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Submitted by:

PISANELLI BICE PLLC

By: _____

James J. Pisanelli, Esq., Bar No. 4027
Debra L. Spinelli, Esq., Bar No. 9695
M. Magali Mercera, Esq., Bar No. 11742
Brittnie T. Watkins, Esq., Bar No. 13612
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Plaintiffs

STEVEN D. GRIERSON
CLERK OF COURT

By: _____ 9/6/2017

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Las Vegas, NV 89155

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Attorneys for Plaintiffs

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DISTRICT COURT

CLARK COUNTY, NEVADA

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY,

Plaintiffs,

v.

ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC; and J. JEFFREY FREDERICK,

Defendants.

Case No.: A-17-760537-B

Dept. No.: XXVII

SUMMONS TO MOTI PARTNERS 16, LLC

SUMMONS – CIVIL

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

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Submitted by:

PISANELLI BICE PLLC

By: _____

James J. Pisanelli, Esq., Bar No. 4027
Debra L. Spinelli, Esq., Bar No. 9695
M. Magali Mercera, Esq., Bar No. 11742
Brittnie T. Watkins, Esq., Bar No. 13612
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Las Vegas, Nevada 89101

Attorneys for Plaintiffs

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CLERK OF COURT

By: _____ 9/6/2017

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DISTRICT COURT

CLARK COUNTY, NEVADA

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY,

Plaintiffs,

v.

ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC; and J. JEFFREY FREDERICK,

Defendants.

Case No.: A-17-760537-B

Dept. No.: XXVII

SUMMONS TO TPOV ENTERPRISES, LLC

SUMMONS – CIVIL

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Submitted by:

PISANELLI BICE PLLC

By: /s/ M. Mercera

James J. Pisanelli, Esq., Bar No. 4027
Debra L. Spinelli, Esq., Bar No. 9695
M. Magali Mercera, Esq., Bar No. 11742
Brittnie T. Watkins, Esq., Bar No. 13612
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Las Vegas, Nevada 89101

Attorneys for Plaintiffs

STEVEN D. GRIERSON
CLERK OF COURT

By: /s/ Kim M. Martin 9/6/2017

Deputy Clerk Kim Martin
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

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702.214.2100

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Telephone: 312.862.2000

Attorneys for Plaintiffs

PISANELLI BICE PLLC
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LAS VEGAS, NEVADA 89101
702.214.2100

DISTRICT COURT

CLARK COUNTY, NEVADA

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY,

Plaintiffs,

v.

ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC; and J. JEFFREY FREDERICK,

Defendants.

Case No.: A-17-760537-B

Dept. No.: XXVII

SUMMONS TO TPOV ENTERPRISES 16, LLC

SUMMONS – CIVIL

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Submitted by:

PISANELLI BICE PLLC

By: /s/ M. Mercera

James J. Pisanelli, Esq., Bar No. 4027
Debra L. Spinelli, Esq., Bar No. 9695
M. Magali Mercera, Esq., Bar No. 11742
Brittnie T. Watkins, Esq., Bar No. 13612
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Plaintiffs

STEVEN D. GRIERSON
CLERK OF COURT

By: /s/ Kim N. Martin 9/6/2017

Deputy Clerk Kim Martin
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

PISANELLI BICE PLLC
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702.214.2100

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9/12/2017 12:26 PM
Steven D. Grierson
CLERK OF THE COURT

AFFT
Pisanelli Bice, PLLC
James J. Pisanelli, Esq.,
400 S. 7th Street, Suite 300
Las Vegas , NV 89101
State Bar No.: 4027
Attorney(s) for: Plaintiff(s)

DISTRICT COURT
CLARK COUNTY, NEVADA

Desert Palace, Inc.; et al.
vs
Rowen Seibel; et al.

Plaintiff(s)
Defendant(s)

Case No.: **A-17-760537-B**
Dept. No.: **XXVII**
Date:
Time:

AFFIDAVIT OF SERVICE

Tina Irizarry, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the **Summons to GR Burgr, LLC; Complaint; Business Court Civil Cover Sheet** on the **7th** day of **September**, **2017** and served the same on the **7th** day of **September**, **2017** at **2:25 pm** by serving the **Defendant(s)**, **GR Burgr, LLC** by personally delivering and leaving a copy at **Registered Agent, United Corporate Services, 874 Walker Rd., Suite C, Dover, DE 19904** with **Tara Fox, Authorized Agent** pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.

State of **Delaware**, County of Kent
SUBSCRIBED AND SWORN to before me on this
11th day of September, **2017**

Tina Irizarry
Affiant: **Tina Irizarry**
Process Server

Shelly Rae Miles
Notary Public

Shelly Rae Miles
Notary Public
State of Delaware
Kent County
No. 220151229000017
My Commission Expires Dec. 29, 2017

WorkOrderNo **1706228**

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9/14/2017 9:30 AM
Steven D. Grierson
CLERK OF THE COURT

AFFT
Pisanelli Bice, PLLC
James J. Pisanelli, Esq.,
400 S. 7th Street, Suite 300
Las Vegas, NV 89101
State Bar No.: 4027
Attorney(s) for: Plaintiff(s)

DISTRICT COURT
CLARK COUNTY, NEVADA

Case No.: **A-17-760537-B**

Desert Palace, Inc.; et al. *Plaintiff(s)*
vs
Rowen Seibel; et al. *Defendant(s)*

Dept. No.: **XXVII**

Date:
Time:

AFFIDAVIT OF SERVICE

Denorris Britt, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the **Summons to DNT Acquisition, LLC; Complaint; Business Court Civil Cover Sheet** on the **7th** day of **September**, **2017** and served the same on the **7th** day of **September**, **2017** at **3:40 pm** by serving the **Defendant(s)**, **DNT Acquisition, LLC** by personally delivering and leaving a copy at **Registered Agent, Corporation Trust Company, 1209 Orange St., Wilmington, DE 19801** with **Amy McLaren, authorized employee** pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.

State of **Delaware**, County of **New Castle**
SUBSCRIBED AND SWORN to before me on this
14 day of **Sept.**, **2017**

KEVIN DUNN
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires September 14, 2020

Notary Public

Affiant: **Denorris Britt**
Process Server

WorkOrderNo **1706227**

Electronically Filed
9/26/2017 1:25 PM
Steven D. Grierson
CLERK OF THE COURT

IAFD
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Telephone: (702) 614-0600
Facsimile: (702) 614-0647
Attorney for defendant J. Jeffrey Frederick.

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY,

Plaintiffs,

v.

ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16,LLC; FERG, LLC; FERG 16, LLC; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC; and J. JEFFREY FREDERICK,

Defendants.

CASE NO. A-17-760537-B
DEPT NO. XXVII

INITIAL APPEARANCE FEE DISCLOSURE

Pursuant to NRS Chapter 19, as amended by Assembly Bills, filing fees are hereby submitted for certain parties appearing in the above entitled action, as indicated below:

J. JEFFREY FREDERICK, *defendant* $1,483.00

Total Remitted: $1,483.00

DATED: September 26, 2017

ATKINSON LAW ASSOCIATES LTD.

By: /s/ Robert Atkinson
ROBERT E. ATKINSON, ESQ.
Nevada Bar No. 9958

Electronically Filed
9/26/2017 1:25 PM
Steven D. Grierson
CLERK OF THE COURT

NOTA
ROBERT E. ATKINSON, ESQ., Bar No. 9958
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ATKINSON LAW ASSOCIATES LTD.
8965 S Eastern Ave., Suite 260
Las Vegas, NV 89123
Telephone: (702) 614-0600
Attorney for Defendant J. Jeffrey Frederick

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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Defendants.

CASE NO. A-17-760537-B
DEPT NO. XXVII

NOTICE OF APPEARANCE FOR DEFENDANT J. JEFFREY FREDERICK

TO: ALL PARTIES-IN-INTEREST and their COUNSEL OF RECORD:

ROBERT E. ATKINSON, ESQ. of the law firm ATKINSON LAW ASSOCIATES LTD., hereby enters his appearance on the record in the above-captioned case as attorney of record for defendant J. JEFFREY FREDERICK. Service of all motions, notices, and filed documents and pleadings for this party should be made by electronic service via the Eighth District Court's electronic filing system, or, if by U.S. mail, directed to: Robert E. Atkinson, Esq., Atkinson Law Associates Ltd., 8965 S. Eastern Ave. Suite 260, Las Vegas, NV 89123.

DATED: September 26, 2017

ATKINSON LAW ASSOCIATES LTD.

By: /s/ Robert Atkinson
ROBERT E. ATKINSON, ESQ. # 9958
Attorney for J. Jeffrey Frederick

CERTIFICATE OF SERVICE

I hereby certify that, on September 26, 2017, I caused to be served the foregoing document entitled **NOTICE OF APPEARANCE** on the following persons and entities, using the means so indicated:

☒ **BY ELECTRONIC SERVICE:** Pursuant to EDCR 8.05(a) and (f), via the Eighth District Court's electronic filing system, to:

For Plaintiffs:

Pisanelli Bice	lit@pisanellibice.com
Magali Mercera	mmm@pisanellibice.com
Debra L Spinelli	dls@pisanellibice.com
Cinda Towne	cct@pisanellibice.com
Brittnie Watkins	btw@pisanellibice.com

DATED: September 26, 2017

/s/ Robert Atkinson
ROBERT ATKINSON, ESQ.
Attorney for J. Jeffrey Frederick

EXHIBIT E

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MATTHEW C. WOLF (SBN 10801)
CARBAJAL & MCNUTT, LLP
625 South Eighth Street
Las Vegas, Nevada 89101
Tel. (702) 384-1170 / Fax. (702) 384-5529

NATHAN Q. RUGG*
STEVEN B. CHAIKEN*
Admitted *Pro Hac Vice*
ADELMAN & GETTLEMAN, LTD.
53 West Jackson Boulevard, Suite 1050
Chicago, IL 60604
Tel. (312) 435-1050 / Fax. (312) 435-1059

Attorney for Defendants:
LLTQ ENTERPRISES, LLC;
LLTQ ENTERPRISES 16, LLC;
FERG, LLC; AND FERG 16, LLC

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

IN RE: , Debtor(s) DESERT PALACE, INC., et al., Plaintiffs, v. LLTQ ENTERPRISES, LLC, et al., Defendants.	Adv. No.: 17-01238-led **REPLY IN SUPPORT OF MOTION TO TRANSFER VENUE OF CLAIMS AGAINST LLTQ/FERG DEFENDANTS** **Hearing Date: November 6, 2017** **Hearing Time: 1:30 p.m.**

NOW COME LLTQ ENTERPRISES 16, LLC ("LLTQ 16"), LLTQ ENTERPRISES, LLC ("LLTQ"), and FERG 16, LLC ("FERG 16"), and FERG, LLC ("FERG," and together with LLTQ 16, LLTQ and FERG 16, the "LLTQ/FERG Defendants" or "Movants"), by and through their undersigned counsel, and for their reply in support of their motion to transfer venue to the United States Bankruptcy Court for the Northern District of Illinois [Docket No. 8] (the "Motion")[1], respectfully state as follows:

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Motion.

I. Introduction.

Caesars' objection focuses on remand and subject matter jurisdiction issues to the exclusion of the deciding factors for Movants' requested transfer of venue. As detailed in the Motion, (a) this Court has full discretion to transfer venue, which decision is to be made on a case-by-case basis, and (b) all of the relevant factors favor transfer, e.g. convenience; efficient administration of the estate; judicial economy; timeliness; and fairness. That such elements favor transferring the LLTQ/FERG Removed Claims is self-evident as Caesars and the LLTQ/FERG Defendants have been litigating the merits of and defenses to such claims in the Chapter 11 Cases and the IL Bankruptcy Court since June 2015. The parties are still in the midst of contentious discovery as well.

This Court, however, is not required to first resolve Caesars' requested remand before ruling on the present Motion. The case law cited by Caesars in fact supports that remand should be decided by the "home court" (here, the IL Bankruptcy Court) because there are bankruptcy jurisdictional issues to be resolved. The IL Bankruptcy Court has an in-depth understanding of Caesars' Chapter 11 Cases and the LLTQ/FERG Removed Claims, as well as the practical relationship that the Caesars' state law claims have to the Pending Bankruptcy Motions. As the home court under such circumstances, the IL Bankruptcy Court should decide whether remand is appropriate.

Subject matter jurisdiction exists with this Court and the IL Bankruptcy Court through both "arising under" and "related to" jurisdiction. The operative legal and factual issues in the LLTQ/FERG Removed Claims (i.e. the business history among the parties, the Pub Agreements, alleged breaches thereof, survival of restricted covenants therein, alleged fraudulent inducement, and whether Caesars can void the contracts) are the basis for LLTQ/FERG's Admin Request under section 503 of the Bankruptcy Code, Caesars' affirmative defenses thereto, and the LLTQ/FERG Defendants' defenses to Caesars' Rejection Motion and Ramsay Rejection Motion under sections 363 and 365 of the Bankruptcy Code. "Arising under" jurisdiction thus exists.

Because these contested matters and discovery therein were initiated prior to confirmation in the Chapter 11 Cases and continue to date, "related to" jurisdiction exists as well. Caesars has repackaged its claims and affirmative defenses to the Pending Bankruptcy Motions and sought a new court to decide same. These same defenses (i.e. the claims asserted in the LLTQ/FERG Removed Claims) and the underlying Pending Bankruptcy Motions were filed

well before the IL Bankruptcy Court confirmed Caesars' plan of reorganization. As such, the expansive test under *Pacor* for "related to" jurisdiction applies.

"Related to" jurisdiction also exists under the more stringent "close nexus" test. Caesars' plan of reorganization –which was confirmed but not effective as of the filing of the LLTQ/FERG Removed Claims– expressly retains jurisdiction to resolve the Pending Bankruptcy Motions (and all claims and matters related thereto) and provides broad protections to Caesars for issues not resolved as of the effective date of the plan. Both the implementation and the administration of Caesars' plan are therefore implicated.

Caesars inaccurately states that Movants conceded that the FERG/LLTQ Removed Claims should be decided outside of the pending Chapter 11 Cases. Rather, Movants made an argument to this effect in connection with a motion for a protective order against "suitability discovery" in the Pending Bankruptcy Motions. Caesars opposed the motion arguing that its fraud in the inducement defense was properly before the IL Bankruptcy Court in connection with the Pending Bankruptcy Motions. The IL Bankruptcy Court denied Movants' motion for a protective order, thereby allowing suitability discovery to proceed on the very claims which the LLTQ/FERG Defendants seek to have transferred.

Finally, to the extent necessary to address the issues raised in the Limited Objection filed by defendant J. Jeffrey Frederick, the LLTQ/FERG Removed Claims may be severed under Rule 21 of the Federal Rules of Civil Procedure.

This Court should therefore transfer venue to the IL Bankruptcy Court without delay.

II. This Court should transfer venue of the LLTQ/FERG Removed Claims and allow the IL Bankruptcy Court to decide whether to maintain jurisdiction over or remand the LLTQ/FERG Removed Claims.

This Court has wide discretion over whether to hear a motion to transfer prior to a motion to remand. *Pac. Inv. Mgmt. Co. LLC v. Am. Int'l Grp., Inc.*, 2015 WL 3631833, at *4 (C.D. Cal. June 10, 2015) ("[D]istrict courts have discretion over whether to hear a motion to transfer prior to a motion to remand."). The cases cited by Caesars alleging a "recognized approach" in the Ninth Circuit do not mandate that this Court decide Caesars' remand motion prior to deciding the pending transfer motion. Caesars' cited cases (i) provide that the decision is extremely sensitive to the facts of the particular case; and (ii) do not involve remand in connection with bankruptcy matters.

For example, in *Pacific Investment*, the court asserts that transfer motions should be

considered before remand motions in certain circumstances, including where, as here, questions of bankruptcy jurisdiction and removal issues are present. *Id.* at *4 "Only in rare circumstances should transfer motions be considered before remand motions. For example . . . where 'related to [bankruptcy] jurisdictional and removal' raises 'difficult questions.'" *Id.* (citations omitted). Recently, another court in the Ninth Circuit similarly stated a motion to transfer should be considered before a motion to remand "where the case is related to bankruptcy and raises 'difficult questions.'" *Hawkins v. Biotronik, Inc.*, 2017 WL 838650, at *3 (C.D. Cal. March 3, 2017).

Not surprisingly then, where a bankruptcy court is simultaneously confronted with both a motion to transfer venue and a motion to remand, courts often favor transferring the action to the "home" court of the bankruptcy to decide the remand motion. *See In re Wedlo, Inc.*, 212 B.R. 678, 679 (Bankr. M.D. Ala. 1996) ("the bankruptcy court in which the chapter 11 case is pending is in the best position to determine the issues underlying the motion to remand, abstain, or dismiss").

"All of the known authorities hold that, where a bankruptcy court is simultaneously confronted with (1) a Motion, pursuant to 28 U.S.C. § 1412, to transfer or change venue of an action which has been removed to it pursuant to 28 U.S.C. § 1452(a); and (2) a Motion to remand or otherwise abstain from hearing the change of venue action, pursuant to 28 U.S.C. § 1334(c), the action should be transferred to the 'home' court of the bankruptcy to decide the issues of whether to remand or abstain from hearing the action." *In re Covenant Guardian Corp.*, 75 B.R. 346, 347 (Bankr. E.D.Pa. 1987); *see also In re Gallucci*, 63 B.R. 93, 94 (Bankr. D.R.I. 1986); *Seybolt v. Bio-Energy of Lincoln, Inc.*, 38 B.R. 123, 128 (Bankr. D. Mass.1984); *Colarusso v. Burger King Corp.*, 35 B.R. 365, 368 (Bankr. E.D.Pa. 1984). Common themes from these lines of decisions are that the "home court" is more familiar with the pending bankruptcy case and what may be required for its efficient administration and can better evaluate all the interests involved.

Similarly, a district court may transfer a case to the home bankruptcy court to decide remand issues to prevent a court in one district from interfering with the administration of a bankruptcy case already pending in another district. *Tallo v. Gianopoulos*, 321 B.R. 23, 28 (E.D.N.Y. 2005). "Permitting the bankruptcy court to decide the motion for remand is in accord with the strong presumption in favor of placing venue in the district where the bankruptcy

proceedings are pending. *Id.* (citing *In re Enron Corp.*, 317 B.R. 629, 642 (Bankr. S.D.N.Y. 2004)).

Consistent with this line of reasoning, the IL Bankruptcy Court is in the best position to determine the propriety of remand. The IL Bankruptcy Court has an extensive history and knowledge with respect to the Chapter 11 Cases, the Pending Bankruptcy Motions and related discovery disputes among the parties. Caesars' confirmed plan of reorganization [Docket No. 6318 in the Chapter 11 Cases] (the "Plan") contains and explicitly reserves jurisdiction with respect to the Pending Bankruptcy Motions and all matters related thereto. Accordingly, this Court should transfer venue of the LLTQ/FERG Removed Claims before deciding the motion to remand.

III. The Bankruptcy Courts have jurisdiction over the LLTQ/FERG Removed Claims.

Even if this Court were to decide the remand motion first, it would be constrained to deny it and find that the Court has subject matter jurisdiction over the LLTQ/FERG Removed Claims under either the "arising under" and/or "related to" tests.

"A proceeding 'arises under' Title 11 when the cause of action is created or decided by a provision of Title 11. . . The meaning of 'arising in' is not as clear, but seems to refer to those matters that arise only in a bankruptcy case. In other words, 'arising in' proceedings are not based on any right created by Title 11, but, nevertheless, would have no existence outside of the bankruptcy." *In re Waters Asbestos & Supply Co., Inc.*, 225 B.R. 196, 198 (Bankr. D. Idaho 1998) (citing *In re Harris Pine Mills*, 44 F.3d 1431, 1435 (9th Cir.1995)).

The Pending Bankruptcy Motions are, on their face, respectively based on sections 363, 365 and 503 of the Bankruptcy Code. Caesars cannot reject the Pub Agreements without employing section 365, and the LLTQ/FERG Defendants cannot obtain an administrative priority expense claim against Caesars' estate outside of section 503 of the Bankruptcy Code. The parties appear to be in agreement that the LLTQ/FERG Removed Claims (i.e. challenging the existence, enforceability, and survival of the restrictive covenants in the Pub Agreements) control the claims and defenses in the Pending Bankruptcy Motions. As such, subject matter jurisdiction exists and this Court may transfer the LLTQ/FERG Removed Claims.

A. The LLTQ/FERG Removed Claims are identical to claims and defenses currently being prosecuted by Caesars in all three Pending Bankruptcy Motions.

The relief sought in the LLTQ/FERG Removed Claims arises out of the Pub Agreements –specifically, the restrictive covenants contained therein and the enforceability of thereof– which are at the heart of the pending disputes in the various Pending Bankruptcy Motions. These contract issues cannot be separated from the Pending Bankruptcy Motions for jurisdictional purposes.

For example, a bankruptcy court does not lose jurisdiction over an administrative priority claim asserted in a bankruptcy case simply because the claim is based on a contract. In *Waters Asbestos& Supply Co.*, the bankruptcy court denied a motion to remand a removed state law contract claim because it was effectively an administrative claim arising under section 503 of the Bankruptcy Code.

> While Plaintiff's original action is based upon the account agreement between Plaintiff and Defendants, and therefore state law, the parties' claims against Trustee may be seen as arising under Title 11. . . The basis of the Third Party Complaint is an alleged agreement between Defendants and Trustee . . . In effect, Defendants assert what amounts to an administrative priority claim under Section 503 of the Bankruptcy Code for the cost of the materials purchased by Defendants. As such, whether Defendants are entitled to allowance of their claim against Trustee will be governed by the provisions of Title 11. Jurisdiction therefore exists under Section 1334(b) . . .
>
> *Waters Asbestos & Supply*, 225 B.R. at 198.

"Arising under" jurisdiction thus exists.

Caesars correctly points out that the LLTQ/FERG Defendants previously argued that Caesars' fraud in the inducement claim (just one of the issues in the LLTQ/FERG Removed Claims) was not properly before the IL Bankruptcy Court. Caesars however fails to provide the context for this argument and, importantly, that this argument did not prevail thereby allowing Caesars to bring such defenses in the Pending Bankruptcy Motions.

As part of its objection to the LLTQ/FERG Defendants' request for payment of an administrative expense claim in the Chapter 11 Cases, Caesars sought to obtain discovery related to the "suitability" of Rowen Seibel (and by extension, of the LLTQ/FERG Defendants) for use in all three Pending Bankruptcy Motions. The IL Bankruptcy Court denied, without prejudice,

the LLTQ/FERG Defendants' motion for partial summary judgment[2] because of this alleged need for suitability discovery. Caesars contended that such discovery was necessary to support Caesars' claim that it was fraudulently induced into entering agreements with the LLTQ/FERG Defendants and therefore the Pub Agreements are subject to being rescinded or voided. Caesars has repeatedly argued in the Chapter 11 Cases that if the Pub Agreements are rescinded or voided, the Rejection Motion and Ramsay Rejection Motion would be moot and the LLTQ/FERG Admin Request must be denied. Caesars first asserted this affirmatives defense in the MSJ Objection (¶¶5-7) in October 2016, almost one year before filing the complaint containing the LLTQ/FERG Removed Claims.

The LLTQ/FERG Defendants filed a motion for a protective order with respect to the suitability discovery asserting that Caesars' claim for rescission or fraud in the inducement was (i) deficient and unsupportable as a matter of law, and (ii) an affirmative defense/counterclaim which was not presently before the IL Bankruptcy Court under the applicable Bankruptcy Rules and, therefore, should remain separate from the Pending Bankruptcy Motions. In successfully defeating the request for a protective order, Caesars stated:

> the Debtors have claims for fraudulent inducement and rescission of the contracts. Procedurally, the Court may, under Bankruptcy Rule 9014, direct that Bankruptcy Rules 7008 and 7013 apply to a contested matter. . . If the Court does so, the Debtors can assert fraudulent inducement as either an affirmative defense or counterclaim. Alternatively, the Debtors are willing to initiate an adversary proceeding if necessary.
>
> Exhibit B to the Motion, p. 14.

The IL Bankruptcy Court denied the motion for protective order and allowed Caesars to proceed with discovery on its fraud in the inducement and rescission defenses. As such, the argument made by the LLTQ/FERG Defendants was unsuccessful and Caesars' fraud in the inducement defense and the related asserted defenses of rescinding or voiding the underlying Pub Agreements are currently being prosecuted by Caesars in the IL Bankruptcy Court in connection with the Pending Bankruptcy Motions.

B. The Court has "Related To" Jurisdiction under 28 U.S.C. § 1334

Under either the *Pacor* test or "close nexus" test, the Court has "related to" jurisdiction of the LLTQ/FERG Removed Claims.

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[2] Caesars Preliminary Objection to the LLTQ/FERG Defendants' motion for partial summary judgment [Chapter 11 Cases Docket No. 5246] (the "MSJ Objection") is attached hereto as Exhibit A.

Prior to 2005, the Ninth Circuit relied on a formulation set forth in *Pacor, Inc. v. Higgins,* 743 F.2d 984 (3d Cir. 1984) to determine "related to" jurisdiction under 28 U.S.C. § 1334. *See In re Pegasus Gold Corp*., 394 F.3d 1189, 1193 (9th Cir. 2005). In *Pegasus Gold*, the Ninth Circuit asserted that post-confirmation bankruptcy jurisdiction is more limited, and therefore adopted the "close nexus" test because it both "recognizes the limited nature of post-confirmation jurisdiction but retains a certain flexibility. . ." *Id.* at 1194. Under the close nexus test "matters affecting 'the interpretation, implementation, consummation, execution, or administration of the confirmed plan will typically have the requisite close nexus.'" *Id.* (citation omitted).

Notably, under the close nexus test, the Ninth Circuit found related to jurisdiction even though "the majority of the claims asserted in the complaint are common state tort and contract claims involving post-confirmation conduct" (including fraud in the inducement) because interpretation, implementation and execution of the plan could be affected by the claims. *Id.* The close nexus test requires particularized consideration of the facts and posture of each case. *In re Wilshire Courtyard*, 729 F.3d 1279, 1289 (9th Cir. 2013). "Such a test can only be properly applied by looking at the whole picture." *Id.*

1. The Confirmed Plan expressly retains jurisdiction to resolve the FERG/LLTQ Removed Claims and the Pending Bankruptcy Motions

Article III of the Plan provides for payment of administrative claims not allowed as of the Effective Date (i.e. October 6, 2017), within 30 days after the date on which an order of the IL Bankruptcy Court allowing such administrative claim becomes a final order. It also sets a deadline for filing administrative claims. Article V of the Plan provides that all Executory Contracts shall be deemed assumed as of the Effective Date unless the contracts were, among other things, "the subject of a motion to reject Filed on or before the Effective Date."

Article XI of the Plan expressly provides that, notwithstanding the entry of the order confirming the Plan, "on and after the Effective Date, to the extent legally permissible, the [IL] Bankruptcy Court shall retain such jurisdiction over the Chapter 11 Cases and all matters arising out of, or related to, the Chapter 11 Cases and the Plan, including jurisdiction to," among other things:

> 1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;

> ***
>
> 3. resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable in any manner and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including cure amounts pursuant to section 365 of the Bankruptcy Code, or any other matter related to such Executory Contract or Unexpired Lease; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed or assumed and assigned; . . . and (d) any dispute regarding whether a contract is or was executory or expired.
>
> ***
>
> 5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;
>
> ***
>
> 17. determine requests for payment of Claims and Interests entitled to priority pursuant to section 507 of the Code;

The Pending Bankruptcy Motions implicate all four of these components of post-confirmation jurisdiction. So do the LLTQ/FERG Removed Claims, which have been unequivocally asserted by Caesars in the Pending Bankruptcy Motions, and are necessary to resolve each of the Pending Bankruptcy Motions. Each of the LLTQ/FERG Removed Claims is a contested matter or constitute an "other matter" pending on the Effective Date.

2. Related to jurisdiction exists under the "close nexus" test.

As detailed above, the Plan expressly creates a mechanism by which the reorganized debtors and the IL Bankruptcy Court will administer and decide the rejection and assumption of contracts under section 365 of the Bankruptcy Code, all administrative claims under section 503 and all other priority claims under section 507, as well as any disputes and claims related thereto. The Pending Bankruptcy Motions, and the LLTQ/FERG Claims that have been asserted therein, are therefore part of the implementation and execution of the Plan.

The LLTQ/FERG Removed Claims are not post-confirmation claims. Caesars has presented these claims to the IL Bankruptcy Court repeatedly during the Chapter 11 Cases, including, invoking them: to prevent summary judgment on the LLTQ/FERG Admin Request; to obtain voluminous and contested discovery over the past two years; to unsuccessfully defend against a motion to compel discovery filed by the LLTQ/FERG Defendants against Caesars; and as a shield in successfully defending against the LLTQ/FERG Defendants' motion for a protective order.

At different times during the Chapter 11 Cases, the IL Bankruptcy Court has commented that Caesars' legal theories underlying the LLTQ/FERG Removed Claims (e.g., the restrictive covenants are too broad to be enforced, and rescission based on fraudulent inducements) are respectively not accurate "under Nevada law," "thin," and "dubious." Though such claims and defenses have not been finally adjudicated by the IL Bankruptcy Court as discovery continues, they have been expressly preserved under Caesars' Plan to be resolved by the IL Bankruptcy Court. Accordingly, the close nexus test is satisfied.

3. The Court may apply the broader *Pacor* test because the parties first raised the LLTQ/FERG Removed Claims prior to Plan confirmation.

The close nexus standard "has generally been applied in a bright-line fashion. If the proceedings arise pre-confirmation, the *Pacor* test applies. If the proceeding arises post-confirmation, a 'close nexus' is required to give rise to 'related to' jurisdiction." *In re Consol. Meridian Funds*, 511 B.R. 140, 144 (W.D. Wash. 2014). The *Pacor* test is expansive. "An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate. *Pegasus Gold Corp*., 394 F.3d at 1193 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir.1984))). There is no serious dispute that related to jurisdiction exists under this broad test, as the LLTQ/FERG Claims directly, and indirectly through the Pending Bankruptcy Motions, will alter Caesars rights, liabilities and options with respect to claims that must be paid to Movants by Caesars, and the right to operate the Pubs and other Ramsay-branded restaurants.

C. Alternatively, the Bankruptcy Courts can exercise supplemental jurisdiction

Even if the LLTQ/FERG Removed Claims were not directly implicated and already at issue in the Chapter 11 Cases, their relationship is so substantial the Court can exercise supplemental jurisdiction. Importantly, the factual issues and legal disputes all arose prior to confirmation of the Plan, and are subject to ongoing contested matters filed and prosecuted by the parties' pre-confirmation. At a minimum, the LLTQ/FERG Removed Claims and the Pending Bankruptcy Motions "involve a common nucleus of operative facts" sufficient to invoke supplemental jurisdiction under 28 U.S.C. § 1367.

> Pursuant to 28 U.S.C. § 1367, district courts have "supplemental jurisdiction over all other claims that are so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under

> Article III of the United States Constitution." This circuit has applied § 1367 to bankruptcy claims, even when the subject matter jurisdiction is based on "related to" bankruptcy jurisdiction. Here, the remaining claims involve a "common nucleus of operative facts" and would ordinarily be expected to be resolved in one judicial proceeding, and therefore the bankruptcy court has supplemental jurisdiction over the remaining claims.

Pegasus Gold Corp., 394 F.3d at 1194–95 (citations omitted).

The LLTQ/FERG Removed Claims and the Pending Bankruptcy Motions have a shared history that starts in 2012, involving the Pub Agreements and the Ramsay-branded Pubs. Caesars continues to operate the Ramsay-branded Pubs but refuse to pay Movants under the Pub Agreements. Through the Pending Bankruptcy Motions, Caesars has been attempting for two years to reject their obligations under the Pub Agreements and deny payment to Movants thereunder. Unsuccessful in its rejection efforts, Caesars brought the LLTQ/FERG Removed Claims in State Court, citing the "suitability" issues and affirmative defenses still pending in the Chapter 11 Cases. There is a substantial shared nucleus of facts underlying both the LLTQ/FERG Removed Claims and the Pending Bankruptcy Motions, which facilitates supplemental jurisdiction.

IV. The LLTQ/FERG Removed Claims may be severed and transferred to the IL Bankruptcy Court

Rule 21 of the Federal Rules of Civil Procedure, made applicable here by Rule 7021 of the Federal Rules of Bankruptcy Procedure, provides that the Court may "sever any claim against any party." Fed.R.Civ.P. 21; Fed.R.Bankr.P. 7021. "Under Rule 21, 'the court may at any time, on just terms, add or drop a party' and 'may also sever any claim against a party.'" *Lewis v. Nevada*, 2014 WL 65799, at *3 (D. Nev. Jan. 7, 2014). (citations omitted). "Claims may be severed if such action will serve the ends of justice and further the prompt and efficient disposition of litigation. *Id.* The court "has broad discretion with regard to severance of claims under Rule 21." *Id.* (citations omitted); "It is within the district court's discretion whether to sever a claim so long as it is 'discrete and separate.'" *Anticancer, Inc. v. Pfizer Inc.*, 2012 WL 10197796, at *1 (S.D. CA. Mar. 26, 2012) quoting *Rice v. Sunrise Express, Inc.*, 209 F.3d 1008, 1016 (7th Cir.2000).

A court will consider several factors in determining whether to sever a claim under Rule 21:

(1) whether the claims arise out of the same transaction or occurrence;

(2) whether the claims present some common questions of law or fact;

(3) whether settlement of the claims or judicial economy would be facilitated;

(4) whether prejudice would be avoided if severance were granted; and

(5) whether different witnesses and documentary proof are required for the separate claims."

Id., at *1.

First, the claims asserted against the LLTQ/FERG Defendants in counts II and III of the Complaint seek to determine the current and future obligations of Caesars under the Pub Agreements and the scope and enforceability of the restrictive covenants provided therein. The current and future obligations under these agreements and the related restrictive covenants are separate and apart from the current and future obligations of Caesars (which includes certain plaintiffs which have no relationship to the LLTQ/FERG Defendants) to the other separate defendants under their separate agreements and, therefore, do not arise out of the same transaction or occurrence.

Second, while at first blush the LLTQ/FERG Removed Claims and the claims against the other defendants in Counts II and III may seem to present some common questions of law or fact, there are in fact separate entities (most with different ownership structures) with separate contracts containing separate restrictive covenants and separate rights and obligations related to different restaurant projects.

Third, judicial economy would be facilitated if the LLTQ/FERG Removed claims are severed. As set forth above, the parties are litigating the very same issues in the IL Bankruptcy Court in order to resolve whether the LLTQ/FERG Defendants are entitled to payment of administrative expenses through the effective date of the Plan and whether Caesars can reject the Pub Agreements and enter into new agreements with Ramsay. The IL Bankruptcy Court is the only court that has jurisdiction to: (i) determine the amount of the administrative expense claim owed to the LLTQ/FERG Defendants pursuant to section 503 of the Bankruptcy Code; (ii) authorize the rejection of the Pub Agreements pursuant to section 365 of the Bankruptcy Code; and (iii) authorize Caesars to enter into new agreements with Ramsay pursuant to section 363 of the Bankruptcy Code. If the LLTQ/FERG Removed Claims are not severed, then the same issues will have to be tried both in the IL Bankruptcy Court and in another venue. In addition, the Complaint contains three claims by four plaintiffs (two of which have no relationship with the LLTQ/FERG Defendants) against twelve defendants concerning six different agreements (to

which only two agreements are with the LLTQ/FERG Defendants).

Fourth, prejudice would be avoided if severance were granted and the LLTQ/FERG Removed Claims were transferred to the IL Bankruptcy Court, there would be no risk of the IL Bankruptcy Court ruling one way with respect to Caesars' affirmative defense and another court ruling differently on the same issue (i.e. the obligations, if any, of Caesars under the LLTQ/FERG Agreements and the enforceability of the restrictive covenants therein). Moreover, the parties have undertaken and continue to undertake significant discovery on these very issues in the IL Bankruptcy Court. There is an agreed protective order in place in the Chapter 11 Cases [Docket No. 1575] with respect to this discovery which provides that the information obtained through discovery will not be used in proceedings other than those proceedings before the IL Bankruptcy Court. The LLTQ/FERG Defendants will be prejudiced if they are unable to utilize the information obtained in discovery related to these claims. The LLTQ/FERG Defendants will be prejudiced by having to incur unnecessary legal fees if they are forced to litigate the same issues and claims in two different venues.

Fifth, different witnesses and documentary proof are required for the separate claims. The claims against the LLTQ/FERG Defendants center around the Pub Agreements and related agreements entered into between Caesars and Ramsay. Ramsay is not a defendant in and has not otherwise been made a party to the Nevada complaint, but is involved in the Pending Bankruptcy Motions and has produced and is producing documents in discovery in connection therewith.

As such, each of the factors courts typically consider in determining whether to sever and transfer claims favor severance and transferring venue of the LLTQ/FERG Removed Claims.

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CONCLUSION

For the reasons set forth above and in the Motion, the LLTQ/FERG Defendants submit that the Court should transfer venue of the LLTQ/FERG Removed Claims to the United States Bankruptcy Court for the Northern District of Illinois and grant such further relief as it deems just and proper.

DATED November 1, 2017.

MCNUTT LAW FIRM, P.C.

/s/ Dan McNutt
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 1, 2017, I caused service of the foregoing **REPLY IN SUPPORT OF MOTION TO TRANSFER VENUE OF CLAIMS AGAINST LLTQ/FERG DEFENDANTS** via electronic mail through the United States Bankruptcy Court's CM/ECF system on all interested parties in the above-referenced matter:

Signed on: 11/1/2017

Daniel R. McNutt
(Name of Declarant)

/s/ Dan McNutt
(Signature of Declarant)

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,[1]	)	Case No. 15-01145 (ABG)
	)	(Jointly Administered)
Debtors.	)	**Re: Docket Nos. 5197, 5198**

DEBTORS' PRELIMINARY OBJECTION TO COMBINED MOTION FOR PARTIAL SUMMARY JUDGMENT BY LLTQ ENTERPRISES, LLC AND FERG, LLC IN CONNECTION WITH REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE

[1] A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at https://cases.primeclerk.com/CEOC.

The above-captioned debtors and debtors in possession (collectively, the "Debtors") submit this preliminary objection to LLTQ and FERG's motion for summary judgment [Dkt. 5197] (the "Motion") and related statement of undisputed facts [Dkt. 5198]. In support thereof, the Debtors state as follows:

1. For the past 15 months, LLTQ, FERG, and the Debtors have been litigating two contract rejection motions and a motion for payment of administrative expenses. [Dkts. 1755, 2531, 3000] The Motion seeks partial summary judgment on the payment of administrative expenses. Until recently, the Debtors believed the focus of these motions would be the enforceability of restrictive covenants, the purportedly integrated nature of the contracts, and the benefits (if any) LLTQ and FERG provided postpetition. On August 20, 2016, that all changed.

2. On that day, the Debtors first became aware of news articles reporting that Rowen Seibel, the managing member of LLTQ and FERG, had been sentenced to a month in prison.[2] According to these articles, on April 18, 2016, Mr. Seibel pled guilty to one count of a corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212, a Class E Felony. (*See* Exs. A-C, Case No. 1:16-cr-00279-WHP, Dkt. Nos. 2, 14, 15) According to the charging document submitted by the United States government, Mr. Seibel had, for more than a decade, illegally utilized Swiss bank accounts and Panamanian shell corporations to commit tax fraud. (*See generally* Ex. A, Case No. 1:16-cr-00279-WHP, Dkt. No. 2)

3. In the heavily-regulated casino industry, Caesars must have full disclosure regarding its business relationships and the parties to those relationships. Without this

[2] *See, e.g.*, *Restaurateur Seibel Sent to Jail, Then Kitchen, in Tax Scam*, BLOOMBERG.COM, http://www/Bloomberg/com/news/articles/2016-08-19/restaurateur-turned-tax-dodger-readies-for-manhatten-sentencing (last visited Oct. 11, 2016); *Gordon Ramsay's Business Partner Gets Jail Time for Tax Evasion*, PAGE SIX, http://pagesix.com/2010/08/20/ gordon-ramseys-business-partner-gets-jail-time-for-tax-evasion-scheme/ (last visited Oct. 11, 2016).

information, Caesars risks entering into commercial relationships and/or associations that are unacceptable to the various gaming regulatory agencies that have jurisdiction over Caesars and its affiliates. Such gaming regulatory agencies have broad and unfettered discretion to impose disciplinary actions against a gaming license, including, without limitation, the revocation of the gaming licenses and/or the imposition of additional conditions, limitations, and monetary fines upon such licenses. Therefore, if Caesars were to maintain, directly or indirectly, any unsuitable relationships or associations, the regulatory agencies may impose such disciplinary actions.

4. For that reason, the LLTQ and FERG agreements were expressly conditioned on Mr. Seibel's representations that he (a) was not engaged in any illegal activity and (b) had disclosed all material facts relating to any activities that could render him an "Unsuitable Person" under the agreements.[3] (Ex. D, LLTQ Agmt., §§ 2.2(a); 9.1(f); 10.2; Ex. E, FERG Agmt., §§ 2.2(a), 11.2) To further protect itself, Caesars also required LLTQ, FERG, and Mr. Seibel to provide updated disclosures if any prior disclosure regarding his suitability subsequently became inaccurate. (Ex. D, LLTQ Agmt., §§ 10.2; Ex. E, FERG Amgt., § 11.2) Finally, to the extent LLTQ, FERG, or Mr. Seibel failed to satisfy any of these requirements, the agreements provided Caesars with sole discretion to terminate the relationship. (*Id*.)

5. Despite these explicit obligations, Mr. Seibel did not disclose his criminal activities when the contracts were first negotiated and executed. Nor did Mr. Seibel provide the Debtors with an updated disclosure after Mr. Seibel's guilty plea. Instead, Mr. Seibel attempted to transfer of his membership interests and management duties in LLTQ and FERG just ***one***

[3] Under the LLTQ and FERG Agreements, an "Unsuitable Person" includes, *inter alia*, an individual (a) whose association could cause Caesars to face disciplinary action; (b) whose association with Caesars could be anticipated to violate any gaming laws or regulations; or (c) "is or might be engaged or about to be engaged in any activity which could adversely impact the business or reputation of Caesars or its Affiliates." (Ex. D, LLTQ Agmt., at 6; Ex. E, FERG Agmt., at 6)

week before Mr. Seibel was scheduled to plead guilty. Even in that instance, however, Mr. Seibel never disclosed the rationale for the transfer, leaving the Debtors to learn about the felony conviction—and the illegal activities underlying that conviction—through press reports that finally surfaced four months after Mr. Seibel pled guilty.

6. Mr. Seibel's felony conviction and recently-discovered criminal activities have dramatically altered the course of this litigation by introducing key threshold issues that must be resolved before the Court can decide the contract rejection motions, the motion for the payment of administrative expenses, and the instant Motion.

7. Each of these motions assumes that the LLTQ and FERG agreements are valid, enforceable contracts. If not for the events of the past few months, this assumption likely would have never been challenged. Now, however, the Debtors intend to oppose the Motion on the grounds that the agreements are void, voidable, or void *ab initio*.

8. Based on the little information that the Debtors have been able to gather through press reports and sentencing reports, it appears that Mr. Seibel either misrepresented or omitted material facts that the Debtors relied upon when deciding whether to enter into the agreements. In particular, Mr. Seibel never informed the Debtors that he was violating United States tax law by using a Swiss bank account and Panamanian shell corporation. (*See* Exs. A–C, Case No. 1:16-cr-00279-WHP, Dkt. Nos. 2, 14, 15) Thus, the agreements are likely void, voidable, or void *ab initio*. *See* Restatement (Second) of Contracts § 164 (1981) ("If a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by the other party upon which the recipient is justified in relying, the contract is voidable by the recipient.")

9. To do so, however, the Debtors will need to take additional discovery to identify facts that are essential to its opposition—specifically, the timing, nature, and content of the

negotiations and communications between the parties. To that end, the Debtors intend to file an affidavit pursuant to Rule 56(d) describing the additional discovery and facts the Debtors believe are necessary to oppose the Motion. For the foregoing reasons, the Debtors respectfully request that the Court allow the Debtors to take discovery of facts necessary to oppose the Motion.

10. In addition, the Motion fails on the merits as well. As the Court has noted, LLTQ and FERG have not performed any services postpetition, and therefore the movants are not entitled to any administrative expenses. (11/18/2015 Hr'g Tr. 32:1–32:23.) To get around this fact, LLTQ and FERG claim that their contracts are integrated with certain contracts the Debtors have entered into with Gordon Ramsay. Not so. The agreements contain an integration clause stating clearly that "[t]his Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written." (Ex. D, LLTQ Agmt. § 13.6; Ex. E, FERG Agmt. § 14.6.) Thus, by their very terms, the LLTQ and FERG Agreements cannot be integrated with the two Ramsay agreements. Further, the facts surrounding the negotiation and execution of the Agreement demonstrate that they are not integrated with the two Ramsay agreements. This is because Mr. Ramsay is critical to the operation of the restaurants, and the services provided by FERG and LLTQ are not. For instance, the LLTQ and FERG Agreements are terminable if the Ramsay agreements are terminated (*see* Ex. D, LLTQ Agmt. § 4.2.3; Ex. E, FERG Agmt. § 4.2(c)), whereas the agreements with Mr. Ramsay contain no similar clause. If the Debtors and Mr. Ramsay believed that FERG and LLTQ were critical to the operation of these restaurants, they would have entered into one contract or made both terminable upon the termination of the other. LLTQ's and FERG's integration arguments therefore will not save their administrative claim request. Thus, summary judgment on that issue should be denied.

Dated: October 12, 2016
Chicago, Illinois

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MOTI PARTNERS, LLC, AND
MOTI PARTNERS 16, LLC;

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC.; and BOARDWALK REGENCY CORPORATION d/b/a CAESARAS ATLANTIC CITY, Plaintiffs, v. ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16 LLC; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC; AND J. JEFFREY FREDERICK, Defendants.	Adv. No.: 17-01237-led **MOTION TO TRANSFER VENUE FOR CLAIMS AGAINST MOTI DEFENDANTS** Hearing Date: November 6, 2017 Hearing Time: 1:30 p.m.

Defendants MOTI PARTNERS, LLC ("MOTI") and MOTI PARTNERS 16, LLC ("MOTI 16," and together with MOTI, the "MOTI Defendants"), hereby submit their motion (the "Motion") to transfer venue to the United States Bankruptcy Court for the Northern District of Illinois, pursuant to 28 U.S.C. § 1412 and Rule 7087 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

INTRODUCTION

The MOTI Defendants and Desert Palace, Inc. ("Caesars"), one of the plaintiff entities, have been embroiled in litigation in the United States Bankruptcy Court for the Northern District

of Illinois, Eastern Division in the plaintiff's chapter 11 bankruptcy case for nearly ten months in an effort to determine and resolve what, if any, amounts are owed to the MOTI Defendants by Caesars in connection with the Serendipity restaurant previously located in Las Vegas and operated by Caesars. In 2009, Caesars entered into a development, operation and license agreement with MOTI for the development and operation of Serendipity (the "MOTI Agreement"). By its terms, the MOTI Agreement was set to expire on April 5, 2014, unless 180 days prior to such expiration Caesars extended the MOTI Agreement for an additional five (5) year period on the same terms and conditions. The MOTI Agreement allowed Caesars to terminate for any reason whatsoever. In September 2016, Caesars elected to terminate its relationship with the MOTI Defendants and shut down the restaurant.

Caesars continued to use the intellectual property provided under the MOTI Agreement to continue operating Serendipity through January 1, 2017, when Caesars closed Serendipity. Serendipity was a profitable restaurant generating millions of dollars of profits to Caesars. Caesars elected to terminate and shut down Serendipity, instead of seeking some other equitable remedy and, therefore, the relationship of the parties has been fully performed and concluded. The MOTI Defendants have not challenged the fact that Caesars properly terminated this relationship. The MOTI Defendants assert the reason for the termination is irrelevant, as Caesars had the right to terminate for any reason whatsoever.

The MOTI Defendants have asserted in the chapter 11 bankruptcy case that the MOTI Defendants are entitled to an administrative priority expense claim under section 503 of the Bankruptcy Code based on Caesars' continued use of the license and the continued operations of Serendipity through and including January 1, 2017. In defense to the request for an administrative expense claim, Caesars has asserted that, based on certain suitability requirements, Caesars was fraudulently induced into entering into the MOTI Agreement, which makes the MOTI Agreement subject to rescission.

In order to resolve the request for an administrative priority expense claim, the Illinois bankruptcy court is presently set to determine: (i) what terms governed the parties' relationship; and (ii) whether Caesars' theories of fraud in the inducement or rescission can serve to defeat the request for an award of administrative expenses. The parties have presented arguments relating to these issues in the chapter 11 cases and have commenced and continue to conduct extensive

discovery regarding same. More than ten months into this litigation, and after the Illinois bankruptcy court (a) questioned whether the suitability requirements upon which Caesars purported to rely are relevant (depending on what terms controlled the relationship of the parties) and (b) in related matters, described Caesars' rescission theory to be "thin" and "dubious," Caesars filed a state court action seeking to have another court determine these very same issues presently before the Illinois bankruptcy court.

The MOTI Defendants contend that the bankruptcy court that has been presiding over Caesars' bankruptcy case and the motion of the MOTI Defendants seeking payment of an administrative expense claim is the proper court to decide these issues and venue for the claims asserted against the MOTI Defendants should therefore be transferred.

JURISDICTION

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. This Motion is a core proceeding under 28 U.S.C. § 157(b).

3. The statutory basis for the relief requested herein is section 28 U.S.C. § 1412 and Bankruptcy Rule 7087.

BACKROUND AND PROCEDURAL HISTORY

4. On January 15, 2015 (the "Petition Date"), Caesars and several of its affiliated entities (collectively, the "Debtors") each filed voluntary petitions under Chapter 11 of the United States Code (11 U.S.C. §§ 101 et seq., as amended, the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the "IL Bankruptcy Court"), thereby commencing the chapter 11 cases jointly administered as case no. 15-01145 (collectively, the "Chapter 11 Cases"). The Chapter 11 Cases remain pending.

5. In September 2016, Caesars sent a letter stating Caesars was exercising its rights to terminate the relationship between the parties. Notwithstanding this termination letter, Caesars continued to operate Serendipity and utilize the non-exclusive license to use certain intellectual property provided by the MOTI Defendants in connection with such operations through and including January 1, 2017, when Caesars closed Serendipity.

6. On November 30, 2016, approximately ten months prior to Caesars filing the Nevada Lawsuit (as hereinafter defined), the MOTI Defendants filed that certain *Request for*

Payment of Administrative Expense [Dkt. No. 5862] (the "Admin Expense Motion") seeking payment from Caesars based on Caesars' continued use of the license and the continued operations of Serendipity.

7. On December 7, 2016, the Debtors filed the *Debtors' Preliminary Objection to Request for Payment of Administrative Expense filed by the MOTI Parties* [Dkt. No. 5901] (the "Preliminary Objection").

8. On January 11, 2017, the Debtors filed the *Debtor's Objection to Request for Payment of Administrative Expense* [Dkt. No. 6267] (the "Objection"). In the Objection, the Debtors assert that, if Caesars can establish it was fraudulently induced into entering into the MOTI Agreement as a result of misrepresentations or omissions by Rowen Seibel, the former principal of MOTI, then Caesars can rescind the MOTI Agreement and eliminate any requirement to pay the MOTI Defendants as requested in the Admin Expense Motion.

9. On February 1, 2017, Claimants filed their *Reply Brief in Support of Request for Payment of Administrative Expense* [Dkt. No. 6518] (the "Reply Brief").

10. On February 15, 2017, a hearing was held on the Admin Expense Motion. A true and correct copy of the February 15, 2017 hearing transcript is attached hereto as **Exhibit A**. At this hearing, the IL Bankruptcy Court invited the parties to submit further briefing to assist the court in determining what terms governed the parties' continued relationship. If and after the MOTI Agreement expired, depending on such terms, the IL Bankruptcy Court questioned whether the suitability requirements upon which Caesars relied are even relevant:

> Isn't there also a question about this suitability requirement if in fact the contract expired? I mean, I don't think you can pull these issues apart. If the written agreement that had that requirement in it expired, and the parties were operating on some other basis, then I don't know if it would be relevant any more. I'm just not sure. That's why, again, I can't get past this expiration problem.

Exh. A, p. 25, lines 1 - 9.

11. On April 21, 2017, the MOTI Defendants field their *Supplemental Brief in Support of Request for Payment of Administrative Expense* [Dkt. No. 6878] (the "Supplemental Brief").

12. On May 12, 2017, the Debtors filed the *Debtors' Limited Response to MOTI's*

Supplemental Brief in Support of Request for Payment of Administrative Expense [Dkt. No. 6912] (the "Limited Response"). A true and correct copy of the Limited Response is attached hereto as **Exhibit B**. In the Limited Response, Caesars states

> If the Court concludes that [the MOTI Defendants] may be entitled to a claim, the Debtors request that the Court allow the Debtors to conduct discovery into Mr. Seibel's suitability as an additional defense to [the MOTI Defendants'] continued request for administrative payment by the Debtors after [the MOTI Defendants] breached the MOTI Agreement by, for example, not informing the Debtors that Mr. Seibel had engaged in criminal activity as required by section 9.2.

Exh. B, p. 3.

13. On June 21, 2017, a hearing was held on the Admin Expense Motion, during which the IL Bankruptcy Court concluded that a factual question existed as to the terms under which the parties continued to operate post-expiration of the MOTI Agreement and, therefore, would require an evidentiary hearing.

14. The Admin Expense Motion remains pending and is a "contested matter" in the Chapter 11 Cases subject to Rule 9014 of the Federal Rules of Bankruptcy Procedure.

15. Discovery has been commenced in connection with the Admin Expense Motion and all fact discovery is to be completed by March 2, 2018.

16. On or about August 25, 2017, Caesars and some of its affiliated entities filed a complaint (the "Complaint") entitled *Desert Palace Inc., et al. v. Rowen Seibel, et al.*, designated as case number A-17-760537-B (the "Nevada Lawsuit"), in the District Court, Clark County, Nevada (the "State Court"). A true and correct copy of the Complaint is attached hereto as **Exhibit C**.

17. On September 27, 2017, the MOTI Defendants timely removed the claims asserted against the MOTI Defendants in the Nevada Lawsuit (the "MOTI Removed Claims"), pursuant to 28 U.S.C. §§ 1452(a) and 1334(b) and Bankruptcy Rule 9027, by filing that certain Notice of Removal of Lawsuit Pending in Nevada State Court to Bankruptcy Court thereby commencing the instant action.

18. The relief sought in the MOTI Removed Claims arises out of the same core set of facts necessary to, and which are at the heart of, the pending disputes in the Admin Expense

Motion.

19. Counts I and II of the Nevada Lawsuit seek, among other relief, determinations that Caesars properly terminated the MOTI Agreement and has no current or future obligations to the MOTI Defendants.

20. As set forth above, the IL Bankruptcy Court is set to determine the terms that governed the parties' relationship and, based thereon, to what extent Caesars has any obligations to the MOTI Defendants (including whether Caesars' theory that it was fraudulently induced is relevant and, if so, how such may be applicable).

21. The allegations of breach and fraudulent inducement and the related legal issue of whether the MOTI Agreement may be rescinded has been asserted by Caesars as a defense to the Admin Expense Motion and remains pending, as discovery continues.

22. In addition, on May 31, 2017, the IL Bankruptcy Court - in denying the request of for a protective order in a related, but separate, dispute regarding the continued operations of a restaurant at Caesars - referred to the Debtors' legal theories regarding fraud in the inducement and rescission as "thin" and "dubious". *See* May 31, 2017 hearing transcript, p. 6, line 23 – p. 7, line 7; p.10, line 3, a true and correct copy of which is attached hereto as **Exhibit D**.

23. Count III of the Nevada Lawsuit, seeks, among other relief, a determination that the certain restrictive covenants contained in unrelated agreements do not prohibit or limit existing or future restaurant ventures between the Debtors and celebrity Gordon Ramsay. As Serendipity is a restaurant not affiliated with Mr. Ramsay, the MOTI Defendants do not believe that Count III relates to the MOTI Defendants, but, to the extent it does, it should be resolved with the Admin Expense Motion, which will resolve all issues between the MOTI Defendants and Caesars.

RELIEF REQUESTED

24. By this Motion, the MOTI Defendants seek the entry of an order transferring venue of the MOTI Removed Claims to the IL Bankruptcy Court.

BASIS FOR RELIEF

25. This Court may transfer a case or adversary proceeding under Title 11 of the Bankruptcy Code to another district if such transfer is either "in the interest of justice or for the convenience of the parties." U.S.C. § 1412; Bankruptcy Rule 7087.

26. The decision whether to transfer venue "is within the court's discretion based on an individualized case-by-case analysis of convenience and fairness." *In re B.L. of Miami, Inc.*, 294 B.R. 325, 328 (Bankr. D. Nev.2003) *quoting In re Enron*, 284 B.R. 376, 386 (Bankr. S.D.N.Y. 2002).

A. Under Section 1412, the Court should transfer venue to the IL Bankruptcy Court because it is in the interests of justice.

27. "When applying the 'interest of justice' test, 'the court applies a broad and flexible standard,' considering whether transfer of venue 'will promote the efficient administration of the estate, judicial economy, timeliness and fairness.'" *In re B.L. of Miami, Inc.*, 294 B.R. 325, 328 (Bankr. D. Nev.2003) *quoting In re Enron*, 284 B.R. at 386. These factors favor transferring venue to the IL Bankruptcy Court.

28. The first two factors (efficient administration of the estate and judicial economy) both favor transferring venue to the IL Bankruptcy Court.

i. Resolution of the Admin Expense Motion will resolve all issues between the parties and is set to be resolved by the IL Bankruptcy Court. Importantly, the IL Bankruptcy Court is currently addressing the very claims raised in Count II of the Nevada Lawsuit in connection with the Admin Expense Motion. In addition, the IL Bankruptcy Court is set to perform the necessary task of determining what terms controlled the parties' relationship, which, notwithstanding the fact that the MOTI Defendants do not dispute the termination of the parties' relationship, would be necessary to resolve Count I of the Nevada Lawsuit.

ii. Discovery has already commenced in connection with the Admin Expense Motion and all fact discovery is set to be completed by March 2, 2018.

iii. It would be an unnecessary waste of judicial resources for another court to hear the very same issues that are currently before the IL Bankruptcy Court, where the evidence and arguments have already been (or are in the process of being) gathered, produced, and litigated.

29. The third and fourth factors (timeliness and fairness) also favor transferring venue to the IL Bankruptcy Court.

i. As set forth above, the parties have already spent nearly a year litigating the very issues raised in the MOTI Removed Claims. To begin the process anew with a different

Court would inevitably delay matters.

ii. It would be unfair to allow the Debtors to shop for a more favorable forum in an attempt to evade a final determination from the IL Bankruptcy Court which has provided unfavorable commentary on the Debtors' legal theories and is set to resolve all issue between these parties.

30. For the above reasons, the MOTI Defendants submit that under the relevant factors transfer of venue of the MOTI Removed Claims to the IL Bankruptcy Court serves the interest of justice.

B. Under Section 1412, the Court should transfer venue to the IL Bankruptcy Court for the convenience of the parties.

31. Because (i) the issues raised in the MOTI Removed Claims are the very same issues already being prosecuted in connection with the Admin Expense Motion and (ii) the Admin Expense Motion necessarily must be resolved by the IL Bankruptcy Court, it would be inconvenient and unnecessarily expensive to require the parties to also litigate these same issues before another court.

32. Because the claims against the MOTI Defendants asserted in the MOTI Removed Claims involve the same issues, parties, witnesses, and evidence already involved in the Admin Expense Motion before the IL Bankruptcy Court (where discovery is underway), access to relevant documents and witnesses is easily obtained and less costly in Illinois.

33. Accordingly, the MOTI Defendants submit that the test for "convenience of the parties" favors transfer of venue of the MOTI Removed Claims to the IL Bankruptcy Court.

CONCLUSION

34. For the reasons set forth above, the MOTI Defendants submit that the factors under either prong of Section 1412 weigh heavily in favor of transferring venue of the MOTI Removed Claims to the IL Bankruptcy Court.

NOTICE

35. Notice of this Motion has been given to: (a) counsel of record for Desert Palace Inc.; (b) counsel of record for PHWLV LLC; (c) counsel of record for Boardwalk Regency Corporation d/b/a Caesars Atlantic City; (d) counsel of record for Paris Las Vegas Operating Company LLC; (e) TPOV Enterprises, LLC; (f) TPOV Enterprises 16, LLC; (g) GR Burgr,

LLC; (h) DNT Acquisition, LLC; (i) Rowen Seibel; (j) counsel of record for J. Jeffrey Frederick; (k) LLTQ Enterprises, LLC; (l) LLTQ Enterprises 16, LLC; (m) FERG, LLC; and (n) FERG 16, LLC.

WHEREFORE, the MOTI Defendants respectfully request that venue be transferred to the United States Bankruptcy Court for the Northern District of Illinois and that the Court grant such further relief as it deems just and proper.

DATED October 2, 2017.

Respectfully submitted:

MOTI PARTNERS, LLC,
MOTI PARTNERS 16, LLC

By: /s/ Dan McNutt
One of their attorneys

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Electronically Filed
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DISTRICT COURT

CLARK COUNTY, NEVADA

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC.; and BOARDWALK REGENCY CORPORATION d/b/a CAESARAS ATLANTIC CITY, Plaintiffs, v. ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16 LLC; MOTI PARTNERS, LLC; MOTI PARTNER 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC; AND J. JEFFREY FREDERICK, Defendants.	Case No.: A-17-760537-B **DEFENDANTS MOTI PARTNERS, LLC AND MOTI PARTNERS 16, LLC NOTICE TO STATE COURT OF REMOVAL**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD AND TO THE DISTRICT COURT OF THE STATE OF NEVADA FOR THE COUNTY OF CLARK:

PLEASE TAKE NOTICE that a Notice of Removal of this action was filed in the United States Bankruptcy Court for the District of Nevada (the "**Bankruptcy Court**") on September 27, 2017, under Case No. 17-01237. A true and correct copy of the file-stamped Notice of Removal is attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that the filing of the Notice of Removal in the Bankruptcy Court and a copy of the Notice of Removal in this Court effects the removal of the action from this Court. Fed. R. Bankr. P. 9027(c); *see also* 28 U.S.C. § 1452. The litigation in this Court "shall proceed no further . . . unless and until the claim or cause of action is remanded." *Id.*

DATED September 27, 2017.

Respectfully submitted:

MOTI PARTNERS, LLC,
MOTI PARTNERS 16, LLC

By: /s/ Daniel R. McNutt
One of their attorneys

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that pursuant to Nev. R. Civ. P. 5(b) and EDCR 8.05 on September 27, 2017 I caused service of the foregoing **NOTICE TO STATE COURT OF REMOVAL** to be made by depositing a true and correct copy of same in the United States Mail, postage fully prepaid, addressed to the following and/or via electronic mail through the Eighth Judicial District Court's E-Filing system to the following at the e-mail address provided in the e-service list:

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC.; and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY, Plaintiffs, v. ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16 LLC; MOTI PARTNERS, LLC; MOTI PARTNER 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC; AND J. JEFFREY FREDERICK, Defendants.	Case No.: _____ **NOTICE OF REMOVAL OF LAWSUIT PENDING IN NEVADA STATE COURT TO BANKRUPTCY COURT**

Defendants MOTI PARTNERS, LLC ("MOTI") and MOTI PARTNERS 16, LLC ("MOTI 16," and together with MOTI, the "MOTI Defendants"), hereby remove the lawsuit entitled *Desert Palace Inc., et al. v. Rowen Seibel, et al.*, designated as case number A-17-760537-B, including all claims, counterclaims, third-party claims and defenses thereto (the "Nevada Action") formerly pending in the District Court, Clark County, Nevada (the "State Court") to the United States Bankruptcy Court for the District of Nevada, pursuant to 28 U.S.C. §§ 1452(a) and 1334(b) and Rule 9027 of the Federal Rules of Bankruptcy Procedure.

As grounds for the removal, the MOTI Defendants state as follows:

1. On January 15, 2015 (the "Petition Date"), Desert Palace, Inc. and several of its affiliated entities (collectively, the "Debtors") each filed voluntary petitions under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois, thereby commencing the chapter 11 cases jointly administered as case no. 15-01145 (collectively, the "Chapter 11 Cases"). The Chapter 11 Cases remain pending.

2. In 2009, Desert Palace and MOTI entered into an agreement (the "MOTI Agreement") relating to the development and operation of Serendipity 3 Restaurant in Las Vegas ("Serendipity").

3. Pursuant to Section 3.1 of the MOTI Agreement, the MOTI Agreement would expire by its terms five (5) years from its opening date (i.e. April 5, 2009), unless extended by the parties.

4. The parties discussed entering into an extension but never executed an amendment extending the term of the MOTI Agreement.

5. Desert Palace continued to make payments to the MOTI Defendants for the continued operation of Serendipity through September 2, 2016.

6. On September 2, 2016, Caesars sent MOTI a letter stating that Caesars was terminating the MOTI Agreement effective immediately.

7. Caesars then began the process of shutting Serendipity down and completed the process on January 1, 2017.

8. From September 2, 2016, until Serendipity was closed on January 1, 2017, Caesars continued to operate Serendipity and use the intellectual property provided by MOTI without compensating MOTI.

9. On November 30, 2016, the MOTI Defendants filed that certain *Request for Payment of Administrative Expense* [Dkt. No. 5862] (the "MOTI Admin Request") seeking payment attributable to the continued operations of Serendipity after the filing the Chapter 11 Cases through and including January 1, 2017.

10. The Debtors filed an objection to the relief sought in the MOTI Admin Request thereby triggering a "contested matter" subject to Rule 9014 of the Federal Rules of Bankruptcy Procedure. In the contested matter pending in the Chapter 11 Cases the Debtors

assert, among other things, allegations of fraudulent inducement and that the MOTI Agreement may not be a valid, enforceable agreement and, instead, may be void, voidable or void ab initio.

11. In addition, the Bankruptcy Court concluded that a factual question exists as to the terms under which the parties operated the Serendipity restaurant requiring discovery and an evidentiary hearing to resolve the MOTI Admin Request.

12. The MOTI Admin Request remains pending.

13. On August 25, 2017, the Plaintiffs filed the Nevada Action.

14. In the Nevada Action, the Plaintiffs seek declaratory judgments as more fully set forth in the copy of the Complaint attached hereto as Exhibit A. The relief sought in the Nevada Action concerns the very issues set to be resolved by the Bankruptcy Court in connection with the MOTI Admin Request.

15. The Nevada Action is not a proceeding before the United States Tax Court.

16. The Nevada Action is not a civil action by a governmental unit to enforce its police or regulatory power.

17. The Nevada Action, until the filing of this Notice of Removal and the filing of a copy of this Notice of Removal with the State Court, was pending in the District Court of the State of Nevada, Clark County.

18. This Court has "arising under" jurisdiction over the Nevada Action pursuant to 28 U.S.C. § 1334(b). The MOTI Defendants filed the MOTI Admin Request pursuant to section 503(b) of the Bankruptcy Code.

19. This Court also has "related to" jurisdiction over the Nevada Action pursuant to 28 U.S.C. § 1334(b). The outcome of the Nevada Action will alter the Debtors' liabilities to the MOTI Defendants, affecting the estates and the amount of property available for distribution.

20. For example, if rescission of the MOTI Agreement is not an available remedy, and the Debtors are found to be liable to the MOTI Defendants in connection with their continued operations of Serendipity, the MOTI Defendants will be awarded a large administrative priority claim (i.e. six to seven figures) that affects the administration of the estate and the amount of property available for distribution.

21. The MOTI Admin Request cannot be resolved without resolving the issues raised in the Nevada Action.

22. Removal of the Nevada Action to this Court is proper pursuant to 28 U.S.C. § 1452(a) and Rule 9027 of the Federal Rules of Bankruptcy Procedure.

23. Venue for the Nevada Action is proper in this Court under 28 U.S.C. § 1452(a) because this Court is the Bankruptcy Court located in the District where the Nevada Action is pending. The MOTI Defendants intend to promptly file a motion to transfer venue to the United States Bankruptcy Court for the Northern District of Illinois, where the Chapter 11 Cases are pending and the MOTI Admin Request is being litigated.

24. On August 28, 2017, counsel to the MOTI Defendants informally obtained a copy of the Complaint (the "Informal Receipt Date").

25. By agreement of the Plaintiffs, service of the Complaint was effective on September 21, 2017, and the MOTI Defendants have until October 20, 2017, by which to respond to the summons and Complaint.

26. Because the MOTI Defendants have filed this Notice of Removal within thirty days of service (and within thirty days of the Informal Receipt Date), removal is timely under Rule 9027(a)(3) of the Federal Rules of Bankruptcy Procedure.

27. Attached as Group Exhibit B is the docket from the Nevada Action as of the date of removal, which reflects that the Complaint is the only pleading filed to date, and copies of all accessible summonses issued and affidavits of service.[1]

28. Promptly after filing the Notice of Removal, the MOTI Defendants will serve a copy of it on all parties to the Nevada Action as required by Federal Rule of Bankruptcy Procedure 9027(b).

29. Promptly after filing the Notice of Removal, the MOTI Defendants will file with the State Court a copy of this Notice of Removal, as required by Federal Rule of Bankruptcy Procedure 9027(c).

30. Removal is made directly to this Court under 28 U.S.C. § 157(a).

[1] The summonses issued for defendants DNT Acquisition, LLC, GR BURGR, LLC and J. Jeffrey Frederick were not accessible as of the time of this filing and therefore are not included in Group Exhibit B.

31. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

32. The MOTI Defendants consent to the Bankruptcy Court entering final orders and judgments in this matter.

33. Venue lies properly in this Court pursuant to 28 U.S.C. § 1409(a).

34. This adversary proceeding is commenced pursuant to Rules 7001(7) and (9) and 7008 of the Federal Rules of Bankruptcy Procedure and 28 U.S.C. §§ 2201-2202.

DATED September 27, 2017.

Respectfully submitted:

MOTI PARTNERS, LLC, AND
MOTI PARTNERS 16, LLC

By: /s/ Daniel R. McNutt
One of their attorneys

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DISTRICT COURT

CLARK COUNTY, NEVADA

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY;

Plaintiffs,

vs.

ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC; and J. JEFFREY FREDERICK,

Defendants.

Case No.: A-17-760537-B

Dept. No.: Department 27

COMPLAINT

(Exempt from Arbitration – Declaratory Relief Requested)

Desert Palace Inc. ("Caesars Palace"), Paris Las Vegas Operating Company, LLC ("Paris"), PHWLV, LLC ("Planet Hollywood") and Boardwalk Regency Corporation d/b/a Caesars Atlantic City ("CAC," and collectively with Caesars Palace, Paris, and Planet Hollywood,

"Plaintiffs" or "Caesars") bring this Complaint against Rowen Seibel, J. Jeffrey Frederick, LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC (collectively, with LLTQ Enterprises, LLC, "LLTQ"), FERG, LLC, FERG 16, LLC (collectively, with FERG, LLC, "FERG"), Moti Partners, LLC, Moti Partners 16, LLC (collectively, with Moti Partners, LLC, "MOTI"), TPOV Enterprises, LLC, TPOV Enterprises 16, LLC (collectively, with TPOV Enterprises, LLC, "TPOV"), DNT Acquisition, LLC ("DNT"), and GR Burgr, LLC ("GRB," and collectively with LLTQ, FERG, MOTI, TPOV, and DNT, the "Seibel-Affiliated Entities") seeking declaratory relief as a result of Mr. Seibel's criminal activities and Defendants' failure to disclose those criminal activities to the Plaintiffs.

Caesars alleges as follows:

PRELIMINARY STATEMENT

1. Since 2009, Caesars has entered into six agreements with entities owned by, managed by, and/or affiliated with Rowen Seibel relating to the operation of restaurants at Caesars' casinos (the "Seibel Agreements"). Because of the highly-regulated nature of Caesars' business, each of these agreements contained representations, warranties, and conditions to ensure that Caesars was not entering into a business relationship that would jeopardize its good standing with gaming regulators. To further ensure that Caesars was not doing business with an "Unsuitable Person," Caesars also requested and received "Business Information Forms" from Mr. Seibel at the outset of the MOTI and DNT business relationships in which he represented that he had not been a party to a felony in the last ten years and there was nothing "that would prevent him from being licensed by a gaming authority." Although the agreements required Mr. Seibel and the Seibel-Affiliated Entities to update those disclosures to the extent they subsequently became inaccurate, neither Mr. Seibel nor the Seibel-Affiliates Entities ever did so.

2. Unbeknownst to Caesars, when the parties entered into each of the agreements, Mr. Seibel was engaged in criminal conduct that rendered him "Unsuitable" under the terms of each agreement. In 2004, Mr. Seibel began using foreign bank accounts to defraud the IRS. In 2009, when Mr. Seibel was assuring Caesars that he had not been a party to a felony and there was nothing

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"that would prevent him from being licensed by a gaming authority," he was submitting false documentation to the IRS regarding his use of foreign bank accounts.

3. In April 2016, Mr. Seibel was charged with defrauding the IRS. Rather than contest the charges against him, Mr. Seibel pleaded guilty to one count of a corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212, a Class E Felony, and subsequently served time in a federal penitentiary for his crime.

4. Mr. Seibel, however, never informed Caesars that he was engaged in criminal activities. Nor did he disclose to Caesars that he had lied to the United States government, was under investigation by the United States government, or that he had pleaded guilty to a felony.

5. Instead, Caesars only learned about Mr. Seibel's felony conviction from press reports four months after he pleaded guilty. Upon learning of Mr. Seibel's felony conviction, Caesars exercised its contractual right to terminate its agreements with the Seibel-Affiliated Entities. Indeed, the parties to the Seibel Agreements expressly agreed that Caesars in its "sole and exclusive judgment" could terminate the agreements if it determined that Mr. Seibel and/or the Seibel-Affiliated Entities were "Unsuitable Persons" as defined in the agreements. The parties likewise expressly agreed that Caesars' decision to terminate the agreements would "not be subject to dispute by [the Seibel-Affiliated Entities]." Caesars determined that Mr. Seibel's conduct and felony conviction rendered him an "Unsuitable Person" as defined in the agreements. Therefore, Caesars exercised its "sole and exclusive judgment" and terminated the Seibel Agreements on or around September 2, 2016.

6. Nevertheless, Defendants are now claiming that Caesars wrongfully terminated those agreements and either have initiated or indicated that they intend to initiate legal proceedings relating to the termination of the agreements. Because there is an actual dispute among the parties, Caesars brings this action for a declaratory judgment confirming that it was proper, in its sole and exclusive judgment, to terminate each of the agreements with the Seibel-Affiliated Entities.

7. In addition, Caesars seeks a declaratory judgment that it has no current or future obligations to Defendants. Certain defendants are seeking monetary relief from Caesars in three different courts across the country related to the Seibel Agreements and have threatened to attempt

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to force Caesars to include Mr. Seibel in other restaurant opportunities. Simply put, Caesars is not required under the Seibel Agreements or otherwise to do business with a convicted felon. Indeed, Mr. Seibel and the Seibel-Affiliated Entities concealed material facts from Caesars that they had a duty to disclose regarding Mr. Seibel's wrongdoings. Mr. Seibel concealed these wrongdoings from Caesars to avoid the termination of the Seibel Agreements. Had Caesars been aware of Mr. Seibel's wrongdoings when the relationship first began, it would not have entered into the Seibel Agreements. And, if Mr. Seibel had properly disclosed his wrongdoings, Caesars would not have continued doing business with Mr. Seibel and would have terminated its relationship with Mr. Seibel and his companies. Because Mr. Seibel and the Seibel-Affiliated Entities fraudulently induced Caesars to enter into the Seibel Agreements and breached the Seibel Agreements by failing to disclose material facts regarding Mr. Seibel's wrongdoings, Caesars owes no current or future obligations to Defendants.

8. Caesars therefore brings this action to obtain declarations that it properly terminated its agreements with the Seibel-Affiliated Entities and does not owe any current or future obligations to Defendants.

PARTIES, JURISDICTION, AND VENUE

9. Plaintiff Desert Palace, Inc. is a Nevada corporation that operates the Caesars Palace casino. Desert Palace Inc.'s principal place of business is 3570 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

10. Plaintiff Paris Las Vegas Operating Co., LLC is a Nevada limited liability company that operates the Paris Las Vegas Hotel and Casino. Paris Las Vegas Operating Co., LLC's principal place of business is 3655 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

11. Plaintiff PHWLV, LLC is a Nevada limited liability company that operates the Planet Hollywood Las Vegas Resort and Casino. PHWLV, LLC's principal place of business is 3667 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

12. Plaintiff Boardwalk Regency Corporation d/b/a Caesars Atlantic City LLC is a Delaware limited liability company that operates the Caesars Atlantic City Hotel and Casino.

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Caesars Atlantic City's principal place of business is 2100 Pacific Avenue, Atlantic City, New Jersey 08401.

13. Defendant Rowen Seibel currently resides at 200 Central Park South, Unit 19E, New York, New York 10019. Mr. Seibel regularly travels to and conducts business in Nevada, and owns real estate in Nevada. Mr. Seibel also filed a lawsuit in the district court of Clark County, Nevada, purportedly derivatively on behalf of GRB, that relates to certain of the issues set forth in this Complaint and remains pending. Case No. A-17-751759-B.

14. Defendant Moti Partners, LLC is a New York limited liability company located at 200 Central Park South, New York, New York 10019. In March 2009, Caesars Palace and MOTI Partners, LLC entered into a Development, Operation, and License Agreement (the "MOTI Agreement"). The MOTI Agreement relates to the design, development, construction, and operation of the Serendipity restaurant in Las Vegas. The negotiations of the MOTI Agreement occurred primarily in Nevada. The MOTI Agreement also was signed by the parties in Nevada, and Mr. Seibel signed the MOTI Agreement on behalf of MOTI. The MOTI Agreement further provided that "[t]he laws of the State of Nevada applicable to agreements made in that State shall govern the validity, construction, performance and effect of [the MOTI Agreement]." The MOTI Agreement likewise required (i) MOTI to provide "Development Services" during meetings that "shall take place primarily in Las Vegas;" (ii) MOTI to provide "Menu Development Services" during meetings that "shall take place primarily in Las Vegas;" and (iii) Mr. Seibel to provide "Marketing Consulting Services" during meetings that "shall take place primarily in Las Vegas."

15. Defendant Moti Partners 16, LLC is a Delaware limited liability company. In April 2016, Mr. Seibel informed Caesars Palace that the MOTI Agreement would purportedly be assigned to Moti Partners 16, LLC. Caesars Palace disputes the propriety of this assignment.

16. Defendant DNT Acquisition, LLC is a Delaware limited liability company located at 200 Central Park South, 19th Floor, New York, New York 10019. In June 2011, Caesars Palace and DNT entered into a Development, Operation, and License Agreement among DNT Acquisition, LLC, The Original Homestead Restaurant, Inc., and Desert Palace, Inc. ("DNT Agreement"). The DNT Agreement relates to the design, development, construction, and

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operation of an Old Homestead restaurant in Las Vegas. The negotiations of the DNT Agreement occurred in Nevada and the agreement was signed by the parties in Nevada. Mr. Seibel signed the DNT Agreement on behalf of DNT. The DNT Agreement also provided that "[t]he laws of the State of Nevada applicable to agreements made in that State shall govern the validity, construction, performance, and effect of this Agreement." The DNT Agreement further required (i) DNT to provide "Restaurant Development Services" that "shall take place in Las Vegas;" (ii) Mr. Seibel to visit the restaurant one time each quarter for two consecutive nights; and (iii) Mr. Seibel to participate in marketing consultations and meetings that "shall take place in Las Vegas."

17. Defendant TPOV Enterprises, LLC is a New York limited liability company located at 200 Central Park South, New York, NY 10019. In November 2011, Paris and TPOV entered into a Development and Operation Agreement between TPOV Enterprises, LLC and Paris Las Vegas Operating Company, LLC ("TPOV Agreement"). The TPOV Agreement relates to the design, development, construction, and operation of the Gordon Ramsay Steak restaurant in Las Vegas. The negotiations of the TPOV Agreement occurred in Nevada and the agreement was signed by the parties in Nevada. Mr. Seibel signed the TPOV Agreement on behalf of TPOV. The TPOV Agreement also provided that "[t]he laws of the State of Nevada applicable to agreements made in that State shall govern the validity, construction, performance and effect of this Agreement." The TPOV Agreement further required (i) TPOV to provide "Restaurant Development Services" during meetings that "shall take place in Las Vegas, Nevada;" (ii) Mr. Seibel to visit and attend the restaurant one time each quarter for five consecutive nights; and (iii) Mr. Seibel to provide operational consulting and advice and attend meetings "with respect to same [that] shall take place in Las Vegas, Nevada."

18. Defendant TPOV Enterprises 16, LLC is a Delaware limited liability company. In April 2016, Mr. Seibel informed Paris that the TPOV Agreement would purportedly be assigned to TPOV Enterprises 16, LLC. Paris disputes the propriety of this assignment.

19. Defendant LLTQ Enterprises, LLC is a Delaware limited liability company located at 200 Central Park South, New York, New York 10019. In April 2012, Caesars Palace and LLTQ entered into a Development and Operation Agreement between LLTQ Enterprises, LLC and

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Desert Palace, Inc. ("LLTQ Agreement"). The LLTQ Agreement relates to the design, development, construction, and operation of the Gordon Ramsay Pub restaurant in Las Vegas. The negotiations of the LLTQ Agreement primarily occurred in Nevada and the agreement was signed by the parties in Nevada. Mr. Seibel signed the LLTQ Agreement on behalf of LLTQ. The LLTQ Agreement also provided that "[t]he laws of the State of Nevada applicable to agreements made in that State shall govern the validity, construction, performance and effect of this Agreement." The LLTQ Agreement further required (i) LLTQ to provide "Restaurant Development Services" during meetings that "shall take place in Las Vegas, Nevada;" (ii) Mr. Seibel to visit and attend the restaurant one time each quarter for five consecutive nights; and (iii) Mr. Seibel to provide operational consulting and advice and "meetings with respect to same [that] shall take place in Las Vegas, Nevada."

20. Defendant LLTQ Enterprises 16, LLC is a Delaware limited liability company. In April 2016, Mr. Seibel informed Caesars Palace that the LLTQ Agreement would purportedly be assigned to LLTQ Enterprises 16, LLC. Caesars Palace disputes the propriety of this assignment.

21. Defendant GR Burgr, LLC is a Delaware limited liability company located at 200 Central Park South, 19th Floor, New York, New York 10019. In December 2012, Planet Hollywood and GRB entered into a Development, Operation and License Agreement Among Gordon Ramsay, GR Burgr, LLC and PHW Manager, LLC on behalf of PHW Las Vegas, LLC DBA Planet Hollywood ("GRB Agreement"). The GRB Agreement relates to the design, development, construction, and operation of the BURGR Gordon Ramsay restaurant in Las Vegas. The negotiations of the GRB Agreement primarily occurred in Nevada and the agreement was signed by the parties in Nevada. Mr. Seibel signed the GRB Agreement on behalf of GRB. The GRB Agreement also provided that "[t]he laws of the State of Nevada applicable to agreements made in that State shall govern the validity, construction, performance and effect of this Agreement." The GRB Agreement further required GRB to provide "Restaurant Development Services," and meetings with respect to same, that "shall take place in Las Vegas, Nevada." Caesars is naming GRB as a defendant to the extent of Mr. Seibel's involvement with that entity.

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22. Defendant FERG, LLC is a Delaware limited liability company located at 200 Central Park South, New York, New York 10019. In May 2014, CAC and FERG entered into a Consulting Agreement between FERG, LLC and Boardwalk Regency Corporation DBA Caesars Atlantic City ("FERG Agreement"). The FERG Agreement relates to the design, development, construction, and operation of the Gordon Ramsay Pub and Grill restaurant. The negotiations of the FERG Agreement primarily occurred in Nevada and the agreement was signed by the parties in Nevada. Mr. Seibel signed the FERG Agreement on behalf of FERG.

23. Defendant FERG 16, LLC is a Delaware limited liability company. In April 2016, Mr. Seibel informed CAC that the FERG Agreement would purportedly be assigned to FERG 16, LLC. CAC disputes the propriety of this assignment.

24. Defendant J. Jeffrey Frederick resides at 31 Grand Masters Drive, Las Vegas, Nevada 89141. Mr. Seibel purportedly assigned his duties and obligations under the LLTQ, FERG, TPOV, and MOTI Agreements to Mr. Frederick. Mr. Frederick considers Mr. Seibel to be his best friend. Caesars disputes the propriety of this assignment and contends that Mr. Seibel did not properly delegate his duties and obligations to Mr. Frederick and instead attempted to effectuate this assignment to circumvent the suitability provisions in the LLTQ, FERG, TPOV, and MOTI Agreements.

25. Clark County, Nevada is a proper venue because the agreements, acts, events, occurrences, decisions, transactions, and/or omissions giving rise to this lawsuit occurred or were performed in Clark County, Nevada.

STATEMENT OF FACTS

A. The Business Relationship Between Caesars and Mr. Seibel.

(a) The MOTI Agreement.

26. Caesars' relationship with Mr. Seibel began in 2009 when the parties commenced negotiations for an agreement relating to the Serendipity 3 restaurant in Las Vegas. At the time, Mr. Seibel was a restaurateur responsible for the Serendipity restaurant in New York City and was looking to partner with Caesars on a similar concept at its Caesars Palace casino.

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27. Caesars holds gaming licenses and therefore is subject to rigorous regulation. Nevada requires its licensees to police themselves and their affiliates to ensure unwavering compliance with gaming regulations. As part of its compliance program, Caesars conducts suitability investigations of potential vendors that meet certain criteria as outlined in its compliance program, and requires various disclosures by vendors meeting such criteria to ensure that the entities with which it does business are suitable. Thus, in connection with the initial discussions between the parties, Caesars required Mr. Seibel to complete a "Business Information Form." On that form, Mr. Seibel represented that he had not been a party to a felony in the last ten years and there was nothing "that would prevent [him] from being licensed by a gaming authority." In reliance on those representations (among other things), Caesars Palace and MOTI entered into the MOTI Agreement.

28. The MOTI Agreement also contained a number of representations relating to the conduct of the parties and their disclosure obligations.

29. As far as conduct, MOTI represented that "it shall conduct all of its obligations hereunder in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of Caesars, the Marks, the Hotel Casino, and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel and casino and an exclusive, first-class restaurant."

30. With respect to disclosure, MOTI agreed that it would "provide to Caesars written disclosure regarding MOTI and all of their respective key employees, agents, representatives, management personnel, lenders, or any financial participants (collectively, the "Associated Parties") . . . ." And, "[t]o the extent that any prior disclosure becomes inaccurate, MOTI shall, within five (5) calendar days from that event, update the prior disclosure without Caesars making any further request."

31. The prior written disclosures referenced in the MOTI Agreement included and were intended to include the information that Mr. Seibel provided in the MOTI Business Information Form. Accordingly, MOTI was obligated to update the Business Information Form in accordance with the provisions in the MOTI Agreement.

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Action pursuant to 28 U.S.C. § 1334(b). The outcome of Counts II and III of the Nevada Action will alter the Debtors' liabilities to the LLTQ/FERG Defendants, affecting the estates and the amount of property available for distribution.

22. For example, if rescission of the Pub Agreements is not an available remedy, and the Debtors are found to be liable to the LLTQ/FERG Defendants in connection with their continued operations of the Pubs, the LLTQ/FERG Defendants will be awarded a large administrative priority claim (i.e. at least seven figures) that affects the administration of the estate and the amount of property available for distribution.

23. The Pending Bankruptcy Motions cannot be resolved without resolving Counts II and III of the Nevada Action.

24. Removal of Counts II and III of the Nevada Action to this Court is proper pursuant to 28 U.S.C. § 1452(a) and Rule 9027 of the Federal Rules of Bankruptcy Procedure.

25. Venue for Counts II and III of the Nevada Action is proper in this Court under 28 U.S.C. § 1452(a) because this Court is the Bankruptcy Court located in the District where the Nevada Action is pending. The LLTQ/FERG Defendants intend to promptly file a motion to transfer venue to the United States Bankruptcy Court for the Northern District of Illinois, where the Chapter 11 Cases are pending and the Pending Bankruptcy Motions are being litigated.

26. On August 28, 2017, counsel to the LLTQ/FERG Defendants informally obtained a copy of the Complaint (the "Informal Receipt Date").

27. By agreement of the Plaintiffs, service of the Complaint was effective on September 21, 2017, and the LLTQ/FERG Defendants have until October 20, 2017, by which to respond to the summons and Complaint.

28. Because the LLTQ/FERG Defendants have filed this Notice of Removal within thirty days of service (and within thirty days of the Informal Receipt Date), removal is timely under Rule 9027(a)(3) of the Federal Rules of Bankruptcy Procedure.

29. Attached as Group Exhibit B is the docket from the Nevada Action as of the date

of removal, which reflects that the Complaint is the only pleading filed to date, and copies of all accessible summonses issued and affidavits of service.[1]

30. Promptly after filing the Notice of Removal, the LLTQ/FERG Defendants will serve a copy of it on all parties to the Nevada Action as required by Federal Rule of Bankruptcy Procedure 9027(b).

31. Promptly after filing the Notice of Removal, the LLTQ/FERG Defendants will file with the State Court a copy of this Notice of Removal, as required by Federal Rule of Bankruptcy Procedure 9027(c).

32. Removal is made directly to this Court under 28 U.S.C. § 157(a). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

33. The LLTQ/FERG Defendants consent to the Bankruptcy Court entering final orders and judgments in this matter.

34. Venue lies properly in this Court pursuant to 28 U.S.C. § 1409(a).

35. This adversary proceeding is commenced pursuant to Rules 7001(7) and (9) and 7008 of the Federal Rules of Bankruptcy Procedure and 28 U.S.C. §§ 2201-2202.

DATED September 27, 2017.

Respectfully submitted:

LLTQ ENTERPRISES, LLC,
LLTQ ENTERPRISES 16, LLC
FERG, LLC AND FERG 16, LLC

By: /s/ Daniel R. McNutt
One of their attorneys

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MATTHEW C. WOLF (SBN 10801)
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and

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DISTRICT COURT

CLARK COUNTY, NEVADA

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY;

Plaintiffs,

vs.

ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC; and J. JEFFREY FREDERICK,

Defendants.

Case No.: A-17-760537-B

Dept. No.: Department 27

COMPLAINT

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Caesars alleges as follows:

PRELIMINARY STATEMENT

1. Since 2009, Caesars has entered into six agreements with entities owned by, managed by, and/or affiliated with Rowen Seibel relating to the operation of restaurants at Caesars' casinos (the "Seibel Agreements"). Because of the highly-regulated nature of Caesars' business, each of these agreements contained representations, warranties, and conditions to ensure that Caesars was not entering into a business relationship that would jeopardize its good standing with gaming regulators. To further ensure that Caesars was not doing business with an "Unsuitable Person," Caesars also requested and received "Business Information Forms" from Mr. Seibel at the outset of the MOTI and DNT business relationships in which he represented that he had not been a party to a felony in the last ten years and there was nothing "that would prevent him from being licensed by a gaming authority." Although the agreements required Mr. Seibel and the Seibel-Affiliated Entities to update those disclosures to the extent they subsequently became inaccurate, neither Mr. Seibel nor the Seibel-Affiliates Entities ever did so.

2. Unbeknownst to Caesars, when the parties entered into each of the agreements, Mr. Seibel was engaged in criminal conduct that rendered him "Unsuitable" under the terms of each agreement. In 2004, Mr. Seibel began using foreign bank accounts to defraud the IRS. In 2009, when Mr. Seibel was assuring Caesars that he had not been a party to a felony and there was nothing

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"that would prevent him from being licensed by a gaming authority," he was submitting false documentation to the IRS regarding his use of foreign bank accounts.

3. In April 2016, Mr. Seibel was charged with defrauding the IRS. Rather than contest the charges against him, Mr. Seibel pleaded guilty to one count of a corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212, a Class E Felony, and subsequently served time in a federal penitentiary for his crime.

4. Mr. Seibel, however, never informed Caesars that he was engaged in criminal activities. Nor did he disclose to Caesars that he had lied to the United States government, was under investigation by the United States government, or that he had pleaded guilty to a felony.

5. Instead, Caesars only learned about Mr. Seibel's felony conviction from press reports four months after he pleaded guilty. Upon learning of Mr. Seibel's felony conviction, Caesars exercised its contractual right to terminate its agreements with the Seibel-Affiliated Entities. Indeed, the parties to the Seibel Agreements expressly agreed that Caesars in its "sole and exclusive judgment" could terminate the agreements if it determined that Mr. Seibel and/or the Seibel-Affiliated Entities were "Unsuitable Persons" as defined in the agreements. The parties likewise expressly agreed that Caesars' decision to terminate the agreements would "not be subject to dispute by [the Seibel-Affiliated Entities]." Caesars determined that Mr. Seibel's conduct and felony conviction rendered him an "Unsuitable Person" as defined in the agreements. Therefore, Caesars exercised its "sole and exclusive judgment" and terminated the Seibel Agreements on or around September 2, 2016.

6. Nevertheless, Defendants are now claiming that Caesars wrongfully terminated those agreements and either have initiated or indicated that they intend to initiate legal proceedings relating to the termination of the agreements. Because there is an actual dispute among the parties, Caesars brings this action for a declaratory judgment confirming that it was proper, in its sole and exclusive judgment, to terminate each of the agreements with the Seibel-Affiliated Entities.

7. In addition, Caesars seeks a declaratory judgment that it has no current or future obligations to Defendants. Certain defendants are seeking monetary relief from Caesars in three different courts across the country related to the Seibel Agreements and have threatened to attempt

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to force Caesars to include Mr. Seibel in other restaurant opportunities. Simply put, Caesars is not required under the Seibel Agreements or otherwise to do business with a convicted felon. Indeed, Mr. Seibel and the Seibel-Affiliated Entities concealed material facts from Caesars that they had a duty to disclose regarding Mr. Seibel's wrongdoings. Mr. Seibel concealed these wrongdoings from Caesars to avoid the termination of the Seibel Agreements. Had Caesars been aware of Mr. Seibel's wrongdoings when the relationship first began, it would not have entered into the Seibel Agreements. And, if Mr. Seibel had properly disclosed his wrongdoings, Caesars would not have continued doing business with Mr. Seibel and would have terminated its relationship with Mr. Seibel and his companies. Because Mr. Seibel and the Seibel-Affiliated Entities fraudulently induced Caesars to enter into the Seibel Agreements and breached the Seibel Agreements by failing to disclose material facts regarding Mr. Seibel's wrongdoings, Caesars owes no current or future obligations to Defendants.

8. Caesars therefore brings this action to obtain declarations that it properly terminated its agreements with the Seibel-Affiliated Entities and does not owe any current or future obligations to Defendants.

PARTIES, JURISDICTION, AND VENUE

9. Plaintiff Desert Palace, Inc. is a Nevada corporation that operates the Caesars Palace casino. Desert Palace Inc.'s principal place of business is 3570 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

10. Plaintiff Paris Las Vegas Operating Co., LLC is a Nevada limited liability company that operates the Paris Las Vegas Hotel and Casino. Paris Las Vegas Operating Co., LLC's principal place of business is 3655 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

11. Plaintiff PHWLV, LLC is a Nevada limited liability company that operates the Planet Hollywood Las Vegas Resort and Casino. PHWLV, LLC's principal place of business is 3667 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

12. Plaintiff Boardwalk Regency Corporation d/b/a Caesars Atlantic City LLC is a Delaware limited liability company that operates the Caesars Atlantic City Hotel and Casino.

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Caesars Atlantic City's principal place of business is 2100 Pacific Avenue, Atlantic City, New Jersey 08401.

13. Defendant Rowen Seibel currently resides at 200 Central Park South, Unit 19E, New York, New York 10019. Mr. Seibel regularly travels to and conducts business in Nevada, and owns real estate in Nevada. Mr. Seibel also filed a lawsuit in the district court of Clark County, Nevada, purportedly derivatively on behalf of GRB, that relates to certain of the issues set forth in this Complaint and remains pending. Case No. A-17-751759-B.

14. Defendant Moti Partners, LLC is a New York limited liability company located at 200 Central Park South, New York, New York 10019. In March 2009, Caesars Palace and MOTI Partners, LLC entered into a Development, Operation, and License Agreement (the "MOTI Agreement"). The MOTI Agreement relates to the design, development, construction, and operation of the Serendipity restaurant in Las Vegas. The negotiations of the MOTI Agreement occurred primarily in Nevada. The MOTI Agreement also was signed by the parties in Nevada, and Mr. Seibel signed the MOTI Agreement on behalf of MOTI. The MOTI Agreement further provided that "[t]he laws of the State of Nevada applicable to agreements made in that State shall govern the validity, construction, performance and effect of [the MOTI Agreement]." The MOTI Agreement likewise required (i) MOTI to provide "Development Services" during meetings that "shall take place primarily in Las Vegas;" (ii) MOTI to provide "Menu Development Services" during meetings that "shall take place primarily in Las Vegas;" and (iii) Mr. Seibel to provide "Marketing Consulting Services" during meetings that "shall take place primarily in Las Vegas."

15. Defendant Moti Partners 16, LLC is a Delaware limited liability company. In April 2016, Mr. Seibel informed Caesars Palace that the MOTI Agreement would purportedly be assigned to Moti Partners 16, LLC. Caesars Palace disputes the propriety of this assignment.

16. Defendant DNT Acquisition, LLC is a Delaware limited liability company located at 200 Central Park South, 19th Floor, New York, New York 10019. In June 2011, Caesars Palace and DNT entered into a Development, Operation, and License Agreement among DNT Acquisition, LLC, The Original Homestead Restaurant, Inc., and Desert Palace, Inc. ("DNT Agreement"). The DNT Agreement relates to the design, development, construction, and

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operation of an Old Homestead restaurant in Las Vegas. The negotiations of the DNT Agreement occurred in Nevada and the agreement was signed by the parties in Nevada. Mr. Seibel signed the DNT Agreement on behalf of DNT. The DNT Agreement also provided that "[t]he laws of the State of Nevada applicable to agreements made in that State shall govern the validity, construction, performance, and effect of this Agreement." The DNT Agreement further required (i) DNT to provide "Restaurant Development Services" that "shall take place in Las Vegas;" (ii) Mr. Seibel to visit the restaurant one time each quarter for two consecutive nights; and (iii) Mr. Seibel to participate in marketing consultations and meetings that "shall take place in Las Vegas."

17. Defendant TPOV Enterprises, LLC is a New York limited liability company located at 200 Central Park South, New York, NY 10019. In November 2011, Paris and TPOV entered into a Development and Operation Agreement between TPOV Enterprises, LLC and Paris Las Vegas Operating Company, LLC ("TPOV Agreement"). The TPOV Agreement relates to the design, development, construction, and operation of the Gordon Ramsay Steak restaurant in Las Vegas. The negotiations of the TPOV Agreement occurred in Nevada and the agreement was signed by the parties in Nevada. Mr. Seibel signed the TPOV Agreement on behalf of TPOV. The TPOV Agreement also provided that "[t]he laws of the State of Nevada applicable to agreements made in that State shall govern the validity, construction, performance and effect of this Agreement." The TPOV Agreement further required (i) TPOV to provide "Restaurant Development Services" during meetings that "shall take place in Las Vegas, Nevada;" (ii) Mr. Seibel to visit and attend the restaurant one time each quarter for five consecutive nights; and (iii) Mr. Seibel to provide operational consulting and advice and attend meetings "with respect to same [that] shall take place in Las Vegas, Nevada."

18. Defendant TPOV Enterprises 16, LLC is a Delaware limited liability company. In April 2016, Mr. Seibel informed Paris that the TPOV Agreement would purportedly be assigned to TPOV Enterprises 16, LLC. Paris disputes the propriety of this assignment.

19. Defendant LLTQ Enterprises, LLC is a Delaware limited liability company located at 200 Central Park South, New York, New York 10019. In April 2012, Caesars Palace and LLTQ entered into a Development and Operation Agreement between LLTQ Enterprises, LLC and

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Desert Palace, Inc. ("LLTQ Agreement"). The LLTQ Agreement relates to the design, development, construction, and operation of the Gordon Ramsay Pub restaurant in Las Vegas. The negotiations of the LLTQ Agreement primarily occurred in Nevada and the agreement was signed by the parties in Nevada. Mr. Seibel signed the LLTQ Agreement on behalf of LLTQ. The LLTQ Agreement also provided that "[t]he laws of the State of Nevada applicable to agreements made in that State shall govern the validity, construction, performance and effect of this Agreement." The LLTQ Agreement further required (i) LLTQ to provide "Restaurant Development Services" during meetings that "shall take place in Las Vegas, Nevada;" (ii) Mr. Seibel to visit and attend the restaurant one time each quarter for five consecutive nights; and (iii) Mr. Seibel to provide operational consulting and advice and "meetings with respect to same [that] shall take place in Las Vegas, Nevada."

20. Defendant LLTQ Enterprises 16, LLC is a Delaware limited liability company. In April 2016, Mr. Seibel informed Caesars Palace that the LLTQ Agreement would purportedly be assigned to LLTQ Enterprises 16, LLC. Caesars Palace disputes the propriety of this assignment.

21. Defendant GR Burgr, LLC is a Delaware limited liability company located at 200 Central Park South, 19th Floor, New York, New York 10019. In December 2012, Planet Hollywood and GRB entered into a Development, Operation and License Agreement Among Gordon Ramsay, GR Burgr, LLC and PHW Manager, LLC on behalf of PHW Las Vegas, LLC DBA Planet Hollywood ("GRB Agreement"). The GRB Agreement relates to the design, development, construction, and operation of the BURGR Gordon Ramsay restaurant in Las Vegas. The negotiations of the GRB Agreement primarily occurred in Nevada and the agreement was signed by the parties in Nevada. Mr. Seibel signed the GRB Agreement on behalf of GRB. The GRB Agreement also provided that "[t]he laws of the State of Nevada applicable to agreements made in that State shall govern the validity, construction, performance and effect of this Agreement." The GRB Agreement further required GRB to provide "Restaurant Development Services," and meetings with respect to same, that "shall take place in Las Vegas, Nevada." Caesars is naming GRB as a defendant to the extent of Mr. Seibel's involvement with that entity.

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22. Defendant FERG, LLC is a Delaware limited liability company located at 200 Central Park South, New York, New York 10019. In May 2014, CAC and FERG entered into a Consulting Agreement between FERG, LLC and Boardwalk Regency Corporation DBA Caesars Atlantic City ("FERG Agreement"). The FERG Agreement relates to the design, development, construction, and operation of the Gordon Ramsay Pub and Grill restaurant. The negotiations of the FERG Agreement primarily occurred in Nevada and the agreement was signed by the parties in Nevada. Mr. Seibel signed the FERG Agreement on behalf of FERG.

23. Defendant FERG 16, LLC is a Delaware limited liability company. In April 2016, Mr. Seibel informed CAC that the FERG Agreement would purportedly be assigned to FERG 16, LLC. CAC disputes the propriety of this assignment.

24. Defendant J. Jeffrey Frederick resides at 31 Grand Masters Drive, Las Vegas, Nevada 89141. Mr. Seibel purportedly assigned his duties and obligations under the LLTQ, FERG, TPOV, and MOTI Agreements to Mr. Frederick. Mr. Frederick considers Mr. Seibel to be his best friend. Caesars disputes the propriety of this assignment and contends that Mr. Seibel did not properly delegate his duties and obligations to Mr. Frederick and instead attempted to effectuate this assignment to circumvent the suitability provisions in the LLTQ, FERG, TPOV, and MOTI Agreements.

25. Clark County, Nevada is a proper venue because the agreements, acts, events, occurrences, decisions, transactions, and/or omissions giving rise to this lawsuit occurred or were performed in Clark County, Nevada.

STATEMENT OF FACTS

A. The Business Relationship Between Caesars and Mr. Seibel.

(a) The MOTI Agreement.

26. Caesars' relationship with Mr. Seibel began in 2009 when the parties commenced negotiations for an agreement relating to the Serendipity 3 restaurant in Las Vegas. At the time, Mr. Seibel was a restaurateur responsible for the Serendipity restaurant in New York City and was looking to partner with Caesars on a similar concept at its Caesars Palace casino.

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27. Caesars holds gaming licenses and therefore is subject to rigorous regulation. Nevada requires its licensees to police themselves and their affiliates to ensure unwavering compliance with gaming regulations. As part of its compliance program, Caesars conducts suitability investigations of potential vendors that meet certain criteria as outlined in its compliance program, and requires various disclosures by vendors meeting such criteria to ensure that the entities with which it does business are suitable. Thus, in connection with the initial discussions between the parties, Caesars required Mr. Seibel to complete a "Business Information Form." On that form, Mr. Seibel represented that he had not been a party to a felony in the last ten years and there was nothing "that would prevent [him] from being licensed by a gaming authority." In reliance on those representations (among other things), Caesars Palace and MOTI entered into the MOTI Agreement.

28. The MOTI Agreement also contained a number of representations relating to the conduct of the parties and their disclosure obligations.

29. As far as conduct, MOTI represented that "it shall conduct all of its obligations hereunder in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of Caesars, the Marks, the Hotel Casino, and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel and casino and an exclusive, first-class restaurant."

30. With respect to disclosure, MOTI agreed that it would "provide to Caesars written disclosure regarding MOTI and all of their respective key employees, agents, representatives, management personnel, lenders, or any financial participants (collectively, the "Associated Parties") . . . ." And, "[t]o the extent that any prior disclosure becomes inaccurate, MOTI shall, within five (5) calendar days from that event, update the prior disclosure without Caesars making any further request."

31. The prior written disclosures referenced in the MOTI Agreement included and were intended to include the information that Mr. Seibel provided in the MOTI Business Information Form. Accordingly, MOTI was obligated to update the Business Information Form in accordance with the provisions in the MOTI Agreement.

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32. The MOTI Agreement provided Caesars with the ability to terminate the MOTI Agreement in its discretion if it determined that (i) MOTI was not complying with its disclosure obligations or (ii) MOTI or an Associated Party was engaged in any activity or relationship that jeopardized the privileged licenses held by Caesars. Specifically, the MOTI Agreement stated:

> If MOTI fails to satisfy or fails to cause the Associated Parties to satisfy [the disclosure] requirement, if Caesars or any of Caesars' affiliates are directed to cease business with MOTI or any Associated Party by the Gaming Authorities, or if Caesars shall determine, in Caesars' sole and exclusive judgment, that MOTI or any Associated Party is or may engage in any activity or relationship that could or does jeopardize any of the privileged licenses held by Caesars or any Caesars' Affiliate, then (a) MOTI shall terminate any relationship with the Associated Party who is the source of such issue, (b) MOTI shall cease the activity or relationship creating the issue to Caesars' satisfaction, in Caesars' sole judgment, or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b), as determined by Caesars in its sole discretion, Caesars shall, without prejudice to any other rights or remedies of Caesars including at law or in equity, terminate this Agreement and its relationship with MOTI. In the event MOTI does not comply with any of the foregoing, such noncompliance may be deemed, in Caesars' sole discretion, as a default hereunder. MOTI further acknowledges that Caesars shall have the absolute right, without any obligation [to initiate arbitration], to terminate this Agreement in the event any Gaming Authority require Caesars to do so.

33. Finally, MOTI represented that, "[a]s of the Effective date [of the agreement], no representation or warranty made herein by [MOTI] contains any untrue statement of a material fact, or omits to state a material fact necessary to make such statements not misleading."

34. Significantly, the disclosure obligations under the MOTI Agreement were not limited to the corporate entity MOTI. Instead, MOTI's obligations—both with respect to conduct and disclosure—applied to "Associated Parties" of MOTI, which included all of MOTI's key employees, agents, representatives, and financial participants. As the member-manager of MOTI and the individual who signed the MOTI Agreement, Mr. Seibel was an "Associated Party" of MOTI. Thus, Mr. Seibel had an ongoing obligation to conduct himself with the highest standards of honesty, integrity, quality, and courtesy. And MOTI had an ongoing obligation to disclose any information regarding Mr. Seibel that jeopardized any of the privileged licenses held by Caesars.

35. The initial disclosures that MOTI and Mr. Seibel provided were false when made. And, despite the obligations set out in the MOTI Agreement, neither Mr. Seibel nor MOTI ever provided Caesars with an updated Business Information Form or any other supplemental disclosure.

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Nor did they otherwise provide updated disclosures regarding Mr. Seibel's criminal activities, his investigation by the IRS, his guilty plea, his felony conviction, or his incarceration.

36. Over the next five years, Caesars and Mr. Seibel entered into five more agreements with entities owned and managed by Mr. Seibel. With respect to each of these agreements, Caesars relied upon the MOTI Business Information Form and the ongoing obligations of MOTI and Mr. Seibel to update that disclosure when and if necessary.

(b) The DNT Agreement.

37. Like the MOTI Agreement, the DNT Agreement related to Caesars' efforts to introduce a New York City restaurant—Old Homestead—at its Caesars Palace property. Unlike the MOTI Agreement, however, the DNT Agreement involved a third-party unrelated to Mr. Seibel (The Original Homestead Restaurant, Inc.; collectively, with DNT, the "DNT Parties"). As part of the DNT Agreement, the Old Homestead Restaurant, Inc. licensed its intellectual property to Caesars Palace (the "Old Homestead Marks").

38. In connection with the discussions between DNT and Caesars Palace, Caesars required Mr. Seibel to complete another "Business Information Form" in 2011. On that form, Mr. Seibel represented that he had not been a party to a felony in the last ten years and there was nothing "that would prevent [him] from being licensed by a gaming authority." In reliance on those representations (among other things), Caesars Palace and DNT entered into the DNT Agreement.

39. The DNT Agreement contained a number of representations relating to the conduct of the parties and their disclosure obligations.

40. First, the DNT Parties represented in the DNT Agreement that "they shall, and they shall cause their Affiliates to, conduct themselves in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of Caesars, the Old Homestead Marks, the Old Homestead Materials, the Old Homestead System, the Caesars Palace and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel and casino and an exclusive, first-class restaurant." The DNT Parties further agreed that they would "use commercially reasonable efforts to continuously monitor the performance of each of its and its Affiliates'

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respective agents, employees, servants, contractors and licensees and shall ensure the foregoing standards are consistently maintained by all of them." Finally, the DNT Agreement provided that "[a]ny failure by the DNT Parties, their affiliates or any of their respective agents, employees, servants, contractors or licensees to maintain the standards described [above] shall, in addition to any other rights or remedies Caesars may have, give Caesars the right to terminate [the DNT Agreement] in its sole and absolute discretion."

41. Second, the DNT Parties agreed that they would "provide to Caesars written disclosure regarding the DNT Associates . . . ," which included Mr. Seibel. And, "[t]o the extent that any prior disclosure becomes inaccurate, the DNT Parties shall, within ten (10) calendar days from the event, update the prior disclosure without Caesars making any further request."

42. The DNT Agreement provided Caesars with the ability to terminate the DNT Agreement in its discretion if it determined that (i) DNT was not complying with its disclosure obligations, or (ii) DNT or an Associated Party was an "Unsuitable Person." Specifically, the DNT Agreement provided:

> If any DNT Associate fails to satisfy or [sic] such requirement, if Caesars or any of Caesars' affiliates are directed to cease business with any DNT Associate by any Gaming Authority, or if Caesars shall determine, in Caesars' sole and exclusive judgment, that any DNT Associate is an Unsuitable Person, whether as a result of DNT Change of Control or otherwise, then, immediately following notice by Caesars to DNT, (a) the DNT Parties shall terminate any relationship with the Person who is the source of such issue, (b) the DNT Parties shall cease the activity or relationship creating the issue to Caesars' satisfaction, in Caesars' sole judgment, or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b), as determined by Caesars in its sole discretion, Caesars shall, without prejudice to any other rights or remedies of Caesars including at law or in equity, have the right to terminate this Agreement and its relationship with the DNT Parties. The DNT Parties further acknowledges [sic] that Caesars shall have the absolute right to terminate this Agreement in the event any Gaming Authority requires Caesars or one of its Affiliates to do so. Any termination by Caesars pursuant to this [section] shall not be subject to dispute by the DNT Parties and shall not be the subject of any [arbitration proceeding].

43. Under the DNT Agreement, an "Unsuitable Person" was defined as follows:

> Any Person (a) whose association with Caesars could be anticipated to result in a disciplinary action relating to, or the loss of, inability to reinstate or failure to obtain, any registration, application or license or any other rights or entitlements held or required to be held by Caesars or any of its Affiliates under any United States, state, local or foreign laws, rules or regulations relating to gaming or the sale of alcohol, (b) whose association or relationship with Caesars or its Affiliates could be anticipated to violate any United States, state, local or foreign laws, rules or

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> regulations relating to gaming or the sale of alcohol to which Caesars or its Affiliates are subject, (c) who is or might be engaged or about to be engaged in any activity which could adversely impact the business or reputation of Caesars or its Affiliates, or (d) who is required to be licensed, registered, qualified or found suitable under any United States, state, local, or foreign laws, rules or regulations relating to gaming or the sale of alcohol under which Caesars or any of its Affiliates is licensed, registered, qualified or found suitable, and such Person is not or does not remain so licensed, registered, qualified or found suitable.

44. Finally, DNT represented that, "[a]s of the Effective date [of the agreement], no representation or warranty made herein by [DNT] contains any untrue statement of a material fact, or omits to state a material fact necessary to make such statements not misleading."

45. As with the MOTI Agreement, the disclosure obligations under the DNT Agreement were not limited to the corporate entity DNT. Instead, DNT's obligations—both with respect to conduct and disclosure—applied to "DNT Associates," which included persons controlling DNT. Mr. Seibel, as the member-manager of DNT and the individual who signed the DNT Agreement, was a "DNT Associate." Thus, Mr. Seibel had an ongoing obligation to conduct himself with the highest standards of honesty, integrity, quality, and courtesy. And DNT had an ongoing obligation to disclose any information regarding Mr. Seibel that would render him an Unsuitable Person.

46. The initial disclosures that DNT and Mr. Seibel provided were false when made. And, despite the obligations set out in the DNT Agreement, neither Mr. Seibel nor DNT ever provided Caesars with an updated Business Information Form or any other supplemental disclosure. Nor did they otherwise provide updated disclosures regarding Mr. Seibel's criminal activities, his investigation by the IRS, his guilty plea, his conviction, or his incarceration.

(c) The TPOV Agreement.

47. The TPOV Agreement related to Paris' plans to partner with celebrity chef Gordon Ramsay to design and develop a restaurant in the Paris casino known as "Gordon Ramsay Steak." The TPOV Agreement set forth the obligations of TPOV and Mr. Seibel to assist with the design, development, construction, and operation of Gordon Ramsay Steak.

48. The TPOV Agreement contained a number of representations relating to the conduct of the parties and their disclosure obligations.

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49. First, TPOV represented that "it shall and it shall cause its Affiliates to conduct themselves in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of Paris, the Paris Las Vegas and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel and casino and an exclusive, first-class restaurant." TPOV further agreed that it would "use commercially reasonable efforts to continuously monitor the performance of each of its and its Affiliates' respective agents, employees, servants, contractors and licensees and shall ensure the foregoing standards are consistently maintained by all of them."

50. Second, TPOV agreed that it would "provide to Paris written disclosure regarding the TPOV Associates . . . ," which included Mr. Seibel. And, "[t]o the extent that any prior disclosure becomes inaccurate, TPOV shall, within ten (10) calendar days from the event, update the prior disclosure without Paris making any further request."

51. The TPOV Agreement provided Paris with the ability to terminate the TPOV Agreement in its discretion if it determined that (i) TPOV was not complying with its disclosure obligations, or (ii) TPOV or an Associated Party was an "Unsuitable Person." Specifically, the TPOV Agreement provided:

> If any TPOV Associate fails to satisfy or [sic] such requirement, if Paris or any of Paris' Affiliates are directed to cease business with any TPOV Associate by any Gaming Authority, or if Paris shall determine, in Paris' sole and exclusive judgment, that any TPOV Associate is an Unsuitable Person, whether as a result of a TPOV Change of Control or otherwise, then (a) TPOV shall terminate any relationship with the Person who is the source of such issue, (b) TPOV shall cease the activity or relationship creating the issue to Paris' satisfaction, in Paris' sole judgment, or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b), as determined by Paris in its sole discretion, Paris shall, without prejudice to any other rights or remedies of Paris including at law or in equity, have the right to terminate this Agreement and its relationship with TPOV. TPOV further acknowledges that Paris shall have the right to terminate this Agreement in the event any Gaming Authority requires Paris or one of its Affiliates to do so. Any termination by Paris pursuant to this [section] shall not be subject to dispute by TPOV and shall not be the subject of any proceeding [in arbitration].

52. Under the TPOV Agreement, an "Unsuitable Person" was defined as follows:

> Any Person (a) whose association with Paris or its Affiliates could be anticipated to result in a disciplinary action relating to, or the loss of, inability to reinstate or failure to obtain, any registration, application or license or any other rights or entitlements held or required to be held by Paris or any of its Affiliates under any United States, state, local or foreign laws, rules or regulations relating to gaming or the sale of

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> alcohol, (b) whose association or relationship with Paris or its Affiliates could be anticipated to violate any United States, state, local or foreign laws, rules or regulations relating to gaming or the sale of alcohol to which Paris or its Affiliates are subject, (c) who is or might be engaged or about to be engaged in any activity which could adversely impact the business or reputation of Paris or its Affiliates, or (d) who is required to be licensed, registered, qualified or found suitable under any United States, state, local, or foreign laws, rules or regulations relating to gaming or the sale of alcohol under which Paris or any of its Affiliates is licensed, registered, qualified or found suitable, and such Person is not or does not remain so licensed, registered, qualified or found suitable.

53. Finally, TPOV represented that, "[a]s of the Effective date [of the agreement], no representation or warranty made herein by [TPOV] contains any untrue statement of a material fact, or omits to state a material fact necessary to make such statements not misleading."

54. The disclosure and conduct obligations under the TPOV Agreement were not limited to the corporate entity TPOV. Instead, TPOV's obligations—both with respect to conduct and disclosure—included TPOV's "Associates" and "Affiliates." TPOV's Affiliates included persons controlling TPOV. The TPOV Agreement specifically stated that "with respect to TPOV, the term 'Affiliate' shall include Rowen Seibel and each Affiliate of Rowen Seibel." TPOV's Associates included its directors, employees, and representatives. Mr. Seibel, as the member-manager of TPOV and the individual who signed the TPOV Agreement, was both a TPOV Affiliate and TPOV Associate. Thus, Mr. Seibel had an ongoing obligation to conduct himself with the highest standards of honesty, integrity, quality, and courtesy. And TPOV had an ongoing obligation to disclose any information regarding Mr. Seibel that would render him an Unsuitable Person.

55. Because Mr. Seibel was specifically included as a TPOV Associate, Paris relied upon his previous representations in the MOTI and DNT Business Information Forms that he had not been a party to a felony in the past ten years and there was nothing in his past that would prevent him from being licensed by a gaming authority. Thus, the disclosures contained in the Business Information Forms constituted prior written disclosures referenced in the TPOV Agreement that needed to be updated to the extent they were no longer accurate.

56. The initial disclosures that TPOV provided were false when made. And, despite the obligations set out in the TPOV Agreement, neither Mr. Seibel nor TPOV ever provided Caesars with an updated Business Information Form or any other supplemental disclosure. Nor did TPOV

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otherwise provide updated disclosures regarding Mr. Seibel's criminal activities, his investigation by the IRS, his guilty plea, his felony conviction, or his incarceration.

(d) The LLTQ Agreement.

57. The LLTQ Agreement related to Caesars Palace's plans to partner with celebrity chef Gordon Ramsay to license intellectual property that would be used in connection with a restaurant in the Caesars Palace casino known as the Gordon Ramsay Pub. The LLTQ Agreement set forth the obligations of LLTQ and Mr. Seibel to assist with the design, development, construction, and operation of the Gordon Ramsay Pub.

58. The LLTQ Agreement contained a number of representations relating to the conduct of the parties and their disclosure obligations.

59. First, LLTQ represented that "it shall and it shall cause its Affiliates to conduct themselves in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of Caesars, the Caesars Palace Las Vegas and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel and casino and an exclusive, first-class restaurant." LLTQ further agreed that it would "use commercially reasonable efforts to continuously monitor the performance of each of its and its Affiliates' respective agents, employees, servants, contractors and licensees and shall ensure the foregoing standards are consistently maintained by all of them."

60. Second, LLTQ agreed that it would "provide to Caesars written disclosure regarding the LLTQ Associates . . . ," which included Mr. Seibel. And, "[t]o the extent that any prior disclosure becomes inaccurate, LLTQ shall, within ten (10) calendar days from the event, update the prior disclosure without Caesars making any further request."

61. The LLTQ Agreement provided Caesars Palace with the ability to terminate the LLTQ Agreement in its discretion if it determined that (i) LLTQ was not complying with its disclosure obligations or (ii) LLTQ or an Associated Party was an "Unsuitable Person." Specifically, the LLTQ Agreement provided:

> If any LLTQ Associate fails to satisfy or [sic] such requirement, if Caesars or any of Caesars' Affiliates are directed to cease business with any LLTQ Associate by any Gaming Authority, or if Caesars shall determine, in Caesars' sole and exclusive

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> judgment, that any LLTQ Associate is an Unsuitable Person, whether as a result of a LLTQ Change of Control or otherwise, then (a) LLTQ shall terminate any relationship with the Person who is the source of such issue, (b) LLTQ shall cease the activity or relationship creating the issue to Caesars' satisfaction, in Caesars' sole judgment, or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b), as determined by Caesars in its sole discretion, Caesars shall, without prejudice to any other rights or remedies of Caesars including at law or in equity, have the right to terminate this Agreement and its relationship with LLTQ. LLTQ further acknowledges that Caesars shall have the right to terminate this Agreement in the event any Gaming Authority requires Caesars or one of its Affiliates to do so. Any termination by Caesars pursuant to this [section] shall not be subject to dispute by LLTQ and shall not be the subject of any proceeding [in arbitration].

62. Under the LLTQ Agreement, an "Unsuitable Person" was defined as follows:

> Any Person (a) whose association with Caesars or its Affiliates could be anticipated to result in a disciplinary action relating to, or the loss of, inability to reinstate or failure to obtain, any registration, application or license or any other rights or entitlements held or required to be held by Caesars or any of its Affiliates under any United States, state, local or foreign laws, rules or regulations relating to gaming or the sale of alcohol, (b) whose association or relationship with Caesars or its Affiliates could be anticipated to violate any United States, state, local or foreign laws, rules or regulations relating to gaming or the sale of alcohol to which Caesars or its Affiliates are subject, (c) who is or might be engaged or about to be engaged in any activity which could adversely impact the business or reputation of Caesars or its Affiliates, or (d) who is required to be licensed, registered, qualified or found suitable under any United States, state, local, or foreign laws, rules or regulations relating to gaming or the sale of alcohol under which Caesars or any of its Affiliates is licensed, registered, qualified or found suitable, and such Person is not or does not remain so licensed, registered, qualified or found suitable.

63. Finally, LLTQ represented that, "[a]s of the Effective date [of the agreement], no representation or warranty made herein by [LLTQ] contains any untrue statement of a material fact, or omits to state a material fact necessary to make such statements not misleading."

64. The disclosure and conduct obligations under the LLTQ Agreement were not limited to the corporate entity LLTQ. Instead, LLTQ's obligations—both with respect to conduct and disclosure—included LLTQ's "Associates" and "Affiliates." LLTQ's Affiliates included persons controlling LLTQ. The LLTQ Agreement specifically stated that "with respect to LLTQ, the term 'Affiliate' shall include Rowen Seibel and each Affiliate of Rowen Seibel." LLTQ's Associates included its directors, employees, and representatives. Mr. Seibel, as the member-manager of LLTQ and the individual who signed the LLTQ Agreement, was both an LLTQ Affiliate and Associate. Thus, Mr. Seibel had an ongoing obligation to conduct himself with the highest

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standards of honesty, integrity, quality, and courtesy. And LLTQ had an ongoing obligation to disclose any information regarding Mr. Seibel that would render him an Unsuitable Person.

65. Because Mr. Seibel was specifically included as an LLTQ Associate, Caesars relied upon his previous representations in the MOTI and DNT Business Information Forms that he had not been a party to a felony in the past ten years and there was nothing in his past that would prevent him from being licensed by a gaming authority. Thus, the disclosures contained in the Business Information Forms constituted the prior written disclosures referenced in the LLTQ Agreement.

66. The initial disclosures that LLTQ provided were false when made. And, despite the obligations set out in the LLTQ Agreement, neither Mr. Seibel nor LLTQ ever provided Caesars with an updated Business Information Form or any other supplemental disclosure. Nor did LLTQ otherwise provide updated disclosures regarding Mr. Seibel's criminal activities, his investigation by the IRS, his guilty plea, his felony conviction, or his incarceration.

67. In addition, Section 13.22 of the LLTQ Agreement ("Section 13.22") contains the following provision:

> If Caesars elects under this Agreement to pursue any venture similar to (i) the Restaurant (i.e., any venture generally in the nature of a pub, bar, café or tavern) or (ii) the "Restaurant" as defined in the [TPOV Agreement] (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), Caesars and LLTQ shall, or shall cause an Affiliate to, execute a development and operation agreement on the same terms and conditions as this Agreement, subject only to revisions proposed by Caesars or its Affiliate as are necessary to reflect the difference in location between the Restaurant and such other venture (including, for the avoidance of doubt, the Baseline Amount, permitted Operating Expenses and necessary Project Costs).

68. Caesars has taken the position that this provision, which has been characterized as a restrictive covenant, is unenforceable as a matter of law because (a) the LLTQ Agreement was properly terminated; (b) Caesars is prohibited from entering into a business relationship with LLTQ or Mr. Seibel given that LLTQ and Mr. Seibel are Unsuitable Persons; and (c) Section 13.22 is vague, ambiguous, indefinite, and overly broad. In contrast, LLTQ has asserted that it is enforceable and should apply to any future ventures in any location between Caesars and Gordon Ramsay.

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(e) The GR Burgr Agreement.

69. The GRB Agreement related to Planet Hollywood's plans to design, develop, and operate a restaurant in the Planet Hollywood casino known as "BURGR Gordon Ramsay." As such, the GRB Agreement set forth the obligations of GRB to license certain intellectual property to Planet Hollywood and assist with the design, development, construction, and operation of the BURGR Gordon Ramsay Restaurant.

70. The GRB Agreement contained a number of representations relating to the conduct of the parties and their disclosure obligations.

71. First, GRB represented that "it shall and it shall cause its Affiliates to conduct themselves in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of PH, the GRB Marks, PH and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel and casino and an exclusive, first-class restaurant." GRB further agreed that it would "use commercially reasonable efforts to continuously monitor the performance of each of its and its Affiliates' respective agents, employees, servants, contractors and licensees and shall ensure the foregoing standards are consistently maintained by all of them. Any failure by GRB or any of its respective Affiliates or any of their respective agents, employees, servants, contractors or licensees to maintain the standards described in this [section] shall, in addition to any other rights or remedies PH have, give PH the right to terminate this Agreement . . . in its sole and absolute discretion."

72. Second, GRB further agreed that it would "provide or cause to be provided to PH written disclosure regarding its GR Associates . . . ," which included Mr. Seibel. And, "[t]o the extent that any prior disclosure becomes inaccurate, GRB shall, within ten (10) calendar days from the event, update the prior disclosure without PH making any further request."

73. The GRB Agreement provided Planet Hollywood with the ability to terminate the GRB Agreement in its discretion if it determined that (i) GRB was not complying with its disclosure obligations, or (ii) GRB or an Associated Party was an "Unsuitable Person." Specifically, the GRB Agreement provided:

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> If any GRB Associate fails to satisfy any such requirement, if PH or any of PH's Affiliates are directed to cease business with any GRB Associate by any Gaming Authority, or if PH shall determine, in PH's sole and exclusive judgment, that any GRB Associate is an Unsuitable Person, then immediately following notice by PH to Gordon Ramsay and GRB, (a) Gordon Ramsay and/or GRB shall terminate any relationship with the Person who is the source of such issue, (b) Gordon Ramsay and/or GRB shall cease the activity or relationship creating the issue to PH's satisfaction, in PH's sole judgment, or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b), as determined by PH in its sole discretion, PH shall, without prejudice to any other rights or remedies of Caesars including at law or in equity, have the right to terminate this Agreement and its relationship with Gordon Ramsay and GRB. Each of Gordon Ramsay and GRB further acknowledges that PH shall have the absolute right to terminate this Agreement in the event any Gaming Authority requires PH or one of its Affiliates to do so. Any termination by PH pursuant to this [section] shall not be subject to dispute by Gordon Ramsay or GRB and shall not be the subject of any proceeding [in arbitration].

74. Under the GRB Agreement, an "Unsuitable Person" was defined as follows:

> Any Person (a) whose association with PH or its Affiliates could be anticipated to result in a disciplinary action relating to, or the loss of, inability to reinstate or failure to obtain, any registration, application or license or any other rights or entitlements held or required to be held by PH or any of its Affiliates under any United States, state, local or foreign laws, rules or regulations relating to gaming or the sale of alcohol, (b) whose association or relationship with PH or its Affiliates could be anticipated to violate any United States, state, local or foreign laws, rules or regulations relating to gaming or the sale of alcohol to which PH or its Affiliates are subject, (c) who is or might be engaged or about to be engaged in any activity which could adversely impact the business or reputation of PH or its Affiliates, or (d) who is required to be licensed, registered, qualified or found suitable under any United States, state, local, or foreign laws, rules or regulations relating to gaming or the sale of alcohol under which PH or any of its Affiliates is licensed, registered, qualified or found suitable, and such Person is not or does not remain so licensed, registered, qualified or found suitable.

75. Finally, GRB represented that, "[a]s of the Effective date [of the agreement], no representation or warranty made herein by [GRB] contains any untrue statement of a material fact, or omits to state a material fact necessary to make such statements not misleading."

76. The disclosure and conduct obligations under the GRB Agreement were not limited to the corporate entity GRB. Instead, GRB's obligations—both with respect to conduct and disclosure—included GRB's "Associates" and "Affiliates." GRB's Affiliates included persons controlling GRB and GRB's Associates included its directors, employees, and representatives. Mr. Scibel, as the member-manager of GRB and the individual who signed the GRB Agreement, was both a GRB Affiliate and Associate. Thus, Mr. Seibel had an ongoing obligation to conduct himself with the highest standards of honesty, integrity, quality, and courtesy. And GRB had an

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ongoing obligation to disclose any information regarding Mr. Seibel that would render him an Unsuitable Person.

77. Because Mr. Seibel was specifically included as a GRB Associate, Caesars relied upon his previous representations in the MOTI and DNT Business Information Forms that he had not been a party to a felony in the past ten years and there was nothing in his past that would prevent him from being licensed by a gaming authority. Thus, the disclosures contained in the Business Information Forms constituted the prior written disclosures referenced in the GRB Agreement.

78. The initial disclosures that GRB provided were false when made. And, despite the obligations set out in the GRB Agreement, neither Mr. Seibel nor GRB ever provided Caesars with an updated Business Information Form or any other supplemental disclosure. Nor did GRB otherwise provide updated disclosures regarding Mr. Seibel's illegal activities, his criminal investigation by the IRS, his guilty plea, his felony conviction, or his incarceration.

(f) The FERG Agreement

79. As with the LLTQ Agreement, the FERG Agreement related to CAC's plans to partner with Mr. Ramsay to license intellectual property that would be used in connection with a restaurant in the CAC casino known as "Gordon Ramsay Pub and Grill." The FERG Agreement set forth the obligations of FERG and Mr. Seibel to assist with the design, development, construction, and operation of the Gordon Ramsay Pub and Grill.

80. The FERG Agreement contained a number of representations relating to the conduct of the parties and their disclosure obligations.

81. First, FERG represented in the FERG Agreement that "it shall and it shall cause its Affiliates to conduct themselves in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of the CAC Marks and materials, the GR Marks, CAC, and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel and casino and an exclusive, first-class restaurant." FERG further agreed that it would "use commercially reasonable efforts to continuously monitor the performance of each of its and its Affiliates'

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respective agents, employees, servants, contractors and licensees and shall ensure the foregoing standards are consistently maintained by all of them."

82. Second, FERG agreed that it would "provide to CAC written disclosure regarding the FERG Associates . . . ," which included Mr. Seibel. And, "[t]o the extent that any prior disclosure becomes inaccurate, FERG shall, within ten (10) calendar days from the event, update the prior disclosure without CAC making any further request."

83. The FERG Agreement provided CAC with the ability to terminate the FERG Agreement in its discretion if it determined that (i) FERG was not complying with its disclosure obligations, or (ii) FERG or an Associated Party was an "Unsuitable Person." Specifically, the FERG Agreement provided:

> If any FERG Associate fails to satisfy or [sic] such requirement, if CAC or any of CAC's Affiliates are directed to cease business with any FERG Associate by any Gaming Authority, or if CAC shall determine, in CAC's sole and exclusive judgment, that any FERG Associate is an Unsuitable Person, whether as a result of a FERG Change of Control or otherwise, then (a) FERG shall terminate any relationship with the Person who is the source of such issue, (b) FERG shall cease the activity or relationship creating the issue to CAC's satisfaction, in CAC's sole judgment, or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b), as determined by CAC in its sole discretion, CAC shall, without prejudice to any other rights or remedies of CAC including at law or in equity, have the right to terminate this Agreement and its relationship with FERG. FERG further acknowledges that CAC shall have the right to terminate this Agreement in the event any Gaming Authority requires CAC or one of its Affiliates to do so. Any termination by CAC pursuant to this [section] shall not be subject to dispute by FERG and shall not be the subject of any proceeding [in arbitration].

84. Under the FERG Agreement, an "Unsuitable Person" was defined as follows:

> Any Person (a) whose association with CAC or its Affiliates could be anticipated to result in a disciplinary action relating to, or the loss of, inability to reinstate or failure to obtain, any registration, application or license or any other rights or entitlements held or required to be held by CAC or any of its Affiliates under any United States, state, local or foreign laws, rules or regulations relating to gaming or the sale of alcohol, (b) whose association or relationship with CAC or its Affiliates could be anticipated to violate any United States, state, local or foreign laws, rules or regulations relating to gaming or the sale of alcohol to which CAC or its Affiliates are subject, (c) who is or might be engaged or about to be engaged in any activity which could adversely impact the business or reputation or CAC or its Affiliates, or (d) who is required to be licensed, registered, qualified or found suitable under any United States, state, local, or foreign laws, rules or regulations relating to gaming or the sale of alcohol under which CAC or any of its Affiliates is licensed, registered, qualified or found suitable, and such Person is not or does not remain so licensed, registered, qualified or found suitable.

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85. Finally, FERG represented that, "[a]s of the Effective date [of the agreement], no representation or warranty made herein by [FERG] contains any untrue statement of a material fact, or omits to state a material fact necessary to make such statements not misleading."

86. The disclosure and conduct obligations under the FERG Agreement were not limited to the corporate entity FERG. Instead, FERG's obligations—both with respect to conduct and disclosure—included FERG's "Associates" and "Affiliates." FERG's Affiliates included persons controlling FERG. The FERG Agreement specifically stated that "with respect to FERG, the term 'Affiliate' shall include Rowen Seibel and each Affiliate of Rowen Seibel." FERG's Associates included its directors, employees, and representatives. Mr. Seibel, as the member-manager of FERG and the individual who signed the FERG Agreement, was both a FERG Affiliate and Associate. Thus, Mr. Seibel had an ongoing obligation to conduct himself with the highest standards of honesty, integrity, quality, and courtesy. And FERG had an ongoing obligation to disclose any information regarding Mr. Seibel that would render him an Unsuitable Person.

87. Because Mr. Seibel was specifically included as a FERG Associate, Caesars relied upon his previous representations in the MOTI and DNT Business Information Forms that he had not been a party to a felony in the last ten years and there was nothing in his past that would prevent him from being licensed by a gaming authority. Thus, the disclosures contained in the Business Information Forms constituted the prior written disclosures referenced in the FERG Agreement.

88. The initial disclosures that FERG provided were false when made. And, despite the obligations set out in the FERG Agreement, neither Mr. Seibel nor FERG ever provided Caesars with an updated Business Information Form or any other supplemental disclosure. Nor did FERG otherwise provide updated disclosures regarding Mr. Seibel's criminal activities, his investigation by the IRS, his guilty plea, his felony conviction, or his incarceration.

89. In addition, Section 4.1 of the FERG Agreement ("Section 4.1") states: "In the event a new agreement is executed between CAC and/or its Affiliate and Gordon Ramsay and/or his Affiliate relative to the Restaurant or Restaurant Premises, this Agreement shall be in effect and binding on the parties during the term hereof."

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90. Caesars contends that this provision, which has been characterized as a restrictive covenant, is unenforceable as a matter of law because (a) the FERG Agreement was properly terminated; (b) Caesars is prohibited from entering into a business relationship with FERG or Mr. Seibel given that FERG and Mr. Seibel are Unsuitable Persons; and (c) Section 4.1 is vague, ambiguous, indefinite, and overly broad. In contrast, FERG has asserted that this provision is enforceable and should apply to any future ventures between CAC and Gordon Ramsay.

B. <u>The Activities of Mr. Seibel and the Seibel-Affiliated Entities Rendered Him Unsuitable Under the Seibel Agreements</u>.

91. Approximately five years before completing the MOTI Business Information Form and entering into the MOTI Agreement, Mr. Seibel was engaged in activities of the type that would have rendered him unsuitable under the Seibel Agreements. And, despite his obligations to do so, Mr. Seibel and the Seibel-Affiliated Entities never disclosed Mr. Seibel's illegal activities to Caesars.

(a) Mr. Seibel set up numbered UBS accounts in Switzerland and concealed them from the United States government.

92. From approximately March 3, 2004 through 2008, Mr. Seibel maintained an account at Union Bank of Switzerland ("UBS").

93. In 2004, Mr. Seibel and his mother traveled to UBS' offices in Switzerland. While in Switzerland, Mr. Seibel opened and became the beneficiary and account holder of a UBS bank account that was not titled in his own name. Instead, the account was identified in internal bank records with the phrase "CQUE" and a unique account number (the "Numbered UBS Account").

94. At the same time, Mr. Seibel executed a UBS Telefax Agreement that allowed him to have regular communication with UBS via facsimile. Mr. Seibel also executed forms acknowledging that he was a United States citizen subject to United States taxation, and that he was the beneficial owner of the assets and income associated with the Numbered UBS Account.

95. In exchange for the payment of an additional fee to UBS, Mr. Seibel authorized and directed UBS to retain all account correspondence so that no bank statements or other correspondence related to the Numbered UBS Account would be mailed to him in the United States.

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96. Mr. Seibel caused his Numbered UBS Account to be opened in 2004 with a $25,000 cash deposit made by his mother. Between 2004 and 2005, Mr. Seibel's mother deposited cash and checks totaling approximately $1,000,000 into Mr. Seibel's account, bringing to $1,011,279 the total deposits made into Mr. Seibel's Numbered UBS Account.

97. UBS bank records demonstrate that Mr. Seibel and not his mother was the individual who actively monitored and approved the selection and investment of the assets maintained in the Numbered UBS Account. Mr. Seibel's trading in the account resulted in a substantial amount of income in the form of capital gains, dividends, and interest. By 2008, the account had a balance of approximately $1,300,200.

(b) In 2008, Mr. Seibel closed his UBS account and opened a new account.

98. On or about May 30, 2008, Mr. Seibel traveled back to Switzerland and informed UBS personnel that he wanted to close his Numbered UBS Account. Mr. Seibel explained he was concerned about the existence of the account given recent press reports. Those press reports had revealed various investigations commenced by United States law enforcement of UBS's role in helping United States citizens evade federal income taxes by, among other things, using undeclared foreign bank accounts at UBS.

99. In late May 2008, Mr. Seibel traveled to Switzerland to close out his Numbered UBS Account. Prior to doing so, he created a Panamanian shell company called Mirza International ("Mirza"). Mr. Seibel was the beneficial owner of the shell company. In addition, Mr. Seibel opened another offshore account at a different Swiss bank, Banque J. Safra. This time, however, he opened the account in the name of the newly created Mirza International instead of his own name.

(c) Mr. Seibel filed incomplete and inaccurate tax returns.

100. On or about October 10, 2008, Mr. Seibel filed with the IRS a Form 1040 for calendar year 2007. United States citizens and residents are obligated, on their Form 1040, to report their income from any source, regardless of whether the source is inside or outside the United States. Taxpayers who have a financial interest in, or signature authority over, a financial account in a

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foreign country over a threshold amount also are required to file with the IRS a Report of Foreign Bank and Financial Accounts, Form TD F 90-22.1 ("FBAR").

101. On his return, which Mr. Seibel signed under penalty of perjury, he omitted reporting any dividend, interest, and other income received by him in one or more bank, securities, and other financial accounts at UBS. Mr. Seibel also failed to report on Schedule B of his 2007 Form 1040 that he had an interest in or a signature authority over a financial account in a foreign country. Moreover, because of his authority over the Numbered UBS Account, Mr. Seibel was required to file a FBAR for calendar year 2007. He failed to do so.

102. On or about April 15, 2009, Mr. Seibel submitted his IRS Form 1040 for calendar year 2008. On that return, Mr. Seibel omitted the dividend, interest, and other income received by him in one or more bank, securities, and other financial accounts at UBS. Moreover, Mr. Seibel falsely claimed that he did not have an interest in or signature authority or control over a financial account in a foreign country. In addition, because of his authority over the Numbered UBS Account, Mr. Seibel was required to file a FBAR for calendar year 2008. He failed to do so.

(d) Mr. Seibel provided false application to voluntary disclosure program.

103. In March 2009, the IRS began the Voluntary Disclosure Program to provide an opportunity for U.S. taxpayers, not already under investigation by the IRS, to avoid criminal prosecution by disclosing their previously undeclared offshore accounts and paying tax and penalties on the income earned in those accounts.

104. On or about October 15, 2009, Mr. Seibel signed and caused to be submitted to the IRS an application to the Voluntary Disclosure Program (the "Application"). The Application, drafted by Mr. Seibel's mother's attorney, stated that Mr. Seibel had been unaware, during the years 2004 and 2005, that his mother had made deposits into the Numbered UBS Account for Mr. Seibel's benefit. It also stated Mr. Seibel had been unaware, until he made inquiries of UBS in 2009, of the status of his account at UBS and had in fact over time reached "the conclusion that deposits [into his Numbered UBS Account] had been stolen or otherwise disappeared."

105. These statements were false. As set forth above, Mr. Seibel was (i) at all times knowledgeable about the Numbered UBS Account and had taken a role in the oversight of, and

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transactions in, that account, and (ii) was aware as to the disposition of the funds from that account, as Mr. Seibel traveled to Switzerland the year before to effect the closing of the Numbered UBS Account and transfer of its funds into another foreign bank account at a different Swiss bank. Thus, when Mr. Seibel signed and submitted the Application, he was lying to the United States government.

106. At some point, the United States government began to investigate Mr. Seibel for his criminal activities. On April 18, 2016, the United States Attorney filed an information charging Mr. Seibel with corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212(a). That same day, Mr. Seibel pleaded guilty to one count of a corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212, a Class E Felony. Mr. Seibel stated that he was "pleading guilty because [he was] in fact guilty," and admitted that on his IRS Form 1040 for the year 2008, he "corruptly answer[ed] the question 'no' when [he] knew that answer was incorrect." Mr. Seibel's guilty plea was the result of criminal conduct that began prior to Caesars entering into the Seibel Agreements.

107. On August 19, 2016, Mr. Seibel appeared at his sentencing hearing where he was sentenced to 30 days in prison, six months of home confinement, and 300 hours of community service.

108. Mr. Seibel, however, did not notify Caesars of his guilty plea. But he certainly understood that it would result in the termination of his relationship with Caesars. In an attempt to avoid these consequences of his impending felony conviction, Mr. Seibel informed Caesars on April 8, 2016—ten days before entering his guilty plea—that he was (i) transferring all of the membership interests of the Seibel-Affiliated Entities that he previously owned to two individuals that would be trustees of a trust he had created; (ii) naming other individuals as the managers of the Seibel-Affiliated Entities; (iii) assigning the agreements to new entities that had been created (*i.e.*, LLTQ 16, FERG Enterprises 16, TPOV 16, and MOTI Partners 16, LLC); and (iv) delegating all of his duties under the LLTQ, FERG, TPOV, and MOTI Agreements to Mr. Frederick. Mr. Seibel did not disclose that he decided to perform these purported assignments, transfers, and delegations because of his impending felony conviction. Mr. Seibel also transferred the interests

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and duties relating to the Seibel-Affiliated Entities to his family and close friends—like Mr. Frederick—and thus remained associated with the Seibel-Affiliated Entities.

C. Caesars Exercises Its Sole Discretion to Terminate the Agreements with the Seibel-Affiliated Entities.

109. Despite the obligations of Mr. Seibel and the Seibel-Affiliated Entities to inform Caesars of Mr. Seibel's felony conviction and update the relevant disclosures, they never did so. Instead, Caesars only learned of Mr. Seibel's felony conviction from press reports in August 2016. When Caesars became aware of Mr. Seibel's felony conviction, it promptly terminated all of its agreements with the Seibel-Affiliated Entities.

(a) Termination of the MOTI Agreement.

110. On September 2, 2016, counsel for Caesars Palace sent MOTI a letter terminating the MOTI Agreement. Caesars explained the grounds for termination in its letter:

> Pursuant to Section 9.2 of the Agreement, MOTI has acknowledged and agrees that Caesars and/or its affiliates conduct business that are or may be subject to and exist because of privileged licenses issued by governmental authorities. Additionally, Section 9.2 provides that if Caesars determines, in its sole and absolute judgment, that (a) any MOTI Associate is an Unsuitable Person and (b) such relationship is not subject to cure, Caesars shall have the right to terminate the Agreement.
>
> Caesars is aware that Rowen Seibel, who is a MOTI Associate under the Agreement, has recently pleaded guilty to a one-count criminal information charging him with impeding the administration of the Internal Revenue Code (26 U.S.C. § 7212) (corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws), a Class E Felony. Such felony conviction renders Rowen Seibel an Unsuitable Person.
>
> Therefore, Caesars has determined that the nature of Rowen Seibel's actions and his relationship to MOTI are not capable of being cured. Accordingly, Caesars is exercising its rights under Section 9.2 of the Agreement and is terminating the Agreement effective immediately.

(b) Termination of the DNT Agreement.

111. On September 2, 2016, counsel for Caesars Palace sent DNT a letter terminating the DNT agreement. Caesars explained the grounds for termination in its letter:

> Pursuant to Section 11.2 of the Agreement, the DNT Parties have acknowledged and agree that Caesars and/or its affiliates conduct business that are or may be subject to and exist because of privileged licenses issued by governmental authorities. Additionally, Section 11.2 provides that Caesars determines, in its sole and absolute

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> judgment, that any DNT Associate is an Unsuitable Person, the DNT Parties shall cease activity or relationship creating the issue.
>
> Caesars is aware that Rowen Seibel, who is a DNT Associate under the Agreement, has recently pleaded guilty to a one-count criminal information charging him with impeding the administration of the Internal Revenue Code (26 U.S.C. § 7212) (corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws), a Class E Felony. Such felony conviction renders Rowen Seibel an Unsuitable Person.
>
> Therefore, the DNT Parties shall, within 10 business days of receipt of this letter, terminate any relationship with Mr. Seibel and provide Caesars with written evidence of such terminated relationship. If the DNT Parties fails to terminate the relationship with Mr. Seibel, Caesars will be required to terminate the agreement pursuant to section 4.2.3 of the Agreement.

112. In response to this letter, DNT failed to provide Caesars with sufficient evidence demonstrating that it had terminated its relationship with Mr. Seibel. Though Mr. Seibel had purportedly assigned his rights and interests in DNT and the DNT Agreement, Caesars determined, in its sole discretion—as it was entitled to do under the DNT Agreement—that DNT's relationship was not subject to cure given Mr. Seibel's continued relationship with the principals and representatives of DNT. As a result, the DNT Agreement was terminated.

(c) Termination of the TPOV Agreement.

113. On September 2, 2016, counsel for Caesars Palace sent TPOV a letter terminating the TPOV agreement. Caesars explained the grounds for termination in its letter:

> Pursuant to Section 10.2 of the Agreement, TPOV has acknowledged and agrees that Caesars and/or its affiliates conduct business that are or may be subject to and exist because of privileged licenses issued by governmental authorities. Additionally, Section 10.2 provides that if Caesars determines, in its sole and absolute judgment, that (a) any TPOV Associate is an Unsuitable Person and (b) such relationship is not subject to cure, Caesars shall have the right to terminate the Agreement.
>
> Caesars is aware that Rowen Seibel, who is a TPOV Associate under the Agreement, has recently pleaded guilty to a one-count criminal information charging him with impeding the administration of the Internal Revenue Code (26 U.S.C. § 7212) (corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws), a Class E Felony. Such felony conviction renders Rowen Seibel an Unsuitable Person.
>
> Therefore, Caesars has determined that the nature of Rowen Seibel's actions and his relationship to TPOV are not capable of being cured. Accordingly, Caesars is exercising its rights under Section 4.2.5 of the Agreement and is terminating the Agreement effective immediately.

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(d) Termination of the LLTQ Agreement.

114. On September 2, 2016, counsel for Caesars Palace sent LLTQ a letter terminating the LLTQ agreement. Caesars explained the grounds for termination in its letter:

> Pursuant to Section 10.2 of the Agreement, LLTQ has acknowledged and agrees that Caesars and/or its affiliates conduct business that are or may be subject to and exist because of privileged licenses issued by governmental authorities. Additionally, Section 10.2 provides that if Caesars determines, in its sole and absolute judgment, that (a) any LLTQ Associate is an Unsuitable Person and (b) such relationship is not subject to cure, Caesars shall have the right to terminate the Agreement.
>
> Caesars is aware that Rowen Seibel, who is a LLTQ Associate under the Agreement, has recently pleaded guilty to a one-count criminal information charging him with impeding the administration of the Internal Revenue Code (26 U.S.C. § 7212) (corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws), a Class E Felony. Such felony conviction renders Rowen Seibel an Unsuitable Person.
>
> Therefore, Caesars has determined that the nature of Rowen Seibel's actions and his relationship to LLTQ are not capable of being cured. Accordingly, Caesars is exercising its rights under Section 4.2.5 of the Agreement and is terminating the Agreement effective immediately.

(e) Termination of the GRB Agreement.

115. On September 2, 2016, counsel for Caesars Palace sent GRB a letter terminating the GRB Agreement. Caesars explained the grounds for termination in its letter:

> Pursuant to Section 11.2 of the Agreement, GRB has acknowledged and agrees that Caesars and/or its affiliates conduct business that are or may be subject to and exist because of privileged licenses issued by governmental authorities. Additionally, Section 11.2 provides that if Caesars determines, in its sole and absolute judgment, that any GRB Associate is an Unsuitable Person, GRB shall cease the activity or relationship creating the issue.
>
> Caesars is aware that Rowen Seibel, who is a GR Associate under the Agreement, has recently pleaded guilty to a one-count criminal information charging him with impeding the administration of the Internal Revenue Code (26 U.S.C. § 7212) (corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws), a Class E Felony. Such felony conviction renders Rowen Seibel an Unsuitable Person.
>
> Therefore, GRB shall, within 10 business days of the receipt of this letter, terminate any relationship with Mr. Seibel and provide Caesars with written evidence of such terminated relationship. If GRB fails to terminate the relationship with Mr. Seibel, Caesars will be required to terminate the Agreement pursuant to Section 4.2.5 of the Agreement.

116. In response to this letter, GRB failed to provide Caesars with sufficient evidence demonstrating that it had terminated its relationship with Mr. Seibel. Though Mr. Seibel had

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purportedly assigned his rights and interests in GRB and the GRB Agreement, Caesars determined, in its sole discretion—as it was entitled to do under the GRB Agreement—that GRB's relationship was not subject to cure given Mr. Seibel's continued relationship with the principals and representatives of GRB. Mr. Seibel's partner in GRB similarly informed Caesars that GRB could not adequately disassociate itself with Mr. Seibel. As a result, the GRB Agreement was terminated.

(f) Termination of the FERG Agreement.

117. On September 2, 2016, counsel for Caesars Palace sent FERG a letter terminating the FERG agreement. Caesars explained the grounds for termination in its letter:

> Pursuant to Section 11.2 of the Agreement, FERG has acknowledged and agrees that Caesars and/or its affiliates conduct business that are or may be subject to and exist because of privileged licenses issued by governmental authorities. Additionally, Section 11.2 provides that if Caesars determines, in its sole and absolute judgment, that (a) any FERG Associate is an Unsuitable Person and (b) such relationship is not subject to cure, Caesars shall have the right to terminate the Agreement.
>
> Caesars is aware that Rowen Seibel, who is a FERG Associate under the Agreement, has recently pleaded guilty to a one-count criminal information charging him with impeding the administration of the Internal Revenue Code (26 U.S.C. § 7212) (corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws), a Class E Felony. Such felony conviction renders Rowen Seibel an Unsuitable Person.
>
> Therefore, Caesars has determined that the nature of Rowen Seibel's actions and his relationship to FERG are not capable of being cured. Accordingly, Caesars is exercising its rights under Section 4.2(e) of the Agreement and is terminating the Agreement effective immediately.

(g) The Seibel-Affiliated Entities dispute the propriety of the termination of their agreements with Caesars,

118. After receiving the termination notices on September 2, 2016, counsel for the Defendants sent Caesars several letters disputing the propriety of the terminations. According to the Seibel-Affiliated Entities, Mr. Seibel no longer had any relationship with the Seibel-Affiliated Entities and thus Caesars' termination of the agreements was improper.

119. In response, counsel for Caesars explained that the Seibel-Affiliated Entities' relationship with Mr. Seibel was still unacceptable given the relationships of the assignees (like Mr. Frederick) to Mr. Seibel:

> We note that the proposed assignee [of the agreements] and its Associates have direct or indirect relationships with Rowen Seibel. Based on the Company's experiences with the Nevada Gaming Control Board and other gaming regulatory authorities

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which regulate the Company and its affiliates (collectively, "Gaming Regulatory Authorities"), the Company believes that such relationships with Mr. Seibel would be unacceptable to the Gaming Regulatory Authorities. Further the Company believes that a commercial relationship with the proposed assignee and its Associates, because of their relationships with Mr. Seibel, would also be unacceptable to the Gaming Regulatory Authorities. Lastly, we note that Mr. Seibel failed, through the applicable entity, to affirmatively update prior discloses to the Company, which updated disclosure is required and bears directly on his suitability.

Based on the foregoing, the Company reasonably believes the commercial relationship with the proposed assignee and its Associates would result in a disciplinary action by one or more of the Gaming Regulatory Authorities, which could jeopardize the Company's privileged licenses. Therefore, the Company has determined that the proposed assignee and its Affiliates are Unsuitable Persons.

Pursuant to the Letter Agreement, dated May 16, 2014, (i) the Company is not satisfied, in its sole reasonable discretion, that the proposed assignee and its Associates are not Unsuitable Persons and (ii) the Compliance Committee has not approved the proposed assignee and its Associates.

D. Legal Proceedings Involving Caesars and the Defendants.

(a) Contested matters involving Caesars Palace, CAC, LLTQ, FERG, and MOTI.

120. In January 2015, Caesars Entertainment Operating Company, Inc. and a number of its subsidiaries and affiliates (including Caesars Palace and CAC) filed for bankruptcy protection under Chapter 11 in the United States Bankruptcy Court, Northern District of Illinois, Eastern Division. As part of that bankruptcy, Caesars Palace, CAC, FERG, LLTQ, and MOTI are involved in several contested matters.

121. First, Caesars Palace filed a motion to reject the LLTQ and FERG Agreements. Caesars Palace concluded that the costs of these two agreements outweighed any potential benefits that Caesars Palace could realize by continuing to perform under the agreements. LLTQ and FERG objected to Caesars Palace's motion to reject the LLTQ and FERG Agreements on the grounds that, inter alia, (i) the LLTQ and FERG Agreements are integrated with the separate agreements that Caesars Palace entered into with Gordon Ramsay, and (ii) Sections 13.22 and 4.1 are enforceable restrictive covenants that prevent the rejection of the LLTQ and FERG agreements.

122. Second, LLTQ and FERG filed a motion for the payment of administrative expenses relating to payments purportedly owed to LLTQ and FERG for operation of the relevant restaurants after Caesars Palace filed for bankruptcy. Caesars Palace objected to this motion on the grounds

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that LLTQ and FERG have not provided any post-petition benefit to Caesars Palace. Indeed, LLTQ and FERG did not provide Caesars Palace with any services after Caesars Palace filed for bankruptcy.

123. Third, MOTI filed a motion for the payment of administrative expenses relating to Caesars Palace's use of MOTI's intellectual property during the wind-down period following the termination of the MOTI Agreement. Caesars Palace objected to this motion on the grounds that MOTI is not entitled to an administrative expense where, as here, the MOTI Agreement was terminated because MOTI was, and is, an "Unsuitable Person."

124. In connection with these three motions, the parties have conducted discovery on a number of issues, including the suitability of LLTQ, FERG, and Mr. Seibel. And, as a defense to LLTQ and FERG's motion for the payment of administrative defenses, Caesars Palace and CAC have raised LLTQ and FERG's failure to disclose Mr. Seibel's criminal activities. Caesars Palace and CAC contend that LLTQ and FERG's failure to do so constitutes fraudulent inducement and breaches the LLTQ and FERG Agreements.

125. The contested matters in the bankruptcy court do not, however, directly implicate Caesars' decision to terminate its agreements with the Seibel-Affiliated Entities. Instead, counsel for LLTQ and FERG have stated in filings in the bankruptcy court that they intend to challenge the propriety of the termination of the relevant agreements but do not believe that issue should be heard by the bankruptcy court:

- "[T]he [Debtors'] fraudulent inducement claim, like the issue of whether the Termination [of the LLTQ and FERG Agreements] was proper in the first instance, is not presently before [the bankruptcy court] and should be resolved in separate proceedings (likely in state court or federal district court)."

- "[LLTQ and FERG] will challenge the propriety of the purported termination of the [LLTQ and FERG Agreements] in the appropriate venue, likely outside of the Chapter 11 cases."

(b) Litigation involving GRB and Planet Hollywood.

126. On January 11, 2017, Mr. Seibel, purportedly derivatively on behalf of GRB, filed a complaint in the United States District Court for the District of Nevada naming Planet Hollywood as a defendant. Mr. Seibel also filed a motion for a preliminary injunction enjoining

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Planet Hollywood from (i) terminating the GRB Agreement or, alternatively, (ii) utilizing GRB's intellectual property and operating a restaurant in the premises for the GR Burgr restaurant. This action was dismissed from the federal court on jurisdictional grounds and Mr. Seibel re-filed a similar complaint and motion for preliminary injunction in the Eighth Judicial District Court in Clark County, Nevada, Case No. A-17-751759 (Hon. Joe Hardy). The state court complaint included counts for (i) breach of contract arising out of the termination of the GRB Agreement; (ii) breach of the implied covenant of good faith and fair dealing relating to the termination of the GRB Agreement on suitability grounds; (iii) unjust enrichment relating to Planet Hollywood's use of GRB's intellectual property; (iv) civil conspiracy relating to the circumstances surrounding the termination of the GRB Agreement; (v) specific performance requiring Planet Hollywood to pay GRB; and (vi) declaratory relief establishing, inter alia, that Planet Hollywood must stop using the GR intellectual property and compensate GR for the period of time it utilized GRB's intellectual property.

127. The Court denied Mr. Seibel's motion for a preliminary injunction on the grounds that Mr. Seibel did not demonstrate irreparable harm, likelihood of success on the merits, balance of hardships, or that public policy weighed in his favor.

128. Planet Hollywood moved to dismiss Mr. Seibel's claims for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, civil conspiracy, and declaratory relief. The Court granted in part and denied in part Planet Hollywood's motion. Specifically, the Court granted Planet Hollywood's motion to dismiss Mr. Seibel's breach of contract claim to the extent it was based on Caesars allegedly receiving money that should have been paid to GRB under the GRB Agreement, Caesars' failure to provide GRB with an opportunity to cure its association with any unsuitable persons, and Caesars' efforts to open a rebranded restaurant with Gordon Ramsay. Mr. Seibel subsequently filed an amended complaint, reasserting some of the same causes of action and adding further allegations. On July 21, 2017, Planet Hollywood answered the amended complaint and asserted a counterclaim for fraudulent concealment against Mr. Seibel individually.

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(c) Nevada Federal District Court litigation involving TPOV and Paris.

129. On February 3, 2017, TPOV Enterprises 16, LLC filed a complaint in the United States District Court for the District of Nevada against Paris, Case No. 2:17-cv-00346-JCM-VCF. TPOV Enterprises 16, LLC alleges, inter alia, that (i) Paris breached the TPOV Agreement by, inter alia, refusing to continue to pay TPOV 16 and terminating the TPOV Agreement; (ii) Paris breached the implied covenant of good faith and fair dealing by, inter alia, disputing the validity of the assignment of the TPOV Agreement and claiming that TPOV is an Unsuitable Person; (iii) Paris has been unjustly enriched by its failure to pay TPOV 16 in accordance with the TPOV Agreement; and (iv) it is entitled to a declaration that the assignment of the TPOV Agreement from TPOV to TPOV 16 was valid and TPOV 16 is not associated with an Unsuitable Person.

130. Paris moved to dismiss TPOV 16's claims based on subject matter jurisdiction and failure to state a claim upon which relief could be granted. The District Court (Judge Mahan) granted the motion in part, and denied it in part, dismissing TPOV 16's claim for unjust enrichment. On July 21, 2017, Paris answered the complaint, and asserted counterclaims for breach of contract, breach of the implied covenant, fraudulent concealment, civil conspiracy, and declaratory relief against TPOV, TPOV 16, and Mr. Seibel personally.

COUNT I

(Declaratory Judgment Against All Defendants Declaring That Caesars Properly Terminated All of the Seibel Agreements)

131. Caesars hereby repeats and re-alleges each of the above paragraphs as though fully set forth herein.

132. NRS 30.040(1) provides that "[a]ny person interested under [a written contract] or whose rights, status or other legal relations are affected by a [contract] may have determined any question of construction or validity arising under the [contract] and obtain a declaration of rights, status or other legal relations thereunder."

133. The parties dispute whether Caesars properly terminated the Seibel Agreements. Thus, there is a justiciable controversy ripe for adjudication among the parties.

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134. Caesars properly exercised its sole and absolute discretion to terminate the Seibel Agreements after it determined Mr. Seibel and the Seibel-Affiliated Entities were unsuitable under the Seibel Agreements given Mr. Seibel's felony conviction and his criminal activities that led to his conviction. Caesars also properly exercised its sole and absolute discretion to terminate the Seibel Agreements in light of the Seibel-Affiliated Entities' failure to disclose Mr. Seibel's felony conviction and his criminal activities that led to his conviction. Caesars therefore seeks a declaration that the Seibel Agreements were properly terminated.

135. Caesars further requests any additional relief authorized by the law, the Seibel Agreements or found fair, equitable, just, or proper by the Court, including but not limited to attorneys' fees, costs, and interest under NRS 30.120 or any other law or agreement allowing the same.

COUNT II

(Declaratory Judgment Against All Defendants Declaring That Caesars Does Not Have Any Current or Future Obligations to Defendants Under the Seibel Agreements)

136. Caesars hereby repeats and re-alleges each of the above paragraphs as though fully set forth herein.

137. NRS 30.040(1) provides that "[a]ny person interested under [a written contract] or whose rights, status or other legal relations are affected by a [contract] may have determined any question of construction or validity arising under the [contract] and obtain a declaration of rights, status or other legal relations thereunder."

138. The parties dispute whether Caesars has any current or future financial obligations or commitments to Mr. Seibel or the Seibel-Affiliated Entities. Thus, there is a justiciable controversy ripe for adjudication among the parties.

139. Caesars does not have any current or future financial obligations or commitments to Mr. Seibel or the Seibel-Affiliated Entities for at least three reasons.

140. First, the express language of the Seibel Agreements states that Caesars has no future obligations to the Seibel-Affiliated Entities where, as here, termination is based on suitability or non-disclosure grounds. For example, the MOTI Agreement provides that "[a]ny termination by

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Caesars under [the suitability and disclosure provision] shall terminate the obligations of each Party to this Agreement . . . ." Similarly, all of the Seibel Agreements state that termination based on unsuitability grounds under the agreements has "immediate effect" and alleviates the parties of any future obligations.

141. Second, Mr. Seibel and the Seibel-Affiliated Entities fraudulently induced Caesars to enter into the Seibel Agreements when they failed to disclose Mr. Seibel's illegal activities. Mr. Seibel and the Seibel-Affiliated Entities all represented—through the MOTI and DNT Business Information Forms—that he had not been a party to any felony in the past ten years and there was nothing in Mr. Seibel's past that would prevent him from being licensed by a gaming authority. Although Caesars had the right to request information from each entity to satisfy itself that Mr. Seibel was suitable from a regulatory perspective, it had received such assurances in the Business Information Forms with respect to the MOTI Agreement and DNT Agreement. To the extent the MOTI and DNT suitability disclosures became inaccurate, they had to be updated without Caesars making a request. Caesars therefore reasonably relied on Mr. Seibel's prior representations to satisfy itself that Mr. Seibel remained a suitable person when entering into the TPOV Agreement, LLTQ Agreement, GRB Agreement, and FERG Agreement.

142. Caesars reasonably relied on Defendants' representations when deciding to enter into each agreement with the Seibel-Affiliated Entities. Specifically, Caesars relied on the following representations:

- The MOTI and DNT Business Information Forms;
- Sections 8.1, 9.1, and 9.2 of the MOTI Agreement;
- Sections 10.2, 11.1, and 11.2 of the DNT Agreement;
- Sections 9.2, 10.1, and 10.2 of the TPOV Agreement;
- Sections 9.2, 10.1, and 10.2 of the LLTQ Agreement;
- Sections 10.3, 11.1, and 11.2 of the GRB Agreement; and
- Sections 10.2, 11.1, and 11.2 of the FERG Agreement.

143. Mr. Seibel and the Seibel-Affiliated Entities knew that these representations were false when made. The fraudulent inducement of Mr. Seibel and the Seibel-Affiliated Entities

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permits Caesars to rescind the Seibel Agreements and thereby avoid future obligations to Mr. Seibel or the Seibel-Affiliated Entities.

144. Third, the Seibel-Affiliated Entities repeatedly breached the Seibel Agreements when they failed to update their prior disclosures to reflect Mr. Seibel's illegal activities. Because the Seibel-Affiliated Entities breached the Seibel Agreements, Caesars is no longer required to perform under the Seibel Agreement.

145. Caesars therefore seeks a declaration that Caesars does not have any current or future financial obligations or commitments to Mr. Seibel or the Seibel-Affiliated Entities.

146. Caesars further requests any additional relief authorized by the law, the Seibel Agreements or found fair, equitable, just, or proper by the Court, including but not limited to attorneys' fees, costs, and interest under NRS 30.120 or any other law or agreement allowing the same.

COUNT III

(Declaratory Judgment Against All Defendants Declaring that the Seibel Agreements Do Not Prohibit or Limit Existing or Future Restaurant Ventures Between Caesars and Gordon Ramsay)

147. Caesars hereby repeats and re-alleges each of the above paragraphs as though fully set forth herein.

148. NRS 30.040(1) provides that "[a]ny person interested under [a written contract] or whose rights, status or other legal relations are affected by a [contract] may have determined any question of construction or validity arising under the [contract] and obtain a declaration of rights, status or other legal relations thereunder."

149. The parties dispute whether section 13.22 of the LLTQ Agreement and Section 4.1 of the FERG Agreement are enforceable and require Caesars to include Mr. Seibel, LLTQ, and/or FERG in current or future ventures between Caesars and Mr. Ramsay. Thus, there is a justiciable controversy ripe for adjudication among the parties.

150. Section 13.22 of the LLTQ Agreement is unenforceable as a matter of law because (a) the LLTQ Agreement was properly terminated; (b) Caesars is prohibited from entering into a

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business relationship with LLTQ or Mr. Seibel given that LLTQ and Mr. Seibel are Unsuitable Persons; and (c) Section 13.22 is overly broad, indefinite, vague, and ambiguous.

151. Section 13.22 is overly broad and indefinite because it does not contain any geographic or temporal limitations. For example, by its terms, the restrictive covenant in Section 13.22 could apply to future ventures between any Caesars affiliate and Mr. Ramsay located anywhere in world. It could also apply to future ventures between any Caesars affiliate and Mr. Ramsay entered into 40 years after LLTQ and Caesars Palace entered into the LLTQ Agreement. Under Nevada law, the lack of any geographic or temporal restrictions render the restrictive covenant in Section 13.22 unenforceable.

152. Section 13.22 is vague and ambiguous because it does not clearly specify which future ventures are subject to the restrictive covenant contained therein. On the one hand, Section 13.22 broadly states that ventures "generally in the nature of" pubs, bars, cafes, taverns, steak restaurants, fine dining steakhouses, and chophouses are encompassed by the restrictive covenant. On the other hand, Section 13.22 is seemingly limited to ventures that Caesars elects to pursue "under the [LLTQ Agreement]," which relates only to the Gordon Ramsay Pub.

153. Section 4.1 of the FERG Agreement is unenforceable as a matter of law because (a) the FERG Agreement was properly terminated; (b) Caesars is prohibited from entering into a business relationship with FERG or Mr. Seibel given that FERG and Mr. Seibel are Unsuitable Persons; and (c) Section 4.1 is overly broad, indefinite, vague, and ambiguous.

154. Section 4.1 is overly broad, indefinite, vague, and ambiguous because it does not contain any temporal limitations. For example, by it terms, Section 4.1 could apply to any future ventures entered into between CAC and an affiliate at any point in time. In addition, Section 4.1 is not limited to CAC but includes all of CAC's affiliates. Section 4.1 also is not limited to specific types of restaurants but includes any agreement that merely relates to the premises where the current restaurant is located. Finally, Section 4.1 is vague and ambiguous because it is unclear how the FERG Agreement could "be in effect and binding on the parties" if a "new agreement is executed" between the parties—i.e., it is not clear how both agreements could simultaneously be in effect,

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what the terms of the agreements would be, how the new agreement would be negotiated, and which terms would govern the parties' relationship.

155. Caesars therefore seeks a declaration that section 13.22 of the LLTQ Agreement and Section 4.1 of the FERG Agreement are unenforceable and Caesars does not have any current or future obligations pursuant to those provisions or otherwise that would prohibit or limit existing or future restaurant ventures between Caesars and Gordon Ramsay.

156. Caesars further requests any additional relief authorized by the law, the Seibel Agreements or found fair, equitable, just, or proper by the Court, including but not limited to attorneys' fees, costs, and interest under NRS 30.120 or any other law or agreement allowing the same.

Prayer for Relief

WHEREFORE, Caesars respectfully prays for judgment as follows:

(a) Declaratory Relief as requested herein;

(b) Equitable relief;

(c) Reasonable attorneys' fees and costs; and

(d) Any additional relief this Court may deem just and proper

DATED this 24th day of August, 2017.

PISANELLI BICE PLLC

By: _____

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GROUP EXHIBIT B

Case Information

A-17-760537-B | Desert Palace Inc, Plaintiff(s) vs. Rowen Seibel, Defendant(s)

Case Number	Court	Judicial Officer
A-17-760537-B	Department 27	Allf, Nancy
File Date	Case Type	Case Status
08/25/2017	Other Business Court Matters	Open

Party

Plaintiff
Desert Palace Inc

Active Attorneys
Lead Attorney
Pisanelli, James J
Retained

Attorney
Mercera, Maria Magali
Retained

Attorney
Spinelli, Debra L.
Retained

Attorney
Watkins, Brittinee T
Retained

Plaintiff
PHWLV LLC

Active Attorneys
Lead Attorney
Pisanelli, James J
Retained

Attorney
Mercera, Maria
Magali
Retained

Attorney
Spinelli, Debra L.
Retained

Attorney
Watkins, Brittinee
T
Retained

Plaintiff
Boardwalk Regency Corporation

Aliases
DBA Caesars Atlantic City

Active Attorneys
Lead Attorney
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Attorney
Mercera, Maria
Magali
Retained

Attorney
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Retained

Attorney
Spinelli, Debra L.
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Plaintiff
Paris Las Vegas Operating Company LLC

Active Attorneys
Lead Attorney
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Retained

Attorney
Mercera, Maria
Magali
Retained

Attorney
Spinelli, Debra L.
Retained

Attorney
Watkins, Brittinee T
Retained

Defendant
Seibel, Rowen

Defendant
LLTQ Enterprises LLC

Defendant
LLTQ Enterprises 16 LLC

Defendant
Ferg LLC

Defendant
Ferg 16 LLC

Defendant
MOTI Partners LLC

Defendant
MOTI Partners 16, LLC

Defendant

TPOV Enterprises LLC

Defendant
TPOV Enterprises 16 LLC

Defendant
DNT Acquisition LLC

Defendant
GR Burgr LLC

Defendant
Frederick, J Jeffrey

Active Attorneys
Lead Attorney
Atkinson, Robert E.
Retained

Events and Hearings

08/25/2017 Initial Appearance Fee Disclosure

Initial Appearance Fee Disclosure - IAFD

Comment
Initial Appearance Fee Disclosure

08/25/2017 Complaint (Business Court)

Complaint (Business Court) - COMPB

Comment
Complaint

09/05/2017 Summons Electronically Issued - Service Pending

Comment
Summons to Rowen Seibel

09/05/2017 Summons Electronically Issued - Service Pending

Comment
Summons to LLTQ Enterprises, LLC

09/05/2017 Summons Electronically Issued - Service Pending

Comment
Summons to LLTQ Enterprises 16, LLC

09/05/2017 Summons Electronically Issued - Service Pending

Comment
Summons to FERG, LLC

09/05/2017 Summons Electronically Issued - Service Pending

Comment
Summons to FERG 16, LLC

09/05/2017 Summons Electronically Issued - Service Pending

Comment
Summons to Moti Partners, LLC

09/05/2017 Summons Electronically Issued - Service Pending

Comment
Summons to Moti Partners 16, LLC

09/05/2017 Summons Electronically Issued - Service Pending

Comment
Summons to TPOV Enterprises, LLC

09/05/2017 Summons Electronically Issued - Service Pending

Comment
Summons to TPOV Enterprises 16, LLC

09/05/2017 Summons Electronically Issued - Service Pending

Comment
Summons to DNT Acquisition, LLC

09/05/2017 Summons Electronically Issued - Service Pending

Comment
Summons to GR Burgr, LLC

09/05/2017 Summons Electronically Issued - Service Pending

Comment
Summons to J. Jeffrey Frederick

09/12/2017 Affidavit of Service

Affidavit of Service - AOS

Comment
Affidavit of Service to GR Burgr, LLC

09/14/2017 Affidavit of Service

Affidavit of Service - AOS

Comment
Affidavit of Service - DNT Acquisition, LLC

09/26/2017 Initial Appearance Fee Disclosure

Initial Appearance Fee Disclosure - IAFD

Comment
Initial Appearance Fee Disclosure

09/26/2017 Notice of Appearance

Notice of Appearance - NOTA

Comment
Notice of Appearance for Defendant J. Jeffrey Frederick

Financial

Desert Palace Inc

Total Financial Assessment	$1,620.00
Total Payments and Credits	$1,620.00

8/25/2017	Transaction Assessment	$1,620.00

8/25/2017	Efile Payment	Receipt # 2017-67410-CCCLK	Desert Palace Inc	($1,620.00)

Frederick, J Jeffrey

Total Financial Assessment	$1,483.00
Total Payments and Credits	$1,483.00

9/26/2017	Transaction Assessment			$1,483.00
9/26/2017	Efile Payment	Receipt # 2017-74493-CCCLK	Frederick, J Jeffrey	($1,483.00)

Documents

Initial Appearance Fee Disclosure - IAFD

Complaint (Business Court) - COMPB

Affidavit of Service - AOS

Affidavit of Service - AOS

Initial Appearance Fee Disclosure - IAFD

Notice of Appearance - NOTA

Electronically Filed
8/25/2017 12:54 PM
Steven D. Grierson
CLERK OF THE COURT

IAFD
James J. Pisanelli, Esq., #4027
Debra L. Spinelli, Esq., #9695
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

DISTRICT COURT

CLARK COUNTY, NEVADA

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY,

Plaintiffs,

-vs-

ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC; and J. JEFFREY FREDERICK,

Defendants.

CASE NO. A-17-760537-B

DEPT. NO. Department 27

INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above entitled action as indicated below:

New Complaint Fee	1st Appearance Fee
☒ $1530 ☐ $520 ☐ $299 ☐ $270.00	☐ $1483.00 ☐ $473.00 ☐ $223.00

Name: DESERT PALACE, INC.	
PARIS LAS VEGAS OPERATING COMPANY, LLC	☒ $30
PHWLV, LLC	☒ $30

IAFD.doc/8/23/2017

BOARDWALK REGENCY CORPORATION ☒ $30

d/b/a CAESARS ATLANTIC CITY

TOTAL REMITTED: (Required) Total Paid $ 1620

DATED this 23rd day of August, 2017.

#9695

James J. Pisanelli, Esq.

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9/5/2017 6:08 PM

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William E. Arnault, IV, Esq. *(pro hac vice forthcoming)*
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Telephone: 312.862.2000

Attorneys for Plaintiffs

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702.214.2100

DISTRICT COURT

CLARK COUNTY, NEVADA

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY,

Plaintiffs,

v.

ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC; and J. JEFFREY FREDERICK,

Defendants.

Case No.: A-17-760537-B

Dept. No.: XXVII

SUMMONS TO ROWEN SEIBEL

SUMMONS – CIVIL

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

Case Number: A-17-760537-B

TO DEFENDANT: A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint.

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4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

Submitted by:

PISANELLI BICE PLLC

By: /s/ M. Mercera

James J. Pisanelli, Esq., Bar No. 4027
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Las Vegas, Nevada 89101

Attorneys for Plaintiffs

STEVEN D. GRIERSON
CLERK OF COURT

By: /s/ Kim M. Martin 9/6/2017
Deputy Clerk Kim M. Martin
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DISTRICT COURT

CLARK COUNTY, NEVADA

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY,

Plaintiffs,

v.

ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC; and J. JEFFREY FREDERICK,

Defendants.

Case No.: A-17-760537-B

Dept. No.: XXVII

SUMMONS TO LLTQ ENTERPRISES, LLC

SUMMONS – CIVIL

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

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Submitted by:

PISANELLI BICE PLLC

By: _____

James J. Pisanelli, Esq., Bar No. 4027
Debra L. Spinelli, Esq., Bar No. 9695
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Attorneys for Plaintiffs

STEVEN D. GRIERSON
CLERK OF COURT

By: _____ 9/6/2017
Deputy Clerk Kim M. Martin
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Attorneys for Plaintiffs

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702.214.2100

DISTRICT COURT

CLARK COUNTY, NEVADA

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY,

Plaintiffs,

v.

ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC; and J. JEFFREY FREDERICK,

Defendants.

Case No.: A-17-760537-B

Dept. No.: XXVII

SUMMONS TO LLTQ ENTERPRISES 16, LLC

SUMMONS – CIVIL

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Submitted by:

PISANELLI BICE PLLC

By: /s/ M. Mercera

James J. Pisanelli, Esq., Bar No. 4027
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Attorneys for Plaintiffs

STEVEN D. GRIERSON
CLERK OF COURT

By: Kim M. Martin 9/6/2017
Deputy Clerk Kim M. Martin
Regional Justice Center
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Las Vegas, NV 89155

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DISTRICT COURT

CLARK COUNTY, NEVADA

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY,

Plaintiffs,

v.

ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC; and J. JEFFREY FREDERICK,

Defendants.

Case No.: A-17-760537-B

Dept. No.: XXVII

SUMMONS TO FERG, LLC

SUMMONS – CIVIL

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Submitted by:

PISANELLI BICE PLLC

By: /s/ M. Mercera

James J. Pisanelli, Esq., Bar No. 4027
Debra L. Spinelli, Esq., Bar No. 9695
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Brittnie T. Watkins, Esq., Bar No. 13612
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Plaintiffs

STEVEN D. GRIERSON
CLERK OF COURT

By: /s/ Kim M. Martin 9/6/2017

Deputy Clerk Kim M. Martin
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

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Attorneys for Plaintiffs

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LAS VEGAS, NEVADA 89101
702.214.2100

DISTRICT COURT

CLARK COUNTY, NEVADA

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY, Plaintiffs, v. ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC; and J. JEFFREY FREDERICK, Defendants.	Case No.: A-17-760537-B Dept. No.: XXVII **SUMMONS TO FERG 16, LLC**

SUMMONS – CIVIL

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

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Submitted by:

PISANELLI BICE PLLC

By: /s/ M. Mercera

James J. Pisanelli, Esq., Bar No. 4027
Debra L. Spinelli, Esq., Bar No. 9695
M. Magali Mercera, Esq., Bar No. 11742
Brittnie T. Watkins, Esq., Bar No. 13612
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Plaintiffs

STEVEN D. GRIERSON
CLERK OF COURT

By: /s/ Kim M. Martin 9/6/2017

Deputy Clerk: Kim M. Martin
Regional Justice Center
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Las Vegas, NV 89155

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Attorneys for Plaintiffs

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LAS VEGAS, NEVADA 89101
702.214.2100

DISTRICT COURT

CLARK COUNTY, NEVADA

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY,

Plaintiffs,

v.

ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC; and J. JEFFREY FREDERICK,

Defendants.

Case No.: A-17-760537-B

Dept. No.: XXVII

SUMMONS TO MOTI PARTNERS, LLC

SUMMONS – CIVIL

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; TPOV ENTERPRISES, LLC; TPOV 16 ENTERPRISES, LLC; DNT ACQUISITION, LLC, appearing derivatively by one of its two members, R Squared Global Solutions, LLC,

Petitioners

vs.

CLARK COUNTY DISTRICT COURT, THE HONORABLE JOSEPH HARDY, DEPARTMENT 15,

Respondent,

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY,

Real Parties in Interest.

Case Number:

Eighth Judicial District Court
Case No. A-17-760537-B
Dept. 15, Honorable Joseph Hardy

Electronically Filed
Jun 18 2018 04:45 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPENDIX TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

VOLUME 11 OF 15

(APP. 2501 – 2750)

MCNUTT LAW FIRM
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MATTHEW C. WOLF (SBN 10801)
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200 W. Madison Street, Suite 3900
Chicago, IL 60606
Attorneys for Petitioners

Docket 76118 Document 2018-23237

CERTIFICATE OF SERVICE

Pursuant to NEV. R. APP. P. 25, I certify that I am an employee of MCNUTT LAW FIRM. On June 18, 2018, I caused a copy of the **APPENDIX TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION** to be hand delivered, in a sealed envelope, on the date and to the addressee(s) shown below:

Honorable Joseph Hardy
District Court Judge, Dept. 15
Regional Justice Center
200 Lewis Ave., Las Vegas, NV 89155
Respondent

James J. Pisanelli, Esq.
Pisanelli Bice, PLLC
400 S. 7th Street, Suite 300
Las Vegas, NV 89101
Attorney for Real Parties in Interest

/s/ Lisa Heller
Employee of McNutt Law Firm, P.C.

APPENDIX TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

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09.27.17	Notice of Removal of Counts II and III of Lawsuit Pending in Nevada State Court to Bankruptcy Court	1	App. 120 - 200
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12.14.17	Order Denying Motion to Transfer	1	App. 217 - 220
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Prior to learning about his criminal activity, Caesars filed a motion to reject the LLTQ and FERG Agreements in June 2015. [Dkt No. 1755] LLTQ and FERG responded with a motion for administrative expense. [Dkt. No. 2531] This Court raised whether suitability is an appropriate topic for discovery with respect to LLTQ and FERG's Motion for Payment of Administrative Expense Claim, given that the Debtors have not filed a separate adversary proceeding. Discovery on the subject of suitability is directly relevant and appropriate here, however, because it will be used to establish that LLTQ and FERG breached the agreements and that breach excuses the Debtors' performance and, thereby, any obligation to pay LLTQ and FERG an administrative expense claim. *Arlington LF, LLC, v. Arlington Hospitality, Inc.*, 657 F.3d 706, 713 (7th Cir. 2011). *Arlington Hospitality* is a case with the exact same procedural posture here: a lender sought payment of an administrative expense claim and the Court held the lender's anticipatory repudiation immediately discharged all of the debtor's remaining duties to the lender. *Id.* No separate adversary proceeding was necessary; the debtor in *Arlington* was entitled to defend the administrative expense claim by proving breach of the contract. So too here. LLTQ and FERG breached the relevant agreements each time they failed to disclose to the Debtors that they and their affiliates were unsuitable parties. The Debtors are entitled to discovery on that breach. Moreover, the Debtors are entitled to discovery into whether they were fraudulently induced into entering the LLTQ and FERG Agreements.

Instead of demonstrating that unsuitability is irrelevant, LLTQ and FERG spend considerable effort attempting to demonstrate that LLTQ and FERG were indeed suitable parties to the contracts and that the Debtors' assertions about suitability are "wholly inaccurate and, at best, a misstatement of the relevant language." [Dkt. No. 6781, at 7] As set forth below, however, suitability was indeed required as a continuing material obligation throughout the

course of the parties' dealings or else Caesars was not permitted to do business with LLTQ and FERG. And LLTQ and FERG cannot separate themselves from Mr. Seibel and his unsuitableness. In any event, the Debtors are not required to *prove* breach and unsuitability in order to be entitled to discovery on it. As even LLTQ and FERG previously argued before this Court, "[d]iscovery is not to be denied because it relates to a claim or defense that is being challenged as insufficient." [Dkt. No. 4674 at 1-2] LLTQ and FERG bear the burden of establishing that good cause exists for entry of its proposed protective order. *See* Fed. R. Civ. P. 26(c); *Johnson v. Jung*, 242 F.R.D. 481, 483 (N.D. Ill. 2007) ("The burden to show good cause is on the party seeking the protective order."). They have failed to satisfy this burden.

FACTUAL AND PROCEDURAL BACKGROUND

Caesars' relationship with Mr. Seibel began in 2009 when the parties commenced negotiations of an agreement relating to the operation of the Serendipity 3 restaurant in Las Vegas (the "MOTI Agreement"). (Ex. D, MOTI Agreement) In connection with the initial discussions between the parties, Caesars required Mr. Seibel to complete a "Business Information Form" ("BIF"). (Ex. C, MOTI BIF) On that form, Mr. Seibel represented that there was nothing "that would prevent him from being licensed by a gaming authority." (*Id*. at ¶ 11) The parties then entered into the MOTI Agreement wherein MOTI agreed that, to the extent any prior disclosure regarding it or its key employees, representatives, or management personnel became inaccurate, MOTI must "update the prior disclosure without Caesars making any further requests." (Ex. D, MOTI Agreement, at 12) Despite these obligations, neither Mr. Seibel nor MOTI ever provided Caesars with an updated disclosure regarding his illegal activities, his investigation by the IRS, or his eventual conviction.

In 2012 and 2014, Caesars entered into two more agreements with entities owned and managed by Mr. Seibel (the LLTQ and FERG Agreements). (Ex. A, LLTQ Agreement; Ex. B,

FERG Agreement) LLTQ and FERG represented in those agreements that "[they] shall and shall cause their Affiliates to conduct themselves in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of Caesars, the Caesars Las Vegas and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel casino and an exclusive, first-class restaurant." (Ex. A, LLTQ Agreement § 10.1(b); Ex. B, FERG Agreement § 11.1(b)) The agreements also stated that, "[f]or the avoidance of doubt, Rowen Seibel and his Relatives are Affiliates of LLTQ [and FERG]." (Ex. A, LLTQ Agreement § 2.1; Ex. B, FERG Agreement § 2.1) The rights and obligations of each party under the LLTQ and FERG Agreements were likewise conditioned on "Caesars being satisfied, in its sole discretion, that no [LLTQ Associate and FERG Associate] is an Unsuitable Person." (Ex. A, LLTQ Agreement § 2.2(a)(ii); *see also* Ex. B, FERG Agreement § 2.2(a)) Mr. Seibel was included within the definitions of LLTQ Associates and FERG Associates as an "Affiliate" of each Entity. (Ex. A, LLTQ Agreement § 1; Ex. B, FERG Agreement § 1) Furthermore, the agreements imposed on LLTQ and FERG an ongoing obligation to update any prior disclosures regarding LLTQ, FERG, or their key personnel, employees, or management if those disclosures became inaccurate.[2] (Ex. A, LLTQ Agreement § 10.2; Ex. B, FERG Agreement § 11.2) Given that Mr. Seibel and his entities had never updated his suitability disclosures despite an obligation to do so if they changed without Caesars making a request (Ex. B, MOTI Agreement § 9.2), Caesars

[2] The LLTQ and FERG Agreements stated that "[p]rior to the execution of this Agreement and, in any event, prior to the payment of any monies by Caesars to LLTQ hereunder, and thereafter on each anniversary of the Opening Date during the Term, (a) LLTQ shall provide to Caesars written disclosure regarding the LLTQ Associates [*e.g.*, "directors, officers, employees, agents, representatives and other associates of LLTQ or any of its Affiliates] . . . To the extent that any prior disclosure becomes inaccurate, LLTQ shall, within ten (10) calendar days from that event, update the prior disclosure without Caesars making any further request." (Ex. A, LLTQ Agreement § 10.2; Ex. B, FERG Agreement § 11.2)

relied on Mr. Seibel's prior representations to satisfy itself that Mr. Seibel remained a suitable person when entering into the LLTQ and FERG Agreements. Finally, LLTQ and FERG represented that "[a]s of the Effective Date, no representation or warranty made herein by LLTQ [or FERG] contains any untrue statement of a material fact, or omits to state a material fact necessary to make such statements not misleading." (Ex. A, LLTQ Agreement § 9.2; Ex. B, FERG Agreement § 10.2)

Mr. Seibel, as the manager and owner of LLTQ and FERG, signed the LLTQ and FERG Agreements. Mr. Seibel retained "voting control of LLTQ and the sole right to make decisions relating to [the LLTQ] Agreement on behalf of LLTQ. . . . [And Mr.] Seibel . . . [was] the individual designated by LLTQ representing the interests of LLTQ in interfacing with Caesars relative to [the LLTQ] Agreement, in connection with the operation of the Restaurant." (Ex. A, LLTQ Agreement §2.2(b)) LLTQ also acknowledged that "Caesars is relying upon the skill and expertise of Rowen Seibel in entering into this Agreement and accordingly, the obligations and duties of LLTQ specifically designated hereunder to be performed by Rowen Seibel are personal to Rowen Seibel and are not assignable or delegable by LLTQ or Rowen Seibel to any other Person without the prior written consent of Caesars." (Ex. A, LLTQ Agreement § 13.2) Finally, the agreements explicitly state that Rowen Seibel and his Relatives are Affiliates of LLTQ and FERG. (Ex. A, LLTQ Agreement § 2.1; Ex. B, FERG Agreement § 2.1)

The instant litigation began when the Debtors filed a motion to reject the FERG and LLTQ Agreements. [Dkt. No. 1755] Shortly thereafter, LLTQ and FERG filed a request for payment of administrative expenses. [Dkt. 2531] In August 2016, the Debtors discovered from press reports that Mr. Seibel had pled guilty in April 2016 to one count of corrupt endeavor to

obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212.[3] Based on a review of the pleadings in that case, the Debtors discovered that, in 2004, Mr. Seibel and his mother traveled to UBS offices in Switzerland. (Ex. E, U.S.A. v. Rowen Seibel Information, ¶ 7) While in Switzerland, Mr. Seibel opened and became the beneficiary and account holder of a UBS bank account. (*Id.*)

On or about May 30, 2008, Mr. Seibel traveled back to Switzerland and informed UBS personnel that he wanted to close his Numbered UBS Account. (*Id.* ¶ 8) At the time, there were press reports that the United States government was commencing investigations and pursuing legal action relating to UBS's role in helping United States citizens evade federal income taxes by, among other things, using undeclared foreign bank accounts at UBS. (*Id.*) Mr. Seibel specifically referenced these press reports as the reason he wanted to close the account. (*Id.*)

Prior to closing the UBS Account, Mr. Seibel created a Panamanian shell company called Mirza International ("Mirza"). (*Id.* ¶ 9) Mr. Seibel was the beneficial owner of the shell company. (*Id.*) In addition, Mr. Seibel opened another offshore account at a different Swiss bank, Banque J. Safra. (*Id.*) This time, however, he opened the account in the name of the newly-created Mirza International instead of his own name. (*Id.*)

On or about October 10, 2008, Mr. Seibel filed with the IRS a Form 1040 for calendar year 2007. (*Id.* ¶ 10) On that return, which Mr. Seibel signed under penalty of perjury, he omitted the dividend, interest, and other income he received in one or more bank, securities, and other financial accounts at UBS. (*Id.*) Mr. Seibel also failed to report on Schedule B of his 2007

[3] *See* Jesse Drucker & Christian Berthelsen, *Restauranteur Seibel Sent to Jail, Then Kitchen, in Tax Scam* (Bloomberg, Aug. 19, 2016), https://www.bloomberg.com/news/articles/2016-08-19/restaurateur-turned-tax-dodger-readies-for-manhattan-sentencing; Bradley Martin, *IRS Busts Caesars Palace's Serendipity 3 Owner Rowen Seibel; The Gordon Ramsay Partner Will Serve One Month in Prison* (Eater Las Vegas, Aug. 22, 2016) http://vegas.eater.com/2016/8/22/12580248/Rowen-Seibel-jail-sentence-IRS-tax-evasion.

Form 1040 that he had an interest in or a signature authority over a financial account in a foreign country. (*Id.*) Moreover, because of his authority over the Numbered UBS Account, Mr. Seibel was required to file a Foreign Bank and Financial Accounts, Form TD F 90-22.1 ("FBAR") for calendar year 2007, but did not do so. (*Id.*) Mr. Seibel filed other false forms for calendar year 2008. (*Id.*) Individuals failing to file an FBAR are subject to up to ten years in prison and criminal penalties up to $500,000. Voluntary Disclosure Program, IRS Website, https://www.irs.gov/uac/voluntary-disclosure-questions-and-answers.

In 2009, the IRS announced the Voluntary Disclosure Program. (Ex. E,. U.S.A. v. Rowen Seibel Information, ¶ 12). The Voluntary Disclosure Program was intended to serve as a vehicle for U.S. taxpayers that were not already under investigation by the IRS to avoid criminal prosecution. (*Id.*) It required these individuals to disclose their previously undeclared offshore accounts, pay tax on the income earned in those accounts, and file a FBAR. Under the Voluntary Disclosure Program:

> When a taxpayer **truthfully**, timely, and **completely** complies with all provisions of the voluntary disclosure practice, the IRS will not recommend criminal prosecution to the Department of Justice. . . . The failure to file an FBAR and **the filing of a false FBAR are both violations that are subject to criminal penalties** under 31 U.S.C. § 5322.

Voluntary Disclosure Program, IRS Website, https://www.irs.gov/uac/voluntary-disclosure-questions-and-answers (emphasis added).

In October 2009, Mr. Seibel submitted an application and FBAR to the Voluntary Disclosure Program. (Ex. E, U.S.A. v. Rowen Seibel Information, ¶ 13) The application and FBAR, however, contained several misrepresentations. (*Id.*) First, the application falsely stated that Mr. Seibel had been unaware, during the years 2004 and 2005, that his mother had made deposits into the Numbered UBS Account for Mr. Seibel's benefit. (*Id.*) Second, the application

falsely stated that Mr. Seibel had been unaware, until he made inquiries of UBS in 2009, of the status of his account at UBS. (*Id*.) Third, the application falsely stated that Mr. Seibel reached "the conclusion that deposits [into his Numbered UBS Account] had been stolen or otherwise disappeared." (*Id*.) Contrary to the statements in his application, Mr. Seibel was (a) at all times knowledgeable about the Numbered UBS Account and had taken a role in the oversight of, and transactions in, that account; and (b) was aware as to the disposition of the funds from that account, as Mr. Seibel traveled to Switzerland the year before to effect the closing of the Numbered UBS Account and transfer of its funds into another foreign bank account at a different Swiss bank. (*Id*.)

When Caesars first became aware of Mr. Seibel's felony conviction, it promptly terminated all of its agreements with him due to regulatory and licensing concerns.[4] The Debtors also recognized that Mr. Seibel's conviction and underlying activities meant that many of the representations, warranties, and promises in the LLTQ and FERG Agreements were false when made. And LLTQ and FERG at no point, even as of Mr. Seibel's felony conviction, disclosed to the Debtors that these representations, warranties and promises were no longer true. Mr. Seibel's illegal activities prohibited him and his affiliates from entering into, and continuing to do business under, the LLTQ and FERG Agreements with Caesars. Given these material breaches, the Debtors are relieved of any obligations to perform under the agreements, including any obligation to pay an administrative expense claim. In the alternative, if the representations and

[4] Nevada Gaming Control Regulation 5.011 provides the basis for disciplinary action by the Nevada Gaming Control Board upon a finding of an unsuitable method of operation, which includes "associating with, either socially or in business affairs, persons of notorious or unsavory reputation or who have extensive police records, or persons who have defied congressional investigative committees, or other officially constituted bodies acting on behalf of the United States."

warranties were false when made, then the LLTQ and FERG contracts could be rescinded and LLTQ and FERG would likewise not be entitled to administrative expenses.

Accordingly, the Debtors served discovery on LLTQ, FERG, and Mr. Seibel to determine if the parties to the LLTQ and FERG Agreements were suitable, whether LLTQ and FERG had breached the contracts on the basis of unsuitability, and whether there was a basis to seek rescission of the LLTQ and FERG agreements (the "Suitability Discovery"). (Ex. F, LLTQ RFPs; Ex. G, FERG RFPs; Ex. H, R. Seibel Subpoena; Ex. I, Y. Seibel Subpoena) The requests sought, for example, documents that would reveal whether, as of 2009, 2012 and 2014 when the MOTI, LLTQ, and FERG Agreements were each respectively executed, Mr. Seibel knew he had engaged in criminal activity or was being investigated by the federal government such that his original suitability representation was false and/or should have been updated. For the reasons described below, LLTQ and FERG have failed to meet their burden to shut down this highly relevant discovery.

LEGAL STANDARD

It is well-settled that "relevancy should be interpreted 'very broadly to mean matter that is relevant to anything that is or may become an issue in the litigation.'" *Chan v. City of Chicago*, 1992 WL 170561, at *3 (N.D. Ill. July 16, 1992) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n. 12 (1978)). Accordingly, relevance "is not limited to the precise issues set out in the pleadings or to the merits of the case. Instead, discovery requests may be deemed relevant if there is any possibility that the information may be relevant to the general subject matter of the action." *Oppenheimer Fund Inc. v. Sanders*, 437 U.S. 340, 351 (1978). LLTQ and FERG do not disagree. As they previously argued before this Court, "[d]iscovery is not to be denied because it relates to a claim or defense that is being challenged as insufficient." [Dkt. No. 4674, at 1–2] LLTQ and FERG bear the burden of establishing that good cause exists

for entry of its proposed protective order. *See* Fed. R. Civ. P. 26(c); *Johnson v. Jung*, 242 F.R.D. 481, 483 (N.D. Ill. 2007) ("The burden to show good cause is on the party seeking the protective order.")

ARGUMENT

I. Suitability is Directly Relevant to the Issues in the Contested Matters.

A. Suitability is Directly Relevant Because a Breach Relieves the Debtors of Any Further Obligation to Perform.

Suitability Discovery is directly relevant because it will be utilized to establish that LLTQ and FERG breached the agreements when they continuously failed to provide the requisite disclosures to the Debtors regarding their lack of suitability. Under both Nevada and New Jersey law,[5] a material breach in a contract excuses a party from its duty to perform. *Crockett & Myers v. Napier, Fitzgerald & Kirby*, 440 F.Supp.2d 1184, 1193 (D.Nev. 2006) ("It is elementary contract law that a material breach by one party to the contract may excuse further performance by another party."); *Tarakji v. Feldman & Fiorello, LLC*, No. A-2669-08T2, 2010 WL 3834810, at *4 (N.J. Super. Ct. App. Div. Oct. 4, 2010) ("The material breach of a contract by one party can excuse further performance by the other party."). If, in fact, LLTQ and FERG breached the relevant agreements, that means the agreements are no longer executory and the breach excuses the Debtors' performance—in this case, a continuing obligation to pay the requested administrative claims.

[5] The LLTQ Agreement provides that "[t]he laws of the State of Nevada applicable to agreements made in that State shall govern the validity, construction, performance and effect of this Agreement." (Ex. A, LLTQ Agreement § 13.10(a)) The FERG Agreement provides that "[t]he laws of the State of New Jersey applicable to agreements made in that State shall govern the validity, construction, and performance and effect of this Agreement." (Ex. B, FERG Agreement § 14.10(a))

Arlington LF, LLC, v. Arlington Hospitality, Inc., 657 F.3d 706, 713 (7th Cir. 2011) is directly on point. In *Arlington*, a post-petition lender sought payment of default interest and fees as an administrative expense claim. The Seventh Circuit held that because the lender had repudiated its lending agreement with the debtor, however, that "[a]t the moment [the lender] repudiated, [the debtor] was entitled to treat the agreement as having ended and was no longer under any obligation to perform." 637 F.3d at 716. The lender had argued that the debtor had "never sought rescission or brought suit against [the lender] for any alleged breach." The Seventh Circuit held, however, that the debtor "did not need to:"

> Unless the non-repudiating party wishes to hold the repudiatory responsible for contract damages, the non-repudiating party need not make efforts to keep the contract in force. [ ] It is [*the lender*] seeking additional money in this case, not [the debtor]. [The debtor]—which paid [the lender] in full for the money it borrowed—simply believes it has no further obligations under the agreement. Once [the lender] declared it was unwilling to perform its obligations memorialized in the Interim Order, [the lender] "was quite clearly not entitled to payments it would otherwise have been due.

Id. (internal citations omitted). Accordingly, because the lender had no basis to demand the debtor's further performance under the contract, the lender had no right to an administrative expense claim.

Here, the topic of suitability is directly relevant to whether or not LLTQ and FERG breached the agreements. If they breached, they have no right to demand the Debtors' continued performance under those contracts through payment of an administrative expense claim. And the Debtors should be able to defend the claim on this basis. No separate adversary proceeding for rescission or breach of contract is required under *Arlington.*

In re C & S Grain Co., Inc., 47 F.3d 233, 237 (7th Cir. 1995) is also illustrative of this point. In *C & S Grain*, the Seventh Circuit held that certain grain contracts with the debtor were not executory and thus, could not be assumed, where the debtor had repudiated the contracts.

With respect to the contracts at issue, the Seventh Circuit noted that "implicit in every grain contract entered into by [the debtor] was an assurance that it was licensed to deal and store grain." *Id.* But the debtor had surrendered its licenses and by doing so, had declared itself unable to perform. Accordingly, the Seventh Circuit held that "in the face of clear evidence of an intent to repudiate, the non-repudiating party is no longer under an obligation to perform . . . [b]ecause one party is not obligated to perform, the contract is no longer executory as defined in bankruptcy." *Id.*

Here, suitability was required of LLTQ, FERG, and their affiliates including Mr. Seibel, or else the Debtors were not permitted to do business with them. Mr. Seibel's illegal activities prohibited him and his affiliates from entering into, and continuing to do business under, the agreements with the Debtors. By not disclosing his unsuitability, he breached the agreements and excused any further performance by the Debtors.

B. Suitability is Directly Relevant to the Debtors' Claims for Fraudulent Inducement and Rescission of the Contracts.

In the alternative, the Debtors have claims for fraudulent inducement and rescission of the contracts. Procedurally, the Court may, under Bankruptcy Rule 9014, direct that Bankruptcy Rules 7008 and 7013 apply to a contested matter. Fed. R. Bankr. P. 9014 ("The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply."). If the Court does so, the Debtors can assert fraudulent inducement as either an affirmative defense or counterclaim. Alternatively, the Debtors are willing to initiate an adversary proceeding if necessary.

Substantively, the Court can fashion a remedy that is equitable to the parties based on their respective conduct. The Court could, for example, rescind the LLTQ and FERG Agreements and place the parties back in the positions they occupied prior to executing the

contracts. If that occurs, the Court could require LLTQ and FERG to disgorge any payments they received from Caesars over and above any initial capital contributions and disallow the requested administrative expenses. The Debtors, on the other hand, would be free to enter into a new contract with Gordon Ramsay and operate the pub restaurants—the same position they were in prior to entering into the LLTQ and FERG Agreements.

LLTQ and FERG argue that rescission is not available because the Debtors did not suffer any damages as a result of Mr. Seibel's, LLTQ's, or FERG's misrepresentations. (Mot. at 18–19) To the contrary, the LLTQ and FERG Agreements required Caesars to make payments to Mr. Seibel even though he provided little benefit pre-petition and no benefit post-petition. Were it not for these misrepresentations, Caesars would have never entered into these contracts or made these payments. In fact, because Mr. Seibel's illegal actions were never disclosed by him or his entities to Caesars—even after he pled guilty—Caesars suffered additional damages in the form of accrued payments to Mr. Seibel and an alleged administrative expense claim. And, of course, the misrepresentations of Mr. Seibel, LLTQ, and FERG have caused the Debtors to incur significant fees and expenses investigating and analyzing Mr. Seibel's illegal activities and litigating the instant motions.

Under both Nevada and New Jersey law, the elements of fraudulent inducement are similar: (a) a false representation; (b) the person making the false representation knew or should have known that the representation was false; (c) the person intended that the representation would induce another to rely on it; and (d) the false representation caused injury to the party relying on it. *See J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*, 89 P.3d 1009, 1018 (Nev. 2004); *Schillaci v. First Fid. Bank*, 311 N.J. Super. 396, 403 (App. Div. 1998). Moreover, "claims for fraudulent inducement can be predicated on the promisor having no intention of

fulfilling a promise at the time it makes that promise." *UBI Telecom Inc. v. KDDI Am., Inc.*, No. CIV.A 13-1643 KSH, 2014 WL 2965705, at *15 (D. N.J. June 30, 2014). The question at this point is not whether the Debtors will prevail on their fraudulent inducement claims. The only issue before the Court is whether the Suitability Discovery requested by the Debtors is relevant to the issues in the contested matters. On that issue, the answer is plainly yes.

II. LLTQ and FERG Have Not Met Their Burden For A Protective Order.

In their motion, LLTQ and FERG claim that the "Debtors do not have a fraudulent inducement defense because there are no representations and warranties actually made by Movants." (Mot. at 13) Not so. The representations and warranties in the LLTQ and FERG Agreements directly involve Mr. Seibel as an Affiliate and Associated Party of LLTQ and FERG, and implicate him indirectly given his role as the owner and manager of those entities.

As noted, the LLTQ and FERG Agreements state that "the rights and obligations of each party under this Agreement [are] conditioned upon (which conditions may be waived by Caesars in its sole and absolute discretion) . . . (ii) Caesars being satisfied, in its sole discretion, that no LLTQ [or FERG] Associate is an Unsuitable Person; (Ex. A, LLTQ Agreement § 2.2; Ex. B, FERG Agreement § 2.2) The agreements also impose on LLTQ and FERG continuing obligations to update Caesars if any prior disclosures become inaccurate. (Ex. A, LLTQ Agreement § 10.2; Ex. B, FERG Agreement § 11.2) But neither Mr. Seibel nor his entities updated his prior disclosures.

LLTQ and FERG blame the Debtors for not uncovering Mr. Seibel's false statements and argue that their representations cannot be false because the "suitability issue is squarely a matter for the Debtors based on their own investigation." (Mot. at ¶ 43) But, as noted above, Mr. Seibel's entities had ongoing obligations to update the disclosures regarding Mr. Seibel without

any request from Caesars, and failed to do so. Caesars reasonably expected that MOTI would provide those updates if necessary and relied upon MOTI's obligations when it entered into the LLTQ and FERG Agreements.

LLTQ and FERG take issue with the Debtors' reliance on the MOTI BIF and claim that it constitutes parol evidence. But this argument misapprehends the parol evidence rule and the purpose for which the Debtors relied on the BIF. The Debtors are not suggesting that the BIF is extrinsic evidence of the parties' intent. Nor are they suggesting that it should be used to aid in the interpretation of the meaning of the contractual terms. Instead, the BIF was a prior disclosure that Caesars had obtained from Mr. Seibel and MOTI relating to suitability. And, knowing that the MOTI Agreement required that the disclosures be updated when and if necessary, the Debtors believed that any change in Mr. Seibel's suitability would be disclosed in connection with the MOTI Agreement—a disclosure that would bear equally on the suitability requirements imposed by the LLTQ and FERG Agreements. Thus, while LLTQ and FERG make much of the fact that the Debtors did not complete a separate investigation with respect to the LLTQ and FERG Agreements, no separate investigation was necessary given the ongoing obligations under the MOTI Agreement to update any inaccurate disclosures. (Ex. D, MOTI Agreement, at 12)

LLTQ and FERG also argue that the Debtors wrongly treat every representation, warranty, and covenant in the agreements as if they were made by Mr. Seibel individually. (*Id.* at ¶ 53) As a legal matter, Mr. Seibel, LLTQ and FERG should be treated as the same. Under Nevada and New Jersey law, a court will pierce the corporate veil if (a) the corporation is governed and influenced by the people asserted to be its alter egos; (b) there is a unity of interest and ownership such that the two are inseparable; and (c) adherence to the fiction would sanction a fraud or promote injustice. *See Ecklund v. Nevada Wholesale Lumber Co.*, 93 Nev. 196, 197

(1977); *State, Dept. of Environmental Protection v. Ventron Corp.*, 94 N.J. 473, 500 (1983). Although discovery is not complete, there is a strong case for veil piercing here.

First, the information the Debtors have received thus far establishes that LLTQ and FERG are governed and influenced by Mr. Seibel such that there is a unity of interest and ownership. As noted above, Mr. Seibel was the owner and manager of LLTQ, and the sole manager and owner of FERG. And, for compliance and regulatory purposes, the owners of closely-held corporations like LLTQ and FERG are considered to be one and the same as the corporate entities themselves—*i.e.*, if an owner is not suitable, neither is the closely-held corporation. Furthermore, as confirmed by the LLTQ Agreement, Mr. Seibel "retain[ed] voting control of LLTQ and the sole right to make decisions relating to [the LLTQ Agreement] on behalf of LLTQ." (Ex. D, LLTQ Agreement § 2.2(b)) The principal office for both entities was Mr. Seibel's home address. Further discovery will explore the finances of the entities and the treatment of corporate assets.

Second, there is substantial evidence to support the Debtors' belief that a fraud or injustice would result from a failure to pierce the corporate veil. Fraud or injustice exists when the facts are such that adherence to the fiction of a corporate entity would sanction a fraud or promote an injustice. *Ecklund*, 93 Nev. at 197. Here, LLTQ and FERG are attempting to do just that. They would have this Court adhere to the corporate form even though it could permit LLTQ and FERG—and, by extension, Mr. Seibel—to avoid any liability for the ongoing failure to disclose his illegal activities.

As a practical matter, LLTQ and FERG do not actually believe that there is any distinction between Mr. Seibel and the legal entities. Had they actually believed in the corporate distinctions that they are asking this Court to embrace, Mr. Seibel would not have attempted to

assign all of his rights and interests in LLTQ and FERG just days before he pled guilty. As they concede, however, Mr. Seibel's felony conviction was, in fact, a consideration when making the assignment. (Ex. J, LLTQ Responses to Suitability RFAs, at Response 3; Ex. K, FERG Responses to Suitability RFAs, at Response 3) Furthermore, the trust that now purportedly owns LLTQ and FERG has taken a number of steps to separate itself from Mr. Seibel and has assured the Debtors that Mr. Seibel has no association with the entities. Thus, while LLTQ and FERG may claim that Mr. Seibel is distinct, their actions prove otherwise.

CONCLUSION

For the aforementioned reasons, the Debtors respectfully request that the Court deny LLTQ and FERG's Motion for Protective Order.

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Dated: April 26, 2017
Chicago, Illinois

/s/ Jeffrey J. Zeiger, P.C.

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Exhibit C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,	)	No. 15 B 01145
	)	Chicago, Illinois
	)	10:00 a.m.
Debtor.	)	May 31, 2017

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE A. BENJAMIN GOLDGAR

APPEARANCES:

For the Debtors:	Mr. William Arnault;
For FERG, LLC, LLTQ Enterprises and MOTI Partners:	Mr. Nathan Rugg;

Court Reporter:	Amy Doolin, CSR, RPR U.S. Courthouse 219 South Dearborn Room 661 Chicago, IL 60604.

THE CLERK: Caesars Entertainment Operating Company, Incorporated, et al.

MR. ARNAULT: Good morning, Your Honor. Bill Arnault on behalf of the debtors.

MR. RUGG: Good morning, Your Honor. Nathan Rugg on behalf of FERG, LLC, LLTQ Enterprises, and MOTI Partners.

THE COURT: Good morning. We are here on the motion for a protective order, and I have a ruling that I will read. You can have a seat, if you'd like.

Before me for ruling is the motion of LLTQ Enterprises, LLC, and FERG, LLC, for a protective order. For reasons I will describe, the motion will be denied.

In June 2015, the debtors moved to reject contracts with LLTQ and FERG. The contracts concerned the development and operation of restaurants at Caesars facilities in Nevada and New Jersey. The restaurants bear the name of British celebrity chef Gordon Ramsay who himself had contracts with two of the debtors. Some months later, LLTQ and FERG filed a request for payment of administrative expenses in connection with the restaurants, expenses they said had to be calculated

under the contracts. The debtors then moved to reject the two contracts with Ramsay and to enter into new agreements with him. LLTQ and FERG moved for partial summary judgment on their administrative expense request, but the motion was denied. Each of the motions is consequently still pending and is hotly contested. Discovery on the motions seems to have been extensive.

Meanwhile, in April 2016, Rowen Seibel, a manager and owner of both LLTQ and FERG, pled guilty to federal charges of obstructing the tax laws. In August 2016, the debtors learned of Seibel's conviction and terminated the LLTQ and FERG contracts. The debtors then asserted that Seibel's criminal activities made him an "unsuitable person" with whom they could not have done business and indeed would never have done business had they only known what he was up to. The debtors took the position that Seibel had fraudulently induced them to enter into the two contracts and began discovery on the subject, what both sides call "suitability discovery."

Precisely what discovery the parties have taken on suitability to date is unclear. Their papers on the current motion suggest the discovery

has been primarily if not entirely written, that there have yet to be any depositions. The debtors intend to continue pursuing suitability discovery. LLTQ and FERG maintain that enough is enough. In fact, LLTQ and FERG contend that enough is too much, that no suitability discovery should have been taken. They request a protective order under Rule 26(c)(1) terminating discovery on the subject.

Although I have some sympathy for LLTQ and FERG's position, their motion for protective order must be denied. They argue that suitability discovery should cease because the debtors' arguments about suitability are deficient as a matter both of fact and law. That is not a conclusion I am willing to draw on a discovery motion.

Under Bankruptcy Rules 6004(b), 6006(a), and 9014(c), Fed. R. Bankr. P. 6004(b), 6006(a), 9014(c), Rule 26 of the Civil Rules applies to contested matters like the ones here. The scope of permissible discovery is set out in Rule 26(b)(1). That rule says parties may obtain discovery on any non-privileged matter that is "relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1). Relevance for this purpose has the same meaning it has under Rule 401 of the Federal Rules of Evidence.

Zimnicki v. General Foam Plastics Corp., No. 09 C 2132, 2011 WL 833601, at *2 (N.D. Ill. Mar. 3, 2011). Rule 401 says that evidence is relevant "if (a) it has any tendency to make a fact more or less probable than it would be without the evidence, and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401.

For discovery to be permissible under Rule 26(b)(1), though, the matter in question must not only be relevant, it must also be "proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). Proportionality depends on "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Id.

The Federal Rules are designed to promote liberal discovery. Kim v. Hopfauf, No. 15 C 9127, 2017 WL 85441, at *2 (N.D. Ill. Jan. 27, 2017); LaPorta v. City of Chicago, No. 14 C 9665, 2016 WL 4429746, at *3 (N.D. Ill. Aug. 22, 2016). The burden therefore rests with a party resisting discovery to show why discovery is improper and should not be

allowed. Last Atlantis Capital LLC v. AGS Specialist Partners, 292 F.R.D. 568, 573 (N.D. Ill. 2013). Whether to permit discovery is a matter over which a trial court has broad discretion. Kuttner v. Zaruba, 819 F.3d 970, 974 (7th Cir. 2016).

The motion for protective order essentially collapses relevance and proportionality into a single inquiry. LLTQ and FERG say little about the proportionality factors mentioned in Rule 26(b)(1): The importance of the issues, the amount in controversy, the parties' access to information, their resources, the importance of the proposed discovery to the issues, or the burdens and benefits discovery would entail. They offer conclusions but no detail. Instead, they argue principally that the subject of suitability is irrelevant because the debtors have no legally or factually plausible theory under which suitability could have an effect on the outcome of the contested matters. Because suitability is irrelevant, any discovery on the subject would be disproportionate. (See, e.g., Mot. at 20).

I agree that the debtors' legal theories look thin. At an earlier hearing, I raised questions about the fraudulent inducement theory. I

asked about the procedural context in which the debtors might argue fraudulent inducement, since the pending motions did not appear to provide one. I also asked how rescission based on fraudulent inducement could be accomplished since rescission involves restoring each side to its original position. That did not look like a possibility here.

The debtors have yet to answer those questions. Recognizing that there seem to have been no misrepresentations about suitability in connection with either the LLTQ agreement or the FERG agreement, the debtors now maintain that Seibel misrepresented his suitability in connection with another restaurant agreement, the MOTI agreement. But that agreement involved a different entity, MOTI Partners. It involved a different restaurant. And it predated the LLTQ and FERG agreements by several years. It is hard to understand how Seibel's misrepresentation in connection with one agreement in 2009 could have fraudulently induced the debtors to enter into two different agreements three and five years later. The debtors could have trouble demonstrating the requisite mental state as well as the reasonableness of their reliance.

For the first time, the debtors also

argue that LLTQ and FERG breached their agreements when they failed to disclose Seibel's unsuitability. Citing Arlington LF, LLC v. Arlington Hospitality, Inc., 637 F.3d 706 (7th Cir. 2011), a case with which I am all too familiar, the debtors argue that the non-disclosure was an anticipatory repudiation, absolving the debtors of their obligations under the agreements. But as Arlington Hospitality explains, anticipatory repudiation involves a party's manifestation of its intent not to perform under a contract when its performance is due. Id. at 713. The debtors fail to explain how the failure of LLTQ and FERG to disclose Seibel's unsuitability manifested an intent not to perform under the agreements. Perhaps the failure was a breach, but it does not appear to have been an anticipatory repudiation.

My skepticism is not so great, though, that I am prepared to conclude discovery on the subject of suitability should simply stop, as FERG and LLTQ request. The facts adduced thus far suggest that Seibel may have made a false disclosure to the debtors in 2009, a disclosure the debtors insist they relied on in connection with the LLTQ and FERG agreements. The facts also suggest that the LLTQ and

FERG agreements required their affiliates (Seibel was an affiliate) to behave with honesty and integrity. Seibel's conviction, another fact, tends to show he did neither. Although the relevance standard in Rule 26 is narrower than it used to be, it "is still a very broad one." 8 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, Federal Practice & Procedure § 2008 at 130 (3d ed. 2010). Discovery should shut down when the information would have "no conceivable bearing on the case," id. at 142, but the relevance of suitability to the contested matters is certainly conceivable, even if the debtors have explained it poorly. As for the legal sufficiency of the debtors' theories, "[d]iscovery is not to be denied because it relates to a claim or defense that is being challenged as insufficient." Id. at 137.

It might be another matter if LLTQ and FERG had made more of the proportionality end of things, arguing (for example) that suitability discovery should not be permitted because the issues are too insignificant, the expense too great, the benefit too small, and offering specifics to back up the arguments. But they have not. They have objected to the discovery as if they were moving for summary judgment, claiming that the facts and law

show the debtors' theories are so devoid of merit that all discovery on suitability should stop. Dubious though the debtors' legal theories seem to be – at least based on what I have been given to date – that is not a determination I am comfortable making on a discovery motion.

The motion of LLTQ Enterprises, LLC, and FERG, LLC, for a protective order is denied.

Now, we also have a motion to compel, and I had postponed addressing that until I could deal with the protective order motion, figuring that if I granted the protective order motion, I wouldn't have to deal with the motion to compel. Now I have to deal with the motion to compel, and that I will do on June 19.

So everything that is currently set for today will be continued until June 19. And I expect to have a ruling for you on the motion to compel then.

All right. Anything else need to be discussed today?

MR. RUGG: I don't believe so, Your Honor.

MR. ARNAULT: No, Your Honor.

MR. RUGG: Thank you, Your Honor.

MR. ARNAULT: Thank you.

THE COURT: Okay. Thank you very much.

(Brief pause.)

THE COURT: June 21 let's make that. Everything will be continued to June 21. The idea was to put everything with the omnibus date, so that's just my calendar impairedness exhibiting itself.

(Which were all the proceedings had in the above-entitled cause, May 31, 2017, 10:00 a.m.)

I, AMY B. DOOLIN, CSR, RPR, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.

Exhibit D

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,[1]	)	Case No. 15-01145 (ABG)
	)	(Jointly Administered)
Debtors.	)	**Re: Docket No. 4579**

DEBTORS' OBJECTION TO MOTION TO COMPEL DEBTORS TO RESPOND TO SPECIFIC INTERROGATORIES AND RELATED REQUESTS FOR PRODUCTION OF DOCUMENTS

The above-captioned debtors and debtors in possession (collectively, the "Debtors") object to the *Motion to Compel Debtors to Respond to Specific Interrogatories and Related Requests for Production of Documents* [Dkt. No. 4579] (the "Motion to Compel"). In support thereof, the Debtors state as follows:

INTRODUCTION

1. The instant dispute arises out of the Debtors' attempts to reject certain contracts relating to two Gordon Ramsay-branded pubs (the "Ramsay Pubs") located in Las Vegas and Atlantic City. (*See* [Dkt. Nos. 1755, 3000]) These contracts include (a) a consulting agreement between Debtor Desert Palace, Inc. ("Caesars Palace") and LLTQ (the "LLTQ Agreement") and a consulting agreement between Debtor Boardwalk Regency Corporation dba Caesars Atlantic City ("Caesars AC") and FERG (the "FERG Agreement"), which respectively provide LLTQ or FERG, as applicable, with a share of the revenues of the applicable Ramsay Pub; and (b) a licensing agreement between Caesars Palace and Gordon Ramsay and certain of his affiliates

[1] A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at https://cases.primeclerk.com/CEOC.

("Ramsay," and such agreement, the "CPLV Ramsay Agreement") and a licensing agreement between Caesars AC and Ramsay (the "Caesars AC Ramsay Agreement," and together with the CPLV Ramsay Agreement, the "Ramsay Agreements"). In connection with the rejection of the Ramsay Agreements, the Debtors are also seeking to enter into two new contracts with Ramsay that include substantially better terms for the Debtors. (*See* [Dkt. No. 3000] (the "Ramsay Motion").)

2. LLTQ and FERG have objected to the Debtors' rejection motions. In support thereof, LLTQ and FERG rely on a restrictive covenant in the LLTQ Agreement that purportedly requires the Debtors to enter into a new agreement with LLTQ "on the same terms and conditions as [the LLTQ Agreement]" if any of the Debtors pursue any other pubs, bars, cafes, taverns, or steak restaurants with Ramsay. According to LLTQ and FERG, a post-rejection breach of that restrictive covenant does not create a "claim" under the Bankruptcy Code because such a breach cannot be remedied by money damages.

3. LLTQ and FERG have since requested information and documents relating to any ventures that the Debtors intend to pursue with Gordon Ramsay in the future. They assert that this information will reveal the Debtors' intentions to pursue new ventures with Ramsay and the terms of those ventures—information they claim is necessary to determine whether money damages are available. LLTQ's and FERG's analysis is incorrect.

4. *First*, the restrictive covenant is not enforceable. Under well-established Nevada law, a restrictive covenant is enforceable only if it contains reasonable temporal and geographic limitations. As LLTQ and FERG concede, however, the restrictive covenant at issue is unbounded by time and geography. As a result, the restrictive covenant is unenforceable as a matter of law and LLTQ and FERG cannot rely upon it for purposes of opposing the Debtors'

rejection motions. Nor can they use it as means to obtain discovery to which they are not otherwise entitled.

5. *Second*, the contours of the Debtors' discussions with Ramsay regarding potential new ventures have no bearing on the availability of money damages. Though LLTQ and FERG claim that information relating to these discussions is necessary to determine "what breaches are likely to occur in the future," as a practical matter the only possible breach would be the Debtors' decision to enter into a new agreement with Ramsay. Similarly, additional discovery is not necessary to determine the terms of any new agreement between the Debtors and Ramsay. If LLTQ and FERG are correct that the restrictive covenant is enforceable, the Debtors must enter into a new agreement with LLTQ "on the same terms and conditions as [the LLTQ Agreement]." In other words, the nature of any preliminary discussions between the Debtors and Ramsay regarding new ventures will have no bearing on the nature of any breach or the availability of money damages. Accordingly, the Debtors should not be required to collect and review additional documents from additional custodians regarding new ventures that have not yet been consummated and may never materialize.

6. For the foregoing reasons, the Debtors respectfully request that the Court deny the Motion to Compel.

BACKGROUND

7. In 2012, the Debtors entered into two separate agreements relating to the development and operation of a Gordon Ramsay-branded pub in Las Vegas: (a) the LLTQ Agreement, which is a development and operation agreement with LLTQ; and (b) the CPLV Ramsay Agreement, which is a development, operation, and licensing agreement with Ramsay. The CPLV Ramsay Agreement provides the Debtors with, *inter alia*, the right to use certain trademarks associated with Gordon Ramsay, and requires Gordon Ramsay to make personal

appearances at the Ramsay Restaurants and to provide ongoing services related to menu development and the operation of the Ramsay Restaurants. The LLTQ Agreement provides LLTQ with a share of the revenue of the Ramsay Pub at Caesars Palace Las Vegas in exchange for certain services in connection with the Debtors' design, development, construction, and operation of that pub. The LLTQ Agreement also contains a restrictive covenant relating to future ventures between the Debtors and Gordon Ramsay:

> Additional Restaurant Projects. If Caesars [i.e., Debtor Caesars Palace] elects under [the LLTQ Agreement] to pursue any venture similar to (i) the Restaurant (i.e., any venture generally in the nature of a pub, bar, café or tavern) or (ii) the "Restaurant" as defined in the development and operation agreement entered into December 5, 2011 between TPOV Enterprises, LLC (an affiliate of LLTQ), on the one hand, and Paris Las Vegas on the other hand (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), Caesars and LLTQ shall, or shall cause an affiliate to, execute a development and operation agreement on the same terms and conditions as this Agreement, subject only to revisions proposed by Caesars or its Affiliates as are necessary to reflect the difference in location between the Restaurant and such other venture (including, for the avoidance of doubt, the Baseline Amount, permitted Operating Expenses and necessary Project Costs).

LLTQ Agmt. § 13.22.

8. In response to certain requests for admission, LLTQ and FERG have admitted that the restrictive covenant in the LLTQ Agreement (a) does not expire at any point (except as may be provided under applicable law); (b) applies to any future venture between the Debtors and Ramsay that is similar to any venture generally in the nature of a pub, bar, café, tavern, or steak restaurant; (c) applies to all Caesars' affiliates that pursue a new venture with Ramsay; and (d) applies to ventures located anywhere in the world. (LLTQ Resp. to Debtors' First Requests for Admission Nos. 1, 2, 36, 37, 38, attached hereto as **Exhibit 1**.)

9. In 2014, the Debtors entered into two separate agreements relating to the development and operation of a Gordon Ramsay-branded pub in Atlantic City (a) the FERG

Agreement, which is a consulting agreement with FERG; and (b) the Caesars AC Ramsay Agreement, which is a development, operation, and licensing agreement with Ramsay. The Caesars AC Ramsay Agreement provides the Debtors with, *inter alia*, the right to use certain trademarks associated with Gordon Ramsay, and requires Gordon Ramsay to make personal appearances at the Ramsay Restaurants and to provide ongoing services related to menu development and the operation of the Ramsay Restaurants. The FERG Agreement provides FERG with a share of the revenue of the Ramsay Pub at Caesars Atlantic City in exchange for certain services in connection with the Debtors' design, development, construction, and operation of that pub.

10. As part of their restructuring efforts following the filing of voluntary petitions on January 15, 2015, the Debtors evaluated a number of their executory contracts to determine whether their rejection or assumption would benefit the estates. In the course of this evaluation, the Debtors determined that the rejection of the LLTQ and FERG Agreements (and the entry into new agreements with Ramsay on better terms) was of substantial benefit to the estates. In particular, the Debtors determined that the restaurants could operate successfully without the services provided by LLTQ and FERG and on a more cost-effective basis. Rejection of the LLTQ Agreement will save the Debtors approximately $1.7 million annually, and rejection of the FERG Agreement will save the Debtors approximately $222,000 annually.

11. In addition, the Debtors determined that their relationship with Rowen Seibel, the former principal of LLTQ and FERG, was harming the Debtors' business in other ways. In the past, Mr. Seibel had, for example, used profanity in front of Caesars' customers and yelled at the Caesars Palace valet team. (*See* Email thread between Ashcraft and Jorcin and Kripitz, December 12, 2012, attached hereto as **Exhibit 2.**) The Debtors determined that this behavior

had a negative effect on their operations and was yet another reason why rejecting the LLTQ and FERG Agreements—thereby limiting Mr. Seibel's presence on the premises—was an appropriate exercise of their business judgment.

12. The Debtors also saw the potential for cost savings with respect to the Ramsay Agreements. In addition to rejecting the GR Agreements, the Debtors moved to enter into two new agreements ("New GR Agreements") with Gordon Ramsay that improved the terms of the agreements for the applicable Debtor. The benefits of the New Agreements are two-fold: (a) they provide the applicable Debtor with significant savings in terms of the payments owed to Ramsay from a reduced licensing fee; and (b) they allow for the continued operation of the profitable Ramsay Pubs. The New GR Agreements will provide the Debtors with aggregate annual cost savings of approximately $144,000. Moreover, because the New GR Agreements replaced the existing Ramsay Agreements in their entirety, the New GR Agreements completely mitigated the rejection damages that Ramsay may have otherwise asserted against the Debtors.

13. LLTQ and FERG objected to the Debtors' rejection of the LLTQ and FERG Agreements and their request for authority to enter into the New GR Agreements. In connection with their objections, LLTQ and FERG have served 629 separate discovery requests on the Debtors. These requests have included 356 requests for admission, 111 interrogatories, and 162 document requests. Though the Debtors have repeatedly informed LLTQ and FERG that such extensive discovery efforts are not proportional to the needs of the case, request irrelevant information, contain complex and indirect requests, fail to narrow the issues for trial, and constitute an abuse of the discovery process, the Debtors have endeavored in good faith to satisfy LLTQ and FERG's many requests. In addition, the Debtors have produced approximately

10,000 pages of documents and, at the request of LLTQ and FERG, agreed to collect and search another 10,000 documents.

14. Despite these efforts, the parties have reached an impasse relating to several requests. These requests ask the Debtors to identify any ventures the Debtors are currently "contemplating" pursuing with Ramsay and any corresponding communications relating to these ventures. In response to these requests, the Debtors identified several ventures they had previously discussed with Ramsay and described why they were not consummated. But the Debtors objected to identifying any ventures they are currently contemplating and any communications relating to those ventures. As the Debtors stated in their responses, such requests sought irrelevant information, and were overly broad, unduly burdensome, and ambiguous, particularly to the extent they asked the Debtors to identify every restaurant venture that the Debtors were "contemplating."

ARGUMENT

15. Federal Rule of Civil Procedure 26, which is made applicable here through Federal Rule of Bankruptcy Procedure 7026, limits the scope of discovery to "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1); Fed. R. Bankr. P. 7026. In other words, parties only can obtain discovery that is both relevant and proportional to the issues raised in a matter. The discovery requested by LLTQ and FERG relating to the Debtors' "contemplated" ventures with Ramsay is neither relevant nor proportional to the needs of this case.

16. *First*, the restrictive covenant in the LLTQ Agreement is not enforceable as a matter of law. Thus, LLTQ's and FERG's requested discovery—which goes to whether the restrictive covenant remains enforceable post-rejection—is irrelevant. *Second*, even if the Debtors have engaged in postpetition discussions with Ramsay regarding future ventures, any

such discussions have no bearing on the availability of money damages. Any future breach that may occur can only be a breach of the restrictive covenant, and the occurrence (or, as the case may be, non-occurrence) of such discussions will not impact that analysis. There is thus no reason to subject the Debtors to further expense when discovery in this contested matter has already gone on for far too long.

A. THE RESTRICTIVE COVENANT IN THE LLTQ AGREEMENT IS UNENFORCEABLE AS A MATTER OF LAW AND CANNOT FORM THE BASIS FOR LLTQ'S AND FERG'S DISCOVERY REQUESTS.

17. LLTQ's and FERG's Motion to Compel rests on the premise that "restrictive covenants remain enforceable against debtors post-rejection if their breach cannot be remedied by money." (Mot. 2.) This argument suggests, however, that the enforceability of a restrictive covenant depends solely on establishing that money damages are insufficient to compensate for a breach. (Mot. ¶ 30 ("These restrictive covenants will survive rejection if money damages are insufficient to compensate for their breach.") To the contrary, a restrictive covenant cannot survive rejection if its terms are not enforceable in the first instance. *Cf. In re Bedford Square Associates, L.P.*, 247 B.R. 140, 145 (Bankr. E.D. Pa. 2000) ("It is true that restrictive covenants enforceable under applicable non-bankruptcy law survive a § 365(h) rejection") (emphasis added). Here, the restrictive covenant at issue is not enforceable under well-established Nevada law.[2]

18. In Nevada, a restrictive covenant constitutes an unreasonable restraint—and is rendered unenforceable—when it is unlimited in duration and geography:

> A restraint of trade is unreasonable, in the absence of statutory authorization or dominant social or economic justification, if it is greater than is required for the protection of the person for whose benefit the restraint is imposed or imposes undue hardship upon the person restricted. The period of time during which the

[2] The LLTQ Agreement has a Nevada choice of law provision. (LLTQ Agmt. § 13.10)

> restraint is to last and the territory that is included are important factors to be considered in determining the reasonableness of the agreement.

Hansen v. Edwards, 83 Nev. 189, 191-92 (1967). *See also Camco, Inc. v. Baker,* 113 Nev. 512, 520 (1997) ("[T]he covenant at issue is overly broad as to future territory for possible expansion."); *Jones v. Deeter*, 112 Nev. 291, 296 (1996) ("The amount of time the covenant lasts, the territory it covers, and the hardship imposed upon the person restricted are factors for the court to consider in determining whether such a covenant is reasonable."); *Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. Adv. Op. 49 (2016) ("We have been especially cognizant of the care that must be taken in drafting contracts that are in restraint of trade.").

19. As LLTQ and FERG concede, the restrictive covenant in the LLTQ Agreement contains no such limitations. According to LLTQ and FERG, that covenant applies to all of the Debtors *and* the Debtors' non-debtor affiliates—*i.e.*, more than 200 are purportedly covered by this covenant. It is unlimited in terms of geographical scope and applies to any ventures between the Debtors and Gordon Ramsay throughout the word. It contains no limitations on duration and survives the termination of the LLTQ Agreement. And it applies to a broad range of ventures between the Debtors and LLTQ. Put simply, the restrictive covenant in the LLTQ Agreement is the very type of overly broad covenant that Nevada courts routinely deem to be unenforceable.

20. Because the restrictive covenant in the LLTQ Agreement is unenforceable as a matter of law, LLTQ and FERG's attempts to obtain discovery designed to inquire into the adequacy of money damages is wholly irrelevant.

B. ANY DISCUSSIONS BETWEEN THE DEBTORS AND RAMSAY REGARDING VENTURES THEY ARE CONTEMPLATING DO NOT INFORM THE NATURE OF THE BREACH OR THE TERMS OF ANY NEW AGREEMENT BETWEEN LLTQ/FERG AND THE DEBTORS.

21. LLTQ and FERG also argue that the only means to determine whether a post-rejection breach can be remedied by money damages requires an inquiry into what breaches

are likely to occur in the future. In other words, LLTQ and FERG claim that they need discovery into discussion between the Debtors and Ramsay regarding potential new ventures to determine how the Debtors could breach the LLTQ Agreement. Such an argument defies common sense and the very arguments LLTQ and FERG assert in their objections.

22. Of course, any "breach" of the LLTQ Agreement that arises out of discussions between the Debtors and Ramsay will necessarily be a breach of the restrictive covenant. LLTQ and FERG have identified no other potential breaches and, as a result, focus almost exclusively on the breach of the restrictive covenant in their objections. Moreover, the Debtors have admitted that they have had postpetition discussions with Ramsay regarding possible new ventures. As a result, LLTQ and FERG know exactly how the Debtors could breach the LLTQ Agreement, and no additional discovery is necessary to determine "what breaches are likely to occur in the future."

23. Pushing this argument a step further, LLTQ and FERG also argue that, "[a]ssuming *arguendo* that such money damages could be calculated in the first instance, certain information is required to even begin the appropriate analysis, *i.e.*, the extent to which the Debtors intend to open new Ramsay Pubs in violation of the agreements, and on what terms." Again though, LLTQ and FERG fail to establish how the requested discovery could be relevant to the "appropriate analysis."

24. *First*, the requested discovery would reveal only the potential terms of any agreement between the Debtors and Ramsay. But those are not the terms that would be relevant for purposes of establishing LLTQ's and FERG's money damages. Instead, the relevant terms are those of the agreement that the Debtors would need to enter into with LLTQ because of the purported restrictive covenant. And the LLTQ Agreement specifically provides that the Debtors

must execute an agreement with LLTQ "on the same terms and conditions as [the LLTQ Agreement]."

25. *Second*, LLTQ and FERG suggest that the "extent to which the Debtors intend to open new Ramsay Pubs" has some bearing on determining the adequacy of money damages. By this logic, whether money damages are adequate would depend on how many new ventures the Debtors intend to open with Ramsay. Conversely, if the Debtors do not currently intend to pursue any new ventures with Ramsay, LLTQ's and FERG's logic would dictate that money damages are sufficient. If that were the case, the availability of money damages would constantly fluctuate based on the state of negotiations between the Debtors and Ramsay. Of course, it does not. Instead, all that should be relevant for LLTQ's and FERG's purposes is the fact that the Debtors *could* enter into a new agreement with Ramsay without entering into a corresponding agreement with LLTQ—and discovery is not necessary to establish that.

C. DISCOVERY REGARDING THE DISCUSSIONS BETWEEN THE DEBTORS AND RAMSAY REGARDING POTENTIAL NEW VENTURES IS NOT PROPORTIONAL TO THE NEEDS OF THE CASE.

26. Rule 26 requires balancing of relevance against burden of providing information and provides that:

> Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit . . . .

Fed. R. Civ. Proc. 26(b)(1). The language of the 2015 amendments to Rule 26 emphasizes the importance of proportionality and relevance in assessing the appropriateness of discovery requests.

27. As discussed above, the information requested by LLTQ and FERG is not relevant to any claim or defense in this matter. Moreover, even if it were relevant, the burden of providing this information far outweighs its potential relevance.

28. To obtain the information they seek, LLTQ and FERG have requested that the Debtors collect electronically stored information from at least 10 additional custodians and run additional searches to attempt to capture "potential future ventures" contemplated by the parties. Though the Debtors have added two additional custodians and run searches resulting in approximately 10,000 additional documents they have agreed to review, LLTQ and FERG appear nevertheless to request even more custodians and searches than the Debtors have proposed in their letter of August 2, 2016. (Mot. § 38). This would almost certainly result in tens of thousands of additional documents based on the searches the Debtors have run to date on the limited number of additional custodians.

29. To date, the Debtors already have produced approximately 10,000 pages of documents and are prepared to produce further documents as set forth in their August 2 letter. But now, a full 14 months after the Debtors' filed their initial rejection motion seeking to reject the LLTQ and FERG Agreements, is not the time to expand this already broad discovery process. Indeed, other more complex issues have already been fully developed in these cases since the Debtors filed their contract rejection motion. The parties must move on to depositions, and then briefing, and then, if necessary, to present evidence to this Court about the Debtors' request to reject the FERG, LLTQ, and Ramsay Agreements and to enter into the New GR Agreements.

30. In sum, discovery above and beyond that to which the Debtors have agreed to attempt to resolve this dispute is not proportional when viewed through the lens of relevance and weighed against what the Debtors have already produced.

CONCLUSION

31. For the foregoing reasons, the Debtors respectfully request that the Court deny LLTQ's and FERG's Motion to Compel.

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Respectfully submitted,

Dated: August 10, 2016
Chicago, Illinois

/s/ Stephen C. Hackney

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Counsel to the Debtors and Debtors in Possession

Exhibit 1

LLTQ Responses and Objections to First Set of Requests for Admission

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,	)	Case No. 15-01145 (ABG) (Jointly Administered)
Debtors.	)	Hon. A. Benjamin Goldgar

RESPONSE TO DEBTORS' FIRST REQUESTS FOR ADMISSION TO LLTQ ENTERPRISES, LLC

LLTQ ENTERPRISES, LLC ("**LLTQ**"), by and through its undersigned attorneys and pursuant to Federal Rules of Civil Procedure 26 and 36, made applicable to this proceeding by Federal Rules of Bankruptcy Procedure 7026, 7036, and 9014, hereby responds to the First Requests for Admission to LLTQ ENTERPRISES, LLC (the "**RFAs**") propounded by Desert Palace, Inc. ("**Caesars**") and the other above-captioned debtors and debtors-in-possession (collectively along with Caesars, the "**Debtors**") and for its response states as follows.

RESPONSES AND OBUECTIONS TO REQUESTS FOR ADMISSION

1. Section 13.22 of the LLTQ Agreement does not expire at any point.

ANSWER: Admitted, except as may be provided under any applicable law.

2. Section 13.22 of the LLTQ Agreement has an expiration.

ANSWER: Denied, except as may be provided under any applicable law.

3. Section 13.22 of the LLTQ Agreement is ambiguous.

ANSWER: LLTQ objects to this request because it does not seek facts, application of law to its facts, or opinions about either.

4. Section 13.22 of the LLTQ Agreement is not ambiguous.

ANSWER: LLTQ objects to this request because it does not seek facts, application of law to its facts, or opinions about either.

5. Section 13.22 of the LLTQ Agreement applies to all future ventures between Gordon Ramsay and his affiliates and any Caesars entity.

ANSWER: Denied. LLTQ admits that Section 13.22 of the LLTQ Agreement applies to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house).

6. Section 13.22 of the LLTQ Agreement does not apply to all future ventures between Gordon Ramsay and his affiliates and any Caesars entity.

ANSWER: Admitted.

7. Section 13.22 of the LLTQ Agreement is a restrictive covenant.

ANSWER: LLTQ admits that section 13.22 of the LLTQ Agreement contains a restrictive covenant.

8. Section 13.22 of the LLTQ Agreement is not a restrictive covenant.

ANSWER: Denied. LLTQ admits that section 13.22 of the LLTQ Agreement contains a restrictive covenant.

9. The term "Agreement" in Section 13.22 of the LLTQ Agreement refers to the LLTQ Agreement.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it means the LLTQ Agreement. LLTQ further admits that the parties intended Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and

confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

10. The term "Agreement" in Section 13.22 of the LLTQ Agreement does not refer to the LLTQ Agreement.

ANSWER: LLTQ objects to this RFA as the term "refer to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it means the LLTQ Agreement. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

11. The term "Agreement" in Section 13.22 of the LLTQ Agreement does not refer to the GR Agreement.

ANSWER: LLTQ objects to this RFA as the term "refer to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it does not mean the GR Agreement. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

12. The term "Agreement" in Section 13.22 of the LLTQ Agreement refers to the GR Agreement.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it does not mean the GR Agreement. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or

tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

13. The term "Agreement" in Section 13.22 of the LLTQ Agreement refers to both the LLTQ Agreement and the GR Agreement.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it does not mean both the LLTQ Agreement and the GR Agreement. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

14. The term "Agreement" in Section 13.22 of the LLTQ Agreement does not refer to both the LLTQ Agreement and the GR Agreement.

ANSWER: LLTQ objects to this RFA as the term "refer to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it does not mean both the LLTQ Agreement and the GR Agreement. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

15. The term "Agreement" in Section 13.22 of the LLTQ Agreement refers to the FERG Agreement.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it does not mean

the FERG Agreement. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

16. The term "Agreement" in Section 13.22 of the LLTQ Agreement does not refer to the FERG Agreement.

ANSWER: LLTQ objects to this RFA as the term "refer to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it does not mean the FERG Agreement. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

17. The term "Agreement" in Section 13.22 of the LLTQ Agreement does not refer to any and all agreements between Caesars and Gordon Ramsay and any of his affiliates.

ANSWER: LLTQ objects to this RFA as the term "refer to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it does not mean any and all agreements between Caesars and Gordon Ramsay and any of his affiliates. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

18. The term "Agreement" in Section 13.22 of the LLTQ Agreement refers to all agreements between Caesars and Gordon Ramsay and any of his affiliates.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it does not mean any and all agreements between Caesars and Gordon Ramsay and any of his affiliates. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

19. The term "Agreement" in Section 13.22 of the LLTQ Agreement refers to all agreements between Caesars and Rowen Seibel and any of his affiliates.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it does not mean all agreements between Caesars and Rowen Seibel and any of his affiliates. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

20. "Caesars" is defined in the LLTQ Agreement as Desert Palace, Inc.

ANSWER: Admit that in the opening paragraph of the LLTQ Agreement, "Caesars" is defined as Desert Palace, Inc.

21. "Caesars" as defined in the LLTQ Agreement does not refer to all of Caesars' affiliates.

ANSWER: LLTQ objects to this RFA as the term "refer to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that in the opening paragraph of the LLTQ Agreement, "Caesars" is defined as Desert Palace, Inc. but denies that "Caesars" means only Desert Palace, Inc. in each instance the term "Caesars" is used in the LLTQ Agreement.

22. "Caesars" as defined in the LLTQ Agreement refers to all of Caesars' affiliates.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that in the opening paragraph of the LLTQ Agreement, "Caesars" is defined as Desert Palace, Inc. but denies that "Caesars" means only Desert Palace, Inc. in each instance the term "Caesars" is used in the LLTQ Agreement.

23. The term "Caesars" in Section 13.22 of the LLTQ Agreement refers to Desert Palace, Inc.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the term "Caesars" in Section 13.22 of the LLTQ Agreement includes Desert Palace, Inc. Admit further that the first time the term "Caesars" appears in Section 13.22 of the LLTQ Agreement means Desert Palace, Inc. as well as its "Affiliates" (as defined in the LLTQ Agreement).

24. The term "Caesars" in Section 13.22 of the LLTQ Agreement does not refer to Desert Palace, Inc.

ANSWER: LLTQ objects to this RFA as the term "refer to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the term "Caesars" in Section 13.22 of the LLTQ Agreement includes Desert Palace, Inc. Admit further that the first time the term "Caesars" appears in Section 13.22 of the LLTQ Agreement means Desert Palace, Inc. as well as its "Affiliates" (as defined in the LLTQ Agreement).

25. The term "Caesars" in Section 13.22 if the LLTQ Agreement refers to all of the Caesars' affiliates.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the first time the term "Caesars" appears in Section 13.22 of the LLTQ Agreement means Desert Palace, Inc. and all of its "Affiliates" (as defined in the LLTQ Agreement). LLTQ denies that the

term "Caesars" means all of Caesars' affiliates in the remaining appearances in Section 13.22.

26. The term "Caesars" in Section 13.22 of the LLTQ Agreement does not refer to all of Caesars' affiliates.

ANSWER: LLTQ objects to this RFA as the term "refer to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the first time the term "Caesars" appears in Section 13.22 of the LLTQ Agreement means Desert Palace, Inc. and all of its "Affiliates" (as defined in the LLTQ Agreement). LLTQ denies that the term "Caesars" means all of Caesars' affiliates in the remaining appearances in Section 13.22.

27. The phrase "any venture similar to the Restaurant" in Section 13.22 of the LLTQ Agreement includes the Restaurant (as defined in the LLTQ Agreement).

ANSWER: LLTQ admits that the phrase "any venture similar to (i) the Restaurant" in Section 13.22 of the LLTQ Agreement includes the Restaurant (as defined in the LLTQ Agreement).

28. The phrase "any venture similar to the Restaurant" in Section 13.22 of the LLTQ Agreement does not include the Restaurant (as defined in the LLTQ Agreement).

ANSWER: Denied.

29. The term "Restaurant" in clause (i) of Section 13.22 of the Agreement refers to the Gordon Ramsay Pub & Grill in Caesars Palace.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the term "Restaurant" in clause (i) of Section 13.22 means the Gordon Ramsay Pub & Grill in Caesars Palace.

30. The term "Restaurant" in clause (i) of Section 13.22 of the Agreement does not refer to the Gordon Ramsay Pub & Grill in Caesars Palace.

ANSWER: LLTQ objects to this RFA as the term "refer to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the term "Restaurant" in clause (i) of Section 13.22 means the Gordon Ramsay Pub & Grill in Caesars Palace.

31. Section 13.22 of the LLTQ Agreement applies when Caesars (as defined in the LLTQ Agreement) elects to pursue a restaurant venture similar to the Restaurant (as defined in the LLTQ Agreement and the Paris Agreement).

ANSWER: Admitted. Admitted further that Section 13.22 of the LLTQ Agreement applies when Caesars' Affiliates (as defined in the LLTQ Agreement) pursue a restaurant venture similar to the Restaurant (as defined in the LLTQ Agreement and the Paris Agreement, as applicable).

32. Section 13.22 of the LLTQ Agreement does not apply when an entity other than Caesars (as defined in the LLTQ Agreement) elects to pursue a restaurant venture similar to the Restaurant (as defined in the LLTQ Agreement and the Paris Agreement).

ANSWER: Denied.

33. Section 13.22 of the LLTQ Agreement does not set forth the terms of any new development and operation agreement.

ANSWER: Denied. LLTQ admits that Section 13.22 of the LLTQ Agreement provides that Caesars and LLTQ shall, or shall cause an Affiliate (as defined in the LLTQ Agreement) to, execute a development and operation agreement on the same terms and conditions as the LLTQ Agreement, subject only to revisions proposed by Caesars or its Affiliate as are necessary to reflect the difference in location between the Restaurant and such other venture (including the Baseline Amount, permitted Operating Expenses and necessary Project Costs (as such terms are defined in the LLTQ Agreement)).

34. Section 13.22 of the LLTQ Agreement sets forth the terms of a new development and operation agreement.

ANSWER: Denied. LLTQ admits that Section 13.22 of the LLTQ Agreement provides that Caesars and LLTQ shall, or shall cause an Affiliate (as defined in the LLTQ Agreement) to, execute a development and operation agreement on the same terms and conditions as the LLTQ Agreement, subject only to revisions proposed by Caesars or its Affiliate as are necessary to reflect the difference in location between the Restaurant and such other venture (including the Baseline Amount, permitted Operating Expenses and necessary Project Costs (as such terms are defined in the LLTQ Agreement)).

35. Section 13.22 of the LLTQ Agreement requires the parties to negotiate the terms and conditions of any new development and operation agreement.

ANSWER: Denied.

36. Section 13.22 of the LLTQ Agreement applies to ventures located anywhere in the world.

ANSWER: Admitted.

37. Section 13.22 of the LLTQ Agreement is limited to ventures located in the United States.

ANSWER: Denied.

38. Section 13.22 of the LLTQ is limited to limited to ventures located in Las Vegas.

ANSWER: Denied.

39. The LLTQ Agreement is a consulting agreement.

ANSWER: Denied. LLTQ admits that consulting services are part of the LLTQ Agreement.

40. The LLTQ Agreement is not a consulting agreement.

ANSWER: Admitted. LLTQ further admits that consulting services are part of the LLTQ Agreement.

41. The FERG Agreement is a consulting agreement.

ANSWER: Denied. LLTQ admits that the FERG Agreement is titled a "Consulting Agreement" and that CAC may request consulting services under the FERG Agreement.

42. The FERG Agreement is not a consulting agreement.

ANSWER: Admitted. LLTQ admits further that CAC may request consulting services under the FERG Agreement.

43. As part of discussions between You and Gordon Ramsay, you proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that the GR Agreement and the LLTQ Agreement were negotiated together.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that the GR Agreement and the LLTQ Agreement were negotiated together relative to the Restaurant.

44. As part of discussions between You and Gordon Ramsay, you proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that the GR Agreement and the LLTQ Agreement were signed at the same time.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that the GR Agreement and the LLTQ Agreement were signed at the same time.

45. As part of discussions between You and Gordon Ramsay, you proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that the GR Agreement and the LLTQ Agreement are wholly dependent on one another.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that, relative to the Restaurant, the GR Agreement and the LLTQ Agreement are wholly dependent on one another.

46. As part of discussions between You and Gordon Ramsay, You proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that Caesars recognized that the GR Agreement would not become effective until both the GR Agreement and the LLTQ Agreement were executed.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that Caesars recognized that the GR Agreement would not become effective until both the GR Agreement and the LLTQ Agreement were executed.

47. As part of discussions between You and Gordon Ramsay, You proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" once executed, both the GR Agreement and the LLTQ Agreement were to exist and remain effective together.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that once executed both the GR Agreement and the LLTQ Agreement were to exist and remain effective together.

48. As part of discussions between You and Gordon Ramsay, You proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that Rowen Seibel "brought the original deal together, introducing Caesars to GR and spearheading the discussion of business terms for all parties."

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that Rowen Seibel "brought the original deal together, introducing Caesars to GR and spearheading the discussion of business terms for all parties."

49. As part of discussions between You and Gordon Ramsay, You proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that neither Gordon Ramsay nor Caesars intended for Rowen Seibel to provide consultation services for the Restaurant after opening.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that neither Gordon Ramsay nor Caesars intended for Rowen Seibel to provide consultation services for the Restaurant after opening.

50. As part of discussions between You and Gordon Ramsay, You proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that Gordon Ramsay is not aware that any consultation services were provided.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that Gordon Ramsay is not aware that any consultation services were provided after opening of the Restaurants.

51. As part of discussions between You and Gordon Ramsay, You proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that Gordon Ramsay understood that Rowen Seibel was providing a capital investment for the Restaurant.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that Gordon Ramsay understood that Rowen Seibel was providing a capital investment for the Restaurant.

52. As part of discussions between You and Gordon Ramsay, You proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that Gordon Ramsay was advised by Caesars at the time of the discussions relating to the Gordon Ramsay Pub & Grill in Atlantic City that Caesars could not "do a GR Pub" without Rowen Seibel's involvement.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that Gordon Ramsay was advised by Caesars at the time of the discussions relating to the Gordon Ramsay Pub & Grill in Atlantic City that Caesars could not "do a GR Pub" without Rowen Seibel's involvement.

53. As part of discussions between You and Gordon Ramsay, you proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that Caesars initially provided one agreement for Rowen Seibel and Gordon Ramsay for the Gordon Ramsay Pub & Grill in Atlantic City.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that Caesars initially provided one agreement for Rowen Seibel and Gordon Ramsay for the Gordon Ramsay Pub & Grill in Atlantic City.

54. As part of discussions between You and Gordon Ramsay, You proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that Gordon Ramsay requested that the agreement for the Gordon Ramsay Pub & Grill in Atlantic City be "put into 2, but one could not be entered or carried out without the other."

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that Gordon Ramsay requested that the agreement for the Gordon Ramsay Pub & Grill in Atlantic City be "put into 2, but one could not be entered or carried out without the other."

55. On December 12, 2012, Rowen Seibel accused the valet team at Caesars of losing his car.

ANSWER: Admit that in December 2012 Rowen Seibel accused the valet team at Caesars of losing his car. LLTQ lacks sufficient information to admit or deny whether Mr. Seibel accused the valet team at Caesars of losing his car on December 12, 2012. LLTQ has made a reasonable inquiry and the information it knows or can readily obtain is insufficient to enable it to admit or deny this request.

56. On December 12, 2012, Rowen Seibel yelled at the Caesars valet team.

ANSWER: Admit that in December 2012 Rowen Seibel expressed frustration with the Caesars valet team. LLTQ lacks sufficient information to admit or deny whether Mr. Seibel yelled at the Caesars valet team. LLTQ has made a reasonable inquiry and the information it knows or can readily obtain is insufficient to enable it to admit or deny this request.

57. On December 12, 2012, Rowen Seibel used profanity in front of customers at Augustus/Octavius.

ANSWER: LLTQ lacks sufficient information to admit or deny this request. LLTQ has made a reasonable inquiry and the information it knows or can readily obtain is insufficient to enable it to admit or deny this request.

58. On December 13, 2012, Rowen Seibel was contacted by Caesars employees about his treatment of the valet team at Augustus/Octavius.

ANSWER: LLTQ lacks sufficient information to admit or deny this request. LLTQ has made a reasonable inquiry and the information it knows or can readily obtain is insufficient to enable it to admit or deny this request.

59. On December 13, 2012, Rowen Seibel was asked to give a valet at Caesars an apology.

ANSWER: LLTQ lacks sufficient information to admit or deny this request. LLTQ has made a reasonable inquiry and the information it knows or can readily obtain is insufficient to enable it to admit or deny this request.

Respectfully submitted,

LLTQ ENTERPRISES, LLC

By: _____
One of its Attorneys

NATHAN Q. RUGG, ESQ.
STEVEN B. CHAIKEN, ESQ.
ADELMAN & GETTLEMAN, LTD.
53 West Jackson Blvd., Suite 1050
Chicago, Illinois 60604
312-435-1050

VERIFICATION

I, Rowen Seibel, as the manager of LLTQ ENTERPRISES, LLC, made a reasonable inquiry and the information LLTQ knows or can readily obtain is insufficient to enable LLTQ to admit or deny Requests For Admission Numbers 55 through 59 as provided in the responses thereto. Under penalties as provided by law pursuant to 28 U.S.C. § 1746, I hereby certify that the responses to Requests For Admission Numbers 55 through 59 are true and correct to the best of my knowledge, information and belief.

LLTQ ENTERPRISES, LLC

By: Rowen Seibel
Rowen Seibel, its manager

Executed on: 3/29/16

CERTIFICATE OF SERVICE

I certify that a true and complete copy of the **RESPONSE TO DEBTORS' FIRST REQUEST FOR ADMISSION TO LLTQ ENTERPRISES, LLC,** was made by electronic mail delivery, this 29th day of March, 2016, upon the following party:

Desert Palace, Inc.
c/o:

Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attn: William Arnault, Esq., Lally Gartel, Esq., and Joe Graham, Esq.
warnault@kirkland.com
lally.gartel@kirkland.com
joe.graham@kirkland.com

- and -

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attn: Christopher T. Greco, Esq.
christopher.greco@kirkland.com

Steven B. Chaiken, Esq.

NATHAN Q. RUGG, ESQ.
STEVEN B. CHAIKEN, ESQ.
ADELMAN & GETTLEMAN, LTD.
53 West Jackson Blvd., Suite 1050
Chicago, Illinois 60604
(312) 435-1050

Exhibit 2

Email from December 12, 2012

To: Michael Grey[mgrey@caesarspalace.com]
From: rowen360@aol.com
Sent: Thur 12/13/2012 9:38:21 PM
Importance: Normal
Subject: Re: Rowen Seibel - concerns with valet
Received: Thur 12/13/2012 9:38:38 PM

Done - good

From: "Michael Grey" <mgrey@caesarspalace.com>
Date: Thu, 13 Dec 2012 21:08:46 +0000
To: 'rowen360@aol.com'<rowen360@aol.com>
Subject: RE: Rowen Seibel - concerns with valet

Tomorrow afternoon way better if that works for you.

From: rowen360@aol.com [mailto:rowen360@aol.com]
Sent: Thursday, December 13, 2012 1:04 PM
To: Michael Grey
Subject: Re: Rowen Seibel - concerns with valet

O man - sorry sorry, just finished Gordon meeting and now going to planet

Can I pop up afterwards?

From: "Michael Grey" <mgrey@caesarspalace.com>
Date: Thu, 13 Dec 2012 19:42:14 +0000
To: 'rowen360@aol.com'<rowen360@aol.com>
Subject: RE: Rowen Seibel - concerns with valet

Sure... 11:45 #9?

From: rowen360@aol.com [mailto:rowen360@aol.com]
Sent: Thursday, December 13, 2012 10:08 AM
To: Michael Grey
Subject: Re: Rowen Seibel - concerns with valet

May I ring u/come see u shortly to discuss. Meeting Gordon now for a bit, then back to palace to corp office.

From: "Michael Grey" <mgrey@caesarspalace.com>
Date: Thu, 13 Dec 2012 18:00:32 +0000
To: 'rowen360@aol.com'<rowen360@aol.com>
Subject: RE: Rowen Seibel - concerns with valet

Food was outstanding last night. Service b- but for first mock day that's pretty good. Staff is not a "pretty" as I had hoped for. Thought on GM? I was indifferent when we hired and thought he might not be hungry enough.... no fire in his belly.

From: rowen360@aol.com [mailto:rowen360@aol.com]
Sent: Thursday, December 13, 2012 9:58 AM
To: Michael Grey
Subject: Re: Rowen Seibel - concerns with valet

I def will and JR too!

From: "Michael Grey" <mgrey@caesarspalace.com>
Date: Thu, 13 Dec 2012 17:56:25 +0000
To: 'rowen360@aol.com'<rowen360@aol.com>
Subject: RE: Rowen Seibel - concerns with valet

No worries just give the guy an apology and I'm sure all will be fine.

From: rowen360@aol.com [mailto:rowen360@aol.com]
Sent: Thursday, December 13, 2012 9:45 AM
To: Michael Grey
Subject: Re: Rowen Seibel - concerns with valet

Mike - its inaccurate to say a scene was caused "several" times. Besides, the car hasn't been missing like this before. - the valet guys are always WELL looked after, and I think we get along real well, always high fiving, joking...
I always tip the guys for saying hello with a smile, and they're usually excellent!

If I used profanity, @ least I don't think so - it certainly was not directed @ them Absolutely not.

The car missing ended up being JR's fault, b/c I asked for the car to be driven back from paris/ph the other day, when I left it there, and it wasn't. She shouldve apologized to the valets for ?ing it.

I apologize if I upset a guest of our hotel. I was late to pick up Gordon (b/c couldn't find the car), and didn't want to mess up the sched by a minute. Ill also speak to the valet guys (if ud like) and make sure they were apologized to, as the car was not misplaced by them @ all.

From: "Michael Grey" <mgrey@caesarspalace.com>
Date: Thu, 13 Dec 2012 17:22:19 +0000
To: rowen360@aol.com<rowen360@aol.com>
Subject: FW: Rowen Seibel - concerns with valet

Please take it easy one the valet guys... for the most part they are a pretty solid team.

From: Kathryn Ashcraft
Sent: Wednesday, December 12, 2012 3:12 PM
To: Christophe Jorcin; Patty Kripitz
Cc: Miguel Nodarse; Al Delio; Ramesh Sadhwani
Subject: Rowen Seibel - concerns with valet

Christophe and Patty,

I know you're slammed right now so I'm sorry to bother you with this but we're hoping for some direction on how to handle....

As I'm sure you know, Mr. Seibel valets his car with us quite frequently and leaves it in our care when he is out of town. Unfortunately several times we have had a "scene" caused in the VIP valet due to Mr. Seibel thinking we've lost his car when he comes to retrieve it though it's never actually been lost. It seems as though Mr. Seibel takes his car out at night and returns to the property using other transportation and forgets that he left it somewhere other than Caesars the next day.

I'm sorry to say that it's our line level associates who catch the brunt of Mr. Seibel's displeasure but normally they dismiss it and move on. Today's episode at the Augustus/Octavius valet was just a little too extreme as he was using quite a bit of profanity and called one of the valets several foul names. When we couldn't find his car on the property today we were able to accommodate him with his assistant's car and through our own research discovered that his Audi was at Planet Hollywood where it had been all night.

As I said, normally we dismiss this type of thing but this was actually brought to my attention by a group of guests who witnessed the interaction and were quite upset with how the valets were treated. Apparently the couple that I spoke to dined at S3 when it opened several years ago and remember who Mr. Seibel is. They were quite offended that someone they deem to be an employee of Caesars Palace would speak to a fellow associate in that way and cause such an embarrassing scene. I handled the guests and explained that he is a valued partner and a good friend to the company, that it was an unusual situation and he is usually very kind to everyone which they accepted but I'd like to get the larger problem solved.

Is there a different way we should be dealing with Mr. Seibel in regards to his car or is there communication from him that

we are missing that would allow us to assist him better? I'd like to do whatever we can so we can eliminate these scenes. They are understandably quite upsetting /embarrassing for our valets and apparently our guests as well. Your direction is appreciated.

Thanks,

Kathryn Ashcraft
Director of Front Office Operations

CAESARS PALACE
LAS VEGAS

3570 Las Vegas Blvd. South
Las Vegas, NV 89109
Direct 702.866.1349 | Fax 702.697.5706
katashcraft@caesarspalace.com | www.caesarspalace.com

Exhibit E

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,	)	No. 15 B 01145
	)	Chicago, Illinois
	)	1:30 p.m.
Debtor.	)	August 17, 2016

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE A. BENJAMIN GOLDGAR

APPEARANCES:

For the Debtors:	Mr. David Zott; Mr. Jeffrey Zeiger; Mr. Joseph Graham; Mr. Brent Rogers; Mr. Bill Arnault;
For the U.S. Trustee:	Ms. Denise DeLaurent; Mr. Adam Brief;
For the Noteholder Committee:	Mr. James Johnston;
For the 10.75 Notes Trustee:	Mr. Jason Zakia;
For FERG, LLC and LLTQ Enterprises:	Mr. Steven Chaiken;
For BOKF:	Mr. Andrew Silfen;

Court Reporter:	Amy Doolin, CSR, RPR U.S. Courthouse 219 South Dearborn Room 661 Chicago, IL 60604.

THE CLERK: We are taking up all matters on the call in the Caesars Entertainment Operating Company Incorporated, et al., bankruptcy case.

MR. GRAHAM: Good morning, Your Honor. Joe Graham, Kirkland & Ellis, on behalf of the debtors.

THE COURT: Good afternoon.

MR. GRAHAM: I want to just take care of a couple of quick housekeeping matters. Beginning first, I wanted to note that this morning we announced a deal -- we announced a deal in principle in our 105 pleading last Monday. This morning we actually filed -- CEC filed an 8-K announcing the terms of the deal with the Danner plaintiffs. So that's one of the parties to the 105 litigation.

The second thing --

THE COURT: No deal with any of the other parties, though?

MR. GRAHAM: No, understood, Judge.

THE COURT: Well, I was asking.

MR. GRAHAM: Oh, no, there is no deal at this point with any of the other parties.

In addition, Judge, we filed an updated agenda yesterday.

THE COURT: Yes, I have it.

MR. GRAHAM: One of the things, the third item on the agenda, the Paul Weiss motion to compel, that's been withdrawn. So we'll just skip over that, unless you have any questions.

We also made an error when we moved the NRF stuff. It says the status is going forward, even though it's going to be continued. It should just say the matter is continued. So we won't need to take up the NRF stuff today, unless you have questions.

THE COURT: All right.

MR. GRAHAM: With that, I'm going to hand it to my colleague, Mr. Zott, for our motion to continue the standing motion.

THE COURT: Very well.

MR. ZOTT: Good morning, Your Honor. Good afternoon, I should say.

THE COURT: Are the crutches an improvement over the scooter?

MR. ZOTT: No scooter, Judge. This is considered progress in these things.

THE COURT: Is it? Good.

MR. ZOTT: Apparently. Although the scooter was much more fun, I have to say.

THE COURT: Well, it was certainly a lot more interesting to look at.

MR. ZOTT: Your Honor, this is, I guess, as you know, Your Honor, our motion to continue the standing motion, to stay the standing discovery, and also to stay the actual adversary proceeding that we filed.

THE COURT: Right.

MR. ZOTT: It has been set for presentment. And, Your Honor, there has been four responses to that filed. I'm not sure if you've had a chance to look at those.

THE COURT: Of course, I have.

MR. ZOTT: Okay. So you're probably way ahead of me on this one, Judge.

THE COURT: Well, I saw no real objection to staying the adversary that you filed or postponing the hearing. People had various comments.

MR. ZOTT: Right.

THE COURT: But the committee, whose derivative standing motion it is, didn't have a problem striking the hearing, and at least continuing the motion to the October omnibus date.

MR. ZOTT: Right.

THE COURT: So that would be what I would propose to do.

MR. ZOTT: Okay, Your Honor. Obviously, we were requesting that it be continued through confirmation. But, you know, of course, whatever Your Honor thinks is best.

I will just note that the one issue they raised is really tolling, the fact that we tolled as to six defendants and then sued the vast majority. And on tolling, just so Your Honor knows, we had a healthy dialogue with the Jones Day firm about tolling. We exchanged thoughts on that. We took a very, very hard look.

And as to these six individuals, two law firms and four individuals, we concluded that we're very, very comfortable in the tolling. And so that's really their issue.

THE COURT: But they are not. They aren't that comfortable. And they have some questions about whether the agreements, I think, are enforceable, at least in certain places.

MR. ZOTT: Uh-huh.

THE COURT: And I don't know whether there was more to it than that. But, you know, rather than put that off to a point where it might

suddenly be determined that they're not enforceable and, oh, wait, it's too late now, I think they would rather make sure that no rights were lost. And I would imagine you would like that too. And the only difference of opinion is on enforceability. You want them to be enforceable and they want them to be enforceable. But they have questions.

MR. ZOTT: Absolutely. I was only proposing that the court enters a stay through confirmation, but then we come and, if necessary, brief the tolling issue in October. And if there is any issue, obviously we would have to address it at that point. That was my suggestion.

THE COURT: Well, it may have to be briefed, but I think I would like to give the committee an opportunity to do some research under less stressful conditions.

MR. ZOTT: Sure.

THE COURT: I am willing to dispense with the January -- January, not yet -- the September 12 trial, because even if we have to have a hearing, obviously it would be a lot more limited. Otherwise, I wouldn't be willing to. I mean, I couldn't see postponing what we thought we were going to have to do in September to a later date. That's

just not going to fly.

MR. ZOTT: Very good.

THE COURT: So let's strike the September 12 hearing date on the motion and continue the motion to I think October 19.

THE CLERK: Yes.

THE COURT: Then there's a motion in the adversary, which I think is a couple items down on the agenda. We can take that up at the same time. And that was to stay proceedings on the adversary itself.

Don't you want to serve these complaints?

MR. ZOTT: Oh, we do. We do, Your Honor.

THE COURT: Okay. I think that would be important.

MR. ZOTT: We agree with the noteholders on that. And we will timely serve. And we're intending to do that. If Your Honor wants to put it in the order, that's fine.

THE COURT: Oh, I think it should be in the order.

MR. ZOTT: Yes.

THE COURT: So why don't we make both

of these draft order to follow, and you can supply me with orders that do what we talked about today.

MR. ZOTT: Very good, Your Honor.

THE COURT: But I won't expect to see you on September 12, at least not in connection with the standing motion.

MR. ZOTT: Very good.

THE COURT: Okay.

MR. ZOTT: Thank you, Your Honor.

THE COURT: Thank you.

MR. ARNAULT: Good afternoon, Your Honor. Bill Arnault for the debtors.

MR. CHAIKEN: Good afternoon, Judge. Steve Chaiken on behalf of the movants FERG, LLC, and LLTQ Enterprise, LLC.

THE COURT: Good afternoon.

Before I make any observations about this, I don't suppose you've worked it all out?

MR. CHAIKEN: We have not been able to work this out.

THE COURT: All right. Well, I am going to grant the motion to an extent. I have doubts myself about the legal contentions that both sides have made here. I don't know that the debtors' assertions about the validity of the restrictive

covenant under Nevada law are accurate. The cases they cite would not support the proposition that this is invalid. They don't have a case that I saw, at least based on the information in the memorandum, that would support that.

And in any event, arguments about the merits are not usually good arguments when it comes to discovery. You can't say we're not going to supply discovery because the party's position on the merits is wrong. No one would ever produce anything, supply any discovery, if that kind of argument would fly.

On the other hand, and I don't know that it really goes to this motion, I'm not sure about the movant's position on the Udell case. I mean, Udell, which I have the misfortune to be familiar with from another matter, had to do with whether a claim for an equitable remedy, particularly to enforce a restrictive covenant, was a claim as that term is defined in the Bankruptcy Code. And I'm not sure it goes quite as far as you suggest. But that's by the by.

When I look at the discovery requests here, I think you're entitled to some of what you want, but not all of it. It doesn't seem to me that

you really are entitled to everything that interrogatory number 11 would get you. That asks for identification of every restaurant venture with Mr. Ramsay that the debtors have contemplated since January 1st, 2010. Just thinking about opening a restaurant is neither here nor there. They have to have actually opened it. Just, you know, musings by the by would not produce any kinds of rights even under your view of your restrictive covenant.

So I think just contemplating isn't enough. Actually pursuing the venture would be relevant, it seems to me, and particularly if there were any revenues that were obtained as a result of the venture. I mean, you could pursue it but then never open it. I think that happens in the restaurant business more often than one would like to think.

So I would be willing to enforce interrogatory number 11 and order the discovery limited to ventures that were pursued, but not contemplated. That's too broad.

I don't --

MR. ARNAULT: Your Honor --

THE COURT: Yes, go ahead.

MR. ARNAULT: Sorry to interrupt, Your

Honor.

THE COURT: No, go ahead.

MR. ARNAULT: But we did in fact provide information relating to restaurants that were pursued in the past.

THE COURT: Okay. Then if it's supplied, there's nothing else to be done.

Although I don't love the form of interrogatory number 13, I don't think it's really productive to ask people to identify communications, as a rule. It's not beyond what's permitted. And so to the extent that it requests communications relating to ventures that were pursued, again, I would grant the motion.

I don't have a problem with number 15. That has to do with ventures currently contemplating pursuing. Well, you know, those could still come to fruition. It's the ones that have been contemplated and never went anywhere that I just don't think are relevant at all.

MR. CHAIKEN: Judge, on that note, that's the issue. We did limit this from contemplating to actually discussed, so it wasn't as broad when we were having our conversations.

The concern we have is if restaurants

were discussed and weren't pursued because of the very restriction that's at play here.

THE COURT: Why would that help you? Why would that be relevant?

MR. CHAIKEN: It's relevant to the extent of the issue over the scope of what 1322 means in a restrictive covenant provision. It is one issue here. And if there are communications where the debtors did not pursue restaurants with Mr. Ramsay based on the very provision that's at issue, we think that's relevant.

THE COURT: Right, because it would be behavior of the parties that would inform the interpretation of the provision. That's the theory?

MR. CHAIKEN: Yes.

MR. ARNAULT: And, Your Honor, again, to be clear, we provided that information. We are hearing a switch of the theory. Their motion to compel is based on the premise that these future ventures are relevant to determine whether the money damages can be determinable. It doesn't have anything to do with the interpretation of 1322.

THE COURT: Right. Well, this whole determinable thing goes to the movant's position on the Udell case that I asked a question about.

MR. ARNAULT: And, Your Honor, our point here is that for future ventures, it doesn't matter whether or not these discussions have occurred one way or another to determine whether or not money damages can be calculable.

Let's say they did or let's say they didn't. We know what the breach is going to be. We know what the terms of the agreement was going to be, so there's no need to delve into discovery because it doesn't have a bearing one way or another on whether the money damages can actually be calculable.

In other words, let's say that there were no future ventures that were being contemplated. That wouldn't indicate one way or another if a future breach of this contract provision would make money damages calculable or not. Same thing if ten future ventures were being contemplated. That wouldn't have a bearing on the calculability of those future money damages.

THE COURT: The calculability is not something that's really grabbing me at this point but, of course, I could be mistaken, and maybe it will grab me eventually.

It seems to me that if there have been

discussions about opening a restaurant with Mr. Ramsay in the future, that that would be relevant because calculability or not, the theory here is that if such a restaurant were opened, it would have to involve the movants. And if your position is that it would not, then there would be damages as well from that. So it's not so much the calculability of the damages as their existence. That's why it seemed to me that these matters were relevant.

MR. ARNAULT: Right. But to the extent that there are, as you put it, no agreements that have been entered into, or there's no terms, there are just discussions out in the ether, then they're not going to be relevant to what those damages could potentially be.

THE COURT: It's one thing when those happened in the past and nothing came of them, and it's another thing when they're going on now. So I would rather err on the side of allowing the discovery, which I think is always the best thing to do.

So with those caveats on limitation, I'm going to grant the motion. So we'll call this draft order to follow, and you and counsel can come up with an order.

MR. ARNAULT: Thanks, Your Honor.
MR. CHAIKEN: Thank you, Your Honor.
THE COURT: Thank you.
MR. ZEIGER: Good afternoon, Your Honor. Jeffrey Zeiger, Kirkland & Ellis, on behalf of the debtors.
Your Honor, we're here on the debtors' motion for a protective order with respect to one deposition for the 105 hearing next week.
THE COURT: Right. There seems to be some confusion about the issues for the hearing. The issues for the hearing have not changed. The issues for the hearing are the same issues that are described in the court of appeals' opinion.
What has changed is the amount of time that has passed. With the passage of time, the burden that the movant has in this situation increases. And the case law is very clear that you can get this kind of injunction at the early stages of the case. We're not exactly at the early stages of the case.
So I am not inclined to grant your motion for a protective order. The position that you take on Mr. Stauber really is that he doesn't know anything. Well, that's why you take depositions, to

establish that people don't know anything.

They don't have to take your word for that. And maybe they'd like to explore that for themselves. And, you know, it's one thing to procure an affidavit from somebody that says that, and it's another thing to extract that from them under the bright lights, you know.

So I'm going to grant the motion to compel and deny the motion for a protective order, and have you produce Mr. Stauber.

MR. ZEIGER: We will, Your Honor. I understand.

To be clear, Mr. Stauber -- our point was Mr. Stauber doesn't know anything that Mr. Hayes doesn't also know. We're making Mr. Hayes available for a deposition.

The challenge, Judge, is that obviously this is an accelerated proceeding. And they have committed to, you know, keeping the scope of discovery within essentially the topics that they listed on page 3 of their motion to compel. The concern is that, you know, they've obviously wanted to take discovery of the independent directors on standing. And we kept saying, look, it's going to be duplicative of confirmation.

What we don't want to do is these depositions twice. And so I understand the court's order. We will produce him this Friday as scheduled. But our view is that it should be limited to the topics as they set out in their motion.

THE COURT: Well, I don't have a problem with the topics limited to matters that are relevant to the hearing. And it doesn't seem to me that most of the matters that pertain to the derivative standing motion, which has now been continued anyway --

MR. ZEIGER: Correct.

THE COURT: -- are going to be relevant here. But I think Mr. Stauber should be examined.

Why am I not going to hear from Mr. Millstein at the hearing? He has been your star witness right along. You know, as time goes on, your case peters out. I was quite surprised to see that I was not going to have a chance to question him.

MR. ZEIGER: Your Honor, Mr. Millstein has a similar issue to Mr. Zott, and he can't fly right now. He just had surgery last Friday.

THE COURT: Oh, dear.

MR. ZEIGER: He's unable to fly.

THE COURT: Well, that's too bad.

MR. ZEIGER: So that's why Mr. Hayes will be here instead.

THE COURT: All right. Well, that will happen, I suppose.

I have two comments, though, that I wanted to make in anticipation of the hearing, and I wanted to offer them because these motions suggested some disagreement about the issues with the guaranty plaintiffs, in particular, asserting that the issues have narrowed.

And as I said, they haven't. But my comments may give some guidance to the parties in deciding what evidence to present. And I offer these as well for another reason: On the off-chance that they may promote a global settlement in the few days remaining. Never say "never."

The first comment concerns the debtors' position that this is a "textbook case" for the issuance of a section 105 injunction. I've agreed with that position in the past, because this is a textbook case - in certain respects. The textbook third-party injunction is issued to stop a lawsuit against a non-debtor who guaranteed one or more of the debtors' obligations, intends to make a

financial contribution to the debtors' reorganization, and won't be able to make the contribution if the lawsuit succeeds. Because CEC guaranteed certain of CEOC's obligations and is contributing to its reorganization, and because the lawsuits against CEC arguably jeopardize the contribution, to that extent this case takes textbook form.

But in another important respect, this isn't a textbook case. In the textbook case, the third party that the injunction would protect is a person - an actual human being - rather than a corporation. So, for example, a partner in a debtor partnership or an officer or shareholder in a debtor corporation. In the textbook case, no one stands behind the third party and its contribution. A judgment against a third party consequently spells doom for the reorganization. That was true in United Health Care, in Saxby's Coffee, in Rustic, and Lahman Manufacturing, in Otero Mills, in every decision cited in my published opinion after the first hearing except Lyondell. It was true in the R&G Properties case, as well, which was one of mine.

It isn't true here. CEC is majority-owned by four LLCs. Two of those LLCs

are owned, in turn, by TPG Capital, LP, a large private equity fund. The other two LLCs are owned by Apollo Global Management, LLC, also a large private equity fund. With those entities standing behind CEC, it's hard to argue this is truly the textbook case.

That brings me to my second comment. In requesting relief under section 105, the debtors always proceeded under the theory that the denial of an injunction would, as the court of appeals put it, "endanger the success of the bankruptcy proceedings." They reach that conclusion because they contend that successful reorganization depends on CEC's contribution, and that contribution will disappear if CEC loses the guaranty actions.

But why should the successful reorganization depend on a contribution from CEC alone? As I just observed, several other entities stand behind CEC. Not only that, but the estates here have claims - large ones the examiner found - against some of these entities, entities that include Apollo and TPG, as well as a host of other companies and individuals.

The plan the debtors want to confirm would release those claims. Yet as far as I know,

none of those companies and individuals, all of whom would benefit from the proposed release, has contributed so much as a dime under the plan. Certainly, there's been no evidence to date of any contribution. In fact, Mr. Millstein, the debtors' restructuring advisor, from whom apparently we will not hear, testified as recently as this past June that he had not even considered whether these entities could contribute anything. The current motion asserts perfunctorily that "the sponsors" - Apollo and TPG - are participating in settlement discussions, but the motion doesn't describe their participation and gives no indication that it's any better than pro forma.

The debtors in these cases are asking the guaranty plaintiffs, all of them creditors of the debtors, to take considerably less than they are owed. The guaranty plaintiffs are miffed at being asked to do that when parties potentially liable to the estates would see the claims against them released under the plan - and would pay nothing for that benefit. They're especially miffed when some of the released parties are the ultimate owners of the Caesars enterprise, the very entities that engineered the leveraged buyout that led to these cases. The

guaranty plaintiffs don't see the proposed reorganization here as involving shared pain. I don't blame them.

A section 105 injunction is an equitable remedy. To receive equity, the saying goes, one must do equity. Next week, the debtors might well want to show - if it can be shown - what is equitable about stopping the guaranty plaintiffs from enforcing their contractual rights in order to let the debtors confirm a plan under which alleged wrongdoers are released for free.

With that, we can move on to the next item. I'll see you Tuesday.

MR. JOHNSTON: Your Honor, before we do that, for the record, Jim Johnston of Jones Day on behalf of Wilmington Savings Fund.

First, thank you for your comments. That is very helpful for preparing for next week. You will hear more about those issues in our brief on Friday and next week.

THE COURT: Good.

MR. JOHNSTON: I wanted to raise an issue that just came to my attention this morning, and that has to do with another aspect of the discovery we tendered in connection with the motion,

specifically a document request for the signature pages to the second lien RSA, which you read about in the motion.

We thought we had an agreement from the debtors to produce those signature pages. In fact, Mr. Zeiger memorialized that agreement in an email sent Friday night. But when the production was made, I believe Monday night, the signature pages were produced but were redacted of the relevant information. The relevant information here being the nature of the claims held by the signatories to the agreement.

Again, one of the things you will hear more about on Friday and next week is the nature of the parties who signed the second lien RSA. We have reason to believe that those parties are all substantial shareholders of CEC, or its affiliate, CAC, and have other interests and claims throughout the capital structure that are driving their actions in this case, and that in fact make them less concerned, and perhaps not concerned at all, with recoveries on the second lien notes as second lien notes.

We were never told those signature pages were going to be redacted. They were produced

redacted. We need that information.

THE COURT: I guess this is an oral motion to compel, which is not really appropriate. But, nevertheless, time is short. This is sort of an emergency.

So could you respond to that, Mr. Zeiger.

MR. ZEIGER: Yes, I can. And I just heard about this ten minutes ago. I ended up working in the ten minutes before the hearing started to figure out what the status is.

Under, apparently, the second lien RSA, we are prohibited from sharing that information. Apparently it's very commercially sensitive as to what each specific signatory owns of each of the second lien debt. And what we're trying to do is work on an agreement with counsel to be able to share that on an attorney-eyes only basis.

THE COURT: A protective order in other words?

MR. ZEIGER: I'm sorry?

THE COURT: A protective order in other words?

MR. ZEIGER: Yes. Yes, Your Honor.

THE COURT: Okay.

MR. ZEIGER: So then Jones Day could have that information and we wouldn't be in violation of our RSAs, which, obviously, is a huge point of contention. We have an RSA that we believe is progress. And in response, they have gone out and gotten a cooperation agreement that ensures that the RSA that we negotiated will never become effective, which you'll hear more about next week.

So this is, obviously, a very sensitive issue. We're trying to work with some of the second lienholders who believe that we are making progress. And what we don't want to do is have a foot fault whereby, you know, the progress we made goes out the window.

MR. JOHNSTON: And I will note, Your Honor, the second lien RSA itself contemplates exactly this situation and provides for advisors'-eyes only production. It's Section 5(a) romanette iii.

THE COURT: I take your word for it, since I don't have the document.

MR. JOHNSTON: Yes.

MR. ZEIGER: I will.

MR. JOHNSTON: This is something that the parties actually envisioned when they were

negotiating this agreement, and the agreement categorically does not prohibit the debtors from turning it over.

THE COURT: It sounds as if the production part of this can be worked out pretty simply.

MR. ZEIGER: Correct.

THE COURT: There is the trial question. You know, it's one thing to produce it, and it's another thing then to have it disclosed at trial. And if it's going to come out at trial, it's going to come out. I'm not going to clear the courtroom and shut off the telephone connection for this. So we'll have to give that some thought.

MR. ZEIGER: Yes.

MR. JOHNSTON: I think we all need to think about that. And hopefully we will come to a resolution that works for everyone.

MR. ZEIGER: My assumption is we all want progress here, and we'll figure out a way to allow them to challenge the bona fides of the statement without destroying progress.

THE COURT: Okay. Very good. Thanks.

MR. ZEIGER: Very good.

THE COURT: The next matter is the preference complaint CEC, et al., versus BOKF. There was a report filed of the parties' Rule 26(f) conference. And now because we've gone that route, which I must say is really unusual in the adversary proceedings that I have, we now need a scheduling order under Rule 60(b). I really hate those because they require me to set deadlines for things that I don't like to set deadlines for, but I guess there's no way around it.

So I think what I would like is for the parties to provide me with a proposed scheduling order, since you're in the best position to know how much time you need for discovery. And I don't need to be involved in that. And it's unfortunate that the rule requires a deadline for motions. I don't usually set deadlines for motions, but the rule is the rule. So pick a deadline that you like and we'll go from there.

MR. ROGERS: Your Honor, Brent Rogers from Kirkland & Ellis on behalf of the debtors.

We would be happy to work with the noteholders to come up with a proposed schedule. I want to advise Your Honor that the debtors will be filing a motion to strike certain of the affirmative

defenses and the answers.

THE COURT: Okay.

MR. ROGERS: That will be filed this week.

THE COURT: All right. Thanks for the warning. That won't affect this scheduling matter, of course.

You know, the other thing I didn't see discussed in the report was expert discovery. And I don't know if that's something that you did discuss or whether you're even contemplating any. I imagine you would be, but maybe I'm wrong about that.

MR. ROGERS: Your Honor, I believe in the report what we said was that we would discuss among the parties expert discovery and come up with a schedule for that in advance of the October omnibus hearing.

THE COURT: Okay.

MR. ROGERS: We're happy to incorporate that into the discussions over the scheduling order.

THE COURT: I think you should. I think that should be in the scheduling order. Scheduling orders can always be amended. That's the one thing I'm not restricted from doing. So let's

call it draft order to follow. You can provide me with a scheduling order at some point. And why don't we continue the adversary proceeding to the October 19 date.

Was that your proposal?

MR. ROGERS: It is, Your Honor.

THE COURT: Okay. Let's do that.

MR. ROGERS: And I believe we've already laid out some of the dates in our Rule 26 report.

THE COURT: Right.

MR. ROGERS: And we'll incorporate those into the scheduling order.

THE COURT: Yes, exactly. And you can choose the other dates.

There is another matter that's under the continued matters that I want to call, and that is the debtors' motion for entry of an order that would authorize the payment of certain expenses of the 10.75 SGU notes trustee because I've got parties who are not in agreement about how this should go forward. And I have some folks suggesting that there should be a briefing schedule, and I have the U.S. Trustee asking for a trial. And if we're going to have a trial, I'd just as soon set the date, frankly,

so we know what we're working with.

MR. GRAHAM: Good afternoon, Your Honor. Joe Graham, Kirkland & Ellis, on behalf of the debtors.

MS. DeLAURENT: Good afternoon, Your Honor. Denise DeLaurent.

MR. BRIEF: Adam Brief on behalf of Patrick Layng, the United States Trustee.

THE COURT: So there were a number of objections that went in some very interesting ways I thought. I'm not quite sure how the debtors feel about some of that, since it seems to me to involve a whole lot more expenditures than they had originally contemplated when they filed this motion, although maybe they knew about them all along. I'm not sure. And then, of course, the U.S. Trustee says nobody can be paid.

You wanted a hearing. Is that still your position?

MS. DeLAURENT: You're talking to the United States Trustee?

THE COURT: I sure am.

MS. DeLAURENT: Yes.

THE COURT: You're the only person who asked for one.

MS. DeLAURENT: Yes, okay.

I think initially we think that the issue should be briefed. We think as a threshold issue you have to decide whether the authority they're using, which is 363, is a basis for them to actually pay the fees that they are contemplating paying, which are administrative claims in the estate.

And I think we laid that out in our objection. If you decide they cannot use 363, then they're going to have to come in and I think they're going to have to do what we think they should do, which is proceed under 503 and substantial contribution.

THE COURT: Well, isn't there a factual issue that underlies that question too though? I mean, I thought that was why you wanted a hearing, or one of the reasons. Maybe I'm mistaken.

MR. GRAHAM: They have raised -- I think one of their arguments, Your Honor, was whether Wilmington Trust is a member of the committee was a factual issue that needed to be discussed. We have a footnote, obviously, in our motion, Wilmington Trust is a member of the committee. But I think as Your Honor is well aware, they've had a very active role

as a creditor, representing a bunch of creditors in this case.

THE COURT: Oh, I'm well aware.

MR. GRAHAM: It was predicated on that role. We have a footnote that says that. I believe that that was one of the, you know, predicate issues they raised, practical issues.

THE COURT: Right. So that's a factual question, and we can brief it if you want. But until we know as a factual matter, you know, what they did -- I mean, I know some of what they did. I don't know probably everything they did for which they want to be compensated.

Wouldn't you want to know that?

MS. DeLAURENT: Yeah. We don't probably know everything they did either.

THE COURT: Right.

MS. DeLAURENT: I don't disagree with that. I mean, I think the burden is on the debtor to basically put that forth in the motion. And I'm assuming they put that forth in the motion. I don't know.

Is there more?

MR. GRAHAM: Your Honor --

MS. DeLAURENT: I think there is.

MR. GRAHAM: I mean, we can put out -- we have other -- we have, obviously, plenty of reasons why we reached this deal with Wilmington, with the holders of these subsidiary guaranty notes, who have directed the trustee here throughout the case.

If we need to put on more briefing, I think that's part of our suggestion for why we need to do a briefing -- we need to discuss with the parties a briefing schedule. One, we need to figure out what the issues are, whether people think there is a legal -- threshold legal issues that we can deal with or whether there are certain factual issues that need to be decided first.

I recognize that's what you're asking for here, but we have been contemplating not making the sausage in front of the court, if possible.

THE COURT: It's usually unavoidable in this case.

Well, if it's your preference to go ahead and brief it, then that's fine. But it may just serve to highlight the issues and not do much more, and then we still have to have a hearing. And then you might have to brief it again based on what the evidence at the hearing shows. So that's the

thing about prehearing briefs, they often just add to the pile of paper.

And then the other thing is, you know, the longer we postpone the hearing, the less time I have. I have this other hearing set for January 17th. You may know about it.

MR. GRAHAM: Yes.

THE COURT: And I imagine there will be some activity leading up to that, unless really wonderful things happen in the next few days.

All right. If that's your preference, then why don't we set a briefing schedule now.

MS. DeLAURENT: Yes. Judge, can I just raise too, that, you know, if they're proceeding under 363, it may be a different standard than under 503, 503 substantial contribution.

THE COURT: Well, right.

MS. DeLAURENT: Right?

THE COURT: Very different standard, I would say.

MS. DeLAURENT: Very different standard. And that's why we're saying, I mean, we may be at this issue -- we may brief it more than once.

THE COURT: Okay.

MS. DeLAURENT: That is where we are. I mean, we can definitely sit down and talk to the debtors, see what they have to say about it, and come up with a briefing schedule. I have no problem with doing that.

MR. GRAHAM: Your Honor, obviously, we have the U.S. Trustee up here. I believe we are about to get counsel maybe for BOKF. But, obviously, the committee, as well as the second lien trustees filed objections as well. So I think we need to maybe all discuss the scheduling issues.

THE COURT: Okay. If that's your preference.

MR. SILFEN: Good afternoon, Your Honor. Andrew Silfen, Arent Fox, counsel for BOKF.

THE COURT: Welcome.

MR. SILFEN: I think I just want to provide some comments that may be helpful to all of this because we are dealing with possibly confirmation. And I think there is no disagreement that under 1129(a)(4) and 1123 the indenture trustees can be paid. And the question is timing, can it be paid in contemplation of a confirmed plan or can it be paid during the case?

The challenge here is if we start to

go in this direction, and it may be the right direction, we run into ultimately a different standard vis-a-vis the confirmed plan. Because what you do under a plan is different than what you can do prior to a plan. So from our perspective, this is a timing issue.

THE COURT: I was just going to say --

MR. SILFEN: The indenture trustees will be paid. The question is confirmation or earlier. And, obviously, you've read our papers. We're offended by the discriminatory, coercive nature and the unbalanced approach that's been taken.

THE COURT: Well, it's discriminatory. I don't know if it's coercive.

Does the U.S. Trustee agree that this is really just timing and ultimately this money is going to get paid?

MS. DeLAURENT: Well, it depends on if it's an administrative claim. Okay? Under 503, if you're paying fees at an administrative level or if it's added to the claim. If it's an unsecured claim -- they probably -- they have documents, I'm sure, that provide for payment of attorney's fees. And if that's -- it's a charging lien. They put that in

their papers. And those are often in plans. And we'll look at that and look at that a little differently.

So it kind of depends on where they are going. If you have an administrative claim, and you're being paid priority-wise above everybody prior to confirmation, then that's a different issue.

And Lehman dealt with some of that. And, I mean, that's the seminal case the whole country looks at is Lehman which, you know, that's the case what we cited, and those were the problems.

And I think there are questions whether -- you know, does it matter if you're on the committee or off the committee? I think our position is it doesn't matter either way. But we definitely have all of these parties are on the committee. And beyond that, we have all the parties on the committee, the UCC committee in particular, they are all litigating.

I mean, they are all in major litigation. This is not something new. We have Hilton in litigation. We have the National Labor Relations Board in litigation. We have each of the indenture trustees in litigation.

I used the wrong term for --

THE COURT: I think it's NRF.

MS. DeLAURENT: It's the NRF. I'm sorry.

THE COURT: I haven't seen the NLRB yet. Maybe next week.

MS. DeLAURENT: It's the NRF. I have a different case in my head. It's the NRF. And you have litigation.

So almost every single member of the UCC committee has an independent claim that they have been pursuing in some way in this case.

MR. SILFEN: And I don't think you want to get into arguments today, but I have two comments that may be helpful.

1123 specifically provides that an indenture can be canceled or modified, and it's usually dealt with within the constructs of a plan. Okay? The indentures all are continuing through this case. There are obligations of the debtor. There's obligations of the indenture trustee. One of those obligations is for the debtor to pay. It's still an obligation.

The charging lien, just so that we're clear because that's a term of art that's often used, it gives under the contract, the indenture, the

indenture trustee, the right to have its fees paid out first priority of any distributions before the holders get it. So if the debtor turns over a dollar, and there's 50 cents in fees, the 50 cents in fees can be paid as a priority. It's called the charging lien.

Often what happens is it gets kind of added up. Instead of being deducted, it would be an add-on that's paid by the debtor or it's treated in other ways. This has come to a head because the debtor has chosen to pay one indenture trustee earlier and have not discussed this with the other indenture trustees. And there are other bases to pay indenture trustees that have not been raised by the debtors' motion, which is what the U.S. Trustee has raised.

I was hoping these comments would be helpful. As I listen to myself --

THE COURT: Oh, they are. You don't think so? You have doubts about your own helpfulness?

MR. SILFEN: I'll step aside.

THE COURT: No, no, that's helpful.

You know, when I hear about timing, and it's not a question of just who gets paid but

when, then I sometimes wonder whether it's really worth the fuss. But I'll leave that to you. I don't decide what disputes get brought to me.

MS. DeLAURENT: Well, there is how, how you get paid and under what statutory provision.

THE COURT: Right.

MS. DeLAURENT: Right?

THE COURT: Okay.

MS. DeLAURENT: I mean, it's just not timing.

THE COURT: Well, all right. I raised all of this just because I was trying to arrive at the most efficient way to get it decided, and in particular since you asked for an evidentiary hearing. You know, it may not seem like it now, but time is really short. And time is also at a premium, especially trial time.

MR. GRAHAM: Understood, Your Honor.

THE COURT: So that's why, you know -- and I felt this way about the derivative standing motion of the second lien committee too. You know, I mean, things that get put off, we're going to end up with a problem if we have to have evidentiary hearings down the road.

So I'd rather just get it done and get

it done now. If you want to brief it and you've got a schedule, that's great. If you don't have a schedule now, you can propose one. We can do this a bunch of different ways. You can arrive at a schedule and just submit an order to me. I can put this on a non-omnibus date and we can have another nice chat.

MR. GRAHAM: Your Honor, we have been planning on trying to work with the parties and come back at the next omnibus hearing. If Your Honor thinks that we should do something on an earlier date, you know, I'm sure we can just -- there's, obviously, several of us here, but I'm sure we can all get together and decide how to proceed, and also a briefing schedule, and get either a draft order to follow or to be back here on a non-omnibus hearing date.

THE COURT: I hate to wait a month.

MR. SILFEN: I think all of the parties other than the U.S. Trustee was prepared to put this on to the next omnibus hearing so we can kind of sort through all these issues and not have to bring it before you in this haphazard way. The U.S. Trustee wanted at least to have a discussion. So I think, unless you have an objection, we can put it on

to the next omnibus date and sort through this.

THE COURT: Well, I can do that. My concern, again, is delay that results in difficulty finding trial time. You know, life is unpleasant enough as it is, and I'm reluctant to make it -- it's going to get more unpleasant. But I wouldn't like to make it even more unpleasant than that, frankly.

MS. DeLAURENT: Why don't we go off omnibus and have a status where we come before you.

How about two weeks from now?

MR. ZAKIA: Your Honor, Jason Zakia, White Case for the 10.75 trustee. We have, obviously, have an interest in how this gets resolved as well.

It seems like the parties have agreed to negotiate a briefing schedule. Perhaps that can be done and we can negotiate a briefing schedule and submit it to the court, and then you can set a backstop date in case that breaks down. But I would at least be optimistic we might not need another hearing before Your Honor to enter a briefing schedule because I think that's something that probably everyone can agree to. And I don't know

that we need to wait a month to have that entered. We'd like to get the ball rolling if Your Honor is concerned about timing.

THE COURT: I'd like to get the ball rolling too, and I am concerned.

So, okay. So, in other words, you would rather just treat this as draft order to follow, negotiate a briefing schedule --

MR. GRAHAM: Yes.

THE COURT: -- submit it to me, and I'll see what I think about it?

MR. GRAHAM: That would be the debtors' preference.

THE COURT: That meet with everybody's approval?

MS. DeLAURENT: That's fine, Your Honor.

THE COURT: All right. That's what we will do.

MR. GRAHAM: Thank you, Your Honor.

THE COURT: Okay. I think that's all. Am I correct? I don't have Mr. Seligman here to serve as master of ceremonies. I feel at sea.

MR. GRAHAM: Your Honor, I believe that was the last item on today's agenda. So I think

other than continued matters, we are set. I don't have any other housekeeping matters.

THE COURT: All right. If something wonderful happens before next Tuesday, give us a call. Otherwise, I'll see you Tuesday at 9:00.

(Which were all the proceedings had in the above-entitled cause, August 17, 2016, 1:30 p.m.)

I, AMY B. DOOLIN, CSR, RPR, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.

EXHIBIT D

Electronically Filed
9/27/2017 2:50 PM
Steven D. Grierson
CLERK OF THE COURT

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LLTQ ENTERPRISES 16, LLC;
FERG, LLC; AND FERG 16, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC.; and BOARDWALK REGENCY CORPORATION d/b/a CAESARAS ATLANTIC CITY, Plaintiffs, v. ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16 LLC; MOTI PARTNERS, LLC; MOTI PARTNER 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC; AND J. JEFFREY FREDERICK, Defendants.	Case No.: A-17-760537-B **DEFENDANTS LLTQ ENTERPRISES 16, LLC, LLTQ ENTERPRISES, LLC, FERG 16, LLC AND FERG, LLC NOTICE TO STATE COURT OF REMOVAL OF COUNTS II AND III**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD AND TO THE DISTRICT COURT OF THE STATE OF NEVADA FOR THE COUNTY OF CLARK:

PLEASE TAKE NOTICE that a Notice of Removal of Counts II and III of this action was filed in the United States Bankruptcy Court for the District of Nevada (the "**Bankruptcy Court**") on September 27, 2017, under Case No. 17-01238. A true and correct copy of the file-stamped Notice of Removal is attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that the filing of the Notice of Removal in the Bankruptcy Court and a copy of the Notice of Removal in this Court effects the removal of Counts II and III of the action from this Court. Fed. R. Bankr. P. 9027(c); *see also* 28 U.S.C. § 1452. The litigation in this Court "shall proceed no further . . . unless and until the claim or cause of action is remanded." *Id.*

DATED September 27, 2017.

Respectfully submitted:

LLTQ ENTERPRISES, LLC,
LLTQ ENTERPRISES 16, LLC
FERG, LLC AND FERG 16, LLC

By: /s/ Daniel R. McNutt
One of their attorneys

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that pursuant to Nev. R. Civ. P. 5(b) and EDCR 8.05 on September 27, 2017 I caused service of the foregoing **NOTICE TO STATE COURT OF REMOVAL OF COUNTS II AND III** to be made by depositing a true and correct copy of same in the United States Mail, postage fully prepaid, addressed to the following and/or via electronic mail through the Eighth Judicial District Court's E-Filing system to the following at the e-mail address provided in the e-service list:

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EXHIBIT A

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC.; and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY, Plaintiffs, v. ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16 LLC; MOTI PARTNERS, LLC; MOTI PARTNER 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; DNT ACQUISITION, LLC; GR BURGR, LLC; AND J. JEFFREY FREDERICK, Defendants.	Case No.: _____ **NOTICE OF REMOVAL OF COUNTS II AND III OF LAWSUIT PENDING IN NEVADA STATE COURT TO BANKRUPTCY COURT**

Defendants LLTQ ENTERPRISES 16, LLC ("LLTQ 16"), LLTQ ENTERPRISES, LLC ("LLTQ"), and FERG 16, LLC ("FERG 16"), and FERG, LLC ("FERG," and together with LLTQ 16, LLTQ and FERG 16, the "LLTQ/FERG Defendants"), hereby remove Counts II and III of the lawsuit entitled *Desert Palace Inc., et al. v. Rowen Seibel, et al.*, designated as case number A-17-760537-B, including all claims, counterclaims, third-party claims and defenses thereto (the "Nevada Action") formerly pending in the District Court, Clark County, Nevada (the "State Court") to the United States Bankruptcy Court for the District of Nevada, pursuant to 28

U.S.C. §§ 1452(a) and 1334(b) and Rule 9027 of the Federal Rules of Bankruptcy Procedure.

As grounds for the removal, the LLTQ/FERG Defendants state as follows:

1. On January 15, 2015 (the "Petition Date"), Desert Palace, Inc., Boardwalk Regency Corporation d/b/a Caesars Atlantic City (both of which are Plaintiffs in the Nevada Action), and several of their affiliated entities (collectively, the "Debtors") each filed voluntary petitions under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois, thereby commencing the chapter 11 cases jointly administered as case no. 15-01145 (collectively, the "Chapter 11 Cases"). The Chapter 11 Cases remain pending.

2. On June 8, 2015, the Debtors filed that certain Fourth Omnibus Motion for the Entry of an Order Authorizing the Debtors to Reject Certain Executory Contracts Nunc Pro Tunc to June 11, 2015 [Docket No. 1755] (the "Rejection Motion"). In the Rejection Motion the Debtors seek to reject, pursuant to section 365 of the Bankruptcy Code, two agreements with the LLTQ/FERG Defendants (the "Pub Agreements") concerning the development and operation of two Gordon Ramsay-branded pubs located in Las Vegas and in Atlantic City (collectively, the "Ramsay-branded Pubs").

3. The LLTQ/FERG Defendants filed an objection to the relief sought in the Rejection Motion asserting, among other things, that Section 13.22 of the Pub Agreement with LLTQ (the "LLTQ Agreement") is an enforceable restrictive covenant.

4. The Rejection Motion remains pending and is a "contested matter" in the Chapter 11 Cases subject to Rule 9014 of the Federal Rules of Bankruptcy Procedure.

5. On November 4, 2015, the LLTQ/FERG Defendants filed that certain Request for Payment of Administrative Expense [Docket No. 2531] (the "LLTQ/FERG Admin Request") seeking payments to which LLTQ and FERG claim they are owed under the Pub Agreements as a result of the Debtors' continued operations of the Ramsay-branded Pubs.

6. The Debtors filed an objection to the relief sought in the LLTQ/FERG Admin Request thereby triggering a "contested matter" subject to Rule 9014 of the Federal Rules of Bankruptcy Procedure. In the contested matter pending in the Chapter 11 Cases the Debtors assert, among other things, allegations of fraudulent inducement and that the Pub Agreements may not be valid, enforceable agreements and, instead, may be void, voidable or void ab initio.

7. The LLTQ/FERG Admin Request remains pending and is a "contested matter" in

the Chapter 11 Cases subject to Rule 9014 of the Federal Rules of Bankruptcy Procedure.

8. On January 14, 2016, the Debtors filed that certain Motion for the Entry of an Order Authorizing the Debtors to (A) Reject Certain Existing Restaurant Agreements and (B) Enter Into New Restaurant Agreements [Docket No. 3000] (the "Ramsay Rejection Motion"). In the Ramsay Rejection Motion the Debtors seek to reject certain agreements (the "Original Ramsay Agreements") with Gordon Ramsay and his related entity (collectively, "Ramsay") and simultaneously enter into new agreements with Ramsay to continue operating the Ramsay-branded Pubs (the "New Ramsay Agreements"). The Debtors only seek rejection of Original Ramsay Agreements if the Bankruptcy Court approves the Debtors' entry into the New Ramsay Agreements.

9. The LLTQ/FERG Defendants filed an objection to the relief sought in the Ramsay Rejection Motion asserting, among other things, that Section 13.22 of the LLTQ Agreement and Sections 4.1 and 4.2 of the Pub Agreement with FERG (the "FERG Agreement") are enforceable restrictive covenants.

10. The Ramsay Rejection Motion remains pending and is a "contested matter" in the Chapter 11 Cases subject to Rule 9014 of the Federal Rules of Bankruptcy Procedure.

11. On August 25, 2017, the Plaintiffs filed the Nevada Action.

12. In the Nevada Action, the Plaintiffs seek declaratory judgments as more fully set forth in the copy of the Complaint attached hereto as Exhibit A. The relief sought in counts II and III of the Nevada Action arises out of certain restrictive covenants contained in and the enforceability of the Pub Agreements, which are at the heart of the pending disputes of the Rejection Motion, the Ramsay Rejection Motion, and the LLTQ/FERG Admin Request (collectively, the "Pending Bankruptcy Motions").

13. Count II of the Nevada Action seeks, among other relief, a determination that the Debtors have no current or future obligations under the Pub Agreements due to alleged breaches thereto and allegations of fraudulent inducement.

14. The allegations of fraudulent inducement and the related legal issue of whether the Pub Agreements are void, voidable or void ab initio has been brought by the Debtors as a defense to the LLTQ/FERG Admin Request and remains pending. In their successful objection to the LLTQ/FERG Defendants' request for a protective order in the Pending Bankruptcy

Motions [Docket No. 6887], the Debtors expressly stated:

> "the Debtors have claims for fraudulent inducement and rescission of the contracts. Procedurally, the Court may, under Bankruptcy Rule 9014, direct that Bankruptcy Rules 7008 and 7013 apply to a contested matter. . . If the Court does so, the Debtors can assert fraudulent inducement as either an affirmative defense or counterclaim. Alternatively, the Debtors are willing to initiate an adversary proceeding if necessary."

The Debtors have also suggested that these defenses apply to the two other Pending Bankruptcy Motions.

15. Count III of the Nevada Action seeks, among other relief, a determination that the Section 13.22 of the LLTQ Agreement and Section 4.1 of the FERG Agreement do not prohibit or limit existing or future restaurant ventures between the Debtors and Ramsay.

16. The scope and enforceability of these restrictive covenants contained in the Pub Agreements and the effect of the potential rejection of such contracts under the Bankruptcy Code on such provisions has been raised as defenses to both the Rejection Motion and the Ramsay Rejection Motion. These issues remain pending before the Bankruptcy Court.

17. The Nevada Action is not a proceeding before the United States Tax Court.

18. The Nevada Action is not a civil action by a governmental unit to enforce its police or regulatory power.

19. Counts II and III of the Nevada Action, until the filing of this Notice of Removal and the filing of a copy of this Notice of Removal with the State Court, was pending in the District Court of the State of Nevada, Clark County.

20. This Court has "arising under" jurisdiction over Counts II and III of the Nevada Action pursuant to 28 U.S.C. § 1334(b). The Debtors brought the Rejection Motion and Ramsay Rejection Motion pursuant to sections 363 and 365 of the Bankruptcy Code. The LLTQ/FERG Defendants filed the LLTQ/FERG Admin Request pursuant to section 503(b) of the Bankruptcy Code.

21. This Court also has "related to" jurisdiction over Counts II and III of the Nevada