

CASE NO.

IN THE SUPREME COURT OF NEVADA

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ROWEN SEIBEL; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; R SQUARED GLOBAL SOLUTIONS, LLC, DERIVATIVELY ON BEHALF OF DNT ACQUISITION LLC; GR BURGR, LLC; AND CRAIG GREEN

Petitioners,

vs.

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

Respondents,

-and-

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

Real Parties in Interest.

District Court Case No. A-17-751759-B, consolidated with A-17-760537-B

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

VOLUME 5 OF 17

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**PETITIONERS' APPENDIX TO PETITION FOR EXTRAORDINARY
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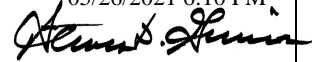
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The Development Entities, Rowen Seibel, and Craig Green’s Motion to Stay Compliance with the Court’s June 8, 2021 Order Pending Petition for Extraordinary Writ Relief on Order Shortening Time, filed June 10, 2021	5	77	PA001007 - PA001040
The Development Entities, Rowen Seibel, and Craig Green’s Motion to Compel the Return, Destruction, or Sequestering of the Court’s August 19, 2021 Minute Order Containing Privileged Attorney-Client Communications, filed August 30, 2021	5	83	PA001103 - PA001118
The Development Parties’ Notice of Submission of Competing Order Concerning Supplemental Findings of Fact, Conclusions of Law, and Order Granting Caesars’ Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime Fraud Exception, filed on October 28, 2021	6	91	PA001299 - PA001319
Verified Complaint and Demand for Jury Trial, filed February 28, 2017	1	1	PA000001 - PA000036

TAB 73


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ORDR (CIV)

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

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

Defendants,

And

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED CLAIMS.

Case No. A-17-751759-B

Dept. No. XVI

Consolidated with A-17-760537-B

**OMNIBUS ORDER GRANTING THE
DEVELOPMENT ENTITIES, ROWEN SEIBEL,
AND CRAIG GREEN'S MOTIONS TO SEAL AND
REDACT**

This Order addresses the following matters:

- The Development Entities¹ and Rowen Seibel's ("Seibel") Motion to Seal Certain Exhibits to Opposition to Caesars' Motion for Leave to File First Amended Complaint, filed on December 23, 2019, which came before the Court, Department XVI (the Honorable Timothy C. Williams presiding), on February 12, 2020, at 9:00 a.m., for hearing;
- The Development Entities, Seibel, and Craig Green's ("Green") Motion to Redact Their Motion: (1) For Leave to Take Caesars' NRCP 30(b)(6) Depositions; and (2) To Compel Responses to Written Discovery; and to Seal Exhibits 49 Through 57 to the Appendix of Exhibits Related Thereto, filed on November 20, 2020, which came before the Court, Department XVI (the Honorable Timothy C. Williams presiding), on January 6, 2021, at 9:00 a.m., for hearing;
- The Development Entities, Seibel, and Craig Green's ("Green") Motion to Seal Volume 5 of the Appendix to Their Reply in Support of Motion: (1) for Leave to Take Caesars' NRCP 30(b)(6) Depositions; and (2) to Compel Responses to Written Discovery, filed on December 7, 2020, which came before the Court, Department XVI (the Honorable Timothy C. Williams presiding), on January 6, 2021, at 9:00 a.m., for hearing;
- The Development Entities, Seibel, and Green's Motion to Redact Their Opposition to Caesars' Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception; and to Seal Exhibits 2-20, 22-23, 26-36, 38-60, 62-69, and 71 to the Appendix of Exhibits Related Thereto, filed on January 22, 2021, which came before the Court, Department XVI (the Honorable Timothy C. Williams presiding), on February 24, 2021, at 9:00 a.m., for hearing; and
- The Development Entities, Seibel, and Green's Motion to Seal Exhibits 2-3 and 5-6 to Their Motion to Compel "Confidential" Designation of Caesars' Financial Documents, which came before the Court, Department XVI (the Honorable Timothy C. Williams presiding), on

¹ Moti Partners, LLC ("Moti"); Moti Partners 16, LLC ("Moti 16"); LLTQ Enterprises, LLC ("LLTQ"); LLTQ Enterprises 16, LLC ("LLTQ 16"); TPOV Enterprises, LLC ("TPOV"); TPOV Enterprises 16, LLC ("TPOV 16"); FERG, LLC ("FERG"); FERG 16, LLC ("FERG 16"); and R Squared Global Solutions, LLC ("R Squared"), derivatively on behalf of DNT Acquisition LLC ("DNT"), are collectively referred to as the "Development Entities."

1 April 9, 2021, in chambers, for hearing (collectively, the “Motions to Seal”).

2 **FINDINGS**

3 Upon review of the papers and pleadings on file in this matter, as proper service has been
4 provided, this Court notes no oppositions were filed to any of the Motions to Seal. Accordingly,
5 pursuant to EDCR 2.20(e), the Motions to Seal are deemed unopposed. In accordance with Part VII
6 of the Nevada Supreme Court Rules Governing Sealing and Redacting Court Records (SRCR), the
7 Court finds that the information sought to be sealed and/or redacted as set forth in the Motions to
8 Seal has been marked Confidential or Highly Confidential under the Stipulated Confidentiality
9 Agreement and Protective Order, entered on March 12, 2019, contains commercially sensitive
10 information, and that the parties’ privacy interests in maintaining the confidential nature of such
11 information outweighs the public interest in access to the court record. SRCR 3(4)(h).

12 **ORDER**

13 Based on the foregoing Findings, and good cause appearing,

14 **IT IS HEREBY ORDERED** that the Development Entities and Rowen Seibel’s Motion to
15 Seal Certain Exhibits to Opposition to Caesars’ Motion for Leave to File First Amended Complaint
16 shall be, and hereby is, GRANTED.

17 **IT IS HEREBY FURTHER ORDERED** that the Development Entities, Rowen Seibel, and
18 Craig Green’s Motion to Redact Their Motion: (1) For Leave to Take Caesars’ NRCP 30(b)(6)
19 Depositions; and (2) To Compel Responses to Written Discovery; and to Seal Exhibits 49 Through
20 57 to the Appendix of Exhibits Related Thereto shall be, and hereby is, GRANTED.

21 **IT IS HEREBY FURTHER ORDERED** that the Development Entities, Rowen Seibel, and
22 Craig Green’s Motion to Seal Volume 5 of their Appendix to Their Reply in Support of Motion: (1)
23 For Leave to Take Caesars’ NRCP 30(b)(6) Depositions; and (2) To Compel Responses to Written
24 Discovery shall be, and hereby is, GRANTED.

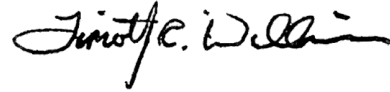
25 **IT IS HEREBY FURTHER ORDERED** that the Development Entities, Rowen Seibel, and
26 Craig Green’s Motion to Redact Their Opposition to Caesars’ Motion to Compel Documents
27 Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception; and to
28

Seal Exhibits 2-20, 22-23, 26-36, 38-60, 62-69, and 71 to the Appendix of Exhibits Related Thereto shall be, and hereby is, GRANTED.

IT IS HEREBY FURTHER ORDERED that the Development Entities, Rowen Seibel, and Craig Green's Motion to Seal Exhibits 2-3 And 5-6 to Their Motion to Compel "Confidential" Designation of Caesars' Financial Documents shall be, and hereby is, GRANTED.

IT IS SO ORDERED.

Dated this 26th day of May, 2021



ZJ

788 4D6 B0A0 08CA
Timothy C. Williams
District Court Judge

Respectfully Submitted By:

Approved as to Form and Content:

BAILEY ♦ KENNEDY

PISANELLI BICE PLLC

By: /s/ Stephanie J. Glantz

By: /s/ M. Magali Mercera

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

JAMES J. PISANELLI (#4027)
DEBRA L. SPINELLI (#9695)
M. MAGALI MERCERA (#11742)
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

*Attorneys for the Development Entities,
Seibel, and Green*

Attorneys for Caesars

Approved as to Form and Content:

Approved as to Form and Content:

LEBENSFELD SHARON & SCHWARTZ, P.C.

FENNEMORE CRAIG, P.C.

By: /s/ Alan M. Lebensfeld

By: /s/ John D. Tennert

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Attorneys for OHR

Attorneys for Ramsay

Susan Russo

From: Magali Mercera <mmm@pisanellibice.com>
Sent: Thursday, May 20, 2021 4:38 PM
To: Stephanie Glantz; James Pisanelli; Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Cinda C. Towne; Diana Barton; 'alan.lebensfeld@lsandspc.com'; Connot, Mark J.; Tennert, John
Cc: Joshua Gilmore; Paul Williams; Susan Russo
Subject: RE: Seibel adv. Caesars
Attachments: Omnibus Sealing Order 5-18 - PB edits.docx

Stephanie –

Attached please find our minor edits. You may apply my e-signature to this version.

Thanks,

M. Magali Mercera

PISANELLI BICE, PLLC

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mmm@pisanellibice.com | www.pisanellibice.com



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Cc: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>
Subject: Seibel adv. Caesars

All,

Attached is a proposed Omnibus Order Granting Motions to Seal/Redact. Specifically, it encompasses the following:

- The Development Entities and Rowen Seibel's ("Seibel") Motion to Seal Certain Exhibits to Opposition to Caesars' Motion for Leave to File First Amended Complaint, which came before the Court on February 12, 2020;
- The Development Entities, Seibel, and Craig Green's ("Green") Motion to Redact Their Motion: (1) For Leave to Take Caesars' NRCP 30(b)(6) Depositions; and (2) To Compel Responses to Written Discovery; and to Seal Exhibits 49 Through 57 to the Appendix of Exhibits Related Thereto, which came before the Court on January 6, 2021;

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- The Development Entities, Seibel, and Green's Motion to Seal Exhibits 2-3 and 5-6 to Their Motion to Compel "Confidential" Designation of Caesars' Financial Documents, which came before the Court on April 9, 2021.

Please let me know if I may apply your e-signature.

Thanks,
Stephanie

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(702) 562-8821 (Fax)
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Susan Russo

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Cc: Joshua Gilmore; Paul Williams; Susan Russo
Subject: RE: Seibel adv. Caesars

Ditto

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To: Stephanie Glantz; Magali Mercera; James Pisanelli; Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Cinda C. Towne; Diana Barton; Alan Lebensfeld; Connot, Mark J.
Cc: Joshua Gilmore; Paul Williams; Susan Russo
Subject: RE: Seibel adv. Caesars

Stephanie,
You may apply my e-signature.
Thanks,
John

John D. Tennert III, Director

FENNEMORE.

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Cc: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Susan Russo

<SRusso@baileykennedy.com>

Subject: RE: Seibel adv. Caesars

All,

Attached is a clean version with Magali's changes incorporated.

John and Alan, please confirm that I may affix your e-signatures to this version.

Thanks,
Stephanie

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Cc: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>

Subject: RE: Seibel adv. Caesars

Stephanie –

Attached please find our minor edits. You may apply my e-signature to this version.

Thanks,

M. Magali Mercera
PISANELLI BICE, PLLC
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Cc: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>

Subject: Seibel adv. Caesars

All,

Attached is a proposed Omnibus Order Granting Motions to Seal/Redact. Specifically, it encompasses the following:

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- The Development Entities, Seibel, and Green's Motion to Seal Exhibits 2-3 and 5-6 to Their Motion to Compel "Confidential" Designation of Caesars' Financial Documents, which came before the Court on April 9, 2021.

Please let me know if I may apply your e-signature.

Thanks,
Stephanie

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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Rowen Seibel, Plaintiff(s)

CASE NO: A-17-751759-B

7 vs.

DEPT. NO. Department 16

8 PHWLTV LLC, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

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23 Lisa Anne Heller .

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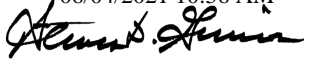
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TAB 74


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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**ORDER GRANTING MOTION TO
REDACT CAESARS' REPLY IN
SUPPORT OF MOTION TO COMPEL
RESPONSES TO REQUESTS FOR
PRODUCTION OF DOCUMENTS AND
OPPOSITION TO COUNTERMOTION
FOR A PROTECTIVE ORDER AND
EXHIBIT 20 AND SEAL EXHIBIT 23
THERE TO**

AND ALL RELATED MATTERS

PHWLV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las
Vegas Operating Company, LLC ("Paris"), Boardwalk Regency Corporation d/b/a Caesars Atlantic
City's ("CAC," and collectively, with Caesars Palace, Paris, and Planet Hollywood, "Caesars,")
*Motion to Redact Caesars' Reply in Support of Motion to Compel Responses to Requests for
Production of Documents and Opposition to Countermotion for a Protective Order and Exhibit 20*

PISANELLIBICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

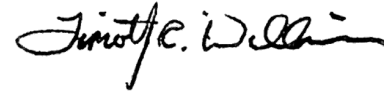
1 *and Seal Exhibit 23 Thereto* (the "Motion to Seal"), filed on July 8, 2020, came before this Court
2 for hearing in Chambers on August 4, 2020.

3 Upon review of the papers and pleadings on file in this matter, as proper service of the
4 Motion to Seal has been provided, this Court notes no opposition has been filed. Accordingly,
5 pursuant to EDCR 2.20(e), the Motion to Seal is deemed unopposed. The Court finds that Exhibits
6 20 and 23 to Caesars' Reply in Support of Motion to Compel Responses to Requests for Production
7 of Documents and Opposition to Countermotion for a Protective Order contain commercially
8 sensitive information creating a compelling interest in protecting the information from widespread
9 dissemination to the public which outweighs the public disclosure of said information in accordance
10 with Rule 3(4) of the Nevada Supreme Court's Rules Governing Sealing and Redacting of Court
11 Records. Therefore, good cause appearing therefor:

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

14 IT IS SO ORDERED.

Dated this 4th day of June, 2021



26B 357 4375 1A4D
Timothy C. Williams
District Court Judge

NS

17 Respectfully submitted by:

Approved as to form and content by:

18 DATED May 18, 2021

DATED May 17, 2021

19 PISANELLI BICE PLLC

BAILEY ♦ KENNEDY

20 By: /s/ M. Magali Mercera
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22 Debra L. Spinelli, Esq., Bar No. 9695
23 M. Magali Mercera, Esq., Bar No. 11742
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By: /s/ Paul C. Williams
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Dennis L. Kennedy, Esq., Bar No. 1462
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25 *Paris Las Vegas Operating*
26 *Company, LLC; PHWLTV, LLC; and*
Boardwalk Regency
Corporation d/b/a Caesars Atlantic City

Attorneys for Rowen Seibel, Craig Green
Moti Partners, LLC, Moti Partner 16, LLC,
LLTQ Enterprises, LLC,
LLTQ Enterprises 16, LLC,
TPOV Enterprises, LLC,
TPOV Enterprises 16, LLC, FERG, LLC,
FERG 16, LLC; R Squared Global Solutions,

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*LLC, Derivatively on Behalf of DNT
Acquisition, LLC, and GR BurGR, LLC*

Approved as to form and content by:

Approved as to form and content by:

DATED May 18, 2021

DATED May 17, 2021

LEBENSFELD SHARON & SCHWARTZ P.C.

FENNEMORE CRAIG, P.C.

By: /s/ Alan M. Lebensfeld
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By: /s/ John D. Tennert
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Attorneys for Gordon Ramsay

*Attorneys for The Original Homestead
Restaurant, Inc*

Cinda C. Towne

From: Paul Williams <PWilliams@baileykennedy.com>
Sent: Monday, May 17, 2021 2:14 PM
To: Magali Mercera
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Tennert, John; Cinda C. Towne; Joshua Gilmore; Stephanie Glantz; Alan Lebensfeld; Connot, Mark J.; Diana Barton
Subject: RE: Desert Palace v. Seibel: Order Granting MTSR Reply ISO Motion to Compel [FC-Email.FID7746767]

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Hi Magali,

You may apply my e-signature.

Thank you,

Paul C. Williams
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Las Vegas, Nevada 89148-1302
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To: Magali Mercera <mmm@pisanellibice.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Connot, Mark J. <MConnot@foxrothschild.com>
Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Robert A. Ryan <RR@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Diana Barton <DB@pisanellibice.com>
Subject: RE: Desert Palace v. Seibel: Order Granting MTSR Reply ISO Motion to Compel [FC-Email.FID7746767]

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Thanks,

John D. Tennert III, Director

Cinda C. Towne

From: Tennert, John <jtennert@fennemorelaw.com>
Sent: Monday, May 17, 2021 2:07 PM
To: Magali Mercera; Joshua Gilmore; Paul Williams; Stephanie Glantz; Alan Lebensfeld; Connot, Mark J.
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Cinda C. Towne; Diana Barton
Subject: RE: Desert Palace v. Seibel: Order Granting MTSR Reply ISO Motion to Compel [FC-Email.FID7746767]

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Thanks,

John D. Tennert III, Director

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From: Magali Mercera <mmm@pisanellibice.com>
Sent: Monday, May 17, 2021 10:35 AM
To: Tennert, John <jtennert@fennemorelaw.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Connot, Mark J. <MConnot@foxrothschild.com>
Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Robert A. Ryan <RR@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Diana Barton <DB@pisanellibice.com>
Subject: Desert Palace v. Seibel: Order Granting MTSR Reply ISO Motion to Compel

All -

Attached please find the proposed order granting the Motion to Redact Caesars' Reply in Support of Motion to Compel Responses to Requests for Production of Documents and Opposition to Countermotion for a Protective Order and Exhibit 20 and Seal Exhibit 23 Thereto, which was originally filed on July 8, 2020 and granted via minute order on August 4, 2020.

Cinda C. Towne

From: Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Sent: Tuesday, May 18, 2021 10:32 AM
To: Magali Mercera; Paul Williams; Connot, Mark J.; Joshua Gilmore; Stephanie Glantz; Tennert, John
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Cinda C. Towne; Diana Barton
Subject: RE: Desert Palace v. Seibel: Order Granting MTSR Reply ISO Motion to Compel [FC-Email.FID7746767]

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From: Magali Mercera [mailto:mmm@pisanellibice.com]
Sent: Tuesday, May 18, 2021 1:10 PM
To: Paul Williams; Alan Lebensfeld; Connot, Mark J.; Joshua Gilmore; Stephanie Glantz; Tennert, John
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Cinda C. Towne; Diana Barton
Subject: RE: Desert Palace v. Seibel: Order Granting MTSR Reply ISO Motion to Compel [FC-Email.FID7746767]

Thank you, John and Paul.

Alan – Did you have any changes to this draft order? If not, please confirm that we may apply your e-signature.

Thanks,

M. Magali Mercera
PISANELLI BICE, PLLC
Telephone: (702) 214-2100
mmm@pisanellibice.com | www.pisanellibice.com



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From: Paul Williams <PWilliams@baileykennedy.com>
Sent: Monday, May 17, 2021 2:14 PM
To: Magali Mercera <mmm@pisanellibice.com>
Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Robert A. Ryan <RR@pisanellibice.com>; Tennert, John <jtennert@fennemorelaw.com>; Cinda C. Towne <cct@pisanellibice.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Connot, Mark J. <MConnot@foxrothschild.com>; Diana Barton <DB@pisanellibice.com>
Subject: RE: Desert Palace v. Seibel: Order Granting MTSR Reply ISO Motion to Compel [FC-Email.FID7746767]

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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Rowen Seibel, Plaintiff(s)

CASE NO: A-17-751759-B

7 vs.

DEPT. NO. Department 16

8 PHWLTV LLC, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order Granting Motion was served via the court's electronic eFile
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 6/4/2021

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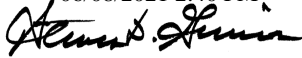
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TAB 75


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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
CAESARS' MOTION TO COMPEL
DOCUMENTS WITHHELD ON THE
BASIS OF ATTORNEY-CLIENT
PRIVILEGE PURSUANT TO THE
CRIME-FRAUD EXCEPTION**

Date of Hearing: February 10, 2021

Time of Hearing: 9:00 a.m.

AND ALL RELATED MATTERS

PHWLTV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las
Vegas Operating Company, LLC ("Paris"), and Boardwalk Regency Corporation d/b/a Caesars
Atlantic City's ("CAC," and collectively, with Caesars Palace, Paris, and Planet Hollywood,
"Caesars,") *Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege*

PISANELLIBICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

Pursuant to the Crime-Fraud Exception (the "Motion to Compel"), filed on January 6, 2021, came before this Court for hearing on February 10, 2021, at 9:00 a.m. James J. Pisanelli, Esq., M. Magali Mercera, Esq., and Brittanie T. Watkins, Esq. of the law firm PISANELLI BICE PLLC, appeared telephonically on behalf of Caesars. Joshua P. Gilmore, Esq., and Paul C. Williams, Esq. of the law firm BAILEY KENNEDY, appeared telephonically on behalf of TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), and DNT Acquisition, LLC ("DNT"), appearing derivatively by and through R Squared Global Solutions, LLC ("R Squared"), (collectively the "Seibel-Affiliated Entities"), Rowen Seibel ("Seibel"), and Craig Green ("Green").¹ John Tennert, Esq., of the law firm FENNEMORE CRAIG, appeared telephonically on behalf of Gordon Ramsay ("Ramsay").

The Court having considered the Motion to Compel, the opposition thereto, as well as argument of counsel presented at the hearing, and good cause appearing therefor, enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. THE COURT FINDS THAT, Caesars and MOTI, TPOV, DNT, GR Burgr, LLC, LLTQ, and FERG entered into a series of agreements governing the development, creation, and operation of various restaurants in Las Vegas and Atlantic City beginning in 2009 (the "Seibel Agreements");

2. THE COURT FURTHER FINDS THAT, Caesars is a gaming licensee and each of the Seibel Agreements contained representations, warranties, and conditions to ensure that Caesars was not involved in a business relationship with an unsuitable individual and/or entity;

3. THE COURT FURTHER FINDS THAT, Seibel began using foreign bank accounts to defraud the IRS in 2004;

¹ Seibel, Green, and the Seibel-Affiliated Entities are collectively referred to herein as the "Seibel Parties."

1 4. THE COURT FURTHER FINDS THAT, in 2016, after years of investigations,
2 numerous tolling agreements, and plea negotiations with the U.S. Government, Seibel pleaded
3 guilty to one count of corrupt endeavor to obstruct and impede the due administration of the Internal
4 Revenue Laws, 26 U.S.C. § 7212, a Class E Felony;

5 5. THE COURT FURTHER FINDS THAT, Seibel did not inform Caesars that he was
6 engaging in criminal activity, being investigated for it, or that he pled guilty to one count of corrupt
7 endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. §
8 7212, a Class E Felony;

9 6. THE COURT FURTHER FINDS THAT, Caesars found out through news reports
10 that Seibel pleaded guilty to a felony and thereafter, Caesars terminated the agreements – as it was
11 expressly allowed to do – due to Seibel's unsuitability and failure to disclose;

12 7. THE COURT FURTHER FINDS THAT, before Caesars learned of Seibel's
13 criminal conduct and in an effort to conceal his criminal conviction while still reaping the benefits
14 of his relationship with Caesars – ten days before entering his guilty plea – Seibel informed Caesars
15 that he was, among other things, (i) transferring all of the membership interests under certain Seibel-
16 Affiliated Entities that he held, directly or indirectly, to two individuals in their capacities as trustees
17 of a trust that he had created (the "Seibel Family 2016 Trust"); (ii) naming other individuals as the
18 managers of these entities; and (iii) assigning the Seibel Agreements to new entities;

19 8. THE COURT FURTHER FINDS THAT, Seibel did not disclose that he decided to
20 perform these purported assignments, transfers, and delegations because of his impending felony
21 conviction;

22 9. THE COURT FURTHER FINDS THAT, these purported transfers were made
23 specifically to avoid, undermine, and circumvent Caesars' rights to terminate the Seibel
24 Agreements;

25 10. THE COURT FURTHER FINDS THAT in this litigation, Seibel has alleged that
26 his unsuitability "is immaterial and irrelevant because, *inter alia*, he assigned his interests, if any,
27 in Defendants or the contracts;"

28

1 11. THE COURT FURTHER FINDS THAT, Seibel's long-time counsel, Brian Ziegler
2 ("Ziegler"), represented to Caesars that "great care was taken to ensure that the trust would never
3 have an unpermitted association with an Unsuitable Person and, as you can see, the trust is to be
4 guided by your . . . determination;"

5 12. THE COURT FURTHER FINDS THAT, Seibel always intended to receive
6 benefits/distributions from the Seibel Family 2016 Trust and Seibel took steps – with the assistance
7 of his attorneys – to be able to do so;

8 13. THE COURT FURTHER FINDS THAT, shortly before Seibel pleaded guilty, he
9 undertook a complex scheme that involved (1) creating new entities to which he was purportedly
10 assigning the interests in certain Seibel-Affiliated Entities; (2) creating the Seibel Family 2016 Trust
11 to receive the income from said entities; and (3) entering into a prenuptial agreement with his soon
12 to be wife Bryn Dorfman ("Dorfman") to, in part, continue benefitting from the Seibel Agreements;

13 14. THE COURT FURTHER FINDS THAT, Seibel worked with his attorneys and
14 Green to create new entities to which he would purportedly assign the Seibel Agreements;

15 15. THE COURT FURTHER FINDS THAT, after the new entities were created, Seibel
16 sent letters to Caesars purporting to assign the Seibel Agreements. In each of those letters, Seibel
17 told Caesars that the agreement would be assigned to a new entity whose membership interests were
18 ultimately mostly owned by the Seibel Family 2016 Trust. For some of the entities, approximately
19 less than 1% of the membership interest were held by Green, Ziegler, and Ziegler's children;

20 16. THE COURT FURTHER FINDS THAT, Seibel falsely told Caesars that the sole
21 beneficiaries of the Seibel Family 2016 Trust were Netty Wachtel Slushny, Dorfman, and potential
22 descendants of Seibel;

23 17. THE COURT FURTHER FINDS THAT, Seibel falsely represented that, "[o]ther
24 than the parties described in th[e] letter[s], there [were] no other parties that have any management
25 rights, powers or responsibilities regarding, or equity or financial interests in" the new entities;

26 18. THE COURT FURTHER FINDS THAT, these representations were all false and
27 were made with the intent to deceive Caesars;

28

1 importance of fully informed advocacy in the administration of justice." *Canarelli v. Eighth*
2 *Judicial Dist. Ct.*, 464 P.3d 114, 119 (2020) (quoting *Wynn Resorts, Ltd. v. Eighth Judicial Dist.*
3 *Ct.*, 133 Nev. 369, 374, 399 P.3d 334, 341 (2017)). "The party asserting the privilege has the burden
4 to prove that the material is in fact privileged." *Id.* at 120 (citing *Ralls v. United States*, 52 F.3d 223,
5 225 (9th Cir. 1995)). However, "[i]t is well settled that privileges, whether creatures of statute or
6 the common law, should be interpreted and applied narrowly." *Id.* at 120 (quoting *Clark Cty. Sch.*
7 *Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 705, 429 P.3d 313, 318 (2018)).

8 3. Under Nevada law, no attorney-client privilege exists, "[i]f the services of the lawyer
9 were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew
10 or reasonably should have known to be a crime or fraud." NRS § 49.115(1).

11 4. "The 'crime-fraud exception' to the privilege protects against abuse of the attorney-
12 client relationship." *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078, 1090 (9th Cir. 2007),
13 *abrogated on other grounds by Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100 (2009).
14 Specifically, "where the client seeks the advice for 'future wrongdoing,' the crime-fraud exception
15 will not protect communications 'made for the purpose of getting advice for the commission of a
16 fraud or crime.'" *Hernandez v. Creative Concepts, Inc.*, No. 2:10-CV-02132-PMP, 2013 WL
17 1405776, at *4 (D. Nev. Apr. 5, 2013) (quoting *United States v. Zolin*, 491 U.S. 554, 562-63
18 (1989)); *see also In re Grand Jury Investigation*, 810 F.3d 1110, 1113 (9th Cir. 2016) (internal
19 quotations omitted) ("Under the crime-fraud exception, communications are not privileged when
20 the client consults an attorney for advice that will serve him in the commission of a fraud or
21 crime."); *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090 (quoting *Clark v. United States*, 289
22 U.S. 1, 15 (1933)) ("The privilege takes flight if the relation is abused. A client who consults an
23 attorney for advice that will serve him in the commission of a fraud will have no help from the law.
24 He must let the truth be told.").

25 5. Importantly, "[t]he planned crime or fraud need not have succeeded for the exception
26 to apply." *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090. "The client's abuse of the attorney-
27 client relationship, not his or her successful criminal or fraudulent act, vitiates the privilege." *Id.*
28 (citation omitted). Indeed, "[t]he attorney need not have been aware that the client harbored an

improper purpose." *Lewis v. Delta Air Lines, Inc.*, No. 214CV01683RFBGWF, 2015 WL 9460124, at *2 (D. Nev. Dec. 23, 2015) (citation omitted).

6. "[T]he crime-fraud exception is not strictly limited to cases alleging criminal violations or common law fraud." *Lewis*, 2015 WL 9460124, at *3. "The term 'crime/fraud exception,' . . . , is 'a bit of a misnomer . . . as many courts have applied the exception to situations falling well outside of the definitions of crime or fraud.'" *Rambus, Inc. v. Infineon Techs. AG*, 222 F.R.D. 280, 288 (E.D. Va. 2004) (internal citations omitted); *see, e.g., Cooksey v. Hilton Int'l Co.*, 863 F. Supp. 150, 151 (S.D.N.Y. 1994) (upholding magistrate judge's application of the crime-fraud exception and finding that "the facts of th[e] case demonstrate[d] if not an actual fraud, at least an intent on the part of defendants to defraud plaintiff."); *Volcanic Gardens Mgmt. Co. v. Paxson*, 847 S.W.2d 343, 348 (Tex. App. 1993) ("The crime/fraud exception comes into play when a prospective client seeks the assistance of an attorney in order to make a false statement or statements of material fact or law to a third person or the court for personal advantage."); *Horizon of Hope Ministry v. Clark Cty., Ohio*, 115 F.R.D. 1, 5 (S.D. Ohio 1986) ("Attorney/client communications which are in perpetuation of a tort are not privileged.").

7. To invoke the crime-fraud exception, the moving party must first "show that the client was engaged in or planning a criminal or fraudulent scheme when it sought the advice of counsel to further the scheme." *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090 (internal quotations omitted). "Mere allegations of fraud or criminality do not suffice." *Garcia v. Serv. Emps. Int'l Union*, No. 217CV01340APGNJK, 2018 WL 6566563, at *5 (D. Nev. Sept. 6, 2018) (citations omitted). Instead, "[a] movant in a civil case must show by a preponderance of the evidence that the attorney's services were utilized in furtherance of an ongoing unlawful scheme." *Id.* (citing *In re Napster Inc. Copyright Litig.*, 479 F.3d at 1090).

8. Next, the moving party must "demonstrate that the attorney-client communications for which production is sought are sufficiently related to and were made in furtherance of [the] intended, or present, continuing illegality." *In re Grand Jury Investigation*, 810 F.3d at 1113 (internal quotations omitted). This second step is accomplished through an *in camera* review of the documents. *See id.* at 1114 (internal quotations omitted) ("[A] district court must examine the

individual documents themselves to determine that the specific attorney-client communications for which production is sought are sufficiently related to and were made in furtherance of the intended, or present, continuing illegality.").

9. Caesars has met its initial burden of proof and established that Seibel's representations as to the independence of the Seibel Family 2016 Trust were unfounded, and Seibel could continue to benefit from the Seibel Agreements despite his unsuitability to conduct business with a gaming licensee.

10. An issue exists as to the effect of Seibel's prenuptial agreement with his wife and its interplay with the Seibel Family 2016 Trust.

11. Thus, communications seeking legal advice for creation of the prenuptial agreement and the Seibel Family 2016 Trust are discoverable under the crime-fraud exception (NRS § 49.115(1)) as they were made in furtherance of a scheme to defraud Caesars.

ORDER

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

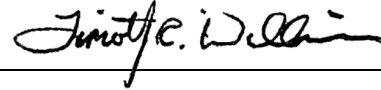
IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the Seibel Parties shall submit the following documents from their privilege log to the Court for *in camera* review within ten (10) days of notice of entry of this Order: CTRL00111548; CTRL00111549; CTRL00112143; CTRL00112144; CTRL00112145; CTRL00112146; CTRL00112147; CTRL00113142; CTRL00113288; CTRL00113763; CTRL00113764; CTRL00113765; CTRL00113766; CTRL00113767; CTRL00113774; CTRL00113775; CTRL00113832; CTRL00113833; CTRL00113840; CTRL00113841; CTRL00113843; CTRL00114161; CTRL00114162; CTRL00114164; CTRL00114165; CTRL00114272; CTRL00114273; CTRL00114282; CTRL00114283; CTRL00114284; CTRL00114285; CTRL00114286; CTRL00114300; CTRL00114316; CTRL00114324; CTRL00114346; CTRL00114364; CTRL00114416; CTRL00114417; CTRL00114475; CTRL00114476; CTRL00114871; CTRL00114872; CTRL00114873; CTRL00114874; CTRL00114968; CTRL00114969; CTRL00114970; CTRL00115207; CTRL00115208; CTRL00117851; CTRL00117852;

1	CTRL00145759;	CTRL00145772;	CTRL00145774;	CTRL00145775;	CTRL00145777;
2	CTRL00145789;	CTRL00145790;	CTRL00145791;	CTRL00145792;	CTRL00145877;
3	CTRL00145878;	CTRL00145879;	CTRL00145895;	CTRL00145896;	CTRL00145897;
4	CTRL00177870;	CTRL00177871;	CTRL00177872;	CTRL00177873;	CTRL00177874;
5	CTRL00178124;	CTRL00178125;	CTRL00178141;	CTRL00178153;	CTRL00178156;
6	CTRL00178158;	CTRL00178163;	CTRL00178164;	CTRL00178165;	CTRL00178166;
7	CTRL00178167;	CTRL00178168;	CTRL00178169;	CTRL00178173;	CTRL00178174;
8	CTRL00178175;	CTRL00178176;	CTRL00178177;	CTRL00178178;	CTRL00178179;
9	CTRL00178238;	CTRL00333064;	CTRL00333065;	CTRL00333066;	CTRL00333067;
10	CTRL00333068;	CTRL00334493;	CTRL00334494;	CTRL00334495;	CTRL00334496;
11	CTRL00335096;	CTRL00335097;	CTRL00335098;	CTRL00336394;	CTRL00336395;
12	CTRL00366278;	CTRL00366279;	CTRL00366280;	CTRL00366281;	CTRL00366614;
13	CTRL00366615;	CTRL00366616;	CTRL00111325;	CTRL00114114;	CTRL00114410;
14	CTRL00114429;	CTRL00114432;	CTRL00114445;	CTRL00114604;	CTRL00114844;
15	CTRL00114870;	CTRL00114989;	CTRL00120720;	CTRL00120721;	CTRL00120723;
16	CTRL00120724;	CTRL00120726;	CTRL00145197;	CTRL00145198;	CTRL00145784;
17	CTRL00145876;	CTRL00173347;	CTRL00173350;	CTRL00173352;	CTRL00178020;
18	CTRL00178080;	CTRL00178092;	CTRL00178094;	CTRL00178115;	CTRL00178120;
19	CTRL00178137;	CTRL00178140;	CTRL00178155;	CTRL00178162;	CTRL00178191;
20	CTRL00178227;	CTRL00333242;	CTRL00333310;	CTRL00366304;	CTRL00366305;
21	CTRL00338414;	CTRL00338425;	CTRL00338426;	CTRL00338511;	CTRL00338513;
22	CTRL00338611;	CTRL00338612;	CTRL00339801;	CTRL00339802;	CTRL00339803;
23	CTRL00339848;	CTRL00339849;	CTRL00340482;	CTRL00346870;	CTRL00346871;
24	CTRL00346875;	CTRL00367769;	CTRL00367770;	CTRL00367771;	CTRL00367772;
25	CTRL00338593;	CTRL00113723;	CTRL00113754;	CTRL00113762;	CTRL00113768;
26	CTRL00114321;	CTRL00114322;	CTRL00145645;	CTRL00145661;	CTRL00145662;
27	CTRL00145663; CTRL00178086; CTRL00178090; and CTRL00178092.				
28					

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall examine, *in camera*, the above identified documents to determine whether they are sufficiently related to and were made in furtherance of intended or continued illegality and, thus, whether the same must be produced to Caesars.

IT IS SO ORDERED.

Dated this 8th day of June, 2021



NS

Respectfully submitted by:

AAA F5E 5E2F 4B5B
Timothy C. Williams
District Court Judge

DATED June 4, 2021

DATED May 27, 2021

PISANELLI BICE PLLC

LEBENSFELD SHARON & SCHWARTZ P.C.

By: /s/ M. Magali Mercera
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Debra L. Spinelli, Esq., Bar No. 9695
M. Magali Mercera, Esq., Bar No. 11742
400 South 7th Street, Suite 300
Las Vegas, NV 89101

By: /s/ Alan M. Lebensfeld
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(admitted *pro hac vice*)
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Red Bank, New Jersey 07701

*Attorneys for Desert Palace, Inc.;
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Boardwalk Regency
Corporation d/b/a Caesars Atlantic City*

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*Attorneys for The Original Homestead
Restaurant, Inc*

Approved as to form and content by:

DATED May 27, 2021

FENNEMORE CRAIG, P.C.

By: /s/ John D. Tennert
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Wade Beavers, Esq. (SBN 13451)
7800 Rancharra Parkway
Reno, NV 89511

Attorneys for Gordon Ramsay

Cinda C. Towne

From: Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Sent: Thursday, May 27, 2021 6:17 PM
To: Magali Mercera
Cc: Joshua Gilmore; Stephanie Glantz; Paul Williams; Tennert, John; James Pisanelli; Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Diana Barton; Cinda C. Towne
Subject: Re: Desert Palace v. Seibel: FFCL Granting Motion to Compel Documents Pursuant to Crime-Fraud Exception

CAUTION: External Email

You may

Sent From AML iPhone

On May 27, 2021, at 8:04 PM, Magali Mercera <mmm@pisanellibice.com> wrote:

Josh/Stephanie –

Thank you for hopping on a call yesterday. Following our discussion, we went back and reviewed your proposed revisions to the findings of fact and conclusions of law. While we made a few changes you suggested, we cannot agree to the majority of your revisions. Please note that we did not change the reference of “Seibel-Affiliated Entities” to “Development Entities” as we discussed yesterday to remain consistent with how we referred to the parties in our briefing.

We believe our proposed findings of fact and conclusions of law are supported by the record and follows the Court’s minute order directing us to “prepare a Findings of Fact, Conclusions of Law and Order based not only on the court’s minute order but the pleadings on file herein, argument of counsel, and the entire record.”

Please advise if you are willing to sign this order or if competing orders will be necessary.

John/Alan – Please advise if we may apply your e-signature to this version of the findings of fact and conclusions of law.

Thanks,

M. Magali Mercera

PISANELLI BICE, PLLC

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

Telephone: (702) 214-2100

Fax: (702) 214-2101

mmm@pisanellibice.com | www.pisanellibice.com



Please consider the environment before printing.

This transaction and any attachment is confidential. Any dissemination or copying of this communication is prohibited. If you are not the intended recipient, please notify us immediately by replying and delete the message. Thank you.

<FFCL and Order Granting Motion to Compel Comm's Due to Crime-Fraud v2.docx>

<FFCL and Order Granting Motion to Compel Comm's Due to Crime-Fraud v2 (redline).docx>

Cinda C. Towne

From: Tennert, John <jtennert@fennemorelaw.com>
Sent: Thursday, May 27, 2021 6:37 PM
To: Magali Mercera
Cc: Joshua Gilmore; Stephanie Glantz; Paul Williams; Alan Lebensfeld; James Pisanelli; Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Diana Barton; Cinda C. Towne
Subject: Re: Desert Palace v. Seibel: FFCL Granting Motion to Compel Documents Pursuant to Crime-Fraud Exception

CAUTION: External Email

Magali,
Please apply my e-signature.
Thanks,
John

Sent from my iPhone

John D. Tennert III, Director

FENNEMORE.

7800 Rancharrah Parkway, Reno, NV 89511
T: 775.788.2212 | F: 775.788.2213
jtennert@fennemorelaw.com | [View Bio](#)



CONFIDENTIALITY NOTICE: The information contained in this message may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have received the message in error. Then delete it. Thank you.

COVID-19: Governors in our markets have deemed law firms essential services. As a result, our offices will be open from 8 am to 5 pm, but most of our team members are working remotely. To better protect our employees and clients, please schedule an appointment before coming to our offices.

On May 27, 2021, at 5:05 PM, Magali Mercera <mmm@pisanellibice.com> wrote:

Josh/Stephanie –

Thank you for hopping on a call yesterday. Following our discussion, we went back and reviewed your proposed revisions to the findings of fact and conclusions of law. While we made a few changes you suggested, we cannot agree to the majority of your revisions. Please note that we did not change the

reference of "Seibel-Affiliated Entities" to "Development Entities" as we discussed yesterday to remain consistent with how we referred to the parties in our briefing.

We believe our proposed findings of fact and conclusions of law are supported by the record and follows the Court's minute order directing us to "prepare a Findings of Fact, Conclusions of Law and Order based not only on the court's minute order but the pleadings on file herein, argument of counsel, and the entire record."

Please advise if you are willing to sign this order or if competing orders will be necessary.

John/Alan – Please advise if we may apply your e-signature to this version of the findings of fact and conclusions of law.

Thanks,

M. Magali Mercera

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This transaction and any attachment is confidential. Any dissemination or copying of this communication is prohibited. If you are not the intended recipient, please notify us immediately by replying and delete the message. Thank you.

<FFCL and Order Granting Motion to Compel Comm's Due to Crime-Fraud v2.docx>

<FFCL and Order Granting Motion to Compel Comm's Due to Crime-Fraud v2 (redline).docx>

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Rowen Seibel, Plaintiff(s)

CASE NO: A-17-751759-B

7 vs.

DEPT. NO. Department 16

8 PHWL V LLC, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 6/8/2021

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18 "John Tennert, Esq." . jtennert@fclaw.com

19 Brittanie T. Watkins . btw@pisanellibice.com

20 Dan McNutt . drm@cmlawnv.com

21 Debra L. Spinelli . dls@pisanellibice.com

22 Diana Barton . db@pisanellibice.com

23 Lisa Anne Heller . lah@cmlawnv.com

24 Matt Wolf . mcw@cmlawnv.com

25 PB Lit . lit@pisanellibice.com

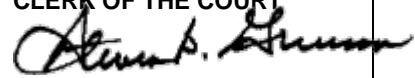
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PA000984

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TAB 76



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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER GRANTING CAESARS'
MOTION TO COMPEL DOCUMENTS
WITHHELD ON THE BASIS OF
ATTORNEY-CLIENT PRIVILEGE
PURSUANT TO THE CRIME-FRAUD
EXCEPTION**

AND ALL RELATED MATTERS

PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law, and Order Granting
Caesars' Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege

///

Pursuant to the Crime-Fraud Exception was entered in the above-captioned matter on June 8, 2021, a true and correct copy of which is attached hereto.

DATED this 8th day of June 2021.

PISANELLI BICE PLLC

By: /s/ M. Magali Mercera
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*Attorneys for Desert Palace, Inc.;
Paris Las Vegas Operating Company, LLC;
PHWLV, LLC; and Boardwalk Regency
Corporation d/b/a Caesars Atlantic City*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 8th day of June 2021, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING CAESARS' MOTION TO COMPEL DOCUMENTS WITHHELD ON THE BASIS OF ATTORNEY-CLIENT PRIVILEGE PURSUANT TO THE CRIME-FRAUD EXCEPTION** to the following:

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Paul C. Williams, Esq.
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LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC,
TPOV Enterprises, LLC, TPOV Enterprises 16, LLC,
FERG, LLC, and FERG 16, LLC; and R Squared
Global Solutions, LLC, Derivatively on Behalf of
DNT Acquisition, LLC, and Nominal Plaintiff
GR Burgr LLC*

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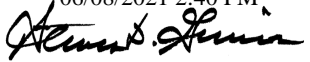
Attorneys for Gordon Ramsay

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

/s/ Cinda Towne
An employee of PISANELLI BICE PLLC


CLERK OF THE COURT

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
CAESARS' MOTION TO COMPEL
DOCUMENTS WITHHELD ON THE
BASIS OF ATTORNEY-CLIENT
PRIVILEGE PURSUANT TO THE
CRIME-FRAUD EXCEPTION**

Date of Hearing: February 10, 2021

Time of Hearing: 9:00 a.m.

AND ALL RELATED MATTERS

PHWLTV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las
Vegas Operating Company, LLC ("Paris"), and Boardwalk Regency Corporation d/b/a Caesars
Atlantic City's ("CAC," and collectively, with Caesars Palace, Paris, and Planet Hollywood,
"Caesars,") *Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege*

PISANELLIBICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

Pursuant to the Crime-Fraud Exception (the "Motion to Compel"), filed on January 6, 2021, came before this Court for hearing on February 10, 2021, at 9:00 a.m. James J. Pisanelli, Esq., M. Magali Mercera, Esq., and Brittanie T. Watkins, Esq. of the law firm PISANELLI BICE PLLC, appeared telephonically on behalf of Caesars. Joshua P. Gilmore, Esq., and Paul C. Williams, Esq. of the law firm BAILEY KENNEDY, appeared telephonically on behalf of TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), and DNT Acquisition, LLC ("DNT"), appearing derivatively by and through R Squared Global Solutions, LLC ("R Squared"), (collectively the "Seibel-Affiliated Entities"), Rowen Seibel ("Seibel"), and Craig Green ("Green").¹ John Tennert, Esq., of the law firm FENNEMORE CRAIG, appeared telephonically on behalf of Gordon Ramsay ("Ramsay").

The Court having considered the Motion to Compel, the opposition thereto, as well as argument of counsel presented at the hearing, and good cause appearing therefor, enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. THE COURT FINDS THAT, Caesars and MOTI, TPOV, DNT, GR Burgr, LLC, LLTQ, and FERG entered into a series of agreements governing the development, creation, and operation of various restaurants in Las Vegas and Atlantic City beginning in 2009 (the "Seibel Agreements");

2. THE COURT FURTHER FINDS THAT, Caesars is a gaming licensee and each of the Seibel Agreements contained representations, warranties, and conditions to ensure that Caesars was not involved in a business relationship with an unsuitable individual and/or entity;

3. THE COURT FURTHER FINDS THAT, Seibel began using foreign bank accounts to defraud the IRS in 2004;

¹ Seibel, Green, and the Seibel-Affiliated Entities are collectively referred to herein as the "Seibel Parties."

1 4. THE COURT FURTHER FINDS THAT, in 2016, after years of investigations,
2 numerous tolling agreements, and plea negotiations with the U.S. Government, Seibel pleaded
3 guilty to one count of corrupt endeavor to obstruct and impede the due administration of the Internal
4 Revenue Laws, 26 U.S.C. § 7212, a Class E Felony;

5 5. THE COURT FURTHER FINDS THAT, Seibel did not inform Caesars that he was
6 engaging in criminal activity, being investigated for it, or that he pled guilty to one count of corrupt
7 endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. §
8 7212, a Class E Felony;

9 6. THE COURT FURTHER FINDS THAT, Caesars found out through news reports
10 that Seibel pleaded guilty to a felony and thereafter, Caesars terminated the agreements – as it was
11 expressly allowed to do – due to Seibel's unsuitability and failure to disclose;

12 7. THE COURT FURTHER FINDS THAT, before Caesars learned of Seibel's
13 criminal conduct and in an effort to conceal his criminal conviction while still reaping the benefits
14 of his relationship with Caesars – ten days before entering his guilty plea – Seibel informed Caesars
15 that he was, among other things, (i) transferring all of the membership interests under certain Seibel-
16 Affiliated Entities that he held, directly or indirectly, to two individuals in their capacities as trustees
17 of a trust that he had created (the "Seibel Family 2016 Trust"); (ii) naming other individuals as the
18 managers of these entities; and (iii) assigning the Seibel Agreements to new entities;

19 8. THE COURT FURTHER FINDS THAT, Seibel did not disclose that he decided to
20 perform these purported assignments, transfers, and delegations because of his impending felony
21 conviction;

22 9. THE COURT FURTHER FINDS THAT, these purported transfers were made
23 specifically to avoid, undermine, and circumvent Caesars' rights to terminate the Seibel
24 Agreements;

25 10. THE COURT FURTHER FINDS THAT in this litigation, Seibel has alleged that
26 his unsuitability "is immaterial and irrelevant because, *inter alia*, he assigned his interests, if any,
27 in Defendants or the contracts;"

28

1 11. THE COURT FURTHER FINDS THAT, Seibel's long-time counsel, Brian Ziegler
2 ("Ziegler"), represented to Caesars that "great care was taken to ensure that the trust would never
3 have an unpermitted association with an Unsuitable Person and, as you can see, the trust is to be
4 guided by your . . . determination;"

5 12. THE COURT FURTHER FINDS THAT, Seibel always intended to receive
6 benefits/distributions from the Seibel Family 2016 Trust and Seibel took steps – with the assistance
7 of his attorneys – to be able to do so;

8 13. THE COURT FURTHER FINDS THAT, shortly before Seibel pleaded guilty, he
9 undertook a complex scheme that involved (1) creating new entities to which he was purportedly
10 assigning the interests in certain Seibel-Affiliated Entities; (2) creating the Seibel Family 2016 Trust
11 to receive the income from said entities; and (3) entering into a prenuptial agreement with his soon
12 to be wife Bryn Dorfman ("Dorfman") to, in part, continue benefitting from the Seibel Agreements;

13 14. THE COURT FURTHER FINDS THAT, Seibel worked with his attorneys and
14 Green to create new entities to which he would purportedly assign the Seibel Agreements;

15 15. THE COURT FURTHER FINDS THAT, after the new entities were created, Seibel
16 sent letters to Caesars purporting to assign the Seibel Agreements. In each of those letters, Seibel
17 told Caesars that the agreement would be assigned to a new entity whose membership interests were
18 ultimately mostly owned by the Seibel Family 2016 Trust. For some of the entities, approximately
19 less than 1% of the membership interest were held by Green, Ziegler, and Ziegler's children;

20 16. THE COURT FURTHER FINDS THAT, Seibel falsely told Caesars that the sole
21 beneficiaries of the Seibel Family 2016 Trust were Netty Wachtel Slushny, Dorfman, and potential
22 descendants of Seibel;

23 17. THE COURT FURTHER FINDS THAT, Seibel falsely represented that, "[o]ther
24 than the parties described in th[e] letter[s], there [were] no other parties that have any management
25 rights, powers or responsibilities regarding, or equity or financial interests in" the new entities;

26 18. THE COURT FURTHER FINDS THAT, these representations were all false and
27 were made with the intent to deceive Caesars;

28

1 importance of fully informed advocacy in the administration of justice." *Canarelli v. Eighth*
2 *Judicial Dist. Ct.*, 464 P.3d 114, 119 (2020) (quoting *Wynn Resorts, Ltd. v. Eighth Judicial Dist.*
3 *Ct.*, 133 Nev. 369, 374, 399 P.3d 334, 341 (2017)). "The party asserting the privilege has the burden
4 to prove that the material is in fact privileged." *Id.* at 120 (citing *Ralls v. United States*, 52 F.3d 223,
5 225 (9th Cir. 1995)). However, "[i]t is well settled that privileges, whether creatures of statute or
6 the common law, should be interpreted and applied narrowly." *Id.* at 120 (quoting *Clark Cty. Sch.*
7 *Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 705, 429 P.3d 313, 318 (2018)).

8 3. Under Nevada law, no attorney-client privilege exists, "[i]f the services of the lawyer
9 were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew
10 or reasonably should have known to be a crime or fraud." NRS § 49.115(1).

11 4. "The 'crime-fraud exception' to the privilege protects against abuse of the attorney-
12 client relationship." *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078, 1090 (9th Cir. 2007),
13 *abrogated on other grounds by Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100 (2009).
14 Specifically, "where the client seeks the advice for 'future wrongdoing,' the crime-fraud exception
15 will not protect communications 'made for the purpose of getting advice for the commission of a
16 fraud or crime.'" *Hernandez v. Creative Concepts, Inc.*, No. 2:10-CV-02132-PMP, 2013 WL
17 1405776, at *4 (D. Nev. Apr. 5, 2013) (quoting *United States v. Zolin*, 491 U.S. 554, 562-63
18 (1989)); *see also In re Grand Jury Investigation*, 810 F.3d 1110, 1113 (9th Cir. 2016) (internal
19 quotations omitted) ("Under the crime-fraud exception, communications are not privileged when
20 the client consults an attorney for advice that will serve him in the commission of a fraud or
21 crime."); *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090 (quoting *Clark v. United States*, 289
22 U.S. 1, 15 (1933)) ("The privilege takes flight if the relation is abused. A client who consults an
23 attorney for advice that will serve him in the commission of a fraud will have no help from the law.
24 He must let the truth be told.").

25 5. Importantly, "[t]he planned crime or fraud need not have succeeded for the exception
26 to apply." *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090. "The client's abuse of the attorney-
27 client relationship, not his or her successful criminal or fraudulent act, vitiates the privilege." *Id.*
28 (citation omitted). Indeed, "[t]he attorney need not have been aware that the client harbored an

improper purpose." *Lewis v. Delta Air Lines, Inc.*, No. 214CV01683RFBGWF, 2015 WL 9460124, at *2 (D. Nev. Dec. 23, 2015) (citation omitted).

6. "[T]he crime-fraud exception is not strictly limited to cases alleging criminal violations or common law fraud." *Lewis*, 2015 WL 9460124, at *3. "The term 'crime/fraud exception,' . . . , is 'a bit of a misnomer . . . as many courts have applied the exception to situations falling well outside of the definitions of crime or fraud.'" *Rambus, Inc. v. Infineon Techs. AG*, 222 F.R.D. 280, 288 (E.D. Va. 2004) (internal citations omitted); *see, e.g., Cooksey v. Hilton Int'l Co.*, 863 F. Supp. 150, 151 (S.D.N.Y. 1994) (upholding magistrate judge's application of the crime-fraud exception and finding that "the facts of th[e] case demonstrate[d] if not an actual fraud, at least an intent on the part of defendants to defraud plaintiff."); *Volcanic Gardens Mgmt. Co. v. Paxson*, 847 S.W.2d 343, 348 (Tex. App. 1993) ("The crime/fraud exception comes into play when a prospective client seeks the assistance of an attorney in order to make a false statement or statements of material fact or law to a third person or the court for personal advantage."); *Horizon of Hope Ministry v. Clark Cty., Ohio*, 115 F.R.D. 1, 5 (S.D. Ohio 1986) ("Attorney/client communications which are in perpetuation of a tort are not privileged.").

7. To invoke the crime-fraud exception, the moving party must first "show that the client was engaged in or planning a criminal or fraudulent scheme when it sought the advice of counsel to further the scheme." *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090 (internal quotations omitted). "Mere allegations of fraud or criminality do not suffice." *Garcia v. Serv. Emps. Int'l Union*, No. 217CV01340APGNJK, 2018 WL 6566563, at *5 (D. Nev. Sept. 6, 2018) (citations omitted). Instead, "[a] movant in a civil case must show by a preponderance of the evidence that the attorney's services were utilized in furtherance of an ongoing unlawful scheme." *Id.* (citing *In re Napster Inc. Copyright Litig.*, 479 F.3d at 1090).

8. Next, the moving party must "demonstrate that the attorney-client communications for which production is sought are sufficiently related to and were made in furtherance of [the] intended, or present, continuing illegality." *In re Grand Jury Investigation*, 810 F.3d at 1113 (internal quotations omitted). This second step is accomplished through an *in camera* review of the documents. *See id.* at 1114 (internal quotations omitted) ("[A] district court must examine the

individual documents themselves to determine that the specific attorney-client communications for which production is sought are sufficiently related to and were made in furtherance of the intended, or present, continuing illegality.").

9. Caesars has met its initial burden of proof and established that Seibel's representations as to the independence of the Seibel Family 2016 Trust were unfounded, and Seibel could continue to benefit from the Seibel Agreements despite his unsuitability to conduct business with a gaming licensee.

10. An issue exists as to the effect of Seibel's prenuptial agreement with his wife and its interplay with the Seibel Family 2016 Trust.

11. Thus, communications seeking legal advice for creation of the prenuptial agreement and the Seibel Family 2016 Trust are discoverable under the crime-fraud exception (NRS § 49.115(1)) as they were made in furtherance of a scheme to defraud Caesars.

ORDER

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

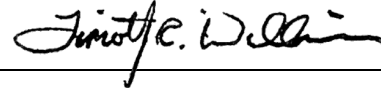
IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the Seibel Parties shall submit the following documents from their privilege log to the Court for *in camera* review within ten (10) days of notice of entry of this Order: CTRL00111548; CTRL00111549; CTRL00112143; CTRL00112144; CTRL00112145; CTRL00112146; CTRL00112147; CTRL00113142; CTRL00113288; CTRL00113763; CTRL00113764; CTRL00113765; CTRL00113766; CTRL00113767; CTRL00113774; CTRL00113775; CTRL00113832; CTRL00113833; CTRL00113840; CTRL00113841; CTRL00113843; CTRL00114161; CTRL00114162; CTRL00114164; CTRL00114165; CTRL00114272; CTRL00114273; CTRL00114282; CTRL00114283; CTRL00114284; CTRL00114285; CTRL00114286; CTRL00114300; CTRL00114316; CTRL00114324; CTRL00114346; CTRL00114364; CTRL00114416; CTRL00114417; CTRL00114475; CTRL00114476; CTRL00114871; CTRL00114872; CTRL00114873; CTRL00114874; CTRL00114968; CTRL00114969; CTRL00114970; CTRL00115207; CTRL00115208; CTRL00117851; CTRL00117852;

1	CTRL00145759;	CTRL00145772;	CTRL00145774;	CTRL00145775;	CTRL00145777;
2	CTRL00145789;	CTRL00145790;	CTRL00145791;	CTRL00145792;	CTRL00145877;
3	CTRL00145878;	CTRL00145879;	CTRL00145895;	CTRL00145896;	CTRL00145897;
4	CTRL00177870;	CTRL00177871;	CTRL00177872;	CTRL00177873;	CTRL00177874;
5	CTRL00178124;	CTRL00178125;	CTRL00178141;	CTRL00178153;	CTRL00178156;
6	CTRL00178158;	CTRL00178163;	CTRL00178164;	CTRL00178165;	CTRL00178166;
7	CTRL00178167;	CTRL00178168;	CTRL00178169;	CTRL00178173;	CTRL00178174;
8	CTRL00178175;	CTRL00178176;	CTRL00178177;	CTRL00178178;	CTRL00178179;
9	CTRL00178238;	CTRL00333064;	CTRL00333065;	CTRL00333066;	CTRL00333067;
10	CTRL00333068;	CTRL00334493;	CTRL00334494;	CTRL00334495;	CTRL00334496;
11	CTRL00335096;	CTRL00335097;	CTRL00335098;	CTRL00336394;	CTRL00336395;
12	CTRL00366278;	CTRL00366279;	CTRL00366280;	CTRL00366281;	CTRL00366614;
13	CTRL00366615;	CTRL00366616;	CTRL00111325;	CTRL00114114;	CTRL00114410;
14	CTRL00114429;	CTRL00114432;	CTRL00114445;	CTRL00114604;	CTRL00114844;
15	CTRL00114870;	CTRL00114989;	CTRL00120720;	CTRL00120721;	CTRL00120723;
16	CTRL00120724;	CTRL00120726;	CTRL00145197;	CTRL00145198;	CTRL00145784;
17	CTRL00145876;	CTRL00173347;	CTRL00173350;	CTRL00173352;	CTRL00178020;
18	CTRL00178080;	CTRL00178092;	CTRL00178094;	CTRL00178115;	CTRL00178120;
19	CTRL00178137;	CTRL00178140;	CTRL00178155;	CTRL00178162;	CTRL00178191;
20	CTRL00178227;	CTRL00333242;	CTRL00333310;	CTRL00366304;	CTRL00366305;
21	CTRL00338414;	CTRL00338425;	CTRL00338426;	CTRL00338511;	CTRL00338513;
22	CTRL00338611;	CTRL00338612;	CTRL00339801;	CTRL00339802;	CTRL00339803;
23	CTRL00339848;	CTRL00339849;	CTRL00340482;	CTRL00346870;	CTRL00346871;
24	CTRL00346875;	CTRL00367769;	CTRL00367770;	CTRL00367771;	CTRL00367772;
25	CTRL00338593;	CTRL00113723;	CTRL00113754;	CTRL00113762;	CTRL00113768;
26	CTRL00114321;	CTRL00114322;	CTRL00145645;	CTRL00145661;	CTRL00145662;
27	CTRL00145663; CTRL00178086; CTRL00178090; and CTRL00178092.				
28					

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall examine, *in camera*, the above identified documents to determine whether they are sufficiently related to and were made in furtherance of intended or continued illegality and, thus, whether the same must be produced to Caesars.

IT IS SO ORDERED.

Dated this 8th day of June, 2021



NS

Respectfully submitted by:

AAA F5E 5E2F 4B5B
Timothy C. Williams
District Court Judge

DATED June 4, 2021

DATED May 27, 2021

PISANELLI BICE PLLC

LEBENSFELD SHARON & SCHWARTZ P.C.

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Debra L. Spinelli, Esq., Bar No. 9695
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Restaurant, Inc*

Approved as to form and content by:

DATED May 27, 2021

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Wade Beavers, Esq. (SBN 13451)
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Attorneys for Gordon Ramsay

Cinda C. Towne

From: Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Sent: Thursday, May 27, 2021 6:17 PM
To: Magali Mercera
Cc: Joshua Gilmore; Stephanie Glantz; Paul Williams; Tennert, John; James Pisanelli; Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Diana Barton; Cinda C. Towne
Subject: Re: Desert Palace v. Seibel: FFCL Granting Motion to Compel Documents Pursuant to Crime-Fraud Exception

CAUTION: External Email

You may

Sent From AML iPhone

On May 27, 2021, at 8:04 PM, Magali Mercera <mmm@pisanellibice.com> wrote:

Josh/Stephanie –

Thank you for hopping on a call yesterday. Following our discussion, we went back and reviewed your proposed revisions to the findings of fact and conclusions of law. While we made a few changes you suggested, we cannot agree to the majority of your revisions. Please note that we did not change the reference of “Seibel-Affiliated Entities” to “Development Entities” as we discussed yesterday to remain consistent with how we referred to the parties in our briefing.

We believe our proposed findings of fact and conclusions of law are supported by the record and follows the Court’s minute order directing us to “prepare a Findings of Fact, Conclusions of Law and Order based not only on the court’s minute order but the pleadings on file herein, argument of counsel, and the entire record.”

Please advise if you are willing to sign this order or if competing orders will be necessary.

John/Alan – Please advise if we may apply your e-signature to this version of the findings of fact and conclusions of law.

Thanks,

M. Magali Mercera

PISANELLI BICE, PLLC

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

Telephone: (702) 214-2100

Fax: (702) 214-2101

mmm@pisanellibice.com | www.pisanellibice.com



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This transaction and any attachment is confidential. Any dissemination or copying of this communication is prohibited. If you are not the intended recipient, please notify us immediately by replying and delete the message. Thank you.

<FFCL and Order Granting Motion to Compel Comm's Due to Crime-Fraud v2.docx>

<FFCL and Order Granting Motion to Compel Comm's Due to Crime-Fraud v2 (redline).docx>

Cinda C. Towne

From: Tennert, John <jtennert@fennemorelaw.com>
Sent: Thursday, May 27, 2021 6:37 PM
To: Magali Mercera
Cc: Joshua Gilmore; Stephanie Glantz; Paul Williams; Alan Lebensfeld; James Pisanelli; Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Diana Barton; Cinda C. Towne
Subject: Re: Desert Palace v. Seibel: FFCL Granting Motion to Compel Documents Pursuant to Crime-Fraud Exception

CAUTION: External Email

Magali,
Please apply my e-signature.
Thanks,
John

Sent from my iPhone

John D. Tennert III, Director

FENNEMORE.

7800 Rancharrah Parkway, Reno, NV 89511
T: 775.788.2212 | F: 775.788.2213
jtennert@fennemorelaw.com | [View Bio](#)



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COVID-19: Governors in our markets have deemed law firms essential services. As a result, our offices will be open from 8 am to 5 pm, but most of our team members are working remotely. To better protect our employees and clients, please schedule an appointment before coming to our offices.

On May 27, 2021, at 5:05 PM, Magali Mercera <mmm@pisanellibice.com> wrote:

Josh/Stephanie –

Thank you for hopping on a call yesterday. Following our discussion, we went back and reviewed your proposed revisions to the findings of fact and conclusions of law. While we made a few changes you suggested, we cannot agree to the majority of your revisions. Please note that we did not change the

reference of "Seibel-Affiliated Entities" to "Development Entities" as we discussed yesterday to remain consistent with how we referred to the parties in our briefing.

We believe our proposed findings of fact and conclusions of law are supported by the record and follows the Court's minute order directing us to "prepare a Findings of Fact, Conclusions of Law and Order based not only on the court's minute order but the pleadings on file herein, argument of counsel, and the entire record."

Please advise if you are willing to sign this order or if competing orders will be necessary.

John/Alan – Please advise if we may apply your e-signature to this version of the findings of fact and conclusions of law.

Thanks,

M. Magali Mercera

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<FFCL and Order Granting Motion to Compel Comm's Due to Crime-Fraud v2.docx>

<FFCL and Order Granting Motion to Compel Comm's Due to Crime-Fraud v2 (redline).docx>

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Rowen Seibel, Plaintiff(s)

CASE NO: A-17-751759-B

7 vs.

DEPT. NO. Department 16

8 PHWL V LLC, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 6/8/2021

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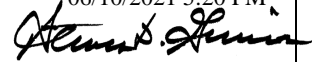
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TAB *77*


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R Squared Global Solutions, LLC, Derivatively on Behalf of DNT Acquisition,
LLC; and GR Burgr, LLC*

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants,

And

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED CLAIMS.

Case No. A-17-751759-B

Dept. No. XVI

Consolidated with A-17-760537-B

(HEARING REQUESTED)

**THE DEVELOPMENT ENTITIES,
ROWEN SEIBEL, AND CRAIG GREEN'S
MOTION TO STAY COMPLIANCE WITH
THE COURT'S JUNE 8, 2021 ORDER
PENDING PETITION FOR
EXTRAORDINARY WRIT RELIEF**

ON ORDER SHORTENING TIME

Pursuant to NRAP 8 and the inherent authority of this Court, the Development Parties¹ move to stay (the “Motion to Stay”) compliance with this Court’s Findings of Fact, Conclusions of Law, and Order Granting Caesars’ Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, entered on June 8, 2021 (the “Order”) pending the outcome of a Petition for Extraordinary Writ Relief to be filed with the Nevada Supreme Court (the “Writ Petition”). Alternatively, the Development Parties request that this Court stay compliance with the Order until July 9, 2021, or until ten (10) days after this Court rules on the Motion to Stay, whichever is later. This would give the Development Parties sufficient time to seek a stay from the Nevada Supreme Court.

As detailed below, this Court’s Order requires the Development Parties to divulge privileged communications to this Court and to opposing parties. The Writ Petition seeks to vacate the Order. If the Development Parties are required to divulge the privileged communications prior to the resolution of the Writ Petition, the primary object of the Writ Petition will be defeated. Thus, a stay is warranted.

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

DATED this 10th day of June, 2021.

BAILEY❖KENNEDY

By: /s/ Paul C. Williams

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

Attorneys for the Development Parties

¹ “Development Parties” refers to Rowen Seibel, Craig Green, 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”); R Squared Global Solutions, LLC (“R Squared”), derivatively on behalf of DNT Acquisition LLC (“DNT”); and GR Burgr, LLC.

APPLICATION FOR ORDER SHORTENING TIME

Pursuant to EDCR 2.26, the Development Parties hereby apply for an Order Shortening Time in which their Motion to Stay is to be heard. If the Motion to Stay is heard in the ordinary course, the object of the Writ Petition will be defeated. The deadline for the Development Parties to produce the privileged communications for *in camera* review is June 18, 2021. If the Motion to Stay is heard in the ordinary course, the Development Parties will be required to comply with the Order and disclose privileged communications, defeating the primary purpose of their Writ Petition.

Accordingly, the Development Parties respectfully request that this Court set a hearing on the Motion to Stay on or before June 15, 2021, and stay compliance with the Order pending this Court's disposition of the Motion to Stay. An Order Shortening Time—which includes a provision staying compliance with the Order pending this Court's resolution of the Motion to Stay—is included below.

This Application is made and based upon the following Declaration of Paul Williams, Esq.

DATED this 10th day of June, 2021.

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

JOHN R. BAILEY

DENNIS L. KENNEDY

JOSHUA P. GILMORE

PAUL C. WILLIAMS

STEPHANIE J. GLANTZ

Attorneys for the Development Parties

**DECLARATION OF PAUL C. WILLIAMS, ESQ. IN SUPPORT OF
APPLICATION FOR ORDER SHORTENING TIME**

I, Paul C. Williams, Esq., declare as follows:

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

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

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

4. Good cause exists to hear the Motion to Stay on shortened time. If the Motion to Stay is heard in the ordinary course, the object of the Writ Petition—to vacate the Order and prevent the disclosure of privileged attorney-client communications—will be defeated.

5. The deadline for the Development Parties to provide the Court with privileged communications for *in camera* review—ten (10) days from entry of the Order—is June 18, 2021.

6. If the Motion to Stay is heard in the ordinary course, the Development Parties will be required to disclose privileged communications before this Court has a chance to consider the Motion to Stay. This would defeat the object of the Writ Petition—as the Nevada Supreme Court has said, there is “no adequate remedy at law that could restore the privileged nature of the information, because once such information is disclosed, it is irretrievable.” *See Valley Health Sys., Ltd. Liab. Co. v. Eighth Jud. Dist. Ct.*, 127 Nev. 167, 172, 252 P.3d 676, 679 (2011).

7. Accordingly, the Development Parties respectfully request that this Court set a hearing on the Motion to Stay as soon as possible.

8. Further, to give this Court adequate time to analyze the issues and avoid forcing the Development Parties to seek emergency relief from the Nevada Supreme Court before initially requesting a stay from this Court, the Development Parties respectfully request that this Court stay compliance with the Order pending this Court’s disposition of the Motion to Stay.

11. This Application is made in good faith and without improper motive.
I declare under penalty of perjury that the foregoing is true and correct.
EXECUTED on this 10th day of June, 2021.

PA001011

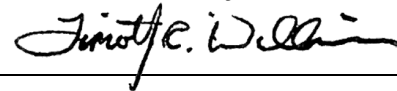
ORDER SHORTENING TIME

The Court, having considered the Development Parties' Application for Order Shortening Time, and the Declaration of Paul C. Williams, Esq., in support thereof, and good cause appearing, **HEREBY ORDERS** that the time for hearing on The Development Entities, Rowen Seibel, and Craig Green's Motion to Stay Compliance with the Court's June 8, 2021 Order Pending Petition for Extraordinary Writ Relief (the "Motion to Stay") be **SHORTENED**, and the same shall be heard on the 24 day of June, 2021, at 9:05 a.m., in Department XVI of the Eighth Judicial District Court, Clark County, Nevada, located at the Regional Justice Center, 200 Lewis Avenue, in Las Vegas, Nevada, or as soon thereafter as counsel can be heard.

~~**IT IS HEREBY FURTHER ORDERED** that compliance with the Court's Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, entered on June 8, 2021, is **STAYED**, until July 9, 2021, or until ten (10) days after the Court rules on the Motion to Stay, whichever is later.~~ TCW

IT IS SO ORDERED.

Dated this 10th day of June, 2021



18A 546 735F BDB5
Timothy C. Williams
District Court Judge

N

Respectfully Submitted By:

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams
JOHN R. BAILEY
DENNIS L. KENNEDY
JOSHUA P. GILMORE
PAUL C. WILLIAMS
STEPHANIE J. GLANTZ
Attorneys for the Development Parties

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court should stay compliance with its Order pending resolution of the Development Parties' forthcoming Writ Petition. This Court's Order commands the Development Parties to divulge privileged communications to this Court and to opposing parties. The Development Parties' Writ Petition seeks to vacate the Order. If a stay is not entered, then the object of the Development Parties' Writ Petition—to prevent the Development Parties from having to divulge privileged communications—will be defeated. If the documents are divulged, their privileged nature cannot be retrieved. The Development Parties cannot unring the bell. Accordingly, a stay is warranted.

As detailed below, the Nevada Supreme Court has repeatedly entertained writ petitions concerning orders that require the disclosure of privileged communications. The reasoning behind the Nevada Supreme Court's intervention is simple: If the "order requires the disclosure of privileged material, there would be no adequate remedy at law that could restore the privileged nature of the information, because once such information is disclosed, it is irretrievable." *See Valley Health Sys., LLC*, 127 Nev. at 171-72, 252 P.3d at 679. Here, because the Order requires the Development Parties to divulge privileged communications, it is very likely that the Nevada Supreme Court will entertain the Writ Petition. *See Toll v. Wilson*, 135 Nev. 430, 432, 453 P.3d 1215, 1217 (2019) ("[T]his court will intervene when the district court issues an order requiring disclosure of privileged information."). Moreover, the Writ Petition provides an opportunity for the Nevada Supreme Court to issue guidance on a privilege conferred by a statute, NRS 49.115(1), that it has not yet interpreted. *See Diaz v. Eighth Jud. Dist. Ct.*, 116 Nev. 88, 93, 993 P.2d 50, 54 (2000) (noting writ relief may be appropriate where a "writ petition offers this court a unique opportunity to define the precise parameters of [a] privilege conferred by a statute that this court has never interpreted.") (alteration in original) (internal quotation marks omitted).

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

First, the object of the Writ Petition will be defeated if a stay is not entered because the Development Parties will be forced to disclose privileged communications and, as a result, the

1 “assertedly privileged information would irretrievably lose its confidential and privileged quality.”

2 *See Wardleigh*, 111 Nev. at 350-51, 891 P.2d at 1183-84.

3 Second, the Development Parties will suffer irreparable injury if a stay is not entered because
4 the bell of compelled disclosure of privileged communications cannot be unrung. *See id.*

5 Third, Caesars,² Gordon Ramsay (“Ramsay”), and Original Homestead Restaurant, Inc.
6 (“OHR”) will suffer little to no harm from a stay. The Nevada Supreme Court has previously held
7 that delay in litigation, without more, is not a sufficient ground to oppose a stay; nevertheless, a stay
8 of all non-discovery proceedings in this matter is already in effect pursuant to the Nevada Supreme
9 Court’s April 16, 2021 Order Granting Stay. As a result, the impact of any delay is minimal.

10 Fourth, respectfully, the Supreme Court is likely to grant the Writ Petition, as Caesars did not
11 meet its burden to set aside the attorney-client privilege between Seibel and his counsel and the
12 Order contains findings that are not supported by the record.

13 In sum, this Court should stay compliance with the Order pending the Nevada Supreme
14 Court’s disposition of the Writ Petition. *See Cotter v. Eighth Jud. Dist. Ct.*, 134 Nev. 235, 249 n.2,
15 416 P.3d 228, 231 n.2 (2018) (noting that the court had granted “emergency motion for stay pending
16 resolution of ... writ petition” that challenged order requiring party to divulge privileged
17 communications). Alternatively, the Development Parties request that this Court stay compliance
18 with the Order until July 9, 2021, or until ten (10) days after this Court rules on the Motion to Stay,
19 whichever is later. This will enable the Development Parties sufficient time to seek an emergency
20 stay from the Nevada Supreme Court.

21 II. RELEVANT PROCEDURAL HISTORY

22 A. Caesars Moves to Compel Production of the Development Parties’ 23 Communications With Their Attorneys Based on the Crime-Fraud Exception.

24 On January 6, 2021, Caesars moved to compel documents based on the crime-fraud
25 exception (the “Motion to Compel”). (Caesars’ Mot. to Compel Docs. Withheld on the Basis of the
26 Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, Jan. 6, 2021.) The Development

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

Parties filed their Opposition on January 22, 2021. (Rowen Seibel, Craig Green, and the Development Entities' Opp'n to Caesars' Mot. to Compel Docs. Withheld on the Basis of the Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, Jan. 22, 2021.) Caesars filed a Reply on February 3, 2021. (Reply in Support of Caesars' Mot. to Compel Docs. Withheld on the Basis of the Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, Feb. 3, 2021.)

B. This Court Grants Caesars' Motion to Compel.

This Court held a hearing on the Motion to Compel on February 24, 2021. It then issued a Minute Order Granting the Motion to Compel on April 12, 2021. (Apr. 12, 2021, Minute Order.) In its Minute Order, this Court determined that "Caesars ha[d] met its initial burden of proof by establishing that Plaintiff Seibel's representations as to the independence of the Seibel Family 2016 Trust were unfounded, and Plaintiff Seibel could continue to benefit from the agreements despite unsuitability to conduct business with a gaming licensee." (*Id.*) This Court further determined that "an issue exists as to the effect of Plaintiff Seibel's prenuptial agreement with his wife and the interplay with the trust." (*Id.*)

Through the Minute Order, this Court directed Caesars to prepare an order based on the minute order, arguments of counsel, and the entire record, and circulate it to the Development Parties prior to submission to the Court. (*Id.*) If the parties could not agree on the contents, they were to submit competing orders. (*Id.*)

C. The Parties Submit Competing Orders; the Court Adopts Caesars' Order.

Ultimately, the parties could not agree on language for the order and submitted competing orders. (Ex. A, June 3, 2021, Letter from Joshua P. Gilmore to the Court.³) On June 8, 2021, this Court adopted Caesars' version of the Order. (*See* Order, June 8, 2021.) The Order requires the

³ The Development Parties disputed numerous portions of Caesars' proposed order, including, but not limited to, the narrow "window of time between notice of entry of the Order and the deadline for the Development Parties to submit documents to this Court for an *in camera* review," as it would unnecessarily require this Court to evaluate a motion to stay on an emergency basis. (*Id.* at 7.) Specifically, the Development Parties expressed concern that, "[w]ithout an ample window of time to [comply with the Order], [the Development Parties] will be left with two options: (1) asking this Court to hear a Motion to Stay within a matter of days; or (2) depriving this Court of the ability to hear a Motion to Stay, even on an Order Shortening Time, and instead, requesting such relief on an emergency basis from the Nevada Supreme Court, pending a decision on a writ petition." (*Id.*)

Development Parties to submit privileged communications for *in camera* review by June 18, 2021. (Notc. of Entry of Findings of Fact, Concl. of Law, and Ord., June 8, 2021.)

III. ARGUMENT

A. Standard of Decision.

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

As shown below, this Court should stay compliance with the Order pending the outcome of the Writ Petition; or at a minimum, until the Development Parties have an opportunity to seek a stay from the Nevada Supreme Court.

B. The Object of the Writ Petition Will be Defeated Unless a Stay is Granted.

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

Here, without a stay, the Development Parties will be forced to disclose privileged communications to this Court and the opposing parties without a ruling from the Nevada Supreme Court on the Writ Petition. Plainly, requiring disclosure of the privileged communications would defeat the primary object of the Writ Petition. As the Nevada Supreme Court has explained, “if improper discovery were allowed, the assertedly privileged information would irretrievably lose its confidential and privileged quality and petitioners would have no effective remedy, even by a later appeal.” *Wardleigh v. Second Jud. Dist. Ct.*, 111 Nev. 345, 350-51, 891 P.2d 1180, 1183-84

(1995); *accord Cotter*, 134 Nev. at 249, 416 P.3d at 231 (“[W]ithout writ relief, compelled disclosure of petitioner’s assertedly privileged communication will occur and petitioner would have no effective remedy, even by subsequent appeal.”); *Las Vegas Sands Corp. v. Eighth Jud. Dist. Ct.*, 130 Nev. 118, 122, 319 P.3d 618, 621 (2014) (“This case presents a situation where, if improperly disclosed, ‘the assertedly privileged information would irretrievably lose its confidential and privileged quality and petitioners would have no effective remedy, even by later appeal.’”) (quoting *Wardleigh*, 111 Nev. at 350-51, 891 P.2d at 1183-84); *Valley Health Sys., LLC*, 127 Nev. at 171-72, 252 P.3d at 679 (holding that where an “order requires the disclosure of privileged material,” there is “no adequate remedy at law that could restore the privileged nature of the information, because once such information is disclosed, it is irretrievable.”).

Accordingly, the first factor weighs *heavily* in favor of a stay.

C. The Development Parties Will Suffer Irreparable Injury if a Stay is not Entered Pending the Outcome of their Writ Petition; Conversely, Caesars, Ramsay, and OHR will Suffer No Harm.

“[I]n certain cases, a party may face actual irreparable harm, and in such cases the likelihood of irreparable harm should be considered in the stay analysis.” *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39.

The “resulting prejudice” from disclosure of privileged communications prior to appellate review would “not only be irreparable, but of a magnitude that could require the imposition of such drastic remedies as dismissal with prejudice or other similar sanctions.” *Cotter*, 134 Nev. 235, 249, 416 P.3d at 231; *see also Las Vegas Sands Corp.*, 130 Nev. at 122, 319 P.3d at 621; *Valley Health*, 127. at Nev 171, 252 P.3d at 678-79; *Wardleigh*, 111 Nev. at 350-51, 891 P.2d at 1183-84. Conversely, when “the only cognizant harm threatened to the parties is increased litigation costs and delay,” they do not face any irreparable harm. *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39.

Here, the Development Parties will suffer serious injury if a stay is not entered, whereas Caesars (and the other parties) will not. Specifically, compelled disclosure of privileged communications results in a prejudice that is irreparable and cannot be restored. If a stay is not

1 entered and the Development Parties ultimately prevail before the Nevada Supreme Court, their
2 victory will be hollow.

3 Conversely, Caesars (and the other parties) will not suffer irreparable or serious harm if this
4 Court grants a stay. A stay of all non-discovery proceedings in this matter is already in effect
5 pursuant to the Nevada Supreme Court’s April 16, 2021, Order Granting Stay. Thus, although mere
6 delay does not constitute irreparable harm, any delay that would allegedly be suffered by Caesars
7 from a stay would be minimal, if any, as all non-discovery proceedings in this matter are already
8 stayed.

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

10 **D. The Development Parties are Likely to Prevail on the Merits of their Writ**
11 **Petition.**

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

16 Here, respectfully, it is likely that the Nevada Supreme Court will consider the Writ Petition
17 and grant the relief requested by the Development Parties. As detailed in the Development Parties’
18 Opposition to the Motion to Compel, Caesars failed to meet its burden to justify piercing the
19 attorney-client privilege. The Nevada Supreme Court “will intervene [on discovery issues] when
20 the district court issues an order requiring disclosure of privileged information.” *Toll*, 135 Nev. at
21 432, 453 P.3d at 1217.

22 Moreover, the Nevada Supreme Court has not yet defined the parameters of NRS 49.115(1),
23 or the crime-fraud exception. Indeed, this Court’s Order was based on federal common law
24 regarding the crime-fraud exception. (Order at 5-7.)

25 Further, this Court made factual findings without substantial evidence from the record to
26 reach its conclusion that a legitimate attempt to disassociate—to the extent Seibel understood was
27 needed based on Caesars’ prior conduct and communications (or rather, a complete lack thereof on
28 Caesars’ part)—constituted an attempted fraud. In so doing, this Court (respectfully) erred in its

1 interpretation of the prenuptial agreement and Seibel Family 2016 Trust. As a result, it is likely the
2 Nevada Supreme Court will entertain the Writ Petition. *See Diaz*, 116 Nev. at 93, 993 P.2d at 54
3 (noting writ relief may be appropriate where a “writ petition offers this court a unique opportunity to
4 define the precise parameters of [a] privilege conferred by a statute that this court has never
5 interpreted.”) (alteration in original) (internal quotation marks omitted).

6 Accordingly, the fourth factor weighs in favor of a stay.

7 IV. CONCLUSION

8 For the reasons set forth above, this Court should stay enforcement of the Order until the
9 Nevada Supreme Court rules on the Development Parties’ Writ Petition. Without a stay, the object
10 of the Writ Petition will be defeated, and unlike Caesars, Ramsay, and OHR, the Development
11 Parties will suffer serious injury, for which they would have no remedy.

12 Alternatively, the Development Parties request that this Court stay compliance with the
13 Order until July 9, 2021, or until ten (10) days after the Court rules on the Motion to Stay,
14 whichever is later. This would give the Development Parties sufficient time to seek an emergency
15 stay from the Nevada Supreme Court.

16 DATED this 10th of June, 2021.

17 BAILEY❖KENNEDY

18 By: /s/ Paul C. Williams

19 JOHN R. BAILEY

20 DENNIS L. KENNEDY

21 JOSHUA P. GILMORE

22 PAUL C. WILLIAMS

23 STEPHANIE J. GLANTZ

24 *Attorneys for the Development Parties*

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 10th of June, 2021, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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EXHIBIT A

EXHIBIT A

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June 4, 2021

Via Email

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The Honorable Timothy C. Williams
Department XVI
Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89145

Re: *Seibel v. PHWLTV, LLC*; Case No. A-17-751759-B
Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception

Your Honor:

Despite their good faith efforts, the parties were unable to reach an agreement on the language of the Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception (the "Order"). Seibel, Green, and the Development Entities¹ (collectively, the "Development Parties") hereby submit their competing version of the Order to this Court for consideration, which is attached hereto as **Exhibit 1**. A competing version of the Order is being submitted by counsel for Caesars.² This explanatory letter is being provided consistent with your Department Guidelines for handling Contested Orders.

¹ 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"); R Squared Global Solutions, LLC ("R Squared"), derivatively on behalf of DNT Acquisition LLC ("DNT") are collectively referred to as the "Development Entities."

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

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June 4, 2021

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The Development Parties dispute numerous portions of the Order, which largely fall into one of four categories: (1) Caesars' Order contains factual findings and legal conclusions that are inconsistent with this Court's April 12, 2021 Minute Order (the "Minute Order"); (2) Caesars' Order contains factual findings that go beyond a determination of crime-fraud for purposes of a discovery motion and, instead, are directed toward ultimate issues in this case, including issues that are the subject of Caesars' multiple motions for summary judgment currently pending—rulings on which are currently stayed pursuant to the Stipulation and Order entered on April 28, 2021 (the "Stay Order"); (3) Caesars' Order contains factual findings that are not supported by the record before this Court in deciding Caesars' Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception (the "Motion to Compel"); and (4) Caesars' Order includes Caesars' advocacy, including characterizations made by Caesars of the evidence in this case. Each category of objections is discussed below.

1. Caesars' Proposed Order is Inconsistent with the Minute Order

First, the Order proposed by Caesars contains factual findings and legal conclusions that are inconsistent with the Minute Order.

In particular, this Court determined that "Seibel's representations as to the independence of the Seibel Family 2016 Trust were unfounded." (Minute Order, at 1.) Yet, Caesars seeks to have this Court characterize these representations—and others pertaining to issues separate and apart from the independence of the Seibel Family 2016 Trust—as "false," made "with the intent to deceive," and "exclusively for the purposes of defrauding" Caesars. (Caesars' Order at Findings of Fact, ¶¶ 16-18, 22-24.) That is not what this Court found in deciding the Motion to Compel.

Further, this Court determined that "an issue exists as to the effect of Plaintiff Seibel's prenuptial agreement with his wife and the interplay with the trust." (Minute Order, at 1.) Yet, Caesars' Order goes much further, finding that "the prenuptial agreement demonstrates that Seibel always had an interest in receiving distributions from the Seibel Family 2016 Trust" and that "the prenuptial agreement has not been amended or nullified."³ (Caesars' Order, at Findings of Fact, ¶¶ 20, 23; *see also id.* at ¶¶ 9, 12.)

³ Whether the prenuptial agreement has been amended or nullified is a conclusion of law that this Court did not address in its Minute Order; nor is it a conclusion that had to be reached in deciding the Motion to Compel.

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June 4, 2021

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Lastly, Caesars' Order concludes that "**communications** seeking legal advice for creation of the prenuptial agreement and Seibel Family 2016 Trust **are discoverable...as they were made in furtherance of** a scheme to defraud Caesars." (Caesars' Order at Conclusions of Law, ¶ 11 (emphasis added).) However, the Minute Order states that "this Court shall examine in camera the requested documents to determine that the attorney-client communications for which production is sought ... were made in furtherance of intended or continued illegality." (Minute Order, at 1-2; *see also In re Grand Jury Investigation*, 810 F.3d 1110, 1114 (9th Cir. 2016) (internal quotations omitted) ("[A] district court must examine the individual documents themselves to determine that the specific attorney-client communications for which production is sought are sufficiently related to and were made in furtherance of the intended, or present, continuing illegality.").) In other words, Caesars' Order causes this Court to conclude that the communications at issue **were** made in furtherance of continued illegality, despite the fact that this Court has not yet reviewed the documents *in camera* to make such a determination.

The Development Parties' competing Order incorporates the specific language from the Minute Order—*e.g.*, using the phrase "unfounded"—and eliminates any reference to certain representations being "false" or made with any specific intent. Seibel, Green, and the Development Entities have also omitted findings from their competing Order regarding the prenuptial agreement that are inconsistent with the Minute Order and beyond the scope of the Motion to Compel. Finally, they have eliminated any conclusions beyond that "Caesars has met its initial burden of proof"—this Court's conclusion in its Minute Order—and that the communications at issue must be reviewed *in camera* by this Court to determine if they were made in furtherance of intended or continued illegality. (*See* Minute Order, at 1-2.)

2. Caesars' Order Determines Ultimate Issues of this Case

Second, the Order proposed by Caesars determines ultimate issues of this case, including issues that are the subject of Caesars' pending Motions for Summary Judgment and that are not the subject of or necessary for deciding the Motion to Compel.

To begin, Caesars' Order states that "Seibel did not inform Caesars that he was engaging in criminal activity, being investigated for it, or that he pled guilty to one count of...28 U.S.C. § 7212." (Caesars' Order at Findings of Fact, ¶ 5.) As set forth more fully in Seibel, Green, and the Development Entities' Opposition to Caesars' Motion for Summary Judgment No. 1, Seibel told J. Jeffrey Frederick (his primary point of contact at Caesars) that he was under investigation for tax issues and could be facing criminal charges. (Opp'n to Caesars' MSJ 1, filed Mar. 30,

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June 4, 2021

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2021, at 14-15, 25.) This contention is a disputed issue of material fact that requires the jury to weigh the evidence and assess the credibility of the witnesses. (*Id.* at 25-26 (citing evidence refuting Caesars’ assertion that “Seibel failed [to] disclose anything about his activity that led to the criminal investigation”).)

Next, Caesars’ Order states that “Caesars terminated the agreements – as it was expressly allowed to do – due to Seibel’s unsuitability and failure to disclose.” (Caesars’ Order at Findings of Fact, ¶ 6.) ***This is the precise subject of Caesars’ declaratory relief claim.*** (See Caesars’ First Am. Compl., filed Mar. 11, 2020, ¶ 148 (“Caesars therefore seeks a declaration that the Seibel Agreements were properly terminated.”).) As set forth more fully in the Development Entities and Seibel’s Opposition to Caesars’ Motion for Summary Judgment No. 1, Caesars’ ability to terminate the Development Agreements is tempered by the implied covenant of good faith and fair dealing; as a result, genuine issues of material fact exist as to whether Caesars acted appropriately when it terminated the Development Agreements. (Opp’n to Caesars’ MSJ 1, filed Mar. 30, 2021, at 27-36.⁴)

In addition, Caesars’ Order states that “Seibel...worked with...Green to create new entities” as part of a “complex scheme.” (Caesars’ Order at Findings of Fact, ¶¶ 13-14.) Though not *currently* at issue in any pending motion for summary judgment (the deadline to file such motions is currently tolled by the Stay Order), this sort of finding would go directly toward Caesars’ tort claims against Seibel and Green for civil conspiracy and fraudulent concealment.

Lastly, to the extent that any findings refer to Seibel’s representations as to the independence of the Seibel Family 2016 Trust as “false,” made “with the intent to deceive,” or “exclusively for the purposes of defrauding” Caesars (*see* Caesars’ Order at Findings of Fact, ¶¶ 16-18, 22-24), such findings go to ultimate issues in this case, and thus, should be limited to the context of deciding this discovery motion. *See, e.g., In re Omnicom Grp. Inc., Sec. Litig.*, 233 F.R.D. 400, 405-06 (S.D.N.Y. 2006) (noting that courts must take special care “in setting the height of the bar” in a crime-fraud determination, as “any findings by the court that would suggest a strong enough basis to infer the perpetration of a fraud when such fraud is an essential

⁴ Further compounding the problem with the language proposed by Caesars is that the record reflects the termination was due to Seibel’s unsuitability, rather than “due to Seibel’s...failure to disclose.” (*Compare* Caesars Order at Findings of Fact, ¶ 6, *with* Ex. 68 to App’x of Exs. to Seibel, Green, & the Development Entities’ Opp. to Caesars’ MSJ 1, filed Mar. 30, 2021.)

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element of the ... underlying claims in th[e] case would, at the very least, potentially tilt the playing field”).

To rectify these issues, the competing Order proposed by Seibel, Green, and the Development Entities eliminates any findings that go beyond the scope of Caesars’ Motion to Compel and includes clarifying language that the burden of proof met by Caesars is “for purposes of claiming application of the crime-fraud exception to Seibel’s communications with his attorneys related to the Seibel Family 2016 Trust and prenuptial agreement.”

3. The Order Incorporates Factual Findings Not Supported by the Record

Third, the Order proposed by Caesars contains findings that are not supported by the record before this Court when deciding the Motion to Compel.

At times, Caesars’ Order inaccurately summarizes documents using language that is inconsistent with the documents themselves. For example, when summarizing the prenuptial agreement, Caesars’ Order states that “by its plain terms, [it] would require Dorfman to share the distributions she received from [the Trust] with Seibel”; however, the precise language of the prenuptial agreement required Dorfman to deposit the distributions in a joint bank account “to be used to pay their living expenses.” (*Compare* Caesars’ Order at Findings of Fact, ¶ 19, *with* Ex. 8 to App’x in Support of Caesars’ Mot. to Compel, at 7.)

In another instance, Caesars’ Order states that “Seibel began using foreign bank accounts to defraud the IRS in 2004” and that there were “numerous tolling agreements” entered into between Seibel and the federal government. (Caesars’ Order at Findings of Fact, ¶¶ 3-4.) Not only is this language inconsistent with the record of the criminal proceeding (*e.g.*, it is inaccurate and contrary to the terms of Seibel’s guilty plea to state that “Seibel began using foreign bank accounts to defraud the IRS in 2004”), but such findings are not supported by the record before this Court, as Caesars set forth only a single document related to Seibel’s criminal proceeding with its Motion to Compel: a tolling agreement. (*See generally* App’x in Support of Caesars’ Mot. to Compel; App’x to Reply in Support of Caesars’ Mot. to Compel.)

Further, Caesars’ Order uses language like “purportedly assigning the interests,” despite the fact that the interests held in the Development Entities *were assigned*, and only later rejected by Caesars. (Caesars’ Order at Findings of Fact, ¶¶ 13, 15; *see also* Exs. 6, 7 to App’x in Support of Caesars’ Mot. to Compel; Exs. 48, 49, 50, 62 to App’x of Exs. to Seibel, Green, & the

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Development Entities’ Opp. to Caesars’ Mot. to Compel.) On the topic of the Assignments, Caesars’ Order finds that Seibel assigned his interests “in an effort to conceal his criminal conviction while still reaping the benefits of his relationship with Caesars.” (Caesars’ Order at Findings of Fact, ¶ 7.) Yet, this Court’s Minute Order—and Caesars’ Motion to Compel—focused on the interplay between the prenuptial agreement and the Seibel Family 2016 Trust. (Minute Order, at 1; *see generally* Mot. to Compel.)

Indeed, Caesars’ Order includes numerous findings regarding Seibel’s intent that are not supported by the record, not present in this Court’s Minute Order, and beyond the scope of the Motion to Compel. For instance, Caesars’ Order states that “Seibel did not disclose that he decided to perform these purported assignments, transfers, and delegations *because of* his impending felony conviction” and that “these purported transfers were made *specifically to* avoid, undermine, and circumvent Caesars’ rights to terminate the Seibel Agreements.” (Caesars’ Order at Findings of Fact, ¶¶ 7, 9 (emphasis added).) Caesars’ Order also states that “Seibel *always* intended to receive benefits/distributions from the Seibel Family 2016 Trust,” despite the fact that he *did not* ultimately receive any distributions from the Seibel Family 2016 Trust. (*Compare* Caesars’ Order at Findings of Fact, ¶ 12, *with* Ex. 63 to App’x of Exs. to Seibel, Green, & the Development Entities’ Opp. to Caesars’ Mot. to Compel.) Caesars should not cause this Court to make findings concerning Seibel’s intent for purposes of a discovery motion.

The competing Order submitted by the Development Parties is consistent with the record and this Court’s Minute Order and does not cause this Court to make findings concerning what Seibel was thinking in 2016.

4. Caesars’ Order Incorporates Caesars’ Advocacy

Lastly, the Order proposed by Caesars incorporates Caesars’ advocacy, including characterizations made by Caesars of the evidence in this case.

Most notably, Caesars’ Order uses terms such as “Seibel Agreements” and “Seibel-Affiliated Entities” in an obvious attempt to have this Court find that Seibel did not dissociate from the Development Entities—another issue that is disputed in this case. (Caesars’ Order at Findings of Fact, ¶ 10.) In any event, the characterization “Seibel Agreement” is factually incorrect; Seibel was never a party to any of the Agreements—the Development Entities were.

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(Exs. 15, 16, 19, 20, 22, 26 to App'x of Exs. to Seibel, Green, & the Development Entities' Opp. to Caesars' Mot. to Compel.)

Beyond "Seibel Agreements" and "Seibel-Affiliated Entities," Caesars' Order contains various instances of unnecessary, advocacy-based phrases, such as "complex scheme" and the suggestion that Seibel was "*secretly* negotiating" the prenuptial agreement with his wife. (Caesars' Order at Findings of Fact, ¶¶ 13, 19 (emphasis added).) Those types of phrases should not be included in a decision by the Court addressing the discoverability of certain documents.

Alongside the above categories of objections, the parties dispute the window of time between notice of entry of the Order and the deadline for the Development Parties to submit documents to this Court for an *in camera* review. The Development Parties request 21 days to alleviate any unnecessary burden on the parties and this Court. Specifically, the Development Parties have notified Caesars that they intend to seek writ relief from the Nevada Supreme Court related to the Order and, in the interim, will request a stay of the Order. Without an ample window of time to do so, they will be left with two options: (1) asking this Court to hear a Motion to Stay within a matter of days; or (2) depriving this Court of the ability to hear a Motion to Stay, even on an Order Shortening Time, and instead, requesting such relief on an emergency basis from the Nevada Supreme Court, pending a decision on a writ petition.

In accordance with the above, the Development Parties respectfully request that this Court enter the enclosed version of the Order. Thank you.

Sincerely,

/s/ Joshua P. Gilmore

Joshua P. Gilmore

cc: All counsel (via email)
Attachment

1 **EIGHTH JUDICIAL DISTRICT COURT**

2 **CLARK COUNTY, NEVADA**

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

5 Plaintiff,

6 v.

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

9 Defendants,

10 and

11 GR BURGR LLC, a Delaware limited liability
company,

12 Nominal Plaintiff.

13 AND ALL RELATED MATTERS
14

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
CAESARS' MOTION TO COMPEL
DOCUMENTS WITHHELD ON THE
BASIS OF ATTORNEY-CLIENT
PRIVILEGE PURSUANT TO THE
CRIME-FRAUD EXCEPTION**

Date of Hearing: February 10, 2021

Time of Hearing: 9:00 a.m.

15
16 PHWLTV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las
17 Vegas Operating Company, LLC ("Paris"), and Boardwalk Regency Corporation d/b/a Caesars
18 Atlantic City's ("CAC," and collectively, with Caesars Palace, Paris, and Planet Hollywood,
19 "Caesars,") *Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege*
20 *Pursuant to the Crime-Fraud Exception* (the "Motion to Compel"), filed on January 6, 2021, came
21 before this Court for hearing on February 10, 2021, at 9:00 a.m. James J. Pisanelli, Esq.,
22 M. Magali Mercera, Esq., and Brittnie T. Watkins, Esq. of the law firm PISANELLI BICE PLLC,
23 appeared telephonically on behalf of Caesars. Joshua P. Gilmore, Esq., and Paul C. Williams, Esq.
24 of the law firm BAILEY KENNEDY, appeared telephonically on behalf of TPOV Enterprises, LLC
25 ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"),
26 LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"),
27 MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), and DNT Acquisition, LLC
28 ("DNT"), appearing derivatively by and through R Squared Global Solutions, LLC ("R Squared"),

(collectively the "Development Entities"), Rowen Seibel ("Seibel"), and Craig Green ("Green").¹ John Tennert, Esq., of the law firm FENNEMORE CRAIG, appeared telephonically on behalf of Gordon Ramsay ("Ramsay").

The Court having considered the Motion to Compel, the opposition thereto, as well as argument of counsel presented at the hearing, and good cause appearing therefor, enters the following Findings of Fact, Conclusions of Law, and Order granting the Motion to Compel:

FINDINGS OF FACT

1. THE COURT FINDS THAT, Caesars and MOTI, TPOV, DNT, GR Burgr, LLC, LLTQ, and FERG entered into a series of agreements governing the development, creation, and operation of various restaurants in Las Vegas and Atlantic City beginning in 2009 (the "Development Agreements");

2. THE COURT FURTHER FINDS THAT, Caesars is a gaming licensee and each of the Development Agreements contained representations, warranties, and conditions to ensure that Caesars was not involved in a business relationship with an unsuitable individual and/or entity;

3. THE COURT FURTHER FINDS THAT, in 2016, Seibel 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 Class E Felony;

4. THE COURT FURTHER FINDS THAT, Seibel did not inform Caesars that he pled 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 Class E Felony;

5. THE COURT FURTHER FINDS THAT, Caesars found out through news reports that Seibel pleaded guilty to a felony and thereafter, Caesars terminated the Development Agreements due to Seibel's unsuitability;

6. THE COURT FURTHER FINDS THAT, ten days before entering his guilty plea, Seibel informed Caesars that he was, among other things, (i) transferring all of the membership

¹ Seibel, Green, and the Development Entities are collectively referred to herein as the "Development Parties."

1 interests under the Development Entities that he held, directly or indirectly, to two individuals in
2 their capacities as trustees of a trust that he had created (the "Seibel Family 2016 Trust"); (ii) naming
3 one of these two individuals (Green) as the manager of the Development Entities in place of Seibel;
4 and (iii) assigning the Development Agreements to new entities owned by the Seibel Family 2016
5 Trust;

6 7. THE COURT FURTHER FINDS THAT, Seibel did not disclose at the time to
7 Caesars that he had pled guilty to a felony;

8 8. THE COURT FURTHER FINDS THAT, in this litigation, Seibel has alleged that
9 his unsuitability "is immaterial and irrelevant because, *inter alia*, he assigned his interests, if any,
10 in Defendants or the contracts;"

11 9. THE COURT FURTHER FINDS THAT, Seibel's long-time counsel, Brian Ziegler
12 ("Ziegler"), represented to Caesars that "great care was taken to ensure that the trust would never
13 have an unpermitted association with an Unsuitable Person and, as you can see, the trust is to be
14 guided by your . . . determination;"

15 10. THE COURT FURTHER FINDS THAT, shortly before Seibel pleaded guilty, he
16 (1) created new entities to which he was claiming to assign his interests in the Development Entities;
17 (2) created the Seibel Family 2016 Trust to receive the income from said entities; and (3) entered
18 into a prenuptial agreement with his soon-to-be wife, Bryn Dorfman ("Dorfman");

19 11. THE COURT FURTHER FINDS THAT, Seibel had his attorneys create new
20 entities to which the Development Agreements would be assigned;

21 12. THE COURT FURTHER FINDS THAT, after the new entities were created, Seibel
22 sent letters to Caesars claiming to have assigned the Development Agreements. In each of those
23 letters, Seibel told Caesars that the agreement would be assigned to a new entity whose membership
24 interests were ultimately mostly owned by the Seibel Family 2016 Trust. For some of the entities,
25 approximately less than 1% of the membership interests were held by Green, Ziegler, and Ziegler's
26 children;

1 13. THE COURT FURTHER FINDS THAT, Seibel told Caesars that the sole
2 beneficiaries of the Seibel Family 2016 Trust were Netty Wachtel Slushny, Dorfman, and potential
3 descendants of Seibel;

4 14. THE COURT FURTHER FINDS THAT, Seibel represented that, "[o]ther than the
5 parties described in th[e] letter[s], there [were] no other parties that have any management rights,
6 powers or responsibilities regarding, or equity or financial interests in" the new entities;

7 15. THE COURT FURTHER FINDS THAT, at or around the same time that Seibel set-
8 up the new entities and claimed to have assigned the Development Agreements to these new
9 entities, Seibel was negotiating a prenuptial agreement with Dorfman that, by its plain terms, would
10 require Dorfman to deposit the distributions she received from the Seibel Family 2016 Trust as a
11 beneficiary into a joint bank account with Seibel "to be used to pay their living expenses" and cause
12 the entities assigned to the Trust to remain Seibel's separate property in the event of a divorce;

13 16. THE COURT FURTHER FINDS THAT, Seibel used his lawyers to obtain advice
14 about setting up the Seibel Family 2016 Trust and the prenuptial agreement;

15 17. THE COURT FURTHER FINDS THAT, Seibel's representations as to the
16 independence of the Seibel Family 2016 Trust appear to be inconsistent with the plain language of
17 the prenuptial agreement, because Seibel could continue to benefit from income received by
18 Dorfman, as a beneficiary of the Seibel Family 2016 Trust, arising from the Development
19 Agreements despite Seibel's unsuitability to conduct business with a gaming licensee; and

20 18. THE COURT FURTHER FINDS THAT, an issue exists as to the effect of the
21 prenuptial agreement with Seibel's wife and its interplay with the Seibel Family 2016 Trust.

22 **CONCLUSIONS OF LAW**

23 1. In Nevada, the attorney-client privilege protects communications between a client
24 (or their representative) and their attorney (or their representative) "[m]ade for the purpose of
25 facilitating the rendition of professional legal services to the client, by the client or the client's
26 lawyer to a lawyer representing another in a matter of common interest." NRS § 49.095.

27 2. "The purpose of the attorney-client privilege 'is to encourage clients to make full
28 disclosures to their attorneys in order to promote the broader public interests of recognizing the

1 importance of fully informed advocacy in the administration of justice." *Canarelli v. Eighth*
2 *Judicial Dist. Ct.*, 464 P.3d 114, 119 (2020) (quoting *Wynn Resorts, Ltd. v. Eighth Judicial Dist.*
3 *Ct.*, 133 Nev. 369, 374, 399 P.3d 334, 341 (2017)). "The party asserting the privilege has the burden
4 to prove that the material is in fact privileged." *Id.* at 120 (citing *Ralls v. United States*, 52 F.3d 223,
5 225 (9th Cir. 1995)). However, "[i]t is well settled that privileges, whether creatures of statute or
6 the common law, should be interpreted and applied narrowly." *Id.* at 120 (quoting *Clark Cty. Sch.*
7 *Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 705, 429 P.3d 313, 318 (2018)).

8 3. Under Nevada law, no attorney-client privilege exists, "[i]f the services of the lawyer
9 were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew
10 or reasonably should have known to be a crime or fraud." NRS § 49.115(1).

11 4. "The 'crime-fraud exception' to the privilege protects against abuse of the attorney-
12 client relationship." *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078, 1090 (9th Cir. 2007),
13 *abrogated on other grounds by Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100 (2009).
14 Specifically, "where the client seeks the advice for 'future wrongdoing,' the crime-fraud exception
15 will not protect communications 'made for the purpose of getting advice for the commission of a
16 fraud or crime.'" *Hernandez v. Creative Concepts, Inc.*, No. 2:10-CV-02132-PMP, 2013 WL
17 1405776, at *4 (D. Nev. Apr. 5, 2013) (quoting *United States v. Zolin*, 491 U.S. 554, 562-63
18 (1989)); *see also In re Grand Jury Investigation*, 810 F.3d 1110, 1113 (9th Cir. 2016) (internal
19 quotations omitted) ("Under the crime-fraud exception, communications are not privileged when
20 the client consults an attorney for advice that will serve him in the commission of a fraud or
21 crime."); *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090 (quoting *Clark v. United States*, 289
22 U.S. 1, 15 (1933)) ("The privilege takes flight if the relation is abused. A client who consults an
23 attorney for advice that will serve him in the commission of a fraud will have no help from the law.
24 He must let the truth be told.").

25 5. Importantly, "[t]he planned crime or fraud need not have succeeded for the exception
26 to apply." *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090. "The client's abuse of the attorney-
27 client relationship, not his or her successful criminal or fraudulent act, vitiates the privilege." *Id.*
28 (citation omitted). Indeed, "[t]he attorney need not have been aware that the client harbored an

improper purpose." *Lewis v. Delta Air Lines, Inc.*, No. 214CV01683RFBGWF, 2015 WL 9460124, at *2 (D. Nev. Dec. 23, 2015) (citation omitted).

6. "[T]he crime-fraud exception is not strictly limited to cases alleging criminal violations or common law fraud." *Lewis*, 2015 WL 9460124, at *3. "The term 'crime/fraud exception,' . . . , is 'a bit of a misnomer . . . as many courts have applied the exception to situations falling well outside of the definitions of crime or fraud.'" *Rambus, Inc. v. Infineon Techs. AG*, 222 F.R.D. 280, 288 (E.D. Va. 2004) (internal citations omitted); *see, e.g., Cooksey v. Hilton Int'l Co.*, 863 F. Supp. 150, 151 (S.D.N.Y. 1994) (upholding magistrate judge's application of the crime-fraud exception and finding that "the facts of th[e] case demonstrate[d] if not an actual fraud, at least an intent on the part of defendants to defraud plaintiff."); *Volcanic Gardens Mgmt. Co. v. Paxson*, 847 S.W.2d 343, 348 (Tex. App. 1993) ("The crime/fraud exception comes into play when a prospective client seeks the assistance of an attorney in order to make a false statement or statements of material fact or law to a third person or the court for personal advantage."); *Horizon of Hope Ministry v. Clark Cty., Ohio*, 115 F.R.D. 1, 5 (S.D. Ohio 1986) ("Attorney/client communications which are in perpetuation of a tort are not privileged.").

7. To invoke the crime-fraud exception, the moving party must first "show that the client was engaged in or planning a criminal or fraudulent scheme when it sought the advice of counsel to further the scheme." *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090 (internal quotations omitted). "Mere allegations of fraud or criminality do not suffice." *Garcia v. Serv. Emps. Int'l Union*, No. 217CV01340APGNJK, 2018 WL 6566563, at *5 (D. Nev. Sept. 6, 2018) (citations omitted). Instead, "[a] movant in a civil case must show by a preponderance of the evidence that the attorney's services were utilized in furtherance of an ongoing unlawful scheme." *Id.* (citing *In re Napster Inc. Copyright Litig.*, 479 F.3d at 1090).

8. Next, if successful, the moving party must then "demonstrate that the attorney-client communications for which production is sought are sufficiently related to and were made in furtherance of [the] intended, or present, continuing illegality." *In re Grand Jury Investigation*, 810 F.3d at 1113 (internal quotations omitted). This second step is accomplished through an *in camera* review of the documents. *See id.* at 1114 (internal quotations omitted) ("[A] district court must

1 examine the individual documents themselves to determine that the specific attorney-client
2 communications for which production is sought are sufficiently related to and were made in
3 furtherance of the intended, or present, continuing illegality.").

4 9. For purposes of claiming application of the crime-fraud exception to Seibel's
5 communications with his attorneys related to the Seibel Family 2016 Trust and prenuptial
6 agreement, Caesars has met its initial burden of proof and established that Seibel's representations
7 as to the independence of the Seibel Family 2016 Trust were unfounded, as Seibel could continue
8 to benefit from the Development Agreements despite his unsuitability to conduct business with a
9 gaming licensee.

10 10. An issue exists as to the effect of Seibel's prenuptial agreement with his wife and its
11 interplay with the Seibel Family 2016 Trust.

12 11. The Court must review, *in camera*, the emails between Seibel and his counsel related
13 to the Seibel Family 2016 Trust and prenuptial agreement to determine which email(s), if any, are
14 sufficiently related to and were made in furtherance of intended or continued illegality.

15 **ORDER**

16 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Motion to
17 Compel shall be, and hereby is, GRANTED.

18 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the
19 Development Parties shall submit the following documents from their privilege log to the Court for
20 *in camera* review within twenty-one (21) days of notice of entry of this Order: CTRL00111548;
21 CTRL00111549; CTRL00112143; CTRL00112144; CTRL00112145; CTRL00112146;
22 CTRL00112147; CTRL00113142; CTRL00113288; CTRL00113763; CTRL00113764;
23 CTRL00113765; CTRL00113766; CTRL00113767; CTRL00113774; CTRL00113775;
24 CTRL00113832; CTRL00113833; CTRL00113840; CTRL00113841; CTRL00113843;
25 CTRL00114161; CTRL00114162; CTRL00114164; CTRL00114165; CTRL00114272;
26 CTRL00114273; CTRL00114282; CTRL00114283; CTRL00114284; CTRL00114285;
27 CTRL00114286; CTRL00114300; CTRL00114316; CTRL00114324; CTRL00114346;
28 CTRL00114364; CTRL00114416; CTRL00114417; CTRL00114475; CTRL00114476;

1	CTRL00114871;	CTRL00114872;	CTRL00114873;	CTRL00114874;	CTRL00114968;
2	CTRL00114969;	CTRL00114970;	CTRL00115207;	CTRL00115208;	CTRL00117851;
3	CTRL00117852;	CTRL00145759;	CTRL00145772;	CTRL00145774;	CTRL00145775;
4	CTRL00145777;	CTRL00145789;	CTRL00145790;	CTRL00145791;	CTRL00145792;
5	CTRL00145877;	CTRL00145878;	CTRL00145879;	CTRL00145895;	CTRL00145896;
6	CTRL00145897;	CTRL00177870;	CTRL00177871;	CTRL00177872;	CTRL00177873;
7	CTRL00177874;	CTRL00178124;	CTRL00178125;	CTRL00178141;	CTRL00178153;
8	CTRL00178156;	CTRL00178158;	CTRL00178163;	CTRL00178164;	CTRL00178165;
9	CTRL00178166;	CTRL00178167;	CTRL00178168;	CTRL00178169;	CTRL00178173;
10	CTRL00178174;	CTRL00178175;	CTRL00178176;	CTRL00178177;	CTRL00178178;
11	CTRL00178179;	CTRL00178238;	CTRL00333064;	CTRL00333065;	CTRL00333066;
12	CTRL00333067;	CTRL00333068;	CTRL00334493;	CTRL00334494;	CTRL00334495;
13	CTRL00334496;	CTRL00335096;	CTRL00335097;	CTRL00335098;	CTRL00336394;
14	CTRL00336395;	CTRL00366278;	CTRL00366279;	CTRL00366280;	CTRL00366281;
15	CTRL00366614;	CTRL00366615;	CTRL00366616;	CTRL00111325;	CTRL00114114;
16	CTRL00114410;	CTRL00114429;	CTRL00114432;	CTRL00114445;	CTRL00114604;
17	CTRL00114844;	CTRL00114870;	CTRL00114989;	CTRL00120720;	CTRL00120721;
18	CTRL00120723;	CTRL00120724;	CTRL00120726;	CTRL00145197;	CTRL00145198;
19	CTRL00145784;	CTRL00145876;	CTRL00173347;	CTRL00173350;	CTRL00173352;
20	CTRL00178020;	CTRL00178080;	CTRL00178092;	CTRL00178094;	CTRL00178115;
21	CTRL00178120;	CTRL00178137;	CTRL00178140;	CTRL00178155;	CTRL00178162;
22	CTRL00178191;	CTRL00178227;	CTRL00333242;	CTRL00333310;	CTRL00366304;
23	CTRL00366305;	CTRL00338414;	CTRL00338425;	CTRL00338426;	CTRL00338511;
24	CTRL00338513;	CTRL00338611;	CTRL00338612;	CTRL00339801;	CTRL00339802;
25	CTRL00339803;	CTRL00339848;	CTRL00339849;	CTRL00340482;	CTRL00346870;
26	CTRL00346871;	CTRL00346875;	CTRL00367769;	CTRL00367770;	CTRL00367771;
27	CTRL00367772;	CTRL00338593;	CTRL00113723;	CTRL00113754;	CTRL00113762;
28					

CTRL00113768; CTRL00114321; CTRL00114322; CTRL00145645; CTRL00145661;
CTRL00145662; CTRL00145663; CTRL00178086; CTRL00178090; and CTRL00178092.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall examine, *in camera*, the above identified documents to determine whether the attorney-client communications for which production is sought by Caesars are sufficiently related to and were made in furtherance of intended or continued illegality.

IT IS SO ORDERED.

Respectfully submitted by:

BAILEY ♦ KENNEDY

By: /s/ Joshua P. Gilmore
John R. Bailey, Esq., Bar No. 0137
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LLC; Craig Green; R Squared Global Solutions,
LLC, Derivatively on Behalf of DNT Acquisition,
LLC; and GR Burgr, LLC*

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Rowen Seibel, Plaintiff(s)

CASE NO: A-17-751759-B

7 vs.

DEPT. NO. Department 16

8 PHWLTV LLC, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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12 Court. The foregoing Order Shortening Time was served via the court's electronic eFile
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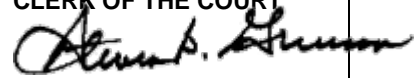
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TPOV Enterprises 16, LLC; FERG, LLC; FERG 16, LLC; Craig Green;
R Squared Global Solutions, LLC, Derivatively on Behalf of DNT Acquisition,
LLC; and GR Burgr, LLC*

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants,

And

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED CLAIMS.

Case No. A-17-751759-B

Dept. No. XVI

Consolidated with A-17-760537-B

**NOTICE OF ENTRY OF ORDER
SHORTENING TIME**

Hearing Date: June 24, 2021

Hearing Time: 9:00 am

1 PLEASE TAKE NOTICE that an Order Shortening Time was entered on The Development
2 Entities, Rowen Seibel, and Craig Green's Motion to Stay Compliance with the Court's June 8,
3 2021 Order Pending Petition for Extraordinary Writ Relief, a true and correct copy of which is
4 attached hereto.

5 DATED this 11th day of June, 2021.

6 BAILEY ♦ KENNEDY

7 By: /s/ Paul C. Williams

8 JOHN R. BAILEY

9 DENNIS L. KENNEDY

JOSHUA P. GILMORE

PAUL C. WILLIAMS

STEPHANIE J. GLANTZ

10 *Attorneys for Rowen Seibel; Moti Partners, LLC; Moti*
11 *Partners 16, LLC; LLTQ Enterprises, LLC; LLTQ Enterprises*
12 *16, LLC; TPOV Enterprises, LLC; TPOV Enterprises 16,*
13 *LLC; FERG, LLC; FERG 16, LLC; Craig Green; R Squared*
14 *Global Solutions, LLC, Derivatively on Behalf of DNT*
15 *Acquisition, LLC; and GR Burgr, LLC*

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 11th day of June, 2021, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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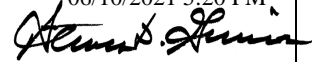
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TPOV Enterprises 16, LLC; FERG, LLC; FERG 16, LLC; Craig Green;
R Squared Global Solutions, LLC, Derivatively on Behalf of DNT Acquisition,
LLC; and GR Burgr, LLC*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

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

Defendants,

And

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED CLAIMS.

Case No. A-17-751759-B

Dept. No. XVI

Consolidated with A-17-760537-B

(HEARING REQUESTED)

**THE DEVELOPMENT ENTITIES,
ROWEN SEIBEL, AND CRAIG GREEN'S
MOTION TO STAY COMPLIANCE WITH
THE COURT'S JUNE 8, 2021 ORDER
PENDING PETITION FOR
EXTRAORDINARY WRIT RELIEF**

ON ORDER SHORTENING TIME

Pursuant to NRAP 8 and the inherent authority of this Court, the Development Parties¹ move to stay (the “Motion to Stay”) compliance with this Court’s Findings of Fact, Conclusions of Law, and Order Granting Caesars’ Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, entered on June 8, 2021 (the “Order”) pending the outcome of a Petition for Extraordinary Writ Relief to be filed with the Nevada Supreme Court (the “Writ Petition”). Alternatively, the Development Parties request that this Court stay compliance with the Order until July 9, 2021, or until ten (10) days after this Court rules on the Motion to Stay, whichever is later. This would give the Development Parties sufficient time to seek a stay from the Nevada Supreme Court.

As detailed below, this Court’s Order requires the Development Parties to divulge privileged communications to this Court and to opposing parties. The Writ Petition seeks to vacate the Order. If the Development Parties are required to divulge the privileged communications prior to the resolution of the Writ Petition, the primary object of the Writ Petition will be defeated. Thus, a stay is warranted.

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

DATED this 10th day of June, 2021.

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

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

Attorneys for the Development Parties

¹ “Development Parties” refers to Rowen Seibel, Craig Green, 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”); R Squared Global Solutions, LLC (“R Squared”), derivatively on behalf of DNT Acquisition LLC (“DNT”); and GR Burgr, LLC.

APPLICATION FOR ORDER SHORTENING TIME

Pursuant to EDCR 2.26, the Development Parties hereby apply for an Order Shortening Time in which their Motion to Stay is to be heard. If the Motion to Stay is heard in the ordinary course, the object of the Writ Petition will be defeated. The deadline for the Development Parties to produce the privileged communications for *in camera* review is June 18, 2021. If the Motion to Stay is heard in the ordinary course, the Development Parties will be required to comply with the Order and disclose privileged communications, defeating the primary purpose of their Writ Petition.

Accordingly, the Development Parties respectfully request that this Court set a hearing on the Motion to Stay on or before June 15, 2021, and stay compliance with the Order pending this Court's disposition of the Motion to Stay. An Order Shortening Time—which includes a provision staying compliance with the Order pending this Court's resolution of the Motion to Stay—is included below.

This Application is made and based upon the following Declaration of Paul Williams, Esq.

DATED this 10th day of June, 2021.

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

JOHN R. BAILEY

DENNIS L. KENNEDY

JOSHUA P. GILMORE

PAUL C. WILLIAMS

STEPHANIE J. GLANTZ

Attorneys for the Development Parties

**DECLARATION OF PAUL C. WILLIAMS, ESQ. IN SUPPORT OF
APPLICATION FOR ORDER SHORTENING TIME**

I, Paul C. Williams, Esq., declare as follows:

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

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

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

4. Good cause exists to hear the Motion to Stay on shortened time. If the Motion to Stay is heard in the ordinary course, the object of the Writ Petition—to vacate the Order and prevent the disclosure of privileged attorney-client communications—will be defeated.

5. The deadline for the Development Parties to provide the Court with privileged communications for *in camera* review—ten (10) days from entry of the Order—is June 18, 2021.

6. If the Motion to Stay is heard in the ordinary course, the Development Parties will be required to disclose privileged communications before this Court has a chance to consider the Motion to Stay. This would defeat the object of the Writ Petition—as the Nevada Supreme Court has said, there is “no adequate remedy at law that could restore the privileged nature of the information, because once such information is disclosed, it is irretrievable.” *See Valley Health Sys., Ltd. Liab. Co. v. Eighth Jud. Dist. Ct.*, 127 Nev. 167, 172, 252 P.3d 676, 679 (2011).

7. Accordingly, the Development Parties respectfully request that this Court set a hearing on the Motion to Stay as soon as possible.

8. Further, to give this Court adequate time to analyze the issues and avoid forcing the Development Parties to seek emergency relief from the Nevada Supreme Court before initially requesting a stay from this Court, the Development Parties respectfully request that this Court stay compliance with the Order pending this Court’s disposition of the Motion to Stay.

/s/ Paul C. Williams
PAUL C. WILLIAMS

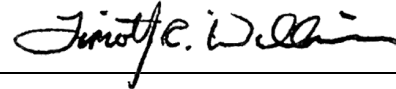
ORDER SHORTENING TIME

The Court, having considered the Development Parties' Application for Order Shortening Time, and the Declaration of Paul C. Williams, Esq., in support thereof, and good cause appearing, **HEREBY ORDERS** that the time for hearing on The Development Entities, Rowen Seibel, and Craig Green's Motion to Stay Compliance with the Court's June 8, 2021 Order Pending Petition for Extraordinary Writ Relief (the "Motion to Stay") be **SHORTENED**, and the same shall be heard on the 24 day of June, 2021, at 9:05 a.m., in Department XVI of the Eighth Judicial District Court, Clark County, Nevada, located at the Regional Justice Center, 200 Lewis Avenue, in Las Vegas, Nevada, or as soon thereafter as counsel can be heard.

~~**IT IS HEREBY FURTHER ORDERED** that compliance with the Court's Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, entered on June 8, 2021, is **STAYED**, until July 9, 2021, or until ten (10) days after the Court rules on the Motion to Stay, whichever is later.~~ TCW

IT IS SO ORDERED.

Dated this 10th day of June, 2021



18A 546 735F BDB5
Timothy C. Williams
District Court Judge

N

Respectfully Submitted By:

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams
JOHN R. BAILEY
DENNIS L. KENNEDY
JOSHUA P. GILMORE
PAUL C. WILLIAMS
STEPHANIE J. GLANTZ
Attorneys for the Development Parties

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court should stay compliance with its Order pending resolution of the Development Parties’ forthcoming Writ Petition. This Court’s Order commands the Development Parties to divulge privileged communications to this Court and to opposing parties. The Development Parties’ Writ Petition seeks to vacate the Order. If a stay is not entered, then the object of the Development Parties’ Writ Petition—to prevent the Development Parties from having to divulge privileged communications—will be defeated. If the documents are divulged, their privileged nature cannot be retrieved. The Development Parties cannot unring the bell. Accordingly, a stay is warranted.

As detailed below, the Nevada Supreme Court has repeatedly entertained writ petitions concerning orders that require the disclosure of privileged communications. The reasoning behind the Nevada Supreme Court’s intervention is simple: If the “order requires the disclosure of privileged material, there would be no adequate remedy at law that could restore the privileged nature of the information, because once such information is disclosed, it is irretrievable.” *See Valley Health Sys., LLC*, 127 Nev. at 171-72, 252 P.3d at 679. Here, because the Order requires the Development Parties to divulge privileged communications, it is very likely that the Nevada Supreme Court will entertain the Writ Petition. *See Toll v. Wilson*, 135 Nev. 430, 432, 453 P.3d 1215, 1217 (2019) (“[T]his court will intervene when the district court issues an order requiring disclosure of privileged information.”). Moreover, the Writ Petition provides an opportunity for the Nevada Supreme Court to issue guidance on a privilege conferred by a statute, NRS 49.115(1), that it has not yet interpreted. *See Diaz v. Eighth Jud. Dist. Ct.*, 116 Nev. 88, 93, 993 P.2d 50, 54 (2000) (noting writ relief may be appropriate where a “writ petition offers this court a unique opportunity to define the precise parameters of [a] privilege conferred by a statute that this court has never interpreted.”) (alteration in original) (internal quotation marks omitted).

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

First, the object of the Writ Petition will be defeated if a stay is not entered because the Development Parties will be forced to disclose privileged communications and, as a result, the

1 “assertedly privileged information would irretrievably lose its confidential and privileged quality.”

2 *See Wardleigh*, 111 Nev. at 350-51, 891 P.2d at 1183-84.

3 Second, the Development Parties will suffer irreparable injury if a stay is not entered because
4 the bell of compelled disclosure of privileged communications cannot be unrung. *See id.*

5 Third, Caesars,² Gordon Ramsay (“Ramsay”), and Original Homestead Restaurant, Inc.
6 (“OHR”) will suffer little to no harm from a stay. The Nevada Supreme Court has previously held
7 that delay in litigation, without more, is not a sufficient ground to oppose a stay; nevertheless, a stay
8 of all non-discovery proceedings in this matter is already in effect pursuant to the Nevada Supreme
9 Court’s April 16, 2021 Order Granting Stay. As a result, the impact of any delay is minimal.

10 Fourth, respectfully, the Supreme Court is likely to grant the Writ Petition, as Caesars did not
11 meet its burden to set aside the attorney-client privilege between Seibel and his counsel and the
12 Order contains findings that are not supported by the record.

13 In sum, this Court should stay compliance with the Order pending the Nevada Supreme
14 Court’s disposition of the Writ Petition. *See Cotter v. Eighth Jud. Dist. Ct.*, 134 Nev. 235, 249 n.2,
15 416 P.3d 228, 231 n.2 (2018) (noting that the court had granted “emergency motion for stay pending
16 resolution of ... writ petition” that challenged order requiring party to divulge privileged
17 communications). Alternatively, the Development Parties request that this Court stay compliance
18 with the Order until July 9, 2021, or until ten (10) days after this Court rules on the Motion to Stay,
19 whichever is later. This will enable the Development Parties sufficient time to seek an emergency
20 stay from the Nevada Supreme Court.

21 II. RELEVANT PROCEDURAL HISTORY

22 A. Caesars Moves to Compel Production of the Development Parties’ 23 Communications With Their Attorneys Based on the Crime-Fraud Exception.

24 On January 6, 2021, Caesars moved to compel documents based on the crime-fraud
25 exception (the “Motion to Compel”). (Caesars’ Mot. to Compel Docs. Withheld on the Basis of the
26 Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, Jan. 6, 2021.) The Development

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

Parties filed their Opposition on January 22, 2021. (Rowen Seibel, Craig Green, and the Development Entities' Opp'n to Caesars' Mot. to Compel Docs. Withheld on the Basis of the Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, Jan. 22, 2021.) Caesars filed a Reply on February 3, 2021. (Reply in Support of Caesars' Mot. to Compel Docs. Withheld on the Basis of the Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, Feb. 3, 2021.)

B. This Court Grants Caesars' Motion to Compel.

This Court held a hearing on the Motion to Compel on February 24, 2021. It then issued a Minute Order Granting the Motion to Compel on April 12, 2021. (Apr. 12, 2021, Minute Order.) In its Minute Order, this Court determined that "Caesars ha[d] met its initial burden of proof by establishing that Plaintiff Seibel's representations as to the independence of the Seibel Family 2016 Trust were unfounded, and Plaintiff Seibel could continue to benefit from the agreements despite unsuitability to conduct business with a gaming licensee." (*Id.*) This Court further determined that "an issue exists as to the effect of Plaintiff Seibel's prenuptial agreement with his wife and the interplay with the trust." (*Id.*)

Through the Minute Order, this Court directed Caesars to prepare an order based on the minute order, arguments of counsel, and the entire record, and circulate it to the Development Parties prior to submission to the Court. (*Id.*) If the parties could not agree on the contents, they were to submit competing orders. (*Id.*)

C. The Parties Submit Competing Orders; the Court Adopts Caesars' Order.

Ultimately, the parties could not agree on language for the order and submitted competing orders. (Ex. A, June 3, 2021, Letter from Joshua P. Gilmore to the Court.³) On June 8, 2021, this Court adopted Caesars' version of the Order. (*See* Order, June 8, 2021.) The Order requires the

³ The Development Parties disputed numerous portions of Caesars' proposed order, including, but not limited to, the narrow "window of time between notice of entry of the Order and the deadline for the Development Parties to submit documents to this Court for an *in camera* review," as it would unnecessarily require this Court to evaluate a motion to stay on an emergency basis. (*Id.* at 7.) Specifically, the Development Parties expressed concern that, "[w]ithout an ample window of time to [comply with the Order], [the Development Parties] will be left with two options: (1) asking this Court to hear a Motion to Stay within a matter of days; or (2) depriving this Court of the ability to hear a Motion to Stay, even on an Order Shortening Time, and instead, requesting such relief on an emergency basis from the Nevada Supreme Court, pending a decision on a writ petition." (*Id.*)

Development Parties to submit privileged communications for *in camera* review by June 18, 2021. (Notc. of Entry of Findings of Fact, Concl. of Law, and Ord., June 8, 2021.)

III. ARGUMENT

A. Standard of Decision.

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

As shown below, this Court should stay compliance with the Order pending the outcome of the Writ Petition; or at a minimum, until the Development Parties have an opportunity to seek a stay from the Nevada Supreme Court.

B. The Object of the Writ Petition Will be Defeated Unless a Stay is Granted.

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

Here, without a stay, the Development Parties will be forced to disclose privileged communications to this Court and the opposing parties without a ruling from the Nevada Supreme Court on the Writ Petition. Plainly, requiring disclosure of the privileged communications would defeat the primary object of the Writ Petition. As the Nevada Supreme Court has explained, “if improper discovery were allowed, the assertedly privileged information would irretrievably lose its confidential and privileged quality and petitioners would have no effective remedy, even by a later appeal.” *Wardleigh v. Second Jud. Dist. Ct.*, 111 Nev. 345, 350-51, 891 P.2d 1180, 1183-84

(1995); *accord Cotter*, 134 Nev. at 249, 416 P.3d at 231 (“[W]ithout writ relief, compelled disclosure of petitioner’s assertedly privileged communication will occur and petitioner would have no effective remedy, even by subsequent appeal.”); *Las Vegas Sands Corp. v. Eighth Jud. Dist. Ct.*, 130 Nev. 118, 122, 319 P.3d 618, 621 (2014) (“This case presents a situation where, if improperly disclosed, ‘the assertedly privileged information would irretrievably lose its confidential and privileged quality and petitioners would have no effective remedy, even by later appeal.’”) (quoting *Wardleigh*, 111 Nev. at 350-51, 891 P.2d at 1183-84); *Valley Health Sys., LLC*, 127 Nev. at 171-72, 252 P.3d at 679 (holding that where an “order requires the disclosure of privileged material,” there is “no adequate remedy at law that could restore the privileged nature of the information, because once such information is disclosed, it is irretrievable.”).

Accordingly, the first factor weighs *heavily* in favor of a stay.

C. The Development Parties Will Suffer Irreparable Injury if a Stay is not Entered Pending the Outcome of their Writ Petition; Conversely, Caesars, Ramsay, and OHR will Suffer No Harm.

“[I]n certain cases, a party may face actual irreparable harm, and in such cases the likelihood of irreparable harm should be considered in the stay analysis.” *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39.

The “resulting prejudice” from disclosure of privileged communications prior to appellate review would “not only be irreparable, but of a magnitude that could require the imposition of such drastic remedies as dismissal with prejudice or other similar sanctions.” *Cotter*, 134 Nev. 235, 249, 416 P.3d at 231; *see also Las Vegas Sands Corp.*, 130 Nev. at 122, 319 P.3d at 621; *Valley Health*, 127. at Nev 171, 252 P.3d at 678-79; *Wardleigh*, 111 Nev. at 350-51, 891 P.2d at 1183-84. Conversely, when “the only cognizant harm threatened to the parties is increased litigation costs and delay,” they do not face any irreparable harm. *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39.

Here, the Development Parties will suffer serious injury if a stay is not entered, whereas Caesars (and the other parties) will not. Specifically, compelled disclosure of privileged communications results in a prejudice that is irreparable and cannot be restored. If a stay is not

1 entered and the Development Parties ultimately prevail before the Nevada Supreme Court, their
2 victory will be hollow.

3 Conversely, Caesars (and the other parties) will not suffer irreparable or serious harm if this
4 Court grants a stay. A stay of all non-discovery proceedings in this matter is already in effect
5 pursuant to the Nevada Supreme Court’s April 16, 2021, Order Granting Stay. Thus, although mere
6 delay does not constitute irreparable harm, any delay that would allegedly be suffered by Caesars
7 from a stay would be minimal, if any, as all non-discovery proceedings in this matter are already
8 stayed.

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

10 **D. The Development Parties are Likely to Prevail on the Merits of their Writ**
11 **Petition.**

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

16 Here, respectfully, it is likely that the Nevada Supreme Court will consider the Writ Petition
17 and grant the relief requested by the Development Parties. As detailed in the Development Parties’
18 Opposition to the Motion to Compel, Caesars failed to meet its burden to justify piercing the
19 attorney-client privilege. The Nevada Supreme Court “will intervene [on discovery issues] when
20 the district court issues an order requiring disclosure of privileged information.” *Toll*, 135 Nev. at
21 432, 453 P.3d at 1217.

22 Moreover, the Nevada Supreme Court has not yet defined the parameters of NRS 49.115(1),
23 or the crime-fraud exception. Indeed, this Court’s Order was based on federal common law
24 regarding the crime-fraud exception. (Order at 5-7.)

25 Further, this Court made factual findings without substantial evidence from the record to
26 reach its conclusion that a legitimate attempt to disassociate—to the extent Seibel understood was
27 needed based on Caesars’ prior conduct and communications (or rather, a complete lack thereof on
28 Caesars’ part)—constituted an attempted fraud. In so doing, this Court (respectfully) erred in its

1 interpretation of the prenuptial agreement and Seibel Family 2016 Trust. As a result, it is likely the
2 Nevada Supreme Court will entertain the Writ Petition. *See Diaz*, 116 Nev. at 93, 993 P.2d at 54
3 (noting writ relief may be appropriate where a “writ petition offers this court a unique opportunity to
4 define the precise parameters of [a] privilege conferred by a statute that this court has never
5 interpreted.”) (alteration in original) (internal quotation marks omitted).

6 Accordingly, the fourth factor weighs in favor of a stay.

7 IV. CONCLUSION

8 For the reasons set forth above, this Court should stay enforcement of the Order until the
9 Nevada Supreme Court rules on the Development Parties’ Writ Petition. Without a stay, the object
10 of the Writ Petition will be defeated, and unlike Caesars, Ramsay, and OHR, the Development
11 Parties will suffer serious injury, for which they would have no remedy.

12 Alternatively, the Development Parties request that this Court stay compliance with the
13 Order until July 9, 2021, or until ten (10) days after the Court rules on the Motion to Stay,
14 whichever is later. This would give the Development Parties sufficient time to seek an emergency
15 stay from the Nevada Supreme Court.

16 DATED this 10th of June, 2021.

17 BAILEY❖KENNEDY

18 By: /s/ Paul C. Williams

19 JOHN R. BAILEY

20 DENNIS L. KENNEDY

21 JOSHUA P. GILMORE

22 PAUL C. WILLIAMS

23 STEPHANIE J. GLANTZ

24 *Attorneys for the Development Parties*

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 10th of June, 2021, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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EXHIBIT A

EXHIBIT A

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June 4, 2021

Via Email

dc16inbox@clarkcountycourts.us

The Honorable Timothy C. Williams
Department XVI
Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89145

Re: *Seibel v. PHWLTV, LLC*; Case No. A-17-751759-B
Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception

Your Honor:

Despite their good faith efforts, the parties were unable to reach an agreement on the language of the Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception (the "Order"). Seibel, Green, and the Development Entities¹ (collectively, the "Development Parties") hereby submit their competing version of the Order to this Court for consideration, which is attached hereto as **Exhibit 1**. A competing version of the Order is being submitted by counsel for Caesars.² This explanatory letter is being provided consistent with your Department Guidelines for handling Contested Orders.

¹ 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"); R Squared Global Solutions, LLC ("R Squared"), derivatively on behalf of DNT Acquisition LLC ("DNT") are collectively referred to as the "Development Entities."

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

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The Development Parties dispute numerous portions of the Order, which largely fall into one of four categories: (1) Caesars' Order contains factual findings and legal conclusions that are inconsistent with this Court's April 12, 2021 Minute Order (the "Minute Order"); (2) Caesars' Order contains factual findings that go beyond a determination of crime-fraud for purposes of a discovery motion and, instead, are directed toward ultimate issues in this case, including issues that are the subject of Caesars' multiple motions for summary judgment currently pending—rulings on which are currently stayed pursuant to the Stipulation and Order entered on April 28, 2021 (the "Stay Order"); (3) Caesars' Order contains factual findings that are not supported by the record before this Court in deciding Caesars' Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception (the "Motion to Compel"); and (4) Caesars' Order includes Caesars' advocacy, including characterizations made by Caesars of the evidence in this case. Each category of objections is discussed below.

1. Caesars' Proposed Order is Inconsistent with the Minute Order

First, the Order proposed by Caesars contains factual findings and legal conclusions that are inconsistent with the Minute Order.

In particular, this Court determined that "Seibel's representations as to the independence of the Seibel Family 2016 Trust were unfounded." (Minute Order, at 1.) Yet, Caesars seeks to have this Court characterize these representations—and others pertaining to issues separate and apart from the independence of the Seibel Family 2016 Trust—as "false," made "with the intent to deceive," and "exclusively for the purposes of defrauding" Caesars. (Caesars' Order at Findings of Fact, ¶¶ 16-18, 22-24.) That is not what this Court found in deciding the Motion to Compel.

Further, this Court determined that "an issue exists as to the effect of Plaintiff Seibel's prenuptial agreement with his wife and the interplay with the trust." (Minute Order, at 1.) Yet, Caesars' Order goes much further, finding that "the prenuptial agreement demonstrates that Seibel always had an interest in receiving distributions from the Seibel Family 2016 Trust" and that "the prenuptial agreement has not been amended or nullified."³ (Caesars' Order, at Findings of Fact, ¶¶ 20, 23; *see also id.* at ¶¶ 9, 12.)

³ Whether the prenuptial agreement has been amended or nullified is a conclusion of law that this Court did not address in its Minute Order; nor is it a conclusion that had to be reached in deciding the Motion to Compel.

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Lastly, Caesars' Order concludes that "**communications** seeking legal advice for creation of the prenuptial agreement and Seibel Family 2016 Trust **are discoverable...as they were made in furtherance of** a scheme to defraud Caesars." (Caesars' Order at Conclusions of Law, ¶ 11 (emphasis added).) However, the Minute Order states that "this Court shall examine in camera the requested documents to determine that the attorney-client communications for which production is sought ... were made in furtherance of intended or continued illegality." (Minute Order, at 1-2; *see also In re Grand Jury Investigation*, 810 F.3d 1110, 1114 (9th Cir. 2016) (internal quotations omitted) ("[A] district court must examine the individual documents themselves to determine that the specific attorney-client communications for which production is sought are sufficiently related to and were made in furtherance of the intended, or present, continuing illegality.")) In other words, Caesars' Order causes this Court to conclude that the communications at issue **were** made in furtherance of continued illegality, despite the fact that this Court has not yet reviewed the documents *in camera* to make such a determination.

The Development Parties' competing Order incorporates the specific language from the Minute Order—*e.g.*, using the phrase "unfounded"—and eliminates any reference to certain representations being "false" or made with any specific intent. Seibel, Green, and the Development Entities have also omitted findings from their competing Order regarding the prenuptial agreement that are inconsistent with the Minute Order and beyond the scope of the Motion to Compel. Finally, they have eliminated any conclusions beyond that "Caesars has met its initial burden of proof"—this Court's conclusion in its Minute Order—and that the communications at issue must be reviewed *in camera* by this Court to determine if they were made in furtherance of intended or continued illegality. (*See* Minute Order, at 1-2.)

2. Caesars' Order Determines Ultimate Issues of this Case

Second, the Order proposed by Caesars determines ultimate issues of this case, including issues that are the subject of Caesars' pending Motions for Summary Judgment and that are not the subject of or necessary for deciding the Motion to Compel.

To begin, Caesars' Order states that "Seibel did not inform Caesars that he was engaging in criminal activity, being investigated for it, or that he pled guilty to one count of...28 U.S.C. § 7212." (Caesars' Order at Findings of Fact, ¶ 5.) As set forth more fully in Seibel, Green, and the Development Entities' Opposition to Caesars' Motion for Summary Judgment No. 1, Seibel told J. Jeffrey Frederick (his primary point of contact at Caesars) that he was under investigation for tax issues and could be facing criminal charges. (Opp'n to Caesars' MSJ 1, filed Mar. 30,

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2021, at 14-15, 25.) This contention is a disputed issue of material fact that requires the jury to weigh the evidence and assess the credibility of the witnesses. (*Id.* at 25-26 (citing evidence refuting Caesars’ assertion that “Seibel failed [to] disclose anything about his activity that led to the criminal investigation”).)

Next, Caesars’ Order states that “Caesars terminated the agreements – as it was expressly allowed to do – due to Seibel’s unsuitability and failure to disclose.” (Caesars’ Order at Findings of Fact, ¶ 6.) ***This is the precise subject of Caesars’ declaratory relief claim.*** (See Caesars’ First Am. Compl., filed Mar. 11, 2020, ¶ 148 (“Caesars therefore seeks a declaration that the Seibel Agreements were properly terminated.”).) As set forth more fully in the Development Entities and Seibel’s Opposition to Caesars’ Motion for Summary Judgment No. 1, Caesars’ ability to terminate the Development Agreements is tempered by the implied covenant of good faith and fair dealing; as a result, genuine issues of material fact exist as to whether Caesars acted appropriately when it terminated the Development Agreements. (Opp’n to Caesars’ MSJ 1, filed Mar. 30, 2021, at 27-36.⁴)

In addition, Caesars’ Order states that “Seibel...worked with...Green to create new entities” as part of a “complex scheme.” (Caesars’ Order at Findings of Fact, ¶¶ 13-14.) Though not *currently* at issue in any pending motion for summary judgment (the deadline to file such motions is currently tolled by the Stay Order), this sort of finding would go directly toward Caesars’ tort claims against Seibel and Green for civil conspiracy and fraudulent concealment.

Lastly, to the extent that any findings refer to Seibel’s representations as to the independence of the Seibel Family 2016 Trust as “false,” made “with the intent to deceive,” or “exclusively for the purposes of defrauding” Caesars (*see* Caesars’ Order at Findings of Fact, ¶¶ 16-18, 22-24), such findings go to ultimate issues in this case, and thus, should be limited to the context of deciding this discovery motion. *See, e.g., In re Omnicom Grp. Inc., Sec. Litig.*, 233 F.R.D. 400, 405-06 (S.D.N.Y. 2006) (noting that courts must take special care “in setting the height of the bar” in a crime-fraud determination, as “any findings by the court that would suggest a strong enough basis to infer the perpetration of a fraud when such fraud is an essential

⁴ Further compounding the problem with the language proposed by Caesars is that the record reflects the termination was due to Seibel’s unsuitability, rather than “due to Seibel’s...failure to disclose.” (*Compare* Caesars Order at Findings of Fact, ¶ 6, *with* Ex. 68 to App’x of Exs. to Seibel, Green, & the Development Entities’ Opp. to Caesars’ MSJ 1, filed Mar. 30, 2021.)

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element of the ... underlying claims in th[e] case would, at the very least, potentially tilt the playing field”).

To rectify these issues, the competing Order proposed by Seibel, Green, and the Development Entities eliminates any findings that go beyond the scope of Caesars’ Motion to Compel and includes clarifying language that the burden of proof met by Caesars is “for purposes of claiming application of the crime-fraud exception to Seibel’s communications with his attorneys related to the Seibel Family 2016 Trust and prenuptial agreement.”

3. The Order Incorporates Factual Findings Not Supported by the Record

Third, the Order proposed by Caesars contains findings that are not supported by the record before this Court when deciding the Motion to Compel.

At times, Caesars’ Order inaccurately summarizes documents using language that is inconsistent with the documents themselves. For example, when summarizing the prenuptial agreement, Caesars’ Order states that “by its plain terms, [it] would require Dorfman to share the distributions she received from [the Trust] with Seibel”; however, the precise language of the prenuptial agreement required Dorfman to deposit the distributions in a joint bank account “to be used to pay their living expenses.” (*Compare* Caesars’ Order at Findings of Fact, ¶ 19, *with* Ex. 8 to App’x in Support of Caesars’ Mot. to Compel, at 7.)

In another instance, Caesars’ Order states that “Seibel began using foreign bank accounts to defraud the IRS in 2004” and that there were “numerous tolling agreements” entered into between Seibel and the federal government. (Caesars’ Order at Findings of Fact, ¶¶ 3-4.) Not only is this language inconsistent with the record of the criminal proceeding (*e.g.*, it is inaccurate and contrary to the terms of Seibel’s guilty plea to state that “Seibel began using foreign bank accounts to defraud the IRS in 2004”), but such findings are not supported by the record before this Court, as Caesars set forth only a single document related to Seibel’s criminal proceeding with its Motion to Compel: a tolling agreement. (*See generally* App’x in Support of Caesars’ Mot. to Compel; App’x to Reply in Support of Caesars’ Mot. to Compel.)

Further, Caesars’ Order uses language like “purportedly assigning the interests,” despite the fact that the interests held in the Development Entities *were assigned*, and only later rejected by Caesars. (Caesars’ Order at Findings of Fact, ¶¶ 13, 15; *see also* Exs. 6, 7 to App’x in Support of Caesars’ Mot. to Compel; Exs. 48, 49, 50, 62 to App’x of Exs. to Seibel, Green, & the

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Development Entities’ Opp. to Caesars’ Mot. to Compel.) On the topic of the Assignments, Caesars’ Order finds that Seibel assigned his interests “in an effort to conceal his criminal conviction while still reaping the benefits of his relationship with Caesars.” (Caesars’ Order at Findings of Fact, ¶ 7.) Yet, this Court’s Minute Order—and Caesars’ Motion to Compel—focused on the interplay between the prenuptial agreement and the Seibel Family 2016 Trust. (Minute Order, at 1; *see generally* Mot. to Compel.)

Indeed, Caesars’ Order includes numerous findings regarding Seibel’s intent that are not supported by the record, not present in this Court’s Minute Order, and beyond the scope of the Motion to Compel. For instance, Caesars’ Order states that “Seibel did not disclose that he decided to perform these purported assignments, transfers, and delegations *because of* his impending felony conviction” and that “these purported transfers were made *specifically to* avoid, undermine, and circumvent Caesars’ rights to terminate the Seibel Agreements.” (Caesars’ Order at Findings of Fact, ¶¶ 7, 9 (emphasis added).) Caesars’ Order also states that “Seibel *always* intended to receive benefits/distributions from the Seibel Family 2016 Trust,” despite the fact that he *did not* ultimately receive any distributions from the Seibel Family 2016 Trust. (*Compare* Caesars’ Order at Findings of Fact, ¶ 12, *with* Ex. 63 to App’x of Exs. to Seibel, Green, & the Development Entities’ Opp. to Caesars’ Mot. to Compel.) Caesars should not cause this Court to make findings concerning Seibel’s intent for purposes of a discovery motion.

The competing Order submitted by the Development Parties is consistent with the record and this Court’s Minute Order and does not cause this Court to make findings concerning what Seibel was thinking in 2016.

4. Caesars’ Order Incorporates Caesars’ Advocacy

Lastly, the Order proposed by Caesars incorporates Caesars’ advocacy, including characterizations made by Caesars of the evidence in this case.

Most notably, Caesars’ Order uses terms such as “Seibel Agreements” and “Seibel-Affiliated Entities” in an obvious attempt to have this Court find that Seibel did not dissociate from the Development Entities—another issue that is disputed in this case. (Caesars’ Order at Findings of Fact, ¶ 10.) In any event, the characterization “Seibel Agreement” is factually incorrect; Seibel was never a party to any of the Agreements—the Development Entities were.

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(Exs. 15, 16, 19, 20, 22, 26 to App'x of Exs. to Seibel, Green, & the Development Entities' Opp. to Caesars' Mot. to Compel.)

Beyond "Seibel Agreements" and "Seibel-Affiliated Entities," Caesars' Order contains various instances of unnecessary, advocacy-based phrases, such as "complex scheme" and the suggestion that Seibel was "*secretly* negotiating" the prenuptial agreement with his wife. (Caesars' Order at Findings of Fact, ¶¶ 13, 19 (emphasis added).) Those types of phrases should not be included in a decision by the Court addressing the discoverability of certain documents.

Alongside the above categories of objections, the parties dispute the window of time between notice of entry of the Order and the deadline for the Development Parties to submit documents to this Court for an *in camera* review. The Development Parties request 21 days to alleviate any unnecessary burden on the parties and this Court. Specifically, the Development Parties have notified Caesars that they intend to seek writ relief from the Nevada Supreme Court related to the Order and, in the interim, will request a stay of the Order. Without an ample window of time to do so, they will be left with two options: (1) asking this Court to hear a Motion to Stay within a matter of days; or (2) depriving this Court of the ability to hear a Motion to Stay, even on an Order Shortening Time, and instead, requesting such relief on an emergency basis from the Nevada Supreme Court, pending a decision on a writ petition.

In accordance with the above, the Development Parties respectfully request that this Court enter the enclosed version of the Order. Thank you.

Sincerely,

/s/ Joshua P. Gilmore

Joshua P. Gilmore

cc: All counsel (via email)
Attachment

1 **EIGHTH JUDICIAL DISTRICT COURT**

2 **CLARK COUNTY, NEVADA**

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

5 Plaintiff,

6 v.

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

9 Defendants,

10 and

11 GR BURGR LLC, a Delaware limited liability
company,

12 Nominal Plaintiff.

13 AND ALL RELATED MATTERS
14

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
CAESARS' MOTION TO COMPEL
DOCUMENTS WITHHELD ON THE
BASIS OF ATTORNEY-CLIENT
PRIVILEGE PURSUANT TO THE
CRIME-FRAUD EXCEPTION**

Date of Hearing: February 10, 2021

Time of Hearing: 9:00 a.m.

15
16 PHWLTV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las
17 Vegas Operating Company, LLC ("Paris"), and Boardwalk Regency Corporation d/b/a Caesars
18 Atlantic City's ("CAC," and collectively, with Caesars Palace, Paris, and Planet Hollywood,
19 "Caesars,") *Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege*
20 *Pursuant to the Crime-Fraud Exception* (the "Motion to Compel"), filed on January 6, 2021, came
21 before this Court for hearing on February 10, 2021, at 9:00 a.m. James J. Pisanelli, Esq.,
22 M. Magali Mercera, Esq., and Brittnie T. Watkins, Esq. of the law firm PISANELLI BICE PLLC,
23 appeared telephonically on behalf of Caesars. Joshua P. Gilmore, Esq., and Paul C. Williams, Esq.
24 of the law firm BAILEY KENNEDY, appeared telephonically on behalf of TPOV Enterprises, LLC
25 ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"),
26 LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"),
27 MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), and DNT Acquisition, LLC
28 ("DNT"), appearing derivatively by and through R Squared Global Solutions, LLC ("R Squared"),

(collectively the "Development Entities"), Rowen Seibel ("Seibel"), and Craig Green ("Green").¹ John Tennert, Esq., of the law firm FENNEMORE CRAIG, appeared telephonically on behalf of Gordon Ramsay ("Ramsay").

The Court having considered the Motion to Compel, the opposition thereto, as well as argument of counsel presented at the hearing, and good cause appearing therefor, enters the following Findings of Fact, Conclusions of Law, and Order granting the Motion to Compel:

FINDINGS OF FACT

1. THE COURT FINDS THAT, Caesars and MOTI, TPOV, DNT, GR Burgr, LLC, LLTQ, and FERG entered into a series of agreements governing the development, creation, and operation of various restaurants in Las Vegas and Atlantic City beginning in 2009 (the "Development Agreements");

2. THE COURT FURTHER FINDS THAT, Caesars is a gaming licensee and each of the Development Agreements contained representations, warranties, and conditions to ensure that Caesars was not involved in a business relationship with an unsuitable individual and/or entity;

3. THE COURT FURTHER FINDS THAT, in 2016, Seibel 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 Class E Felony;

4. THE COURT FURTHER FINDS THAT, Seibel did not inform Caesars that he pled 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 Class E Felony;

5. THE COURT FURTHER FINDS THAT, Caesars found out through news reports that Seibel pleaded guilty to a felony and thereafter, Caesars terminated the Development Agreements due to Seibel's unsuitability;

6. THE COURT FURTHER FINDS THAT, ten days before entering his guilty plea, Seibel informed Caesars that he was, among other things, (i) transferring all of the membership

¹ Seibel, Green, and the Development Entities are collectively referred to herein as the "Development Parties."

1 interests under the Development Entities that he held, directly or indirectly, to two individuals in
2 their capacities as trustees of a trust that he had created (the "Seibel Family 2016 Trust"); (ii) naming
3 one of these two individuals (Green) as the manager of the Development Entities in place of Seibel;
4 and (iii) assigning the Development Agreements to new entities owned by the Seibel Family 2016
5 Trust;

6 7. THE COURT FURTHER FINDS THAT, Seibel did not disclose at the time to
7 Caesars that he had pled guilty to a felony;

8 8. THE COURT FURTHER FINDS THAT, in this litigation, Seibel has alleged that
9 his unsuitability "is immaterial and irrelevant because, *inter alia*, he assigned his interests, if any,
10 in Defendants or the contracts;"

11 9. THE COURT FURTHER FINDS THAT, Seibel's long-time counsel, Brian Ziegler
12 ("Ziegler"), represented to Caesars that "great care was taken to ensure that the trust would never
13 have an unpermitted association with an Unsuitable Person and, as you can see, the trust is to be
14 guided by your . . . determination;"

15 10. THE COURT FURTHER FINDS THAT, shortly before Seibel pleaded guilty, he
16 (1) created new entities to which he was claiming to assign his interests in the Development Entities;
17 (2) created the Seibel Family 2016 Trust to receive the income from said entities; and (3) entered
18 into a prenuptial agreement with his soon-to-be wife, Bryn Dorfman ("Dorfman");

19 11. THE COURT FURTHER FINDS THAT, Seibel had his attorneys create new
20 entities to which the Development Agreements would be assigned;

21 12. THE COURT FURTHER FINDS THAT, after the new entities were created, Seibel
22 sent letters to Caesars claiming to have assigned the Development Agreements. In each of those
23 letters, Seibel told Caesars that the agreement would be assigned to a new entity whose membership
24 interests were ultimately mostly owned by the Seibel Family 2016 Trust. For some of the entities,
25 approximately less than 1% of the membership interests were held by Green, Ziegler, and Ziegler's
26 children;

1 13. THE COURT FURTHER FINDS THAT, Seibel told Caesars that the sole
2 beneficiaries of the Seibel Family 2016 Trust were Netty Wachtel Slushny, Dorfman, and potential
3 descendants of Seibel;

4 14. THE COURT FURTHER FINDS THAT, Seibel represented that, "[o]ther than the
5 parties described in th[e] letter[s], there [were] no other parties that have any management rights,
6 powers or responsibilities regarding, or equity or financial interests in" the new entities;

7 15. THE COURT FURTHER FINDS THAT, at or around the same time that Seibel set-
8 up the new entities and claimed to have assigned the Development Agreements to these new
9 entities, Seibel was negotiating a prenuptial agreement with Dorfman that, by its plain terms, would
10 require Dorfman to deposit the distributions she received from the Seibel Family 2016 Trust as a
11 beneficiary into a joint bank account with Seibel "to be used to pay their living expenses" and cause
12 the entities assigned to the Trust to remain Seibel's separate property in the event of a divorce;

13 16. THE COURT FURTHER FINDS THAT, Seibel used his lawyers to obtain advice
14 about setting up the Seibel Family 2016 Trust and the prenuptial agreement;

15 17. THE COURT FURTHER FINDS THAT, Seibel's representations as to the
16 independence of the Seibel Family 2016 Trust appear to be inconsistent with the plain language of
17 the prenuptial agreement, because Seibel could continue to benefit from income received by
18 Dorfman, as a beneficiary of the Seibel Family 2016 Trust, arising from the Development
19 Agreements despite Seibel's unsuitability to conduct business with a gaming licensee; and

20 18. THE COURT FURTHER FINDS THAT, an issue exists as to the effect of the
21 prenuptial agreement with Seibel's wife and its interplay with the Seibel Family 2016 Trust.

22 **CONCLUSIONS OF LAW**

23 1. In Nevada, the attorney-client privilege protects communications between a client
24 (or their representative) and their attorney (or their representative) "[m]ade for the purpose of
25 facilitating the rendition of professional legal services to the client, by the client or the client's
26 lawyer to a lawyer representing another in a matter of common interest." NRS § 49.095.

27 2. "The purpose of the attorney-client privilege 'is to encourage clients to make full
28 disclosures to their attorneys in order to promote the broader public interests of recognizing the

1 importance of fully informed advocacy in the administration of justice." *Canarelli v. Eighth*
2 *Judicial Dist. Ct.*, 464 P.3d 114, 119 (2020) (quoting *Wynn Resorts, Ltd. v. Eighth Judicial Dist.*
3 *Ct.*, 133 Nev. 369, 374, 399 P.3d 334, 341 (2017)). "The party asserting the privilege has the burden
4 to prove that the material is in fact privileged." *Id.* at 120 (citing *Ralls v. United States*, 52 F.3d 223,
5 225 (9th Cir. 1995)). However, "[i]t is well settled that privileges, whether creatures of statute or
6 the common law, should be interpreted and applied narrowly." *Id.* at 120 (quoting *Clark Cty. Sch.*
7 *Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 705, 429 P.3d 313, 318 (2018)).

8 3. Under Nevada law, no attorney-client privilege exists, "[i]f the services of the lawyer
9 were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew
10 or reasonably should have known to be a crime or fraud." NRS § 49.115(1).

11 4. "The 'crime-fraud exception' to the privilege protects against abuse of the attorney-
12 client relationship." *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078, 1090 (9th Cir. 2007),
13 *abrogated on other grounds by Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100 (2009).
14 Specifically, "where the client seeks the advice for 'future wrongdoing,' the crime-fraud exception
15 will not protect communications 'made for the purpose of getting advice for the commission of a
16 fraud or crime.'" *Hernandez v. Creative Concepts, Inc.*, No. 2:10-CV-02132-PMP, 2013 WL
17 1405776, at *4 (D. Nev. Apr. 5, 2013) (quoting *United States v. Zolin*, 491 U.S. 554, 562-63
18 (1989)); *see also In re Grand Jury Investigation*, 810 F.3d 1110, 1113 (9th Cir. 2016) (internal
19 quotations omitted) ("Under the crime-fraud exception, communications are not privileged when
20 the client consults an attorney for advice that will serve him in the commission of a fraud or
21 crime."); *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090 (quoting *Clark v. United States*, 289
22 U.S. 1, 15 (1933)) ("The privilege takes flight if the relation is abused. A client who consults an
23 attorney for advice that will serve him in the commission of a fraud will have no help from the law.
24 He must let the truth be told.").

25 5. Importantly, "[t]he planned crime or fraud need not have succeeded for the exception
26 to apply." *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090. "The client's abuse of the attorney-
27 client relationship, not his or her successful criminal or fraudulent act, vitiates the privilege." *Id.*
28 (citation omitted). Indeed, "[t]he attorney need not have been aware that the client harbored an

1 improper purpose." *Lewis v. Delta Air Lines, Inc.*, No. 214CV01683RFBGWF, 2015 WL 9460124,
2 at *2 (D. Nev. Dec. 23, 2015) (citation omitted).

3 6. "[T]he crime-fraud exception is not strictly limited to cases alleging criminal
4 violations or common law fraud." *Lewis*, 2015 WL 9460124, at *3. "The term 'crime/fraud
5 exception,' . . . , is 'a bit of a misnomer . . . as many courts have applied the exception to situations
6 falling well outside of the definitions of crime or fraud." *Rambus, Inc. v. Infineon Techs. AG*, 222
7 F.R.D. 280, 288 (E.D. Va. 2004) (internal citations omitted); *see, e.g., Cooksey v. Hilton Int'l Co.*,
8 863 F. Supp. 150, 151 (S.D.N.Y. 1994) (upholding magistrate judge's application of the crime-fraud
9 exception and finding that "the facts of th[e] case demonstrate[d] if not an actual fraud, at least an
10 intent on the part of defendants to defraud plaintiff."); *Volcanic Gardens Mgmt. Co. v. Paxson*, 847
11 S.W.2d 343, 348 (Tex. App. 1993) ("The crime/fraud exception comes into play when a prospective
12 client seeks the assistance of an attorney in order to make a false statement or statements of material
13 fact or law to a third person or the court for personal advantage."); *Horizon of Hope Ministry v.*
14 *Clark Cty., Ohio*, 115 F.R.D. 1, 5 (S.D. Ohio 1986) ("Attorney/client communications which are in
15 perpetuation of a tort are not privileged.").

16 7. To invoke the crime-fraud exception, the moving party must first "show that the
17 client was engaged in or planning a criminal or fraudulent scheme when it sought the advice of
18 counsel to further the scheme." *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090 (internal
19 quotations omitted). "Mere allegations of fraud or criminality do not suffice." *Garcia v. Serv. Emps.*
20 *Int'l Union*, No. 217CV01340APGNJK, 2018 WL 6566563, at *5 (D. Nev. Sept. 6, 2018) (citations
21 omitted). Instead, "[a] movant in a civil case must show by a preponderance of the evidence that
22 the attorney's services were utilized in furtherance of an ongoing unlawful scheme." *Id.* (citing *In*
23 *re Napster Inc. Copyright Litig.*, 479 F.3d at 1090).

24 8. Next, if successful, the moving party must then "demonstrate that the attorney-client
25 communications for which production is sought are sufficiently related to and were made in
26 furtherance of [the] intended, or present, continuing illegality." *In re Grand Jury Investigation*, 810
27 F.3d at 1113 (internal quotations omitted). This second step is accomplished through an *in camera*
28 review of the documents. *See id.* at 1114 (internal quotations omitted) ("[A] district court must

1 examine the individual documents themselves to determine that the specific attorney-client
2 communications for which production is sought are sufficiently related to and were made in
3 furtherance of the intended, or present, continuing illegality.").

4 9. For purposes of claiming application of the crime-fraud exception to Seibel's
5 communications with his attorneys related to the Seibel Family 2016 Trust and prenuptial
6 agreement, Caesars has met its initial burden of proof and established that Seibel's representations
7 as to the independence of the Seibel Family 2016 Trust were unfounded, as Seibel could continue
8 to benefit from the Development Agreements despite his unsuitability to conduct business with a
9 gaming licensee.

10 10. An issue exists as to the effect of Seibel's prenuptial agreement with his wife and its
11 interplay with the Seibel Family 2016 Trust.

12 11. The Court must review, *in camera*, the emails between Seibel and his counsel related
13 to the Seibel Family 2016 Trust and prenuptial agreement to determine which email(s), if any, are
14 sufficiently related to and were made in furtherance of intended or continued illegality.

15 **ORDER**

16 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Motion to
17 Compel shall be, and hereby is, GRANTED.

18 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the
19 Development Parties shall submit the following documents from their privilege log to the Court for
20 *in camera* review within twenty-one (21) days of notice of entry of this Order: CTRL00111548;
21 CTRL00111549; CTRL00112143; CTRL00112144; CTRL00112145; CTRL00112146;
22 CTRL00112147; CTRL00113142; CTRL00113288; CTRL00113763; CTRL00113764;
23 CTRL00113765; CTRL00113766; CTRL00113767; CTRL00113774; CTRL00113775;
24 CTRL00113832; CTRL00113833; CTRL00113840; CTRL00113841; CTRL00113843;
25 CTRL00114161; CTRL00114162; CTRL00114164; CTRL00114165; CTRL00114272;
26 CTRL00114273; CTRL00114282; CTRL00114283; CTRL00114284; CTRL00114285;
27 CTRL00114286; CTRL00114300; CTRL00114316; CTRL00114324; CTRL00114346;
28 CTRL00114364; CTRL00114416; CTRL00114417; CTRL00114475; CTRL00114476;

1	CTRL00114871;	CTRL00114872;	CTRL00114873;	CTRL00114874;	CTRL00114968;
2	CTRL00114969;	CTRL00114970;	CTRL00115207;	CTRL00115208;	CTRL00117851;
3	CTRL00117852;	CTRL00145759;	CTRL00145772;	CTRL00145774;	CTRL00145775;
4	CTRL00145777;	CTRL00145789;	CTRL00145790;	CTRL00145791;	CTRL00145792;
5	CTRL00145877;	CTRL00145878;	CTRL00145879;	CTRL00145895;	CTRL00145896;
6	CTRL00145897;	CTRL00177870;	CTRL00177871;	CTRL00177872;	CTRL00177873;
7	CTRL00177874;	CTRL00178124;	CTRL00178125;	CTRL00178141;	CTRL00178153;
8	CTRL00178156;	CTRL00178158;	CTRL00178163;	CTRL00178164;	CTRL00178165;
9	CTRL00178166;	CTRL00178167;	CTRL00178168;	CTRL00178169;	CTRL00178173;
10	CTRL00178174;	CTRL00178175;	CTRL00178176;	CTRL00178177;	CTRL00178178;
11	CTRL00178179;	CTRL00178238;	CTRL00333064;	CTRL00333065;	CTRL00333066;
12	CTRL00333067;	CTRL00333068;	CTRL00334493;	CTRL00334494;	CTRL00334495;
13	CTRL00334496;	CTRL00335096;	CTRL00335097;	CTRL00335098;	CTRL00336394;
14	CTRL00336395;	CTRL00366278;	CTRL00366279;	CTRL00366280;	CTRL00366281;
15	CTRL00366614;	CTRL00366615;	CTRL00366616;	CTRL00111325;	CTRL00114114;
16	CTRL00114410;	CTRL00114429;	CTRL00114432;	CTRL00114445;	CTRL00114604;
17	CTRL00114844;	CTRL00114870;	CTRL00114989;	CTRL00120720;	CTRL00120721;
18	CTRL00120723;	CTRL00120724;	CTRL00120726;	CTRL00145197;	CTRL00145198;
19	CTRL00145784;	CTRL00145876;	CTRL00173347;	CTRL00173350;	CTRL00173352;
20	CTRL00178020;	CTRL00178080;	CTRL00178092;	CTRL00178094;	CTRL00178115;
21	CTRL00178120;	CTRL00178137;	CTRL00178140;	CTRL00178155;	CTRL00178162;
22	CTRL00178191;	CTRL00178227;	CTRL00333242;	CTRL00333310;	CTRL00366304;
23	CTRL00366305;	CTRL00338414;	CTRL00338425;	CTRL00338426;	CTRL00338511;
24	CTRL00338513;	CTRL00338611;	CTRL00338612;	CTRL00339801;	CTRL00339802;
25	CTRL00339803;	CTRL00339848;	CTRL00339849;	CTRL00340482;	CTRL00346870;
26	CTRL00346871;	CTRL00346875;	CTRL00367769;	CTRL00367770;	CTRL00367771;
27	CTRL00367772;	CTRL00338593;	CTRL00113723;	CTRL00113754;	CTRL00113762;
28					

CTRL00113768; CTRL00114321; CTRL00114322; CTRL00145645; CTRL00145661;
CTRL00145662; CTRL00145663; CTRL00178086; CTRL00178090; and CTRL00178092.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall examine, *in camera*, the above identified documents to determine whether the attorney-client communications for which production is sought by Caesars are sufficiently related to and were made in furtherance of intended or continued illegality.

IT IS SO ORDERED.

Respectfully submitted by:

BAILEY ♦ KENNEDY

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LLC, Derivatively on Behalf of DNT Acquisition,
LLC; and GR Burgr, LLC*

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Rowen Seibel, Plaintiff(s)

CASE NO: A-17-751759-B

7 vs.

DEPT. NO. Department 16

8 PHWLTV LLC, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order Shortening Time was served via the court's electronic eFile
13 system to all recipients registered for e-Service on the above entitled case as listed below:

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TAB 79

CASE NO.

IN THE SUPREME COURT OF NEVADA

Electronically Filed
Jun 16 2021 04:07 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

ROWEN SEIBEL; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; TPOV ENTERPRISES, LLC; TPOV ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; R SQUARED GLOBAL SOLUTIONS, LLC, DERIVATIVELY ON BEHALF OF DNT ACQUISITION LLC; GR BURGR, LLC; AND CRAIG GREEN

Petitioners,

vs.

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

Respondents,

-and-

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

Real Parties in Interest.

District Court Case No. A-17-751759-B, consolidated with A-17-760537-B

**PETITIONERS' EMERGENCY MOTION FOR A STAY OF COMPLIANCE WITH THE
DISTRICT COURT'S ORDER COMPELLING PRODUCTION OF ATTORNEY-CLIENT
PRIVILEGED DOCUMENTS**

EMERGENCY MOTION UNDER NRAP 27(e)

RELIEF REQUESTED BY JUNE 18, 2021

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EMERGENCY MOTION UNDER NRAP 27(e)

Pursuant to NRAP 8 and NRAP 27, Rowen Seibel (“Seibel”); Moti Partners, LLC (“Moti”); Moti Partners 16, LLC (“Moti 16”); LLTQ Enterprises, LLC (“LLTQ”); LLTQ Enterprises 16, LLC (“LLTQ 16”); TPOV Enterprises, LLC (“TPOV”); TPOV Enterprises 16, LLC (“TPOV 16”); FERG, LLC (“FERG”); FERG 16, LLC (“FERG 16”); R Squared Global Solutions, LLC (“R Squared”), derivatively on behalf of DNT Acquisition LLC (“DNT”); GR Burgr, LLC (“GRB”); and Craig Green (“Green”) (collectively, “Petitioners” or “Development Parties”) respectfully move (the “Motion”) this Court, on an emergency basis, for an Order staying their compliance with the district court’s Findings of Fact, Conclusions of Law, and Order Granting Caesars’ Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, entered on June 8, 2021 (the “Order”), which is the subject of their Petition for Extraordinary Writ Relief filed contemporaneously herewith (the “Writ Petition”). Emergency relief is warranted because the Order mandates the Petitioners to divulge attorney-client privileged documents on June 18, 2021.

Absent a stay being entered on or before June 18, 2021, the object of their Writ Petition will be defeated. Such relief was initially requested from the district court; however, the district court declined to consider the stay request until after the deadline for compliance with its Order.

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court should stay the Petitioners' compliance with the district court's Order—which mandates the Petitioners to divulge attorney-client privileged documents by June 18, 2021—pending this Court's resolution of the Writ Petition.

As detailed below, this Court analyzes four factors in determining whether to issue a stay. All four factors support the issuance of a stay. *First*, and most importantly, the object of the Writ Petition will be defeated if a stay is not entered by June 18, 2021, because the Petitioners will be forced to divulge the privileged documents that are the subject of their Writ Petition. *Second*, the Petitioners will suffer irreparable injury if a stay is not entered because the bell of compelled disclosure of privileged communications cannot be unrung. *Third*, Caesars will suffer little to no harm if the Petitioners' compliance with the Order is stayed—all non-discovery proceedings in this matter are already stayed pursuant to this Court's order in another matter. *Finally*, the Petitioners are likely to prevail on the merits of their Writ Petition because (i) Caesars did not meet its burden to set aside the attorney-client privilege between Seibel and his counsel pursuant to NRS

49.115(1); (ii) the Order contains findings that are not supported by the record; and (iii) the district court misapplied the law.

In sum, this Court should stay the Petitioners' compliance with the Order until it rules on their Writ Petition.

II. RELEVANT PROCEDURAL HISTORY¹

A. The District Court Grants Caesars' Motion to Compel Production of the Petitioners' Communications with Their Attorneys Based on the Crime-Fraud Exception.

On January 6, 2021, Caesars² moved to compel attorney-client privileged documents based on the crime-fraud exception (the "Motion to Compel"). (6 PA 977-96.) After full briefing, the district court held a hearing on February 24, 2021, and then issued a Minute Order granting the Motion to Compel on April 12, 2021. (4 PA 803-04.) The district court directed Caesars to prepare an order and to provide it to the Development Parties for review and comment. (*Id.*) The district court directed the parties to submit competing orders if they were unable to agree on the form and content of the order. (*Id.*)

¹ A recitation of the facts relevant to these proceedings is contained in the Writ Petition and, in the interests of brevity, is incorporated herein by reference.

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

B. The Parties Submit Competing Orders; the Court Adopts Caesars' Order.

The parties could not agree on language for the order and submitted competing versions. (5 PA 921-27.) One point of dispute between the parties was the time for compliance with the Order, given that the Development Parties had expressed their intent to seek writ relief from this Court related to the decision. (*Id.* at 927.) They explained (in an explanatory letter to the district court) that absent a reasonable amount of time, the district court would have to decide a motion to stay within a matter of days; or the Development Parties would be forced to seek emergency relief from this Court. (*Id.*)

On June 8, 2021, the district court adopted Caesars' version of the order, without making any revisions, and entered it. (4 PA 869-78.) The Order concludes that “communications seeking legal advice for creation of the prenuptial agreement and the Seibel Family 2016 Trust are discoverable under the crime-fraud exception (NRS § 49.115(1)) as they were made in furtherance of a scheme to defraud Caesars” and requires the Development Parties to submit privileged communications for *in camera* review by the district court within ten (10) days of notice of entry of the Order. (*Id.* at 876.)

Notice of entry of the Order was filed on June 8, 2021. (4 PA 886-98.) Accordingly, in the absence of a stay, the Development Parties must divulge attorney-client privileged documents on or before June 18, 2021.

C. The District Court Effectively Denies the Development Parties’ Motion to Stay by Setting the Hearing Nearly One Week After the Deadline to Divulge Privileged Communications.

Two (2) days after entry of the Order, the Development Parties moved for a stay pending disposition of their Writ Petition. (5 PA 906-39.) Given that the Order required them to divulge privileged communications by June 18, 2021, the Development Parties asked the district court to hear and decide their motion for stay by June 15, 2021, and to stay compliance with the Order pending its resolution of the motion to stay. (*Id.* at 908-910.)

The district court denied the Development Parties’ request to temporarily stay compliance with the Order and set the motion to stay for hearing on June 24, 2021—*nearly one full week after the deadline for compliance with the Order.* (5 PA 911.) The district court’s setting of the hearing on the motion to stay after the compliance deadline is a *de facto* denial of the motion to stay, necessitating the request for emergency relief from this Court.

III. ARGUMENT

A. Standard of Decision.

In deciding whether to issue a stay pending review of a writ petition, this Court evaluates: “(1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether

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

B. This Court Should Stay Compliance with the Order Pending the Outcome of the Writ Petition.

1. The Object of the Writ Petition Will Be Defeated Unless an Emergency Stay of the Order Is Entered.

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

Here, without a stay, the Development Parties will be forced to divulge privileged communications to the district court and the opposing parties without a ruling from this Court on the Writ Petition. While the Order requires communications to be initially produced for an *in camera* review before they will be turned over to Caesars,³ the *in camera* review process is arguably superfluous

³ Importantly, the Order also fails to state how or when any privileged documents will be provided to Caesars. For example, if the district court intends to provide the privileged documents directly to Caesars immediately after

because the district court has already determined that the documents were “made in furtherance” of the alleged crime fraud. (4 PA 876.)

Requiring disclosure of the privileged communications would defeat the object of the Writ Petition. As this Court has explained, “the assertedly privileged information would irretrievably lose its confidential and privileged quality and petitioners would have no effective remedy, even by a later appeal.” *Wardleigh v. Second Jud. Dist. Ct.*, 111 Nev. 345, 350-51, 891 P.2d 1180, 1183-84 (1995); accord *Cotter v. Eighth Jud. Dist. Ct.*, 134 Nev. 235, 249, 416 P.3d 228, 231 (2018); *Las Vegas Sands Corp. v. Eighth Jud. Dist. Ct.*, 130 Nev. 118, 122, 319 P.3d 618, 621 (2014); *Valley Health Sys., LLC v. Eighth Jud. Dist. Ct.*, 127 Nev. 167, 171-72, 252 P.3d 676, 679 (2011).

Accordingly, the first factor weighs *heavily* in favor of a stay.

2. *The Development Parties Will Suffer Irreparable Injury if a Stay Is Not Entered Pending the Outcome of Their Writ Petition; Conversely, the Opposing Parties Will Suffer No Harm.*

“[I]n certain cases, a party may face actual irreparable harm, and in such cases the likelihood of irreparable harm should be considered in the stay analysis.” *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39.

reviewing them, the Development Parties would have no ability to challenge the district court’s evaluation of the documents before they are turned over to Caesars.

As this Court has held, the “resulting prejudice” from disclosure of privileged communications prior to appellate review would “not only be irreparable, but of a magnitude that could require the imposition of such drastic remedies as dismissal with prejudice or other similar sanctions.” *Cotter*, 134 Nev. 235, 249, 416 P.3d at 231. Conversely, when “the only cognizant harm threatened to the parties is increased litigation costs and delay,” they do not face any irreparable harm. *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39.

Here, the Development Parties will suffer irreparable injury if a stay is not entered, whereas Caesars (and the other parties) will not. Specifically, compelled disclosure of privileged communications results in a prejudice that is irreparable and cannot be restored. If a stay is not entered and the Development Parties ultimately prevail before this Court, their victory will be hollow—the opposing parties will already have possession of their privileged documents.

Conversely, Caesars (and the other parties) will not suffer irreparable or serious harm if this Court grants a stay of compliance with the Order. A stay of all non-discovery proceedings in this matter is already in effect pursuant to this Court’s order in another matter.⁴ Thus, although mere delay does not constitute irreparable harm, any delay that would allegedly be suffered by Caesars from a

⁴ Order Granting Stay, *Moti Partners, LLC v. Eighth Jud. Dist. Ct.*, Case No. 82448 (Apr. 16, 2021).

stay would be minimal, if any, as all non-discovery proceedings in this matter are already stayed.

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

3. The Development Parties Are Likely to Prevail on the Merits of Their Writ Petition.

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

Here, it is likely that this Court will consider the Writ Petition and grant the relief requested by the Development Parties. As detailed in the Writ Petition, the district court abused its discretion by compelling the production of privileged documents. This Court has said that it “will intervene [on discovery issues] when the district court issues an order requiring disclosure of privileged information.” *Toll*, 135 Nev. at 432, 453 P.3d at 1217. Further, this Court has not yet defined the parameters of NRS 49.115(1). *See Diaz*, 116 Nev. at 93, 993 P.2d at 54 (noting writ relief may be appropriate where a “writ petition offers this court a unique opportunity to define the precise parameters of [a] privilege conferred by a statute that this court has never interpreted.”) (alteration in original) (internal quotation marks omitted).

Aside from abusing its discretion in compelling privileged documents, the district court made factual findings without substantial evidence from the record, and it misapplied the law related to the crime-fraud exception to the attorney-client privilege. The district court also erred in its interpretation of Seibel's Prenuptial Agreement and The Seibel Family 2016 Trust.

Because it is likely that this Court will issue a writ, the fourth factor weighs in favor of a stay.

IV. CONCLUSION

For the reasons set forth above, this Court should stay compliance with (and enforcement of) the Order until it rules on the Development Parties' Writ Petition. Absent a stay, the object of the Writ Petition will be defeated and, unlike Caesars (and the other parties), the Development Parties will suffer serious injury for which they would have no remedy. Their Writ Petition is meritorious, and this Court should enter a stay until it decides the matter.

DATED this 16th day of June, 2021.

BAILEY ❖ KENNEDY

By: /s/ John R. Bailey

JOHN R. BAILEY

DENNIS L. KENNEDY

JOSHUA P. GILMORE

PAUL C. WILLIAMS

STEPHANIE J. GLANTZ

Attorneys for Petitioners

NRAP 27(e) CERTIFICATE

I, Paul C. Williams, declare as follows:

1. I am a partner of Bailey❖Kennedy, LLP, counsel for the Development Parties in the above-captioned proceeding.
2. I make this Certificate in support of Petitioners' Emergency Motion for a Stay of Compliance with the District Court's Order Compelling Production of Attorney-Client Privileged Documents. I am competent to testify to the facts stated herein, which are based on personal knowledge unless otherwise indicated, and would do so if requested.
3. The telephone numbers and office addresses for the district court and the attorneys for the Real Parties in Interest are as follows:

The Honorable Timothy C. Williams
District Court Judge
Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155
(702) 671-4406

JAMES J. PISANELLI
DEBRA L. SPINELLI
M. MAGALI MERCERA
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, NV 89101
(702) 214-2100

Attorneys for Real Parties in Interest Desert Palace, Inc.; Paris Las Vegas Operating Company, LLC; PHWLTV, LLC; and Boardwalk Regency Corporation

4. Emergency relief is needed with regard to this Motion. As explained above, the district court ordered production of privileged communications within ten (10) days of entry of the Order and then set a hearing on the Development Parties' motion for stay (filed with the district court) nearly one week after the deadline to comply with the Order. (5 PA 911.) Accordingly, the Development Parties need emergency relief through a stay of compliance with the Order—which compels the Development Parties to divulge privileged communications by June 18, 2021—while this Court decides the Writ Petition filed concurrently herewith.

5. All grounds for a stay being advanced in this Motion were previously submitted to the district court on a motion for stay. (5 PA 906-39.)

6. On June 15, 2021, I notified the Nevada Supreme Court Clerk, via telephone, of the Development Parties' intent to file this Motion and seek relief on an emergency basis. I called the Clerk again on June 16, 2021, to indicate that the Motion was being filed.

7. On June 15, 2021, I notified M. Magali Mercera, Esq., counsel for Caesars, of the Development Parties' intent to file this Motion and seek relief on an emergency basis. I emailed Ms. Mercera an unfiled copy of the Motion on June 16, 2021.

8. On June 16, 2021, I notified the district court, via telephone, of the Development Parties' filing of this Motion and request for relief on an emergency basis.

9. As noted in the Certificate of Service, a file-stamped copy of this Motion is being served via U.S. Mail, first class postage prepaid, *and* through the Eighth Judicial District Court's electronic filing system. The district court will also be served with a copy of this Motion via hand delivery.

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

EXECUTED this 16th day of June, 2021.

/s/ Paul C. Williams
PAUL C. WILLIAMS

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ❖ KENNEDY and that on the 16th day of June, 2021, service of the foregoing was made by electronic service through the Nevada Supreme Court's electronic filing system, electronic service through the Eighth Judicial District Court's electronic filing system, hand delivery, and/or depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

JAMES J. PISANELLI
DEBRA L. SPINELLI
M. MAGALI MERCERA
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, NV 89101

Email: JJP@pisanellibice.com
DLS@pisanellibice.com
MMM@pisanellibice.com
*Attorneys for Real Parties in Interest
Desert Palace, Inc.; Paris Las Vegas
Operating Company, LLC; PHWLV,
LLC; and Boardwalk Regency
Corporation*

HON. TIMOTHY C. WILLIAMS
DISTRICT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

Email:
DC16Inbox@ClarkCountyCourts.us;
Dept16lc@clarkcountycourts.us;
Dept16ea@clarkcountycourt.us

Respondent

/s/ Susan Russo
Employee of BAILEY ❖ KENNEDY

TAB 80

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROWEN SEIBEL; MOTI PARTNERS,
LLC; MOTI PARTNERS 16, LLC; LLTQ
ENTERPRISES, LLC; LLTQ
ENTERPRISES 16, LLC; TPOV
ENTERPRISES, LLC; TPOV 16
ENTERPRISES, LLC; FERG 16, LLC; R
SQUARED GLOBAL SOLUTIONS, LLC,
DERIVATIVELY ON BEHALF OF DNT
ACQUISTION, LLC; GR BURGR, LLC;
AND CRAIG GREEN,
Petitioners,

vs.

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,

Respondents,

and

DESERT PALACE, INC.; PARIS LAS
VEGAS OPERATING COMPANY, LLC;
PHWLTV, LLC; AND BOARDWALK
REGENCY CORPORATION,
Real Parties in Interest.

No. 83071

FILED

JUN 18 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF PROHIBITION

This original petition for a writ of prohibition challenges a district court order granting in part a motion to compel the disclosure of allegedly privileged attorney-client communications and directing petitioner to turn over the communications for an in camera review.

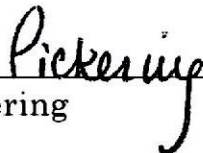
Petitioner has also filed an emergency motion for stay,¹ which real parties in interest have opposed. Petitioner has filed a reply.

Whether to entertain a petition for extraordinary writ relief is discretionary with this court. *Leibowitz v. Eighth Judicial Dist. Court*, 119 Nev. 523, 529, 78 P.3d 515, 519 (2003). It is petitioner's burden to demonstrate that extraordinary relief is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Having considered the petition and supporting documents, we conclude that petitioner has not demonstrated that our extraordinary intervention is warranted at this time. In particular, the district court has not completed its review of the matter, determining merely that real parties in interest have demonstrated that its in camera review is warranted. Only after that review is completed may the district court compel petitioner to disclose the documents to real parties in interest. Thus, without prejudice to petitioner's ability to seek writ relief in the event he is ordered to disclose the subject documents to real parties in interest, we

ORDER the petition DENIED.²


_____, J.
Cadish


_____, J.
Pickering

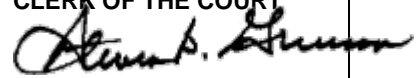

_____, J.
Herndon

¹Petitioner's motion to file a redacted writ petition and several volumes of the appendix under seal is granted, as the information contained therein was sealed below. SRCR 3(4)(b), 7. The clerk of this court shall file, under seal, the writ petition and volumes 6, 7, 8, 9, 10, 11, 12, 13, 14A, 14B, 15, and 16, all of which were provisionally received in this court on June 17, 2021.

²In light of this order, petitioner's motion for a stay is denied as moot.

cc: Hon. Timothy C. Williams, District Judge
Bailey Kennedy
Pisanelli Bice, PLLC
Eighth District Court Clerk

TAB 81



NOC

JOHN R. BAILEY

Nevada Bar No. 0137

DENNIS L. KENNEDY

Nevada Bar No. 1462

JOSHUA P. GILMORE

Nevada Bar No. 11576

PAUL C. WILLIAMS

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants,

And

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED CLAIMS.

Case No. A-17-751759-B

Dept. No. XVI

Consolidated with A-17-760537-B

**NOTICE OF COMPLIANCE WITH JUNE 8,
2021, FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
CAESARS' MOTION TO COMPEL
DOCUMENTS WITHHELD ON THE BASIS
OF ATTORNEY-CLIENT PRIVILEGE
PURSUANT TO THE CRIME-FRAUD
EXCEPTION**

1 PLEASE TAKE NOTICE that on the 18th day of June, 2021, the following documents were
2 submitted to this Court by hand delivery for *in camera* review: CTRL00111548; CTRL00111549;
3 CTRL00112143; CTRL00112144; CTRL00112145; CTRL00112146; CTRL00112147;
4 CTRL00113142; CTRL00113288; CTRL00113763; CTRL00113764; CTRL00113765;
5 CTRL00113766; CTRL00113767; CTRL00113774; CTRL00113775; CTRL00113832;
6 CTRL00113833; CTRL00113840; CTRL00113841; CTRL00113843; CTRL00114161;
7 CTRL00114162; CTRL00114164; CTRL00114165; CTRL00114272; CTRL00114273;
8 CTRL00114282; CTRL00114283; CTRL00114284; CTRL00114285; CTRL00114286;
9 CTRL00114300; CTRL00114316; CTRL00114324; CTRL00114346; CTRL00114364;
10 CTRL00114416; CTRL00114417; CTRL00114475; CTRL00114476; CTRL00114871;
11 CTRL00114872; CTRL00114873; CTRL00114874; CTRL00114968; CTRL00114969;
12 CTRL00114970; CTRL00115207; CTRL00115208; CTRL00117851; CTRL00117852;
13 CTRL00145759; CTRL00145772; CTRL00145774; CTRL00145775; CTRL00145777;
14 CTRL00145789; CTRL00145790; CTRL00145791; CTRL00145792; CTRL00145877;
15 CTRL00145878; CTRL00145879; CTRL00145895; CTRL00145896; CTRL00145897;
16 CTRL00177870; CTRL00177871; CTRL00177872; CTRL00177873; CTRL00177874;
17 CTRL00178124; CTRL00178125; CTRL00178141; CTRL00178153; CTRL00178156;
18 CTRL00178158; CTRL00178163; CTRL00178164; CTRL00178165; CTRL00178166;
19 CTRL00178167; CTRL00178168; CTRL00178169; CTRL00178173; CTRL00178174;
20 CTRL00178175; CTRL00178176; CTRL00178177; CTRL00178178; CTRL00178179;
21 CTRL00178238; CTRL00333064; CTRL00333065; CTRL00333066; CTRL00333067;
22 CTRL00333068; CTRL00334493; CTRL00334494; CTRL00334495; CTRL00334496;
23 CTRL00335096; CTRL00335097; CTRL00335098; CTRL00336394; CTRL00336395;
24 CTRL00366278; CTRL00366279; CTRL00366280; CTRL00366281; CTRL00366614;
25 CTRL00366615; CTRL00366616; CTRL00111325; CTRL00114114; CTRL00114410;
26 CTRL00114429; CTRL00114432; CTRL00114445; CTRL00114604; CTRL00114844;
27 CTRL00114870; CTRL00114989; CTRL00120720; CTRL00120721; CTRL00120723;
28 CTRL00120724; CTRL00120726; CTRL00145197; CTRL00145198; CTRL00145784;

CTRL00145876; CTRL00173347; CTRL00173350; CTRL00173352; CTRL00178020;
CTRL00178080; CTRL00178092; CTRL00178094; CTRL00178115; CTRL00178120;
CTRL00178137; CTRL00178140; CTRL00178155; CTRL00178162; CTRL00178191;
CTRL00178227; CTRL00333242; CTRL00333310; CTRL00366304; CTRL00366305;
CTRL00338414; CTRL00338425; CTRL00338426; CTRL00338511; CTRL00338513;
CTRL00338611; CTRL00338612; CTRL00339801; CTRL00339802; CTRL00339803;
CTRL00339848; CTRL00339849; CTRL00340482; CTRL00346870; CTRL00346871;
CTRL00346875; CTRL00367769; CTRL00367770; CTRL00367771; CTRL00367772;
CTRL00338593; CTRL00113723; CTRL00113754; CTRL00113762; CTRL00113768;
CTRL00114321; CTRL00114322; CTRL00145645; CTRL00145661; CTRL00145662;
CTRL00145663; CTRL00178086; CTRL00178090; and CTRL00178092.

DATED this 18th day of June, 2021.

BAILEY ♦ KENNEDY

By: /s/ Stephanie J. Glantz

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

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

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 18th day of June, 2021, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

JAMES J. PISANELLI
DEBRA L. SPINELLI
M. MAGALI MERCERA
BRITTNIE T. WATKINS
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MMM@pisanellibice.com
BTW@pisanellibice.com
Attorneys for Defendants/Counterclaimant Desert Palace, Inc.; Paris Las Vegas Operating Company, LLC; PHWL, LLC; and Boardwalk Regency Corporation

JOHN D. TENNERT
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Reno, NV 89511

Email: jtennert@fclaw.com
Attorneys for Defendant Gordon Ramsay

ALAN LEBENSFELD
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LEBENSFELD SHARON & SCHWARTZ, P.C.
140 Broad Street
Red Bank, NJ 07701

Email: alan.lebensfeld@lsandspc.com
Brett.schwartz@lsandspc.com
Attorneys for Plaintiff in Intervention The Original Homestead Restaurant, Inc.

MARK J. CONNOT
KEVIN M. SUTEHALL
FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135

Email: mconnot@foxrothschild.com
ksutehall@foxrothschild.com
Attorneys for Plaintiff in Intervention The Original Homestead Restaurant, Inc.

/s/ Susan Russo
Employee of BAILEY ♦ KENNEDY

TAB 82

A-17-751759-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

August 05, 2021

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

August 05, 2021 3:00 AM Minute Order

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

JOURNAL ENTRIES

After review and consideration of the points and authorities on file herein and oral argument of counsel, the Court determined as follows:

Upon consideration of the Stipulated Protective Order, specifically the 90 day deadline to object to the designation of Highly Confidential information, and the applicable *Venetian* factors, the Court finds that designation of Caesars' financial information as "Highly Confidential" is proper.

The Seibel Parties' did not challenge Caesars' Highly Confidential designation of financial documents within the 90 days required by the Stipulated Protective Order, thus the Seibel Parties' effectively waived their right to challenge the designation of the Highly Confidential Information.

Furthermore, after review of the applicable *Venetian* factors, there appears to be good cause for a protective order as well as maintaining designation of Caesars' financial information as "Highly Confidential." As Defendants note, Caesars interests in protecting its information must be balanced against the Seibel Parties' rather than the public's interest in disclosure. Based on that balancing test the factors weigh in favor of Caesars and the designation of their financial documents as "Highly Confidential."

Based on the foregoing, The Development Entities, Rowen Seibel, and Craig Greens' Motion to Compel "Confidential" Designation of Caesar's Financial Documents shall be **DENIED**.

Additionally, Defendants' Countermotion for Protective Order is **GRANTED**.

PRINT DATE: 08/05/2021

Page 1 of 2

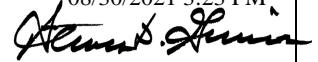
Minutes Date: August 05, 2021

PA001101

Counsel for Defendants shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections prior to submitting to the Court for review and signature.

CLERK'S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

TAB 83


CLERK OF THE COURT

BAILEY ♦ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

MCOM (CIV)

JOHN R. BAILEY

Nevada Bar No. 0137

DENNIS L. KENNEDY

Nevada Bar No. 1462

JOSHUA P. GILMORE

Nevada Bar No. 11576

PAUL C. WILLIAMS

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants,

And

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED CLAIMS.

Case No. A-17-751759-B

Dept. No. XVI

Consolidated with A-17-760537-B

(HEARING REQUESTED)

**THE DEVELOPMENT ENTITIES,
ROWEN SEIBEL, AND CRAIG GREEN'S
MOTION TO COMPEL THE RETURN,
DESTRUCTION, OR SEQUESTERING OF
THE COURT'S AUGUST 19, 2021,
MINUTE ORDER CONTAINING
PRIVILEGED ATTORNEY-CLIENT
COMMUNICATIONS**

ON ORDER SHORTENING TIME

Pursuant to the inherent authority of this Court, the Development Parties¹ move to compel (the “Motion to Compel”) all third-party recipients (other than counsel for the Development Parties, the Court, and Court personnel) who received a copy of the Court’s minute order dated August 18, 2021 (the “Minute Order”) to return, destroy, or sequester the Minute Order because it quotes privileged attorney-client communications. Further, the Court should prohibit all such third-party recipients from using the Minute Order for any purpose.

Without regard to the merits of the Court’s decision, the Development Parties should have been given a full and fair opportunity to seek review from the Nevada Supreme Court *prior* to the Court’s disclosure of privileged communications. Although the disclosure itself will likely require further relief, all individuals who received the Minute Order should be compelled to return, destroy, or sequester the Minute Order, and be prohibited from using it for any purpose, pending the outcome of the Development Parties’ forthcoming writ petition.

This Motion to Compel is made and based upon the following Memorandum of Points and Authorities, the exhibits attached thereto, the papers and pleadings on file, and any oral argument as may be heard by the Court.

DATED this 30th day of August, 2021.

BAILEY ♦ KENNEDY

By: 

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

Attorneys for the Development Parties

¹ “Development Parties” refers to Rowen Seibel, Craig Green, 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”); R Squared Global Solutions, LLC (“R Squared”), derivatively on behalf of DNT Acquisition LLC (“DNT”); and GR Burgr, LLC.

APPLICATION FOR ORDER SHORTENING TIME

Pursuant to EDCR 2.26, the Development Parties hereby apply for an Order Shortening Time in which their Motion to Compel is to be heard. The Minute Order quotes privileged attorney-client communications that should not have been disclosed before the Development Parties had an opportunity to seek review from the Nevada Supreme Court by way of a writ petition. Put simply, the Development Parties face further irreparable harm based on the disclosure of privileged communications as there is “no adequate remedy at law that could restore the privileged nature of the information, because once such information is disclosed, it is irretrievable.” *See Valley Health Sys., LLC v. Eighth Jud. Dist. Ct.*, 127 Nev. 167, 172, 252 P.3d 676, 679 (2011). This Application is made and based upon the following Declaration of Dennis L. Kennedy, Esq.

DATED this 30th day of August, 2021.

BAILEY ♦ KENNEDY

By: 

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

Attorneys for the Development Parties

**DECLARATION OF DENNIS L. KENNEDY, ESQ. IN SUPPORT OF
APPLICATION FOR ORDER SHORTENING TIME**

I, Dennis L. Kennedy, Esq., declare as follows:

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

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

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

4. Good cause exists to hear the Motion to Compel on shortened time. Where a “district court ultimately determines that the crime/fraud exception applies, it should keep the privileged communications under seal to prevent their further disclosure until all avenues of appeal have been exhausted.” *In re GMC*, 153 F.3d 714, 717 (8th Cir. 1998); *Haines v. Liggett Grp., Inc.*, 975 F.2d 81, 97 (3d Cir. 1992) (“[T]he matters covered by the exception be kept under seal or appropriate court-imposed privacy procedures until all avenues of appeal are exhausted.”).

5. The Minute Order quotes privileged attorney-client communications, even though the Development Parties have not had a full and fair opportunity to seek review of the Court’s decisions from the Nevada Supreme Court by way of a writ petition and—although not accessible by the general public—the Minute Order was served on both current and former counsel for all parties in this action. Accordingly, the Development Parties respectfully request that the Court set a hearing on the Motion to Compel as soon as possible to address the Minute Order, including its return, destruction, or sequestration, or pending the outcome of a forthcoming writ petition.

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

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

EXECUTED on this 30th day of August, 2021.

DENNIS L. KENNEDY

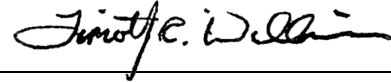
ORDER SHORTENING TIME

The Court, having considered the Development Parties' Application for Order Shortening Time, and the Declaration of Dennis L. Kennedy, Esq., in support thereof, and good cause appearing,

HEREBY ORDERS that the time for hearing on The Development Entities, Rowen Seibel, and Craig Green's Motion to Compel the Return, Destruction, or Sequestering of the Court's August 19, 2021 Minute Order Containing Privileged Attorney-Client Communications be **SHORTENED**, and the same shall be heard on the 15 day of September, 2021, at 9 : 30 a .m., in Department XVI of the Eighth Judicial District Court, Clark County, Nevada, located at the Regional Justice Center, 200 Lewis Avenue, in Las Vegas, Nevada, or as soon thereafter as counsel can be heard.

IT IS SO ORDERED.

Dated this 30th day of August, 2021



NS

94A 92E 0BE4 9D18
Timothy C. Williams
District Court Judge

Respectfully Submitted By:

BAILEY ♦ KENNEDY

By: 

JOHN R. BAILEY

DENNIS L. KENNEDY

JOSHUA P. GILMORE

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Attorneys for the Development Parties

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Respectfully, it was inappropriate for the Court to quote from attorney-client privileged communications in its Minute Order. The Court completed an *in camera* review of privileged communications and concluded that those documents were discoverable pursuant to the crime-fraud exception. The Court then—without prior notice, without providing an opportunity for the Development Parties to be heard, and without providing an opportunity for the filing of a writ petition—disclosed the contents of certain privileged communications in its Minute Order, which was served on current and former counsel for all parties in this action. That disclosure should not have occurred and the individuals who received the Minute Order should immediately be compelled to return, destroy, or sequester the Minute Order and be barred from using it for any purpose.

As the Court is aware, the Development Parties intend to seek review, through a writ petition to the Nevada Supreme Court, of the Court’s Findings of Fact, Conclusions of Law, and Order Granting Caesars’ Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, entered on June 8, 2021 (the “Initial Order”), and the Court’s recent decision to compel the Development Parties to disclose attorney-client privileged communications as reflected in the Minute Order (to be reduced to a formal written order to be prepared by counsel for Caesars). However, before the Development Parties were able to ask the Nevada Supreme Court to intervene and determine whether such privileged communications should be turned over, the Minute Order disclosed the contents of—by directly quoting from—privileged communications to certain counsel and law firms (some of whom are no longer counsel of record for any party in this action).

When a district court finds that the crime-fraud exception applies, *it should not actually disclose the contents of the privileged communications in its decision*. Rather, the court’s decision should be “*circumspect in its description of the various documents supporting its decision*” in the event that the aggrieved party seeks appellate review.²

² *Transcon. Refrigerated Lines, Inc. v. New Prime, Inc.*, No. 1:13-CV-2163, 2014 U.S. Dist. LEXIS 75320, at *39-42 & n.18 (M.D. Pa. June 3, 2014) (emphasis added).

1 Without regard to the merits of the Court’s decision on the crime-fraud exception, the
2 disclosure of the content of privileged communications in the Minute Order deprives the
3 Development Parties of their right to a full and fair opportunity to seek writ review from the
4 Nevada Supreme Court. Although the harm caused by the disclosure itself may necessitate other
5 relief, the Development Parties should not be placed in a catch-22 situation where they must either:
6 (a) refuse to address the contents of the privileged communications in their writ petition in an effort
7 to maintain the privilege; or (b) address the content of the privileged communications and risk
8 waiver of the privilege.

9 Accordingly, the Court should compel the individuals who received the Minute Order to
10 return, destroy, or sequester it—and prohibit them from utilizing the Minute Order, including the
11 privileged communications quoted in it, for any purpose—pending the resolution of the
12 Development Parties’ forthcoming writ petition. This Motion to Compel should be granted in its
13 entirety.

14 II. RELEVANT PROCEDURAL HISTORY

15 A. Caesars Moves to Compel Production of the Development Parties’ 16 Communications with Their Attorneys Based on the Crime-Fraud Exception.

17 On January 6, 2021, Caesars moved to compel production of documents based on the crime-
18 fraud exception (the “Motion to Compel”). (Caesars’ Mot. to Compel Docs. Withheld on the Basis
19 of the Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, Jan. 6, 2021.) On January
20 22, 2021, the Development Parties filed their Opposition. (Rowen Seibel, Craig Green, and the
21 Development Entities’ Opp’n to Caesars’ Mot. to Compel Docs. Withheld on the Basis of the
22 Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, Jan. 22, 2021.) On February 3,
23 2021, Caesars filed a Reply. (Reply in Support of Caesars’ Mot. to Compel Docs. Withheld on the
24 Basis of the Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, Feb. 3, 2021.) On
25 February 24, 2021, the Court held a hearing on the Motion to Compel. Following argument from
26 counsel, the Court took the Motion to Compel under advisement.

B. This Court Grants Caesars’ Motion to Compel.

On April 12, 2021, the Court issued a minute order Granting the Motion to Compel. (Apr. 12, 2021, Minute Order.) In that minute order, the Court determined that “Caesars ha[d] met its initial burden of proof by establishing that Plaintiff Seibel’s representations as to the independence of the Seibel Family 2016 Trust were unfounded, and Plaintiff Seibel could continue to benefit from the agreements despite unsuitability to conduct business with a gaming licensee.” (*Id.*) The Court further determined that “an issue exists as to the effect of Plaintiff Seibel’s prenuptial agreement with his wife and the interplay with the trust.” (*Id.*)

The Court directed counsel for Caesars to prepare a formal written order and to circulate it to the Development Parties’ counsel for review and comment. (*Id.*) The parties could not agree on the content of the order and submitted competing versions. (Ex. A to The Dev. Parties’ Mot. to Stay Compliance with the Court’s June 8, 2021, Ord. Pending Pet. for Extraordinary Writ Relief on Ord. Shortening Time, June 10, 2021.) On June 8, 2021, over the Development Parties’ objection that Caesars’ proposed order contained (i) factual findings and legal conclusions that were inconsistent with the Court’s minute order, (ii) factual findings that were not supported by substantial evidence, and (iii) inaccurate characterizations of the evidence presented with the Motion to Compel, the Court adopted and entered Caesars’ version. (*See generally* Initial Order.)

In the Initial Order, the Court concluded—prior to conducting an *in camera* review—that “communications seeking legal advice for creation of the prenuptial agreement and the Seibel Family 2016 Trust are discoverable under the crime-fraud exception (NRS § 49.115(1)) as they were made in furtherance of a scheme to defraud Caesars.” (*Id.* at 8:10-12.) The Court directed the Development Parties to submit privileged communications for *in camera* review by June 18, 2021. (*Id.* at 8:16-10:4.)

C. The Development Parties Seek Writ Relief and a Stay of Enforcement of the Initial Order, which the Nevada Supreme Court Denies as Premature.

On June 16, 2021, the Development Parties filed a Writ of Prohibition with the Nevada Supreme Court challenging the Initial Order (the “Initial Writ Petition”). (Notice of Filing Pet. for Extraordinary Writ Relief, June 17, 2021.) Notably, in the Initial Writ Petition, the Development

Parties expressed concerns that the Court might “provide the privileged communications directly to Caesars immediately after reviewing them,” which would then inhibit the Development Parties’ ability to challenge the Court’s decision. (*See id.*, Ex. A (Initial Writ Pet.) at 31, n.7.)

On June 18, 2021, the Nevada Supreme Court entered an Order denying the Initial Writ Petition, on the basis that the District Court had “not completed its review of the matter” and had merely determined that “real parties in interest have demonstrated that [an] *in camera* review is warranted.” (Ord. Denying Pet. for Writ of Prohibition, *Seibel v. Eighth Jud. Dist. Court*, Case No. 83071, June 18, 2021, at 2.) The Supreme Court explained that “only after that review is completed may the district court compel [the Development Parties] to disclose the documents to real parties in interest.” (*Id.*) Importantly, the Supreme Court made clear that its decision was “*without prejudice to petitioner’s ability to seek writ relief in the event he is ordered to disclose the subject documents.*” (*Id.* (emphasis added).)

On June 18, 2021, the Development Parties submitted the privileged communications for the Court’s *in camera* review. (Notc. of Compliance with June 8, 2021, Findings of Fact, Concl. of Law, and Ord. Granting Caesars’ Mot. to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception (June 18, 2021).)

D. The Court Discloses Privileged Communications in its Minute Order.

On August 19, 2021, the Court issued the Minute Order. In the Minute Order, the Court held that all privileged communications were to be produced to counsel for Caesars. (*Id.* at 1.) In the Minute Order, the Court quoted from two privileged communications and referenced that the same quoted language appeared in a third privileged communication. (*Id.*)

In addition to counsel for the Development Parties, the Minute Order was served on the following individuals/law firms:

Current counsel for Caesars:

- James J. Pisanelli, Esq. (Pisanelli Bice, PLLC)
- Debra L. Spinelli, Esq. (Pisanelli Bice, PLLC)
- M. Magali Mercera, Esq. (Pisanelli Bice, PLLC)

Former counsel for Caesars:

- Brittnie T. Watkins, Esq. (Nevada Gaming Control Board; formerly, Pisanelli Bice, PLLC)
- Jeffrey J. Zeiger, P.C., Esq. (Kirkland & Ellis LLP)
- William E. Arnault, IV, Esq. (Kirkland & Ellis LLP)

Counsel for The Original Homestead Restaurant, Inc.:

- Alan Lebensfeld, Esq. (Lebensfeld Sharon & Scwhartz, P.C.)
- Mark J. Connot, Esq. (Fox Rothschild LLP)
- Kevin M. Sutehall, Esq. (Fox Rothschild LLP)

Counsel for Gordon Ramsay:

- John D. Tennert, Esq. (Fennemore Craig, P.C.)
- Wade Beavers, Esq. (Fennemore Craig, P.C.)

Former counsel for GRB:

- Aaron D. Lovaas, Esq. (Newmeyer & Dillon)

III. ARGUMENT

It is undisputed that when a district court conducts an *in camera* review of privileged communications and determines that the crime-fraud exception applies, the court should give the aggrieved party an opportunity to seek appellate review of the decision *before* compelling the production of the communications or revealing them to the opposing party. *See In re GMC*, 153 F.3d 714, 717 (8th Cir. 1998) (“We stress that if the district court ultimately determines that the crime/fraud exception applies, it should keep the privileged communications under seal to prevent their further disclosure until all avenues of appeal have been exhausted.”); *Haines v. Liggett Grp., Inc.*, 975 F.2d 81, 97 (3d Cir. 1992) (“Because of the sensitivity surrounding the attorney-client privilege, care must be taken that, following any determination that an exception applies, the matters covered by the exception be kept under seal or appropriate court-imposed privacy procedures until all avenues of appeal are exhausted.”); *Walanpatrias Found. v. AMP Servs.*, 964 So. 2d 903, 905 (Fla. Dist. Ct. App. 2007) (holding trial court’s order requiring production of privileged communications was “defective in that the order provides for an immediate turning over

1 of the documents by the judge to [the party seeking the privileged communications], without further
2 opportunity for appellate review of the judge’s decision following the *in camera* inspection”);
3 accord *In re Grand Jury Subpoena*, 190 F.3d 375, 388 (5th Cir. 1999) (“When a district court
4 conducts *in camera* review of documents, determines that production is appropriate and so orders, it
5 should, as a matter of course, provide the individual who submitted the documents for *in camera*
6 review an opportunity to comply with the court’s order or stand in contempt. Once the district court
7 has provided the individual with this opportunity, the individual must, in order to secure an
8 immediate appeal, stand in contempt.... This procedure secures for the individual an avenue of
9 immediate review of the district court’s order....”).

10 Nevada law is in accord. The Nevada Supreme Court has consistently recognized that the
11 compelled disclosure of privileged communications causes irreparable harm, thus warranting its
12 intervention to review the decision. See *Cotter v. Eighth Jud. Dist. Ct.*, 134 Nev. 235, 249, 416
13 P.3d 228, 231 (2018) (“[W]ithout writ relief, compelled disclosure of petitioner’s assertedly
14 privileged communication will occur and petitioner would have no effective remedy, even by
15 subsequent appeal.”); *Las Vegas Sands Corp. v. Eighth Jud. Dist. Ct.*, 130 Nev. 118, 122, 319 P.3d
16 618, 621 (2014) (“This case presents a situation where, if improperly disclosed, ‘the assertedly
17 privileged information would irretrievably lose its confidential and privileged quality and
18 petitioners would have no effective remedy, even by later appeal.’”) (quoting *Wardleigh v. Second*
19 *Jud. Dist. Ct.*, 111 Nev. 345, 350-51, 891 P.2d 1180, 1183-84 (1995)); *Valley Health Sys., LLC*, 127
20 Nev. at 171-72, 252 P.3d at 679 (holding that where an “order requires the disclosure of privileged
21 material,” there is “no adequate remedy at law that could restore the privileged nature of the
22 information, because once such information is disclosed, it is irretrievable”). Yet, the Court
23 disclosed privileged communications directly to adverse parties in this action, without giving the
24 Development Parties a full and fair opportunity to seek review from the Nevada Supreme Court by
25 way of a writ petition.

26 Here, the Minute Order—which was served on current and former counsel for all parties in
27 this action—quotes directly from privileged communications. (See Minute Order at 1.) This
28 disclosure was, respectfully, inappropriate. *In re GMC*, 153 F.3d at 717; *Haines*, 975 F.2d at 97;

1 *Walanpatrias Found.*, 964 So. 2d at 905; *In re Grand Jury Subpoena*, 190 F.3d at 388. Rather than
2 disclosing the content of a privileged communication, a district court should be “*circumspect in its*
3 *description of the various documents supporting its decision*” regarding the crime-fraud exception
4 “*in order to avoid premature disclosure in the event [the party asserting the privilege] exercises*
5 *his rights to challenge th[e] decision*” *Transcon. Refrigerated Lines, Inc.*, No. 1:13-CV-2163,
6 2014 U.S. Dist. LEXIS 75320, at *39-42 & n.18.

7 Based on the above authority, the Court should issue a new minute order addressing its
8 decision related to the crime-fraud exception without disclosing the content of privileged
9 communications. In turn, the Court should compel the return, destruction, or sequestering of the
10 Minute Order and preclude all third-party recipients of it from using it (or the privileged
11 communications contained within it) for any purpose.

12 It is well settled that a “party cannot be expected to defend a privilege assertion by revealing
13 the contents of what it hopes to keep secret.” *In re Zetia (Ezetimibe) Antitrust Litig.*, No. MDL No.
14 2:18-md-2836, 2019 U.S. Dist. LEXIS 206524, at *51-52 (E.D. Va. July 16, 2019). Enabling the
15 parties to utilize the privileged communications that the Court divulged to them would place the
16 Development Parties in an unfair position of deciding whether: (a) to refuse to address the content
17 of the privileged communications in their forthcoming writ petition in an effort to maintain the
18 privilege; or (b) address the content of the privileged communications while risking waiver of the
19 privilege. Rather than force the Development Parties into such an untenable position, the Court
20 should bar all third-party recipients of the Minute Order from using the contents of the privileged
21 communications for any purpose whatsoever. *Cf. id.*

22 In sum, the Court should not have disclosed privileged communications in the Minute
23 Order. See *In re GMC*, 153 F.3d at 717; *Haines*, 975 F.2d at 97; *Walanpatrias Found.*, 964 So. 2d
24 at 905; *In re Grand Jury Subpoena*, 190 F.3d at 388. Accordingly, the Court should compel the
25 third-party recipients of the Minute Order to return, destroy, or sequester it and prohibit them from
26 using it for any purpose—at least until the Nevada Supreme Court rules on the Development
27 Parties’ forthcoming writ petition.

28

IV. CONCLUSION

For the reasons set forth above, the Court should compel all individuals who received the Minute Order (other than counsel for the Development Parties, the Court, and Court personnel) to return, destroy, or sequester the Minute Order pending the Development Parties' forthcoming writ petition.³ Further, all such individuals should be prohibited from using the contents of the Minute Order (or the privileged communications contained within it) for any purpose.

DATED this 30th day of August, 2021.

BAILEY ♦ KENNEDY

By: 

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

Attorneys for the Development Parties

³ The Development Parties expressly reserve the right to seek other remedies necessitated by the disclosure.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Rowen Seibel, Plaintiff(s)

CASE NO: A-17-751759-B

7 vs.

DEPT. NO. Department 16

8 PHWLTV LLC, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order Shortening Time was served via the court's electronic eFile
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 8/30/2021

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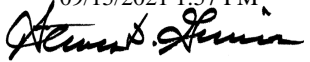
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TAB 84


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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED MATTERS

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**STIPULATION AND ORDER TO
CONTINUE HEARING ON THE
DEVELOPMENT ENTITIES,
ROWEN SEIBEL, AND CRAIG GREEN'S
MOTION TO COMPEL THE RETURN,
DESTRUCTION, OR SEQUESTERING
OF THE COURT'S AUGUST 19, 2021,
MINUTE ORDER CONTAINING
PRIVILEGED ATTORNEY-CLIENT
COMMUNICATIONS AND EXTEND
DEADLINE TO FILE OPPOSITION
THERE TO**

Caesars,¹ Gordon Ramsay ("Ramsay"), Rowen Seibel ("Seibel"), Craig Green ("Green"),
the Development Entities,² and the Original Homestead Restaurant, Inc. ("OHR") (collectively the

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

² GR Burgr, LLC, ("GRB"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC

"Parties"), by and through their undersigned counsel of record, hereby stipulate and agree as follows:

1. On August 30, 2021, Seibel, Green, and the Development Entities filed their Motion to Compel the Return, Destruction, or Sequestering of the Court's August 19, 2021, Minute Order Containing Privileged Attorney-Client Communications (the "Motion").

2. Pursuant to Seibel, Green, and the Development Entities' Application for an Order Shortening Time, the hearing on the Motion is presently set for September 15, 2021, at 9:30 AM.

3. Due to scheduling conflicts for Caesars, the Parties have agreed to continue the hearing on the Motion to September 22, 2021, at 9:00 AM, or as soon thereafter as the Court's schedule permits.

4. Additionally, the Parties have agreed that Caesars shall have up to and including September 20, 2021 to file its Opposition to the Motion.

5. While disputing the arguments set forth in the Motion and without waiver of any arguments or rights, neither Caesars, Ramsay, nor OHR will use the Court's Minute Order that is the subject of the Motion pending the outcome of the hearing on the Motion. By this Stipulation, Caesars, Ramsay, and OHR do not concede and/or admit that they are obligated to sequester, return, or destroy the Court's Minute Order.

///

///

///

("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), and DNT Acquisition, LLC, appearing derivatively by one of its two members, R Squared Global Solutions, LLC ("DNT"), are collectively referred to herein as the "Development Entities."

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

Respectfully submitted by:

DATED September 14, 2021

DATED September 14, 2021

PISANELLI BICE PLLC

BAILEY KENNEDY

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Corporation d/b/a Caesars Atlantic City*

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

DATED September 14, 2021

DATED September 14, 2021

LEBENSFELD SHARON & SCHWARTZ
P.C.

FENNEMORE CRAIG, P.C.

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*Attorneys for The Original Homestead
Restaurant, Inc*

MH
Calendared

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ORDER

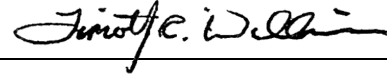
Based on the foregoing stipulation of the parties and good cause appearing,

IT IS HEREBY ORDERED that the hearing currently scheduled for September 15, 2021, at 9:30 AM, for the Motion to Compel the Return, Destruction, or Sequestering of the Court's August 19, 2021, Minute Order Containing Privileged Attorney-Client Communications shall be continued to September 22nd, 2021, at 9:00 AM ~~a.m./p.m.~~.

IT IS HEREBY FURTHER ORDERED that Caesars shall have up to and including September 20, 2021 to file its Opposition to the Motion to Compel the Return, Destruction, or Sequestering of the Court's August 19, 2021, Minute Order Containing Privileged Attorney-Client Communications.

IT IS SO ORDERED.

Dated this 15th day of September, 2021



MH

789 4C0 BCD1 D806
Timothy C. Williams
District Court Judge

Cinda C. Towne

From: Joshua Gilmore <JGilmore@baileykennedy.com>
Sent: Tuesday, September 14, 2021 1:30 PM
To: Magali Mercera; Paul Williams; Tennert, John; alan.lebensfeld@lsandspc.com
Cc: Susan Russo; Cinda C. Towne
Subject: RE: Desert Palace v. Seibel: Hearing on Motion to Compel Return of Minute Order

CAUTION: This message is from an EXTERNAL SENDER.
You may apply my e-signature. Thanks. Josh

Joshua P. Gilmore, Esq. | Bailey Kennedy, LLP
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Cc: Susan Russo <SRusso@baileykennedy.com>; Cinda C. Towne <cct@pisanellibice.com>
Subject: RE: Desert Palace v. Seibel: Hearing on Motion to Compel Return of Minute Order

Yes. Thanks, Josh. Final version attached. Please let me know if you have any changes. Otherwise, please confirm that we may apply your e-signature.

John/Alan – Please confirm that we may apply your e-signature to this version.

Best,

M. Magali Mercera

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From: Joshua Gilmore <JGilmore@baileykennedy.com>
Sent: Tuesday, September 14, 2021 12:28 PM

Cinda C. Towne

From: Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Sent: Tuesday, September 14, 2021 1:33 PM
To: Magali Mercera; Joshua Gilmore; Paul Williams; Tennert, John
Cc: Susan Russo; Cinda C. Towne
Subject: RE: Desert Palace v. Seibel: Hearing on Motion to Compel Return of Minute Order

CAUTION: This message is from an EXTERNAL SENDER.

You may, thanks.

From: Magali Mercera [mailto:mmm@pisanellibice.com]
Sent: Tuesday, September 14, 2021 4:23 PM
To: Joshua Gilmore; Paul Williams; Tennert, John; Alan Lebensfeld
Cc: Susan Russo; Cinda C. Towne
Subject: RE: Desert Palace v. Seibel: Hearing on Motion to Compel Return of Minute Order

Yes. Thanks, Josh. Final version attached. Please let me know if you have any changes. Otherwise, please confirm that we may apply your e-signature.

John/Alan – Please confirm that we may apply your e-signature to this version.

Best,

M. Magali Mercera

PISANELLI BICE, PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: (702) 214-2100
Fax: (702) 214-2101
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From: Joshua Gilmore <JGilmore@baileykennedy.com>
Sent: Tuesday, September 14, 2021 12:28 PM
To: Magali Mercera <mmm@pisanellibice.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; alan.lebensfeld@lsandspc.com
Cc: Susan Russo <SRusso@baileykennedy.com>; Cinda C. Towne <cct@pisanellibice.com>
Subject: RE: Desert Palace v. Seibel: Hearing on Motion to Compel Return of Minute Order

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We have no problem with the addition, however, did you mean to say:

“By this Stipulation, Caesars, Ramsay, and OHR do not concede and/or admit that they are obligated to sequester, return, or destroy the Court's Minute Order.”

Please let me know. Thanks. Josh

Joshua P. Gilmore, Esq. | Bailey Kennedy, LLP

Cinda C. Towne

From: Tennert, John <jtennert@fennemorelaw.com>
Sent: Tuesday, September 14, 2021 1:58 PM
To: Magali Mercera; Joshua Gilmore; Paul Williams; alan.lebensfeld@lsandspc.com
Cc: Susan Russo; Cinda C. Towne
Subject: RE: Desert Palace v. Seibel: Hearing on Motion to Compel Return of Minute Order

CAUTION: This message is from an EXTERNAL SENDER.

You may apply my e-signature.

John D. Tennert III, Director

FENNEMORE.

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jtennert@fennemorelaw.com | [View Bio](#)



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COVID-19: Governors in our markets have deemed law firms essential services. As a result, our offices will be open from 8 am to 5 pm, but most of our team members are working remotely. To better protect our employees and clients, please schedule an appointment before coming to our offices.

From: Magali Mercera <mmm@pisanellibice.com>
Sent: Tuesday, September 14, 2021 1:23 PM
To: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; alan.lebensfeld@lsandspc.com
Cc: Susan Russo <SRusso@baileykennedy.com>; Cinda C. Towne <cct@pisanellibice.com>
Subject: RE: Desert Palace v. Seibel: Hearing on Motion to Compel Return of Minute Order

Yes. Thanks, Josh. Final version attached. Please let me know if you have any changes. Otherwise, please confirm that we may apply your e-signature.

John/Alan – Please confirm that we may apply your e-signature to this version.

Best,

M. Magali Mercera

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Fax: (702) 214-2101

mmm@pisanellibice.com | www.pisanellibice.com

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Rowen Seibel, Plaintiff(s)

CASE NO: A-17-751759-B

7 vs.

DEPT. NO. Department 16

8 PHWL V LLC, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Stipulation and Order was served via the court's electronic eFile system
13 to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/15/2021

15 Robert Atkinson robert@nv-lawfirm.com

16 Kevin Sutehall ksutehall@foxrothschild.com

17 "James J. Pisanelli, Esq." . lit@pisanellibice.com

18 "John Tennert, Esq." . jtennert@fclaw.com

19 Brittnie T. Watkins . btw@pisanellibice.com

20 Dan McNutt . drm@cmlawnv.com

21 Debra L. Spinelli . dls@pisanellibice.com

22 Diana Barton . db@pisanellibice.com

23 Lisa Anne Heller . lah@cmlawnv.com

24 Matt Wolf . mcw@cmlawnv.com

25 PB Lit . lit@pisanellibice.com
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