

KENT R. ROBISON

EDUCATION

University of Nevada, Reno - 1969 (B.A.)

University of San Francisco, School of Law - 1972 (J.D.)

OCCUPATIONAL BACKGROUND

1971 - Carson City District Attorney's Office

1972-1975 - Washoe County Public Defender's Office

1975-1979 - Johnson, Belaustegui & Robison

1979-1981 - Johnson, Belaustegui, Robison and Adams

1981-1988 - Robison, Lyle, Belaustegui & Robb

1988 to 1999 - Robison, Belaustegui, Robb & Sharp

1999 to present - Robison, Belaustegui, Sharp & Low

COURTS ADMITTED TO PRACTICE

Nevada Supreme Court - 1972

Nevada Federal District Court - 1973

Ninth Circuit Court of Appeals - 1976

Court of Claims - 1973

United States Tax Court - 1982

United States Supreme Court - 1977

Northern District of California Federal Court

Eastern District of California Federal Court

Southern District of California Federal Court

District of Arizona Federal Court

District of Kansas Federal Court

District of Hawaii Federal Court

District of Western Washington Federal Court

District of New Mexico Federal Court

PROFESSIONAL AFFILIATIONS & ACTIVITIES

Nevada Supreme Court Trial Judge Seminar - Judge's Relationship With Lawyers -
2009 & 2012

Nevada Supreme Court - Bench Bar Committee - 2009-2011

Member - Nevada Supreme Court's Committee on Court Costs and Speedy Trials

Member - State Commission on Sentencing Felony Offenders

Member - Executive Committee to Establish Appellate Court

Member - Commission to Implement Cameras in the Courtroom

Member - Committee on Rules of Civil Procedure

Member - Ad Hoc Committee for Improved Technology in Nevada Federal Court Rooms

American Trial Lawyer's Association - ATLA Sustaining Member - ATLA Stalwart

Member - Professional Liability Section of ATLA

Roscoe Pound Foundation

National Association of Criminal Defense Lawyers

Nevada Trial Lawyer's Association - Past President - 1979

Member of NTLA Board of Governors 1973-1983

NTLA Pillar of Justice

American Board of Trial Advocates - President, Reno Chapter, 1991-1993

Nevada State Board of Bar Governors - 1980 to 1990

Northern Nevada Legal - Medical Screening Panel (1981-1985)
Washoe County Juvenile Master Pro Tem (1975-1977)
Diplomat - National Board of Trial Advocacy - Civil
Diplomat - National Board of Trial Advocacy - Criminal
American Bar Association (1972-present)
Member - ABA Litigation Section
Nevada State Bar Association (1972-present)
Washoe County Bar Association
American Board of Criminal Lawyers
Nevada State Bar Ethics Committee - Ex-officio
Nevada State Bar Jury Instruction Committee - Ex-officio
American Inns of Court (Charter Member and as Master)
Honorable Bruce R. Thompson Chapter
American College of Barristers
Member - Board of Trustees - Justice League of Nevada (2012-2013)
(Formerly Nevada Law Foundation)

RECOGNITION

The Best Lawyers in America - 1993-2013 (21 years)
(Bet the Company/Personal Injury/Commercial Litigation)
Named Top Attorneys - "Super Lawyers" of the Mountain States - 2007-2015 - Top 5%
Named by the American Law Journal to the Nation's Top 100 Commercial Litigation Lawyers
Chambers USA Leading Litigation and Business Lawyers - Tier I - Highest Ranking
Outstanding Lawyers of America - 2003-2015
American College of Barristers - Senior Counsel
College of Master Advocates
Martindale's "Bar Registry of Preeminent Lawyers" in five categories
(Business Litigation, Personal Injury (Plaintiff and Defense), Domestic and Criminal)
Who's Who in the Law
Who's Who in the West
Who's Who in America
Certified Criminal Trial Advocate - National Board of Trial Advocacy - 1980
Certified Civil Trial Advocate - National Board of Trial Advocacy -1980
National College of Trial Advocacy - Faculty Advanced Course
Category I (Highest Rating) National Directory of Criminal Lawyers
"AV" Martindale-Hubbell Rating for over 28 years
Master (Emeritus) and Charter Member of The American Inns of Court - Reno Chapter
Litigation Counsel of America - Trial Lawyer Honorary Society
Fellow - Litigation Counsel of America
Corporate Counsel Top Lawyers -2010
Top Commercial Litigation Lawyers - 2006 - 2011
National Trial Lawyers - Top 100 Trial Lawyers - 2011 - 2013
Robison, Belaustegui, Sharp & Low - U.S. News - Best Law Firms - Reno Tier 1 - 2011
Commercial Litigation, Corporate Law and Personal Injury
Lawyer.com - Highest Rating - 5.0 out of 5

AUTHORSHIP

Cameras in the Courtroom (Advocate - Vol. IV., No. 2, February 1980)
Nevada's Comparative Negligence (Advocate - Vol. I., No. 9, January 1977)
Psychology and Eye Witness Identification (Advocate - Vol. II., No. 2, November, 1977)
Juries & Verdicts - Nevada Handbook on Civil Procedure
The Gaming Industry's Other Gamble - Tort Litigation
The Law of Jury Selection (NBI 1996)
Special Tools for Selecting the Right Jury (NBI 1996)
Inadequate Security Issues in the Intentional Tort Arena
(Professional Educational Systems 1996)
Inadequate Security Cases Involving Violent Crimes - From a Defense View
(ATLA January 1997)
Direct Examination and Demonstrative Evidence "Tools For Proving" (Consumer Attorneys of San Diego 1998)
"Initial Considerations Regarding Use of Expert Witnesses" (NBI 1998)
Comparative Cross-Examination and Strategies For Impeachment (NBI 1998)
The Defense Attorney's "Dirty Dozen" (Defense Considerations in Negligent Security Cases)
(ATLA January 1999)
Damages: The Art of Asking for Money (NTLA Annual Seminar)
Jury Trials - Nevada Civil Practice Manual (2000-2014)
Trial Lawyers' Relationship with the Trial Judge in Civil Actions
(2008 & 2012 Nev. S. Ct. Trial College)

CRIMINAL DEFENSE EXPERIENCE

Served as Deputy Washoe County Public Defender from October 1972 through May 1975. Assigned multiple major felony cases, including 13 murder cases. Tried 25 criminal jury trials while employed by the Washoe County Public Defender's office.

From 1975 through and including 1995, continued taking criminal defense cases. Began concentration on major white collar criminal defense cases, including defense of the Douglas County Sheriff, Nevada State Lieutenant Governor, Lyon County Commissioner, practicing lawyers and the Reviglio family in tax evasion matters.

Was certified by the National Board of Trial Advocacy and was a previous member of the National Association on Criminal Defense Lawyers. Member, American Board of Criminal Lawyers.

CIVIL DEFENSE EXPERIENCE

Since 1991 extensive defense work has been provided for the Mandalay Resort Group, General Star Management Company, ALAS, Allianz Insurance Company and individuals in the areas of negligent security, toxic mold, unnecessary force, professional liability, defective construction, intentional torts and negligence.

LECTURES

Western Nevada Community College - Annual "Criminal Defense Trial Tactics"
Reno Police Academy - 1976 - "Motions to Suppress Evidence"
California Legal Secretaries Association - 1979 - "Capital Punishment"
Nevada Trial Lawyers Annual Convention - 1977 - "Closing Arguments in Criminal Trials"
University of Nevada, Reno, Department of Criminal Science - 1978 - "Defense Strategy"
Reno Business College - "Organization of Criminal Files" - 1980
Nevada Society of Safety Engineers
ATLA's 1984 Annual Convention, Seattle, Washington, Belli Seminar - "Lay
Use of the Psychological Stress Evaluator as a Civil Cause of Action"
Washoe County Bar Association - May 14, 1985 - "Preparation of Personal Injury Cases"
Legal Aspects of Mandatory Drug Testing of Collegiate Athletes - 1986
Psychology and Jury Selection - 1987
New Rules of Civil Procedure - 1987
Psychology of Jury Selection - Nevada Trial Lawyers Annual Convention - 1988
Nevada Law on Bad Faith Insurance Practices - Nevada Trial Lawyers - 1993
Gaming Industry and Tort Litigation - 1994
Premises Liability: Inadequate or Negligent Security - 1996
Strategies for Selecting Juries - 1996
Premises Liability - Defense View - ATLA Mega Seminar - 1997
Expert Witness - Selection, Preparation and Presentation - NBI 1998
Direct Examination and Demonstrative Evidence - 1998
Premises Liability Cases - From a Defense View - ATLA - Phoenix - Feb. 1999
Damages - "How to Ask for Money" - NTLA Annual Convention - Oct. 1999
Masters in Trial - Closing Argument (ABOTA-Masters in Trial) - Dec. 1999
Damages: How to Minimize; How to Maximize - Inns of Court - Jan. 2000
Masters in Trial - 2002 - 2005 - 2006
Inns of Court Presentations: Jury Selection; Opening Statements; Child Witnesses;
Eye Witness Testimony; Expert Witness Examinations
Presenter for Difficult Voir Dire Issues (2009 Nev. S. Ct. Trial College)
UNR Medical School Presenter - "Interaction Between Legal and Medical Professions" - 2/2011
"Role of the Judge" (new judge orientation) (2012 Nev. S. Ct. Trial College)
Presenter - Nevada State Bar Convention - "Direct Examination" - July 2013
"How to Judge & Be A Judge" (lecturer to newly elected judges)(Dec.2014-Natl. Judicial College)

NEVADA SUPREME COURT / APPELLATE CASES

City of Reno v. David Evans (Case No. 63266)
Renown v. Arger et als (Case No. 64455)
Matthew Boga v. TMC Group, Inc. / Matthew J. Fuller (Case No. 62738/63531)
Patraw v. Nevada System of Higher Education, Milton Glick, Cary Groth
(Case No. 53918/54573)
Patraw v. Nevada System of Higher Education, Milton Glick, Cary Groth (Injunction)
(Case No. 55433)
Furer v. Furer (Case No. 51198)
EES v. Gunnerman, Sulphco, Inc. (Case No. 50324)
Darren Mack v. Michael E. Fondi (Case No. 51536)
Landmark Homes v. Sierra Gateway, 121 Nev. 1143, 152 P.3d 783 (2005)

Ferguson v. Sierra Gateway / Landmark - 2007 (appeal from U.S. Bankruptcy Court)
Lexey Parker v. St. Mary's, 121 Nev. 1174, 152 P.3d 809 (2005)
Farhadi v. CB Commercial, 118 Nev. 1089, 106 P.3d 1209 (2002)
Farhadi v. CB Commercial, 131 P.3d 589 (2004)
Hazelwood v. Harrah's, 109 Nev. 1005, 862 P.2d 189 (1993)
Oak Grove Investors v. Bell & Gossett, 108 Nev. 958, 843 P.2d 351 (1992)
Williams v. State Farm/Sierra Foods v. Williams, 107 Nev. 574, 816 P.2d 466
State v. Batt, 111 Nev. 1127, 901 P.2d 664 (1995)
Amoroso v. L & L Roofing, 107 Nev. 294, 810 P.2d 775
Swain v. Meyer, 104 Nev. 595, 763 P.2d 337 (1988)
State v. Kaplan, 96 Nev. 798, 618 P.2d 354 (1980)
State v. Kaplan, 99 Nev. 449, 663 P.2d 1190 (1983)
Bell v. ATO
Eikelberger v. Tolotti, 96 Nev. 525, 611 P.2d 1086 (1980)
Friedas v. Quinn River, 101 Nev. 471, 705 P.2d 673 (1985)
Fondi v. Fondi, 106 Nev. 856, 802 P.2d 1264 (1990)
State v. Fogarty, 108 Nev. 1234, 872 P.2d 817 (1992)
State v. Bishop (Death Penalty)
State v. Biederstadt / Hurt, 92 Nev. 80, 545 P.2d 202 (1976)
State v. Lendon, 92 Nev. 112, 546 P.2d 234 (1976)

NINTH CIRCUIT COURT OF APPEALS:

Talisman Capital Talon Fund, Ltd. v. Gunnerman, Sulphco, Inc. (Case No. 09-16256)
Wild Game Ng v. Wong's International (USA) Corp. (Case No. 08-15616)
Hussein v. Dugan (Case No. 08-17443)
Montreux v. Pitts, 130 Fed. Appx. 80 WL 663810CA9 (Nev. 2005)
Shipman v. Allstate

GENERAL

Born in Reno, Nevada 1947. Raised and educated in Reno, Nevada. Jury trials in state in and federal courts of six states. Received verdicts in over 100 jury trials. Ten Judgments over \$1,000,000 with total value of judgments in excess of \$600,000,000.

Tried over 500 non-jury (court) trials. Served on Medical Legal Screening Panel. Handled legal malpractice cases, both for plaintiffs and for defendants. Settled legal malpractice cases for over \$1,000,000. Served as a lobbyist for the Nevada Trial Lawyers Association with emphasis construction legislation, medical malpractice, no fault insurance and judicial salaries. Represented Nevada lawyers and national law firms concerning legal malpractice claims. Member of the malpractice section of the American Trial Lawyers Association. Have prosecuted and defended lawyers charged with ethical violations. Have served as a special prosecutor for the Judicial Discipline Committee and have served as a special prosecutor for the Nevada State Board of Bar Governors, prosecuting ethical claims against lawyers charged with ethical violations. Have testified as an expert in legal malpractice claims in Second Judicial District in and for the State of Nevada.

Extensive experience in prosecuting and defending negligent security, premises liability cases and gaming cases with representative clients of Circus Circus, Mandalay Resort Group, WMS, Peppermill Casinos, Inc., and Red Lions Hotel and Inns. Primary focus for the past ten years has been in business tort litigation involving complex commercial and real estate transactions. Counsel of record in over twenty-six Nevada Supreme Court decisions.

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THERESE M. SHANKS
71 Washington Street
Reno, Nevada 89503
(775) 729-3151
tshanks@rbsllaw.com

BAR ADMISSION

Nevada, 2012

EDUCATION

University of the Pacific, McGeorge School of Law

Sacramento, California

Juris Doctor, May 2012

Top 3% of Class (**6/244**)

GPA: **3.79**

Honors: Graduated Order of the Coif, with Great Distinction (*top 10% of graduating class*)
Roger J. Traynor Honor Society (*scholastic honor organization of McGeorge School of Law*)
Who's Who Among Students in American Colleges and Universities
Global Lawyering Skills Top 30 Oral Advocate (*Appellate Oral Advocacy Competition*)
Dean's List, 2010-2012
Witkin Award, Global Lawyering Skills (Appellate Advocacy)
Witkin Award, Criminal Procedure
Witkin Award, Civil Procedure
Honors at Entrance, Anthony M. Kennedy Fellows (*full tuition scholarship*)

University of Nevada, Reno

Reno, Nevada

Bachelor of Arts in English Literature, May 2008

Minor in European History

GPA: **3.772**

Honors: Graduated with High Distinction
Dean's list, 8 of 10 semesters

EXPERIENCE

Robison, Belaustegui, Sharp & Low

Reno, Nevada

Litigation Associate, August 2013-Present

- Assists in all aspects of litigation, including drafting and preparation of dispositive motions, oral argument, conducting and defending depositions, drafting and responding to discovery request, legal research, and client conferences.

The Nevada Supreme Court, Justice James W. Hardesty's Chambers

Carson City, Nevada

Law Clerk, August 2012 – August 2013

- Drafted opinions and orders
- Prepared civil and criminal bench memorandums
- Observed oral arguments
- Performed legal research

THERESE M. SHANKS
71 Washington Street
Reno, Nevada 89503
(775) 729-3151
tshanks@rbsllaw.com

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EXPERIENCE (cont'd)

Federal District Court, District of Nevada, Judge Robert C. Jones' Chambers
Legal Extern, Spring 2012

Reno, Nevada

- Prepared multiple civil bench memorandums
- Drafted civil orders and opinions
- Researched various issues in federal procedural and state substantive law
- Observed trials, mediations, and oral arguments

McDonald, Carano & Wilson, LLP

Reno, Nevada

Summer Associate, May 2011 – August 2011

- Assisted attorneys in drafting civil pleadings and motions
- Assisted attorneys in legal research
- Prepared memorandums on various civil issues

Professor Lawrence Levine, McGeorge School of Law
Research/Teaching Assistant, August 2010 – May 2011

Sacramento, California

- Researched issues in tort law
- Assisted in the revision of a casebook
- Helped students improve study skills

The Nevada Supreme Court, Justice James W. Hardesty's Chambers
Legal Extern, June 2010 – July 2010

Reno, Nevada

- Drafted orders in civil and criminal cases
- Prepared a civil and a criminal bench memorandum
- Researched various issues in civil and criminal law
- Observed oral arguments

The Law Firm of Joel A. Santos

Reno, Nevada

Legal Assistant/Secretary, July 2005 – July 2009

- Helped draft pleading for cases in personal injury, workers compensation, immigration, criminal, wills, and family law
- Conducted initial client interviews
- Organized case files and documents
- Supported three attorneys as sole employee

PUBLICATIONS:

Abarra v. State of Nevada, 131 Nev. ___, 342 P.3d 994 (Advance Op. No. 3, February 5, 2015)

THERESE M. SHANKS
71 Washington Street
Reno, Nevada 89503
(775) 729-3151
tshanks@rbsllaw.com

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PROFESSIONAL MEMBERSHIPS/ACHIEVEMENTS:

- Nevada's Legal Elite 2015
- Washoe County Bar Association
- Northern Nevada Women's Lawyers
- Northern Nevada Women's Mentoring Circle
- American Inns of Court, Bruce R. Thompson Chapter 2012-2016

ACTIVITIES:

- Sponsorship Chair for Young Professionals Committee of Northern Nevada Big Brothers Big Sisters, 2014-2015
- Volunteer for Girl Scouts of America
- Society member for Volunteers of America

Jayne Ferretto

From: eflex@washoecourts.us
Sent: Monday, November 23, 2015 8:56 AM
To: Kent Robison
Cc: Jayne Ferretto
Subject: NEF: MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7): Mtn for Sanctions: CV13-01704

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CV13-01704

Judge: HONORABLE PATRICK FLANAGAN

Official File Stamp: 11-20-2015:17:28:38
Clerk Accepted: 11-23-2015:08:55:09
Court: Second Judicial District Court - State of Nevada
Civil
Case Title: MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7)
Document(s) Submitted: Mtn for Sanctions
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Filed By: Kent R. Robison

You may review this filing by clicking on the following link to take you to your [cases](#).

This notice was automatically generated by the courts auto-notification system.

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

The following people were served electronically:

SCOTT L. HERNANDEZ, ESQ.

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

H. STAN JOHNSON, ESQ. for MEI-GSR HOLDINGS, LLC
THERESE M. SHANKS, ESQ. for PEPPERMILL CASINOS, INC.
KEEGAN GRAHAM LOW, ESQ. for PEPPERMILL CASINOS, INC.
KENT RICHARD ROBISON, ESQ. for PEPPERMILL CASINOS, INC.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

MEI-GSR HOLDINGS, LLC for PEPPERMILL CASINOS, INC.
PEPPERMILL CASINOS, INC. for MEI-GSR HOLDINGS, LLC
CHRIS DAVIS, ESQ. for MEI-GSR HOLDINGS, LLC
TERRY KINNALLY, ESQ. for MEI-GSR HOLDINGS, LLC
DARLENE B CARUSO, ESQ for NEVADA GAMING COMMISSION,
STATE GAMING CONTROL BOARD

4105
KENT R. ROBISON, ESQ. - NSB #1167
krobison@rbsllaw.com
SCOTT L. HERNANDEZ, ESQ. - NSB #13147
shernandez@rbsllaw.com
THERESE M. SHANKS, ESQ. - NSB #12890
tshanks@rbsllaw.com
Robison, Belaustegui, Sharp & Low
A Professional Corporation
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169

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

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

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

CASE NO.: CV13-01704

DEPT. NO.: B7

Plaintiff,

vs.

BUSINESS COURT DOCKET

PEPPERMILL CASINOS, INC., a Nevada
Corporation, d/b/a/ PEPPERMILL CASINO,
Defendant.

**PEPPERMILL CASINOS, INC.'S SUPPLEMENT TO RENEWED MOTION FOR
SUMMARY JUDGMENT REGARDING "TRADE SECRET"**

On November 13, 2015, Peppermill Casinos, Inc. ("Peppermill") filed its **Renewed Motion for Summary Judgment Regarding "Trade Secret"**. That Renewed Motion was filed before discovery cutoff. GSR has designated Charles Lombardo as its rebuttal expert witness. Mr. Lombardo was deposed on November 11, 2015. Mr. Lombardo's testimony is crucial, if not dispositive, of Peppermill's Motion for Summary Judgment Regarding "Trade Secret".

I. GSR'S COMPLAINT.

GSR's only claim against the Peppermill is the accusation that by obtaining 6 to 15 par settings from the GSR, Peppermill violated the Nevada Trade Secret Act, NRS 600A.030. In that statute, a "trade secret" is identified as information that derives **independent economic value**

1 from not being generally known to and not readily ascertainable by proper means by the public or
2 any other persons who can obtain commercial or economic value from using the information.
3 Peppermill has repeatedly displayed evidence to this Court that the 6 to 15 par settings that the
4 Peppermill obtained from the GSR have no independent economic value and are definitely readily
5 ascertainable by proper means. Peppermill has shown in its November 13, 2015 Renewed Motion
6 that the GSR witnesses and representatives concede and admit that the 6 to 16 pars obtained by the
7 Peppermill from GSR have no independent economic value.

8 Now, GSR has provided the testimony of an expert witness that also confirms and
9 concedes that the pars obtained by the Peppermill from the GSR in this case have no economic
10 value whatsoever. Attached hereto as **Exhibit 1** is selected testimony of Charles Lombardo. He
11 admits and concedes as follows:

- 12 1. He would not purchase pars. **Exhibit 1**, p. 272.
- 13 2. Again, on page 277, Mr. Lombardo concedes that as a consultant, he would
14 recommend that his client pay nothing for pars obtained from another casino.
- 15 3. Mr. Lombardo is emphatic that the pars obtained by the Peppermill from the GSR
16 are valueless, because those par settings on the machines Tors keyed could be changed the very
17 next day. That fact alone renders the pars "valueless" according to Mr. Lombardo. *Id.*, p. 247.
- 18 4. For pars obtained from a competitor to have any value, the pars must be obtained
19 regularly for them to have any value. *Id.*, p. 248 (Mr. Tors may have keyed on December 29,
20 2011, and June 14, 2012).
- 21 5. There is no evidence that Mr. Tors keyed the GSR on more than two occasions,
22 except for the night he was detained. However, Mr. Lombardo testified that for the par settings to
23 have any value, the GSR's machines would have to be repeatedly keyed at least every week,
24 maybe more. *Id.*, p. 248. Moreover, to have any value, Mr. Lombardo concedes that every game
25 on the floor would have to be keyed every week for the pars to have any value. *Id.*, p. 248. That
26 did not happen in this case.
- 27 6. Remarkably, Mr. Lombardo admits that it is "probably impossible" for Mr. Tors to
28 have done something at the GSR to give the pars he obtained any value. *Id.*, p. 250.

1 Not only does Mr. Lombardo concede that the pars obtained by Mr. Tors from the GSR
2 have no value whatsoever, he also concedes that the pars are readily ascertainable. Mr. Lombardo
3 was hired to analyze the Expert Report of Peppermill's expert Stacy Friedman. He did so.
4 Through one method (ratio analysis), Mr. Friedman ascertained the precise par settings on 27
5 different machines on the GSR. Mr. Lombardo was aware of that as it was fully explained and
6 stated in Mr. Friedman's Expert Witness Report. On page 260 of his testimony, Mr. Lombardo
7 concedes that Mr. Friedman was successful in obtaining the par settings on 27 different GSR
8 machines without using a 2341 key. Mr. Lombardo concedes, however, that results in "very
9 unreliable information", page 261. The par information obtained by Tors, and for that matter
10 Friedman, is unreliable because the GSR could change the par the very next day. *Id.* GSR has
11 confirmed that the par settings on the machines Mr. Friedman analyzed through the Comp Ratio
12 Analysis Method were precisely as determined by Mr. Friedman through his Comp Ratio Analysis
13 Method. Mr. Lombardo concedes that if GSR confirmed that the par settings were consistent with
14 Mr. Friedman's finding, the par settings that were obtained by Mr. Friedman through a legal and
15 ethical manner are readily ascertainable. Mr. Lombardo's only concern is that Mr. Friedman went
16 to the GSR for the purposes of obtaining par settings and Lombardo questions whether that is an
17 ethical practice. There is no prohibition to that methodology and Lombardo concedes in that event
18 that pars are readily ascertainable. *Id.*

19 Again, on page 231 of Mr. Lombardo's deposition, he concedes that pars have no value.
20 The following dialogue occurred on page 231.

21 Q If I offered to give you my par settings, that's unethical?

22 A Give is different than - - and I would accept them maybe, maybe not.

23 Q If I offered to sell them to you.

24 A Not interested.

25 Q If Eldorado offers to sell you their pars, can't buy them?

26 A Not interested.

27 Q No value?

28 A **No value.**

1 *Id.*, p. 231, emphasis added.

2 GSR's experts, in addition to all of the GSR representatives who have been deposed in this
3 case, concede that GSR has no lawsuit. Mr. Lombardo, like the other GSR representatives, has
4 admitted and conceded that GSR's pars are readily ascertainable and that pars, in general, and
5 specifically the pars Tors obtained, have no value.


6 Under the fundamental definition set forth in NRS 600A.030, GSR has presented a
7 convincing case that its pars are not trade secrets because they are readily ascertainable and have
8 no independent economic value. Summary judgment must, therefore, be granted.

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

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

13 DATED this 25th day of November, 2015.

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

18 
19 KENT R. ROBISON
20 SCOTT L. HERNANDEZ
21 THERESE M. SHANKS
22 Attorneys for Defendant
23 Peppermill Casinos, Inc., d/b/a Peppermill Casino
24
25
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27
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[illegible]

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. Attached hereto as **Exhibit 1** are true and accurate copies of excerpts from the deposition transcript of Charles Lombardo deposed on November 11, 2015.

Dated this 25th day of November, 2015.


KENT R. ROBISON

Subscribed and sworn to before me
on this 25th day of November, 2015 by
Kent R. Robison.

Notary Public



1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP &
3 LOW, and that on this date I caused to be served a true copy of the **PEPPERMILL CASINOS, INC.'S**
4 **SUPPLEMENT TO RENEWED MOTION FOR SUMMARY JUDGMENT REGARDING**
5 **"TRADE SECRET"** on all parties to this action by the method(s) indicated below:

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

8 H. STAN JOHNSON, ESQ.
9 TERRY KINNALLY, ESQ.
10 CHRIS DAVIS, ESQ.
11 Cohen-Johnson, LLC
12 255 E. Warm Springs Road, Suite 100
13 Las Vegas, NV 89119
14 Email: sjohnson@cohenjohnson.com
15 tkinnally@cohenjohnson.com
16 cdavis@cohenjohnson.com

17 *Attorneys for Plaintiff*

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

19 H. STAN JOHNSON, ESQ.
20 TERRY KINNALLY, ESQ.
21 CHRIS DAVIS, ESQ.
22 Cohen-Johnson, LLC
23 255 E. Warm Springs Road, Suite 100
24 Las Vegas, NV 89119
25 Email: sjohnson@cohenjohnson.com
26 tkinnally@cohenjohnson.com
27 cdavis@cohenjohnson.com

28 *Attorneys for Plaintiff*

MARK WRAY, ESQ.
608 Lander Street
Reno, NV 89509
Email: mwrap@markwraylaw.com
Attorneys for Plaintiff

X 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 25th day of November, 2015.


V. JAYNE FERRÉTO

Employee of Robison, Belaustegui, Sharp & Low

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EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>	<u>Pages</u>
1	Excerpts from the deposition of Charles Lombardo taken on 11/11/15	10

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Jacqueline Bryant
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EXHIBIT 1

EXHIBIT 1

1 IN THE SECOND JUDICIAL DISTRICT COURT

2 IN AND FOR THE COUNTY OF WASHOE

3
4 MEI-GSR HOLDINGS, LLC, a Nevada
5 Corporation, d/b/a GRAND SIERRA
6 RESORT,

7 Plaintiff,

8 vs.

CASE NO.

CV13-01704

9 PEPPERMILL CASINOS, INC., a
10 Nevada Corporation d/b/a
11 PEPPERMILL CASINO; RYAN TORS, an
12 individual; JOHN DOES I-X and
13 JANE DOES I-X and CORPORATIONS
14 I-X,

15 Defendants.

16 DEPOSITION OF
17 CHARLES LOMBARDO

18 Wednesday, November 11, 2015
19 9:04 a.m.

20 2300 West Sahara Avenue, Suite 770
21 Las Vegas, Nevada

22
23
24
25 KIMBERLY E. BLOMBERG, RPR, CCR NO. 484



1 Q. If I offered to give you my par settings,
2 that's unethical?

3 A. Give is different than -- and would I accept
4 them, maybe, maybe not.

5 Q. If I offered to sell them to you.

6 A. Not interested.

7 Q. If Eldorado offers to sell you their pars,
8 can't buy them?

9 A. Not interested.

10 Q. No value?

11 A. No value.

12 Q. Are you aware of the fact that Tracy Mimno
13 agrees with you the pars do not have value?

14 MR. COHEN: Objection. Mischaracterizes.

15 MR. ROBISON: I knew you were coming with
16 that one, Steve.

17 THE WITNESS: I didn't say they didn't have
18 value. I'm saying I'm not interested. It's unethical.
19 BY MR. ROBISON:

20 Q. If it's unethical to buy them, they can't
21 have value because otherwise you're putting a value on
22 something that's unethical?

23 A. No. No. No. I disagree with that
24 statement.

25 Q. That's what you said. So I'm sure you

1 I'm sorry.

2 Is your opinion based upon a keying incident
3 that you're unaware of?

4 A. No.

5 Q. Is your opinion based upon the fact that
6 you've seen evidence that he keyed on December 29,
7 2011, and June 14, 2012?

8 A. Yes.

9 Q. Okay. Is your opinion based upon any other
10 keying activities by Ryan Tors at the GSR?

11 A. No.

12 Q. So getting back to this value proposition,
13 the GSR could have changed the par settings on the six
14 machines reflected on the second page of Exhibit 8, the
15 day after Mr. Tors obtained that information?

16 A. Correct.

17 Q. Rendering that information valueless?

18 A. That is correct.

19 Q. Now, in your report, Mr. Lombardo, you say
20 that this methodology by which you get pars that were
21 alluded to in Mr. Lucas's report and Stacy Friedman's
22 report, you think that's unreliable because it's not
23 constant and -- or periodic; correct?

24 A. I think that's what I said here.

25 Q. I chopped up your words or whoever's words

1 those are. But the idea is you got a key regularly for
2 these things to have value?

3 A. Absolutely.

4 Q. And in order to raise your analysis or these
5 other methodologies that we say, make par settings
6 readily accessible, you've got to do that repeatedly?

7 A. Repeatedly.

8 Q. Every week?

9 A. Maybe more.

10 Q. But certainly no less frequently than every
11 week?

12 A. And you would have to do every game out of
13 the floor every week.

14 Q. In order for keying to have value, you would
15 have to do at least every week of every machine on the
16 floor?

17 A. Okay.

18 Q. Is that true? Is your answer yes?

19 A. Yes.

20 Q. We know that did not happen in this case?

21 A. We don't know.

22 Q. Are you suggesting that there may be evidence
23 that Tors was keying every machine at the GSR every
24 week of every year?

25 A. Any --

1 surveillance would probably almost certainly pick up?

2 A. Yes.

3 Q. If you're there two or three hours keying
4 machines, you're going to be kind of conspicuous?

5 A. Yes.

6 Q. So that's a highly improbable hypothetical?

7 A. Yes.

8 Q. It's probably impossible for Mr. Tors to have
9 done something at the GSR to give these pars value?

10 A. Yes.

11 Q. All right. Let's take a break.

12 (Recess taken.)

13 MR. ROBISON: We're back on the record.

14 BY MR. ROBISON:

15 Q. I don't know if I'm confused about what
16 you're saying or not. The par settings, theoretical
17 hold percentage settings that are set forth on the
18 second page of Exhibit 7 and 8.

19 A. Okay.

20 Q. I was talking about buying and selling those
21 par settings.

22 A. Yes.

23 Q. You understood that?

24 A. Yes.

25 Q. You used the word unethical, and again, do

1 sent those back to me, and they were exactly what
2 Mr. Friedman suggested they would be.

3 A. Doesn't mean his analysis was -- his analysis
4 came out exactly. That's one thing. If it came out in
5 a range.

6 Q. No. It was exact. Do you know why it was
7 exact?

8 A. Why?

9 Q. Because the method works.

10 MR. COHEN: Objection.

11 BY MR. ROBISON:

12 Q. Do you have any reason to believe it doesn't?

13 A. Yes.

14 Q. Why didn't it work in this case?

15 A. It worked in that case because what the par
16 setting was and what the play to determine that par
17 setting were the same. If there was something
18 different in the system, it would not have been the
19 same.

20 Q. But there wasn't?

21 A. There wasn't.

22 Q. And there wasn't in any of the times he did
23 this. So --

24 A. Doesn't mean I can't change those tomorrow.

25 Q. You could, but that didn't happen?

1 A. Okay.

2 Q. There's a lot of things that could have
3 happened to make a man wrong, but none of them did
4 happen.

5 A. Okay.

6 Q. But again, it's a snapshot. It's a one off.
7 Just like the day Mr. Tors walks in the GSR -- just
8 like the day Mr. Tors allegedly walked into GSR and
9 keyed six machines. That's a one off?

10 A. One off.

11 Q. Could change the next day?

12 A. Could change the next day.

13 Q. Could change even more a week later?

14 A. Yes.

15 Q. And a month later?

16 A. Yes.

17 Q. Very unreliable information?

18 A. Very unreliable unless he comes in every day
19 and does it.

20 Q. Other than that, it's -- we've been down that
21 road. So let me go back to your rebutting Stacy
22 Friedman -- Stacy Friedman's work to determine the pars
23 of unknown machines that the GSR was absolutely
24 accurate, wasn't it?

25 A. For one game.



1 to put value on pars.

2 I said, And you certainly haven't asked to do
3 so. I said, Suppose there's six pars of IGT machines
4 at the floor of the Peppermill right now. Do you want
5 to buy them?

6 No. Thank you. I don't. They have no value
7 to me.

8 And I said, Okay. I said, Well, tell me what
9 you would buy them for.

10 She says, I have not. That's my whole point.
11 I don't have a value on them. I would not buy them.

12 I said, Even if I offered them to you for
13 sale.

14 She said, No. You wouldn't buy them. No.
15 She says it would be foolish to buy them. I don't have
16 value on them.

17 Do you agree with that?

18 A. I agree that's what she stated.

19 Q. Do you agree with her opinion -- and I think
20 it's consistent with yours -- that that pars in and of
21 themselves have no independent value?

22 A. I never said I didn't have any independent
23 value. I said I wasn't interested in purchasing them.

24 Q. Well, we went circle and circle about that.

25 A. Right.

1 Q. They are. I'm not. I just read the stuff
2 they gave me. Based on that analysis, the pars on
3 those machines were readily ascertainable; correct?

4 A. Yes.

5 Q. I'm sorry?

6 A. Yes.

7 Q. If Mr. Friedman obtained those par settings
8 that way because they're readily accessible and offered
9 to sell them to somebody that you were consulting with,
10 what would you recommend that they pay for those pars
11 that were readily accessible?

12 A. Nothing.

13 Q. Are we done? We're done?

14 MR. COHEN: I have no questions.

15 THE REPORTER: Do you need a copy of the
16 transcript?

17 MR. COHEN: Yes.

18

19 (Proceedings Adjourned at 3:49 p.m.)

20

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REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Kimberly E. Blomberg, a Certified Court Reporter, licensed by the State of Nevada, do hereby certify:

That I reported the deposition of CHARLES LOMBARDO, on November 11, 2015, commencing at the hour of 9:04 a.m.

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

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

I further certify that I am not a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in said action.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 23rd of November, 2015.

Kimberly Blomberg

KIMBERLY E. BLOMBERG, CCR NO. 484

Jayne Ferretto

From: eflex@washoecourts.us
Sent: Wednesday, November 25, 2015 3:07 PM
To: Kent Robison
Cc: Jayne Ferretto
Subject: NEF: MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7): Supplemental ...: CV13-01704

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CV13-01704

Judge: HONORABLE PATRICK FLANAGAN

Official File Stamp: 11-25-2015:15:01:02
Clerk Accepted: 11-25-2015:15:06:13
Court: Second Judicial District Court - State of Nevada
Civil
Case Title: MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7)
Document(s) Submitted: Supplemental ...
- **Continuation
Filed By: Kent R. Robison

You may review this filing by clicking on the following link to take you to your [cases](#).

This notice was automatically generated by the courts auto-notification system.

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

The following people were served electronically:

SCOTT L. HERNANDEZ, ESQ.
MARK DOUGLAS WRAY, ESQ. for MEI-GSR HOLDINGS, LLC
H. STAN JOHNSON, ESQ. for MEI-GSR HOLDINGS, LLC
THERESE M. SHANKS, ESQ. for PEPPERMILL CASINOS, INC.
KEEGAN GRAHAM LOW, ESQ. for PEPPERMILL CASINOS, INC.
KENT RICHARD ROBISON, ESQ. for PEPPERMILL CASINOS, INC.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

MEI-GSR HOLDINGS, LLC for PEPPERMILL CASINOS, INC.
PEPPERMILL CASINOS, INC. for MEI-GSR HOLDINGS, LLC
CHRIS DAVIS, ESQ. for MEI-GSR HOLDINGS, LLC
TERRY KINNALLY, ESQ. for MEI-GSR HOLDINGS, LLC

DARLENE B CARUSO, ESQ for NEVADA GAMING COMMISSION,
STATE GAMING CONTROL BOARD

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

2645
COHEN-JOHNSON, LLC
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
Las Vegas, Nevada 89119
Telephone: (702) 823-3500
Facsimile: (702) 823-3400

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 I-X,

Defendants.

Case No.: CV13-01704

Dept. No.: B7

BUSINESS COURT DOCKET

**GSR'S OPPOSITION TO PEPPERMILL'S
MOTION FOR SANCTIONS WITH
RESPECT TO GREGORY GALE.
REQUEST FOR SANCTIONS.**

Plaintiff, MEI-GSR HOLDINGS, LLC, d/b/a GRAND SIERRA RESORT ("GSR"), by
and through its counsel of record, Cohen-Johnson, LLC, opposes Peppermill Casino, Inc.'s
("Peppermill") Motion for Sanctions with Respect to Gregory Gale.

This opposition is made and based upon pleadings and other papers on file and
incorporated herein, the attached Memorandum of Points and Authorities, Exhibits, attached

hereto, as well as the arguments and evidence presented at any hearing convened to consider these motions.

Dated this 14th day of December, 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
Las Vegas, Nevada 89119
*Attorneys for MEI-GSR Holdings, LLC.,
d/b/a GRAND SIERRA RESORT*

POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Peppermill Casinos, Inc., (“Peppermill” or “Defendant”) seeks sanctions in the form of Attorney’s fees, costs and dismissal of the complaint based on Plaintiff MEI-GSR Holdings, LLC, a Nevada Corporation, d/b/a Grand Sierra Resort’s (“GSR”) designation and subsequent (after deposition) withdrawal of Gregory Gale as a rebuttal expert. Defendant cites NRCP 16.1(a)(2)(C), 16.1(e)(3) and 37(b)(2) as well as “the inherent power of the court to sanction abusive litigation practices” (Motion for Sanctions, p. 8, lines 19-28) as grounds for said motion.

As will be demonstrated in the following opposition, Defendant’s motion is without merit. GSR’s withdrawal of Mr. Gale was not in violation of a previously issued discovery order. Furthermore, neither NRCP 16.1(e)(3) in conjunction with NRCP 16.1(a)(2)(C) nor “the

1 inherent power of the court to sanction abusive litigation practices” allows sanctions under
2 Nevada Law.

3 **II. LAW AND ARGUMENT**

4 **A. NRCP 37(b)(2) Requires Violation of a Specific Offense in Order to Impose Sanctions.**

5 Citing federal court precedent, the Nevada Supreme Court reversed an Eighth Judicial
6 District (Washoe County) trial court’s award of attorney’s fees, costs and dismissal of the
7 complaint under Rule 37 because the sanction was not specifically related to the particular claim
8 at issue in the order that was allegedly violated. The Court explained that only when a facially
9 clear order was disobeyed is it appropriate for the trial court to consider sanctions. It then held
10 that “NRCP 37(b) (2) limits an award of attorney’s fees to those incurred because of the alleged
11 failure to obey *the particular order in question.*” *Nevada Power Co. v. Fluor Illinois*, 837 P.2d
12 1354, 1360 (Nev. 1992). [Emphasis Added]. It is axiomatic that where there is no order, there is
13 certainly no particular or specific portion of an order to be considered *vis a vis* a sanction.
14

15 The only “order” applicable to the facts underlying this motion is this Court’s “Order
16 Granting Motion to Extend Discovery and Continue Trial Deadlines and Amended Scheduling
17 Order” filed July 1, 2015 (Peppermill’s Motion for Sanctions, Exhibit #5), which included an
18 order to disclose rebuttal witnesses on a particular date. Disclosure was accomplished by GSR in
19 a timely manner (October 15, 2015) with a compliant report. The claim that Mr. Gale’s
20 subsequent deposition testimony failed to constitute what defense counsel considers to be proper
21 rebuttal testimony does not serve as an *ex post facto* violation of the previously compliant
22 disclosure. Neither does the fact that the witness was thereafter withdrawn create an *ex post facto*
23 violation. Neither does the fact that the witness was thereafter withdrawn create an *ex post facto*
24 violation.
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1 Therefore Defendant's motion for sanctions based on GSR's withdrawal of a rebuttal
2 witnesses, but apart from disobedience to the scheduling order or to *any other order*, is wholly
3 inappropriate under NRCP 37(b)(2).

4 **B. NRCP 16.1 (and cited subsections) does not Allow the Sanctions Sought by Defendant.**

5 Rule 16.1 reads in pertinent part as follows: (e) **Pretrial Orders.** After any conference
6 held pursuant to this rule, an order shall be entered reciting any action taken. ..." (f) **Sanction.** If a
7 party or party's attorney fails to obey a scheduling or pretrial order...the judge... may make such
8 orders with regard thereto as are just, including any of the orders provided in Rule 37(b)(2)(B),
9 (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the
10 attorney representing the party or both to pay the reasonable expenses incurred because of any
11 noncompliance with this rule [that is failure to obey the provisions of the scheduling order]
12 including attorney's fees, unless the judge finds that the noncompliance was substantially
13 justified or that other circumstances make an award of expenses unjust. Nev. R. Civ. P. 16.
14

15 Thus, the question in this motion is whether designation of a rebuttal expert who in his
16 deposition testifies that he does not rebut the opinions of the opposing party's experts, the type of
17 "disobedience" to the court orders contemplated in NRCP 16.1? NRCP 16.1(e)(3) provides as
18 follows:
19

20 (3) If an attorney fails to reasonably comply with any provision of this rule, or if an
21 attorney or a party fails to comply with an order entered pursuant to subsection (d) of this rule,
22 the court, upon motion or upon its own initiative, shall impose upon a party or a party's attorney,
23 or both, appropriate sanctions in regard to the failure(s) as are just, including the following:
24

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

26 (B) An order prohibiting the use of any witness, document or tangible thing which
27 should have been disclosed, produced, exhibited, or exchanged pursuant to Rule 16.1(a).
28

1 NRCP 16.1(e)(3).

2 Additionally NRCP 16.1(a)(2)(C) provides (with respect to expert disclosures):

3 (C) These disclosures shall be made at the times and in the sequence directed by the court.

4 (i) In the absence of extraordinary circumstances, and except as otherwise provided in
5 subdivision (2), the court shall direct that the disclosures shall be made at least 90 days before
6 the discovery cut-off date.

7
8 (ii) If the evidence is intended solely to contradict or rebut evidence on the same subject
9 matter identified by another party under paragraph (2)(B), the disclosures shall be made within
10 30 days after the disclosure made by the other party. This later disclosure deadline does not
11 apply to any party's witness whose purpose is to contradict a portion of another party's case in
12 chief that should have been expected and anticipated by the disclosing party, or to present any
13 opinions outside of the scope of another party's disclosure.

14 NRCP 16.1(a)(2)(C).

15
16 Contrary to what Defendant would like the Court to believe, a complete reading of the
17 Rule 16.1 sections cited by Defendant in its moving papers (p. 6, lines 26-28) makes clear that
18 the language mandating sanctions applies only to the disclosure *deadline* and not to the
19 *substance* of that disclosure. Thus, although Section 16.1(e) (3) will mandate sanctions for
20 failure to timely *disclose* a rebuttal expert's report (because it is then a violation of the court-
21 ordered deadline and would be a violation of an order, per Rule 37(c)), it is not a correct
22 interpretation of the rule to allow, let alone require, sanctions for a heretofore designated rebuttal
23 expert who subsequently equivocates in his deposition with respect to either his qualifications or
24 the nature of his testimony. An even more specious argument is that a post-deposition
25 withdrawal of that same previously designated expert for any reason (even if it is only that his
26 deposition testimony was not helpful) constitutes grounds for sanctions.
27
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1 **C. There are no other Statutory Bases for the Imposition of Sanctions in this Matter.**

2 Neither NRCP 11, nor its federal counterpart (FRCP 11) applies to disclosures or
3 discovery matters. “ (d) **Applicability to Discovery.** Subdivisions (a) through (c) of this rule
4 [(c) covers “sanctions”], do not apply to disclosures and discovery requests, responses,
5 objections, and motions that are subject to the provisions of Rules 16.1, 16.2, and 26 through 37.
6 Sanctions for refusal to make discovery are governed by Rules 26(g) and 37.” NRCP 11(d).

7 Furthermore, Rule 26(g)(3) is inapplicable to the facts underlying this motion as well:

8 (3) If without substantial justification a certification is made in violation of this rule, the
9 court, upon motion or upon its own initiative, shall impose upon the person who made the
10 certification, the party on whose behalf the disclosure, request, response, or objection was made,
11 or both, an appropriate sanction, which may include an order to pay the amount of the reasonable
12 expenses incurred because of the violation, including a reasonable attorney’s fee.

13 NRCP 26(g)(3)¹

14 **D. Federal law, and thus by Extension Nevada Law, does not allow Sanctions under the**
15 **“Inherent Power of the Court”, absent a showing of Willfulness or Bad Faith.**

16 The Nevada Supreme Court case cited by Defendant for support that sanctions are
17 appropriate on these facts under the “inherent power of the court to regulate discovery abuses”
18 dealt with a partner willfully fabricating his journal or diary entries. In that case, partner Young
19 brought the claim against the managing partner of their real estate investment group. In
20 deposition, Young claimed that he had made certain hand-written journal or diary entries
21 contemporaneously or nearly contemporaneously with the entry date. When the matter was
22 brought to the court’s attention, the court gave Young the opportunity to clarify the deposition
23

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¹ The foregoing applies to the “signing of disclosures, discovery requests, responses, and objections,” but expert reports are not specifically referenced.

1 testimony ambiguities. He declined to do so. However, in a subsequent evidentiary hearing, the
2 court found that the entries were willfully fabricated and in fact made much later, just prior to
3 Plaintiff's deadline for producing the diaries in discovery.

4 The Supreme Court upheld the trial court's dismissal of the complaint and an award of
5 costs and fees. The court reasoned that there were two sources of authority for doing so: Rule
6 37(c) for Young's violation of the court's express oral order to rectify his deposition
7 inaccuracies, and the court's "inherent equitable powers to dismiss actions or enter default
8 judgments for ... abusive litigation practices." The Court further held that "[l]itigants and
9 attorneys alike should be aware that these powers may permit sanctions for discovery and other
10 litigation abuses not specifically proscribed by statute." *Young v. Johnny Ribeiro Bldg., Inc.*, 787
11 P.2d 777, 779 (Nev. 1990).

12 The case at bar does not involve an act of willfulness sufficient to warrant such a drastic
13 sanction. Indeed, there is no direct evidence that GSR or its counsel realized the extent to which
14 Mr. Gale would fail to provide appropriate rebuttal testimony.

15 A district court has wide discretion to determine appropriate sanctions for discovery
16 abuses under both Rule 37 of the Federal Rules of Civil Procedure and its inherent powers.
17 *Gutman v. Klein*, No. 03 CV 1570(BMC)(RML), 2008 WL 4682208, at *11 (E.D.N.Y. Oct. 15,
18 2008). Rule 37 sanctions require a showing of violation of a court order. *Daval Steel Prod. v.*
19 *M/V Fakredine*, 951 F.2d 1357, 1363 (2d Cir.1991). Sanctions under the court's inherent power
20 require a showing of bad faith or willfulness. *See DLC Mgmt. Corp. v. Town of Hyde Park*, 163
21 F.3d 124, 136 (2d Cir.1998).

22 Even in cases showing indifference or incompetence with respect to expert disclosure
23 requirements, willfulness will not be inferred. For example, in a case involving inaccurate or
24 perhaps even misleading treating physician disclosures, the court denied a motion for sanctions
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1 of costs and fees to attend subsequent depositions, reasoning that: "...absent evidence that
2 plaintiff intentionally misled defendants to cause them to incur needless deposition expenses,"
3 such sanctions would not be appropriate under Rules 11 and 37(c)(1) (which require a higher
4 standard of carelessness or frivolity than does Rule 16.1(f)). *Taylor v. Mayor and City Council*
5 *of Berlin, Md.*, 194 F.R.D. 512 (D. Md. 2000).

6
7 **E. Given the Facts at Bar, Dismissal of the Complaint is Absolutely Unwarranted.**

8 "Under both the court's inherent powers and Rule 37, the court must weigh the following
9 factors before imposing case-dispositive sanctions: 1) the public's interest in expeditious
10 resolution of litigation; 2) the court's need to manage its docket; 3) the risk of prejudice to the
11 party seeking sanctions; 4) the public policy favoring disposition of cases on their merits; and 5)
12 the availability of less drastic measures." *Anheuser-Busch v. Natural Beverage Distrib.*, 69 F.3d
13 337, 348 (9th Cir.1995). See also *Stars' Desert Inn Hotel & Country Club, Inc. v. Hwang*, 105 F
14 .3d 521 (9th Cir.1997). Dismissal is proper only where the party's conduct is due to willfulness,
15 bad faith, or fault, and "...there is a nexus between the misconduct and the matters in
16 controversy such that the rightful decision of the case is threatened." *Anheuser-Busch v. Natural*
17 *Beverage Distrib., Id.* See also *Payne v. Exxon Corp.*, 121 F.3d 503, 507 (9th Cir.1997) quoting,
18 *Henry v. Gill Indust.*, 983 F.2d 943, 946 (9th Cir.1993) holding that discretion is circumscribed
19 to those instances where willfulness, fault or bad faith is proven and *Dahl v. City of Huntington*
20 *Beach*, 84 F.3d 363, 366 (9th Cir.1996), quoting, *Thompson v. Housing Auth. of Los Angeles*,
21 782 F.2d 829, 831 (9th Cir.1986).] Holding that due to the harshness of termination (in that case,
22 a default judgment), such sanction should only be imposed in "extreme circumstances".
23
24

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1 **F. Assuming, Arguendo that Monetary Sanctions against GSR are found to be**
2 **Warranted, “Reasonable Fees and Costs” are not what Defendant has Claimed.**

3 “Reasonable expense incurred because of non-compliance with this rule” is the key
4 phrase at issue with respect to the statutes under which sanctions are sought. GSR *did in fact*
5 comply with the order by designating Mr. Gale and others as rebuttal witnesses in a timely
6 manner. There fact that he was withdrawn after that designation does not, *nunc pro tunc*,
7 establish original non-compliance.
8

9 Finally, “reasonable expenses” would not include the costs for Denise Vessie, a salaried
10 employee of the Peppermill, to assist and/or attend an out-of-town deposition where her
11 attendance is not required under the discovery statutes. Therefore any “reasonable” amount of
12 costs and attorney’s fees awarded should not include the \$1700 attributable to Ms. Vessie’s
13 work. (See Motion for Sanctions, Ex. #11, ¶15).
14

15 **III. CONCLUSION.**

16 Wherefore, based on the foregoing points and authorities, this Court should deny
17 Defendant’s motion for sanctions.

18 DATED this 14th day of December, 2015.

19
20 COHEN|JOHNSON, LLC.

21 By: /s/ H. Stan Johnson

22 H. STAN JOHNSON, ESQ.
23 Nevada Bar No. 00265
sjohnson@cohenjohnson.com
24 CHRIS DAVIS, Esq.
Nevada Bar No. 6616
cdavis@cohenjohnson.com
25 255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
26 Attorneys for MEI-GSR Holdings, LLC.,
d/b/a GRAND SIERRA RESORT
27
28

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

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED this 14th day of December, 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
Las Vegas, Nevada 89119
*Attorneys for MEI-GSR Holdings, LLC.,
d/b/a GRAND SIERRA RESORT*

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 OPPOSITION TO MOTION TO FOR SANCTIONS 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 14th day of December, 2015.

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

3790

KENT R. ROBISON, ESQ. - NSB #1167

krobison@rbsllaw.com

SCOTT L. HERNANDEZ, ESQ. - NSB #13147

shernandez@rbsllaw.com

THERESE M. SHANKS, ESQ. - NSB #12890

tshanks@rbsllaw.com

Robison, Belaustegui, Sharp & Low

A Professional Corporation

71 Washington Street

Reno, Nevada 89503

Telephone: (775) 329-3151

Facsimile: (775) 329-7169

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

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

CASE NO.: CV13-01704

DEPT. NO.: B7

Plaintiff,

vs.

BUSINESS COURT DOCKET

PEPPERMILL CASINOS, INC., a Nevada
Corporation, d/b/a/ PEPPERMILL CASINO,

Defendant.

**PEPPERMILL'S REPLY TO GSR'S OPPOSITION TO PEPPERMILL'S MOTION FOR
PARTIAL SUMMARY JUDGMENT REGARDING DAMAGES**

Peppermill Casinos, Inc., ("Peppermill") replies to GSR's Opposition as follows.

**I. GSR'S FAILURE TO PURSUE DISCOVERY DOES NOT BAR SUMMARY
JUDGMENT.**

GSR's preoccupation with discovery issues is misleading. All discovery GSR complains about has been available for GSR's inspection since August 2015. GSR failed and refused to appear to inspect Mr. Tors' computer as scheduled on September 21, 2015. GSR failed and refused to appear and inspect emails produced (those believed to be obtained by gaming regulators). Those emails were made available for inspection in response to GSR's promise to inspect on Friday, October 30, 2015. GSR failed to show up. Instead, it waited until November 4, 2015 (20 days before discovery cutoff) to inspect the emails and, even then, GSR's inspection was

1 brief and cursory.

2 By failing to honor its discovery responsibilities, GSR has fabricated a phony discovery
3 dispute. Its recent machinations are similar to its April 2015 insistence that the Peppermill
4 produce "slot reports" for every one of its slot machines, for every day, for five years. GSR
5 insisted that its expert, Jeremy Aguero, needed to see those reports to formulate his opinion.
6 Peppermill complied by producing for inspection 800,000 responsive documents. GSR spent less
7 than an hour looking through one box of documents and Mr. Aguero **NEVER** even looked at the
8 documents. *See* Peppermill's Opposition to GSR's Counter-Motion to Compel Discovery of
9 Emails and Peppermill's Opposition to GSR's Motion for Case Concluding Sanctions for
10 Violation of Discovery Order (Pursuant to NRCP 37), both of which are hereby incorporated by
11 reference.

12 Whatever discovery GSR says it needs, it is a claim based on GSR's refusal to inspect **all**
13 documents it requested that it refused to inspect. Accordingly, because GSR refused to review
14 discovery produced in this case, it cannot now ask for a NRCP 56(f) stay in order to review
15 documents already produced. Summary judgment should be granted, and GSR's request under
16 NRCP 56(f) should be denied.

17 **II. GSR'S USE OF CRIME HYPERBOLE DOES NOT BAR SUMMARY JUDGMENT.**

18 Engaging in inexcusable hypocrisy, GSR punctuates its Opposition with strident and
19 unprofessional hyperbole. GSR seems to believe that if it uses such terms as "theft", "steal",
20 "espionage" and "unlawful", this Honorable Court will be distracted and unduly offended.

21 GSR's nasty verbiage is particularly disturbing in light of the fact that GSR's admitted
22 theft of Peppermill's par settings and slot strategies is described by GSR's own expert as far more
23 egregious than Peppermill's conduct. To avoid further confusion, clarification of GSR's immoral
24 conduct must be disclosed.

25 Tracy Mimno is the General Manager of GSR. Until 2008, she was the General Manager
26 of the Peppermill. She was fired by the Peppermill, as was her friend, Scott Bean. Mr. Bean was
27 fired because he was disruptive and offended all colleagues with his vulgar and offensive conduct.
28 Mr. Bean, as GSR's consultant, and Ms. Mimno hired a consulting firm ("CDC") to steal slot

1 strategies and marketing information from the Peppermill. On behalf of GSR, CDC obtains this
2 strategical information from the Peppermill through “social engineering”. CDC and GSR admit
3 that social engineering involves obtaining secret information through deceit and manipulation.

4 Rex Carlson is one of GSR’s experts. When he was confronted with the testimony of
5 GSR’s consultant (CDC) on how he stole, and still does steal, par settings and slot strategies from
6 the Peppermill, Mr. Carlson agreed that GSR’s/CDC’s conduct was more egregious than is the
7 conduct of the Peppermill.

8 GSR prides itself in stealing par settings, theoretical win strategies, free play strategies,
9 comp reinvestment percentages and other sensitive marketing data from the Peppermill, Atlantis,
10 Eldorado, Sparks Nugget and Western Village.

11 GSR has not been held accountable for its unlawful, unethical, illegal and immoral
12 business practices . . . yet. Peppermill has been held accountable to the gaming industry, while
13 GSR operates its business with even worse ethics.

14 The overly strident and self-serving rhetoric in GSR’s Opposition must be seen for what it
15 is . . . distasteful hypocrisy.

16 **III. GSR’S CONFLATION OF THE UNIFORM TRADE SECRET ACT’S (“UTSA”)**
17 **MISAPPROPRIATION ELEMENT DOES NOT EXCUSE ITS FAILURE TO**
18 **PROVE “USE” AS REQUIRED TO RECOVER A REASONABLE ROYALTY.**

19 GSR’s preoccupation with the concept of “misappropriation” in the first thirty pages of its
20 brief is neither necessary nor relevant. First, the misappropriation discussion assumes that the
21 GSR’s 6 to 15 par settings are trade secrets. They are not as shown in Peppermill’s Renewed
22 Motion for Summary Judgment Regarding Trade Secrets, as well as the Peppermill’s supplemental
23 and reply briefs, which are expressly incorporated by reference.

24 Second, the Opposition fails to understand that it is in response to a motion regarding only
25 damages. This is highly apparent in its discussion regarding “use.” As the Court may recall, a
26 plaintiff must prove “a misappropriator’s unauthorized *disclosure* or *use* of a trade secret” in order
27 to recover a reasonable royalty. NRS 600A.505(1)(emphasis added); *see also* Opposition,
28 p. 31:11-15. GSR cites to several cases for the proposition that a plaintiff need not prove use to
recover a reasonable royalty. However, these cases discuss “use” not as a prerequisite to a

1 reasonable royalty, but as an element of a prima facie case for “misrepresentation.” *See* NRS
2 600A.030(2)(c) (defining “misappropriation” as “[d]isclosure or use of a trade secret of another
3 without express or implied consent . . .”). Under the UTSA “use” need not be proven to prove
4 misappropriation, as it is also defined as “[a]cquisition of the trade secret of another by a person by
5 improper mean.” *See* NRS 600A.030(2)(a).

6 Indeed, cases relied upon by GSR for the proposition that “use” need not be proven are
7 inapposite, because they do not involve a reasonable royalty. *See Saturn Sys., Inc. v. Militare*, 252
8 P.3d 516, 520-21 (Colo. App. 2011) (Plaintiff only sought injunctive under the UTSA.); *see also*
9 *Sw. Energy Co. v. Eickenhorst*, 955 F. Supp. 1078, 1085 (W.D. Ark. 1997) *aff’d*, 175 F.3d 1025
10 (8th Cir. 1999) (Court observed that disclosure was the basis of “misappropriation”; however, the
11 relief sought was an injunction, not reasonable royalty damages.); *cf. AvidAir Helicopter Supply,*
12 *Inc. v. Rolls-Royce Corp.*, 663 F.3d 966, 971 (8th Cir. 2011) (On appeal of a jury award of “actual
13 damages,” the Court did not discuss use or reasonable royalty, because the main issue on appeal
14 was whether the information was a trade secret.).

15 In others, the court evaluated the “misappropriation” as the liability element of the UTSA,
16 but it did not even discuss damages. *See Smithfield Ham & Products Co. v. Portion Pac, Inc.*, 905
17 F. Supp. 346, 350 (E.D. Va. 1995); *see also Insituform Techs., Inc. v. Reynolds, Inc.*, 398 F. Supp.
18 2d 1058, 1063 (E.D. Mo. 2005) (reviewing UTSA in context of a personal jurisdiction analysis);
19 *Finkel v. Cashman Profl, Inc.*, 128 Nev. Adv. Op. 6, 270 P.3d 1259, 1263-64 (2012) (Court only
20 evaluated whether there was a trade secret, as the defendant admitted use, but did not evaluate
21 damages.). Several cases cited by GSR involve whether a party has sufficiently pleaded the
22 element of “misappropriation” and make no reference to damages. *Ajuba Int’l, L.L.C. v. Saharia*,
23 871 F. Supp. 2d 671, 691 (E.D. Mich. 2012); *Dealertrack, Inc. v. Huber*, 460 F. Supp. 2d 1177,
24 1183-84 (C.D. Cal. 2006); *Luminate Techs., LP v. Integrated Data Storage, LLC*, No. 13 C 3767,
25 2013 WL 5974731, at *5-6 (N.D. Ill. Nov. 11, 2013).

26 In *Frantz v. Johnson*, 116 Nev. 455, 469-68, 999 P.2d 351, 360-61 (2000), the Nevada
27 Supreme Court noted that there was sufficient circumstantial evidence to sustain a finding of
28 misappropriation. However, there was no discussion of a reasonable royalty, because damages

1 were based upon the plaintiff's actual losses measured by lost profits. *See id.* at 469-70.
2 Similarly, in *Pioneer Hi-Bred Int'l v. Holden Found. Seeds, Inc.*, 35 F.3d 1226, 1243-44 (8th Cir.
3 1994), the court noted that "misappropriation" could be proven by circumstantial evidence. The
4 court did not address "use" as a requirement of a reasonable royalty. *See also W. Plains, L.L.C. v.*
5 *Retzlaff Grain Co. Inc.*, 927 F. Supp. 2d 776, 785 (D. Neb. 2013) (noting that methods used by
6 defendant to take confidential information sufficient to finding of "trade secret" for purposes of a
7 preliminary injunction, not use).

8 In furtherance of the circumstantial evidence argument, GSR also cites to dictum set forth
9 in *Binary Semantics Ltd. v. Minitab, Inc.*, No. CIV.A. 4:07-CV-1750, 2008 WL 763575, at *4
10 (M.D. Pa. Mar. 20, 2008), in which the court stated that "we believe that the theft of trade secrets
11 necessarily implies that they will be used." However, the *Binary Semantics* Court made this
12 statement in context of a RICO claim. Accordingly, the offhanded comment by a federal district
13 court ruling a on a federal statute cannot be applicable (or even persuasive) on a question of state
14 trade secret law. Accordingly, *Binary Semantics* is not representative of the law under the UTSA,
15 and overstating the above quotation is improper.

16 Indeed, the kind of circumstantial evidence that Court's require are proof of (1) access to a
17 trade secret *and* (2) similarity between the defendant's product and the trade secret *or* the
18 defendant's product is derived from the trade secret. *See Leggett & Platt, Inc. v. Hickory Springs*
19 *Mfg. Co.*, 285 F.3d 1353, 1361 (Fed. Cir. 2002) (evaluating evidence of access and similarity);
20 *Sokol Crystal Prods., Inc. v. DSC Communications Corp.*, 15 F.3d 1427, 1429 (7th Cir.1994)
21 ("While there was no direct evidence that [defendant] used [plaintiff's] confidential information ...
22 the jury apparently inferred from the fact that the [defendant] has access to [plaintiff's] confidential
23 information and from the similarity between the two devices that [defendant] misappropriated
24 [plaintiff's] trade secret . . ."); *Pioneer Hi-Bred Int'l v. Holden Found. Seeds, Inc.*, 35 F.3d 1226,
25 1240 (8th Cir. 1994) ("This case involves possession of a product *derived from* the protected
26 secret. Proof of derivation removes the possibility of independent development . . ."). Here,
27 GSR concedes that there is no evidence of similarity or derivation in this case, as GSR's expert
28 notes that there is no correlation between the GSR's par information and Peppermill's business

1 operations. *See* Motion, p13-14. Accordingly, there is no circumstantial evidence of “use” in this
2 case.

3 In summary, the bulk of the cases cited by GSR to support the contention that “use” or
4 “disclosure” need not be proven only related to the misappropriation element. Accordingly, these
5 cases are of no use in a discussion of reasonable royalty damages, as proving “use” or “disclosure”
6 is a requirement for a reasonable royalty. Thus, GSR’s discussion should be disregarded, because
7 there is no question that GSR misapplies the law.

8 **IV. THERE IS NO EVIDENCE TO SUPPORT REASONABLE ROYALTY DAMAGES.**

9 GSR disregards its expert’s report. Mr. Aguero’s report is a mishmash of wrong concepts,
10 mischaracterization of terms and a nonresponsive report about nothing involved in this case.
11 Similarly, GSR is totally consumed by self-inflicted confusion.

12 First, GSR apparently abandons its alleged “loss” of some \$22,000 for what it says was
13 incurred to replace locks on its 1100 slot machines. Peppermill has convincingly shown that GSR
14 has and does claim the \$22,000 as actual loss under NRS 600A.050. Second, GSR’s expert admits
15 that there is no evidence that Peppermill was unjustly enriched. *See* Transcript of Deposition of
16 Jeremy Aguero (Sept. 15, 2015) p. 33:2-7 attached hereto as **EXHIBIT 1**. In doing so, GSR is
17 precluded from seeking a royalty because a royalty form of damages is only available “in lieu” of
18 other damages. *See Pioneer Hi-Bred Int’l v. Holden Found. Seeds, Inc.*, 35 F.3d 1226, 1243-44
19 (8th Cir. 1994) (holding that reasonable royalty is appropriate when actual loss or unjust
20 enrichment are unavailable).¹ Accordingly, GSR is bound by the plain language of NRS
21 600A.050(1) to be awarded only its actual loss, and not Augero’s flawed reasonable royalty.

22 Third, GSR’s expert witness admits that there is no evidence that Peppermill used the par
23 information. *See* Motion, p. 7-9. Interestingly, GSR relies greatly upon cases in which the Court
24 expressly notes that there is evidence of “use.” In *Olson v. Nieman’s, Ltd.*, 579 N.W.2d 299, 314-
25 15 (Iowa 1998), the court addressed disclosure or use in terms of the misappropriation element.

26 ¹ GSR cites to *Hallmark Cards, Inc. v. Monitor Clipper Partners, LLC*, No. 08-0840-CV-W-ODS,
27 2012 WL 3047308, at *6 (W.D. Mo. July 25, 2012) for the proposition that a plaintiff is free to
28 elect whether it can recover reasonable royalty. However, this case is inapposite, as such an
election was merely discussed in context of motion to strike an expert testimony.

1 The *Olson* Court noted the extensive evidence of disclosure presented to the trial court:

2 Contrary to Nieman's second contention that it did not
3 "use" or "disclose" any confidential information, there was
4 uncontroverted evidence that Nieman displayed the device
5 at the November 1992 trade show, distributed brochures
6 describing the device, and even offered it for sale. Olson
7 knew nothing about these actions.

8 Shortly before the trade show, Nieman terminated its
9 relationship with Olson. Shortly after the trade show,
10 Olson entered into a confidentiality agreement with
11 Tekonsha, a Nieman competitor. After Olson disclosed the
12 schematic diagram to Tekonsha pursuant to the agreement,
13 the director of engineering for Tekonsha wrote Olson a
14 letter in January 1993, stating that "another vendor does
15 employ the exact idea which you have disclosed. The other
16 vendor (Nieman) has utilized the flasher system for around
17 six months." Olson called the writer of the letter who
18 informed Olson that she had seen a brochure from the
19 November 1992 trade show.

20 The jury could reasonably find from this evidence that
21 Nieman used or disclosed Olson's trade secret and by its
22 actions placed it within the public domain.

23 *See id.* Accordingly, the *Olson* Court upheld the finding of disclosure in conjunction with
24 upholding the trial court's award of reasonable royalty.

25 GSR relies heavily upon *Univ. Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d 518,
26 542 (5th Cir. 1974). However, while the court assessed a reasonable royalty in that case, the jury
27 expressly found that the trade secret was put to commercial use in that case.

28 In *Avery Dennison Corp. v. Four Pillars Enter. Co.*, 45 F. App'x 479, 486-87 (6th Cir.
2002), the court assessed reasonable royalty damages. There court noted that the trade secret had
21 been used, because there was evidence that the defendant "modified [the plaintiff's] formula, and
22 used [the plaintiff's] manufacturing specifications to cut their own research time and streamline its
23 manufacturing processes." *See id.* at 487. Similarly, in *Mid-Michigan Computer Sys., Inc. v.*
24 *Marc Glassman, Inc.*, 416 F.3d 505, 510 (6th Cir. 2005), the court awarded a reasonable royalty,
25 noting that defendant used the trade secret by "sav[ing] research and manufacturing resources,"
26 [that] it would have expended to develop the software that ultimately replaced [the plaintiff's]
27 pharmacy software."

28 Fourth, GSR misapplies so-called "disclosure" cases for the proposition that a plaintiff

1 need not prove use to recover a reasonable royalty. As noted above, a reasonable royalty can also
2 be proven by the *disclosure* of a trade secret. *See also* Opposition, p. 31:11-15. As noted in the
3 instant Motion, Peppermill explains that there cannot be disclosure in this case, because Tors acted
4 under Peppermill's control and within the scope of his employment when he participated in the
5 conduct that is the subject of this lawsuit. *See* Motion, p. 15. Accordingly, Tors and Peppermill
6 were part of the same legal body and could not "disclose" par information to one another. *See id.*

7 It is notable that GSR cites to no cases that contradict Peppermill's position on disclosure.
8 Instead, the disclosure cases that GSR cites to involve the same fact pattern: a former employee of
9 Company A disclosed Company A's trade secret to his new employer Company B, which is a
10 competitor of Company A. This is notable, because Company B and the employee were not a part
11 of the same legal body when the misappropriation occurred. Accordingly, there is a disclosure.
12 *See, e.g., Storagecraft Tech. Corp. v. Kirby*, 744 F.3d 1183, 1185 (10th Cir. 2014) (Kirby, a former
13 employee of Storagecraft Technology Corporation, disclosed Storagecraft's source code to his new
14 employer NetJapan, a competitor of Storagecraft.); *PepsiCo, Inc. v. Redmond*, 54 F.3d 1262, 1263-
15 64, (7th Cir. 1995) (Redmond, a former General Manager of PepsiCo, Inc.'s Northern California
16 Business Unit, disclosed Pepsi's trade secret to his new employer, The Quaker Oats Company,
17 which is a competitor of Pepsi through its Gatorade and Snapple line of products.); *Uhlig LLC v.*
18 *Shirley*, No. 6:08-CV-01208-JMC, 2012 WL 2923242, at *1 (D.S.C. July 17, 2012) (Shirley, a
19 Vice President of CoxCustomMedia, Inc. ("CCM"), disclosed CCM's trade secret to his new
20 employer, Prism Content Solutions, LLC, which is a competitor of CCM's new parent company.);
21 *RKI, Inc. v. Grimes*, 177 F. Supp. 2d 859, 862 (N.D. Ill. 2001) (Grimes, a former sales employee
22 of RKI, Inc. d/b/a Roll-Kraft, disclosed Roll-Kraft's trade secret to his new employer, Chicago
23 Roll Corporation, which is competitor of Roll-Kraft.); *Sonoco Products Co. v. Johnson*, 23 P.3d
24 1287, 1288 (Colo. App. 2001) (Johnson, a former employee of Sonoco Products Company ,
25 disclosed Sonoco's trade secret to his new employer, Newark Group, Inc., which is competitor of
26 Sonoco.).

27 Here, Tors and Peppermill were part of the same legal entity when the par information was
28 allegedly taken. Accordingly, there is no "disclosure." As there is also no evidence of use, a

1 reasonable royalty cannot be awarded. Summary judgment should be granted.

2 **V. GSR'S MISTATEMENT OF THE RECORD CANNOT FORM THE BASIS OF A**
3 **DENIAL OF SUMMARY JUDGMENT.**

4 GSR makes several inaccurate statements regarding the facts and evidence in this case that
5 requires a bit of explanation. For example, GSR asserts that Tors sent out emails regarding keying
6 to Peppermill management on December 28, 2011, June 16, 2012,² June 25, 2012, January 3,
7 2013,³ March 18, 2013, and June 13, 2013. *See* Opposition, p. 6:14-17. These dates come from
8 emails that GSR marked as Exhibit 5 to its Opposition. A brief explanation indicates why only the
9 emails sent on December 29, 2011 and June 15, 2012 are relevant to the issues in this case. A
10 quick review indicates that the email dated June 25, 2012 is merely a forward of the email sent on
11 June 15, 2012. *See* Opposition, Exh. 5 (PM 0083). Further, the June 13, 2013 email is a summary
12 of the June 15, 2012, as evidenced by the fact that the attached spreadsheet is named "June 2012
13 summary.xlsx" and cites the same 6.60 figure attributed to GSR in the June 15, 2012 email. *See*
14 *id.*, Exh. 5 (PM 0088-PM 0089).

15 The email from Tors dated January 2, 2013 is not evidence of keying. *See id.*, Exh. 5 Exh.
16 5 (PM 0085). It is evidence that Peppermill shopped GSR. This was a normal part of Tors' job
17 responsibilities, as he was Peppermill's slot analyst, as noted below. The March 18, 2013 email
18 is also not evidence of keying. *See id.*, Exh. 5 (PM 0087). In this email, Aaron Robyns asked Tors
19 to "**estimate**" the hold percentage on a Sex in the City theme video reel slot machine. *See id.*; *see*
20 *also* Affidavit of Aaron Robyns ("Robyns Aff."), ¶ 2.⁴ In response, Tors provided a guess, stating
21 "[l]ooks like the most liberal is 10%, could 12, but I guess 10." *See* Opposition, Exh. 5 (PM
22 0087). Sex in the City is a wide area progressive machine. Its pars are readily ascertainable
23 without the use of a key because the pars are set by the manufacturer of the machine. *See* Robyns
24 Aff., ¶ 3. Mr. Tors could easily and readily ascertain the hold percentage on a wide progressive
25 without utilizing a 2341 key and without doing anything improper or illegal. *See id.*

26 ² It is clear that "June 16, 2012" is a typographical error. There is an email in GSR's Exhibit 5
27 dated June 15, 2012, which is actual date that GSR's references.

28 ³ It is clear that "January 3, 2013" is a typographical error. There is an email in GSR's Exhibit 5
dated January 2, 2015, which is actual date that GSR's references.

⁴ Mr. Robyns' Affidavit is attached as Exhibit 8 to Peppermill's Reply to Opposition to Peppermill's Renewed Motion
for Summary Judgment Regarding Trade Secret, filed contemporaneously with this Reply.

1 In another instance of confusing the record, GSR cites to an email between Dave McHugh
2 and Ryan Tors that refers to a text message William Paganetti sent to Dave McHugh. *See*
3 *Opposition*, p. 12-13. GSR's contention that this email proves that there exists text messages
4 pertaining to the alleged "theft" of pars at any casino is false. There are no such text messages.
5 The text referred to was prior to the lawsuit, and Peppermill employees did not preserve texts at
6 the time the text was allegedly sent. *See Affidavit of William Paganetti ("Paganetti Aff.")*, ¶ 3, 6.⁵

7 Mr. Paganetti sent that text message in question to Dave McHugh after reviewing the
8 gaming abstracts, which are publicly available from the Gaming Control Board ("GCB"). After
9 reviewing this public document, Mr. Paganetti texted Mr. McHugh to have an adjustment made to
10 Peppermill's pars based upon the GCB abstracts. The text in question had nothing to do with
11 keying slot machines or any information that was provided about slot machines being keyed. *See*
12 *Paganetti Aff.*, ¶ 4.

13 After receiving the text, Mr. McHugh then forwarded Mr. Paganetti's instructions to Ryan
14 Tors. Mr. McHugh is the Corporate Director of Slot Operations, and Ryan Tors was employed as
15 Corporate Slot Analyst. Whenever it was determined that a change in Peppermill's par settings
16 was needed, Mr. Paganetti would inform Mr. McHugh, who would then have Ryan Tors carry out
17 the task as Slot Analyst to cause the adjustments of par settings at our various properties. *See*
18 *Paganetti Aff.*, ¶ 5.

19 Additionally, GSR cites to an email Tors sent regarding the pars at the Atlantis and the
20 responding email. *See Opposition*, p. 12:7-20. Tors admitted that the keying information from the
21 Atlantis was an "estimate" of the Atlantis' particular par settings. *See Affidavit of Denise Vessie*,
22 ¶ 4.⁶ Although Tors admitted that he did not key the Atlantis in this instance, he indicated that he
23 had a relationship with an Atlantis representative in accounting named "Dora" who told Mr. Tors
24 that the Atlantis had not changed its par settings. *See id.* at ¶ 5. This relationship with "Dora" is
25 corroborated by documents in the record. The response to Tors' email was merely a comment
26 upon fabricated information. *See id.* at ¶ 7.

27
28 ⁵ Mr. Paganetti's Affidavit is attached as Exhibit 6 to Peppermill's Reply to Opposition to Peppermill's Renewed Motion for Summary Judgment Regarding Trade Secret, filed contemporaneously with this Reply.

⁶ Ms. Vessie's Affidavit is attached as Exhibit 5 to Peppermill's Reply to Opposition to Peppermill's Renewed Motion for Summary Judgment Regarding Trade Secret, filed contemporaneously with this Reply.

1 GSR also argues that the decline in Peppermill's market share may be evidence of a motive
2 to key GSR's machines. However, this argument is based upon a false assumption that market
3 share is irrelevant in this case or to slot operations generally. It is true that Peppermill's revenue
4 declined in early 2012. Peppermill management was very concerned as that the Peppermill was
5 giving away too much free play. Mr. Paganetti insisted that the free play be reduced immediately.
6 Because many direct mail free play offerings were outstanding, the reduction of free play and
7 corresponding reduction of par settings took several months to accomplish. Because Peppermill
8 reduced its free play and par settings, and for many other reasons, the revenue for penny slots
9 slightly declined in 2012. There was not and never has been a "motive" to change par settings at
10 our properties or to "key" other properties because of our financial performance in the market. *See*
11 *Paganetti Aff.*, ¶ 5. Accordingly, a decline in Peppermill's market share or revenues signify
12 nothing and do not preclude summary judgment in this case.

13 Accordingly, the "fact" that GSR presents to defeat the instant Motion, are not facts at all.
14 They are a distortion of the record. This distortion cannot be the basis for denying summary
15 judgment. There is no genuine issue of material fact

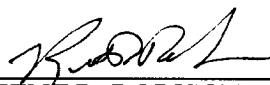
16 **VI. CONCLUSION.**

17 For the reasons stated above and in the Motion, there is no genuine issue of material fact on
18 damages. Accordingly, the Motion should be granted, and GSR's request for a stay under NRCP
19 56(f) should be denied.

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

22 DATED this 15th day of December, 2015.

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

27 
28 KENT R. ROBISON
SCOTT L. HERNANDEZ
THERESE M. SHANKS
Attorneys for Defendant
Peppermill Casinos, Inc., d/b/a Peppermill Casino

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AFFIDAVIT OF KENT R. ROBISON

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.

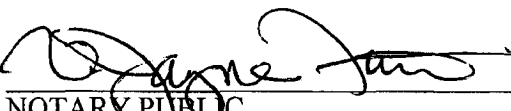
3. Attached as **Exhibit 1** to this Motion is a true and correct copies of excerpts from the deposition transcript of Jeremy Aguero taken on September 15, 2015.

Dated this 15th day of December, 2015.

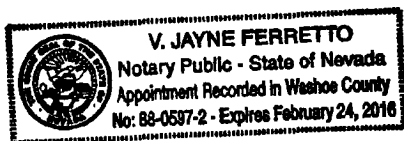


KENT R. ROBISON

Subscribed and sworn to before me on this 15th day of December, 2015 by Kent R. Robison.



NOTARY PUBLIC



1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP
3 & LOW, and that on this date I caused to be served a true copy of the **PEPPERMILL'S REPLY TO**
4 **GSR'S OPPOSITION TO PEPPERMILL'S MOTION FOR PARTIAL SUMMARY**
5 **JUDGMENT REGARDING DAMAGES** on all parties to this action by the method(s)
6 indicated below:

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

9 H. STAN JOHNSON, ESQ.

10 TERRY KINNALLY, ESQ.

11 CHRIS DAVIS, ESQ.

12 Cohen-Johnson, LLC

13 255 E. Warm Springs Road, Suite 100

14 Las Vegas, NV 89119

15 Email: sjohnson@cohenjohnson.com

16 tkinnally@cohenjohnson.com

17 cdavis@cohenjohnson.com

18 *Attorneys for Plaintiff*

19 MARK WRAY, ESQ.

20 608 Lander Street

21 Reno, NV 89509

22 Email: mwrap@markwraylaw.com

23 *Attorneys for Plaintiff*

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

25 H. STAN JOHNSON, ESQ.

26 TERRY KINNALLY, ESQ.

27 CHRIS DAVIS, ESQ.

28 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

MARK WRAY, ESQ.

608 Lander Street

Reno, NV 89509

Email: mwrap@markwraylaw.com

Attorneys for Plaintiff

_____ by electronic email addressed to the above.

_____ by personal delivery/hand delivery addressed to:

_____ by facsimile (fax) addressed to:

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

26 DATED: This 15th day of December, 2015.

27 
V. JAYNE FERRETTO

28 Employee of Robison, Belaustegui, Sharp & Low

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EXHIBIT LIST

Exhibit No.	Description	Pages
1	Excepts from the deposition transcript of Jeremy Aguero deposed on September, 2015	3

FILED
Electronically
2015-12-15 04:49:55 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5280339 : csulezic

EXHIBIT 1

EXHIBIT 1

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).

COPY

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 A My opinion is that it cannot be determined.

2 Q Okay. And is it because that you cannot
3 determine lost profits and because it is not
4 determinable whether the Peppermill was unjustly
5 enriched that you have devised a reasonable royalty
6 analysis?

7 A That is correct. Yes, sir.

8 Q Are you aware that the GSR is seeking
9 monetary damages in this case?

10 A Yes, sir.

11 Q And the trade secret legislation indicates
12 that if you're seeking damages -- excuse me.
13 Reasonable royalty is only available in lieu of a
14 damage claim. Correct?

15 A I don't know that I can opine relative to
16 what the statute says.

17 Q Well, you're the one that did the research
18 in your file on it.

19 A I'm sorry. I thought you were asking me
20 the question about what the legislation specifically
21 said. It is my understanding that trade secret is an
22 opportunity at the point at which neither profits on
23 one side or unjust enrichment on the other can be
24 determined.

25 In terms of opining relative to the -- what

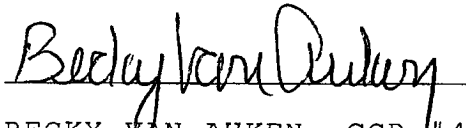
STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

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

That on Tuesday, 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

Jayne Ferretto

From: eflex@washoecourts.us
Sent: Wednesday, December 16, 2015 8:33 AM
To: Kent Robison
Cc: Jayne Ferretto
Subject: NEF: MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7): Reply to/in Opposition: CV13-01704

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CV13-01704

Judge: HONORABLE PATRICK FLANAGAN

Official File Stamp: 12-15-2015:16:49:55
Clerk Accepted: 12-16-2015:08:32:10
Court: Second Judicial District Court - State of Nevada
Civil
Case Title: MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7)
Document(s) Submitted: Reply to/in Opposition
- **Continuation
Filed By: Kent R. Robison

You may review this filing by clicking on the following link to take you to your [cases](#).

This notice was automatically generated by the courts auto-notification system.

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

The following people were served electronically:

SCOTT L. HERNANDEZ, ESQ.
MARK DOUGLAS WRAY, ESQ. for MEI-GSR HOLDINGS, LLC
H. STAN JOHNSON, ESQ. for MEI-GSR HOLDINGS, LLC
THERESE M. SHANKS, ESQ. for PEPPERMILL CASINOS, INC.
KEEGAN GRAHAM LOW, ESQ. for PEPPERMILL CASINOS, INC.
KENT RICHARD ROBISON, ESQ. for PEPPERMILL CASINOS, INC.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

MEI-GSR HOLDINGS, LLC for PEPPERMILL CASINOS, INC.
PEPPERMILL CASINOS, INC. for MEI-GSR HOLDINGS, LLC
CHRIS DAVIS, ESQ. for MEI-GSR HOLDINGS, LLC
TERRY KINNALLY, ESQ. for MEI-GSR HOLDINGS, LLC

DARLENE B CARUSO, ESQ for NEVADA GAMING COMMISSION,
STATE GAMING CONTROL BOARD

3790
KENT R. ROBISON, ESQ. - NSB #1167
krobison@rbsllaw.com
SCOTT L. HERNANDEZ, ESQ. - NSB #13147
shernandez@rbsllaw.com
THERESE M. SHANKS, ESQ. - NSB #12890
tshanks@rbsllaw.com
Robison, Belaustegui, Sharp & Low
A Professional Corporation
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169

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

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

CASE NO.: CV13-01704

DEPT. NO.: B7

Plaintiff,

vs.

BUSINESS COURT DOCKET

PEPPERMILL CASINOS, INC., a Nevada
Corporation, d/b/a/ PEPPERMILL CASINO,

Defendant.

**REPLY TO OPPOSITION TO PEPPERMILL'S RENEWED MOTION FOR SUMMARY
JUDGMENT REGARDING TRADE SECRET**

Defendant Peppermill Casinos, Inc. ("Peppermill"), by and through its counsel of Robison, Belaustegui, Sharp and Low, hereby replies to plaintiff MEI-GSR Holdings, LLC's ("GSR") Opposition to Peppermill's Renewed Motion For Summary Judgment Regarding Trade Secret.

I. GSR CANNOT DEFEAT SUMMARY JUDGMENT BY ATTEMPTING TO CAST PEPPERMILL IN A NEGATIVE LIGHT AS A "THIEF."

To defeat Peppermill's motion for partial summary judgment, GSR must present this Court with evidence that demonstrates the existence of a genuine issue of material fact as to whether an individual par setting is a trade secret. *Wood v. Safeway, Inc.*, 121 Nev. 724, 730-31, 121 P.3d 1026, 1030-31 (2005) (holding that "the non-moving party may not rest upon general allegations and conclusions" to defeat summary judgment). GSR does not present any such evidence in its

1 Opposition. Instead, GSR attempts to cast Peppermill in a negative light by emphasizing
2 Peppermill's "theft" of the pars. Not only is this insufficient to defeat summary judgment, but it
3 is improper in light of GSR's own theft of Peppermill's slot and marketing strategies.

4 GSR admits that the slot and marketing strategies are information that it does not want to
5 share with the Peppermill, and that individual par are only one small part of this much larger
6 puzzle:

7 GSR analyzes the location of each slot machine, the amount of money played on each slot
8 machine, the actual money held by each machine [i.e., the par], the rewards given to the
9 players, the amount of free play, and the effect special events have on GSR's slot revenues.
GSR then attempts to compare its market position with those of its competitors based on
the rewards, free play and special events offered by its competitors.

10 Opposition to Peppermill's Renewed Motion for Summary Judgment Regarding Trade Secret
11 ("Opposition"), p. 30:13-18. GSR's statement confirms what Peppermill has already told this
12 Court – that a par setting is "a small and relatively insignificant part of a larger strategical puzzle."
13 See Renewed Motion for Summary Judgment re Trade Secret ("Motion"), at p. 9:2-9 (citing to
14 Exhibit 2).

15 GSR omits to inform this Court that it has stolen the larger strategical puzzle – i.e.
16 Peppermill's slot and marketing strategies – from Peppermill while GSR is blasting Peppermill for
17 stealing a few of GSR's pars. Peppermill provided this Court with a consulting report prepared by
18 CDC Consulting, in which CDC joined players clubs at various casinos – including the Peppermill
19 – in order to obtain the slot and marketing strategies of those casinos. See Exhibit 30. GSR's
20 **own experts** testify that GSR's method in obtaining Peppermill's slot and marketing strategies is
21 unethical and worse than stealing a few individual pars. Tors did not obtain a quarter of the
22 information that GSR has obtained through its use of CDC.

23 Specifically, Rex Carlson testified that he has a problem with CDC Consulting's use of a
24 player's club card to obtain this information. See **Exhibit 1**, p. 191:23-192:3 (Excerpts from the
25 Deposition of Rex Carlson). And, Charles Lombardo testified:

26 Q: . . . And GSR has readily accessed our pars; correct? According to the testimony of
27 John Stone [of CDC Consulting]?

28 A: According to the testimony.

Q: You have a problem with that?

1 A: I do.

2 Q: They shouldn't be doing that, should they?

3 A: They shouldn't be doing that. They shouldn't be in that kind of business.

4 *See Exhibit 2*, p. 271:11-20 (Excerpts from the deposition transcript of Charles Lombardo).

5 If GSR wishes to place the emphasis in this litigation on bad conduct, then all of the parties' bad
6 conduct ought to be considered. Furthermore, as will be shown below, Peppermill's bad conduct
7 does not render an individual par setting a protectable trade secret.

8 **II. GSR HAS NOT PRESENTED ANY EVIDENCE SUFFICIENT TO ESTABLISH**
9 **THAT AN INDIVIDUAL PAR SETTING HAS INDEPENDENT ECONOMIC**
10 **VALUE.**

11 GSR argues, without proof, that individual par settings have independent economic value
12 because (1) Peppermill stole the pars, and (2) Peppermill allegedly used the pars. Neither of these
13 contentions have any merit.

14 **A. GSR Presents No Proof that Tors' Keying is Evidence of Value.**

15 Unable to contradict the direct evidence from the testimony of its own witnesses and
16 experts who all agree that pars have no independent economic value, GSR instead argues to this
17 Court in its legal brief that the pars must have value because Peppermill stole them. Opposition,
18 pp. 19-20. As an initial matter, this argument fails because it does not contradict the direct
19 evidence of a lack of value in this case, and GSR does not support its argument with any extraneous
20 factual evidence that theft is indicative of value. *See* Opposition. It is well established that "[a]
21 party cannot manufacture a genuine issue of material fact by making assertions in its legal
22 memorandum." *Dermody v. City of Reno*, 113 Nev. 207, 211, 931 P.2d 1354, 1357 (1997); *See*
23 *also Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 923 (9th Cir. 2001) ("The
24 alternative arguments of counsel are not evidence and do not create issues of fact capable of
25 defeating an otherwise valid summary judgment." (Internal quotations omitted)).

26 The legal authority that GSR cites is factually distinguishable. For example, in *Altavion*
27 *Inc. v. Konica Minolta Systems Laboratories, Inc.*, the California appellate court found that the
28 defendant's "serious interest" in obtaining a software design system was circumstantial evidence
of value because the defendant also went to great lengths to obtain patents of that system. 171

1 Cal. Rptr. 3d 714, 744 (Ct. App. 2014). In contrast, here, Peppermill has not gone to any lengths
2 to use the par settings, a fact which is extensively discussed in Peppermill's sister motion on the
3 issue of damages and which will be briefly touched upon below.

4 In *West Plains, LLC v. Retzlaff Grain Co.*, the Court found that the defendant's theft of
5 information was circumstantial evidence of value because "a large portion of the information . . .
6 was not readily ascertainable through any source identified by Defendants." 927 F. Supp. 2d 776,
7 784 (D. Neb. 2013). In contrast, here, Peppermill has demonstrated that all of the information
8 obtained, i.e., the individual par settings, are readily ascertainable through a variety of proper
9 means. *See* Motion, pp. 12-18.

10 In fact, these cases support Peppermill's position. As the *Altavion* court points out,
11 circumstantial evidence of value includes "the willingness of others to pay for access to the
12 information." 171 Cal. Rptr. 3d at 743. GSR has not, and cannot, present any evidence to rebut
13 the fact that *its own experts and witnesses would not have paid any amount of money to obtain*
14 *the par settings that Tors obtained*. GSR's executives testified that the individual par settings
15 obtained by Tors have no independent economic value. Tracy Mimno, GSR's General Manager,
16 testified that she would pay *nothing* to obtain a competitor's pars. Motion, Exhibit 10, pp.
17 282:22-284:4. Terry Vavra, GSR's Vice President of Finance, confirmed that individual par
18 settings have no value. Motion, Exhibit 11, p. 96:2-6.

19 Similarly, GSR's experts testified that the individual par settings have no economic value.
20 *See* Motion, Exhibit 12, p. 117:11-12 (Deposition of Expert David Schwartz); Motion, Exhibit 13,
21 p. 224:10-14 (Deposition of Jeremy Aguero). GSR's rebuttal experts also have testified that the
22 individual par settings have no independent economic value. Charles Lombardo testified that the
23 information Tors obtained was "valueless" because the par settings could be changed the next day:

24 Q: So for all we know, GSR could have changed its pars on December 30, 2011, and
25 made the information in Exhibit 7 [containing the pars Tors obtained] meaningless?

26 A: That is correct.

27 Q: Valueless?

28 A: Valueless.

...

1 Q: So getting back to the value proposition, the GSR could have changed the par
2 settings on the six machines reflected on the second page of Exhibit 8 [containing
the pars Tors obtained] the day after Mr. Tors obtained that information?

3 A: Correct.

4 Q: Rendering that information valueless?

5 A: That is correct.

6 See Exhibit 2, pp. 245:1-6, 247:12-18.

7 Rex Carlson also confirms that individual par settings have no independent economic
8 value:

9 Q: You wouldn't buy those for \$100, would you?

10 A: I wouldn't.

11 Q: Well, your testimony is also consistent with Toby Taylor, director of slots at GSR.
12 He has testified taken alone the pars on Exhibit 7 and 8 considered by themselves
13 have no independent economic value.
Do you agree?

14 A: Okay. Yeah.

Exhibit 1, p. 176:3-11.

15 GSR presents no evidence to rebut its own witnesses' statements. Therefore, even if the
16 way in which Peppermill obtained the pars could be considered as circumstantial evidence of
17 value, GSR'S executives and experts provide direct evidence of the par settings' lack of value
18 that defeats GSR's argument. Accordingly, there is no genuine issue of material fact that the
19 individual par settings have no independent economic value.

20 **B. GSR Cannot Defeat Direct Evidence Of Lack Of Value By Pointing to Alleged**
21 **Circumstantial Evidence of "Use."**

22 GSR also argues that there is circumstantial evidence that Peppermill "used" the
23 information obtained by Tors, and that this somehow establishes value. Again, as set forth above,
24 GSR cannot overcome the direct evidence provided by its own executives and experts that these
25 individual par settings have no value by asserting contradictory legal arguments in its Opposition
26 regarding alleged "circumstantial" evidence. *Dermody*, 113 Nev. at 211, 931 P.2d at 1357.

27 The inaccuracies in GSR's argument are broken down as follows. First, GSR argues that
28 its experts, Carlson and Lombardo, establish in their reports that individual par settings have

1 independent economic value. Opposition, pp. 20-21. But, GSR conveniently omits to present to
2 this Court Carlson's and Lombardo's deposition testimony, taken after their reports were written
3 for them by the GSR, in which both experts definitively state that individual par settings have no
4 independent economic value. See Exhibit 1, p. 176:3-11; Exhibit 2, pp. 245:1-6, 247:12-18. In
5 fact, Carlson admits that he **does not** rebut Stacy Friedman's opinion that individual par settings
6 have no independent economic value in his rebuttal report:

7 Q: Okay. One opinion, slot par settings have no independent economic value to
8 members of the general public. You did not address that in your report?

9 A: No.

10 Q: So in your report, you don't refute that finding?

11 A: In the report, no.

12 Exhibit 1, p. 207:1-8.

13 Next, GSR argues that the December 7, 2012 email from Billy Paganetti establishes that
14 Peppermill "used" GSR's pars. Opposition, p. 21. As an initial matter, alleged evidence of use
15 does not establish value. Furthermore, regarding GSR's claim that Billy Paganetti's email, which
16 is attached hereto as **Exhibit 3**, reflects "use," nothing could be further from the truth. Peppermill
17 has produced **Exhibit 4** (bates #9626-9627), which includes the par information referred to in
18 Billy Paganetti's email. Ryan Tors confessed that he did not key the Atlantis on December 3,
19 2012. See **Exhibit 5** (Affidavit of Denise Vessie). All experts agree that Tors is unreliable and
20 has fabricated information about the par settings of other casinos. To suggest that Peppermill
21 gained a competitive advantage by using false and fabricated information is ludicrous. As Denise
22 Vessie explains, "to the extent Billy Paganetti commented on the par settings reflected on the
23 unredacted copy of the attached document, Billy Paganetti was commenting on information Mr.
24 Tors fabricated." *Id.* at ¶ 7. Peppermill clearly did not gain any competitive advantage from this
25 information.

26 Similarly, GSR points to the emails from Aaron Robyns to Tors as alleged evidence of
27 "use." Opposition, p. 8. However, as Aaron Robyns, Peppermill's Marketing Director, explains,
28 these emails are not evidence of keying. See **Exhibit 8**, ¶ 3. Tors did not key to obtain the par
settings since the games referred to are wide area progressives whose pars are generally known

1 since they are set by the manufacturer. *Id.* Furthermore, Tors' responses were guesses. *Id.* at ¶
2 4.

3 Next, GSR argues that it has direct evidence of Tors theft. Opposition, p. 24. Again, this
4 does not establish value and does not refute the direct evidence of *lack* of value provided by
5 GSR's own executives and experts. Nor are GSR's arguments regarding Peppermill's alleged
6 motive for Tors' conduct accurate. As William Paganetti explains, Peppermill's slight dip in
7 revenue had nothing to do with GSR's par settings. See **Exhibit 6**, ¶ 8 (Affidavit of William
8 Paganetti). Furthermore, Peppermill never had a motive to key other casinos because of its
9 financial position in the market. *Id.*

10 Finally, GSR returns to the Gaming Control Board stipulation and argues that, if
11 Peppermill was fined a million dollars, then clearly the par settings have value. Opposition, p. 24.
12 A fine imposed for an ethical violation concerning *how* the pars were obtained does not establish
13 the value of the pars, and GSR's attempt to hitchhike onto an ethical fine when it cannot establish
14 value or damages is inappropriate. Furthermore, if GSR wishes to rely upon the Gaming Control
15 Board stipulation, then GSR must live with *all* of the findings in that stipulation. Those findings
16 include the specific finding that *there was no evidence that Peppermill used the information*
17 *obtained*. See Opposition to Damages MSJ, Exhibit 7, ¶ 4(a). Importantly, both of the emails
18 which GSR points to as evidence of "use" in its Opposition to this current motion were included in
19 the documents reviewed by the Gaming Control Board, and the Gaming Control Board clearly
20 found that neither of these emails established use. See **Exhibit 7**, Affidavit of Kent R. Robison,
21 Esq. at ¶ 2. Therefore, GSR has not presented any competent to establish that the individual par
22 settings have independent economic value. Summary judgment in favor of Peppermill is
23 warranted.

24 **III. GSR HAS NOT PRESENTED ANY EVIDENCE SUFFICIENT TO ESTABLISH**
25 **THAT AN INDIVIDUAL PAR SETTING IS NOT READILY ASCERTAINABLE**
BY PROPER MEANS.

26 **A. GSR Presents No Evidence to Rebut the Ease With Which Par Settings May**
27 **Be Obtained.**

28 Again, GSR attempts to defeat summary judgment on the issue of whether an individual
par is readily ascertainable by setting forth legal arguments of its own counsel and not by

1 presenting evidence demonstrating an existence of fact. This does not defeat Peppermill's motion
2 for summary judgment. *Dermody*, 113 Nev. at 211, 931 P.2d at 1357.

3 Even if GSR's self-serving arguments could be considered, they are insufficient to create
4 an issue of fact or law. Although GSR argues that the fact that Peppermill paid an expert to
5 demonstrate the different methods of obtaining par settings defeats the argument that these are
6 readily ascertainable, all expert witnesses must be paid and the fact that Peppermill paid an expert
7 witness is irrelevant to the issue at hand. GSR has not presented any evidence that a non-paid
8 ordinary consumer would not be able to perform any of the alternative methods Stacy Friedman
9 identified.

10 In fact, GSR's own expert witness, Rex Carlson, admits the pars are readily ascertainable
11 in a short amount of time and inexpensively:

12 Q: In determining pars can be readily ascertained?

13 A: Yes. In a fairly short amount of time.

14 Q: Inexpensively?

15 A: Yes.

16 Q: But there's no question in that case now that pars are readily ascertainable by means
17 other than using a key.

18 A: In this case, the case where the comp system works the way it does.

19 Q: Right.

20 A: I'll go with. Yes. I agree.

21 Q: That's no longer an issue in this case as far as you are concerned?

22 A: No.

23 Q: We agree given the comp system used at the GSR for many years, pars are readily
ascertainable, correct?

24 A: Yes.

25 Exhibit 1, pp. 221:14-222:7.

26 Furthermore, contrary to GSR's argument, the methods identified by Friedman do not take
27 "hours" to perform or require "complicated mathematical formulas." Opposition, p. 29. The
28 above testimony of GSR's own expert defeats GSR's evidence. *See* Exhibit 1, pp. 221:14-222:7.

1 GSR's own witnesses testified that it is relatively simple to determine a par based on comp
2 percentage reinvestments. *See* Motion, Exhibit 31, p. 98:18-99:1 (Deposition of Scott Bean);
3 Exhibit 29, p. 77:1-15 (Deposition of John Stone). GSR's own Finance Director, Michael
4 Draeger testified that viewing a pay table is a very easy way to determine the par. Motion, Exhibit
5 33, p. 32:19-24. GSR's former director, Tom Sullivan, testified that it is a "simple math equation"
6 to determine par settings from the publicly available gaming abstracts. Motion, Exhibit 24,
7 p.52:25-53:21. ***GSR has not presented any evidence to contradict the direct evidence of its own***
8 ***witnesses and executives.***

9 **B. GSR Does Not Present Any Evidence That the Methods Identified by the**
10 **Peppermill to Ascertain Pars Are "Improper Means."**

11 GSR presents no independent evidence establishing that the methods the Peppermill
12 provided to this Court are improper means. Instead, GSR continues to bleat the same tired horn:
13 "The Gaming Control Board fined them, therefore they have to pay us." *See* Opposition, p. 25.
14 Again, a fine for ethical issues does not automatically render something a trade secret. GSR
15 cannot avoid its burden of proof simply because the Gaming Control Board did not approve of
16 Peppermill's conduct. Disapproval of how the Peppermill obtained the pars does not prove that
17 the par setting is a trade secret.

18 GSR presents no evidence that keying is improper under the Nevada Trade Secrets Act,
19 which is a statutory scheme completely different from and independent of the ethical regulations
20 imposed on casino operators by the Nevada Gaming Control Board. In contrast, Peppermill has
21 established that all casinos have access to the 2341 key that Tors used to obtain the pars, and that
22 there is nothing illegal about using this key to access machines.

23 Furthermore, GSR's argument that Peppermill's identified means are improper because
24 they all involve sending "spies" into the GSR to obtain pars fails in light of the fact that GSR
25 sends "spies" into all of its competitors' casinos to obtain their slot and marketing strategies
26 through its use of CDC. In addition, GSR's expert, Rex Carlson, states that he has no opinion
27 whether the methods of ascertaining pars discussed by Stacy Friedman are proper. Exhibit 1, p.
28 222:8-25 ("Q: . . . And the third thing is proper means, and you're not going to render an opinion
regarding whether the use of that card is or is not proper? A: Correct. . . . Q: . . . And you don't

1 know whether the method by which Mr. Friedman ascertained those pars is proper or not? A:
2 Right.”). Accordingly, GSR has failed to demonstrate a genuine issue of material fact, and
3 summary judgment in favor of Peppermill is warranted.

4 **IV. GSR HAS NOT PRESENTED ANY EVIDENCE SUFFICIENT TO ESTABLISH**
5 **THAT IT REASONABLY TRIED TO KEEP ITS INDIVIDUAL PAR SETTINGS**
6 **CONFIDENTIAL.**

7 **A. GSR Publicly Advertises Its Pars.**

8 GSR attempts to avoid the fact that it publicly advertises its par settings by arguing that it
9 didn’t publicly advertise the pars that Tors obtained. Opposition, p. 34. However, GSR fails to
10 provide this Court with any evidence supporting that assertion (i.e, that the Buffalo slots that were
11 advertised were not the machines keyed by Tors). Furthermore, GSR fails to provide this Court
12 with any evidence that it would not currently be seeking damages against Peppermill if Tors had
13 keyed one of those advertised machines.

14 **B. There is No Presumption of Confidentiality.**

15 GSR next argues that there is a presumption of confidentiality because (1) the machines
16 were locked, and (2) GSR employs security and has security cameras. Opposition, pp. 35-36.
17 These arguments both fail.

18 First, as Peppermill already pointed out in its motion, the “lock and key” that GSR used
19 was a 2341 key which are universal keys that come with any slot machine, are sold in mass
20 quantities to the public, and are available for purchase on Ebay. Motion, Exhibit 3 at ¶ 27; Exhibit
21 4. Every casino owner and operator in the Reno Sparks area had access to GSR’s machines
22 because they all have access to a 2341 key. GSR was aware of this, and yet did not change the
23 locks on its machines.

24 Next, it is common knowledge that all casinos employ security and have security cameras.
25 GSR has not presented any evidence to substantiate the arguments of its counsel that it had
26 security hired for the specific purpose of protecting pars. Accordingly, GSR has not established
27 that there is a presumption of confidentiality.

28 **V. GSR HAS NOT DEMONSTRATED THAT FURTHER DISCOVERY IS**
WARRANTED ON THE ISSUE OF WHETHER A PAR IS A TRADE SECRET.

GSR’s request for additional discovery must be denied. “NRCP 56(f) requires that the

1 party opposing a motion for summary judgment and seeking a denial or continuance of the motion
2 in order to conduct further discovery provide an affidavit giving the reasons why the party cannot
3 present facts essential to justify the party's opposition." *Choy v. Ameristar Casinos, Inc.*, 127 Nev.
4 ___, ___, 265 P.3d 698, 700 (2011). If the party fails to attach the affidavit, the continuance is
5 properly denied. *Id.*

6 Here, GSR does not attach an affidavit in support of its request. Instead, it refers to a
7 declaration attached to a separate opposition. *See* Opposition, p. 37. This does not comply with
8 NRCP 56(f) and is alone grounds for denial of the continuance. In addition, the declaration
9 referred to does not give this Court any reason why GSR cannot present facts essential to justify its
10 Opposition. Specifically, the declaration refers generally to "thousands" of emails but does not
11 specify how those emails will help prove that an individual par setting is a protectable trade secret
12 because it has independent value, is readily ascertainable and/or is the subject of reasonable efforts
13 to keep confidential. *See* Opposition to Renewed Motion for Partial Summary Judgment re
14 Damages, Exhibit 24.

15 This is because GSR is premising its argument on emails it claims it found pertaining to
16 alleged use. Use of information does not establish that the information was a trade secret, and
17 therefore a continuance on this ground is not warranted. Furthermore, contrary to GSR's
18 contention, all of the emails that GSR is contending it needs discovery concerning have already
19 been produced.

20 First, GSR relies on the December 2012 email from Billy Paganetti. This email was part of
21 the documentation provided to the Nevada Gaming Control Board during its investigation of
22 Peppermill. *See* Affidavit of Kent R. Robison, **Exhibit 7**, ¶ 2. Given the massive amount of
23 information, Peppermill produced all of these emails for inspection at the office of its counsel. *Id.*
24 at ¶ 3. GSR failed to inspect these records by: (1) missing the inspection of the items returned by
25 the Gaming Control Board on September 21, 2013; (2) failing to arrange a time to come to
26 Peppermill's counsel's office to review the emails; (3) spending a brief amount of time reviewing
27 the records during the deposition of Tracy Mimno; and (4) failing to contact Peppermill following
28 Ms. Mimno's deposition to discuss production. *Id.* at ¶¶ 4-7.

1 Where the party seeking a NRCP 56(f) continuance "has previously failed to diligently
2 pursue discovery," the request is properly denied. *Francis v. Wynn Las Vegas*, 127 Nev. ___, ___,
3 262 P.3d 705, 713-14 (2011) (internal quotations omitted). GSR's failure to inspect the emails
4 Peppermill produced for inspection is not grounds for a continuance.

5 GSR's argument that there are text messages that have not been produced is similarly
6 unfounded. GSR relies upon the email from Dave McHugh to Tors, in which Dave McHugh
7 refers to a text from William Paganetti, to argue that there are undisclosed text messages
8 pertaining to "theft." Opposition, p. 15. However, William Paganetti's text referred to
9 information he obtained from the gaming abstract and not from any keying activity. Exhibit 6, ¶¶
10 4-5. There are no text messages relating to Tors' theft of the pars. *Id.* at ¶¶ 5-6. Thus, a
11 continuance is not warranted this ground either.

12 Accordingly, GSR is not entitled to a continuance of summary judgment, and Peppermill is
13 entitled to an award of summary judgment in its favor because GSR has not, and cannot, prove that
14 its individual par settings are a protectable trade secret.

15 **V. CONCLUSION.**

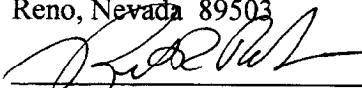
16 For the foregoing reasons, Peppermill respectfully requests that this Court grant
17 Peppermill's motion for summary judgment, and hold that the par settings obtained by Tors are not
18 protectable trade secrets.

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

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

23 DATED this 15th day of December, 2015.

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



28 KENT R. ROBISON
SCOTT L. HERNANDEZ
THERESE M. SHANKS
Attorneys for Defendant
Peppermill Casinos, Inc., d/b/a Peppermill Casino

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 **REPLY TO OPPOSITION TO PEPPERMILL'S RENEWED MOTION FOR SUMMARY JUDGMENT REGARDING TRADE SECRET** 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

MARK WRAY, ESQ.
608 Lander Street
Reno, NV 89509
Email: mwrap@markwraylaw.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
cdavis@cohenjohnson.com

Attorneys for Plaintiff

MARK WRAY, ESQ.
608 Lander Street
Reno, NV 89509
Email: mwrap@markwraylaw.com
Attorneys for Plaintiff

X by electronic email addressed to the above.

by personal delivery/hand delivery addressed to:

by facsimile (fax) addressed to:

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

DATED: This 15th day of December, 2015.


V. JAYNE FERRETTO

Employee of Robison, Belaustegui, Sharp & Low

EXHIBIT LIST

Exhibit No.	Description	Pages
1	Excerpts from the deposition transcript of Rex Carlson deposed on November 13, 2015	8 pages
2	Excerpts from the deposition transcript of Charles Lombardo deposed on November 11, 2015	5 pages
3	12/4/12 email from Billy Paganetti to Ryan Tors et al; and Attached 12/4/12 email from Ryan Tors to Billy Paganetti et al (Highly Confidential)	1 page
4	Bates #PM 9626 and PM 9627 (Highly Confidential)	2 pages
5	Affidavit of Denise Vessie, with attached Bates #PM 9626 - PM 9628 (Highly Confidential)	4 pages
6	Affidavit of William Paganetti	2 pages
7	Affidavit of Kent Robison, with attached Bates #PM 0081 – PM 0085 and PM 0087 – PM 0089 (Highly Confidential)	11 pages
8	Affidavit of Aaron Robyns, with attached Bates #PM 0087 (Highly Confidential)	2 pages

EXHIBIT 1

EXHIBIT 1

1 IN THE SECOND JUDICIAL DISTRICT COURT

2 IN AND FOR THE COUNTY OF WASHOE

3
4 MEI-GSR HOLDINGS, LLC, a Nevada
5 Corporation, d/b/a GRAND SIERRA
6 RESORT,

7 Plaintiff,

8 vs.

CASE NO.

CV13-01704

9 PEPPERMILL CASINOS, INC., a
10 Nevada Corporation d/b/a
11 PEPPERMILL CASINO; RYAN TORS, an
12 individual; JOHN DOES I-X and
13 JANE DOES I-X and CORPORATIONS
14 I-X,

15 Defendants.

16
17 DEPOSITION OF
18 REX CARLSON

19
20 Friday, November 13, 2015
21 9:10 a.m.

22
23 2300 West Sahara Avenue, Suite 770
24 Las Vegas, Nevada

25
KIMBERLY E. BLOMBERG, RPR, CCR NO. 484

1 Q. 100 is the deal broker.

2 A. Yeah.

3 Q. You wouldn't buy those for \$100, would you?

4 A. I wouldn't.

5 Q. Well, your testimony is also consistent with
6 Toby Taylor, director of slots at GSR. He has
7 testified taken alone the pars on Exhibit 7 and 8
8 considered by themselves have no independent economic
9 value.

10 Do you agree?

11 A. Okay. Yeah.

12 Q. Tom Sullivan --

13 MR. EDWARDS: Same objection as before.
14 Standing objection to anything you talk about with
15 regard to value.

16 MR. ROBISON: I agree it's a standing
17 objection with regard to your objections concerning
18 value.

19 MR. EDWARDS: Thank you.

20 MR. ROBISON: But I think some of this
21 testimony also goes into ascertainable, and I think
22 that's covered by your witness's report.

23 MR. EDWARDS: I would agree. Standing
24 objection, and we'll work it out.

25 BY MR. ROBISON:



1 Q. Really? You might find this deposition of
2 Mr. Stone entertaining given your expertise to find out
3 that that would be problematic the way that theo is
4 ascertained.

5 A. Unfortunately, I haven't seen that
6 deposition. I would like to.

7 Q. I'm sure they'll accommodate you. In this
8 case, it's usually done underneath the surface. I gain
9 that information, theo from looking at the screen.
10 Now, once you see the theo on the screen, Mr. Carlson,
11 you know that, if you know your coin in, the simple
12 math is coin in divided by theo equals the par in the
13 machine; correct?

14 A. In their configuration, they're having
15 constant theo for everything. I mean, you can then
16 apply that to other games, yes.

17 Q. You're aware that the theo is constant at
18 GSR?

19 A. Yes. By the information provided.

20 Q. So this method is just as easily used at GSR
21 as Mr. Stone uses it at Peppermill?

22 A. It would be reciprocal, yes.

23 Q. Mr. Stone says there's nothing improper about
24 this methodology.

25 Do you agree?

1 A. I still have a problem with the player's club
2 card, but that's just me because I don't have the legal
3 ramifications.

4 Q. Well, every single player who uses a card
5 racks up theo. There's nothing wrong with that, is
6 there?

7 A. No.

8 Q. In fact, that's probably why they go there is
9 to have the points and the comps. So another thing.
10 One you get -- you go to the kiosk; right? With your
11 card?

12 A. Yes.

13 Q. You put your card in the kiosk? Is that what
14 they call it in kiosk?

15 A. That's fine.

16 Q. That pops the screen. You get your comp
17 dollars and you get your --

18 A. Right.

19 Q. -- your points?

20 A. Yes. And you -- of course, points you
21 reverse back.

22 Q. You're getting there. You divide the theo by
23 the comp dollars, and what do you get?

24 A. The contribution rate.

25 Q. You get the comp rate investment percentage



1 Q. Okay. One opinion, slot par settings have no
2 independent economic value to members of the general
3 public.

4 You did not address that in your report?

5 A. No.

6 Q. So in your report you don't refute that
7 finding?

8 A. In the report, no.

9 Q. And then you've got a handful of pars is an
10 insignificant sample on which to make conclusions about
11 casino strategies.

12 And we didn't see that you rebutted that in
13 any way?

14 A. Correct.

15 Q. Then Mr. Friedman concludes even a large
16 number of par settings by themselves are insufficient
17 to know a casino's operation strategies.

18 A. If you have a sufficient number of them, you
19 have part of the strategy.

20 Q. Part of the strategy?

21 A. Yes.

22 Q. But you didn't rebut this finding?

23 A. No.

24 Q. Or you didn't rebut Mr. Friedman's opinion in
25 that respect?



1 can't say whether it's proper or improper. I can say
2 that it can be done.

3 Q. Okay. By the way, the methodologies that he
4 used were, in fact, accurate?

5 A. Yes.

6 Q. This ratio analysis -- I mean, he did what?
7 How many machines did he do?

8 A. There are quite a number of machines. And
9 you had like 100 percent hit rate from what I read in
10 the report.

11 Q. Did a lot of machines with 100 percent
12 accuracy?

13 A. Yes.

14 Q. In determining pars can be readily
15 ascertained?

16 A. Yes. In a fairly short amount of time.

17 Q. Inexpensively?

18 A. Yes.

19 Q. But there's no question in that case now that
20 pars are readily ascertainable by means other than
21 using a key.

22 A. In this case, the case where the comp system
23 works the way it does.

24 Q. Right.

25 A. I'll go with it. Yes. I agree.



1 Q. That's no longer an issue in this case as far
2 as you are concerned?

3 A. No.

4 Q. We agree given the comp system used at the
5 GSR for many years, pars are readily ascertainable;
6 correct?

7 A. Yes.

8 Q. So the only issue remaining with regard to
9 the definition of a trade secret is independent
10 economic value. I've covered that with you even though
11 it's been over objection with regard to Exhibit 7 and
12 8. And the third thing is proper means, and you're not
13 going render an opinion regarding whether the use of
14 that card is or is not proper?

15 A. Correct.

16 Q. So those don't have value because they may
17 change the next day? Exhibit 7 and 8?

18 A. These particular ones. Two minimal.

19 Q. You wouldn't pay me more than \$100 for those?

20 A. Certainly not. I mean, I wouldn't.

21 Q. So we got value out of the way, readily
22 accessible out of the way, and you don't know whether
23 the method by which Mr. Friedman ascertained those pars
24 is proper or not?

25 A. Right.



REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Kimberly E. Blomberg, a Certified Court
Reporter, licensed by the State of Nevada, do hereby
certify:

That I reported the deposition of REX
CARLSON, on November 13, 2015, commencing at the hour
of 9:10 a.m.

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

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

I further certify that I am not a relative or
employee of an attorney or counsel involved in said
action, nor a person financially interested in said
action.

IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
23rd of November, 2015

Kimberly Blomberg
KIMBERLY E. BLOMBERG, CCR NO. 484



FILED
Electronically
2015-12-15 05:00:35 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5280379 : mcholino

EXHIBIT 2

EXHIBIT 2

1 IN THE SECOND JUDICIAL DISTRICT COURT

2 IN AND FOR THE COUNTY OF WASHOE

3
4 MEI-GSR HOLDINGS, LLC, a Nevada
5 Corporation, d/b/a GRAND SIERRA
6 RESORT,

7 Plaintiff,

8 vs.

CASE NO.

9 CV13-01704

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

16 Defendants.

17 DEPOSITION OF
18 CHARLES LOMBARDO

19 Wednesday, November 11, 2015
20 9:04 a.m.

21 2300 West Sahara Avenue, Suite 770
22 Las Vegas, Nevada

23
24
25 KIMBERLY E. BLOMBERG, RPR, CCR NO. 484

1 Q. So for all we know, GSR could have changed
2 its pars on December 30, 2011, and made the information
3 on Exhibit 7 meaningless?

4 A. That is correct.

5 Q. Valueless?

6 A. Valueless.

7 Q. For all we know, the GSR could have changed
8 its pars on June 16, 2012, and rendered the information
9 on Exhibit 8 meaningless?

10 A. Unless he came back in.

11 Q. But if he did not come right back in, it's
12 meaningless?

13 A. It's an assumption.

14 Q. Let's go back. June 14, 2012 there's
15 evidence that Ryan Tors may have keyed six machines at
16 the GSR; correct?

17 A. Yes.

18 Q. Exhibit 8. You've seen that?

19 A. I've seen that.

20 Q. Do you have any information it came in any
21 time after that?

22 A. No.

23 Q. Other than the night he got caught?

24 A. No. I have no reason to believe that he
25 didn't.

1 I'm sorry.

2 Is your opinion based upon a keying incident
3 that you're unaware of?

4 A. No.

5 Q. Is your opinion based upon the fact that
6 you've seen evidence that he keyed on December 29,
7 2011, and June 14, 2012?

8 A. Yes.

9 Q. Okay. Is your opinion based upon any other
10 keying activities by Ryan Tors at the GSR?

11 A. No.

12 Q. So getting back to this value proposition,
13 the GSR could have changed the par settings on the six
14 machines reflected on the second page of Exhibit 8, the
15 day after Mr. Tors obtained that information?

16 A. Correct.

17 Q. Rendering that information valueless?

18 A. That is correct.

19 Q. Now, in your report, Mr. Lombardo, you say
20 that this methodology by which you get pars that were
21 alluded to in Mr. Lucas's report and Stacy Friedman's
22 report, you think that's unreliable because it's not
23 constant and -- or periodic; correct?

24 A. I think that's what I said here.

25 Q. I chopped up your words or whoever's words

1 Q. Are you aware Ms. Mimno knows that?

2 A. I'm not aware. And again, I think I stated
3 earlier how they choose to spend their money is their
4 business.

5 Q. It's our business too.

6 A. I wouldn't trust those guys too.

7 Q. It's our business too because we're talking
8 about readily ascertainable.

9 A. I would tell you I wouldn't trust them. I
10 wouldn't hire them.

11 Q. I don't care if you trust them. We're
12 talking about readily accessible. And GSR has readily
13 accessed our pars; correct? According to the testimony
14 of John Stone?

15 A. According to the testimony.

16 Q. You have a problem with that?

17 A. I do.

18 Q. They shouldn't be doing that, should they?

19 A. They shouldn't be doing that. They shouldn't
20 be in that kind of business.

21 Q. Ms. Mimno was asked about pretty much the
22 same question that you were asked about the pars. And
23 I asked her whether or not she would purchase six pars
24 from the 13 pars from the Peppermill.

25 And she said, I agree I'm not in the position



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Kimberly Blomberg



ESQUIRE
SOLUTIONS

800.211.DEPO (3376)
EsquireSolutions.com

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

From: Billy Paganetti
Sent: Tuesday, December 04, 2012 9:31 AM
To: Ryan Tors; NBPartners; John C Hanson (Reno GM); David McHugh
Subject: RE: Atlantis

Thanks Ryan, good to know.

- I guess our frequent guests are starting to feel how loose our slots are... making it seem like the Atlantis has tightened theirs, even though they really haven't! Over the years, they frequently would say, "we win more at the Atlantis, you guys have tightened your slots". Now... with them feeling like they win more here vs. the Atlantis, they will start saying, "We win more at the Peppermill... the Atlantis has tightened their slots". With us being over 20% looser on the pennies, I expect that this feeling among locals will continue to grow stronger.

Thanks,

Billy

From: Ryan Tors
Sent: Tuesday, December 04, 2012 9:27 AM
To: NBPartners; John C Hanson (Reno GM); David McHugh; Billy Paganetti
Subject: Atlantis

There have been no par changes- guaranteed
<< File: Atlantis pars.xls >>

Thanks-
Ryan Tors
Peppermill Casinos
775 689 7499

CONFIDENTIAL

EXHIBIT 4

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 4

NB Rec
R/T

Denise Vessie

From: Ryan Tors
Sent: Tuesday, December 04, 2012 9:27 AM
To: NBPartners; John C Hanson (Reno GM); David McHugh; Billy Paganetti
Subject: Atlantis

~~There have been no par changes guaranteed~~



Atlantis pars.xls

Estimated
got info from Dora/accountant

Thanks-
Ryan Tors
Peppermill Casinos
775 689 7499

(P)

Atlantis

1 55546
2 55721
3 55316
4 55545 (11-18)
5 56106
6 55350
7 53146
8 54496
9 54390
10 53889
11 53357 (04-08)
12 55907
13 55072 (01-58)
14 55720
15 54626
16 55653
17 55722 (04-08)
18 55315 (04-08)
19 55695 (12-34)
20 53355 (04-08)
21 53244 (12-34)
22 53888 (12-34)
23 54797
24 53509
25 53327 (04-10)
26 55665
27 53165
28 52189 (01-64)
29 55144
30 53515 (11-64)
31 52895
32 52894
33 53671 (01-64)
34 53483 (05-98)

3/5/2011

1/7/2012

1/28/2012

6/17/2012

12/3/2012

*X

*X

Estimated

an Atlantis game after 1/9/12

5 Dragons
Wicked Winnings II
100 Lions
Buffalo
Viking Riches
100 Lions
Road Trip
Shaman Magic
50 Dragons
100 Lions
Pelican Pete
Wicked Winnings II
Buffalo
Wicked Winnings II
Cashman
Wings over Olympus
Wildways
Sun and Moon
Buffalo
Choy Sun Doa
Jaguar Mist
Dragon Emperor
Stripmania
Betty the Yeti
Treasures of Troy
Elvira
CW
Lobstermania
Hexbreaker
Twin Win
Allen
Lobstermania
Davinci Diamonds
Twin Win

3/5/11 & 1/7/12 game were played.

1/28/12, 6/17/12

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

AFFIDAVIT OF DENISE VESSIE

I, DENISE VESSIE, being first duly sworn, depose and state under penalty of perjury the following:

1. I am the Executive Vice President for the Defendant Peppermill Casinos, Inc. ("Peppermill").

2. During the Gaming Control Board's investigation of Ryan Tors' activities, I was instructed by Peppermill gaming counsel, Frank Schreck, to carefully interview Ryan Tors to see whether his reports were accurate, honest and reliable.

3. I interviewed Mr. Tors concerning each of his alleged keying incidents.

4. Mr. Tors admitted to me that the keying information he logged for December 3, 2012 of the Atlantis was an "estimate" of the Atlantis' particular par settings.

5. Although Mr. Tors admitted that he did not key the Atlantis on December 3, 2012, he indicated to me that he had a relationship with an Atlantis representative in accounting named "Dora" who told Mr. Tors that the Atlantis had not changed its par settings.

6. Attached to my Affidavit are the documents that were produced in discovery verifying and proving the foregoing. The language on the attached "Estimated . . . got info from Dora/accountant" is information given to me during my interview with Ryan Tors. Mr. Tors initialed that explanation as being truthful and accurate as reflected on bates 9626.

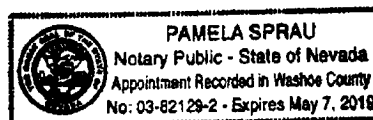
7. To the extent Billy Paganetti commented on the par settings reflected on the unredacted copy of the attached document, Billy Paganetti was commenting on information Mr. Tors fabricated.

Dated this 15th day of December, 2015.


DENISE VESSIE

Subscribed and Sworn to Before me
on this 15th day of December, 2015, by
Denise Vessie.


NOTARY PUBLIC



NB Rec
R/T

Denise Vessie

From: Ryan Tors
Sent: Tuesday, December 04, 2012 9:27 AM
To: NBPartners; John C Hanson (Reno GM); David McHugh; Billy Paganetti
Subject: Atlantis

~~There have been no par changes guaranteed~~



Atlantis pars.xls

Estimated
got info from Dora/accountant

Thanks-
Ryan Tors
Peppermill Casinos
775 689 7499

(P)

Atlantis

1	55546				5 Dragons
2	55721				Wicked Winnings II
3	55316				100 Lions
4	55545 (11-18)				Buffalo
5	56106				Viking Riches
6	55350				100 Lions
7	53146				Road Trip
8	54496				Shaman Magic
9	54390				50 Dragons
10	53889				100 Lions
11	53357 (04-08)				Pelican Pete
12	55907				Wicked Winnings II
13	55072 (01-58)				Buffalo
14	55720				Wicked Winnings II
15	54626				Cashman
16	55653				Wings over Olympus
17	55722 (04-08)				Wildways
18	55315 (04-08)				Sun and Moon
19	56595 (12-34)				Buffalo
20	53356 (04-08)				Choy Sun Doa
21	53244 (12-34)				Jaguar Mist
22	53888 (12-34)				Dragon Emperor
23	54797				Shrimpmania
24	53509				Belt the Yeti
25	53327 (04-10)				Treasures of Troy
26	55655				Elvira
27	53165				CV
28	52189 (01-64)				Lobstermania
29	55144				Hexbreaker
30	53515 (11-64)				Twinn Win
31	52895				Allen
32	52894				Lobstermania
33	53671 (01-64)				Davinci Diamonds
34	53483 (05-98)				Twinn Win

3/5/2011

1/7/2012

1/28/2012

6/17/2012

12/3/2012

Estimated

am atlantis game after 1/9/12

3/5/11 ~ 1/7/12? Thanks kept.

1/28/12, 6/17/12

35	55483 (11-24)					Persian Princess
36	13260 (11-24)					Hoot Loot
37	52890 (11-64)					Coyote Moon
38	54168 (07-16)					Treasures of Troy
39	52615 (01-36)					Dam Lumberjacks
40	53513 (10-85)					Twin Win
41	52723 (10-32)					Stinkin Rich
42	55646 (10-32)					Tabasco
43	53101 (10-32)					Coyote Moon
44	52889 (11-64)					Aztec Temple
45	56606 (04-07)					Wild Wolf
46	55417 (04-07)					Cats
	average					

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EXHIBIT 6

EXHIBIT 6

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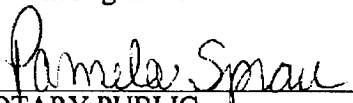
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1 free play and reduced our par settings, and for many other reasons, the revenue for penny slots
2 slightly declined in 2012. There was not and never has been a "motive" to change par settings at
3 our properties or to "key" other properties because of our financial performance in the market. I
4 have explained this to GSR's lawyers at my deposition and I explained this to GCB agents during
5 GCB's investigation.

6 Dated this 15th day of December, 2015.

7 
8 WILLIAM PAGANETTI

9
10 Subscribed and sworn to before me
11 on this 15th day of December, 2015, by
12 William Paganetti.

13 
14 NOTARY PUBLIC

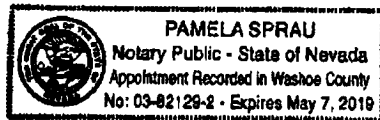


EXHIBIT 7

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

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1 produce this information.

2 8. On page 8 of GSR's Opposition (and on page 6 of GSR's Opposition to
3 Peppermill's Motion for Summary Judgment Regarding Damages), GSR identifies five emails
4 that GSR mischaracterizes as disclosures of GSR's par settings.

5 9. Attached hereto are the five emails.

6 10. The June 16, 2012 email, to which a schedule of six par settings is attached,
7 reflects one incident in which it is believed that Mr. Tors actually keyed GSR's machines.

8 11. The June 25, 2012 email simply forwards the same information to Dan Smercina,
9 who was then employed as General Manager of the Peppermill's Western Village Casino. It
10 does not reflect or contain any information that was not obtained by Mr. Tors on June 14, 2012.

11 12. The January 3, 2013 email is believed to be the attached to the January 2, 2013
12 email. This reflects a shopping experience by Mr. Tors in which he did not key any machines,
13 but only did a visual inspection according to Mr. Tors' testimony.

14 13. The March 18, 2013 email string between Aaron Robyns and Ryan Tors pertains
15 to a wide area progressive slot machine known as Sex in the City. Mr. Robyns' Affidavit and the
16 testimony from all experts have proven that the hold percentages on wide area progressive
17 machines are readily ascertainable because the hold percentage is set by the manufacturer of the
18 machine and the sponsor of the progressive program. Indeed, no keying of the Sex in the City
19 machine occurred.

20 14. The attached June 13, 2013 email is to an employee of the Peppermill, Jim
21 Moritz. The information on the second page reflects Grand Sierra 6.6. This "6.6" is the
22 "average" that is on Mr. Tors' schedule attached to his June 15, 2012 email and does not reflect
23 any additional keying activity.

24 15. There are only two instances reflected by the discovery exchanged in which Mr.
25 Tors may have possibly used a 2341 key to access GSR's machines. Mr. Tors has testified that
26 he probably did not key the GSR on December 29, 2011. The attached emails pertain to the June
27 14, 2012 incident and other incidents in which there was no keying at all.

28 16. Attached hereto as **Exhibit 1** are true and accurate excerpts from the transcript of

1 the deposition of Rex Carlson taken on November 13, 2015.

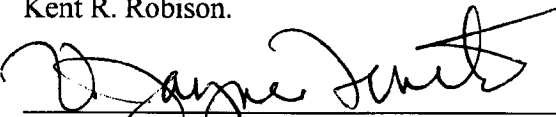
2 17. Attached hereto as **Exhibit 2** are true and accurate excerpts from the transcript of
3 the deposition of Charles Lombardo taken on November 11, 2015.

4 18. Attached hereto as **Exhibit 3** is a true and accurate copy of an email thread
5 containing a December 4, 2012 9:31 AM email from Billy Paganetti to Ryan Tors, and others,
6 and a December 4, 2012 9:27 AM email from Ryan Tors to Billy Paganetti and others.

7 Dated this 15th day of December, 2015.

8 
9 KENT R. ROBISON

10 Subscribed and sworn to before me
11 on this 15th day of December, 2015 by
12 Kent R. Robison.

13 
14 NOTARY PUBLIC



From: Ryan Tors
Sent: Friday, June 15, 2012 8:51 AM
To: NBPartners; John C Hanson (Reno GM); Billy Paganetti; David McHugh
Subject: Grand Sierra pars



Grand Sierra
pars1.xls

Thanks-
Ryan Tors
Peppermill Casinos
775 689 7499

HIGHLY CONFIDENTIAL

Grand Sierra

6/14/2012

1	04-07	20376	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	Cafe
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 02979

From: David McHugh
Sent: Monday, June 25, 2012 2:17 PM
To: Dan Smerolna
Subject: Fw: Grand Sierra pars
Attachments: Grand Sierra pars1.xls

From: Ryan Tors
To: NBPartners; John C Hanson (Reno GM); Billy Paganetti; David McHugh
Sent: Fri Jun 15 08:50:59 2012
Subject: 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	20060	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 0084

RA 02981

From: Ryan Tors
Sent: Wednesday, January 02, 2013 11:24 AM
To: NBPartners; Billy Paganetti; John C Hanson (Reno GM); Aaron Robyns; David McHugh; Peter Batchelor; Rob Erwin; Bill Hughes
Subject: NYE shops

I shopped several casinos NYE. Comments below.

Grand Sierra -- Observed no changes to penny pars, averaged around 6.7%. The layout of the casino has been completely changed since the last time I was there. 2 months ago? Fairly nice job, but non-gaming space has grown huge. Even in the gaming area, some slot banks look like they are 25 feet apart. This place had a good feel surrounding the south end bar. Lots of young people not playing however. Also lots of people sitting at games with their back to it. It looked like a lot of people were paying cash for drinks!

They also have the same problem as we do, only much worse. We still have remnants from the eye poppers put on slots we used for the last penny promotion. Ours has only been for a few days and only slight remnants. They have lots of plastic, springs and parts of signs and it has been months. Tacky.

HIGHLY CONFIDENTIAL

PM 0085

RA 02982

From: Ryan Tors
Sent: Monday, March 18, 2013 9:32 AM
To: Aaron Robyns
Subject: RE: Grand Sierra

Looks like the most liberal is 10%, could be 12, but I guess 10

Thanks-
Ryan Tors
Peppermill Casinos
775.689.7499

From: Aaron Robyns
Sent: Monday, March 18, 2013 9:28 AM
To: Ryan Tors
Subject: Grand Sierra
Importance: High

What would you estimate that GSR's hold percentage would be on Penny Video Reel machines (Sex in the City theme)? I am trying to calculate their comp reinvestment, thanks.

Aaron Robyns
Corporate Executive Director of Marketing
Peppermill Hotel & Casino
(Direct) 775.689.7007
arobyns@PeppermillReno.com

HIGHLY CONFIDENTIAL

From: Ryan Tors
Sent: Thursday, June 13, 2013 4:49 PM
To: Jim Moritz
Subject: pars



*June 2012
summary.xlsx

Thanks-
Ryan Tors
Peppermill Casinos
775 689 7499

HIGHLY CONFIDENTIAL

Summary - June 2012

Grand Sierra

6.60

HIGHLY CONFIDENTIAL

PM 0089

RA 02985

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

1 **AFFIDAVIT OF AARON ROBYNS**

2 I, AARON ROBYNS, being first duly sworn, depose and state under penalty of perjury
3 the following:

4 1. I am the Marketing Director for the Defendant Peppermill Casinos, Inc.
5 ("Peppermill").

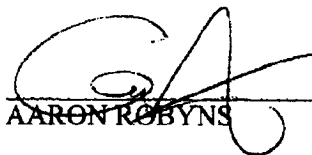
6 2. As reflected in the attached email string, I asked Ryan Tors to "estimate" the hold
7 percentage on a Sex in the City theme video reel slot machine.

8 3. Sex in the City is a wide area progressive machine. Its pars are readily
9 ascertainable without the use of a key because the pars are set by the manufacturer of the
10 machine. I, therefore, knew that Mr. Tors could easily and readily ascertain the hold percentage
11 on a wide progressive without utilizing a 2341 key and without doing anything improper or
12 illegal.

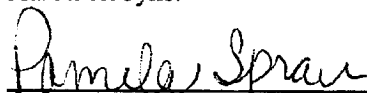
13 4. Mr. Tors responded to my email with his estimate. As reflected, Mr. Tors
14 guessed at the setting.

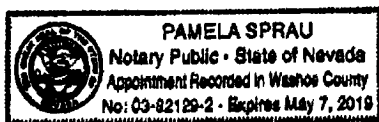
15 5. I did not ask Mr. Tors to key a GSR slot machine and as is quite evident by the
16 attached email, he did not do so because he guessed at the setting. As I have testified at my
17 deposition, wide area progressive slot machines have pre-established par settings that are set by
18 the manufacturer of the machine and the operator of the progressive program.

19 Dated this 15th day of December, 2015.

20
21 
22 AARON ROBYNS

23 Subscribed and Sworn to Before me
24 on this 15th day of December, 2015, by
25 Aaron Robyns.

26 
27 NOTARY PUBLIC



From: Ryan Tors
Sent: Monday, March 18, 2013 9:32 AM
To: Aaron Robyns
Subject: RE: Grand Sierra

Looks like the most liberal is 10%, could be 12, but I guess 10

Thanks-
Ryan Tors
Peppermill Casinos
775.689.7499

From: Aaron Robyns
Sent: Monday, March 18, 2013 9:28 AM
To: Ryan Tors
Subject: Grand Sierra
Importance: High

What would you estimate that GSR's hold percentage would be on Penny Video Reel machines (Sex in the City theme)? I am trying to calculate their comp reinvestment, thanks.

Aaron Robyns
Corporate Executive Director of Marketing
Peppermill Hotel & Casino
(Direct) 775.689.7007
arobyns@PeppermillReno.com

HIGHLY CONFIDENTIAL

Jayne Ferretto

From: eflex@washoecourts.us
Sent: Wednesday, December 16, 2015 8:52 AM
To: Kent Robison
Cc: Jayne Ferretto
Subject: NEF: MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7): Reply to/in Opposition: CV13-01704

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CV13-01704

Judge: HONORABLE PATRICK FLANAGAN

Official File Stamp: 12-15-2015:17:00:35
Clerk Accepted: 12-16-2015:08:51:08
Court: Second Judicial District Court - State of Nevada
Civil
Case Title: MEI-GSR HOLDINGS VS PEPPERMILL CASINOS; ETAL (B7)
Document(s) Submitted: Reply to/in Opposition
- **Continuation
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Filed By: Kent R. Robison

You may review this filing by clicking on the following link to take you to your [cases](#).

This notice was automatically generated by the courts auto-notification system.

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

The following people were served electronically:

SCOTT L. HERNANDEZ, ESQ.
MARK DOUGLAS WRAY, ESQ. for MEI-GSR HOLDINGS, LLC
H. STAN JOHNSON, ESQ. for MEI-GSR HOLDINGS, LLC
THERESE M. SHANKS, ESQ. for PEPPERMILL CASINOS, INC.
KEEGAN GRAHAM LOW, ESQ. for PEPPERMILL CASINOS, INC.

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

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

MEI-GSR HOLDINGS, LLC for PEPPERMILL CASINOS, INC.

PEPPERMILL CASINOS, INC. for MEI-GSR HOLDINGS, LLC

CHRIS DAVIS, ESQ. for MEI-GSR HOLDINGS, LLC

TERRY KINNALLY, ESQ. for MEI-GSR HOLDINGS, LLC

DARLENE B CARUSO, ESQ for NEVADA GAMING COMMISSION,
STATE GAMING CONTROL BOARD

3790
KENT R. ROBISON, ESQ. - NSB #1167
krobison@rbsllaw.com
SCOTT L. HERNANDEZ, ESQ. - NSB #13147
shernandez@rbsllaw.com
THERESE M. SHANKS, ESQ. - NSB #12890
tshanks@rbsllaw.com
Robison, Belaustegui, Sharp & Low
A Professional Corporation
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169

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

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

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

CASE NO.: CV13-01704

DEPT. NO.: B7

Plaintiff,

vs.

BUSINESS COURT DOCKET

PEPPERMILL CASINOS, INC., a Nevada
Corporation, d/b/a/ PEPPERMILL CASINO,
Defendant.

**DEFENDANT PEPPERMILL CASINOS, INC.'S REPLY
IN SUPPORT OF MOTION FOR SANCTIONS**

Defendant Peppermill Casinos, Inc. ("Peppermill"), by and through its counsel, Robison, Belaustegui, Sharp and Low, hereby replies in support of its Motion for Sanctions.

I. SANCTIONS ARE APPROPRIATE UNDER NRCP 16.1(e)(3).

Peppermill seeks sanctions against GSR and its counsel for their failure to reasonably comply with NRCP 16.1. GSR argues that it has complied with the provisions of this rule because it timely disclosed Gregory Gale by the rebuttal expert deadlines. *See* GSR's Opposition to Peppermill's Motion for Sanctions With Respect to Gregory Gale ("Opposition"), pp. 4-5. This argument overlooks the fact that GSR has, since its initial disclosure of Mr. Gale as a "rebuttal" expert, attempted to use Mr. Gale as an expert in GSR's case-in-chief and *not* as a rebuttal expert.

1 Because GSR was required to disclose its experts for its case-in-chief by June 4, 2015, GSR did
2 not reasonably comply with NRCP 16.1.

3 As Peppermill argued in its motion, NRCP 16.1(a)(2)(C) specifically states that “rebuttal”
4 experts are not experts “whose purpose is to contradict a portion of another party’s case in chief
5 that *should have been expected and anticipated by the disclosing party*.” Any experts whose
6 testimony and/or opinions will consist of the above must be disclosed by the deadline set for initial
7 expert witness disclosures. *Id.* GSR did not do this.

8 GSR attempts to gloss over this fact by arguing that Gale simply contradicted his prior
9 report with his deposition. Opposition, pp. 4-5. This argument misrepresents the contents of
10 Gale’s report. Gale’s report did not rebut any opinion of Peppermill’s experts. *See* Exhibit 7.
11 Thus, from the date of Gale’s disclosure, it was clear that Gale was not a rebuttal expert. He was,
12 instead, an untimely disclosed expert. GSR presents no argument or evidence to this Court that
13 GSR would not still be relying on Gale as a purported rebuttal expert if Gale had not testified so
14 clearly that he was not, and had never intended to be, a rebuttal expert. GSR’s failure to comply
15 with the disclosure deadlines set forth in NRCP 16.1 is grounds for sanctions. NRCP 16.1(e)(3).

16 GSR spends much of its Opposition arguing that the punishment should fit its crime, and
17 that Peppermill has asked for too much regarding sanctions. However, Peppermill very clearly
18 requested that this Court sanction GSR’s counsel by ordering counsel to reimburse Peppermill for
19 the legal fees and costs Peppermill incurred as a result of deposing an untimely disclosed expert,
20 who was withdrawn as a witness immediately following his deposition. This sanction is
21 reasonably tailored to GSR’s offense.

22 **II. SANCTIONS ARE APPROPRIATE UNDER NRCP 37(b)(2).**

23 Peppermill seeks sanctions under NRCP 37(b)(2) against GSR for its failure to obey this
24 Court’s Scheduling Order. GSR argues that sanctions are not warranted because the failure to
25 obey an order must be a failure to obey a particular order relating to the particular alleged abuse.
26 Opposition, p. 3. Yet, that is exactly what Peppermill has requested. This Court ordered that all
27 initial experts be disclosed by June 4, 2015 in its Scheduling Order. Exhibit 5. That amended
28 Scheduling Order was entered *after* a lengthy discovery dispute involving the sufficiency of GSR’s

1 expert disclosures and was not a general scheduling order. GSR did not timely disclose Gale by
2 June 4, 2015. Peppermill's motion seeks sanctions for a violation of the exact language in this
3 Court's order.

4 GSR's sole argument against this is that Gale was disclosed by this Court's ordered
5 deadlines for rebuttal experts. Opposition, p. 3. However, as Peppermill has shown, Gale was not
6 a rebuttal expert and should have been disclosed by the June 4, 2015 deadline for initial expert
7 disclosures. GSR's untimely disclosure of Gale violated this Court's Scheduling Order and is
8 grounds for sanctions under NRCP 37(b)(2).

9 Finally, Peppermill did request that this Court sanction GSR under NRCP 37(b) by
10 dismissing its Complaint. However, Peppermill also noted to this Court that an order requiring
11 GSR to reimburse Peppermill for the legal fees and costs it incurred in deposing Gale and bringing
12 this current motion would be an appropriate sanction under NRCP 37(b)(2). Therefore,
13 Peppermill is not, as GSR contends, overreaching in its requests for sanctions.

14 **III. SANCTIONS UNDER THIS COURT'S INHERENT POWER ARE**
15 **APPROPRIATE.¹**

16 Finally, GSR contends that sanctions pursuant to this Court's inherent power to sanction
17 are inappropriate because GSR has not engaged in sufficiently willful or malicious conduct to
18 warrant such sanctions. However, as shown, GSR has a pattern of providing insufficient and
19 improper expert disclosures. Furthermore, GSR was aware that Peppermill would challenge the
20 disclosure of Gale as a rebuttal expert *before* this Court entered its Amended Scheduling Order
21 because Peppermill did, in fact, challenge Gale. Exhibit 4. Furthermore, GSR was aware that
22 Gale did not qualify as a rebuttal expert because the Discovery Commissioner granted
23 Peppermill's motion to exclude Gale and concluded that Gale was an untimely disclosed expert
24 witness. *Id.* Yet, when given a chance to rectify its mistake, GSR did not disclose Gale by the
25 June 4, 2015 deadline, and again attempted to disclose Gale as a "rebuttal" expert. This has
26 generated needless cost and expense to Peppermill. Accordingly, this Court should sanction GSR
27 and its counsel for their continuously abusive litigation practices.

28 ¹ Peppermill did not request sanctions under NRCP 11. It is unclear why GSR argued against the imposition of
sanctions pursuant to that rule in its Opposition.

1 **IV. CONCLUSION**

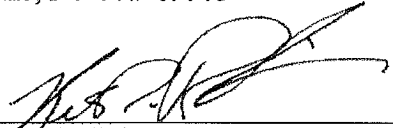
2 For the foregoing reasons, Peppermill respectfully requests that this Court sanction GSR
3 and GSR's attorneys and require them to reimburse Peppermill for its legal fees and costs incurred
4 in deposing Gale and bringing this current motion. Alternatively, Peppermill requests that this
5 Court sanction GSR by dismissing its Complaint.

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

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

10 DATED this 23^d day of December, 2015.

11
12 ROBISON, BELAUSTEGUI, SHARP & LOW
13 A Professional Corporation
14 71 Washington Street
15 Reno, Nevada 89503

16 
17 KENT R. ROBISON
18 SCOTT L. HERNANDEZ
19 THERESE M. SHANKS
20 Attorneys for Defendant
21 Peppermill Casinos, Inc., d/b/a Peppermill Casino

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 **DEFENDANT PEPPERMILL CASINOS, INC.'S REPLY IN SUPPORT OF MOTION FOR SANCTIONS** 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

MARK WRAY, ESQ.
608 Lander Street
Reno, NV 89509
Email: mwrap@markwraylaw.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
cdavis@cohenjohnson.com
Attorneys for Plaintiff

MARK WRAY, ESQ.
608 Lander Street
Reno, NV 89509
Email: mwrap@markwraylaw.com
Attorneys for Plaintiff


by electronic email addressed to the above.

by personal delivery/hand delivery addressed to:
Honorable Patrick Flanagan
Second Judicial District Court - Department 7
75 Court Street
Reno, NV 89501

by facsimile (fax) addressed to:

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

DATED: This 23rd day of December, 2015.


V. JAYNE FERRETTO
Employee of Robison, Belaustegui, Sharp & Low

3860
KENT R. ROBISON, ESQ. - NSB #1167
krobison@rbsllaw.com
SCOTT L. HERNANDEZ, ESQ. - NSB #13147
shernandez@rbsllaw.com
THERESE M. SHANKS, ESQ. - NSB #12890
tshanks@rbsllaw.com
Robison, Belaustegui, Sharp & Low
A Professional Corporation
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169

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

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

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

CASE NO.: CV13-01704

DEPT. NO.: B7

Plaintiff,

vs.

BUSINESS COURT DOCKET

PEPPERMILL CASINOS, INC., a Nevada
Corporation, d/b/a/ PEPPERMILL CASINO,

Defendant.

**REQUEST FOR SUBMISSION OF DEFENDANT PEPPERMILL CASINOS, INC.'S
MOTION FOR SANCTIONS**

It is requested that Defendant Peppermill Casinos, Inc.'s Motion for Sanctions, which was filed in the above-entitled matter on November 20, 2015, be submitted for decision. The undersigned attorney certifies that a copy of this Request has been served on all counsel of record.

AFFIRMATION
Pursuant to NRS 239B.030

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

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1 number of any person.

2 DATED this 23rd day of December, 2015.

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



7 KENT R. ROBISON
8 SCOTT L. HERNANDEZ
9 THERESE M. SHANKS
10 Attorneys for Defendant
11 Peppermill Casinos, Inc., d/b/a Peppermill Casino
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1 **CERTIFICATE OF SERVICE**

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

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

8 H. STAN JOHNSON, ESQ.

9 TERRY KINNALLY, ESQ.

10 CHRIS DAVIS, ESQ.

11 Cohen-Johnson, LLC

12 255 E. Warm Springs Road, Suite 100

13 Las Vegas, NV 89119

14 Email: sjohnson@cohenjohnson.com

15 tkinnally@cohenjohnson.com

16 cdavis@cohenjohnson.com

17 *Attorneys for Plaintiff*

18 MARK WRAY, ESQ.

19 608 Lander Street

20 Reno, NV 89509

21 Email: mwrap@markwraylaw.com

22 *Attorneys for Plaintiff*

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

24 H. STAN JOHNSON, ESQ.

25 TERRY KINNALLY, ESQ.

26 CHRIS DAVIS, ESQ.

27 Cohen-Johnson, LLC

28 255 E. Warm Springs Road, Suite 100

Las Vegas, NV 89119

Email: sjohnson@cohenjohnson.com

tkinnally@cohenjohnson.com

cdavis@cohenjohnson.com

Attorneys for Plaintiff

MARK WRAY, ESQ.

608 Lander Street

Reno, NV 89509

Email: mwrap@markwraylaw.com

Attorneys for Plaintiff

 by electronic email addressed to the above.

 by personal delivery/hand delivery addressed to:

Honorable Patrick Flanagan

Second Judicial District Court - Department 7

75 Court Street

Reno, NV 89501

 by facsimile (fax) addressed to:

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DATED: This 20th day of December, 2015.



V. JAYNE FERRETTO

Employee of Robison, Belaustegui, Sharp & Low

4210
KENT R. ROBISON, ESQ. - NSB #1167
krobison@rbsllaw.com
SCOTT L. HERNANDEZ, ESQ. - NSB #13147
shernandez@rbsllaw.com
THERESE M. SHANKS, ESQ. - NSB #12890
tshanks@rbsllaw.com
Robison, Belaustegui, Sharp & Low
A Professional Corporation
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169

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

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

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

Plaintiff,

vs.

CASE NO.: CV13-01704

DEPT. NO.: B7

BUSINESS COURT DOCKET

PEPPERMILL CASINOS, INC., a Nevada
Corporation, d/b/a/ PEPPERMILL CASINO,
Defendant.

PEPPERMILL CASINOS, INC.'S TRIAL STATEMENT

Pursuant to WDCR 5 and this Court's Scheduling Order, Peppermill Casinos, Inc.
("Peppermill") submits the following as its Trial Statement.

I.

FACTS

On July 12, 2013, Peppermill employee Ryan Tors was caught accessing slot machines at
the Grand Sierra Resort ("GSR"). Tors utilized a 2341 key ("Master Key") to access GSR's
machines. Tors was not authorized to access GSR's slot machines.

The Gaming Control Board ("GCB") was notified. It immediately commenced an
extensive investigation. Tors was suspended. Over the next eight months, the GCB conducted

1 interviews, took statements, examined computers and reviewed over 200,000 emails that were
2 downloaded from the Peppermill's system.

3 The GCB investigation revealed:

- 4 1. The Peppermill authorized Tors to key machines at Northern Nevada Casinos for at
5 least two years preceding the July 12, 2013 incident;
- 6 2. Eleven Northern Nevada casinos had been keyed by Tors;
- 7 3. There was no evidence to suggest that any use was made by the Peppermill of the
8 par settings Tors obtained from the slot machines of its competitors; and
- 9 4. Peppermill's conduct of allowing and authorizing the keying activity was conduct
10 unsuitable for gaming licensees.

11 The GCB and Peppermill entered into a settlement that was approved by the Nevada
12 Gaming Commission on February 20, 2014. Peppermill paid a \$1,000,000 fine, Tors was
13 terminated and Peppermill's General Manager, John Hanson, was terminated and he lost his
14 gaming card.

15 Meanwhile, GSR filed this action on August 3, 2013. Discovery has revealed that Tors
16 submitted a report to the Peppermill that he keyed a GSR slot machine on December 29, 2011.
17 The report contains inaccurate information. Tors had admitted that he fabricated many of his
18 reports. The December 29, 2011 report is one that was fabricated and he has testified that he
19 probably did not key the GSR on that date.

20 Mr. Tors submitted another report to Peppermill executives on June 15, 2012. It shows the
21 par settings on six GSR slot machines. This information appears to be more accurate and reliable
22 than the December 29, 2011 report. Tors admits that he probably keyed GSR's six slot machines
23 on or about June 14, 2012.

24 The information Tors obtained for the GSR on the night he got caught, July 12, 2013,
25 never got to the Peppermill. Peppermill's only knowledge of the information Tors obtained from
26 the GSR as a result of the July 12, 2013 keying incident was given to the Peppermill by GSR in
27 discovery.

28 Accordingly, this case is about the six pars Tors obtained from the GSR on June 14, 2012.

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CERTIFICATE OF SERVICE

I certify that I am an employee of Robison, Belaustegui, Sharp & Low, and pursuant to NRAP 5(b)(2)(D) and N.E.F.C.R. 7, I caused the **RESPONDENT PEPPERMILL CASINOS, INC.'S ANSWERING BRIEF - APPENDIX VOLUME 12** to be filed electronically with the Clerk of the Nevada Supreme Court. Pursuant to N.E.F.C.R. 9, notice of an electronically filed document by the Court "shall be considered as valid and effective service of the document" on the below listed persons who are registered users.

H. STAN JOHNSON, ESQ.
CHRIS DAVIS, ESQ.
Cohen Johnson Parker Edwards, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, NV 89119
Email: sjohnson@cohenjohnson.com
cdavis@cohenjohnson.com
Attorneys for Appellant

DATED: This 8th day of May, 2017.



V. JAYNE FERRETTO
Employee of Robison, Belaustegui, Sharp & Low

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RESPONDENT PEPPERMILL CASINOS, INC.'S ANSWERING BRIEF

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Trial Exhibit 330 - 2013 Peppermill Reno 1C Video and Reel Analysis (Highly Confidential)	01/22/16	22	RA 05322 – 05323

Trial Exhibit 339 - Machine Performance Statistics	01/22/16	22	RA 05324
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

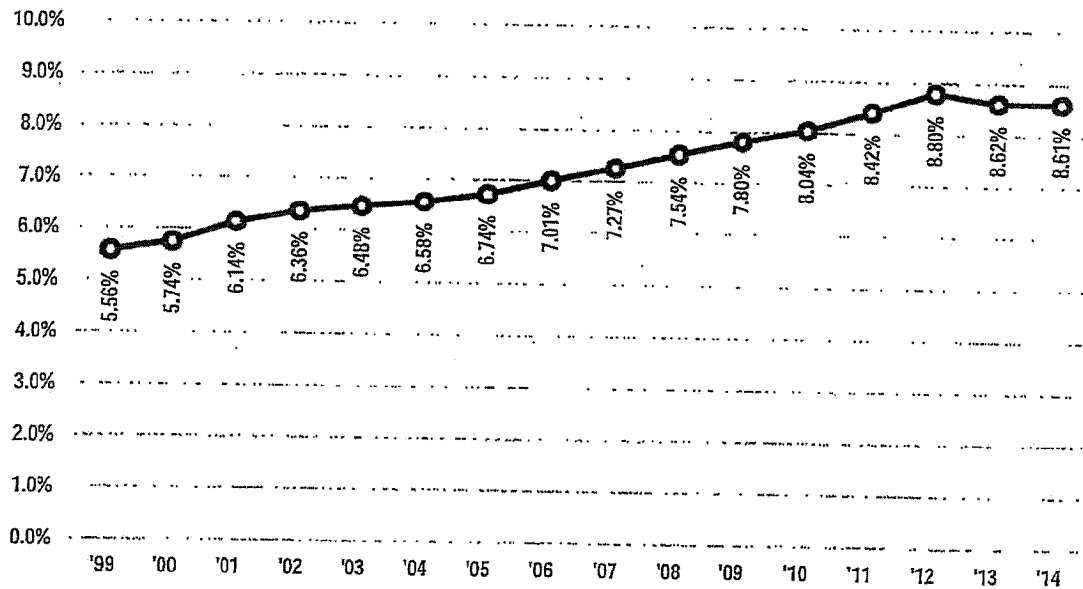
Trial Exhibit 358 - Portions of the Deposition Transcript of Craig Robinson		22	RA 05369 – 05375
Trial Exhibit 359 - Portions of the Deposition Transcript of Terry Vavra		22	RA 05376 – 05384
Trial Exhibit 35A – 11/03/14 GSR Answers to 2 nd Set of Interrogatories – REDACTED Interrogatory No. 14 and Response 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

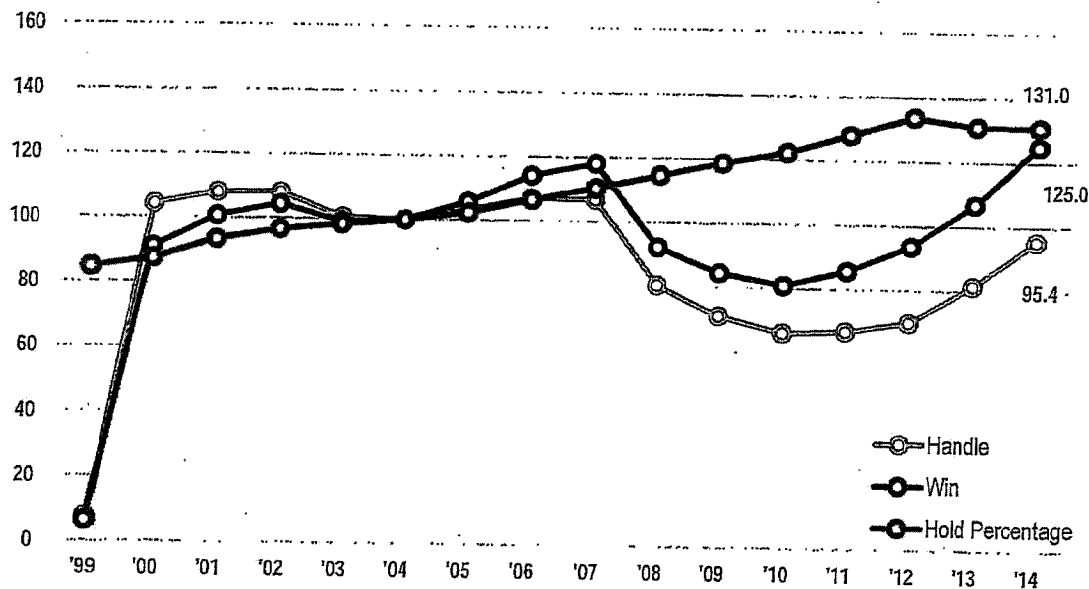
Trial Exhibit 75 - 05/07/10 CDC Report re: Slot Comp	01/22/16	16	RA 03853 – 03858
Trial Exhibit 76 - 05/12/10 CDC Report re: Direct Mail	01/22/16	16	RA 03859 – 03864
Trial Exhibit 77 – 06/2014 CDC Report re: Free Play & Comp Rewards	01/15/16	15	RA 03646 – 03650
Trial Exhibit 78 – 07/2014 CDC Report re: 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

Slot Hold Percentage



Indexed Slot Handle, Slot Win and Slot Hold Percentage (2004=100)



Indiana

Overview

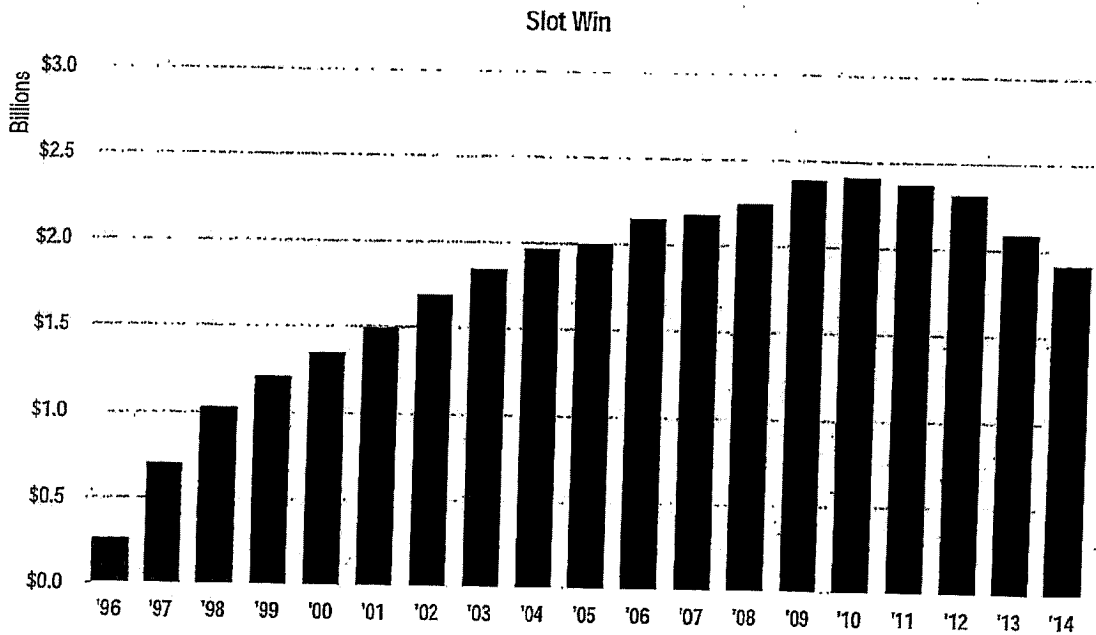
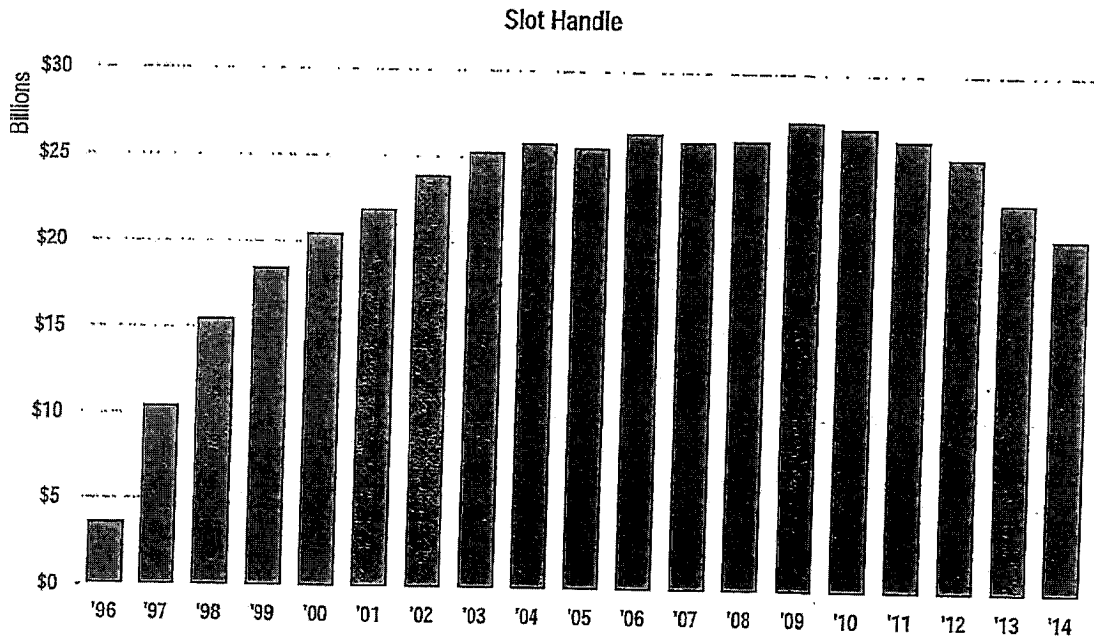
The Hoosier state followed many of its neighbors by legalizing riverboat gaming in 1993. By the end of the decade, the state would be home to 10 riverboat casinos, the same number in operation today. However, state lawmakers have expanded gaming to include three land-based casinos, including two at horse racing tracks. In all, the 13 casinos host 20,000 video lottery terminals that made \$2.0 billion in revenue in fiscal year 2014.



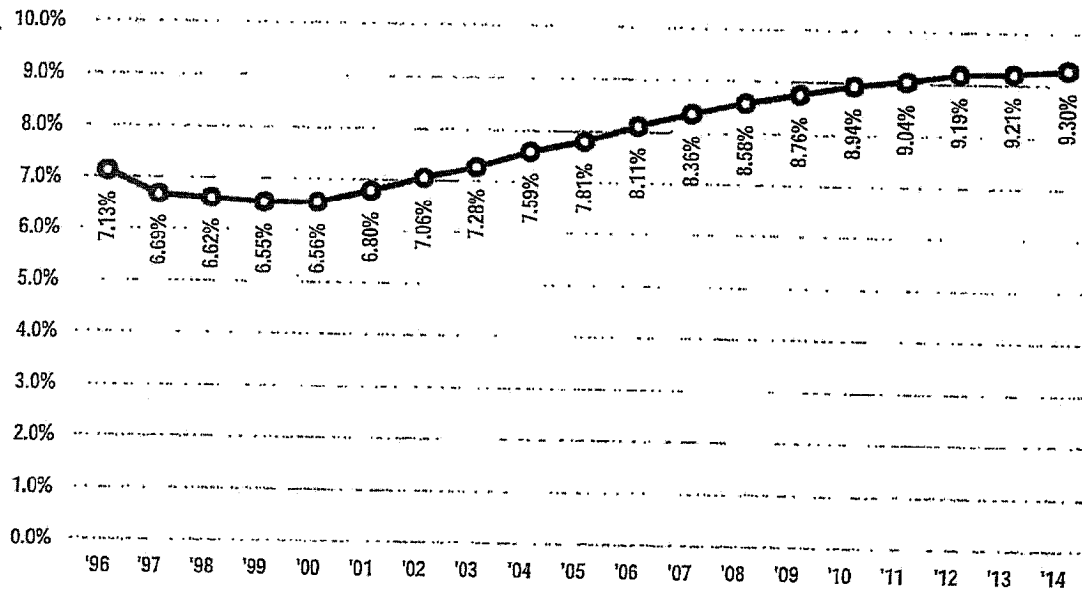
Key Events in History

- July 1993 – Riverboat gambling is approved by state lawmakers. Legal challenges over the law's constitutionality will delay the premiere of riverboat gaming for more than two years.
- December 1995 – The first riverboat casino opens in Evansville.
- June 1996 – Three other riverboat casinos open in northern Indiana, starting an industry growth period that will end with 10 boats by October 2000.
- July 2002 – The state law changes to allow dockside riverboat gambling.
- November 2006 – French Lick Resort opens. Because it was licensed under a riverboat gaming license, a moat was built around the casino, which was designed to look like a boat. In 2008 the moat was removed, making it the state's first land-based casino.
- May 2007 – Video lottery terminals are legalized at two Indiana racetracks, Hoosier Park and Indiana Downs.
- October 2014 – A legislative study committee recommends changing the law to allow riverboat casinos to add land-based operations.

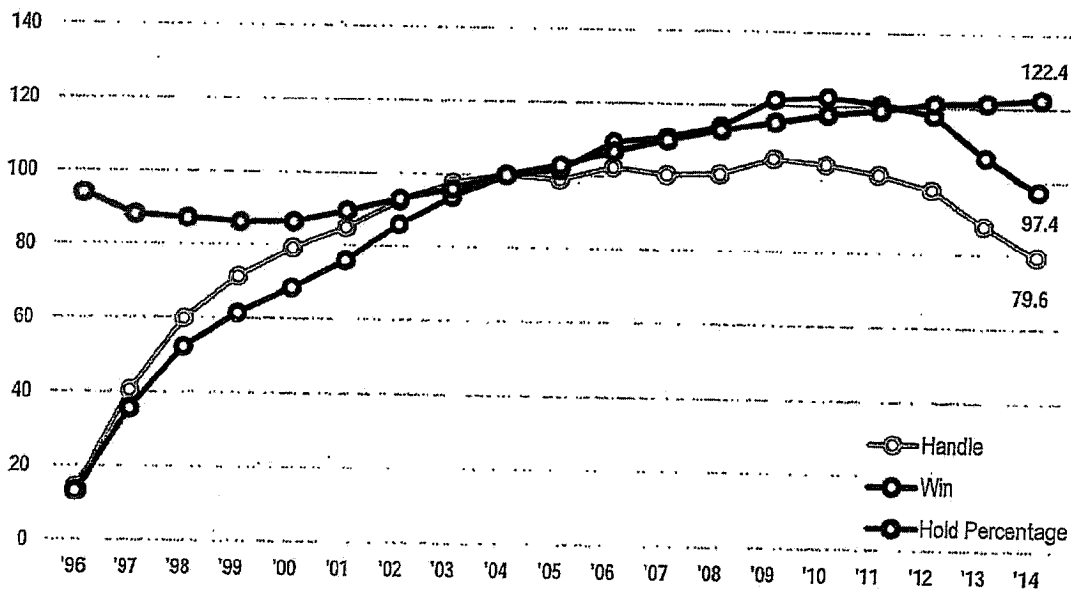
Historical Slot Performance Trends



Slot Hold Percentage



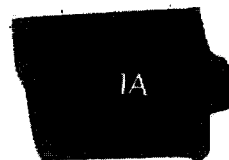
Indexed Slot Handle, Slot Win and Slot Hold Percentage (2004=100)



Iowa

Overview

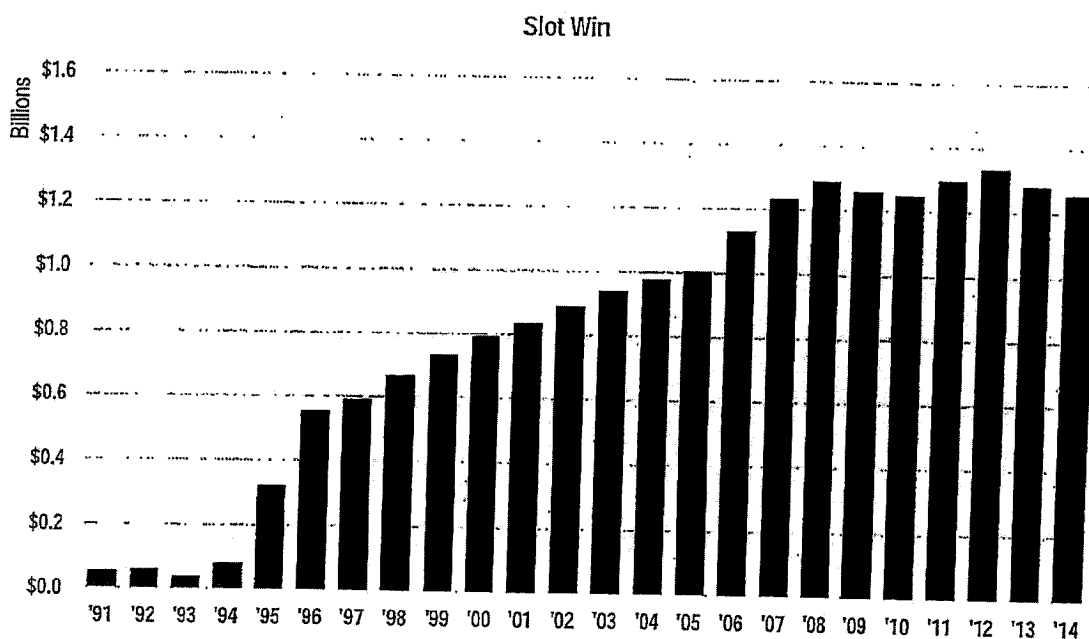
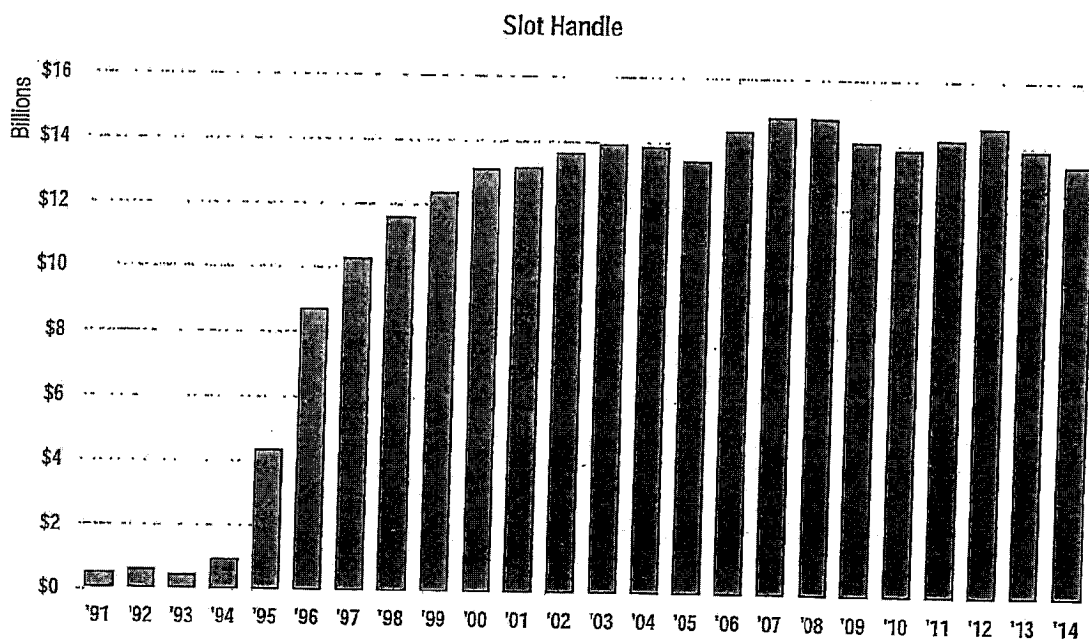
Bordered by three rivers, it's no surprise that Iowa was the first state to legalize riverboat gaming in 1989. The state added water-bound casinos just six years after allowing pari-mutuel wagering on horse and dog racing. As of December 2014, there were about 17,600 slot machines that produced \$1.3 billion in revenue for the state's 18 casinos.



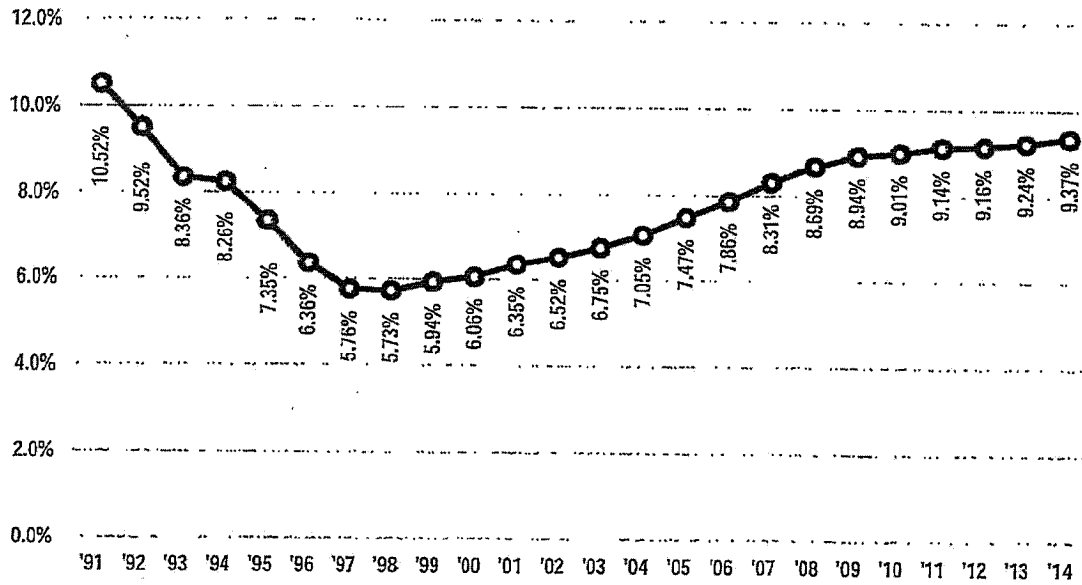
Key Events in History

- July 1989 – Legislation passes to allow gambling on excursion boats in counties where the issue is approved by a majority of voters.
- Various dates, 1991 – The first five riverboats open for gambling: President, Diamond Lady, Dubuque Casino Belle, Emerald Lady and Mississippi Belle II.
- March 1994 – Facing competition from riverboats in neighboring Illinois, Iowa loosens many of its gaming regulations. Bet and loss limits are eliminated, and gaming operations are allowed to remain open 24 hours a day.
- April 2001 – Mississippi River flooding forces the closing of three riverboats, Rhythm City, Isle of Capri Marquette and Catfish Bend Casino, for varying time periods.
- 2007 Legislative Session – Legislation passes that authorizes land-based casinos.
- March 2008 – State gaming regulators approve land-based gaming licenses for Dubuque Racing Association/Peninsula Gaming Company, LLC and Clinton County Community Development Association/Wild Rose Clinton, LLC.
- December 2008 – Diamond Jo Casino becomes land-based.

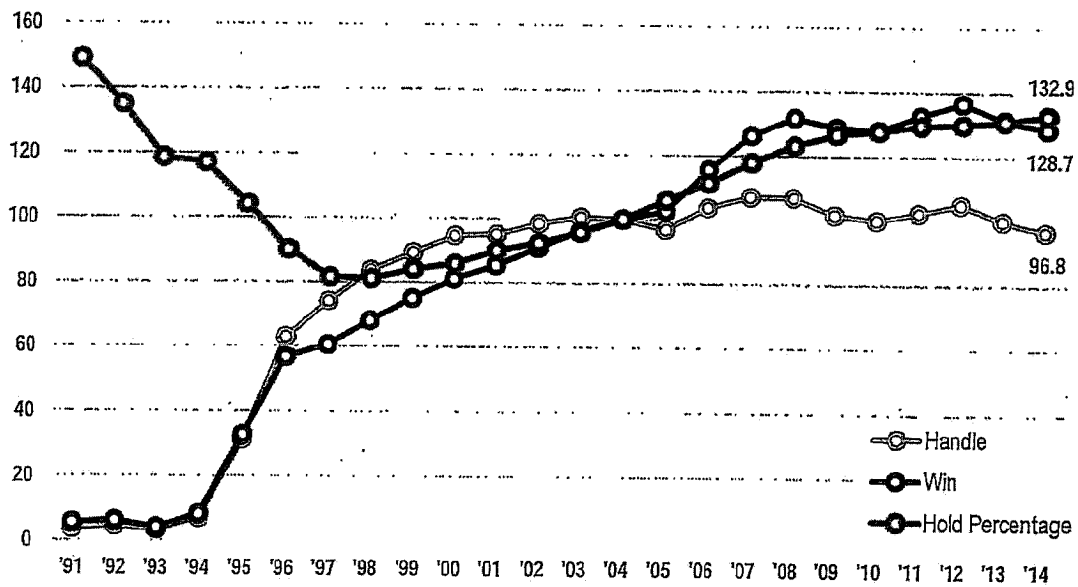
Historical Slot Performance Trends



Slot Hold Percentage



Indexed Slot Handle, Slot Win and Slot Hold Percentage (2004=100)





Louisiana

Overview



Louisiana has been known for its gaming since French settlers took root in New Orleans. However, by the end of 1800's the Louisiana Lottery was outlawed in an attempt to protect its citizens from dubious deals. This led to pari-mutuel wagering on horses being the only legal form of gambling. Since then, the Louisiana Lottery has been restored and casino gambling has been legalized on riverboats, racetracks and at one land-based casino. Video poker machines have also been legalized in bars and the state hosts three Indian casinos. Louisiana's gaming industry appears to be on the rise with 18 operating casinos producing about \$2 billion in gaming revenue a year.

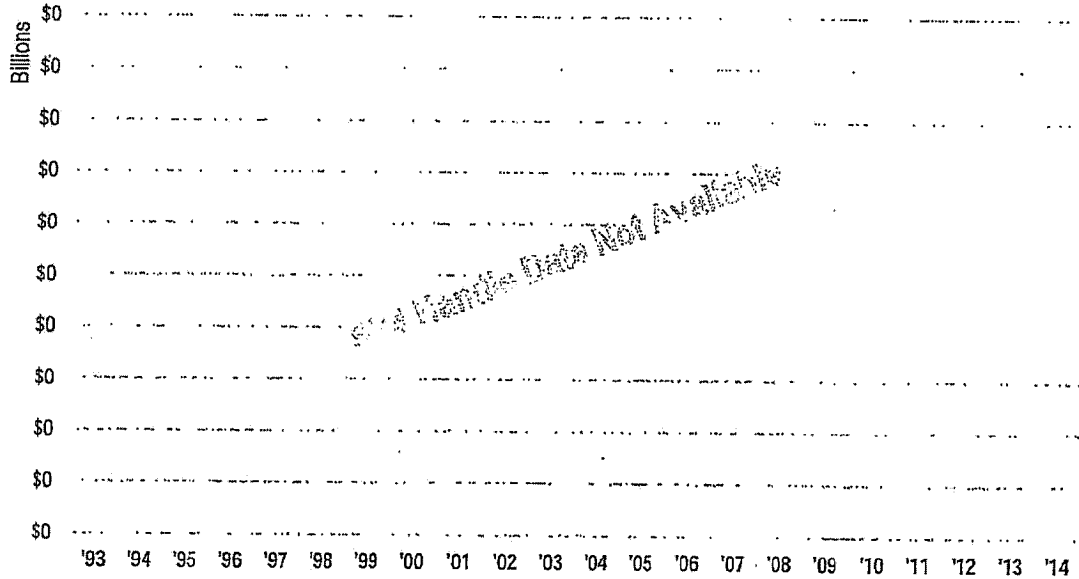
Key Events in History

- July 1991 – The Legislature legalizes the opening of 15 riverboat casinos. The vessels are required to be paddle-driven replicas of historic riverboats.
- September 1991 – The first scratch-off game is introduced, beginning the Louisiana Lottery. The Louisiana Legislature allows video poker devices to be used in parishes throughout the state.
- June 1993 – Louisiana grants three Indian tribes gaming licenses. This allowed for the state's first land-based casino to be opened, Paragon Casino Resort.
- March 1995 – Louisiana becomes a member of the Multi-State Lottery, which offers residents the opportunity to participate in the PowerBall drawing.
- 1997 – State lawmakers allow slot machine gaming at racetracks in Louisiana.
- 2004 – The Legislature bans anyone under the age of 21 from entering gaming areas or playing casino games.
- August 2005 – Hurricane Katrina hits the Gulf of Mexico, causing extensive flooding along the Mississippi River. A dozen coastal casinos closed during and after the storm for repairs, leading to a significant hit to the state's gaming industry.
- February 2006 – Harrah's New Orleans reopened for the first time since Hurricane Katrina.
- August 2013 – State law raises the distance requirements between video poker establishments and certain buildings, including churches and playgrounds. The law change also caps the number pari-mutuel facilities with video poker in Jefferson Parish at five.

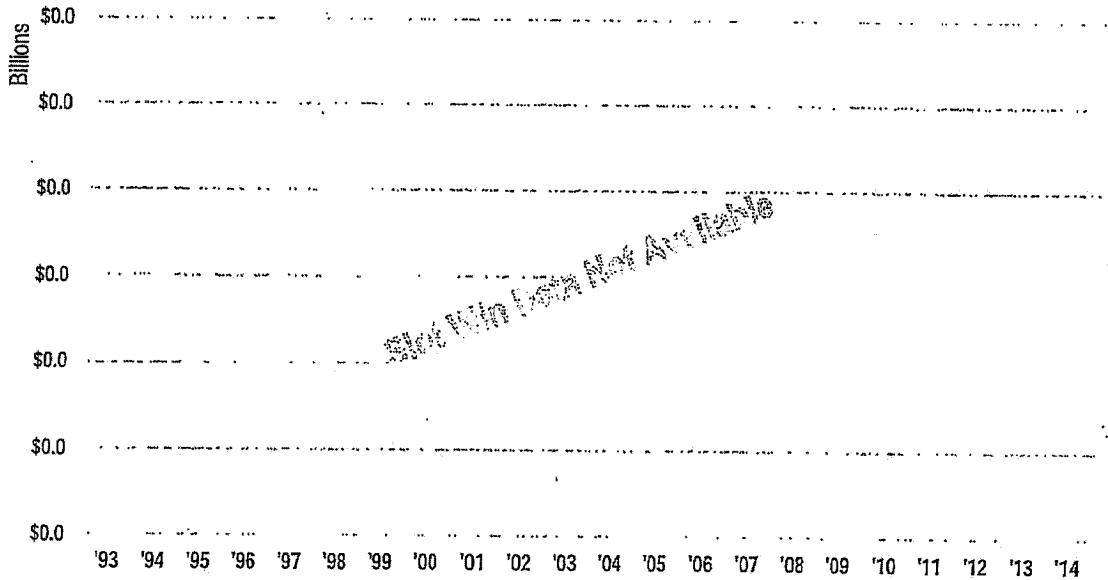


Historical Slot Performance Trends

Slot Handle⁷

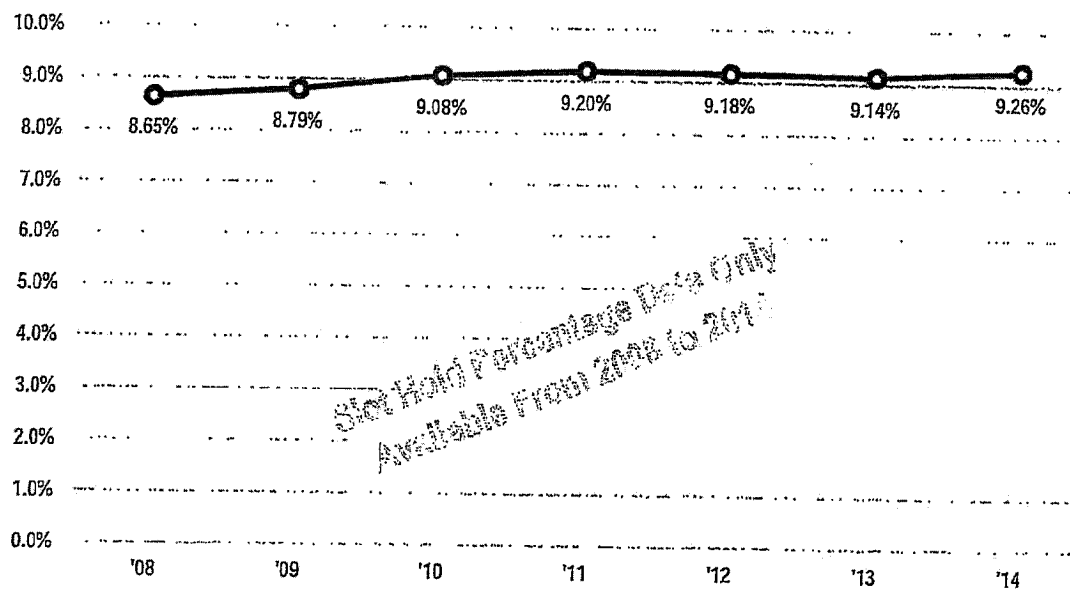


Slot Win

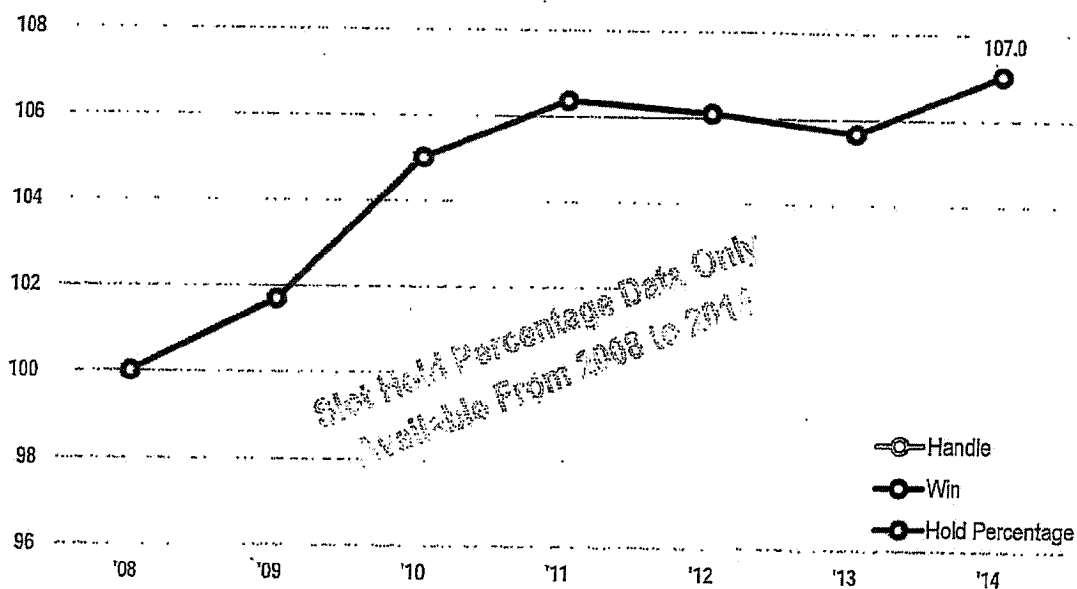


⁷ Louisiana has been included in the analysis at the request of AGEM; however, slot handle and win data are not available from regulators. Slot win percentage is available for the market; those data have been included.

Slot Hold Percentage



Indexed Slot Handle, Slot Win and Slot Hold Percentage (2008=100)



Mississippi

Overview

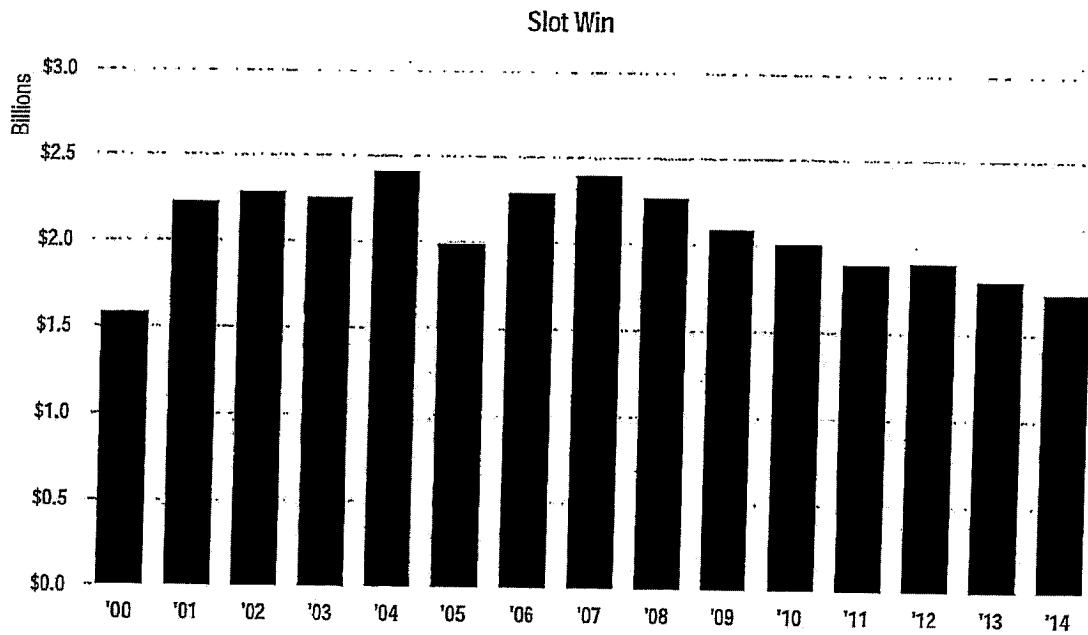
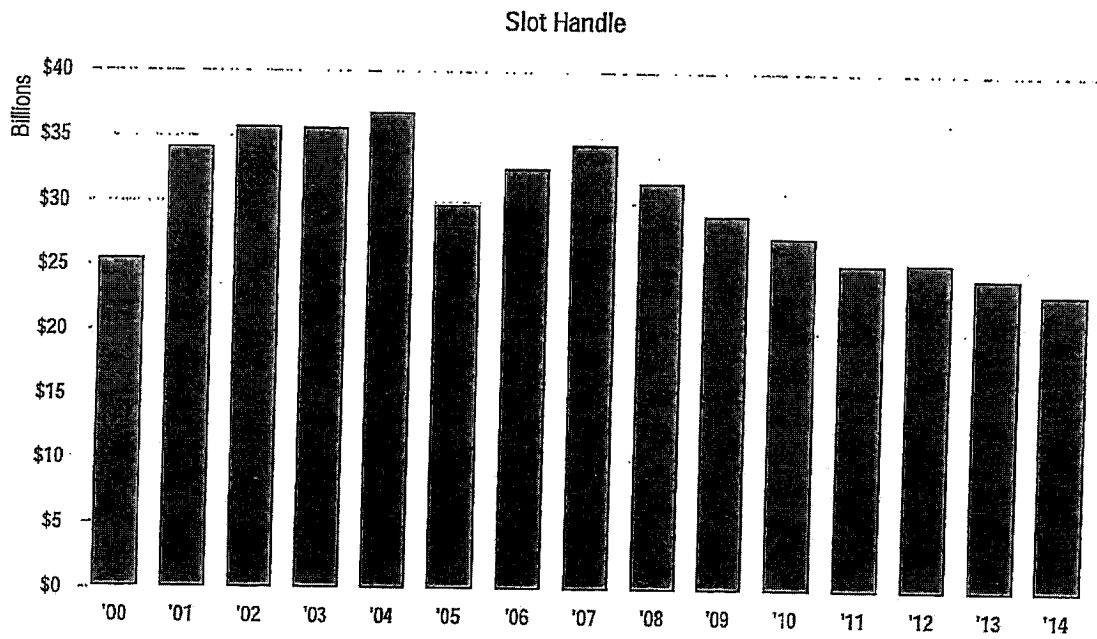
In 1990 the Mississippi Legislature approved casino gambling in dockside facilities, provided local voters approved them in their counties. Today there are 30 dockside and land-based casinos. They are home to 30,300 slot machines that produced \$1.7 billion in revenue in fiscal year 2014.



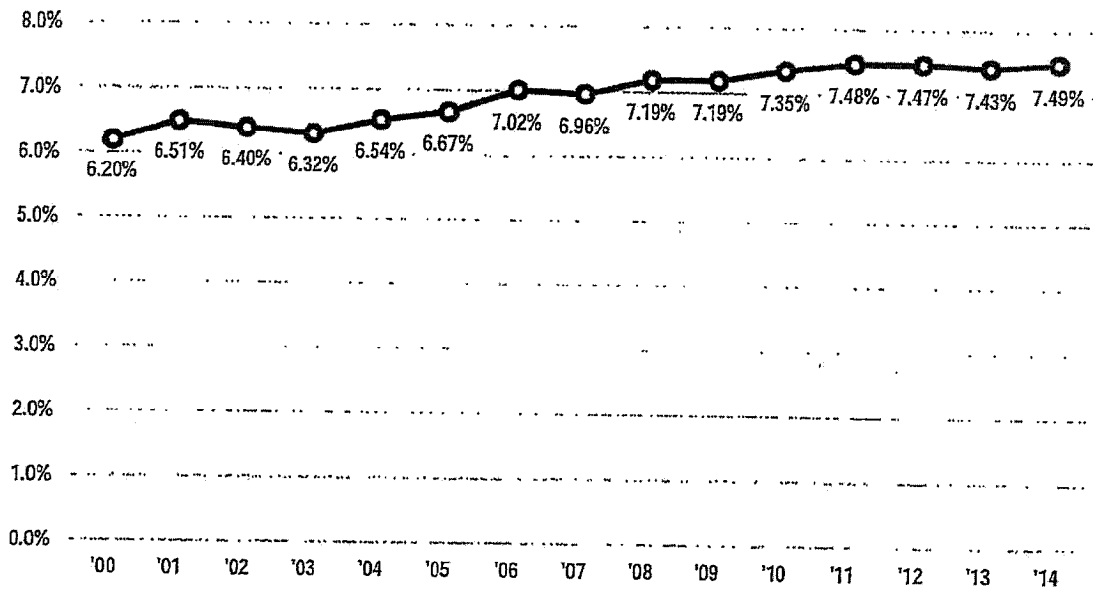
Key Events in History

- June 1990 – The Legislature passes the Mississippi Gaming Control Act, allowing voter-approved gambling in counties along the Mississippi River and Gulf Coast.
- August 1992 – The Isle of Capri Casino, Mississippi's first gambling casino, opens in Biloxi.
- August 2005 – Hurricane Katrina hits the Mississippi River, causing coastal casinos to shut down to weather the storm and repair the damage it left behind. About half the dockside casinos are removed from their berths.
- October 2005 – Because of Katrina's devastation, Mississippi lawmakers are pressured to legalize land-based casinos. The law allows previously docked barge-based casinos to establish operations 800 feet inland. The federal government offers tax incentives to casinos that reopen by December 31, 2008.
- December 2005 – IP Casino Resort and Spa reopens.

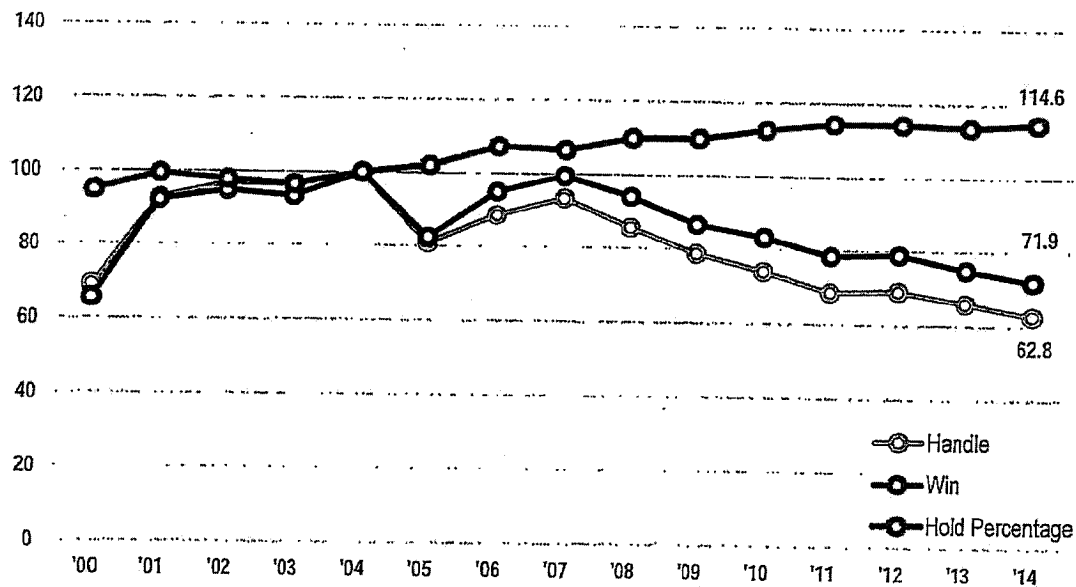
Historical Slot Performance Trends



Slot Hold Percentage



Indexed Slot Handle, Slot Win and Slot Hold Percentage (2004=100)





Missouri

Overview

Riverboat casinos returned to Missouri after the Legislature legalized them in 1993. Originally, players were limited to a \$500 buy-in every two hours, the length of a riverboat's excursion time. That restriction was lifted 15 years later, which brought an increase in slot revenues and hold percentages. In fiscal year 2014, the state's 13 casinos made \$1.5 billion in revenue from their 18,800 slot machines.



Key Events in History

- April 1993 – Missouri legalizes the return of riverboat casinos. Player losses are limited to \$500 every two hours and the riverboats are required to sail.
- 1994 – Missouri's first riverboat casinos, The President Casino and the Casino St. Charles, open. Adults are allowed to board every two hours, and only games of skill, including poker and blackjack, are permitted. By the end of the year, however, slot machines are legalized.
- 1996 – Because of weather conditions and other incidents on the water, riverboats are allowed to remain docked.
- November 2008 – Voters approve Proposition A, which eliminates the player loss limit of \$500 every two hours. It also raises the state tax on casinos to 21 percent and limits the number of casino licenses to 13.
- October 2012 – The Isle of Capri - Cape Girardeau Casino opens. This is Missouri's 13th casino, the most allowed under state law.

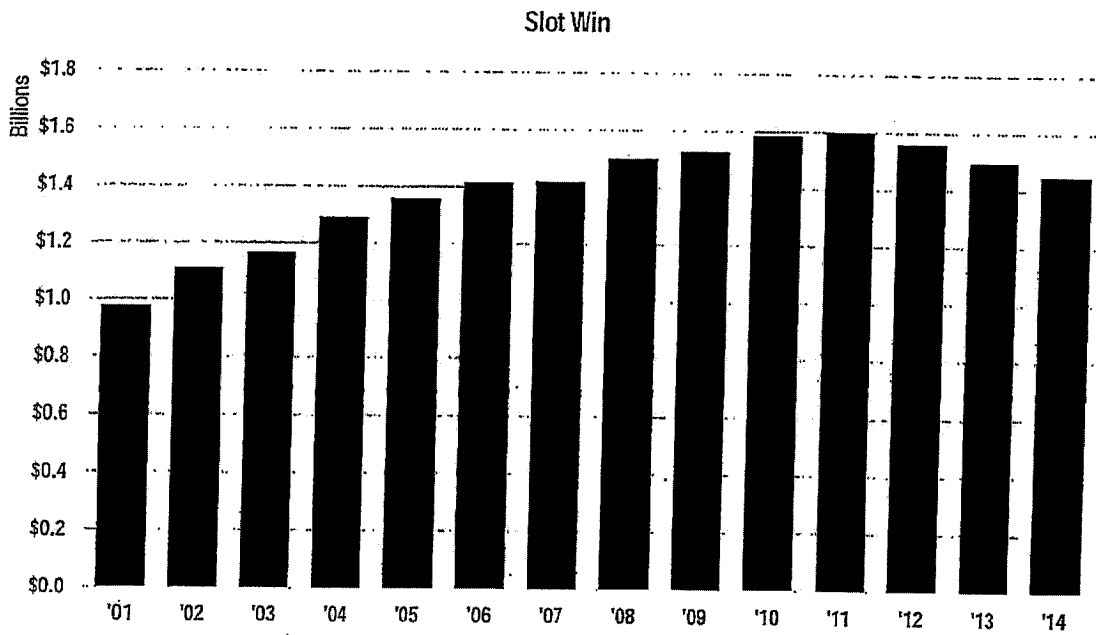
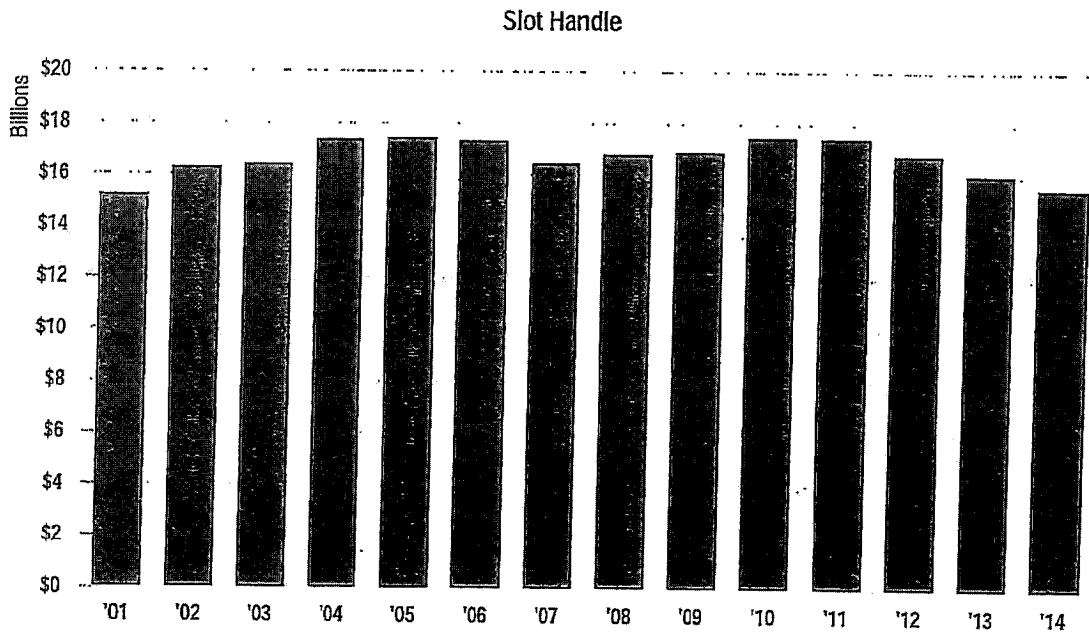
EXHIBIT 25

Part 3 of 3

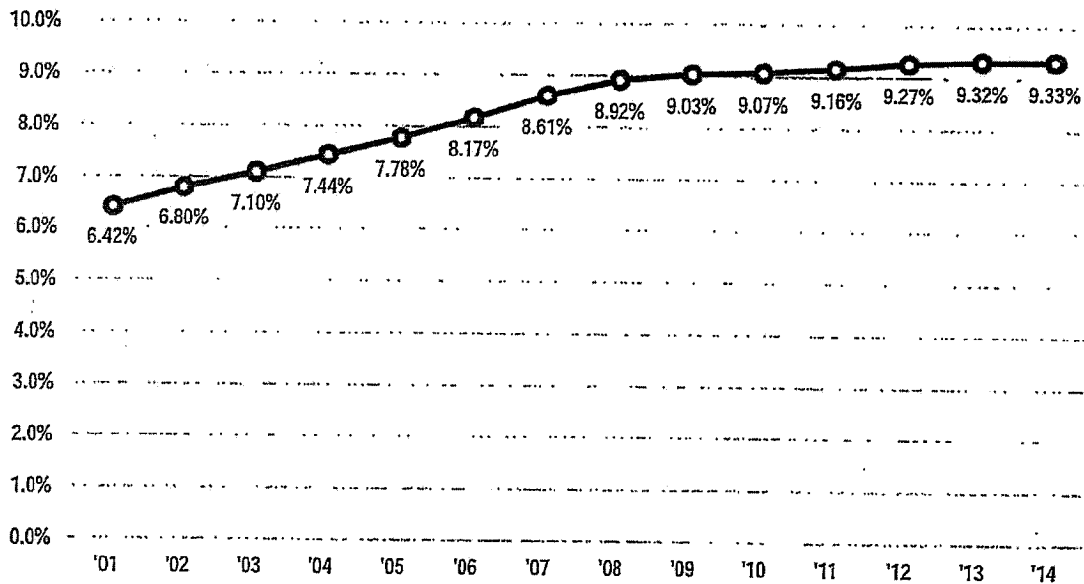
EXHIBIT 25

Part 3 of 3

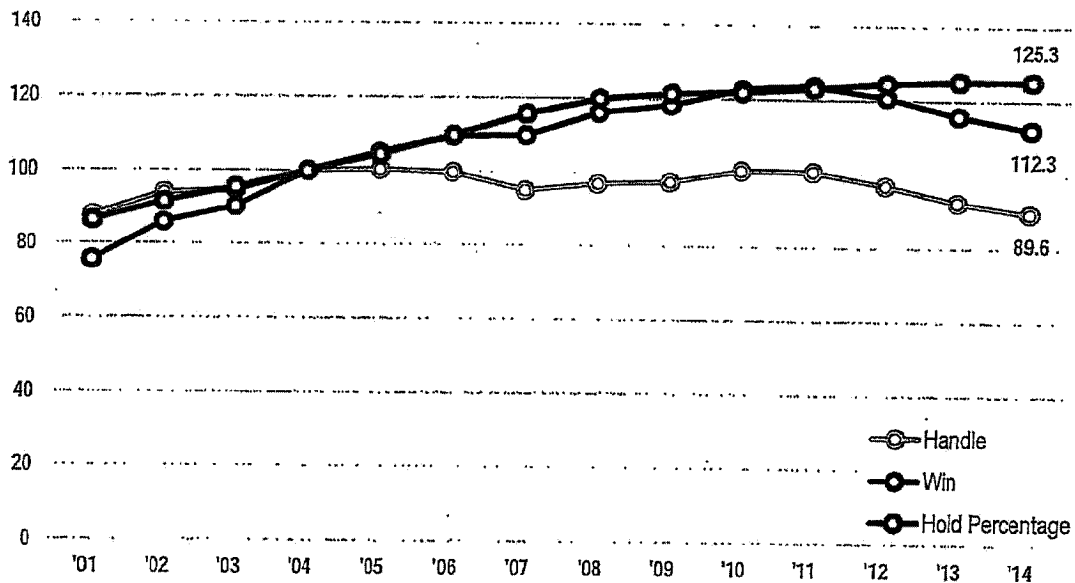
Historical Slot Performance Trends



Slot Hold Percentage



Indexed Slot Handle, Slot Win and Slot Hold Percentage (2004=100)



Nevada

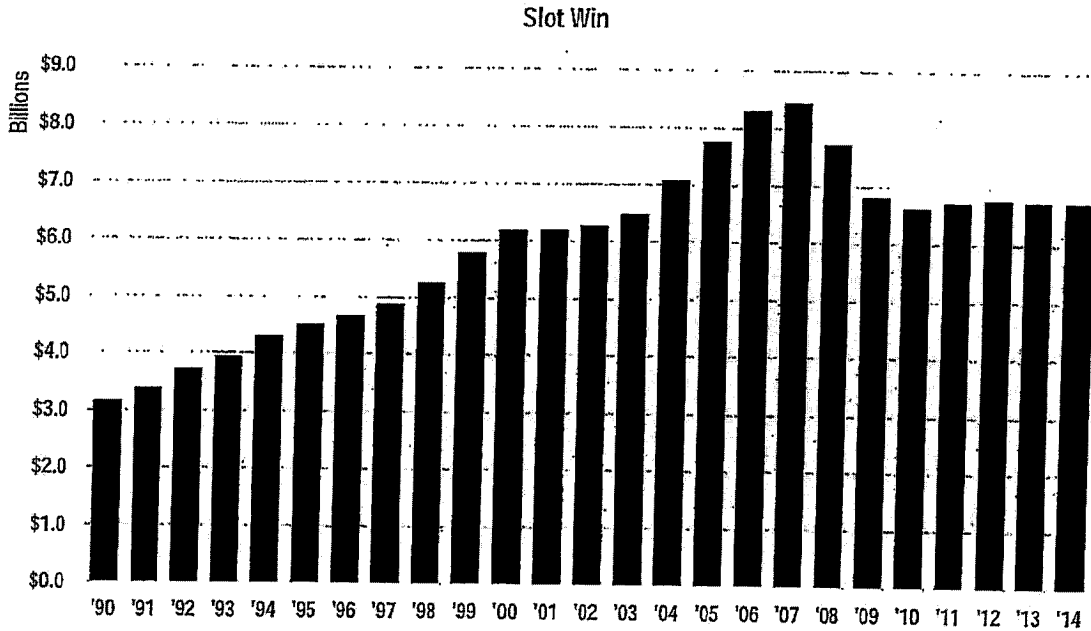
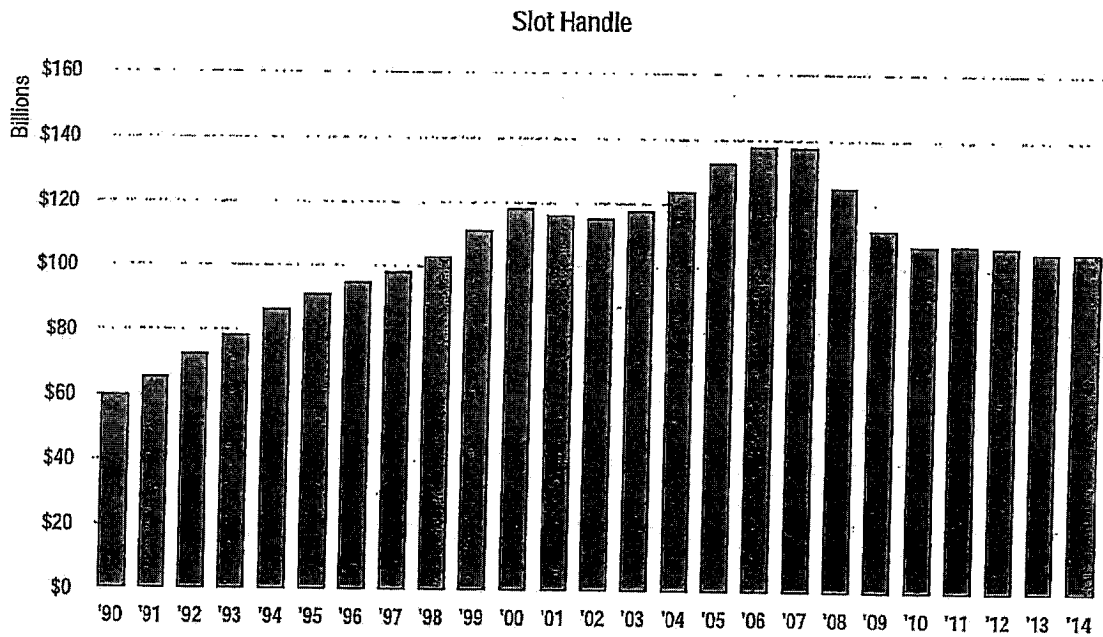
Overview

For nearly a century, the Silver State has remained a pioneer in the gaming world. Its modern gaming trailblazing started in 1931, when the state became the first to legalize and regulate casino gambling. Nevada enjoyed a gaming monopoly for 45 years before New Jersey entered the gaming arena. Since then, more than a dozen states have legalized slot machines or some other form of casino gambling. Many states have also seen the rise of Indian casinos, widening the reach of legalized gaming to all corners of the United States. In the face of growing competition, Nevada has maintained its status as a gaming pioneer by becoming the first state to legalize online poker. Even with Nevada's large variety of gaming options, slots remain a significant portion of revenue, with the state's 152,300 slot machines producing \$6.7 billion in revenue in 2014.

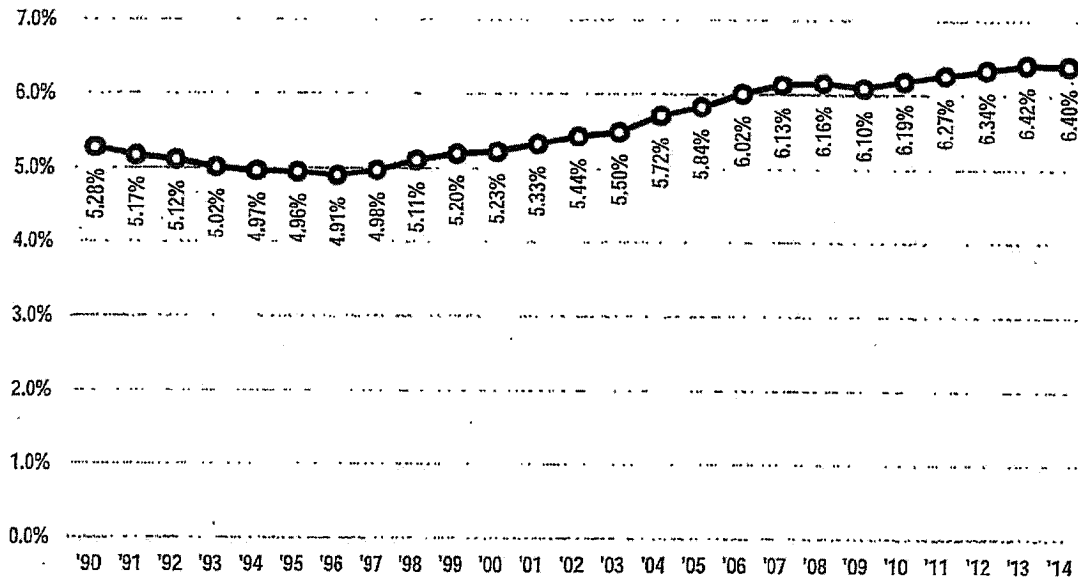
Key Events in History

- November 1989 – The Mirage opens, ushering in the megaresort era along the Las Vegas Strip. More than a dozen large-scale resorts will open over the next decade.
- March 2000 – In neighboring California, voters pass Proposition 1A, which amends the constitution to legalize casino gaming on the state's Indian reservations.
- May 2000 – MGM Grand Inc. merges with Mirage Resorts Inc., becoming MGM Mirage
- February 2004 – Boyd Gaming Corp. merges with Coast Casinos Inc.
- April 2005 – MGM Mirage acquires Mandalay Resort Group. Two months later, Harrah's Entertainment buys Caesars Entertainment.
- June 2005 – Nevada legalizes betting on smartphones and other handheld devices. Their use is limited to public areas of casinos.
- May 2011 – State lawmakers legalize online poker with the caveat that it must also be considered legal by the federal government. Within seven months, the U.S. Justice Department reverses its previous position and rules that Internet gambling is legal, and Nevada officials approve online poker regulations.
- February 2013 – Nevada passes a law to allow the state to enter into pacts with other states on Internet poker.
- April 2013 – Ultimate Poker launches the first legal online poker website.
- February 2014 – Nevada enters a compact with Delaware, allowing online poker players from each state to play against each other.

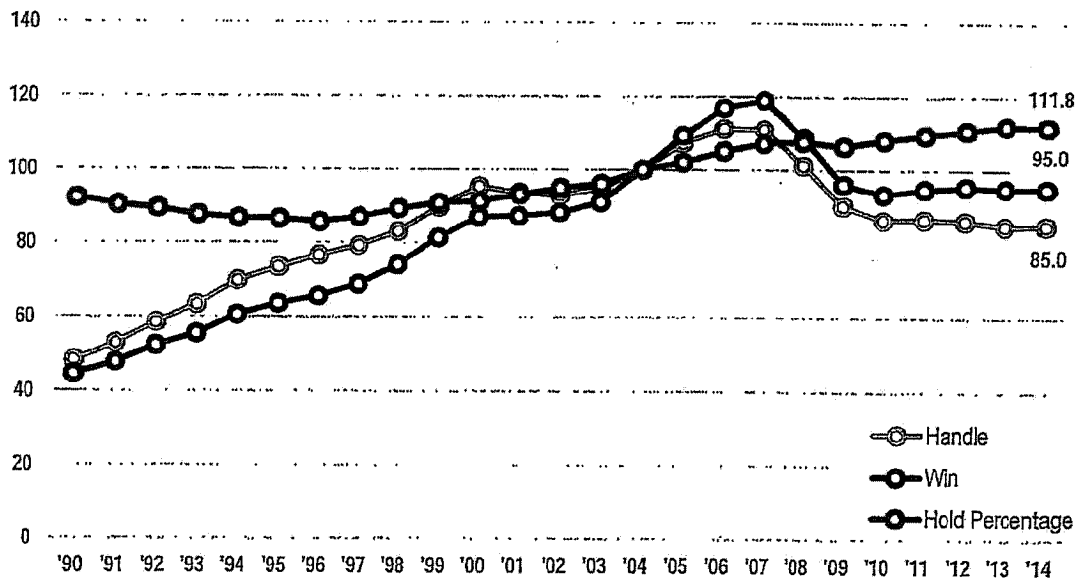
Historical Slot Performance Trends



Slot Hold Percentage



Indexed Slot Handle, Slot Win and Slot Hold Percentage (2004=100)





New Jersey

Overview

In 1976, New Jersey became the second state to legalize casino gaming within the United States. The state's early adoption made Atlantic City, New Jersey's only city to allow gambling, one of the top competitors in the gaming industry for many years. However, as neighboring states legalized gaming, New Jersey lost players who preferred to gamble closer to home. In the face of declining gaming revenues, New Jersey legalized online gaming in 2011 and continues to pursue sports betting. As of January 2015, 11 casinos remain in Atlantic City, most of which are partnered with online gambling operators.

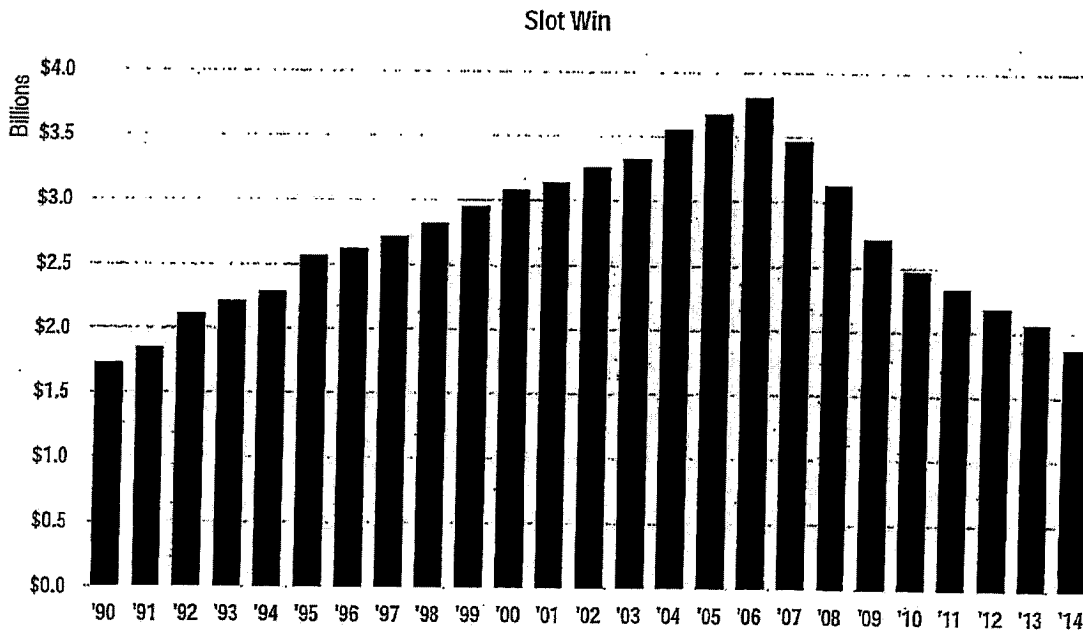
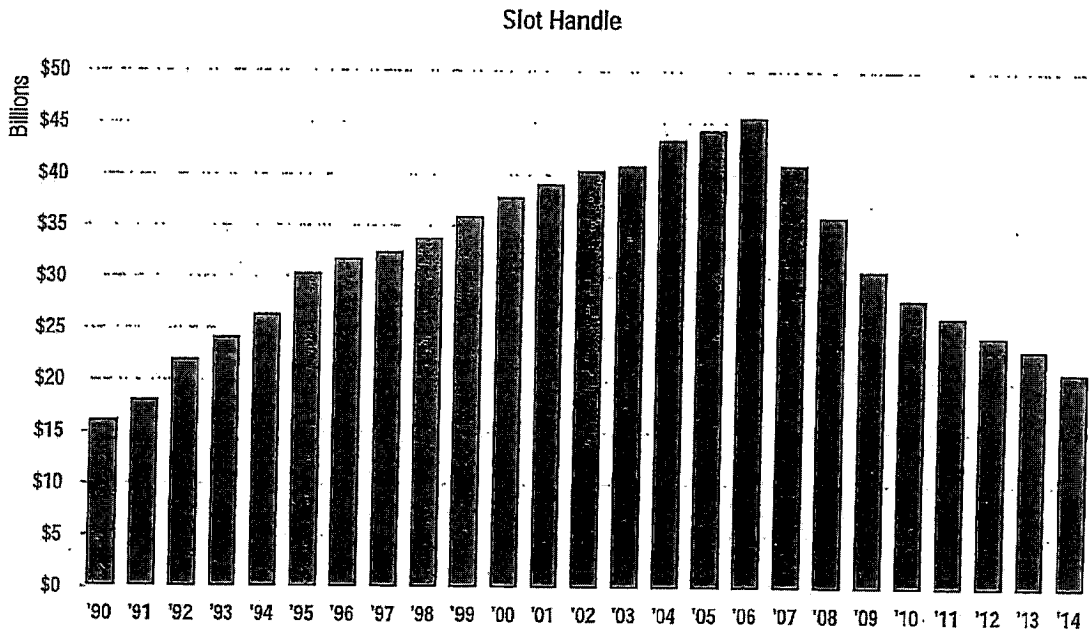


Key Events in History

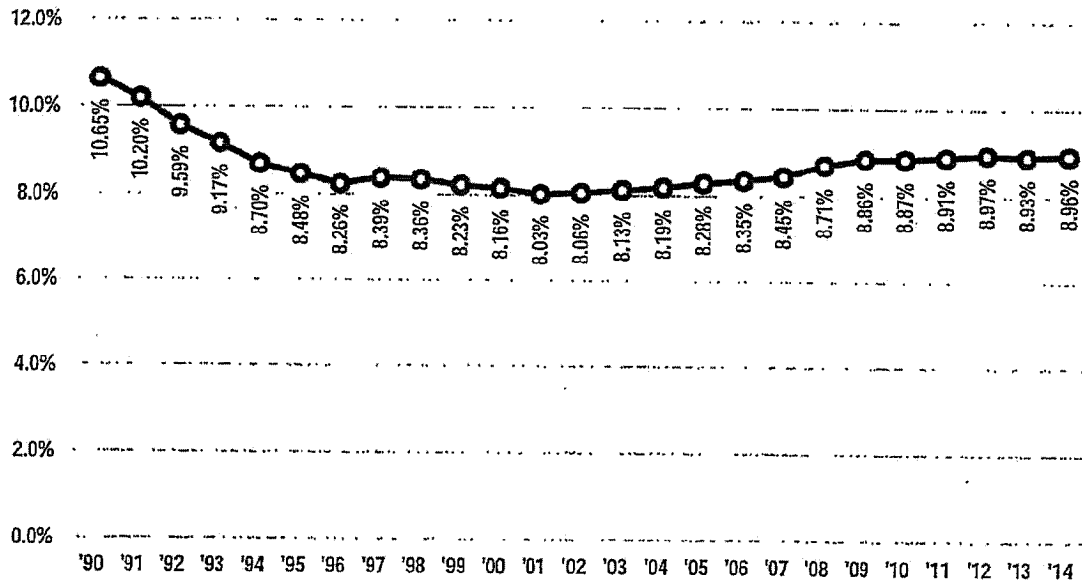
- 1976 – Voters approve legalized casinos in Atlantic City with the goal of revitalizing the struggling seaside destination.
- May 1978 – Atlantic City opens its first casino, Resorts Atlantic City.
- February 2004 – The Legislature passes a bill to deduct jackpot winnings from players who owe child support.
- July 2007 – Electronic table games, such as electronic poker and roulette, are approved for use in Atlantic City casinos.
- February 2013 – The Legislature overwhelmingly passes a bill to allow online gambling within New Jersey. However, online gaming sites are required to partner with Atlantic City casinos.
- November 2014 – Atlantic City's Borgata Hotel Casino and Spa partner with Pala Interactive, LLC to offer online gaming to the state of New Jersey.
- 2014 – Revel Atlantic City (opened on April 2012), Showboat (opened March 1987), Trump Plaza (opened May 1984), and Atlantic Club (opened December 1980) all close.



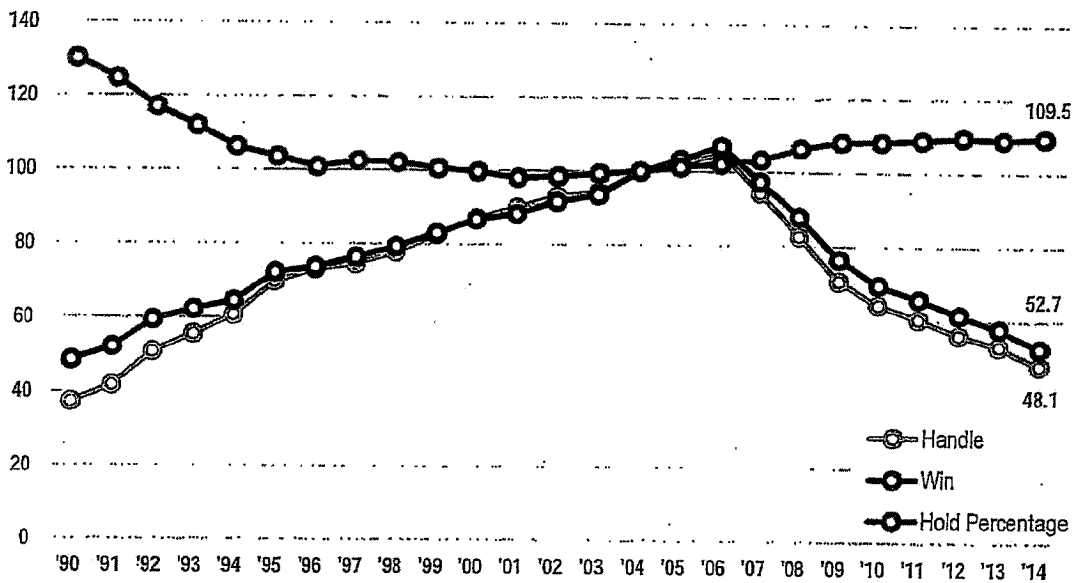
Historical Slot Performance Trends



Slot Hold Percentage



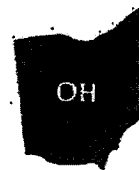
Indexed Slot Handle, Slot Win and Slot Hold Percentage (2004=100)



Ohio

Overview

Ohio became the most recent addition to the gaming industry in 2009 when voters passed a constitutional amendment that allowed for the construction of four commercial casinos in the state's four biggest cities. It wasn't until three years after the vote, however, that the first casino, the Horseshoe Casino, opened its doors in downtown Cleveland. Ohio is now home to four land-based casinos and seven racinos that offer video lottery terminals. Altogether, the state's 8,200 slot machines generated \$560.7 million in revenue in fiscal year 2014.

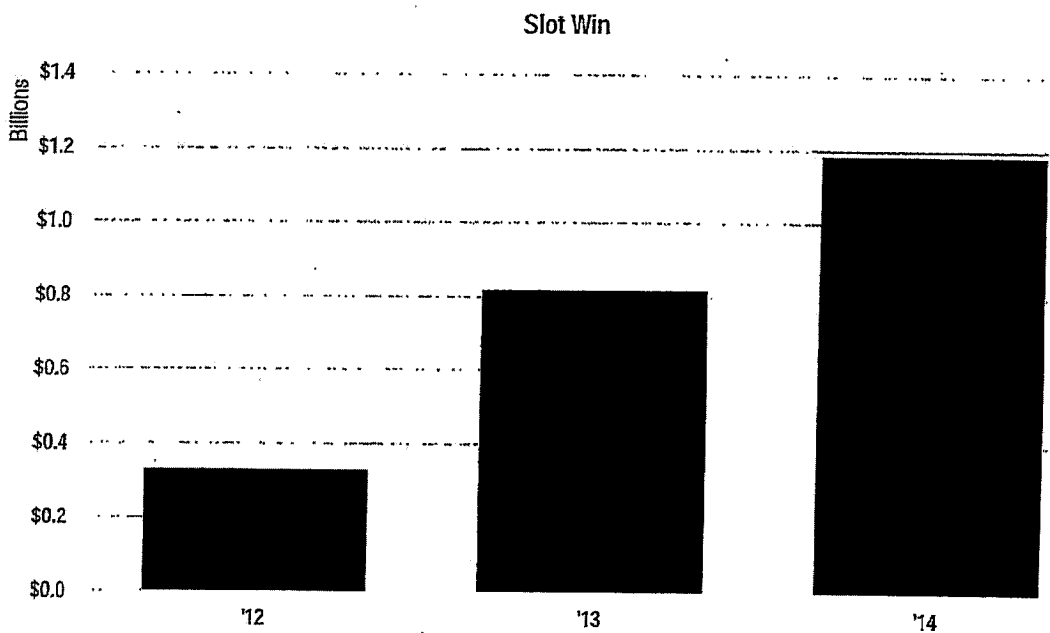
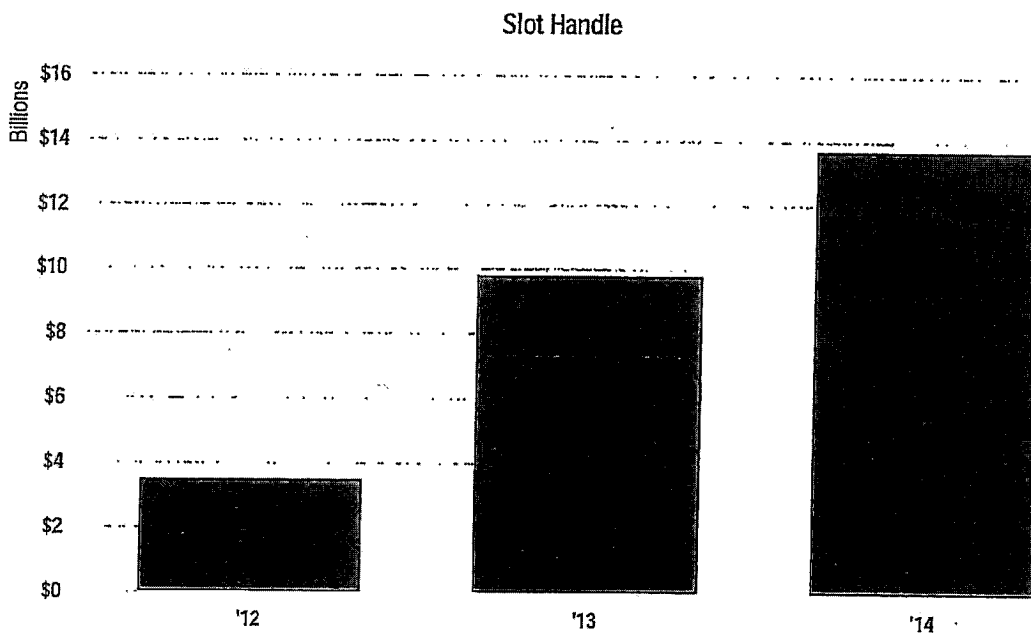


Key Events in History

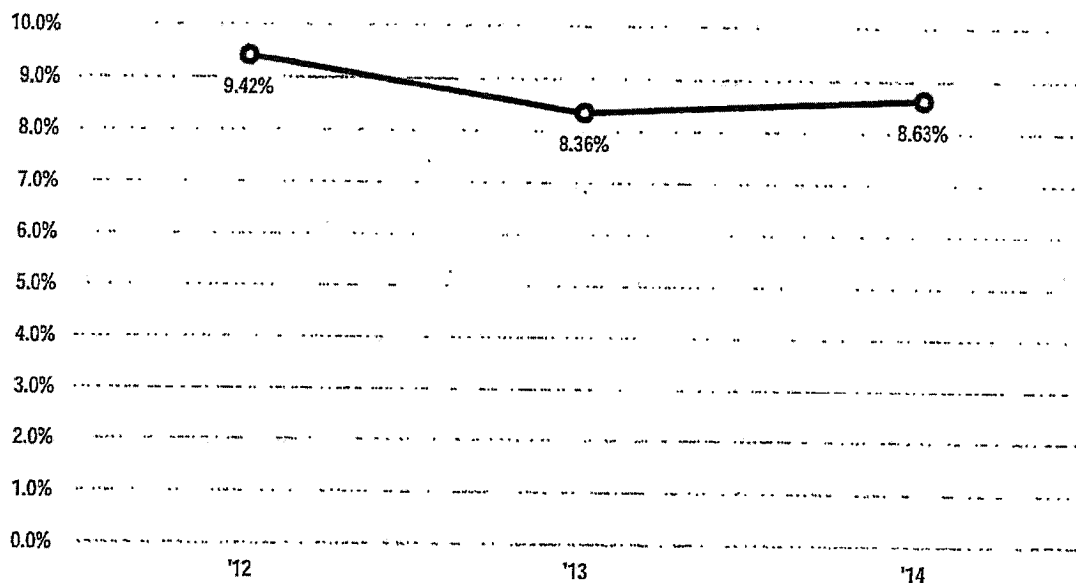
- July 2009 – Ohio Legislature agrees to allow video lottery terminals to be placed at the state's seven racetracks.
- November 2009 – Ohio voters pass a constitutional amendment that allows the licensing of casinos in Cleveland, Cincinnati, Toledo, and Columbus. The Casino Control Commission was formed to regulate casino activity and licensing.
- November 2010 – Ohio Governor Ted Strickland loses his bid for reelection. This forced the Casino Control Commission to stop work because its members were not yet approved by the Senate. Incoming Governor John Kasich wanted a hand in selecting the members of the commission.
- October 2011 – Kasich signs an executive order to permit the licensing and operation of 17,500 VLTs at Ohio's seven racetracks.
- May 2012 – Ohio's first casino, Horseshoe Cleveland, opens.
- June 2012 – Scioto Downs, a horse racing track since 1959 in Columbus, offers the state's first VLTs, becoming Ohio's first racino.
- August 2014 – The Horseshoe Casino – Cincinnati submitted plans to create a smoking section on its casino floor.
- October 2014 – The Parlor opened inside the Horseshoe Casino – Cincinnati. The Parlor is the Horseshoe's smoking, gambling patio and bar.



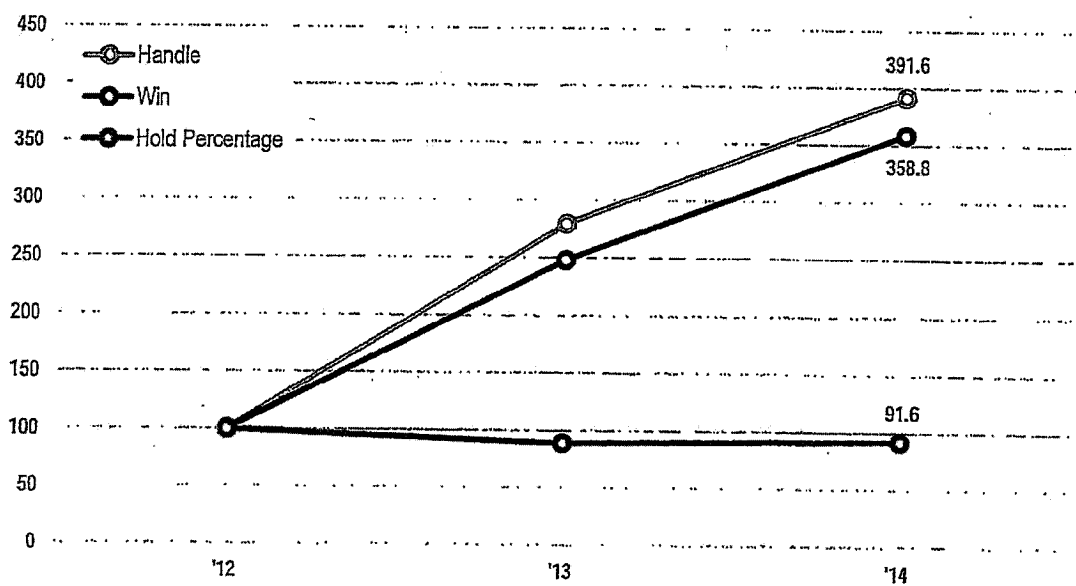
Historical Slot Performance Trends



Slot Hold Percentage



Indexed Slot Handle, Slot Win and Slot Hold Percentage (2012=100)



Pennsylvania

Overview

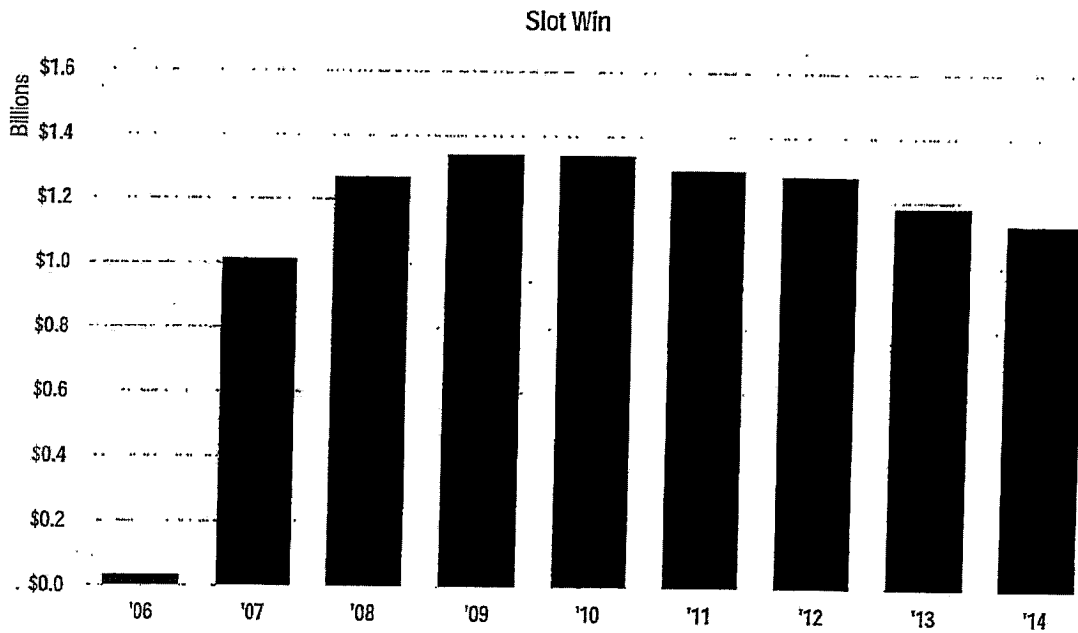
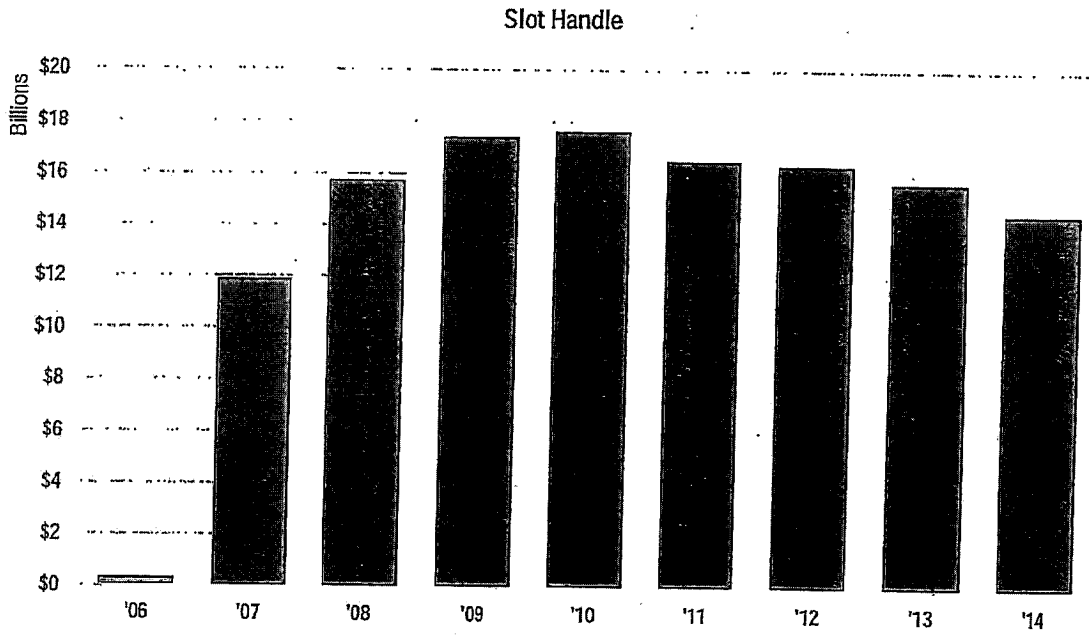
Since the late 1970's, Pennsylvanians who wanted to gamble had to drive to Atlantic City or other neighboring casino cities. That changed in 2004 when Pennsylvania legalized gambling and authorized up to 14 slot machine facilities. Since then, four casinos, six racinos, and two resorts have opened and continue to supply the state with billions each year due to the 55% tax on slot machine revenue. In fiscal year 2014, the state's slots accounted for \$1.1 billion in revenue.

Key Events in History

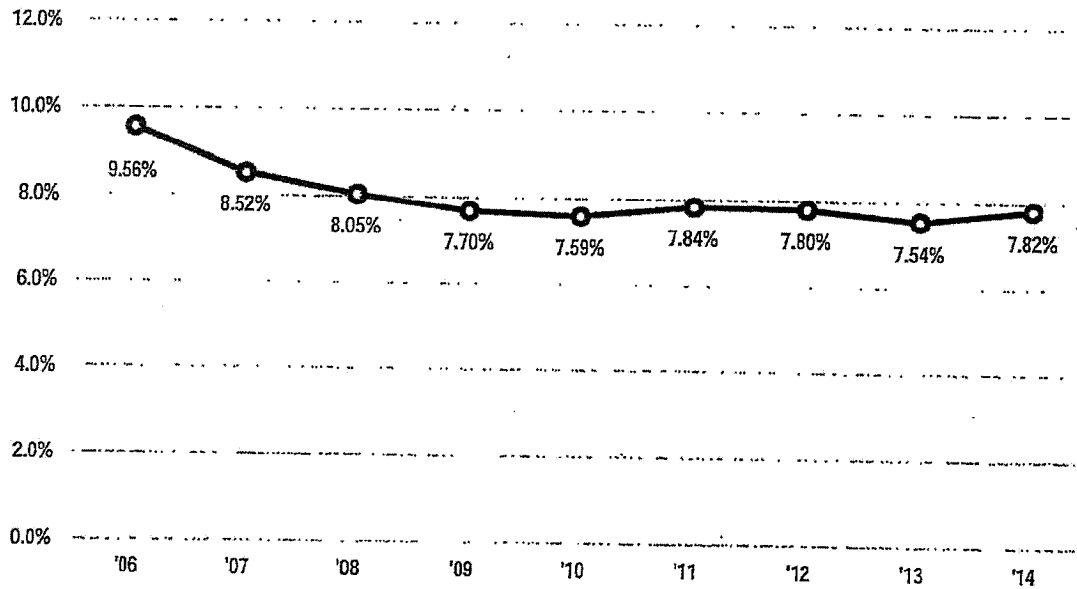
- July 2004 – The Race Horse Development and Gaming Act is signed into law. The act created the Pennsylvania Gaming Control Board, which was the first new state agency in over 30 years. The board was allowed to issue licenses to 14 slot machine establishments distributed among racetracks, casinos and resorts.
- November 2006 – Mohegan Sun at Pocono Downs opens with the first operating slot machines in the state.
- December 2006 – Philadelphia Park Racetrack and Casino opens, establishing itself as the largest racino in the state.
- June 2008 – The Clean Indoor Air Act bans smoking for all public indoor facilities, with exemptions for some bars and designated parts of casinos. If casinos could show that smoking areas were more profitable than non-smoking ones, that establishment could apply to expand their smoking sections.
- January 2010 – The state authorizes the operation of table games, allowing racetracks and stand-alone casinos to have up to 250 table games. Slot machine operators could install up to 50 tables. Table games in Pennsylvania were taxed 16 percent the first year, then dropped to 14 percent for the following years.



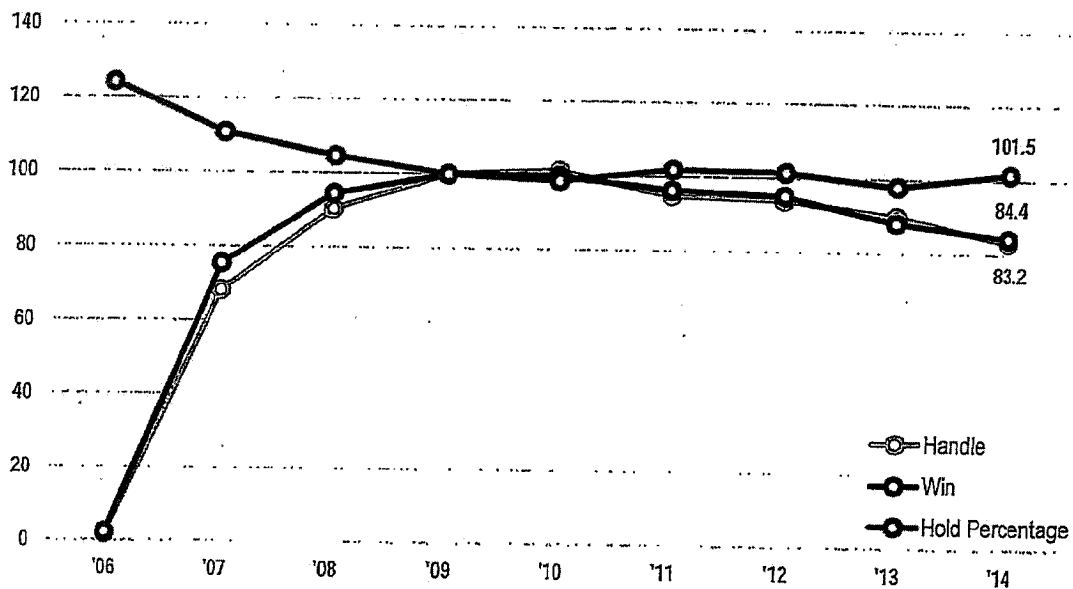
Historical Slot Performance Trends



Slot Hold Percentage



Indexed Slot Handle, Slot Win and Slot Hold Percentage (2009=100)



Rhode Island

Overview

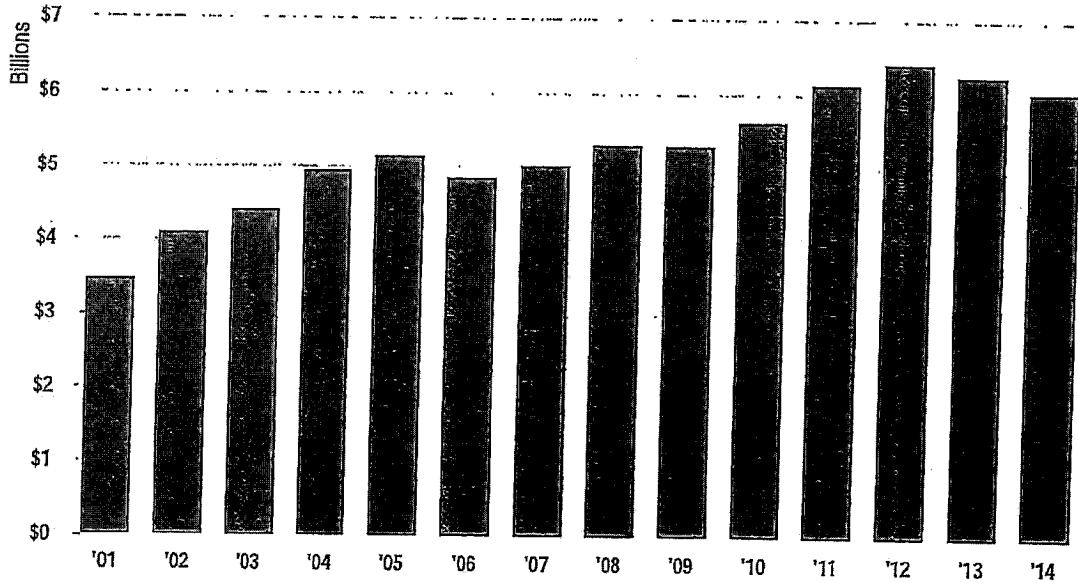
Rhode Island might be the smallest state, but it continues to keep up with its sizable neighbors when it comes to gaming. In 1992 the state lawmakers legalized video lottery terminals, and Rhode Island's two pari-mutuel properties, Twin River and Newport Grand, began operating VLTs the following year. Since then these two properties have been running efficiently, providing steady revenue for the state and a seemingly increasing win percentage for players. In fiscal year 2014, the state's 5,600 slot machines raised \$507.0 million in revenue.

Key Events in History

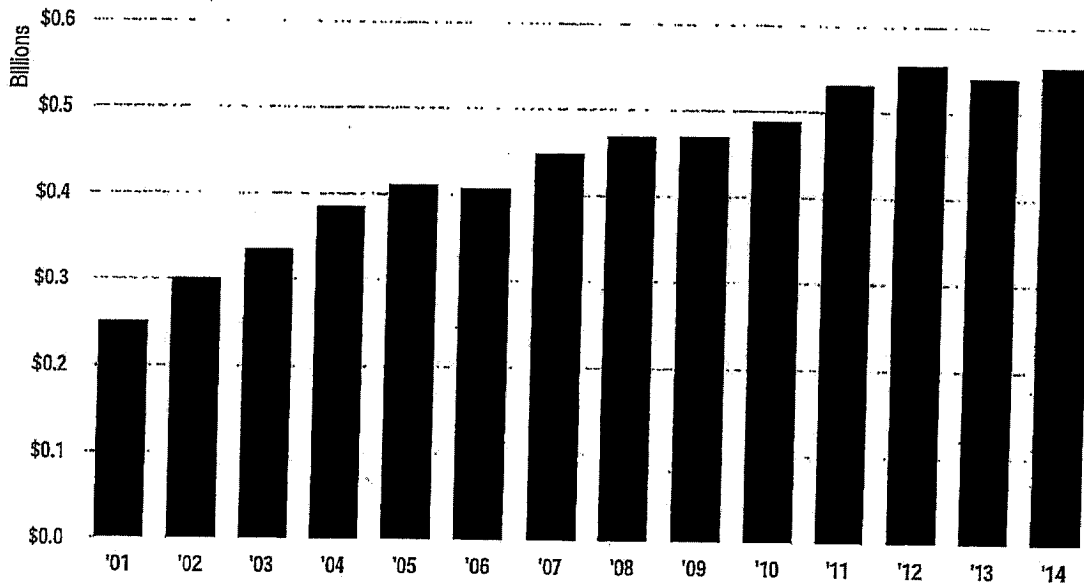
- November 1973 – Rhode Island Lottery is created by Constitutional Amendment. Voters favored the amendment by a three-to-one majority. The General Assembly was delegated to regulate and advise future lotteries.
- May 1974 – The first lottery drawing in the state was held.
- 1975 – Rhode Island became the first state to conduct a televised lottery drawing.
- September 1987 – Rhode Island Lottery becomes a founding member of the Multi-State Lottery Association (MUSL), established to aid in the operation of multi-state games and allow smaller states to offer games with higher jackpots.
- February 1988 – MUSL's Lotto*America sold its first tickets.
- April 1992 – Lotto*America was replaced by the PowerBall lottery.
- September 1992 – The operation of Video Lottery Terminals (VLTs) is approved by legislation (June). They are installed at the two pari-mutuel gaming facilities, Twin River and Newport Grand. Also, keno is introduced to Rhode Island.
- November 2012 – The Town of Lincoln approved a referendum to allow table games in Twin River.
- September 2013 – Twin River begins operating Rhode Island's first live table games.

Historical Slot Performance Trends

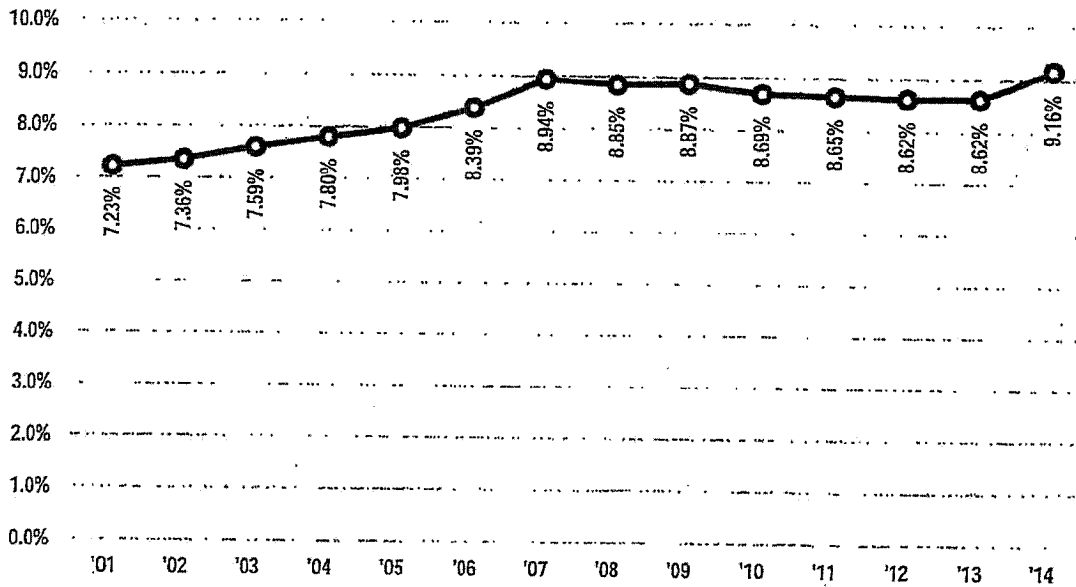
Slot Handle



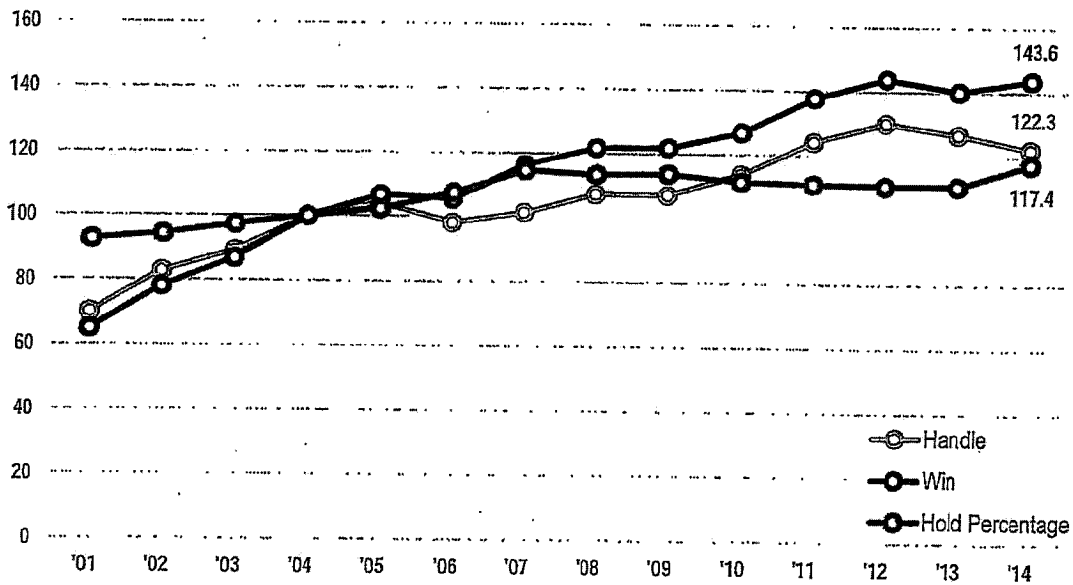
Slot Win



Slot Hold Percentage



Indexed Slot Handle, Slot Win and Slot Hold Percentage (2004=100)



South Dakota

Overview

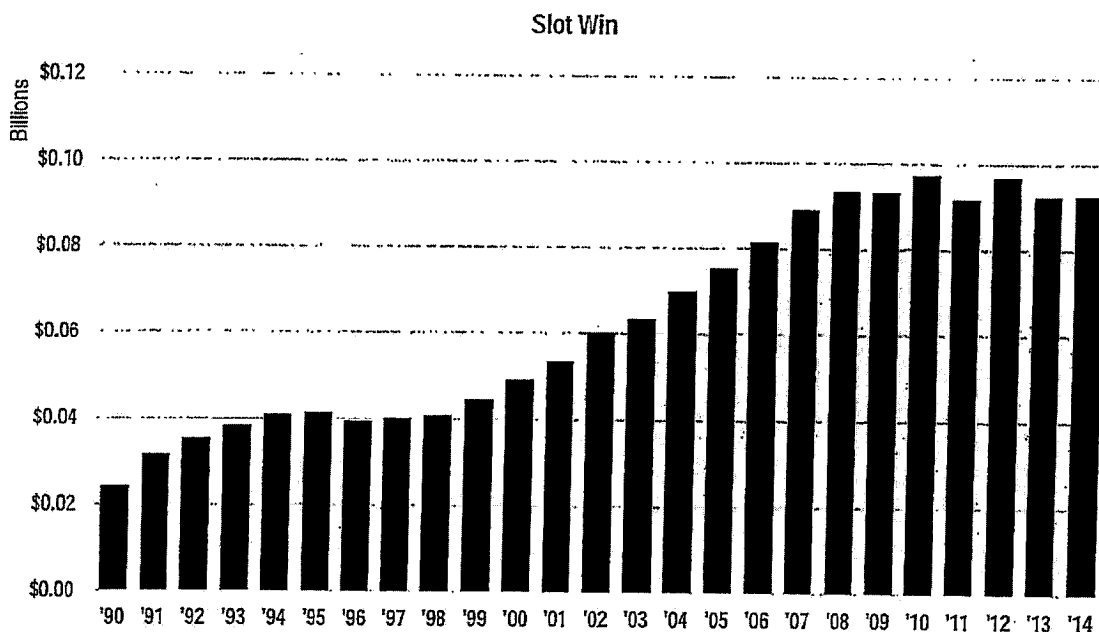
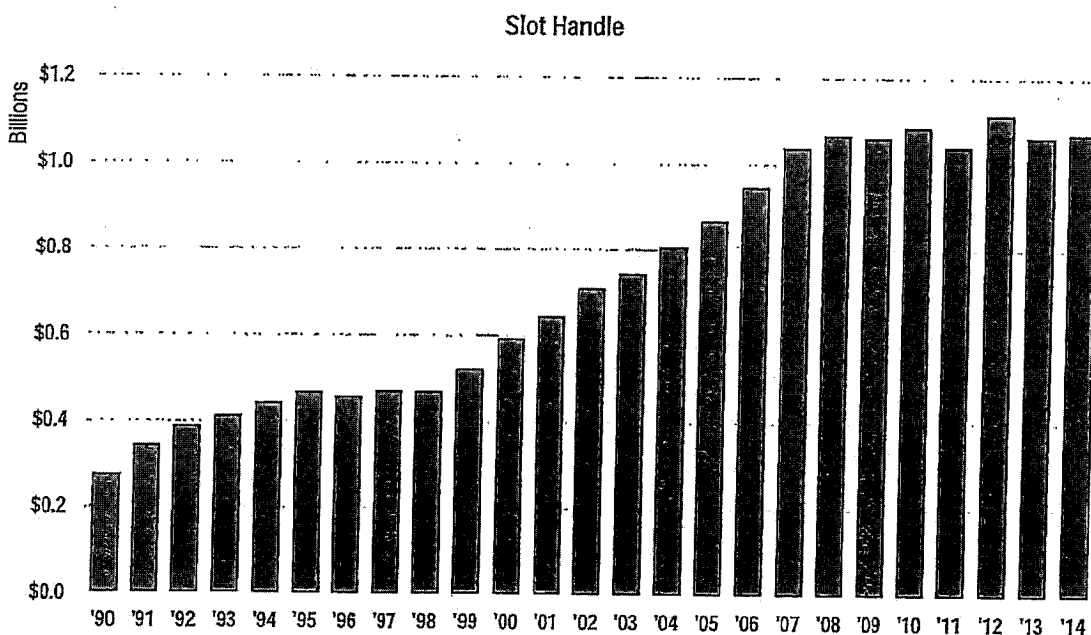


Before it was the subject of an HBO television series, Deadwood was home to the first modern casinos in South Dakota. The infamous Old West town once known for its violence is now the center of state-regulated gaming, thanks to a 1988 ballot initiative to legalize gambling in the town. The initial law allowed only slots, poker and blackjack. That changed last year when voters approved an expansion of gaming to include other casino games, including roulette and craps. The town's 24 casinos host 3,300 slot machines that raised \$92.0 million in revenue in fiscal year 2014.

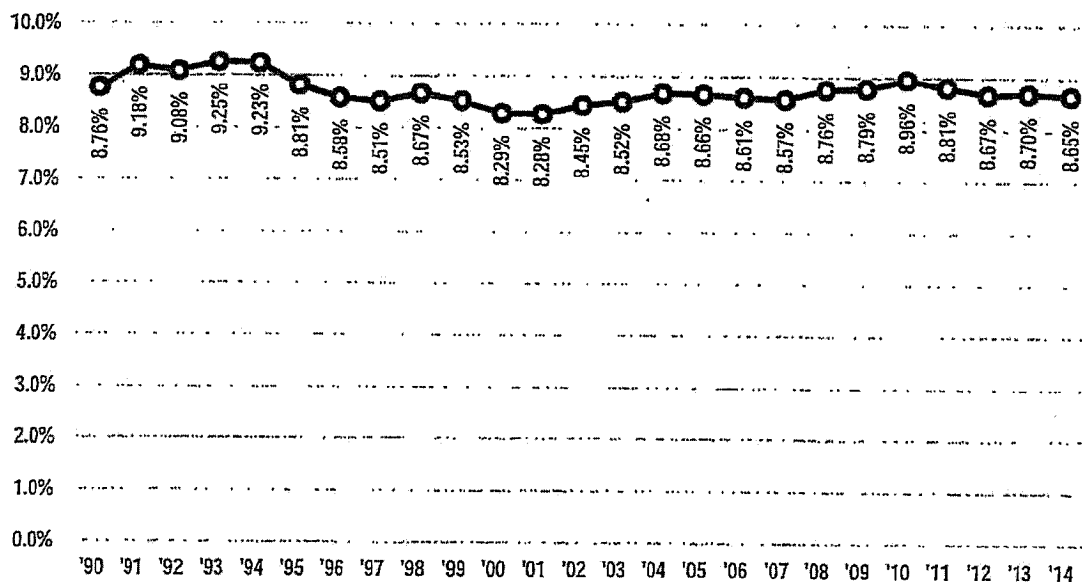
Key Events in History

- November 1988 – Voters overwhelmingly pass a constitutional amendment to legalize gaming in the historic Old West town of Deadwood. The amendment calls for a \$5 betting maximum on slots, blackjack and poker.
- October 1989 – South Dakota becomes the nation's first state to offer Video Lottery Terminals (VLTs). Within the first year, 700 establishments are licensed to allow the games.
- October 1990 – The first Indian casino opens in Flandreau. Run by the Santee Sioux tribe, the casino is the first of nine Indian casinos to be approved by the state.
- June 1994 – South Dakota Supreme Court rules that the Video Lottery is unconstitutional. To reauthorize VLTs, a resolution to place a constitutional amendment on the general election ballot was passed the following month.
- August 1994 – The Video Lottery is shut down. Then on November 22, 1994, citizens in South Dakota vote to reauthorize the Video Lottery and the games resume.
- November 2000 – An initiative to raise the betting limit in Deadwood casinos to \$100 narrowly passes at the polls.
- November 2010 – A smoking ban for all indoor workplaces, including casinos, is approved by voters.
- February 2012 – State lawmakers raise Deadwood's betting limit to \$1,000.
- November 2014 – Voters easily approve a constitutional amendment that allows new casino games in Deadwood, including roulette, keno and craps.

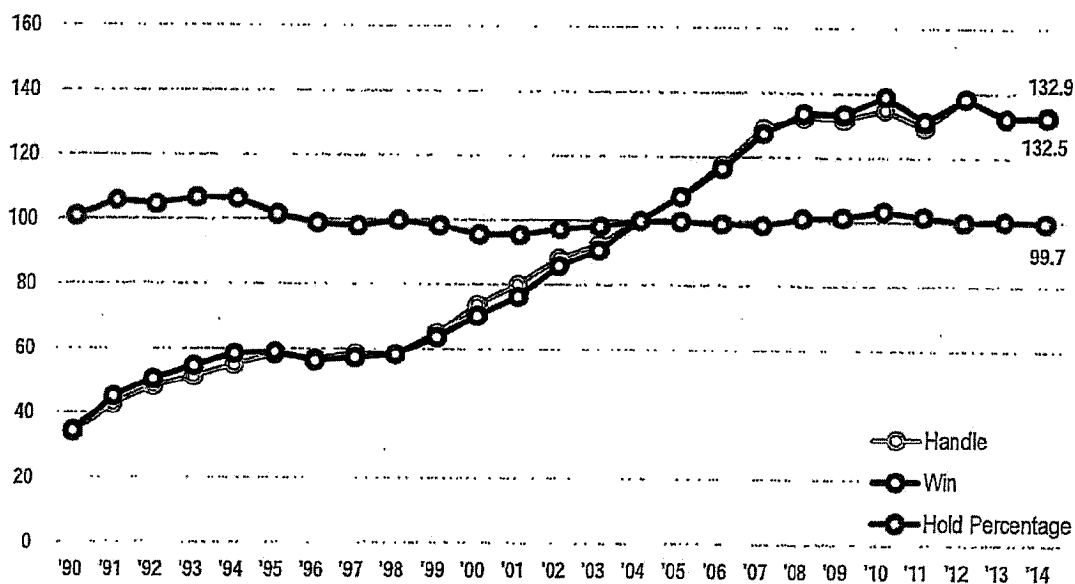
Historical Slot Performance Trends



Slot Hold Percentage



Indexed Slot Handle, Slot Win and Slot Hold Percentage (2004=100)



2185
KENT R. ROBISON, ESQ. - NSB #1167
krobison@rbsllaw.com
SCOTT L. HERNANDEZ, ESQ. - NSB #13147
shernandez@rbsllaw.com
THERESE M. SHANKS, ESQ. - NSB #12890
tshanks@rbsllaw.com
Robison, Belaustegui, Sharp & Low
A Professional Corporation
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169

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

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

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

CASE NO.: CV13-01704

DEPT. NO.: B7

Plaintiff,

vs.

BUSINESS COURT DOCKET

PEPPERMILL CASINOS, INC., a Nevada
Corporation, d/b/a/ PEPPERMILL CASINO,

Defendant.

PEPPERMILL CASINOS, INC.'S MOTION FOR SANCTIONS

Defendant Peppermill Casinos, Inc. ("Peppermill") moves this Court for an order entering sanctions against Plaintiff MEI-GSR Holdings, LLC ("GSR") for GSR's improper designation of Gregory Gale as a purported "rebuttal" expert witness, and GSR's withdrawal of Mr. Gale as an expert witness *after* Peppermill incurred the cost and expense of preparing to and of deposing Mr. Gale. This motion is made pursuant to NRCP 16.1, NRCP 37 and this Court's inherent authority to sanction abusive litigation, and is based upon the attached memorandum of points and

///

///

///

1 authorities and exhibits.

2 DATED this 20th day of November, 2015.

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

7 

8 KENT R. ROBISON
9 SCOTT L. HERNANDEZ
10 THERESE M. SHANKS
11 Attorneys for Defendant
12 Peppermill Casinos, Inc., d/b/a Peppermill Casino

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. INTRODUCTION**

15 Peppermill requests that this Court sanction GSR and GSR's counsel for their abusive
16 conduct in untimely, and (knowingly) improperly designating Gale as a rebuttal expert, forcing
17 Peppermill to incur the cost and expense of preparing for and deposing Gale, and then promptly
18 withdrawing Gale as a rebuttal expert.

19 Gale was initially identified as a rebuttal expert in April 2015, but his expert report was
20 never provided. Following this Court's order requiring GSR to disclose Gale *and* his expert report
21 no later than August 19, 2015, GSR disclosed Gale as a rebuttal expert on October 15, 2015,
22 pursuant to stipulation. Gale's report made it evident that he was not a rebuttal expert at all, but
23 an expert that should have been disclosed in GSR's initial expert disclosures in June 2015.
24 Regardless, Peppermill prepared for and conducted the deposition of Gale in Las Vegas on
25 November 9, 2015.

26 At his deposition, Gale testified that (1) he was not hired to be a rebuttal expert as of April
27 2015 and was not aware that he was disclosed as one by GSR as of that date, (2) that he is not
28 qualified as an expert on either trade secrets or damages, and (3) that he does not rebut any of the
opinions of Peppermill's experts. GSR was clearly aware of all this prior to Peppermill incurring
the expense of traveling to Las Vegas and deposing Gale, yet GSR did not withdraw Gale as a
witness until the day following his deposition. Accordingly, Peppermill now seeks sanctions

1 against GSR and its counsel for their abusive conduct.

2 **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

3 **A. GSR'S HISTORY OF DEFICIENT EXPERT DISCLOSURES.**

4 GSR's Complaint against the Peppermill alleges that the Peppermill misappropriated
5 GSR's alleged "trade secret" when a former Peppermill employee used a master key to access
6 several slot machines on the GSR's property and view GSR's par settings on those machines.
7 Despite the fact that GSR has the burden to prove that par settings are protectable trade secrets at
8 trial, GSR did not designate an expert witness to testify to this issue in its initial expert disclosures.
9 See **Exhibit 1** (GSR's Initial Expert Disclosure). Instead, GSR designated Jeremy Aguero as an
10 expert *solely* on the issue of damages, but failed to attach his expert report. See *id.*

11 In contrast, Peppermill disclosed two experts to opine on the issue of whether a par setting
12 is a protectable trade secret in its initial expert disclosures. See **Exhibit 2** (Peppermill's Initial
13 Expert Disclosure). Realizing its blunder, GSR then designated Jeremy Aguero and Gregory Gale
14 as purported "rebuttal" expert witnesses. See **Exhibit 3** (GSR's Rebuttal Expert Disclosure).
15 GSR did not attach Gale's report to its rebuttal disclosures. *Id.*

16 Peppermill moved to exclude the testimony of both Aguero and Gale as "rebuttal" expert
17 witnesses because GSR's disclosure was deficient under NRCP 16.1, *and* because neither
18 Aguero's nor Gale's testimony regarding whether a par setting constituted a trade secret was
19 properly designated as rebuttal evidence. Since this must be proven in GSR's case in chief, neither
20 of these experts qualified as a "rebuttal expert." They were, instead, untimely disclosed experts.

21 The Discovery Commissioner agreed with Peppermill and recommended to this Court that
22 Aguero and Gale be precluded from testifying. See **Exhibit 4** (Recommendation and Order). The
23 Discovery Commissioner found that GSR could not attempt to fix its insufficient and deficient
24 expert witness disclosure by designating witnesses as "rebuttal experts" who should have been
25 originally identified in the initial expert disclosure. *Id.*

26 Before this Court could adopt the Discovery Commissioner's recommendation, however,
27 trial was continued and discovery was extended. Thus, this Court entered an order extending the
28 expert disclosure and rebuttal expert disclosure deadlines. See **Exhibit 5** (Order). Under that

1 Order, GSR was given until June 4, 2015, to provide sufficient expert disclosures, and until
2 August 19, 2015, to designate rebuttal expert witnesses and to provide written rebuttal expert
3 reports. *Id.* That deadline was extended to October 15, 2015, by stipulation.

4 Although GSR was by now aware of the issue with designating Gregory Gale as a rebuttal
5 expert, GSR nevertheless omitted him from GSR's August 27, 2015 Supplemental Disclosure of
6 Expert Witness. *See Exhibit 6* (GSR's Supplemental Disclosure of Expert Witness). In that
7 disclosure, Mr. Aguero was again designated as the *sole* expert, and his area of expertise was again
8 limited to the issue of damages. *See id. No other expert witnesses were identified. Id.*¹

9 On October 15, 2015, GSR filed its new rebuttal expert witness disclosure in which GSR
10 identified (1) Aguero, (2) Gregory Gale, (3) Rex Carlson, and (4) Charles Lombardo, as rebuttal
11 experts who will counter the opinions of Peppermill's experts Friedman and Lucas. *See Exhibit*
12 *7* (GSR Rebuttal Expert Witness Disclosure).²

13 **B. GREGORY GALE ADMITS HE IS NOT A REBUTTAL EXPERT.**

14 On October 21, 2015, Peppermill noticed Gale's deposition to take place on November 9,
15 2015 in Las Vegas, Nevada. *See Exhibit 8* (Second Amended Notice of Deposition of Gregory
16 Gale). At no point did GSR indicate that it would be withdrawing Gale as a rebuttal expert
17 witness. Thus, Peppermill's counsel and corporate representative traveled to Las Vegas to depose
18 Gale on November 9, 2015.

19 During his deposition, it became abundantly clear that Gale was not, and never was, a
20 "rebuttal" expert. Gale testified that he was never hired to be a rebuttal expert in April 2015
21 because he did not speak to GSR concerning this case between December 2014 and September
22 2015 as follows:

23 Q: After the deposition of Ryan Tors in December 2014, is it - - is it true that you were
24 not contacted by the plaintiff's lawyers in this case until September 2015?

25 A: To the best of my recollection, that's true.

26 *See Exhibit 9*, p. 21:8-12 (Excerpts from Deposition Transcript of Gregory Gale).

27 In fact, Gale was surprised by the fact that GSR designated him as a rebuttal expert in April

28 ¹ Peppermill has moved to disqualify Aguero as an expert witness and to preclude his testimony or report from being
entered into evidence at trial.

² *Id.* at ¶ 36.

1 2015:

2 Q: All right. I was served with this document on April 1st, 2015. It says: Grand Sierra
3 Resort's rebuttal expert disclosure.
4 If you turn to the second page, under Roman numeral I, capital B, I see your name
there. Do you see that?

5 A: Yes.

6 Q: You're surprised. You just acted surprised.

7 A: Well, my – the address of my – is completely wrong.

8 Q: Well, that may be because you hadn't even talked to counsel about being rebuttal;
correct?

9 A: True.

10 Q: Did you give counsel permission to do this?

11 A: No.

12 *Id.* at p. 26:12-27:1.

13 Gale then testified that he had not prepared any expert report by April 1, 2015, the initial
14 due date for rebuttal expert disclosure. *Id.* at p. 27:17-19 ("Q: . . . You had not prepared a report by
15 April 1st, 2015, had you? A: No."). Gale further testified that, although he was designated to
16 rebut the reports of Peppermill's experts, he had not seen those reports by April 2015, and had
17 never been contacted to rebut those experts. *Id.* at p. 27:25-29:1.

18 Gale went on to testify that he is not even *qualified* to provide opinions on trade secrets *or*
19 damages in this case:

20 Q: You're not an expert on trade secrets; correct?

21 A: No.

22 . . .

23 Q: But you're not a damage expert?

24 A: No.

25 *Id.* at p. 37:23-25, 38:13-14.

26 Finally, Gale admitted that he was not a rebuttal expert because he *did not rebut*
27 *Peppermill's experts*:

28 Q: . . . You didn't – you didn't rebut Stacy Friedman in this report, did you?

1 A: No.

2 Q: You didn't rebut Dr. Lucas, did you?

3 A: No.

4 ...

5 Q: Here's what the court was told. Here's what my office was told – that you were
6 going to testify in this case and you were going to counter the opinions of Dr.
7 Lucas. You're not doing that, are you?

8 A: No.

9 Q: And I was told, and the court was told, that you were going to counter the opinions
10 of Stacy Friedman. You're not doing that either are you?

11 A: No.

12 Q: In fact, you're not rebutting anything, are you?

13 A: No.

14 *Id.* at pp. 43:21-25, 44:4-17.

15 The day after Gale's deposition, GSR withdrew Gale as a "rebuttal" expert. *See Exhibit*
16 **10** (GSR's Withdrawal of Rebuttal Expert). GSR provided no explanation to this Court for the
17 basis for this withdrawal. *Id.* As shown from above, GSR was aware of the grounds to withdraw
18 Gale *months* before it ever improperly designated him as a rebuttal expert. Furthermore, GSR
19 was aware that Gale's report did not rebut Peppermill's experts prior to Peppermill incurring the
20 cost and expense of traveling to Las Vegas to conduct Gale's deposition. As a result of GSR's
21 abusive conduct, Peppermill has incurred unnecessary costs and attorney fees in the amount of
22 \$16,267.85. *See Exhibit 11* (Affidavit of Kent R. Robison). Accordingly, Peppermill now
23 moves this Court to sanction GSR and its attorneys.

24 **III. GROUNDS FOR SANCTIONS**

25 **A. NRCP 16.1(e)(3)**

26 Peppermill requests that this Court sanction GSR's counsel for its improper conduct.
27 NRCP 16.1(e)(3) provides that this Court *shall* impose sanctions upon an attorney who "fails to
28 reasonably comply" with NRCP 16.1. NRCP 16.1(a)(2)(C) specifically states that "rebuttal"
experts are not experts "whose purpose is to contradict a portion of another party's case in chief
that *should have been expected and anticipated by the disclosing party.*" In such a case, these

1 witnesses must be designated according to the timeline set forth for initial expert disclosures. *Id.*

2 GSR has the burden at trial to prove that its par settings are a protectable trade secret.
3 *Frantz v. Johnson*, 116 Nev. 455, 466, 999 P.2d 351, 358 (2000). Thus, expert evidence on this
4 issue must be presented in GSR's case-in-chief. It is well established that rebuttal evidence *may*
5 *not* be used to establish a case-in-chief. *Cates v. Sears Roebuck Co.*, 928 F.2d 679, 685 (9th Cir.
6 1991) ("Rebuttal must be kept in perspective; it is not to be used as a continuation of the case-in-
7 chief."); *see also Marmo v. Tyson Fresh Meats, Inc.*, 457 F.3d 748, 759 (8th Cir. 2006) (holding
8 that "rebuttal evidence may be used to challenge the evidence or theory of an opponent – and not
9 to establish a case-in-chief."). Thus, rebuttal is "not an opportunity for the correction of any
10 oversights in the plaintiff's case in chief." *Crowley v. Chait*, 322 F. Supp. 2d 530, 551 (D.N.J.
11 2004) (internal quotations omitted). "Rebuttal evidence is admissible only where the need for it
12 could not have been foreseen at the time the plaintiff presented its case-in-chief." *Daly v. Far E.*
13 *Shipping Co. PLC.*, 238 F. Supp. 2d 1231, 1238 (W.D. Wash. 2003) (quoting *Faigin v. Kelly*, 184
14 F. 3d 67, 85 (1st Cir. 1999)). Therefore, "evidence which properly belongs in the case-in-chief but
15 is first introduced in rebuttal may be rejected, so as to avoid prejudice to the defendant and to
16 ensure the orderly presentation of proof." *Emerick v. U.S. Suzuki Motor Corp.*, 750 F.2d 19, 21-22
17 (3d Cir. 1984).

18 Gale admits that he is not a rebuttal expert. Exh. 9 at 43:21-25, 44:4-17. Furthermore,
19 Gale admits that he is not qualified as an expert to testify regarding trade secrets or damages. *Id.*
20 at p. 37:23-25, 38:13-14. Yet, he was purportedly hired and disclosed to rebut the expert opinions
21 of Peppermill's experts on these issues. Exh. 7.

22 The grounds for sanctioning GSR's counsel are abundantly clear from Gale's admissions.
23 GSR did not timely designate an expert according to NRCP 16.1(a)(2)'s requirements, GSR
24 designated an unqualified expert, and GSR improperly designated an expert witness as a "rebuttal"
25 witness despite the fact that the witness did not rebut any expert opinion of Peppermill's.

26 NRCP 16.1(e)(3)(A) permits this Court to enter any of the sanctions available under NRCP
27 37(b)(2). Those sanctions include ordering GSR's counsel to reimburse Peppermill for its costs
28 and fees incurred in taking the deposition of Gale and bringing this current motion. *Id.*

1 Accordingly, Peppermill requests that this Court sanction GSR's counsel and order it to reimburse
2 Peppermill for its legal fees and costs.

3 **B. NRCP 37(b)(2)**

4 Peppermill further requests that this Court sanction GSR for its abusive litigation tactics.
5 NRCP 37(b)(2) states that this Court may sanction a party who "fails to obey an order entered
6 under Rules 16, 16.1 and 16.2." This Court's order extending discovery deadlines and amending
7 its scheduling order is an order entered under NRCP 16. *See* NRCP 16(e).

8 As shown from the above, GSR clearly failed to obey this Court's scheduling order. Even
9 if Gale was qualified to testify as an expert, which he admits that he is not, Gale admits that he was
10 not a rebuttal expert. Exh. 9 at 43:21-25, 44:4-17. Therefore, he should have been disclosed as
11 an expert by June 4, 2015, pursuant to this Court's order. Exh. 5. He was not. GSR clearly did
12 not comply with this Court's order, and sanctions are warranted.

13 NRCP 37(b)(2) permits this Court to enter an order (1) establishing certain facts, (2)
14 refusing to allow GSR to support or oppose claims or defenses, (3) striking portions of GSR's
15 pleading, (4) dismissing GSR's Complaint, and (5) holding GSR in contempt of court. NRCP
16 37(b)(2)(A)-(D). In lieu of these, this Court may also sanction GSR by ordering GSR to pay
17 Peppermills its attorney fees and costs incurred in taking the deposition of Gale and bringing this
18 motion. NRCP 37(b)(2).

19 **C. THIS COURT'S INHERENT POWER TO SANCTION ABUSIVE**
20 **LITIGATION PRACTICES**

21 Finally, this Court has "inherent equitable powers to dismiss actions or enter default
22 judgments for abusive litigation practices." *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92,
23 787 P.2d 777, 779 (1990) (internal quotations and alterations omitted). These inherent equitable
24 powers "permit sanctions for discovery and other litigation abuses not specifically proscribed by
25 statute." *Id.*

26 As shown from the above, GSR has a pattern of providing insufficient and improper expert
27 disclosures. This has generated needless cost and expense to Peppermill to challenge these
28 experts. Accordingly, this Court should exercise its inherent power to sanction GSR and its
counsel for their continuously abusive litigation practices.

1 **IV. CONCLUSION**

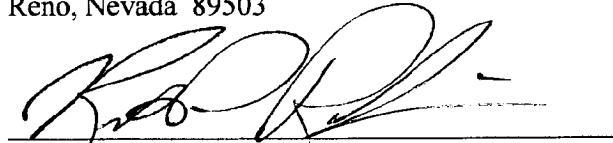
2 Peppermill respectfully requests that this Court sanction GSR's attorneys and require them
3 to reimburse Peppermill for its legal fees and costs incurred in deposing Gale and bringing this
4 current motion. Peppermill further requests that this Court sanction GSR by dismissing its
5 complaint. Alternatively, Peppermill requests that this Court sanction GSR by ordering payment
6 of its attorney fees and costs incurred in deposing Gale and bringing this current motion.

7
8 **AFFIRMATION**
9 **Pursuant to NRS 239B.030**

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

12 DATED this 20th day of November, 2015.

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



17 KENT R. ROBISON
18 SCOTT L. HERNANDEZ
19 THERESE M. SHANKS
20 Attorneys for Defendant
21 Peppermill Casinos, Inc., d/b/a Peppermill Casino
22
23
24
25
26
27
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 MOTION FOR SANCTIONS** 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

cdavis@cohenjohnson.com

Attorneys for Plaintiff

MARK WRAY, ESQ.

608 Lander Street

Reno, NV 89509

Email: mwrav@markwraylaw.com

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

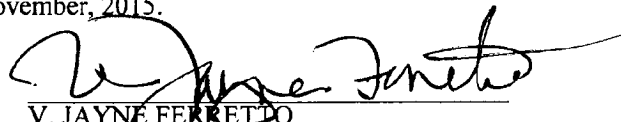
Email: mwrav@markwraylaw.com

Attorneys for Plaintiff

by facsimile (fax) addressed to:

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

DATED: This 20th day of November, 2015.



V. JAYNE FERRETTO

Employee of Robison, Belaustegui, Sharp & Low

EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>	<u>Pages</u>
1	Plaintiff MEI-GSR Holdings LLC, A Nevada Corporation d/b/a/ Grand Sierra Resorts Disclosure of Expert Witnesses (without exhibits)	5 pages
2	Defendant Peppermill Casinos, Inc.'s Disclosure of Expert Witnesses (without exhibits)	7 pages
3	Grand Sierra Resort's Rebuttal Expert Disclosure (without exhibits)	5 pages
4	Recommendation for Order (filed 5/14/15)	13 pages
5	Order Granting Motion to Extend Discovery and Continue Trial Deadlines and Amended Scheduling Order (filed 7/1/15)	3 pages
6	Plaintiff MEI-GSR Holdings, LLC, A Nevada Corporation, d/b/a/ Grand Sierra Resort's Supplemental Disclosure of Expert Witness (without exhibits)	5 pages
7	Grand Sierra Resort's Supplemental Rebuttal Expert Disclosure (without exhibits)	5 pages
8	Second Amended Notice of Taking Deposition of Gregory Gale, GSR's Rebuttal Expert Witness	3 pages
9	Excerpts from the Deposition Transcript of Gregory J. Gale, CPA, M.S. deposed on 11/9/15	10 pages
10	Grand Sierra Resort's Notice of Withdrawal of Rebuttal Expert Witness and Rebuttal Expert Report	3 pages
11	Affidavit of Kent R. Robison (with attached statements of qualifications of Kent R. Robison and Therese Shanks)	12 pages

FILED
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Clerk of the Court
Transaction # 5246861 : ccovingt

EXHIBIT 1

EXHIBIT 1

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

1700
COHEN-JOHNSON, LLC
H. STAN JOHNSON, ESQ.
Nevada Bar No. 00265
sjohnson@cohenjohnson.com
TERRY KINNALLY, ESQ.
Nevada Bar No. 6379
tkinnally@cohenjohnson.com
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
Telephone: (702) 823-3500
Facsimile: (702) 823-3400
*Attorneys for MEI-GSR Holdings, LLC.,
d/b/a GRAND SIERRA RESORT*

IN ASSOCIATION WITH

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 I-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 RESORTS DISCLOSURE OF EXPERT WITNESSES

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

1 Plaintiff GRAND SIERRA RESORT ("GSR"), by and through its counsel of record,
2 Cohen-Johnson, LLC, hereby submits and identifies its expert witnesses and discloses the expert
3 report pursuant to NRCP 16.1(a)(2) in this matter as follows:

4 I. EXPERT WITNESSES

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 his opinion in this matter in regards to
11 damages in accordance with his affidavit attached hereto as Exhibit A (Bates Stamped GSR
12 17,998 – GSR 17,999) in lieu of report due to the failure of Defendant Peppermill Casino to
13 provide documents requested in this case. Upon receipt of the requested information a full expert
14 report prepared by Applied Analysis, including opinions, data and any other information
15 considered in forming said report and opinions, his professional qualifications, and any other
16 related matters will be produced.

17 Attached hereto is Mr. Aguero Curriculum Vitae and his testimonial history attached
18 hereto as Exhibit B and Bates Stamped GSR 18,000 – GSR 18,018

19 Plaintiff reserves the right to supplement this disclosure as further investigation and
20 discovery may reveal additional information.

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

AFFIRMATION

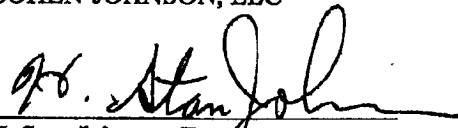
Pursuant to NRS 239B.030

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

Dated this 2nd day of March, 2015

COHEN-JOHNSON, LLC

By:


H. Stan Johnson, Esq.
Nevada Bar No. 00265
Terry Kinnally, Esq.
Nevada Bar No 06379
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
Attorneys for Plaintiff

COHEN-JOHNSON, LLC

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

INDEX OF EXHIBITS

Exhibits	Description	Pages
1	Affidavit of Jeremy Aguero	3
2	Curriculum Vitae of Jeremy A. Aguero	20

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 RESORTS DISCLOSURE OF EXPERT WITNESSES** on all the parties to this action by the method(s) indicated below:

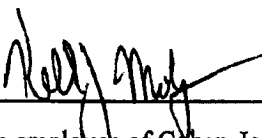
 x by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States Mail, Las Vegas, Nevada and addressed to:

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

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

 by using the Court's CM/ECF Electronic Notification System addressed to:
 x by electronic email addressed to the above:
 by personal or hand/delivery addressed to:
 By facsimile (fax) addresses to:
 by Federal Express/UPS or other overnight delivery addressed to:

DATED the 2nd day of March, 2015.



An employee of Cohen-Johnson, LLC

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Jacqueline Bryant
Clerk of the Court
Transaction # 5246861 : ccovingt

EXHIBIT 2

EXHIBIT 2

1610
KENT R. ROBISON, ESQ. - NSB #1167
krobison@rbsllaw.com
KEEGAN G. LOW, ESQ. - NSB #307
klow@rbsllaw.com
SCOTT L. HERNANDEZ, ESQ. - NSB # 13147
sherenandez@rbsllaw.com
Robison, Belaustegui, Sharp & Low
A Professional Corporation
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169

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

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

CASE NO.: CV13-01704

DEPT. NO.: B7

Plaintiff,

vs.

BUSINESS COURT DOCKET

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

Defendant(s).

DEFENDANT PEPPERMILL CASINOS, INC.'S
DISCLOSURE OF EXPERT WITNESSES

Pursuant to NRCP 16.1, Defendant Peppermill Casinos, Inc. ("Peppermill") designates the
following individuals as expert witnesses:

1. Anthony Lucas, Ph.D.
William F. Harrah College of Hotel Administration
University of Nevada, Las Vegas
2562 Deer Season Street
Henderson, Nevada 89052
Telephone: (702) 300-6064

Dr. Lucas is a professor of the William F. Harrah College of Hotel Administration at the
University of Nevada, Las Vegas, and will render an opinion concerning the fact that pars are not

1 public, that pars have no value in the market and that the information received by the Peppermill
2 from Ryan Tors has no value or benefit to the Peppermill. Attached hereto as **Exhibit 1** is a copy
3 of Dr. Lucas's Expert Report, Curriculum Vitae, Fee Schedule and List of Prior Testimony.

- 4
5 1. Stacy Friedman
6 Olympian Gaming
7 13915 S.W. Otter Lane
8 Beaverton, Oregon 97008
9 Telephone: (503) 764-5614

10 Mr. Friedman is a mathematician, statistician, and expert designer of gaming machines and
11 will render an opinion concerning his different investigations and analysis of how easy it is to
12 obtain pars from slot machines in Northern Nevada, that pars have no value, that pars are not
13 secret, that the Grand Sierra Resort (GSR) did not adequately protect what it now contends is
14 secret, that GSR has no damages, that the Peppermill was not unjustly enriched, that pars have no
15 commercial value, and he will contradict the findings and opinions of David Schwartz, Ph.D.
16 Attached hereto as **Exhibit 2** is a copy of Mr. Friedman's Expert Report, Curriculum Vitae, Fee
17 Schedule and List of Prior Testimony.

- 18 2. Randall A. Fine
19 Managing Director
20 The Fine Point Group
21 3960 Howard Hughes Parkway, Suite 500
22 Las Vegas, Nevada 89169
23 Telephone: (702) 965-2020

24 Mr. Fine is an expert marketing analyst in the gaming industry and will render rebuttal
25 opinions concerning the expert opinions provided by GSR's expert witnesses.

- 26 3. Michelle Salazar, CPA/ABV, CVA, CFE
27 Litigation and Valuation Consultants, Inc.
28 1575 Delucchi Lane, Suite 115-16
Reno, Nevada 89502
Telephone: (775) 825-7982

Ms. Salazar is a licensed certified public accountant, a CVA (Certified Valuation Analyst)

1 and is accredited in business valuation. She will render rebuttal opinions refuting any expert
2 witness opinions that suggest, allege or opine that the Peppermill "used" the information provided
3 by Ryan Tors concerning the GSR's pars.

- 4
5 4. Michael Draeger
6 GSR Director of Finance
7 c/o H. STAN JOHNSON, ESQ.
8 TERRY KINNALLY, ESQ.
9 Cohen-Johnson, LLC
10 255 E. Warm Springs Road, Suite 100
11 Las Vegas, Nevada 89119

12 Mr. Draeger is the Director of Finance at the Grand Sierra Resort and as an expert in
13 gaming operations, Mr. Draeger will confirm his sworn testimony that pars are not secret.

- 14 5. Toby Taylor
15 GSR Executive Director of Slot Operations
16 c/o H. STAN JOHNSON, ESQ.
17 TERRY KINNALLY, ESQ.
18 Cohen-Johnson, LLC
19 255 E. Warm Springs Road, Suite 100
20 Las Vegas, Nevada 89119

21 Mr. Taylor is the Executive Director of Slot Operations at the Grand Sierra Resort and will
22 confirm his sworn testimony that without more information and a greater statistical sample, the
23 pars obtained by Ryan Tors from the GSR have no value or benefit to the Peppermill.

- 24 6. Terry Vavra
25 GSR Vice President of Development
26 c/o H. STAN JOHNSON, ESQ.
27 TERRY KINNALLY, ESQ.
28 Cohen-Johnson, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119

Mr. Vavra is the Vice President of Development at the Grand Sierra Resort and will
confirm his sworn testimony that without more information and a greater statistical sample, the
pars obtained by Ryan Tors from the GSR have no value or benefit to the Peppermill.

///

1 7. Billy Paganetti
2 General Manager
3 Peppermill Casinos, Inc.
4 c/o Robison, Belaustegui, Sharp & Low
5 71 Washington Street
6 Reno, Nevada 89503
7 Telephone: (775) 329-3151

8 Billy Paganetti is a General Manager of the Peppermill and has sophisticated knowledge,
9 experience and expertise regarding methods by which par information can be obtained without the
10 use of a 2341 key and can testify and will render opinions concerning the fact that the Peppermill
11 did not use the pars provided by Ryan Tors and did not derive any benefit or value from that
12 information.

13 8. Aaron Robyns
14 Executive Director of Marketing
15 Peppermill Casinos, Inc.
16 c/o Robison, Belaustegui, Sharp & Low
17 71 Washington Street
18 Reno, Nevada 89503
19 Telephone: (775) 329-3151

20 Aaron Robyns is an expert on marketing concepts and issues. He will express expert
21 opinions concerning the fact that the pars obtained by Ryan Tors had no value, were of no benefit,
22 were not used and that the marketing concepts and practices are such that any use of the
23 information obtained by Ryan Tors would be counterproductive and/or useless.

24 9. Richard Wells
25 President
26 Wells Gaming Research
27 6900 S. McCarran Blvd., Suite 3030
28 Reno, Nevada 89509
 Telephone: (775) 826-3232

 Richard Wells is an expert on gaming practices and market share and will testify
concerning the basis, findings and conclusions set forth in the Wells Reports for a period of time
of September 2011 through September of 2014.

10. John Stone
CDC Consulting
P.O. Box 1811
Zephyr Cove, Nevada 89448
Telephone: (702) 378-0634

John Stone is not a retained expert, but is an expert on "shopping" activities in the Northern Nevada casino market and will render opinions concerning the efforts various casinos make to determine and ascertain their competitors' par information, slot strategies and marketing.

11. Steven N. Rosen
Marketing Consultant
1816 Wincanton Drive
Las Vegas, Nevada 89134

Steven Rosen is a former General Manager of the GSR and will render expert opinions concerning the market strategies invoked and implemented by the GSR.


Defendant Peppermill reserves the right to disclose additional witnesses as they become known, as well as witnesses to address issues raised by other parties, and to address witnesses that may be disclosed by other parties.

AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 2nd day of March, 2015.

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



KENT R. ROBISON
KEEGAN G. LOW
SCOTT L. HERNANDEZ
Attorneys for Defendant
Peppermill Casinos, Inc., d/b/a Peppermill Casino

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP
3 & LOW, and that on this date I caused to be served a true copy of the **DEFENDANT PEPPERMILL**
4 **CASINOS, INC.'S DISCLOSURE OF EXPERT WITNESSES** on all parties to this action by
5 the method(s) indicated below:

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

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

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

16 ☐ by electronic email addressed to the above.

17 ☒ by personal delivery/hand delivery addressed to:

18 MARK WRAY, ESQ.
19 608 Lander Street
20 Reno, NV 89509
21 Email: mwrays@markwray.law.com
22 Attorneys for Plaintiff

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

☐ by facsimile (fax) addressed to:

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

DATED: This 2nd day of March, 2015.

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22 V. JAYNE PERRETTO
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EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>	<u>Pages</u>
1	Expert Report of Professor Anthony Lucas (confidential) (in three parts)	86
2	Expert Report of Stacy Friedman (confidential) (in four parts)	105

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Jacqueline Bryant
Clerk of the Court
Transaction # 5246861 : ccovingt

EXHIBIT 3

EXHIBIT 3

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

15 **IN ASSOCIATION WITH**

16 **LAW OFFICES OF MARK WRAY**
17 **MARK WRAY, ESQ.**
18 Nevada Bar No.: 4425
19 608 Lander Street
20 Reno, Nevada 89509
21 Telephone: (775) 348-8877
22 Facsimile: (775) 348-8351
23 *Attorney for MEI-GSR Holdings, LLC. d/b/a*
24 *Grand Sierra Resort*

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

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

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

Plaintiff,

v.

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

Defendants.

Case No.: CV13-01704

Dept. No.: B7

BUSINESS COURT DOCKET

29 **GRAND SIERRA RESORT'S REBUTTAL EXPERT DISCLOSURE**

30 Defendant, GRAND SIERRA RESORT ("GSR" or "Defendant"), by and through its
31 counsel of record, Cohen-Johnson, LLC, hereby submits and identifies its rebuttal expert
32

1 witnesses and discloses the rebuttal expert report pursuant to NRCP 16.1(a)(2) in this matter as
2 follows:

3 **I. REBUTTAL EXPERT WITNESSES**

4 **A.** Jeremy A. Agüero
Principal Analyst
Applied Analysis
6385 S. Rainbow Blvd., Suite 105
6 Las Vegas, Nevada 89118
(702) 937-3333

7 **B.** Gregory Gale
2626 Yesesca Drive
8 Henderson, Nevada 89052
9 (702) 456-4695

10 Jeremy Agüero 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. Attached hereto Mr. Agüero's Affidavit (*Exhibit "1"*) and his
15 testimonial history attached (*Exhibit "2"*) and Bates Stamped GSR 18,000 – GSR 18,018.

16 Gregory Gale is expected to testify regarding the Rebuttal Expert Witness Report
17 prepared by Gregory Gale to counter any opinions or claims made the Defendant's Experts: (1)
18 Anthony Lucas, Ph.D. and (2) Stacey Friedman. This report is comprised of opinions, data and
19 any other information considered in forming said opinions, his professional qualifications, and
20 any other related matters.

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

AFFIRMATION

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

Dated this 1stth day of April, 2015.

COHEN-JOHNSON, LLC

By:


H. STAN JOHNSON, ESQ.

Nevada Bar No. 60265

TERRY KINNALLY, ESQ.

Nevada Bar No. 6379

255 E. Warm Springs Road, Suite 100

Las Vegas, Nevada 89119

*Attorneys for MEI-GSR Holdings, LLC,
d/b/a Grand Sierra Resort*

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

INDEX OF EXHIBITS

Exhibits	Description	Pages
1	Affidavit of Jeremy Aguero	3
2	Curriculum Vitae of Jeremy A. Aguero	20

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 **GRAND SIERRA RESORT'S REBUTTAL EXPERT DISCLOSURE** on all the parties to this action by the method(s) indicated below:

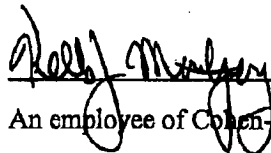
☒ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States Mail, Las Vegas, Nevada and addressed to:

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

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

☒ by using the Court's CM/ECF Electronic Notification System addressed to:
☒ by electronic email addressed to the above;
by personal or hand/delivery addressed to:
By facsimile (fax) addresses to:
by Federal Express/UPS or other overnight delivery addressed to:

DATED the 1st day of April, 2015.


An employee of Cohen-Johnson, LLC

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Jacqueline Bryant
Clerk of the Court
Transaction # 5246861 : ccovingt

EXHIBIT 4

EXHIBIT 4

1 CODE NO. 1945

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

8 * * *

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

11 Plaintiff,

Case No. CV13-01704

12 vs.

Dept. No. B7

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

14 Defendants.
15 _____/

16 **RECOMMENDATION FOR ORDER**

17 Presently before the Court is *Peppermill Casinos, Inc.'s Motion to Strike Plaintiff's Rebuttal*
18 *Expert Disclosure and for Order in Limine Precluding Plaintiff from Utilizing Any Experts Except for*
19 *David Schwartz, Ph.D. in this Case*, filed on April 7, 2015.¹ Defendant Peppermill Casinos, Inc.,
20 maintains that the rebuttal expert witness disclosure filed and served by Plaintiff MEI-GSR Holdings,
21 LLC, on April 1, 2015, was incomplete, untimely, and otherwise improper.² *GSR's Opposition to*
22 *Peppermill's Motion to Strike GSR's Rebuttal Expert Disclosure and for Order in Limine Excluding*
23 *GSR's Rebuttal Experts* was filed on April 24, 2015. *Peppermill's Reply to GSR's Opposition to*

24 ¹ The background of this action is set forth in greater detail in previous decisions entered by the Court.

25 ² Defendant also argues that one of Plaintiff's designated rebuttal expert witnesses is precluded from acting in
26 that capacity due to a conflict of interest. For reasons explained in a separate decision regarding Defendant's motion to
strike Plaintiff's initial expert witness disclosure, the Court finds that the expert at issue, Mr. Aguero, would not be
precluded from testifying on Plaintiff's behalf in this case. However, that issue is rendered moot by the Court's analysis
regarding other issues raised by this motion.

1 *Peppermill's Motion to Strike GSR's Rebuttal Expert Disclosure and for Order in Limine Excluding*
2 *GSR's Rebuttal Experts* was filed on May 4, 2015, and the motion was submitted on that same date.

3 Plaintiff filed and served *Grand Sierra Resort's Rebuttal Expert Disclosure* on April 1, 2015.
4 In that disclosure, Plaintiff identified Jeremy Aguero and Gregory Gale as rebuttal expert witnesses.
5 It states that each witness will testify regarding his rebuttal expert witness report to counter any
6 opinion or claims made by Defendant's experts. Plaintiff also states for each witness that "[t]his
7 report is comprised of opinions, data and any other information considered in forming said opinions,
8 his professional qualifications, and any other related matters." Attached to Plaintiff's disclosure is an
9 affidavit of Mr. Aguero and a curriculum vitae that previously were provided as part of Plaintiff's initial
10 expert witness disclosure. In the affidavit, Mr. Aguero states that he needs information from certain
11 documents in the possession of Defendant before he can complete his report, and that Defendant
12 has not yet provided those documents.

13 The analysis applicable to this motion parallels that provided in connection with Defendant's
14 motion to strike Plaintiff's initial expert witness disclosure, which is addressed in a separate decision.
15 As explained there, NRCP 16.1(a)(2)(B) generally provides that the disclosure pertaining to a
16 retained testifying expert witness must be accompanied by a written report prepared and signed by
17 the witness. The report must contain the following information:

18 a complete statement of all opinions to be expressed and the basis and reasons
19 therefor; the data or other information considered by the witness in forming the
20 opinions; any exhibits to be used as a summary of or support for the opinions; the
21 qualifications of the witness, including a list of all publications authored by the witness
within the preceding 10 years; the compensation to be paid for the study and
testimony; and a listing of any other cases in which the witness has testified as an
expert at trial or by deposition within the preceding four years.

22 However, no reports have been provided with Plaintiff's rebuttal expert disclosure, and neither the
23 disclosure nor the exhibits attached thereto contain (a) a complete statement of all opinions to be
24 expressed and the basis and reasons therefor; (b) the data or other information considered by the
25 witness in forming the opinions; or (c) any exhibits to be used as a summary of or support for the
26 opinions. Indeed, since none of the exhibits pertain to Mr. Gale, the disclosure is entirely deficient

1 as to him. Because Plaintiff failed to make a full and timely disclosure³ regarding its rebuttal expert
2 witnesses, Defendant is presumptively entitled to an order precluding Plaintiff from using these
3 witnesses at trial, at a hearing, or on a motion. See NRCP 37(c)(1). Although preclusion is not
4 warranted if the failure is deemed substantially justified or harmless, the Court has already
5 determined (in the decision pertaining to Plaintiff's initial expert disclosure) that Plaintiff did not
6 successfully carry its burden of demonstrating that either of these conditions were met in this case.

7 Plaintiff maintains that Defendant's failure to produce requested documents is sufficient to
8 establish that Plaintiff's failure to provide the requisite expert witness reports was substantially
9 justified. For support, it cites the Court to OFS Fitel, LLC v. Epstein, Becker & Green, P.C., 549 F.3d
10 1344 (11th Cir. 2008), in which the appellate court reversed a lower court's decision to preclude
11 plaintiff's expert testimony based upon an untimely expert disclosure. But the facts supporting the
12 court's decision in that case are distinguishable from those in the case at bar. In OFS Fitel, plaintiff
13 identified its expert in the complaint and in its initial disclosures, and the expert's affidavit provided
14 some information about her opinions. See OFS Fitel, 549 F.3d at 1363. By way of contrast, Mr.
15 Aguero was first identified in an insufficient initial expert witness disclosure, and Mr. Gale apparently
16 was not identified until the insufficient rebuttal expert disclosure. In addition, no substantive
17 information was provided regarding the opinions of Plaintiff's rebuttal experts.

18 In addition, plaintiff in OFS Fitel needed to complete certain depositions before its expert
19 could complete her report. Defendant in that case did not object to the taking of those depositions; it
20 merely requested that they be scheduled at the witness' convenience. Although plaintiff had taken
21 appropriate action to schedule those depositions earlier, it cooperated with defendant's request to
22 reschedule the depositions to a later date. Plaintiff also reminded defendant that its expert's report
23 would be provided within a month after those depositions. Defendant even requested an extension
24 of the discovery deadline to accommodate the later disclosure, and so that defendant could depose
25 plaintiff's expert and determine whether a rebuttal expert was needed. See id. All of these facts

26 ³ To be clear, an expert disclosure is not timely unless all information that must be disclosed under NRCP
16.1(a)(2) is provided on or before the disclosure deadline.

1 effectively would have negated any argument by defendant that it was surprised and prejudiced by
2 plaintiff's late disclosure of an expert witness. Clearly, defendant was fully informed and agreeable
3 to the later disclosure. Further, no trial date was set when the expert report was provided, so the
4 delay did not impact defendant's ability to employ a rebuttal expert or to have that expert conduct
5 needed analysis. See id.

6 In the case at bar, Defendant objected to Plaintiff's request for documents, and Plaintiff did
7 not bring that dispute to the Court's attention with reasonable diligence in light of the impending
8 expert disclosure deadlines. Indeed, the motion to compel was not filed until after the deadline for
9 making initial expert witness disclosures, and no effort was made to obtain a ruling on that motion
10 prior to the deadline for making rebuttal expert witness disclosures.⁴ The timeliness of a motion to
11 compel was not an issue in OFS Fitel. Moreover, the expert disclosure deadlines have been known
12 to the parties since April 2014, and the trial date of July 6, 2015, was selected in June 2014. As
13 explained in the decision concerning Plaintiff's initial expert witness disclosure, the failure to make a
14 full and timely expert disclosure has prejudiced Defendant. Although the parties agreed to
15 simultaneous expert disclosures, Defendant has been denied the benefit of that agreement.
16 Defendant also is unable to depose Plaintiff's experts because (a) it may not do so until after their
17 reports are provided, see NRCP 26(b)(4), and (b) the deadline for completing all discovery
18 proceedings has passed. Without a complete report, Defendant also has been precluded from
19 designating one or more rebuttal experts. With trial scheduled to commence in less than two
20 months, Defendant's ability to prepare its case properly has been negatively impacted by Plaintiff's
21 failures regarding its expert disclosure. For all of the foregoing reasons, the Court finds that OFS
22 Fitel is factually distinguishable from the case at bar.

23 ⁴ In addition, Plaintiff did not serve its second request for production of documents until February 18, 2015, only
24 forty-one days before the rebuttal expert disclosure deadline. No effort was made to shorten the time for Defendant's
25 response, or to extend the expert disclosure deadlines. Plaintiff believed that Defendant's response of March 23, 2015,
26 was deficient, but still waited until April 16, 2015—more than two weeks after the rebuttal expert disclosure deadline—to
file a motion to compel regarding that second request for production. While this delay would not be problematic under
other circumstances, the deadline for making initial expert disclosures had already passed, and the rebuttal expert
disclosure deadline was imminent. Under these circumstances, Plaintiff should have brought this matter to the Court's
attention prior to the deadline on April 1, 2015, so that the Court could have resolved the dispute or otherwise granted
Plaintiff relief from the rebuttal expert disclosure deadline.

1 Plaintiff also cites the Court to Childress v. Darby Lumber, Inc., 357 F.3d 1000 (9th Cir.
2 2004). In that case, the trial court's decision not to exclude the untimely opinions of plaintiffs' expert
3 was upheld by the appellate court because defendants "provided no evidence demonstrating that
4 the district court's denial of their motion to exclude expert opinions was an abuse of discretion." See
5 Childress, 357 F.3d at 1010. In the case at bar, Defendant's motion is supported by evidence and
6 argument. In any event, the Childress court's finding that the lower court did not abuse its discretion
7 in allowing the expert testimony does not mean that a contrary decision by the lower court would
8 have been reversed on appeal—a decision precluding the expert's testimony might also have been
9 found to be within the lower court's discretion. Therefore, to the extent that Plaintiff might seek
10 support from this case, the Court finds it to be unpersuasive.

11 Defendant offers an additional argument for why Plaintiff's disclosure of rebuttal experts is
12 improper—because Messrs. Aguero and Gale are not actually rebuttal experts. NRCP 16.1(a)(2)(C)
13 makes clear that the deadline applicable to rebuttal expert disclosures "does not apply to any party's
14 witness whose purpose is to contradict a portion of another party's case in chief that should have
15 been expected and anticipated by the disclosing party, or to present any opinions outside of the
16 scope of another party's disclosure." Although Plaintiff's rebuttal expert disclosure states that
17 Messrs. Aguero and Gale are expected to "counter any opinion or claims made by Defendant's
18 experts," that broad, unspecific statement does not sufficiently identify the particular rebuttal
19 evidence that these witnesses would offer. That omission is especially problematic since
20 Defendant's initial expert witness disclosure identified the findings, opinions, and conclusions that
21 would be offered by its experts, Anthony Lucas, Ph.D., and Stacy Friedman. Defendant emphasizes
22 that these experts will present testimony concerning the secrecy of pars, the value of pars, and
23 Plaintiff's damages, and that since these matters are all essential elements of Plaintiff's claim for
24 misappropriation of trade secrets, Plaintiff should have expected and anticipated the need for expert
25 testimony on these matters. Plaintiff maintains that evidence may qualify as rebuttal evidence even
26 though it might have been offered during a party's case in chief.

1 When a party seeks to present expert evidence pertaining to disputed facts that are material
2 to that party's case in chief, the expert evidence is not rebuttal:

3 The plaintiff who knows that the defendant means to contest an issue that is germane
4 to the prima facie case (as distinct from an affirmative defense) must put in his
5 evidence on the issue as part of his case in chief. Otherwise the plaintiff could
reverse the order of proof, in effect requiring the defendants to put in their evidence
before the plaintiff put in his.

6 Braun v. Lorillard Inc., 84 F.3d 230, 237 (7th Cir. 1996) (citation omitted); cf. Faigin v. Kelly, 184
7 F.3d 67, 85 (1st Cir. 1999) ("[t]he principal objective of rebuttal is to permit a litigant to counter new,
8 unforeseen facts brought out in the other side's case"); Cates v. Sears, Roebuck & Co., 928 F.2d
9 679, 685 (5th Cir. 1991) ("[r]ebuttal must be kept in perspective; it is not to be used as a continuation
10 of the case-in-chief").

11 Significantly, the defendant in a civil action is not automatically permitted to delay its expert
12 witness disclosure until after receiving the plaintiff's disclosure. In Morgan v. Commercial Union
13 Assurance Cos., 606 F.2d 554 (5th Cir. 1979), a suit for injuries sustained in a car accident, plaintiff
14 testified that he had never experienced any preexisting back problems. Defendant then sought to
15 introduce testimony of a doctor who, defendant contended, had treated plaintiff for a back disorder
16 that arose prior to the accident. The trial court denied the request on the ground that the expert was
17 not timely disclosed, rejecting defendant's argument that the doctor was merely a rebuttal expert.
18 The appellate court affirmed the trial court's decision:

19 It is patent that Dr. Hovnatanian was not a "rebuttal witness." Rebuttal is a
20 term of art, denoting evidence introduced by a Plaintiff to meet new facts brought out
21 in his opponent's case in chief. We recognize that boilerplate Rule 16 orders have
22 engendered confusion as to its meaning, and that even in this case the pre-trial
23 order's specific reference to "rebuttal witnesses" almost certainly was meant also to
embrace witnesses that in an earlier era would have been classified "rejoinder," "re-
rebuttal," and so on. However that may be, a defense witness whose purpose is to
contradict an expected and anticipated portion of the plaintiff's case in chief can never
be considered a "rebuttal witness," or anything analogous to one.

24 In a case such as this one, where a plaintiff asserts that the incident under
25 investigation was the producing cause of his back condition, it is to be expected that
26 he will maintain that position at trial. Where the defense position is that the incident
did not produce the condition, it is a part of its case in chief to demonstrate that the
condition, if real, was pre-existent. It is true that the pre-existence of the condition
might be demonstrated in various ways. The plaintiff might admit it. The physician
who discovered it on earlier examination may be called to testify to its pre-existence.

1 But simply because one method fails, the other does not become "rebuttal." Insofar
2 as defendants are concerned, the "rebuttal" concept which is more properly styled
3 "rejoinder" appertains only in response to a plaintiff's rebuttal, if any there be. We
4 hold that Dr. Hovnatanian was not a "rebuttal witness."

5 Morgan, 606 F.2d at 555-56 (citations omitted and emphasis added); see also Sierra Club, Lone
6 Star Chapter v. Cedar Point Oil Co., 73 F.3d 546, 571 (5th Cir. 1996) (rebuttal and supplementary
7 disclosures of expert evidence "are not intended to provide an extension of the deadline by which a
8 party must deliver the lion's share of its expert information"); Fairfax v. Lords, 41 Cal. Rptr. 3d 850,
9 851 (Cal. Ct. App. 2006) ("[w]hen it comes to issues that both sides anticipate will be disputed at
10 trial, a party cannot merely 'reserve its right' to designate experts in the initial exchange, wait to see
11 what experts are designated by the opposition, and then name its experts only as purported
12 'rebuttal' witnesses").

13 In deciding whether an individual should have been disclosed in a party's initial expert
14 witness disclosure, the Court sees no reason why plaintiffs should be held to a different standard
15 than defendants. Once a case is at issue, both sides are aware of the claims, denials, and
16 defenses. From that point forward, both sides are fully capable of obtaining information sufficient to
17 (a) determine the kinds of experts that should be retained, and (b) enable those experts to form
18 appropriate opinions. If a defendant can be compelled to do so (as Morgan and other cases
19 illustrate), then a plaintiff can be as well. In fact, NRCP 16.1(a)(2) presumes a level playing field, as
20 demonstrated by its requirement that expert disclosures must be simultaneous. If a plaintiff wants
21 the opportunity to employ an expert witness with regard to matters that are reasonably foreseeable,
22 then that expert must be disclosed in the plaintiff's initial expert disclosures, rather than as part of a
23 rebuttal disclosure.⁵ A plaintiff would be permitted to make rebuttal expert disclosures only if
24 unanticipated and unforeseeable information were provided in an opponent's initial expert
25 disclosures.

26 ⁵ A contrary approach would provide plaintiffs with an unfair advantage, because plaintiffs' experts would be able
to fully digest the reports of defendants' experts, and tailor their disclosures accordingly. This would be a significant
advantage, and one that would be denied to defendants' experts, as Morgan and other cases make clear.

1 The party bringing a claim for misappropriation of a trade secret bears the burden of proving
2 that the information at issue constitutes a valuable trade secret. See Frantz v. Johnson, 116 Nev.
3 455, 466, 999 P.2d 351, 358 (2000); see also, e.g., Imax Corp. v. Cinema Techs., Inc., 152 F.3d
4 1161, 1164 (9th Cir. 1998) (plaintiff seeking relief for misappropriation of trade secrets must identify
5 the trade secrets and carry the burden of showing that they exist). Thus, as part of its case in chief,
6 Plaintiff must show that its pars are secret and that they have value. If Plaintiff desired to present
7 expert testimony in that regard, it was obligated to identify those experts—and provide full expert
8 reports—as part of its initial expert witness disclosures. Likewise, Plaintiff bears the burden of
9 establishing its damages, and therefore was required to identify in a complete and timely initial
10 expert witness disclosure any expert that it wished to use in establishing those damages. To the
11 extent that Defendant provided unanticipated and unforeseeable information in its initial expert
12 disclosures, Plaintiff would be permitted to designate one or more rebuttal expert witnesses.
13 However, Plaintiff has not demonstrated that any information provided in Defendant's expert witness
14 disclosure was unanticipated and unforeseeable. In fact, Defendant has consistently denied
15 throughout this litigation that Plaintiff's pars are secret or that they have value, and it has always
16 contested that Plaintiff is entitled to recover damages in this case.

17 Plaintiff cites the Court to Morrison v. Air Cal., 101 Nev. 233, 699 P.2d 600 (1985), a
18 negligence action that arose when plaintiff was injured while leaving an airplane. During trial,
19 plaintiff presented evidence to support the essential elements of her claim. As part of defendant's
20 case in chief, it offered evidence that its procedures were consistent with the industry standard of
21 care on deplaning procedures. Plaintiff had not raised that issue or presented any evidence in that
22 regard during her case in chief. Nevertheless, the trial court refused to allow plaintiff to present a
23 rebuttal witness to testify about the procedures that she believed constituted the applicable standard
24 of care for deplaning. On appeal from a defense verdict, the Nevada Supreme Court reversed the
25 trial court's decision, observing that "[e]vidence will not be excluded from rebuttal merely because it
26 might have been made part of the case in chief." See Morrison, 101 Nev. at 236, 699 P.2d at 602.

1 The issue of what information a plaintiff may or must present during its case in chief at trial
2 differs substantially from the issue of what information must be provided as part of a party's expert
3 witness disclosures, and when that information must be provided. A plaintiff at trial is not required to
4 present all evidence in its possession that arguably supports the essential elements of its claim;
5 rather, the plaintiff may select the evidence that it believes will present its case in the most favorable
6 light. If defendant raises a new matter during its case in chief, then plaintiff presumably would be
7 permitted to present rebuttal evidence on that issue, even if it could have presented that evidence
8 earlier, during plaintiff's case in chief. But these concepts are inapposite to expert witness
9 disclosures. Morgan and similar cases make clear that a plaintiff's initial expert disclosure must
10 encompass any matter that plaintiff should expect or anticipate based upon the position that
11 defendant has taken during the litigation prior to that time. Whether plaintiff will ultimately decide to
12 present a given expert during its case in chief is a separate question of trial strategy and tactics.
13 Regardless of that decision, plaintiff is obligated to identify that expert in a full and timely initial
14 expert witness disclosure.⁶

15 Plaintiff also cites the Court to L.A. Perks Plumbing & Heating, Inc. v. Manke, No. 49015
16 (Nev. Sept. 5, 2008). However, L.A. Perks is an unpublished decision of our high court.⁷ Reliance
17 on that decision is therefore unavailing:

18 An unpublished opinion or order of the Nevada Supreme Court shall not be regarded
19 as precedent and shall not be cited as legal authority except when the opinion or
20 order is (1) relevant under the doctrines of law of the case, res judicata or collateral
21 estoppel; (2) relevant to a criminal or disciplinary proceeding because it affects the
22 same defendant or respondent in another such proceeding; or (3) relevant to an
23 analysis of whether recommended discipline is consistent with previous discipline
24 orders appearing in the state bar publication.

22 SCR 123. In any event, that decision is factually distinguishable from the case at bar. The trial court
23 in L.A. Perks permitted plaintiff to present testimony through a rebuttal expert witness who was

24 ⁶ To the extent that one could construe Morgan as applicable to expert witness disclosure obligations, the Court
25 observes that Morgan was decided in 1985. The operative provision in NRCP 16.1(a)(2)(C) was added in 2012, and that
recently added provision would therefore supersede any contrary indication that might be seen in Morgan.

26 ⁷ The text of this decision is available on WestlawNext; however, the WestlawNext version clearly labels this
document as an "Unpublished Disposition."

1 disclosed only one week prior to trial. But the trial court's decision to allow that testimony was
2 premised on the fact that defendant had improperly failed to identify one of its lay witnesses as an
3 expert witness, since during trial he provided opinions based on his technical or specialized
4 knowledge. Because defendant's witness was allowed to testify as an expert over plaintiff's
5 objection in spite of the fact that the witness had not been disclosed as an expert witness, it was not
6 an abuse of the trial court's discretion to allow plaintiff's late-disclosed expert to provide rebuttal
7 expert testimony. The decision in L.A. Perks thus has no bearing on the issue presently before this
8 Court.

9 Bowers v. N. Telecom, Inc., 905 F. Supp. 1004 (N.D. Fla. 1995), is also inapposite. Indeed,
10 the parties in that case agreed upon a schedule for making expert witness disclosures, and each
11 side complied with it. The issue for the court was whether plaintiff could defend against a summary
12 judgment motion by relying upon rebuttal expert deposition testimony. Not surprisingly, the district
13 court ruled that plaintiff could rely upon the rebuttal expert testimony, essentially because the
14 process and timing for making expert witness disclosures has nothing to do with a party's use of
15 expert witnesses at trial. See Bowers, 905 F. Supp. at 1008 ("[m]erely because the parties labeled
16 this evidence 'rebuttal' during the discovery process does not preclude Plaintiffs from using it in their
17 case-in-chief at trial"). The court further found that the facts did not warrant an order precluding
18 plaintiff's use of this testimony, even assuming that plaintiff should have disclosed the rebuttal expert
19 evidence earlier. See id. That finding is contrary to the Court's finding in the case at bar.

20 The only other case relied upon by Plaintiff is Callahan v. A.E.V., Inc., 182 F.3d 237 (3d Cir.
21 1999). In that case, defendant sought summary judgment on plaintiffs' antitrust claims. In their
22 opposition, plaintiffs offered, inter alia, reports and testimony from their primary expert and their
23 rebuttal expert. "Neither the defendant nor the District Court raised a question about the
24 admissibility of Seidel's or Sullivan's opinion." See Callahan, 182 F.3d at 254. Rather, summary
25 judgment was based, in part, on a finding that this evidence was insufficient as a matter of law to
26 permit a finding of causation. The appellate court disagreed, and found the experts' reports and

1 testimony to be sufficient to withstand summary judgment. See id. at 254-59. With regard to the
2 rebuttal expert's report and testimony, defendant argued that it could not be considered to support
3 plaintiffs' substantive case. The appellate court rejected that argument for the same reasons as in
4 Bowers. See id. at 259 ("[t]he Federal Rules of Civil Procedure, and Rule 26(a)(2) governing the
5 disclosure and discovery of expert witnesses in particular, make no distinction between the
6 permissible uses of 'regular' experts and 'rebuttal' experts," and "we see no reason to prevent the
7 plaintiffs from using Sullivan in their case-in-chief at trial"). The court also rejected arguments that
8 the rebuttal expert evidence was substantively insufficient. See id. at 259-60. Thus, the reasoning
9 used in Callahan is inapplicable to the Court's analysis in the case at bar for the same reason as
10 Bowers.

11 Plaintiff failed to provide any reports with its rebuttal expert witness disclosure, and that
12 disclosure must therefore be deemed incomplete and untimely. For reasons explained previously in
13 connection with Plaintiff's initial expert disclosure, NRCP 37(c)(1) presumptively precludes Plaintiff
14 from using these rebuttal expert witnesses in this case, and Plaintiff has not shown that its failure to
15 make a complete and timely disclosure was substantially justified or harmless. In addition, the
16 findings, opinions, and conclusions of the individuals identified in Defendant's initial expert witness
17 disclosure concern matters on which Plaintiff bears the burden of proof, and Plaintiff should have
18 expected and anticipated that Defendant might present expert evidence in that regard. Plaintiff was
19 therefore required to identify in its initial expert witness disclosure any individuals that it wanted to
20 use to address those matters. Moreover, Plaintiff has not identified any other findings, opinions, and
21 conclusions from Defendant's expert witnesses disclosure that could properly be the subject of
22 rebuttal expert evidence. For all of these reasons, the Court finds that Plaintiff cannot use Mr.
23 Aguero, Mr. Gale, or anyone else as rebuttal expert witnesses in this case.

24 ACCORDINGLY, *Peppermill Casinos, Inc.'s Motion to Strike Plaintiff's Rebuttal Expert*
25 *Disclosure and for Order in Limine Precluding Plaintiff from Utilizing Any Experts Except for David*
26 *Schwartz, Ph.D. in this Case* should be GRANTED.

1 IT SHOULD, THEREFORE, BE ORDERED that Plaintiff is precluded from using Jeremy
2 Aguero, Gregory Gale, or any other individual as a rebuttal expert witness in this case.

3 DATED: This 14th day of May, 2015.

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5 
6 WESLEY M. AYRES
7 DISCOVERY COMMISSIONER
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1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV13-01704

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE
4 OF NEVADA, COUNTY OF WASHOE; that on the 14th day of May, 2015, I electronically filed
5 the **RECOMMENDATION FOR ORDER** with the Clerk of the Court by using the ECF system.

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

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

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

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

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

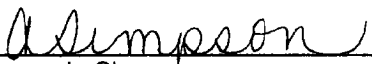
13 KEEGAN GRAHAM LOW, ESQ. for PEPPERMILL CASINOS, INC.

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

15 SCOTT L. HERNANDEZ, ESQ. for PEPPERMILL CASINOS, INC.

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

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

24 
Annemarie Simpson
Administrative Secretary

FILED
Electronically
2015-11-20 05:28:38 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5246861 : ccovingt

EXHIBIT 5

EXHIBIT 5

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
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9
10 MEI-GSR HOLDINGS, LLC, a
11 Nevada Corporation, d/b/a GRAND
12 SIERRA RESORT,

Case No. CV13-01704

Dept. B7

13 Plaintiff,

14 vs.

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

20 Defendants.
21

22 **ORDER GRANTING MOTION TO EXTEND DISCOVERY**
23 **AND CONTINUE TRIAL DEADLINES**
24 **AND**
25 **AMENDED SCHEDULING ORDER**

26 Before the Court is a *Motion to Extend Discovery and Continue Trial Deadlines*.

27 The present motion was filed April 16, 2015 on behalf of Plaintiff MEI-GSR Holdings,
28 LLC, dba Grand Sierra Resort, represented by Mark Wray, of the Law Offices of Mark
Wray, against Defendant Peppermill Casinos, Inc. dba Peppermill Casino, represented by
Kent R. Robison of Robison, Belaustegui, Sharp and Low.

1 The Court read and considered Plaintiff's motion, read and considered
2 *Peppermill's Opposition to Plaintiff's Motion to Extend Discovery and Continue Trial*
3 *Deadlines* filed May 5, 2015, and read and considered Plaintiff's *Reply in Support of*
4 *Motion to Extend Discovery and Continue Trial Deadlines* filed May 14, 2015. At the
5 pretrial conference on May 19, 2015, at 1:15 p.m., the Court heard oral argument on the
6 motion.

7 On June 24, 2015 at 2:00 p.m., during an Emergency NRCP 16 Conference
8 requested by Peppermill, the Court considered supplemental arguments based on various
9 motions filed by Peppermill with respect to Grand Sierra's Motion to Extend Discovery
10 and Continue Trial Deadlines. At the NRCP 16 conference, the Court did not alter its
11 decision made on May 19, 2015, but requested that the parties lodge proposed orders
12 granting the Grand Sierra's motion and amending deadlines for disclosures concerning
13 rebuttal experts as well as extending the deadline for Peppermill's reply in support of the
14 Peppermill motion for summary judgment on damages.

15 The Court finds that the extension of deadlines and continuance of trial is a matter
16 committed to the Court's sound discretion. *See Summerfield v. Coca Cola Bottling Co.*,
17 113 Nev. 1291, 948 P.2d 704 (1997). The Court has considered the history of this
18 litigation, the possibility of prejudice to parties, and the interests of justice, and finds that
19 plaintiff's request "to extend the discovery deadline by three (3) months, and to also
20 continue all other trial deadlines for three (3) months" and to "[c]omplete all discovery no
21 sooner than three (3) months after this Court rules on this motion" to be reasonable.

22 **IT IS THEREFORE ORDERED** that Plaintiff's Motion to Extend Discovery
23 and Continue Trial Deadlines is **GRANTED**.

24 **IT IS FURTHER ORDERED** that trial is **CONTINUED** to October 5, 2015, at
25 9:00 a.m.

26 **IT IS FURTHER ORDERED** that the pretrial conference is **CONTINUED** to
27 September 10, 2015 at 1:30 p.m.
28

1 **IT IS FURTHER ORDERED** that the deadline for filing Peppermill's reply in
2 support of its motion for summary judgment on damages is ten (10) days after the
3 completion of the deposition of Grand Sierra's expert.

4 **IT IS FURTHER ORDERED** that the Scheduling Order filed on April 15, 2014,
5 is **AMENDED** as follows:

- 6 1. Complete all discovery by September 4, 2015.
- 7 2. Make initial expert disclosures, including providing expert reports, on or
8 before June 4, 2015.
- 9 3. Disclose rebuttal experts, including providing rebuttal expert reports, ten
10 (10) days after the deposition of the opposing party's expert, but no later than August 19,
11 2015.
- 12 4. Motions in Limine shall be submitted on or before September 18, 2015.

13
14 Patrick Flanagan
15 PATRICK FLANAGAN
16 District Judge

17 DATED: July 1, 2015
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Jacqueline Bryant
Clerk of the Court
Transaction # 5246861 : ccovingt

EXHIBIT 6

EXHIBIT 6

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

1700
COHEN-JOHNSON, LLC
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
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 "I"*) 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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COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX. (702) 823-3400

Affirmation Pursuant to NRS §239B.030

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

Dated this 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
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
*Attorney for MEI-GSR Holdings, LLC. d/b/a
Grand Sierra Resort*

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

INDEX OF EXHIBITS

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

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

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Clerk of the Court
Transaction # 5246861 : ccovingt

EXHIBIT 7

EXHIBIT 7

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

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

9 **IN ASSOCIATION WITH**

10 **LAW OFFICES OF MARK WRAY**
11 **MARK WRAY, ESQ.**
12 Nevada Bar No.: 4425
13 608 Lander Street
14 Reno, Nevada 89509
15 Telephone: (775) 348-8877
16 Facsimile: (775) 348-8351
17 *Attorney for MEI-GSR Holdings, LLC. d/b/a*
18 *Grand Sierra Resort*

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

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

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

Case No.: CV13-01704

19 Plaintiff,

Dept. No.: B7

20 v.

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

BUSINESS COURT DOCKET

26 Defendants.

27 **GRAND SIERRA RESORT'S SUPPLEMENTAL REBUTTAL EXPERT DISCLOSURE**
28

1 Defendant, GRAND SIERRA RESORT ("GSR" or "Defendant"), by and through its
2 counsel of record, Cohen-Johnson, LLC, hereby submits and identifies its rebuttal expert
3 witnesses pursuant to NRCP 16.1(a)(2) in this matter as follows:

4 **I. REBUTTAL EXPERT WITNESSES**

- 5 A. Jeremy A. Aguero
Principal Analyst
Applied Analysis
6385 S. Rainbow Blvd., Suite 105
7 Las Vegas, Nevada 89118
(702) 937-3333
- 8 B. Gregory Gale
2626 Yesesca Drive
9 Henderson, Nevada 89052
(702) 456-4695
- 10 C. Rex Carlson
c/o Cohen-Johnson, LLC
255 E. Warm Springs Rd., Ste. 100
11 Las Vegas, Nevada 89119
- 12 D. Charles Lombardo
c/o Cohen-Johnson, LLC
255 E. Warm Springs Rd., Ste. 100
13 Las Vegas, Nevada 89119

14
15
16
17 Jeremy Aguero is expected to testify regarding the Rebuttal Expert Witness Report
18 prepared by Applied Analysis to counter any opinion or claims made the Defendant's Experts:
19 (1) Anthony Lucas, Ph.D. and (2) Stacey Friedman. This report is comprised of opinions, data
20 and any other information considered in forming said opinions, his professional qualifications,
21 and any other related matters.

22 Gregory Gale is expected to testify regarding the Rebuttal Expert Witness Report
23 prepared by Gregory Gale to counter any opinions or claims made the Defendant's Experts: (1)
24 Anthony Lucas, Ph.D. and (2) Stacey Friedman. This report is comprised of opinions, data and
25 any other information considered in forming said opinions, his professional qualifications, and
26 any other related matters. Mr. Gale's Biography and Resume are attached hereto as Exhibit 1.
27
28

1 Rex Carlson is expected to testify regarding the Rebuttal Expert Witness Report prepared
2 by Rex Carlson to counter any opinions or claims made the Defendant's Experts: (1) Anthony
3 Lucas, Ph.D. and (2) Stacey Friedman. This report is comprised of opinions, data and any other
4 information considered in forming said opinions, his professional qualifications, and any other
5 related matters. Mr. Carlson's qualifications are attached hereto as Exhibit 2.

6 Charles Lombardo is expected to testify regarding the Rebuttal Expert Witness Report
7 prepared by Charles Lombardo to counter any opinions or claims made the Defendant's Experts:
8 (1) Anthony Lucas, Ph.D. and (2) Stacey Friedman. This report is comprised of opinions, data
9 and any other information considered in forming said opinions, his professional qualifications,
10 and any other related matters. Mr. Lombardo's Biography is attached hereto as Exhibit 3.

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

13 **AFFIRMATION**

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

16 Dated this 15th day of October, 2015.

17 **COHEN|JOHNSON, LLC.**

18
19 By: /s/ H. Stan Johnson
20 H. STAN JOHNSON, ESQ.
21 Nevada Bar No. 00265
22 TERRY KINNALLY, ESQ.
23 Nevada Bar No. 6379
24 255 E. Warm Springs Road, Suite 100
25 Las Vegas, Nevada 89119
26 *Attorneys for MEI-GSR Holdings, LLC,*
27 *d/b/a Grand Sierra Resort*
28

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

INDEX OF EXHIBITS

Exhibits	Description	Pages
1	Gregory Gale's Biography and Resume	3
2	Rex Carlson's Qualifications	1
3.	Charles Lombardo's Biography	1

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 **GRAND SIERRA RESORT'S SUPPLEMENTAL REBUTTAL EXPERT DISCLOSURE** 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:

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

 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
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:

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DATED the 15th day of October, 2015.

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

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Clerk of the Court
Transaction # 5246861 : ccovingt

EXHIBIT 8

EXHIBIT 8

2582
KENT R. ROBISON, ESQ. - NSB #1167
krobison@rbsllaw.com
SCOTT L. HERNANDEZ, ESQ. - NSB #13147
shernandez@rbsllaw.com
THERESE M. SHANKS, ESQ. - NSB #12890
tshanks@rbsllaw.com
Robison, Belaustegui, Sharp & Low
A Professional Corporation
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169

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

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiff,

vs.

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).

CASE NO.: CV13-01704

DEPT. NO.: B7

BUSINESS COURT DOCKET

**SECOND AMENDED NOTICE OF TAKING DEPOSITION OF GREGORY GALE,
GSR'S REBUTTAL EXPERT WITNESS
(OR HIS REPLACEMENT AS DISCLOSED BY GSR)**

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

PLEASE TAKE NOTICE that on **Monday, November 9, 2015**, (instead of Tuesday, October 20, 2015), **commencing at 9:30 a.m.**, at the offices of **Esquire Deposition Solutions, 2300 West Sahara Avenue, Suite 770, Las Vegas, Nevada**, the Defendant **Peppermill Casinos, Inc.**, in the above-entitled action, will take the deposition of **GREGORY GALE**, GSR's rebuttal expert witness (or his replacement as disclosed by GSR), upon oral examination, pursuant to Rules 26 and 30 of the Nevada Rules of Civil Procedure, before a Notary Public or before some other

1 officer authorized by law to administer oaths. Oral examination will continue from day to day
2 until completed.


3 You are invited to attend and cross-examine.

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

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

8 DATED this 21st day of October, 2015.

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

13 
14 KENT R. ROBISON
15 SCOTT L. HERNANDEZ
16 THERESE M. SHANKS
17 Attorneys for Defendant
18 Peppermill Casinos, Inc., d/b/a Peppermill Casino
19
20
21
22
23
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25
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true copy of the **SECOND AMENDED NOTICE OF TAKING DEPOSITION OF GREGORY GALE, GSR'S REBUTTAL EXPERT WITNESS (OR HIS REPLACEMENT AS DISCLOSED BY GSR)** 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.

KAY BURNINGHAM, 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

kburningham@cohenjohnson.com

Attorneys for Plaintiff

MARK WRAY, ESQ.

608 Lander Street

Reno, NV 89509

Email: mwrap@markwray.law.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.

KAY BURNINGHAM, 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

kburningham@cohenjohnson.com

Attorneys for Plaintiff

MARK WRAY, ESQ.

608 Lander Street

Reno, NV 89509

Email: mwrap@markwray.law.com

Attorneys for Plaintiff

X by electronic email addressed to the above.

by personal delivery/hand delivery addressed to:

by facsimile (fax) addressed to:

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

DATED: This 21st day of October, 2015.


V. JAYNE FERRETTO

Employee of Robison, Belaustegui, Sharp & Low

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Transaction # 5246861 : ccovingt

EXHIBIT 9

EXHIBIT 9

1 IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

2 IN AND FOR THE COUNTY OF WASHOE

3
4
5 MEI-GSR HOLDINGS, LLC, a Nevada
6 Corporation, d/b/a GRAND SIERRA
7 RESORT,

8 Plaintiff,

9 vs.

No. CV13-01704

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

15 Defendants.
16 _____/

17 DEPOSITION OF GREGORY J. GALE, CPA, M.S.

18 November 9, 2015

19 9:39 a.m.

20 2300 West Sahara Avenue, Suite 770

21 Las Vegas, Nevada

22
23
24
25 Linda Horton Sprague, C.C.R. No. 466

1 A. I wrote these this morning, actually.

2 Q. Oh. So they became part of your file this
3 morning; correct?

4 A. Yes.

5 Q. Okay. I want to go through some exhibits
6 with you. But I want to make sure that we're clear on
7 one thing.

8 After the deposition of Ryan Tors in
9 December 2014, is it -- is it true that you were not
10 contacted by the plaintiff's lawyers in this case
11 until September of 2015?

12 A. To the best of my recollection, that's true.

13 Q. Would you have any notes or records of such
14 a contact if, in fact, that happened?

15 A. I could probably look in my PC at my office
16 to see. Yes.

17 Q. Do you take notes on your PC of telephone
18 conversations?

19 A. No.

20 But it would have a record of -- of being
21 provided with documents and -- like, a deadline of
22 when I had to review the documents at issue.

23 Q. Are you referring to e-mail traffic?

24 A. Yes.

25 Q. Any other documents in your computer that

1 BY MR. ROBISON:

2 Q. Exhibit 189, sir, is a designation of
3 rebuttal expert witness that was served on my office.

4 A. You want it back?

5 Q. Sir, let me ask you to keep the originals
6 right in front of this reporter's --

7 A. Okay.

8 Q. -- screen here. Okay? So 188 is right
9 there.

10 We good?

11 A. Yes.

12 Q. All right. I was served with this document
13 on April 1st, 2015. It says: Grand Sierra Resort's
14 rebuttal expert disclosure.

15 If you turn to the second page, under Roman
16 numeral I, capital B, I see your name there.

17 Do you see that?

18 A. Yes.

19 Q. You're surprised. You just acted surprised.

20 A. Well, my -- the address of my -- is
21 completely wrong.

22 Q. Well, that may be because you hadn't even
23 talked to counsel about being rebuttal; correct?

24 A. True.

25 Q. Did you give counsel permission to do this?

1 A. No.

2 Q. It says here that:

3 Mr. Gale is expected to testify regarding
4 expert witness report prepared by Gregory Gale.

5 You hadn't prepared a report by that date,
6 had you?

7 MR. COHEN: I'm going to object to the form
8 of the question.

9 BY MR. ROBISON:

10 Q. Please, answer my question.

11 A. Please repeat it again.

12 Q. Sure.

13 It says:

14 Gregory Gale is expected to testify
15 regarding the rebuttal expert witness report prepared
16 by Gregory Gale.

17 You had not prepared a report by April 1st,
18 2015, had you?

19 A. No.

20 Q. Why was I told this?

21 A. I don't know.

22 Q. You hadn't even talked to counsel about
23 this, had you?

24 A. I don't think so.

25 Q. And it says that you're going to counter the

1 Q. The trial was continued in June. And the
2 court then dictated that supplemental expert witness
3 reports be submitted by August 27th, 2015.

4 Were you contacted to provide your expert
5 witness report by that deadline?

6 A. I don't believe so.

7 Q. Do you know why?

8 A. No.

9 Q. I'm going to show you Exhibit 155. I'll
10 show you my copy.

11 I received this on June 4th, 2015. It's the
12 expert witness report that the court ordered be
13 provided by that date.

14 Will you look at that and see if you are
15 designated as a witness in any respect in that
16 document.

17 A. Would you like me to review every --

18 Q. No. That's just --

19 A. Okay.

20 Q. Do you see yourself designated as an expert
21 in the June 4th, 2015, expert disclosure?

22 A. No, I don't.

23 Q. Do you know why you're not designated then?

24 A. I don't know.

25 Q. You weren't working on this case in June of

1 A. Yes.

2 Q. Then you've been given some briefing in this
3 case, apparently?

4 A. Yes.

5 Q. The opposition regarding trade secrets --
6 what is that?

7 A. Well, you've used the term "briefing." I'm
8 not familiar with that term.

9 I was given two legal documents -- motions
10 or legal documents -- I'm not an attorney -- that were
11 filed in this case. And it was entitled Opposition
12 Regarding Trade Secrets and -- which is i.

13 And then j was the opposition regarding
14 damages.

15 It was -- again, it was a legal document.

16 Q. Well, you're not here as an expert on
17 damages, are you?

18 A. No.

19 Q. Do you know why you were provided the
20 opposition to our motion for summary judgment
21 regarding damages?

22 A. No.

23 Q. You're not an expert on trade secrets;
24 correct?

25 A. No.

1 Q. Do you know why you were provided an
2 expert -- excuse me -- an opposition to our motion for
3 summary judgment regarding trade secrets?

4 A. No.

5 Q. Do you know why you were given Mr. Aguero's
6 report if you're not -- he's a damage expert?

7 A. Well, as I said earlier, Mr. Cohen provided
8 me with all of these documents so that I could have
9 some background in the case so that I could form my
10 own expert witness report.

11 Q. Sure.

12 A. Uh-huh.

13 Q. But you're not a damage expert?

14 A. No.

15 Q. What does Mr. Aguero's report have to do
16 with you -- by the way, what was your assignment when
17 Mr. Cohen contacted you in September or October of
18 2015?

19 A. It's essentially as I stated in my expert
20 witness report. He wanted me to review everything
21 that happened in this case, based upon the documents
22 that were given to me, and -- and provide insights
23 regarding the regulatory aspects of what was done and
24 the violations that were cited by the Gaming Control
25 Board and adjudicated by the Gaming Commission.

1 Q. And then they hire you to say that we
2 violated the regulations that we admit that we've
3 violated?

4 A. Well, again, my report has more than that.
5 It also provides insights on gaming regulations
6 regarding par percentages of slot machines, what they
7 required -- or acceptable ranges are.

8 Q. Well, that's got nothing --

9 A. The key control requirements of -- and how
10 reset keys are used in slot machines, and what the
11 Gaming Control Board's requirements are regarding
12 those keys.

13 That's what I was asked to provide expert
14 testimony on.

15 Q. All right. I don't see in your report that
16 was given to me that you are even answering the
17 assignment that you were given.

18 Would that be a fair statement?

19 You're not doing that; correct?

20 Bad question. Let me rephrase that.

21 You didn't -- you didn't rebut
22 Stacey Friedman in this report, did you?

23 A. No.

24 Q. You didn't rebut Dr. Lucas, did you?

25 A. No.



1 Q. Well, let me go back, then, to Exhibit 190.

2 Do you have that in front of you?

3 A. Yes.

4 Q. Here's what the court was told. Here's what
5 my office was told -- that you were going to testify
6 in this case and you were going to counter the
7 opinions of Dr. Lucas.

8 You're not doing that, are you?

9 A. No.

10 Q. And I was told, and the court was told, that
11 you were going to counter the opinions of
12 Stacey Friedman.

13 You're not doing that either, are you?

14 A. No.

15 Q. In fact, you're not rebutting anything are,
16 you?

17 A. No.

18 MR. ROBISON: I want to take a recess right
19 now.

20 (Recess from 10:28 a.m. to 10:35 a.m.)

21 BY MR. ROBISON:

22 Q. Okay. I'm going to finish up with a few
23 questions. The summary of opinions on your report,
24 Exhibit 191.

25 Tell me when you're there, sir.

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Linda Horton Sprague, CCR NO. 466





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EXHIBIT 10

EXHIBIT 10

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

IN ASSOCIATION WITH

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,

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.

GRAND SIERRA RESORT'S NOTICE OF WITHDRAWAL OF REBUTTAL
EXPERT WITNESS AND REBUTTAL EXPERT REPORT

1 Plaintiff, GRAND SIERRA RESORT ("GSR" or "Defendant"), by and through its
2 counsel of record, Cohen-Johnson, LLC, hereby withdraws its designation of GREGORY GALE
3 as a Rebuttal Expert Witness. Further, Plaintiff hereby withdraws the Expert Report of Gregory
4 Gale, which was filed and distributed on or about October 15, 2015.

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

7 **AFFIRMATION**

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

10 Dated this 10th day of November, 2015.

11 **COHEN|JOHNSON, LLC.**

12
13 By: /s/ H. Stan Johnson
14 H. STAN JOHNSON, ESQ.
15 Nevada Bar No. 00265
16 TERRY KINNALLY, ESQ.
17 Nevada Bar No. 6379
18 255 E. Warm Springs Road, Suite 100
19 Las Vegas, Nevada 89119
20 *Attorneys for MEI-GSR Holdings, LLC,*
21 *d/b/a Grand Sierra Resort*
22
23
24
25
26
27
28

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

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 **GRAND SIERRA RESORT'S NOTICE OF WITHDRAWAL OF REBUTTAL EXPERT WITNESS AND REBUTTAL EXPERT REPORT** 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:

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

☒ 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
Attorney for the Defendant Peppermill

☒ by electronic email addressed to the above:

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By facsimile (fax) addresses to:

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

DATED the 10th day of November, 2015.

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

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Clerk of the Court
Transaction # 5246861 : ccovingt

EXHIBIT 11

EXHIBIT 11

**AFFIDAVIT OF KENT R. ROBISON IN SUPPORT OF
PEPPERMILL CASINOS, INC.'S MOTION FOR SANCTIONS**

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. Attached hereto as **Exhibit 1** is a true and accurate file-stamped copy of Plaintiff Grand Sierra Resort's Disclosure of Expert Witnesses filed on March 2, 2015, without exhibits.

3. Attached hereto as **Exhibit 2** is a true and accurate file-stamped copy of Defendant Peppermill Casinos, Inc.'s Disclosure of Expert Witnesses filed on March 2, 2015, without exhibits.

4. Attached hereto as **Exhibit 3** is a true and accurate file-stamped copy of the Grand Sierra Resort's Rebuttal Expert Disclosure filed on April 1, 2015, without exhibits.

5. Attached hereto as **Exhibit 4** is a true and accurate file-stamped copy of the Recommendation for Order filed on May 14, 2015.

6. Attached hereto as **Exhibit 5** is a true and accurate file-stamped copy of the Order Granting Motion to Extend Discovery and Continue Trial Deadlines and Amended Scheduling Order filed on July 1, 2015.

7. Attached hereto as **Exhibit 6** is a true and accurate file-stamped copy of the Plaintiff Grand Sierra Resort's Supplemental Disclosure of Expert Witness filed on August 28, 2015, without exhibits.

8. Attached hereto as **Exhibit 7** is a true and accurate file-stamped copy of the Grand Sierra Resort's Supplemental Rebuttal Expert Disclosure filed on October 16, 2015, without exhibits.

9. Attached hereto as **Exhibit 8** is a true and accurate file-stamped copy of the

1 Second Amended Notice of Taking Deposition of Gregory Gale, GSR's Rebuttal Expert Witness
2 filed on October 21, 2015.

3 10. Attached hereto as **Exhibit 9** is a true and accurate copy of excerpts from the
4 deposition transcript of Gregory J. Gale, CPA, M.S. deposed on November 9, 2015.

5 11. Attached hereto as **Exhibit 10** is a true and accurate file-stamped copy of the
6 Grand Sierra Resort's Notice of Withdrawal of Rebuttal Expert Witness and Rebuttal Expert
7 Report filed on November 10, 2015.

8 12. I have charged the Peppermill 12.2 hours concerning and relating to my
9 preparation for and taking of the deposition of Gregory J. Gale. My hourly rate is \$450 per hour
10 for 12.2 hours (\$5,490).

11 13. Therese Shanks is an attorney employed by Robison, Belaustegui, Sharp & Low
12 and has charged the Peppermill at \$280 per hour. Ms. Shanks has charged the Peppermill 3.3
13 hours for her work on this matter (\$924).

14 14. Peppermill has been charged the total sum of \$813.85 for court reporting services
15 and transcripts.

16 15. I was given no warning by GSR's counsel that they would be withdrawing Mr.
17 Gale as a rebuttal expert witness. I learned of the Plaintiff's position one day after I took the
18 deposition of Mr. Gale in which he admitted that he was not a rebuttal expert witness and that he
19 had never formed opinions that in any way rebut or challenge the expert opinions and reports of
20 the Peppermill's expert witnesses.

21 15. Denise Vessie is the Executive Vice President of Peppermill Casinos, Inc. and is
22 the client representative. Based on her compensation, a reasonable hourly rate for her
23 involvement in assisting me with the taking of Mr. Gale's deposition is \$200. She has devoted
24 8.5 hours to assist me with preparing for and taking the deposition of Gregory Gale (\$1,700).

25 16. Travel to and from Las Vegas for the purpose of taking Mr. Gale's deposition was
26 accomplished through the use of Peppermill's corporate jet. The charges for using the jet for Mr.
27 Gale's deposition is \$3,400 per hour for flight time. The flight time is one hour to Las Vegas and
28 one hour back to Reno. The standby time is \$120 per hour and there were 4.5 hours of standby

1 time (\$7,340).

2 17. The total expenses and fees incurred by the Peppermill to accomplish this
3 unnecessary deposition is \$16,267.85.

4 18. Attached to this Affidavit is a copy of my statement of qualifications and a
5 statement of the qualifications of Therese Shanks.

6 Dated this 20th day of November, 2015.

7
8 
KENT R. ROBISON

9 Subscribed and sworn to before me
10 on this 20th day of November, 2015 by
Kent R. Robison.

11 
12 NOTARY PUBLIC

