

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

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***Supreme Court Case No. 82448***

MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; TPOV ENTERPRISES, LLC; TROY ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; DNT ACQUISITION LLC, APPEARING DERIVATIVELY BY ONE OF ITS TWO MEMBERS R SQUARED GLOBAL SOLUTIONS, LLC,

*Petitioners,*

v.

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

*Respondent,*

and

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

*Real Parties in Interest.*

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**REAL PARTIES IN INTERESTS' RESPONSE TO MOTION FOR A  
PARTIAL STAY OF DISTRICT COURT PROCEEDINGS**

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## **I. INTRODUCTION**

This Court has long recognized the basic judicial principal that "justice delayed is justice denied." *See, e.g., Weddell v. Stewart*, 127 Nev. 645, 650, 261 P.3d 1080, 1084 (2011). Petitioners'<sup>1</sup> Motion to Stay (the "Motion") is part of a pattern of continuous and unrelenting efforts to avoid resolution of a long-pending case. This is the second motion to stay the proceedings filed before this Court and it follows four motions to stay the action filed in the district court. Respectfully, there is no basis to stay the proceedings and, indeed, the factors this Court must consider for a stay weigh in favor of denial of Petitioners' request. Following years of litigation, it is time for this matter to proceed to dispositive motions and trial.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Caesars<sup>2</sup> Protects its Gaming License and Litigation Ensues.**

The underlying facts of this case are simple: Caesars is a gaming licensee that is required by Nevada gaming regulations to self-police and ensure that it is not doing business with unsuitable persons. 5 PA 58 at 950. This is a well-recognized tenet known by all Nevada gaming licensees and by all those who do

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<sup>1</sup> Petitioners refers to LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC, FERG, LLC, FERG 16, LLC, MOTI Partners, LLC, MOTI Partners 16, LLC, TPOV Enterprises, LLC, TPOV Enterprises 16, LLC, and R Squared Global Solutions, LLC, derivatively on behalf of DNT Acquisition, LLC.

<sup>2</sup> Caesars refers to Desert Palace Inc., Paris Las Vegas Operating Company, LLC, PHWLV, and Boardwalk Regency Corporation d/b/a Caesars Atlantic City.

business with gaming licensees. Here, Caesars discovered that Rowen Seibel ("Seibel"), who owned, managed, and is affiliated with Petitioners, was an unsuitable person following a conviction for 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. *Id.* at 944. Petitioners failed to inform Caesars of Seibel's criminal felony conviction and instead attempted to defraud Caesars in an effort to avoid termination of the agreements between the parties. *Id.* Upon uncovering Seibel's felony conviction and his scheme to conceal it, Caesars terminated its agreements with Petitioners. *Id.* In short, Caesars did exactly as the contracts provided and exactly what was expected of a gaming licensee.

#### **B. The Underlying Litigation.**

Caesars filed its complaint in this action on August 25, 2017. 1 PA 7 at 130-69. All of the allegations therein related to termination of the agreements between Caesars and Petitioners. *Id.* Following a nearly year-long delay, Petitioners responded to Caesars' Complaint in July 2018. 2 PA 25-28. At that time, only LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC, FERG, LLC, FERG 16, LLC, and DNT Acquisition, LLC, filed counterclaims against Caesars. 2 PA 27-28. TPOV Enterprises, LLC, TPOV Enterprises 16, LLC, MOTI Partners, LLC, and MOTI Partners 16, LLC only filed answers in response to Caesars' original

complaint. 2 PA 25-26. After Petitioners filed their responsive pleadings, the district held a Rule 16 conference and issued a scheduling order setting, among other things, the deadline to amend pleadings on February 4, 2019. 2 PA 35 at 403.

Nearly eight months after the deadline to amend expired, in October 2019, LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC, FERG, LLC, and FERG 16, LLC (collectively the "LLTQ/FERG Petitioners") moved to amend their counterclaims to add claims regarding additional restaurants. 3 PA 41 at 476-80. However, the district court rejected the LLTQ/FERG Petitioners' efforts 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." *Id.* at 716. Following the district court's decision, the LLTG/FERG Petitioners did not appeal, did not seek reconsideration, nor did they initiate any other action to preserve their tardy claims.

On December 12, 2019, Caesars moved to amend its complaint to add additional claims and allegations related to a kickback scheme it uncovered during discovery. 4 PA 47 at 725-741. Caesars' new claims did not make any changes to the claims related to termination of the agreements between the parties or its initial claims. *See generally id.* After Caesars' successfully obtained leave of court to amend its complaint, Petitioners – without seeking leave of court – improperly filed an amended counterclaim asserting, for the first time, new claims and

attempting to insert new restaurants into the litigation. 6 PA 73 at 1186-236. Importantly, Petitioners' new counterclaims related to the initial claims Caesars' asserted nearly three years prior. *Id.* at 1225-1234. In other words, Petitioners ignored the district court's previous denial of their efforts to amend and unilaterally added the very claims the district court rejected over a year earlier. Following motion practice, the district court struck Petitioners' amended counterclaims. 7 PA 84 at 1482-96.

**C. Petitioners Have Delayed this Litigation at Every Turn.**

Trial in this matter is currently set to proceed on a five-week stack beginning July 12, 2021. 6 PA 80 at 1419. Petitioners, however, have made clear that they do not intend to proceed at that time. Indeed, this is not the first, nor the second, nor even the third time that Petitioners have sought to stay this litigation. Including the present Motion, Petitioners have filed six motions to stay between the district court action and this Court. *See* Ex. 1, Notice of Entry of Order, June 4, 2018, Ex. 2, Notice of Entry of Order, Aug. 22, 2018; Ex. 3, Order, Nov. 9, 2019, Ex. 4, Notice of Entry of Order, June 4, 2019, and Ex. 5, Notice of Entry of Order, Feb. 25, 2021. Here, the analysis that this Court must undertake to determine whether a stay should be granted is not close. The balance of factors under NRAP 8 leads to one conclusion: Petitioners' Motion must be denied.

### III. ARGUMENT

The factors this Court must consider in determining whether to issue a stay are: (1) whether the object of the writ petition will be defeated if the stay is denied; (2) whether petitioner will suffer irreparable injury if the stay is denied; (3) whether the real party in interest will suffer irreparable harm if a stay is granted; and (4) whether petitioner is likely to prevail on the merits of the writ petition. NRAP 8(c); *Hansen v. Eighth Jud. Dis. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). While no single factor is conclusive, none of the factors weigh in favor of a stay here. *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004).

#### A. The Object of the Writ Will Not Be Defeated if a Stay is Denied.

In their Motion, Petitioners admit that the object of their writ petition will not be defeated if the stay is denied. Specifically, Petitioners argue they may have the opportunity to conduct a "potential retrial" if they are ultimately successful on their writ petition. (Mot. 6:2-9.) If they will have an opportunity adjudicate their claims, it cannot be that the object of their writ will be defeated. Instead, their argument appears to be one of efficiency<sup>3</sup> as they claim that many of the witnesses

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<sup>3</sup> Curiously, while arguing for efficiency now, Petitioners can only blame themselves for their current predicament. Indeed, Petitioners sat on their hands and chose not to bring any new claims in response to Caesars' complaint in 2018. Petitioners continued to sit on their hands following denial of their original motion

and evidence will be the same if they are successful. But repeat proceedings demonstrate that relief will be available, if necessary. This factor, thus, weighs in favor of denial of their stay request.

***B. Petitioners Will Not Suffer Irreparable or Serious Harm.***

Irreparable harm is "harm for which compensatory damage is an inadequate remedy." *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987) (citation omitted). "'Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough' to show irreparable harm." *Hansen*, 116 Nev. at 658, 6 P.3d at 987 (quoting *Wis. Gas Co. v. F.E.R.C.*, 758 F.2d 669, 674 (D.C. Cir. 1985)). Indeed, "litigation expenses, while potentially substantial, are neither irreparable nor serious." *Id.*, 6 P.3d at 986–87 (citations omitted). Here, Petitioners cannot show either irreparable or even serious harm. Aware that this factor weighs against a stay, Petitioners attempt to argue they will be prevented from seeking additional damages. But this Court has repeatedly stated that monetary damages are insufficient to satisfy this factor. *See id.*, 6 P.3d at 986–87. This factor, thus, weighs in favor of denying a stay.

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to amend the LLTQ/FERG Petitioners' counterclaims. At no point following the district court's ruling did Petitioners take steps to protect their purported claims. They could have sought reconsideration. They did not. They could have instituted a new action. They did not. Instead, they did nothing, only to cry foul now in the eleventh hour before trial.

***C. Caesars Will be Harmed by a Stay.***

While Caesars will not be irreparably harmed by a stay, Petitioners' unrelenting efforts to delay trial in this matter will continue to harm and greatly prejudice Caesars. As this Court has recognized, "[t]he delay resulting from a stay may also duly frustrate a plaintiff's ability to put on an effective case; because as time elapses, witnesses become unavailable, memories of conversations and dates fade, and documents can be lost or destroyed." *Aspen Fin. Servs. v. Dist. Ct.*, 128 Nev. 635, 646, 289 P.3d 201, 209 (2012) (internal quotations omitted); *see also Clinton v. Jones*, 520 U.S. 681, 707–08 (1997) ("[D]elaying trial would increase the danger of prejudice resulting from the loss of evidence, including the inability of witnesses to recall specific facts, or the possible death of a party.")

The termination of the agreements at issue here took place nearly five years ago. Yet at every turn, Petitioners have sought to delay trial, including improper attempts to remove, repeated motions to stay, and even continual changes of counsel. The parties must proceed to trial to avoid any further delay as a result of Petitioners' dilatory conduct. This factor, thus, weighs in favor of denial of stay.

***D. Petitioners Are Unlikely to Prevail on the Merits.***

Of the four factors this court must consider, the fourth factor weighs most heavily against a stay in these proceedings. At the outset, Petitioners continue to ignore the mandates under Nevada law that promote judicial efficiency. *See Nutton*



*v. Sunset Station, Inc.*, 131 Nev. 279, 285-86, 357 P.3d 966, 971 (Nev. App. 2015) (quoting *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992)) ("Disregard of the [scheduling] order would undermine the court's ability to control its docket, disrupt the agreed-upon course of the litigation, and reward the indolent and the cavalier.") With respect to amended pleadings, the law makes clear that "where a scheduling order has been entered, the lenient standard under Rule 15(a), which provides leave to amend shall be freely given, must be balanced against the requirement under Rule 16(b) that the Court's scheduling order shall not be modified except upon a showing of good cause." *Id.* at 285, 357 P.3d at 971 (internal quotations omitted). The purpose of Rule 16 "is to offer a measure of certainty in pretrial proceedings, ensuring that at some point both the parties and the pleadings will be fixed." *Id.*, 357 P.3d at 971 (internal quotations omitted).)

Ignoring these mandates, Petitioners instead argue that because there is no specific Nevada caselaw on point as to whether a party may amend its counterclaims freely in response to an amended complaint, this Court must look to federal law for guidance. Petitioners' position, however, is unavailing. The district court considered the federal approach when ruling upon Caesars' motion to strike. Although the district court ultimately determined that a Rule 16 analysis was appropriate, it nevertheless concluded that even under the moderate approach in federal caselaw advocated by Petitioners, they would not be permitted to file their

amended counterclaims. 7 PA 84 at 1490. Under the "moderate approach" "an amended response may be filed without leave only when the amended complaint changes the theory or scope of the case, and then, the breadth of the changes in the amended response must reflect the breadth of the changes in the amended complaint." *Elite Entm't, Inc. v. Khela Bros. Entm't*, 227 F.R.D. 444, 446 (E.D. Va. 2005). While the "moderate approach [is] predominant in the caselaw[,] the requirement that an amended response reflect the change in theory or scope of the amended complaint is [also] consistent with Rule 15's requirement that an amended pleading must 'plead in response' to the amended pleading." *Id.* at 446–47 (citations omitted).

Petitioners' amended counterclaims did not reflect the breadth of changes made to Caesars' amended complaint. Specifically, Petitioners' amended counterclaims sought to assert claims related to the original claims Caesars asserted in August 2017. In other words, Petitioners advocate that the despite missing the court's deadline to amend their pleadings, despite failing to obtain permission to amend their pleadings, and despite sitting on their hands for years, they should nevertheless be permitted to assert tardy claims at will. This argument encourages complete disregard for both the rules and orders of the courts and will reward litigants for dilatory behavior. *See Dougan v. Gustaveson*, 108 Nev. 517, 522–23, 835 P.2d 795, 799 (1992), abrogated on other grounds by *Scrimmer v.*

*Eighth Judicial Dist. Court ex rel. Cnty. of Clark*, 116 Nev. 507, 998 P.2d 1190 (2000), and abrogated on other grounds by *Arnold v. Kip*, 123 Nev. 410, 168 P.3d 1050 (2007) ("The timeliness provisions written into the rules will, as a general proposition, be enforced by the courts in order to promote the timely and efficient processing of cases. In effect, these provisions recognize judicial commitment to the proposition that 'justice delayed is justice denied.'"); *see also Weddell v. Stewart*, 127 Nev. 645, 650, 261 P.3d 1080, 1084 (2011) ("Procedural rules governing timelines and filing fees are therefore in place for a reason: they promote cost-effective, timely access to the courts. It runs contrary to these important goals when parties fail to abide by this court's rules and directives.") A stay must be denied.

#### **IV. CONCLUSION**

Based upon the foregoing, Caesars respectfully requests that Petitioners' request for a stay be denied.

DATED this 18th day of March 2021.

PISANELLI BICE PLLC

/s/ M. Magali Mercera

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and, pursuant to NRAP 25(b) and NEFR 9, that on this 18th day of March 2021, I electronically filed and served the foregoing **REAL PARTIES IN INTERESTS' RESPONSE TO MOTION FOR A PARTIAL STAY OF DISTRICT COURT PROCEEDINGS** properly addressed to the following:

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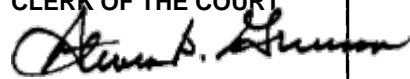
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# EXHIBIT 1



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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.

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

**NOTICE OF ENTRY OF ORDER  
DENYING, WITHOUT PREJUDICE,  
(1) DEFENDANT ROWEN SEIBEL'S  
MOTION TO DISMISS PLAINTIFFS'  
CLAIMS; (2) DEFENDANTS TPOV  
ENTERPRISES AND TPOV  
ENTERPRISES 16'S MOTION TO  
DISMISS PLAINTIFFS CLAIMS;  
(3) MOTION TO DISMISS OR, IN THE  
ALTERNATIVE, TO STAY CLAIMS  
ASSERTED AGAINST DEFENDANT  
DNT ACQUISITION, LLC;  
(4) AMENDED MOTION TO DISMISS  
OR, IN THE ALTERNATIVE, TO STAY  
CLAIMS ASSERTED AGAINST  
LLTQ/FERG DEFENDANTS; AND  
(5) AMENDED MOTION TO DISMISS  
OR, IN THE ALTERNATIVE, TO STAY  
CLAIMS ASSERTED AGAINST  
MOTI DEFENDANTS**

AND ALL RELATED MATTERS.

PLEASE TAKE NOTICE that an *Order Denying, without Prejudice, (1) Defendants Rowen Seibel's Motion to Dismiss Plaintiffs' Claims; (2) Defendants TPOV Enterprises and TPOV Enterprises 16's Motion to Dismiss Plaintiffs Claims; (3) Motion to Dismiss or, in the Alternative, to Stay Claims Asserted Against Defendant DNT Acquisition, LLC; (4) Amended Motion to Dismiss or, in the Alternative, to Stay Claims Asserted Against LLTQ/FERG Defendants; and (5) Amended Motion to Dismiss or, in the Alternative, to Stay Claims Asserted Against MOTI Defendants* was entered in the above-captioned matter on June 1, 2018, a true and correct copy of which is attached hereto.

DATED this 4<sup>th</sup> day of June 2018.

PISANELLI BICE PLLC

By: 

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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 4 day of June 2018, I caused to be served via the Court's e-filing/e-service system true and correct copies of the above and foregoing **NOTICE OF ENTRY OF ORDER DENYING, WITHOUT PREJUDICE, (1) DEFENDANT ROWEN SEIBEL'S MOTION TO DISMISS PLAINTIFFS' CLAIMS; (2) DEFENDANTS TPOV ENTERPRISES AND TPOV ENTERPRISES 16'S MOTION TO DISMISS PLAINTIFFS CLAIMS; (3) MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY CLAIMS ASSERTED AGAINST DEFENDANT DNT ACQUISITION, LLC; (4) AMENDED MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY CLAIMS ASSERTED AGAINST LLTQ/FERG DEFENDANTS; AND (5) AMENDED MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY CLAIMS ASSERTED AGAINST MOTI DEFENDANTS** to the following:

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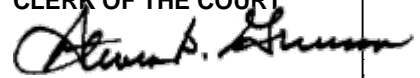
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*Corporation d/b/a Caesars Atlantic City*

**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.

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.: XV

Consolidated with A-17-760537-B

**ORDER DENYING, WITHOUT  
PREJUDICE, (1) DEFENDANT ROWEN  
SEIBEL'S MOTION TO DISMISS  
PLAINTIFFS' CLAIMS; (2)  
DEFENDANTS TPOV ENTERPRISES  
AND TPOV ENTERPRISES 16'S MOTION  
TO DISMISS PLAINTIFFS CLAIMS; (3)  
MOTION TO DISMISS OR, IN THE  
ALTERNATIVE, TO STAY CLAIMS  
ASSERTED AGAINST DEFENDANT DNT  
ACQUISITION, LLC; (4) AMENDED  
MOTION TO DISMISS OR, IN THE  
ALTERNATIVE, TO STAY CLAIMS  
ASSERTED AGAINST LLTQ/FERG  
DEFENDANTS; AND (5) AMENDED  
MOTION TO DISMISS OR, IN THE  
ALTERNATIVE, TO STAY CLAIMS  
ASSERTED AGAINST MOTI  
DEFENDANTS**

1 The following motions came before the Court on May 1, 2018:

- 2 1. Defendant Rowen Seibel's Motion to Dismiss Plaintiffs Claims ("Seibel's Motion  
3 to Dismiss");
- 4 2. Defendants TPOV Enterprises and TPOV Enterprises 16's Motion to Dismiss  
5 Plaintiffs Claims ("TPOV & TPOV 16's Motion to Dismiss");
- 6 3. Motion to Dismiss or, in the Alternative, to Stay Claims Asserted Against  
7 Defendant DNT Acquisition, LLC ("DNT's Motion to Dismiss");
- 8 4. Amended Motion to Dismiss or, in the Alternative, to Stay Claims Asserted  
9 Against LLTQ/FERG Defendants ("LLTQ, LLTQ 16, FERG, & FERG 16's  
10 Motion to Dismiss"); and
- 11 5. Amended Motion to Dismiss or, in the Alternative, to Stay Claims Asserted  
12 Against MOTI Defendants ("MOTI & MOTI 16's Motion to Dismiss").

13 James J. Pisanelli, Esq., M. Magali Mercera, Esq., and Brittne Watkins, Esq., of  
14 PISANELLI BICE PLLC, and Jeffrey J. Zeiger, Esq., of KIRKLAND & ELLIS, LLP, appeared on behalf  
15 of Desert Palace, Inc., Paris Las Vegas Operating Company, LLC, PHWLTV, LLC, and Boardwalk  
16 Regency Corporation d/b/a Caesars Atlantic City (collectively the "Caesars Parties"). Dan  
17 McNutt, Esq. and Matt Wolf, Esq., of MCNUTT LAW FIRM, appeared on behalf of TPOV  
18 Enterprises, LLC ("TPOV") and TPOV Enterprises 16, LLC ("TPOV 16"). Paul Sweeney, Esq.,  
19 of CERTILMAN BALIN ADLER & HYMAN, LLP, appeared on behalf of TPOV, TPOV 16, Rowen  
20 Seibel ("Seibel"), DNT Acquisition, LLC ("DNT"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ  
21 Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI  
22 Partners, LLC ("MOTI"), and MOTI Partners 16, LLC ("MOTI 16"). Nathan Rugg, Esq., of  
23 BARACK FERRAZZANO KIRSCHBAUM & NAGELBERG LLP, appeared on behalf of LLTQ, LLTQ 16,  
24 FERG, FERG 16, MOTI, and MOTI 16. Allen Wilt, Esq., of FENNEMORE CRAIG, PC, appeared  
25 on behalf of Gordon Ramsay.

26 The Court having considered the above-referenced motions and related briefings, as well  
27 as argument of counsel presented at the hearing, and good cause appearing therefor,  
28

1 THE COURT FINDS that the first-to-file doctrine is a doctrine of discretion. Under the  
2 totality of circumstances before the Court, the Court finds that it should exercise its discretion  
3 and not defer to the first-to-file doctrine;

4 THE COURT FURTHER FINDS that in ruling upon a motion to dismiss, the Court must  
5 treat all factual allegations in the complaint as true and draw all inferences in favor of the  
6 Caesars Parties. See *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d  
7 670, 672 (2008). Further, "[a]s a general rule, the court may not consider matters outside the  
8 pleading being attacked. However, the court may take into account matters of public record,  
9 orders, items present in the record of the case, and any exhibits attached to the complaint when  
10 ruling on a motion to dismiss for failure to state a claim upon which relief can be granted.  
11 *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). Thus,  
12 here the Court considered the subject contracts that were either referred to, attached to or  
13 incorporated in the pleadings.

14 THE COURT FURTHER FINDS that the subject contracts have nearly identical  
15 suitability provisions, which supports denial of the Motions. This Court agrees that this action  
16 involves issues of suitability pertaining to Mr. Seibel and, thus, there exists a great potential for  
17 inconsistent rulings amongst the various actions. Denying the Motions will help alleviate if not  
18 resolve the potential of inconsistent rulings on suitability amongst all of the various actions.  
19 Therefore, the Court finds, pursuant to its discretion, the totality of the circumstances, and to  
20 avoid inconsistent rulings, that it would be most efficient to resolve the suitability issues in one  
21 forum. This is the most comprehensive action in which to make a determination on this key  
22 issue.

23 THE COURT FURTHER FINDS that comity supports denial of the Motions. In  
24 reaching its conclusion on the Motions and determining that these matters should be proceeding  
25 before this Court, the Court agrees with Judge Davis' Findings of Fact and Conclusions of Law  
26 ("FFCL") related to MOTI, MOTI 16, LLTQ, LLTQ 16, FERG, & FERG 16's Motions to  
27 Transfer Venue and the Caesars Parties' Motions to Remand. Judge Davis' FFCL are attached  
28

1 hereto as Exhibits 1 and 2, and the Court hereby incorporates Judge Davis' reasoning as set forth  
2 therein.

3 THE COURT FURTHER FINDS that a stay is inappropriate and denies this request,  
4 without prejudice.

5 THE COURT FURTHER FINDS that issues related to discovery taken in other actions  
6 can be addressed, as appropriate, in the future by this Court.

7 THE COURT FURTHER FINDS that FERG is in a unique position in light of sections  
8 14.10(b)-(c) of the subject contract which would ordinarily require that actions, not just  
9 arbitration matters, be litigated in New Jersey. However, the parties are already involved in  
10 litigation in a forum other than New Jersey, namely the United State Bankruptcy Court in  
11 Illinois, which along with the other circumstances discussed above supports denial of LLTQ,  
12 LLTQ 16, FERG, & FERG 16's Motion to Dismiss, without prejudice.

13 THE COURT FURTHER FINDS that while other courts have made comments regarding  
14 aspects of the litigation, those courts have made clear that such comments are not determinations  
15 on the merits of any matter and, in fact, determination on the merits have not been reached in the  
16 other actions.

17 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

- 18 1. Seibel's Motion to Dismiss is hereby DENIED, without prejudice;
- 19 2. TPOV & TPOV 16's Motion to Dismiss is hereby DENIED, without prejudice;
- 20 3. DNT's Motion to Dismiss is hereby DENIED, without prejudice;
- 21 4. LLTQ, LLTQ 16, FERG, & FERG 16's Motion to Dismiss is hereby DENIED,  
22 without prejudice; and

23 ///

24 ///

25 ///

5. MOTI & MOTI 16's Motion to Dismiss is hereby DENIED, without prejudice.

IT IS SO ORDERED.

DATED this 1<sup>st</sup> June day of May 2018.

  
THE HONORABLE JOE HARDY  
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

PISANELLI BICE PLLC

By: 

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*PHWL, LLC; and Boardwalk Regency*  
*Corporation d/b/a Caesars Atlantic City*

Approved as to form and content:

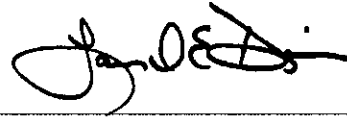
FENNEMORE CRAIG, P.C.

By: /s/ Allen J. Wilt

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*Attorneys for Gordon Ramsay*

# EXHIBIT 1



Honorable Laurel E. Davis  
United States Bankruptcy Judge



Entered on Docket  
December 14, 2017

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

DESERT PALACE, INC.; PARIS LAS VEGAS)  
OPERATING COMPANY, LLC; PHWLTV,  
LLC; BOARDWALK REGENCY)  
CORPORATION dba CAESARS ATLANTIC)  
CITY,

Plaintiffs,

vs.

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

Defendants.

Adv. Proceeding No.: 17-01237-LED

Date: December 4, 2017  
Time: 1:30 p.m.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW<sup>1</sup>**

On December 4, 2017, the court held a combined hearing on the “Motion to Transfer Venue for Claims against MOTI Defendants” (AECF No. 9) (the “Motion to Transfer Venue”)

<sup>1</sup> All references to “AECF No.” are to the numbers assigned to the documents filed in the above-captioned adversary proceeding as they appear on the docket maintained by the Clerk of Court. All references to “ECF No.” are to the numbers assigned to the documents filed in the bankruptcy proceeding as they appear on the docket maintained by the Clerk of Court of the United States Bankruptcy Court for the Northern District of Illinois in Case No. 15-01145. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure. All references to “FRCP” are to the Federal Rules of Civil Procedure.



1 and "Plaintiffs' Amended Motion to Remand" (AECF No. 34) (the "Amended Motion to  
2 Remand"). Appearances were noted on the record.

3 The court has considered the pleadings, arguments of counsel, the case law and  
4 statutes applicable to this matter, and the court takes judicial notice of the pleadings filed in  
5 the Caesars Bankruptcy Case (defined below) pursuant to Federal Rules of Evidence  
6 201(b). In accordance with FRCP 52, made applicable to adversary proceedings by FRBP  
7 7052, the court makes the following findings of fact and conclusions of law. Any finding of  
8 fact that should be a conclusion of law is deemed a conclusion of law; any conclusion of  
9 law that should be a finding of fact is deemed a finding of fact.

#### 10 FINDINGS OF FACT

11 1. In 2009, Desert Palace, Inc. ("Desert Palace") and MOTI Partners, LLC  
12 entered into an agreement relating to the development and operation of a Las Vegas  
13 restaurant (the "MOTI Agreement"). (AECF No. 1 at ¶ 2; see also AECF No. 1-1 at ¶ 14).

14 2. On January 15, 2015, Desert Palace filed a voluntary chapter 11 petition with  
15 the Bankruptcy Court for the Northern District of Illinois (the "Illinois Bankruptcy Court")  
16 as Case No. 15-01167. On that same day, the Illinois Bankruptcy Court entered an order  
17 directing joint administration of Desert Palace's chapter 11 case, among others, with the  
18 lead chapter 11 case filed by Caesars Entertainment Operating Company, Inc. as Case No.  
19 15-01145 (the "Caesars Bankruptcy Case"). (ECF No. 43).

20 3. On September 2, 2016, Desert Palace sent MOTI Partners, LLC a letter  
21 terminating the MOTI Agreement. (AECF No. 1 at ¶ 6; AECF No. 1-1 at ¶ 110).

22 4. On November 30, 2016, MOTI Partners, LLC and MOTI Partners, 16, LLC  
23 (collectively, "MOTI") filed a "Request for Payment of Administrative Expense" in the  
24 Caesars Bankruptcy Case relating to the termination of the MOTI Agreement (the "MOTI  
25 Administrative Expense Claim"). (ECF No. 5862). The MOTI Administrative Expense  
26 Claim remains pending before the Illinois Bankruptcy Court.

1           5.       On January 17, 2017, the Illinois Bankruptcy Court entered an order (the  
2 “Confirmation Order”) in the Caesars Bankruptcy Case confirming the Third Amended  
3 Joint Plan of Reorganization (the “Confirmed Plan”). (ECF No. 6334).

4           6.       On August 25, 2017, Desert Palace, Paris Las Vegas Operating Company,  
5 LLC, PHWLTV, LLC, and Boardwalk Regency Corporation d/b/a Caesars Atlantic City  
6 (collectively, the “Plaintiffs”) filed a Complaint in the District Court for Clark County,  
7 Nevada (the “State Court”) as Case No. A-17-760537-B (the “State Court Case”) against  
8 Rowen Seibel, J. Jeffrey Frederick, LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC  
9 (together with LLTQ Enterprises, LLC, “LLTQ”), FERG, LLC, FERG 16, LLC (together  
10 with FERG, LLC, “FERG”), MOTI, TPOV Enterprises, LLC, TPOV Enterprises 16, LLC  
11 (together with TPOV Enterprises, LLC, “TPOV”), DNT Acquisition, LLC (“DNT”), and  
12 GR Burgr, LLC (“GRB,” and collectively with Rowen Seibel, J. Jeffrey Frederick, LLTQ,  
13 FERG, MOTI, TPOV, and DNT, the “Defendants”). (AECF No. 1 at Ex. A).

14           7.       The Complaint alleges three causes of action (the “Removed Claims”)  
15 seeking declaratory judgments relating to contracts, including the MOTI Agreement  
16 (collectively, the “Seibel Agreements”),<sup>2</sup> entered into by and among Plaintiffs and the  
17 Defendants.

18           8.       Count I of the Complaint seeks a “Declaratory Judgment Against All  
19 Defendants Declaring That Caesars Properly Terminated All of the Seibel Agreements.”

20           9.       Count II of the Complaint seeks a “Declaratory Judgment Against All  
21 Defendants Declaring That Caesars Does Not Have Any Current or Future Obligations to  
22 Defendants Under the Seibel Agreements.”

---

23  
24  
25  
26           <sup>2</sup> The Complaint defines the contracts as the “Seibel Agreements.”

1           10.     Count III of the Complaint seeks a “Declaratory Judgment Against All  
2 Defendants Declaring that the Seibel Agreements Do Not Prohibit or Limit Existing or  
3 Future Restaurant Ventures Between Caesars and Gordon Ramsay.”

4           11.     On September 27, 2017,<sup>3</sup> MOTI removed the State Court Case to this court  
5 pursuant to 28 U.S.C. §§ 1452(a) and 1334(b) and FRBP 9027.<sup>4</sup> (AECF No. 1). MOTI  
6 argues that the issues made the subject of the Removed Claims are subsumed within the  
7 MOTI Administrative Expense Claim currently pending in the Caesars Bankruptcy Case.

8           12.     On October 2, 2017, MOTI filed a Motion to Transfer Venue, pursuant to  
9 which MOTI seeks to transfer the Removed Claims to the Illinois Bankruptcy Court.

10          13.     On October 6, 2017, the effective date of the Confirmed Plan occurred. (ECF  
11 No. 7482).

12          14.     On October 23, 2017, Plaintiffs filed an objection to the Motion to Transfer  
13 Venue (AECF No. 29)<sup>5</sup> and a Motion to Remand (AECF No. 30), pursuant to which  
14 Plaintiffs seek to remand the Removed Claims back to the State Court.

15          15.     On October 24, 2017, Plaintiffs filed their Amended Motion to Remand.

16          16.     On October 24, 2017, the Plaintiffs and some of the Defendants, including  
17 MOTI, filed a Stipulation to remand certain parties and claims back to the State Court (the  
18 “Stipulation”). (AECF No. 35).

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21           <sup>3</sup> On September 27, 2017, LLTQ and FERG filed a second Notice of Removal with this  
22 court as Case No. 17-01238-LED. The court will address similar motions for removal and/or  
23 transfer filed in that adversary proceeding by separate findings of fact and conclusions of law  
entered therein.

24           <sup>4</sup> Plaintiffs have not contested the timeliness of MOTI’s removal.

25           <sup>5</sup> On October 18, 2017, J. Jeffrey Frederick also filed a limited objection to the Motion to  
26 Transfer Venue (AECF No. 28), which has since been resolved and is not currently before the  
court.

17. On November 1, 2017, MOTI filed a reply in support of its Motion to Transfer Venue. (AECF No. 38).

18. On November 2, 2017, the court entered an “Order Approving Stipulation to Remand Certain Claims,” pursuant to which the court remanded back to the State Court “[a]ll claims and counts asserted against TPOV, DNT, GRB, Rowen Seibel, and J. Jeffrey Frederick; and the claims asserted against LLTQ and FERG in Count I.” (AECF No. 39 at p. 2, ¶ 1). At the December 4 hearing, MOTI’s counsel clarified that the Count I claim as to MOTI was not remanded and remains with this court.<sup>6</sup>

19. On November 7, 2017, LLTQ, FERG, and MOTI (collectively, the “Objectors”)<sup>7</sup> filed a joint objection to the Amended Motion to Remand. (AECF No. 47).

20. On November 17, 2017, Plaintiffs filed their reply in support of the Amended Motion to Remand. (AECF No. 58).

21. At the court's request, on November 28, 2017, the Objectors filed a "Supplemental Brief in Support of Motions to Transfer" (AECF No. 64), and on November 30, 2017, the Plaintiffs filed a "Supplemental Brief Regarding Removal of Claims" (AECF No. 65).

## CONCLUSIONS OF LAW

## Jurisdiction

A. The court has jurisdiction to enter final orders on the Amended Motion to Remand and Motion to Transfer Venue pursuant to 28 U.S.C. §§ 1412, 1447 and 1452 and FRBP 7087 and 9027. Neither party has argued to the contrary. See Citicorp Sav. of Ill. v. Chapman (In re Chapman), 132 B.R. 153, 160-61 (Bankr. N.D. Ill. 1991) (recognizing the

<sup>6</sup> Counts II and III are asserted against, among other parties, LLTQ and FERG, and not MOTI.

<sup>7</sup> The Objectors filed a joint objection because “[t]he Remand Motions filed in these two adversary proceedings are identical to one another . . .” (AECF No. 47 at p. 2, n.1).

1 split in the case law but concluding that the bankruptcy court had authority to enter a final  
2 order on a motion to remand).

3 B. “[A] bankruptcy court’s post-confirmation ‘related to’ jurisdiction is  
4 substantially more limited than its pre-confirmation jurisdiction . . . .” Montana v. Goldin  
5 (In re Pegasus Gold Corp.), 394 F.3d 1189, 1191 (9th Cir. 2005). “[T]he essential inquiry  
6 appears to be whether there is a close nexus to the bankruptcy plan or proceeding sufficient  
7 to uphold bankruptcy court jurisdiction over the matter[.]” and “matters affecting ‘the  
8 interpretation, implementation, consummation, execution, or administration of the  
9 confirmed plan will typically have the requisite close nexus.” Id. at 1194 (quoting Binder  
10 v. Price Waterhouse & Co., LLP (In re Resorts Int’l, Inc.), 372 F.3d 154, 166-67 (3d Cir.  
11 2004)).

12 C. Count I seeks a declaration regarding Desert Palace’s right to terminate the  
13 MOTI Agreement based upon Nevada state law, a fact that MOTI concedes. MOTI  
14 nevertheless argues that the “unique circumstances” of the Caesars Bankruptcy Case require  
15 some different conclusion. (See AECF No. 47 at p. 6). The court disagrees.

16 D. The disclosure statement approved in the Caesars Bankruptcy Case listed an  
17 estimated 1,800 administrative claims that are provided for by either payment in full or  
18 other resolution during the post-confirmation period. (ECF No. 4220-1 at p. 105). Any  
19 state law issue arising in Count I is distinct from the MOTI Administrative Expense Claim.  
20 And, MOTI’s counsel conceded during the December 4 hearing that Count I is a nullity  
21 because Desert Palace had the right to terminate the MOTI Agreement for any reason.  
22 Consequently, the determination of Count I in the State Court Case will not affect the  
23 interpretation, implementation, consummation, execution, or administration of the  
24 Confirmed Plan.

25 E. Language in the Confirmed Plan providing for the Illinois Bankruptcy Court’s  
26 retention of jurisdiction over administrative claims does not alter this conclusion, as the

1 court's subject matter jurisdiction may not be conferred by the parties' consent with respect  
2 to state law contract claims that do not satisfy the "close nexus" test regarding post-  
3 confirmation jurisdiction. Go Global, Inc. v. Rogich (In re Go Global, Inc.), 2016 WL  
4 6901265, at \*7 (B.A.P. 9th Cir. Nov. 22, 2016) (citing In re Resorts Int'l, Inc., 372 F.3d at  
5 161) ("[T]o the extent the plan could be construed as reserving jurisdiction to the  
6 bankruptcy court to adjudicate that claim, such a reservation would be, by itself,  
7 ineffective.").

8 F. Because this court finds and concludes that there is a not a sufficiently "close  
9 nexus" between Count I and the Caesars Bankruptcy Case, the court does not reach the  
10 question of supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

11 G. For all of these reasons, the court lacks jurisdiction over Count I, which shall  
12 be remanded back to the State Court.

### 13 **Remand of Claims**

14 H. Even if the court has jurisdiction over Count I, the court exercises its  
15 discretion to remand Count I back to the State Court. See Pac. Inv. Mgmt. Co., LLC v.  
16 OCP Opportunities Fund III, L.P. (In re Enron Corp.), 296 B.R. 505, 508 (C.D. Cal. 2003)  
17 (citing 28 U.S.C. § 1452(b)) ("Bankruptcy courts have broad discretion to remand cases  
18 over which they otherwise have jurisdiction on any equitable ground.").

19 I. Pursuant to 28 U.S.C. § 1452(a), a party is authorized to "remove any claim  
20 or cause of action in a civil action . . . to the district court for the district where such civil  
21 action is pending, if such district court has jurisdiction of such claim or cause of action  
22 under section 1334 of this title."

23 J. Pursuant to 28 U.S.C. § 1452(b), "[t]he court to which such claim or cause of  
24 action is removed may remand such claim or cause of action on any equitable ground."

25 K. "This 'any equitable ground' remand standard is an unusually broad grant of  
26 authority. It subsumes and reaches beyond all of the reasons for remand under

1 nonbankruptcy removal statutes.” McCarthy v. Prince (In re McCarthy), 230 B.R. 414, 417  
2 (B.A.P. 9th Cir. 1999). “At bottom, the question is committed to the sound discretion of the  
3 bankruptcy judge.” Id.

4 L. The court may consider 14 non-exclusive factors during its discretionary  
5 analysis. See Wood v. Bank of N.Y. (In re Wood), 2011 WL 7145617, at \*8-9 (B.A.P. 9th  
6 Cir. Dec. 12, 2011). “[A]ny one of the relevant factors may provide a sufficient basis for  
7 equitable remand . . . .” Fenicle v. Boise Cascade Co., 2015 WL 5948168, at \*6 (N.D. Cal.  
8 Oct. 13, 2015) (quotations and citations omitted).

9 M. The first factor involves “the effect or lack thereof on the efficient  
10 administration of the estate if the Court recommends [remand] . . . .” In re Wood, 2011 WL  
11 7145617, at \*8. The court finds and concludes that remand will not affect the efficient  
12 administration of the Caesars Bankruptcy Case because any state law issue involving Count  
13 I is distinct from the MOTI Administrative Expense Claim, which is only one of an  
14 estimated 1,800 such claims that are provided for by the Confirmed Plan. Furthermore,  
15 MOTI’s counsel conceded during the December 4 hearing that Count I is a nullity because  
16 Desert Palace had the right to terminate the MOTI Agreement for any reason. See  
17 Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1169 (9th  
18 Cir. 1990) (finding that issues involving state law interpretation of a restrictive covenant’s  
19 reach “are distinct from the administration of the bankruptcy estate.”); In re Go Global, Inc.,  
20 2016 WL 6901265, at \*7 (holding that the court lacked post-confirmation jurisdiction to  
21 decide a cause of action that was not discussed in the disclosure statement or confirmed  
22 plan); Machine Zone, Inc. v. Peak Web LLC (In re Peak Web LLC), 559 B.R. 738, 741-42  
23 (Bankr. D. Or. 2016) (finding that the first factor weighed in favor of remand because  
24 “reorganization is not dependent on resolution of the [removed] claims.”). See also RG  
25 Adding L.L.C. v. Carrier Mid-Atlantic HQ (In re Fedders N. Am., Inc.), 2009 WL 2151245,  
26 at \*1-2 (Bankr. D. Del. July 17, 2009) (abstaining from deciding an action to collect a

1 receivable purchased during the bankruptcy case because, among other things, state law  
2 predominates and resolution of this action “will have no effect on the administration of the  
3 estate because the Debtor’s plan has been confirmed . . . .”); Sun Healthcare Group, Inc. v.  
4 Levin (In re Sun Healthcare Group, Inc.), 267 B.R. 673, 679 (Bankr. D. Del. 2000)  
5 (abstaining from hearing the debtor’s adversary proceeding involving breach of contract  
6 and tortious interference with business relations’ claims because, among other things, “there  
7 is no impact on the administration of the bankruptcy estate . . . .”).

8 N. The second factor involves the “extent to which state law issues predominate  
9 over bankruptcy issues . . . .” In re Wood, 2011 WL 7145617, at \*9. As MOTI has  
10 acknowledged, the court finds and concludes that this factor strongly weighs in favor of  
11 remand because Count I involves a state law contract issue. See AECF No. 47 at p. 6  
12 (stating that the Removed Claims involve a “state law contract dispute . . . .”); see also In re  
13 Peak Web LLC, 559 B.R. at 742 (finding that the second factor weighed in favor of remand  
14 because state law issues predominate and “no bankruptcy issues . . . need to be determined  
15 before the case can be tried.”).

16 O. The third factor involves whether there are “difficult or unsettled [issues] of  
17 applicable law . . . .” In re Wood, 2011 WL 7145617, at \*9. Although the parties did not  
18 argue this factor, MOTI’s counsel conceded that Desert Palace had the right to terminate the  
19 MOTI Agreement for any reason. In light of this concession, the court finds and concludes  
20 that this factor weighs in favor of remand.

21 P. The fourth factor involves the “presence of a related proceeding commenced  
22 in state court or other nonbankruptcy proceeding . . . .” Id. The State Court Case  
23 constitutes a related proceeding to which this court has already remanded certain claims and  
24 parties pursuant to the Stipulation. See Maya, LLC v. Cytodyn of N. Mexico, Inc. (In re  
25 Cytodyn of N. Mexico, Inc.), 374 B.R. 733, 739 (Bankr. C.D. Cal. 2007) (finding this factor  
26 weighed in favor of remand even though the state court case may have technically been



1 “extinguished” upon removal). Furthermore, after considering the pleadings and counsels’  
2 arguments, the court is convinced that similar issues involving Nevada law permeate all of  
3 the Removed Claims, as well as the claims that have already been remanded back to the  
4 State Court. Indeed, Plaintiffs’ counsel represented to the court that all parties have agreed  
5 that if the Removed Claims are remanded back to the State Court, then the State Court Case  
6 will be consolidated with another related Nevada state court matter pending before Judge  
7 Joe Hardy as Case No. A-17-751759-B.<sup>8</sup> For all of these reasons, the court finds and  
8 concludes that this factor weighs in favor of remand.

9 Q. The fifth factor involves the “jurisdictional basis, if any, other than § 1334 . . .  
10 .” In re Wood, 2011 WL 7145617, at \*9. MOTI does not argue that any jurisdictional basis  
11 exists other than 28 U.S.C. § 1334. Therefore, the court finds and concludes that this factor  
12 weighs in favor of remand.

13 R. The sixth factor involves the “degree of relatedness or remoteness of [the]  
14 proceeding to [the] main bankruptcy case . . . .” Id. MOTI argues that overlapping facts  
15 exist in the Caesars Bankruptcy Case relating to the MOTI Administrative Expense Claim.  
16 Plaintiffs indirectly refute this, arguing, among other things, that Count I is not “related to”  
17 the interpretation or enforcement of the Confirmed Plan in the Caesars Bankruptcy Case.  
18 The court agrees. Claims objections routinely require a bankruptcy court’s interpretation of  
19 state law issues, and the existence of overlapping facts does not, standing alone, convert  
20 purely state law claims to a bankruptcy matter that must be decided by a bankruptcy court.  
21 See Butner v. U.S., 440 U.S. 48, 54 (1979) (“Congress has generally left the determination  
22 of property rights in the assets of a bankruptcy’s estate to state law.”). Consequently, the  
23 court finds and concludes that this factor weighs in favor of remand.

---

24  
25 <sup>8</sup> Also raising similar issues is a case pending in the U.S. District Court for the District of  
26 Nevada, entitled *TPOV Enterprises 16, LLC v. Paris Las Vegas Operating Co., LLC, et al.*, Case  
No. 2:17-CV-00346-JCM-VCF.

1           S.       The seventh factor involves “the substance rather than the form of an asserted  
2 core proceeding.” In re Wood, 2011 WL 7145617, at \*9. MOTI argues that Count I is a  
3 core proceeding under 28 U.S.C. §§ 157(b)(2)(A) or 28 U.S.C. § 157(b)(2)(O) because it is  
4 “inextricably bound” with the MOTI Administrative Claim Expense Claim. See Honigman,  
5 Miller, Schwartz & Cohn v. Weitzman (In re Delorean Motor Co.), 155 B.R. 521, 525  
6 (B.A.P. 9th Cir. 1993) (“[A] proceeding will not be considered a core matter, even if it falls  
7 within the literal language of sections 157(b)(2)(A) or 157(b)(2)(O), if it is a state law claim  
8 that could exist outside of bankruptcy and is not inextricably bound to the claims allowance  
9 process or a right created by the Bankruptcy Code.”). Pursuant to the MOTI Administrative  
10 Expense Claim, MOTI seeks damages based on post-termination events. However, the only  
11 issue involved in Count I is Desert Palace’s right to terminate the MOTI Agreement under  
12 Nevada state law, an issue that MOTI’s counsel has conceded is no longer in dispute.  
13 Consequently, Count 1 is not “inextricably bound” to the administrative claims process  
14 pending before the Illinois Bankruptcy Court. Therefore, the court finds and concludes that  
15 this factor weighs in favor of remand.

16           T.       The eighth factor relates to “the feasibility of severing state law claims from  
17 core bankruptcy matters to allow judgments to be entered in state court with enforcement  
18 left to the bankruptcy court . . . .” In re Wood, 2011 WL 7145617, at \*9. The court finds  
19 and concludes that this factor weighs in favor of remand because any findings made by the  
20 State Court on Count I may, to the extent applicable, be utilized by the Illinois Bankruptcy  
21 Court with respect to the matters pending before it.

22           U.       The ninth factor involves “the burden on the bankruptcy court’s docket . . . .”  
23 Id. Plaintiffs cite to a transcript from the Caesars Bankruptcy Case in which U.S.  
24 Bankruptcy Judge A. Benjamin Goldgar stated regarding another matter his preference for a  
25 state court to determine a state law issue. See Amended Motion to Remand at p. 14 and Ex.  
26 C. The parties also cite other statements by Judge Goldgar to the effect that particular

1 issues should be decided by the bankruptcy court. These comments by Judge Goldgar are  
2 not consistent and therefore do not provide a basis upon which to make findings and  
3 conclusions regarding this factor. As a result, the court finds and concludes that this factor  
4 is neutral.

5 V. The tenth factor involves “the likelihood that the commencement of the  
6 proceeding in bankruptcy court involves forum shopping by one of the parties . . . .” In re  
7 Wood, 2011 WL 7145617, at \*9. MOTI argues that Plaintiffs engaged in forum shopping  
8 by filing the State Court Case after receiving unfavorable comments from Judge Goldgar.  
9 This contention is not relevant to the tenth factor, which “addresses forum shopping in  
10 connection with the initiation of the bankruptcy court proceeding . . . .” Kamana O’Kala,  
11 LLC v. Lite Solar, LLC, 2017 WL 1100568, at \*7 (D. Or. Feb. 13, 2017). Even if it was  
12 relevant, the “court determines that the evidence does not indicate that any party chose . . .  
13 its respective forum in an attempt to abuse or manipulate the judicial process.” Torres v.  
14 NE Opco, Inc. (In re NE Opco, Inc.), 2014 WL 4346080, at \*3 (Bankr. C.D. Cal. Aug. 28,  
15 2014). For these reasons, the court finds and concludes that this factor is neutral.

16 W. The eleventh factor involves “the existence of a right to a jury trial . . . .” In  
17 re Wood, 2011 WL 7145617, at \*9. MOTI states that no jury trial has been demanded, see  
18 AECF No. 47 at p. 9. Plaintiffs do not refute this claim. For this reason, the court finds and  
19 concludes that this factor weighs slightly against remand.

20 X. The twelfth factor involves “the presence in the proceeding of nondebtor  
21 parties . . . .” In re Wood, 2011 WL 7145617, at \*9. Desert Palace, as a reorganized  
22 debtor, is a separate legal entity from the debtor that was involved in the Caesars  
23 Bankruptcy Case. See Confirmed Plan at p. 71, Art. IV, § AA. Furthermore, two of the  
24 plaintiffs and all the defendants in the State Court Case are non-debtors. As a result, the  
25 court finds and concludes that this factor weighs in favor of remand.

Y. The thirteenth factor involves “comity . . . .” In re Wood, 2011 WL 7145617, at \*9. “Comity dictates that [Nevada] courts should have the right to adjudicate the exclusively state law claims involving [Nevada]-centric plaintiffs<sup>9</sup> and [Nevada]-centric transactions.” Pac. Inv. Mgmt. Co., LLC v. OCP Opportunities Fund III, L.P. (In re Enron Corp.), 296 B.R. 505, 509 (C.D. Cal. 2003). See also Kamana O’Kala, LLC, 2017 WL 1100568, at \*7 (finding the thirteenth factor weighed “heavily” in favor of remand “because Kamana’s claims arise out of Oregon law, and because Kamana selected the [applicable state] court as the forum for litigation of its claims.”); In re NE Opco, Inc., 2014 WL 4346080, at \*3 (finding the same “because California courts have an interest in adjudicating Plaintiff’s California state law claims.”); Brincko v. Rio Props., Inc. (In re Nat’l Consumer Mortg.), 2010 WL 2384217, at \*4 (C.D. Cal. June 10, 2010) (transferring venue from the California bankruptcy court to Nevada because, among other reasons, “Nevada has an interest in having the controversy decided within its borders.”). For these reasons, the court finds and concludes that this factor weighs strongly in favor of remand.

Z. The fourteenth factor involves “the possibility of prejudice to other parties in the action . . . .” In re Wood, 2011 WL 7145617, at \*9. Plaintiffs’ counsel argued that overlapping facts exist regarding “suitability” provisions in the Seibel Agreements and the scope of restrictive covenants. Absent a single forum to decide these issues, Plaintiffs contend that the risk of inconsistent decisions by different courts constitutes prejudice. The court agrees. See W. Helicopters, Inc. v. Hiller Aviation, Inc., 97 B.R. 1, 7 (E.D. Cal. 1988) (“In addition to the unnecessary expense and expenditure of duplicative judicial resources, bifurcating this civil claim creates the real danger of inconsistent results. Such a risk should be avoided if there are no countervailing benefits.”). Finally, the State Court

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<sup>9</sup> According to the Complaint, Boardwalk Regency Corporation d/b/a Caesars Atlantic City LLC is the only Plaintiff that is not incorporated in Nevada. (See AECF No. 1-1 at ¶¶ 9-12).

1 Case involves two non-debtor plaintiffs and 12 non-debtor defendants. For these reasons,  
2 the court finds and concludes that this factor strongly weighs in favor of remand.

3 AA. In summation, factors 1-8 and 12-14 weigh in favor of remand, factor 11  
4 weighs slightly against remand, and factors 9-10 are neutral. The court finds and concludes  
5 that the 11 factors in favor of remand substantially outweigh the one factor weighing  
6 slightly against remand. The court therefore grants the Amended Motion to Remand and  
7 remands Count I back to the State Court. The Motion to Transfer is therefore denied as  
8 moot.

### 9 CONCLUSION

10 Pursuant to FRBP 9021, the court will enter separate orders and judgments  
11 consistent with these Findings of Fact and Conclusions of Law.

12 IT IS SO ORDERED.

13 Copies sent via BNC to:

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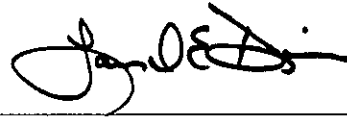
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# EXHIBIT 2





Honorable Laurel E. Davis  
United States Bankruptcy Judge



Entered on Docket  
December 14, 2017

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

DESERT PALACE, INC.; PARIS LAS VEGAS)  
OPERATING COMPANY, LLC; PHWLTV,  
LLC; BOARDWALK REGENCY)  
CORPORATION dba CAESARS ATLANTIC)  
CITY,

Plaintiffs,

vs.

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

Defendants.

Adv. Proceeding No.: 17-01238-LED

Date: December 4, 2017  
Time: 1:30 p.m.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW<sup>1</sup>**

On December 4, 2017, the court held a combined hearing on the “Motion to Transfer Venue of Claims against LLTQ/FERG Defendants” (AECF No. 8) (the “Motion to Transfer

<sup>1</sup> All references to “AECF No.” are to the numbers assigned to the documents filed in the above-captioned adversary proceeding as they appear on the docket maintained by the Clerk of Court. All references to “ECF No.” are to the numbers assigned to the documents filed in the bankruptcy proceeding as they appear on the docket maintained by the Clerk of Court of the United States Bankruptcy Court for the Northern District of Illinois in Case No. 15-01145. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure. All references to “FRCP” are to the Federal Rules of Civil Procedure.

Venue”) and “Plaintiffs’ Amended Motion to Remand” (AECF No. 43) (the “Amended Motion to Remand”). Appearances were noted on the record.

The court has considered the pleadings, arguments of counsel, the case law and statutes applicable to this matter, and the court takes judicial notice of the pleadings filed in the Caesars Bankruptcy Case (defined below) pursuant to Federal Rules of Evidence 201(b). In accordance with FRCP 52, made applicable to adversary proceedings by FRBP 7052, the court makes the following findings of fact and conclusions of law. Any finding of fact that should be a conclusion of law is deemed a conclusion of law; any conclusion of law that should be a finding of fact is deemed a finding of fact.

#### FINDINGS OF FACT

1. In April 2012, Desert Palace, Inc. (“Desert Palace”) and LLTQ Enterprises, LLC entered into a Development and Operation Agreement (the “LLTQ Agreement”). (See ECF No. 1755 at p. 4; ECF No. 1774 at p. 1, ¶ 1).

2. On May 16, 2014, Boardwalk Regency Corporation d/b/a Caesars Atlantic City (“Boardwalk”) and FERG, LLC entered into a Consulting Agreement (the “FERG Agreement” and together with the LLTQ Agreement, the “LLTQ/FERG Agreements”). *Id.*

3. On January 15, 2015, Desert Palace and Boardwalk filed separate voluntary chapter 11 petitions with the U.S. Bankruptcy Court for the Northern District of Illinois (the “Illinois Bankruptcy Court”) as Case Nos. 15-01167 and 15-01151, respectively. On that same day, the Illinois Bankruptcy Court entered an order directing joint administration of the Removed Parties’ chapter 11 cases, among others, with the lead chapter 11 case filed by Caesars Entertainment Operating Company, Inc. as Case No. 15-01145 (the “Caesars Bankruptcy Case”). (ECF No. 43).

4. On June 8, 2015, the jointly administered debtors (the “Debtors”) filed “Debtors’ Fourth Omnibus Motion for the Entry of an Order Authorizing the Debtors to Reject Certain Executory Contracts Nunc Pro Tunc to June 11, 2015” in the Caesars

1 Bankruptcy Case, pursuant to which the Debtors requested rejection of, in pertinent part, the  
2 LLTQ/FERG Agreements (the “First Rejection Motion”). (ECF No. 1755) (emphasis in  
3 original). The First Rejection Motion remains pending before the Illinois Bankruptcy  
4 Court.

5       5. On November 4, 2015, LLTQ and FERG filed a “Request for Payment of  
6 Administrative Expense” in the Caesars Bankruptcy Case relating to alleged post-petition  
7 amounts owed by the Removed Parties under the LLTQ/FERG Agreements (the  
8 “LLTQ/FERG Administrative Expense Claim”). (ECF No. 2531). The LLTQ/FERG  
9 Administrative Expense Claim remains pending before the Illinois Bankruptcy Court.

10       6. On January 14, 2016, the Debtors filed “Debtors’ Motion for the Entry of an  
11 Order Authorizing the Debtors to (A) Reject Certain Existing Restaurant Agreements and  
12 (B) Enter into New Restaurant Agreements” in the Caesars Bankruptcy Case, pursuant to  
13 which the Debtors seek to reject certain agreements entered into with celebrity chef Gordon  
14 Ramsay and Gordon Ramsay Holdings Limited regarding, among other things, the  
15 operation of Gordon Ramsay Pub & Grill restaurants at Caesars’ properties (the “Second  
16 Rejection Motion” and together with the First Rejection Motion, the “Rejection Motions”).  
17 (ECF No. 3000). In the Second Rejection Motion, the Debtors state that they “entered into  
18 separate agreements with restaurateur Rowen Seibel and his affiliates, FERG, LLC and  
19 LLTQ Enterprises, LLC . . . to obtain consulting services regarding employee staffing and  
20 training, marketing, and various operational matters for the Ramsay Restaurants . . .” Id.  
21 at p. 3, ¶ 3. The Debtors subsequently deemed the LLTQ/FERG Agreements no longer  
22 beneficial to their business operations and seek, by the Second Rejection Motion, to reject  
23 these affiliated agreements with Gordon Ramsay and enter into a new business relationship  
24 with him without LLTQ’s and FERG’s involvement. The Second Rejection Motion  
25 remains pending before the Illinois Bankruptcy Court.

1           7.     On January 17, 2017, the Illinois Bankruptcy Court entered an order (the  
2     “Confirmation Order”) in the Caesars Bankruptcy Case confirming the Third Amended  
3     Joint Plan of Reorganization (the “Confirmed Plan”). (ECF No. 6334).

4           8.     On August 25, 2017, Desert Palace, Paris Las Vegas Operating Company,  
5     LLC, PHWLTV, LLC, and Boardwalk (collectively, the “Plaintiffs”) filed a Complaint in the  
6     District Court for Clark County, Nevada (the “State Court”) as Case No. A-17-760537-B  
7     (the “State Court Case”) against Rowen Seibel, J. Jeffrey Frederick, LLTQ Enterprises,  
8     LLC, LLTQ Enterprises 16, LLC (together with LLTQ Enterprises, LLC, “LLTQ”),  
9     FERG, LLC, FERG 16, LLC (together with FERG, LLC, “FERG”), MOTI Partners, LLC,  
10    MOTI Partners 16, LLC (together with MOTI Partners, LLC, “MOTI”), TPOV Enterprises,  
11    LLC, TPOV Enterprises 16, LLC (together with TPOV Enterprises, LLC, “TPOV”), DNT  
12    Acquisition, LLC (“DNT”), and GR Burgr, LLC (“GRB,” and collectively with Rowen  
13    Seibel, J. Jeffrey Frederick, LLTQ, FERG, MOTI, TPOV, and DNT, the “Defendants”).  
14    (AECF No. 1 at Ex. A).

15          9.     The Complaint alleges three causes of action (the “Removed Claims”) seeking declaratory judgments relating to contracts, including the LLTQ/FERG Agreements  
16    seeking declaratory judgments relating to contracts, including the LLTQ/FERG Agreements  
17    (collectively, the “Seibel Agreements”),<sup>2</sup> entered into by and among Plaintiffs and the  
18    Defendants.

19          10.    Count I of the Complaint seeks a “Declaratory Judgment Against All  
20    Defendants Declaring That Caesars Properly Terminated All of the Seibel Agreements.”

21          11.    Count II of the Complaint seeks a “Declaratory Judgment Against All  
22    Defendants Declaring That Caesars Does Not Have Any Current or Future Obligations to  
23    Defendants Under the Seibel Agreements.”

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24  
25  
26               <sup>2</sup> The Complaint defines the contracts as the “Seibel Agreements.”

1           12. Count III of the Complaint seeks a “Declaratory Judgment Against All  
2 Defendants Declaring that the Seibel Agreements Do Not Prohibit or Limit Existing or  
3 Future Restaurant Ventures Between Caesars and Gordon Ramsay.”

4           13. On September 27, 2017,<sup>3</sup> LLTQ and FERG removed the State Court Case to  
5 this court pursuant to 28 U.S.C. §§ 1452(a) and 1334(b) and FRBP 9027.<sup>4</sup> (AECF No. 1).  
6 LLTQ and FERG argue that the issues made the subject of the Removed Claims are  
7 subsumed within the Rejection Motions and the LLTQ/FERG Administrative Expense  
8 Claim currently pending in the Caesars Bankruptcy Case.

9           14. On October 2, 2017, LLTQ and FERG filed a Motion to Transfer Venue,  
10 pursuant to which they seek to transfer the Removed Claims to the Illinois Bankruptcy  
11 Court.

12           15. On October 6, 2017, the effective date of the Confirmed Plan occurred. (ECF  
13 No. 7482).

14           16. On October 23, 2017, Plaintiffs filed an objection to the Motion to Transfer  
15 Venue (AECF No. 37)<sup>5</sup> and a Motion to Remand (AECF No. 38), pursuant to which  
16 Plaintiffs seek to remand the Removed Claims back to the State Court.

17           17. On October 24, 2017, Plaintiffs filed an amended objection to the Motion to  
18 Transfer Venue (AECF No. 42) and the Amended Motion to Remand.

19           18. On November 1, 2017, LLTQ and FERG filed a reply in support of their  
20 Motion to Transfer Venue. (AECF No. 48).

---

21  
22           <sup>3</sup> On September 27, 2017, MOTI filed a Notice of Removal with this court as Case No. 17-  
23 01237-LED. The court will address similar motions for removal and/or transfer filed in that  
adversary proceeding by separate findings of fact and conclusions of law entered therein.

24           <sup>4</sup> Plaintiffs have not contested the timeliness of the removal.

25           <sup>5</sup> On October 18, 2017, J. Jeffrey Frederick also filed a limited objection to the Motion to  
26 Transfer Venue (AECF No. 36), which has since been resolved and is not currently before the  
court.



split in the case law but concluding that the bankruptcy court had authority to enter a final order on a motion to remand).

B. “[A] bankruptcy court’s post-confirmation ‘related to’ jurisdiction is substantially more limited than its pre-confirmation jurisdiction . . . .” Montana v. Goldin (In re Pegasus Gold Corp.), 394 F.3d 1189, 1191 (9th Cir. 2005). “[T]he essential inquiry appears to be whether there is a close nexus to the bankruptcy plan or proceeding sufficient to uphold bankruptcy court jurisdiction over the matter[,]” and “matters affecting ‘the interpretation, implementation, consummation, execution, or administration of the confirmed plan will typically have the requisite close nexus.’” Id. at 1194 (quoting Binder v. Price Waterhouse & Co., LLP (In re Resorts Int’l, Inc.), 372 F.3d 154, 166-67 (3d Cir. 2004)).

C. Counts II and III seek a declaration regarding the Plaintiff’s right to terminate the LLTQ/FERG Agreements under state law, a fact that LLTQ and FERG concede. LLTQ/FERG nevertheless argue that the “unique circumstances” of the Caesars Bankruptcy Case require a different conclusion. (See AECF No. 55 at p. 6). The court disagrees.

D. The disclosure statement approved in the Caesars Bankruptcy Case listed an estimated 1,800 administrative claims that are provided for by either payment in full or other resolution during the post-confirmation period. (ECF No. 4220-1 at p. 105). Any state law issue arising in Counts II and III is distinct from the LLTQ/FERG Administrative Expense Claim. Plaintiffs’ counsel further stated at the hearing that the Confirmed Plan provides for a reserve of funds to pay any rejection claims. Consequently, the determination of Counts II and III in the State Court Case will not affect the interpretation, implementation, consummation, execution, or administration of the Confirmed Plan.

E. Language in the Confirmed Plan providing for the Illinois Bankruptcy Court’s retention of jurisdiction over administrative claims and rejection motions does not alter this conclusion, as the court’s subject matter jurisdiction may not be conferred by the parties’

1 consent with respect to state law contract claims that do not satisfy the “close nexus” test  
2 regarding post-confirmation jurisdiction. Go Global, Inc. v. Rogich (In re Go Global, Inc.),  
3 2016 WL 6901265, at \*7 (B.A.P. 9th Cir. Nov. 22, 2016) (citing In re Resorts Int’l, Inc.,  
4 372 F.3d at 161) (“[T]o the extent the plan could be construed as reserving jurisdiction to  
5 the bankruptcy court to adjudicate that claim, such a reservation would be, by itself,  
6 ineffective.”).

7 F. Because this court concludes that there is a not a sufficiently “close nexus”  
8 between Counts II and III and the Caesars Bankruptcy Case, the court does not reach the  
9 question of supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

10 G. For all of these reasons, the court lacks jurisdiction over Counts II and III, and  
11 both counts shall be remanded back to the State Court.

#### 12 **Remand of Claims**

13 H. Even if the court has jurisdiction, it exercises its discretion to remand Counts  
14 II and III back to the State Court. See Pac. Inv. Mgmt. Co., LLC v. OCP Opportunities  
15 Fund III, L.P. (In re Enron Corp.), 296 B.R. 505, 508 (C.D. Cal. 2003) (citing 28 U.S.C. §  
16 1452(b)) (“Bankruptcy courts have broad discretion to remand cases over which they  
17 otherwise have jurisdiction on any equitable ground.”).

18 I. Pursuant to 28 U.S.C. § 1452(a), a party is authorized to “remove any claim  
19 or cause of action in a civil action . . . to the district court for the district where such civil  
20 action is pending, if such district court has jurisdiction of such claim or cause of action  
21 under section 1334 of this title.”

22 J. Pursuant to 28 U.S.C. § 1452(b), “[t]he court to which such claim or cause of  
23 action is removed may remand such claim or cause of action on any equitable ground.”

24 K. “This ‘any equitable ground’ remand standard is an unusually broad grant of  
25 authority. It subsumes and reaches beyond all of the reasons for remand under  
26 nonbankruptcy removal statutes.” McCarthy v. Prince (In re McCarthy), 230 B.R. 414, 417



1 (B.A.P. 9th Cir. 1999). “At bottom, the question is committed to the sound discretion of the  
2 bankruptcy judge.” Id.

3 L. The court may consider fourteen non-exclusive factors during its  
4 discretionary analysis. See Wood v. Bank of N.Y. (In re Wood), 2011 WL 7145617, at \*8-  
5 9 (B.A.P. 9th Cir. Dec. 12, 2011). “[A]ny one of the relevant factors may provide a  
6 sufficient basis for equitable remand . . . .” Fenicle v. Boise Cascade Co., 2015 WL  
7 5948168, at \*6 (N.D. Cal. Oct. 13, 2015) (quotations and citations omitted).

8 M. The first factor involves “the effect or lack thereof on the efficient  
9 administration of the estate if the Court recommends [remand] . . . .” In re Wood, 2011 WL  
10 7145617, at \*8. The court finds and concludes that remand will not affect the efficient  
11 administration of the Caesars Bankruptcy Case because any state law issue arising in  
12 Counts II and III is distinct from the LLTQ/FERG Administrative Expense Claim, which is  
13 only one of an estimated 1,800 such claims that are provided for by the Confirmed Plan, as  
14 well as any rejection claim that is likewise provided for by the Confirmed Plan. See  
15 Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1169 (9th  
16 Cir. 1990) (finding that issues involving state law interpretation of a restrictive covenant’s  
17 reach “are distinct from the administration of the bankruptcy estate.”); In re Go Global, Inc.,  
18 2016 WL 6901265, at \*7 (holding that the court lacked post-confirmation jurisdiction to  
19 decide a cause of action that was not discussed in the disclosure statement or confirmed  
20 plan); Machine Zone, Inc. v. Peak Web LLC (In re Peak Web LLC), 559 B.R. 738, 741-42  
21 (Bankr. D. Or. 2016) (finding that the first factor weighed in favor of remand because  
22 “reorganization is not dependent on resolution of the [removed] claims.”). See also RG  
23 Adding L.L.C. v. Carrier Mid-Atlantic HQ (In re Fedders N. Am., Inc.), 2009 WL 2151245,  
24 at \*1-2 (Bankr. D. Del. July 17, 2009) (abstaining from deciding an action to collect a  
25 receivable purchased during the bankruptcy case because, among other things, state law  
26 predominates and resolution of this action “will have no effect on the administration of the

estate because the Debtor’s plan has been confirmed . . . .”); Sun Healthcare Group, Inc. v. Levin (In re Sun Healthcare Group, Inc.), 267 B.R. 673, 679 (Bankr. D. Del. 2000) (abstaining from hearing the debtor’s adversary proceeding involving breach of contract and tortious interference with business relations’ claims because, among other things, “there is no impact on the administration of the bankruptcy estate . . . .”).

N. The second factor involves the “extent to which state law issues predominate over bankruptcy issues . . . .” In re Wood, 2011 WL 7145617, at \*9. As LLTQ and FERG have acknowledged, the court finds and concludes that this factor strongly weighs in favor of remand because Counts II and III involve state law contract issues. See AECF No. 55 at p. 6 (stating that the Removed Claims involve a “state law contract dispute . . . .”); see also In re Peak Web LLC, 559 B.R. at 742 (finding that the second factor weighed in favor of remand because state law issues predominate and “no bankruptcy issues . . . need to be determined before the case can be tried.”).

O. The third factor involves whether there are “difficult or unsettled [issues] of applicable law . . . .” In re Wood, 2011 WL 7145617, at \*9. Because the parties did not discuss this factor, the court finds and concludes that it is neutral.

P. The fourth factor involves the “presence of a related proceeding commenced in state court or other nonbankruptcy proceeding . . . .” Id. The State Court Case constitutes a related proceeding to which this court has already remanded certain claims and parties pursuant to the Stipulation. See Maya, LLC v. Cytodyn of N. Mexico, Inc. (In re Cytodyn of N. Mexico, Inc.), 374 B.R. 733, 739 (Bankr. C.D. Cal. 2007) (finding this factor weighed in favor of remand even though the state court case may have technically been “extinguished” upon removal). Furthermore, after considering the pleadings and counsels’ arguments, the court is convinced that similar issues involving Nevada law permeate all of the Removed Claims, as well as the claims that have already been remanded back to the State Court. Indeed, Plaintiffs’ counsel represented to the court that all parties have agreed

1 that if the Removed Claims are remanded back to the State Court, then the State Court Case  
2 will be consolidated with another related Nevada state court matter pending before Judge  
3 Joe Hardy as Case No. A-17-751759-B.<sup>7</sup> For all of these reasons, the court finds and  
4 concludes that this factor weighs in favor of remand.

5 Q. The fifth factor involves the “jurisdictional basis, if any, other than § 1334 . . .  
6 .” In re Wood, 2011 WL 7145617, at \*9. LLTQ and FERG do not argue that any  
7 jurisdictional basis exists other than 28 U.S.C. § 1334. Therefore, the court finds and  
8 concludes that this factor weighs in favor of remand.

9 R. The sixth factor involves the “degree of relatedness or remoteness of [the]  
10 proceeding to [the] main bankruptcy case . . . .” Id. LLTQ and FERG argue that  
11 overlapping facts exist in the Caesars Bankruptcy Case relating to the Rejection Motions  
12 and the LLTQ/FERG Administrative Expense Claim. Plaintiffs indirectly refute this,  
13 arguing, among other things, that Counts II and III are not “related to” the interpretation or  
14 enforcement of the Confirmed Plan in the Bankruptcy Case. The court agrees. Claims  
15 objections and contract rejections routinely require a bankruptcy court’s interpretation of  
16 state law issues, and the existence of overlapping facts does not, standing alone, convert  
17 purely state law claims to bankruptcy matters that must be decided by a bankruptcy court.  
18 See Butner v. U.S., 440 U.S. 48, 54 (1979) (“Congress has generally left the determination  
19 of property rights in the assets of a bankruptcy’s estate to state law.”). Consequently, the  
20 court finds and concludes that this factor weighs in favor of remand.

21 S. The seventh factor involves “the substance rather than the form of an asserted  
22 core proceeding.” In re Wood, 2011 WL 7145617, at \*9. LLTQ and FERG argue that  
23 Counts II and III are core proceedings under 28 U.S.C. §§ 157(b)(2)(A) or 28 U.S.C. §  
24

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25 <sup>7</sup> Also raising similar issues is a case pending in the U.S. District Court for the District of  
26 Nevada, entitled *TPOV Enterprises 16, LLC v. Paris Las Vegas Operating Co., LLC, et al.*, Case  
No. 2:17-CV-00346-JCM-VCF.

1 157(b)(2)(O) because they are “inextricably bound” with the Rejection Motions and the  
2 LLTQ/FERG Administrative Claim Expense Claim. See Honigman, Miller, Schwartz &  
3 Cohn v. Weitzman (In re Delorean Motor Co.), 155 B.R. 521, 525 (B.A.P. 9th Cir. 1993)  
4 (“[A] proceeding will not be considered a core matter, even if it falls within the literal  
5 language of sections 157(b)(2)(A) or 157(b)(2)(O), if it is a state law claim that could exist  
6 outside of bankruptcy and is not inextricably bound to the claims allowance process or a  
7 right created by the Bankruptcy Code.”). Under Count I, Plaintiffs seek a declaratory  
8 judgment that they properly terminated the Seibel Agreements, including the LLTQ/FERG  
9 Agreements. The Complaint further states, in pertinent part, that because the Seibel  
10 Agreements were properly terminated (an issue conceded by MOTI’s counsel), the  
11 restrictive covenants in the LLTQ/FERG Agreements are no longer enforceable. (See  
12 Complaint at ¶¶ 67-68 and 89-90). These allegations form the gravaman of Counts II and  
13 III. By the court-approved Stipulation, however, LLTQ and FERG voluntarily remanded  
14 Count I back to the State Court, while inconsistently arguing that Counts II and III are  
15 “inextricably bound” with the Rejection Motions and the LLTQ/FERG Administrative  
16 Expense Claim. For all of these reasons, the court finds and concludes that this factor  
17 weighs in favor of remand because Counts II and III are not core proceedings.

18 T. The eighth factor relates to “the feasibility of severing state law claims from  
19 core bankruptcy matters to allow judgments to be entered in state court with enforcement  
20 left to the bankruptcy court . . . .” In re Wood, 2011 WL 7145617, at \*9. The court finds  
21 and concludes that this factor weighs in favor of remand because any findings made by the  
22 State Court on Counts II and III may, to the extent applicable, be utilized by the Illinois  
23 Bankruptcy Court with respect to the matters pending before it.

24 U. The ninth factor involves “the burden on the bankruptcy court’s docket . . . .”  
25 Id. Plaintiffs cite to a transcript from the Caesars Bankruptcy Case in which U.S.  
26 Bankruptcy Judge A. Benjamin Goldgar stated regarding another matter his preference for a

1 state court to determine a state law issue. See Amended Motion to Remand at p. 14 and Ex.  
 2 C. The parties also cite other statements by Judge Goldgar to the effect that particular  
 3 issues should be decided by the bankruptcy court. These comments by Judge Goldgar are  
 4 not consistent and therefore do not provide a basis upon which to make findings and  
 5 conclusions regarding this factor. As a result, the court finds and concludes that this factor  
 6 is neutral.

7 V. The tenth factor involves “the likelihood that the commencement of the  
 8 proceeding in bankruptcy court involves forum shopping by one of the parties . . . .” In re  
 9 Wood, 2011 WL 7145617, at \*9. LLTQ and FERG argue that Plaintiffs engaged in forum  
 10 shopping by filing the State Court Case after receiving unfavorable comments from Judge  
 11 Goldgar. This contention is not relevant to the tenth factor, which “addresses forum  
 12 shopping in connection with the initiation of the bankruptcy court proceeding . . . .”  
 13 Kamana O’Kala, LLC v. Lite Solar, LLC, 2017 WL 1100568, at \*7 (D. Or. Feb. 13, 2017).  
 14 Even if it was relevant, the “court determines that the evidence does not indicate that any  
 15 party chose . . . its respective forum in an attempt to abuse or manipulate the judicial  
 16 process.” Torres v. NE Opco, Inc. (In re NE Opco, Inc.), 2014 WL 4346080, at \*3 (Bankr.  
 17 C.D. Cal. Aug. 28, 2014). For these reasons, the court finds and concludes that this factor is  
 18 neutral.

19 W. The eleventh factor involves “the existence of a right to a jury trial . . . .” In  
 20 re Wood, 2011 WL 7145617, at \*9. LLTQ and FERG state that no jury trial has been  
 21 demanded, see AECF No. 55 at p. 9. Plaintiffs do not refute this claim. For this reason, the  
 22 court finds and concludes that this factor weighs slightly against remand.

23 X. The twelfth factor involves “the presence in the proceeding of nondebtor  
 24 parties . . . .” In re Wood, 2011 WL 7145617, at \*9. Desert Palace, as reorganized debtor,  
 25 is a separate legal entity from the debtor that was involved in the Caesars Bankruptcy Case.  
 26 See Confirmed Plan at p. 71, Art. IV, § AA. Furthermore, two of the plaintiffs and nine of

1 the defendants in the state court action are non-debtor parties who will separately litigate  
 2 the Removed Claims in state court. As a result, the court finds and concludes that this  
 3 factor weighs in favor of remand.

4 Y. The thirteenth factor involves “comity . . . .” In re Wood, 2011 WL  
 5 7145617, at \*9. “Comity dictates that [Nevada] courts should have the right to adjudicate  
 6 the exclusively state law claims involving [Nevada]-centric plaintiffs<sup>8</sup> and [Nevada]-centric  
 7 transactions.” Pac. Inv. Mgmt. Co., LLC v. OCP Opportunities Fund III, L.P. (In re Enron  
 8 Corp.), 296 B.R. 505, 509 (C.D. Cal. 2003). See also Kamana O’Kala, LLC, 2017 WL  
 9 1100568, at \*7 (finding the thirteenth factor weighed “heavily” in favor of remand “because  
 10 Kamana’s claims arise out of Oregon law, and because Kamana selected the [applicable  
 11 state] court as the forum for litigation of its claims.”); In re NE Opco, Inc., 2014 WL  
 12 4346080, at \*3 (finding the same “because California courts have an interest in adjudicating  
 13 Plaintiff’s California state law claims.”); Brincko v. Rio Props., Inc. (In re Nat’l Consumer  
 14 Mortg.), 2010 WL 2384217, at \*4 (C.D. Cal. June 10, 2010) (transferring venue from the  
 15 California bankruptcy court to Nevada because, among other reasons, “Nevada has an  
 16 interest in having the controversy decided within its borders.”). For these reasons, the court  
 17 finds and concludes that this factor weighs strongly in favor of remand.

18 Z. The fourteenth factor involves “the possibility of prejudice to other parties in  
 19 the action . . . .” In re Wood, 2011 WL 7145617, at \*9. Pursuant to the Complaint’s  
 20 allegations, any ruling on Count I, which LLTQ and FERG voluntarily remanded back to  
 21 the State Court, will inform the determination of Counts II and III. Plaintiffs’ counsel  
 22 argued that overlapping facts exist regarding “suitability” provisions in the Seibel  
 23 Agreements and the scope of restrictive covenants. Absent a single forum to decide these  
 24 issues, Plaintiffs contend that the risk of inconsistent decisions by different courts

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25 <sup>8</sup> According to the Complaint, Boardwalk is the only Plaintiff that is not incorporated in  
 26 Nevada. (See AECF No. 1-1 at ¶¶ 9-12).

1 constitutes prejudice. The court agrees. See W. Helicopters, Inc. v. Hiller Aviation, Inc.,  
2 97 B.R. 1, 7 (E.D. Cal. 1988) ("In addition to the unnecessary expense and expenditure of  
3 duplicative judicial resources, bifurcating this civil claim creates the real danger of  
4 inconsistent results. Such a risk should be avoided if there are no countervailing benefits." ).  
5 Finally, the State Court Case involves two non-debtor plaintiffs and 12 non-debtor  
6 defendants. For these reasons, this factor strongly weighs in favor of remand.

7 AA. In summation, factors 1, 2, 4-8 and 12-14 weigh in favor of remand, factor 11  
8 weighs slightly against remand, and factors 3 and 9-10 are neutral. The court finds and  
9 concludes that the ten factors in favor of remand substantially outweigh the one factor  
10 weighing slightly against remand. The court, therefore, grants the Amended Motion to  
11 Remand and remands Counts II and III back to the State Court. The Motion to Transfer is  
12 therefore denied as moot.

### 13 CONCLUSION

14 Pursuant to FRBP 9021, the court will enter separate orders and judgments  
15 consistent with these Findings of Fact and Conclusions of Law.

16 IT IS SO ORDERED.

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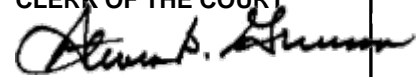
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# EXHIBIT 2



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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.

AND ALL RELATED MATTERS.

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**NOTICE OF ENTRY OF ORDER  
DENYING DEFENDANTS' MOTION TO  
STAY ALL PROCEEDINGS IN THE  
DISTRICT COURT PENDING A  
DECISION ON THEIR PETITION FOR  
WRIT OF MANDAMUS OR  
PROHIBITION**

PLEASE TAKE NOTICE that an *Order Denying Defendants' Motion to Stay All  
Proceedings in the District Court Pending a Decision on Their Petition for Writ of Mandamus or  
Prohibition* was entered in the above-captioned matter on August 22, 2018, a true and correct

1 copy of which is attached hereto.

2 DATED this 22 day of August 2018.

3 PISANELLI BICE PLLC

4  
5 By: 

James J. Pisanelli, Esq., #4027  
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11 *PHWLV, LLC; and Boardwalk Regency*  
12 *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 22 day of August 2018, I caused to be served via the Court's e-filing/e-service system true and correct copies of the above and foregoing **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION TO STAY ALL PROCEEDINGS IN THE DISTRICT COURT PENDING A DECISION ON THEIR PETITION FOR WRIT OF MANDAMUS OR PROHIBITION**

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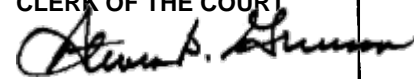
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14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

18 Plaintiff,

19 v.

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

22 Defendants,

23 and

24 GR BURGR LLC, a Delaware limited liability  
company,

25 Nominal Plaintiff.  
26

27 AND ALL RELATED MATTERS  
28

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**ORDER DENYING DEFENDANTS'  
MOTION TO STAY ALL PROCEEDINGS  
IN THE DISTRICT COURT PENDING A  
DECISION ON THEIR PETITION FOR A  
WRIT OF MANDAMUS OR  
PROHIBITION**

Date of Hearing: August 7, 2018

Time of Hearing: 9:00 a.m.

**AUG 20 2018**

1 Defendants Rowen Seibel ("Seibel"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ  
2 Enterprises 16, LLC ("LLTQ 16"), FERG LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI  
3 Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), TPOV Enterprises, LLC  
4 ("TPOV"), TPOV 16 Enterprises, LLC ("TPOV 16"), and DNT Acquisition, LLC's ("DNT")  
5 (collectively "Defendants") Motion to Stay All Proceedings in the District Court Pending a  
6 Decision on their Petition for a Writ of Mandamus or Prohibition (the "Motion") came before the  
7 Court for hearing on August 7, 2018, at 9:00 a.m.

8 James J. Pisanelli, Esq., M. Magali Mercera, Esq., and Brittanie Watkins, Esq., of the law  
9 firm PISANELLI BICE PLLC and William Arnault, Esq. of the law firm KIRKLAND & ELLIS LLP  
10 appeared on behalf of PHWLTV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars  
11 Palace"), Paris Las Vegas Operating Company, LLC ("Paris"), and Boardwalk Regency  
12 Corporation d/b/a Caesars Atlantic City ("CAC" and collectively with Caesars Palace, Paris, and  
13 Planet Hollywood, "Caesars"). Daniel R. McNutt, Esq. and Matthew Wolf, Esq. of the MCNUTT  
14 LAW FIRM, P.C. appeared on behalf of Defendants. Allen Wilt, Esq. of the law firm FENNEMORE  
15 CRAIG appeared on behalf of Gordon Ramsay.

16 The Court having considered the Motion and related briefings, as well as argument of  
17 counsel presented at the hearing, and good cause appearing therefor,

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

20 THE COURT FURTHER FINDS that under the facts of this case Defendants are not  
21 likely to prevail on the merits of their writ petition, particularly in light of the Court's prior  
22 decision in this matter, the unique issues of suitability raised by this case, and further taking into  
23 consideration the comity points raised by the Honorable Laurel Davis with respect to the unique  
24 issues of Nevada law in this Nevada-centric case.



1 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the  
2 Motion shall be, and hereby is, DENIED.

3 IT IS SO ORDERED.

4 DATED this 21<sup>st</sup> day of August 2018.

5   
6 THE HONORABLE TIMOTHY C. WILLIAMS  
7 EIGHTH JUDICIAL DISTRICT COURT *BT*

8 Respectfully submitted by:

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28 Approved as to form and content:

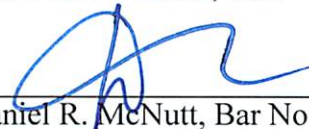
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FERG 16, LLC; MOTI Partners, LLC;  
MOTI Partners 16, LLC;  
TPOV Enterprises, LLC;  
TPOV Enterprises 16, LLC, and DNT Acquisition,*



1 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the  
2 Motion shall be, and hereby is, DENIED.

3 IT IS SO ORDERED.

4 DATED this \_\_\_\_ day of August 2018.

5  
6 THE HONORABLE TIMOTHY C. WILLIAMS  
EIGHTH JUDICIAL DISTRICT COURT

8 Respectfully submitted by:

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Defendants Rowen Seibel;  
LLTQ Enterprises, LLC;  
LLTQ Enterprises 16, LLC; FERG, LLC;  
FERG 16, LLC; MOTI Partners, LLC;  
MOTI Partners 16, LLC;  
TPOV Enterprises, LLC;  
TPOV Enterprises 16, LLC, and DNT Acquisition,*

23 Approved as to form and content:

24 FENNEMORE CRAIG, P.C.

25 By:

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28 *Attorneys for Gordon Ramsay*

# EXHIBIT 3

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROWEN A. SEIBEL; LLTQ  
ENTERPRISES, LLC; LLTQ  
ENTERPRISES 16, LLC; FERG, LLC;  
FERG 16, LLC; MOTI PARTNERS, LLC;  
MOTI PARTNERS 16, LLC; TPOV  
ENTERPRISES, LLC; TPOV 16  
ENTERPRISES, LLC; AND DNT  
ACQUISTION, LLC, APPEARING  
DERIVATIVELY BY ONE OF ITS TWO  
MEMBERS, R SQUARED GLOBAL  
SOLUTIONS, LLC,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
JOSEPH HARDY, JR., DISTRICT  
JUDGE,

Respondents,

and

DESERT PALACE, INC.; PARIS LAS  
VEGAS OPERATING COMPANY, LLC;  
PHWLTV, LLC; BOARDWALK  
REGENCY CORPORATION, D/B/A  
CAESARS ATLANTIC CITY,

Real Parties in Interest.

No. 76118

**FILED**

NOV 09 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER DENYING MOTION FOR STAY*

Petitioners have filed a motion to stay the underlying district court proceedings pending resolution of their petition for a writ of mandamus or prohibition. Having considered the motion, response, reply, and documents before this court, as well as the relevant factors, *see* NRAP

8(c), we conclude that a stay is not warranted. Accordingly, we deny the motion.

It is so ORDERED.

*Douglas*, C.J.  
Douglas

*Cherry*, J.  
Cherry

*Gibbons*, J.  
Gibbons

*Pickering*, J.  
Pickering

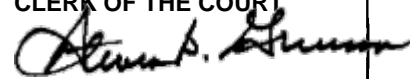
*Hardesty*, J.  
Hardesty

*Parraguirre*, J.  
Parraguirre

*Stiglich*, J.  
Stiglich

cc: Hon. Joseph Hardy, Jr., District Judge  
McNutt Law Firm  
Barack Ferrazzano Kirschbaum & Nagelberg  
Certilman Balin Adler & Hyman  
Adelman & Gettleman  
Pisanelli Bice, PLLC  
Eighth District Court Clerk

# EXHIBIT 4



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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.

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

Dept. No.: XVI

Consolidated with A-17-760537-B

**NOTICE OF ENTRY OF ORDER  
GRANTING, IN PART, MOTION FOR A  
STAY OF DISCOVERY ON ORDER  
SHORTENING TIME**

1 PLEASE TAKE NOTICE that an Order Granting, in Part, Motion for a Stay of Discovery  
2 on Order Shortening Time was entered in the above-captioned matter on June 4, 2019, a true and  
3 correct copy of which is attached hereto.

4 DATED this 4<sup>th</sup> day of June 2019.

5 PISANELLI BICE PLLC

6 By: 

7 James J. Pisanelli, Esq., #4027  
8 Debra L. Spinelli, Esq., #9695  
9 M. Magali Mercera, Esq., #11742  
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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 4 day of June 2019, 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, IN PART, MOTION FOR A STAY OF DISCOVERY ON ORDER SHORTENING TIME** to the following:

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

**VIA U.S. MAIL**

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Moti Partners, LLC, Moti Partner 16, LLC,  
LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC,  
TPOV Enterprises, LLC, TPOV Enterprises 16, LLC,  
FERG, LLC, and FERG 16, LLC*

  
\_\_\_\_\_  
An employee of PISANELLI BICE PLLC



*Steven D. Grierson*

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*Attorneys for Desert Palace, Inc.;  
Paris Las Vegas Operating Company, LLC;  
PHWLV, 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.

PHWLV, 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, IN PART, MOTION  
FOR A STAY OF DISCOVERY ON  
ORDER SHORTENING TIME**

Date of Hearing: May 23, 2019

Time of Hearing: 9:00 a.m.

PISANELLI BICE  
400 SOUTH 7TH STREET, SUITE 300  
LAS VEGAS, NEVADA 89101

65-30-15P12:40 RCVD

1 Defendants Rowen Seibel ("Seibel"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ  
2 Enterprises 16, LLC ("LLTQ 16"), FERG LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI  
3 Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), TPOV Enterprises, LLC  
4 ("TPOV"), TPOV 16 Enterprises, LLC ("TPOV 16"), and DNT Acquisition, LLC's ("DNT")  
5 (collectively "Defendants") Motion for a Stay of Discovery on Order Shortening Time (the  
6 "Motion to Stay") came before the Court for hearing on May 23, 2019, at 9:00 a.m.

7 M. Magali Mercera, Esq., of the law firm PISANELLI BICE PLLC, appeared on behalf of  
8 PHWLTV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las Vegas  
9 Operating Company, LLC ("Paris"), and Boardwalk Regency Corporation d/b/a Caesars Atlantic  
10 City ("CAC") and collectively with Caesars Palace, Paris, and Planet Hollywood, "Caesars").  
11 Daniel R. McNutt, Esq. of the McNUTT LAW FIRM, P.C. and Paul Sweeney, Esq. of the law firm,  
12 CERTILMAN BALIN ADLER & HYMAN, LLP, appeared on behalf of Defendants. Nate Rugg, Esq.,  
13 of the law firm BARACK FERRAZZANO KIRSCHBAUM & NAGELBERG, LLP appeared on behalf of  
14 LLTQ, LLTQ 16, MOTI, MOTI 16, FERG, and FERG 16. Steve Chaiken, Esq., of the law firm  
15 of Adelman & Gettleman, Ltd., appeared telephonically on behalf of LLTQ, LLTQ 16, MOTI,  
16 MOTI 16, FERG, and FERG 16. Allen Wilt, Esq., of the law firm FENNEMORE CRAIG, appeared  
17 on behalf of Gordon Ramsay. Kevin M. Sutehall, Esq., of the law firm FOX ROTHSCHILD LLP,  
18 appeared on behalf of The Original Homestead Restaurant, Inc. ("OHR").

19 The Court having considered the Motion to Stay and the oppositions thereto, as well as  
20 argument of counsel presented at the hearing, and good cause appearing therefor, IT IS HEREBY  
21 ORDERED, ADJUDGED, AND DECREED that the Motion to Stay shall be and is HEREBY  
22 GRANTED, IN PART, AND DENIED IN PART, as follows: This matter shall be and is hereby  
23 stayed for a period not to exceed two (2) weeks (or beyond June 6, 2019) to permit Defendants to  
24 retain new counsel. A status check is set for June 6, 2019 at 9:00 a.m. to determine whether  
25 Defendants have retained new counsel.

1 The Motion to Stay is DENIED in all other respects.

2 IT IS SO ORDERED.

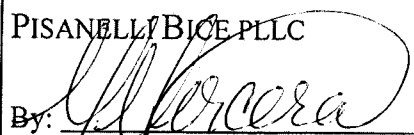
3 DATED this 4 <sup>June</sup> day of ~~May~~ 2019.

4  
5   
6 THE HONORABLE TIMOTHY C. WILLIAMS  
EIGHTH JUDICIAL DISTRICT COURT  
CD

7 Respectfully submitted by:

8 DATED May 30 2019

9 PISANELLI BICE PLLC

10 By:   
11 James J. Pisanelli, Esq., Bar No. 4027  
12 Debra L. Spinelli, Esq., Bar No. 9695  
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17 and

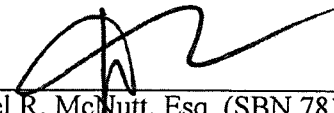
18 Jeffrey J. Zeiger, P.C., Esq.  
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27 Paris Las Vegas Operating Company, LLC;  
28 PHWL, LLC; and Boardwalk Regency  
Corporation d/b/a Caesars Atlantic City

Approved as to form and content by:

DATED May 29 2019

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1 Approved as to form and content by:

2 DATED May 24, 2019

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

17 Approved as to form and content by:

18 DATED May \_\_, 2019

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1 Approved as to form and content by:

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13 Approved as to form and content by:

14 DATED May \_\_, 2019

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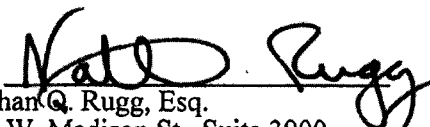
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DATED May \_\_, 2019  
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By: \_\_\_\_\_  
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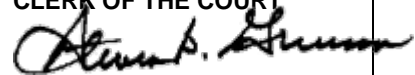
*Attorneys for Gordon Ramsay*

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By: \_\_\_\_\_  
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*MOTI Partners 16, LLC*

# EXHIBIT 5





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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-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**NOTICE OF ENTRY OF ORDER  
DENYING 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

PLEASE TAKE NOTICE that an Order Denying the Development Entities' Motion for a Limited Stay of Proceedings Pending Their Petition for Extraordinary Writ Relief on Order Shortening Time was entered in the above-captioned matter on February 24, 2021, a true and correct copy of which is attached hereto.

DATED this 25th day of February 2021.

PISANELLI BICE PLLC

By: /s/ M. Magali Mercera  
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Debra L. Spinelli, Esq., #9695  
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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 25th 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 **NOTICE OF ENTRY OF ORDER DENYING THE DEVELOPMENT ENTITIES' MOTION FOR A LIMITED STAY OF PROCEEDINGS PENDING THEIR PETITION FOR EXTRAORDINARY WRIT RELIEF ON ORDER SHORTENING TIME** to the following:

John R. Bailey, Esq.  
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Joshua P. Gilmore, Esq.  
Paul C. Williams, Esq.  
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LLTQ Enterprises, LLC, 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*

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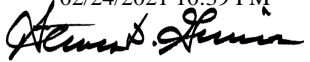
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*Attorneys for Nominal Plaintiff  
GR Burgr LLC*

/s/ Cinda Towne  
An employee of PISANELLI BICE PLLC

  
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Paris Las Vegas Operating Company, LLC;  
PHWL, 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.

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")<sup>1</sup> *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).

---

24  
25  
26  
27  
28 <sup>1</sup> TPOV, TPOV 16, LLTQ, LLTQ 16, LLC, FERG, FERG 16, MOTI, MOTI 16, DNT, are collectively referred to herein as the Development Entities.

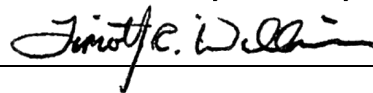
THE COURT FURTHER FINDS THAT, that the amended counterclaims the Development Entities filed on or about June 19, 2020 bear no relation to the new claims brought by Caesars in its First Amended Complaint which pertained to an alleged kickback scheme.

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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Brittanie T. Watkins, Esq., Bar No. 13612  
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By: /s/ Paul C. Williams  
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Joshua P. Gilmore, Esq., Bar No. 11576  
Paul C. Williams, Esq., Bar No. 12524  
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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  
Corporation d/b/a Caesars Atlantic City*

1 Approved as to form and content by:

2 DATED February 23, 2021

3 FENNEMORE CRAIG, P.C.

4 By: /s/ John D. Tennert  
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6 Wade Beavers, Esq., Bar No. 13451  
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8 Reno, NV 89511

9 *Attorneys for Gordon Ramsay*

10 Approved as to form and content by:

11 DATED February 22, 2021

12 LEBENSFELD SHARON & SCHWARTZ P.C.

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23 *Attorneys for The Original Homestead*  
24 *Restaurant, Inc*

Approved as to form and content by:

DATED February 22, 2021

NEWMEYER & DILLION LLP

By: /s/ Aaron D. Lovaas

Aaron D. Lovaas, Esq., Bar No. 5701  
3800 Howard Hughes Pkwy, Suite 700  
Las Vegas, Nevada 89169

*Attorneys for GR Burgr, LLC*

## Cinda C. Towne

---

**From:** Paul Williams <PWilliams@baileykennedy.com>  
**Sent:** Monday, February 22, 2021 9:33 AM  
**To:** Magali Mercera  
**Cc:** James Pisanelli; Debra Spinelli; Joshua Gilmore; Stephanie Glantz; Tennert, John; Alan Lebensfeld; Aaron D. Lovaas; Emily A. Buchwald; Robert A. Ryan; Brittnie T. Watkins; Cinda C. Towne; Sharon Murnane; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: Order Denying Motion for Stay  
**Attachments:** Order Denying Motion for a Limited Stay Pending Writ Petition (BK Redline).docx; Order Denying Motion for a Limited Stay Pending Writ Petition (BK Clean).docx

CAUTION: External Email

Hi Magali,

One minor revision—changing “the kickback scheme” to “an alleged kickback scheme.” Redline and clean copies are attached.

Assuming you are agreeable to that revision, you may affix my electronic signature and submit it to the Court.

Thank you,

Paul C. Williams  
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**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Friday, February 19, 2021 4:56 PM  
**To:** Paul Williams <PWilliams@baileykennedy.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Robert A. Ryan <RR@pisanellibice.com>; Brittnie T. Watkins <BTW@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>  
**Subject:** Desert Palace v. Seibel: Order Denying Motion for Stay

All –



Attached please find the order denying the Motion for a Limited Stay of Proceedings Pending Petition for Extraordinary Writ Relief on Order Shortening Time.

Please let us know if you have any changes. Otherwise, if acceptable, please confirm that we may apply your e-signature.

Regards,

**M. Magali Mercera**

PISANELLI BICE, PLLC

Telephone: (702) 214-2100

[mmm@pisanellibice.com](mailto:mmm@pisanellibice.com) | [www.pisanellibice.com](http://www.pisanellibice.com)



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## Cinda C. Towne

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**From:** Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>  
**Sent:** Monday, February 22, 2021 9:35 AM  
**To:** Paul Williams; Magali Mercera  
**Cc:** James Pisanelli; Debra Spinelli; Joshua Gilmore; Stephanie Glantz; Tennert, John; Aaron D. Lovaas; Emily A. Buchwald; Robert A. Ryan; Brittnie T. Watkins; Cinda C. Towne; Sharon Murnane; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: Order Denying Motion for Stay

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[Same here](#)

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**From:** Paul Williams [mailto:PWilliams@baileykennedy.com]  
**Sent:** Monday, February 22, 2021 12:33 PM  
**To:** Magali Mercera  
**Cc:** James Pisanelli; Debra Spinelli; Joshua Gilmore; Stephanie Glantz; Tennert, John; Alan Lebensfeld; Aaron D. Lovaas; Emily A. Buchwald; Robert A. Ryan; Brittnie T. Watkins; Cinda C. Towne; Sharon Murnane; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: Order Denying Motion for Stay

Hi Magali,

One minor revision—changing “the kickback scheme” to “an alleged kickback scheme.” Redline and clean copies are attached.

Assuming you are agreeable to that revision, you may affix my electronic signature and submit it to the Court.

Thank you,

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**Subject:** Desert Palace v. Seibel: Order Denying Motion for Stay

All –

Attached please find the order denying the Motion for a Limited Stay of Proceedings Pending Petition for Extraordinary Writ Relief on Order Shortening Time.

Please let us know if you have any changes. Otherwise, if acceptable, please confirm that we may apply your e-signature.

Regards,

**M. Magali Mercera**

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## Cinda C. Towne

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**From:** Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>  
**Sent:** Monday, February 22, 2021 10:15 AM  
**To:** Magali Mercera; Paul Williams  
**Cc:** James Pisanelli; Debra Spinelli; Joshua Gilmore; Stephanie Glantz; Tennert, John; Alan Lebensfeld; Emily A. Buchwald; Robert A. Ryan; Brittnie T. Watkins; Cinda C. Towne; Sharon Murnane; Susan Russo  
**Subject:** RE: [EXTERNAL]:RE: Desert Palace v. Seibel: Order Denying Motion for Stay

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**From:** Magali Mercera <mmm@pisanellibice.com>  
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**Subject:** [EXTERNAL]:RE: Desert Palace v. Seibel: Order Denying Motion for Stay

Thanks, Paul. That revision is acceptable. The updated order is attached.

John and Aaron – please confirm that we may apply your e-signature to this version.

Thanks,

**M. Magali Mercera**  
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## Cinda C. Towne

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**From:** Tennert, John <jtennert@fennemorelaw.com>  
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**To:** Magali Mercera; Paul Williams  
**Cc:** James Pisanelli; Debra Spinelli; Joshua Gilmore; Stephanie Glantz; Alan Lebensfeld; Aaron D. Lovaas; Emily A. Buchwald; Robert A. Ryan; Brittnie T. Watkins; Cinda C. Towne; Sharon Murnane; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: Order Denying Motion for Stay

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Yes, you may.

John D. Tennert III, Director

---

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**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Tuesday, February 23, 2021 4:22 PM  
**To:** Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>  
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**Subject:** RE: Desert Palace v. Seibel: Order Denying Motion for Stay

John – Can you confirm that we may apply your e-signature to this version?

**M. Magali Mercera**

PISANELLI BICE, PLLC

Telephone: (702) 214-2100

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Rowen Seibel, Plaintiff(s)

CASE NO: A-17-751759-B

7 vs.

DEPT. NO. Department 16

8 PHWL V LLC, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order Denying Motion was served via the court's electronic eFile  
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