

CASE NO.

IN THE
SUPREME COURT OF NEVADA

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**MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; LLTQ
ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; TPOV
ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; FERG, LLC;
FERG 16, LLC; AND R SQUARED GLOBAL SOLUTIONS, LLC,
DERIVATIVELY ON BEHALF OF DNT ACQUISITION LLC,**

Petitioners,

vs.

**EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE
TIMOTHY C. WILLIAMS, DISTRICT JUDGE,**

Respondents,

-and-

**DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING
COMPANY, LLC; PHWLTV, LLC, AND BOARDWALK REGENCY
CORPORATION,**

Real Parties in Interest.

**DISTRICT COURT CASE NO. A-17-751759-B
CONSOLIDATED WITH A-17-760537-B**

**PETITIONERS' APPENDIX TO
PETITION FOR EXTRAORDINARY WRIT RELIEF**

VOLUME 5 OF 9

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APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF

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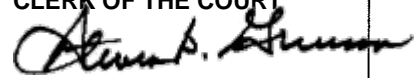
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Corporation d/b/a Caesars Atlantic City*

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.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED MATTERS

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

FIRST AMENDED COMPLAINT

**(Exempt from Arbitration –
Declaratory Relief Requested)**

///

Desert Palace Inc. ("Caesars Palace"), Paris Las Vegas Operating Company, LLC ("Paris"), PHWLTV, LLC ("Planet Hollywood") and Boardwalk Regency Corporation d/b/a Caesars Atlantic City ("CAC," and collectively with Caesars Palace, Paris, and Planet Hollywood, "Plaintiffs" or "Caesars") bring this Complaint against Rowen Seibel, Craig Green, LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC (collectively, with LLTQ Enterprises, LLC, "LLTQ"), FERG, LLC, FERG 16, LLC (collectively, with FERG, LLC, "FERG"), Moti Partners, LLC, Moti Partners 16, LLC (collectively, with Moti Partners, LLC, "MOTI"), TPOV Enterprises, LLC, TPOV Enterprises 16, LLC (collectively, with TPOV Enterprises, LLC, "TPOV"), DNT Acquisition, LLC ("DNT"), and GR Burgr, LLC ("GRB," and collectively with LLTQ, FERG, MOTI, TPOV, and DNT, the "Seibel-Affiliated Entities") seeking declaratory relief as a result of Mr. Seibel's criminal activities and Defendants' failure to disclose those criminal activities to the Plaintiffs. Further, Caesars seeks damages relating to Mr. Seibel's and Mr. Green's conspiracy to obtain illegal kickbacks from vendors providing product to Caesars.

Caesars alleges as follows:

PRELIMINARY STATEMENT

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

2. Unbeknownst to Caesars, when the parties entered into each of the agreements, Mr. Seibel was engaged in criminal conduct that rendered him "Unsuitable" under the terms of each agreement. In 2004, Mr. Seibel began using foreign bank accounts to defraud the IRS. In 2009, when Mr. Seibel was assuring Caesars that he had not been a party to a felony and there was nothing "that would prevent him from being licensed by a gaming authority," he was submitting false documentation to the IRS regarding his use of foreign bank accounts.

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

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

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

6. Nevertheless, Defendants are now claiming that Caesars wrongfully terminated those agreements and either have initiated or indicated that they intend to initiate legal proceedings relating to the termination of the agreements. Because there is an actual dispute among the parties,

1 Caesars brings this action for a declaratory judgment confirming that it was proper, in its sole and
2 exclusive judgment, to terminate each of the agreements with the Seibel-Affiliated Entities.

3 7. In addition, Caesars seeks a declaratory judgment that it has no current or future
4 obligations to Defendants. Certain defendants are seeking monetary relief from Caesars in three
5 different courts across the country related to the Seibel Agreements and have threatened to attempt
6 to force Caesars to include Mr. Seibel in other restaurant opportunities. Simply put, Caesars is not
7 required under the Seibel Agreements or otherwise to do business with a convicted felon. Indeed,
8 Mr. Seibel and the Seibel-Affiliated Entities concealed material facts from Caesars that they had a
9 duty to disclose regarding Mr. Seibel's wrongdoings. Mr. Seibel concealed these wrongdoings from
10 Caesars to avoid the termination of the Seibel Agreements. Had Caesars been aware of Mr. Seibel's
11 wrongdoings when the relationship first began, it would not have entered into the Seibel
12 Agreements. And, if Mr. Seibel had properly disclosed his wrongdoings, Caesars would not have
13 continued doing business with Mr. Seibel and would have terminated its relationship with
14 Mr. Seibel and his companies. Because Mr. Seibel and the Seibel-Affiliated Entities fraudulently
15 induced Caesars to enter into the Seibel Agreements and breached the Seibel Agreements by failing
16 to disclose material facts regarding Mr. Seibel's wrongdoings, Caesars owes no current or future
17 obligations to Defendants.

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

21 9. Additionally, during discovery in this litigation Caesars has uncovered evidence
22 demonstrating that Mr. Seibel, Mr. Green, and others were engaged in a scheme of commercial
23 bribery to obtain illegal kickbacks from Caesars' vendors.

24 10. In particular, Mr. Seibel received thousands of dollars from Caesars' vendors based
25 on total goods sold to Caesars without Caesars' knowledge. Upon information and believe, Mr.
26 Green, also received sums from Caesars' vendors based on total goods sold to Caesars without
27 Caesars' knowledge. Mr. Seibel and Mr. Green scheme was shrouded in secrecy and threats to
28 further their improper gains.

11. Accordingly, Caesars also brings claims of civil conspiracy, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and intentional interference with contractual relations against Mr. Seibel and Mr. Green personally.

PARTIES, JURISDICTION, AND VENUE

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

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

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

15. Plaintiff Boardwalk Regency Corporation d/b/a Caesars Atlantic City LLC is a Delaware limited liability company that operates the Caesars Atlantic City Hotel and Casino. Caesars Atlantic City's principal place of business is 2100 Pacific Avenue, Atlantic City, New Jersey 08401.

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

17. Defendant Craig Green currently resides at 320 East 54th Street, Apartment 3A, New York, New York 10022. Mr. Green regularly travels to and conducts business in Nevada. Mr. Green has been the manager of Defendants TPOV, TPOV 16, LLTQ, LLTQ 16, FERG, FERG 16, MOTI, and MOTI 16 since April 2016. Prior to April 2016, Mr. Green acted actively performed services on behalf of the Seibel-Affiliated Entities.

1 18. Defendant Moti Partners, LLC is a New York limited liability company located at
2 200 Central Park South, New York, New York 10019. In March 2009, Caesars Palace and
3 MOTI Partners, LLC entered into a Development, Operation, and License Agreement
4 (the "MOTI Agreement"). The MOTI Agreement relates to the design, development, construction,
5 and operation of the Serendipity restaurant in Las Vegas. The negotiations of the MOTI Agreement
6 occurred primarily in Nevada. The MOTI Agreement also was signed by the parties in Nevada,
7 and Mr. Seibel signed the MOTI Agreement on behalf of MOTI. The MOTI Agreement further
8 provided that "[t]he laws of the State of Nevada applicable to agreements made in that State shall
9 govern the validity, construction, performance and effect of [the MOTI Agreement]." The
10 MOTI Agreement likewise required (i) MOTI to provide "Development Services" during meetings
11 that "shall take place primarily in Las Vegas;" (ii) MOTI to provide "Menu Development Services"
12 during meetings that "shall take place primarily in Las Vegas;" and (iii) Mr. Seibel to provide
13 "Marketing Consulting Services" during meetings that "shall take place primarily in Las Vegas."

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

17 20. Defendant DNT Acquisition, LLC is a Delaware limited liability company located
18 at 200 Central Park South, 19th Floor, New York, New York 10019. In June 2011, Caesars Palace
19 and DNT entered into a Development, Operation, and License Agreement among
20 DNT Acquisition, LLC, The Original Homestead Restaurant, Inc., and Desert Palace, Inc.
21 ("DNT Agreement"). The DNT Agreement relates to the design, development, construction, and
22 operation of an Old Homestead restaurant in Las Vegas. The negotiations of the DNT Agreement
23 occurred in Nevada and the agreement was signed by the parties in Nevada. Mr. Seibel signed the
24 DNT Agreement on behalf of DNT. The DNT Agreement also provided that "[t]he laws of the
25 State of Nevada applicable to agreements made in that State shall govern the validity, construction,
26 performance, and effect of this Agreement." The DNT Agreement further required (i) DNT to
27 provide "Restaurant Development Services" that "shall take place in Las Vegas;" (ii) Mr. Seibel to
28

1 visit the restaurant one time each quarter for two consecutive nights; and (iii) Mr. Seibel to
2 participate in marketing consultations and meetings that "shall take place in Las Vegas."

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

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

20 23. Defendant LLTQ Enterprises, LLC is a Delaware limited liability company located
21 at 200 Central Park South, New York, New York 10019. In April 2012, Caesars Palace and LLTQ
22 entered into a Development and Operation Agreement between LLTQ Enterprises, LLC and
23 Desert Palace, Inc. ("LLTQ Agreement"). The LLTQ Agreement relates to the design,
24 development, construction, and operation of the Gordon Ramsay Pub restaurant in Las Vegas. The
25 negotiations of the LLTQ Agreement primarily occurred in Nevada and the agreement was signed
26 by the parties in Nevada. Mr. Seibel signed the LLTQ Agreement on behalf of LLTQ. The LLTQ
27 Agreement also provided that "[t]he laws of the State of Nevada applicable to agreements made in
28 that State shall govern the validity, construction, performance and effect of this Agreement." The

1 LLTQ Agreement further required (i) LLTQ to provide "Restaurant Development Services" during
2 meetings that "shall take place in Las Vegas, Nevada;" (ii) Mr. Seibel to visit and attend the
3 restaurant one time each quarter for five consecutive nights; and (iii) Mr. Seibel to provide
4 operational consulting and advice and "meetings with respect to same [that] shall take place in
5 Las Vegas, Nevada."

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

9 25. Defendant GR Burgr, LLC is a Delaware limited liability company located at
10 200 Central Park South, 19th Floor, New York, New York 10019. In December 2012,
11 Planet Hollywood and GRB entered into a Development, Operation and License Agreement
12 Among Gordon Ramsay, GR Burgr, LLC and PHW Manager, LLC on behalf of
13 PHW Las Vegas, LLC DBA Planet Hollywood ("GRB Agreement"). The GRB Agreement relates
14 to the design, development, construction, and operation of the BURGR Gordon Ramsay restaurant
15 in Las Vegas. The negotiations of the GRB Agreement primarily occurred in Nevada and the
16 agreement was signed by the parties in Nevada. Mr. Seibel signed the GRB Agreement on behalf
17 of GRB. The GRB Agreement also provided that "[t]he laws of the State of Nevada applicable to
18 agreements made in that State shall govern the validity, construction, performance and effect of this
19 Agreement." The GRB Agreement further required GRB to provide "Restaurant Development
20 Services," and meetings with respect to same, that "shall take place in Las Vegas, Nevada." Caesars
21 is naming GRB as a defendant to the extent of Mr. Seibel's involvement with that entity.

22 26. Defendant FERG, LLC is a Delaware limited liability company located at
23 200 Central Park South, New York, New York 10019. In May 2014, CAC and FERG entered into
24 a Consulting Agreement between FERG, LLC and Boardwalk Regency Corporation DBA Caesars
25 Atlantic City ("FERG Agreement"). The FERG Agreement relates to the design, development,
26 construction, and operation of the Gordon Ramsay Pub and Grill restaurant. The negotiations of
27 the FERG Agreement primarily occurred in Nevada and the agreement was signed by the parties in
28 Nevada. Mr. Seibel signed the FERG Agreement on behalf of FERG.

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

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

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

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

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

32. As far as conduct, MOTI represented that "it shall conduct all of its obligations hereunder in accordance with the highest standards of honesty, integrity, quality and courtesy so as

1 to maintain and enhance the reputation and goodwill of Caesars, the Marks, the Hotel Casino, and
2 the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the
3 operation of an exclusive, first-class resort hotel and casino and an exclusive, first-class restaurant."

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

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

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

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

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

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

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

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

21 **(b) The DNT Agreement.**

22 40. Like the MOTI Agreement, the DNT Agreement related to Caesars' efforts to
23 introduce a New York City restaurant—Old Homestead—at its Caesars Palace property. Unlike
24 the MOTI Agreement, however, the DNT Agreement involved a third-party unrelated to Mr. Seibel
25 (The Original Homestead Restaurant, Inc.; collectively, with DNT, the "DNT Parties"). As part of
26 the DNT Agreement, the Old Homestead Restaurant, Inc. licensed its intellectual property to
27 Caesars Palace (the "Old Homestead Marks").
28

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

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

8 43. First, the DNT Parties represented in the DNT Agreement that "they shall, and they
9 shall cause their Affiliates to, conduct themselves in accordance with the highest standards of
10 honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill
11 of Caesars, the Old Homestead Marks, the Old Homestead Materials, the Old Homestead System,
12 the Caesars Palace and the Restaurant and at all times in keeping with and not inconsistent with or
13 detrimental to the operation of an exclusive, first-class resort hotel and casino and an exclusive,
14 first-class restaurant." The DNT Parties further agreed that they would "use commercially
15 reasonable efforts to continuously monitor the performance of each of its and its Affiliates'
16 respective agents, employees, servants, contractors and licensees and shall ensure the foregoing
17 standards are consistently maintained by all of them." Finally, the DNT Agreement provided that
18 "[a]ny failure by the DNT Parties, their affiliates or any of their respective agents, employees,
19 servants, contractors or licensees to maintain the standards described [above] shall, in addition to
20 any other rights or remedies Caesars may have, give Caesars the right to terminate [the DNT
21 Agreement] in its sole and absolute discretion."

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

26 45. The DNT Agreement provided Caesars with the ability to terminate the DNT
27 Agreement in its discretion if it determined that (i) DNT was not complying with its disclosure
28

obligations, or (ii) DNT or an Associated Party was an "Unsuitable Person." Specifically, the DNT Agreement provided:

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

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

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

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

48. As with the MOTI Agreement, the disclosure obligations under the DNT Agreement were not limited to the corporate entity DNT. Instead, DNT's obligations—both with respect to conduct and disclosure—applied to "DNT Associates," which included persons controlling DNT. Mr. Seibel, as the member-manager of DNT and the individual who signed the DNT Agreement, was a "DNT Associate." Thus, Mr. Seibel had an ongoing obligation to conduct himself with the

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

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

8 (c) *The TPOV Agreement.*

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

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

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

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

27 54. The TPOV Agreement provided Paris with the ability to terminate the TPOV
28 Agreement in its discretion if it determined that (i) TPOV was not complying with its disclosure

1 obligations, or (ii) TPOV or an Associated Party was an "Unsuitable Person." Specifically, the
2 TPOV Agreement provided:

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

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

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

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

23 57. The disclosure and conduct obligations under the TPOV Agreement were not limited
24 to the corporate entity TPOV. Instead, TPOV's obligations—both with respect to conduct and
25 disclosure—included TPOV's "Associates" and "Affiliates." TPOV's Affiliates included persons
26 controlling TPOV. The TPOV Agreement specifically stated that "with respect to TPOV, the term
27 'Affiliate' shall include Rowen Seibel and each Affiliate of Rowen Seibel." TPOV's Associates
28 included its directors, employees, and representatives. Mr. Seibel, as the member-manager of

1 TPOV and the individual who signed the TPOV Agreement, was both a TPOV Affiliate and TPOV
2 Associate. Thus, Mr. Seibel had an ongoing obligation to conduct himself with the highest
3 standards of honesty, integrity, quality, and courtesy. And TPOV had an ongoing obligation to
4 disclose any information regarding Mr. Seibel that would render him an Unsuitable Person.

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

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

16 *(d) The LLTQ Agreement.*

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

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

24 62. First, LLTQ represented that "it shall and it shall cause its Affiliates to conduct
25 themselves in accordance with the highest standards of honesty, integrity, quality and courtesy so
26 as to maintain and enhance the reputation and goodwill of Caesars, the Caesars Palace Las Vegas
27 and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the
28 operation of an exclusive, first-class resort hotel and casino and an exclusive, first-class restaurant."

1 LLTQ further agreed that it would "use commercially reasonable efforts to continuously monitor
2 the performance of each of its and its Affiliates' respective agents, employees, servants, contractors
3 and licensees and shall ensure the foregoing standards are consistently maintained by all of them."

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

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

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

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

22 Any Person (a) whose association with Caesars or its Affiliates could be anticipated
23 to result in a disciplinary action relating to, or the loss of, inability to reinstate or
24 failure to obtain, any registration, application or license or any other rights or
25 entitlements held or required to be held by Caesars or any of its Affiliates under any
26 United States, state, local or foreign laws, rules or regulations relating to gaming or
27 the sale of alcohol, (b) whose association or relationship with Caesars or its Affiliates
28 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,

1 qualified or found suitable, and such Person is not or does not remain so licensed,
2 registered, qualified or found suitable.

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

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

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

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

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

28 If Caesars elects under this Agreement to pursue any venture similar to (i) the
Restaurant (i.e., any venture generally in the nature of a pub, bar, café or tavern) or

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

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

(e) The GR Burgr Agreement.

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

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

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

1 failure by GRB or any of its respective Affiliates or any of their respective agents, employees,
2 servants, contractors or licensees to maintain the standards described in this [section] shall, in
3 addition to any other rights or remedies PH have, give PH the right to terminate this Agreement . . .
4 in its sole and absolute discretion."

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

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

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

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

23 Any Person (a) whose association with PH or its Affiliates could be anticipated to
24 result in a disciplinary action relating to, or the loss of, inability to reinstate or failure
25 to obtain, any registration, application or license or any other rights or entitlements
26 held or required to be held by PH or any of its Affiliates under any United States,
27 state, local or foreign laws, rules or regulations relating to gaming or the sale of
28 alcohol, (b) whose association or relationship with PH or its Affiliates could be
anticipated to violate any United States, state, local or foreign laws, rules or
regulations relating to gaming or the sale of alcohol to which PH or its Affiliates are
subject, (c) who is or might be engaged or about to be engaged in any activity which
could adversely impact the business or reputation of PH or its Affiliates, or (d) who
is required to be licensed, registered, qualified or found suitable under any United
States, state, local, or foreign laws, rules or regulations relating to gaming or the sale

1 of alcohol under which PH or any of its Affiliates is licensed, registered, qualified or
2 found suitable, and such Person is not or does not remain so licensed, registered,
qualified or found suitable.

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

6 79. The disclosure and conduct obligations under the GRB Agreement were not limited
7 to the corporate entity GRB. Instead, GRB's obligations—both with respect to conduct and
8 disclosure—included GRB's "Associates" and "Affiliates." GRB's Affiliates included persons
9 controlling GRB and GRB's Associates included its directors, employees, and representatives.
10 Mr. Seibel, as the member-manager of GRB and the individual who signed the GRB Agreement,
11 was both a GRB Affiliate and Associate. Thus, Mr. Seibel had an ongoing obligation to conduct
12 himself with the highest standards of honesty, integrity, quality, and courtesy. And GRB had an
13 ongoing obligation to disclose any information regarding Mr. Seibel that would render him an
14 Unsuitable Person.

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

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

25 *(f) The FERG Agreement*

26 82. As with the LLTQ Agreement, the FERG Agreement related to CAC's plans to
27 partner with Mr. Ramsay to license intellectual property that would be used in connection with a
28 restaurant in the CAC casino known as "Gordon Ramsay Pub and Grill." The FERG Agreement

1 set forth the obligations of FERG and Mr. Seibel to assist with the design, development,
2 construction, and operation of the Gordon Ramsay Pub and Grill.

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

5 84. First, FERG represented in the FERG Agreement that "it shall and it shall cause its
6 Affiliates to conduct themselves in accordance with the highest standards of honesty, integrity,
7 quality and courtesy so as to maintain and enhance the reputation and goodwill of the CAC Marks
8 and materials, the GR Marks, CAC, and the Restaurant and at all times in keeping with and not
9 inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel and casino
10 and an exclusive, first-class restaurant." FERG further agreed that it would "use commercially
11 reasonable efforts to continuously monitor the performance of each of its and its Affiliates'
12 respective agents, employees, servants, contractors and licensees and shall ensure the foregoing
13 standards are consistently maintained by all of them."

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

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

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

1 termination by CAC pursuant to this [section] shall not be subject to dispute by FERG
2 and shall not be the subject of any proceeding [in arbitration].

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

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

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

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

25 90. Because Mr. Seibel was specifically included as a FERG Associate, Caesars relied
26 upon his previous representations in the MOTI and DNT Business Information Forms that he had
27 not been a party to a felony in the last ten years and there was nothing in his past that would prevent
28

1 him from being licensed by a gaming authority. Thus, the disclosures contained in the Business
2 Information Forms constituted the prior written disclosures referenced in the FERG Agreement.

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

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

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

18 **B. The Activities of Mr. Seibel and the Seibel-Affiliated Entities Rendered Him**
19 **Unsuitable Under the Seibel Agreements.**

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

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

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

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

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

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

12 99. Mr. Seibel caused his Numbered UBS Account to be opened in 2004 with a
13 \$25,000 cash deposit made by his mother. Between 2004 and 2005, Mr. Seibel's mother deposited
14 cash and checks totaling approximately \$1,000,000 into Mr. Seibel's account, bringing to
15 \$1,011,279 the total deposits made into Mr. Seibel's Numbered UBS Account.

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

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

22 101. On or about May 30, 2008, Mr. Seibel traveled back to Switzerland and informed
23 UBS personnel that he wanted to close his Numbered UBS Account. Mr. Seibel explained he was
24 concerned about the existence of the account given recent press reports. Those press reports had
25 revealed various investigations commenced by United States law enforcement of UBS's role in
26 helping United States citizens evade federal income taxes by, among other things, using undeclared
27 foreign bank accounts at UBS.
28

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

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

8 103. On or about October 10, 2008, Mr. Seibel filed with the IRS a Form 1040 for
9 calendar year 2007. United States citizens and residents are obligated, on their Form 1040, to report
10 their income from any source, regardless of whether the source is inside or outside the United States.
11 Taxpayers who have a financial interest in, or signature authority over, a financial account in a
12 foreign country over a threshold amount also are required to file with the IRS a Report of Foreign
13 Bank and Financial Accounts, Form TD F 90-22.1 ("FBAR").

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

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

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

27 106. In March 2009, the IRS began the Voluntary Disclosure Program to provide an
28 opportunity for U.S. taxpayers, not already under investigation by the IRS, to avoid criminal

1 prosecution by disclosing their previously undeclared offshore accounts and paying tax and
2 penalties on the income earned in those accounts.

3 107. On or about October 15, 2009, Mr. Seibel signed and caused to be submitted to the
4 IRS an application to the Voluntary Disclosure Program (the "Application"). The Application,
5 drafted by Mr. Seibel's mother's attorney, stated that Mr. Seibel had been unaware, during the years
6 2004 and 2005, that his mother had made deposits into the Numbered UBS Account for Mr. Seibel's
7 benefit. It also stated Mr. Seibel had been unaware, until he made inquiries of UBS in 2009, of the
8 status of his account at UBS and had in fact over time reached "the conclusion that deposits [into
9 his Numbered UBS Account] had been stolen or otherwise disappeared."

10 108. These statements were false. As set forth above, Mr. Seibel was (i) at all times
11 knowledgeable about the Numbered UBS Account and had taken a role in the oversight of, and
12 transactions in, that account, and (ii) was aware as to the disposition of the funds from that account,
13 as Mr. Seibel traveled to Switzerland the year before to effect the closing of the Numbered UBS
14 Account and transfer of its funds into another foreign bank account at a different Swiss bank. Thus,
15 when Mr. Seibel signed and submitted the Application, he was lying to the United States
16 government.

17 109. At some point, the United States government began to investigate Mr. Seibel for his
18 criminal activities. On April 18, 2016, the United States Attorney filed an information charging
19 Mr. Seibel with corrupt endeavor to obstruct and impede the due administration of the Internal
20 Revenue Laws, 26 U.S.C. § 7212(a). That same day, Mr. Seibel pleaded guilty to one count of a
21 corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws,
22 26 U.S.C. § 7212, a Class E Felony. Mr. Seibel stated that he was "pleading guilty because [he
23 was] in fact guilty," and admitted that on his IRS Form 1040 for the year 2008, he "corruptly
24 answer[ed] the question 'no' when [he] knew that answer was incorrect." Mr. Seibel's guilty plea
25 was the result of criminal conduct that began prior to Caesars entering into the Seibel Agreements.

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

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

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

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

(a) *Termination of the MOTI Agreement.*

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

Pursuant to Section 9.2 of the Agreement, MOTI has acknowledged and agrees that Caesars and/or its affiliates conduct business that are or may be subject to and exist because of privileged licenses issued by governmental authorities. Additionally, Section 9.2 provides that if Caesars determines, in its sole and absolute judgment, that (a) any MOTI Associate is an Unsuitable Person and (b) such relationship is not subject to cure, Caesars shall have the right to terminate the Agreement.

1 Caesars is aware that Rowen Seibel, who is a MOTI Associate under the Agreement,
2 has recently pleaded guilty to a one-count criminal information charging him with
3 impeding the administration of the Internal Revenue Code (26 U.S.C. § 7212)
(corrupt endeavor to obstruct and impede the due administration of the Internal
4 Revenue Laws), a Class E Felony. Such felony conviction renders Rowen Seibel an
Unsuitable Person.

5 Therefore, Caesars has determined that the nature of Rowen Seibel's actions and his
6 relationship to MOTI are not capable of being cured. Accordingly, Caesars is
exercising its rights under Section 9.2 of the Agreement and is terminating the
Agreement effective immediately.

7 ***(b) Termination of the DNT Agreement.***

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

10 Pursuant to Section 11.2 of the Agreement, the DNT Parties have acknowledged and
11 agree that Caesars and/or its affiliates conduct business that are or may be subject to
and exist because of privileged licenses issued by governmental authorities.
12 Additionally, Section 11.2 provides that Caesars determines, in its sole and absolute
judgment, that any DNT Associate is an Unsuitable Person, the DNT Parties shall
13 cease activity or relationship creating the issue.

14 Caesars is aware that Rowen Seibel, who is a DNT Associate under the Agreement,
15 has recently pleaded guilty to a one-count criminal information charging him with
impeding the administration of the Internal Revenue Code (26 U.S.C. § 7212)
(corrupt endeavor to obstruct and impede the due administration of the Internal
16 Revenue Laws), a Class E Felony. Such felony conviction renders Rowen Seibel an
Unsuitable Person.

17 Therefore, the DNT Parties shall, within 10 business days of receipt of this letter,
18 terminate any relationship with Mr. Seibel and provide Caesars with written evidence
of such terminated relationship. If the DNT Parties fails to terminate the relationship
19 with Mr. Seibel, Caesars will be required to terminate the agreement pursuant to
section 4.2.3 of the Agreement.

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

26 ***(c) Termination of the TPOV Agreement.***

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

1 Pursuant to Section 10.2 of the Agreement, TPOV has acknowledged and agrees that
2 Caesars and/or its affiliates conduct business that are or may be subject to and exist
3 because of privileged licenses issued by governmental authorities. Additionally,
4 Section 10.2 provides that if Caesars determines, in its sole and absolute judgment,
5 that (a) any TPOV Associate is an Unsuitable Person and (b) such relationship is not
6 subject to cure, Caesars shall have the right to terminate the Agreement.

7 Caesars is aware that Rowen Seibel, who is a TPOV Associate under the Agreement,
8 has recently pleaded guilty to a one-count criminal information charging him with
9 impeding the administration of the Internal Revenue Code (26 U.S.C. § 7212)
10 (corrupt endeavor to obstruct and impede the due administration of the Internal
11 Revenue Laws), a Class E Felony. Such felony conviction renders Rowen Seibel an
12 Unsuitable Person.

13 Therefore, Caesars has determined that the nature of Rowen Seibel's actions and his
14 relationship to TPOV are not capable of being cured. Accordingly, Caesars is
15 exercising its rights under Section 4.2.5 of the Agreement and is terminating the
16 Agreement effective immediately.

17
18 **(d) Termination of the LLTQ Agreement.**

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

21 Pursuant to Section 10.2 of the Agreement, LLTQ has acknowledged and agrees that
22 Caesars and/or its affiliates conduct business that are or may be subject to and exist
23 because of privileged licenses issued by governmental authorities. Additionally,
24 Section 10.2 provides that if Caesars determines, in its sole and absolute judgment,
25 that (a) any LLTQ Associate is an Unsuitable Person and (b) such relationship is not
26 subject to cure, Caesars shall have the right to terminate the Agreement.

27 Caesars is aware that Rowen Seibel, who is a LLTQ Associate under the Agreement,
28 has recently pleaded guilty to a one-count criminal information charging him with
impeding the administration of the Internal Revenue Code (26 U.S.C. § 7212)
(corrupt endeavor to obstruct and impede the due administration of the Internal
Revenue Laws), a Class E Felony. Such felony conviction renders Rowen Seibel an
Unsuitable Person.

Therefore, Caesars has determined that the nature of Rowen Seibel's actions and his
relationship to LLTQ are not capable of being cured. Accordingly, Caesars is
exercising its rights under Section 4.2.5 of the Agreement and is terminating the
Agreement effective immediately.

(e) Termination of the GRB Agreement.

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

Pursuant to Section 11.2 of the Agreement, GRB has acknowledged and agrees that
Caesars and/or its affiliates conduct business that are or may be subject to and exist
because of privileged licenses issued by governmental authorities. Additionally,
Section 11.2 provides that if Caesars determines, in its sole and absolute judgment,

1 that any GRB Associate is an Unsuitable Person, GRB shall cease the activity or
2 relationship creating the issue.

3 Caesars is aware that Rowen Seibel, who is a GR Associate under the Agreement,
4 has recently pleaded guilty to a one-count criminal information charging him with
5 impeding the administration of the Internal Revenue Code (26 U.S.C. § 7212)
(corrupt endeavor to obstruct and impede the due administration of the Internal
6 Revenue Laws), a Class E Felony. Such felony conviction renders Rowen Seibel an
7 Unsuitable Person.

8 Therefore, GRB shall, within 10 business days of the receipt of this letter, terminate
9 any relationship with Mr. Seibel and provide Caesars with written evidence of such
10 terminated relationship. If GRB fails to terminate the relationship with Mr. Seibel,
11 Caesars will be required to terminate the Agreement pursuant to Section 4.2.5 of the
12 Agreement.

13 119. In response to this letter, GRB failed to provide Caesars with sufficient evidence
14 demonstrating that it had terminated its relationship with Mr. Seibel. Though Mr. Seibel had
15 purportedly assigned his rights and interests in GRB and the GRB Agreement, Caesars determined,
16 in its sole discretion—as it was entitled to do under the GRB Agreement—that GRB's relationship
17 was not subject to cure given Mr. Seibel's continued relationship with the principals and
18 representatives of GRB. Mr. Seibel's partner in GRB similarly informed Caesars that GRB could
19 not adequately disassociate itself with Mr. Seibel. As a result, the GRB Agreement was terminated.

20 *(f) Termination of the FERG Agreement.*

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

23 Pursuant to Section 11.2 of the Agreement, FERG has acknowledged and agrees that
24 Caesars and/or its affiliates conduct business that are or may be subject to and exist
25 because of privileged licenses issued by governmental authorities. Additionally,
26 Section 11.2 provides that if Caesars determines, in its sole and absolute judgment,
27 that (a) any FERG Associate is an Unsuitable Person and (b) such relationship is not
28 subject to cure, Caesars shall have the right to terminate the Agreement.

Caesars is aware that Rowen Seibel, who is a FERG Associate under the Agreement,
has recently pleaded guilty to a one-count criminal information charging him with
impeding the administration of the Internal Revenue Code (26 U.S.C. § 7212)
(corrupt endeavor to obstruct and impede the due administration of the Internal
Revenue Laws), a Class E Felony. Such felony conviction renders Rowen Seibel an
Unsuitable Person.

Therefore, Caesars has determined that the nature of Rowen Seibel's actions and his
relationship to FERG are not capable of being cured. Accordingly, Caesars is
exercising its rights under Section 4.2(e) of the Agreement and is terminating the
Agreement effective immediately.

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

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

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

We note that the proposed assignee [of the agreements] and its Associates have direct or indirect relationships with Rowen Seibel. Based on the Company's experiences with the Nevada Gaming Control Board and other gaming regulatory authorities which regulate the Company and its affiliates (collectively, "Gaming Regulatory Authorities"), the Company believes that such relationships with Mr. Seibel would be unacceptable to the Gaming Regulatory Authorities. Further the Company believes that a commercial relationship with the proposed assignee and its Associates, because of their relationships with Mr. Seibel, would also be unacceptable to the Gaming Regulatory Authorities. Lastly, we note that Mr. Seibel failed, through the applicable entity, to affirmatively update prior disclosures to the Company, which updated disclosure is required and bears directly on his suitability.

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

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

D. Legal Proceedings Involving Caesars and the Defendants.

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

123. In January 2015, Caesars Entertainment Operating Company, Inc. and a number of its subsidiaries and affiliates (including Caesars Palace and CAC) filed for bankruptcy protection under Chapter 11 in the United States Bankruptcy Court, Northern District of Illinois, Eastern

1 Division. As part of that bankruptcy, Caesars Palace, CAC, FERG, LLTQ, and MOTI are involved
2 in several contested matters.

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

10 125. Second, LLTQ and FERG filed a motion for the payment of administrative expenses
11 relating to payments purportedly owed to LLTQ and FERG for operation of the relevant restaurants
12 after Caesars Palace filed for bankruptcy. Caesars Palace objected to this motion on the grounds
13 that LLTQ and FERG have not provided any post-petition benefit to Caesars Palace. Indeed, LLTQ
14 and FERG did not provide Caesars Palace with any services after Caesars Palace filed for
15 bankruptcy.

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

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

27 128. The contested matters in the bankruptcy court do not, however, directly implicate
28 Caesars' decision to terminate its agreements with the Seibel-Affiliated Entities. Instead, counsel

1 for LLTQ and FERG have stated in filings in the bankruptcy court that they intend to challenge the
2 propriety of the termination of the relevant agreements but do not believe that issue should be heard
3 by the bankruptcy court:

- 4 • "[T]he [Debtors'] fraudulent inducement claim, like the issue of whether the
5 Termination [of the LLTQ and FERG Agreements] was proper in the first instance,
6 is not presently before [the bankruptcy court] and should be resolved in separate
7 proceedings (likely in state court or federal district court)."
- 8 • "[LLTQ and FERG] will challenge the propriety of the purported termination
9 of the [LLTQ and FERG Agreements] in the appropriate venue, likely outside of the
10 Chapter 11 cases."

11 **(b) Litigation involving GRB and Planet Hollywood.**

12 129. On January 11, 2017, Mr. Seibel, purportedly derivatively on behalf of GRB, filed
13 a complaint in the United States District Court for the District of Nevada naming Planet Hollywood
14 as a defendant. Mr. Seibel also filed a motion for a preliminary injunction enjoining
15 Planet Hollywood from (i) terminating the GRB Agreement or, alternatively, (ii) utilizing GRB's
16 intellectual property and operating a restaurant in the premises for the GR Burgr restaurant. This
17 action was dismissed from the federal court on jurisdictional grounds, and Mr. Seibel re-filed a
18 similar complaint and motion for preliminary injunction in the Eighth Judicial District Court in
19 Clark County, Nevada, Case No. A-17-751759 (Hon. Joe Hardy). The state court complaint
20 included counts for (i) breach of contract arising out of the termination of the GRB Agreement;
21 (ii) breach of the implied covenant of good faith and fair dealing relating to the termination of the
22 GRB Agreement on suitability grounds; (iii) unjust enrichment relating to Planet Hollywood's use
23 of GRB's intellectual property; (iv) civil conspiracy relating to the circumstances surrounding the
24 termination of the GRB Agreement; (v) specific performance requiring Planet Hollywood to pay
25 GRB; and (vi) declaratory relief establishing, inter alia, that Planet Hollywood must stop using the
26 GR intellectual property and compensate GR for the period of time it utilized GRB's intellectual
27 property.

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

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

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

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

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

1 **E. Mr. Seibel, Mr. Green, and the Seibel-Affiliated Entities Were Engaged in a**
2 **Kickback Scheme.**

3 134. In discovery in this litigation, Mr. Seibel and the Seibel-Affiliated Entities produced
4 documents demonstrating that he, Mr. Green, and various Seibel-Affiliated Entities solicited and
5 accepted payments from Caesars' vendors for products those vendors sold to Caesars. Specifically,
6 Mr. Green, Mr. Seibel, and the Seibel-Affiliated Entities on one hand and certain Caesars vendors
7 on the other, including, but not limited to Innis & Gunn and Pat LaFrieda Meat Purveyors
8 ("LaFrieda") entered into an agreement whereby Innis & Gunn and LaFrieda would pay a
9 percentage to Mr. Green, Mr. Seibel, and/or the Seibel-Affiliated Entities for product Caesars
10 purchased for the various restaurants.

11 135. This scheme was entered into with Innis & Gunn and LaFrieda without Caesars'
12 knowledge.

13 136. The structure of the scheme was such that the Seibel-Affiliated Entities would
14 receive a kickback from vendors based on the volume of goods sold to Caesars.

15 137. The kickbacks were set-up to be paid to other entities owned by Mr. Seibel
16 including, but not limited to, BR 23 Venture, LLC and Future Star Hospitality Consulting, LLC.

17 138. In exchange for the kickbacks, Mr. Green, acting on behalf of Mr. Seibel, promised
18 the vendors that they would become "preferred vendors." If vendors were unwilling to pay the
19 kickbacks, Mr. Green would threaten to pull the vendors' products from the Caesars' restaurants.

20 139. In particular, acting on behalf of Mr. Seibel, Mr. Green coerced a representative of
21 Innis & Gunn to establish a 15% retroactive kickback on each keg of beer sold to certain Caesars'
22 restaurants.

23 140. After advocating to Caesars for the use of LaFrieda as a vendor, Mr. Seibel admitted
24 to secretly receiving a percentage, approximately 5%, of LaFrieda's sales to Caesars' restaurants.

25 141. Caesars was unaware of, never consented to, and never would have consented to,
26 this scheme. Further, Caesars never received any amount of the money paid to Mr. Seibel or his
27 entities.
28

143. Mr. Green was also involved in the secret and wrongful solicitation of kickbacks from Newcastle Brown Ale ("Newcastle"), proposing to grow Newcastle within the Caesars restaurants in exchange for a 15% kickback of the total order. Unbeknownst to Caesars, Mr. Green directed agents to threaten to pull product if the vendors were not willing to pay the kickback.

144. These and other acts by Mr. Seibel, Mr. Green, and the Seibel-Affiliated Entities representatives demonstrate a conspiratorial scheme to engage in commercial bribery for the benefit of Defendants and to the detriment of Caesars.

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

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

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

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

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

conviction and his criminal activities that led to his conviction. Caesars therefore seeks a declaration that the Seibel Agreements were properly terminated.

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

COUNT II

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

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

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

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

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

154. First, the express language of the Seibel Agreements states that Caesars has no future obligations to the Seibel-Affiliated Entities where, as here, termination is based on suitability or non-disclosure grounds. For example, the MOTI Agreement provides that "[a]ny termination by Caesars under [the suitability and disclosure provision] shall terminate the obligations of each Party to this Agreement" Similarly, all of the Seibel Agreements state that termination based on unsuitability grounds under the agreements has "immediate effect" and alleviates the parties of any future obligations.

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

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

- 16 • The MOTI and DNT Business Information Forms;
- 17 • Sections 8.1, 9.1, and 9.2 of the MOTI Agreement;
- 18 • Sections 10.2, 11.1, and 11.2 of the DNT Agreement;
- 19 • Sections 9.2, 10.1, and 10.2 of the TPOV Agreement;
- 20 • Sections 9.2, 10.1, and 10.2 of the LLTQ Agreement;
- 21 • Sections 10.3, 11.1, and 11.2 of the GRB Agreement; and
- 22 • Sections 10.2, 11.1, and 11.2 of the FERG Agreement.

23 157. Mr. Seibel and the Seibel-Affiliated Entities knew that these representations were
24 false when made. The fraudulent inducement of Mr. Seibel and the Seibel-Affiliated Entities
25 permits Caesars to rescind the Seibel Agreements and thereby avoid future obligations to Mr. Seibel
26 or the Seibel-Affiliated Entities.

27 158. Third, the Seibel-Affiliated Entities repeatedly breached the Seibel Agreements
28 when they failed to update their prior disclosures to reflect Mr. Seibel's illegal activities. Because

1 the Seibel-Affiliated Entities breached the Seibel Agreements, Caesars is no longer required to
2 perform under the Seibel Agreement.

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

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

9 COUNT III

10 **(Declaratory Judgment Against All Defendants Declaring that the Seibel Agreements Do** 11 **Not Prohibit or Limit Existing or Future Restaurant Ventures Between Caesars and** 12 **Gordon Ramsay)**

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

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

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

23 164. Section 13.22 of the LLTQ Agreement is unenforceable as a matter of law because
24 (a) the LLTQ Agreement was properly terminated; (b) Caesars is prohibited from entering into a
25 business relationship with LLTQ or Mr. Seibel given that LLTQ and Mr. Seibel are Unsuitable
26 Persons; and (c) Section 13.22 is overly broad, indefinite, vague, and ambiguous.

27 165. Section 13.22 is overly broad and indefinite because it does not contain any
28 geographic or temporal limitations. For example, by its terms, the restrictive covenant in
Section 13.22 could apply to future ventures between any Caesars affiliate and Mr. Ramsay located

1 anywhere in world. It could also apply to future ventures between any Caesars affiliate and
2 Mr. Ramsay entered into 40 years after LLTQ and Caesars Palace entered into the LLTQ
3 Agreement. Under Nevada law, the lack of any geographic or temporal restrictions render the
4 restrictive covenant in Section 13.22 unenforceable.

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

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

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

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

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

5 **COUNT IV**
6 **(Civil Conspiracy Against Mr. Seibel and Mr. Green)**

7 171. Caesars hereby repeats, realleges, and incorporates all of the allegations contained
8 in the preceding Paragraphs as though fully set forth herein.

9 172. Mr. Seibel and Mr. Green knowingly acted in concert with vendors, including, but
10 not limited to, intending to accomplish an unlawful objective for the purpose of harming Caesars.

11 173. Specifically, Mr. Seibel and Mr. Green conspired to engage in commercial bribery
12 and extortion to obtain kickbacks from Caesars' vendors, for the purpose of interfering with the
13 Agreements at an economic loss to Caesars and for Defendants' own benefit.

14 174. Mr. Seibel and Mr. Green understood that the benefit would adversely influence the
15 vendors' conduct as it relates to Caesars' commercial affairs.

16 175. As a direct and proximate result of Mr. Seibel's and Mr. Green's acts and omissions,
17 Caesars has suffered and will continue to suffer damages in an amount to be proven at trial, but in
18 any event in excess of \$15,000.00.

19 176. As a result of Mr. Seibel's and Mr. Green's conduct, Caesars has been forced to retain
20 the services of PISANELLI BICE PLLC to address the conduct complained of herein and is therefore
21 entitled to all of its attorneys' fees and costs associated with bringing this action.

22 **COUNT V**
23 **(Breaches of Implied Covenants of Good Faith and Fair Dealing Against MOTI, DNT,**
24 **TPOV, LLTQ, GR BURGR, and FERG)**

25 177. Caesars hereby repeats and re-alleges each of the above Paragraphs as though fully
26 set forth herein.

27 178. The MOTI, DNT, TPOV, LLTQ, GR BURGR, and FERG Agreements constituted
28 valid, binding, and enforceable contracts between Defendants and Caesars.

180. Caesars is informed and believes, and thereon alleges, Defendants breached their duty of good faith to Caesars by, among other things, wrongfully soliciting, coercing, agreeing to accept, and accepting benefits from vendors based on the understanding that the benefit would adversely influence Defendants' actions in relationship to Caesars' commercial affairs, including, but not limited to, the Agreements between Caesars and Defendants.

181. Caesars had a justified expectation that Defendants would not accept, not solicit, nor coerce kickbacks from vendors to the detriment of Caesars without Caesars' knowledge.

182. As a direct and proximate result of Defendants' breaches of the implied covenants of good faith and fair dealing arising from the Agreements, Caesars has been damaged in an amount in excess of \$15,000.00.

183. As a result of Defendants' conduct, Caesars has been forced to retain the services of PISANELLI BICE PLLC to address the conduct complained of herein and is therefore entitled to all of its attorneys' fees and costs associated with bringing this action.

COUNT VI

(Unjust Enrichment Against Mr. Seibel & Mr. Green)

184. Caesars hereby repeats, realleges, and incorporates all of the allegations contained in the preceding Paragraphs as though fully set forth herein.

185. By contracting with certain vendors, Caesars unknowingly conferred benefits upon Mr. Green and Mr. Seibel, including, but not limited to, establishing relationships from which they received kickbacks based on the amount of goods sold to Caesars.

186. Mr. Green and Mr. Seibel accepted, appreciated, and retained those benefits.

187. Mr. Green and Mr. Seibel have not compensated Caesars for the benefits Caesars conferred.

188. It would be unjust, unfair, and inequitable for Mr. Green and Mr. Seibel to be permitted to retain the benefits of Caesars' relationships with vendors.

1 189. As a direct and proximate result of Mr. Green's and Mr. Seibel's acts and omissions,
2 Caesars has suffered and will continue to suffer damages in an amount to be proven at trial, but in
3 any event in excess of \$15,000.00.

4 190. As a result of Defendants' conduct, Caesars has been forced to retain the services of
5 PISANELLI BICE PLLC to address the conduct complained of herein and is therefore entitled to all
6 of its attorneys' fees and costs associated with bringing this action.

7 **COUNT VII**

8 **(Intentional Interference with Contractual Relations Against Rowen Seibel and**
9 **Craig Green)**

10 191. Caesars hereby repeats, realleges, and incorporates all of the allegations contained
11 in the preceding Paragraphs as though fully set forth herein.

12 192. The MOTI, DNT, TPOV, LLTQ, GR BURGR, and FERG Agreements were valid
13 and binding agreements between Caesars and Defendants, granting Caesars valuable rights,
14 including the right to share in all revenues arising from the various contracted restaurants.

15 193. Mr. Green and Mr. Seibel knew of the Agreements between Caesars and the
16 Defendants, and of the exclusive rights the Agreements granted to Caesars.

17 194. Mr. Green's and Mr. Seibel's actions were intended or designed to disrupt the
18 Agreements and Caesars' valuable rights under it, and caused an actual interference and disruption
19 of the Agreements.

20 195. Mr. Green's and Mr. Seibel's conduct is in no way privileged or justified.

21 196. Through their tortious conduct, the Mr. Green and Mr. Seibel disrupted performance
22 of the Agreements and injured Caesars, including by diverting money and/or preventing Caesars
23 from obtaining product at lesser costs to its detriment.

24 197. As a direct and proximate result of the acts and omissions of Mr. Green and Mr.
25 Seibel, Caesars has suffered and will continue to suffer damages in an amount to be proven at trial,
26 but in any event in excess of \$15,000.00.

(Fraudulent Concealment Against Rowen Seibel and Craig Green)

199. Caesars hereby repeats, realleges, and incorporates all of the allegations contained in the preceding Paragraphs as though fully set forth herein.

200. Mr. Seibel and Mr. Green concealed material facts from Caesars, including, but not limited to, that they were secretly and wrongfully soliciting and obtaining kickbacks from Caesars' vendors.

201. Mr. Seibel and Mr. Green had a duty to disclose these wrongdoings to Caesars.

202. Mr. Seibel and Mr. Green intentionally concealed these wrongdoings to adversely influence the vendors' conduct as it relates to Caesars' commercial affairs.

203. Caesars was unaware of Mr. Seibel's and Mr. Green's wrongful conduct until discovery in this litigation.

204. Had Caesars been aware of Mr. Seibel's and Mr. Green's conduct it would not have continued doing business with them or any of their affiliated entities.

205. As a direct and proximate result of Mr. Seibel's and Mr. Green's acts and omissions, Caesars has suffered and will continue to suffer damages in an amount to be proven at trial, but in any event in excess of \$15,000.00.

206. As a result of Mr. Green's and Mr. Seibel's conduct, Caesars has been forced to retain the services of PISANELLI BICE PLLC to address the conduct complained of herein and is therefore entitled to all of its attorneys' fees and costs associated with bringing this action.

WHEREFORE, Caesars respectfully prays for judgment as follows:

(a) That judgment be entered in favor of Plaintiffs and against Defendants on all of Plaintiffs' claims;

- (b) For an award of damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), to be determined upon proof at trial, against Defendants;
- (c) For punitive damages in an amount to be determined at trial;
- (d) For an award of pre- and post-judgment interest until the judgment is paid in full;
- (e) Declaratory Relief as requested herein;
- (f) Equitable relief;
- (g) Reasonable attorneys' fees and costs; and
- (h) Any additional relief this Court may deem just and proper.

DATED this 11th day of March 2020.

PISANELLI BICE PLLC

By: 

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and

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*Attorneys for Desert Palace, Inc.;
Paris Las Vegas Operating Company, LLC;
PHWL, LLC; and Boardwalk Regency
Corporation d/b/a Caesars Atlantic City*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 11th day of March 2020, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **FIRST AMENDED COMPLAINT** to the following:

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Paul C. Williams, Esq.
Stephanie J. Glantz, Esq.
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*Attorneys for Plaintiff in Intervention
The Original Homestead Restaurant, Inc.*

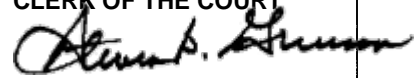
VIA U.S. MAIL (pleading only)

Kurt Heyman, Esq.
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Trustee for GR Burgr LLC


An employee of PISANELLI BICE PLLC

TAB 59



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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.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED MATTERS

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

ACCEPTANCE OF SERVICE


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I, Joshua P. Gilmore, of the law firm of BAILEY KENNEDY, do hereby accept service of the Summons and First Amended Complaint on behalf of Craig Green in the above-entitled action. This Acceptance of Service shall have the same effect and shall operate in the same manner as if Mr. Green had been personally served pursuant to NRCP 4. This Acceptance of Service shall not operate to waive, release, compromise or prejudice any rights, defenses, arguments or claims Mr. Green may have concerning the ability of this Court to assert personal jurisdiction over him. This Acceptance of Service is intended solely to satisfy obligations under NRCP 4.

ACCEPTED this 17th day of March 2020.

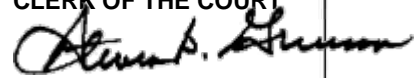
BAILEY KENNEDY

By:


John R. Bailey, Esq., Bar No. 0137
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FERG, LLC; FERG 16, LLC; Moti Partners, LLC;
Moti Partners 16, LLC; TPOV Enterprises, LLC;
TPOV Enterprises 16, LLC; and Craig Green*

TAB 60



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Paris Las Vegas Operating Company, LLC;

PHWLTV, LLC; and Boardwalk Regency

Corporation d/b/a Caesars Atlantic City

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.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED MATTERS

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

ACCEPTANCE OF SERVICE

1 I, Alan M. Lebensfeld, of the law firm of LEBENSFELD SHARON &
2 SCHWARTZ, P.C., do hereby accept service of the First Amended Complaint on behalf of DNT
3 Acquisition, LLC ("DNT") in the above-entitled action. This Acceptance of Service shall have
4 the same effect and shall operate in the same manner as if DNT had been personally served
5 pursuant to NRCP 4. This Acceptance of Service shall not operate to waive, release,
6 compromise or prejudice any rights, defenses, arguments or claims DNT may have concerning
7 the ability of this Court to assert personal jurisdiction over it. This Acceptance of Service is
8 intended solely to satisfy obligations under NRCP 4.

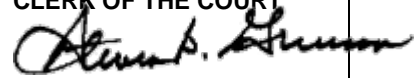
9 ACCEPTED this 17th day of March 2020.

10 LEBENSFELD SHARON & SCHWARTZ, P.C.

11 By: 

12 Alan Lebensfeld, Esq.
13 Lawrence J. Sharon, Esq.
14 140 Broad Street
15 Red Bank, NJ 07701
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TAB 61



MTD (CIV)

JOHN R. BAILEY

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TPOV Enterprises 16, LLC; FERG, LLC; FERG 16, LLC; Craig Green;
and R Squared Global Solutions, LLC, Derivatively On Behalf of DNT
Acquisition, 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,

vs.

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

Defendants,

And

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED CLAIMS.

Case No. A-17-751759-B

Dept. No. XVI

Consolidated with A-17-760537-B

**ROWEN SEIBEL, THE DEVELOPMENT
ENTITIES, AND CRAIG GREEN'S
MOTION TO DISMISS COUNTS IV, V, VI,
VII, AND VIII OF CAESARS' FIRST
AMENDED COMPLAINT**

(Hearing Requested)

Pursuant to NRCP 12(b)(5), Rowen Seibel (“Seibel”); Moti Partners, LLC (“Moti”); Moti Partners 16, LLC (“Moti 16”); LLTQ Enterprises, LLC (“LLTQ”); LLTQ Enterprises 16, LLC (“LLTQ 16”); TPOV Enterprises, LLC (“TPOV”); TPOV Enterprises 16, LLC (“TPOV 16”); FERG, LLC (“FERG”); FERG 16, LLC (“FERG 16”); Craig Green (“Green”); and R Squared Global Solutions, LLC (“R Squared”), derivatively on behalf of DNT Acquisition LLC (“DNT”), hereby move (the “Motion”) to dismiss Count IV (Civil Conspiracy), Count V (Breaches of the Implied Covenant of Good Faith and Fair Dealing); Count VI (Unjust Enrichment); Count VII (Intentional Interference with Contractual Relations); and Count VIII (Fraudulent Concealment) of the First Amended Complaint filed by Desert Palace Inc. (“Caesars Palace”); Paris Las Vegas Operating Company, LLC (“Paris”); PHWLTV, LLC (“Planet Hollywood”); and Boardwalk Regency Corporation d/b/a Caesars Atlantic City (“CAC”) (all collectively, “Caesars”).

This Motion is made and based on the papers and pleadings on file, the following Memorandum of Points and Authorities, and any argument heard by the Court.

DATED this 8th day of April, 2020.

BAILEY ♦ KENNEDY

By: /s/ John R. Bailey

JOHN R. BAILEY
DENNIS L. KENNEDY
JOSHUA P. GILMORE
PAUL C. WILLIAMS
STEPHANIE J. GLANTZ

Attorneys for Rowen Seibel; Moti Partners, LLC; Moti Partners 16, LLC; LLTQ Enterprises, LLC; LLTQ Enterprises 16, LLC; TPOV Enterprises, LLC; TPOV Enterprises 16, LLC; FERG, LLC; FERG 16, LLC; Craig Green; and R Squared Global Solutions, LLC, Derivatively On Behalf of DNT Acquisition, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Caesars’ newly asserted tort claims are nothing more than a veiled attempt to distract from the real issue in this case; namely: may Caesars and Ramsay continue to enjoy all the benefits of the agreements that they entered into with the Development Entities¹ while disregarding their burdens? Caesars and Ramsay continue to operate—and profit from—the various restaurants designed and developed by the Development Entities (an inconvenient fact ignored by Caesars) without paying any compensation to the Development Entities. Indeed, discovery has revealed that Caesars and Ramsay began their plot to oust the Development Entities and steal their share of the profits as early as 2013.

Worse, to justify its untimely motion to amend, Caesars expressly represented to this Court that it had only recently learned of the rebates giving rise to its newly asserted tort claims.² Not true! On March 17, 2017—nearly *three (3) years* before the motion to amend was filed—Caesars attached and relied upon a letter, in support of its opposition to the motion for preliminary injunction referenced in Paragraphs 129 and 130 of its First Amended Complaint, *expressly referencing the rebates* that are at the heart of its newly asserted tort claims.³ Even then, the rebates were discussed years prior, *in 2013*, by Caesars’ then-Vice President of Food and Beverage, J. Jeffrey Frederick, with Seibel. Accordingly, the notion that Caesars was unaware of the rebates

¹ Moti, Moti 16, LLTQ, LLTQ 16, TPOV, TPOV 16, FERG, FERG 16, and DNT are collectively referred to as the “Development Entities.” The agreements between the Development Entities and Caesars/Ramsay are collectively referred to as the “Development Agreements.”

² See, e.g., Caesars’ Motion for Leave to File First Am. Compl., filed on Dec. 12, 2019, at 7:7-9, 10:6-8 (representing that the rebates were only “recently discovered” ... “[i]n preparing for the depositions for the Green, Seibel, and certain Seibel-Affiliated Entities”), 16:4-6 (representing that Caesars’ motion for leave to amend was filed in good faith as “it has only recently become clear that Seibel and Green were engaged in a kickback scheme at an economic loss to Caesars”).

³ Planet Hollywood’s Opp. to Pl.’s Mot. for Prelim. Inj., filed on March 17, 2017, Ex. G, Sept. 12, 2016, Letter from Kevin E. Gaut to Brian K. Ziegler, at 3 (“Mr. Green stated under oath in a recent deposition that he together with Mr. Seibel organized and received rebates from alcohol suppliers *inter alia* to the restaurant Gordon Ramsay Pub & Grill.”).

1 until 2019—the predicate for its motion for leave to amend after the deadline to do so had
2 expired—is patently false.⁴

3 In any event, Caesars’ newly asserted tort claims, which improperly add a new party to this
4 action (Green) who is alleged to have at all times acted as an agent for others, fail as a matter of law
5 and must be dismissed for the following reasons.

6 First, Caesars’ civil conspiracy claim (Count IV) is barred by the intra-corporate conspiracy
7 doctrine. Seibel and Green cannot legally conspire with one another (or with the Development
8 Entities) as they were acting on behalf of their principals (specifically, the non-party entities who
9 are alleged to have received the rebates).⁵ This claim further fails because Caesars did not allege a
10 viable underlying tort or wrongful act committed by Seibel and Green or actual harm arising from
11 the rebates.

12 Second, Caesars’ breach of the implied covenant of good faith and fair dealing claim (Count
13 V) fails because Caesars fails to allege that the Development Entities took any actions or received
14 any benefit with respect to the rebates.⁶ As a practical matter, it would be counterintuitive for
15 Caesars to allege that the Development Entities benefited from the rebates since the alleged harm
16 would equally apply to the Development Entities (who shared in profits with Caesars). Moreover,
17 as it pertains to the 16 Entities,⁷ they were only involved in the restaurants for a few short months
18 before Caesars terminated the Development Agreements.

19 Third, Caesars’ unjust enrichment claim (Count VI) fails because Caesars does not allege
20 that Seibel or Green received the rebates; in fact, Caesars alleges that the rebates were received by
21 other non-party entities (BR 23 Venture, LLC and Future Star Hospitality Consulting, LLC) who
22 Caesars could have, but chose not to sue. Thus, neither Seibel nor Green was unjustly enriched.

23
24 ⁴ Given that this Court denied LLTQ, LLTQ 16, FERG, and FERG 16’s motion for leave to amend their counterclaim
25 based on a finding that they “were aware of the facts they sought to include in their amended counterclaim before the
26 deadline to amend expired and they delayed seeking leave,” Caesars’ misrepresentation likely altered this Court’s decision
27 to Caesars’ benefit. (*See* Order Denying Mot. to Amend LLTQ/FERG Defs.’ Answer, Affirmative Defenses &
28 Countercls., filed on Nov. 25, 2019, at 3:6-8.)

⁵ And in Green’s case, he was also acting on behalf of Seibel.

⁶ For purposes of the First Amended Complaint, “MOTI” refers to Moti and Moti 16, “LLTQ” refers to LLTQ and
LLTQ 16, “TPOV” refers to TPOV and TPOV 16, and “FERG” refers to FERG and FERG 16. (*Id.*, 1:1-13.)

⁷ “16 Entities” refers to Moti 16, LLTQ 16, TPOV 16, and FERG 16.

Fourth, Caesars' claim for intentional interference with contractual relations (Count VII) is barred because neither Seibel nor Green was a stranger to the Development Agreements. Non-contracting individuals involved in a business transaction—such as officers and agents of a contracting entity—cannot be held liable for interfering with the transaction. Further, the intentional interference claim fails because Caesars does not allege that the rebates constituted an actual breach or disruption of any particular provision of the Development Agreements.

Finally, Caesars' fraudulent concealment claim (Count VIII) fails because Seibel and Green had no duty to disclose any facts to Caesars. A duty to disclose arises under special circumstances, such as through the existence of a fiduciary or special relationship between the parties. Caesars fails to allege any facts that would support such a relationship leading to a duty to disclose on the part of Seibel (who was not a signatory to any of the Development Agreements). In addition, Caesars fails to allege any facts that would support such a relationship leading to a duty to disclose on the part of Green (who acted as an agent for Seibel and the Development Entities).⁸

In sum, Counts IV through VIII in Caesars' First Amended Complaint do not state claims upon which relief can be granted. NRCP 12(b)(5). These newly asserted tort claims should be dismissed, which will also result in dismissal of Green as a party (who should have never been named in the first instance by Caesars). Doing so will appropriately foreclose Caesars's sideshow and focus it on the real issue in this case: whether Caesars and Ramsay may continue to reap all the benefits of the Development Agreements without any of the attendant burdens.

II. STATEMENT OF RELEVANT FACTS

The following facts and allegations arise from the First Amended Complaint and are accepted as true solely for purposes of this Motion. *See, e.g., Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

A. The Parties and the Development Agreements.

Beginning in 2009, Caesars entered into the Development Agreements with Moti, LLTQ, TPOV, FERG, DNT, and GR Burgr, LLC ("GR Burgr") to develop various restaurants at Caesars'

⁸ Assuming (*arguendo*) Seibel owed a duty to disclose the rebates to Caesars (which he disputes), no argument can reasonably be made that the same duty to disclose the rebates was owed by Green to Caesars.

1 properties. (First Am. Compl., filed Mar. 11, 2020 [“FAC”], ¶ 1.) Under the terms of the
2 Development Agreements, the Development Entities (and GR Burgr) agreed to provide capital
3 funding and to assist in the design, development, construction, and/or operation of restaurants at
4 Caesars’ properties. (*See, e.g., id.* ¶¶ 18, 21, 23, 26.) ***Notably, the Development Agreements***
5 ***expressly state that they are not intended to form a joint venture or partnership among the***
6 ***parties.*** (*See, e.g., App’x of Exs. in Support of Mot. to Dismiss or, in the Alternative, to Stay*
7 *Claims Against MOTI Defs., Vol. I, filed on Jan. 5, 2018, Ex. A, MOTI Agr., at 14, § 12.1.*⁹)

8 Seibel owned, managed, and/or was affiliated with the Development Entities (and GR
9 Burgr). (FAC ¶ 1.) Green has been the Manager of the Development Entities since April 2016 and
10 before that, “actively performed services *on behalf of*” the Development Entities (and GR Burgr).
11 (*Id.* ¶ 17 (emphasis added).)

12 **B. Seibel Divests his Interests in the Development Entities.**

13 In April 2016, Seibel divested his interests in the Development Entities by, among other
14 acts: (a) assigning his interests to a trust (the “Trust”); and (b) causing the Development Entities to
15 assign (the “Assignments”) their interests in the Development Agreement to new entities in which
16 Seibel had no rights or responsibilities. (FAC ¶ 111; *see also id.*, ¶¶ 19, 22, 24, 27.)

17 **C. Seibel Pleads Guilty to a Tax Offense; Paris Wrongfully Terminates the**
18 **Development Agreement While Continuing to Operate and Reap TPOV 16’s**
Profits From the Steak Restaurant.

19 In April 2016, Seibel pled guilty to a tax offense. (FAC ¶ 109.) In September 2016,
20 Caesars terminated the Development Agreements, contending that it had determined that Seibel—
21 who had no continuing interest in the Development Entities as noted above—would be considered
22 an “Unsuitable Person” by the Nevada Gaming Control Board. (*Id.* ¶¶ 112-22.) Caesars rejected
23 the Assignments on the grounds that the new entities remained affiliated with Seibel. (*Id.*)

24 However, rather than closing the restaurants, Caesars continued (and continues) to operate
25 them. (*Id.* ¶¶ 152-54.) In other words, Caesars wants the best of both worlds: receive the benefits
26

27 ⁹ Because the Development Agreements are quoted at length in and heavily relied upon by Caesars in its First Amended
28 Complaint, the Court may review their contents without converting this Motion to Dismiss into a Motion for Summary
Judgment. *See, e.g., Baxter v. Dignity Health*, 131 Nev., Adv. Op. 76, 357 P.3d 927, 930 (2015).

1 of the Development Agreements (e.g., capital funding and the development of successful
2 restaurants) without their corresponding burdens (e.g., profit sharing with the Development
3 Entities). (*See id.*)

4 **D. The Rebates.**

5 Caesars alleges that Seibel, Green, and/or the Development Entities “solicited and accepted
6 payments from Caesars’ vendors for products sold to Caesars.” (FAC ¶ 134.) With regard to Green,
7 Caesars alleges that he was “acting on behalf of Mr. Seibel” in communicating with vendors. (*Id.* ¶¶
8 138-39.) Caesars then alleges that the rebates were paid to “other entities owned by Mr. Seibel,
9 including, but not limited to, BR 23 Venture, LLC and Future Star Hospitality Consulting, LLC.”
10 (*Id.* ¶ 137.) *Stated differently, Caesars does not allege that Seibel, Green, or the Development*
11 *Entities received the rebates.* (*See id.*) Neither BR 23 Venture, LLC nor Future Star Hospitality
12 Consulting, LLC—the entities who received the rebates—is named as an additional counterclaim
13 defendant in Caesars’ First Amended Complaint.

14 Further, Caesars alleges that it would never have consented to the payment of rebates by its
15 vendors. (*Id.* ¶ 141.) That being said, Caesars does not allege that the rebates caused its vendors to
16 increase their prices or that Caesars paid non-competitive prices to such vendors because of the
17 rebates. In other words, the rebates resulted in the vendors receiving less net profit, not Caesars
18 paying more for the products that it received from those vendors. (*See generally id.*)

19 Finally, while Caesars alleges that the Development Agreements entitle it to a “right to share
20 in all revenues arising from the various contracted restaurants,” it fails to identify what specific
21 provisions of those agreements would entitle it to a portion of the rebates. (*See id.* ¶ 192.)

22 **III. ARGUMENT**

23 **A. Standard of Decision.**

24 Under NRCP 12(b)(5), “[d]ismissal is proper where the allegations are insufficient to
25 establish the elements of a claim for relief.” *Stockmeier v. Nev. Dept. of Corrections*, 124 Nev. 313,
26 316, 183 P.3d 133, 135 (2008) (internal quotation marks omitted). A complaint shall be dismissed
27 “if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would
28 entitle it to relief.” *Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672; *see also Morris v. Bank of*

1 *Am. Nev.*, 110 Nev. 1274, 1276, 886 P.2d 454, 456 (1994) (providing that dismissal under Rule
2 12(b)(5) is appropriate where the allegations “fail to state a cognizable claim for relief”). A bare
3 recital of the elements of a claim for relief is insufficient to withstand an NRCP 12(b)(5) motion.
4 *Ashcroft v. Iqbal*, 556 U.S. 662, 678.¹⁰

5 When deciding a motion to dismiss, the Court need not accept legal conclusions as true,
6 even if they are cast in the form of factual allegations. *Clegg v. Cult Awareness Network*, 18 F.3d
7 752, 754-55 (9th Cir. 1994); *Flowers v. Carville*, 266 F. Supp. 2d 1245, 1249 (D. Nev. 2003); *see*
8 *also Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870, 875, 8 P.3d 837, 840 (2000) (stating that
9 “[a] bare allegation is not enough” and that a complaint “must set forth sufficient facts to establish
10 all necessary elements of a claim for relief”). That rule has particular relevance to this Motion since
11 ***the Court should disregard the misguided rhetoric that plagues Caesars’ First Amended***
12 ***Complaint, such as the terms “illegal kickbacks” and “commercial bribery,”*** which are intended
13 to account for a woefully deficient factual premise supporting the newly asserted tort claims.

14 Also, in deciding a motion to dismiss, the court may consider materials outside the
15 pleadings if those materials are attached to the complaint, *Hal Roach Studios v. Richard Feiner &*
16 *Co.*, 896 F.2d 1542, 1555 (9th Cir. 1990), are referenced by the complaint, *Durning v. First Boston*
17 *Corp.*, 815 F.2d 1265, 1267 (9th Cir. 1987), or are properly subject to judicial notice—such as
18 matters of public record, *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986). *See*
19 *also Baxter*, 131 Nev., Adv. Op. 76, 357 P.3d at 930.

20 **B. Caesars’ Civil Conspiracy Claim (Count IV) is Barred by the Intra-Corporate**
21 **Conspiracy Doctrine and Fails Because Caesars Has Not Alleged a Viable**
22 **Underlying Tort or Wrongful Act.**

23 The basis of Caesars’ civil conspiracy claim is that Seibel and Green “conspired to engage
24 in commercial bribery and extortion to obtain kickbacks from Caesars’ vendors, for the purpose of
25 interfering with the [Development] Agreements at an economic loss to Caesars and for Defendants’
26 own benefit.” (FAC ¶ 173.) Again, Caesars alleges that the rebates were paid to ***other entities***

27
28 ¹⁰ Federal cases interpreting rules of procedure are strong persuasive authority in Nevada courts. *See Exec. Mgmt. Ltd.*
v. Ticor Title Ins. Co., 118 Nev. 46, 53, 38 P.3d 872, 876 (2002).

1 owned by Seibel and that Green was at all times acting on behalf of Seibel. (*Id.* ¶¶ 137-39.) In
2 light of those allegations, the civil conspiracy claim fails as a matter of law.

3 Civil conspiracy involves a “combination of two or more persons who, by some concerted
4 action, intend to accomplish some unlawful objective for the purpose of harming another which
5 results in damage.” *Collins v. Union Fed. Sav. & Loan Assn.*, 99 Nev. 284, 303, 662 P.2d 610, 622
6 (1983). “The gist of a civil conspiracy is not the unlawful agreement but the damage resulting from
7 that agreement or its execution.” *Eikelberger v. Tolotti*, 96 Nev. 525, 528 n.1, 611 P.2d 1086, 1088
8 n.1 (1980).

9 The intra-corporate conspiracy doctrine provides that “[a]gents and employees of a
10 corporation cannot conspire with their corporate principal or employer where they act in their
11 official capacities on behalf of the corporation and not as individuals for their individual
12 advantage.”¹¹ *Collins*, 99 Nev. at 303, 662 P.2d at 622; *see also Laxalt v. McClatchy*, 622 F. Supp.
13 737, 745 (D. Nev. 1985) (stating that agents and employees cannot conspire among themselves or
14 with the corporation when acting in the course and scope of their employment or agency). For an
15 agent’s conduct to constitute an actionable conspiracy, the agent’s conduct must be *solely* for his or
16 her own advantage; mixed motives are insufficient as a matter of law. *See, e.g., General*
17 *Refractories Co. v. Fireman’s Fund Ins. Co.*, 337 F.3d 297, 313 (3d Cir. 2003) (providing that an
18 officer must act for his sole personal benefit in order to apply the exception to the intra-corporate
19 conspiracy doctrine); *Litchie v. U.S. Home Corp.*, 655 F. Supp. 1026, 1028 (D. Utah 1987)
20 (providing that an agent who acts with “mixed motives” acts “within the scope of employment”)
21 (citing RESTATEMENT (SECOND) OF AGENCY § 235 cmt. a (1958)).

22 Here, the alleged civil conspiracy between Seibel and Green fails because they, as officers/
23 agents of the entities alleged to have received rebates from vendors, cannot conspire—as a matter of
24 law—with their principals unless they were acting for their *sole* personal benefit. Caesars has not
25 alleged any facts indicating that Seibel and Green were acting for their sole personal benefits.

26
27 ¹¹ Relatedly, the Nevada Supreme Court has held that it appears to be “impossible” for a parent company to conspire
28 with its subsidiaries. *See Nanopierce Techns., Inc. v. Depository Trust*, 123 Nev. 362, 379 n.9, 168 P.3d 73, 85 n.9
(2007).

1 Indeed, Caesars alleges that the rebates were made to non-party entities (i.e., BR 23 Venture, LLC,
2 and Future Star Hospitality Consulting, LLC). (FAC ¶ 137.) Further, Caesars alleges that Green
3 was acting on behalf of Seibel. (*Id.* ¶¶ 138-39.) Even if it could be said that the rebates somehow
4 indirectly benefited Seibel and/or Green, they would have been acting with mixed motives, which is
5 insufficient as a matter of law to state a viable civil conspiracy claim.

6 Further, as detailed further below, Caesars has failed to assert any viable torts or underlying
7 wrongs committed by Seibel and Green (as opposed to the non-party entities who received the
8 rebates but who were not named as additional counterclaim defendants). Caesars also fails to allege
9 how it was harmed by the rebates, e.g., that it would have paid less for product for the restaurants.

10 In sum, this Court should dismiss Caesars' claim for civil conspiracy because (i) Seibel and
11 Green could not conspire with each other or the Development Entities as a matter of law, (ii)
12 Caesars has failed to allege an underlying tort or wrongful act committed by Seibel and Green, and
13 (iii) Caesars' First Amended Complaint lacks factual allegations showing any harm it suffered.
14 *Collins*, 99 Nev. at 303, 662 P.2d at 622.

15 C. **Caesars' Claim for Breach of the Implied Covenant of Good Faith and Fair**
16 **Dealing (Count V) Fails Because the Development Entities Did Not Solicit,**
Coerce, or Accept Anything from Any Vendor.

17 Caesars alleges that the Development Entities¹² breached the implied covenant of good faith
18 and fair dealing underlying the Development Agreements by “wrongfully soliciting, coercing,
19 agreeing to accept, and accepting benefits from vendors based on the understanding that the benefit
20 would adversely influence Defendants' actions in relationship to Caesars' commercial affairs,
21 including, but limited to, the [Development] Agreements between Caesars and Defendants.”¹³
22 (FAC ¶ 180.) This is a pure legal conclusion and is not supported by any factual allegations (or, for
23 that matter, by logic).

24 “To survive a Motion to Dismiss, a claim for breach of the implied covenant of good faith
25 and fair dealing must: (1) identify the contract that is the basis for the claim; (2) identify the

26 ¹² Caesars' also alleges that GR Burgr breached the implied covenant of good faith and fair dealing. Although
27 undersigned counsel has not appeared in this action for GR Burgr, the implied covenant claim against it would fail for
the same reasons detailed in this Motion.

28 ¹³ Caesars does not allege that the rebates constituted a breach of the Development Agreements.

1 conduct that allegedly constituted the breach of the covenant; (3) indicate that this conduct was
2 deliberate; and (4) show how the alleged breach caused damage.” *Beta Soft Sys., Inc. v. Yosemite*
3 *Grp., LLC*, No. 2:16-cv-01748-GMN-VCF, 2017 U.S. Dist. LEXIS 137565, at *12-13 (D. Nev.
4 Aug. 25, 2017) (citing *Morris*, 110 Nev. at 1276, 886 P.2d at 457).

5 Here, Caesars fails to allege any facts supporting the bare assertion that the Development
6 Entities actually solicited, coerced, agreed to accept, and/or actually accepted “benefits from
7 vendors based on the understanding that the benefit would adversely influence Defendants’ actions
8 in relationship to Caesars’ commercial affairs” (FAC ¶ 180.) Instead, Caesars alleges that
9 Seibel and Green were involved in discussions with vendors on behalf of other entities. (*Id.* ¶¶ 138-
10 40, 142-43.) Stated differently, the First Amended Complaint is devoid of any factual allegations
11 indicating that the Development Entities took any actions concerning the rebates. (*See generally*
12 *id.*). Needless to say, Seibel and Green should not be considered interchangeably with the
13 Development Entities.

14 Further, Caesars alleges that the vendors paid rebates to *other* non-party entities—not the
15 Development Entities. (*Id.* ¶ 137.) Absent facts indicating that any of the contracting entities were
16 involved in securing rebates from vendors, Caesars is unable to show that the Development Entities
17 breached the implied covenant of good faith and fair dealing.

18 Assuming (*arguendo*) the rebates hurt the restaurants’ bottom lines (which is not supported
19 by any factual allegations in the First Amended Complaint since Caesars does not allege how it
20 would have paid less for products from its vendors), the alleged harm would have negatively
21 impacted the Development Entities because under the Development Agreements they were
22 compensated based on the restaurants’ net profits. (*See id.* ¶ 192 (alleging that Caesars and the
23 Development Entities would “share in all revenues arising from the various contracted
24 restaurants”). In other words, if the restaurants made less in profits (a fact not alleged in the First
25 Amended Complaint), then such harm would be equally suffered by the Development Entities.

26 Accordingly, Caesars’ claim for breach of the implied covenant of good faith and fair
27 dealing is supported by nothing more than a bare legal conclusion and must be dismissed. *Conway*,
28 116 Nev. at 875, 8 P.3d at 840 (“A bare allegation is not enough.”).

1 **D. Caesars’ Unjust Enrichment Claim (Count VI) Fails Because Caesars Admits**
2 **that Neither Seibel nor Green Received the Alleged Benefit.**

3 Caesars alleges that Seibel and Green were unjustly enriched based on rebates paid by
4 vendors to non-party entities. (FAC ¶¶ 136, 185.) This claim fails to state a claim against Seibel
5 and Green (as opposed to the non-party entities who Caesars chose to omit as additional
6 counterclaim defendants from its First Amended Complaint).

7 “Unjust enrichment occurs whenever a person has and retains a benefit which in equity and
8 good conscience belongs to another.” *Coury v. Robison*, 115 Nev. 84, 90, 976 P.2d 518, 521 (1999)
9 (internal quotation marks omitted). ***Logically, there is no unjust enrichment if no benefit has***
10 ***been conferred on a defendant.*** *See, e.g., Unionamerica Mortg. & Equity Tr. v. McDonald*, 97
11 Nev. 210, 212-13, 626 P.2d 1272, 1274 (1981) (reversing judgment on a claim for unjust
12 enrichment where the defendant was not unjustly enriched); *Hillcrest Invs., Ltd. v. Am. Borate Co.*,
13 No. 2:15-cv-01613-RFB-GWF, 2016 U.S. Dist. LEXIS 135811, at *20-21 (D. Nev. Sep. 30, 2016)
14 (“Plaintiff cannot state a claim for unjust enrichment as plaintiff conferred no benefit on
15 [Defendant].”).

16 Here, Caesars has alleged that the rebates “were set-up to be paid to other entities owned by
17 Mr. Seibel including, but not limited to, BR 23 Venture, LLC and Future Star Hospitality
18 Consulting, LLC.” (FAC ¶ 136.) ***In other words, Caesars concedes that neither Seibel nor Green***
19 ***received the alleged benefit from the vendors.*** (*See id.*) And as noted above, Caesars separately
20 alleges that Green communicated with vendors on behalf of Seibel. (*Id.* ¶¶ 138-39.) Because
21 neither Seibel nor Green received any rebates, they could not have been unjustly enriched as a
22 matter of law. *Cf. Hillcrest Invs., Ltd.*, No. 2:15-cv-01613-RFB-GWF, 2016 U.S. Dist. LEXIS
23 135811, at *20-21 (“Plaintiffs have not cited and the Court is not aware of any a legal authority that
24 permits [unjust enrichment] claims based only on a transaction with an entity not party to the instant
25 suit.”).

26 In sum, because Seibel and Green did not have any benefit conferred upon them by the
27 vendors, Caesars’ unjust enrichment claim must be dismissed. *Unionamerica Mortg. & Equity Tr.*,
28

97 Nev. at 212-13, 626 P.2d at 1274; *Hillcrest Invs., Ltd.*, No. 2:15-cv-01613-RFB-GWF, 2016 U.S. Dist. LEXIS 135811, at *20-21.

E. **Caesars’ Claim for Intentional Interference with Existing Contractual Relations (Count VII) Fails Because Neither Seibel nor Green Is a Stranger to the Development Agreements and their Alleged Actions Could Not Interfere with those Agreements.**

Caesars alleges that Seibel and Green intentionally interfered with the Development Agreements; specifically, by interfering with Caesars’ “valuable rights, including the right to share in all revenues arising from the various contracted restaurants.” (FAC ¶¶ 192, 194.) This claim fails as a matter of law.

The elements of an intentional interference with existing contractual relations claim are: (1) a valid and existing contract; (2) the defendant’s knowledge of the contract; (3) intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and (5) resulting damage. *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71 P.3d 1264, 1267 (2003). A plaintiff must show that the defendant intended to affirmatively induce a third party to breach his or her contract with the plaintiff—merely taking action which has the effect of disrupting or impeding a contract with a third party is insufficient to impose liability. *See id.*, 119 Nev. at 275, 71 P.3d at 1268. Further, “the plaintiff must establish that the defendant had a motive to induce breach of the contract with the third party.” *Id.*

Importantly, “*in order for a defendant to be liable for tortious interference with contractual relations, the defendant must be a stranger to both the contract and the business relationship giving rise to and underpinning the contract.*” *Atlanta Market Ctr. Mgmt. Co. v. McLane*, 503 S.E.2d 278, 283 (Ga. 1998) (emphasis added). In other words, “[o]ne cannot be guilty of interference with a contract even if one is not a party to the contract so long as one is a participant in a business relationship arising from interwoven contractual arrangements that include the contract.” *Waddell & Reed, Inc. v. United Investors Life Ins. Co.*, 875 So.2d 1143, 1157 (Ala. 2003).

Here, it is unquestionable that neither Seibel nor Green is a “stranger” to the Development Agreements. Seibel and Green were officers/agents of the contracting entities. Accordingly, they

1 cannot be held liable for intentionally interfering with the Development Agreements as a matter of
2 law. *Atlanta Market Ctr. Mgmt. Co.*, 503 S.E.2d at 283; *Waddell & Reed, Inc.*, 875 So.2d at 1157.

3 Further, Caesars has not alleged any facts supporting the bare legal conclusion that Seibel
4 and Green actually interfered with the Development Agreements. (FAC ¶ 173.) For example,
5 Caesars does not identify any provision of the Development Agreement that was interfered with by
6 Seibel or Green. (*Id.* ¶¶ 171-76.) Because Caesars has not identified any breach or disruption of
7 the Development Agreements, Seibel and Green cannot be liable for intentionally interfering with
8 the agreements. *See J.J. Indus., LLC*, 119 Nev. at 274, 71 P.3d at 1267.

9 In sum, this Court must dismiss the intentional interference claim because (i) Seibel and
10 Green are not strangers to the business relationships at issue in this case, and (ii) Caesars has not
11 identified an actual breach or disruption of the Development Agreements. *Atlanta Market Ctr.*
12 *Mgmt. Co.*, 503 S.E.2d at 283; *Waddell & Reed, Inc.*, 875 So.2d at 1157.

13 **F. Caesars' Fraudulent Concealment Claim (Count VIII) Fails Because Neither**
14 **Seibel Nor Green Owed a Duty to Disclose the Rebates to Caesars.**

15 Caesars alleges that Seibel and Green “concealed material facts from Caesars, including, but
16 not limited to, that they were secretly and wrongfully soliciting and obtaining kickbacks from
17 Caesars’ vendors.” (FAC ¶ 200.) This claim fails because no duty was owed to Caesars by Seibel
18 or Green to disclose information related to rebates.

19 To prove fraudulent concealment, a plaintiff must show: “(1) the defendant concealed or
20 suppressed a material fact; (2) the defendant was under a duty to disclose the fact to the plaintiff;
21 (3) the defendant intentionally concealed or suppressed the fact with the intent to defraud the
22 plaintiff; that is, the defendant concealed or suppressed the fact for the purpose of inducing the
23 plaintiff to act differently than she would have if she had known the fact; (4) the plaintiff was
24 unaware of the fact and would have acted differently if she had known of the concealed or
25 suppressed fact; and (5) as a result of the concealment or suppression of the fact, the plaintiff
26 sustained damages.” *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1485, 970 P.2d 98, 110 (1998)
27 *overruled on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 270-71, 21 P.3d 11, 15 (2001).

1 Under Nevada law, for “a mere omission to constitute actionable fraud, a plaintiff must first
2 demonstrate that the defendant had a duty to disclose the fact at issue,” such as a fiduciary
3 relationship or a special relationship “where a party reasonably imparts special confidence in the
4 defendant and the defendant would reasonably know of this confidence.” *Id.* at 1486, 970 P.2d at
5 111; *accord Nev. Power Co. v. Monsanto Co.*, 891 F. Supp. 1406, 1416-17 (D. Nev. 1995) (“The
6 court finds . . . that Defendants’ relationship with [Plaintiff] was a straightforward vendor-vendee
7 relationship, which, as a matter of law, creates no fraud-based duty to disclose.”).

8 Here, Caesars noticeably fails to allege any facts suggesting that Seibel and/or Green owed a
9 duty to disclose the rebates to Caesars. There are no allegations in the First Amended Complaint
10 demonstrating that a fiduciary or special relationship existed between Caesars, on the one hand, and
11 Seibel and Green, on the other hand as it pertains to interactions with vendors.¹⁴ In fact, neither
12 Seibel nor Green had a direct commercial relationship with Caesars—the Development Agreements
13 were between Caesars and the Development Entities.¹⁵ Because neither Seibel nor Green had a
14 duty to disclose the rebates to Caesars, the fraudulent concealment claim fails as a matter of law.
15 *See Dow Chem. Co.*, 114 Nev. at 1487, 970 P.2d at 111 (reversing judgment for fraudulent
16 concealment where the defendant “did not have a fiduciary relationship, a special relationship, or a
17 relationship of any kind” with the plaintiffs).

18 In sum, this Court must dismiss the fraudulent concealment claim because neither Seibel nor
19 Green owed any duty to disclose the rebates to Caesars. *Dow Chem. Co.*, 114 Nev. at 1487, 970
20 P.2d at 111; *Nev. Power Co.*, 891 F. Supp. at 1406.

21 IV. CONCLUSION

22 As shown, Caesars’ newly-asserted tort claims (Counts IV through VIII in the First
23 Amended Complaint), which were filed upon leave of Court based on an incomplete and
24 misleading historical account of the facts as presented by Caesars in its Motion to Amend, fail as a

25 ¹⁴ As noted above, the Development Agreements made clear that the Development Entities were neither joint venturers
26 nor partners with Caesars. Because the Development Entities did not have a fiduciary or special relationship with Caesars,
27 it is unknown how Caesars could demonstrate such a relationship between agents of the Development Entities and
Caesars.

28 ¹⁵ This is particularly true for Green who is not alleged to be an owner of the Development Entities. Even if Seibel
somehow owed any duty to Caesars to disclose the rebates (which he disputes), the same cannot be said about Green.

1 matter of law and are subject to dismissal under NRCP 12(b)(5). None of the claims are viable and
2 Green must be dismissed from this action. The Court should shut down this absurd sideshow by
3 Caesars and direct it to the real issue in this case: how are Caesars and Ramsay going to explain
4 how they should be allowed to reap all the benefits of the Development Agreements without any of
5 the attendant burdens.

6 DATED this 8th day of April, 2020.

7 BAILEY ♦ KENNEDY

8 By: /s/ John R. Bailey

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15 *Squared Global Solutions, LLC, Derivatively On Behalf of*
16 *DNT Acquisition, LLC*

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 8th day of April, 2020, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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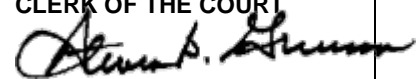
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EIGHTH JUDICIAL DISTRICT COURT

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.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED MATTERS

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**ORDER GRANTING MOTION TO SEAL
EXHIBIT 23 TO CAESARS' REPLY IN
SUPPORT OF ITS MOTION FOR LEAVE
TO FILE FIRST AMENDED
COMPLAINT**

PHWLV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las Vegas Operating Company, LLC ("Paris"), Boardwalk Regency Corporation d/b/a Caesars Atlantic City ("CAC," and collectively, with Caesars Palace, Paris, and Planet Hollywood, "Caesars," *Motion to Seal Exhibit 23 to Caesars' Reply in Support of its Motion for Leave to File First Amended Complaint* (the "Motion to Seal"), filed on February 5, 2020, came before this Court for hearing on March 18, 2020. M. Magali Mercera, Esq. of the law firm PISANELLI BICE PLLC, appeared telephonically on behalf of Caesars. Paul Williams, Esq. of the law firm BAILEY KENNEDY, appeared telephonically on behalf of Rowen Seibel ("Seibel"), TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), and MOTI Partners 16, LLC ("MOTI 16"). John Tennert, Esq., of the law firm FENNEMORE CRAIG, appeared telephonically on behalf of Gordon Ramsay.

Upon review of the papers and pleadings on file in this matter, as proper service of the Motion has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20(e), the Motion to Seal is deemed unopposed. The Court finds that Exhibit 23 to Caesars' Reply in Support of its Motion for Leave to File First Amended Complaint contains commercially sensitive information creating a compelling interest in protecting the filing and information from widespread dissemination to the public which outweighs the public disclosure of said information in accordance with Rule 3(4) of the Nevada Supreme Court's Rules Governing Sealing and Redacting of Court Records. Therefore, good cause appearing therefor:

THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES that the Motion to Seal shall be, and hereby is, GRANTED.

IT IS SO ORDERED.

DATED this 13 day of April 2020.


THE HONORABLE TIMOTHY C. WILLIAMS
EIGHTH JUDICIAL DISTRICT COURT

CG

Respectfully submitted by:

DATED April 8 2020

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DATED April 8, 2020

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FERG, LLC; FERG 16, LLC; MOTI Partners,
LLC; MOTI Partners 16, LLC; TPOV
Enterprises, LLC; and TPOV Enterprises 16,
LLC*

From: TENNERT, JOHN <jtennert@fclaw.com>
Sent: Friday, April 3, 2020 11:58 AM
To: Magali Mercera; Paul Williams; Joshua Gilmore; Stephanie Glantz
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Brittanie T. Watkins; Cinda C. Towne
Subject: RE: Desert Palace v. Seibel: Order Granting Motion to Seal

CAUTION: External Email

Magali, this order is acceptable. Please apply my e-signature. Thanks,

John D. Tennert III, Director

FENNEMORE CRAIG

300 E. 2nd St, Suite 1510, Reno, NV 89501-1591
T: 775.788.2212 | F: 775.788.2213
jtennert@fclaw.com | [View Bio](#)

From: Paul Williams <PWilliams@baileykennedy.com>
Sent: Friday, April 3, 2020 12:59 PM
To: Magali Mercera
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Brittanie T. Watkins; Cinda C. Towne; Joshua Gilmore; Stephanie Glantz; TENNERT, JOHN
Subject: RE: Desert Palace v. Seibel: Order Granting Motion to Seal

CAUTION: External Email

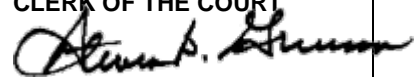
Hi Magali,

You may apply my e-signature to the Order Granting Motion to Seal as well.

Thank you,

Paul C. Williams
Bailey Kennedy, LLP
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Las Vegas, Nevada 89148-1302
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TAB 63



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*Attorneys for Desert Palace, Inc.;
Paris Las Vegas Operating Company, LLC;
PHWLTV, LLC; and Boardwalk Regency
Corporation d/b/a Caesars Atlantic City*

EIGHTH JUDICIAL 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.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

Case No.: A-17-751759

Dept. No.: XVI

Consolidated with A-17-760537-B

**NOTICE OF ENTRY OF ORDER
GRANTING MOTION TO SEAL
EXHIBIT 23 TO CAESARS' REPLY IN
SUPPORT OF ITS MOTION FOR
LEAVE TO FILE FIRST AMENDED
COMPLAINT**

AND ALL RELATED MATTERS

1 PLEASE TAKE NOTICE that an Order Granting Motion to Seal Exhibit 23 to Caesars'
2 Reply in Support of its Motion for Leave to File First Amended Complaint was entered in the
3 above-captioned matter on April 13, 2020, a true and correct copy of which is attached hereto.

4 DATED this 13th day of April 2020.

5 PISANELLI BICE PLLC

6 By: /s/ M. Magali Mercera
7 James J. Pisanelli, Esq., #4027
8 Debra L. Spinelli, Esq., #9695
9 M. Magali Mercera, Esq., #11742
10 Brittanie T. Watkins, Esq., #13612
11 400 South 7th Street, Suite 300
12 Las Vegas, Nevada 89101

13 Jeffrey J. Zeiger, P.C., Esq.
14 (admitted *pro hac vice*)
15 William E. Arnault, IV, Esq.
16 (admitted *pro hac vice*)
17 KIRKLAND & ELLIS LLP
18 300 North LaSalle
19 Chicago, Illinois 60654

20 *Attorneys for Desert Palace, Inc.;*
21 *Paris Las Vegas Operating Company, LLC;*
22 *PHWLV, LLC; and Boardwalk Regency*
23 *Corporation d/b/a Caesars Atlantic City*
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 13th day of April 2020, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF ORDER GRANTING MOTION TO SEAL EXHIBIT 23 TO CAESARS' REPLY IN SUPPORT OF ITS MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT** to the following:

John R. Bailey, Esq.
Dennis L. Kennedy, Esq.
Joshua P. Gilmore, Esq.
Paul C. Williams, Esq.
Stephanie J. Glantz, Esq.
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, NV 89148-1302

*Attorneys for Rowen Seibel, Craig Green,
Moti Partners, LLC, Moti Partner 16s, LLC,
LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC,
TPOV Enterprises, LLC, TPOV Enterprises 16, LLC,
FERG, LLC, FERG 16, LLC, and R Squared Global
Solutions, LLC, Derivatively on Behalf of
DNT Acquisition LLC,*

John D. Tennert, Esq.
FENNEMORE CRAIG, P.C.
300 East 2nd Street, Suite 1510
Reno, NV 89501

Attorneys for Gordon Ramsay

Alan Lebensfeld, Esq.
Lawrence J. Sharon, Esq.
LEBENSFELD SHARON &
SCHWARTZ, P.C.
140 Broad Street
Red Bank, NJ 07701

Mark J. Connot, Esq.
Kevin M. Sutehall, Esq.
FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135

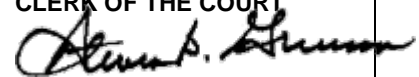
*Attorneys for Plaintiff in Intervention
The Original Homestead Restaurant, Inc.*

VIA E-MAIL (pleading only)

Kurt Heyman, Esq.
HEYMAN ENERIO GATTUSO &
HIRZEL LLP
300 Delaware Ave., Suite 200
Wilmington, DE 19801
kheyman@hegh.law

Trustee for GR Burgr LLC

/s/ Cinda Towne
An employee of PISANELLI BICE PLLC



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DLS@pisanellibice.com
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Brittanie T. Watkins, Esq., Bar No. 13612
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Telephone: 312.862.2000

*Attorneys for Desert Palace, Inc.;
Paris Las Vegas Operating Company, LLC;
PHWLTV, LLC; and Boardwalk Regency
Corporation d/b/a Caesars Atlantic City*

EIGHTH JUDICIAL 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.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED MATTERS

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**ORDER GRANTING MOTION TO SEAL
EXHIBIT 23 TO CAESARS' REPLY IN
SUPPORT OF ITS MOTION FOR LEAVE
TO FILE FIRST AMENDED
COMPLAINT**

PHWLV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las Vegas Operating Company, LLC ("Paris"), Boardwalk Regency Corporation d/b/a Caesars Atlantic City ("CAC," and collectively, with Caesars Palace, Paris, and Planet Hollywood, "Caesars,") *Motion to Seal Exhibit 23 to Caesars' Reply in Support of its Motion for Leave to File First Amended Complaint* (the "Motion to Seal"), filed on February 5, 2020, came before this Court for hearing on March 18, 2020. M. Magali Mercera, Esq. of the law firm PISANELLI BICE PLLC, appeared telephonically on behalf of Caesars. Paul Williams, Esq. of the law firm BAILEY KENNEDY, appeared telephonically on behalf of Rowen Seibel ("Seibel"), TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), and MOTI Partners 16, LLC ("MOTI 16"). John Tennert, Esq., of the law firm FENNEMORE CRAIG, appeared telephonically on behalf of Gordon Ramsay.

Upon review of the papers and pleadings on file in this matter, as proper service of the Motion has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20(e), the Motion to Seal is deemed unopposed. The Court finds that Exhibit 23 to Caesars' Reply in Support of its Motion for Leave to File First Amended Complaint contains commercially sensitive information creating a compelling interest in protecting the filing and information from widespread dissemination to the public which outweighs the public disclosure of said information in accordance with Rule 3(4) of the Nevada Supreme Court's Rules Governing Sealing and Redacting of Court Records. Therefore, good cause appearing therefor:

THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES that the Motion to Seal shall be, and hereby is, GRANTED.

IT IS SO ORDERED.

DATED this 13 day of April 2020.


THE HONORABLE TIMOTHY C. WILLIAMS
EIGHTH JUDICIAL DISTRICT COURT

CG

Respectfully submitted by:

DATED April 8 2020

PISANELLI BICE PLLC

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

and

Jeffrey J. Zeiger, P.C., Esq.
(admitted *pro hac vice*)
William E. Arnault, IV, Esq.
(admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654

*Attorneys for Desert Palace, Inc.; Paris Las Vegas Operating
Company, LLC; PHWLTV, LLC; and Boardwalk Regency
Corporation d/b/a Caesars Atlantic City*

Approved as to form and content by:

DATED April 8, 2020

FENNEMORE CRAIG, P.C.

By: /s/ John Tennert
John Tennert, Esq. (SBN 11728)
300 East 2nd Street, Suite 1510
Reno, NV 89501

Attorneys for Gordon Ramsay

Approved as to form and content by:

DATED April 8, 2020

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams
John R. Bailey (SBN 0137)
Dennis L. Kennedy (SBN 1462)
Joshua P. Gilmore (SBN 11576)
Paul C. Williams (SBN 12524)
Stephanie J. Glantz (SBN 14878)

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Las Vegas, Nevada 89148

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LLC; MOTI Partners 16, LLC; TPOV
Enterprises, LLC; and TPOV Enterprises 16,
LLC*

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CAUTION: External Email

Magali, this order is acceptable. Please apply my e-signature. Thanks,

John D. Tennert III, Director

FENNEMORE CRAIG

300 E. 2nd St, Suite 1510, Reno, NV 89501-1591
T: 775.788.2212 | F: 775.788.2213
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Subject: RE: Desert Palace v. Seibel: Order Granting Motion to Seal

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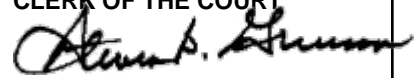
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Thank you,

Paul C. Williams
Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
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(702) 789-4552 (Direct)
(702) 301-2725 (Cell)
(702) 562-8821 (Fax)
PWilliams@BaileyKennedy.com

TAB 64



ARJT

**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,)

-vs-)

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

Defendants.)

and)

GR BURGR LLC, a Delaware limited)
liability company,)

Nominal Plaintiff.)

AND ALL RELATED MATTERS)

Case No. A-17-751759-B
Dept No. XVI

CONSOLIDATED WITH
Case No.: A-17-760537-B

HEARING DATE(S)
ENTERED IN
ODYSSEY

**5th AMENDED ORDER SETTING CIVIL JURY TRIAL,
PRE-TRIAL, CALENDAR CALL, AND DEADLINES FOR MOTIONS;
AMENDED DISCOVERY SCHEDULING ORDER CALL**

Pursuant to the Stipulation to Stay Discovery and Order to Extend Discovery Deadlines
Following Stay (Seventh Request), the Discovery Deadlines and Trial dates are hereby
amended as follows:

IT IS HEREBY ORDERED that the parties will comply with the following deadlines:

Motions to amend pleadings or add parties

Closed

1	Close of Fact Discovery	July 21, 2020
2	Designation of experts pursuant to NRCP 16.1(a)(2)	August 20, 2020
3	Designation of rebuttal experts pursuant to NRCP 16.1(a)(2)	September 21, 2020
4	Discovery Cut Off	October 21, 2020
5	Dispositive Motions	November 20, 2020
6	Motions in Limine	December 7, 2020

8 **IT IS HEREBY ORDERED THAT:**

9 A. The above entitled case is set to be tried to a jury on a **five week stack** to begin
10 **January 19, 2021 at 1:30 p.m.**

11 B. Pre-Trial Conference/Calendar Call will be held on **January 7, 2021 at 10:30 a.m.**

12 C. Parties are to appear on **November 4, 2020 at 9:00a.m.**, for a Status Check re Trial
13 Readiness.

14 D. The Pre-Trial Memorandum must be filed no later than **January 5, 2021**, with a
15 courtesy copy delivered to Department XVI. All parties, (Attorneys and parties in proper person)
16 **MUST** comply with **All REQUIREMENTS** of EDCR 2.67, 2.68 and 2.69. Counsel should include
17 in the Memorandum an identification of orders on all motions in limine or motions for partial
18 summary judgment previously made, a summary of any anticipated legal issues remaining, a brief
19 summary of the opinions to be offered by any witness to be called to offer opinion testimony as well
20 as any objections to the opinion testimony.

21 E. All motions in limine to exclude or admit evidence must be in writing and filed no
22 later than **December 7, 2020. Orders shortening time will not be signed except in extreme**
23 **emergencies.**

24 F. Unless otherwise directed by the court, all pretrial disclosures pursuant to N.R.C.P.
25
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27
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1 16.1(a)(3) must be made at least 30 days before trial.

2 G. All original depositions anticipated to be used in any manner during the trial
3 must be delivered to the clerk prior to the firm trial date given at Calendar Call. If
4 deposition testimony is anticipated to be used in lieu of live testimony, a designation (by
5 page/line citation) of the portions of the testimony to be offered must be filed and served by
6 facsimile or hand, two (2) judicial days prior to the firm trial date. Any objections or
7 counterdesignations (by page/line citation) of testimony must be filed and served by
8 facsimile or hand, one (1) judicial day prior to the firm trial date. Counsel shall advise the
9 clerk prior to publication.
10

11
12 H. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits. All
13 exhibits must comply with EDCR 2.27. Two (2) sets must be three-hole punched placed in three
14 ring binders along with the exhibit list. The sets must be delivered to the clerk two days prior to the
15 firm trial date. Any demonstrative exhibits including exemplars anticipated to be used must be
16 disclosed prior to the calendar call. Pursuant to EDCR 2.68, counsel shall be prepared to stipulate or
17 make specific objections to individual proposed exhibits. Unless otherwise agreed to by the parties,
18 demonstrative exhibits are marked for identification but not admitted into evidence.
19

20 I. In accordance with EDCR 2.67, counsel shall meet, review, and discuss items to be
21 included in the Jury Notebook. Pursuant to EDCR 2.68, counsel shall be prepared to stipulate or
22 make specific objections to items to be included in the Jury Notebook.
23

24 J. In accordance with EDCR 2.67, counsel shall meet and discuss preinstructions to the
25 jury, jury instructions, special interrogatories, if requested, and verdict forms. Each side shall
26 provide the Court, two (2) judicial days prior to the firm trial date given at Calendar Call, an agreed
27
28

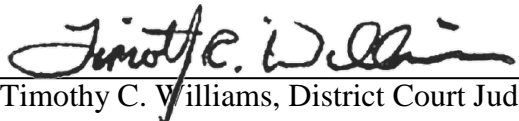
1 set of jury instructions and proposed form of verdict along with any additional proposed jury
2 instructions with an electronic copy in Word format.

3 **Failure of the designated trial attorney or any party appearing in proper person to**
4 **appear for any court appearances or to comply with this Order shall result in any of the**
5 **following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation**
6 **of trial date; and/or any other appropriate remedy or sanction.**

7
8 *Counsel is asked to notify the Court Reporter at least two (2) weeks in advance if they are*
9 *going to require daily copies of the transcripts of this trial or real time court reporting. Failure to*
10 *do so may result in a delay in the production of the transcripts or the availability of real time court*
11 *reporting.*

12
13 Counsel is required to advise the Court immediately when the case settles or is otherwise
14 resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate
15 whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A
16 copy should be given to Chambers.

17 DATED: April 17, 2020.

18
19 
20 Timothy C. Williams, District Court Judge

21
22
23
24
25
26 ...
27 ...
28 ...

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, a copy of the foregoing Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program as follows:

William E Arnault	warnault@kirkland.com
Magali Mercera	mmm@pisanellibice.com
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Paul C. Williams	pwilliams@baileykennedy.com
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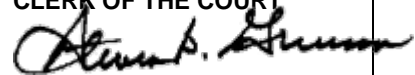
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23	Nathan Rugg	nathan.rugg@bfkn.com
24	Brett Schwartz	brett.schwartz@lsandspc.com
25	Lawrence Sharon	lawrence.sharon@lsandspc.com

/s/ Lynn Berkheimer

Lynn Berkheimer, Judicial Executive Assistant

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DLS@pisanellibice.com
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*Attorneys for Desert Palace, Inc.;
Paris Las Vegas Operating Company, LLC;
PHWLTV, LLC; and Boardwalk Regency
Corporation d/b/a Caesars Atlantic City*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**CAESARS' OPPOSITION TO ROWEN
SEIBEL, THE DEVELOPMENT
ENTITIES, AND CRAIG GREEN'S
MOTION TO DISMISS COUNTS IV, V,
VI, VII, AND VIII OF CAESARS' FIRST
AMENDED COMPLAINT**

AND ALL RELATED MATTERS

I. INTRODUCTION

There is one central issue in this case: Whether Caesars,¹ as a gaming licensee, is required to continue to do business with a convicted felon and his affiliates. Of course, it is not. The undisputed core facts uncovered during discovery in this case all come back to the same point, time and time again. That is, at every turn during this unfortunate experience, Rowen Seibel ("Seibel") was committing one fraud or another against Caesars. While this case started with claims stemming from Seibel's fraudulent concealment of his criminal behavior and ultimate conviction, it then turned to his fraudulent attempt to assign his business interests to entities he secretly controlled. Now, in a turn that appeared to shock even Seibel's own counsel, Caesars has learned that Seibel designed and orchestrated a fraudulent kickback scheme with Caesars' vendors. Those newly discovered claims are the subject of Caesars' First Amended Complaint.

Seibel's latest counsel (this is the 6th law firm to appear for Seibel and the Seibel-Affiliated Entities² in this case) has focused its motion on the later claims related to Seibel's kickback scheme. But, notwithstanding yet another law firm joining the mix, the story Seibel offers is the same: this is someone else's fault. Seibel argues that the kickback fraud is the fault of the fictitious entities he created to effectuate the scheme, the fault of the vendors, or the fault of Caesars itself. True to form, Seibel accepts no responsibility for his fraud and asks the Court to allow his corporate shell game to be sanctioned by this court so as to allow him to escape liability. Fortunately, the law offers Seibel no such safe harbor. Seibel and his cohorts have no one to blame but themselves for their conduct and the consequences for their actions fall on their shoulders alone. Their Motion to Dismiss must be denied in its entirety.

¹ Plaintiffs Desert Palace Inc. ("Caesars Palace"), Paris Las Vegas Operating Company, LLC ("Paris"), PHWLTV, LLC ("Planet Hollywood") and Boardwalk Regency Corporation d/b/a Caesars Atlantic City ("CAC") are collectively referred to herein as "Plaintiffs" or "Caesars."

² TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), and DNT Acquisition, LLC ("DNT") are collectively referred to herein as the Seibel-Affiliated Entities. Seibel, Craig Green ("Green"), and the Seibel-Affiliated Entities' are collectively referred to herein as the Seibel Parties.

1 **II. RELEVANT FACTS**

2 **A. *Seibel Hides his Crimes and Criminal Conviction from Caesars.***

3 As we now have learned, even before Caesars knew of Seibel, he was engaged in criminal
4 activity that would render him unsuitable to do business with a gaming licensee. Specifically, in
5 2004, Seibel opened an account at Union Bank of Switzerland ("UBS") (the "Numbered UBS
6 Account"). (First Am. Compl. ¶ 96.) When he opened the account, *Seibel "executed forms*
7 *acknowledging that he was a United States citizen subject to United States taxation, and that he*
8 *was the beneficial owner of the assets and income associated with the Numbered UBS*
9 *Account."* (*Id.* ¶ 97 (emphasis added).) In 2008, Seibel became concerned about the account as
10 "press reports had revealed various investigations commenced by United States law enforcement
11 of UBS's role in helping United States citizens evade federal income taxes by, among other
12 things, using undeclared foreign bank accounts at UBS." (*Id.* ¶ 101.) Seibel traveled to
13 Switzerland to close the Numbered UBS Account and open another account at a different Swiss
14 bank under the name of a Panamanian shell company which he created and owned. (*Id.* ¶ 102.)

15 Thereafter, when completing his 2008 and 2009 tax returns, Seibel did not report his
16 ownership/interest in any of the Swiss accounts. (*Id.* ¶¶ 103-05.) Additionally, because of his
17 authority over the Numbered UBS account, Seibel was required to file with the IRS a Report of
18 Foreign Bank and Financial Accounts for years 2007 and 2008, but never did so. (*Id.*)

19 Despite all of these failings, Seibel had an opportunity to right any past wrongs as the IRS
20 began a Voluntary Disclosure Program which would have allowed him to avoid criminal
21 prosecution by disclosing his previously undeclared foreign accounts. (*Id.* ¶ 107.) However,
22 instead of coming clean about his Numbered UBS account, *Seibel submitted a false application*
23 *to the Voluntary Disclosure Program.* (*Id.* ¶¶ 107-08.) To be clear, *even after committing his*
24 *crimes, Seibel had the opportunity to avoid prosecution and, instead, he lied again to the United*
25 *States Government.* (*Id.*)

26 Unsurprisingly, Seibel was then investigated and ultimately charged "with corrupt
27 endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C.
28 § 7212(a)." (*Id.* ¶ 109.) On or about April 18, 2016, Seibel pled guilty to the Class E felony. (*Id.*)

1 Although Seibel now tries to justify and/or excuse his behavior, by pleading guilty, Seibel
2 admitted he was, in fact, guilty of the charged crime. Following his conviction, Seibel was
3 sentenced in August 2016. (*Id.* ¶ 110.)

4 ***At no point during this years' long ordeal did Seibel inform Caesars of his criminal***
5 ***behavior that rendered him unsuitable.*** (*Id.* ¶ 111.) Instead, less than two weeks before his
6 guilty plea, Seibel informed Caesars that he was allegedly "(i) transferring all of the membership
7 interests of the Seibel-Affiliated Entities that he previously owned to two individuals that would
8 be trustees of a trust he had created; (ii) naming other individuals as the managers of the Seibel-
9 Affiliated Entities; (iii) assigning the agreements to new entities that had been created . . .; and
10 (iv) delegating all of his duties under the LLTQ, FERG, TPOV, and MOTI Agreements." (*Id.*)
11 Discovery has revealed that this too was a sham and, as Caesars long suspected, Seibel, once
12 again and unsurprisingly, lied. In August 2016, following his sentencing, Caesars finally became
13 aware of Seibel's crimes and conviction from public press reports. (*Id.* ¶ 112.)

14 **B. *Caesars Terminates its Relationship with Seibel and the Seibel-Affiliated***
15 ***Entities.***

16 As this Court knows, ***a gaming license is a revocable privilege, not a right.*** See Nev.
17 Rev. Stat. § 463.0129 (2) ("No applicant for a license or other affirmative Commission or Board
18 approval has any right to a license or the granting of the approval sought. Any license issued or
19 other Commission or Board approval granted . . . is a revocable privilege, and no holder acquires
20 any vested right therein or thereunder.") Because issues of suitability affect Caesars' gaming
21 license, ***Caesars expressly contracted for the sole and absolute discretion to terminate the Seibel***
22 ***Agreements should the Seibel-Affiliated Entities or their Affiliates, including Seibel, diverge***
23 ***from Caesars' suitability standards.*** Caesars expressly contracted for this sole discretion because
24 Nevada and other jurisdictions in which it is licensed call on their gaming licensees to police
25 themselves and their affiliates to ensure compliance with gaming regulations.

26 Therefore, once Caesars learned of Seibel's criminal behavior, it deemed Seibel and the
27 Seibel-Affiliated Entities to be unsuitable – as allowed in its sole discretion by the Seibel
28

1 Agreements – and terminated all of its agreements with the Seibel-Affiliated Entities. (First Am.
2 Compl. ¶¶ 112-22.) This litigation, and litigation across the country, ensued. (*Id.* ¶¶ 123-33.)

3 C. ***Caesars Uncovers Additional Wrongdoings: Seibel, Green, and the Seibel-***
4 ***Affiliated Entities Were Soliciting, Coercing, and Receiving Kickbacks from***
Caesars' Vendors.

5 In discovery in this litigation, Caesars uncovered documents that seemed to reveal a
6 payment arrangement between certain Caesars' vendors on the one hand and Seibel, Green, and
7 the Seibel-Affiliated Entities on the other hand. (*Id.* ¶ 134.) However, because of the Seibel-
8 Parties' numerous and ongoing delay tactics, Caesars was unable to question witnesses –
9 including Seibel himself – for almost two years following the filing of the initial complaint. As
10 this Court recognized, even with documents, depositions are necessary to develop the facts:
11 ***"Depositions had to be taken to explain specifically what documents stood for, what they meant,***
12 ***what their purpose was . . . and you have to do that because documents don't testify. People***
13 ***testify."*** (Ex. 1, Reporter's Tr., Feb. 12, 2020, at 24:25-25:4 (emphasis added).)³

14 On their face, the documents seemed to indicate some sort of payment arrangement, but it
15 was not until the depositions of Green, Seibel, and their business partners, that Caesars was able
16 to determine that these payments were far from innocent and indeed were illegal kickbacks. (*See*
17 *Caesars' Mot. for Leave to File First Am. Compl.*, Dec. 12, 2019, on file.) Interestingly, Seibel,
18 the Seibel-Affiliated Entities, and Green attempt to brand these payments as "rebates." But
19 neither the law nor the facts support this fabrication. A rebate is defined as "[a] return of part of a
20 payment, serving as a discount or reduction." (Rebate, *Black's Law Dictionary*, (11th ed. 2019).)

21 _____
22 ³ Dissatisfied with the Court's ruling on Caesars' Motion for Leave to File First Amended
23 Complaint, Seibel, the Seibel-Affiliated Entities, and Green, attempt to re-argue whether Caesars'
24 Motion was appropriately granted by claiming that a letter written by Ramsay's counsel to Seibel's
25 counsel was in Caesars' possession three years ago. This argument is a red herring. The letter
26 states that "Seibel organized and received rebates from alcohol suppliers inter alia to the
27 restaurant Gordon Ramsay Pub & Grill." This information was apparently obtained in a
28 deposition for other litigation between Ramsay and Seibel, unrelated to Caesars and, importantly,
it does not change Caesars' or this Court's analysis. Caesars was not and is not a party to that
litigation, did not have an opportunity to depose Green or Seibel until after this litigation was well
underway and could not, in good faith, bring additional claims based on a single line in a letter.
Indeed, just as with the documents produced by the Seibel Parties in this action, Caesars needed
an opportunity to depose the involved parties to determine the underlying facts (i.e., who was
getting the rebates, under what circumstances, etc.). Undoubtedly, if Caesars had attempted to
bring any such claims – without actual information supporting such allegations – it would have
faced a similar motion to dismiss or other motion.

1 In other words, a rebate is a refund provided to the purchaser of a product. Indeed, the various
2 Seibel Agreements [REDACTED]

3 [REDACTED]
4 [REDACTED] (See, e.g., Ex. 2, TPOV Agreement, at 4.)⁴

5 Conversely, a kickback is defined, in relevant part, as "a return of a portion of a monetary
6 sum received, usually as a result of coercion or a secret agreement." (Kickback, *Black's Law*
7 *Dictionary*, (11th ed. 2019).) In Nevada, such arrangements, are illegal. See, e.g., NRS
8 § 207.295(1) ("Any person who, with corrupt intent . . . [o]ffers, confers or agrees to confer any
9 benefit upon any employee, agent or fiduciary without the consent of the employer or principal of
10 that employee, agent or fiduciary in order to influence adversely that person's conduct in relation
11 to the commercial affairs of his or her employer or principal . . . commits commercial bribery and
12 is guilty of a misdemeanor.") Here, ***neither Seibel, Green, nor any of the Seibel-Affiliated***
13 ***Entities purchased any of the goods for which they demanded money.*** Indeed, they sought
14 and/or *coerced payment from vendors who had agreements with Caesars* for the sale of certain
15 products to Caesars' restaurants. To be clear, Caesars was purchasing products from these
16 vendors and, egregiously, Green threatened vendors who did not sign up for the scheme with
17 pulling their products from the venues. In other words, extortion. (*Scheidler v. Nat'l Org. for*
18 *Women, Inc.*, 537 U.S. 393, 409, 123 S. Ct. 1057, 1068, 154 L. Ed. 2d 991 (2003) (emphasis
19 added) (internal quotations omitted) ("*[E]xtortion is defined as obtaining something of value*
20 ***from another with his consent induced by the wrongful use of force, fear, or threats.***")

21 Seibel, the Seibel-Affiliated Entities, and Green's use of the term "rebates" is not only
22 misleading to this Court, it ignores the criminal nature of the scheme. This type of behavior is

23 ⁴ "Review on a motion pursuant to Fed. R. Civ. P. 12(b)(6) is normally limited to the
24 complaint itself." *Carstarphen v. Milsner*, 594 F. Supp. 2d 1201, 1207 (D. Nev. 2009) (citing *Lee*
25 *v. City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001). "A court may, however, consider certain
26 materials—documents attached to the complaint, documents incorporated by reference in the
27 complaint, or matters of judicial notice—without converting the motion to dismiss into a motion
28 for summary judgment." *Id.* (quoting *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003);
see also Baxter v. Dignity Health, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015) (internal
quotations omitted) ("While presentation of matters outside the pleadings will convert the motion
to dismiss to a motion for summary judgment, . . . such conversion is not triggered by a court's
consideration of matters incorporated by reference or integral to the claim, as where the complaint
relies heavily on a document's terms and effect.") Caesars' First Amended Complaint quotes the
various Seibel Agreements extensively and they are incorporated therein by reference.

1 prohibited by the Seibel Agreements. Specifically, under the various agreements, an "Unsuitable
2 Person" is defined, in relevant part, as "any Person . . . who is or might be engaged or about to be
3 engaged in any activity which could adversely impact the business or reputation of [Caesars] or
4 its Affiliates." (First Am. Compl, ¶¶ 55, 65, 77, and 87.) As expressly set forth therein, Caesars
5 was entitled to terminate the agreements, if in its sole discretion, it determined that the Seibel-
6 Affiliated Entities or any Associate thereof, which would include Seibel and Green, were
7 Unsuitable Persons. (*Id.* ¶¶ 35, 45, 54, 64, 76, and 86.) Importantly, each of the Seibel-Affiliated
8 Entities agreed that "it shall and it shall cause its Affiliates to conduct themselves in accordance
9 with the highest standards of honesty, integrity, quality and courtesy so as to maintain and
10 enhance the reputation and goodwill of" Caesars. (*Id.* ¶¶ 43, 52, 62, 74, and 84.) Further, each of
11 the Seibel-Affiliated Entities agreed that it would "use commercially reasonable efforts to
12 continuously monitor the performance of each of its and its Affiliates' respective agents,
13 employees, servants, contractors and licensees and shall ensure the foregoing standards are
14 consistently maintained by all of them." (*Id.*) Thus, not only was their conduct illegal, it was also
15 prohibited by the Seibel Agreements.

16 III. ANALYSIS

17 A. *Legal Standard*

18 "Nevada is a notice-pleading state; thus, *our courts liberally construe pleadings to 'place*
19 *into issue matters which are fairly noticed to the adverse party.'*" *W. States Const., Inc. v.*
20 *Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992) (quoting *Hay v. Hay*, 100 Nev. 196, 198,
21 678 P.2d 672, 674 (1984)). "A complaint need only set forth sufficient facts to demonstrate the
22 necessary elements of a claim for relief so that the defending party has adequate notice of the
23 nature of the claim and relief sought." *Id.* (citing *Hay*, 100 Nev. at 198, 678 P.2d at 674, and
24 *Ravera v. City of Reno*, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984)); *see also Brown v. Kellar*, 97
25 Nev. 582, 583, 636 P.2d 874, 874 (1981) (emphasis added) ("*NRCP 8(a) requires that a pleading*
26 *contain only a short and plain statement showing that the pleader is entitled to relief.*") "In
27 alleging fraud or mistake, a party must state with particularity the circumstances constituting
28 fraud or mistake." NRCP 9(b). "The circumstances that must be detailed include averments to

1 the time, the place, the identity of the parties involved, and the nature of the fraud or mistake."
2 *Brown*, 97 Nev. at 583–84, 636 P.2d at 874. If this Court believes that additional details are
3 required for any claim, leave to amend should be granted instead of dismissal. *See Cohen v.*
4 *Mirage Resorts, Inc.*, 119 Nev. 1, 22, 62 P.3d 720, 734 (2003) ("[W]hen a complaint can be
5 amended to state a claim for relief, leave to amend, rather than dismissal, is the preferred
6 remedy.")

7 A "*complaint should be dismissed only if it appears beyond a doubt that it could prove*
8 *no set of facts, which, if true, would entitle it to relief.*" *Buzz Stew, LLC v. City of N. Las Vegas*,
9 124 Nev. 224, 228, 181 P.3d 670, 672 (2008) (emphasis added); *see also Brown*, 97 Nev. at 583,
10 636 P.2d at 874 ("On a motion to dismiss for failure to state a claim for relief, the trial court . . .
11 must construe the pleading liberally and draw every fair intendment in favor of the plaintiff.").
12 "Allegations in the complaint must be accepted as true." *Brown*, 97 Nev. at 58384, 636 P.2d at
13 874. "The test for determining whether the allegations of a complaint are sufficient to assert a
14 claim for relief is whether the allegations give fair notice of the nature and basis of a legally
15 sufficient claim and the relief requested." *Vacation Vill., Inc. v. Hitachi Am., Ltd.*, 110 Nev. 481,
16 484, 874 P.2d 744, 746 (1994) (citations omitted). Applying this test to Caesars' First Amended
17 Complaint demonstrates that Caesars has appropriately asserted claims for civil conspiracy
18 (Count IV), breach of the implied covenant of good faith and fair dealing (Count V), unjust
19 enrichment (Count VI), intentional interference with contractual relations (Count VII), and
20 fraudulent concealment (Count VIII). (*See First Am. Compl.*, Mar. 11, 2020, ¶¶ 134-44, 171-
21 206.) The Seibel Parties' Motion to Dismiss is without merit and must be denied.

22 **B. *The Intra-Corporate Conspiracy Doctrine is Inapplicable***

23 "An actionable civil conspiracy is a combination of two or more persons who, by some
24 concerted action, intend to accomplish some unlawful objective for the purpose of harming
25 another which results in damage." *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 303,
26 662 P.2d 610, 622 (1983) (citations omitted). The Seibel Parties argue that Caesars' civil
27 conspiracy claim must fail because Seibel and Green, "as officers/agents of the entities alleged to
28

1 have received rebates from vendors, cannot conspire [with their principals]—as a matter of law . .
2 . ." (Mot. 9:22-23.)

3 Although the intra-corporate conspiracy doctrine by implication does not apply to
4 corporate employees acting outside the scope of their employment, Nevada has specifically stated
5 this as an exception to the rule: "Agents and employees of a corporation cannot conspire with
6 their corporate principal or employer where they act in their *official capacities on behalf of the*
7 *corporation and not as individuals for their individual advantage.*" *Collins*, 99 Nev. at 303, 662
8 P.2d at 622 (emphasis added); *see also Local Ad Link, Inc. v. AdzZoo, LLC*,
9 209CV01564RCJLRL, 2009 WL 10694069, at *9 (D. Nev. Dec. 15, 2009) (concluding that
10 parties were "not subject to the intra-corporate conspiracy doctrine because they were acting out
11 of their own pecuniary interest").

12 In *Collins*, Nevada's preeminent authority on the doctrine, the Court noted that "one of the
13 material issues of fact regarding Collins' civil conspiracy claim for relief is whether [the parties]
14 were acting as individuals for their individual advantage." 99 Nev. at 303, 662 P.2d at 622.
15 "[A]n action for civil conspiracy [] include[s] a state of mind issue which is usually inappropriate
16 for disposition by way of summary judgment." *Id.*; *Wagner v. County of Plumas*, No. 2:18-CV-
17 03105-KJM-DB, 2020 WL 820241, at *7 (E.D. Cal. Feb. 19, 2020) ("[T]he court must undertake
18 a close examination of the factual allegations of [the] case . . . to make an informed decision
19 regarding application of the intracorporate conspiracy bar." (alteration in original) (quotation
20 omitted)); *Condos v. Conforte*, 596 F. Supp. 197, 201 (D. Nev. 1984) ("Because intent is an
21 element of a claim of conspiracy, such a claim often cannot be decided via a motion for summary
22 judgment."); *Roniger v. McCall*, 72 F. Supp. 2d 433, 441 (S.D.N.Y. 1999) ("Given the record
23 before the Court, it cannot be said that no material issues of fact exist as to whether the
24 Comptroller's decision to fire Roniger was motivated solely by personal interests distinct from
25 those of the OSC."). Hence, dismissal is certainly inappropriate here at the *motion to dismiss*
26 stage, where factual inferences must be drawn in favor of Caesars' allegations that Green and
27 Seibel acted for their individual advantage, rather than for the benefit of the Seibel-Affiliated
28 Entities. (*See, e.g.*, First Am. Compl. ¶ 139 ("In particular, acting on behalf of Mr. Seibel, Mr.

Green coerced a representative of Innis & Gunn to establish a 15% retroactive kickback on each keg of beer sold to certain Caesars' restaurants.".)

Citing only Third Circuit and District of Utah law, the Seibel Parties argue that "[f]or an agent's conduct to constitute an actionable conspiracy, the agent's conduct must be solely for his or her own advantage; mixed motives are insufficient as a matter of law." (Mot. 9:14-16.) The Seibel Parties have not shown, nor can they show at the motion to dismiss stage, how the conduct underlying Caesars' civil conspiracy claim was committed with mixed motives, as this inquiry into the mind is highly fact-intensive.

Moreover, Nevada has not adopted this standard of solely personal motive. *See Local Ad Link*, 2009 WL 10694069, at *9 (emphasis added) ("***So long as Plaintiffs claim the individual Defendants were acting in their individual capacities, the civil conspiracy claim should not be dismissed based on the intra-corporate conspiracy doctrine.***") Indeed, the District of Nevada determined that officers and directors were "not subject to the intra-corporate conspiracy doctrine because they were corporate officers or directors who ordered the tortious activity in violation of their own duties to Plaintiffs." *Id.* In other words, "allegations of conspiracy . . . are hardly descriptive of acts that may be rationally included within the prerogatives of an employee's official capacity." *N. Nev. Ass'n of Injured Workers v. Nev. State Indus. Ins. Sys.*, 107 Nev. 108, 115, 807 P.2d 728, 732 (1991); *Smith's Food & Drug Ctrs., Inc. v. Bellegarde*, 114 Nev. 602, 608, 958 P.2d 1208, 1212-13 (1998), *overruled on other grounds by Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 192 P.3d 243 (2008) ("Any act or omission of a corporate officer or employee within the scope of his employment is, as a matter of law, the act or omission of such corporation." (emphasis added)).

Similarly, here, Green and Seibel were engaged in tortious activity for their own personal benefit and were acting outside of their official capacities, if any, when conspiring. As alleged, "Mr. Seibel and Mr. Green knowingly acted in concert with vendors . . . to accomplish an unlawful objective for the purpose of harming Caesars." (First Am. Compl., ¶ 172.) Caesars does not allege that Seibel or Green acted in any official capacity. Indeed, it can hardly be argued that when Green was "threatening to pull vendors' products from Caesars' restaurants," he was acting

1 in any official capacity. Further as alleged in the First Amended Complaint, "[a]fter advocating
2 to Caesars for the use of LaFrieda as a vendor, ***Mr. Seibel admitted to secretly receiving a***
3 ***percentage[.]***" (*Id.* ¶ 139 (emphasis added).) The payments made to Seibel and his other entities
4 for the benefit of Seibel and Green demonstrate a conspiratorial scheme to engage in commercial
5 bribery to the detriment of Caesars.⁵ This conspiracy is not precluded by the intra-corporate
6 conspiracy doctrine.

7 Next, the Seibel Parties suggest that Caesars' claim fails because Caesars did not sue
8 Future Star Hospitality, LLC or BR 23 Venture, LLC. But, it is well known that this is not the
9 standard, as the Seibel Parties have not argued that the unnamed entities are necessary parties.
10 (*See* NRCP 19.) Further, "[i]t has long been the rule that it is not necessary for all joint
11 tortfeasors to be named as defendants in a single lawsuit." *Temple v. Synthes Corp., Ltd.*, 498
12 U.S. 5, 7 (1990); *see also Henry v. Rizzolo*, No. 2:08-CV-00635-PMP, 2011 WL 2975539, at *3
13 (D. Nev. July 21, 2011) (same); *William Inglis & Sons Baking Co. v. ITT Cont'l Baking Co., Inc.*,
14 668 F.2d 1014, 1053 (9th Cir. 1981) (providing that the plaintiff was not required to sue all of the
15 alleged conspirators because they were jointly and severally liable for damages caused by the
16 conspiracy). Any argument that other co-conspirators needed to be named is easily debunked by
17 applicable case law and Caesars has more than sufficiently stated its claim for conspiracy.

18 **C. *Caesars Has Appropriately Pled a Claim for Breach of the Implied Covenant of***
19 ***Good Faith and Fair Dealing Claim.***

20 Caesars alleges that "Defendants breached their duty of good faith to Caesars by, among
21 other things, wrongfully soliciting, coercing, agreeing to accept, and accepting benefits from
22 vendors based on the understanding that the benefit would adversely influence Defendants' action
23 in relationship to Caesars' commercial affairs, including, but not limited to, the Agreements
24 between Caesars and Defendants." (First Am. Compl. ¶ 180.) The Seibel Parties argue that: (1)
25 Caesars' breach of the implied covenant claim is "pure legal conclusion . . . not supported by any

26 ⁵ Knowledge of all those who benefited from the kickback scheme may present itself during
27 the discovery process. Indeed, as has been their *modus operandi*, the Seibel Parties have not
28 produced all of the documents related to their illegal scheme. Discovery very well may show, and
in fact most likely will show, that the fictitious entities used to perpetrate the scheme were mere
conduits for the secret flow of cash, with no other purpose and no benefit independent of the
funds that flowed directly to Seibel and Green.

1 factual allegations,"; (2) "[a]bsent facts indicating that any of the contracting entities were
2 involved in securing rebates from vendors," Caesars cannot demonstrate a breach; and (3) "if the
3 restaurants made less in profits . . . then such harm would be equally suffered by the Development
4 Entities." (Mot. 10:17-11:25.). Each of these arguments rely on false standards and ignore many
5 allegations in the First Amended Complaint. They are equally of no moment to this debate.

6 First, the Seibel Parties' arguments hold Caesars to a heightened pleading standard. Yet,
7 they provide no authority for a pleading standard wherein Caesars is required at the Complaint
8 stage to divulge the evidence it will present at trial. In accordance with the appropriate pleading
9 standard, Caesars provided "a short and plain statement of the claim showing that the pleader is
10 entitled to relief." See NRCP 8(a); *Davenport*, 2013 WL 5437119, at *2 ("The more lenient
11 pleading requirements of NRCP 8(a) apply to Davenport's claim[] for . . . breach of the covenant
12 of good faith and fair dealing.").

13 "When one party performs a contract in a manner that is unfaithful to the purpose of the
14 contract and the justified expectations of the other party are thus denied, damages may be
15 awarded against the party who does not act in good faith." *Hilton Hotels Corp. v. Butch Lewis*
16 *Productions, Inc.*, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991). "Whether the controlling party's
17 actions fall outside the reasonable expectations of the dependent party is determined by the
18 various factors and special circumstances that shape these expectations." *Id.* at 923-24. Caesars
19 identified the contracts, the conduct, its justified expectation, and damages amounting to the
20 breach. Namely, and respectively, the Seibel Agreements, (¶ 178); solicitation, coercion, and
21 agreement to accept benefits, (¶ 180); expectation that Defendants would not engage in such
22 conduct, (¶ 181); and damage to Caesars' commercial affairs, including performance of the
23 Development Agreements (¶ 180).

24 Second, under terms of the Seibel Agreements, [REDACTED]
25 [REDACTED]
26 [REDACTED]. (Ex. 2, TPOV Agreement,
27 at 4.) Further, as set forth in the various agreements, Caesars had an expectation that the Seibel-
28 Affiliated Entities would "conduct themselves in accordance with the highest standards of

1 honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill
2 of Caesars" and hold its Affiliates (including Seibel and Green) to those same standards. (*See*,
3 *e.g.*, First Am. Compl. ¶ 43.) Instead by failing to report any legitimate rebates and actually
4 allowing Seibel and Green to coerce, solicit, and accept kickbacks, they each breached the
5 implied covenant of good faith and fair dealing.

6 Finally, the fact that the purchase of goods from vendors at an increased price would have
7 reduced the Seibel-Affiliated Entities' profits as well also has no impact on whether the Seibel-
8 Affiliated Entities acted in good faith with regard to the agreements as damage to the Seibel-
9 Affiliated Entities does not preclude damage to Caesars. Caesars had an expectation that the
10 Seibel-Affiliated Entities would not engage in a kickback scheme to the detriment of Caesars and
11 its operation of the various restaurants or that they would hide this criminal conduct from Caesars.
12 The Seibel Parties' challenge to Caesars' breach of the implied covenant of good faith and fair
13 dealing claim is wholly meritless.

14 **D. *Caesars Has Appropriately Pled a Claim for Unjust Enrichment Because Siebel***
15 ***& Green Received Kickbacks and Benefits from the Kickbacks.***

16 The Seibel Parties argue that Caesars "concedes that neither Seibel nor Green received the
17 alleged benefit from the vendors." (Mot. 12:18-19.) Not true. In particular, Caesars alleges that
18 "[b]y contracting with certain vendors, Caesars unknowingly conferred benefits upon Mr. Green
19 and Mr. Seibel, including, but not limited to, establishing relationships from which they received
20 kickbacks based on the amount of goods sold to Caesars." (First Am. Compl. ¶ 185.) Caesars
21 further alleges that "Mr. Green and Mr. Seibel accepted, appreciated, and retained those benefits."
22 (First Am. Compl. ¶ 186.). Thus, Caesars alleges that Seibel and Green benefited from both the
23 relationships and the kickbacks.

24 Even assuming that the kickback funds were only deposited into accounts for entities that
25 Seibel owned and not Seibel's or Green's personal accounts – a fact which is still subject to
26 discovery and which Caesars does not concede – Seibel and Green still received and benefited
27 from the kickback scheme. Seibel owned BR Ventures and Future Star Hospitality. (First Am.
28 Compl., ¶ 137.) These entities certainly were not charitable organizations. Their very natures

1 reveal that they were set up to establish beneficial relationships and monetary gain for Seibel and
2 Green.⁶ Indeed, in its complaint, Caesars specifically alleges that "Mr. Green and Mr. Seibel
3 *accepted, appreciated, and retained those benefits.*" (First Am. Compl., ¶ 186 (emphasis
4 added).) This claim is appropriately and sufficiently pled.

5 **E. *Caesars Has Appropriately Pled a Claim for Intentional Interference with***
6 ***Contractual Relations.***

7 The Seibel Parties cite Georgia law to argue that "in order for a defendant to be liable for
8 tortious interference with contractual relations, the defendant must be a stranger to both the
9 contract and the business relationship giving rise to and underpinning the contract." (Mot. 13:19-
10 22 (quoting *Atlanta Market Ctr. Mgmt. Co. v. McLane*, 503 S.E.2d 278, 283 (Ga. 1998)).) In
11 Nevada, to succeed on a claim "for intentional interference with contractual relations, a plaintiff
12 must establish: (1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3)
13 intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption
14 of the contract; and (5) resulting damage." *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71
15 P.3d 1264, 1267 (2003). "[A] party cannot, as a matter of law, tortiously interfere with his own
16 contract." *Blanck v. Hager*, 360 F. Supp. 2d 1137, 1154 (D. Nev. 2005) (citing *Bartsas Realty,*
17 *Inc. v. Nash*, 81 Nev. 325, 402 P.2d 650 (1965)).

18 Nevada's intentional interference law does not require that the defendant be a stranger to
19 the contract, and consequently, Caesars is not required to allege that Seibel or Green did not
20 participate in the business relationship. In *Kernaghan v. BCI*, the defendant in an intentional
21 interference claim attempted to rely on the same argument as the Seibel Parties. Specifically, the
22 defendant argued that because an agreement was formed between the plaintiff and a third party
23 for the benefit of the defendant, the defendant had a beneficial interest in the agreement, and thus
24 was not a stranger to the agreement and could not be held liable for intentional interference. 802
25 F. Supp. 2d 590, 596, (E.D. Pa. 2011). The court observed that the parties cited to no authority
26 addressing "whether the Pennsylvania Supreme Court would adopt and apply the stranger rule to

27 ⁶ At this stage, Caesars is not required to present evidence it has supporting such claims.
28 Nevertheless, discovery has already revealed that Green held an unpurchased interest, represented
the entities, received health benefits through the entities, and, according to Green's own
statements, may have received direct distributions.

1 a tortious interference claim." *Id.* (quotation omitted). The court further observed that "[i]n each
2 court decision relied upon by Defendant [] in support of the Motion to Dismiss, the 'stranger' rule
3 has been adopted only in that jurisdiction." *Id.* at 596-97.

4 Because Pennsylvania, like Nevada, only precludes intentional interference claims against
5 defendants who were are not a party to the contract, the court determined that it "w[ould] not
6 expand the test to include language that a defendant be a 'stranger' to the agreement, having no
7 'beneficial or economic interest' in it." *Id.* at 597. Here, as in *Kernaghan*, this Court cannot
8 expand the law to require the defendant to be a stranger to the agreement and the Seibel Parties
9 cite no authority suggesting the Nevada Supreme Court would adopt this rule.

10 Moreover, as the *Kernagahn* court highlighted, few jurisdictions have adopted the
11 "stranger rule," and of the few who have, some define "stranger" such that potential liability is
12 expanded to be similar to Nevada intentional interference law. For instance, the Ninth Circuit has
13 recognized California's recent approach to its stranger rule, concluding "that only the contracting
14 parties have a direct interest or involvement in th[e contractual] relationship." *Fresno Motors,*
15 *LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1127 (9th Cir. 2014) (quotations omitted).
16 Hence, under California law, where the stranger rule has been adopted, "strangers" are defined as
17 those who are not a party to the contract, which is essentially the same as in Nevada, where the
18 "stranger rule" has not been adopted, and a party cannot interfere with his own contract. *Id.*
19 Further, courts have "consistently found owners, managers, and advisers . . . liable in tort as third
20 parties where they were not acting to protect the interests of the contracting party." *Oxycal Labs.,*
21 *Inc. v. Patrick*, 8 F. App'x 761, 764 (9th Cir. 2001) (citations omitted); *Asahi Kasei Pharma Corp.*
22 *v. Actelion Ltd.*, 222 Cal. App. 4th 945, 967–68, 169 Cal. Rptr. 3d 689, 707 (2013) (citations
23 omitted) ("The manager's privilege does not exempt a manager from liability when he or she
24 tortiously interferes with a contract or relationship between third parties.")

25 The Seibel Parties also argue that "Caesars has not alleged any facts supporting the bare
26 legal conclusion that Seibel and Green actually interfered with the [Seibel] Agreements." (Mot.
27 14:3-4.) This argument simply ignores the allegations. Caesars plainly alleges that Seibel and
28 Green interfered with revenues arising out of the Seibel Agreements that Caesars was entitled to

1 receive, "including by diverting money and/or preventing Caesars from obtaining product at
2 lesser costs." (See First Am. Compl. ¶¶ 192, 196.) Because Seibel and Green actually interfered
3 with the Seibel Agreements and, under Nevada law, only parties to the contract are immune from
4 liability for intentional interference, the Seibel Parties' arguments fail.

5 **F. *Caesars Has Appropriately Pled a Claim for Fraudulent Concealment Because***
6 ***Seibel and Green Owed a Duty to Caesars to Disclose the Kickbacks They***
7 ***Coerced from Caesars' Vendors.***

8 The Seibel Parties argue that "[t]his claim fails because no duty was owed to Caesars by
9 Seibel or Green to disclose information related to rebates." (Mot. 14:17-18.) The law and facts
10 provide otherwise. "A duty to disclose arises from the relationship of the parties." *Dow Chem.*
11 *Co. v. Mahlum*, 114 Nev. 1468, 1486, 970 P.2d 98, 110 (1998), *abrogated by GES, Inc. v. Corbitt*,
12 117 Nev. 265, 21 P.3d 11 (2001). It may "arise where the parties enjoy a 'special relationship,'
13 that is, where a party reasonably imparts special confidence in the defendant and the defendant
14 would reasonably know of this confidence." *Id.* "A party's superior knowledge thus imposes a
15 duty to speak in certain transactions, depending on the parties' relationship." *Id.* "Nondisclosure
16 will become the equivalent of fraudulent concealment when it becomes the duty of a person to
17 speak in order that the party with whom he is dealing may be placed on an equal footing with
18 him." *Id.* Hence, "[t]he duty to disclose requires, at a minimum, some form of relationship
19 between the parties." *Id.* at 1487, 970 P.2d at 110. Importantly, "[t]he duty to speak does not
20 necessarily depend on the existence of a *fiduciary* relationship." *Mackintosh v. Jack Matthews &*
21 *Co.*, 109 Nev. 628, 635, 855 P.2d 549, 553 (1993) (emphasis added) (citation omitted). "It may
22 arise in any situation where one party imposes confidence in the other because of that person's
23 position, and the other party knows of this confidence." *Id.* "Nondisclosure will become the
24 equivalent of fraudulent concealment when it becomes the duty of a person to speak in order that
25 the party with whom he is dealing may be placed on an equal footing with him." *Id.* at 634-45,
855 P.2d at 553.

26 Caesars alleges a relationship at the beginning of the First Amended Complaint, providing
27 that "Caesars has entered into six agreements with entities owned by, managed by, and/or
28 affiliated with Rowen Seibel." (¶ 1.) Moreover, Part A of the "Statement of Facts" section details

1 at length the special business relationships between the parties, which includes, but is not limited
2 to, Seibel's obligation to provide disclosures, (§§ 31, 63), Seibel's identification as an Associate of
3 the Seibel-Affiliated Entities, and the requirement that Affiliates and representatives also provide
4 disclosures, (§ 67).

5 Notwithstanding that Caesars made these allegations, the Seibel Parties argue that no duty
6 exists. (Mot. 14:17-18.) This statement is disingenuous. Seibel and Green bargained for,
7 performed, and benefited under the Seibel Agreements. In addition to being identified as an
8 Affiliate of the Seibel-Affiliated Entities, (*see, e.g.*, Ex. 2, TPOV Agreement § 2.1), [REDACTED]

9 [REDACTED]
10 [REDACTED]
11 [REDACTED],
12 (§ 2.2(b)). [REDACTED]

13 [REDACTED]. (§ 6.1.1.) At times, Green
14 acted with Seibel to exercise the aforementioned rights and obligations. It cannot be argued with
15 any sincerity that the parties did not have a special relationship requiring disclosure, especially
16 given that Seibel, along with the Seibel-Affiliated Entities, had a duty to maintain the highest
17 standards and update their suitability disclosures. Moreover, Caesars bargained for and had an
18 expectation that [REDACTED]. (*Id.* at 4

19 [REDACTED]
20 [REDACTED] As a result, both Seibel
21 and Green had a duty to disclose these kickbacks, and are liable for fraudulent concealment
22 because they chose not to.

23 ///

1 **IV. CONCLUSION**

2 Based on the foregoing, Caesars requests that this Court deny the Seibel Parties' Motion to
3 Dismiss in its entirety.

4 DATED this 22nd day of April 2020.

5 PISANELLI BICE PLLC

6 By: /s/ James J. Pisanelli

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21 *Paris Las Vegas Operating Company, LLC;*
22 *PHWLTV, LLC; and Boardwalk Regency*
23 *Corporation d/b/a Caesars Atlantic City*
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 22nd day of April 2020, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **CAESARS' OPPOSITION TO ROWEN SEIBEL, THE DEVELOPMENT ENTITIES, AND CRAIG GREEN'S MOTION TO DISMISS COUNTS IV, V, VI, VII, AND VIII OF CAESARS' FIRST AMENDED COMPLAINT** to the following:

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/s/ Cinda Towne
An employee of PISANELLI BICE PLLC

EXHIBIT 1

1 CASE NO. A-17-751759-B

2 DOCKET U

3 DEPT. XVI

4

5

6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

* * * * *

9

ROWEN SEIBEL,

)

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Plaintiff,

)

)

11

vs.

)

)

12

PHWLTV LLC,

)

)

13

Defendant.

)

)

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14

15

REPORTER'S TRANSCRIPT

16

OF

17

CAESARS' MOTION FOR LEAVE TO FILE FIRST AMENDED

18

COMPLAINT; AND EX PARTE APPLICATION FOR ORDER

19

SHORTENING TIME; MOTION TO SEAL CERTAIN EXHIBITS TO

20

OPPOSITION TO CAESARS' MOTION FOR LEAVE TO FILE FIRST

21

AMENDED COMPLAINT

22

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

23

DISTRICT COURT JUDGE

24

25

DATED WEDNESDAY, FEBRUARY 12, 2020

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541

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Pursuant to NRS 239.053, illegal to copy without payment. PA01047

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1 LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 12, 2020

2 9:03 A.M.

3 P R O C E E D I N G S

4 * * * * *

09:03:34 5
6 THE COURT: All right. Good morning to
7 everyone. Let's go ahead and place our appearances on
8 the record.

9 MR. PISANELLI: Good morning, your Honor.
09:03:39 10 James Pisanelli on behalf of the Caesars' entities.

11 MS. MECERA: Good morning. Magali Mecera on
12 behalf of the Caesars entities.

13 MS. WATKINS: Good morning, your Honor.
14 Brittnie Watkins on behalf of the Caesars entities.

09:03:50 15 MR. WILT: Your Honor, Allen Wilt for Gordon
16 Ramsey.

17 BR. BROOKS: Daniel J. Brooks for the Seibel
18 entities, and Seibel the person.

19 MR. CARROLL: David Carroll for the same.

09:04:03 20 THE COURT: All right. Once again good
21 morning. And it's my understanding we have a couple of
22 matters on. We have a motion for leave to file first
23 amended complaint on an order shortening time. We also
24 have a motion to seal exhibits. Let's go ahead and
09:04:16 25 deal with the motion to amend first.

09:28:47 1 have always told us after the dates have
2 passed that we have to show good cause. So the fact
3 that he's not happy that we wouldn't give him a free
4 pass because we needed the amendment in light of their
09:29:00 5 bad faith conduct doesn't seem to be a real defense.

6 So we think we've met the four prongs. There
7 certainly is no prejudice here. And to the extent
8 there is any prejudice, if it were to result in the
9 delay, I don't think it would, that's a result of the
09:29:14 10 delay tactic and campaign that these defendants
11 employed in the first place, so they can't be heard to
12 complain now that they're prejudiced by that delay.

13 Mr. Green also has been involved in this case,
14 so no prejudice there. And we're moving as quickly as
09:29:30 15 we can to make sure that all the discovery gets
16 finished on time.

17 THE COURT: Anything else, sir?

18 MR. PISANELLI: No.

19 THE COURT: Okay. This is what I'm going to
09:29:39 20 do. And I -- and before I make a decision on this
21 issue, I think it's important just to take a quick
22 cursory review of the Nutton factors. And
23 specifically, number one, we've had an explanation of
24 the untimely conduct in this regard.

09:29:56 25 Depositions had to be taken to explain

09:29:59 1 specifically what documents stood for, what they meant,
2 what their purpose was.

3 And I -- and you have to do that because
4 documents don't testify. People testify.

09:30:12 5 I understand the importance of the requested
6 untimely action to add a party, new claims for relief,
7 civil conspiracy, and the like. I get that.

8 The potential prejudice in allowing the
9 untimely conduct, and as you can see I'm going through
09:30:30 10 the factors, and one of the -- one of the issues I'm
11 considering is we have a November 9, 2020, trial date,
12 right? And so that's, what, eight, ten -- nine, ten
13 months down the road. If this impacts the trial date
14 potentially, I could move it. But right now it doesn't
09:30:51 15 appear it's going to.

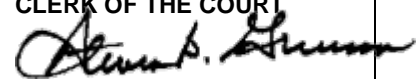
16 And last, but not least, No. 4 of the
17 availability of continuance to cure such prejudice,
18 right now I don't have to deal with that. You know, if
19 it was closer to the trial date, yes. But now, no.
09:31:06 20 But if that becomes a factor I have to consider, bring
21 it to my attention.

22 In light of the discussion of the Nutton
23 factors, I'm going to go ahead and grant the motion,
24 sir. Prepare an order. And there's been a -- you can
09:31:19 25 put the factors in the order that I considered to

EXHIBIT 2

**Filed
Under
Seal
Pursuant to
Motion to Seal or
Redact Filed
Concurrently
Herewith**

TAB 66



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EIGHTH JUDICIAL 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.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED MATTERS

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

Consolidated with A-17-760537-B

HEARING NOT REQUESTED

**MOTION TO REDACT CAESARS'
OPPOSITION TO ROWEN SEIBEL,
THE DEVELOPMENT ENTITIES, AND
CRAIG GREEN'S MOTION TO DISMISS
COUNTS IV, V, VI, VII, AND VIII OF
CAESARS' FIRST AMENDED
COMPLAINT AND SEAL EXHIBIT 2
THERE TO**

PHWLV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las Vegas Operating Company, LLC ("Paris"), Boardwalk Regency Corporation d/b/a Caesars Atlantic City ("CAC," and collectively, with Caesars Palace, Paris, and Planet Hollywood, "Caesars,") by and through their attorneys of record, PISANELLI BICE PLLC, hereby move this Court for an order permitting them redact portions of their Opposition to Rowen Seibel, the Development Entities, and Craig Green's Motion To Dismiss Counts IV, V, VI, VII, and VIII of Caesars' First Amended Complaint (the "Opposition"), filed concurrently herewith and seal Exhibit 2 thereto. Exhibit 2 is the Development and Operation Agreement between TPOV Enterprises, LLC and Paris (the "TPOV Agreement") and it was designated as Confidential pursuant to the Order regarding the Stipulated Confidentiality Agreement and Protective Order ("Protective Order"), entered on March 12, 2019. To protect the confidentiality of the parties' sensitive, non-public information, Caesars seeks an order from the Court permitting Exhibit 2 to be filed under seal and permitting redactions of the Opposition that reference and/or quote those provisions that are not publicly available. A proposed version of the redacted Opposition is attached hereto as Exhibit 1.

This Motion is made and based on Rule 3(1) of the Nevada Supreme Court's Rules Governing Sealing and Redacting Court Records, the attached Memorandum of Points and

///

1 Authorities, the pleadings and papers on file herein, and any argument this Honorable Court allows
2 at any hearing of this matter.

3 DATED this 22nd day of April 2020.

4 PISANELLI BICE PLLC

5 By: /s/ M. Magali Mercera

6 James J. Pisanelli, Esq., Bar No. 4027

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19 *Paris Las Vegas Operating Company, LLC;*

20 *PHWLTV, LLC; and Boardwalk Regency*

21 *Corporation d/b/a Caesars Atlantic City*

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL STANDARD

The Nevada Supreme Court enacted specific rules governing the sealing and redacting of court records. Pursuant to Rule 3(1) of the Nevada Supreme Court's Rules Governing Sealing and Redacting of Records ("SRCR"), "[a]ny person may request that the court seal or redact court records for a case that is subject to these rules by filing a written motion" The Court may order the records redacted or sealed provided that "the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety interest that outweigh the public interest in access to the court record," which includes findings that "[t]hat sealing or redaction furthers . . . a protective order entered under NRCP 26(c)" SCRC 3(4).

Section 14 of the Protective Order provides that "[a]ny Party seeking to file or disclose materials designated as Confidential Information or Highly Confidential Information with the Court in this action . . . must seek to file such Confidential or Highly Confidential Information under seal pursuant to Rule 3 of the Nevada Rules for Sealing and Redacting Court records" Section 5 defines the following information as Confidential: "all information and information that constitutes, reflects, or discloses nonpublic information, trade secrets, know-how, or other financial, proprietary, commercially sensitive, confidential business, marketing, regulatory, or strategic information (regarding business plans or strategies, technical data, and nonpublic designs), the disclosure of which the Producing Party believes in good faith might reasonably result in economic or competitive, or business injury to the Producing Party (or its affiliates, personnel, or clients) and which is not publicly known and cannot be ascertained from an inspection of publicly available sources, documents, material, or devices."

II. ANALYSIS

Here, Caesars requests leave of this Court to seal Exhibit 2 because it includes confidential, non-public information designated Confidential under the Protective Order. In particular, exhibit 2 to the Opposition is the TPOV Agreement. Although portions of the TPOV Agreement have been quoted in the Complaint and First Amended Complaint, the document has been designated as Confidential by the Parties and contains certain provisions, including but not limited to, financial

1 terms, that have not been publicly disclosed. Based on the foregoing and good cause showing,
2 Caesars respectfully requests that this Court allow it to file Exhibit 2 to the Opposition under seal
3 and redact those provisions that that have not been publicly disclosed. Caesars further requests that
4 such information remain sealed until further order of the Court.

5 DATED this 22nd day of April 2020.

6 PISANELLI BICE PLLC

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8 By: /s/ M. Magali Mercera

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16 *PHWLTV, LLC; and Boardwalk Regency*

Corporation d/b/a Caesars Atlantic City

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 22nd day of April 2020, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **MOTION TO REDACT CAESARS' OPPOSITION TO ROWEN SEIBEL, THE DEVELOPMENT ENTITIES, AND CRAIG GREEN'S MOTION TO DISMISS COUNTS IV, V, VI, VII, AND VIII OF CAESARS' FIRST AMENDED COMPLAINT AND SEAL EXHIBIT 2 THERETO** to the following:

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EIGHTH JUDICIAL 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.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**CAESARS' OPPOSITION TO ROWEN
SEIBEL, THE DEVELOPMENT
ENTITIES, AND CRAIG GREEN'S
MOTION TO DISMISS COUNTS IV, V,
VI, VII, AND VIII OF CAESARS' FIRST
AMENDED COMPLAINT**

AND ALL RELATED MATTERS

I. INTRODUCTION

There is one central issue in this case: Whether Caesars,¹ as a gaming licensee, is required to continue to do business with a convicted felon and his affiliates. Of course, it is not. The undisputed core facts uncovered during discovery in this case all come back to the same point, time and time again. That is, at every turn during this unfortunate experience, Rowen Seibel ("Seibel") was committing one fraud or another against Caesars. While this case started with claims stemming from Seibel's fraudulent concealment of his criminal behavior and ultimate conviction, it then turned to his fraudulent attempt to assign his business interests to entities he secretly controlled. Now, in a turn that appeared to shock even Seibel's own counsel, Caesars has learned that Seibel designed and orchestrated a fraudulent kickback scheme with Caesars' vendors. Those newly discovered claims are the subject of Caesars' First Amended Complaint.

Seibel's latest counsel (this is the 6th law firm to appear for Seibel and the Seibel-Affiliated Entities² in this case) has focused its motion on the later claims related to Seibel's kickback scheme. But, notwithstanding yet another law firm joining the mix, the story Seibel offers is the same: this is someone else's fault. Seibel argues that the kickback fraud is the fault of the fictitious entities he created to effectuate the scheme, the fault of the vendors, or the fault of Caesars itself. True to form, Seibel accepts no responsibility for his fraud and asks the Court to allow his corporate shell game to be sanctioned by this court so as to allow him to escape liability. Fortunately, the law offers Seibel no such safe harbor. Seibel and his cohorts have no one to blame but themselves for their conduct and the consequences for their actions fall on their shoulders alone. Their Motion to Dismiss must be denied in its entirety.

¹ Plaintiffs Desert Palace Inc. ("Caesars Palace"), Paris Las Vegas Operating Company, LLC ("Paris"), PHWLTV, LLC ("Planet Hollywood") and Boardwalk Regency Corporation d/b/a Caesars Atlantic City ("CAC") are collectively referred to herein as "Plaintiffs" or "Caesars."

² TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), and DNT Acquisition, LLC ("DNT") are collectively referred to herein as the Seibel-Affiliated Entities. Seibel, Craig Green ("Green"), and the Seibel-Affiliated Entities' are collectively referred to herein as the Seibel Parties.

1 **II. RELEVANT FACTS**

2 **A. *Seibel Hides his Crimes and Criminal Conviction from Caesars.***

3 As we now have learned, even before Caesars knew of Seibel, he was engaged in criminal
4 activity that would render him unsuitable to do business with a gaming licensee. Specifically, in
5 2004, Seibel opened an account at Union Bank of Switzerland ("UBS") (the "Numbered UBS
6 Account"). (First Am. Compl. ¶ 96.) When he opened the account, *Seibel "executed forms*
7 *acknowledging that he was a United States citizen subject to United States taxation, and that he*
8 *was the beneficial owner of the assets and income associated with the Numbered UBS*
9 *Account."* (*Id.* ¶ 97 (emphasis added).) In 2008, Seibel became concerned about the account as
10 "press reports had revealed various investigations commenced by United States law enforcement
11 of UBS's role in helping United States citizens evade federal income taxes by, among other
12 things, using undeclared foreign bank accounts at UBS." (*Id.* ¶ 101.) Seibel traveled to
13 Switzerland to close the Numbered UBS Account and open another account at a different Swiss
14 bank under the name of a Panamanian shell company which he created and owned. (*Id.* ¶ 102.)

15 Thereafter, when completing his 2008 and 2009 tax returns, Seibel did not report his
16 ownership/interest in any of the Swiss accounts. (*Id.* ¶¶ 103-05.) Additionally, because of his
17 authority over the Numbered UBS account, Seibel was required to file with the IRS a Report of
18 Foreign Bank and Financial Accounts for years 2007 and 2008, but never did so. (*Id.*)

19 Despite all of these failings, Seibel had an opportunity to right any past wrongs as the IRS
20 began a Voluntary Disclosure Program which would have allowed him to avoid criminal
21 prosecution by disclosing his previously undeclared foreign accounts. (*Id.* ¶ 107.) However,
22 instead of coming clean about his Numbered UBS account, *Seibel submitted a false application*
23 *to the Voluntary Disclosure Program.* (*Id.* ¶¶ 107-08.) To be clear, *even after committing his*
24 *crimes, Seibel had the opportunity to avoid prosecution and, instead, he lied again to the United*
25 *States Government.* (*Id.*)

26 Unsurprisingly, Seibel was then investigated and ultimately charged "with corrupt
27 endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C.
28 § 7212(a)." (*Id.* ¶ 109.) On or about April 18, 2016, Seibel pled guilty to the Class E felony. (*Id.*)

1 Although Seibel now tries to justify and/or excuse his behavior, by pleading guilty, Seibel
2 admitted he was, in fact, guilty of the charged crime. Following his conviction, Seibel was
3 sentenced in August 2016. (*Id.* ¶ 110.)

4 ***At no point during this years' long ordeal did Seibel inform Caesars of his criminal***
5 ***behavior that rendered him unsuitable.*** (*Id.* ¶ 111.) Instead, less than two weeks before his
6 guilty plea, Seibel informed Caesars that he was allegedly "(i) transferring all of the membership
7 interests of the Seibel-Affiliated Entities that he previously owned to two individuals that would
8 be trustees of a trust he had created; (ii) naming other individuals as the managers of the Seibel-
9 Affiliated Entities; (iii) assigning the agreements to new entities that had been created . . .; and
10 (iv) delegating all of his duties under the LLTQ, FERG, TPOV, and MOTI Agreements." (*Id.*)
11 Discovery has revealed that this too was a sham and, as Caesars long suspected, Seibel, once
12 again and unsurprisingly, lied. In August 2016, following his sentencing, Caesars finally became
13 aware of Seibel's crimes and conviction from public press reports. (*Id.* ¶ 112.)

14 **B. *Caesars Terminates its Relationship with Seibel and the Seibel-Affiliated***
15 ***Entities.***

16 As this Court knows, ***a gaming license is a revocable privilege, not a right.*** See Nev.
17 Rev. Stat. § 463.0129 (2) ("No applicant for a license or other affirmative Commission or Board
18 approval has any right to a license or the granting of the approval sought. Any license issued or
19 other Commission or Board approval granted . . . is a revocable privilege, and no holder acquires
20 any vested right therein or thereunder.") Because issues of suitability affect Caesars' gaming
21 license, ***Caesars expressly contracted for the sole and absolute discretion to terminate the Seibel***
22 ***Agreements should the Seibel-Affiliated Entities or their Affiliates, including Seibel, diverge***
23 ***from Caesars' suitability standards.*** Caesars expressly contracted for this sole discretion because
24 Nevada and other jurisdictions in which it is licensed call on their gaming licensees to police
25 themselves and their affiliates to ensure compliance with gaming regulations.

26 Therefore, once Caesars learned of Seibel's criminal behavior, it deemed Seibel and the
27 Seibel-Affiliated Entities to be unsuitable – as allowed in its sole discretion by the Seibel
28

1 Agreements – and terminated all of its agreements with the Seibel-Affiliated Entities. (First Am.
2 Compl. ¶¶ 112-22.) This litigation, and litigation across the country, ensued. (*Id.* ¶¶ 123-33.)

3 C. ***Caesars Uncovers Additional Wrongdoings: Seibel, Green, and the Seibel-***
4 ***Affiliated Entities Were Soliciting, Coercing, and Receiving Kickbacks from***
Caesars' Vendors.

5 In discovery in this litigation, Caesars uncovered documents that seemed to reveal a
6 payment arrangement between certain Caesars' vendors on the one hand and Seibel, Green, and
7 the Seibel-Affiliated Entities on the other hand. (*Id.* ¶ 134.) However, because of the Seibel-
8 Parties' numerous and ongoing delay tactics, Caesars was unable to question witnesses –
9 including Seibel himself – for almost two years following the filing of the initial complaint. As
10 this Court recognized, even with documents, depositions are necessary to develop the facts:
11 ***"Depositions had to be taken to explain specifically what documents stood for, what they meant,***
12 ***what their purpose was . . . and you have to do that because documents don't testify. People***
13 ***testify."*** (Ex. 1, Reporter's Tr., Feb. 12, 2020, at 24:25-25:4 (emphasis added).)³

14 On their face, the documents seemed to indicate some sort of payment arrangement, but it
15 was not until the depositions of Green, Seibel, and their business partners, that Caesars was able
16 to determine that these payments were far from innocent and indeed were illegal kickbacks. (*See*
17 *Caesars' Mot. for Leave to File First Am. Compl.*, Dec. 12, 2019, on file.) Interestingly, Seibel,
18 the Seibel-Affiliated Entities, and Green attempt to brand these payments as "rebates." But
19 neither the law nor the facts support this fabrication. A rebate is defined as "[a] return of part of a
20 payment, serving as a discount or reduction." (Rebate, *Black's Law Dictionary*, (11th ed. 2019).)

21 _____
22 ³ Dissatisfied with the Court's ruling on Caesars' Motion for Leave to File First Amended
23 Complaint, Seibel, the Seibel-Affiliated Entities, and Green, attempt to re-argue whether Caesars'
24 Motion was appropriately granted by claiming that a letter written by Ramsay's counsel to Seibel's
25 counsel was in Caesars' possession three years ago. This argument is a red herring. The letter
26 states that "Seibel organized and received rebates from alcohol suppliers inter alia to the
27 restaurant Gordon Ramsay Pub & Grill." This information was apparently obtained in a
28 deposition for other litigation between Ramsay and Seibel, unrelated to Caesars and, importantly,
it does not change Caesars' or this Court's analysis. Caesars was not and is not a party to that
litigation, did not have an opportunity to depose Green or Seibel until after this litigation was well
underway and could not, in good faith, bring additional claims based on a single line in a letter.
Indeed, just as with the documents produced by the Seibel Parties in this action, Caesars needed
an opportunity to depose the involved parties to determine the underlying facts (i.e., who was
getting the rebates, under what circumstances, etc.). Undoubtedly, if Caesars had attempted to
bring any such claims – without actual information supporting such allegations – it would have
faced a similar motion to dismiss or other motion.

1 In other words, a rebate is a refund provided to the purchaser of a product. Indeed, the various
2 Seibel Agreements [REDACTED]

3 [REDACTED]
4 [REDACTED] (See, e.g., Ex. 2, TPOV Agreement, at 4.)⁴

5 Conversely, a kickback is defined, in relevant part, as "a return of a portion of a monetary
6 sum received, usually as a result of coercion or a secret agreement." (Kickback, *Black's Law*
7 *Dictionary*, (11th ed. 2019).) In Nevada, such arrangements, are illegal. See, e.g., NRS
8 § 207.295(1) ("Any person who, with corrupt intent . . . [o]ffers, confers or agrees to confer any
9 benefit upon any employee, agent or fiduciary without the consent of the employer or principal of
10 that employee, agent or fiduciary in order to influence adversely that person's conduct in relation
11 to the commercial affairs of his or her employer or principal . . . commits commercial bribery and
12 is guilty of a misdemeanor.") Here, ***neither Seibel, Green, nor any of the Seibel-Affiliated***
13 ***Entities purchased any of the goods for which they demanded money.*** Indeed, they sought
14 and/or *coerced payment from vendors who had agreements with Caesars* for the sale of certain
15 products to Caesars' restaurants. To be clear, Caesars was purchasing products from these
16 vendors and, egregiously, Green threatened vendors who did not sign up for the scheme with
17 pulling their products from the venues. In other words, extortion. (*Scheidler v. Nat'l Org. for*
18 *Women, Inc.*, 537 U.S. 393, 409, 123 S. Ct. 1057, 1068, 154 L. Ed. 2d 991 (2003) (emphasis
19 added) (internal quotations omitted) ("*[E]xtortion is defined as obtaining something of value*
20 ***from another with his consent induced by the wrongful use of force, fear, or threats.***")

21 Seibel, the Seibel-Affiliated Entities, and Green's use of the term "rebates" is not only
22 misleading to this Court, it ignores the criminal nature of the scheme. This type of behavior is

23 ⁴ "Review on a motion pursuant to Fed. R. Civ. P. 12(b)(6) is normally limited to the
24 complaint itself." *Carstarphen v. Milsner*, 594 F. Supp. 2d 1201, 1207 (D. Nev. 2009) (citing *Lee*
25 *v. City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001). "A court may, however, consider certain
26 materials—documents attached to the complaint, documents incorporated by reference in the
27 complaint, or matters of judicial notice—without converting the motion to dismiss into a motion
28 for summary judgment." *Id.* (quoting *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003);
see also Baxter v. Dignity Health, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015) (internal
quotations omitted) ("While presentation of matters outside the pleadings will convert the motion
to dismiss to a motion for summary judgment, . . . such conversion is not triggered by a court's
consideration of matters incorporated by reference or integral to the claim, as where the complaint
relies heavily on a document's terms and effect.") Caesars' First Amended Complaint quotes the
various Seibel Agreements extensively and they are incorporated therein by reference.

1 prohibited by the Seibel Agreements. Specifically, under the various agreements, an "Unsuitable
2 Person" is defined, in relevant part, as "any Person . . . who is or might be engaged or about to be
3 engaged in any activity which could adversely impact the business or reputation of [Caesars] or
4 its Affiliates." (First Am. Compl, ¶¶ 55, 65, 77, and 87.) As expressly set forth therein, Caesars
5 was entitled to terminate the agreements, if in its sole discretion, it determined that the Seibel-
6 Affiliated Entities or any Associate thereof, which would include Seibel and Green, were
7 Unsuitable Persons. (*Id.* ¶¶ 35, 45, 54, 64, 76, and 86.) Importantly, each of the Seibel-Affiliated
8 Entities agreed that "it shall and it shall cause its Affiliates to conduct themselves in accordance
9 with the highest standards of honesty, integrity, quality and courtesy so as to maintain and
10 enhance the reputation and goodwill of" Caesars. (*Id.* ¶¶ 43, 52, 62, 74, and 84.) Further, each of
11 the Seibel-Affiliated Entities agreed that it would "use commercially reasonable efforts to
12 continuously monitor the performance of each of its and its Affiliates' respective agents,
13 employees, servants, contractors and licensees and shall ensure the foregoing standards are
14 consistently maintained by all of them." (*Id.*) Thus, not only was their conduct illegal, it was also
15 prohibited by the Seibel Agreements.

16 III. ANALYSIS

17 A. *Legal Standard*

18 "Nevada is a notice-pleading state; thus, *our courts liberally construe pleadings to 'place*
19 *into issue matters which are fairly noticed to the adverse party.'*" *W. States Const., Inc. v.*
20 *Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992) (quoting *Hay v. Hay*, 100 Nev. 196, 198,
21 678 P.2d 672, 674 (1984)). "A complaint need only set forth sufficient facts to demonstrate the
22 necessary elements of a claim for relief so that the defending party has adequate notice of the
23 nature of the claim and relief sought." *Id.* (citing *Hay*, 100 Nev. at 198, 678 P.2d at 674, and
24 *Ravera v. City of Reno*, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984)); *see also Brown v. Kellar*, 97
25 Nev. 582, 583, 636 P.2d 874, 874 (1981) (emphasis added) ("***NRCP 8(a) requires that a pleading***
26 ***contain only a short and plain statement showing that the pleader is entitled to relief.***") "In
27 alleging fraud or mistake, a party must state with particularity the circumstances constituting
28 fraud or mistake." NRCP 9(b). "The circumstances that must be detailed include averments to

1 the time, the place, the identity of the parties involved, and the nature of the fraud or mistake."
2 *Brown*, 97 Nev. at 583–84, 636 P.2d at 874. If this Court believes that additional details are
3 required for any claim, leave to amend should be granted instead of dismissal. *See Cohen v.*
4 *Mirage Resorts, Inc.*, 119 Nev. 1, 22, 62 P.3d 720, 734 (2003) ("[W]hen a complaint can be
5 amended to state a claim for relief, leave to amend, rather than dismissal, is the preferred
6 remedy.")

7 A "*complaint should be dismissed only if it appears beyond a doubt that it could prove*
8 *no set of facts, which, if true, would entitle it to relief.*" *Buzz Stew, LLC v. City of N. Las Vegas*,
9 124 Nev. 224, 228, 181 P.3d 670, 672 (2008) (emphasis added); *see also Brown*, 97 Nev. at 583,
10 636 P.2d at 874 ("On a motion to dismiss for failure to state a claim for relief, the trial court . . .
11 must construe the pleading liberally and draw every fair intendment in favor of the plaintiff.").
12 "Allegations in the complaint must be accepted as true." *Brown*, 97 Nev. at 58384, 636 P.2d at
13 874. "The test for determining whether the allegations of a complaint are sufficient to assert a
14 claim for relief is whether the allegations give fair notice of the nature and basis of a legally
15 sufficient claim and the relief requested." *Vacation Vill., Inc. v. Hitachi Am., Ltd.*, 110 Nev. 481,
16 484, 874 P.2d 744, 746 (1994) (citations omitted). Applying this test to Caesars' First Amended
17 Complaint demonstrates that Caesars has appropriately asserted claims for civil conspiracy
18 (Count IV), breach of the implied covenant of good faith and fair dealing (Count V), unjust
19 enrichment (Count VI), intentional interference with contractual relations (Count VII), and
20 fraudulent concealment (Count VIII). (*See First Am. Compl.*, Mar. 11, 2020, ¶¶ 134-44, 171-
21 206.) The Seibel Parties' Motion to Dismiss is without merit and must be denied.

22 **B. *The Intra-Corporate Conspiracy Doctrine is Inapplicable***

23 "An actionable civil conspiracy is a combination of two or more persons who, by some
24 concerted action, intend to accomplish some unlawful objective for the purpose of harming
25 another which results in damage." *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 303,
26 662 P.2d 610, 622 (1983) (citations omitted). The Seibel Parties argue that Caesars' civil
27 conspiracy claim must fail because Seibel and Green, "as officers/agents of the entities alleged to
28

1 have received rebates from vendors, cannot conspire [with their principals]—as a matter of law . .
2 . ." (Mot. 9:22-23.)

3 Although the intra-corporate conspiracy doctrine by implication does not apply to
4 corporate employees acting outside the scope of their employment, Nevada has specifically stated
5 this as an exception to the rule: "Agents and employees of a corporation cannot conspire with
6 their corporate principal or employer where they act in their *official capacities on behalf of the*
7 *corporation and not as individuals for their individual advantage*." *Collins*, 99 Nev. at 303, 662
8 P.2d at 622 (emphasis added); *see also Local Ad Link, Inc. v. AdzZoo, LLC*,
9 209CV01564RCJLRL, 2009 WL 10694069, at *9 (D. Nev. Dec. 15, 2009) (concluding that
10 parties were "not subject to the intra-corporate conspiracy doctrine because they were acting out
11 of their own pecuniary interest").

12 In *Collins*, Nevada's preeminent authority on the doctrine, the Court noted that "one of the
13 material issues of fact regarding Collins' civil conspiracy claim for relief is whether [the parties]
14 were acting as individuals for their individual advantage." 99 Nev. at 303, 662 P.2d at 622.
15 "[A]n action for civil conspiracy [] include[s] a state of mind issue which is usually inappropriate
16 for disposition by way of summary judgment." *Id.*; *Wagner v. County of Plumas*, No. 2:18-CV-
17 03105-KJM-DB, 2020 WL 820241, at *7 (E.D. Cal. Feb. 19, 2020) ("[T]he court must undertake
18 a close examination of the factual allegations of [the] case . . . to make an informed decision
19 regarding application of the intracorporate conspiracy bar." (alteration in original) (quotation
20 omitted)); *Condos v. Conforte*, 596 F. Supp. 197, 201 (D. Nev. 1984) ("Because intent is an
21 element of a claim of conspiracy, such a claim often cannot be decided via a motion for summary
22 judgment."); *Roniger v. McCall*, 72 F. Supp. 2d 433, 441 (S.D.N.Y. 1999) ("Given the record
23 before the Court, it cannot be said that no material issues of fact exist as to whether the
24 Comptroller's decision to fire Roniger was motivated solely by personal interests distinct from
25 those of the OSC."). Hence, dismissal is certainly inappropriate here at the *motion to dismiss*
26 stage, where factual inferences must be drawn in favor of Caesars' allegations that Green and
27 Seibel acted for their individual advantage, rather than for the benefit of the Seibel-Affiliated
28 Entities. (*See, e.g.*, First Am. Compl. ¶ 139 ("In particular, acting on behalf of Mr. Seibel, Mr.

Green coerced a representative of Innis & Gunn to establish a 15% retroactive kickback on each keg of beer sold to certain Caesars' restaurants.".)

Citing only Third Circuit and District of Utah law, the Seibel Parties argue that "[f]or an agent's conduct to constitute an actionable conspiracy, the agent's conduct must be solely for his or her own advantage; mixed motives are insufficient as a matter of law." (Mot. 9:14-16.) The Seibel Parties have not shown, nor can they show at the motion to dismiss stage, how the conduct underlying Caesars' civil conspiracy claim was committed with mixed motives, as this inquiry into the mind is highly fact-intensive.

Moreover, Nevada has not adopted this standard of solely personal motive. *See Local Ad Link*, 2009 WL 10694069, at *9 (emphasis added) ("***So long as Plaintiffs claim the individual Defendants were acting in their individual capacities, the civil conspiracy claim should not be dismissed based on the intra-corporate conspiracy doctrine.***") Indeed, the District of Nevada determined that officers and directors were "not subject to the intra-corporate conspiracy doctrine because they were corporate officers or directors who ordered the tortious activity in violation of their own duties to Plaintiffs." *Id.* In other words, "allegations of conspiracy . . . are hardly descriptive of acts that may be rationally included within the prerogatives of an employee's official capacity." *N. Nev. Ass'n of Injured Workers v. Nev. State Indus. Ins. Sys.*, 107 Nev. 108, 115, 807 P.2d 728, 732 (1991); *Smith's Food & Drug Ctrs., Inc. v. Bellegarde*, 114 Nev. 602, 608, 958 P.2d 1208, 1212-13 (1998), *overruled on other grounds by Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 192 P.3d 243 (2008) ("Any act or omission of a corporate officer or employee within the scope of his employment is, as a matter of law, the act or omission of such corporation." (emphasis added)).

Similarly, here, Green and Seibel were engaged in tortious activity for their own personal benefit and were acting outside of their official capacities, if any, when conspiring. As alleged, "Mr. Seibel and Mr. Green knowingly acted in concert with vendors . . . to accomplish an unlawful objective for the purpose of harming Caesars." (First Am. Compl., ¶ 172.) Caesars does not allege that Seibel or Green acted in any official capacity. Indeed, it can hardly be argued that when Green was "threatening to pull vendors' products from Caesars' restaurants," he was acting

1 in any official capacity. Further as alleged in the First Amended Complaint, "[a]fter advocating
2 to Caesars for the use of LaFrieda as a vendor, ***Mr. Seibel admitted to secretly receiving a***
3 ***percentage[.]***" (*Id.* ¶ 139 (emphasis added).) The payments made to Seibel and his other entities
4 for the benefit of Seibel and Green demonstrate a conspiratorial scheme to engage in commercial
5 bribery to the detriment of Caesars.⁵ This conspiracy is not precluded by the intra-corporate
6 conspiracy doctrine.

7 Next, the Seibel Parties suggest that Caesars' claim fails because Caesars did not sue
8 Future Star Hospitality, LLC or BR 23 Venture, LLC. But, it is well known that this is not the
9 standard, as the Seibel Parties have not argued that the unnamed entities are necessary parties.
10 (*See* NRCP 19.) Further, "[i]t has long been the rule that it is not necessary for all joint
11 tortfeasors to be named as defendants in a single lawsuit." *Temple v. Synthes Corp., Ltd.*, 498
12 U.S. 5, 7 (1990); *see also Henry v. Rizzolo*, No. 2:08-CV-00635-PMP, 2011 WL 2975539, at *3
13 (D. Nev. July 21, 2011) (same); *William Inglis & Sons Baking Co. v. ITT Cont'l Baking Co., Inc.*,
14 668 F.2d 1014, 1053 (9th Cir. 1981) (providing that the plaintiff was not required to sue all of the
15 alleged conspirators because they were jointly and severally liable for damages caused by the
16 conspiracy). Any argument that other co-conspirators needed to be named is easily debunked by
17 applicable case law and Caesars has more than sufficiently stated its claim for conspiracy.

18 **C. *Caesars Has Appropriately Pled a Claim for Breach of the Implied Covenant of***
19 ***Good Faith and Fair Dealing Claim.***

20 Caesars alleges that "Defendants breached their duty of good faith to Caesars by, among
21 other things, wrongfully soliciting, coercing, agreeing to accept, and accepting benefits from
22 vendors based on the understanding that the benefit would adversely influence Defendants' action
23 in relationship to Caesars' commercial affairs, including, but not limited to, the Agreements
24 between Caesars and Defendants." (First Am. Compl. ¶ 180.) The Seibel Parties argue that: (1)
25 Caesars' breach of the implied covenant claim is "pure legal conclusion . . . not supported by any

26 ⁵ Knowledge of all those who benefited from the kickback scheme may present itself during
27 the discovery process. Indeed, as has been their *modus operandi*, the Seibel Parties have not
28 produced all of the documents related to their illegal scheme. Discovery very well may show, and
in fact most likely will show, that the fictitious entities used to perpetrate the scheme were mere
conduits for the secret flow of cash, with no other purpose and no benefit independent of the
funds that flowed directly to Seibel and Green.

1 factual allegations,"; (2) "[a]bsent facts indicating that any of the contracting entities were
2 involved in securing rebates from vendors," Caesars cannot demonstrate a breach; and (3) "if the
3 restaurants made less in profits . . . then such harm would be equally suffered by the Development
4 Entities." (Mot. 10:17-11:25.). Each of these arguments rely on false standards and ignore many
5 allegations in the First Amended Complaint. They are equally of no moment to this debate.

6 First, the Seibel Parties' arguments hold Caesars to a heightened pleading standard. Yet,
7 they provide no authority for a pleading standard wherein Caesars is required at the Complaint
8 stage to divulge the evidence it will present at trial. In accordance with the appropriate pleading
9 standard, Caesars provided "a short and plain statement of the claim showing that the pleader is
10 entitled to relief." See NRCP 8(a); *Davenport*, 2013 WL 5437119, at *2 ("The more lenient
11 pleading requirements of NRCP 8(a) apply to Davenport's claim[] for . . . breach of the covenant
12 of good faith and fair dealing.").

13 "When one party performs a contract in a manner that is unfaithful to the purpose of the
14 contract and the justified expectations of the other party are thus denied, damages may be
15 awarded against the party who does not act in good faith." *Hilton Hotels Corp. v. Butch Lewis*
16 *Productions, Inc.*, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991). "Whether the controlling party's
17 actions fall outside the reasonable expectations of the dependent party is determined by the
18 various factors and special circumstances that shape these expectations." *Id.* at 923-24. Caesars
19 identified the contracts, the conduct, its justified expectation, and damages amounting to the
20 breach. Namely, and respectively, the Seibel Agreements, (¶ 178); solicitation, coercion, and
21 agreement to accept benefits, (¶ 180); expectation that Defendants would not engage in such
22 conduct, (¶ 181); and damage to Caesars' commercial affairs, including performance of the
23 Development Agreements (¶ 180).

24 Second, under terms of the Seibel Agreements, [REDACTED]
25 [REDACTED]
26 [REDACTED]. (Ex. 2, TPOV Agreement,
27 at 4.) Further, as set forth in the various agreements, Caesars had an expectation that the Seibel-
28 Affiliated Entities would "conduct themselves in accordance with the highest standards of

1 honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill
2 of Caesars" and hold its Affiliates (including Seibel and Green) to those same standards. (*See*,
3 *e.g.*, First Am. Compl. ¶ 43.) Instead by failing to report any legitimate rebates and actually
4 allowing Seibel and Green to coerce, solicit, and accept kickbacks, they each breached the
5 implied covenant of good faith and fair dealing.

6 Finally, the fact that the purchase of goods from vendors at an increased price would have
7 reduced the Seibel-Affiliated Entities' profits as well also has no impact on whether the Seibel-
8 Affiliated Entities acted in good faith with regard to the agreements as damage to the Seibel-
9 Affiliated Entities does not preclude damage to Caesars. Caesars had an expectation that the
10 Seibel-Affiliated Entities would not engage in a kickback scheme to the detriment of Caesars and
11 its operation of the various restaurants or that they would hide this criminal conduct from Caesars.
12 The Seibel Parties' challenge to Caesars' breach of the implied covenant of good faith and fair
13 dealing claim is wholly meritless.

14 **D. *Caesars Has Appropriately Pled a Claim for Unjust Enrichment Because Siebel***
15 ***& Green Received Kickbacks and Benefits from the Kickbacks.***

16 The Seibel Parties argue that Caesars "concedes that neither Seibel nor Green received the
17 alleged benefit from the vendors." (Mot. 12:18-19.) Not true. In particular, Caesars alleges that
18 "[b]y contracting with certain vendors, Caesars unknowingly conferred benefits upon Mr. Green
19 and Mr. Seibel, including, but not limited to, establishing relationships from which they received
20 kickbacks based on the amount of goods sold to Caesars." (First Am. Compl. ¶ 185.) Caesars
21 further alleges that "Mr. Green and Mr. Seibel accepted, appreciated, and retained those benefits."
22 (First Am. Compl. ¶ 186.). Thus, Caesars alleges that Seibel and Green benefited from both the
23 relationships and the kickbacks.

24 Even assuming that the kickback funds were only deposited into accounts for entities that
25 Seibel owned and not Seibel's or Green's personal accounts – a fact which is still subject to
26 discovery and which Caesars does not concede – Seibel and Green still received and benefited
27 from the kickback scheme. Seibel owned BR Ventures and Future Star Hospitality. (First Am.
28 Compl., ¶ 137.) These entities certainly were not charitable organizations. Their very natures

1 reveal that they were set up to establish beneficial relationships and monetary gain for Seibel and
2 Green.⁶ Indeed, in its complaint, Caesars specifically alleges that "Mr. Green and Mr. Seibel
3 *accepted, appreciated, and retained those benefits.*" (First Am. Compl., ¶ 186 (emphasis
4 added).) This claim is appropriately and sufficiently pled.

5 **E. *Caesars Has Appropriately Pled a Claim for Intentional Interference with***
6 ***Contractual Relations.***

7 The Seibel Parties cite Georgia law to argue that "in order for a defendant to be liable for
8 tortious interference with contractual relations, the defendant must be a stranger to both the
9 contract and the business relationship giving rise to and underpinning the contract." (Mot. 13:19-
10 22 (quoting *Atlanta Market Ctr. Mgmt. Co. v. McLane*, 503 S.E.2d 278, 283 (Ga. 1998)).) In
11 Nevada, to succeed on a claim "for intentional interference with contractual relations, a plaintiff
12 must establish: (1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3)
13 intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption
14 of the contract; and (5) resulting damage." *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71
15 P.3d 1264, 1267 (2003). "[A] party cannot, as a matter of law, tortiously interfere with his own
16 contract." *Blanck v. Hager*, 360 F. Supp. 2d 1137, 1154 (D. Nev. 2005) (citing *Bartsas Realty,*
17 *Inc. v. Nash*, 81 Nev. 325, 402 P.2d 650 (1965)).

18 Nevada's intentional interference law does not require that the defendant be a stranger to
19 the contract, and consequently, Caesars is not required to allege that Seibel or Green did not
20 participate in the business relationship. In *Kernaghan v. BCI*, the defendant in an intentional
21 interference claim attempted to rely on the same argument as the Seibel Parties. Specifically, the
22 defendant argued that because an agreement was formed between the plaintiff and a third party
23 for the benefit of the defendant, the defendant had a beneficial interest in the agreement, and thus
24 was not a stranger to the agreement and could not be held liable for intentional interference. 802
25 F. Supp. 2d 590, 596, (E.D. Pa. 2011). The court observed that the parties cited to no authority
26 addressing "whether the Pennsylvania Supreme Court would adopt and apply the stranger rule to

27 ⁶ At this stage, Caesars is not required to present evidence it has supporting such claims.
28 Nevertheless, discovery has already revealed that Green held an unpurchased interest, represented
the entities, received health benefits through the entities, and, according to Green's own
statements, may have received direct distributions.

1 a tortious interference claim." *Id.* (quotation omitted). The court further observed that "[i]n each
2 court decision relied upon by Defendant [] in support of the Motion to Dismiss, the 'stranger' rule
3 has been adopted only in that jurisdiction." *Id.* at 596-97.

4 Because Pennsylvania, like Nevada, only precludes intentional interference claims against
5 defendants who were are not a party to the contract, the court determined that it "w[ould] not
6 expand the test to include language that a defendant be a 'stranger' to the agreement, having no
7 'beneficial or economic interest' in it." *Id.* at 597. Here, as in *Kernaghan*, this Court cannot
8 expand the law to require the defendant to be a stranger to the agreement and the Seibel Parties
9 cite no authority suggesting the Nevada Supreme Court would adopt this rule.

10 Moreover, as the *Kernagahn* court highlighted, few jurisdictions have adopted the
11 "stranger rule," and of the few who have, some define "stranger" such that potential liability is
12 expanded to be similar to Nevada intentional interference law. For instance, the Ninth Circuit has
13 recognized California's recent approach to its stranger rule, concluding "that only the contracting
14 parties have a direct interest or involvement in th[e contractual] relationship." *Fresno Motors,*
15 *LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1127 (9th Cir. 2014) (quotations omitted).
16 Hence, under California law, where the stranger rule has been adopted, "strangers" are defined as
17 those who are not a party to the contract, which is essentially the same as in Nevada, where the
18 "stranger rule" has not been adopted, and a party cannot interfere with his own contract. *Id.*
19 Further, courts have "consistently found owners, managers, and advisers . . . liable in tort as third
20 parties where they were not acting to protect the interests of the contracting party." *Oxycal Labs.,*
21 *Inc. v. Patrick*, 8 F. App'x 761, 764 (9th Cir. 2001) (citations omitted); *Asahi Kasei Pharma Corp.*
22 *v. Actelion Ltd.*, 222 Cal. App. 4th 945, 967–68, 169 Cal. Rptr. 3d 689, 707 (2013) (citations
23 omitted) ("The manager's privilege does not exempt a manager from liability when he or she
24 tortiously interferes with a contract or relationship between third parties.")

25 The Seibel Parties also argue that "Caesars has not alleged any facts supporting the bare
26 legal conclusion that Seibel and Green actually interfered with the [Seibel] Agreements." (Mot.
27 14:3-4.) This argument simply ignores the allegations. Caesars plainly alleges that Seibel and
28 Green interfered with revenues arising out of the Seibel Agreements that Caesars was entitled to

1 receive, "including by diverting money and/or preventing Caesars from obtaining product at
2 lesser costs." (*See* First Am. Compl. ¶¶ 192, 196.) Because Seibel and Green actually interfered
3 with the Seibel Agreements and, under Nevada law, only parties to the contract are immune from
4 liability for intentional interference, the Seibel Parties' arguments fail.

5 **F. *Caesars Has Appropriately Pled a Claim for Fraudulent Concealment Because***
6 ***Seibel and Green Owed a Duty to Caesars to Disclose the Kickbacks They***
7 ***Coerced from Caesars' Vendors.***

8 The Seibel Parties argue that "[t]his claim fails because no duty was owed to Caesars by
9 Seibel or Green to disclose information related to rebates." (Mot. 14:17-18.) The law and facts
10 provide otherwise. "A duty to disclose arises from the relationship of the parties." *Dow Chem.*
11 *Co. v. Mahlum*, 114 Nev. 1468, 1486, 970 P.2d 98, 110 (1998), *abrogated by* *GES, Inc. v. Corbitt*,
12 117 Nev. 265, 21 P.3d 11 (2001). It may "arise where the parties enjoy a 'special relationship,'
13 that is, where a party reasonably imparts special confidence in the defendant and the defendant
14 would reasonably know of this confidence." *Id.* "A party's superior knowledge thus imposes a
15 duty to speak in certain transactions, depending on the parties' relationship." *Id.* "Nondisclosure
16 will become the equivalent of fraudulent concealment when it becomes the duty of a person to
17 speak in order that the party with whom he is dealing may be placed on an equal footing with
18 him." *Id.* Hence, "[t]he duty to disclose requires, at a minimum, some form of relationship
19 between the parties." *Id.* at 1487, 970 P.2d at 110. Importantly, "[t]he duty to speak does not
20 necessarily depend on the existence of a *fiduciary* relationship." *Mackintosh v. Jack Matthews &*
21 *Co.*, 109 Nev. 628, 635, 855 P.2d 549, 553 (1993) (emphasis added) (citation omitted). "It may
22 arise in any situation where one party imposes confidence in the other because of that person's
23 position, and the other party knows of this confidence." *Id.* "Nondisclosure will become the
24 equivalent of fraudulent concealment when it becomes the duty of a person to speak in order that
25 the party with whom he is dealing may be placed on an equal footing with him." *Id.* at 634-45,
855 P.2d at 553.

26 Caesars alleges a relationship at the beginning of the First Amended Complaint, providing
27 that "Caesars has entered into six agreements with entities owned by, managed by, and/or
28 affiliated with Rowen Seibel." (¶ 1.) Moreover, Part A of the "Statement of Facts" section details

1 at length the special business relationships between the parties, which includes, but is not limited
2 to, Seibel's obligation to provide disclosures, (§§ 31, 63), Seibel's identification as an Associate of
3 the Seibel-Affiliated Entities, and the requirement that Affiliates and representatives also provide
4 disclosures, (§ 67).

5 Notwithstanding that Caesars made these allegations, the Seibel Parties argue that no duty
6 exists. (Mot. 14:17-18.) This statement is disingenuous. Seibel and Green bargained for,
7 performed, and benefited under the Seibel Agreements. In addition to being identified as an
8 Affiliate of the Seibel-Affiliated Entities, (*see, e.g.*, Ex. 2, TPOV Agreement § 2.1), [REDACTED]

9 [REDACTED]
10 [REDACTED]
11 [REDACTED],
12 (§ 2.2(b)). [REDACTED]

13 [REDACTED]. (§ 6.1.1.) At times, Green
14 acted with Seibel to exercise the aforementioned rights and obligations. It cannot be argued with
15 any sincerity that the parties did not have a special relationship requiring disclosure, especially
16 given that Seibel, along with the Seibel-Affiliated Entities, had a duty to maintain the highest
17 standards and update their suitability disclosures. Moreover, Caesars bargained for and had an
18 expectation that [REDACTED]. (*Id.* at 4

19 [REDACTED]
20 [REDACTED] As a result, both Seibel
21 and Green had a duty to disclose these kickbacks, and are liable for fraudulent concealment
22 because they chose not to.

23 ///

1 **IV. CONCLUSION**

2 Based on the foregoing, Caesars requests that this Court deny the Seibel Parties' Motion to
3 Dismiss in its entirety.

4 DATED this 22nd day of April 2020.

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28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 22nd day of April 2020, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **CAESARS' OPPOSITION TO ROWEN SEIBEL, THE DEVELOPMENT ENTITIES, AND CRAIG GREEN'S MOTION TO DISMISS COUNTS IV, V, VI, VII, AND VIII OF CAESARS' FIRST AMENDED COMPLAINT** to the following:

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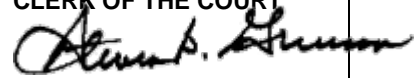
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Acquisition, LLC*

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,

vs.

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

Defendants,

And

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED CLAIMS.

Case No. A-17-751759-B

Dept. No. XVI

Consolidated with A-17-760537-B

**ROWEN SEIBEL, THE DEVELOPMENT
ENTITIES, AND CRAIG GREEN'S REPLY IN
SUPPORT OF THEIR MOTION TO DISMISS
COUNTS IV, V, VI, VII, AND VIII OF
CAESARS' FIRST AMENDED COMPLAINT**

Date of Hearing: May 20, 2020

Time of Hearing: 9:30 a.m.

I. INTRODUCTION

Recognizing that it failed to allege sufficient facts to support its newly-asserted tort claims, Caesars continuously ignores corporate form (even though it has not alleged an alter ego theory of liability in the First Amended Complaint) and attempts to distract this Court with conclusory accusations of criminality and needless recitations of allegations that have no bearing on the claims at issue in this Motion. In the end, Caesars cannot escape reality: The newly-asserted tort claims do not survive NRCP 12(b)(5) scrutiny.

As detailed in the Motion and below, Caesars' newly-asserted tort claims fail as a matter of law and must be dismissed (alongside Green as a party to this action) because:

- Caesars' civil conspiracy claim is barred by the intra-corporate conspiracy doctrine. Caesars' effort to imply facts that it failed to allege in the First Amended Complaint—without explanation, and despite having ample opportunity to do so—is unavailing. There are no allegations that suggest Seibel or Green acted solely for his individual advantage (i.e., outside the scope of his authority as an agent or representative of his corporate principals), and thus, no actionable conspiracy could legally exist between them and the Development Entities (or the other, unnamed entities);
- Caesars' breach of the implied covenant of good faith and fair dealing claim fails because Caesars fails to allege that the Development Entities took any actions or received any benefit with respect to the rebates. Caesars cannot simply assign actions committed by unnamed entities to the Development Entities (without also alleging facts supporting an alter ego theory) in order to avoid the Motion; nor can Caesars ignore that this claim assumes that the Development Entities somehow benefited by reducing their income stream arising from the restaurants, which is an inference not reasonably drawn from the allegations in the First Amended Complaint;
- Caesars' unjust enrichment claim fails because Caesars does not allege that Seibel or Green received the rebates. To the contrary, Caesars alleges that non-party entities received the rebates. That Seibel or Green may have later received distributions or salaries from the non-party entities that received the rebates—an allegation not found in

the First Amended Complaint—is immaterial because Caesars cannot disregard the corporate form in order to support such a claim;

- Caesars’ intentional interference with contractual relations claim is barred because neither Seibel nor Green was a stranger to the Development Agreements. Caesars’ efforts to cast the stranger rule as a legal oddity recognized in only a few jurisdictions does not hold true. The stranger rule is widely recognized and applied in numerous jurisdictions. It is the jurisdictions relied upon by Caesars that are the outliers; and
- Caesars’ fraudulent concealment claim fails because neither Seibel nor Green owed any duty to disclose any facts to Caesars concerning the rebates. Caesars’ efforts to cobble together inferences based upon inferences miss the mark. The Development Agreements were standard, commercial transactions. Seibel and Green were not parties to those agreements and did not have a special relationship with Caesars arising out of those agreements necessary to support a fraud theory.

In sum, this Court should dismiss Caesars’ newly asserted tort claims (Counts IV through VIII in the First Amended Complaint) and also dismiss Green as a defendant—who was at all times simply serving as an agent of others. The parties must return to focusing on the primary issue in this litigation: whether Caesars and Ramsay may continue to reap all the benefits of the Development Agreements without any of the attendant burdens.¹

II. CAESARS’ RED HERRINGS

A. Corporate Form Matters—Caesars Cannot Pierce the Corporate Veil Without Any (Let Alone Sufficient) Allegations to Support an Alter Ego Theory.

“The corporate cloak is not lightly thrown aside.” *Baer v. Amos J. Walker, Inc.*, 85 Nev. 219, 220, 452 P.2d 916, 916 (1969). To hold a shareholder or a member liable for the debts or liabilities of a corporation or a limited liability company, respectively, “a claimant must show that the shareholder or member acted as the alter ego of the corporation [or limited liability company].”

¹ The Opposition to the Motion shows that Caesars wants the story to end upon its termination of the Development Agreements. Caesars’ strained effort to control the narrative simply fails since it will have to explain how it can continue to operate successful restaurants without sharing the profits of those restaurants with its former business partners (the Development Entities)—without whom it would have never conceived of the restaurants.

1 *Volvo Constr. Equip. Rents, Inc. v. NRL Rentals, LLC*, 614 F. App'x 876, 878 (9th Cir. 2015)
2 (internal quotation marks omitted) (analyzing Nevada law).

3 Throughout the Opposition, Caesars attempts to throw aside the corporate cloak even
4 though it has not included an alter ego theory in the First Amended Complaint or alleged any facts
5 that would support an alter ego theory. (*See* Opp'n at 2:17-18 (arguing that Seibel "asks the Court
6 to allow his corporate shell game to be sanctioned by this court so as to allow him to escape
7 liability"), 13:24 – 14:2 (arguing that the entities who received the rebates were owned by Seibel).)
8 Caesars may not assert such a theory, for the first time, in opposing dismissal of its newly-asserted
9 tort claims.

10 Further, Caesars' claims for civil conspiracy and intentional interference with contractual
11 relations ask this Court to disregard the reality that Seibel and Green were members, officers,
12 and/or agents of (i) the Development Entities and (ii) the non-party entities who received the
13 rebates. With that in mind, Caesars' newly-asserted tort claims disregard long-standing corporate
14 law providing for corporate independence and heightened protection to officers, agents,
15 shareholders, and members of corporate entities. *Baer*, 85 Nev. at 220, 452 P.2d at 916.

16 The corporate form matters in Nevada. This Court should reject Caesars' efforts to
17 disregard the corporate form in its Opposition to this Motion. Caesars has not asserted an alter ego
18 theory of liability in the First Amended Complaint and has no basis to hold Seibel and Green
19 individually liable for acts allegedly committed by their corporate principals.

20 **B. Caesars' Allegations of "Commercial Bribery" are False and Nothing More**
21 **than a Distraction from Caesars' Failure to Allege Viable Claims for Relief.**

22 Caesars argues that the rebates received by the non-party entities somehow constitute
23 commercial bribery. (Opp'n at 6:5 – 7:15.) This argument is not only useless for purposes of this
24 Motion—Caesars has not attempted to assert a claim against Seibel and Green as an alleged victim
25 of commercial bribery—it is premised on a flawed reading of the applicable statute.

26 Under Nevada law, commercial bribery occurs if a person, with corrupt intent, offers,
27 confers, or agrees "to confer any benefit upon any employee, agent or fiduciary without the consent
28 of the employer or principal of that employee, agent or fiduciary in order to influence adversely that

1 person's conduct in relation to the commercial affairs of his or her employer or principal"
2 NRS 207.295(1). In other words, commercial bribery requires a person to corruptly bribe an
3 "employee, agent or fiduciary" to act in a manner that is contrary to the interests of the employee's,
4 agent's, or fiduciary's employer or principal.

5 Here, even assuming the allegations of the First Amended Complaint are true, neither
6 Seibel, Green, the Development Entities, nor the non-party entities who received the rebates
7 conferred any benefit on any "employee, agent or fiduciary" of the vendors (or any of the Caesars'
8 entities and affiliates) in order to induce them to act in a manner contrary to the interests of their
9 employers or principals. As a result, Seibel and Green did not commit commercial bribery.²

10 Caesars' labeling the rebates as a form of "commercial bribery," while colorful, is nothing
11 more than hyperbole and an effort to distract from the failings of the First Amended Complaint.³

12 III. ARGUMENT

13 A. Caesars' Civil Conspiracy Claim Is Legally Deficient as a Matter of Law.

14 Caesars argues that the intra-corporate conspiracy doctrine does not bar its civil conspiracy
15 claim because (i) "factual interferences must be drawn in favor of Caesars' allegations that Green
16 and Seibel acted for their individual advantage, rather than for the benefit of the Seibel-Affiliated
17 Entities"; and (ii) application of the intra-corporate conspiracy doctrine is inappropriate at the
18 dismissal stage because the analysis is "fact-intensive." (Opp'n at 8:23 – 11:6.) These arguments
19 fall short.⁴

20 ///

21 ///

22 ///

23 _____
24 ² As an aside, the fact that some vendors issued Form W-2s to the non-party entities contravenes the notion that anything nefarious was occurring with regard to the rebates.

25 ³ Many of the asserted "facts" contained in Caesars' Opposition are incorrect or misleading. (*See* Opp'n at 3:1 – 7:15.)
26 Regardless, the vast majority of them are irrelevant because they relate to Caesars' declaratory relief claims, which are
27 not at issue in the Motion. Stated differently, whether Caesars sets forth sufficient facts to support its declaratory relief
28 claims does not matter in determining whether Caesars set forth sufficient facts to support its newly-asserted tort claims.

⁴ Caesars further argues that dismissal was sought based on Caesars' failure to name BR 23 Venture, LLC and Future
Star Hospitality, LLC as additional counterclaim defendants. (Opp'n at 11:7-17.) Not true—Seibel and Green argue that
they could not legally conspire with their principals, which would include conspiring with these unnamed entities.

1 **1. *Caesars Does Not Allege Facts Sufficient to Infer that Seibel and Green***
2 ***Acted Outside the Scope of Their Corporate Authority.***

3 As detailed in the Motion, the intra-corporate conspiracy doctrine bars a claim for civil
4 conspiracy between a corporation and its agents unless the agents act outside the scope of their
5 authority—i.e., “as individuals for their individual advantage.” *See Collins v. Union Fed. Sav. &*
6 *Loan Assn.*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983); *accord Laxalt v. McClatchy*, 622 F. Supp.
7 737, 745 (D. Nev. 1985) (stating that agents and employees cannot conspire among themselves or
8 with the corporation when acting in the course and scope of their agency or employment). This rule
9 applies between a corporation and its subsidiaries, and the agents of its subsidiaries. *See, e.g.,*
10 *Official Comm. of Unsecured Creditors of Verestar, Inc. v. Am. Tower Corp. (In re Verestar, Inc.)*,
11 343 B.R. 444, 483 (Bankr. S.D.N.Y. 2006) (“[A] parent corporation cannot conspire with its
12 subsidiary or its subsidiary’s agent.”). ***Indeed, a corporation can only act through its agents, and***
13 ***therefore, alleging an intra-corporate conspiracy simply defies the reality of the corporate***
14 ***form—an issue that plagues Caesars’ Opposition to this Motion.*** *Cf. United States v. Comput.*
15 *Scis. Corp.*, 689 F.2d 1181, 1190 (4th Cir. 1982) (“[W]e would not take seriously . . . an assertion
16 that a defendant could conspire with his right arm, which held, aimed and fired the fatal weapon.”);
17 *accord Copperweld Corp., v. Independence Tube Corp.*, 467 U.S. 752, 771-72 (1984) (explaining
18 that “corporate actions [by multiple entities with a unity of interest] are guided or determined not by
19 two separate consciousnesses, but one,” and are “not unlike a multiple team of horses drawing a
20 vehicle under the control of a single driver.”).

21 To determine whether agents are acting within the scope of their authority, courts look to the
22 law of agency for guidance. Under basic principles of agency law, an agent’s conduct must be
23 *solely* for his or her own advantage in order to take the agent’s conduct outside the scope of his or
24 her corporate authority—mixed motives are insufficient. *See, e.g., General Refractories Co. v.*
25 *Fireman’s Fund Ins. Co.*, 337 F.3d 297, 313 (3d Cir. 2003) (providing that an officer must act for
26 his sole personal benefit in order to apply the exception to the intra-corporate conspiracy doctrine);
27 *Litchie v. U.S. Home Corp.*, 655 F. Supp. 1026, 1028 (D. Utah 1987) (providing that an agent who
28 acts with “mixed motives” acts “within the scope of employment”) (citing RESTATEMENT (SECOND)

1 OF AGENCY § 235 cmt. b (1958)). *Moreover, where “a corporation does not complain about its*
2 *agent’s actions, then the agent cannot be held to have acted contrary to the corporation’s*
3 *interests.”* *Powell Indus., Inc. v. Allen*, 985 S.W.2d 455, 457 (Tex. 1998) (emphasis added).

4 With those legal principles in mind, Caesars’ efforts to plead (by inference) around the
5 intra-corporate conspiracy doctrine are unavailing. Caesars has not alleged any facts indicating that
6 Seibel and Green were acting for their sole personal gain; instead, Caesars alleges that the rebates
7 were received by non-party entities (i.e., BR 23 Venture, LLC, and Future Star Hospitality
8 Consulting, LLC) and that Green was acting on behalf of Seibel. (FAC ¶¶ 137-39.) The First
9 Amended Complaint demonstrates that Seibel and Green acted to further the interests of their
10 corporate principals, thus defeating any notion that they could have legally conspired with their
11 corporate principals.

12 Under Caesars’ logic—that an agent’s motive need not be solely for his or her own personal
13 gain in order to support a viable civil conspiracy claim—Caesars’ officers/employees could be sued
14 for engaging in a civil conspiracy with Caesars simply if Seibel alleged that those officers/
15 employees stood to gain *some* personal benefit from causing Caesars to terminate the Development
16 Agreements (e.g., a performance bonus or salary increase). This approach would turn every
17 standard, commercial dispute into a three-ring circus with numerous corporate agents unnecessarily
18 being subjected to liability that should stop at the actual parties to the transaction. Needless to say,
19 the law does not favor such an expansive approach to liability in the context of business disputes.

20 Moreover, Caesars does not allege (and could not allege) that any of the Development
21 Entities (or the non-party entities who received the rebates) objected to Seibel’s or Green’s conduct.
22 If the conduct was acceptable to their principals, neither Seibel nor Green can “be held to
23 have acted contrary to [their principals’] interests.” *See Powell Indus., Inc.*, 985 S.W.2d at 457.

24 For these reasons, this Court should reject the notion that Seibel and Green conspired with
25 the Development Entities (or the non-party entities who received the rebates).

26 **2. It is Not Premature to Apply the Intra-Corporate Conspiracy Doctrine.**

27 Caesars’ argument that the intra-corporate conspiracy doctrine cannot be raised on a motion
28 to dismiss is simply wrong. Courts dismiss civil conspiracy claims where the pleadings reveal an

1 application of the intra-corporate conspiracy doctrine. *See, e.g., Honghui Deng v. Bd. of Regents*
2 *for the Nev. Sys. of Higher Educ.*, No. 2:17-cv-03019-APG-VCF, 2020 U.S. Dist. LEXIS 53930, at
3 *7 (D. Nev. Mar. 25, 2020) (“He also does not allege that the defendants, who both work for the
4 same entity along with all of the other alleged co-conspirators, acted as individuals for their
5 individual advantage, so the intra-corporate conspiracy doctrine applies to the facts currently
6 alleged.”). This makes sense, as otherwise, any civil conspiracy claim involving an agent and his or
7 her principal would make its way past the pleading stage and into discovery.

8 Indeed, *even Caesars and its agents* have successfully obtained dismissal (on a motion to
9 dismiss) of a civil conspiracy claim in the past based on the intra-corporate conspiracy doctrine:

10 Plaintiffs also argue in their response to defendants’ motion
11 to dismiss that civil conspiracies among corporate employees are
12 actionable if the conspirators are independently seeking individual
13 pecuniary gain through unlawful conduct. First, plaintiffs’ allegations
14 are conclusory. Second, plaintiffs cannot maintain a civil conspiracy
15 claim against Caesars and its employees as a matter of law. Defendants
16 in this action are Caesars and numerous Caesars employees. Plaintiffs
make no allegations that the individual defendants were acting outside
of their official capacities on behalf of the corporation Plaintiffs
also plead no facts to assert that the individual defendants sought or
achieved individual pecuniary gain through unlawful conduct.
Accordingly, plaintiffs’ claim for civil conspiracy will be dismissed.

17 *Jamil v. Caesars Entm’t Corp.*, No. 2:14-cv-01363-JCM-GWF, 2015 U.S. Dist. LEXIS 57727, at
18 *12-13 (D. Nev. Apr. 30, 2015) (citations omitted). Based on the arguments made by Caesars in
19 *Jamil*, Caesars’ attempt to convince this Court that it must forego considering application of the
20 intra-corporate conspiracy doctrine until the summary judgment stage is intellectually dishonest.

21 Accordingly, this Court may decide—as a matter of law—that the intra-corporate
22 conspiracy doctrine bars Caesars’ civil conspiracy claim.

23 **3. *Caesars Fails to Allege an Underlying Tort or Wrongful Act Committed by***
24 ***Seibel and Green Sufficient to Support its Civil Conspiracy Claim.***

25 The above infirmities aside, Caesars fails to allege any viable tort or underlying wrong
26 committed by Seibel and Green (as opposed to the non-party entities who received the rebates)—an
27
28

essential element of a civil conspiracy claim.⁵ *See, e.g., Paul Steelman Ltd. v. HKS, Inc.*, No. 2:05-cv-01330-BES-RJJ, 2007 U.S. Dist. LEXIS 5886, at *7 (D. Nev. Jan. 24, 2007) (noting that a civil conspiracy claim “must arise from some underlying wrong”). Caesars also fails to allege how it was harmed by the rebates, e.g., that it would have paid less for product for its restaurants. Thus, even if Caesars can somehow avoid application of the intra-corporate conspiracy doctrine, it lacks allegations showing a viable tort or underlying wrongful act committed by Seibel and Green needed to support its civil conspiracy claim.

In sum, there are no allegations in the First Amended Complaint that this Court may reasonably construe in Caesars’ favor in order to imply that Seibel and Green acted outside the scope of their authority as agents of their corporate principals. The intra-corporate conspiracy doctrine bars Caesar’s civil conspiracy claim, and, in any event, Caesars has failed to allege a viable tort or underlying wrong by Seibel and Green to support such a claim. *See Collins*, 99 Nev. at 303, 662 P.2d at 622; *Paul Steelman Ltd.*, No. 2:05-cv-01330-BES-RJJ, 2007 U.S. Dist. LEXIS 5886, at *7. The Motion should be granted as to Count IV of the First Amended Complaint.

B. Caesars Fails to Identify any Allegations Supporting its Breach of the Implied Covenant of Good Faith and Fair Dealing Claim; the Development Entities Took No Actions Concerning Rebates and Received No Benefits from them.

Caesars, crafting exemplary straw men, refutes arguments that were not made by the Development Entities in a misguided effort to salvage its breach of the implied covenant of good faith and fair dealing claim. (Opp’n at 12:6 – 13:13.) Specifically, Caesars argues that the Development Entities contend: (a) that this claim is subject to a heightened pleading standard; and (b) that the rebates did not increase vendor prices. A plain reading of the Motion proves otherwise.

First, the Development Entities did not contend that Caesars’ implied covenant claim is subject to a heightened pleading standard. Rather, the Development Entities argued that Caesars could not rely solely on legal conclusions to support this claim. *See, e.g., Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870, 875, 8 P.3d 837, 840 (2000) (“A bare allegation is not enough. . . . [A]

⁵ As discussed above, Seibel and Green did not engage in commercial bribery. (*Contra* Opp’n at 11:3-6.)

1 complaint must set forth sufficient facts to establish all necessary elements of a claim for relief”)
2 (internal quotation marks omitted).

3 Second, the Development Entities assumed (*arguendo*) that the rebates hurt the restaurants’
4 bottom lines (which assumption is not supported by any factual allegations in the First Amended
5 Complaint). Even so, the alleged harm would have negatively impacted them to the same extent as
6 it would have impacted Caesars because under the Development Agreements, the Development
7 Entities were compensated based on net profits of the restaurants. (*See id.* ¶ 192.) Higher operating
8 expenses resulting in lower profits would translate into less revenue for the Development Entities.
9 Common sense dictates that the Development Entities would act in a way designed to make more
10 money, not less. Absent facts suggesting that the Development Entities acted out of spite, it is
11 unreasonable for this Court to infer that the Development Entities acted in a manner designed to
12 yield lower returns on their investments by diverting money away from the restaurants.⁶

13 Regardless, the fatal flaw of Caesars’ breach of the implied covenant of good faith and fair
14 dealing claim is simple: Caesars fails to allege any facts supporting the bare assertion that the
15 Development Entities actually solicited, coerced, agreed to accept, and/or actually accepted
16 “benefits from vendors based on the understanding that the benefit would adversely influence
17 Defendants’ actions in relationship to Caesars’ commercial affairs” (FAC ¶ 180.) Rather,
18 Caesars alleges that Seibel and Green (not the Development Entities) were involved in discussions
19 with vendors on behalf of other, unnamed entities—BR 23 Venture, LLC and Future Star
20 Hospitality Consulting, LLC. (*Id.* ¶¶ 138-40, 142-43.) That omission is absolutely fatal to Caesars’
21 implied covenant claim. Further, Caesars alleges that its vendors paid rebates to these other,
22 unnamed entities. (*Id.* ¶ 137.) Absent facts indicating that any of the Development Entities were
23 involved in seeking or securing rebates from vendors, Caesars is unable to show that the
24 Development Entities acted in bad faith under the Development Agreements.

25
26
27 ⁶ Additionally, Caesars’ argument that it allegedly expected to account for rebates in calculating expenses for the
28 restaurants is immaterial to the Motion. (Opp’n at 12:24 – 13:5 (citing one of the Development Agreements, not the First Amended Complaint).) The Motion is limited to an analysis of the claims actually pled by Caesars—not *post hoc* efforts by Caesars to rely on external documents in order to create inferences supporting deficiently-pled claims.

1 In sum, Caesars’ breach of the implied covenant of good faith and fair dealing claim fails
2 because there are no allegations to support the bare assertion that the Development Entities were
3 involved in or benefited from the rebates. *See Conway*, 116 Nev. at 875, 8 P.3d at 840 (“A bare
4 allegation is not enough.”). The opposite is true, and therefore, the Motion should be granted as to
5 Count V of the First Amended Complaint.

6 **C. Caesars’ Unjust Enrichment Claim Fails Because it Alleges that Non-Party**
7 **Entities Received the Rebates—not Seibel and Green.**

8 Caesars argues that its unjust enrichment claim is viable because (i) it “does not concede”
9 that the rebates were received by non-party entities; and (ii) Seibel and Green indirectly benefited
10 from the rebates. (Opp’n at 13:16 – 14:4.) These arguments likewise fail.

11 First, whether Caesars concedes that Seibel and Green did, or did not, receive the rebates is
12 immaterial. This Court looks to the First Amended Complaint in evaluating the viability of
13 Caesars’ unjust enrichment claim. In doing so, this Court will find that Caesars has alleged that the
14 rebates “were set-up to be paid to other entities owned by Mr. Seibel including, but not limited to,
15 BR 23 Venture, LLC and Future Star Hospitality Consulting, LLC.” (FAC ¶ 136.) Because
16 Caesars may not rewrite its First Amended Complaint in response to this Motion, this Court should
17 find that neither Seibel nor Green received the alleged rebates from the vendors, which precludes
18 any inference that they could have been unjustly enriched by those rebates. (*See id.*)

19 Second, that Seibel or Green may have ultimately received distributions or income from the
20 non-party entities who received the rebates does not subject them to a claim for unjust enrichment.
21 Where an individual is not a party to a transaction, he cannot be held liable for unjust enrichment
22 arising from that transaction. *See, e.g., Hillcrest Invs., Ltd. v. Am. Borate Co.*, No. 2:15-cv-01613-
23 RFB-GWF, 2016 U.S. Dist. LEXIS 135811, at *20-21 (D. Nev. Sep. 30, 2016) (“Plaintiffs have not
24 cited and the Court is not aware of any legal authority that permits [unjust enrichment] claims based
25 only on a transaction with an entity not party to the instant suit.”); *accord Baer*, 85 Nev. at 220, 452
26 P.2d at 916 (“The corporate cloak is not lightly thrown aside.”). Seibel and Green stand separate
27 and apart from the non-party entities; as discussed above, Caesars has not alleged an alter ego
28 theory of liability with respect to those non-party entities. The corporate form, which is respected

1 in Nevada, precludes Caesars from seeking to hold Seibel and Green personally responsible for
2 money alleged to have been unjustly remitted to and retained by BR 23 Venture, LLC and Future
3 Star Hospitality Consulting, LLC.

4 In sum, because Caesars does not allege that Seibel and Green received any rebates, they
5 could not have been unjustly enriched as a matter of law. *See Unionamerica Mortg. & Equity Tr. v.*
6 *McDonald*, 97 Nev. 210, 212-13, 626 P.2d 1272, 1274 (1981) (reversing judgment on a claim for
7 unjust enrichment where the defendant was not unjustly enriched); *Hillcrest Invs., Ltd.*, No. 2:15-
8 cv-01613-RFB-GWF, 2016 U.S. Dist. LEXIS 135811, at *20-21 (D. Nev. Sep. 30, 2016) (“Plaintiff
9 cannot state a claim for unjust enrichment as plaintiff conferred no benefit on [Defendant].”). The
10 Motion should be granted as to Count VI of the First Amended Complaint.

11 **D. Caesars’ Intentional Interference Claim Fails as a Matter of Law.**

12 **1. *The Stranger Rule is Widely Accepted and Bars Caesars’ Intentional***
13 ***Interference with Contractual Relations Claim.***

14 Caesars argues that its intentional interference with contractual relations claim is viable
15 because the “stranger” rule is a peculiarity of a few jurisdictions. (Opp’n at 14:7 – 15:24.)
16 Wrong—many jurisdictions have adopted and applied the stranger rule.

17 As stated in *American Jurisprudence*, a widely-recognized legal encyclopedia that is
18 routinely cited by the Nevada Supreme Court in a multitude of contexts: “[T]he tort of intentional
19 interference with contractual or business relations may be maintained only against a person who is a
20 stranger to the contractual or business relationship at issue.” 44B *Am. Jur. 2d Interference* § 6.
21 Stated differently, for “a defendant to be liable for tortious interference with contractual relations,
22 ***one must be a stranger to both the contract and the business relationship giving rise to the***
23 ***contract.***” *Id.* (emphasis added).

24 *American Jurisprudence* goes on to explain how an individual is “not a stranger to the
25 contract, for purposes of a claim for tortious interference, just because one is not a party to the
26 contract.” *Id.* For example, neither a “third party who would benefit from the business
27 relationship” nor “a defendant [who] has a financial interest in one of the parties to the contract or
28 in the contract or business relationship” is a stranger to the contract—even if the defendant is

1 neither “an intended beneficiary” nor “a signatory to the contract”—and thus, “cannot be liable for
2 tortious interference with business relations.” *Id.*

3 Numerous jurisdictions have adopted and applied the stranger rule. *See, e.g., Waddell &*
4 *Reed, Inc. v. United Inv’rs Life Ins. Co.*, 875 So. 2d 1143, 1157 (Ala. 2003) (“One cannot be guilty
5 of interference with a contract even if one is not a party to the contract so long as one is a
6 participant in a business relationship arising from interwoven contractual arrangements that include
7 the contract.”); *Atlanta Market Ctr. Mgmt. Co. v. McLane*, 503 S.E.2d 278, 283 (Ga. 1998) (“[I]n
8 order for a defendant to be liable for tortious interference with contractual relations, the defendant
9 must be a stranger to both the contract and the business relationship giving rise to and underpinning
10 the contract.”); *Beco Constr. Co. v. J-U-B Eng’rs, Inc.*, 184 P.3d 844, 849 (Idaho 2008) (“It follows
11 that a claim for tortious interference with contractual relations requires proof that the defendant is a
12 stranger to the contract with which the defendant allegedly interfered and to the business
13 relationship giving rise to the contract.”); *Wagner v. MSE Tech. Applications, Inc.*, 383 P.3d 727,
14 732 (Mont. 2016) (“This tort may be maintained only against a person who is a stranger to the
15 contractual or business relationship at issue.”); *Cooper Indus., LLC v. Pepsi-Cola Metro. Bottling*
16 *Co.*, 475 S.W.3d 436, 442-43 (Tex. Ct. App. 2015) (“A person must be a stranger to a contract to
17 interfere tortiously with it.”); *see also Edwards v. Prime Inc.*, 602 F.3d 1276, 1302-003 (11th Cir.
18 2010) (applying Alabama law to find stranger rule barred claim for tortious interference). In reality,
19 it is the federal authority relied upon by Caesars (in which the courts are predicting what the highest
20 courts of Pennsylvania and California would rule) that are the outliers.

21 The widespread acceptance of the stranger rule is driven by the sound policy underlying its
22 application. Business transactions often involve numerous interwoven relationships between
23 individuals, accountants, lawyers, and related entities and affiliates, including their officers,
24 directors, agents, managers, members, and employees. If the stranger rule did not exist, a plaintiff
25 could seek to transform an ordinary breach of contract claim into an intentional interference claim
26 simply by naming the non-contracting (but substantially-involved) individuals of the contracting
27 parties as defendants in the same action.

1 For example, under Caesars' analysis, the Development Entities, alongside suing Caesars
2 for breach of contract and breach of the implied covenant of good faith and fair dealing, could sue
3 the Chief Executive Officer, the Chief Financial Officer, and/or the General Counsel of Caesars for
4 intentionally interfering with the Development Agreements to the extent that they were involved in
5 the decision to terminate them. The Development Entities did not do so because the stranger rule
6 forecloses such a claim given the relatedness of those individuals to Caesars.

7 Here, neither Seibel nor Green is a stranger to the Development Agreements. To hold them
8 liable for intentionally interfering with the Development Agreement would be contrary to law and
9 sound public policy. *Waddell & Reed, Inc.*, 875 So. 2d at 1157.

10 **2. *There are Simply No Facts to Support the Bare Legal Conclusion that***
11 ***Seibel and Green Actually Interfered with the Development Agreements.***

12 Caesars argues that the First Amended Complaint sets forth facts sufficient to support the
13 notion that Seibel's and Green's respective conduct actually interfered with the Development
14 Agreements because Caesars alleged that "Seibel and Green interfered with revenues arising out of
15 the Seibel Agreements that Caesars was entitled to receive, 'including by diverting money and/or
16 preventing Caesars from obtaining product at lesser costs.'" (Opp'n at 15:25 -16:4 (quoting FAC ¶
17 192, 196).) This argument is misleading.

18 The Development Agreements speak to monies to be earned by the Development Entities
19 through design, construction, development, and operation of the restaurants. The payment
20 obligations under the Development Agreements comprise capital contributions, if any, from the
21 Development Entities to Caesars and sharing of profits by Caesars with the Development Entities.

22 More importantly, Caesars does not allege that the Development Entities breached any
23 express term of the Development Agreements as it pertains to the rebates. Rather, Caesars alleges
24 that the Development Entities breached the implied covenant of good faith and fair dealing by not
25 disclosing the rebates to Caesars. However, as noted above, Caesars' implied covenant claim is not
26 legally sound and requires this Court to infer that the Development Entities acted in a manner
27 designed to reduce their income. Because no acts were committed by the Development Entities in
28 violation of the implied covenant of good faith and fair dealing, neither Seibel nor Green could

1 have intentionally caused the Development Entities to breach the implied covenant of good faith
2 and fair dealing. *See J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 276, 71 P.3d 1264, 1268 (2003)
3 (holding a “plaintiff must demonstrate that the defendant intended to induce the other party to
4 ***breach the contract*** with the plaintiff.”) (emphasis added); *see also* RESTATEMENT (SECOND) TORTS
5 § 766 cmt. f (1979) (noting that the alleged interference “must be applicable to the particular
6 performance that the third person has been induced or caused not to discharge.”).

7 In sum, Caesars’ intentional interference with contractual relations claim fails because (i)
8 neither Seibel nor Green is a stranger to the Development Agreements; and (ii) Caesars has not
9 alleged any actual interference by Seibel or Green with any contractual obligations of the
10 Development Entities under the Development Agreements. The Motion should be granted as to
11 Count VII of the First Amended Complaint.

12 **E. Caesars’ Fraudulent Concealment Claim Fails Because Neither Seibel nor**
13 **Green Owed Caesars Any Duty to Disclose Matters Concerning the Rebates.**

14 Caesars argues that its fraudulent concealment claim is viable because: (i) it required other
15 disclosures (completely unrelated to the rebates) from Seibel; and (ii) it had an unremarkable
16 business relationship with Seibel and Green (in their capacities as representatives of the
17 Development Entities). (Opp’n at 16:5 – 17:22.) Both arguments fail.

18 As explained in the Motion, under Nevada law, for “a mere omission to constitute
19 actionable fraud, a plaintiff must first demonstrate that the defendant had a duty to disclose the fact
20 at issue,” such as a fiduciary relationship or a special relationship “where a party reasonably imparts
21 special confidence in the defendant and the defendant would reasonably know of this confidence.”
22 *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1486, 970 P.2d 98, 111 (1998), *overruled on other*
23 *grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 270-71, 21 P.3d 11, 15 (2001). By contrast, where
24 the relationship between the parties is a standard commercial relationship, there is no duty of
25 disclosure. *See Nev. Power Co. v. Monsanto Co.*, 891 F. Supp. 1406, 1416-17 (D. Nev. 1995).

26 Caesars’ *post hac* efforts to create the appearance of a special relationship with Seibel and
27 Green are unavailing. Most notably, Caesars attempts to disregard the corporate form by arguing
28 that “Seibel and Green bargained for, performed, and benefited under the [Development]

1 Agreements.” (*See* Opp’n at 17:6-7.) In reality, Caesars only contracted with the Development
2 Entities—not Seibel and Green. The fact that the Development Entities were parties to contracts
3 with Caesars did not suddenly cause their agents to have a special relationship with Caesars.

4 Nevertheless, Caesars argues—without supporting authority—that Seibel entered into a
5 special relationship with Caesars by signing the Development Agreements (as an officer of the
6 Development Entities), managing the Development Entities, and receiving confidential information
7 related to the restaurants. (*Id.* at 17:8-12.) Under this (flawed) logic, virtually every commercial
8 transaction gives rise to a special relationship among the signatories to the contracting parties.
9 Caesars cites no law allowing it to morph a breach of contract claim into a tort claim in such
10 fashion.

11 As explained in the Motion, there are no allegations to suggest that Seibel or Green had a
12 special relationship with Caesars. Indeed, neither Seibel nor Green was a party to any of the
13 Development Agreements. *See Dow Chem. Co.*, 114 Nev. at 1487, 970 P.2d at 110 (holding that
14 where a party is “not directly involved in the transaction,” it has no duty of disclosure). Regardless,
15 there are no facts alleged to infer that Seibel and Green had a special relationship with Caesars that
16 would impose any duty on them to disclose anything to Caesars related to the rebates. *See Nev.*
17 *Power Co.*, 891 F. Supp. at 1416-17 (“The court finds . . . that Defendants’ relationship with
18 [Plaintiff] was a straightforward vendor-vendee relationship, which, as a matter of law, creates no
19 fraud-based duty to disclose.”).⁷ And saying such a relationship existed does not make it so (even if
20 it comes from Caesars).

21 In sum, Caesars’ fraudulent concealment claim fails as a matter of law because neither
22 Seibel nor Green owed Caesars any duty to disclose the rebates. *See id.*; *see also Dow Chem. Co.*,
23 114 Nev. at 1487, 970 P.2d at 110. The Motion should be granted as to Count VIII of the First
24 Amended Complaint.

27 ⁷ As a practical matter, the non-party entities did not receive rebates from vendors until the various restaurants were
28 operational—*after* the Development Agreements were executed. As a result, there was nothing for Seibel and Green to
allegedly “conceal” at the time the Development Agreements were executed.

IV. CONCLUSION

The excessive bombast that permeates Caesars' Opposition notwithstanding, the newly-asserted tort claims (Counts IV through VIII of the First Amended Complaint) cannot survive NRCP 12(b)(5) scrutiny and must be dismissed. So, too, Green must be dismissed from this action. The corporate form is respected in Nevada, and Caesars has not explained why it should be disregarded as it pertains to the Development Entities (and the non-party entities who received the rebates). Further, no amount of rhetoric or misdirection from Caesars will make up for the dearth of facts underlying its newly-asserted tort claims.⁸

This Court should put an end to Caesars' efforts to distract from its ongoing scheme with Ramsay to reap all the benefits of the Development Agreements without being inconvenienced by any of their attendant burdens. The Motion to Dismiss should be granted in its entirety.

DATED this 13th day of May, 2020.

BAILEY ♦ KENNEDY

By: /s/ John R. Bailey

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⁸ Further, although outside the scope of the Motion, Caesars was aware of the rebates years before seeking leave to file its First Amended Complaint.

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 13th day of May, 2020, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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TAB 68

1 CASE NO. A-17-751759-B

2 DOCKET U

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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ROWEN SEIBEL,

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Plaintiff,

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vs.

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PHWLTV LLC,

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Defendant.

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REPORTER'S TRANSCRIPT

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OF

MOTION

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(TELEPHONIC HEARING)

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BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

21

DISTRICT COURT JUDGE

22

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DATED WEDNESDAY, MAY 20, 2020

24

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REPORTED BY: PEGGY ISOM, RMR, NV CCR #541

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PA01099

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3 (PURSUANT TO ADMINISTRATIVE ORDER 20-10, ALL MATTERS IN
4 DEPARTMENT 16 ARE BEING HEARD VIA TELEPHONIC
APPEARANCE)

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PA01101

1 LAS VEGAS, NEVADA; WEDNESDAY, MAY 20, 2020

2 11:48 A.M.

3 P R O C E E D I N G S

4 * * * * *

09:47:45

5
6 THE COURT: All right. Good morning. We have
7 the last matter on calendar, and that's Rowen Seibel
8 vs. PHWLTV LLC, et al.

11:48:23

9 Let's go ahead and place our appearances on
10 the record. We'll start first with the plaintiff and
11 move on to the defense.

11:48:39

12 MR. BAILEY: Good morning, and almost good
13 afternoon. Your Honor, this is John Bailey, Josh
14 Gilmore, and Paul Williams from Bailey Kennedy on
15 behalf of Mr. Seibel, Mr. Green, and the development
16 entities.

17 THE COURT: All right. Do we have
18 Mr. Pisanelli?

11:48:57

19 THE COURT CLERK: There are three people
20 mooted. Maybe *4?

21 THE COURT: Can we *4. Somebody -- I think
22 three people are mooted right now.

11:49:07

23 MS. MERCERA: Good morning, your Honor. This
24 is Magali Mercera on behalf of the Desert Palace Inc.,
25 Paris Las Vegas Operating Company, PHWLTV, and the

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PA01102

11:49:13 1 Boardwalk Regency Corporation.

2 THE COURT: Thank you, ma'am.

3 MS. WATKINS: Good morning, your Honor. This
4 is Brittnie Watkins.

11:49:24 5 THE COURT: Can you state your name again
6 because it's a little muffled.

7 MS. WATKINS: Yes. This is Brittnie Watkins
8 also on behalf of the Caesars entities.

9 THE COURT: Thank you, ma'am.

11:49:42 10 Anyone else?

11 MR. PISANELLI: Your Honor, this is James
12 Pisanelli. I made my appearance. I'm not sure you
13 heard me.

14 THE COURT: I can hear you now, sir. All
11:49:51 15 right.

16 MR. PISANELLI: Okay. Thank you, your Honor.
17 I'm here on behalf of the Caesars entities as well.

18 THE COURT: Thank you, sir.

19 And let's go ahead and deal specifically with
11:49:59 20 the motion to dismiss Counts Four, Five, Six, Seven,
21 and Eight of Caesars' first amended complaint.

22 MR. GILMORE: Thank you, your Honor. Again,
23 this is Joshua Gilmore on behalf of Mr. Seibel,
24 Mr. Green, and the collectively referring to as the
11:50:21 25 development entities. Please stop me any time if you

11:50:23 1 have trouble hearing me.

2 This is our motion to dismiss the first
3 amended complaint that was filed a couple of months ago
4 by the Caesars entities. (indiscernible) atypical to
11:50:39 5 see a motion to dismiss this far along in the midst of
6 the case. Your Honor, of course, probably knows the
7 case better than our office. (telephonic audio drop)
8 plaintiffs months ago. We understand it.

9 Furthermore, (indiscernible) in this case has
11:50:54 10 arisen from a decision made by Caesars, one of the
11 largest gaming companies, back in 2016 determining that
12 a series of contracts that it had with various entities
13 that were previously owned here, whole or in part, by
14 Mr. Seibel. Those entities being the development that
11:51:13 15 we've referred to.

16 Discovery has really centered around focused
17 on that decision and what comes from it. And from our
18 perspective really there's a central issue. Whether
19 Caesars may continue to operate these various
11:51:31 20 restaurants that, setting aside the recent COVID-19
21 closures, have by all accounts been very successful and
22 very profitable. Being able to continue to enjoy the
23 benefits of those restaurants that derive from these
24 contracts without being inconvenienced by their burden,
11:51:50 25 that being either as to continue to remit the profits

11:51:55 1 that arise from those restaurants due to the
2 development entities or buy out the development
3 entities' interest in those restaurants. Not just take
4 the money and keep it for himself while continuing to
11:52:09 5 operate the restaurant.

6 So that's -- that, what we perceive, has
7 really been the central issue and continues to be the
8 central issue.

9 There's been a (indiscernible) reason we
11:52:23 10 believe on Caesars' part to look at other conduct and
11 take away from that issue at what gives rise to this
12 first amended complaint that is focused on rebates that
13 were being received by nonparty entities, I'm going to
14 refer to them as, today, nonparty entities Caesars
11:52:45 15 chose not to name or join as defendants in this action.

16 The arguments that were made in the past that
17 aren't really in front of you today but made before
18 was, Well, we didn't know about this until discovery
19 got going and we had a chance to take different
11:53:05 20 depositions.

21 We didn't agree with that. We think the
22 evidence shows they were aware of it. Be that as it
23 may, we would grant the file this first amended
24 complaint. And if these claims are allowed to proceed
11:53:20 25 past the pleading stage and into discovery, it's going

11:53:23 1 to change the landscape of this case. And the reason
2 why I say that is Caesars initially filed declaratory
3 relief claims and in a sense that Judge Hardy can have
4 a disagreement over their (indiscernible) contracts,
11:53:38 5 seek some guidance from you. Hear our opposition as I
6 respond.

7 Counterclaims are permissive in a declaratory
8 relief action but not necessarily mandatory.

9 But now, we have Caesars adding permanent
11:53:54 10 claims for relief seeking damages looking to couple
11 those with the declaratory relief claims. And if those
12 claims go forward, it may then compel the filing of
13 what now might be compulsory counterclaims where in the
14 past they would have been permissive.

11:54:13 15 The declaratory relief claims and the facts
16 surrounding those, it's not before you today. So
17 really you can ignore, you don't have to focus on the
18 bulk of the first amended complaint.

19 Counts Four through Eight rise from the
11:54:30 20 allegations that appear starting on page 36 of Caesars'
21 first amended complaint and end on page 37. Those are
22 paragraphs 134 to 141.

23 Those are the allegations that then
24 (indiscernible) to support Counts Four through Eight
11:54:50 25 that were added to (telephonic audio drop). So that's

11:54:54 1 where briefing focused on, and that's where my argument
2 here this morning will focus as well.

3 For our brief we went through each claim to
4 describe why that claim can't survive 12(b)(5)

11:55:10 5 (telephonic audio drop) that pertain to Mr. Seibel and
6 it pertains to Mr. Green with one exception. All of
7 these newly asserted claims were brought against those
8 two individuals.

9 Caesars strategically decided to sue those two
11:55:28 10 individuals for the bulk of these claims rather than
11 other parties or other entities (telephonic audio drop)
12 may or may not believe should be on the other side.

13 But so we are focused on the claims that
14 Caesars has brought against those two entities, those
11:55:45 15 two individuals as well as the new claim that's been
16 filed against the development entities. I'd like to
17 highlight the arguments that we've made with regard to
18 dismissal on each of those claims and then, of course,
19 answering any questions that your Honor has.

11:56:03 20 So the first -- the first claim that Caesars
21 added to their first amended complaint is for civil
22 conspiracy.

23 Caesars alleges that Mr. Seibel, Mr. Green
24 conspired to engage in what they dub commercial bribery
11:56:20 25 to Caesars' detriment. Now we point out in our reply

11:56:24 1 brief that as an aside (indiscernible) fact pattern
2 here it's got a lot of cells. But it's really
3 irrelevant. It's a legal conclusion. But even if you
4 were to consider the definition of commercial bribery
11:56:35 5 in Nevada law, it just doesn't apply.

6 In any event, we had raised a doctrine that is
7 appropriately brought before any court, your Honor, or
8 any other judge on a motion to dismiss based on a civil
9 conspiracy claim. That is what is known as the
11:56:54 10 intracorporate conspiracy doctrine.

11 We pointed out in our reply brief that Caesars
12 has taken this very tact in the past when it has
13 responded to a complaint alleging that one or more
14 affiliates or subsidiaries of Caesars and its auditors
11:57:12 15 and directors has engaged in some sort of conspiracy.
16 So we have filed before you today a motion to dismiss
17 the conspiracy claims appearing in the first amended
18 complaint based on the intracorporate conspiracy
19 doctrine.

11:57:29 20 And that comes out of the Kollins case.
21 Basically said if you have anything impacting the
22 actual principles you can't then accuse that agency of
23 engaging in some sort of conspiracy. The laws flowing
24 from that doctrine is entities can only act (telephonic
11:57:47 25 audio drop).

11:57:48 1 We have here if you look at pages 36 and 37,
2 amended complaint. The allegations that I mentioned
3 that give rise to their claims, what we see is Caesars
4 alleging that Mr. Seibel is acting on behalf of these
11:58:05 5 nonparties entities. The names specifically identified
6 in paragraph 137 of the first amended complaint. And
7 we have Caesars alleging that Mr. Green was acting on
8 (telephonic audio drop) Mr. Seibel, who again acting on
9 behalf of the nonparty entity.

11:58:24 10 So from the face of the complaint it is easy
11 to see that Caesars is suing agents of an entity saying
12 you engaged in a conspiracy. It falls smack within the
13 contours and realm of the intracorporate conspiracy
14 doctrine.

11:58:42 15 Caesars did not have to sue the unnamed
16 entities. So as we pointed out in our reply, by making
17 any sort of necessary indispensable argument, what
18 we're saying is you can't sue the agents of the
19 entities who you claim geared these rebates from the
11:59:03 20 vendors. Just doesn't work.

21 Under Nevada law, and recognize for extended
22 period of time, the intracorporate conspiracy doctrine
23 bars this exact claim.

24 Now, any opposition we see in the footnote
11:59:17 25 that maybe Mr. Green and Mr. Seibel were actually

11:59:22 1 acting from their individual would have been, we think
2 that's how discovery is going to shake out.

3 Well, that's great, but discovery has already
4 occurred. You claim discovery gave rise to new claims
11:59:35 5 in the first place. You can't come in here and take
6 the position that, well, we think the evidence will
7 bear that these two agents were actually acting for
8 their individual advantage, not on behalf of the
9 principles for whom they are working. We look at the
11:59:53 10 allegations here in the complaint. Readily admit that
11 these rebates were secured and paid to those nonparty
12 entities.

13 Final point is that, it's a point I'll raise
14 in the other points here as well, is we don't have an
12:00:11 15 alter ego theory of liability being asserted by
16 (telephonic audio drop) in the first amended complaint,
17 and we see them allude to that in their opposition.
18 But the focus is on this complaint, this operative
19 document. There is nothing that requires this Court to
12:00:29 20 disregard the corporate form and assume that the money
21 paid to these two nonparty entities should be treated
22 as flowing directly to Mr. Seibel and Mr. Green.

23 We have no facts on which your Honor can take
24 that leap. There's nothing to allow your Honor to
12:00:49 25 infer that. So as a result, nothing gets them around

12:00:51 1 the intracorporate conspiracy doctrine. So the
2 conspiracy claim that is brought against these two
3 agents for acts committed on behalf of the principals
4 have to be dismissed.

12:01:05 5 The second claim that they've added, your
6 Honor, which is Count Five, the most curious one to us,
7 is a claim for the breach of the implied covenant of
8 good faith and fair dealing. That the premise here is
9 that the development entities had their agents forego
12:01:24 10 disclosing rebates on costs of goods sold to Caesars to
11 Caesars' detriment.

12 Now we point out in the briefing, we don't
13 have any allegations here from Caesars saying we would
14 have paid less for this product. But setting that
12:01:39 15 aside, and I like to think (indiscernible) for us, and
16 we raised it in the motion and reply, why this claim
17 makes no sense as it pertains to the development
18 entities, and I say that because the development
19 entities are sharing in the profits from these
12:01:55 20 restaurants.

21 So if there's an ability for expenses to go
22 down, that, of course, in turn, would drive up profit
23 benefits the development entities.

24 So the only logic here would be that the
12:02:09 25 development entities did this out of spite. That, of

12:02:13 1 course, is not an inference that's fairly drawn in the
2 first amended complaint.

3 Again, we have the Caesars parties alleging
4 that these acts were done for the benefit of nonparty
12:02:28 5 entities. So Caesars' allegations say that this was
6 being done for other entities, not on behalf of the
7 development entities.

8 So by definition, if the conduct is not being
9 committed by the development, you can't come in here
12:02:46 10 and say, Well, even though you didn't do this, we think
11 you breached the implied covenant of good faith and
12 fair dealing. That doesn't fit.

13 The only way to get around that is for your
14 Honor to trace the acts committed by the nonparty
12:03:01 15 entity as being acts committed by the development
16 entities. Again, an alter ego theory where we would
17 treat the development entities as being synonymous with
18 the nonparty entities. But the acts committed on
19 behalf of the nonparty entity should be attributed to
12:03:21 20 and treated as acts that were admitted on behalf of the
21 development entity.

22 But we can't do that. Your Honor shouldn't do
23 that. The corporate forum, as we talk about in our
24 reply, is respected here in Nevada. We don't have any
12:03:36 25 allegation suggesting alter ego.

12:03:40 1 As an aside, I'm sure Mr. Ramsey's counsel,
2 his client is 50/50 partners with Mr. Seibel on this GR
3 Burger would take issue with having acts committed by
4 these nonparty entities being attributed to GR Burger.

12:03:56 5 The point being is that these are separate entities.
6 They're not alleged to be involved in the operations of
7 the restaurant.

8 You can't attribute acts by other entities to
9 the development entity. And without that, (telephonic
12:04:12 10 audio drop).

11 The third new claim, your Honor, is Caesars'
12 claim for unjust enrichment. The allegation here is
13 that Mr. Seibel and Mr. Green were unjustly enriched by
14 the rebates received from the vendor.

12:04:28 15 Now, as a preliminary matter Caesars
16 equivocates in terms of whether Mr. Green actually
17 received any money from the vendors.

18 And I would point to paragraph 10 of the
19 introductory to their operative pleading where they
12:04:46 20 say, Upon information and belief Mr. Green received
21 some of the money. In other words we don't actually
22 know, but we are going to sue him anyway. But if we
23 actually get into the allegations that we see on
24 paragraph -- on pages 36 and 37, Caesars says, These
12:05:04 25 rebates went to these entities.

12:05:07 1 Now, unjust enrichment, of course, is premised
2 on the idea that someone received something which in
3 equity and good conscious he should not retain. We
4 know here from Caesars' operative pleading that the
12:05:21 5 money went to these nonparty entities. Not to
6 Mr. Seibel. Not to Mr. Green. That that racks up any
7 suggestion that Mr. Seibel and Mr. Green unjustly
8 enriched by those rebates. I can't speak to why
9 Caesars did not bring this claim against the nonparty.
12:05:42 10 They brought it against Mr. Seibel and Mr. Green.

11 These issues (indiscernible) beat a dead horse
12 too much, but, again, you cannot treat Mr. Seibel and
13 Mr. Green as being synonymous with the nonparty entity.
14 The corporate forum needs to be respected. As a result
12:06:04 15 the allegations themselves show that neither Mr. Seibel
16 nor Mr. Green were unjustly enriched. That those
17 allegations, the unjust enrichment claim has to be
18 (telephonic audio drop).

19 (Reporter clarification)

12:06:15 20 THE COURT: -- has to be dismissed.

21 MR. GILMORE: The fourth claim that Caesars
22 has is a claim for intentional interference with
23 contract. Caesars alleges that Mr. Seibel and
24 Mr. Green interfered with the contract between Caesars
12:06:31 25 and the development entities. As we set forth in our

12:06:35 1 motion, your Honor, and then citing from additional
2 case law in our reply, this claim falls squarely within
3 what is called the stranger doctrine. It's a world
4 recognized in a majority of jurisdictions that
12:06:51 5 basically tells us someone who may not be a signatory
6 but who is still involved with the contract as a party
7 cannot be accused of interfering in the contract of the
8 parties' obligations under the contract.

9 In order to sue somebody, that person needs to
12:07:08 10 be a stranger to the economic relationship underlying
11 the contract in order to be exposed to a tortious
12 interference claim. That doctrine fits that fact
13 pattern directly. We have Caesars accusing the
14 contracts parties of breach and then accusing the
12:07:26 15 agents of those contracted parties of intentional
16 interference with those contracts.

17 And as we point out in our reply in particular
18 that theory would turn every breach of contract case
19 into an intentional interference case. And the lies
12:07:42 20 would equally be true to the officers and directors of
21 Caesar directed termination the contract at issue in
22 this matter, and the conduct leading up to and
23 following the decision.

24 That's not the rule that should be adopted or
12:08:01 25 followed here. It's not the rule that we recognize in

1 a majority of the jurisdictions, not a minority as was
2 argued in the opposition.

3 Although it's not informally adopted to our
4 knowledge here, given that it's the majority rule, we
5 believe it would be adopted if the Nevada Supreme Court
6 is formally asked to do so.

7 As a practical matter in our eyes it would be
8 the intracorporate conspiracy doctrine. It would be
9 inconsistent to say that an employee could not conspire
10 with his principal to harm a third party, but that same
11 employee could tortiously interfere with its
12 principal's contract to harm that same third party.

13 Because the intracorporate conspiracy doctrine is well
14 recognized in Nevada, to the extent the Nevada Supreme
15 Court has not formally adopted the stranger doctrine,
16 in all likelihood it would do so because it would be
17 consistent with its jurisprudence dealing with these
18 types of claims.

19 For that reason, your Honor, we believe and
20 we've argued that Count Seven should be dismissed.

21 The final count in Caesars' first amended
22 complaint is for fraudulent concealment. Caesars
23 alleges that Mr. Seibel and Mr. Green owed a duty to
24 disclose these rebates to Caesars.

25 Now, the problem here is that Caesars' claim

1 presupposes that such a duty existed and was created by
2 virtue of the contracts that were entered into between
3 Caesars and the development entities.

4 And we know the Dow Chemical case that that
5 duty to disclose is an essential element to this claim.
6 And we argued either standard commercial contracts.
7 They specifically say it's neither a partnership nor a
8 joint venture that's being created between the parties.

9 Also your Honor is presented with a question.
10 Is there a duty to disclose these facts that may be
11 imparted upon Mr. Seibel and Mr. Green to support
12 Caesars' fraudulent concealment claim.

13 The answer is no such duty arises. And that
14 comes right out of the Dow Chemical case that we cite
15 in our motion and our reply.

16 I want to point out in particular a quote from
17 that case which I think is very apt and applies to
18 exactly what we're dealing with here. We already had
19 an existing contractual relationship between entities
20 to various contracts, and Caesars is trying to impose a
21 heightened duty rising from a special relationship they
22 claim exists between principals of one side to the
23 contract and the other contracting party.

24 In the Dow Chemical case the Nevada Supreme
25 Court said even when the parties are dealing at arm's

12:10:55 1 length, a duty to disclose may arise from the existence
2 of material facts peculiarly within the knowledge of
3 parties sought to be (telephonic audio drop) and not
4 within the fair and reasonable reach of the other
12:11:08 5 party.

6 Now that quote is taken from a case from a
7 Nevada Supreme Court decision issued back in 1954.

8 So it's been the law here quite some time. In
9 that case, the Nevada Supreme Court said that rule
12:11:23 10 about the information really being securely within the
11 knowledge of one side may be heightened if there is a
12 false impression that it's been deliberately created by
13 the party ought to be charged. And that Nevada case is
14 Villalon vs. Bowen, 70 Nevada 456, 273 P.2d 409.

12:11:44 15 So with those legal principles in mind, we
16 look here at the first amended complaint and say, Do we
17 have allegations from Caesars saying that this
18 information was purely within the knowledge of
19 Mr. Seibel and Mr. Green and not something within its
12:12:04 20 fair and reasonable reach?

21 In other words was Caesars somehow precluded
22 from speaking to its vendor finding out are we getting
23 the best price for this product, or please disclose to
24 us all the terms that may arise from or around our
12:12:21 25 relationship and the product that we're buying to you.

12:12:24 1 We don't deal with allegations because it
2 wouldn't be -- Caesars couldn't allege that they were
3 at the mercy of Mr. Seibel and Mr. Green to negotiate
4 with these vendors. These are vendors for Caesars.
12:12:37 5 They have a relationship with them.

6 Caesars is not in a position to say we are not
7 able to speak to these vendors now if there are any
8 terms of which we are not familiar.

9 Further, in going to that Villalon case, we
12:12:56 10 don't have allegations that Mr. Seibel or Mr. Green
11 affirmatively mislead about rebates.

12 His claiming they're (telephonic audio drop)
13 so, your Honor, without those allegations that would --
14 that would potentially support, at least perhaps at a
12:13:12 15 motion to dismiss stage, a duty to disclose arising
16 from some sort of special relationship between
17 Mr. Seibel and Mr. Green on one hand and Caesars on the
18 other hand, you have no duty. And thus the fraudulent
19 concealment claims survive without being an essential
12:13:33 20 element of (telephonic audio drop).

21 Your Honor, if you have nothing else, that's
22 all for me.

23 THE COURT: Okay.

24 MR. GILMORE: -- respond to arguments.

12:13:40 25 THE COURT: I understand. I do have a couple

12:13:42 1 of questions for you. And understand this. This is a
2 12(b)(5) motion. And number one, as a trial judge I'm
3 charged with liberally construing the pleadings. You
4 understand that; right?

12:13:57 5 MR. GILMORE: Yes, your Honor.

6 THE COURT: Okay. And just as important too,
7 a complaint will not be dismissed for failure to state
8 a claim unless it appears beyond a doubt that the
9 plaintiff could prove no set of facts, which, if
12:14:09 10 accepted by the trier of fact, would entitle them to
11 relief. You understand that too?

12 MR. GILMORE: I do, your Honor.

13 THE COURT: Okay. And so my question is this,
14 and then after I ask -- after this question we can move
12:14:20 15 on. I'll hear what Caesars has to say on this issue.

16 But we were talking about the intracorporate
17 conspiracy doctrine in this matter. And I know they
18 raise one issue and, I guess, it depends on who
19 benefits. But when I look at paragraph 34 of the --
12:14:40 20 I'm sorry, paragraph 134 of the first amended
21 complaint, and starting out at line 7, and this is on
22 page 36, it provides as follows:

23 "but not limited to Innis and Gunn and Pat
24 LaFrieda, meat purveyors, LaFrieda entered into
12:15:04 25 an agreement whereby Innis and Gunn and

12:15:07 1 LaFrieda would pay a percentage to Mr. Green,
2 Mr. Seibel, and/or Seibel affiliate entities
3 for product Caesars purchased for various
4 restaurants."

12:15:22 5 And the reason why I ask that question there
6 and I framed it in such a way, if, for example, they
7 were paying directly to Mr. Green, based upon a liberal
8 construction of the pleading, the first amended
9 complaint, under those facts, if he's acting in his own
12:15:45 10 pecuniary interest would the intracorporate conspiracy
11 doctrine apply to the facts of this case?

12 MR. GILMORE: So the answer to that, your
13 Honor, is paragraph 134. If that is all you were
14 (telephonic audio drop) I could understand why it would
12:16:03 15 give you pause at the motion to dismiss stage, just
16 based on that paragraph. But we have to look at the
17 entirety of the pleading that is in front of you here
18 today.

19 And I would draw your attention to, for
12:16:19 20 example, to paragraph N of the first amended complaint
21 appears on page 4. The second line starts out with:
22 "Upon information and belief, Mr. Green also receives
23 sums from Caesars vendors." So there we're
24 equivocating in a sense as opposed to definitively
12:16:38 25 alleging that this money was paid to him.

12:16:40 1 We then go back to the page 36 that you're
2 looking. You see paragraph 137.

3 The kickbacks were set up to be paid to other
4 entities owned by Mr. Seibel. Including, but not
12:16:53 5 limited to BR23 Venture LLC and Future Star Hospitality
6 Consulting LLC. So I submit to your Honor that when we
7 look at the entirety of the pleading that is in front
8 of you, we have some very general language in
9 paragraph 134 which we know to take with a grain of

12:17:16 10 salt based on paragraph 10. But then paragraph 137 is
11 specific, answers the precise question that you're
12 asking. How do I know where the money went? Caesars
13 says BR23 Venture LLC, Future Star Hospitality
14 Consulting LLC.

12:17:35 15 THE COURT: Well, here's my question. As a
16 follow up, aren't you asking me to weigh and balance
17 the allegations as set forth in the complaint?
18 Because, for example, if you look at page 36, there's a
19 leading paragraph, upper case E.

12:17:52 20 Which provides, this is the very top of the
21 entry in this whole area. It says: "Mr. Seibel,
22 Mr. Green, and the Seibel affiliated entities were
23 engaged in a kickback scheme."

24 Right? And so when I look at that, I mean, I
12:18:12 25 don't -- I can't pick and choose which provisions of

12:18:16 1 the complaint I should rely upon. I rely upon all of
2 them to come to some sort of determination as to --
3 after reviewing the complaint for failure to state a
4 claim upon which relief can be granted. It appears
12:18:34 5 beyond a doubt that plaintiff could not prove no set of
6 facts which, if accepted by the trier of fact, would
7 entitle him or her to relief.

8 My point is this. We don't know what the
9 facts are right now as it relates to these specific
12:18:48 10 allegations as set forth in the complaint.

11 You could be 100 percent right where there
12 might be no evidence that, for example, Mr. Green or
13 Mr. Seibel acted on their own pecuniary interest or
14 received monies or some sort of benefit. It all went
12:19:04 15 to the business entities. Then maybe that might be the
16 appropriate way to rule based upon a summary judgment
17 motion.

18 But for now --

19 MR. GILMORE: And I think -- sorry. Go ahead,
12:19:18 20 your Honor.

21 THE COURT: No, go ahead.

22 MR. GILMORE: Your Honor, your comments are
23 certainly well taken. And if your Honor is inclined to
24 say, look, on the conspiracy claim because it's unclear
12:19:29 25 based on the allegation that we have in front of me

12:19:32 1 where the money is going to, that I have to deny that
2 (indiscernible) claim without prejudice until we
3 actually see where the money goes.

4 The problem we would submit, though, is we, of
12:19:43 5 course, are working from the documents that we have
6 here. You know, this isn't a document that was filed
7 at the outset before Caesars could say to you we were
8 not able to do discovery to know. This claim was
9 brought after discovery, after Caesars came to you and
12:20:00 10 said we've done the discovery.

11 So with that, while this case is not in a
12 position as it might normally be, we're here looking at
13 a motion to dismiss brought within a couple of months
14 after. So I certainly would respect whatever decision
12:20:17 15 you make, your Honor. But I would submit here because
16 Caesars has done the discovery and was far more
17 specific in paragraph 137 they should be held to and
18 bound by what they've alleged (telephonic audio drop.)

19 THE COURT: Okay. I get that. But once
12:20:31 20 again, this is a 12(b)(5) motion. And, for example, as
21 it relates to the covenant of good faith and fair
22 dealing, on counts -- I think it's Count Five, I took a
23 look at the complaint. And then I have paragraph 180
24 on page 43. What do I do with that? I don't want to
12:20:47 25 read it entirely into the record, but it says --

12:20:49 1 specifically sets forth the allegation that there was a
2 breach of the covenant of good faith and fair dealings
3 based upon wrongfully soliciting, coercing, agreeing to
4 accept, and accepting a benefit from vendors.

12:21:06 5 And my question is this: It seems to me under
6 the Butch Lewis case, I can kind of get why potentially
7 that claim for relief was set forth in the complaint.
8 Because in any contract, you have a contractual duty or
9 responsibility of good faith and fair dealings, which
12:21:30 10 is my understanding, and that's why I asked that.

11 And so I'm looking here. And at the end of
12 the day my task is very simple. Based upon the
13 complaint, does it meet the requirement of 12(b)(5)?

14 MR. GILMORE: Understood, your Honor. And the
12:21:47 15 response we have and the reason why we brought this
16 motion is the way we see the allegations being plead
17 using nonparty entities of soliciting and securing
18 these debts. That's the end of it of the implied
19 covenant claim. So your Honor's point to Caesars,
12:22:07 20 well, maybe it was actually done for and to the benefit
21 to the development entities, then I certainly
22 understand where you're coming from. We are working
23 from the pleading which on its face appears to suggest
24 that the money went to other entities.

12:22:23 25 And, again, logically it wouldn't -- at least

12:22:26 1 from our perspective, you can infer at this point why
2 would the development entity divert money that would
3 increase their profitability?

4 So you are correct that we are looking at this
12:22:39 5 from the perspective of 12(b)(5). And our argument, we
6 submit, your Honor, is these allegations you can come
7 to the conclusion now that the money is going elsewhere
8 and logically wouldn't benefit Seibel entities to
9 engage in this alleged scheme that then factor the
12:22:58 10 (indiscernible) is not a claim against the development.

11 THE COURT: Thank you, sir. Anything else?

12 MR. GILMORE: Nothing for me, your Honor,
13 reserving the right to respond to argument.

14 THE COURT: Absolutely. We'll hear from
12:23:18 15 Caesars.

16 MR. PISANELLI: Thank you. Good afternoon,
17 your Honor. James Pisanelli for the Caesars entities.

18 Your Honor, I've learned a long time ago that
19 it is a dangerous pursuit to talk your way out of a
12:23:36 20 victory so to speak. And I hear a lot of your

21 concerns. I share them. We, obviously, briefed them
22 in the same manner your Honor has been pointing out.

23 So if your Honor is already prepared based
24 upon what you've read, based upon what you've heard

12:23:52 25 from counsel to deny this motion, I won't take up any

12:23:55 1 more of your time.

2 If you want to hear more debate, of course,
3 I'm prepared to do that.

4 THE COURT: Well, and I understand that,
12:24:01 5 Mr. Pisanelli. And my point is this: When I get
6 12(b)(5) motions, one of the -- one of my charge
7 responsibilities would be essentially this: Not just
8 review the points and authorities, but take -- I take a
9 clear look at the pleadings as it relates to this case
12:24:18 10 it would be the first amended complaint.

11 And then I accept the allegations as set forth
12 in the complaint, you know, as being -- you know, I'm
13 required to liberally construe them and essentially
14 accept them as true, and say to myself under any set --
12:24:35 15 under any set of facts upon which this claim for relief
16 could be granted. And that's about the end of it.

17 Because I can't weigh and balance. And as you
18 are probably well aware, lawyers plead in the
19 alternative all the time. You know, and so it --
12:24:51 20 inherently you have inconsistencies from time to time
21 as far as general pleadings to set forth in the
22 complaint is concerned because sometimes you just --

23 MR. PISANELLI: That's correct.

24 THE COURT: -- don't know what the facts are.
12:25:03 25 And that was my point when I reviewed it just to make

12:25:06 1 sure I understood what was going on. And that's why I
2 asked counsel questions.

3 But I don't want to -- I don't want to cut you
4 off. Is there anything else you want to place on the
12:25:14 5 record? If not, we'll hear from the -- hear from the
6 adverse party in this matter, the plaintiff. Then I'll
7 make a decision.

8 MR. PISANELLI: Well, I assume you'd like to
9 hear our point. Otherwise, you know, as I said I'll
12:25:30 10 shut up if your Honor is already prepared to rule
11 having already heard from them. I let your Honor cut
12 me off whenever you're heard enough. How about that?

13 So --

14 THE COURT: You can -- you can -- you can make
12:25:42 15 it brief.

16 MR. PISANELLI: I'll do my best.

17 So the challenge here, of course, in
18 responding to this motion is twofold. One is to put
19 our claims at issue in context with the actual history
12:26:00 20 of this case, not the rewritten by one Mr. Seibel and
21 his counsel. And the allegation that attempt to hold
22 Mr. Seibel and Mr. Green to account for, you know, what
23 we already know from discovery and what we already know
24 from the very words of his own lawyers add up to be the
12:26:19 25 facts from this case.

12:26:21 1 Now, the second charge, of course, is to
2 conduct, as your Honor always does, a clinical analysis
3 of the claims. Look at the standards for each claim.
4 Filter the actual allegation through lens of the
12:26:31 5 standards. And when we do both of those things, I
6 think we see a very clear picture emerge here that
7 Mr. Seibel has been playing his partners as fools for
8 years until his past finally caught up with him. And
9 his past has been exposed in this litigation. And now
12:26:49 10 caught in that game in attempting to play this Court as
11 well with alternative facts in order to dodge
12 responsibility for the scams.

13 You know, to simply say casually, the jig is
14 up. It's time for Mr. Seibel and Mr. Green to be held
12:27:07 15 accountable to answer for what they've done.

16 So, you know, charge one, what is this? Well,
17 what do we know about this? We know from the pleadings
18 and the discovery that Mr. Seibel is a convicted felon
19 having defrauded the United States government. You
12:27:23 20 know, we know that he then defrauded Caesars by keeping
21 his felony a secret before entering into these
22 contracts, and certainly not disclosing them later.
23 When he was exposed, we know that he tried to defraud
24 Caesars again with fraudulent assignment and trusts
12:27:41 25 that he and his wife and his lawyers control.

12:27:44 1 It's not the first time an unsuitable person
2 tried that ruse with the gaming licensee. And now we
3 know from some of the discovery and because of what his
4 lawyers have said to your Honor in this Court, that
12:27:58 5 he's been defrauding Caesars and his other partner,
6 Mr. Ramsey, with a secret kickback and extortion scheme
7 with some of the vendors.

8 What we hear in this motion, if it is this
9 dancing-between-raindrops approach from new counsel,
12:28:16 10 his sixth, is that he is excused from all of this bad
11 behavior because he was laundering the money through an
12 LLC.

13 I mean, when you really boil it all down to
14 all of these different theories, that's what he's
12:28:34 15 actually arguing to your Honor despite the very clear
16 allegations in the complaint that he personally was
17 benefiting, that Mr. Green personally was benefiting,
18 that they were personally conspiring with the vendors,
19 personally conspiring with one another.

12:28:53 20 They fall back time and time again to say,
21 Wait a minute. We have to honor the corporate entities
22 because these guys laundered their money through an
23 LLC, and, therefore, they are exempt from liability for
24 all of these claims. Thankfully, nothing under the law
12:29:10 25 gives them a safe harbor that they try to argue for.

12:29:15 1 So that's what we know. We know what they
2 were doing. They admitted that they're doing it.
3 Their lawyer admitted what they were doing to you on
4 the record in this case. And we know that the law
12:29:27 5 provides no shelter because they used an LLC to filter,
6 to funnel, and to launder the money that they were
7 getting turning this kickback into a commercial bribery
8 scheme.

9 So let's do the clinical analysis just for a
12:29:41 10 few minutes. And first I feel compelled to have to
11 clarify the terms we're using here.

12 Mr. Seibel and his counsel seem to take
13 offense reference to the kickback and commercial
14 bribery portion and they actually, you know, we -- we
12:29:57 15 got a kick out of this one in our office. They've
16 actually using the phrase of rebate program.

17 Now we know we go to Black's Law Dictionary or
18 any case anywhere is going to tell us a rebate is a
19 method of discount where money is given back to the
12:30:15 20 payor, the payor. Mr. Seibel wasn't the payor. He
21 wasn't getting a rebate. He was getting a kickback.
22 He was getting a kickback for anything that us,
23 Caesars, the development entities, were paying these
24 vendors. They were secretly, through extortion of
12:30:35 25 threats, getting a secret kickback that otherwise by

12:30:39 1 contract and law was supposed to be going to the
2 development entities to reduce their costs.

3 So I don't think you were distracted or fooled
4 for one minute by this, this phraseology of rebate, but
12:30:55 5 it's important for the record to show that the concept
6 rebate has no place in this debate because Mr. Seibel
7 was not a payor of the services. He was the
8 extortioner of the services.

9 So what do we know? And these claims I'll be
12:31:10 10 as quick as I can. Intracorporate corporate
11 conspiracy. In other words you can't conspire with
12 yourself. This other case that talks about, you know,
13 a person can't be claimed to have conspired with his
14 arm that fired the weapon.

12:31:25 15 That concept has no place factually or legally
16 in this debate. That is somewhat factual. Defendants
17 ignore the complaint actual allegations. We don't say
18 that Seibel conspired with his LLCs. We allege
19 something very different. That he and Green were
12:31:44 20 personally conspiring with each other to the detriment
21 of Caesars, and that they personally were conspiring
22 with the vendors personally. Not through the entities,
23 not through the LLCs, personally.

24 And your Honor has already hit upon some of
12:32:03 25 the most important allegations (indiscernible)

12:32:07 1 including paragraph 134. We cited, but you have picked
2 up on it. Mr. Green and Mr. Seibel, we write, and the
3 Seibel entities on the one hand and certain Caesars
4 vendors on the other, including the entities that your
12:32:20 5 Honor has cited, enter into an agreement. These were
6 the kickback agreements. This isn't an intracorporate
7 conspiracy. These are guys, as we said in
8 paragraph 138, Mr. Green acting on behalf of
9 Mr. Seibel, not the development entities, not their
12:32:37 10 laundering LLCs. Mr. Seibel and Mr. Green promised the
11 vendors they'd become preferred if they would give them
12 kickbacks.

13 Paragraph 139, acting on behalf of Mr. Seibel,
14 Mr. Green coerced Innis and Gunn to establish a
12:32:55 15 15 percent retroactive kickback.

16 Paragraph 140, Mr. Seibel admitted to secretly
17 receiving a percentage, approximately 5 percent of the
18 free sales to Caesars restaurants. I have pages and
19 pages of additional allegations including 173
12:33:16 20 through -- 172 through 174 where we are very specific
21 in our allegations that Mr. Seibel and Mr. Green
22 "knowingly acted in concert with vendors". That's from
23 paragraph 172. That's not an intracorporate
24 conspiracy. That's not a person conspiring with their
12:33:37 25 arm that held the weapon.

12:33:39 1 These are two guys acting on their -- on
2 behalf in an illegal scheme to take money from the
3 vendors that otherwise would have benefited Caesars.
4 That's very clear. The intracorporate conspiracy
12:33:53 5 doctrine has no place in this debate.

6 The concept of the breach of the implied
7 covenant of good faith and fair dealing, your Honor,
8 has already hit the nail on the head. The obligation
9 of good faith, of course, is the standard under the
12:34:11 10 law. So also as we have cited, a standard under the
11 contracts of what they're obligated to do. So the fact
12 that they claim that this could not apply to them is
13 necessarily ignoring the allegations in particular
14 paragraph 180 as you have described.

12:34:32 15 Now, the unjust enrichment claim we found very
16 interesting. Again, this was Mr. Seibel hiding behind
17 his own bad acts. This is -- this is where the concept
18 really comes out and so (indiscernible). He says
19 because I laundered my money through an LLC, you can't
12:34:56 20 hold me liable for unjust enrichment. And that's --
21 that's as absurd as anything I can imagine until both
22 at paragraph -- page 10 of the reply brief.

23 And, again, this afternoon in the argument
24 counsel doubles down and says that it makes no sense
12:35:16 25 for Mr. Seibel and Mr. Green to have received

12:35:20 1 personally kickbacks from these vendors because it was
2 in their best interests as participants in the
3 development agreement to make sure that the development
4 agreement was as profitable as possible.

12:35:32 5 I'm stunned by that argument that Mr. Seibel
6 would think that no one can see through how illogical
7 it is. Did they really think this through? Mr. Seibel
8 is getting 100 percent of the kickback, and they say
9 it's illogical that he'd want to put the kickback into
12:35:49 10 the company where he would only get a fraction of that
11 value.

12 Well, I don't understand how they think the
13 common sense works on the (indiscernible). He is
14 stealing money from the company. He's keeping
12:36:03 15 100 percent of it. When it goes through the company,
16 he gets a fraction of it. That is his incentive.

17 It doesn't have to be spite. It has to be
18 greed. And that's what it was. And that's what we've
19 alleged. The unjust enrichment paragraphs in
12:36:18 20 paragraph -- allegations, excuse me -- paragraph 185 to
21 188 couldn't be clearer.

22 Paragraph 186 Mr. Green and Mr. Seibel
23 accepted, appreciated, and retained those benefits.
24 Period. That's the allegation. There isn't anything
12:36:35 25 in here that says that they -- that they were not

12:36:39 1 directing the kickback scheme and the fraud or doing
2 anything in here that says that the LLC have been
3 created to laundry their money at the heart of all
4 this.

12:36:48 5 Simply because they were running the money
6 through this didn't change who they were and what they
7 were doing. They were working on their own personal
8 behalf.

9 What counsel from Mr. Seibel seems to forget
12:37:00 10 is that his predecessor counsel actually admitted to
11 your Honor in open court when trying to oppose our
12 motion for leave amend. You recall, your Honor, in
13 February 12 Mr. Brooks specifically said to you that
14 the documents show Mr. Seibel receiving 5 percent of
12:37:21 15 the proceeds of the sale. He didn't talk about on
16 Mr. Seibel's LLC or any intracorporate conspiracy
17 doctrine, and that's a piece he specifically said "this
18 would be total owed to Rowen Seibel per LaFrieda.
19 \$107,000-plus. Total paid to Rowen Seibel, he said,
12:37:45 20 \$57,000 and change."

21 Their own counsel on the record admitted that
22 Mr. Seibel was personally benefiting. Yet, this new
23 motion comes in with an entirely new theory as if none
24 of us have been in this case and none of us know what
12:38:03 25 the evidence already shows and what the lawyers have

12:38:07 1 already said.

2 And in connection with intentional
3 interference, the stranger rule, again, this has --
4 another misplaced -- the stranger rule if it were
12:38:22 5 applied in Nevada, and it's not adopted in Nevada, but
6 this is an important point. Even if it was, stranger
7 rule is defined to have two parties with an executory
8 contract, one of them -- you know, we'll use the law
9 school example. One of them is supposed to sell White
12:38:41 10 Acre to the other. And he doesn't sell it. And so,
11 you know, the other party to the contract says that you
12 have interfered with my rights by not giving me White
13 Acre. Well, no, that's not how the law works. You're
14 both parties to the contract. It's a contract dispute.

12:38:56 15 That has nothing to do with what's going on.
16 These are guys working in their personal interest to
17 try to undermine agreements that Caesars already had.
18 This isn't the stranger rule. They are worth --
19 because we have alleged -- and as I've just quoted, and
12:39:13 20 there is many more I can quote to you, including from
21 paragraphs 192 through 196, because we have alleged
22 that they are working in their individual personal
23 interests against those of any party to a contract, the
24 stranger rule has no place in this debate. And it
12:39:32 25 certainly, once again, offers no shelter to Mr. Seibel

12:39:37 1 or Mr. Green for their kickback scheme.

2 And on the fraudulent concealment, I'll just
3 say this. We have alleged in paragraph 43 that they
4 had contract obligations of disclosure. And in
12:39:53 5 paragraph 44, and these obligations were very specific.
6 They were required to maintain high ethical standards
7 in conducting business. They were required to update
8 suitability disclosures which included what type of
9 behavior they're involved in. And they had a
12:40:15 10 contractual obligation to ensure that all credits and
11 rebates, if we're going to use their words, receive
12 some sponsors and vendors, this is from the contract
13 itself, in connection with the services shall be a
14 credit against an operating expense.

12:40:30 15 It is incredible to hear Mr. Seibel say that
16 while the contract specifically required disclosure,
17 physically required to making sure financial credits
18 remain, that they had no obligation to disclose that
19 they could secretly get money from this operation
12:40:50 20 through kickbacks and through extortion and duress and
21 had no duty to disclose. I invite that summary
22 judgment motion when and if it comes. It certainly has
23 no place in a debate now on Rule 12.

24 And, again, just for the record the
12:41:06 25 allegations about the duties to disclose, where they

12:41:10 1 come from, don't belong in a contract. Failures to
2 disclose factually are found throughout paragraphs 200
3 to 204 and again in paragraphs 42 through 44.

4 I've taken more time than I should have. And
12:41:28 5 I apologize, your Honor. I kind of get on a role when
6 I start talking about these things. But this has been
7 an amazing exercise in dealing with the revolving door
8 of counsel that have been in this action for
9 Mr. Seibel.

12:41:42 10 We suspect every time, because we deal with
11 every one of them on a one-on-one basis, that
12 Mr. Seibel deceives his own lawyers. It's amazing how
13 often we have to educate his lawyers on what the truth
14 is because they come to the table with something short
12:41:58 15 of a full transparent exposure of what really happens
16 here.

17 This motion suggests to us that,
18 unfortunately, the sixth law firm isn't getting the
19 full picture from Mr. Seibel either. And that's why,
12:42:08 20 you know, I take this moment to point out not only his
21 bad behavior in dealing with Caesars but the admissions
22 that we've got from his own lawyers on the record that
23 Mr. Seibel now is trying to rewrite and erase from the
24 history of this case.

12:42:26 25 This complaint hits upon every element of

12:42:29 1 every one of these complaints on multiple occasions.
2 The arguments that have been offered to you in this
3 motion are straw men respectfully that not consistent
4 and what we're actually pleading, not consistent with
12:42:42 5 what this case is really about, and so certainly having
6 nothing to do with this fraudulent kickback and
7 extortion scheme that Mr. Seibel is involved in that
8 are at the heart of these new claims.

9 So we would ask your Honor to deny the motion
12:42:56 10 in its entirety. And let's get back to work in
11 finishing up the discovery in this case.

12 THE COURT: Thank you, sir.

13 MR. GILMORE: Your Honor.

14 THE COURT: Yes, sir.

12:43:15 15 MR. GILMORE: Thank you. Big picture point
16 and I'll address some of just (telephonic audio drop).
17 Sorry. At the end there, Mr. Pisanelli's reference to
18 the revolving door of counsel. I think everybody is
19 aware why the last firm had to withdraw. And that's
12:43:33 20 the untimely death of lead counsel for Mr. Seibel.

21 Unless the inference is going to go drawn that that is
22 somehow caused by this case, and I don't think it is,
23 that is certainly beyond everybody's (indiscernible)
24 what I anticipated and certainly was not done in some
12:43:51 25 way to then cause our firm (telephonic audio drop)

12:43:52 1 getting things or argue anything different.

2 Now, we hear a lot today and see in the brief
3 it's certainly not short of rhetoric on Caesars part,
4 which we know is necessary to try to drive the
12:44:07 5 narrative.

6 I wrote down the different phrases we heard
7 here today: Kickback, extortion, bribery, illegal,
8 stole, greed, and the newest one which we didn't see in
9 the opposition, money laundering.

12:44:24 10 And if I didn't know, I'd think this is a
11 criminal case. I'm arguing against the DA because
12 we're hearing a lot of charges that illegal conduct,
13 money laundering, extortion. This is a civil case.
14 All of those legal conclusions mean nothing. They are
12:44:45 15 only intended to try to plague the decision. I know
16 your Honor won't be. But, of course, I'm compelled to
17 have to say something about them as we tried to say in
18 the brief.

19 But that's certainly not new or unique to this
12:44:56 20 hearing. We've seen it as we're getting up to speed on
21 this that it's something that permeates all of
22 (indiscernible) that we see. And certainly no lack of
23 the rhetoric. But the point is you can't use passion.
24 I don't deny that Caesars is passionate about their
12:45:14 25 position. But that passion can't excuse some very

12:45:19 1 technical but significant fault with these claims.

2 The other big point I'd like to make is the
3 story here, as they like to tell it, stops the day they
4 terminated the contract. They like to talk about what
12:45:34 5 happened up until that. But that is not where the
6 story ends. The story continues as we pointed out that
7 Caesars continues to operate this restaurant, continues
8 to thrive from restaurants that were conceived not by
9 Caesars, but by the development entities.

12:45:51 10 And that, of course, is something that they
11 never want to happen. They will at some point, but the
12 point is this, the attempts here to use rhetoric and
13 sell a larger story that is unrelated to these claims
14 is improper.

12:46:09 15 Now, we heard a lot today, several times,
16 referencing you to allegations that fall under specific
17 counts. Yes, Caesars did a good job citing elements of
18 each claim. But we know that doesn't carry the day
19 even if you're looking at motion under the eighth --
12:46:31 20 Rule 8 standard rather than under Rule 9. That's why I
21 pointed your Honor to paragraph 36 and 37 of the first
22 amended complaint.

23 Those are the paragraphs that (indiscernible)
24 not Caesars ability to follow the elements of each
12:46:50 25 claim and say, Well, yeah, we said what we're supposed

12:46:53 1 to say to get us passed the 12(b)(5) motion.

2 So the operative allegations come from
3 pages 36 and 37, paragraph 134 to 144. And that's why
4 my argument, your Honor, was focused on those
12:47:10 5 paragraphs, and what we derive and glean from those
6 paragraphs.

7 Now just a couple of quick points, your Honor,
8 on these -- on the claims themselves. We have several
9 claims here brought by Caesars. And a couple of them,
12:47:26 10 well several, hearing in the argument today, Why are
11 you to disregard the corporate veil? We heard
12 Mr. Seibel is simply laundering money through these
13 entities. That is argument of counsel. It is not
14 supported by factual allegations from this complaint.

12:47:46 15 Caesars could have included those types of
16 allegations. They didn't. They did not choose to
17 plead an alter ego theory of liability. And that is
18 particularly significant as it pertains to the
19 development entities.

12:48:01 20 We're looking at Mr. Seibel and Mr. Green
21 individually. We're looking at the development
22 entities, and then we're looking at the nonparty
23 entities that receive the rebates according to
24 paragraph 137. And we cannot read them synonymously.

12:48:20 25 Now, your Honor said this and I agree.

12:48:21 1 Parties are allowed to plead alternative theories of
2 liability. That's true. But parties can't plead
3 alternate facts trying to then use discovery to figure
4 out which fact pattern was accurate.

12:48:35 5 And then thinking about the comments, your
6 Honor, that you made a little bit earlier. Looking
7 again at paragraphs 134 to 144, what we have is
8 alternate facts. We have Caesars pleading the money
9 going every which way, and they did that so that they
12:48:54 10 can now say, Your Honor, we get all of these claims
11 past the 12(b)(5) (telephonic audio drop) can't plead
12 alternate facts especially after discovery has been
13 conducted. And we hear it argued at length today.
14 We've done the discovery. Got to do the discovery.

12:49:10 15 So as I mentioned earlier, we don't have a
16 plaintiff in the position of saying, you know, Judge,
17 this case is just getting started. I haven't even seen
18 the disclosure. I don't know what the documents look
19 like. That's not this case.

12:49:23 20 Mr. Seibel has been deposed. Mr. Green has
21 been deposed. Documents have been exchanged. Either
22 it is well equipped to know what the facts are so as to
23 come in here and plead inconsistent facts to try to
24 stick several claims related to these rebate as
12:49:41 25 improper. I would submit, your Honor, that even if you

12:49:43 1 have difficulty dismissing all of these claims, because
2 they were required inconsistent fact patterns to
3 survive, some have to go at the expense of others.

4 Now I'll say, for example, the fraudulent
12:49:58 5 concealment claim. If we are going to allege that
6 these entities breached the implied covenant of good
7 faith and fair dealing, the development breached the
8 implied covenant of good faith and fair dealing by not
9 disclosing the rebates, well, that is not a fraud
12:50:16 10 claim. And, again, anybody could make the argument.
11 You have a disclosure obligation under the contract.
12 So we're going to sue the contracting party for breach.
13 And then we're going to sue the principal of that
14 contracting party for fraudulent concealment.

12:50:34 15 Caesars argues without citing cases in their
16 brief that they can do that. No, you can't. Again,
17 every contract case would become a fraud case. So if
18 your Honor looks and says, you know, the implied
19 covenant claim, I have trouble at 12(b)(5) dismissing
12:50:51 20 that, then perhaps this is benefit to the development.
21 And we respectfully disagree but appreciate your
22 reasoning behind it.

23 And I would submit the intentional
24 interference claim can stand. And the same logic would
12:51:06 25 be true, your Honor, on the unjust enrichment. For to

12:51:10 1 allege that the development entities are behind all of
2 it, those -- that's what Caesars wants to stand by.
3 Then to accuse these two individuals of unjust
4 enrichment, based on argument that the money was
12:51:24 5 laundered, something we don't even have in the
6 complaint, then -- then fault perhaps as it is alleged
7 lies with the development. It does not lie with these
8 two individuals. Caesars can't plead inconsistent
9 facts to try to get all of these claims at the 12(b)(5)
12:51:45 10 motion.

11 Any other questions, your Honor? Otherwise
12 I'll (telephonic audio drop.)

13 THE COURT: No other questions, sir. And
14 thank you.

12:51:52 15 Anyway, I've had a chance to review the points
16 and authorities on file herein. And I just want to
17 remind everyone that this is a 12(b)(5) motion. It's
18 not a summary judgment motion. I do understand what my
19 role is as a trial judge under the present posture of
12:52:12 20 the procedural nature of this matter.

21 And I'm going to rule after reviewing the
22 complaint on file herein and the moving papers that the
23 first amended complaint as it currently stands on file
24 herein withstands a Rule 12(b)(5) challenge. And,
12:52:34 25 consequently, I'm going to deny the motion to dismiss

12:52:38 1 the first amended complaint.

2 Just one final comment as far as that's
3 concerned and understand I thought about this, and I
4 listened to the argument of counsel. But I can't rule
12:52:46 5 as a matter of law, for example, that if the breach of
6 the covenant of good faith and fair dealings as implied
7 in all contracts in the state of Nevada would be
8 mutually exclusive of a fraudulent concealment claim.
9 You can't do that. You can potentially have a breach
12:53:03 10 of the covenant of good faith and fair dealing and
11 fraud, fraudulent concealment.

12 And this case is unique in its nature in light
13 of the fact that Caesars is a gaming entity. I
14 understand that. When you conduct business with gaming
12:53:18 15 entities, there is different obligations and the like,
16 and they have obligations also to protect their gaming
17 license. I understand that aspect of it.

18 But at the end of the day, my decision is real
19 simple. The first amended complaint as set forth and
12:53:34 20 on file in this matter shall stand its Rule 12(b)(5)
21 challenge.

22 And, Mr. Pisanelli, can you prepare an order
23 for me, sir?

24 MR. PISANELLI: Certainly will, your Honor.

12:53:45 25 THE COURT: And when you prepare it, you can

12:53:49 1 submit it to adverse counsel. If you can't agree,
2 submit competing orders.

3 Everyone, enjoy your day and enjoy your lunch.

4 THE COURT: Oh, yeah, I'm sorry. We have one
12:53:58 5 more --

6 MR. PISANELLI: Thank you.

7 THE COURT: Wait, wait. Hold it, hold it,
8 hold it. We do have one more matter. And that's
9 the -- let me make sure I get this -- status check,
12:54:10 10 outstanding discovery other than depositions. Do we
11 need to address that today or?

12 MS. MERCERA: Yes, your Honor. This is Magali
13 Mercera on behalf of the Caesars entities. At the last
14 time check the Court indicated that (indiscernible) and
12:54:29 15 motion practice. We were unable to come it an
16 agreement.

17 THE COURT: And, ma'am.

18 MS. MERCERA: I have --

19 THE COURT: Can you -- I don't want to hold
12:54:36 20 you -- I don't want to stop you, but we don't have the
21 visual cues. And my court reporter couldn't hear you.
22 So can you go ahead and set forth that again for the
23 record?

24 MS. MERCERA: Sure. Of course, can you hear
12:54:47 25 me clearly?

12:54:48 1 THE COURT: We can hear you better now.

2 MS. MERCERA: Okay. Perfect. As I said my
3 name is Magali Mercera on behalf of the Caesars
4 parties.

12:54:57 5 During our last status check the Court
6 directed us to meet and confer on some outstanding
7 discovery issues that we brought to the Court's
8 attention. We have conferred earlier this week, and we
9 were -- we're still working through a few issues that
12:55:11 10 hopefully we can come to an agreement on without court
11 intervention. But there are a few that we will be
12 bringing via motion practice to this Court within short
13 order.

14 THE COURT: Okay. Does anyone else want to
12:55:25 15 add to that?

16 MR. GILMORE: This is Joshua Gilmore, your
17 Honor. Nothing to add to that. I want to follow up on
18 your decision to deny the motion to amend.

19 We will go ahead, of course, and prepare an
12:55:39 20 omnibus answer on behalf of all the parties that we
21 represent. Our preference too would be to include the
22 counterclaim within that same operative pleading. From
23 what we see there are several different pleadings
24 outstanding. And, of course, counterclaims in the past
12:55:59 25 were permissive and they came in response to the

12:56:03 1 declaratory relief claims that Caesars filed at
2 different points in time.

3 Our preference is to do an omnibus
4 consolidated answer and counterclaim so that on our
12:56:14 5 side -- and I think it would be economic and makes
6 sense for the other party, just have one operative
7 pleading from which all the parties are working from.

8 So I again I want to raise that to your
9 attention now and not (indiscernible) to the other
12:56:29 10 side.

11 And the other part of it and I want to, you
12 know, hear your Honor's thoughts now. We can certainly
13 address it after we file that document. Declaratory
14 relief claims generally don't compel the filing of
12:56:46 15 compulsive counterclaim. Because it's at times an
16 efficient means to come in and get guidance from the
17 Court on what are the rights and obligations of the
18 parties.

19 We may be in a position now that Caesars has
12:57:00 20 added affirmative claims for relief to be compelled to
21 file what would have been permissive counterclaims
22 before that may now be considered compulsory
23 counterclaims. And so I want to bring that to your
24 Honor's attention. Actually, I want to bring that to
12:57:15 25 everybody's attention now so it doesn't come as a

12:57:19 1 surprise. But in light of the decision filing
2 affirmative claims for relief, we believe that may
3 trigger now an obligation to file counterclaims that
4 may not have been filed before.

12:57:30 5 MR. PISANELLI: So, your Honor, this is James
6 Pisanelli. I'll say just two things. On the idea of
7 an omnibus pleading it's hard to have an opinion in
8 advance before I see it. Obviously, we are always in
9 support of anything that will make the matter more
12:57:47 10 efficient. But, you know, I'm only concerned about the
11 clarity on who is asserting what claim, and what
12 defense, and what response. But we'll take that up
13 once we see the pleading.

14 I only say this. I don't have to agree or
12:58:04 15 disagree with Mr. Gilmore about permissive
16 counterclaims or compulsory that relate to declaratory
17 judgments, but I don't think he's right. But today is
18 not the day for that debate.

19 I do think that vetting up is an excuse for
12:58:18 20 Mr. Seibel with new counsel to bring new claims into
21 the case years into the case and now falling back on
22 the excuse that they've only now just become
23 compulsory. So we'll take that up when we see it.

24 If they're adding in new claims that are too
12:58:33 25 late and beyond the cutoff for amendments, then we'll

12:58:37 1 bring that to your attention to either strike them or
2 dismiss them, whatever the appropriate procedural
3 mechanism will be. But I have a feeling that's what's
4 afoot here and we'll wait to see this response before
12:58:49 5 we take any action. I just don't want our silence to
6 anything he just said to be taken as a concession that
7 this is (indiscernible).

8 THE COURT: All right. Is there anything
9 else? I'll leave this as my final comment. Do what
12:59:03 10 you feel is in the best interests of your client.

11 MR. PISANELLI: Fair enough, your Honor.
12 Thank you.

13 THE COURT: That's all I can do.

14 MS. MERCERA: Thank you, your Honor.

12:59:14 15 MR. GILMORE: Thank you, your Honor. Will do.
16 Thank you so much, your Honor.

17 THE COURT: Okay. Everyone enjoy your lunch.

18 MR. PISANELLI: You as well.

19

20

21

22 (Proceedings were concluded.)

23

24

* * * * *

25

REPORTER'S CERTIFICATE

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
TELEPHONIC PROCEEDINGS HAD IN THE BEFORE-ENTITLED
MATTER AT THE TIME AND PLACE INDICATED, AND THAT
THEREAFTER SAID STENOGRAPHY NOTES WERE TRANSCRIBED INTO
TYPEWRITING AT AND UNDER MY DIRECTION AND SUPERVISION
AND THE FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE
AND ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
NEVADA.

PEGGY ISOM, RMR, CCR 541

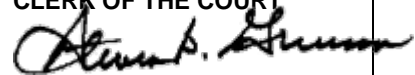
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Pursuant to NRS 239.053, illegal to copy without payment.

PA01153

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EIGHTH JUDICIAL 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.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

Case No.: A-17-751759-B

Dept. No.: XV

Consolidated with A-17-760537-B

**ORDER DENYING, WITHOUT
PREJUDICE, ROWEN SEIBEL, THE
DEVELOPMENT ENTITIES, AND CRAIG
GREEN'S MOTION TO DISMISS
COUNTS IV, V, VI, VII, AND VIII OF
CAESARS' FIRST AMENDED
COMPLAINT**

AND ALL RELATED MATTERS

Rowen Seibel ("Seibel"), TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), Craig Green ("Green"), and R Squared Global Solutions, LLC, Derivatively on Behalf of DNT Acquisition, LLC's ("DNT") *Motion to Dismiss Counts IV, V, VI, VII, And VIII of Caesars' First Amended Complaint* (the "Motion to Dismiss"), filed on April 8, 2020, came before this Court for hearing on May 20, 2020. James J. Pisanelli, Esq., M. Magali Mercera, Esq., and Brittne Watkins, Esq., of PISANELLI BICE PLLC, appeared telephonically on behalf of Desert Palace, Inc., Paris Las Vegas Operating Company, LLC, PHWLTV, LLC, and Boardwalk Regency Corporation d/b/a Caesars Atlantic City (collectively "Caesars"). John R. Bailey, Esq., Joshua P. Gilmore, Esq., and Paul C. Williams, Esq. of the law firm BAILEY KENNEDY, appeared telephonically on behalf of Seibel, Green, TPOV, TPOV 16, LLTQ, LLTQ 16, MOTI, MOTI 16, FERG, FERG 16, and DNT. John Tennert, Esq., of FENNEMORE CRAIG, PC, appeared telephonically on behalf of Gordon Ramsay.

The Court having considered the Motion to Dismiss and the opposition thereto, as well as argument of counsel presented at the hearing, and good cause appearing therefor,

THE COURT FINDS that a "complaint should be dismissed only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). Further, in ruling upon the Motion to Dismiss, the Court "must construe the pleading liberally and draw every fair intendment in favor of" Caesars. *See Brown v. Kellar*, 97 Nev. 582, 583, 636 P.2d 874, 874 (1981).

THE COURT FURTHER FINDS that Caesars' First Amended Complaint withstands a Rule 12(b)(5) challenge and may proceed.

///

///

1 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the
2 Motion to Dismiss shall be, and hereby is, DENIED.

3 IT IS SO ORDERED.

4 DATED this 29th day of May 2020.

5
6 
7 THE HONORABLE TIMOTHY C. WILLIAMS
8 EIGHTH JUDICIAL DISTRICT COURT CG

8 Respectfully submitted by:

9 DATED May 28, 2020

10 PISANELLI BICE PLLC

11
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13 James J. Pisanelli, Esq., Bar No. 4027
14 Debra L. Spinelli, Esq., Bar No. 9695
15 M. Magali Mercera, Esq., Bar No. 11742
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16 and

17 Jeffrey J. Zeiger, P.C., Esq.
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25 *Company, LLC; PHWLV, LLC; and Boardwalk Regency*
26 *Corporation d/b/a Caesars Atlantic City*
27
28

Approved as to form and content by:

DATED May 27, 2020

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DATED May 27, 2020

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Derivatively on Behalf of DNT Acquisition,
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Sent: Wednesday, May 27, 2020 9:12 PM
To: Magali Mercera; John Bailey; Paul Williams; Susan Russo; jtennert@fclaw.com; Stephanie Glantz
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Brittanie T. Watkins; Cinda C. Towne; Zeiger, Jeffrey J.; Arnault, Bill (warnault@kirkland.com)
Subject: RE: Desert Palace v. Seibel: Order Denying Motion to Dismiss

CAUTION: External Email

Yes, you may affix my e-signature. Thanks. Josh

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From: TENNERT, JOHN <jtennert@fclaw.com>
Sent: Wednesday, May 27, 2020 5:53 PM
To: Magali Mercera; Joshua Gilmore; John Bailey; Paul Williams; Susan Russo; Stephanie Glantz
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Brittne T. Watkins; Cinda C. Towne; Zeiger, Jeffrey J.; Arnault, Bill (warnault@kirkland.com)
Subject: RE: Desert Palace v. Seibel: Order Denying Motion to Dismiss

CAUTION: External Email

Please apply by e-signature. Thanks,

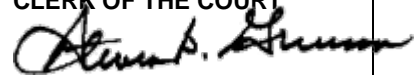
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EIGHTH JUDICIAL DISTRICT COURT

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.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

Case No.: A-17-751759

Dept. No.: XVI

Consolidated with A-17-760537-B

**NOTICE OF ENTRY OF ORDER
DENYING, WITHOUT PREJUDICE,
ROWEN SEIBEL, THE DEVELOPMENT
ENTITIES, AND CRAIG GREEN'S
MOTION TO DISMISS COUNTS IV, V,
VI, VII, AND VIII OF CAESARS' FIRST
AMENDED COMPLAINT**

AND ALL RELATED MATTERS

1 PLEASE TAKE NOTICE that an Order Denying, without Prejudice, Rowen Seibel, the
2 Development Entities, and Craig Green's Motion to Dismiss Counts IV, V, VI, VII, and VIII of
3 Caesars' First Amended Complaint was entered in the above-captioned matter on May 29, 2020, a
4 true and correct copy of which is attached hereto.

5 DATED this 29th day of May 2020.

6 PISANELLI BICE PLLC

7
8 By: /s/ M. Magali Mercera
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28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 29th day of May 2020, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF ORDER DENYING, WITHOUT PREJUDICE, ROWEN SEIBEL, THE DEVELOPMENT ENTITIES, AND CRAIG GREEN'S MOTION TO DISMISS COUNTS IV, V, VI, VII, AND VIII OF CAESARS' FIRST AMENDED COMPLAINT** to the following:

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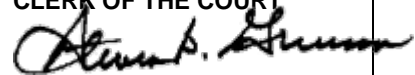
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VIA E-MAIL (pleading only)

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CLARK COUNTY, NEVADA

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DOES I through X; ROE CORPORATIONS I
through X,

Defendants,

and

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Case No.: A-17-751759-B

Dept. No.: XV

Consolidated with A-17-760537-B

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GREEN'S MOTION TO DISMISS
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COMPLAINT**

AND ALL RELATED MATTERS

Rowen Seibel ("Seibel"), TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), Craig Green ("Green"), and R Squared Global Solutions, LLC, Derivatively on Behalf of DNT Acquisition, LLC's ("DNT") *Motion to Dismiss Counts IV, V, VI, VII, And VIII of Caesars' First Amended Complaint* (the "Motion to Dismiss"), filed on April 8, 2020, came before this Court for hearing on May 20, 2020. James J. Pisanelli, Esq., M. Magali Mercera, Esq., and Brittne Watkins, Esq., of PISANELLI BICE PLLC, appeared telephonically on behalf of Desert Palace, Inc., Paris Las Vegas Operating Company, LLC, PHWLTV, LLC, and Boardwalk Regency Corporation d/b/a Caesars Atlantic City (collectively "Caesars"). John R. Bailey, Esq., Joshua P. Gilmore, Esq., and Paul C. Williams, Esq. of the law firm BAILEY KENNEDY, appeared telephonically on behalf of Seibel, Green, TPOV, TPOV 16, LLTQ, LLTQ 16, MOTI, MOTI 16, FERG, FERG 16, and DNT. John Tennert, Esq., of FENNEMORE CRAIG, PC, appeared telephonically on behalf of Gordon Ramsay.

The Court having considered the Motion to Dismiss and the opposition thereto, as well as argument of counsel presented at the hearing, and good cause appearing therefor,

THE COURT FINDS that a "complaint should be dismissed only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). Further, in ruling upon the Motion to Dismiss, the Court "must construe the pleading liberally and draw every fair intendment in favor of" Caesars. *See Brown v. Kellar*, 97 Nev. 582, 583, 636 P.2d 874, 874 (1981).

THE COURT FURTHER FINDS that Caesars' First Amended Complaint withstands a Rule 12(b)(5) challenge and may proceed.

///

///

1 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the
2 Motion to Dismiss shall be, and hereby is, DENIED.

3 IT IS SO ORDERED.

4 DATED this 29th day of May 2020.

5
6 
7 THE HONORABLE TIMOTHY C. WILLIAMS
8 EIGHTH JUDICIAL DISTRICT COURT CG

8 Respectfully submitted by:

9 DATED May 28, 2020

10 PISANELLI BICE PLLC

11
12 By: /s/ M. Magali Mercera
13 James J. Pisanelli, Esq., Bar No. 4027
14 Debra L. Spinelli, Esq., Bar No. 9695
15 M. Magali Mercera, Esq., Bar No. 11742
16 Brittanie T. Watkins, Esq., Bar No. 13612
17 400 South 7th Street, Suite 300
18 Las Vegas, NV 89101

16 and

17 Jeffrey J. Zeiger, P.C., Esq.
18 (admitted *pro hac vice*)
19 William E. Arnault, IV, Esq.
20 (admitted *pro hac vice*)
21 KIRKLAND & ELLIS LLP
22 300 North LaSalle
23 Chicago, IL 60654

24 *Attorneys for Plaintiffs Desert Palace, Inc.; Paris Las Vegas Operating*
25 *Company, LLC; PHWLV, LLC; and Boardwalk Regency*
26 *Corporation d/b/a Caesars Atlantic City*
27
28

Approved as to form and content by:

DATED May 27, 2020

FENNEMORE CRAIG, P.C.

By: /s/ John Tennert
John Tennert, Esq. (SBN 11728)
300 East 2nd Street, Suite 1510
Reno, NV 89501

Attorneys for Gordon Ramsay

Approved as to form and content by:

DATED May 27, 2020

BAILEY ♦ KENNEDY

By: /s/ Joshua P. Gilmore
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Dennis L. Kennedy (SBN 1462)
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LLTQ Enterprises, LLC,
LLTQ Enterprises 16, LLC,
TPOV Enterprises, LLC,
TPOV Enterprises 16, LLC,
FERG, LLC, FERG 16, LLC. Craig Green,
and R Squared Global Solutions, LLC,
Derivatively on Behalf of DNT Acquisition,
LLC*

From: Joshua Gilmore <JGilmore@baileykennedy.com>
Sent: Wednesday, May 27, 2020 9:12 PM
To: Magali Mercera; John Bailey; Paul Williams; Susan Russo; jtennert@fclaw.com; Stephanie Glantz
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Brittanie T. Watkins; Cinda C. Towne; Zeiger, Jeffrey J.; Arnault, Bill (warnault@kirkland.com)
Subject: RE: Desert Palace v. Seibel: Order Denying Motion to Dismiss

CAUTION: External Email

Yes, you may affix my e-signature. Thanks. Josh

Joshua P. Gilmore, Esq. | Bailey Kennedy, LLP
8984 Spanish Ridge Avenue, Las Vegas, Nevada 89148-1302
(702) 562-8820 (main) | (702) 562-8821 (fax) | (702) 789-4547 (direct) | JGilmore@BaileyKennedy.com
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From: TENNERT, JOHN <jtennert@fclaw.com>
Sent: Wednesday, May 27, 2020 5:53 PM
To: Magali Mercera; Joshua Gilmore; John Bailey; Paul Williams; Susan Russo; Stephanie Glantz
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Brittanie T. Watkins; Cinda C. Towne; Zeiger, Jeffrey J.; Arnault, Bill (warnault@kirkland.com)
Subject: RE: Desert Palace v. Seibel: Order Denying Motion to Dismiss

CAUTION: External Email

Please apply by e-signature. Thanks,

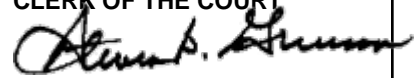
John D. Tennert III, Director

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TAB 71



ARJT

**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,)

-vs-)

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

Defendants.)

and)

GR BURGR LLC, a Delaware limited)
liability company,)

Nominal Plaintiff.)

AND ALL RELATED MATTERS)

Case No. A-17-751759-B
Dept No. XVI

CONSOLIDATED WITH
Case No.: A-17-760537-B

HEARING DATE(S)
ENTERED IN
ODYSSEY

**6th AMENDED ORDER SETTING CIVIL JURY TRIAL,
PRE-TRIAL, CALENDAR CALL, AND DEADLINES FOR MOTIONS;
AMENDED DISCOVERY SCHEDULING ORDER CALL**

Pursuant to the June 10, 2020 hearing on Craig Green's Motion to Extend Discovery
Deadlines on OST, the Discovery Deadlines and Trial dates are hereby amended as follows:

IT IS HEREBY ORDERED that the parties will comply with the following deadlines:

Motions to amend pleadings or add parties Closed

Close of Fact Discovery Closed

1	Designation of experts pursuant to NRCP 16.1(a)(2)	Closed
2	Designation of rebuttal experts pursuant to NRCP 16.1(a)(2)	Closed
3	Discovery Cut Off	October 19, 2020
4	Dispositive Motions	November 18, 2020
5	Motions in Limine	January 4, 2021

7 **IT IS HEREBY ORDERED THAT:**

8 A. The above entitled case is set to be tried to a jury on a **five week stack** to begin
9 **February 22, 2021 at 9:30 a.m.**

10 B. Pre-Trial Conference/Calendar Call will be held on **February 11, 2021 at 10:30 a.m.**

11 C. Parties are to appear on **November 4, 2020 at 9:00a.m.**, for a Status Check re Trial
12 Readiness.

13 D. The Pre-Trial Memorandum must be filed no later than **Febarury 18, 2021**, with a
14 courtesy copy delivered to Department XVI. All parties, (Attorneys and parties in proper person)
15 **MUST** comply with **All REQUIREMENTS** of EDCR 2.67, 2.68 and 2.69. Counsel should include
16 in the Memorandum an identification of orders on all motions in limine or motions for partial
17 summary judgment previously made, a summary of any anticipated legal issues remaining, a brief
18 summary of the opinions to be offered by any witness to be called to offer opinion testimony as well
19 as any objections to the opinion testimony.

20 E. All motions in limine to exclude or admit evidence must be in writing and filed no
21 later than **January 4, 2021. Orders shortening time will not be signed except in extreme**
22 **emergencies.**

23 F. Unless otherwise directed by the court, all pretrial disclosures pursuant to N.R.C.P.
24 16.1(a)(3) must be made at least 30 days before trial.

1 G. All original depositions anticipated to be used in any manner during the trial
2 must be delivered to the clerk prior to the firm trial date given at Calendar Call. If
3 deposition testimony is anticipated to be used in lieu of live testimony, a designation (by
4 page/line citation) of the portions of the testimony to be offered must be filed and served by
5 facsimile or hand, two (2) judicial days prior to the firm trial date. Any objections or
6 counterdesignations (by page/line citation) of testimony must be filed and served by
7 facsimile or hand, one (1) judicial day prior to the firm trial date. Counsel shall advise the
8 clerk prior to publication.
9
10

11 H. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits. All
12 exhibits must comply with EDCR 2.27. Two (2) sets must be three-hole punched placed in three
13 ring binders along with the exhibit list. The sets must be delivered to the clerk two days prior to the
14 firm trial date. Any demonstrative exhibits including exemplars anticipated to be used must be
15 disclosed prior to the calendar call. Pursuant to EDCR 2.68, counsel shall be prepared to stipulate or
16 make specific objections to individual proposed exhibits. Unless otherwise agreed to by the parties,
17 demonstrative exhibits are marked for identification but not admitted into evidence.
18

19 I. In accordance with EDCR 2.67, counsel shall meet, review, and discuss items to be
20 included in the Jury Notebook. Pursuant to EDCR 2.68, counsel shall be prepared to stipulate or
21 make specific objections to items to be included in the Jury Notebook.
22

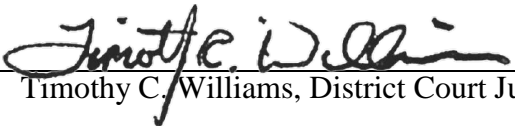
23 J. In accordance with EDCR 2.67, counsel shall meet and discuss preinstructions to the
24 jury, jury instructions, special interrogatories, if requested, and verdict forms. Each side shall
25 provide the Court, two (2) judicial days prior to the firm trial date given at Calendar Call, an agreed
26 set of jury instructions and proposed form of verdict along with any additional proposed jury
27 instructions with an electronic copy in Word format.
28

1 Failure of the designated trial attorney or any party appearing in proper person to
2 appear for any court appearances or to comply with this Order shall result in any of the
3 following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation
4 of trial date; and/or any other appropriate remedy or sanction.

5 *Counsel is asked to notify the Court Reporter at least two (2) weeks in advance if they are*
6 *going to require daily copies of the transcripts of this trial or real time court reporting. Failure to*
7 *do so may result in a delay in the production of the transcripts or the availability of real time court*
8 *reporting.*

9
10 Counsel is required to advise the Court immediately when the case settles or is otherwise
11 resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate
12 whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A
13 copy should be given to Chambers.

14
15 DATED: June 18, 2020.

16
17 
18 Timothy C. Williams, District Court Judge
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25 ...

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CERTIFICATE OF SERVICE

I hereby certify that on the date filed, a copy of the foregoing Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program as follows:

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