

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

2 ROWEN SEIBEL; LLTQ
3 ENTERPRISES, LLC; LLTQ
4 ENTERPRISES 16, LLC; FERG, LLC;
5 FERG 16, LLC; MOTI PARTNERS,
6 LLC; MOTI PARTNERS 16, LLC; TPOV
7 ENTERPRISES, LLC; TPOV 16
8 ENTERPRISES, LLC; DNT
9 ACQUISITION, LLC, appearing
10 derivatively by one of its two members, R
11 Squared Global Solutions, LLC,

12 Petitioners

13 vs.

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

17 Respondent,

18 DESERT PALACE, INC.; PARIS LAS
19 VEGAS OPERATING COMPANY,
20 LLC; PHWLTV, LLC; and BOARDWALK
21 REGENCY CORPORATION d/b/a
22 CAESARS ATLANTIC CITY,

23 Real Parties in Interest.

Case Number:

24 Eighth Judicial District Electronically Filed
25 Case No. A-17-760537-18 Jun 18 2018 04:47 p.m.
26 Dept. 15, Honorable Joseph Hardy
27 Elizabeth A. Brown
 Clerk of Supreme Court

**APPENDIX TO PETITION FOR
WRIT OF MANDAMUS OR
PROHIBITION**

VOLUME 14 OF 15

(APP. 3251 – 3500)

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1 **CERTIFICATE OF SERVICE**

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

6 Honorable Joseph Hardy
7 District Court Judge, Dept. 15
8 Regional Justice Center
9 200 Lewis Ave., Las Vegas, NV 89155
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16 */s/ Lisa Heller*
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18 Employee of McNutt Law Firm, P.C.
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PROHIBITION**

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1 multiple parties into a single action in one forum,¹ this forum simply cannot and will not be able to
2 resolve all claims as they pertain to DNT and each of the claims asserted here against DNT, Counts I-
3 III, are disputes that are properly before the Illinois Bankruptcy Court and can be determined in that
4 forum.

5 **II. The Debtor Plaintiffs’ Forum Shopping Should Not Be Permitted**

6 In their opposition, the Debtor Plaintiffs argue that they are not engaged in improper forum
7 shopping because the present action seeks “comprehensive relief.” (Opp. 21.) As set forth above,
8 Plaintiffs’ assertion that this action provides comprehensive relief is inaccurate and should be rejected.
9 In addition, the caselaw cited by Debtor Plaintiffs is not on point. Debtor Plaintiffs cite *R.R. St. & Co.*
10 *Inc. v. Transp. Ins. Co.*, 656 F.3d 966, 981 (9th Cir. 2011). However, in that action there was “no
11 question” that second filed action would resolve all issues. *Id.* at 983. That is clearly not the case here,
12 as explained above. The Debtor Plaintiffs also seek to downplay the Bankruptcy Court’s negative
13 comments about the viability of their position because the comments were made in the context in
14 discovery disputes. (Opp. 21.) While DNT concedes that the Bankruptcy Court’s comments – that
15 Debtor Plaintiffs’ main defenses are thin and dubious (Exhibit K) – were made during a discussion
16 concerning a discovery dispute, that does not change the fact that it was only *after* those comments
17 were made that Debtor Plaintiffs attempted to shop for a new forum to adjudicate matters that were
18 already squarely before the Bankruptcy Court. This Court should not permit Debtor Plaintiffs’ forum
19 shopping by permitting Plaintiffs to bring the present action against DNT in this Court. *Land v. Allstate*
20 *Ins. Co.*, 114 Nev. 1176, 1181, 969 P.2d 938, 941 (1998).

21 **III. The Debtor Plaintiffs Opposition Does Not Rebut the First-to-File Rule**

22 Plaintiffs argue that this court should refuse to apply the first-to-file rule and maintain
23 jurisdiction over the second filed action based on the alleged that this forum is the one “in which all
24 interests are best served.” (Opp. 12-14.) First, as explained above, the interests of the parties are not
25

26
27 ¹ DNT notes that it was not a party to the removal proceedings before the Nevada Bankruptcy
28 Court. Therefore, to the extent that Plaintiffs’ argument in opposition relies on the decision rendered
by the Nevada Bankruptcy Court in the removal proceedings, DNT is not bound by any decision in that
matter.

1 best served by proceeding in this forum. In addition, the cases relied upon by Debtor Plaintiffs are not
2 on point. Plaintiffs cite to *Continental Insurance Co. v. Hexcel Corp.*² in support of their argument.
3 However, in *Continental Insurance* the difference in time in the filing of lawsuits in *Continental*
4 *Insurance* was a mere eight days (*id.* at *2), as contrasted with the two years between DNT’s proofs of
5 claim and the present action. Plaintiffs also cite to *Amlin Corp. Member Ltd. v. Leeward*³, a case in
6 which the time difference between the first-filed and second-filed cases was a mere two days (*id.* at
7 *2.) Also, the *Amlin* court held that the choice of forum should be given to the “true plaintiffs” in the
8 dispute, and not the party which filed an action seeking a declaration that it owed no obligation to the
9 true plaintiffs. (*Id.* at *7.)

10 Plaintiffs argue that because there are parties in the present action that are not parties to the
11 Federal Action this Court should refuse to apply the first-filed rule. In support of their argument,
12 Plaintiffs cite two cases – *Mitchell Capital, LLC v. Powercom, Inc.*⁴ and *Jones v. Eighth Judicial*
13 *District Court of County of Clark*⁵ – both cases are inapposite. Contrary to Plaintiffs’ characterization,
14 the *Mitchell* court addressed in dicta the propriety of a court’s exercise of jurisdiction over a declaratory
15 relief default judgment that involved additional unrelated parties and was filed after judgment in the
16 prior action. See *Mitchell Capital, LLC v. Powercom, Inc.*, 2015 WL 5774161 at *3 n.2. Important to
17 the *Mitchell* court’s ruling was a finding that the subsequently filed declaratory judgment case
18 “involved many parties unrelated to [the previous] judgment” (*id.*) which is not the case in the instant
19 action, as the same relevant parties – DNT and Debtor Plaintiff Desert Place – are present in both
20 matters. The mere fact that a later-filed action includes additional parties does not prevent the
21 application of the first-to-file rule to dismiss the later-filed action, as “[a] contrary holding could allow
22 a party...to skirt the first-to-file rule.” *Kohn Law Grp., Inc. v. Auto Parts Mfg. Mississippi, Inc.*, 787
23 F.3d 1237, 1240 (9th Cir. 2015).

24 Plaintiffs also cite to *Jones*, but that decision does not diverge from settled Nevada law in favor
25 of the first-filed rule. The *Jones* court, in a ruling on a petition for a writ of mandamus challenging a
26

27 ² No. 12-cv-05352-YGR, 2013 WL 1501565, at *1-2 (N.D. Cal. Apr. 10, 2013)

28 ³ No. 3:12-cv-0360-LRH-VPC, 2012 WL 6020107, at *1 (D. Nev. Nov. 27, 2012)

⁴ No. 64669, 2015 WL 5774161, at *3 n.2 (Nev. Sept. 29, 2015)

⁵ No. 62614, 2013 WL 3944042, at *2 (Nev. July 24, 2013)

1 motion to dismiss a declaratory judgment action, found that it was “not clear...that the issues presented
2 in the declaratory relief action may be adjudicated” in the prior pending case. *Jones v. Eighth Judicial*
3 *District Court of County of Clark*, 2013 WL 3944042 at *2. Based on that finding, the court ruled that
4 it could not be compelled to conclude that the declaratory action should be dismissed. *Id.* Unlike in
5 *Jones*, here it is uncontested that the issues presented by Plaintiffs in the instant action are similar if not
6 identical issues as raised in the Bankruptcy Court.

7 In sum, Debtor Plaintiffs have not provided this Court with sufficient basis to disregard the first-
8 to-file rule. Accordingly, this Court should dismiss all claims in this action brought against DNT, or,
9 in the alternative, stay such claims until the same issues are resolved by the Illinois Bankruptcy Court.

10 **IV. This Court Should Not Hold This Motion in Abeyance Pending the Resolution of a**
11 **Yet to be Filed or Briefed Motions to Stay**

12 The Debtor Plaintiffs ask this court to hold DNT’s motion, as well as the motions to dismiss
13 filed by other Defendants, in abeyance pending a motion for stay filed (but not briefed) in the
14 Bankruptcy Court and a future motion for stay to be filed in the Nevada Federal Court. (Opp. 15.)
15 Plaintiffs do not cite any authority for this proposition – that this Court should hold in abeyance DNT’s
16 motion because Plaintiffs intend to file, on some unspecified future date, a request to stay the Federal
17 Action. In making this argument, Plaintiffs provide no excuse as to why they have not sought a stay in
18 the Federal Action in the seven (7) months since they filed the present action.

19 Second, the Bankruptcy Court will not consider entering a briefing schedule on the motion to
20 stay until April 18, 2018 at the earliest. There is no reason for this Court to wait indefinitely to decide
21 the Motion, which will be fully briefed and presented for hearing on April 4, 2018.

22 In sum, if this Court denies DNT’s motion to dismiss, Plaintiffs have offered no valid reason
23 why this Court should disregard the first-to-file rule and “either dismissing, staying, or transferring the
24 later filed suit.” *Sherry v. Sherry*, No. 62895, 2015 WL 1798857, at *1 (Nev. Apr. 16, 2015). *See also*
25 *Jonah Paul Anders v. Mayla Casacop Anders, Respondent.*, No. 71266, 2017 WL 6547399, at *1 (Nev.
26 App. Dec. 14, 2017) (holding the first-to-file rule “authorizes district courts to decline jurisdiction over
27 an action if a complaint involving the same parties and issues had already been filed in another trial
28

1 court” (internal quotations and citation omitted).) Accordingly, Plaintiffs’ instant claims against DNT,
2 as a later-filed suit, should be dismissed or in the alternative stayed.

3 **CONCLUSION**

4 For the reasons set forth above and in the Motion, DNT requests that this Court dismiss all
5 claims in the NV Complaint or, in the alternative, stay such claims until the prior Contested Bankruptcy
6 Matters are resolved by the Bankruptcy Court.

7 DATED March 28, 2018.

8 MCNUTT LAW FIRM, P.C.

9
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17 *On behalf of Defendant DNT ACQUISITION LLC*
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1 **CERTIFICATE OF MAILING**

2 I HEREBY CERTIFY that pursuant to Nev. R. Civ. P. 5(b) and EDCR 8.05 on March 28, 2018
3 I caused service of the foregoing **DEFENDANT DNT ACQUISTION, LLC'S REPLY**
4 **MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION TO DISMISS, OR, IN**
5 **THE ALTERNATIVE TO STAY** to be made by depositing a true and correct copy of same in the
6 United States Mail, postage fully prepaid, addressed to the following and/or via electronic mail through
7 the Eighth Judicial District Court's E-Filing system to the following at the e-mail address provided in
8 the e-service list:

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Employee of McNutt Law Firm

Exhibit N

DEVELOPMENT, OPERATION AND LICENSE AGREEMENT

among

DNT ACQUISITION LLC,

THE ORIGINAL HOMESTEAD RESTAURANT, INC.

and

DESERT PALACE, INC.

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DEVELOPMENT, OPERATION AND LICENSE AGREEMENT

THIS DEVELOPMENT, OPERATION AND LICENSE AGREEMENT (the "Agreement") shall be deemed made, entered into and effective as of this 21st day of June, 2011, by and among Desert Palace, Inc., a Nevada corporation, having its principal place of business located at 3570 Las Vegas Boulevard South, Las Vegas, Nevada 89109 ("Caesars"); The Original Homestead Restaurant, Inc., d/b/a the "Old Homestead Steakhouse", a New York corporation, having its principal place of business located at 56 9th Avenue, New York, New York 10011-4901 ("OHS"); DNT Acquisition LLC, a Delaware limited liability company, having its principal place of business c/o Rowen Seibel, 200 Central Park South, 19th Floor, New York, New York 10019 ("DNT"); and, solely with respect to Sections 2.3, 2.4 and 6.1, Marc Sherry, Greg Sherry and Rowen Seibel.

RECITALS:

- A. Caesars owns that certain real property located at 3570 Las Vegas Boulevard South, Las Vegas, Nevada, on which Caesars operates a resort hotel casino known as Caesars Palace ("Caesars Palace" or "Hotel");
- B. OHS has developed, and owns and operates, a restaurant concept known as the "Old Homestead Steakhouse" which currently has locations at 56 9th Avenue, New York, New York, and in the Borgata Resort Hotel Casino located in Atlantic City, New Jersey;
- C. OHS has developed and owns a distinctive proprietary system for operating steakhouses under the "Old Homestead Steakhouse" trade name, which system includes, without limitation, signature products, unique menus and menu items, ingredients, recipes, methods of preparation, specifications for food products and beverages, methods of inventory, operations control, equipment and design, all of which may be improved, furthered and developed from time to time by OHS and its Affiliates (collectively, the "Old Homestead System");
- D. OHS is also the owner of certain distinctive trade names, service marks, trademarks, designs, trade dress, service names, logos, emblems and indicia of origin, including, but not limited to, a mark for the "Old Homestead Steakhouse," together with all registrations thereof and applications for registration thereof, and such other trade names, service marks, trademarks, designs, trade dress, service names, logos, emblems and indicia of origin as may be developed from time to time by OHS and its Affiliates (collectively, the "Old Homestead Marks");
- E. OHS possesses the exclusive right to license the Old Homestead System, the Old Homestead Marks and the Old Homestead Materials (hereinafter defined), and has licensed DNT to utilize the same in connection with, and for the purposes specified in, this Agreement;
- F. DNT, through its members or the principals of its members, Marc Sherry, Greg Sherry and Rowen Seibel (collectively, the "Principals"), possesses certain qualifications, expertise and a reputation in the development and operation of first-class restaurants;
- G. DNT, as a licensee of OHS, possesses the right to utilize and further sublicense the Old Homestead System, Old Homestead Marks and Old Homestead Materials, as herein below set forth;
- H. Caesars, in consultation with OHS and DNT (collectively, the "DNT Parties") to the extent set forth herein, desires to design, develop, construct and operate a first-class restaurant and retail premises to be known as "Old Homestead Steakhouse" (collectively, the "Restaurant") in those certain premises located within Caesars Palace, as more particularly shown on Exhibit A attached hereto (the "Restaurant Premises");
- I. Caesars desires to obtain a sub-license from DNT to utilize the Old Homestead System, the Old Homestead Marks and the Old Homestead Materials in connection with the Restaurant, and to retain the DNT Parties and/or the Principals to perform certain services and fulfill certain obligations with respect to consultation concerning the design, development, construction and operation of the Restaurant in accordance with the terms hereof; and
- J. DNT desires to grant to Caesars a sub-license to utilize the Old Homestead System, the Old Homestead Marks and the Old Homestead Materials in connection with the Restaurant, and the DNT Parties desire to be

retained by Caesars to perform such services and fulfill such obligations, and the parties desire to enter into this Agreement to set forth their respective rights and obligations with respect thereto, all as more particularly set forth herein.

NOW THEREFORE, in consideration of the premises and the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the foregoing recitals are true and correct, and further agree as follows:

1. DEFINITIONS.

As used herein, the following terms have the meanings set forth or referenced below. Other terms may be defined in other Articles and Sections of this Agreement.

"Additional Venture" means (i) in the case of DNT and Rowen Seibel, any activities, business or operations involving any restaurant or bar (including any lounge, nightclub, ultra lounge or similar operation), including as an owner, investor, operator, director, officer, manager, agent, consultant, licensor or employee of any such restaurant or bar, if such restaurant or bar (a) utilizes or is to utilize any Old Homestead Mark, the Old Homestead Materials or the Old Homestead System, (b) is or is to be located within a twenty-five (25) mile radius of any hotel or gaming facility owned or operated by Caesars or any of its Affiliates and (c) is not otherwise prohibited by Section 2.3, and (ii) in the case of OHS, Greg Sherry and Marc Sherry, any activities, business or operations involving any restaurant or bar (including any lounge, nightclub, ultra lounge or similar operation), including as an owner, investor, operator, director, officer, manager, agent, consultant, licensor or employee of any such restaurant or bar, if such restaurant or bar (a) utilizes or is to utilize any Old Homestead Mark, the Old Homestead Materials or the Old Homestead System or any concept similar to the concept reflected by any Old Homestead Mark, the Old Homestead Materials or the Old Homestead System, (b) is or is to be located within a twenty-five (25) mile radius of any hotel or gaming facility owned or operated by Caesars or any of its Affiliates and (c) is not otherwise prohibited by Section 2.3.

"Affiliate" means, with respect to a specified Person, any other Person who or which is directly or indirectly controlling, controlled by, or under common control with, the specified Person, or any member, stockholder or comparable principal of, the specified Person, or such other Person. For purposes of this definition, "control", "controlling" and/or "controlled" mean the right to exercise, directly or indirectly, at least five percent (5%) of the voting power of the stockholders, members or owners and, with respect to any individual, partnership, trust or other entity or association, the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of the controlled Person. "Affiliate" of Caesars shall not include Apollo Management L.P. (or any of its Affiliates) or TPG Capital (or any of its Affiliates), other than Caesars Entertainment Corporation and its direct and indirect controlled subsidiaries.

"Arbitration Support Action" has the meaning set forth in Section 14.10(c).

"Baseline Amount" means the amount of the net profits of Nero's Restaurant located in Caesars Palace and operated by Caesars ("Nero's Restaurant"), for the twelve (12) complete months ended at the end of the calendar month immediately prior to the date of this Agreement, as such net profits are determined by Caesars in a manner consistent with the determination of net profits for the twelve (12) complete months ended April 30, 2011, as previously disclosed to DNT, which amount is equal to \$2,132,735.79.

"Capital Reserve" has the meaning set forth in Section 8.1.2.

"Capital Reserve Account" has the meaning set forth in Section 8.1.2.

"Competitor" shall mean any Person that, or a Person that has an Affiliate that, in each case directly or indirectly, whether as owner, operator, manager, licensor or otherwise, is engaged in the conduct of one or more Gaming Businesses.

"Confidential Information" means, as to a party hereto, information about that party and/or its Affiliates

that is either confidential, proprietary and/or not generally available to the public, including information such as business plans, strategies, costing information, prospects and locations, that (i) is furnished by or on behalf of the party to a Recipient or its Representatives, or (ii) otherwise becomes known to a Recipient or its Representatives as a result of the transactions contemplated hereby; provided, that, "Confidential Information" shall not include any information which the Recipient can clearly show (a) is or has become openly known to the public through no fault of the Recipient or its Representatives, (b) was lawfully obtained by the Recipient from a source other than the disclosing party or its Representatives, who the Recipient reasonably believed (after due inquiry) was not subject to any obligation of confidentiality or restriction on use or disclosure to the disclosing party or its Affiliates, or to any other Person, or (c) was developed independently by the Recipient or its Affiliates.

"Dispute" has the meaning set forth in Section 13.1.

"Dispute Notice" has the meaning set forth in Section 13.1.

"DNT" has the meaning set forth in the Recitals.

"DNT Associates" has the meaning set forth in Section 2.2.

"DNT Change of Control" means (i) a sale, lease, license, transfer or other disposition of all or substantially all of the assets of a DNT Party to a third party purchaser that is not, as of the date hereof, an Affiliate of DNT, any DNT Party and/or any of the Principals, in a single transaction or series of transactions, (ii) a liquidation, dissolution or winding up of the affairs of either DNT Party, or (iii) if, following the consummation of a merger, consolidation or business combination involving a DNT Party, or a sale, transfer or other disposition of a DNT Party's shares of stock or membership interests in a single transaction or series of transactions, less than 50% of the outstanding voting stock or membership interests of such DNT Party (or any successor entity resulting from such transaction), is held collectively by any combination of any of the Principals (or any of their successors reasonably approved by Caesars) or by any trust or other entity controlled by or for the benefit of the Principals (or any of their successors reasonably approved by Caesars).

"DNT Party" means either of DNT or OHS; and DNT Parties means both of DNT and OHS.

"DNT Promotional Visits" has the meaning set forth in Section 7.1.1.

"DNT Restaurant Visits" has the meaning set forth in Section 7.2.1.

"Early Termination Payment" means a payment equal to the aggregate amount that DNT is entitled to receive pursuant to Article 8 hereof for, (a) in the case of termination on or prior to the third anniversary of the Opening Date, the twenty-four complete months ended at the end of the calendar month immediately prior to the effective date of termination of this Agreement or (b) in the case of termination after the third anniversary of the Opening Date, the twelve complete months ended at the end of the calendar month immediately prior to the effective date of termination of this Agreement; provided, that, in the case of clause (b), if the number of complete months remaining in the Term following the effective date of termination is less than twelve (12), the Early Termination Payment shall be prorated based on the number of complete months remaining in the Term.

"Effective Date" means the later of: (i) the date of this Agreement; and (ii) the date on which Caesars determines, in its sole discretion, that none of the DNT Associates is an Unsuitable Person.

"Exchange Act" has the meaning set forth the definition of DNT Change of Control.

"Exclusivity Provisions" has the meaning set forth in Section 2.3.

"Excusable Delay" has the meaning set forth in Section 12.3.

"Fiscal Year" means (a) for the first Fiscal Year shall mean the period commencing on the Opening Date and ending on December 31 of the calendar year in which the Opening Date occurs and (b) each subsequent period

of twelve months commencing on January 1 and ending on December 31 of any calendar year (or, if earlier, ending on the date of termination of this Agreement).

“Gaming Business” shall mean the ownership, operation or management of one or more casinos, video lottery terminal facilities, racetracks, on-line gaming businesses or other business involving gaming or wagering.

“Ground Lease” has the meaning set forth in Section 14.19.

“Group” has the meaning set forth in the definition of DNT Change of Control.

“Gross Restaurant Sales” means all receipts or revenues of the Restaurant from all sources of any kind (subject to the limitations set forth in this Agreement), including the sale of food and beverage, door charges and sale of merchandise, computed on an accrual basis in accordance with generally accepted accounting principles consistently applied by Caesars, excluding only (i) federal, state and local excise, sales, use or rent taxes collected from customers from receipts which are included in Gross Restaurant Sales, (ii) gratuities paid to the employees of the Restaurant (or paid to Caesars and paid by Caesars to such employees) by patrons with respect to functions which generate Gross Restaurant Sales, (iii) amounts collected by Caesars from patrons for the account of, and for direct payment to, unrelated third parties providing services specifically for a patron’s function which generate Gross Restaurant Sales, such as flowers, music and entertainment, (iv) proceeds paid as a result of an insurable loss (unless paid for the loss or interruption of business and representing payment for damage for loss of income and profits of those Restaurant operations which are intended to generate Gross Restaurant Sales), (v) proceeds of condemnation and eminent domain awards, litigation awards and settlement payments, (vi) any proceeds or other economic benefits of any borrowings or financings of Caesars, (vii) any proceeds or other economic benefit from any sale, exchange or other disposition of all or any part of Caesars Palace or the Restaurant, including any furniture, furnishings, decorations, and equipment, or any other similar items, (viii) funds provided by Caesars, (ix) payments made under any warranty or guaranty and (x) any other receipts or payments that are not standard or typical in the ordinary course of operating a restaurant or that are excluded by Caesars in a manner consistent with the determination of gross revenues of operations of Caesars and its Affiliates similar to the Restaurant. Gross Restaurant Sales shall be reduced by the amount of credit card fees and over-rings, refunds and credits given, paid or returned by Caesars in the course of obtaining Gross Restaurant Sales. In addition to receipts from transactions occurring at the Restaurant, Gross Restaurant Sales shall include, without limitation, all receipts for food, beverages or merchandise delivered from the Restaurant in satisfaction of orders therefor received away from the Restaurant and receipts for food, beverages and merchandise delivered away from the Restaurant in satisfaction of orders received at the Restaurant and receipts for food, beverages and merchandise delivered away from the Restaurant in satisfaction of orders received away from the Restaurant but sold, transferred or solicited with reference to the Restaurant. Notwithstanding the foregoing, Gross Restaurant Sales shall include the menu price of all food, beverages and merchandise delivered on a complimentary or discounted basis by Caesars to its customers and, unless the promotion and alternative pricing was made with the prior written consent of DNT, Gross Restaurant Sales shall include the full menu price of all food, and beverages and merchandise so provided on a complimentary or discounted basis to its customers (except that employees of Caesars or its Affiliates shall be entitled to a twenty percent (20%) discount off the full menu price and such twenty percent (20%) discount amount shall not be included in Gross Restaurant Sales).

“Initial Capital Account” of Caesars is the amount of Project Costs borne by it under Section 3.2(d) and shall be subject to repayment as set forth in Article 8.

“Initial Term” has the meaning set forth in Section 4.1.

“License Fee” has the meaning set forth in Section 8.1.1.

“Menu Development Services” has the meaning set forth in Section 3.4.1.

“Mortgages” has the meaning set forth in Section 14.19.

“Net Profits” means, for any period, the amount (which shall be a positive number) by which Gross

Restaurant Sales for such period exceed the Operating Expenses for such Period.

“Nevada Courts” has the meaning set forth in Section 14.10(c).

“Old Homestead Marks” shall have the meaning ascribed to it in the Recitals.

“Old Homestead Materials” means all copyrights, works of authorship, programs, techniques, processes, formulas, developmental or experimental work, work-in-process, methods or trade secrets used by OHS or any of its Affiliates in the operation of food or beverage establishments similar to the Restaurant, all menus and recipes developed and provided pursuant to Section 3.4, and such other works of authorship, programs, techniques, processes, formulas, developmental or experimental work, work-in-process, methods or trade secrets of OHS as may be provided from time to time by DNT to Caesars in connection with the transactions contemplated by this Agreement.

“Old Homestead System” shall have the meaning ascribed to it in the Recitals.

“Opening Date” has the meaning set forth in Section 4.1.

“Operating Expenses” means, for any period, (a) the actual expenses incurred during such period in operating the Restaurant in those categories included in the Profit and Loss Statement of Nero’s Restaurant previously disclosed to DNT and set forth on Exhibit B, in each case computed on an accrual basis in accordance with generally accepted accounting principles consistently applied by Caesars, plus (b) the License Fee for such period, plus (c) the actual expenses incurred by Caesars during such period for operation of the Restaurant for variable expenses not reflected on such Profit and Loss Statement, provided that such variable expenses for accounting, call center, engineering, EVS, F&B administration, human resources, marketing, payroll, procurement, refuse, risk management, security, tech support and utilities (the “Non-Allocated Variable Expenses”) shall not in the aggregate exceed in any Operating Year the amount set forth for such Operating Year on Exhibit E. All credits and rebates received from sponsors and/or vendors in connection with product or services used at the venue shall be a credit against Operating Expenses. Additionally, the Restaurant shall receive an allocation charge for use of the commissary for areas such as baker, butchery, gardmanger and cook chill.

“Permanent Damage” means any damage by fire or other casualty to the Caesars Palace or Restaurant (a) where the net insurance proceeds are not sufficient to restore and repair the damaged portion of the Caesars Palace or Restaurant substantially to its condition and character just prior to the occurrence of such casualty or (b) where it is not reasonably practicable to restore and repair the Caesars Palace or Restaurant due to restrictions under applicable Law or for other reasons beyond Caesars’ reasonable control within three hundred sixty five (365) days from the damage, in each case as reasonably determined by Caesars.

“Person” means any individual, corporation, proprietorship, firm, partnership, limited partnership, limited liability company, trust, association or other entity, including any governmental authority.

“Principals” has the meaning set forth in Recitals.

“Prohibited Person” means any Unsuitable Person or Competitor.

“Project Budget” has the meaning set forth in Section 3.2(b).

“Project Costs” means all reasonable costs and expenses incurred by Caesars or its Affiliates prior to the Opening Date to accomplish the effective and efficient commencement of operations at the Restaurant on the Opening Date in accordance with the Project Budget attached hereto as Exhibit C, including all hard and soft construction costs, the cost of all furniture, equipment and furnishings, inventories of food and beverages and other operating supplier acquired in preparation for the opening of the Restaurant, all reasonable expenses incurred by Caesars or any of its Affiliates in performing pre-opening services and other pre-opening functions, including pre-opening expenses of business entertainment and reimbursable expenses (but excluding salary, compensation and benefits of Caesars’ or its Affiliates’ employees) and any related taxes, the cost of recruitment and related expenses

for all employees of the Restaurant and the cost of pre-opening sales, marketing, advertising, promotion and publicity for the Restaurant, including all losses, expenses and reasonable attorneys' fees arising directly or indirectly from any dispute with any third party engaged to design, develop, construct or outfit the Restaurant solely.

"Recipient" has the meaning set forth in Section 14.18(a).

"Relative" means, with respect to any Person, such Person's mother, father, spouse, brother, sister and children.

"Representatives" means, with respect to any Person, such Person's employees, agents, independent contractors, representatives and Affiliates.

"Rules" has the meaning set forth in Section 13.1.

"Seibel" has the meaning set forth in Section 7.2.2.

"Seibel Restaurant Visits" has the meaning set forth in Section 7.2.2.

"Senior Management Employee(s)" has the meaning set forth in Section 5.2.

"Services" has the meaning set forth in Section 2.1.

"Substantial Damage" means any damage, other than a Permanent Damage, by fire or other casualty to the Caesars Palace or Restaurant (a) that results in more than twenty percent (20%) of the area of the Caesars Palace or Restaurant, as applicable, being rendered unusable, (b) where the estimated length of time required to restore the Caesars Palace or Restaurant, as applicable, substantially to its condition and character just prior to the occurrence of such casualty shall be in excess of one hundred eighty (180) days or (c) if the estimated cost of restoration and repair of the damage exceeds twenty percent (20%) of the then current replacement cost of the Caesars Palace or Restaurant, as applicable, in each case as determined by Caesars in its reasonable discretion.

"Term" has the meaning set forth Section 4.1.

"Third-Party Claim" has the meaning set forth in Section 14.15.1.

"Training" has the meaning set forth in Section 5.1.2.

"Union Agreements" has the meaning set forth in Section 5.3.1.

"Unsuitable Person" is 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.

"USCIS" has the meaning set forth in Section 5.6.

2. APPOINTMENT; CONDITIONS; EXCLUSIVITY; CERTAIN RIGHTS.

2.1 Appointment. On the terms and subject to the conditions set forth in this Agreement, Caesars

hereby appoints the DNT Parties, and the DNT Parties hereby agree, to perform those services and fulfill those obligations set forth herein as to be performed or fulfilled by the DNT Parties (collectively, the “Services”). In addition to the terms and conditions more particularly set forth in this Agreement, the DNT Parties agree to perform and cause to be performed the Services (a) in good faith and using sound business practice, due diligence and care, (b) using, at a minimum, the same degree of skill and attention that the DNT Parties or their Affiliates use in performing the same or similar services for its or their own accounts or the accounts of others (and in no event less than a reasonable degree of skill and attention), and (c) with sufficient resources and qualified personnel as are reasonably required to perform the Services in accordance with the standards set forth in this Agreement. For the avoidance of doubt, the Principals and their respective Relatives are Affiliates of the DNT Parties.

2.2 Conditions to Agreement. Notwithstanding anything to the contrary contained herein, the rights and obligations of each party under this Agreement (other than the obligations under Section 2.3, 2.4 and 9.1 and Article 14 (other than Section 14.16)), is conditioned upon (which conditions may be waived by Caesars in its sole and absolute discretion): (a) submission by the DNT Parties to Caesars of all information requested by Caesars regarding the DNT Parties, their Affiliates and the directors and officers of each as well as the employees, agents, representatives and other associates of the DNT Parties or any of their Affiliates (all of the foregoing, “DNT Associates”) to ensure that none of the foregoing is an Unsuitable Person; and (b) Caesars being satisfied, in its sole discretion, that no DNT Associate is an Unsuitable Person.

2.3 DNT Parties’ Exclusivity.

(a) (i) The DNT Parties and the Principals covenant and agree that, at all times during the Term, the DNT Parties and the Principals will not and will cause their respective Affiliates not to, directly or indirectly, except as contemplated by this Agreement or any other Agreement with Caesars or any of its Affiliates, use, permit or license, or offer or agree to permit or license any other Person to use, any Old Homestead Mark, the Old Homestead Materials or the Old Homestead System within Clark County, Nevada in connection with the operation of a restaurant or bar (including any lounge, nightclub, ultra lounge or similar operation), excluding any operation for Caesars or its Affiliates; and

(ii) Each of OHS, Greg Sherry and Marc Sherry covenant and agrees that, at all times during the Term, each of them will not and will cause its or his Affiliates not to, directly or indirectly, except as contemplated by this Agreement or any other Agreement with Caesars or any of its Affiliates, engage in or become affiliated or associated with, or offer or agree to become engaged in or affiliated or associated with, any activities, business or operations involving any restaurant or bar (including any lounge, nightclub, ultra lounge or similar operation) which is located within Clark County, Nevada and which features a concept similar to the concept reflected by any Old Homestead Mark, the Old Homestead Materials or the Old Homestead System, including as an owner, investor, operator, director, officer, manager, agent, consultant, licensor or employee of any such restaurant or bar (collectively, (i) and (ii), the “Exclusivity Provisions”).

(b) If this Agreement is terminated by Caesars prior to the end of the Term originally stated herein, and either of the DNT Parties is in default or breach of this Agreement at the time of such termination, the Exclusivity Provisions shall continue for a period of twenty-four (24) months following such termination.

(c) Notwithstanding the foregoing, owning the securities of any company if the securities of such company are listed for trading on a national stock exchange or traded in the over-the-counter market and the DNT Parties’ and/or their Affiliates’ holdings therein represent less than five percent (5%) of the total number of shares or principal amount of other securities of such company outstanding shall not be deemed violative of this Section 2.3.

(d) Notwithstanding the foregoing: (i) nothing in this Section 2.3 shall preclude the sale of any products branded with any Old Homestead Marks; and (ii) Caesars shall have no rights with respect to the sale of any products (other than any food products used in the Restaurant) branded with any Old Homestead Marks other than as specifically set forth in this Agreement.

2.4 Rights of First Refusal.

(a) Each of the DNT Parties and the Principals covenants and agrees that, at all times during the Term, it or he will not and will cause its or his Affiliates not to, directly or indirectly, engage in or become affiliated or associated with, or offer or agree to become engaged in or affiliated or associated with, any Additional Venture, except after compliance with this Section 2.4; provided, that this Section 2.4 shall not apply to any Old Homestead Steakhouse restaurant owned by any DNT Party or its Affiliates as of the date of this Agreement in New York, New York or Atlantic City, New Jersey. Any Additional Venture that does not involve Caesars or any of its Affiliates shall not: (i) use the Mark "Empire"; (ii) use the Mark "Gotham"; nor (iii) offer a "Filet on Bone" in connection with any of its food or beverage offerings. Additionally, should any new menu offering (a item first offered for sale following the Effective Date) in any category (i.e., appetizer, entrée, etc.) at the Old Homestead restaurant in New York comprise twenty (20%) or greater of the sales of the menu offerings in its category, said menu offering shall be considered a "Signature Item" and shall not be offered for sale except at the Old Homestead restaurant in New York, at Borgata in Atlantic City, New Jersey, at Caesars and at the location of its Affiliate(s) then operating an Old Homestead Restaurant, it being understood that the prohibitions contained in (i), (ii) and (iii) shall not apply to any Additional Venture should Caesars (or its designated Affiliate) not timely exercise its rights described in Section 2.4(b) hereinbelow.

(b) Before any of the DNT Parties, the Principals or any of their respect Affiliates engage in or become affiliated or associated with, or offer or agree to become engaged in or affiliated or associated with, any Additional Venture, the applicable Person shall provide Caesars and its Affiliates with an offer, in writing, to participate in such Additional Venture in a hotel or casino owned or operated by Caesars or its Affiliates, which offer shall set forth reasonable detail regarding the proposed Additional Venture. If Caesars (or its designated Affiliate) indicates in writing within fifteen (15) days after receipt of such offer its interest in considering such opportunity, the applicable Person shall or shall cause its applicable Affiliates to enter into exclusive discussions, negotiations and due diligence with Caesars (or its designated Affiliate) for the succeeding sixty (60) days to determine if mutually agreeable terms of participation in the Additional Venture can be reached. During such period, the applicable DNT Party shall or shall cause its applicable Affiliates to provide Caesars (or its designated Affiliate) with all reasonable supporting or other documents it may reasonably request with respect to the Additional Venture. If Caesars (or its designated Affiliate) does not timely exercise such right, or if the Parties fail to reach agreement to mutually agreeable terms, the DNT Parties will be free to proceed without Caesars (or its designated Affiliate), it being understood that the DNT Parties shall not enter into an agreement for any Additional Venture with any other party on terms that are more favorable than those offered by the DNT Parties to Caesars (or its designated Affiliate).

2.5 Caesars Exclusivity. Caesars covenants and agrees that, at all times during the Term, Caesars will not and will cause its Affiliates not to, directly or indirectly, except as contemplated by this Agreement or any other Agreement with the DNT Parties or any of their respective Affiliates open a new restaurant in Caesars Palace with a menu featuring primarily beef steaks; provided, that this Section 2.5 shall not apply to the operation of any restaurant in any premises located in the mall adjacent to Caesars Palace known as the "Forum Shops" or in any addition to or expansion of Caesars Palace after the date of this Agreement.

3. RESTAURANT LOCATION, DESIGN, DEVELOPMENT AND OPERATION.

3.1 General. The Restaurant shall be comprised of that approximate square footage indicated on Exhibit A attached hereto. The parties acknowledge that with the consent of the parties the design of the Restaurant and the Restaurant Premises may change following the execution of this Agreement, however, the approximate square footage and placement of the Restaurant within the Restaurant Premises as designed and constructed shall not be materially different than that which is depicted in Exhibit A. At all times during the Term and thereafter Caesars shall retain all right, title and interest in and to the Restaurant Premises.

3.2 Initial Design and Construction.

(a) Planning. Subject to all of the terms and conditions more particularly set forth herein, Caesars and DNT shall work closely with respect to, and Caesars shall give consideration to all of DNT's reasonable recommendations regarding, the initial design, development, construction and outfitting of the Restaurant, including, without limitation, all furniture, fixtures, equipment, inventory and supplies (the "Restaurant Development Services"); provided, however, that Caesars, after consulting with DNT and considering all reasonable

recommendations from DNT, shall have final approval with respect to all aspects of same but shall at all times act reasonably. Caesars shall appoint an individual or individuals, who may be changed from time to time by Caesars, acting in its sole and absolute discretion, to act as Caesars' liaison with DNT in the design, development, construction and outfitting of the Restaurant. Restaurant Development Services, and meetings with respect to same, shall take place in Las Vegas.

(b) Budgeting. Caesars shall provide DNT with copies of all proposed budgets for the Project Costs (each, a "Project Budget"), and afford DNT the reasonable opportunity to review each such Project Budget and to make reasonable recommendations on same based upon the experience of DNT prior to Caesars' adoption and implementation of any such Project Budget. After giving consideration to all reasonable recommendations made by DNT regarding the Project Budget, Caesars shall establish, control, and amend from time to time as necessary, all in Caesars' reasonable discretion, the Project Budget for the initial design, development, construction, and outfitting of the Restaurant. Caesars shall promptly advise DNT of, and consult with DNT regarding, any material changes in, modifications to and/or deviations from any Project Budget, with the understanding that Caesars shall make all decisions related to same acting in its reasonable discretion; provided, that Caesars may not increase the current Project Budget attached hereto as Exhibit C to reflect aggregate Project Costs in excess of Two Million Three Hundred Thousand Dollars (\$2,300,000) without the prior written consent of DNT (not to be unreasonably withheld, conditioned or delayed).

(c) Implementation of Initial Design and Construction. Caesars shall be solely responsible for hiring, retaining and authorizing the performance of services by any and all design, development, construction and other professionals engaged in the initial design, development, construction and outfitting of the Restaurant. At all times during the Term and thereafter, Caesars shall retain all right, title and interest in and to the furniture, fixtures, equipment, inventory, supplies and other tangible and intangible assets used or held for use in connection with the Restaurant, except for the Old Homestead Marks, the Old Homestead Materials and the Old Homestead System.

(d) Costs of Initial Design and Construction. The current Project Budget is set forth as Exhibit C. The parties agree that the Project Costs shall be borne 100% by Caesars; provided, however, with the understanding that the Project Costs are anticipated not to exceed Two Million Dollars (\$2,000,000) in the aggregate. To the extent the Project Costs exceed Two Million Three Hundred Thousand Dollars (\$2,300,000) in the aggregate, such excess shall be paid for and absorbed by Caesars but shall not be included in the Initial Capital Account of Caesars.

3.3 Subsequent Refurbishment, Redesign and Reconstruction of the Restaurant. If, after the Opening Date, Caesars determines that the Restaurant requires any additional capital expenditures, Caesars shall give consideration to all of DNT's reasonable recommendations regarding the same; provided, however, that Caesars, after consulting with DNT's and considering all reasonable recommendations from DNT, shall have final approval with respect to all aspects of same. For any such capital expenditures that exceed the amount in the Capital Reserve Account, the parties will negotiate in good faith and use commercially reasonable efforts to agree regarding the responsibility for such capital expenditures. If the parties cannot agree, Caesars may make the capital expenditure and bear the related cost (which cost shall then be recovered under Section 8.1.3 as if the cost were part of the Initial Capital Account) if, in Caesars' sole and absolute discretion, such capital expenditure is necessary to maintain the Restaurant in a condition of that which is associated with a first class, gourmet steakhouse.

3.4 Menu.

3.4.1 Menu Development. DNT shall develop the initial food and beverage menus of the Restaurant, subject to the ultimate final approval of Caesars, and the recipes for same, and thereafter, DNT shall revise the food and beverage menus of the Restaurant, subject to the ultimate final approval of Caesars, and the recipes for same (the "Menu Development Services"), all of which recipes shall be owned by OHS. Caesars shall have the reasonable opportunity to review any food and beverage menus prior to their implementation and make reasonable recommendations to same based upon the proposed costs and Caesars' experience with the Las Vegas, Nevada fine-dining industry. After consulting with and giving consideration to all reasonable advice and reasonable recommendations from DNT, Caesars shall establish the pricing of any food and beverage menus, in its sole and absolute discretion. Menu Development Services, and meetings with respect to same, shall take place by conference

call at times and on dates mutually agreed to by the parties.

3.4.2 Menu Standards. The food and beverage menus of the Restaurant, and the recipes for the same, shall be of a nature and cost that is consistent with the nature and cost of menu offerings of fine-dining restaurants in Las Vegas, Nevada and shall feature primarily beef steaks, with fish and chicken as ancillary offerings, and an array of complimentary dishes created by the DNT Parties. The Restaurant's menu may feature the Old Homestead Steakhouse "signature" dishes (and related items), subject to Caesars' ultimate final approval of the food and beverage menus of the Restaurant as contemplated by Section 3.4.1.

3.5 General Operation of the Restaurant. Unless expressly provided herein to the contrary, Caesars shall be solely responsible for:

- (a) managing the operations, business, finances and Employees of the Restaurant on a day-to-day basis;
- (b) maintaining the Restaurant;
- (c) developing and enforcing employment and training procedures, marketing plans, pricing policies and quality standards of the Restaurant;
- (d) supervising the use of the food and beverage menus and recipes developed by DNT pursuant to the terms of Section 3.4; and
- (e) providing copies of the Restaurant's unaudited income statement to DNT (i) for each month, within fifteen (15) days after the end of each calendar month, (ii) for each quarter, within forty-five (45) days after the end of each calendar quarter and (iii) for each year, within seventy-five (75) days following the conclusion of each calendar year.

3.6 Merchandise.

3.6.1 For Use in the Restaurant. Upon Caesars' reasonable request, DNT shall use commercially reasonable efforts to arrange for Caesars to purchase, for use at the Restaurant, such fixtures and furnishings as the DNT Parties and their Affiliates are then merchandising elsewhere and featuring the Old Homestead Marks or other intellectual property of OHS and/or its Affiliates. The DNT Parties shall permit or cause their Affiliates to permit Caesars to purchase such products at actual out of pocket cost of goods on products manufactured by OHS or at cost not to exceed the wholesale cost if OHS is not the manufacturer for such products plus the actually incurred cost for shipping and any applicable tax. For the avoidance of doubt, payment by Caesars for all such goods shall be treated as a Project Cost (for costs incurred before the Opening Date) (subject to the limitations imposed by Section 3.2) or Operating Expense (for costs incurred after the Opening Date) of the Restaurant. The DNT Parties and their Affiliates shall not receive any commission or apply any "mark-up" in connection with the placement of any order for, or purchase by, Caesars of such products. Caesars acknowledges and agrees that the DNT Parties and their Affiliates may receive royalties or other benefit from such sale of merchandise as are generally applicable under the agreements entered into between them and such third parties from whom Caesars seeks to obtain product.

3.6.2 For Retail Sale. Upon Caesars' reasonable request, the DNT Parties shall use, without cost to the DNT Parties, commercially reasonable efforts to arrange for Caesars to purchase, for retail sale at the Restaurant, such products as the DNT Parties and their Affiliates are then merchandising elsewhere and featuring the Old Homestead Marks or other intellectual property of the DNT Parties and their Affiliates. The DNT Parties shall permit or cause their Affiliates to permit Caesars to purchase such products at actual out of pocket cost of goods on products manufactured by OHS or at cost not to exceed the wholesale cost if OHS is not the manufacturer for such products plus the actually incurred cost for shipping and any applicable tax. For the avoidance of doubt, payment by Caesars for all such goods shall be treated as an Operating Expense of the Restaurant. The DNT Parties and their Affiliates shall not receive any commission or apply any "mark-up" in connection with the placement of any order for, or purchase by, Caesars of such products. Caesars acknowledges and agrees that the DNT Parties and their

Affiliates may receive royalties or other benefit from such sale of merchandise as are generally applicable under the agreements entered into between them and such third parties from whom Caesars seeks to obtain product.

3.7 Meetings and Personal Appearances. Whenever scheduling any meeting or personal appearance contemplated by this Agreement, Caesars shall make commercially reasonable efforts to take into account the other then existing commitments of the individual whose appearance is required and give such individual prior notice as far in advance as is possible, of the contemplated date, time and place of each scheduled meeting or appearance. If advised of a conflict, Caesars shall make commercially reasonable efforts to reschedule such meeting or appearance to a date and time closest to the initially proposed scheduled appearance date, it being understood that all such scheduling shall be made by Caesars based upon the best interest of the Restaurant and DNT shall each endeavor to make commercially reasonable efforts to meet the appearance schedule proposed by Caesars subject to previously scheduled commitments.

3.8 Non-Allocated Variable Expenses. The DNT Parties and Caesars shall discuss each Operating Year the caps on Non-Allocated Variable Expenses set forth in Exhibit E and mutually agree to revise the caps for any subsequent Operating Year upward or downward, if at all, based on the actual Non-Allocated Variable Expenses incurred by Caesars in connection with the Restaurant.

3.9 Appointed Representative(s). With respect to the rights and obligations of DNT set forth in Article 3 and Article 5 of this Agreement, DNT shall appoint one or more of its Principals or other representatives reasonable acceptable to Caesars to serve as its representative in communicating and working with Caesars and otherwise acting on behalf of DNT in accordance with the provisions of Article 3 and Article 5.

4. TERM.

4.1 Term. The initial term of this Agreement shall commence on the Effective Date and shall expire on that date that is ten (10) years from the date on which the Restaurant first opens to the general public for business (the "Opening Date"), unless extended by Caesars or unless earlier terminated pursuant to the terms hereof (the "Initial Term"). Provided Caesars is not in default hereunder, Caesars shall have the right, but not the obligation, upon written notice given to the DNT Parties not less than one hundred eighty (180) calendar days prior to the expiration of the Initial Term, to extend the term of this Agreement for one additional five (5) year term (together with the Initial Term, the "Term"), which shall be on all of the same terms and conditions as contained herein. Thereafter, there shall be no additional extensions of the Term of this Agreement.

4.2 Termination.

4.2.1 For Convenience. At any time following the second anniversary of the Opening Date, this Agreement may be terminated by Caesars by written notice to the DNT Parties specifying the date of termination.

4.2.2 Breach of Standards. This Agreement may be terminated by Caesars upon written notice to the DNT Parties having immediate effect if, following a breach of Section 11.1 of this Agreement, Caesars sends written notice of such breach to the DNT Parties and the DNT Parties fail to cure such material breach within thirty (30) days after receipt of such notice.

4.2.3 Unsuitability. This Agreement may be terminated by Caesars upon written notice to the DNT Parties having immediate effect as contemplated by Section 11.2.

4.2.4 Condemnation and Casualty. This Agreement may be terminated by Caesars upon written notice to the DNT Parties having immediate effect as contemplated by Article 12.

4.2.5 Change of Control. This Agreement may be terminated by Caesars upon written notice to the DNT Parties having immediate effect if there is a DNT Change of Control involving any Prohibited Person.

4.2.6 Material Breach.

(a) This Agreement may be terminated by Caesars upon written notice to the DNT Parties having immediate effect if, following a material breach of this Agreement by either of the DNT Parties, Caesars sends written notice of such material breach to the DNT Parties specifying in reasonable detail the facts and circumstances underlying the claimed breach (including the provisions(s) of the Agreement claimed to have been breached) and the DNT Parties fail to cure such material breach within thirty (30) days after receipt of such notice; provided that if the DNT Party shall have taken steps reasonably anticipated to cure such breach within such thirty (30) day period, Caesars shall not be permitted terminate the Agreement unless such cure is not completed within a reasonable time thereafter.

(b) This Agreement may be terminated by DNT upon written notice to Caesars having immediate effect if, following a material breach of this Agreement by Caesars, DNT sends written notice of such material breach to Caesars specifying in reasonable detail the facts and circumstances underlying the claimed breach (including the provision(s) of the Agreement claimed to have been breached) and Caesars fails to cure such material breach within thirty (30) days after receipt of such notice for non-monetary breaches by Caesars (provided that if Caesars shall have taken steps reasonably anticipated to cure such breach within such thirty (30) day period, DNT shall not be permitted terminate the Agreement unless such cure is not completed within a reasonable time thereafter) and within five (5) days after written notice is given to Caesars for monetary breaches by Caesars; (it being understood that Caesars' failure to pay any amount disputed in good faith shall not entitle DNT to terminate this Agreement).

4.2.7 Bankruptcy, etc.

(a) This Agreement may be terminated by Caesars upon written notice to the DNT Parties having immediate effect if any of the DNT Parties or the Principals (i) becomes insolvent or admits in writing its inability to pay its debts as they become due, (ii) has instituted against it a proceeding seeking a judgment of insolvency, suspension of payment or bankruptcy, or a petition is presented against it for its winding up or liquidation, in each case that is not dismissed within sixty (60) days, (iii) institutes a proceeding seeking a judgment of insolvency, suspension of payment or bankruptcy, or files a petition for its winding up or liquidation, (iv) makes a general assignment for the benefit of its creditors, (v) seeks or becomes subject to the appointment of a receiver over all or substantially all of its assets, or (vi) any analogous procedure or step is taken in any jurisdiction.

(b) This Agreement may be terminated by DNT upon written notice to Caesars having immediate effect if Caesars (i) becomes insolvent or admits in writing its inability to pay its debts as they become due, (ii) has instituted against it a proceeding seeking a judgment of insolvency, suspension of payment or bankruptcy, or a petition is presented against it for its winding up or liquidation, in each case that is not dismissed within sixty (60) days, (iii) institutes a proceeding seeking a judgment of insolvency, suspension of payment or bankruptcy, or files a petition for its winding up or liquidation, (iv) makes a general assignment for the benefit of its creditors, (v) seeks or becomes subject to the appointment of a receiver over all or substantially all of its assets, or (vi) any analogous procedure or step is taken in any jurisdiction.

4.3 Effect of Expiration or Termination.

4.3.1 Termination of Obligations; Survival. Upon expiration or termination of this Agreement, there shall be no liability or obligation on the part of any party with respect to this Agreement, other than that such termination or expiration shall not (a) relieve any party of any liabilities resulting from any breach hereof by such party on or prior to the date of such termination or expiration, (b) relieve any party of any payment obligation arising prior to the date of such termination or expiration (notwithstanding that payment may not be due until after the expiration or termination of the Agreement), or (c) affect any rights arising as a result of such breach or termination or expiration. The provisions of this Section 4.3 and Sections 2.3(b), 6.2, 6.6, the last sentence of Section 12.2.2 and Articles 13 and 14 (other than Section 14.16) shall survive any termination or expiration of this Agreement.

4.3.2 Certain Rights of Caesars Upon Expiration or Termination. Upon expiration or termination of this Agreement:

(a) Caesars shall cease operation of the Restaurant and its use of the Old Homestead Marks, the Old Homestead Materials and the Old Homestead System; provided, however, in the event of an early

termination of this Agreement, Caesars shall be entitled to operate the Restaurant and use the License for a period of up to one hundred twenty (120) days after such termination to orderly and properly wind-up operations of the Restaurant provided that during such period Caesars shall continue to be obligated to pay DNT all amounts due DNT hereunder that accrue during such period in accordance with the terms of this Agreement as if this Agreement had not been terminated;

(b) Caesars shall retain all right, title and interest in and to the Restaurant Premises except for the Old Homestead Marks, Old Homestead Materials, and Old Homestead System;

(c) Caesars shall retain all right, title and interest in and to the furniture, fixtures, equipment, inventory, supplies and other tangible and intangible assets used or held for use in connection with the Restaurant, except as expressly provided in Section 4.3.3;

(d) Caesars shall retain all right, title and interest in and to Caesars Marks and Materials; and

(e) Caesars shall have the right, but not the obligation, immediately or at any time after such expiration or termination, to operate a restaurant in the Restaurant Premises; provided, however, such restaurant shall not employ the Restaurant's food and beverage menus or recipes developed by DNT pursuant to Section 3.4 or use any of the Old Homestead Marks, Old Homestead Materials or Old Homestead System.

4.3.3 Certain Rights of the DNT Parties Upon Expiration or Termination. Upon expiration or termination of this Agreement:

(a) The DNT Parties shall retain all right, title and interest in and to the Restaurant's food and beverage menus and recipes developed by DNT pursuant to Section 3.4;

(b) The DNT Parties shall retain all right, title and interest in and to the Old Homestead Marks, the Old Homestead Materials and the Old Homestead System; and

(c) In the case of termination by Caesars pursuant to Section 4.2.1, Caesars shall pay to DNT the Early Termination Payment within five (5) business days after the effective date of such termination.

5. RESTAURANT EMPLOYEES.

5.1 General Requirements.

5.1.1 Employees. Subject to the terms of this Article 5, after consulting with and giving consideration to all reasonable recommendations of DNT, Caesars shall be responsible for, and shall have final approval with respect to, hiring, training, managing, evaluating, promoting, disciplining and firing all kitchen and front-of-house management and staff of the Restaurant (collectively, the "Employees"). Notwithstanding anything herein to the contrary, all Employees, including, without limitation, all Senior Management Employees, shall be employees of Caesars and shall be expressly subject to (a) Caesars' human resources policies and procedures and hiring requirements in existence as of the Effective Date and as modified by Caesars from time to time during the Term, and (b) the Compliance Committee requirements applicable to Caesars and its Affiliates, as more particularly set forth in Section 11.2 hereof.

5.1.2 Qualified Training by Caesars. At Caesars' option, exercisable in its sole discretion, all applicants for Employee front-of-house positions that require personal contact with guests of the Restaurant, as well as all cook, pantry, pastry, bakery and other skilled kitchen positions, shall be required to undergo specialized training (the "Training") and, upon the culmination of such specialized training, pass a test reasonably related to the Training in order to be qualified as an Employee. The Training shall be conducted by Caesars and, except for Training sessions that are mandated and scheduled by Caesars, the Training shall be completed on the Employee's own time and at the Employee's expense. At Caesars' option, exercisable in its sole discretion, the Training and related test may only be required of individuals who are employees of Caesars at the time of such individual's application for a position as an Employee.

5.2 Senior Management Employees. DNT shall advise Caesars as to those individuals whom it recommends be hired for the following positions at the Restaurant, such advice to be provided within the time frames set forth below:

- (a) One full-time equivalent Chef De Cuisine/Room Chef (no later than 60 days before the Opening Date);
- (b) One full-time equivalent General Manager (no later than 45 days before the Opening Date);
- (c) Two full-time equivalent Assistant Chefs (no later than 30 days before the Opening Date);
- (d) Two full-time equivalent Assistant Managers (no later than 20 days before the Opening Date); and
- (e) Two full-time equivalent Sommeliers - one lead and one regular (no later than 20 days and 10 days before the Opening Date, respectively).

The initial and any successor Chef De Cuisine/Room Chef, General Manager, Assistant Chefs, Assistant Managers and Sommeliers shall be referred to collectively, as the "Senior Management Employees" and individually, a "Senior Management Employee", with the understanding that said designation is for the purposes of reference for this document only and shall not be deemed to create a requirement or expectation of any particular level of compensation or benefits that may otherwise be available to individuals employed by Caesars having such employment designation. Subject to the terms of this Article 5, after consulting with and giving consideration to all reasonable recommendations of DNT, Caesars shall be responsible for, and shall have final approval with respect to, hiring, training, managing, evaluating, promoting, disciplining and firing Senior Management Employees (and any additional or replacement Senior Management Employees as reasonably required by Caesars from time to time). The parties acknowledge and agree that Caesars is under no obligation to hire any individual recommended pursuant to this Section 5.2.

5.3 Union Agreements.

5.3.1 Agreements. The DNT Parties acknowledge and agree that all of Caesars' agreements, covenants and obligations and all of the DNT Parties' rights and agreements contained herein are subject to the provisions of any and all collective bargaining agreements and related union agreements to which Caesars or any of its Affiliates is or may become a party and that are or may be applicable to the Employees (as the same may be amended or supplemented from time to time, collectively, the "Union Agreements"). The DNT Parties agree that all of their agreements, covenants and obligations hereunder, including, without limitation, those obligations to train certain Employees, shall be undertaken in such manner as to be in accordance with and to assist and cooperate with Caesars' obligation to fulfill its obligations contained in the Union Agreements; provided, that Caesars now and hereafter shall advise the DNT Parties of the obligations contained in said Union Agreements that are applicable to Employees. Notwithstanding the foregoing, in no event shall the DNT Parties be deemed a party to any such Union Agreement whether by reason of this Agreement, the performance of its obligations hereunder or otherwise.

5.3.2 Amendments. The DNT Parties acknowledge and agree that from time to time during the Term, Caesars may negotiate and enter into amendments and supplements to the Union Agreements. Each Union Agreement, as so amended or supplemented, may include those provisions agreed to by and between the applicable union and Caesars, in its sole discretion, including, without limitation, provisions for (a) notifying then-existing employees of Caesars in the bargaining units represented by the applicable union of employment opportunities in the Restaurant, (b) preferences in training opportunities for such then-existing employees, (c) preferences in hiring of such then-existing employees, if such then-existing employees are properly qualified, and (d) other provisions concerning matters addressed in this Section 5.3.

5.3.3 Conflicts. Subject to the next sentence, in the event any agreement, covenant, obligation

or right of a party contained herein is, or at any time during the Term shall be, prohibited pursuant to the terms of any Union Agreement, the applicable party shall be relieved of such agreement, covenant, obligation or right, with no continuing or accruing liabilities of any kind, and such agreement, covenant, obligation or right shall be deemed to be separate and severable from the other portions of this Agreement, and the other portions shall be given full force and effect. In the event any agreement, covenant, obligation or right under this Agreement is severed from this Agreement pursuant to this Section 5.3.3, Caesars and the DNT Parties shall thereafter cooperate in good faith to modify this Agreement to provide the parties with continuing agreements, covenants, obligations and rights that are consistent with the requirements and obligations of this Agreement (including, but not limited to, the economic provisions contained herein), such Union Agreement and applicable law, rules and regulations.

5.4 Training Support.

5.4.1 Pre-Opening Training. For the period prior to the Opening Date, the DNT Parties shall advise Caesars as to the training the DNT Parties recommend be provided to the Senior Management Employees, including, without limitation, working methods, culinary style, culinary philosophy, standard of service, marketing techniques and customer service. After consulting with and giving consideration to all reasonable recommendations of the DNT Parties, Caesars shall be responsible for, and shall have final approval with respect to training Senior Management Employees and other Employees.

5.4.2 Refresher Training. As and if reasonably requested by Caesars from time to time during the Term, the DNT Parties shall advise Caesars as to the training the DNT Parties recommend be provided for refresher training of such appropriate kitchen and front-of-house Employees as reasonably selected by Caesars, including, without limitation, training with respect to any new food and beverage menus and recipes therefore developed and implemented from time to time during the Term. After consulting with and giving consideration to all reasonable recommendations of the DNT Parties, Caesars shall be responsible for, and shall have final approval with respect to such refresher training.

5.5 Evaluations. As reasonably requested by Caesars from time to time during the Term but not more than twice in any one (1) year during the Term, the DNT Parties shall cause Marc Sherry or Greg Sherry or their designated culinary expert to review, approve and make recommendations with respect to the annual evaluations of the Senior Management Employees as conducted by Caesars; provided, however, Caesars shall have final approval with respect to all aspects of same. Such evaluation services, and meetings with respect to same, shall take place in Las Vegas after reasonable advance notice.

5.6 Employment Authorization. Caesars shall be solely responsible for applying for, and shall be solely responsible for all costs and expenses related to obtaining (with the understanding that said costs shall be deemed to be an expense of the Restaurant), any work authorizations from the United States Citizenship and Immigration Services, a Bureau of the United States Department of Homeland Security ("USCIS"), that may be required in order for the Senior Management Employees to be employed by Caesars at the Restaurant; provided, however, each such Employee shall be required to cooperate with Caesars with respect to applying for such work authorization and shall be required to diligently provide to Caesars or directly to USCIS, as applicable, all information such Employee is required to provide in support of the application for such work authorization; provided further, however, the DNT Parties expressly acknowledge that, in the event that Caesars is unable to reasonably obtain such work authorization for any Employee, the offer of employment for such Employee shall be revoked and the DNT Parties shall have an obligation, within a reasonable period thereafter, to advise Caesars as to whom the DNT Parties recommend be hired for such position.

6. LICENSE.

6.1 Marks and Materials. Each of OHS, Greg Sherry and Marc Sherry represent and warrant to Caesars that OHS is and at all times during the Term will be the sole owner of the Old Homestead Marks, Old Homestead Materials and Old Homestead System and possesses, and at all times during the Term will possess, the entire right to license the Old Homestead Marks, Old Homestead Materials and Old Homestead System to DNT, free and clear of any restrictions. Each of the DNT Parties and Principals represent and warrant to Caesars that DNT possesses, and all time during the Term will possess, the right to sublicense the Old Homestead Marks, Old Homestead Materials and Old Homestead System to Caesars pursuant to this Agreement, free and clear of any

restrictions except those imposed by this Agreement.

6.2 Ownership.

6.2.1 By OHS. Caesars acknowledges and agrees that OHS is the owner of the Old Homestead Marks, Old Homestead Materials and Old Homestead System and that all use of the Old Homestead Marks (including, without limitation, any goodwill generated by such use) shall inure to the benefit of OHS and, except for the limited License set forth in this Agreement, Caesars shall not have or obtain any right, title or interest in or to any of the Old Homestead Marks, Old Homestead Materials or Old Homestead System. Notwithstanding the foregoing, the DNT Parties acknowledge and agree that Caesars shall own all copyright and other rights, title and interest in and to all materials described in Section 6.2.2(ii) below, whether such materials use or contain any or all of the Old Homestead Marks, Old Homestead Materials or Old Homestead System and, in addition to the rights granted by copyright, Caesars may use such materials and the Old Homestead Marks or Old Homestead Materials in promotional pieces listing, indicating or depicting people or entities that have or have had an appearance, relationship or other connection to Caesars or any of its Affiliates.

6.2.2 By Caesars. The DNT Parties acknowledge and agree that Caesars shall own: (i) any works, trade names, trademarks, designs, trade dress, service names and service marks, and registrations thereof and applications for registration thereof, and all works of authorship, programs, techniques, processes, formulas, developmental or experimental work, work-in-process, methods or trade secrets and all other materials, work product, intangible assets or other intellectual property rights created or developed by any party for use in association with the Restaurant or otherwise pursuant to this Agreement except for the Old Homestead Marks, Old Homestead Materials or Old Homestead System; (ii) any materials that that are created by any party pursuant to this Agreement in which the Old Homestead Marks or the Old Homestead Materials are embodied or incorporated, including, without limitation, all photographic or video images, all promotional materials produced in accordance with the provisions of Article 7 hereof and all marketing materials produced in accordance with the provisions of Article 9 hereof, and (iii) any other works, designs, trademarks, trade names, services marks and registrations thereof, programs, techniques, processes, formulas, developmental or experimental work, work-in-process, plans and specifications and any other materials or work product that were created by Caesars (clauses (i), (ii) and (iii), collectively, the "Caesars Marks and Materials"). The DNT Parties acknowledge and agree that the DNT Parties shall not have or obtain any right, title or interest in or to any of the Caesars Marks and Materials. Notwithstanding the foregoing, except as expressly provided in this Agreement, Caesars shall not acquire any rights in any Old Homestead Marks or Old Homestead Materials included or embedded in any of the Caesars Marks and Materials and shall have no right to continue to use the Caesars Marks and Materials after the expiration or termination of this Agreement if such Caesars Marks and Materials have embedded in them the Old Homestead Marks and/or the Old Homestead Materials.

6.3 Intellectual Property License. DNT hereby grants to Caesars and its Affiliates a sub-license, during the Term (the "License"), to use and employ the Old Homestead Marks, the Old Homestead System and the Old Homestead Materials on and in connection with the operation of the Restaurant in the Restaurant Premises and the marketing and promotion thereof, and in connection with the marketing, promotion and retail sale of certain products in the Restaurant Premises as is contemplated in Section 3.6 under the terms and conditions set forth in this Agreement. DNT shall, at Caesars' reasonable request and DNT's sole cost and expense, provide information or documents possessed by the DNT Parties, and execute documents, that are necessary for Caesars and its Affiliates to exercise their rights under the License.

6.4 Quality Control.

6.4.1 Quality Control Standards. Caesars acknowledges that the Old Homestead Marks have secondary meaning in the eyes of purchasers and the public, that the Old Homestead Marks enjoy an excellent reputation and that the provision of restaurant services of poor quality under the Old Homestead Marks could adversely affect such reputation. Caesars agrees that it shall use its commercially reasonable efforts to maintain the reputation of the Old Homestead Marks, and further agrees that its use of the Old Homestead Marks shall be of a quality consistent with, at a minimum, the quality used in connection with Caesars' use of its own trademarks and OHS's use of its own trademarks in the Old Homestead Steakhouses.

6.4.2 Inspection of Operations. During the Term, DNT shall have the right, upon reasonable notice and during regular business hours, to inspect Caesars' operations that touch or concern the Restaurant operation, including but not limited to inspection of the Restaurant Premises, to ensure that the quality standards for the Old Homestead Marks and the Old Homestead System are being maintained.

6.4.3 Notices. Caesars shall place appropriate trademark and copyright notices and symbols on any marketing, advertising, promotional or other materials incorporating the Old Homestead Marks and at the Restaurant Premises, with information to be included in such notices and symbols to be obtained from DNT. Moreover, Caesars shall use commercially reasonable efforts to include any specific trademark and copyright notices relating to the Old Homestead Marks as are requested by the DNT Parties.

6.5 OHS' Rights in Marks.

6.5.1 Protection. OHS, shall, at its own cost and expense, maintain in full force and effect the Old Homestead Marks and Old Homestead Materials that are registered.

6.5.2 No Registration. Caesars shall not, either during or after the Term of this Agreement: (i) use or register any mark which is identical or confusingly similar to any of the Old Homestead Marks or any variation thereof, in any jurisdiction; or (ii) register any domain name consisting of or including any of the Old Homestead Marks or any variation thereof.

6.5.3 No Challenges. Caesars acknowledges the validity of the Old Homestead Marks, and agrees that at no time either during or after the Term of this Agreement will it directly or indirectly challenge or assist others to challenge the validity or strength of the Old Homestead Marks, or OHS' ownership thereof, provided that nothing herein shall preclude Caesars from complying with any lawful subpoena or other legal requirement.

6.6 Indemnification of Caesars. OHS covenants and agrees to defend, indemnify and save and hold harmless DNT, Caesars and their respective Affiliates, stockholders, directors, officers, agents and employees from and against all claims, losses, expenses, obligations, liabilities, liens, demands, charges, litigation and judgments, including, without limitation, court costs and reasonable attorneys' fees, arising directly or indirectly from any claim by any third Person alleging that the use permitted hereunder by Caesars or its Affiliates of the Old Homestead Marks, Old Homestead Materials or Old Homestead System violates, infringes or otherwise conflicts with any intellectual property or other rights of a third Person. Caesars shall notify the DNT Parties of any such claim and OHS may and, upon Caesars' or DNT's request, shall, at OHS' sole cost and expense, defend such claim or cause such claim to be defended by counsel designated by OHS and reasonably acceptable to Caesars and DNT.

6.7 Infringement by Third Persons. OHS shall make good faith efforts to monitor industry developments for possible infringement of the Old Homestead Marks, Old Homestead Materials or Old Homestead System and shall immediately inform Caesars in writing if it becomes aware of any actual or potential infringement of the Old Homestead Marks, Old Homestead Materials or Old Homestead System. OHS shall use and shall cause its Affiliates to use all commercially reasonable efforts to prosecute infringement of Caesars' right to use the Old Homestead Marks, Old Homestead Materials or Old Homestead System granted hereunder. If OHS shall not prosecute in a reasonable and timely manner an infringement of the Old Homestead Marks, Old Homestead Materials or Old Homestead System or shall cease such prosecution once commenced, then Caesars may, but shall not be required to, prosecute such infringement. In such event, Caesars shall be entitled to retain any amounts recovered and any unrecovered out of pocket costs of prosecution shall be treated as an Operating Expense of the Restaurant. The parties shall provide to one another such information and assistance as may reasonably be requested in the course of any prosecution of infringements as contemplated by this Section 6.7.

7. PROMOTION AND OPERATIONAL PRESENCE.

7.1 Initial Promotion.

7.1.1 Greg Sherry and Marc Sherry. During the period prior to the Opening Date, each of Greg Sherry and Marc Sherry shall, as reasonably directed by Caesars, engage in promotional activities for the Restaurant,

which may include commercial photography of Greg Sherry or Marc Sherry, and review and provide advice and recommendations with respect to the Restaurant's operational, efficiency and profitability issues, the food and beverage menu standards and implementation, and Employee training, evaluations and customer service, media interviews and such other promotional events as Caesars may reasonably require. Prior to the Opening Date, Caesars may require Greg Sherry or Marc Sherry to make two (2) visits to Las Vegas, Nevada, each such visit to be for not more than two (2) consecutive days unless otherwise agreed by the parties, for such purposes, in each case as reasonably scheduled by Caesars taking into consideration the scheduling requirements described in Section 3.7. Commencing on the Opening Date, Greg Sherry or Marc Sherry shall be in Las Vegas at the Restaurant for a stay of three (3) consecutive nights. All visits by Greg Sherry or Marc Sherry under this Section 7.1.1 are referred to as the "DNT Promotional Visits" and, for the avoidance of doubt, the number of DNT Promotional Visits shall not exceed two (2).

7.2 Subsequent Restaurant Visits.

7.2.1 Greg Sherry and Marc Sherry. From and after the Opening Date, Greg Sherry or Marc Sherry shall visit and attend to the Restaurant (a) one (1) time within the first thirty (30) days following the Opening Date; and (b) four (4) times during each calendar year of the Term, which visits shall be made at consistent intervals during each calendar year of the Term and which four (4) visits shall be prorated for any year of the Term that is less than a full calendar year (collectively, the "DNT Restaurant Visits"), in each case for three (3) consecutive nights, as reasonably scheduled by Caesars taking into consideration the scheduling requirements described in Section 3.7 and, for the avoidance of doubt, DNT Restaurant Visits during any calendar year other than the year in which the Opening Date occurs shall not exceed four (4). During the DNT Restaurant Visits, Greg Sherry or Marc Sherry, as applicable, shall, as reasonably directed by Caesars, engage in promotional activities for the Restaurant, which may include the commercial photography of Greg Sherry or Marc Sherry and review and provision of advice and recommendations with respect to the Restaurant's operational, efficiency and profitability issues, the food and beverage menu standards and implementation, and Employee training, evaluations and customer service, media interviews and such other promotional events as Caesars may reasonably require.

7.2.2 Seibel. From and after the Opening Date, Rowen Seibel ("Seibel") and his designee, if he so chooses shall visit and attend to the Restaurant one (1) time each calendar quarter of each year of the Term (collectively, the "Seibel Restaurant Visits") for two consecutive nights, as reasonably scheduled by Caesars taking into consideration the scheduling requirements described in Section 3.7. During the Seibel Restaurant Visits, Seibel shall participate with Caesars in a review of Restaurant operations, standards, financial results, marketing and strategy. In the event that Seibel shall be unavailable to fulfill his obligations under this Article 7 as a result of legitimate health, personal or business reasons on one or more occasion, he shall have the right to designate one or two qualified replacements to substitute for him.

7.3 Other Las Vegas Deals. If, under the terms of any agreement or agreements with an Affiliate of Caesars relating to any food or beverage concept, Seibel is required to visit Las Vegas, Nevada, the parties will schedule the visits required hereunder and under the other agreement or agreements so that they are contiguous. If the visits under this Agreement and the other agreement or agreements are scheduled to be contiguous, the length of the visit shall be for no more than five consecutive nights unless otherwise agreed by the parties, with such portion of the visit dedicated to the Restaurant and the other concepts as determined by Caesars and its Affiliates.

7.4 Travel Expenses.

7.4.1 Greg Sherry and Marc Sherry. For each DNT Promotional Visit and DNT Restaurant Visit, Caesars shall reimburse Greg Sherry or Marc Sherry, as the case may be, the sum of Five Hundred Dollars (\$500) for round trip airfare between any airport in the metropolitan New York, New York area designated from time to time by Greg Sherry or Marc Sherry and Las Vegas McCarran International Airport. If a DNT Promotional Visit or DNT Restaurant Visit is cancelled for any reason, Caesars shall be entitled to the entire refund or credit, if any, resulting from the cancellation of a reimbursed airline ticket associated with same. During the duration of each DNT Promotional Visit and DNT Restaurant Visit, and subject to availability, Caesars shall provide for Greg Sherry's or Marc Sherry's, as the case may be, use, at no cost or expense to Greg Sherry and Marc Sherry, of a deluxe room at Caesars Palace or a property owned by an Affiliate of Caesars (room and all applicable taxes); provided, however, that Greg Sherry and Marc Sherry shall be responsible for all incidental room charges (subject to

a 30% discount) and other expenses incurred during the occupancy of such rooms.

7.4.2 Seibel. For each Seibel Restaurant Visit, Caesars shall reimburse Seibel for refundable economy class round trip airfare between any airport in the continental United States and Las Vegas McCarran International Airport up to a maximum of Five Hundred Dollars (\$500) per round trip ticket purchased. Seibel shall endeavor to ensure all such airline tickets are booked not less than eight (8) calendar days in advance of the departure date. If a Seibel Restaurant Visit is cancelled for any reason, Caesars shall be entitled to the entire refund or credit, if any, resulting from the cancellation of a reimbursed airline ticket associated with same. During the duration of each Seibel Restaurant Visit, and subject to availability, Caesars shall provide for Seibel's use, at no cost or expense to Seibel, two deluxe rooms at the Caesars Palace or a property owned by an Affiliate of Caesars (room and all applicable taxes); provided, however, Seibel shall be responsible for all incidental room charges (subject to a 30% discount) and other expenses incurred during the occupancy of such rooms.

7.4.3 General. Any cost or expense to Caesars or its Affiliates associated with the provision of travel (excluding the room rate and applicable taxes) under this Section 7.4 shall be a Project Cost or an Operating Expense of the Restaurant, as applicable. The room rate and applicable taxes relating to the provision of accommodations or lodging by Caesars or its Affiliate for Greg Sherry or Seibel (or his designee) under this Agreement shall be absorbed by Caesars or its Affiliate and shall not be considered a Project Cost or an Operating Expense of the Restaurant. If visits to the Restaurant are scheduled to be contiguous with visits to other concepts of Caesars or its Affiliates, the costs and expenses of such visits shall be apportioned among the Restaurant and such other concepts as reasonably determined by Caesars in its reasonable discretion.

8. LICENSE FEE, RESTAURANT REVENUES AND OPERATING INCOME

8.1 Net Profits. From and after the Opening Date, the Net Profits in respect of each Fiscal Year will be distributed and retained among the parties as set forth below. The amounts (but not the percentages) set forth in this Section 8.1 are based on a Fiscal Year equivalent to a calendar year. Accordingly, for the first Fiscal Year and any subsequent Fiscal Year consisting of less than twelve (12) months, the amounts set forth in Sections 8.1.4 through 8.1.4 shall be prorated based on the number of days in such Fiscal Year.

8.1.1 License Fee. First, in consideration of the Services provided hereunder, Caesars shall pay DNT a fee (the "License Fee") equal to the sum of: (a) four percent (4%) of Gross Restaurant Sales for Gross Restaurant Sales in all Fiscal Years up to and including Seven Million Seven Hundred Thirty-Five Thousand Seven Hundred Fifty-Five Dollars (\$7,735,755.00); and (b) eight percent (8%) of Gross Restaurant Sales for Gross Restaurant Sales in any Fiscal Year exceeding Seven Million Seven Hundred Thirty-Five Thousand Seven Hundred Fifty-Five Dollars (\$7,735,755.00). The License Fee shall be paid to DNT out of the Gross Restaurant Sales irrespective of whether there are Net Profits. OHS acknowledges and agrees that that it is being compensated through its license arrangement with DNT and that no license fee is due to OHS under this Agreement.

8.1.2 Capital Reserve. Beginning for periods starting on or after the second anniversary of the Opening Date, out of out of any remaining Net Profits after the payment of all amounts described in the foregoing paragraph of this Section 8.1, Caesars shall be entitled to retain a capital reserve (the "Capital Reserve") in an amount not to Four Thousand One Hundred Sixty Seven (\$4.167) per month (the amount of the aggregate Capital Reserve credited by Caesars hereunder less the aggregate amount expended by Caesars under this Section 8.1.2 is the "Capital Reserve Account"); provided, that the Capital Reserve Account shall not exceed Two Hundred Fifty Thousand (\$250,000) at any given time. No later than 90 days after the end of each quarter, Caesars shall credit the Capital Reserve Account with the Capital Reserve (if any) for such quarter. After the Opening Date, any Capital Expenditures for the Restaurant paid by Caesars shall reduce the amount of the Capital Reserve Account (but not below zero). Caesars may draw upon the Capital Reserve Account to fund Capital Expenditures in the Restaurant from time to time. Upon termination of this Agreement, any balance remaining in the Capital Reserve account shall be distributed 20% to DNT and 80% to Caesars.

8.1.3 Initial Capital Payback. Out of any Net Profits remaining after the retention and payment of all amounts described in the foregoing paragraphs of this Section 8.1, Caesars shall be entitled to retain an amount for any month not to exceed 1/60th of its Initial Capital Account. Should the amount of Net Profits for any period after the retention and payment of all amounts described in the foregoing paragraphs of this Section 8.1 be

insufficient to cover the full retention and payment contemplated by this Section 8.1.3, Caesars shall be entitled to any remaining Net Profits pro rata in accordance with the amounts of its Initial Capital Account and any shortfall shall be retained from the Net Profits in any subsequent period before payment of any other amount pursuant to the remaining paragraphs of this Section 8.1.

8.1.4 Retention by Caesars. Out of any Net Profits remaining after the retention and payment of all amounts described in the foregoing paragraphs of this Section 8.1, Caesars shall be entitled to retain an amount not to exceed the Baseline Amount.

8.1.5 Retention by/Payment to the Parties. Caesars shall be entitled to retain and DNT shall be paid the amount of any Net Profits remaining after the retention and payment of all amounts described in the foregoing paragraphs of this Section 8.1, which amount shall be split such that Caesars shall retain the sum of eighty percent (80%) of same, on the one hand, and Caesars shall pay to DNT the sum of twenty percent (20%) of the same, on the other hand; provided, however, that DNT shall not be entitled to any payment under this Section 8.1.5 from and after the occurrence of a DNT Change of Control after which less than 50% of the outstanding voting stock or membership interests of DNT (or any successor entity resulting from such transaction) is held by Rowen Seibel or his Affiliates or if Rowen Seibel otherwise ceases to be engaged in the business of DNT consistent with the level of such engagement as of the date hereof, unless such DNT Change of Control was occasioned by the death or disability of Rowen Seibel, in which event DNT shall remain entitled to all payments otherwise due under this Section 8.1.5.

8.2 Timing and Manner of Payments. The License Fee and all other amounts payable or retainable pursuant to Section 8.1 shall be paid or retained, as the case may be, on a calendar quarter basis. Amounts payable to DNT under Section 8.1 shall be paid by Caesars no later than thirty (30) days after the end of the quarter to which they relate by check, money order or wire transfer in lawful funds of the United States of America to such address or account located within the United States of America as directed by DNT from time to time. Unless otherwise directed in a written instrument signed by OHS, DNT and Rowen Seibel, it is agreed that Caesars shall pay all amounts due to DNT pursuant to this Agreement as follows:

8.2.1 The four percent (4%) License Fee due DNT pursuant to Section 8.1.1 (a) shall be paid two and one-half percent (2.5%) to OHS and one and one-half percent (1.5%) to Rowen Seibel or his designee.

8.2.2 The eight percent (8%) License Fee (if any) due DNT pursuant to Section 8.1.1(b) shall be paid four percent (4%) to OHS and four percent (4%) to Rowen Seibel or his designee.

8.2.3 The Net Profits (if any) due DNT pursuant to Section 8.1.5 shall be paid fifty percent (50%) to OHS and fifty percent (50%) to Rowen Seibel or his designee.

8.2.4 Any distribution of a Capital Reserve due DNT pursuant to Section 8.1.2 and any payment of an Early Termination Payment, should the same become payable to DNT pursuant to this Agreement, shall be paid to OHS and Rowen Seibel (or his designee), on behalf of DNT, in the same ratio that the aggregate of all amounts due DNT pursuant to the entire Section 8.1 for the twelve complete months ended at the end of the calendar month immediately prior to the effective date of termination of this Agreement were payable pursuant to this Section 8.2.

8.3 Calculations. Caesars shall be solely responsible for maintaining and shall maintain, all books and records necessary to calculate the amounts retainable and payable under Section 8.1 and, within thirty (30) days after the end of each quarter during each Fiscal Year shall deliver notice to DNT reasonably detailing the calculation of all such amounts. Caesars' calculations shall be conclusive and binding unless, (i) within thirty (30) calendar days of Caesars delivery of such notice, DNT notifies Caesars in writing of any claimed manifest calculation error therein; or (ii) such calculations are determined to be inaccurate as the result of any audit pursuant to Section 8.4. Upon receipt of any such notification, Caesars shall review the claimed manifest calculation error and, within thirty (30) calendar days of such notification, advise DNT as to the corrected calculation, if any. Absent such notification and such manifest calculation error, Caesars' calculations shall be binding on the parties.

8.4 Audit. Subject to the remaining provisions of this Section 8.4, DNT shall be entitled at any time, and its sole cost and expense, upon ten (10) calendar days' notice to Caesars, but not more than two (2) times per calendar year, to cause an audit to be made, during normal business hours, by any Person designated by DNT and approved by Caesars (who shall not unreasonably withhold, delay or condition said approval), of all books, records, accounts and receipts required to be kept for the calculation of the amounts retainable and payable under Section 8.1, which shall not include tax returns of Caesars filed on a consolidated basis, which audit shall be conducted without material disruption or disturbance to Caesars' operations. If such audit discloses that any amount retainable or payable under Section 8.1 was calculated in error, Caesars shall be entitled to review such audit materials and to conduct its own audit related to such period. If Caesars does not dispute the result of DNT's audit within ninety (90) days after conclusion and presentation by DNT to Caesars of DNT's findings, Caesars shall (in the next quarterly allocation) pay to DNT such additional monies necessary to compensate DNT. If such audit discloses that the amount owed by Caesars to DNT for any Fiscal Year exceeds the amount paid to DNT for such year by more than five percent (5%), Caesars shall pay DNT the actual third party costs of such audit. Caesars may condition any audit under this Section 8.4 on the receipt of a confidentiality undertaking from any Person to whom information will be disclosed in connection with such audit, in form and substance satisfactory to Caesars.

9. OPERATIONS.

9.1 Marketing and Publicity. As reasonably required by Caesars from time to time during the Term, the DNT Parties shall cause the Principals to consult with Caesars, and provide Caesars with advice regarding the marketing of the Restaurant. Notwithstanding the foregoing or anything to the contrary contained herein, Caesars shall have the right to make all determinations regarding advertising, sales and promotional materials, press releases and other publicity materials and statements relating to the Restaurant or the transactions contemplated by this Agreement and the DNT Parties will not, and will cause their Affiliates not to, publish, make or use any such materials or statements without the prior written consent of Caesars. Marketing consultations and meetings with respect to same, shall take place in Las Vegas. Throughout the Term, Caesars shall, without charge and not as an Operating Expense, market and advertise the Restaurant in a manner reasonably consistent with how other partnered, first class, gourmet restaurants in Caesars Palace are marketed by Caesars.

9.2 Operational Efficiencies. As reasonably required by Caesars from time to time during the Term, the DNT Parties shall cause the Principals to consult with Caesars and provide Caesars with advice regarding the Restaurant's food and beverage menus, quality standards, and operational, efficiency and profitability issues; provided, however, Caesars, after considering all reasonable recommendations received from the DNT Parties, shall have final approval with respect to all aspects of same. Such operational consulting and advice and meetings with respect to same, shall take place in Las Vegas.

10. REPRESENTATIONS AND WARRANTIES.

10.1 Caesars' Representations and Warranties. Caesars hereby represents and warrants and covenants to the DNT Parties that:

(a) Caesars is a limited liability company duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization;

(b) Caesars has the valid corporate power to execute and deliver, and perform its obligations under, this Agreement and such execution, delivery and performance has been authorized by all necessary corporate action on the part of Caesars;

(c) no consent or approval or authorization of any Person is required in connection with Caesars execution and delivery, and performance of its obligations under, this Agreement and the execution and performance of this Agreement by Caesars does not and shall not result in the violation of any agreement to which Caesars or its Affiliates is a party or any court order, law, regulation or rule applicable to Caesars or its Affiliates;

(d) there are no actions, suits or proceedings pending or, to the best knowledge of Caesars, threatened against Caesars in any court or administrative agency that would prevent Caesars from completing the

transactions provided for herein;

(e) this Agreement constitutes the legal, valid and binding obligation of Caesars, enforceable in accordance with its terms;

(f) as of the Effective Date, no representation or warranty made herein by Caesars contains any untrue statement of material fact, or omits to state a material fact necessary to make such statements not misleading; and

(g) the Restaurant shall be a first-class gourmet restaurant at all times from and after the Opening Date, Caesar currently contemplates that the Restaurant will have at least 250 seats (including the bar area) and, except as otherwise required by law, regulation or legal process, at all times from and after the Opening Date, the Restaurant will have at least 225 seats (including the bar area); and

(h) to the extent that Caesars or its Affiliates utilizes a "point" or any similar system to offer complimentary, discounted or promotional food, beverage or merchandise to customers, the Restaurant shall be treated no less favorably with regard to redemption of "points" than any other restaurant in Caesars Palace, such that, for example, if the best rate for redemption of "points" in Caesars Palace is "1 point" per \$1 of menu price, the Restaurant will allow for redemption at the same (or lower) rate, but will not require that more than one point be redeemed for each \$1 of menu price. In any event, Gross Restaurant Sales will include the full menu price of such complimentary, discounted or promotional food, beverage and merchandise given to customers.

10.2 The DNT Parties' Representations and Warranties. Each of the DNT Parties hereby jointly and severally represents and warrants to Caesars that:

(a) DNT is a limited liability company duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization and OHS is a corporation duly incorporated, validly existing, and in good standing under the laws of the jurisdiction of its incorporation;

(b) each of the DNT Parties has the legal capacity to execute and deliver, and perform its obligations under, this Agreement;

(c) no consent or approval or authorization of any applicable governmental authority or Person is required in connection with the execution and delivery by each of the DNT Parties of, and performance by each of the DNT Parties of its obligations under, this Agreement;

(d) there are no actions, suits or proceedings pending or, to the best knowledge of the DNT Parties, threatened against either of the DNT Parties in any court or before any administrative agency that would prevent the DNT Parties from completing the transactions provided for herein;

(e) this Agreement constitutes the legal, valid and binding obligation of each of the DNT Parties, enforceable in accordance with its terms; and

(f) as of the Effective Date, no representation or warranty made herein by the DNT Parties contains any untrue statement of a material fact, or omits to state a material fact necessary to make such statements not misleading.

11. STANDARDS; PRIVILEGED LICENSE.

11.1 Standards. The DNT Parties acknowledge that the Caesars Palace is an exclusive first-class resort hotel casino and that the Restaurant shall be an exclusive first-class restaurant and that the maintenance of Caesars', the Old Homestead Marks', Caesars Palace's and the Restaurant's reputation and the goodwill of all of Caesars', Caesars Palace's and the Restaurant's guests and invitees is absolutely essential to Caesars, and that any impairment thereof whatsoever will cause great damage to Caesars. The DNT Parties therefore covenant and agree that (a) they shall not and they shall cause their Affiliates not to use or license Old Homestead Marks, Old Homestead Materials

or Old Homestead System in a manner that is inconsistent with, or take any action that dilutes or denigrates, the current level of quality, integrity and upscale positioning associated with the Old Homestead Marks, Old Homestead Materials and Old Homestead System and (b) 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 casino and an exclusive, first-class restaurant. The DNT Parties shall 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 any of the DNT Parties, their Affiliates or any of their respective agents, employees, servants, contractors or licensees to maintain the standards described in this Section 11.1 shall, in addition to any other rights or remedies Caesars may have, give Caesars the right to terminate this Agreement pursuant to Section 4.2.2 in its sole and absolute discretion.

11.2 Privileged License. The DNT Parties acknowledges that Caesars and Caesars' Affiliates are businesses that are or may be subject to and exist because of privileged licenses issued U.S., state, local and foreign governmental, regulatory and administrative authorities, agencies, boards and officials (the "Gaming Authorities") responsible for or involved in the administration of application of laws, rules and regulations relating to gaming or gaming activities or the sale, distribution and possession of alcoholic beverages. The Gaming Authorities require Caesars, and Caesars deems it advisable, to have a compliance committee (the "Compliance Committee") that does its own background checks on, and issues approvals of, Persons involved with Caesars and its Affiliates. Prior to the execution of this Agreement and, in any event, prior to the payment of any monies by Caesars to the DNT Parties hereunder, and thereafter on each anniversary of the Opening Date during the Term, (a) the DNT Parties shall provide to Caesars written disclosure regarding the DNT Associates, and (b) the Compliance Committee shall have issued approvals of the DNT Associates. Additionally, during the Term, on ten (10) calendar days written request by Caesars to the DNT Parties, the DNT Parties shall disclose to Caesars the identity of all DNT Associates. To 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. The DNT Parties shall cause all DNT Associates to provide all requested information and apply for and obtain all necessary approvals required or requested by Caesars or the Gaming Authorities. If any DNT Associate fails to satisfy or 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 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 11.2 shall not be subject to dispute by the DNT Parties and shall not be the subject of any proceeding under Article 13.

12. CONDEMNATION; CASUALTY; FORCE MAJEURE.

12.1 Condemnation. In the event that during the Term the whole of the Restaurant shall be taken under power of eminent domain by any governmental authority or conveyed by Caesars to any governmental authority in lieu of such taking, then this Agreement shall terminate as of the date of such taking. In the event that during the Term a substantial portion of the Restaurant (thirty percent (30%) or more) shall be taken under power of eminent domain by any governmental authority or conveyed by Caesars to any governmental authority in lieu of such taking (as determined by Caesars in its sole and absolute discretion), Caesars may, in the exercise of its sole discretion, terminate this Agreement upon written notice give not more than thirty (30) calendar days after the date of such taking. All compensation awarded by any such governmental authority shall be the sole property of Caesars and the DNT Parties shall have no right, title or interest in and to same except that the DNT Parties may pursue their own separate claim provided their claim will not reduce the award granted to Caesars.

12.2 Casualty.

12.2.1 Permanent and Substantial Damage. If the Caesars Palace or Restaurant experiences any Permanent Damage or any Substantial Damage, in each case Caesars shall have the right to terminate this Agreement upon written notice having immediate effect delivered to the DNT Parties within one hundred and twenty (120) days after the occurrence of the Permanent Damage or Substantial Damage, as the case may be. All insurance proceeds recovered in connection with any damage or casualty to the Caesars Palace or Restaurant shall be the sole property of Caesars and the DNT Parties shall have no right, title or interest in and to same.

12.2.2 Obligation in Connection With a Casualty. If (i) Caesars does not terminate this Agreement in the event of a Substantial Damage to the Caesars Palace or Restaurant within the time periods provided in Section 12.2.1, (ii) restoration and repair of the damage is permitted under applicable Law and the terms of any agreement to which Caesars or any of its Affiliates is a party and (iii) Caesars has received net insurance proceeds sufficient to complete restoration and repair, Caesars shall use commercially reasonable efforts to restore and repair the Caesars Palace or Restaurant, as applicable, to its condition and character immediately prior to the damage. If all such restoration and repair is not completed within one hundred eighty (180) days following the occurrence of the damage, the DNT Parties shall have the right to terminate this Agreement upon written notice having immediate effect delivered to Caesars within one hundred and twenty (120) days after one hundred eighty (180) days following the date of the damage and Caesars shall have no liability related to the failure of such completion to have occurred.

12.3 Excusable Delay. In the event that during the Term any party shall be delayed in or prevented from the performance of any of such party's respective agreements, covenants or obligations hereunder by reason of strikes, lockouts, unavailability of materials, failure of power, fire, earthquake or other acts of God, restrictive applicable laws, riots, insurrections, the act, failure to act or default of the other party, war, terrorist acts or other reasons wholly beyond its control and not reasonably foreseeable (each, an "Excusable Delay"), then the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, lack of funds shall not be deemed an Excusable Delay. Any claim for an extension of time due to an Excusable Delay must be made in writing and received by the other party not more than fifteen (15) calendar days after the commencement of such delay, otherwise, such party's rights under this Section 12.3 shall be deemed waived.

12.4 No Extension of Term. Nothing in this Article 12 shall extend the Term and no other payments shall accrue during any period during which the Restaurant is closed by reason of such condemnation, casualty or Excusable Delay.

13. ARBITRATION.

13.1 Dispute Resolution. Except for a breach of Section 2.3, 2.4, 14.18 or Article 6, in the event of any other dispute, controversy or claim arising out of or relating to this Agreement between the parties to this Agreement ("Dispute"), either party may serve written notice (a "Dispute Notice") upon the other party setting forth the nature of the Dispute and the relief sought, and the parties shall attempt to resolve the Dispute by negotiation. If the Dispute has not been resolved within thirty (30) days of receipt of a Dispute Notice, either party may serve on the other party a request to resolve the Dispute by arbitration. All Disputes not resolved by the foregoing negotiation shall be finally settled by binding arbitration. Such arbitration shall be held in Las Vegas, Nevada in accordance with the Commercial Rules of Arbitration of the American Arbitration Association ("AAA"), in effect on the date of the Dispute Notice (the "Rules") by one or more arbitrators appointed in accordance with Section 13.2 hereof.

13.2 Arbitrator(s). If the claim in the Dispute Notice does not exceed Two Hundred Thousand and 00/100 Dollars (\$200,000.00), there shall be a single arbitrator nominated by mutual agreement of the parties and appointed according to the Rules. If the claim in the Dispute Notice exceeds Two Hundred Thousand and 00/100 Dollars (\$200,000.00), the arbitration panel shall consist of three (3) members unless both parties agree to use a single arbitrator. One of the arbitrators shall be nominated by Caesars, one of the arbitrators shall be nominated by the DNT Parties and the third, who shall serve as chairman, shall be nominated by the two (2) party-arbitrators within thirty (30) days of the confirmation of the nomination of the second arbitrator. If either party fails to timely nominate an arbitrator in accordance with the Rules, or if the two (2) arbitrators nominated by the parties fail to

timely agree upon a third arbitrator, then such arbitrator will be selected by the AAA Court of Arbitration in accordance with the Rules. The arbitral award shall be final and binding on the parties and may be entered and enforced in any court having jurisdiction over any of the parties or any of their assets.

14. MISCELLANEOUS.

14.1 No Partnership or Joint Venture. Nothing expressed or implied by the terms of this Agreement shall make or constitute any party hereto the agent, partner or joint venturer of and with any other party. Accordingly, the parties acknowledge and agree that all payments made to DNT under this Agreement shall be for the license provided and/or the services rendered as an independent contractor and, unless otherwise required by law, Caesars shall report as such on IRS Form 1099, and both parties shall report this for financial and tax purposes in a manner consistent with the foregoing.

14.2 Successors, Assigns and Delagees. No party may assign this agreement or any right, benefit or obligation hereunder, or delegate any obligation hereunder, without the prior written of the other parties (which consent may be withheld in such other parties' sole discretion); provided, however, that Caesars may assign or delegate all or any portion of this Agreement to an Affiliate of Caesars and may assign this Agreement in whole as contemplated by Section 14.4. Without limiting the foregoing, the parties acknowledge and agree that Caesars is relying upon the skill and expertise of the Principals in entering into this Agreement and accordingly, the obligations and duties of the DNT Parties specifically designated hereunder to be performed by the Principals are personal to each such Principal and are not assignable or delegable by the DNT Parties or any Principal to any other Person without the prior written consent of Caesars (which consent may be withheld in Caesars' sole discretion). Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns and delagees.

14.3 Waiver of Rights. Failure to insist on compliance with any of the agreements, obligations and covenants hereof shall not be deemed a waiver of such agreements, obligations and covenants, nor shall any waiver or relinquishment of any right or power hereunder at any one or more time or times be deemed a waiver or relinquishment of such rights or powers at any other time or times. The exercise of any right or remedy shall not impair Caesars' or the DNT Parties' right to any other remedy.

14.4 Divestiture or Transfer of Management Rights of Caesars Palace. Notwithstanding Section 14.2, Caesars may assign this Agreement to any purchaser or other acquirer of the Caesars Palace or to any entity to which Caesars assigns management or operational responsibility of the Caesars Palace. Notwithstanding the foregoing, Section 2.3 shall terminate upon consummation of such divestiture or assignment unless otherwise agreed by the acquirer or assignee.

14.5 Notices. Any notice or other communication required or permitted to be given by a party hereunder shall be in writing, and shall be deemed to have been given by such party to the other party or parties, and received by the other party or parties, (a) on the date of personal delivery, (b) on the next business day following any facsimile transmission to a party at its facsimile number set forth below (if confirmation of transmission is received), (c) three (3) calendar days after being given to an international delivery company, or (d) ten (10) calendar days after being placed in the mail, as applicable, registered or certified, postage prepaid addressed to the following addresses (each of the parties shall be entitled to specify a different address by giving notice as aforesaid):

If to Caesars, to:

Desert Palace, Inc.
3570 Las Vegas Boulevard South
Las Vegas, Nevada 89109

With a copy (which shall not constitute notice) to:

Caesars Entertainment Corporation
One Caesars Palace Drive

Las Vegas, Nevada 89109
Attention: General Counsel

If to the DNT/DNT Parties:

Mr. Rowen Seibel
200 Park Avenue South
New York, New York 10019

With copies (which shall not constitute notice) via facsimile and e-mail to:

Brian K. Ziegler, Esq.
Certilman Balin Adler & Hyman, LLP
90 Merrick Avenue
East Meadow, New York 11554
Facsimile No.: (516) 296-7111
Email: bziegler@certilmanbalin.com

and to

Alan M. Lebensfeld, Esq.
Lebensfeld Borker Sussman & Sharon LLP
140 Broad Street
Red Bank, New Jersey 07701
Facsimile No. (732) 530-4601
E-Mail: alan.lebensfeld@lbands.com

If to OHS, to:

Mr. Greg Sherry
c/o The Old Homestead Steakhouse
56 9th Avenue
New York, New York 10011-4901
Facsimile No. (212) 727-1637

With copies (which shall not constitute notice) via facsimile and e-mail to:

Alan M. Lebensfeld, Esq.
Lebensfeld Borker Sussman & Sharon LLP
140 Broad Street
Red Bank, New Jersey 07701
Facsimile No. (732) 530-4601
E-Mail: alan.lebensfeld@lbands.com

14.6 Entire Agreement. This 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.

14.7 Severability. If any part of this Agreement is determined to be void, invalid or unenforceable, such void, invalid, or unenforceable portion shall be deemed to be separate and severable from the other portions of this Agreement, and the other portions shall be given full force and effect, as though the void, invalid or unenforceable portions or provisions were never a part of this Agreement.

14.8 Amendment and Modification. No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound. No waiver of any of the provisions

of this Agreement shall be deemed or shall constitute a waiver of any other provisions (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

14.9 Headings. Article or Section headings are not to be considered part of this Agreement and are included solely for convenience and reference and shall not be held to define, construe, govern or limit the meaning of any term or provision of this Agreement. References in this Agreement to an Article or Section shall be reference to an Article or Section of this Agreement unless otherwise stated or the context otherwise requires.

14.10 Governing Law: Submission to Jurisdiction; Specific Performance.

(a) The laws of the State of Nevada applicable to agreements made in that State shall govern the validity, construction, performance and effect of this Agreement.

(b) Notwithstanding any other provision of this Agreement, the parties acknowledge and agree that monetary damages would be inadequate in the case of any breach of the covenants contained in Section 2.3, 2.4 or 14.18 or Article 6 of this Agreement. Accordingly, Caesars shall be entitled, without limiting its other remedies and without the necessity of proving actual damages or posting any bond, to equitable relief, including the remedy of specific performance or injunction, with respect to any breach or threatened breach of such provisions, covenants or obligations hereunder and each party (on behalf of itself and its Affiliates) consents to the entry thereof. In the event that any proceeding is brought in equity to enforce the provisions of this Agreement, no party hereto shall allege, and each party hereto hereby waives the defense or counterclaim that there is an adequate remedy at law.

(c) Subject to the provisions of Section 13.1, the DNT Parties and Caesars each agree to submit to the exclusive jurisdiction of any state or federal court within the Clark County Nevada (the "Nevada Courts") for any court action or proceeding to compel or in support of arbitration or for provisional remedies in aid of arbitration, including but not limited to any action to enforce the provisions of Article 13 (each an "Arbitration Support Action") or for any action or proceeding contemplated by Section 14.10(b). Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding in a Nevada Court arising out of this Agreement including, but not limited to, an Arbitration Support Action or action or proceeding contemplated by Section 14.10(b) and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

14.11 Interpretation. This Agreement is to be deemed to have been prepared jointly by the parties hereto, and if any inconsistency or ambiguity exists herein, it shall not be interpreted against either party but according to the application of rules of the interpretation of contracts. Each party has had the availability of legal counsel with respect to its execution of this Agreement. The use of the terms "includes" or "including" shall in all cases herein mean "includes, without limitation" and "including, without limitation", respectively. When an obligation or duty under this Agreement is to be performed by a Principal, this Agreement shall be interpreted as if such obligation or duty was an obligation or duty of the DNT Parties for purposes of responsibility for any breach of such obligation or duty.

14.12 Third Persons. Except as provided in Section 14.15 and 14.17, nothing in this Agreement, expressed or implied, is intended to confer upon any Person other than the parties hereto any rights or remedies under or by reason of this Agreement.

14.13 Attorneys' Fees. The prevailing Party in any dispute that arises out of or relates to the making or enforcement of the terms of this Agreement shall be entitled to receive an award of its expenses incurred in pursuit or defense of said claim, including, without limitation, attorneys' fees and costs, incurred in such action.

14.14 Counterparts. This Agreement may be executed in counterparts, each one of which so executed shall be deemed an original, and both of which shall together constitute one and the same agreement.

14.15 Indemnification Against Third Party Claims.

14.15.1 By Caesars. Caesars covenants and agrees to defend, indemnify and save and hold harmless the DNT Parties, their Affiliates and their and their Affiliates' respective stockholders, directors, members, managers, officers, agents and employees from and against all claims, losses, expenses, obligations, liabilities, liens, demands, charges, litigation and judgments, including court costs and reasonable attorneys' fees, incurred or suffered by them arising directly or indirectly from any claim, action, suit, demand, assessment, investigation, arbitration or other proceeding by or in respect of a any third Person (a "Third-Party Claim") arising out of Caesars' performance of or failure to perform its obligations under or in connection with this Agreement.

14.15.2 By OHS. OHS covenants and agrees to defend, indemnify and save and hold harmless Caesars and its Affiliates and DNT and its Affiliates and their and their Affiliates' respective stockholders, directors, members, managers, officers, agents and employees from and against all claims, losses, expenses, obligations, liabilities, liens, demands, charges, litigation and judgments, including court costs and reasonable attorneys' fees, incurred or suffered by them arising directly or indirectly from any Third-Party Claim arising out of OHS' performance of or failure to perform its obligations under or in connection with this Agreement.

14.15.3 By DNT. DNT covenants and agrees to defend, indemnify and save and hold harmless Caesars and its Affiliates and OHS and its Affiliates and their and their Affiliates' respective stockholders, directors, officers, agents and employees from and against all claims, losses, expenses, obligations, liabilities, liens, demands, charges, litigation and judgments, including court costs and reasonable attorneys' fees, incurred or suffered by them arising directly or indirectly from any Third-Party Claim arising out of DNT's performance of or failure to perform its obligations under or in connection with this Agreement.

14.15.4 Procedures. In connection with any Third Party Claim for which a Person (any of such Persons, an "Indemnified Person") is entitled to indemnification under this Section 14.15, the Indemnified Person asserting a claim for indemnification under this Section 14.15 shall notify the party from which indemnification is being sought (the "Indemnifying Person") of such Third Party Claim and the Indemnifying Person shall, at its sole cost and expense, defend such Third Party Claim or cause the same to be defended by counsel designated by the Indemnifying Person and reasonably acceptable to the Indemnified Person. Notwithstanding the foregoing, the Indemnified Person, at the Indemnifying Person's expense, if the Indemnifying Person does not undertake and duly pursue the defense of such Third Party Claim in a timely manner or, in the case of Caesars, if the Third Party Claim is asserted by any Governmental Authority, may defend the action, suit or proceeding or cause the same to be defended by counsel designated by the Indemnified Person. Neither the Indemnified Person nor the Indemnifying Person shall settle or compromise any Third Party Claim that is the subject of a claim for indemnification under this Section 14.15 without the prior written consent of the other.

14.16 Insurance. The DNT Parties will maintain at all times during the Term, insurance for claims which may arise from, or in connection with, services performed / products furnished by the DNT Parties, its agents, representatives, employees or subcontractors with coverage at least as broad and with limits of liability not less than those stated below. Notwithstanding the DNT Parties' obligation to maintain the coverage described herein, Caesars shall pay for the policy premium related to said coverage, with said premium payment being treated as an Operating Expense as such is defined herein.

- I. Workers Compensation and Employers Liability Insurance: Statutory workers compensation coverage, Employers liability insurance - \$1,000,000 each accident, \$1,000,000 disease, each employee, \$1,000,000 disease, policy limit
- II. General Liability Insurance: Limits: \$1,000,000 per occurrence, \$2,000,000 aggregate / include - Products / Completed Operations, Blanket Contractual Liability, Independent Contractor Liability, Broad form property damage, Cross liability, severability of interests, Personal and advertising injury, Medical Expense Coverage, Fire Legal Liability / Damage to Rented Premises
- III. Automobile Liability Insurance (if applicable): Liability limits: \$1,000,000 combined single limit, \$1,000,000 uninsured and underinsured motorist, Covers owned, hired and non-owned Vehicles
- IV. Umbrella Liability Insurance: Limits: \$3,000,000 per occurrence and aggregate, Provides excess limits over General Liability, Automobile Liability, and Employers Liability coverages, Coverage

shall be no more restrictive than the applicable underlying policies

Evidence of Insurance: Before the Effective Date, immediately upon the renewal of any policy required above, and upon request, the DNT Parties shall provide Caesars and Caesars Operating Company, Inc. with a Certificate of Insurance in accordance with the foregoing and referencing the services to be provided. Such certificate of insurance is to be delivered to Caesars and in electronic format to Ins_Certs@Caesars.com.

General Terms: All policies of insurance shall (1) provide for cancellation of not less than thirty (30) days prior written notice to Caesars and Caesars Operating Company, Inc., (2) have a minimum A.M. Best rating of A+, (3) be primary and non-contributory with respect to any other insurance or self-insurance program of Caesars or Caesars Operating Company, Inc., and (4) provide a waiver of subrogation in favor of Caesars and Caesars Operating Company, Inc. The DNT Parties further agree that any subcontractors engaged by the DNT Parties will carry like and similar insurance with the same additional insured requirements.

Additional Insured. Insurance required to be maintained by the DNT Parties pursuant to this Section 14.16 (excluding workers compensation) shall name Caesars Palace Operating Company, LLC and Caesars Operating Company, Inc., including their parent, affiliated or subsidiary corporations, and their respective agents, officers, members, directors, employees, successors and assigns, as additional insureds. The coverage for an Additional Insured shall apply on a primary basis and shall be to the full limits of liability purchased by the DNT Parties even if those limits of liability are in excess of those required by this contract.

Failure to Maintain Insurance. Failure to maintain the insurance required in this Section 14.16 will constitute a material breach and may result in termination of this Agreement at Caesars' option except if failure to maintain such insurance is caused by Caesars' acts or omissions.

Representation of Insurance. By requiring the insurance as set out in this Section 14.16, Caesars does not represent that coverage and limits will necessarily be adequate to protect the DNT Parties, and such coverage and limits shall not be deemed as a limitation on the DNT Parties' liability under the indemnities provided to Caesars in this Agreement, or any other provision of the Agreement.

14.17 Withholding and Tax Indemnification.

(a) The DNT Parties represent that no amounts due to be paid to the DNT Parties hereunder are subject to withholding. If Caesars is required to deduct and withhold from any payments or other consideration payable or otherwise deliverable pursuant to this Agreement to the DNT Parties any amounts under the Internal Revenue Code of 1986, as amended (the "Code"), or any provision of United States federal, state, local or foreign law, statute, regulation, treaty, administrative ruling, pronouncement or other authority or judicial opinion, Caesars agrees that, prior to said deduction and withholding, it shall provide the DNT Parties with notice of same. To the extent such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Agreement as having been paid to the person to whom such amounts would otherwise have been paid. If requested by Caesars, the DNT Parties shall promptly deliver to Caesars all the appropriate Internal Revenue Service forms necessary for Caesars, in its sole and absolute discretion deems necessary to make a determination as to its responsibility to make any such U.S. federal withholding with respect to any payment payable pursuant to this Agreement.

(b) Notwithstanding anything to the contrary in this Agreement, the DNT Parties shall be responsible for and shall jointly and severally indemnify and hold harmless Caesars and its Affiliates against (i) all Taxes (including, without limitation, any interest and penalties imposed thereon) payable by or assessed against Caesars or any of its Affiliates with respect to all amounts payable by Caesars to the DNT Parties pursuant to this Agreement and (ii) any and all claims, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees and expenses) suffered or paid by Caesars or any of its Affiliates as a result of or in connection with such Taxes. Caesars shall have the right to reduce any payment payable by Caesars to the DNT Parties pursuant to this Agreement in order to satisfy any indemnity claim pursuant to this Section 14.17. For purposes of this Section 14.17, the term "Tax" or "Taxes" means all taxes, assessments, charges, duties, fees, levies or other governmental charges, including all federal, state, local and foreign income, franchise, profits, capital gains, capital stock, transfer, sales, use, value added, occupation, property, excise, severance, windfall profits, stamps, license, payroll, social

security, withholding and other taxes, or other governmental assessments, duties, fees, levies or charges of any kind whatsoever, all estimated taxes, deficiency assessments, additions to tax, penalties and interest.

14.18 Confidentiality.

(a) Each party agrees that it shall not use, nor shall it induce or permit others to use, any of the Confidential Information of another party for any purpose other than to further the purpose of this Agreement consistent with the terms hereof or as otherwise contemplated hereby. Each party further agrees that it shall not reveal, nor shall it permit or induce others to reveal, any of the Confidential Information of another party to any other Person: (i) except to the Representatives of the receiving party to the extent such Persons require knowledge of the same in connection with the transactions contemplated in this Agreement or their representation of the receiving party; (ii) except as required to comply with applicable laws, regulation or legal process (but only after compliance with Section 14.18(b)); and (iii) except as otherwise agreed by the party to which the Confidential Information belongs in writing. Each party receiving, or whose Representatives receive, Confidential Information of another party (a "Recipient") shall inform its Representatives of the proprietary nature of such Confidential Information and shall be responsible for any further disclosure of such Confidential Information by any such Representative unless the Recipient would have been permitted to make such disclosure hereunder. Each Recipient, upon written request following termination of this Agreement, shall destroy any Confidential Information of another party in its or any of its Representative's possession (and certify to the destruction thereof).

(b) In the event that a Recipient or any of its Representatives is requested or required by applicable law, regulation or legal process to disclose any of the Confidential Information of another party, the Recipient will notify the other party promptly in writing so that the other party may seek a protective order or other appropriate remedy, or, in the other party's sole discretion, waive compliance with the terms of this Agreement. The Recipient agrees not to, and agrees to cause its Representatives not to, oppose any action by the other party to obtain a protective order or other appropriate remedy. In the event that no such protective order or other remedy is obtained, or that the other party waives compliance with the terms of this agreement, the Recipient and its respective Representatives will furnish only that portion of the Confidential Information of the other party which the Recipient is advised by its counsel is legally required to be disclosed at that time and the Recipient will exercise its reasonable best efforts to obtain confidential treatment, to the extent available, for such Confidential Information so disclosed.

14.19 Subordination. For the avoidance of doubt, the Agreement does not create in favor of the DNT Parties any interest in real or personal property or any lien or encumbrance on the Caesars Palace or any ground or similar lease affecting all or any portion of the Caesars Palace (as the same may be renewed, modified, consolidated, replaced or extended, a "Ground Lease"). The DNT Parties acknowledges and agrees that Caesars may from time to time assign or encumber all or any part of its interest in the Caesars Palace or any Ground Lease by way of any one or more mortgages, deeds of trust, security agreements or similar instruments (as the same may be renewed, modified, consolidated, replaced or extended, "Mortgages"), assign or encumber all or any part of its interest in this Agreement as security to any holder of a Mortgage or a landlord under a Ground Lease or enter into a Ground Lease. The rights of The DNT Parties hereunder whether with respect to the Caesars Palace and the revenue thereof or otherwise, be inferior and subordinate to the rights and remedies of the holder of any Mortgage and the landlord under any Ground Lease. For the avoidance of doubt, the DNT Parties shall have no right to encumber or subject the Caesars Palace or the Restaurant, or any interest of Caesars therein, to any lien, charge or security interest, including any mechanic's or materialman's lien, charge or encumbrance of any kind. The DNT Parties, at their sole cost and expense, shall promptly cause any and all such liens, charges or security interests to be released by payment, bonding or otherwise (as acceptable to Caesars in its sole discretion) within ten (10) days after the DNT Parties first has notice thereof. If the DNT Parties fail to timely take such action, Caesars may pay the claim relating to such lien, charge or security interest and any amounts so paid by Caesars shall be reimbursed by the DNT Parties upon demand.

14.20 Comps and Reward Points. The DNT Parties shall be entitled to reasonable comp privileges to be reasonably agreed to by the parties. Caesars shall cause the Restaurant to participate in Caesars' reward points system and the Restaurant shall be entitled to receive the point redemption thresholds in place as of the date of this Agreement for other first class, gourmet restaurants in the Caesars Palace. For purposes of this Agreement, one reward point shall entitle the holder thereof to \$1.00 of food or beverage in the Restaurant.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date first written hereinabove.

Desert Palace, Inc.

By:
Name:
Its:
Date:

A handwritten signature in black ink, written over a horizontal line. The signature is stylized and appears to be a name, possibly "Desert Palace".

DNT Acquisition, LLC

By: Rowen Seibel
Name: Rowen Seibel
Its: _____
Date: 6/23/11

The Original Homestead Restaurant, Inc.

By: Greg Sherry
Name: Greg Sherry
Its: Pres.
Date: 6/21/11

Solely with respect to Sections 2.3, 2.4 and 6.1 of this Agreement:

Rowen Seibel
Rowen Seibel
Date: _____

Greg Sherry
Greg Sherry
Date: 6/21/11

Marc Sherry
Marc Sherry
Date: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date first written hereinabove.

Desert Palace, Inc.

By: _____
Name:
Its:
Date:

DNT Acquisition, LLC

By: _____
Name:
Its:
Date:

The Original Homestead Restaurant, Inc.

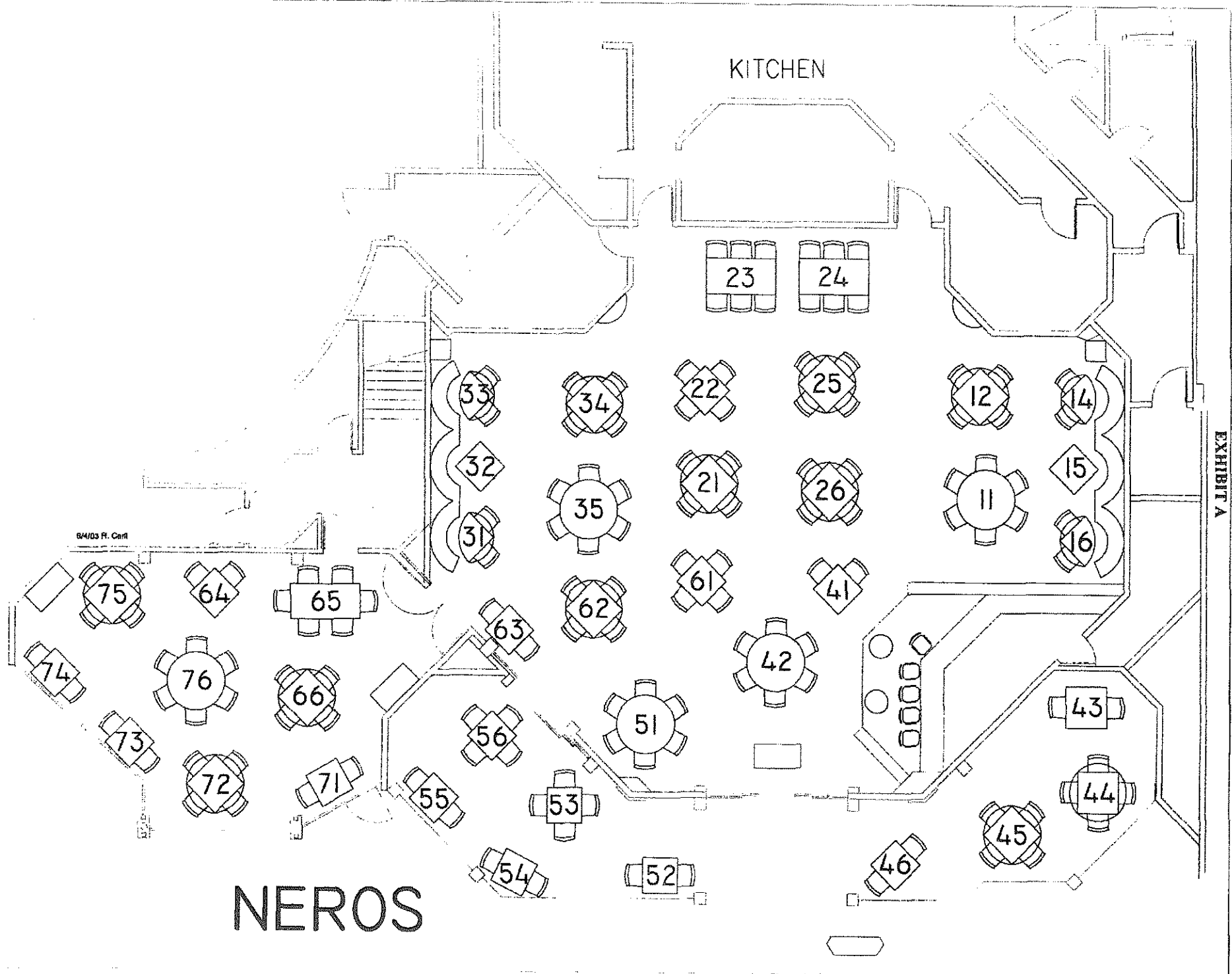
By: Marc Sherry 6/21/11
Name:
Its:
Date:

Solely with respect to Sections 2.3, 2.4 and 6.1 of this Agreement:

Rowen Seibel
Date:

Greg Sherry
Date:

Marc Sherry 6/21/11
Marc Sherry
Date:



NEROS

EXHIBIT A

REPORT ID: W48895
 RECEIVING OFFICE - W48-2868 NEWARK
 PERIOD: 04/2011

CAESARS ENTERTAINMENT, INC.
 OPERATING STATEMENT DETAIL DEPARTMENT: 2260/2260 NEW 5

RUN DATE: 3/13/2011
 RUN TIME: 16:55:20
 PAGE: 7

CONTR	CURR	BUDGET	AMOUNT	AMOUNT	PERIOD	PERIOD	ACCOUNT	DESCRIPTION	F-Y-O	F-Y-O	F-Y-O	F-Y-O	PERIOD
ACTUAL	BUDGET	ACTUAL	ACTUAL	ACTUAL	ACTUAL	ACTUAL			ACTUAL	BUDGET	BUDGET	BUDGET	ACTUAL
AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT			AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT
								SALARY & WAGES-NO					
								LEAVE-ACCUMULATED					
								OT WAGES-UNDEVELOPED					
								VACATION PAYS					
								TTL SALARIES & WA					
								UNEMP-HOLIDAY PAY					
								LONG TERM DISABIL					
								SHORT TERM DISABIL					
								LABOR RELATIONSHIP					
								STRIKE PAYS					
								TERMINAL EMPLOYER					
								* ALL EMPLOYER					
								* OTHER EMPLOYER					
								MAJOR BENEFITS					
								MAJOR MEDICAL					
								GENERAL BENEFITS					
								LIAB BENEFITS					
								VISITOR BENEFITS					
								UNEMPLOYMENT COMPENSA					
								UNEMP PAYS					
								UNEMP BENEFITS					
								EMPLOYEE BENEFITS					
								TOTAL OTHER PAYS					
								TOTAL PAYROLL					
								CREDIT CARD CHARG					
								TOTAL BAD DEBT					

REPORT ID: R000000
 SCHEDULE: 00-000
 VERSION: 04/2011

CASUALTY ENTERTAINMENT, I.A.C.
 OPERATING STATEMENT DETAIL: OPERATING EXPENSES

PER DATE: 3/31/2011
 PER TIME: 10:55:28
 PAGE: 3

DEPT	ACTUAL	BUDGET	VARIANCE	ACTUAL	VARIANCE	ACCOUNT	DESCRIPTION	Y-T-D	Y-T-D	Y-T-D	Y-T-D	Y-T-D	Y-T-D
	A	B	A-B	A	A-B			AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT
							SUPPLIES						
							SUPPLIES-BAF & RE						
							SUPPLIES-CLEANING						
							TOTAL SUPPLIES						
							REPAIRS & MAINTEN						
							TOTAL REPAIRS/MAI						
							CONSUMER ACCOUNTS						
							INSURANCE-ELIOTT						
							LEASE CONTRACT						
							FINANCIAL SERVICE						
							CONTRACT - AUDIO						
							PERMIT - CAMP DISSEM						
							LABORER						
							LABORER - LIBRARI						
							LABORER - OFFICER						
							TRUCK & EQUIP						
							TELEPHONE						
							POSTAGE & PLANTS						
							OTHER EXPENSES						
							TOTAL OTHER EXPEN						
							TOTAL EXP B						
							REF ALLOC						
							ALLOCATION IN						
							TOTAL EXTRA PROF AC						
							TOTAL EXPENSES						
							OPERATING INCOME/						
							OR INCOME						

REPORT ID: R0486G
 COLLECTION: LD-01P-1100-2010 REVENUES
 FUND: 04-201

CASAS ENTERTAINMENT, INC.
 OPERATIONAL STATEMENT DETAIL DEPARTMENT 2740/3342 NHD'S

WIB DATE: 5-31-2011
 SUB TIME: 10:56:20
 PAGE: 3

CURRENT ACTUAL AMOUNT	CURRENT BUDGET AMOUNT	%	BUDGET VARIANCE AMOUNT	%	TRIAL PR ACTUAL AMOUNT	PSIDR NB VARIANCE AMOUNT	ACCOUNT DESCRIBE	Y-T-D ACTUAL AMOUNT	%	Y-T-D BUDGET AMOUNT	%	Y-T-D BUDGET VARIANCE	Y-T-D ACTUAL AMOUNT	%	VAR %
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OP STATEMENT SUMMARY

TOTL REVENUE
 RECEIVED REVENUE
 OTHER REVENUE
 TOTAL REVENUES
 CES INCD
 CES REFURGE
 CES OTHER
 TOTAL CES
 GROSS PROFIT
 DEPRECI
 BAD DEBT EXPENSE
 SUPPLIES
 15 MONTHS MAINTENAN
 OTHER EXPENSES
 NET LIP 0
 NET INCD
 NETRA PRO
 TOTAL COMPENS
 OPERATING INCOME/

TOTL DMS
 CENTRI-OR
 CENTRI-OR
 AVERAGE C
 AVERAGE F
 AVERAGE H

REPORT ID: R0785
SECTION: CO-OP --NO-PHO BONERS
FOLDER: 06701

CASARS ENTERTAINMENT, INC.
OPERATIONAL STATEMENT DETAIL DEPARTMENT 21605560 MDD'S

JOB DATE: 5/23/2011
JOB TIME: 10:29:10
PAGE: 8

ACCOUNT	UNLINT	BUDGET	PERIOD	FISCAL	FISCAL	ACCOUNT	DESCRIPTION	Y-T-D	Y-T-D	Y-T-D	Y-T-D	PERIOD
AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT

EXP PER C
EXP PER C
SAL PER UNEMP/INS
SAL & MSA PER COE
TR EXP PER COE

EXHIBIT C

N31-070 Old Homestead (to replace Nero's at CP)
 Preliminary Budget to \$2,000,000
 Date: March 2, 2011

SCOPE OF WORK

Renovation of the existing Nero's restaurant at Casanova Place to a newly branded restaurant, Old Homestead. Includes remodel and expansion of the existing bar and complete remodel of existing finishes.

ADMINISTRATIVE & DESIGN COSTS	AMOUNT
01 - DESIGN & CONSULTING FEES	\$ 515,000
02 - TESTING & INSPECTION	\$ 2,500
03 - PERMITS & FEES	\$ 17,700
05 - PROJECT MANAGEMENT	\$ 18,000
C.S. % of project cost	
Total Admin & Design	\$ 294,200
CONSTRUCTION COSTS	AMOUNT
04 - COMPANY CONSTRUCTION	\$ -
08 - GENERAL CONSTRUCTION (Contractor)	\$ 614,000
- DEMOLITION	\$ -
09 - GENERAL CONSTRUCTION (OWNER Perform)	\$ 65,000
10 - FURNITURE, FIXTURES & EQUIPMENT	\$ 299,000
Sub Total Construction Costs	\$ 1,164,000
Total Design & Construction Costs	\$ 1,418,773
SOFT COSTS	AMOUNT
22 - INFORMATION TECHNOLOGY	\$ 48,000
24 - GAMING EQUIPMENT, FURNITURE & SUPPLIES	\$ -
25 - DEPARTMENT FURNITURE, FIXTURES & SUPPLIES	\$ 176,000
30 - PRE-OPENING	\$ 138,000
Sub Total Soft Costs	\$ 358,000
TOTAL DESIGN, CONSTRUCTION, & SOFT COSTS	\$ 1,772,773
32 - CAP INTEREST	\$ 44,400
35 - CONTINGENCY	\$ 181,818
TOTAL PROJECT ESTIMATE	\$ 2,000,000

Item	Cost	Per Sq Ft	Notes
Construction Cost Per Sq Ft	\$ 475		
Project Cost per Sq Ft	\$ 475		
COR Per Sq Ft	\$ 2.15		

EXHIBIT D
SIGNATURE DISH LIST

Appetizers

- Maryland Lump Crabmeat Cocktail
- Colossal Crab Cake
- Chefs Special Bread Preparation
- Raw Bar (Shellfish Platter)

Salads

- Classic Caesar Salad
- Wedge of Iceberg Lettuce Salad
- Mozzarella Di Buffala & Tomato Salad
- Vine Ripened Tomato and Red Onion Salad

Sides

- Truffle Mac & Cheese
- Creamed Spinach
- Slab Bacon

Steaks

- Prime Grade New York Sirloin (various sizes)
- Sirloin Steak Au Poivre
- The Gotham Rib Steak on the Bone (various sizes)
- The Empire Cut of Prime Rib on the Bone
- Steak Filet Mignon on the Bone
- Filet Mignon on the Bone Au Poivre
- Filet Mignon (various sizes)

w/ hashed brown potato cake, bordelaise

w/ wrapped in applewood smoked bacon , hashed brown potato cake, bordelaise sauce

- Porterhouse Steak for Two

Burger

- American Kobe Burger

Seafood

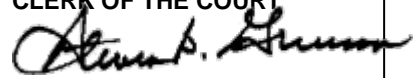
- 2 ½ LB. & 4 ½ Whole Lobsters

Dessert

- NY Style Cheese Cake
- Big Fat Chocolate Cake

EXHIBIT E

Non-Allocated Outlet Services	Est Cost 2011- 2020	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Accounting - Invoice Processing											
Call Center - Restaurant Reservations											
Engineering - Light Maintenance & Repairs											
EVS - Cleaning Services (Dust / Carpet / Bathrooms)											
F&B Administration - Senior Leaders etc.											
HR - (Benefits / Training / Labor Relations)											
Marketing / PR - Signage / Packages / PR											
Payroll - Payroll Processing											
Procurement - Ordering / Receiving											
Refuse - Trash / Recycling / Asset Recovery											
Risk Management - Life Safety Training / Claims											
Security - Safety / Surveillance											
Tech Support - IT, Telephone, Internet etc.											
Utilities - Water, Sewer, Electric, Gas											
Total Per Year		\$8,228.11	\$16,895.81	\$25,725.90	\$34,820.79	\$44,188.52	\$53,837.29	\$63,775.52	\$74,011.89	\$84,555.36	\$95,415.13



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20 *LLTQ Enterprises, LLC; LLTQ Enterprises 16, LLC;*
21 *FERG, LLC; FERG 16, LLC; MOTI Partners, LLC;*
22 *and MOTI Partners 16, LLC*

23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 ROWEN SEIBEL, an individual and citizen of
26 New York, derivatively on behalf of Real Party
27 in Interest GR BURGR LLC, a Delaware limited
28 liability company,

Plaintiff,

v.

PHWLV, LLC, a Nevada limited liability
company; GORDON RAMSAY, an individual;
DOES I through X; ROE CORPORATIONS I
through X,

Defendants,

AND ALL RELATED MATTERS

Case No.: A-17-751759-B
Dept. No.: 15

Consolidated with:
Case No.: A-17-760537-B

**REPLY IN SUPPORT OF AMENDED
MOTION TO DISMISS OR, IN THE
ALTERNATIVE, TO STAY CLAIMS
ASSERTED AGAINST LLTQ/FERG AND
MOTI DEFENDANTS**

This document applies to:
A-17-760537-B

**Hearing Date: April 4, 2018
Hearing Time: 9:00 a.m.**

Defendants LLTQ ENTERPRISES 16, LLC (“LLTQ 16”), LLTQ ENTERPRISES, LLC
 (“LLTQ”), and FERG 16, LLC (“FERG 16”), FERG, LLC (“FERG” and together with LLTQ 16, LLTQ
 and FERG 16, the “LLTQ/FERG Defendants”), MOTI PARTNERS 16, LLC (“MOTI 16”)m and MOTI

1 PARTNERS, LLC (“MOTI” and together with MOTI 16 the “MOTI Defendants”) hereby submit their
2 combined reply in support of their respective amended motions (the “Motion”) to dismiss or, in the
3 alternative, to stay the claims asserted against the LLTQ/FERG Defendants in the complaint filed on
4 August 25, 2017, seeking equitable and declaratory relief (the “NV Complaint”).

5 INTRODUCTION

6 Comprehensive relief as imagined by the plaintiffs simply is not available in this forum, or in
7 any other. Five separate pieces of litigation exist across state and federal courts in connection with six
8 contracts among four plaintiffs on the one hand and ten defendants on the other. Critically, the
9 Contested Bankruptcy Matters¹ have been pending for nearly three years and present defenses and legal
10 disputes restated in the NV Complaint with respect to two plaintiffs, the LLTQ/FERG Defendants, and
11 the MOTI Defendants. Moreover, there are parts of the Contested Bankruptcy Matters that this court
12 simply cannot decide, i.e. the substantive relief sought by those parties under sections 363, 365 and
13 503 of the Bankruptcy Code.

14 In their combined response to the Motion (the “Response”) the plaintiffs cite to cases where
15 separate actions have been consolidated, though none similar to the number and scope of the prior
16 pending actions at issue here. Most cases cited in the Response involve disputes in insurance coverage
17 litigation (or proceeds from a descendant’s estate) where multiple creditors are seeking the same funds
18 or the parties are fighting over indemnification. Also, in many cases, the competing litigation had been
19 **filed only weeks or sometimes days apart**. In stark contrast, the Contested Bankruptcy Matters will
20 surpass a three year anniversary in June 2018 in federal bankruptcy court. Despite years of litigation
21 and extensive discovery, through the NV Complaint, the Debtor Plaintiffs improperly seek to add two
22 non-debtor plaintiffs and six defendants to the disputed issues in the Contested Bankruptcy Matters and
23 have their defenses adjudicated in state court via declaratory judgment.

24 Fifteen of the sixteen parties to the NV Action are already subject to five separate actions
25 involving six different contracts for five different restaurant ventures. Substantive differences exist in
26 the prior litigation, the underlying contracts, and restaurant ventures; for example: some ventures
27

28 ¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed in the Motion.

1 involve the Ramsay brand, others do not; some actions must be decided by Nevada law, some by New
2 Jersey law, and other relationships are governed by New York law and by Delaware law; some disputes
3 require application of federal bankruptcy law; some involve business relationships with joint ventures
4 formed with third parties who are not defendants, while some contracting parties are defendants herein;
5 in some, but not all disputes, assignment of ownership and contractual rights are at issue; some
6 restaurants were literally built through substantive capital investments made by the defendants, while
7 other restaurants did not require such contributions; and some restaurants are still operating
8 notwithstanding purported termination, some are alleged to be “rebranded”, and others have been shut
9 down. Each of the foregoing factors have been raised in and are contested in the various prior pending
10 litigation, thus precluding “comprehensive” sweeping relief to be provided on a uniform basis as
11 requested by plaintiffs.

12 The heart of the instant disputes are restrictive covenants in the Pub Agreements, which
13 collectively govern the Ramsay Pubs and Ramsay Steak restaurants (i.e. two of the five restaurant
14 ventures). Caesars, CAC and the LLTQ/FERG Defendants have been engaged in contested litigation
15 over these restrictive covenants for nearly three years in the Illinois Bankruptcy Court. Contrary to the
16 alleged goals of efficiency and preservation of judicial resources, adding two plaintiffs and eight
17 defendants to these matters will only delay resolution. The quickest way to resolve the parties’ central
18 disputes (i.e. the fraudulent inducement and rescission defenses reasserted in Counts II and III) is to
19 allow the Illinois Bankruptcy Court decide the matters without having this Court simultaneously seek
20 to adjudicate the same issues. Moreover, a declaratory judgment is not a proper mode of determining
21 the sufficiency of legal defenses to a pending action, much less multiple pending actions. The Debtor
22 Plaintiffs added additional litigants who are not parties to the Pub Agreements to disguise their blatant
23 forum shopping.

24 Accordingly, the Motion should be granted.

25
26 ///

ARGUMENT

I. The overarching defense to Motion is based on an errant premise that comprehensive relief is available in this Court.

The conceit for the NV Complaint is that the plaintiffs have an absolute right to comprehensive relief in one forum. They do not. Such relief is simply not available here, where the NV Complaint (a) generically asserts three propositions for declaratory judgment across six different contracts entered among separate and distinct parties over a span of six years for six different restaurants, and (b) is the last to be filed after four separate pieces of litigation involving the various restaurant ventures, all of which were pending in different federal and state courts across four states (collectively, the “Prior Litigation”). “Comprehensive relief” is a theme throughout the Response in an effort to: (i) distract this Court from the Debtor Plaintiffs’ forum shopping; and (ii) evade the “first to file” rule. This Court simply cannot provide comprehensive relief to all parties for all disputes. The Illinois Bankruptcy Court, on the other hand, can comprehensively resolve all disputes between the Debtor Plaintiffs and the LLTQ/FERG Defendants and between the Debtor Plaintiffs and the MOTI Defendants. This Court should therefore dismiss or stay the NV Complaint to allow the Prior Litigation to proceed to their respective conclusions.

A. The NV Complaint improperly attempts to homogenize rights and obligations under six different contracts.

The plaintiffs argue that the NV Complaint should not be dismissed in favor of the Prior Litigation because the NV Complaint is “broader” in scope and thus more comprehensive. It is not. Rather, the NV Complaint is an overly-simplified attempt to homogenize the separate and distinct disputes among the different parties separately asserted in the Prior Litigation.

1. The NV Complaint improperly conflates the multiple defendants

While the Plaintiffs purport to have terminated all of the underlying contracts at the same time, the viability and effect of the termination cannot be resolved uniformly through the NV Action. Each restaurant venture is different, governed by different contracts with different terms among different parties.

The plaintiffs allege that Mr. Rowen Seibel is the unifying link among all the defendants to the NV Complaint. Mr. Seibel, however, cannot be equated to a single corporate entity in lieu of the multiple

1 separate contracting entities to the various agreements at issue. Pursuant to section 13.10 of the LLTQ
2 Agreement, Nevada law governs “the validity, construction, performance and effect” of the contract.
3 LLTQ Agree. (Ex. R to the Response), § 12.10. Nevada generally treats corporations and shareholders
4 as separate legal entities. *See Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1241 (D. Nev.
5 2008). Pursuant to section 14.10 of the FERG Agreement, New Jersey law governs “the validity,
6 construction, performance and effect” of the contract. FERG Agree. (Ex. T to the Response), § 14.10.
7 New Jersey courts similarly hold as a “fundamental proposition” that a corporation is a separate entity
8 from its shareholders. *Richard A. Pulaski Const. Co., Inc. v. Air Frame Hangars, Inc.*, 195 N.J. 457,
9 472, 950 A.2d 868, 877 (2008). Nowhere in the NV Complaint do the plaintiffs allege they entered into
10 a contract with Mr. Seibel, individually, or that the corporate veil should be pierced.

11 In a similar vein, the Debtor Plaintiffs previously tried to conflate Mr. Seibel with the separate
12 contracting entity parties in the Contested Bankruptcy Matters, which theory the Illinois Bankruptcy
13 Court rejected. At a hearing on February 15, 2017, months before the filing of the NV Action, the
14 Illinois Bankruptcy Court commented that LLTQ, FERG and MOTI “are not Mr. Seibel. . .” A true and
15 correct copy of the 2-15-17 Transcript is attached hereto as Exhibit A; *see* p. 23, lines 16-19. The Illinois
16 Bankruptcy Court also stated that the disputes between the Debtor Plaintiffs and LLTQ/FERG
17 Defendants on the one hand, and their disputes with MOTI Defendants on the other, were different and
18 had to be kept separate. “I don’t want to have one great big – **I don’t want to think of this as the Rowen**
19 **Seibel dispute singular. I would rather keep these apart, if we can, because I have a sense they’re**
20 **really different.** There is the Ramsay stuff and there is the Moti stuff.” A true and correct copy of the
21 3-23-17 Transcript is attached hereto as Exhibit B; *see* p. 21, lines 18-21 (Emphasis added).

22 Indeed, even within the Contested Bankruptcy Matters the disputes involving MOTI Defendants
23 are separate and distinct from the disputes involving the LLTQ/FERG Defendants. In connection with
24 the MOTI administrative expense claim, the Illinois Bankruptcy Court must decide whether there is a
25 controlling written agreement among the parties in the first instance. Depending on whether the MOTI
26 Agreement (as modified by an unsigned written amendment) controls, the parties’ disputes related to
27 suitability may be irrelevant. Specifically, the Illinois Bankruptcy Court stated:

28

1 But it wasn't signed, so it's not a written amendment. I mean, this just raises another
2 issue. That's the whole problem with this whole thing. I don't know the answer to this.
3 If people propose a written amendment to a written contract, and they never execute
4 it, but then they operate post expiration of the original agreement as if this has been
5 signed, what do we have? (Exhibit A, p. 20, lines 10-17)

6 *****

7 Isn't there also a question about this suitability requirement if in fact the contract
8 expired? I mean, I don't think you can pull these issues apart. If the written agreement
9 that had that requirement in it expired, and the parties were operating on some other
10 basis, then I don't even know if it would be relevant anymore. I'm just not sure. That's
11 why, again, I can't get past this expiration problem. (*Id.* at p. 25, lines 1-9.)

12 After supplemental briefing on the issue, the Illinois Bankruptcy Court reiterated that there may
13 no longer be an operative written document controlling the parties' relationship. At a hearing conducted
14 on June 21, 2017, the Illinois Bankruptcy Court indicated that the MOTI Agreement was not subject to
15 a written extension, and that an evidentiary hearing is required to determine the parties' relationship with
16 respect to the Serendipity restaurant. A true and correct copy of the 6-21-17 Transcript is attached hereto
17 as Exhibit C. At the hearing, the Illinois Bankruptcy Court stated:

18 My research suggests the following. One, based at least on the facts that I have now,
19 the contract was not extended. The parties continued operating, but not under the
20 contract. They continued operating in some new way. Exactly how they operated and
21 in what new way isn't entirely clear to me. [Exhibit C, p. 29, lines 16-22]

22 *****

23 So I think we're going -- and unless you're able to convince me in a way you haven't
24 so far, and I realize we're not at that point, that this contract really was extended -- we
25 are going to have a factual question about what the terms were. And we know what
26 factual questions require. They require an evidentiary hearings.

27 *Id.* at p. 30, lines 17-23.

28 The NV Complaint does not seek a determination as to the terms that governed the parties' relationship,
an issue set to be determined by the Illinois Bankruptcy Court. If the MOTI Agreement does not control,
the suitability provisions therein are inapplicable and no relief can be afforded under the NV Complaint.
The MOTI Defendants are thus in a wholly different position vis-à-vis Caesars and its suitability issues
than the LLTQ/FERG Defendants and any of the other defendants named in the NV Complaint.

In addition to the foregoing, Mr. Gordon Ramsay and his brand are an essential part of the Pub
Agreements and the Ramsay Pubs, but are unassociated with (a) the Serendipity restaurant and the MOTI

1 Agreement, and (b) the Old Homestead restaurant and the DNT Agreement. There are thus different
2 brands and different parties at issue but which were not made part of the NV Complaint; neither Mr.
3 Ramsay nor his entities are parties to the NV Complaint. The Illinois Bankruptcy Court has opined on
4 this issue. In connection with a discovery dispute and a motion to compel filed by the LLTQ/FERG
5 Defendants in the Contested Bankruptcy Matters, Mr. Ramsay argued that he was not a party to the
6 Contested Bankruptcy Matters. At a hearing conducted on September 20, 2017, the Illinois Bankruptcy
7 Court elaborated on the central role Mr. Ramsay plays in the Contested Bankruptcy Matters specific to
8 the Pub Agreements.

9 “Therefore, [Mr. Ramsay] says, he is entitled to special consideration a party would
10 otherwise not receive.

11 Ramsay is mistaken. He is at the very center of the dispute between FERG, LLTQ,
12 and the debtors. The FERG and LLTQ agreements would not have come about but for
13 the debtors’ desire to have Ramsay-branded pubs. The debtors have their own
14 agreements with Ramsay, and the debtors have sought to reject those agreements and
15 enter into new ones with him. The suggestion that Ramsay is some sort of third party,
16 a mere bystander here, is simply not credible. So whatever special considerations to
17 which non-parties might be entitled will not be extended to him.”

18 9-20-17 Transcript, p. 14, lines 1-14.

19 As demonstrated by the rulings to date in the Contested Bankruptcy Matters, the unique
20 circumstances among all the defendants are not subject to uniform relief.

21 **2. The NV Complaint will not result in one consistent ruling for all three counts
22 across the 12 different defendants and 6 separate contracts.**

23 The foregoing makes clear that not only are the defendants unique, but so are the legal issues
24 between them and the various plaintiffs. There are different facts at issue for each of the restaurant
25 ventures and each contract. For example, only MOTI and DNT executed “Business Information Forms”
26 in connection with their contracts with Caesars (the “MOTI/DNT BIFs”). Complaint, ¶¶27, 38. No
27 other defendant executed a Business Information Form, yet Plaintiffs’ reliance on the disclosures
28 contained in the MOTI/DNT BIFs are at the heart of the suitability disputes in the NV Complaint. *Id.*
at ¶¶36, 55, 65, 77 and 87. Therefore, for some defendants, but not all, Plaintiffs will have to demonstrate
why they relied on representations from third parties to proceed with the underlying restaurant ventures.

1 For example, Caesars and CAC will have to show that they actually and reasonably relied on a
2 MOTI/DNT BIF three years after their execution for the Pub Agreements when neither MOTI nor DNT
3 are parties to the Pub Agreements.

4 As summarized below, a host of different facts and circumstances apply to the various
5 defendants, their respective contracts with the plaintiffs, the respective legal issues among the parties,
6 and the status of the Prior Litigation:

- 7 i. Each restaurant is a different enterprise, with different branding and intellectual
8 property, subject to separate contracts. Complaint, ¶¶26, 37, 47, 57, 69 and 79.
- 9 ii. Caesars required capital contributions from MOTI in 2009 to build the Serendipity
10 restaurant (MOTI Agree, Exhibit W to the Response, § 1.1), and from LLTQ in
11 2012 to build the first Ramsay Pub (LLTQ Agree., Ex. R to the Response, § 3.2(d)).
- 12 iii. Some of the restaurant ventures involve Mr. Ramsay and his brand, while others
13 do not. *Id.*
- 14 iv. The FERG Agreement is subject to New Jersey law (FERG Agree., Ex T to the
15 Response, § 14.10), whereas many of the underlying contracts are subject to
16 Nevada law. Response, p. 14.
- 17 v. Caesars has shut down the Serendipity restaurant subject to the original MOTI
18 Agreement (Complaint, ¶123), while all other restaurants remain open.
- 19 vi. The MOTI Agreement does not contain a definition of “Unsuitable Person” (Ex.
20 W to the Response), while the other contracts have defined this terms. Complaint,
21 ¶¶43, 53, 62, 74 and 84.
- 22 vii. Plaintiff Planet Hollywood has purported to open “a rebranded restaurant with
23 Gordon Ramsay” (Complaint, ¶128) in connection with the GR Burger restaurant,
24 but none of the other restaurant ventures are subject to an alleged rebranding.
- 25 viii. This Court has decided a motion for preliminary injunction in connection with the
26 GR Burger restaurant. Complaint, ¶127.
- 27 ix. The federal district court has already decided a motion to dismiss the Prior
28 Litigation involving the TPOV Defendants, granting in part and denying in part
the motion. Complaint, ¶129.
- x. Extensive discovery has been conducted in the Contested Bankruptcy Matters
(Complaint, ¶124).

- 1 xi. As part of the Contested Bankruptcy Matters the Debtor Plaintiffs sought approval
- 2 of the Illinois Bankruptcy Court to enter into new agreements with Gordon Ramsay
- 3 to replace the Pub Agreements (Ramsay Rejection Motion, Ex. F to the Motion),
- 4 which approval must be decided under section 363 of the Bankruptcy Code and
- 5 has not been awarded to date.
- 6
- 7 xii. Count III of the NV Complaint is based on specific restrictive covenants contained
- 8 in certain contracts, the covenants in the LLTQ Agreement and FERG Agreement
- 9 are already at issue in the Contested Bankruptcy Matters. Complaint, ¶121.
- 10
- 11 xiii. Each contract treats termination differently and contains express language
- 12 detailing the parties’ rights upon termination. For example:
- 13
- 14 a. Section 4.3 of the LLTQ Agreement states that the restrictive covenants in
- 15 section 13.22 survive termination. Ex. R to the Response.
- 16
- 17 b. Section 4.1 of the FERG Agreement provides that the FERG Agreement
- 18 shall be in effect and binding on any new agreements between CAC and
- 19 Mr. Ramsay. Ex. T to the Response.
- 20
- 21 c. Section 3.2.3 of the MOTI Agreement provides for an early termination
- 22 payment to be made to MOTI if Caesars terminate the contract “for any
- 23 reason or no reason at all.” Ex. W to the Response.

24 **B. Truly comprehensive relief requires adjudication of the Contested Bankruptcy**

25 **Matters by the Illinois Bankruptcy Court.**

26 Only the Illinois Bankruptcy Court can decide the Contested Bankruptcy Matters. These

27 disputes involve rejection under section 365 of the Bankruptcy Code, administrative claims under 503

28 of the Bankruptcy Code, and distributions under the Plan for claims against the Debtor Plaintiffs.

Therefore, while the NV Complaint attempts to provide a single forum for all **parties**, it cannot and does

not purport to resolve all **claims** among those parties. This is the fundamental fallacy of the proposed

comprehensive relief under the NV Complaint.

II. Taken as a whole, the NV Complaint represents an improper request for this Court to

determine defenses pending in the Contested Bankruptcy Matters.

The plaintiffs assert in their Response that the LLTQ/FERG Defendants advocated that Counts

II and III of the NV Complaint be prosecuted outside of the Illinois Bankruptcy Court. Response, pp.

10, 21. Their citation to the record in this regard is incomplete and misleading. This matter is addressed

fully in the Motion (¶¶19-26). In summary, in a contested motion the Debtor Plaintiffs and LLTQ/FERG

Defendants took contrary positions whether the fraudulent inducement and rescission defenses were

1 properly before the Illinois Bankruptcy Court as part of the Contested Bankruptcy Matters. The Illinois
2 Bankruptcy Court decided in favor of the Debtor Plaintiffs (i.e. denying the LLTQ/FERG Defendants’
3 Protective Order Motion) and allowed them to take suitability discovery and pursue these defenses
4 without requiring the Debtor Plaintiffs to file any separate or additional litigation. Motion, ¶¶25, 26
5 (fn1).

6 There is no dispute that the Debtor Plaintiffs first raised the fraudulent inducement and rescission
7 defenses in the Contested Bankruptcy Matters. Complaint, ¶124; Motion, ¶23. Even if a court
8 determines that termination was **proper** in the first instance, the **effect** of the termination remains the
9 determination critical to the Contested Bankruptcy Matters. The LLTQ/FERG Defendants have asserted
10 in the Contested Bankruptcy Matters that the fraudulent inducement and rescission defenses asserted
11 therein are unavailable as a matter of law regardless of the purported termination. *See* Protective Order
12 Motion (Ex. N to Motion), ¶¶40-46, 55-58.

13 “A declaratory judgment is not a proper mode of determining the sufficiency of legal defenses
14 to a pending action.” 22A Am. Jur. 2d Declaratory Judgments § 36. However, this is exactly what
15 Debtor Plaintiffs ask this Court to do, having conceded Counts II and III and the related defenses of
16 fraudulent inducement and rescission were first raised (and discovery was pursued thereon) in the
17 Contested Bankruptcy Matters. In addition, Count I cannot be separated from the Contested Bankruptcy
18 Matters because the Debtor Plaintiffs’ continued operation of the Ramsay Pubs, regardless of the
19 purported termination of the Pub Agreements, forms the basis for LLTQ/FERG’s Admin Claim.
20 Complaint, ¶122. As such, the issues presented in Counts I-III of the NV Complaint cannot be separated
21 from the Contested Bankruptcy Matters and the NV Complaint should be dismissed.

22 **III. The Nevada Bankruptcy Court’s conclusions in the Removed Claims have no**
23 **precedential value and are not binding on this Court.**

24 Throughout the Response, the plaintiffs cite to the Nevada Bankruptcy Court’s conclusions in
25 connection with the Removed Claims. In particular, plaintiffs reference such conclusions in alleged
26 support of this forum to decide the Contested Bankruptcy Matters and to rebut forum shopping. The
27 conclusions contained in the Removed Claims, however, are neither binding nor persuasive for several
28 reasons.

1 First, the conclusions are unsupported by findings of fact and are being challenged on appeal.
2 The findings included in the Findings of Fact and Conclusions of Law (the “Removal Decision”) are
3 only a barebones recital of the pleadings filed in the Illinois Bankruptcy Court, the various counts of the
4 NV Complaint, and the pleadings filed in the Nevada Bankruptcy Court. Ex. A to Response, ¶¶1-22.
5 Nowhere in the Removal Decision did the Nevada Bankruptcy Court review or consider the decisions
6 the Illinois Bankruptcy Court made with respect to the fraudulent inducement and rescission claims or
7 other theories previously raised by the Debtor Plaintiffs in the Contested Bankruptcy Matters. There is
8 therefore no basis for this Court to rely on the unsupported conclusion in the Removal Decision with
9 respect to forum shopping, and this Court should review the record in the Illinois Bankruptcy Court for
10 itself.

11 Second, the Nevada Bankruptcy Court conclusions have no precedential value and are not
12 binding on this Court in connection with the Motion or beyond. That court was not presented with and
13 did not decide the Motion or the motions to dismiss filed by the other defendants. If a federal court
14 grants a motion for remand, it necessarily leaves the disposition of any other matter to the state court.
15 *See Thee Sombrero, Inc. v. Murphy*, 2015 WL 4399631, at *1 (C.D. Cal. July 17, 2015) (citing
16 *Christopher v. Stanley–Bostitch, Inc.*, 240 F.3d 95, 100 (1st Cir. 2001) (“When a federal court concludes
17 that it lacks subject matter jurisdiction over a case, it is precluded from rendering any judgments on the
18 merits of the case.”); *Wages v. I.R.S.*, 915 F.2d 1230, 1234 (9th Cir. 1990) (“[W]e have held that a judge
19 ordering a dismissal based upon lack of subject matter jurisdiction retains no power to make judgments
20 relating to the merits of the case.”); *see also Christopher*, 240 F.3d at 100 (1st Cir. 2001) (citing *Willy*
21 *v. Coastal Corp.*, 503 U.S. 131, 137, 112 S.Ct. 1076 (1992) (a federal court’s determination that it lacks
22 subject matter jurisdiction precludes rendering judgment on the merits of the underlying case).

23 Third, the cases in the Removal Decision are based on federal remand statutes and bankruptcy
24 law, not the state law at issue here. For example, the case cited by the Nevada Bankruptcy Court in
25 connection with a forum shopping argument is based on 28 U.S.C. § 1452, the federal statute relevant
26 to removal of cases to bankruptcy courts and remand. *See In re NE Opco, Inc.*, 2014 WL 43460803
27 (Bankr. C.D. Cal. Aug. 28, 2014). Not only is the case inapplicable to the present dispute, the *NE Opco*
28

1 court did not make any analysis of the forum shopping issues, making only a conclusory statement that
2 the relevant factor was neutral in considering remand. *Id.* at *3.

3 **IV. This Court should not abstain hearing the Motion in favor of motions to stay yet to**
4 **be filed or briefed.**

5 The plaintiffs ask this court to abstain hearing the Motion in favor of a motion for stay filed (but
6 not briefed) in the Illinois Bankruptcy Court and a future motion for stay to be filed in the Nevada
7 Federal Court. Response, p. 15. First, this request is unreasonable on its face as no motion to stay has
8 been filed with Nevada Federal Court since the NV Complaint has been filed. Second, the Illinois
9 Bankruptcy Court will not consider entering a briefing schedule on the motion to stay until April 18,
10 2018, at the earliest. Third, the plaintiffs cite no legal authority for the proposed delay.

11 Debtor Plaintiffs first presented their motion to stay the Contested Bankruptcy Matters on March
12 21, 2018. A true and correct copy of the 3-21-18 Transcript is attached hereto as Exhibit D. At the
13 hearing, not only did the Illinois Bankruptcy Court question the ability for the Debtor Plaintiffs to bring
14 all disputes into one forum in the first instance (3-21-18 Transcript, p. 3-6), but it also declined to enter
15 a briefing schedule for the stay motion. The Illinois Bankruptcy Court stated:

16 I don't think we're going to be delayed that much if we just come back in April and
17 see what's happened. **And maybe I'll continue the motion again.** I don't know. But
I'd like to see what develops. I don't think there's any harm.

18 So that's what I'll do. I'm going to continue the motion until our April date, which is
19 April 18. Okay? And no briefing schedule. So nothing needs to be done

20 Exhibit D, p. 13, lines 15-24 (emphasis added).

21 There will be no briefing scheduled established in the Illinois Bankruptcy Court until April 18,
22 2018 (the date of the next omnibus hearing), at the earliest. There is no reason for this Court to wait
23 indefinitely to decide the Motion, which will be fully briefed and presented for hearing on April 4,
24 2018.

25 **V. The Debtor Plaintiffs are forum shopping.**

26 In their Response, the plaintiffs sidestep the issue of forum shopping by (a) repeating the
27 disproven and misleading assertion that the defendants advocated for filing the NV Complaint; (b)
28 repeating the argument that they are seeking comprehensive relief, which purportedly justifies asking

1 this Court to decide issues already before the Illinois Bankruptcy Court; and (c) citing the Nevada
2 Bankruptcy Court’s unsupported conclusion that forum shopping did not occur. All such matters have
3 been rebutted above.

4 The Response cites *R.R. St. & Co. Inc. v. Transp. Ins. Co.*, 656 F.3d 966, 981 (9th Cir. 2011),
5 alleging that a party’s forum shopping is forgiven if it is seeking to obtain more comprehensive relief.
6 Response, p. 21. Comprehensive relief is not available here as detailed above. In contrast, the Ninth
7 Circuit found in *R.R. St.* there was “no question that with the Removed Action in state court, **the state**
8 **proceedings will resolve all issues**, and the goal of ‘comprehensive disposition of litigation’ will be
9 met.” *Id.* at 983 (emphasis added).

10 Moreover, the Ninth Circuit affirmed the district court’s decision to remand back to state court,
11 where a related action that “had been pending for several years”. *Id.* at 970. This is in no way analogous
12 to the situation presented by the NV Complaint, which seeks to consolidate five pending actions in state
13 court with several federal bankruptcy court actions that have been pending for several years. *See also*,
14 *Nakash v. Marciano*, 882 F.2d 1411, 1417 (9th Cir. 1989) (“Apparently, after three and one-half years,
15 Nakash has become dissatisfied with the state court and now seeks a new forum for their claims. We
16 have no interest in encouraging this practice.”).

17 The Debtor Plaintiffs also seek to reduce the significance of the Illinois Bankruptcy Court’s
18 negative comments because they were made in the context of discovery disputes. While the Illinois
19 Bankruptcy Court’s comments were not case dispositive, this Court should not gainsay the significance
20 of a court telling one party that their main defenses are “thin” and “dubious”, even in the context of
21 discovery disputes. *See Am. Int’l Underwriters (Philippines), Inc. v. Cont’l Ins. Co.*, 843 F.2d 1253, 1256
22 (9th Cir. 1988) (abstention in second action filed in federal court appropriate where party filed to avoid
23 evidentiary obstacles).

24 In the Motion, the defendants recite several instances where the Illinois Bankruptcy Court cast
25 serious doubt as to the viability of very defenses reasserted in the NV Action. Motion, ¶¶15, 25. In
26 addition, the Illinois Bankruptcy Court made the following comments:

27
28

1 I don't understand how the fraud argument plays into all of this. Fraud is a basis to --
2 in the inducement is a basis to rescind the contract. You can affirm the contract and
sue for damages if you think there is a breach or you can rescind.

3 ****

4 The other point, which I think is one that the FERG folks were making, is that **in order**
5 **to rescind a contract, you have to put both sides back in the position they were**
6 **in. And I don't understand how that could be done here** or if that's even something
the Caesars people would really want.

7 (Transcript of the April 19, 2017 Hearing, attached hereto as Exhibit E; p 14., lines
8 17-22, p. 15, lines 6-11 (emphasis added)).

9 Meanwhile, the relevance of the information the debtors sought is open to serious
10 question. In denying FERG and LLTQ's motion for protective order, I described as
11 "thin" the legal theories the debtors have advanced to justify what they call
12 "suitability" discovery. As I explained, **rescission does not seem to be a possibility**
13 here, and neither the LLTQ and FERG dispute nor the MOTI dispute appears to
involve anticipatory repudiation. Nine months have passed since the debtors learned
of Seibel's conviction, and still **they have articulated no coherent theory** that would
make relevant the documents they want from him.

14 6-21-17 Transcript (Ex. C), p. 25, lines 17-25, p. 26, lines 1-4 (emphasis added).

15 The Illinois Bankruptcy Court made all of the foregoing comments months before the plaintiffs
16 filed the NV Complaint. This Court should find that the Debtor Plaintiffs engaged in forum shopping
17 by filing the NV Complaint in reaction to a string of negative comments from the Illinois Bankruptcy
18 Court. *See Gov't Employees Ins. Co. v. Dizol*, 133 F.3d 1220, 1225 (9th Cir. 1998) ("courts should
19 generally decline to entertain reactive declaratory actions.").

20 **VI. The Plaintiffs cannot rebut the first-to-file rule**

21 None of the cases cited in the Response to rebut the "first-to-file rule" are factually or
22 procedurally on point with the circumstances here. In *Mitchell Capital, LLC v. Powercom, Inc.*, 2015
23 WL 5774161 (Nev. Sept. 29, 2015), Mitchell obtained a confession of judgment against Powercom,
24 which thereafter received life insurance proceeds from a policy obtained by its owner. A second action
25 was brought by Powercom and a second beneficiary for declaratory relief seeking the policy proceeds
26 to be declared exempt. *Id.* at *1. Mitchell did not appear in the second proceeding and had a default
27 judgment entered against it. *Id.* In an appeal of the default judgment, the Nevada Supreme Court
28

1 determined that the second action sought a determination based on a state exemption statute, and not
2 the first judgment Mitchell obtained; declaratory relief was thus appropriate. *Id.* at *3, fn 2.

3 Similarly, *Jones v. Eighth Judicial Dist. Court of State ex rel. Cty. of Clark*, 2013 WL 3944042
4 (Nev. July 24, 2013) is unavailing as it involved declaratory relief after the bifurcation of issues
5 involving marriage dissolution on the one hand, and enforcement of contracts on the other. The issues
6 were separate and the court found “It is not clear, however, that the issues presented in the declaratory
7 relief action may be adjudicated in the [prior] case.” *Id.* at *2.

8 *Continental Ins. Co. v. Hexcel Corporation* is readily distinguishable where the second action
9 brought in additional insurance companies as parties who collectively sought a declaration that they had
10 no duty to defend or indemnify one company in connection with environmental contamination at one
11 site in New Jersey. 656 F.3d at *1. As detailed above, the NV Complaint cannot bring such
12 comprehensive relief and the parties are subject to different contracts, with different provisions, for
13 separate projects. In addition, the two actions at issue in *Continental* were filed **only eight days apart**.
14 *Id.* at *4. Here, the parties have been engaged in contested litigation for over 2 years.

15 **VII. The mandatory forum selection clause contained in the FERG Agreement is enforceable**
16 **under Nevada law.**

17 Plaintiffs narrowly construe the FERG Defendants’ argument concerning the forum selection
18 clause in attempt to have form prevail over substance. Plaintiffs argue that “FERG’s Rule 12(b)(1)
19 motion fails” and that the forum selection clause does not apply on its face. Response, p. 17. By referring
20 to this argument solely as a Rule 12(b)(1) motion, plaintiffs omit the holdings of the cases cited in their
21 Response— all of which support enforcement of mandatory forum selection clauses and dismissal based
22 upon same, whether considered under Rule 12(b)(1) or, as these cases suggest, more appropriately under
23 Rule 12(b)(5).

24 First, Plaintiffs cite *Walters v. FSP Stallion 1, LLC*, 2010 WL 8034117 (Nev. Dist. Ct. Apr. 13,
25 2010) for the proposition that “forum selection clauses do not present issues of subject matter jurisdiction
26 and should not be considered under Nevada Rule of Civil Procedure 12(b)(1).” Response, p. 17. This is
27 a partial statement of the *Walters* analysis which concluded that a motion to dismiss asserting improper
28 forum due to a forum selection clause should likely be considered as a motion to dismiss under Nevada

1 Rule of Civil Procedure (12)(b)(5) for failing to state a claim which can be granted in the subject forum.
2 *Walters*, at *1. The court went on to state that a motion for failure to state a claim can be raised at any
3 time and granted the motion to dismiss requiring the plaintiff to proceed in the forum agreed upon by
4 the forum selection clause. “[T]he Court discerns no unfairness or prejudice to Plaintiff in requiring him
5 to proceed in the forum agreed upon in the context of this case.” *Id.* Regardless whether this court treats
6 the motion to dismiss based on the mandatory forum selection clause under NRCP 12(b)(1) or 12(b)(5),
7 the requested relief was timely made and the mandatory forum selection clause is enforceable. Nothing
8 in the Response suggests otherwise.

9 Next, Plaintiffs cite the First Circuit decision in *Silva v. Encyclopedia Britannica, Inc.*, 239 F.
10 3d 385 (1st Cir. 2001). In *Silva*, like *Walters*, the court upheld dismissal of an action based on an
11 exclusive forum selection clause contained in the underlying contract. *Silva* found that “a motion to
12 dismiss based on a forum-selection clause may be raised at any time in the proceedings before
13 disposition on the merits.” 239 F. 3d at 388. The court found that the mandatory forum selection clause
14 was a result of “an arms-length transaction, the terms of which are binding on both parties” and therefore
15 enforced the clause and granted the motion to dismiss. *Id.* at 389. Plaintiffs do not suggest the forum
16 selection claim in the FERG Agreement was anything different.

17 Plaintiffs then cite the Supreme Court’s decision in *M/S Bremen v. Zapata Off-Shore Co.*, 407
18 U.S. 1 (1972). *M/S Bremen* stated that a forum selection clause “made in an arm’s length negotiation by
19 experienced and sophisticated businessmen, and absent some compelling and countervailing reason it
20 should be honored and enforced by the courts.” 407 U.S. at 12. Plaintiffs cite *M/S Bremen* for the
21 proposition that forum selection clauses do not “oust” a district court of subject matter jurisdiction. Once
22 again Plaintiffs omit the underlying holding - that the “threshold question is whether [the] court should
23 have exercised its jurisdiction to do more than give effect to the legitimate expectations of the parties,
24 manifested in their freely negotiated agreement, by specifically enforcing the forum clause.” *Id.* This
25 Court can and should enforce the mandatory forum selection clause contained in the FERG Agreement
26 as it is the product of an arm’s length negotiation between sophisticated parties. Plaintiffs have not
27 provided or offered any compelling or countervailing reason not to enforce the legitimate expectations
28 of the parties as set forth in the mandatory forum selection clause.

1 Plaintiffs next argue that the forum selection clause is inapplicable on its face. They are wrong.
2 Defendant FERG, LLC is a Delaware limited liability company located at 200 Central Park South, New
3 York, New York 10019. Complaint, ¶22. Defendant FERG 16, LLC is a Delaware limited liability
4 company. *Id.* at ¶23. The FERG Agreement relates to the design, development, construction, and
5 operation of the Gordon Ramsay Pub and Grill restaurant in Atlantic City. *Id.* at ¶22.

6 Through section 14.10(c) of the FERG Agreement, the parties agreed to exclusive jurisdiction
7 of courts located in Atlantic City, New Jersey of various matters, including Arbitration Support Actions
8 as well as “any action or proceeding contemplated by Section 14.10(b)”. Exh. T to the Response, Sec.
9 14.10(c). As stated in the Motion, section 14.10(b) (which plaintiffs do not address in the Response)
10 contemplates any proceeding in which equitable relief is sought to enforce the provisions of the FERG
11 Agreement. The NV Action is a proceeding seeking equitable relief, including rescission of the Pub
12 Agreements. *See, e.g.*, Complaint, ¶143. Accordingly, the claims asserted against the FERG Defendants
13 in the NV Action are subject to an enforceable mandatory forum selection clause and this Court should
14 dismiss such claims.

15 **CONCLUSION**

16 For the reasons set forth above and in the Motion, the LLTQ/FERG Defendants and the MOTI
17 Defendants request that this Court dismiss all claims in the NV Complaint or, in the alternative, stay
18 such claims until the prior Contested Bankruptcy Matters are resolved by the Illinois Bankruptcy Court.

19 DATED March 28, 2018.

20 MCNUTT LAW FIRM, P.C.

21 /s/ Dan McNutt

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27 *LLTQ Enterprises, LLC;*
28 *LLTQ Enterprises 16, LLC; FERG, LLC;*
FERG 16, LLC; MOTI Partners, LLC;
MOTI Partners 16, LLC;

1 **CERTIFICATE OF MAILING**

2 I HEREBY CERTIFY that pursuant to Nev. R. Civ. P. 5(b) and EDCR 8.05 on March 28,
3 2018, I caused service of the foregoing **REPLY IN SUPPORT OF AMENDED MOTION TO**
4 **DISMISS OR, IN THE ALTERNATIVE, TO STAY CLAIMS ASSERTED AGAINST**
5 **LLTQ/FERG AND MOTI DEFENDANTS** to be made by depositing a true and correct copy of
6 same in the United States Mail, postage fully prepaid, addressed to the following and/or via electronic
7 mail through the Eighth Judicial District Court’s E-Filing system to the following at the e-mail address
8 provided in the e-service list:

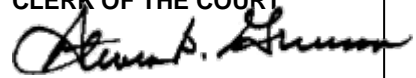
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and MOTI PARTNERS 16, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

ROWEN SEIBEL, an individual and citizen of
New York, derivatively on behalf of Real Party
in Interest GR BURGR LLC, a Delaware limited
liability company,

Plaintiff,

v.

PHWLV, LLC, a Nevada limited liability
company; GORDON RAMSAY, an individual;
DOES I through X; ROE CORPORATIONS I
through X,

Defendants,

AND ALL RELATED MATTERS

Case No.: A-17-751759-B
Dept. No.: 15

Consolidated with:
Case No.: A-17-760537-B

**APPENDIX OF EXHIBITS IN SUPPORT OF
REPLY IN SUPPORT OF AMENDED
MOTION TO DISMISS OR, IN THE
ALTERNATIVE, TO STAY CLAIMS
ASSERTED AGAINST LLTQ/FERG AND
MOTI DEFENDANTS**

This document applies to:
A-17-760537-B

Exhibit	Description	Page No. Range
A.	2-15-17 Hearing Transcript (Caesars IL Bankruptcy Case)	1 - 38
B.	3-23-17 Hearing Transcript (Caesars IL Bankruptcy Case)	39 - 63
C.	6-21-17 Hearing Transcript (Caesars IL Bankruptcy Case)	64 - 96
D.	03-21-18 Hearing Transcript (Caesars IL Bankruptcy Case)	97 - 111
E.	4-19-17 Hearing Transcript (Caesars IL Bankruptcy Case)	112 - 140

DATED March 28, 2018.

MCNUTT LAW FIRM, P.C.

/s/ Dan McNutt

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LLTQ Enterprises 16, LLC;
FERG, LLC; and FERG 16, LLC

1 **CERTIFICATE OF MAILING**

2 I HEREBY CERTIFY that pursuant to Nev. R. Civ. P. 5(b) and EDCR 8.05 on March 28, 2018
3 I caused service of the foregoing **APPENDIX OF EXHIBITS IN SUPPORT OF REPLY IN**
4 **SUPPORT OF AMENDED MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY**
5 **CLAIMS ASSERTED AGAINST LLTQ/FERG AND MOTI DEFENDANTS** to be made by
6 depositing a true and correct copy of same in the United States Mail, postage fully prepaid, addressed
7 to the following and/or via electronic mail through the Eighth Judicial District Court's E-Filing system
8 to the following at the e-mail address provided in the e-service list:

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Attorney for Defendant J. Jeffrey Frederick

/s/ Lisa A. Heller

Employee of McNutt Law Firm

Exhibit A

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

4 CAESARS ENTERTAINMENT OPERATING)
COMPANY, INC., et al.,) No. 15 B 01145
5) Chicago, Illinois
6 Debtor.) 1:30 p.m.
February 15, 2017

7
8
9 TRANSCRIPT OF PROCEEDINGS BEFORE THE
10 HONORABLE A. BENJAMIN GOLDFAR

11
12 APPEARANCES:

13 For the Debtors: Mr. Joseph Graham;
14 For the U.S. Trustee: Mr. Roman Sukley;
15 For the Noteholder Committee: Mr. Joshua Mester;
16 For the Unsecured Creditors
Committee: Mr. Paul Possinger;
17 For Moti Partners, et al.: Mr. Nathan Rugg;

18
19
20
21 Court Reporter: Amy Doolin, CSR, RPR
22 U.S. Courthouse
23 219 South Dearborn
Room 661
Chicago, IL 60604.

1 THE CLERK: We are taking up all
2 matters on the call in the Caesars Entertainment
3 Operating Company, Incorporated, bankruptcy case.

4 MR. MESTER: Good afternoon, Your
5 Honor. Joshua Mester of Jones Day on behalf of the
6 noteholder committee.

7 THE COURT: Good afternoon.

8 I actually have a couple of matters I
9 want to take up with the debtors first, if I might.

10 MR. MESTER: Sure.

11 THE COURT: I wanted to pose the
12 question that I posed at the end of the confirmation
13 hearing and see if I could get a better sense, and
14 that is, what do you imagine - emphasis on imagine -
15 is in store down the road? I ask this, as I said
16 back in January, because I am trying to gauge whether
17 I could take back work from other judges on my cases
18 that they have kindly been doing for me.

19 I am asking purely for an estimate.
20 Nothing you say will be binding. If something blows
21 up in this case, I won't say, but, Mr. Graham, you
22 told me everything was going to be fine. But I
23 really think it's not fair to Judge Doyle, who has
24 been doing my Chapter 13 cases, and some of the other
25 judges whose case weights have gone up as my

1 assignments have gone down to have them continue to
2 do work if I am available to do it.

3 Right now everything is quiet. Will
4 it continue to be fairly quiet? What do you project?
5 And, again, this is not binding. Just tell me what
6 you think.

7 MR. GRAHAM: Understood.

8 THE COURT: Because I can always undo
9 this.

10 MR. GRAHAM: Understood, Your Honor.
11 Joe Graham, Kirkland & Ellis, on
12 behalf of the debtors.

13 It's our expectation that things will
14 continue to be quiet.

15 THE COURT: Okay.

16 MR. GRAHAM: We will have some
17 contract litigation that, you know, is on today's
18 agenda. That will be continuing.

19 THE COURT: Right.

20 MR. GRAHAM: There will be things like
21 the Louisiana claims objections. We'll have other
22 claims objections. But outside of that, we don't
23 expect there to be a lot of activity in this court.
24 A lot of the work that remains to be done to go
25 effective is regulatory approval, raising, you know,

1 a couple -- almost \$3 billion in financing. But
2 those are work streams that, obviously, we don't have
3 to come to this court to do. So we would expect that
4 this is about as large of a crowd as you're going to
5 see going forward at these omnibus hearings.

6 THE COURT: Okay. So, I mean, you
7 don't anticipate any adversary proceedings or any
8 large claim and contentious claim objections
9 necessarily?

10 MR. GRAHAM: No adversary proceedings
11 among the major parties.

12 THE COURT: Okay.

13 MR. GRAHAM: That actually is a good
14 segue into one quick housekeeping matter, if that's
15 okay?

16 THE COURT: Sure.

17 MR. GRAHAM: We did get an email from
18 Donald Marro, who you may recall his claim was
19 disallowed in October. He's appealing that.

20 THE COURT: Right.

21 MR. GRAHAM: It was a motion to lift
22 the stay with a draft complaint asserting actual
23 fraud against CEC and CEOC related to general
24 transactions and the guaranty actions. Obviously,
25 the plan releases those. I am not sure when they

1 will hit the docket. He sent them via email in Word
2 version on Monday, saying that he was going to set --
3 he was going to notice them for hearing on March 1st.

4 Obviously, it's not a motion to lift
5 stay. It would be a standing motion. We can object
6 to that in due course, probably move it to like the
7 March 15 hearing. But subject to things like that
8 coming up, we don't expect a lot of adversaries like
9 on the major issues.

10 There could be, you know, a contract
11 dispute or claims that become a little bit bigger
12 than they currently are. But I don't expect those to
13 -- you know, I would consider those a little more
14 normal course, probably, things that you'd be
15 expecting.

16 THE COURT: All right. Well, I don't
17 know if that's what I expected to hear, but that
18 answers my question, in any event. So I think I can
19 talk to the clerk and Judge Doyle and see if I can't
20 get things put back to where they were before you all
21 arrived.

22 The other matter I wanted to mention
23 was speaking of the Louisiana dispute, is that
24 somebody, I think it was you, filed an agreed order.

25 MR. GRAHAM: We probably didn't do it

1 right.

2 THE COURT: No. Well, here is what
3 you did. I can't sign something -- let me back up.
4 I won't sign something like this because it makes
5 various declarations about what I have jurisdiction
6 to do. And it's just peachy that you all agree that
7 I have jurisdiction, but I can't just accept your
8 agreement, of course. I would have to make my own
9 determination, and I'm not going to do that just on
10 the strength of this order. I need something else.

11 If what you are trying to do is
12 consent to entry of a final judgment in some fashion
13 or other, I would do a different document that just
14 calls itself consent to entry of final judgment. And
15 if you want to specify the extent to which you
16 consent or don't consent and you want to do it
17 jointly, that would be fine.

18 MR. GRAHAM: Understood.

19 THE COURT: You know, and then I can
20 evaluate that. But as far as my jurisdiction to
21 address the disputes in the Louisiana matter --

22 MR. GRAHAM: Okay.

23 THE COURT: -- that's something I have
24 to determine. And I'm not at the point where I'm
25 ready to determine it because it's still being

1 briefed.

2 MR. GRAHAM: That's fine, Your Honor.

3 THE COURT: So I would go back and do
4 a different document with your friends from down
5 south.

6 MR. GRAHAM: We will reach out to them
7 and change the way that's been phrased.

8 THE COURT: Okay.

9 MR. GRAHAM: Real quickly --

10 THE COURT: Yes.

11 MR. GRAHAM: -- on that housekeeping
12 matter I did raise.

13 THE COURT: Mr. Marro?

14 MR. GRAHAM: Mr. Marro. If it's filed
15 and it's noticed for March 1st, can we treat it in
16 accordance with the case management procedures --

17 THE COURT: Yes.

18 MR. GRAHAM: -- and have it for
19 March 15th?

20 THE COURT: Yes, that's exactly what
21 will happen. It will just be continued.

22 MR. GRAHAM: I just wanted to make
23 sure, you know, with objection deadlines and things
24 like that.

25 THE COURT: No. I mean, until the

1 case management procedures get vacated or amended in
2 some way, I imagine we'll be complying with them. If
3 at some point it becomes appropriate to do that, we
4 could talk about it. But we will still have, what,
5 two more omnibus hearings set after this?

6 MR. GRAHAM: That's right.

7 THE COURT: And at some point, not
8 necessarily today, we'll have to talk about whether
9 we need more omnibus hearings or what we need to do.

10 MR. GRAHAM: Okay. Sounds good.
11 Thank you, Your Honor.

12 THE COURT: Okay. Thanks.

13 All right. Now we can get back to our
14 regularly scheduled program.

15 MR. MESTER: Good afternoon, Your
16 Honor. Joshua Mester of Jones Day on behalf of the
17 noteholder committee.

18 The first item on the agenda is
19 actually agenda number 2.

20 THE COURT: Yes.

21 MR. MESTER: The noteholder
22 committee's motion to vacate the amended employment
23 orders of Jones Day and Zolfo Cooper.

24 THE COURT: Right.

25 Just to refresh everybody's

1 recollection, what happened here was that I
2 discovered that any number of retention orders in
3 this case in which the retained professionals were to
4 be compensated under Section 328 contained provisions
5 allowing the U.S. Trustee to object to the
6 reasonableness of compensation under Section 330.
7 That is wrong.

8 I said it was wrong when it came to my
9 attention, and I said I was going to do something
10 about it. I also fell on my sword a little bit for
11 not having been sufficiently attentive to know at the
12 time the orders were entered that they had these
13 offending provisions in them.

14 To that, the U.S. Trustee requested
15 time to brief the matter, but nothing was ever filed.
16 So I then, as I recall, entered an order requesting
17 draft orders that deleted the offending language, and
18 I entered them.

19 Now I've got your motion addressing
20 the retention order for your firm as counsel to the
21 second priority noteholders committee, and also the
22 order retaining Zolfo Cooper, and suggesting that
23 those orders should not have been entered. And the
24 grounds in the motion are two.

25 The first is that the proposed order,

1 proposed revised orders, were based on a literal
2 reading of the court's order dated January 5, and
3 that you believed that you might have misunderstood
4 the order. But you didn't. You did exactly what I
5 wanted you to do. And the orders that you presented
6 were exactly the orders that I wanted, which is why I
7 signed them. This time I read them.

8 The other reason that you give for
9 your motion is that the U.S. Trustee wasn't given a
10 chance to review and comment on the proposed orders
11 before their entry. Well, that is as it may be, but
12 the fact of the matter is they had an opportunity to
13 brief this whole issue if they wanted to, and they
14 didn't. And the orders met with my approval. So
15 regardless of whether they saw them or not, it
16 wouldn't have mattered had they objected because the
17 orders were correct. So I'm not inclined to grant
18 this motion.

19 Now, there are two things that still
20 might be done about this. You probably don't want to
21 pick a fight with the U.S. Trustee at this point, and
22 this may come as a surprise, I don't want to either.
23 However, I'm still right on this 328 versus 330
24 thing. So here's the deal:

25 One way that I could grant this motion

1 is if you were willing to stipulate that Section 330
2 review on the part of the U.S. Trustee was actually
3 part of the original contractual arrangement. I
4 mean, you can arrive at any reasonable terms under
5 Section 328. And if a 330 review is one of those
6 terms, then that in fact is not something that I
7 could do anything about. I took a look -- I went
8 back and I dug out the original retention motions,
9 and I took a look at the papers, and to be perfectly
10 honest, I couldn't tell. So that is one way that we
11 could revisit this.

12 The other way is for the U.S. Trustee
13 to file the necessary motion under Section 328 and
14 ask me to revisit these arrangements because the
15 terms were improvident in light of later events.

16 So those are two ways we can do
17 something about this if something needs to be done.
18 But this motion itself, based on what it says, is not
19 one I'm inclined to grant.

20 MR. MESTER: I appreciate the
21 clarification, Your Honor. Two points.

22 THE COURT: Yes.

23 MR. MESTER: First, the fundamental
24 thrust of the motion was to make sure we were
25 complying with your direction about submitted revised

1 orders and making sure that this was what you wanted.
2 And I now understand that we gave you exactly what
3 you wanted.

4 THE COURT: You did.

5 MR. MESTER: Secondly, I don't think
6 we have a dispute with the U.S. Trustee that the
7 Jones Day fees and Zolfo Cooper fees are subject to a
8 reasonableness review. At most, I believe that 328
9 is probably approving our rates, but we're still
10 subject to a reasonableness review in terms of hours
11 and necessity.

12 THE COURT: I'm not so sure about
13 that, but in any event...

14 MR. MESTER: Be that as it may, I
15 think your suggestion of a stipulation with the U.S.
16 Trustee is a good one that I'm happy to revisit with
17 the U.S. Trustee.

18 THE COURT: Well, if you want to. I
19 mean, you know, if you're willing to agree that that
20 was the original basis of the retention, and I don't
21 mean as far as the order, I mean that was a deal
22 between Jones Day and the committee, and between
23 Zolfo Cooper and the committee, that was one of the
24 terms of the retention -- I mean, I looked at the
25 engagement letters and it just didn't help me out --

1 but as a contractual matter you're willing to agree
2 that that was the deal that you had with the
3 committee and Zolfo Cooper had, then I'll undo these
4 orders.

5 MR. MESTER: I think we're likely to
6 get there with a stipulation with the U.S. Trustee on
7 that point.

8 THE COURT: Okay.

9 MR. MESTER: So, but I would like to
10 confer with my colleagues in the home office and talk
11 to the U.S. Trustee.

12 THE COURT: Well, that's fine. We can
13 do that, and then if the U.S. Trustee wants --
14 barring that, if the U.S. Trustee wants to come in
15 under 328 and suggest that these arrangements were
16 improvident, they can do that. But this motion,
17 given what I've said, I will deny.

18 MR. MESTER: Okay.

19 MR. POSSINGER: And, Your Honor, Paul
20 Possinger on behalf of the unsecured creditors
21 committee.

22 We had a similar reading that Jones
23 Day did in filing their motion to vacate in the first
24 place, so we didn't file an amended order because we
25 thought it did still -- 330 did still apply to the

1 hourly review. So I guess what we will do is comply
2 with Your Honor's direction.

3 THE COURT: That would be fine, unless
4 your firm's deal with the committee, again, was that
5 the U.S. Trustee would have the ability to review the
6 fees under 330. If that's an actual term of your
7 arrangement --

8 MR. POSSINGER: I'm pretty sure that
9 that is not.

10 THE COURT: Okay. I will leave it up
11 to you.

12 MR. POSSINGER: Expressly
13 contemplated.

14 THE COURT: Okay.

15 Now, Mr. Sukley wants to go on the
16 attack.

17 MR. SUKLEY: Sorry, Your Honor.

18 THE COURT: No, no.

19 MR. SUKLEY: Roman Sukley on behalf of
20 the United States.

21 Judge, I understand what you're
22 saying. Does Your Honor's comments apply also now to
23 the professionals who were employed on a fixed or
24 percentage basis that we have the same arrangement
25 with? I mean, that was a negotiated provision where

1 we weren't relying on Section 330 of the Code for
2 that, Section 330 look-back.

3 THE COURT: You lost me there. What
4 do you mean you weren't relying on Section 330 for a
5 Section 330 look-back?

6 MR. SUKLEY: Well, that --

7 THE COURT: I don't follow.

8 MR. SUKLEY: Well, all of these
9 professionals who have been employed on a fixed or
10 percentage basis, we understood that the review is
11 improvident.

12 THE COURT: Right.

13 MR. SUKLEY: Okay.

14 THE COURT: I mean, that's one way to
15 revisit it. That's really the only way to revisit
16 it.

17 MR. SUKLEY: However, when we
18 negotiate their retention orders, we ask them to
19 include that Section 330 look-back only for the U.S.
20 Trustee, not for anyone else.

21 THE COURT: Yes, that's wrong. I
22 mean, that can't be in there.

23 MR. SUKLEY: Okay. That was my
24 question, Your Honor.

25 THE COURT: Yes.

1 MR. SUKLEY: I didn't know whether you
2 were going to allow us to do that since that was --
3 we also negotiated that with them.

4 THE COURT: No. And as I said before,
5 I mean, if people have Section 328, that's -- Section
6 328 is the basis of the compensation mechanism, then
7 330 is out of the question.

8 MR. SUKLEY: I understand.

9 THE COURT: And if people don't -- you
10 know, I mean, I said please submit orders. And if
11 people don't submit orders, I won't sign them. But
12 they can submit them and I'll sign them.

13 MR. SUKLEY: Understood.

14 THE COURT: Okay. Thank you.

15 MR. MESTER: Thank you, Your Honor.

16 THE COURT: Thank you.

17 All right.

18 MR. RUGG: Good afternoon, Your Honor.

19 Nathan Rugg on behalf of Moti Partners.

20 THE COURT: Is that how it's
21 pronounced?

22 MR. RUGG: I believe so.

23 Moti Partners, FERG, LLC, LLTQ
24 Enterprises, and their various assignees.

25 MR. GRAHAM: Joe Graham, Kirkland &

1 Ellis, on behalf of the debtors.

2 THE COURT: I have read these papers,
3 and I got hung up on a point that did not seem to
4 hang you up, but I can't get past it. And so I may
5 need additional briefing on this point, and that is
6 this:

7 Both sides here are hurling around
8 various provisions of this March 2009 development
9 operation license agreement. The problem is that the
10 agreement by its terms expired pre-petition. There
11 was, according to one of the papers I read, a
12 proposed amendment that would have extended the term,
13 but that was never signed.

14 And there is also a provision that
15 allows an extension if Caesars gives 180 days written
16 notice, but there was apparently no notice ever
17 given. So what seems to have happened here is that
18 the parties continued operating after the expiration
19 of the written agreement as if the agreement were
20 still in effect.

21 It's been a long time since contracts
22 class, but my recollection is that when that happens,
23 you end up with what they call a quasi contractual
24 problem or maybe a contract implied at law, although
25 I have been having a hard time finding anything quite

1 like this. I did find a Pennsylvania Supreme Court
2 case from 1857, but the less said about that the
3 better.

4 MR. GRAHAM: Probably not on point.

5 THE COURT: One of the difficulties is
6 a choice of law problem here. I don't know whose
7 contract law applies. And for that matter, it isn't
8 even clear whose choice of law principles apply.

9 The Court of Appeals has,
10 unfortunately, twice declined to say what choice of
11 law principles apply in bankruptcy. The most recent
12 refusal was in case a called Jafari, which is 569
13 F.3d 644. There is a nice decision from Judge Lorch
14 in the Southern District of Indiana that talks about
15 this a bit. It's called Eastern Livestock.

16 But I don't know the answer to that
17 question, and I don't know whether, as you all seem
18 to be assuming, post expiration all of the terms of
19 the original agreement still are in effect just
20 because everybody assumed they were.

21 Now, there is this assertion in the
22 debtors' brief in a couple of footnotes that post
23 expiration the contract continued on a month-to-month
24 basis, but there is no citation for that, and it's
25 not an apartment lease. I mean, there is no holdover

1 tenant here. I get how that works with leases. But
2 this is a different kind of agreement, and so I need
3 some help with this.

4 MR. RUGG: Your Honor, if I may, if
5 more is required, we're happy to supplement.

6 THE COURT: Yes.

7 MR. RUGG: But --

8 THE COURT: Yes, I need somebody to
9 help me with this because I couldn't get beyond it.
10 And so all of the hurling around of the different
11 provisions which you're invoking against each other
12 kept running up against this wall of, yes, but it is
13 expired.

14 MR. RUGG: So, Your Honor, there was
15 an amendment that was proposed by Caesars. I believe
16 it was timely sent under the original agreement. And
17 the significance of the amendment is that there were
18 changes to significant terms, taking out the capital
19 contribution portion, and a payback of net profits to
20 my client.

21 THE COURT: But it was never executed.

22 MR. RUGG: Well, that's correct, Your
23 Honor, but...

24 THE COURT: Well, then it's just
25 paper.

1 MR. RUGG: Well, but, Your Honor,
2 again, we can brief this as need be necessary, but
3 that effectively changed the payment terms of the
4 original contract, and as such, that is what the
5 debtors have been doing since 2014, has been
6 operating under the terms of the modified contract
7 under the amendments, the written amendments. And
8 then the written amendment says that all other terms
9 of the original contract apply.

10 THE COURT: But it wasn't signed, so
11 it's not a written amendment. I mean, this just
12 raises another issue. That's the whole problem with
13 this whole thing. I don't know the answer to this.
14 If people propose a written amendment to a written
15 contract, and they never execute it, but then they
16 operate post expiration of the original agreement as
17 if this has been signed, what do we have?

18 MR. RUGG: Your Honor.

19 THE COURT: This is even messier than
20 you think.

21 MR. RUGG: Your Honor, we have looked
22 at it. I mean, there is an oral contract. It is
23 enforceable. Frankly, we didn't address it in the
24 reply brief as it was an unsupported footnote in the
25 objection.

1 I understand you're raising the issue
2 now, and to some degree there still has to be payment
3 for the use of the intellectual property for four
4 months regardless of --

5 THE COURT: Well, maybe. Maybe that's
6 quasi contractual recovery. That would be different.
7 But nobody has argued that. Everybody has acted as
8 if this contract were in effect.

9 MR. GRAHAM: Your Honor, I think that
10 per your suggestion, short simultaneous briefs on the
11 point might make sense.

12 THE COURT: Yeah, simultaneous briefs
13 are never very helpful because we end up with ships
14 passing in the night. So I'd rather not have
15 simultaneous.

16 There was some talk also, and maybe
17 I'm wrong about that, but I think there was some talk
18 in the debtors' papers about discovery. Is it your
19 view that you want to take discovery? Maybe we
20 should wait on the briefing until you've got all the
21 facts you think you're going to have?

22 MR. GRAHAM: There is that point,
23 Your Honor. So, obviously, we've all focused on
24 kind of two things, is there a claim and is that
25 an admin claim. It's like what do the contractual

1 terms say and, you know, what is the bankruptcy
2 priority.

3 We did have a couple pages in our
4 brief and in our preliminary objection about the
5 ongoing suitability dispute between the debtors
6 and -- or really the Caesars enterprise and the
7 principal of Moti and FERG and LLTQ.

8 In fact, it's not just a debtor issue.
9 It's a non-debtor issue. Non-debtor Caesars
10 affiliates like Burger, which is one of the ones
11 we've cited to in the papers, they haven't paid
12 either, because my client and my parent company and
13 our affiliates are actually concerned because of
14 advice they've gotten related to the regulatory --
15 you know, from the regulatory counsel about paying
16 Mr. Seibel.

17 So there is -- Mr. Seibel has actually
18 brought at least one, maybe two suits in Nevada
19 seeking payment. Discovery is ongoing. It's kind of
20 a messy fight that really we started with our
21 contract motion, but over time discovery opened up
22 into the suitability issue, and we've been developing
23 that here for the debtors.

24 It may make sense to finish that
25 suitability discovery between the parties on all of

1 these motions, because the problem we could run into,
2 and I don't know where you're going with your ruling,
3 obviously, ones you --

4 THE COURT: Neither do I yet.

5 MR. GRAHAM: -- once you know this
6 piece, but if you enter an order saying that we owe
7 an admin expense, my client owes an admin expense,
8 that has real ramifications potentially on their
9 licensing. And that will actually be an issue that I
10 think probably needs to be further developed before
11 such an order was entered.

12 THE COURT: I imagine what Mr. Rugg
13 would tell me is his position is it doesn't matter
14 because you still used the intellectual property
15 and payment is due for that. You mean, you got a
16 benefit here. And also, these LLCs are not Mr.
17 Seibel, unless you're going to demonstrate that they
18 are, which would add another layer of complexity to
19 this.

20 MR. GRAHAM: Understood that they're
21 not Mr. Seibel, but he is a principal of them.

22 MR. RUGG: Your Honor, if I may, this
23 is what was raised initially at the first hearing.
24 We were going to brief. And we did say then -- and
25 you had mentioned then you could decide that issue

1 now.

2 A couple of things. The non-debtor
3 affiliates in these proceedings that Mr. Graham
4 referenced as to the two lawsuits filed, at least one
5 of them said we're holding the money in escrow, if
6 the court orders it, we're going to pay it.

7 We've also challenged the basis for
8 why they're saying they cannot pay us. And I don't
9 think they've provided any support, as they were just
10 given the opportunity with this briefing to say why
11 we cannot be paid.

12 And then our other point was the whole
13 point of suitability discovery as the debtors cast is
14 whether or not they can then rescind the contracts,
15 void them out. This is now an enterprise that has a
16 start with capital contributions from both sides, a
17 restaurant that ran for eight years and is now
18 closed.

19 So, I understand the suitability
20 issues with the other contracts, but not for this.
21 How are they interested in a contract for a project
22 that's been fully completed that has generated
23 millions of dollars of profits and has done nothing
24 but benefit the estate and is now completely
25 concluded?

1 THE COURT: Isn't there also a
2 question about this suitability requirement if in
3 fact the contract expired? I mean, I don't think you
4 can pull these issues apart. If the written
5 agreement that had that requirement in it expired,
6 and the parties were operating on some other basis,
7 then I don't even know if it would be relevant
8 anymore. I'm just not sure. That's why, again, I
9 can't get past this expiration problem.

10 MR. GRAHAM: Understood.

11 THE COURT: And there was only so much
12 time I was willing to spend without assistance from
13 you all. So I would rather get your help before I
14 explore it further on my own.

15 So, what do you think makes sense at
16 this point? We, obviously, need rebriefing, but
17 should we do it now or not?

18 MR. GRAHAM: Well, Your Honor, we had
19 actually spoken with Mr. Rugg before today's hearing.
20 And there is open discovery issues on the suitability
21 discovery. The parties were hoping to have a few
22 more meet and confers and determine, you know,
23 whether we can close the gap.

24 THE COURT: Okay.

25 MR. GRAHAM: I recognize Mr. Rugg may

1 say, you know, that shouldn't matter to this one, but
2 we had talked about coming back next month to kind of
3 give you an update on that.

4 THE COURT: Okay.

5 MR. GRAHAM: And I recognize this has
6 been out there a long time.

7 THE COURT: This one hasn't been.

8 MR. GRAHAM: This one hasn't.

9 THE COURT: The other one has.

10 Well, why don't we just do that. Why
11 don't we come back at the next omnibus and you can
12 just tell me where you are. I don't want people to
13 write briefs if they don't have everything at their
14 disposal they would like to have.

15 MR. RUGG: But, Your Honor, this is
16 solely with respect to the contract issue, what
17 happened when the contract expired and there was an
18 unsigned amendment. I would submit to Your Honor
19 this is a rather straightforward issue. I believe
20 Nevada law applies.

21 THE COURT: Maybe.

22 MR. RUGG: So --

23 THE COURT: I couldn't find a Nevada
24 case on this either, but I confess I didn't look as
25 hard as I might have.

1 MR. RUGG: But I think that -- because
2 this is a separate LLC. This is a project that is
3 distinct from the Ramsay Pubs that continue to
4 operate. This one is done.

5 MR. GRAHAM: Your Honor --

6 MR. RUGG: And my client has not
7 been paid. So I don't see the harm in briefing the
8 issue.

9 MR. GRAHAM: Your Honor, his client,
10 it's four months. I don't even know what that amount
11 is, in all honesty, but my client --

12 MR. RUGG: It's a little over
13 \$200,000, and eventually 700,000 with an early
14 termination payment. And while it doesn't mean a lot
15 for Caesars, it means something for our LLC.

16 THE COURT: Yes, the early
17 termination, there are arguments about that. But,
18 again, those are arguments based on the terms of the
19 contract.

20 MR. GRAHAM: Right.

21 THE COURT: Well, it is true that
22 the contractual questions I'm raising are things
23 unto themselves and maybe we could go ahead and
24 have that briefed, even if you're doing discovery
25 on the suitability question. Of course, you

1 might be looking at another round of briefing
2 after that.

3 MR. GRAHAM: That's kind of the point
4 I'm raising. If you would like us to address this
5 and then come back and discuss it again, you know, we
6 may have narrowed things on the suitability front by
7 the next hearing.

8 We're happy to -- if you think it
9 would be helpful to see something on the contract
10 stuff, but we may still need to --

11 THE COURT: I have other things I
12 can pay attention to. I think I would rather wait.
13 It gives you lots of time to think about it too.
14 Mostly what I would like to do is get this teed up in
15 such a way that I can decide it without making you
16 jump through any more hoops than is necessary and
17 causing any more expense than is necessary. That's
18 really the idea. So I'm just trying to be efficient
19 here.

20 I think the most efficient thing is to
21 go to the next date and, you know, maybe then we'll
22 have a better sense of how we ought to proceed with
23 this.

24 MR. GRAHAM: Thank you, Your Honor.

25 THE COURT: Okay. We'll just go to

1 the next date.

2 MR. GRAHAM: We'll do the same,
3 obviously, with the next several items on the agenda
4 then.

5 THE COURT: Okay. So that's going to
6 be March 15.

7 Why don't we talk a little bit about
8 the next few items, though. Those are all the Ramsay
9 items.

10 MR. GRAHAM: Yes, that's right, Your
11 Honor.

12 THE COURT: Why don't you just give me
13 an update. I gather we are going to be continuing
14 those.

15 MR. RUGG: Yes, Your Honor. Both
16 sides have issued discovery as to this quote,
17 unquote, suitability issue. Both sides have had, you
18 know, some production and some objections. We have
19 had several meet and confers.

20 To put it more succinctly, I don't
21 think the parties agree to what the proper scope of
22 the suitability discovery should be. We are trying
23 to avoid motion practice, but it's one of those
24 things if we just can't agree as to the scope, we may
25 have to get in front of Your Honor.

1 THE COURT: Sure.

2 MR. GRAHAM: And on that point, we had
3 talked before today that March 15th we would give you
4 an update and really come in probably with a plan
5 forward.

6 THE COURT: Okay.

7 MR. GRAHAM: Which dovetails nicely
8 with the other issue, even if they are not on the
9 same time line.

10 THE COURT: That's fine.

11 All right. Okay. Then we can talk
12 more about all of this in March.

13 MR. GRAHAM: Very good.

14 MR. RUGG: Thank you, Your Honor.

15 THE COURT: Thanks.

16 MR. GRAHAM: Your Honor, the next two
17 items on the agenda had orders denying the motions
18 yesterday and vacating those orders today.

19 THE COURT: Right. Those should not
20 have been entered. That was just an internal error
21 we made. Neither of these motions has been noticed
22 for hearing.

23 MR. GRAHAM: Correct.

24 THE COURT: Because they haven't been,
25 I am not inclined to address them. I mean, they are

1 not actually on the call. They are on your agenda,
2 but they're not on today's call because that's not
3 how we do things in this district.

4 MR. GRAHAM: So they're on no calls.

5 THE COURT: They are just sitting out
6 there in the ether waiting for somebody to do
7 something. They are in exactly the same position as
8 the motion that was filed coming up on two years ago.
9 I think it was handwritten by some pro se somebody or
10 other, who wanted to intervene in the bankruptcy
11 case. It was very entertaining.

12 And it was never noticed for hearing,
13 so it was not granted or denied. It's just sitting
14 there. And that's what will happen with these until
15 the lawyers who filed them decide to notice them for
16 hearing. They are just not before me.

17 So, if Mr. Watson wants to notice his
18 motions up and see if he can get some relief, that's
19 great. But, you know, if you're practicing in a
20 district you're not used to, you really have to
21 acquaint yourself with the local rules.

22 MR. GRAHAM: All right.

23 THE COURT: And that goes for
24 Mr. Watson. So there is nothing to be done with
25 these.

1 MR. GRAHAM: Okay.

2 THE COURT: And he can decide how he
3 wants to proceed.

4 MR. GRAHAM: Sounds good, Your Honor.
5 For a second there I thought you were addressing our
6 motion to assume the 1L bond RSA which we never
7 noticed for hearing back in February of 2015.

8 THE COURT: Oh, my, I forgot about
9 that one.

10 MR. GRAHAM: It's just --

11 THE COURT: That one wasn't as
12 entertaining as the motion to intervene.

13 The last motion it's --

14 MR. GRAHAM: It's from Ms. Schuck.

15 THE COURT: Yes, I remember her.

16 MR. GRAHAM: Obviously, she was here
17 back in like in November 2015. Lots of people are
18 coming back. But, we have talked. We, obviously,
19 filed our objection, limited objection, back -- you
20 know, November of 2015 or whenever that was, or
21 December I think.

22 Ms. Schuck has stopped responding to
23 her counsel. Her counsel --

24 THE COURT: Oh.

25 MR. GRAHAM: -- you know, we've

1 routinely gotten things moved along. So the counsel
2 who filed the lift stay motion has not been able to
3 reach her for a while. And so he told us that we can
4 either just continue it for the foregoing future or
5 we can come in and he would not come in and oppose
6 us.

7 THE COURT: Well, you know, we've got
8 an address for her because she did come in pro se
9 initially. She filed an adversary proceeding and she
10 flew out here.

11 MR. GRAHAM: She did. That's right.

12 THE COURT: Maybe she's just not
13 interested. I think rather than address this today,
14 what I'd like to do is enter an order that says --
15 gee, it's a little hard to know because Mr. Diamond
16 hasn't moved to withdraw.

17 MR. GRAHAM: I think he also doesn't
18 feel like he can because he hasn't heard from his
19 client.

20 THE COURT: Well, he can move to
21 withdraw --

22 MR. GRAHAM: Oh, oh --

23 THE COURT: -- because he hasn't heard
24 from her.

25 MR. GRAHAM: -- you mean as attorney.

1 THE COURT: I mean, you know,
2 requiring her to get in touch with the court in
3 some way is a little strange when she's got a lawyer
4 who still has an appearance on file. He should be
5 moving to withdraw, it seems to me. I mean, lack
6 of communication is a perfectly reasonable basis to
7 get out. And right now he's in kind of a funny
8 position, and as a result I'm kind of in a funny
9 position. But I would like to do some kind of an
10 order that --

11 MR. GRAHAM: Your Honor --

12 THE COURT: -- would do something --

13 MR. GRAHAM: Would it be helpful, Your
14 Honor, if we reach out to who we obviously have been
15 to discuss with Mrs. Schuck's attorney and ask him
16 to -- if he is really not hearing from his client, to
17 file a motion withdrawing as her attorney so that,
18 you know, there is not that attorney issue in front
19 of the pro se --

20 THE COURT: Now, that's Mr. Diamond,
21 not the lawyer in New Jersey who was representing her
22 in the underlying --

23 MR. GRAHAM: Yes. We have not heard
24 from that attorney.

25 THE COURT: Okay. Yes. He needs

1 to move to withdraw. Let's continue this motion
2 to the next time. If he moves to withdraw, then
3 I can shoot some kind of an order to Ms. Schuck
4 herself saying, look, you know, you have to come in
5 and do something here or I'm just going to deny your
6 motion --

7 MR. GRAHAM: Okay.

8 THE COURT: -- for want of
9 prosecution, I suppose.

10 Also, if Mr. Diamond does move to
11 withdraw, it might get her attention. It is amazing
12 how things like that get a reaction sometimes.

13 MR. GRAHAM: Okay.

14 THE COURT: So let's put this over to
15 the next date as well and --

16 MR. GRAHAM: Okay, Your Honor.

17 THE COURT: Yes. We will see if we
18 get a motion from Mr. Diamond.

19 MR. GRAHAM: Sounds good.

20 THE COURT: And that I think is --

21 MR. GRAHAM: That is --

22 THE COURT: Not quite. There are
23 quite a number of continued matters, and I just
24 wondered, were we just going to put those over to
25 March 15th, everything, or did you have some other

1 date in mind?

2 MR. GRAHAM: So, Your Honor, what we
3 have listed under number 10, that's the contract cure
4 responses.

5 THE COURT: Right.

6 MR. GRAHAM: And number 11, which is
7 one of our long-standing proof of claim objections
8 that is being reconciled, those should go to
9 March 15th.

10 THE COURT: Okay.

11 MR. GRAHAM: The rest of the
12 matters -- well, no, I will correct myself. Items
13 number 12 --

14 THE COURT: Thirteen.

15 MR. GRAHAM: -- 13, those are
16 things covered by, you know, RSAs with those
17 parties. And I guess our last omnibus date right
18 now is the April date, so we want to go to that one,
19 I think.

20 THE COURT: Right. That's as far out
21 as we can go. I understand the theory. And then
22 there are a series of stay lifts.

23 MR. GRAHAM: Fourteen, 15, 16, we
24 would go to the next -- the March 15 hearing.

25 THE COURT: Okay.

1 MR. GRAHAM: And then we have the NRF
2 adversary and related matters. Those would go out to
3 April.

4 THE COURT: Nineteen.

5 MR. GRAHAM: The April 19 omnibus.

6 THE COURT: Okay. All right. Okay.
7 I think that's it then. Thanks very much.

8 MR. GRAHAM: Thank you, Your Honor.

9 THE COURT: See you next month.

10 (Which were all the proceedings had in
11 the above-entitled cause, February 15,
12 2017, 1:30 p.m.)

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

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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.)	March 23, 2017

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE A. BENJAMIN GOLDGAR

APPEARANCES:

For the Debtors:	Mr. Bill Arnault;
For FERG, LLC, et al:	Mr. Nathan Rugg;

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

1 THE CLERK: Taking up all matters in
2 the Caesars Entertainment Operating Company,
3 Incorporated, case.

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

6 MR. RUGG: Good morning, Judge.
7 Nathan Rugg on behalf of FERG, LLC, LLTQ Enterprises,
8 LLC, and Moti Partners and their various assigns.

9 THE COURT: Good morning.
10 When we here last, we were talking
11 about the need for some kind of schedule so we could
12 get these matters, some of which have been around for
13 awhile, teed up and decided. And I suggested that
14 perhaps you could have a conversation about that, and
15 we could have another conversation this morning.

16 MR. RUGG: Your Honor, we have, and I
17 think we're very close to a final order -- I should
18 say a final agreement, among the parties for a
19 scheduling order. And I think it would make sense to
20 kind of give you an outline of what we're thinking,
21 and then we could have a draft order to follow.

22 THE COURT: Please.

23 MR. RUGG: The general idea is that we
24 have allowed for some time to allow my clients to
25 file a motion for protective order and briefing

1 schedule that would then tee it up for a hearing
2 before Your Honor I think on your May omnibus hearing
3 date. And we can be flexible on that as well. But
4 that's just what we're talking about.

5 In the interim, we're talking about
6 having a discovery pause for outstanding discovery
7 among the parties. There is certain third-party
8 discovery that has been issued by both sides. That
9 would continue.

10 And then beyond that, we have as part
11 of the scheduling order hard dates for motions to
12 compel and document production, expert discovery, and
13 ultimately dispositive motions. So we do have that
14 hard stop in mind, Your Honor. And we have
15 definitive dates that the parties have to live by to
16 get there.

17 THE COURT: Well, all right. Is the
18 third-party discovery on the suitability issue or is
19 it something else? It has been my impression that
20 this suitability question, for want of a better term,
21 is the only matter still outstanding on which you're
22 taking discovery.

23 MR. RUGG: Yes and no, Your Honor.
24 There is a subpoena that was issued to Mr. Rowen
25 Seibel individually, and him as guardian for his

1 mother. That relates directly to suitability. We
2 still have a long-standing discovery dispute with the
3 Gordon Ramsay camp. I think we're at the point now
4 where we're actually going to get documents sometime
5 soon, so that's still ongoing.

6 THE COURT: Okay.

7 MR. ARNAULT: Yes. So at least the
8 way that we were thinking about it and at least the
9 way that I'm thinking about it is for the discovery
10 between the parties, that that would pause while the
11 parties either try to work out their issues around
12 some of the discovery relating to suitability, and if
13 they're not able to work it out, then that would
14 occasion the filing of the motion.

15 MR. RUGG: More importantly, Your
16 Honor, they've -- the debtors have offered to further
17 amend existing interrogatories that relate
18 specifically to the representations at issue. And we
19 said, okay, we'll take a look at that. If that makes
20 us take a step back then on what we think is
21 appropriate for the protective order, then we'll
22 consider that.

23 So we are trying to resolve that issue
24 as well, the idea of whether a protective order is
25 needed, whether the suitability, we should go

1 forward. But in the absence of that, we wanted to
2 ensure that we do have those hard dates.

3 THE COURT: When you say a discovery
4 pause, what's pausing exactly?

5 MR. RUGG: Frankly, Your Honor, I
6 think it's document production and motions to compel.

7 MR. ARNAULT: Yeah. It would really
8 just be the -- yeah, the document production from
9 LLTQ, FERG, and the debtors, as well as any motions
10 to compel.

11 THE COURT: So production of documents
12 would halt temporarily, and there would be no motions
13 to compel filed temporarily while you did what
14 exactly?

15 MR. RUGG: Well, so, Your Honor, two
16 things. The debtors will provide some updated
17 disclosures in connection with the representations at
18 issue, which is what our big concern is, what started
19 the suitability discovery, and whether there's a
20 basis for that.

21 So two things. We can either take a
22 step -- maybe not need a protective order or
23 constrict the scope of what the protective order
24 would be. We could agree on what the scope of
25 suitability is because that has never been

1 determined. And if not, it will give us some time to
2 brief the issue for Your Honor.

3 THE COURT: Okay.

4 MR. ARNAULT: And in the interim, we
5 would -- yes, so that would pause discovery. But
6 then we would envision that this third-party
7 discovery with Gordon Ramsay, as well as the
8 third-party discovery with Mr. Seibel, and the motion
9 to compel, would go forward.

10 MR. RUGG: And the other component of
11 this, Your Honor, is both sides would want to take
12 depositions, so that's -- we could notice
13 depositions, but nothing would go forward until after
14 May.

15 THE COURT: Wow. It sounds like
16 you're quite a long way from being done, quite a long
17 way.

18 MR. RUGG: Well, I think that's right
19 Your Honor, to the extent we're talking about having
20 you know, dispositive motions I think in November.

21 MR. ARNAULT: November and December.

22 MR. RUGG: Your Honor, we have a
23 thicket of issues. And actually this does -- this is
24 another thing I wanted to make the court aware of
25 because it ties into the issue of suitability and the

1 fact that we have yet to define it, and that is
2 whether the termination of the contracts was proper
3 in the first instance. Your Honor might not recall
4 when we were --

5 THE COURT: We're talking about the
6 Ramsay --

7 MR. RUGG: No, these are the LLTQ.

8 THE COURT: That's what I mean.

9 MR. RUGG: Oh.

10 THE COURT: That's what I mean, the
11 Ramsay disputes, for want of a better term, rather
12 than Moti.

13 MR. RUGG: Correct.

14 THE COURT: You're talking about
15 termination?

16 MR. RUGG: Correct. Although
17 technically Moti was terminated as well, but that's a
18 little -- a separate issue.

19 THE COURT: Well --

20 MR. RUGG: Well, and, Your Honor --

21 THE COURT: -- I don't know about
22 that, but --

23 MR. RUGG: Okay. Right. So for the
24 Ramsay disputes, when we moved for summary judgment
25 in our admin claim, we -- it was a limited issue as

1 to whether the contracts were integrated, my clients'
2 contracts and the Ramsay contracts. We said that's
3 why we're entitled to our admin claim. And we
4 said -- what we asked for was a determination as to
5 integration and an award for admin expenses up to the
6 date of termination, and then we would reserve our
7 rights and figure out termination later.

8 There are two proceedings right now
9 that I believe Mr. Graham had referenced in prior
10 hearings involving non-debtor affiliates of Caesars.
11 And there is two other restaurants at issue that were
12 terminated as well for the same basis. There is now
13 litigation in district court in Nevada and in state
14 court in Nevada where the sole issue is whether that
15 termination was proper.

16 THE COURT: All involving Mr. Seibel?

17 MR. RUGG: Correct. That's not really
18 before you right now, Your Honor. And the way it
19 would come up is perhaps in our response to their
20 defense to our admin claim motion -- it gets
21 convoluted very quickly. So we don't think that
22 should be -- that's not really front and center here.
23 So what we think we need to do is either move to lift
24 the stay so the appropriate action can be brought
25 against the debtor entities or bring an adversary

1 proceeding here before Your Honor to determine that
2 issue, because I don't think it's appropriate to
3 determine that issue within the scope of a rejection
4 motion or an admin claim motion.

5 THE COURT: The termination issue?

6 MR. RUGG: Correct.

7 THE COURT: I don't know. I guess
8 I'll have to find out.

9 MR. ARNAULT: Yes, we've been talking
10 about it. I think -- well, we are thinking through
11 the right procedural vehicle or the process to --
12 because it is in a sense linked with the motions that
13 -- and the proceedings that are currently before Your
14 Honor. But in a sense it also presents some separate
15 issues as well.

16 MR. RUGG: And the fact of the matter
17 is there are -- that very issue, I cannot see any
18 different legal issues that would be raised here than
19 -- in these other proceedings that have already
20 commenced in out-of-state of litigation.

21 THE COURT: Is any of this going to be
22 subject to a summary judgment motion? I mean, it
23 sounds like trial material to me. There are a lot of
24 facts. It's a mess. And summary judgment motions
25 have an unfortunate tendency to require a great deal

1 of time on the part of the parties, a great deal of
2 time on the part of judges, and too often they just
3 end up being denied anyway, and they end up going to
4 trial. I'm just thinking why even bother.

5 MR. ARNAULT: I mean, I do think we're
6 hopeful that -- I mean, at least in the current
7 schedule that we've been discussing, there are
8 deadlines for dispositive motion practice.

9 THE COURT: Well, yeah, but you don't
10 have to have those.

11 MR. ARNAULT: Certainly.

12 THE COURT: The problem with deadlines
13 like that is that they have a tendency to invite the
14 motions. Well, I don't want to set that deadline and
15 force people to do this if it's going to turn out not
16 to make sense.

17 MR. ARNAULT: And maybe it's something
18 that as we get further along we can continue to
19 discuss and contemplate whether it's a partial
20 motion for summary judgment that allows us to narrow
21 any issues that we may then need to try.

22 THE COURT: Okay.

23 MR. RUGG: And, Your Honor, taking
24 another step back, before the termination issue
25 arose, I believe the parties thought we came down to

1 two distinct issues. One was integration, the idea
2 that for our argument that the single agreements or
3 the Ramsay agreements, you can't separate them, so
4 that results in a lot of issues.

5 And the other one was with respect to
6 the that Section 13.22 covenant that we thought bound
7 the parties to do these type of restaurants together
8 in the future. Those were restrictive covenants that
9 survived rejection. So our thought was that that
10 really resolved the rejection motion and the admin
11 claim motions.

12 Whether suitability is something for
13 summary judgment, it's hard to say right now. But I
14 get it. It's messy. But I do think -- and, Your
15 Honor, you know, taking your comments about the
16 summary judgment motion, the initial one that was
17 filed, I think that one was as dense as it was
18 because we wanted to make sure we covered the entire
19 landscape. I think we could probably narrow it down.
20 I'm sure we could narrow it down so it's a little
21 more palatable, digestible for these two particular
22 issues.

23 THE COURT: Well, you'll recall -- I
24 suppose I have to repeat what I said about it, and
25 what the problem was with it. I mean, if I can't

1 take your version of the facts and make them the
2 facts almost without change in an opinion, then there
3 is a problem. And it just wasn't written that way.

4 Well, okay. I guess the thing to do
5 is see what kind of scheduling order you want to
6 submit. You say you're pretty close?

7 MR. ARNAULT: Yeah. And to be clear,
8 what we're contemplating -- so we'll submit a
9 briefing schedule for the Moti issues that we have
10 been able to agree upon. That was the issues that
11 Your Honor raised.

12 THE COURT: Okay.

13 MR. ARNAULT: Subject to any comments
14 Your Honor may have, but that was what we figured was
15 the best way to proceed.

16 MR. RUGG: So, Your Honor, for Moti,
17 what you raised was what governed the relationship
18 between the parties in light of the unsigned
19 amendments.

20 THE COURT: Oh, I know. That one I
21 remember well.

22 MR. RUGG: So that one, we tried to
23 stagger that schedule a little bit behind the
24 protective order schedule just so that -- so that it
25 doesn't delay moving forward with suitability.

1 THE COURT: Okay.

2 MR. RUGG: So that would be -- what we
3 were contemplating was having that presented and
4 fully briefed to you for June.

5 THE COURT: Well, the problem is the
6 notion of briefing issues. I mean, usually you brief
7 something. Briefing is prompted by a particular
8 motion or complaint or something. So this would be
9 supplemental briefing on the -- I mean, we have to
10 call it something.

11 MR. RUGG: Right.

12 THE COURT: We can't just set a
13 schedule for briefing on issues out there in the
14 world.

15 MR. RUGG: Sure. So what we have is
16 -- there was a -- the footnote in the response
17 objecting to our admin claim. So I guess these are
18 surreplies.

19 THE COURT: Well --

20 MR. RUGG: -- in connection with that
21 one particular issue.

22 THE COURT: I think we probably need a
23 sur-response. This is a sur-response to the motion,
24 and then a surreply in support of the motion. It's
25 all about the procedural context, guys.

1 Okay. And you're thinking those would
2 come in sort of when? I realize I'm going to get a
3 draft, so I don't have --

4 MR. RUGG: Well, Your Honor, for that,
5 we actually --

6 MR. ARNAULT: So we had come up with
7 the initial motion filed by Moti on April 21st.

8 THE COURT: Wait, wait, wait, you've
9 got a motion already.

10 MR. ARNAULT: A brief.

11 THE COURT: Who is going first?

12 MR. ARNAULT: LLTQ.

13 THE COURT: They are. Okay. So there
14 will be a supplement to the -- let's do it this way.
15 So a supplement -- supplemental memorandum in support
16 of the motion.

17 MR. ARNAULT: And then a --

18 THE COURT: And then a response to the
19 supplement.

20 MR. ARNAULT: Right, on May 12th.

21 THE COURT: Which one is on May 12?

22 MR. ARNAULT: The --

23 MR. RUGG: Response.

24 MR. ARNAULT: -- response to the
25 supplemental.

1 THE COURT: When is the supplemental
2 memorandum in support coming in?

3 MR. RUGG: April 21st.

4 THE COURT: Okay. And then the reply
5 would be?

6 MR. ARNAULT: June 2nd.

7 THE COURT: Okay. All right. Then I
8 guess we'll have some kind of date which that all
9 goes to.

10 Okay. So that's Moti. Then what else
11 were you going to propose?

12 MR. ARNAULT: And then the other --
13 set for the -- call it Gordon Ramsay issues, that was
14 where we were coming up with the broader schedule
15 that we're still working on and hopefully we can
16 submit in the next two to three days.

17 THE COURT: Are we going to have a
18 final discovery cutoff on a particular date for
19 everything?

20 MR. ARNAULT: Yes. Well, yes, so we
21 have -- we can work that in. We have document
22 production deadlines. And then -- so we could
23 include that cutoff.

24 THE COURT: Yes, we need a final
25 cutoff. We haven't talked about that yet, though.

1 MR. ARNAULT: I guess it's in a sense
2 implicit in the schedule because we also have dates
3 for expert discovery, so we would just put it in
4 front of the fact -- well, we would have a fact
5 discovery deadline prior to expert discovery, and
6 then the close of discovery, I assume, would fall at
7 the end of expert discovery.

8 THE COURT: What issue here would be
9 susceptible to expert testimony?

10 MR. ARNAULT: So, there is -- one of
11 our arguments is that the -- goes to this termination
12 issue, that Mr. Seibel is so entangled within the
13 LLTQ and FERG enterprises that even though he
14 purportedly transferred out his interest in April,
15 because he is so entangled, that that would still
16 provide grounds to terminate the contracts once he
17 was convicted of the felony.

18 THE COURT: What is the opinion that
19 an expert -- if you could get an expert to offer the
20 opinion you want, what opinion would that be?

21 MR. ARNAULT: I think the opinion
22 would be that when -- it would be looking at these
23 regulatory agencies. And when regulatory agencies
24 look at entities like a Caesars, they view it through
25 it this lens of what entanglement -- or who are the

1 various people that are contracting with Caesars.
2 And they would say based on what regulatory agencies
3 have done in the past or their practice, they would
4 find that these type of relationships are improper
5 and inappropriate and reasonable grounds for Caesars
6 to decide to terminate the contract.

7 THE COURT: Okay.

8 MR. RUGG: Your Honor --

9 THE COURT: You don't have to argue.

10 MR. RUGG: I'm not going to argue.

11 THE COURT: Don't argue it. It sounds
12 a little doubtful to me, but I will wait and see.

13 MR. RUGG: Your Honor, I promise I'm
14 biting my tongue on that issue. The only comment is
15 that I really see that as something that is squarely
16 at issue in those non-debtor affiliate cases, and
17 what we think should be separated out from this
18 procedure. Because the issue of whether termination
19 -- we are the ones who would say -- who would raise
20 the issue that termination was not proper, and that's
21 not before you right now.

22 THE COURT: Well, I was just thinking
23 this is a straight, you know, Rule 702 question.
24 Could you even have testimony like that? But, I
25 don't have to decide that today. I just was curious

1 because you don't usually have expert testimony in
2 disputes like this. It's typically what the contract
3 means, and that is not typically subject to expert --

4 MR. RUGG: Yes --

5 MR. ARNAULT: We were also
6 contemplating if there was a damages aspect to it,
7 there was an expert who could opine, at least
8 calculate what those damages are.

9 THE COURT: Well, that's different.

10 MR. RUGG: But, Your Honor, I also
11 think that's really not ripe. That only comes up to
12 the extent that there's a rejection. I don't know
13 that we have a damages issue right now.

14 THE COURT: Well, we might have one
15 eventually. It all depends on how this shakes out.

16 MR. RUGG: Yeah.

17 THE COURT: You know, if we do this
18 through one or more summary judgment motions, or God
19 forbid, a series of motions for partial summary
20 judgment where we decide little bits of this -- and
21 maybe we never get there, I don't know, to the
22 damages question. On the other hand, if we did it
23 all at once and had an actual evidentiary hearing on
24 this, then we would need to, unless there was some
25 kind of bifurcation, which is not impossible.

1 As I said the other day, all I'm
2 trying to do at this point is get this teed up so we
3 can get it resolved. As far as I can tell -- and I
4 am in no way blaming anybody. I'm not casting blame.
5 But as far as I can tell, the more time that moves
6 on, the more complicated all of this seems to become,
7 which is not good. And that inclines me to see what
8 I can do to try to -- and we're doing this -- set
9 deadlines, so we get to a point where we can get a
10 decision, because if we don't, it will blow so
11 totally out of control, I don't know what we'll do.

12 MR. RUGG: Your Honor --

13 THE COURT: And that's my concern.

14 MR. RUGG: -- we understand. We're
15 living it.

16 THE COURT: Yes.

17 MR. RUGG: We kicked around some
18 settlement discussions. Those didn't go anywhere, or
19 we just talked about whether or not mediation would
20 make sense. I know that doesn't involve Your Honor
21 at all. We're very much aware, unfortunately, of the
22 morass this has turned into.

23 THE COURT: Yes, it is a morass.

24 That's a good term for it.

25 Well, I think in your order we should

1 have some kind of final cutoff. I would rather not
2 have a deadline for potentially dispositive motions
3 for the reasons that I suggested. That doesn't
4 mean -- you know, I'm not like one of my former
5 colleagues who used to tell people they just couldn't
6 file summary judgment motions. But I really don't
7 want to require anybody to do that.

8 My usual preference is when you get to
9 the point where discovery is done, then we can have a
10 nice chat and say what -- consider what is the right
11 way to dispose of this. Maybe at that point you'll
12 have a better feel for whether potentially
13 dispositive motions are the way to go. Maybe at that
14 point you'll say we think we know where this is
15 going, we think we know who we will call as
16 witnesses, let's just set a trial date and do it.
17 But I'm not one for -- that's why I'm not setting a
18 trial date either. I don't want to do either one. I
19 don't want --

20 MR. RUGG: Your Honor, I think that's
21 a great idea, and it will probably save us from, you
22 know, going down another -- a new path.

23 THE COURT: Exactly. I don't want to
24 do that. But I do want a cutoff, and I do want a
25 deadline for the motion for protective order.

1 Now, do you anticipate separate
2 protective order motions in Moti and what we've been
3 calling the Ramsay matters or is it really all one
4 thing?

5 MR. RUGG: There is no discovery
6 presently pending in the Moti matter. I mean, it was
7 a separate standalone motion for an admin claim.

8 THE COURT: Right, but if the
9 suitability issue is an issue there, and I think it
10 is --

11 MR. ARNAULT: We would say it is.

12 THE COURT: So then the question is
13 whether the issue is the same. I will let you decide
14 that. But unless the arguments are going to be
15 identical, you're going to want to file separate
16 motions. I don't want to have one great big -- I
17 don't want to think of this as the Rowen Seibel
18 dispute singular. I would rather keep these apart,
19 if we can, because I have a sense they're really
20 different. There is the Ramsay stuff and there is
21 the Moti stuff. But if the suitability question --
22 if your argument for cutting off discovery on that is
23 going to be same, don't file two motions. But I'll
24 let you decide what to do.

25 MR. RUGG: Yes. I suspect it would be

1 the same, but we'll evaluate it.

2 THE COURT: Well, think about that.
3 But you might want to establish a deadline for
4 motions, plural, protective order motions, in case
5 you need more than one.

6 MR. RUGG: Very good, Your Honor.

7 THE COURT: You might be able to
8 separate them out that way.

9 MR. RUGG: Well, I think we'll know
10 more about that once we get the supplemental
11 disclosures about the representations because
12 they're --

13 THE COURT: Okay.

14 MR. RUGG: We'll get to it. But
15 that's a good comment, and we'll evaluate that for
16 the order.

17 THE COURT: All right. When were you
18 thinking of submitting your draft order? Just give
19 me an estimate.

20 MR. ARNAULT: Monday you think?

21 THE COURT: Oh, sure.

22 MR. RUGG: Yes, I can't see a problem
23 with Monday.

24 THE COURT: Okay. Well, then you can
25 just email it to Nancy. We need to do something with

1 everything that's set for today just for housekeeping
2 purposes. We can just put it over to the April
3 omnibus date just to have it not fall -- it's not
4 going to fall off the map. I'm well aware of this.
5 But just so we have it somewhere. We can move things
6 again if we need to.

7 MR. ARNAULT: That's fine.

8 THE COURT: All right. Let's do that.
9 And I will just await your order. And, you know, if
10 there are things that I'm not clear on, I may end up
11 bringing you back. And we don't have to tie any of
12 this to the omnibus dates. We could keep it off to
13 give you more flexibility. It's really not a
14 problem.

15 MR. RUGG: We appreciate that, Your
16 Honor.

17 THE COURT: We'll put it to the
18 April 19 date for now, but if you want to have status
19 hearings or whatever on non-omnibus dates, we can do
20 that.

21 MR. ARNAULT: That's fine.

22 MR. RUGG: Very good.

23 THE COURT: All right. Is there
24 anything else we need to talk about today?

25 MR. ARNAULT: I don't think so.

1 THE COURT: Okay. All right. Good.
2 I appreciate the cooperation you have shown. I know
3 this has gone on a long time, and it's probably
4 frustrating for everybody.

5 MR. RUGG: No, Your Honor. Actually,
6 this was very helpful, so we appreciate it. I just
7 apologize to people who are actually in court today.
8 And I apologize to anyone who watched. And this is
9 why we're not on the omnibus --

10 THE COURT: Yes, I didn't do it that
11 day. We didn't need an audience of thousands. I
12 think this is a much more productive way to go.

13 MR. RUGG: Very good. Thank you, Your
14 Honor.

15 MR. ARNAULT: Thank you.

16 THE COURT: All right. Thanks so much
17 for coming in.

18 (Which were all the proceedings had in
19 the above-entitled cause, March 23,
20 2017, 10:00 a.m.)

21 I, AMY B. DOOLIN, CSR, RPR, DO HEREBY CERTIFY
22 THAT THE FOREGOING IS A TRUE AND ACCURATE
23 TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-
24 ENTITLED CAUSE.
25

Exhibit C

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

4	CAESARS ENTERTAINMENT OPERATING)	
5	COMPANY, INC., et al.,)	No. 15 B 01145
6	Debtor.)	Chicago, Illinois
		1:30 p.m.
		June 21, 2017

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE A. BENJAMIN GOLDFAR

APPEARANCES:

13	For the Debtors:	Mr. Joseph Graham;
14	For the Unsecured Creditors	
15	Committee:	Mr. Paul Possinger;
16	For Sidley & Austin:	Mr. Matthew Linder;
17	For FERG, LLTQ Enterprises,	
18	and MOTI Partners:	Mr. Nathan Rugg;
21	Court Reporter:	Amy Doolin, CSR, RPR
22		U.S. Courthouse
23		219 South Dearborn
24		Room 661
25		Chicago, IL 60604.

1 THE CLERK: We are taking up all
2 matters on the call at 1:30 in the Caesars
3 Entertainment Operating Company, Incorporated
4 bankruptcy case.

5 MR. GRAHAM: Good morning, Your Honor
6 -- or good afternoon, Your Honor. Joe Graham,
7 Kirkland & Ellis, on behalf of the debtors.

8 THE COURT: Good afternoon.

9 MR. GRAHAM: Before we get into
10 today's agenda, I referenced a few months ago that we
11 would give you an update of kind of where we are on
12 our path towards emergence. So I wanted to quickly
13 do that, or relatively quickly.

14 THE COURT: Take your time.

15 MR. GRAHAM: All right.

16 A decent amount of this has been
17 probably -- you know, it's all been probably publicly
18 shown at this point given that we issued some press
19 releases when many of these things happened. But I
20 wanted to kind of give it to you, because I don't
21 expect you to be sitting there watching our press
22 release newswire.

23 So under the plan, there are numerous
24 conditions to the effective date, as you are well
25 aware. A lot of those are related to, you know,

1 finalizing certain documentation and making sure that
2 certain payments are made on the date of the
3 effective date, obviously, pursuant to the terms of
4 the plan. In addition to that, there are, I would
5 say, three primary kinds of non-definitive document
6 work streams. Those are financing, the merger
7 between our parent company and Caesars Acquisition,
8 and the regulatory approval process.

9 On the first of those, raising
10 financing at reorganized CEOC as well as at Caesars
11 Palace, the latter of which will be the obligation of
12 the REIT being created under our plan, we've made
13 significant progress. Back in April, on April 4th,
14 we received commitments from a syndicate of lenders
15 for a \$1.235 billion term loan and a \$200 million
16 revolving facility. That 1.235 billion term loan
17 will be used to make payments -- you know, fees under
18 the term loan, but also to pay most -- a large
19 portion of the cash due to our creditors under our
20 plan. That was committed financing, so, you know, as
21 far as the debtors are concerned, that part of
22 process is done.

23 We also announced earlier this month
24 that we've gone to market to raise financing at
25 Caesars Palace. We are seeking to raise up to \$2.2

1 billion. Under the plan, it's between 1.8 and 2.6,
2 but the requirement is 1.8. We are highly confident
3 that we will get that \$1.8 billion number, and very
4 optimistic that we'll get up to \$2.2 billion in cash.

5 The plan has several other securities
6 and debt we can hand out to our creditors as
7 distributions for that period -- that amount, between
8 1.8 and 2.6, to the extent we don't raise more than
9 1.8. And we are, you know, deep into negotiations
10 trying to raise that money. We expect that we will
11 be able to announce commitments hopefully in the next
12 few weeks.

13 In terms of the second big work
14 stream, that is, the merger between Caesars
15 Entertainment and Caesars Acquisition, back in March,
16 Caesars Entertainment and Caesars Acquisition filed
17 an S-4 with the SEC. That has gone through a round
18 of comments. They actually filed another version of
19 it this week and are seeking to send out their proxy
20 materials early next week, I believe, with a
21 shareholders meeting sometime near the end of July.

22 I wanted to note on that front that as
23 part of all the various restructuring support
24 agreements, the entity, Hamlet Holdings, that owns an
25 irrevocable proxy from the sponsors and their

1 coinvestors, has agreed to vote in favor of that
2 merger, but we do have to do the merger vote. So we
3 are very confident that should be handled by around
4 the end of July, Your Honor.

5 The final part of the process is what
6 I'll say is probably the long pole in the tent right
7 now, which is regulatory approval. Depending on the
8 state, we need approval for either the REIT
9 transaction under the plan, various financing under
10 the plan, the CEC/CAC merger, and various other
11 transactions.

12 At this time, we have all necessary
13 approvals from the state of Illinois, state of Iowa,
14 Maryland, Mississippi and Pennsylvania. And we also
15 have certain of the necessary approvals from New
16 Jersey. The company continues to need remaining
17 approvals from New Jersey at this time, as well as
18 approvals from Indiana, Nevada, Louisiana, and
19 Missouri.

20 We're very confident that over the
21 next couple weeks we'll get a few of those, and then
22 over the coming months we would get the remainder of
23 those, obviously subject to availability of the
24 gaming commissions in those states.

25 THE COURT: I thought I had heard 14

1 states were necessary. That doesn't sound correct,
2 though. Do you need fewer state approvals than that?

3 MR. GRAHAM: I believe we are in 14
4 states, Your Honor, but these are the states that
5 require -- you know, we need to go get approvals
6 from.

7 THE COURT: Oh, okay. So you don't
8 need approvals from every state then.

9 MR. GRAHAM: Yes. In certain of the
10 states that we operate casinos, we are managers. So
11 Arizona, California, we manage American Indian
12 casinos, tribal casinos, and in those ones we do not
13 need approvals.

14 THE COURT: Okay. So what --

15 MR. GRAHAM: Long way of saying --

16 THE COURT: -- is your anticipated
17 date?

18 MR. GRAHAM: -- the second half of the
19 third quarter I'd say right now, probably September.
20 But we're working as feverishly as we can to make
21 sure that we stay on track for that or it doesn't
22 slip much.

23 THE COURT: All right.

24 MR. GRAHAM: You will see on the
25 agenda that we did file we continued all of the

1 various litigation that's been stayed to the August
2 omnibus for the time being, in part because we don't
3 have a September omnibus, but in part because we may
4 be able to give an update then also on timing on
5 these final regulatory approvals.

6 THE COURT: Well, as long as we're
7 talking about preliminary matters, do you think we
8 should be setting a few more omnibus dates?

9 MR. GRAHAM: Your Honor, I think that
10 probably would be appropriate.

11 THE COURT: Okay. Let's see, we have
12 been typically doing it the third Wednesday of the
13 month, so that would be September 20, and October 18,
14 and November 15. Well, we could set a December one
15 because you can always get rid of them.

16 MR. GRAHAM: Okay.

17 THE COURT: I mean, I don't know that
18 we're going to need it, but if we don't, we'll just
19 strike it.

20 MR. GRAHAM: Okay.

21 THE COURT: So that will take us to
22 the 20th, unless you wanted a week earlier given the
23 time of year.

24 MR. GRAHAM: I would say given the
25 time of year, it might make sense to do it.

1 THE COURT: So let's say December 13.
2 And we'll get those on the website.

3 MR. GRAHAM: Thank you, Your Honor.

4 THE COURT: I assume, since I have
5 heard no complaints from either official committee,
6 that they are, A, apprised of your progress, and, B,
7 satisfied with it, because otherwise they would be in
8 here howling.

9 MR. GRAHAM: I believe that's correct,
10 Your Honor. We have regular regulatory -- monthly
11 regulatory update calls with the creditor groups.
12 And we remain, like, in discussions, obviously, about
13 all these things with both official committees, as
14 well as the various ad hoc groups that represented
15 the banks in the first lien box.

16 THE COURT: Okay. Anything else on
17 the update?

18 MR. GRAHAM: I think that's it for
19 now, Your Honor.

20 THE COURT: All right.

21 MR. GRAHAM: So I think we can move
22 into the agenda.

23 THE COURT: Let's do that.

24 MR. GRAHAM: The first item was the
25 debtor's Clark County stipulation motion, which there

1 were no objections. And we did file a certification
2 of no objection last week at docket number 712. I
3 believe that Your Honor wanted to call it. You may
4 have had some questions.

5 THE COURT: Well, I do. My question
6 is this, you don't call it a motion to approve
7 settlement under Rule 9019, but you cite Section 363
8 and Rule 9019. And I could not for the life of me
9 figure out what you were settling or what property
10 you might be using or selling or leasing.

11 And when I got to the end of the
12 motion, it seemed to me that there was nothing --
13 there was no dispute here. You say, in short, the
14 stipulation simply sets forth what the debtors
15 already expected to provide Clark County. And then
16 you go on and say but it provides Clark County with
17 the protections it needs to save the debtors
18 significant cash. I think the protections are
19 apparently against some sort of collateral attack,
20 and you talk about that. But there hasn't been one.

21 MR. GRAHAM: Correct, Your Honor.

22 THE COURT: There isn't one
23 threatened.

24 MR. GRAHAM: No one has threatened it.

25 THE COURT: So why is this not what I

1 sometimes call a comfort order?

2 MR. GRAHAM: Your Honor, we did
3 discuss that with Clark County. There is a concern
4 raised by Clark County that the plan provides that --
5 you know, there's objection to claims for 365 days
6 after the plan effective date, which could be
7 extended. And as you're well aware, you know, the
8 Code allows any party to come in and object.

9 So by entering into this stipulation
10 with them and seeking approval of the allowed amount,
11 that allows them to then go refinance without the
12 concern, by now having put it on notice, having filed
13 it on the docket, having sent it out to the major
14 creditor groups, that no one is going to object to
15 the allowance of this claim in this amount.

16 The claim itself, just as background,
17 I know it's probably in the motion, but it will sit
18 actually on the property underlying the REIT. The
19 first lien creditors are very comfortable with the
20 amount and the allowance of it. And it would be paid
21 by the Caesars side under the lease.

22 THE COURT: Is it your position that
23 by entering into the stipulation the debtors are -- I
24 don't know what the term would be -- releasing their
25 right to object? Are you giving up something here?

1 MR. GRAHAM: We are agreeing not to
2 object, yes.

3 THE COURT: Okay.

4 MR. GRAHAM: We would be releasing our
5 right under the Code or under the...

6 THE COURT: All right. So that's the
7 property that you are proposing to give up, and
8 that's why it's a Rule 9019 motion, and that's why
9 it's not just a comfort order?

10 MR. GRAHAM: Yes, Your Honor.

11 THE COURT: Okay. All right. In that
12 case, I'm comfortable. The motion is granted.

13 MR. GRAHAM: Thank you, Your Honor.

14 THE COURT: All right.

15 MR. GRAHAM: I think the next item,
16 Your Honor, is the independent member of the fee
17 committee's sixth interim final fee application.

18 THE COURT: Well, yes. My problem is
19 not with the dollars. My problem is with the word
20 "final." It can't be final because despite what
21 Professor Rapoport may think, she isn't done yet. We
22 don't have final fee applications. I don't know when
23 we will have final fee applications. Maybe we'll
24 never have final fee applications. But until we do,
25 it seems to me that the fee committee has to keep

1 working.

2 Even when there are final fee
3 applications, I would expect a report on those. Not
4 so much that the fee committee will go through, God
5 forbid, line by line every invoice since the case
6 began, but rather that the committee would determine
7 whether the amount sought as final compensation was
8 the sum of all of the amounts awarded as interim
9 compensation, because, sadly, it is not unusual for
10 there to be a disconnect. And I've got a calculator.
11 I suppose I could do it. But I'm going to have
12 Professor Rapoport do it or someone to whom she
13 delegates the task.

14 So, I have to go back and doctor this
15 order or she can submit a new one. In fact, it says
16 proposed order anyway. But I am happy to allow her
17 interim fees, but I expect another interim
18 application from her.

19 MR. GRAHAM: Understood.

20 THE COURT: Once there are final fee
21 applications that we have dealt with in this case,
22 presumably because a plan has become effective, then
23 I would like a final fee application.

24 MR. GRAHAM: Understood, Your Honor.

25 THE COURT: So to the extent it says

1 final, I think she jumped the gun. And that's my
2 only problem.

3 Why doesn't she submit a new order.

4 MR. GRAHAM: Okay. We'll reach out to
5 her. She may be on the phone.

6 THE COURT: I think she is.

7 All right. That's good.

8 MR. GRAHAM: Your Honor, I think the
9 next item up is Paul Hastings.

10 THE COURT: Yes. And, you know, I
11 just don't get certificates of no objection from
12 them. That's all.

13 MR. GRAHAM: Trying to save the estate
14 some cash, I think, Your Honor.

15 THE COURT: Well, okay. I can grant
16 that application.

17 MR. GRAHAM: Thank you, Your Honor.

18 I think with that, I think the next
19 one is actually Jefferies, which I would hand over to
20 somebody else.

21 MR. POSSINGER: Good afternoon, Your
22 Honor. Paul Possinger on behalf of the committee of
23 unsecured creditors. With me today is counsel to
24 Jefferies, Matt Linder.

25 MR. LINDER: Good afternoon, Your

1 Honor.

2 THE COURT: And where are you from
3 exactly?

4 MR. LINDER: Matthew Linder of Sidley
5 & Austin.

6 THE COURT: Yes, that's my problem.
7 And I would want to hear from the U.S. Trustee on
8 this. Sidley is not a retained professional in this
9 case, and the application proposes to pay Sidley
10 \$70,000 in estate funds. And I don't think that can
11 happen because Sidley was never retained.

12 A professional who is retained in a
13 case cannot then retain its own professional without
14 court approval and then seek to essentially expense
15 that firm's fees and get somebody paid from the
16 estate who is not a retained professional. And I
17 didn't see an objection from the U.S. Trustee on
18 this, so I don't know if that office has a position.

19 There is a split in the case law on
20 this, but I am inclined to disagree with Judge
21 Glenn's decision in Borders Group and to agree with
22 Judge Feller's decision in Crafts Retail Holding
23 Corporation.

24 So, it's not for me to be awarding
25 fees to Sidley, who was never retained. If Jefferies

1 wants to retain a lawyer to help it in this case,
2 Jefferies can pay Sidley if it wants to, but the
3 debtors aren't going to pay.

4 MR. LINDER: Understood, Your Honor.
5 I would just note for the court that it's expressly
6 contemplated in the engagement letter and then also
7 in the court's order authorizing --

8 THE COURT: I am aware of that. And
9 to the extent necessary under Section 328(a), I would
10 revise the retention order, actually, to delete that
11 provision, if necessary, because I certainly never
12 contemplated that Jefferies would go out and without
13 court approval retain counsel to be paid from the
14 estate. That never crossed my mind.

15 I've seen this kind of thing before.
16 I don't allow it. And had I thought it was going to
17 go on here, I would not have permitted it. I also
18 really don't understand why Jefferies thought it was
19 necessary to even seek additional counsel. I mean,
20 the services rendered had to do with the fee
21 application and had to do with document production.
22 And if Jefferies, which was working for the
23 committee, needed help, they could have gone to
24 Proskauer for the help and Proskauer could have
25 billed the time and there would be no problem. But

1 that is not what they chose to do.

2 MR. LINDER: Your Honor --

3 THE COURT: So that's their decision.

4 MR. LINDER: -- if I could on that
5 point, Your Honor. We believe that it is important
6 for Jefferies to use its own counsel in connection
7 with document productions and in responding to
8 subpoenas, particularly in this case where the scope
9 of the requests actually were so broad that they
10 included search terms that referred to many
11 professionals in the case with whom Jefferies works.

12 Routinely in other cases there was an
13 elevated risk that there would be disclosure of
14 materials that were not related to this case or that
15 were otherwise privileged or were confidential or we
16 deemed not relevant. So that is why in this case
17 there was -- given also the voluminous nature of the
18 document requests, that was -- that was another
19 reason that Jefferies sought out its own counsel.

20 THE COURT: Well, if Jefferies thought
21 it was so important, then Jefferies can pay the bill.
22 But I'm not going to have the estate pay the bill.
23 So I will grant the Jefferies application but reduce
24 it by the amount of the fees --

25 MR. LINDER: Understood, Your Honor.

1 Would you like us to submit a revised order?

2 THE COURT: No, I can take care of it.
3 As I said, I have a calculator.

4 MR. LINDER: Thank you, Your Honor.

5 MR. POSSINGER: Thank you, Your Honor.

6 THE COURT: All right. The next
7 matter, matters, are debtors' motion to compel
8 production of documents by Rowen Seibel and Mr.
9 Seibel's motion to quash and modify the subpoenas to
10 him or for an extension of time. And I have a
11 ruling, as I promised, which I will read.

12 Have a seat, if you would like.

13 This matter is before me on two
14 motions: (1) the debtors' motion to compel Rowen
15 Seibel to comply with two subpoenas, one to Seibel
16 himself, the other to Seibel as guardian for his
17 mother; and (2) the motion of Seibel to quash or
18 modify the subpoenas or alternatively for an
19 extension of time to object and respond to the
20 subpoenas.

21 If ever there were a situation calling
22 for a "plague-on-both-your-houses" ruling, this is
23 it. But since such a ruling is not an option, I will
24 grant Seibel's motion and quash the subpoenas. The
25 debtors will be permitted to issue new subpoenas

1 consistent with guidelines I will describe.

2 Neither side here deserves much
3 sympathy. On the one hand, there is Rowen Seibel,
4 sometime restaurateur, tax cheat, and convicted
5 felon. Seibel was served with the debtors' subpoenas
6 on December 15, 2016. He promptly gave them to a
7 lawyer who had represented businesses with which
8 Seibel has been affiliated, wrongly assuming the
9 lawyer would take care of things. As far as the
10 record shows, Seibel then forgot about them. The
11 January 3, 2017, compliance date came and went, but
12 Seibel made no effort to collect or produce the
13 documents the debtors sought. It was not until
14 January 31, when the debtors moved to compel his
15 compliance, that Seibel stirred himself. By then,
16 though, it had been a month and a half since the
17 subpoenas were served. His motion to quash or for an
18 extension did not follow for nearly a month after
19 that.

20 In March, Seibel served objections to
21 the document requests - although he was well past the
22 deadline to serve them, and no extension had been
23 granted. To each request, he intoned essentially the
24 same mantra: That the request was "vague, ambiguous,
25 overly broad, unduly burdensome, call[ed] for the

1 disclosure of information that is protected by the
2 attorney-client privilege, work product doctrine, or
3 immunity from discovery," and "s[ought] documents
4 that are not relevant to the subject matter of this
5 proceeding." Boilerplate objections are pointless,
6 since they do nothing to meet the objecting party's
7 burden to show why discovery is improper. *Burkybile*
8 *v. Mitsubishi Motors Corp.*, No. 04 C 4932, 2006 WL
9 2325506, at *6 (N.D. Ill. Aug. 2, 2006). Seibel
10 supplied no log to support his claims of privilege.
11 Assertions of privilege are pointless if no privilege
12 log accompanies them. *RBS Citizens, N.A. v. Husain*,
13 291 F.R.D. 209, 218-19 (N.D. Ill. 2013); *Acosta v.*
14 *Target Corp.*, 281 F.R.D. 314, 319-20 (N.D. Ill.
15 2012).

16 Seibel now tries to explain away his
17 delay in responding to the subpoenas by claiming he
18 takes care of his elderly grandmother. Beginning in
19 late December, he says, she had to be hospitalized
20 several times. Perhaps so, although one wonders who
21 was caring for her during Seibel's prison term. But
22 whatever his obligations to his grandmother, it was
23 still incumbent upon him to pay attention to the
24 subpoenas, communicate with counsel, and seek
25 extensions if necessary. The debtors point out that

1 during the same period, Seibel was able to sue a
2 non-debtor Caesars entity in a distant district, and
3 in connection with that action he was able to file
4 two detailed affidavits. Some legal matters, then,
5 he had time for, ailing grandmother notwithstanding.
6 The subpoenas here he did not.

7 On the other hand, there are the
8 debtors. Knowing full well that Seibel was to begin
9 serving his one-month prison sentence on November 29,
10 2016, the debtors nonetheless had the subpoenas
11 issued that very day. The subpoenas had a compliance
12 date of January 3, 2017, mere days after his release.
13 To make matters worse, the debtors waited to serve
14 Seibel until December 15, just two weeks before the
15 compliance date, while he was still imprisoned and
16 obviously unable to gather any documents. And to
17 make matters still worse, the document requests
18 accompanying the subpoenas were stunning both in
19 number and in breadth: More than 150 exceptionally
20 expansive requests calling for the production of
21 material from 2002 to the present. In late January,
22 when Seibel's counsel suggested service of a new
23 subpoena with a new compliance date, efforts at
24 cooperation were rebuffed. The debtors maintained
25 that Seibel had waived his objections by not

1 responding within 14 days after service - by December
2 29, in other words, although he was a federal
3 prisoner until December 27.

4 Tempting though it is, I cannot come
5 up with a way to rule against everyone. It is not
6 possible both to compel Seibel's response and also
7 quash the subpoenas. Given that the debtors made
8 unacceptable document requests and Seibel belatedly
9 served unacceptable objections to them, there is no
10 good resolution. The best course, it seems to me, is
11 to put both sides back to square one and make them
12 begin again. I can do that by quashing the
13 subpoenas, and there is plenty of reason to quash
14 them.

15 Rule 45(d)(3)(A) requires the court
16 "[o]n timely motion" to quash or modify a subpoena
17 that, among other things, fails to allow a reasonable
18 time to comply or subjects a person to an undue
19 burden. The initial question here is whether
20 Seibel's motion was timely. The debtors argue it was
21 not, insisting that the motion must be filed before
22 the subpoena's compliance date. Many courts reach
23 that conclusion. See *Enargy Power (Shenzhen) Co. v.*
24 *Wang*, No. 13-11348-DJC, 2014 WL 2048416, at *3 n.5
25 (D. Mass. May 16, 2014). But the Rule itself imposes

1 no set time limit - in contrast to Rule 45(d)(2)(B)
2 which does, specifying a 14-day period to object.
3 The omission of any similar period in Rule
4 45(d)(3)(A) suggests an intent to permit greater
5 flexibility in an area where courts typically enjoy
6 broad discretion. Other courts, consequently, have
7 found that timeliness means filing the motion within
8 the compliance period "so long as that period is of
9 reasonable duration." *City of St. Petersburg v.*
10 *Total Containment, Inc.*, No. 07-191, 2008 WL 1995298,
11 at *2 (E.D. Pa. May 5, 2008). Still other courts
12 have exercised their discretion to quash defective
13 subpoenas even when the motion was untimely. See
14 *Bouchard Transp. Co. v. Associated Elec. & Gas Ins.*
15 *Servs., Ltd.*, No. 15 Civ. 6586 PAC, 2015 WL 6741852,
16 at *1 (S.D.N.Y. Nov. 4, 2015).

17 In this case, I will exercise my
18 discretion and quash the subpoenas for two reasons
19 that are related.

20 First, the subpoenas did not give
21 Seibel a reasonable time to comply, which, as the
22 court in *Bouchard* noted, is a "mandatory ground to
23 quash" under the Rule. *Bouchard*, 2015 WL 6741852, at
24 *2. As I noted before, the subpoena was served on
25 December 15 and required Seibel to produce documents

1 on January 3, a little over two weeks later. That
2 period might well be reasonable in a different case
3 with more modest requests for production. Fourteen
4 days is often considered a presumptively reasonable
5 time for compliance. See *Verisign v. XYZ.com, LLC*,
6 No. 15-mc-175-RGA-MPT, 2015 WL 7960976, at *3 (D.
7 Del. Dec. 4, 2015) (making this observation).

8 But here, the debtors served more than
9 150 document requests (if subparts are included),
10 requests that were breathtakingly broad. Many of the
11 requests sought documents that were arguably
12 privileged. No one could have complied with these
13 subpoenas in the short time Seibel was given, let
14 alone someone who was a federal prisoner for most of
15 the period between the dates of service and
16 compliance. Under the circumstances, the time for
17 compliance was unreasonable. Cf. *Nguyen v. Louisiana*
18 *State Bd. of Cosmetology*, No. 14-80-BAJ-RLB, 2016 WL
19 320152, at *2 (M.D. La. Jan. 26, 2016) (finding 16
20 days unreasonable where the subpoena sought "a large
21 amount of documents, most of which are subject to the
22 attorney client privilege").

23 Second, the subpoenas subjected Seibel
24 to an undue burden. In determining whether a
25 subpoena imposes an undue burden, the court must

1 consider whether the burden of compliance exceeds the
2 benefit of production. *Northwestern Mem'l Hosp. v.*
3 *Ashcroft*, 362 F.3d 923, 927 (7th Cir. 2004).

4 Relevant factors include whether (1) the party
5 subpoenaed is a non-party to the underlying suit; (2)
6 the information requested is relevant; (3) the
7 requesting party has a substantial need for the
8 documents; (4) the request is overly broad; (5) the
9 time period covered is reasonable; (6) the request is
10 sufficiently specific; and (7) the request imposes a
11 burden. *American Soc'y of Media Photographers, Inc.*
12 *v. Google, Inc.*, No. 13 C 408, 2013 WL 1883204, at *2
13 (N.D. Ill. May 6, 2013).

14 Again, Seibel was served with more
15 than 150 document requests seeking documents spanning
16 almost two decades. The requests were overly broad,
17 were insufficiently specific, covered an unreasonable
18 period, and often sought material that appeared to be
19 privileged. Some examples:

20 • All documents relating to "any
21 assignment" involving FERG or LLTQ.

22 • All tax filings of FERG, LLTQ,
23 and Seibel.

24 • All documents relating to the
25 Seibel Family 2016 Trust, including its creation or

1 formation.

2 • All documents related to FERG
3 2016, LLC.

4 • All documents relating to
5 Seibel's criminal case and any allegations in the
6 information filed against Seibel.

7 • All documents relating to
8 Seibel's decision to plead guilty in the criminal
9 case.

10 • All documents relating to "any
11 criminal, illegal, or fraudulent activity that you
12 are currently involved in or have ever been involved
13 in."

14 And on and on. The burden that these
15 requests imposed on Seibel was more than just undue.
16 The subpoenas were overbearing and abusive.

17 Meanwhile, the relevance of the
18 information the debtors sought is open to serious
19 question. In denying FERG and LLTQ's motion for
20 protective order, I described as "thin" the legal
21 theories the debtors have advanced to justify what
22 they call "suitability" discovery. As I explained,
23 rescission does not seem to be a possibility here,
24 and neither the LLTQ and FERG dispute nor the MOTI
25 dispute appears to involve anticipatory repudiation.

1 Nine months have passed since the debtors learned of
2 Seibel's conviction, and still they have articulated
3 no coherent theory that would make relevant the
4 documents they want from him.

5 Given the oppressiveness of the
6 subpoenas the debtors served on Seibel and the
7 dubious relevance of the discovery they are pursuing,
8 I find the burden of compliance with the subpoenas
9 exceeded the benefit of production. *Northwestern*
10 *Mem'l Hosp.*, 362 F.3d at 927.

11 Because the subpoenas did not provide
12 Seibel with a reasonable time for compliance and
13 imposed an undue burden, his motion to quash the
14 subpoenas will be granted. The debtors' motion to
15 compel his compliance will be denied.

16 The debtors are free to try again. To
17 minimize the chances of future disputes, I will
18 impose the following guidelines for any new
19 subpoenas.

20 1. In this circuit, a subpoena may be
21 served not only by personal delivery but also by
22 certified mail. See *Ott v. City of Milwaukee*, 682
23 F.3d 552, 557 (7th Cir. 2012). The debtors are free
24 to serve Seibel by certified mail at his last known
25 address. His counsel should receive a copy.

1 2. Any subpoena to Seibel must
2 include no more than 35 requests for documents,
3 including subparts. Any subpoena to Seibel in his
4 capacity as his mother's guardian must include no
5 more than 15 requests for documents, including
6 subparts. The time period the subpoenas cover must
7 be no greater than 2009 to the present.

8 3. Any subpoena to Seibel must allow
9 him at least 45 days from the date of service to
10 respond.

11 4. Counsel for the parties are
12 reminded that there are rules, national and local,
13 governing discovery and discovery disputes. Those
14 rules must be followed. So must the decisional law
15 applying those rules. Counsel for the debtors are
16 reminded that lawyers are expected to show each other
17 something that in these parts we call "professional
18 courtesy."

19 An appropriate order will be entered
20 addressing the motions and setting out the terms for
21 future subpoenas to Seibel.

22 I don't believe there is much else to
23 discuss except the status of the FERG, LLTQ, and MOTI
24 matters.

25 MR. RUGG: Your Honor, for the record,

1 Nathan Rugg for FERG, LLTQ Enterprises, MOTI
2 Partners, and their assigns.

3 MR. GRAHAM: Your Honor, Joe Graham,
4 Kirkland & Ellis, on behalf of the debtors.

5 I want to thank you for your ruling.
6 I know that it didn't necessarily go our way, but
7 thank you for getting to it.

8 THE COURT: I'm paid to do these
9 things.

10 MR. GRAHAM: I know.

11 THE COURT: All right. Well, there
12 is, obviously, discovery going ahead on all of these
13 matters, so I don't think there is much to discuss
14 except this on MOTI. I received supplemental briefs
15 that I asked for to address the question of the
16 contractual status of the parties' relationship
17 because it seemed to me on looking at the documents,
18 that the contract had expired. And, nonetheless, the
19 parties had continued dealing with each other.

20 And I suggested at the time that it
21 might involve a doctrine known as quasi-contract,
22 which it does not. And I wanted some assistance with
23 that. MOTI submitted a supplemental brief that
24 suggested that there had indeed been an extension of
25 the contract and gave me various legal reasons why

1 that was true, in addition to factual ones. The
2 debtors filed what they called a limited response in
3 which they essentially said, yes, we agree that the
4 contract was extended.

5 But I didn't find the facts that MOTI
6 supplied to suggest that the contract had been
7 extended. And I didn't believe the legal arguments
8 were persuasive. And I cannot simply conclude that
9 the contract was extended because the parties agree
10 to it. You can stipulate to facts. You can't
11 stipulate to legal conclusions, nor can you stipulate
12 to what this is, a mixed question of law or fact. It
13 is my decision whether the contract was extended
14 based on the facts. You can stipulate to those
15 facts, but not to the conclusion.

16 My research suggests the following.
17 One, based at least on the facts that I have now, the
18 contract was not extended. The parties continued
19 operating, but not under the contract. They
20 continued operating in some new way. Exactly how
21 they operated and in what new way isn't entirely
22 clear to me.

23 Rather than a contract implied in law,
24 what usually happens when parties continue to perform
25 under a contract that has expired is that they end up

1 with what is called a contract implied in fact. And
2 "the seminal case" would probably be too much to call
3 it, but you can take a look at Martin v. Campanaro,
4 which is a Second Circuit case from 1946, 156 F.2d
5 127.

6 That doctrine applies when the parties
7 continue operating as if the old contract were in
8 existence. When they start operating in a new way,
9 they have an implied contract, but not necessarily on
10 the same terms. And this is described in -- this
11 will seem obscure, but it's really not -- a South
12 Dakota Supreme Court decision called Jurrens,
13 J-U-R-R-E-N-S, which you will find at 587 N.W.2d 151.
14 What happens when the parties behave differently is
15 that you end up with a factual question about what
16 the terms under which they operated really were.

17 So I think we're going -- and unless
18 you're able to convince me in a way you haven't so
19 far, and I realize we're not at that point, that this
20 contract really was extended -- we are going to have
21 a factual question about what the terms were. And we
22 know what factual questions require. They require an
23 evidentiary hearings. Now, maybe we're going to need
24 one of those anyway on this. I really don't know.
25 But that's my analysis at this point based on what I

1 have.

2 Okay. So I thought to the extent that
3 it was useful, maybe it is, maybe it's not, to hear
4 what was on my mind, now I have told you. Other than
5 that, I think since there is discovery going on, we
6 should just continue this to a new date.

7 Do you agree?

8 MR. GRAHAM: Your Honor, in that
9 scenario then, MOTI would be continued on just on the
10 same path as the FERG and LLTQ matters, is that what
11 you're suggesting then?

12 THE COURT: Yes. I think they are
13 both up today for status.

14 MR. GRAHAM: They all were, Your
15 Honor.

16 THE COURT: And, you know, we can put
17 them over to July, if that makes sense, or instead of
18 putting something on the calendar that may not be
19 suitable, we could move it to August. You're the
20 ones taking discovery. I'm just sitting here reading
21 the things you file.

22 MR. RUGG: Your Honor, I think August
23 works for the parties for status.

24 THE COURT: Why don't we do that. So
25 we will put all of those matters over to the August

1 date.

2 Is there anything else today we need
3 to discuss?

4 MR. GRAHAM: I think that's it, Your
5 Honor.

6 THE COURT: Okay. Great. Thank you
7 all.

8 MR. GRAHAM: Thank you.

9 MR. RUGG: Thank you, Your Honor.
10 Good afternoon.

11 (Which were all the proceedings had in
12 the above-entitled cause, June 21,
13 2017, 1:30 p.m.)

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

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

4	CAESARS ENTERTAINMENT OPERATING)	
5	COMPANY, INC., et al.,)	No. 15 B 01145
6		Chicago, Illinois
7		10:30 a.m.
8	Debtor.)	March 21, 2018

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE A. BENJAMIN GOLDGAR

APPEARANCES:

13	For the Debtors:	Mr. William Arnault;
14	For LLTQ, FERG and Moti:	Mr. Nathan Rugg;

19	Court Reporter:	Amy Doolin, CSR, RPR
20		U.S. Courthouse
21		219 South Dearborn
22		Room 661
23		Chicago, IL 60604.

1 THE CLERK: We are taking up this
2 court's 10:30 set matters in the case of Caesars
3 Entertainment Operating Company, Incorporated.

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

7 MR. RUGG: Good morning, Your Honor.
8 Nathan Rugg on behalf of the LLTQ, FERG, and Moti
9 entities.

10 THE COURT: Good morning. And I know
11 we have some lawyers on the phone.

12 I have got --

13 MR. MAYALL: Good morning.

14 THE COURT: Go ahead.

15 MR. MAYALL: Good morning, Your Honor.
16 Jaspreet Mayall on behalf of R Squared Global
17 Solutions, LLC, and DNT Acquisition, LLC. I
18 appreciate the court's courtesy in allowing me to
19 appear by live phone on a last-minute request. And I
20 apologize to the court and counsel for not being
21 there.

22 MR. LEBENSFELD: Your Honor, good
23 morning. Alan Lebensfeld for the original Homestead
24 Restaurant. And thank you as well.

25 THE COURT: You're welcome.

1 So I have the motion from the debtors
2 for stay or abstention, and there's been a joinder,
3 and there are a couple of limited objections
4 suggesting that I really ought to just continue these
5 at least until the next date.

6 Is there a reason I shouldn't continue
7 them?

8 MR. ARNAULT: Well, I would say that
9 we think that a briefing schedule should be entered.

10 THE COURT: Why?

11 MR. ARNAULT: Well --

12 THE COURT: Why not just wait?

13 MR. ARNAULT: Because I think that our
14 position is that your ruling on this issue will be an
15 important data point for the Nevada state court as it
16 determines what it's going to do with all these
17 issues.

18 As we lay out in our motion there,
19 we're trying to create one comprehensive forum where
20 all of these issues, all of the debtors, all of the
21 non-debtor entities, all of the Seibel-affiliated
22 entities can actually litigate these issues.

23 THE COURT: Except you're not going to
24 be able to do that, are you? Because there are
25 matters in Delaware, in New York, and in another

1 couple other Nevada courts, I believe.

2 MR. ARNAULT: Well --

3 THE COURT: So there's no possibility
4 of bringing all of these --

5 MR. ARNAULT: -- well --

6 THE COURT: -- to one place.

7 MR. ARNAULT: Well, right now in the
8 Nevada state court action we actually have all of the
9 debtor and non-debtor entities from the Caesars, and
10 we also have all of the Seibel-affiliated entities,
11 as well as Mr. Seibel. So at least we've done our
12 best to create a forum that contains all of the
13 relevant parties.

14 And, yes, it's true that there are
15 other -- there's other ongoing litigation. We are
16 trying to create one forum where all of these issues
17 can be decided and can go forward.

18 THE COURT: I don't understand. What
19 are you doing to create that forum? I mean, if
20 you've done what you say, why is there litigation
21 anywhere else?

22 MR. ARNAULT: Well, because -- well,
23 there is -- well, so, for example, there's the
24 dissolution action in Delaware, so that is a slightly
25 different issue and relates to the relationship

1 between the two partners and GRB.

2 THE COURT: Okay. But what about New
3 York?

4 MR. ARNAULT: And then you have the
5 New York action which relates to, I would say,
6 primarily the relationship, much like the Delaware
7 action, between the JV partners, so Old Homestead and
8 Mr. Seibel.

9 So that's really -- I would say that
10 the brunt of that litigation relates to the
11 relationship between those two, whereas the
12 relationship between the Caesars and Mr. Seibel is
13 what's at issue in the Nevada state court action.

14 So I would say that those are -- while
15 they're related or they certainly have common facts,
16 the one forum that addresses all of the
17 inter-relationships between Caesars and Mr. Seibel
18 and the Seibel-affiliated entities is the Nevada
19 state court litigation.

20 THE COURT: How would it be helpful
21 for me to have this briefed when there is all this
22 activity, particularly in Nevada and New York, and
23 those cases seem to be on a track that's faster than
24 mine?

25 MR. ARNAULT: Well, I would say -- I

1 mean, we even make this point in our response to
2 their motions to dismiss in the Nevada state court
3 action, that the court should look to what this court
4 does and -- because it could be an important data
5 point in deciding where these claims should go
6 forward, and use that information in order to
7 determine what -- which forum should be the forum
8 that decides these issues.

9 THE COURT: The Nevada court isn't
10 deciding where things go. The Nevada court is
11 deciding whether the complaint states a claim,
12 right?

13 MR. ARNAULT: Well, it's -- it's a
14 motion to dismiss or in the alternative stay the
15 claims that are being asserted against LLTQ.

16 THE COURT: So stay in favor of?

17 MR. ARNAULT: This court.

18 THE COURT: The bankruptcy court?

19 MR. ARNAULT: That's correct. So
20 that's why --

21 THE COURT: What if both the Nevada
22 judge and I stay our proceedings? Then what do you
23 do?

24 MR. ARNAULT: Well, I mean, our point
25 would be that this issue has really already been

1 decided by the Nevada bankruptcy court. This is the
2 same issue that was presented there, where should
3 these claims and issues go forward. It decided that
4 it should be in the Nevada state court.

5 Now, they're presenting the same
6 issues to the Nevada state court. We think that it's
7 -- this issue has already been decided.

8 THE COURT: Forgive me, because it's
9 more than I can handle just to read materials filed
10 in my own cases.

11 MR. ARNAULT: Understood.

12 THE COURT: I try not to read
13 materials filed in other judge's cases.

14 Are the debtors or the Caesars
15 entities the ones asking that the Nevada matter be
16 stayed?

17 MR. ARNAULT: No, we are not.

18 THE COURT: I was going to say --

19 MR. ARNAULT: No.

20 THE COURT: -- I would hope --

21 MR. ARNAULT: That's the LLTQ, FERG,
22 and the Seibel-affiliated entities.

23 No, no, we would like to go forward in
24 the Nevada state court, actually.

25 THE COURT: Okay. Good. At least

1 there's some consistency there.

2 MR. ARNAULT: We're trying.

3 And that's another point that
4 there's -- no matter what, the Nevada state court
5 action is going to be going forward. We have the GRB
6 action. So there's going to be issues that are being
7 litigated there. I know there's been motions to
8 dismiss that have been filed, but, quite frankly,
9 they relate to disputed fact issues. They're
10 relatively inconsistent with the previous relief
11 that's been sought in the Nevada bankruptcy court, so
12 it's --

13 THE COURT: You've got at least some
14 argument, if not decision dates coming up, what, in
15 just a couple of weeks, right? So, I'm not going to
16 get anything accomplished in a couple of weeks. I
17 won't even be here. So why shouldn't we just wait
18 and see what happens in New York, and particularly in
19 Nevada?

20 MR. ARNAULT: I mean, at the end of
21 the day, that's fine. We think that Nevada is the
22 proper forum. We think that that's what the Nevada
23 state court is going to decide. We made the same
24 pitch to them that we made to you in the stay
25 briefing. We think at the end of the day this issue

1 has already been decided. So we're happy to go
2 forward there, if that's the best course of action
3 for --

4 THE COURT: Well, the problem is that
5 it's very hard to know what the best course of action
6 is. My concern is the concern that I expressed last
7 time. I don't want to see courts operating at cross
8 purposes. I don't want to see judges duplicating
9 effort. I don't want to see lawyers duplicating
10 effort.

11 Frankly, my inclination is not to set
12 a briefing schedule and just put this over to the
13 April date. I mean, as I understand it, you have
14 either reached or are close to reaching an agreement
15 that the discovery will only have to be taken once in
16 the various actions and can be used anywhere.

17 Mr. Rugg is looking skeptical.

18 MR. RUGG: I have just not --

19 THE COURT: That's what the papers
20 suggest. If that's true, then there's no reason to
21 stop the discovery because that's not going to be
22 duplicative. And, meanwhile, I'm not going to have a
23 chance to look at anything that you file for some
24 time.

25 And with these other courts at least

1 moving ahead and maybe ruling, I don't know, whatever
2 the courts do, might as well just wait and see at
3 least as of our next date whether anything has
4 happened to change the landscape.

5 MR. RUGG: That was going to be our
6 suggestion, Your Honor, just --

7 THE COURT: I know.

8 MR. RUGG: -- what Mr. Arnault
9 suggested, we're discussing really the merits of the
10 motion for stay. We have an April 4 hearing for
11 motions to dismiss, and we can't presume that they're
12 all going to be denied as part of this briefing.

13 At any rate, we're going to be in
14 front of these -- in front of the judge in Nevada for
15 motions that were originally filed back in January.
16 So, I think it's a better course to see where that
17 lands.

18 We also have the appeal. I mean, it
19 could be favorable for Caesars next time we come back
20 in that maybe you dismiss the appeal.

21 THE COURT: Right. I guess I should
22 say sometimes I read materials filed in other cases.
23 I did read the motion just because I was curious.
24 And I can't imagine if the Bankruptcy Appellate Panel
25 works the way other appellate courts do, that there's

1 going to be any argument entertained on that. I
2 think they'll just rule.

3 But, otherwise, that's moved ahead.
4 You filed your brief I saw.

5 MR. RUGG: Correct, Your Honor. We
6 have our reply brief due April 9. So we wouldn't --
7 I mean, if we were going to enter a schedule, we
8 wouldn't want to do it until the middle of April
9 anyway.

10 THE COURT: Right. So the appeal is
11 going to be fully briefed April 9. There is an
12 argument in Nevada on April 4. I thought I saw there
13 was an argument in the New York case on April 6th.

14 MR. RUGG: I think --

15 THE COURT: I'm not even going to be
16 back from my travels until after all of these things
17 have happened. And I have my hands full with other
18 things, including a number of motions to compel that
19 the Whitebox people are providing me.

20 So, I think it would be better just to
21 wait. I'm not saying that we won't set a briefing
22 schedule, and maybe we will. But I'd like to see if
23 the clouds part a little bit and the landscape is a
24 little clearer. I don't think there's any harm done.

25 MR. ARNAULT: I mean, I guess the only

1 harm to us, Your Honor, is that all these issues were
2 known. The appeal was -- notice of appeal was on
3 December 28th. They filed their initial motions to
4 dismiss on January 5th. So it's not as if -- for the
5 first time last week after we had filed our brief, so
6 that would be the only harm that -- they didn't take
7 this position until we had put our brief on file.

8 THE COURT: But it's your motion for
9 stay. So, it's not as if they've delayed in reacting
10 to that. This is the first time they could have
11 reacted.

12 MR. ARNAULT: Well, I mean, it --

13 MR. RUGG: Your Honor -- Your Honor,
14 there was nothing for us to discuss. We didn't know
15 what the landscape would be when the motion was going
16 to be filed. Now that the motion is filed, we have
17 fully briefed motions to dismiss. So, I don't think
18 there's anything inconsistent or any harm in that
19 regard.

20 MR. ARNAULT: I mean, I don't think
21 that's entirely fair, that you didn't know what the
22 landscape would be, because we all knew that these
23 were being filed. And it wasn't until -- we had
24 discussed filing a motion to stay, and it wasn't
25 until after we filed our motion to stay that now the

1 attempt has been made to stay the stay briefing,
2 which is just -- that is the -- that would be the
3 only thing that I would argue is slightly unfair, is
4 that we had -- that if this was an issue that LLTQ
5 and FERG were going to raise, there was an -- there
6 was an opportunity to raise it before we had filed
7 our motion.

8 THE COURT: I don't think so. I don't
9 know how you react to a motion until it's been filed.
10 But in any event, I have to do, it seems to me,
11 what's sensible. And when I look at all of this, I
12 see many things happening in the next few weeks, at
13 least potentially, in three other courts, all during
14 a period when I'm out of town anyway.

15 So I think it would be better. I
16 don't think we're going to be delayed that much if we
17 just come back in April and see what's happened. And
18 maybe I'll continue the motion again. I don't know.
19 But I'd like to see what develops. I don't think
20 there's any harm.

21 So that's what I'll do. I'm going to
22 continue the motion until our April date, which is
23 April 18. Okay? And no briefing schedule. So
24 nothing needs to be done.

25 MR. ARNAULT: Thank you, Your Honor.

1 MR. RUGG: Thank you, Your Honor.

2 THE COURT: Okay. That's all for
3 today, I believe.

4 MR. MAYALL: Thank you, Your Honor.

5 MR. LEBENSFELD: Thank you, Your
6 Honor.

7 THE COURT: Thank you.

8 (Which were all the proceedings had in
9 the above-entitled cause, March 21,
10 2018, 10:30 a.m.)

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

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

4	CAESARS ENTERTAINMENT OPERATING)	
5	COMPANY, INC., et al.,)	No. 15 B 01145
6		Chicago, Illinois
		1:30 p.m.
	Debtor.)	April 19, 2017

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE A. BENJAMIN GOLDGAR

APPEARANCES:

12	For the Debtors:	Mr. Joseph Graham; Mr. William Arnault;
13	For LLTQ and FERG:	Mr. Nathan Rugg;
14	For NRF:	Mr. Ronald Barliant;
15	For TPG:	Mr. Aaron Davis;
16	For Rowen Seibel:	Mr. Claude Millman; (Telephonically)
19	Court Reporter:	Amy Doolin, CSR, RPR U.S. Courthouse 219 South Dearborn Room 661 Chicago, IL 60604.

1 THE CLERK: We are taking up all
2 matters on the call, on the 1:30 call, in the
3 Caesars Entertainment Operating Company,
4 Incorporated, case.

5 MR. GRAHAM: Good afternoon, Your
6 Honor. Joe Graham, Kirkland & Ellis, on behalf of
7 the debtors.

8 THE COURT: Good afternoon.

9 MR. GRAHAM: I don't have any
10 housekeeping matters to address, so unless you have
11 any questions, we can jump into item 1 on the agenda.

12 THE COURT: Let's do that.

13 MR. GRAHAM: Item 1 is the debtors'
14 settlement motion with the NRF and other Caesars
15 parties.

16 We filed this motion, obviously, back
17 on March 20th. We've been here before. You issued
18 an order on your indicative ruling. We sent that up
19 to the clerk in the Northern District. Yesterday
20 they sent it back down for the limited remand to
21 consider the settlement motion.

22 THE COURT: Right.

23 MR. BARLIANT: Ronald Barliant,
24 Goldberg Kohn, on behalf of NRF.

25 THE COURT: Good afternoon.

1 MR. BARLIANT: Good afternoon, Your
2 Honor.

3 THE COURT: So this is back now
4 legitimately in my lap to address the motion. There
5 have been no objections. So I can grant the motion.

6 I had a problem with paragraph 4 of
7 your proposed order, which authorized you to enter
8 into amendments to the settlement agreement from time
9 to time as necessary. I don't see how I can approve
10 a settlement that is in flux. I have to approve a
11 particular settlement.

12 MR. GRAHAM: Your Honor --

13 THE COURT: If you want to qualify
14 "amendments" in some way, I could do that, I suppose,
15 but you'd have to think of an appropriate qualifier.

16 MR. GRAHAM: Your Honor, I don't
17 actually expect that we would probably have to get
18 amendments. But it was put it in case -- there's
19 like an outside date, for instance. If the parties
20 were to agree to extend the outside date so no party
21 terminates if, for instance, this case doesn't end
22 when we all hope it does, and we don't emerge, you
23 know, sometime this summer, we want to make sure that
24 that is not a cause for a problem.

25 Can we qualify it to, you know, any

1 extensions of the outside date? I think that would
2 probably be the most important thing that could be
3 amended, or we can come back, Your Honor, if that's
4 easier -- if it's easier for this court, we're happy
5 to remove it and come back to court if that were to
6 be an issue, you know, amendment to the NRF
7 settlement agreement.

8 MR. BARLIANT: Or the parties could
9 waive -- we could provide that the parties could
10 waive requirements in the agreement, if the court is
11 okay with that.

12 THE COURT: It isn't necessary, I
13 think, to worry about little things. The question is
14 a provision in the order that allows you essentially
15 to change wholesale the nature of the settlement that
16 I approved on a completely different basis. And I
17 won't sign an order that allows you to do that.

18 So if there is a way to change -- to
19 qualify -- as I said, to qualify the word
20 "amendments" so it's little ones and not big ones --
21 I wouldn't put it that way exactly, but you get the
22 gist -- that would be better.

23 MR. GRAHAM: So, Your Honor, would it
24 be possible then on paragraph 4 -- I'm doing,
25 obviously, this from the podium.

1 THE COURT: Of course.

2 MR. GRAHAM: To say the debtors are
3 authorized but not directed to enter into amendments
4 to the settlement agreement from time to time, and
5 then instead of as necessary, to say, with respect to
6 the termination rights under the settlement
7 agreement? Because that doesn't go to the economics.
8 That doesn't go to, you know, the big material
9 issues.

10 THE COURT: Or we could say
11 non-economic amendments.

12 MR. GRAHAM: Or non-economic
13 amendments. I like that.

14 THE COURT: Okay.

15 MR. BARLIANT: That's fine.

16 THE COURT: All right. Then, in
17 paragraph 5, I took out the sentence that says this
18 order does not stay proceedings in the district
19 court. That is obvious. And I realize it's the
20 style in large Chapter 11 cases to state the obvious,
21 but I just like to give everybody credit for not
22 being complete idiots. Maybe that's credit that is
23 undeserved. I don't know. But I don't think there
24 is a district judge in the building who would feel
25 that I have the ability to stay proceedings before

1 that judge. I have that much faith in them, at
2 least.

3 MR. GRAHAM: Understood.

4 THE COURT: So that I took out.
5 Otherwise, I am only too happy to approve your
6 settlement.

7 MR. GRAHAM: Thank you, Your Honor.

8 THE COURT: You're quite welcome.

9 MR. GRAHAM: We will make sure --
10 obviously, we will work with CEC to make sure that
11 the -- and the NRF to make sure that the Second
12 Circuit and the Southern District of New York are
13 aware. They did get a letter last week --

14 THE COURT: Okay.

15 MR. GRAHAM: Per your instruction that
16 we had gone up with the indicative ruling.

17 THE COURT: Right. Well, it's for
18 your own protection, as I said.

19 MR. GRAHAM: Yes.

20 MR. BARLIANT: Right. Thank you, Your
21 Honor.

22 THE COURT: Thanks.

23 MR. GRAHAM: With that, I think the
24 next two items are two claim objections.

25 THE COURT: Right.

1 MR. GRAHAM: Uncontested. I presume
2 that you -- that there are certain issues in them
3 that are giving you pause based on --

4 THE COURT: Well, little ones.

5 On the twenty-third omnibus
6 objection -- and I may need some help getting this
7 right -- with the a single claimant, Inez Johnson, I
8 believe what happened was you corrected her address
9 and made it incorrect. So if you look at her proof
10 of claim, her address is in Paducah, Kentucky. And
11 you had that originally, even the correct street
12 address, and you changed it to a different address in
13 Lexington. And I don't know why you would do that,
14 but that suggests that you did not serve her at the
15 right place.

16 Now, there are a couple ways we can do
17 this. It's a single claimant. I could sustain the
18 objection as to all the claims except the claim of
19 Inez Johnson. And as to that one, I could overrule
20 without prejudice, and you could just tack her onto
21 your next omnibus, if that works.

22 MR. GRAHAM: What I would suggest --

23 THE COURT: What would you like to do?

24 MR. GRAHAM: What I would suggest --
25 would it be easiest if we did a draft order to

1 follow, we remove her, you know, from the schedules
2 for you, and submit that to chambers?

3 THE COURT: Yes. Okay. Let's do it
4 that way.

5 MR. GRAHAM: That might just be
6 cleaner for recordkeeping later.

7 THE COURT: Let's do that. All right.
8 So we'll just treat this as draft order to follow.

9 Okay. Then the other one, this is
10 even smaller, I have to say, is a dollar figure
11 question. This is the objection to claim 3141 filed
12 by Yahoo.

13 MR. GRAHAM: Yes.

14 THE COURT: And the motion -- not the
15 motion, the objection, the dollar figure in the
16 objection is \$18,058. That's what it ought to be.
17 And your order says \$18,050. So we're talking about
18 \$8 here. So I don't know which one is correct.

19 MR. GRAHAM: Let's go with the one in
20 the motion.

21 THE COURT: Okay. So that would be --
22 that gives them more money anyway.

23 MR. GRAHAM: We're giving them eight
24 more dollars.

25 THE COURT: A whole eight bucks. So

1 let's just fix that.

2 I have fixed it. So with that, what
3 we're really doing is reducing the claim, and I can
4 do that. So the order is signed.

5 MR. GRAHAM: Thank you, Your Honor.

6 THE COURT: You're quite welcome.

7 MR. GRAHAM: Your Honor, that would
8 bring us to the next item on today's agenda, which is
9 the Louisiana tax claim objection.

10 THE COURT: Right.

11 MR. GRAHAM: And I believe that, you
12 know, this message probably has gotten to you, but we
13 would ask for the moment you set that aside. The
14 debtors and the State of Louisiana have come to a
15 tentative agreement in principle, subject to
16 documentation, and, of course, approval by the State
17 of Louisiana, you know, the formal approval, as well
18 as the debtors' board.

19 But we expect that that issue will be
20 something we can take off the table here in the near
21 future. And we'd, obviously, be back in front of the
22 court with a settlement motion if we do reach one.

23 THE COURT: Okay. So what we probably
24 should do with that -- today was theoretically a
25 ruling date, but that was only in theory. No one

1 expected a ruling. I bet you're not going to be
2 ready by the May omnibus date, but maybe June. So
3 why don't we continue this just for status to
4 June 21.

5 MR. GRAHAM: I think that's fair, Your
6 Honor.

7 THE COURT: Okay. And if you're
8 ready, you're ready, and if you're not, you're not.
9 We'll just go from there.

10 MR. GRAHAM: Sounds good.

11 THE COURT: All right.

12 MR. GRAHAM: I think we're up to the
13 various Rowen Seibel matters. I will turn it over to
14 my colleague.

15 MR. ARNAULT: Good afternoon, Your
16 Honor. Bill Arnault on behalf of the debtors.

17 MR. RUGG: Good afternoon, Your Honor.
18 Nathan Rugg on behalf of the LLTQ and FERG entities.

19 THE COURT: Good afternoon.

20 We have got a number of matters.
21 Basically what I would like to do -- I am, obviously,
22 not going to be ruling on the discovery dispute until
23 -- well, I've got a discovery dispute that has been
24 sent to me from New York. I am not going to be
25 dealing with that until I deal with the motion for

1 protective order, because if the protective order
2 gets granted, that's all going to be moot. That
3 would be my understanding.

4 MR. ARNAULT: Well, I mean, we would
5 say that the -- LLTQ and FERG's motion for protective
6 order is separate and apart from the motion to compel
7 that we filed.

8 THE COURT: Why?

9 MR. ARNAULT: In fact, in our -- the
10 discovery order that we filed explicitly carved out
11 that the motion to compel would continue because the
12 motion for protective order doesn't ask to stay or
13 doesn't relate to any of the discovery that was
14 served on Mr. Seibel.

15 THE COURT: It was my impression that
16 the subpoenas in New York had to do with suitability.
17 If the protective order is granted, there will be no
18 discovery on suitability, and so I won't have to deal
19 with the motion to compel and the motion to quash.

20 MR. ARNAULT: Well, I --

21 THE COURT: Am I mischaracterizing the
22 New York matters?

23 MR. ARNAULT: Well, so --

24 THE COURT: I mean, I could be.

25 MR. ARNAULT: Yes. So the two

1 subpoenas that were served on Mr. Seibel, they were
2 third-party subpoenas and that are the subject of the
3 motion to compel are separate and apart from the
4 document requests that are the subject of the motion
5 for protective order. So while they may relate to
6 similar topics of suitability, they're actually --
7 the motion for protective order actually just relates
8 to the -- those discovery requests and not the
9 subpoenas.

10 THE COURT: The motion for protective
11 order seeks to cut off discovery on a topic. If you
12 can't take discovery on that topic, then you can't
13 take it no matter where you're trying to take it, and
14 so you won't be able to pursue the discovery in New
15 York -- that is derived from New York, I should say.

16 MR. ARNAULT: Well, I mean, we would
17 still say that they're two -- they're separate
18 discovery requests.

19 THE COURT: They may be separate
20 discovery requests, but the motion for protective
21 order has to do with the subject of discovery. If
22 you can't take discovery on that subject, then you
23 can't take it by dropping subpoenas on people in New
24 York or San Francisco or Taiwan. It doesn't matter
25 what the request is. It's the subject that's off

1 limits.

2 MR. ARNAULT: I mean, I guess the way
3 that we looked at it was LLTQ and FERG would not have
4 standing to object to requests that were served on a
5 third party because they're third-party requests and
6 they weren't served on them.

7 THE COURT: I don't think that's
8 correct anyway.

9 MR. ARNAULT: Okay.

10 THE COURT: Well, this is the way I
11 view it, and you haven't convinced me otherwise, so
12 I'm not going to be doing anything with the New York
13 matter -- except I do have a motion that I will talk
14 about in a minute -- until I resolve the protective
15 order question. There is an interesting issue that
16 exists on the discovery matter which I might like to
17 throw out there. Discovery, I mean the subpoenas and
18 the motion to compel and the motion to quash that
19 were transferred.

20 And that is, what law applies when a
21 discovery matter is transferred under Rule 45(f) to
22 the issuing court? It's not as big an issue as I
23 thought it would be, because looking at the papers, I
24 was not given a whole lot of Second Circuit law that,
25 frankly, as a Seventh Circuit judge, I wouldn't be

1 very interested in. There is a fair mixture there.
2 But still, I'd like to know whose discovery rules I
3 have to pay attention to.

4 I could not find anything on that when
5 I took a quick look. It may be that there isn't
6 anything. If I had to just reason it out from
7 scratch, I suppose I would speculate that the
8 discovery always related to the case that's pending
9 here. It isn't as if the entire case were
10 transferred from somewhere else. So probably Seventh
11 Circuit standards always apply, but I don't know. So
12 that's out there. And people can think about that if
13 they have nothing better to do.

14 On the motion for protective order, I
15 had a couple of questions, and they're really for the
16 Caesars folks. And that is, how this fraud argument
17 -- let's assume that the discovery goes ahead. I
18 don't understand how the fraud argument plays into
19 all of this. Fraud is a basis to -- in the
20 inducement is a basis to rescind the contract. You
21 can affirm the contract and sue for damages if you
22 think there is a breach or you can rescind.

23 But nobody has asked for rescision.
24 There isn't a separate adversary proceeding seeking
25 it. I don't know that it would be filed in the

1 bankruptcy court anyway. There is no such thing as a
2 counterclaim in a contested matter. Affirmative
3 defenses don't apply in contested matters. So I
4 don't understand how rescision on the basis of fraud
5 can even be raised here.

6 The other point, which I think is one
7 that the FERG folks were making, is that in order to
8 rescind a contract, you have to put both sides back
9 in the position they were in. And I don't understand
10 how that could be done here or if that's even
11 something the Caesars people would really want.

12 So, those are some matters to
13 consider. I believe we have got a briefing schedule
14 set on the motion for protective order, and I'll just
15 let you brief it. But those are matters that I would
16 like to see addressed because I just don't understand
17 how the rescision idea plays into the whole dispute
18 here. And if I can't think of a way that it does
19 play in rationally, I would be more inclined to grant
20 the motion since there is no point in taking
21 discovery on a subject that we can never really get
22 into.

23 MR. ARNAULT: Understood, Your Honor.

24 THE COURT: All right.

25 MR. RUGG: And, Your Honor, just on

1 that, I think we teed it up for hearing on May 31st.

2 THE COURT: Yes, I think that's right.

3 MR. RUGG: If that works for, Your
4 Honor.

5 THE COURT: Well --

6 MR. RUGG: We had originally proposed
7 it for the omnibus on the 17th, and then I think Your
8 Honor struck that.

9 THE COURT: Probably.

10 MR. RUGG: So we presumed that you
11 wanted more time. But we weren't sure exactly where
12 to put it, so we thought that we would --

13 THE COURT: The May 31 date may get
14 moved again. We'll see. But we'll keep it there for
15 now.

16 I should mention generally
17 something -- I guess this falls under housekeeping.
18 I don't know. But it's something you can bear in
19 mind. For two years, these cases got priority over
20 every other thing I had to do, sometimes at the
21 expense of other parties in other cases who had just
22 as much right of access to the courts as you all did.
23 That's not your fault. That was my decision. It
24 made sense to me to do that. But, indeed, some
25 things are backed up now, and I'm trying to remedy

1 that.

2 Now that a plan is confirmed, it seems
3 to me that there is less urgency, and I can treat you
4 folks the way I treat anybody else with a case. So
5 you're not at the back of the line, but you're in the
6 line with everybody else. So things may get moved on
7 you in a way they might not have gotten moved
8 pre-confirmation.

9 All right. There is one other matter
10 related to this, and that is a motion that I have.
11 And I think counsel is on the line. The motion is
12 styled motion for electronic filing access.

13 Do I have moving counsel on the line?

14 MR. MILLMAN: This is Claude Millman
15 that you have on the line.

16 THE COURT: All right. Good. As I
17 understand the situation, Mr. Millman, you are unable
18 to obtain the necessary electronic filing credentials
19 from the clerk because you can't take the course and
20 you can't take the course because you're New York
21 lawyers not admitted in this district.

22 Am I describing correctly what the
23 clerk's position is on this?

24 MR. MILLMAN: I think that's correct.

25 THE COURT: Okay.

1 THE WITNESS: I don't fully understand
2 what's happening. I think they're expecting that we
3 have a pro hac vice, or something like that.

4 THE COURT: Well, if you were to do
5 that, that's a very easy thing to do. You file your
6 little pro hac application with the necessary fee in
7 the district court, and I promise you, unless you
8 disclose that you have some hideous criminal
9 conviction or are not in fact a lawyer, it will be
10 granted. So that would be the way to obviate all of
11 this.

12 However, you don't have to do that
13 because Rule 45(f) says you don't have to. What I
14 can't give you is what you're asking for in your
15 motion, which is I am not going to order the clerk to
16 issue you electronic filing credentials.

17 What I will do is I will order the
18 clerk to let you take the course. That, I think, is
19 reasonable. And I think that's what you're entitled
20 to under Rule 45(f). Rule 45(f) makes it's very
21 clear that you're entitled to file papers. I think
22 that's the language of the rule. Well, that's great,
23 but we have electronic filing.

24 Now, you still have to be at least
25 allowed to take the course so that you can file

1 electronically. And I will give you an order that
2 says that, but I'm not going to exempt you from the
3 kind of course that every lawyer practicing out of a
4 storefront in Chicago has to satisfy. I think you
5 guys can manage that.

6 So I'll grant the motion to that
7 extent, okay, and then you can take the class. If
8 you also -- I don't think you need to do the pro hac
9 thing. You could have, if you wanted to, but you can
10 save your \$25, or whatever it costs.

11 All right. I think that takes care of
12 all -- I'm sorry, sir. It's very hard to hear you.
13 Say again.

14 MR. MILLMAN: I'm sorry. This is
15 Claude Millman. Thank you, Your Honor.

16 I suppose -- what I have heard is this
17 course has something to do with bankruptcy law, but
18 we're not familiar with it. We'll simply look into
19 it and figure it out if it poses any problem.

20 THE COURT: Yes. It doesn't have to
21 do with bankruptcy law. It does have to do with the
22 way this district, at least, deals with electronic
23 filing.

24 But as long as we are on the subject,
25 if you are going to be filing papers here, it would

1 be a really good idea to go on the court's website
2 and read the local rules. We don't practice the way
3 they practice in New York, or I guess the way I'd put
4 it, in New York, they practice in a way we don't
5 practice.

6 So, for example, it's really not cool
7 in our district to write letters to judges. Very
8 common in New York. Here, they get returned to you.
9 That's considered a no-no. And then we have a motion
10 practice that doesn't look a lot like yours.

11 So, the last thing you want to be
12 taken for is a foreigner, right? And the first thing
13 you do whenever you practice in a district court
14 you're not used to is you get the local rules and you
15 read them. So that would be my recommendation. And
16 then you will look like an experienced Chicago
17 lawyer. And as we know, there's nothing better.

18 All right.

19 MR. MILLMAN: This is Claude Millman,
20 Your Honor. We would be happy to try and become
21 experienced Chicago lawyers.

22 THE COURT: I'd be only too delighted
23 to see that. Okay.

24 MR. MILLMAN: Thank you, Your Honor.

25 THE COURT: You're quite welcome, sir.

1 I think the next item on the agenda --
2 I think we're done with the FERG matters.

3 Are there things we need to discuss?

4 MR. RUGG: No, Your Honor, just that I
5 think they were -- the only reason why they were up
6 today was for status, the three motions.

7 THE COURT: Is there anything else to
8 discuss?

9 MR. RUGG: No, not at all, but I just
10 want to know, are we going to move them to another
11 date?

12 THE COURT: Oh, yes. We'll just carry
13 them. You're on the schedule right now. I mean,
14 unless there is another date that makes more sense,
15 we can just push them off to the May date.

16 MR. RUGG: That's great, Your Honor.

17 THE COURT: Okay.

18 MR. RUGG: That would be very helpful.
19 Thank you.

20 MR. ARNAULT: Thank you, Your Honor.

21 THE COURT: Sounds good.

22 The next item on the agenda is this
23 Tipping Point lift stay motion.

24 Have you resolved it or did you want
25 to brief it?

1 MR. GRAHAM: Well, actually, Your
2 Honor, this is Joe Graham again, Kirkland & Ellis, on
3 behalf of the debtors.

4 MR. DAVIS: Aaron Davis on behalf of
5 TPG.

6 MR. GRAHAM: We actually reached
7 agreement yesterday with Tipping Point Gaming on a
8 briefing schedule. We can set it for status on
9 June 21st. We hear you on you're getting backed up.
10 We expect it to be status only. I have a copy --

11 THE COURT: No, we'll see. It depends
12 on what else I get done, right?

13 Okay. So that's fine.

14 MR. GRAHAM: Okay.

15 MR. DAVIS: Thank you, Your Honor.

16 THE COURT: All right. You're
17 welcome.

18 MR. GRAHAM: Your Honor, that then
19 brings us to another filing by Mr. Marro, which is
20 item number 12 on today's agenda.

21 THE COURT: Yes. All right. This is
22 Mr. Marro's motion, which is a motion I took under
23 Rule 9023, which would really be Rule 59(e). He
24 calls it a motion for reconsideration or
25 clarification, and as appropriate, for a separate

1 document under Rule 54(e), which is the wrong rule,
2 and he acknowledges that -- or alternatively, for
3 leave for Rule 8008 notice to the district court --
4 which is not something I understand, or, we have
5 another alternative, to certify questions under 28
6 USC Code, Section 158(d)(2) and Rule 8006. So let me
7 deal with these one at a time here.

8 On the reconsideration point, I have
9 not been given any reason to reconsider my decision
10 denying Mr. Marro's motion to lift the stay. I
11 denied it for a number of reasons. I think those
12 reasons are correct, and he has not shown me in his
13 motion, as the debtors point out in their response to
14 the motion, that I made a manifest error of law or
15 fact.

16 As far as clarification is concerned,
17 I thought that the ruling was brutally clear. And if
18 there is some confusion about it, Mr. Marro can
19 purchase a copy of the transcript. But it is my
20 practice not to repeat at a second hearing rulings
21 that were understandable the first time and were
22 transcribed simply because someone didn't get it or
23 wasn't paying attention. So I'm not going to
24 reconsider and I'm not going to clarify.

25 As far as the separate document

1 requirement, which I believe he is referring to under
2 Rule 58, the order that denied his motion satisfies
3 Rule 58. That's as separate as it's going to get. I
4 don't have to have another one so that I would have
5 two orders. That is not really what Rule 58 is
6 about. So we've got the separate document that we
7 need.

8 The Rule 8008 thing I really don't
9 entirely understand. That's the indicative ruling
10 rule, and there is no indicative ruling to be made
11 here. And he doesn't explain, it seems to me, why
12 there would be one.

13 So, finally, we have the desire to, as
14 he puts it, certify questions. One doesn't certify
15 questions. One certifies a matter for direct appeal.
16 So what I would have to do is certify his appeal of
17 the order denying his motion to lift the stay,
18 certify it for direct appeal to the Court of Appeals.

19 I looked into whether I could even
20 consider that request, and it's trickier than you
21 might imagine. Rule 8006 deals with this. Rule
22 8006(d) discusses the court that may make the
23 certification. And that rule says, only the court
24 where the matter is pending may certify a direct
25 review on request of parties. And that says as

1 provided in subdivision (b).

2 So, okay, is this pending here or is
3 it pending in the district court? And the answer is
4 that it's pending here. And what 8006(b) says is
5 that for purposes of this rule, a matter remains
6 pending in the bankruptcy court for 30 days after the
7 effective date under Rule 8002 of the first notice of
8 appeal.

9 All right. The notice of appeal, such
10 as it is, and I'll talk more about that in a minute,
11 was filed on March 24. It was filed while Mr.
12 Marro's Rule 9023 motion was pending. So the notice
13 of appeal doesn't become effective until I rule on,
14 and presumably deny, which is what I intend to do,
15 his Rule 9023 motion. At that point there is another
16 30 days.

17 So, 30 days from today the matter will
18 not be pending here for purposes of certification.
19 But right now, it is. So that's a long way of saying
20 I can deal with his request.

21 Then we have an interesting question,
22 though, about this notice of appeal, because what Mr.
23 Marro did was not file a separate notice of appeal.
24 That's what he should have done, but he didn't.
25 Instead, he filed what he called an amended notice of

1 appeal or alternatively notice of appeal. I'm not
2 sure it can be both.

3 To the extent it's an amended notice
4 of appeal, there is a question, it seems to me,
5 whether it's valid at all. But he also calls it
6 alternatively notice of appeal. I imagine, given his
7 alternative and given that he's pro se and given that
8 the tone these days is a little less technical on
9 these things, that reviewing courts would treat this
10 as a proper notice of appeal.

11 So I've got his request to certify.
12 And in order to do that, I would have to determine
13 that the requirements of Section 28 U.S. Code Section
14 158(d)(2)(A) were met. And he has not given me any
15 reason to think that they are. I could certify this
16 for appeal if the order denying his motion to lift
17 the stay involved a question of law as to which there
18 is no controlling decision of the Court of Appeals
19 for our circuit or the Supreme Court or involves a
20 matter of public importance.

21 He has not identified a question of
22 law that is raised by his motion on which there is no
23 controlling decision. And, quite frankly, I cannot
24 think of one.

25 I don't see how this is a matter of

1 public importance.

2 The second possible ground would be
3 that the order involves a question of law requiring
4 resolution of conflicting decisions. He has not
5 identified any conflicting decisions, much less the
6 question of law on which those conflicting decisions
7 exists. Since I don't know what the question is, and
8 since I haven't been given any conflicting decisions,
9 I can't find that that requirement has been met.

10 And, finally, the third possible basis
11 for a direct appeal would be that an immediate appeal
12 from the order might materially advance the progress
13 of the case or proceeding in which the appeal was
14 taken. I do not think that resolving Mr. Marro's
15 motion, really for the reasons I described in denying
16 it in the first place, will materially advance the
17 progress of these bankruptcy cases.

18 So, I will let Mr. Marro address
19 himself to the district court, if he wishes, but his
20 motion today is denied.

21 MR. GRAHAM: Thank you, Your Honor.

22 THE COURT: All right. And that, I
23 think, is the last matter on the agenda.

24 MR. GRAHAM: That's correct, Your
25 Honor. One thing I wanted to note, I know we've

1 talked about this in the past.

2 THE COURT: Yes.

3 MR. GRAHAM: We moved in the continued
4 matters the ones all covered by various RSAs. We
5 have moved those to the June 21st hearing in the
6 hopes that we can give you an update at that hearing
7 kind of on a time line for emergence.

8 THE COURT: Okay.

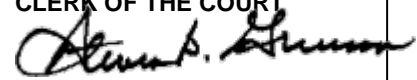
9 MR. GRAHAM: So people are aware of
10 where we are at.

11 THE COURT: Yes, that's good a idea.

12 Sounds good. Thank you very much.

13 (Which were all the proceedings had in
14 the above-entitled cause, April 19,
15 2017, 1:30 p.m.)

16 I, AMY B. DOOLIN, CSR, RPR, DO HEREBY CERTIFY
17 THAT THE FOREGOING IS A TRUE AND ACCURATE
18 TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-
19 ENTITLED CAUSE.
20
21
22
23
24
25



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10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 ROWEN SEIBEL, an individual and citizen of
13 New York, derivatively on behalf of Real Party
14 in Interest GR BURGR LLC, a Delaware limited
15 liability company,

16 Plaintiff,

17 v.

18 PHWLTV, LLC, a Nevada limited liability
19 company; GORDON RAMSAY, an individual;
20 DOES I through X; ROE CORPORATIONS I
21 through X,

22 Defendants,

23 AND ALL RELATED MATTERS

Case No.: A-17-751759-B
Dept. No.: 15

Consolidated with:
Case No.: A-17-760537-B

**DEFENDANT ROWEN SEIBEL'S REPLY
IN FURTHER SUPPORT OF HIS MOTION
TO DISMISS PLAINTIFFS' CLAIMS**

This document applies to:
A-17-760537-B

**Hearing Date: April 4, 2018
Hearing Time: 9:00 a.m.**

24 Defendant Rowen Seibel ("Seibel") hereby submits this reply in further support of his motion
25 pursuant to NEV. R. CIV. P. 12(b)(5) to dismiss the claims asserted against him in the Declaratory
26 Judgment Action filed on August 25, 2017 (the "Complaint") by Plaintiffs DESERT PALACE, INC.
27 ("DPI"); PARIS LAS VEGAS OPERATING COMPANY LLC ("Paris"); PHWLTV, LLC ("PHWLTV");
28 and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY ("CEOC")
(collectively, "Plaintiffs")¹.

¹ Seibel hereby incorporates by reference the defined terms set forth in his Motion.

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I. INTRODUCTION

In their opposition, Plaintiffs argue that that only this Court can provide “comprehensive relief” to all the parties, despite the fact that litigation is pending in other jurisdictions and has been pending for months, if not years, between some of the parties. According to Plaintiffs, the basis for attempting to cobble together different parties to multiple different agreements with varying terms that concern multiple different restaurants is that the Defendants once had a connection to Defendant Seibel. Moreover, the mere fact that Seibel once had connections to the various Defendants and Restaurants at issue is not an appropriate basis on which to force these parties into an unwieldy single action.

To emphasize that point, Plaintiffs have asserted direct declaratory relief claims directly against Seibel despite the fact that Seibel is not a party to any of the Agreements at issue in this action. Although the Agreements contain clauses that may require services by Seibel, none of those purported services are at issue or the subject of the declaratory relief sought by Plaintiffs. There is simply no dispute between the parties regarding Seibel’s purported responsibilities under the Agreements, rendering this declaratory judgment action against him subject to dismissal.

ARGUMENTS.

A. Plaintiffs’ Claims against Seibel should be Dismissed as Seibel Is Not a Party to the Subject Agreements.

Defendants concede that Seibel is not a party to the Agreements at issue in this action. (Opp’n 16.) Nevertheless, Defendants argue that Seibel is an appropriate defendant in this action because he had “numerous legal rights and duties under the ... Agreements.” (*Id.*) This argument fails for a number of reasons.

First, while Plaintiffs recite a number of responsibilities of Seibel under the Agreements, Plaintiffs make no claim that those purported responsibilities are in any way in dispute or are in any way the subject of this litigation. For instance, Plaintiffs cite to Seibel’s purported obligation visit the Pub Restaurant under the LLTQ Agreement. (Opp’n 16, Ex. R, §2.2(b).) But Plaintiffs do not cite to a single allegation in the Complaint that this obligation is in any way at issue in the action or that such alleged obligations are subject to dispute. Plaintiffs’ First Cause of Action seeks adjudication as to whether their termination on the grounds of “unsuitability” was proper – a claim under which Seibel’s obligations are not at issue, nor were they the alleged cause for the termination. Indeed, while Seibel

1 may have to provide certain services under the Agreement, there is no alleged dispute over whether
2 those services must be performed if Plaintiffs' First Cause of Action is successful.

3 Plaintiffs' Second Cause of Action seeks a declaration that *Plaintiffs* have no further obligation
4 under the Agreements. Plaintiffs do not seek a declaration regarding any purported obligation of Seibel,
5 nor is the basis for the Second Cause of Action in any way connected to Seibel's alleged performance
6 or non-performance of his alleged obligations under the Agreements. Plaintiffs' Third Cause of Action
7 seeks a declaration that the Agreements do not prohibit or limit further restaurants between Caesars and
8 Ramsay which, once again, has no connection whatsoever to Seibel's purported obligations and the
9 performance or non-performance of those obligations under the Agreements. Accordingly, as the
10 Complaint fails to allege a dispute regarding Seibel's purported obligations under the Agreements, the
11 claims against Seibel do not state a justiciable controversy. *Doe v. Bryant*, 102 Nev. 523, 525 (1986).

12 Second, Plaintiffs rely upon *Wells v. Bank of Nev.*, 90 Nev. 192, 197-98, n.7 (1974) in support
13 of their proposition that Seibel is a proper defendant in this case. (Opp'n 16.) However, that is not what
14 the *Wells* case states. In *Wells*, the court *denied* the attempt to obtain declaratory relief by individuals
15 who were not parties to the agreement at issue. *Wells*, 522 P. 2d at 197. In doing so, the court found
16 that "[c]ontroversies arising under an agreement properly are to be determined and settled by parties to
17 the agreement or their assigns, that is, by those who have legal rights or duties thereunder." *Id.*
18 Accordingly, the court in *Wells* does not support Plaintiffs' assertion that Seibel is a proper party to this
19 Action.²

20 **B. Plaintiffs' Claims against Seibel Should Be Dismissed or, Alternatively, Stayed**
21 **Due to the Existence of a Prior Pending Proceeding.**

22 Plaintiffs do not contest that the claims asserted against Seibel by Plaintiff Paris are identical to
23 the counterclaims asserted against Seibel in the TPOV Federal Action. Accordingly, Plaintiffs do not
24 contest that the claims in the TPOV Federal Action are first filed. Under the first-filed rule, those
25 claims should be dismissed. *Pub. Serv. Comm'n of Nevada v. Dist. Ct.*, 107 Nev. 680, 684, 818 P.2d
26

27 ² Plaintiffs also rely upon the case *Regal Ware, Inc. v. Advanced Mktg. Int'l, Inc.*, 2006 WL
28 752899, at *3-5 (E.D. Wis. Mar. 21, 2006). Obviously, this ruling by a federal court applying Wisconsin
state court law has no binding effect on this Court and Seibel contends is of little relevance to the present
motion.

1 396, 399 (1991) (“[C]ourts will not entertain a declaratory judgment action if there is pending, at the
2 time of the commencement of the action for declaratory relief, another action or proceeding to which
3 the same persons are parties and in which the same issues may be adjudicated”); *see also Fitzharris v.*
4 *Phillips*, 74 Nev. 371, 376-77, 333 P.2d 721, 724 (1958) (dismissing the second filed of two actions
5 involving the same parties and facts).

6 Plaintiffs’ argue that the fact that there are additional parties to this action that are not involved
7 in the Federal Action dictates that the first-to-file rule should not be followed by this Court. However,
8 contrary to Plaintiffs’ argument, the first-to-file rule “does not require exact identity of the parties.”
9 *Kohn Law Group v. Auto Parts Mfg. Miss, Inc.*, 767 F.3d 1237 (9th Cir. 2015). As the Nevada Supreme
10 Court found in *Winemiller v. Keilly*, 2009 WL 1491481, at *2 (Nev. Feb. 6, 2009), when two actions
11 involve different parties, it is appropriate for the court to examine on a party-by-party basis whether
12 specific claims involve identical facts and claims. That is clearly the situation regarding the Paris
13 claims against Seibel and such all such claims must be dismissed. *Smith v. Hutchins*, 93 Nev. 431, 432,
14 566 P.2d 1136, 1137 (1977) (“Policy demands that all forms of injury or damage sustained by the
15 plaintiff as a consequence of the defendant's wrongful act be recovered in one action rather than in
16 multiple actions.”)

17 Plaintiffs also argue that the claims against Seibel based on the LLTQ, FERG, MOTI and DNT
18 Agreements are not precluded by the first-to-file rule because claims are not asserted against or by
19 Seibel in the Bankruptcy Action. Nevertheless, LLTQ, FERG, MOTI and DNT have all filed motions
20 to dismiss based on the first filed rule and the prior pendency of identical claims in the Bankruptcy
21 Court. If this Court grants those motions, and in light of the fact that there is no claim in this action
22 concerning Seibel’s alleged obligations under the Agreements, this Court should still exercise its
23 discretion to stay any claims against Seibel as such claims would necessarily hinge on rulings in the
24 Bankruptcy Court and Federal Action as to whether the Agreements were properly terminated. *Sherry*
25 *v. Sherry*, 2015 WL 1798857, at *1 (Nev. Apr. 16, 2015) (the first-to-file rule provides that “where
26 substantially identical actions are proceeding in different courts, the court of the later-filed action
27 should defer to the jurisdiction of the court of the first-filed action by either dismissing, staying, or
28 transferring the later filed suit.”)

1 **C. This Forum Is Not the Most Efficient Forum for Adjudicating the Claims**

2 Plaintiffs argue that this court should refuse to apply the first-filed rule and maintained
3 jurisdiction over the second filed action based on the alleged that this forum is the one “in which all
4 interests are best served.” (Opp’n 12-14.) That argument fails. While Plaintiffs call the present action
5 the “most comprehensive”, it is not.³ As is revealed by the motions to dismiss filed by the various
6 Defendants, the Defendants to this action are parties to different Agreements, are involved in different
7 Restaurants, and have significant differences in the factual and legal posture of the claims. Moreover,
8 since Seibel is not a party to the Agreements and his responsibilities under the Agreements are not in
9 dispute, there is little reason for Seibel be forced to participate in an unwieldy litigation that involves
10 multiple Defendants each with defend the contract claims at issue in these declaratory relief claims.
11 Plaintiffs’ misguided effort should fail as their argument that this “comprehensive” action is somehow
12 efficient for the Court or the parties is belied by the significant differences in the Agreements and the
13 factual background for each Restaurant.

14 **D. Alternatively, the Claims Against Seibel Should Be Stayed**

15 Plaintiffs make the argument that this Court should hold its ruling on Defendants’ motion until
16 the court in the TPOV Federal Action rules on a *yet to be filed* motion for a stay that Defendants claim
17 they intend to file. (Opp’n 15.) Plaintiffs do not cite any authority for this novel proposition – that this
18 Court should hold in abeyance Defendants’ motion because Plaintiffs intend to file, on some unspecified
19 future date, a request for a stay in the TPOV Federal Action. In making this argument, Plaintiffs provide
20 no excuse whatsoever why they have not sought in stay in the TPOV Federal Action in the seven (7)
21 months since they filed the present action while the parties are engaged in discovery in the Federal
22 Action. Plaintiffs’ failure to promptly seek a stay of the TPOV Federal Action after filing the instant
23 action asserting the identical claims should weigh heavily against this Court utilizing its discretion to
24 hold the present motion in abeyance.

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26 _____
27 ³ Plaintiffs cite to *Continental Insurance Co. v. Hexcel Corp*, 2013 WL 1501565, at *1-2 (N.D.
28 Cal. Apr. 10, 2013) in support of their argument. However, their reliance is misplaced. The difference
in time in the filing of lawsuits in *Continental Insurance* was a mere eight days (*id.* at *2), as contrasted
with the seven-month time difference between the first filing of the Federal Action and the second filing
of the instant action.

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that pursuant to Nev. R. Civ. P. 5(b) and EDCR 8.05 on March 28, 2018, I caused service of the foregoing **DEFENDANT ROWEN SEIBEL'S REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF HIS MOTION TO DISMISS PLAINTIFFS' CLAIMS** 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:

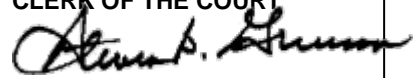
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17 *and TPOV Enterprises 16, LLC*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 ROWEN SEIBEL, an individual and citizen of
14 New York, derivatively on behalf of Real Party
15 in Interest GR BURGR LLC, a Delaware limited
16 liability company,

16 Plaintiff,

17 v.

18 PHWLTV, LLC, a Nevada limited liability
19 company; GORDON RAMSAY, an individual;
20 DOES I through X; ROE CORPORATIONS I
21 through X,

21 Defendants,

22 AND ALL RELATED MATTERS

Case No.: A-17-751759-B
Dept. No.: 15

Consolidated with:
Case No.: A-17-760537-B

**DEFENDANTS TPOV ENTERPRISES, LLC
AND TPOV ENTERPRISES 16, LLC REPLY
MEMORANDUM OF LAW IN FURTHER
SUPPORT OF MOTION TO DISMISS, OR,
IN THE ALTERNATIVE TO STAY**

This document applies to:
A-17-760537-B

**Hearing Date: April 4, 2018
Hearing Time: 9:00 a.m.**

23 Defendants TPOV ENTERPRISES, LLC (“TPOV”) and TPOV ENTERPRISES 16, LLC
24 (“TPOV 16”) (collectively, “the TPOV Entities”) hereby submit this reply memorandum in further
25 support of their motion pursuant to NEV. R. CIV. P. 12(b)(5) and NEV. REV. STAT. § 30.080 to dismiss
26 the claims asserted against the TPOV Entities in the Declaratory Judgment Action filed on August 25,
27 2017 (the “Complaint”) by Plaintiffs DESERT PALACE, INC. (“DPI”); PARIS LAS VEGAS
28 OPERATING COMPANY LLC (“Paris”); PHWLTV, LLC (“PHWLTV”); and BOARDWALK

1 REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY (“CEOC”) (collectively,
2 “Plaintiffs”)¹.

3 **I. INTRODUCTION**

4 In their opposition, Plaintiffs argue that despite the fact that all the disputes between Plaintiffs
5 and TPOV Entities are the subject of the Federal Action that was filed at least seven (7) months before
6 this action, the “first-to-file” rule should be disregarded by this Court because only the present action
7 can provide “comprehensive relief” to all the parties. According to Plaintiffs, the basis for attempting
8 to avoid the first-to-file rule is that the Defendants once had a connection to Defendant Seibel.
9 However, the mere fact that Seibel once had connections to the various Defendants and Restaurants at
10 issue is not an appropriate basis to force these parties into a single action that involves multiple different
11 Defendants and concern at least six different restaurants and six different contracts with different
12 contractual terms. For instance, while Plaintiffs claim that Defendants made false disclosures in certain
13 Business Information Forms (“BIFs”) submitted by prior to the parties entering into the Agreements,
14 the BIFs were submitted only by DNT and MOTI. No such disclosure was made in connection with
15 the TPOV Agreement, which greatly impacts the viability of Plaintiffs’ claim based on an alleged
16 fraudulent inducement (Count II). In addition, while Plaintiffs claim that Seibel’s conduct was the
17 basis for terminating the Agreements, prior to termination Seibel had assigned his ownership interest
18 in TPOV and TPOV had assigned its Agreement to TPOV 16. That is different from, for instance, the
19 GR BURGR LLC (“GRB”) Restaurant, as Seibel had not assigned his interest in that entity prior to the
20 termination, but rather was provided with an opportunity to “cure” the alleged unsuitability. Moreover,
21 unlike the Serendipity Restaurant that is the subject of the MOTI Agreement which was closed after
22 the Agreement was purportedly terminated, and unlike the GRB Restaurant, which Plaintiffs claim has
23 been “rebranded”, the Restaurant that is the subject of the TPOV Agreement - the Steak Restaurant –
24 remains open to this day.

25 These are but some of the important differences between the various Defendants and their
26 respective Agreements and Restaurants which belie Plaintiffs claim that “comprehensive relief” can be
27 achieved in this Court. In sum, Plaintiffs opposition fails to provide any viable reason why the first-

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¹ TPOV Entities refer to and incorporate by reference the defined terms set forth in their Motion.

1 to-file rule should be disregarded or why its forum shopping should be permitted. Accordingly,
2 Plaintiffs claims against TPOV Entities should be dismissed or, in the alternative, stayed.

3 **II. ANALYSIS.**

4 **A. Plaintiffs’ Claims Improperly Seeks Adjudication of the Same Claims Previously**
5 **Filed and Currently Being Litigated in Separate Forums.**

6 Plaintiffs do not contest that the claims pending between TPOV and Paris in the Federal Action
7 are identical to the claims between those parties in this action. Plaintiffs do not contest that Federal
8 Action was commenced nearly seven (7) months prior to Plaintiffs’ commencement of the present
9 action. Plaintiffs do not contest that the parties have been engaged in discovery in the Federal Action.
10 Despite these concessions, Plaintiffs argue that this Court should disregard the “first-filed rule” and
11 should exert jurisdiction over the same claims that were first pending in the Federal Action. (Opp’n
12 11.) Plaintiffs’ argument fails for a number of reasons.

13 **1. Complete identity of all parties involved is not required.**

14 First, Plaintiffs argue that because there are parties in the present action that are not parties to
15 the Federal Action this Court should refuse to apply the first-filed rule. (Opp’n 11.) In support of their
16 argument, Plaintiffs cite two cases – *Mitchell Capital, LLC v. Powercom, Inc.*² and *Jones v. Dist. Ct.*³
17 – both cases are inapposite. The *Mitchell* decision concerned a motion to set aside a default judgment
18 pursuant to NEV. R. CIV. P. 60(c) in which the declaratory nature of the case was, at best, ancillary to
19 the court’s decision. Contrary to Plaintiffs’ characterization, the *Mitchell* court addressed in dicta the
20 propriety of a court’s exercise of jurisdiction over a declaratory relief default judgment that involved
21 additional unrelated parties and was filed after judgment in the prior action. *Mitchell Capital, LLC v.*
22 *Powercom, Inc.*, 2015 WL 5774161, at *3 n.2. Key to the *Mitchell* court’s ruling was a finding that the
23 subsequently filed declaratory judgment case “involved many parties unrelated to [the previous]
24 judgment” (*id.*) which is not the case in the instant action, as the same relevant parties – the TPOV
25 Entities and Caesars – are present in both matters. The mere fact that a later-filed action includes
26 additional parties does not prevent the application of the first-to-file rule to dismiss the later-filed
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28 ² 2015 WL 5774161, at *3 n.2 (Nev. Sept. 29, 2015).

³ 2013 WL 3944042, at *2 (Nev. July 24, 2013).

1 action, as “[a] contrary holding could allow a party...to skirt the first-to-file rule.” *Kohn Law Grp., Inc.*
2 *v. Auto Parts Mfg. Mississippi, Inc.*, 787 F.3d 1237, 1240 (9th Cir. 2015).

3 Plaintiffs also cite to *Jones*, but that decision does not diverge from settled Nevada law in favor
4 of the first-filed rule. The *Jones* court, in a ruling on a petition for a writ of mandamus challenging a
5 motion to dismiss a declaratory judgment action, found that it was “not clear...that the issues presented
6 in the declaratory relief action may be adjudicated” in the prior pending case. *Jones v. Dist. Ct.*, 2013
7 WL 3944042, at *2. Based on that finding, the court ruled that it could not be compelled to conclude
8 that the declaratory action should be dismissed. *Id.* Unlike in *Jones*, here it is uncontested that the issues
9 presented by Plaintiffs in the instant action are similar if not identical issues as raised by the TPOV
10 Entities in the Federal Action. (Mot. 11.)

11 In short, contrary to Plaintiffs’ argument, the first-to-file rule “does not require exact identity
12 of the parties.” *Kohn Law Group*, 767 F.3d at 1240. In fact, under the first-to-file rule a second-filed
13 suit should be dismissed when it involves a mere similarity of parties and issues. *Glob. Experience*
14 *Specialists, Inc. v. Cunniffe*, 2014 WL 3748931, at *5 (D. Nev. July 30, 2014) (holding that a “similarity
15 of parties and issues is sufficient to trigger application of the first-to-file rule.”) In its motion, TPOV
16 Entities cited *Winemiller v. Keilly*, 2009 WL 1491481, at *2 (Nev. Feb. 6, 2009) in support of this point,
17 but Plaintiffs do not address *Winemiller*. In *Winemiller*, the Nevada Supreme Court found it was
18 improper to dismiss claims against defendants in the second action who were not named parties in the
19 first action. The Supreme Court found, however, that it would not be an abuse of discretion for the
20 court to dismiss the second action as between plaintiffs and defendants who were parties to both actions,
21 so long as the same causes of action were present in both actions. *Id.*⁴ Thus, the Nevada Supreme
22 Court found that complete identity of parties in both actions was not required, but rather the court
23 should examine whether the causes of action and issues are similar on a party by party basis.

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28 ⁴ In *Winemiller*, the court reversed and remanded to the lower court for the court to determine
whether the issues and causes of action were identical because the decision appealed from “did not
make any findings in this regard.” *Id.*

1 The claims and parties to Plaintiffs’ claims against the TPOV Entities in the instant action are
2 substantially similar to those involved in the Federal Action. This Court should apply the first-to-file
3 rule to dismiss or stay this lawsuit as it concerns the TPOV Entities.

4 **2. The alleged convenience of this forum does not overcome the First-to-File Rule**

5 Plaintiffs argue that this court should refuse to apply the first-filed rule and maintain jurisdiction
6 over the second filed action based on the alleged that this forum is the one “in which all interests are
7 best served.” (Opp’n 12-14.) That argument fails for numerous reasons.

8 First, Plaintiffs cite to *Continental Insurance Co. v. Hexcel Corp.*⁵ in support of their argument.
9 However, their reliance is misplaced. In *Continental Insurance*, the court considered factors relevant
10 to declaratory judgment actions pursuant to 28 U.S.C. § 2201, a federal statute that is not relevant to
11 the instant case. Additionally, the difference in time in the filing of lawsuits in *Continental Insurance*
12 was a mere eight days (*id.* at *2), as contrasted with the seven-month time difference between the first
13 filing of the Federal Action and the second filing of the instant action.

14 While Plaintiffs call the present action the “most comprehensive”, it is not. Plaintiffs fail to
15 address the many significant differences between the claims asserted by the various parties that make
16 consolidation of all claims between these parties unwieldy and inefficient. First, only MOTI and DNT
17 submitted BIFs in connection with their Agreements with Plaintiffs. (Comp. ¶¶ 27, 38.) No other
18 Defendant submitted a BIF, which greatly impacts the viability of the fraudulent inducement based-
19 Count II against those non-submitting Defendants. (*Id.* ¶¶ 36, 55, 65, 77, 87.) Also, regarding the
20 propriety of Plaintiffs’ determination that Mr. Seibel is “unsuitable”, there are different implications of
21 such a determination for each Agreement. TPOV (as well as LLTQ, and FERG) had direct contractual
22 relationships with Plaintiffs. (*Id.* ¶¶ 17, 19, 22.) Prior to the purported termination of the TPOV
23 Agreement, Seibel’s interest in the entity that owned an interest in TPOV were assigned, and the TPOV
24 Agreement was assigned to TPOV 16. (*Id.* ¶ 18.) Accordingly, Caesars’ purported determination that
25 Seibel was “unsuitable” does not resolve the issue of the propriety of the termination of the TPOV
26 Agreement, because the interests in the Agreement had already been assigned, thereby raising the issue
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⁵ 2013 WL 1501565, at *1-2 (N.D. Cal. Apr. 10, 2013).

1 of the propriety of the assignment. In addition, if the assignment was valid, it raises the additional
2 question whether TPOV 16 could be deemed unsuitable. That is different from, for instance, GRB, an
3 entity in which Seibel was a member. (*Id.* ¶76.) When Plaintiffs’ purported to determine that Seibel
4 was unsuitable, they provided notice and cure period to GRB. (*Id.* ¶115.) Thus, the propriety of the
5 termination concerns issues of whether a viable cure was offered to Plaintiffs.

6 In addition, TPOV contributed \$1 million in connection with the development of its restaurant.
7 (Ex. A at ¶10; Ex. B Art. 7) It was, in essence, a partner in that Restaurant with Plaintiffs entitled to
8 receive a share of the profits. (*Id.*) Thus, in the Second Cause of Action, in which Plaintiffs seeks a
9 declaration that they owe no further obligations under the Agreements, Plaintiffs are seeking a ruling
10 that by virtue of their unilateral determination of unsuitability they do not have to pay back the \$1
11 million capital contributions of TPOV, among other things. While LLTQ also invested \$1 million
12 dollars, that issue does not exist for GRB, FERG, and DNT.

13 TPOV is different from GRB in other respects. GRB licensed intellectual property and the GR
14 General Materials, which include the restaurant concept, menus, recipes, systems, among other things.
15 (Comp. ¶ 69.) Plaintiffs alleges that they closed the Restaurant and “rebranded” it, thereby allowing
16 the continued operation of the Restaurant without paying license fees to GRB because it further claims
17 it is no longer using the GR General Materials. (*Id.* ¶ 128.) Seibel disputes this, and this “rebranding”
18 dispute is not an issue with regard to TPOV and the Steak Restaurant.

19 These are only some of the differences between the parties and the Agreements at issue. In
20 short, Plaintiffs are trying to force multiple parties with different contracts and different factual
21 circumstances into a single forum – despite the fact that prior pending actions were brought in other
22 forums. Plaintiffs’ misguided effort should fail as their argument that this “comprehensive” action is
23 somehow efficient for the Court or the parties is belied by the significant differences in the Agreements
24 and the factual background for each Restaurant.

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1 **3. Plaintiffs remaining arguments that this Court should disregard the first-to-file rule fail.**

2 First, argues that this Court should not apply the first-to-file rule because the claims at issue
3 concern Nevada state law. TPOV contends that the Federal Action pending in the District of Nevada
4 is capable of hearing Nevada state law claims.

5 Second, the cases relied upon by Plaintiffs are not on point. Plaintiffs cite to *Amlin Corp.*
6 *Member Ltd. v. Leeward*⁶ in support of their argument. The time difference between the first-filed and
7 second-filed cases in *Amlin* was a mere two days (*id.* at *2), which is vastly different from the delay
8 between the filing of the Federal Action and the instant action. Crucially, the *Amlin* court held that the
9 choice of forum should be given to the “true plaintiffs” in the dispute, and not the party which filed an
10 action seeking a declaration that it owed no obligation to the true plaintiffs. *Id.* at *7.

11 Plaintiffs also cite to *Editorial Planeta Mexicana, S.A. de C.V. v. Argov*.⁷ However, that action
12 concerns the federal transfer provision in 28 U.S.C. § 1404(a) and involves an entirely incongruent set
13 of facts. Unlike in the instant case where the issues are based on the same facts and the same parties
14 are involved, the *Editorial Planeta Mexicana* court found that the first-to-file rule did not apply because
15 differing claims were raised based on different sets of facts. *Id.* at *8. That is clearly not the case here.
16 Plaintiffs’ also rely upon *Commercial Cas. Ins. Co. v. Swarts, Manning & Assocs., Inc.*,⁸ however, that
17 case does not support Plaintiffs’ argument. In *Commercial Cas. Ins. Co.* the court ruled in favor of
18 defendants’ motion to stay a second-filed action based on a comparison of the relative progress made
19 in the two actions at issue. *Id.* at 1036. The same situation presents itself here – discovery has
20 commenced and is ongoing in the Federal Action, while the instant case is in the midst of briefing on
21 pre-answer motions to dismiss filed by, among others, the TPOV Entities. Though Plaintiffs are not
22 mistaken that the *Commercial Cas. Ins. Co.* court deferred to the Nevada state court, it did so by staying
23 the second-filed, federal suit which had made less progress than the state court proceeding. *Id.*

24 Third, contrary to Plaintiffs’ arguments, once similarity of issues and parties has been
25 established, the first-to-file rule “should not be disregarded lightly” and courts should only depart from
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28 ⁶ 2012 WL 6020107, at *1 (D. Nev. Nov. 27, 2012).

⁷ 2012 WL 3027456, at *4 (D. Nev. July 23, 2012).

⁸ 616 F. Supp. 2d 1027, 1035-37 (D. Nev. 2007).

1 the first-to-file rule for reasons of equity under three circumstances: bad faith, anticipatory suit, and
2 forum shopping. *Alltrade, Inc. v. Uniweld Prod., Inc.*, 946 F.2d 622, 628 (9th Cir. 1991). However,
3 Plaintiffs have not argued – nor do they have any basis on which to argue – that any of these exceptions
4 applies. In fact, it is the instant action, and not the Federal Action, that was filed in a bad faith attempt
5 by Plaintiffs to forum shop. (Mot. 9-10.) Therefore, due to the factors that weigh in favor of dismissing
6 the instant action pursuant to the first-to-file rule and the lack of Plaintiffs’ argument in favor of
7 applying a cognizable exception, the instant case should be dismissed as asserted against the TPOV
8 Entities due to the first-filed, pending Nevada Federal Action.

9 In sum, Plaintiffs have not provided this Court with valid reasons to reject the application of the
10 first-to-file rule. *Pub. Serv. Comm’n of Nevada v. Dist. Ct.*, 107 Nev. 680, 684, 818 P.2d 396, 399
11 (1991) (it is well-settled that “courts will not entertain a declaratory judgment action if there is pending,
12 at the time of the commencement of the action for declaratory relief, another action or proceeding to
13 which the same persons are parties and in which the same issues may be adjudicated”); *Fitzharris v.*
14 *Phillips*, 74 Nev. 371, 376-77, 333 P.2d 721, 724 (1958) (dismissing the second filed of two actions
15 involving the same parties and facts); *Smith v. Hutchins*, 93 Nev. 431, 432, 566 P.2d 1136, 1137 (1977)
16 (“Policy demands that all forms of injury or damage sustained by the plaintiff as a consequence of the
17 defendant's wrongful act be recovered in one action rather than in multiple actions.”)

18 **B. Plaintiffs’ Claims Against TPOV and TPOV 16 Must Be Dismissed Due to the**
19 **Lack of a Justiciable Controversy that is Ripe for Judicial Determination.**

20 Plaintiffs’ claims against TPOV and TPOV 16 must be dismissed for the additional reason that
21 Plaintiffs are not entitled to declaratory relief based on the prior pending proceeding, the Federal
22 Action.

23 Plaintiffs argue that a dispute can be ripe for adjudication despite its pendency in multiple
24 forums and that the existence of a justiciable controversy is not contingent on the outcome of any other
25 proceeding. (Opp’n 12.) In support of their argument, Plaintiffs attempt to distinguish TPOV and
26 TPOV 16’s citations to *Knittle v. Progressive Cas. Ins. Co.*⁹ and *American Realty Investors, Inc. v.*

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28

⁹ 112 Nev. 8, 11, 908 P.2d 724, 726 (1996).

1 *Prime Income Asset Management, Inc.*¹⁰, the latter of which was analyzed in great detail in the TPOV
2 Entities' memorandum in support of their instant motion, arguing that these cases simply stand for the
3 proposition that an insurer's or indemnitor's payment obligations are not ripe until the insured incurs a
4 loss. (Opp'n 12.) However, Plaintiffs' attempts to distinguish these cases fail. The *Knittle* court
5 explicitly found that a plaintiff's claims were not ripe for declaratory relief as the plaintiff's rights were
6 "contingent on her successful litigation of a pending tort suit." *Knittle v. Progressive Cas. Ins. Co.*, 112
7 Nev. at 11, 908 P.2d at 726. Similarly, the *American Realty* court held that to render a declaratory
8 judgment would be to "operate in something of a factual vacuum", and "the costs and pitfalls associated
9 with litigating multiple suits on the same subject matter, and the attendant possibility of inconsistent
10 verdicts, are not insubstantial or abstract. The inefficiency and risk of conflicting judgments posed a
11 real risk of hardship to the parties." *Am. Realty Inv'rs, Inc. v. Prime Income Asset Mgmt., LLC*, 2013
12 WL 5663069, at *8. Therefore, where there is a suit pending on the same subject matter and
13 encompassing the same claims, a declaratory action is not ripe due to the attendant inefficiencies,
14 including increased costs and the risk of inconsistent verdicts. *Id.* Where "the rights of the plaintiff are
15 contingent on the happening of some event which cannot be forecast and which may never take place"
16 – in this case, a judgment against Caesars in favor of TPOV 16 in the Nevada Federal Action – a
17 declaratory judgment action should be dismissed as unripe. *Knittle v. Progressive Cas. Ins. Co.*, 112
18 Nev. at 10–11, 908 P.2d at 726.

19 **C. Alternatively, Plaintiffs' Claims Against the TPOV Entities Should Be Stayed**
20 **Pending a Final Determination in the Federal Action**

21 Plaintiffs do not specifically address TPOV's argument that, even if this Court does not grant
22 the TPOV Entities' instant motion to dismiss Plaintiffs' claims, the TPOV Entities are entitled to a stay.
23 Instead, Plaintiffs' argue that this Court should hold its ruling on TPOV's motion in abeyance pending
24 the determination in the Federal Action of a yet-to-be-filed motion for a stay in the Federal Action.
25 (Opp'n 15.) Plaintiffs do not cite any authority for this proposition – that this Court should hold in
26 abeyance Defendants' motion because Plaintiffs intend to file, on some unspecified future date, a
27 request to stay the Federal Action. In making this argument, Plaintiffs provide no excuse as to why

28 _____
¹⁰ 2013 WL 5663069 (D. Nev. Oct. 15, 2013).

1 they have not sought a stay in the Federal Action in the seven (7) months since they filed the present
2 action. Plaintiffs' failure to promptly seek a stay of the Federal Action after it filed the present action
3 asserting the identical claims here should weigh heavily against this Court utilizing its discretion to
4 hold the present motion in abeyance.

5 In sum, if this Court denies TPOV's motion to dismiss, Plaintiffs have offered no valid reason
6 why this Court should disregard the first-to-file rule and "either dismissing, staying, or transferring the
7 later filed suit." *Sherry v. Sherry*, 2015 WL 1798857, at *1 (Nev. Apr. 16, 2015); *see also Jonah Paul*
8 *Anders v. Mayla Casacop Anders, Respondent.*, 2017 WL 6547399, at *1 (Nev. App. Dec. 14, 2017)
9 (holding the first-to-file rule "authorizes district courts to decline jurisdiction over an action if a
10 complaint involving the same parties and issues had already been filed in another trial court") (internal
11 quotations and citation omitted). Accordingly, Plaintiffs' instant claims against the TPOV Entities, as
12 a later-filed suit, should be dismissed or in the alternative stayed pending the outcome of the Federal
13 Action pursuant to the first-to-file rule.

14 **III. CONCLUSION.**

15 WHEREFORE, this Court should grant the TPOV Entities motion to dismiss the Complaint
16 against them or, in the alternative, stay the present action until resolution of the prior pending Federal
17 Action, along with such other relief that this Court deems just and proper.

18 DATED: March 28, 2018.

19 MCNUTT LAW FIRM, P.C.

20
21 /s/ Dan McNutt
22 DANIEL R. MCNUTT (SBN 7815)
23 MATTHEW C. WOLF (SBN 10801)
24 625 South Eighth Street
25 Las Vegas, Nevada 89101
26 *Attorneys for Defendants*
27 *TPOV Enterprises, LLC and*
28 *TPOV Enterprises 16, LLC*

1 **CERTIFICATE OF MAILING**

2 I HEREBY CERTIFY that pursuant to Nev. R. Civ. P. 5(b) and EDCR 8.05 on March 28,
3 2018, I caused service of the foregoing **DEFENDANTS TPOV ENTERPRISES AND TPOV**
4 **ENTERPRISES 16’S REPLY MEMORANDUM IN FURTHER SUPPORT OF MOTION TO**
5 **DISMISS PLAINTIFFS’ CLAIMS** to be made by depositing a true and correct copy of same in the
6 United States Mail, postage fully prepaid, addressed to the following and/or via electronic mail through
7 the Eighth Judicial District Court’s E-Filing system to the following at the e-mail address provided in
8 the e-service list:

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1 TRAN

DISTRICT COURT

2
3 CLARK COUNTY, NEVADA

4 * * * * *

5
6 ROWEN SEIBEL, GR BURGR, LLC,)

7 Plaintiffs,)

8 vs.)

9 PHWLIV, LLC, ET AL.,)

10 Defendants.)

CASE NO. A-17-751759

DEPT. NO. XV

Transcript of Proceedings

11
12 BEFORE THE HONORABLE ROB BARE, DISTRICT COURT JUDGE

13 **ALL PENDING MOTIONS**

14 TUESDAY, MAY 1, 2018

15 APPEARANCES:

16 For the Plaintiffs: DANIEL R. MCNUTT, ESQ.
17 NATHAN Q. RUGG, ESQ.
18 MATTHEW C. WOLF, ESQ.
19 PAUL B. SWEENEY, ESQ.

20 For the Defendants: JAMES J. PISANELLI, ESQ.
21 ALLEN J. WILT, ESQ.
22 BRITTINEE T. WATKINS, ESQ.
23 MARIA MAGAN MERCERA, ESQ.
24 JEFFREY J. ZEIGER, ESQ.

25 RECORDED BY: MATTHEW YARBROUGH, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

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TUESDAY, MAY 1, 2018 AT 9:11 A.M.

THE COURT: 751759, *Rowen Seibel versus PHWLV, LLC.*

MR. MCNUTT: Morning, sir.

THE COURT: Go ahead and state your appearances.

MR. MCNUTT: Dan McNutt on behalf of TPOV and TPOV 16. Along with me is Matt Wolf from my office.

MR. SWEENEY: Paul Sweeney from Certilman Balin. I represent the defendants but today I'll be a partner on behalf of DNT and Mr. Seibel.

MR. RUGG: Good morning, Your Honor. Nathan Rugg on behalf of the LLTQ, FERG, and MOTI defendants and their affiliates.

THE COURT: Is that everybody on that side? Okay.

MR. PISANELLI: Good morning, Your Honor. James Pisanelli on behalf of the Caesars entities.

MS. MERCERA: Good morning, Your Honor. Magali Mercera on behalf of the Caesars entities.

MR. ZEIGER: Good morning, Your Honor. Jeffrey Zeiger on behalf of the Caesars entities.

MS. WATKINS: Good morning, Your Honor. Brittinee Watkins on behalf of the Caesars entities.

MR. WILT: And, good morning, Your Honor. I'm Allen Wilt for Gordon Ramsay.

1 THE COURT: Okay. Good morning. All right. Have
2 a seat if you can. So, before we dive into the Motions, I
3 wasn't sure if we needed to follow-up on Delaware or not.
4 If anybody thinks we do, just let me know.

5 MR. WOLF: Your Honor, I can just give you a
6 status update.

7 THE COURT: Okay.

8 MR. WOLF: The trustee had discussions with
9 counsel for Ramsay and I think they reached an agreement in
10 principle on settlement of the action there. We have
11 responded and offered some additional terms that would be
12 necessary if Seibel were going to sign off on that
13 settlement. And I think that is where it stands right now.
14 My understanding is the trustee is in communications with
15 the other parties but settlement discussions of that action
16 have been proceeding. The matter is not presently settled
17 though.

18 MR. ZEIGER: Your Honor, that is correct.

19 THE COURT: Okay.

20 MR. ZEIGER: We do have an agreement in principle
21 with the trustee and he has sent additional terms but that
22 Mr. Seibel has requested. And, so, those discussions are
23 ongoing.

24 THE COURT: Okay. So, as far as that goes,
25 nothing that I need to do or be affected by. Is that fair?

1 MR. ZEIGER: I think the process is playing out
2 pretty cooperatively and collaboratively.

3 THE COURT: Okay.

4 MR. ZEIGER: So, I think that's correct.

5 THE COURT: Okay. Several Motions to Dismiss,
6 which I, quite honestly, were a bit hard to keep track of.
7 But I did review the briefs and I'd like to hear -- bear
8 with me a moment. The LLTQ, FERG probably stood out to me.
9 You could probably guess might be a little different than
10 some of them. But, other than that one, I'm not sure if
11 the others are -- have a lot that are different between
12 them. Say that again?

13 THE CLERK: [Indiscernible].

14 THE COURT: No. I think I have it all. I think I
15 have everything.

16 So, let's hear that one first.

17 MR. RUGG: Thank --

18 MR. PISANELLI: Your Honor, if I may? Just from a
19 procedure standpoint, we filed one consolidated Opposition.

20 THE COURT: Yes.

21 MR. PISANELLI: I'm perfectly fine presenting one
22 Opposition after the defendants' tables make all of their
23 arguments or we can piecemeal, whichever Your Honor
24 prefers.

25 THE COURT: No. That's fair. Let's -- that's a

1 great point because, yeah, there is one Opposition. Let's
2 hear from whomever is arguing on behalf of all the movants
3 first. And, then, let's do the opposition and, then, the
4 replies in whatever order. But, yeah, the one that stood
5 out to me, really, was the third one. But go ahead.

6 MR. RUGG: So, Your Honor, if I may? Nathan Rugg
7 again and it's for LLTQ and FERG and also MOTI Partners,
8 which I can address all of those presently.

9 THE COURT: Sure.

10 MR. RUGG: So, there are several bases that exist
11 to dismiss or stay the action. But these are all premised
12 on the fact that Caesars is now asking this Court to decide
13 litigation that's been pending anywhere from nearly three
14 years to eight months when this Nevada Complaint was filed
15 -- the present Complaint's been filed.

16 Just in summary, because I know you've read the
17 briefs, we argue that there's the prior pending actions,
18 and in the case for LLTQ and FERG is going to be a three-
19 year anniversary, that based on the prior pending action,
20 it's improper for Caesars to use this Court for a
21 declaratory judgment action, basically to test the defenses
22 that have been affirmatively asserted in the Bankruptcy
23 Court in those matters.

24 Just taking a step back for Your Honor, these
25 disputes started as motions in the bankruptcy case for

1 Caesars. But once we filed our objections, it took on a
2 life as if it was a Complaint. We refer to these contested
3 matters, there's full blown discovery, it has to be
4 resolved by summary judgment or an evidentiary hearing.

5 Back to the other bases, there's no
6 distinguishable controversy under 12(b)5 where you have the
7 same facts and claims that are issued in the Bankruptcy
8 Court. We believe that you can also stay because of the
9 First to File Rule. The -- Caesars asserts that the First
10 to File is just a rebuttal presumption that should be
11 rebutted here because of the alleged convenience and
12 comprehensive nature.

13 But a couple of things on that, Your Honor. We
14 don't believe that comprehensive relief is available and
15 the fact that we do have these unique bankruptcy disputes
16 at issue is evidence of that. There's just simply no
17 absolute right to take five different actions and
18 consolidate them into one piece of litigation. Certainly,
19 Your Honor is not going to determine what MOTI's pre-
20 petition claim was under its contract. It's not going to
21 decide whether Caesars can reject our contracts with
22 Caesars under 365, the code. It's not going to decide our
23 administrative priority claim that's under 503 of the code
24 -- bankruptcy code, that we were required to file and
25 prosecute in the Bankruptcy Court. So, what's happened

1 here is Caesars has assembled all the parties but they
2 can't resolve all the issues in one Court.

3 A note on the First to File presumption, as well.
4 Each of the three cases that they cited in support of that
5 represent a distinct contrast from what we -- where we are
6 today. Where in the *Amlin* [phonetic] case, there was a
7 second action filed two days after the first. In the
8 *Continental Insurance* matter, the second action was filed
9 seven days after. And the *Editorial Planeta Mexicana*, it
10 was about a month. Here, we're going on our third
11 anniversary and I think there is a clear reason for this,
12 it's the forum shopping issue we have that we've raised.
13 It presents another basis for Your Honor to dismiss abuse
14 of litigation practice and I'll get into that a little bit
15 later.

16 But the other issue we have for a separate
17 dismissal applies only to the FERG entity, that's in
18 connection with the Ramsay Pub that is in Atlantic City,
19 New Jersey. New Jersey law controls that dispute and there
20 is a forum selection clause. To fine tune the issue that's
21 gone through the briefs, it's not an issue of depriving
22 you, Your Honor, of jurisdiction, but whether or not that
23 the mandatory forum selection clause should be enforced.
24 And all the cases cited on both sides have indicated yes,
25 that should be enforced. So, we have a separate basis

1 that's just for FERG, as well, and the Gordon Ramsay Pub in
2 Atlantic City.

3 The basis -- the alleged basis to tie all this
4 together is the suitability issues of Rowen Seibel. It
5 might be a common thread but it's not a silver bullet.
6 And, frankly, Your Honor, it's only the beginning of the
7 analysis. Mr. Seibel had different involvement with each
8 of the different defendant entities, with different
9 contracts, with different of -- plaintiffs. These
10 contracts have different terms that are at issue. There's
11 expressed provisions in each contract of what happens upon
12 termination. There's also a fundamental issue as to what
13 each of the plaintiffs were relying on in connection with
14 Mr. Seibel. For example, for LLTQ an FERG, there was not a
15 business information form that was submitted by Mr. Seibel,
16 which is -- forms the basis for their alleged suitability
17 issues.

18 This, like many of the things that have -- are in
19 front of you, Your Honor, have already been presented to
20 Judge Goldgar in Illinois. With regard to Mr. Seibel,
21 Judge Goldgar stated, and I quote:

22 I don't want to think of this as the Rowen Seibel
23 dispute.

24 That was back in March of -- 23.

25 So, what we've been doing for the last two and a

1 half years is determining -- trying to determine, what are
2 the parties' contractual rights and obligations under these
3 contracts? That's been going on for two and a half years.
4 Judge Goldgar is very familiar with all these disputes.
5 He's had occasion to comment on some of the underlying
6 legal theories, albeit they've been through discovery
7 disputes, but the comments he's made have been quite
8 strong. And if you -- and if I can simply it for Your
9 Honor as far as the timing.

10 The first motion was filed in the Caesars case in
11 June of 2015. There's been endless discovery in that
12 matter, rounds and rounds of requests for admission, for
13 interrogatories, document productions, Motions to Compel.
14 The MOTI litigation has been pending since November of
15 2016. Separately, the TPOV matter was filed in January of
16 2017. All that was pending when the Bankruptcy Court
17 issued its decision in may of 2017 on a protective order
18 motion. My clients had argued that the whole suitability
19 discovery should cease because there was no availability of
20 the remedy as a matter of law. Judge Goldgar made comments
21 at that hearing denying the Motion saying, okay, you may
22 proceed because it's only on discovery, but found the
23 issues of fraudulent inducement to be thin and dubious.
24 Those were his exact words, the theories.

25 Later, in June 21, 2017, in connection with

1 another discovery motion, the Court repeated those
2 comments, these thin and dubious theories, and stated that,
3 Caesars was yet to articulate a coherent theory as to why
4 they should be able to get the suitability discovery from
5 Rowen Seibel. It was two months after those comments that
6 this Complaint was filed. So, the Illinois Court has cast
7 serious doubt on the defenses that Caesars is now
8 repackaged here as counts two and counts three of the
9 Complaint.

10 THE COURT: But aren't the -- what is at issue in
11 the Bankruptcy Court, in terms of -- I've never been a
12 bankruptcy lawyer and so I'll probably use the wrong terms
13 of art, but -- well, I forget. And you all did a fine job
14 putting it in the briefs, I just don't remember what the
15 phrase is. But aren't the issues in my case different than
16 those in front of the Bankruptcy Court in terms of what
17 they want me to look at is simply suitability and what's in
18 the bankruptcy is this fraud in the inducement, ostensibly,
19 to get it out of the Bankruptcy Court, I guess, or to keep
20 it in there? So, how are those the same or different?

21 MR. RUGG: Your Honor, they're exactly the same.
22 This boils down to a contract dispute. You know, in the
23 bankruptcy world, typically that initial motion that was
24 filed back in June of 2015 is resolved summarily. It
25 doesn't take long. But what the debtors can do is get out

1 of the -- can get out of their obligations for a contract.
2 It's because of those restrictive covenants that are there,
3 that's the hook, that has kept this thing going on for
4 nearly three years. And it's -- and I don't think Caesars
5 would dispute that those two theories are at issue directly
6 before Your Honor. The question is -- they are literally
7 the same theories.

8 When you take a step back -- and in their response
9 briefs, Caesars said the same thing that we're saying, is
10 that someone needs to determine what the parties' ongoing
11 rights and obligations are under these contracts. And that
12 is very much an issue in the Bankruptcy Court. It would
13 preclude the ability to reject. It would, under 365 in the
14 code, it would require Caesars to pay my clients for the
15 operation of the restaurants under these contracts the last
16 two and a half years. That's if anything, Your Honor, why
17 we're still fighting. It's an unusual case.

18 I think, though, that the issues are
19 straightforward. However, putting aside -- excuse me. The
20 issue of suitability, when you look what Caesars is
21 attempting to do, they cannot rescind the contract here.
22 And I won't go into this because, Your Honor, I know we're
23 not, you know, arguing it as a dispositive motion, but at a
24 high-level review, there's some very simple issues.
25 There's a contract -- there's two contracts between LLTQ

1 and FERG for the two Ramsay Pub agreements. The whole
2 basis for those contracts are the design, the development,
3 and the operation of the Ramsay pubs. Those pubs are still
4 in operation. One of my clients put in a million dollars
5 of capital contributions for that. The only thing that's
6 changed is that our clients are not getting paid.

7 So, that and another issue that's been sort of
8 side issue, again, not directly before Your Honor, is
9 whether it's integration of contracts with Mr. Ramsay.
10 That is a state law issue. Bankruptcy Court decides state
11 law issues all the time. They are required under the U.S.
12 Supreme Court case law, *Butner versus U.S.*, to decide
13 property rights based on state law. So, the fact that
14 state law is at issue is not something that should sway
15 Your Honor. And for --

16 THE COURT: And how do you address, then, the
17 Nevada -- Judge, is it Davis, bankruptcy decision saying:
18 Hey, according to these 14 factors, I'm going to remand
19 back to State Court?

20 MR. RUGG: Your Honor, yes. So, a little
21 different analysis there. That under that statute, under
22 the remand statute, there is a lot of leeway for the Court.
23 All it needs to find is one of the factors applies to
24 remand. The decision has being -- it has been appealed.
25 We are -- we are just waiting right now, Your Honor.

1 There's a Motion --

2 THE COURT: All the briefing's done on that one?

3 MR. RUGG: Well, the -- no. The briefing's been
4 complete.

5 THE COURT: Okay.

6 MR. RUGG: We do not have a date yet for oral
7 argument. There also was a Motion to Dismiss that was
8 filed on a jurisdictional issue by Caesars. That's been
9 fully briefed, but that has not been decided upon.

10 But, frankly, it's a different issue for Your
11 Honor, under the various theories that have been presented
12 with the prior pending action, and the First to File Rule,
13 and forum shopping. And, frankly, it's something that we
14 don't think that Caesars can prosecute in the first
15 instance because of what I just mentioned. The idea of
16 terminating the contract and enforcing the contract are
17 inconsistent rights. Whoever was the first to breach.
18 This is not an action for damages against LLTQ or FERG.
19 There's no damages. They have all the benefits of these
20 contracts. It's -- they want to have their cake and eat it
21 too and, frankly, they want our slice, as well. These
22 contracts would not be in existence, these restaurants
23 would not be in existence but for the contracts. They've
24 been nothing but profitable for the whole enterprise and
25 they continue to date. The only thing that has changed,

1 Your Honor, is that we're not getting paid.

2 If Your Honor -- may I address the MOTI issue?

3 THE COURT: Oh, sure. Whatever -- I -- whatever
4 you want is fine.

5 MR. RUGG: Very good, Your Honor. So, for MOTI, I
6 look around and I ask: Why are we here? This is -- not
7 only is it a separate bankruptcy action that if it were
8 brought under 503 of the bankruptcy code, that MOTI was
9 required to bring in Chicago to obtain an administrative
10 claim from the bankruptcy estate, really all the issues and
11 the fact patterns are distinct from what's at issue with
12 Gordon Ramsay. This was the Serendipity 3 restaurant.
13 There is no alleged relationship with Ramsay or his brand.
14 The restaurant's been shut down for over one year. There's
15 no restrictive covenants in place in that contract and none
16 of the parties allege that there are restrictive covenants
17 that play into the MOTI contract or that restaurant.
18 Again, it's been shut down.

19 Prior to the planned confirmations, Caesar
20 terminated its -- that contract with MOTI and, then,
21 continued to operate the restaurant for four months. This
22 is simply a dispute as to whether they had to pay MOTI for
23 the use of its license -- intellectual property, and for
24 early termination fee under that contract.

25 Significantly, this has gone through several

1 rounds of briefing in front of Judge Goldgar and he has had
2 his own issues with this. He -- the contract by its terms
3 would have expired in 2014. The parties negotiated a
4 modification of that contract. It, however, was not
5 signed. This has been an issue for Judge Goldgar. We've
6 had additional briefing on this particular issue per the
7 Court's request and the outcome of that process is that
8 Judge Goldgar has questioned: What controls the parties'
9 relationship in the first instance? Is it the original
10 contract? Is it the modification? Is it outside a written
11 contract?

12 So, we're in the midst of discovery in that, as we
13 have been with LLTQ and FERG. And, quite simply, the
14 adjudication of that expense claim in the bankruptcy case
15 by Judge Goldgar, the Illinois Bankruptcy Court, will
16 conclusively resolve the dispute among MOTI and Caesars.
17 There's no future restaurants, there's no restrictive
18 covenants, there's no Gordon Ramsay. So, on that basis,
19 each of these same arguments apply but I think even more so
20 it stands out as something that should be separated.

21 THE COURT: Anything else?

22 MR. RUGG: Not directly, Your Honor, unless you
23 have questions on those?

24 THE COURT: No. I already asked my questions.

25 MR. RUGG: Okay. Very good.

1 THE COURT: Thank you very much.

2 MR. MCNUTT: Good morning, sir. I won't track
3 over the ground that we've -- you've already been over,
4 either in the briefs or with Mr. Rugg.

5 In short, there's four plaintiffs, there's six
6 contracts, and there's a dozen -- maybe even a baker's
7 dozen, of defendants. Not all of the defendants have
8 privity of contract with the plaintiffs and that's the rub,
9 that's the issue that we really have to decide here today.
10 Because what plaintiffs are asking you to become is a
11 judicial supernumerary.

12 THE COURT: A judicial what? I'm sorry.

13 MR. MCNUTT: Supernumerary. A judge --

14 THE COURT: How --

15 MR. MCNUTT: -- that can sit in the post of any
16 other judge.

17 THE COURT: So, say that one word again because --

18 MR. MCNUTT: And I acknowledge it's a military
19 phrase, not a judicial one.

20 THE COURT: I just don't -- what's the word again?
21 Super --

22 MR. MCNUTT: It's a supernumerary, Your Honor.

23 THE COURT: Okay.

24 MR. MCNUTT: So, in short, that's a guy on post
25 that can stand in any post in a military post.

1 THE COURT: Okay.

2 MR. MCNUTT: But not a very good analogy,
3 apparently.

4 THE COURT: And I apologize.

5 MR. MCNUTT: If you've got to explain it, it's
6 apparently not a very good one. It's like the Polish
7 godfather, Your Honor. I'll make you a deal you can't
8 understand.

9 What they want you to do -- they -- all this cases
10 across all of these jurisdictions, they're asking you to
11 become Judge Mahan in Federal Court. They're asking you to
12 become Magistrate Judge Ferenbach in Federal Court on the
13 TPOV case. That case, I filed in February of 2017, TPOV 16
14 against Paris, involving the Gordon Ramsay Steak
15 restaurant. We contributed a million dollars back in 2011
16 to build the Gordon Ramsay steakhouse. We're still owed
17 capital contributions from that restaurant and we're still
18 owed profits. And anybody in this court can go make a
19 reservation and get in at Gordon Ramsay Steak, which is
20 different than the case we were here previously on, GRB,
21 where we talked about rebranding of the Gordon Ramsay
22 BURGR, and we made discussion about whether, you know, they
23 -- the rebranding was they added an E to the word burger.

24 Well, in the state case -- and I won't delve too
25 far into the details, but the reality is, Judge Mahan and

1 Judge Ferenbach are going to decide things about what
2 happens upon the purported termination? Not only was the
3 termination appropriate, but if the termination then what
4 are the consequences, and Section 4.3.1 of the agreement
5 deals with those things. And our federal judges are
6 perfectly capable of interpreting that contract. We've had
7 motion practice, we've exchanged tens of thousand pages of
8 documents, we've had preliminary discussions about setting
9 depositions. That case has been going on now at this point
10 for something along the lines of 15 months, 16 months and
11 what they're asking you to do is usurp the authority of
12 those judges. They tried to file a Motion to Dismiss and
13 say there's no jurisdiction in Federal Court, Judge Mahan
14 dismissed that. He dismissed one account but everything
15 else stood and we proceeded into discovery. And that case
16 is now well into its second year. And they want you to
17 take over those judicial slots here in this court.

18 Similarly, in the other cases, they want you to
19 become an Illinois bankruptcy judge. They also want you to
20 take over the -- Judge Laurel Davis' position, as well as
21 the Ninth Circuit Bankruptcy Appellate Court, meaning they
22 want everything here, and it's simply inappropriate. Under
23 the rule that they announce without saying it, they say,
24 at some point, if you -- after litigation has been going on
25 for years, literally you can recharacterize the claims,

1 even though they're the same claims, file a new action and
2 say: Ah-ha, everything should come together here. And
3 under that rule, they act like the First to File Rule is
4 some quaint rule that can be enforced if and when you chose
5 to, without any discretion of the Court to look at the
6 underlying fact that, in truth, they're forum shopping and
7 trying to get away from courts they don't want and try to
8 bring it to a court they do want, whether or not, and
9 irrespective of, whether all the defendants are subject to
10 that Court's jurisdiction.

11 When the Court looks at the basic question in this
12 case, one is: Why should all of these parties be here? Is
13 it more convenient for all the parties? Well, apparently,
14 it's a -- more convenient for the four plaintiffs and
15 clearly based upon the mountain of paper you have to your
16 left, it is not convenient for the dozen or so defendants
17 and it's also not more convenient for this Court. Because
18 I dare say that Judge Goldgar in Chicago has a better grasp
19 of the bankruptcy issues than anybody in this courtroom,
20 save Mr. Rugg.

21 THE COURT: Well, I'll admit --

22 MR. MCNUTT: And maybe Mr. Zeiger.

23 THE COURT: -- he probably has -- well no. I will
24 admit it. He has, for sure, a better grasp of bankruptcy
25 issues than I do.