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Mar 11 2021 03:54 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

12 IN THE SUPREME COURT OF THE STATE OF NEVADA

13 MOTI PARTNERS, LLC, *et al.*

14 Petitioners,

15 vs.

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

18 Respondents,

19 and

20 DESERT PALACE, INC., *et al.*,

Real Parties in Interest.

Supreme Court No. 82448

District Court No. A-17-751759-B
Consolidated with A-17-760537-B

**PETITIONERS' MOTION FOR A
PARTIAL STAY OF DISTRICT
COURT PROCEEDINGS**

1 Pursuant to NRAP 8, Petitioners Moti Partners, LLC (“Moti”); Moti
2 Partners 16, LLC (“Moti 16”); LLTQ Enterprises, LLC (“LLTQ”); LLTQ
3 Enterprises 16, LLC (“LLTQ 16”); TPOV Enterprises, LLC (“TPOV”); TPOV
4 Enterprises 16, LLC (“TPOV 16”); FERG, LLC (“FERG”); FERG 16, LLC
5 (“FERG 16”); and R Squared Global Solutions, LLC (“R Squared”),
6 derivatively on behalf of DNT Acquisition LLC (“DNT”) (collectively,
7 “Petitioners” or the “Development Entities”) respectfully move (the “Motion”)
8 this Court for an Order staying all non-discovery proceedings in this matter
9 pending a decision from this Court on the Petition for Extraordinary Writ
10 Relief, filed on February 5, 2021 (the “Writ Petition”). Currently, hearings on
11 various motions for summary judgment are set to be heard on April 28, 2021,
12 at 1:00 p.m. (Ex. 4, Stip. & Order, at 4:3-4.)¹ Additionally, the jury trial is set
13 on a five-week stack to begin on July 12, 2021, at 9:30 a.m. (*See* 6 PA 80, at
14 1419.) Absent a stay, the parties will be forced to litigate dispositive motions
15 and prepare for and proceed to trial even though the pleadings are in question.

16 This Motion is made and based on the papers and pleadings on file, the
17 exhibits hereto, and the following Memorandum of Points and Authorities.
18
19

20 ¹ For brevity, the attachments to Exhibits 1, 3, and 4 have been removed.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court should stay all non-discovery proceedings in the district court until this Court rules on the Writ Petition, which seeks to vacate the district court’s order striking the Development Entities’ Amended Counterclaims (the “Striking Order”), which were filed in response to Caesars’² First Amended Complaint. The Writ Petition raises an issue of first impression in Nevada: whether and under what circumstances a defendant may file amended counterclaims, without leave of court, in response to an amended complaint. The Writ Petition provides an opportunity for this Court to issue guidance to all Nevada litigants on this unclear issue.

As detailed below, this Court analyzes four factors in determining whether to issue a stay. All four factors support the issuance of a partial stay. *First*, the object of the Writ Petition may be defeated if a partial stay is not entered because the parties will be required to litigate dispositive motions and prepare for and proceed to trial on pleadings that may ultimately be rendered moot, which, in turn, may impact the Development Entities’ efforts to

² “Caesars” refers to PHWLTV, LLC (“Planet Hollywood”), Desert Palace, Inc. (“Caesars Palace”), Paris Las Vegas Operating Company, LLC (“Paris”), and Boardwalk Regency Corporation d/b/a Caesars Atlantic City (“CAC”).

1 challenge the Striking Order on appeal. **Second**, the Development Entities will
2 suffer serious injury if a stay is not entered because they will be required to
3 proceed in the district court without a ruling from this Court as to whether they
4 had a right to file their Amended Counterclaims in response to Caesars’ First
5 Amended Complaint. **Third**, Caesars and defendants Gordon Ramsay
6 (“Ramsay”) and Original Homestead Restaurant, Inc. (“OHR”) will suffer little
7 to no harm if all non-discovery proceedings are stayed in this case. **Fourth**,
8 the Development Entities are likely to prevail on the merits of their Writ
9 Petition. Stated simply, this Court looks to federal authority in interpreting the
10 Nevada Rules of Civil Procedure and federal courts hold—with near
11 unanimity—that defendants may assert amended counterclaims as a matter of
12 right in response to amended claims if the amended complaint (like the First
13 Amended Complaint) alters the scope and/or theory of the case.

14 In sum, this Court should stay all non-discovery proceedings in the
15 district court (e.g., dispositive motions, motions *in limine*, the deadlines
16 associated with pre-trial disclosures, the deadline for filing the pre-trial
17 memorandum, and trial) until this Court rules on the Writ Petition.

II. RELEVANT PROCEDURAL HISTORY

A recitation of the relevant procedural history of these proceedings through February 5, 2021, is contained in the Writ Petition and, in the interests of brevity, is incorporated herein by reference.

After filing the Writ Petition, on February 5, 2021, the Development Entities filed a Motion for a Limited Stay of Proceedings Pending Their Petition for Extraordinary Writ Relief on Order Shortening Time. (*See* Ex. 1, District Court Motion to Stay.) Caesars, and only Caesars, opposed it. (*See* Ex. 2, Opposition.) On February 24, 2021, the district court entered an order denying the motion. (Ex. 3, Order.)

On February 25, 2021, Caesars filed a Motion for Summary Judgment addressing, among other issues, the Development Entities' counterclaims (specifically, the initial Counterclaims filed in July 2018 and not the Amended Counterclaims filed in June 2020). The Motion for Summary Judgment is currently set for a hearing on April 28, 2021. (Ex. 4, Stip. & Order, at 4:3-4.)

III. ARGUMENT

A. Standard of Decision.

In deciding whether to issue a stay pending review of a writ petition, this Court evaluates: "(1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will

1 suffer irreparable or serious injury if the stay or injunction is denied; (3)
2 whether respondent/real party in interest will suffer irreparable or serious
3 injury if the stay or injunction is granted; and (4) whether appellant/petitioner
4 is likely to prevail on the merits in the appeal or writ petition.” NRAP 8(c);
5 *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004).
6 “[I]f one or two factors are especially strong, they may counterbalance other
7 weak factors.” *Mikohn Gaming Corp.*, 120 Nev. at 251, 89 P.3d at 38.

8 **B. This Court Should Stay All Non-Discovery Proceedings in**
9 **District Court Pending the Outcome of the Writ Petition.**

10 As shown below, a stay of all non-discovery proceedings in the district
11 court pending the outcome of the Writ Petition is warranted.

12 ***1. The Object of the Writ Petition May be Defeated Unless a***
13 ***Partial Stay is Entered.***

14 Where the object of a writ petition will be defeated unless a stay is
15 entered, “a stay is generally warranted.” *Mikohn Gaming Corp.*, 120 Nev. at
16 253, 89 P.3d at 40.

17 Here, the object of the Writ Petition may be defeated if a partial stay is
18 not entered. Specifically, the parties will be forced to litigate dispositive
19 motions and go through a costly and time-consuming trial without knowing the
20 status of the pleadings (e.g., whether the TPOV Parties and Moti Parties may

1 present claims for relief to the jury and whether the LLTQ/FERG Parties may
2 present evidence concerning GR Steak AC and GR Steak KC). Further, the
3 outcome of dispositive motions and trial could impact the object of the Writ
4 Petition. For example, if trial proceeds and the Development Entities prevail
5 with what will ultimately be a non-operative pleading after resolution of the
6 Writ Petition, they will be placed in a precarious position of having to elect
7 whether to pursue their Amended Counterclaims (the object of the Writ
8 Petition) on appeal while, at the same time, risking a potential retrial if this
9 Court reverses the Striking Order.

10 Indeed, if this Court vacates the Striking Order on appeal, the parties
11 will need to go through another round of dispositive motions and will be forced
12 to go through a retrial on the same facts and legal theories, calling the same
13 witnesses and presenting virtually identical evidence. Plainly, it would be
14 much more efficient for all the parties and for the district court to stay all non-
15 discovery proceedings until this Court's decision on the Writ Petition. *See*
16 NRAP 1(c) ("These Rules shall be liberally construed to secure the proper and
17 efficient administration of the business and affairs of the courts and to promote
18 and facilitate the administration of justice by the courts."); *accord* NRCp 1.

19 Accordingly, the first factor favors entry of a partial stay.
20

1 **2. *The Development Entities Will Suffer Serious Injury if a***
2 ***Partial Stay is Not Entered; Conversely, Caesars will***
3 ***Suffer Little or No Harm if a Partial Stay is Entered.***

4 Under the second and third factors, “[a]lthough irreparable or serious
5 harm remains part of the stay analysis, th[ese] factor[s] will not generally play
6 a significant role in the decision whether to issue a stay.” *Mikohn Gaming*
7 *Corp.*, 120 Nev. at 253, 89 P.3d at 39.

8 Here, the Development Entities will suffer serious injury if a partial stay
9 is not entered. The dispositive motions will be decided by the district court
10 even without a clear answer on which pleadings are operative. The TPOV
11 Parties and the MOTI Parties will be barred from presenting evidence on any
12 claims for relief at trial; and the LLTQ/FERG Parties will be unable to seek
13 damages at trial with regard to GR Steak AC and GR Steak KC while, at the
14 same time, seeking damages concerning other restaurant ventures based on the
15 same arguments and similar evidence.

16 By contrast, Caesars (and the other parties) cannot show serious injury
17 or irreparable harm as a “mere delay in ... litigation” is not enough. *Mikohn*
18 *Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39. Indeed, the Development
19 Entities seek only a *partial* stay of the proceedings below so as not to delay
20 outstanding discovery proceedings. Although a partial stay may somewhat
 delay the litigation, the alternative is to move forward at the risk of having to

1 proceed with multiple trials. This would not be efficient, and would cause
2 unnecessary expense, for every party. The more rational approach is to
3 implement a partial stay pending the outcome of the Writ Petition.

4 Accordingly, the second and third factors weigh in favor of granting a
5 partial stay.

6 ***3. The Development Entities are Likely to Prevail on the***
7 ***Merits of the Writ Petition.***

8 Under the fourth factor, the party opposing the stay “can defeat the
9 motion by making a strong showing that [writ] relief is unattainable” or by
10 showing that the writ petition is frivolous or was filed for dilatory purposes.
11 *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 40.

12 Here, it is likely that this Court will grant the relief requested by the
13 Development Entities. There is no Nevada law addressing whether and under
14 what circumstances a defendant may file amended counterclaims, without
15 leave of court, in response to an amended complaint where the amended
16 complaint changes the theory and/or scope of the case. As a result, federal
17 case law is “strong persuasive authority” on the issue. *See, e.g., Exec. Mgmt.*
18 *Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002).

19 Virtually every federal court to address this issue has held that as a
20 matter of right, a defendant may file amended counterclaims, without leave of

1 court, in response to an amended complaint that changes the theory and/or
2 scope of the case, based on principles of equity and fairness. (*See* Writ Pet. at
3 23-25.) The Development Entities should have been allowed to do so here
4 since the breadth of the changes in their Amended Counterclaims is *minor*
5 when compared with the breadth of the changes in Caesars' First Amended
6 Complaint. (*See id.* at 34-35.)

7 Further, federal courts have rejected arguments advocating for the Rule
8 16 approach (or those that are similar) adopted by the district court. For
9 example, courts have rejected arguments that amended counterclaims filed in
10 response to amended complaints are untimely if they are filed after the
11 deadline to amend has passed. (*Id.* at 27-28, 31-32.)

12 Finally, the Development Entities' Writ Petition is neither frivolous, nor
13 filed for dilatory purposes. To the contrary, the Development Entities timely
14 filed the Writ Petition in good faith in order to address an issue of first
15 impression in Nevada and further obtain guidance in this specific, but
16 common, situation for parties involved in civil litigation.

17 For these reasons, the fourth factor weighs in favor of a partial stay
18 pending a ruling on the Writ Petition.
19
20

IV. CONCLUSION

For the reasons set forth above, this Court should enter an order staying all non-discovery proceedings in the district court, including proceedings concerning dispositive motions, motions *in limine*, the deadlines for pre-trial disclosures, the deadline for the pre-trial memorandum, and trial.

DATED this 11th day of March, 2021.

BAILEY ♦ KENNEDY

By: /s/ John R. Bailey
JOHN R. BAILEY
DENNIS L. KENNEDY
JOSHUA P. GILMORE
PAUL C. WILLIAMS
STEPHANIE J. GLANTZ
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 11th day of March, 2021, service of the foregoing was made by electronic service through Nevada Supreme 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:

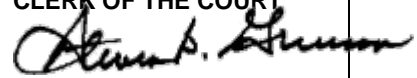
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	<i>LLC; and Boardwalk Regency</i>
	<i>Corporation</i>

HON. TIMOTHY C. WILLIAMS	Email:
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EIGHTH JUDICIAL DISTRICT COURT	Dept16lc@clarkcountycourts.us;
Regional Justice Center	Dept16ea@clarkcountycourt.us
200 Lewis Avenue	
Las Vegas, NV 89155	<i>Respondents</i>

/s/ Sharon Murnane
Employee of BAILEY ♦ KENNEDY

Exhibit 1

Exhibit 1



MSTY (CIV)

JOHN R. BAILEY

Nevada Bar No. 0137

DENNIS L. KENNEDY

Nevada Bar No. 1462

JOSHUA P. GILMORE

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*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*

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

**THE DEVELOPMENT ENTITIES'
MOTION FOR A LIMITED STAY OF
PROCEEDINGS PENDING THEIR
PETITION FOR EXTRAORDINARY
WRIT RELIEF ON ORDER
SHORTENING TIME**

(Hearing Requested)

Date/hearing: February 17, 2021

Time/hearing: 9:00 a.m.

HEARING DATE(S)
ENTERED IN
ODYSSEY

Pursuant to NRAP 8 and the inherent authority of this Court, the Development Entities¹ move for a stay of all non-discovery deadlines (the “Motion to Stay”) pending the outcome of their Petition for Extraordinary Writ Relief filed with the Nevada Supreme Court (the “Writ Petition”). A copy of the Writ Petition (excluding the Appendix) is attached hereto as Exhibit 1.² As detailed below, the object of the Writ Petition—to vacate the Findings of Fact, Conclusions of Law, and Order Granting Caesars’ Motion to Strike the Seibel-Affiliated Entities’ Counterclaims, and/or in the Alternative, Motion to Dismiss, entered on February 3, 2021 (the “Order”) and direct the entry of an order denying Caesars’ Motion to Strike the Seibel-Affiliated Entities’ Counterclaims, and/or in the Alternative, Motion to Dismiss (the “Motion to Strike”) in its entirety—will be defeated if a partial stay is not entered. Specifically, the parties will be required to file dispositive motions and proceed to trial without a ruling from the Nevada Supreme Court as to the viability of the Development Entities’ amended counterclaims (the “Amended Counterclaims”).

This Motion to Stay is made and based upon the following memorandum of points and authorities, the exhibits attached hereto, the papers and pleadings on file, and any oral argument as may be heard by the Court.

DATED this 5th day of February, 2021.

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

¹ “Development Entities” refers to 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”); and R Squared Global Solutions, LLC (“R Squared”), derivatively on behalf of DNT Acquisition LLC (“DNT”).

² The Development Entities will separately file and serve a Notice of Filing Petition for Extraordinary Writ Relief in accordance with NRAP 21(a)(1).

APPLICATION FOR ORDER SHORTENING TIME

Pursuant to EDCR 2.26, the Development Entities hereby apply for an Order Shortening Time in which their Motion to Stay is to be heard. If the Motion to Stay is heard in the ordinary course, at least one object of the Writ Petition (*i.e.*, to vacate the Order prior to the deadline to file dispositive motions) will be defeated. The deadline to file dispositive motions is currently set for February 18, 2021. If the Motion to Stay is heard in the ordinary course, the parties will be required to submit dispositive motions even though the status of the pleadings is in question. Accordingly, the Development Entities respectfully request that this Court set a hearing on the Motion to Stay as soon as possible, and preferably by or before February 12, 2021.

This Application is made and based upon the following Declaration of John R. Bailey, Esq.

DATED this 5th day of February, 2021.

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

**DECLARATION OF JOHN R. BAILEY, ESQ. IN SUPPORT OF
APPLICATION FOR ORDER SHORTENING TIME**

I, John R. Bailey, Esq., declare as follows:

1. I am over eighteen years of age and I am competent to testify to the facts stated herein, which are based on personal knowledge unless otherwise indicated, and if called upon to testify, I could and would testify competently to the following.

2. I am a resident of Clark County, Nevada, and a partner of the law firm of Bailey ♦ Kennedy, LLP, counsel for the Development Entities in the above matter (the “Matter”).

3. I make this Declaration in support of the Development Entities’ Application to shorten the time for the hearing on the Motion to Stay.

4. Good cause exists to hear the Motion to Stay on shortened time. If the Motion to Stay is heard in the ordinary course, at least one object of the Writ Petition—to vacate the Order prior to the deadline to file dispositive motions—will be defeated. The deadline to file dispositive motions is currently set for February 18, 2021. If the Motion to Stay is heard in the ordinary course, the parties will be required to submit dispositive motions even though the status of the pleadings is in question.

5. Accordingly, the Development Entities respectfully request that this Court set a hearing on the Motion to Stay as soon as possible, and preferably by or before February 12, 2021.

6. This Application is made in good faith and without improper motive.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this 5th day of February, 2021.

/s/ John R. Bailey
JOHN R. BAILEY

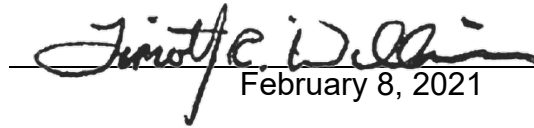
ORDER SHORTENING TIME

The Court, having considered the Development Entities' Application for Order Shortening Time, and the Declaration of John R. Bailey, Esq., in support thereof, and good cause appearing, **HEREBY ORDERS** that the time for hearing THE DEVELOPMENT ENTITIES' MOTION FOR A LIMITED STAY OF PROCEEDINGS PENDING THEIR PETITION FOR EXTRAORDINARY WRIT RELIEF be shortened, and the same shall be heard ^{telephonically*} on the 17th day of February, 2021, at 9 : 00 a.m., in Department XVI of the Eighth Judicial District Court, Clark County, Nevada, located at the Regional Justice Center, 200 Lewis Avenue, in Las Vegas, Nevada, or as soon thereafter as counsel can be heard.

*BlueJeans dial-in information:

Dial: 1-408-419-1715

Meeting ID 458 575 421#


February 8, 2021 ZJ

Respectfully Submitted By:

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

This Court should stay all non-discovery deadlines in this case until the Nevada Supreme Court rules on the Development Entities' Writ Petition, which seeks to vacate the Order striking the Development Entities' Amended Counterclaims. As this Court acknowledged at oral argument on Caesars' Motion to Strike and in the Order itself, there is *no Nevada case law* addressing whether and under what circumstances a defendant may file amended counterclaims, without leave of court, in response to an amended complaint. The Writ Petition provides an opportunity for the Nevada Supreme Court to issue guidance on this precise issue. Without a partial stay, the parties will be forced to file dispositive motions and proceed to trial even though the status of the pleadings is in question.

As detailed below, this Court analyzes four factors in determining whether to issue a stay. All four factors support the issuance of a partial stay:

- **First**, the object of the Writ Petition will be defeated if a partial stay is not entered because the parties will be required to file dispositive motions and proceed to trial even though the Development Entities seek to challenge the Order through extraordinary writ relief;
- **Second**, the Development Entities will suffer serious injury if a stay is not entered because they will be required to file dispositive motions and proceed to trial without the opportunity for the Nevada Supreme Court to initially determine whether they appropriately filed their Amended Counterclaims in response to Caesars' First Amended Complaint;
- **Third**, Caesars,³ Gordon Ramsay, and Original Homestead Restaurant, Inc. ("OHR") will suffer little to no harm if all non-discovery deadlines are stayed in this case and the Nevada Supreme Court has previously held that delay in litigation, without more, is not a sufficient ground to oppose a stay; and

³ "Caesars" refers to PHWL, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las Vegas Operating Company, LLC ("Paris"), and Boardwalk Regency Corporation d/b/a Caesars Atlantic City ("CAC").

- **Finally**, the Development Entities are, respectfully, likely to prevail on the merits of their Writ Petition—federal courts hold, with near unanimity, that defendants may assert amended counterclaims as a matter of right in response to amended complaints where amended complaints alter the scope and/or theory of the case (just as Caesars’ First Amended Complaint did).

In sum, this Court should stay all non-discovery deadlines in this case (e.g., the dispositive motion and motions *in limine* deadlines, the deadlines associated with pretrial disclosures, and the deadline for filing the pre-trial memorandum, and trial) until the Nevada Supreme Court rules on the Development Entities’ Writ Petition. This Motion to Stay should be granted in its entirety.

II. RELEVANT PROCEDURAL HISTORY

A. Caesars Files a Complaint for Declaratory Relief Related to the Development Agreements.

On August 25, 2017, Caesars filed a Complaint against Rowen Seibel, the Development Entities, GR Burger, LLC (“GRB”), and J. Jeffrey Frederick. (*See generally* Compl., No. A-17-760537-B.) Caesars’ Complaint contained three claims for declaratory judgment involving the Development Agreements at issue in this case; Caesars did not assert any claims for coercive relief (e.g., breach of contract, civil conspiracy, etc.). (*Id.* ¶¶ 131-56.)

B. The Development Entities’ Answers/Initial Counterclaims.

On July 6, 2018, the Development Entities answered Caesars’ Complaint and certain of them counterclaimed against Caesars, as follows:

- LLTQ and LLTQ 16 (the “LLTQ Parties”), together with FERG and FERG 16 (the “FERG Parties,” and together with the LLTQ Parties, the “LLTQ/FERG Parties”), filed an Answer and Counterclaims against Caesars Palace and CAC, asserting contract claims (*see* LLTQ/FERG Defendants’ Answer & Affirmative Defenses to Pls.’ Compl. & Countercls., filed on July 6, 2018);
- R Squared, derivatively on behalf of DNT, filed an Answer and Counterclaims against Caesars Palace, asserting contract claims (*see* DNT’s Answer to Pls.’ Compl. & Countercls., filed on July 6, 2018);

- Moti and Moti 16 (the “Moti Parties”) filed an Answer (*see* Moti Defs.’ Answer & Affirmative Defenses to Pls.’ Compl., filed on July 6, 2018); and
- TPOV and TPOV 16 (the “TPOV Parties”) filed an Answer (*see* Defs. TPOV Enterprises, LLC & TPOV Enterprises 16, LLC’s Answer to Pls.’ Compl., filed on July 6, 2018).

C. This Court Denies the LLTQ/FERG Parties Leave to Amend their Counterclaims.

In their initial counterclaims, the LLTQ/FERG Parties cited specific provisions of their Development Agreements restricting Caesars from pursuing certain restaurant ventures with Ramsay absent involving the LLTQ/FERG Parties, the TPOV Parties, or their affiliates. (LLTQ/FERG Defendants’ Answer & Affirmative Defenses to Pls.’ Compl. & Countercls., filed on July 6, 2018, ¶ 16.) Their counterclaims described, as examples, two such restaurant ventures—Gordon Ramsay Fish & Chips, in Las Vegas (“GR Fish & Chips”), and Gordon Ramsay Steak, in Baltimore (“GR Steak Baltimore”)—in which the LLTQ Parties and the TPOV Parties had been wrongfully excluded. (*Id.* ¶¶ 61-70; *see also id.* ¶ 71.) The LLTQ/FERG Parties thereafter sought discovery concerning another restaurant venture from which the TPOV Parties had been wrongfully excluded: Gordon Ramsay Steak, in Atlantic City (“GR Steak AC”). (Mot. to Amend LLTQ/FERG Defs.’ Answer, Affirmative Defenses & Countercls., filed on Oct. 2019, at 4:6-12.) Caesars resisted the discovery, asserting that there were no specific allegations pled by the LLTQ/FERG Parties concerning GR Steak AC. (*Compare id.* at 4:12-15 with LLTQ/FERG Answer & Countercls. at 27, 30.)

On October 2, 2019—approximately eight months after the deadline to amend had expired—the LLTQ/FERG Parties sought leave to amend their counterclaims. (Mot. to Amend LLTQ/FERG Defs.’ Answer, Affirmative Defenses & Countercls., filed on Oct. 2019.) Specifically, the LLTQ/FERG Parties sought leave to add specific allegations to their counterclaims concerning GR Steak AC. (*Id.*) Caesars opposed the motion, contending that the LLTQ/FERG Parties were previously aware of GR Steak AC and had not acted diligently in seeking leave to

1 amend. (*See* Opp. to Motion to Amend LLTQ/FERG Defs. Answer, Affirmative Defenses &
2 Countercls., filed on Oct. 14, 2019.)

3 On November 6, 2019, this Court denied the LLTQ/FERG Parties leave to file their
4 proposed amended counterclaims. (Order Denying Mot. to Amend LLTQ/FERG Defendants’
5 Answer, Affirmative Defenses and Counterclaims, filed on November 25, 2019, at 3:4-8.)

6 **D. This Court, after the Deadline to Amend Pleadings Had Expired, Grants**
7 **Caesars Leave to Amend its Complaint to Assert Five New Coercive Claims for**
8 **Relief and to Add a New Party.**

9 On December 12, 2019—over ten months after the deadline to amend had expired—Caesars
10 sought leave to amend its Complaint. (Caesars’ Mot. for Leave to File First Am. Compl., filed on
11 Dec. 12, 2019.) Specifically, Caesars sought leave to add a new party, Craig Green, and to assert,
12 for the first time, several coercive claims for relief against the Development Entities, GRB, Seibel,
13 and Green. (*See* First Amended Complaint, filed on Mar. 3, 2020 [“FAC”], ¶¶ 171 – 206.)
14 Caesars’ proposed changes were based on new facts and legal theories unrelated to its initial
15 Complaint. (*Id.* ¶¶ 134-44.)

16 The Development Entities and Seibel opposed Caesars’ motion, arguing that Caesars had
17 been aware of the facts forming the basis of its new claims for at least one year based on documents
18 that had been produced by the Development Entities and Seibel—noting the incongruence with
19 Caesars’ prior opposition to the LLTQ/FERG Parties’ motion to amend. (*See* Opp. to Caesars’
20 Mot. for Leave to File First Am. Compl., filed on Dec. 23, 2019.)

21 On February 12, 2020, this Court granted Caesars leave to file its First Amended Complaint.
22 (*See* Order Granting Caesars’ Mot. for Leave to File First Am. Compl., filed on Mar. 10, 2020, at
23 3:6-9.)

24 On March 11, 2020, Caesars filed its First Amended Complaint. (*See generally* FAC.)
25 Caesars asserted the following new claims for coercive relief: civil conspiracy, breach of the
26 implied covenant of good faith and fair dealing, unjust enrichment, intentional interference with
27 contractual relations, and fraudulent concealment. (*Id.* ¶¶ 171 – 206.) Caesars also named Green as
28 an additional defendant. (*See generally id.*)

E. The Development Entities, Seibel, and Green Move to Dismiss the New Claims Asserted by Caesars.

On April 8, 2020, the Development Entities, Seibel, and Green filed a motion to dismiss the new claims in Caesars’ First Amended Complaint. (Rowen Seibel, the Development Entities, & Craig Green’s Mot. to Dismiss Counts IV, V, VI, VII, & VIII of Caesars’ First Am. Compl., filed on Apr. 8, 2020.) On May 20, 2020, this Court denied the motion. (Order Denying, Without Prejudice, Rowen Seibel, the Development Entities, & Craig Green’s Mot. to Dismiss Counts IV, V, VI, VII, & VIII of Caesars’ First Am. Compl., filed on May 29, 2020.)

F. The Development Entities File their Amended Counterclaims Against Caesars.

On June 19, 2020, the Development Entities, Seibel, and Green filed a consolidated Answer to Caesars’ First Amended Complaint and the Development Entities filed their Amended Counterclaims against Caesars. (*See* Development Entities, Rowen Seibel, & Craig Green’s Answer to Caesars’ First Am. Compl. & Countercls., filed on June 19, 2020.) In their Amended Counterclaims, the Development Entities asserted two causes of action: Breach of Contract; and Breach of the Implied Covenant of Good Faith and Fair Dealing. (*Id.* at 48-49, ¶¶ 87-101.) The Amended Counterclaims did not significantly expand the scope of this case—they involve the same facts and legal theories that the Development Entities had previously asserted in this case, whether in defense to Caesars’ initial declaratory relief claims and/or as counterclaims. The material changes from the initial counterclaims filed by the LLTQ/FERG Parties and DNT are two-fold: (i) the TPOV Parties and the Moti Parties asserted counterclaims against Caesars for the first time; and (ii) the LLTQ/FERG Parties added allegations concerning GR Steak AC and another restaurant venture from which the TPOV Parties were wrongfully excluded: Gordon Ramsay Steak, in Kansas City (“GR Steak KC”).

G. Caesars Moves to Strike the Amended Counterclaims.

On July 15, 2020, Caesars moved to strike the Amended Counterclaims, advocating for this court to apply the “narrow” approach applied by a small minority of federal courts when determining whether a defendant may assert amended counterclaims, without leave of court, in response to an amended complaint. (Caesars Mot. to Strike the Seibel-Affiliated Entities

Countercls. and/or in the Alternative, Mot. to Dismiss, filed on July 15, 2020.) Caesars argued that the Amended Counterclaims should be stricken because they did not relate to the changes in Caesars' First Amended Complaint—i.e., the subject matter of the new counterclaims was different from the subject matter of the new claims. (*See generally id.*) The Development Entities opposed Caesars' motion, pointing out that the “narrow” approach was no longer good law and advocating for this Court to adopt the “moderate” approach applied by the majority of federal courts—which would require this Court to only find that the breadth of the changes made to the Amended Counterclaims were consistent with the breadth of the changes made to the First Amended Complaint. (The Development Entities' Opp'n to Caesars Mot. to Strike the Seibel-Affiliated Entities Countercls. and/or in the Alternative, Mot. to Dismiss, filed on Aug. 3, 2020.)

H. This Court Strikes the Amended Counterclaims.

On September 23, 2020, this Court heard argument on the Motion to Strike. On February 3, 2021, this Court entered its Order granting the Motion to Strike. (*See generally* Order.) This Court noted that there “is *no Nevada case law* directly addressing whether a defendant may file amended counterclaims in response to an amended complaint without leave of court.” (*Id.* at 7:12-14 emphasis added.) This Court correctly concluded that the abrogation of NRCP 13(f) in 2019 “would supersede [federal] cases following the narrow approach.” (*Id.* at 7:21-24.) This Court further predicted that, under “Nevada law, the permissive approach would contradict NRCP 16, which the Nevada Supreme Court implemented to ensure trial judges actively managed their cases in an orderly manner.” (*Id.* at 8:2-4.) In analyzing the moderate approach, this Court stated that the Amended Counterclaims would be impermissible because they did not relate to the same subject matter as the new claims in Caesars' First Amended Complaint. (*Id.* at 8:5-12.)

Ultimately, this Court declined to apply any of the federal approaches, stating: “This Court has considered the three approaches described under federal law; however, this Court will follow the NRCP 16 mandate, which specifically requires a showing of good cause to amend the pleadings after the time for doing so set forth in the court's scheduling order has expired.” (*Id.* at 8:18-21.) With that in mind, this Court found that the Amended Counterclaims were “time-barred by [the District] Court's prior scheduling order and the previous denial of the LTTQ/FERG Defendants'

Motion to Amend,” and that “Caesars’ First Amended Complaint did not open the door for the Development Entities to expand the scope of the litigation beyond its current parameters.” (*Id.* at 9:3-6.)

I. The Development Entities File their Writ Petition.

On February 5, 2021, the Development Entities filed their Writ Petition. (*See generally* Ex. 1.) In brief, the Development Entities seek a writ of mandamus from the Nevada Supreme Court directing this Court: (i) to vacate the Order; and (ii) to enter an order denying the Motion to Strike in its entirety. (*Id.* at 1.)

III. ARGUMENT

A. Standard of Decision.

This Court has the inherent power to grant a stay “as a matter of controlling [its] docket and calendar.” *Evanston Ins. Co. v. 70 Ltd. P’ship*, No. 2:14-cv-01370-RFB-NJK, 2014 WL 6882415, at *1 (D. Nev. Dec. 5, 2014) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936)). In deciding whether to issue a stay pending the Nevada Supreme Court’s review of a writ petition, a court evaluates: “(1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.” NRAP 8(c); *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). “[I]f one or two factors are especially strong, they may counterbalance other weak factors.” *Mikohn Gaming Corp.*, 120 Nev. at 251, 89 P.3d at 38.

B. This Court Should Stay All Non-Discovery Deadlines Pending the Outcome of the Writ Petition.

As shown below, a stay of all non-discovery deadlines pending the outcome of the Writ Petition is warranted.

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1 **1. *The Object of the Writ Petition Will be Defeated Unless a Partial Stay is***
2 ***Granted.***

3 Where the object of a writ petition will be defeated unless a stay is entered, “a stay is
4 generally warranted.” *See Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 40.

5 Here, the object of the Writ Petition will be defeated if the parties are required to file
6 dispositive motions and proceed to trial prior to the Nevada Supreme Court ruling on the Writ
7 Petition. Specifically, if a stay is not entered, the parties will be forced to file dispositive motions
8 and go through a costly and time-consuming trial without knowing the status of the pleadings (e.g.,
9 whether the TPOV Parties and Moti Parties may present claims for relief to the jury and whether
10 the LLTQ/FERG Parties may present evidence concerning GR Steak AC and GR Steak KC). If the
11 Nevada Supreme Court elects to consider the Writ Petition and vacates the Order, the parties will
12 need to go through another round of dispositive motions and will be forced to go through a retrial
13 on the same facts and legal theories, calling the same witnesses and presenting virtually identical
14 evidence. Plainly, it would be much more efficient to wait for the Nevada Supreme Court to rule on
15 the Writ Petition prior to filing dispositive motions and proceeding to trial.

16 For these reasons, a partial stay of all non-discovery deadlines is warranted.

17 **2. *The Development Entities Will Suffer Serious Injury if a Partial Stay is not***
18 ***Entered Pending the Outcome of their Writ Petition; Conversely, Caesars,***
19 ***Ramsay, and OHR will Suffer Little or No Harm if a Partial Stay is***
20 ***Entered.***

21 Under the second and third factors, “[a]lthough irreparable or serious harm remains part of
22 the stay analysis, th[ese] factor[s] will not generally play a significant role in the decision whether
23 to issue a stay.” *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39.

24 Here, the Development Entities will suffer serious injury if a partial stay is not entered.
25 That is, the Development Entities will be precluded from addressing their Amended Counterclaims
26 in dispositive motions; the TPOV Parties and the MOTI Parties will be barred from presenting
27 evidence on any claims for relief at trial; and the LLTQ/FERG Parties will be unable to seek
28 damages at trial with regard to GR Steak AC and GR Steak KC (even though they may seek
damages for similar restaurant ventures from which they were wrongfully excluded).

1 By contrast, Caesars, Ramsay, and OHR cannot show serious injury or irreparable harm as a
2 “mere delay in ... litigation” is not enough. *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39.

3 Accordingly, the second and third factors weigh in favor of granting a partial stay.

4 **3. The Development Entities are Likely to Prevail on the Merits of their Writ**
5 **Petition.**

6 Under the fourth factor, the party opposing the stay “can defeat the motion by making a
7 **strong showing** that [writ] relief is unattainable.” *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d
8 at 40. (emphasis added). Alternatively, the opposing party can defeat the motion by showing that
9 the writ petition is frivolous or was filed for dilatory purposes. *See id.*

10 Here, respectfully, it is likely that the Nevada Supreme Court will consider the Writ Petition
11 and grant the relief requested by the Development Entities. As this Court has acknowledged, there
12 is no Nevada law addressing whether and under what circumstances a defendant may file amended
13 counterclaims, without leave of court, in response to an amended complaint that changes the theory
14 and/or scope of the case. As a result, federal case law is “strong persuasive authority” on the issue.
15 *See Exec. Mgmt. Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002); *see also*
16 *Venetian Casino Resort, LLC v. Eighth Jud. Dist. Ct.*, 136 Nev. Adv. Op. 26, 467 P.3d 1, 5 n.7
17 (2020) (noting that the “current version of the NRCF is modeled after the federal rules.”).

18 ***Virtually every federal court to address the issue has held that a defendant may do so as a***
19 ***matter of right based on principles of equity and fairness.*** *See e.g., Va. Innovation Scis. Inc. v.*
20 *Samsung Elecs. Co.*, 11 F. Supp. 3d 622, 632-33 (E.D. Va. 2014); *see also Poly-Med, Inc. v. Novus*
21 *Sci. Pte Ltd.*, Civil Action No. 8:15-cv-01964-JMC, 2017 U.S. Dist. LEXIS 103991, at *7 (D.S.C.
22 July 6, 2017); *UDAP Indus. v. Bushwacker Backpack & Supply Co.*, No. CV 16-27-BU-JCL, 2017
23 U.S. Dist. LEXIS 66803, at *7-8 (D. Mont. May 2, 2017); *Hydro Eng’g, Inc. v. Petter Invs., Inc.*,
24 No. 2:11-cv-00139-RJS-EJF, 2013 U.S. Dist. LEXIS 40552, at *13 (D. Utah Mar. 22, 2013); *Elite*
25 *Entm’t, Inc. v. Khela Bros. Entm’t*, 227 F.R.D. 444, 446 (E.D. Va. 2005); *Uniroyal Chem. Co. v.*
26 *Syngenta Crop Prot., Inc.*, No. 3:02-CV-02253-AHN, 2005 WL 677806, at *3 (D. Conn. Mar. 23,
27 2005). Thus, the Development Entities should have been allowed to do so since the breadth of the
28

1 changes in their Amended Counterclaims is *minor* when compared with the breadth of the changes
2 in Caesars' First Amended Complaint.

3 Further, federal courts have rejected arguments akin to the Rule 16 approach adopted by this
4 Court. Specifically, courts have rejected arguments that amended counterclaims filed in response to
5 amended complaints are untimely if they are filed after the deadline to amend has passed. *See*
6 *Spellbound Dev. Grp., Inc. v. Pac. Handy Cutter, Inc.*, No. SACV-09-951-DOC-(Anx), 2011 U.S.
7 Dist. LEXIS 54597, at *4 (C.D. Cal. May 12, 2011) (rejecting argument that a counterclaim filed in
8 response to an amended complaint was "untimely" because the defendant had "failed to comply
9 with the Court's past scheduling order dictating the deadline by which to amend claims and failed
10 to seek leave of the Court to amend."); *Sierra Dev. Co. v. Chartwell Advisory Grp. Ltd.*, No. 13-cv-
11 602-BEN-VPC, 2016 U.S. Dist. LEXIS 160308, at *10-12 (D. Nev. Nov. 18, 2016) (denying a
12 motion to strike counterclaims pled by Caesars and other defendants, without leave of court, in
13 response to an amended complaint after the Rule 16 deadline to amend had passed); *cf. Hydro*
14 *Eng'g, Inc.*, No. 2:11-cv-00139-RJS-EJF, 2013 U.S. Dist. LEXIS 40552, at *15 (holding defendant
15 did not need to seek leave under Rule 15 to file amended counterclaims in response to an amended
16 complaint). This Court already determined that the pleadings could be amended when it allowed
17 Caesars to file its First Amended Complaint. The same privilege should have been afforded to the
18 Development Entities with regard to their Amended Counterclaims.

19 Finally, the Development Entities' Writ Petition is neither frivolous, nor filed for dilatory
20 purposes. To the contrary, the Development Entities timely filed their Writ Petition in good faith in
21 order to address issues of first impression in Nevada.

22 For these reasons, the fourth factor weighs in favor of partially staying this matter pending a
23 ruling on the Writ Petition.

24 IV. CONCLUSION

25 Until the Nevada Supreme Court rules on the Writ Petition, this Court should enter an order
26 staying all non-discovery deadlines in this matter, including the deadlines for filing dispositive
27 motions and motions *in limine*, the deadlines for pretrial disclosures, the deadline for the pre-trial
28 memorandum, and trial. The object of the Writ Petition will be defeated, and unlike Caesars,

1 Ramsay, and OHR, the Development Entities will suffer serious injury if a partial stay is not
2 entered. The Development Entities have a likelihood of success on their Writ Petition, and
3 therefore, this Motion to Stay should be granted in its entirety.

4 DATED this 5th day of February, 2021.

5 BAILEY ♦ KENNEDY

6 By: /s/ John R. Bailey

7 JOHN R. BAILEY

8 DENNIS L. KENNEDY

9 JOSHUA P. GILMORE

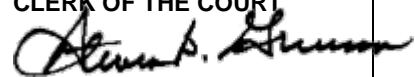
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16 *Squared Global Solutions, LLC, Derivatively on Behalf of*
17 *DNT Acquisition, LLC*

Exhibit 2

Exhibit 2



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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 THE
DEVELOPMENT ENTITIES' MOTION
FOR A LIMITED STAY OF
PROCEEDINGS PENDING THEIR
PETITION FOR EXTRAORDINARY
WRIT RELIEF ON ORDER
SHORTENING TIME**

AND ALL RELATED MATTERS

I. INTRODUCTION

The judiciary has long recognized that "*justice delayed is justice denied.*" Yet, after numerous delay tactics, once again, the Seibel-Affiliated Entities¹ brazenly ask this Court to delay this matter. Caesars² has waited *years* for resolution of its claims against the Seibel Parties. Now, so close to resolution, with trial set for this summer, the Seibel Parties want to stay the case. The answer must be no.

Importantly, this is neither the first nor the second time that the Seibel-Affiliated Entities have argued that their untimely claims should be before the Court. This Court has *repeatedly* found that neither the law nor the facts are on their side. Now, seeking the third bite at the proverbial apple, the Seibel-Affiliated Entities fail to breathe new life into their position. To be clear, the parties have thoroughly briefed and this Court has extensively considered the timeliness and propriety of the Seibel-Affiliated Entities' claims. Each time, in carefully reasoned decisions, the Court has rejected the Seibel Parties' efforts to bring their untimely claims. Nothing has changed and the factors this Court must consider when determining whether to issue a stay weigh heavily in Caesars' favor. The Court must reject the Seibel-Affiliated Entities' Motion to Stay.

II. RELEVANT FACTUAL BACKGROUND

A. Caesars Terminates the Seibel Agreements When it Learns of Seibel's Felony Conviction.

This Court is familiar with the underlying facts of this litigation, so Caesars only briefly recites them here. As this Court knows, Caesars entered into six agreements with entities owned by, managed by, and/or affiliated with Seibel related to the operation of restaurants at Caesars'

¹ The Seibel-Affiliated Entities include 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"), TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), and DNT Acquisition, LLC, appearing derivatively by one of its two members R Squared Global Solutions, LLC ("DNT"). Rowen Seibel ("Seibel"), Craig Green ("Green"), and the Seibel-Affiliated Entities are collectively referred to herein as the "Seibel Parties."

² 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."

properties in Las Vegas and Atlantic City (the "Seibel Agreements").³ (First Am. Compl., Aug. 25, 2017, on file, ¶ 1.) As required of a gaming licensee, each of the Seibel Agreements contained certain suitability and disclosure provisions to ensure that Caesars was not engaged in business dealings with an unsuitable entity or individual. (*See, e.g., id.* ¶¶ 42-48.)

Unbeknownst to Caesars, Seibel was unsuitable. As all now know, Seibel was under investigation by the United States Government for his use of and failure to disclose a foreign bank account. (*Id.* ¶¶ 95-111.) In April 2016, Seibel was charged with defrauding the IRS and pleaded guilty to a corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212, a Class E Felony. (*Id.* ¶ 109.) Despite the express requirements of the Seibel Agreements, Seibel did not advise Caesars that he was engaged in criminal activity, being investigated for it, or that he was convicted of it. (*Id.* ¶¶ 111-12.) Instead, Seibel tried to defraud Caesars via sham assignments that left him as the ultimate beneficiary of the Seibel Agreements. (*Id.* ¶ 111.) Once Caesars discovered Seibel's conviction in August 2016 – via news reports no less – Caesars exercised its ability to terminate the Seibel Agreements as expressly allowed by their terms and as required of a gaming licensee. (*Id.* ¶¶ 112-22.) The parties have been engaged in protracted litigation ever since.

B. The Seibel Parties' Delay This Litigation at Every Turn.

Although the Seibel-Affiliated Entities' Motion relates to this Court's Order Granting Caesars' Motion to Strike, their request for a stay cannot and should not be considered in a vacuum as it is only their latest effort in a *long* line of attempts to delay this litigation and avoid having this Court adjudicate Caesars' claims. Indeed, *this is the Seibel Parties' fourth motion to stay this action*. (*See* Am. Mot. to Dismiss or, in the Alternative to Stay Claim Asserted Against MOTI Defs., Feb. 22, 2018, on file; Defs.' Mot. to Stay All Proceedings in the District Court

³ The six Seibel Agreements are as follows: 1) Development, Operation, and License Agreement among DNT Acquisition, LLC, The Original Homestead Restaurant, Inc., and Desert Palace, Inc. ("DNT Agreement"); 2) Development and Operation Agreement between TPOV Enterprises, LLC and Paris Las Vegas Operating Company, LLC ("TPOV Agreement"); 3) Development and Operation Agreement between LLTQ Enterprises, LLC and Desert Palace, Inc. ("LLTQ Agreement"); 4) Development, Operation and License Agreement Among Gordon Ramsay, GR BURGR, LLC and PHW Manager, LLC on behalf of PHW Las Vegas, LLC DBA Planet Hollywood ("GRB Agreement"); 5) Consulting Agreement between FERG, LLC and Boardwalk Regency Corporation DBA Caesars Atlantic City ("FERG Agreement"); and 6) Development, Operation, and License Agreement (the "MOTI Agreement").

1 Pending a Decision on Their Petition for a Writ of Mandamus or Prohibition, June 18, 2018, on
2 file, Certilman Balin's Mot. to Withdraw & Mot. for a Stay of Discovery on Order Shortening
3 Time, May 13, 2019, on file.)

4 As this Court will recall, Caesars' complaint was originally filed in August 2017. (*See*
5 *Compl.*, Aug. 25, 2017, on file.) The Seibel Parties have attempted to delay this litigation since
6 that initial filing. First, the Seibel Parties improperly attempted to remove the action. *Desert*
7 *Palace, Inc. v. MOTI Partners, LLC*, Case No. 17 01237 (Bankr. D. Nev.); *Desert Palace, Inc. v.*
8 *LLTQ Enters., LLC*, Case No. 17 01238 (Bankr. D. Nev.) Then the Seibel Parties unsuccessfully
9 moved to dismiss or alternatively stay certain claims. (Order, June 1, 2018, on file.) Even after all
10 of those procedural maneuvers were unsuccessful, Seibel and the Seibel-Affiliated Entities
11 refused to respond to Caesars' complaint and Caesars was forced to file notices of intent to
12 default. (*See, e.g.*, Notice of Intent to Take Default, June 25, 2019.) Finally, over ten months after
13 Caesars filed its initial complaint, the Seibel Parties filed answers in July 2018. But the delay
14 tactics continued. From refusing to produce meaningful Rule 16.1 disclosures,⁴ failing to
15 participate in good faith discovery,⁵ to even replacing their counsel multiple times,⁶ the Seibel
16 Parties have taken every and any action possible to delay this litigation.

17 **C. The Seibel Parties Unsuccessfully Attempt to Expand the Scope of the**
18 **Litigation.**

19 Even after engaging in discovery in this litigation, the Seibel Parties have been less than
20 efficient and, indeed, intentionally dilatory in defending against Caesars' claims and in
21 prosecuting their own. Recall, initially only LLTQ, LLTQ 16, FERG, FERG 16, and DNT,
22 derivatively by one of its members, R Squared Global Solutions, LLC, filed counterclaims against
23 Caesars. (*See, e.g.*, LLTQ/FERG Defs.' Answer & Affirmative Defenses to Pl.'s Compl. &
24 Countercls., July 6, 2018, on file; Def. DNT's Answer to Pl.'s Compl. & Coutnercls., July 6,

25 ⁴ (*See, e.g.*, Ex. 1, Email from M. Magali Mercera to Nicole Milone, Apr. 26, 2019.)

26 ⁵ (*See, e.g.*, Ex. 2, Email from M. Magali Mercera to Nicole Milone, Apr. 30, 2019.)

27 ⁶ (*See* Certilman Balin's Mot. to Withdraw & Mot. for a Stay of Disc. on Order Shortening
28 Time, May 13, 2019, on file; *see also* Substitution of Att'ys, Mar. 2, 2020, on file.) Notably,
present counsel is the sixth firm that has represented the Seibel Parties.

2018.) The other Seibel Parties, Seibel, TPOV, TPOV 16, MOTI, and MOTI 16 filed only answers in response to Caesars' original complaint. (*See* MOTI Defs.' Answer & Affirmative Defenses to Pl.'s Compl., July 6, 2018; Defs. TPOV & TPOV 16's Answer to Pl.'s Compl., July 6, 2018, on file.)

In October 2019, LLTQ, LLTQ 16, FERG, FERG 16 (collectively the "LLTQ/FERG Defendants") moved to amend their counterclaims. (Mot. to Amend LLTQ/FERG Defs.' Answer, Affirmative Defenses & Countercls., Oct. 2, 2019.) After thorough briefing from the parties and considering the arguments made at the hearing, the Court denied LLTQ/FERG Defendants' Motion to Amend specifically finding that they "*were aware of the facts they sought to include in their amended counterclaim before the deadline to amend expired and they delayed seeking leave to amend* their counterclaims." (Order Denying Mot. to Amend LLTQ/FERG Defs.' Answer, Affirmative Defenses & Countercls., May 29, 2020, on file, at 3:6-8 (emphasis added).) Following this Court's denial of their motion to amend, the Seibel Parties did not appeal this Court's decision, did not seek reconsideration, nor did they initiate any other action to preserve their rights.

Instead, following amendment of Caesars' complaint, the Seibel Parties' improperly filed an amended counterclaim asserting, for the first time, new claims and attempting to insert new restaurants into the litigation. (The Development Entities, Seibel, & Green's Answer to Caesars' 1st Am. Compl. & Countercls., June 19, 2020, on file.) Specifically, all of the Seibel-Affiliated Entities attempted to assert claims for breach of contract and breach of the implied covenant of good faith and fair dealing claims against Caesars related to the initial claims asserted nearly three years prior in August 2017. (*See id.* at 48:10-16.) However, just as with the Seibel Parties' previous unsuccessful attempt to amend their counterclaims, the new claims were woefully late and time-barred by this Court's prior scheduling orders. (*See generally* Caesars' Mot. to Strike the Seibel-Affiliated Entities' Countercls., and/or in the Alternative, Mot. to Dismiss, July 15, 2020, on file.) Once again, following extensive motion practice, hearing from counsel at the hearing, and taking the matter under advisement for further consideration, this Court agreed with Caesars that the Seibel-Affiliated Entities' last-minute addition of claims was improper and granted

Caesars' Motion to Strike. (Findings of Fact, Conclusions of Law, & Order Granting Caesars' Mot. to Strike the Seibel-Affiliated Entities' Counterclaims, and/or in the Alternative, Mot. to Dismiss, Feb. 3, 2021, on file.)

III. ARGUMENT

In determining whether to issue a stay pending adjudication of a writ, this Court must consider:

(1) Whether the object of the appeal or writ petition will be defeated if the stay is denied;

(2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;

(3) Whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and

(4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

Hansen v. Eighth Jud. Dis. Ct., 116 Nev. 650, 657, 6 P.3d 982, 986 (2000) (citing NRAP 8(c); *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948)). These factors weigh heavily in favor of denying the Seibel-Affiliated Entities' Motion to Stay.

A. The Object of the Stay Will Not Be Defeated.

In their Motion, the Seibel Parties argue that the object of their appeal will be defeated if the parties are required to proceed with dispositive motions and trial before the Nevada Supreme Court entertains their writ petition. In support of this argument, the Seibel-Affiliated Entities argue that if they are then successful on their appeal, they may have "to go through another round of dispositive motions" and a possible "retrial." By their own admission, thus, the object of their appeal will not be defeated as – if successful – they would still have an opportunity for their untimely claims to be heard. Indeed, while the parties must submit motions for summary judgment by February 18, 2021 pursuant to this Court's scheduling order, there is nothing that would have prevented the parties from filing such motions in advance of this deadline and at no point did the Seibel Parties attempt to appeal the denial of their motion to amend since their efforts were initially rejected over a year ago. This factor, thus, weighs in favor of denial of a stay.

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1 *It runs contrary to these important goals when parties fail to abide by this court's rules and*
2 *directives.")* Yet delaying justice is exactly what the Seibel Parties are attempting to do.

3 As discussed above this is not the first, nor the second, nor even the third time that the
4 Seibel Parties have sought a stay of this action. It is now the fourth time in as many years that
5 they have tried to delay Caesars from obtaining judicial relief on its claims related to Seibel's
6 unsuitability and its proper termination of the Seibel Agreements. Indeed, the Seibel Parties have
7 also previewed that if Caesars is successful on its Motion to Compel currently pending before this
8 Court on another issue, they will seek to appeal that issue and once again seek a stay. At some
9 point, this case must go to trial. The Seibel Parties have delayed it long enough despite Caesars'
10 good faith efforts to proceed with the litigation. Simply, the Seibel Parties cannot be rewarded for
11 their ongoing dilatory behavior. These two factors weigh in favor of a denial of a stay.

12 C. **The Seibel-Affiliated Entities Will Not Prevail on the Merits.**

13 The final factor here weighs most heavily in Caesars' favor and against a stay. Here it is
14 unlikely that the Seibel Parties will prevail on the merits. To this day, the Seibel Parties have
15 offered no explanation as to why they delayed bringing claims on behalf of the LLTQ/FERG
16 Defendants that they knew about when they first asserted their counterclaims in July 2018 or why,
17 suddenly, after years of litigation in which TPOV, TPOV, 16, MOTI, and MOTI 16 had failed to
18 assert any claims they must do so now. Of course, the most reasonable explanation is that the
19 Seibel Parties' present counsel is different than the counsel that initially responded to Caesars'
20 complaint. But the law does not reward parties simply because they switched counsel. To the
21 contrary, it discourages gamesmanship and delay. *See Nutton v. Sunset Station, Inc.*, 131 Nev.
22 279, 285-86, 357 P.3d 966, 971 (Nev. App. 2015) (emphasis added) (quoting *Johnson v.*
23 *Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992)) ("***Disregard of the [scheduling]***
24 ***order would undermine the court's ability to control its docket, disrupt the agreed-upon course***
25 ***of the litigation, and reward the indolent and the cavalier.***")

26 As this Court knows, Rule 12(f) allows a court to "strike from a pleading an insufficient
27 defense or any redundant, immaterial, impertinent, or scandalous matter." (*See also Russell Rd.*
28 *Food & Beverage, LLC v. Galam*, No. 2:13-CV-0776-JCM-NJK, 2013 WL 6684631, at *1 (D.

1 Nev. Dec. 17, 2013)⁸ ("A motion to strike material from a pleading is made pursuant to Rule
2 12(f), which allows courts to strike 'an insufficient defense or any redundant, immaterial,
3 impertinent or scandalous matter.'") "The *essential function of a Rule 12(f) motion is to 'avoid*
4 *the expenditure of time and money that may arise from litigating spurious issues by dispensing*
5 *with those issues prior to trial.'*" *Russell Rd. Food & Beverage, LLC*, 2013 WL 6684631, at *1
6 (emphasis added) (quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993)); *see*
7 *also Bolick v. Pasioneck*, No. 2:10-CV-00353-KJD, 2011 WL 742237, at *3 (D. Nev. Feb. 24,
8 2011) (emphasis added) (citations omitted) ("***The Court is cautious of transparent attempts to***
9 ***prolong litigation, open up spurious discovery issues, or that may unnecessarily waste time,***
10 ***expense, resources or cause undue prejudice.***")

11 The law had made clear that "where a scheduling order has been entered, the lenient
12 standard under Rule 15(a), which provides leave to amend 'shall be freely given,' must be
13 balanced against the requirement under Rule 16(b) that the Court's scheduling order 'shall not be
14 modified except upon a showing of good cause.'" *Nutton*, 131 Nev. at 285, 357 P.3d at 971
15 (quoting *Grochowski v. Phoenix Constr.*, 318 F.3d 80, 86 (2d Cir. 2003).) The ***purpose of Rule***
16 ***16 'is 'to offer a measure of certainty in pretrial proceedings, ensuring that at some point both***
17 ***the parties and the pleadings will be fixed.'***" *Id.*, 357 P.3d at 971 (quoting *Parker v. Columbia*
18 *Pictures Indus.*, 204 F.3d 326, 339–40 (2d Cir. 2000).) Although the Seibel Parties continue to
19 complain that Caesars was permitted to amend its Complaint when they were not, the Seibel
20 Parties continue to fail to recognize that Caesars satisfied its burden to show good cause while the
21 Seibel Parties did not. (See Feb. 12, 2020 Hr'g Tr. 9:18-23 ("I have to conduct a good cause
22 analysis under the *Nutton* case. It's not a tit for tat. It's I look at each issue individually.")
23 Litigation is not a quid pro quo. The Seibel Parties had ample opportunity to bring their
24 counterclaims. They did not. They cannot now be rewarded for their dilatory behavior.

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27 ⁸ "Federal cases interpreting the Federal Rules of Civil Procedure 'are strong persuasive authority,
28 because the Nevada Rules of Civil Procedure are based in large part upon their federal
counterparts.'" *Exec. Mgmt., Ltd. v. Tigor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002)
(quoting *Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990))

1 Even if the Court were to ignore the mandates of Rule 16 (it cannot), the Seibel-Affiliated
2 Entities are unlikely to prevail under the "moderate approach" they advocate for. Under the
3 "moderate approach" "an amended response may be filed without leave only when the amended
4 complaint changes the theory or scope of the case, and then, the breadth of the changes in the
5 amended response must reflect the breadth of the changes in the amended complaint." *Elite*
6 *Entm't, Inc. v. Khela Bros. Entm't*, 227 F.R.D. 444, 446 (E.D. Va. 2005); *see also, e.g., Bibb Cnty.*
7 *Sch. Dist. v. Dallemand*, Civil Action No. 5:26-cv-549, 2019 WL 1519299, *3 (M.D. GA Apr. 8,
8 2019) ("Put another way, [under the moderate approach] a defendant may bring a counterclaim as
9 a matter of course if the amended complaint broadened the scope or theory of the case and the
10 counterclaim was proportional to that amendment." (citation omitted)). While the "moderate
11 approach [is] predominant in the caselaw[,] ***the requirement that an amended response reflect***
12 ***the change in theory or scope of the amended complaint is [also] consistent with Rule 15's***
13 ***requirement that an amended pleading must 'plead in response' to the amended pleading.***" *Elite*
14 *Entm't, Inc.*, 227 F.R.D. at 446–47 (emphasis added) (citations omitted).

15 As this Court already determined, the Seibel Parties' counterclaims would not be permitted
16 even under the moderate approach because the changes they seek to make to their counterclaims
17 bear no relation to the changes made by Caesars in its First Amended Complaint. In other words,
18 their changes "do not reflect the breadth of the changes in Caesars' First Amended Complaint"
19 which were limited to the kickback scheme and thus are not proportional to Caesars' changes.
20 There must be some relation back to the claims actually brought by Caesars otherwise, this
21 Court's scheduling order, the rules of civil procedure, and even the motion practice about the
22 LLTQ/FERG Defendants' prior attempt to amend would be meaningless. No party would ever
23 have to comply with the requirement to bring a motion to amend and there would be no need for
24 the Court to include such a deadline in the scheduling order.⁹ The Seibel Parties made the
25 strategic decision not to assert claims on behalf of MOTI, MOTI 16, TPOV, and TPOV 16 in the
26 first three years of the litigation and to only bring limited claims on behalf of the LLTQ/FERG
27 Defendants. They do not get a do-over simply because they have new counsel or because Caesars

28 ⁹ As of the filing of this Opposition, the Nevada Supreme Court has not Caesars to file a
response nor is there presently any indication that any such order will issue.

1 was allowed to amend their complaint on issues discovered in this litigation. Their remedy was
2 seeking leave to amend their counterclaims to obtain the appropriate leave of court. They did not
3 do so and it is unlikely that the Supreme Court, even if it considers the writ petition, will
4 disregard those strategic choices that the Seibel-Affiliated Entities made. This factor weighs
5 heavily in favor of denial of a stay.

6 **IV. CONCLUSION**

7 Based on the foregoing, Caesars respectfully requests this Court deny the Seibel-
8 Affiliated Entities' Motion to Stay.

9 DATED this 16th day of February 2021.

10 PISANELLI BICE PLLC

11 By: /s/ M. Magali Mercera
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24 *Paris Las Vegas Operating Company, LLC;*
25 *PHWLTV, LLC; and Boardwalk Regency*
26 *Corporation d/b/a Caesars Atlantic City*
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 16th day of February 2021, 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 THE DEVELOPMENT ENTITIES' MOTION FOR A LIMITED STAY OF PROCEEDINGS PENDING THEIR PETITION FOR EXTRAORDINARY WRIT RELIEF ON ORDER SHORTENING TIME** to the following:

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*Attorneys for Nominal Plaintiff
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/s/ Cinda Towne
An employee of PISANELLI BICE PLLC

EXHIBIT 1

Magali Mercera

From: Magali Mercera
Sent: Friday, April 26, 2019 11:02 AM
To: 'Nicole L. Milone'; Joshua Feldman; PAUL B. SWEENEY; Dan McNutt (drm@mcnuttlawfirm.com); Matt Wolf; Lisa Heller
Cc: James Pisanelli; Debra Spinelli; Brittanie T. Watkins; Robert A. Ryan; Diana Barton; Cinda C. Towne
Subject: Desert Palace/Seibel: 16.1 Disclosures & Deficient Rule 34 Responses

Nicole –

I am following up regarding the Seibel Parties deficient, or rather non-existent, disclosures in the state court matter. As discussed, the Seibel Parties have not produced a single document in the state court action. Not only do the Seibel Parties have an independent obligation to disclose discoverable documents, we served numerous Rule 34 requests and granted extensions for the Seibel Parties to respond to those requests. To date, not only have the Seibel Parties refused to comply with their NRCP 16.1 obligations, they have also failed to provide any documents responsive to the numerous requests served by Plaintiffs even despite the additional time provided to respond.

As you know, there are upcoming deadlines that are being affected by the Seibel Parties' ongoing delay tactics and gamesmanship with respect to discovery in the state court action. We have met and conferred on the issue regarding the Seibel Parties' failure to comply with their Rule 16.1 disclosure obligations and will bring this issue before the Court. Please advise when you are available for a meet and confer regarding the Seibel Parties' deficient responses to the Rule 34 requests as we also intend to bring that issue to the Court for prompt resolution.

Thanks,

M. Magali Mercera

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EXHIBIT 2

Magali Mercera

From: Magali Mercera
Sent: Tuesday, April 30, 2019 7:23 PM
To: 'Lisa Heller'; PAUL B. SWEENEY; Robert Atkinson (Robert@nv-lawfirm.com); bknotices@nv-lawfirm.com; Sutehall, Kevin M.; TENNERT, JOHN; WILT, ALLEN; Dan McNutt; Matt Wolf; BYRD, MARGARET; Loffredo, Doreen; Nathan Rugg; Steven B. Chaiken; Alan Lebensfeld; brett.schwartz@lsandspc.com; mconnot@foxrothschild.com; Joshua Feldman; Nicole L. Milone; LISA A. NICHOLS; christine.gioe@lsandspc.com; Trey Pictum
Cc: James Pisanelli; Debra Spinelli; Diana Barton; Brittne T. Watkins; Cinda C. Towne; Zeiger, Jeffrey J. (jzeiger@kirkland.com); Arnault, Bill; Robert A. Ryan
Subject: RE: Notification of Service for Case: A-17-751759-B, Rowen Seibel, Plaintiff(s) vs. PHWLVC LLC, Defendant(s) for filing Service Only, Envelope Number: 4223800

Nicole –

We are in receipt of the Seibel Parties' first supplemental disclosures. The Seibel Parties' production fails to comply with the Stipulated Protocol Governing Production of Electronically Stored Information entered in this action on March 12, 2019 (the "ESI Protocol"). The production did not provide the required load files (including text files, image files, natives, .dat files, or .opt files, as applicable) nor were the documents produced in the format required by Section 3 of the ESI Protocol. The documents were provided in PDF form, which was only allowable to Mr. Frederick per the parties' stipulation. Please provide a corrected production in compliance with the ESI protocol by close of business Thursday. If you are unable or unwilling to provide a corrected production as requested, please advise of your availability for a meet and confer.

As you know, after many months of delay, this is the first set of documents produced by the Seibel Parties. It appears that these documents consist of only a sampling of pleadings and/or discovery served in the bankruptcy action as opposed to a meaningful and good faith production of documents required to comply with the Seibel Parties' 16.1 obligations. Given the Seibel Parties' ongoing delay, we reserve all rights to bring the Seibel Parties' ongoing discovery failures to the Court for prompt resolution.

Thanks,

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From: Lisa Heller <lah@mcnuttlawfirm.com>

Sent: Tuesday, April 30, 2019 3:31 PM

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Subject: FW: Notification of Service for Case: A-17-751759-B, Rowen Seibel, Plaintiff(s)vs.PHWLV LLC, Defendant(s) for filing Service Only, Envelope Number: 4223800

The documents referenced in Defendants' First Supplemental Disclosures can be found in the attached sharefile link.

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From: efilingmail@tylerhost.net <efilingmail@tylerhost.net>

Sent: Tuesday, April 30, 2019 3:26 PM

To: Lisa Heller <lah@mcnuttlawfirm.com>

Subject: Notification of Service for Case: A-17-751759-B, Rowen Seibel, Plaintiff(s)vs.PHWLV LLC, Defendant(s) for filing Service Only, Envelope Number: 4223800



Notification of Service

Case Number: A-17-751759-B
Case Style: Rowen Seibel, Plaintiff(s)vs.PHWLV
LLC, Defendant(s)
Envelope Number: 4223800

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

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Case Number	A-17-751759-B
Case Style	Rowen Seibel, Plaintiff(s)vs.PHWLV LLC, Defendant(s)

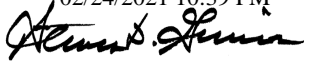
Date/Time Submitted	4/30/2019 3:25 PM PST
Filing Type	Service Only
Filing Description	DEFENDANTS' FIRST SUPPLEMENTAL DISCLOSURE OF DOCUMENTS AND WITNESSES
Filed By	Lisa Heller
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Exhibit 3

Exhibit 3



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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

**ORDER DENYING THE
DEVELOPMENT ENTITIES' MOTION
FOR A LIMITED STAY OF
PROCEEDINGS PENDING THEIR
PETITION FOR EXTRAORDINARY
WRIT RELIEF ON ORDER
SHORTENING TIME**

Date of Hearing: February 17, 2021

Time of Hearing: 9:00 a.m.

1 TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ
2 Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"),
3 FERG 16, LLC ("FERG 16"), DNT Acquisition, LLC, appearing derivatively through R Squared
4 Global Solutions, LLC ("DNT"), MOTI Partners, LLC ("MOTI"), and MOTI Partners 16, LLC's
5 ("MOTI 16")¹ *Motion for a Limited Stay of Proceedings Pending their Petition for Extraordinary*
6 *Writ Relief on Order Shortening Time* (the "Motion to Stay") filed on February 8, 2021 came before
7 this Court for hearing on February 17, 2021, at 9:00 a.m. Joshua P. Gilmore, Esq. and
8 Paul C. Williams, Esq. of the law firm BAILEY KENNEDY, appeared telephonically on behalf of
9 Rowen Seibel ("Seibel"), Craig Green ("Green"), and the Development Entities.
10 James J. Pisanelli, Esq., M. Magali Mercera, Esq., and Brittanie T. Watkins, Esq. of the law firm
11 PISANELLI BICE PLLC, appeared telephonically on behalf of PHWLTV, LLC ("Planet
12 Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las Vegas Operating Company, LLC
13 ("Paris"), Boardwalk Regency Corporation d/b/a Caesars Atlantic City ("CAC," and collectively,
14 with Caesars Palace, Paris, and Planet Hollywood, "Caesars,") John D. Tennert, Esq., of the law
15 firm FENNEMORE CRAIG, appeared telephonically on behalf of Gordon Ramsay.

16 The Court having considered the Motion to Stay, the Opposition thereto, as well as argument
17 of counsel presented at the hearing, and good cause appearing therefor,

18 THE COURT FINDS THAT, the four factors enumerated in NRAP 8(c) are to be considered
19 in determining whether to issue a stay pending adjudication of a writ.

20 THE COURT FURTHER FINDS THAT, that under the current status of this case, the
21 Development Entities are not likely to prevail on the merits of their writ petition, particularly in
22 light of the good cause analysis this Court is required to conduct under Rule 16(b). *See Nutton v.*
23 *Sunset Station, Inc.*, 131 Nev. 279, 357 P.3d 966 (Nev. App. 2015).

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28 ¹ TPOV, TPOV 16, LLTQ, LLTQ 16, LLC, FERG, FERG 16, MOTI, MOTI 16, DNT, are collectively referred to herein as the Development Entities.

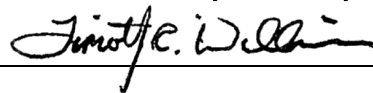
THE COURT FURTHER FINDS THAT, that the amended counterclaims the Development Entities filed on or about June 19, 2020 bear no relation to the new claims brought by Caesars in its First Amended Complaint which pertained to an alleged kickback scheme.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Motion to Stay shall be, and hereby is, DENIED.

IT IS SO ORDERED.

DATED this ____ day of February 2021.

Dated this 24th day of February, 2021



33A E04 4701 8888
Timothy C. Williams
District Court Judge

ZJ

Respectfully submitted by:

Approved as to form and content by:

DATED February 23, 2021

DATED February 22, 2021

PISANELLI BICE PLLC

BAILEY ♦ KENNEDY

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and

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LLTQ Enterprises 16, LLC,
TPOV Enterprises, LLC,
TPOV Enterprises 16, LLC,
FERG, LLC, and FERG 16, LLC; and R
Squared Global Solutions, LLC, Derivatively
on Behalf of DNT Acquisition, LLC*

*Attorneys for Desert Palace, Inc.;
Paris Las Vegas Operating
Company, LLC; PHWLTV, LLC; and
Boardwalk Regency
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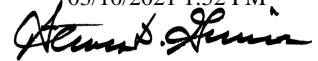
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Exhibit 4

Exhibit 4



CLERK OF THE COURT

SAO

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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.

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.

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**STIPULATION AND ORDER TO
CONTINUE HEARING DATES AND SET
BRIEFING SCHEDULE**

AND ALL RELATED MATTERS

///

The Parties, PHWLTV, 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"), Gordon Ramsay ("Ramsay"), Rowen Seibel ("Seibel"), Craig Green ("Green"), 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"), TPOV Enterprises, LLC ("TPOV"), TPOV 16 Enterprises, LLC ("TPOV 16"), DNT Acquisition, LLC ("DNT"), appearing derivatively through R Squared Global Solutions, LLC, the Original Homestead Restaurant, Inc. ("OHR"), and GR Burgr, LLC ("GRB") (the "Parties"), by and through their undersigned counsel of record, hereby stipulate and agree as follows:

1. On February 25, 2021, Caesars filed their Motion for Summary Judgment No. 1; Motion for Summary Judgment No. 2; and Motion to Redact Caesars' Motion for Summary Judgment No. 1 and Motion for Summary Judgment No. 2 and to Seal Exhibits 1-36, 38, 40-42, 45-46, 48, 50, 66-67, 73, and 76-80 to the Appendix of Exhibits in Support of Caesars' Motions for Summary Judgment (collectively the "Caesars Motions").

2. On February 26, 2021, Ramsay filed his Motion for Summary Judgment and Motion to Redact Gordon Ramsay's Motion for Summary Judgment and Seal Exhibits 2-3, 5-25, 27, 28, 30, 32-35, 37, 38, 42 in Appendix to Ramsay's Motion for Summary Judgment (collectively the "Ramsay Motions").

3. The hearing on Caesars Motions is presently set for April 14, 2021.

4. The hearing on Ramsay Motions is presently set for April 21, 2021.

5. In order to have the motions heard at the same time, the Parties have agreed to continue the above-noticed hearings to April 28, 2021, at 1:30 p.m. for a special setting.

6. Additionally, the Parties agree that oppositions to Caesars Motions and Ramsay Motions shall be due on March 29, 2021. Replies in support of Caesars Motions and Ramsay Motions shall be due in accordance with EDCR 2.20(g).

7. The Parties represent that this stipulation is sought in good faith, is not interposed for delay, and is not filed for an improper purpose.

Respectfully submitted by:

DATED March 5, 2020

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Corporation d/b/a Caesars Atlantic City*

DATED March 4, 2020

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DATED March 4, 2020

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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*

DATED March 4, 2020

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Attorneys for Gordon Ramsay

DATED March 4, 2020

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Attorneys for Nominal Plaintiff GR Burger LLC

ORDER

Based on the foregoing stipulation of the parties and good cause appearing,

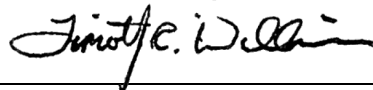
IT IS HEREBY ORDERED that the hearings currently scheduled for April 14, 2021 for
Caesars Motions shall be continued to April 28, 2021, at 1:30 p.m.;

IT IS FURTHER ORDERED that the hearings currently scheduled for April 21, 2021 for
Ramsay Motions shall be continued to April 28, 2021, at 1:30 p.m.; and

IT IS FURTHER ORDERED that the Parties shall have up to and including March 29, 2021
to file responses to Caesars Motions and Ramsay Motions and replies thereto shall be filed in
accordance with EDCR 2.20(g).

IT IS SO ORDERED.

Dated this 10th day of March, 2021



A09 D42 142C 99CA
Timothy C. Williams
District Court Judge

ZJ