

FILED  
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2015-02-04 11:19:03 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 4802417 : melwood

**EXHIBIT "1"**

**EXHIBIT "1"**

1 **DISCOVERY**

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22 *Attorneys for Defendant Peppermill Casinos,  
Inc., d/b/a Peppermill Casino*

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

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

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

27 Plaintiff,

28 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 CORPORAITONS I-X,

Defendant(s).

**DEFENDANT PEPPERMILL CASINOS, INC.'S  
SECOND SET OF INTERROGATORIES TO PLAINTIFF**

**TO: PLAINTIFF MEI-GSR HOLDINGS, LLC, d/b/a GRAND SIERRA RESORT:**

Defendant, Peppermill Casinos, Inc. ("Peppermill"), pursuant to Rule 33 of the Nevada

1 Rules of Civil Procedure, requests that Plaintiff, MEI-GSR Holdings, LLC, d/b/a Grand Sierra  
2 Resort ("Plaintiff"), respond to the following interrogatories in writing, in detail, and under oath  
3 within thirty (30) days of service hereof.

4 NOTE: When used in these Interrogatories, the terms "you" or "Plaintiff", are intended to  
5 and shall embrace and include all Plaintiffs herein, counsel for Plaintiff, and all agents, servants,  
6 employees, representatives, investigators and others who are in possession of or who may have  
7 obtained information for or on behalf of Plaintiff.

8 **PRELIMINARY DEFINITIONS AND INSTRUCTIONS**

9 The following preliminary definitions and instructions apply to each of the interrogatories  
10 set forth hereafter and are deemed to be incorporated therein.

11 1. As used in these interrogatories, the terms "document" and "writing" and the plural  
12 forms thereof shall mean all written, recorded, or graphic matters, however produced or  
13 reproduced, of every kind and description, pertaining in any way to the subject matter of this  
14 action. The terms "document" and "writing" shall include, but are not limited to, any books,  
15 pamphlets, periodicals, memoranda (including those of telephone or oral conversations), contracts,  
16 correspondence, agreements, applications, financial records, security instruments, disbursements,  
17 checks, bank statements, time records, accounting or financial records, notes, diaries, logs,  
18 telegrams, or cables prepared, drafted, received or sent, tapes, transcripts, recordings, minutes of  
19 meetings, directives, work papers, charts, drawings, prints, flow sheets, photographs, films,  
20 computer printouts, medical and hospital records and reports, x-ray photographs, advertisements,  
21 catalogs, or any handwritten, recorded, transcribed, punched, taped, filmed or graphic matter,  
22 however produced or reproduced, in Plaintiff's possession, custody or control or to which Plaintiff  
23 has or has had access.

24 2. As used throughout these interrogatories, the term "you", its plural or any synonym  
25 thereof, is intended to and shall embrace and include in addition to the named party or parties,  
26 counsel for such party or parties, and all agents, servants, employees, representatives,  
27 investigators, and others who are in the possession of or who may have obtained information for or  
28 on behalf of the named party or parties.

1           3.     As used throughout these interrogatories, the term "person", or its plural or any  
2 synonym thereof, is intended to and shall embrace and include any individual, partnership,  
3 corporation, company, association, government agency (whether federal, state, local, or any agency  
4 of the government of a foreign country) or any other entity.

5           4.     As used throughout these interrogatories, the term "communication", its plural or  
6 any synonym thereof, is intended to and shall embrace and include all written communications,  
7 and with respect to all written communications, shall include, but is not limited to, every  
8 discussion, conversation, conference, meeting, interview, telephone call or doctor or other  
9 professional service visit.

10          5.     (a)   As used throughout these interrogatories, the terms "identify" or  
11 "identification", their plural or synonyms thereof, when used with reference to a person shall  
12 mean to state the full name and address, and where applicable, the present position and business,  
13 if known, and each prior position and business.

14               (b)   As used throughout these interrogatories, the terms "identify", "identity" or  
15 "identification", their plural or synonyms thereof, when used with reference to a document mean to  
16 state:

17                   (i)   The general nature of the document or object, i.e., whether it  
18 is a letter, a memorandum, a report, a drawing, a chart or tracing, a  
19 pamphlet, etc.;

20                   (ii)   The general subject matter of the document or object;

21                   (iii)   The name and current or last known business address and  
22 home address of the original author or draftsman (and, if different,  
23 the signor or signors), and of any person who has edited, corrected,  
24 revised or amended, or who has entered any initials or comment or  
25 notation thereon;

26                   (iv)   The date thereof, including any date of any such editing,  
27 correcting, amending or revising;  
28



- 1 (v) Any numerical designation appearing thereof, such as a file
- 2 reference;
- 3 (vi) The name of each recipient of a copy of the document or
- 4 object; and
- 5 (vii) The place where and the person now having custody or
- 6 control of each of such document or object, or if such document or
- 7 object has been destroyed, the place of and reasons for such
- 8 destruction.

9 (c) As used throughout these interrogatories, the terms "identify", "identity"  
10 and "identification", when used in reference to a communication, mean to state with respect to  
11 each communication, the nature of the communication (telephone call, letter, etc.), the date of the  
12 communication, the persons who were present at or participated in the communication or with, to  
13 or from whom the communication was made, and the substance of the statement made by each  
14 person involved in such communication.

15 (d) As used throughout these interrogatories, the term "the machines" means  
16 those machines at Plaintiff's premises, which are specifically identified by Plaintiff in paragraph  
17 16 of its Complaint for Damages in this case and further specifically identified as machines  
18 numbers 951, 440, 855, 486, 1646 and 20042 as described in said paragraph 16 of Plaintiff's  
19 Complaint.

20 6. All information is to be divulged which is in Plaintiff's possession or control, or  
21 can be ascertained upon reasonable investigation or areas within your control. The knowledge of  
22 Plaintiff's attorney is deemed to be Plaintiff's knowledge, so that, apart from privileged matters, if  
23 Plaintiff's attorney has knowledge of the information sought to be elicited herein, said knowledge  
24 must be incorporated into these answers, even if such information is unknown to Plaintiff  
25 individually.

26 7. Whenever you are unable to state an answer to these interrogatories based upon  
27 your own personal knowledge, please so state, and identify the person or persons you believe to  
28

1 have such knowledge, what you believe the correct answer to be, and the facts upon which you  
2 based your answer.

3 8. Where an interrogatory calls for an answer in more than one part, each part should  
4 be separated so that the answer is clearly understandable.

5 9. Each interrogatory should be construed independently. No interrogatory should be  
6 construed by reference to any other interrogatory if the result is a limitation of the scope of the  
7 answer to such interrogatory.

8 10. "And" and "or" shall be construed disjunctively or conjunctively as necessary, in  
9 order to bring within the scope of the interrogatory all responses which might otherwise be  
10 construed to be outside of its scope.

11 11. If an interrogatory is objected to, in whole or in part, or if information responsive to  
12 an interrogatory is withheld, on the ground of privilege or otherwise, please set forth fully each  
13 object, describe generally the information which is withheld, and set forth the facts upon which  
14 Plaintiff relies as the basis for each such objection.

15 12. Pursuant to the Nevada Rules of Civil Procedure, you shall supplement your  
16 responses according to the following:

17 (a) A party is under a duty seasonably to supplement his response with respect  
18 to any question directly addressed to, (a) the identity and location of persons having knowledge of  
19 discoverable matters and, (b) the identity of each person expected to be called as an expert witness  
20 at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

21 (b) A party is under a duty seasonably to amend a prior response if he obtains  
22 information upon the basis of which (a) he knows that the response was incorrect when made, or  
23 (b) he knows that the response though correct when made is no longer true and the circumstances  
24 are such that a failure to amend the response is in substance a knowing concealment.

### 25 INTERROGATORIES

#### 26 INTERROGATORY NO. 1:

27 Since July 2011, has the Grand Sierra Resort ("GSR") utilized the services of a "shopper"  
28

1 to examine and investigate other casino properties in Washoe County? If your answer is in the  
2 affirmative, please identify the shopper by name and address.

3 **INTERROGATORY NO. 2:**

4 Since July 2011, has the GSR ever utilized the services of CDC Consulting (also known as  
5 Compton Dancer) to conduct any consulting services or shopping of other casinos in Washoe  
6 County?

7 **INTERROGATORY NO. 3:**

8 Has the GSR, since July of 2011, conducted any research, shopping or other marketing  
9 investigations concerning the Peppermill Hotel Casino?

10 **INTERROGATORY NO. 4:**

11 Has the GSR conducted any investigations since July of 2011 concerning the Peppermill's  
12 comp strategies, reinvestment strategies or efforts to determine Peppermill's par settings, player  
13 theoretical holds or other information pertinent to the Peppermill's gaming strategies for slot  
14 machines?

15 **INTERROGATORY NO. 5:**

16 Have you received any reports, summaries, explanations or written material from any  
17 shopper, consulting firm or consulting individual that in any way provides an analysis of your  
18 competitors' gaming strategies, marketing strategies and/or promotional activities?

19 **INTERROGATORY NO. 6:**

20 Have you utilized the services of any consultants to compare GSR's player rewards  
21 strategies with GSR's competitors in Washoe County?

22 **INTERROGATORY NO. 7:**

23 Have you used consultants or employees to make visits to other casino properties in  
24 Washoe County for the purposes of comparing players' activities and propensities and club card  
25 procedures and operations?

26 **INTERROGATORY NO. 8:**

27 Have you received from any consultants or entities or persons who have attempted to  
28

1 compare your player reward strategy to other casinos? Have you hired anyone for services  
2 resulting in a player club assessment report?

3 **INTERROGATORY NO. 9:**

4 Have you received any reports, written documents or graphs that analyze the players' club  
5 of other casinos, club booth operations reward programs and/or overall players club rating scores  
6 of other casino properties in the Reno/Sparks area since July 2011?

7 **INTERROGATORY NO. 10:**

8 Have you made any attempts to have consultants, employees or other entities or individuals  
9 analyze the cashback and visible comp reinvestment percentages of reel slots for other gaming  
10 properties in the Reno/Sparks area? If so, please explain in detail.

11 **INTERROGATORY NO. 11:**

12 If your answer is in the affirmative to any of the foregoing Interrogatories, please identify  
13 with specificity and particularity the name, address and, if possible, telephone number for each  
14 individual involved in the analysis, investigation and reporting mentioned in the above  
15 Interrogatories.

16 **INTERROGATORY NO. 12:**

17 Please identify with specificity and particularity each and every report, analysis,  
18 examination or documents that pertain in any way to the GSR's analysis of the Peppermill's:

- 19 (a) Cashback and visible comp reinvestment percentage for reel slots;  
20 (b) Cashback program reinvestment strategies;  
21 (c) Visible comp program reinvestment;  
22 (d) Reinvestment analysis of Peppermill's players clubs employees' attitude, training  
23 and ability to solve problems;  
24 (e) Peppermill's staffing levels;  
25 (f) Booth location and design;  
26 (g) Focus on guess service through use of technology;  
27 (h) Printed information and collateral available;  
28 (i) Quantity and value of benefits;

- (j) Quality of benefits;  
(k) Benefits ease of use;  
(l) Players club ratings score;  
(m) Players club effectiveness;  
(n) Cashback strategies; and  
(o) Comping strategies or programs.

**INTERROGATORY NO. 13:**

Please identify with particularity and specificity the documents which you contend are in the Peppermill's possession which would be in any way relevant to your contention that the Peppermill was unjustly enriched by its possession and/or knowledge of GSR's par settings on the slot machines allegedly accessed by Ryan Tors.

**INTERROGATORY NO. 14:**

Please state with specificity and particularity how the GSR has, or intends to, determine what an appropriate royalty is as and for its alleged damages.

**INTERROGATORY NO. 15:**

Please state with particularity and specificity the value that the GSR attributes to the par settings on the following slot machines on the date specified:

	<u>MACHINE</u>	<u>NUMBER</u>	<u>LOCATION</u>	<u>AS OF DATE</u>
(a)	Buffalo	440		12/29/11
(b)	Buffalo	21016		12/29/11
(c)	Ducks in a Row	440		12/29/11
(d)	Cleopatra	21016		12/29/11
(e)	Money Storm	571		12/29/11
(f)	Texas Tea	50060		12/29/11
(g)	Munsters			12/29/11
(h)	Double Diamond 2000			12/29/11
(i)	Lil Lady	358		12/29/11
(j)	Ducks in a Row	20375		06/14/12

1	(k)	Buffalo	1011		06/14/12
2	(l)	Enchanted Unicorn	20050		06/14/12
3	(m)	Cats	127		06/14/12
4	(n)	Horoscope	246		06/14/12
5	(o)	Wolf Run	937		06/14/12
6	(p)	Sun & Moon	951	061109	07/12/13
7	(q)	Ducks in a Row	440	040403	07/12/13
8	(r)	Buffalo	855	104604	07/12/13
9	(s)	Wings Over Olympus	485	104603	07/12/13
10	(t)	Miss Red	1646	101607	07/12/13
11	(u)	Hex Breaker	20042	102201	07/12/13
12	(v)	Ducks in a Row	20375	091007	07/12/13
13	(w)	Enchanted Unicorn	20050	103304	07/12/13
14	(x)	Cats	127	011802	07/12/13

**INTERROGATORY NO. 16:**

Please describe in detail with specificity and particularity the method by which the values of the par setting for the machines listed in the above Interrogatory for the specific dates were determined.

**INTERROGATORY NO. 17:**

Please state with specificity and particularity how the Peppermill used the par information allegedly obtained by Ryan Tors from the following machines:

	<u>MACHINE</u>	<u>NUMBER</u>	<u>LOCATION</u>	<u>AS OF DATE</u>
23	(a) Buffalo	440		12/29/11
24	(b) Buffalo	21016		12/29/11
25	(c) Ducks in a Row	440		12/29/11
26	(d) Cleopatra	21016		12/29/11
27	(e) Money Storm	571		12/29/11
28	(f) Texas Tea	50060		12/29/11

1	(g)	Munsters			12/29/11
2	(h)	Double Diamond 2000			12/29/11
3	(i)	Lil Lady	358		12/29/11
4	(j)	Ducks in a Row	20375		06/14/12
5	(k)	Buffalo	1011		06/14/12
6	(l)	Enchanted Unicorn	20050		06/14/12
7	(m)	Cats	127		06/14/12
8	(n)	Horoscope	246		06/14/12
9	(o)	Wolf Run	937		06/14/12
10	(p)	Sun & Moon	951	061109	07/12/13
11	(q)	Ducks in a Row	440	040403	07/12/13
12	(r)	Buffalo	855	104604	07/12/13
13	(s)	Wings Over Olympus	485	104603	07/12/13
14	(t)	Miss Red	1646	101607	07/12/13
15	(u)	Hex Breaker	20042	102201	07/12/13
16	(v)	Ducks in a Row	20375	091007	07/12/13
17	(w)	Enchanted Unicorn	20050	103304	07/12/13
18	(x)	Cats	127	011802	07/12/13

**INTERROGATORY NO. 18:**

Please state with specificity and particularity what the value to which the pars allegedly obtained by Ryan Tors was to the Peppermill and the methodology used to determine that value.

**INTERROGATORY NO. 19:**

Please state the amount of money the GSR would charge a competing casino for the par settings on the following machines on the specific date:

	<u>MACHINE</u>	<u>NUMBER</u>	<u>LOCATION</u>	<u>AS OF DATE</u>
26	(a) Buffalo	440		12/29/11
27	(b) Buffalo	21016		12/29/11
28	(c) Ducks in a Row	440		12/29/11

1	(d)	Cleopatra	21016		12/29/11
2	(e)	Money Storm	571		12/29/11
3	(f)	Texas Tea	50060		12/29/11
4	(g)	Munsters			12/29/11
5	(h)	Double Diamond 2000			12/29/11
6	(i)	Lil Lady	358		12/29/11
7	(j)	Ducks in a Row	20375		06/14/12
8	(k)	Buffalo	1011		06/14/12
9	(l)	Enchanted Unicorn	20050		06/14/12
10	(m)	Cats	127		06/14/12
11	(n)	Horoscope	246		06/14/12
12	(o)	Wolf Run	937		06/14/12
13	(p)	Sun & Moon	951	061109	07/12/13
14	(q)	Ducks in a Row	440	040403	07/12/13
15	(r)	Buffalo	855	104604	07/12/13
16	(s)	Wings Over Olympus	485	104603	07/12/13
17	(t)	Miss Red	1646	101607	07/12/13
18	(u)	Hex Breaker	20042	102201	07/12/13
19	(v)	Ducks in a Row	20375	091007	07/12/13
20	(w)	Enchanted Unicorn	20050	103304	07/12/13
21	(x)	Cats	127	011802	07/12/13

**INTERROGATORY NO. 20:**

Concerning your answer to the above Interrogatory, please state with detail, specificity and particularity all components and considerations that were used to determine the "charge" for the par settings for the machines listed in the above Interrogatory for the specific dates.

**INTERROGATORY NO. 21:**

Please state with particularity and specificity the "development costs" that were involved in establishing the par settings for the following slot machines on the specified dates:



	<u>MACHINE</u>	<u>NUMBER</u>	<u>LOCATION</u>	<u>AS OF DATE</u>
1				
2	(a) Buffalo	440		12/29/11
3	(b) Buffalo	21016		12/29/11
4	(c) Ducks in a Row	440		12/29/11
5	(d) Cleopatra	21016		12/29/11
6	(e) Money Storm	571		12/29/11
7	(f) Texas Tea	50060		12/29/11
8	(g) Munsters			12/29/11
9	(h) Double Diamond 2000			12/29/11
10	(i) Lil Lady	358		12/29/11
11	(j) Ducks in a Row	20375		06/14/12
12	(k) Buffalo	1011		06/14/12
13	(l) Enchanted Unicorn	20050		06/14/12
14	(m) Cats	127		06/14/12
15	(n) Horoscope	246		06/14/12
16	(o) Wolf Run	937		06/14/12
17	(p) Sun & Moon	951	061109	07/12/13
18	(q) Ducks in a Row	440	040403	07/12/13
19	(r) Buffalo	855	104604	07/12/13
20	(s) Wings Over Olympus	485	104603	07/12/13
21	(t) Miss Red	1646	101607	07/12/13
22	(u) Hex Breaker	20042	102201	07/12/13
23	(v) Ducks in a Row	20375	091007	07/12/13
24	(w) Enchanted Unicorn	20050	103304	07/12/13
25	(x) Cats	127	011802	07/12/13

**INTERROGATORY NO. 22:**

Please state in complete detail and with specificity and particularity the amount of money a competing casino would pay to have knowledge of and/or access to the par settings for the slot

1 machines identified in Interrogatory Nos. 15, 17, 19 and 21 as of December 29, 2011, for the first  
2 nine machines listed, as of June 14, 2012, for the next six machines listed, and as of July 12, 2013,  
3 for the last nine machines listed.

4 **INTERROGATORY NO. 23:**

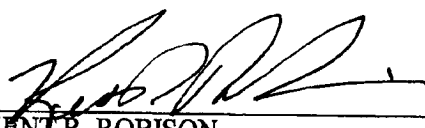
5 With respect to the above Interrogatory and your answer thereto, please state in detail and  
6 with particularity and specificity the exact formula, equation and all facts and circumstances taken  
7 into consideration in establishing your opinion of what a competing casino would pay for the pars  
8 for the machines listed in the above Interrogatory.

9 **AFFIRMATION**  
10 **Pursuant to NRS 239B.030**

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

13 DATED this 30<sup>th</sup> day of September, 2014.

14 ROBISON, BELAUSTEGUI, SHARP & LOW  
15 A Professional Corporation  
16 71 Washington Street  
17 Reno, Nevada 89503

18   
19 KENT R. ROBISON  
20 KEEGAN G. LOW  
21 THERESE M. SHANKS  
22 Attorneys for Defendant  
23 Peppermill Casinos, Inc., d/b/a Peppermill Casino

24 IN ASSOCIATION WITH:

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j:\wpdata\krr\1872.006-peppermill-gsr v\discovery\defendants 2nd set of interrogatories.doc

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCF 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 SECOND SET OF INTERROGATORIES TO PLAINTIFF** on all parties to this  
5 action by the method(s) indicated below:

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

8 H. STAN JOHNSON, ESQ.

9 TERRY KINNALLY, ESQ.

10 Cohen-Johnson, LLC

11 255 E. Warm Springs Road, Suite 100

12 Las Vegas, NV 89119

13 Email: [sjohnson@cohenjohnson.com](mailto:sjohnson@cohenjohnson.com) / [tkinnally@cohenjohnson.com](mailto:tkinnally@cohenjohnson.com)

14 Attorneys for Plaintiff

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26 Attorneys for Defendant Peppermill Casinos, Inc.

27 \_\_\_\_\_ by using the Court's CM/ECF Electronic Notification System addressed to:

28 H. STAN JOHNSON, ESQ.

TERRY KINNALLY, ESQ.

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Email: [dcarus@ag.nv.gov](mailto:dcarus@ag.nv.gov) / [msomps@ag.nv.gov](mailto:msomps@ag.nv.gov)

Attorneys for Nevada Gaming Control Board

☒ by electronic email addressed to the above.

\_\_\_\_\_ by personal delivery/hand delivery addressed to:

\_\_\_\_\_ by facsimile (fax) addressed to:

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

DATED: This 30<sup>th</sup> day of September, 2014.

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V. JAYNE FERRITTO

FILED  
Electronically  
2015-02-04 11:19:03 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 4802417 : melwood

**EXHIBIT "2"**

**EXHIBIT "2"**

2540  
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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,  
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).

**NOTICE OF ENTRY OF ORDER**

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

PLEASE TAKE NOTICE that on the 20<sup>th</sup> day of January, 2015, the Court entered an  
Order, a copy of which is attached hereto.

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

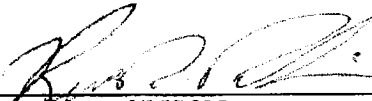
The undersigned does hereby affirm that this document does not contain the social security

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1 number of any person.

2 DATED this 21<sup>st</sup> day of January, 2015.

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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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
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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 Before the Court is Peppermill's *Motion for Order Requiring GSR to Show*  
20 *Cause why it not be Held in Contempt, Sanctioned, and Ordered to Produce*  
21 *Documents*, filed December 17, 2014, and GSR's *Opposition to Memorandum of Fees*  
22 *and Costs*, filed December 22, 2014. The pertinent facts and procedural history are  
23 detailed in this Court's *Order* of November 26, 2014, in which it ordered GSR to  
24 turn over all documents relating to its calculation of damages by December 15,  
25 2014, and awarded Peppermill certain fees and costs as a sanction.

26 a. *Contempt and Production of Documents*

27 The thrust of Peppermill's grievance is that it believes GSR has failed to turn  
28 over "Notes from David Schwartz Ph.D. re: Computation of Damages" (identified as

1 GSR 103) as required by this Court's prior ruling.<sup>1</sup> See *Opposition* at Ex. 1, pg. 6.

2 GSR provides evidence that it timely produced the notes.<sup>2</sup> Defendants claim they  
3 never got them.<sup>3</sup>

4 The Court has reviewed the pleadings and papers on file herein. Allegations  
5 that GSR knowingly "backdated" its disclosure are very serious. The Court believes  
6 that GSR's counsel adhere to the rules of ethics and that the disclosure was mailed  
7 to Defendants on December 4 as stated in the certificate of service. The Court will  
8 not speculate as to how the disclosure failed to reach its destination. Contempt  
9 proceedings and further sanctions are unwarranted. Peppermill's *Motion* is granted  
10 insofar as it seeks production of the notes, and is otherwise denied.

11 *b. Memorandum of costs*

12 After reviewing the *Memorandum of Fees and Costs* and the attached  
13 affidavit of counsel, the Court finds that the work described falls within the scope of  
14 its *Order* and that the amounts incurred are not unreasonable. They are therefore  
15 an appropriate sanction pursuant to this Court's prior ruling.

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24  
25 <sup>1</sup> Peppermill also seeks documents relating to "payments for [Dr. Schwartz] services." However,  
26 such information is not related to calculation of damages and need only be disclosed as and when  
required under NRCP 26.

27 <sup>2</sup> See *Opposition to Motion for Contempt* at 3, Ex. 1. GSR attaches as an exhibit a copy of a *Fifth*  
*Supplemental Disclosure Pursuant to NRCP 16.1*—which purports to include the notes—with an  
attached certificate of mailing dated December 4, 2014.

28 <sup>3</sup> See *Reply* at 2-3, Ex. 4-6. Peppermill provides three separate affidavits stating that Defendants  
were not served with the *Fifth Supplemental Disclosure* and that they did not receive the notes.



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**CONCLUSION**

Based on the foregoing, Defendant Peppermill's *Motion for Order Requiring GSR to Show Cause why it not be Held in Contempt, Sanctioned, and Ordered to Produce Documents* is **DENIED** in part and **GRANTED** in part. GSR is hereby ordered to produce and serve on the Defendants a copy of its *Fifth Supplemental Disclosure*, including the above-described notes, within five days of the filing of this Order. Further, Defendant is awarded costs in the amount of \$26,565.00 pursuant to this Court's ruling of November 26, 2014.

DATED this 20 day of January, 2015.

  
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 20 day of January, 2015, 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 Somps, Esq., for Nevada Gaming Commission, State Gaming Control Board;

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

  
Judicial Assistant

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

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

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

8 H. STAN JOHNSON, ESQ.  
9 TERRY KINNALLY, ESQ.  
10 Cohen-Johnson, LLC  
11 255 E. Warm Springs Road, Suite 100  
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13 Email: [sjohnson@cohenjohnson.com](mailto:sjohnson@cohenjohnson.com) / [tkinnally@cohenjohnson.com](mailto:tkinnally@cohenjohnson.com)  
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27 *Attorneys for Defendant Ryan Tors*


28        by electronic email addressed to the above.

       by personal delivery/hand delivery addressed to:

       by facsimile (fax) addressed to:

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

DATED: This 21<sup>st</sup> day of January, 2015.

  
V. JAYNE FERRETTO

FILED  
Electronically  
2015-02-04 11:19:03 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 4802417 : melwood

**EXHIBIT "3"**

**EXHIBIT "3"**

2270  
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IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

MEI-GSR HOLDINGS, LLC, a Nevada  
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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).

**SUPPLEMENTAL MOTION TO COMPEL ANSWERS TO INTERROGATORIES**

This motion is made pursuant to and in accordance with this Court's November 26, 2014 Order, which addressed various discovery issues. One of the discovery disputes addressed in that November 26, 2014 Order was GSR's failure to provide meaningful answers to the Peppermill's Second Set of Interrogatories. The Court noted that GSR objected to nearly every single Interrogatory. Although the Peppermill moved to compel answers to its Second Set of Interrogatories, the Court noted that the Peppermill had not identified which of GSR's objections it was challenging. The Court further noted that without more, the Order Compelling Discovery was not at that time appropriate.

1 Peppermill responds with providing specific responses to specific GSR objections and  
2 providing the following authority, which justifies an order compelling GSR to answer the  
3 Interrogatories to which it objected.

4 Attached hereto is a true and accurate copy of GSR's Response to Peppermill's Second Set  
5 of Interrogatories (**Exhibit 1**). 23 Interrogatories were propounded. GSR objected to 20 of the 23  
6 Interrogatories propounded.<sup>1</sup> Each of GSR's objections are addressed as follows:

7 **Interrogatory No. 1:** This Interrogatory asks whether GSR has utilized the services of a  
8 shopper to examine and investigate other casino properties in Washoe County. The Interrogatory  
9 is now moot. Without objection, GSR has allowed its witnesses to testify at length about the fact  
10 that it uses "shoppers" to investigate other casino properties. The following GSR representatives  
11 have testified about GSR's shopping activities.

12 1. **David Schwartz:** Attached as **Exhibit 2** is the testimony of David Schwartz,  
13 where he admits being a shopper for GSR and describes the shopping activities  
14 he has performed.

15 2. **Steve Rosen:** Steve Rosen was a former manager of the GSR and he, too,  
16 admits to shopping activities of other casino properties in Washoe County. Mr.  
17 Rosen testified that the shopping occurred to determine pars and free play at the  
18 Atlantis and Peppermill. *See Exhibit 3.*

19 3. **Ralph Burdick:** Ralph Burdick is an executive at the GSR. He, too, has  
20 described the shopping activities he has performed on behalf of GSR at other  
21 casino properties in Washoe County. *See Exhibit 4.*

22 4. **Terry Vavra:** He, too has admitted shopping at other Washoe County casino  
23 properties, including the Peppermill. He has also admitted that GSR has hired  
24 professional shoppers to examine and investigate other casino properties. *See*  
25 **Exhibit 5.**

26 5. **Christopher Abraham:** Mr. Abraham is the Marketing Director at GSR.  
27 Not only is he aware of shopping activities performed by GSR of the  
28

<sup>1</sup> Simply, it refused to answer the other three.

1                   Peppermill, he has recently received reports from CDC Consulting reflecting its  
2                   shopping activities of the Peppermill. **See Exhibit 6.**

3                   Accordingly, GSR's objection is not only moot, it has been made with questionable  
4                   motives. GSR has waived any objection it would otherwise have concerning the topic of  
5                   shopping. It is clear that GSR has shopped the Peppermill to ascertain the Peppermill's pars.  
6                   GSR's witnesses have repeatedly testified about the efforts. It is disingenuous for the GSR to  
7                   suggest that GSR's efforts to determine the Peppermill's pars is irrelevant and not reasonably  
8                   calculated to lead to admissible evidence when that is what GSR is suing the Peppermill for. The  
9                   only distinction is that GSR has obtained par information through various methods, but admittedly  
10                  not through the use of a 2341 master key. The fact is, this line of testimony shows that GSR  
11                  obtains information concerning the Peppermill's pars and the hypocrisy of GSR's position  
12                  suggesting that shopping activities are irrelevant is self-evident. Moreover, GSR's shopping  
13                  activities show that pars are not secret.

14                **Interrogatory No. 2:** Interrogatory No. 2 asks whether GSR has utilized the services of  
15                CDC Consulting (Compton Dancer). This objection is moot. The following witnesses have  
16                confirmed that over the years GSR has utilized the services of CDC Consulting to shop,  
17                investigate and analyze the marketing and slot operations of the Peppermill. It has done so to  
18                obtain par information about the Peppermill and the Atlantis. **See Exhibits 2 and 3.**

19                **Interrogatory No. 3:** This Interrogatory seeks information about the research, shopping  
20                and marketing investigation the GSR has done concerning the Peppermill Hotel Casino. What is  
21                clear is that the GSR has already testified to its activities on multiple occasions through various  
22                representatives. An example of the significance of this testimony is the descriptions offered by  
23                former General Manager, Steven Rosen. Rosen testified that the marketing strategy for GSR was  
24                to shop the Atlantis and the Peppermill Casino so that GSR could set its pars and establish free  
25                play somewhere between the Atlantis Hotel and the Peppermill Hotel Casino. GSR has shown  
26                how public and nonsecret pars are because of these shopping activities.

27                **Interrogatory No. 4:** This Interrogatory asks the GSR about investigations it has  
28                conducted concerning the Peppermill's comp strategies, reinvestment strategies and efforts to

1 determine par settings. GSR's objection has been waived. GSR representatives Rosen, Burdick,  
2 Vavra, Taylor and Abraham have all testified about the GSR's multiple and substantial efforts to  
3 conduct investigations of the Peppermill to determine comp strategies, reinvestment strategies, par  
4 settings, player theoretical holds and other information about Peppermill's gaming strategies.  
5 GSR has allowed this testimony about "shopping" to come forward **without objection**. Even  
6 though GSR objected to these Interrogatories dated November 3, 2014, it has since that time  
7 allowed extensive, if not massive, discovery concerning shopping activities of the GSR without  
8 objection through at least seven depositions. GSR has made this information relevant because it  
9 allowed all of its witnesses to testify about its shopping activities without objections. The  
10 relevance is obvious. GSR has made a concerted, systematic and determined effort to ascertain  
11 Peppermill's par settings, player theoretical holds and other pertinent information to Peppermill's  
12 gaming strategies. GSR should not be allowed to sue the Peppermill for obtaining GSR's par  
13 information when the GSR is, through its shopping activities, ascertaining the par settings on the  
14 various slot machines located on the Peppermill property.

15 **Interrogatory No. 5:** This Interrogatory asks whether GSR has received reports as a result  
16 of its extensive and substantial shopping activities of its competitors. Not only is it expected that  
17 these reports will show the methodology by which GSR obtained Peppermill's pars, it will also  
18 demonstrate that pars are not secret in the Northern Nevada gaming community because of the  
19 massive and extensive shopping activities pursued by GSR and its competitors.

20 **Interrogatory No. 6:** This Interrogatory asks whether GSR has used consultants to  
21 compare its player reward strategies with competitors in Washoe County. Again, goes to the heart  
22 of this case. Players' rewards are based upon various slot machine strategies, including the setting  
23 of pars. That information, therefore, is highly relevant. Moreover, GSR's representatives have  
24 already testified about the consultant's activities are explained in the testimony of David Schwartz,  
25 Steve Rosen, Ralph Burdick, Terry Vavra and Christopher Abraham. *See Exhibits 2, 3, 4, 5, and*  
26 *6.*

27 **Interrogatory No. 7:** This Interrogatory asks the GSR whether it uses consultants and  
28 employees to visit other casinos for shopping purposes. As noted, GSR representatives Rosen,



1 Taylor, Burdick, Abraham and Schwartz have already testified extensively about their shopping  
2 activities of other Washoe County properties. To the extent the objection had any legitimacy, the  
3 objection has been thoroughly and completely waived as a result of GSR allowing its  
4 representatives to testify about this very inquiry. GSR witnesses have revealed that GSR uses  
5 consultants to "shop" other casinos. It is clear that these shoppers obtain par information and  
6 marketing strategies from their competitors.

7 **Interrogatory No. 8:** This Interrogatory asks whether GSR has received information from  
8 its consultants which analyzes the player reward strategy of other casinos. Again, these types of  
9 shopping activities are highly relevant. Shopping is what this case is all about. GSR would have  
10 this Court believe that its procurement of player information, slot information, par information,  
11 and free play information from the Peppermill means that because it has procured that information  
12 without a 2341 key, pars and other similar strategies are still trade secrets. The argument is  
13 without merit. Marketing strategies of the GSR are highly relevant to whether par settings are  
14 secret, whether GSR took adequate assurances to protect the alleged secrets and whether there is a  
15 market for pars and, if so, what costs are associated with obtaining pars. GSR has repeatedly  
16 stated that it is entitled to reasonable royalties because of Mr. Tors' activities. The information  
17 obtained by GSR's shoppers is highly relevant to what value, if any, par settings have in the casino  
18 industry. The objection is ill-founded and should be overruled.

19 **Interrogatory No. 9:** This Interrogatory asks for similar information concerning player's  
20 club activities of other casinos and player's club ratings. This information is relevant to the  
21 reasonably royalty theory that GSR claims justifies an award of damages. GSR's intensive efforts  
22 to analyze the player's club activities of other casinos is directly relevant to trade secret legislation.  
23 Peppermill will be able to demonstrate with this information (much of which has already been  
24 testified to) that so much information is obtained by the shopping activities of the GSR, that little  
25 is left as secret in the slot strategy industry in Northern Nevada. Thus, pars discovered by GSR's  
26 shoppers have little, if any, "value".

27 **Interrogatory No. 10:** This Interrogatory asks whether the GSR has tried to analyze the  
28 cashback and visible comp reinvestment percentages of reel slots in other gaming properties of

1 Reno. Again, this goes to the strategic implications of marketing. The GSR's witnesses have  
2 testified that they have engaged in extensive shopping activities to investigate and analyze the  
3 various strategies invoked by its competitors, including the Peppermill. It is clear that once a  
4 gaming property knows the comp reinvestment percentages of its competitors, it can easily  
5 determine par. Once GSR gives an answer to Interrogatory No. 10, Peppermill will be able to  
6 establish that it is using shopping activities to ascertain the pars of its competitors throughout  
7 Northern Nevada. More relevant information could not be imagined. The truthful answer to this  
8 Interrogatory will assist Peppermill in showing the pars have little, if any, "value".

9 **Interrogatory No. 11:** This Interrogatory simply asks for the witnesses involved in the  
10 shopping activities that are the subject of Interrogatories Nos. 1 through 10. The information  
11 requested in Interrogatories Nos. 1 through 10 is highly relevant. Accordingly, the identification  
12 of witnesses who can testify about the information that GSR should provide (and in many respects  
13 has provided) is relevant so that appropriate depositions can be noticed and taken.

14 **Interrogatory No. 12:** This Interrogatory asks GSR to identify the reports that it has  
15 received about the Peppermill's cashback and visible comp reinvestment percentage for reel slots,  
16 cashback program for reinvestment strategies, visible comp program reinvestment and  
17 reinvestment analysis of the Peppermill's player's club. It has been established through the  
18 extensive testimony of GSR representatives that GSR engages in serious and extensive shopping  
19 activities of the Peppermill. That information has been given without objection. Interrogatory No.  
20 12 asks that the reports of the shopping activities be identified. In these reports, it is expected that  
21 GSR's efforts to ascertain the pars and amount of free play of the Peppermill and the Atlantis is  
22 reports that have established the defined market strategy of GSR. Former General Manager Steven  
23 Rosen has been specific about these strategies. See Exhibit 3, testimony of Steven Rosen.

24 **Interrogatory No. 13:** GSR did not object, but did not answer.

25 **Interrogatory No. 14:** GSR did not object, but did not answer.

26 **Interrogatory No. 15:** Before addressing Interrogatory No. 15, it is important to note that  
27 GSR is relying on the holding in *University Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d  
28 518 (GA 1974) ("UCC"). (See GSR's Answer to Interrogatory No. 14.) The UCC decision

1 discusses the reasonably royalty theory for damages. It suggests that the damages (royalty) being  
2 sought by GSR is based upon information improperly acquired by the Peppermill. However, GSR  
3 should be compelled to give answers to the Interrogatories in the Second Set to which GSR has  
4 objected. UCC is based upon the alleged "use" of GSR's alleged secret. What is important is the  
5 competitive position. The information sought by the Second Set of Interrogatories clearly defines  
6 and describes GSR's competitive position relative to that of the Peppermill. Moreover, UCC  
7 indicates that reasonably royalty damages may be appropriate only when the Defendant has in  
8 some way destroyed the value of the secret. The Answers to the Second Set of Interrogatories will  
9 clearly establish that GSR's pars (and values thereof) have in no way been destroyed. In fact, in  
10 many instances, they have replicated and copied the marketing strategies of the Peppermill and the  
11 Atlantis. (See testimony of Rosen). All of the information sought in the Second Set of  
12 Interrogatories will clearly show that the value of the GSR's pars **has not been destroyed**.  
13 Moreover, the information sought will show that the GSR did retain the use of the alleged secret  
14 and that there has been no disclosure of the secret by Peppermill through publication of the total  
15 value of the secret to the GSR. Once the answers are provided, UCC will then serve as the basis  
16 for a summary judgment, because reasonable royalty is then an inappropriate measure of damages  
17 because pars have no value.

18 GSR's reliance on UCC is compelling authority that each and every one of the  
19 Interrogatories contained in the Second Set of Interrogatories must be answered completely and  
20 fully. The second prong of the UCC case pertains to the "value of the secret" to the Peppermill.  
21 Once the shopping activities of the GSR are fully and completely revealed, it is provable, then, that  
22 the exchange of this par information between various casinos destroys any "value" that pars would  
23 otherwise have to a buyer or seller.

24 Interrogatory No. 15 is based upon the holding in UCC. Peppermill claims that pars have  
25 value. Interrogatory No. 15 asks the GSR to define the value of the pars on the machines that Mr.  
26 Tors allegedly accessed. GSR cannot rely on UCC and then refuse to provide the specific  
27 information requested in Interrogatory No. 15. UCC involves an analysis of the "value" of the  
28 secret. GSR contends that the pars obtained by Tors are secret. GSR must, therefore, tell us what

1 the value of the pars are as specifically identified in Interrogatory No. 15, which are the specific  
2 machines it is alleged that Tors accessed. The objection is not made in good faith.

3 **Interrogatory No. 16:** This Interrogatory asks for the method by which the value of the  
4 par settings of the machines accessed by Mr. Tors were established. The relevance is obvious.  
5 GSR relies on UCC. UCC requires that there be a valuation of the secret. The pars allegedly  
6 obtained by Tors are what GSR refers to as the secret. Valuation of the secret is required by UCC.  
7 GSR's objection to providing the value of the pars is simply a bad faith objection.

8 **Interrogatory No. 17:** Likewise, Interrogatory No. 17 must be answered. GSR claims  
9 that discovery at that time was ongoing and that it "believes" Peppermill used the information.  
10 Discovery has been nearly completed. Still, GSR has never described or explained what  
11 information or evidence it has to demonstrate that the Peppermill in any way used the information  
12 obtained by Mr. Tors. GSR should be compelled to answer fully and completely Interrogatory No.  
13 17. After all, this case has been pending for 18 months.

14 **Interrogatory No. 18:** GSR did not answer.

15 **Interrogatory No. 19:** This Interrogatory is also an interrogatory based upon the specific  
16 holding of UCC. It asks GSR how much it would charge a competing casino for the par settings  
17 on the machines allegedly accessed by Tors. What the GSR (a willing seller) would charge a  
18 willing buyer is the essence of the UCC holding. Reasonable royalty relies on a fair market value  
19 analysis and invokes the hypothetical license agreement. That is, UCC holds that it must be  
20 determined in a reasonable royalty case what a reasonable seller would charge for the secret and  
21 what a reasonable buyer would pay for the secret. GSR's objection to Interrogatory No. 19 is  
22 clearly bad faith in light of its express reliance on the UCC decision.

23 **Interrogatory No. 20:** This Interrogatory asks for detail and specificity with respect to  
24 why the GSR would charge a certain amount for the par settings on its machines. The  
25 Interrogatory is clearly appropriate. It is one drafted specifically in line with GSR's reliance on the  
26 UCC decision. Peppermill is entitled to know what the value of the pars are according to GSR's  
27 own analysis. GSR is sandbagging and will not provide information of its analysis as to what the  
28 value of a par is. That contradicts and violates its own reliance on UCC.

1       **Interrogatory No. 21:** This Interrogatory asks for information concerning GSR's  
2 "development costs" involved in establishing the pars on the machines alleged accessed by Mr.  
3 Tors. The development costs are part of the reasonable royalty analysis according to UCC.  
4 Accordingly, GSR's refusal to provide this information is in bad faith. While it relies on UCC, it  
5 will not provide information necessary to determine whether GSR can comply with the stringent  
6 criteria expressed by the court in UCC. The information is highly relevant and GSR's objection is  
7 clearly one made in bad faith.

8       **Interrogatory No. 22:** This Interrogatory asks for specific information that GSR believes  
9 a competing casino would pay for the par settings allegedly acquired by Mr. Tors. Despite GSR's  
10 reliance on UCC, which requires an analysis of fair market value of the pars, GSR elects to avoid  
11 the obvious. The obvious is that its alleged theory of damages depend on what casinos will pay for  
12 a par, assuming a par is secret. Nonetheless, GSR elects to evade and avoid proper and legitimate  
13 discovery requests notwithstanding the fact that it relies on a decision that makes this information  
14 highly pertinent and relevant.

15       **Interrogatory No. 23:** This Interrogatory asks for the backup information that GSR would  
16 use to determine what a competing casino would pay for the pars allegedly accessed by Mr. Tors.  
17 Again, GSR's reliance on UCC is fatal to its position. If a reasonable royalty is the damage theory  
18 upon which GSR is relying, then, GSR should be obligated to provide discovery which would  
19 allow the Peppermill to analyze the methodology by which GSR establishes the "value" of GSR's  
20 pars. Ironically, in response to Interrogatory No. 14, GSR highlights with emphasis that the "value  
21 of the secret" is the crux of this case. How GSR goes about valuing this alleged secret is a crucial  
22 aspect of this case and GSR's refusal to answer Interrogatory No. 23 is a bad faith response to  
23 legitimate and appropriate discovery.

24       So the Court is not misled by GSR's partial quote of the UCC decision on which it relies, a  
25 full and complete copy of that decision is attached hereto as **Exhibit 7**. For the reasons stated,  
26 GSR should be immediately ordered to answer in detail, fully and with particularity, the  
27 Interrogatories to which it objected in the Peppermill's Second Set of Interrogatories.

28       ///

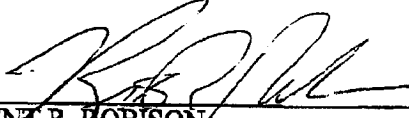
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**AFFIRMATION**  
**Pursuant to NRS 239B.030**

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

DATED this 28<sup>th</sup> day of January, 2015.

ROBISON, BELAUSTEGUI, SHARP & LOW  
A Professional Corporation  
71 Washington Street  
Reno, Nevada 89503



---

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

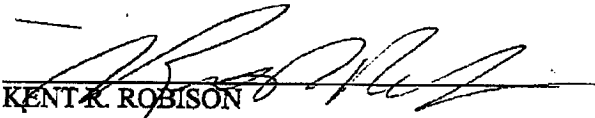
**AFFIDAVIT OF KENT R. ROBISON IN SUPPORT OF DEFENDANT  
PEPPERMILL CASINOS, INC.'S SUPPLEMENTAL MOTION TO COMPEL  
ANSWERS TO INTERROGATORIES**

STATE OF NEVADA            }  
                                      } ss.  
COUNTY OF WASHOE        }

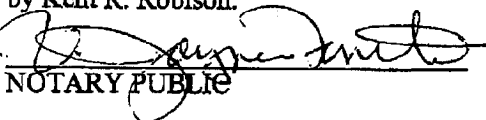
Kent R. Robison, being first duly sworn on oath, deposes and says under penalty of perjury that the following assertions are true and correct.

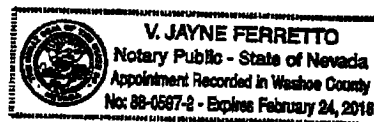
1. I am counsel for the Defendant Peppermill Casinos, Inc. in this action.
2. Attached hereto as **Exhibit 1** is a true and accurate copy of Plaintiff MEI-GSR Holdings LLC Responses to Defendant Peppermill Casino Inc.'s Second Set of Interrogatories dated November 3, 2014.
3. Attached hereto as **Exhibit 2** are true and accurate copies of relevant pages of the **confidential** deposition transcript of David G. Schwartz, Ph.D., dated October 21, 2014.
4. Attached hereto as **Exhibit 3** are true and accurate copies of relevant pages of the **confidential** deposition transcript of Steven N. Rosen, dated October 21, 2014.
5. Attached hereto as **Exhibit 4** are true and accurate copies of relevant pages of the **confidential/highly confidential** deposition transcript of Ralph Burdick, dated November 3, 2014.
6. Attached hereto as **Exhibit 5** are true and accurate copies of relevant pages of the **highly confidential** deposition transcript of Terry Vavra, dated December 3, 2014.
7. Attached hereto as **Exhibit 6** are true and accurate copies of relevant pages of the **highly confidential** deposition transcript of Christopher Abraham, dated December 17, 2014.
8. Attached hereto as **Exhibit 7** is a true and accurate copy of *University Computing Company v. Lykes-Youngstown Corp.*, 504 F.2d 518 (5<sup>th</sup> Cir. 1974).

DATED: This 28<sup>th</sup> day of January, 2015.

  
KENT R. ROBISON

Subscribed and Sworn to Before  
me this 28<sup>th</sup> day of January, 2015,  
by Kent R. Robison.

  
NOTARY PUBLIC



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 **SUPPLEMENTAL**  
4 **MOTION TO COMPEL ANSWERS TO INTERROGATORIES** 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  
affixed thereto, in the United States mail at Reno, Nevada, addressed to:

6 H. STAN JOHNSON, ESQ.  
TERRY KINNALLY, ESQ.  
Cohen-Johnson, LLC  
255 E. Warm Springs Road, Suite 100  
7 Las Vegas, NV 89119  
Attorneys for Plaintiff

8 MARK WRAY, ESQ.  
9 608 Lander Street  
Reno, NV 89509  
Attorneys for Plaintiff

10 MARK GUNDERSON, ESQ.  
11 JOHN R. FUNK, ESQ.  
Gunderson Law Firm  
12 3895 Warren Way  
Reno, NV 89509  
13 Attorneys for Defendant Ryan Tors

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

15 H. STAN JOHNSON, ESQ.  
TERRY KINNALLY, ESQ.  
16 Cohen-Johnson, LLC  
255 E. Warm Springs Road, Suite 100  
17 Las Vegas, NV 89119  
Email: [sjohnson@cohenjohnson.com](mailto:sjohnson@cohenjohnson.com) / [tkinnally@cohenjohnson.com](mailto:tkinnally@cohenjohnson.com)  
18 Attorneys for Plaintiff

19 MARK WRAY, ESQ.  
608 Lander Street  
Reno, NV 89509  
20 Email: [mwrap@markwray.law.com](mailto:mwrap@markwray.law.com)  
Attorneys for Plaintiff

21 MARK GUNDERSON, ESQ.  
22 JOHN R. FUNK, ESQ.  
Gunderson Law Firm  
23 3895 Warren Way  
Reno, NV 89509  
24 Email: [mgunderson@gundersonlaw.com](mailto:mgunderson@gundersonlaw.com)  
[jfunk@gundersonlaw.com](mailto:jfunk@gundersonlaw.com)  
Attorneys for Defendant Ryan Tors

25 \_\_\_\_\_ by electronic email addressed to the above.

26 \_\_\_\_\_ by personal delivery/hand delivery addressed to:

27 \_\_\_\_\_ by facsimile (fax) addressed to:

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

DATED: This 28th day of January, 2015.



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**EXHIBIT LIST**

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>	<b><u>Pages</u></b>
1	Plaintiff MEI-GSR Holdings, LLC Responses to Defendant Peppermill Casino Inc.'s Second Set of Interrogatories	19
2	Testimony excerpts of David G. Schwartz, Ph.D. (Confidential)	10
3	Testimony excerpts of Steven N. Rosen (Confidential)	8
4	Testimony excerpts of Ralph Burdick (Confidential / Highly Confidential)	12
5	Testimony excerpts of Terry Vavra (Highly Confidential)	8
6	Testimony excerpts of Christopher Abraham (Highly Confidential)	5
7	<i>University Computing Co. v. Lykes-Youngstown Corp.</i>	19

FILED  
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2015-02-04 11:19:03 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 4802417 : melwood

**EXHIBIT "4"**

**EXHIBIT "4"**

Case No. CV13-01704

COPY

Dept. No. B7

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

-oOo-

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

-vs- )

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

DEPOSITION OF TERRY VAVRA

(HIGHLY CONFIDENTIAL PAGES 186 - 225)

called for examination by counsel for Defendant Peppermill  
Casinos, Inc., d/b/a Peppermill Casino pursuant to Notice, at  
the offices of Robison, Belaustegui, Sharp & Low, 71  
Washington Street, Reno, Nevada, at 9:30 a.m., Wednesday,  
December 3, 2014, before Becky Van Auken, a Certified Court  
Reporter.

APPEARANCES: (See separate page)

Reported by: BECKY VAN AUKEN, CCR No. 418, RMR, CRR

CAPTIONS UNLIMITED OF NEVADA, INC. (775) 746-3534

1 questions of you, sir.

2 (Exhibit 35 was marked.)

3 BY MR. ROBISON:

4 Q Exhibit 35 are GSR's responses to the  
5 Peppermill's second set of interrogatories. If you  
6 would please look at page 18 of 19 on this document.  
7 That's your signature, correct, sir?

8 A That is correct.

9 Q And you signed these answers attesting to  
10 their accuracy under oath and under penalty of  
11 perjury?

12 A That is correct.

13 Q Do you know why you were tagged "it" with  
14 respect to these interrogatories?

15 A Not exactly, no.

16 Q When did you first see the interrogatories?

17 A Probably -- I signed this November 3rd.  
18 Maybe November 2nd, the day before.

19 Q Were the answers already typed in?

20 A Yes.

21 Q So you didn't do anything to research or  
22 investigate the questions?

23 A Me personally? No. I read through the  
24 document.

25 Q Okay. Before you even saw -- the answers

1        were typed in the first time you saw these responses,  
2        correct?

3            A        Correct.

4            Q        Who answered them?

5            A        I'm not sure.

6            Q        You didn't?

7            A        No.

8            Q        Somebody wrote these answers, and it wasn't  
9        you?

10          A        That's correct.

11          Q        Has anybody told you who wrote these  
12        answers on these interrogatories? And if it's  
13        counsel, I don't get to ask that question. But has  
14        any other person ever told you who actually wrote  
15        these answers?

16          A        No.

17          Q        And prior to seeing them for the first  
18        time, which may have been a day before November 3rd --  
19        November 2nd -- were you even aware of the fact that  
20        you would be signing these answers?

21          A        I was not.

22          Q        The first time you became aware of the fact  
23        that you were going to testify under oath in this case  
24        was one day before these interrogatories were signed  
25        by you?

1           A     Correct.

2           Q     In that period of time, I assume, sir, that  
3     you did nothing to validate or verify the accuracy of  
4     these answers.

5           A     No. I simply reviewed the questions and  
6     the responses and that's it.

7           Q     All right. And as far as you know there  
8     was no collaboration or communication among GSR  
9     employees with respect to the accuracy of these  
10    answers?

11          A     I had no conversations about that.

12          Q     Do you know, for example, if Mr. Burdick  
13    knows whether or not these answers are accurate?

14          A     I don't know.

15          Q     Or the CFO?

16          A     I don't know. I did not share this with  
17    anyone at GSR, nor did I talk to anyone besides  
18    counsel about this.

19          Q     Okay. Well, let's walk through these  
20    answers, and I'm going to ask you some questions about  
21    what positions GSR has taken on these things.

22                In Interrogatory No. 1 we propounded a  
23    question to the GSR, and it says: Since July 1st  
24    has -- since July 2011 has GSR utilized the services  
25    of a shopper to examine and investigate other casinos

1 MR. ROBISON: I don't know what it says.  
2 What I'm doing is interrogating this witness based  
3 upon his answers that he has testified under oath are  
4 true and accurate.

5 MR. WRAY: Objection. They're not his  
6 answers; they're his verification of these answers.

7 BY MR. ROBISON:

8 Q With respect to the objections, did you  
9 take any role in trying to determine what was  
10 requested in these interrogatories that might be  
11 considered a trade secret?

12 A No.

13 Q Do you know what a trade secret is?

14 A I think so, yes.

15 Q Is that because you read the UCC case?

16 A No.

17 Q Did you read the UCC case?

18 A No.

19 Q Why did you quote it?

20 MR. WRAY: Objection. He didn't quote it.

21 THE WITNESS: I did not --

22 MR. WRAY: He verified the responses.

23 BY MR. ROBISON:

24 Q Why can you verify that UCC is the basis  
25 for the GSR's position in this case?

1           A     That was my -- the legal guidance from my  
2 attorneys. They wrote these responses and I verified.

3           Q     You verified them as truthful?

4           A     To the best of my knowledge, yes.

5           Q     And so the case on which GSR predicates its  
6 position on trade secrets is the UCC case, according  
7 to your verified answers. Correct?

8           MR. WRAY: The answers that he verified.

9           MR. ROBISON: You guys have been sanctioned  
10 once for doing this kind of stuff. You'd think you'd  
11 stop doing it..

12          MR. WRAY: And you're going to be  
13 sanctioned for telling him we're sanctioned. That's  
14 threatening.

15          MR. ROBISON: No, I just --

16          MR. WRAY: Yes, it is.

17          MR. ROBISON: I'm telling you.

18          MR. WRAY: I know you are.

19          MR. ROBISON: Why do you keep doing this?  
20 Judge Flanagan made his position very clear to you  
21 guys.

22          MR. WRAY: My objection is to the question  
23 that's pending. I don't want to argue the case with  
24 you. I just want to try to make an objection that the  
25 objections here are written by attorneys, not by this



1 Company vs. Lyke-Youngstown Corp.

2 Do you see that?

3 A Yes.

4 Q So you're simply verifying under oath that  
5 that's what the GSR is doing, correct?

6 A Correct.

7 Q And you, of course, have not discussed the  
8 holding in this case with any GSR representative, have  
9 you?

10 A I have not.

11 Q You haven't discussed what this case says  
12 about trade secrets, have you, with anybody at the  
13 GSR, other than counsel?

14 A That's correct. Just counsel.

15 Q All right. I want to look at the quote  
16 that you verify as GSR's position in this case. And I  
17 need this answer to the question.

18 You are not denying, are you, that this  
19 case, University Computing Company vs.  
20 Lykes-Youngstown Corporation, is the case on which GSR  
21 is relying in this case? Because it says GSR is  
22 relying on the holding. You are verifying that in  
23 this case, are you not, sir?

24 A Again, my verification is that I've read  
25 this and, to the best of my knowledge, this is true.

1 And my lawyer, Stan Johnson, who wrote this, that's  
2 what he put there. So to the best of my knowledge,  
3 that is true.

4 Q These are really Mr. Johnson's answers?

5 A On page 17, Mr. Johnson is the one who  
6 signed it.

7 Q I know that.

8 A Okay. So I would assume these are his  
9 answers and -- I don't know.

10 Q The answer to No. 14 says GSR is relying on  
11 the UCC case. Do you have any reason to dispute that,  
12 having signed these interrogatories under oath, that  
13 these are true and accurate answers?

14 A No.

15 Q If we look at this block quote on answer to  
16 Interrogatory No. 14, sir, are you aware that  
17 requesting a royalty is dependent on whether or not  
18 the Peppermill used the pars obtained by the keying?

19 A I don't know.

20 Q I'm going to read to you from the third  
21 sentence of the block quote: Largely as a result of  
22 this practical dilemma, normally the value of the  
23 secret to the plaintiff is an appropriate measure of  
24 damages only when the defendant has in some way  
25 destroyed the value of the secret.

1           Q     When you signed these interrogatories under  
2 oath, did you even see the documents that you were  
3 referring to?

4           A     I did not.

5           Q     How do you know, then, that those documents  
6 are responsive to the interrogatory?

7           A     Again, my verification was that I read this  
8 document and, to the best of my knowledge, this is  
9 true.

10          Q     But the question, I hope you understand, is  
11 how can you say what documents are responsive to what  
12 interrogatories if you haven't read the documents that  
13 you identified?

14               MR. WRAY: Objection. He didn't identify  
15 them; he verified them.

16               You can answer.

17 BY MR. ROBISON:

18          Q     Let me do it the right way, then.

19               Why did you verify that these documents  
20 answer this interrogatory when you didn't even verify  
21 what the document said?

22          A     I don't know.

23          Q     You don't know whether this answer is true  
24 or false, do you?

25          A     Reading this response, I'm taking it by

1 face value which says you have these -- Peppermill has  
2 these documents, and -- yeah, I did not review Tors'  
3 deposition or disclosure statements, so...

4 Q Well, do you know why an invoice from the  
5 computer guy suggests how the Peppermill might have  
6 been unjustly enriched?

7 A By the what guy?

8 Q Computer guy.

9 A Who's the computer guy? I don't know --

10 Q Well, actually, he's a guy that works on  
11 computers that is part of these answers that you gave  
12 me.

13 A I have no idea what you're talking about.

14 Q Tors 1. I'm going to show you a copy of  
15 it, but it's also in the exhibit book as Exhibit 15.

16 Why did you refer to what has already been  
17 marked as Exhibit 15 to these depositions as a  
18 document that would show that the Peppermill was  
19 unjustly enriched?

20 A I don't know.

21 Q Is it your understanding that that piece of  
22 paper reflected in Exhibit 15 is what was taken  
23 from -- excuse me, Exhibit 14 -- taken from Mr. Tors  
24 the night that he met with the Gaming Control Board at  
25 the GSR?

1 A That's what it looks like.

2 Q Do you have any information that the  
3 Peppermill ever saw that before discovery in this  
4 case?

5 A No.

6 Q Do you have any information that that  
7 document would in any way demonstrate, prove, or  
8 establish that the Peppermill was unjustly enriched?

9 A No.

10 Q So why did you say that it did?

11 A I didn't. I verified what my lawyers  
12 wrote.

13 Q You verified what your lawyers wrote?

14 A Yes. To the best of my knowledge.

15 Q Well, you don't have any knowledge about  
16 this, do you?

17 A Very little.

18 Q Well, do you have any knowledge about how  
19 the Peppermill was unjustly enriched by the keying  
20 activities that occurred on July 12th, 2013?

21 A No.

22 Q June 14th, 2012?

23 A No.

24 Q December 29th, 2011?

25 A No.

1 BY MR. ROBISON:

2 Q Yeah, it's Exhibit 11. I'm showing you an  
3 extra copy of that, sir.

4 MR. WRAY: Could you repeat the question,  
5 Counsel? Because I forgot.

6 BY MR. ROBISON:

7 Q Now that you've seen, for the first time,  
8 Tors 87 through 96, can you tell me how this caused  
9 Peppermill to be unjustly enriched or is relevant to  
10 that accusation?

11 A That's not my place to comment on.

12 Q Well, just so we're clear, I asked the  
13 question and you answered it.

14 A No, I didn't. My lawyers answered it.

15 Q Okay. This is not your answer, is it?

16 A No. It's not my answer.

17 Q So this verification process, you're simply  
18 verifying what your lawyers said?

19 A Yes. Again, my lawyers wrote the answers.  
20 I verified to the best of my knowledge -- read it, and  
21 I verified to the best of my knowledge that what they  
22 wrote was true.

23 Q When you discussed the UCC case -- I've  
24 marked as Exhibit No. 37 a copy of that decision.

25 (Exhibit 37 was marked.)

1 BY MR. ROBISON:

2 Q Just so we're clear, did you ever take time  
3 to read this decision when you stated or verified that  
4 the GSR was relying on it?

5 A Repeat the question.

6 MR. WRAY: Before you verified it, did you  
7 read it?

8 MR. ROBISON: I'll be happy to repeat the  
9 question.

10 BY MR. ROBISON:

11 Q Did you read this case at any time to  
12 determine its applicability to this case when you  
13 stated that GSR was relying on this case?

14 A Again, I did not state that GSR was relying  
15 on this case. I did not read this case.

16 Q Your lawyers stated in writing that GSR is  
17 relying on this case, and you verified the fact that  
18 your lawyers said that?

19 A Yes.

20 Q Okay. Do you have any information, as the  
21 person who signed the interrogatories, that the  
22 Peppermill offered any of the GSR's pars to potential  
23 buyers?

24 A I do not.

25 Q Do you have any information, sir, that the

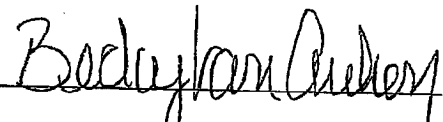
STATE OF NEVADA            )  
                                  )    ss.  
COUNTY OF WASHOE        )

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

That on Wednesday, December 3, 2014, at the offices of Robison, Belaustegui, Sharp & Low, 71 Washington Street, Reno, Nevada, I was present and took verbatim stenotype notes of the deposition of TERRY VAVRA, who personally appeared and was duly sworn by me and was deposed in the matter entitled herein; and thereafter transcribed the same into typewriting as herein appears;

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

Dated at Reno, Nevada, this 8th day of December, 2014.

  
BECKY VAN AUKEN, CCR #418



FILED  
Electronically  
2015-02-04 11:19:03 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 4802417 : melwood

**EXHIBIT "5"**

**EXHIBIT "5"**

## Kent Robison

---

**From:** Stan Johnson <[sjohnson@cohenjohnson.com](mailto:sjohnson@cohenjohnson.com)>  
**Sent:** Wednesday, January 28, 2015 4:10 PM  
**To:** Kent Robison  
**Cc:** Mark Gunderson  
**Subject:** RE: Deposition of Stan Johnson - GSR v. Peppermill/Tors

Kent, let me know when you are available to discuss.

Stan

---

**From:** Jayne Ferretto [<mailto:JFerretto@rbsllaw.com>] **On Behalf Of** Kent Robison  
**Sent:** Tuesday, January 27, 2015 5:59 PM  
**To:** Stan Johnson  
**Cc:** Kent Robison; Mark Gunderson; [tkinnally@cohenjohnson.com](mailto:tkinnally@cohenjohnson.com); [scohen@cohenjohnson.com](mailto:scohen@cohenjohnson.com)  
**Subject:** Deposition of Stan Johnson - GSR v. Peppermill/Tors

Dear Mr. Johnson:

I do not consider your letter an appropriate effort to meet and confer as required by our Rules of Discovery. I am willing to discuss this matter with you tomorrow.

Kent

Kent R. Robison, Esq.  
Robison, Belaustegui, Sharp & Low  
71 Washington Street  
Reno, Nevada 89503  
Telephone: 775-329-3151

**From:** Stan Johnson [<mailto:sjohnson@cohenjohnson.com>]  
**Sent:** Tuesday, January 27, 2015 11:23 AM  
**To:** Kent Robison; Mark Gunderson; Terry Kinnally; Steve Cohen  
**Subject:**

Dear Kent, attached please find my letter to you of today's date. I will be filing today by 4:00 pm a motion for a protective order regarding your attempt to take my deposition. Please let me know if you want to withdraw the notice of deposition before then.

Stan

--

H. Stan Johnson, Esq.  
Cohen-Johnson, LLC  
255 E. Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
702-823-3500  
702-823-3400 fax

[sjohnson@cohenjohnson.com](mailto:sjohnson@cohenjohnson.com)

Tax Advice Disclosure: Per IRS Circular 230, any U.S. federal tax advice contained in this communication (including any attachments), is not intended or written to be used, and cannot be used, to: (1) avoid penalties under the Internal Revenue Code or (2) promote, market or recommend to another party any matters addressed herein.

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**Jayne Ferretto**

---

**From:** eflex@washoecourts.us  
**Sent:** Wednesday, February 04, 2015 11:41 AM  
**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 \*\*\*\*\*  
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**A filing has been submitted to the court RE: CV13-01704**

**Judge:** HONORABLE PATRICK FLANAGAN

**Official File Stamp:** 02-04-2015:11:19:03  
**Clerk Accepted:** 02-04-2015:11:40:09  
**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  
- \*\*Continuation  
**Filed By:** Kent R. Robison

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If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

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

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24 *Grand Sierra Resort*

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

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

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

29 **Plaintiff,**

30 **v.**

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

36 **Defendants.**

37 **Case No.: CV13-01704**

38 **Dept. No.: B7**

39 **BUSINESS COURT DOCKET**

40 **GSR'S REPLY TO PEPPERMILL'S OPPOSITION ON GSR'S MOTION FOR**  
41 **PROTECTIVE ORDER ON AN ORDER SHORTENING TIME AND FOR STAY OF**  
42 **DEPOSITIONS PENDING HEARING ON THE MATTER**

1 Now comes Plaintiff by and through their attorneys H. Stan Johnson, Esq. and Terry  
2 Kinnally, Esq. of the law offices of Cohen Johnson LLC andfor its Reply to the Defendant's  
3 Opposition to Plaintiff's Motion for a Protective Order states as follows:

4 This Reply is made and based upon the pleadings and documents on file herein, the  
5 following points and authorities submitted in support hereof, declarations to be submitted, and  
6 oral arguments (if allowed) at the time of the hearing in this matter

7 Dated this 5<sup>th</sup> day of February, 2015

8 COHEN|JOHNSON, LLC.

9  
10 By: /s/ H. Stan Johnson  
11 H. STAN JOHNSON, ESQ.  
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20 d/b/a GRAND SIERRA RESORT  
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**POINTS AND AUTHORITIES**

As a preliminary matter GSR would like to address the Peppermill's claim that GSR did not make a good faith effort to meet and confer. It must be noted that without any attempt to seek leave a court, Counsel for Peppermill unilaterally set the deposition of Counsel for GSR. Mr. Johnson, then advised Peppermill's counsel that under Nevada law the deposition was improper and asked that it be withdrawn or a Protective Order would be sought. Peppermill refused to do so. This is a situation in which no compromise or resolution of the dispute is possible without intervention of the Court, rendering any further communication between Counsel futile. It should also be noted that Peppermill and Tors have entered into a joint defense agreement and therefore any order should be equally effective as to both parties to prevent Tors re-litigating these issues.

**I. LAW AND ARGUMENT**

**A. The Court Denied Peppermill's Motion to Compel Responses to the Second Set of Interrogatories.**

The Peppermill's excuse for seeking to depose H. Stan Johnson, Esq. is without merit and intended to evade the Court's denial of its Motion to Compel. In order to carry out this scheme Peppermill has misrepresented the Court's ruling on the Motion to Compel Responses to the Peppermill's Second Set of Interrogatories to GSR. Peppermill claims that the Court did not enter a ruling on the Peppermill's Motion to Compel Answers to the Second Set of Interrogatories but instead reserved its ruling until Peppermill filed a supplemental motion. This is totally misstatement of the Order entered by the Court on the motion.

On November 26, 2014 the Court entered a ruling on the motion and Peppermill filed the Notice of Entry of Order on December 2, 2014 (*See Exhibit Notice of Entry and Order attached as GSR's Exhibit 1*). In addressing the motion in regard to the Second Set of Interrogatories the Court held:



While GSR objects to nearly every request, it properly states reasons for the objections and otherwise answers to the extent the interrogatories are not objectionable *See* NRCP 33(b)(1). In response to the objections, Peppermill moves to compel disclosure under NRCP 33(b)(5). It fails however, to identify which of GSR's objections it is challenging or to cite specific authority compelling disclosure. Absent more, an order compelling discovery is not appropriate. (See Exhibit 2 Order p. 5 ll 20-25)

The Court ruling stated:

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 Sanction* are GRANTED in part and DENIED in part in accordance with this order. Defendant's *Motion For Order Compelling GSR To Show Cause It Not Be Held In Contempt* is DENIED. Plaintiff is hereby compelled to provide discovery as described herein. (*See Exhibit 2 p. 10 ll 2 through 9*)

Nowhere in the above language does the Court reserve judgment on the issue of the Plaintiff's Responses to the Second Set of Interrogatories, nor does the order grant leave to Peppermill to bring a "supplemental motion" on the issue. The order is quite clear, the Court denied the Peppermill's Motion to Compel as to the Second Interrogatories, permitting the objections to stand and also found that GSR properly responded to the Interrogatories where no objections were raised. Peppermill's claim that the Court did not rule on the issue or granted Peppermill leave to bring subsequent motions is a misrepresentation of the Court's order.

Equally untrue is the claim by Peppermill that the Court failed to properly analyze the answers. (Peppermill's Opp. P.4 ll10-12) The Court did an analysis, it noted that the objections were properly brought and that Peppermill failed to provide any argument as to why objections were improper and provide a basis upon which the Court should overrule the objections. Peppermill in bringing the Motion had the burden of establishing why the discovery should be permitted. It failed to do so. It is now seeking to improperly re-litigate these issues under the guise of deposing Mr. Johnson.

If Peppermill disagreed with the Court's ruling on the Motion to Compel, it had an opportunity to bring a timely Motion for Reconsideration, but made no effort to do so. Under Nevada law, a request for reconsideration may be filed within ten days of the entry of the order

1 pursuant to Second Judicial Court Local Rule 12 (8) and District Court Rule 13 (7). The Notice  
2 of Entry of Order was filed by Peppermill on December 2, 2014, therefore the time in which to  
3 file a timely motion expired on December 17, 2014. Peppermill did not do so.

4 In fact, Peppermill filed nothing until January 14<sup>th</sup>, 2015 when it filed the Notice of  
5 Deposition of S. Stan Johnson, Esq. On January 26, 2015 Peppermill then filed a Request for  
6 Production of Documents seeking the documents concerning GSR's use of shoppers and/or  
7 consultants (*See Exhibit 3 attached hereto*). On January 28, 2015 Peppermill filed its untimely  
8 Motion for Reconsideration under the guise of a Supplemental Motion to Compel, and then on  
9 January 29<sup>th</sup>, 2015 served a subpoena duces tecum on Compton Dancer the shopping and  
10 consulting service used by GSR, (*See Exhibit 4 attached hereto*). All of these are efforts to  
11 evade the Court's ruling of November 26, 2014 and obtain the information denied by the Court  
12 and should not be permitted.

13 It should also be noted that while Peppermill attached as exhibits to its Opposition the  
14 Second Set of Interrogatories and its untimely Supplemental Motion to Compel it did not provide  
15 a copy of the GSR responses to those interrogatories. This is especially interesting in that in its  
16 untimely motion, Peppermill makes the following statements in its Exhibit No. 3:

17 Interrogatory No. 13: GSR did not object, but did not answer. (p. 6 ll 24)

18 Interrogatory No. 14: GSR did not object but did not answer. (p. 6 ll 25)

19 Interrogatory No. 18: GSR did not object but did not answer. (p. 8 ll 14)

20 These statements are patently untrue. As GSR's Responses show (See GSR's exhibit No.  
21 1) each of these interrogatories was responded to and the Court found the answers to be adequate  
22 in the Order of November 26, 2014. Again Peppermill is deliberately misstating the facts

23 **B. Terry Vavra's Verification of the Interrogatory Responses was Proper.**

24 Peppermill seeks to justify deposing Mr. Johnson on the grounds that he "should" have  
25 verified the GSR's Responses to Interrogatories and that Mr. Vavra's verification was a sham.  
26 On December 3, 2014, the deposition of Terry Vavra was taken by Peppermill. During the  
27 course of the deposition Counsel for Peppermill sought to obtain from Mr. Vavra the same

1 information sought in the interrogatories to which the objections had been sustained. During  
2 the deposition Mr. Vavra testified that he reviewed the Interrogatories and the Responses which  
3 had been drafted by Counsel and that he believed the responses to be both true and accurate.  
4 (*See deposition of Terry Vavra p. 58 ll 4 through P. 65 ll 2 and P. 100 ll 20 through P. 146.*  
5 *Attached hereto as Exhibit 5*). In response to this Peppermill has labeled Mr. Vavra's  
6 verification a sham. Apparently Peppermill is claiming that a client may not rely on Counsel to  
7 draft discovery responses but must personally undertake this duty as though the party were in  
8 proper person. To claim that the verifier of the interrogatories may not rely on the legal expertise  
9 of his counsel in drafting objections means that no objections may be made. This is also untrue,  
10 the Nevada Rules of Civil Procedure, permit a litigant to object to a discovery request. If that  
11 request is upheld then the inquiry is terminated. Since the objections were upheld there is no  
12 obligation to investigate, gather, or produce the information sought. GSR had a right to challenge  
13 the interrogatories, and until such time as the properly stated objections to the discovery were  
14 overruled Peppermill had no right to the information. Once the objections were sustained  
15 Peppermill lost all right to make further attempts to obtain that information in violation of the  
16 Court's ruling. Peppermill has no right to demand it from Mr. Vavra and certainly no right to  
17 obtain it from Mr. Johnson.

18 It again must be noted that among Peppermill's criticism of Mr. Vavra was his failure to  
19 review discovery from Peppermill and Tors and failed to review Mr. Tor's deposition  
20 (Peppermill's Opposition P. 6 ll 9-28). Peppermill has conveniently forgotten that pursuant to  
21 the protective order, Mr. Vavra is not permitted to review those items, and therefore had no  
22 choice but to rely upon Counsel or risk being held in violation of the protective order.  
23 Peppermill cannot have it both ways, first denying GSR management access to discovery and  
24 then arguing they are being obstructive when they don't violate the protective order.

25 ...

26 ...

27 ...

28

**B The Request to Depose Attorney Johnson is improper.**

***1. The Interrogatory Responses Speak For Themselves***

Peppermill claims that it needs to depose Mr. Johnson in order to verify the truth or falsity of the Responses to the Interrogatories. This issue is moot. The Responses consisted of legal objections to Interrogatory Nos. 1 through 12 and 15, 16, 17, and 19 through 23 which were sustained. Peppermill has failed to set forth any basis as to which it is entitled to verify the truth of sustained objections. As to the other responses:

**INTERROGATORY NO. 13:**

Please identify with particularity and specificity the documents which you contend are in the Peppermill's possession which would be in any way relevant to your contention that the Peppermill was unjustly enriched by its possession and/or knowledge of GSR's par settings on the slot machines allegedly by Ryan Tors.

**RESPONSE NO. 13:**

See Tors supplemental disclosure statement TOR 001 and TOR 70-TOR71 and TOR 87 through TOR0096. These documents are also in the Peppermill's possession and demonstrate the method by which Peppermill combined information improperly acquired from multiple casinos including the GSR and used said information to gain an unfair economic advantage over its competitors including GSR which led to Peppermill's unjust enrichment.

**INTERROGATORY NO. 14:**

Please state with specificity and particularity how the GSR has, or intends to, determine what an appropriate royalty is as and for its alleged damages.

**RESPONSE NO. 14:**

GSR is relying on the holding in University Computing Co. v. Lyke-Youngstown Corp 504 F.2d 518 (GA 1974) where the court determined that:

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

disclosure of the secret through publication the total value of the secret to the plaintiff is an inappropriate measure.

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

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

The royalty sought by GSR is based on the information improperly acquired by Peppermill and the uses to which said information was put. For each use of the information, either alone or in combination with information improperly obtained from other casinos. GSR is asking the court to set a reasonable royalty based on the number of uses, and the value obtained by Peppermill through an economic advantage or in savings based on the cost of acquiring the information through proper and legal means.

#### **INTERROGATORY NO. 18:**

Please state with specificity and particularity what the value to which the pars allegedly obtained by Ryan Tors was to the Peppermill and the methodology used to determine that value.

#### **RESPONSE NO. 18:**

Pending the receipt of discovery responses from Peppermill who has the sole possession of this information, the value will be determined by means of determining the benefits, profits, or advantages gained by the defendant in the use of the trade secret. This analysis will be performed by experts. (See GSR’s Exhibit 2)

Peppermill does not want to investigate or inquire concerning the responses but is using this deposition as a ploy to obtain the specific answers which it was denied by this court. The responses stand as upheld by the Court and Peppermill’s claim that these responses justify deposing Mr. Johnson is a ploy meant to harass counsel and undermine the Court’s order of November 26, 2014. Peppermill admits this is its purpose in its own Opposition to the Motion and makes clear it is seeking to circumvent the objections and obtain the information despite the Court’s ruling.

#### ***2. Peppermill Has Failed To Comply With The Requirements Of Nevada Law.***

Peppermill’s unilaterally notice of the deposition of Counsel for GSR has no valid or purpose permissible under Nevada law. In *Club Vista Financial Serv. v. Dist. Ct.*, 128 Nev. Adv. OP 21, 276 P.3d 246 (2012) the Nevada Supreme Court held

To address the difficulties presented by attorney depositions, the Eighth Circuit Court of Appeals has developed a stringent three-factor test under which the party seeking to take the deposition of an opposing party's counsel has the burden of proving that "(1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case." *Shelton*, 805 F.2d at 1327 (citations omitted). We agree with the *Shelton* court that, in the absence of these conditions, a party should not be permitted to depose an opposing party's attorney, and thus, we adopt this three-factor test.<sup>7</sup> In evaluating these three factors, the district court should consider whether the attorney is a percipient witness<sup>8</sup> to the facts giving rise to the complaint. *See Kerr*, 684 A.2d at 967 (including, among factors to be considered in determining whether to permit an attorney deposition, the "relative quality of the information purportedly in the attorney's knowledge") *id p. 250*

Peppermill cannot show that :

**(1) no other means exist to obtain the information than to depose opposing counsel;**

First, Peppermill admits it is not seeking to verify the validity of the objections which were upheld, it is seeking to depose Mr. Johnson as to the information which would have been provided had the objections not been sustained. If this were allowable then every lawyer who ever drafted a sustained discovery objection would be subject to deposition on the matters involved, effectively negating the provisions of NRCP 33 permitting objections. Peppermill's alleged inability to obtain the information from another source because objections to the discovery were upheld does not justify the deposition of counsel. Moreover Peppermill admits that this information was available from GSR but for the sustained objections and is also seeking this information through its untimely Supplemental Motion To Compel, and its subsequent Request for Production to GSR and Subpoena Duces Tecum on Compton Dancer. Peppermill knew that the information was potentially available from other sources, and with that full knowledge that it could not satisfy the requirements of *Club Vista* chose to notice the deposition, and refused to vacate it necessitating this motion. This conduct demonstrates that Peppermill's motivation in noticing Mr. Johnson's deposition has nothing to do with discovery but is an attempt to harass Counsel and presumably set the stage to try to remove him as Counsel for GSR.

**(2) the information sought is relevant and nonprivileged;**

Peppermill claims that this information is relevant and non-privileged, however the information it seeks does not concern the interrogatory responses but the underlying information

1 to which the Court has upheld the objections(See GSR's exhibit 2) and denied Peppermill's  
2 motion to compel. The objections stated that the information was not within the scope of  
3 permissible discovery under NRCP 26. Based on that ruling the information sought must be  
4 irrelevant. Peppermill may not obtain from Counsel for GSR what the Court has already ruled it  
5 may not obtain directly from GSR.

6 **(3) the information is crucial to the preparation of the case.**

7 The information sought is not crucial to the preparation of the case. Upheld objections to  
8 discovery are not crucial to the preparation of any case. Nor does Peppermill even pretend to  
9 make that argument. Peppermill is arguing that it believes that the information sought in the  
10 interrogatories is crucial, not the objections which denied them that information. Again, this is  
11 an attempt to undermine and evade the Court's order of November 26, 2014. Even were the  
12 deposition permitted to proceed, it would have to be limited to the interrogatory responses as  
13 upheld by the Court, not the information which would have been provided if no objections had  
14 been made.

15 The gravamen of this case is that Peppermill sent employees onto the premises of GSR  
16 and other casinos and used a slot key to gain access to the diagnostic screens of various slot  
17 machines and copied confidential information from those screens. The information being sought  
18 in the interrogatories involves "shopping" and other method of obtaining information which does  
19 not include the unauthorized invasion of the inner workings of a slot machine. Peppermill is  
20 seeking this information as a red herring to try and excuse and justify its own inappropriate and  
21 unethical conduct by seeking to imply that "shopping" is equivalent to Mr. Tors conduct.

22 **III. CONCLUSION**

23 Peppermill's conduct in labeling Terry Vavra's verification of the Responses to the  
24 Second Set of Interrogatories as a "sham" is outrageous. Peppermill compounds this behavior by  
25 seeking to depose Counsel for Plaintiff as to those same Interrogatories. Peppermill seeks to  
26 depose GSR's Counsel with the goal of obtaining the discovery to which objections were  
27 sustained. This conduct shows a total disregard for the spirit as well as the letter of NRCP 26  
28

1 and a complete and utter disdain for this Court's ruling upholding the objections to discovery  
2 and the Nevada Supreme Court's ruling in Club Vista. Defendant's conduct is clearly meant to  
3 harass, embarrass, and oppress counsel for the Plaintiff and is an unprincipled attempt at  
4 intimidation.

5 The deposition should have never been noticed, and when GSR's Counsel notified  
6 Peppermill's counsel of the impropriety of the notice, should have been immediately withdrawn.  
7 Peppermill refused to do so; leaving Plaintiff with no choice but to bring this motion. Plaintiff  
8 should be awarded fees and costs for the necessity of bringing of this motion, and Peppermill  
9 should be sanctioned for its complete disregard of the Nevada Rules of Civil Procedure and its  
10 contemptuous conduct in this matter, specifically, its deliberate misrepresentation of the Court's  
11 November 26, 2014 order, the deliberate misrepresentation of GSR's Responses to the Second  
12 Set of Interrogatories; and its clear intention to subvert the rules by misleading the Court as to  
13 Peppermill's purpose in seeking this deposition. Therefore Plaintiff asks this Honorable Court  
14 to:

15 1. Bar Peppermill and Tors from taking the deposition of Counsel for GSR,  
16 including but not limited to H. Stan Johnson, Esq., Steven B. Cohen, Esq. Terry Kinnally, Esq.  
17 and Mark Wray, Esq.

18 2. Barring Defendants Peppermill and Tors from making any further inquiry  
19 concerning the subjects to which the objections were upheld in the Plaintiff's Responses to  
20 Peppermill's Second Set of Interrogatories.

21 3. Award GSR attorneys' fees and costs for the necessity of bringing this motion

22 4 For such other and further relief as this Court deems equitable and just;

23 ...

24 ...

25 ...

26 ...

27 ...

28



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

1 Dated this 5<sup>th</sup> day of February, 2015

2 COHEN|JOHNSON, LLC.

3  
4 By: /s/ H. Stan Johnson

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14 d/b/a GRAND SIERRA RESORT

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**INDEX OF EXHIBITS**

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COHEN-JOHNSON, LLC  
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Las Vegas, Nevada 89119  
(702) 823-3500 FAX: (702) 823-3400

**CERTIFICATE OF SERVICE**

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 **GSR'S REPLY TO PEPPERMILL'S OPPOSITION ON GSR'S MOTION FOR PROTECTIVE ORDER ON AN ORDER SHORTENING TIME AND FOR STAY OF DEPOSITIONS PENDING HEARING ON THE MATTER** 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 CM/ECF Electronic Notification System addressed to:

ROBINSON, BELAUSTEGUI, SHARP & LOW

C/o Kent R. Robison, Esq.

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Reno, Nevada 89503

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*Attorney for the Defendant Peppermill*

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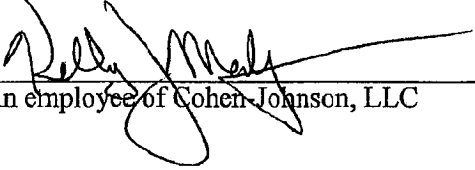
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*Attorney for Defendant Ryan Tors*

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 5<sup>th</sup> day of February, 2015.

  
An employee of Cohen-Johnson, LLC

FILED  
Electronically  
2015-02-05 01:34:29 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 4805032 : ylloyd

**Exhibit “1”**

**Exhibit “1”**

1 2540  
2 KENT R. ROBISON, ESQ. - NSB #1167  
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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 MEL-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 NOTICE OF ENTRY OF ORDER

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

PLEASE TAKE NOTICE that on the 26<sup>th</sup> 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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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 80(b)(6) regarding the topics identified in Peppermill's  
7 amended notice.<sup>1</sup>

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 <sup>1</sup> The recommendation excepted "Topic 28," 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 80(b)(6).<sup>2</sup> 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 80(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. 856, 368 (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 32718320 (W.D. Okla. Jun. 18, 2002)).  
16 The testimony of the Rule 80(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 Burdiak, 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 <sup>2</sup>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 80(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 (80)(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 87(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 21<sup>st</sup> day of November, 2014.

20  
21 Patrick J. Flanagan  
22 PATRICK FLANAGAN  
23 District Judge  
24  
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2  
3 CERTIFICATE OF SERVICE

4 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second  
5 Judicial District Court of the State of Nevada, County of Washoe; that on this  
6 26 day of November, 2014, I electronically filed the following with the Clerk of  
7 the Court by using the ECF system which will send a notice of electronic filing to  
8 the following:

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

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

11 John Funk, Esq., for Ryan Tors;

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

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

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Judicial Assistant

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCF 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](mailto:sjohnson@cohenjohnson.com) / [tkinnally@cohenjohnson.com](mailto:tkinnally@cohenjohnson.com)  
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20 *Attorneys for Nevada Gaming Control Board*

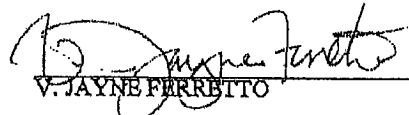
21 ☐ by electronic email addressed to the above.

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

FILED  
Electronically  
2015-02-05 01:34:29 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 4805032 : ylloyd

**Exhibit “2”**

**Exhibit “2”**

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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 21<sup>st</sup> day of November, 2014.

  
PATRICK FLANAGAN  
District Judge

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2015-02-05 01:34:29 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 4805032 : ylloyd

**Exhibit “3”**

**Exhibit “3”**

1 **DISCOVERY**

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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 **DEFENDANT PEPPERMILL CASINOS, INC.'S FIFTH REQUEST FOR PRODUCTION**  
28 **OF DOCUMENTS TO PLAINTIFF<sup>1</sup>**

TO: Plaintiff above-named and its attorneys of record:

Defendant Peppermill Casinos, Inc., ("Peppermill") by and through its attorneys Robison, Belaustegui, Sharp & Low, pursuant to Rule 34 of the Nevada Rules of Civil Procedure, hereby requests that Plaintiff produce all documents as follows:

**DEFINITIONS**

The following definitions and instructions apply to each of the Requests for Production set

<sup>1</sup> Peppermill served its First and Fourth Requests for Production of Documents to Plaintiff. This Request is referred to as Defendant Peppermill's Fifth, even though there are no Second and Third Requests for Production of Documents to Plaintiff.

1     forth and are deemed to be incorporated therein.

2             (1)     “Plaintiff” or “GSR” or “you” means Plaintiff MEI-GSR Holdings, LLC, a Nevada  
3     Corporation, d/b/a/ Grand Sierra Resort.

4             (2)     The term “document” means all written, printed, recorded, photographed,  
5     videotaped, or any electronically stored or transmitted information, including e-mails, however  
6     produced or reproduced, and is to be construed in its more comprehensive sense as contemplated  
7     by the Nevada Rules of Civil Procedure.

8             (3)     When responding to a Request for Production, please do so in sufficient detail to  
9     permit service of a Subpoena, a Subpoena Duces Tecum, or a supplemental document production  
10    request, as the context dictates. At a minimum, a complete description of the current location of  
11    the documents, and identification of the custodian, are to be provided.

12    **REQUEST FOR PRODUCTION NO. 1:**

13             Please produce any and all documents regarding the Gaming Application of Alex Meruelo.

14    **REQUEST FOR PRODUCTION NO. 2:**

15             Please produce any and all documents regarding any Gaming Application of Luis Armona.

16    **REQUEST FOR PRODUCTION NO. 3:**

17             Please produce any and all documents regarding any Operating Agreement between MEI-  
18    GSR Holdings, LLC and the Santo Group.

19    **REQUEST FOR PRODUCTION NO. 4:**

20             Please produce any and all documents regarding any Gaming License issued to Alex  
21    Meruelo.

22    **REQUEST FOR PRODUCTION NO. 5:**

23             Please produce any and all documents regarding any Gaming License issued to Luis  
24    Armona.

25    **REQUEST FOR PRODUCTION NO. 6:**

26             Please produce any and all Operating Agreements of the MEI-GSR Holdings, LLC,  
27    including, but not limited to, Operating Agreement(s) provided to the Nevada gaming authority.

28    ///

1 **REQUEST FOR PRODUCTION NO. 7:**

2 Please produce any and all documents regarding any lease agreement(s) and/or contracts by  
3 and between the Santo Group and MEI-GSR Holdings, LLC

4 **REQUEST FOR PRODUCTION NO. 8:**

5 Please produce any and all documents regarding all contracts, engagement letters, or other  
6 written documents that reflect Compton Dancer Consulting's work performed for the Grand Sierra  
7 Resort Hotel Casino (owned by MEI-GSR Holdings, LLC) for a period of time from January 1,  
8 2010 through and including January 1, 2015.

9 **REQUEST FOR PRODUCTION NO. 9:**

10 Please produce all true and correct copies of all notes, research, investigation performed by  
11 Compton Dancer Consulting ("CDC") of the Peppermill Hotel Casino and/or Western Village  
12 performed pursuant to CDC's contract with Grand Sierra Resort Hotel Casino or for the Grand  
13 Sierra Resort Hotel Casino for a period of time from January 1, 2010 through and including  
14 January 1, 2015.

15 **REQUEST FOR PRODUCTION NO. 10:**

16 Please produce all copies of all reports, summaries, and schedules concerning Compton  
17 Dancing Consulting's "shopping" and investigation or analysis of the Atlantis Hotel Casino and  
18 the Peppermill Hotel Casino for the period of time from January 1, 2010 through and including  
19 January 1, 2015.

20 **REQUEST FOR PRODUCTION NO. 11:**

21 Please produce copies of all invoices submitted to GSR for the shopping activities,  
22 investigation activities, and consulting activities that CDC has performed for or on behalf of Grand  
23 Sierra Resort concerning investigation, shopping activities, or analysis of other Northern Nevada  
24 gaming properties for a period of time from January 1, 2010 through and including January 1,  
25 2015.

26 **REQUEST FOR PRODUCTION NO. 12:**

27 Please produce a copy of the "Initial Comparative Analysis: Tier Structure and Tier Credit  
28 Design, Select Study of Grand Sierra Resort and Two Competitive Properties" prepared for Grand



1 Sierra Resort, Reno, Nevada, 2012, identified in the Curriculum Vitae of David G. Schwartz,  
2 Ph.D. (GSR 00052).

3 **REQUEST FOR PRODUCTION NO. 13:**

4 Please produce a copy of the "Comparative Analysis: Phase II: Tier Structure and Tier  
5 Credit Design, Select Study of Grand Sierra Resort and Three Competitive Properties" prepared  
6 for Grand Sierra Resort, Reno, Nevada, 2013, identified in the Curriculum Vitae of David G.  
7 Schwartz, Ph.D. (GSR 00052).

8 **REQUEST FOR PRODUCTION NO. 14:**

9 Please produce a copy of the "Initial Competitive Analysis: Atlantic City Market"  
10 prepared for Meruelo Group, Atlantic City, New Jersey, 2013, identified in the Curriculum Vitae  
11 of David G. Schwartz, Ph.D. (GSR 00052).

12 **REQUEST FOR PRODUCTION NO. 15:**

13 Please produce copies of the "current academic literature" identified on page three of the  
14 September 9, 2014 Affidavit of David G. Schwartz, Ph.D. (GSR00046).

15 **REQUEST FOR PRODUCTION NO. 16:**

16 Please produce all correspondence, emails, notes, memoranda, agreements, term sheets,  
17 reports, operating agreements, leases, rental agreements, contracts, or any other electronic or  
18 written memorialization, not protected by the attorney/client or work product privilege, regarding  
19 any transaction between the Plaintiff and any individual or entity to operate the casino located at  
20 the Plaintiff's property in Reno from January 1, 2010 to the present.

21 **REQUEST FOR PRODUCTION NO. 17:**

22 Please produce all correspondence, emails, notes, memoranda, agreements, term sheets,  
23 reports, operating agreements, leases, rental agreements, contracts, or any other electronic or  
24 written memorialization, not protected by the attorney/client or work product privilege, regarding  
25 the merger or acquisition of Navegante Group by the Plaintiff.

26 **REQUEST FOR PRODUCTION NO. 18:**

27 Please produce all correspondence, emails, notes, memoranda, agreements, term sheets,  
28 reports, operating agreements, leases, rental agreements, contracts, or any other electronic or

1 written memorialization, not protected by the attorney/client or work product privilege, regarding  
2 the merger or acquisition of Nav-Reno-GS, LLC by the Plaintiff.

3 **REQUEST FOR PRODUCTION NO. 19:**

4 Please produce all correspondence, emails, notes, memoranda, agreements, term sheets,  
5 reports, operating agreements, leases, rental agreements, contracts, or any other electronic or  
6 written memorialization, not protected by the attorney/client or work product privilege, regarding  
7 all shopper or shopping activities regarding the Peppermill from January 1, 2010 to the present.

8 **REQUEST FOR PRODUCTION NO. 20:**

9 Please produce all correspondence, emails, notes, memoranda, agreements, term sheets,  
10 reports, operating agreements, leases, rental agreements, contracts, or any other electronic or  
11 written memorialization, not protected by the attorney/client or work product privilege, regarding  
12 the GSR Executive Program walk-throughs or any other GSR employee-conducted shop of the  
13 Peppermill from January 1, 2010 to the present.

14 **REQUEST FOR PRODUCTION NO. 21:**

15 Please produce any and all documents regarding the Gaming Application of MEI-GSR  
16 Holdings, LLC.

17 **REQUEST FOR PRODUCTION NO. 22:**

18 Please produce any and all documents regarding the Gaming Application of Nav-Reno-GS,  
19 LLC to operate the Grand Sierra Resort Casino in Reno, Nevada.

20 **REQUEST FOR PRODUCTION NO. 23:**

21 Please produce any and all documents regarding the Gaming Application of Navegante  
22 Group to operate the Grand Sierra Resort Casino in Reno, Nevada.

23 **REQUEST FOR PRODUCTION NO. 24:**

24 Please produce any and all documents regarding any Gaming License issued to Tony Santo  
25 to operate the Grand Sierra Resort Casino in Reno, Nevada.

26 **REQUEST FOR PRODUCTION NO. 25:**

27 Please produce any and all documents regarding any Gaming License issued to MEI-GSR  
28 Holdings, LLC.

1 **REQUEST FOR PRODUCTION NO. 26:**

2 Please produce any and all documents, correspondence, emails and other written material  
3 that in any way identifies, explains or has as its subject matter the "extremely valuable  
4 information" to which Alex Meruelo referred to on line 20 of page 32 of his deposition.

5 **REQUEST FOR PRODUCTION NO. 27:**

6 Please produce any and all documents, correspondence, emails, notes, memoranda and/or  
7 other written material that explains, pertains to or constitutes the "prior work" to which David  
8 Schwartz, Ph.D. referred to in his notes date-stamped GSR00103.

9 **REQUEST FOR PRODUCTION NO. 28:**

10 Please produce any and all information, documents, correspondence, emails or other  
11 written material which constitutes or is intended to constitute the information turned over to or to  
12 be turned over to the Nevada Gaming Control Board referred to by Alex Meruelo in his deposition  
13 on page 96.

14 **REQUEST FOR PRODUCTION NO. 29:**

15 Please produce any and all documents, records, correspondence, emails, schedules, reports  
16 or other written material which refers to, mentions, pertains to or validates, substantiates or  
17 illustrates in any way Alex Meruelo's testimony that parts have "a tremendous amount of value".

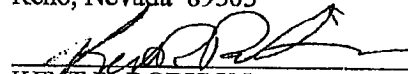
18 **AFFIRMATION**

19 Pursuant to NRS 239B.030

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

22 DATED this 26th day of January, 2015.

23 ROBISON, BELAUSTEGUI, SHARP & LOW  
24 A Professional Corporation  
25 71 Washington Street  
26 Reno, Nevada 89503

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

J:\WPData\Krr1872.006-Peppermill-GSR vP-Request for Production (5th set).doc

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 FIFTH REQUEST FOR PRODUCTION OF DOCUMENTS TO**  
5 **PLAINTIFF** 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  
7 postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

8 H. STAN JOHNSON, ESQ.  
9 TERRY KINNALLY, ESQ.  
10 Cohen-Johnson, LLC  
11 255 E. Warm Springs Road, Suite 100  
12 Las Vegas, NV 89119  
13 Email: [sjohnson@cohenjohnson.com](mailto:sjohnson@cohenjohnson.com) / [tkinnally@cohenjohnson.com](mailto:tkinnally@cohenjohnson.com)  
14 Attorneys for Plaintiff

15 MARK WRAY, ESQ.  
16 608 Lander Street  
17 Reno, NV 89509  
18 Email: [mwrap@markwray.law.com](mailto:mwrap@markwray.law.com)  
19 Attorneys for Plaintiff

20 MARK GUNDERSON, ESQ.  
21 JOHN R. FUNK, ESQ.  
22 Gunderson Law Firm  
23 3895 Warren Way  
24 Reno, NV 89509  
25 Email: [mgunderson@gundersonlaw.com](mailto:mgunderson@gundersonlaw.com)  
26 [jfunk@gundersonlaw.com](mailto:jfunk@gundersonlaw.com)  
27 Attorneys for Defendant Ryan Tors

28 \_\_\_\_\_ by using the Court's CM/ECF Electronic Notification System addressed to:

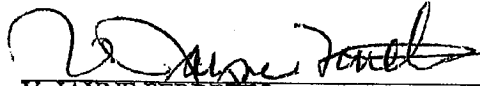
\_\_\_\_\_ by electronic email addressed to the above.

\_\_\_\_\_ by personal delivery/hand delivery addressed to:

\_\_\_\_\_ by facsimile (fax) addressed to:

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

DATED: This 26th day of January, 2015.

22   
23 V. JAYNE FERRETTO

FILED  
Electronically  
2015-02-05 01:34:29 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 4805032 : ylloyd

**Exhibit “4”**

**Exhibit “4”**

1 2582  
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

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).

24 NOTICE OF TAKING DEPOSITION OF CUSTODIAN OF RECORDS  
25 OF COMPTON DANCER CONSULTING

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

27 PLEASE TAKE NOTICE that on Friday, February 20, 2015, commencing at 10:00 a.m., at  
28 the offices of Robison, Belaustegui, Sharp & Low, 71 Washington Street, Reno, Nevada 89503,  
the Defendant, Peppermill Casinos, Inc., in the above-entitled action will take the deposition of the  
CUSTODIAN OF RECORDS OF COMPTON DANCER CONSULTING upon oral examination,  
pursuant to Rules 26 and 30 of the Nevada Rules of Civil Procedure, before a Notary Public or  
before some other officer authorized by law to administer oaths and he/she shall further be  
required to bring with him those items described in Exhibit 1 attached hereto and by this reference

1 incorporated herein. Oral examination will continue from day to day until completed.


2 You are invited to attend and cross-examine.

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

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

7 DATED this 24<sup>th</sup> day of January, 2015.

8 ROBISON, BELAUSTEGUI, SHARP & LOW  
9 A Professional Corporation  
10 71 Washington Street  
11 Reno, Nevada 89503

12   
13 KENT R. ROBISON  
14 KEEGAN G. LOW  
15 THERESE M. SHANKS  
16 Attorneys for Defendant  
17 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 **NOTICE OF**  
4 **TAKING DEPOSITION OF CUSTODIAN OF RECORDS OF COMPTON DANCER**  
5 **CONSULTING** 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  
7 affixed thereto, in the United States mail at Reno, Nevada, addressed to:

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

9 H. STAN JOHNSON, ESQ.  
10 TERRY KINNALLY, ESQ.  
11 Cohen-Johnson, LLC  
12 255 E. Warm Springs Road, Suite 100  
13 Las Vegas, NV 89119  
14 Email: [sjohnson@cohenjohnson.com](mailto:sjohnson@cohenjohnson.com) / [tkinnally@cohenjohnson.com](mailto:tkinnally@cohenjohnson.com)  
15 *Attorneys for Plaintiff*

16 MARK WRAY, ESQ.  
17 608 Lander Street  
18 Reno, NV 89509  
19 Email: [mwrap@markwray.law.com](mailto:mwrap@markwray.law.com)  
20 *Attorneys for Plaintiff*

21 MARK GUNDERSON, ESQ.  
22 JOHN R. FUNK, ESQ.  
23 Gunderson Law Firm  
24 3895 Warren Way  
25 Reno, NV 89509  
26 Email: [mgunderson@gundersonlaw.com](mailto:mgunderson@gundersonlaw.com)  
27 [jfunk@gundersonlaw.com](mailto:jfunk@gundersonlaw.com)  
28 *Attorneys for Defendant Ryan Tors*

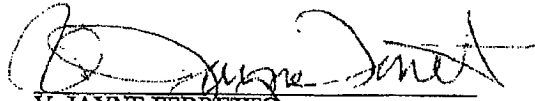
— by electronic email addressed to the above.

— by personal delivery/hand delivery addressed to:

— by facsimile (fax) addressed to:

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

DATED: This 27th day of January, 2015.

  
V. JAYNE FERRETTO



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**LIST OF EXHIBITS**

<b>EXHIBIT NO.</b>	<b>DESCRIPTION</b>	<b>NO. OF PAGES</b>
1	Documents to be Produced by Custodian of Records of Compton Dancer Consulting	1

**Exhibit “5”**

**Exhibit “5”**

1 questions of you, sir.

2 (Exhibit 35 was marked.)

3 BY MR. ROBISON:

4 Q Exhibit 35 are GSR's responses to the  
5 Peppermill's second set of interrogatories. If you  
6 would please look at page 18 of 19 on this document.  
7 That's your signature, correct, sir?

8 A That is correct.

9 Q And you signed these answers attesting to  
10 their accuracy under oath and under penalty of  
11 perjury?

12 A That is correct.

13 Q Do you know why you were tagged "it" with  
14 respect to these interrogatories?

15 A Not exactly, no.

16 Q When did you first see the interrogatories?

17 A Probably -- I signed this November 3rd.  
18 Maybe November 2nd, the day before.

19 Q Were the answers already typed in?

20 A Yes.

21 Q So you didn't do anything to research or  
22 investigate the questions?

23 A Me personally? No. I read through the  
24 document.

25 Q Okay. Before you even saw -- the answers

1 keys?

2 A Not besides -- really the first time I  
3 heard about it was through this public event.

4 Q If you turned a reset key, do you know what  
5 you would see on the diagnostic screens?

6 A I do not.

7 Q Okay. Have you seen the nondisclosure  
8 protective order in this case?

9 A I don't think so, no.

10 Q Do you know that there's one in place  
11 approved by Judge Flanagan in this case?

12 A No.

13 Q Have you been told that the exchange of  
14 proprietary information is protected in this case?

15 MR. WRAY: Objection.

16 Other than by your attorneys.

17 THE WITNESS: Oh, I haven't talked to  
18 anyone about that, no.

19 BY MR. ROBISON:

20 Q Okay. You object a lot in these  
21 interrogatories based upon the fact that you contend  
22 certain things are trade secrets.

23 MR. WRAY: Objection. He hasn't objected.  
24 He just verified the responses.

25 MR. ROBISON: Well, actually, Mr. Wray, he

1 does more than that, because what he says --

2 MR. WRAY: I can't answer your question,  
3 Counsel.

4 MR. ROBISON: His verification doesn't say  
5 anything about verifying answers. What it says is  
6 that he has read the foregoing and that they are true  
7 to the best of his knowledge.

8 MR. WRAY: That's what I call a  
9 verification. Excuse me.

10 MR. ROBISON: No, he says they're true.  
11 He's not verifying somebody else's work. I'm going to  
12 ask questions about the truth or falsity of these  
13 answers.

14 MR. WRAY: Okay. I understand. You got my  
15 objection, and I understand what your position is.  
16 I'm just saying he signed the verification. He didn't  
17 write the answers. And particularly the objections.

18 MR. ROBISON: No, we actually found out  
19 today that he didn't write these answers and didn't  
20 prepare them. We know that.

21 MR. WRAY: I could be right or I could be  
22 wrong, but doesn't Rule 33 say something about this;  
23 when someone verifies responses, they're verifying the  
24 facts that are responded to, not the objections?  
25 Doesn't it say that in the rule?

1 MR. ROBISON: I don't know what it says.  
2 What I'm doing is interrogating this witness based  
3 upon his answers that he has testified under oath are  
4 true and accurate.

5 MR. WRAY: Objection. They're not his  
6 answers; they're his verification of these answers.

7 BY MR. ROBISON:

8 Q With respect to the objections, did you  
9 take any role in trying to determine what was  
10 requested in these interrogatories that might be  
11 considered a trade secret?

12 A No.

13 Q Do you know what a trade secret is?

14 A I think so, yes.

15 Q Is that because you read the UCC case?

16 A No.

17 Q Did you read the UCC case?

18 A No.

19 Q Why did you quote it?

20 MR. WRAY: Objection. He didn't quote it.

21 THE WITNESS: I did not --

22 MR. WRAY: He verified the responses.

23 BY MR. ROBISON:

24 Q Why can you verify that UCC is the basis  
25 for the GSR's position in this case?

1           A     That was my -- the legal guidance from my  
2 attorneys. They wrote these responses and I verified.

3           Q     You verified them as truthful?

4           A     To the best of my knowledge, yes.

5           Q     And so the case on which GSR predicates its  
6 position on trade secrets is the UCC case, according  
7 to your verified answers. Correct?

8           MR. WRAY: The answers that he verified.

9           MR. ROBISON: You guys have been sanctioned  
10 once for doing this kind of stuff. You'd think you'd  
11 stop doing it.

12          MR. WRAY: And you're going to be  
13 sanctioned for telling him we're sanctioned. That's  
14 threatening.

15          MR. ROBISON: No, I just --

16          MR. WRAY: Yes, it is.

17          MR. ROBISON: I'm telling you.

18          MR. WRAY: I know you are.

19          MR. ROBISON: Why do you keep doing this?  
20 Judge Flanagan made his position very clear to you  
21 guys.

22          MR. WRAY: My objection is to the question  
23 that's pending. I don't want to argue the case with  
24 you. I just want to try to make an objection that the  
25 objections here are written by attorneys, not by this

1 witness. I believe Rule 33 speaks to this.

2 BY MR. ROBISON:

3 Q What I want to do is go to Interrogatory 14  
4 because -- I want to tell you that I sympathize with  
5 your position, but, nonetheless, I have to ask these  
6 questions because we asked these questions so that we  
7 can get information to help us defend this case and  
8 these accusations, and we rely on these, and you're  
9 the guy that verified these. Lawyers can't do that.  
10 So I have to go through these questions. Please bear  
11 with me.

12 MR. WRAY: Well, I object to this  
13 instruction to the witness. It's not a question.  
14 It's seemingly an attempt to instruct the witness  
15 about someone else's position in the case, which is  
16 really inappropriate.

17 MR. ROBISON: Actually, Mr. Wray, it's an  
18 exercise in civility.

19 MR. WRAY: Please forgive me for  
20 disagreeing with you --

21 MR. ROBISON: No.

22 MR. WRAY: -- but I don't think that's  
23 civil.

24 BY MR. ROBISON:

25 Q GSR is relying on University Computing



1 Company vs. Lyke-Youngstown Corp.

2 Do you see that?

3 A Yes.

4 Q So you're simply verifying under oath that  
5 that's what the GSR is doing, correct?

6 A Correct.

7 Q And you, of course, have not discussed the  
8 holding in this case with any GSR representative, have  
9 you?

10 A I have not.

11 Q You haven't discussed what this case says  
12 about trade secrets, have you, with anybody at the  
13 GSR, other than counsel?

14 A That's correct. Just counsel.

15 Q All right. I want to look at the quote  
16 that you verify as GSR's position in this case. And I  
17 need this answer to the question.

18 You are not denying, are you, that this  
19 case, University Computing Company vs.  
20 Lykes-Youngstown Corporation, is the case on which GSR  
21 is relying in this case? Because it says GSR is  
22 relying on the holding. You are verifying that in  
23 this case, are you not, sir?

24 A Again, my verification is that I've read  
25 this and, to the best of my knowledge, this is true.

1 And my lawyer, Stan Johnson, who wrote this, that's  
2 what he put there. So to the best of my knowledge,  
3 that is true.

4 Q These are really Mr. Johnson's answers?

5 A On page 17, Mr. Johnson is the one who  
6 signed it.

7 Q I know that.

8 A Okay. So I would assume these are his  
9 answers and -- I don't know.

10 Q The answer to No. 14 says GSR is relying on  
11 the UCC case. Do you have any reason to dispute that,  
12 having signed these interrogatories under oath, that  
13 these are true and accurate answers?

14 A No.

15 Q If we look at this block quote on answer to  
16 Interrogatory No. 14, sir, are you aware that  
17 requesting a royalty is dependent on whether or not  
18 the Peppermill used the pars obtained by the keying?

19 A I don't know.

20 Q I'm going to read to you from the third  
21 sentence of the block quote: Largely as a result of  
22 this practical dilemma, normally the value of the  
23 secret to the plaintiff is an appropriate measure of  
24 damages only when the defendant has in some way  
25 destroyed the value of the secret.

1                   Are you aware of any evidence or any  
2 information that suggests to you that the Peppermill  
3 destroyed the value of any secret it may have gotten  
4 from GSR?

5           A       I wouldn't know.

6           Q       You wouldn't?

7           A       I wouldn't know.

8           Q       But are you aware of any information or  
9 evidence to that effect?

10          A       Me? No.

11          Q       All right. The next sentence of this block  
12 quote to your answers to interrogatories is: The most  
13 obvious way this is done is through publication, so  
14 that no secret remains.

15                   Do you see that, sir?

16          A       Yes, I do.

17          Q       First of all, are you aware of any  
18 publication or disclosure by the Peppermill of that  
19 par information it received as a result of keying  
20 incidents?

21          A       I'm not aware.

22          Q       Has anybody told you that there's been a  
23 publication or a disclosure by the Peppermill of that  
24 information?

25          A       No one's told me, no.

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 7** to be filed electronically with the Clerk of the Nevada Supreme  
6 Court. Pursuant to N.E.F.C.R. 9, notice of an electronically filed document by the  
7 Court "shall be considered as valid and effective service of the document" on the  
8 below listed persons who are registered users.  
9

10  
11 H. STAN JOHNSON, ESQ.  
12 CHRIS DAVIS, ESQ.  
13 Cohen Johnson Parker Edwards, LLC  
14 255 E. Warm Springs Road, Suite 100  
15 Las Vegas, NV 89119  
16 Email: [sjohnson@cohenjohnson.com](mailto:sjohnson@cohenjohnson.com)  
[cdavis@cohenjohnson.com](mailto:cdavis@cohenjohnson.com)  
17 *Attorneys for Appellant*

18  
19 DATED: This 8th day of May, 2017.

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21 V. JAYNE FERRETTO  
22 Employee of Robison, Belaustegui, Sharp & Low  
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1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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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                                  \_\_\_\_\_/

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Supreme Court No. 70319

District Ct. Case No. CV13-01704

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

16                                   **APPENDIX VOLUME 7**

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

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

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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 **REQUEST FOR**  
**SUBMISSION** on all parties to this action by the method(s) indicated below:

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

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

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16 *Attorneys for Defendant Ryan Tors*

17        by electronic email addressed to the above.

18        by personal delivery/hand delivery addressed to:

19        by facsimile (fax) addressed to:

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

21 DATED: This 8th day of January, 2015.

22   
23 V. JAYNE FERRETTO  
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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,**

20 **Plaintiff,**

21 **vs.**

22 **CASE NO.: CV13-01704**

23 **DEPT. NO.: B7**

24 **BUSINESS COURT DOCKET**

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

Defendant(s).  
/

**REQUEST FOR SUBMISSION**

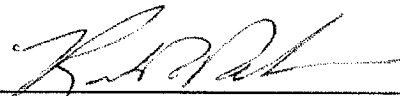
It is requested that Defendant Peppermill Casinos, Inc.'s Motion for Order Requiring GSR to Show Why It Not Be Held In Contempt, Sanctioned and Ordered to Produce Documents, which was filed on December 17, 2014, in the above-entitled matter be submitted for decision. The undersigned attorney certifies 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  
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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 **REQUEST FOR**  
4 **SUBMISSION** 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  
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  
Email: [sjohnson@cohenjohnson.com](mailto:sjohnson@cohenjohnson.com) / [tkinnally@cohenjohnson.com](mailto:tkinnally@cohenjohnson.com)  
9 *Attorneys for Plaintiff*

10 MARK WRAY, ESQ.  
608 Lander Street  
11 Reno, NV 89509  
Email: [mwrap@markwray.law.com](mailto:mwrap@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  
Email: [mgunderson@gundersonlaw.com](mailto:mgunderson@gundersonlaw.com)  
15 [jfunk@gundersonlaw.com](mailto:jfunk@gundersonlaw.com)  
16 *Attorneys for Defendant Ryan Tors*

17 ☐ by electronic email addressed to the above.

18 ☐ by personal delivery/hand delivery addressed to:

19 ☐ by facsimile (fax) addressed to:

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

21 DATED: This 8th day of January, 2015.

22   
23 V. JAYNE FERRETTO  
24  
25  
26  
27  
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**

Before the Court is Peppermill's *Motion for Order Requiring GSR to Show Cause why it not be Held in Contempt, Sanctioned, and Ordered to Produce Documents*, filed December 17, 2014, and GSR's *Opposition to Memorandum of Fees and Costs*, filed December 22, 2014. The pertinent facts and procedural history are detailed in this Court's *Order* of November 26, 2014, in which it ordered GSR to turn over all documents relating to its calculation of damages by December 15, 2014, and awarded Peppermill certain fees and costs as a sanction.

a. *Contempt and Production of Documents*

The thrust of Peppermill's grievance is that it believes GSR has failed to turn over "Notes from David Schwartz Ph.D. re: Computation of Damages" (identified as

1 GSR 103) as required by this Court's prior ruling.<sup>1</sup> See *Opposition* at Ex. 1, pg. 6.  
2 GSR provides evidence that it timely produced the notes.<sup>2</sup> Defendants claim they  
3 never got them.<sup>3</sup>

4 The Court has reviewed the pleadings and papers on file herein. Allegations  
5 that GSR knowingly "backdated" its disclosure are very serious. The Court believes  
6 that GSR's counsel adhere to the rules of ethics and that the disclosure was mailed  
7 to Defendants on December 4 as stated in the certificate of service. The Court will  
8 not speculate as to how the disclosure failed to reach its destination. Contempt  
9 proceedings and further sanctions are unwarranted. Peppermill's *Motion* is granted  
10 insofar as it seeks production of the notes, and is otherwise denied.

11 *b. Memorandum of costs*

12 After reviewing the *Memorandum of Fees and Costs* and the attached  
13 affidavit of counsel, the Court finds that the work described falls within the scope of  
14 its *Order* and that the amounts incurred are not unreasonable. They are therefore  
15 an appropriate sanction pursuant to this Court's prior ruling.

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25 <sup>1</sup> Peppermill also seeks documents relating to "payments for [Dr. Schwartz] services." However,  
26 such information is not related to calculation of damages and need only be disclosed as and when  
27 required under NRCP 26.

28 <sup>2</sup> See *Opposition to Motion for Contempt* at 3, Ex. 1. GSR attaches as an exhibit a copy of a *Fifth  
Supplemental Disclosure Pursuant to NRCP 16.1*—which purports to include the notes—with an  
attached certificate of mailing dated December 4, 2014.

<sup>3</sup> See *Reply* at 2-3, Ex. 4-6. Peppermill provides three separate affidavits stating that Defendants  
were not served with the *Fifth Supplemental Disclosure* and that they did not receive the notes.



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**CONCLUSION**

Based on the foregoing, Defendant Peppermill's *Motion for Order Requiring GSR to Show Cause why it not be Held in Contempt, Sanctioned, and Ordered to Produce Documents* is **DENIED** in part and **GRANTED** in part. GSR is hereby ordered to produce and serve on the Defendants a copy of its *Fifth Supplemental Disclosure*, including the above-described notes, within five days of the filing of this *Order*. Further, Defendant is awarded costs in the amount of \$26,565.00 pursuant to this Court's ruling of November 26, 2014.

**DATED** this 20 day of January, 2015.

  
PATRICK FLANAGAN  
District Judge

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 20 day of January, 2015, I electronically filed the following with the Clerk of the  
5 Court by using the ECF system which will send a notice of electronic filing to the  
6 following:

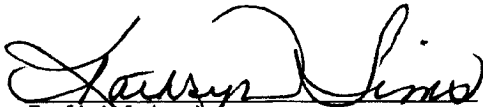
7 Alisa Nave-Worth, Esq., for Peppermill Casinos, Inc.;

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

9 John Funk, Esq., for Ryan Tors;

10 Michael Somps, 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  
17  
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2540  
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).

NOTICE OF ENTRY OF ORDER

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

PLEASE TAKE NOTICE that on the 20<sup>th</sup> day of January, 2015, 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 21<sup>st</sup> day of January, 2015.

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**

Before the Court is Peppermill's *Motion for Order Requiring GSR to Show Cause why it not be Held in Contempt, Sanctioned, and Ordered to Produce Documents*, filed December 17, 2014, and GSR's *Opposition to Memorandum of Fees and Costs*, filed December 22, 2014. The pertinent facts and procedural history are detailed in this Court's *Order* of November 26, 2014, in which it ordered GSR to turn over all documents relating to its calculation of damages by December 15, 2014, and awarded Peppermill certain fees and costs as a sanction.

a. *Contempt and Production of Documents*

The thrust of Peppermill's grievance is that it believes GSR has failed to turn over "Notes from David Schwartz Ph.D. re: Computation of Damages" (identified as

1 GSR 103) as required by this Court's prior ruling.<sup>1</sup> See *Opposition* at Ex. 1, pg. 6.  
2 GSR provides evidence that it timely produced the notes.<sup>2</sup> Defendants claim they  
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4 The Court has reviewed the pleadings and papers on file herein. Allegations  
5 that GSR knowingly "backdated" its disclosure are very serious. The Court believes  
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25 <sup>1</sup> Peppermill also seeks documents relating to "payments for [Dr. Schwartz'] services." However,  
26 such information is not related to calculation of damages and need only be disclosed as and when  
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27 <sup>2</sup> See *Opposition to Motion for Contempt* at 3, Ex. 1. GSR attaches as an exhibit a copy of a *Fifth*  
*Supplemental Disclosure Pursuant to NRCP 16.1*—which purports to include the notes—with an  
attached certificate of mailing dated December 4, 2014.

28 <sup>3</sup> See *Reply* at 2-3, Ex. 4-6. Peppermill provides three separate affidavits stating that Defendants  
were not served with the *Fifth Supplemental Disclosure* and that they did not receive the notes.

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**CONCLUSION**

Based on the foregoing, Defendant Peppermill's *Motion for Order Requiring GSR to Show Cause why it not be Held in Contempt, Sanctioned, and Ordered to Produce Documents* is **DENIED** in part and **GRANTED** in part. GSR is hereby ordered to produce and serve on the Defendants a copy of its *Fifth Supplemental Disclosure*, including the above-described notes, within five days of the filing of this Order. Further, Defendant is awarded costs in the amount of \$26,565.00 pursuant to this Court's ruling of November 26, 2014.

DATED this 20 day of January, 2015.

  
PATRICK FLANAGAN  
District Judge

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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 **NOTICE OF**  
4 **ENTRY OF ORDER** 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.  
Cohen-Johnson, LLC  
255 E. Warm Springs Road, Suite 100  
Las Vegas, NV 89119  
Email: [sjohnson@cohenjohnson.com](mailto:sjohnson@cohenjohnson.com) / [tkinnally@cohenjohnson.com](mailto:tkinnally@cohenjohnson.com)  
Attorneys for Plaintiff

10 MARK WRAY, ESQ.  
11 608 Lander Street  
Reno, NV 89509  
Email: [mwrap@markwray.law.com](mailto:mwrap@markwray.law.com)  
12 Attorneys for Plaintiff

13 MARK GUNDERSON, ESQ.  
14 JOHN R. FUNK, ESQ.  
Gunderson Law Firm  
3895 Warren Way  
Reno, NV 89509  
Email: [mgunderson@gundersonlaw.com](mailto:mgunderson@gundersonlaw.com)  
15 [jfunk@gundersonlaw.com](mailto:jfunk@gundersonlaw.com)  
16 Attorneys for Defendant Ryan Tors


17 ☐ by electronic email addressed to the above.

18 ☐ by personal delivery/hand delivery addressed to:

19 ☐ by facsimile (fax) addressed to:

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

21 DATED: This 21<sup>st</sup> day of January, 2015.

22   
23 V. JAYNE FERRESTO  
24  
25  
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28

1670  
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  
Attorneys for 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

EX PARTE MOTION FOR PROTECTIVE ORDER ON AN ORDER SHORTENING  
TIME AND FOR STAY OF DEPOSITIONS PENDING HEARING ON THE MATTER.

Now comes Plaintiff by and through their attorneys H. Stan Johnson, Esq. and Terry Kinnally, Esq. of the law offices of Cohen Johnson LLC and requests this Honorable Court for a Protective Order pursuant to NRCP 26 (b) (5) (c) on an order shortening time and further asking that the taking of the depositions be stayed pending the Court's ruling on this matter.

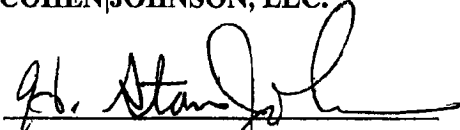
This motion is made and based upon the pleadings and documents on file herein, the following points and authorities submitted in support hereof, declarations to be submitted, and oral arguments (if allowed) at the time of the hearing in this matter. This motion is being filed

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

1 concomitantly with an ex parte motion for an order shortening time and staying depositions in  
2 this matter.

3  
4 Dated this 27th Day of January 2015

5 COHEN|JOHNSON, LLC.

6  
7 

8 H. STAN JOHNSON, ESQ.  
9 Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
10 TERRY KINNALLY, ESQ.  
Nevada Bar No. 6379  
tkinnally@cohenjohnson.com  
11 255 E. Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
12 Attorneys for MEI-GSR HOLDINGS, LLC.  
d/b/a Grand Sierra Resort

## POINTS AND AUTHORITIES

### **I. STATEMENT OF FACTS**

On July 12, 2013, and for a considerable period of time prior thereto, Defendant RYAN TORS, an employee of Defendant PEPPERMILL CASINO, entered the premises of the GRAND SIERRA RESORT and made an unauthorized entry into certain slot machines located upon the premises. Plaintiff alleges and Defendants deny that at the time of this and similar incidents, Mr. Tors was acting within the scope of his employment and at the direction of his employer.

On November 3, 2014 GSR served its responses to the Second Set of Interrogatories a copy of which is attached hereto as *Exhibit 1*. Said interrogatories were verified by Terry Vavra, an employee of GSR. A review of the responses indicate that of the 23 Interrogatories GSR objected to Interrogatories 1 through 13 and 15, 16, and 19 through 23 on the grounds that the Interrogatories sought "information which was irrelevant to the subject matter of the pending litigation and which is not reasonably calculated to lead to the discovery of admissible evidence and is therefore outside the scope of permissible discovery as prescribed by NRCP 26 et.al." While additional objections were made to some of these Interrogatories, all included this objection. On October 27, 2014 Peppermill filed a motion to compel answers to these interrogatories, even though the interrogatories responses were not due. On November 26, 2014 the Court entered a ruling on the motion and a Notice of Entry of Order was filed on December 2, 2014 (*See Exhibit Notice of Entry and Order attached hereto as Exhibit 2*). In addressing the Second Set of Interrogatories the Court held:

... While GSR objects to nearly every request, it properly states reasons for the objections and otherwise answers to the extent the interrogatories are not objectionable *See* NRCP 33(b)(1). In response to the objections, Peppermill moves to compel disclosure under NRCP 33(b)(5). It fails however, to identify which of GSR's objection it is challenging or to cite specific authority compelling disclosure. Absent more, an order compelling discovery is not appropriate. (*See Exhibit 2 Order p. 5 ll 20-25*)

No request for reconsideration was filed and therefore the objections stand, meaning no further response was required beyond that provided. On December 3, 2014, the deposition of Terry Vavra was taken by Peppermill. During the course of the deposition Counsel for

1 Peppermill sought to obtain from Mr. Vavra the same information sought in the interrogatories  
2 and to which the objections had been sustained. Said inquiry was improper, and constitutes an  
3 abuse of discovery and an attempt to evade the ruling of this Court that the objections were  
4 proper. During the deposition Mr. Vavra testified that he reviewed the questions and the  
5 answers. He admitted he did not draft them, and stated that he believed Counsel for GSR had  
6 drafted the responses for his review and verification. (*See deposition of Terry Vavra p. 58 ll 4*  
7 *through P. 65 ll 2 and P. 100 ll 20 through P. 146. Attached hereto as Exhibit 3*) A review of  
8 this testimony shows that Mr. Robison's questions were argumentative: he asked the witness to  
9 provide the answers to the interrogatories, in spite of the fact that the objections were upheld;  
10 analyze legal authority relied upon in the responses, and identify persons who could provide the  
11 objected to information. This inquiry was improper as seeking information which was objected  
12 to and to which the objections were sustained. He accused the witness of failing to properly  
13 obtain the specific answers to interrogatories despite the fact that based on the upheld objections  
14 no specific answers were required.

15 Following the deposition of Mr. Vavra, Peppermill unilaterally noticed the deposition of  
16 H. Stan Johnson, Esq. counsel for GSR to testify concerning the answers to the Second Set of  
17 Interrogatories,

18 Counsel seeks to justify his outrageous conduct in noticing the deposition of Counsel  
19 Stan Johnson on the grounds that he "answered the interrogatories" and the verification of Terry  
20 Vavra was a "sham". (*A copy of correspondence from K. Robison and notice of deposition of H.*  
21 *Stan Johnson, Esq. is attached hereto as exhibit 4*) This is a veiled attempt to turn Mr. Johnson  
22 into a witness and seek to have him disqualified as counsel in this matter. Counsel routinely  
23 prepare the objections to discovery requests, indeed a failure to do so might be deemed  
24 malpractice. The preparation of objections to discovery responses does not turn Counsel into a  
25 witness nor does it permit opposing counsel to depose counsel as to those objections or the  
26 information which might have been provided had the objections not been upheld.  
27

1 Plaintiff seeks a protective order barring the Peppermill from deposing counsel for GSR  
2 and further seeks a protective order barring peppermill from inquiring into the subject matter to  
3 which the objections were sustained, and excluding any and all testimony from Terry Vavra  
4 where inquiry was made on the subjects in the interrogatories to which objections were  
5 sustained.

6 Peppermill unilaterally set the deposition for February 1, 2015 which means that this  
7 motion would not be heard in the ordinary course and therefore Plaintiff is seeking an OST and  
8 is also seeking a stay of the deposition pending the hearing. The stay is necessary since on prior  
9 occasions when protective orders concerning depositions were pending Peppermill proceeded  
10 without waiting for a ruling and entered notices of non-appearance. Having amply demonstrated  
11 that Peppermill cannot be relied upon to act reasonably during the pendency of this motion GSR  
12 must seek this stay.

## 13 II. LAW AND ARGUMENT

### 14 A. Peppermill May Not Depose Counsel For GSR

15 Peppermill has unilaterally noticed the deposition of Counsel for GSR as a witness in this  
16 matter. This deposition has no valid or purpose permissible under Nevada law. The Nevada  
17 Supreme Court addressed the question of the propriety of seeking to depose an attorney in  
18 Club Vista Financial Serv.v. Dist. Ct., 128 Nev. Adv. OP 21, 276 P.3d 246 (2012)  
19 holding:

20 To address the difficulties presented by attorney depositions, the  
21 Eighth Circuit Court of Appeals has developed a stringent three-factor test  
22 under which the party seeking to take the deposition of an opposing party's  
23 counsel has the burden of proving that "(1) no other means exist to obtain  
24 the information than to depose opposing counsel; (2) the information sought  
25 is relevant and nonprivileged; and (3) the information is crucial to the  
26 preparation of the case." *Shelton*, 805 F.2d at 1327 (citations omitted). We  
27 agree with the *Shelton* court that, in the absence of these conditions, a party  
should not be permitted to depose an opposing party's attorney, and thus,  
we adopt this three-factor test.<sup>7</sup> In evaluating these three factors, the district  
court should consider whether the attorney is a percipient witness<sup>8</sup> to the  
facts giving rise to the complaint. *See Kerr*, 684 A.2d at 967 (including,  
among factors to be considered in determining whether to permit an  
attorney deposition, the "relative quality of the information purportedly in  
the attorney's knowledge") id p. 250

Peppermill cannot show that :

1           **(1) no other means exist to obtain the information than to depose opposing counsel;**

2           The information sought is available would be available through other means, except for  
3 the fact that the Court has already upheld the objections to the information sought in the  
4 interrogatories. The fact that Peppermills is precluded by a Court order from obtaining this  
5 information through other discovery methods does not permit or justify an attempt to evade the  
6 effect of the Court's ruling by deposing counsel.

7           **(2) the information sought is relevant and nonprivileged;**

8           The Court has already upheld the objections to the interrogatories (See exhibit 2) and  
9 denied Peppermill's motion to compel finding that the information is not relevant and is not  
10 within the scope of permissible discovery under NRCP 26. Therefore the information has  
11 already been deemed irrelevant and Peppermill may not obtain from Counsel for GSR what the  
12 Court has already ruled it may not obtain directly from GSR.

13           **(3) the information is crucial to the preparation of the case.**

14           The information sought is not crucial to the preparation of the case. The gravamen of this  
15 case is that Peppermill sent employees onto the premises of GSR and other casinos and used a  
16 slot key to gain access to the diagnostic screens of various slot machines and copied confidential  
17 information from those screens. The information being sought in the interrogatories involves  
18 "shopping" and other method of obtaining information which does not include the unauthorized  
19 invasion of the inner workings of a slot machine. Peppermill is seeking this information as a red  
20 herring to try and excuse and justify its own inappropriate and unethical conduct.

21           Peppermill not only cannot justify its attempt to depose Mr. Johnson an anything other  
22 than harassment is shown by Mr. Robison's statement that he cannot call Mr. Johnson as a  
23 witness.

24           **B. GSR Is Entitled to A Protective Order in this Matter.**

25           GSR has notified Counsel for the Peppermill that it would be bringing this motion for a  
26 protective order on an order shortening time. *(A copy of the correspondence is attached hereto as*  
27 *Exhibit 5).* The affidavit of Counsel in support of this motion is attached hereto and incorporated

1 herein as Exhibit 6.

2 Plaintiff is asking this Court to enter a Protective Order staying the deposition pending  
3 the hearing of this motion and barring Peppermill from proceeding to depose Mr. Johnson or any  
4 attorney for GSR and barring Peppermill from any further inquiry concerning the subjects  
5 addressed in the Second Set of interrogatories to which objections were upheld.

6 In view of the Peppermill's conduct GSR has no choice but to bring this motion and seek  
7 a protective order under NRCP 26 (c) (2) which provides"

8  
9 **(c) Protective Orders.** Upon motion by a party or by the person from  
10 whom discovery is sought, accompanied by a certification that the movant  
11 has in good faith conferred or attempted to confer with the other affected  
12 parties in an effort to resolve the dispute without court action, and for  
13 good cause shown, the court in which the action is pending may make any  
14 order which justice requires to protect a party or person from annoyance,  
15 embarrassment, oppression, or undue burden or expense, including one or  
16 more of the following:

17 (1) that the discovery not be had;

18 Peppermill is seeking to evade the Court's order upholding GSR's objections to the  
19 Peppermill's Second Set of Interrogatories by deposing Counsel for GSR as to his drafting of the  
20 objections to discovery. As previously shown Peppermill has no proper basis for seeking this  
21 deposition other than harassment. Therefore Plaintiff is entitled to a Protective Order barring  
22 Peppermill from deposing Counsel for GSR or making any further inquiry into the subjects  
23 covered by the upheld objections to the Responses to the Second Set of Interrogatories.

24 Moreover since the objections went to the subject matter of the Interrogatories, not  
25 merely the form, inquiry by Peppermill's co-defendant should be similarly barred. This is  
26 especially true, since Tors and Peppermill have entered into a joint defense agreement, and Mr.  
27 Gunderson's representation of Mr. Tors is subject to Peppermill's approval based on an  
28 indemnification agreement between the defendants. To allow Tors to attempt to reopen these  
29 issues will merely require additional motions for protective orders and waste judicial resources,  
30 since the Court has already ruled that these topics are outside the scope of permissible discovery.



1                   **III. CONCLUSION**

2           Peppermill's conduct in labeling Terry Vavra's verification of the Responses to the  
3   Second Set of Interrogatories as a "sham" is outrageous. To then seek to depose Counsel for  
4   Plaintiff as to the objections to those same Interrogatories is unconscionable. To do so without  
5   leave of Court, shows a total disregard for the spirit as well as the letter of NRCP 26 and a  
6   complete and utter disdain for this Court's ruling upholding the objections to discovery and the  
7   Nevada Supreme Court's ruling in Club Vista. Defendant's conduct is clearly meant to harass,  
8   embarrass, and oppress counsel for the Plaintiff and is an unprincipled attempt at intimidation.  
9   The deposition should have never been noticed, and the Plaintiff should have never been  
10   compelled to bring a Motion for a Protective Order to Prevent Peppermill from Deposing  
11   Counsel and as such the Plaintiff should be awarded fees and costs for the bringing of this  
12   motion. Therefore Plaintiff asks this Honorable Court to:

- 13           1.     Stay the Deposition of H. Stan Johnson, Esq. during the pendency of this motion;
- 14           2.     Bar Peppermill and Tors from taking the deposition of Counsel for GSR,  
15   including but not limited to H. Stan Johnson, Esq., Steven B. Cohen, Esq. Terry Kinnally, Esq.  
16   and Mark Wray, Esq.
- 17           3.     Barring Defendants Peppermill and Tors from making any further inquiry  
18   concerning the subjects to which the objections were upheld in the Plaintiff's Responses to  
19   Peppermill's Second Set of Interrogatories.
- 20           4.     Award GSR attorneys fees and costs for the necessity of bringing this motion
- 21           5.     For such other and further relief as this Court deems equitable and just;

22                   **Affirmation Pursuant to NRS §239B.030**

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

25   ...

26   ...

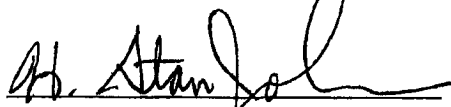
27   ...

28

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

Dated this 27th Day of January 2015

COHEN|JOHNSON, LLC



H. STAN JOHNSON, ESQ.  
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*Attorneys for MEI-GSR HOLDINGS, LLC.  
d/b/a Grand Sierra Resort*

**INDEX OF EXHIBITS**

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2	Notice of Entry of Order from November 26, 2014	15
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4	Correspondence from K. Robison and notice of deposition of H. Stan Johnson, Esq.	5
5	Correspondence from H. Stan Johnson, Esq. to Kent Robison, Esq.	3

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 **EX PARTE MOTION FOR PROTECTIVE ORDER ON AN ORDER SHORTENING TIME AND FOR STAY OF DEPOSITIONS PENDING HEARING ON THE MATTER** 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:

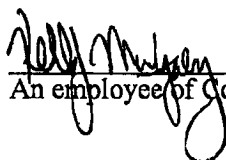
ROBISON, BELAUSTEGUI, SHARP & LOW  
C/o Kent R. Robison, Esq.  
71 Washington Street  
Reno, Nevada 89503  
Attorney for the Defendant Peppermill  
[krobison@rbsllaw.com](mailto:krobison@rbsllaw.com)

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

X by using the Court's CMF/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 27<sup>th</sup> day of January, 2015.

  
An employee of Cohen-Johnson, LLC

FILED  
Electronically  
2015-01-27 05:49:12 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 4791445 : ylloyd

**Exhibit "1"**

**Exhibit "1"**

COHEN-JOHNSON, LLC  
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1 **RSPN**  
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11 Telephone: (702) 823-3500  
12 Facsimile: (702) 823-3400  
13 Attorneys for the Plaintiffs

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

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

13 Plaintiffs,

14 vs.

14 PEPPERMILL CASINO, INC., a Nevada  
15 Corporation, d/b/a/ PEPPERMILL  
16 CASINO; RYAN TORS, an individual; JOHN  
17 DOES I-X AND CORPORATIONS I-X,

18 DEFENDANT(S).

Case No.: CV13-01704

Dept. No.: B7

BUSINESS COURT DOCKET

19 **PLAINTIFF MEI-GSR HOLDINGS LLC RESPONSES TO DEFENDANT**  
20 **PEPPERMILL CASINO INC.'S SECOND SET OF INTERROGATORIES**

21 **GENERAL OBJECTIONS**

22 The following general objections are incorporated into each of Plaintiff's Responses to  
23 Defendant's Interrogatories

24 Wherever Plaintiff objects to an Interrogatory on the grounds that said Request is unduly  
25 burdensome and oppressive, Defendant's attention is directed to the following cases: *Riss &*  
26 *Co. v. Association of American Railroads*, 23 F.R.D. 211 (D.D.C. 1959); *United States v.*  
27 *Loew's, Inc.*, 23 F.R.D. 178 (S.D.N.Y. 1959); *Green v. Raymond*, 41 F.R.D. 11 (D. Colo. 1966);  
28 and *Flour Mills of America, Inc. v. Pace*, 75 F.R.D. 676 (D. Okla. 1977).

1 Further, wherever Plaintiff objects to an Interrogatory on the grounds of vagueness and  
2 over breadth, Defendant's attention is directed to the following cases: *Jewish Hospital Ass'n of*  
3 *Louisville v. Struck Construction Co.*, 77 F.R.D. 59 (C.D. Ky. 1978); *Flour Mills of America,*  
4 *Inc. v. Pace*, 75

5 F.R.D. 676 (D. Okla. 1977); and *Stovall v. Gulf & So. Am. S.S. Co.*, 30 F.R.D. 152 (D.  
6 Tex. 1961).

7 Further, wherever Plaintiff objects to an Interrogatory on the grounds that the Request is  
8 irrelevant and not calculated to lead to admissible evidence, Defendant's attention is directed to  
9 the following cases: *Green v. Raymond*, 41 F.R.D. 11 (D. Colo. 1966); and *Burroughs v.*  
10 *Warner Bros. Pictures*, 14 F.R.D. 165, 166 (D. Mass. 1963).

11 Further, wherever Plaintiff objects to an Interrogatory regarding trial preparation  
12 materials on the ground that the propounding party has failed to show "good cause" under  
13 FRCP 26(b)(3), Defendant's attention is directed to the following cases: *United States v.*  
14 *Chatham City Corp.*, 72 F.R.D. 640 at 642-643 (S.D. Ga. 1976); and *First Wisconsin Mtg. v.*  
15 *First Wisconsin Corp.*, 86 F.D.R. 160 at 165, 167 (E.D. Wisc. 1980).

16 Finally, wherever Plaintiff objects to an Interrogatory on the ground of attorney-client  
17 privilege, Defendant's attention is directed to the following cases: *Sperry Rand Corp. v. IBM*,  
18 45 F.R.D. 287 (D. Del. 1968); and *Jewish Hospital Ass'n of Louisville v. Struck Construction*  
19 *Co.*, 77 F.R.D. 59 (C.D. Ky. 1978).

20 The following Responses to Requests for Interrogatories are based upon information and  
21 documents presently available to and known by Plaintiff and disclose only those contentions  
22 that are presently asserted, based upon presently available and known facts. It is anticipated  
23 that further discovery investigation, legal research and analysis will reveal additional facts, add  
24 meaning to known facts, and establish entirely new factual conclusions or legal contentions, all  
25 of which may lead to additions to, changes in and variations from these contentions and  
26 Responses.

27 All Responses are subject to these continuing objections.  
28

**DEFINITIONS OF SPECIFIC OBJECTIONS**

As used in the specific responses below, the following terms include objections based upon their respective definitions:

A. "Vague and Ambiguous" is defined to mean: Plaintiff objects on the basis that the Request is vague, uncertain, and ambiguous.

B. "Overbroad" is defined to mean: Plaintiff objects on the basis that the Request is overbroad and calls for an expansive potential breadth of information that is unreasonable in scope and parameter.

C. "Irrelevant" is defined to mean: Plaintiff objects on the basis that the Request requests information irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

D. "Burdensome" is defined to mean: Plaintiff objects on the basis that the Request is so broad and uncertain that it creates an unreasonable and undue burden. "Burdensome" is also defined to mean that Plaintiff objects to the Request because the information sought is more readily available through some other, more convenient, less burdensome, and less expensive source or discovery procedure. See NRCP 26(b)(1).

E. "Privileged" is defined to mean: Plaintiff objects on the basis that the Request calls for information that is (1) protected by the work product doctrine; (2) protected by the attorney-client privilege; (3) protected because it consists, in whole or in part, of trial preparation materials and/or documents containing mental impressions, conclusions, opinions, or legal theories of counsel; (4) otherwise protected under NRCP 26(b); or (5) protected under any other valid privilege.

F. "Repetitious" is defined to mean: Plaintiff objects on the basis that the Response to the Request has already been given after similar documents were produced in response to a previous Request or another format through this proceeding.

...

...

...



1 G. The phrase "Without waiving the foregoing objections", or words having similar  
2 effect, is defined to mean: While Plaintiff will produce the requested documents in response to  
3 the Request, the documents sought by the Request that are covered by either a specific or  
4 general objection will not be produced.

5 **RESPONSES TO SECOND SET OF INTERROGATORIES**

6 **INTERROGATORY NO. 1:**

7 Since July 2011, has the Grand Sierra Resort ("GSR") utilized the services of a  
8 "shopper" to examine and investigate other casino properties in Washoe County? If your answer  
9 is in the affirmative, please identify the shopper by name and address.

10 **RESPONSE NO. 1:**

11 Objection is made to this Interrogatory in that it requests information which is irrelevant  
12 to the subject matter of the pending litigation and which is not reasonably calculated to lead to  
13 the discovery of admissible evidence, thus rendering this request outside the scope of permissible  
14 discovery as prescribed by NRCP 26 et seq. The use of shoppers is not improper and is  
15 irrelevant to the claims of Peppermill accessing slot machines by use of a key and will lead to no  
16 admissible evidence as to the claims in this matter. Without waiving said objection the GSR has  
17 used "shoppers"

18 **INTERROGATORY NO. 2:**

19 Since July 2011, has the GSR ever utilized the services of CDC Consulting (also known  
20 as Compton Dancer) to conduct any consulting services or shopping of other casinos in Washoe  
21 County?

22 **RESPONSE NO. 2:**

23 Objection is made to this Interrogatory in that it requests information which is  
24 irrelevant to the subject matter of the pending litigation and which is not reasonably calculated  
25 to lead to the discovery of admissible evidence, thus rendering this request outside the scope of  
26 permissible discovery as prescribed by NRCP 26 et seq. The use of a consulting service is not  
27 improper and is irrelevant to the claims of Peppermill accessing slot machines by use of a key  
28

1 and will lead to no admissible evidence as to the claims in this matter. Without waiving said  
2 objection the GSR has used the services of CDC Consulting.

3 **INTERROGATORY NO. 3:**

4 Has the GSR, since July 2011, conducted any research, shopping or other marketing  
5 investigation concerning the Peppermill Hotel Casino?

6 **RESPONSE NO. 3:**

7 Objection is made to this Interrogatory in that it requests information which is  
8 irrelevant to the subject matter of the pending litigation and which is not reasonably calculated  
9 to lead to the discovery of admissible evidence, thus rendering this request outside the scope of  
10 permissible discovery as prescribed by NRCP 26 et seq. The use of shoppers is not improper  
11 and is irrelevant to the claims of Peppermill accessing slot machines by use of a key and will  
12 lead to no admissible evidence as to the claims in this matter.

13 **INTERROGATORY NO. 4:**

14 Has the GSR conducted any investigations since July 2011 concerning the Peppermill's  
15 comp strategies, reinvestment strategies or efforts to determine Peppermill's par settings, player  
16 theoretical holds or other information pertinent to the Peppermill's gaming strategies for slot  
17 machines?

18 **RESPONSE NO. 4:**

19 Objection is made to the term "investigations" as vague and ambiguous, without further  
20 Objection is made to this Interrogatory in that it requests information which is irrelevant to the  
21 subject matter of the pending litigation and which is not reasonably calculated to lead to the  
22 discovery of admissible evidence, thus rendering this request outside the scope of permissible  
23 discovery as prescribed by NRCP 26 et seq. . Without waiving said objection the GSR has  
24 never conducted any "investigation" which would be deemed illegal or improper or sent persons  
25 into casinos to access any information as set forth above by means of a reset key.

26 ///

27 ///

28 ///

1 **INTERROGATORY NO. 5:**

2 Have you received any reports, summaries, explanation or written material from any  
3 shopper, consulting firm or consulting individual, that in any way provides an analysis of your  
4 competitors' gaming strategies, marketing strategies and/or promotional activities?

5 **RESPONSE NO. 5:**

6 Objection is made to this Interrogatory in that it requests information which is irrelevant  
7 to the subject matter of the pending litigation and which is not reasonably calculated to lead to  
8 the discovery of admissible evidence, thus rendering this request outside the scope of permissible  
9 discovery as prescribed by NRCP 26 et seq. Moreover this interrogatory is objected to in that it  
10 seeks information concerning the trade secrets of GSR concerning marketing strategies.

11 **INTERROGATORY NO. 6:**

12 Have you utilizes the services of any consultants to compare GSR's player rewards  
13 strategies with GSR's competitors in Washoe County?

14 **RESPONSE NO. 6:**

15 Objection is made to this Interrogatory in that it requests information which is  
16 irrelevant to the subject matter of the pending litigation and which is not reasonably calculated to  
17 lead to the discovery of admissible evidence, thus rendering this request outside the scope of  
18 permissible discovery as prescribed by NRCP 26 et seq.

19 **INTERROGATORY NO. 7:**

20 Have you used consultants or employees to make visits to other casino properties in  
21 Washoe County for the purposes of comparing players' activities and propensities and club card  
22 procedures and operations?

23 **RESPONSE NO. 7:**

24 Objection is made to this Interrogatory in that it requests information which is irrelevant  
25 to the subject matter of the pending litigation and which is not reasonably calculated to lead to  
26 the discovery of admissible evidence, thus rendering this request outside the scope of permissible  
27 discovery as prescribed by NRCP 26 et seq.

28 ///

1 **INTERROGATORY NO. 8:**

2 Have you received from any consultants or entities or persons who have attempted to  
3 compare your player reward strategy to other strategy to other casinos? Have you hired anyone  
4 for services resulting in a player club assessment report?

5 **RESPONSE NO. 8:**

6 Objection is made to this Interrogatory in that it requests information which is  
7 irrelevant to the subject matter of the pending litigation and which is not reasonably calculated  
8 to lead to the discovery of admissible evidence, thus rendering this request outside the scope of  
9 permissible discovery as prescribed by NRCP 26 et seq. Further objection is made in that this  
10 interrogatory seeks information concerning GSR's marketing strategies which constitute as  
11 trade secret.

12 **INTERROGATORY NO. 9:**

13 Have you received any reports, written documents or graphs that analyze the players' club  
14 of other casinos, club booth operations reward programs and/or overall players club rating  
15 scores of other casino properties in the Reno/Sparks area since July 2011?

16 **RESPONSE NO. 9:**

17 Objection is made to this Interrogatory in that it requests information which is irrelevant  
18 to the subject matter of the pending litigation and which is not reasonably calculated to lead to  
19 the discovery of admissible evidence, thus rendering this request outside the scope of permissible  
20 discovery as prescribed by NRCP 26 et seq. The use of shoppers is not improper and is  
21 irrelevant to the claims of Peppermill accessing slot machines by use of a key and will lead to no  
22 admissible evidence as to the claims in this matter.

23 **INTERROGATORY NO. 10:**

24 Have you made attempts to have consultants, employees or other entities or individuals  
25 analyze the cashback and visible comp reinvestment percentages of reel slots for other gaming  
26 properties in the Reno/Sparks area? If so, please explain in detail.

27 ///

28 ///

1 **RESPONSE NO. 10:**

2 Objection is made to this Interrogatory in that it requests information which is irrelevant  
3 to the subject matter of the pending litigation and which is not reasonably calculated to lead to  
4 the discovery of admissible evidence, thus rendering this request outside the scope of permissible  
5 discovery as prescribed by NRCP 26 et seq. The use of shoppers is not improper and is  
6 irrelevant to the claims of Peppermill accessing slot machines by use of a key and will lead to no  
7 admissible evidence as to the claims in this matter. Without waiving said objection the GSR has  
8 used "shoppers"

9 **INTERROGATORY NO. 11:**

10 If your answer is in the affirmative to any of the foregoing Interrogatories, please identify  
11 with specificity and particularity the name, address, and if possible, telephone number for each  
12 individual involved in the analysis, investigation and reporting mention in the above  
13 Interrogatories.

14 **RESPONSE NO. 11:**

15 Objection is made to this Interrogatory in that it requests information which is  
16 irrelevant to the subject matter of the pending litigation and which is not reasonably calculated  
17 to lead to the discovery of admissible evidence, thus rendering this request outside the scope of  
18 permissible discovery as prescribed by NRCP 26 et seq. Objection is also made in that this  
19 interrogatory seeks information concerning individuals who may have information concerning  
20 GSR's trade secrets which are not relevant to this litigation.

21 **INTERROGATORY NO. 12:**

22 Please identify with specificity and particularity each and every report, analysis,  
23 examination or documents that pertain in any way to the GSR's analysis of the Peppermill'

- 24 (a) Cash back and visible comp reinvestment percentage for reel slots;  
25 (b) Cash back program reinvestment strategies;  
26 (c) Visible comp program reinvestment;  
27 (d) Reinvestment analysis of Peppermill's players clubs employees' attitude, training  
28 and ability to solve problems;

- (e) Peppermill's staffing levels;
- (f) Booth location and design;
- (g) Focus on guess [t] [spelling error] service through use of technology;
- (h) Printed information and collateral available;
- (i) Quantity and value of benefits;
- (j) Quality of benefits;
- (k) Benefits case of use;
- (l) Players club ratings score;
- (m) Players club effectiveness;
- (n) Cash back strategies; and
- (o) Comparing strategies or programs.

**RESPONSE NO. 12:**

Objection is made to this Interrogatory in that it requests information which is irrelevant to the subject matter of the pending litigation and which is not reasonably calculated to lead to the discovery of admissible evidence, thus rendering this request outside the scope of permissible discovery as prescribed by NRCP 26 et seq. The issue in this matter is Peppermills use of an unauthorized key to access pars at GSR and the use to which the Peppermill put the information so obtained.. Moreover, Peppermill claims that it last accessed information from GSR on July 12, 2013 and therefore any of this information is irrelevant to either liability or damages against Peppermill.

**INTERROGATORY NO. 13:**

Please identify with particularity and specificity the documents which you contend are in the Peppermill's possession which would be in any way relevant to your contention that the Peppermill was unjustly enriched by its possession and/or knowledge of GSR's par settings on the slot machines allegedly by Ryan Tors.

///

///

///

1 **RESPONSE NO. 13:**

2 See Tors supplemental disclosure statement TOR 001 and TOR 70-TOR71 and TOR 87  
3 through TOR0096. These documents are also in the Peppermill's possession and demonstrate  
4 the method by which Peppermill combined information improperly acquired from multiple  
5 casinos including the GSR and used said information to gain an unfair economic advantage over  
6 its competitors including GSR which led to Peppermill's unjust enrichment.

7 **INTERROGATORY NO. 14:**

8 Please state with specificity and particularity how the GSR has, or intends to, determine  
9 what an appropriate royalty is as and for its alleged damages.

10 **RESPONSE NO. 14:**

11 GSR is relying on the holding in University Computing Co. v. Lyke-Youngstown Corp  
12 504 F.2d 518 (GA 1974) where the court determined that:

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

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

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

The royalty sought by GSR is based on the information improperly acquired by  
Peppermill and the uses to which said information was put. For each use of the information,  
either alone or in combination with information improperly obtained from other casinos. GSR

is asking the court to set a reasonable royalty based on the number of uses, and the value obtained by Peppermill through an economic advantage or in savings based on the cost of acquiring the information through proper and legal means.

**INTERROGATORY NO. 15:**

Please state with particularity and specificity the value that the GSR attributes to the par settings on the following slot machines on the date specified:

	Machine	Number	Location	As of Date
A	Buffalo	440		12/19/2011
B	Buffalo	21016		12/19/2011
C	Ducks in a Row	440		12/29/2011
D	Cleopatra	21016		12/29/2011
E	Money Storm	571		12/29/2011
F	Texas Tea	50060		12/29/2011
G	Munsters			12/29/2011
H	Double Diamond 2000			12/29/2011
I	Lil Lady	358		12/29/2011
J	Ducks in a Row	20375		06/14/2012
K	Buffalo	1011		06/14/2012
L	Enchanted Unicorn	20050		06/14/2012
M	Cats	127		06/14/2012
N	Horoscope	246		06/14/2012
O	Wolf Run	937		06/14/2012
P	Sun & Moon	951	061109	07/12/2013
Q	Ducks in a Row	440	040403	07/12/2013
R	Buffalo	885	104604	07/12/2013
S	Wings Over Olympus	485	104603	07/12/2013
T	Miss Red	1646	101607	07/12/2013
U	Hex Breaker	20042	102201	07/12/2013
V	Ducks in a Row	20375	091007	07/12/2013
W	Enchanted Unicorn	20050	1033304	07/12/2013
X	Cats	127	011802	07/12/2013

**RESPONSE NO. 15:**

Objection is made to this Interrogatory in that it requests information which is irrelevant to the subject matter of the pending litigation and which is not reasonably calculated to lead to the discovery of admissible evidence, thus rendering this request outside the scope of permissible discovery as prescribed by NRCP 26 et seq. Further objection is made in that this interrogatory seeks information concerning GSR's trade secrets. Further objection is made in that the value of the pars to GSR is irrelevant to this matter, it is the value of GSR's pars to Peppermill and the



use to which Peppermill put the GSR pars either alone or in combination with other pars from other casinos, which constitutes the value of the pars for purposes of this litigation.

**INTERROGATORY NO. 16:**

Please describe in detail with specificity and particularity the method by which the values of the par setting for the machines listed in the above Interrogatory for the specific dates were determined.

**RESPONSE NO. 16:**

Objection is made to this Interrogatory in that it requests information which is irrelevant to the subject matter of the pending litigation and which is not reasonably calculated to lead to the discovery of admissible evidence, thus rendering this request outside the scope of permissible discovery as prescribed by NRCP 26 et seq. Further objection is made in that this interrogatory seeks information concerning GSR's gaming strategies which constitute as trade secret.

**INTERROGATORY NO. 17:**

Please state with specificity and particularity how the Peppermill used the par information allegedly obtained by Ryan Tors from the following machines:

	Machine	Number	Location	As of Date
A	Buffalo	440		12/19/2011
B	Buffalo	21016		12/19/2011
C	Ducks in a Row	440		12/29/2011
D	Cleopatra	21016		12/29/2011
E	Money Storm	571		12/29/2011
F	Texas Tea	50060		12/29/2011
G	Munsters			12/29/2011
H	Double Diamond 2000			12/29/2011
I	Lil Lady	358		12/29/2011
J	Ducks in a Row	20375		06/14/2012
K	Buffalo	1011		06/14/2012
L	Enchanted Unicorn	20050		06/14/2012
M	Cats	127		06/14/2012
N	Horoscope	246		06/14/2012
O	Wolf Run	937		06/14/2012
P	Sun & Moon	951	061109	07/12/2013
O	Ducks in a Row	440	040403	07/12/2013
R	Buffalo	885	104604	07/12/2013
S	Wings Over Olympus	485	104603	07/12/2013
T	Miss Red	1646	101607	07/12/2013
U	Hex Breaker	20042	102201	07/12/2013

V	Ducks in a Row	20375	091007	07/12/2013
W	Enchanted Unicorn	20050	1033304	07/12/2013
X	Cats	127	011802	07/12/2013

**RESPONSE NO. 17:**

Discovery is ongoing and on information and belief Peppermill used this information in combination with pars improperly obtained from other casinos to adjust its own pars, and or marketing strategies, gaming strategies, comp reinvestment strategies, among other uses to gain a competitive advantage over GSR and other casinos in competition with Peppermill. Upon receipt of discovery responses from Peppermill and Tors and upon the completion of depositions GSR will be able to demonstrate the uses to which Peppermill used this information with greater specificity and supplement this response.

**INTERROGATORY NO. 18:**

Please state with specificity and particularity what the value to which the pars allegedly obtained by Ryan Tors was to the Peppermill and the methodology used to determine that value.

**RESPONSE NO. 18:**

Pending the receipt of discovery responses from Peppermill who has the sole possession of this information, the value will be determined by means of determining the benefits, profits, or advantages gained by the defendant in the use of the trade secret. This analysis will be performed by experts.

**INTERROGATORY NO. 19:**

Please state the amount of money the GSR would charge a competing casino for the par settings on the following machines on the specific date:

	Machine	Number	Location	As of Date
A	Buffalo	440		12/19/2011
B	Buffalo	21016		12/19/2011
C	Ducks in a Row	440		12/29/2011
D	Cleopatra	21016		12/29/2011
E	Money Storm	571		12/29/2011
F	Texas Tea	50060		12/29/2011
G	Munsters			12/29/2011
H	Double Diamond 2000			12/29/2011
I	Lil Lady	358		12/29/2011
J	Ducks in a Row	20375		06/14/2012

K	Buffalo	1011		06/14/2012
L	Enchanted Unicorn	20050		06/14/2012
M	Cats	127		06/14/2012
N	Horoscope	246		06/14/2012
O	Wolf Run	937		06/14/2012
P	Sun & Moon	951	061109	07/12/2013
O	Ducks in a Row	440	040403	07/12/2013
R	Buffalo	885	104604	07/12/2013
S	Wings Over Olympus	485	104603	07/12/2013
T	Miss Red	1646	101607	07/12/2013
U	Hex Breaker	20042	102201	07/12/2013
V	Ducks in a Row	20375	091007	07/12/2013
W	Enchanted Unicorn	20050	1033304	07/12/2013
X	Cats	127	011802	07/12/2013

**RESPONSE NO. 19:**

Objection is made to this Interrogatory in that it requests information which is irrelevant to the subject matter of the pending litigation and which is not reasonably calculated to lead to the discovery of admissible evidence, thus rendering this request outside the scope of permissible discovery as prescribed by NRCP 26 et seq. Further objection is made in that this interrogatory assumes that GSR would sell its pars to a competing casino and therefore assumes facts not in evidence and calls for a hypothetical response based on speculation. Without waiving the foregoing objections GSR would not sell its par information to any competing casino and therefore there is no basis for making such an evaluation.

**INTERROGATORY NO. 20:**

Concerning your answer to the above Interrogatory, please state with detail, specificity and particularity all components and considerations that were used to determine the "charge" for the par settings for the machines listed in the above Interrogatory for the specific dates.

**RESPONSE NO. 20:**

Objection is made to this Interrogatory in that it requests information which is irrelevant to the subject matter of the pending litigation and which is not reasonably calculated to lead to the discovery of admissible evidence, thus rendering this request outside the scope of permissible discovery as prescribed by NRCP 26 et seq. Further objection is made in that this interrogatory assumes that GSR would sell its pars to a competing casino and therefore assumes

facts not in evidence and calls for a hypothetical response based on speculation. Without waiving the foregoing objections GSR would not sell its par information to any competing casino and therefore there is no basis for making such an evaluation. GSR would not sell its par information to any competing casino and therefore there is no basis for making such an evaluation.

**INTERROGATORY NO. 21:**

Please state with particularity and specificity the "development costs" that were involved in establishing the par settings for the following slot machines on the specified dates:

	Machine	Number	Location	As of Date
A	Buffalo	440		12/19/2011
B	Buffalo	21016		12/19/2011
C	Ducks in a Row	440		12/29/2011
D	Cleopatra	21016		12/29/2011
E	Money Storm	571		12/29/2011
F	Texas Tea	50060		12/29/2011
G	Munsters			12/29/2011
H	Double Diamond 2000			12/29/2011
I	Lil Lady	358		12/29/2011
J	Ducks in a Row	20375		06/14/2012
K	Buffalo	1011		06/14/2012
L	Enchanted Unicorn	20050		06/14/2012
M	Cats	127		06/14/2012
N	Horoscope	246		06/14/2012
O	Wolf Run	937		06/14/2012
P	Sun & Moon	951	061109	07/12/2013
Q	Ducks in a Row	440	040403	07/12/2013
R	Buffalo	885	104604	07/12/2013
S	Wings Over Olympus	485	104603	07/12/2013
T	Miss Red	1646	101607	07/12/2013
U	Hex Breaker	20042	102201	07/12/2013
V	Ducks in a Row	20375	091007	07/12/2013
W	Enchanted Unicorn	20050	1033304	07/12/2013
X	Cats	127	011802	07/12/2013

**RESPONSE NO. 21:**

Objection as to the term "development costs" as being vague and ambiguous since the manufacture determines a range of par settings and the casino determines which of the settings, if any to adopt. Further objection is made in that the determination of what par settings to apply to an particular machine on any particular date and the methodology employed to make that determination is a trade secret which is irrelevant to the claims against the Peppermill and will

1 not lead to any discoverable evidence under NRCP 26 et. seq.

2 **INTERROGATORY NO. 22:**

3 Please state in complete detail and with specificity and particularity the amount of money a  
4 competing casino would pay to have knowledge of and/or access to the par settings for the slot  
5 machines identified in the Interrogatory Nos. 15,17, 19, and 21 as of December 29, 2011, for the  
6 first nine machines listed as of June 14, 2012, for the next six machines listed, and as of July 12,  
7 2013, for the last nine machines listed.

8 **RESPONSE NO. 22:**

9 Objection is made to this Interrogatory in that it requests information which is irrelevant  
10 to the subject matter of the pending litigation and which is not reasonably calculated to lead to  
11 the discovery of admissible evidence, thus rendering this request outside the scope of permissible  
12 discovery as prescribed by NRCP 26 et seq. Further objection is made in that this interrogatory  
13 assumes that a competing casino would pay GSR to obtain its par settings and GSR is unaware  
14 of any offers by any casinos to do so and therefore assume facts not in evidence and calls for a  
15 hypothetical response based on speculation. Without waiving the foregoing objections GSR  
16 would not sell its par information to any competing casino and therefore there is no basis for  
17 making such an evaluation nor has any competing casino offered to pay for pars so there is no  
18 basis for determining what any particular casino might be willing to offer for such information.  
19 Without waiving the foregoing objections, on information and belief Peppermill believes said  
20 information to be of great financial value as evidence by its theft of said information from GSR  
21 and other casinos.

22 **INTERROGATORY NO. 23:**

23 With respect to the above Interrogatory and you answered hereto, please state in detail and  
24 with particularity and specificity the exact formula, equation and all facts and circumstances  
25 taken into consideration in establishing your opinion of what a competing casino would pay for  
26 the pars for the machines listed in the above Interrogatory.

27 ///

28 ///

1 **RESPONSE NO. 23:**

2       Objection is made to this Interrogatory in that it requests information which is irrelevant  
3 to the subject matter of the pending litigation and which is not reasonably calculated to lead to  
4 the discovery of admissible evidence, thus rendering this request outside the scope of permissible  
5 discovery as prescribed by NRC 26 et seq. Further objection is made in that this interrogatory  
6 assumes that a competing casino would pay GSR to obtain its par settings and GSR is unaware  
7 of any offers by any casinos to do so and therefore assume facts not in evidence and calls for a  
8 hypothetical response based on speculation. Without waiving the foregoing objections GSR  
9 would not sell its par information to any competing casino and therefore there is no basis for  
10 making such an evaluation nor has any competing casino offered to pay for pars so there is no  
11 basis for determining what any particular casino might be willing to offer for such information.  
12 Without waiving the foregoing objections, on information and belief Peppermill believes said  
13 information to be of great financial value as evidence by its theft of said information from GSR  
14 and other casinos. Upon the receipt of discovery from Peppermill and Tors as to what  
15 Peppermill paid Tors and others to improperly steal such information and other costs and  
16 expenses related to these thefts, including the cost of analyzing said information, a base value  
17 may be determined as to what Peppermill was willing to pay to improperly acquire this  
18 information and may provide a baseline as to what Peppermill would be willing to pay to obtain  
19 this information

20  
21       Dated this 3<sup>rd</sup> day of November, 2014

22 **COHEN|JOHNSON**

23  
24 By: 

25 H. Stan Johnson, Esq.  
26 Nevada Bar No. 00265  
27 Terry Kinnally, Esq.  
28 Nevada Bar No.: 06379  
255 E. Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
*Attorney for the Plaintiffs*

COHEN-JOHNSON, LLC

255 E. Warm Springs Road, Suite 100  
Las Vegas, Nevada 89115  
(702) 823-3500 FAX: (702) 823-3400

VERIFICATION

STATE OF NEVADA )  
COUNTY OF CLARK ) ss.

Terry Vavra, of MEI-GSR HOLDINGS INC LLC d/b/a GRAND  
SIERRA RESORT, being duly sworn, states that he is an authorized agent of the Defendant  
Grand Sierra Resort in the above-entitled matter, that he has read the foregoing PLAINTIFF  
MEI-GSR HOLDINGS LLC RESPONSES TO DEFENDANT PEPPERMILL CASINO INC.'S  
SECOND SET OF INTERROGATORIES and that the same are true to the best of his  
knowledge, except as to the matters set forth upon information and belief, and as to those  
matters, he believe them to be true.

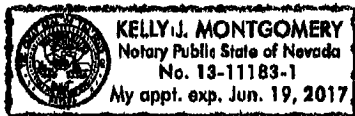
DATED this 3 day of November, 2014.



TERRY VAVRA, VICE-PRESIDENT, MEI-GSR  
HOLDINGS, INC. LLC, D/B/A GRAND SIERRA  
RESORT.

SUBSCRIBED AND SWORN to before me  
this 3<sup>rd</sup> day of November 2014.

Kelly J. Montgomery  
Notary Public



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

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 3<sup>rd</sup> day of October 2014, a true and correct copy of the foregoing MEI-GSR HOLDINGS, LLC.'s Responses to Defendant Peppermill's Second Set of Interrogatories was served by placing a copy thereof in the US Mail at Las Vegas, Nevada, with proper postage prepaid, addressed to the following and by facsimile:

ROBISON, BELAUSTEGUI, SHARP & LOW  
C/o Kent R. Robison, Esq.  
71 Washington Street  
Reno, Nevada 89503  
Facsimile (775) 329-7941  
*Attorney for the Defendant Peppermill*

GUNDERSON LAW FIRM  
C/o Mark H. Gunderson, Esq.  
3895 Warren Way  
Reno, Nevada 89509  
Facsimile (775) 829-1226  
*Attorney for Defendant Ryan Tors*

/s/ Kelly J. Montgomery  
Kelly J. Montgomery, an employee of COHEN|JOHNSON, LLC.



FILED  
Electronically  
2015-01-27 05:49:12 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 4791445 : ylloyd

**Exhibit "2"**

**Exhibit "2"**

1 2540

KENT R. ROBISON, ESQ. - NSB #1167

2 krobison@rbsllaw.com

KEEGAN G. LOW, ESQ. - NSB #307

3 klow@rbsllaw.com

THERESE M. SHANKS, ESQ. - NSB # 12890

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5 A Professional Corporation

71 Washington Street

6 Reno, Nevada 89503

Telephone: (775) 329-3151

7 Facsimile: (775) 329-7169

8 *Attorneys for Defendant Peppermill Casinos,*  
9 *Inc., d/b/a Peppermill Casino*

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

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

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

CASE NO.: CV13-01704

13 DEPT. NO.: B7

14 Plaintiff,

vs.

BUSINESS COURT DOCKET

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

17  
18 Defendant(s).  
19 \_\_\_\_\_/

20 **NOTICE OF ENTRY OF ORDER**

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

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

24 **AFFIRMATION**

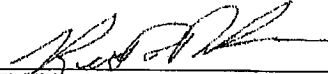
25 Pursuant to NRS 239B.030

26 The undersigned does hereby affirm that this document does not contain the social security  
27  
28 ///

1 number of any person.

2 DATED this 2<sup>nd</sup> 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  
13  
14  
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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.<sup>1</sup>

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 923 (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 <sup>1</sup> 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).<sup>2</sup> 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 <sup>2</sup> 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  
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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

*Tatiana Lina*  
Judicial Assistant

**CERTIFICATE OF SERVICE**

Pursuant to NRCF 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 **NOTICE OF ENTRY OF ORDER** 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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TERRY KINNALLY, ESQ.  
Cohen-Johnson, LLC  
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— by Federal Express/UPS or other overnight delivery addressed to:

DATED: This 2nd day of December, 2014.

  
V. JAYNE FERRETTO

FILED  
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Clerk of the Court  
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**Exhibit "3"**

**Exhibit "3"**



1 questions of you, sir.

2 (Exhibit 35 was marked.)

3 BY MR. ROBISON:

4 Q Exhibit 35 are GSR's responses to the  
5 Peppermill's second set of interrogatories. If you  
6 would please look at page 18 of 19 on this document.  
7 That's your signature, correct, sir?

8 A That is correct.

9 Q And you signed these answers attesting to  
10 their accuracy under oath and under penalty of  
11 perjury?

12 A That is correct.

13 Q Do you know why you were tagged "it" with  
14 respect to these interrogatories?

15 A Not exactly, no.

16 Q When did you first see the interrogatories?

17 A Probably -- I signed this November 3rd.  
18 Maybe November 2nd, the day before.

19 Q Were the answers already typed in?

20 A Yes.

21 Q So you didn't do anything to research or  
22 investigate the questions?

23 A Me personally? No. I read through the  
24 document.

25 Q Okay. Before you even saw -- the answers

1 keys?

2 A Not besides -- really the first time I  
3 heard about it was through this public event.

4 Q If you turned a reset key, do you know what  
5 you would see on the diagnostic screens?

6 A I do not.

7 Q Okay. Have you seen the nondisclosure  
8 protective order in this case?

9 A I don't think so, no.

10 Q Do you know that there's one in place  
11 approved by Judge Flanagan in this case?

12 A No.

13 Q Have you been told that the exchange of  
14 proprietary information is protected in this case?

15 MR. WRAY: Objection.

16 Other than by your attorneys.

17 THE WITNESS: Oh, I haven't talked to  
18 anyone about that, no.

19 BY MR. ROBISON:

20 Q Okay. You object a lot in these  
21 interrogatories based upon the fact that you contend  
22 certain things are trade secrets.

23 MR. WRAY: Objection. He hasn't objected.  
24 He just verified the responses.

25 MR. ROBISON: Well, actually, Mr. Wray, he

1 does more than that, because what he says --

2 MR. WRAY: I can't answer your question,  
3 Counsel.

4 MR. ROBISON: His verification doesn't say  
5 anything about verifying answers. What it says is  
6 that he has read the foregoing and that they are true  
7 to the best of his knowledge.

8 MR. WRAY: That's what I call a  
9 verification. Excuse me.

10 MR. ROBISON: No, he says they're true.  
11 He's not verifying somebody else's work. I'm going to  
12 ask questions about the truth or falsity of these  
13 answers.

14 MR. WRAY: Okay. I understand. You got my  
15 objection, and I understand what your position is.  
16 I'm just saying he signed the verification. He didn't  
17 write the answers. And particularly the objections.

18 MR. ROBISON: No, we actually found out  
19 today that he didn't write these answers and didn't  
20 prepare them. We know that.

21 MR. WRAY: I could be right or I could be  
22 wrong, but doesn't Rule 33 say something about this;  
23 when someone verifies responses, they're verifying the  
24 facts that are responded to, not the objections?  
25 Doesn't it say that in the rule?

1 MR. ROBISON: I don't know what it says.  
2 What I'm doing is interrogating this witness based  
3 upon his answers that he has testified under oath are  
4 true and accurate.

5 MR. WRAY: Objection. They're not his  
6 answers; they're his verification of these answers.  
7 BY MR. ROBISON:

8 Q With respect to the objections, did you  
9 take any role in trying to determine what was  
10 requested in these interrogatories that might be  
11 considered a trade secret?

12 A No.

13 Q Do you know what a trade secret is?

14 A I think so, yes.

15 Q Is that because you read the UCC case?

16 A No.

17 Q Did you read the UCC case?

18 A No.

19 Q Why did you quote it?

20 MR. WRAY: Objection. He didn't quote it.

21 THE WITNESS: I did not --

22 MR. WRAY: He verified the responses.

23 BY MR. ROBISON:

24 Q Why can you verify that UCC is the basis  
25 for the GSR's position in this case?

1           A       That was my -- the legal guidance from my  
2 attorneys. They wrote these responses and I verified.

3           Q       You verified them as truthful?

4           A       To the best of my knowledge, yes.

5           Q       And so the case on which GSR predicates its  
6 position on trade secrets is the UCC case, according  
7 to your verified answers. Correct?

8           MR. WRAY: The answers that he verified.

9           MR. ROBISON: You guys have been sanctioned  
10 once for doing this kind of stuff. You'd think you'd  
11 stop doing it.

12           MR. WRAY: And you're going to be  
13 sanctioned for telling him we're sanctioned. That's  
14 threatening.

15           MR. ROBISON: No, I just --

16           MR. WRAY: Yes, it is.

17           MR. ROBISON: I'm telling you.

18           MR. WRAY: I know you are.

19           MR. ROBISON: Why do you keep doing this?  
20 Judge Flanagan made his position very clear to you  
21 guys.

22           MR. WRAY: My objection is to the question  
23 that's pending. I don't want to argue the case with  
24 you. I just want to try to make an objection that the  
25 objections here are written by attorneys, not by this

1 witness. I believe Rule 33 speaks to this.

2 BY MR. ROBISON:

3 Q What I want to do is go to Interrogatory 14  
4 because -- I want to tell you that I sympathize with  
5 your position, but, nonetheless, I have to ask these  
6 questions because we asked these questions so that we  
7 can get information to help us defend this case and  
8 these accusations, and we rely on these, and you're  
9 the guy that verified these. Lawyers can't do that.  
10 So I have to go through these questions. Please bear  
11 with me.

12 MR. WRAY: Well, I object to this  
13 instruction to the witness. It's not a question.  
14 It's seemingly an attempt to instruct the witness  
15 about someone else's position in the case, which is  
16 really inappropriate.

17 MR. ROBISON: Actually, Mr. Wray, it's an  
18 exercise in civility.

19 MR. WRAY: Please forgive me for  
20 disagreeing with you --

21 MR. ROBISON: No.

22 MR. WRAY: -- but I don't think that's  
23 civil.

24 BY MR. ROBISON:

25 Q GSR is relying on University Computing

1 Company vs. Lyke-Youngstown Corp.

2 Do you see that?

3 A Yes.

4 Q So you're simply verifying under oath that  
5 that's what the GSR is doing, correct?

6 A Correct.

7 Q And you, of course, have not discussed the  
8 holding in this case with any GSR representative, have  
9 you?

10 A I have not.

11 Q You haven't discussed what this case says  
12 about trade secrets, have you, with anybody at the  
13 GSR, other than counsel?

14 A That's correct. Just counsel.

15 Q All right. I want to look at the quote  
16 that you verify as GSR's position in this case. And I  
17 need this answer to the question.

18 You are not denying, are you, that this  
19 case, University Computing Company vs.  
20 Lykes-Youngstown Corporation, is the case on which GSR  
21 is relying in this case? Because it says GSR is  
22 relying on the holding. You are verifying that in  
23 this case, are you not, sir?

24 A Again, my verification is that I've read  
25 this and, to the best of my knowledge, this is true.

1 And my lawyer, Stan Johnson, who wrote this, that's  
2 what he put there. So to the best of my knowledge,  
3 that is true.

4 Q These are really Mr. Johnson's answers?

5 A On page 17, Mr. Johnson is the one who  
6 signed it.

7 Q I know that.

8 A Okay. So I would assume these are his  
9 answers and -- I don't know.

10 Q The answer to No. 14 says GSR is relying on  
11 the UCC case. Do you have any reason to dispute that,  
12 having signed these interrogatories under oath, that  
13 these are true and accurate answers?

14 A No.

15 Q If we look at this block quote on answer to  
16 Interrogatory No. 14, sir, are you aware that  
17 requesting a royalty is dependent on whether or not  
18 the Peppermill used the pars obtained by the keying?

19 A I don't know.

20 Q I'm going to read to you from the third  
21 sentence of the block quote: Largely as a result of  
22 this practical dilemma, normally the value of the  
23 secret to the plaintiff is an appropriate measure of  
24 damages only when the defendant has in some way  
25 destroyed the value of the secret.



1                   Are you aware of any evidence or any  
2 information that suggests to you that the Peppermill  
3 destroyed the value of any secret it may have gotten  
4 from GSR?

5           A       I wouldn't know.

6           Q       You wouldn't?

7           A       I wouldn't know.

8           Q       But are you aware of any information or  
9 evidence to that effect?

10          A       Me? No.

11          Q       All right. The next sentence of this block  
12 quote to your answers to interrogatories is: The most  
13 obvious way this is done is through publication, so  
14 that no secret remains.

15                   Do you see that, sir?

16          A       Yes, I do.

17          Q       First of all, are you aware of any  
18 publication or disclosure by the Peppermill of that  
19 par information it received as a result of keying  
20 incidents?

21          A       I'm not aware.

22          Q       Has anybody told you that there's been a  
23 publication or a disclosure by the Peppermill of that  
24 information?

25          A       No one's told me, no.

1           Q     The next line of this block quote as part  
2 of your sworn answer: Where the plaintiff retains the  
3 use of the secret as here and where there has been no  
4 effective disclosure of the secret through publication  
5 the total value of the secret to the plaintiff is an  
6 appropriate measure.

7           Are you aware, sir, that whether or not --  
8 after the July 12th incident, were the pars changed on  
9 those machines?

10          A     I don't know.

11          Q     Well, are you aware of the fact that on  
12 July 13th, 2013, GSR became aware of the fact that  
13 certain machines were accessed by Mr. Tors where he  
14 saw the par settings? Are you aware of that fact?

15          A     Yes.

16          Q     What did the GSR do to protect the secrecy  
17 of those pars after that incident?

18          A     I don't know.

19          Q     Did it change the pars?

20          A     I don't know if we did.

21          Q     Did it change the mix?

22          A     The mix?

23          Q     The mix among the machines.

24          A     Did we change our mix?

25          Q     Yeah.

1           A     I don't know. I don't know.

2           Q     Did you change your keys after this  
3 incident in July of 2013?

4           A     We did change keys.

5           Q     Now, that was in March of 2014, right?

6           A     Which was after July 2013.

7           Q     I mean as a result of the keying incident  
8 in July of 2013, there was no effort to change the  
9 keys, was there?

10          A     It was definitely discussed.

11          Q     But you didn't do it until March of 2014.  
12 Right?

13          A     I'm not sure exactly when, but we did do  
14 it, I know.

15          Q     Can you tell me today or perhaps the jury  
16 at the trial of this matter why GSR would have waited  
17 nine months to change locks on the keys, knowing that  
18 it had been accessed by Mr. Tors?

19          A     I don't know.

20          Q     Between July of 2013 and March of 2014,  
21 what did the Peppermill -- what did the GSR do to  
22 protect the secrecy of the information obtained by  
23 Mr. Tors?

24          A     I'm not sure, besides getting the Gaming  
25 Commission involved.

1 Q Okay. How did that protect your pars?

2 A I don't know. The Gaming Commission  
3 proceeded with their investigation, so...

4 Q Going on further, the language of the case  
5 that you state the GSR is relying on -- I'm going to  
6 the second bold print paragraph. It states: The  
7 second approach is to measure the value of the secret  
8 to the defendant.

9 What can you tell me about the value of  
10 those pars to the Peppermill?

11 A I couldn't.

12 Q You have no information one way or the  
13 other whether or not that par information has any  
14 value, do you, sir?

15 A I don't.

16 Q Do you, as the chief financial officer --  
17 is that right? No, that's not right.

18 A That's correct. VP of finance.

19 Q For the period of time July 2011 until  
20 September 2014 in your position as VP of finance, can  
21 you give us any evidence or information that the GSR  
22 lost one dime, one dollar, any money, because of what  
23 Mr. Tors did?

24 A I don't have anything.

25 Q No money? No money lost?

1 A I don't know. I don't know.

2 Q Well, okay. You're VP of finance.  
3 Wouldn't you typically know whether or not GSR lost  
4 money because of an event?

5 MR. WRAY: Objection. Argumentative.  
6 Go ahead.

7 THE WITNESS: How long has this event been  
8 happening?

9 BY MR. ROBISON:

10 Q You tell me.

11 A I don't know. Has this been happening for  
12 years and have we lost money for years? We don't  
13 know. It's hard to price out something you don't  
14 understand.

15 Q Do you have any evidence that the GSR lost  
16 money because of any keying incidents?

17 A I don't know.

18 Q Do you have any money [sic] that it lost  
19 players because of any of these keying incidents?

20 A I don't have anything specific, no.

21 Q In general?

22 A I don't, no.

23 Q Do you have any information or evidence to  
24 suggest that it lost market share because of the  
25 keying incidents?

1           A     It's hard to say.

2           Q     Do you have any information, sir, to tell  
3 me about that would suggest that GSR lost any market  
4 share because of the keying incidents?

5           A     I don't know. I don't have anything.

6           Q     Okay.

7           A     I don't.

8           Q     The case which you cited in your  
9 interrogatory answers goes on to say in the last  
10 sentence: In the case before us then the appropriate  
11 measure of damages by analogy to patent infringement  
12 is not what the plaintiff lost but rather the  
13 benefits, profits, or advantages gained by the  
14 defendant in the use of the trade secret.

15                     Do you see that?

16           A     Yep.

17           Q     All right. Based upon you quoting this  
18 case, have you done any investigation to determine  
19 what benefits were derived by the Peppermill as a  
20 result of having this information?

21           A     Repeat that.

22                     MR. WRAY: Objection. Compound.

23 BY MR. ROBISON:

24           Q     Have you done any investigation to  
25 determine what benefits were derived by the Peppermill

1 as a result of receiving this information?

2 A I'm not quite sure what we would -- what we  
3 can do. I'm not sure how Peppermill used that  
4 information.

5 Q You don't even know if it did?

6 A I don't know, no.

7 Q It was a little bit different question. It  
8 was a question about whether or not you've looked into  
9 it, you've done any investigation or research to  
10 determine whether there was a benefit.

11 A No. There's nothing we can do.

12 Q For example, sir, are you aware of any  
13 advertisement on the Peppermill website, on its  
14 billboards or in its mailings that it suggested to  
15 anybody that it had looser machines or tighter  
16 machines or less or more free play than GSR?

17 MR. WRAY: Objection. Compound.

18 Go ahead.

19 THE WITNESS: Yes, they have.

20 BY MR. ROBISON:

21 Q What have they said about the GSR?

22 A Not GSR specifically, but there's an  
23 Atlantis/Peppermill joint billboard --

24 Q Billboard that says Reno has the lowest  
25 pars in the country, right? That's what that

1 billboard says, doesn't it?

2 A I thought it said Peppermill and Atlantis  
3 has the lowest pars in the country.

4 Q No. It's a joint advertising campaign to  
5 suggest that Reno has the lowest pars in the country.

6 A Then I'm mistaken on that. So besides  
7 that, I don't have any specific examples of Peppermill  
8 advertising holds.

9 Q And it is true that Reno, as a gaming  
10 community, does have the lowest pars in the country,  
11 isn't it?

12 A Yes, it is, actually.

13 Q And the Peppermill and Atlantis were  
14 advertising to GSR's benefit by advertising the fact  
15 that Reno has the lowest pars in the nation?

16 A I don't know.

17 Q Well, it would certainly help you with the  
18 gaming casinos over the hill, wouldn't it?

19 A If GSR's name was on that billboard, yes,  
20 I'd say it would be to our benefit.

21 Q Do you know whether or not you were  
22 approached to participate in that joint campaign?

23 A I don't know.

24 Q Do you know why those two rivals down south  
25 of town, Peppermill and Atlantis, would jointly do



1       that?

2               A       No.

3               Q       Do you have any reason to dispute the fact  
4       that the Reno pars are lower than anyplace else in the  
5       country?

6               A       They're pretty low. I don't know if  
7       they're the lowest, but they are pretty low.

8               Q       The gaming publications have verified that,  
9       have they not?

10              A       I don't know. I don't know. Laughlin  
11       might be pretty close. I don't know. I don't know  
12       all the markets.

13              Q       Are you aware of any advertising -- and I'm  
14       going to bring in a picture of that billboard and  
15       we're going to discuss it more because I don't want  
16       you to think I'm misleading you, because I know what  
17       it says.

18              A       Okay.

19              Q       Are you aware of any other advertising or  
20       any other efforts taken by the Peppermill to benefit  
21       itself as a result of the specific information it  
22       obtained from Mr. Tors' accessing GSR machines?

23              A       I don't recall. I don't know.

24              Q       Well, here's the bad boy. And this is  
25       Exhibit No. 38.

1 (Exhibit 38 was marked.)

2 BY MR. ROBISON:

3 Q And I want to make sure that you were  
4 referring to that billboard when you suggested that  
5 the Peppermill somehow benefitted from getting the par  
6 information from the GSR.

7 A That is the billboard I was referring to,  
8 yes.

9 Q Does that make you want to reconsider your  
10 suggestion that the Peppermill used GSR pars to  
11 benefit itself?

12 What's the quote read?

13 A It reads "Reno, Loosest Slots in the USA."

14 Q Does it say anything about the GSR?

15 A No, it doesn't.

16 Q Does it suggest in any way that the  
17 Peppermill has lower pars than the GSR?

18 A No, it doesn't.

19 Q Going on with the answer to Interrogatory  
20 14, you verify under penalty of perjury as follows:  
21 The royalty sought by GSR is based upon information  
22 improperly acquired by the Peppermill and the uses to  
23 which said information was put.

24 My question is: What uses?

25 A I don't know.

1           Q     How would you use the par of another  
2 casino?

3           A     How would I?

4           Q     Yeah. You're already using what you  
5 believe the pars of the Peppermill and Atlantis to be,  
6 aren't you?

7           A     I don't -- again, I'm not sure what they're  
8 doing with CDC today.

9           Q     Well, no, you've indicated that the  
10 marketing strategy of the GSR is to establish pars  
11 between those of Atlantis and Peppermill. Correct?

12          A     Correct.

13          Q     So that's how GSR uses the Peppermill's par  
14 information, right, to develop a marketing strategy?

15          A     Right.

16          Q     So that you have a little bit higher pars  
17 than the Peppermill and a little bit lower pars than  
18 the Atlantis?

19          A     Yes.

20          Q     And you're using the par information from  
21 the Peppermill for that marketing objective?

22          A     Our best guess, yes.

23          Q     But you're using what you got from your  
24 shopping activities to establish a marketing strategy?

25          A     Actually that doesn't -- that doesn't come

1 from our shopping activities.

2 Q Where's it come from?

3 A Market analysis.

4 Q You analyze the gaming abstracts?

5 A Not the abstracts; the market share  
6 reports, the market reports.

7 Q So from that you try to determine the pars  
8 of the Peppermill, floor average, correct?

9 A Correct.

10 Q And you came up with this 4 percent figure?

11 A Yes.

12 Q And you came -- you did the same analysis  
13 to determine the approximate 6 percent hold at the  
14 Atlantis?

15 A Yep.

16 Q And then you established a market strategy  
17 of having a 5 percent par?

18 A Roughly.

19 Q Okay.

20 A No, no -- 5 percent net par.

21 Q Correct. All right. And I appreciate you  
22 clarifying that.

23 So we know how you use your estimates of  
24 the Peppermill's pars. Now, you tell us, if you  
25 would, please, how the Peppermill has used the

1 information obtained by Mr. Tors.

2 A I don't know how they've used the  
3 information from Mr. Tors.

4 Q Are you aware that Mr. Tors has conceded  
5 that some of those numbers are made up?

6 A No.

7 Q Have you seen any advertisement, mailers,  
8 or any other publications or information emanating  
9 from the Peppermill that would suggest to you that the  
10 Peppermill has used that par information?

11 A Nothing -- nothing that I've seen publicly,  
12 no.

13 Q Now, do you look at the gaming abstracts?

14 A The abstracts --

15 Q The monthly gaming?

16 A The monthly market report, yes. Yes, I do.

17 Q So you know that there are six casinos,  
18 approximately, in this community that generate  
19 \$36 million or more from penny slots?

20 A Yeah. Yes.

21 Q And GSR is one of those properties?

22 A Yes.

23 Q And you know that the gaming authorities  
24 publish the average par for those six properties?

25 A Yes.

1           Q     And that's a market component that you do  
2 pay attention to?

3           A     Yes, it is.

4           Q     And that's an important one to you?

5           A     Yes, it is.

6           Q     More important than just one property,  
7 because you're competing against a market rather than  
8 specific slot machines?

9           A     We take -- yeah. But we take that because  
10 we know ourselves, we know what the five are, and we  
11 estimate what the five individual properties are at.

12          Q     Pretty simple to do. You've got six  
13 properties, and you know what your par is. Correct?

14          A     Net par. Well, I know what my par is and  
15 my net par, yes.

16          Q     Well, the GSR -- excuse me, the Gaming  
17 Control Board is not net par, is it?

18          A     Yes, it is.

19          Q     All right. So you take the net par  
20 published by the Gaming Control Board for those six  
21 casinos, you know yours, you subtract it out?

22          A     That's correct.

23          Q     What do you have left?

24          A     The other five.

25          Q     And from that you can get more precise as

1 to what the other properties' pars are. Because you  
2 know Harrah's is going to be high.

3 A I can get the other properties' net pars.

4 Q Right.

5 A I can't get the pars.

6 Q And I hate to pound this in, but we both  
7 know a net par is more important than par for your  
8 marketing strategy.

9 A It depends on your strategy. For my -- for  
10 GSR net is important because we are big on free play,  
11 much more so than any other property. So --

12 Q Okay. Are you aware, sir -- getting back  
13 to answer to Interrogatory 14 -- of any profit  
14 advantage that was gained by Peppermill through the  
15 use of the pars obtained from GSR?

16 A I'm not aware.

17 Q The answer goes on to state: GSR is asking  
18 the Court to set a reasonable royalty based upon the  
19 use and the value obtained by the Peppermill.

20 What value?

21 A I don't know.

22 Q How are you going to determine value of a  
23 par obtained by the Peppermill?

24 A I don't know.

25 Q Have you any information to give us today,

1       sir, about the number of uses to which that par  
2       information was made at the Peppermill?

3           A       I personally don't know.

4           Q       Do you know what is meant by this phrase,  
5       "based upon the number of uses"?

6           A       I would assume the number of times data was  
7       collected from the GSR.

8           Q       Okay. Data was collected on July 12th,  
9       2013, correct?

10          A       We know that one, yes.

11          Q       It was a piece of paper. Are you aware of  
12       that?

13          A       Yes.

14          Q       On which pars were written?

15          A       Yes.

16          Q       Where did that information go?

17          A       Where did it go?

18          Q       Yeah.

19          A       The gaming agent, I believe, took it.

20          Q       The Peppermill didn't get it, did it?

21          A       On that case, correct.

22          Q       Are you aware that the GSR is only suing  
23       the Peppermill for what happened on July 13th  
24       according --

25                 MR. WRAY: Objection. Legal conclusion.



1                   Go ahead.

2       BY MR. ROBISON:

3           Q       -- according to the complaint?

4           MR. WRAY: Same objection.

5           Go ahead.

6           THE WITNESS: Yes.

7       BY MR. ROBISON:

8           Q       Well, how can you tell the Court and jury  
9       that the Peppermill used the information seized by the  
10      Gaming Control Board?

11           MR. WRAY: Same objection. Legal  
12      conclusion.

13      BY MR. ROBISON:

14           Q       I'm asking you to tell the jury. I'm not  
15      talking about this case anymore --

16           MR. WRAY: Objection. He's not talking to  
17      the jury.

18      BY MR. ROBISON:

19           Q       Go ahead.

20           A       Repeat the question.

21           Q       Sure.

22                   How is it that in this case the GSR,  
23      according to the complaint, is contending damages for  
24      what happened on July 13th when that information is  
25      with the Gaming Control Board, not the Peppermill?

1           A       I don't know.

2                   MR. WRAY:  Objection.  Argumentative.  
3       Legal conclusion.  He's already answered.

4       BY MR. ROBISON:

5           Q       You go on to verify the truth of the  
6       following statement:  The value obtained by the  
7       Peppermill through an economic advantage or savings  
8       based upon the cost of acquiring the information  
9       through proper and legal means.

10                   What are you saying there?  What are you  
11       verifying?

12           A       I'm verifying that the Peppermill -- that  
13       there's an implied Peppermill economic advantage by  
14       having the pars.  And, again, it was either savings  
15       and free play reinvestment or others.

16           Q       How much are they saving to determine the  
17       par on your Buffalos when you're publicizing the pars  
18       to competitors?

19           A       How much are they saving?

20           Q       How much is the Peppermill saving in costs  
21       to look at the par sheet of an Aristocrat Buffalo to  
22       determine that the lowest setting is 5.28?

23           A       It's what they do with that.

24           Q       So there is no value or damages just by  
25       knowing your pars; it's how they use it that counts.

1 Correct?

2 A Exactly.

3 Q That's what this case is about? Use?

4 A The use.

5 Q All right.

6 A That would be my assumption.

7 Q So how did the Peppermill use the fact that  
8 you set your Buffalos at 5.28?

9 A I don't know how they use that.

10 Q Well, why would you care when you already  
11 told them what it is?

12 A It's what they did with that information,  
13 though.

14 Q If the Peppermill changed their marketing  
15 because of what they saw on your billboards, are you  
16 saying that's doing something improper?

17 A On the Buffalo, no. We put that out there.  
18 But we didn't put out our pars on the other machines.

19 Q You did on the Williams.

20 A Okay. On the Williams we did.

21 Q Are you aware of the fact that if you get  
22 one par on one machine you can easily ascertain the  
23 par on all the other machines by simply playing and  
24 going to the kiosk and determining the points and comp  
25 ratios?

1           A     You cannot --  
2                     MR. WRAY:  Objection.  Compound.  
3                     You already answered.  
4                     THE WITNESS:  You cannot --  
5                     MR. ROBISON:  It's not compound.  
6                     THE WITNESS:  And you can't.  
7       BY MR. ROBISON:  
8           Q     How do you know?  
9           A     Statistically, you cannot.  
10          Q     What makes you say that?  
11          A     How would you know?  
12          Q     How would I know what?  
13          A     The par on a machine.  
14          Q     You don't know how to do that, then?  
15          A     You can't.  
16          Q     Can you deconstruct a machine to reverse  
17 engineer it to determine the par?  
18          A     With enough play, yes.  
19          Q     In fact, Shackleford does that on his  
20 video, doesn't he?  
21          A     I don't know who Shackleford is.  
22          Q     Have you ever heard of the Wizard of Odds?  
23          A     Yes, I have heard of that, but I haven't  
24 looked at it.  
25          Q     Okay.  And then, of course, if your VIPs

1 and host people are telling their customers how to  
2 figure it out, that would be relinquishment of the  
3 secret, wouldn't it?

4 A I guess, yeah.

5 Q Sir, again, I want to make sure that we're  
6 clear on these.

7 (Exhibit 39 was marked.)

8 BY MR. ROBISON:

9 Q Exhibit 39 is what has been produced in  
10 this case by the GSR, and it's a quote given to Toby  
11 Taylor.

12 We know he's in charge of slots, correct?

13 A He is.

14 Q So this document is from VSR Industries in  
15 Henderson, and it's a quote submitted to Toby Taylor,  
16 and it is -- indicates that the locks apparently were  
17 sold to the GSR on March 21st, 2014, and the quote  
18 expires on April 21st, 2014, and the quote is for  
19 \$17,479.46. Correct?

20 A Correct.

21 Q Can you tell me why it took so long for the  
22 GSR to change the locks?

23 MR. WRAY: Objection. Argumentative.

24 Go ahead.

25 THE WITNESS: No, I can't.

1 BY MR. ROBISON:

2 Q What happened in April or March of 2014  
3 that caused GSR to change the locks on the slot  
4 machines?

5 A I don't know.

6 Q Did you change the locks on the video  
7 poker?

8 A I don't know.

9 Q Well, why would you if the pars are on the  
10 pay tables?

11 MR. WRAY: Objection. Argumentative.

12 Go ahead.

13 THE WITNESS: I don't know. I don't know  
14 what locks they changed.

15 BY MR. ROBISON:

16 Q Well, did you change the locks on the video  
17 roulette?

18 A I don't know.

19 Q Well, those are fixed pars, correct?

20 A I believe so, but I don't know.

21 Q Well, why are you changing locks on  
22 machines that the pars are known to the public? For  
23 example, Wheel of Fortune. It's a set par, isn't it?

24 A I don't know. I wasn't involved with the  
25 keying or rekeying situation.

1 Q You just paid the bill?

2 A I paid the bill.

3 Q All right.

4 MR. ROBISON: Shall we break for lunch?

5 MR. GUNDERSON: Let's do that.

6 (The lunch recess was taken from  
7 12:08 p.m. to 1:16 p.m.)

8 MR. ROBISON: We're back on the record.

9 And, for the record, I just want to read a  
10 portion of Rule 33 of the Nevada Rules of Civil  
11 Procedure with respect to answers and objections to  
12 interrogatories, which is Section B of Rule 33.

13 Section 1 says: Each interrogatory shall  
14 be answered separately and fully in writing under oath  
15 unless it's objected to, in which event the objecting  
16 party shall state the reasons for the objection and  
17 shall answer to the extent the interrogatory is not  
18 objectionable. The answers shall first set forth each  
19 interrogatory asked followed by the answer or response  
20 of the party.

21 No. 2: The answers are to be signed by the  
22 person making them, and the objections are to be  
23 signed by the attorney making them.

24 BY MR. ROBISON:

25 Q So with that on the record, I'm going to

1 continue my questions on the basis that you are the  
2 person answering these interrogatories as required by  
3 law.

4 MR. WRAY: The objections by the attorney  
5 making them, not by -- the verification is still what  
6 I said before. Having had the rule read to us to  
7 refresh our recollections, I still feel exactly the  
8 same way as I did when I first said Rule 33 addresses  
9 this.

10 BY MR. ROBISON:

11 Q Have you had an opportunity, sir, to see  
12 the Court's most recent order about GSR having to  
13 produce records and deponents concerning market  
14 strategies?

15 A No.

16 Q Have you heard from anybody other than  
17 lawyers that Judge Flanagan has now taken position  
18 that 30(b)(6) depositions can be taken of those most  
19 knowledgeable about market strategies?

20 A Have I had that conversation with anyone?  
21 No.

22 Q Have you read or heard from anybody other  
23 than lawyers that Judge Flanagan has ordered GSR to  
24 respond to requests for production of documents to  
25 produce marketing strategy material?



1 A No.

2 Q Okay. I still would like to return to  
3 Exhibit 35, which is the answers to interrogatories.

4 Looking at the answer to Interrogatory  
5 No. 12, sir, which starts on page 8 and ends on  
6 page -- 18 and ends on page 19.

7 Let me know when you're done, please.

8 A Oh, I'm done.

9 Q With respect to the interrogatory, it asks  
10 the GSR to identify and specify with particularity  
11 each event -- excuse me, each and every report,  
12 analysis, examination or documents that pertain to a  
13 series of -- I'll call them marketing criteria.

14 Did you do anything to investigate or  
15 research this question, this interrogatory?

16 A No.

17 Q Did you try to determine whether there are  
18 any reports at GSR that addressed A through O of this  
19 interrogatory?

20 A No.

21 Q How about did you do anything to determine  
22 whether or not GSR had performed an analysis of those  
23 criteria?

24 A No.

25 Q Did you determine whether or not there were

1 any documents that pertained to those criteria?

2 A No.

3 Q Why?

4 A Based on the response, my lawyers objected  
5 to it.

6 Q With respect to the answer that it's not  
7 part of the objection, I think it starts with the  
8 sentence, "The issue in this matter is whether" --  
9 "The issue in this matter is Peppermills use" -- I  
10 suppose that's possessive -- "of an unauthorized key  
11 to access pars at GSR and the use to which the  
12 Peppermill put that information so obtained" -- "put  
13 the information so obtained," I'm sorry.

14 What makes you say that's the issue?

15 MR. WRAY: Objection. This is part of the  
16 objection. This is the attorney's objection, so I  
17 don't think this witness said anything like that. He  
18 just verified the responses that were responsive.

19 BY MR. ROBISON:

20 Q Do you concur, sir, as the deponent in this  
21 case at this time that that's the issue in this case?

22 MR. WRAY: Objection. Legal conclusion.

23 THE WITNESS: I don't know.

24 BY MR. ROBISON:

25 Q Do you have any information that suggests

1       that the Peppermill claims that it last accessed  
2       information from GSR on July 12th, 2013?

3               A       Do I? No.

4               Q       Getting back to the question, as you sit  
5       here now, are you aware of any shopping activities  
6       that scrutinized the Peppermill's staffing levels?  
7       You've talked quite a bit about shopping, yourself and  
8       others and Mr. Schwartz.

9                       From those shopping activities did the GSR  
10       derive any information concerning the staffing levels  
11       at the Peppermill?

12              A       Potentially just general observations,  
13       yeah.

14              Q       Reduced to writing?

15              A       Huh?

16              Q       Were they reduced to writing?

17              A       I don't -- I don't recall.

18              Q       If they were, would they be in one of those  
19       reports that you referred to provided by Compton &  
20       Dancer, Mr. Schwartz, or Mr. Burdick?

21              A       Maybe. I don't know. I don't know.

22              Q       How about booth location and design?

23              A       No idea.

24              Q       Is that something you looked for, sir, when  
25       you shopped?

1           A     No. I couldn't even tell you where the  
2 booth is.

3           Q     How about the focus on guest services  
4 through the use of technology?

5           A     I don't know.

6           Q     Any information with regard to shopping the  
7 printed information and collateral available?

8           A     Any information? You know, if there was a  
9 flyer or a marketing material available, we might have  
10 taken that if it was for the public, but I don't...

11          Q     How many of your executives actually have a  
12 card, players card, at the Peppermill, do you know?

13          A     I don't know.

14          Q     Those with player cards, they are permitted  
15 to gamble at the Peppermill; would that be a fair  
16 statement?

17          A     There was one gentleman that was asked not  
18 to gamble there, but --

19          Q     Who?

20          A     Jason Braelow was his name.

21          Q     Why is that?

22          A     I'm not quite sure.

23          Q     Who asked him not to gamble at the  
24 Peppermill?

25          A     I'm not quite sure.

1           Q     Okay. Do you have a card, Peppermill card,  
2 or have you ever had a Peppermill card?

3           A     I assume I do, but I can't recall.

4           Q     Is a player card helpful with regard to the  
5 shopping activities that the GSR does at the  
6 Peppermill?

7           A     If you're shopping to get reinvestment,  
8 yes, it is.

9           Q     You can slide your card in the kiosk and  
10 determine what the comps are?

11          A     Yes.

12          Q     What the points are?

13          A     I assume so. I'm not quite sure how the  
14 Peppermill program works, but yeah.

15          Q     Okay. With a card you get the mailers?

16          A     The mail, yeah.

17          Q     And the mailers are scrutinized by the GSR  
18 to see what kind of free play and offerings are made  
19 by the Peppermill?

20          A     I'm aware of the one time with David  
21 Schwartz. He was supposed to look at that. I'm not  
22 sure if that ever happened or not.

23          Q     Do you know if he reported on the quality  
24 and value of the benefits offered by the Peppermill?

25          A     I don't recall.

1 Q The quality of the benefits?

2 A Don't recall.

3 Q Or the benefits for each use?

4 A I really don't recall.

5 Q Did anybody do a comparative analysis  
6 between the comp strategies of the Peppermill and GSR  
7 after Mr. Schwartz or Mr. Burdick shopped the  
8 Peppermill?

9 A I'm not sure. I really don't know.

10 Q All right. I want to turn your attention,  
11 please, to Interrogatory 13.

12 As we said earlier, I think this case is  
13 about GSR's contention that Peppermill may have used  
14 this information obtained by Mr. Tors. And in here I  
15 asked the GSR to identify with specificity the  
16 documents that the GSR contends would be in the  
17 Peppermill's possession that would be in any way  
18 relevant to the suggestion that Peppermill was  
19 unjustly enriched or used the information obtained by  
20 Mr. Tors. And I looked at your answer, and you  
21 identified some documents responsive to that.

22 Do you see that, sir?

23 A I do.

24 Q What documents are you referring to?

25 A I don't know.

1           Q     When you signed these interrogatories under  
2 oath, did you even see the documents that you were  
3 referring to?

4           A     I did not.

5           Q     How do you know, then, that those documents  
6 are responsive to the interrogatory?

7           A     Again, my verification was that I read this  
8 document and, to the best of my knowledge, this is  
9 true.

10          Q     But the question, I hope you understand, is  
11 how can you say what documents are responsive to what  
12 interrogatories if you haven't read the documents that  
13 you identified?

14               MR. WRAY: Objection. He didn't identify  
15 them; he verified them.

16               You can answer.

17 BY MR. ROBISON:

18          Q     Let me do it the right way, then.

19               Why did you verify that these documents  
20 answer this interrogatory when you didn't even verify  
21 what the document said?

22          A     I don't know.

23          Q     You don't know whether this answer is true  
24 or false, do you?

25          A     Reading this response, I'm taking it by

1 face value which says you have these -- Peppermill has  
2 these documents, and -- yeah, I did not review Tors'  
3 deposition or disclosure statements, so...

4 Q Well, do you know why an invoice from the  
5 computer guy suggests how the Peppermill might have  
6 been unjustly enriched?

7 A By the what guy?

8 Q Computer guy.

9 A Who's the computer guy? I don't know --

10 Q Well, actually, he's a guy that works on  
11 computers that is part of these answers that you gave  
12 me.

13 A I have no idea what you're talking about.

14 Q Tors 1. I'm going to show you a copy of  
15 it, but it's also in the exhibit book as Exhibit 15.

16 Why did you refer to what has already been  
17 marked as Exhibit 15 to these depositions as a  
18 document that would show that the Peppermill was  
19 unjustly enriched?

20 A I don't know.

21 Q Is it your understanding that that piece of  
22 paper reflected in Exhibit 15 is what was taken  
23 from -- excuse me, Exhibit 14 -- taken from Mr. Tors  
24 the night that he met with the Gaming Control Board at  
25 the GSR?



1           A     That's what it looks like.

2           Q     Do you have any information that the  
3     Peppermill ever saw that before discovery in this  
4     case?

5           A     No.

6           Q     Do you have any information that that  
7     document would in any way demonstrate, prove, or  
8     establish that the Peppermill was unjustly enriched?

9           A     No.

10          Q     So why did you say that it did?

11          A     I didn't. I verified what my lawyers  
12     wrote.

13          Q     You verified what your lawyers wrote?

14          A     Yes. To the best of my knowledge.

15          Q     Well, you don't have any knowledge about  
16     this, do you?

17          A     Very little.

18          Q     Well, do you have any knowledge about how  
19     the Peppermill was unjustly enriched by the keying  
20     activities that occurred on July 12th, 2013?

21          A     No.

22          Q     June 14th, 2012?

23          A     No.

24          Q     December 29th, 2011?

25          A     No.

1           Q     You don't know of any unjust enrichment  
2     that Peppermill enjoyed because of that, correct?

3           A     I don't, no.

4           Q     And you don't know of any damage to GSR --  
5     loss of revenue, damage, loss of money sustained by  
6     GSR as a result of that activity, correct?

7           A     No.

8           Q     You go on to say that Tors Documents 70  
9     through 71 show unjust enrichment somehow to the  
10    Peppermill. Let me show you those documents.

11           MR. WRAY: Objection. It says "in any way  
12    relevant" to your contention. It doesn't say shows  
13    it.

14    BY MR. ROBISON:

15           Q     Tell me, please, under oath how this is  
16    relevant.

17           MR. WRAY: In any way.

18    BY MR. ROBISON:

19           Q     Yeah, in any way.

20           A     It's a bill from the computer guy to Ryan  
21    Tors.

22           Q     How does that show in any way or how is  
23    that relevant in any way to the GSR's accusation that  
24    the Peppermill was unjustly enriched?

25           A     I don't know.

1 Q Do you know why you verified that as such?

2 A To the best of my knowledge, that's what my  
3 lawyers suggested.

4 Q You were just signing what your lawyers  
5 said without really doing any investigation, right?

6 A I did not investigate, no. I read and  
7 verified to the best of my knowledge.

8 Q You didn't even know what this document  
9 was --

10 A No.

11 Q -- when you signed these interrogatories  
12 under oath, correct?

13 A I did not.

14 Q You also refer to Tors Bates No. 87 through  
15 96 as documents that might possibly be relevant to  
16 GSR's accusation that the Peppermill was unjustly  
17 enriched by Mr. Tors' activities.

18 What are Tors Documents 87 through 96?

19 A I don't know.

20 Q Have you ever seen them?

21 A I have not.

22 Q They are also marked as an exhibit --

23 MR. GUNDERSON: Is it a depo exhibit?

24 MR. ROBISON: Yes.

25 MR. WRAY: Looks like 11.

1 BY MR. ROBISON:

2 Q Yeah, it's Exhibit 11. I'm showing you an  
3 extra copy of that, sir.

4 MR. WRAY: Could you repeat the question,  
5 Counsel? Because I forgot.

6 BY MR. ROBISON:

7 Q Now that you've seen, for the first time,  
8 Tors 87 through 96, can you tell me how this caused  
9 Peppermill to be unjustly enriched or is relevant to  
10 that accusation?

11 A That's not my place to comment on.

12 Q Well, just so we're clear, I asked the  
13 question and you answered it.

14 A No, I didn't. My lawyers answered it.

15 Q Okay. This is not your answer, is it?

16 A No. It's not my answer.

17 Q So this verification process, you're simply  
18 verifying what your lawyers said?

19 A Yes. Again, my lawyers wrote the answers.  
20 I verified to the best of my knowledge -- read it, and  
21 I verified to the best of my knowledge that what they  
22 wrote was true.

23 Q When you discussed the UCC case -- I've  
24 marked as Exhibit No. 37 a copy of that decision.

25 (Exhibit 37 was marked.)

1 BY MR. ROBISON:

2 Q Just so we're clear, did you ever take time  
3 to read this decision when you stated or verified that  
4 the GSR was relying on it?

5 A Repeat the question.

6 MR. WRAY: Before you verified it, did you  
7 read it?

8 MR. ROBISON: I'll be happy to repeat the  
9 question.

10 BY MR. ROBISON:

11 Q Did you read this case at any time to  
12 determine its applicability to this case when you  
13 stated that GSR was relying on this case?

14 A Again, I did not state that GSR was relying  
15 on this case. I did not read this case.

16 Q Your lawyers stated in writing that GSR is  
17 relying on this case, and you verified the fact that  
18 your lawyers said that?

19 A Yes.

20 Q Okay. Do you have any information, as the  
21 person who signed the interrogatories, that the  
22 Peppermill offered any of the GSR's pars to potential  
23 buyers?

24 A I do not.

25 Q Do you have any information, sir, that the

1       Peppermill represented to any third parties that they  
2       had rights to the GSR's pars?

3           A       I do not.

4           Q       Do you have any information, sir, that the  
5       Peppermill represented to anyone that the pars  
6       obtained by Mr. Tors were in fact pars designed by the  
7       Peppermill?

8           A       Pars obtained are pars -- I don't  
9       understand the question.

10          Q       Fair enough.

11                 Do you have any information that the  
12       Peppermill represented those pars to be the property  
13       of the Peppermill?

14          A       I don't know.

15          Q       You're not aware of any attempt at a sale  
16       by the Peppermill of this information, are you?

17          A       I am not.

18          Q       You're not aware of any commercial use made  
19       of this information by the Peppermill, are you?

20          A       I am not.

21          Q       In these interrogatories there's an  
22       objection to my use of the term "development costs."  
23       And I know that's a lawyer objection. But are you  
24       aware of what development costs are involved in the  
25       GSR establishing the pars on these machines as of

1 July 12th, 2013?

2 A Am I aware of the GSR's costs in developing  
3 their pars?

4 Q Yes.

5 A As of what date?

6 Q Well, I'm going to use the date of the  
7 event, July 12th, 2013.

8 A You know, of course I can't quantify, but  
9 the costs would be the analysts that we had developing  
10 the analytics to help us analyze our pars and what to  
11 do with them.

12 Q Who was the analyst?

13 A John Kucera.

14 Q What was his position in July of 2013?

15 A He was an analyst with us.

16 Q What office did he hold?

17 A He was our slot analyst, casino analyst.

18 Q For whom was he actually employed?

19 A For whom -- who did he report to?

20 Q No, who was he employed by?

21 A Oh, which company? I don't know.

22 Q Okay.

23 A Either HG Staffing or MEI-GSR.

24 MR. WRAY: Can we substitute that, please?

25 Here you go.

1 MR. GUNDERSON: Give me a sticker and I'll  
2 put a sticker on it. We can solve that.

3 MR. ROBISON: We just took back a copy of  
4 37 that I marked as the original exhibit that had my  
5 markings on it, and now I've marked as 37 a clean copy  
6 of that document.

7 MR. WRAY: So stipulated.

8 BY MR. ROBISON:

9 Q Looking at the decision that we've marked  
10 as 37, I'd like you to turn, please, to page 4 of 19.  
11 Upper right-hand corner is where the pages are.

12 I think you'll see the two paragraphs in  
13 the middle are quoted in the answers to  
14 interrogatories.

15 A Yep.

16 Q If you go to the paragraph immediately  
17 below that, it reads: Normally only the defendant's  
18 actual profits can be used as a measure of damages in  
19 cases where profits can be proved, and the defendant  
20 is normally not assessed damages on wholly speculative  
21 expectations of profits.

22 Are you aware, sir, of any profit the  
23 Peppermill made as a result of the information it  
24 received from Mr. Tors?

25 A I am not.



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Jacqueline Bryant  
Clerk of the Court  
Transaction # 4791445 : ylloyd

**Exhibit "4"**

**Exhibit "4"**



ROBISON, BELAUSTEGUI, SHARP & LOW

January 14, 2015

ATTORNEYS:

Kent R. Robison  
Thomas L. Belaustegui  
E. DeArmond Sharp  
Keegan G. Low  
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Scott L. Hernandez

Via Email: [sjohnson@cohenjohnson.com](mailto:sjohnson@cohenjohnson.com)  
H. Stan Johnson, Esq.  
Cohen-Johnson, LLC  
255 E. Warm Springs Road, Suite 100  
Las Vegas, NV 89119

Re: *GSR v. Peppermill/Tors*

Dear Mr. Johnson,

Submitted herewith you will find a notice for your deposition to be taken on Monday, February 2, 2015, at 9:30 a.m. at my office. Peppermill Casinos, Inc. ("Peppermill") was prompted to take your deposition given testimony provided by Terry Vavra at his deposition on December 3, 2014. As you know, Mr. Vavra verified MEI-GSR Holdings, LLC's ("GSR") responses to Peppermill's Second Set of Interrogatories (the "Interrogatories"). At Mr. Vavra's deposition, he testified that he never reviewed the Interrogatories prior to being presented with the completed responses for him to verify. Moreover, he admitted that he did not participate in the investigation and collection of facts upon which the responses to the Interrogatories were based. Indeed, Mr. Vavra did not even know who drafted the responses. The best Mr. Vavra could do was to speculate that you prepared the responses to the Interrogatories.

Based on Mr. Vavra's testimony, it appears his verification was a sham. Instead, you should have verified the responses yourself, because the responses were prepared without Mr. Vavra's participation. It is acceptable for an attorney to verify interrogatory responses; however, such a practice subjects such an attorney to deposition. Here, Mr. Vavra's verification appears to be a thinly-veiled attempt to avoid this outcome. This tactic is unavailing, and Peppermill will take your deposition.

Admittedly, deposing opposing counsel presents logistical issues. To streamline the process and to determine the appropriate scope of deposition, Peppermill would like to meet and confer with you and come to an agreement as to how best to proceed with your deposition. Please advise as to a suitable time to meet and confer.

Yours very truly,

KENT R. ROBISON

KRR/slh:jf  
Attachment

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

P 775.329.3151  
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RA 01612

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12 Telephone: (775) 329-3151

13 Facsimile: (775) 329-7169

14 *Attorneys for Defendant Peppermill Casinos,*  
15 *Inc., d/b/a Peppermill Casino*

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

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

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

20 Plaintiff,

21 vs.

22 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 \_\_\_\_\_/

**CASE NO.: CV13-01704**

**DEPT. NO.: B7**

**BUSINESS COURT DOCKET**

28 **NOTICE OF TAKING DEPOSITION OF H. STAN JOHNSON**

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

PLEASE TAKE NOTICE that on Monday, February 2, 2015, commencing at 9:30 a.m., at the offices of Robison, Belaustegui, Sharp & Low, 71 Washington Street, Reno, Nevada 89503, the Defendant, Peppermill Casinos, Inc., in the above-entitled action will take the deposition of H. STAN JOHNSON upon oral examination, pursuant to Rules 26 and 30 of the Nevada Rules of Civil Procedure, before a Notary Public or before some other officer authorized by law to administer oaths. Oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

**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 14<sup>th</sup> day of January, 2015.

ROBISON, BELAUSTEGUI, SHARP & LOW  
A Professional Corporation  
71 Washington Street  
Reno, Nevada 89503



KENT R. ROBISON  
KEEGAN G. LOW  
SCOTT L. HERNANDEZ  
Attorneys for Defendant  
Peppermill Casinos, Inc., d/b/a Peppermill Casino

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP &  
3 LOW, and that on this date I caused to be served a true copy of the **NOTICE OF TAKING**  
4 **DEPOSITION OF H. STAN JOHNSON** 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 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 \_\_\_\_\_ by electronic email addressed to the above.

8 \_\_\_\_\_ by personal delivery/hand delivery addressed to:

9 \_\_\_\_\_ by facsimile (fax) addressed to:

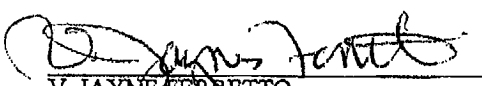
10 \_\_\_\_\_ by Federal Express/UPS or other overnight delivery addressed to:

11  
12 H. STAN JOHNSON, ESQ.  
13 TERRY KINNALLY, ESQ.  
Cohen-Johnson, LLC  
255 E. Warm Springs Road, Suite 100  
14 Las Vegas, NV 89119  
Email: [sjohnson@cohenjohnson.com](mailto:sjohnson@cohenjohnson.com) / [tkinnally@cohenjohnson.com](mailto:tkinnally@cohenjohnson.com)  
15 *Attorneys for Plaintiff*

16 MARK WRAY, ESQ.  
608 Lander Street  
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18 MARK GUNDERSON, ESQ.  
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21 [jfunk@gundersonlaw.com](mailto:jfunk@gundersonlaw.com)  
22 *Attorneys for Defendant Ryan Tors*

23 DATED: This 14<sup>th</sup> day of January, 2015.

24   
25 V. JAYNE FERRETTO  
Employee of  
26 Robison, Belaustegui, Sharp & Low

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**Exhibit "5"**

**Exhibit "5"**

**COHEN | JOHNSON**  
**ATTORNEYS & COUNSELORS AT LAW**

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mgunderson@gundersonlaw.com

January 20, 2015

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

**Re: GSR Productions**  
**Case No.: CV-13-01704**  
**Our File No.: 130133**

Dear Mr. Robison.

Please be advised that we will be filing a protective order on an OST seeking an order from the Court barring you from taking my deposition. As the Nevada Supreme Court held in Club Vista Financial Serv.v. Dist. Ct., 128 Nev. Adv. OP 21, 276 P.3d 246 (2012)

To address the difficulties presented by attorney depositions, the Eighth Circuit Court of Appeals has developed a stringent three-factor test under which the party seeking to take the deposition of an opposing party's counsel has the burden of proving that **"(1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case."** *Shelton*, 805 F.2d at 1327 (citations omitted). We agree with the *Shelton* court that, in the absence of these conditions, a party should not be permitted to depose an opposing party's attorney, and thus, we adopt this three-factor test.

You have failed to provide any facts in support of the *Shelton* factors adopted by the Nevada Supreme Court and cannot do so. Your apparent basis for seeking my deposition is that I drafted the Responses to the Second Set of Interrogatories and therefore I am subject to deposition on the subject matter of the Interrogatories. Your theory is not supported by any applicable rule or case law. If you have any please enlighten me by providing such. By seeking to inquire into the basis for the objections you are intentionally seeking to invade the attorney/client and attorney work product privilege. Furthermore you have no right to any information concerning the subject matter of the Interrogatories where the Court upheld the objections that the information was irrelevant and outside the scope of permissible discovery in

this case. Since the Court has found these subjects to be irrelevant they cannot possibly be crucial to the preparation of the case.

The noticing of this deposition is being done for purposes of harassment and for no other valid purpose. If you do not withdraw the notice of deposition the motion will be filed no later than today at 4:00 pm. At that time, we will also be seeking sanctions against you for the necessity of bringing this motion.

Very Truly Yours,

*H. Stan Johnson*

H. Stan Johnson, Esq.

Cc: Mark H. Gunderson, Esq.  
Mark Wray at [mwrap@markwraylaw.com](mailto:mwrap@markwraylaw.com)



**Jayne Ferretto**

---

**From:** eflex@washoecourts.us  
**Sent:** Wednesday, January 28, 2015 9:31 AM  
**To:** Kent Robison  
**Cc:** Jayne Ferretto  
**Subject:** NEF: MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7): Ex-Parte Mtn: 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:** 01-27-2015:17:49:12  
**Clerk Accepted:** 01-28-2015:09:30:16  
**Court:** Second Judicial District Court - State of Nevada  
Civil  
**Case Title:** MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7)  
**Document(s) Submitted:** Ex-Parte Mtn  
- \*\*Continuation  
- \*\*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  
MARK HARLAN GUNDERSON, ESQ. for RYAN TORS

**The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):**

DARLENE B CARUSO, ESQ for NEVADA GAMING COMMISSION,  
STATE GAMING CONTROL BOARD

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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**

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 **OPPOSITION TO PLAINTIFF'S EX PARTE MOTION FOR PROTECTIVE**  
29 **ORDER ON AN ORDER SHORTENING TIME AND FOR STAY OF**  
30 **DEPOSITIONS PENDING HEARING ON THE MATTER**

31 Defendant PEPPERMILL CASINOS, INC ("Peppermill") hereby opposes Plaintiff MEI-  
32 GSR HOLDINGS, LLC, d/b/a/ GRAND SIERRA RESORT's ("GSR") motion for protective  
33 order. Peppermill requests that the Court deny the motion and issue an order for Stan Johnson,  
34 counsel for GSR, to submit to deposition. While such a deposition is unusual, the law and GSR's  
35 conduct requires that Mr. Johnson's deposition take place.

36 Further, Peppermill opposes GSR's request for an order barring further discovery of  
37 information regarding (1) whether slot machine par information is actually a trade secret and

1 (2) whether slot machine par information has any value. GSR must prove both of these facts in  
2 order to establish liability and damages in this case. Issuing an order precluding discovery on  
3 these topics is a de facto summary adjudication or issue sanction in GSR's favor. Accordingly,  
4 such extraordinary relief is contrary to justice and cannot be granted.

5 GSR refuses to provide appropriate answers to Peppermill's queries related to the value  
6 and secrecy of par information, even when interrogatories relevant to these issues were submitted  
7 to GSR. Terry Vavra, the GSR representative who verified the interrogatory responses, failed to  
8 perform any investigation or participate in drafting the responses at all. Instead, Mr. Vavra  
9 testified that Mr. Johnson, counsel for GSR, prepared the interrogatory responses without his  
10 involvement. In light of this fact, Mr. Johnson should have verified the response himself. Even  
11 though Mr. Johnson should have done so, it is understandable that he instructed Mr. Vavra to  
12 pretextually verify the interrogatory responses. Given the right to depose a person who signs  
13 interrogatory verifications, Mr. Johnson sought to avoid his own deposition. However, this type of  
14 bad-faith conduct should not be rewarded. Accordingly, the motion for protective order must be  
15 denied and Mr. Johnson's deposition must take place.

## 16 I. STATEMENT OF FACTS

17 According to the Plaintiff's allegations, Defendant RYAN TORS improperly utilized a key  
18 to access various slot machines at the Grand Sierra Resort to gain access to the hold percentage or  
19 par of those machines.<sup>1</sup> See Points and Authorities in Support of GSR's Ex Parte Motion for  
20 Protective Order on an Order Shortening Time and for Stay of Depositions Pending Hearing on the  
21 Matter ("Ex Parte Motion"), p. 3. This action followed in which GSR seeks recovery under  
22 Nevada's Uniform Trade Secrets Act. GSR alleges that, by accessing slot machine pars,  
23 Peppermill misappropriated GSR's trade secrets. As discussed in detail below, by putting its slot  
24 machine pars at issue, discovery as to the secrecy of slot machine pars and the value of slot  
25

26  
27 <sup>1</sup> Interestingly, GSR states in the Ex Parte Motion that "Plaintiff alleges and Defendants deny that at the time [that Mr.  
28 Tors accessed slot machines at the Grand Sierra Resort], Mr. Tors was acting within the scope of his employment and  
at the direction of his employer [Peppermill]." This statement is grossly inaccurate. Peppermill has consistently  
maintained that Mr. Tors was acting within the scope of his employment at all relevant times described in GSR's  
Complaint. This is precisely the basis for Peppermill and Mr. Tors' Joint Motion to Dismiss Plaintiff's Complaint  
Against Ryan Tors Without Prejudice.

1 machine pars are within the scope of discovery and relevant to material issues in this case. See  
2 discussion Part II.A., *infra*.

3 **A. Peppermill's Second Set of Interrogatories**

4 In pursuit of discovery regarding whether par data is secret information—and thus a trade  
5 secret—Peppermill propounded its Second Set of Interrogatories on September 30, 2014. See  
6 Affidavit of Scott L. Hernandez in Support of Opposition to Plaintiff's Ex Parte Motion  
7 (Hernandez Aff.), ¶ 2, Exh. 1. The interrogatories specifically requested information regarding  
8 GSR's use of shoppers and consultants in order to ascertain par settings, theoretical holds, player  
9 rewards, and gaming strategies of the Peppermill and other Nevada gaming establishments. See  
10 Hernandez Aff., ¶ 2, Exh. 1, Interrogatory Nos. 1-10. Further, the identities of GSR personnel and  
11 consultants who participated in shopping and analysis of such information was also sought. See  
12 Hernandez Aff., ¶ 2, Exh. 1, Interrogatory No. 11. Additionally, Peppermill requested information  
13 regarding GSR's shopping and analysis of Peppermill's gaming and marketing strategies, which  
14 would necessarily include par information. See Hernandez Aff., ¶ 2, Exh. 1, Interrogatory No. 12.  
15 Moreover, the interrogatories sought information regarding GSR's computation of unjust  
16 enrichment and reasonable royalty damages, including information related to the value, use, and  
17 development costs associated with GSR's par information. See Hernandez Aff., ¶ 2, Exh. 1,  
18 Interrogatory Nos. 13-23. In all, each of the 23 interrogatories propounded by Peppermill was  
19 calculated to discover information relevant to the adjudication of Peppermill's liability (secrecy of  
20 par information) and GSR's damages (value of par information).

21 GSR responded to Peppermill's Second Set of Interrogatories on November 3, 2014. See  
22 Ex Parte Motion, Exh. 1. These responses were verified by Terry Vavra, vice-president of GSR.  
23 See Ex Parte Motion, Exh. 1. Despite the obvious relevance of the information sought in  
24 Peppermill's Second Set of Interrogatories, GSR's untimely responses had little substance and  
25 were loaded with boilerplate objections. Specifically, GSR's asserted that all but three of the  
26 interrogatories requested "information which is irrelevant to the subject matter of the pending  
27 litigation and which is not reasonably calculated to lead to the discovery of admissible  
28 evidence . . . ." See Ex Parte Motion, Exh. 1. The remaining three interrogatories were answered

1 within minimal substantive information. See Hernandez Aff., ¶ 2, Exh. 1, Interrogatory Nos. 13-  
2 14, 18.

3 In light of GSR's persistent discovery abuses in this matter, Peppermill submitted a motion  
4 for terminating sanctions. Among the misconduct that Peppermill identified in its moving papers  
5 was GSR's failure and refusal to provide meaningful answers to the Second Set of  
6 Interrogatories."<sup>2</sup> Ultimately, GSR was sanctioned in the amount of \$26,565.00. See Hernandez  
7 Aff., ¶ 3, Exh. 2. However, the Court reserved its determination as to GSR's responses to the  
8 Second Set of Interrogatories, stating that Peppermill did not "identify which of GSR's objections  
9 it is challenging or to cite specific authority compelling disclosure." See Ex Parte Motion, Exh. 2,  
10 p. 5. Due to the lack of discussion regarding GSR's responses to the Second Set of Interrogatories  
11 in the Motion for Terminating Sanctions, the Court noted that "[a]bsent more, an order compelling  
12 discovery is not appropriate." See Ex Parte Motion, Exh. 2, p. 5. Based on this absence of  
13 analysis, Peppermill filed a Supplemental Motion to Compel Answers to Interrogatories on  
14 January 28, 2015, which contained briefing as to each of GSR's discovery responses.<sup>3</sup> See  
15 Hernandez Aff., ¶ 4, Exh. 3.

16 **B. The Deposition of Terry Vavra**

17 As a part of the discovery process, Peppermill noticed the deposition of Mr. Vavra, which  
18 was taken on December 3, 2014. During Mr. Vavra's deposition, counsel for Peppermill opened a  
19 line of inquiry regarding the Second Set of Interrogatories and Mr. Vavra's involvement with  
20 drafting those responses. See Hernandez Aff., ¶ 5, Exh. 4, p. 58:4-12. Mr. Vavra testified as to  
21 his involvement as follows:

22 Q When did you first see the interrogatories?

23 A Probably -- I signed this November 3rd. Maybe November  
24 2nd, the day before.

25 <sup>2</sup> Peppermill's Supplemental Motion for Terminating Sanctions or, in the Alternative, for an Order to Show Cause  
26 Why Plaintiff Not Be Held in Contempt and Subjected to Severe Sanctions ("Motion for Terminating Sanctions") was  
27 filed under seal, because the Motion for Terminating Sanctions contained Highly Confidential Information. As a  
28 consequence, Peppermill will not attach the Motion for Terminating Sanctions to this Opposition or the supporting  
affidavit.

<sup>3</sup> In its Supplemental Motion to Compel Answers to Interrogatories, Peppermill draws a nexus between each of the  
interrogatories in the Second Set and either the secrecy of par information and the value of par information. See  
Hernandez Aff., ¶ 4, Exh. 3. Since this nexus is relevant to the discussion in Part II.A.1., *infra*, Peppermill hereby  
incorporates the Supplemental Motion to Compel Answers to Interrogatories into this Opposition by reference.

1 Q Were the answers already typed in?  
2 A Yes.  
3 Q So you didn't do anything to research or investigate the  
4 questions?  
5 A Me personally? No. I read through the document.  
6 Q Okay. Before you even saw -- the answers were typed in the  
7 first time you saw these responses, correct?  
8 A Correct.  
9 Q Who answered them?  
10 A I'm not sure.  
11 Q You didn't?  
12 A No.  
13 Q Somebody wrote these answers, and it wasn't you?  
14 A That's correct.  
15 Q Has anybody told you who wrote these answers on these  
16 interrogatories? And if it's counsel, I don't get to ask that  
17 question. But has any other person ever told you who  
18 actually wrote these answers?  
19 A No.  
20 Q And prior to seeing them for the first time, which may have  
21 been a day before November 3rd -- November 2nd -- were  
22 you even aware of the fact that you would be signing these  
23 answers?  
24 A I was not.  
25 Q The first time you became aware of the fact that you were  
26 going to testify under oath in this case was one day before  
27 these interrogatories were signed by you?  
28 A Correct.  
29 Q In that period of time, I assume, sir, that you did nothing to  
30 validate or verify the accuracy of these answers.  
31 A No. I simply reviewed the questions and the responses and  
32 that's it.  
33 Q All right. And as far as you know there was no  
34 collaboration or communication among GSR employees  
35 with respect to the accuracy of these answers?  
36 A I had no conversations about that.

See Hernandez Aff., ¶ 5, Exh. 4, p. 58:16-60:11. When pressed further on his verification of  
GSR's responses to the Second Set of Interrogatories, Mr. Vavra stated that:

A Again, my verification is that I've read this and, to the best  
of my knowledge, this is true. And my lawyer, Stan  
Johnson, who wrote this, that's what he put there. So to the  
best of my knowledge, that is true.

1 Q These are really Mr. Johnson's answers?  
2 A On page 17, Mr. Johnson is the one who signed it.  
3 Q I know that.  
4 A Okay. So I would assume these are his answers and -- I  
don't know.

5 See Hernandez Aff., ¶ 5, Exh. 4, p. 105:24-106:9.

6 The line of questioning later turned to the specific ways in which Mr. Vavra confirmed that  
7 the responses to the Second Set of Interrogatories were truthful. Particularly, Mr. Vavra was asked  
8 about documents produced by Mr. Tors that were referenced in GSR's substantive responses:

9 Q When you signed these interrogatories under oath, did you  
even see the documents that you were referring to?  
10 A I did not.  
11 Q How do you know, then, that those documents are  
responsive to the interrogatory?  
12 A Again, my verification was that I read this document and, to  
13 the best of my knowledge, this is true.  
14 Q But the question, I hope you understand, is how can you say  
what documents are responsive to what interrogatories if  
15 you haven't read the documents that you identified?  
MR. WRAY: Objection. He didn't identify them; he verified  
16 them. You can answer.

BY MR. ROBISON:

17 Q Let me do it the right way, then. Why did you verify that  
these documents answer this interrogatory when you didn't  
18 even verify what the document said?  
19 A I don't know.  
20 Q You don't know whether this answer is true or false, do  
you?  
21 A Reading this response, I'm taking it by face value which  
says you have these -- Peppermill has these documents, and  
22 -- yeah, I did not review Tors' deposition or disclosure  
statements, so...

23 ...  
24 Q Do you have any information that that document would in  
any way demonstrate, prove, or establish that the  
25 Peppermill was unjustly enriched?  
26 A No.  
27 Q So why did you say that it did?  
A I didn't. I verified what my lawyers wrote.  
28 Q You verified what your lawyers wrote?  
A Yes. To the best of my knowledge.



1 Q Well, you don't have any knowledge about this, do you?

2 A Very little.

3 Q Well, do you have any knowledge about how the  
4 Peppermill was unjustly enriched by the keying activities  
5 that occurred on July 12th, 2013?

6 A No.

7 Q June 14th, 2012?

8 A No.

9 Q December 29th, 2011?

10 A No.

11 See Hernandez Aff., ¶ 5, Exh. 4, p. 137:1-138:3; 139:6-25. Mr. Vavra was given the opportunity  
12 to inspect the documents referenced in the verified responses to the Second Set of Interrogatories,  
13 which prompted additional questions:

14 Q. Now that you've seen, for the first time, Tors 87 through  
15 96, can you tell me how this caused Peppermill to be  
16 unjustly enriched or is relevant to that accusation?

17 A That's not my place to comment on.

18 Q Well, just so we're clear, I asked the question and you  
19 answered it.

20 A No, I didn't. My lawyers answered it.

21 Q Okay. This is not your answer, is it?

22 A No. It's not my answer.

23 Q So this verification process, you're simply verifying what  
24 your lawyers said?

25 A Yes. Again, my lawyers wrote the answers. I verified to the  
26 best of my knowledge -- read it, and I verified to the best of  
27 my knowledge that what they wrote was true.

28 See Hernandez Aff., ¶ 5, Exh. 4, p. 142:7-22.

It is clear from Mr. Vavra's deposition that he took no steps to confirm or research the  
factual basis for any of GSR's substantive responses. Indeed, Mr. Vavra was merely presented  
with substantive responses by his counsel, Stan Johnson. Mr. Vavra made no investigation or  
reasonable inquiry before he verified GSR's responses to the Second Set of Interrogatories.  
Because Mr. Johnson drafted the substantive responses and Mr. Vavra did not participate in the  
investigation as to the truthfulness of the responses, Peppermill was left no choice but to notice

1 Mr. Johnson's deposition in order to procure information sought in the Second Set of  
2 Interrogatories and confirm that GSR performed a reasonable investigation when responding to the  
3 interrogatories. Mr. Johnson's deposition was noticed for February 2, 2015, and the Ex Parte  
4 Motion followed.<sup>4</sup> See Ex Parte Motion, Exh. 4.

## 5 **II. LEGAL ARGUMENT**

6 As a preliminary matter, there is no question that Peppermill is entitled to discovery  
7 regarding whether par information is a trade secret or whether it has value. GSR must prove these  
8 facts to prevail on the issues of liability and damages in this case. There is no basis to bar  
9 Peppermill from seeking discovery on these issues.

10 Contrary to GSR's arguments, Peppermill is entitled to depose Mr. Johnson. Pursuant to  
11 Mr. Vavra's testimony, the substantive answers to the Second Set of Interrogatories were  
12 investigated, analyzed, and drafted without any involvement from Mr. Vavra. As such, Mr.  
13 Vavra's verification was a mere sham; he had no basis of knowledge upon which to verify the  
14 truth or falsity of GSR's responses. Accordingly, it was Mr. Johnson who should have verified the  
15 responses to the Second Set of Interrogatories. Moreover, because Mr. Johnson performed the  
16 factual investigation to answer the interrogatories, he must be deposed to understand the scope of  
17 the investigation and to answer questions regarding secrecy of par information and its value.

### 18 **A. Information Regarding the Secrecy and Value of Par Information Is Within** 19 **the Scope of Discovery.**

20 In order to recover under the Uniform Trade Secrets Act, GSR must demonstrate liability  
21 and damages. In order to establish liability, GSR "must prove by a preponderance of the evidence  
22 that (1) the information at issue was a trade secret; (2) the information was misappropriated; and  
23 (3) the information was used in defendants' business." *Allied Erecting & Dismantling Co. v.*  
24 *Genesis Equip. & Mfg., Inc.*, 649 F. Supp. 2d 702, 711-12 (N.D. Ohio 2009); see also *U.S.*  
25 *Gypsum Co. v. LaFarge N. Am., Inc.*, 508 F. Supp. 2d 601, 623 (N.D. Ill. 2007) ("To prevail on  
26

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27 <sup>4</sup> It must be noted that the Ex Parte Motion does not contain GSR's certification that a good-faith meet and confer  
28 effort took place. NRCP 37(a)(2)(B); WDCR 12(6). There is no such certification, because GSR never meaningfully  
attempted any such meet and confer effort. See *Hernandez Aff.*, ¶ 6, Exh. 5. Indeed, counsel for GSR emailed counsel  
for Peppermill to coordinate a meet and confer call *after* the Ex Parte Motion was filed. Accordingly, GSR's motion  
for protective order is improper, and its request for monetary sanctions must be denied.

1 any of its trade secret claims, USG must prove by a preponderance of the evidence that (1) the  
2 information at issue was a trade secret; (2) the information was misappropriated; and (3) the  
3 information was used in defendants' business."'). Accordingly, in order to prove a prima facie case  
4 of trade secret misappropriation, GSR must establish that the slot machine pars were, in fact,  
5 secret.

6 In order to establish damages under the Uniform Trade Secret Act, GSR must utility three  
7 possible measures of damages: (1) "loss caused by misappropriation," (2) "unjust enrichment  
8 caused by misappropriation," and (3) "a reasonable royalty for a misappropriator's unauthorized  
9 disclosure or use of a trade secret." See NRS 600A.050. To date, GSR has not alleged any actual  
10 loss due to Mr. Tors accessing the slot machine pars. However, the allegations suggest that GSR  
11 is pursuing damages under either an unjust enrichment or reasonable royalty theory. Under both of  
12 these damage theories, the value of the par information will determine the degree to which  
13 Peppermill was unjustly enriched or what value Peppermill would have paid GSR for a  
14 hypothetical reasonable royalty. See *Sperry Rand Corp. v. A-T-O, Inc.*, 447 F.2d 1387, 1393 (4th  
15 Cir. 1971) (measuring unjust enrichment to the increase in profit equal to development costs avoid  
16 by the misappropriating party); *Secure Energy, Inc. v. Coal Synthetics, LLC*, 708 F. Supp.2d 923,  
17 931 (using the value to the plaintiff and development costs, as well as a number of other factors, to  
18 establish a reasonable royalty).

19 In sum, GSR must establish, among other things, that slot machine pars are a trade secret  
20 and that they have value to GSR. Accordingly, both of these issues are not only within the broad  
21 scope of discovery; they are relevant for purposes of trial on the merits. There is no reasonable  
22 dispute that discovery into the secrecy of slot machine pars and the value of slot machine pars is  
23 necessary in this case.

24  
25 **1. GSR Concedes that Information Regarding the Secrecy of Par  
Information and Its Value Is Relevant.**

26 Curiously, GSR argues in the Ex Parte Motion that whether par information is a trade  
27 secret and whether it has value is not relevant to this action. As discussed above, this is simply not  
28

1 the case. However, GSR's position is not merely inconsistent with the law; it is inconsistent with  
2 GSR's prior positions in this case.

3 In its responses to the Second Set of Interrogatories, GSR asserts that it "is asking the  
4 Court to set a reasonable royalty based on the number of uses, *and the value obtained by*  
5 *Peppermill through an economic advantage or in savings based on the cost of acquiring the*  
6 *information through proper and legal means."* See Ex Parte Motion, Exh. 1, p. 11 (emphasis  
7 added.) By taking this position, GSR admits that acquiring par information "through proper and  
8 legal means" (i.e., shopping) and value measured by "economic advantage or in savings" (i.e.,  
9 unjust enrichment or development costs) are relevant in this case. GSR will be asking the Court to  
10 make specific findings on these particular issues. Therefore, these topics are relevant to the above-  
11 entitled action.

12 Not only has GSR expressly admitted the relevance of its own par shopping activities and  
13 the value of par information, it has also implicitly admitted that this information is within the  
14 scope of discovery by providing discovery responses on these very issues. For example, five GSR  
15 representatives have testified as to GSR's shopping activities. See Hernandez Aff., ¶ 4, Exh. 3,  
16 p. 2. Moreover, GSR has retained of consultants to shop, investigate, and analyze the slot  
17 operations at the Peppermill. See Hernandez Aff., ¶ 4, Exh. 3, p. 2. It is improper for GSR to  
18 provide information regarding the value and secrecy of par information and to now state that this  
19 information is outside the scope of discovery. Accordingly, any of GSR's arguments to the  
20 contrary should be disregarded.

21 **2. GSR Unreasonably Overreads the Court's Order for Sanctions as Issue**  
22 **Sanctions or Summary Adjudication Against Peppermill on the Issues**  
**of Par Secrecy and Value.**

23 GSR also reads too much into to the Court's comment that, absent more, an order  
24 compelling answers to the Second Set of Interrogatories is inappropriate. See Ex Parte Motion,  
25 Exh. 2, p. 5. GSR states in the Ex Parte Motion that Peppermill should be barred "from deposing  
26 Counsel for GSR *or making any further inquiry into the subjects covered by the upheld objections*  
27 *to the responses to the Second Set of Interrogatories."* This argument fails for several reasons.

1 First, there is nothing in the Court's November 26, 2014 order that upholds GSR's  
2 objections to the Second Set of Interrogatories. The Court expressly withheld a decision on GSR's  
3 objections in absence of analysis from Peppermill. This is what prompted Peppermill to file its  
4 Supplemental Motion to Compel Answers to Interrogatories.

5 Second, GSR is attempting to turn the Court's November 26 order into an issue sanction or  
6 summary adjudication on the secrecy and value of par information. By arguing that Peppermill  
7 cannot "make further inquiry" in these issues, GSR is essentially asking that Peppermill be  
8 precluded from litigating two elements to GSR's claim: damages and whether the par information  
9 is a trade secret. This is improper. Indeed, summary adjudication is only improper if issued in  
10 compliance with NRCPP 56. No such motion, let alone briefing and hearing, took place here.  
11 Further, Peppermill is not in violation of any discovery order that would warrant issue sanction  
12 under NRCPP 37. Indeed, the sanctions order against GSR cannot be considered as an order against  
13 Peppermill. There is simply no conceivable basis for Peppermill to be barred from making  
14 inquiries into the measure of GSR's damage and whether GSR's par information is a trade secret.

15 In summary, information regarding whether par information is a trade secret and  
16 information regarding the value of par information is relevant to the above-entitled action. Both of  
17 these issues relate to elements of the trade secret misappropriation claim that GSR must prove to  
18 prevail; they are crucial to preparation of this case for trial. Because there is a direct and close  
19 nexus between these issues and the Second Set of Interrogatories, the interrogatories are  
20 necessarily within the scope of discovery. Additionally, the Court must not issue an order barring  
21 discovery as to par information, and the instant motion must be denied.

22  
23 **B. The Details of GSR's Investigation Pursuant to Peppermill's Second Set of  
Interrogatories Are Within the Scope of Discovery.**

24 Under NRCPP 33, answers to interrogatories must be verified and must be signed by the  
25 person answering the interrogatory. See NRCPP 33(b) ("Each interrogatory shall be answered  
26 separately and fully in writing under oath [and] answers are to be signed by the person making  
27 them . . ."); see also *Overton v. City of Harvey*, 29 F.Supp.2d 894, 901 (N.D.Ill.1998) (striking

1 unverified answers to interrogatories as a summary judgment exhibit).<sup>5</sup> When interrogatories are  
2 propounded to a corporate party, the corporate agent need not have personal knowledge of the  
3 information sought in order to answer on behalf of the corporation; however, he must make a  
4 reasonable inquiry with other individuals within the organization. See *International Ass'n. of*  
5 *Machinists, Dist. 169 v. Amana Refrig., Inc.*, 90 F.R.D. 1, 2 (E.D. Tenn. 1978); see also *A. Farber*  
6 *& Partners, Inc. v. Garber*, 234 F.R.D. 186, 189 (C.D. Cal. 2006) (“[A] party has an obligation to  
7 conduct a reasonable inquiry into the factual basis of his responses to discovery . . .”), *Hansel v.*  
8 *Shell Oil Corp.*, 169 F.R.D. 303, 305 (E.D. Pa. 1996) (A party must “provide true, explicit,  
9 responsive, complete, and candid answers to interrogatories [and] [i]f a party is unable to supply  
10 the requested information, the party may not simply refuse to answer, but must state under oath  
11 that he is unable to provide the information and ‘set forth the efforts he used to obtain the  
12 information.’”).

13 When answering interrogatories, a corporate party may choose any internal process to  
14 conduct a reasonable inquiry. See *Shepherd v. American Broadcasting Companies, Inc.*, 62 F.3d  
15 1469, 1482 (D.C. Cir. 1995). The party propounding interrogatories may depose the person who  
16 verified the responses to describe the scope of the investigation in order to identify any gaps in the  
17 investigation. See, e.g., *Thomas & Betts Corp.*, No. 93 C 4017, 1999 WL 1129607, at \*1 (N.D. Ill.  
18 Dec. 3, 1999) (noting that verifying interrogatory responses is “an invitation to be deposed”);  
19 *Oklahoma ex rel. Edmondson v. Tyson Foods, Inc.*, No. 05-CV-329-GKF-SAJ, 2008 WL 140527,  
20 at \*2 (N.D. Okla. Jan. 11, 2008) (stating that a plaintiff is obligated to comply with a deposition  
21 notice regarding verification of discovery responses); *State Farm Mut. Auto. Ins. Co. v. New*  
22 *Horizont, Inc.*, 250 F.R.D. 203, 209 (E.D. Pa. 2008) (excerpting deposition questions posed to a  
23 verifying corporate agent). Because identifying such gaps will require a corporate party to conduct  
24 a more thorough information, deposing the person who verified the interrogatories is necessarily  
25 calculated to lead to the discovery of admissible evidence. Therefore, the deposition of anyone  
26 who verifies interrogatories is within the scope of discovery.

27  
28 <sup>5</sup> When interpreting the Nevada Rules of Civil Procedure, Nevada courts look to federal court interpretation of the  
corresponding Federal Rules of Civil Procedure. *Moseley v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark*, 124  
Nev. 654, 662-63, 188 P.3d 1136, 1142 (2008).

1           **C.     Peppermill Is Entitled to Depose Mr. Johnson.**

2           While disfavored, there is no absolute bar to deposing opposing counsel. See *Club Vista*  
3 *Fin. Servs. v. Dist. Ct.*, 128 Nev. Adv. Op. 21, 276 P.3d 246, 250 (2012). As GSR correctly states  
4 in the Ex Parte Motion, in order to depose opposing counsel, the party that issues the deposition  
5 notice must show that “(1) no other means exist to obtain the information than to depose opposing  
6 counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is  
7 crucial to the preparation of the case.” *Id* (citing *Shelton v. American Motors Corp.*, 805 F.2d  
8 1323, 1327 (8th Cir.1986)). However, even under this relatively high bar, it is appropriate for the  
9 Court to order the deposition of Mr. Johnson in this case.

10           **1.     Mr. Johnson Should Have Verified GSR’s Responses.**

11           NRCP 33(a) expressly provides that interrogatories directed to a corporate party must be  
12 answered by “any officer or agent.” Because attorneys are agents of a corporation, attorneys may  
13 verify interrogatory responses. See *Fernandes v. United Fruit Co.*, 50 F.R.D. 82, 85-86 (D. Md.  
14 1970) (“An attorney for a corporation may sign and swear to answers to interrogatories addressed  
15 to it if he makes oath that to the best of his knowledge, information and belief the answers are true  
16 and contain all information which is available to the corporation on the interrogatories which are  
17 being answered.”); *Jones v. Goldstein*, 41 F.R.D. 271, 274 (D. Md. 1966) (“The answers to the  
18 interrogatories addressed to the corporate defendant herein were properly signed by its  
19 attorneys.”); *Segarra v. Waterman S. S. Corp.*, 41 F.R.D. 245, 248 (D.P.R. 1966) (“[I]t has been  
20 held that an attorney is the proper person to answer interrogatories on behalf of a corporation and  
21 that it is his duty to furnish the sum total of the corporate information.”). Accordingly, Mr.  
22 Johnson *could* have verified GSR’s responses to the Second Set of Interrogatories.

23           Furthermore, Mr. Johnson *should* have verified the interrogatories. As noted above, the  
24 person who verifies the interrogatory responses must conduct a reasonable inquiry. See discussion  
25 Part II.B., *supra*. Here, Mr. Vavra did not conduct any reasonable inquiry whatsoever. See  
26 discussion Part I.B., *supra*. Instead, Mr. Vavra stated that Mr. Johnson drafted the interrogatories,  
27 and it appears that Mr. Johnson conducted the investigation prompted by the interrogatories. See  
28 Hernandez Aff., ¶ 5, Exh. 4, p. 58:16-60:11; 142:7-22. Based on this testimony, one must

1 conclude that Mr. Johnson was responsible for the substantive responses to the Second Set of  
2 Interrogatories. Therefore, Mr. Johnson should have verified them.

3 **2. All of the Requirements to Depose Mr. Johnson Are Satisfied.**

4 As noted above, opposing counsel can be deposed when “(1) no other means exist to obtain  
5 the information than to depose opposing counsel; (2) the information sought is relevant and  
6 nonprivileged; and (3) the information is crucial to the preparation of the case.” *Club Vista Fin.*  
7 *Servs. v. Dist. Ct.*, 276 P.3d 246 at 250. Here, each of the requirements is satisfied.

8 a. No Other Means Exist to Obtain Information.

9 As discussed above, Peppermill has a right to discover facts related to the investigation  
10 made by GSR when answering the Second Set of Interrogatories. See discussion Part II.B., *supra*.  
11 According to Mr. Vavra, he made no inquiry or investigation prior to verifying the discovery  
12 responses. See discussion Part I.B., *supra*. All he did was sign the interrogatory responses as they  
13 were drafted. See Hernandez Aff., ¶ 5, Exh. 4, p. 142:7-22. He identified no other person but Mr.  
14 Johnson who had a hand in drafting the responses. Peppermill can only conclude that it was Mr.  
15 Johnson who performed the inquiry. He is the only percipient witness that GSR has disclosed who  
16 has knowledge regarding the steps taken to investigate the facts sought in the Second Set of  
17 Interrogatories. There is no possible way for Peppermill to gain this information without deposing  
18 Mr. Johnson. Therefore, the first requirement is satisfied.

19 b. The Information Sought Is Relevant and Nonprivileged.

20 As discussed in both this opposition and Peppermill’s Supplemental Motion to Compel  
21 Answers to Interrogatories, the Second Set of Interrogatories sought information related to whether  
22 par information is a trade secret and the value of par information. See discussion Part I.A., *supra*.  
23 This information is not only within the scope of discovery, but it is directly relevant to issues that  
24 must be resolved at trial. Since there is a close nexus between the interrogatories and these  
25 fundamental issues, the investigation regarding the substantive responses to the Second Set of  
26 Interrogatories is also relevant in this action.

27 As for the issue of privilege, the party propounding interrogatories is entitled to depose the  
28 person who verified the interrogatory responses. See discussion Part II.B., *supra*. Further, an



1 attorney *can* but is not required to verify interrogatory responses. See discussion Part II.C.1.,  
2 *supra*. Overlaying these rules leads to one conclusion, a corporate investigation to respond to  
3 interrogatories is not privileged, whether an attorney verifies the interrogatories or not. Therefore,  
4 the deposition of Mr. Johnson would relate to information that is both relevant and nonprivileged.  
5 Accordingly, the second requirement is satisfied.

6 c. The Information Is Crucial to the Preparation of the Case.

7 As noted above, the Second Set of Interrogatories sought information related to the secrecy  
8 and value of par information, which are both fundamental and crucial issues in this case. The  
9 investigation to prepare GSR's interrogatory responses is also crucial, because any gaps in the  
10 investigation must be identified in order to ensure that all discoverable facts on these two crucial  
11 issues have been discovered. Failure to do so unduly prejudices Peppermill and will create an  
12 unfair disadvantage at trial. Thus, deposing Mr. Johnson is crucial to the preparation of this case.  
13 Therefore, all three requirements to depose Mr. Johnson have been met. The Court should deny  
14 GSR's motion for protective order and issue an order for Mr. Johnson to submit to his deposition.

15 **III. CONCLUSION**

16 For the reasons stated above, GSR's motion for protective order should be denied and Mr.  
17 Johnson's deposition must commence. Further, no order barring discovery as to the value and  
18 secrecy of par information should issue.

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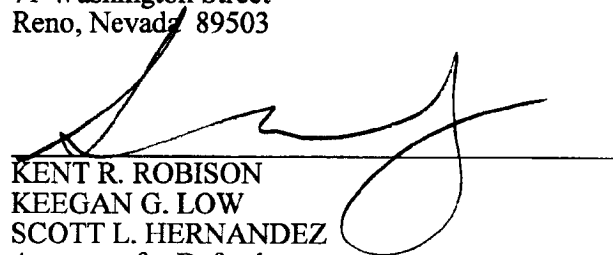
28 ///

**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 4<sup>th</sup> day of February, 2015.

ROBISON, BELAUSTEGUI, SHARP & LOW  
A Professional Corporation  
71 Washington Street  
Reno, Nevada 89503



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**AFFIDAVIT OF SCOTT L. HERNANDEZ IN SUPPORT OF  
DEFENDANT PEPPERMILL CASINOS, INC.'S OPPOSITION TO  
PLAINTIFF'S EX PARTE MOTION FOR PROTECTIVE  
ORDER ON AN ORDER SHORTENING TIME AND FOR STAY OF  
DEPOSITIONS PENDING HEARING ON THE MATTER**

STATE OF NEVADA            )  
                                      ) ss.  
COUNTY OF WASHOE        )

Scott L. Hernandez, being first duly sworn on oath, deposes and says under penalty of perjury that the following assertions are true and correct.

1. I am co-counsel for Defendant Peppermill Casinos, Inc. d/b/a Peppermill Casino ("Peppermill") in this action.

2. Attached as **Exhibit 1** is a true and accurate copy of Peppermill's Second Set of Interrogatories.

3. Attached as **Exhibit 2** is a true and accurate copy of Notice of Entry of Order filed on January 21, 2015.

4. Attached as **Exhibit 3** is a true and accurate copy of Peppermill's Supplemental Motion to Compel Answers to Interrogatories. (without exhibits).

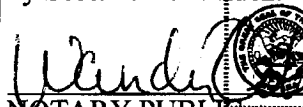
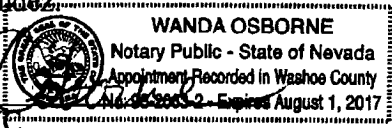
5. Attached as **Exhibit 4** is a true and accurate copy of an excerpt from the Transcript of the Deposition of Terry Vavra, taken on December 3, 2015.

6. Attached as **Exhibit 5** is a true and accurate copy of an email chain between counsel with beginning January 27, 2015 and ending January 28, 2015.

DATED: This 4th day of February, 2015.

  
SCOTT L. HERNANDEZ

Subscribed and Sworn to Before  
me this 4th day of February, 2015,  
by Scott L. Hernandez,

  
  
NOTARY PUBLIC

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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 **OPPOSITION TO**  
4 **PLAINTIFF'S EX PARTE MOTION FOR PROTECTIVE ORDER ON AN ORDER**  
**SHORTENING TIME AND FOR STAY OF DEPOSITIONS PENDING HEARING ON**  
**THE MATTER** 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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17 *Attorneys for Defendant Ryan Tors*

18 ☒ by electronic email addressed to the above.  
19 — by personal delivery/hand delivery addressed to:  
20 — by facsimile (fax) addressed to:  
21 — by Federal Express/UPS or other overnight delivery addressed to:

22 DATED: This 4th day of February, 2015.

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24 V. JAYNE FERRETTO  
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**Exhibit List**

<u>Exhibit</u>	<u>Description</u>	<u>Pages</u>
1	Peppermill's Second Set of Interrogatories	14
2	Notice of Entry of Order (Jan. 21, 2014)	7
3	Peppermill's Supplemental Motion to Compel Answers to Interrogatories (without exhibits)	13
4	Excerpts from Transcript of the Deposition of Terry Vavra (Dec. 3, 2014)	14
5	Email Chain Dated January 28, 2015	2