

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 82448

MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; LLTQ
ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC;
TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC;
FERG, LLC; FERG 16, LLC; 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.

SUPPLEMENTAL APPENDIX

James J. Pisanelli, Esq., Bar No. 4027
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Debra L. Spinelli, Esq., Bar No. 9695
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Attorneys for Real Parties in Interest

CHRONOLOGICAL & ALPHABETICAL INDEX

Date	Description	Bates no.
6/25/2018	Notice of Intent to Take Default of Defendant DNT Acquisition, LLC	0001-0003
6/25/2018	Notice of Intent to Take Default of Defendant FERG 16, LLC	0004-0006
6/25/2018	Notice of Intent to Take Default of Defendant FERG, LLC	0007-0009
6/25/2018	Notice of Intent to Take Default of Defendant LLTQ Enterprises 16, LLC	0010-0012
6/25/2018	Notice of Intent to Take Default of Defendant LLTQ Enterprises, LLC	0013-0015
6/25/2018	Notice of Intent to Take Default of Defendant MOTI Partners 16, LLC	0016-0018
6/25/2018	Notice of Intent to Take Default of Defendant MOTI Partners, LLC	0019-0021
6/25/2018	Notice of Intent to Take Default of Defendant TPOV Enterprises 16, LLC	0022-0024
6/25/2018	Notice of Intent to Take Default of Defendant TPOV Enterprises, LLC	0025-0027
11/6/2019	Reporter's Transcript of Hearing	0028-0067
2/12/2020	Reporter's Transcript of Caesars' Motion for Leave to File First Amended Complaint; and Ex Parte Application for Order Shortening Time; Motion to Seal Certain Exhibits to Opposition to Caesars' Motion for Leave to File First Amended Complaint	0068-0103
2/17/2021	Reporter's Transcript of Hearing	0104-0162

DATED this 19th day of April 2021.

PISANELLI BICE PLLC

By: /s/ James J. Pisanelli
James J. Pisanelli, Esq., Bar No. 4027
Debra L. Spinelli, Esq., Bar No. 9695
Jordan T. Smith, Esq., Bar No. 12097
M. Magali Mercera, Esq., Bar No. 11742
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Real Parties in Interest

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 19th day of April 2021, I electronically filed and served a true and correct copy of the above and foregoing **SUPPLEMENTAL APPENDIX** properly addressed to the following:

John R. Bailey, Esq.
Dennis L. Kennedy, Esq.
Joshua P. Gilmore, Esq.
Paul C. Williams, Esq.
Stephanie J. Glantz, Esq.
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Attorneys for Gordon Ramsay

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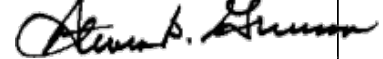
*Attorneys for Plaintiff in Intervention The
Original Homestead Restaurant, Inc.*

VIA EMAIL

Hon. Timothy C. Williams
District Judge
Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155
Dept16lc@clarkcountycourts.us
Dept16ea@clarkcountycourt.us

Respondent

By: /s/ Cinda Towne
An employee of PISANELLI BICE PLLC



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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED MATTERS.

Case No.: A-17-751759-B

Dept. No.: XV

Consolidated with A-17-760537-B

**NOTICE OF INTENT TO TAKE
DEFAULT OF DEFENDANT DNT
ACQUISITION, LLC**

To: Defendant DNT Acquisition, LLC;

To: Daniel R. McNutt, Esq. and Matthew C. Wolf, Esq., McNUTT LAW FIRM, P.C., its
attorneys of record; and

To: Paul Sweeney, CERTILMAN BALIN ADLER & HYMAN, LLP, its attorneys of record;

1 PLEASE TAKE NOTICE that Plaintiffs Desert Palace, Inc., Paris Las Vegas Operating
2 Company, LLC, PHWLTV, LLC; and Boardwalk Regency Corporation d/b/a Caesars Atlantic City
3 intend to take the default of Defendant DNT Acquisition, LLC, unless an answer or other
4 responsive pleading is filed on or before three days from the date of this Notice.

5 DATED this 25th day of June 2018.

6 PISANELLI BICE PLLC

7
8 By: 

9 James J. Pisanelli, Esq., #4027
10 Debra L. Spinelli, Esq., #9695
11 M. Magali Mercera, Esq., #11742
12 Brittanie T. Watkins, Esq., #13612
13 400 South 7th Street, Suite 300
14 Las Vegas, Nevada 89101

15 *Attorneys for Desert Palace, Inc.;*
16 *Paris Las Vegas Operating Company, LLC;*
17 *PHWLTV, LLC; and Boardwalk Regency*
18 *Corporation d/b/a Caesars Atlantic City*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 25 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 INTENT TO TAKE DEFAULT OF DEFENDANT DNT ACQUISITION, LLC to the following:

Daniel R. McNutt, Esq.
Matthew C. Wolf, Esq.
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625 South Eighth Street
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Nathan O. Rugg, Esq.
BARACK FERRAZZANO KIRSCHBAUM &
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*Attorneys for Rowen Seibel, DNT Acquisition LLC,
Moti Partners, LLC, Moti Partner 16s, LLC,
LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC,
TPOV Enterprises, LLC, TPOV Enterprises 16, LLC,
FERG, LLC, and FERG 16, LLC*

*Attorneys for LLTQ Enterprises, LLC;
LLTQ Enterprises 16, LLC, FERG, LLC;
FERG 16, LLC; MOTI Partners, LLC;
and MOTI Partners 16, LLC*

Allen J. Wilt, Esq.
John D. Tennert III, Esq.
300 East Second Street, Suite 1510
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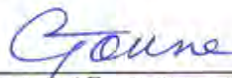
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Attorneys for Gordon Ramsay

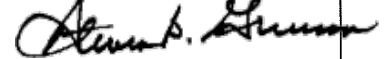
Attorneys for J. Jeffrey Frederick

VIA U.S. MAIL
Kurt Heyman, Esq.
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Wilmington, DE 19801

Trustee for GR Burgr, LLC



An employee of PISANELLI BICE PLLC



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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED MATTERS.

Case No.: A-17-751759-B

Dept. No.: XV

Consolidated with A-17-760537-B

**NOTICE OF INTENT TO TAKE
DEFAULT OF DEFENDANT FERG 16,
LLC**

To: Defendant FERG 16, LLC;

To: Daniel R. McNutt, Esq. and Matthew C. Wolf, Esq., McNUTT LAW FIRM, P.C., its
attorneys of record;

To: Paul Sweeney, CERTILMAN BALIN ADLER & HYMAN, LLP, its attorneys of record;

1 To: Nathan O. Rugg, Esq., BARACK FERRAZZANO KIRSCHBAUM & NAGELBERG LLP, its
2 attorneys of record; and

3 To: Steven B. Chaiken, Esq., ADELMAN & GETTLEMAN, LTD, its attorneys of record.

4 PLEASE TAKE NOTICE that Plaintiffs Desert Palace, Inc., Paris Las Vegas Operating
5 Company, LLC, PHWLTV, LLC; and Boardwalk Regency Corporation d/b/a Caesars Atlantic City
6 intend to take the default of Defendant FERG 16, LLC, unless an answer or other responsive
7 pleading is filed on or before three days from the date of this Notice.

8 DATED this 25th day of June 2018.

9 PISANELLI BICE PLLC

10
11 By: 

12 James J. Pisanelli, Esq., #4027
13 Debra L. Spinelli, Esq., #9695
14 M. Magali Mercera, Esq., #11742
15 Brittanie T. Watkins, Esq., #13612
16 400 South 7th Street, Suite 300
17 Las Vegas, Nevada 89101

18 *Attorneys for Desert Palace, Inc.;*
19 *Paris Las Vegas Operating Company, LLC;*
20 *PHWLTV, LLC; and Boardwalk Regency*
21 *Corporation d/b/a Caesars Atlantic City*
22
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 25 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 INTENT TO TAKE DEFAULT OF DEFENDANT FERG 16, LLC to the following:

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Matthew C. Wolf, Esq.
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Moti Partners, LLC, Moti Partner 16s, LLC,
LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC,
TPOV Enterprises, LLC, TPOV Enterprises 16, LLC,
FERG, LLC, and FERG 16, LLC*

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

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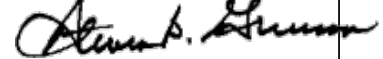
Attorneys for Gordon Ramsay

Attorneys for J. Jeffrey Frederick

VIA U.S. MAIL
Kurt Heyman, Esq.
300 Delaware Ave., Suite 200
Wilmington, DE 19801

Trustee for GR Burgr, LLC


An employee of PISANELLI BICE PLLC



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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED MATTERS.

Case No.: A-17-751759-B

Dept. No.: XV

Consolidated with A-17-760537-B

**NOTICE OF INTENT TO TAKE
DEFAULT OF DEFENDANT FERG, LLC**

To: Defendant FERG, LLC;

To: Daniel R. McNutt, Esq. and Matthew C. Wolf, Esq., McNUTT LAW FIRM, P.C., its
attorneys of record;

To: Paul Sweeney, CERTILMAN BALIN ADLER & HYMAN, LLP, its attorneys of record;

To: Nathan O. Rugg, Esq., BARACK FERRAZZANO KIRSCHBAUM & NAGELBERG LLP, its
attorneys of record; and

To: Steven B. Chaiken, Esq., ADELMAN & GETTLEMAN, LTD, its attorneys of record.

PLEASE TAKE NOTICE that Plaintiffs Desert Palace, Inc., Paris Las Vegas Operating
Company, LLC, PHWLTV, LLC; and Boardwalk Regency Corporation d/b/a Caesars Atlantic City
intend to take the default of Defendant FERG, LLC, unless an answer or other responsive
pleading is filed on or before three days from the date of this Notice.

DATED this 25th day of June 2018.

PISANELLI BICE PLLC

By: 

James J. Pisanelli, Esq., #4027
Debra L. Spinelli, Esq., #9695
M. Magali Mercera, Esq., #11742
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*Attorneys for Desert Palace, Inc.;
Paris Las Vegas Operating Company, LLC;
PHWLTV, LLC; and Boardwalk Regency
Corporation d/b/a Caesars Atlantic City*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 25 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 INTENT TO TAKE DEFAULT OF DEFENDANT FERG, LLC** to the following:

Daniel R. McNutt, Esq.
Matthew C. Wolf, Esq.
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625 South Eighth Street
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Moti Partners, LLC, Moti Partner 16s, LLC,
LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC,
TPOV Enterprises, LLC, TPOV Enterprises 16, LLC,
FERG, LLC, and FERG 16, LLC*

*Attorneys for LLTQ Enterprises, LLC;
LLTQ Enterprises 16, LLC, FERG, LLC;
FERG 16, LLC; MOTI Partners, LLC;
and MOTI Partners 16, LLC*

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Attorneys for Gordon Ramsay

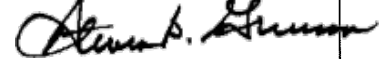
Attorneys for J. Jeffrey Frederick

VIA U.S. MAIL
Kurt Heyman, Esq.
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Trustee for GR Burgr, LLC



An employee of PISANELLI BICE PLLC



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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED MATTERS.

Case No.: A-17-751759-B

Dept. No.: XV

Consolidated with A-17-760537-B

**NOTICE OF INTENT TO TAKE
DEFAULT OF DEFENDANT LLTQ
ENTERPRISES 16, LLC**

To: Defendant LLTQ Enterprises 16, LLC;

To: Daniel R. McNutt, Esq. and Matthew C. Wolf, Esq., McNUTT LAW FIRM, P.C., its
attorneys of record;

To: Paul Sweeney, CERTILMAN BALIN ADLER & HYMAN, LLP, its attorneys of record;


To: Nathan O. Rugg, Esq., BARACK FERRAZZANO KIRSCHBAUM & NAGELBERG LLP, its
attorneys of record; and

To: Steven B. Chaiken, Esq., ADELMAN & GETTLEMAN, LTD, its attorneys of record.

PLEASE TAKE NOTICE that Plaintiffs Desert Palace, Inc., Paris Las Vegas Operating
Company, LLC, PHWLTV, LLC; and Boardwalk Regency Corporation d/b/a Caesars Atlantic City
intend to take the default of Defendant LLTQ Enterprises 16, LLC, unless an answer or other
responsive pleading is filed on or before three days from the date of this Notice.

DATED this 25th day of June 2018.

PISANELLI BICE PLLC

By: 
James J. Pisanelli, Esq., #4027
Debra L. Spinelli, Esq., #9695
M. Magali Mercera, Esq., #11742
Brittnie T. Watkins, Esq., #13612
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 25 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 INTENT TO TAKE DEFAULT OF DEFENDANT LLTQ ENTERPRISES 16, LLC** to the following:

Daniel R. McNutt, Esq.
Matthew C. Wolf, Esq.
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FERG, LLC, and FERG 16, LLC*

*Attorneys for LLTQ Enterprises, LLC;
LLTQ Enterprises 16, LLC, FERG, LLC;
FERG 16, LLC; MOTI Partners, LLC;
and MOTI Partners 16, LLC*

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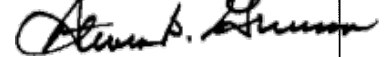
Attorneys for J. Jeffrey Frederick

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Kurt Heyman, Esq.
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Trustee for GR Burgr, LLC



An employee of PISANELLI BICE PLLC



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DOES I through X; ROE CORPORATIONS I
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Defendants,

and

GR BURGR LLC, a Delaware limited liability
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Nominal Plaintiff.

AND ALL RELATED MATTERS.

Case No.: A-17-751759-B

Dept. No.: XV

Consolidated with A-17-760537-B

**NOTICE OF INTENT TO TAKE
DEFAULT OF DEFENDANT LLTQ
ENTERPRISES, LLC**

To: Defendant LLTQ Enterprises, LLC;

To: Daniel R. McNutt, Esq. and Matthew C. Wolf, Esq., McNUTT LAW FIRM, P.C., its
attorneys of record;

To: Paul Sweeney, CERTILMAN BALIN ADLER & HYMAN, LLP, its attorneys of record;

1 To: Nathan O. Rugg, Esq., BARACK FERRAZZANO KIRSCHBAUM & NAGELBERG LLP, its
2 attorneys of record; and

3 To: Steven B. Chaiken, Esq., ADELMAN & GETTLEMAN, LTD, its attorneys of record.

4 PLEASE TAKE NOTICE that Plaintiffs Desert Palace, Inc., Paris Las Vegas Operating
5 Company, LLC, PHWLTV, LLC; and Boardwalk Regency Corporation d/b/a Caesars Atlantic City
6 intend to take the default of Defendant LLTQ Enterprises, LLC, unless an answer or other
7 responsive pleading is filed on or before three days from the date of this Notice.

8 DATED this 25th day of June 2018.

9 PISANELLI BICE PLLC

10
11 By: 

12 James J. Pisanelli, Esq., #4027
13 Debra L. Spinelli, Esq., #9695
14 M. Magali Mercera, Esq., #11742
15 Brittnie T. Watkins, Esq., #13612
16 400 South 7th Street, Suite 300
17 Las Vegas, Nevada 89101

18 *Attorneys for Desert Palace, Inc.;*
19 *Paris Las Vegas Operating Company, LLC;*
20 *PHWLTV, LLC; and Boardwalk Regency*
21 *Corporation d/b/a Caesars Atlantic City*
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24
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 25 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 INTENT TO TAKE DEFAULT OF DEFENDANT LLTQ ENTERPRISES, LLC to the following:

Daniel R. McNutt, Esq.
Matthew C. Wolf, Esq.
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625 South Eighth Street
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*Attorneys for Rowen Seibel, DNT Acquisition LLC,
Moti Partners, LLC, Moti Partner 16s, LLC,
LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC,
TPOV Enterprises, LLC, TPOV Enterprises 16, LLC,
FERG, LLC, and FERG 16, LLC*

*Attorneys for LLTQ Enterprises, LLC;
LLTQ Enterprises 16, LLC, FERG, LLC;
FERG 16, LLC; MOTI Partners, LLC;
and MOTI Partners 16, LLC*

Allen J. Wilt, Esq.
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8965 S. Eastern Ave., Suite 260
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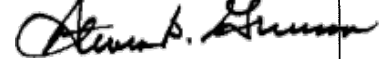
Attorneys for Gordon Ramsay

Attorneys for J. Jeffrey Frederick

VIA U.S. MAIL
Kurt Heyman, Esq.
300 Delaware Ave., Suite 200
Wilmington, DE 19801

Trustee for GR Burgr, LLC


An employee of PISANELLI BICE PLLC



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

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.: XV

Consolidated with A-17-760537-B

**NOTICE OF INTENT TO TAKE
DEFAULT OF DEFENDANT MOTI
PARTNERS 16, LLC**

To: Defendant MOTI Partners 16, LLC;

To: Daniel R. McNutt, Esq. and Matthew C. Wolf, Esq., McNUTT LAW FIRM, P.C., its
attorneys of record;

To: Paul Sweeney, CERTILMAN BALIN ADLER & HYMAN, LLP, its attorneys of record;

1 To: Nathan O. Rugg, Esq., BARACK FERRAZZANO KIRSCHBAUM & NAGELBERG LLP, its
2 attorneys of record; and

3 To: Steven B. Chaiken, Esq., ADELMAN & GETTLEMAN, LTD, its attorneys of record.

4 PLEASE TAKE NOTICE that Plaintiffs Desert Palace, Inc., Paris Las Vegas Operating
5 Company, LLC, PHWLTV, LLC; and Boardwalk Regency Corporation d/b/a Caesars Atlantic City
6 intend to take the default of Defendant MOTI Partners 16, LLC, unless an answer or other
7 responsive pleading is filed on or before three days from the date of this Notice.

8 DATED this 25th day of June 2018.

9 PISANELLI BICE PLLC

10
11 By: 

12 James J. Pisanelli, Esq., #4027
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TPOV Enterprises, LLC, TPOV Enterprises 16, LLC,
FERG, LLC, and FERG 16, LLC*

*Attorneys for LLTQ Enterprises, LLC;
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Attorneys for Gordon Ramsay

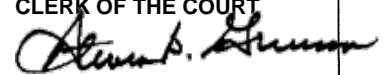
Attorneys for J. Jeffrey Frederick

VIA U.S. MAIL

Kurt Heyman, Esq.
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Trustee for GR Burgr, LLC


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*Attorneys for Desert Palace, Inc.;
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PHWLTV, LLC; and Boardwalk Regency
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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.: XV

Consolidated with A-17-760537-B

**NOTICE OF INTENT TO TAKE
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PARTNERS, LLC**

To: Defendant MOTI Partners, LLC;

To: Daniel R. McNutt, Esq. and Matthew C. Wolf, Esq., McNUTT LAW FIRM, P.C., its
attorneys of record;

To: Paul Sweeney, CERTILMAN BALIN ADLER & HYMAN, LLP, its attorneys of record;

1 To: Nathan O. Rugg, Esq., BARACK FERRAZZANO KIRSCHBAUM & NAGELBERG LLP, its
2 attorneys of record; and

3 To: Steven B. Chaiken, Esq., ADELMAN & GETTLEMAN, LTD, its attorneys of record.

4 PLEASE TAKE NOTICE that Plaintiffs Desert Palace, Inc., Paris Las Vegas Operating
5 Company, LLC, PHWLTV, LLC; and Boardwalk Regency Corporation d/b/a Caesars Atlantic City
6 intend to take the default of Defendant MOTI Partners, LLC, unless an answer or other responsive
7 pleading is filed on or before three days from the date of this Notice.

8 DATED this 20th day of June 2018.

9 PISANELLI BICE PLLC

10
11 By: 

12 James J. Pisanelli, Esq., #4027
13 Debra L. Spinelli, Esq., #9695
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18 *Attorneys for Desert Palace, Inc.;*
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LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC,
TPOV Enterprises, LLC, TPOV Enterprises 16, LLC,
FERG, LLC, and FERG 16, LLC*

*Attorneys for LLTQ Enterprises, LLC;
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and MOTI Partners 16, LLC*

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Attorneys for Gordon Ramsay

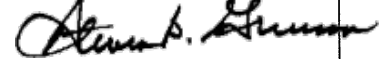
Attorneys for J. Jeffrey Frederick

VIA U.S. MAIL

Kurt Heyman, Esq.
300 Delaware Ave., Suite 200
Wilmington, DE 19801

Trustee for GR Burgr, LLC


An employee of PISANELLI BICE PLLC



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*Attorneys for Desert Palace, Inc.;
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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

**NOTICE OF INTENT TO TAKE
DEFAULT OF DEFENDANT TPOV
ENTERPRISES 16, LLC**

To: Defendant TPOV Enterprises 16, LLC;

To: Daniel R. McNutt, Esq. and Matthew C. Wolf, Esq., McNUTT LAW FIRM, P.C., its
attorneys of record; and

To: Paul Sweeney, CERTILMAN BALIN ADLER & HYMAN, LLP, its attorneys of record;

1 PLEASE TAKE NOTICE that Plaintiffs Desert Palace, Inc., Paris Las Vegas Operating
2 Company, LLC, PHWLTV, LLC; and Boardwalk Regency Corporation d/b/a Caesars Atlantic City
3 intend to take the default of Defendant TPOV Enterprises 16, LLC, unless an answer or other
4 responsive pleading is filed on or before three days from the date of this Notice.

5 DATED this 20th day of June 2018.

6 PISANELLI BICE PLLC

7
8 By: 

James J. Pisanelli, Esq., #4027
Debra L. Spinelli, Esq., #9695
M. Magali Mercera, Esq., #11742
Brittnie T. Watkins, Esq., #13612
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12 *Attorneys for Desert Palace, Inc.;*
13 *Paris Las Vegas Operating Company, LLC;*
14 *PHWLTV, LLC; and Boardwalk Regency*
15 *Corporation d/b/a Caesars Atlantic City*

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Daniel R. McNutt, Esq.
Matthew C. Wolf, Esq.
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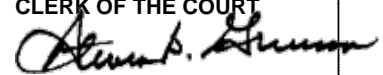
Attorneys for Gordon Ramsay

Attorneys for J. Jeffrey Frederick

VIA U.S. MAIL
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Trustee for GR Burgr, LLC


An employee of PISANELLI BICE PLLC



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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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v.

PHWLTV, LLC, a Nevada limited liability
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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

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To: Defendant TPOV Enterprises, LLC;

To: Daniel R. McNutt, Esq. and Matthew C. Wolf, Esq., McNUTT LAW FIRM, P.C., its
attorneys of record; and

To: Paul Sweeney, CERTILMAN BALIN ADLER & HYMAN, LLP, its attorneys of record;

1 PLEASE TAKE NOTICE that Plaintiffs Desert Palace, Inc., Paris Las Vegas Operating
2 Company, LLC, PHWLTV, LLC; and Boardwalk Regency Corporation d/b/a Caesars Atlantic City
3 intend to take the default of Defendant TPOV Enterprises, LLC, unless an answer or other
4 responsive pleading is filed on or before three days from the date of this Notice.

5 DATED this 20th day of June 2018.

6 PISANELLI BICE PLLC

7
8 By: 

9 James J. Pisanelli, Esq., #4027
10 Debra L. Spinelli, Esq., #9695
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Trustee for GR Burgr, LLC


An employee of PISANELLI BICE PLLC

1 CASE NO. A-17-751759-B

2 DOCKET U

3 DEPT. XVI

4

5

6 DISTRICT COURT

7 CLARK COUNTY, NEVADA

8 * * * * *

9 ROWEN SEIBEL,)

10 Plaintiff,)

11 vs.)

12 PHWLTV LLC,)

13 Defendant.)

14 -----)

15 REPORTER'S TRANSCRIPT

16 OF
17 HEARING

18 BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19 DISTRICT COURT JUDGE

20

21 DATED WEDNESDAY, NOVEMBER 6, 2019

22

23

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

25

1 APPEARANCES:

2 FOR GORDON RAMSEY:

3

CORIX GROUP OF COMPANIES

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BY: ALLEN WILT, ESQ.

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AWILT@ALLEN.WILT@CORIX.COM

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FOR PHWLV LLC:

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PISANELLI BICE PLLC

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BY: MARIA MAGALI MERCERA, ESQ.

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Peggy Isom, CCR 541, RMR

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Pursuant to NRS 239.053, illegal to copy without payment.

0029

1 APPEARANCES CONTINUED:

2

FOR THE DEFENDANTS:

3 FOR LLTQ ENTERPRISES; LLTQ ENTERPRISES 16, LLC; FERG,
4 LLC; FERG 16, LLC; MOTI PARTNERS LLC; AND MOTI PARTNERS
16 LLC:

5

SCAROLA ZUBATOV SCHAFFZIN PLLC

6

BY: DANIEL J. BROOKS, ESQ.

7

1700 BROADWAY

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41ST FLOOR

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NEW YORK, NY 10019

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9212) 757-0469 Fax

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AND

15

RICE REUTHER SULLIVAN & CARROLL, LLP

16

BY: ANTHONY DIRAIMONDO, ESQ.

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Pursuant to NRS 239.053, illegal to copy without payment.

0030

1 LAS VEGAS, NEVADA; WEDNESDAY, NOVEMBER 6, 2019

2 10:50 A.M.

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

4 * * * * *

09:47:44

5
6 THE COURT: Next up, page 8. Rowen Seibel
7 versus PHWLIV LLC.

8 And what we're going to do, we're going to
9 take -- how long do you think this will take?

10:50:51 10 MS. MERCERA: I don't think it will take --

11 MR. BROOKS: This motion?

12 THE COURT: Yes.

13 MR. BROOKS: This is a Daniel J. Brooks with
14 Scarola Zubatov Schaffzin for the movants. I've been
10:51:00 15 admitted pro hac. I would think probably ten minutes.
16 Maybe less.

17 THE COURT: Can you promise me ten minutes?

18 MS. MERCERA: From my argument --

19 MR. BROOKS: My argument will be less than
10:51:15 20 ten.

21 MS. MERCERA: My argument will be less than
22 ten minutes.

23 THE COURT: All right. And let's go ahead and
24 place our appearances for the record. Did we place our
10:51:22 25 appearances on the record?

10:51:25 1 MR. BROOKS: I think I just did. Yes. Daniel
2 J. Brooks Scarola Zubatov Schaffzin. Admitted pro hac
3 for the movants, LLTQ and FERG.

4 THE COURT: And can you say it one more time
10:51:39 5 sir, slowly?

6 MR. BROOKS: Sure. The name of the firm?

7 THE COURT: Your name too for the court
8 reporter.

9 MR. BROOKS: Okay. All right. Daniel J.
10:51:50 10 Brooks. And the name of the firm is Scarola,
11 S-C-A-R-O-L-A; Zubatov, Z-U-B-A-T-O-V, Schaffzin
12 S-C-H-A-F-F-Z-I-N. We are -- represent the plaintiff
13 in the first captioned action. And this, we're
14 representing the movants on this motion. And the
10:52:12 15 movants are LLTQ and FERG, F-E-R-G.

16 THE COURT: You got that?

17 THE COURT REPORTER: Yes. Thank you.

18 And I forgot to ask. Do you guys want this
19 reported?

10:52:21 20 MS. MERCERA: Yes, please.

21 THE COURT: And everyone placed their
22 appearances on the record in open court.

23 MR. DIRAIMONDO: Your Honor, Anthony
24 DiRaimondo co-counsel for Mr. Brooks representing the
10:52:34 25 same parties.

10:52:35 1 MS. MERCERA: Good morning, your Honor.
2 Magali Mercera on behalf of PHWLTV, Paris Las Vegas
3 Operating Company, Boardwalk Regency Corporation, and
4 Desert Palace Inc., and Caesars parties.

10:52:47 5 MR. WILT: Good morning, your Honor. Allen
6 Wilt for Gordon Ramsey.

7 THE COURT: All right. Once again, good
8 morning. And it's my understanding we have a motion to
9 amend defendant's answer, affirmative defenses, and
10:53:00 10 counterclaims; is that correct?

11 MR. BROOKS: Yes, your Honor. Really we're
12 just trying to -- we're just trying to get permission
13 to amend the LLTQ counterclaim. We're not asking to
14 change anything in the answer or the affirmative
10:53:15 15 defenses.

16 THE COURT: You can go ahead, sir.

17 MR. BROOKS: Okay. Thank you, your Honor.
18 Thank you for allowing me to participate over the
19 phone.

10:53:28 20 As you're aware these actions involve a number
21 of restaurants that were opened in various properties
22 belonging to Caesars Palace by Mr. Seibel through a
23 number of different entities. There's one entity for
24 each restaurant.

10:53:46 25 So in this case LLTQ entered into an agreement

10:53:53 1 with Caesars in 2012 to open a Gordon Ramsey pub, GR
2 Pub. The counterclaim as it exists -- and this motion
3 really seeks only to make explicit what's already, I
4 think, apparent in the existing counterclaim.

10:54:10 5 But the basis of the counterclaim of the
6 existing one and what we want to add by way of
7 amendment is paragraph 13.22 of the LLTQ agreement with
8 Caesars, which you can find on page 21 of Exhibit 1 to
9 the motion. Exhibit 1 to the motion is simply the
10 existing counterclaim.

10:54:34 11 But this provision which survives termination
12 of the agreements requires Caesars if it wishes to open
13 another restaurant similar to the Gordon Ramsey Pub to
14 do so with LLTQ or an affiliate on the same terms of
10:54:56 15 this agreement.

16 It also says that if Caesars wants to open a
17 steak restaurant similar to the one that TPOV had
18 opened in the Paris Hotel, it also needs to include
19 LLTQ or an affiliate. Now let me just backup because
10:55:14 20 this becomes relevant later. But TPOV opened a Gordon
21 Ramsey steak restaurant in the Paris Hotel prior to the
22 LLTQ agreement.

23 That agreement does not have a provision
24 similar to 13.22. So 13.22 not only deems as
10:55:35 25 restricted restaurant ventures, which require the

10:55:38 1 participation of LLTQ or an affiliate, not just pubs
2 similar to the Gordon Ramsey Pub but also steak
3 restaurants similar to the one that TPOV opened in the
4 Paris Hotel here in Las Vegas.

10:55:52 5 Now, the TPOV restaurant in the Paris Hotel is
6 part of a separate lawsuit, a related federal lawsuit
7 in federal court. And that becomes significant later
8 in this -- in this discussion.

9 The original counterclaim says that Caesars
10:56:17 10 opened restricted restaurant ventures without LLTQ's
11 participation. One is a fish and chips restaurant.
12 And then if you look at on page 26 of the original
13 counterclaim, beginning on page 26 paragraph 66 through
14 7 -- 69 -- 70, rather, refer to a GR. And GR stands
10:56:39 15 for Gordon Ramsey, GR Steak Baltimore steakhouse. And
16 it says that was improperly opened without LLTQ's
17 participation.

18 Now, the focus of this motion is to add
19 specific allegations about a GR Steak Atlantic City
10:56:56 20 restaurant.

21 But if you look at paragraph 71 of the
22 original counterclaim it says, "Upon information and
23 belief Ramsey intends to open additional restaurants in
24 the United States. And one or more such restaurant
10:57:10 25 ventures is, A, between Ramsey and Caesars or one of

10:57:14 1 its facilities, and, B, qualifies as a restricted
2 restaurant venture."

3 And then on page 30, of the original -- the
4 existing counterclaim, in the prayer for relief damages
10:57:29 5 are specifically sought for the operation by Caesars or
6 its affiliates of any and all restricted restaurant
7 ventures since they came out the bankrupt. There is a
8 typo there. It says restricted Ramsey ventures, but it
9 means restricted restaurant ventures. It has all
10:57:50 10 initial caps.

11 Caesars understood very well that what I just
12 read you would evince an intent on the part of LLTQ to
13 recover damages for any restricted restaurant venture
14 that was opened. Not just for the one, the steak, fish
10:58:09 15 and chips, or the GR Steak Baltimore.

16 And how do we know that Caesars understood
17 this? Well, if you look at our reply, your Honor,
18 Exhibit 5 to our reply, first of all, an acknowledgment
19 by counsel for Caesars that even though the
10:58:34 20 counterclaim does not specifically mention GR Steak
21 Atlantic City, the initial disclosures filed by those
22 parties did.

23 And if you look at the email, it's dated
24 April 30, 2019. Counsel for Caesars acknowledged that
10:58:56 25 that the initial disclosures did mention a request for

10:59:01 1 damages specific to the GR Steak Atlantic City even
2 though the counterclaim doesn't specifically mention
3 GR Steak Atlantic City.

4 And then also interestingly is Exhibit 6 to
10:59:17 5 our reply. So you'll recall I mentioned that TPOV had
6 brought a federal action in Las Vegas with respect to
7 the GR Steak Las Vegas, the one that's in the Paris
8 Hotel.

9 And in that case TPOV sought production of
10:59:39 10 financial records, profit and loss statements for
11 GR Steak Baltimore and also for GR Steak Atlantic City.
12 And in Exhibit 6 to our reply, you will see counsel for
13 Caesars saying that they were not going to -- by the
14 way, this happened back on a January 18th; although,
11:00:00 15 Exhibit 6 memorializing that is dated later in
16 February.

17 But there was a meet and confer on January 18,
18 and an email. And that significantly predates the
19 deadline for filing amendments to pleadings in this
11:00:18 20 case.

21 Now this relates to the federal case, though.
22 And so Caesars is saying that because TPOV in the
23 federal action had not asserted any claims related to
24 future restaurants, Paris, which is the defendant in
11:00:34 25 that the case, was not going to produce any financial

11:00:38 1 documents for the Atlantic City -- the steak restaurant
2 in Atlantic City or Baltimore. And then this is what
3 is significant. They then say, Additionally the
4 LLTQ/FERG defendants, the movants in this case, have
11:00:56 5 asserted claims related to future restaurants in the
6 action pending before the Nevada state court. That's
7 this case. And has conceded plaintiffs/LLTQ cannot
8 obtain nor do you intend to seek duplicate recovery in
9 both actions.

11:01:13 10 In other words Caesars or one of its
11 affiliates Paris is refusing to turn over profit and
12 loss statements for GR Steak Baltimore and GR Steak
13 Atlantic City because those claims are the subject of
14 this action, and, therefore, presumably those documents
11:01:32 15 would be produced in this action. And any recovery
16 with respect to those restaurants would occur in this
17 action not in the federal action.

18 Then we've attached email correspondence
19 showing numerous meet and confers through February,
11:01:50 20 March, and April to the end of April 2019, this year.

21 And if you were to look at Exhibit H to the
22 reply as late as April 29 Caesars was still acting as
23 if they might produce those records for GR Steak AC
24 even though the counterclaim does not explicitly ask
11:02:13 25 for those records. And they -- you'll see in Exhibit A

11:02:17 1 counsel for Caesars asks for "clarification" of exactly
2 what financial records LLTQ would want. There was an
3 exchange of correspondence.

4 And then I think on that date, April 29,
11:02:31 5 Caesars finally said we're not going to give you those
6 reports because you don't have a claim. We'll give you
7 the records for AC Steak Baltimore because, as
8 explicitly mentioned in the counterclaim, but we won't
9 give them to you for GR Steak AC because that is not
11:02:49 10 explicitly mentioned in the counterclaim.

11 At that point and shortly thereafter in early
12 May, predecessor counsel to these parties moved to --
13 for leave to withdraw, which is granted after some
14 passage of time. And my firm did not start
11:03:07 15 representing these parties until early June of 2019.

16 We kind of are like jumping into the spin
17 cycle of a very fast moving washing machine, your
18 Honor. And there have been discovery disputes. There
19 have been motion practice in both cases. There have
11:03:25 20 been depositions. There have been production of tens
21 of thousands of documents. Bates stamping them.
22 It's -- it's -- we've been very busy. But we've -- and
23 we're playing catch up.

24 But we did ask -- and this is in Exhibit 2 to
11:03:42 25 the motion. We did ask for financial records for all

11:03:50 1 of these restaurants. This is on page 5 of Exhibit 2
2 to the motion. My partner asked for financials for
3 eight different restaurants.

4 And then we're -- he was told, as Caesars has
11:04:09 5 said previously with predecessor counsel, that they
6 wouldn't give us records for GR Steak AC because it's
7 not mentioned explicitly in the counterclaim. However,
8 if we wanted to give them a proposed amendment to the
9 counterclaim, they would review it. We did. They
11:04:27 10 reviewed it. And if you look at Exhibit 2, on page 1,
11 after reviewing it on September 13th, we were told the
12 following: They wouldn't give us the records for
13 GR Steak Atlantic City. And this is the entire
14 explanation: "We reviewed your proposed amendment to
11:04:50 15 the counterclaim and cannot stipulate to the
16 amendment."

17 So we then made this motion, your Honor. And
18 if you look at Exhibit 3, it's red lined. And I
19 apologize. I'm not sure the red came out because when
11:05:04 20 I downloaded the document from the website, I don't see
21 anything in red. I don't know if your copy has the
22 red. But even if it doesn't, it's pretty self evident
23 what it is. We're changing -- it's almost nothing.
24 It's on pages 28 and 29 of the proposed new
11:05:24 25 counterclaim. And there's a red lined version, it's

11:05:27 1 Exhibit 3, and the clean version is Exhibit 4 to our
2 motion.

3 It only adds six paragraphs on pages 28 and
4 29. Paragraph 73 to 78. And those pertain to the fact
11:05:41 5 that Caesars affiliate has opened a steak restaurant
6 similar to the one, the TPOV one here, in Atlantic City
7 and hasn't allowed LLTQ or any of its affiliates to
8 participate.

9 And that's what those six paragraphs say. And
11:06:00 10 then paragraph 86 has been changed. I hope it's a
11 little bit more artfully pleaded than it's -- the
12 original paragraph, which just said that there haven't
13 been payments. It now says there must be payments for
14 these other restricted restaurant ventures including
11:06:23 15 the one in Atlantic City, the GR Steak Atlantic City.

16 And it also says to make more explicit which
17 what I believe is implied, at least implied in the
18 original one, that if you go and open any others in the
19 future, and there have been in the press that they
11:06:40 20 might be opening one in Kansas City, I believe, that
21 you'll also be liable if you don't include us and don't
22 pay us our share of the profits.

23 So those are the facts. We've -- there's
24 no -- there's no prejudice here to Caesars. They've
11:06:59 25 been on notice for a very long time that LLTQ, or one

11:07:06 1 of its affiliates, would try to hold it liable for not
2 including it in all restricted restaurant ventures and
3 not paying their share of the profits. They've known
4 that.

11:07:18 5 They even use that as a reason in the federal
6 action, if you look at Exhibit 6, to refuse to turn
7 over financial records about a steak restaurant in
8 Baltimore and the one in Atlantic City. They said
9 you're going to get that in the state case. You have
11:07:37 10 claims for that in the state case.

11 They've known that all along. There's no
12 prejudice they've been on notice. And the important
13 other issue is what effect would this have on case
14 management in this case? And the answer is none.

11:07:53 15 They finally have turned over some of the P&Ls
16 for the other seven restaurants; although, not
17 completely.

18 Hopefully they will or else there will be, you
19 know, get more motion practice. So they would just
11:08:07 20 have to answer seven new paragraphs which I'm sure
21 would take less than an hour. Quite a bit less than an
22 hour. And turn over P&Ls for GR Steak Atlantic City as
23 they've done -- as they're done reluctantly and slowly
24 for the others.

11:08:23 25 So and the reason is we want to turn them over

11:08:25 1 to our expert witness so he can try to calculate the
2 damages. That's due in February of next year. All the
3 discovery has been pushed back. Depositions have been
4 happening all the time. We've been trying to work very
11:08:41 5 diligently in moving this case forward.

6 Allowing this technical minor amendment of a
7 counterclaim when -- as I've said before, and I don't
8 want to beat a dead horse, arguably this claim is
9 already part of the existing claim. But I think for
11:08:59 10 the sake of clarity so everyone knows what the case is
11 about and what documents have to be produced, it would
12 be preferable if the Court would see fit to grant this
13 motion and allow us -- we'll serve it immediately. Let
14 them answer. And we can move forward.

11:09:15 15 It will not impede what's going on in this
16 case one iota. And that constitutes good cause under
17 Rule 16(b). The fact that they're on notice, the
18 completely lack of prejudice, and the lack of any
19 impact on case management.

11:09:29 20 And we -- we cited a Ninth Circuit case. I've
21 noticed that in this state, because your Rules of
22 Federal -- Civil Procedure track the federal ones,
23 often the courts in this state will cite Ninth Circuit
24 cases. And we've cited one. It's on page 5 of the
11:09:51 25 reply. It's in the original one. It's C.R. ex rel

11:09:54 1 Farnan vs Capistrano School District. It's a Ninth
2 Circuit court case in 2011?

3 THE COURT: Can you say that again? Say that
4 again because I have --

11:10:03 5 MR. BROOKS: I'm sorry.

6 THE COURT: What you just -- you cited a Ninth
7 Circuit federal case on page 5 --

8 MR. BROOKS: Yeah.

9 THE COURT: -- of your reply. Something like
11:10:09 10 that.

11 MR. BROOKS: Yeah. Okay. And the name of the
12 case is C.F. ex rel Farnan, F-A-R-N-A-N, versus
13 Capistrano Unified School District. 654 F3d 975, 1984
14 to 85, Ninth Circuit, 2011. Which says that good cause
11:10:39 15 is shown where there's no case management issues and
16 where the opposing party was on notice.

17 We cited that same case in our original
18 motion, your Honor.

19 I just want to have one last thing to say. As
11:10:52 20 I've been on the call listening to the other cases
21 before us, I could hear everything you're saying, your
22 Honor, but I've been having trouble hearing what some
23 of the counsel are saying. I'm not sure what the
24 reason is. So I would request that whoever is opposing
11:11:07 25 this motion speak loudly as possible so I can hear.

11:11:12 1 THE COURT: I understand, sir.

2 I mean, ultimately, and I understand your

3 discussion. It appears to me that the opposing party's

4 taking the position that Nutton, N-U-T-T-O-N, vs.

11:11:22 5 Sunset Station Inc. controls this matter.

6 And it's a recent Nevada Supreme Court matter

7 that places a burden on the moving party to establish

8 good cause when a motion to amend is filed pursuant to

9 Rule 15 to amend a pleading. And Nutton has a specific

11:11:45 10 standard that appears slightly different from the Ninth

11 Circuit case. What do I do with that?

12 MR. BROOKS: Well, your Honor, we cited that

13 case too in our original motion. I think what that

14 case says is you have to -- when the --

11:11:58 15 THE COURT: Because it's your -- it's your

16 burden.

17 (Multiple speaker cross-talk)

18 THE COURT: It's your burden. Right.

19 MR. BROOKS: It's our burden to show why

11:12:07 20 there's been delay and whether that delay has

21 prejudiced -- is likely to prejudice anyone or

22 impede --

23 THE COURT: Or whether there's --

24 MR. BROOKS: -- the effective administration

11:12:15 25 of this case.

11:12:15 1 THE COURT: Whether there's good cause for
2 delay because it's my understanding it's six months;
3 right?

4 MR. BROOKS: Well --

11:12:21 5 MS. MERCERA: It's a little more --

6 MR. BROOKS: It is.

7 MS. MERCERA: A little more than that.

8 MR. BROOKS: It is longer than that. But what
9 I was trying to say is I think counsel, predecessor
11:12:29 10 counsel may well have been lead to believe when they
11 were arguing, it's the same counsel in the federal
12 case, and they were told by Caesars, Well, you'll get
13 the documents in the state case because you have
14 asserted these claims in the state case.

11:12:44 15 That was right before the deadline expired for
16 amending pleadings. And we've consensually extended
17 every other deadline for everything else in this case:
18 Expert disclosure, depositions, document production.
19 You know, and there was a change of counsel in there.

11:13:07 20 And there were discussions where it seemed as though
21 Caesars would produce the documents. They'd want to
22 know which ones.

23 So, you know, I think -- I think the case you
24 referred to says you have to blend the liberal amended
11:13:26 25 policy under Rule 50 with the good cause standard under

11:13:32 1 Rule 16 when a deadline has been missed. But that
2 doesn't mean -- it's in your discretion, your Honor.
3 This --

4 THE COURT: Well, see, here's the thing. And
11:13:40 5 I think this is important to point out. I'm given
6 discretion, but all the discretion I'm given is
7 tempered depending on the facts and the rule --

8 MR. BROOKS: Yes.

9 THE COURT: -- that's applicable.

11:13:52 10 MR. BROOKS: I agree.

11 THE COURT: So I can't do whatever I want to
12 do. It's my understanding -- I haven't read Nutton in
13 a while, but Nutton recognizes the tension between
14 Rule 15C and Rule 16. And they say --

11:14:05 15 MR. BROOKS: Right.

16 THE COURT: -- yes, normally when motions to
17 amend should be freely granted. However, when there's
18 a scheduling order issued by the trial court has run,
19 then the standard is, no, not Rule 15, but you'll
11:14:19 20 follow Rule 16. And as a trial judge, I have to make a
21 determination as to whether there's good cause as
22 articulated in Nutton as the basis for any decision I
23 make.

24 And it really comes down to that. Because I
11:14:33 25 would love to do whatever I want to do, but I can't.

11:14:36 1 Right?

2 And so unless I can articulate on the record
3 good cause, I have to deny the motion. It's really
4 that simple.

11:14:46 5 MR. BROOKS: Well, I think there -- I think
6 you can articulate that here. I think there is good
7 cause because they've known about this since -- since
8 the -- since February. They took advantage of it.
9 Declined to produce documents in the federal case.

11:15:02 10 There is no prejudice. They have been on notice. And
11 this isn't going to affect one iota the progress of
12 this case.

13 And let me just read something from -- from
14 that case. Because I think -- well, this is another
11:15:29 15 case. But oh, yeah, it's Nutton. Yeah. So on page 5.
16 I'm sorry.

17 On page 5 of our original motion we cited the
18 Nutton case. And then we quoted -- quoted from the
19 Nutton case which says. Disregarding the scheduling
11:15:47 20 order should not be permitted where it, quote:

21 "Would undermined the Court's ability to
22 control its docket, disrupt the agreed-upon
23 course of the litigation and reward the
24 indolent and the cavalier."

11:16:00 25 And that's Nutton quoting Johnson vs. Mammoth

11:16:03 1 Recreations. It's another Ninth Circuit case. So as I
2 said, the Supreme Court -- well, it's actually the
3 Court of Appeals, the Nutton case, I believe, deciding
4 a Ninth Circuit case.

11:16:14 5 But here if you look at the language they
6 quoted from the Ninth Circuit granting this motion,
7 your Honor, will not undermine your ability to control
8 your docket. It will not disrupt the agreed-upon
9 course of the litigation. And it will not reward the
11:16:30 10 indolent and the cavalier.

11 I mean, we are rowing upstream here. We've
12 come into this. This is an enormously complex case.
13 We've been juggling all kinds of -- all kinds of issues
14 since the minute we got in here. We've been -- I don't
11:16:45 15 know how many times my partner has been out to
16 Las Vegas to argue motions, to take depositions. I've
17 been out there twice, and I'm going back next week.

18 It's hard to even fit in this motion practice
19 amid all of that. And as I said, I'm just repeating
11:17:01 20 myself, but I'm quoting from what Nutton says, quoting
21 the Ninth Circuit. I don't think those problems -- and
22 I understand those problems are present here.

23 So you've got Nutton. And I could be wrong.
24 I don't think it is the Nevada Supreme Court. It says
11:17:23 25 Court of Appeals.

11:17:23 1 THE COURT: No. It's the Court of Appeals.
2 That's fine.

3 MR. BROOKS: Okay. All right. But anyway
4 it's citing a Ninth Circuit case. It's warning about
11:17:31 5 certain kinds of things that could happen. Which I
6 agree with. They make sense. They're not going to
7 happen here. Nothing is going to happen here if you
8 allow this. They'll have to do it -- they've got the
9 answer on their -- you know, in the word document.

11:17:45 10 They'll just add. They'll deny the other six
11 paragraphs or admit them. And we'll move on.

12 It's not going to disrupt anything. We didn't
13 do it on purpose. There has been a change of counsel.
14 Original counsel, you know, they make another point
11:18:02 15 that this restaurant in Atlantic City had opened before
16 the original counterclaim was filed. And that's true.
17 It opened in late May 2018. And the original
18 counterclaim was filed on July 6, 2018.

19 And, obviously, prior counsel didn't -- even
11:18:19 20 though the restaurant had opened in Atlantic City, they
21 didn't know about it. If they had known about it,
22 obviously they would have alleged it as they did with
23 the Baltimore restaurant.

24 This is -- I think it is completely
11:18:33 25 discretionary, but I don't think elevating form over

11:18:37 1 substance and punishing unnecessarily somebody who is
2 not causing any prejudice to opposing party or to the
3 Court's ability to control its docket, I think, well,
4 it's within your discretion. We agree about that, your
11:18:50 5 Honor.

6 I think you have ample reasons to allow this
7 modest technical amendment. And don't forget. I mean,
8 this already may be included in the original
9 counterclaim. It talks about getting -- requesting
11:19:02 10 damages for all future restricted restaurant ventures,
11 and it alleges that on information and belief Caesars
12 intends to open more, which is what happened.

13 THE COURT: Thank you, sir.

14 Ma'am.

11:19:19 15 MS. MERCERA: Thank you, your Honor.

16 MR. BROOKS: Thank you.

17 MS. MERCERA: Your Honor, this motion really
18 is about the Seibel parties not believing that the
19 rules apply to them. That's true of their theory of
11:19:33 20 the case where they maintain that a convicted felon had
21 no duty to disclose not only his action but his
22 ultimate conviction to Caesars, a gaming licensee. And
23 it's also true now, your Honor, when they seek to
24 disregard the scheduling order that was entered in this
11:19:48 25 case.

11:19:49 1 This litigation was started over two years
2 ago. As counsel just conceded the counterclaim in this
3 case was filed over a year ago including after the
4 restaurant they seek to add now was already open.

11:20:01 5 And we have conducted extensive discovery over
6 a dozen depositions at this point with numerous more to
7 go. We have extended other deadlines in this case,
8 your Honor. But at no point have the Seibel parties
9 sought to extend the deadline to amend the pleadings.

11:20:19 10 Even when they try to shift that burden to us to say
11 that it was on us to determine that they were seeking
12 this discovery related to this case, that actually
13 contradicts their argument. Because if they knew back
14 in March that we were objecting to producing documents
11:20:37 15 related to the Atlantic City restaurant, they could
16 have still amended their counterclaim at that point.

17 Their reference to the communications in the
18 federal action saying that we concede that they're
19 seeking information about future restaurants actually
11:20:51 20 relates to paragraph 81 of their counterclaim, your
21 Honor. And there they specifically list which
22 restaurants they're seeking recovery for. Gordon
23 Ramsey Pub, Fish and Chips, and GR Steak Baltimore,
24 which are some of the documents that they were seeking.

11:21:09 25 At no point did they allege in their

11:21:11 1 counterclaim or in their pleading that they were
2 seeking information related to the Gordon Ramsey
3 Atlantic City restaurant.

4 Your Honor, I think what's interesting to note
11:21:19 5 too is that we have heard no explanation other than a
6 brief sentence just today as to why they never included
7 this restaurant in their future pleadings.

8 And I think it's important to note that they
9 even said that there will be future restaurants, and
11:21:33 10 they mentioned Kansas City. And the problem with that,
11 your Honor, is that at some point discovery has to cut
12 off.

13 We need to know what we're going to trial on,
14 what discovery needs to be completed so that the
11:21:45 15 parties can hire their experts and move forward to get
16 this case to trial next year which would have been
17 three years from the filing date.

18 And, your Honor, we are aware and we recognize
19 that there are certain situations where discovery
11:21:58 20 reveals additional facts that may require an amendment
21 to the pleading or even, as the rules explicitly allow,
22 the parties can even amend their pleadings at trial.

23 But, your Honor, the facts here are that --

24 THE COURT: Well, that's only -- you can only
11:22:12 25 do that if it's based upon consent.

11:22:15 1 MS. MERCERA: Correct, your Honor.

2 THE COURT: Under the rule. And that's often
3 overlooked. But that's clearly in the rule.

4 MS. MERCERA: Correct, your Honor. This is
11:22:20 5 not one of those situations because the counterclaim is
6 filed after much delay from the Seibel parties in July
7 of 2018 for a restaurant that was opened in May.

8 There is no explanation why they didn't add it
9 to the July counterclaim. Why didn't they move to
11:22:34 10 amend in August, September, October, November,
11 December, February even since new counsel came in, your
12 Honor, in June. They knew that we were objecting about
13 discovery related to a restaurant that wasn't included
14 in their pleadings and they didn't seek to amend.

11:22:50 15 So the fact that there has been undue delay I
16 think falls clearly within the case law in Nevada as
17 one of the reasons that this Court can deny an
18 amendment when it is sought so far after the deadline
19 to amend the pleadings has expired, your Honor.

11:23:06 20 So unless this Court has any questions for me,
21 I will leave it submitted on the pleadings.

22 THE COURT: For the record that deadline again
23 was?

24 MS. MERCERA: Deadline -- I'm sorry, what?

11:23:16 25 THE COURT: The deadline as far as the

11:23:18 1 motions -- the amendment of the pleadings.

2 MS. MERCERA: It was February 4, 2019, I
3 believe, your Honor. Yes, February 4, 2019.

4 THE COURT: Thank you, ma'am.

11:23:33 5 MS. MERCERA: Thank you, your Honor.

6 MR. BROOKS: Your Honor, may I be heard on one
7 point that counsel made?

8 THE COURT: Yes.

9 MR. BROOKS: So she said that -- I'm
11:23:53 10 specifically referring to Exhibit 6 to our reply.

11 She's saying that the -- when they said they wouldn't
12 produce financial records pertaining to certain
13 restaurants because those restaurants -- those future
14 restaurants were subject -- were the subject of this
11:24:18 15 action, but not the federal action.

16 She said that didn't include GR Steak -- GR
17 Steak Atlantic City. That's not true. If you look at
18 the Exhibit 6. It's a February 15, 2019, email from
19 counsel who just spoke to you. And it says -- I'll
11:24:40 20 read it into the record:

21 "Additionally the LLTQ/FERG defendants have
22 asserted claims related to future restaurants
23 in the action pending before the Nevada state
24 court" -- this case -- "and as conceded
11:24:56 25 plaintiff/LLTQ cannot obtain nor do you intend

11:25:01 1 to seek duplicative recovery of both actions."

2 I read that to you before. But then the next

3 sentence is the important sentence here.

4 "Accordingly, we do not believe that TPOV

11:25:11 5 16" -- that's the federal plaintiff -- "is

6 entitled to discovery related to the two

7 restaurants in Baltimore and Atlantic City. If

8 you believe an additional meet and confer is

9 necessary please let us know."

11:25:24 10 Again, I think, there is good cause on this

11 record to allow this very modest technical amendment.

12 THE COURT: Here's my last question before I

13 make a determination. Was there a specific discovery

14 request as it relates to written discovery requesting

11:25:47 15 the identification of all restaurants that, past and

16 current, that would meet the guidelines of the

17 contracts in place in this case?

18 MR. BROOKS: A request by us?

19 THE COURT: Yes.

11:26:04 20 MR. BROOKS: I'm not sure. I know there was a

21 request for financial information about this particular

22 restaurant.

23 THE COURT: Because the reason why I am asking

24 this, I'm asking this because it appears to me this

11:26:17 25 could have been solved as a result of a simple

11:26:22 1 interrogatory requesting the identity of any and all
2 restaurants that potentially would come under the
3 contractual agreements entered into between the
4 parties; right?

11:26:31 5 And if for whatever reason the plaintiffs
6 failed to properly identify the restaurant pursuant to
7 that discovery request, it could be said that, you
8 know, Judge, that is good cause. They were supposed to
9 disclose this. They have a duty and responsibility to
11:26:46 10 seasonably supplement their discovery. Consequently,
11 if that didn't occur, Judge, it's on them; not on us.
12 That would be good cause, your Honor.

13 MR. BROOKS: Your Honor.

14 THE COURT: I think --

11:26:58 15 MR. BROOKS: I'm not --

16 THE COURT: Go ahead.

17 MR. BROOKS: I'm sorry. I'm not aware of such
18 an interrogatory. I mean, I just don't know one way or
19 the other.

11:27:09 20 THE COURT: Okay. Anything else? Is that it?

21 MR. BROOKS: Not from me.

22 THE COURT: This is what I'm going to do. And
23 it's based upon the current facts of this case. We had
24 the discovery cutoff -- I'm sorry, a motion to amend
11:27:28 25 deadline of February 4, 2019. And that's, what, ten

11:27:33 1 months ago, give or take. That's a fairly significant
2 time period.

3 And just as important too, it seems to me that
4 under the current posture of the case during the open
11:27:50 5 discovery time period there could have been either
6 interrogatories or requests for production of documents
7 regarding additional restaurants that come under the
8 purview and umbrella of this contractual agreement
9 between the parties. That wasn't done. And I don't
11:28:05 10 know why it wasn't, but it wasn't.

11 And if that wouldn't have been properly
12 responded to, there would be clearly good cause here.
13 And so under the facts and based upon the delay, I
14 can't say there is currently.

11:28:18 15 So regarding the motion to amend, I'm going to
16 deny that.

17 Can you prepare an order, ma'am?

18 MS. MERCERA: We will. And we'll run it by
19 opposing counsel, your Honor.

11:28:27 20 THE COURT: Yeah.

21 Everyone enjoy your day.

22

23 (Proceedings were concluded.)

24

25 * * * * *

1 | REPORTER'S CERTIFICATE

2 | STATE OF NEVADA)

:SS

3 | COUNTY OF CLARK)

4 I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
5 HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
6 PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE
7 TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
8 STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
9 AND UNDER MY DIRECTION AND SUPERVISION AND THE
10 FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
11 ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
12 PROCEEDINGS HAD.

13 IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
14 MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
15 NEVADA.

16

17

PEGGY ISOM, RMR, CCR 541

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23

24

Peggy Isom, CCR 541, RMR
(702) 671-4402 - CROERT48@GMAIL.COM
Pursuant to NRS 239.053, illegal to copy without payment.

MR. BROOKS: [31] 4/11 4/13 4/19 5/1 5/6 5/9 6/11 6/17 17/5 17/8 17/11 18/12 18/19 18/24 19/4 19/6 19/8 20/8 20/10 20/15 21/5 23/3 24/16 28/6 28/9 29/18 29/20 30/13 30/15 30/17 30/21 MR. DIRAIMONDO: [1] 5/23 MR. WILT: [1] 6/5 MS. MERCERA: [15] 4/10 4/18 4/21 5/20 6/1 19/5 19/7 24/15 24/17 27/1 27/4 27/24 28/2 28/5 31/18 THE COURT REPORTER: [1] 5/17 THE COURT: [38] 0 0007 [1] 3/10 0469 [1] 3/11 1 10019 [1] 3/9 1005 [1] 2/5 10:50 [1] 4/2 1200 [1] 3/18 13.22 [3] 7/7 7/24 7/24 13th [1] 13/11 15 [3] 18/9 20/19 28/18 15C [1] 20/14 16 [8] 3/3 3/3 3/4 16/17 20/1 20/14 20/20 29/5 1628 [1] 2/8 1700 [1] 3/7 18 [1] 10/17 18th [1] 10/14 1984 [1] 17/13 2 2011 [2] 17/2 17/14 2012 [1] 7/1 2018 [3] 23/17 23/18 27/7 2019 [9] 1/21 4/1	9/24 11/20 12/15 28/2 28/3 28/18 30/25 21 [1] 7/8 2100 [1] 2/20 2101 [1] 2/21 212 [1] 3/10 214-2100 [1] 2/20 214-2101 [1] 2/21 26 [2] 8/12 8/13 28 [2] 13/24 14/3 29 [4] 11/22 12/4 13/24 14/4 294 [1] 2/6 3 30 [2] 9/3 9/24 300 [1] 2/18 300-1628 [1] 2/8 3800 [1] 3/17 4 400 [1] 2/17 41ST [1] 3/8 5 50 [1] 19/25 541 [2] 1/24 32/17 6 654 [1] 17/13 66 [1] 8/13 69 [1] 8/14 7 70 [1] 8/14 702 [4] 2/20 2/21 3/20 3/21 71 [1] 8/21 73 [1] 14/4 732-9099 [1] 3/20 757-0007 [1] 3/10 757-0469 [1] 3/11 775 [1] 2/8 78 [1] 14/4 8 81 [1] 25/20 85 [1] 17/14 86 [1] 14/10 89101 [1] 2/19 89169 [1] 3/19 89502 [1] 2/7 9 9099 [1] 3/20 9212 [1] 3/11 975 [1] 17/13	: :SS [1] 32/2 A A.M [1] 4/2 ability [4] 21/21 22/7 24/3 32/11 about [13] 8/19 15/7 16/11 21/7 23/4 23/21 23/21 24/4 24/9 24/18 25/19 27/12 29/21 AC [4] 11/23 12/7 12/9 13/6 Accordingly [1] 29/4 ACCURATE [1] 32/11 acknowledged [1] 9/24 acknowledgment [1] 9/18 acting [1] 11/22 action [14] 5/13 10/6 10/23 11/6 11/14 11/15 11/17 11/17 15/6 24/21 25/18 28/15 28/15 28/23 actions [3] 6/20 11/9 29/1 actually [3] 22/2 25/12 25/19 add [5] 7/6 8/18 23/10 25/4 27/8 additional [4] 8/23 26/20 29/8 31/7 Additionally [2] 11/3 28/21 adds [1] 14/3 ADIRAIMONDO [1] 3/22 administration [1] 18/24 admit [1] 23/11 admitted [2] 4/15 5/2 advantage [1] 21/8 affect [1] 21/11 affiliate [4] 7/14 7/19 8/1 14/5 affiliates [4] 9/6 11/11 14/7 15/1 affirmative [2] 6/9 6/14 after [5] 12/13 13/11 25/3 27/6	27/18 again [5] 6/7 17/3 17/4 27/22 29/10 ago [3] 25/2 25/3 31/1 agree [3] 20/10 23/6 24/4 agreed [2] 21/22 22/8 agreed-upon [2] 21/22 22/8 agreement [6] 6/25 7/7 7/15 7/22 7/23 31/8 agreements [2] 7/12 30/3 ahead [3] 4/23 6/16 30/16 all [20] 4/23 5/9 6/7 9/6 9/9 9/18 12/25 15/2 15/11 16/2 16/4 20/6 22/13 22/13 22/19 23/3 24/10 29/15 30/1 32/5 allegations [1] 8/19 allege [1] 25/25 alleged [1] 23/22 alleges [1] 24/11 ALLEN [2] 2/4 6/5 ALLEN.WILT [1] 2/9 allow [5] 16/13 23/8 24/6 26/21 29/11 allowed [1] 14/7 allowing [2] 6/18 16/6 almost [1] 13/23 along [1] 15/11 already [4] 7/3 16/9 24/8 25/4 also [8] 7/16 7/18 8/2 10/4 10/11 14/16 14/21 24/23 although [2] 10/14 15/16 am [1] 29/23 amend [12] 6/9 6/13 18/8 18/9 20/17 25/9 26/22 27/10 27/14 27/19 30/24 31/15 amended [2] 19/24 25/16 amending [1] 19/16	amendment [10] 7/7 13/8 13/14 13/16 16/6 24/7 26/20 27/18 28/1 29/11 amendments [1] 10/19 amid [1] 22/19 ample [1] 24/6 another [4] 7/13 21/14 22/1 23/14 answer [6] 6/9 6/14 15/14 15/20 16/14 23/9 ANTHONY [2] 3/16 5/23 any [12] 9/6 9/13 10/23 10/25 11/15 14/7 14/18 16/18 20/22 24/2 27/20 30/1 anyone [1] 18/21 anything [4] 6/14 13/21 23/12 30/20 anyway [1] 23/3 apologize [1] 13/19 apparent [1] 7/4 Appeals [3] 22/3 22/25 23/1 appearances [5] 1/25 2/22 4/24 4/25 5/22 appears [3] 18/3 18/10 29/24 applicable [1] 20/9 apply [1] 24/19 April [5] 9/24 11/20 11/20 11/22 12/4 April 29 [1] 11/22 April 30 [1] 9/24 are [13] 5/12 5/15 9/5 11/13 12/16 14/23 17/23 22/11 22/22 25/24 26/18 26/19 26/23 arguably [1] 16/8 argue [1] 22/16 arguing [1] 19/11 argument [4] 4/18 4/19 4/21 25/13 artfully [1] 14/11 articulate [2] 21/2 21/6 articulated [1] 20/22 as [33]
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<p>A</p> <p>ask [4] 5/18 11/24 12/24 12/25</p> <p>asked [1] 13/2</p> <p>asking [3] 6/13 29/23 29/24</p> <p>asks [1] 12/1</p> <p>asserted [4] 10/23 11/5 19/14 28/22</p> <p>at [20] 8/12 8/21 9/17 9/23 11/21 12/11 13/10 13/18 14/17 15/6 22/5 25/6 25/8 25/16 25/25 26/11 26/22 28/17 32/6 32/8</p> <p>Atlantic [20] 8/19 9/21 10/1 10/3 10/11 11/1 11/2 11/13 13/13 14/6 14/15 14/15 15/8 15/22 23/15 23/20 25/15 26/3 28/17 29/7</p> <p>attached [1] 11/18</p> <p>August [1] 27/10</p> <p>aware [3] 6/20 26/18 30/17</p> <p>AWILT [1] 2/9</p>	<p>25/13 27/5 28/13 29/23 29/24</p> <p>becomes [2] 7/20 8/7</p> <p>been [30] 4/14 12/18 12/19 12/20 12/20 12/22 14/10 14/13 14/19 14/25 15/12 16/3 16/3 16/4 17/20 17/22 18/20 19/10 20/1 21/10 22/13 22/14 22/15 22/17 23/13 26/16 27/15 29/25 31/5 31/11</p> <p>before [10] 1/18 11/6 16/7 17/21 19/15 23/15 28/23 29/2 29/12 32/6</p> <p>BEFORE-ENTITLED [1] 32/6</p> <p>beginning [1] 8/13</p> <p>behalf [1] 6/2</p> <p>belief [2] 8/23 24/11</p> <p>believe [7] 14/17 14/20 19/10 22/3 28/3 29/4 29/8</p> <p>believing [1] 24/18</p> <p>belonging [1] 6/22</p> <p>BEST [1] 32/11</p> <p>between [4] 8/25 20/13 30/3 31/9</p> <p>BICE [1] 2/15</p> <p>bit [2] 14/11 15/21</p> <p>blend [1] 19/24</p> <p>Boardwalk [1] 6/3</p> <p>both [3] 11/9 12/19 29/1</p> <p>brief [1] 26/6</p> <p>BROADWAY [1] 3/7</p> <p>BROOKS [5] 3/6 4/13 5/2 5/10 5/24</p> <p>brought [1] 10/6</p> <p>burden [5] 18/7 18/16 18/18 18/19 25/10</p> <p>busy [1] 12/22</p> <p>but [31] 7/5 7/11 7/20 8/2 8/21 9/8 10/17 12/8 12/22 12/24 13/22 16/9 17/22 19/8 20/1 20/6 20/13 20/19 20/25 21/15 22/5 22/20 23/3 23/25 24/21 25/8 26/23</p>	<p>27/3 28/15 29/2 31/10</p> <p>C</p> <p>C.F [1] 17/12</p> <p>C.R [1] 16/25</p> <p>Caesars [26] 6/4 6/22 7/1 7/8 7/12 7/16 8/9 8/25 9/5 9/11 9/16 9/19 9/24 10/13 10/22 11/10 11/22 12/1 12/5 13/4 14/5 14/24 19/12 19/21 24/11 24/22</p> <p>calculate [1] 16/1</p> <p>call [1] 17/20</p> <p>came [3] 9/7 13/19 27/11</p> <p>can [15] 4/17 5/4 6/16 7/8 16/1 16/14 17/3 17/25 21/2 21/6 26/15 26/22 26/24 27/17 31/17</p> <p>can't [3] 20/11 20/25 31/14</p> <p>cannot [3] 11/7 13/15 28/25</p> <p>Capistrano [2] 17/1 17/13</p> <p>caps [1] 9/10</p> <p>captioned [1] 5/13</p> <p>CARROLL [1] 3/15</p> <p>case [53]</p> <p>cases [3] 12/19 16/24 17/20</p> <p>catch [1] 12/23</p> <p>cause [12] 16/16 17/14 18/8 19/1 19/25 20/21 21/3 21/7 29/10 30/8 30/12 31/12</p> <p>causing [1] 24/2</p> <p>cavalier [2] 21/24 22/10</p> <p>CCR [2] 1/24 32/17</p> <p>certain [3] 23/5 26/19 28/12</p> <p>CERTIFICATE [1] 32/1</p> <p>CERTIFIED [1] 32/4</p> <p>CERTIFY [1] 32/5</p> <p>change [3] 6/14 19/19 23/13</p> <p>changed [1] 14/10</p> <p>changing [1] 13/23</p> <p>chips [3] 8/11 9/15</p>	<p>25/23</p> <p>Circuit [11] 16/20 16/23 17/2 17/7 17/14 18/11 22/1 22/4 22/6 22/21 23/4</p> <p>cite [1] 16/23</p> <p>cited [6] 16/20 16/24 17/6 17/17 18/12 21/17</p> <p>citing [1] 23/4</p> <p>City [22] 8/19 9/21 10/1 10/3 10/11 11/1 11/2 11/13 13/13 14/6 14/15 14/15 14/20 15/8 15/22 23/15 23/20 25/15 26/3 26/10 28/17 29/7</p> <p>Civil [1] 16/22</p> <p>claim [3] 12/6 16/8 16/9</p> <p>claims [6] 10/23 11/5 11/13 15/10 19/14 28/22</p> <p>clarification [1] 12/1</p> <p>clarity [1] 16/10</p> <p>CLARK [3] 1/7 32/3 32/14</p> <p>clean [1] 14/1</p> <p>clearly [3] 27/3 27/16 31/12</p> <p>co [1] 5/24</p> <p>co-counsel [1] 5/24</p> <p>come [3] 22/12 30/2 31/7</p> <p>comes [1] 20/24</p> <p>communications [1] 25/17</p> <p>COMPANIES [1] 2/3</p> <p>Company [1] 6/3</p> <p>completed [1] 26/14</p> <p>completely [3] 15/17 16/18 23/24</p> <p>complex [1] 22/12</p> <p>concede [1] 25/18</p> <p>conceded [3] 11/7 25/2 28/24</p> <p>concluded [1] 31/23</p> <p>conducted [1] 25/5</p> <p>confer [2] 10/17 29/8</p>	<p>confers [1] 11/19</p> <p>consensually [1] 19/16</p> <p>consent [1] 26/25</p> <p>Consequently [1] 30/10</p> <p>constitutes [2] 16/16 32/10</p> <p>CONTINUED [1] 3/1</p> <p>contracts [1] 29/17</p> <p>contractual [2] 30/3 31/8</p> <p>contradicts [1] 25/13</p> <p>control [3] 21/22 22/7 24/3</p> <p>controls [1] 18/5</p> <p>convicted [1] 24/20</p> <p>conviction [1] 24/22</p> <p>copy [1] 13/21</p> <p>CORIX [1] 2/3</p> <p>CORIX.COM [1] 2/9</p> <p>Corporation [1] 6/3</p> <p>correct [3] 6/10 27/1 27/4</p> <p>correspondence [2] 11/18 12/3</p> <p>could [7] 17/21 22/23 23/5 25/15 29/25 30/7 31/5</p> <p>counsel [20] 5/24 9/19 9/24 10/12 12/1 12/12 13/5 17/23 19/9 19/10 19/11 19/19 23/13 23/14 23/19 25/2 27/11 28/7 28/19 31/19</p> <p>counterclaim [28] 6/13 7/2 7/4 7/5 7/10 8/9 8/13 8/22 9/4 9/20 10/2 11/24 12/8 12/10 13/7 13/9 13/15 13/25 16/7 23/16 23/18 24/9 25/2 25/16 25/20 26/1 27/5 27/9</p> <p>counterclaims [1] 6/10</p> <p>COUNTY [3] 1/7 32/3 32/14</p>
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1 CASE NO. A-17-751759-B

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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ROWEN SEIBEL,

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Plaintiff,

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vs.

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PHWLTV LLC,

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Defendant.

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REPORTER'S TRANSCRIPT

16

OF

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CAESARS' MOTION FOR LEAVE TO FILE FIRST AMENDED

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COMPLAINT; AND EX PARTE APPLICATION FOR ORDER

19

SHORTENING TIME; MOTION TO SEAL CERTAIN EXHIBITS TO

20

OPPOSITION TO CAESARS' MOTION FOR LEAVE TO FILE FIRST

21

AMENDED COMPLAINT

22

23

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

24

DISTRICT COURT JUDGE

25

26

DATED WEDNESDAY, FEBRUARY 12, 2020

27

28

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Pursuant to NRS 239.053, illegal to copy without payment.

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0070

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

2 9:03 A.M.

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

4 * * * * *

09:03:34

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

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

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

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

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

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

19 MR. CARROLL: David Carroll for the same.

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

09:04:19 1 Mr. Pisanelli, sir.

2 MR. PISANELLI: Good morning, your Honor. So,

3 your Honor, the central issue in this case is, of

4 course, the impact of Mr. Seibel's felony conviction

09:04:32 5 and how that plays for his suitability to conduct

6 business and a gaming licensee.

7 He, of course, defends in this case saying

8 that his fraud against the United States Government is

9 just being used as a pretext because Caesars

09:04:48 10 Entertainment simply just doesn't want to do business

11 with him.

12 Well, over the course of discovery in this

13 case we've uncovered further fraudulent conduct by

14 Mr. Seibel, and that he was engaged with one of his

09:05:03 15 cohorts in a scheme to obtain kickbacks from some of

16 the vendors for the restaurants of which he was a joint

17 venture and partner. I use that phrase loosely.

18 So the central issue now before us is whether

19 there is a good cause to amend -- for leave to amend in

09:05:22 20 light of the fact that the deadline for amendments has

21 passed.

22 And simple facts of the matter are these:

23 Mr. Seibel has been something short of a model

24 of cooperation in the discovery process. As we've put

09:05:38 25 forth in our papers, he has obstructed and delayed this

09:05:42 1 case in hopes of prosecuting similar issues in federal
2 court, bankruptcy courts, other courts across the
3 nation presumably because of his discomfort of coming
4 to a Nevada court to try and defend his actions against
09:05:57 5 the gaming licensee. But I leave that to him to
6 explain why he has been so uncooperative.

7 The point is this. The documents, the thread
8 that we started to pull that uncovered this second
9 fraud, were not produced in this action until after the
09:06:16 10 cutoff for amendments had already lapsed. As I said,
11 he took many months, six to eight months to even file
12 his answer in this case with all his delay tactics, and
13 that certainly carried over with his discovery
14 responses.

09:06:32 15 Now, those documents in and of themselves were
16 not a smoking gun that showed us what they were doing.
17 They were curious documents that didn't necessarily
18 have anything to do with his felony conviction and his
19 suitability. And surely, once we did get those
09:06:46 20 documents, had we run to court with no deposition
21 testimony even explaining what they were, first of all
22 we wouldn't have done it because I don't think it would
23 satisfy my Rule 11 obligations before coming before
24 you. But they too, I'm sure Mr. Seibel and his counsel
09:07:00 25 would have complained that we were running to court as

09:07:03 1 alarmists not even knowing what we were talking about.

2 So what we did is what I think your Honor
3 would expect us to do. We did our job. We set out to
4 do discovery on all issues in this case including what
09:07:14 5 these strange documents were, only to find one of the
6 co-conspirators, I'll call them, denying any knowledge
7 what they were. Despite that we would later learn he
8 was actually the architect of the scheme.

9 He denied even knowing what they were in his
09:07:29 10 deposition, but Mr. Seibel brazenly told us what they
11 were and simply claimed that that's not a kickback
12 scheme. That is a marketing scheme. So whatever it
13 is, that's for your Honor and a jury to decide at a
14 later date.

09:07:42 15 The only defense that we see in the motion
16 today is not that there was no kickback scheme and that
17 is this is frivolous, or that this is futile. The only
18 defense is you should have caught us sooner, he says,
19 because in another case we planted a couple of those
09:08:01 20 documents, the needle in the proverbial haystack, with
21 a document dump about two months prior to our cutoff
22 here for amendments.

23 Well, first of all it was another case.
24 Second of all, it was, as I said, planted inside a
09:08:20 25 document dump where we didn't even know what those

09:08:23 1 documents were in ten-plus thousand documents.

2 And third, those documents themselves were not
3 even usable for some time until after the expiration of
4 our cutoff here because they were not produced in
09:08:36 5 proper form in that action.

6 So it's a thin excuse. We -- we had no
7 ability respectfully to catch them at this sooner.
8 Certainly, even if that document in another case was a
9 smoking gun, we didn't realize what it was until the

09:08:54 10 depositions took place which were months after the
11 cutoff here. So we have plenty --

12 THE COURT: I mean, you're not conducting
13 discovery in the other case, anyway so --

14 MR. PISANELLI: Yeah. They're overlapping.

09:09:04 15 THE COURT: Yeah.

16 MR. PISANELLI: So we're using them for both
17 now.

18 THE COURT: I understand.

19 MR. PISANELLI: We're not asking to change the
09:09:08 20 trial date. We're not asking to do anything other than
21 bring all of Mr. Seibel's fraud before your Honor and
22 before the jury in this case to be efficient instead of
23 having two different lawsuits. We've already got
24 enough lawsuits. And this is a consolidated action to
09:09:20 25 begin with.

09:09:21 1 And the excuse that we should have caught them
2 earlier when they weren't participating in discovery in
3 good faith really doesn't hold a lot of weight in our
4 view. So we think we've met the standard of good cause
09:09:35 5 under the circumstances and respectfully ask that we be
6 given leave to amend our complaint.

7 THE COURT: Thank you, sir.

8 MR. PISANELLI: Thank you.

9 THE COURT: Counsel.

09:09:52 10 MR. BROOKS: Good morning, your Honor.

11 THE COURT: Good morning.

12 MR. BROOKS: The last time I appeared in front
13 of you, I was on the telephone and you denied our
14 motion to amend a counterclaim in this same action.

09:10:04 15 THE COURT: Why does that matter?

16 MR. BROOKS: Because the same rationale
17 applies here as I'm going to --

18 THE COURT: Well, I mean, I have to conduct a
19 good cause analysis --

09:10:13 20 MR. BROOKS: Right.

21 THE COURT: -- under the Nutton case. It's
22 not a tit for tat. It's I look at each issue
23 individually.

24 MR. BROOKS: Right. But the issue is the
09:10:22 25 same. In fact, I would say the issue is weaker here as

09:10:25 1 a motion to amend. Now they say these are not smoking
2 guns. If you look at Exhibit 6 and 9 to their motion,
3 it's very clearly stated that doesn't use the word
4 "kickback". It uses the word "rebate". That in one
09:10:39 5 case one vendor is paying 5 percent rebate to one of
6 Mr. Seibel's entities. And then the other vendor is
7 paying 15 percent rebate. And if you look at our
8 Exhibit 1E, it states -- that email states that a 1099
9 will be issued.

09:10:56 10 So that, those documents were all produced in
11 CD form on December 7, 2018. The cutoff to amend
12 pleadings or add new parties was February 4, 2019. The
13 documents on their face clearly show a rebate being
14 paid. If they think that's unlawful, they were on
09:11:20 15 notice of that.

16 Now, I notice in this motion they filed here
17 and in their reply that they filed about a week ago and
18 in the oral argument that you just heard, they never
19 tell you when they found these documents. They never
09:11:37 20 tell you that. So you have to assume they got them by
21 Federal Express on December 8, and that's when they
22 knew.

23 If they didn't even notice them until May or
24 June or July, they would have told you that in their
09:11:51 25 motion or in the oral argument you just heard.

09:11:54 1 Now, even indulging -- and it's not another
2 case. It's a highly closely related case, and the
3 parties have agreed that all document discovery and
4 depositions in the two cases can be used

09:12:10 5 interchangeably. It's not some other random case.
6 It's a federal case here in Las Vegas involving the
7 same issues and the same parties.

8 And even if you want to take what they say at
9 face value that, Well, we don't like to run into court
09:12:26 10 and accuse people of things prematurely, they could
11 have asked to change the date, the deadline for
12 amending pleadings or adding parties. They could have.
13 They didn't. And they say, Well, we didn't really
14 understand what happened until we took depositions on
09:12:46 15 September 6, 2019, and September 24, 2019.

16 Yet, your Honor, on October 8, 2019, after
17 those depositions, they filed with you voluntarily with
18 us a stipulation amending the scheduling order which
19 was filed in the Court on October 15, 2019. It's
09:13:08 20 Exhibit 6 to our opposition, your Honor. And on page 1
21 of that scheduling order it states the time to amend
22 pleadings or add parties is closed.

23 They could have by then. They certainly even
24 by their admission they knew what -- they knew that
09:13:25 25 they thought they had a claim. Why didn't they say to

09:13:28 1 us, Hey, let's extend the time to amend pleadings or
2 add parties? And I think the answer to that, your
3 Honor, is they knew we wanted to amend our counterclaim
4 on behalf of one of these parties, LLTQ, and they
09:13:45 5 didn't want us to be able to. So they opposed that
6 successfully, the one I argued on the phone. And now
7 they want to change the rules.

8 Your Honor, in the opinion you wrote on
9 November 25th, denying our motion, you laid out the
09:14:05 10 good cause standard under Rule 16. And you said what
11 was fatal to our attempt to amend was that we knew --
12 we knew the facts before the filing date -- I'm sorry,
13 before the deadline for amending pleadings and we
14 waited. That's exactly what they did.

09:14:23 15 And, in fact, they --

16 THE COURT: Tell me this, though. How can you
17 know the facts without taking depositions? Because --

18 MR. BROOKS: Because you --

19 THE COURT: No, I'm serious about this.

09:14:33 20 MR. BROOKS: I'm sorry.

21 THE COURT: Because, I mean, I took thousands
22 of depositions.

23 MR. BROOKS: Right.

24 THE COURT: Relying upon documents they
09:14:38 25 weren't necessary in the business court setting.

09:14:40 1 MR. BROOKS: Right.

2 THE COURT: But until you have testimony --

3 MR. BROOKS: Right.

4 THE COURT: -- under oath, explaining what the

09:14:49 5 documents --

6 MR. BROOKS: Um-hum.

7 THE COURT: -- were for and their purposes --

8 MR. BROOKS: Um-hum.

9 THE COURT: -- and the like, you don't have

09:14:55 10 meaning.

11 MR. BROOKS: Right.

12 THE COURT: And that I think that's the

13 important issue when it comes to discovery. And that's

14 why we take depositions.

09:15:01 15 MR. BROOKS: So I have two responses to that,

16 your Honor. The first one I already said is if they

17 thought this looked suspicious, they should have moved.

18 They should have agreed with us to move the deadline

19 for amending pleadings.

09:15:17 20 The second thing is if you would just look at

21 Exhibit 6 to their motion, it was marked as

22 Exhibit C 37 in the deposition Mr. Pisanelli was just

23 talking about, and it's clear. It shows that they're

24 getting 5 percent of these proceeds of the sales of

09:15:40 25 steak by Pat LaFrieda to some of the Caesars

09:15:44 1 restaurants. And it breaks it down. Paris Hotel,
2 Caesars. It shows the amounts. And this is in 2011
3 and '12. It says \$2.14 million. Pat LaFrieda Feeder
4 RS. That's Rowen Seibel 5 percent.

09:16:00 5 Then they calculated. The total owed to Rowen
6 Seibel per LaFrieda, \$107,031.79. Total paid to Rowen
7 Seibel through September 3, 2012, \$57,590.06. Total
8 owed to Rowen, they subtract what was paid from what
9 should have been paid. The total owed to Rowen is

09:16:25 10 \$49,000. And this is an email chain. It goes through.
11 It discusses the deal. It discusses the percent.

12 If you look at Exhibit 9 to their motion, this
13 is the other vendor, and it's in 9, I think a beer
14 distributor, same thing. Says we're going to get --
09:16:41 15 we're going to give you 15 percent of rebates, and
16 we'll send you -- on page TPOV00018823 it says we're
17 going to give you a 1099 at the end of the year for tax
18 purposes.

19 And those are only two of the emails. There
09:17:00 20 were four that we attached to our opposition. There
21 are taken off of a duplicate of the CD that was sent to
22 Caesars by former counsel, the firm that proceeded us
23 in the case. They made a duplicate CD. They sent it
24 by Federal Express. And we printed out exhibits -- in
09:17:20 25 our opposition Exhibits 1. Exhibit 1 is an affidavit

09:17:24 1 from the attorney at the old firm who did this. And
2 Exhibit 1A is a letter that he sent to Caesars' counsel
3 enclosing the CDs with the Bates page ranges.

4 Exhibit 1B, C, D -- excuse me, your Honor --
09:17:38 5 and E are four emails that very clearly show an
6 agreement to get a rebate from these two vendors. And
7 then we attached the next four exhibits to our
8 opposition, are those documents with the same Bates
9 page number at the bottom as marked as deposition
09:18:00 10 Exhibits 37GR3, 4, and 6, I believe.

11 So they knew. And everything you said in the
12 opinion, your Honor, on November 25th applies here.
13 And it applies, I would say, more strongly. Because
14 here, they're trying to add a party. And maybe they're
09:18:16 15 not asking for the trial date to be changed yet, but
16 they're going to want to embark on a lot of discovery.
17 They've already been serving subpoenas to third
18 parties. And they're adding a party.

19 All we were trying to do is get one more
09:18:32 20 restaurant named, not as a party but it was one more
21 restaurant which we allege they should have included us
22 in because it was a restricted venture so-called
23 involving Gordon Ramsey. And all it would have meant
24 is if you would have granted that, is that we would
09:18:53 25 have added that -- the name of that restaurant, and

09:18:55 1 they would have had to give us one more PNL for that
2 restaurant. They already give us PNLs for, I think,
3 six or seven other restaurants.

4 But you -- your Honor, you ruled and supported
09:19:07 5 by case law. You signed an order which actually
6 counsel for Caesars drafted at your request, and that
7 we agreed to. All the parties agreed to it. And it's
8 clearly if you look at Exhibit 7 to our opposition, you
9 said that: "The Court further finds that where a
09:19:30 10 scheduling order has entered, the lenient standard
11 under Rule 15(a) which provides leave to amend shall be
12 freely given, must be balanced against the requirement
13 of Rule 16(b) that the Court's scheduling order shall
14 not be the modified except upon a showing of good
09:19:45 15 cause."

16 Then it continues: Disregarding the
17 scheduling order would undermine the Court's ability to
18 control its docket, disrupt the agreed-upon course of
19 the litigation, and reward the indolent and the
09:19:55 20 cavalier.

21 THE COURT: Okay. And for the record I agree
22 with all that. But, ultimately, at the end of the day
23 when a motion is made to somehow change the scheduling
24 order of the trial court, I'm required to conduct a
09:20:09 25 good cause analysis under Nutton.

09:20:11 1 MR. BROOKS: Right.

2 THE COURT: And you do that on an
3 issue-by-issue basis. And so I'm not really concerned
4 about prior decisions in this case. I'm concerned
09:20:17 5 about the four factors as set forth in the Nutton case.

6 MR. BROOKS: Okay.

7 THE COURT: And more specifically the
8 explanation for the untimely conduct.

9 Two, the importance of the requested untimely
09:20:27 10 action.

11 Three, the potential prejudice in allowing
12 untimely conduct.

13 And last, but not least, the availability of a
14 continuance to cure such prejudice.

09:20:37 15 And so I'm not really looking back
16 retrospectively as to what decisions I made in this
17 case. I'm looking at it on an issue-by-issue basis.
18 And I would love to remember all the argument that was
19 made back in the fall of last year. I can't. I have
09:20:53 20 too many cases. I have -- I have -- in fact, today I'm
21 looking at it. I'm trying to -- wondering why our
22 calendar is so clogged --

23 MR. BROOKS: Right.

24 THE COURT: -- with matters. Because there's
09:21:02 25 certain matters I'd love to spend more time with. I

09:21:05 1 can't.

2 But the bottom line is this, when I'm making
3 this decision, I want an analysis under this case.
4 That's all. And if the -- and our Supreme Court said,
09:21:15 5 Look, the four factors are nonexclusive. It's right
6 out of the decision.

7 MR. BROOKS: Right.

8 THE COURT: And so, ultimately, that's going
9 to be my safe harbor on any decision I make today. I
09:21:28 10 just want to tell everybody that.

11 MR. BROOKS: Right.

12 THE COURT: That's what it's going to be.

13 MR. BROOKS: All I'm saying, your Honor, is
14 they were aware of these facts. They were aware of
09:21:34 15 them in December of 2018, early December of 2018.

16 They're complaining about a document dump. That was
17 what was agreed to for the ESI, the electronically
18 stored information. It wasn't a document dump.

19 And I'll just repeat. I said it before. If
09:21:50 20 they -- if they actually only noticed those emails, the
21 needle in the haystack, after February 4, 2019, the
22 deadline in this case for amending or adding parties,
23 they would have told you. They would have said, you
24 know, we only noticed these emails on May 11, 2019, and
09:22:10 25 this is how we came to notice them.

09:22:13 1 They didn't tell you that. That speaks
2 volumes. They knew before -- or if they saw them and
3 they weren't sure exactly what they meant, and I submit
4 they're pretty clear on their face, they could have
09:22:25 5 tried to agree with us to amend to change the deadline
6 for amending counterclaims -- claims and adding
7 parties.

8 They didn't want to do that because they
9 wanted to oppose our motion to amend our counterclaim,
09:22:37 10 which they knew about. So I just think whether you
11 want to refer to your prior decision or not that the
12 logic is the same.

13 There's no good valid reason for this delay on
14 their part. There's no good cause. Even according to
09:22:55 15 what they say, they knew after the depositions on
16 September 6 and 24th of 2019 that they thought they had
17 a claim. And, yet, they then, a couple of weeks later,
18 stipulated with us in the third scheduling order,
19 Exhibit 6 to our opposition, that the time for amending
09:23:16 20 claims or adding parties was closed. So there is no
21 good cause.

22 And this -- the good cause analysis stems from
23 the fact that they missed the deadline, not that
24 they're asking in this case to change the trial date.
09:23:31 25 They missed a deadline. As you correctly pointed out

09:23:35 1 in your previous order and as the Nutton case says, if
2 you miss the deadline, you're under Rule 16. You're in
3 that universe, not Rule 15. You have to have good
4 cause. They don't have good cause.

09:23:47 5 So with that said, your Honor, we will rest on
6 our papers. I think -- I've told you which exhibits we
7 think should be dispositive here. It's very clear they
8 had these emails. They used them in depositions. If
9 you read the four emails, Exhibits 1B, C, D, and E, no
09:24:10 10 reasonable person wouldn't understand what that was
11 referring to. We call it -- they called it an email, a
12 rebate program. They call it kickbacks.

13 We don't think it's illegal at all, but
14 that's -- we didn't brief that issue. We're not
09:24:28 15 arguing the merits of this relationship. I'll just say
16 Mr. Seibel and his entities were not fiduciaries of
17 Caesars. They were not partners of Caesars. They were
18 not employees of Caesars. And they had a relationship
19 with these two vendors, not just the Caesars
09:24:46 20 establishments.

21 They got 1099s. It wasn't secret. But that's
22 not the point. The point is this case will be really
23 delayed if you allow this, your Honor. As I've said,
24 they've served third party subpoenas already on Pat
09:25:06 25 LaFrieda, the meat vendor, and I think other, other

09:25:10 1 entities.

2 So, your Honor, unless you have some
3 questions, I'll rest on our papers.

4 THE COURT: Thank you, sir.

09:25:16 5 MR. BROOKS: Thank you.

6 MR. PISANELLI: I don't think this case is
7 going to be delayed for even one minute because of
8 this.

9 First of all, it's not a sin but actually a
09:25:31 10 good fact that we've already started the other
11 discovery with subpoenas to third parties. I'm sure we
12 would have been criticized had we done the opposite,
13 sat on our hands.

14 Secondly, this idea of a new party can be
09:25:44 15 brought in, new parties, Mr. Green who is the manager
16 of all these defendants in this case has been sitting
17 as the 30(b)(6) for those entities. So it's not like
18 he has to come up to speed on a new case and knows
19 nothing about it. He is more involved in these cases,
09:26:01 20 it seems, then Mr. Seibel himself.

21 And it was Mr. Green who delayed uncovering
22 what this kickback scheme was because he was not
23 truthful during his deposition when confronted with
24 these emails to tell us when asked what are they about.
09:26:15 25 He said "I don't know." But he did know. As I said he

09:26:18 1 was the architect of this -- of the scheme.

2 I find it interesting that counsel refers to
3 these documents. Like Exhibit 6 he referred to as the
4 smoking gun. I'm sure they're going to be running
09:26:31 5 backwards from that comment when we're in front of a
6 jury saying that it's no smoking gun.

7 But that said, just look at it, your Honor.
8 It's -- it's an audit. That's what it says. Pat
9 LaFrieda audit. Doesn't say "kickback", "I hope
09:26:46 10 Caesars doesn't catch us," "there's our illegal
11 scheme," that type of smoking gun. It says audit. And
12 we were questioning audit of what. That's when the
13 thread that I referred to as the deposition started to
14 uncover what really was afoot here.

09:27:00 15 And finally, your Honor, it's worthy to note
16 that even the depositions -- put aside Mr. Green not
17 being forthright what these things were about.
18 Mr. Seibel himself seems to have had a bit of a
19 revolving door at his counsel table here with a number
09:27:18 20 of different lawyers coming in and out of this case,
21 which has delayed Mr. Seibel sitting down and giving
22 sworn testimony.

23 We were originally trying to get him to tell
24 us about these things in May of 2019. And they sought
09:27:31 25 delays of his depositions as they transitioned from one

09:27:35 1 counsel to the next, which I think we're about to see
2 yet again.

3 So the point is this. I hear your point, your
4 Honor, loud and clear about understanding what
09:27:46 5 documents mean, depositions shed light on cold
6 documents, typically, like emails in particular.
7 They're drafted between insiders. They don't spell out
8 everything they're referring to or where it all comes
9 from because they know.

09:27:59 10 We were not insiders to this kickback scheme,
11 but once we got to talk to those insiders and make them
12 raise their hands and swear to tell the truth, then
13 some light was shined on this scheme. That's when we
14 finally figured it out. That's when we came to you to
09:28:14 15 ask for leave.

16 Counsel's primary grievance, it sounds like,
17 is that we wanted to amend our pleading, as you said,
18 on a case-by-case basis, not just open up pleadings
19 again. Well, we uncovered a new claim against you,
09:28:31 20 and, therefore, we're obligated to change the amendment
21 date so that the defendants, the wrongdoers here, can
22 add more nonsense into this case? That's not how this
23 works.

24 Your Honor wouldn't, I suspect, have allowed a
09:28:45 25 stipulation like that in the first place anyway. You

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

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

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

17 THE COURT: Anything else, sir?

18 MR. PISANELLI: No.

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

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

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

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

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

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

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

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

09:31:20 1 determine good cause.

2 MR. PISANELLI: Will do. Thank you, your
3 Honor.

4 THE COURT: Everyone, enjoy your day.

09:31:25 5 MS. MECERA: Thank you, your Honor.

6 THE COURT: What about the motion to seal?
7 Was that --

8 MS. MECERA: Yes.

9 THE COURT: I'm sorry. Motion to seal certain
09:31:31 10 exhibits to opposition, any issue there?

11 MS. MECERA: Yes, Judge. Just briefly. We
12 didn't file an opposition with the only caveat that
13 yesterday we had a meet and confer with counsel. And I
14 believe that the documents that they're seeking to seal
09:31:43 15 have now been de-designated as not confidential. So I
16 don't know if that changes their motion. By other than
17 that we have no opposition to them being under seal.

18 THE COURT: Sir, anything on that?

19 MR. BROOKS: Yeah. We had a meet and confer
09:31:56 20 yesterday. And I said I would review certain
21 documents, and if they were -- if they were what they
22 were represented to be, we would withdrew the
23 confidentiality.

24 MS. MECERA: These were --

09:32:08 25 (Reporter clarification)

09:32:09 1 THE COURT: What I'll do, it's unopposed.
2 I'll grant it. If you want to de-designate, that's up
3 to you.

4 MR. BROOKS: Okay.

09:32:14 5 THE COURT: Just to make that easier.

6 MS. MECERA: Thank you, your Honor.

7 THE COURT: All right.

8 MR. PISANELLI: Thank you, your Honor.

9 THE COURT: Everyone, enjoy your day.

10

11 (Proceedings were concluded.)

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REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE
TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
AND UNDER MY DIRECTION AND SUPERVISION AND THE
FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
NEVADA.

PEGGY ISOM, RMR, CCR 541

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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ROWEN SEIBEL,

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Plaintiff,

)

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vs.

)

12

PHWLTV LLC,

)

13

Defendant.

)

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15

REPORTER'S TRANSCRIPT

16

OF

17

HEARING

18

(TELEPHONIC HEARING)

19

20

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

21

DISTRICT COURT JUDGE

22

23

DATED WEDNESDAY, FEBRUARY 17, 2021

24

25

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

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3 DEPARTMENT 16 ARE BEING HEARD VIA TELEPHONIC
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1 LAS VEGAS, NEVADA; WEDNESDAY, FEBRUARY 17, 2021

2 9:20 A.M.

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

4 * * * * *

09:47:45 5

6 THE COURT: Rowen Seibel versus PHWLTV. Let's
7 go ahead and place our appearances on the record.
8 We'll start first with the plaintiff and then move to
9 the defendants.

09:20:35 10

11 MS. MERCERA: Good morning, your Honor.
12 Magali Mercera on behalf of Desert Palace Inc, PHWLTV
13 LLC, Paris Las Vegas Operating Company, and Boardwalk
14 Regency Corporation.

15 THE COURT: Good morning, ma'am.

09:20:48 16

17 MS. WATKINS: Good morning, your Honor,
18 Brittanie Watkins also on behalf of the Caesars
19 entities.

20 THE COURT: Good morning.

09:20:55 21

22 MR. WILLIAMS: Good morning, your Honor, I
23 apologize. I was muted. This is Paul Williams on
24 behalf of the development entities. And we also
25 represent plaintiff Rowen Seibel and defendant Craig
Green. But they are not parties to this motion. Only
the development entities are.

09:21:09 26

27 THE COURT: Okay.

09:21:11 1 MR. WILLIAMS: And Joshua Gilmore is also on
2 the line. Thank you.

3 THE COURT: All right. Okay.

4 MR. TENNERT: Good morning, your Honor. John
09:21:18 5 Tennert on behalf of the Gordon Ramsey.

6 THE COURT: All right. Does that cover all
7 appearances?

8 MR. MAUPIN: And, good morning, your Honor.
9 Michael Maupin on behalf of the Ellis Hospitality.

09:21:33 10 THE COURT: Good morning, sir.

11 Is there anyone else we've overlooked?

12 And I would anticipate we want to have this
13 matter reported; is that correct?

14 MR. WILLIAMS: Yes, your Honor.

09:21:49 15 THE COURT: And who requested that for the
16 record?

17 MR. WILLIAMS: This is Paul Williams on behalf
18 of the development entities.

19 THE COURT: All right. And Ms. Isom, did you
09:21:59 20 get the appearances, ma'am?

21 THE COURT REPORTER: I did, Judge. Thank you.

22 THE COURT: We can go ahead and get started.

23 MR. WILLIAMS: Good morning, again, your
24 Honor.

09:22:09 25 This is Paul Williams on behalf of the

09:22:11 1 development entities.

2 We are seeking a limited stay pending
3 resolution of the development entities' writ petition
4 which was recently filed with the Nevada Supreme Court.

09:22:23 5 That writ petition concerns this Court's order
6 which struck the development entities' amended
7 counterclaims which they asserted in response to
8 Caesars' first amended complaint.

9 As this Court recognized at oral argument on
09:22:40 10 the motion to strike, the Caesars' motion to strike,
11 neither the Nevada Supreme Court nor the Nevada Court
12 of Appeals have addressed whether and under what
13 circumstances a defendant may assert an amended
14 counterclaims as a matter of right in response to an
09:22:57 15 amended complaint.

16 We think the writ petition is a great
17 opportunity for the Nevada Supreme Court to provide
18 some clarity to this Court and to the parties and to
19 all the litigants in the state on this issue, which it
09:23:09 20 hasn't decided before. And as this Court likely
21 recalls, there are multiple different approaches taken
22 by other courts. So we think that that's a great writ
23 petition for them to take up and decide that issue.

24 Now, we're only seeking to stay the
09:23:26 25 dispositive motion deadline and to stay trial. We're

09:23:28 1 not seeking to stay discovery, which the parties are
2 still finishing up, they're still engaging in some
3 cleanup discovery.

4 And, in fact, the deadline to file dispositive
09:23:38 5 motions is tomorrow. But there's one caveat to that,
6 and that is that the parties have stipulated to
7 continue the deadline for dispositive motions as it
8 concerns Caesars coercive claims for relief. Because
9 there are at least two depositions that have -- the
09:23:56 10 parties have been unable to complete concerning those
11 claims. And we've submitted a stipulation and order to
12 the Court on that point just for the record.

13 Now, there are four factors the Court looks at
14 in evaluating whether or not to grant a stay pending a
09:24:12 15 writ petition.

16 The first factor is whether the object of the
17 writ petition will be defeated if the stay is not
18 entered.

19 Now, here the object of the writ petition is
09:24:23 20 to enable the development entities to assert the
21 amended counterclaims that they asserted in response to
22 Caesars' first amended complaint and to bring those
23 counterclaims to trial.

24 If the stay is not entered and trial proceeds
09:24:37 25 without a decision from the Nevada Supreme Court, and

09:24:39 1 the dispositive motions are briefed and argued and
2 decided, the object of the writ petition will be
3 defeated.

4 And as the Nevada Supreme Court recognized in
09:24:49 5 the McCowan Gaming Corporation case where the object of
6 the writ petition is -- will be defeated, a stay is
7 generally warranted. So under the first factor, that
8 would support a stay being entered in this case.

9 The second and third factors concern the
09:25:05 10 respective harm to the parties if the stay is or is not
11 entered. In its opposition, Caesars focuses a lot on,
12 you know, this idea of irreparable harm. But that's
13 not the only relevant consideration. The factor
14 expressly is irreparable or serious harm. So it
09:25:23 15 doesn't have to be irreparable harm. It could also
16 include serious harm.

17 And here the development entities face serious
18 harm if the stay is not entered because they will be
19 precluded from being able to bring the amended
09:25:37 20 counterclaims to trial irrespective of the Nevada
21 Supreme Court's ruling on the writ petition. So that,
22 that is the harm they face.

23 Now, on the other hand, which is the third
24 factor, there virtually will be no harm to Caesars if
09:25:52 25 this matter is stayed. And the only real harm that

09:25:55 1 Caesars points to in their opposition is delay. And
2 the Nevada Supreme Court -- and, again, this is from
3 the McCowan case -- has already ruled that a mere delay
4 is not sufficient to -- is not sufficient grounds to
09:26:09 5 avoid a stay.

6 And one thing I want to address, your Honor,
7 is Caesars argues that the development entities -- the
8 development entities have sought to delay this
9 litigation, but that's not the reality of the
09:26:21 10 situation.

11 The reality is Caesars continues to operate
12 the restaurant venture -- restaurants that the
13 development entities, for lack of a better term,
14 actually developed. And Caesars continues to keep the
09:26:35 15 money that the development entities believe they're
16 entitled to. I say this because, believe me, my
17 clients would like to get a resolution on their claims
18 on the merits as soon as possible.

19 They want -- you know, they believe that
09:26:48 20 Caesars is withholding money that they're entitled to.

21 But the issue here that warrants the stay is
22 that the development entities believe that they were
23 entitled to assert their amended counterclaims as a
24 matter of right and don't want to have to go through
09:27:02 25 the process of a retrial after an appeal. We don't

09:27:05 1 think that's an effective use of court resources.

2 And that's -- you know, that's the -- that's
3 the -- in addressing the harm, we think that there's
4 significant harm to the development entities. And
09:27:16 5 really the only harm that Caesars can point to is
6 delay.

7 And that leads me to the final and fourth
8 factor, your Honor, which is whether the party opposing
9 the stay, here Caesars, can make a strong showing that
09:27:28 10 writ relief is unattainable. And that's from the
11 McCowan case again, your Honor.

12 Respectfully, we believe the Nevada Supreme
13 Court is going to take up the writ petition and provide
14 some clarity on a novel issue that it's never decided
09:27:43 15 before.

16 And, you know, at the hearing on the motion to
17 strike, this Court noted multiple times that the lack
18 of controlling authority, and even when an -- even the
19 best way I can put it is, I think, you were trying to
09:27:57 20 speak to the Nevada Supreme Court in what your thinking
21 was on this issue. And, you know, I think that was a
22 recognition that given the lack of authority, you know,
23 this is something that was ultimately going to need to
24 be decided by the Nevada Supreme Court regardless --
09:28:13 25 regardless of what it decided. But that was something

09:28:15 1 that was going to eventually make its way up to the
2 Nevada Supreme Court on a writ petition.

3 Now, I'd like to point out two things on
4 the -- on that -- on the merits -- on the merits of the
09:28:32 5 writ petition.

6 First, I want to point out on pages 20 through
7 21 of the writ petition, which is attached as Exhibit 8
8 to the motion to stay, that's where we address the
9 Nevada Supreme Court decision in Lund.

09:28:46 10 That case involved a matter where the Nevada
11 Supreme Court took up a writ petition where a district
12 court had struck counterclaims based on its
13 interpretation of the Rule 13(h). It was an issue that
14 the Nevada Supreme Court had never addressed before.
09:29:00 15 So they took up the writ to provide some guidance on
16 it.

17 And the Nevada Supreme Court held that writ
18 relief was appropriate there because the district
19 court's dismissal of those counterclaims -- and I'm
09:29:13 20 trying to -- I'm summarizing here from the language of
21 the opinion was something that strike -- the
22 striking -- I'm sorry, the dismissal of the
23 counterclaims potentially affected the future course of
24 the proceedings and the confusion. There was confusion
09:29:29 25 as to the scope and application of Rule 13(h) which the

09:29:32 1 Court found to be of statewide significance. So that
2 the Court took up that writ petition and basically
3 provided some clarity to that rule.

4 And here we have a very remarkable fact
09:29:45 5 pattern that's very similar to Lund. There's no
6 controlling authority. There's a potential range of
7 approaches from federal courts. And based on that, we
8 think it's likely the Nevada Supreme Court is going to
9 take up this writ petition and provide some guidance on
09:29:59 10 that issue.

11 I think this Court recognized it was put in a
12 position where there's no controlling authority and it
13 had to decide on what approach it believed the Nevada
14 Supreme Court was going to take up.

09:30:09 15 And we are -- you know, we disagree with the
16 approach utilized in the ultimate decision, but we
17 understand that this Court didn't have the controlling
18 authority to go off of. And we think the Nevada
19 Supreme Court has a good opportunity here to provide
09:30:23 20 some guidance to everybody.

21 Now as to the actual merits of the writ
22 petition the -- you know, what approach should be
23 utilized, that's been extensively briefed by the
24 parties. But there's two things I want to point out
09:30:38 25 for the record.

09:30:38 1 First, as explained on page 15 of the motion
2 to stay, numerous courts have rejected that Rule 16 and
3 scheduling orders have any application in a Court's
4 evaluation of whether amended counterclaims pled in
09:30:58 5 response to amended complaints are appropriate.

6 And the reason I want to point that the out
7 is --

8 THE COURT: And explain to me why. The reason
9 why I bring that up, I think it's really important to
09:31:11 10 focus on what the issues are and the basis for my
11 decision. Because to me what is primarily overlooked
12 in this entire discussion is essentially this: And
13 it's important to go back to the Nutton case.

14 And understand, the Nutton case was a first
09:31:29 15 case of first impression as it pertains to the tension
16 between Nevada Rules of Civil Procedure 15(a) that
17 deals specifically with motions to amend pleadings
18 versus the scheduling order under Rule 16(b). I'm not
19 talking about Rule 16.1., but Rule 16(b). And, in
09:31:49 20 fact, that -- I think that is probably the first
21 Rule 16(b) case ever published in the state of Nevada.
22 And it was published by our Court of Appeals. And I
23 think it was Judge Tao who authored that opinion. And
24 I think it's really a fascinating opinion because,
09:32:07 25 No. 1, it's 25 pages long. Typically when the opinion

09:32:11 1 is discussed, we focus on the tension between those two
2 rules.

3 But if you really go back and read it again,
4 Judge Tao discusses many, many different issues
09:32:24 5 pertaining to granting a summary judgment, Rule 56,
6 pleadings, Rule 8, and there is many more issues he
7 discusses in that case.

8 But this is what I think is the most important
9 aspect of that case is concerned. And the reason why I
09:32:39 10 am bringing this up is this: He did two things in that
11 case. First, remember Rule 16(b) was not an issue
12 raised below. It was raised the first time by the
13 Court of Appeals on appeal. And to me, that -- I look
14 at that as a guidepost because of the instructions and
09:32:58 15 the comments given by our Court of Appeals as far as
16 the application of Rule 16(b).

17 And he talked about the tension between the
18 two rules. But he said, Look, trial courts, you have
19 to read these rules in harmony.

09:33:11 20 But this is my point as far as the analysis is
21 concerned. Because as a condition precedent to be
22 conducting a Rule 15 analysis, he says the first thing
23 the trial court must do and has to do is to address
24 16(b). And 16(b) is the scheduling order. And, you
09:33:29 25 know what, if things are filed before the expiration of

09:33:32 1 the time set forth in the -- in Rule 16(b), the Court's
2 not required to conduct any good cause analysis.

3 However, once the time runs for -- in that
4 case it dealt specifically with amendment to the
09:33:45 5 pleadings. Before the Court conducts a Rule 15(a)
6 analysis, it first must conduct a Rule 16(b) analysis.

7 And just as important too, and this is why I
8 think this is a guidepost case for the trial courts is
9 really simply this. He said the failure to conduct a
09:34:03 10 Rule 16(b) analysis by the trial court was in error.

11 At the end of the day he said it was harmless
12 because they granted summary judgment appropriately.
13 But, once again, it was in error.

14 And so I come back to the issue here. And it
09:34:19 15 seems to me in light of the Nutton analysis before --
16 and that's why I brought it up the way I did. Before I
17 decide which type of approach to accept, the first
18 predicate to have to decide, and no one brought it up,
19 but this motion or this amendment is in violation of my
09:34:39 20 discovery order. So I need to know -- or conduct a
21 good cause analysis.

22 Once I -- if I determine there is good cause
23 for the amendment to the counterclaim, based upon my
24 analysis, then, and only then, will I decide which form
09:34:58 25 or the three different approaches to accept.

09:35:01 1 And I don't mind telling you that's kind of
2 how I see it. And I think if you go back and look at
3 the Nutton case, that's the approach that was
4 recommended, I mean, from Judge Tao in this regard.

09:35:18 5 Because the trial court, he said it, they didn't
6 consider 16(b). That's error. Right there at the end
7 of the case and the conclusion.

8 So tell me why it was an error for me not to
9 consider Rule 16(b) in light of Nutton.

09:35:42 10 MR. WILLIAMS: Understood, your Honor. And I
11 agree. Nutton is, you know, it is a very, very good
12 opinion. And Judge Tao did an excellent job analyzing
13 sort of the federal landscape of the similar cases that
14 they took on and did an excellent job of that.

09:35:56 15 Your Honor, here is why Nutton doesn't apply
16 and why Nutton doesn't apply to the amended
17 counterclaims at issue here.

18 When -- the case law on these approaches, the
19 narrow approach, the moderate approach, and the

09:36:12 20 permissive approach takes the -- takes the approach
21 that when a party is allowed to assert an amended -- an
22 amended complaint, so here it was Caesars, when that
23 party is allowed to assert an amended complaint, that
24 gives the defending party who has to answer that

09:36:32 25 complaint the matter of -- to file amended

09:36:35 1 counterclaims as a matter of right without -- they
2 don't have to seek leave under Rule 15(a). They don't
3 have to comply with -- Rule 16 and Rule 15, essentially
4 the requirement that a party normally obtain leave to
09:36:49 5 assert an amended -- to assert amended claims does not
6 apply because they are pleading in response to the
7 amended complaint that the Court allowed by the other
8 party.

9 So here --

09:37:01 10 THE COURT: But here's my question --

11 MR. WILLIAMS: -- the Court allowed --

12 THE COURT: -- though, in this case, and it's
13 my recollection -- I might be wrong. I have a lot of
14 cases. But there was a motion to assert counterclaims
09:37:11 15 earlier, the same counterclaims; is that correct?

16 MR. WILLIAMS: That is correct, your Honor.

17 It's a --

18 THE COURT: Right?

19 MR. WILLIAMS: There are similar -- there
09:37:17 20 are -- as it relates to one of the restaurants; that is
21 correct.

22 THE COURT: Okay. And the basis for my
23 determination was essentially this. And this is -- I
24 do agree with you. This is a really fascinating issue.
09:37:30 25 But at the time, it's my recollection, I made a

09:37:32 1 determination it was -- it was too late. It wasn't
2 good cause. Something to that effect; right?

3 MR. WILLIAMS: Correct.

4 THE COURT: Okay. Now, here's my question,
09:37:42 5 and I think this is a really important question because
6 I thought about this. In the rules as it -- is there a
7 counterclaim exception to Rule 16(b)?

8 MR. WILLIAMS: There -- I don't have
9 Rule 16(a) in front of me, your Honor. But I am fairly
09:38:00 10 certain there is not a specific counterclaim exception.

11 THE COURT: Yeah. And 16(b), that's the rule.

12 MR. WILLIAMS: Correct.

13 THE COURT: That's kind of my point. There
14 isn't, you know. And here's the thing. And I don't
09:38:12 15 mind saying this. We look to the federal rules, we do,
16 in many different scenarios. But, and sometimes this
17 is very much overlooked. The district courts are
18 courts of general jurisdiction. Our jurisdiction is
19 very much different than a federal court. As far as
09:38:33 20 their cases are concerned, they're actually very
21 limited, either diversity or federal question. That's
22 it; right?

23 In contrast, we see a myriad of different
24 cases they never see. In fact, our case load is much
09:38:46 25 different. And I look at the Nutton case in one simple

09:38:49 1 respect. It's like a mandate from our Court of Appeals
2 in this respect.

3 They're saying, Look, Judge, your Rule -- your
4 Rule 16(b) scheduling orders have to have meaning.

09:39:07 5 They have to have force and effect. If there's a
6 motion filed, for whatever reason, subsequent to the
7 time set forth in the scheduling order, you're required
8 to, No. 1, before you consider that to make a good
9 cause determination. And if I don't, it's error.

09:39:27 10 Whether it's harmless or not or reversible or whatever,
11 I guess, it depends on the circumstances, but it's
12 error.

13 And so when I was confronted with this issue,
14 and I read it, and I remember reading the points and
09:39:42 15 authorities, and one of the -- it just jumped off the
16 page to me based upon my recollection of Nutton, that
17 no one has addressed 16(b). And I think as a trial
18 judge, based upon the Nutton decision, I'm required to
19 do that. Especially when it's a contested issue. If
09:40:01 20 it's not and the parties stipulate and agree, in a
21 general sense because we're much different than the
22 federal courts, I let you decide your own destiny. I
23 do.

24 But if it's a contested, I think -- I think
09:40:11 25 that triggers that 16(b) analysis. And that's -- and,

09:40:14 1 you know what, and I respect everyone's position. I
2 think it's -- but one thing I try to do is explain why
3 I do what I do and why I make the decision.

4 And it will be up to the Court of Appeals
09:40:26 5 and/or Nevada Supreme Court to make a decision as to
6 whether I'm right or wrong.

7 But, sir, I didn't want to cut you off.
8 Continue on.

9 MR. WILLIAMS: No, your Honor. And I,
09:40:35 10 frankly, I agree that this is a very -- this is a very
11 intriguing issue. And from an academic perspective
12 there are a lot of different approaches. And I think
13 this is something I think the Nevada Supreme Court is
14 going to have to provide some clarity on.

09:40:48 15 But just as it relates to Nutton, one thing I
16 want to point out on Nutton is that Nutton was also --
17 you know, it relied a lot, if I recall correctly, on
18 federal authorities as well. Because Rule 16, not
19 16.1, but Rule 16 is similarly modeled off of federal
09:41:07 20 Rule 16.

21 And the federal courts in applying the narrow
22 approach or the moderate appropriate or the permissive
23 approach are -- have those same limitations
24 theoretically as the Rule 16 schedule order --
09:41:19 25 scheduling orders they enter.

09:41:21 1 And the only reason why I bring that up, your
2 Honor, is just so the record -- this is not something
3 that was really briefed before the Court decided the
4 motion to strike because, as you noted, neither Caesars
09:41:30 5 nor our side addressed Rule 16(b). But in the motion
6 to stay we have, I think, three -- two or three cases
7 that address that argument saying that -- where the
8 party said, Hey, you need to conduct a good cause
9 analysis under Rule 16(b) because your amended
09:41:49 10 counterclaim was filed after the deadline had passed.
11 And the court there said -- the courts there
12 said, No, it doesn't apply because the defendant when
13 it's responding to an amended complaint has the right
14 to assert the amended counterclaims so long as they
09:42:07 15 comply with whatever approach is being applied. That
16 they have the right to do that.
17 So neither the limitations that would be
18 normally under 16(b) or under 15(a) apply in those
19 circumstances.
09:42:19 20 And the reasoning behind all these cases is,
21 you know, if an -- if the Court is going to allow one
22 side to amend, which here was -- this Court allowed
23 Caesars to file its first amended complaint. Conducted
24 the Nutton analysis. Determined that it was -- there
09:42:34 25 was good cause to allow Caesars to file their first

09:42:37 1 amended complaint. Then the corresponding -- the
2 corresponding right that comes from that is that the
3 defendant has the right to respond with amended
4 counterclaims.

09:42:49 5 And those cases, again, which are -- is on
6 page 15 of the motion to stay address that issue. This
7 particular issue of Rule 16 and the scheduling order
8 and also Rule 15 as well.

9 But I appreciate your Honor's position. I
09:43:06 10 completely understand, you know, you have something
11 where you have controlling authority where you can look
12 to and say What is -- what is -- how does this work?
13 How do these all interplay?

14 And I, you know, I think all the parties
09:43:19 15 appreciate that you really put the time into this.
16 And, you know, evaluate and decide what you think the
17 Nevada Supreme Court is going to do. But we believe
18 that this is a case where the Nevada Supreme Court
19 needs to provide some guidance overall for all
09:43:32 20 litigants including on this case.

21 So with that, I just want to -- there's one
22 other -- just one other point on the merits I want to
23 have on the record is that I just want to explain the
24 differences between the narrow approach and the
09:43:46 25 moderate approach.

09:43:48 1 Because Caesars continues to argue that under
2 the -- even if this Court were to apply the moderate
3 approach that it shouldn't allow it. The amended
4 counterclaims should not be allowed because the amended
09:44:02 5 counterclaims, the changes in there did not relate to
6 the subject matter of the changes in the first amended
7 complaint.

8 But that is the narrow approach. The narrow
9 approach says, if you -- Yeah, defendant, you may
09:44:19 10 assert amended counterclaims in response to an amended
11 complaint as a matter of right, but you must -- you are
12 limited to the subject matter of those -- of the
13 changes in the first amended complaint.

14 So here, if you recall Caesars' first amended
09:44:35 15 complaint, the changes in there dealt with what they
16 refer to as a kickback scheme.

17 And essentially, Caesars' argument, which this
18 Court adopted in its order, was that under the moderate
19 approach that would not be appropriate because it did
09:44:51 20 not pertain to that -- those changes in the first
21 amended complaint. But that's the narrow approach.

22 The moderate approach allows a defendant to
23 assert amended counterclaims as a matter of right in
24 response to a first -- in response to an amended
09:45:06 25 complaint so long as the changes in the amended

09:45:11 1 counterclaim are proportional to the changes in the
2 amended complaint.

3 Proportional is not -- means it's not limited
4 by subject matter. It just happens it can't, you know,
09:45:22 5 phase -- the amended complaint brings, you know, five
6 new claims. That doesn't mean that the amended
7 counterclaims can suddenly bring 20 new claims and five
8 new parties and go way overboard. It has to be
9 proportional. But it doesn't necessarily have to
09:45:38 10 relate to the same subject matter.

11 And I just want clarity on that on the record
12 because that's an argument that Caesars has continued
13 to make. And, again, this Court adopted it in its
14 order. But it's something we want to point out that
09:45:48 15 the difference between the narrow approach and the
16 moderate approach, which, as this Court will recall, it
17 correctly found that the narrow approach is not tenable
18 anymore because Rule 15(f) was -- I'm sorry.
19 Rule 12 -- 13(f) was the lead advice from Nevada
09:46:06 20 Supreme Court. And that's what -- that's what the
21 narrow approach is based upon.

22 You know, so to summarize this issue, your
23 Honor, I just think that here a stay is warranted
24 because the writ petition is likely to be taken up by
09:46:19 25 the Nevada Supreme Court.

09:46:20 1 And regardless of whether -- of what they
2 decide, there was -- what the most efficient process to
3 address this all is to allow the Nevada Supreme Court
4 to say, Here's what the rule is, here's what the
09:46:34 5 interplay is between all the rules, and then make a
6 decision as to what -- whether or not the amended
7 counterclaims pled by the development entities were
8 appropriate based on that approach.

9 And, respectfully, we believe -- obviously, we
09:46:46 10 believe that the Nevada Supreme Court is going to find
11 that the amended counterclaims were appropriately pled.

12 But either way, it would be very -- the most
13 efficient way to handle this is as to let the Nevada
14 Supreme Court address that in a writ petition before we
09:47:05 15 brief dispositive motions and before things get taken
16 to trial.

17 It would be very inefficient to require the
18 development entities to wait until after trial to
19 address the Court's order on appeal. That would --
09:47:17 20 that would potentially require a retrial if they
21 prevail.

22 So unless your Honor has any other questions,
23 I will turn it over.

24 THE COURT: I don't have -- sir, for the
09:47:33 25 record I don't have any more questions. I just have a

09:47:35 1 couple of comments. Understand this. I never have a
2 position. I always tell you what I'm thinking or what
3 my thoughts are. Because I'm not an advocate in the
4 case, so I don't take positions.

09:47:47 5 Secondly, and this is just more of a general
6 observation. And I don't always say this, but it would
7 have been really nice to have a motion for
8 reconsideration to thoroughly vet that issue as it
9 pertains to Rule 16 and counterclaims as a matter of
09:48:08 10 right, so I could have taken a bite at that one too.

11 However, I don't have that opportunity. And
12 so anyway, sir, anything else you want to add for the
13 record? I just want to make sure you're done before we
14 go to Caesars.

09:48:20 15 MR. WILLIAMS: No, your Honor. Thank you.

16 THE COURT: You're more than welcome, sir.
17 Oh, one last comment. Yes, you are correct as far as
18 Rule 16 is concerned, 16(b). The Nevada Supreme
19 Court -- the Court of Appeals did rely upon federal
09:48:33 20 authorities in their interpretation of that.

21 Okay. Sir. Thank you.

22 MR. WILLIAMS: Thank you.

23 THE COURT: And we'll hear from -- we'll hear
24 from Caesars.

09:48:43 25 MS. MERCERA: Thank you, your Honor. And for

09:48:44 1 the record I just wanted to let the Court know as well
2 that my colleague James Pisanelli is here as well at
3 the hearing.

4 THE COURT: And thank you.

09:48:53 5 MS. MERCERA: Your Honor, we're before this
6 Court again experiencing a bit of deja vu. This is not
7 the first time the Seibel parties have requested a stay
8 in the action. It's not the second time or even the
9 third time. Now for the fourth time, they're
09:49:04 10 effectively asking this Court for the indefinite stay
11 when the parties are so close to trial in this matter,
12 and it's set in July later this year.

13 Your Honor correctly focuses on the Nutton
14 case and the interplay of Rule 16(b) with their request
09:49:19 15 because what they're asking -- what they asked this
16 Court and what they are asking the Supreme Court is to
17 disregard the rules of civil procedure and make this
18 Court's scheduling orders moot. There would be no
19 point for the Court from here on out to issue a
09:49:34 20 scheduling order if at any point the parties could come
21 in and simply disregard it and bring their amended
22 counterclaim.

23 Now, your Honor, respectfully this issue also
24 cannot be considered in a vacuum. The Court cannot
09:49:45 25 simply look at the present request for a stay.

09:49:48 1 Nearly four years after this litigation was
2 commenced, the Seibel parties' strategy really is the
3 same, and it's to delay this resolution of this matter
4 at all costs.

09:49:58 5 Your Honor may recall that the Seibel parties
6 first attempted to remove this action to federal court.
7 Then they sought to stay it. Then they sought to
8 dismiss it.

9 When they were unsuccessful in each of those
09:50:10 10 attempts, they moved on to their next strategy which
11 was to simply not respond to Caesars' complaint.
12 Caesars was, ultimately, forced to file notices of
13 intent to take default to get any answers in this case
14 over ten months after filing its original motion.

09:50:26 15 Now, even after that, Seibel parties continued
16 with delay tactic after delay tactic. They refused to
17 produce meaningful 16.1 disclosures. They refused to
18 participate in good faith discovery. And they even
19 replaced their counsel multiple times.

09:50:43 20 Even the subject matter of their writ to the
21 Supreme Court goes back to delay on their part. And
22 because, as your Honor correctly pointed out, it was
23 over a year ago now in October of 2019 that some of the
24 Seibel parties, specifically the LLTQ and the FERG
09:51:01 25 defendants, tried to assert new claims that they should

09:51:04 1 have brought when they originally filed their answers
2 back in July of 2018.

3 In this Court's order which was entered on
4 November 25th, 2019, the Court specifically found,
09:51:16 5 again, doing the analysis under the Nutton case, that
6 the Seibel parties were aware of the facts that they
7 sought to include in their amended counterclaims before
8 the deadline to amend expired. And they delayed
9 seeking leave to amend their counterclaims.

09:51:32 10 Now, following denial of that motion, your
11 Honor, the Seibel parties didn't seek reconsideration.
12 They didn't appeal. They didn't initiate another
13 action to preserve their rights. They simply sat on
14 their hands and accepted this Court's decision that
09:51:45 15 those claims were not appropriately before this Court.

16 So what has changed? You know, the Seibel
17 parties simply have engaged new counsel. As I said,
18 now there's six sets of attorneys on this case. And
19 they're attempting a new strategy to bring the amended
09:51:59 20 counterclaims that, frankly, are just woefully,
21 woefully deficient and untimely.

22 You know, the Seibel parties made choices in
23 this case long ago to not assert timely counterclaims
24 about facts that they knew and about facts that
09:52:13 25 responded to Caesars' initial claims. And they have to

09:52:16 1 live with those choices now. They don't get a do-over
2 simply because new counsel is in the case.

3 What their most recent request to your
4 Honor -- well, not even request, frankly, but their
09:52:28 5 most recent attempt to bring these counterclaims, they
6 took the approach that it's better to ask for
7 forgiveness instead of ask for permission. And instead
8 of asking this Court for permission to amend their
9 counterclaims, as would be required under Rule 15 and
09:52:42 10 Rule 16, they simply filed their amended counterclaims
11 in response to Caesars' amended counterclaim.

12 Now, they continued to have this argument
13 that, well, Caesars was allowed to amend; we should
14 have been also. But that argument respectfully
09:52:59 15 continues to ignore that this is not a tit-for-tat
16 argument.

17 The Court has to do an analysis of each motion
18 brought before it to determine if there was good cause.
19 Caesars showed that there was good cause to amend its
09:53:13 20 counterclaim -- or its claims, excuse me, because the
21 documents that are the -- gave rise to their claims
22 were discovered in this case. Unlike the claims
23 brought by the Seibel parties, which they knew about
24 prior to initiating their own counterclaims.

09:53:31 25 Now, Caesars moves to strike. And following

09:53:34 1 extensive motion practice, this Court issued a thorough
2 decision explaining in detail why the Seibel parties'
3 amended counterclaims are inappropriate and striking
4 them.

09:53:44 5 Respectfully, your Honor, we don't believe
6 that the Supreme Court will reverse this Court's
7 decision. In fact, we presently don't have any
8 indication that the Supreme Court is going to consider
9 the writ. They haven't even directed Caesars to file a
09:53:56 10 response.

11 So with that background, your Honor, turning
12 to the factors that this Court must consider to issue a
13 stay in this case, respectfully, they do not weigh in
14 favor of issuing such relief.

09:54:09 15 With respect to the first -- the first point
16 that they have to prove is whether the object of the
17 writ will be defeated if the stay is denied. Your
18 Honor, they admit in their motion that if the Supreme
19 Court grants them the relief that they seek, they will
09:54:24 20 be able to file -- refile motions for summary judgment.

21 That is not -- that does not show that the
22 object of their writ will be defeated. While they cite
23 to the Mikohn Gaming case, respectfully, your Honor,
24 that case related to an arbitration clause. And the
09:54:41 25 reason the object of the writ would have been defeated

09:54:46 1 was because the district court would have ruled on the
2 claims when there was an arbitration clause in effect.
3 This is not the same situation here.

4 While the parties must admit motions for
09:54:57 5 summary judgment tomorrow in accordance with this
6 Court's October scheduling order, there was no -- there
7 was nothing prohibiting the parties from filing motions
8 for summary judgment early. And at no point before
9 then has the Seibel parties made the argument that the
09:55:12 10 case should be stayed so that this issue could be
11 briefed before the Supreme Court. That factor weighs
12 in favor of denying their stay request.

13 Now, your Honor, in terms of the second and
14 third factors, it is -- there is no irreparable harm,
09:55:27 15 and there is no substantial injury here for the Seibel
16 parties. They simply have, if any, damages -- and
17 we're not conceding in any way that they would even
18 have these -- would be monetary damages.

19 The Supreme Court has made clear that that
09:55:41 20 does not constitute irreparable harm and would be
21 sufficient enough to warrant a stay.

22 Now, your Honor, we're not making the argument
23 that Caesars would be irreparably harmed. That is not
24 the point. But they would -- we would be substantially
09:55:57 25 prejudiced.

09:55:57 1 And the judiciary looks to the tenet that
2 justice delayed is justice denied. And here, your
3 Honor, we're going on over, almost over four years when
4 this case was initially filed. At some point this case
09:56:12 5 has to go to trial. It was first filed 2017. We're
6 now in 2011. Respectfully, the Seibel parties have
7 delayed resolution of this matter long enough.

8 Notably, there is also a sister action in
9 federal court, your Honor. Some of the Seibel parties
09:56:28 10 are involved in that one, TPOV and TPOV 16. And they
11 have not asked for a stay of that matter. They simply
12 don't want this Court ruling on Caesars claims. Just
13 as has been their strategy for the entirety of the
14 litigation.

09:56:45 15 Now, moving to the last factor that the Court
16 must consider, respectfully, again. We think this
17 weighs heavily in favor of denying their request for a
18 stay. This Court did a thorough and appropriate
19 analysis under Rule 16 and the Nutton case as directed
09:57:02 20 by the rules of civil procedure.

21 Again, their request to render such rules
22 moot, it can consistently be disregarded at any point.
23 And even if, your Honor, the Supreme Court were to
24 agree with the Seibel parties that Nevada should adopt
09:57:17 25 one of the federal court approaches, and the one they

09:57:20 1 advocate for is the moderate approach, this Court
2 specifically addressed that moderate approach in its
3 decision.

4 And the case law even -- the moderate approach
09:57:29 5 is predominant in the case law. The requirement that
6 an amended response reflect the change in theory or
7 scope of the amended complaint is also consistent with
8 Rule 15's requirement that an amended pleading must
9 plead in response to the amended pleading.

09:57:46 10 As this Court will recall, the Seibel parties'
11 amended counterclaims didn't relate in any way to the
12 new claims brought by Caesars. The claims we brought,
13 your Honor, were related solely to the kickback scheme.
14 We didn't make any changes to claims regarding
09:58:03 15 determination of the agreement. Yet all of the changes
16 that the Seibel parties attempted to make over three
17 years after the litigation had started, all related
18 back to Caesars' original complaint.

19 Frankly, they shouldn't have sat on their
09:58:17 20 hands. And they should have either sought
21 reconsideration, or appeal, or any action at some point
22 in the four years of this litigation to bring those
23 claims if they truly thought that they were valid. You
24 know, they cannot be awarded for sitting on their hands
09:58:30 25 and refusing to timely prosecute their case.

09:58:33 1 So respectfully, your Honor, we believe that
2 the factors weigh heavily in favor of denial of any
3 stay. This case should go to trial as scheduled.

4 And unless the Court has any further
09:58:43 5 questions, we would submit that their motion should be
6 denied.

7 THE COURT: Ma'am, I don't have any questions
8 at this time. We'll hear from the moving parties.

9 Did you hear me? Or am I mute?

09:59:11 10 MR. WILLIAMS: My apologies, your Honor. I
11 was muted again.

12 Can you hear me? Your Honor, can you hear me?

13 THE COURT: Yes, I can, sir. You may proceed.

14 MR. WILLIAMS: My apologies.

09:59:22 15 Again, this is Paul Williams on behalf of the
16 development entities.

17 I just want to address one of the last points
18 opposing counsel just made just because, again, it
19 bears repeating. Caesars continues to argue that the
09:59:35 20 moderate approach requires that the changes in the
21 amended counterclaim relate to the changes in the
22 amended complaint, here the alleged kickback scheme.
23 And that's just simply not the case.

24 If you -- there's numerous cases that we cited
09:59:50 25 in the briefing on that. You can look at Virginia

09:59:52 1 Innovation case which is out of the Eastern District of
2 Virginia, the UDAP Industry case which is out of the
3 District of Montana, there are numerous cases that
4 explain that the moderate approach does not require
10:00:06 5 that the amended changes relate to the changes in the
6 amended complaint. So just so that -- so that is
7 clear.

8 The point on Nutton, again, I'll just
9 emphasize, the federal courts, which, again, the Nutton
10:00:23 10 case relied on, the federal courts have looked at that
11 issue of Rule 16 and Rule 15 and have decided that that
12 doesn't apply where a defendant is responding to an
13 amended complaint.

14 So that issue has been addressed by the
10:00:38 15 federal courts. And the -- that issue is -- does not
16 prohibit a defendant from asserting amended
17 complaint -- an amended counterclaim as a matter of
18 right in response to an amended complaint. And that's
19 what the case law explains is that where a party is --
10:00:57 20 where a plaintiff is allowed to assert amended claims,
21 then the defendant has the ability, as a matter of
22 right, to assert them in the counterclaim. That's
23 irrespective of Rule 15(a) or 16(b).

24 And just a few other things I want to address.
10:01:16 25 The notion of delay here. Again, my clients would like

10:01:21 1 nothing more than to get a resolution on the merits.

2 And the fact that they are seeking to address
3 this -- to address the amended counterclaims through
4 the writ petition, there's a significant cost to that.

10:01:35 5 And the cost is that Caesars, during this time, is the
6 one keeping the money which my clients believe they're
7 entitled to. The development entities believe they're
8 entitled to a portion of the funds that are being
9 generated by the restaurants which they developed.

10:01:50 10 So, you know, this notion that we're looking
11 to delay things even further that's -- you know, it
12 only goes to show how serious the issue is that they
13 want to get this resolved. And that, yeah, there's a
14 significant cost to development entities, but it is
10:02:04 15 something that makes the most sense to do. To stay
16 this action pending resolution by the Nevada Supreme
17 Court of the writ petition so that we make sure we have
18 all the amended -- all of the claims addressed in one
19 action.

10:02:18 20 Opposing counsel also noted that the Nevada
21 Supreme Court hasn't entered an order directing an
22 answer yet. I mean, frankly given the amount of time
23 that has elapsed, that's not necessarily something
24 you'd expect by this time. It's only been a week. Or
10:02:31 25 it's only been a little over a few weeks. So that's

10:02:34 1 not, nothing unusual.

2 One other point on the object of the writ
3 petition whether that will be harmed by, if the stay is
4 not entered. Opposing counsel noted that, you know, if
10:02:47 5 they -- if we had wanted to file a motion for summary
6 judgment, we could have done so before this time, and
7 taken that route, and that, you know, that we could be
8 allowed to do so afterwards. But, again, the point of
9 the writ petition is to address all these claims and
10:03:02 10 counterclaims together. Irrespective of whether, you
11 know, their filing -- whether -- irrespective of
12 what -- you know, if motions for summary judgments are
13 filed on the amended counterclaims that they should all
14 be addressed together through dispositive motions and
10:03:19 15 trial.

16 And finally, I just want to address the harms
17 here to the parties. Again, there's just really no
18 harm beyond delay. And that Caesars, again, argues,
19 well, you know, the delay here is the harm that we
10:03:37 20 face. But the Nevada Supreme Court has already
21 addressed that issue in McCowan and said mere delay is
22 not enough to prohibit the entry of a stay.

23 So unless your Honor has any further
24 questions, I will end it there.

10:03:51 25 THE COURT: Here's my question, and I think

10:03:53 1 this is somewhat overlooked. And you're saying, Look,
2 Judge, under the federal approach, it would be
3 appropriate to conduct a Rule 16(b) analysis. Because
4 the counterclaim is being asserted as a matter of
10:04:14 5 right. I mean, I kind of understand that, but my
6 viewpoint is slightly different in this respect.

7 Because, all right, we know what the
8 procedural history of this case is. But if you look at
9 the factors that would be part of the good cause
10:04:30 10 analysis, for example, No. 1, is the explanation for
11 the untimely conduct. Right? That's pretty broad.

12 It appears to me that, for example, it can be
13 argued that, Look, Judge, we're asserting this
14 counterclaim as a matter of right, and that's why it's
10:04:56 15 being done untimely. And my point is this: I don't
16 think they're necessarily mutually exclusive. Because
17 the way I look at Nutton, and I talked about this a
18 little earlier, there's been a mandate by our Court of
19 Appeals in this respect, because remember Rule 16(b)
10:05:13 20 was not raised at any level other than by the Court of
21 Appeals. And they said, Look, it was an error not to
22 consider this rule.

23 And that's what Judge Tao and, of course,
24 concurring Judge Gibbons and also, I guess,
10:05:28 25 Justice Silver now, they all agree. And then you look

10:05:30 1 at the other factors. The importance of the requested
2 untimely action. That's factor No. 2.

3 And so why wouldn't all this come under, once
4 again, the Nutton-type analysis? Because I really do
10:05:44 5 feel very strongly about this: That our Supreme Court
6 wants the scheduling orders to have full force and
7 effect. And I don't see why, potentially, that type of
8 analysis couldn't be made under the four factors as set
9 forth in Nutton. I just don't see it. And I think you
10:06:08 10 can do it.

11 And so anyway, is there anything else, sir,
12 you wanted to -- because I don't want to --

13 MR. WILLIAMS: No, your Honor, unless -- if
14 you want me to respond to that. I mean, I -- again, I
10:06:20 15 just with respect to Nutton and the case law on the
16 federal case law on this point is that if -- yes, if,
17 suppose that we, the development entities, had moved
18 the Court to amend, you know, maybe a similar argument
19 to what they had previously done, and this Court had
10:06:39 20 rejected, under Nutton then that -- then, yeah, then
21 the Nutton analysis would have been applicable.

22 But that's not where -- that's not the stage
23 of where the amended counterclaims were asserted.

24 This Court -- this Court allowed Caesars to
10:06:54 25 file its first amended complaint. Conducted the Nutton

10:06:57 1 analysis, and found that there was good cause to allow
2 Caesars to amend its complaint and to add the numerous
3 coercive claims for relief and to add a new party,
4 Craig Green.

10:07:08 5 So based on that, the federal case law says
6 when that occurs, when we've given to one party to
7 increase the scope of the litigation, then the
8 defending parties in responding to that amended
9 complaint has the right without leave of the Court to
10:07:23 10 assert the amended counterclaims.

11 And I understand trying to -- you know, you're
12 trying to, you know, put together the analysis of
13 Nutton and the federal case law, but the federal case
14 law says, No, you don't look at Rule 16(b). You don't
10:07:41 15 look at scheduling orders. You don't look at
16 Rule 15(a).

17 The only question is -- and if you're an
18 applying the moderate approach, the only question is:
19 Do those amended counterclaims, are they proportional
10:07:54 20 in scope to the claims that were added in the amended
21 complaint? And if so, then the defendants are allowed
22 to assert them as a matter of right. If not, then
23 they're not allowed to assert them as a matter of
24 right.

10:08:08 25 And that's what the federal case law explains.

10:08:10 1 But I -- your Honor, I understand your reasoning. And
2 I think both parties greatly appreciate you taking the
3 time to thoroughly analyze these issues and explain
4 your reasoning behind them. But, again, this is
10:08:21 5 something we feel that, you know, controlling authority
6 from the Nevada Supreme Court to rule one way or the
7 other, here's what the rule is and here's how the
8 interplay works, is what is the most efficient way to
9 address this issue and to stay trial and the
10:08:35 10 dispositive motions pending that resolution.

11 THE COURT: I understand, sir.

12 All right.

13 MS. MERCERA: Your Honor, if I -- if I may.

14 THE COURT: Yeah. Go ahead, ma'am.

10:08:44 15 MS. MERCERA: The only thing --

16 THE COURT: This will be well vetted if it
17 does -- if the writ is accepted.

18 MS. MERCERA: Your Honor, just one final
19 point. If the Supreme Court agrees with the Seibel
10:08:57 20 parties' request that this is an issue of vast
21 importance that it will consider, they will enter a
22 stay at the request of the parties.

23 As I mentioned earlier, we have no indication
24 that they're going to consider the writ at this point,
10:09:09 25 and we haven't even been directed to file a response.

10:09:12 1 So if the Supreme Court agreed with the Seibel parties,
2 they will take action. But they haven't done so yet.

3 THE COURT: All right. I guess, we have a
4 well vetted record.

10:09:26 5 Anyway, what I'm going to do is this:
6 Regarding the motion for a limited stay of proceedings
7 pending the petition for extraordinary writ relief, I'm
8 going to deny that.

9 And I've considered the three factors that I'm
10:09:37 10 required to consider regarding whether the object of
11 the writ would be defeated, the irreparable harm
12 analysis, and also whether or not the party filing the
13 writ would likely prevail on the merits of the action.

14 And I can say this. At the end of the day
10:10:06 15 based upon the current status of the counterclaims with
16 little or no relationship to the amended complaint in
17 this case, and based upon the long history of this
18 litigation, we're talking about four years, give or
19 take, and that's an old case. It just is. Ultimately,
10:10:27 20 I have to marshal this case to trial. I do.

21 And we have a jury trial in this matter
22 currently set for July 12, 2021. I'm 50/50 on whether
23 we can do that or not. I don't know. But this is one
24 of my older cases. And at the end of the day, it's
10:10:49 25 going to get tried this year. It just is. And whether

10:10:53 1 it's in July or might be September, but we have to get
2 this matter, along with some of my older cases, either
3 settled or resolved.

4 And so what we're going to do, ma'am, we're
10:11:03 5 going to have you prepare an order. Please circulate
6 it.

7 If you can't agree on the contents of the
8 order, submit competing orders.

9 Let's not spend a whole lot of time as far as
10:11:17 10 review is concerned. Let's put in a three-day
11 turnaround on whether we agree or disagree with the
12 contents, or if we want to submit competing orders.
13 And so that's what we'll do.

14 And so --

10:11:30 15 MR. PISANELLI: Your Honor. Your Honor. Your
16 Honor, this is James Pisanelli. May I ask you a quick
17 question about the trial?

18 THE COURT: Yes, sir.

19 MR. PISANELLI: I'm just wondering if your
10:11:39 20 Honor has given any consideration. I know we have some
21 issues with court availability and particularly with
22 the backup of the criminal trials. So I was just
23 wondering if you'd given any consideration to holding
24 this trial, which will have a jury, at the convention
10:11:57 25 center courtroom.

10:11:58 1 THE COURT: Well, I don't know if the
2 convention center courtroom is going to be available
3 after March. That's what I've heard. I can check up
4 on that. But, sir, I don't know the answer. But I
10:12:15 5 remember hearing somewhere talking to another judge
6 after March it won't be available.

7 MR. PISANELLI: Yeah, actually, Judge Johnson
8 says similar. There's some issue about the rent
9 because it hasn't been used very frequently, et cetera.
10:12:27 10 So fair enough.

11 THE COURT: Yeah. But I'll find out for you,
12 sir. I'll -- that's my understanding. And what can
13 you do.

14 I mean, and I was -- I don't know what's going
10:12:40 15 on. I was hoping, I mentioned this before, that
16 business court we get the sixth floor. Because we have
17 some small courtrooms. And realistically, that doesn't
18 make sense to me. I mean, I come from construction
19 defect. And those were massive, massively complex
10:12:54 20 cases. And I think some of you remember. We had the
21 complex civil litigation center over on Fifth or Six
22 Street, or whatever the location was. But we should
23 have facilities like that available for business court
24 too. We just should because of the size of some of the
10:13:11 25 cases if they go to trial. They involve multiple

10:13:13 1 parties, multiple lawyers, and I don't -- from a case
2 management perspective, it would be -- I can't try this
3 case, I would think, in my courtroom.

4 MR. PISANELLI: With some of the social
10:13:26 5 distancing, it will be a challenge for sure.

6 THE COURT: Absolutely. You know, and how can
7 we pick a jury right now?

8 MR. PISANELLI: Right.

9 THE COURT: And are we going to make --

10:13:40 10 MR. PISANELLI: Hopefully the -- I was just
11 going to say hopefully the county will find it in their
12 budget to keep that courtroom on line for this calendar
13 year.

14 THE COURT: Right. Are we going to require
10:13:53 15 vaccine passports for all jurors when they come in?

16 MR. PISANELLI: No. Good point.

17 THE COURT: I mean, I don't know. But these
18 are things I think about. I don't mind sharing that
19 with everyone. Because we have to, you know, I -- I
10:14:05 20 can't bring in panel members where some are vaccinated
21 and some aren't.

22 MR. PISANELLI: Yes.

23 THE COURT: What do you do? Okay. Well,
24 everyone enjoy your day.

10:14:18 25 MS. MERCERA: Thank you, your Honor.

10:14:58 1

MR. WILLIAMS: Thank you, your Honor.

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MR. PISANELLI: Thank you, Judge.

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(Proceedings were concluded.)

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1	REPORTER'S CERTIFICATE
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2 | STATE OF NEVADA)

:SS

3 | COUNTY OF CLARK)

4 I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
5 HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
6 TELEPHONIC PROCEEDINGS HAD IN THE BEFORE-ENTITLED
7 MATTER AT THE TIME AND PLACE INDICATED, AND THAT
8 THEREAFTER SAID STENOGRAPHY NOTES WERE TRANSCRIBED INTO
9 TYPEWRITING AT AND UNDER MY DIRECTION AND SUPERVISION
10 AND THE FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE
11 AND ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
12 PROCEEDINGS HAD.

13 IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
14 MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
15 NEVADA.

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PEGGY ISOM, RMR, CCR 541

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Peggy Isom, CCR 541, RMR
(702) 671-4402 - DEPT16REPORTER@GMAIL.COM
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<p>MR. MAUPIN: [1] 5/8 MR. PISANELLI: [9] 44/15 44/19 45/7 46/4 46/8 46/10 46/16 46/22 47/2 MR. TENNERT: [1] 5/4 MR. WILLIAMS: [19] 4/19 5/1 5/14 5/17 5/23 16/10 17/11 17/16 17/19 18/3 18/8 18/12 20/9 26/15 26/22 35/10 35/14 40/13 47/1 MS. MERCERA: [7] 4/10 26/25 27/5 42/13 42/15 42/18 46/25 MS. WATKINS: [1] 4/15 THE COURT REPORTER: [1] 5/21 THE COURT: [37] 4/6 4/14 4/18 4/25 5/3 5/6 5/10 5/15 5/19 5/22 13/8 17/10 17/12 17/18 17/22 18/4 18/11 18/13 25/24 26/16 26/23 27/4 35/7 35/13 38/25 42/11 42/14 42/16 43/3 44/18 45/1 45/11 46/6 46/9 46/14 46/17 46/23</p>	<p>13/18 13/19 13/21 14/11 14/16 14/24 14/24 15/1 15/6 15/10 16/6 16/9 17/3 18/7 18/9 18/11 19/4 19/17 19/25 20/18 20/19 20/20 20/24 21/5 21/9 21/18 22/7 26/9 26/18 26/18 27/14 30/10 33/10 33/19 36/11 36/23 39/3 39/19 41/14 16.1 [3] 13/19 20/19 28/17 17 [2] 1/23 4/1</p>	<p>3/19 3/20 8 8000 [1] 3/9 8086 [1] 3/10 8820 [1] 2/10 8821 [1] 2/11 89101 [2] 2/21 3/8 89145 [1] 3/18 89148 [1] 2/9 8984 [1] 2/8 9 9:20 [1] 4/2 : :SS [1] 48/2 A A.M [1] 4/2 ability [2] 36/21 48/11 able [2] 8/19 31/20 about [12] 13/19 14/17 18/6 29/24 29/24 30/23 39/17 40/5 43/18 44/17 45/8 46/18 Absolutely [1] 46/6 academic [1] 20/11 accept [2] 15/17 15/25 accepted [2] 29/14 42/17 accordance [1] 32/5 ACCURATE [1] 48/11 action [10] 27/8 28/6 29/13 33/8 34/21 37/16 37/19 40/2 43/2 43/13 actual [1] 12/21 actually [3] 9/14 18/20 45/7 add [3] 26/12 41/2 41/3 added [1] 41/20 address [15] 9/6 11/8 14/23 21/7 22/6 25/3 25/14 25/19 35/17 36/24 37/2 37/3 38/9 38/16 42/9 addressed [9] 6/12 11/14 19/17 21/5 34/2 36/14 37/18</p>	<p>38/14 38/21 addressing [1] 10/3 ADMINISTRATIVE [1] 2/2 admit [2] 31/18 32/4 adopt [1] 33/24 adopted [2] 23/18 24/13 advice [1] 24/19 advocate [2] 26/3 34/1 affected [1] 11/23 after [10] 9/25 21/10 25/18 28/1 28/14 28/15 28/16 34/17 45/3 45/6 afterwards [1] 38/8 again [23] 5/23 9/2 10/11 14/3 15/13 22/5 24/13 27/6 29/5 33/16 33/21 35/11 35/15 35/18 36/8 36/9 36/25 38/8 38/17 38/18 40/4 40/14 42/4 ago [2] 28/23 29/23 agree [8] 16/11 17/24 19/20 20/10 33/24 39/25 44/7 44/11 agreed [1] 43/1 agreement [1] 34/15 agrees [1] 42/19 ahead [3] 4/7 5/22 42/14 all [26] 2/2 5/3 5/6 5/6 5/19 6/19 21/20 22/13 22/14 22/19 25/3 25/5 28/4 34/15 34/17 37/18 37/18 38/9 38/13 39/7 39/25 40/3 42/12 43/3 46/15 48/5 alleged [1] 35/22 allow [5] 21/21 21/25 23/3 25/3 41/1 allowed [12] 16/21 16/23 17/7 17/11 21/22 23/4 30/13 36/20 38/8 40/24</p>	<p>41/21 41/23 allows [1] 23/22 almost [1] 33/3 along [1] 44/2 already [2] 9/3 38/20 also [13] 4/16 4/21 5/1 8/15 20/16 22/8 27/23 30/14 33/8 34/7 37/20 39/24 43/12 always [2] 26/2 26/6 am [3] 14/10 18/9 35/9 amend [9] 13/17 21/22 29/8 29/9 30/8 30/13 30/19 40/18 41/2 amended [70] amendment [3] 15/4 15/19 15/23 amount [1] 37/22 analysis [23] 14/20 14/22 15/2 15/6 15/6 15/10 15/15 15/21 15/24 19/25 21/9 21/24 29/5 30/17 33/19 39/3 39/10 40/4 40/8 40/21 41/1 41/12 43/12 analyze [1] 42/3 analyzing [1] 16/12 another [2] 29/12 45/5 answer [3] 16/24 37/22 45/4 answers [2] 28/13 29/1 anticipate [1] 5/12 any [20] 13/3 15/2 25/22 25/25 27/20 28/13 31/7 32/16 32/17 33/22 34/11 34/14 34/21 35/2 35/4 35/7 38/23 39/20 44/20 44/23 anymore [1] 24/18 anyone [1] 5/11 anything [2] 26/12 40/11 anyway [3] 26/12 40/11 43/5 apologies [2] 35/10 35/14 apologize [1] 4/20</p>
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