

1 Q With respect to your answer on line 16, I
2 asked you a question: "What emails have you asked to
3 see?"

4 You said: "I think at the outset any
5 information that would have talked about what Mr. Tors
6 did with the information, what information Mr. Tors
7 provided, to whom he provided that information, how
8 they utilized that, anything that went on, anything
9 that was used from a casino management standpoint, how
10 they were interpreting the use of the pars or
11 considering the use of the pars throughout that."

12 Now, with respect to that answer, between
13 then and now have you found any information about any
14 discussions Mr. Tors had about those particular pars
15 set forth in Exhibit 8 and 7?

16 A No, sir.

17 Q Have you found any information that would
18 relate to what information other than the pars and the
19 information on the exhibits themselves Mr. Tors
20 provided to Peppermill representatives?

21 A No, sir.

22 Q Have you since read Mr. Tors' deposition
23 since last time we talked?

24 A No, sir.

25 Q Have you seen any information that he

1 provided par information from the GSR to any persons
2 other than those reflected in Exhibit 7 and 8?

3 A No, sir.

4 Q Have you found any information, quote, how
5 they utilized that information?

6 A No, sir.

7 Q Have you found any information about
8 anything that went on with respect to those pars?

9 A Not with those -- respect to those specific
10 pars, no, sir.

11 Q And you agree -- or do you know that the
12 GSR has alleged in this case that the pars on
13 Exhibits 7 and 8 are the secrets that were
14 misappropriated? You're aware of that allegation?

15 A I am, sir. Yes, sir.

16 Q Okay. Thank you.

17 A You're welcome.

18 Q And then you say, "Anything that was used
19 from a casino management standpoint."

20 Have you found any information that the par
21 information on Exhibits 7 and 8 was used respective to
22 Peppermill's casino management?

23 A Not for those specific machines.

24 Q Have you found any par information from the
25 GSR that was used from a casino management standpoint?

1 A Would you mind restating that question for
2 me, sir?

3 Q Sure.

4 Have you found any information that the
5 Peppermill has received from the GSR that affected its
6 casino management?

7 A Not with regard to any specific machines,
8 no.

9 Q With regard to anything --

10 A Sure --

11 Q -- at the GSR.

12 You said not specific machines. I want to
13 broaden it to anything else.

14 A Sure. Yes. I believe that they were --

15 Q Coin-in from those machines. Was that
16 used?

17 A No, sir.

18 Q Was the accounting data in those machines
19 used?

20 A Not that I'm aware of.

21 Q Was the play history depicted on the
22 diagnostic screen used?

23 A Not that I'm aware of.

24 Q So the information from the GSR that was
25 used by Peppermill casino management, we know it's not

1 Q And you've been given the opportunity to
2 determine whether or not the theo, theoretical win,
3 changed. Right?

4 A Yes, sir.

5 Q And your finding with respect to whether
6 theoretical win changed as a result of the information
7 on Exhibit 7 and 8 is what?

8 A That -- again, I don't have an opinion --
9 and I want to be clear about this -- I don't have an
10 opinion relative to the specific changes as a result
11 of 7 and 8 but, rather, the correlation between all of
12 Mr. Tors' activity and the changes in the pars.

13 Because there was no correlation between
14 those two, the idea of trying to correlate it to some
15 higher order of variable -- like you said, the floor
16 par -- would be irrelevant.

17 Q What question are you answering, sir?

18 A The one that you asked.

19 Q You're just rambling.

20 A I don't think so.

21 Q Let's get back to my question.

22 A Okay.

23 Q Did the theoretical win calculation at the
24 Peppermill change in any way because of information on
25 7 and 8?

1 A Sure.

2 Q Theo includes the free play?

3 A Again, I -- I'm not trying to go through a
4 specific calculation relative to get that. My
5 understanding is that there's a certain amount that is
6 reinvested in the player, both through free play and
7 cash and comps and all of that, and that is netted off
8 the total.

9 Q Okay. So with regard to Exhibits 7 and 8,
10 if you're operating your casino, how do you use that
11 information?

12 A I would use it with the additional
13 information that was collected from Mr. Tors --

14 Q I didn't ask you that. I said how do you
15 use that information. I'm sure you know that I was
16 referring to the information in Exhibits 7 and 8.

17 A And I am responding to that.

18 I would utilize the information in 7 and 8
19 in combination with the other information that
20 Mr. Tors obtained in order to evaluate and better
21 manage my casino.

22 Q Okay. What other information?

23 A Mr. Tors systematically went to various
24 casinos, beginning in 2011, collecting information.

25 Q How many?

1 A I don't recall the exact total, and I don't
2 know that we know the exact number.

3 Q When did he go?

4 A Various times.

5 Q When?

6 A Between 2011 and when he got caught.

7 Q How many times did he go and shop with this
8 key?

9 A I don't know that I know the exact number,
10 nor do I know that the testimony from Mr. Tors is
11 complete in that regard.

12 Q Why didn't you come look at the GCB
13 correspondence so you could know?

14 A You're talking about the 80,000 emails?

15 Q Yeah.

16 A Number one, I wasn't aware. But even if I
17 was, the idea of trying to go through 80,000 emails
18 one by one would've been a ridiculous exercise.

19 Q We produced 800,000 pages of documents when
20 you asked for slot performance records.

21 A Yes, sir. And I would have hoped they
22 would have been digital so we could work our way
23 through them.

24 Q They're not. The marketing stuff was
25 digital.

1 A That is the opposite of what I said.

2 Q Do you want me to go through the list
3 again?

4 A If you think that's appropriate.

5 Q Did they use it in the marketing?

6 A What is "it"?

7 Q The pars in 7 and 8.

8 A Not that I can tell, those specific
9 machines.

10 Q Okay. Casino operations?

11 A Same answer.

12 Q Slot strategies?

13 A Same answer.

14 Q Slot operations?

15 A Same answer.

16 Q So I don't understand how you would then
17 use it. You have no information that Peppermill used
18 it in those categories.

19 In those specific categories that I just
20 mentioned, how would you use it?

21 A I think it would be the totality of the
22 information that was available. Are they assuming
23 that I have all of the information that is -- that is
24 possessed by Peppermill? Is that the question that
25 you're asking me?

1 A All of the information that the Peppermill
2 had at the point it was making its casino management
3 decisions.

4 Q Mr. Aguero, as the expert in this case, I
5 need you to tell me what information the Peppermill
6 had. And please be specific. Please.

7 A The Peppermill has all kinds of
8 information. They know how many people are coming in
9 the door, they know their mix of units, they know
10 their banking strategy, they know what their casino --
11 their units are set at, they know what competitors
12 like about their property or what they like about a
13 different property.

14 The totality of information is extensive
15 relative to what type of information these folks have,
16 whether that's how players are playing the games or
17 how competitors are competing or advertising programs.
18 They have a remarkable amount of information.

19 Q What one of those components that you just
20 alluded to were changed by the Peppermill as a result
21 of Exhibits 7 and 8?

22 A I can't tell you which one.

23 Q Okay. All right. All right.

24 So with respect to this quote, what do you
25 disagree with?

1 A Agreed. And I thought that's what you were
2 asking me. And I continue to agree with that
3 statement.

4 Q And you found no evidence that the totality
5 of that information Tors gained was in any way used?

6 A In terms of the pars specifically. Again,
7 I want to make sure that I'm answering your question.

8 The Gaming Control Board essentially
9 said --

10 Q I'll ask the question. I'll ask the
11 question.

12 The Gaming Control Board determined after
13 its six-month investigation that there was no evidence
14 that the Peppermill utilized the par information
15 obtained by Tors to in any way change its gross
16 theoretical settings, pars. Do you agree with that?

17 A I do not disagree with it, yes, sir.

18 Q Do you agree with it?

19 A Yes, sir, I do.

20 Q Okay. Breaking it down, you're aware, are
21 you not, that the Gaming Control Board did analyze all
22 80,000 emails that we've offered for you to look at?

23 A I did not know that, no, sir.

24 Q You didn't know that those were the -- that
25 we produced 80,000 emails to the Gaming Control Board?

1 A I knew that you had produced emails to the
2 Gaming Control Board. I didn't know that there were
3 80,000 and it was the exact same set that are at
4 dispute there.

5 MR. COHEN: And I'm going to object to the
6 characterization of that. You keep making reference
7 to the 80,000 emails that you --

8 MR. ROBISON: Made available.

9 MR. COHEN: -- made -- well, no, sir. You
10 keep saying that you made available the 80,000 emails
11 that you produced to the Gaming Control Board.

12 MR. ROBISON: No. I misspoke if I said
13 that.

14 MR. COHEN: You did say that.

15 BY MR. ROBISON:

16 Q Gaming asked us for email traffic among,
17 between, six individuals. We tried to replicate that
18 and make it available for your inspection. Our
19 replication is of all of the email traffic between and
20 among Bill Paganetti, Billy Paganetti, Dave McHugh,
21 Ryan Tors, John Hanson and Rob Erwin.

22 Do you have any reason to believe that
23 Gaming, after looking at all those emails, found any
24 evidence of use?

25 A No, sir.

1 Q Do you have any reason to question the
2 thoroughness of their investigation?

3 A I do not.

4 Q You are aware, are you not, that they also
5 analyzed the email traffic that was addressed by
6 Mr. Halabuk in his deposition, quoted by you?

7 A Yes, sir.

8 Q Did you see the fact that Halabuk was
9 involved in an email chain with regard to Rail City?

10 A Yes, sir, I recall that.

11 Q Well, did you read the emails?

12 A I did not read the emails specifically. I
13 read the deposition.

14 Q You're aware, are you not, that the Gaming
15 Control Board has this information?

16 A I'm sorry. What is "this information"?

17 Q The email traffic with regard to Rail City,
18 the keying that occurred at Rail City in 2010.

19 MR. COHEN: Objection. Calls for
20 speculation.

21 If you know the answer, go ahead and
22 answer.

23 THE WITNESS: Again, I --

24 BY MR. ROBISON:

25 Q If you know the answer, it's not

1 give an independent value to now has an \$8 million
2 value?

3 A I am.

4 Q Well, why did you tell me you couldn't
5 value it before?

6 A I don't think that I did. I said that you
7 have to take it in its context.

8 Q I see. And I misspoke. I apologize.

9 A That's okay.

10 Q You're saying that the individual piece of
11 pizza, Exhibits 7 and 8, if removed from the
12 constellation of other information, its value is not
13 ascertainable?

14 A That is correct.

15 Q Okay. There you go.

16 So because the other pars from the other
17 casinos are an indispensable part of this
18 constellation of information, without the other pars
19 does the data in Exhibit 7 and 8 have value?

20 A Yes, sir.

21 Q How much?

22 A I don't know. I don't think that's readily
23 ascertainable, but less.

24 Q And given the value of 8 million as these
25 pars fit into the pie, the constellation of

1 numbered version of your report.

2 A Yes, sir.

3 Q Okay. The Nevada Gaming Control Board
4 conducted an exhaustive investigation, and it
5 determined, quote, "The par information obtained by
6 Mr. Tors was never used by the Peppermill to gain a
7 competitive advantage over other casinos."

8 Do you agree with the Gaming Control
9 Board's statement --

10 A I do.

11 Q -- to that effect?

12 A I do.

13 Q Okay. Then the next sentence of
14 Mr. Friedman's report is "I find no evidence to
15 suggest otherwise."

16 So you and he agree?

17 A No, sir. I think that if you look beyond
18 other -- evidence beyond just utilizing the pars to
19 convert something --

20 Q You just told me, sir, that you agree with
21 the quote that par information obtained by Mr. Tors
22 was never used by the Peppermill to gain a competitive
23 advantage other over casinos. All Mr. Friedman did
24 was agree with you.

25 A Okay.

1 Gaming Control Board could not find, and they looked
2 at everything and you didn't look hardly at anything?

3 A Again, I take a look at the totality of the
4 information that I've been provided, and it seems
5 clear that they were utilizing this information,
6 beside the fact that they did it over such an
7 extensive period of time.

8 Q Well, "extensive period of time" is twice.
9 Right?

10 A No, sir.

11 Q Do you have any evidence that Tors keyed
12 the GSR any other times as depicted by Exhibits 7 and
13 8?

14 A Forgive me. I thought I was answering a
15 different question. It was only twice to the GSR.

16 Q Okay. We're on the same page now.

17 So, again, is there any specific thing that
18 was done or said by the Peppermill upon which you
19 relied to suggest that it was used?

20 A May I clarify? It is the information from
21 the GSR.

22 Q Yes, sir. 7 and 8.

23 A No, sir.

24 Q Is there any trend, any financial record,
25 any document that has been exchanged in discovery that

1 substantiates -- that shows use?

2 A Not of the specific pars identified in
3 Exhibits 7 and 8.

4 Q You've seen all the revenue reports from
5 the Peppermill?

6 A I have.

7 Q Those revenue reports do not show evidence
8 of use, do they?

9 A There's no correlation.

10 Q Well, they don't show evidence of use, do
11 they?

12 A Again, there's no correlation. The reason
13 that I say that -- the brief answer to your question
14 is no, they don't show use. And the reason for that
15 is that they may have been changing pars and managing
16 their casino for any numbers reasons. It was one
17 portion of it. So there's no correlation.

18 It also doesn't show that they didn't use
19 it. But there's no correlation.

20 Q Well, you don't have proof that they did
21 with respect to the financial records.

22 A Absolutely true.

23 Q Okay.

24 A It's absolutely true that I do not have
25 proof that they used it in the financial records.

1 Q Then you've got these par sheets, par
2 schedules, that you've created.

3 A Are you referring to the change in pars?

4 Q The 11-by-17 --

5 A Yes, sir.

6 Q You created those?

7 A I did.

8 Q Okay. And you created those off of our
9 penny reports which show all the par changes on a
10 weekly basis?

11 A Yes, sir, that's correct.

12 Q And you went through every week of every
13 year from 2010 to 2014, and based upon your analysis
14 of the par changes at the Peppermill reflected in the
15 penny reports, those reports don't show use, do they?

16 A There's no correlation between them.

17 Q Well, I think we're saying the same thing,
18 but -- you don't find a correlation that proves use?

19 A That is correct.

20 Q Thank you.

21 Same with the marketing stuff?

22 A Right. Once there was no correlation, I
23 didn't spend the time to try and analyze whether
24 marketing had made some change because there was no
25 correlation.

1 Q Okay. And can you specify what operational
2 decision, act, or conduct reflects use?

3 A I cannot.

4 Q Okay. So you're saying they had used it?

5 A I'm -- again, when we're talking about
6 "it," I just want to make sure that --

7 Q 7 and 8.

8 A 7 and 8. I'm saying that they obtained the
9 information. They were systematically obtaining that
10 information for multiple properties over an extended
11 period of time. There's evidence that they were
12 utilizing that for some of their casino management
13 operations --

14 Q No, you went back to "it."

15 A Oh, I'm sorry. That they were using 7 and
16 8 -- excuse me -- forgive me -- that they were using
17 all of the information that was coming from Mr. Tors,
18 reliable or otherwise, to try and make some of that
19 information --

20 Q The only use, as you characterize it, is
21 Rail City?

22 A That is correct.

23 Q No other evidence of use regarding GSR's
24 pars from a document, testimony, operational reports,
25 anything like that?

1 A I want to make sure I'm answering your
2 question correctly.

3 You said no other evidence of use for GSR's
4 pars. Rail City was not GSR's pars, and therefore
5 neither one of them were GSR's pars specifically.

6 Q Well, okay. Now --

7 A I think I'm agreeing with you. I just want
8 to make sure I'm not confusing Rail City and GSR.

9 Q I think we agree, but let's clean it up a
10 little bit. Let's put Rail City aside for the moment.
11 Okay?

12 Can you show the jury a document -- any
13 document exchanged in discovery or testimony that was
14 given in discovery that shows that the data in 7 and 8
15 were actually used?

16 A No, sir.

17 MR. COHEN: Objection. Kent, that's the
18 last time I'm going to let him answer. You've asked
19 it every which way you can.

20 MR. ROBISON: Okay.

21 BY MR. ROBISON:

22 Q So, Mr. Aguero, what's confusing me in this
23 case -- and I must be really stupid, but if there's no
24 evidence of use, how can you tell the jury, then, that
25 it was used? And "it," again, is 7 and 8.

1 A No, sir.

2 Q Do you have any information to show us or
3 the Court that the information that Tors got the night
4 he was detained on July 12, 2013, found its way to the
5 Peppermill?

6 A No, sir.

7 Q That it was used by the Peppermill?

8 A No, sir.

9 Q Okay. We're done. Thank you very much.

10 A Thank you, sir.

11 (Deposition concluded at 4:11 p.m.)

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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 Monday, October 19, 2015, at the offices of Cohen Johnson, 255 E. Warm Springs Road, Suite 100, Las Vegas, Nevada, I was present and took verbatim stenotype notes of the deposition of JEREMY AGUERO, 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 25th day of October, 2015.

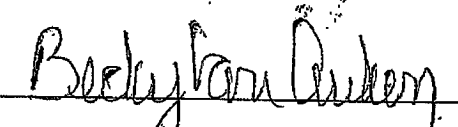

BECKY VAN AUKEN, CCR #418



EXHIBIT 10

EXHIBIT 10

Case No. CV13-01704

Dept. No. B7

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

-ooo-

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

-vs-

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

DEPOSITION OF SCOTT BEAN

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 11:08 a.m., Tuesday,
March 17, 2015, before Becky Van Auken, a Certified Court
Reporter.

APPEARANCES: (See separate page)

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

1 A Correct.

2 Q I'm not going there because I think that
3 might be privileged. Anything attorneys say is
4 privileged or what you say to attorneys --

5 A Okay.

6 Q -- okay?

7 So you have been designated as the person
8 most knowledgeable at the GSR about exactly and
9 precisely how this Exhibit 7 was used at the
10 Peppermill.

11 You weren't at the Peppermill at this time,
12 correct?

13 A No, sir.

14 Q And you've had no discussions with anybody
15 at the Peppermill about this email?

16 A No, sir.

17 Q It would be fair to say you don't know how
18 or if it was used?

19 A No, sir. It's a fair statement. I have no
20 idea -- let me be clear. I have no idea what the
21 Peppermill did with this document.

22 Q Would your testimony be the same with
23 respect to Exhibit 8, sir?

24 A Yes, sir.

25 Q Just so we're clear on the record,

1 Mr. Bean -- and I appreciate your candor -- you have
2 no idea to what use, if any, Exhibit 8 was made at the
3 Peppermill?

4 A I have no idea what they did with this
5 information at the Peppermill.

6 Q I just want to make sure I'm using the
7 right language.

8 You're here as a person most knowledgeable
9 about any use to which the information set forth in
10 Exhibits 7 and 8 was put or made at the Peppermill.
11 And you have no knowledge of what use was made?

12 A I have knowledge of what -- I guess -- I
13 cannot -- I cannot state exactly what was done with
14 this information that was provided to them with
15 100 percent certainty, I guess, is the right answer.

16 Q Well, have you talked to anybody about what
17 use this was put to?

18 A Not with these exhibits dated 2011 or 2012.

19 Q Well, that's all I'm permitted to ask you
20 about.

21 A Exactly. 7 and 8, no, sir, I have not.

22 Q All right. So with respect to Exhibit
23 No. 7 and the second sheet of that, are you aware
24 whether or not the GSR has a Ducks in a Row and a
25 Buffalo with the same machine number?

1 testify about GSR's knowledge about the specific
2 benefit derived by the Peppermill.

3 If you don't know whether or not this
4 information was used, would it be fair to say you
5 don't know whether or not there was benefit?

6 A Are we referring to 7 and 8 again -- once
7 again?

8 Q Just 7 and 8.

9 A I cannot give any answer to what Exhibit 7
10 or 8 were done -- what information was done with
11 Exhibit 7 or 8.

12 Q And therefore cannot tell me whether or not
13 there was any benefit derived by the Peppermill as a
14 result of its receipt of Exhibit 7 and 8?

15 A With respect to Exhibit 7 or 8, I cannot
16 tell you what they did with this information, if
17 anything.

18 Q Right. I think your answers are pregnant
19 with information that I'm not permitted to go into
20 today, so we may have to revisit someday in the
21 future. But I think you've told me everything you
22 know about Exhibit 7 and 8.

23 Am I correct on that?

24 A Yes. 7 and 8, yes. We're very clear on
25 what 7 and 8 --

1 Q You have no knowledge whatsoever that the
2 information on Exhibits 7 and 8 was ever used by the
3 Peppermill or whether they derived any benefit from
4 this information?

5 A With respect to 7 and 8, I have no
6 information whatsoever regarding what it was used for,
7 what it wasn't used for.

8 Q While you were at the -- well, I can't ask
9 that question. I'm going to have re-notice you.

10 Okay. Let me take a short break, and I
11 think we've concluded the 30(b)(6) deposition, but
12 I'll probably have to take another deposition of you.

13 (A recess was taken.)

14 MR. ROBISON: Thank you. No further
15 questions.

16 (Deposition concluded at 11:53 a.m.)

17 -oOo-

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

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

That on Tuesday, March 17, 2015, 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 SCOTT BEAN, 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 22nd day of March, 2015.

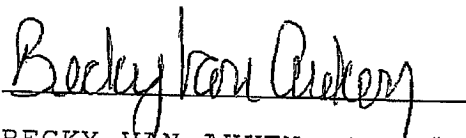

BECKY VAN AUKEN, CCR #418

EXHIBIT 11

EXHIBIT 11

BEFORE THE NEVADA GAMING COMMISSION

1

-000-

FEBRUARY 2014 AGENDA

PUBLIC COMMENT

COMPLAINT(S)

FOR POSSIBLE ACTION: Consideration of Settlement Agreement received Settling Complaint filed in the Matter of the STATE GAMING CONTROL BOARD vs. PEPPERMILL CASINOS, INC., dba PEPPERMILL HOTEL & CASINO; WESTER VILLAGE; RAINBOW CLUB AND CASINO; RAINBOW CASINO; and PEPPERMILL INN & CASINO, Case No. 13-23.

THURSDAY, FEBRUARY 20, 2014

State Gaming Control Board Offices
Conference Room 2450
555 East Washington Avenue
Las Vegas, Nevada

Via videoconference to:

State Gaming Control Board Offices
Conference Room 100
1919 College Parkway
Carson City, Nevada

Reported by:

ERIC V. NELSON, CCR #57, RPR, CM

SUNSHINE LITIGATION SERVICES (775) 323-3411

TOR0002

RA 02483

1 have been a benefit to the state. We took over, of the six
2 casinos, and I probably I guess the statutes have run out,
3 but when Randy was talking about the Sirloin Steakhouse and
4 we opened the Little Peppermill as a coffee shop, I bounced

5 a \$250 check, that was the days before technology, I wrote
6 \$250 that I didn't have to put in the cash register to get
7 enough revenue to pay it back the next day.

8 I'm not asking for any sympathy, but I'm a
9 sincere person and I have always prided myself on being an
10 honest person and giving back to the community. This matter
11 is totally inconsistent with the way I have conducted myself
12 as a gaming licensee.

13 The only mitigating fact, that the information
14 was never used by me or the Peppermill to gain competitive
15 advantage over any casino. No casinos got victimized for
16 one penny. They have a philosophy, we have a philosophy.

17 I was as dumb as a post to let this continue
18 and believe in that everybody does this, you can buy it on
19 the Internet, didn't take time to think of it, got an
20 e-mail, threw it in the waste basket, because it wasn't
21 going to change what we do, which has made us successful.

22 I have sent letters to casino operators
23 identified in the complaint apologizing for our conduct. I
24 was advised not to send one to the one we are in civil
25 litigation with.

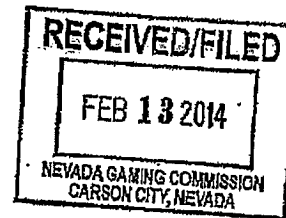


EXHIBIT 12

EXHIBIT 12

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

1 NGC 13-23
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5 STATE OF NEVADA

6 BEFORE THE NEVADA GAMING COMMISSION

7 STATE GAMING CONTROL BOARD,

8 Complainant,

9 vs.

10 PEPPERMILL CASINOS, INC., dba

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

16 Respondent.

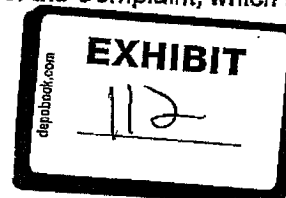
STIPULATION FOR SETTLEMENT
AND ORDER

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Gaming Division
6420 Kietzke Lane, Suite 202
Reno, Nevada 89511

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

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

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

DATED this 13th day of February, 2014.

PEPPERMILL CASINOS, INC.

By:

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

STATE GAMING CONTROL BOARD

A.G. BURNETT, Chairman

SHAWN R. REID, Member

TERRY JOHNSON, Member

BROWNSTEIN HYATT
FARBER SCHRECK, LLP

FRANK A. SCHRECK, Esq.
Attorneys for Respondent

Submitted by:

CATHERINE CORTEZ MASTO
Attorney General

By:

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

ORDER

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

DATED this _____ day of _____, 2014.

NEVADA GAMING COMMISSION

PETER BERNHARD, Chairman

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

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

3 DATED this _____ day of _____, 2014.

4 PEPPERMILL CASINOS, INC.

STATE GAMING CONTROL BOARD

5 By:

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

A.G. BURNETT, Chairman

SHAWN R. REID, Member


TERRY JOHNSON, Member

10 BROWNSTEIN HYATT
11 FARBER SCHRECK, LLP

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

14
15 Submitted by:

16 CATHERINE CORTEZ MASTO
17 Attorney General

18 By:

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

21
22 **ORDER**

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

24 DATED this _____ day of _____, 2014.

25 NEVADA GAMING COMMISSION

26
27 PETER BERNHARD, Chairman
28

Office of the Attorney General
Gaming Division
8420 Kietzke Lane, Suite 202
Reno, Nevada 89511

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

3 DATED this _____ day of _____, 2014.

4 PEPPERMILL CASINOS, INC.

STATE GAMING CONTROL BOARD

5 By: *William A. Paganetti, Jr.*

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

A.G. BURNETT, Chairman

SHAWN R. REID, Member

TERRY JOHNSON, Member

10 BROWNSTEIN HYATT
11 FARBER SCHRECK, LLP

12 *Frank A. Schreck, Esq.*
13 FRANK A. SCHRECK, Esq.
Attorneys for Respondent

14
15 Submitted by:

16 CATHERINE CORTEZ MASTO
17 Attorney General

18 By:

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

21
22 ORDER

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

24 DATED this _____ day of _____, 2014.

25 NEVADA GAMING COMMISSION

26
27 PETER BERNHARD, Chairman
28

EXHIBIT 13

EXHIBIT 13

Case No. CV13-01704

Dept. No. B7

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

-oOo-

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

-vs-)

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

VIDEOTAPED DEPOSITION OF WILLIAM ALFRED PAGANETTI

called for examination by counsel for Plaintiff pursuant to
Notice, at the offices of Robison, Belaustegui, Sharp & Low,
71 Washington Street, Reno, Nevada, at 2:30 p.m., Friday,
April e, 2015, before Becky Van Auken, a Certified Court
Reporter.

APPEARANCES: (See separate page)

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

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1 the marketing strategy for the Peppermill?

2 A Yes.

3 Q Okay. Before there are any major changes
4 in marketing, does that have to be approved by you?

5 A No.

6 Q And who -- who would you say is head of
7 that marketing team?

8 A Aaron Robyns.

9 Q So he has authority to make major changes
10 to the Peppermill's marketing strategy without your
11 approval?

12 A Yes.

13 Q Now, would that also include where pars are
14 set for the gaming machines?

15 A No.

16 Q And whose responsibility is that?

17 A That's my responsibility.

18 Q And -- and why is it that you have
19 maintained that responsibility, Mr. Paganetti?

20 A It's something I've always done.

21 Q Okay. From the beginning when you were
22 involved in gaming?

23 A Correct.

24 Q And I understand -- I'm not -- I'm not from
25 Reno, but I understand that the Peppermill started out

1 as just a restaurant.

2 A Yes.

3 Q Is that accurate?

4 A Yes.

5 Q And you built it up to what it is today?

6 A Yes.

7 Q That's an amazing accomplishment.

8 A Thank you.

9 Q What do you think has been one of the -- or
10 what do you think the keys to the success of the
11 Peppermill has been?

12 A First and foremost, the biggest thing is
13 the employees.

14 Q What else? Anything else?

15 A Nice -- we've always tried to maintain a
16 nice facility.

17 Q Anything else?

18 A Nice rooms, food, location, good gaming
19 experience.

20 Q And what do you mean by "good gaming
21 experience"?

22 A Friendly dealers, friendly employees.

23 Q Does the Peppermill have a philosophy about
24 how the customer experiences more play or less play
25 for their -- for their money?

1 A You just try to give a fair overall
2 experience, whether it's cocktail service, gaming
3 experience, background music, clean air.

4 Q Okay. Is your philosophy to position
5 yourself in the marketplace as far as a gaming
6 facility that has loose slots or tighter slots, or
7 what's your philosophy on that?

8 A It's a total combination, as an end result,
9 to give the customer an enjoyable experience.

10 I guess it's kind of like baking a cake.
11 There's a lot of -- and great grandma has this great
12 cake, and you have a combination of ingredients.

13 Q Okay. Is one of those ingredients where
14 the pars may be set on the machines to give the
15 customer more play or less play?

16 A It combines with the amount of free play.
17 I can't give a definitive answer to the pars. Pars
18 are, into themselves, are only one part of the value.

19 Q Would you consider them an important part?

20 A I don't know how important. Everything is
21 important.

22 Q Okay. Now, you had mentioned that you had
23 always, from the beginning, maintained control of
24 where the pars were set. Is that accurate?

25 A Yes.

1 Q And is that the same at all of the casinos
2 that are under the Peppermill umbrella?

3 A They all have a little difference. Each
4 area would have a little difference --

5 Q Okay.

6 A -- in --

7 Q Where pars are set?

8 A And the rest of the combination.

9 Q Okay. But you maintain control over the
10 setting of the pars at the other casinos also?

11 A Correct.

12 Q And is there a -- why have you maintained
13 control of that part of the -- of the -- sort of the
14 cake, as you described it? Why have you maintained
15 control of that part of it and not turned that over to
16 the marketing team?

17 A It is just something that I've always done.

18 Q Okay. Is there -- is there an art to
19 setting where the pars should be? Is there something
20 special about that?

21 A I don't think so.

22 Q How do you go about deciding where the pars
23 should be set?

24 A Well, one of the main ingredients would be
25 the amount of free play plus all the other 15 or 20

1 factors that would go into the overall philosophy.

2 Q Okay.

3 MR. JOHNSON: What are we on? 113?

4 MR. ROBISON: Yes.

5 (Exhibit 113 was marked.)

6 BY MR. JOHNSON:

7 Q You mentioned that there are 15 to 20 other
8 factors. What are some of those other factors? You
9 mentioned free play.

10 A Obviously the reinvestment percentage, the
11 amount of free play, 20 percent locals' discount,
12 direct mailing, the offers and the cost, special
13 parties, our airplane program and its cost, the
14 different concerts, the New Year's Eve party,
15 Superbowl, various special events, seven-times,
16 five-times, three-times comp days, Christmas presents,
17 birthday presents, tickets for Asian concerts.
18 There's probably another 10 to 15 that I can't
19 recollect at this time, but that gives you a theme of
20 how we do it or how I do it.

21 Q So all those factors go into your
22 decision-making about where to set the pars?

23 A Correct.

24 Q Okay. Sounds like a very complex process.

25 A No, I don't think so.

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

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

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

20 
21 V. JAYNE FERRETTO
22 Employee of Robison, Belaustegui, Sharp & Low
23
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1 Peppermill?

2 A I don't think it's readily determinable.

3 Q Have you seen any evidence that GSR did
4 lose profit as a result of these activities?

5 A No, sir.

6 Q You are aware, are you not, that the
7 revenue -- the net revenue at the GSR has increased
8 steadily since 2011?

9 A I am, sir.

10 Q And that their head count has increased
11 steadily since 2011?

12 A I'm not familiar with head count as a
13 metric, but I am -- I do understand that revenue has
14 increased.

15 Q Have you looked at the Wells Reports?

16 A I have not.

17 Q Why?

18 A I have no reason to look at them.

19 Q Do you know what's in the Wells Reports?

20 A The total volume of activity that's going
21 on at various casinos.

22 Q And that is not germane to your assignment?

23 A No, sir.

24 Q Would it surprise you that the Wells
25 Reports do reflect that GSR's head count has gone up

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1 substantially in the last four years?

2 A No, sir. I would expect it.

3 Q So as you sit here now, you have no opinion
4 as to whether or not GSR lost profit as a result of
5 the Peppermill's activities as alleged in this case?

6 A That is correct, sir.

7 Q To unjust enrichment, the second component
8 of damages under the trade secret act, what have you
9 done to ascertain whether or not the Peppermill has
10 been unjustly enriched?

11 A Information was provided from the
12 Peppermill as it relates to its total amount of slot
13 revenue over time. Those data were then essentially
14 analyzed in comparison to the various emails from
15 Mr. Tors and then compared against the times in which
16 pars were adjusted on the casino floor to determine if
17 there was a correlation between the times at which
18 pars were adjusted and the emails that came through
19 from Mr. Tors and then ultimately whether or not we
20 could look at any adjustment, any differential, if you
21 would, between the general market performance --
22 between the general market performance in the region
23 and the Peppermill's performance in the region, which
24 was obtained from the NCG1 reports.

25 Q You're trying to determine whether there

1 was an adjustment of pars?

2 A That was one piece, yes.

3 Q And you're trying to determine whether
4 there was an adjustment of pars relative to the
5 specific emails Mr. Tors sent to Peppermill
6 representatives?

7 A Yes, sir.

8 Q And you concluded recently that pars do not
9 necessarily correlate directly to revenue. Correct?

10 A That's correct.

11 Q So why would you look for pars to determine
12 whether or not there's a change in revenue?

13 A Because the question at that point was
14 whether or not -- at that point it was simply trying
15 to ascertain the question as to whether or not the
16 information that was obtained from Mr. Par --
17 Mr. Tors, excuse me, was utilized to then make
18 adjustment to the various pars.

19 Q Did you see any adjustments based upon
20 Mr. Tors' activities?

21 A The answer is I don't think it can be
22 determined. There were a number of adjustments to
23 pars. A number of those adjustments to pars happened
24 after Mr. Tors' emails came through, but I don't think
25 I can draw a definitive conclusion that there's a

1 A I do not know, sir.

2 Q Same question with respect to these alleged
3 par readings for the IGT machines. Do you have any
4 information whatsoever that these particular par
5 settings were used by the Peppermill?

6 A No, sir.

7 Q That they were distributed to third
8 parties, competitors?

9 A No, sir.

10 Q What was the floor par at the GSR on
11 December 29, 2011?

12 A I'm not sure.

13 Q Why haven't you determined whether or not
14 that's even close to the 6.4 average?

15 A I did do an analysis that sort of analyzed
16 those, but I was looking at it over a long-term trend.
17 So if you're asking me for a specific par, specific
18 point in time, I don't know that off the top of my
19 head.

20 Q Well, you don't believe that nine machines
21 out of 1100 is statistically significant, do you?

22 A I do not.

23 Q So any information that would be -- any
24 conclusions drawn from this piece of paper, Exhibit 7,
25 as to what the floor par is at the GSR would not be

1 Q Are you saying that they paid for more than
2 they got?

3 A No, sir.

4 Q Do you know what they got?

5 A Yes, sir.

6 Q What did they get?

7 A Information about the par settings on a
8 competitor's slot floor.

9 Q What information?

10 A Information on par settings.

11 Q No, no. You mean -- are you telling me --
12 is "information" in that sentence synonymous with
13 "gross hold"?

14 A No. That number is what the machines were
15 generally set at in that casino.

16 Q That's the information?

17 A They had unfettered access to a
18 competitor's casino floor where they obtained
19 information relative to their par settings. That is
20 what they negotiated for in my hypothetical.

21 Q I understand. And please forgive me.

22 They negotiated for unrestricted -- you say
23 unfettered -- unrestricted access to pars?

24 A Yes.

25 Q What do you mean, "unfettered"?

1 A Forgive me if I misused the term.

2 The idea that Mr. Tors was not restricted
3 in any way in terms of which units he could look at or
4 wanted to open, what times of day he would come in and
5 take a look at. To my knowledge, he went in when he
6 sort of saw fit and was able to obtain that.

7 And so in thinking about it in terms of
8 this flexible opportunity, I would think they would
9 negotiate for something similar.

10 Q Again, let me just see if I got it.

11 The \$8 million that the Peppermill is
12 paying for the license agreement dated on or about
13 December 28, 2011, is for Tors to have access or
14 Peppermill to access pars at the GSR?

15 A To obtain par information, yes, sir. I
16 think that would be correct.

17 Q Great.

18 And then it's broken down in your report at
19 I think 5 million a year -- I might be wrong -- I'm
20 sorry, 5.4 million per year?

21 A Yes, sir.

22 Q And that's for all of 2011?

23 A That's for the total that was in that
24 document from the entire period that we looked at in
25 that particular exhibit.

1 witness.

2 BY MR. ROBISON:

3 Q Does a separate par have separate, distinct
4 value?

5 A I don't know that I could testify to that.

6 Q Are the pars reflected on Exhibit 7 and 8,
7 do any of them have separate and distinct value?

8 A I wouldn't be able to answer that question.

9 Q In looking at Exhibit 7 and 8, there are
10 nine alleged par settings on Exhibit 7 and six par
11 settings on Exhibit 8.

12 A Yes, sir.

13 Q Okay?

14 A Yes, sir.

15 Q Did you find anything in the record that
16 any one of those pars was put to a commercial use by
17 Peppermill?

18 MR. JOHNSON: Vague and ambiguous.

19 THE WITNESS: No, sir.

20 BY MR. ROBISON:

21 Q You know that the UCC vs. Lykes case
22 requires commercial use of a misappropriated secret in
23 order to allow royalties to be awarded, don't you?

24 MR. JOHNSON: Objection. Misstates the
25 holding in the case and the case law.

1 sort of asking how it netted out?

2 Q No. I'm asking for -- do you know what a
3 floor par is?

4 A Sure. The total floor and the total
5 earning for each one or the individual unit floor par.

6 Q Has nothing to do with earning. Okay?

7 A Okay.

8 Q What's the floor par according to your
9 understanding?

10 A My understanding of the floor par would be
11 the par setting for the totality of the floor, the
12 casino floor.

13 Q Right. In your hypothetical license
14 agreement, does Peppermill get unfettered access to
15 all machines or just pennies?

16 A I think they would have unfettered access
17 to the casino floor.

18 Q Okay. Why would you pay for access to
19 video poker when that par is ascertainable on the
20 tables?

21 A Because you thought you'd obtain some
22 degree of competitive intelligence by having that.

23 Q Isn't that competitive intelligence
24 something that you can read off the pay tables on
25 video poker?

1 A Because they wanted to understand the par
2 information and trends on the casino floor.

3 Q It's pretty much free, isn't it?

4 A No, sir.

5 Q Why isn't it free?

6 A Because the sum of the parts are greater
7 than the whole of the ability to look at how the
8 casino was, overall, managing the property, the
9 combination of having both the traditional slot
10 machines as well as the video poker and keno and
11 roulette information that you provided. I believe
12 that was the value that was ultimately sought.

13 Q Megabucks is ready ascertainable, isn't it?

14 A I don't know the answer to that question.

15 Q Well, the par is set by the manufacturer.
16 It's a participation game, isn't it?

17 A I know it's a participation game. I have
18 not looked at the par settings.

19 Q You don't know how that works?

20 A No, sir.

21 Q You don't know that pars are readily
22 ascertainable on progressives?

23 A That's a different question. I do know
24 that you can readily obtain those. Again, with regard
25 to Megabucks specifically, I have not studied

1 machines they looked at.

2 Q Why does it depend on how often they went?
3 Because it changes?

4 A Yes.

5 Q And how frequently did GSR change?

6 A I don't know the answer to that question.

7 Q Did they change for a par setting or change
8 specific machines for specific reasons?

9 A Both, I believe.

10 Q Which specific machines did they change?

11 A I don't know.

12 Q Why did they change specific machines?

13 A I don't know.

14 Q Did they change the par settings on the
15 specific machines that are reflected on Exhibit 7 and
16 Exhibit 8?

17 A I don't know.

18 Q You don't know what the trend is there?

19 A Nope. No, sir. Excuse me.

20 Q That's okay. It ages me when you say that.

21 A Forgive me. My grandmother is sitting over
22 my shoulder.

23 Q Come on. I'm not that old.

24 A No. That's her, not you.

25 Q You have no information, do you, that the

1 Peppermill used the par information to improve its
2 product?

3 MR. JOHNSON: Objection. Asked and
4 answered.

5 THE WITNESS: No. It was irrelevant to my
6 calculation.

7 BY MR. ROBISON:

8 Q According to this passage I just read to
9 you from the UCC vs. Lykes decision, the law looks to
10 a time at which the misappropriation occurred. Did
11 you do that in your opinion?

12 A Yes, sir.

13 Q And the time the misappropriation occurred
14 was when exactly?

15 A I'd have to look at the exact dates, but
16 the ones we spoke of before, from 2011 to 2013.

17 Q December -- excuse me, December 29, 2011,
18 Exhibit 7?

19 A Correct.

20 Q June 14, 2012, Exhibit 8?

21 A Correct.

22 Q Then you're including the July 12, 2013,
23 incident?

24 A I am, yes, sir.

25 Q Did the value change over that 18-month

1 Q Okay. With respect to the par information
2 that was obtained by Mr. Tors, do you have any
3 information that it was distributed beyond those
4 persons mentioned on the -- as addressees on the
5 emails?

6 A No, Sir.

7 Q Did you see any responses to those emails?

8 A Not that I recall, no, Sir.

9 Q We have made available for inspection all
10 the emails that we think Gaming Control Board copied
11 off of the systems at Peppermill. Have you asked to
12 look at those?

13 A I have asked to see other emails. Whether
14 those are the same emails, I'm not sure.

15 Q What emails have you asked to see?

16 A I think at the outset any information that
17 would have talked about what Mr. Tors did with the
18 information, what information Mr. Tors provided, to
19 whom he provided that information, how they utilized
20 that, anything that went on -- anything that was used
21 from a casino management standpoint, how they were
22 interpreting the use of pars or considering the use of
23 pars throughout that --

24 Q Mr. Tors was asked those questions. What
25 did he answer?

1 have not attempted to, either individually or as a
2 group, value them in terms of their trade secret
3 value.

4 Q Okay. And what I think -- and I'm pretty
5 sure I'm right. I think there's nine entries on
6 Exhibit 7 and six entries on Exhibit 8. Assuming I'm
7 right, that's 15, even though there's a duplication of
8 a couple machine numbers.

9 But as a group of 15, have you attempted to
10 determine an economic value that those 15 pars have to
11 Peppermill as a group?

12 A No, sir.

13 Q I think I heard you say that, nonetheless,
14 the pars are a component of your reasonable royalty
15 opinion. Fair?

16 A Fair.

17 Q Have you apportioned what amount the pars
18 have to that reasonable royalty from other aspects of
19 your opinion?

20 A No, sir.

21 Q Other than pars, what other aspects are
22 there that are in that reasonable royalty valuation
23 other than pars?

24 A Well, I think the pars in and of themselves
25 from the standpoint of how the casino was being

1 managed. If the pars were moving up or down, it would
2 give you insight relative to how the casino itself was
3 being imagined.

4 But, again, I want to make sure that I'm
5 answering your question. If you're asking about those
6 specific pars on those two exhibits, the answer would
7 be no.

8 Q Gotcha. I think I misspoke. Let me try
9 again.

10 You've indicated to me -- correct me if I'm
11 wrong -- that the pars, the 15 pars in those two
12 exhibits, can fairly be considered a component of the
13 overall opinion that a hypothetical license agreement
14 would entail an \$8 million compensation.

15 A I would change that from saying a component
16 to a subset of.

17 Q Subset. Fair enough.

18 Given the fact that those pars are a subset
19 that in and of themselves have not been valued, what
20 other sets or subsets are there in this license
21 agreement that have been valued other than the pars?

22 A I would come back to the same statement
23 that I made earlier, and that is that I feel like the
24 sum of the parts are worth more than the whole; the
25 idea that Mr. Tors went in, obtained this type of

1 information both from the Grand Sierra as well as
2 other properties and was trying to obtain business
3 intelligence, trying to gather information. The pars
4 are essentially the manifestation of that information.

5 But, again, it's the concept of trying to
6 obtain where the pars are set -- where the pars are
7 set, whether they're moving up or down, and trying to
8 look at that in the universe of other casino
9 management information that seems to me to be the
10 totality of what the value of that agreement, that
11 theoretical agreement, would be.

12 Q And I'm going to focus for a moment on what
13 was obtained by Tors.

14 And with respect to GSR, it's fair, is it
15 not, that the only thing he did obtain was payback
16 percentages and house hold, pars?

17 A To my knowledge --

18 Q That's not fair. We've got banks and we've
19 got machine number and we've got brands and we've got
20 themes.

21 A Right.

22 Q Other than what can be ascertained publicly
23 by proper means, the only information that's not
24 something you can see by looking at a machine is the
25 payback percentage and the par?

1 Q Okay. In this composite of factors with
2 par being admittedly a component of your opinion, is
3 free play a component of that?

4 A No, sir.

5 Q Is theoretical wins estimations a part of
6 that?

7 A Well, okay, if you're talking about the
8 totality of the management of a casino, then all of
9 those factors would absolutely come into play. If
10 you're asking the question, which I thought you were
11 asking, and I may be answering the wrong question in
12 terms of what could potentially be obtained from
13 looking at a computer screen, then my answer would be
14 my understanding was the pars, not this various other
15 information that could or could not be acquired from
16 something long those lines.

17 Q And I appreciate that.

18 Looking at Exhibit No. 10, you'll see in
19 the second column a highlighted box called "Game
20 Accounting." Do you know what would be reflected if
21 you activated that button?

22 A I do not.

23 Q Do you know -- have any information that
24 Mr. Tors or Peppermill obtained any accounting
25 information from these machines other than the payback

1 A Ultimately?

2 Q How were the pars from the GSR used?

3 A Likely to help manage casino operations.

4 Q How --

5 A I mean, how would a casino utilize that

6 information --

7 Q -- where? How? Show me.

8 MR. JOHNSON: Objection. Vague and

9 ambiguous.

10 THE WITNESS: I cannot show you.

11 BY MR. ROBISON:

12 Q Do you have any evidence whatsoever that

13 you've seen or to which you've had access that shows

14 how this information was used?

15 A No, because it's my understanding that it's

16 irrelevant to my calculation.

17 Q How the Peppermill used the information is

18 irrelevant to your calculation? Is that your

19 testimony?

20 A From a reasonable royalty standpoint, the

21 use of the information is a secondary consideration.

22 Q It's really going to go faster if you

23 answer my questions. Okay?

24 A Yes, sir.

25 Q Do you have any evidence that the pars

1 unfamiliar with that.

2 A I am.

3 Q Okay. Did you take into consideration the
4 machines that are reflected on Exhibit 7 and 8?

5 A No, sir.

6 Q Did you take into consideration things such
7 as their frequency settings or their variability
8 settings?

9 A I did not.

10 Q In and of themselves, the par settings on
11 Exhibit 7 and 8 don't have individual value. Correct?

12 A I'm sorry. What do you mean by "individual
13 value"?

14 Q Well, would you pay for one of those pars
15 on Exhibit 7?

16 A No. Again, I think sort of the comment
17 that I made in my report I think I would just
18 reiterate here, and that is an individual par and an
19 individual machine at one point in time has limited
20 relevance and value.

21 Q If you take the cumulative impact of the
22 nine pars on Exhibit 7, assuming Tors even did that,
23 and the six pars reflected on Exhibit 8, the total
24 value for having that knowledge of those 15 pars is
25 what?

1 A I don't know.

2 MR. JOHNSON: Asked and answered.

3 BY MR. ROBISON:

4 Q Speculative?

5 A I don't know that it's necessarily
6 speculative. I'm just saying that -- again, those
7 small pieces have limited relevance if looked at in a
8 vacuum. But, in reality, given the other information
9 that may have been available both from the operator
10 themselves or from other properties or other
11 information that may have been collected by Tors but
12 are not reflected in the emails I think increases the
13 value or provides some incremental competitive
14 intelligence.

15 Q But I need to know if you can render this
16 statement, this opinion. It's important to this case.

17 Do those 15 pars, assuming that they were
18 actually the product of keying, have independent
19 value?

20 MR. JOHNSON: Asked and answered.

21 THE WITNESS: Yeah, I think the process
22 that went by to get that information, taken
23 collectively with everything else, does have a
24 significant value.

25 /////

1 BY MR. ROBISON:

2 Q Independent value? The pars themselves
3 have independent value?

4 MR. JOHNSON: Asked and answered.

5 BY MR. ROBISON:

6 Q Independent of all other information that
7 you keep alluding to.

8 A Again, I would just say that if you're
9 talking about the individual value of an individual
10 par, it would have limited relevance, and taken in
11 context of an operator, it would have more relevance.

12 Q Mr. Aguero, I really would appreciate it if
13 you didn't mix terms on me. The operative word is
14 "value." And my question is whether those individual
15 pars on those two exhibits have independent economic
16 value.

17 MR. JOHNSON: Asked and answered.

18 THE WITNESS: My answer would be yes.

19 BY MR. ROBISON:

20 Q How much?

21 A I don't know.

22 Q \$10?

23 A I don't know.

24 Q \$100?

25 A I don't know.

1 Q Okay. Completely speculative as to what
2 the value -- independent value of those pars is?

3 MR. JOHNSON: Objection. Misstates
4 testimony.

5 BY MR. ROBISON:

6 Q Okay. He said I misstated the testimony.
7 What is the independent value of the pars reflected on
8 Exhibit 7 and 8?

9 MR. JOHNSON: Asked and answered.

10 THE WITNESS: The value -- they certainly
11 have value.

12 BY MR. ROBISON:

13 Q How much?

14 A I don't know.

15 Q Can you tell me with any degree of
16 specificity or precision what the independent value of
17 those pars are reflected on Exhibit 7 and 8?

18 A If I would have been able to do that, I
19 would have been able to ascertain what the loss was to
20 the GSR or what the unjust enrichment was to the
21 Peppermill because those are inconclusive relative to
22 those 15 pars that we seem to be focusing on; that, at
23 the end of the day, I had to do a reasonable royalty
24 analysis, and those become a centerpiece of a
25 reasonable royalty analysis that I think does reflect

1 value.

2 Q Thank you. I need you to answer my
3 question.

4 MR. ROBISON: Would you please read it back
5 to him.

6 (The question was read by the reporter.)

7 THE WITNESS: Yes. They are reflected in
8 the amount of the damages that are calculated in my
9 report.

10 BY MR. ROBISON:

11 Q So those 15 pars have a value of
12 \$8 million?

13 A When taken in context, yes.

14 Q Individual, independent value, not taken in
15 context with anything else. Mr. Aguero, this is a
16 very simple question. Please don't convolute it.

17 What is the precise independent economic
18 value of the pars reflected on Exhibit 7 and 8?

19 MR. JOHNSON: Asked and answered.

20 THE WITNESS: It's reflected in my damages
21 calculation, and it cannot be separated from the
22 totality of the calculation.

23 BY MR. ROBISON:

24 Q Do they have independent value?

25 A It can't be separated.

1 Q So therefore your answer is no?

2 A Well, I do think --

3 MR. JOHNSON: Misstates testimony. Asked
4 and answered.

5 BY MR. ROBISON:

6 Q Do they have independent value?

7 A Yes.

8 Q What is it?

9 A It is the value of the damages that are
10 outlined in my report.

11 Q Those 15 pars have a value of \$8 million?

12 A When taken collectively with the other
13 information.

14 Q I don't want to take it collectively with
15 anything, Mr. Aguero. I'm looking at the law and
16 looking at the statute, and it says that the trade
17 secret at issue must have independent economic value.

18 You've agreed that the only secret involved
19 in this case is the pars. Correct?

20 A I'm not opining as to what a trade secret
21 is.

22 Q Correct. You have agreed with me, do you
23 not, that -- what has been misappropriated in this
24 case?

25 A The par information from the GSR.

1 Q Okay. Assuming that that is the
2 information that was misappropriated, what independent
3 economic value do those pars have aside and separate
4 from all the other factors?

5 MR. JOHNSON: Same objection. Asked and
6 answered.

7 THE WITNESS: The amount that is outlined
8 in my report.

9 BY MR. ROBISON:

10 Q So those 15 pars, according to your expert
11 opinion, have a value of \$8 million?

12 A When taken in the context, yes.

13 Q In the context of what?

14 A Of all of the other information that would
15 have been available as part of the calculation.

16 Q Without the other information, they have no
17 value?

18 MR. JOHNSON: Objection. Misstates
19 testimony.

20 THE WITNESS: Again, I don't know that I
21 can opine as to that. What I'm telling you is that
22 taken as part of the value, that would be what I'm
23 opining as to.

24 BY MR. ROBISON:

25 Q How much would the hypothetical seller sell

1 the Buffalo pars for that are on Exhibit 8 and 7?

2 A I don't know. I didn't do that
3 calculation.

4 Q How much would the independent -- how much
5 would the hypothetical negotiator sell the pars of the
6 IGT machines set forth in Exhibit 7?

7 A I don't know. I didn't do that
8 calculation.

9 Q How much would the hypothetical seller
10 charge for the IGT pars set forth in Exhibit 8?

11 A I don't know. I didn't do that
12 calculation.

13 Q How much would the independent seller of
14 these 15 pars charge for those 15 pars only with no
15 other information involved?

16 A I don't know. I didn't do that
17 calculation.

18 Q Is the value of these 15 pars dependent on
19 anything else other than the hold percentages?

20 MR. JOHNSON: Objection. Vague and
21 ambiguous.

22 THE WITNESS: Yes.

23 BY MR. ROBISON:

24 Q Tell me precisely with some specificity
25 what other factors give value to those pars.

1 A Other market intelligence that would have
2 been gained by the totality of the effort to try and
3 obtain information from competitors and the GSR.

4 Q Based on your review of the documents and
5 the discovery exchanged in this case, what
6 specifically is that information?

7 A Information on pars from various properties
8 as well as information on pars from the GSR.

9 Q So without the par information from the
10 other casinos, does the par information displayed in
11 Exhibit 7 and 8 have any independent value?

12 A Yes.

13 Q Specifically how much?

14 MR. JOHNSON: Asked and answered.

15 THE WITNESS: Same answer. The value
16 that's outlined in my report.

17 BY MR. ROBISON:

18 Q But that value combines the knowledge of
19 other information as well as just the pars. Correct?

20 A Yes, sir.

21 Q Other information that is freely and -- not
22 freely -- that is ascertainable through proper means?

23 A Some of which is.

24 Q Some of which is not?

25 A Yes, sir.

1 Q What?

2 A If you had to open up a machine with a lock
3 and a key, that would not be readily ascertainable.

4 Q To ascertain the par settings on an
5 individual machine?

6 A During those specific periods of time, the
7 specific machines; whatever additional information was
8 ultimately being obtained.

9 Q Well, do you feel that the opening of a
10 slot machine -- a Cleopatra, for example -- that the
11 par setting throughout the community of a Cleopatra
12 has independent value?

13 A I haven't looked at that specific issue.

14 Q Same with Ducks in a Row?

15 A I haven't look at that specific issue.

16 Q Is your answer the same with Wolf Run?

17 A It is.

18 Q Munsters?

19 A Yes.

20 Q So you haven't looked at whether the par
21 settings revealed by Mr. Tors for these specific
22 themed machines have independent economic value.
23 Correct?

24 A What I'm saying is that combined, they do
25 have economic value.

1 Q It was a different question. I didn't put
2 the word "combined" in my question so please don't
3 change my question.

4 A Then, yes, I do believe they have
5 independent economic value.

6 Q How much?

7 A The amount that's outlined in my report.

8 Q So the value of the Munsters at Eldorado
9 has an \$8 million value?

10 A No, sir.

11 MR. JOHNSON: Objection.

12 BY MR. ROBISON:

13 Q The value of the Ducks in a Row at Circus
14 Circus has independent value?

15 A No, sir.

16 Q You're not here to opine that all of the
17 pars that are set forth in the emails attached -- the
18 pars attached to Mr. Tors emails are not readily
19 ascertainable by proper means, are you?

20 A Again, I wouldn't be the one that could
21 talk about whether something could be ascertained or
22 whether it could not.

23 Q Okay. All right.

24 I have no further questions. I look
25 forward to seeing you if you ever give a rebuttal

STATE OF NEVADA)
)
COUNTY OF WASHOE) ss.

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

That on Tuesday, September 15, 2015, at the offices of Cohen Johnson, 255 E. Warm Springs Road, Suite 100, Las Vegas, Nevada, I was present and took verbatim stenotype notes of the deposition of JEREMY AGUERO, 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 24th day of September, 2015.

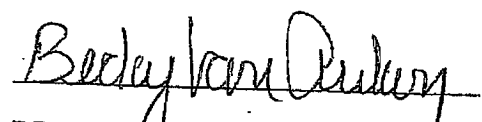

BECKY VAN AUKEN, CCR #418

EXHIBIT 7

DESIGNATED
HIGHLY CONFIDENTIAL INFORMATION

**CONFIDENTIAL-SUBJECT TO STIPULATED
CONFIDENTIALITY AGREEMENT AND PROTECTIVE
ORDER FILED JULY 17, 2014**

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

EXHIBIT 7

COHEN-JOHNSON, LLC
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Las Vegas, Nevada 89119
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FILED
Electronically
2015-06-04 08:42:25 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4985233 : csulezic

1700
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Grand Sierra Resort*

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Telephone: (775) 348-8877
Facsimile: (775) 348-8351
*Attorney 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-X,

Defendants.

Case No.: CV13-01704

Dept. No.: B7

BUSINESS COURT DOCKET

PLAINTIFF MEI-GSR HOLDINGS, LLC. A NEVADA CORPORATION, D/B/A GRAND
SIERRA RESORT'S AMENDED DISCLOSURE OF EXPERT WITNESS

1 Plaintiff MEI-GSR HOLDINGS, LLC., a Nevada Corporation, d/b/a Grand Sierra Resort
2 (hereinafter referred to as "GSR"), by and through its counsel of record, H. Stan Johnson, Esq. of
3 Cohen|Johnson, LLC., hereby submits and identified its expert witness and discloses the expert
4 report pursuant to NRCP 16.1(a)(2) in this matter as follows:

5
6 **I. EXPERT WITNESS**

7 A. Jeremy A. Aguero
8 Principal Analyst
9 Applied Analysis
6385 S. Rainbow Blvd., Suite 105
Las Vegas, Nevada 89118

10 Jeremy Aguero is expected to testify regarding the Expert Witness Report prepared by
11 Applied Analysis, including opinions, data and any other information considered in forming said
12 report (*Attached as Exhibit "1"*) and opinions, his professional qualifications, and any other
13 related matters.

14 Plaintiff reserves the right to supplement the expert witness disclosure as further
15 investigation and discovery may reveal additional information.

16 **II. NON-RETAINED EXPERTS**

17 **A. Ralph Burdick**

18 Mr. Burdick is a non-retained expert and currently holds the position as Vice-President of
19 Casino Operations for Grand Sierra Resort.

20 **B. Toby Taylor**

21 Mr. Taylor is a non-retained expert and currently holds the position as Executive Director
22 of Slots for Grand Sierra Resort.

23 **C. Scott Bean**

24 Mr. Bean is a non-retained expert and he currently provides consulting services to Grand
25 Sierra Resort.

26 ...

27 ...

1 **D. Craig Robinson**

2 Mr. Robinson is a non retained expert and he currently holds the position as Chief
3 Financial Officer for Grand Sierra Resort.

4 **F. Christopher Abraham**

5 Mr. Abraham is a non-retained expert and he currently holds the position as Vice
6 President of Marketing for Grand Sierra Resort.

7 **G. Terry Vavra**

8 Mr. Vavra is a non-retained expert and he currently holds the position as Vice-President
9 of Development for Grand Sierra Resort.

10 **III. DOCUMENTS**

11 A. June 4, 2015 Expert Report Prepared by Applied Analysis, Bates Stamped
12 GSREXP 01 – GSREXP 028.

13 Plaintiff reserves the right to supplement the document disclosures as further
14 investigation and discovery may reveal additional information.

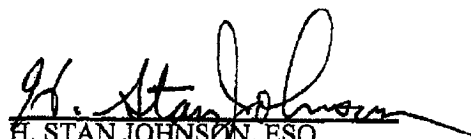
15 **Affirmation Pursuant to NRS §239B.030**

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

18 Dated this 4th day of June, 2015.

19 **COHEN|JOHNSON, LLC.**

20
21 By:

22 
23 H. STAN JOHNSON, ESQ.
24 Nevada Bar No. 00265
25 sjohnson@cohenjohnson.com
26 TERRY KINNALLY, ESQ.
27 Nevada Bar No. 6379
28 tkinnally@cohenjohnson.com
 CHRIS DAVIS, Esq.
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 255 E. Warm Springs Road, Suite 100
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 Attorney for MEI-GSR Holdings, LLC. d/b/a
 Grand Sierra Resort

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INDEX OF EXHIBITS

<u>Exhibits</u>	<u>Description</u>	<u>Pages</u>
1.	Expert Report prepared by Jeremy Aguero	29

COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Suite 100
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 **PLAINTIFF MEI-GSR HOLDINGS, LLC. A NEVADA CORPORATION, D/B/A GRAND SIERRA RESORT'S AMENDED DISCLOSURE OF EXPERT WITNESS** 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.

71 Washington Street

Reno, Nevada 89503

krobison@rbsllaw.com

Attorney for the Defendant Peppermill

 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 4th day of June, 2015.

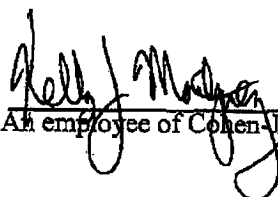

An employee of Cohen-Johnson, LLC.

Exhibit “1”

Filed Under Seal

**HIGHLY CONFIDENTIAL
INFORMATION**

**HIGHLY CONFIDENTIAL – SUBJECT TO
STIPULATED CONFIDENTIALITY
AGREEMENT AND PROTECTIVE
ORDER FILED IN JULY 17, 2014**

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

Exhibit “1”

Expert Report

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

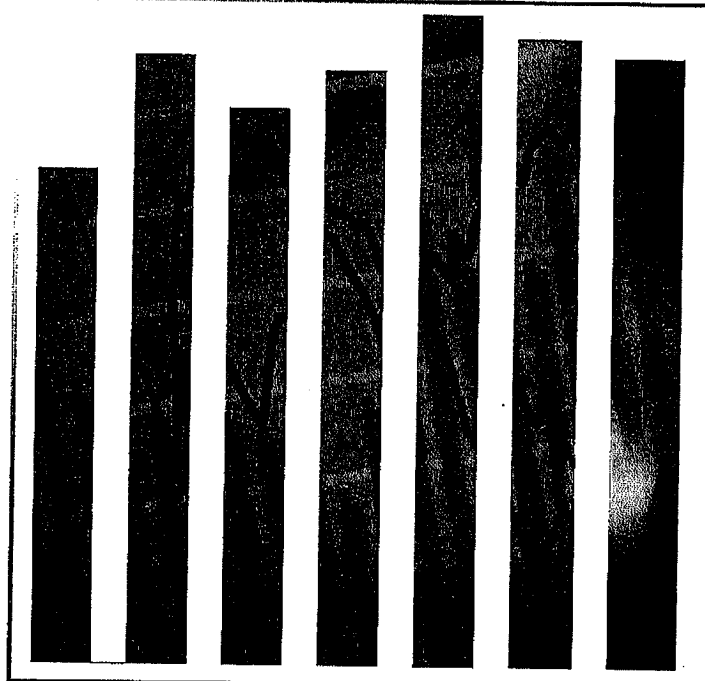
vs.

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 ABC CORPORATIONS I-X

District Court
Washoe County, Nevada

Case No. CV13-01704
Dept. No. B7

**APPLIED
ANALYSIS**



GSREXP001

RA 02416

Table of Contents

Introduction.....	1
General Background.....	1
Competitive Information.....	1
Reasonable Royalty.....	3
Expert Witness Credentials – Jeremy A. Aguero.....	6
Professional and Business History.....	6
Education	6
Selected Project Experience	7
Selected Presentations	22
Selected Community Involvement and Awards.....	23
Publications in the Last Ten Years.....	24
Witness Testimony or Depositions in the Last Four Years.....	24
Right to Amend or Supplement Analysis.....	25
Statement of Compensation for the Study and Testimony	26

INTRODUCTION

Applied Analysis ("AA") was retained by Cohen-Johnson, LLC ("Cohen Johnson") on behalf of MEI-GSR Holdings, LLC, doing business as Grand Sierra Resort ("GSR"), to evaluate potential damages stemming from Peppermill Casinos, Inc. ("Peppermill") employee Ryan Tors unlawfully obtaining casino operating information from GSR slot machines. This is case number CV13-01704, now before the Second Judicial District Court of the State of Nevada, Washoe County. In submitting this analysis we respectfully reserve the right to revisit, revise and supplement this analysis should additional data become available.

GENERAL BACKGROUND

Ryan Tors ("Tors"), an employee of Peppermill, unlawfully accessed the slot machines of GSR at the direction of his employer. Specifically, Tors opened a number of machines and accessed each machine's diagnostic screens and payback percentages. This was part of a systematic and coordinated data-gathering effort that a Nevada Gaming Control Board investigation determined had been going on since at least 2011 and included at least 10 other casino properties.¹ Information was then relayed back to Tors' superiors at Peppermill and was subsequently used by the Peppermill in developing its casino operations strategy. The issue of the deceitful, surreptitious and unlawful actions of Tors, and whether his actions were at the behest of the Peppermill, is not at issue here. In a Stipulation for Settlement and Order executed on February 13, 2014, between the Peppermill and the Nevada Gaming Control Board, Peppermill admits to violations of the Nevada Gaming Control Act and Regulations of the Nevada Gaming Commission. Peppermill also agreed to pay a \$1,000,000 fine to the State of Nevada, among the largest fines ever imposed on a Nevada non-restricted gaming licensee.

The fundamental question presented here is the extent to which GSR was damaged as a result of Peppermill's actions. The question of whether competitive information was obtained in an illegal or unethical manner has already been settled; the question of damages turns generally on the profits lost by the aggrieved party or profits illegally or unethically earned by the acts of a third party, sometimes referred to as unjust enrichment. We note, however, that in instances where the ability to prove such damages is not possible, courts have used a "reasonable royalty" approach under the Uniform Trade Secrets Act.²

COMPETITIVE INFORMATION

There seems to be at least some question as to whether obtaining information on the settings of slot machines should be considered ill-gained competitive intelligence. We would submit that the mere fact that the Peppermill accepted a \$1,000,000 fine and admitted "each and every allegation" set forth in the Nevada Gaming Control Board's

¹ NGC 13-23, State Gaming Control Board v. Peppermill Casinos, Inc., February 13, 2014 (at page 6).

² Uniform Trade Secrets Act (1985 with Amendments, Section 3. Damages).

complaint would provide clear and convincing evidence of wrongdoing in the acquisition of GSR's competitive information. That said, the Peppermill experts' suggestion that the information obtained by the Peppermill did not damage its competitors because it could be easily obtained, because it was of no analytical value or because the keys needed to unlock competitors' gaming machines are easily accessed is little more than an *ex post facto* attempt to recast the fact that the Peppermill systematically sought to obtain, over multiple years, information it viewed as valuable that was kept under lock and key by its competitors.

The expert reports of Dr. Lucas and Ms. Friedman were thoughtful and well-constructed in many respects; however, the position that the Peppermill's actions would merely "satisfy some measure of curiosity"³ attempts to downplay the facts of the immediate case and stands in sharp contrast as to why, for example, the industry would rely on a Harvard-trained computer scientist and Ph.D. researcher from among the largest gaming colleges in the country for information, analysis and insights. "Curiosity" is defined as "the desire to learn or know more about something or someone"⁴ or "a strong desire to know or learn something."⁵ In the private sector, the accumulation of this knowledge is generally referred to as business intelligence or competitive intelligence and there are strong arguments that it is more valuable today than ever.⁶

Both Dr. Lucas and Ms. Friedman submit that the information improperly obtained by the Peppermill did not amount to a trade secret because it was "readily ascertainable by proper means by the public or any other persons who can obtain commercial or economic value from its disclosure or use." The Peppermill, a sophisticated casino operator, did not appear to know slot machine settings could be obtained by the calculations set forth by Dr. Lucas and Ms. Friedman, calling into question how "readily ascertainable" such data were at the time by the parties involved in this case. Perhaps the Peppermill had such knowledge but preferred the expediency provided by a less ethical approach to obtaining the information. Or, perhaps it was something altogether different. Perhaps the program was never about the digital settings on a handful of casino gaming machines as much as it was a carefully conceived effort to obtain competitive intelligence on whether GSR and other local casinos were tightening or loosening their slot machines over time. As outlined by Dr. Lucas and Ms. Friedman, taken alone, the individual machine settings obtained by the illegal actions of Ryan Tors on July 12, 2013 are of little relevance. By contrast, when viewed collectively with other information available to Peppermill, including without limitation, historical data collected by its employees, the result is business intelligence that the company clearly valued and which both its competitors and its regulators viewed as ill-gotten.

Finally, the idea that this information has no value is disputed by the Peppermill's own testimony. In the settlement hearing with the Nevada Gaming Commission, the attorney for the Peppermill categorized his client's behavior as

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⁴ See, Merriam-Webster Dictionary (available at: <http://www.merriam-webster.com/dictionary/curiosity>).

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⁶ See, e.g., A. McAfee and E. Brynjolfsson, Big Data: The Management Revolution. Harvard Business Review (October 2012); J. Frates and S. Sharp, Using Business Intelligence to Discover New Market Opportunities. Journal of Competitive Intelligence and Management, Volume 3, Issue 3, Fall 2005; and T. Davenport (Guest Contributor), What Business Can Learn From Intelligence. The Wall Street Journal [CIO Journal]. September 24, 2014.

"egregious" and "a violation of privacy."⁷ In addressing a question from Commissioner Moran about the potential value of par setting manipulation, he further noted:⁸

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

Importantly, casino management is equal parts art and science. In Nevada, casino department officers were paid \$22.2 million in 2014,⁹ and casino management contracts for the top operators nationally can be significant. Information on how to optimize a casino floor, including the settings of various machines, is unarguably part of the calculus considered by top casino managers as well as how they set themselves apart from one another. The idea that after the Peppermill was caught in the act, publicly admitted wrongdoing and was fined for such actions that the company would then forward the position that those actions were of no consequence lies somewhere between absurdity and a convenient fiction.

REASONABLE ROYALTY

Data available obtained from the Peppermill regarding the actions of Mr. Tors and casino management is, at best, incomplete. While an analysis of available information, and the testimony of Peppermill executives, suggests that the company considered the information obtained by Tors as an element of its casino management, the degree to which the Peppermill directly benefitted or the Grand Sierra Resort was directly harmed is obscured by any number of factors. As Commissioner Moran noted in his questioning during the settlement hearing, simply obtaining the information and doing nothing with it could potentially result in a "competitive edge."¹⁰

To the extent that data are unavailable to adequately determine either the extent of unjust enrichment or the direct losses to GSR, courts may consider a "reasonable royalty" approach such that uncertainty should not preclude recovery.¹¹ There are many ways in which such a reasonable royalty can be calculated, respecting that the individualized facts and circumstances require a "flexible and imaginative approach to the problem of damages" when a misappropriation of a trade secret is put to commercial use.¹² As outlined by the Second Circuit Court of Appeals in *Vermont Microsystems Inc. v. Autodesk Inc.* 39 U.S.P.Q.2d 1421 (1996), "reasonable royalty award attempts to measure a hypothetically agreed value of what the defendant wrongfully obtained from the plaintiff...the court calculates what the parties would have agreed to as a fair licensing price at the time that the misappropriation

⁷ Transcript of the Nevada Gaming Commission February 2014 Agenda, February 20, 2014 (at page 23).

⁸ Id. at page 26.

⁹ Nevada Gaming Control Board, Gaming Abstract (2014).

¹⁰ Transcript of the Nevada Gaming Commission February 2014 Agenda, February 20, 2014 (at pages 24 and 25).

¹¹ R. Johnson, *Milgrim on Trade Secrets*, Section 15.02, Aspects of Relief Available in Trade Secret Litigation.

¹² *University Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d 518 (5th Cir. 1974) at 536, 538; see also, *Alcatel USA, Inc. v. Cisco Systems, Inc.*, 239 F. Supp. 2d 660 (E.D. Tex. 2002).

occurred." In the immediate case, the hypothetical offered during the Nevada Gaming Commission settlement hearing by the Peppermill's attorney, attributed to Mr. Paganetti himself, provides a fair starting point for such a hypothetical agreement.¹³

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

The table below summarizes coin-in, total revenue and the hold percentage for the Peppermill for 2010 through 2014.

Slot Machine Operating Metrics for the Peppermill¹⁴

	Total Coin-In	Total Slot Revenue	Hold Percentage
2010	\$2,197,992,570	\$84,137,824	3.83%
2011	\$2,170,038,851	\$78,953,449	3.64%
2012	\$2,079,308,653	\$75,570,373	3.63%
2013	\$2,128,917,671	\$78,138,590	3.67%
2014	\$2,173,869,302	\$83,256,130	3.83%

The table that follows provides adjusted hold percentages increased by 0.25 percent to 2.0 percent. Highlighted in red are the resulting values that are equal to or higher than the hold percentage reported by the balance of the market during each year. Notably, the 1.0 percent adjustment referenced in the hypothetical would have still left the Peppermill below the overall market average in each year during the study period (figures in red reflect hold percentages higher than broader market average, excluding the Peppermill).

Adjusted Slot Machine Hold Percentages
Increase Compared to Historical Hold Percentage

	Adjustment Factor							
	0.25%	0.50%	0.75%	1.00%	1.25%	1.50%	1.75%	2.00%
2010	4.08%	4.33%	4.58%	4.83%	5.08%	5.33%	5.58%	5.83%
2011	3.89%	4.14%	4.39%	4.64%	4.89%	5.14%	5.39%	5.64%
2012	3.88%	4.13%	4.38%	4.63%	4.88%	5.13%	5.38%	5.63%
2013	3.92%	4.17%	4.42%	4.67%	4.92%	5.17%	5.42%	5.67%
2014	4.08%	4.33%	4.58%	4.83%	5.08%	5.33%	5.58%	5.83%

¹³ Transcript of the Nevada Gaming Commission February 2014 Agenda, February 20, 2014 (at page 26).

¹⁴ Data provided by Peppermill, PM 2845-2992.

The table that follows summarizes the incremental amount of gaming win generated by the Peppermill assuming its volume of play was unchanged and the company's slot hold was increased by a value between 0.25 percent and 2.0 percent. This results in an increase in slot machine revenue of somewhere between \$26.9 million and \$215 million. This analysis does not attempt to adjust for changes in play (coin-in) resulting from higher hold percentages, but instead relies on historical, known volumes in play.

Increased Slot Machine Revenue at Higher Hold Percentages
Holding Constant Total Slot Play (Coin-In)
(in millions)

	Adjustment Factor							
	0.25%	0.50%	0.75%	1.00%	1.25%	1.50%	1.75%	2.00%
2010	\$5.49	\$10.99	\$16.48	\$21.98	\$27.47	\$32.97	\$38.46	\$43.96
2011	\$5.43	\$10.85	\$16.28	\$21.70	\$27.13	\$32.55	\$37.98	\$43.40
2012	\$5.20	\$10.40	\$15.59	\$20.79	\$25.99	\$31.19	\$36.39	\$41.59
2013	\$5.32	\$10.64	\$15.97	\$21.29	\$26.61	\$31.93	\$37.26	\$42.58
2014	<u>\$5.43</u>	<u>\$10.87</u>	<u>\$16.30</u>	<u>\$21.74</u>	<u>\$27.17</u>	<u>\$32.61</u>	<u>\$38.04</u>	<u>\$43.48</u>
Total	\$26.88	\$53.75	\$80.63	\$107.50	\$134.38	\$161.25	\$188.13	\$215.00

The sole remaining factor in this hypothetical is what the Peppermill would have been willing to pay to obtain the knowledge that its hold percentages could be increased by 1.0 percent. Assuming a midpoint rate of 25 percent would mean that the Peppermill would have spent approximately \$5.4 million per year to generate approximately \$21.4 million per year. The table that follows provides a range of values based on 4.5 years of "reasonable royalties."

Estimated Royalty Matrix
Cumulative, 2010 - 2014
(in millions)

	Slot Machine Hold Percentage Adjustment							
	0.25%	0.50%	0.75%	1.00%	1.25%	1.50%	1.75%	2.00%
10%	\$2.41	\$4.83	\$7.24	\$9.65	\$12.06	\$14.48	\$16.89	\$19.30
15%	\$3.62	\$7.24	\$10.86	\$14.48	\$18.10	\$21.72	\$25.33	\$28.95
20%	\$4.83	\$9.65	\$14.48	\$19.30	\$24.13	\$28.95	\$33.78	\$38.60
25%	\$6.03	\$12.06	\$18.10	\$24.13	\$30.16	\$36.19	\$42.22	\$48.26
30%	\$7.24	\$14.48	\$21.72	\$28.95	\$36.19	\$43.43	\$50.67	\$57.91
35%	\$8.44	\$16.89	\$25.33	\$33.78	\$42.22	\$50.67	\$59.11	\$67.56
40%	\$9.65	\$19.30	\$28.95	\$38.60	\$48.26	\$57.91	\$67.56	\$77.21
45%	\$10.86	\$21.72	\$32.57	\$43.43	\$54.29	\$65.15	\$76.00	\$86.86
50%	\$12.06	\$24.13	\$36.19	\$48.26	\$60.32	\$72.38	\$84.45	\$96.51

A reasonable royalty in the amount of \$24.1 million would appear appropriate considering the facts and circumstances in the immediate case.

EXHIBIT 8

DESIGNATED
HIGHLY CONFIDENTIAL INFORMATION

**CONFIDENTIAL-SUBJECT TO STIPULATED
CONFIDENTIALITY AGREEMENT AND PROTECTIVE
ORDER FILED JULY 17, 2014**

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

EXHIBIT 8

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

1700
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255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
Telephone: (702) 823-3500
Facsimile: (702) 823-3400
*Attorney for MEI-GSR Holdings, LLC. d/b/a
Grand Sierra Resort*

IN ASSOCIATION WITH

THE LAW OFFICES OF MARK WRAY
MARK WRAY, ESQ.
Nevada Bar No.: 4425
608 Lander Street
Reno, Nevada 89509
Telephone: (775) 348-8877
Facsimile: (775) 348-8351
*Attorney 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-X,

Defendants.

Case No.: CV13-01704

Dept. No.: B7

BUSINESS COURT DOCKET

PLAINTIFF MEI-GSR HOLDINGS, LLC. A NEVADA CORPORATION, D/B/A GRAND
SIERRA RESORT'S SUPPLEMENTAL DISCLOSURE OF EXPERT WITNESS

Plaintiff MEI-GSR HOLDINGS, LLC., a Nevada Corporation, d/b/a Grand Sierra Resort

(hereinafter referred to as "GSR"), by and through its counsel of record, H. Stan Johnson, Esq. of

1 Cohen|Johnson, LLC., hereby submits and identifies its expert witness and supplements the
2 expert report pursuant to NRCP 16.1(a)(2) in this matter as follows:

3
4 **I. EXPERT WITNESS**

5 **A. Jeremy A. Aguero**
6 Principal Analyst
7 Applied Analysis
8 6385 S. Rainbow Blvd., Suite 105
9 Las Vegas, Nevada 89118

10 Jeremy Aguero is expected to testify regarding the Expert Witness Report prepared by
11 Applied Analysis, including opinions, data and any other information considered in forming said
12 report (*Attached as Exhibit "1"*) and opinions, his professional qualifications, and any other
13 related matters.

14 Plaintiff reserves the right to supplement the expert witness disclosure as further
15 investigation and discovery may reveal additional information.

16 **II. DOCUMENTS**

17 **A. August 27, 2015 Supplemental Expert Report Prepared by Applied Analysis.**

18 Plaintiff reserves the right to supplement the document disclosures as further
19 investigation and discovery may reveal additional information.

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Affirmation Pursuant to NRS §239B.030

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

Dated this 27th day of August, 2015.

COHEN|JOHNSON, LLC.

By: /s/ H. Stan Johnson
H. STAN JOHNSON, ESQ.
Nevada Bar No. 00265
sjohnson@cohenjohnson.com
CHRIS DAVIS, Esq.
Nevada Bar No. 6616
cdavis@cohenjohnson.com
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Las Vegas, Nevada 89119
Attorney for MEI-GSR Holdings, LLC. d/b/a
Grand Sierra Resort

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INDEX OF EXHIBITS

<u>Exhibits</u>	<u>Description</u>	<u>Pages</u>
1.	Supplemental Expert Report prepared by Jeremy Aguero	

COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Suite 100
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(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 **PLAINTIFF MEL-GSR HOLDINGS, LLC. A NEVADA CORPORATION, D/B/A GRAND SIERRA RESORT'S SUPPLEMENTAL DISCLOSURE OF EXPERT WITNESS** on all the parties to this action by the method(s) indicated below:

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

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

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

_____ 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 27th day of August, 2015.

/s/ Sarah Gondek
An employee of Cohen-Johnson, LLC.

EXHIBIT 1

DESIGNATED CONFIDENTIAL INFORMATION

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CONFIDENTIALITY AGREEMENT AND PROTECTIVE
ORDER FILED JULY 17, 2014

To be Opened Only Upon Further Order of This Court
Or for the Sole Use of the Court and its Employees

EXHIBIT 1

Amended Expert Report

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

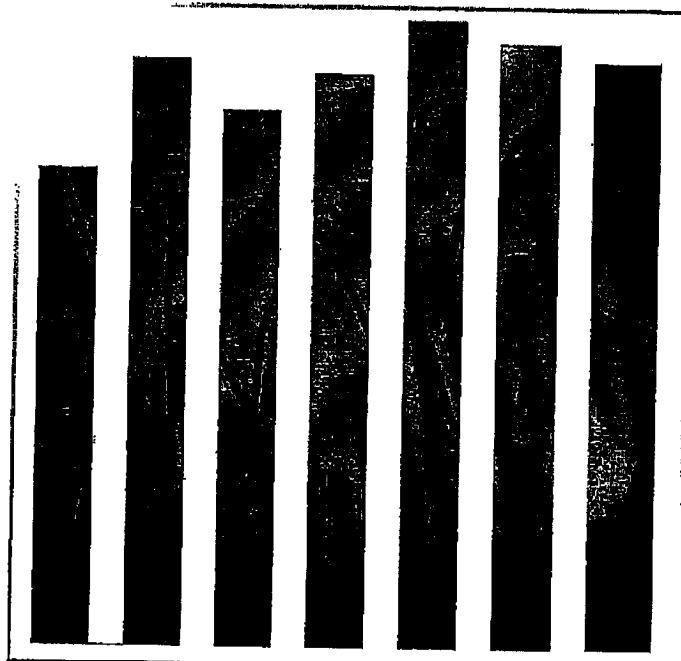
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PEPPERMILL CASINO; RYAN TORS, an individual; JOHN DOES I-X and
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APPLIED
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Amended Expert Report
MEI-GSR Holdings vs. Peppermill Casinos, Inc.

Table of Contents

Introduction	1
General Background	1
Competitive Information	2
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Education	7
Selected Project Experience	8
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business intelligence that the company clearly valued and which both its competitors and its regulators viewed as ill-gotten.

Finally, the idea that this information has no value is disputed by the Peppermill's own testimony. In the settlement hearing with the Nevada Gaming Commission, the attorney for the Peppermill categorized his client's behavior as "egregious" and "a violation of privacy."⁸ In addressing a question from Commissioner Moran about the potential value of par setting manipulation, he further noted:⁹

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

Importantly, casino management is equal parts art and science. In Nevada, casino department officers were paid \$22.2 million in 2014,¹⁰ and casino management contracts for the top operators nationally can be significant. Information on how to optimize a casino floor, including the settings of various machines, is unarguably part of the calculus considered by top casino managers as well as how they set themselves apart from one another. The idea that after the Peppermill was caught in the act, publicly admitted wrongdoing and was fined for such actions that the company would then forward the position that those actions were of no consequence lies somewhere between absurdity and a convenient fiction.

REASONABLE ROYALTY

Data available obtained from the Peppermill regarding the actions of Mr. Tors and casino management is, at best, incomplete. While an analysis of available information, and the testimony of Peppermill executives, suggests that the company considered the information obtained by Tors as an element of its casino management, the degree to which the Peppermill directly benefitted or the Grand Sierra Resort was directly harmed is obscured by any number of factors. As Commissioner Moran noted in his questioning during the settlement hearing, simply obtaining the information and doing nothing with it could potentially result in a "competitive edge."¹¹

To the extent that data are unavailable to adequately determine either the extent of unjust enrichment or the direct losses to GSR, courts may consider a "reasonable royalty" approach such that uncertainty should not preclude recovery.¹² There are many ways in which such a reasonable royalty can be calculated, respecting that the individualized facts and circumstances require a "flexible and imaginative approach to the problem of damages" when

⁸ Transcript of the Nevada Gaming Commission February 2014 Agenda, February 20, 2014 (at page 23).

⁹ Id. at page 26.

¹⁰ Nevada Gaming Control Board, Gaming Abstract (2014).

¹¹ Transcript of the Nevada Gaming Commission February 2014 Agenda, February 20, 2014 (at pages 24 and 25).

¹² Milgrim on Trade Secrets, Section 15.02, Aspects of Relief Available in Trade Secret Litigation.

a misappropriation of a trade secret is put to commercial use.¹³ As outlined by the Second Circuit Court of Appeals in *Vermont Microsystems, Inc. v. Autodesk, Inc.* 39 U.S.P.Q.2d 1421 (1996), "reasonable royalty award attempts to measure a hypothetically agreed value of what the defendant wrongfully obtained from the plaintiff...the court calculates what the parties would have agreed to as a fair licensing price at the time that the misappropriation occurred." In the immediate case, the hypothetical offered during the Nevada Gaming Commission settlement hearing by the Peppermill's attorney, attributed to Mr. Paganetti himself, provides a fair starting point for such a hypothetical agreement.¹⁴

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

The table below summarizes coin-in, total revenue and the hold percentage for the Peppermill for 2010 through 2014. Total slot revenue for the time Peppermill admitted to the theft of GSR's slot machine payback percentages by unlawfully accessing GSR's slot machines (December 29, 2011 through July 12, 2013) is approximately \$116.3 million.¹⁵

Slot Machine Operating Metrics for the Peppermill¹⁶

	Total Coin-In	Total Slot Revenue	Hold Percentage
2010	\$2,197,992,570	\$84,137,824	3.83%
2011	\$2,170,038,851	\$78,953,449	3.64%
2012	\$2,079,308,653	\$75,570,373	3.63%
2013	\$2,128,917,671	\$78,138,590	3.67%
2014	\$2,173,869,302	\$83,256,130	3.83%

The table that follows provides adjusted hold percentages increased by 0.25 percent to 2.0 percent. Highlighted in red are the resulting values that are equal to or higher than the hold percentage reported by the balance of the market during each year. Notably, the 1.0 percent adjustment referenced in the hypothetical would have still left the Peppermill below the overall market average in each year during the study period (figures in red reflect hold percentages higher than broader market average, excluding the Peppermill).

¹³ *University Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d 518 (5th Cir. 1974) at 536-538; see also, *Alcatel USA, Inc. v. Cisco Systems, Inc.*, 239 F. Supp. 2d 660 (E.D. Tex. 2002).

¹⁴ Transcript of the Nevada Gaming Commission February 2014 Agenda, February 20, 2014 (at page 26).

¹⁵ Slot revenues are based on daily averages for the month of December 2011 and July 2013 as information was readily available by month as opposed to by day. Monthly totals were utilized for January 2012 through June 2013.

¹⁶ Data provided by Peppermill, PM 2845-2992.

Adjusted Slot Machine Hold Percentages
Increase Compared to Historical Hold Percentage

	<u>Adjustment Factor</u>							
	<u>0.25%</u>	<u>0.50%</u>	<u>0.75%</u>	<u>1.00%</u>	<u>1.25%</u>	<u>1.50%</u>	<u>1.75%</u>	<u>2.00%</u>
2010	4.08%	4.33%	4.58%	4.83%	5.08%	5.33%	5.58%	5.83%
2011	3.89%	4.14%	4.39%	4.64%	4.89%	5.14%	5.39%	5.64%
2012	3.88%	4.13%	4.38%	4.63%	4.88%	5.13%	5.38%	5.63%
2013	3.92%	4.17%	4.42%	4.67%	4.92%	5.17%	5.42%	5.67%
2014	4.08%	4.33%	4.58%	4.83%	5.08%	5.33%	5.58%	5.83%

The table that follows summarizes the incremental amount of gaming win generated by the Peppermill assuming its volume of play was unchanged and the company's slot hold was increased by a value between 0.25 percent and 2.0 percent. This results in an increase in slot machine revenue of somewhere between \$26.9 million and \$215 million. This analysis does not attempt to adjust for changes in play (coin-in) resulting from higher hold percentages, but instead relies on historical, known volumes in play.

Increased Slot Machine Revenue at Higher Hold Percentages
Holding Constant Total Slot Play (Coin-In)
(in millions)

	<u>Adjustment Factor</u>							
	<u>0.25%</u>	<u>0.50%</u>	<u>0.75%</u>	<u>1.00%</u>	<u>1.25%</u>	<u>1.50%</u>	<u>1.75%</u>	<u>2.00%</u>
2010	\$5.49	\$10.99	\$16.48	\$21.98	\$27.47	\$32.97	\$38.46	\$43.96
2011	\$5.43	\$10.85	\$16.28	\$21.70	\$27.13	\$32.55	\$37.98	\$43.40
2012	\$5.20	\$10.40	\$15.59	\$20.79	\$25.99	\$31.19	\$36.39	\$41.59
2013	\$5.32	\$10.64	\$15.97	\$21.29	\$26.61	\$31.93	\$37.26	\$42.58
2014	<u>\$5.43</u>	<u>\$10.87</u>	<u>\$16.30</u>	<u>\$21.74</u>	<u>\$27.17</u>	<u>\$32.61</u>	<u>\$38.04</u>	<u>\$43.48</u>
Total	\$26.88	\$53.75	\$80.63	\$107.50	\$134.38	\$161.25	\$188.13	\$215.00

The sole remaining factor in this hypothetical is what the Peppermill would have been willing to pay to obtain the knowledge that its hold percentages could be increased by 1.0 percent. Assuming a midpoint rate of 25 percent would mean that the Peppermill would have spent approximately \$5.4 million per year to generate approximately \$24.1 million. The table that follows provides a range of values based on 4.5 years of "reasonable royalties."

APPLIED ANALYSIS

Estimated Royalty Matrix
Cumulative, 2010 - 2014
(in millions)

	Slot Machine Hold Percentage Adjustment							
	0.25%	0.50%	0.75%	1.00%	1.25%	1.50%	1.75%	2.00%
Royalty Amount								
10%	\$2.41	\$4.83	\$7.24	\$9.65	\$12.06	\$14.48	\$16.89	\$19.30
15%	\$3.62	\$7.24	\$10.86	\$14.48	\$18.10	\$21.72	\$25.33	\$28.95
20%	\$4.83	\$9.65	\$14.48	\$18.10	\$24.13	\$28.95	\$33.78	\$38.60
25%	\$6.04	\$12.06	\$18.10	\$24.13	\$30.16	\$36.19	\$42.22	\$48.26
30%	\$7.24	\$14.48	\$21.72	\$28.95	\$36.19	\$43.43	\$50.67	\$57.91
35%	\$8.44	\$16.89	\$25.33	\$32.57	\$42.22	\$50.67	\$59.11	\$67.56
40%	\$9.65	\$19.30	\$28.95	\$36.19	\$48.26	\$57.91	\$67.56	\$77.21
45%	\$10.86	\$21.72	\$32.57	\$42.22	\$54.29	\$65.15	\$76.00	\$86.86
50%	\$12.06	\$24.13	\$36.19	\$48.26	\$60.32	\$72.38	\$84.45	\$96.51

A reasonable royalty in the amount of \$24.1 million would appear appropriate considering the facts and circumstances in the immediate case. Limiting the reasonable royalty to the time period Peppermill admitted to the theft of GSR's slot machine payback percentages by unlawfully accessing GSR's slot machines (December 29, 2011 through July 12, 2013) would result in a reasonable royalty in the amount of \$8.0 million. Assuming theft of GSR's trade secrets are determined to be for a period of time longer than presently admitted by Peppermill, the reasonable royalty owed to GSR would increase from this minimum amount.

EXHIBIT 9

EXHIBIT 9

Case No. CV13-01704

Dept. No. B7

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

-oOo-

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

-vs-

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

DEPOSITION OF JEREMY AGUERO

called for examination by counsel for Defendant Peppermill
Casinos, Inc., d/b/a Peppermill Casino pursuant to Notice, at
the offices of Cohen Johnson, 255 E. Warm Springs Road, Suite
100, Las Vegas, Nevada, at 9:34 a.m., Monday, October 19,
2015, before Becky Van Auken, a Certified Court Reporter.

APPEARANCES: (See separate page)

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

1 Q And as you sit here right now, having
2 worked on this case from August of 2013, you have no
3 evidence or information that the Peppermill used the
4 pars Tors obtained from the GSR, do you?

5 A No, sir.

6 Q Is that a double negative? My problem if
7 it is. Do you --

8 A Let me be clear. If the question is, is
9 there any evidence that I've been provided or have I
10 reviewed that is specific to Mr. Tors specifically
11 utilizing the somewhere between 6 and 13 or 6 and 15,
12 depending on which set of reports we look at, pars
13 that were obtained and are part of the record from the
14 GSR, the answer is no, I have not seen any information
15 that has that.

16 Q Okay. You said whether GSR used it.
17 let's -- one more trip down this road.

18 A Yes, sir.

19 Q It's true, as it not, that you have found
20 no evidence or information that would suggest that
21 Peppermill utilized the pars Tors obtained from the
22 GSR. Correct? Is that correct?

23 A Yes, sir.

24 Q Thank you.

25 Did you testify in the condominium case,

1 your report?

2 A I did.

3 Q When did that happen?

4 A A few times over the past few weeks.

5 Q How much time have you devoted to this
6 particular report, Exhibit 169?

7 A Oh, I don't know the exact amount of time.

8 Q Would you give me your best estimate.

9 A Twenty hours.

10 Q Do you know how much time Brian or Irene
11 devoted to this report?

12 A I don't.

13 Q Now, you were assigned to determine use as
14 a rebuttal expert, right?

15 A Yes, sir.

16 Q Exhibit 175 is portions of your prior
17 deposition.

18 Exhibit 175 was marked.

19 BY MR. ROBISON:

20 Q On page 59 of your prior deposition, you
21 say, on line 5, "To be honest with you" -- which is
22 nice -- "I think that the time that I'm looking at is
23 from the time we knew Tors began the activity to the
24 point at which he was caught. Again, I don't have any
25 confidence relative to Mr. Tors' emails."

1 A I have no information in that regard.

2 Q Would your answer be the same for John

3 Hanson?

4 A It would.

5 Q And Rob Erwin?

6 A It would.

7 Q And Ryan Tors?

8 A It would.

9 Q All right. Is there anybody else addressed

10 on the first page of Exhibit 7 I neglected to mention?

11 A The only other one would be NBPartners.

12 Q That's Bill Paganetti.

13 A Thank you.

14 Q So with respect to the people identified on

15 the first page of Exhibit 7, it's true, is it not, you

16 have no information or evidence suggesting that any

17 one of those individuals utilized the information on

18 the second page of Exhibit 7. Correct?

19 A Not for those specific machines, no, sir.

20 Q All right. In December of 2011 do you have

21 any information that the Peppermill used the par

22 information for any other machines at the GSR?

23 A No, sir.

24 Q January?

25 A No, sir.

1 Q February?

2 A No, sir.

3 Q March of 2012?

4 A No, sir.

5 Q April of 2012?

6 A No, sir.

7 Q May of 2012?

8 A No, sir.

9 Q June of 2012?

10 A No, sir.

11 Q July of 2012?

12 A No, sir.

13 Q All right. Let's go to Exhibit No. 8. Is

14 that in front of you, sir?

15 A It is, sir.

16 Q All right. You recognize that as the

17 June -- I think it's a June 15th email.

18 A That is correct, sir.

19 Q And it's addressed to Peppermill

20 representatives?

21 A It is, sir.

22 Q They are?

23 A They are NBR Partners, which I believe you

24 said was Mr. Paganetti, Mr. Hanson, Billy Paganetti,

25 and Mr. McHugh.

1 Q All right. Now, with respect to the
2 information reflected on the second page, do you have
3 information or evidence that any of those individuals
4 or the Peppermill itself utilized the information
5 reflected for any one of those machines?

6 A Not these specific machines, no, sir.

7 Q And the first machines is what?

8 A Ducks in a Row.

9 Q Do you have any information that any of the
10 Ducks in a Row at the Peppermill were changed, the par
11 settings, as a result of this?

12 A No, sir.

13 Q That any machines at all at the Peppermill
14 were changed as a result of this?

15 A No, sir.

16 Q Second machine?

17 A Is Buffalo.

18 Q And that reflects, what, a 5.27 reading?

19 A It says 8.18.

20 Q Thank you.

21 A You're welcome, sir.

22 Q Do you have any information that any of
23 those individuals on the first page of Exhibit 8 or
24 any representative of the Peppermill utilized the
25 information reflected on the second page of Exhibit 8

1 [REDACTED] pertaining to the Buffalo?

2 A [REDACTED] Not for that specific machine, no, sir.

3 Q [REDACTED] Third machine?

4 A [REDACTED] Enchanted Unicorn.

5 Q [REDACTED] Are you aware whether or not the Peppermill
6 [REDACTED] even had an Enchanted Unicorn on its floor in June of
7 [REDACTED] 2012?

8 A [REDACTED] No, sir, I am not.

9 Q [REDACTED] Do you have any information, sir, that
10 [REDACTED] anybody at the Peppermill, including the addressees on
11 [REDACTED] the first page of Exhibit 8, used that information
12 [REDACTED] concerning the Unicorn at all?

13 A [REDACTED] Not for that specific machine, no, sir.

14 Q [REDACTED] Next machine?

15 A [REDACTED] Cats.

16 Q [REDACTED] Do you know whether or not the Peppermill
17 [REDACTED] had Cats machines on its floor in June of 2012?

18 A [REDACTED] I do not.

19 Q [REDACTED] Do you know whether any of the addressees
20 [REDACTED] used the information with respect to the Cats on the
21 [REDACTED] second page of Exhibit 8?

22 A [REDACTED] Not for that specific machine, sir.

23 Q [REDACTED] Is your answer you have no information with
24 [REDACTED] regard to Cats?

25 A [REDACTED] I have no -- sorry. [REDACTED] For the first response

1 to your question, I am not sure whether -- I don't
2 have any information whether they had or did not have
3 the Cats machines on their floor in 2012. And the
4 second --

5 Q Second question: Do you have any
6 information that the information relative to the Cats
7 par was utilized in any way at the Peppermill?

8 A Not for that specific machine.

9 Q And the next machine?

10 A Horoscope.

11 Q Do you know whether or not the Peppermill
12 had a Horoscope on its floor in June of 2012?

13 A No, sir.

14 Q Do you know of any information or evidence
15 that would suggest that the Peppermill or the
16 addressees on that email utilized the information that
17 is reflected for that particular machine?

18 A Not for that specific machine.

19 Q The last machine?

20 A Wolf Run.

21 Q Do you know whether Peppermill has Wolf
22 Run?

23 A I do not.

24 Q Have you ever been at the Peppermill to
25 look at what kind of machines they actually have on

1 their floor?

2 A I have been on the floor of the Peppermill,
3 but I did not take an inventory of their specific
4 machines.

5 Q All right. Do you have any information
6 that would suggest that the Peppermill utilized the
7 information for that particular machine?

8 A I do not.

9 Q You keep referring to my question that you
10 have no information that the Peppermill utilized the
11 par information set forth on Exhibits 7 and 8, saying
12 that "not that specific machine."

13 Does that suggest that you are aware of
14 other machines that were keyed and the pars reflected
15 from that keying process were utilized?

16 A No, sir.

17 Q Let's go back to Exhibit 175. I think
18 we've covered page 74. I'm turning to page 75. And
19 I'll ask you the same questions with regard to the ICI
20 machines displayed on the exhibits we just covered.

21 You told me then you had no information, so
22 I take at this testimony is still reliable.

23 A My testimony has not changed.

24 Q On page 14 of your deposition as reflected
25 on Exhibit 175, I asked the question on line 15: Did

1 you find anything in the record that any one of those
2 pars was put to a commercial use by Peppermill?

3 Mr. Johnson objected, but your answer was:
4 No, sir.

5 Any change to that testimony?

6 A No, sir.

7 Q And on page 119, line 25, going over to
8 page 120 --

9 A I'm sorry, sir. Can you give me the
10 reference again?

11 Q 119.

12 A Yes, sir.

13 Q Should be the next page, line 25.

14 A Okay. Thank you, sir.

15 Q It's pretty easy because I highlighted them
16 on the right side.

17 A I'm sorry. I thought you said page 125.

18 Q I probably did. I apologize.

19 I asked you a question on line 25: "You
20 have no information, do you, that the Peppermill used
21 the par information to improve its product?"

22 "Objection. Asked and answered."

23 You answered. "No. It was irrelevant to
24 my calculation."

25 I'm not concerned about your calculation or

1 the relevance of these pars to anything you did. But

2 I want to make sure that your testimony is the same.

3 It's true, is it not, that you have

4 absolutely no information to suggest that the par

5 information was used by the Peppermill to improve its

6 product?

7 A I believe par information was used by the

8 Peppermill.

9 Q Let me get there step by step.

10 Your answer here is no. So you're changing

11 your testimony?

12 A The question was "Do you have

13 information" -- excuse me -- "You have no information,

14 do you, that the Peppermill used the par information

15 to improve its product?"

16 Q And you answered "No."

17 A And subsequent to that I think I've

18 reviewed additional material that would suggest that

19 they were using that information. If you're asking

20 me --

21 Q Wait a minute --

22 A -- whether my testimony --

23 Q Just follow me. I don't want a speech.

24 Okay?

25 I asked you on September 15th quite

1 clearly: "You have no information, do you, that the
2 Peppermill used the par information to improve its
3 product?"

4 And your answer was: "No. It was
5 irrelevant to my calculation. That is relevant to
6 me -- irrelevant to me."

7 Your answer then was no, that you had no
8 information that the Peppermill used the par
9 information it got from the GSR to improve its
10 product. Correct?

11 MR. COHEN: Objection. Limit your
12 statement to as of September 15th.

13 MR. ROBISON: Yes, sir. I appreciate your
14 comment.

15 BY MR. ROBISON:

16 Q On September 15th you had no information
17 that the Peppermill used the GSR pars to improve its
18 product. Correct?

19 A That's correct.

20 Q And you're changing that testimony now?

21 A No, sir, I'm not.

22 Q Okay. As you sit here today, Mr. Aguero,
23 do you have any information to suggest that the pars
24 reflected on Exhibit 7 and 8 were used in any way by
25 the Peppermill to improve the Peppermill's product?

1 A Yes, sir, I believe they were.
2 Q Okay. Which one of the cars was used?
3 A I can't tell that with any specificity.
4 Q Was the Buffalo used?
5 A Again, that would be the specificity I'm
6 referring to.
7 Q Was the Buffalo used?
8 A I don't know.
9 Q Was Unicorn used?
10 A I don't know.
11 Q Was Ducks in a Row used?
12 A I don't know.
13 Q Was Cats used?
14 A I don't know.
15 Q Well, you've looked at the documents,
16 haven't you, to see whether or not the Cats machines
17 at the Peppermill were changed?
18 A I have.
19 Q At or about this time?
20 A I have.
21 Q Now, we agree that the time of the alleged
22 misappropriation was June 14, 2012, with regard to
23 Exhibit B. Correct?
24 A We do agree.
25 Q All right. To what use were those cars on

1 Exhibit 8 made on June 14, 2012?

2 A Those specific pars, it's impossible to
3 tell.

4 Q Well, it's not impossible to tell. You can
5 look at a multitude of records, can't you?

6 A I'm sure I could.

7 Q I mean, you could look at the Cats machines
8 from the information we gave you to determine if there
9 was a change in the par setting of a Cats in and about
10 the time of June 14, 2012?

11 A Yes, sir, I could.

12 Q And you did that?

13 A I did look at them.

14 Q And you didn't see any correlation, did
15 you?

16 A Sir, there is no correlation between the
17 changes in the pars and the totality and the timing of
18 when Mr. Tors went through. With one specific date,
19 that analysis would be irrelevant.

20 Q I'm talking about the time of the alleged
21 misappropriation, which is June 14, 2012.

22 A Right. And that's why your question
23 doesn't make any sense --

24 Q I haven't asked you a question yet so you
25 don't need to answer anything.

1 On June 14, 2012, did you look to determine
2 whether there were par changes on or about that date
3 of the machines reflected on the second page of
4 Exhibit 8?

5 A Yes, sir, I did.

6 Q And did you find changes?

7 A There were changes, yes, sir.

8 Q Which way did they go?

9 A Both up and down if I recall correctly.

10 Q Which machines went up?

11 A I don't think I could tell you that.

12 Q Which machines went down?

13 A I couldn't tell you that.

14 Q Do you have any reason to believe it was
15 because of the information reflected on Exhibit 8?

16 A There was no correlation.

17 Q All right. Do you have any information to
18 suggest that the changes were caused by the
19 information on Exhibit 8?

20 A No, sir.

21 Q Were there any other pans obtained from the
22 GSR by the Peppermill in June of 2014?

23 A Not that I'm aware of.

24 Q And this exercise that you followed to try
25 to correlate whether it was changes in specific

1 follows:

2 "QUESTION: Well, you're an expert. It
3 wouldn't be a wise thing to do to change
4 your floor par based upon six pars of a
5 competitor, would it?"

6 BY MR. ROBISON:

7 Q If you were the Peppermill with 1600
8 machines on your floor,

9 MR. COHEN: Same objection. Argumentative.

10 BY MR. ROBISON:

11 Q If you're Dotty's, I might get it. But
12 you're not. We're Peppermill. Right?

13 A That is correct, sir.

14 Q The answer?

15 A Is no, I do not think that would be a
16 prudent management practice.

17 Q All right. The next page that I want to
18 ask you about is page 124. You testified on
19 September 15th with respect to the par information
20 that was obtained by Mr. Tors: "Do you have any
21 information that it was distributed beyond the persons
22 mentioned as addressees on the emails?"

23 Your answer is: "No, sir."

24 Has that testimony changed?

25 A No, sir.

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

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

7 Appellant,

8 vs.

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

12 Respondent.
13 _____/

Electronically Filed
May 15 2017 03:18 p.m.
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Clerk of Supreme Court

Supreme Court No. 70319

District Ct. Case No. CV13-01704

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

16 **APPENDIX VOLUME 10**

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RESPONDENT PEPPERMILL CASINOS, INC.'S ANSWERING BRIEF

APPENDIX – CHRONOLOGICAL TABLE OF CONTENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RESPONDENT PEPPERMILL CASINOS, INC.'S ANSWERING BRIEF

APPENDIX – ALPHABETICAL TABLE OF CONTENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"egregious" and "a violation of privacy."⁷ In addressing a question from Commissioner Moran about the potential value of par setting manipulation, he further noted:⁸

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

Importantly, casino management is equal parts art and science. In Nevada, casino department officers were paid \$22.2 million in 2014,⁹ and casino management contracts for the top operators nationally can be significant. Information on how to optimize a casino floor, including the settings of various machines, is unarguably part of the calculus considered by top casino managers as well as how they set themselves apart from one another. The idea that after the Peppermill was caught in the act, publicly admitted wrongdoing and was fined for such actions that the company would then forward the position that those actions were of no consequence lies somewhere between absurdity and a convenient fiction.

REASONABLE ROYALTY

Data available obtained from the Peppermill regarding the actions of Mr. Tors and casino management is, at best, incomplete. While an analysis of available information, and the testimony of Peppermill executives, suggests that the company considered the information obtained by Tors as an element of its casino management, the degree to which the Peppermill directly benefitted or the Grand Sierra Resort was directly harmed is obscured by any number of factors. As Commissioner Moran noted in his questioning during the settlement hearing, simply obtaining the information and doing nothing with it could potentially result in a "competitive edge."¹⁰

To the extent that data are unavailable to adequately determine either the extent of unjust enrichment or the direct losses to GSR, courts may consider a "reasonable royalty" approach such that uncertainty should not preclude recovery.¹¹ There are many ways in which such a reasonable royalty can be calculated, respecting that the individualized facts and circumstances require a "flexible and imaginative approach to the problem of damages" when a misappropriation of a trade secret is put to commercial use.¹² As outlined by the Second Circuit Court of Appeals in *Vermont Microsystems Inc. v. Autodesk Inc.*, 39 U.S.P.Q.2d 1421 (1996), "reasonable royalty award attempts to measure a hypothetically agreed value of what the defendant wrongfully obtained from the plaintiff...the court calculates what the parties would have agreed to as a fair licensing price at the time that the misappropriation

⁷ Transcript of the Nevada Gaming Commission February 2014 Agenda, February 20, 2014 (at page 23).

⁸ Id. at page 26.

⁹ Nevada Gaming Control Board, Gaming Abstract (2014).

¹⁰ Transcript of the Nevada Gaming Commission February 2014 Agenda, February 20, 2014 (at pages 24 and 25).

¹¹ R. Johnson, Milgrim on Trade Secrets, Section 15.02, Aspects of Relief Available in Trade Secret Litigation.

¹² *University Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d 518 (5th Cir. 1974) at 536, 538; see also, *Alcatel USA, Inc. v. Cisco Systems, Inc.*, 239 F. Supp. 2d 660 (E.D. Tex. 2002).

occurred." In the immediate case, the hypothetical offered during the Nevada Gaming Commission settlement hearing by the Peppermill's attorney, attributed to Mr. Paganetti himself, provides a fair starting point for such a hypothetical agreement.¹³

As we told the Board and we told the Investigators, and Mr. Paganetti said, if he sees one at seven percent, then he says, well, I can take mine from four and-a-half to five and-a-half percent, I'm still a percent and-a-half lower. So I'm still going to get the business. But that extra percent adds a hundred thousand dollars a week in revenue. [emphasis added]

The table below summarizes coin-in, total revenue and the hold percentage for the Peppermill for 2010 through 2014.

Slot Machine Operating Metrics for the Peppermill¹⁴

	Total Coin-In	Total Slot Revenue	Hold Percentage
2010	\$2,197,992,570	\$84,137,824	3.83%
2011	\$2,170,038,851	\$78,953,449	3.64%
2012	\$2,079,308,653	\$75,570,373	3.63%
2013	\$2,128,917,671	\$78,138,590	3.67%
2014	\$2,173,869,302	\$83,256,130	3.83%

The table that follows provides adjusted hold percentages increased by 0.25 percent to 2.0 percent. Highlighted in red are the resulting values that are equal to or higher than the hold percentage reported by the balance of the market during each year. Notably, the 1.0 percent adjustment referenced in the hypothetical would have still left the Peppermill below the overall market average in each year during the study period (figures in red reflect hold percentages higher than broader market average, excluding the Peppermill).

Adjusted Slot Machine Hold Percentages
Increase Compared to Historical Hold Percentage

	Adjustment Factor							
	0.25%	0.50%	0.75%	1.00%	1.25%	1.50%	1.75%	2.00%
2010	4.08%	4.33%	4.58%	4.83%	5.08%	5.33%	5.58%	5.83%
2011	3.88%	4.14%	4.39%	4.64%	4.89%	5.14%	5.39%	5.64%
2012	3.88%	4.13%	4.38%	4.63%	4.88%	5.13%	5.38%	5.63%
2013	3.92%	4.17%	4.42%	4.67%	4.92%	5.17%	5.42%	5.67%
2014	4.08%	4.33%	4.58%	4.83%	5.08%	5.33%	5.58%	5.83%

¹³ Transcript of the Nevada Gaming Commission February 2014 Agenda, February 20, 2014 (at page 26).

¹⁴ Data provided by Peppermill, PM 2845-2892.

The table that follows summarizes the incremental amount of gaming win generated by the Peppermill assuming its volume of play was unchanged and the company's slot hold was increased by a value between 0.25 percent and 2.0 percent. This results in an increase in slot machine revenue of somewhere between \$26.9 million and \$215 million. This analysis does not attempt to adjust for changes in play (coin-in) resulting from higher hold percentages, but instead relies on historical, known volumes in play.

Increased Slot Machine Revenue at Higher Hold Percentages
Holding Constant Total Slot Play (Coin-In)
(in millions)

	Adjustment Factor							
	0.25%	0.50%	0.75%	1.00%	1.25%	1.50%	1.75%	2.00%
2010	\$5.49	\$10.99	\$16.48	\$21.98	\$27.47	\$32.97	\$38.46	\$43.96
2011	\$5.43	\$10.85	\$16.28	\$21.70	\$27.13	\$32.55	\$37.98	\$43.40
2012	\$5.20	\$10.40	\$15.69	\$20.79	\$25.99	\$31.19	\$36.39	\$41.59
2013	\$5.32	\$10.64	\$15.97	\$21.29	\$26.61	\$31.93	\$37.28	\$42.58
2014	<u>\$5.43</u>	<u>\$10.87</u>	<u>\$16.30</u>	<u>\$21.74</u>	<u>\$27.17</u>	<u>\$32.61</u>	<u>\$38.04</u>	<u>\$43.48</u>
Total	\$26.88	\$53.75	\$80.83	\$107.50	\$134.38	\$161.25	\$188.13	\$215.00

The sole remaining factor in this hypothetical is what the Peppermill would have been willing to pay to obtain the knowledge that its hold percentages could be increased by 1.0 percent. Assuming a midpoint rate of 25 percent would mean that the Peppermill would have spent approximately \$5.4 million per year to generate approximately \$21.4 million per year. The table that follows provides a range of values based on 4.5 years of "reasonable royalties."

Estimated Royalty Matrix
Cumulative, 2010 - 2014
(in millions)

	Slot Machine Hold Percentage Adjustment							
	0.25%	0.50%	0.75%		1.25%	1.50%	1.75%	2.00%
10%	\$2.41	\$4.83	\$7.24		\$12.06	\$14.48	\$16.89	\$19.30
15%	\$3.82	\$7.24	\$10.66		\$18.10	\$21.72	\$25.33	\$28.95
20%	\$4.83	\$9.65	\$14.48		\$24.13	\$28.95	\$33.78	\$38.60
30%	\$7.24	\$14.48	\$21.72		\$36.19	\$43.43	\$50.67	\$57.91
35%	\$8.44	\$16.89	\$25.33		\$42.22	\$50.67	\$59.11	\$67.56
40%	\$9.65	\$19.30	\$28.95		\$48.26	\$57.91	\$67.56	\$77.21
45%	\$10.86	\$21.72	\$32.57		\$54.29	\$65.15	\$76.00	\$86.86
50%	\$12.06	\$24.13	\$36.19		\$60.32	\$72.38	\$84.45	\$96.51

A reasonable royalty in the amount of \$24.1 million would appear appropriate considering the facts and circumstances in the immediate case.

EXPERT WITNESS CREDENTIALS – JEREMY A. AGUERO

Professional and Business History

Principal Analyst

Applied Analysis, June 1997-Present
Las Vegas, Nevada

Market Analyst/Intern

Coopers & Lybrand L.L.P., January 1996–June 1997, Financial Advisory Services Group
Las Vegas, Nevada

Education

Juris Doctorate, 2004

William S. Boyd School of Law

Cum Laude, Dean's Graduation Award

- ◆ CALI Awards: (4)
- ◆ Lead a team of students who introduced and passed legislation in 2003, which clarified a conflict in a provision of the Nevada Revised Statutes as it relates to lottery payouts.
- ◆ Commerce Clause Limitations & Nevada's Tax Debate of 2003, A Review and Analysis
(Recommended for submission to the Tannenwald Competition), 2003
- ◆ Keeping Pace with Technology: The Issue of State and Local Taxation of Internet Sales, 2003
- ◆ State and Local Taxation of Securitizations, 2003

Bachelor's Degree, Hotel Administration, 1997

University of Nevada, Las Vegas

Cum Laude, Wm. M. Weinberger Graduate Award

- ◆ Undertook a special course of study under the direction of Dr. Shannon Bybee focusing on economics, finance, impact analysis and market analysis
- ◆ Elected Student Senate Representative, 1995 & 1996
- ◆ Student Association, Executive Board, 1995 & 1996
- ◆ Organized and led a team of students that drafted and adopted organizational constitution and bylaws

APPLIED ANALYSIS

GSREXP008

RA 02254

Selected Project Experience

- Retained by the City of Las Vegas to review and analyze foreclosure trends throughout southern Nevada. The comprehensive analysis considers foreclosure volumes, pre-foreclosure activities and the disposition of foreclosed properties.
- Retained by Pisanelli Bice as an expert witness for the defendant in a case involving the temporary suspension of construction and evolving economic conditions in a dispute between a development company and national home builder. AA was asked to review and comment on changing economic conditions.
- Retained by the State Bar of Nevada to develop and evaluate financial strategies related to the disposition and potential acquisition of real property. In connection with this analysis, AA was also asked to evaluate the southern Nevada economy and commercial real estate sector relative to project feasibility.
- Retained by Boles, Schiller & Flexner as an expert witness for the defendant in a case involving a loan agreement between Plainfield Specialty Holdings II and VV Ventures Operations. AA was asked to determine whether a material adverse effect had occurred in the context of whether funding of the loan should continue and to review aspects related to the viability of the project.
- Retained by the Regional Transportation Commission of Southern Nevada to review the reasonableness of the best and final offers submitted by Veolia Transportation and First Transit for fixed route services in southern Nevada. Analysis was used in the Regional Transportation Commission's determination in awarding the service contract valued at more than \$600 million. Notably, AA was originally contacted by both Veolia Transportation and First Transit to analyze the reasonableness of the offers on their behalf. Both parties agreed to allow us to review the contract for the Regional Transportation Commission as an independent and objective third party.
- Retained by Zuffa, Inc., the parent company of the Ultimate Fighting Championship (UFC), to undertake a series of pre-and post-event economic and fiscal impact studies. These studies have been completed not only for the UFC's Las Vegas-based events but also for events throughout the United States, in Canada, Mexico, Brazil, Australia, Germany, and other host jurisdictions around the world.
- Retained by Station Casinos to review and monitor economic activities in southern Nevada on a monthly basis. AA has also prepared a number of presentations and analyses for Station Casinos relative to the projection of key demand variables, geographic concentrations of foreclosure activity, various forms of measuring inflation, the impact of rising gasoline prices, and economic trends in other markets throughout the United States.

- Retained by Coyote Springs Renewable Ventures to explore labor supply-demand considerations under existing market dynamics (at the time, southern Nevada had a 15-percent unemployment rate) as well as to develop a cost-benefit analysis for development of a wind turbine manufacturing plant at the Coyote Springs site.
- AA was retained by Steer Davies Gleave to develop a range of projection scenarios for southern Nevada's tourism industry to assist the company in evaluating the market potential of a high-speed rail service between Las Vegas and southern California.
- Retained by the City of Henderson to review and analyze the economic and fiscal impacts of the legislation during the 2011 Regular Session of the Nevada State Legislature. The focus of AA's effort was specific to legislation with the potential to impact local governments.
- Retained by BrightSource Energy to review and analyze the economic and fiscal impacts associated with the development of a utility-scale solar energy generation facility located in both Nevada and California.
- Retained by Starwood Capital Group to research and analyze macro and micro economic conditions potentially impacting a select set of gaming properties in the southern Nevada market.
- Retained by Odyssey Real Estate Capital and Lone Star Investments to provide a general overview of Las Vegas market conditions, as well as how southern Nevada is positioned relative to a post-recessionary recovery and longer-term growth.
- Retained to identify and review the most favorable locations to site a number of Steak 'n Shake restaurants in the southern Nevada region.
- Retained by the Nevada Insurance Council to review and analyze the potential impacts of proposed legislation that would have disallowed consideration of credit scores in pricing insurance coverage. Our analysis reviewed the impact of similar initiatives in other areas of the United States and compiled impact data from state insurers covering more than 70 percent of the insured population.
- Retained by Boyd Gaming Corporation to review and analyze economic conditions in the southern Nevada market and to prepare a series of projections relative to population, employment, income and locals gross gaming win. Projections were presented to the company's top management and its board of directors.
- Retained by Big Traffic Mass Media to review, analyze, compare and contrast the reach of mobile billboard advertising as compared to other forms of outdoor advertising.

- Retained by Pisanelli Bice as an expert witness for the defendant in a case involving changes to Mandalay Bay that a tenant claimed adversely affected their restaurant and nightclub operations. AA was asked to review economic conditions, the classification of key property elements, and to overview the history of nightclub openings and closings within the southern Nevada tourism market.
- Worked jointly with the Nevada Secretary of State's office to analyze business filing data as a leading indicator of Nevada's economic activity. Our analysis ultimately led to the development of the *Quarterly Economic & Business Activity Report* released by Secretary Miller.
- Retained by Harrah's Entertainment Inc. (now Caesar's Entertainment, Inc.) to prepare a fiscal and economic impact statement for the development of an arena along the Las Vegas Strip. The analysis included a survey of consumer sentiment relative to various alternative funding strategies as well as an estimate of incremental retail sales and use tax yields within the resort corridor.
- Retained by the Regional Transportation Commission of Southern Nevada to evaluate the potential economic and fiscal impact of indexing Clark County's fuel tax to the Consumer Price Index. The analysis included an analysis of the impacts on the RTC's operations as well as the impacts on various consumer groups.
- AA was retained by Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP as an expert witness for the plaintiffs in a case brought against Platinum Hotel. AA was asked to review various claims and representations made to investors by the developer.
- Retained by Southern California Edison and Lewis & Roca to estimate the economic and fiscal impacts associated with the development of approximately 35 miles of electricity transmission lines and related facilities in the southern portions of California and Nevada; the project is known as the Eldorado-Ivanpah Transmission Project.
- Retained by Kemp Jones as an expert witness for the defense in a case brought against Scott Financial Services regarding a non-performing investment in the now defunct Manhattan West project. AA was asked to review market conditions underlying the credit display.
- Retained by Pinnacle Homes to evaluate the potential costs and benefits of implementation of a sprinkler requirement for one and two family homes in Clark County, Nevada.
- Retained by the Las Vegas Convention and Visitors Authority to review and analyze the economic impacts associated with its various operations and southern Nevada's tourism industry generally. Reports have included the impact of LVCVA operations on the community, visitors' tax contribution, major tax payments by hotel casino operations, advertising and marketing program return on investment analyses, fiscal

contribution to school and road construction programs, the relative dependence of the economy on tourism activities, trends in international visitation and other similar topics. AA also prepares a quarterly national economic briefing and tracks sector trends on behalf of the LVCVA.

- Retained by the Nevada Housing Division to evaluate the market potential for two proposed mixed-use, multi-family projects in the southern Nevada area. Other elements of the projects analyzed included limited retail, daycare facilities or other ancillary uses in support of the primary residential element.
- Retained by Herbst Gaming, Inc. (now Affinity Gaming, Inc.) to conduct primary market research on consumer activities for its Primm Valley Casinos. The analysis included a number of surveys of existing clients, lost clients and those traveling over Interstate 15.
- Retained by a company seeking to provide taxi services in Reno and Sparks Nevada to evaluate competitive concentrations relative to the requirements of Nevada Revised Statutes 708.8827; and where possible, to gauge the depth of the market and to identify potentially underserved segments. AA was also asked to review the operator's financial pro formas and other budget documents to develop conclusions relative to the market growth necessary to make the operator profitable.
- Retained by Cox Communications to review and analyze market conditions in southern Nevada and to prepare a presentation to be delivered to the company's key staff and management on key trends with the potential to impact service demand.
- Retained by Chapman Law Firm as an advisor and potential expert witness in land condemnation and eminent domain actions in Clark County, Nevada.
- Retained by Presidential Suites to evaluate alternative strategies for the company's Las Vegas real property holdings in light of current realities and expected market conditions. Essentially a highest and best use analysis, AA reviewed the potential marketability and financial productivity of multiple alternative uses for two parcels.
- Retained by the Associated General Contractors to review, analyze and monitor economic conditions impacting the construction and development industries. AA produces a quarterly economic briefing for the AGC that is routinely distributed to the AGC's members, the media and state and local elected officials.
- Retained by the City of Las Vegas Office of Business Development, Redevelopment Division to review and analyze the economic and fiscal impact associated with the development of the Las Vegas Museum of Organized Crime and Law Enforcement.

- Retained by the Regional Transportation Commission of Southern Nevada to evaluate the impacts of traffic congestion into and out of Boulder City, resulting from changes in traffic patterns after the opening of the Mike O'Callaghan – Pat Tillman Memorial Bridge. The analysis included a survey of local businesses and included a calculation of the value of drive-in visitor traffic primarily originating from feeder markets in Phoenix, Arizona.
- AA was retained by Holland & Hart, LLP as an expert witness for the plaintiff in a case involving Wells Fargo Bank's financing of a commercial retail development located at the southwest corner of Blue Diamond Road and Buffalo Drive at the Mountain's Edge master-planned community in the southwest portion of the Las Vegas valley; the project has been known as "The Edge." AA was asked to review and analyze the reasonableness of the project's development plan, given present economic realities.
- Retained by the Las Vegas Valley Water District to review and analyze changes in economic conditions and to project connection charges sourced to new development activity.
- Retained by Coyote Springs Investment to review the economic and fiscal impacts associated with the development of a 21,142 acre master planned community, located in Clark and Lincoln County, Nevada. This analysis was updated several times and used for multiple reasons, including, without limitation, a hearing on water resource allocation before the Nevada State Engineer.
- Retained by the Nevada Resort Association to summarize the economic and fiscal impacts of Nevada's tourism industry. AA routinely updates the Association's website and its materials.
- Retained by the Las Vegas Chamber of Commerce to review, analyze and report on Nevada's education system, including a comparative analysis of student performance, the identification of statistically significant factors in predicting student academic success, operating and capital funding levels, and alternative legislative strategies. The analyses were used by the Chamber, as well as the Nevada State Legislature, in developing education reform strategies during the 2011 Legislative Session.
- Retained by King Midas World Entertainment to review and analyze the potential market for a US play-for-fun and Italian-based casino gaming website based on the theme and characters of the book *The Seven Sins: The Tyrant Ascending*.
- Retained by the Clark County School District to review economic, fiscal and policy issues' potential impact on the state's schools.
- Retained by the Clark County Flood Control District to review, analyze and quantify the potential economic impacts associated with the District's long-term construction master plan.

- Retained by the Capitol Company to review and analyze the potential impact of legislation and initiatives in the state of Nevada.
- Prepared a series of presentations, reports and analyses for a Nevada-based community bank on national, regional, state and local economic conditions. Presentations were prepared and delivered monthly to bank staff with ad hoc analyses on specific economic and real estate related issues.
- Retained by the Las Vegas Chamber of Commerce to review financial disclosures required of local governments by Nevada Revised Statute 288 after creating or modifying collectively bargained labor agreements.
- Retained by General Moly, Inc. and Gallatin Public Affairs to obtain primary research data on residents' perceptions of General Moly and its proposed Mt. Hope Mine. The Mt. Hope Mine is located in Eureka County, Nevada.
- Retained jointly with Hobbs, Ong and Association by the Nevada System of Higher Education to review cost-savings initiatives sourced to internal service departments.
- Retained by the Picerne Group to review, analyze and monitor supply and demand trends for multi-family residential products in both southern Nevada and the Phoenix metropolitan area.
- Worked cooperatively with Opportunity Village, a local non-profit organization that provides care and work opportunities for those with mental disabilities, to develop an economic and fiscal impact statement for the organization's operations. The analysis, which is used routinely by the organization, demonstrates that the organization not only provides hundreds of jobs for people who would not otherwise have them, but also saves the state more than \$10 million annually in reduced public service costs.
- Retained by the Building Jobs Coalition to identify and analyze potential economic development strategies. AA ultimately produced a report entitled *Creating 100,000 Nevada Jobs* as well as a website that summarized the key findings of our review and analysis. The report was used by the Coalition in revising the Nevada's economic development policies.
- Retained as part of a consultant team asked to review and provide recommendations to restructure Washoe County internal service department functions.
- Retained by the City of Henderson to prepare an economic and fiscal impact analysis pursuant to Nevada's Community Redevelopment Law (NRS 279.573 et seq). The update was required due to changes in the local economy that necessitated a reevaluation all of its land planning efforts, including those such as the Cornerstone Redevelopment Area.

- Retained by the Silverton Hotel and Casino to review and analyze the local market relative to the potential acquisition of the neighborhood casino hotel in southern Nevada.
- Retained by the Retail Association of Nevada to review, analyze and monitor retail trends throughout the state of Nevada. This analysis has produced a number of reports on key consumer spending and retail business trends. AA also prepared a number of comparative analyses on economic trends for the Association as well as a report on the potential impacts of legislation seeking to change Nevada's affiliate nexus laws relative to required collection of sales tax by some internet based retailers.
- Retained by Rational Services Limited, a subsidiary of PokerStars, to review and analyze the economic and fiscal impacts of legalizing Internet Poker in the State of Nevada. Our analysis was delivered to the Nevada State Legislature during its 2011 Session.
- Retained by American Medical Response and MedicWest ambulance to review and analyze the economic impacts associated with emergency medical services in the southern Nevada region.
- Retained by Gordon Silver and the Tavern Owners Association to review and analyze the economic and fiscal impacts of the Nevada Clean Indoor Air Act.
- Retained by the Nevada Development Authority to review, analyze and monitor the economic and fiscal impacts of Nevada's economic development policies and the initiatives undertaken by the Authority. The results of our analyses include a quarterly economic development tracking brief as well as in-depth presentations prepared for the Nevada State Legislature in both 2009 and 2011.
- Retained by Wynn Las Vegas to review and analyze the economic and fiscal impact of various legislative initiatives.
- Managed a team of analysts in support of Clark County's Community Growth Task Force. The Task Force met for one-year and was charged with the review of growth-related issues in Southern Nevada and to develop a series of recommendations on how growth might be most efficiently managed into the foreseeable future. AA was tasked with a review of underlying economic issues as well as a series of benefit-cost analyses for high-priority strategies. In addition, a Community Indicators Program was also created by AA in support of the Task Force efforts.
- Expert witness for the defense in a dispute involving the Conrad-Majestic hotel/condominium project in Las Vegas, Nevada. Specifically, AA was retained to review and analyze historical and current market conditions relating to the absorption and pricing of luxury condominiums in the Las Vegas market.

- Developed and analyzed alternative property tax modifications on behalf of the Nevada State Legislature and Office of the Nevada Governor. Project included the compilation of parcel-level data (i.e., just over one million parcels) for Nevada's 17 counties and the development of an econometric model that allowed for real-time "what-if" scenario analysis. AA's model was used to compare and contrast the fiscal and economic impact of several hundred alternative proposals.
- Selected to chair the Governor's Task Force on Tax Policy Technical Working Group. In doing so, served as the principal analyst for the Task Force and co-authored its 1,200-page report. The Task Force reviewed Nevada's economy and its fiscal system as well as developed a series of recommendations aimed at addressing the state's long-run revenue-expenditure imbalance. The Task Force's report has been called the most comprehensive study of Nevada's fiscal system in the State's history.
- Prepared a review of the economic, fiscal, and social impacts that the hospitality industry has on the State of Nevada. This review included consideration of direct and indirect employment, wage, and output impacts. The project also required an in-depth analysis of Nevada's municipal revenue and expense structure. State, county, and local taxes were analyzed, and the hospitality industry's contribution estimated. Social impact factors reviewed included population growth, employment and unemployment, public service costs, social assistance programs, crime rate, and underage and problem gambling. In addition, the evolution of the gaming and hospitality industry, Nevada's regulatory structure, and current market indicators were also reviewed.
- Expert witness for the defense in a dispute involving the sale of the property upon which the Krystle Towers project was to be built. Specifically, AA was retained to review and analyze historical and current market conditions relating to the absorption and pricing of luxury condominium units in the Las Vegas market.
- Retained by the Las Vegas Chamber of Commerce to review, analyze and report on fiscal issues affecting the state of Nevada. Analyses included a detailed review of public employee wages and salaries, Nevada's Public Employee Retirement System, post-retirement health care, and various budgeting policies. The analyses were used by the Chamber as well as the Nevada State Legislature in making significant reforms to public employee benefits in 2009 and 2011.
- Retained by MedicWest Ambulance to compare and contrast public sector and private sector ambulance service costs. The analysis was ultimately used by MedicWest to put down an initiative by the North Las Vegas Fire Department that would have diverted a number of emergency medical transports from MedicWest to the fire department as a revenue generating measure.
- Retained by the Large-scale Solar Association to provide a comparative analysis of potential tax burdens for a prototypical 100-megawatt, utility scale solar facility in Nevada, Arizona and California. Analysis presented to the 2009 Session of the Nevada State Legislature and used in developing the state's abatement strategy.

- Retained as part of a team of business and community leaders opposed to the passage of the Tax and Spending Control for Nevada Initiative ("TASC"). Analysis included a review of the potential implications of the initiative as well as a comparative analysis of alternative versions that were circulated. This analysis was introduced in the state court hearings on the matter and was utilized by the Nevada Supreme Court in finding that TASC should be removed from the November 2006 ballot.
- Retained by Bailey Kennedy and Aspen Financial as an expert witness for the defendant in a case involving the performance of various real estate investments within the southern Nevada market. AA was asked to review and comment on changing market conditions.
- Retained by Ballard Spahr, LLP as an expert witness for the defendant in a case involving a loan agreement between Lehman Brothers and Trimont Real Estate Advisor. AA was asked to review and comment on tourism sector conditions and the viability of a project that proposed to acquire and renovate the Atrium Suites Las Vegas Hotel.
- Retained by the City of Las Vegas to evaluate the economic and fiscal impacts of its redevelopment area activities. Analysis was used by the City and the Nevada State Legislature in revising Nevada's redevelopment laws as they relate to the distribution of tax revenue during the 2009 Session of the Nevada Legislature.
- Expert witness for St. Mary's Hospital in its dispute against Renown Medical relating to unfair business practices in the northern Nevada hospital market. Analysis considered historical contract requirements, definition of the relevant competitive market and mathematical analyses of market concentration.
- Retained by the Association General Contractors to review and analyze the economic and fiscal impacts of construction programs in the state of Nevada. The analysis has been used by the Association and Legislature to help preserve construction and even accelerate some capital construction programs for roads (see, Senate Bill 5, 26th Special Session of the Nevada State Legislature).
- Retained as an expert witness by Coyote Springs Investment, LLC in its petition to move water between major basins in Nevada. Analysis required a review and comparative analysis of the economic benefits of water use.
- Obtained, analyzed and reported market-based data in support of filings required in the acquisition of the Mandalay Bay Resorts by MGM MIRAGE. This included a review and analysis of supply and demand characteristics, an extensive inventory of existing and future development locally, regionally and nationally, and a comparative analysis of performance-based statistics.

- Retained by the City of North Las Vegas to evaluate gaming market concentration issues. Specifically, the analysis considered current and projected development of restricted and non-restricted gaming licensees relative to demand growth in the region.
- Acted as the lead economic and fiscal analyst in support of the Las Vegas Convention and Visitors Authority's \$737-million facility enhancement program. This included a comprehensive market analysis, internal and external return on investment calculations and the development of a performance measurement model. In January 2006, the Convention Center Board unanimously approved the enhancement program.
- Retained by Credit Suisse First Boston to prepare a review and analysis of market conditions in Clark County, Nevada. Analysis included a review of supply and demand conditions in the single family and multi-family residential markets as well as the office, industrial, retail, and vacant land markets. Also included economic modeling of anticipated future performance and identification of areas of opportunity.
- Managed preparation of a regional demographic snapshot on behalf of the Clark County Department of Child and Family Services. The analysis included a detailed review and analysis of economic factors impacting demand for government programs as well as a review and analysis of the department's service array.
- Retained by Snell & Wilmer to analyze competitive market issues relating to taxi cabs in the Las Vegas market. Specifically, an equilibrium model was constructed, projecting supply and demand based on a projection of underlying land use development. The objective of the analysis was to determine if the expansion of one company would adversely impact either existing operators or the level of service in that company's primary trade area.
- Managed the review and analysis of several market feasibility analyses for developments ranging from high-rise condominiums to retail centers. Analysis included a review and analysis of supply and demand trends and well as competitive profiling and site-related analyses.
- Prepared a review and analysis of housing affordability issues on behalf of the Southern Nevada Homebuilders Association. Analysis included a review of housing affordability issues as well as price stability and market sustainability. Report was ultimately delivered to the Nevada State Legislature's interim committee on housing affordability.
- Retained by Clark County, Nevada to provide expert testimony relating to economic conditions and cost of living escalation factors in the County's arbitration with the Police Protective Association.
- Prepared a review and analysis of residential and commercial development indicators for a private equity/investment firm seeking to acquire a construction materials company in southern Nevada. This

analysis included a review of historical trends as well as a 10-year projection of development activity. It also included a review and analysis of major project activity.

- Retained by the California Ambulance Association to review and analyze market conditions, economic and fiscal, impacting the state's emergency medical transport service providers. This analysis included a survey of selected providers and a report detailing challenges facing the industry.
- Prepared an economic, fiscal and community impact statement on behalf of the Nevada Cancer Institute. The analysis considered the economic, fiscal and social benefits to the community of providing comprehensive cancer care in Nevada. It also considered the impacts of medical service provider co-location and industry clustering.
- Prepared a portion of the economic impact statement for Southern Nevada Regional Transportation Commission, relative to the local government portion of the Las Vegas Monorail Project. This study included a detailed review of existing and future land use conditions for ¼ and ¼-mile rings around each proposed monorail station. Existing and future land uses were then translated into jobs, wages and business output. The before and after conditions were compared to identify the project's economic impact.
- Selected as part of a consultant team asked to analyze the potential fiscal, economic and social impacts of a growth interruption in Southern Nevada. This analysis required a documentation of the state and regional economy and projections at various levels of potential impact. It also required the coordination of regional and national panels of economic experts as well as a local working group of government administrators. The results of our analysis were delivered to various public bodies including Clark County's Regional Planning Commission and the State Engineer.
- Prepared a comprehensive market analyses for a number of development/ redevelopment alternatives for a resident-oriented gaming operator in Nevada. Project considered the demographics of the primary trade area, likely capture rates, site characteristics, and a potential service array.
- Selected as part of a consultant team asked to estimate the economic and fiscal impacts of a high-tech manufacturing firm's expansion into one of seven U.S. states. This analysis required an assessment of a \$1 billion development schedule over a 13-year build-out period. The analysis included a review of how states would be impacted, fiscally and economically, in terms of employment, wages, and output and tax collections. State and local taxes and proposed incentive packages were also reviewed as were labor markets, infrastructure availability and delivery cost constraints.
- Managed a team of analysts asked to review the current and potential impacts of construction defect litigation. This analysis considered how construction defect laws affect home prices, housing supply, competition and several other market variables. It also considered how more limited supplies of affordable

housing might adversely affect Southern Nevada's labor market, specifically as it relates to services industries.

- Retained by the Bureau of Land Management to review and analyze the impacts of the release of 380 acres of property for development in Carson City and Douglas County, Nevada. This analysis considered economic, fiscal and social impacts on an interconnected regional economic unit. It also considered a number of alternative uses at the site, from hotel-gaming to residential.
- Managed a team of analysts asked to develop an information tracking system for the Clark County Air Quality Division. This effort required the migration of over 70 legacy databases into one integrated information system. In performing this analysis, our team identified nearly \$1 million in billings that had been missed or wrongly characterized by the legacy system.
- Selected as a component of a consultant team to review and analyze the operations of a riverboat casino hotel in Rock Island, Illinois. This project included a report that was ultimately presented to the state's legislature discussing the economic impact factors created by dockside gaming versus mandatory cruising for competitive facilities within the Quad Cities.
- Provided litigation support services in a matter involving fees charged by a contractor to dispose of medical waste. This analysis required a reconstruction and review of accounting records as well as comparative analysis of services provided in Western States.
- Selected as part of a consultant team asked to estimate the fiscal and economic impacts of a 1,900-acre master planned community development in North Las Vegas, Nevada. This analysis required the development of a 20-year development absorption build-out schedule as well as estimates of public revenues and public service costs.
- Retained by the Clark County Department of Aviation to review and analyze the value of land trades in the 5,300-acre Clark County Cooperative Management Area. This study required a comprehensive review of long-run value created by controlled development within areas impacted by McCarran International Airport's noise environs.
- Retained by the Clark County Department of Finance to project revenue streams at the county and township level over a ten-year projection period. This analysis considered revenues generated directly by the county as well as distributions from state and federal sources.
- Managed a comprehensive economic, demographic and market analysis of Central City and Black Hawk, Colorado for a national gaming operator. This analysis included a review of historical supply and demand conditions; an examination of current and projected market performance; an analysis of existing, planned,

proposed, and under-construction competitive gaming facilities; a survey of infrastructure developments; and an analysis of historical, existing and potential regulatory conditions.

- Selected as part of the consulting team asked to prepare a 3,000-acre redevelopment plan for the City of North Las Vegas. This project required estimates of financial feasibility, economic vitality, development trends, and revenues likely to be generated via tax increment financing alternatives.
- Managed comprehensive economic, demographic, and site analysis for a proposed Native American gaming facility in Southern California under the covenants and restrictions of the Pala Band of Mission Indians Compact. This project included the generation of performance estimates for twelve competitive facilities, a review and analysis of existing demand and urban economic factors, an analysis of transportation and location restrictions, and an analysis of the potential contribution of an innovative video lottery terminal required under compacted operations.
- Provided litigation support in a class action lawsuit where members of a residential community claimed the value of their property was decreased when a public golf course was made private. This analysis required a longitudinal study of home sales and pricing trends over a five-year period.
- Selected as part of the team asked to develop a parcel-level revenue maximization plan for a local master plan community developer. Specifically, this analysis reviewed general pricing trends for the Valley's major master-planned communities versus those of the subject developer. The project also considered the relative value of amenities and infrastructure improvements offered by a number of developers.
- Retained by the Clark County Regional Flood Control District in 1999 and again in 2002 to develop a cost-benefit analysis for the District's flood master plan. This project required consideration of inundation reduction, economic output and productivity, emergency management and several qualitative elements. Our 1999 analysis was called a model of government accountability by the Clark County Board of Commissioners.
- Prepared and managed a market analysis for a convention and banquet facility in the Las Vegas Valley for a local developer. The project included a review of existing, planned, proposed, and under-construction meeting facilities, as well as five-year market projections.
- Selected as part of the team asked to review the potential costs and benefits of creating a new local air quality control agency on behalf of Southern Nevada Regional Planning Coalition. This analysis included a review of existing operations, staffing, space requirements, funding alternatives, and potential single-agency costs (i.e., the creation of a fund balance).

- Developed the absorption timeline for the Clark County Southwest Study Area in support of a public facilities needs assessment in 1999 and again in 2003. This analysis included the projection of land uses, property values, population and employment densities, occupancy rates, and school enrollment.
- Worked as a member of the team selected to prepare detailed site analysis of Las Vegas' suburban casino market as part of strategic plan for a Nevada gaming corporation. The work involved the segmentation of the market into competitive submarkets in order to identify those areas with greatest growth potential.
- Prepared an absorption study for a 7,500-acre tract of land located in North Las Vegas, Nevada as part of a team reviewing the land on behalf of the United States Bureau of Land Management. The study included annual absorption estimates, by land use, through the project's development as well as a review of potential changes to the development's land use mix.
- Designed, developed and employed a set of monitoring indices specific to the Las Vegas gaming market, including the Applied Analysis Gaming Index. The publications have a national distribution base, and our gaming index is a recurring feature in the State's largest daily paper.
- Selected as a member of the consultant team hired to perform a fiscal impact analysis for the City of Las Vegas. This analysis included the creation of an absorption model to identify probable build-out patterns by land use type. These land uses were then translated into own-source revenues and public service costs (using a service standard method) for the City through build out. The revenues and costs were analyzed under alternative economic conditions (i.e., population growth rates) to determine whether existing revenue sources were sufficient to fund the public services demanded.
- Generated a fiscal impact model that was used to estimate the impact of a waste management contract extension with a governmental service provider. This model balanced the net present value of the cost to comply with the projected value of the expected contract extension, ultimately determining the "break-even" point.
- Selected as part of the consulting team that prepared a market study, site analysis, and a fiscal forecast for a mixed-use rural entertainment facility in Nevada on behalf of an international development company. The facility included a hotel, Class III casino, RV park, convenience store and gas station.
- Worked as a part of a team charged with evaluating the potential impacts of a business tax initiative proposed to be levied in the State of Nevada. A significant portion of this study included a detailed review of economic diversification throughout the Western United States and in Nevada. Diversity's effects on the State's revenue-generating powers were also considered.

- In 1999 and 2000, selected as part of the team engaged to estimate the absorption timeline for a series of "villages" within a major master-planned community. This included a detailed review of economic and demographic conditions and an econometric projection of both supply and demand. The project was performed as part of the special improvement district process.
- Designed a database application for Palm Pilot handheld computers, which allows users to identify, search, sort and update an extensive series of data on Las Vegas office, industrial and retail markets.
- From 1996 to the present, performed and/or managed an ongoing quarterly report reviewing existing and projected trends in the office, industrial and retail market for Southern Nevada's commercial real estate community. In 2005, vacant land, apartments and luxury condominium reports were added to AA's publication list. These analyses include a review of urban economic conditions, competitive facility profiles, and a three-year performance projection of both supply and demand for the company's existing and proposed projects. During 2004 and 2005, AA was the sole provider of economic information for Propertyline, Nevada's largest on-line commercial real estate listing service.
- Worked as part of the team charged with generating socioeconomic estimates and projections for the Clark County (Las Vegas) Regional Transportation Commission's Planning Variable Update, 1998 and 2000. Specifically, our role involved establishing baseline estimates and generating trend information on population, employment, housing units, and household income for 1,140 traffic analysis zones through the year 2020. Our role further involved the coordination of geographic information systems, the integration of the planning data from several independent jurisdictions and public agencies, relational database management, and econometric modeling.
- Performed numerous highest and best use studies for developments throughout the Las Vegas Valley. These studies have been for properties as diversified as hotel-gaming establishments to condominiums to retail strip centers. Generally speaking, these studies include a comprehensive review of locational factors, area economics and demographics, existing and potential competitive supply, existing and projected demand, project development costs and a maximal use analysis.
- Prepared an economic model designed to run "what if" scenarios for a solid waste disposal firm. The model was used to assist the company in its negotiations with a local government regarding the potential value of a proposed contract extension and the potential cost of complying with the United States Environmental Protection Agency administrative order dealing with waste storage at the Sunrise Mountain Landfill Facility.
- Worked in conjunction with a prominent financial advisory services firm to prepare a review of cash handling procedures for White Pine County, Nevada. The review included a diagnostic of existing policies, a revised set of cash handling procedures, and a series of internal audit checkpoints.

- Reviewed and analyzed the Clark County (Las Vegas) School District's school-siting methodology on behalf of a major Nevada development corporation.
- Managed a review of operations at the departmental level for a gaming corporation in Biloxi, Mississippi. This project focused on cost control procedures implemented with the goal of increased revenues at the EBITDA line.
- Conducted an industrial site selection analysis for a manufacturing and distribution firm. The project included the analysis of available parcels relative to zoning, visual perception, location, accessibility to rail service, local roadways and freeways, topography, easements, flood zones and other site-related issues.

Selected Presentations

Presenter, "The Numbers Tell the Story," *Preview Las Vegas*, January 2015

Presenter, "The 2014 Las Vegas Perspective," *Las Vegas Perspective Annual Meeting*, March 2014

Presenter, "How Far We've Come," *Preview Las Vegas*, January 2014

Presenter, "Wired for the Future," *Las Vegas Perspective Annual Meeting*, April 2013

Presenter, "Opportunity is Everywhere," *Preview Las Vegas*, January 2013

Presenter, "The 2012 Las Vegas Perspective," *Las Vegas Perspective Annual Meeting*, March 2012

Presenter, "Reset, Rethink, Rebuild," *Preview Las Vegas*, February 2012

Presenter, "Reinventing the Las Vegas Economy," *Las Vegas Perspective Annual Meeting*, April 2011

Presenter, "The Rise and Fall of the Next Great Economy," *Preview Las Vegas*, February 2011

Presenter, "The Impacts of the Financial Crisis on the State of Nevada," *Federal Financial Crisis Inquiry Commission*, September 2010

Presenter, "Dealing with the New Normal", *Western Legislators Conference*, September 2010

Presenter, "Signs of Life", *Preview Las Vegas*, February 2010

Presenter, "The Glass is Half Empty – The Glass is Half Full", *Las Vegas Perspective Annual Meeting*, April 2009

Presenter, "Top 10 Indicators to Watch", *Preview Las Vegas*, February 2009

Presenter, "Charting the Course", *Las Vegas Perspective Annual Meeting*, April 2008

Presenter, "Top 10 Indicators to Watch" *Preview Las Vegas*, February 2008

Presenter, "The Implications of Current Market Trends", *Las Vegas Perspective Annual Meeting*, April 2007

Presenter, "Economic Trends Impact Southern Nevada Multi-Housing Market", SNMA Annual Trends Conference, February 2007

Presenter, "10 Trends to Watch", *Preview Las Vegas*, January 2007

Presenter, "Luxury Condominium Market – The State of the Industry" Las Vegas High-rise Conference, February 2006.

Presenter, 2003 Lionel, Sawyer and Collins Legislative Roundup, "The Fiscal Outcome of the 71st Legislative Session."

Selected Community Involvement and Awards

Alumni of the Year, William Boyd School of Law, 2011

Board of Directors, Nevada State Bank, 2011

Hispanic of the Year, Southern Nevada Latin Chamber of Commerce, 2010

Member, President Elect and President, Nevada Child Seekers, 2009-Present

Adjunct Professor, HMD 401, Hotel Law. William F. Harrah College of Hotel Administration, 2006 to Present

Board Member, R&R Charitable Foundation, 2009-Present

Member of the Board of Directors and Executive Secretary (2010-2011), Opportunity Village, 2009 to Present

Gubernatorial Appointee, Nevada Housing Stabilization Task Force, 2008 to Present

Chairman, Technical Working Group, Governor's Task Force on Tax Policy, December 2001 – November 2002

Member, Clark County Organization & Resource Review Committee, June 2002

Nevada Taxpayers Association, Good Government Special Recognition Award, February 2003

Member, Board of Directors, Hispanics in Politics, 1999

Member and President (2010), Board of Directors, Nevada Child Seekers, 2009 to Present

Board of Advisors, Nevada Council on Problem Gambling, 1999 to Present

Insider Club Inductee, *The Ralston Report*, May 2003

Top 40 Under 40 in Business, *InBusiness Magazine*, 2001

Who's Who in Nevada, 2002 to Present

Coach, Juniors Basketball, 2003 to Present

Coach, Paseo Verde Little League, Board of Advisors, 2004 to Present

Publications in the Last Ten Years

Author, "A Positive Outlook," a recurring series of monthly articles for Nevada State Bank (November 2011 – present); articles are available at https://www.nsbank.com/about_us/forecast/index.jsp.

Co-author, Intelligence-Led Governance: Establishing Meaningful Community Indicators. Presented at an international conference on community monitoring in Leuven, Belgium, June 2006.

AA routinely produces written reports for our clients that may or may not be made available to the public by such clients; the nature of these reports are summarized in the sub-section, *Selected Project Experience*.

Witness Testimony or Depositions in the Last Four Years

Impacts of the Financial Crisis on the State of Nevada

(Testified before the Financial Crisis Inquiry Commission, which was created as part of the Fraud Enforcement and Recovery Act (Public Law 111-21) passed by the U.S. Congress and signed by the President in May 2009)

Southern Nevada Employment and Workforce Trends

(Testified before the U.S. Subcommittee on Education and the Workforce)

Expert Report

MEI-GSR Holdings vs. Peppermill Casinos, Inc.

Page 25

In re Club Vista Financial Services, LLC, et al. vs. Scott Financial Corporation, et al.

Case No. A579963

District Court, Clark County, Nevada

(Deposition)

Service Employees Union International (SEIU) Labor Relations Matter

(Testified at hearing before arbitrator as an expert witness on economic and employment issues in a labor dispute between the Las Vegas Convention and Visitors Authority and its labor union)

Water Resource Matter, Nevada Groundwater Basins 180, 181, 182, 194

State of Nevada Water Engineer

(Testified at Hearing before the State of Nevada Water Engineer as an expert witness for the Southern Nevada Water Authority)

In re Las Vegas Development Associates v. KB Home Nevada, Inc.

Case No. A566442

District Court, Clark County, Nevada

(Deposition)

In re Golden Road Motor Inn, dba Atlantis Casino Resort Spa v. Sumona Islam, Grand Sierra Resort, et al.

Case No. CV12-01171

District Court, Washoe County, Nevada

(Deposition and Trial)

In re Jeffrey Soffer, et al. v. Five Mile Capital Partners LLC, et al.

Case No. 2:12-cv-01407-JCM-GWF

United States District Court, District of Nevada

(Deposition)

Testified between 2009 and 2014 before the Nevada State Legislature, county commissions and local government boards on multiple occasions

RIGHT TO AMEND OR SUPPLEMENT ANALYSIS

The analysis and conclusions contained in this report are subject to further revisions, amendments and adjustments as additional information may become available. Additionally, I may generate updated or supplemental graphs, charts, exhibits and/or analyses to assist in explaining conclusions at trial.

APPLIED ANALYSIS

GSREXP027

RA 02273

STATEMENT OF COMPENSATION FOR THE STUDY AND TESTIMONY

Applied Analysis will be compensated at an hourly rate of \$400 for Jeremy Aguero and at a blended average hourly rate of approximately \$200 for other professionals under the direction of Jeremy Aguero based on the actual time required to complete this study and any testimony, if deemed necessary. Compensation is not dependent on the outcome of the litigation or any conclusion in this report.

FILED
Electronically
2015-11-13 04:03:25 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5235334 : csulezic

EXHIBIT 39

EXHIBIT 39

COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
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Grand Sierra Resort*

IN ASSOCIATION WITH

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Telephone: (775) 348-8877
Facsimile: (775) 348-8351
*Attorney 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-X,

Defendants.

Case No.: CV13-01704

Dept. No.: B7

BUSINESS COURT DOCKET

**PLAINTIFF MEI-GSR HOLDINGS, LLC. A NEVADA CORPORATION, D/B/A GRAND
SIERRA RESORT'S DISCLOSURE OF REBUTTAL EXPERT WITNESS REPORTS**
Plaintiff MEI-GSR HOLDINGS, LLC., a Nevada Corporation, d/b/a Grand Sierra Resort

(hereinafter referred to as "GSR"), by and through its counsel of record, H. Stan Johnson, Esq. of

1 Cohen|Johnson, LLC., hereby submits and identifies its rebuttal expert witnesses and provides its
2 rebuttal expert reports pursuant to NRCP 16.1(a)(2) in this matter as follows:

3
4 **I. EXPERT WITNESS**

5 **A. Jeremy A. Aguero**
6 Principal Analyst
7 Applied Analysis
8 6385 S. Rainbow Blvd., Suite 105
9 Las Vegas, Nevada 89118

10 Jeremy Aguero is expected to testify regarding the Rebuttal Expert Witness Report
11 prepared by Applied Analysis to counter any opinion or claims made the Defendant's Experts:
12 (1) Anthony Lucas, Ph.D. and (2) Stacey Friedman. This report is comprised of opinions, data
13 and any other information considered in forming said opinions, his professional qualifications,
14 and any other related matters.

15 **B. Gregory Gale**
16 2216 Tedesca Drive
17 Henderson, Nevada 89052
18 (702) 456-4695

19 Gregory Gale is expected to testify regarding the Rebuttal Expert Witness Report
20 prepared by Gregory Gale to counter any opinions or claims made the Defendant's Experts: (1)
21 Anthony Lucas, Ph.D. and (2) Stacey Friedman. This report is comprised of opinions, data and
22 any other information considered in forming said opinions, his professional qualifications, and
23 any other related matters.

24 **C. Rex Carlson**
25 c/o Cohen-Johnson, LLC
26 255 E. Warm Springs Rd., Ste. 100
27 Las Vegas, NV 89119

28 Rex Carlson is expected to testify regarding the Rebuttal Expert Witness Report prepared
by Rex Carlson to counter any opinions or claims made the Defendant's Experts: (1) Anthony
Lucas, Ph.D. and (2) Stacey Friedman. This report is comprised of opinions, data and any other
information considered in forming said opinions, his professional qualifications, and any other
related matters.

1 D. Charles Lombardo
2 c/o Cohen-Johnson, LLC
3 255 E. Warm Springs Rd., Ste. 100
4 Las Vegas, NV 89119

5 Charles Lombardo is expected to testify regarding the Rebuttal Expert Witness Report
6 prepared by Charles Lombardo to counter any opinions or claims made the Defendant's Experts:
7 (1) Anthony Lucas, Ph.D. and (2) Stacey Friedman. This report is comprised of opinions, data
8 and any other information considered in forming said opinions, his professional qualifications,
9 and any other related matters.

10 Plaintiff reserves the right to supplement the expert witness disclosure as further
11 investigation and discovery may reveal additional information.

12 **II. DOCUMENTS**

13 A. October 15, 2015 Expert Rebuttal Report Prepared by Applied Analysis.

14 Plaintiff reserves the right to supplement the document disclosures as further
15 investigation and discovery may reveal additional information.

16 B. October 15, 2015 Expert Report Prepared by Gregory Gale.

17 Plaintiff reserves the right to supplement the document disclosures as further
18 investigation and discovery may reveal additional information.

19 C. October 15, 2015 Expert Report Prepared by Rex Carlson.

20 Plaintiff reserves the right to supplement the document disclosures as further
21 investigation and discovery may reveal additional information.

22 D. October 15, 2015 Expert Report Prepared by Charles Lombardo.

23 Plaintiff reserves the right to supplement the document disclosures as further
24 investigation and discovery may reveal additional information.

25
26 ///

27
28 ///

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Affirmation Pursuant to NRS §239B.030

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

Dated this 15th day of October, 2015.

COHEN|JOHNSON, LLC.

By: /s/ H. Stan Johnson
H. STAN JOHNSON, ESQ.
Nevada Bar No. 00265
sjohnson@cohenjohnson.com
CHRIS DAVIS, Esq.
Nevada Bar No. 6616
cdavis@cohenjohnson.com
255 E. Warm Springs Road, Suite 100
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Attorney for MEI-GSR Holdings, LLC. d/b/a
Grand Sierra Resort

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INDEX OF EXHIBITS

<u>Exhibits</u>	<u>Description</u>	<u>Pages</u>
1.	Expert Rebuttal Report prepared by Jeremy Aguero	3
2.	Expert Report prepared by Gregory Gale	8
3.	Expert Report prepared by Rex Carlson	7
4.	Expert Report prepared by Charles Lombardo	99

COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Suite 100
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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 **PLAINTIFF MEI-GSR HOLDINGS, LLC. A NEVADA CORPORATION, D/B/A GRAND SIERRA RESORT'S SUPPLEMENTAL DISCLOSURE OF EXPERT WITNESS** on all the parties to this action by the method(s) indicated below:

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

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

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

 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 15th day of October, 2015.

/s/ Sarah Gondek
An employee of Cohen-Johnson, LLC.

1 **\$2160**

2 **KENT R. ROBISON, ESQ. - NSB #1167**

3 krobison@rbsllaw.com

4 **SCOTT L. HERNANDEZ, ESQ. - NSB # 13147**

5 shernandez@rbsllaw.com

6 **THERESE M. SHANKS, ESQ. - NSB #12890**

7 tshanks@rbsllaw.com

8 Robison, Belaustegui, Sharp & Low

9 A Professional Corporation

10 71 Washington Street

11 Reno, Nevada 89503

12 Telephone: (775) 329-3151

13 Facsimile: (775) 329-7169

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

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

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

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

20 Plaintiff,

21 vs.

22 PEPPERMILL CASINOS, INC., a Nevada
23 Corporation, d/b/a/ PEPPERMILL CASINO,

24 Defendant.

CASE NO.: CV13-01704

DEPT. NO.: B7

BUSINESS COURT DOCKET

25 **PEPPERMILL CASINOS, INC.'S RENEWED MOTION FOR PARTIAL SUMMARY**
26 **JUDGMENT REGARDING DAMAGES**

27 **FILED UNDER SEAL**


28 **DESIGNATED HIGHLY CONFIDENTIAL INFORMATION**

Confidential- Subject to Stipulated Confidentiality Agreement and Protective Order Filed July 17, 2014
To be Opened Only Upon Further Order of this Court or for the Sole Use of the Court and its Employees

Defendant Peppermill Casinos, Inc. ("Peppermill") moves this Honorable Court for its
Order granting summary judgment against the Plaintiff MEI-GSR Holdings, LLC ("GSR")
pursuant to and in accordance with Rule 56 of the Nevada Rules of Civil Procedure. This is a
renewed motion because this Court's denial of Peppermill's previous motion was without
prejudice pending additional discovery. This renewed motion is based upon the attached points
and authorities, exhibits, and affidavit affixed thereto.

1 DATED this 18th day of November, 2015.

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

6
7 
8 KENT R. ROBISON
9 SCOTT L. HERNANDEZ
THERESE M. SHANKS
Attorneys for Defendant
Peppermill Casinos, Inc., d/b/a Peppermill Casino

10 **POINTS AND AUTHORITIES AND AUTHORITIES IN SUPPORT OF PEPPERMILL'S**
11 **RENEWED MOTION FOR SUMMARY JUDGMENT REGARDING DAMAGES**

12 Peppermill is entitled to a summary judgment regarding the issue of whether GSR
13 sustained damages. After over two years of litigation, intensive discovery, and substantial motion
14 practice, there is no evidence to support GSR's claim for damages under the Nevada Uniform
15 Trade Secrets Act. *See* NRS 600A.050.

16 **I. OVERVIEW**

17 In its Complaint filed August 2, 2013, GSR alleges that the Peppermill violated NRS
18 600A.030 by accessing 6 to 15 par settings from GSR's slot machines. Pursuant to NRS
19 600A.050, Plaintiff may recover damages for a misappropriation of a trade secret that include:

- 20 (1) loss caused by misappropriation;
21 (2) unjust enrichment caused by misappropriation; and
22 (3) in lieu of damages measured by the above, damages actually caused by
23 misappropriation may be measured by the imposition of liability for a
24 "reasonable royalty for the misappropriator's unauthorized disclosure or
25 use" of a trade secret.

26 In this case, GSR has admitted that it lost no revenue as a result of the alleged
27 misappropriation. It is precluded from seeking a reasonable royalty because it is seeking other
28 losses caused by the alleged misappropriation. It claims that it had to change locks on all of its

1 slot machines because of Peppermill's conduct. See discussion Part VI, *infra*. GSR produced no
2 evidence of damages based upon unjust enrichment. GSR's person most knowledgeable regarding
3 damages has no knowledge of any damages. GSR, through its expert, also admitted there is no
4 evidence that the Peppermill used the pars obtained by Peppermill's former employee, Ryan Tors.
5 Further, GSR admits that it has no knowledge of any value derived by the Peppermill related to
6 obtaining GSR's pars. In fact, there is no evidence that pars have any value, and GSR's most
7 prominent representatives concede that pars have no value.

8 Despite this lack of necessary evidence of use and value, GSR's only expert calculated
9 damages based upon a reasonable royalty. However, the expert's analysis fails to connect the
10 reasonable royalty to the facts in this case. He refuses to associate the royalty to the time of the
11 alleged misappropriation. Further, his reasonable royalty calculation fails to address certain
12 necessary considerations such as a reasonable profit margin for Peppermill and what how much of
13 the royalty relates specifically to the pars, as opposed to other sources of information. Summary
14 judgment as to damages under NRS 600A.050 should be granted.

15 **II. STANDARD OF REVIEW**

16 Summary judgment is appropriate when there is no genuine issue of material fact, "and the
17 moving party is entitled to a judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724,
18 729, 121 P.3d 1026, 1029 (2005) (internal quotations omitted); *see also* NRCP 56(c). Summary
19 judgment is particularly appropriate to avoid needlessly trying an issue at trial. *McDonald v. D.P.*
20 *Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005).

21 "While the pleadings and other proof must be construed in a light most favorable to the
22 nonmoving party, that party bears the burden to do more than simply show that there is some
23 metaphysical doubt as to the operative facts in order to avoid summary judgment." *Wood*, 121
24 Nev. at 732, 121 P.3d at 1031 (internal quotations omitted). Instead, the nonmoving party must
25 demonstrate the existence of a genuine issue for trial, and "is not entitled to build a case on the
26 gossamer threads of whimsy, speculation, and conjecture." *Id.* (Internal quotations omitted).

27 **III. UNDISPUTED MATERIAL FACTS**

28 1. GSR concedes that the alleged "trade secrets" at issue in this case are those known

1 in this litigation at Exhibits 7 and 8, which is slot machine information allegedly obtained by
2 Peppermill's employee Ryan Tors on December 29, 2011 and June 14, 2014, respectively. *See*
3 **Exhibit 1** (Exhibits 7 and 8 to the Deposition of Ryan Tors (September 19, 2014)).

4 2. GSR's person most knowledgeable about damages testified that he has no
5 knowledge that GSR sustained any damages.

6 3. GSR's initial damages expert, David Schwartz, Ph.D., testified that his damage
7 calculation was inaccurate, incomplete, flawed and unreliable.

8 4. GSR's second damages expert, Jeremy Aguero, testified that GSR suffered no loss
9 and Peppermill was not unjustly enriched. Mr. Aguero calculated a "reasonable royalty" model
10 based upon Peppermill's own data and publicly available information. Mr. Aguero's calculation is
11 not based upon the pars set forth in **Exhibit 1** (deposition Exhibits 7 and 8), but are based upon
12 "unfettered access" to GSR's slots for an 18-month period.

13 5. GSR admits that there is "no evidence" that the pars were either used by Peppermill
14 or disclosed to anyone outside of the Peppermill.

15 6. GSR's witnesses and experts, Peppermill's witnesses and experts, and prominent
16 owners of the Northern Nevada casino agree that pars have no value.

17 The foregoing demonstrates that there is no genuine issue of material fact, and partial
18 summary judgment on damages is warranted.

19 **IV. ANALYSIS OF EVIDENCE.**

20 Discovery has revealed two instances on December 29, 2011, and June 14, 2012 where Mr.
21 Tors allegedly keyed slot machines at GSR before he was apprehended on July 12, 2013.¹ Two
22 emails and schedules of "pars" for those respective dates were produced by Peppermill executives.
23 These have been marked as Exhibits 7 and 8 to the depositions taken in this case. *See* Exh. 1.
24 These two exhibits are the only evidence of Peppermill "keying" GSR slot machines other than the
25 night that Tors was apprehended. What Tors saw or obtained the day he was detained was not
26 given to Peppermill until discovery was initiated in this case.

27
28 ¹ Tors fabricated some of his reports, including the December 29, 2011 report. *See Exhibit 2*, p. 139:11-140:3, 173:8-11, 224:1-5 (Excerpts from the Deposition of Ryan Tors (Sept. 19, 2014)). GSR concedes that certain pars were fabricated. *See* Exh. 8 (cited below), 253:11-18.

1 **A. Testimony of Craig Robinson**

2 On November 4, 2014, Peppermill took the deposition of GSR's witness most
3 knowledgeable about damages, Craig Robinson. See **Exhibit 3**, p. 12:1-22, 13:7-8 (Excerpts of
4 Deposition of Craig Robinson (Nov. 4, 2014)). He conceded that he was specifically tasked to
5 testify about damages GSR sustained as a result of Tors' activities. *Id.* at p. 14:11-13, 27:1-3.

6 Mr. Robinson confirmed that there was no other person more knowledgeable about GSR's
7 financial loss or damages than himself. *Id.* at p. 29-30. Further, Mr. Robinson had no personal
8 knowledge of any damages sustained by GSR. *Id.* at p. 35-36. Indeed, Mr. Robinson could not
9 quantify or identify what GSR's damages are. *Id.* at p. 37. The only "damages" that Mr. Robinson
10 could refer to was a vague estimation of some \$17,000 that the GSR expended to change locks on
11 its slot machines.² *Id.* at p. 23-25, 67. That information, however, was not reliable and was only
12 information related to him by GSR's lawyers.

13 Mr. Robinson was also produced as GSR's person most knowledgeable about any financial
14 harm caused to the GSR by Tors. *Id.* at p. 48. However, Mr. Robinson could not provide details,
15 an amount or computation of those alleged damages. *Id.* at p. 53. Indeed, he conceded that the
16 damages were "unquantifiable". *Id.* at p. 64:14-20. Mr. Robinson further conceded that he would
17 also have to look at Peppermill's marketing information to identify damage. *Id.* at p. 60. To
18 date, that has been done, but revealed no evidence supportive of GSR's damage claim.

19 Mr. Robinson could not place a value on the pars obtained by Mr. Tors from the GSR
20 machines. He frankly conceded, "I can't determine the value" *Id.* p. 74. Mr. Robinson also
21 conceded that he could not put an economic value on pars. *Id.* p. 77.

22 Notably, Mr. Robinson—GSR's person most knowledgeable about damages—had no
23 knowledge about any damages to which GSR might be entitled under a reasonable royalty theory.
24 *Id.* at 90:20-91:9. However, when testifying about issues related to reasonable royalty damages,
25 Mr. Robinson had no information. Mr. Robinson was unaware of any specific actions or use the
26 Peppermill made of the par information. *Id.* at p. 95. Indeed, "use" is a predicate to allowing
27 reasonable royalty damages under NRS 600A.050. Mr. Robinson could only "speculate" as to

28

2 See discussion in Part VI, *infra*.

1 Peppermill's intent. *Id.* p. 95:6-20. He had no evidence of or information to suggest that
2 Peppermill "used" the information Tors obtained from GSR.

3 Mr. Robinson testified fifteen months after GSR filed its Complaint. He testified as GSR's
4 most knowledgeable person about damages, and he had no knowledge whether GSR sustained any
5 damages whatsoever. In short, Mr. Robinson's testimony is conclusive evidence and an
6 irrevocable concession that GSR has no damages.

7 **B. Testimony of David Schwartz, Ph.D.**

8 David Schwartz, Ph.D. was retained to offer expert testimony in this case on "the subject of
9 damages sustained by GSR by the misappropriation of trade secrets by Defendant Peppermill" and
10 to provide a computation of damages as required by NRCP 16.1. *See Exhibit 4* (Affidavit of
11 David G. Schwartz as attached to GSR's Third Supplemental Disclosure Pursuant to NRCP 16.1).
12 Dr. Schwartz was instructed by GSR to determine a reasonable royalty. *See Exhibit 5*, p. 60:15-23
13 (Excerpts from the Deposition of David Schwartz (Oct. 21, 2014)). His theory required a player to
14 play \$40,000,000 on one slot machine for 20,000 hours, every hour of every day for 2.24 years. *Id.*
15 at p. 80. However, at his October 21, 2014 deposition, Dr. Schwartz conceded his damage model
16 was "impossible," his calculations were unreliable and inaccurate, and that neither the Court nor
17 jury should rely on his testimony. *Id.* at p. 60:15-23, 79:19-88:6, 98:16-25, 111:13-113:15. He
18 also conceded that his formula required data that could not be obtained "legally". *Id.* at p. 84-85.
19 Even if proper criteria were used, Schwartz's formula requires \$3,132,000 of cash played in the
20 slot machine to ascertain its par, which Schwartz concludes is "preposterous" and concedes that no
21 one would ever do. *Id.* pp. 93-95.

22 In short, Dr. Schwartz's deposition testimony exposed his calculation to be unsupported by
23 fact, law, or logic. His testimony is conclusive evidence that GSR has no damages.³

24 **C. Testimony of Jeremy Aguero**

25 GSR replaced Dr. Schwartz with Jeremy Aguero as its new damage expert. Mr. Aguero
26 testified that GSR suffered no loss and Peppermill was not unjustly enriched due to Mr. Tors'
27 conduct. *See Exhibit 6*, p 18-22 (Excerpt from the Deposition of Jeremy Aguero (Sept. 15,

28 ³ Dr. Schwartz also conceded that there wasn't any evidence that the par information obtained by Mr. Tors was "used".
Id. p. 76.

2015)). Mr. Aguero's June 4, 2015 report, in which he attempted to calculate a reasonable royalty, was based upon the "knowledge" that the Peppermill could obtain from looking at its own records and public documents generated by the Nevada Gaming Control Board. *See Exhibit 7*, p. 3-5 (Expert Report Prepared by Jeremy Aguero (June 4, 2015)). The \$24,000,000 estimated damage was wrong. Mr. Aguero's Supplemental Amended Report, based on the same data, changed the damage figure. *See Exhibit 8*, p. 3-6 (Supplemental Expert Report Prepared by Jeremy Aguero (August 28, 2015)). Notably absent from both reports was reference to the par information set forth in Exhibits 7 and 8.

Realizing, however, that his report was flawed, unreliable, and that his opinion was not connected to the facts, circumstances or alleged trade secrets at issue in this case, Aguero changed his damage model at his deposition. According to his testimony, Mr. Aguero now bases his damage model on "unfettered access" to GSR's slot machines. *See Exh. 6*, p. 336-346. Until now, GSR never alleged "access" as a source of damages, nor has it alleged that unfettered access is a trade secret. The \$8,000,000 reasonable royalty damage figure is predicated on the Peppermill having unrestricted access to *all* of GSR's machines *each and every day* for a period of 18 months. This model is contrary to the facts and circumstances of this case. It is a self-serving escape from reality.

Perhaps realizing that his analysis was divorced from the proper "hypothetical negotiation" analysis (*see* discussion Part V.B, *infra.*), Mr. Aguero opined that a reasonably prudent buyer would pay a reasonably prudent seller \$8,000,000 for "unfettered access" to GSR's slot machines in a hypothetical negotiation. *See Exh. 6*, p. 91:11-92:16; 113:13-17. Yet, he also concedes that the hypothetical negotiations would not include any consideration of other gaming strategies, slot strategies, casino operation strategies. *Id.* at p. 168:5-16. This hypothetical is contradictory to and inconsistent with the reality of the gaming market.

Additionally, Mr. Aguero could not identify any direct or circumstantial evidence showing that Peppermill ever used or disclosed GSR's pars at his September 15, 2015 deposition. *Id.* at 75, 110, 119-120, 210. Nor could he identify any evidence that Tors disclosed GSR's pars to anyone

1 outside of Peppermill.⁴ *Id.* at 75, 124.

2 At his rebuttal expert deposition on October 19, 2015, Mr. Aguero acknowledged that he
3 was assigned to determine the issue of “use” of GSR’s pars. *See Exhibit 9*, p. 25:13-15 (Excerpt
4 from the Deposition of Jeremy Aguero (Oct. 19, 2015)). He unqualifiedly testified that he found
5 no evidence that Peppermill used the pars obtained by Tors. *Id.* at p. 20:19-23 (“Q. It’s true, is it
6 not, that you have found no evidence or information that would suggest that Peppermill utilized
7 the pars Tors obtained from the GSR. Correct? Is that correct? A. Yes, sir.”). When asked about
8 each of the individual pars set forth in Tors’ emails, Mr. Aguero could not identify any evidence
9 that any of the individual pars were used. *Id.* at p. 37-47.

10 Later in the rebuttal deposition, Aguero slightly changed his testimony, asserting that he
11 believed that Peppermill used GSR’s pars even though he could not specifically identify how:

12 Q. On September 15th you had no information that the Peppermill used the
GSR pars to improve its product. Correct?

13 A. That’s correct.

14 Q. And you’re changing that testimony now?

15 A. No, sir, I’m not.

16 Q. Okay. As you sit here today, Mr. Aguero, do you have any information to
suggest that the pars reflected on Exhibit 7 and 8 were used in any way by
the Peppermill to improve the Peppermill’s product?

17 A. Yes, sir, I believe they were.

18 Q. Okay. Which one of the pars was used?

19 A. I can’t tell that with any specificity.

20 *Id.* at p. 45:16-46:3; see also p.75:19-25 (“Q . . . Tell me with some degree of specificity how
21 they [Peppermill] actually used it. Not how they could have; how they did. A. I can’t tell you
22 with any degree of specificity how the information that was obtained on -- or are specifically cited
23 on Exhibits 7 and 8 were specifically used on the casino management floor.”).

24 The best Aguero could muster was a speculative position that Peppermill management
25 “could” conceivably have used the pars in conjunction with other unspecified information in order
26 to better manage the Peppermill. *Id.* at p. 96:14-97:11. Mr. Aguero’s conjecture is based upon his
27 unsupported notion that Peppermill used the “totality of the information available.” *Id.* at

28

⁴ This testimony was confirmed and reaffirmed at Mr. Aguero’s October 19, 2015 rebuttal expert deposition. *See Exhibit 9*, p. 52:17-25, 53:25-55:3.

1 p. 109:16-25. When requested to explain this “totality of the information theory,” Mr. Aguero
2 could offer no clear definition, specificity or clarity. His theoretical example of use is:

3 A. The totality of information is extensive relative to what type of
4 information these folks have, whether that’s how players are playing the
5 games or how competitors are competing or advertising programs. They
6 have a remarkable amount of information.

7 Q. What one of those components that you just alluded to were changed by
8 the Peppermill as a result of Exhibits 7 and 8?

9 A. I can’t tell you which one.

10 p. 114:14-22. Without evidence of use, there cannot be a reasonable royalty. As discussed in
11 depth below, the plain language of NRS 600A.050 requires use before reasonable royalty damages
12 can be assessed. Accordingly, Mr. Aguero’s reports and deposition testimony confirm that there is
13 no factual basis for a reasonable royalty in this case.

14 **D. Testimony of Scott Bean**

15 Scott Bean worked for the Peppermill before he became an Executive Consultant to GSR
16 and was designated as GSR’s person most knowledgeable regarding whether the Peppermill used,
17 benefitted from, or derived value from GSR’s par information. *See Exhibit 10*, p. 22-23. Mr.
18 Bean testified that he had no knowledge about whether Peppermill used, benefitted from, or
19 derived value from the par information Mr. Tors obtained from the GSR. *Id.* at p. 27-28. In short,
20 GSR believes that there is no evidence of use, benefit, or value.

21 **E. Gaming Control Board / Nevada Gaming Commission**

22 On July 12, 2013, the Gaming Control Board launched an investigation regarding the
23 Peppermill’s “keying” activities. On February 20, 2014, the Nevada Gaming Commission
24 conducted a hearing. *See Exhibit 11* (Gaming Control Board Partial Transcript). Peppermill’s
25 owner and President, Bill Paganetti, confirmed that “the information was never used by me or the
26 Peppermill to gain competitive advantage over any casino.” *Id.* at p. 59. This testimony was
27 confirmed by the regulators. *See Exhibit 12* (Nevada Gaming Commission Stipulation for
28 Settlement and Order). The Nevada Gaming Commission adopted the Board’s findings that the
investigation revealed “no evidence” that the Peppermill used the pars obtained from GSR’s slot
machines based on the keying activity of Mr. Tors. *Id.* at p. 4, ¶ 4(b).

///

1 **F. Testimony of Bill Paganetti**

2 Mr. Paganetti was deposed on April 3, 2015, and testified that he received the par
3 information that Mr. Tors obtained from the GSR. However, Mr. Paganetti was also adamant that
4 there was absolutely no use made of the information obtained by Mr. Tors. *See Exhibit 13*, p. 65-
5 66 (Excerpts of Deposition of Bill Paganetti (April 3, 2015)). Moreover, Mr. Paganetti
6 definitively testified that knowing his competitor's par settings has no benefit whatsoever. *Id.* at p.
7 10-22.

8 **G. Testimony of Alex Meruelo**

9 Peppermill took the deposition of Alex Meruelo, who is the 75% owner of GSR. *See*
10 *Exhibit 14*, p. 6 (Excerpts of Deposition of Alex Meruelo (January 16, 2015)). Mr. Meruelo was
11 unable to identify any losses caused by Tors' gaining access to GSR's pars. *Id.* at p. 30-31. While
12 Mr. Meruelo was adamant that the pars has "a lot of value," when asked whether he would pay for
13 another casino's pars, he unequivocally stated that he would not pay for par information. *Id.* at
14 p. 32-33, 65-66. Mr. Meruelo's testimony is vital, because it shows that GSR's ultimate
15 stakeholder does not believe that pars have any value. His unwillingness to engage in a
16 hypothetical negotiation of pay information, demonstrates that as between Peppermill and GSR
17 there is no basis for a reasonable royalty.

18 **H. Testimony of Tracy Mimno**

19 On November 4, 2015, Peppermill took the deposition of Tracy Mimno, the General
20 Manager of GSR. *See Exhibit 15* (Excerpts of Deposition of Tracy Mimno (November 4, 2015)).
21 When asked if she would consider buying Peppermill's par information, she stated that she would
22 not. *Id.* at p. 285-287. Indeed, she stated that it would be "foolish" to buy par information. *Id.* at
23 p. 287. Further, Ms. Mimno, as casino operator of GSR, stated that Peppermill's pars have no
24 value to her. In part, she admitted that pars lack value, because they can be changed at the whims
25 of the operator. *Id.* at p. 287. In short, GSR's top casino executive concedes that pars have no
26 value to casino operators.⁵

27
28 ⁵ Ms. Mimno's sentiment is echoed by other members of GSR's management team. Terry Vavra, GSR's Vice
President of Finance, confirmed that the information obtained by Tors has no value because keying such a small
number of machines does not provide any valuable information. *See Exhibit 16*, p. 96:2-6 (Excerpts from the
Transcript of the Deposition of Terry Vavra).

1 **I. Statements from Northern Nevada Casino Operators**

2 Peppermill's rebuttal expert witnesses have relied on seven letters and statements from
3 several prominent operators and owners of Northern Nevada casinos. *See Exhibit 17*
4 (Peppermill's Supplement to Disclosure of Rebuttal Expert Witnesses). The owner of Wendover
5 Casinos, David Ensign, opines that the seven to nine par settings obtained by the Peppermill from
6 the GSR have absolutely no value. Similarly, John Ascuaga, the former owner of the Nugget in
7 Sparks, states that no reasonable and thoughtful casino operator or owner would pay any money
8 for a license agreement to have access to the par settings of competing casinos.

9 John Farahi, the Co-Chairman and Chief Executive of Monarch Casino and Resort (owner
10 of the Atlantis Casino Resort), reviewed the par data at issue. Mr. Farahi states that the
11 information obtained by the Peppermill from the GSR is too limited to have any value to a
12 reasonably prudent casino operator or owner. He adds that he would pay no money whatsoever for
13 a license to know or use the par settings that were obtained by the Peppermill from the GSR. Russ
14 Sheltra and Ryan Sheltra, the owner and General Manager of the Bonanza Casino, respectively,
15 state that a casino operator would be foolish to pay money for the par settings allegedly obtained
16 from GSR. In their estimation, a few pars from a competitor's casino floor are "worthless".

17 Gary Carano, Chairman of the Board and Chief Executive Officer of Eldorado Resorts,
18 also reviewed the pars obtained by the Peppermill from the GSR and concludes they have "no
19 value". He further states that he would pay nothing for such par information. Jeffery L. Siri,
20 President, Chief Executive Officer, and owner of the Cal Neva Hotel Casino, states that if he were
21 asked to pay for 6 to 15 par settings of slot machines at the Grand Sierra Resort, or any other
22 competitive casino, he would refuse to pay any money whatsoever. Mitch Gardner, Vice President
23 of Bordertown Casino, states that the 13 pars theoretically obtained by the Peppermill from the
24 GSR are valueless.

25 In sum, these prominent operators believe that GSR's pars have no value, and they would
26 not pay for them.

27 **J. Testimony of Toby Taylor**

28 GSR designated and produced GSR's Slot Director, Toby Taylor, as its NRCP 30(b)(6)

1 witness regarding GSR's efforts to change the locks on its slot machines in 2014. Mr. Taylor
2 admitted that GSR did not begin to change the locks until 9 months after filing this lawsuit and
3 nearly a year after Tors was detained at the GSR. See **Exhibit 18**, at p. 30 (Excerpts of Deposition
4 of Toby Taylor (Mar. 17, 2015)). While GSR ordered locks in April 2014, GSR had not
5 completed replacing all of the locks as of March 17, 2015. *Id.* at p. 25.

6 GSR asserts that it spent \$17,479 for new locks and keys for **all** of its slot machines. See
7 **Exhibit 19**, (GSR's Invoice and Purchase Order (Bates No. GSR00100-GSR00102)). However,
8 of the 1,136 slot machines on the floor of the GSR, only 618 of those slot machines have received
9 new keys or new locks. See Exh. 18, p. 25:1-10. GSR stopped the practice of putting new locks in
10 its slot machines in June of 2014. *Id.* at p. 23-25. From June of 2014 forward, no additional
11 machines were rekeyed or relocked. *Id.* 518 slots remain unchanged and are still vulnerable to
12 access by and through the use of a 2341 master key. *Id.* at p. 29-30.⁶

13 Mr. Taylor's testimony regarding labor costs imprecise and incomplete. When questioned
14 about these labor costs, Mr. Taylor stated as follows:

15 Q. The typical wage for the person who changes these out is what?

16 A. Probably about 15 an hour average.

17 Q. So about \$5 a machine for labor? You say 20 minutes, 15 –

18 A. Yeah. Sounds adequate, yeah.

19 Q. Has anybody done that calculation?

20 A. I believe we looked at -- we put something together.

21 Q. Mr. Taylor, it's my understanding that this is a damage figure that GSR is
22 seeking to recover from the Peppermill.

23 Q. Have you been involved in trying to specify this amount of labor and
24 charges?

25 A. Yes.

26 Q. And what is it?

27 A. Like I said, 20 minutes a machine.

28 Q. Total. For labor.

A. I don't have the total yet. The project is not completely done yet.

Id. at p. 33. These approximated and speculated labor costs, in conjunction with cost of the locks

⁶ Mr. Taylor agreed to produce an "expense schedule" showing the man hours necessary to change the locks at the GSR. Then, unexpectedly and contrary to the agreement reached at Mr. Taylor's deposition, GSR asserted the attorney-client privilege and has never produced the "expense schedule". *Id.* at p. 36:1-10; 47:19-49:3.

1 and number of locks actually changed, are as close as GSR has come to providing evidence of
2 damages in this case.

3 **V. THERE IS NO EVIDENCE TO SUPPORT A REASONABLE ROYALTY.**

4 As noted above, the damages provision of NRS 600A.050 provides as follows:

5 Damages include both loss caused by misappropriation and unjust enrichment
6 caused by misappropriation that is not taken into account in computing the
7 loss. In lieu of damages measured by any other methods, damages caused by
misappropriation may be measured by imposition of liability for a reasonable
royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

8 GSR has asserted both an actual loss theory of damages—namely the cost of changing the locks of
9 its slot machines—and a reasonable royalty theory. However, GSR failed to provide evidence to
10 support a reasonable royalty theory. There is nothing to support a finding of “disclosure or use,”
11 which is a statutory prerequisite to find a reasonable royalty.

12 **A. There Is No Evidence of Use.**

13 There are two fundamental types of evidence: direct and circumstantial. “Direct evidence
14 is evidence which, if believed, proves the fact in issue without the aid of an inference.” *Privette v.*
15 *Faulkner*, 92 Nev. 353, 356, 550 P.2d 404, 406 (1976). Whereas circumstantial evidence is facts
16 from which inferences can be reasonably drawn. *Fairman v. Warden, Nev. State Prison*, 83 Nev.
17 332, 337, 431 P.2d 660, 663 (1967). While direct and circumstantial evidence may be sufficient to
18 maintain a claim, “mere speculation is insufficient.” *Paulino v. Harrison*, 542 F.3d 692, 700 (9th
19 Cir. 2008). GSR has provided no direct or circumstantial evidence of use, only bare speculation.

20 As a starting point, the Gaming Control Board concluded from its thorough investigation
21 that there was no evidence that the pars were used. *See* discussion Part IV.E, *supra*. GSR
22 concedes that the Board's findings and the thoroughness of its investigations. *See* Exh. 9,
23 p. 128:12-19, p. 129:22-130:3; p. 231:3-12. Additionally, Aguero conceded again and again that
24 there was no direct evidence of any use. *See, e.g., id.* at p. 237:12-16 (“Q. . . . Can you show the
25 jury a document – any document exchanged in discovery or testimony that was given in discovery
26 that shows that the data in 7 and 8 were actually used? A. No, sir.”).

27 GSR appears to suggest that there is circumstantial evidence of use. However, Mr.
28 Aguero, GSR's rebuttal expert on “use,” could not articulate any facts from which an inference of

1 use could be drawn. *Id.* at p. 48-14-18. He concedes that there is a lack of correlation between
2 Tors obtaining pars and Peppermill's slot operations, marketing, or financial records:

3 Q. . . . So, again, is there any specific thing that was done or said by the
4 Peppermill upon which you relied to suggest that it was used?

5 A. May I clarify? It is the information from the GSR.

6 Q. Yes, sir. 7 and 8.

7 A. No, sir.

8 Q. Is there any trend, any financial record, any document that has been
9 exchanged in discovery that substantiates -- that shows use?

10 A. Not of the specific pars identified in Exhibits 7 and 8.

11 Q. You've seen all the revenue reports from the Peppermill?

12 A. I have.

13 Q. Those revenue reports do not show evidence of use, do they?

14 A. There's no correlation.

15 Q. Well, they don't show evidence of use, do they?

16 A. Again, there's no correlation. The reason that I say that -- the brief answer
17 to your question is no, they don't show use. And the reason for that is that
18 they may have been changing pars and managing their casino for any
19 numbers reasons. It was one portion of it. So there's no correlation. It also
20 doesn't show that they didn't use it. But there's no correlation.

21 Q. Well, you don't have proof that they did with respect to the financial
22 records.

23 A. Absolutely true.

24 . . .

25 Q. And you went through every week of every year from 2010 to 2014, and
26 based upon your analysis of the par changes at the Peppermill reflected in
27 the penny reports, those reports don't show use, do they?

28 A. There's no correlation between them.

Q. Well, I think we're saying the same thing, but -- you don't find a
correlation that proves use?

A. That is correct.

Q. Thank you. Same with the marketing stuff?

A. Right. Once there was no correlation, I didn't spend the time to try and
analyze whether marketing had made some change because there was no
correlation.

Q. Okay. And can you specify what operational decision, act, or conduct
reflects use?

A. I cannot.

See Exh. 9, p. 233:17-236:3

In short, there is no evidence of use—either direct or circumstantial. GSR is relying on
speculation and whimsy. Partial summary judgment is appropriate.

1 B. **There Is No Disclosure.**

2 GSR concedes that the pars were not transmitted to anyone outside of a few agents and
3 employees of the Peppermill. *Id.* at p. 53:25-54:3. Based upon this undisputed fact, there is no
4 “disclosure.” To disclose something means “to expose to view” or “make known or public.” *See*
5 **Exhibit 20** (Merriam-Webster Dictionary, “disclose” [http://www.merriam-](http://www.merriam-webster.com/dictionary/disclose)
6 [webster.com/dictionary/disclose](http://www.merriam-webster.com/dictionary/disclose) (last viewed November 18, 2015)). Accordingly, in order for a
7 disclosure to occur, one must transmit or otherwise make known information to a third party.
8 Logically, without a third party, there cannot be a disclosure.

9 Just as with the law of civil conspiracy, a disclosure cannot exist between employees, their
10 corporate employer, or the employer’s wholly owned subsidiaries, because all of the actors are part
11 of the same legal body. *See Laxalt v. McClatchy*, 622 F. Supp. 737, 745 (D. Nev. 1985); *Collins v.*
12 *Union Fed. Sav. & Loan Ass’n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983) (“An actionable civil
13 conspiracy is a combination of two or more persons who, by some concerted action, intend to
14 accomplish some unlawful objective for the purpose of harming another which results in
15 damage.”).

16 There is no dispute that Tors was acting under Peppermill’s control and within the scope of
17 his employment when he participated in the conduct that is the subject of the above-entitled action.
18 Further, Mr. Tors and Peppermill have entered into an Indemnification Agreement whereby
19 Peppermill expressly agrees, on the basis of respondeat superior, to indemnify Mr. Tors from any
20 adverse judgments related to the allegations in GSR’s Complaint. *See Exhibit 21*
21 (Indemnification Agreement). GSR admits there is no evidence that Tors disclosed the par
22 information to anyone outside of the Peppermill. As a matter of law, there cannot be a disclosure.
23 A reasonable royalty cannot be asserted on the basis of either use or disclosure in this case.

24 C. **There Is No Evidence to Support a Reasonable Royalty.**

25 Borrowed from patent law, reasonable royalty damages contemplate a hypothetical
26 negotiation between the owner of a trade secret and the alleged misappropriator, “[b]y means of a
27 ‘suppositional meeting’ between the parties, the court calculates what the parties would have
28 agreed to as a fair licensing price at the time that the misappropriation occurred.” *See Vermont*

1 *Microsystems, Inc. v. Autodesk, Inc.*, 88 F.3d 142, 151 (1996).

2 **1. GSR's Reasonable Royalty Calculation Abandons the Facts and**
3 **Circumstances of this Case.**

4 Case law requires that a reasonable royalty damage model be connected to the facts and
5 circumstances of the case. See *University Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d
6 518, 538 (1974) (holding that trade secret damages are controlled by the "peculiar facts and
7 circumstances" in a given case). Court's evaluating reasonable royalty damages under the Trade
8 Secret Act apply factors established in the patent context in *Georgia-Pacific Corp. v. U.S.*
9 *Plywood Corp.*, 318 F.Supp. 1116 (1970). The *Georgia-Pacific* factors are accepted as "valid and
10 important factors in the determination of a reasonable royalty rate" in large part, because they
11 connect a reasonable royalty calculation to the "facts and circumstances" of a particular case. See
12 *Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1317-18 (Fed. Cir. 2011). As modified for
13 use in trade secret cases, some of the 15 *Georgia-Pacific* factors are as follows:

- 14 . . .
- 15 5. The commercial relationship between the plaintiff and defendant, such as,
16 whether they are competitors in the same territory in the same line of
17 business; or whether they are inventor and promoter;
 - 18 6. The effect of selling the trade secret product in promoting sales of other
19 products of the defendant; the existing value of the trade secret to the
20 plaintiff as a generator of sales of its non-trade secret items; and the extent
21 of such derivative or connected or conveyed sales;
 - 22 7. The duration of the trade secret and the term of the license;
 - 23 8. The established profitability of the product made with the trade secret; its
24 commercial success; and its current popularity; . . .
 - 25 10. The nature of the trade secret; the character of the commercial
26 embodiment of it as owned or produced by the plaintiff; and the benefits to
27 those who have used the trade secret;
 - 28 11. The extent to which the defendant has made use of the trade secret; and
any evidence probative of the value of that use;
 12. The portion of the profit or of the selling price that may be customary in
the particular business or in comparable businesses to allow for the use of
the trade secret or analogous trade secrets;
 13. The portion of the realizable profit that should be credited to the invention
as distinguished from non-trade secret elements, the manufacturing
process, business risks, or significant features or improvements added by
the defendant; . . .
 15. The amount that the plaintiff and the defendant would have agreed upon
(at the time the misappropriation began) if both had been reasonably and
voluntarily trying to reach an agreement . . .

1 *LinkCo, Inc. v. Fujitsu Ltd.*, 232 F. Supp. 2d 182, 187 (S.D.N.Y. 2002).

2 Given the *Georgia-Pacific* factors' overall importance to the methodology of a reasonable
3 royalty analysis, it is shocking that GSR has offered no evidence or opinions to support its
4 analysis. In fact, GSR's damages expert testimony does not truly contemplate a hypothetical
5 negotiation between GSR and Peppermill, at all. Mr. Aguero makes no reference to *Georgia-*
6 *Pacific* or the relevant factors. Indeed, parts of his analysis even contradict principals set forth in
7 the *Georgia-Pacific* factors, as discussed below. In short, GSR fails to connect its reasonable
8 royalty calculation to the facts and circumstances in this case using the *Georgia-Pacific* factors or
9 otherwise and fails to connect the "royalty" to the time of alleged misappropriation.

10 Instead of negotiating for the trade secrets at issue—namely, the pars already obtained by
11 Mr. Tors—Mr. Aguero contemplates a negotiation for Peppermill's "unfettered access" of GSR's
12 slot machines. *See* Exh. 6, p. 91:11-92:16; 113:13-17. By looking to a hypothetical negotiation
13 for unfettered access, Mr. Aguero has ignored the fundamental mandate of reasonable royalty law:
14 he abandoned the facts of this case. There is no evidence that the Peppermill had unfettered access
15 to other casino's pars, nor is it pled in the Complaint. There is no evidence that the Peppermill
16 obtained access to GSR's par machines on more than two separate occasions separated by six
17 months. *See* Exh. 9, p. 290:2-8.

18 Mr. Aguero's "hypothetical negotiation" is based on a false assumption. It assumes that a
19 casino operator would negotiate to buy access or par information without considering all of the
20 other pertinent and crucial variables that affect casino operations, slot operations, and marketing
21 strategies. The evidence is to the contrary. GSR's owners and managers concede that pars have
22 no value. *See* discussion Part IV.G-H, *supra*. Moreover, several prominent Northern Nevada
23 casino owners and operators agree that pars have no value. *See* discussion Part IV.I, *supra*.
24 Because there is no dispute pars are without value, a hypothetical negotiation would yield no
25 damages. Mr. Aguero's "access" theory is a false hypothetical that has no connection to the casino
26 industry, the GSR and the Peppermill, and the facts and circumstances of this case.

27 ///

28 ///

1 **2. There Is No Evidence to Support a Royalty for an 18-Month Period.**

2 Another factor to consider is the duration of the hypothetical license. *See LinkCo, Inc. v.*
3 *Fujitsu Ltd., supra*, 232 F. Supp. 2d at 187 (factor 7). Here, GSR asserts that the proper license
4 term is an 18-month period running from December 29, 2011 (the first date that Tors allegedly
5 obtained GSR's pars) to July 12, 2013 (the date he was apprehended). *See* Exh 8, p. 6. However,
6 there is no genuine issue of material fact that the only pars at issue in this case are Deposition
7 Exhibits 7 and 8, which were obtained on December 29, 2011 and June 14, 2012, respectively.
8 Indeed, there is no evidence that the pars obtained on July 12, 2013 ever made their way to the
9 Peppermill. *See* Exh. 9, p. 290:2-8. Accordingly, at best, the evidence only would support a
10 reasonable royalty running for a 6 month period, not an 18-month period.

11 **3. GSR Concedes that the Pars at Issue Have No Value.**

12 Among the considerations of the *Georgia-Pacific* factors are the value of the purported
13 trade secret to the plaintiff and the value of its use. *See LinkCo, Inc. v. Fujitsu Ltd., supra*, 232 F.
14 Supp. 2d at 187 (factors 6 and 11). GSR has stated clearly and unequivocally that it is relying on
15 the holding in *University Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d 510 (Ga. 1974).
16 Under this case, the "value" of a secret to the Plaintiff is an appropriate measure of damages at the
17 time the Defendant has in some way destroyed the value of the secret. *Id.* at p. 535-46. Even in its
18 interrogatory responses, GSR relies on the proposition that where the Peppermill retains the "use"
19 of the secret and where there has been no effective disclosure of the secret through publication, the
20 total value of the secret to the Plaintiff is an inappropriate measure. *See Exhibit 22*, No. 14
21 (GSR's Answers to Peppermill's Second Set of Interrogatories).

22 Here, GSR does not contend that the alleged secret has been destroyed. Time and again
23 GSR testified that par information in questions has no value. *See* Exh. 2, p. 74; Exh. 10, p. 27-28;
24 Exh. 14, p. 32-33, 65-66; Exh. 15, p. 283-284. Additionally, as reflected in the Peppermill's
25 expert witness reports, the "value" of pars to the Peppermill is nonexistent. *See Exhibit 23*, p. 19-
26 21 (Expert Report of Stacy Friedman) and *Exhibit 24*, p. 4 (Expert Report of Anthony Lucas,
27 Ph.D.). Most important, the casino industry does not believe that the pars have any value. *See*

1 discussion Part IV.I, *supra*. Because the evidence shows that pars have no value, a “reasonable
2 royalty” is not an available damage claim.

3 **4. GSR’s Reasonable Royalty Calculation Is Improperly Based Upon**
4 **Peppermill’s Revenue.**

5 In its expert analysis, GSR’s reasonable royalty on *revenue*, not profit. *See* Exh. 8, p. 4.
6 “[A] reasonable royalty is an amount which a person, desiring to manufacture and sell a patented
7 article, as a business proposition, would be willing to pay as a royalty and yet be able to make and
8 sell the patented article, in the market, at a reasonable profit.” *Joy Technologies, Inc. v. Flakt,*
9 *Inc.*, 954 F. Supp. 796, 806 (D. Del. 1996) (internal quotation omitted).

10 Aguero states that the admission by Peppermill’s gaming counsel that “an extra percent [to
11 Peppermill’s pars] adds a hundred thousand dollars a week in revenue” “provides a fair starting
12 point for ... a hypothetical agreement.” . *See* Exh. 8, p. 4. Aguero is hopelessly confused. This
13 case is about “gross pars”. His damage model is based on a different and irrelevant concept, i.e.,
14 net pars. Also, Aguero fails to go beyond that first step and fails to calculate how such of
15 Peppermill’s speculative revenue translates into speculative profit. Amazingly, his own, widely-
16 published analysis of the world-wide gaming industry states that, revenue goes **down** (not up) as
17 pars go up in Nevada. *See Exhibit 25*, p. 40-42 (Slot Market Assessment: Analysis of Industry
18 Data (February 25, 2015)). Accordingly, since GSR’s basis reasonable royalty is disproven by
19 Aguero’s own published analysis, attempting to calculate profit from this non-existent revenue is
20 untenable. At his deposition, Aguero never considered what revenue (hypothetical or otherwise)
21 Peppermill would obtain by using GSR’s par settings. His reasonable royalty calculation is
22 unrelated to the facts in this case.

23 **5. GSR’s Has No Evidence That Pars Have Independent Value.**

24 A reasonable royalty analysis requires the identification of what portion of profit is credited
25 to the alleged “trade secret,” as distinguished from the other non-trade secret part of the profit. *See*
26 *LinkCo, Inc. v. Fujitsu Ltd., supra*, 232 F. Supp. 2d at 187 (factor 13). Accordingly, GSR’s
27 reasonable royalty model must either (1) account for what portion of Peppermill profit is credited
28 to the allegedly misappropriated pars or (2) provide an expert opinion and analysis under the
“entire market value rule.” The entire market value rule “permits recovery of damages based on

1 the value of the entire apparatus [or product] containing several features, where the patent related
2 [or trade secret] feature is the basis for customer demand." See *State Indus., Inc. v. Mor-Flo*
3 *Indus., Inc.*, 883 F.2d 1573, 1580 (Fed.Cir.1989).

4 Here, Aguero offers no opinion as to whether the reasonable royalty accounts for any part
5 of or percentage of Peppermill's profit or, alternatively, whether the pars in question were the
6 aspect of Peppermill's gaming product that drove customer demand. In his deposition, Aguero
7 was asked about how he apportioned the allegedly misappropriated pars as a component of the
8 reasonable royalty, and he testified as follows:

9 Q. . . . But as a group of 15, have you attempted to determine an economic
value that those 15 pars have to Peppermill as a group?

10 A. No, sir.

11 Q. I think I heard you say that, nonetheless, the pars are a component of your
reasonable royalty opinion. Fair?

12 A. Fair.

13 Q. Have you apportioned what amount the pars have to that reasonable
royalty from other aspects of your opinion?

14 A. No, sir.

15 Q. Other than pars, what other aspects are there that are in that reasonable
royalty valuation other than pars?

16 A. Well, I think the pars in and of themselves from the standpoint of how the
17 casino was being managed. If the pars were moving up or down, it would
give you insight relative to how the casino itself was being imagined. . . .

18 Q. You've indicated to me -- correct me if I'm wrong -- that the pars, the 15
19 pars in those two exhibits, can fairly be considered a component of the
overall opinion that a hypothetical license agreement would entail an \$8
million compensation.

20 A. I would change that from saying a component to a subset of.

21 Q. Subset. Fair enough. Given the fact that those pars are a subset that in and
22 of themselves have not been valued, what other sets or subsets are there in
this license agreement that have been valued other than the pars?

23 A. I would come back to the same statement that I made earlier, and that is
24 that I feel like the sum of the parts are worth more than the whole; the idea
that Mr. Tors went in, obtained this type of information both from the
Grand Sierra as well as other properties and was trying to obtain business
25 intelligence, trying to gather information. The pars are essentially the
manifestation of that information.

26 But, again, it's the concept of trying to obtain where the pars are set --
27 where the pars are set, whether they're moving up or down, and trying to
look at that in the universe of other casino management information that
seems to me to be the totality of what the value of that agreement, that
28 theoretical agreement, would be.

See Exh. 6, p. 164:9-166:11.

1 In sum, Agüero admits that the allegedly misappropriated parts are merely portion of the
2 data that he utilized to calculate his reasonable royalty calculation. *Id.* at p. 117:6-12 (“[T]he sum
3 of the parts are greater than the whole . . .”). However, he cannot value the individual parts “from
4 the constellation of other information.” *See* Exh. 9, p. 224:10-14. Indeed, he never calculated or
5 attempted to calculate the specific value of the parts themselves. *Id.* at p. 224:16-23. Moreover,
6 there is no evidence in the record to suggest that the parts are subject to the entire market rule.

7 In light of GSR’s failure to connect its reasonable royalty to the facts in this case, summary
8 judgment is warranted.

9 **V. GSR’S ALTERNATIVE THEORY OF DAMAGES**

10 GSR claims that because of the Peppermill’s activities, it had to change the locks on all of
11 its slot machines. *See* Exh. 18, p. 30. The invoice and purchase order produced by GSR show an
12 expense of \$17,479 to purchase new locks for all of its slot machines. *See* Exh. 19. In addition to
13 this cost, GSR contends that it is entitled to recover money for the man hours utilized to install the
14 new locks at \$5 per machine. *See* Exh. 18, p. 33, 35. Therefore, the claim for damages totals
15 \$23,159 (1136 machines at \$5 labor per machine is \$5,680, plus material at \$17,479 is \$23,159).

16 Given GSR inability to finish changing the locks, it is ludicrous to contend that these
17 expenses were incurred expenses because of Tors’ activities. If GSR actually believed there was a
18 threat to its “trade secrets,” it would have changed the locks on the remaining 518 slot machines.
19 It has not done so. Further, GSR’s person most knowledgeable on this subject does not know what
20 the total damages are. *Id.*, at p. 33. However, he was able to provide an approximation, albeit a
21 fuzzy one. Thus, summary judgment should be granted as to these change of lock cost due to a
22 lack of certainty.

23 Regardless, GSR attempted to provide real sums and figures in support of its actual loss
24 damages pursuant to NRS 600A.050. NRS 600A.050 *only* allows reasonable royalty damages *if*
25 and only *if* there are no losses caused by the misappropriation:

26 *In lieu of* damages measured by other methods, damages caused by
27 misappropriation may be measured by imposition of liability for a reasonable
28 royalty for a misappropriator’s unauthorized disclosure or use of a trade secret.
(Emphasis added).

Therefore, GSR is precluded from asserting a reasonable royalty, since it has made an effort to

1 quantify its actual losses for changing the locks on its slot machines. Accordingly, summary
2 judgment should be entered barring reasonable royalty damages.

3 **VI. CONCLUSION**

4 For the reasons stated, GSR has failed to present a triable issue of fact as to whether it
5 sustained damages in this case. It failed to demonstrate that it incurred any loss caused by the
6 misappropriation. It failed to demonstrate that Peppermill was unjustly enriched by possession of
7 GSR's pars. GSR's reasonable royalty calculation is bizarre. It is not connected to the facts and
8 circumstances in this case. Moreover, because it failed to provide evidence of use, disclosure, or
9 value, there is no evidence to even support reasonable royalty damages.

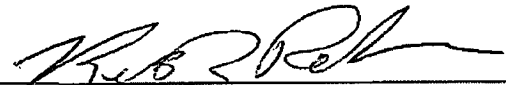
10 There is no genuine issue of material fact that GSR has damages, and summary judgment
11 should be entered accordingly.

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

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

15 DATED this 15th day of November, 2015.

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

19 
20 KENT R. ROBISON
21 SCOTT L. HERNANDEZ
22 THERESE M. SHANKS
Attorneys for Defendant
23 Peppermill Casinos, Inc., d/b/a Peppermill Casino
24
25
26
27
28

**AFFIDAVIT OF KENT R. ROBISON IN SUPPORT OF
PEPPERMILL CASINOS, INC.'S RENEWED MOTION FOR SUMMARY JUDGMENT
REGARDING DAMAGES**

STATE OF NEVADA)
)ss.
COUNTY OF WASHOE)

KENT R. ROBISON, being first duly sworn, deposes and states under penalty of perjury that the following assertions are true and correct.

1. I am an attorney licensed in Nevada, and I am counsel representing Defendant Peppermill Casinos, Inc. in this matter. I am a shareholder with the law firm of Robison, Belaustegui, Sharp & Low.

2. I have personal knowledge of the matters set forth in this Affidavit, and if called to testify, I could. I submit this Affidavit in support of Peppermill Casinos, Inc.'s Renewed Motion for Summary Judgment Regarding Damages ("Motion"), to which this Affidavit is attached.

3. Attached as **Exhibit 1** to this Motion is a true and correct copy of Exhibits 7 and 8 to the transcript of the deposition of Ryan Tors taken on September 19, 2014, marked as **Highly Confidential**.

4. Attached as **Exhibit 2** to this Motion are true and correct copies of excerpts from the deposition transcript of Ryan Tors taken on September 19, 2014, marked as **Highly Confidential**.

5. Attached as **Exhibit 3** to this Motion are true and correct copies of excerpts from the deposition transcript of Craig Robinson taken on November 4, 2014, marked as **Highly Confidential**.

6. Attached as **Exhibit 4** to this Motion is a true and correct copy of Plaintiff's Third Supplemental Disclosure Pursuant to NRCP 16.1, with attached Affidavit of David G. Schwartz, Ph.D. only.

7. Attached as **Exhibit 5** to this Motion are true and correct copies of excerpts from the deposition transcript of David Schwartz taken on October 21, 2014, marked as **Highly Confidential**.

1 8. Attached as **Exhibit 6** to this Motion are true and correct copies of excerpts from
2 the deposition transcript of Jeremy Aguero taken on September 15, 2015.

3 9. Attached as **Exhibit 7** to this Motion is a true and correct file-stamped copy of
4 Plaintiff MEI-GSR Holdings, LLC, A Nevada Corporation, D/B/A/ Grand Sierra Resort's
5 Amended Disclosure of Expert Witness with attached Expert Report prepared by Jeremy Aguero
6 (without credentials) filed on June 4, 2015, marked as **Highly Confidential**.

7 10. Attached as **Exhibit 8** to this Motion is a true and correct file-stamped copy of
8 Plaintiff MEI-GSR Holdings, LLC, A Nevada Corporation, D/B/A/ Grand Sierra Resort's
9 Supplemental Disclosure of Expert Witness with attached Amended Expert Report of Jeremy
10 Aguero (without credentials) filed on August 28, 2015, marked as **Highly Confidential**.

11 11. Attached as **Exhibit 9** to this Motion are true and correct copies of excerpts from
12 the deposition transcript of Jeremy Aguero taken on October 19, 2015, marked as **Highly**
13 **Confidential**.

14 12. Attached as **Exhibit 10** to this Motion are true and correct copies of excerpts from
15 the deposition transcript of Scott Bean taken on March 17, 2015, marked as **Highly**
16 **Confidential**.

17 13. Attached as **Exhibit 11** to this Motion is a true and correct copy of the relevant
18 pages of the Gaming Control Board's transcript of its hearing conducted on February 10, 2014.

19 14. Attached as **Exhibit 12** to this Motion is a true and correct copy of the Nevada
20 Gaming Commission Stipulation for Settlement and Order.

21 15. Attached as **Exhibit 13** to this Motion are true and correct copies of excerpts from
22 the deposition transcript of William Alfred Paganetti taken on April 3, 2015.

23 16. Attached as **Exhibit 14** to this Motion are true and correct copies of excerpts from
24 the deposition transcript of Alex Meruelo taken on January 16, 2015, marked as **Highly**
25 **Confidential**.

26 17. Attached as **Exhibit 15** to this Motion are true and correct copies of excerpts from
27 the deposition transcript of Tracy Mimno taken on November 4, 2015, marked as **Highly**
28 **Confidential**.

1 18. Attached as **Exhibit 16** to this Motion are true and correct copies of excerpts from
2 the deposition transcript of Terry Vavra taken on December 3, 2014, marked as **Highly**
3 **Confidential**.

4 19. Attached as **Exhibit 17** to this Motion is a true and correct copy of the
5 Peppermill's Supplement to Disclosure of Rebuttal Expert Witnesses, with attachments, filed on
6 November 3, 2015, marked as **Highly Confidential**.

7 20. Attached as **Exhibit 18** to this Motion are true and correct copies of excerpts from
8 the deposition transcript of Toby Taylor taken on March 17, 2015, marked as **Highly**
9 **Confidential**.

10 21. Attached as **Exhibit 19** to this Motion is a true and correct copy of the GSR's
11 Invoice and Purchase Order (Bates No. GSR00100 – GSR00102), produced by the GSR relevant
12 to the changing of the locks on all of its slot machines.

13 22. Attached as **Exhibit 20** to this Motion is a true and correct copy of the Merriam-
14 Webster Dictionary, "disclose" <http://www.merriam-webster.com/dictionary/disclose> definition
15 last viewed on November 18, 2015.

16 23. Attached as **Exhibit 21** to this Motion is a true and correct copy of the
17 Indemnification Agreement dated December 10, 2014, between Peppermill Casinos, Inc. and
18 Ryan Tors, marked as **Highly Confidential**.

19 24. Attached as **Exhibit 22** to this Motion is a true and correct copy of GSR's
20 Responses to Defendant Peppermill's Second Set of Interrogatories dated May 19, 2015.

21 25. Attached as **Exhibit 23** to this Motion is a true and correct copy of the Expert
22 Report of Stacy Friedman dated March 2, 2015, marked as **Highly Confidential**.

23 26. Attached as **Exhibit 24** to this Motion is a true and correct copy of the Expert
24 Report of Anthony Lucas, Ph.D. (without appendix) dated March 1, 2015, marked as **Highly**
25 **Confidential**.

26 27. Attached as **Exhibit 25** to this Motion is a true and correct copy of an article
27 entitled, *Slot Market Assessment: Analysis of Industry Data*, published February 25, 2015, by

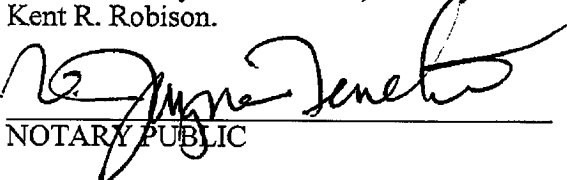
28 *///*

1 Applied Analysis.

2 Dated this 18th day of November, 2015.

3
4
5 
6 KENT R. ROBISON

7 Subscribed and sworn to before me
8 on this 18th day of November, 2015 by
9 Kent R. Robison.

10 
11 NOTARY PUBLIC

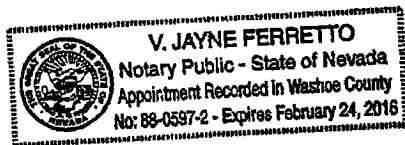


EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>	<u>Pages</u>
1	Exhibits 7 and 8 to the Transcript of the Deposition of Ryan Tors Taken on September 19, 2014 (Highly Confidential)	4
2	Excerpts from the Transcript of the Deposition of Ryan Tors Taken on September 19, 2014 (Highly Confidential)	7
3	Excerpts from the Transcript of the Deposition of Craig Robinson Taken on November 4, 2014 (Highly Confidential)	23
4	GSR's Third Supplemental Disclosure Pursuant to NRCP 16.1 with attached Affidavit of David Schwartz, <u>only</u>	11
5	Excerpts from the Transcript of the Deposition of David Schwartz Taken on October 21, 2014 (Highly Confidential)	15
6	Excerpts from the Transcript of the Deposition of Jeremy Aguero Taken on September 15, 2015	32
7	GSR's Amended Disclosure of Expert Witness, Dated June 4, 2015 with Attached Expert Report Prepared by Jeremy Aguero (without credentials) (Highly Confidential)	13
8	GSR's Supplemental Disclosure of Expert Witness, Dated August 28, 2015 with Attached Amended Expert Report of Jeremy Aguero (without credentials) (Highly Confidential)	14
9	Excerpts from the Transcript of the Deposition of Jeremy Aguero Taken on October 19, 2015	36
10	Excerpts from the Transcript of the Deposition of Scott Bean Taken on March 17, 2015	6
11	Gaming Control Board Partial Transcript	2
12	Nevada Gaming Commission Stipulation for Settlement and Order	8
13	Excerpts from the Transcript of the Deposition of William Alfred Paganetti Taken on April 3, 2015	17
14	Excerpts from the Transcript of the Deposition of Alex Meruelo Taken on January 16, 2015 (Highly Confidential)	9
15	Excerpts from the Transcript of the Deposition of Tracy Mimno Taken on November 4, 2015 (Highly Confidential)	6

1	16	Excerpts from the Transcript of the Deposition of Terry Vavra Taken on December 3, 2014 (Highly Confidential)	3
2			
3	17	Peppermill's Supplement to Disclosure of Rebuttal Expert Witnesses with attachments (Highly Confidential)	31
4			
5	18	Excerpts from the Transcript of the Deposition of Toby Taylor Taken on March 17, 2015 (Highly Confidential)	13
6	19	GSR's Invoice and Purchase Order (Bates No. GSR00100-GSR00102)	3
7			
8	20	Merriam-Webster Dictionary, "disclose" http://www.merriam-webster.com/dictionary/disclose , Last Viewed November 18, 2015	1
9			
10	21	Indemnification Agreement (Highly Confidential)	1
11	22	GSR's Responses to Peppermill's Second Set of Interrogatories	23
12	23	Expert Report of Stacy Friedman dated March 2, 2015, (Highly Confidential)	
13		Part 1 of 3	24
14		Part 2 of 3	24
15		Part 3 of 3	26
16	24	Expert Report of Anthony Lucas, Ph.D. dated March 1, 2015 (without Appendix) (Highly Confidential)	36
17	25	Slot Market Assessment: Analysis of Industry Data, Dated Feb. 25, 2015	
18		Part 1 of 3	20
19		Part 2 of 3	20
20		Part 3 of 3	20
21			
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28			

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true copy of the **PEPPERMILL CASINOS, INC.'S RENEWED MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING DAMAGES** 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:

H. STAN JOHNSON, ESQ.
TERRY KINNALLY, ESQ.
CHRIS DAVIS, ESQ.
Cohen-Johnson, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, NV 89119
Email: sjohnson@cohenjohnson.com
tkinnally@cohenjohnson.com
cdavis@cohenjohnson.com

Attorneys for Plaintiff

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

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

MARK WRAY, ESQ.
608 Lander Street
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Attorneys for Plaintiff

by electronic email addressed to the above.

by personal delivery/hand delivery addressed to:

MARK WRAY, ESQ.
608 Lander Street
Reno, NV 89509
Email: mwrap@markwraylaw.com
Attorneys for Plaintiff

by facsimile (fax) addressed to:

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

DATED: This 18th day of November, 2015.



V. JAYNE FERRETTO
Employee of Robison, Belaustegui, Sharp & Low

EXHIBIT 1

DESIGNATED CONFIDENTIAL INFORMATION

**CONFIDENTIAL-SUBJECT TO STIPULATED
CONFIDENTIALITY AGREEMENT AND PROTECTIVE
ORDER FILED JULY 17, 2014**

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

EXHIBIT 1

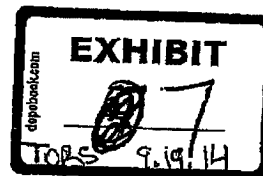
From: Ryan Tors
Sent: Thursday, December 29, 2011 8:59 AM
To: NBPartners; Rob Erwin; John C Hanson (Reno GM)
Subject: Grand Sierra



Grand Sierra
pars.xls

Thanks-
Ryan Tors
Peppermill Casinos
775 689 7499

HIGHLY CONFIDENTIAL



Grand Sierra

12/29/2011

1	04-15-08	440	91.83	8.17	Buffalo
2	04-15-07	21016	91.83	8.17	Buffalo
	Aristocrat	55722	average	8.17	
1	04-15-08	440	93.99	6.01	Ducks in a Row
2	04-15-07	21016	94.03	5.97	Cleopatra
3	04-15-06	571	94.03	5.97	Money Strom
4	05-25-02	50060	93.98	6.02	Texas Tea
5	05-25-03		94.98	5.02	Munsters
6	05-25-01		94.00	6.26	Dbi Dia 2000
7	03-25-04	358	93.97	6.03	Lil Lady
	IGT		average	5.90	

overall average 6.40

*all machines that I can key quickly were flagged as having been loosened, some had the dangler pulled off

HIGHLY CONFIDENTIAL

PM 0080

RA 02313

From:
Sent:
To:
Subject:

Ryan Tors
Friday, June 15, 2012 8:51 AM
NBPartners; John C Hanson (Reno GM); Billy Paganetti; David McHugh
Grand Sierra pars



Grand Sierra
pars1.xls

Thanks-
Ryan Tors
Peppermill Casinos
775 689 7499

HIGHLY CONFIDENTIAL



6/14/2012

Grand Sierra

1	04-07	20375	93.99	6.01 Ducks in a Row
2	04-18	1011	91.82	8.18 Buffalo
3	04-10	20050	94.06	5.94 Enchanted Unicorn
4	01-07	127	94.01	5.99 Cats
5	10-47	246	93.99	6.01 Horoscope
6	05-26	937	92.51	7.49 Wolf Run
			average	6.60

HIGHLY CONFIDENTIAL

PM 0082

RA 02315

EXHIBIT 2

DESIGNATED
HIGHLY CONFIDENTIAL INFORMATION

**CONFIDENTIAL-SUBJECT TO STIPULATED
CONFIDENTIALITY AGREEMENT AND PROTECTIVE
ORDER FILED JULY 17, 2014**

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

EXHIBIT 2

1 Case No. CV13-01704

2 Dept. No. B7

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

5
6 -oOo-

7 MEI-GSR Holdings, LLC, a Nevada)
8 Corporation, d/b/a Grand Sierra Resort,)
9 Plaintiff,)

10 -vs-)

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

16 *** HIGHLY CONFIDENTIAL ***

17 *** ATTORNEYS' EYES ONLY ***

18 VIDEOTAPED DEPOSITION OF RYAN TORS, VOLUME I

19 (Pages 131-286)

20 called for examination by counsel for Defendant Peppermill
21 Casinos, Inc., d/b/a Peppermill Casino pursuant to Notice, at
22 the offices of Gunderson Law Firm, 3895 Warren Way, Reno,
23 Nevada, at 9:38 a.m., Friday, September 19, 2014, before
24 Becky Van Auken, a Certified Court Reporter.

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

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

RA 02317

1 A Supposed to be analysis that I could
2 provide because I did -- because of my background.

3 Q Analysis of what?

4 A Casino industry. I was -- I was going to
5 support the CFO and the -- and the director of slots
6 who needed assistance in analysis.

7 Q Okay. And now we know who you assisted
8 with analysis --

9 A Yeah.

10 Q -- but the question is: What did you
11 analyze?

12 A They had projects. It was special
13 projects. And they had projects that they, each of
14 them, gave to me.

15 Q And who were those two individuals?

16 A John Hanson was the director of slots. And
17 Rob Erwin was the director of finance, or sometimes he
18 used the title CFO.

19 Q So you were doing analysis projects for
20 those two individuals for approximately how long?

21 A Until 2008 I worked -- I was promoted to
22 director of slots.

23 Q Can you give the jury an idea of what type
24 of assignments you were given with regard to this
25 analysis position from 2005 to 2008?

1 print, and it's 440.

2 Do you see that?

3 A Yes.

4 Q What does that number signify?

5 A The game number.

6 Q The slot machine number, you mean?

7 A The slot machine number, yes.

8 Q Not the game number.

9 A Well, we call them interchangeably, but,

10 yeah, slot machine number.

11 Q So each slot machine has a number on it?

12 A Yes.

13 Q And the number that was on the slot machine

14 on this first column, the number of that slot machine

15 was 440, correct?

16 A That's sloppy work. There's another 440.

17 So it's just very sloppy work, the way I did it.

18 Q What do you mean there's another 440?

19 A There's another 440. Ducks in a Row is 440

20 too. They both can't be 440.

21 Q So maybe you made this up?

22 A I might have made this up. I -- as a

23 matter of fact, if you look at it, I got the same

24 sections down below too. So I --

25 Q It tell -- it tells you that you made this

1 material up, didn't it -- doesn't it?

2 A I definitely fabricated things, yes. I
3 don't -- I just don't remember this. So...

4 Q All right. So if you go to the next
5 column, that number is 91.83, correct?

6 A Right.

7 Q Does that reflect the number of dollars
8 that would theoretically be paid back to the player?

9 A Yes.

10 Q What's that called? The payback
11 percentage?

12 A Payback, yes.

13 Q So I play a hundred dollars, I play that
14 machine for a long, long time.

15 A Yeah.

16 Q And, theoretically, I'm going to get \$91.83
17 per hundred dollars back?

18 A Correct.

19 Q And the next column reflects what I lost?
20 Theoretically.

21 A Theoretically.

22 Q These are all theoretical numbers, correct?

23 A Correct.

24 Q And they're established on statistics that
25 basically go out to infinity if possible, correct?

1 Q All right. Can you tell the jury,
2 Mr. Tors, whether you actually keyed these machines at
3 GSR on that date, June 14, 2012?

4 A I can't -- I can't say I did, no.

5 Q You don't know right now whether or not
6 these are made up or whether they're accurate, do you?

7 A No, I don't.

8 Q And, again, from time to time you would
9 fabricate these settings on these reports; you would
10 make them up?

11 A Yes.

12 Q If you go to the first page of this Exhibit
13 No. 8, sir, this is the email that distributed the --
14 the schedule that we just discussed with the jury?

15 A Yes.

16 Q On June 15, 2012, at approximately 8:51 in
17 the morning, you distributed this par information to
18 NB Partners. That's Bill Paganetti, correct?

19 A Yes.

20 Q John Hanson --

21 A Yes.

22 Q -- GM?

23 Now there's a new name here, Billy
24 Paganetti. Who's that?

25 A Yes. That's -- that's the owner's --

1 Q For what purpose?

2 A I thought it might be helpful if I could
3 find those games. Because it seemed like my mission
4 was to know if anything changed, if they were still
5 doing the same thing, because they were still
6 advertising the same thing.

7 Q All right. Now, I want to get down to the
8 handwritten entries underneath the typewritten entries
9 so the jury can see those.

10 What are you recording on this handwritten
11 information on Exhibit 14?

12 A Kind of a shorthand of location, game
13 numbers, and a description of the game.

14 Q Okay. So the jury is clear, the
15 handwritten information, would that be the information
16 that you got on July 12, 2013?

17 A Yes.

18 Q And the typewritten information on this
19 same piece of paper is the information that you got
20 approximately a year before?

21 A Yes.

22 Q On June 14, 2012?

23 A I think it was 15th, but yes.

24 Q Well, that's the date of the email.

25 A Okay.

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 Friday, September 19, 2014, at the offices of Gunderson Law Firm, 3895 Warren Way, Reno, Nevada, I was present and took verbatim stenotype notes of the videotaped deposition of RYAN TORS, VOLUME I, 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 27th day of September, 2014.


BECKY VAN AUKEN, CCR #418

EXHIBIT 3

DESIGNATED
HIGHLY CONFIDENTIAL INFORMATION

**CONFIDENTIAL-SUBJECT TO STIPULATED
CONFIDENTIALITY AGREEMENT AND PROTECTIVE
ORDER FILED JULY 17, 2014**

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

EXHIBIT 3

Case No. CV13-01704

Dept. No. B7

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

-oOo-

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

-vs-)

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

DEPOSITION OF CRAIG ROBINSON

(HIGHLY CONFIDENTIAL PAGES 16 - 101)

called for examination by counsel for Defendant Peppermill
Casinos, Inc., d/b/a Peppermill Casino pursuant to Notice, at
the offices of Robison, Belaustegui, Sharp & Low, 71
Washington Street, Reno, Nevada, at 9:00 a.m., Tuesday,
November 4, 2014, before Becky Van Auken, a Certified Court
Reporter.

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

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

1 Exhibit 32 is a letter we received from
2 GSR's counsel identifying witnesses that it will
3 produce responsive to the various topics. And I
4 believe you are identified on page 2 of Exhibit 32.
5 Would you take a look at that, please.

6 Can you determine which topics you have
7 been asked to testify about here today?

8 A Topics 8 and topics 9.

9 Q Okay. And then if you go to Exhibit 1 of
10 Exhibit 31, you'll see what the description of topics
11 8 and 9 are.

12 Wait a minute.

13 Going back to Exhibit 32, please, on the
14 second page, Tuesday, November 4, 2014, 9:00 a.m., I
15 see that you've been identified for topics 8, 9, 21
16 and 23.

17 See that?

18 A Yes.

19 Q Okay. Is that consistent with your
20 understanding?

21 A Yes.

22 Q Okay. What have you done to prepare for
23 today's deposition?

24 A I've met with counsel.

25 Q Which counsel?

1 A Mr. Cohen.

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

4 A No.

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

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

9 Q Anything else?

10 A No.

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

14 A No, sir.

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

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

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

1 A Not outside my normal daily duties, no.

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

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

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

9 Q So you go back?

10 A Yes.

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

14 A No, sir.

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

18 A Last week.

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

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

25 Q Sure.

1 A There would be an invoice from the vendor.

2 Q Who's the vendor?

3 A I do not know.

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

7 A I have not.

8 Q When were these hard costs incurred?

9 A I wouldn't have knowledge of that.

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

12 A From you.

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

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

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

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

25 THE WITNESS: If it was -- if the

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

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

4 THE WITNESS: Okay.

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

7 BY MR. ROBISON:

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

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

14 THE WITNESS: Okay.

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

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

19 BY MR. ROBISON:

20 Q It depends on who else was present.

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

25 THE WITNESS: Correct.

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

3 THE WITNESS: I cannot answer that
4 question.

5 BY MR. ROBISON:

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

8 A I have not.

9 Q Are you going to?

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

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

14 A That's not what I said.

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

17 A I have not been tasked as of yet.

18 Q Do you know of anybody that has?

19 A Not -- not to my personal knowledge.

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

23 A No.

24 Q Have you done anything to verify that?

25 A I have not.

1 A Correct.

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

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

6 You may answer.

7 THE WITNESS: It was adverse business
8 impact.

9 BY MR. ROBISON:

10 Q From what activities or conduct?

11 A Mostly from damages to property.

12 Q Physical damage?

13 A Physical damage to property, loss of use.

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

17 A No.

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

20 A Uh-huh.

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

25 Is it true that you are aware of nobody

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

3 A Correct.

4 Q What is your knowledge, personal knowledge?

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

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

9 A I have personal knowledge of it.

10 Q How?

11 A I have knowledge of it.

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

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

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

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

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

23 BY MR. ROBISON:

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

1 2014 --

2 A Uh-huh.

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

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

8 Q What additional measures were taken?

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

11 Q What additions were made, sir?

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

13 Q Who does?

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

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

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

19 Q More cameras, more --

20 A I don't know the specifics.

21 Q More surveillance officers?

22 A I don't know the specifics.

23 Q More sophisticated technology?

24 A I don't know the specifics.

25 Q How much?

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

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

4 A Uh-huh.

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

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

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

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

12 Q How much are the damages?

13 A I can't quantify that right now.

14 Q You don't know, do you?

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

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

19 MR. WRAY: Objection. Asked and answered.

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

21 BY MR. ROBISON:

22 Q Go ahead.

23 MR. WRAY: You can answer again.

24 You don't like the answer.

25 But you can answer again --

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

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

4 BY MR. ROBISON:

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

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

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

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

13 MR. WRAY: Objection. Asked and answered.

14 BY MR. ROBISON:

15 Q Go ahead.

16 A Specifically, no.

17 Q Generally?

18 MR. WRAY: Same objection.

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

21 BY MR. ROBISON:

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

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

1 A Uh-huh.

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

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

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

13 A Yes.

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

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

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

21 A Okay.

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

25 A Nothing specifically, no.

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

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

7 Q Where would you get them from?

8 A Peppermill.

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

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

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

19 A I can't answer that right now.

20 Q Why?

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

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

1 BY MR. ROBISON:

2 Q Go ahead and answer.

3 A Yes, I'm in those meetings.

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

7 A Yes --

8 MR. WRAY: Objection --

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

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

14 BY MR. ROBISON:

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

19 A Yes, sir.

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

22 A Does marketing?

23 Q Shops the Peppermill's marketing
24 strategies.

25 MR. WRAY: You mean the GSR shops?

1 Q So about two a week?

2 A One to two a week.

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

7 A Repeat the question again.

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

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

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

16 A To the GSR?

17 Q Yes.

18 A Yes.

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

20 A With the information I have, correct.

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

24 A That is correct.

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

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

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

6 A No, sir.

7 Q Moving to item No. 21 --

8 A Uh-huh.

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

13 Right?

14 A Correct.

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

18 A That is correct.

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

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

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

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

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

4 A Yeah, that's better.

5 Sir, repeat the question, please.

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

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

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

14 A GSR chose to publish those, though.

15 Q Right.

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

18 Q Will you listen?

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

21 A That's my understanding, yes.

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

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

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

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

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

11 Q That's not a billboard.

12 A Wherever it was disclosed.

13 Q Website.

14 A Okay.

15 Q You didn't know that?

16 A That GSR --

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

19 MR. ROBISON: Yeah.

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

1 Q In general?

2 A In general, yes.

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

6 A In general, yes.

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

8 A I'm not qualified to quantify that.

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

12 A Uh-huh.

13 Q Please assume that to be true.

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

16 A No, I do not.

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

19 A No, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Object as vague.

1 THE WITNESS: Okay.

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

5 BY MR. ROBISON:

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

9 A That is correct.

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

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

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

17 A Correct.

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

20 A That is correct.

21 Q We're done.

22 A Okay.

23 Q No further questions.

24 MR. FUNK: No questions.

25 MR. WRAY: No questions.

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

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

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

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

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

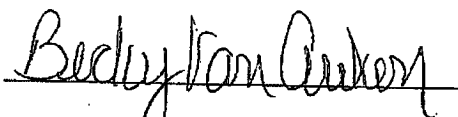

BECKY VAN AUKEN, CCR #418

EXHIBIT 4

EXHIBIT 4

16.1

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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, d/b/a GRAND SIERRA RESORT,

Case No.: CV13-01704

Plaintiff,

Dept. No.: B7

v.

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

BUSINESS COURT DOCKET

Defendants.

PLAINTIFF'S THIRD SUPPLEMENTAL DISCLOSURE PURSUANT TO NRCP 16.1

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

I. WITNESSES

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

Mr. Draeger, is expected to testify as to his knowledge of the facts and circumstances surrounding the claims and allegations which are the subject of this instant litigation including

1 his prior experiences and knowledge of Mr. Tors.

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

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

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

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

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

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

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

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

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

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

- 26 7. Anthony Moran, Security
27 c/o COHEN|JOHNSON, LLC
28 255 E. Warm Springs Rd., Suite 100
Las Vegas, Nevada 891189

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

3 8. Tim Donovan
4 c/o COHEN|JOHNSON, LLC
5 255 E. Warm Springs Rd., Suite 100
6 Las Vegas, Nevada 891189

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

9 8. John Hanson
10 c/o COHEN|JOHNSON, LLC
11 255 E. Warm Springs Rd., Suite 100
12 Las Vegas, Nevada 891189

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

15 9. David McHugh
16 c/o COHEN|JOHNSON, LLC
17 255 E. Warm Springs Rd., Suite 100
18 Las Vegas, Nevada 891189

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

21 10. Justin Woods, Agent. NGC
22 c/o Nevada Gaming Control Board
23 9790 Gateway Drive, Suite 100
24 Reno, Nevada 89521

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

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- 1 11. Person Most Knowledgeable of Peppermill Casinos, Inc. dba Peppermill Casino
2 c/o Clark V. Vellis, Esq.
3 50 West Liberty Street, Suite 1030
4 Reno, Nevada 89501

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

- 8 12. Ryan Tors
9 c/o William M. Omara, Esq.
10 311 East Liberty Street
11 Reno, Nevada 89501

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

- 14 13. Billy Paganetti
15 c/o Robison, Belaustegui, Sharp & Low
16 71 Washington Street
17 Reno, NV 89503

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

- 20 14. William Paganetti
21 c/o Robison, Belaustegui, Sharp & Low
22 71 Washington Street
23 Reno, NV 89503

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

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

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

1 16. Dave Halabuk
2 c/o Robison, Belaustegui, Sharp & Low
3 71 Washington Street
4 Reno, NV 89503

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

8 17. Peter Batchelor
9 c/o Robison, Belaustegui, Sharp & Low
10 71 Washington Street
11 Reno, NV 89503

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

15 18. Aaron Robyns
16 c/o Robison, Belaustegui, Sharp & Low
17 71 Washington Street
18 Reno, NV 89503

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

22 19. Dan Smercina
23 c/o Robison, Belaustegui, Sharp & Low
24 71 Washington Street
25 Reno, NV 89503

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

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1 **II. DOCUMENTS**

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

10 **III. COMPUTATION OF DAMAGES**

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

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

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

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

8 Dated this 30th day of September 2014.

9 COHEN|JOHNSON, LLC.

10 By: /s/ Stan Johnson
11 H. STAN JOHNSON, ESQ.
12 Nevada Bar No. 00265
13 TERRY KINNALLY, ESQ.
14 Nevada Bar No. 6379
15 255 E. Warm Springs Road, Suite 100
16 Las Vegas, Nevada 89119
17 Attorney for the Plaintiff

18 **AFFIRMATION PURSUANT TO NRSB.030**

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

21 Dated this 30th day of September, 2014.

22 COHEN|JOHNSON, LLC.

23 By: /s/ Stan Johnson
24 H. STAN JOHNSON, ESQ.
25 Nevada Bar No. 00265
26 TERRY KINNALLY, ESQ.
27 Nevada Bar No. 6379
28 255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
Attorney for the Plaintiff

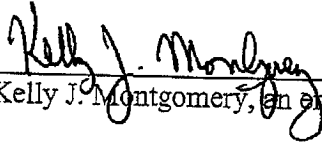
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 30th of September, 2014, a true and correct copy of the foregoing Plaintiff's Third Supplemental Disclosure of Witnesses and Documents pursuant to NRCp 16.1 was served by placing a copy thereof in the US Mail at Las Vegas, Nevada, with proper postage prepaid, addressed to the following:

HOLLEY, DRIGGS, WALCH, PUZEY & THOMPSON
C/o Clark V. Velis, Esq.
800 S. Meadows Parkway, Suite 800
Reno, Nevada 89501
Attorney for the Defendant Peppermill

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

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


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

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

AFFIDAVIT OF DAVID G. SCHWARTZ, PH.D.

STATE OF NEVADA }
COUNTY OF CLARK } ss:

I, David G. Schwartz being duly sworn on oath and under the penalty of perjury state that the following is true of my own personal knowledge and if called to testify in this matter would testify as follows

1 I am a the Director of the Center for Gaming Research at the University of Nevada, Las Vegas.

My CV is attached hereto and incorporated herein as to my credentials.

2. I have been retained to offer expert testimony in the case of GSR v. Peppermill on the subject of damages sustained by GSR by the misappropriation of trade secrets by the Defendant Peppermill.

3. I will testify that GSR is seeking damages based on a royalty theory based on the value of the misappropriated trade secrets to Peppermill and the economic benefit obtained by Peppermill in not incurring the costs of obtaining such information by legal means.

4. These damages may be shown by two separate computational methodologies. The first is based on the use to which Peppermill put the misappropriated information consisting of the pars of several slot machines over time and would include the use of the information in Peppermill's marketing, advertising, promotion, or evaluating its own pars on similar slot machines.

5. The second and equally valid method of calculation of the damages is based upon the economic benefit obtained by Peppermill by having obtained the information through misappropriation and is based on what it would have cost Peppermill to obtain the information legally.

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6. This calculation is the amount of money it would have taken a person to have determined the par of a slot machine based on play. Play would be defined as playing the maximum coin value of the machine for a period sufficient to allow such a determination plus the related costs of the salary of the persons doing the playing.

7. Based on a survey of the current academic literature, I estimate this accurately determining the par through simple observation (rather than using illicit means to discover that information) would entail in most penny machines a cost of \$4.00 per play for minimum of 20,000 hours of continuous play at 500 spins per had for an estimate cost of \$600,000 per machine, exclusive of labor costs. One would also have to factor in a comparable wage to keep the machine staffed for 20,000 man-hours. At an assumed salary of \$9/hour, that gives an additional \$180,000, exclusive of benefits and other costs, bring the hypothetical costs at \$780,000. In addition, the simple act of playing the machine so intensively and for such a long period would trigger several flags, making it impossible to collect the information legally. For that reason, the value of gaining this information, which no other competitors would share, is likely higher than its hypothetical cost.

8. I am unclear about why trade secrets disclosing GSR's methods of routine operation would be relevant to determine whether the Peppermill was unjustly enriched by its access to GSR's (and other casinos') par information. To my knowledge, GSR's internal communications, methods for setting par values, and marketing discussions have no bearing on the uses to which Peppermill put the par information, or Peppermill's rationale for collecting that information.

9. In my opinion, to more precisely determine the full value and use of the information it will be necessary for me to obtain the names of all the slot machine illegally accessed, the dates of that access, and the casinos where the machines were located. The specific par information obtained from each machine is not necessary at this time and may be redacted; however, it would be of value to know the range of possible par settings for each machine.

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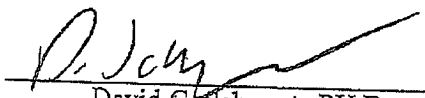
COHEN-JOHN, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

10. While GSR's methods of operation do not, in my opinion, have a bearing on Peppermill's admitted collection of the misappropriated par information, I believe that Peppermill's motives for collecting the information and any operational changes that he Peppermill made or did not make with the benefit of the par information are crucial to accurately determining damages.

Affirmation Pursuant to NRS 239 B.030

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

Further your Affiant sayeth naught.


David G. Schwartz PH.D.

SUBSCRIBED and SWORN to before
me this 9th day of September, 2014.


NOTARY PUBLIC in and for said
County and State

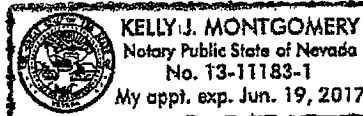


EXHIBIT 5

DESIGNATED
HIGHLY CONFIDENTIAL INFORMATION

**CONFIDENTIAL-SUBJECT TO STIPULATED
CONFIDENTIALITY AGREEMENT AND PROTECTIVE
ORDER FILED JULY 17, 2014**

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

EXHIBIT 5

1 IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

2 IN AND FOR THE COUNTY OF WASHOE

3 * * * * *

4 MEI-OSR HOLDINGS, LLC, a
5 Nevada Corporation, d/b/a
6 GRAND SIERRA RESORT,

7 Plaintiff,

8 vs.

CASE NO.: CV13-01704
DEPT. NO.: B7

9 PEPPERMILL CASINOS, INC.,
10 a Nevada Corporation, d/b/a
11 PEPPERMILL CASINO; RYAN TORS,
12 an individual; JOHN DOES I-X,
13 and JANE DOE I-X and
14 CORPORATIONS I-X,

15 Defendants.

16 CONFIDENTIAL DEPOSITION OF

17 DAVID G. SCHWARTZ, PH.D.

18 October 21, 2014

19 9:27 a.m.

20 2300 West Sahara Avenue
21 Suite 770
22 Las Vegas, Nevada

23 Christine M. Jacobs, CCR No. 455

24

25



1 Sorry.

2 Q. Well, you haven't read any authorities, have
3 you? You haven't read any case law on reasonable
4 royalties, have you?

5 A. I have not read any case law on that.

6 Q. You have no idea what the law prescribes with
7 respect to how you determine reasonable royalties in a
8 trade secret case, have you?

9 A. I have not read the case law on that.

10 Q. Do you think you might want to know what the law
11 says before you do any calculations on reasonable
12 royalty?

13 A. I've been relying on Mr. Johnson to let me know
14 what he needs.

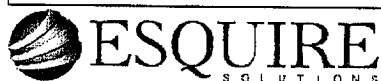
15 Q. What did he tell you?

16 MR. JOHNSON: About what?

17 MR. ROBISON: About the reasonable royalty
18 theory of damages.

19 THE WITNESS: He said that it was their belief
20 that their information was taken, and he asked me to
21 figure out, well, how would it -- could somebody get this
22 information without doing that and what would it take,
23 and that's what I've done.

24 Q. (By Mr. Robison) Okay. All right. So you
25 understand, then, that would be Mr. Johnson's theory of



1 going to ask some foundation questions. Excuse me.

2 You read the transcript, didn't you?

3 A. Of?

4 Q. Of the Gaming Commission's hearing.

5 A. I read the opinion. I believe that's the
6 correct word for it. The final opinion recommendation.
7 Whatever you call that.

8 Q. And you're aware that the Gaming Control Board
9 found in its investigation the Peppermill had not used
10 GSR's information; correct?

11 MR. JOHNSON: Objection. Assumes facts not in
12 evidence. Misstates the report. It's vague and
13 ambiguous.

14 THE WITNESS: I'm aware that there wasn't any
15 evidence that the material was used.

16 Q. (By Mr. Robison) Okay. And if that's in fact
17 the case that the material was never used at the
18 Peppermill, then you only have one theory of damages.
19 That's unjust enrichment for cost avoidance. Correct?

20 MR. JOHNSON: Objection. Calls for a legal
21 conclusion. Incomplete hypothetical.

22 THE WITNESS: Hang on a second now. I'm -- you
23 got me sidetracked there for a second. I'm trying to
24 answer your question, so let me -- just bear with me. So
25 if you could just --

1 A. I'm aware that they made, that their position is
2 they made no changes, but I would -- well, I'll just say
3 I'm aware that that is, that they took that position that
4 they made no changes.

5 Q. And you have no proof to establish otherwise?

6 A. No, I do not have any proof that would establish
7 otherwise.

8 Q. So right now your opinion on No. 1, value of
9 use, is incomplete and you have no evidence if it was
10 used and there is any value associated with getting the
11 pars at the Peppermill?

12 A. Correct.

13 Q. All right. Let's move on to No. 2.

14 A. Okay.

15 Q. Cost avoidance I call this theory.

16 A. Okay.

17 Q. All right?

18 A. So this is 5?

19 Q. This is starting of 5, "the second and equally
20 valid." You're saying this is a valid method even though
21 you say it's impossible. The method that you suggest,
22 2.28 years of continuous play, you say is impossible.
23 How can you say it's impossible and valid in the same
24 affidavit?

25 A. This is, I'm saying that practically it would be



1 impossible. But if you were to try to get this
2 information legitimately, this is my best estimate of how
3 much it would cost.

4 Q. Who in their right mind is going to play a slot
5 machine for 2.24 years continuously?

6 A. I do not know.

7 Q. That's pretty ridiculous, isn't it?

8 A. That's -- based on my review of the literature,
9 that's what it would take to get this information.

10 Q. I know. Who in the world would do that?

11 A. I do not know. I suppose somebody who really
12 wanted to know that par setting.

13 Q. We're going to walk through that.

14 A. Okay.

15 Q. Who would pay \$40 million? Who would do that in
16 this industry?

17 A. Somebody who really wanted to know that par
18 setting.

19 Q. They're going to go out and pay somebody \$9 an
20 hour to gamble \$40 million, Mr. Schwartz?

21 A. Again, somebody who -- if you wanted -- the
22 question is how could you determine this information
23 exactly?

24 Q. The question is who in the world would do that.

25 A. I don't know.



1 A. Yes.

2 Q. But then you say that is an impossible scenario;
3 correct?

4 A. Yes.

5 Q. So, ladies and gentlemen of the jury, we'll
6 never know the cost because Mr. Schwartz's analogy is
7 impossible; correct?

8 A. We can tell that the cost is going to be pretty
9 big.

10 Q. But the cost is not based on reality, is it?
11 Your cost model is not based on reality.

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

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

18 A. Yes.

19 Q. Isn't it?

20 A. Yes.

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

25 A. I'm saying that the best way that I would know



1 to get it would be to do this.

2 Q. But that's impossible.

3 A. And in the course of doing that, it would be
4 impossible to get that information legally.

5 Q. Let's go back.

6 A. Sure.

7 Q. Your testimony to the jury in this case, it is
8 impossible to get the hold percentage on a competitor's
9 slot machine without using a 2341 reset key; correct?

10 A. To an extent. You could also ask them and they
11 could tell you.

12 Q. Well, that happens all the time. We know that.

13 A. I would say that if you just have a machine,
14 let's say we just have a machine in a room and you want
15 to know the hold percentage, you either have the key or
16 you would have to do an incredibly time and labor
17 intensive series of play in that machine to get it, and I
18 don't think that it would be possible to do the latter.

19 Q. My question was people relate the settings on
20 the machine all the time, don't they?

21 A. They do.

22 Q. Vendors tell competitors what the other
23 properties set their machines at. You know that.

24 A. I'm not aware of what they might or might not
25 do.



1 A. 3 million.

2 Q. -- 100. Good grief. Come on. You don't do
3 this very often, do you?

4 A. Use a calculator when I have an attorney firing
5 questions at me? No.

6 Q. No. I'm talking about pars and calculations of
7 pars and holds.

8 A. Well, I do back out the handles from the pay
9 back percentages.

10 Q. When you use the par in the Reno, Sparks area --

11 A. Yeah.

12 Q. -- of 7.83, you're going to determine what the
13 cost is to ascertain that par by factoring 40 million
14 times 7.83 hold.

15 A. Well, aren't you multiplying that by .0783?

16 Q. Well, that's fine. Same way. We're going to
17 get a better decimal point either way.

18 A. I'm sorry. I must have hit the wrong key. Now
19 I do get the \$3.1 million figure.

20 Q. What's the real number? 1 million -- 3
21 million --

22 A. 3,132,000 -- 132,000.

23 Q. So what casino owner in their right mind would
24 pay \$3,132,000 to know the par, the hold for one day at
25 the GSR for a Cleopatra?

1 A. Nobody that I can think of.

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

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

6 Q. It's right in the reports.

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

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

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

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

15 A. That seems a little bit low.

16 Q. 163?

17 A. One dollar --

18 Q. 163.

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

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

21 A. Right.

22 Q. And you get 59,840.

23 A. Okay.

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



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

3 A. I do.

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

5 A. It is.

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

8 A. I didn't.

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

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

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

13 A. Sure.

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

16 A. Yes.

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

19 A. Yes.

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

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

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

25 A. Sure.



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

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

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

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

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

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

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

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

19 A. No.

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

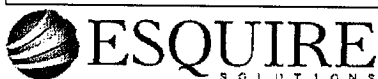
21 A. Oh, no.

22 Q. That was signed under penalty of perjury.

23 A. True.

24 Q. And it's inaccurate?

25 A. It is.



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

2 A. Yes.

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

5 A. I've not watched his videos.

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

7 A. I haven't.

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

10 A. Yeah, I think he is.

11 Q. A well respected authority.

12 A. I think he is.

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

16 A. Yes.

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

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

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

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



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

7 A. Correct.

8 Q. And you don't have either of those?

9 A. Correct.

10 Q. So your information is inherently inaccurate?

11 A. At this stage, yes.

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

13 A. Why what?

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

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

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

21 MR. JOHNSON: Objection.

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

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



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

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

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

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

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

15 A. No.

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

19 A. No, I don't.

20 Q. Did I ask that before?

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

23 MR. GUNDERSON: I do.

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



EXHIBIT 6

EXHIBIT 6

Case No. CV13-01704

Dept. No. B7

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

-oOo-

MEI-GSR HOLDINGS, LLC, a Nevada)
Corporation, d/b/a GRAND SIERRA RESORT,)
)
Plaintiff,)
)
-vs-)
)
PEPPERMILL CASINOS, INC., a Nevada)
Corporation, d/b/a PEPPERMILL CASINO;)
RYAN TORS, an individual; JOHN DOES I-X,)
and JANE DOES I-X and CORPORATIONS I-X,)
)
Defendant(s).)

DEPOSITION OF JEREMY AGUERO

called for examination by counsel for Defendant Peppermill
Casinos, Inc., d/b/a Peppermill Casino pursuant to Notice, at
the offices of Cohen Johnson, 255 E. Warm Springs Road,
Suite 100, Las Vegas, Nevada, at 9:00 a.m., Tuesday,
September 15, 2015, before Becky Van Auken, a Certified Court
Reporter.

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

1 good month or a bad month, I'm often concerned in
2 terms of whether the state was luckier that month or
3 whether it wasn't to sort of evaluate the trend in
4 terms of whether we're seeing improved performance
5 from a demand standpoint or whether or not that just
6 has to do with the fact that the hold percentages were
7 outside the normal range that month.

8 Q All right. And was there -- is there any
9 way that you know of to determine the floor par, for
10 example, for the GSR from those GCB1 reports?

11 A The publicly -- information that we were
12 just talking about?

13 Q Correct.

14 A No, sir.

15 Q Any specific casino, can you determine
16 their par?

17 A You cannot.

18 Q In this case you indicated that you were
19 asked to see if you could determine damages.

20 A Yes, sir.

21 Q Did you first look for lost profits?

22 A I did.

23 Q And what did you do to pursue that
24 assignment?

25 A I guess maybe I should take one step back.

1 I first took a look at whether there was
2 unjust enrichment first and then considered the
3 question of lost profit. So I guess I should modify
4 my response in that I did those in reverse.

5 Q Well, I'm going to follow the order of the
6 trade secret act and ask about lost profits first.

7 A Please.

8 Q All right. So what did you do to determine
9 whether the GSR lost profits as a result of the
10 activities of the Peppermill?

11 A The only thing that was done at that point
12 in time was to determine the extent to which we would
13 have to obtain information from the Peppermill in
14 order to determine when the pars were being adjusted,
15 when there was manipulation going on in terms of on
16 the casino floor.

17 Understanding that that information was
18 somewhat limited, what we attempted to do at that
19 point in time was determine whether or not we could
20 get the information that we needed from the Peppermill
21 so that we could then take a look at analyzing the
22 question of lost profits from the GSR.

23 Q As you sit here now, do you have an opinion
24 as to whether or not the GSR sustained a loss of
25 profit or revenue as a result of the activities of the