an opposition to the
26 Peppermill's motion.

27 As a result, Peppermill submitted its *Motion for Terminating Sanctions* on September 26,
28 2014. Peppermill also filed an *Opposition to GSR's Motion to Strike and Dismiss Motion*. GSR,

1 again, responded with a procedurally inappropriate filing. It filed an "*Objection to Request for*
2 *Submission and Request That GSR's Opposition be Submitted Prior to Hearing or Ruling*".
3 Clearly, GSR's counsel is not familiar with the Second Judicial District Court Rules. GSR seems
4 to predicate all of its filings on some unscheduled "hearing". While that may be the practice in the
5 Eighth Judicial District, it is not the practice in the Second Judicial District and GSR's counsel
6 should know better. The Peppermill was then required to file a *Second Request for Submission of*
7 *Motion for Terminating Sanctions*. Then, on October 15, 2014, Peppermill was required to file a
8 *Response to GSR's Objection to Request for Submission and Request That GSR's Opposition be*
9 *Submitted Prior to Hearing or Ruling*.

10 If it were not for the bizarre machinations pursued by GSR, the requested fees and costs
11 would not be as substantial.

12 Even more egregious was GSR's complete failure to communicate. GSR refused to engage
13 in meaningful meet and confer procedures. If GSR had been willing to discuss these discovery
14 issues with requisite civility and professionalism, the fees would not have been incurred. Further,
15 had GSR had the decency to inform Peppermill's counsel that Mr. Robinson had no knowledge
16 about the topics he was presented to be most knowledgeable about, the costs and fees to the
17 Peppermill could have been avoided. Instead, GSR forced Peppermill to be involved in bizarre
18 motion practice and confront a witness allegedly most knowledgeable about the vital issues in this
19 case who had no knowledge. Not even a telephone call was made by GSR'S counsel to alert
20 Peppermill to the fact that it should not spend hours preparing for a deposition that was a
21 meaningless exercise and completely futile with respect to the damage issues that underscore this
22 entire case.

23 In an effort to conceal the now obvious fact that GSR has no damages and has not
24 sustained financial harm, GSR forced Peppermill to prepare for and confront witnesses with no
25 knowledge and pursue motions that could have easily been avoided had GSR been candid and
26 truthful.

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III.

DISPUTED FEES AND COSTS

A. August 25, 2014 Time For Deposition Preparation.

This Court has sanctioned GSR and ordered it to pay Peppermill's reasonable costs and fees incurred in filing its *Motion for Terminating Sanctions or, in the Alternative, Motion to Compel Discovery*. Part of that motion addressed GSR's failure to produce witnesses that were properly noticed pursuant to NRCP 30(b)(6). Those depositions were scheduled to occur on August 25, 2014. Time and effort were expended to prepare for those depositions. Without word, communication or warning, GSR did not produce those witnesses. GSR did not even appear.

While preparing for those depositions is not specifically or expressly addressed by the Court's November 26, 2014 Order, the aborted deposition process is addressed in Peppermill's *Motion for Terminating Sanctions or, in the Alternative, Motion to Compel Discovery*. GSR's response is that the dates set for the NRCP 30(b)(6) depositions were "tentative". That is simply not true. All agreed that the depositions would proceed the week of August 25, 2014. There was no protective order issued and the depositions should have proceeded as scheduled. GSR did not notify the Peppermill that witnesses were not going to appear at the scheduled depositions. Accordingly, time was spent not only preparing for those depositions but participating in the certification process that GSR failed to produce witnesses, failed to contact counsel that they would not produce witnesses and failed to participate in good faith discovery. GSR wants its silence about its intent to not appear to be its ally. However, this Court should construe its silence as its enemy and allow the time expended by Peppermill counsel for preparing for the August 25, 2014 depositions to be recoverable.

B. James Stewart's Time For September 22 and 23, 2014.

GSR complains that the request for compensation for Mr. Stewart's fees charged to the Peppermill for September 22 and September 23, 2014, should not be permitted. The total time claimed is 5.0 hours for these two dates. Peppermill concedes that this time should not be charged for purposes of awarding sanctions against GSR. The amount claimed, therefore, should be reduced by \$550.

1 C. Keegan Low's Time For September 26, 2014.

2 GSR objects to the time expended by Keegan Low on September 26, 2014, for his review
3 of the Discovery Commissioner's Recommendation. This time was charged to the Peppermill for
4 Mr. Low's activities on September 26, 2014. This time should not be deducted. Mr. Low's
5 involvement in assisting with the strategy and process to be followed concerning the Master's
6 Recommendation that GSR comply with discovery demands ultimately led to the *Motion for*
7 *Terminating Sanctions or, in the Alternative, Motion to Compel Discovery.*

8 D. October 5, 2014 Time Should Be October 15, 2014 Time.

9 The Peppermill's Memorandum of Costs and Attorneys' Fees and supporting Affidavit
10 indicates that 6.2 hours of work was charged to the Peppermill because the Peppermill was
11 required to respond to GSR's *Objection to Peppermill's Request for Submission of Peppermill's*
12 *Motion for Terminating Sanctions.* That work was clearly contemplated as work and charges for
13 which GSR should be responsible in the Court's Order awarding sanctions against GSR. In its
14 November 26, 2014 Order, this Court specifically ruled that GSR be sanctioned and ordered to pay
15 Peppermill's reasonable costs and fees incurred in filing its *Motion for Terminating Sanctions or,*
16 *in the Alternative, Motion to Compel Discovery,* in addition to fees and costs incurred "in
17 responding to objections thereto." (See Order, p. 9, lns. 22-24.)

18 The request mistakenly identifies that time as having been expended on October 5, 2014.
19 Review of the attachments to the Peppermill's Memorandum, however, reflects that time was
20 actually charged on October 15, 2014. Indeed, Peppermill's Memorandum of Costs and Fees
21 correctly states on page 3 in subsection C that that time was actually charged for October 15, 2014,
22 and should be awarded accordingly.

23 E. Time Charged By Scott Hernandez.

24 Scott Hernandez is an attorney employed by Robison, Belaustegui, Sharp and Low and has
25 been assigned to work on this case. Mr. Hernandez charged 12.6 hours from October 17, 2014,
26 through and including October 24, 2014. This time was charged for work on responding to GSR's
27 Objection to the Discovery Commissioner's Recommendation for Order. The Court's November
28 26, 2014 Order did not specifically address the work done to respond to GSR's Objection to the

1 Discovery Commissioner's Recommendation. However, GSR's Objection to the Discovery
2 Commissioner's Recommendation was filed in this matter on October 10, 2014. Mr. Hernandez
3 briefed Peppermill's Opposition to GSR's Objection. On November 13, 2014, the Court adopted
4 the Discovery Commissioner's Recommendation, ordering GSR to designate and produce one or
5 more representatives to testify on behalf of GSR pursuant to NRCP 30(b)(6). Peppermill should
6 be compensated by GSR for Mr. Hernandez's work. It was GSR's refusal, in part, to produce
7 witnesses and GSR's improper Objection to the Discovery Commissioner's Recommendation that
8 resulted in the Peppermill having to file its *Motion for Terminating Sanctions and Supplemental*
9 *Motion for Terminating Sanctions*. Accordingly, the Peppermill should be reimbursed for the time
10 Mr. Hernandez spent on trying to obtain judicial relief for GSR's failure to abide by the
11 Commissioner's appropriate Recommendation.

12 F. October 24, 2014 Time.

13 GSR objects to the time spent on October 24, 2014, for work relating to Peppermill's
14 *Supplemental Motion for Terminating Sanctions*. This work was clearly associated with the
15 Peppermill's need to file a *Supplemental Motion for Terminating Sanctions*. As the Court may
16 recall, it entered an Order which addressed the wrong Recommendation by the Discovery
17 Commissioner and that confusion had to be promptly clarified. This work was necessitated by
18 GSR's failure to participate in good faith with discovery. The Affidavit regarding the Motion for
19 an Order to Show Cause was intertwined with the work performed by Peppermill's counsel to
20 oppose GSR's Objection to the Discovery Commissioner's Recommendation. Accordingly, all 2.3
21 hours should be allowed, since it is GSR's blatant failure to participate in good faith in discovery
22 that required attorney time, fees and costs, which should not be borne by the Peppermill.

23 G. Time To Prepare For Craig Robinson Deposition.

24 As explained herein, the contemplated deposition of Craig Robinson was considered to be
25 a crucial part of this entire case. Since the filing of the Complaint, GSR has been completely
26 incapable of showing damages of any kind. It has not shown that the Peppermill was unjustly
27 enriched. It has never disclosed a reasonable royalty theory of damages. It continues to chastise
28 the Peppermill for inappropriate conduct, but ignores and defies demands that it show any

1 damages that in any way relate to the activities of Defendant Ryan Tors.

2 The NRCP 30(b)(6) process was implemented to find a witness that might have credible
3 knowledge about GSR's damages. The time invested in preparing for such a crucial witness
4 cannot be disputed. GSR seeks to punish the Peppermill for its arduous preparation to depose a
5 witness who was designated as being most knowledgeable about GSR's damages. Instead, GSR
6 claims that the five hours expended by James Stewart to prepare for the Robinson deposition and
7 the seven hours expended by the undersigned to prepare for one of the most crucial witnesses to
8 this case is inappropriate and overstated. That is untrue.

9 As a paralegal, Mr. Stewart is responsible for scrutinizing documents produced in
10 discovery to determine whether the documents can be used to impeach Mr. Robinson. Likewise,
11 extensive time and effort was necessary to review applicable authority concerning damage
12 theories. The time expended was necessary to develop strategies to counter the testimony of Mr.
13 Robinson should he have revealed information about damages, reasonable royalty theories, or
14 unjust enrichment theories. Indeed, the time spent to prepare for Mr. Robinson would have been
15 time well spent had Mr. Robinson had any knowledge whatsoever of damages. The time charged
16 was appropriate and reasonable, since it was time expended to prepare for one of the most
17 important witnesses involved in this case. It is not the Peppermill's fault that the most important
18 witness in the case had no knowledge about the most important issue in this case. This time
19 should be allowed.

20 H. Moran Deposition.

21 GSR attempts to use the time Peppermill's counsel expended to prepare for the Moran
22 deposition as evidence that the time spent to prepare for the Robinson deposition was
23 inappropriate. The most important witness in the case (that person most knowledgeable about
24 GSR's damages) is much different than the security officer who briefly detained Defendant Ryan
25 Tors. The detention of Mr. Tors is documented by GSR's Incident Report. The time to prepare
26 for the Moran deposition was nearly meaningless and irrelevant compared to the time that
27 Peppermill counsel had to expend to prepare for GSR's most important witness, Craig Robinson,
28 who is most knowledgeable about GSR's damages, whether those damages be in the form of a

1 reasonable royalty, unjust enrichment or financial harm by way of lost revenue.

2 IV.

3 CONCLUSION

4 Based on the foregoing, Peppermill should be awarded fees and costs in the sum of
5 \$26,015. All requested time should be awarded, except for the five hours of Mr. Stewart's time
6 for September 22 and September 23, 2014 (charged at \$110 per hour).

7 The work that GSR has required of Peppermill's counsel is substantial. GSR has required
8 Peppermill's counsel to use every motion available under the Nevada Rules of Civil Procedure to
9 get "evidence" about GSR's claims. It has defied Court Orders. It has defied Recommendations
10 issued by the Discovery Commissioner. It has failed to produce witnesses at depositions. It has
11 failed and refused to respond to Interrogatories and Requests for Production of Documents. All of
12 the additional work that Peppermill's counsel has been required to do has to be duplicated when
13 and if GSR ever produces the discovery that Peppermill has repeatedly requested. Accordingly,
14 Peppermill respectfully requests that this Honorable Court enter an award of sanctions against
15 GSR in the amount of \$29,015.

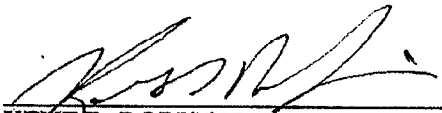
16 **AFFIRMATION**

Pursuant to NRS 239B.030

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

19 DATED this 6th day of January, 2015.

20
21 ROBISON, BELAUSTEGUI, SHARP & LOW
22 A Professional Corporation
23 71 Washington Street
24 Reno, Nevada 89503

25 
26 KENT R. ROBISON
27 KEEGAN G. LOW
28 THERESE M. SHANKS
Attorneys for Defendant
Peppermill Casinos, Inc., d/b/a Peppermill Casino

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI,
3 SHARP & LOW, and that on this date I caused to be served a true copy of the **PEPPERMILL**
4 **CASINOS, INC.'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S**
MEMORANDUM OF FEES AND COSTS 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 ☒ 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
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State Gaming Control Board
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Las Vegas, NV 89101-1068
20 Email: dcarusos@ag.nv.gov / msomps@ag.nv.gov
21 *Attorneys for Nevada Gaming Control Board*

22 — by electronic email addressed to the above.

23 — by personal delivery/hand delivery addressed to:

24 — by facsimile (fax) addressed to:

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

26 DATED: This 6th day of January, 2015.

27 
28 V. JAYNE FERRETTO

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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,

CASE NO.: CV13-01704

DEPT. NO.: B7

Plaintiff,

vs.

BUSINESS COURT DOCKET

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

Defendant(s).

REQUEST FOR SUBMISSION

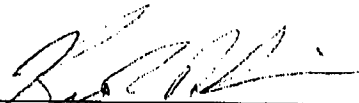
24 It is requested that Defendant Peppermill Casinos, Inc.'s Memorandum of Costs and
25 Attorneys' Fees in Response to Court's Order of November 26, 2014, which was filed on December 8,
26 2014, in the above-entitled matter, be submitted for decision. The undersigned attorney certifies that a
27 copy of this Request has been served on all counsel of record.

AFFIRMATION
Pursuant to NRS 239B.030

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

1 DATED this 6th day of January, 2015.

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

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10 Attorneys for Defendant
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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 **REQUEST FOR SUBMISSION** 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:

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

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V. JAYNE FERRETTO

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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 REPLY TO PLAINTIFF'S OPPOSITION
TO DEFENDANT'S MOTION FOR CONTEMPT**

The Plaintiff ("GSR") either suffers from inexcusable confusion or GSR has attempted to mislead the Court and the Defendants. The pertinent chronology is as follows:

1. On November 26, 2014, this Honorable Court entered its Order by which it sanctioned GSR for its failure to participate in good faith in the discovery process. *See Exhibit 1.* Among other things, this Court ordered GSR to produce all documents relevant to damages on or before December 15, 2014. *Exhibit 1*, p. 9, lns. 24-26.

2. On December 4, 2014, Peppermill's counsel reminded GSR that it was obligated to produce all documents "that in any way pertain or relate to damages on or before December 15,

1 2014.” Peppermill reminded GSR that this production would include the working file of GSR’s
2 damage expert David Schwartz, including payments made for his services, “**his work file, his**
3 **notes, and any research to which he referred, including the article he referred to authored**
4 **by Dr. Anthony Lucas.” See Exhibit 2, emphasis added.**

5 3. GSR responded on December 10, 2014. GSR accused Peppermill of
6 misunderstanding this Court’s Order. GSR refused to produce Dr. Schwartz’s working file. GSR
7 further noted that because the Peppermill had withdrawn a Subpoena Duces Tecum, GSR would
8 not be required to produce Dr. Schwartz’s working file concerning his damage calculations. *See*
9 **Exhibit 3.**

10 4. Because GSR took this unreasonable position, the Peppermill filed its Motion
11 asking this Court to find that GSR was in contempt for its refusal to produce Dr. Schwartz’s file
12 concerning his damage calculations and other research he performed. That Motion was filed on
13 December 17, 2014.

14 5. On January 2, 2015, GSR filed its Opposition to the Peppermill’s Motion asking
15 that GSR be held in contempt for its failure and refusal to produce and provide the damage
16 calculations and related documents performed by and possessed by GSR’s damage expert, David
17 Schwartz.

18 6. GSR falsely claims that on December 4, 2014, it provided the Defendants with its
19 Fifth Supplemental Disclosure Pursuant to NRCP 16.1. That Fifth Supplemental Disclosure was
20 not served on the Defendants. **Exhibit 4** is a letter authored by counsel for Defendant Ryan Tors
21 in which Mr. Funk confirms that GSR’s Fifth Supplemental Disclosure Pursuant to NRCP 16.1
22 was **NOT** served on the Defendant Tors.

23 7. Attached hereto as **Exhibit 5** is the Affidavit of Peppermill’s counsel attesting to
24 the fact that the Plaintiff’s Fifth Supplemental Disclosure Pursuant to NRCP 16.1 was not served
25 on the Peppermill.

26 8. Ironically, the Plaintiff’s Fifth Supplemental Disclosure claims that documents
27 were produced relative to the notes from David Schwartz, Ph.D. “re: Computation of Damages
28 GSR 103.” (*See* Opposition, Ex. 1, p. 6 of 8.) The computation notes of David Schwartz, Ph.D.,

1 have not and were not produced. See **Exhibit 6**. Counsel for the Peppermill has reviewed all of
2 the productions by GSR and GSR has failed and refused to produce document GSR 103, which is
3 allegedly the notes from David Schwartz, Ph.D. re: Computation of Damages. See **Exhibit 5** and
4 **Exhibit 6**.

5 9. It is shocking that on December 10, 2014, GSR claimed that it was not required to
6 provide Dr. Schwartz's working file when it now claims that six days prior to taking that position,
7 it did produce Dr. Schwartz's working file. This contradiction is highly suspicious.

8 10. First, GSR refuses to produce Dr. Schwartz's working file. See **Exhibit 3**. It's
9 refusal to produce Dr. Schwartz's working file, however, was dated December 10, 2014. Now,
10 however, GSR claims that it produced that which it refused to produce six days earlier in a Fifth
11 Supplemental Disclosure that none of the Defendants received until it was attached as Exhibit 1 to
12 GSR's Opposition to Defendant's Motion for Contempt.

13 11. Three problems with GSR's credibility are inescapable:

- 14 (1) GSR has not produced the notes from David Schwartz's file regarding his
15 computation of damages;
- 16 (2) The Fifth Supplemental Disclosure Pursuant to NRCP 16.1 (Exhibit 1 to
17 GSR's Opposition) appears to have been backdated; and
- 18 (3) GSR is claiming that it produced on December 4, 2014, documents to which
19 it objected producing on December 10, 2014.

20 At the risk of being redundant, GSR is playing fast and loose with the Rules of Civil
21 Procedure. It was ordered to produce all documents concerning its damages on or before
22 September 30, 2014. It refused to do so. The Court ordered that it do so on November 26, 2014.
23 The Court ordered that the documents be provided by December 15, 2014. Yet, on December 10,
24 2014, GSR simply refused to produce Dr. Schwartz's working file. Now that GSR is facing
25 additional contempt charges, a mysterious document appears as Exhibit 1 to GSR's Opposition
26 that has not been served on Defendant Tors or Defendant Peppermill.

27 This curious alignment of conflicting, contradictory and inconsistent representations made
28 by the Plaintiff warrants additional sanctions. Worse, one of the critical documents, GSR 103, has


1 still not been produced. Sanctions are indeed warranted and they should be substantial. This
2 Court's Order of November 26, 2014, has obviously failed to get GSR's attention. GSR continues
3 to either fabricate documents or involve itself in discovery with an obstinate and contemptuous
4 attitude toward both the Court and the Defendants.

5
6 **AFFIRMATION**
Pursuant to NRS 239B.030

7
8 The undersigned does hereby affirm that this document does not contain the social security
9 number of any person.

10 Respectfully submitted this 8th day of January, 2015.

11 ROBISON, BELAUSTEGUI, SHARP & LOW
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13 71 Washington Street
14 Reno, Nevada 89503

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16 KENT R. ROBISON
17 KEEGAN G. LOW
18 THERESE M. SHANKS
19 Attorneys for Defendant
20 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,
3 SHARP & LOW, and that on this date I caused to be served a true copy of the **PEPPERMILL**
4 **CASINOS, INC.'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION**
5 **FOR CONTEMPT** on all parties to this action by the method(s) indicated below:

6 — by placing an original or true copy thereof in a sealed envelope, with sufficient postage
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15 *Attorneys for Plaintiff*

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21 MARK GUNDERSON, ESQ.
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27 jfunk@gundersonlaw.com
28 *Attorneys for Defendant Ryan Tors*

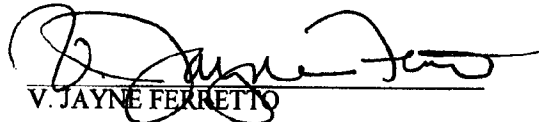
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DATED: This 8th day of January, 2015.

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24 V. JAYNE FERRETTO

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EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>	<u>Pages</u>
1	Order entered November 26, 2014	11
2	12/4/14 letter from Kent R. Robison to GSR Counsel	2
3	12/10/14 letter from Terry Kinnally to Kent Robison and Mark Gunderson	2
4	1/5/15 letter from John R. Funk to Stan Johnson and Terry Kinnally	1
5	Affidavit of Kent R. Robison	1
6	Affidavit of James Stewart	2

FILED
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2015-01-08 10:21:49 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 4764789 : mchoilco

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, dba GRAND
SIERRA RESORT,

Case No.: CV13-01704

Dept. No.: 7

Plaintiff,

vs.

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

Defendants.

ORDER

On August 25, 2014, Defendant PEPPERMILL CASINOS, INC., filed a *Motion for Terminating Sanctions or, in the Alternative, Motion to Compel Discovery*. Defendant RYAN TORS joined the *Motion* on August 28, 2014. On September 9, 2014, Plaintiff MEI-GSR HOLDINGS, LLC filed its *Motion to Strike and Dismiss Defendant Peppermill's Motion for Case Terminating Sanctions*, which will be treated here as an opposition. Peppermill filed an *Opposition to Plaintiff's Motion to Strike* on September 26, 2014, which will be treated here as a reply. The *Motion* of August 25, 2014, was submitted for decision on October 14, 2014. On October 27, 2014, Peppermill filed a *Motion for Order Compelling GSR to Show Cause why it not be Held in Contempt*, which has not been opposed. On November

1 12, 2014, Peppermill filed a *Supplemental Motion for Terminating Sanctions or, in*
2 *the Alternative, for an Order to Show Cause why Plaintiff not be Held in Contempt*
3 *and Subjected to Severe Sanctions*, renewing several of its arguments in earlier
4 filings, on November 12, 2014. The Court will now take up all issues Peppermill
5 has raised in its motions for "terminating sanctions" from August 25, 2014, and
6 November 12, 2014, as well as in its *Motion for Order Compelling GSR to Show*
7 *Cause* from October 27, 2014. It should be noted that GSR has not responded to the
8 *Motion to Show Cause* or to the *Supplemental Motion*.

9 First, the Court notes that several collateral disputes have already been
10 resolved which are relevant to Peppermill's claims here. On June 4, 2014,
11 Peppermill filed a *Motion to Dismiss Complaint* alleging that GSR was refusing to
12 provide a calculation of damages. On June 18, 2014, GSR filed an *Opposition to*
13 *Defendants' Motion to Dismiss Complaint and Counter-Motion to Compel*
14 *Disclosures under NRC 16.1* claiming that it was relieved from its obligation to
15 provide a calculation of damages because Peppermill had failed to confer about the
16 matter prior to filing the motion and that Peppermill must be compelled to provide
17 certain documents under NRC 16.1. The discovery issues were referred to the
18 Discovery Commissioner, who issued an unopposed *Recommendation for Order* on
19 September 19, 2014. This Court adopted those recommendations on October 1,
20 2014, ordering GSR to provide to the Defendants, no later than September 30, 2014,
21 an updated calculation of damages under NRC 16.1(a)(1)(C), and to identify and
22 make available for inspection any documents, electronically stored information, or
23 tangible things that it is relying upon in support of its damages claim.

24 A separate issue involving depositions has also been resolved. On June 4,
25 2014, Peppermill served GSR with a notice of NRC 30(b)(6) depositions, with an
26 amended deposition notice on June 11, 2014. GSR refused to provide deponents as
27 demanded in the notice and, on June 19, 2014, it filed a *Motion for Protective Order*
28 *on an Order Shortening Time and for Stay of Depositions Pending Hearing on the*

1 *Matter.* The issue was referred to the Commissioner who returned a
2 *Recommendation for Order* on October 2, 2014. GSR filed an *Objection* on October
3 10, 2014 and Peppermill filed an *Opposition* to the *Objection* on October 24, 2014.
4 On November 13, 2014, the Court adopted the Commissioner's recommendation,
5 ordering GSR to designate and produce one or more representatives to testify on its
6 behalf pursuant to NRCP 30(b)(6) regarding the topics identified in Peppermill's
7 amended notice.¹

8 **Legal Standard**

9 Peppermill asks that GSR's complaint be dismissed with prejudice. Under
10 NRCP 37(b)(2)(C), a district court has discretion to issue sanctions, including case-
11 concluding sanctions, against a party for willful failure to comply with a discovery
12 order, or where the adversary process has been halted by actions of unresponsive
13 party. *GNLV Corp. v. Service Control Corp.*, 111 Nev. 866, 900 P.2d 323 (1995).
14 Fundamental notions of fairness and due process require that discovery sanctions
15 be just and that sanctions relate to the specific conduct at issue. *Id.*

16 **Analysis**

17 The Court will address each of the alleged discovery violations and motions to
18 compel before taking up the issue of whether GSR's conduct, as a whole, is
19 sanctionable.

20 **a. Computation of damages and related documents**

21 Peppermill alleges that GSR failed to reasonably provide a mandatory
22 computation of damages and related documents as required by NRCP 16.1(a)(1)(C)
23 and by orders of this Court. NRCP 16.1(a)(1)(C) states that, without awaiting a
24 discovery request, a party must provide a computation of damages, making
25 available for inspection and copying the documents or other evidentiary matter, not
26 privileged or protected from disclosure, on which the computation is based.

27
28 ¹ The recommendation excepted "Topic 26," which was determined to be overbroad and therefore
subject to a protective order.

1 On September 19, 2014, the Commissioner issued a *Recommendation for*
2 *Order* finding that GSR's calculation of damages as included in its initial
3 disclosures was deficient and that GSR should be compelled to provide an updated
4 calculation of damages, along with related documents, by September 30, 2014.
5 Neither party opposed the *Recommendation*. It was adopted by the Court on
6 October 1, 2014. Peppermill acknowledges that GSR has provided the requested
7 computation of damages in the form of an affidavit, dated September 9, 2014, from
8 Dr. David Schwartz, GSR's damages expert. Peppermill contends, however, that
9 the affidavit is false and misleading (see discussion below) and that GSR has
10 refused to produce related documents. GSR has not responded to this argument.

11 Any failure by GSR to identify and make available documents related to its
12 damages calculation is a violation of this Court's adopted *Order* of October 1, 2014.
13 GSR is hereby compelled to comply with that directive by December 15, 2014, if it
14 has not already done so by the time of this *Order*.

15 **b. Requests for Production of Documents**

16 Peppermill alleges that GSR has willfully failed to comply with requests for
17 production of documents in contravention of Court orders. Peppermill specifically
18 identifies the above-referenced documents pertaining to damages calculations
19 (*Motion for Sanctions* at 5; *Supplemental Motion* at 3) as well as other documents
20 related to testimony given by GSR's named witnesses at deposition (*Motion for*
21 *Order to Show Cause* at 2). It appears that all documents requested pertain in some
22 way to calculation of damages, i.e. "slot strategies, marketing policies, and hold
23 percentages." *Id.*; see also *Recommendation for Order* of October 2, 2014. As
24 described above, GSR is compelled to disclose those documents.

25 **c. False and misleading testimony**

26 Peppermill alleges that the calculations of GSR's damages expert, David
27 Schwartz, are admitted by him to be inaccurate, and that GSR has a duty to correct
28 the record accordingly. The Court is not in receipt of Dr. Schwartz' deposition, and

1 therefore can make no determination as to his alleged admissions concerning his
2 affidavit. Moreover, any issue as to inconsistency in Dr. Schwartz' statements is an
3 issue of weight and credibility, not of compliance with the rules of discovery. GSR
4 has provided its expert's damages calculations as directed. The reliability of those
5 calculations is an issue for trial.

6 **d. Interrogatories**

7 Peppermill alleges that GSR has failed to provide meaningful answers to two
8 separate sets of interrogatories, served June 4, 2014 and September 30, 2014,
9 respectively. GSR argues that it did not file a response to the first set because it
10 was understood that its *Motion for a Protective Order*, filed June 19, 2014, was to
11 serve as a general objection to the interrogatories. The parties agree that GSR
12 responded to the second set on November 3, 2014, although Peppermill claims that
13 the responses are generally unsatisfactory.

14 The Court denied in part GSR's *Motion for a Protective Order* on October 1,
15 2014, thereby overruling GSR's general objection with respect to most if not all of
16 the first set of interrogatories. GSR is directed to respond forthwith to the first set
17 of interrogatories to the extent that the answers are not subject to the partial
18 protective order.

19 The Court has reviewed GSR's untimely responses to the second set of
20 interrogatories. While GSR objects to nearly every request, it properly states
21 reasons for the objections and otherwise answers to the extent the interrogatories
22 are not objectionable. See NRCP 33(b)(1). In response to the objections, Peppermill
23 moves to compel disclosure under NRCP 33(b)(5). It fails, however, to identify
24 which of GSR's objections it is challenging or to cite specific authority compelling
25 disclosure. Absent more, an order compelling discovery is not appropriate.

26 **e. Depositions**

27 On November 3 and 4, Peppermill deposed several of GSR's witnesses
28

1 pursuant to NRCP 30(b)(6).² Peppermill complains that, while GSR provided
2 witnesses for the topics identified, the witnesses generally lacked the knowledge
3 necessary to answer questions posed at deposition. Peppermill claims that,
4 pursuant to NRCP 30(b)(6), it is entitled to depose the "person most knowledgeable"
5 or "PMK" on each identified topic. Failure to provide such a witness or to
6 adequately prepare a witness for deposition, Peppermill contends, is "tantamount to
7 failure to appear" and is subject to immediate sanction. *Supplemental Motion* at 10
8 (citing *United States v. Taylor*, 166 F.R.D. 356, 363 (M.D.N.C. 1996); *Wilson v.*
9 *Lakner*, 228 F.R.D. 524, 530 (D. Md. 2005)).

10 The Discovery Commissioner addressed the issue of PMK depositions in his
11 *Recommendation for Order* of October 2, 2014 (*see pages 8-9*). Therein, the
12 Commissioner noted that an organization is not actually required to provide the
13 "person most knowledgeable" on a topic, only a witness adequately prepared to
14 speak on corporate knowledge of the subject. *Id.* (citing *Cummings v. General*
15 *Motors Corp.*, No. Civ. 00-1562-W, 2002 WL 32713320 (W.D. Okla. Jun. 18, 2002)).
16 The testimony of the Rule 30(b)(6) designee is deemed to be the testimony of the
17 corporation itself, not of the individual deponent. *Great American Insurance Co. of*
18 *New York v. Vegas Const. Co., Inc.*, 251 F.R.D. 534, 538 (D. Nev. 2008).

19 Peppermill takes issue with the testimony of three of GSR's witnesses: Ralph
20 Burdick, Toby Taylor, and Craig Robinson. They claim each was woefully
21 underprepared to be deposed on the topics designated, thereby wasting time and
22 money. It complains of Mr. Robinson's testimony in particular, describing it as
23 "clearly the most egregious breach of discovery duties that has yet occurred in this
24 case." *Supplemental Motion* at 8.

25
26 ² Peppermill notes that depositions had previously been scheduled for the end of August, but that
27 GSR had failed to appear for those depositions without notice. GSR argues that the parties had an
28 understanding that the depositions would not proceed if the Court had not yet ruled on GSR's *Motion*
for a *Protective Order*, which it had not. Regardless of the circumstances, the parties are encouraged
to communicate in advance of an approaching deadline, no matter how tenuous, so as not to waste
one another's time over a misunderstanding.

1 Mr. Robinson is GSR's Chief Financial Officer. *Supplemental Motion, Ex. 3,*
2 *Deposition of Craig Robinson* at 4. Peppermill sought to depose him on the issues of
3 (1) damages, (2) the "independent economic value" of the information obtained by
4 Ryan Tors, and (3) the allegations of Peppermill's intent to financially harm GSR.
5 At the time of his deposition, he had been working for GSR for approximately seven
6 weeks. *Id.* at 11. He acknowledged that he had not reviewed any documents or done
7 any internal investigation to prepare himself for his deposition, and that he was
8 instead relying entirely on his day-to-day familiarity with GSR's financial records in
9 answering the questions posed. *Id.* at 13-15; 40.

10 The text of Mr. Robinson's deposition reveals that, because of this, he was
11 unprepared to provide meaningful answers. Robinson admitted that he had no
12 specific knowledge as to damages or the independent value of appropriated
13 information until a week before the deposition. *Id.* at 26-27. He further conceded
14 that the lion's share of his specific knowledge had been obtained through
15 discussions with counsel, creating privilege issues and limiting his possible
16 testimony. *Id.* at 26-27, 67-68. Robinson had never read the *Complaint*. *Id.* at 49-
17 50. Robinson had never met with GSR's damages expert or reviewed that expert's
18 affidavit. *Id.* at 26-27, 92-93. He was therefore unfamiliar with the exact amounts
19 of damages claimed or how they were calculated. *Id.* at 26-27; 53; 64, 90-91. In
20 general, he was unable to identify anyone else who might have knowledge as to
21 damages. *Id.* at 35, 43. With respect to the appropriated information, Robinson
22 was unaware exactly what had been obtained. *Id.* at 86, 88. As to its value he was
23 able to opine only that confidential par settings acquired from competitors are
24 generally "invaluable." *Id.* at 68, 74-79. The information sought on these topics is
25 clearly within the scope of GSR's corporate knowledge, as it forms the basis for the
26 instant suit. It was clearly not within Mr. Robinson's knowledge, however, making
27 him ineffective as an NRCP 30(b)(6) witness. As the court in *Great American Ins.*
28 *Co.* indicated, the failure to produce a Rule 30(b)(6) designee who is adequately

1 educated and prepared to testify on designated topics amounts to a nonappearance
2 which could warrant the imposition of sanctions. *Great American Ins. Co. of New*
3 *York*, 251 F.R.D. at 542.

4 With respect to Mr. Burdick and Mr. Taylor, Peppermill notes that each was
5 unable to provide information related to several of the noticed topics. In contrast
6 with Mr. Robinson, however, the topics for which Mr. Burdick and Mr. Taylor had
7 no knowledge focus mainly on things that may plausibly be outside GSR's corporate
8 knowledge. Mr. Burdick and Mr. Taylor were unable to answer questions about the
9 use the Peppermill made of the information obtained by Mr. Tors, the specific and
10 precise accounting information and diagnostics obtained by Mr. Tors. Mr. Burdick
11 was unable to answer questions about whether Peppermill "will likely continue to
12 misappropriate trade secrets of the GSR." *Supplemental Motion* at 7. These topics
13 involve information which GSR was no doubt hoping to obtain through its own
14 discovery. The deponents' failure to have that information is therefore not
15 necessarily indicative of a failure to prepare. Without a copy of either deposition,
16 the Court is unable to verify what steps they did, in fact, take in preparation to
17 testify. Without more, it is not clear that Mr. Burdick and Mr. Taylor were
18 ineffective as an NRCP 30(b)(6) witnesses.

19 **f. Sanctionable Conduct and Sanctions**

20 Two items of GSR's conduct are of particular concern: (1) its failure to
21 adequately prepare Craig Robinson to testify as an NRCP (30)(b)(6) witness; and (2)
22 its failure to produce documents related to its calculation of damages, in violation of
23 this Court's *Order*. As stated, NRCP 37(b)(2)(C), provides courts with discretion to
24 issue sanctions, including case-concluding sanctions, against a party for willful
25 failure to comply with a discovery rule or order, or where the adversary process has
26 been halted by actions of unresponsive party. *GNLV Corp. v. Service Control Corp.*,
27 111 Nev. 866, 900 P.2d 323 (1995). However, rules of fairness and of due process
28 require that the sanctions be fair and be tailored to the specific conduct at issue. *Id.*

1 None of the issues here are so severe or so related to the case's foundations
2 that case-terminating sanctions are warranted. This is not to say, that GSR's
3 misconduct has been harmless. The effects of its failure to prepare Mr. Robinson to
4 be deposed are easily measured: Peppermill was forced to incur the costs of
5 preparing to depose and deposing a witness who had admittedly done no
6 preparation to speak on corporate knowledge of the topics identified. Peppermill
7 was then forced to file its *Supplemental Motion for Sanctions* raising this issue.
8 GSR is hereby sanctioned and ordered to pay Peppermill's reasonable costs and fees
9 incurred in deposing Mr. Robinson and in filing its *Supplemental Motion*. It is
10 further compelled to provide and *adequately prepare*, in accordance with the
11 strictures of NRCP 30(b)(6), an alternate deponent for the topics identified for Mr.
12 Robinson.

13 The effects of GSR's failure to provide documents related to its computation
14 of damages are more difficult to quantify. Its action fits with what appears to be a
15 pattern of resistance throughout the discovery process in this case. The suit is now
16 over a year old. As time passes and as both sides experience changes in personnel,
17 it will only become more difficult for meaningful evidence to be uncovered. GSR
18 failed to identify its precise claim for damages until ordered to do so and the
19 resulting hardship is compounded by its failure to also produce the documentary
20 support for its calculations. As a result of GSR's foot-dragging, Peppermill has been
21 forced to incur expenses seeking redress from this Court. GSR is hereby sanctioned
22 and ordered to pay Peppermill's reasonable costs and fees incurred in filing its
23 *Motion for Terminating Sanctions or, in the Alternative, Motion to Compel Discovery*
24 and in responding to objections thereto. As noted above, GSR is further compelled
25 to provide the documents at issue by December 15, 2014, or risk the imposition of
26 meaningful economic sanctions.

27 //

28 //

1 **CONCLUSION**

2 Based on the foregoing, Defendant's *Motion for Terminating Sanctions* or, in
3 the Alternative, *Motion to Compel Discovery*, as well as its *Supplemental Motion for*
4 *Terminating Sanctions* or, in the Alternative, for an Order to Show Cause Why
5 Plaintiff Not be Held in Contempt and Subjected to Severe Sanctions are
6 GRANTED in part and DENIED in part in accordance with this Order.
7 Defendant's *Motion for Order Compelling GSR to Show Cause why it not be Held in*
8 Contempt is DENIED. Plaintiff is hereby compelled to provide discovery as
9 described herein.

10 Further, Plaintiff is hereby sanctioned and ordered to pay to Defendant
11 Peppermill the reasonable costs and attorney's fees incurred in filing its *Motion for*
12 *Terminating Sanctions* and its *Supplemental Motion for Terminating Sanctions*, as
13 well as the responses thereto, as well as the reasonable costs and attorney's fees
14 incurred in preparing to depose and deposing Craig Robinson on November 4, 2014.
15 Defendant is ordered to submit memoranda of the above costs within ten (10) days.
16 Plaintiff will have ten (10) days to serve and file written responses thereto.
17 Defendant may then serve and file a reply within five (5) days.

18 IT IS HEREBY ORDERED.

19 DATED this 26 day of November, 2014.

20 
21 PATRICK FLANAGAN
22 District Judge
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Alisa Nave-Worth, 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

Kathryn A. Lewis
Judicial Assistant

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2015-01-08 10:21:49 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 4764789 : mcholico

EXHIBIT 2

EXHIBIT 2



ROBISON, BELAUSTEGUI, SHARP & LOW

December 4, 2014

ATTORNEYS:

Kent R. Robison
Thomas L. Belaustegui
E. DeArmond Sharp
Keegan C. Low
Betsy L. Brydson
Mark G. Simons
Michael E. Sullivan
Clyton B. Bruns
Stephan T. Sharp

Frank C. Gilmore
Michael A. Burke
Theresa M. Shanks
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Via Email: kjohnson@cohenjohnson.com
tkinnally@cohenjohnson.com
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H. Stan Johnson, Esq.
Steven B. Cohen, Esq.
Terry Kinnally, Esq.
Cohen-Johnson, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119

Via Email: mwray@markwray.law.com
Mark Wray, Esq.
608 Lander Street
Reno, NV 89509

Re: GSR v. Peppermill/Tors

Dear Counsel:

As you know, we have scheduled a series of NRCP 30(b)(6) depositions for December 18, 2014. The topics on which the GSR is required to produce knowledgeable witnesses about pertain to the playing activity of our expert, Stacy Friedman. To prevent the GSR from making unnecessary and inappropriate objections, I am providing herewith a properly executed and notarized Authorization for Release of Gaming Records executed by Mr. Friedman. Accordingly, there exists no ethical or procedural prohibitions preventing your NRCP 30(b)(6) witnesses from testifying completely and fully about the NRCP 30(b)(6) topics.

We still have not received responsive and complete answers to our First Set of Interrogatories. On November 26, 2014, Judge Flanagan ordered that you produce those answers "forthwith". Your delay is inexcusable. If we have not received full and complete answers to the First Set of Interrogatories on or before Wednesday, December 10, 2014, we will, once again, make a Motion for Order to Show Cause why GSR and its counsel not be sanctioned.

GSR is obligated to produce all documents responsive to our Request for Production of Documents and all documents that in any way pertain or relate to damages on or before December 15, 2014. This production must include the working file of David Schwartz, including all payments for his services, his work file, his notes, and any research to which he referred, including the article he referred to authored by Dr. Anthony Lucas.

Yours very truly,

KENT R. ROBISON

KRR:jf
Attachment
cc: Mark Gunderson, Esq. (w/attachment)

P 775.329.1151
F 775.329.7941
71 Washington Street
Reno, Nevada 89503
www.rbsllaw.com

J:\WPData\Krr\1872.006-Peppermill-GSR v.L-Johnson.Cohen.Kinnally.Wray.12-03-14.docx

RA 01484

AUTHORIZATION FOR RELEASE OF GAMING RECORDS

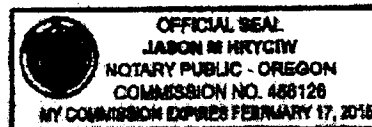
I, STACY FRIEDMAN, holder and owner of Grand Sierra Resort Player Card No. 200080747, do hereby permit, authorize and consent the Grand Sierra Resort to release my play records and information to Kent R. Robison, Esq., Robison, Belaustegui, Sharp & Low, 71 Washington Street, Reno, Nevada 89503, pursuant to and in accordance with the Notice of Taking Depositions of Plaintiff's Persons Most Knowledgeable Pursuant to NRCP 30(b)(6) dated November 24, 2014, filed in Case No. CV13-01704, in the Second Judicial District for the State of Nevada, in and for the County of Washoe.

Dated this 25th day of November, 2014.


STACY FRIEDMAN

Subscribed and Sworn to Before me
this 25th day of November, 2014, by
Stacy Friedman.


NOTARY PUBLIC



Jayne Ferretto

From: Jayne Ferretto
Sent: Thursday, December 04, 2014 5:53 PM
To: 'sjohnson@cohenjohnson.com'; tkinnally@cohenjohnson.com;
scohen@cohenjohnson.com
Cc: 'Mark Gunderson'; Kent Robison; Scott Hernandez
Subject: GSR v. Peppermill / Tors
Attachments: L-Robison to Counsel.12-04-14.pdf

Dear Counsel:

Attached hereto is Mr. Robison's letter to counsel of this date.

Thank you.

Jayne Ferretto
Assistant to Kent Robison

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2015-01-08 10:21:49 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 4764789 : mcholino

EXHIBIT 3

EXHIBIT 3

COHEN | JOHNSON
ATTORNEYS & COUNSELORS AT LAW

255 E. Warm Springs Rd., Suite 100
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702-823-3500 tel
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I. Stan Johnson, Esq.
sjohnson@cohenjohnson.com
cohenjohnsonlaw.com

**Sent Via U.S. Mail and e-mail krobison@rbsllaw.com and
mgunderson@gundersonlaw.com**

December 10, 2014

Robison, Belaustegui, Sharp, and Low
C/o Kent Robison, Esq.
71 Washington Street
Reno, Nevada 89503

Gunderson Law Firm
c/o Mark H. Gunderson, Esq.
3895 Warren Way
Reno Nevada 89509

**Re: Working file Of D. Schwartz and Freidman SDT
MEI-GSR Holdings, LLC vs. Peppermill
Case No.: CV-13-01704
Our File No.: 130133**

Dear Kent:

Apparently you have misunderstood the court's order, it did not require us to provide you with Dr. Schwartz' working file, including fees, but only documents in support of our claim for damages, which have been provided.

Apparently you also forgot that you withdrew the subpoena duces tecum you served. If you recall, I informed you that we were filing a motion to quash the subpoena for failure to comply with the applicable rules of civil procedure. You requested that we not file the motion and voluntarily withdrew the subpoena. If you like, I will be happy to provide you with a copy of the emails involved.

Very Truly Yours,

Terry Kinnally

Terry Kinnally, Esq.

cc. Mark Wray

RA 01488

Kent Robison

From: Terry Kinnally <tkinnally@cohenjohnson.com>
Sent: Wednesday, December 10, 2014 1:02 PM
To: Kent Robison; mgunderson@gundersonlaw.com
Subject: GSR v. Peppermill
Attachments: Ltr to Robison sdt.doc

Attached please find my letter this date regarding your letter of December 4, 2014.

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Jacqueline Bryant
Clerk of the Court
Transaction # 4764789 : mchollco

EXHIBIT 4

EXHIBIT 4

Gunderson
Law Firm

From the Desk of:
John R. Funk, Esq.
jrfunk@gundersonlaw.com

January 5, 2015

*Via Electronic Mail –sjohnson@cohenjohnson.com;
tkinnally@cohenjohnson.com
and U.S. Mail:*

H. Stan Johnson, Esq.
Terry Kinnally, Esq.
Cohen-Johnson, LLC
255 East Warm Springs Road, Suite 100
Las Vegas, NV 89119

Re: MEI-GSR Holdings, et al v. Peppermill Casinos, et al.
Our client: Ryan Tors
Case no: CV13-01704

Dear Mr. Johnson:

In reviewing the *Plaintiff's Opposition to Defendant's Motion for Contempt* filed on January 2, 2015, we noted that you attached as Exhibit "1" the Plaintiff's Fifth Supplemental Disclosure Pursuant to NRCP 16.1. The certificate of service for the Fifth Supplemental Disclosure inaccurately indicates that it was mailed to our office on December 4, 2014.

After a thorough review of our paper file, electronic file, and all appropriate logs, we have determined that we never received and were never served with the Plaintiff's Fifth Supplemental Disclosures. Please tender a copy of your client's Fifth Supplemental Disclosure to our office immediately with an accurate and updated certificate of service.

Should you have any questions, do not hesitate to contact us.

Very truly yours,

GUNDERSON LAW FIRM

John R. Funk, Esq.

JRF/cs

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2015-01-08 10:21:49 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 4764789 : mcholicc

EXHIBIT 5

EXHIBIT 5

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Clerk of the Court
Transaction # 4764789 : mcholino

EXHIBIT 6

EXHIBIT 6

1 **AFFIDAVIT OF JAMES STEWART IN SUPPORT OF DEFENDANT PEPPERMILL**
2 **CASINOS, INC.'S MOTION FOR ORDER REQUIRING GSR TO SHOW**
3 **CAUSE WHY IT NOT BE HELD IN CONTEMPT. SANCTIONED**
 AND ORDERED TO PRODUCE DOCUMENTS

4 STATE OF NEVADA)
5 COUNTY OF WASHOE) ss.

6 James Stewart, being first duly sworn on oath, deposes and says under penalty of perjury
7 that the following assertions are true and correct.

- 8 1. I am a paralegal employed by Robison, Belaustegui, Sharp & Low.
9 2. I have assisted Kent Robison in working on various discovery matters in this case.
10 3. One of my job functions involves the control and monitoring of document
11 productions from all parties.
12 4. I have reviewed and assembled all documents produced by GSR in my normal job
13 functions.
14 5. On November 10, 2014, we received the Plaintiff's Fourth Supplemental
15 Disclosure Pursuant to NRCP 16.1. The disclosure is dated November 6, 2014.
16 6. Plaintiff's Fourth Supplemental Disclosure Pursuant to NRCP 16.1 contained
17 documents bate stamped GSR00100-GSR00102.
18 7. On January 2, 2015, we received the Plaintiff's Response to Defendant Peppermill
19 Casino, Inc. d/b/a Peppermill Casino's Request for Production of Documents to Plaintiff.
20 8. The GSR Response to Defendant Peppermill Casino, Inc. d/b/a Peppermill Casino's
21 Request for Production of Documents to Plaintiff contained four disks of documents.
22 9. These disks of documents contained documents with a bate stamp range of
23 GSR0104-GSR16246.

24 ///

25 ///

26 ///

27 ///

28 ///

10. Neither of the aforementioned document productions contained a document bated stamped GSR 103.

DATED: This 8th day of January, 2015.

James Stewart
JAMES STEWART

Subscribed and Sworn to Before
me this 8th day of January, 2015,
by James Stewart.

Notary Public



Jayne Ferretto

From: eflex@washoecourts.us
Sent: Thursday, January 08, 2015 11:24 AM
To: Kent Robison
Cc: Jayne Ferretto
Subject: NEF: MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7): Reply to/in Opposition: 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: 01-08-2015:10:21:49
Clerk Accepted: 01-08-2015:11:22:48
Court: Second Judicial District Court - State of Nevada
Civil
Case Title: MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7)
Document(s) Submitted: Reply to/in Opposition
- **Continuation
- **Continuation
- **Continuation
- **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.
MARK DOUGLAS WRAY, ESQ. for MEI-GSR HOLDINGS, LLC
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
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 **3860**
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,**

CASE NO.: CV13-01704

DEPT. NO.: B7

20 **Plaintiff,**

21 **vs.**

BUSINESS COURT DOCKET

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

26 **Defendant(s).**
27 _____/

28 **REQUEST FOR SUBMISSION**

It is requested that Defendant Peppermill Casinos, Inc.'s Motion for Order Requiring GSR to Show Why It Not Be Held In Contempt, Sanctioned and Ordered to Produce Documents, which was filed on December 17, 2014, in the above-entitled matter be submitted for decision. The undersigned attorney certifies that a copy of this Request has been served on all counsel of record.

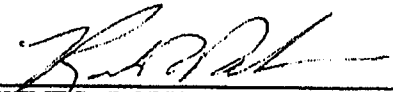
AFFIRMATION

Pursuant to NRS 239B.030

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

1 DATED this 8th day of January, 2015.

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
13
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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 6** 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.
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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
25
26
27
28

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

2
3
4 MEI-GSR HOLDINGS, LLC, a Nevada
5 limited liability company, d/b/a GRAND
6 SIERRA RESORT,

7 Appellant,

8 vs.

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

12 Respondent.
13 _____/

Electronically Filed
May 15 2017 03:17 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 70319

District Ct. Case No. CV13-01704

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

16 **APPENDIX VOLUME 6**

17 ROBISON, BELAUSTEGUI, SHARP & LOW

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RESPONDENT PEPPERMILL CASINOS, INC.'S ANSWERING BRIEF

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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
Trial Exhibit 54 – 11/07/14 & 11/17/14 List of games with par settings	01/11/16	14	RA 03286
Trial Exhibit 56 – Chart of GSR Earning Structure	01/11/16	14	RA 03287
Trial Exhibit 6 – 2341 Key on EBay	01/11/16	14	RA 03268 – 03280
Trial Exhibit 73 - Custodian of Records Statement	01/22/16	16	RA 03851 – 03852
Trial Exhibit 74 – CDC Invoices to GSR	01/15/16	15	RA 03637 – 03645

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

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

1 A. Nobody that I can think of.

2 Q. How long would it take the Peppermill to recoup
3 that \$3 million it spent to get that hold percentage?

4 A. I don't know exactly how much they make, but I
5 imagine it would take some time.

6 Q. It's right in the reports.

7 A. Well, I don't know how much the Peppermill's
8 revenues are broken out in the reports that I can see.

9 Q. Well, that's true, but let's --

10 A. You said they were 18 percent market share, so
11 if we say 18 percent of that.

12 Q. Well, let's assume that the average in the
13 report, which is \$1.63 per day per machine. That's what
14 the report said. Okay?

15 A. That seems a little bit low.

16 Q. 163?

17 A. One dollar --

18 Q. 163.

19 A. Oh, 100. Okay. That seems a little better.

20 Q. Then you'd multiple that by 365; right?

21 A. Right.

22 Q. And you get 59,840.

23 A. Okay.

24 Q. Per year that that one machine would make. And
25 if you divided that into the \$3,132,000, it's going to

1 take 52 years to recoup your investment. Do you
2 understand that?

3 A. I do.

4 Q. That's preposterous, isn't it?

5 A. It is.

6 Q. Okay. In fact, you didn't use 7.83, the par
7 reflected in the gaming reports, in this math, did you?

8 A. I didn't.

9 Q. Nor did you use a \$4 bet, did you?

10 A. I'd have to look at my calculations to see.

11 Q. Well, we can do it right here. You've got a
12 calculator.

13 A. Sure.

14 Q. \$4 a bet, 500 bets an hour for 20,000 hours,
15 that's \$40 million?

16 A. Yes.

17 Q. What do you do with that? You factor in the
18 hold, don't you?

19 A. Yes.

20 Q. What hold? You don't know, do you?

21 A. Right now I don't. I'd want to see my
22 calculations again.

23 Q. You use 6. It's easy to figure out. You divide
24 600,000 --

25 A. Sure.

1 Q. -- and you know what your hold is.

2 A. Yes.

3 Q. This is new for you, isn't it?

4 A. No.

5 Q. Well, what hold did you use to get 600,000; sir?

6 A. I can't remember off the top of my head.

7 Q. Well, you use 6. Go ahead, do 6.

8 A. All right. So I used 6. All right.

9 Q. What does that come out? It doesn't come out
10 600, does it?

11 A. No.

12 Q. That's because you didn't use \$4. You used \$1.
13 Why did you do that? This is a mathematical nightmare,
14 paragraph 7, isn't it?

15 A. It looks that way now.

16 Q. It's a mess; right?

17 A. I would like to have some more time to refine
18 this.

19 Q. You've had six months. Six months and you come
20 up with paragraph 7 which you admit is a mathematical
21 mess. Why is that?

22 MR. JOHNSON: Objection. Assumes facts not in
23 evidence. Vague and ambiguous.

24 Q. (By Mr. Robison) What fact is assumed that's
25 wrong, Mr. Schwartz? You've had this assignment since

1 February of 2014; correct?

2 A. Correct.

3 Q. This paragraph 7 doesn't work at \$4 a play, does
4 it?

5 A. It doesn't.

6 Q. And it doesn't work at \$4 a play with a 6 par or
7 6 hold, does it?

8 A. No.

9 Q. And this is a mathematical mess, isn't it,
10 paragraph 7?

11 A. It's not as accurate as I'd like it to be, and
12 I'd like to have a chance --

13 Q. Not as accurate? There's nothing accurate about
14 it, is there?

15 MR. JOHNSON: Objection. Harassment.

16 MR. ROBISON: Yeah, that's true. That's very
17 true. I'll back off.

18 Q. (By Mr. Robison) Why are there so many errors in
19 paragraph 7?

20 A. I couldn't tell you.

21 Q. You kind of failed your assignment, didn't you?

22 MR. JOHNSON: Objection. Harassment.

23 Q. (By Mr. Robison) Did you give GSR an accurate
24 analogy of what the cost is to obtain a par in paragraph
25 7?

1 A. I believe that I did at the time.

2 Q. And as you've now walked through the math you
3 admit that you did not; correct?

4 A. I would like to look at my calculations and see
5 if I made a mistake and if I did, where I made that
6 mistake.

7 Q. I'm here. You look at those numbers and you
8 tell me how they work.

9 A. That's -- I would like, I would like a chance to
10 look at my own calculations to see if I made a mistake
11 and where I did, and then I could give you a better
12 explanation.

13 Q. Why didn't you show up with your calculations?
14 You knew I was going to depose you on your affidavit.

15 A. I couldn't tell you the answer to that.

16 Q. As you sit here right now, can you give me any
17 explanation of why the math is so bad in paragraph 7 of
18 your affidavit?

19 A. No.

20 Q. You weren't trying to mislead the Court?

21 A. Oh, no.

22 Q. That was signed under penalty of perjury.

23 A. True.

24 Q. And it's inaccurate?

25 A. It is.

1 Q. You don't expect the jury to rely on that, do
2 you?

3 MR. JOHNSON: Objection. Speculation.

4 THE WITNESS: Yeah.

5 Q. (By Mr. Robison) Do you expect the judge to rely
6 on that?

7 MR. JOHNSON: Same objection.

8 Q. (By Mr. Robison) You know that was attached to a
9 document that was submitted to Judge Flanagan.

10 A. Yes.

11 Q. Do you expect Judge Flanagan now to rely on
12 that, that math?

13 A. I don't know.

14 Q. Well, is there any way you can look at it now
15 and resurrect it?

16 A. I would like to have the chance to be able to do
17 that to --

18 Q. Mr. Schwartz --

19 A. -- correct it.

20 Q. I'm sorry to interrupt you, and I apologize to
21 the court reporter.

22 You're the expert. Tell me how to do it. Because
23 that paragraph 7 doesn't tell me anything but it's a
24 bunch of mistakes. Tell me how to do it.

25 A. I would like to look at my original calculations

1 to see where the mistake is.

2 Q. I understand that, but you're an expert so walk
3 me through how you determine this cost.

4 A. What I did was figure the time of play times the
5 total number of spins and --

6 Q. Why did you use \$4?

7 A. Because I believed that these machines were
8 going to be the machines that took \$4 for the total coin
9 in.

10 Q. Well, the machines are different. Different
11 machines take different coin in.

12 A. This is why I wanted to know what are the exact
13 machines. This was just a --

14 Q. You didn't say --

15 A. -- hypothetical case.

16 Q. You didn't say that in your affidavit. You
17 said, Judge Flanagan, it's going to cost the Peppermill
18 \$780,000 per machine over a period of 2.24 years to
19 figure out what the hold setting is.

20 A. I said that I estimate. I didn't say that's
21 what it would cost. I say I estimate. And as we were
22 talking about before as you made such a --

23 Q. A stink about?

24 A. -- big show of, that it would be impossible.

25 Q. Well, I know you don't want to go back to

1 impossible, but you have to.

2 A. Well, I'm glad we can agree on at least one
3 thing here.

4 Q. We do know that math is impossible to implement,
5 don't we?

6 A. Yes.

7 Q. And we do know that your model is impossible to
8 implement.

9 A. Can you clarify what you mean by the model?

10 Q. Well, the model of playing the machine for 2.24
11 years at \$40 million. That's a model that's not only
12 impractical, it's impossible.

13 A. I believe it is.

14 Q. Why \$4?

15 A. Because that was, that would be the max. I was
16 just saying for these kinds of machines, penny machines,
17 that would be max coin in for a lot of them.

18 Q. But that's not true for all of them, is it?

19 A. Not all. That's why this is only an estimate.

20 Q. Why 20,000 hours?

21 A. 20,000 hours came from one of the articles that
22 I found in my literature review.

23 Q. Do you know which ones, sir?

24 A. Yes.

25 Q. Would you give me the name of that?

1 A. It was by Lucas and Singh, S-i-n-g-h.

2 Q. Anthony Lucas, Ph.D.?

3 A. Yes.

4 Q. One of our experts?

5 A. Yes.

6 Q. He's looked at this?

7 A. Okay.

8 Q. You didn't use his model at all, did you?

9 A. Well, I got -- from that article, I got that to
10 determine this for these to converge, you would need to
11 do 10 million, I believe it was 10 million spins.

12 Q. Of course it's 10 million spins, but you don't
13 have 10 million spins in your analysis.

14 A. Okay.

15 Q. Do you?

16 A. I thought I did.

17 Q. Where did you get 10 million from?

18 A. I thought that was the 200,000 times 500 is 10
19 million.

20 Q. Well, \$4; right?

21 A. Yeah.

22 Q. Times 500?

23 A. Yes.

24 Q. Is \$2,000.

25 A. Yes.

1 Q. Times 20,000 --

2 A. Yes.

3 Q. -- hours.

4 A. Hours.

5 Q. Is \$40 million.

6 A. Correct.

7 Q. And that's 10 million spins.

8 A. Correct.

9 Q. Well, you got that off a par sheet, didn't you?

10 A. No.

11 Q. Do you know what a par sheet is?

12 A. I do know what a par sheet is.

13 Q. Do you look at par sheets?

14 A. I've looked at them before.

15 Q. Can you read them?

16 A. I think I could.

17 Q. Have you ever written one?

18 A. Written one?

19 Q. Have you ever done the math for a par sheet?

20 A. No, I've never written one.

21 Q. Okay. All right. So now we got 10 million
22 spins.

23 A. Correct.

24 Q. Which according to the par sheets reduces the
25 variability down to a tolerable amount; correct?

1 A. Correct.

2 Q. What's the variation of 10 million spins?

3 A. I don't know the answer to that.

4 Q. Well, it's not exact. There is a variation.

5 A. There is.

6 Q. Which produces an element of unreliability.

7 A. Correct.

8 Q. So even at 10 million spins there's some element
9 of unreliability because of the variation; right?

10 A. Correct.

11 Q. So you're telling Judge Flanagan and anyone in
12 this affidavit that there is inherent unreliability in
13 these calculations at 10 million spins?

14 A. I did say this was an estimate.

15 Q. Okay. Well, I mean is this what the GSR is
16 going to ask the jury for in damages, sir? Do you know?

17 MR. JOHNSON: Objection. Calls for a legal
18 conclusion and speculation.

19 Q. (By Mr. Robison) Do you know whether or not
20 they're going to utilize your model to ask the jury in
21 this case that the Peppermill pay \$780,000 per machine
22 accessed by Mr. Tors?

23 A. I do not know.

24 Q. Is that your recommended model of unjust
25 enrichment?

1 A. I would like to have more time to get more
2 information to give a more refined estimate.

3 Q. Because if we use the actual pars according to
4 Exhibit 29, it's not 780, it's 3,123,000 plus 180,000 per
5 machine. Is that the damage model you seek to put in
6 this case?

7 A. I would like to have more time to refine my
8 model.

9 Q. Because you now know that paragraph 7 is
10 mathematically incorrect; correct?

11 MR. JOHNSON: Asked and answered.

12 Q. (By Mr. Robison) Correct?

13 A. Correct. Also, I would remind you that I did
14 want more information about exactly which machines were
15 used, how many times, which would also help me. So this
16 was a very preliminary model.

17 Q. This preliminary model was submitted to Judge
18 Flanagan for a very specific reason. It was to convince
19 Judge Flanagan to make a decision as to the Peppermill.
20 Are you aware of that?

21 A. I'm aware that I was asked for an affidavit.

22 Q. That you knew was going to be submitted to
23 court?

24 A. Correct.

25 Q. And therefore, a judge would probably look at it

1 and, perhaps, rely on it. You knew that?

2 A. Correct.

3 Q. And what precautions did you make to make sure
4 that this judge did not get false information?

5 A. I did check the math, but I must have --

6 Q. You used \$1 and you used 6 par. That's the only
7 way it works.

8 A. Okay.

9 Q. Correct me if I'm wrong.

10 A. Okay. That sounds accurate.

11 Q. One dollar, 500 spins an hour --

12 A. Yes.

13 Q. -- \$500 times 20,000 --

14 A. Yes.

15 Q. -- is?

16 A. 600,000?

17 Q. No. Not even close.

18 A. Ten million.

19 Q. There you go. And then you use the par. You
20 assume the par of 6.

21 A. Yes.

22 Q. Why 6?

23 A. Because there were a number of different
24 machines, I figured 6 was a conservative number. I
25 didn't want to have too high a number. I was shooting

1 for a conservative number.

2 Q. What relationship did 6 have to the average
3 floor par at the GSR in December of 2011?

4 A. I don't know.

5 Q. What relationship or correlation does 6
6 percentage, does 6 par have to the floor par average at
7 the GSR on June 14, 2012?

8 A. I don't know, but can I have a minute take a
9 look at this?

10 Q. Sure. I've got '11 and '12 if you'd like to see
11 them.

12 A. Oh, you can give them to me.

13 Q. Yeah, they've been earmarked. Exhibit 27 --
14 hold on, sir.

15 A. Sure.

16 Q. Exhibit 27 is the 2011 gaming revenue report for
17 December. And Exhibit 28 is the gaming revenue report
18 for June of 2012, and the most vital information you'll
19 find probably on pages 33 to 37.

20 A. Sure. If you look at the Reno, Washoe County
21 Reno area, pars range from -- the average par for the
22 area is 5.29.

23 Q. Which year?

24 A. This is for July 2013.

25 Q. Why are you using Reno, Sparks?

1 A. It looks like it's Washoe County, Reno area.

2 Q. Right. Why would you use that instead of the
3 Reno big six?

4 A. Because I don't have the Reno big six.

5 Q. It's in there.

6 A. There's a page here that says Reno big six?

7 Q. Well, do you know what I mean by the big six?
8 36 million and above?

9 A. Yeah. All right. I'll go to that page. So
10 that par for that month is 5.15.

11 Q. Why did you use 6?

12 A. 6 was just the best estimate I had for the state
13 as a whole.

14 Q. Well, Mr. Schwartz, you have access to these.

15 A. Yes.

16 Q. You can get on line, look at the gaming revenue
17 report for any month of any year to determine the par
18 that you should have used; correct?

19 A. Correct.

20 Q. But you didn't do that, did you?

21 A. No.

22 Q. You just made up 6?

23 A. 6 was an early estimate.

24 Q. And you have no idea how that actually relates
25 to GSR's pars?

1 A. No.

2 Q. It could be a point off. It could be two points
3 off.

4 A. It could be.

5 Q. In fact, you're using the same par for 2011 as
6 you are 2012; right?

7 A. Yes.

8 Q. But you just told me they changed the pars
9 frequently. How do you justify that?

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.

24 Q. Are you aware of -- do you believe it can be
25 done in five hours?

1 A. I don't believe it could be.

2 Q. If it could be then, if it can be done in five
3 hours, the math would be $1/4,000$ th of 600,000; correct?

4 A. 1 -- so if it's done in five hours instead of
5 20,000?

6 Q. Yes. So you take 1 over 4,000, times 600,000 to
7 establish the cost.

8 A. Yes.

9 Q. So if you assume it can be done in five hours,
10 you could then ascertain the cost of that for me?

11 A. Yes, if you assume it could be done in five
12 hours.

13 Q. And you would yield that if we proved to you
14 that it could be done?

15 A. If I found proof, and I did do a search of the
16 literature, so I would want to know if there's more stuff
17 in the literature, but if I could find proof that would
18 rebut what I found in my search of the literature, I'd
19 definitely want to take that into account.

20 Q. Has the literature addressed how to determine
21 pars by play with calculations of theo and points and
22 comp?

23 A. I couldn't find anything that specifically did.
24 I found nothing that said this is how you can reverse
25 engineer par.

1 Q. You're aware of Wizard of Odds?

2 A. Yes.

3 Q. He deconstructs and establishes par all the time
4 right on his videos, doesn't he?

5 A. I've not watched his videos.

6 Q. You haven't watched Shackleford's videos?

7 A. I haven't.

8 Q. Why? He's a pretty savvy individual in the
9 industry, isn't it?

10 A. Yeah, I think he is.

11 Q. A well respected authority.

12 A. I think he is.

13 Q. But in any event, all these numbers lack
14 accuracy according to your admission in the last
15 paragraph of your affidavit; correct?

16 A. Yes.

17 Q. So you did tell the judge that these numbers are
18 inaccurate?

19 MR. JOHNSON: Objection. Assumes facts not in
20 evidence.

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

25 "While GSR's methods of operation do not, in my

1 opinion, have a bearing on Peppermill's admitted
2 collection of misappropriated par information, I believe
3 that Peppermill's motives for collecting the information
4 and any operational changes that the Peppermill made or
5 did not make with the benefit of the par information are
6 crucial to accuracy."

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.

12 Q. Okay. Why did you give it to the judge?

13 A. Why what?

14 Q. Why then would it -- why did they ask you for
15 this information to give to the judge?

16 A. I couldn't answer that. You can ask Mr. Johnson
17 for why. I don't know.

18 Q. Well, you can explain it to the judge. This
19 really should be stricken from the record, shouldn't it,
20 because it's so inaccurate?

21 MR. JOHNSON: Objection.

22 THE WITNESS: You're asking me for a legal
23 conclusion there.

24 Q. (By Mr. Robison) Well, this is your tattoo. You
25 have to wear it. Do you want this to be the position of

1 Dr. David Schwartz in court? Yes or no.

2 A. At the time, this accurately reflects what my
3 knowledge of it based on the information I had then, as I
4 said. As you brought to our attention in paragraph 10
5 there, I do want more information to be able to
6 definitively have an opinion and have a report, which
7 I haven't done yet.

8 Q. That wasn't my question. My question is: Is
9 this the testimony, sworn testimony under penalty of
10 perjury, that you want to stand behind in this case?

11 A. Again, I'll say that at the time I believed this
12 was accurate.

13 Q. Right now is this the testimony that you want to
14 stand behind in this case? Yes or no.

15 A. No.

16 Q. Thank you. Please excuse me if I've already
17 asked this, but do you know how the tier points relate to
18 the theo at the GSR?

19 A. No, I don't.

20 Q. Did I ask that before?

21 A. I don't remember if you did or didn't. It's
22 been a long morning for me. He knows.

23 MR. GUNDERSON: I do.

24 Q. (By Mr. Robison) So if you use that 7.83 par and
25 the cost under that assumption is \$3,132,000, and if you

1 assume that the evidence in this case shows that 15
2 machines were accessed, nine on December 29th, 2011, and
3 six on June 14th, 2012, that's 15. Then the proposition
4 is you take those 15 machines times the 3,132,000 for
5 damages; correct?

6 A. I wouldn't know the par settings in each of
7 those machines, but you're telling me that was the par
8 settings for each of those machines are --

9 Q. I think that's a very good point. You got to
10 ask your client that. What were the actual par settings
11 at those times on those machines?

12 A. What I would like to know is I'd like to know
13 the range of pars to be able to tell how long it would
14 take. If there's only two and they're very extreme, it
15 might take less time. But if they're spread out, it
16 would take more.

17 Q. You can see the range of the pars on the par
18 sheets. Why didn't you get the par sheets? GSR has
19 them.

20 A. I have not been given them yet.

21 Q. Well, ask for them; right? That's what experts
22 do.

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.

4 Q. Now, given the fact we've seen this one sheet
5 from Mr. Tors where we have two different pars on the
6 same number of machine 440 and 440, remember that?

7 A. Let me flip to it.

8 Q. I think it was 7.

9 A. Yeah, 7.

10 Q. And I think there's another pretty flagrant
11 mistake. That's on machine No. 21016.

12 A. Correct.

13 Q. It says that's a Buffalo?

14 A. Correct.

15 Q. And then he says it's a Cleopatra, right?

16 A. Correct.

17 Q. Can't be, right?

18 A. Correct.

19 Q. So you ask your client what the actual pars were
20 on this date on these machines, then you will know, one,
21 whether Ryan Tors got accurate information or whether he
22 made it up; right?

23 A. I suppose so.

24 Q. That's highly relevant to your opinion, isn't
25 it?

1 A. Before you brought it to my attention, I wasn't
2 aware that Ryan Tors had allegedly made up any of the
3 information.

4 Q. Did I hear you say you got his deposition?

5 A. I don't think I got his deposition.

6 Q. Oh, I'm sorry.

7 A. I got some kind of statement. I don't recall
8 reading his deposition.

9 Q. As an expert, then, what are you going to do
10 that Tors made some of these up?

11 A. I'd have to think about that.

12 Q. Really kind of makes it a little messier,
13 doesn't it?

14 A. I think it does.

15 Q. I mean you don't want to give the jury a damage
16 calculation on these cost figures of 3,123,000 if it's
17 false information, do you?

18 A. I'd like it to be as accurate as possible yes.

19 Q. How are you going to know which ones were keyed
20 and which ones he made up? Because he can't tell us.

21 A. He can't. That would be a problem.

22 Q. It's very problematic to damages, isn't it?

23 A. It could be.

24 Q. Renders it speculative, does it not?

25 A. I wouldn't go that far, but it does make it more

1 difficult.

2 Q. Well, what he said at his deposition, he can't
3 tell us which ones he did and which ones he made up.

4 Now, I don't know what to do with that, do you?

5 A. Right now I don't. But again, I'd like some
6 more time to look into that.

7 Q. If he's right, he's got an average par of 6.4,
8 which renders your 6 inapplicable, if true.

9 A. If the average par is 6.4?

10 Q. Yeah. But that's not the average par, is it?

11 A. I don't know what the average par is.

12 Q. I mean that's seven machines out of 303
13 machines. That's not reliable, is it?

14 A. I would want a bigger sample.

15 Q. Yeah, you'd want probably close to 40 percent to
16 be reliable according to the statistics of this kind of
17 analysis; correct?

18 A. Possibly, yes.

19 Q. So if you used 2 percent of the number of
20 machines on the floor, you're doing so at a high degree
21 of risks. Fair enough?

22 A. Sure.

23 Q. And you wouldn't recommend that anybody relied
24 on a sample of 3 percent, would you, as an expert?

25 A. It all depends on what they're using it for.

1 Are they just, do they want to know this is -- what are
2 they looking for. Are they looking for this is the
3 average par or payback for the GSR, or are they trying to
4 say how these individual machines relate to whatever our
5 strategies are. I'd want to know why they're doing it.

6 Q. Fair enough. But if you want to be competitive
7 in the industry, isn't the most relevant factor what the
8 community par is on average to be competitive in the
9 community?

10 A. I think it could be based on a number of
11 things. I think the overall par might be. But I think
12 also you've got things that appeal more to habitual
13 gamblers who you want them to be lower and better payback
14 for the players than the ones that appeal to less
15 frequent gamblers since they're not going to be regular
16 customers that one wouldn't impact it quite as much.

17 Q. But that might differ from casino to casino;
18 right?

19 A. It may.

20 Q. In fact, one of the most important facts that
21 the scholarly literature addresses is location of the
22 machine; doesn't it?

23 A. Location of the machine within the casino?

24 Q. Yes.

25 A. That is a topic that's in the literature.

1 Q. And that influences play, revenue for particular
2 machines, and popularity; correct?

3 A. It can.

4 Q. So you would want to know, would you not, before
5 you made any conclusions where these machines were
6 located compared to other locations as to whether or not
7 they were more or less played?

8 A. Can you clarify something for me?

9 Q. Give it my best shot.

10 A. Sure. Are you asking -- I'm not sure which hat
11 you want me to wear here. Are you asking me that
12 question for the purposes of computing damages or asking
13 me that question assuming the hypothetical that I am
14 Mr. Tors and I'm trying to get some information for the
15 benefit of my employer?

16 Q. They're intertwined and indistinguishable.

17 A. Again, I think it goes back to why he's doing
18 it, which is what I want to know, what is he trying to
19 determine.

20 Q. Well, he said he was trying to see whether or
21 not GSR was falsely advertising its pars. That's what he
22 told Gaming Control Board.

23 A. Yes.

24 Q. You've seen that video?

25 A. I've seen that. Well, I haven't seen the video

1 but I'm aware he said that.

2 Q. Did you see the transcript of the video?

3 A. I've not seen the transcript. I'm aware that
4 that was his testimony.

5 Q. So you know that Tors told the Gaming Control
6 Board that he was doing this to determine whether or not
7 GSR was falsely advertising.

8 A. I'm aware that he said that, but it still raises
9 a question in my mind why he would be doing it at these
10 other properties unless he suspects that all these other
11 properties are falsely advertising.

12 Q. And that wasn't the same time.

13 A. Well, I don't understand why he would be doing
14 it at these other properties at that time.

15 Q. Well, if you believe Mr. Tors was trying to
16 determine on these incidents at the GSR whether or not
17 they are falsely advertising their statement that they
18 had reduced pars by 40 percent, then this information has
19 no value to anyone other than the Gaming Control Board;
20 right?

21 A. I don't quite follow you.

22 Q. Well, the Gaming Control Board doesn't really
23 appreciate false advertising, does it? Or do you know?

24 A. I would expect that they don't.

25 Q. Have you followed the Gaming Control Board's

1 scrutiny of advertising loosest machines? Have you been
2 following that for the last couple of years?

3 A. I've not.

4 Q. And they've issued regulations about that kind
5 of advertising?

6 A. I'm not familiar with those regulations.

7 Q. You say it's important for you to know why, the
8 motive Tors had to access these machines, and yet you
9 know he said it was to determine whether there was false
10 advertising. Now that you at least know that he said
11 that, doesn't that answer part of the question that you
12 put in paragraph 2 of your affidavit?

13 A. It was my understanding that this was part of
14 this bigger project where this data was being collected
15 systematically, and his statement didn't answer, in my
16 mind didn't answer that question.

17 Q. Is that because you simply didn't like it for
18 your damage model?

19 A. No. It's that I legitimately wanted to know why
20 is this such -- I could understand if Mr. Tors just sees
21 a billboard and says, wait, that doesn't look right, and
22 then goes and checks. But it seems to me this was over a
23 long period of time. So unless Mr. Tors is constantly
24 seeing billboards that he doesn't like I want to know,
25 well, is this part of the --

1 Q. Forget the billboards. You've seen the
2 mailings?

3 A. Or mailings. Billboards or mailings.

4 Q. Now, isn't mailings an important component of
5 the entire marketing for a machine or machines?

6 A. Direct mailing is an important component for
7 casino marketing.

8 Q. And substantial value to the machine; correct?

9 A. It can.

10 Q. Look, you're a shopper and you know, do you not,
11 sir, that the revenue of a casino property is predicated
12 on a multitude of factors?

13 A. Correct.

14 Q. And if you take one of those factors which we'll
15 call penny slots, even the revenue from penny slots is
16 dependent upon a multitude of factors; correct?

17 A. I'd go along with that.

18 Q. Ambience, restaurants, etc. Almost an endless
19 list of factors will influence play on a penny machine.

20 A. Correct.

21 Q. And a very small part of those influences is the
22 hold. That's in the literature; right?

23 MR. JOHNSON: Objection. It's vague and
24 ambiguous.

25 THE WITNESS: I'm aware that there's a

1 disagreement. And I know one of the articles that I
2 found, and I don't recall the exact title of the article,
3 but they said that they had -- before they did the study
4 they believed it was important, but after they did the
5 study, they found that it wasn't important.

6 Q. That's Dr. Lucas' study in Harrah's in Atlantic
7 City.

8 A. No. There's another study that I think was out
9 of Ontario.

10 Q. They differ then?

11 A. Yes. So yeah, I'm aware that there is a
12 disagreement.

13 Q. I think you misunderstood my question.

14 A. Sure.

15 Q. Whether pars mean anything or not is one topic.

16 A. Yes.

17 Q. That's not what I'm asking. What I'm asking is
18 of all the marketing, advertising, operational influences
19 on revenue at a casino, a par setting on a particular
20 penny machine is a very, very small component of all
21 those considerations, isn't it?

22 MR. JOHNSON: Objection. Assumes facts not in
23 evidence. Vague and ambiguous.

24 THE WITNESS: I'm aware that it's a component.
25 I couldn't tell you now how big or how small the

1 component is. But I'm aware it's one component out of
2 many.

3 Q. (By Mr. Robison) For example, your shopping.
4 When you go shop at the Peppermill without telling them
5 you're shopping, you're getting information about what
6 they do to make their machines more profitable, aren't
7 you?

8 A. I would say that I'm getting information about
9 what they do to appeal to customers, which would make the
10 machines more profitable if they do it well.

11 Q. Sounds like the answer was yes. You're finding
12 information from the Peppermill about how they make their
13 machines more profitable; correct? You can say it.

14 A. If they do it -- I wouldn't say it's necessarily
15 a straight line because it may be that having all these
16 restaurants does or doesn't. But I believe they're
17 trying to make their machines more profitable. So what
18 are they doing to try to do that, I couldn't tell you
19 whether it's working or not.

20 Q. You went over there to see what marketing and
21 comps and tier points Peppermill had in place which is
22 part of the strategies to make their machine more
23 profitable. True?

24 A. Correct.

25 Q. So you're over there trying to figure out how

1 the Peppermill makes their machines profitable; correct?

2 A. I was asked to look at different casinos in the
3 region to determine how are they rewarding players.

4 Q. And rewarding players is part of the equation
5 how you make machines profitable because it provides more
6 time on the device; right?

7 A. In the big picture, yes.

8 Q. That's basically what you were taking from the
9 Peppermill and giving to the GSR?

10 A. Correct.

11 MR. ROBISON: Let's take ten minutes here.

12 (Break was taken.)

13 Q. (By Mr. Robison) Back on the record. I think a
14 fair synopsis of today's experience is that you need more
15 time to work on a damage claim.

16 A. Correct.

17 Q. And you will then provide us a report, and we
18 will visit with you again and we can have this enjoyable
19 moment on another day after you've done your analysis.
20 But would you please give to counsel all the paperwork
21 that you have to this point in time, because I believe
22 it's discoverable, and I believe that the Court ordered
23 that it be produced, and then I'll work with counsel to
24 get that from him. But please make sure he gets
25 everything.

1 A. Certainly.

2 Q. Fair enough?

3 MR. JOHNSON: Yes.

4 MR. ROBISON: Then to shut this down, I just
5 want to make sure that the record is clear on which
6 exhibits we marked today, although some were not referred
7 to.

8 Exhibit 20 is Mr. Schwartz's affidavit. 21 is
9 the CV. 22 is the marketing material on Marketations.
10 23 is the Contra Costa Times article. 24 is Judge
11 Flanagan's confirming order. 25 is the subpoena that was
12 served on Mr. Schwartz. 26 is the web site bio. 27 is
13 the 2011 Gaming Revenue Report for December 2011.
14 Exhibit 28 is the June 30th, 2012, gaming revenue report,
15 and Exhibit 29 is the July 21st, 2013, gaming revenue
16 report.

17 And with that, I have no further questions at
18 this time, and we'll continue this when you submit your
19 report.

20 MR. GUNDERSON: I will wait to ask my questions
21 when we have a final report.

22 MR. JOHNSON: All right.

23 MR. ROBISON: Thank you. We'll make the
24 original, then, go to GSR's counsel.

25 MR. JOHNSON: Yes.

1 MR. ROBISON: You'll be entitled, as I said, to
2 see the transcript and make any corrections. If you
3 don't make any corrections within 30 days, it can be used
4 as transcribed. And if you don't sign it in 30 days, it
5 can be used in its unsigned condition.

6 THE WITNESS: (Nodding).

7 MR. ROBISON: Okay. Thank you.

8 (The deposition concluded at 12:02 p.m.)
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STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

IN WITNESS WHEREOF, I have hereunto set my hand
in my office in the County of Clark, State of Nevada,
this 31st day of October 2014.



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DEPOSITION ERRATA SHEET

Assignment No. 215323

Case Caption: MEI-GSR HOLDINGS vs. PEPPERMILL

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I declare under penalty of perjury that I have read the entire transcript of my deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

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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,**

CASE NO.: CV13-01704

20 **Plaintiff,**

DEPT. NO.: B7

21 **vs.**

BUSINESS COURT DOCKET

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

26 **Defendant(s).**
27 _____/

28 **REQUEST FOR SUBMISSION**

It is requested that Defendant Peppermill Casinos, Inc.'s Motion for Order Compelling GSR to Show Cause Why It Not Be Held in Contempt, which was filed on October 27, 2014, in the above-entitled matter, be submitted for decision. The undersigned attorney certifies that a copy of this Request has been served on all counsel of record.

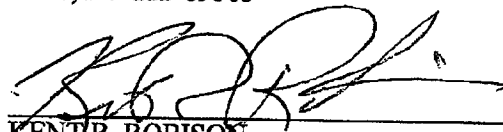
AFFIRMATION
Pursuant to NRS 239B.030

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

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DATED this 24th day of November, 2014.

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1 **CERTIFICATE OF SERVICE**

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

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

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

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20 ☒ by electronic email addressed to the above.

21 ☐ by personal delivery/hand delivery addressed to:

22 ☐ by facsimile (fax) addressed to:

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

24 DATED: This 24th day of November, 2014.

25
26 
27 V. JAYNE FERRETTO
28

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, dba GRAND
SIERRA RESORT,

Case No.: CV13-01704

Dept. No.: 7

Plaintiff,

vs.

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

Defendants.

ORDER

On August 25, 2014, Defendant PEPPERMILL CASINOS, INC., filed a *Motion for Terminating Sanctions or, in the Alternative, Motion to Compel Discovery*. Defendant RYAN TORS joined the *Motion* on August 28, 2014. On September 9, 2014, Plaintiff MEI-GSR HOLDINGS, LLC filed its *Motion to Strike and Dismiss Defendant Peppermill's Motion for Case Terminating Sanctions*, which will be treated here as an opposition. Peppermill filed an *Opposition to Plaintiff's Motion to Strike* on September 26, 2014, which will be treated here as a reply. The *Motion* of August 25, 2014, was submitted for decision on October 14, 2014. On October 27, 2014, Peppermill filed a *Motion for Order Compelling GSR to Show Cause why it not be Held in Contempt*, which has not been opposed. On November

1 12, 2014, Peppermill filed a *Supplemental Motion for Terminating Sanctions or, in*
2 *the Alternative, for an Order to Show Cause why Plaintiff not be Held in Contempt*
3 *and Subjected to Severe Sanctions*, renewing several of its arguments in earlier
4 filings, on November 12, 2014. The Court will now take up all issues Peppermill
5 has raised in its motions for "terminating sanctions" from August 25, 2014, and
6 November 12, 2014, as well as in its *Motion for Order Compelling GSR to Show*
7 *Cause* from October 27, 2014. It should be noted that GSR has not responded to the
8 *Motion to Show Cause* or to the *Supplemental Motion*.

9 First, the Court notes that several collateral disputes have already been
10 resolved which are relevant to Peppermill's claims here. On June 4, 2014,
11 Peppermill filed a *Motion to Dismiss Complaint* alleging that GSR was refusing to
12 provide a calculation of damages. On June 18, 2014, GSR filed an *Opposition to*
13 *Defendants' Motion to Dismiss Complaint and Counter-Motion to Compel*
14 *Disclosures under NRCP 16.1* claiming that it was relieved from its obligation to
15 provide a calculation of damages because Peppermill had failed to confer about the
16 matter prior to filing the motion and that Peppermill must be compelled to provide
17 certain documents under NRCP 16.1. The discovery issues were referred to the
18 Discovery Commissioner, who issued an unopposed *Recommendation for Order* on
19 September 19, 2014. This Court adopted those recommendations on October 1,
20 2014, ordering GSR to provide to the Defendants, no later than September 30, 2014,
21 an updated calculation of damages under NCRP 16.1(a)(1)(C), and to identify and
22 make available for inspection any documents, electronically stored information, or
23 tangible things that it is relying upon in support of its damages claim.

24 A separate issue involving depositions has also been resolved. On June 4,
25 2014, Peppermill served GSR with a notice of NRCP 30(b)(6) depositions, with an
26 amended deposition notice on June 11, 2014. GSR refused to provide deponents as
27 demanded in the notice and, on June 19, 2014, it filed a *Motion for Protective Order*
28 *on an Order Shortening Time and for Stay of Depositions Pending Hearing on the*

1 *Matter.* The issue was referred to the Commissioner who returned a
2 *Recommendation for Order* on October 2, 2014. GSR filed an *Objection* on October
3 10, 2014 and Peppermill filed an *Opposition* to the *Objection* on October 24, 2014.
4 On November 13, 2014, the Court adopted the Commissioner's recommendation,
5 ordering GSR to designate and produce one or more representatives to testify on its
6 behalf pursuant to NRCP 30(b)(6) regarding the topics identified in Peppermill's
7 amended notice.¹

8 **Legal Standard**

9 Peppermill asks that GSR's complaint be dismissed with prejudice. Under
10 NRCP 37(b)(2)(C), a district court has discretion to issue sanctions, including case-
11 concluding sanctions, against a party for willful failure to comply with a discovery
12 order, or where the adversary process has been halted by actions of unresponsive
13 party. *GNLV Corp. v. Service Control Corp.*, 111 Nev. 866, 900 P.2d 323 (1995).
14 Fundamental notions of fairness and due process require that discovery sanctions
15 be just and that sanctions relate to the specific conduct at issue. *Id.*

16 **Analysis**

17 The Court will address each of the alleged discovery violations and motions to
18 compel before taking up the issue of whether GSR's conduct, as a whole, is
19 sanctionable.

20 **a. Computation of damages and related documents**

21 Peppermill alleges that GSR failed to reasonably provide a mandatory
22 computation of damages and related documents as required by NRCP 16.1(a)(1)(C)
23 and by orders of this Court. NRCP 16.1(a)(1)(C) states that, without awaiting a
24 discovery request, a party must provide a computation of damages, making
25 available for inspection and copying the documents or other evidentiary matter, not
26 privileged or protected from disclosure, on which the computation is based.

27
28 ¹ The recommendation excepted "Topic 26," which was determined to be overbroad and therefore
subject to a protective order.

1 On September 19, 2014, the Commissioner issued a *Recommendation for*
2 *Order* finding that GSR's calculation of damages as included in its initial
3 disclosures was deficient and that GSR should be compelled to provide an updated
4 calculation of damages, along with related documents, by September 30, 2014.
5 Neither party opposed the *Recommendation*. It was adopted by the Court on
6 October 1, 2014. Peppermill acknowledges that GSR has provided the requested
7 computation of damages in the form of an affidavit, dated September 9, 2014, from
8 Dr. David Schwartz, GSR's damages expert. Peppermill contends, however, that
9 the affidavit is false and misleading (see discussion below) and that GSR has
10 refused to produce related documents. GSR has not responded to this argument.

11 Any failure by GSR to identify and make available documents related to its
12 damages calculation is a violation of this Court's adopted *Order* of October 1, 2014.
13 GSR is hereby compelled to comply with that directive by December 15, 2014, if it
14 has not already done so by the time of this *Order*.

15 **b. Requests for Production of Documents**

16 Peppermill alleges that GSR has willfully failed to comply with requests for
17 production of documents in contravention of Court orders. Peppermill specifically
18 identifies the above-referenced documents pertaining to damages calculations
19 (*Motion for Sanctions* at 5; *Supplemental Motion* at 3) as well as other documents
20 related to testimony given by GSR's named witnesses at deposition (*Motion for*
21 *Order to Show Cause* at 2). It appears that all documents requested pertain in some
22 way to calculation of damages, i.e. "slot strategies, marketing policies, and hold
23 percentages." *Id.*; see also *Recommendation for Order* of October 2, 2014. As
24 described above, GSR is compelled to disclose those documents.

25 **c. False and misleading testimony**

26 Peppermill alleges that the calculations of GSR's damages expert, David
27 Schwartz, are admitted by him to be inaccurate, and that GSR has a duty to correct
28 the record accordingly. The Court is not in receipt of Dr. Schwartz' deposition, and

1 therefore can make no determination as to his alleged admissions concerning his
2 affidavit. Moreover, any issue as to inconsistency in Dr. Schwartz' statements is an
3 issue of weight and credibility, not of compliance with the rules of discovery. GSR
4 has provided its expert's damages calculations as directed. The reliability of those
5 calculations is an issue for trial.

6 **d. Interrogatories**

7 Peppermill alleges that GSR has failed to provide meaningful answers to two
8 separate sets of interrogatories, served June 4, 2014 and September 30, 2014,
9 respectively. GSR argues that it did not file a response to the first set because it
10 was understood that its *Motion for a Protective Order*, filed June 19, 2014, was to
11 serve as a general objection to the interrogatories. The parties agree that GSR
12 responded to the second set on November 3, 2014, although Peppermill claims that
13 the responses are generally unsatisfactory.

14 The Court denied in part GSR's *Motion for a Protective Order* on October 1,
15 2014, thereby overruling GSR's general objection with respect to most if not all of
16 the first set of interrogatories. GSR is directed to respond forthwith to the first set
17 of interrogatories to the extent that the answers are not subject to the partial
18 protective order.

19 The Court has reviewed GSR's untimely responses to the second set of
20 interrogatories. While GSR objects to nearly every request, it properly states
21 reasons for the objections and otherwise answers to the extent the interrogatories
22 are not objectionable. See NRCP 33(b)(1). In response to the objections, Peppermill
23 moves to compel disclosure under NRCP 33(b)(5). It fails, however, to identify
24 which of GSR's objections it is challenging or to cite specific authority compelling
25 disclosure. Absent more, an order compelling discovery is not appropriate.

26 **e. Depositions**

27 On November 3 and 4, Peppermill deposed several of GSR's witnesses
28

1 pursuant to NRCP 30(b)(6).² Peppermill complains that, while GSR provided
2 witnesses for the topics identified, the witnesses generally lacked the knowledge
3 necessary to answer questions posed at deposition. Peppermill claims that,
4 pursuant to NRCP 30(b)(6), it is entitled to depose the "person most knowledgeable"
5 or "PMK" on each identified topic. Failure to provide such a witness or to
6 adequately prepare a witness for deposition, Peppermill contends, is "tantamount to
7 failure to appear" and is subject to immediate sanction. *Supplemental Motion* at 10
8 (citing *United States v. Taylor*, 166 F.R.D. 356, 363 (M.D.N.C. 1996); *Wilson v.*
9 *Lakner*, 228 F.R.D. 524, 530 (D. Md. 2005)).

10 The Discovery Commissioner addressed the issue of PMK depositions in his
11 *Recommendation for Order* of October 2, 2014 (see pages 8-9). Therein, the
12 Commissioner noted that an organization is not actually required to provide the
13 "person most knowledgeable" on a topic, only a witness adequately prepared to
14 speak on corporate knowledge of the subject. *Id.* (citing *Cummings v. General*
15 *Motors Corp.*, No. Civ. 00-1562-W, 2002 WL 32713320 (W.D. Okla. Jun. 18, 2002)).
16 The testimony of the Rule 30(b)(6) designee is deemed to be the testimony of the
17 corporation itself, not of the individual deponent. *Great American Insurance Co. of*
18 *New York v. Vegas Const. Co., Inc.*, 251 F.R.D. 534, 538 (D. Nev. 2008).

19 Peppermill takes issue with the testimony of three of GSR's witnesses: Ralph
20 Burdick, Toby Taylor, and Craig Robinson. They claim each was woefully
21 underprepared to be deposed on the topics designated, thereby wasting time and
22 money. It complains of Mr. Robinson's testimony in particular, describing it as
23 "clearly the most egregious breach of discovery duties that has yet occurred in this
24 case." *Supplemental Motion* at 8.

25
26 ² Peppermill notes that depositions had previously been scheduled for the end of August, but that
27 GSR had failed to appear for those depositions without notice. GSR argues that the parties had an
28 understanding that the depositions would not proceed if the Court had not yet ruled on GSR's *Motion*
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4 Ryan Tors, and (3) the allegations of Peppermill's intent to financially harm GSR.
5 At the time of his deposition, he had been working for GSR for approximately seven
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7 any internal investigation to prepare himself for his deposition, and that he was
8 instead relying entirely on his day-to-day familiarity with GSR's financial records in
9 answering the questions posed. *Id.* at 13-15; 40.

10 The text of Mr. Robinson's deposition reveals that, because of this, he was
11 unprepared to provide meaningful answers. Robinson admitted that he had no
12 specific knowledge as to damages or the independent value of appropriated
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14 that the lion's share of his specific knowledge had been obtained through
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15 necessarily indicative of a failure to prepare. Without a copy of either deposition,
16 the Court is unable to verify what steps they did, in fact, take in preparation to
17 testify. Without more, it is not clear that Mr. Burdick and Mr. Taylor were
18 ineffective as an NRCP 30(b)(6) witnesses.

19 **f. Sanctionable Conduct and Sanctions**

20 Two items of GSR's conduct are of particular concern: (1) its failure to
21 adequately prepare Craig Robinson to testify as an NRCP (30)(b)(6) witness; and (2)
22 its failure to produce documents related to its calculation of damages, in violation of
23 this Court's *Order*. As stated, NRCP 37(b)(2)(C), provides courts with discretion to
24 issue sanctions, including case-concluding sanctions, against a party for willful
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27 111 Nev. 866, 900 P.2d 323 (1995). However, rules of fairness and of due process
28 require that the sanctions be fair and be tailored to the specific conduct at issue. *Id.*

1 None of the issues here are so severe or so related to the case's foundations
2 that case-terminating sanctions are warranted. This is not to say, that GSR's
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6 preparation to speak on corporate knowledge of the topics identified. Peppermill
7 was then forced to file its *Supplemental Motion for Sanctions* raising this issue.
8 GSR is hereby sanctioned and ordered to pay Peppermill's reasonable costs and fees
9 incurred in deposing Mr. Robinson and in filing its *Supplemental Motion*. It is
10 further compelled to provide and *adequately prepare*, in accordance with the
11 strictures of NRCP 30(b)(6), an alternate deponent for the topics identified for Mr.
12 Robinson.

13 The effects of GSR's failure to provide documents related to its computation
14 of damages are more difficult to quantify. Its action fits with what appears to be a
15 pattern of resistance throughout the discovery process in this case. The suit is now
16 over a year old. As time passes and as both sides experience changes in personnel,
17 it will only become more difficult for meaningful evidence to be uncovered. GSR
18 failed to identify its precise claim for damages until ordered to do so and the
19 resulting hardship is compounded by its failure to also produce the documentary
20 support for its calculations. As a result of GSR's foot-dragging, Peppermill has been
21 forced to incur expenses seeking redress from this Court. GSR is hereby sanctioned
22 and ordered to pay Peppermill's reasonable costs and fees incurred in filing its
23 *Motion for Terminating Sanctions or, in the Alternative, Motion to Compel Discovery*
24 and in responding to objections thereto. As noted above, GSR is further compelled
25 to provide the documents at issue by December 15, 2014, or risk the imposition of
26 meaningful economic sanctions.

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CONCLUSION

Based on the foregoing, Defendant's *Motion for Terminating Sanctions or, in the Alternative, Motion to Compel Discovery*, as well as its *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* are **GRANTED** in part and **DENIED** in part in accordance with this Order. Defendant's *Motion for Order Compelling GSR to Show Cause why it not be Held in Contempt* is **DENIED**. Plaintiff is hereby compelled to provide discovery as described herein.

Further, Plaintiff is hereby sanctioned and ordered to pay to Defendant Peppermill the reasonable costs and attorney's fees incurred in filing its *Motion for Terminating Sanctions* and its *Supplemental Motion for Terminating Sanctions*, as well as the responses thereto, as well as the reasonable costs and attorney's fees incurred in preparing to depose and deposing Craig Robinson on November 4, 2014. Defendant is ordered to submit memoranda of the above costs within ten (10) days. Plaintiff will have ten (10) days to serve and file written responses thereto. Defendant may then serve and file a reply within five (5) days.

IT IS HEREBY ORDERED.

DATED this 26 day of November, 2014.


PATRICK FLANAGAN
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 26 day of November, 2014, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

- Alisa Nave-Worth, Esq., for Peppermill Casinos, Inc.;
- H. Johnson, Esq., for MEI-GSR Holdings, LLC;
- John Funk, Esq., for Ryan Tors;
- Michael Soms, 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

1 2540
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
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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,

CASE NO.: CV13-01704

DEPT. NO.: B7

Plaintiff,

vs.

BUSINESS COURT DOCKET

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

Defendant(s).
/

NOTICE OF ENTRY OF ORDER

TO: All parties herein and their respective attorneys of record:

PLEASE TAKE NOTICE that on the 26th day of November, 2014, the Court entered an Order, a copy of which is attached hereto.

AFFIRMATION
Pursuant to NRS 239B.030


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

///

1 number of any person.

2 DATED this 2nd day of December, 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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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, dba GRAND
SIERRA RESORT,

Case No.: CV13-01704

Dept. No.: 7

Plaintiff,

vs.

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

Defendants.

ORDER

On August 25, 2014, Defendant PEPPERMILL CASINOS, INC., filed a *Motion for Terminating Sanctions or, in the Alternative, Motion to Compel Discovery*. Defendant RYAN TORS joined the *Motion* on August 28, 2014. On September 9, 2014, Plaintiff MEI-GSR HOLDINGS, LLC filed its *Motion to Strike and Dismiss Defendant Peppermill's Motion for Case Terminating Sanctions*, which will be treated here as an opposition. Peppermill filed an *Opposition to Plaintiff's Motion to Strike* on September 26, 2014, which will be treated here as a reply. The *Motion* of August 25, 2014, was submitted for decision on October 14, 2014. On October 27, 2014, Peppermill filed a *Motion for Order Compelling GSR to Show Cause why it not be Held in Contempt*, which has not been opposed. On November

1 12, 2014, Peppermill filed a *Supplemental Motion for Terminating Sanctions or, in*
2 *the Alternative, for an Order to Show Cause why Plaintiff not be Held in Contempt*
3 *and Subjected to Severe Sanctions*, renewing several of its arguments in earlier
4 filings, on November 12, 2014. The Court will now take up all issues Peppermill
5 has raised in its motions for "terminating sanctions" from August 25, 2014, and
6 November 12, 2014, as well as in its *Motion for Order Compelling GSR to Show*
7 *Cause* from October 27, 2014. It should be noted that GSR has not responded to the
8 *Motion to Show Cause* or to the *Supplemental Motion*.

9 First, the Court notes that several collateral disputes have already been
10 resolved which are relevant to Peppermill's claims here. On June 4, 2014,
11 Peppermill filed a *Motion to Dismiss Complaint* alleging that GSR was refusing to
12 provide a calculation of damages. On June 18, 2014, GSR filed an *Opposition to*
13 *Defendants' Motion to Dismiss Complaint and Counter-Motion to Compel*
14 *Disclosures under NRCP 16.1* claiming that it was relieved from its obligation to
15 provide a calculation of damages because Peppermill had failed to confer about the
16 matter prior to filing the motion and that Peppermill must be compelled to provide
17 certain documents under NRCP 16.1. The discovery issues were referred to the
18 Discovery Commissioner, who issued an unopposed *Recommendation for Order* on
19 September 19, 2014. This Court adopted those recommendations on October 1,
20 2014, ordering GSR to provide to the Defendants, no later than September 30, 2014,
21 an updated calculation of damages under NCRP 16.1(a)(1)(C), and to identify and
22 make available for inspection any documents, electronically stored information, or
23 tangible things that it is relying upon in support of its damages claim.

24 A separate issue involving depositions has also been resolved. On June 4,
25 2014, Peppermill served GSR with a notice of NRCP 30(b)(6) depositions, with an
26 amended deposition notice on June 11, 2014. GSR refused to provide deponents as
27 demanded in the notice and, on June 19, 2014, it filed a *Motion for Protective Order*
28 *on an Order Shortening Time and for Stay of Depositions Pending Hearing on the*

1 *Matter.* The issue was referred to the Commissioner who returned a
2 *Recommendation for Order* on October 2, 2014. GSR filed an *Objection* on October
3 10, 2014 and Peppermill filed an *Opposition* to the *Objection* on October 24, 2014.
4 On November 13, 2014, the Court adopted the Commissioner's recommendation,
5 ordering GSR to designate and produce one or more representatives to testify on its
6 behalf pursuant to NRCP 30(b)(6) regarding the topics identified in Peppermill's
7 amended notice.¹

8 **Legal Standard**

9 Peppermill asks that GSR's complaint be dismissed with prejudice. Under
10 NRCP 37(b)(2)(C), a district court has discretion to issue sanctions, including case-
11 concluding sanctions, against a party for willful failure to comply with a discovery
12 order, or where the adversary process has been halted by actions of unresponsive
13 party. *GNLV Corp. v. Service Control Corp.*, 111 Nev. 866, 900 P.2d 323 (1995).
14 Fundamental notions of fairness and due process require that discovery sanctions
15 be just and that sanctions relate to the specific conduct at issue. *Id.*

16 **Analysis**

17 The Court will address each of the alleged discovery violations and motions to
18 compel before taking up the issue of whether GSR's conduct, as a whole, is
19 sanctionable.

20 **a. Computation of damages and related documents**

21 Peppermill alleges that GSR failed to reasonably provide a mandatory
22 computation of damages and related documents as required by NRCP 16.1(a)(1)(C)
23 and by orders of this Court. NRCP 16.1(a)(1)(C) states that, without awaiting a
24 discovery request, a party must provide a computation of damages, making
25 available for inspection and copying the documents or other evidentiary matter, not
26 privileged or protected from disclosure, on which the computation is based.

27
28 ¹ The recommendation excepted "Topic 26," which was determined to be overbroad and therefore
subject to a protective order.

1 On September 19, 2014, the Commissioner issued a *Recommendation for*
2 *Order* finding that GSR's calculation of damages as included in its initial
3 disclosures was deficient and that GSR should be compelled to provide an updated
4 calculation of damages, along with related documents, by September 30, 2014.
5 Neither party opposed the *Recommendation*. It was adopted by the Court on
6 October 1, 2014. Peppermill acknowledges that GSR has provided the requested
7 computation of damages in the form of an affidavit, dated September 9, 2014, from
8 Dr. David Schwartz, GSR's damages expert. Peppermill contends, however, that
9 the affidavit is false and misleading (see discussion below) and that GSR has
10 refused to produce related documents. GSR has not responded to this argument.

11 Any failure by GSR to identify and make available documents related to its
12 damages calculation is a violation of this Court's adopted *Order* of October 1, 2014.
13 GSR is hereby compelled to comply with that directive by December 15, 2014, if it
14 has not already done so by the time of this *Order*.

15 **b. Requests for Production of Documents**

16 Peppermill alleges that GSR has willfully failed to comply with requests for
17 production of documents in contravention of Court orders. Peppermill specifically
18 identifies the above-referenced documents pertaining to damages calculations
19 (*Motion for Sanctions* at 5; *Supplemental Motion* at 3) as well as other documents
20 related to testimony given by GSR's named witnesses at deposition (*Motion for*
21 *Order to Show Cause* at 2). It appears that all documents requested pertain in some
22 way to calculation of damages, i.e. "slot strategies, marketing policies, and hold
23 percentages." *Id.*; see also *Recommendation for Order* of October 2, 2014. As
24 described above, GSR is compelled to disclose those documents.

25 **c. False and misleading testimony**

26 Peppermill alleges that the calculations of GSR's damages expert, David
27 Schwartz, are admitted by him to be inaccurate, and that GSR has a duty to correct
28 the record accordingly. The Court is not in receipt of Dr. Schwartz' deposition, and

1 therefore can make no determination as to his alleged admissions concerning his
2 affidavit. Moreover, any issue as to inconsistency in Dr. Schwartz' statements is an
3 issue of weight and credibility, not of compliance with the rules of discovery. GSR
4 has provided its expert's damages calculations as directed. The reliability of those
5 calculations is an issue for trial.

6 **d. Interrogatories**

7 Peppermill alleges that GSR has failed to provide meaningful answers to two
8 separate sets of interrogatories, served June 4, 2014 and September 30, 2014,
9 respectively. GSR argues that it did not file a response to the first set because it
10 was understood that its *Motion for a Protective Order*, filed June 19, 2014, was to
11 serve as a general objection to the interrogatories. The parties agree that GSR
12 responded to the second set on November 3, 2014, although Peppermill claims that
13 the responses are generally unsatisfactory.

14 The Court denied in part GSR's *Motion for a Protective Order* on October 1,
15 2014, thereby overruling GSR's general objection with respect to most if not all of
16 the first set of interrogatories. GSR is directed to respond forthwith to the first set
17 of interrogatories to the extent that the answers are not subject to the partial
18 protective order.

19 The Court has reviewed GSR's untimely responses to the second set of
20 interrogatories. While GSR objects to nearly every request, it properly states
21 reasons for the objections and otherwise answers to the extent the interrogatories
22 are not objectionable. *See* NRCP 33(b)(1). In response to the objections, Peppermill
23 moves to compel disclosure under NRCP 33(b)(5). It fails, however, to identify
24 which of GSR's objections it is challenging or to cite specific authority compelling
25 disclosure. Absent more, an order compelling discovery is not appropriate.

26 **e. Depositions**

27 On November 3 and 4, Peppermill deposed several of GSR's witnesses
28

1 pursuant to NRCP 30(b)(6).² Peppermill complains that, while GSR provided
2 witnesses for the topics identified, the witnesses generally lacked the knowledge
3 necessary to answer questions posed at deposition. Peppermill claims that,
4 pursuant to NRCP 30(b)(6), it is entitled to depose the "person most knowledgeable"
5 or "PMK" on each identified topic. Failure to provide such a witness or to
6 adequately prepare a witness for deposition, Peppermill contends, is "tantamount to
7 failure to appear" and is subject to immediate sanction. *Supplemental Motion* at 10
8 (citing *United States v. Taylor*, 166 F.R.D. 356, 363 (M.D.N.C. 1996); *Wilson v.*
9 *Lakner*, 228 F.R.D. 524, 530 (D. Md. 2005)).

10 The Discovery Commissioner addressed the issue of PMK depositions in his
11 *Recommendation for Order* of October 2, 2014 (see pages 8-9). Therein, the
12 Commissioner noted that an organization is not actually required to provide the
13 "person most knowledgeable" on a topic, only a witness adequately prepared to
14 speak on corporate knowledge of the subject. *Id.* (citing *Cummings v. General*
15 *Motors Corp.*, No. Civ. 00-1562-W, 2002 WL 32713320 (W.D. Okla. Jun. 18, 2002)).
16 The testimony of the Rule 30(b)(6) designee is deemed to be the testimony of the
17 corporation itself, not of the individual deponent. *Great American Insurance Co. of*
18 *New York v. Vegas Const. Co., Inc.*, 251 F.R.D. 534, 538 (D. Nev. 2008).

19 Peppermill takes issue with the testimony of three of GSR's witnesses: Ralph
20 Burdick, Toby Taylor, and Craig Robinson. They claim each was woefully
21 underprepared to be deposed on the topics designated, thereby wasting time and
22 money. It complains of Mr. Robinson's testimony in particular, describing it as
23 "clearly the most egregious breach of discovery duties that has yet occurred in this
24 case." *Supplemental Motion* at 8.

25
26 ² Peppermill notes that depositions had previously been scheduled for the end of August, but that
27 GSR had failed to appear for those depositions without notice. GSR argues that the parties had an
28 understanding that the depositions would not proceed if the Court had not yet ruled on GSR's *Motion*
for a *Protective Order*, which it had not. Regardless of the circumstances, the parties are encouraged
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20 Two items of GSR's conduct are of particular concern: (1) its failure to
21 adequately prepare Craig Robinson to testify as an NRCP (30)(b)(6) witness; and (2)
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23 this Court's *Order*. As stated, NRCP 37(b)(2)(C), provides courts with discretion to
24 issue sanctions, including case-concluding sanctions, against a party for willful
25 failure to comply with a discovery rule or order, or where the adversary process has
26 been halted by actions of unresponsive party. *GNLV Corp. v. Service Control Corp.*,
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28 require that the sanctions be fair and be tailored to the specific conduct at issue. *Id.*

1 None of the issues here are so severe or so related to the case's foundations
2 that case-terminating sanctions are warranted. This is not to say, that GSR's
3 misconduct has been harmless. The effects of its failure to prepare Mr. Robinson to
4 be deposed are easily measured: Peppermill was forced to incur the costs of
5 preparing to depose and deposing a witness who had admittedly done no
6 preparation to speak on corporate knowledge of the topics identified. Peppermill
7 was then forced to file its *Supplemental Motion for Sanctions* raising this issue.
8 GSR is hereby sanctioned and ordered to pay Peppermill's reasonable costs and fees
9 incurred in deposing Mr. Robinson and in filing its *Supplemental Motion*. It is
10 further compelled to provide and *adequately prepare*, in accordance with the
11 strictures of NRCP 30(b)(6), an alternate deponent for the topics identified for Mr.
12 Robinson.

13 The effects of GSR's failure to provide documents related to its computation
14 of damages are more difficult to quantify. Its action fits with what appears to be a
15 pattern of resistance throughout the discovery process in this case. The suit is now
16 over a year old. As time passes and as both sides experience changes in personnel,
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19 resulting hardship is compounded by its failure to also produce the documentary
20 support for its calculations. As a result of GSR's foot-dragging, Peppermill has been
21 forced to incur expenses seeking redress from this Court. GSR is hereby sanctioned
22 and ordered to pay Peppermill's reasonable costs and fees incurred in filing its
23 *Motion for Terminating Sanctions or, in the Alternative, Motion to Compel Discovery*
24 and in responding to objections thereto. As noted above, GSR is further compelled
25 to provide the documents at issue by December 15, 2014, or risk the imposition of
26 meaningful economic sanctions.

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28 //

1
2 **CONCLUSION**

3 Based on the foregoing, Defendant's *Motion for Terminating Sanctions* or, in
4 *the Alternative, Motion to Compel Discovery*, as well as its *Supplemental Motion for*
5 *Terminating Sanctions* or, in *the Alternative, for an Order to Show Cause Why*
6 *Plaintiff Not be Held in Contempt and Subjected to Severe Sanctions* are
7 **GRANTED** in part and **DENIED** in part in accordance with this Order.
8 Defendant's *Motion for Order Compelling GSR to Show Cause why it not be Held in*
9 *Contempt* is **DENIED**. Plaintiff is hereby compelled to provide discovery as
described herein.

10 Further, Plaintiff is hereby sanctioned and ordered to pay to Defendant
11 Peppermill the reasonable costs and attorney's fees incurred in filing its *Motion for*
12 *Terminating Sanctions* and its *Supplemental Motion for Terminating Sanctions*, as
13 well as the responses thereto, as well as the reasonable costs and attorney's fees
14 incurred in preparing to depose and deposing Craig Robinson on November 4, 2014.
15 Defendant is ordered to submit memoranda of the above costs within ten (10) days.
16 Plaintiff will have ten (10) days to serve and file written responses thereto.
17 Defendant may then serve and file a reply within five (5) days.

18 **IT IS HEREBY ORDERED.**

19 **DATED** this 26 day of November, 2014.

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21 
22 **PATRICK FLANAGAN**
23 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 26 day of November, 2014, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Alisa Nave-Worth, Esq., for Peppermill Casinos, Inc.;

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

John Funk, Esq., for Ryan Tors;

Michael Soms, 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

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 **NOTICE OF ENTRY OF ORDER**
on all parties to this action by the method(s) indicated below:

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

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

7 H. STAN JOHNSON, ESQ.
TERRY KINNALLY, ESQ.
Cohen-Johnson, LLC
255 E. Warm Springs Road, Suite 100
8 Las Vegas, NV 89119
9 Email: sjohnson@cohenjohnson.com / tkinnally@cohenjohnson.com
Attorneys for Plaintiff

10 MARK WRAY, ESQ.
608 Lander Street
11 Reno, NV 89509
Email: mwrav@markwray.law.com
12 *Attorneys for Plaintiff*

13 MARK GUNDERSON, ESQ.
JOHN R. FUNK, ESQ.
Gunderson Law Firm
14 3895 Warren Way
Reno, NV 89509
15 Email: mgunderson@gundersonlaw.com
jfunk@gundersonlaw.com
16 *Attorneys for Defendant Ryan Tors*

17 MICHAEL P. SOMPS, ESQ.
DARLENE B. CARUSO, ESQ.
State Gaming Control Board
18 555 East Washington Avenue, Suite 3900
Las Vegas, NV 89101-1068
19 Email: dcaruso@ag.nv.gov / msomps@ag.nv.gov
20 *Attorneys for Nevada Gaming Control Board*


21 — by electronic email addressed to the above.

22 — by personal delivery/hand delivery addressed to:

23 — by facsimile (fax) addressed to:

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

25 DATED: This 2nd day of December, 2014.

26 
27 V. JAYNE FERRETTO
28

1950
KENT R. ROBISON, ESQ. - NSB #1167
krobison@rbsllaw.com
KEEGAN G. LOW, ESQ. - NSB #307
klow@rbsllaw.com
THERESE M. SHANKS, ESQ. - NSB # 12890
tshanks@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 MEMORANDUM OF COSTS AND
ATTORNEYS' FEES IN RESPONSE TO COURT'S ORDER OF NOVEMBER 26, 2014**

On November 26, 2014, this Honorable Court entered its Order sanctioning the Plaintiff for its willful refusal to comply with Peppermill's discovery requests. The Court further ordered that Peppermill submit its memoranda of costs and fees for preparation and filing of its *Motion For Terminating Sanctions*, its *Supplemental Motion For Terminating Sanctions* and for preparing to and deposing Craig Robinson. In response, Peppermill submits the following.

A. Peppermill's Motion For Terminating Sanctions:

Review of the "Detail Fee Transaction File List" reveals that the following time was devoted to this motion by members of the Robison, Belaustegui, Sharp and Low ("RBSL") law

1 firm.

<u>Date</u>	<u>Hours</u>	<u>Individual Timekeeper</u>
08/13/14	.8 of 1.10	Kent Robison
08/14/14	.8	Keegan G. Low
08/19/14	2.2 of 2.7	Kent Robison
08/20/14	1.2 of 1.5	Kent Robison
08/21/14	1.8	Kent Robison
08/21/14	4.10	James Stewart
08/22/14	2.30	James Stewart
08/25/14	2.5 of 4.0	James Stewart
08/25/14	2.5 of 3.1	Kent Robison
08/25/14	1.1 of 1.4	Keegan G. Low

2 Kent Robison ("KR") is lead counsel and is charging the Peppermill \$450 per hour for time
3 worked on this case. Keegan G. Low ("KGL") is co-counsel, is a shareholder of Robison,
4 Belaustegui, Sharp & Low and is charging \$380 per hour for time worked on this case. James
5 Stewart ("JS") is a paralegal and is charging \$110 per hour for his work on this case.

6 The statement of qualifications for Kent Robison is part of the Affidavit attached as
7 **Exhibit 1.** The statement of qualifications for Keegan G. Low is part of the Affidavit attached as
8 **Exhibit 2.** The statement of qualifications for James Stewart is part of the Affidavit attached as
9 **Exhibit 3.**

10 Based on the foregoing, the total charges incurred by the Peppermill for the *Motion for*
11 *Terminating Sanctions or, in the Alternative, Motion to Compel Discovery* are \$5,526.00.

12 B. Peppermill's Opposition To Plaintiff's Motion To Strike:

<u>Date</u>	<u>Hours</u>	<u>Individual Timekeeper</u>
09/15/14	1.0 of 1.8	Kent Robison
09/19/14	.4	Keegan G. Low
09/22/14	2.0 of 2.5	James Stewart
09/23/14	3.0	James Stewart

1	09/24/14	2.5	Kent Robison
2	09/25/14	1.5 of 2.3	Kent Robison
3	09/26/14	.4	Keegan G. Low
4	09/26/14	.3	Jayne Ferretto
5	09/26/14	3.9	Kent Robison
6	09/29/14	.4	Keegan G. Low

7 Jayne Ferretto ("JF") is a paralegal with Robison, Belaustegui, Sharp & Low and is
8 charging \$90 per hour for her work on this case. (See Exhibit 1.)

9 Based on the foregoing, the total charges incurred by the Peppermill for work on its
10 *Opposition to Plaintiff's Motion to Strike* are \$5,038.00.

11 C. Peppermill's Supplemental Motion For Terminating Sanctions or For Order to
12 Show Cause Why Plaintiff Not Be Held in Contempt and Subjected to Severe
13 Sanctions.

<u>Date</u>	<u>Hours</u>	<u>Individual Timekeeper</u>
14 10/15/14	6.2	Kent Robison
15 10/17/14	3.1	Scott L. Hernandez
16 10/21/14	6.3	Scott L. Hernandez
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22 10/27/14	2.1	Kent Robison
23 11/05/14	2.7 of 4.7	Kent Robison
24 11/11/14	2.0 of 2.6	Kent Robison

25 Scott Hernandez is an association at Robison, Belaustegui, Sharp & Low and is charging
26 the Peppermill \$280.00 per hour for his work on this case.

27 Based on the foregoing, the Peppermill has been charged \$12,301.00 for legal fees
28 pertaining to the discovery disputes leading up to and for processing the Peppermill's

1 *Supplemental Motion for Terminating Sanctions or for Order to Show Cause Why Plaintiff Not Be*
2 *Held in Contempt and Subjected to Severe Sanctions.*

3 D. Deposition of Craig Robinson.

4	<u>Date</u>	<u>Hours</u>	<u>Individual Timekeeper</u>
5	11/04/14	7.0 of 8.3	Kent Robison
6	11/04/14	5.0	James Stewart

7 Peppermill has been charged \$3,700.00 for its lawyer preparing for and taking the
8 deposition of Craig Robinson.

9 E. Conclusion.

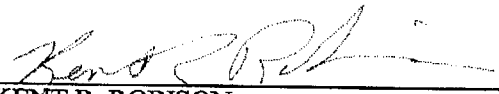
10 Based on the foregoing and the attached, the total amount of the sanctions that should be
11 awarded against the Plaintiff for Peppermill's fees and costs caused by Plaintiff's refusal to
12 properly respond to legitimate discovery requests is \$26,565.00.

13 **AFFIRMATION**
14 **Pursuant to NRS 239B.030**

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

17 DATED this 8th day of December, 2014.

18 ROBISON, BELAUSTEGUI, SHARP & LOW
19 A Professional Corporation
20 71 Washington Street
21 Reno, Nevada 89503

22 
23 KENT R. ROBISON
24 KEEGAN G. LOW
25 THERESE M. SHANKS
26 Attorneys for Defendant
27 Peppermill Casinos, Inc., d/b/a Peppermill Casino
28

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**
4 **CASINOS, INC.'S MEMORANDUM OF COSTS AND ATTORNEYS' FEES IN RESPONSE**
5 **TO COURT'S ORDER OF NOVEMBER 26, 2014** on all parties to this action by the method(s)
6 indicated below:

7 — by placing an original or true copy thereof in a sealed envelope, with sufficient postage
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9 ☒ by using the Court's CM/ECF Electronic Notification System addressed to:

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DATED: This 8TH day of December, 2014.

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28 V. JAYNE FERRETTO

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LIST OF EXHIBITS

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1950
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Robison, Belaustegui, Sharp & Low
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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).

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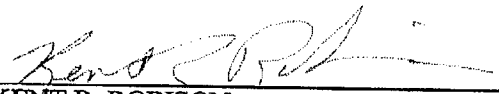
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13 **AFFIRMATION**
14 **Pursuant to NRS 239B.030**

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

17 DATED this 8th day of December, 2014.

18 ROBISON, BELAUSTEGUI, SHARP & LOW
19 A Professional Corporation
20 71 Washington Street
21 Reno, Nevada 89503

22 
23 KENT R. ROBISON
24 KEEGAN G. LOW
25 THERESE M. SHANKS
26 Attorneys for Defendant
27 Peppermill Casinos, Inc., d/b/a Peppermill Casino
28

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**
4 **CASINOS, INC.'S MEMORANDUM OF COSTS AND ATTORNEYS' FEES IN RESPONSE**
5 **TO COURT'S ORDER OF NOVEMBER 26, 2014** on all parties to this action by the method(s)
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28 V. JAYNE FERRETTO

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FILED
Electronically
2014-12-08 04:58:52 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4726776 : mfernand

EXHIBIT 1

EXHIBIT 1

1 **AFFIDAVIT OF KENT R. ROBISON IN SUPPORT OF DEFENDANT PEPPERMILL**
2 **CASINOS, INC.'S MEMORANDUM OF COSTS AND ATTORNEYS' FEES IN**
3 **RESPONSE TO COURT'S ORDER OF NOVEMBER 26, 2014**

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

5 Kent R. Robison, being first duly sworn on oath, deposes and says under penalty of perjury
6 that the following assertions are true and correct.

7 1. I am a member of the firm of Robison, Belaustegui, Sharp & Low, and I am lead
8 counsel for the Defendant Peppermill Casinos, Inc. in this action.

9 2. I have carefully reviewed the Court's Order of November 26, 2014, in an effort to
10 comply with the Court's award of sanctions against the Plaintiff.

11 3. I have carefully reviewed our "Detail Fee Transaction File List", which is a
12 document produced by our bookkeeping department. This document reveals each person who
13 billed on a particular case. It reveals the specific time billed by each person for each day. It also
14 provides a description of the services performed for which the client is charged.

15 4. On August 13, 2014, it is my best belief that I expended .8 hours working on
16 Peppermill's Motion for Terminating Sanctions.

17 5. On August 19, 2014, it is my best belief that 2.2 hours of the 2.7 hours charged to
18 the Peppermill were for work on Peppermill's Motion for Terminating Sanctions.

19 6. On August 20, 2014, it is my best belief that 1.2 hours of the 1.5 hours charged to
20 the Peppermill were for work on Peppermill's Motion for Terminating Sanctions.

21 7. On August 21, 2014, it is my best belief that I expended 1.8 hours of time working
22 on the Peppermill's Motion for Terminating Sanctions.

23 8. On August 25, 2014, it is my best belief that 2.5 hours of the 3.1 hours charged to
24 the Peppermill were for services related to the Peppermill's Motion for Terminating Sanctions.

25 9. On September 15, 2014, it is my best belief that I expended 1 hour out of 1.8 hours
26 charged to the Peppermill on the Peppermill's Opposition to the Plaintiff's Motion to Strike and
27 Motion to Dismiss Motion (considered its Opposition).

28 10. On September 24, 2014, it is my best belief that I expended 2.5 hours working on

1 the Peppermill's Opposition to the Plaintiff's Motion to Strike and Motion to Dismiss Motion.

2 11. On September 25, 2014, it is my best belief that I expended 1.5 hours of 2.3 hours
3 charged to the Peppermill working on the Peppermill's Opposition to the Plaintiff's Motion to
4 Strike.

5 12. On September 26, 2014, it is my best belief that I expended 3.9 hours for work on
6 the Peppermill's Opposition to Plaintiff's Motion to Strike and Motion to Dismiss Motion.

7 13. On October 15, 2014, it is my best belief that I expended 6.2 hours working on
8 discovery demands which related to Peppermill's Supplemental Motion for Terminating Sanctions
9 or for Order Requiring Plaintiff to Show Cause Why it Not be Held in Contempt and Subjected to
10 Severe Sanctions.

11 14. On October 23, 2014, it is my belief that 4 hours of my 4.4 hours charged to the
12 Peppermill were for work related to the Supplemental Motion for Terminating Sanctions.

13 15. On October 24, 2014, I charged the Peppermill 2.3 hours for work related to the
14 Peppermill's Supplemental Motion for Terminating Sanctions.

15 16. On October 27, 2014, it is my belief that I expended 2.1 hours working on the
16 Peppermill's Supplemental Motion for Terminating Sanctions.

17 17. On November 5, 2014, it is my belief that I expended 2.7 hours of the 4.7 hours
18 charged to the Peppermill for services related to the Peppermill's Supplemental Motion for
19 Terminating Sanctions.

20 18. On November 11, 2014, it is my belief that I expended 2 hours of the 2.6 hours
21 charged to the Peppermill on the Peppermill's Supplemental Motion for Terminating Sanctions.

22 19. On November 4, 2014, it is my belief that I prepared for the deposition of Craig
23 Robinson. Also, on that date, I conducted a thorough examination of Craig Robinson concerning
24 the topics for which he had been identified by the Plaintiff as being most knowledgeable. The
25 total charges to the Peppermill for me preparing for and taking the deposition of Craig Robinson
26 was 7 hours.

27 20. I have agreed for the year 2014 to charge the Peppermill the hourly rate of \$450.

28 21. Scott Hernandez is an associate at Robison, Belaustegui, Sharp & Low. I have

1 utilized his services in assisting me with various discovery issues in this case. We are charging the
2 Peppermill \$280 an hour for the services provided by Scott Hernandez.

3 22. Jayne Ferretto is a paralegal who has served as my legal assistant and paralegal for
4 over 30 years. For paralegal services, we charge Mrs. Ferretto at an hourly rate of \$90 per hour.

5 23. I have reviewed the Detail Fee Transaction File List and have determined that Jayne
6 Ferretto worked on legal matters (paralegal matters) for .3 hours on September 26, 2014.

7 24. I have reviewed the Detail Fee Transaction File List to determine the amount of
8 work provided by Scott Hernandez on the Peppermill's Supplemental Motion for Terminating
9 Sanctions or for Order to Show Cause Why Plaintiff Should Not be Held in Contempt and
10 subjected to severe sanctions.

11 25. The firm's records reflect that Scott Hernandez worked on the Peppermill's
12 Supplemental Motion for Terminating Sanctions for 3.1 hours on October 17, 2014, for 6.3 hours
13 on October 21, 2014, and for 2.1 hours on October 22, 2014.

14 26. We are charging the Peppermill the hourly rate of \$280 for Mr. Hernandez's time
15 spent on this case.

16 27. A substantial amount of time has been charged to the Peppermill for discovery
17 issues. The services rendered are both reasonable and necessary in light of the fact that the
18 Peppermill failed to produce witnesses at the NRCP 30(b)(6) depositions scheduled in August of
19 2014, their failure and refusal to answer interrogatories, their failure to produce damage documents
20 as ordered by the Court and for producing NRCP 30(b)(6) witnesses who had no knowledge
21 whatsoever about the topics for which Craig Robinson was produced.

22 28. Attached to this exhibit is my statement of qualifications, which is submitted to this
23 Honorable Court for the purposes of determining the education, experience and general

24 ///

25 ///

26 ///

27 ///

28 ///

1 qualifications that should be considered in awarding fees and justifying my hourly rate of \$450.

2 DATED: This 8th day of December, 2014.

3
4
5 
6 KENT R. ROBISON

7 Subscribed and Sworn to Before
8 me this 8th day of December, 2014,
9 by Kent R. Robison.

10 
11 NOTARY PUBLIC



J:\WPData\Km\1872.006-Peppermill-GSR v\P-Affid. KRR ISO Memo Costs.Fees.12-08-14.doc

KENT R. ROBISON

EDUCATION

University of Nevada, Reno - 1969 (B.A.)

University of San Francisco, School of Law - 1972 (J.D.)

OCCUPATIONAL BACKGROUND

1971 - Carson City District Attorney's Office

1972-1975 - Washoe County Public Defender's Office

1975-1979 - Johnson, Belaustegui & Robison

1979-1981 - Johnson, Belaustegui, Robison and Adams

1981-1988 - Robison, Lyle, Belaustegui & Robb

1988 to 1999 - Robison, Belaustegui, Robb & Sharp

1999 to present - Robison, Belaustegui, Sharp & Low

COURTS ADMITTED TO PRACTICE

Nevada Supreme Court - 1972

Nevada Federal District Court - 1973

Ninth Circuit Court of Appeals - 1976

Court of Claims - 1973

United States Tax Court - 1982

United States Supreme Court - 1977

Northern District of California Federal Court

Eastern District of California Federal Court

Southern District of California Federal Court

District of Arizona Federal Court

District of Kansas Federal Court

District of Hawaii Federal Court

District of Western Washington Federal Court

District of New Mexico Federal Court

PROFESSIONAL AFFILIATIONS & ACTIVITIES

Nevada Supreme Court Trial Judge Seminar - Judge's Relationship With Lawyers -
2009 & 2012

Nevada Supreme Court - Bench Bar Committee - 2009-2011

Member - Nevada Supreme Court's Committee on Court Costs and Speedy Trials

Member - State Commission on Sentencing Felony Offenders

Member - Executive Committee to Establish Appellate Court

Member - Commission to Implement Cameras in the Courtroom

Member - Committee on Rules of Civil Procedure

Member - Ad Hoc Committee for Improved Technology in Nevada Federal Court Rooms

American Trial Lawyer's Association - ATLA Sustaining Member - ATLA Stalwart

Member - Professional Liability Section of ATLA

Roscoe Pound Foundation

National Association of Criminal Defense Lawyers

Nevada Trial Lawyer's Association - Past President - 1979

Member of NTLA Board of Governors 1973-1983

NTLA Pillar of Justice

American Board of Trial Advocates - President, Reno Chapter, 1991-1993

Nevada State Board of Bar Governors - 1980 to 1990

Northern Nevada Legal - Medical Screening Panel (1981-1985)
Washoe County Juvenile Master Pro Tem (1975-1977)
Diplomat - National Board of Trial Advocacy - Civil
Diplomat - National Board of Trial Advocacy - Criminal
American Bar Association (1972-present)
Member - ABA Litigation Section
Nevada State Bar Association (1972-present)
Washoe County Bar Association
American Board of Criminal Lawyers
Nevada State Bar Ethics Committee - Ex-officio
Nevada State Bar Jury Instruction Committee - Ex-officio
American Inns of Court (Charter Member and as Master)
Honorable Bruce R. Thompson Chapter
American College of Barristers
Member - Board of Trustees - Justice League of Nevada (2012-2013)
(Formerly Nevada Law Foundation)

RECOGNITION

The Best Lawyers in America - 1993-2013 (21 years) (Personal Injury/Commercial Litigation)
Named Top Attorneys - "Super Lawyers" of the Mountain States - 2007-2013 - Top 5%
Named by the American Law Journal to the Nation's Top 100 Commercial Litigation Lawyers
Chambers USA Leading Litigation and Business Lawyers - Tier I Nevada Trial Lawyers
Outstanding Lawyers of America - 2003
American College of Barristers - Senior Counsel
College of Master Advocates
Martindale's "Bar Registry of Preeminent Lawyers" in five categories
(Business Litigation, Personal Injury (Plaintiff and Defense), Domestic and Criminal)
Who's Who in the Law
Who's Who in the West
Who's Who in America
Certified Criminal Trial Advocate - National Board of Trial Advocacy - 1980
Certified Civil Trial Advocate - National Board of Trial Advocacy -1980
National College of Trial Advocacy - Faculty Advanced Course
Category I (Highest Rating) National Directory of Criminal Lawyers
"AV" Martindale-Hubbell Rating for over 25 years
Master (Emeritus) and Charter Member of The American Inns of Court - Reno Chapter
Litigation Counsel of America - Trial Lawyer Honorary Society
Fellow - Litigation Counsel of America
Corporate Counsel Top Lawyers -2010
Top Commercial Litigation Lawyers - 2006 - 2011
National Trial Lawyers - Top 100 Trial Lawyers - 2011 - 2013
Robison, Belaustegui, Sharp & Low - U.S. News - Best Law Firms - Reno Tier 1 - 2011
Commercial Litigation, Corporate Law and Personal Injury

AUTHORSHIP

Cameras in the Courtroom (Advocate - Vol. IV., No. 2, February 1980)
Nevada's Comparative Negligence (Advocate - Vol. I., No. 9, January 1977)
Psychology and Eye Witness Identification (Advocate - Vol. II., No. 2, November, 1977)

Juries & Verdicts - Nevada Handbook on Civil Procedure
 The Gaming Industry's Other Gamble - Tort Litigation
 The Law of Jury Selection (NBI 1996)
 Special Tools for Selecting the Right Jury (NBI 1996)
 Inadequate Security Issues in the Intentional Tort Arena
 (Professional Educational Systems 1996)
 Inadequate Security Cases Involving Violent Crimes - From a Defense View
 (ATLA January 1997)
 Direct Examination and Demonstrative Evidence "Tools For Proving" (Consumer Attorneys of
 San Diego 1998)
 "Initial Considerations Regarding Use of Expert Witnesses" (NBI 1998)
 Comparative Cross-Examination and Strategies For Impeachment (NBI 1998)
 The Defense Attorney's "Dirty Dozen" (Defense Considerations in Negligent Security Cases)
 (ATLA January 1999)
 Damages: The Art of Asking for Money (NTLA Annual Seminar)
 Jury Trials - Nevada Civil Practice Manual (2000-2013)
 Trial Lawyers' Relationship with the Trial Judge in Civil Actions
 (2008 & 2012 Nev. S. Ct. Trial College)

DEFENSE EXPERIENCE

Since 1991 extensive defense work has been provided for the Mandalay Resort Group, General
 Star Management Company, ALAS, Allianz Insurance Company and individuals in the areas of
 negligent security, toxic mold, unnecessary force, professional liability, defective construction,
 intentional torts and negligence.

LECTURES

Western Nevada Community College - Annual "Criminal Defense Trial Tactics"
 Reno Police Academy - 1976 - "Motions to Suppress Evidence"
 California Legal Secretaries Association - 1979 - "Capital Punishment"
 Nevada Trial Lawyers Annual Convention - 1977 - "Closing Arguments in Criminal Trials"
 University of Nevada, Reno, Department of Criminal Science - 1978 - "Defense Strategy"
 Reno Business College - "Organization of Criminal Files" - 1980
 Nevada Society of Safety Engineers
 ATLA's 1984 Annual Convention, Seattle, Washington, Belli Seminar - "Lay
 Use of the Psychological Stress Evaluator as a Civil Cause of Action"
 Washoe County Bar Association - May 14, 1985 - "Preparation of Personal Injury Cases"
 Legal Aspects of Mandatory Drug Testing of Collegiate Athletes - 1986
 Psychology and Jury Selection - 1987
 New Rules of Civil Procedure - 1987
 Psychology of Jury Selection - Nevada Trial Lawyers Annual Convention - 1988
 Nevada Law on Bad Faith Insurance Practices - Nevada Trial Lawyers - 1993
 Gaming Industry and Tort Litigation - 1994
 Premises Liability: Inadequate or Negligent Security - 1996
 Strategies for Selecting Juries - 1996
 Premises Liability - Defense View - ATLA Mega Seminar - 1997
 Expert Witness - Selection, Preparation and Presentation - NBI 1998
 Direct Examination and Demonstrative Evidence - 1998

Premises Liability Cases - From a Defense View - ATLA - Phoenix - Feb. 1999
Damages - "How to Ask for Money" - NTLA Annual Convention - Oct. 1999
Masters in Trial - Closing Argument (ABOTA-Masters in Trial) - Dec. 1999
Damages: How to Minimize; How to Maximize - Inns of Court - Jan. 2000
Masters in Trial - 2002 - 2005 - 2006
Inns of Court Presentations: Jury Selection; Opening Statements; Child Witnesses;
Eye Witness Testimony; Expert Witness Examinations
Presenter for Difficult Voir Dire Issues (2009 Nev. S. Ct. Trial College)
UNR Medical School Presenter - "Interaction Between Legal and Medical Professions" - 2/2011
"Role of the Judge" (new judge orientation) (2012 Nev. S. Ct. Trial College)
Presenter - Nevada State Bar Convention - "Direct Examination" - July 2013

NEVADA SUPREME COURT / APPELLATE CASES

City of Reno v. David Evans (Case No. 63266)
Renown v. Arger et als (Case No. 64455)
Matthew Boga v. TMC Group, Inc. / Matthew J. Fuller (Case No. 62738/63531)
Patraw v. Nevada System of Higher Education, Milton Glick, Cary Groth
(Case No. 53918/54573)
Patraw v. Nevada System of Higher Education, Milton Glick, Cary Groth (Injunction)
(Case No. 55433)
Furer v. Furer (Case No. 51198)
EES v. Gunnerman, Sulphco, Inc. (Case No. 50324)
Darren Mack v. Michael E. Fondi (Case No. 51536)
Landmark Homes v. Sierra Gateway, 121 Nev. 1143, 152 P.3d 783 (2005)
Ferguson v. Sierra Gateway / Landmark - 2007 (appeal from U.S. Bankruptcy Court)
Lexey Parker v. St. Mary's, 121 Nev. 1174, 152 P.3d 809 (2005)
Farhadi v. CB Commercial, 118 Nev. 1089, 106 P.3d 1209 (2002)
Farhadi v. CB Commercial, 131 P.3d 589 (2004)
Hazelwood v. Harrah's, 109 Nev. 1005, 862 P.2d 189 (1993)
Oak Grove Investors v. Bell & Gossett, 108 Nev. 958, 843 P.2d 351 (1992)
Williams v. State Farm/Sierra Foods v. Williams, 107 Nev. 574, 816 P.2d 466
State v. Batt, 111 Nev. 1127, 901 P.2d 664 (1995)
Amoroso v. L & L Roofing, 107 Nev. 294, 810 P.2d 775
Swain v. Meyer, 104 Nev. 595, 763 P.2d 337 (1988)
State v. Kaplan, 96 Nev. 798, 618 P.2d 354 (1980)
State v. Kaplan, 99 Nev. 449, 663 P.2d 1190 (1983)
Bell v. ATO
Eikelberger v. Tolotti, 96 Nev. 525, 611 P.2d 1086 (1980)
Friedas v. Quinn River, 101 Nev. 471, 705 P.2d 673 (1985)
Fondi v. Fondi, 106 Nev. 856, 802 P.2d 1264 (1990)
State v. Fogarty, 108 Nev. 1234, 872 P.2d 817 (1992)
State v. Bishop (Death Penalty)
State v. Biederstadt / Hurt, 92 Nev. 80, 545 P.2d 202 (1976)
State v. Lendon, 92 Nev. 112, 546 P.2d 234 (1976)

NINTH CIRCUIT COURT OF APPEALS:

Talisman Capital Talon Fund, Ltd. v. Gunnerman, Sulphco, Inc. (Case No. 09-16256)

Wild Game Ng v. Wong's International (USA) Corp. (Case No. 08-15616)

Hussein v. Dugan (Case No. 08-17443)

Montreux v. Pitts, 130 Fed. Appx. 80 WL 663810CA9 (Nev. 2005)

Shipman v. Allstate

GENERAL

Born in Reno, Nevada 1947. Raised and educated in Reno, Nevada. Jury trials in state in and federal courts of six states. Received verdicts in over 100 jury trials. Ten Judgments over \$1,000,000 with total value in excess of \$600,000,000. Tried over 500 non-jury (court) trials. Served on Medical Legal Screening Panel. Handled legal malpractice cases, both for plaintiffs and for defendants. Settled legal malpractice cases for over \$1,000,000. Served as a lobbyist for the Nevada Trial Lawyers Association with emphasis construction legislation, medical malpractice, no fault insurance and judicial salaries. Represented Nevada lawyers and national law firms concerning legal malpractice claims. Member of the malpractice section of the American Trial Lawyers Association. Have prosecuted and defended lawyers charged with ethical violations. Have served as a special prosecutor for the Judicial Discipline Committee and have served as a special prosecutor for the Nevada State Board of Bar Governors, prosecuting ethical claims against lawyers charged with ethical violations. Have testified as an expert in legal malpractice claims in Second Judicial District in and for the State of Nevada. Extensive experience in prosecuting and defending negligent security and premises liability cases with representative clients of Circus Circus, Mandalay Resort Group and Red Lions Hotel and Inns. Primary focus for the past ten years has been in business tort litigation involving complex commercial and real estate transactions. Counsel of record in over twenty-six Nevada Supreme Court decisions.

Detail Fee Transaction File List Robison Belaustegui Sharp & Low

Client	Trans Date	Trmkr	H Toode/ P Task Code	Rate	Hours to Bill	Amount	Ref #
Client ID 1872.006 Peppermill Inc.							
1872.006	08/01/2014	JS A	9	110.00	2.50	275.00	ARCH
1872.006	08/01/2014	KGL A	9	380.00	0.60	228.00	ARCH
1872.006	08/04/2014	JS A	9	110.00	2.40	264.00	ARCH
1872.006	08/05/2014	JS A	9	110.00	5.90	649.00	ARCH
1872.006	08/05/2014	KGL A	9	380.00	1.40	532.00	ARCH
1872.006	08/06/2014	TMS A	9	220.00	0.20	44.00	ARCH
1872.006	08/06/2014	JS A	9	110.00	0.50	55.00	ARCH
1872.006	08/06/2014	KGL A	9	380.00	0.80	304.00	ARCH
1872.006	08/07/2014	KRR A	9	450.00	2.90	1,305.00	ARCH
1872.006	08/07/2014	JS A	9	110.00	5.30	583.00	ARCH
1872.006	08/07/2014	JS A	9	110.00	2.50	275.00	ARCH
1872.006	08/08/2014	KRR A	9	450.00	2.10	945.00	ARCH
1872.006	08/11/2014	KRR A	9	450.00	1.20	540.00	ARCH
1872.006	08/11/2014	JS A	9	110.00	3.30	363.00	ARCH
1872.006	08/12/2014	KGL A	9	380.00	2.20	836.00	ARCH
1872.006	08/12/2014	KRR A	9	450.00	2.10	945.00	ARCH
1872.006	08/12/2014	JS A	9	110.00	1.80	198.00	ARCH
1872.006	08/13/2014	KRR A	9	450.00	1.10	495.00	ARCH
1872.006	08/13/2014	JS A	9	110.00	1.00	110.00	ARCH
1872.006	08/14/2014	KGL A	9	380.00	0.80	304.00	ARCH
1872.006	08/19/2014	TMS A	9	220.00	0.25	55.00	ARCH
1872.006	08/19/2014	JS A	9	110.00	2.00	220.00	ARCH
1872.006	08/19/2014	KRR A	9	450.00	2.70	1,215.00	ARCH
1872.006	08/20/2014	JS A	9	110.00	1.80	198.00	ARCH

Worked with Jim on 16.1 disclosures and continue research and draft on motion to compel discovery.

Conversations with co-defense counsel regarding status of discovery and depositions of certain individuals and strategy.

Worked on and completed motion for order to show cause and to compel discovery.

Detail Fee Transaction File List
Robison Belaustegui Sharp & Low

<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
Client ID 1872.006 Peppermill Inc.								
1872.006	08/20/2014	KRR	A	9	450.00	1.50	675.00 Telephone conference with Denise. Received and reviewed "par sheets". Continued work on motion to compel.	ARCH
1872.006	08/21/2014	JS	A	9	110.00	4.10	451.00 Two conferences with Kent Robison. Locate and prepare documents/information/exhibits for motion. Review 6/26 hearing transcript. Review and revise email index.	ARCH
1872.006	08/21/2014	KRR	A	9	450.00	1.80	810.00 Worked on motion to compel.	ARCH
1872.006	08/22/2014	JS	A	9	110.00	2.30	253.00 Assemble and email documents/information to Kent Robison. Prepare documents/information/exhibits for Motion.	ARCH
1872.006	08/25/2014	JS	A	9	110.00	4.00	440.00	ARCH
1872.006	08/25/2014	KRR	A	9	450.00	3.10	1,395.00 Prepare documents/information/exhibits for Motion. Prepared for depositions. Appeared at depositions. Made nonappearance supplemental motion to dismiss complaint for sanctions and to compel discovery.	ARCH
1872.006	08/25/2014	KGL	A	9	380.00	1.40	532.00 non-appearance of witness in deposition; review Motion for Terminating Sanctions and confer with Kent Robison regarding same.	ARCH
1872.006	08/26/2014	KRR	A	9	450.00	1.60	720.00	ARCH
1872.006	08/26/2014	KGL	A	9	380.00	0.80	304.00	ARCH
1872.006	08/26/2014	JS	A	9	110.00	3.50	385.00	ARCH
1872.006	08/27/2014	JS	A	9	110.00	5.50	605.00	ARCH
1872.006	08/28/2014	JS	A	9	110.00	3.00	330.00	ARCH
1872.006	08/28/2014	JS	A	9	110.00	5.10	561.00	ARCH
1872.006	08/29/2014	KRR	A	9	450.00	4.50	2,025.00	ARCH
1872.006	09/01/2014	KRR	A	9	450.00	2.80	1,280.00	ARCH
1872.006	09/02/2014	JS	A	9	110.00	0.50	55.00	ARCH
1872.006	09/02/2014	KRR	A	9	450.00	1.10	495.00	ARCH
1872.006	09/03/2014	KGL	A	5	380.00	1.20	456.00	ARCH
1872.006	09/03/2014	JS	A	9	110.00	3.00	330.00	ARCH
1872.006	09/03/2014	KRR	A	9	450.00	4.30	1,935.00	ARCH
1872.006	09/03/2014	JF	A	9	90.00	0.25	22.50	ARCH

Detail Fee Transaction File List
Robison Belaustegui Sharp & Low

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	Ref #
Client ID 1872.006 Peppermill Inc.								
1872.006	09/04/2014	KGL	A	9	380.00	0.70	286.00	ARCH
1872.006	09/04/2014	KRR	A	9	450.00	1.30	585.00	ARCH
1872.006	09/05/2014	KGL	A	9	380.00	0.40	152.00	ARCH
1872.006	09/05/2014	JS	A	9	110.00	1.00	110.00	ARCH
1872.006	09/08/2014	KRR	A	9	450.00	2.20	990.00	ARCH
1872.006	09/08/2014	KGL	A	9	380.00	0.40	152.00	ARCH
1872.006	09/08/2014	JS	A	9	110.00	2.70	297.00	ARCH
1872.006	09/09/2014	KRR	A	9	450.00	2.10	945.00	ARCH
1872.006	09/09/2014	JS	A	9	110.00	3.00	330.00	ARCH
1872.006	09/10/2014	KRR	A	9	450.00	1.20	540.00	ARCH
1872.006	09/10/2014	KGL	A	9	380.00	0.40	152.00	ARCH
1872.006	09/10/2014	JS	A	9	110.00	3.40	374.00	ARCH
1872.006	09/11/2014	JS	A	9	110.00	1.30	143.00	ARCH
1872.006	09/12/2014	JS	A	9	110.00	3.70	407.00	ARCH
1872.006	09/15/2014	JS	A	9	110.00	4.90	539.00	ARCH
1872.006	09/15/2014	KRR	A	9	450.00	1.90	855.00	ARCH
							Receive, review GSR's opposition to motion for terminating sanctions re: discovery disobedience. Review affidavit of GSR's experts, forwarded experts affidavit.	
1872.006	09/16/2014	JS	A	9	110.00	3.60	396.00	ARCH
1872.006	09/17/2014	JS	A	9	110.00	4.90	539.00	ARCH
1872.006	09/18/2014	JS	A	9	110.00	8.60	946.00	ARCH
1872.006	09/18/2014	KRR	A	9	450.00	4.10	1,845.00	ARCH
1872.006	09/18/2014	KGL	A	9	380.00	0.60	228.00	ARCH
1872.006	09/19/2014	JS	A	9	110.00	3.50	385.00	ARCH

Detail Fee Transaction File List
Robison Belaustegui Sharp & Low

Client	Trans Date	Tmkr	H P	Task Code	Rate	Hours to Bill	Amount	Ref #
Client ID 1872.006 Peppermill Inc.								
1872.006	09/19/2014	KRR	A	9	450.00	9.80	4,410.00	ARCH
1872.006	09/19/2014	KGL	A	9	380.00	0.40	152.00	ARCH
1872.006	09/22/2014	JS	A	9	110.00	2.50	275.00	ARCH
1872.006	09/23/2014	JS	A	9	110.00	3.00	330.00	ARCH
1872.006	09/24/2014	JS	A	9	110.00	2.30	253.00	ARCH
1872.006	09/24/2014	KRR	A	9	450.00	2.50	1,125.00	ARCH
1872.006	09/25/2014	KRR	A	9	450.00	2.30	1,035.00	ARCH
1872.006	09/25/2014	JS	A	9	110.00	1.80	198.00	ARCH
1872.006	09/26/2014	KGL	A	9	380.00	0.40	152.00	ARCH
1872.006	09/26/2014	JF	A	9	90.00	0.30	27.00	ARCH
1872.006	09/26/2014	KRR	A	9	450.00	3.90	1,755.00	ARCH
1872.006	09/29/2014	SLH	A	1	280.00	1.40	392.00	ARCH
1872.006	09/29/2014	KGL	A	9	380.00	0.40	152.00	ARCH
1872.006	09/29/2014	JS	A	9	110.00	4.80	528.00	ARCH
1872.006	09/29/2014	KRR	A	9	450.00	2.30	1,035.00	ARCH
1872.006	09/30/2014	SLH	A	1	280.00	2.80	784.00	ARCH
1872.006	09/30/2014	KGL	A	9	380.00	0.20	76.00	ARCH
1872.006	09/30/2014	KRR	A	9	450.00	5.60	2,520.00	ARCH
1872.006	09/30/2014	JS	A	9	110.00	3.20	352.00	ARCH
1872.006	09/30/2014	JF	A	9	90.00	0.25	22.50	ARCH
1872.006	10/01/2014	SLH	A	1	280.00	3.90	1,092.00	ARCH
1872.006	10/01/2014	KRR	A	9	450.00	3.70	1,665.00	ARCH

Detail Fee Transaction File List
Robison Belaustegui Sharp & Low

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	Ref #
Client ID 1872.006 Peppermill Inc.								
1872.006	10/13/2014	JF	A	9	90.00	0.50	45.00	ARCH
1872.006	10/14/2014	KGL	A	9	380.00	0.50	190.00	ARCH
1872.006	10/14/2014	JS	A	9	110.00	2.50	275.00	ARCH
1872.006	10/14/2014	KRR	A	9	450.00	4.30	1,935.00	ARCH
1872.006	10/15/2014	SLH	A	1	280.00	1.10	308.00	ARCH
1872.006	10/15/2014	JS	A	9	110.00	3.30	363.00	ARCH
1872.006	10/15/2014	KRR	A	9	450.00	6.20	2,790.00	ARCH
							Work on opposition to motion to "submit" Peppermill's motion for terminating sanctions.	
1872.006	10/16/2014	SLH	A	1	280.00	4.50	1,260.00	ARCH
1872.006	10/16/2014	KRR	A	9	450.00	2.00	900.00	ARCH
1872.006	10/16/2014	KRR	A	9	450.00	2.30	1,035.00	ARCH
1872.006	10/17/2014	SLH	A	1	280.00	3.10	868.00	ARCH
1872.006	10/17/2014	KRR	A	9	450.00	2.10	945.00	ARCH
1872.006	10/17/2014	JF	A	9	90.00	0.50	45.00	ARCH
1872.006	10/20/2014	JS	A	9	110.00	9.30	1,023.00	ARCH
1872.006	10/20/2014	KRR	A	9	450.00	8.30	3,735.00	ARCH
1872.006	10/21/2014	SLH	A	1	280.00	6.30	1,764.00	ARCH
							Analyze and review standards for issue and claim preclusion under Nevada law. Draft opposition to GSR's objection to discovery commissioner's recommendation for order.	
1872.006	10/21/2014	KRR	A	9	450.00	10.10	4,545.00	ARCH
1872.006	10/21/2014	JS	A	9	110.00	1.50	165.00	ARCH
1872.006	10/22/2014	SLH	A	1	280.00	2.10	588.00	ARCH
							Finalize opposition to GSR's objection to discovery	

Detail Fee Transaction File List
Robison Belaustegui Sharp & Low

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	Ref #
Client ID 1872.006 Peppermill Inc.								
1872.006	10/22/2014	KRR	A	9	450.00	3.50	1,575.00	commissioner's recommendation for order. ARCH
1872.006	10/22/2014	JS	A	9	110.00	4.00	440.00	ARCH
1872.006	10/23/2014	KRR	A	9	450.00	4.40	1,980.00	Worked on Opposition to Objection to Discovery Commissioner's Order. Worked on and completed rough draft of Motion for Order to Show Cause. Continued work on letter to counsel. ARCH
1872.006	10/23/2014	JS	A	9	110.00	1.30	143.00	ARCH
1872.006	10/24/2014	SLH	A	1	280.00	1.10	308.00	Analyze court's order and examine errors. Discuss response to court order. Develop strategy to addressing opposing counsel ex parte motion. Analyze and review opposition to ex parte and GSR's objection to discovery commissioner's recommendation fro order. ARCH
1872.006	10/24/2014	KRR	A	9	450.00	2.30	1,035.00	Continue to work on Motion for Order to Show Cause and Opposition to Objection. Receive Judge Flanagan's Order. Research file to determine that Judge Flanagan has mistakenly entered an order on the wrong Commissioner Recommendation. Worked on affidavit regarding Motion for Order to Show Cause. Worked on affidavit regarding Opposition to Objection to Discovery Commissioner's Recommendation. ARCH
1872.006	10/24/2014	JS	A	9	110.00	0.80	88.00	Locate and prepare documents/information/exhibits for motion. ARCH
1872.006	10/27/2014	KRR	A	9	450.00	2.10	945.00	Prepare for hearing on discovery before Judge Flanagan. Appear in Court before Judge Flanagan, argue 30(b)(6) motion. Documented and started preparation for Rule 16 status conference. Telephone conference with Stan Johnson regarding status of discovery and documents. ARCH
1872.006	10/27/2014	SLH	A	1	280.00	0.30	84.00	ARCH
1872.006	10/28/2014	KRR	A	9	450.00	3.90	1,755.00	ARCH
1872.006	10/29/2014	KRR	A	9	450.00	2.90	1,305.00	ARCH
1872.006	10/30/2014	KRR	A	9	450.00	1.40	630.00	ARCH
1872.006	10/30/2014	JF	A	9	90.00	0.50	45.00	ARCH
1872.006	11/03/2014	KRR	A	9	450.00	1.30	585.00	ARCH
1872.006	11/03/2014	KRR	A	9	450.00	8.60	3,870.00	ARCH

Detail Fee Transaction File List Robison Belaustegui Sharp & Low

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	Ref #
Client ID 1872.006 Peppermill Inc.								
1872.006	11/04/2014	KRR	A	9	450.00	8.30	3,735.00	ARCH
							Prepare for and took 30 (b) (6) depositions of Craig Robinson and security officer. Work on debrief regarding frustration of Robinson having no information concerning topics for which he was produced. Start work on motion for order to show cause and for terminating sanctions for violating NRCP 30 (b) (6).	
1872.006	11/04/2014	JF	A	9	90.00	0.25	22.50	ARCH
1872.006	11/05/2014	KRR	A	9	450.00	4.70	2,115.00	ARCH
							Work on motion to dismiss GSR case because of GSR's most recent discovery violation in not producing persons most knowledgeable. Work on response to court order to file motion for NRCP 16	
1872.006	11/05/2014	SLH	A	1	280.00	3.60	1,008.00	ARCH
1872.006	11/06/2014	KRR	A	9	450.00	4.30	1,935.00	ARCH
1872.006	11/06/2014	SLH	A	1	280.00	0.40	112.00	ARCH
1872.006	11/07/2014	KRR	A	9	450.00	4.10	1,845.00	ARCH
1872.006	11/10/2014	KRR	A	9	450.00	3.10	1,395.00	ARCH
1872.006	11/11/2014	KRR	A	9	450.00	2.60	1,170.00	ARCH
							Motion for Terminating Sanctions Schedule	
1872.006	11/12/2014	KRR	A	9	450.00	3.40	1,530.00	ARCH
1872.006	11/13/2014	KRR	A	9	450.00	2.20	990.00	ARCH
1872.006	11/14/2014	KRR	A	9	450.00	3.60	1,620.00	ARCH
1872.006	11/17/2014	KRR	A	9	450.00	3.10	1,395.00	ARCH
1872.006	11/17/2014	JF	A	9	90.00	0.25	22.50	ARCH
1872.006	11/18/2014	KRR	A	9	450.00	7.60	3,420.00	ARCH
1872.006	11/19/2014	KRR	A	9	450.00	2.70	1,215.00	ARCH
1872.006	11/19/2014	JF	A	9	90.00	0.25	22.50	ARCH
1872.006	11/20/2014	KRR	A	9	450.00	2.50	1,125.00	ARCH

EXHIBIT 2

EXHIBIT 2

STATE OF NEVADA)
COUNTY OF WASHOE) ss.

About Us

Keegan G. Low | Attorney at Law

[back](#)

klow@rbsllaw.com

Growing up in the San Francisco Bay area, Keegan attended Hastings College of the Law in San Francisco, where he was part of the overall top Moot Court Competition Team in 1977.

Moving to Reno in the early 80s, he has concentrated on commercial and defense litigation throughout his career. His endeavors and enthusiasm for the law have earned him inclusion in "Best Lawyers" for commercial litigation, as well as being named to American Lawyer and Corporate Counsel's "Top Lawyers" for 2009.

Involved in various charitable endeavors, Keegan also has served for the past several years on the Nevada Disciplinary Committee's Panel of lawyers/judges, adjudicating disciplinary matters brought by the State Bar.



Areas of practice:

- Insurance and Commercial Litigation
- Personal Injury Defense
- Business Law and Litigation

Education:

- San Francisco State University B.A. 1975
- Hastings College of the Law, University of California J.D. 1978

Admitted to Bar:

- 1978, California and U.S. District Court, Northern District of California
- 1983, Nevada and U.S. District Court, District of Nevada
- 1989, U.S. Court of Appeals, Ninth Circuit and U.S. Supreme Court

Bar Associations:

- State Bar of Nevada
- State Bar of California
- Washoe County Bar Association
- American Bar Association

PDF

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Jacqueline Bryant
Clerk of the Court
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EXHIBIT 3

EXHIBIT 3

1 **AFFIDAVIT OF JAMES STEWART IN SUPPORT OF DEFENDANT PEPPERMILL**
2 **CASINOS, INC.'S MEMORANDUM OF COSTS AND ATTORNEYS' FEES IN**
3 **RESPONSE TO COURT'S ORDER OF NOVEMBER 26, 2014**

3 STATE OF NEVADA }
4 COUNTY OF WASHOE } ss.

5 James Stewart, being first duly sworn on oath, deposes and says under penalty of perjury
6 that the following assertions are true and correct.

7 1. I am a paralegal employed by Robison, Belaustegui, Sharp & Low.

8 2. I have assisted Kent Robison in working on various discovery matters in this case.

9 3. I have reviewed the Detail Fee Transaction File List generated by the bookkeeping
10 department of the law firm.

11 4. I have worked on the discovery motions subject of the Court's November 26, 2014,
12 Order awarding sanctions.

13 5. On August 21, 2014, I expended 4.1 hours assisting Kent Robison by organizing
14 files and producing various discovery documents, pleadings and exhibits for Kent's use in
15 preparing the Peppermill's Motion for Terminating Sanctions.

16 6. On August 22, 2014, I expended 2.30 hours helping with the Motion for
17 Terminating Sanctions.

18 7. Of the 4 hours charged to the Peppermill on August 25, 2014, 2.5 hours of that time
19 was devoted to helping Mr. Robison with document control and organization in working on and
20 preparing the Peppermill's Motion for Terminating Sanctions.

21 8. On September 22, 2014, I spent 2 hours assisting Mr. Robison on the Peppermill's
22 Opposition to the Plaintiff's Motion to Strike and Motion to Dismiss Motion.

23 9. On September 23, 2014, I spent 3 hours assisting Mr. Robison with preparing and
24 reviewing the necessary documents to draft the Peppermill's Opposition to the Plaintiff's Motion
25 to Strike and Motion to Dismiss Motion.

26 10. On October 24, 2014, I spent .8 hours assisting Mr. Robison with document control
27 and review of discovery documents to assist him in preparing the Peppermill's Supplemental
28 Motion for Terminating Sanctions or for Order to Show Cause Why Plaintiff Not be Held in

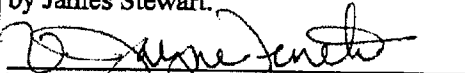
1 Contempt and Subjected to Severe Sanctions.

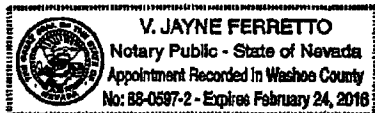
2 11. On November 4, 2014, I attended the deposition of Craig Robinson and spent 5
3 hours assisting Mr. Robison with document control and organization of exhibits and documents
4 used to examine Mr. Robison. Although the Detail Fee Transaction File List does not reflect my
5 time for that day, it is an inadvertent mistake whereby I neglected to log my time on the Peppermill
6 case for that date.

7 DATED: This 8th day of December, 2014.

8
9
10 
JAMES STEWART

11 Subscribed and Sworn to Before
12 me this 8th day of December, 2014,
by James Stewart.

13 
14 NOTARY PUBLIC



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KENT R. ROBISON, ESQ. - NSB #1167
krobison@rbsllaw.com
KEEGAN G. LOW, ESQ. - NSB #307
klow@rbsllaw.com
THERESE M. SHANKS, ESQ. - NSB # 12890
tshanks@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,

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).

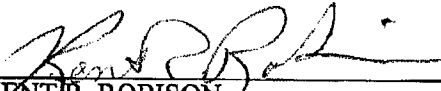
**PEPPERMILL CASINOS, INC.'S MOTION FOR ORDER REQUIRING GSR TO
SHOW CAUSE WHY IT NOT BE HELD IN CONTEMPT, SANCTIONED
AND ORDERED TO PRODUCE DOCUMENTS**

The Plaintiff, after having been sanctioned for discovery abuses, has, once again,
committed a defiant violation of this Court's Order regarding discovery. It has refused to produce
documents relating to its damage claim, notwithstanding the Court's Order otherwise. Defendant
Peppermill Casinos, Inc. ("Peppermill") must, once again, seek the assistance of this Court. This
motion is based upon the attached Points and Authorities, Affidavit and exhibits submitted
therewith.

///

1 DATED this 17th day of December, 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 This Court is well aware of the repeated efforts the Peppermill has made to obtain
14 discovery from GSR. Indeed, GSR's flagrant refusal to participate in good faith discovery resulted
15 in GSR being sanctioned and ordered to produce documents. (See Order of November 26, 2014.)

16 Even after having been sanctioned, GSR continues to defiantly and wrongfully interfere
17 with the discovery process. This dispute, once again, pertains to GSR's blatant and inexcusable
18 refusal to produce documents which support its alleged damage claim. The chronology is as
19 follows:

20 1. On September 19, 2014, the Discovery Commissioner ordered that GSR identify
21 and make available for inspection "any documents, electronically stored information, or tangible
22 things that it is relying upon in support of its damages claim . . .". (See **Exhibit 1.**)

23 2. On October 1, 2014, the Discovery Commissioner's Recommendation for Order
24 was sustained by this Honorable Court. (See **Exhibit 2.**) The Court ordered GSR to produce all
25 documents and records pertaining to its damage claim on or before September 30, 2014. (See
26 **Exhibit 2.**)

27 3. In a feeble effort to comply, GSR produced an Affidavit of its damage expert, rather
28 than documents. The expert's Affidavit is attached hereto as **Exhibit 3.**

1 The Peppermill promptly noticed the deposition of GSR's damage expert, David
2 Schwartz. His deposition was taken on October 21, 2014. (See **Exhibit 4.**) In his deposition, he

1 admitted that he had analyzed academic literature articles and his own work papers, which
2 pertained to his opinion about GSR's damages. *Id.*, p. 12. GSR's expert witness on damages,
3 David Schwartz, was also questioned about whether he was informed that those damage
4 documents in his file had to be produced pursuant to the Discovery Commissioner's
5 Recommendation. Schwartz responded that he was not informed of that deadline. Schwartz
6 admits he has a survey of literature and has his calculations of damages in his files. He possessed
7 those damage documents prior to his deposition.

8 5. The Court entered its Order, which granted Peppermill's request for sanctions on
9 November 26, 2014. (See **Exhibit 5**.) In that Order, GSR was given until December 15, 2014, to
10 produce all records and documents pertaining to its damage claim.

11 6. Thereafter, Peppermill made it clear that the damage records, material and
12 information in Mr. Schwartz's file had to be produced on or before December 15, 2014, in
13 accordance with this Court's Order. (See **Exhibit 6**.)

14 7. Astonishingly, GSR has refused to comply with this Court's Order. The documents
15 from Mr. Schwartz's file have not been produced. GSR accuses the Peppermill of
16 misunderstanding this Court's Order. GSR has taken the self-serving position contrary to this
17 Court's Order that this Court did not specifically order GSR to provide Dr. Schwartz's working
18 file. (See **Exhibit 7**.)

19 8. It can hardly be disputed that David Schwartz is GSR's damage expert. In
20 paragraph 2 of his Affidavit, he states, "I have been retained to offer expert testimony . . . on the
21 subject of damages sustained by GSR. . .". (See **Exhibit 3**, para. 2.) Dr. Schwartz then testifies in
22 his deposition that his opinions are defective, flawed, unreliable and inaccurate. (**Exhibit 4**, p. 96-
23 98.) Dr. Schwartz admits that he has a file containing documents pertaining to damage
24 calculations. *Id.*, p. 50. The files, records, documents and information in Dr. Schwartz's working
25 file obviously pertain to GSR's claim for damages, since Dr. Schwartz is admittedly GSR's
26 "damage expert".

27 9. GSR's refusal to produce Dr. Schwartz's file (clearly discoverable) is a defiant,
28 improper and unreasonable response to this Honorable Court's Order ordering GSR to produce all

1 documents pertaining to GSR's damage claim.

2 10. GSR's rhetoric about a withdrawn Subpoena Duces Tecum (see Exhibit 7) is
3 irrelevant. What is relevant is that GSR will not produce Dr. Schwartz's working papers. It is
4 clear and undisputed that Dr. Schwartz's working file pertains to GSR's damages. GSR has been
5 ordered to produce all documents pertaining to its damage claim.

6 This Honorable Court should enter its order holding GSR in contempt, ordering sanctions
7 against GSR and ordering that all files, records and working papers of Dr. Schwartz be produced
8 to the Peppermill immediately. This Court has already stated "any failure by GSR to identify and
9 make available documents *related* to its damages calculation is a violation of this Court's adopted
10 Order of October 1, 2014."

11 The documents, the calculations, the records, the reference material, and the information in
12 Dr. Schwartz's file are clearly "available documents related to" GSR's "damages calculation".
13 This Court has authority pursuant to NRCP 37(b)(2)(C) to exercise its discretion to sanction GSR,
14 including "case-concluding sanctions". These sanctions are available against a party for willful
15 failure to comply with a discovery rule or order. It is clear that GSR continues to willfully ignore
16 and purposefully refuse to comply with discovery rules and this Honorable Court's Orders.

17 Severe sanctions, if not case-concluding sanctions, should be assessed against GSR for this
18 blatant and defiant obstruction of good faith discovery.

19 **AFFIRMATION**
20 **Pursuant to NRS 239B.030**

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

23 DATED this 17th day of December, 2014.

24 ROBISON, BELAUSTEGUI, SHARP & LOW
25 A Professional Corporation
26 71 Washington Street
27 Reno, Nevada 89503

28 
KENT R. ROBISON
KEEGAN G. LOW

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THERESE M. SHANKS
Attorneys for Defendant
Peppermill Casinos, Inc., d/b/a Peppermill Casino

**AFFIDAVIT OF KENT R. ROBISON IN SUPPORT OF DEFENDANT
PEPPERMILL CASINOS, INC.'S MOTION FOR ORDER REQUIRING GSR TO
SHOW CAUSE WHY IT NOT BE ELDED IN CONTEMPT, SANCTIONED
AND ORDERED TO PRODUCE DOCUMENTS**

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

Kent R. Robison, being first duly sworn on oath, deposes and says under penalty of perjury that the following assertions are true and correct.

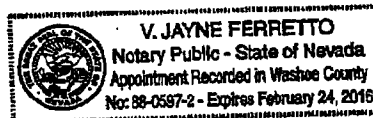
1. I counsel for the Defendant Peppermill Casinos, Inc. in this action.
2. Attached hereto as **Exhibit 1** is a true and accurate copy of page 13 of the Discovery Commissioner's September 19, 2014 Recommendation.
3. Attached hereto as **Exhibit 2** is this Court's October 1, 2014 Confirming Order.
4. Attached hereto as **Exhibit 3** is a true and accurate copy of the Affidavit of Dr. David Schwartz, GSR's damage expert.
5. Attached hereto as **Exhibit 4** are true and accurate portions of the deposition transcript of Dr. David Schwartz.
6. Attached hereto as **Exhibit 5** is a true and accurate copy of page 4 of this Honorable Court's November 26, 2014 Order.
7. Attached hereto as **Exhibit 6** is a true and accurate copy of a December 4, 2014 letter I sent to counsel for GSR demanding that damage documents be produced on or before December 15, 2014.
8. Attached hereto as **Exhibit 7** is a true and accurate copy of a letter I received on December 10, 2014 showing GSR's refusal to produce the working file, documents and material in Dr. Schwartz's file, all of which pertain to damages.

DATED: This 17th day of December, 2014.


KENT R. ROBISON

Subscribed and Sworn to Before
me this 17th day of December, 2014,
by Kent R. Robison


NOTARY PUBLIC



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