

**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, *Electronically Filed Apr 13 2021 02:55 p.m. Elizabeth A. Brown*  
DERIVATIVELY BY ONE OF ITS TWO MEMBERS R SQUARED GLOBAL SOLUTIONS, LLC,  
*CLERK OF Supreme Court*

*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.*

---

**ANSWER TO PETITION  
FOR EXTRAORDINARY WRIT RELIEF**

---

James J. Pisanelli, Esq., Bar No. 4027  
JJP@pisanellibice.com  
Debra L. Spinelli, Esq., Bar No. 9695  
DLS@pisanellibice.com  
Jordan T. Smith, Esq., Bar No. 12097  
JTS@pisanellibice.com  
M. Magali Mercera, Esq., Bar No. 11742  
MMM@pisanellibice.com  
PISANELLI BICE PLLC  
400 South 7th Street, Suite 300  
Las Vegas, Nevada 89101  
Telephone: 702.214.2100

*Attorneys for Real Parties in Interest*

## **RULE 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the foregoing are persons or entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Real Parties in Interest are Desert Palace, Inc., Paris Las Vegas Operating Company, LLC, PHWLTV, LLC, and Boardwalk Regency, LLC.

- A. Desert Palace, Inc. is a former Nevada corporation that was converted to Desert Palace LLC, a Nevada Limited Liability Company. Its ownership structure is as follows:
  - a. Desert Palace LLC is wholly owned by Caesars Palace LLC – a Delaware Limited Liability Company, which is wholly owned by:
    - i. Caesars World LLC – a Florida Limited Liability Company, which is wholly owned by:
      - 1. CEOC, LLC – a Delaware Limited Liability Company, which is wholly owned by:
        - a. Caesars Resort Collection LLC – a Delaware Limited Liability Company which is wholly owned by:
          - i. Caesars Growth Partners, LLC– a Delaware Limited Liability Company which is wholly owned by:
            - 1. Caesars Holdings, Inc. – a Delaware corporation which is wholly owned by:
              - a. Caesars Entertainment, Inc., a publicly traded corporation.

- B. Paris Las Vegas Operating Company, LLC is a Nevada Limited Liability Company. Its ownership structure is as follows:
- a. Paris Las Vegas Operating Company, LLC is wholly owned by Caesars Nevada Newco, LLC – a Nevada Limited Liability Company, which is owned by:
    - i. Caesars Palace LLC – a Delaware Limited Liability Company, which is wholly owned by:
      - 1. Caesars World LLC – a Florida Limited Liability Company, which is wholly owned by:
        - a. CEOC, LLC – a Delaware Limited Liability Company, which is wholly owned by:
          - i. Caesars Resort Collection LLC – a Delaware Limited Liability Company which is wholly owned by:
          - ii. Caesars Growth Partners, LLC – a Delaware Limited Liability Company which is wholly owned by:
            - 1. Caesars Holdings, Inc. – a Delaware corporation which is wholly owned by:
              - a. Caesars Entertainment, Inc., a publicly traded corporation.
- C. PHWLTV, LLC is a Nevada Limited Liability Company. Its ownership structure is as follows:
- a. PHWLTV, LLC is wholly owned by Caesars Growth PH, LLC – a Delaware Limited Liability Company, which is wholly owned by:
    - i. Caesars Nevada Newco, LLC – a Nevada Limited Liability Company, which is owned by:
      - 1. Caesars Palace LLC – a Delaware Limited Liability Company, which is wholly owned by:

a. Caesars World LLC – a Florida Limited Liability Company, which is wholly owned by:

i. CEOC, LLC – a Delaware Limited Liability Company, which is wholly owned by:

1. Caesars Resort Collection LLC – a Delaware Limited Liability Company which is wholly owned by:

a. Caesars Growth Partners, LLC– a Delaware Limited Liability Company which is wholly owned by:

i. Caesars Holdings, Inc. – a Delaware corporation which is wholly owned by:

ii. Caesars Entertainment, Inc., a publicly traded corporation.

D. Boardwalk Regency, LLC is a Nevada Limited Liability Company. Its ownership structure is as follows:

a. Boardwalk Regency, LLC is wholly owned by Caesars New Jersey, LLC – a New Jersey Limited Liability Company, which is wholly owned by:

i. Caesars World LLC– a Florida Limited Liability Company, which is wholly owned by:

a. CEOC, LLC – a Delaware Limited Liability Company, which is wholly owned by:

i. Caesars Resort Collection LLC – a Delaware Limited Liability Company which is wholly owned by:

1. Caesars Growth Partners, LLC— a Delaware Limited Liability Company which is wholly owned by:
  - a. Caesars Holdings, Inc. – a Delaware corporation which is wholly owned by:
    - i. Caesars Entertainment, Inc., a publicly traded corporation.

Pisanelli Bice PLLC is the only law firm whose attorneys are expected to appear for Real Parties in Interest. Previously, attorneys from Kirkland and Ellis also appeared for Real Parties in Interest.

DATED this 13th 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*

## TABLE OF CONTENTS

RULE 26.1 DISCLOSURE .....	i
TABLE OF AUTHORITIES .....	vii
<b>I. Introduction.....</b>	<b>1</b>
<b>II. Counterstatement of Facts.....</b>	<b>2</b>
A. Caesars Enters into the Seibel Agreements Which Contain Express Suitability Disclosure Requirements and Obligations. ....	3
B. Caesars Terminates the Seibel Agreements, as Expressly Allowed Thereunder Following Discovery of Seibel's Felony Conviction. ....	9
C. Petitioners Fail to Assert Counterclaims in Response Caesars' Complaint. ....	9
D. The LLTQ/FERG Petitioners Fail to Show Good Cause to Amend Their Counterclaims After Expiration of the Deadline.....	11
E. Caesars Uncovers Additional Wrongdoing by Petitioners and Seibel in Discovery and Caesars Shows Good Cause to Amend its Complaint. ....	13
F. Without Seeking Leave of Court, Petitioners Improperly File Amended Counterclaims.....	15
<b>III. The REASONS WHY THE Writ Should Not Issue.....</b>	<b>18</b>
A. Writ Relief is Inappropriate Here.....	18
B. The Law is Clear that Good Cause is Required When Seeking to Amend Pleadings After the Deadline to do so Expires.....	21
C. Even if this Court Were to Adopt the Moderate Approach Outlined by Federal Case Law, the Relief Petitioners Seek is Unavailable.....	26

<b>IV. Conclusion .....</b>	<b>29</b>
CERTIFICATE OF COMPLIANCE.....	30

## TABLE OF AUTHORITIES

### Cases

<i>Archon Corp. v. Eighth Jud. Dist. Ct. in &amp; for Cty. of Clark</i> , 133 Nev. 816, 407 P.3d 702 (2017) .....	18
<i>Bibb Cty. Sch. Dist. v. Dallemand</i> , No. 5:16-CV-549 (MTT), 2019 WL 1519299, at *3 (M.D. Ga. Apr. 8, 2019) .....	26
<i>Bradford v. Eighth Jud. Dist. Ct.</i> , 129 Nev. 584, 308 P.3d 122 (2013) .....	18
<i>Connell v. Carl's Air Conditioning</i> , 97 Nev. 436, 634 P.2d 673 (1981) .....	21, 22
<i>Elite Ent., Inc. v. Khela Bros. Ent.</i> , 227 F.R.D. 444 (E.D. Va. 2005) .....	26
<i>Ex parte Fahey</i> , 332 U.S. 258 (1947) .....	18
<i>Johnson v. Mammoth Recreations, Inc.</i> , 975 F.2d 604 (9th Cir. 1992).....	23
<i>Kantor v. Kantor</i> , 116 Nev. 886, 8 P.3d 825 (2000) .....	20, 22
<i>MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.</i> , 134 Nev. 235, 416 P.3d 249 (2018).....	22
<i>Nutton v. Sunset Station, Inc.</i> , 131 Nev. 279, 357 P.3d 966 (Nev. App. 2015) .....	23
<i>Pan v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark</i> , 120 Nev. 222, 88 P.3d 840 (2004) .....	18
<i>Parker v. Columbia Pictures Indus.</i> , 204 F.3d 326 (2d Cir. 2000) .....	23
<i>Poly-Med, Inc. v. Novus Scientific Pte Ltd.</i> , 2017 WL 2874715, *2 (D.S.C. July 6, 2017) .....	26
<i>Poulos v. Eighth Judicial Dist. Court</i> , 98 Nev. 453, 652 P.2d 1177 (1982) .....	20
<i>Rawson v. Ninth Jud. Dist. Ct. in &amp; for Cty. of Douglas</i> , 133 Nev. 309, 396 P.3d 842 (2017).....	18
<i>Round Hill Gen. Imp. Dist. v. Newman</i> , 97 Nev. 601, 637 P.2d 534 (1981).....	20
<i>Stephens v. S. Nev. Music Co.</i> , 89 Nev. 104, 507 P.2d 138 (1973) .....	22



<i>Virginia Innovation Scis., Inc. v. Samsung Elecs. Co.</i> , 11 F. Supp. 3d 622 (E.D. Va. 2014) .....	27
---	----

<i>Walker v. Second Jud. Dist. Ct. in &amp; for Cty. of Washoe</i> , 136 Nev. Adv. Op. 80, 476 P.3d 1194 (2020) .....	19, 21
---	--------

<i>Washoe County v. City of Reno</i> , 77 Nev. 152, 360 P.2d 602 (1961).....	19
--	----

## **Statutes**

NRS § 463.0129(1)(c).....	4
---------------------------	---

## **Rules**

NRCP 1 .....	23
--------------	----

NRCP 15(a).....	21
-----------------	----

NRCP 15(a)(2) .....	22
---------------------	----

NRCP 16 .....	17, 22, 23
---------------	------------

## **I. INTRODUCTION**

The law does not reward dilatory behavior. Litigants and the courts are expected to usher cases to a timely resolution and the Nevada Rules of Civil Procedure exist to help navigate the litigation process and effectuate a prompt and speedy resolution of matters. Importantly, the Rules and orders of the court are not mere guidelines and litigants cannot disregard them at will or choose which ones they will follow and which ones they will ignore. Yet, here, Petitioners<sup>1</sup> ask this Court to do just that. Via their petition for extraordinary writ relief, Petitioners ask this Court to not only ignore the procedural history of the case, but to order the district court to ignore the mandates of Rule 16. Indeed, Petitioners even go as far as to ask this Court to substitute its judgment for that of the district court, who denied Petitioners' eleventh-hour efforts to expand the litigation with facts that were admittedly known to them since the inception of the case. Respectfully, the law does not countenance such a request. Here, the district court, in its sound discretion determined that Petitioners counterclaims were untimely and they should be stricken

---

<sup>1</sup> Moti Partners, LLC ("MOTI"), Moti Partners 16, LLC ("MOTI 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), and DNT Acquisition, LLC ("DNT"), appearing derivatively through one of its two members R Squared Global Solutions, LLC are collectively referred to herein as "Petitioners."

for failure to comply with both the rules and orders of the court. While they may be unhappy with the decision, the law does not dictate any other result.

First, a writ should not issue as Petitioners have a "plain, speedy, and adequate remedy" in the form of an appeal and Petitioners have not shown that an "advisory" mandamus is appropriate here. Second, the district court properly applied a Rule 16 good cause analysis when considering Caesars'<sup>2</sup> motion to strike and correctly determined – in light of Petitioners' previous failed efforts to amend – that Petitioners' purported amended counterclaims were inappropriate and should be stricken. Third, even under the moderate approach set forth in federal caselaw that Petitioners advocate, the law leads to the same result. Petitioners' efforts to greatly expand the litigation at the last minute, following the close of discovery and after nearly four years of litigation, impacts the litigation and thus precludes assertion of the amended counterclaims here. A writ petition should not issue.

## **II. COUNTERSTATEMENT OF FACTS**

Petitioners' recitation of the underlying facts leaves much to be desired. Caesars, therefore, provides a more complete and accurate recitation of the facts herein.

---

<sup>2</sup> Real Parties in Interest Desert Palace Inc. ("Caesars Palace"), Paris Las Vegas Operating Company, LLC ("Paris"), PHWLTV, LLC ("Planet Hollywood"), and Boardwalk Regency Corporation d/b/a Caesars Atlantic City ("CAC") are collectively referred to herein as "Caesars."

**A. Caesars Enters into the Seibel Agreements Which Contain Express Suitability Disclosure Requirements and Obligations.**

Beginning in 2009, Caesars entered into various contracts with Rowen Seibel ("Seibel") and entities he owned, managed, and continues to be affiliated with to develop certain restaurants at Caesars' properties in Las Vegas and Atlantic City. (1 PA 00131.) In total, between 2009 and 2014, Caesars entered into six agreements with Petitioners, including: (1) a Development, Operation, and License Agreement between Desert Palace, Inc. and MOTI Partners, LLC dated March 2009 (the "MOTI Agreement"); (2) a Development, Operation, and License Agreement among DNT Acquisition, LLC, The Original Homestead Restaurant, Inc., and Desert Palace, Inc. dated June 2011 (the "DNT Agreement"); (3) a Development and Operation Agreement between TPOV Enterprises, LLC and Paris Las Vegas Operating Company, LLC dated November 2011 (the "TPOV Agreement"); (4) a Development and Operation Agreement between LLTQ Enterprises, LLC and Desert Palace, Inc. dated April 2012 (the "LLTQ Agreement"); (5) a Development, Operation and License Agreement Among Gordon Ramsay, GR BURGR, LLC and PHW Manager, LLC on behalf of PHW Las Vegas, LLC d/b/a Planet Hollywood dated December 2012 (the "GRB Agreement"); and (6) a Consulting Agreement between FERG, LLC and Boardwalk Regency Corporation d/b/a Caesars Atlantic City dated May 2014 (the "FERG Agreement") (collectively, the "Seibel Agreements") (1 PA 00134-37.)

Caesars and its affiliates hold gaming licenses that subject them to rigorous regulations, including, but not limited to, an obligation to self-police to ensure that Caesars is not engaged in business with any individuals that would bring disrepute to the gaming industry.<sup>3</sup> (1 PA 00138.) In each and every agreement, Caesars made clear to Seibel and Petitioners that Caesars was a gaming licensee and, as result, certain suitability standards and disclosures would be required throughout the relationship. (1 PA 00131.) All of the Seibel Agreements made unequivocally clear that failure to abide by the suitability standards and disclosure obligations could lead to termination of the Seibel Agreements. (*See, e.g.*, 1 PA 00139.) For example, the DNT Agreement provided that:

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

---

<sup>3</sup> *See* NRS § 463.0129(1)(c).

do so. Any termination by Caesars pursuant to this [section] shall not be subject to dispute by the DNT Parties and shall not be the subject of any [arbitration proceeding].

(*Id.* at 00141.) For the avoidance of doubt, the DNT Agreement defined "Unsuitable Person" to include:

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

(*Id.* at 00141-42.) The TPOV Agreement, the GRB Agreement, the LLTQ Agreement, and the FERG Agreement all contained nearly identical provisions to those contained in the DNT Agreement, similarly allowing Caesars to terminate the agreement if it determined – in its sole and exclusive judgment – that any of the

entities, their associates, or their affiliates were unsuitable persons.<sup>4</sup> (*Id.* at 00143-152.)

At the outset of the relationship, Seibel, on behalf of MOTI completed a Business Information Form ("BIF"), which was the disclosure form Caesars used to collect the information necessary for suitability disclosures. (*Id.* at 00138.) In that BIF, Seibel disclosed, in pertinent part, that he had not been convicted of a felony and there was nothing that would prevent him from being licensed by a gaming authority. (*Id.*) Seibel also provided a BIF in connection with the DNT Agreement and once again represented he was not a convicted felon and there was nothing that would prevent him from being licensed by a gaming authority. (*Id.* at 00140.) While Caesars continued to request updated disclosures with each new agreement, it continued to rely on the prior disclosures made by Seibel as he was specifically identified as an associate under the respective agreements. (*Id.* at 00144, 00147, 00150, and 00152.) Unbeknownst to Caesars, Seibel and thus his affiliated entities, were unsuitable from the beginning of the relationship because he was engaged in years-long criminal behavior. (*Id.* at 00153-56.)

As Caesars would later learn, beginning in 2004, Seibel opened and became the beneficiary of a foreign bank account at Union Bank of Switzerland ("UBS").

---

<sup>4</sup> The MOTI Agreement contained similar suitability disclosure provisions. (*See, e.g.*, 1 PA 00137-38.)

(*Id.* at 00153.) The bank account was identified in internal records with the phrase "CQUE" and with a unique number (the "Numbered UBS Account"). (*Id.*) During this process, Seibel executed documents acknowledging he was United States citizen and subject to United States' tax obligations. (*Id.*) However, in exchange for an extra fee, Seibel directed UBS to retain all correspondence about the Numbered UBS Account and not mail the same to him in the United States. (*Id.*) Over the years, Seibel actively monitored the Numbered UBS and approved the selection and investment of the assets therein. (*Id.* at 00154.) As a result of Seibel's management, the account accumulated substantial income over the years. (*Id.*)

In 2008, Seibel became aware of press reports indicating that United States law enforcement officials had ramped up investigations of "UBS's role in helping United States citizens evade federal income taxes, by among other things, using undeclared foreign bank accounts at UBS." (*Id.*) Accordingly, Seibel travelled to Switzerland to close his Numbered UBS Account and move the funds to another foreign bank. (*Id.*) Thereafter for his tax return for years 2007 and 2008 failed to report that he had earned any dividends, interest, or other income from the Numbered UBS Account and he failed to report that he had an interest in or signatory authority over a foreign bank account. (*Id.* at 00155.)

Ironically, even after engaging in this criminal behavior, Seibel had the opportunity for a "get out of jail free card" in the form of the Internal Revenue



Service ("IRS") Voluntary Disclosure Program. (*Id.*) The program provided United States' taxpayers, not then under current investigation, to avoid criminal prosecution by disclosing their previously undeclared foreign bank accounts and paying taxes and penalties on the income generated from those accounts. (*Id.*) Seibel self-sabotaged this opportunity by submitting a false application to the Voluntary Disclosure Program. (*Id.* at 00155-56.) Thereafter, Seibel was investigated for his crimes and pleaded guilty to one count of corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212(a). (*Id.* at 00156.) Seibel pleaded guilty because, in his own words, he was guilty. (*Id.*) Approximately four months following his guilty plea, Seibel was sentenced to 30 days in prison, six months of home confinement, and 300 hours of community service. (*Id.*)

Despite the obligations of the Seibel Agreements, Seibel did not inform Caesars of any of this. (*Id.*) Instead, 10 days prior to pleading guilty to one count of corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws, Seibel wrote letters informing Caesars he intended to (1) transfer his ownership interests in the entities who were parties to the Seibel Agreements; (2) name other individuals as manager of those entities; (3) assign the Seibel Agreements from the original entities to new entities, and (4) delegate his duties under the Seibel Agreements to another individual. (*Id.*) Importantly, while a Letter

Agreement was executed to allow Seibel to assign the Seibel Agreements, such an assignment was not automatic as certain suitability standards had to be met. (*Id.* at 00160-61.)

**B. Caesars Terminates the Seibel Agreements, as Expressly Allowed Thereunder Following Discovery of Seibel's Felony Conviction.**

Despite the disclosure obligations contained in the Seibel Agreements, Seibel kept Caesars in the dark and did not disclose his crimes or felony conviction. (*Id.* at 00157.) Seibel's conduct rendered him an Unsuitable Person (*Id.*) Yet, Caesars only discovered Seibel's unsuitability when news of his felony conviction was released via public news reports. (*Id.*) Upon discovering Seibel's felony conviction, Caesars exercised its rights under the Seibel Agreements and terminated each of them. (*Id.* at 00157-60.) Seibel and Petitioners contested the termination and litigation is ongoing.<sup>5</sup> (*Id.* at 00160-64.)

**C. Petitioners Fail to Assert Counterclaims in Response Caesars' Complaint.**

Following service of Caesars' Complaint, Petitioners engaged in several maneuvers in an attempt to avoid participating in the district court action. (6 PA

---

<sup>5</sup> In addition to certain contested bankruptcy matters, TPOV 16 also commenced legal proceedings in the United States District Court for the District of Nevada related to the termination of the TPOV Agreement in February 2017. (1 PA 00161-64) The federal case involves similar claims to the ones Petitioners improperly attempted to assert at the eleventh hour in the underlying litigation here. (*Id.* at 00164.)

01262.) After those attempts failed, Petitioners continued to refuse to respond to Caesars' Complaint, and Caesars was forced to file notices of intent to take default before Seibel and Petitioners would respond. (1 Supp. App. 0001-27.) Once Petitioners finally responded, in July 2018, nearly a year after Caesars filed its Complaint, TPOV, TPOV 16, MOTI, and MOTI 16, filed answers only to the complaint. (2 PA 00242-59, 00260-78.) On the other hand, LLTQ, LLTQ 16, FERG, FERG 16, and DNT, derivatively by one of its two members R Squared Global Solutions, LLC, each filed answers and counterclaims in response to Caesars' complaint. (2 PA 00279-334.) DNT asserted two claims against Desert Palace for breach of contract and accounting relating to the continued operation of the Old Homestead restaurant. (2 PA 00298-99.) LLTQ, LLTQ 16, FERG, and FERG 16 also asserted claims for breach of contract and accounting against Desert Palace and CAC. (*Id.* at 00329-31.) The counterclaims asserted by FERG and FERG 16 related to the continued operation of the Gordon Ramsay Pub & Grill in Atlantic City (*id.* at 00330), while the counterclaims asserted by LLTQ and LLTQ 16 related to the continued operation of the Gordon Ramsay Pub in Las Vegas, the Gordon Ramsay Fish & Chips restaurant, and the Gordon Ramsay Steak restaurant in Baltimore. (*Id.*)

After Petitioners *finally* responded to Caesars' Complaint, the district court held a Rule 16 conference and set the discovery and case management schedule for the case. (2 PA 00402-07.) Importantly for the issue before this Court, the district

court set the deadline for motion to amend pleadings or add parties on February 4, 2019. (*Id.* at 00403.) Although the court made several changes to the case management schedule, the court did not modify the deadline to amend pleadings nor did the parties ever ask for any such modification. (*See, e.g.*, 2 PA 00469-74.) Moreover, at no point prior to February 4, 2019, did any of the Petitioners move to amend their answers or counterclaims. (*See* 3 PA 00594.)

**D. The LLTQ/FERG Petitioners Fail to Show Good Cause to Amend Their Counterclaims After Expiration of the Deadline.**

As discovery progressed, Petitioners served discovery and demanded production of certain records related to another restaurant, the Gordon Ramsay Steak restaurant in Atlantic City. (3 PA 00603-04.) Caesars objected to these requests as that restaurant was not at issue in the litigation and Petitioners did not make any allegations or assert any claims related to the same. (*Id.* at 00609-10.) Caesars made absolutely clear that it would not produce documents related to that restaurant and informed Petitioners that it would not produce documents responsive to those requests as they sought "information regarding a restaurant that is not relevant to any party's claims or defenses and thus, [were] not proportional to the needs of the case." (*Id.* at 00610.) Although these discussions were ongoing in the spring of 2019, and thus Petitioners were aware of the deficiencies in their counterclaims as then-pled, Petitioners made no move to amend their counterclaims until nearly eight months after the deadline to amend pleadings had expired. (3 PA 00475.)

On or about October 2, 2019, LLTQ, LLTQ 16, FERG, and FERG 16 moved to amend their counterclaims to add specific allegations regarding the Gordon Ramsay Steak restaurant in Atlantic City. (3 PA 00478-79.) As set forth by the Rules of Civil Procedure and established case law, the belated request required Petitioners to satisfy a higher burden and show good cause why the tardy amendment should be permitted. (*See id.*) Following thorough motion practice and argument by counsel, the district court determined that LLTQ, LLTQ 16, FERG, and FERG 16 had "not demonstrated that good cause exist[ed] to permit amendment of their counterclaim." (*Id.* at 000716.) The district court further held that ***LLTQ, LLTQ 16, FERG, and FERG 16 "were aware of the facts they sought to include in their amended counterclaim before the deadline to amend expired and they delayed seeking leave to amend their counterclaim."***<sup>6</sup> (*Id.* (emphasis added); *see also* 1 Supp. App. 0057-58.) After the Court denied their motion to amend, none of the Petitioners filed any other motions to amend their answers and/or counterclaims and LLTQ, LLTQ 16, FERG, and FERG 16 did not ask the district court to reconsider its ruling denying their motion to amend nor did they take any other steps to preserve their claims. (6 PA 01264.)

---

<sup>6</sup> In fact, LLTQ, LLTQ 16, FERG, and FERG 16 knew about the facts purporting to give rise to their amended counterclaims even before they filed their original counterclaim. (3 PA 00699.)

**E. Caesars Uncovers Additional Wrongdoing by Petitioners and Seibel in Discovery and Caesars Shows Good Cause to Amend its Complaint.**

As discovery further proceeded, despite Seibel and Petitioners' efforts to the contrary,<sup>7</sup> and while preparing for depositions, Caesars discovered certain documents – produced by Petitioners – which indicated that Seibel and others were engaged in a scheme to solicit, coerce, and obtain kickbacks from Caesars' vendors for product Caesars purchased. (4 PA 00734-737.) Following depositions to question the parties about the documents that gave rise to Caesars' suspicions, Caesars moved to amend its complaint to assert additional claims against Seibel, Petitioners, and Craig Green ("Green"), the purported manager of the entities. (*Id.* at 00725-41.) Seibel and Petitioners opposed Caesars' motion to amend arguing, in part, that Caesars' motion should be denied because LLTQ, LLTQ 16, FERG, and FERG 16's efforts to amend their counterclaims were rejected. (4 PA 00827.)

Conveniently omitted from Petitioners' Appendix is the transcript from the hearing on Caesars' Motion for Leave to File First Amended Complaint. That transcript shows that the district court addressed the "fairness" argument Petitioners

---

<sup>7</sup> At every opportunity, Seibel and Petitioners took active steps to delay the litigation and avoid participating in good faith in discovery. (*See, e.g.*, 4 PA 00732-34.) Indeed, Seibel and Petitioners did not even serve a meaningful production of documents until nearly two years after the litigation commenced. (*Id.* at 00733.)

purport to make before this Court. (1 Supp. App. 0076.) Specifically, while opposing Caesars' Motion to Amend, Petitioners argued that Caesars' motion should be denied because Petitioners' efforts were denied by the district court:

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

THE COURT: Why does that matter?

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

THE COURT: Well, I mean, I have to conduct a good cause analysis –

MR. BROOKS: Right.

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

(*Id.* (emphasis added).) The district court correctly noted that, Petitioners' argument that fairness dictated the same result as their failed attempt to amend was misplaced because the district court must look at each request to amend pleadings individually.

(*Id.*) In granting Caesars' motion to amend, the Court recognized that while leave to amend should be freely given when justice so requires, the deadline to amend pleadings had passed. (4 PA 00938.) Accordingly, Caesars – just like Petitioners – was required to show good cause why the amendment should be allowed. (*Id.*) Unlike Petitioners' earlier attempt, Caesars "met its burden and demonstrated that good cause exists to permit amendment of their complaint." (*Id.* at 00939.) Caesars

met that burden by showing that it uncovered the documents *during discovery* giving rise to the amended claims and the district court agreed that depositions "had to be taken in order to understand the documents." (*Id.*) As such, Caesars was permitted to file its First Amended Complaint even though the deadline to amend had expired. (*Id.* at PA 00934-41.)

Caesars' First Amended Complaint added five claims all related to the kickback scheme that Caesars uncovered in discovery. (5 PA 00983-86.) Specifically, Caesars asserted claims for (1) civil conspiracy against Seibel and Green; (2) breaches of the implied covenant of good faith and fair dealing against MOTI, DNT, TPOV, LLTQ, GR Burgr, LLC, and FERG; (3) unjust enrichment against Seibel and Green; (4) intentional interference with contractual relations against Seibel and Green; (5) fraudulent concealment against Seibel and Green. (*Id.*) Importantly, *Caesars did not make changes to the original claims it brought in August 2017 relating to Seibel's suitability issues and termination of the Seibel Agreements.* (See generally *id.*)

**F. Without Seeking Leave of Court, Petitioners Improperly File Amended Counterclaims.**

After unsuccessfully attempting to dismiss Caesars' new claims (*id.* at 01154—58.), Seibel, Petitioners, and Green filed an omnibus answer to Caesars' First Amended Complaint. (6 PA 01186-1236.) Together with their answer, *all* of the Petitioners filed counterclaims against Caesars. (*Id.*) Not only did LLTQ, LLTQ



16, FERG, and FERG 16 once again assert claims which they were specifically prohibited from asserting just months earlier, but for the first time MOTI, MOTI 16, TPOV, and TPOV 16 asserted counterclaims for the first time in the litigation. (*Id.* at 01233-34.) The counterclaims – for breach of contract and breach of the implied covenant of good faith and fair dealing – all related to Caesars' termination of the Seibel Agreements. (*Id.*) In other words, Petitioners purported to assert counterclaims at the eleventh hour of the litigation related to issues that had been the subject of the litigation since its inception; all related to facts they were aware of since before the litigation commenced in 2017.

Caesars was left with no choice but to move to strike and/or dismiss the newly asserted counterclaims. (6 PA 01258-70.) The district court granted Caesars' motion. (7 PA 01483-96) In ruling on Caesars' motion, the district court considered not only the Nevada Rules of Civil Procedure, but also the federal case law addressing this issue. (*Id.* at 01488-91.) The district court recognized that under federal law, there were generally three recognized approaches: the narrow, permissive, and moderate approaches. (*Id.* at 01489-90.) In opposition to Caesars' motion, Petitioners strongly advocated for the district court to apply either the permissive or moderate approach. (6 PA 01280-86.) However, after analyzing each approach, the district court determined they were inapplicable. (7 PA 01488-91.) With respect to the narrow approach, the district court concluded that "[t]he abrogation of FRCP 13(f) in 2009;

and consequently NRCP 13(f) in 2019 would supersede cases following the narrow approach." (7 PA 01489.)

On the permissive approach, the district court concluded it would contradict the mandate of NRCP 16 which this Court "implemented to ensure trial judges actively manage[] their cases in an orderly manner." (*Id.* at 01489-90.) Finally, for to the moderate approach, the district court concluded Petitioners amended counterclaims "would not be permitted because the breadth of the changes in their Amended Counterclaims do not reflect the breadth of the changes in Caesars' First Amended Complaint" as they relate to Caesars' termination of the Seibel Agreements. (*Id.* at 01490.) Importantly, the district court also noted that it had "already rejected the LLTQ/FERG Defendants' efforts to file similar amended counterclaims, finding that they failed to show good cause after the deadline to amend had expired." (*Id.*)

Ultimately the district court determined that NRCP 16 was applicable, and it would be guided by the Rule's mandate requiring "a showing of good cause to amend the pleadings after the time for doing so set forth in the court's scheduling order has expired." (*Id.*) The district court made clear that "Caesars' First Amended Complaint did not open the door for [Petitioners] to expand the scope of the litigation beyond its current parameters" and Petitioners amended counterclaims were "time-barred by

[the district court's] prior scheduling order and the previous denial of the LLTQ/FERG Defendants' Motion to Amend." (*Id.*)

### **III. THE REASONS WHY THE WRIT SHOULD NOT ISSUE**

#### **A. Writ Relief is Inappropriate Here**

Generally, "extraordinary writ relief will not issue in cases where the aggrieved party had 'a plain, speedy and adequate remedy in the ordinary course of law.'" *Rawson v. Ninth Jud. Dist. Ct. in & for Cty. of Douglas*, 133 Nev. 309, 316, 396 P.3d 842, 847 (2017). (quoting NRS 34.170; NRS 34.330; *see also* NRS 34.020). "This court has previously pointed out, on several occasions, that the right to appeal is generally an adequate legal remedy that precludes writ relief." *Pan v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004); *see also Rawson*, 133 Nev. at 316, 396 P.3d at 847 (citations omitted) ("We have long held that the right to an appeal is generally a plain, speedy, and adequate remedy that precludes writ relief."); *Bradford v. Eighth Jud. Dist. Ct.*, 129 Nev. 584, 586, 308 P.3d 122, 123 (2013) (citations omitted) ("Generally, the right to appeal is an adequate legal remedy that precludes consideration of a writ petition.")

Indeed, writ relief is exceedingly rare. *Archon Corp. v. Eighth Jud. Dist. Ct. in & for Cty. of Clark*, 133 Nev. 816, 819, 407 P.3d 702, 706 (2017) (emphasis added) (citing *Ex parte Fahey*, 332 U.S. 258, 260 (1947)) ("Nor should the

interlocutory petition for mandamus be a routine litigation practice; *mandamus is an extraordinary remedy, reserved for extraordinary causes.*")

Here, Petitioners concede, as they must, that an appeal is an available remedy for their alleged grievance. (Pet'rs' Br. 20:5-10.) Their complaint about this remedy is one of time, not one of irreparable harm. (*Id.*) Specifically, they complain that if they later prevail on appeal, they would have to go through a re-trial and, thus, it would be more "efficient" to have a trial now on their stricken counterclaims as well. (*Id.*) This argument is unavailing. This Court has stated that "[a] remedy does not fail to be speedy and adequate, because, by pursuing it through the ordinary course of law, more time probably would be consumed than in a mandamus proceeding." *Walker v. Second Jud. Dist. Ct. in & for Cty. of Washoe*, 136 Nev. Adv. Op. 80, 476 P.3d 1194, 1198 (2020) (quoting *Washoe County v. City of Reno*, 77 Nev. 152, 156, 360 P.2d 602, 603 (1961)).

"[T]his court has alternatively granted mandamus relief where a petitioner presented 'legal issues of statewide importance requiring clarification, and our decision ... promote[d] judicial economy and administration by assisting other jurists, parties, and lawyers.'" *Walker*, 476 P.3d at 1198 (quoting *MDC Rests., LLC v. Eighth Judicial Dist. Court*, 134 Nev. 315, 319, 419 P.3d 148, 152 (2018)). The exercise of such relief is limited, and it is insufficient to simply state that a "writ presents an important procedural question of statewide importance to all

practitioners and litigants." *Id.* at 1199. Indeed, "the orderly administration of justice by the lower courts of this state requires that [this Court] allow them the province of their authority." *Id.*

Otherwise, "if the duty of superintending and reviewing the action and proceedings of inferior courts were thrown upon appellate courts otherwise than by the regular course of appeal or writ of error, it would destroy the possibility of such administration—hindering fact-finding by the judicial body best poised to do so and unnecessarily limiting the records for this court's appellate review." *Id.* (internal quotations omitted). So-called, "'advisory' mandamus is appropriate only where it will clarify a 'substantial issue of public policy or precedential value.'" *Id.* (quoting *Poulos v. Eighth Judicial Dist. Court*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982)).

Here, the rules and case law are clear and it is only Petitioners who complain because they failed to diligently pursue their claims. The district court's rulings – both the good cause standard and the decision to allow amendment – are reviewed for abuse of discretion. *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603–04, 637 P.2d 534, 536 (1981) (internal citations omitted) ("Mandamus will not lie to control discretionary action . . . unless discretion is manifestly abused or is exercised arbitrarily or capriciously."); *see also Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000) (quoting *Connell v. Carl's Air Conditioning*, 97 Nev. 436, 439, 634

P.2d 673, 675 (1981) ("A motion for leave to amend pursuant to NRCP 15(a) is addressed to the sound discretion of the trial court, and its action in denying such a motion will not be held to be error in the absence of a showing of abuse of discretion.") Discretionary, fact-bound rulings based on well-settled law are generally inappropriate for writ proceedings. (*Walker*, 476 P.3d at 1199 (internal quotations omitted) ("[T]he orderly administration of justice by the lower courts of this state requires that we allow them the province of their authority. Indeed, if the duty of superintending and reviewing the action and proceedings of inferior courts were thrown upon appellate courts otherwise than by the regular course of appeal or writ of error, it would destroy the possibility of such administration—hindering fact-finding by the judicial body best poised to do so and unnecessarily limiting the records for this court's appellate review.")).) Litigants in Nevada are aware of their obligations to comply with scheduling orders and know that failure to do so has the potential to waive their ability to later assert certain claims. On its face, there is no basis to either consider, much less issue, the writ or the relief Petitioners seek here.

**B. The Law is Clear that Good Cause is Required When Seeking to Amend Pleadings After the Deadline to do so Expires.**

Nevada Rule of Civil Procedure 15 is unequivocal: after the opposing party responds to a pleading, "a party may amend its pleading **only** with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." NRCP 15(a); *see also* *MEI-GSR Holdings, LLC v. Peppermill*

*Casinos, Inc.*, 134 Nev. 235, 239, 416 P.3d 249, 254 (2018) (quoting *Kantor*, 116 Nev. at 891, 8 P.3d at 828) ("After a responsive pleading is filed, a party may amend his or her pleading 'only by leave of court or by written consent of the adverse party[.]'" ) Leave to amend is generally freely given "when justice so requires." NRCP 15(a)(2).

"Although the rule states that leave to amend shall be given when justice so requires, '[t]his does not ... mean that a trial judge may not, in a proper case, deny a motion to amend.'" *Kantor*, 116 Nev. at 886, 8 P.3d at 828 (quoting *Stephens v. S. Nev. Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973)). "Sufficient reasons to deny a motion to amend a pleading include . . . dilatory motives on the part of the movant." *Id.*, 8 P.3d at 828 (citing *Stephens*, 89 Nev. at 105–06, 507 P.2d at 139). Importantly, "[a] motion for leave to amend pursuant to NRCP 15(a) is addressed to the sound discretion of the trial court, and its action in denying such a motion will not be held to be error in the absence of a showing of abuse of discretion." *Id.*, 8 P.3d at 828 (quoting *Connell*, 97 Nev. at 439, 634 P.2d at 675).

The Nevada Rules of Civil Procedure further mandate that "***the court must***, after consulting with the attorneys for the parties and any unrepresented parties by a scheduling conference, case conference, telephone conference, or other suitable means, ***enter a scheduling order.***" NRCP 16(b)(1) (emphasis added). Among other things, "[t]he ***scheduling order must limit the time to join other parties, amend the***

*pleadings*, complete discovery, and file motions." NRCP 16(b)(3)(A) (emphasis added). After the scheduling order is entered, the rules make clear that the scheduling order may only "be modified by the court for good cause." NRCP 16(b)(4). "[T]he purpose of NRCP 16(b) is 'to offer a measure of certainty in pretrial proceedings, ensuring that at some point both the parties and the pleadings will be fixed.'" *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 285, 357 P.3d 966, 971 (Nev. App. 2015) (quoting *Parker v. Columbia Pictures Indus.*, 204 F.3d 326, 339–40 (2d Cir. 2000)). "Unlike Rule 15(a)'s liberal amendment policy which focuses on the bad faith of the party seeking to interpose an amendment and the prejudice to the opposing party, Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking the amendment." *Nutton*, 131 Nev. at 286, 357 P.3d at 971 (Nev. App. 2015) (quoting *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992)). These well-known rules foster the overarching concept that parties must be diligent in pursuing their actions. *See* NRCP 1 ("[The rules] should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.")

a. Petitioners Did Not and Have Not Shown Good Cause

Petitioners spend a great portion of their brief discussing fairness and arguing that they should have been allowed to amend simply because Caesars was allowed to amend their pleadings past the expiration of the deadline. (*See, e.g.*, Pet'rs' Br.



30:16-31:4.) This myopic framing of the issue ignores the rules and, importantly, the facts and history of the underlying litigation. This argument has no place in this debate because the right to amend pleadings was not afforded by the Court to Caesars at will. To the contrary, Caesars was required to bring its own motion to amend, meet its own good cause burden, and only then was it allowed to amend its complaint. The same opportunity was afforded to Petitioners. However, unlike Caesars, Petitioners failed to meet their burden. Simply because one party satisfies its burden does not mean the opposing party has met its burden or, as Petitioners request, that it should be relieved of its burden altogether. Indeed, if a party fails to meet its burden, as Petitioners did here, they should not be rewarded for that failure.

The district court did not unilaterally single out Petitioners' efforts to modify their counterclaims. To the contrary, Petitioners were afforded the opportunity – more than once – to show good cause why their counterclaims claims should be permitted since the deadline to amend pleadings had expired. They were unable to do so. LLTQ, LLTQ 16, FERG, and FERG 16 initially brought their unsuccessful motion to amend in October 2019. After they failed to show good cause, Petitioners tried to bypass the Court's rules and scheduling order by simply filing their amended counterclaims in response to Caesars First Amended Complaint. The district court then again conducted another good cause analysis in accordance with Rule 16 when

ruling upon Caesars' Motion to Strike. Petitioners failed to show good cause for the second time.

The amended counterclaims that Petitioners purported to assert all related to claims about the termination of the Seibel Agreements – issues at the heart of the litigation since 2017. Petitioners failed to assert these claims when responding to Caesars' original complaint in 2018 or at any point prior to the deadline to amend. Petitioners could have filed these claims in response to Caesars' original complaint. They did not. Petitioners could have amended their original counterclaims, without leave of court, before Caesars responded to their counterclaims. They did not. Petitioners could have brought a motion to amend their counterclaims before the deadline to amend expired in February 2019. They did not. Petitioners could have sought reconsideration or review of the district court's initial order denying their motion to amend in 2019. They did not. Petitioners could even have initiated another action to bring their purported claims when they were unable to do so in the underlying litigation here. They, once again, did not. Petitioners sat on their hands and failed to take any steps to preserve their counterclaims. Whether by choice or neglect, Petitioners must now live with the consequences of those decisions and cannot claim an amorphous "fairness" concept dictates a different result when they did nothing to preserve their claims despite ample opportunity to do so.

**C. Even if this Court Were to Adopt the Moderate Approach Outlined by Federal Case Law, the Relief Petitioners Seek is Unavailable**

Hoping to be excused of their undeniable failure to diligently pursue their claims, Petitioners ask this Court to disregard the mandates of Rule 16 and instead turn to federal case law interpreting Rule 15. Their arguments are unavailing. Even under the model set forth by federal case law, and as the district court already determined, Petitioners would not be permitted to assert their counterclaims.

Petitioners advocate for this Court to adopt the moderate approach. Under the moderate approach, "an amended response may be filed without leave only when the amended complaint changes the theory or scope of the case, and then, the breadth of the changes in the amended response must reflect the breadth of the changes in the amended complaint." *Elite Ent., Inc. v. Khela Bros. Ent.*, 227 F.R.D. 444, 446 (E.D. Va. 2005). The moderate approach, while predominant in the federal caselaw, nevertheless requires "that an amended response reflect the change in theory or scope of the amended complaint [and] is consistent with Rule 15's requirement that an amended pleading must 'plead in response' to the amended pleading." *Id.* at 446–47 (citations omitted); *see also Bibb Cty. Sch. Dist. v. Dallemand*, No. 5:16-CV-549 (MTT), 2019 WL 1519299, at \*3 (M.D. Ga. Apr. 8, 2019) (quoting *Poly-Med, Inc. v. Novus Scientific Pte Ltd.*, 2017 WL 2874715, \*2 (D.S.C. July 6, 2017) ("Under this [moderate] approach, a counterclaim may be filed without leave 'only when the amended complaint changes the theory or scope of the case,' and the breadth of the

changes in the counterclaim must 'reflect the breadth of the changes in the amended complaint.'")

Petitioners argue that, under the moderate approach, the breadth requirement is one of proportionality and that their amended counterclaims are thus not required to be tied to the changes in the amended complaint. (Pet'rs' Br. 28:6-15.) This argument, however, misses the mark. "[M]oderate courts attempt to discern whether the defendant's answer *affects the scope of the litigation in a manner commensurate with the amended complaint.*" *Virginia Innovation Scis., Inc. v. Samsung Elecs. Co.*, 11 F. Supp. 3d 622, 633 (E.D. Va. 2014) (citations omitted).

In its First Amended Complaint, Caesars asserted claims related solely to the kickback scheme that it uncovered in litigation. Although Caesars added five additional claims, they all relate to the discrete issue of Petitioners', Seibel's, and Green's improper solicitation, coercion, and receipt of kickbacks from Caesars' vendors. By contrast, Petitioners' amended counterclaims seek to add claims related to purported breaches of two additional contracts and add allegations of additional purported breaches of the contracts already at issue. Petitioners' counterclaims are unrelated to the kickback scheme.

Not only do Petitioners' late amendment expand the scope of the litigation beyond its current scope, but the amended counterclaims will also require new discovery related to the new breaches that Petitioners purport to insert into the

litigation. As the district court recognized, allowing Petitioners to assert these substantial amended counterclaims at this stage of the litigation will greatly impact the case. Discovery will have to be re-opened to allow Caesars to serve written discovery and depose Petitioners. Recall, MOTI, MOTI 16, TPOV, and TPOV 16 previously did not assert any counterclaims in the underlying litigation. If they are now permitted – after nearly four years of litigation – to assert counterclaims for the first time, justice would require that Caesars be permitted to conduct discovery on those claims.

Moreover, the newly asserted counterclaims purportedly brought on behalf of LLTQ, LLTQ 16, FERG, FERG 16, and DNT – which were already rejected by the district court – would similarly require additional discovery. This monumental task after the discovery cutoff, and just months before trial, would make a mockery of the district court's scheduling and prejudice Caesars. The parties have already filed dispositive motions which are set to be decided later this month. Thus, even under the moderate approach, permitting Petitioners to file their Amended Counterclaims would not only greatly impact the case, it would disrupt it entirely.

#### IV. CONCLUSION

For the foregoing reasons, Caesars respectfully requests that the Court either decline to consider or deny Petitioners' Petition for Extraordinary Writ Relief.

DATED this 13th 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 COMPLIANCE**

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Office Word 2016 in size 14 font in double-spaced Times New Roman.

I further certify that I have read this brief and that it complies with the page or type-volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and 6,999 words.

Finally, I hereby certify that, to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires that every assertion in this brief regarding matters in the record to be supported by appropriate references to the record on

///

appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 13th 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 13th day of April 2021, I electronically filed and served a true and correct copy of the above and foregoing **ANSWER TO PETITION FOR EXTRAORDINARY WRIT RELIEF** 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.  
BAILEY KENNEDY  
8984 Spanish Ridge Avenue  
Las Vegas, NV 89148-1302  
[JBailey@BaileyKennedy.com](mailto:JBailey@BaileyKennedy.com)  
[DKennedy@BaileyKennedy.com](mailto:DKennedy@BaileyKennedy.com)  
[JGilmore@BaileyKennedy.com](mailto:JGilmore@BaileyKennedy.com)  
[PWilliams@BaileyKennedy.com](mailto:PWilliams@BaileyKennedy.com)  
[SGlantz@BaileyKennedy.com](mailto:SGlantz@BaileyKennedy.com)

*Attorneys for Petitioners*

**VIA EMAIL**  
John D. Tennert, Esq.  
Wade Beavers, Esq.  
FENNEMORE CRAIG, P.C.  
7800 Rancharrah Parkway  
Reno, NV 89511  
[jtennert@fclaw.com](mailto:jtennert@fclaw.com)  
[wbeavers@fclaw.com](mailto:wbeavers@fclaw.com)

*Attorneys for Gordon Ramsay*

**VIA EMAIL**  
Alan Lebensfeld, Esq.  
LEBENSFELD SHARON &  
SCHWARTZ, P.C.  
140 Broad Street  
Red Bank, NJ 07701  
[alan.lebensfeld@lsandspc.com](mailto:alan.lebensfeld@lsandspc.com)

Mark J. Connot, Esq.  
Kevin M. Sutehall, Esq.  
FOX ROTHSCHILD LLP  
1980 Festival Plaza Drive, #700  
Las Vegas, NV 89135  
[mconnot@foxrothschild.com](mailto:mconnot@foxrothschild.com)  
[ksutehall@foxrothschild.com](mailto:ksutehall@foxrothschild.com)

*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](mailto:Dept16lc@clarkcountycourts.us)  
[Dept16ea@clarkcountycourt.us](mailto:Dept16ea@clarkcountycourt.us)

*Respondent*

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