		Payment of $3,225 for filling out surveys	
136.	06/03/08	Margruder letter to Vessie re: requesting payment Of $3,347 for filling out surveys	PM13964
137.	06/04/08	Barker-Cryer letter to Vessie re: requesting Payment of $1,179 for filling out surveys	PM13965
138.	12/04/12	Email string between Tors and Billy (20%)	
139.	06/17/08	Vessie email to Erwin requesting checks	PM13967
140.	06/17/08	(Dated 6/12/08) Vessie letter to Margruder re: Sending check; copy of check; check request	PM13968-PM13970
141.	06/17/08	(Dated 6/12/08) Vessie letter to Barker-Cryer re: Sending check; copy of check; check request	PM13971-PM13973
142.	06/17/08	(Dated 6/12/08) Vessie letter to Kari Hooker re: Sending check; copy of check; check request	PM13974-PM13976
143.	2008	Kari Hooker 1099	PM13977
144.	2002-2008	Advertising Payments Summary	PM14033
145.	2002-2004	Kari Hooker payment accounting entries	PM13978-PM13986
146.	2005-2007	Stoll payment documents	PM13987-PM14028
147.	05/04/07	Check to Stoll for $9,276.00; Check request "special project by CEO"; Payment chart $2,371.00 to Misty	PM14014-PM14016
148.	2004-2015	Casino player and strictly slots magazines payment Spreadsheets; copy of Peppermill ads	PM14034-PM14037
149.		Friedman Rebuttal Report	
150.		Lucas Rebuttal Report	
151.		Tom Sullivan Player Cards	PM14492
152.			
153.		GSR Billboards "Best"	PM14046-PM14051
154.		Casino Management Fee Information	
155.	03/02/15	Plaintiff's Eight Supplemental Disclosure Pursuant To NRCP 16.1	
156.	06/05/15	Errata to Plaintiff MEI-GSR Holdings, LLC, a	

		Nevada Corporation, d/b/a Grand Sierra Resort's Amended Disclosure of Expert Witness
157.	08/28/15	Plaintiff MEI-GSR Holdings, LLC, a Nevada Corporation, d/b/a Grand Sierra Resort's Supplemental Disclosure of Expert Witness
158.		Amended Expert Report (with numbered sentences)
159.		Nevada Trade Secret Act
160.		Aguero Charts – No Correlation
161.		Las Vegas Sands and Wynn 10-Q's and 10Ks (also 2011-2015 Gaming Revenue Reports)
162.		Atlantis Advertisements
163.		Gaming Revenue Report (2010)
164.		Advertisement from El Cortez
165.	08/2011	EOM Walk About Report
166.		Report entitled "Slot Market Assessment" by Applied Analysis
167.		Vermont Microsystems, Inc., v. Autodesk, Inc., Decision
168.		Uniloc USA, Inc. V. Microsoft Corporation decision
169.		Expert Rebuttal Report, applied analysis
170.		Expert Rebuttal Report, applied analysis (with numbered paragraphs)
171.		Expert Report of Stacy Friedman
172.		Expert Witness Report of Professor Anthony Lucas
173.		Excerpts from the Deposition of John Stone taken April 1, 2015
174.		
175.		
176.		March 18, 2013, email to Aaron Robyns from Ryan Tors
174.		Email from Kari Hooker to Scott Hernandez re: not being able to make it to the deposition

175.		Emails between Kent Robison and Kari Hooker re: Hooker needing more time to make arrangements to come to a deposition	
176.	06/05/13	Planning and Analysis Slot Presentation	GSR0128-GSR0138
177.	7/2013	Slot Detail Report	GSR3200-GSR3381
178.	07/24/13	Planning and Analysis Slot Presentation	GSR0200-GSR0217
179.	11/2014	Slot Detail Report	GSR5814-GSR6127
180.		Kari Hooker LinkedIn Page	
181.		Contract of Employment (1997)	
182.		Contract of Employment (February 24, 2006)	
183.		GSR Bank Report	
184	12/31/12	EOM Walk About Report	
185.	04/2013	Executive Slot Report	
186.		Defendant Peppermills Casino's Supplement to Disclosure of Rebuttal Expert Witnesses	
187.	06/24/13	Email string between McHugh and Tors (Text from Bill)	

188. Photocopy of Plaintiff MEI-GSR Holdings, LLC, a Nevada Corporation d/b/a Grand Sierra Resorts Disclosure of Expert Witnesses (Retained by Mr. Robison)

189. Photocopy of Grand Sierra Resort's Rebuttal Expert Disclosure (Retained by Mr. Robison)

190. Photocopy of Plaintiff MEI-GSR Holdings, LLC, a Nevada Corporation d/b/a Grand Sierra Resort's Disclosure of Rebuttal Expert Witness Reports (Retained by Mr. Robison)

191. Photocopy of Expert Report of Gregory Gale, GCB Consulting Corporation, dated October 15, 2015 (Retained by Mr. Robison)

192. Photocopy of Notice to Licensees, Notice No. 2013-84, dated February 25, 2014, from the State of Nevada Gaming Control Board (Retained by Mr. Robison)

193. Expert Report Professor Anthony Lucas

194. Estimating the Short-term Effects of an Increase in Par on Reel Slot Performance

195. Estimating the Ability of Gamblers to Detect Difference in the Payback Percentages of Reel Slot Machines: A Closter Look at the Slot Player Experience

196. Notice of Confidentiality of Par Sheets (Aristocrat)

197. 2/2011 Slot Floor Review

198. Expert Report (Original Retained by Counsel)

199. Engagement Letter (Original Retained by Counsel)

200. Notes (Original Retained by Counsel)

201.	09/06/15	Atlantis Newspaper Ad	PM14200
202.	08/30/15	Atlantis Newspaper Ad	PM14201-PM14202

203. Expert Report (Retained by Counsel)

204. Hand Written Notes (Retained by Counsel)

205. Expert Witness Reports (Lucas and Friedman) (Retained by Counsel)

206. Salazar Rebuttal Invoice (Retained by Counsel)

206. Expert Report

207. Rebuttal Expert Witness Report of Tom Sullivan

300.	2/2015	CDC Report	GSR18,436-GSR18,481
301.	3/2015	CDC Report	GSR18,294-GSR18,340
302.	4/2015	CDC Report	GSR18,341-GSR18,386
303.	5/2015	CDC Report	GSR18,387-GSR18,433
304.	6/2015	CDC Report	GSR18,434-GSR18,479
305.	12/31/10	State Gaming Control Board Gaming Revenue Report	PM14204-PM14251
306.	12/31/11	State Gaming Control Board Gaming Revenue Report	PM14252-PM14299

307.	12/31/12	State Gaming Control Board Gaming Revenue Report	PM14300-PM14347
308.	12/31/13	State Gaming Control Board Gaming Revenue Report	PM14348-PM14395
309.	12/31/14	State Gaming Control Board Gaming Revenue Report	PM14396-PM14443
310.	08/31/15	State Gaming Control Board Gaming Revenue Report	PM14444-PM14491
311.	2010	Partial Las Vegas Sands Corp 10K	PM12474-PM12613
312.	2010	Partial Las Vegas Sands Corp 10K/A	PM12614-PM12625
313.	2011	Partial Las Vegas Sands Corp 10K	PM12626-PM12765
314.	2012	Partial Las Vegas Sands Corp 10K	PM12766-PM12887
315.	2013	Partial Las Vegas Sands Corp 10K	PM12888-PM13016
316.	2014	Partial Las Vegas Sands Corp 10K	PM13017-PM13148
317.	03/31/15	Partial Las Vegas Sands Corp 10Q	PM13149-PM13200
318.	06/30/15	Partial Las Vegas Sands Corp 10Q	PM13201-PM13263
319.	2010	Partial Wynn Resorts, Limited 10K	PM13279-PM13377
320.	2011	Partial Wynn Resorts, Limited 10K	PM13378-PM13477
321.	2011	Partial Wynn Resorts, Limited 10K/A	PM13478-PM13517
322.	2012	Partial Wynn Resorts, Limited 10K	PM13518-PM13634
323.	2013	Partial Wynn Resorts, Limited 10K	PM13635-PM13747
324.	2014	Partial Wynn Resorts, Limited 10K	PM13748-PM13867
325.	03/31/15	Partial Wynn Resorts, Limited 10Q	PM13868-PM13906
326.	06/30/15	Partial Wynn Resorts, Limited 10Q	PM13907-PM13950

327.	2010	Peppermill Reno 1C Video and Reel Analysis (Highly Confidential)	PM2824-PM2825
328.	2011	Peppermill Reno 1C Video and Reel Analysis (Highly Confidential)	PM2826-PM2827
329.	2012	Peppermill Reno 1C Video and Reel Analysis (Highly Confidential)	PM2828-PM2829
330.	2013	Peppermill Reno 1C Video and Reel Analysis (Highly Confidential)	PM2830-PM2831)
331.	2014	Peppermill Reno 1C Video and Reel Analysis (Highly Confidential)	PM2832-PM2833
332.	2010	All Slots Snapshot	PM2834-PM2835
333.	2011	All Slots Snapshot	PM2836-PM2837
334.	2012	All Slots Snapshot	PM2838-PM2839
335.	2013	All Slots Snapshot	PM2840-PM2841
336.	2014	All Slots Snapshot	PM2842-PM2843
337.		Photographs of Machines	PM9102-PM9153
338.		Willamette Article	Salazar Report
339.		Machine Performance Statistics	GSR10439
340.		Par Sheets from Vendors	PM8641-PM9016
341.		Emails discussed between Tors and Vessie	
		341-1 341-2 341-3 341-4 341-5 341-6 341-7 341-8 341-9 341-10 341-11	

341-12
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342. Wells Reports/Peppermill Summaries
342-1
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EXHIBIT 4
Part 1 of 3

EXHIBIT 4
Part 1 of 3

PURPOSE OF THE TRIAL

The purpose of the trial is to ascertain the truth.

INSTRUCTION NO. _____

Robison, Belaustegui,
Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

PURPOSE OF THE TRIAL

The purpose of the trial is to ascertain the truth.

INSTRUCTION NO. _____

NRS 50.115(1)(A); NJI 1GI.1

Robison, Belaustegui,
Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

ADMONITION

You are admonished that no jury may declare to a fellow juror any fact relating to this case as of his or her own knowledge, and if any juror discovers during the trial or after the jury has retired that he, she or any other juror has personal knowledge of any fact in controversy in this case, he or she shall disclose such situation to myself in the absence of the other jurors. This means that if you learn, during the course of the trial, that you were acquainted with the facts of this case or the witnesses and you have not previously told me of this relationship, you must then declare that fact to me. You communicate to the court through the bailiff/marshal.

During the course of this trial, the attorneys for both sides and court personnel, other than the bailiff/marshal, are not permitted to converse with members of the jury. These individuals are not being anti-social; they are bound by ethics and the law not to talk to you. To do so might contaminate your verdict. You are admonished, additionally, that you are not to visit the scene of any of the acts or occurrences made mention of during this trial, unless specifically directed to do so by the court. Do not undertake any investigation of the case on your own, or endeavor to research legal or factual issues on your own.

INSTRUCTION NO. _____

Robison, Belaustegui,
Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

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INSTRUCTION NO. _____

NRS 16.100; NRS 175.121
NJI 1GI.2

Robison, Belaustegui,
Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

ORDER OF TRIAL

The trial will proceed in the following order:

1. First, the parties have the opportunity to make opening statements. The Plaintiff makes the first opening statement. Then, the Defendant will be given an opportunity to make an opening statement. What is said by the attorneys in their opening statements is not evidence. The statements simply serve as an introduction or guide for you so you will know what to look for as the witnesses testify. Whether or not the attorneys present the evidence which they say they will in their opening statements will be for you to determine.

2. After the opening statements, each side will be given the opportunity to present evidence. The Plaintiff goes first. Evidence presented by the Plaintiff in support of the Plaintiff's Complaint is called the Plaintiff's "case in chief."

3. After the Plaintiff presents evidence, the Defendant may present evidence but is not obligated to do so. This is the Defendant's case in chief.

4. If the Defendant does present evidence, the Plaintiff may then present rebuttal evidence.

5. If the Plaintiff presents rebuttal evidence, the Defendant may then present surrebuttal evidence.

6. After the evidence is concluded, I will instruct you on the law that applies in this case. You must not be concerned with the wisdom of any rule of law stated in my instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given to you by the court.

7. After the instructions on the law are read to you, each party will have the opportunity to present closing arguments. Just as what is said by the attorneys in their opening statements is not evidence, what is said in closing arguments is not evidence. However, unlike opening statements, during their closing arguments, the attorneys are permitted to argue to you what they think the evidence has shown, what witnesses should be believed and what inferences they think you should draw from that evidence. The Plaintiff has the right to both begin and end closing arguments.

INSTRUCTION NO. _____

Robison, Belaustegui,
Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

ORDER OF TRIAL

The trial will proceed in the following order:

1. First, the parties have the opportunity to make opening statements. The Plaintiff makes the first opening statement. Then, the Defendant will be given an opportunity to make an opening statement. What is said by the attorneys in their opening statements is not evidence. The statements simply serve as an introduction or guide for you so you will know what to look for as the witnesses testify. Whether or not the attorneys present the evidence which they say they will in their opening statements will be for you to determine.

2. After the opening statements, each side will be given the opportunity to present evidence. The Plaintiff goes first. Evidence presented by the Plaintiff in support of the Plaintiff's Complaint is called the Plaintiff's "case in chief."

3. After the Plaintiff presents evidence, the Defendant may present evidence but is not obligated to do so. This is the Defendant's case in chief.

4. If the Defendant does present evidence, the Plaintiff may then present rebuttal evidence.

5. If the Plaintiff presents rebuttal evidence, the Defendant may then present surrebuttal evidence.

6. After the evidence is concluded, I will instruct you on the law that applies in this case. You must not be concerned with the wisdom of any rule of law stated in my instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given to you by the court.

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INSTRUCTION NO. _____ NRS 16.090; NJI 1GI.4

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71 Washington St.
Reno, NV 89503
(775) 329-3151

CLAIMS MADE AND ISSUES TO BE PROVED

The credibility or "believability" of a witness should be determined by his or her manner upon the stand, his or her relationship to the parties, his or her fears, motives, interests or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness of his or her statements and the strength or weakness of his or her recollections.

INSTRUCTION NO. _____

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Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

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INSTRUCTION NO. _____

U.S. v. Lizarraga-Cedano, 191 Fed.Appx. 586 (9th Cir. 2006); Young AhChor v. Dulles, 270 F.2d 338 (9th Cir. 1959); NJI 1GI.6

Robison, Belaustegui, Sharp & Low
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EVIDENCE

There are two kinds of evidence; direct and circumstantial. Direct evidence is proof of a fact such as testimony of an eyewitness. Circumstantial evidence is indirect evidence; that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence. It is for you to decide whether a fact has been proved by circumstantial evidence.

Whenever in these instructions I state that the burden, or the burden of proof, rests upon a certain party to prove a certain allegation made by him or her, the meaning of such an instruction is this: That unless the truth of the allegation is proved by a preponderance of the evidence, you shall find the same to be not true.

The term "preponderance of the evidence" means such evidence as, when weighed with that opposed to it, has more convincing force and from which it appears that the greater probability of truth lies therein.

No statement, ruling, remark or comment which I may make during the course of the trial is intended to indicate my opinion as to how you should decide the case or to influence you in any way in your determination of the facts. At times, I may even ask questions of witnesses. If I do, it is for the purpose of bringing out matters which I feel should be brought out and not in any way to indicate my opinion about the facts or to indicate the weight I feel you should give to the testimony of the witness. I may, during the trial, take notes of the witness' testimony. You are not to make any inference from that action. I am required to prepare for legal arguments of counsel during this trial and, for that reason, I may take notes.

INSTRUCTION NO. _____

Robison, Belaustegui,
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INSTRUCTION NO. _____

Metropolitan Stevedore Co. v. Rambo, 521 U.S. 121, 117 S.Ct. 1953 (1997); DirecTV, Inc. v. Webb, 545 F.3d 837 (9th Cir. 2008); NJI 1GI.7

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71 Washington St.
Reno, NV 89503
(775) 329-3151

NO TRANSCRIPT AVAILABLE TO JURY

The jury will not have a transcript to consult at the close of the case. However, the jury will be furnished note pads and pencils and will be allowed to take notes. I caution you, however, not to allow copious note-taking to interfere with your ability to consider the evidence as it is presented.

If you cannot hear a witness, please raise your hand as an indication. Also, if you need to go to the restroom or if you feel ill, please also raise your hand as an indication. I tend to take a short break every now and then, along with a lunch break of at least 30 minutes.

Also, I have no objection to jurors bringing drinks into the courtroom, but please be careful with them.

INSTRUCTION NO. _____

Robison, Belaustegui,
Sharp & Low
71 Washington St.
Reno, NV 89503
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Also, I have no objection to jurors bringing drinks into the courtroom, but please be careful with them.

INSTRUCTION NO. _____ NRS 16.130; NJI 1GI.8

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71 Washington St.
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DISCUSSION OF TRIAL AND MEDIA COVERAGE

Again, let me remind you that until this case is submitted to you:

1. Do not talk to each other or anyone else about it or about anyone who has anything to do with it until the end of the case when you go to the jury room to decide on your verdict.

2. "Anyone else" includes members of your family and your friends. You may tell them that you are a juror in a civil case, but do not tell them anything else about it until after you have been discharged as jurors by myself.

3. Do not let anyone talk to you about the case or about anyone who has anything to do with it. If someone should try to talk to you, please report it to me immediately by contacting the bailiff/marshal.

INSTRUCTION NO. _____

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Sharp & Low
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Reno, NV 89503
(775) 329-3151

DISCUSSION OF TRIAL AND MEDIA COVERAGE

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2. "Anyone else" includes members of your family and your friends. You may tell them that you are a juror in a civil case, but do not tell them anything else about it until after you have been discharged as jurors by myself.

3. Do not let anyone talk to you about the case or about anyone who has anything to do with it. If someone should try to talk to you, please report it to me immediately by contacting the bailiff/marshal.

INSTRUCTION NO. _____ NRS 175.401; NJI 1GI.9

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JURORS NOT TO CONDUCT INDEPENDENT INVESTIGATION

You must decide all questions of fact in this case from the evidence received in this trial and not from any other source. You must not make any independent investigation of the facts of the law or consider or discuss facts as to which there is no evidence. This means, for example, that you must not on your own visit the scene, conduct experiments or consult reference works for additional information.

INSTRUCTION NO. _____

Robison, Belaustegui,
Sharp & Low
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Reno, NV 89503
(775) 329-3151

JURORS NOT TO CONDUCT INDEPENDENT INVESTIGATION

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INSTRUCTION NO. _____

Rowbottom v. State, 105 Nev. 472, 779 P.2d 934 (1989); Meyer v. State, 119 Nev. 554, 80 P.3d 447 (2003); NJI 2EV.16

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71 Washington St.
Reno, NV 89503
(775) 329-3151

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Clerk of the Court
Transaction # 5303826 : csulezic

EXHIBIT 4
Part 2 of 3

EXHIBIT 4
Part 2 of 3

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,

Defendant.

_____/

Case No.: CV13-01704

Dept. No.: B7

BUSINESS COURT DOCKET

LADIES AND GENTLEMEN OF THE JURY:

It is my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the court.

INSTRUCTION NO. _____

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,

Defendant.

_____/

Case No.: CV13-01704

Dept. No.: B7

BUSINESS COURT DOCKET

LADIES AND GENTLEMEN OF THE JURY:

It is my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the court.

INSTRUCTION NO. _____

NEV.J.I. 1.00

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

INSTRUCTION NO. _____

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The order in which the instructions are given has no significance as to their relative importance.

INSTRUCTION NO. _____ NEV.J.I. 1.01

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate as to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

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Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

INSTRUCTION NO. _____ NEV.J.I. 1.03

You must decide all questions of fact in this case from the evidence received in this trial and not from any other source. You must not make any independent investigation of the facts or the law or consider or discuss facts as to which there is no evidence. This means, for example, that you must not on your own visit the scene, conduct experiments, or conduct reference works for additional information.

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INSTRUCTION NO. _____

NEV.J.I. 1.04

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

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Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

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INSTRUCTION NO. _____ NEV.J.I. 1.05

The parties in this case are corporations. A corporation is entitled to the same fair and unprejudiced treatment as an individual would be under like circumstances, and you should decide the case with the same impartiality you would use in deciding a case between individuals.

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INSTRUCTION NO. _____

NEV.J.I. 1.06

If, during this trial, I have said or done anything which has suggested to you that I am inclined to favor the claims or position of any party, you will not be influenced by any such suggestion.

I have not expressed, nor intended to express, nor have I intended to intimate, any opinion as to which witnesses are or are not worthy of belief, what facts are or are not established, or what inference should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

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INSTRUCTION NO. _____ NEV.J.I. 1.08

Plaintiff is seeking damages based upon Nevada's Trade Secret Act. Plaintiff, "GSR," claims that the Defendant, Peppermill, misappropriated trade secrets. Plaintiff has the burden of proving by a preponderance of evidence all of the facts to establish:

1. GSR's specific par settings that were accessed by the Peppermill are trade secrets in that they were information that:

   (a) derived independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain commercial or economic value from its disclosure or use; and

   (b) was the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Defendant has denied that Plaintiff's par information it obtained from the Plaintiff are trade secrets. In addition, Defendant has alleged the following affirmative defenses that it must prove by a preponderance of evidence:

1. Plaintiff has waived its claims;
2. Plaintiff should be estopped from making tis claims;
3. Plaintiff has failed to mitigate its damages, if any it has;
4. Plaintiff is not entitled to any civil penalties;
5. Plaintiff is not entitled to reasonable royalty damages.

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2. Plaintiff should be estopped from making tis claims;
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5. Plaintiff is not entitled to reasonable royalty damages.

INSTRUCTION NO. _____ NJI 2EV.1 Modified

A "preponderance of the evidence" means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your mind a belief that what is sought to be proved is more probably true than not true.

In determining whether any proposition has been proved, you should consider all of the evidence bearing on the question without regard to which party produced it.

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INSTRUCTION NO. _____ NJI 2EV.1

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits and any facts admitted or agreed to by counsel.

There are two types of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness personally saw or heard or did. Circumstantial evidence is the proof of one or more facts from which you could find another fact. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation of evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

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INSTRUCTION NO. _____ NJI 2EV.3

Certain evidence was admitted for a limited purpose. At the time this evidence was admitted you were admonished that it could not be considered by you for any purpose other than the limited purpose for which it was admitted. Do not consider such evidence for any purpose except the limited purpose for which it was admitted.

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INSTRUCTION NO. _____ NJI 2EV.6

Certain charts and summaries have been received into evidence to illustrate facts brought out in the testimony of some witnesses. Charts and summaries are only as good as the underlying evidence that supports them. You should therefore give them only such weight as you think the underlying evidence deserves.

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INSTRUCTION NO. _____ NJI 2EV.14

Where relevant evidence which would properly be a part of this litigation is within the control of one party whose interest it would naturally be to produce it, and they fail to do so without a satisfactory explanation, the jury may draw an inference that such evidence would have been unfavorable to that party.

An inference means a logical and reasonable conclusion of a fact not presented by direct evidence but which, by process of logic and reason, the jury may conclude exists from the established facts.

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INSTRUCTION NO. _____ NJI 2EV.4

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. You are to consider that testimony as if it had been given in court.

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INSTRUCTION NO. _____ NJI 2EV.8

During the course of the trial you have heard references made to the word "interrogatory." An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. You are to consider interrogatories and the answers to them the same as if the questions had been asked and answered herein court.

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INSTRUCTION NO. _____ NJI 2EV.9

As permitted by law, the parties served upon each other a written request for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the parties or which the parties failed to deny.

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INSTRUCTION NO. _____ NJI 2EV.10

An attorney has a right to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney and told that attorney what he or she would testify to does not, by itself, reflect adversely on the truth of the testimony of the witness.

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INSTRUCTION NO. _____ NJI 2EV.15

The credibility or "believability" of a witness should be determined by his or her manner upon the stand, his or her relationship to the parties, his or her fears, motives, interests or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness of his or her statements and the strength or weakness of his or her recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of this testimony which is not proved by other evidence.

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If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of this testimony which is not proved by other evidence.

INSTRUCTION NO. _____ NEV.J.I. 2.07

Discrepancies in a witness's testimony or between his or her testimony and that of others, if there were any discrepancies, do not necessarily mean that the witness should be discredited. Failure of recollection is a common experience, and innocent misrecollection is not uncommon. It is a fact, also, that two persons witnessing an incident or transaction often will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance.

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INSTRUCTION NO. _____ NEV.J.I. 2.08

Witnesses who have special knowledge, skill, experience, training, or education in a particular subject have testified to certain opinions. This type of witness is referred to as an expert witness. In determining what weight to give any opinions expressed by an expert witness, you should consider the qualifications and believability of the witness, the facts or materials upon which each opinion is based, and the reason for each opinion.

An opinion is only as good as the facts and reasons on which it is based. If you find that any such fact has not been proved, or has been disproved, you must consider that in determining the value of the opinions. Likewise, you must consider the strengths and weaknesses of the reason on which it is based.

You must resolve any conflict in the testimony of the witnesses, weighing each of the opinions expressed against the others, taking into consideration the reasons given for the opinion, the facts relied upon by the witness, his or her relative credibility and his or her special knowledge, skill, experience, training and education.

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You must resolve any conflict in the testimony of the witnesses, weighing each of the opinions expressed against the others, taking into consideration the reasons given for the opinion, the facts relied upon by the witness, his or her relative credibility and his or her special knowledge, skill, experience, training and education.

INSTRUCTION NO. _____ NJI-Civil 3EX.2

Expert witnesses have testified about their reliance upon documents that have not been admitted into evidence. Reference by the expert witnesses to this material is allowed so that the expert witnesses may tell you what they relied upon to form their opinions. You may not consider the material as evidence in this case. Rather, you may only consider the material to determine what weight, if any, you will give to the experts' opinions.

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Expert witnesses have testified about their reliance upon documents that have not been admitted into evidence. Reference by the expert witnesses to this material is allowed so that the expert witnesses may tell you what they relied upon to form their opinions. You may not consider the material as evidence in this case. Rather, you may only consider the material to determine what weight, if any, you will give to the experts' opinions.

INSTRUCTION NO. _____ NJI 3EX.3

A hypothetical question has been asked of an expert witness. In a hypothetical question, the expert witness is told to assume the truth of certain facts, and the expert witness is asked to give an opinion based upon those assumed facts. You must decide if all of the facts assumed in the hypothetical question have been established by the evidence. You can determine the effect of that admission upon the value of the opinion.

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A hypothetical question has been asked of an expert witness. In a hypothetical question, the expert witness is told to assume the truth of certain facts, and the expert witness is asked to give an opinion based upon those assumed facts. You must decide if all of the facts assumed in the hypothetical question have been established by the evidence. You can determine the effect of that admission upon the value of the opinion.

INSTRUCTION NO. _____ NJI 3EX.4

The Plaintiff has filed this action against the Defendant alleging that the Defendant violated Nevada's Trade Secret law by misappropriating par information from Plaintiff's slot machines. I will now instruct on the Trade Secret law that applies to this case.

INSTRUCTION NO. _____

The Plaintiff has filed this action against the Defendant alleging that the Defendant violated Nevada's Trade Secret law by misappropriating par information from Plaintiff's slot machines. I will now instruct on the Trade Secret law that applies to this case.

INSTRUCTION NO. _____ Defendant's Custom Instruction

A most important consideration is whether the information is readily ascertainable or accessible to a reasonably diligent competitor.

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Hollingsworth Solderless v. Turley, 548 F. Supp. 1301 (1982), p. 1306; Cambridge Filler Corp., 548 F. Supp. 1306

INSTRUCTION NO. _____

A trade secret is information:

(a) That derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other persons who can obtain commercial or economic value from its disclosure or use, and

(b) Is the subject matter of efforts that are reasonable under the circumstances to maintain its secrecy.

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(a) That derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other persons who can obtain commercial or economic value from its disclosure or use, and

(b) Is the subject matter of efforts that are reasonable under the circumstances to maintain its secrecy.

NRS 600A.030; Hutchison v. KFC Corp., 883 F. Supp. 517 (1993); Finkel v. Cashman Professional, 270 P.3d 1259; 128 Nev. Adv. Opn. 6 (2012)

INSTRUCTION NO. _____

An important factor in determining if information constitutes a trade secret is the ease or difficulty with which the acquired information could be properly acquired by others.

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Frantz v. Johnson, 116 Nov. 455, 467; 999 P.2d 351, 358 (2002)

INSTRUCTION NO. _____

It is critical to any trade secret claim that the party claiming misappropriation of a trade secret identify the trade secret with reasonable particularity.

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Altavion Inc. v. Konica Minolta, 226 Cal. App. 4th 26 (2014)

INSTRUCTION NO. _____

One factor to consider when trying to determine if information alleged to be a trade secret is actually a trade secret is the willingness of others to pay for the information.

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West Plains v. Ritzlaff, 927 F. Supp. 776 (2013)

INSTRUCTION NO. _____

In order to establish that the information at issue in this case is a trade secret, Plaintiff must show that the information is not readily ascertainable quickly and easily by reverse engineering.

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In order to establish that the information at issue in this case is a trade secret, Plaintiff must show that the information is not readily ascertainable quickly and easily by reverse engineering.

Check Point Fluids v. Guccione,
888 F.2d 780, 797-798 (2012)

INSTRUCTION NO. _____

Secrecy is an essential characteristic of information that is protectable as a trade secret.

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Secrecy is an essential characteristic of information that is protectable as a trade secret.

Altavion Inc. v. Konica Minolta, 225 Cal. App. 4th 26 (2014), p. 24

INSTRUCTION NO. _____

Direct evidence relating to the content of the trade secret and its impact on business operations is clearly relevant. Circumstantial evidence of value is also relevant, including the amount of resources invested by the Plaintiff in the production of the information, the precautions taken by the Plaintiff to protect the secrecy of the information, and any willingness of others to pay for access to the information.

INSTRUCTION NO. _____

Direct evidence relating to the content of the trade secret and its impact on business operations is clearly relevant. Circumstantial evidence of value is also relevant, including the amount of resources invested by the Plaintiff in the production of the information, the precautions taken by the Plaintiff to protect the secrecy of the information, and any willingness of others to pay for access to the information.

Altavion Inc. v. Konica Minolta, 226 Cal. App. 4th 24, 26 (2014)

INSTRUCTION NO. _____

To recover damages against the Defendant, the Plaintiff must prove that the Defendant's conduct was the "proximate cause" of the Plaintiff's damages.

A proximate cause of injury, damage, loss, or harm is a cause which, in the natural and continuous sequence, produces the injury, damage, loss, or harm, and without which the injury, damage, loss, or harm, would not have occurred.

INSTRUCTION NO. _____

To recover damages against the Defendant, the Plaintiff must prove that the Defendant's conduct was the "proximate cause" of the Plaintiff's damages.

A proximate cause of injury, damage, loss, or harm is a cause which, in the natural and continuous sequence, produces the injury, damage, loss, or harm, and without which the injury, damage, loss, or harm, would not have occurred.

INSTRUCTION NO. _____ NEV.J.I. 4.04 Modified

A party who has had a trade secret misappropriated is entitled to recover damages. Damages can include both loss caused by the misappropriation and any amount that the Defendant has been unjustly enriched.

In lieu of damages measured by other methods, damages for misappropriation may be measured by imposition of a reasonable royalty for the Defendant's unauthorized disclosure or use of a trade secret.

INSTRUCTION NO. _____

A party who has had a trade secret misappropriated is entitled to recover damages. Damages can include both loss caused by the misappropriation and any amount that the Defendant has been unjustly enriched.

In lieu of damages measured by other methods, damages for misappropriation may be measured by imposition of a reasonable royalty for the Defendant's unauthorized disclosure or use of a trade secret.

INSTRUCTION NO. _____ NRS 600A.050(1)

If you find that the par information is a trade secret and that the par information was put to a commercial use by the Defendant, damages in the form of a reasonable royalty are available if there were no losses incurred by the Plaintiff and that the Plaintiff did not derive financial gain or benefit.

To determine the amount of a reasonable royalty, you must determine what a fair licensing price would have been had the parties agreed with both reasonably trying to reach an agreement. That is, you must determine what the Defendant would have paid to the Plaintiff for the right to have the par information and to put the Plaintiff's par information to a commercial use in a hypothetical negotiation.

In considering this hypothetical negotiation between the Plaintiff and the Defendant, you may consider such factors as the resulting and foreseeable changes in the parties' competitive positions; the prices past purchasers or licensees may have paid; the total value of the secret to the Plaintiff, including the Plaintiff's development costs and the importance to the Plaintiff's business; the nature and extent of the use intended by the Plaintiff; and other factors which might have affected the agreement such as readily available alternative information.

INSTRUCTION NO. _____

If you find that the par information is a trade secret and that the par information was put to a commercial use by the Defendant, damages in the form of a reasonable royalty are available if there were no losses incurred by the Plaintiff and that the Plaintiff did not derive financial gain or benefit.

To determine the amount of a reasonable royalty, you must determine what a fair licensing price would have been had the parties agreed with both reasonably trying to reach an agreement. That is, you must determine what the Defendant would have paid to the Plaintiff for the right to have the par information and to put the Plaintiff's par information to a commercial use in a hypothetical negotiation.

In considering this hypothetical negotiation between the Plaintiff and the Defendant, you may consider such factors as the resulting and foreseeable changes in the parties' competitive positions; the prices past purchasers or licensees may have paid; the total value of the secret to the Plaintiff, including the Plaintiff's development costs and the importance to the Plaintiff's business; the nature and extent of the use intended by the Plaintiff; and other factors which might have affected the agreement such as readily available alternative information.

University Computing Co. v. Lykes-Youngston Corp., 504 F.2d 518, 539 (1974)

INSTRUCTION NO. _____

The law looks to the time at which the misappropriation occurred to determine what the value of the misappropriated secret would be to a Defendant who believes it can utilize it to its advantage, provided the Defendant does in fact put the information to a commercial use.

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University Computing Co. v. Lykes-Youngston Corp., 504 F.2d 518, (1974)

INSTRUCTION NO. _____

Before a reasonable royalty can be used as a measure of damages, the Plaintiff must prove that the Defendant must have actually put the trade secret to some use.

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University Computing Co. v. Lykes-Youngston Corp., 504 F.2d 518, 539, (1974)

INSTRUCTION NO. _____

A trade secret is any information that can be used in the operation of a business or other enterprise and that is sufficiently valuable and secret to afford an actual or potential economic advantage over others. The Plaintiff's use of the trade secret in the operation of its business is, itself, some evidence of the information's value. The requirement of secrecy is satisfied if it would be difficult or costly for others who could exploit the information to acquire it without resort to wrongful conduct. Information that is generally known or readily ascertainable through proper means by others to whom it has potential economic value is not protectable as a trade secret. The theoretical ability of others to ascertain the information through proper means does not necessarily preclude protection as a trade secret. Trade secret protection remains available unless the information is readily ascertainable by such means. Trade secret protection terminates upon the disclosure of information by the holder of the secret. The value of a trade secret lies in the competitive advantage it gives over competitors.

Factors to consider in determining whether information is a trade secret are:

1. The extent to which the information is known outside of the holder's business;
2. The extent to which it is known by employees and others involved in the business;
3. The extent of measures taken by it to guard secrecy of the information for the value of information to the holder and to its competitors;
4. The amount of effort and money expended by the holder of the secret in developing information;
5. The ease or difficulty with which the information could be properly acquired and duplicated by others.

The relative secrecy of information claimed as a trade secret is measured by the difficulty in acquiring the information by proper means. If the information is in fact obtained through reverse engineering, however, the actor is not subject to liability, because the information has not been acquired improperly. Information is readily ascertainable if it is available in trade journals, reference books or published materials. Among the facts relevant in determining relative secrecy or the Plaintiff's precautions against disclosure is the willingness of others to pay for access to

the information, the inability of others to duplicate the information and the Defendant's resort to improper means of acquisition. Protection under the law of trade secrets terminates when the information becomes generally known or readily ascertainable by proper means.

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A trade secret is any information that can be used in the operation of a business or other enterprise and that is sufficiently valuable and secret to afford an actual or potential economic advantage over others. The Plaintiff's use of the trade secret in the operation of its business is, itself, some evidence of the information's value. The requirement of secrecy is satisfied if it would be difficult or costly for others who could exploit the information to acquire it without resort to wrongful conduct. Information that is generally known or readily ascertainable through proper means by others to whom it has potential economic value is not protectable as a trade secret. The theoretical ability of others to ascertain the information through proper means does not necessarily preclude protection as a trade secret. Trade secret protection remains available unless the information is readily ascertainable by such means. Trade secret protection terminates upon the disclosure of information by the holder of the secret. The value of a trade secret lies in the competitive advantage it gives over competitors.

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the information, the inability of others to duplicate the information and the Defendant's resort to improper means of acquisition. Protection under the law of trade secrets terminates when the information becomes generally known or readily ascertainable by proper means.

Section 39, Trade Secret;
Restatement 3d;
Unfair Competition, Section 39

INSTRUCTION NO. _____

The court has given you instructions embodying various rules of law to help guide you to a just and lawful verdict. Whether some of these instructions will apply will depend upon what you find to be the facts. The fact that I have instructed you on various subjects in this case including that of damages must not be taken as indicating an opinion of the court as to what you should find to be the facts or as to which party is entitled to your verdict.

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INSTRUCTION NO. _____ NEV.J.I. 11.00

It is your duty as jurors to consult with one another and to deliberate with a view toward reaching an agreement, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, you should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors. Whatever your verdict is, it must be the product of a careful and impartial consideration of all the evidence in the case under the rules of law as given you by the court.

INSTRUCTION NO. _____

It is your duty as jurors to consult with one another and to deliberate with a view toward reaching an agreement, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, you should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors. Whatever your verdict is, it must be the product of a careful and impartial consideration of all the evidence in the case under the rules of law as given you by the court.

INSTRUCTION NO. _____ NEV.J.I. 11.01

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given to you in the presence of the parties or their attorneys.

INSTRUCTION NO. _____

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given to you in the presence of the parties or their attorneys.

INSTRUCTION NO. _____ NEV.J.I. 11.02

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence, as you understand it and remember it to be, and by the law as given you in these instructions, and return a verdict which, according to your reason and candid judgment, is just and proper.

INSTRUCTION NO. _____

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence, as you understand it and remember it to be, and by the law as given you in these instructions, and return a verdict which, according to your reason and candid judgment, is just and proper.

INSTRUCTION NO. _____ NEV.J.I. 11.03

When you retire to consider your verdict, you must select one of your number to act as foreperson, who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

In civil actions, three-fourths of the total number of jurors may find and return a verdict. This is a civil action. As soon as six or more of you have agreed upon a verdict, you must have it signed and dated by your foreperson, and then return with it to this room.

_____
DISTRICT JUDGE

INSTRUCTION NO. _____

When you retire to consider your verdict, you must select one of your number to act as foreperson, who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

In civil actions, three-fourths of the total number of jurors may find and return a verdict. This is a civil action. As soon as six or more of you have agreed upon a verdict, you must have it signed and dated by your foreperson, and then return with it to this room.

_____
DISTRICT JUDGE

INSTRUCTION NO. _____ NEV.J.I. 11.07

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Clerk of the Court
Transaction # 5303826 : csulezic

EXHIBIT 4
Part 3 of 3

EXHIBIT 4
Part 3 of 3

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, Defendant. _____/	**CASE NO.: CV13-01704** **DEPT. NO.: B7** **BUSINESS COURT DOCKET**

VERDICT FORM NO. 1 FOR DEFENDANT

We, the jury in the above-entitled action, find for the Defendant and against the Plaintiff.

DATED this _____ day of _____, 2016.

_____
FOREPERSON

Robison, Belaustegui, Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

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,

Defendant.

_____/

CASE NO.: CV13-01704

DEPT. NO.: B7

BUSINESS COURT DOCKET

SPECIAL VERDICT FORM NO. 2

We, the jury in the above-entitled action, find as follows:

1. Has Plaintiff proved by a preponderance of the evidence that its par information obtained by the Defendant has independent economic value?

Answer "yes" or "no"

Answer:_____

2. Has the Plaintiff proved by a preponderance of the evidence that its par information obtained by the Defendant was not readily ascertainable by proper means?

Answer "yes" or "no"

Answer:_____

3. Has the Plaintiff proved by a preponderance of the evidence that it took efforts that were reasonable under the circumstances to maintain the secrecy of its par information?

Answer "yes" or "no"

Answer:_____

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71 Washington St.
Reno, NV 89503
(775) 329-3151

4. The answer being "no" to one or more of the above, we, the jury have completed and signed the Verdict Form No. 1 For Defendant

DATED this _____ day of _____, 2016.

_____
FOREPERSON

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Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

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, Defendant. _____/	**CASE NO.: CV13-01704** **DEPT. NO.: B7** **BUSINESS COURT DOCKET**

SPECIAL VERDICT FORM NO. 3

We, the jury in the above-entitled action, find as follows:

1. Has the Plaintiff proved by a preponderance of the evidence that it incurred financial loss caused by the Defendant's obtaining Plaintiff's par information?

Answer "yes" or "no"

Answer:_____

2. Has the Plaintiff proved by a preponderance of the evidence that the Defendant derived any unjust financial gain by obtaining the Plaintiff's par information?

Answer "yes" or "no"

Answer:_____

3. Has the Plaintiff proved by a preponderance of the evidence that the Defendant put the par information it obtained from the Defendant to a commercial use?

Answer "yes" or "no"

Answer:_____

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4. Has the Plaintiff proved by a preponderance of the evidence that imposition of a reasonable royalty for Defendant's use of Plaintiff's par information is appropriate?

Answer "yes" or "no"

Answer:_____

We, the jury having answered "yes" to No. 1 above have completed and signed VERDICT FORM NO. 4.

We, the jury having answered "yes" to No. 2 above have completed and signed VERDICT FORM NO. 5.

We, the jury having answered "no" to No. 3 above have completed and signed VERDICT FORM NO. 1 FOR DEFENDANT.

We, the jury having answered No. 4 above "yes" have completed and signed VERDICT FORM NO. 6 FOR THE PLAINTIFF.

DATED this _____ day of _____, 2016.

_____

FOREPERSON

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IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiff,

vs.

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

Defendant.

_____/

CASE NO.: CV13-01704

DEPT. NO.: B7

BUSINESS COURT DOCKET

VERDICT FORM NO. 4 FOR PLAINTIFF

We, the jury in the above-entitled action, having determined that Plaintiff has proved by a preponderance of the evidence that Plaintiff incurred financial loss caused by Defendant obtaining Plaintiff's par information access Plaintiff's damages at $_____.

DATED this _____ day of _____, 2016.

_____

FOREPERSON

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IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MEI-GSR HOLDINGS, LLC, a Nevada Corporation, d/b/a/ GRAND SIERRA RESORT, Plaintiff, vs. PEPPERMILL CASINOS, INC., a Nevada Corporation, d/b/a/ PEPPERMILL CASINO, Defendant. _____/	**CASE NO.: CV13-01704** **DEPT. NO.: B7** **BUSINESS COURT DOCKET**

VERDICT FORM NO. 5 FOR PLAINTIFF

We, the jury in the above-entitled action, having determined that Plaintiff has proved by a preponderance of the evidence that Defendant derived unjust financial gain by obtaining the Plaintiff's par information, find the unjust financial gain to be and assess Plaintiff's damages at $_____.

DATED this _____ day of _____, 2016.

_____
FOREPERSON

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IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MEI-GSR HOLDINGS, LLC, a Nevada Corporation, d/b/a/ GRAND SIERRA RESORT, Plaintiff, vs. PEPPERMILL CASINOS, INC., a Nevada Corporation, d/b/a/ PEPPERMILL CASINO, Defendant. _____/	**CASE NO.: CV13-01704** **DEPT. NO.: B7** **BUSINESS COURT DOCKET**

VERDICT FORM NO. 6 FOR PLAINTIFF

We, the jury in the above-entitled action, having determined that Plaintiff has proved by a preponderance of the evidence that because of Defendant's misappropriation and use of Plaintiff's par information, Plaintiff is entitled to a reasonable royalty as damages in the amount of $_____.

DATED this _____ day of _____, 2016.

_____
FOREPERSON

Robison, Belaustegui, Sharp & Low
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(775) 329-3151

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2016-01-04 04:49:59 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5304105 : csulezic

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IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MEI-GSR HOLDINGS, LLC, a Nevada Limited Liability Company, d/b/a/ GRAND SIERRA RESORT, Plaintiffs, vs. PEPPERMILL CASINO, INC., a Nevada Corporation, d/b/a/ PEPPERMILL CASINO; RYAN TORS, an individual; JOHN DOES I-X AND CORPORATIONS I-X, Defendant(s).	**Case No.: CV13-01704** **Dept. No.: B7** **BUSINESS COURT DOCKET** **PLAINTIFF, MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT'S TRIAL STATEMENT**

Plaintiff, MEI-GSR Holdings, LLC d/b/a Grand Sierra Resort (GSR), through counsel of record COHEN|JOHNSON|PARKER|EDWARDS and James L. Edwards, Esq., hereby file this

Trial Statement in accordance with WDCR 5 and this Court's Pre-Trial Order.

I. Introduction and Background Facts

This case involves Peppermill Casinos, Inc.'s unethical and unlawful theft of GSR's confidential information and Pars settings on certain machines at the GSR. This information was gathered at the behest of the Peppermill Casinos, Inc. management through its employee, Ryan Tors. Mr. Tors was caught using a reset key on GSR slots on June 12, 2013. Mr. Tors activities were reported to the Nevada Gaming Control Board, and the Board conducted an investigation into the matter. The Gaming Control Board found evidence of wrong doing, and it filed a complaint against the Peppermill. A stipulated settlement was entered with the Control Board wherein the Peppermill agreed to pay a $1 million fine for its illicit activities.

The keying incidents at the GSR were a part of a pattern of long-time practice by the Peppermill Casinos to market itself as the best place for locals to play. For example, in 2005 or 2006, the Defendants began a scheme to individually and collectively misappropriate proprietary and confidential information from other competitors in the market place for their own unlawful use and ill-gotten gain. In order to gain such proprietary and confidential information (hereinafter "Information") Defendants would either directly or through other persons employ the use of a gaming device "reset" key into competitors gaming devices. The "reset" key allows access to theoretical hold percentage (also known as "par") information, diagnostic information, play history, event logs, and game configuration.

Like Mr. Tors, those before him would either directly or through other persons enter on to the land or building of another with the intent to steal information for their own unlawful use and ill-gotten gain. Those who did that were John Hanson, Cheryl Murphy, and Ms. Murphy's husband.

Once Defendant RYAN TORS was director of slots he was directed by Defendant JOHN HANSON to continue these unlawful activities by obtaining Information through the use of a "reset" key on the property of competitors and by unlawfully accessing their competitors' gaming devices.

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During 2010 and 2011 Defendant RYAN TORS was directed to expand the unlawful scheme to include all of the Peppermill's competitors in the Reno area and Wendover. This included but was not limited to the following casinos:

a) Eldorado Hotel and Casino, Reno

b) Circus Circus Hotel and Casino, Reno

c) Sienna Hotel Spa Casino, Reno

d) Tamarack Junction, Reno

e) Wendover Nugget Hotel and Casino, Wendover

f) Red Garter Hotel and Casino, Wendover

g) Atlantis Casino Resort, Reno

h) Hobey's Casino, Sun Valley

i) Rail City Casino, Sparks

j) Baldini's Sports Casino, Sparks

i) Grand Sierra Resort and Casino, Reno

Mr. Tors was directed to obtain Information from the Grand Sierra Resort and the other competitors through the use of unlawful means Peppermill executives William Paganetti, Sr.; William Paganetti, Jr.; David Halabuk and John Hanson,.

The illicitly stolen information was shared with the executives and owners of the Peppermill over the period of time from 2005 or 2006 to at least 2013. The Information that was unlawfully obtained was used to gain a competitive advantage over the Grand Sierra Resort and the Peppermill's other competitors in the Reno and Wendover areas.

It is undisputed that on July 12, 2013, Tors entered the premises of GSR and made an unauthorized entry into certain slot machines located upon the premises. Defendant RYAN TORS illegally opened the machines numbered as #951, #440, #855, #486, #1646, and #20042 and unlawfully accessed the confidential and proprietary information contained within the machines, including each machine's diagnostic screens and payback percentages. He was authorized to access the inner workings of any gaming device at the GSR. Each unauthorized entry by Defendant RYAN TORS into a machine data base constituted a separate theft and

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misappropriation of trade secrets in violation of Nevada law and other statutes. as more fully set forth below.

Defendant RYAN TORS also had a list showing that, had he not been detained, he would have also accessed the following machines:

#20375 stand 091007 Ducks in a Row

#20050 stand 103304 Enchanted Unicorn

#127 stand 011802 Cats

On February 13, 2014 the PEPPERMILL CASINOS entered into a Stipulation for Settlement and Order in which the PEPPERMILL CASINO admitted each and every allegation set forth in the Complaint Case No. 13-23.

The PEPPERMILL CASINO further stipulated:

> RESPONDENT fully understands and voluntarily waives the right to a public hearing on the charges and allegations set forth in the Compliant, the right to present and cross-examine witnesses, the right to a written decision on the merits of the Complaint, which must contain findings of fact and a determination of the issues presented, and the right to obtain judicial review of the Nevada Gaming Commission's decision.

II. Statement of Issues of Law.

A. Plaintiff's Claims.

1. Violation of Uniform Trade Secret Act, NRS 600.A.010, *et seq.*

> The elements of a misappropriation of trade secrets claim include: (1) a valuable trade secret; (2) misappropriation of the trade secret through use, disclosure, or nondisclosure of use of the trade secret; and (3) the requirement that the misappropriation be wrongful because it was made in breach of an express or implied contract or by a party with a duty not to disclose. *See* Peter R.J. Thompson, *An Outline of 23 California Common Law Business Torts,* 13 Pac. L.J. 1, 19–20 (1981); *see also* NRS 600A.030(2) (defining misappropriation).

Frantz v. Johnson, 116 Nev. 455, 466, 999 P.2d 351, 358 (2000).

2. Vicarious Liability.

Respondeat superior is a legal theory which holds an employer, or principal, liable for the employee's or agent's misconduct while performing their employment. In Nevada the elements

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for determining whether respondeat superior liability exists are: 1) Was the liable party an employee of the defendant, and 2) The action complained of was within the scope of the liable party's employment. *Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 1223, 925 P.2d 1175, 1179 (1996).

3. Civil Conspiracy.

"An actionable conspiracy consists of a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and damage results from the act or acts. *Collins v. Union Fed. Savings & Loan,* 99 Nev. 284, 303, 662 P.2d 610, 622 (1983)." *Sutherland v. Gross*, 105 Nev. 192, 196, 772 P.2d 1287, 1290 (1989).

4. NRS 205.4765 and NRS 205.477 Unlawful Acts Regarding Computers.

NRS 205.4765(1) states that "Except as otherwise provided in subsection 6, a person who knowingly, willfully and without authorization: (a) Modifies; (b) Damages; (c) Destroys; (d) Discloses; (e) Uses; (f) Transfers; (g) Conceals; (h) Takes; (i) Retains possession of; (j) Copies; (k) Obtains or attempts to obtain access to, permits access to or causes to be accessed; or (l) Enters, - data, a program or any supporting documents which exist inside or outside a computer, system or network is guilty of a misdemeanor." NRS 205.477 states that "...a person who knowingly, willfully, maliciously and without authorization uses, causes the use of, accesses, attempts to gain access to or causes access to be gained to a computer, system, network is guilty of a misdemeanor." Pursuant to NRS 205.511, the "victim" of these crimes is permitted to bring a civil action for damages.

5. NRS 603.080, NRS 603.040 Unfair Trade Practice

NRS 603.040 Unfair trade practices. It is an unfair trade practice for a person:

1. To obtain possession of or access to a proprietary program or the data stored in computer with intent to:

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(a) Deprive or withhold from the owner his or her control over that program or data; or
(b) Convert that program or data to his or her own use or the use of another.

2. With the consent of the owner, to obtain possession of or access to a proprietary program or the data stored in a computer and thereafter, without the consent of the owner, to:
(a) Convert that program or data to his or her own use or the use of another; or
(b) Make or cause to be made a copy of that data or the statements or instructions of that program or to exhibit that program or data to another.

3. By force, violence, threat, bribe, reward or offer of anything of value on or to another person or a member of his or her family, to obtain or attempt to obtain from that other person an unauthorized copy of a proprietary program or the data stored in a computer.

4. To enter on the premises of another with intent to obtain the unauthorized possession of or access to a proprietary program or the data stored in a computer.

Id.

Pursuant to NRS 603.080 the owner of the trade secret may seek recovery of all damages suffered because of the unfair trade practice.

6. NRS 603.050 Infringement of Trade Secret

It is an infringement of a trade secret for a person, without the consent of the owner, to obtain possession of or access to a proprietary program or a compilation of proprietary information that is stored as data in a computer and make or cause to be made a copy of that program or data if the program or data:

1. Is used in the owner's business;
2. Gives the owner an opportunity to obtain an advantage over competitors who do not know or use it;
3. Is treated by the owner as secret; and
4. Is not copyrighted because an application therefor would result in the program or data no longer being secret.

NRS 603.050.

Pursuant to NRS 603.080 the owner of the trade secret may seek recovery of all damages suffered because of the unfair trade practice.

7. Deceptive Trade Practices NRS 598.0903-0999.

NRS 598.0953 states:

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Engaging in deceptive trade practice prima facie evidence of intent to injure competitor; other rights of action not limited.

1. Evidence that a person has engaged in a deceptive trade practice is prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

2. The deceptive trade practices listed in NRS 598.0915 to 598.0925, inclusive, are in addition to and do not limit the types of unfair trade practices actionable at common law or defined as such in other statutes of this State.

Pursuant to NRS 598.0999 a party may seek damages for violations of this provisions and other under the Nevada Deceptive Trade Practices.

8. Unjust Enrichment.

Unjust enrichment exists when the plaintiff confers a benefit on the defendant, the defendant appreciates such benefit, and there is " 'acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof.' " *Unionamerica Mtg. v. McDonald,* 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981) (quoting *Dass v. Epplen,* 162 Colo. 60, 424 P.2d 779, 780 (1967)).

Certified Fire Prot. Inc. v. Precision Constr., 128 Nev. Adv. Op. 35, 283 P.3d 250, 257 (2012).

B. Defendant's Defenses.

1. GSR's Complaint fails to state a claim for vicarious liability, since as a matter of law vicarious liability is not a claim for relief.

2. As set forth in its motions, GSR's Complaint should be dismissed for improper pleading practices and failure to abide by the mandatory provisions of NRCP 16.1.

3. The Court has ruled that the Peppermill not be restrained and enjoined and for even stronger reasons there presently exists no need for a injunctive relief given the Gaming Control Board's jurisdiction over this matter.

4. GSR has abused process by alleging that the Peppermill conspired with its own employees, knowing full well that an employer cannot legally conspire with its own employees.

5. GSR failed to make any reasonable efforts to preserve what it now in hindsight refers to as secrets and proprietary information and has therefore not stated a claim upon which

6. GSR's marketing and advertising programs boast par percentages, thereby revealing

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to the public the settings for par percentages and hold percentages of its slot machines, resulting in a waiver of any claim under the Nevada Trade Secret Act.

7. GSR is estopped from obtaining the relief requested in its Complaint.

8. GSR's Complaint fails to state claims upon which relief can be granted, since it admittedly cannot establish any losses, injury or damages caused by Tors' activities.

9. Discovery will reveal that, if damaged, GSR failed to mitigate. The only financial damages that GSR can claim is paying attorneys for filing a claim against Peppermill, knowing full well that GSR has sustained no damages whatsoever.

10. GSR continues to refuse and fail implementing reasonable safeguards and protective measures preventing the public, other gaming properties and third persons from obtaining diagnostic information from its machines.

11. GSR has waived each and every claim for relief set forth in its Complaint.

12. Punitive damages cannot be awarded or considered because GSR has sustained no consequential damages.

13. GSR is not entitled to civil penalties as though have already been imposed by the Gaming Control Board.

14. Under the circumstances, any award of punitive damages would be unconstitutional.

15. The Court's rejection of GSR's request for an injunction against the Peppermill is the law of the case and should not be revisited.

16. Par percentages have no bearing on GSR's revenues when taken in light of all marketing, advertising and promotional activities that have been pursued by the GSR.

17. Knowing that it sustained no damages, GSR brought its claims in bad faith, in violation of Rule 11, and should be held accountable for vexatious and malicious initiation and prosecution of this case.

18. To the extent the slot department of the GSR is mismanaged, revenue consequences are attributable only to the GSR's managerial practices and not in any way related to the activities of Tors.

19. Discovery may lead to additional affirmative defenses and to the extent discovery reveals additional affirmative defenses, Peppermill will seek amendment of this answer to plead accordingly.

III. ***Any practical matter which may be resolved before trial.***

None.

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IV. *Statement of admitted or undisputed facts*

1. "Peppermill admits that on December 29, 2011, Ryan Tors used a master key to gain access to nine GSR slot machines at the Grand Sierra Resort ("GSR"). Peppermill management had knowledge of the activity." Amended Answer dated July 25, 2014, ¶1.

2. "Peppermill admits that on June 14, 2012, Ryan Tors gained access to six GSR slot machines by and through the use of a master key (2341). Peppermill management had knowledge of the activity." *Id.* at ¶2.

3. "Peppermill admits that on July 12, 2013, Defendant Ryan Tors gained access to six GSR slot machines at the GSR. Peppermill learned of the event from the Gaming Control Board." *Id.* at ¶3. This access was an unauthorized entry. *Id.* at ¶15.

4. "As a result of Mr. Tors being detained for the July 12, 2013 incident, the Nevada Gaming Control Board initiated an exhaustive investigation into Mr. Tors' activities and the Peppermill's knowledge and participation therein." *Id.* at ¶4.

5. "The Peppermill has admitted the allegations alleged in the Gaming Control Board's proposed Complaint." *Id.* at ¶5.

6. "On February 20, 2014, the Nevada Gaming Commission conducted a hearing for public comment on the Gaming Control Board Complaint against the Peppermill. Bill Paganetti presented comments to the Gaming Commission, wherein he, on behalf of the Peppermill, admitted that the Peppermill had knowledge of Mr. Tors' activities and further stated that the information obtained by Tors was not used by the Peppermill." *Id.* at ¶6.

7. "Bill Paganetti, on behalf of the Peppermill, stipulated that the Peppermill be fined $1,000,000. The fine has been paid." *Id.* at ¶7.

8. "Responding to paragraph 8 of GSR's Complaint, Peppermill admits that Tors was an employee from December 28, 2011, through July 12, 2013.... Peppermill admits that Tors was within his employment on December 29, 2011, June 14, 2012, and July 12, 2013." *Id.* at ¶14.

9. "Responding to paragraph 11 of GSR's Complaint, Peppermill admits that Tors is not an employee of GSR and it admits that Tors was not authorized by GSR to access computer diagnostics of GSR's slot machines." *Id.* at ¶17.

10. "...Peppermill admits that Tors was detained by GSR on July 12, 2013, and admits that the Nevada Gaming Control Board has called and notified." *Id.* at ¶18.

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11. "...Peppermill admits that Tors stated he was a corporate analyst of the Peppermill and that he stated he was at the GSR for the purpose of accessing diagnostic information from certain slot machines belonging to GSR." *Id.* at ¶19.

12. "...Peppermill admits that Tors stated that the July 12, 2013 incident was not an isolated incident and that he had 'keyed' for the previous year. Peppermill denies that Tors stated that he did so 'especially at the Grand Sierra Resort' ." *Id.* at ¶20.

13. "...Peppermill admits that on July 12, 2013, Tors obtained diagnostic information in the six GSR slot machines identified and denies the remaining allegations of paragraph 16." *Id.* at ¶22.

V. *Names and Addresses of all witness, except impeachment witnesses.*

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

2. Janice Doreen Covington
c/o COHEN|JOHNSON|PARKER|EDWARDS
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Las Vegas, Nevada 891189

3. Jason Wagner
c/o COHEN|JOHNSON|PARKER|EDWARDS
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4. Michael Altizer, Slot Manager
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5. Ernie Reilly, Casino Shift Manager
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6. Rakesh Sidher, Slot Manager
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7. Anthony Moran, Security
c/o COHEN|JOHNSON|PARKER|EDWARDS

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8. Tim Donovan
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9. John Hanson
c/o Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503

10. David McHugh
c/o Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503

11. Justin Woods, Agent. NGC
c/o Nevada Gaming Control Board
9790 Gateway Drive, Suite 100
Reno, Nevada 89521

12. Person Most Knowledgeable of Peppermill Casinos, Inc. dba Peppermill Casino
c/o Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503

13. Ryan Tors
c/o Mark Gunderson, Esq.
3895 Warren Way
Reno, Nevada 89509

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

15. William Paganetti
c/o Robison, Belaustegui, Sharp & Low
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16. Rob Erwin
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17. Dave Halabuk
Las Vegas, NV

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18. Peter Batchelor
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19. Aaron Robyns
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71 Washington Street
Reno, NV 89503

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

21. Cheryl Murphy
Address Unknown

22. John Stone, Custodian of Records
Compton Dancer Consulting
c/o Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503

23. Bonnie Picker
7766 Widewing Drive
North Las Vegas, NV 89084

24. Denise Vessie
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25. Nate Estes
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26. Jeremy Aguero
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27. Charles Lombardo
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28. Rex Carlson
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29. Scott Bean
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30. Toby Taylor
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31. Ralph Burdick
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32. Christopher Abraham
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33. Tracy Mimno
c/o COHEN|JOHNSON|PARKER|EDWARDS
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34. Alex Meruelo
c/o COHEN|JOHNSON|PARKER|EDWARDS
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35. Person Most Knowledgeable – Aristocrat Technologies, Inc.
7230 Amigo Street
Las Vegas, NV 89119

36. Person Most Knowledgeable – WMS Gaming
Scientific Games Corp.
6650 S. El Camino Rd.
Las Vegas, NV 89118

37. Person Most Knowledgeable – Konami Gaming, Inc.
585 Trade Center Drive
Las Vegas, NV 89119

38. Aliza Perez
c/o Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503

39. Custodian of Records, Sands Regency
345 North Arlington Ave.
Reno, Nevada 89501

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40. Craig Robinson
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41. Steve Rosen
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42. Michelle Hadley
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43. Terry Vavra
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44. William Hughes
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Reno, NV 89503

45. Christian Ambrose
c/o Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503

46. Any and all witnesses listed by any Defendant in this case.

Plaintiff reserves the right to supplement this disclosure through the commencement of trial.

VI. ***Proposed Voir Dire.***

1. Does any member of the jury know one another before assembling here today? If so, in what way?
2. Has anyone ever previously served on a Jury? Follow up, i.e. Civil/Criminal, Foreperson, verdict?
3. Anything about that experience that would affect your ability to serve as a Juror in this case?
4. Has anyone ever been employed by a Casino? Where, when, what capacity, why leave?
5. Has anyone ever been employed by Peppermill Casino, or Grand Sierra Resort?

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6. What was your job title, and responsibilities? Dates of employment, reasons for leaving?
7. Has anyone ever had any family members employed by Peppermill Casino, or Grand Sierra Resort?
8. In what capacity were they employed? Follow up.
9. Does anyone have any close friends who work for Peppermill Casino, or Grand Sierra Resort?
10. Has anyone ever gambled at Peppermill Casind? When last time there, how often?
11. What type of gambling, i.e. machines, poker, sports betting?
12. What type of machines do you play?
13. Has anyone ever been part of a Players Club, or similar type of rewards program at the Peppermill Casino?
14. Has anyone ever been part of a Players Club, or similar type of rewards program at any Casino?
15. Has anyone ever gambled at the Grand Sierra Resort? When, how often, last time there, type of gambling?
16. Has anyone ever had a negative experience while at the Grand Sierra Resort? (Possible follow up questions.)
17. Do you have any particular feelings about gambling, either positive or negative?
18. Does anyone know what the term PARS, or PARS Settings mean? Follow up, i.e., your understanding of terms, how you learned of terms?
19. Does anyone know any of the following witnesses from the Peppermill Casino, who may be called in this case? List Witnesses out.
20. Does anyone know any of the following witnesses that will be called in this case? How know them?
21. Does anyone know any of the Attorneys or their respective firms involved in this case i.e. Kent Robison or Robison, Belaustegui, Sharp & Low. (Read attorneys names).
22. Has anyone ever been a witness to a lawsuit? Type of case?
23. Has anyone ever been a party to a lawsuit? Plaintiff or Defendant, nature of case, outcome?
24. Has anyone ever been self- employed, or a business owner? Type of employment or business?
25. Has anyone had any experience of knowledge of trade secrets, or proprietary information.

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26. What is your understanding of those terms?

27. Has anyone ever signed a non-disclosure agreement, or have an employee sign an agreement?

28. Has the business ever been sued, or brought suit? Follow up.

29. Has anyone ever supervised employees? Position, Number of employees?

30. Do you believe it is important for people or businesses to take responsibility for their own actions?

31. Have you or any family member ever been a slot machine technician or worked on a slot machine?

32. Where, what capacity, type of machines?

33. Are you presently employed?

34. Whom are you employed by, and what are your job responsibilities?

35. How long have you been employed?

36. What did you do before that?

37. Is your spouse or significant other, employed?

38. Do you have any children? What are their ages?

39. What do your adult children do?

40. Have you or anyone in your immediate family or close friends ever studied law, had legal training or been employed by a law firm? Type of training, where employed, type of law, etc?

41. What is your educational background? Did you attend college? Where and when did you graduate? Do you have a degree? If so, what is that degree?

42. What is your highest level of formal education? Where, when graduate, degree?

43. Have you ever been upset with a Casino for any reason? What was the reason and what was the ultimate outcome of your displeasure?

44. Does anyone have any training or experience in accounting? What, where?

45. Does anyone have any experience with the Gaming Control Board or Commission?

46. Does anyone have any experience in law enforcement? Type of experience, where employed?

47. Have you ever served in the Military? What branch, highest rank achieved?

48. Do you feel that you may have a bias or prejudice in this case? What is it?

49. Do you have any health problems that would affect your ability to serve as a juror?

50. Is there anything about you that the parties should know that could bear upon your ability to serve as a juror?

51. Do you have any hobbies or recreational activities?

52. Which TV programs do you watch to get your news?

53. If you filed a lawsuit as a Plaintiff, would you want someone to decide your case who is in the same frame of mind as you are right now?

54. Is there any reason why you would not want to serve on this jury? Explain

55. Can you think of any reason, no matter how insignificant, why you could not be a fair and impartial juror?

Affirmation Pursuant to NRS §239.030

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

Dated this 4th day of January, 2016.

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ James L. Edwards
JAMES L. EDWARDS, ESQ.
Nevada Bar No. 04256
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of COHEN|JOHNSON, LLC., and that on this date I caused to be served a true and correct copy of the **PLAINTIFF, MEI-GSR HOLDINGS, LLC d/b/a GRAND SIERRA RESORT'S TRIAL STATEMENT** 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:

ROBINSON, BELAUSTEGUI, SHARP & LOW
C/o Kent R. Robison, Esq.
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krobison@rbsllaw.com
Attorney for the Defendant Peppermill

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Attorney for Defendant Ryan Tors

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

DATED the 4th day of January, 2016.

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

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

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiff,

vs.

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

Defendant.

_____/

CASE NO.: CV13-01704

DEPT. NO.: B7

BUSINESS COURT DOCKET

PEPPERMILL CASINO, INC.'S RESPONSE TO GSR'S MOTION TO CLARIFY THE COURT'S ORDER FILED DECEMBER 22, 2015 REGARDING PEPPERMILL'S MOTIONS IN LIMINE

Defendant Peppermill Casinos, Inc. ("Peppermill") hereby opposes Plaintiff MEI-GSR Holdings, LLC's ("GSR") Motion to Clarify the Court's Order Filed December 22, 2015 Regarding Peppermill's Motions in Limine (the "Motion"), as follows:

I. INTRODUCTION

The instant Motion purports to seek guidance and clarity from the Court regarding its omnibus order filed on December 22, 2015 whereby the Court disposed of the motions in limine filed by the litigants to this action (the "Order"). A review of the Motion demonstrates that GSR's intent is not so benign. The Motion actually seeks to do two things.

First, the Motion's first several pages is a word for word cut and paste of GSR's discovery motions. Despite the fact that GSR has not demonstrated that Peppermill abused the discovery process or prejudiced GSR in any material way, GSR is now using all submissions to the court to argue that Peppermill should be sanctioned. The reason for this is apparent: GSR cannot prevail on the merits, and these desperate attempts to prevail as a matter of procedure is the last gossamer thread of hope that GSR has to hold onto. Since the GSR account of its discovery disputes has no relation to the substance of the Order, the first several pages of the Motion should be disregarded.

Second, it is apparent that GSR's Motion is not actually a motion to clarify. GSR does not seek guidance from the Court regarding how best to comply with the Order. Neither does it seek to broaden or narrow the scope of the Court's Order. Instead, the Motion seeks to reverse the Court's Order, granting Peppermill's Motions in Limine Nos. 3, 4, 8, 11, 13, 14, and 17. The Motion is a backdoor attempt by GSR at a motion for reconsideration. Accordingly, the appropriate standard of review should be the standard applied by district courts in evaluating motions for reconsideration.

In addition to the reasons discussed below, the Motion should be denied as a waste of precious time so close to trial. There is no more time for stalling. It is time for GSR to prepare for trial.

II. LEGAL ANALYSIS

A. Standard of Review

As noted above, the Motion is actually a motion for reconsideration, not a motion to clarify. Reconsideration of a previously disposed motion is only appropriate "in very rare instances" when a party raises new issues of law or fact that render the Court's prior holding clearly erroneous. *See Moore v. City of Las Vegas,* 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). While permitted under WDCR 12(8) and DCR 13(7), "[r]ehearings are not granted as a matter of right, and are not allowed for the purpose of reargument, unless there is a reasonable probability that the Court may have arrived at an erroneous conclusion." *Geller v. McCown,* 64 Nev. 102, 108, 178 P.2d 380, 381 (1947) (citations omitted). Motions for reconsideration cannot be "utilized as a vehicle to reargue matters considered and decided in the court's initial opinion." *In re Ross,*

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99 Nev. 657, 659, 668 P.2d 1089, 1091 (1983). Moreover, "[p]oints or contentions not raised in the original hearing cannot be maintained or considered on rehearing." *Achrem v. Expressway Plaza Ltd. P'ship,* 112 Nev. 737, 742, 917 P.2d 447, 450 (1996). A district court may only reconsider a previously decided issue where: (1) substantially different evidence is introduced, or (2) the decision is clearly erroneous. *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolly, Urga & Wirth, Ltd.,* 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

Here, GSR offers no new or different evidence—substantial or otherwise—in support of the Motion. Accordingly, the only basis to grant the instant Motion is if the Court's Order is clearly erroneous.

The standard for clear error to warrant reconsideration of an earlier order is "stringent." *See Gindes v. United States*, 740 F.2d 947, 950 (Fed. Cir. 1984). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing [body] on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948). Stated colorfully, "[t]o be clearly erroneous, a decision must strike us as more than just maybe or probably wrong; it must . . . strike us as wrong with the force of a five-week-old, unrefrigerated dead fish." *Parts & Elec. Motors. Inv. v. Sterling Elec., Inc.*, 866 F.2d 228, 233 (7th Cir. 1988)). As discussed below, the Order is not fishy in the slightest. There is no clear error. The Motion must be denied.

B. <u>Issuing the Order Prior to the Filing of GSR's Oppositions to Peppermill's Motions in Limine Does Not Prejudice GSR and Cannot Constitute Clear Error.</u>

GSR argues that "due process" requires that it be allowed to oppose Peppermill's Motions in Limine. *See* Motion, p. 3:21-25. However, under Nevada law, there is no requirement for a motion in limine to be fully briefed. Indeed, the legal implication of an unbriefed order in limine is distinct from a fully briefed order in limine. In *Richmond v. State*, 118 Nev. 924, 931-32, 59 P.3d 1249, 1254 (2002), the Nevada Supreme Court that an order granting a motion in limine is only advisory unless the following three requirements are satisfied: (1) the objection has been fully briefed, (2) the district court has thoroughly explored the objection during a hearing on a pretrial motion, and (3) the district court has made a definitive ruling. If any of these elements is not met,

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an order on a motion in limine is merely advisory, and the objection must be raised at trial to be preserved for appeal.

Here, there was not a full briefing of the Peppermill's Motions in Limine, so the first *Richmond* factor is not met. Accordingly, the Order is merely advisory. Furthermore, *Richmond* decision contemplates granting motions in limine without full briefing. Therefore, there cannot be prejudice to GSR, and there is not impact to GSR's due process rights. Without more, there is no clear error, and the Motion should be denied.

C. It Was Not Clear Error for the Court to Grant Motions in Limine Nos. 3 and 14, Because It Is Proper to Exclude Undisclosed Expert Witnesses and Opinion Testimony.

Peppermill's Motion in Limine No. 3, which was properly granted by the Court, sought to exclude lay witnesses from offering expert opinion. As noted in Motion in Limine No. 3, NRCP 16.1 and 26 mandate the timely disclosure of expert testimony. In the instant Motion, GSR seeks leave to introduce opinion evidence by lay witnesses as an end run around the expert witness disclosure requirement.

If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences that are:

1. Rationally based on the perception of the witness; and
2. Helpful to a clear understanding of his testimony or the determination of a fact in issue.

NRS 50.265. This narrow exception is limited to the specific circumstance in which an individual offers a reasonable inference premised on that individual's personal observations. *See, e.g., Paul v. Imperial Palace, Inc.*, 111 Nev. 1544, 1550, 908 P.2d 226, 230 (1995) (permitting witness to offer "lay opinion" that oil slick on rug caused plaintiff to slip and fall, where the witness observed end of the plaintiff's fall and immediately observed oil slick on rug where plaintiff fell). To the extent that "lay opinion" testimony constitutes expert opinion, those opinions must be properly disclosed pursuant to NRCP 16.1 and 26, and it must be offered through a qualified witness based on a reliable methodology, as set forth in NRS 50.275 and *Hallmark v. Eldridge*, 124 Nev. 492, 495, 189 P.3d 646, 648 (2008). If not, this type of lay testimony must be excluded. *See, e.g., McKeeman v. Gen. Am. Life Ins. Co.*, 111 Nev. 1042, 1051-52, 899 P.2d 1124, 1130 (1995)

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(excluding "lay opinion" testimony from third-party insurance agent concerning whether plaintiff's coverage had lapsed, because plaintiff failed to qualify insurance agent as an expert). Moreover, where it is established that an individual does not have sufficient personal knowledge to form an opinion on a fact at issue, that testimony must be excluded. *See Sterling v. State*, 108 Nev. 391, 397, 834 P.2d 400, 403-404 (1992) (upholding exclusion of "lay opinion" testimony from victim's mother as to reason for victim's statement concerning her assailant, where defendant failed to show that mother had personal knowledge of victim's motivation).

The law is clear. GSR may not rely on undisclosed "expert" opinions of lay witnesses. Further, GSR cannot now offer the "expert" testimony of "non-retained experts" that it initially disclosed but then withdrew. To allow otherwise would render NRCP 16.1 a nullity and subject Peppermill to trial by surprise. GSR has had over two years to get its ducks in a row; its failure to do so is of no moment. GSR strategic basis for withdrawing its non-retained experts is also of no moment. Accordingly, it was not clearly erroneous for the Court to grant Motion in Limine No. 3. The Motion must be denied on this basis.

D. It Was Not Clear Error for the Court to Grant Motion in Limine No. 4, Because Specific Par Settings from Competing Casinos Is Irrelevant to Any Material Issue in this Case.

GSR now seeks reconsideration of the Court's order to preclude evidence of the par settings of other casinos. GSR does so on the grounds that these specific par settings are "circumstantial evidence" that Peppermill misappropriated trade secrets. GSR stretches the definition of circumstantial evidence too far.

In misappropriation of trade secret cases, the kind of circumstantial evidence that demonstrates misappropriation are evidence of: 1) access to a trade secret, 2) similarity between the defendant's product and the trade secret, or 3) that the defendant's product is derived from the trade secret. *See Leggett & Platt, Inc. v. Hickory Springs Mfg. Co.*, 285 F.3d 1353, 1361 (Fed. Cir. 2002) (evaluating evidence of access and similarity); *Sokol Crystal Prods., Inc. v. DSC Communications Corp.*, 15 F.3d 1427, 1429 (7th Cir.1994) ("While there was no direct evidence that [defendant] used [plaintiff's] confidential information ... the jury apparently inferred from the fact that the [defendant] has access to [plaintiff's] confidential information and from the similarity

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between the two devices that [defendant] misappropriated [plaintiff's] trade secret . . ."); *Pioneer Hi-Bred Int'l v. Holden Found. Seeds, Inc.*, 35 F.3d 1226, 1240 (8th Cir. 1994) ("This case involves possession of a product *derived from* the protected secret. Proof of derivation removes the possibility of independent development . . ."). Here, GSR concedes that there is no evidence of similarity or derivation in this case, as GSR's expert notes that there is no correlation between the GSR's par information and Peppermill's business operations. *See* **EXHIBIT 1** (Deposition of Jeremy Aguero (Oct. 19, 2015)), p. 233:17-236:3. Accordingly, there is no circumstantial evidence sufficient to support a finding of misappropriation of trade secret. Moreover, the par settings of other casinos are simply not the type of evidence that is circumstantial proof of misappropriation. Therefore, it was not clear error to grant Motion in Limine No. 4. The Motion must be denied on this basis.

E. It Was Not Clear Error for the Court to Grant Motion in Limine No. 8, Because Peppermill's Shopping Activities Prior to GSR's Licensure Is Irrelevant.

GSR also seeks reconsideration of the Court's order to preclude evidence of Peppermill's shopping activities prior to GSR gaining licensure. Once again, GSR seeks to admit this type of evidence as "circumstantial evidence." Despite the fact that any such evidence is irrelevant to the issues in this case, GSR is actually seeking to attain gaming revenue prior receiving its gaming license by the State of Nevada.

Under the Nevada Gaming Control Act, "it is unlawful for any person, either as owner, lessee or employee, whether for hire or not, either solely or in conjunction with others:

> (a) To deal, operate, carry on, conduct, maintain or expose for play in the State of Nevada any gambling game, gaming device, inter-casino linked system, mobile gaming system, slot machine, race book or sports pool;
>
> . . .
>
> (d) To receive, directly or indirectly, any compensation or reward or any percentage or share of the money or property played, for keeping, running or carrying on any gambling game, slot machine, gaming device, mobile gaming system, race book or sports pool;
>
> . . .
>
> without having first procured, and thereafter maintaining in effect, all federal, state, county and municipal gaming licenses as required by statute, regulation or ordinance or by the governing board of any unincorporated town."

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NRS 463.160(1). In short, Nevada law expressly prohibits any person or entity without a State gaming license or other necessary licensure from operating a casino or receiving any form of compensation from the operation of a casino.

Nevada regulations clarify this statutory rule as it applies to the sale or transfer of ownership of a casino property from a licensed person or entity to an unlicensed person or entity. Absent an emergency situation:

> No individual who is the owner or any interest in a licensed gaming operation shall in any manner whatsoever transfer any interest therein to any person, firm or corporation not then an owner or an interest therein, and *no such transfer shall become effective for any purpose until the proposed transferee or transferees shall have made application for and obtained all licenses required by the Nevada Gaming Control Act and these regulations, or have been found to be individually qualified to be licensed, as appropriate.*

Regulation, 8.030(1) (emphasis added). Further, no transferor shall permit any transferee to "participate in the profits of, any licensed gaming operations, or any portion thereof" absent the necessary regulatory compliance. Regulation, 8.010(2). Therefore, a purchaser of a casino property may not receive any compensation or revenue from the subject property until the purchaser becomes duly licensed under the Nevada Gaming Control Act and the purchase becomes effective.

Here, GSR is seeking a reasonable royalty for the alleged misappropriation of its par information, which GSR argues is a strategic gaming asset. The reasonable royalty basis for damages contemplates what the hypothetical price or royalty that the plaintiff and defendant would have agreed upon for a license to use the trade secret. *See Univ. Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d 518, 537 (5th Cir. 1974). In essence, the recovery of reasonable royalty fixes recovery to the point in time when a trade secret was appropriated and imagines what a license to use that trade secret would cost. *Id.* This is revenue by way of the sale of a gaming asset.

Here, GSR acquired the Grand Sierra Resort and Casino from JP Morgan Bank in April 2011. However, GSR lacked a gaming license at the time of the purchase and entered into a lease with a licensed gaming operator while its gaming license was pending. *See* **EXHIBIT 2,**

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Opposition to Peppermill's Motion for Summary Judgment Regarding Standing, p. 2:17-23. GSR later merged with the gaming operator. *See id.* Accordingly, GSR is only entitled to a recovery of a reasonable royalty from the date of purchase in April 2011. Evidence of any alleged keying activity prior to that time is irrelevant to any issue in this case and is unduly prejudicial to Peppermill. Therefore, it was not clear error to grant Motion in Limine No. 8, and the Motion should be denied.

F. It Was Not Clear Error for the Court to Grant Motion in Limine No. 11, Because "Knowledge" Obtained Through Public Records Cannot Be a Trade Secret.

As has already been briefed extensively in this case, a reasonable royalty calculation provides a flexible basis to calculate damages for the misappropriation of a trade secret. However, GSR, through its damages expert, is seeking to conflate the Peppermill's ability to compare its own slot data with publicly available market data with an actual trade secret. GSR cannot be permitted to use its expert's sloppy analysis to confuse the jury that public knowledge of the gaming market is somehow a trade secret.

In Nevada, a "trade secret" is defined as any information that "[d]erives independent economic value, actual or potential, ***from not being generally known to, and not being readily ascertainable by proper means by the public or any other persons*** who can obtain commercial or economic value from its disclosure or use," and "[i]s the subject of efforts that are reasonable under the circumstances ***to maintain its secrecy***." NRS 600A.030(5) (emphasis added). Accordingly, it is improper to offer public knowledge as the basis of a protectable trade secret in this case. The only information that is alleged to be trade secrets in this case are the handful of pars settings taken by Ryan Tors. However, GSR's reasonable royalty seeks not to value a hypothetical license for these par settings. Instead, it is attempting to value generalized and public knowledge as a trade secret. Such evidence is properly excluded. Therefore, it was not clear error to grant Motion in Limine No. 11.

G. It Was Not Clear Error for the Court to Grant Motion in Limine No. 13, Because Peppermill's Net Worth, EBITDA, and Financial Condition Are Irrelevant.

GSR seeks reconsideration of the Court's order to preclude evidence of Peppermill's net

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worth, EBITDA, and Financial Condition. GSR argues that this type of evidence is necessary to prove damages. However, GSR's damages expert does not rely on any such data in establishing his damage model. Indeed, GSR's expert conceded at his deposition that there was no correlation between the pars purportedly taken by Ryan Tors and Peppermill's financial, marketing, or slot data. *See* discussion Part II.D, *supra.*

Additionally, GSR now seeks to offer evidence of unjust enrichment to justify putting Peppermill's financial information before the jury. GSR's damages expert has testified that there is no evidence of unjust enrichment in this case. Therefore, admission of Peppermill's financial condition is unduly prejudicial to Peppermill. It is relevant to no issue in this case and will only serve to convince the jury that Peppermill is a deep enough pocket to justify any award, even if GSR cannot establish liability. *See* NRS 48.035. Accordingly, it was not clear error to grant Motion in Limine No. 13, and the instant Motion must be denied.

H. It Was Not Clear Error for the Court to Grant Motion in Limine No. 17, Because GSR Conceded that There Is No Basis for Equitable Relief or Unjust Enrichment.

Motion in Limine No. 17 sought exclusion of any reference to "equitable relief" or "unjust enrichment" at trial. In seeking reconsideration of the Order regarding Motion in Limine No. 17, GSR seeks to turn back time and offer a brand new calculation of damages, specifically unjust enrichment damages. Here, there is no evidence to support an award of unjust enrichment. In fact, GSR has admitted, through its damages, expert that there is no basis for unjust enrichment in this case. *See* **Exhibit 3** (Deposition of Jeremy Aguero (Sept. 15, 2015)), p. 32:18-33:7. Moreover, GSR has conceded, that there is no correlation between the pars allegedly taken by Tors and Peppermill's slot operations. Accordingly, there was no clear error in granting Motion in Limine No. 17. Therefore, the Motion must be denied.

III. CONCLUSION

The Motion—which is actually a motion for reconsideration—was not issued in clear error. In fact, under *Richmond v. State*, the Court was empowered to grant the motions in limine filed in this case without a full briefing. The implications of the Court's Order render it advisory, so it is impossible for GSR to demonstrate clear error vis-à-vis the Order. Further, each of the Motions in

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Limine discussed above were granted with substantial evidence and justification. There was no clear error in the substance of the Court's Order. Accordingly, the Motion should be denied.

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 4th day of January, 2016.

ROBISON, BELAUSTEGUI, SHARP & LOW
A Professional Corporation
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KENT R. ROBISON
SCOTT L. HERNANDEZ
THERESE M. SHANKS
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Peppermill Casinos, Inc., d/b/a Peppermill Casino

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AFFIDAVIT OF KENT R. ROBISON IN SUPPORT OF PEPPERMILL'S MOTION TO CLARIFY THE COURT'S ORDER FILED DECEMBER 22, 2015 REGARDING PEPPERMILL'S MOTIONS IN LIMINE

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** are true and accurate copies of pages 233-236 of the Deposition of Jeremy Aguero taken October 19, 2015.

3. Attached hereto as **EXHIBIT 2** is a true and accurate copy of the Opposition to Peppermill's Motion for Summary Judgment Regarding Standing.

4. Attached hereto as **EXHIBIT 3** are true and accurate copies of pages 32-33 of the Deposition of Jeremy Aguero taken September 15, 2015.

Dated this 4th day of January, 2016.

KENT R. ROBISON

Subscribed and sworn to before me
on this 4th day of January, 2016 by
Kent R. Robison.

NOTARY PUBLIC

CLAUDIA F. ZAEHRINGER
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 93-0603-2 - Expires September 24, 2017

J:\WPData\Krr\1872.006-Peppermill-GSR v\P-Aff KRR ISO rESPONSE TO Mtn to Clarify 12.22.15 Order Re Mtns in Limine.doc

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true copy of the **PEPPERMILL CASINOS, INC.'S RESPONSE TO GSR'S MOTION TO CLARIFY THE COURT'S ORDER FILED DECEMBER 22, 2015 REGARDING PEPPERMILL'S MOTIONS IN LIMINE** 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
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X **by using the Court's CM/ECF Electronic Notification System addressed to:**

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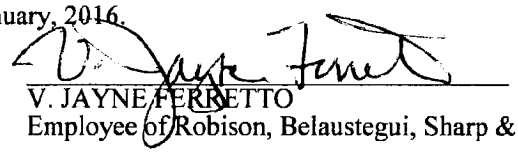
X **by electronic email addressed to the above.**
____ **by personal delivery/hand delivery addressed to:**
____ **by facsimile (fax) addressed to:**
____ **by Federal Express/UPS or other overnight delivery addressed to:**

DATED: This 4th day of January, 2016.



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

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EXHIBIT LIST

Exhibit No.	Description	Pages
1	Excerpts of the Deposition of Jeremy Aguero taken on October 19, 2015	7
2	Opposition to Peppermill's Motion for Summary Judgment Regarding Standing Without Exhibits	12
3	Excerpts of the Deposition of Jeremy Aguero taken on September 15, 2015	5

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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).

DEPOSITION OF JEREMY AGUERO

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

APPEARANCES: (See separate page)

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

1 Gaming Control Board could not find, and they looked
2 at everything and you didn't look hardly at anything?
3 A Again, I take a look at the totality of the
4 information that I've been provided, and it seems
5 clear that they were utilizing this information,
6 beside the fact that they did it over such an
7 extensive period of time.
8 Q Well, "extensive period of time" is twice.
9 Right?
10 A No, sir.
11 Q Do you have any evidence that Tors keyed
12 the GSR any other times as depicted by Exhibits 7 and
13 8?
14 A Forgive me. I thought I was answering a
15 different question. It was only twice to the GSR.
16 Q Okay. We're on the same page now.
17 So, again, is there any specific thing that
18 was done or said by the Peppermill upon which you
19 relied to suggest that it was used?
20 A May I clarify? It is the information from
21 the GSR.
22 Q Yes, sir. 7 and 8.
23 A No, sir.
24 Q Is there any trend, any financial record,
25 any document that has been exchanged in discovery that

1 substantiates -- that shows use?
2 A Not of the specific pars identified in
3 Exhibits 7 and 8.
4 Q You've seen all the revenue reports from
5 the Peppermill?
6 A I have.
7 Q Those revenue reports do not show evidence
8 of use, do they?
9 A There's no correlation.
10 Q Well, they don't show evidence of use, do
11 they?
12 A Again, there's no correlation. The reason
13 that I say that -- the brief answer to your question
14 is no, they don't show use. And the reason for that
15 is that they may have been changing pars and managing
16 their casino for any numbers reasons. It was one
17 portion of it. So there's no correlation.
18 It also doesn't show that they didn't use
19 it. But there's no correlation.
20 Q Well, you don't have proof that they did
21 with respect to the financial records.
22 A Absolutely true.
23 Q Okay.
24 A It's absolutely true that I do not have
25 proof that they used it in the financial records.

1 Q Then you've got these par sheets, par
2 schedules, that you've created.
3 A Are you referring to the change in pars?
4 Q The 11-by-17 --
5 A Yes, sir.
6 Q You created those?
7 A I did.
8 Q Okay. And you created those off of our
9 penny reports which show all the par changes on a
10 weekly basis?
11 A Yes, sir, that's correct.
12 Q And you went through every week of every
13 year from 2010 to 2014, and based upon your analysis
14 of the par changes at the Peppermill reflected in the
15 penny reports, those reports don't show use, do they?
16 A There's no correlation between them.
17 Q Well, I think we're saying the same thing,
18 but -- you don't find a correlation that proves use?
19 A That is correct.
20 Q Thank you.
21 Same with the marketing stuff?
22 A Right. Once there was no correlation, I
23 didn't spend the time to try and analyze whether
24 marketing had made some change because there was no
25 correlation.

1 Q Okay. And can you specify what operational
2 decision, act, or conduct reflects use?
3 A I cannot.
4 Q Okay. So you're saying they had used it?
5 A I'm -- again, when we're talking about
6 "it," I just want to make sure that --
7 Q 7 and 8.
8 A 7 and 8. I'm saying that they obtained the
9 information. They were systematically obtaining that
10 information for multiple properties over an extended
11 period of time. There's evidence that they were
12 utilizing that for some of their casino management
13 operations --
14 Q No, you went back to "it."
15 A Oh, I'm sorry. That they were using 7 and
16 8 -- excuse me -- forgive me -- that they were using
17 all of the information that was coming from Mr. Tors,
18 reliable or otherwise, to try and make some of that
19 information --
20 Q The only use, as you characterize it, is
21 Rail City?
22 A That is correct.
23 Q No other evidence of use regarding GSR's
24 pars from a document, testimony, operational reports,
25 anything like that?

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

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

That on Monday, October 19, 2015, at the offices of Cohen Johnson, 255 E. Warm Springs Road, Suite 100, Las Vegas, Nevada, I was present and took verbatim stenotype notes of the deposition of JEREMY AGUERO, who personally appeared and was duly sworn by me and was deposed in the matter entitled herein; and thereafter transcribed the same into typewriting as herein appears;

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

Dated at Reno, Nevada, this 25th day of October, 2015.

Becky Van Auken

BECKY VAN AUKEN, CCR #418

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EXHIBIT 2

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IN THE SECOND JUDICIAL DISTRICTCOURT 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 andJANE DOES I-X; and ABC CORPORATIONSI-X, Defendants.	Case No.: CV13-01704 Dept. No.: B7 BUSINESS COURT DOCKET **OPPOSITION TO PEPPERMILL'S MOTION FOR SUMMARY JUDGMENT REGARDING STANDING**

. . .

. . .

. . .

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Peppermill Casino, Inc. ("Peppermill"), without any basis whatsoever, argues that Plaintiff MEI-GSR HOLDINGS, LLC ("GSR") lacks standing to recover for Peppermill's intentional theft of GSR's trade secrets because another corporation was allegedly operating the casino from which Peppermill admittedly stole pars. Despite being a matter of public record, Peppermill fails to inform the Court that GSR has merged with NAV-Reno-GS, LLC ("NAV-Reno"), the corporation that was operating the casino from which Peppermill admits it was stealing pars. Due to the merger, GSR and NAV-Reno are one and the same, as a matter of established precedent. The trade secrets which Peppermill intentionally and admittedly stole, therefore, were and are owned by GSR, as the surviving corporation. Without question, GSR has standing to assert claims against Peppermill for theft of its own trade secrets. Nevertheless, even if GSR's standing could be questioned, Peppermill has waived any defense based on standing by not pleading that defense in its answer or amended answer. Accordingly, this Court should deny Peppermill's third motion for summary judgment regarding standing as entirely without merit.

II. STATEMENT OF FACTS

In April 2011, GSR acquired Grand Sierra Resort and Casino (the "Resort") from JP Morgan Bank for $42 million. *See* Exhibit 1, attached to Opposition to Peppermill's Motion for Summary Judgment Regarding Trade Secret ("Op. Trade Secret Mot. Ex."), Meruelo Depo., at 8, 11, 15. Because GSR lacked a gaming license, on July 29, 2011, GSR entered into a lease with NAV-Reno-GS, LLC ("NAV-Reno") to operate and conduct gaming at the Resort. *See* Attached Exhibit 27, Casino Lease. Subsequently, after GSR obtained all necessary approvals to operate gaming, GSR and NAV-Reno merged. *See* Attached Exhibit 28, Articles of Merger.

Upon purchase of the Resort, GSR began to make improvements and has invested approximately $60 million to dramatically improve the Resort, increase market share, and become one of the premier casinos in northern Nevada. *See* Op. Trade Secret Mot. Op. Ex. 1, Meruelo Depo, at 24, 25. As market share increased for GSR and the Resort, Peppermill's

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market share began to decline. *See* Exhibit 6, attached to Motion for Summary Judgment Regarding Trade Secrets ("Trade Secret Mot. Ex.") Friedman Expert Report, at 64; *see also* Op. Trade Secret Mot. Ex. 2, Tors Depo. at 185. Unable to stop the plunge of its market share by legitimate means, Peppermill plotted to steal the trade secrets of GSR and its other competitors. GSR was specifically targeted as its market share saw the greatest increase. *See* Op. Trade Secret Mot. Ex. 2, Tors Depo. at 123, 131-33, 185; Op. Trade Secret Mot. Ex. 3, Tors Emails; Op. Trade Secret Mot. Ex. 4, Stipulation For Settlement And Order, *NGCB v. Peppermill*, Case No. NGC-13-23 ("NGC Settlement"), ¶ 1; Op. Trade Secret Mot. Ex. 5, Complaint, *NGCB v. Peppermill*, Case No. NCG-13-23 ("NGC Complaint"), ¶¶ 3-45.

Many of the factors which position a resort and casino in the marketplace cannot be made secret such as advertisements, the quality of the fixtures, placement of gaming machines, the type and number of special events, the amount of free play, and/or the amount of rewards offered to players. *See* Op. Trade Secret Mot. Ex. 6, Taylor Declaration, at ¶¶ 2-3; Op. Trade Secret Mot. Ex. 7, William Paganetti Depo. at 14. One of the few indgredients that can be maintained secret is GSR's par setting on its slot machines. *See* Op. Trade Secret Mot. Ex. 1, Meruelo Depo, at 27; Op. Trade Secret Mot. Ex. 6, Taylor Declaration, at ¶¶ 2-7. Pars are confidential setting on GSR's slot machines that govern the percentage of money a given slot machine will keep. *See* Op. Trade Secret Mot. Ex. 2, Tors Depo. at 36; Op. Trade Secret Mot. Ex. 6, Taylor Declaration, ¶ 4.

By no later than December 2011, John Hansen, Peppermill's General Manager, outrageously ordered Ryan Tors, Peppermill's Slot Director, in violation of NRS 463.170(8), and NGCR 5.011, to use Peppermill's slot machines keys to steal GSR's pars. *See* Op. Trade Secret Mot. Ex. 2, Tors Depo. at 377; Op. Trade Secret Mot. Ex. 4, NGC Settlement, ¶ 1; Op. Trade Secret Mot. Ex. 5, NGC Complaint, ¶¶ 3-45. Tors continued to steal GSR's pars, with the full knowledge and approval of Peppermill's President, William Paganetti, until July 12, 2013, when GSR caught Tors red hand using his unauthorized key to steal par information from GSR's slot machines on orders from Peppermill. *See* Op. Trade Secret Mot. Ex. 4, NGC Settlement, ¶ 1;

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Op. Trade Secret Mot. Ex. 5, NGC Complaint, ¶¶ 12-16; Op. Trade Secret Mot. Ex. 7, William Paganetti Depo. at 55-57; Op. Trade Secret Mot. Ex. 2, Tors Depo. at 215, 359, 367-68.

Tors was detained and turned over to gaming authorities. *See* Op. Trade Secret Mot. Ex. 2, Tors Depo. at 215, 217, 221-22. The NGCB completed its investigation and determined that Peppermill's illegal misconduct warranted a penalty of no less than $1,000,000. *See* Op. Trade Secret Mot. Ex. 4, Stipulation for Settlement and Order, at ¶ 3. In order to avoid loss of its license, Peppermill stipulated to a sanction in that amount. As part of its settlement with the NGCB, Peppermill admitted that "over a period of time beginning in at least 2011" until "July 12, 2013," Peppermill "knew of, approved of, and directed" Ryan Tors to use "a slot machine 'reset' key to obtain theoretical hold percentage information from slot machines belonging to . . . the Grand Sierra Resort and Casino," along with "numerous" other casinos. *See* Op. Trade Secret Mot. Ex. 4, NGC Settlement, ¶ 1; Op. Trade Secret Mot. Ex. 5, NGC Complaint, ¶¶ 12-18. Peppermill further admitted that in addition to "theoretical hold percentage (also known as 'par') information", Mr. Tors had access to "diagnostic information, play history, event logs, and game configuration." *See* Op. Trade Secret Mot. Ex. 4, NGC Settlement, ¶ 1; Op. Trade Secret Mot. Ex. 2, NGC Complaint, ¶ 14. Mr. Paganetti, President of Peppermill, admitted "how inappropriate it was for me to allow Peppermill to be involved in this type of conduct." *See* Op. Trade Secret Mot. Ex. 10, Transcript of Hearing before the Nevada Gaming Commission, February 20, 2014, ("NGC Hearing") p. 58, ll. 12-14. Paganetti, who has been a casino operator for more than forty-seven (47) years, did so knowing that such practice was in violation of Nevada law and could possibly result in the revocation of Peppermill's License. *See* Op. Trade Secret Mot. Ex. 7, William Paganetti Depo. at 8, 84,150; Op. Trade Secret Mot. Ex. 4, NGC Settlement, ¶ 1; Op. Trade Secret Mot. Ex. 5, NGC Complaint, ¶¶ 12-45. Peppermill admitted that this egregious conduct violated NGCR 5.011 and NRS 463.170(8), "was an unsuitable method of operation" and justified sanctions "in the total amount of ONE MILLLION DOLLARS and NO CENTS ($1,000,000.00)." *See* Op. Trade Secret Mot. Ex. 4, NGC Settlement, ¶ 1, 3; Op. Trade Secret Mot. Ex. 5, NGC Complaint, at ¶¶ 23-27, 32-36, 41-46.

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Peppermill's admitted theft of GSR's pars can only be viewed as a misappropriation of GSR's trade secrets, as GSR merged with the predecessor corporation that was operating the casino, at the time Peppermill admits Tors began to steal GSR's pars. Accordingly, Peppermill's motion for summary judgment regarding standing has absolutely no merit and should be denied.

III. LAW AND ARGUMENT

In *Holcomb v. Georgia Pac., LLC*, 128 Nev. Adv. Op. 56, 289 P.3d 188, 192 (2012), the Nevada Supreme Court, quoting Nev. R. Civ. P. 56(c), held that "[s]ummary judgment is proper ***only*** when 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" "When deciding a motion for summary judgment, "the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. Adv. Op. 23, 277 P.3d 458, 462 (2012).

A. GSR Has Standing To Assert All Claims Of NAV-Reno, the Prior Casino Operator, Including Those Involving Peppermill Theft of GSR's Pars, As GSR And NAV-Reno Merged And Are Now The Same Corporation.

Peppermill spuriously argues that GSR lacks standing to recover for Peppermill's admitted intentional theft of GSR's pars because another corporation was operating the casino at the Resort when Peppermill began stealing GSR's pars, even though GSR and NAV-Reno, the prior casino operator, merged. In *Philadelphia & W.R. Co. v. Maryland*, 51 U.S. 376, 377 n.1 (1850), the United States Supreme Court expressed the long held rule that "[i]f two companies . . . unite, but without forming a new corporation, but simply merge one into the other, the powers of the surviving one will be so enlarged as to include all the rights, privileges, and property of the merged corporation." The Nevada Supreme Court adopted the same rule in *HD Supply Facilities Maint., Ltd. v. Bymoen*, 125 Nev. 200, 210 P.3d 183 (2009). In *Bymoen*, the

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Court held, along with a majority of the courts across the county, that in a merger, the right to enforce claims of a merged corporation vests in the surviving corporation, even when such claims are otherwise non-assignable. 125 Nev at 207, 210 P.3d at 187-88. The Court reasoned that the surviving corporation assumes the right to enforce claims because the "two corporations unite into a single corporate existence" in a merger. *Id.* at 206, 210 P.3d at 186-87; *see also Halliburton Co. Benefits Comm. v. Graves*, 463 F.3d 360, 370 (5th Cir. 2006) (holding that when companies merge, "the surviving corporation succeeds to both the rights and obligations of the constituent corporation, including rights and obligations of every nature, whether they be in contract or in tort"); *Equifax Servs., Inc. v. Hitz*, 905 F.2d 1355, 1361 (10th Cir. 1990) (holding in "the case of a merger, as here, the surviving corporation automatically succeeds to the rights of the merged corporations").

This same rule has been applied to enforcing claims for misappropriation of trade secrets. In *Health Alliance Network, Inc. v. Cont'l Cas. Co.*, 354 F. Supp. 2d 411, 417, 422 (S.D.N.Y. 2005), the court held that after a merger, the surving corporation could maintain a claim for misappropriation of the trade secrets of the merged corporation. The Court reasoned that "all rights and duties of the merging corporations are automatically vested in the surviving corporation and the surviving corporation essentially stands in the same position as the merged corporation prior to the merger." *Id.* at 417; *see also Coulter Corp. v. Leinert*, 869 F. Supp. 732, 733-34 (E.D. Mo. 1994) (holding surviving corporation had standing to sue for misappropriation of merged corporation's trade secrets because "the rights and liabilities of merging corporations are retained by the surviving corporation").

Under established Nevada precedent, by merging with NAV-Reno, GSR and NAV-Reno have united into a "single corporate existence," and GSR, as the surviving corporation, is entitled to enforce the claims of NAV-Reno, the merged corporation, including claims for

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misappropriation of trade secrets. Peppermill does not dispute that NAV-Reno, which was managed by Anthony Santo and is referred to as the "Santos Group" by Peppermill, was legally operating the Casino when Peppermill executed its plot to steal the pars from in December of 2011. *See* Attached Exhibit 27, Casino Lease, at 1, 40. Due to the merger, NAV Reno and GSR are now one and the same and therefore the pars admittedly stolen by Peppermill were and are GSR's pars. *See* Attached Exhibit 28, Articles of Merger. GSR, therefore, is the real party in interest and has standing to assert its claims for Peppermill's admitted intentional misappropriation of GSR's trade secrets.[1] *See Varney Bus. Servs., Inc. v. Pottroff*, 59 P.3d 1003, 1012-13 (Kan. 2002) (holding surviving corporation of merger was the real party in interest and had standing to assert claims of merged corporation); *Winchester Const. Co. v. Miller Cnty. Bd. of Educ.*, 821 F. Supp. 697, 701-02 (M.D. Ga. 1993) (holding the only real party in interest after the merger was "the surviving corporation [that] succeeds to the rights of each of its

[1] Cases cited by Peppermill are totally irrelevant as they deal with assignment, ***not merger***, and trademarks, ***not trade secrets***. *See* Motion at 16 – 17. In *Bymoen*, the Nevada Supreme Court expressly held that when corporations merge "no assignment [of claims] is necessary" because "the two corporations unite into a single corporate existence." 125 Nev. 206, 210 P.3d 186-87. In *ZAO Odessky Konjatschnyi Zawod v. SIA Baltmark Invest*, 999 F. Supp. 2d 851, 861 (E.D. Va. 2014), the court held that it "is well established that "a merger of one corporation into another effects a presumed passage of all common law and federally registered trademark rights to the acquiring corporation without the need for a formal assignment or its recordation." Accordingly, even if this case involved a trademark infringement, instead of a trade secret misappropriation, GSR, as the surviving corporation in its merger with NAV Reno, would have the right to pursue all of NAV-Reno's trademark infringement claims that occurred before the merger. Additionally, unlike trademark claims, ownership of a trade secret is not required to establish a claim for trade secret misappropriation and such claims are freely assignable. *See Robbins v. Supermarket Equip. Sales, LLC*, 722 S.E.2d 55, 57 (Ga. 2012) (holding successor corporation had standing to pursue claims for misappropriation of trade secrets even though successor corporation did not exist when the information at issue was misappropriated); *Lipari v. U.S. Bancorp NA*, 524 F. Supp. 2d 1327, 1330 (D. Kan. 2007) (holding assignee had standing to assert trade secret misappropriation claim); *DTM Research, L.L.C. v. AT & T Corp.*, 245 F.3d 327, 332 (4th Cir. 2001) (rejecting argument that ownership of a trade secret is required to establish misappropriation of trade secret because "one who possesses non-disclosed knowledge may demand remedies as provided by the [UTSA] against those who 'misappropriate' the knowledge"). Even if GSR did not have an ownership interest in the trade secrets admittedly stolen by Peppermill at the time of the theft, which is absolutely not the case due to the merger, such lack of ownership would not prevent GSR from asserting a trade secret misappropriation claim against Peppermill based on the transfer of those rights to GSR.

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constituents"). Accordingly, Peppermill's motion has ***no merit whatsoever***, and this Court should deny Peppermill's motion for summary judgment regarding standing.

B. Peppermill Has Waived Any Argument That GSR Lacks Of Standing To Assert Claims For Peppermill's Admitted Theft Of Trade Secrets.

In *Contrail Leasing Partners, Ltd. v. Executive Serv. Corp.*, 100 Nev. 545, 549 n.2, 688 P.2d 765, 767 n.2 (1984), the Nevada Supreme Court held that a defendant waived the defense of lack of standing when the defense was not pled with particularity in defendant's answer. The Court reasoned that NRCP 8(c)[2] and NRCP 9(a)[3] require that a lack of standing "be plead affirmatively and with particularity." *Id.*

Neither Peppermill's answer, nor its amended answer, even mention standing, much less plead a lack of standing with particularity. Peppermill therefore has waived any defense based on lack of standing and its motion for summary judgment, which is based solely on standing, should be denied for that reason alone.

IV. CONCLUSION

Based on the foregoing, Peppermill's third motion for summary regarding standing has no merit whatsoever. Peppermill has waived any defense based on standing by not pleading that defense. More importantly, GSR has merged with NAV-Reno, the corporation that was operating the casino from which Peppermill admits it was stealing pars. Therefore, GSR, as the surviving corporation, is the corporation that owned the trade secrets that Peppermill admittedly misappropriated, and has standing to assert those claims.

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[2] Nev. R. Civ. P. 8(c), in pertinent part, provides: "In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense."

[3] Nev. R. Civ. P. 9(a), in pertinent part, provides: "When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge."

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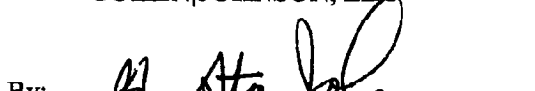
Accordingly, this Court should deny Peppermill's third motion for summary judgment regarding standing as frivolous.

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.

COHEN|JOHNSON, LLC

By: 

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of COHEN|JOHNSON, LLC., and that on this date I caused to be served a true and correct copy of the **OPPOSITION TO PEPPERMILL'S MOTION FOR SUMMARY JUDGMENT REGARDING STANDING** on all the parties to this action by the method(s) indicated below:

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

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

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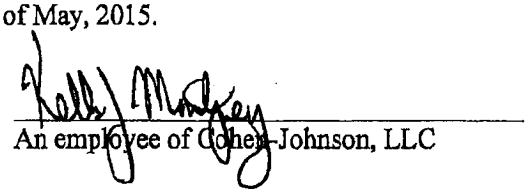
___x___ by electronic email addressed to the above:
_____ by personal or hand/delivery addressed to:
_____ by facsimile(fax) addresses to:
_____ by Federal Express/UPS or other overnight delivery addressed to:

DATED the 28th day of May, 2015.



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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 13** 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.

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IN THE SUPREME COURT OF THE STATE OF NEVADA

MEI-GSR HOLDINGS, LLC, a Nevada limited liability company, d/b/a GRAND SIERRA RESORT,

Appellant,

vs.

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

Respondent.

_____/

Electronically Filed
May 15 2017 03:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 70319

District Ct. Case No. CV13-01704

RESPONDENT PEPPERMILL CASINOS, INC.'S ANSWERING BRIEF

APPENDIX VOLUME 13

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Docket 70319 Document 2017-16232

RESPONDENT PEPPERMILL CASINOS, INC.'S ANSWERING BRIEF

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Trial Exhibit 169A - Expert Rebuttal Report, Applied Analysis – REDACTED	01/22/16	18	RA 04419 - 04421
Trial Exhibit 16A – 01/02/13 11:24a.m. Tors email re: New Year's Eve shop	01/14/16	15	RA 03623 – 03624
Trial Exhibit 170 - Expert Rebuttal Report, Applied Analysis (with numbered paragraphs)		22	RA 05351 – 05353
Trial Exhibit 172 - 03/01/15 Expert Witness Report of Professor Anthony Lucas	01/22/16	18	RA 04422 - 04457
Trial Exhibit 186 - 11/03/15 Defendant Peppermills Casino's Supplement to Disclosure of Rebuttal Expert Witnesses	01/22/16	18	RA 04458 – 04487

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

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

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

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

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

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

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

Trial Exhibit 358 - Portions of the Deposition Transcript of Craig Robinson		22	RA 05369 – 05375
Trial Exhibit 359 - Portions of the Deposition Transcript of Terry Vavra		22	RA 05376 – 05384
Trial Exhibit 35A – 11/03/14 GSR Answers to 2nd 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

Although much slot machine information can be obtained by using a 2341 key to access the slot machines "diagnostic screen", the only information obtained by Tors was a few payback percentages which, if subtracted from 100, reveals the par setting ("theoretical hold percentage") of that particular machine.

Because Tors keyed machines at the GSR and obtained a few payback percentage settings, GSR has sued Peppermill for violating Nevada's Trade Secret law, NRS 600A.030 et. seq. The elements of this case of action are:

1. The specific par settings obtained have independent economic value from;
2. Not being generally known and not readily ascertainable by proper means; and
3. Assuming the par settings are "trade secrets", GSR maintained their secrecy by efforts that were reasonable under the circumstances.

Peppermill's defenses are numerous. Payback percentages (thus, par settings) are generally known throughout the gaming industry. They are completely and easily ascertainable by proper means. Employees move from casino to casino and reveal par settings of their former employer to their new employer. Vendors (IGT, Bally's, Aristocrat, etc.) reveal par settings to casino operators, keying occurs through the industry, casinos advertise their par settings, GSR has constantly advertised on billboards its par settings, GSR has advertised par settings on its web site, par settings are disclosed in public reporting documents known as 10Qs and 10Ks, par settings are discernable through GCB reports, they are ascertainable through simple math analysis based on complimentary awards given for sustained play. Par settings of a given slot machine are readily ascertainable according to the testimony of GSR representatives and witnesses, including GSR's current General Manager, Tracy Mimno, and GSR's Marketing Consultant, Scott Bean, both of whom formerly worked for the Peppermill.

Peppermill also enjoys the benefit of the testimony from GSR executives and experts that par settings on a few (6 to 15) slot machines have no value to competitors. Those same GSR executives and experts also concur with the GCB findings that Peppermill never used any of the par information Tors obtained from the GSR.

///

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II.

ADMITTED FACTS

1. Tors keyed the GSR on or about June 14, 2012;

2. Tors was authorized to key by Peppermill management;

3. GCB found no evidence that the Peppermill used any of the par information it received as a result of the keying activities;

4. Plaintiff purchased the GSR in March 2011;

5. Plaintiff was not licensed to own or operate a gaming casino until October 2012;

6. There is no correlation between Peppermill's changes to par settings of its machines and the timing of Tors keying GSR slot machines;

7. A casino frequently changes its par settings;

8. 6 to 15 of GSR's par settings are not statistically significant enough to determine the average floor par of GSR's 1100 slot machines;

9. GSR has no evidence that Tors' keying activities caused it to lose revenue or customers; and

10. From 2011 to the present, GSR has continuously "shopped" the Peppermill and ascertained Peppermill's par settings, theoretical win percentages, comp reinvestment percentages, tier point award percentage, comp strategy, marketing strategy, and free play award program.

III.

ISSUES OF LAW

The parties have filed extensive briefs on the main issues involved in this case, Peppermill's Motion for Summary Judgment Regarding "Trade Secret" and Peppermill's Motion for Summary Judgment Regarding Damages. Attached (without exhibits) are Peppermill's legal analysis on each issue. **Exhibit 1** is the "Trade Secret" briefing. **Exhbit 2** is the briefing on damages.

IV.

EXHIBITS

Although this is a jury case, the proposed partial list of trial exhibits is attached as **Exhibit**

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3.

V.

WITNESSES

The witnesses that will testify in this case are:

1. Peter Bachelor
2. Henry Bierman
3. A.G. Burnett
   GCB Agent Justin Woods
   GCB Agent Wright
   Nevada Gaming Control Board
4. Robert Erwin
5. Nate Estes
6. Stacy Friedman
7. George Kissler
8. Andrew Ko
9. Joe Kukler
10. Anthony Lucas
11. David McHugh
12. Jim Mortiz
13. Joe Ness
14. Billy Paganetti (William Natale Paganetti)
15. William Alfred Paganetti
16. Aliza Perez
17. Aaron Robyns
18. Michelle Salazar
19. Tom Sullivan
20. Ryan Tors
21. Denise Vessie

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22. Richard Wells
Wells Gaming Research

23. Sally Wilson

24. Ralph Burdick
Vice President of Casino Operations
Grand Sierra Resort
Individually and in his capacity as Person Most Knowledgeable.

25. Toby Taylor
Executive Director of Slot Operations
Grand Sierra Resort
Individually and in his capacity as Person Most Knowledgeable.

26. David Kinder
Director of Surveillance
Grand Sierra Resort

27. David Schwartz

28. Terry Vavra

29. Scott Bean
Individually and in his capacity as Person Most Knowledgeable.

30. Michael Draeger

31. Tom Sullivan

32. John Stone
CDC Consulting

33. Craig Robinson
Individually and in his capacity as Person Most Knowledgeable.

34. Christopher Abraham
Individually and in his capacity as Person Most Knowledgeable.

35. Dan Uonities

36. Alex Meruelo

37. Luis Armano

38. Stan Johnson

39. Tracy Mimno

40. Steven Rosen

41. Anthony Moran

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42. Rex Carlson

43. Charles Lombardo

44. Kim Stoll

45. Kari Hooker

46. Kathy Magruder Stoll

47. Misty Barker-Cryer

48. Jeff Warner
Cypress Systems
Mr. Warner is an IT expert and tracked the production of the GCB emails.

49. Albert Seeno, Jr.

50. Nat Carasali

51. John Farahi
c/o Atlantis Casino Resort & Spa

52. Gary Carano
c/o Eldorado Resorts

53. Jeffrey L. Siri
c/o Club Cal Neva Hotel Casino

54. Mitch Garder
c/o Bordertown Casino RV Resort

55. David Ensign
c/o Red Garter Casino
Wendover, Nevada

56. Russ Sheltra
Ryan Sheltra
c/o Bonanza Casino

VI.

COMMENTS / PRACTICAL MATTERS

1. Both parties are using technology assistance for displaying exhibits, power-point illustrations, deposition testimony and other matters on the Court's video screens and monitors. Space may be an issue. The technology stations must be placed near electrical outlets and not in the path of witnesses and jurors entering and leaving the courtroom.

2. Bill Paganetti is the main witness for the Peppermill. He is an owner and is President of the Defendant. He suffers from Meniere's Disease. He is deaf in his right ear and has

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only 40% hearing in his left ear. Peppermill requests that the Court inform the jury of this situation and that Mr. Paganetti be allowed the use of a "real time" monitor at the witness stand so he can read questions as needed.

3. Peppermill ask permission to have a slot machine in the courtroom for demonstrative purposes. The selected machine is one Tors is accused of keying and is called "Ducks In A Row". It can be operated (and "keyed") if plugged into a standard electrical outlet.

4. Peppermill will, with Court permission, also use foam board charts for demonstrative purposes. Peppermill will provide the easel.

5. Peppermill also respectfully requests the defense counsel table be placed parallel to the jury box so that the Peppermill client representatives and counsel can face the jury. Peppermill counsel has experimented with this proposed configuration and it provides more room, enhanced vision of the witnesses, jury and better ingress and egress.

6. The evidentiary issues that might be problematic have been briefed in the parties' Motions in Limine. The Court has decided the motions, but GSR has asked the Court to change its rulings in what it refers to as a Motion for Clarification.

7. Settlement has not been discussed. Peppermill made an Offer of Judgment. GSR has never responded. The owner of the GSR, Alex Meruelo, has in effect stated that the case won't settle because the jury will award $80,000,000, he intends "to go all the way" and he will then take this case to the media, 60 Minutes, and other news-related programs.

8. The trial is scheduled for two weeks. To enhance preparation, which will be conducive to an efficient administration of the trial, Peppermill respectfully asks that each party be required, before noon of each day of trial, to disclose the witnesses that will be called for the rest of that day and the following day. With this advance notice, it is hopeful that unnecessary examination can be avoided and preparation will be more efficient to avoid unnecessary delay.

VII.

JURY QUESTIONS

Do the jurors and/or members of their immediate family:

1. Know counsel or party representatives?

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2. Know witnesses?

3. Have had prior jury services?

4. Been sued?

5. Filed lawsuit against another?

6. Been employed in the gaming industry?

7. Received legal education?

8. An awards card holder at any casino?

9. Have opinions or feelings against legalized gambling?

10. Been employed at a slot machine manufacturer, IGT, Aristocrat, Bally's, Konami?

11. Worked at the Grand Sierra Resort?

12. Worked at the Peppermill?

13. Had an unfortunate experience at the Grand Sierra Resort?

14. Had an unfortunate experience at the Peppermill?

15. Familiar with CDC Consulting?

16. Worked in law enforcement?

17. Worked at the Nevada Gaming Control Board?

18. Are a mathematician or statistician?

19. Have audit or accounting familiarity?

20. Worked in or familiar with slot repair or maintenance?

21. Familiar with "shopping" as a method to acquire business intelligence?

22. Familiar with the term "royalties"?

VIII.

DISCOVERY CERTIFICATION

Discovery has been completed. GSR is still contesting discovery issues.

AFFIRMATION
Pursuant to NRS 239B.030

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

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DATED this 4th day of January, 2016.

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A Professional Corporation
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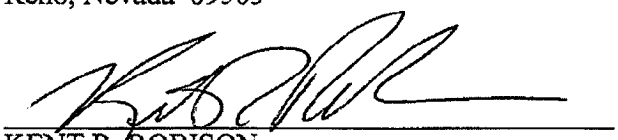

KENT R. ROBISON
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Attorneys for Defendant
Peppermill Casinos, Inc., d/b/a Peppermill Casino

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true copy of the **PEPPERMILL CASINOS, INC.'S TRIAL STATEMENT** 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.
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X **by using the Court's CM/ECF Electronic Notification System addressed to:**

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X **by electronic email addressed to the above.**

X **by personal delivery/hand delivery addressed to:**

HONORABLE PATRICK FLANAGAN
Washoe County District Judge - Dept. 7
75 Court Street
Reno, NV 89501

___ **by facsimile (fax) addressed to:**

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

DATED: This 4th day of January, 2016.

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

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EXHIBIT LIST

Exhibit No.	Description	Pages
1	Portions of Peppermill's Renewed Motion for Summary Judgment Regarding "Trade Secret" (pp. 8-22) and Peppermill's Reply to Opposition to Peppermill's Renewed Motion for Summary Judgment Regarding Trade Secret (pp. 1-12)	27 pages
2	Peppermill's Renewed Motion for Partial Summary Judgment Regarding Damages (pp. 1-22); and Peppermill's Reply to GSR's Opposition to Peppermill's Motion for Partial Summary Judgment Regarding Damages (pp. 1-11)	33 pages
3	Potential Trial Exhibits	14 pages
4	JURY INSTRUCTIONS:	
	Part 1 of Exhibit 4 – Pre-Trial Jury Instructions	16 pages
	Part 2 of Exhibit 4 – Post-Trial Jury Instructions	86 pages
	Part 3 of Exhibit 4 – Verdict Forms	8 pages

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Clerk of the Court
Transaction # 5303826 : csulezic

EXHIBIT 1

EXHIBIT 1

demonstrate the existence of a genuine issue for trial, and "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." *Id.* (Internal quotations omitted).

IV. SUMMARY JUDGMENT IN PEPPERMILL'S FAVOR IS WARRANTED BECAUSE GSR CANNOT PROVE THAT ITS INDIVIDUAL PARS ARE A TRADE SECRET.

"Whether information constitutes a trade secret generally is a question of fact." *Finkel v. Cashman Prof'l, Inc.*, 128 Nev. ___, ___, 270 P.3d 1259, 1264 (2012). In Nevada, a "trade secret" is defined as any information that "[d]erives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other persons who can obtain commercial or economic value from its disclosure or use," and "[i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy." NRS 600A.030(5). As will be shown, there is no genuine issue of material fact that GSR's par settings do not qualify as a trade secret because: (1) par settings have no independent economic value to the public or to GSR's competitors; (2) par settings are generally known and are readily ascertainable by a myriad of proper means by both the public and competitors; and (3) GSR's pars were not the subject of efforts to keep confidential, given that GSR and its competitors all publically advertise their par settings.

A. INDIVIDUAL PAR SETTINGS HAVE NO INDEPENDENT ECONOMIC VALUE.

1. Individual Par Settings Have No Value to the Public.

Peppermill's expert Friedman clearly opined that individual par settings have no value to the public. According to Friedman, this is because most gamblers are not "price-sensitive." Exh. 3 at ¶ 44. As Friedman succinctly points out, if a gambler's concern is to maximize the money that they get back, "the wisest thing to do is not gamble at all." *Id.* As Friedman further points out, the public tends to gamble by playing games that are enjoyable, regardless of the par settings. For example, a video poker game will have a far higher payback percentage than a penny slot, but gamblers often choose penny slots over video poker. *Id.* at ¶ 45. Therefore, par settings have no independent value to the public.

2. Individual Par Settings Have No Value to Competitors.

To understand why a par has no value to competitors, it is important to understand that a

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par is a very small part of a very large scheme in the gaming industry. As explained by Peppermill's Director of Corporate Slots, Dave McHugh:

> ***Pars are a small and relatively insignificant*** part of a larger strategical puzzle that includes many slot strategies and marketing strategies that affect the performance of slot machines and gaming devices. Among the other strategical components that must be considered in determining how a gaming device will perform are such factors as free play, dollars played, theoretical win, comp dollars awarded, and points awarded (aka tier points). ***These other factors are far more important than the knowledge or setting of a particular par.*** The comp reinvestment strategy results in the casino reinvesting substantial sums in the player and that reinvestment involves the factors addressed above in addition to such other perks and benefits such as free rooms, free meals, bonus play, free tickets to events, preferred parking and many other valuable investment strategies, ***which results in a single par having no independent economic value.***

Exh. 2 at ¶ 8 (emphasis added).

Thus, GSR's own executives admit that knowledge of an individual has ***no*** independent economic value. Tracey Mimno, GSR's General Manager, testified that she would pay ***nothing*** to obtain a competitor's pars, as follows:

> Q: Suppose I wrote down six par settings of six IGT machines on the floor at the Peppermill right now. Do you want to buy them?
>
> A: **No, thank you.** I'm not – I don't know what they would mean. Who's are they and what they? I wouldn't be buying proprietary - -
>
> Q: Six IGT machines. The par settings on these six IGT machines on the floor of the Peppermill are accurately stated on this hypothetical piece of paper.
>
> A: Okay.
>
> Q: Tell me what you'll buy them for.
>
> A: I've not – that's my whole point. **I don't have a value on them. I would not buy someone else's pars.**
>
> . . .
>
> Q: Okay. Would you hire somebody to go appraise them or would you just not buy them?
>
> A: **I would probably just not buy them. There's not a value to me. I would not buy - - buy them.**

See **Exhibit 10**, pp. 282:22-284:4 (Excerpts from the Transcript of the Deposition of Tracy Mimno) (emphasis added).[5]

Terry Vavra, GSR's Vice President of Finance, confirmed that the information obtained by Tors has no value because keying such a small number of machines does not provide any valuable information. *See* **Exhibit 11**, p. 96:2-6 (Excerpts from the Transcript of the Deposition of Terry

[5] *See* Exh. 5, at ¶ 8.

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Vavra)[6] ("Q: So keying one machine doesn't tell you what the weighted average is going to be, does it? A: One machine, no. Q: Six out of 1100? A: Probably not."). And, GSR's own expert witness, David G. Schwartz, Ph.D., testified that the information obtained by Tors had no value because those few machines did not provide enough information to represent or estimate the par settings of the entire casino floor. *See* **Exhibit 12**, p. 117:11-22 (Excerpts from the Deposition Transcript of David G. Schwartz, Ph.D.).[7]

GSR's expert, Jeremy Aguero, also testified that par settings obtained by Tors and displayed in his emails have no independent economic value:

> Q: You're saying that the individual piece of pizza, Exhibits 7 and 8, if removed from the constellation of other information, its value is not ascertainable?
>
> A: **That is correct.**
>
> . . .
>
> Q: And given the value of 8 million as these pars fit into the pie, the constellation of information, can you isolate each and every par to give each and every par on 7 and 8 value?
>
> A: **I cannot.**

See **Exhibit 13**, p. 224:10-14 (Excerpts from the Deposition Transcript of Jeremy Aguero) (emphasis added).[8]

GSR's own testimony that par settings have no independent economic value is supported by Peppermill's expert evidence. Peppermill's expert Stacy Friedman opines that individual par settings have no independent economic value to competitors because knowledge of a par, alone, does not provide the other necessary information needed to determine a casino's marketing strategy and reinvestment rate. Exh. 3 at ¶ 51. Furthermore, pars are easily and often changed; therefore, knowledge of an individual par on a particular date is meaningless. *Id.* at ¶ 50. Dr. Friedman's findings are confirmed by Peppermill expert Professor Anthony Lucas, professor of casino marketing and management at the University of Nevada, Las Vegas. *See* **Exhibit 14,** ¶ 3.2.6 (Expert Report of Anthony Lucas) ("Par information alone would be of no value, without also knowing and accounting for the other sources of influence.").[9]

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[6] *Id.* at ¶ 9.
[7] *Id.* at ¶ 10.
[8] *Id.* at ¶ 11.
[9] *Id.* at ¶ 12.

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As stated by Peppermill's rebuttal expert Tom Sullivan, former slot operations director for the GSR, proof of individual par settings have no independent value because:

> [A] par setting must be considered in light of a multitude of other factors and variables including, but not limited to, the slot floor mix, game volatility, the free play earned, the comp reinvestment percentages and strategies associated therewith and all of the various marketing influences to which the par settings have been subjected. Without knowing all of these applicable variables and influences, ***a competitor's pars are meaningless.***

See **Exhibit 15,** ¶ B (Expert Opinion of Tom Sullivan).[10]

Further demonstrating GSR's testimony that par settings have no independent economic value is the evidence from Peppermill's witnesses. William Alfred Paganetti, the President of Peppermill, testified that "an individual par . . . has zero value," because pars are "such a small part of the ingredient." *See* **Exhibit 16,** p. 80:16-24 (Excerpts from the Transcript of the Deposition of William Alfred Paganetti).[11] Similarly, Dave McHugh explained that pars have no independent economic value when considered in isolation from the other factors composing the marketing and reinvestment strategy of a casino. Exh. 2 at ¶ 8.

Finally, supporting GSR's testimony that par settings have no independent economic value are the statements from GSR's other, non-party competitors in the market. David Ensign states that he would not pay money to obtain the par settings of individual machines of a competitor because "[t]he information has no value." *See* **Exhibit 17,** ¶ 1-2 (October 13, 2015 Letter from David Ensign).[12]

John J. Ascuaga states that "[p]ars alone, without information about the machine, the floor par, the other slot settings, and free play have no value in and of themselves." *See* **Exhibit 18,** p. 2 (October 6, 2015 Email from John J. Ascuaga).[13]

John Farahi, Chief Executive Officer for the company that owns and operates the Atlantis Casino Resort, declares that the information obtained by Tors "is too limited to have value to a reasonably prudent casino operator or owner." *See* **Exhibit 19,** ¶ 10 (Declaration of John Farahi).[14]

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[10] *Id.* at ¶ 13.
[11] *Id.* at ¶ 14.
[12] *Id.* at ¶ 15.
[13] *Id.* at ¶ 16.
[14] *Id.* at ¶ 17.

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Russ Sheltra, owner of the Bonanza Casino, states that he would not pay to get 6-15 pars because these pars have no value individually without additional information about "free play, frequency, variability, overall marketing strategy, overall slot strategies." *See* **Exhibit 20** (October 20, 2015 Letter from Russ Sheltra).[15]

Gary Carano, Chief Executive Officer of Eldorado Resorts, Inc., states that the pars Tors accessed "have absolutely no independent economic value" and that he would not pay to obtain a competitor's par settings. *See* **Exhibit 21**, p. 2 (October 26, 2015 Letter from Gary Carano).[16]

Jeff Siri, Chief Executive Officer of the Club Cal Nevada Hotel Casino, states that the pars Tors obtained "is without value and would provide me with no benefit." *See* **Exhibit 22**, p. 3 (October 30, 2015 Letter from Jeff Siri).[17]

Finally, Mitch Gardner, Vice President of the Bordertown Casino RV Resort, states that knowledge of 6 to 15 individual par settings "is without value and would provide me with no benefit." *See* **Exhibit 23**, p. 2 (October 30, 2015 Letter from Mitch Gardner).[18]

All of this evidence conclusively demonstrates that knowledge of an individual par setting has no independent economic value to either the public or a competitor. GSR admits this fact through the testimony of its own executives. Therefore, GSR cannot prove that its "payback percentages" on the slot machines accessed by Tors were trade secrets, and summary judgment in favor of Peppermill is appropriate.

B. INDIVIDUAL PAR SETTINGS ARE NOT CONFIDENTIAL AND ARE READILY ASCERTAINABLE BY PROPER METHODS.

Even if there was any value to be obtained from knowing a single par settings, which there is not, a par setting does not qualify as a trade secret because these settings are either generally known, or are readily ascertainable by proper means. *See* NRS 600A.030(5)(a) (defining trade secret to be information that is not "generally known to, and not . . . readily ascertainable by proper means by the public or any other persons who can obtain commercial or economic value from its disclosure or use").

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[15] *Id.* at ¶ 18.
[16] *Id.* at ¶ 19.
[17] *Id.* at ¶ 20.
[18] *Id.* at ¶ 21.

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1. Some Pars are Generally Known

Because pars are generally known on some games, pars cannot constitute a trade secret. "If the subject matter of a trade secret is obvious and not a secret, then there can be no trade." *Hutchison v. KFC Corp.*, 883 F. Supp. 517, 521 (D. Nev. 1993); *see also Cambridge Filter Corp. v. Int'l Filter Co., Inc.*, 548 F. Supp. 1301, 1306 (D. Nev. 1982) ("Methods generally known and used throughout a trade are not a secret."). For gaming machines representing a video version of a live form of gambling – like roulette, poker, keno, or blackjack – the "mathematical probability of a symbol or other element appearing in the game ***must be equal*** to the mathematical probability of that symbol or element occurring in the live gambling game." Nev. Gaming Reg. 14.040(5) (emphasis added). Thus, the pars are generally known for these games because these games must give the same payback percentage that their live counterparts do, and that payback percentage is generally known throughout the industry.

GSR's former director of slot operations, Tom Sullivan, confirmed that video poker, video roulette and video keno all have the same, known pars. *See* **Exhibit 24**, p. 35:6-9 (Excerpts from the Transcript of the Deposition of Tom Sullivan)[19] ("Q: Sure. So we know the par on keno, we know the par on roulette, we know the par on video poker and – A: Video reel's a wild card."). Similarly, Toby Taylor, GSR's Executive Director of Slot Operations, admits that keno, video poker, video blackjack and video roulette have known pars. *See* **Exhibit 25**, p. 71:22-72:11 (Excerpts from the Transcript of the Deposition of Toby Taylor).[20] GSR's testimony is confirmed by Peppermill's expert Friedman, who also explains that many games have known pars. Exh. 3 at ¶¶ 66-71.

2. GSR's Pars are Readily Ascertainable

Furthermore, even if the par is not generally known, pars are readily ascertainable through a myriad of proper means. *See* NRS 600A.030(5)(a) (stating that a trade secret cannot be ascertainable through proper means). An important factor in determining if information constitutes a trade secret is "the ease or difficulty with which the acquired information could be properly acquired by others." *Frantz v. Johnson,* 116 Nev. 455, 467, 999 P.2d 351, 358 (2000);

[19] *Id.* at ¶ 22.
[20] *Id.* at ¶ 23.

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see also Cambridge Filter Corp., 548 F. Supp. at 1306 ("A most important consideration is whether the information is readily accessible to a reasonably diligent competitor."). Set forth below are a variety of proper methods by which a par can be readily ascertained.

a. Advertising.

One of the easiest ways to determine a par on a particular game is by the casino's own advertisements. All gaming machines have a maximum and a minimum par, as set by the manufacturer. For example, Toby Taylor, GSR's Executive Director of Slot Operations, testified that a "Buffalo" slot machine cannot be set at a par lower than 5.28%. Exh. 25, p. 13:13-15. As Tom Sullivan explains, the manufacturers send out the same par sheet that indicates the same maximum and minimum par settings with each machine. Exh. 24, p. 42:19-25. Thus, all casinos have access to these par sheets.

Because a lower par means a larger payback percentage to the customer, casinos often advertise when pars are low to attract customers. *Id.* at p. 61:17 (explaining the advertisement of par settings as "a marketing strategy"). When a casino advertises that it has the "loosest" slots for certain games, then, competitors know exactly what the par is set for those games because the competitors know the minimum pars for those machines from the par sheet. Exh. 3, ¶ 75.

GSR frequently advertises its pars. GSR has advertised on its billboard that faces Highway 395 that its many of its games are the "loosest pay tables in Reno," or the "loosest pay tables allowed." *See* **Exhibit 26** (GSR Billboard Photo); **Exhibit 27** (GSR Billboard Photos).[21] Similarly, GSR advertises on its website that it has the "loosest" pay tables. *See* **Exhibit 28** (GSR Internet Ad).[22] Thus, GSR's pars are readily ascertainable to competitors.

b. "Theo" Request

A "theo" request occurs when a player plays a certain amount of money on a game, cashes out, and then asks the VIP desk what the "theo" (or the "hold") was for that player's money by the casino that day. Exh. 3 at ¶¶ 77-78. When informed of the hold, the player can then divide the amount of money he or she played on one game by the amount kept by the casino to determine the par. *Id.* As Tom Sullivan explains:

[21] *Id.* at ¶¶ 24-25.
[22] *Id.* at ¶ 26.

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Q: But I mean the competitor. Once a competitor knows the theo, tracks the coin-in, they can calculate the par on that machine for that day?

A: If I were to go to a competitor, which I have, and play a game and put a hundred dollars of coin-in through that game to get a concept of where they're at, I can play the game like anyone else, I can determine how much I won or lost, and I can come up with a ballpark figure - -

Exh. 24, p. 41:16-24.

John Stone, a casino consultant hired by the GSR to determine other casinos' comp reinvestment, free play and pars, testified that the "theo" is easily obtained by simply asking the VIP desk. *See* **Exhibit 29**, p. 75:12-20 (Excerpts from the Deposition Transcript of John Stone);[23] *see also* **Exhibit 30** (CDC Consulting Report).[24] As he explains, once the "theo" is known, it is very easy to determine the par from the amount of money played on a machine. Exh. 29, p. 75:4-20. Thus, both competitors and the public can easily obtain a par using this method.

c. Ratio Analysis

Ratio analysis is another simple method to determine the par, if the gambler is a member of a rewards program at the casino. Most casinos employ a gambler rewards program, under which the casino gives a player "comp points" for every dollar the casino earns as a "theo" (or "hold") from that player. Exh. 3, ¶ 79. Similar to a theo request, the gambler simply plays a certain amount of money on one game, cashes out, and checks to see how many "comp points" were awarded for that game. *Id.* at ¶ 80. Because the "comp points" track the "theo," the gambler can easily determine what the par or the "hold" was for that game.

As Scott Bean, GSR's consultant on slot strategies explains, this is a very simple method to determine pars:

Q: . . . Once you have the comp reinvestment percentage for a machine . . . you can work backwards and get the par on the machine?

A: Yes, sir.

Q: And so once GSR has these comp percentage reinvestments, it can go determine the par of these machines?

A: Yes, sir.

[23] *Id.* at ¶ 27.
[24] *Id.* at ¶ 28.

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See **Exhibit 31,** p. 98:18-99:1 (Excerpts from the Deposition Transcript of Scott Bean).[25]

Similarly, John Stone verifies that this is an easy way to determine a par:

Q: If you know these comp reinvestment percentages of various competitors, you know a lot about their strategies?

A: You do.

Q: And you also know their pars because you can work backwards?

A: That is how I achieved it, so you can do the same thing, yes.

Exh. 29, p. 77:1-15.

And, as Billy Paganetti, Peppermill's General Manager explains, this is a simple way to determine the pars of ***multiple games*** by simply comparing the comp points received on one game versus another. *See* **Exhibit 32,** p. 116:24-117:20 (Excerpts from Deposition Transcript of William Natale Paganetti).[26] Finally, this method is confirmed as a simple way to determine the par of a machine by both Peppermill's expert Dr. Friedman, *see* Exh. 3 at ¶¶ 79-80, and Dr. Lucas. Exh. 14 at ¶ 3.1.2.

d. The Pay Table

Another simple method is to consult a game's "pay table," which is displayed on the screen of certain games. Michael Draeger, GSR's Finance Director, admits that viewing the pay table is an easy way to determine the par:

Q: Okay. So the pay tables is a way to verify par?

A: Yes.

Q: Anybody can do that with some mathematic skills, correct?

A: Yes.

See **Exhibit 33,** p. 32:19-24 (Excerpts from the Deposition Transcript of Michael Draeger).[27]

As Sullivan explains, "I will know, by looking at the pay table, exactly what the hold is. ***It's extremely transparent.***" Exh. 24, p. 32:16-18 (emphasis added). Similarly, Jeff Siri, Chief Executive Officer of the Club Cal Neva, states that the pay tables are displayed on the screens of video gaming machines, and "anyone can find out the par percentage of a video poker machine in

[25] *Id.* at ¶ 29.
[26] *Id.* at ¶ 30.
[27] *Id.* at ¶ 31.

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any casino." Exh. 22, ¶ 1.

e. Gaming Abstracts

Finally, a competitor's pars can be easily determined by reviewing the gaming abstracts published by the Nevada Gaming Board. These gaming abstracts report the revenue earned by each area casino. Exh. 24, p. 50:2-23. Tom Sullivan testified that the information contained in these gaming abstracts makes it incredibly easy to determine the par settings of local casinos:

> Q: Mr. Sullivan, it's not that hard, using this data, to figure out where you are in the market with your par, is it?
>
> A: It's not hard at all.
>
> Q: It's pretty easy?
>
> A: Yes, sir. Again, it's a math equation.
>
> Q: It's a simple math equation?
>
> A: Uh-huh.
>
> Q: So you pretty much know where you are with regard to par competitiveness to the Atlantis?
>
> A: Yes.
>
> Q: To the Peppermill?
>
> A: Yes. . . Within a very close range. I won't be able to tell you it is 4.5 at the Nugget and a 3.9 at the Peppermill, but I can tell you that I'm going to get it pretty close.

Id. at p. 52:25-53:21.

As explained by John Ascuaga, "any casino operator could determine whether to raise or lower pars based upon their own net win percentage compared to the net pars of the market in Northern Nevada published by gaming." Exh. 18. Similarly, John Farahi states that any casino owner can "easily and properly compare its own slot machine operating metrics to the information revealed by the Nevada Gaming Control Board revenue reports to ascertain whether the casino's net floor par is below or above the market as reflected in the gaming revenue reports and could adjust its par settings accordingly." Exh. 19, ¶ 7. Thus, the gaming abstracts are another easy, and proper method to ascertain a competitor's par settings.

As shown from the above, there are a myriad of ways that a par setting can be readily ascertained through proper means by both the public and competitors. Therefore, a par does not

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qualify as a protectable trade secret, and summary judgment in favor of Peppermill is warranted. NRS 600A.030(5)(a).

3. The Above Methods Are all "Proper Means" Under the Nevada Trade Secrets Act.

The Nevada Trade Secrets Act specifically defines "improper means" as (1) theft, (2) bribery, (3) misrepresentation, (4) willful breach (or inducement of breach) of a duty to maintain secrecy, (5) willful breach (or inducement of breach) of "a duty imposed by common law, statute, contract, license, protective order or other court or administrative order;" and (6) espionage. NRS 600A.030(1). As shown from the above, ***none*** of the listed methods requires any of this prohibited conduct. Accordingly, par settings are readily ascertainable by proper means, and summary judgment in favor of Peppermill is warranted.

C. GSR HAS NOT REASONABLY TRIED TO KEEP ITS PAR SETTINGS CONFIDENTIAL.

Summary judgment in favor of Peppermill is warranted because (1) GSR publicly advertises its pars, and (2) no presumption of confidentiality exists in this case.

1. GSR Publicly Advertises Its Pars.

Because GSR, like most other casinos, publicly advertises its par settings, GSR cannot plausibly claim to this Court that its pars are a protectable trade secret. To qualify as a trade secret, GSR must prove that it took reasonable efforts to keep its par settings confidential. NRS 600A.030(5)(b); *see also Frantz v. Johnson,* 116 Nev. 455, 467, 999 P.2d 351, 358-59 (2000) (stating that an important factor to consider in determining whether information is a trade secret is "the extent and manner in which the [owner] guarded the secrecy of the information").

GSR has not taken any steps to keep its par settings confidential because it has ***publicly advertised*** its par settings on its billboards and website. *See* Exhs. 26-28. No casino owner would argue that pars are "confidential" because all casinos advertise their pars to the public and competitors. *See* **Exhibit 34** (Atlantis Advertisements for Looser Slots); **Exhibit 35** (Club Cortez Internet Advertisement for Loose Slots).[28] Furthermore, par settings are published in casino's Form 10-K filings with the SEC, which are publicly available online. *See* **Exhibit 36**, at pp.

[28] *Id.* at ¶¶ 32-33.

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PM12667-12668 (Las Vegas Sands Corp. Form 10-K for fiscal year ending 12/31/2011).[29] As shown from this exhibit, the Sands lists the "slot hold percentage," or floor par, in its 10-K filing for every property it owns. *Id.* Clearly, pars are not confidential. And, even if pars were considered confidential, GSR's conduct in publicly advertising these pars renders GSR's pars clearly non-confidential.

2. There is No Presumption of Confidentiality.

GSR cannot claim that a presumption of confidentiality exists in this case. The presumption of confidentiality only arises when the word "'Confidential' or 'Private' or other indication of secrecy is placed in a reasonably noticeable manner on any medium or container that . . . includes any portion of the trade secret." NRS 600A.032. Here, there is no evidence that GSR placed any such label on the accessed slot machines.

Nor may GSR argue that the fact that Tors accessed the slot machines with a key renders its par settings confidential. As explained above, 2341 keys are universal keys that come with any slot machine, are sold in mass quantities to the public, and are available for purchase on Ebay. Exh. 3 at ¶ 27; Exh. 4. Therefore, every casino in the Reno-Sparks area has access to hundreds, if not thousands, of 2341 keys and the public can buy them for a small amount. As noted by expert Friedman, if GSR wanted to protect the confidentiality of its par settings, it could have easily taken measures to prevent access to the slot machine by a 2341 key. Exh. 3 at ¶¶ 125-126. GSR's failure to do so precludes any presumption of confidentiality from arising.

Because GSR publicly advertises its par settings, and because GSR did not take any efforts to keep its par settings confidential, the par settings obtained by Tors are not protectable trade secrets under the Nevada Uniform Trade Secret Act. Accordingly, summary judgment in favor of Peppermill is warranted because a "par" does not qualify as trade secret.

V. GSR HAS NO ADMISSIBLE EVIDENCE TO DEFEAT SUMMARY JUDGMENT.

GSR has the burden at trial to prove that its par settings are a protectable trade secret. *Frantz v. Johnson,* 116 Nev. 455, 466, 999 P.2d 351, 358 (2000). Thus, Peppermill's burden in this motion is to either "(1) submit[ ] evidence that negates an essential element of the nonmoving

[29] *Id.* at ¶ 34.

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party's claim, or (2) point[ ] out . . . that there is an absence of evidence to support the nonmoving party's case." *Francis v. Wynn Las Vegas, LLC,* 127 Nev. ___, ___, 262 P.3d 705, 714 (2011) (internal quotations omitted) (third alteration in original). As shown above, Peppermill has already presented this Court with ample evidence negating GSR's ability to prove that its pars are a protectable trade secret. Peppermill will now demonstrate that GSR's complete absence of evidence supporting its case.

A. GSR ADMITS ITS PARS ARE NOT A TRADE SECRET.

First, GSR's own admissions through its executive's testimony demonstrate that pars are not a trade secret. GSR cannot attempt to manufacture a genuine issue of material fact by contradicting its own prior testimony. It is well established that "a party ought not be allowed to manufacture a bogus dispute with *himself* to defeat summary judgment." *Nelson v. City of Davis*, 571 F.3d 924, 928 (9th Cir. 2008). As shown, GSR has admitted through the testimony of its corporate executives that its pars have no independent value and are readily ascertainable by proper means. This evidence alone completely negates GSR's claim that its pars are a protectable trade secret.

B. GSR'S ONLY PROPERLY IDENTIFIED EXPERT ADMITS THAT PARS ARE NOT A TRADE SECRET.

Second, GSR has not produced any admissible evidence that tends to prove its pars are a trade secret. The ***only*** expert that GSR properly identified – David Schwartz –testified that the information obtained by Tors had no value because those few machines did not provide enough information to represent or estimate the par settings of the entire casino floor. Exh. 12 at p. 117:11-22.

C. GSR'S IMPROPERLY IDENTIFIED EXPERT DOES NOT OPINE AS TO WHETHER PARS ARE A TRADE SECRET.

GSR's other identified experts either do not address this issue or are not properly identified. Jeremy Aguero, who Peppermill has moved to disqualify as an expert witness and whose testimony and report Peppermill has moved to exclude, was initially identified ***solely*** as an expert on damages. *See* **Exhibit 37** (GSR's Initial Expert Disclosure).[30] Similarly, in GSR's

[30] *Id.* at ¶ 35.

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Amended Disclosure of Expert Witnesses, Mr. Aguero's report is limited to the ***sole*** issue of damages. *See* **Exhibit 38**, at Exhibit 1 (GSR's Amended Disclosure of Expert Witness).[31] ***No other expert witnesses were identified.*** *Id.* Thus, the sole experts that GSR may adduce testimony from in its case in chief, in which GSR has the burden to prove it has a protectable trade secret, are an expert who admits that pars are not a trade secret and an improperly identified expert who has not opined on this issue and cannot do so at trial.

D. GSR'S "REBUTTAL" EXPERT EVIDENCE IS NOT ADMISSIBLE.

In a blatant attempt to fix its inability to prove that pars are a trade secret, GSR has attempted to designate expert witnesses to opine on this issue as "rebuttal" experts. However, it is well established that rebuttal evidence ***may not*** be used to establish a case-in-chief. *Cates v. Sears Roebuck Co.*, 928 F.2d 679, 685 (9th Cir. 1991) ("Rebuttal must be kept in perspective; it is not to be used as a continuation of the case-in-chief."); *see also Marmo v. Tyson Fresh Meats, Inc.*, 457 F.3d 748, 759 (8th Cir. 2006) (holding that "rebuttal evidence may be used to challenge the evidence or theory of an opponent – and not to establish a case-in-chief."). Thus, rebuttal is "not an opportunity for the correction of any oversights in the plaintiff's case in chief." *Crowley v. Chait*, 322 F. Supp. 2d 530, 551 (D.N.J. 2004) (internal quotations omitted). "'Rebuttal evidence is admissible only where the need for it could not have been foreseen at the time the plaintiff presented its case-in-chief.'" *Daly v. Far E. Shipping Co. PLC.*, 238 F. Supp. 2d 1231, 1238 (W.D. Wash. 2003) (quoting *Faigin v. Kelly*, 184 F. 3d 67, 85 (1st Cir. 1999)). Therefore, "evidence which properly belongs in the case-in-chief but is first introduced in rebuttal may be rejected, so as to avoid prejudice to the defendant and to ensure the orderly presentation of proof." *Emerick v. U.S. Suzuki Motor Corp.*, 750 F.2d 19, 21-22 (3d Cir. 1984).

In GSR's rebuttal expert witness disclosure, GSR identified (1) Aguero, (2) Gregory Gale, (3) Rex Carlson, and (4) Charles Lombardo, as rebuttal experts who will counter the opinions of Peppermill's experts Friedman and Lucas. *See* **Exhibit 39** (GSR's Disclosure of Rebuttal Expert Witness Reports filed October 15, 2015).[32] These experts all discuss whether a par is a trade secret. On this basis alone, these reports are inadmissible because GSR has the burden to

[31] *Id.* at ¶ 36.
[32] *Id.* at ¶ 37.

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prove at trial that its pars are trade secrets in its case in chief, and these experts should have been disclosed prior to the initial expert disclosure deadline. GSR may not attempt to correct its deficient expert disclosures by designating these witnesses as "rebuttal" experts.

Instead, GSR's "rebuttal experts" are simply an untimely disclosure of experts that GSR needed to disclose to prove its case in chief. This evidence is inadmissible. *Daly*, 238 F. Supp. at 1238. Importantly, because this evidence is not admissible at trial, it may not be used to defeat summary judgment. *See Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 442 (1993) ("The non-moving party's documentation must be admissible evidence . . . ."). Accordingly, GSR has ***no*** evidence to demonstrate that a genuine issue of material fact exists, and summary judgment in Peppermill's favor is warranted.

VI. CONCLUSION

For the foregoing reasons, Peppermill respectfully requests that this Court grant summary judgment in favor of Peppermill and against GSR on GSR's claim for misappropriation of trade secrets.

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 13th day of November, 2015.

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IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiff,

vs.

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

Defendant.

/

CASE NO.: CV13-01704

DEPT. NO.: B7

BUSINESS COURT DOCKET

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

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

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

> GSR analyzes the location of each slot machine, the amount of money played on each slot machine, the actual money held by each machine [i.e., the par], the rewards given to the 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.

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

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

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

> Q: . . . And GSR has readily accessed our pars; correct? According to the testimony of John Stone [of CDC Consulting]?
>
> A: According to the testimony.
>
> Q: You have a problem with that?

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A: I do.

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

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

See **Exhibit 2**, p. 271:11-20 (Excerpts from the deposition transcript of Charles Lombardo). If GSR wishes to place the emphasis in this litigation on bad conduct, then all of the parties' bad conduct ought to be considered. Furthermore, as will be shown below, Peppermill's bad conduct does not render an individual par setting a protectable trade secret.

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

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

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

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

The legal authority that GSR cites is factually distinguishable. For example, in *Altavion Inc. v. Konica Minolta Systems Laboratories, Inc.*, the California appellate court found that the 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

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

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

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

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

> Q: So for all we know, GSR could have changed its pars on December 30, 2011, and made the information in Exhibit 7 [containing the pars Tors obtained] meaningless?
>
> A: That is correct.
>
> Q: Valueless?
>
> A: Valueless.
>
> . . .

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Q: So getting back to the value proposition, the GSR could have changed the par 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?

A: Correct.

Q: Rendering that information valueless?

A: That is correct.

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

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

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

A: I wouldn't.

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

A: Okay. Yeah.

Exhibit 1, p. 176:3-11.

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

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

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

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

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

> Q: Okay. One opinion, slot par settings have no independent economic value to members of the general public. You did not address that in your report?
>
> A: No.
>
> Q: So in your report, you don't refute that finding?
>
> A: In the report, no.

Exhibit 1, p. 207:1-8.

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

Similarly, GSR points to the emails from Aaron Robyns to Tors as alleged evidence of "use." Opposition, p. 8. However, as Aaron Robyns, Peppermill's Marketing Director, explains, 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

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

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

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

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

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

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

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

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

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

Q: In determining pars can be readily ascertained?

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

Q: Inexpensively?

A: Yes.

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

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

Q: Right.

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

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

A: No.

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

A: Yes.

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

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

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

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

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

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

Furthermore, GSR's argument that Peppermill's identified means are improper because they all involve sending "spies" into the GSR to obtain pars fails in light of the fact that GSR sends "spies" into all of its competitors' casinos to obtain their slot and marketing strategies through its use of CDC. In addition, GSR's expert, Rex Carlson, states that he has no opinion whether the methods of ascertaining pars discussed by Stacy Friedman are proper. Exhibit 1, p. 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

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

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

A. GSR Publicly Advertises Its Pars.

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

B. There is No Presumption of Confidentiality.

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

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

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

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

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

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

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

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

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

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

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

V. CONCLUSION.

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

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 15th day of December, 2015.

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EXHIBIT 2

EXHIBIT 2

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IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiff,

vs.

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

Defendant.

/

CASE NO.: CV13-01704

DEPT. NO.: B7

BUSINESS COURT DOCKET

PEPPERMILL CASINOS, INC.'S RENEWED MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING DAMAGES
FILED UNDER SEAL
DESIGNATED HIGHLY CONFIDENTIAL INFORMATION

Confidential- Subject to Stipulated Confidentiality Agreement and Protective Order Filed July 17, 2014
To be Opened Only Upon Further Order of this Court or for the Sole Use of the Court and its Employees

Defendant Peppermill Casinos, Inc. ("Peppermill") moves this Honorable Court for its Order granting summary judgment against the Plaintiff MEI-GSR Holdings, LLC ("GSR") pursuant to and in accordance with Rule 56 of the Nevada Rules of Civil Procedure. This is a renewed motion because this Court's denial of Peppermill's previous motion was without prejudice pending additional discovery. This renewed motion is based upon the attached points and authorities, exhibits, and affidavit affixed thereto.

DATED this 18th day of November, 2015.

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POINTS AND AUTHORITIES AND AUTHORITIES IN SUPPORT OF PEPPERMILL'S RENEWED MOTION FOR SUMMARY JUDGMENT REGARDING DAMAGES

Peppermill is entitled to a summary judgment regarding the issue of whether GSR sustained damages. After over two years of litigation, intensive discovery, and substantial motion practice, there is no evidence to support GSR's claim for damages under the Nevada Uniform Trade Secrets Act. *See* NRS 600A.050.

I. OVERVIEW

In its Complaint filed August 2, 2013, GSR alleges that the Peppermill violated NRS 600A.030 by accessing 6 to 15 par settings from GSR's slot machines. Pursuant to NRS 600A.050, Plaintiff may recover damages for a misappropriation of a trade secret that include:

(1) loss caused by misappropriation;

(2) unjust enrichment caused by misappropriation; and

(3) in lieu of damages measured by the above, damages actually caused by misappropriation may be measured by the imposition of liability for a "reasonable royalty for the misappropriator's unauthorized disclosure or use" of a trade secret.

In this case, GSR has admitted that it lost no revenue as a result of the alleged misappropriation. It is precluded from seeking a reasonable royalty because it is seeking other losses caused by the alleged misappropriation. It claims that it had to change locks on all of its

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slot machines because of Peppermill's conduct. See discussion Part VI, *infra*. GSR produced no evidence of damages based upon unjust enrichment. GSR's person most knowledgeable regarding damages has no knowledge of any damages. GSR, through its expert, also admitted there is no evidence that the Peppermill used the pars obtained by Peppermill's former employee, Ryan Tors. Further, GSR admits that it has no knowledge of any value derived by the Peppermill related to obtaining GSR's pars. In fact, there is no evidence that pars have any value, and GSR's most prominent representatives concede that pars have no value.

Despite this lack of necessary evidence of use and value, GSR's only expert calculated damages based upon a reasonable royalty. However, the expert's analysis fails to connect the reasonable royalty to the facts in this case. He refuses to associate the royalty to the time of the alleged misappropriation. Further, his reasonable royalty calculation fails to address certain necessary considerations such as a reasonable profit margin for Peppermill and what how much of the royalty relates specifically to the pars, as opposed to other sources of information. Summary judgment as to damages under NRS 600A.050 should be granted.

II. STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact, "and the moving party is entitled to a judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (internal quotations omitted); *see also* NRCP 56(c). Summary judgment is particularly appropriate to avoid needlessly trying an issue at trial. *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005).

"While the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment." *Wood*, 121 Nev. at 732, 121 P.3d at 1031 (internal quotations omitted). Instead, the nonmoving party must demonstrate the existence of a genuine issue for trial, and "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." *Id.* (Internal quotations omitted).

III. UNDISPUTED MATERIAL FACTS

1. GSR concedes that the alleged "trade secrets" at issue in this case are those known

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in this litigation at Exhibits 7 and 8, which is slot machine information allegedly obtained by Peppermill's employee Ryan Tors on December 29, 2011 and June 14, 2014, respectively. *See* **Exhibit 1** (Exhibits 7 and 8 to the Deposition of Ryan Tors (September 19, 2014)).

2. GSR's person most knowledgeable about damages testified that he has no knowledge that GSR sustained any damages.

3. GSR's initial damages expert, David Schwartz, Ph.D., testified that his damage calculation was inaccurate, incomplete, flawed and unreliable.

4. GSR's second damages expert, Jeremy Aguero, testified that GSR suffered no loss and Peppermill was not unjustly enriched. Mr. Aguero calculated a "reasonable royalty" model based upon Peppermill's own data and publicly available information. Mr. Aguero's calculation is not based upon the pars set forth in **Exhibit 1** (deposition Exhibits 7 and 8), but are based upon "unfettered access" to GSR's slots for an 18-month period.

5. GSR admits that there is "no evidence" that the pars were either used by Peppermill or disclosed to anyone outside of the Peppermill.

6. GSR's witnesses and experts, Peppermill's witnesses and experts, and prominent owners of the Northern Nevada casino agree that pars have no value.

The foregoing demonstrates that there is no genuine issue of material fact, and partial summary judgment on damages is warranted.

IV. ANALYSIS OF EVIDENCE.

Discovery has revealed two instances on December 29, 2011, and June 14, 2012 where Mr. Tors allegedly keyed slot machines at GSR before he was apprehended on July 12, 2013.[1] Two emails and schedules of "pars" for those respective dates were produced by Peppermill executives. These have been marked as Exhibits 7 and 8 to the depositions taken in this case. *See* Exh. 1. These two exhibits are the only evidence of Peppermill "keying" GSR slot machines other than the night that Tors was apprehended. What Tors saw or obtained the day he was detained was not given to Peppermill until discovery was initiated in this case.

[1] Tors fabricated some of his reports, including the December 29, 2011 report. *See* **Exhibit 2**, p. 139:11-140:3, 173:8-11, 224:1-5 (Excerpts from the Deposition of Ryan Tors (Sept. 19, 2014)). GSR concedes that certain pars were fabricated. *See* Exh. 8 (cited below), 253:11-18.

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A. **Testimony of Craig Robinson**

On November 4, 2014, Peppermill took the deposition of GSR's witness most knowledgeable about damages, Craig Robinson. *See* **Exhibit 3**, p. 12:1-22, 13:7-8 (Excerpts of Deposition of Craig Robinson (Nov. 4, 2014)). He conceded that he was specifically tasked to testify about damages GSR sustained as a result of Tors' activities. *Id.* at p. 14:11-13, 27:1-3.

Mr. Robinson confirmed that there was no other person more knowledgeable about GSR's financial loss or damages than himself. *Id.* at p. 29-30. Further, Mr. Robinson had no personal knowledge of any damages sustained by GSR. *Id.* at p. 35-36. Indeed, Mr. Robinson could not quantify or identify what GSR's damages are. *Id.* at p. 37. The only "damages" that Mr. Robinson could refer to was a vague estimation of some $17,000 that the GSR expended to change locks on its slot machines.[2] *Id.* at p. 23-25, 67. That information, however, was not reliable and was only information related to him by GSR's lawyers.

Mr. Robinson was also produced as GSR's person most knowledgeable about any financial harm caused to the GSR by Tors. *Id.* at p. 48. However, Mr. Robinson could not provide details, an amount or computation of those alleged damages. *Id.* at p. 53. Indeed, he conceded that the damages were "unquantifiable". *Id.* at p. 64:14-20. Mr. Robinson further conceded that he would also have to look at Peppermill's marketing in information to identify damage. *Id.* at p. 60. To date, that has been done, but revealed no evidence supportive of GSR's damage claim.

Mr. Robinson could not place a value on the pars obtained by Mr. Tors from the GSR machines. He frankly conceded, "I can't determine the value . . . ." *Id.* p. 74. Mr. Robinson also conceded that he could not put an economic value on pars. *Id.* p. 77.

Notably, Mr. Robinson—GSR's person most knowledgeable about damages—had no knowledge about any damages to which GSR might be entitled under a reasonable royalty theory. *Id.* at 90:20-91:9. However, when testifying about issues related to reasonable royalty damages, Mr. Robinson had no information. Mr. Robinson was unaware of any specific actions or use the Peppermill made of the par information. *Id.* at p. 95. Indeed, "use" is a predicate to allowing reasonable royalty damages under NRS 600A.050. Mr. Robinson could only "speculate" as to

[2] See discussion in Part VI, *infra*.

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Peppermill's intent. *Id.* p. 95:6-20. He had no evidence of or information to suggest that Peppermill "used" the information Tors obtained from GSR.

Mr. Robinson testified fifteen months after GSR filed its Complaint. He testified as GSR's most knowledgeable person about damages, and he had no knowledge whether GSR sustained any damages whatsoever. In short, Mr. Robinson's testimony is conclusive evidence and an irrevocable concession that GSR has no damages.

B. Testimony of David Schwartz, Ph.D.

David Schwartz, Ph.D. was retained to offer expert testimony in this case on "the subject of damages sustained by GSR by the misappropriation of trade secrets by Defendant Peppermill" and to provide a computation of damages as required by NRCP 16.1. *See* **Exhibit 4** (Affidavit of David G. Schwartz as attached to GSR's Third Supplemental Disclosure Pursuant to NRCP 16.1). Dr. Schwartz was instructed by GSR to determine a reasonable royalty. *See* **Exhibit 5**, p. 60:15-23 (Excerpts from the Deposition of David Schwartz (Oct. 21, 2014)). His theory required a player to play $40,000,000 on one slot machine for 20,000 hours, every hour of every day for 2.24 years. *Id.* at p. 80. However, at his October 21, 2014 deposition, Dr. Schwartz conceded his damage model was "impossible," his calculations were unreliable and inaccurate, and that neither the Court nor jury should rely on his testimony. *Id.* at p. 60:15-23, 79:19-88:6, 98:16-25, 111:13-113:15. He also conceded that his formula required data that could not be obtained "legally". *Id.* at p. 84-85. Even if proper criteria were used, Schwartz's formula requires $3,132,000 of cash played in the slot machine to ascertain its par, which Schwartz concludes is "preposterous" and concedes that no one would ever do. *Id.* pp. 93-95.

In short, Dr. Schwartz's deposition testimony exposed his calculation to be unsupported by fact, law, or logic. His testimony is conclusive evidence that GSR has no damages.[3]

C. Testimony of Jeremy Aguero

GSR replaced Dr. Schwartz with Jeremy Aguero as its new damage expert. Mr. Aguero testified that GSR suffered no loss and Peppermill was not unjustly enriched due to Mr. Tors' conduct. *See* **Exhibit 6**, p 18-22 (Excerpt from the Deposition of Jeremy Aguero (Sept. 15,

[3] Dr. Schwartz also conceded that there wasn't any evidence that the par information obtained by Mr. Tors was "used". *Id.* p. 76.

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2015)). Mr. Aguero's June 4, 2015 report, in which he attempted to calculate a reasonable royalty, was based upon the "knowledge" that the Peppermill could obtain from looking at its own records and public documents generated by the Nevada Gaming Control Board. *See* **Exhibit** 7, p. 3-5 (Expert Report Prepared by Jeremy Aguero (June 4, 2015)). The $24,000,000 estimated damage was wrong. Mr. Aguero's Supplemental Amended Report, based on the same data, changed the damage figure. *See* **Exhibit 8**, p. 3-6 (Supplemental Expert Report Prepared by Jeremy Aguero (August 28, 2015)). Notably absent from both reports was reference to the par information set forth in Exhibits 7 and 8.

Realizing, however, that his report was flawed, unreliable, and that his opinion was not connected to the facts, circumstances or alleged trade secrets at issue in this case, Aguero changed his damage model at his deposition. According to his testimony, Mr. Aguero now bases his damage model on "unfettered access" to GSR's slot machines. *See* Exh. 6, p. 336-346. Until now, GSR never alleged "access" as a source of damages, nor has it alleged that unfettered access is a trade secret. The $8,000,000 reasonable royalty damage figure is predicated on the Peppermill having unrestricted access to *all* of GSR's machines *each and every day* for a period of 18 months. This model is contrary to the facts and circumstances of this case. It is a self-serving escape from reality.

Perhaps realizing that his analysis was divorced from the proper "hypothetical negotiation" analysis (*see* discussion Part V.B, *infra.*), Mr. Aguero opined that a reasonably prudent buyer would pay a reasonably prudent seller $8,000,000 for "unfettered access" to GSR's slot machines in a hypothetical negotiation. *See* Exh. 6, p. 91:11-92:16; 113:13-17. Yet, he also concedes that the hypothetical negotiations would not include any consideration of other gaming strategies, slot strategies, casino operation strategies. *Id.* at p. 168:5-16. This hypothetical is contradictory to and inconsistent with the reality of the gaming market.

Additionally, Mr. Aguero could not identify any direct or circumstantial evidence showing that Peppermill ever used or disclosed GSR's pars at his September 15, 2015 deposition. *Id.* at 75, 110, 119-120, 210. Nor could he identify any evidence that Tors disclosed GSR's pars to anyone

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outside of Peppermill.[4] *Id.* at 75, 124.

At his rebuttal expert deposition on October 19, 2015, Mr. Aguero acknowledged that he was assigned to determine the issue of "use" of GSR's pars. *See* **Exhibit 9**, p. 25:13-15 (Excerpt from the Deposition of Jeremy Aguero (Oct. 19, 2015)). He unqualifiedly testified that he found no evidence that Peppermill used the pars obtained by Tors. *Id.* at p. 20:19-23 ("Q. It's true, is it not, that you have found no evidence or information that would suggest that Peppermill **utilized** the pars Tors obtained from the GSR. Correct? Is that correct? A. Yes, sir."). When asked about each of the individual pars set forth in Tors' emails, Mr. Aguero could not identify any evidence that any of the individual pars were used. *Id.* at p. 37-47.

Later in the rebuttal deposition, Aguero slightly changed his testimony, asserting that he believed that Peppermill used GSR's pars even though he could not specifically identify how:

> Q. On September 15th you had no information that the Peppermill used the GSR pars to improve its product. Correct?
>
> A. That's correct.
>
> Q. And you're changing that testimony now?
>
> A. No, sir, I'm not.
>
> Q. Okay. As you sit here today, Mr. Aguero, do you have any information to suggest that the pars reflected on Exhibit 7 and 8 were used in any way by the Peppermill to improve the Peppermill's product?
>
> A. Yes, sir, I believe they were.
>
> Q. Okay. Which one of the pars was used?
>
> A. I can't tell that with any specificity.

Id. at p. 45:16-46:3; see also p.75:19-25 ("Q . . . Tell me with some degree of specificity how they [Peppermill] actually used it. Not how they could have; how they did. A. I can't tell you with any degree of specificity how the information that was obtained on -- or are specifically cited on Exhibits 7 and 8 were specifically used on the casino management floor.").

The best Aguero could muster was a speculative position that Peppermill management "could" conceivably have used the pars in conjunction with other unspecified information in order to better manage the Peppermill. *Id.* at p. 96:14-97:11. Mr. Aguero's conjecture is based upon his unsupported notion that Peppermill used the "totality of the information available." *Id.* at

[4] This testimony was confirmed and reaffirmed at Mr. Aguero's October 19, 2015 rebuttal expert deposition. *See* **Exhibit 9**, p. 52:17-25, 53:25-55:3.

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p. 109:16-25. When requested to explain this "totality of the information theory," Mr. Aguero could offer no clear definition, specificity or clarity. His theoretical example of use is:

> A. The totality of information is extensive relative to what type of information these folks have, whether that's how players are playing the games or how competitors are competing or advertising programs. They have a remarkable amount of information.
>
> Q. What one of those components that you just alluded to were changed by the Peppermill as a result of Exhibits 7 and 8?
>
> A. I can't tell you which one.

p. 114:14-22. Without evidence of use, there cannot be a reasonable royalty. As discussed in depth below, the plain language of NRS 600A.050 requires **use** before reasonable royalty damages can be assessed. Accordingly, Mr. Aguero's reports and deposition testimony confirm that there is no factual basis for a reasonable royalty in this case.

D. Testimony of Scott Bean

Scott Bean worked for the Peppermill before he became an Executive Consultant to GSR and was designated as GSR's person most knowledgeable regarding whether the Peppermill used, benefitted from, or derived value from GSR's par information. *See* **Exhibit 10**, p. 22-23. Mr. Bean testified that he had no knowledge about whether Peppermill used, benefitted from, or derived value from the par information Mr. Tors obtained from the GSR. *Id.* at p. 27-28. In short, GSR believes that there is no evidence of use, benefit, or value.

E. Gaming Control Board / Nevada Gaming Commission

On July 12, 2013, the Gaming Control Board launched an investigation regarding the Peppermill's "keying" activities. On February 20, 2014, the Nevada Gaming Commission conducted a hearing. *See* **Exhibit 11** (Gaming Control Board Partial Transcript). Peppermill's owner and President, Bill Paganetti, confirmed that "the information was never used by me or the Peppermill to gain competitive advantage over any casino." *Id.* at p. 59. This testimony was confirmed by the regulators. *See* **Exhibit 12** (Nevada Gaming Commission Stipulation for Settlement and Order). The Nevada Gaming Commission adopted the Board's findings that the investigation revealed "no evidence" that the Peppermill used the pars obtained from GSR's slot machines based on the keying activity of Mr. Tors. *Id.* at p. 4, ¶ 4(b).

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F. Testimony of Bill Paganetti

Mr. Paganetti was deposed on April 3, 2015, and testified that he received the par information that Mr. Tors obtained from the GSR. However, Mr. Paganetti was also adamant that there was absolutely no use made of the information obtained by Mr. Tors. *See* **Exhibit 13**, p. 65-66 (Excerpts of Deposition of Bill Paganetti (April 3, 2015)). Moreover, Mr. Paganetti definitively testified that knowing his competitor's par settings has no benefit whatsoever. *Id.* at p. 10-22.

G. Testimony of Alex Meruelo

Peppermill took the deposition of Alex Meruelo, who is the 75% owner of GSR. *See* **Exhibit 14**, p. 6 (Excerpts of Deposition of Alex Meruelo (January 16, 2015)). Mr. Meruelo was unable to identify any losses caused by Tors' gaining access to GSR's pars. *Id.* at p. 30-31. While Mr. Meruelo was adamant that the pars has "a lot of value," when asked whether he would pay for another casino's pars, he unequivocally stated that he would not pay for par information. *Id.* at p. 32-33, 65-66. Mr. Meruelo's testimony is vital, because it shows that GSR's ultimate stakeholder does not believe that pars have any value. His unwillingness to engage in a hypothetical negotiation of pay information, demonstrates that as between Peppermill and GSR there is no basis for a reasonable royalty.

H. Testimony of Tracy Mimno

On November 4, 2015, Peppermill took the deposition of Tracy Mimno, the General Manager of GSR. *See* **Exhibit 15** (Excerpts of Deposition of Tracy Mimno (November 4, 2015)). When asked if she would consider buying Peppermill's par information, she stated that she would not. *Id.* at p. 285-287. Indeed, she stated that it would be "foolish" to buy par information. *Id.* at p. 287. Further, Ms. Mimno, as casino operator of GSR, stated that Peppermill's pars have no value to her. In part, she admitted that pars lack value, because they can be changed at the whims of the operator. *Id.* at p. 287. In short, GSR's top casino executive concedes that pars have no value to casino operators.[5]

[5] Ms. Mimno's sentiment is echoed by other members of GSR's management team. Terry Vavra, GSR's Vice President of Finance, confirmed that the information obtained by Tors has no value because keying such a small number of machines does not provide any valuable information. *See* **Exhibit 16**, p. 96:2-6 (Excerpts from the Transcript of the Deposition of Terry Vavra).

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I. **Statements from Northern Nevada Casino Operators**

Peppermill's rebuttal expert witnesses have relied on seven letters and statements from several prominent operators and owners of Northern Nevada casinos. *See* **Exhibit** 17 (Peppermill's Supplement to Disclosure of Rebuttal Expert Witnesses). The owner of Wendover Casinos, David Ensign, opines that the seven to nine par settings obtained by the Peppermill from the GSR have absolutely no value. Similarly, John Ascuaga, the former owner of the Nugget in Sparks, states that no reasonable and thoughtful casino operator or owner would pay any money for a license agreement to have access to the par settings of competing casinos.

John Farahi, the Co-Chairman and Chief Executive of Monarch Casino and Resort (owner of the Atlantis Casino Resort), reviewed the par data at issue. Mr. Farahi states that the information obtained by the Peppermill from the GSR is too limited to have any value to a reasonably prudent casino operator or owner. He adds that he would pay no money whatsoever for a license to know or use the par settings that were obtained by the Peppermill from the GSR. Russ Sheltra and Ryan Sheltra, the owner and General Manager of the Bonanza Casino, respectively, state that a casino operator would be foolish to pay money for the par settings allegedly obtained from GSR. In their estimation, a few pars from a competitor's casino floor are "worthless".

Gary Carano, Chairman of the Board and Chief Executive Officer of Eldorado Resorts, also reviewed the pars obtained by the Peppermill from the GSR and concludes they have "no value". He further states that he would pay nothing for such par information. Jeffery L. Siri, President, Chief Executive Officer, and owner of the Cal Neva Hotel Casino, states that if he were asked to pay for 6 to 15 par settings of slot machines at the Grand Sierra Resort, or any other competitive casino, he would refuse to pay any money whatsoever. Mitch Gardner, Vice President of Bordertown Casino, states that the 13 pars theoretically obtained by the Peppermill from the GSR are valueless.

In sum, these prominent operators believe that GSR's pars have no value, and they would not pay for them.

J. **Testimony of Toby Taylor**

GSR designated and produced GSR's Slot Director, Toby Taylor, as its NRCP 30(b)(6)

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witness regarding GSR's efforts to change the locks on its slot machines in 2014. Mr. Taylor admitted that GSR did not begin to change the locks until 9 months after filing this lawsuit and nearly a year after Tors was detained at the GSR. *See* **Exhibit 18**, at p. 30 (Excerpts of Deposition of Toby Taylor (Mar. 17, 2015)). While GSR ordered locks in April 2014, GSR had not completed replacing all of the locks as of March 17, 2015. *Id.* at p. 25.

GSR asserts that it spent $17,479 for new locks and keys for **all** of its slot machines. *See* **Exhibit 19**, (GSR's Invoice and Purchase Order (Bates No. GSR00100-GSR00102)). However, of the 1,136 slot machines on the floor of the GSR, only 618 of those slot machines have received new keys or new locks. *See* Exh. 18, p. 25:1-10. GSR stopped the practice of putting new locks in its slot machines in June of 2014. *Id.* at p. 23-25. From June of 2014 forward, no additional machines were rekeyed or relocked. *Id.* 518 slots remain unchanged and are still vulnerable to access by and through the use of a 2341 master key. *Id.* at p. 29-30.[6]

Mr. Taylor's testimony regarding labor costs imprecise and incomplete. When questioned about these labor costs, Mr. Taylor stated as follows:

> Q. The typical wage for the person who changes these out is what?
> A. Probably about 15 an hour average.
> Q. So about $5 a machine for labor? You say 20 minutes, 15 –
> A. Yeah. Sounds adequate, yeah.
> Q Has anybody done that calculation?
> A. I believe we looked at -- we put something together.
> Q. Mr. Taylor, it's my understanding that this is a damage figure that GSR is seeking to recover from the Peppermill.
> Q. Have you been involved in trying to specify this amount of labor and charges?
> A. Yes.
> Q. And what is it?
> A. Like I said, 20 minutes a machine.
> Q. Total. For labor.
> A. I don't have the total yet. The project is not completely done yet.

Id. at p. 33. These approximated and speculated labor costs, in conjunction with cost of the locks

[6] Mr. Taylor agreed to produce an "expense schedule" showing the man hours necessary to change the locks at the GSR. Then, unexpectedly and contrary to the agreement reached at Mr. Taylor's deposition, GSR asserted the attorney-client privilege and has never produced the "expense schedule". *Id.* at p. 36:1-10; 47:19-49:3.

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and number of locks actually changed, are as close as GSR has come to providing evidence of damages in this case.

V. THERE IS NO EVIDENCE TO SUPPORT A REASONABLE ROYALTY.

As noted above, the damages provision of NRS 600A.050 provides as follows:

> Damages include both loss caused by misappropriation and unjust enrichment caused by misappropriation that is not taken into account in computing the loss. In lieu of damages measured by any other methods, damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

GSR has asserted both an actual loss theory of damages—namely the cost of changing the locks of its slot machines—and a reasonable royalty theory. However, GSR failed to provide evidence to support a reasonable royalty theory. There is nothing to support a finding of "disclosure or use," which is a statutory prerequisite to find a reasonable royalty.

A. There Is No Evidence of Use.

There are two fundamental types of evidence: direct and circumstantial. "Direct evidence is evidence which, if believed, proves the fact in issue without the aid of an inference." *Privette v. Faulkner*, 92 Nev. 353, 356, 550 P.2d 404, 406 (1976). Whereas circumstantial evidence is facts from which inferences can be reasonably drawn. *Fairman v. Warden, Nev. State Prison*, 83 Nev. 332, 337, 431 P.2d 660, 663 (1967). While direct and circumstantial evidence may be sufficient to maintain a claim, "mere speculation is insufficient." *Paulino v. Harrison*, 542 F.3d 692, 700 (9th Cir. 2008). GSR has provided no direct or circumstantial evidence of use, only bare speculation.

As a starting point, the Gaming Control Board concluded from its thorough investigation that there was no evidence that the pars were used. *See* discussion Part IV.E, *supra*. GSR concedes that the Board's findings and the thoroughness of its investigations. *See* Exh. 9, p. 128:12-19, p. 129:22-130:3; p. 231:3-12. Additionally, Aguero conceded again and again that there was no direct evidence of any use. *See, e.g., id.* at p. 237:12-16 ("Q. . . .Can you show the jury a document – any document exchanged in discovery or testimony that was given in discovery that shows that the data in 7 and 8 were actually used? A. No, sir.").

GSR appears to suggest that there is circumstantial evidence of use. However, Mr. Aguero, GSR's rebuttal expert on "use," could not articulate any facts from which an inference of

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use could be drawn. *Id.* at p. 48-14-18. He concedes that there is a lack of correlation between Tors obtaining pars and Peppermill's slot operations, marketing, or financial records:

> Q. . . . So, again, is there any specific thing that was done or said by the Peppermill upon which you relied to suggest that it was used?
>
> A. May I clarify? It is the information from the GSR.
>
> Q. Yes, sir. 7 and 8.
>
> A. No, sir.
>
> Q. Is there any trend, any financial record, any document that has been exchanged in discovery that substantiates -- that shows use?
>
> A. Not of the specific pars identified in Exhibits 7 and 8.
>
> Q. You've seen all the revenue reports from the Peppermill?
>
> A. I have.
>
> Q. Those revenue reports do not show evidence of use, do they?
>
> A. There's no correlation.
>
> Q. Well, they don't show evidence of use, do they?
>
> A. Again, there's no correlation. The reason that I say that -- the brief answer to your question is no, they don't show use. And the reason for that is that they may have been changing pars and managing their casino for any numbers reasons. It was one portion of it. So there's no correlation. It also doesn't show that they didn't use it. But there's no correlation.
>
> Q. Well, you don't have proof that they did with respect to the financial records.
>
> A. Absolutely true.
>
> . . .
>
> Q. And you went through every week of every year from 2010 to 2014, and based upon your analysis of the par changes at the Peppermill reflected in the penny reports, those reports don't show use, do they?
>
> A. There's no correlation between them.
>
> Q. Well, I think we're saying the same thing, but -- you don't find a correlation that proves use?
>
> A. That is correct.
>
> Q. Thank you. Same with the marketing stuff?
>
> A. Right. Once there was no correlation, I didn't spend the time to try and analyze whether marketing had made some change because there was no correlation.
>
> Q. Okay. And can you specify what operational decision, act, or conduct reflects use?
>
> A. I cannot.

See Exh. 9, p. 233:17-236:3

In short, there is no evidence of use—either direct or circumstantial. GSR is relying on speculation and whimsy. Partial summary judgment is appropriate.

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B. **There Is No Disclosure.**

GSR concedes that the pars were not transmitted to anyone outside of a few agents and employees of the Peppermill. *Id.* at p. 53:25-54:3. Based upon this undisputed fact, there is no "disclosure." To disclose something means "to expose to view" or "make known or public." *See* **Exhibit 20** (Merriam-Webster Dictionary, "disclose" http://www.merriam-webster.com/dictionary/disclose (last viewed November 18, 2015)). Accordingly, in order for a disclosure to occur, one must transmit or otherwise make known information to a third party. Logically, without a third party, there cannot be a disclosure.

Just as with the law of civil conspiracy, a disclosure cannot exist between employees, their corporate employer, or the employer's wholly owned subsidiaries, because all of the actors are part of the same legal body. *See Laxalt v. McClatchy,* 622 F. Supp. 737, 745 (D. Nev. 1985); *Collins v. Union Fed. Sav. & Loan Ass'n,* 99 Nev. 284, 303, 662 P.2d 610, 622 (1983) ("An actionable civil conspiracy is a combination of two or more persons who, by some concerted action, intend to accomplish some unlawful objective for the purpose of harming another which results in damage.").

There is no dispute that Tors was acting under Peppermill's control and within the scope of his employment when he participated in the conduct that is the subject of the above-entitled action. Further, Mr. Tors and Peppermill have entered into an Indemnification Agreement whereby Peppermill expressly agrees, on the basis of respondeat superior, to indemnity Mr. Tors from any adverse judgments related to the allegations in GSR's Complaint. *See* **Exhibit 21** (Indemnification Agreement). GSR admits there is no evidence that Tors disclosed the par information to anyone outside of the Peppermill. As a matter of law, there cannot be a disclosure. A reasonable royalty cannot be asserted on the basis of either use or disclosure in this case.

C. **There Is No Evidence to Support a Reasonable Royalty.**

Borrowed from patent law, reasonable royalty damages contemplate a hypothetical negotiation between the owner of a trade secret and the alleged misappropriator, "[b]y means of a 'suppositious meeting' between the parties, the court calculates what the parties would have agreed to as a fair licensing price at the time that the misappropriation occurred." *See Vermont*

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Microsystems, Inc. v. Autodesk, Inc., 88 F.3d 142, 151 (1996).

1. GSR's Reasonable Royalty Calculation Abandons the Facts and Circumstances of this Case.

Case law requires that a reasonable royalty damage model be connected to the facts and circumstances of the case. *See University Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d 518, 538 (1974) (holding that trade secret damages are controlled by the "peculiar facts and circumstances" in a given case). Court's evaluating reasonable royalty damages under the Trade Secret Act apply factors established in the patent context in *Georgia-Pacific Corp. v. U.S. Plywood Corp.*, 318 F.Supp. 1116 (1970). The *Georgia-Pacific* factors are accepted as "valid and important factors in the determination of a reasonable royalty rate" in large part, because they connect a reasonable royalty calculation to the "facts and circumstances" of a particular case. *See Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1317-18 (Fed. Cir. 2011). As modified for use in trade secret cases, some of the 15 *Georgia-Pacific* factors are as follows:

> . . .
>
> 5. The commercial relationship between the plaintiff and defendant, such as, whether they are competitors in the same territory in the same line of business; or whether they are inventor and promoter;
> 6. The effect of selling the trade secret product in promoting sales of other products of the defendant; the existing value of the trade secret to the plaintiff as a generator of sales of its non-trade secret items; and the extent of such derivative or connected or conveyed sales;
> 7. The duration of the trade secret and the term of the license;
> 8. The established profitability of the product made with the trade secret; its commercial success; and its current popularity; . . .
> 10. The nature of the trade secret; the character of the commercial embodiment of it as owned or produced by the plaintiff; and the benefits to those who have used the trade secret;
> 11. The extent to which the defendant has made use of the trade secret; and any evidence probative of the value of that use;
> 12. The portion of the profit or of the selling price that may be customary in the particular business or in comparable businesses to allow for the use of the trade secret or analogous trade secrets;
> 13. The portion of the realizable profit that should be credited to the invention as distinguished from non-trade secret elements, the manufacturing process, business risks, or significant features or improvements added by the defendant; . . .
> 15. The amount that the plaintiff and the defendant would have agreed upon (at the time the misappropriation began) if both had been reasonably and voluntarily trying to reach an agreement . . . .

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LinkCo, Inc. v. Fujitsu Ltd., 232 F. Supp. 2d 182, 187 (S.D.N.Y. 2002).

Given the *Georgia-Pacific* factors' overall importance to the methodology of a reasonable royalty analysis, it is shocking that GSR has offered no evidence or opinions to support its analysis. In fact, GSR's damages expert testimony does not truly contemplate a hypothetical negotiation between GSR and Peppermill, at all. Mr. Aguero makes no reference to *Georgia-Pacific* or the relevant factors. Indeed, parts of his analysis even contradict principals set forth in the *Georgia-Pacific* factors, as discussed below. In short, GSR fails to connect its reasonable royalty calculation to the facts and circumstances in this case using the *Georgia-Pacific* factors or otherwise and fails to connect the "royalty" to the time of alleged misappropriation.

Instead of negotiating for the trade secrets at issue—namely, the pars already obtained by Mr. Tors—Mr. Aguero contemplates a negotiation for Peppermill's "unfettered access" of GSR's slot machines. *See* Exh. 6, p. 91:11-92:16; 113:13-17. By looking to a hypothetical negotiation for unfettered access, Mr. Aguero has ignored the fundamental mandate of reasonable royalty law: he abandoned the facts of this case. There is no evidence that the Peppermill had unfettered access to other casino's pars, nor is it pled in the Complaint. There is no evidence that the Peppermill obtained access to GSR's par machines on more than two separate occasions separated by six months. *See* Exh. 9, p. 290:2-8.

Mr. Aguero's "hypothetical negotiation" is based on a false assumption. It assumes that a casino operator would negotiate to buy access or par information without considering all of the other pertinent and crucial variables that affect casino operations, slot operations, and marketing strategies. The evidence is to the contrary. GSR's owners and managers concede that pars have no value. *See* discussion Part IV.G-H, *supra*. Moreover, several prominent Northern Nevada casino owners and operators agree that pars have no value. *See* discussion Part IV.I, *supra*. Because there is no dispute pars are without value, a hypothetical negotiation would yield no damages. Mr. Aguero's "access" theory is a false hypothetical that has no connection to the casino industry, the GSR and the Peppermill, and the facts and circumstances of this case.

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2. There Is No Evidence to Support a Royalty for an 18-Month Period.

Another factor to consider is the duration of the hypothetical license. *See LinkCo, Inc. v. Fujitsu Ltd.*, *supra*, 232 F. Supp. 2d at 187 (factor 7). Here, GSR asserts that the proper license term is an 18-month period running from December 29, 2011 (the first date that Tors allegedly obtained GSR's pars) to July 12, 2013 (the date he was apprehended). *See* Exh 8, p. 6. However, there is no genuine issue of material fact that the **only** pars at issue in this case are Deposition Exhibits 7 and 8, which were obtained on December 29, 2011 and June 14, 2012, respectively. Indeed, there is no evidence that the pars obtained on July 12, 2013 ever made their way to the Peppermill. *See* Exh. 9, p. 290:2-8. Accordingly, at best, the evidence only would support a reasonable royalty running for a 6 month period, not an 18-month period.

3. GSR Concedes that the Pars at Issue Have No Value.

Among the considerations of the *Georgia-Pacific* factors are the value of the purported trade secret to the plaintiff and the value of its use. *See LinkCo, Inc. v. Fujitsu Ltd.*, *supra*, 232 F. Supp. 2d at 187 (factors 6 and 11). GSR has stated clearly and unequivocally that it is relying on the holding in *University Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d 510 (Ga. 1974). Under this case, the "value" of a secret to the Plaintiff is an appropriate measure of damages at the time the Defendant has in some way destroyed the value of the secret. *Id.* at p. 535-46. Even in its interrogatory responses, GSR relies on the proposition that where the Peppermill retains the "use" of the secret and where there has been no effective disclosure of the secret through publication, the total value of the secret **to the Plaintiff** is an inappropriate measure. *See* **Exhibit 22**, No. 14 (GSR's Answers to Peppermill's Second Set of Interrogatories).

Here, GSR does not contend that the alleged secret has been destroyed. Time and again GSR testified that par information in questions has no value. *See* Exh. 2, p. 74; Exh. 10, p. 27-28; Exh. 14, p. 32-33, 65-66; Exh. 15, p. 283-284. Additionally, as reflected in the Peppermill's expert witness reports, the "value" of pars to the Peppermill is nonexistent. *See* **Exhibit 23**, p. 19-21 (Expert Report of Stacy Friedman) and Exhibit **24**, p. 4 (Expert Report of Anthony Lucas, Ph.D.). Most important, the casino industry does not believe that the pars have any value. *See*

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discussion Part IV.I, *supra*. Because the evidence shows that pars have no value, a "reasonable royalty" is not an available damage claim.

4. GSR's Reasonable Royalty Calculation Is Improperly Based Upon Peppermill's Revenue.

In its expert analysis, GSR's reasonable royalty on ***revenue***, not profit. *See* Exh. 8, p. 4. "[A] reasonable royalty is an amount which a person, desiring to manufacture and sell a patented article, as a business proposition, would be willing to pay as a royalty and yet be able to make and sell the patented article, in the market, at a reasonable profit." *Joy Technologies, Inc. v. Flakt, Inc.*, 954 F. Supp. 796, 806 (D. Del. 1996) (internal quotation omitted).

Aguero states that the admission by Peppermill's gaming counsel that "an extra percent [to Peppermill's pars] adds a hundred thousand dollars a week in revenue" "provides a fair starting point for ... a hypothetical agreement." . *See* Exh. 8, p. 4. Aguero is hopelessly confused. This case is about "gross pars". His damage model is based on a different and irrelevant concept, i.e., net pars. Also, Aguero fails to go beyond that first step and fails to calculate how such of Peppermill's speculative revenue translates into speculative profit. Amazingly, his own, widely-published analysis of the world-wide gaming industry states that, revenue goes **down** (not up) as pars go up in Nevada. *See* **Exhibit 25**, p. 40-42 (Slot Market Assessment: Analysis of Industry Data (February 25, 2015)). Accordingly, since GSR's basis reasonable royalty is disproven by Aguero's own published analysis, attempting to calculate profit from this non-existent revenue is untenable. At his deposition, Aguero never considered what revenue (hypothetical or otherwise) Peppermill would obtain by using GSR's par settings. His reasonable royalty calculation is unrelated to the facts in this case.

5. GSR's Has No Evidence That Pars Have Independent Value.

A reasonable royalty analysis requires the identification of what portion of profit is credited to the alleged "trade secret," as distinguished from the other non-trade secret part of the profit. *See LinkCo, Inc. v. Fujitsu Ltd.*, *supra*, 232 F. Supp. 2d at 187 (factor 13). Accordingly, GSR's reasonable royalty model must either (1) account for what portion of Peppermill profit is credited to the allegedly misappropriated pars or (2) provide an expert opinion and analysis under the "entire market value rule." The entire market value rule "permits recovery of damages based on

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the value of the entire apparatus [or product] containing several features, where the patent related [or trade secret] feature is the basis for customer demand." See *State Indus., Inc. v. Mor-Flo Indus., Inc.*, 883 F.2d 1573, 1580 (Fed.Cir.1989).

Here, Aguero offers no opinion as to whether the reasonable royalty accounts for any part of or percentage of Peppermill's profit or, alternatively, whether the pars in question were the aspect of Peppermill's gaming product that drove customer demand. In his deposition, Aguero was asked about how he apportioned the allegedly misappropriated pars as a component of the reasonable royalty, and he testified as follows:

> Q. . . . . But as a group of 15, have you attempted to determine an economic value that those 15 pars have to Peppermill as a group?
>
> A. No, sir.
>
> Q. I think I heard you say that, nonetheless, the pars are a component of your reasonable royalty opinion. Fair?
>
> A. Fair.
>
> Q. Have you apportioned what amount the pars have to that reasonable royalty from other aspects of your opinion?
>
> A. No, sir.
>
> Q. Other than pars, what other aspects are there that are in that reasonable royalty valuation other than pars?
>
> A. Well, I think the pars in and of themselves from the standpoint of how the casino was being managed. If the pars were moving up or down, it would give you insight relative to how the casino itself was being imagined. . . .
>
> Q. You've indicated to me -- correct me if I'm wrong -- that the pars, the 15 pars in those two exhibits, can fairly be considered a component of the overall opinion that a hypothetical license agreement would entail an $8 million compensation.
>
> A. I would change that from saying a component to a subset of.
>
> Q. Subset. Fair enough. Given the fact that those pars are a subset that in and of themselves have not been valued, what other sets or subsets are there in this license agreement that have been valued other than the pars?
>
> A. I would come back to the same statement that I made earlier, and that is that I feel like the sum of the parts are worth more than the whole; the idea that Mr. Tors went in, obtained this type of information both from the Grand Sierra as well as other properties and was trying to obtain business intelligence, trying to gather information. The pars are essentially the manifestation of that information.
>
> But, again, it's the concept of trying to obtain where the pars are set -- where the pars are set, whether they're moving up or down, and trying to look at that in the universe of other casino management information that seems to me to be the totality of what the value of that agreement, that theoretical agreement, would be.

See Exh. 6, p. 164:9-166:11.

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In sum, Aguero admits that the allegedly misappropriated pars are merely portion of the data that he utilized to calculate his reasonable royalty calculation. *Id.* at p. 117:6-12 ("[T]he sum of the parts are greater than the whole . . . ."). However, he cannot value the individual pars "from the constellation of other information." *See* Exh. 9, p. 224:10-14. Indeed, he never calculated or attempted to calculate the specific value of the pars themselves. *Id.* at p. 224:16-23. Moreover, there is no evidence in the record to suggest that the pars are subject to the entire market rule.

In light of GSR's failure to connect its reasonable royalty to the facts in this case, summary judgment is warranted.

V. GSR'S ALTERNATIVE THEORY OF DAMAGES

GSR claims that because of the Peppermill's activities, it had to change the locks on all of its slot machines. *See* Exh. 18, p. 30. The invoice and purchase order produced by GSR show an expense of $17,479 to purchase new locks for all of its slot machines. *See* Exh. 19. In addition to this cost, GSR contends that it is entitled to recover money for the man hours utilized to install the new locks at $5 per machine. *See* Exh. 18, p. 33, 35. Therefore, the claim for damages totals $23,159 (1136 machines at $5 labor per machine is $5,680, plus material at $17,479 is $23,159).

Given GSR inability to finish changing the locks, it is ludicrous to contend that these expenses were incurred expenses because of Tors' activities. If GSR actually believed there was a threat to its "trade secrets," it would have changed the locks on the remaining 518 slot machines. It has not done so. Further, GSR's person most knowledgeable on this subject does not know what the total damages are. *Id.*, at p. 33. However, he was able to provide an approximation, albeit a fuzzy one. Thus, summary judgment should be granted as to these change of lock cost due to a lack of certainty.

Regardless, GSR attempted to provide real sums and figures in support of its actual loss damages pursuant to NRS 600A.050. NRS 600A.050 *only* allows reasonable royalty damages *if* and only *if* there are no losses caused by the misappropriation:

> ***In lieu of*** damages measured by other methods, damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret. (Emphasis added).

Therefore, GSR is precluded from asserting a reasonable royalty, since it has made an effort to

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quantify its actual losses for changing the locks on its slot machines. Accordingly, summary judgment should be entered barring reasonable royalty damages.

VI. CONCLUSION

For the reasons stated, GSR has failed to present a triable issue of fact as to whether it sustained damages in this case. It failed to demonstrate that it incurred any loss caused by the misappropriation. It failed to demonstrate that Peppermill was unjustly enriched by possession of GSR's pars. GSR's reasonable royalty calculation is bizarre. It is not connected to the facts and circumstances in this case. Moreover, because it failed to provide evidence of use, disclosure, or value, there is no evidence to even support reasonable royalty damages.

There is no genuine issue of material fact that GSR has damages, and summary judgment should be entered accordingly.

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 18th day of November, 2015.

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IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiff,

vs.

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

Defendant.

CASE NO.: CV13-01704

DEPT. NO.: B7

BUSINESS COURT DOCKET

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

brief and cursory.

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

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

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

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

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

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

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

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

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

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

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

III. GSR'S CONFLATION OF THE UNIFORM TRADE SECRET ACT'S ("UTSA") MISAPPROPRIATION ELEMENT DOES NOT EXCUSE ITS FAILURE TO PROVE "USE" AS REQUIRED TO RECOVER A REASONABLE ROYALTY.

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

Second, the Opposition fails to understand that it is in response to a motion regarding only damages. This is highly apparent in its discussion regarding "use." As the Court may recall, a plaintiff must prove "a misappropriator's unauthorized *disclosure* or *use* of a trade secret" in order to recover a reasonable royalty. NRS 600A.505(1)(emphasis added); *see also* Opposition, 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[1] GSR cites to *Hallmark Cards, Inc. v. Monitor Clipper Partners, LLC*, No. 08-0840-CV-W-ODS, 2012 WL 3047308, at *6 (W.D. Mo. July 25, 2012) for the proposition that a plaintiff is free to 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.

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

> Contrary to Nieman's second contention that it did not "use" or "disclose" any confidential information, there was uncontroverted evidence that Nieman displayed the device at the November 1992 trade show, distributed brochures describing the device, and even offered it for sale. Olson knew nothing about these actions.
>
> Shortly before the trade show, Nieman terminated its relationship with Olson. Shortly after the trade show, Olson entered into a confidentiality agreement with Tekonsha, a Nieman competitor. After Olson disclosed the schematic diagram to Tekonsha pursuant to the agreement, the director of engineering for Tekonsha wrote Olson a letter in January 1993, stating that "another vendor does employ the exact idea which you have disclosed. The other vendor (Nieman) has utilized the flasher system for around six months." Olson called the writer of the letter who informed Olson that she had seen a brochure from the November 1992 trade show.
>
> The jury could reasonably find from this evidence that Nieman used or disclosed Olson's trade secret and by its actions placed it within the public domain.

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

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

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 been used, because there was evidence that the defendant "modified [the plaintiff's] formula, and used [the plaintiff's] manufacturing specifications to cut their own research time and streamline its manufacturing processes." *See id.* at 487. Similarly, in *Mid-Michigan Computer Sys., Inc. v. Marc Glassman, Inc.*, 416 F.3d 505, 510 (6th Cir. 2005), the court awarded a reasonable royalty, noting that defendant used the trade secret by "'sav[ing] research and manufacturing resources,' [that] it would have expended to develop the software that ultimately replaced [the plaintiff's] pharmacy software."

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

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

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

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

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

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

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

The email from Tors dated January 2, 2013 is not evidence of keying. *See id*, Exh. 5 Exh. 5 (PM 0085). It is evidence that Peppermill shopped GSR. This was a normal part of Tors' job responsibilities, as he was Peppermill's slot analysist, as noted below. The March 18, 2013 email is also not evidence of keying. *See id*, Exh. 5 (PM 0087). In this email, Aaron Robyns asked Tors to **"estimate"** the hold percentage on a Sex in the City theme video reel slot machine. *See id.*; *see also* Affidavit of Aaron Robyns ("Robyns Aff."), ¶ 2.[4] In response, Tors provided a guess, stating "[l]ooks like the most liberal is 10%, could 12, but I guess 10." *See* Opposition, Exh. 5 (PM 0087). Sex in the City is a wide area progressive machine. Its pars are readily ascertainable without the use of a key because the pars are set by the manufacturer of the machine. *See* Robyns Aff., ¶ 3. Mr. Tors could easily and readily ascertain the hold percentage on a wide progressive without utilizing a 2341 key and without doing anything improper or illegal. *See id.*

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

[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.

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

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

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

Additionally, GSR cites to an email Tors sent regarding the pars at the Atlantis and the responding email. *See* Opposition, p. 12:7-20. Tors admitted that the keying information from the Atlantis was an "estimate" of the Atlantis' particular par settings. *See* Affidavit of Denise Vessie, ¶ 4.[6] Although Tors admitted that he did not key the Atlantis in this instance, he indicated 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. *See id.* at ¶ 5. This relationship with "Dora" is corroborated by documents in the record. The response to Tors' email was merely a comment upon fabricated information. *See id.* at ¶ 7.

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[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.

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

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

VI. CONCLUSION.

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

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

DATED this 15th day of December, 2015.

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EXHIBIT 3

EXHIBIT 3

POTENTIAL TRIAL EXHIBITS

DEPOSITION EXHIBITS

1.	10/1/12	Merger Documents	GSR18,676-GSR18,681
2.	7/29/11	Lease	GSR18,609-GSR18,675
3.	11/6/05	Tors Employment Application	
4.		GSR Billboard Photographs	PM 34-39
5.		GSR Advertisements "Loosest Buffalo"	PM 3
6.		2341 Key on EBay	PM 4-15
7.	12/29/11	8:59 a.m. Tors Email	PM 0079-80
8.	6/15/12	8:51 A.M. Tors Email	PM 0081-82
9.	6/25/12	2:17 p.m. McHugh Email to Smercina re: Sending 6/15/12 Tors emails	PM 0083-84
10.		Diagnostic Screen	
11.		Keying Spreadsheets from other casinos (Redacted)	(TOR0087-96)
12.	2/18/14	GCB Complaint	
13.	7/12/13	GSR Incident Report	GRA0001-0018
14.	7/12/13	Handwritten Key Sheet by Tors	
15.	7/12/13	Tors Transcript from GSR re: interview by GCB	PM 0053-78
16.	1/2/13	11:24 a.m. Tors Email re: New Year's eve shop (see PM9615-PM9616 for non-redacted copy)	PM 0085-86
17.	8/2/13	GSR Complaint	

18.		Michael Draeger LinkedIn Profile	
19.	01/16/15	Alex Murello Deposition	
20.	9/2014	Affidavit of David Schwartz	
21.		David Schwartz Curriculum Vitae	GSR 0048-99
22.		Marketations Website	
23.	2/19/14	Contra Costa Times Article re: "Seeno family casino chain fined $1 million"	
24.	10/1/14	Confirming Order re: GSR to provide damage calculation	
25.	12/10/14	Order in CV12-0222	PM14516-PM14518
26.		David Schwartz Website Information	
27.	12/31/11	Year End Gaming Revenue Report (GCB)	
28.	6/30/12	Gaming Revenue Report (GCB)	
29.	7/31/13	Gaming Revenue Report (GCB)	
30.		Steve Rosen LinkedIn Profile	
31.	11/2011	Slot Report	GSR17,811-GSR12,980
32.	12/2011	Slot Report	
33.	1/2012	1/31/12 EOM Walk About	GSR7820-GSR7859
34.		Terry Vavra Linkedin Profile	
35.	11/03/14	GSR Answers to 2nd Set of Interrogatories	
36.	09/17/14	Compton Dancer Consulting Website	PM0116-146
37.	11/11/15	Charles Lombardo Deposition	
38.		"Reno Loosest Slots in the USA" Billboard by PM & Atlantis	

39.		Quote & Invoice for Security Switch Locks for Reset GSR00100-00102	
40.	5/2012	Slot Detail Report	GSR4748-GSR4899
41.	6/2012	Slot Detail Report	GSR3654-GSR3805
42.	6/30/12	EOM Walk About	GSR7860-GSR7928
43.	7/2012	Slot Detail Report	GSR3008-GSR3119
44.		Toby Taylor Linkedin Profile	
45.	04/22/14	Severance Agreement and Release of all Claims (Tors)	
46.	12/10/14	Indemnification Agreement	
47.	11/13/15	Rex Carlson Deposition	
48.	11/17/14	Third Supplemental Amended Notice of Taking Depositions of Plaintiff's Persons Most Knowledgeable Pursuant to NRCP 30(b)(6)	
49.	11/24/14	Notice of Taking Depositions of Plaintiff's Persons Most Knowledgeable Pursuant to NRCP 30(b)(6)	
50.		GSR Slot Add Worksheet re: machine location and setting (including par) for certain machines	
51.		Gaming Date of 7/12/2013 (Customer List and Machine numbers)	
52.	02/25/14	Notice to Licensees re: slot machine keys	PM0052
53.	11/19/14	GSR Website Slots and Video Poker (Loosest Buffalo)	
54.	11/07/14 & 11/17/14	List of games with par settings	
55.	12/15/14	Stacy Friedman Profile Data	
56.		Chart of GSR Earning structure for comp points	
57.	12/17/14	Email from Toby Taylor to Mark Wray	

		regarding Answers to PAR vs Theo Variance (see exhibit 54)	
58.	2011	GSR Mailers	
59.	2012	GSR Mailers	
60.	2013	GSR Mailers	
61.	2014	GSR Mailers	
62.		Coin in and Slot Win Graph (2009-2013)	
63.	02/20/15	30(b)(6) Deposition Notice (Monday)	
64.	02/27/15	30(b)(6) Deposition Notice (Tuesday)	
65.		Lock Replacement Schedule	
66.		Lock Purchase Order	
67.		Lock Invoice	
68.		Lock Expense Schedule	
69.	03/13/15	Email from Franzen to Taylor (cc: Davies) re: Since 07/13/13 have installed 344 new slots	
70.	03/13/15	Email from Franzen to Taylor (cc: Davies) re: 1136 Slots as of 11/14; 848 were penny	
71.	03/13/15	Franzen Memo to Taylor re: Lock installation details	
72.		Locks installed by section	
73.		Custodian of Records Statement	PM0682
74.		CDC invoices to GSR	PM0684-PM0692
75.	05/07/10	CDC Report re: Slot Comp	PM0694-PM0699
76.	05/12/10	CDC Report re: Direct Mail	PM0700-PM0705

77.	06/2014	CDC Report re: free play & comp rewards	PM0707-PM0711
78.	07/2014	CDC Report re: Direct Mail	PM0901-PM0950
79.	08/2014	CDC Report re: Direct Mail	PM0804-PM0851
80.	09/2014	CDC Report re: Direct Mail	PM0712-PM0756
81.	10/2014	CDC Report re: Direct Mail	PM0852-PM0900
82.	11/2014	CDC Report re: Direct Mail	PM0757-PM0803
83.	12/2014	CDC Report re: Direct Mail	PM0952-PM0906
84.	01/2015	CDC Report re: Direct Mail	PM0997-PM1041
85.	05/14/14	CDC Contract with GSR (signed by Mimno)	
86.		Bean Timeline at Peppermill	
87.	06/15/06	Email re: Bean responding to inquiry personnel	
88.	09/18/06	Email from Bean to Hughes re: letter to guests	
89.	11/30/06	Email from Bean to Hughes re: Internet and Email access	
90.	12/08/06	Email from Bean to Hughes re: Free Play Policy	
91.	12/29/06	Email from Bean to Hughes re: Southwest site	
92.	02/01/07	Email from Bean to Hughes re: Dan Duerst	
93.	02/04/07	Email from Bean to Hughes re: Sturgell bill	
94.	05/11/07	Email re: Bean responding about Apparel Store comps	
95.	09/17/07	Email from Bean to Hughes re: Booking rooms	
96.	09/27/07	Email from Bean to Hughes re: access outside of work property	
97.	10/16/07	Email from Bean to Chris Joy re: UNR vs. Hawaii	
98.	11/13/07	Email re: Sign for Health Club	
99.	11/14/07	Email from Bean to Hughes re: Southwest Magazine	

100.	11/28/07	Email from Bean to Hughes re: new suite offers	
101.	12/03/07	Email re: John silver and bonus rounds	
102.	12/04/07	Email re: filing harassment statement against Bean	
103.	12/04/07	Email re: Bean demanding an apology	
104.	12/05/07	Email re: requesting two reports	
105.	12/04/07	Email re: recording info booth	
106.	12/05/07	Email re: machines that were set up incorrectly	
107.	12/11/07	Email re: Tuscan Towers	
108.	05/20/08	Email forwarded to Denise Vessie re: Bean emails	
109.	01/05/11	Email forwarded to Denise Vessier re: Fantasy Football League	
110.	01/07/11	Letter to Bean from Hicks; Employ Agreement Form	
111.	06/15/06	Email re: room reservations not entered	
112.	02/13/14	Stipulation for Settlement and Order (GCB)	
113.	08/26/13	Affidavit of William Paganetti	
114.	06/13/13	Tors email to Moritz re: sending pars summary	PM0088-0089
115.	03/05/15	Notice of Taking Depositions of Defendant Peppermill Casino, Inc. Persons Most Knowledgeable Pursuant to NRCP 30(B)(6)	
116.	04/10/14	Letter to Mr. Vellis from Kinnally re: Demand for Preservation of Electronically Stored Information	
117.	06/08/09	Employ Agreement Form (Scott Bean)	
118.	12/15/14	Defendant Peppermill Casinos, Inc.'s Answers to Plaintiff MEI-GSR's First Set of Interrogatories	
119.	03/26/15	Amended Notice of Taking NRCP 30(B0(6) Deposition of Christopher Abraham, Plaintiff's Person Most Knowledgeable Pursuant to NRCP 30(B)(6)	

120.		John Stone Deposition	
121.		GSR Slots and Video Poker Website	
122.	2010-2014	Penny Video and Reels Net Win, Gross Theo Free-Play Summary	PM2844
123.	2009-2/2015	NGC Monthly Gross Revenue Reports (Highly Confidential)	PM2845-PM2992
124.	2009-2014	Internal Audit Report Submission (Highly Confidential)	PM2993-PM3075
125.		Tom Sullivan LinkedIn Page	
126.	06/2015	Gaming Abstract Page	
127.		GSR Buffalo Billboard	PM1054
128.	12/10/14	GSR Answer to Peppermill's First Request for Admissions	
128.	05/19/08	Vessie memo re: meeting with Stoll discussing Termination; Stoll describes survey process	PM14030
129.	05/20/08	Denise Vessie memo re: meeting with Stoll; Details about surveys/contests; copy of blank Ballot	PM12951-PM12959
130.		Spreadsheet showing 5/2008 advertising expenses	PM14031
131.	05/20/08	Denise Vessie memo re: spoke to Bill and Nat; Bill did not know	PM14032
132.	05/20/08	Vessie memo re: discussion with Pat Hicks about Contest situation	PM13961
133.	05/20/08	Stoll chart showing money owed for filling out forms	PM13960
134.	05/21/08	Vessie memo re: discussion with Hicks and Roskelley re: will need to pay individuals; Stoll Will be terminated if she doesn't sign resignation	PM13962
135.	05/30/08	Kari Hooker letter to Denise Vessie re: requesting	PM13963