

CASE NO.

IN THE SUPREME COURT OF NEVADA

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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' APPENDIX TO
PETITION FOR EXTRAORDINARY WRIT RELIEF**

VOLUME 6 OF 17

JOHN R. BAILEY
Nevada Bar No. 0137

DENNIS L. KENNEDY
Nevada Bar No. 1462

JOSHUA P. GILMORE
Nevada Bar No. 11576

PAUL C. WILLIAMS
Nevada Bar No. 12524

BAILEY ♦ KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
Telephone: (702) 562-8820
Facsimile: (702) 562-8821
jbailey@baileykennedy.com
dkennedy@baileykennedy.com
jgilmore@baileykennedy.com
pwilliams@baileykennedy.com

Attorneys for Petitioners

**PETITIONERS' APPENDIX TO PETITION FOR EXTRAORDINARY
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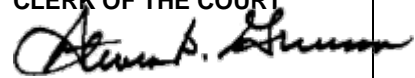
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|--|---------------------------|------------------------|---------------------------|
| Stipulation and Order to Continue Hearing Dates and Set Briefing Schedule, filed March 10, 2021 | 4 | 67 | PA000893 - PA000903 |
| Stipulation and Order to Continue the 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 Thereto, filed September 15, 2021 | 5 | 84 | PA001119 - PA001128 |
| Stipulation and Order to Extend Dispositive Motion Deadline, filed February 18, 2021 | 4 | 64 | PA000850 - PA000862 |
| Stipulation and Proposed Order to Extend Discovery Deadlines (Ninth Request), filed October 15, 2020 | 3 | 57 | PA000665 - PA000691 |
| The Development Entities and Rowen Seibel’s Opposition to Caesars’ Motion for Summary Judgment No. 1, filed March 30, 2021 - FILED UNDER SEAL – [PROPOSED] | 17 | 109 | PA003333 - PA003382 |
| The Development Entities and Rowen Seibel’s Opposition to Caesars’ Motion for Summary Judgment No. 2, filed March 30, 2021 - FILED UNDER SEAL – [PROPOSED] | 17 | 110 | PA003383 - PA003432 |

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| The Development Entities, Rowen Seibel, and Craig Green’s Answer to Caesars’ First Amended Complaint and Counterclaims, filed June 19, 2020 | 3 | 55 | PA000610 - PA000660 |
| 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 85



James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
Debra L. Spinelli, Esq., Bar No. 9695
DLS@pisanellibice.com
M. Magali Mercera, Esq., Bar No. 11742
MMM@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100
Facsimile: 702.214.2101

*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

**OPPOSITION TO 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 ALL RELATED MATTERS

I. INTRODUCTION

The Seibel Parties'¹ gamesmanship has run its course. Following a fully developed record which included briefing, oral argument, additional consideration by the Court, a failed writ

¹ 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

petition, and finally an *in-camera* review by this Court, it is clear that the records at issue must be produced to the parties in this matter. The Seibel Parties' fraud upon Caesars² and this Court cannot be permitted to continue. Indeed, the Seibel Parties' efforts to continue to hide their malfeasance are unavailing. They did not take any steps to clawback the records they (incorrectly) continue to assume are protected by the attorney-client privilege. And, in fact, this Court's holding conclusively establishes that no privilege attaches to the records. As such, there is no basis to alter this Court's minute order. The Seibel Parties' Motion must be denied.

II. RELEVANT FACTS

A. The Court Determines Caesars Has Met its Burden and Finds that Documents Must be Disclosed in Accordance with the Crime-Fraud Exception.

On or about January 6, 2021, Caesars filed a Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception. (Mot. to Compel, Jan. 6, 2021, on file.) As this Court will recall, discovery revealed that Seibel "devised a scheme whereby he lied to Caesars, claiming that he purportedly divested himself of any interests or benefits related to the Seibel Agreements, while secretly entering into an agreement with his wife to continue to reap the benefits of those agreements behind [their] back." (*Id.*, 2:5-10.) Egregiously, Seibel used his lawyers to assist him with this duplicitous scheme. Following extensive briefing by the parties, as well as oral argument, and having taken the matter under advisement for further consideration, on April 12, 2021, this Court granted Caesars' Motion to Compel, determining that it had "met its initial burden of proof by establishing that . . . Seibel's representations as to the independence of the Seibel Family 2016 Trust were unfounded, and [that] Seibel could continue to benefit from the agreements despite unsuitability to conduct business with a gaming licensee." (Findings of Fact, Conclusions of Law, & Order Granting

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") are collectively referred to herein as the "Seibel Parties."

² PHWLV, 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") are collectively referred to herein as "Caesars."

Caesars' Mot. to Compel Docs. Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, June 8, 2021, at 8:4-7, on file.)

Thereafter, on June 8, 2021, this Court entered thorough and detailed Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion to Compel. (*See* Findings of Fact, Conclusions of Law, & Order Granting Caesars' Mot. to Compel Docs. Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, June 8, 2021, on file.) In accordance with that order, and following a failed petition for writ relief and request to stay from the Nevada Supreme Court, the Seibel Parties produced the disputed records to this Court. On or about August 19, 2021, this Court issued its minute order holding that all records must be produced to Caesars. (Mot. at 9:18-19.) Without asking counsel to sequester the minute order, the Seibel Parties filed the pending Motion seeking the return, sequester, and/or destruction of the Court's minute order. Their Motion is futile and must be denied.

III. ANALYSIS

A. The Court's Order Establishes There is No Privilege³

Pursuant to Nevada law, communications between a client (or their representative) and their attorney (or representative) "[m]ade for the purpose of facilitating the rendition of professional legal services to the client, by the client or the client's lawyer to a lawyer representing another in a matter of common interest" are protected from disclosure. NRS § 49.095. However, as all know, the attorney-client privilege is not absolute. Indeed, *"[t]here is no privilege under NRS 49.095 . . . [i]f the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud."* NRS § 49.115(1) (emphasis added); *see also In re Grand Jury Investigation*, 810 F.3d 1110, 1113 (9th Cir. 2016) (internal quotations omitted) (emphasis added) ("Under the crime-fraud exception, *communications are not privileged when the client consults an attorney for advice that will serve him in the commission of a fraud* or crime.") "The 'crime-fraud exception' to the privilege protects against abuse of the attorney-client relationship." *In re*

³ The Seibel Parties fail to cite to any pertinent Nevada authority that holds that a district court must not reveal any contents of documents ordered compelled prior to exhaustion of all appeals.

1 *Napster, Inc. Copyright Litig.*, 479 F.3d 1078, 1090 (9th Cir. 2007), *abrogated on other grounds*
2 *by Mohawk Indus., Inc.v. Carpenter*, 558 U.S. 100, 130 S. Ct. 599, 175 L. Ed. 2d 458 (2009).
3 "The privilege takes flight if the relation is abused. A *client who consults an attorney for advice*
4 *that will serve him in the commission of a fraud will have no help from the law*. He must let the
5 truth be told." *Id.* (quoting *Clark v. United States*, 289 U.S. 1, 15 (1933) (emphasis added)).

6 "A party seeking to vitiate the attorney-client privilege under the crime-fraud exception
7 must satisfy a two-part test." *Id.* First, moving party must "show that the client was engaged in or
8 planning a criminal or fraudulent scheme when it sought the advice of counsel to further the
9 scheme." *Id.* (internal quotations omitted). Next, the moving party "must demonstrate that the
10 attorney-client communications for which production is sought are sufficiently related to and
11 were made in furtherance of [the] intended, or present, continuing illegality." *In re Grand Jury*
12 *Investigation*, 810 F.3d at 1113 (internal quotations omitted). The second step is accomplished
13 through an *in-camera* review of the documents. *See id.* at 1114 (internal quotations omitted)
14 ("[A] district court must examine the individual documents themselves to determine that the
15 specific attorney-client communications for which production is sought are sufficiently related to
16 and were made in furtherance of the intended, or present, continuing illegality.")

17 Following *extensive* motion practice, having considered the record, the arguments of
18 counsel, and after having taken the matter under advisement, the district court determined that
19 Caesars had "met its initial burden of proof and established that Seibel's representations as to the
20 independence of the Seibel Family 2016 Trust were unfounded, and Seibel could continue to
21 benefit from the Seibel Agreements despite his unsuitability to conduct business with a gaming
22 licensee." (Findings of Fact, Conclusions of Law, & Order Granting Caesars' Mot. to Compel
23 Docs. Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception,
24 June 8, 2021, at 8:4-7, on file.) Thereafter, as required under its two-step analysis, this Court
25 undertook its review of the purportedly privileged records that Caesars challenged. In its
26 subsequent order, the Court ordered that all documents be produced to Caesars. (Mot. 9:18-19.)
27 By its order, the Court determined that the crime-fraud privilege applied and, as a result, no
28 privilege attaches to the communications at issue. *See* NRS § 49.115(1); *see also In re Grand*

1 *Jury Investigation*, 810 F.3d at 1113 (9th Cir. 2016) (internal quotations omitted) (emphasis
2 added) ("[C]ommunications are *not privileged when the client consults an attorney for advice*
3 *that will serve him in the commission of a fraud* or crime.") Because the documents are by their
4 very nature not privileged, there is no basis to demand that the minute order be returned,
5 destroyed, and/or sequestered. The Motion must be denied.

6 **B. The Seibel Parties Waived Their Claims of Privilege, if Any.**

7 The Seibel Parties' sudden clawback attempts are further ineffective as they have waived
8 their purported claims of privilege, if any.⁴ As all know, "[w]aiver occurs where a party knows of
9 an existing right and either actually intends to relinquish the right or exhibits conduct so
10 inconsistent with an intent to enforce the right as to induce a reasonable belief that the right has
11 been relinquished." *Hudson v. Horseshoe Club Operating Co.*, 112 Nev. 446, 457, 916 P.2d 786,
12 792 (1996); *see also Nev. Yellow Cab Corp. v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark*, 123
13 Nev. 44, 49, 152 P.3d 737, 740 (2007) ("[T]he waiver of a right may be inferred when a party
14 engages in conduct so inconsistent with an intent to enforce the right as to induce a reasonable
15 belief that the right has been relinquished."). Indeed, under the terms of the Protective Order, the
16 parties agreed to a procedure to address the disclosure of privileged information. Pursuant to
17 Section 24 of the Stipulated Confidentiality Agreement and Protective Order entered by this Court
18 on or about March 12, 2019 (the "Protective Order"), if a party receives purportedly privileged
19 information, "[t]he Receiving Party hereby agree[d] to promptly return, sequester, or destroy any
20 Privileged Information disclosed or produced by [the] Disclosing or Producing Party upon request
21 by the Disclosing or Producing Party, regardless of whether the Receiving Party disputes the
22 designation of Privileged Information." (*See* Protective Order, Mar. 12, 2019, ¶ 24.) The
23 Protective Order further sets forth the procedure that the parties agreed to follow in the event
24 there is a dispute as to the claim of privilege. (*See id.*) Yet, here, the Seibel Parties did nothing to
25 notify Caesars or the other parties that a disclosure took place which they intended to challenge.
26
27

28 ⁴ As discussed *supra* in Section II(A), the district court's granting of Caesars' Motion to
Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-
Fraud Exception precludes the Seibel Parties' arguments that any documents are privileged.

1 The Court's minute order that the Seibel Parties challenge was issued on or about August
2 19, 2021. (*See* Mot. at 9:18.) Yet, at no time prior to or even after filing their Motion on or about
3 August 30, 2021, have the Seibel Parties asked Caesars to sequester the Court's minute order
4 containing the purportedly privileged information. Indeed, under the terms of the Protective
5 Order, even if Caesars, as the Receiving Party, disagreed with the clawback effort, the Protective
6 Order would have required Caesars to sequester the minute order until the dispute was resolved.
7 Protective Order, Mar. 12, 2019, ¶ 24 ("The Receiving Party may sequester (rather than return or
8 destroy) such Privileged Information only if it contends that the information itself is not
9 privileged or otherwise protected, and it challenges the privilege designation, in which case it may
10 only sequester the information until the claim of privilege or other protection is resolved.") Yet
11 the Seibel Parties did not avail themselves of the remedies in the Protective Order. Indeed, the
12 Seibel Parties have actively litigated this matter for some time and are aware of the contents and
13 requirements of the Protective Order, yet they did nothing to preserve their purported claim of
14 privilege. Their failure to act constitutes waiver of any purported claim of privilege. *McKellar v.*
15 *McKellar*, 110 Nev. 200, 202, 871 P.2d 296, 297 (1994) ("[W]hile a waiver may be the subject of
16 express agreement, it may also be implied from conduct which evidences an intention to waive a
17 right, or by conduct which is inconsistent with any other intention than to waive a right.")

18 **C. The Minute Order was Served on Caesars' Counsel Authorized to Access**
19 **Such Discovery Information.**

20 In their Motion, the Seibel Parties object, in part, to this Court's order because the Seibel
21 Parties assert that the Court disclosed the communications to Caesars' prior counsel. (Mot. 10:1-
22 5). The Seibel Parties are mistaken. With respect to Ms. Watkins, the email from the Court
23 serving the minute order was sent to BTW@pisanellibice.com. This email was Ms. Watkins'
24 email address when she worked at Pisanelli Bice and is not Ms. Watkins' current email as she now
25 serves on the Nevada Gaming Control Board. Indeed, until the Seibel Parties served their motion
26 by mailing it to Ms. Watkins at the Nevada Gaming Control Board, it is unlikely that Ms. Watkins
27 was even aware of the Court's ruling.

With respect to Messrs. Zeiger and Arnault, while they no longer represent Caesars in this matter, they remain counsel of record for Caesars in certain bankruptcy matters pending in Illinois. (Ex. 1, Bankruptcy Docket, at 3-4.) As a result, they are entitled to receive both Confidential and Highly Confidential Information under the terms of the Protective Order and the Global Agreement for the Utilization of Discovery Across Cases (the "Global Discovery Agreement"). (See Protective Order, Mar. 12, 2019, ¶ 13, on file; Ex. 2, Global Discovery Agreement.) Under Sections 12 and 13 of the Protective Order, counsel for a Party, including in-house counsel and outside attorneys, are entitled to receive both Confidential and Highly Confidential Information. (Protective Order, ¶¶ 12-13.) Additionally, due to the overlapping issues, the parties entered into a Global Discovery Agreement whereby they agreed that discovery propounded/produced in this matter can be used in other matters, including, but not limited to the bankruptcy pending in Illinois. (Ex. 2, Global Discovery Agreement.) As a result, the minute order was not disclosed to any former Caesars' counsel otherwise not entitled to such information.

IV. CONCLUSION

Based on the foregoing, Caesars respectfully requests that this Court deny the Seibel Parties' Motion in its entirety.

DATED this 20th day of September 2021.

PISANELLI BICE PLLC

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 20th day of September 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 **OPPOSITION TO 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** to the following:

John R. Bailey, Esq.
Dennis L. Kennedy, Esq.
Joshua P. Gilmore, Esq.
Paul C. Williams, Esq.
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, NV 89148-1302
JBailey@BaileyKennedy.com
DKennedy@BaileyKennedy.com
JGilmore@BaileyKennedy.com
PWilliams@BaileyKennedy.com

*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, and FERG 16, LLC; and R Squared
Global Solutions, LLC, Derivatively on Behalf of
DNT Acquisition, LLC, and Nominal Plaintiff
GR Burgr LLC*

John D. Tennert, Esq.
Wade Beavers, Esq.
FENNEMORE CRAIG, P.C.
7800 Rancharrah Parkway
Reno, NV 89511
jtennert@fclaw.com
wbeavers@fclaw.com

Attorneys for Gordon Ramsay

Alan Lebensfeld, Esq.
LEBENSFELD SHARON &
SCHWARTZ, P.C.
140 Broad Street
Red Bank, NJ 07701
alan.lebensfeld@lsandspc.com

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

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

/s/ Cinda Towne
An employee of PISANELLI BICE PLLC

EXHIBIT 1

ClaimsNoticeAgent, JNTADMN, LEAD, MegaCase, NoFeeRequired

**U.S. Bankruptcy Court
Northern District of Illinois (Eastern Division)
Bankruptcy Petition #: 15-01145**

Assigned to: Honorable Judge A. Benjamin
Goldgar
Chapter 11
Voluntary
Asset

Date filed: 01/15/2015
Plan confirmed: 01/17/2017
341 meeting: 05/28/2015
Deadline for filing claims (govt.): 07/14/2015

Debtor 1
**Caesars Entertainment Operating
Company, Inc.**
One Caesars Palace Dr.
Las Vegas, NV 89109
CLARK-NV
Tax ID / EIN: 75-1941623
fka Harrah's Operating Company, Inc.
fka Harrah's Casino Hotel Reno

represented by **Nadar R Boulos**
Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654

Judson Brown
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, DC 20005-5793
202-879-5000 ☎

Marc J Carmel
McDonald Hopkins LLC
300 North LaSalle Street
Suite 1400
Chicago, IL 60654
312-642-1484 ☎
Email: mcarmel@mcdonaldhopkins.com

DLA Piper LLP (US)

Ryan Dahl
Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654
(312) - 8622000 Ext. 7307
Email: ryan.dahl@kirkland.com
TERMINATED: 03/08/2018

Chris L. Dickerson
DLA Piper LLP (US)
203 North LaSalle Street, Suite 1900

PA001138

Chicago, IL 60601-1293
312-368-7045 ☎
Fax : 312-630-5310 ☎
Email: chris.dickerson@dlapiper.com

Gregg Galardi
DLA Piper LLP (US)
1251 Avenue of the Americas
New York, NY 10020-1104
212-335-4500 ☎

Joseph M. Graham
Kirkland & Ellis LLP
300 N. LaSalle St.
Chicago, IL 60654
TERMINATED: 08/23/2021

Christopher T. Greco

Nicole Greenblatt
Kirkland Ellis LLP
601 Lexington Ave
New York, NY 10022
212-446-4800 ☎ x4664
Email: nicole.greenblatt@kirkland.com

Stephen C Hackney
Kirkland & Ellis LLP
300 N. LaSalle
Chicago, IL 60654
312-8612000
Email: stephen.hackney@kirkland.com


Benjamin Kelly
The Vrdolyak Law Group, LLC
100 N. Riverside Plaza
Suite 2400
Chicago, IL 60606
312-482-8200 ☎
Email: bkelly@vrdolyak.com

Kirkland & Ellis International LLP

Kirkland & Ellis LLP

Thanhan Nguyen
Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654

PA001139

(312) 862-3063 

Email: thanhan.nguyen@kirkland.com

Jeffrey Pawlitz

Kirkland & Ellis LLC

300 N LaSalle Street

Chicago, IL 60654

(312) - 8622000 Ext. 7347


Email: jpawlitz@kirkland.com

Benjamin Rhode

Kirkland & Ellis LLP

300 North LaSalle

Chicago, IL 60654

(312) 862-3021 

Email: benjamin.rhode@kirkland.com


TERMINATED: 02/22/2021

Brenton Rogers

Kirkland & Ellis LLP

300 North LaSalle

Chicago, IL 60654

312-862-2000 

Email: brenton.rogers@kirkland.com

David R Seligman

Kirkland & Ellis LLP

300 North LaSalle Street

Chicago, IL 60601

312 862-2000  Ext. 2463

Email: dseligman@kirkland.com


David R Seligman

Kirkland & Ellis LLP

300 North LaSalle Street

Chicago, IL 60601

312 862-2000  Ext. 2463

Fax : 312 862-2200 

Email: dseligman@kirkland.com


Brian L Shaw

Cozen O'Connor

123 N Wacker Drive

Suite 1800

Chicago, IL 60606

312 474-1644 


Email: bshaw@cozen.com

Jeffrey Zeiger


Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654
312-862-3237 
Email: jzeiger@kirkland.com

David J Zott
Kirkland & Ellis, LLP
300 North LaSalle
Chicago, IL 60654
312-862-2428 
Email: dzott@kirkland.com

U.S. Trustee
Patrick S Layng
Office of the U.S. Trustee, Region 11
219 S Dearborn St
Room 873
Chicago, IL 60604
312-886-5785 


represented by **Adam G. Brief**
Office of the United States Trustee
219 South Dearborn
Room 873
Chicago, IL 60604
312-886-5785 
Email: Adam.Brief@usdoj.gov

Denise A Delaurent
Office of the U. S. Trustee, Region 11
219 south Dearborn St
Room 873
Chicago, IL 60604
Email: USTPRegion11.es.ecf@usdoj.gov


Cameron M Gulden
Office of The U.S. Trustee
219 South Dearborn Street
Room 873
Chicago, IL 60604
312 886-2614 
Email: USTPRegion11.es.ecf@usdoj.gov

Roman Sukley
United States Trustee
219 S Dearborn Street Room 873
Chicago, IL 60604
Email: USTPRegion11.es.ecf@usdoj.gov


Creditor Committee
The Statutory Unsecured Claimholders'
Committee of Caesars Entertainment
Operating Company, Inc., et al, The
Statutory Unsecured Claimholders'
Committee of Caesars Entertainment
Operating Company, Inc., et al

represented by **Philip Abelson**
Proskauer Rose LLP
11 Times Square
New York, NY 10036
212-969-3000 
TERMINATED: 06/13/2017


Martin J. Bienenstock

Proskauer Rose LLP
11 Times Square
New York, NY 10036
212-969-3000 


Robert J. Cleary

Proskauer Rose LLP
11 Times Square
New York, NY 10036
212-969-3000 


Mark E. Davidson

Proskauer Rose LLP
11 Times Square
New York, NY 10036
212-969-3000 

Scott A. Eggers

Proskauer Rose LLP
11 Times Square
New York, NY 10036
212-969-3412 


Vincent Indelicato

Proskauer Rose LLP
11 Times Square
New York, NY 10036
212-969-3000 

Brandon Levitan

Proskauer Rose LLP
70 W. Madison St. Suite 3800
Chicago, IL 60602
(312) - 9623521
Email: blevitan@proskauer.com
TERMINATED: 12/08/2016

Judy G.Z. Liu

Proskauer Rose LLP
11 Times Square
New York, NY 10036
212-969-3000 
TERMINATED: 12/08/2016

Jeff J Marwil


Proskauer Rose LLP
70 West Madison, Suite 3800
Chicago, IL 60602

312 962.3540
Fax : 312 962.3551
Email: jmarwil@proskauer.com

Mervis T Mervis
Proskauer Rose LLP
11 Times Square
New York, NY 10036
212-969-3565 

Paul V Possinger
Proskauer Rose LLP
70 W. Madison Street, Suite 3800
Chicago, IL 60602
(312) - 9623550
Email: ppossinger@proskauer.com


Proskauer Rose LLP
Three First National Plaza
70 West Madison Ste 3800
Chicago, IL 60602
312962-3550

Geoffrey T. Raicht
Proskauer Rose LLP
11 Times Square
New York, NY 10036
212-969-3000 

Mark K Thomas
Proskauer Rose, LLP
70 W. Madison Street, Suite 3800
Chicago, IL 60602
(312) - 9623550
Email: mthomas@proskauer.com


Marissa Tillem
Proskauer Rose LLP
11 Times Square
New York, NY 10036
212-969-3000 

Jeramy D Webb
Latham & Watkins LLP
330 N Wabash Ave
Suite 2800
Chicago, IL 60611
3128767645
Email: jeramy.webb@lw.com

Andrew S. Wellin
Proskauer Rose LLP
11 Times Square
New York, NY 10036
212-969-3000 
TERMINATED: 12/08/2016

Maja Zerjal

Creditor Committee
Official Committee of Second Priority
Noteholders


represented by **Robert W. Hamilton**
Jones Day
325 John H. McConnell Boulevard
Suite 600
Columbus, OH 43215
614-469-3939 

Sara Higgins


Houlihan Lokey Capital Inc


Ira Karoll

Houlihan Lokey

Joshua D. Morse
Jones Day
555 California Street
26th Floor
San Francisco, CA 94104-1500
415-626-3939 

Sevan Ogulluk

David S. Torborg
Jones Day
51 Louisiana Avenue, N.W.
Washington, D. 20001
202-879-3939 

Monika S. Wiener
555 South Flower Street
50th Floor
Los Angeles, CA 90071
213-489-3939 

There are proceedings for case 15-01145 but none satisfy the

PA001144

selection criteria.

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EXHIBIT 2

GLOBAL AGREEMENT FOR THE UTILIZATION OF DISCOVERY ACROSS CASES

IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned and all parties of record that, notwithstanding any Protective Orders or Confidentiality Agreements to the contrary, any documents produced and discovery responses served (collectively "Document Discovery") by any of the Parties (as hereinafter defined) during discovery in one or more of the Related Actions (as hereinafter defined) may be used by any other Party in any of the Related Actions. *Caesars Entertainment Operating Company, PHWLTV, LLC, Desert Palace, Inc., Paris Las Vegas Operating Company, LLC, PHWLTV, LLC, Boardwalk Regency Corporation, d/b/a Caesars Atlantic City, LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC, FERG, LLC, FERG 16, LLC, MOTI Partners, LLC, MOTI Partners 16, LLC, TPOV Enterprises, LLC, TPOV Enterprises 16, LLC, Rowen Seibel, R Squared Global Solutions LLC, The Seibel Family 2016 Trust, Brian K. Ziegler, Craig Green, Jeffrey Frederick, Gordon Ramsay and GR Burgr LLC, The Original Homestead Restaurant, Inc., Marc Sherry and Greg Sherry* shall each individually be a "Party" and are collectively referred to as the "Parties."

IT IS FURTHER STIPULATED AND AGREED that this Agreement pertains only to the Document Discovery produced in the following actions (collectively, the "Related Actions"):

1. *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 v. PHWLTV, LLC, a Nevada limited liability company; Gordon Ramsay, an individual; et. al., District Court, Clark County, Nevada, Case No. A-17-751759-B, Dept. No. 15 (*
-and-
Desert Palace, Inc. et. al. v. Rowen Seibel et. al., District Court, Clark County, Nevada, Case No. A-17-760537-B, Dept. No. 27 (collectively with Case No, A-17-751759-B, the "Nevada Consolidated Action").
2. *TPOV Enterprises 16, LLC v. Paris Las Vegas Operating Company, LLC, United States District Court, District of Nevada, Case No. 2:17-CV-00346-JCM-VCF (the "Nevada Federal Action").*
3. *In re: Caesars Entertainment Operating Company, Inc., et. al., United States Bankruptcy Court, Northern District of Illinois, Eastern Division, Chapter 11, Case No. 15-01145 (ABG) (the "Contested Matters").*

4. *The Original Homestead Restaurant, Inc., et. al. v, Rowen Seibel, et. al.*, Supreme Court of New York, County of New York, Index No. 650145/2018 (the “New York Action”)

IT IS FURTHER STIPULATED AND AGREED that the use of any Document Discovery in any Related Action other than the action in which it was initially produced ("Other Action") shall be governed by the applicable confidentiality stipulation and/or Protective Order that governs the use of discovery materials in the Related Action in which the document was initially produced. Further, a document shall retain its designation from the Related Action in which it was initially produced. Copies of applicable Stipulated Confidentiality Agreement and Protective Orders are attached hereto as Exhibits 1-3.

IT IS FURTHER STIPULATED AND AGREED that production of Document Discovery in a Related Action does not concede that such Document Discovery is relevant to, discoverable, and/or should have been produced in any Other Action.

IT IS FURTHER STIPULATED AND AGREED that any Party who subsequently joins the Nevada Consolidated Action, the Nevada Federal Action, the Contested Matters, or the New York Action shall be required to agree to and be bound by this Stipulation before being granted access to Document Discovery produced in any Related Action.

///

IT IS FURTHER STIPULATED AND AGREED that the respective Parties in each of the Related Actions, and each of them, covenant and agree that they shall take all such actions as are reasonably necessary or requested by the other Parties to carry out this Stipulation, including, if appropriate, filing any motions or stipulations in the Related Actions to approve this Stipulation or otherwise amend any existing Protective Orders.

DATED February 26th, 2019

MCNUTT LAW FIRM, P.C.

By: _____

Daniel R. McNutt (SBN 7815)
Matthew C. Wolf (SBN 10801)
625 South Eighth Street
Las Vegas, Nevada 89101

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

DATED February __, 2019

CERTILMAN BALIN ADLER
& HYMAN, LLP

By: _____

Paul B. Sweeney, Esq.
Joshua Feldman, Esq.
90 Merrick Avenue, 9th Floor
East Meadow, New York 11554

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

DATED March 14 February __, 2019

PISANELLI BICE PLLC

James Pisanelli, Esq., Bar No. 4027
Debra Spinelli, Esq., Bar No. 9695
M. Magali Mercera, Esq., Bar No. 11742
Brittnie Watkins, Esq., Bar No. 13612
400 South 7th Street, Suite 300
Las Vegas, NV 89101

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

DATED February __, 2019

KIRKLAND & ELLIS LLP

By: _____

William Arnault, Esq.
Jeffrey J. Zeiger, Esq.
300 North LaSalle
Chicago, Illinois 60654

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

IT IS FURTHER STIPULATED AND AGREED that the respective Parties in each of the Related Actions, and each of them, covenant and agree that they shall take all such actions as are reasonably necessary or requested by the other Parties to carry out this Stipulation, including, if appropriate, filing any motions or stipulations in the Related Actions to approve this Stipulation or otherwise amend any existing Protective Orders.

DATED February __, 2019

MCNUTT LAW FIRM, P.C.

By: _____

Daniel R. McNutt (SBN 7815)
Matthew C. Wolf (SBN 10801)
625 South Eighth Street
Las Vegas, Nevada 89101

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

DATED February __, 2019

PISANELLI BICE PLLC

James Pisanelli, Esq., Bar No. 4027
Debra Spinelli, Esq., Bar No. 9695
M. Magali Mercera, Esq., Bar No. 11742
Brittnie Watkins, Esq., Bar No. 13612
400 South 7th Street, Suite 300
Las Vegas, NV 89101

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

DATED February 25, 2019

CERTILMAN BALIN ADLER
& HYMAN, LLP

By: _____

Paul B. Sweethy, Esq.
Joshua Feldman, Esq.
90 Merrick Avenue, 9th Floor
East Meadow, New York 11554

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

DATED February __, 2019

KIRKLAND & ELLIS LLP

By: _____

William Arnault, Esq.
Jeffrey J. Zeiger, Esq.
300 North LaSalle
Chicago, Illinois 60654

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

IT IS FURTHER STIPULATED AND AGREED that the respective Parties in each of the Related Actions, and each of them, covenant and agree that they shall take all such actions as are reasonably necessary or requested by the other Parties to carry out this Stipulation, including, if appropriate, filing any motions or stipulations in the Related Actions to approve this Stipulation or otherwise amend any existing Protective Orders.

DATED February __, 2019

MCNUTT LAW FIRM, P.C.

By: _____

Daniel R. McNutt (SBN 7815)
Matthew C. Wolf (SBN 10801)
625 South Eighth Street
Las Vegas, Nevada 89101

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

DATED February __, 2019

CERTILMAN BALIN ADLER
& HYMAN, LLP

By: _____

Paul B. Sweeney, Esq.
Joshua Feldman, Esq.
90 Merrick Avenue, 9th Floor
East Meadow, New York 11554

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

DATED February __, 2019

PISANELLI BICE PLLC

James Pisanelli, Esq., Bar No. 4027
Debra Spinelli, Esq., Bar No. 9695
M. Magali Mercera, Esq., Bar No. 11742
Brittnie Watkins, Esq., Bar No. 13612
400 South 7th Street, Suite 300
Las Vegas, NV 89101

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

DATED February __, 2019

KIRKLAND & ELLIS LLP

By: _____

William Arnault, Esq.
Jeffrey J. Zeiger, Esq.
300 North LaSalle
Chicago, Illinois 60654

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

DATED February 28, 2019

BARACK FERRAZZANO KIRSCHBAUM
& NAGELBERG LLP

By: Nathan Q. Rugg
Nathan Q. Rugg, Esq.
200 West Madison Street, Suite 3900
Chicago, Illinois 60606

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

DATED February __, 2019

FENNEMORE CRAIG, P.C.

By: _____
Allen Wilt, Esq., Bar No.4798
John Tennert, Esq., Bar No.11728
FENNEMORE CRAIG, P.C.
300 East 2nd Street, Suite 1510
Reno, NV 89501

Attorneys for Gordon Ramsay

DATED February 29, 2019

ADELMAN & GETTLEMAN, LTD.

By: Steven B. Chaiken
Steven B. Chaiken, Esq.
53 West Jackson Blvd., Suite 1050
Chicago, Illinois 60604

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

DATED February __, 2019

LEBENSFELD SHARON & SCHWARTZ
P.C.

By: _____
Alan Lebensfeld, Esq.
140 Broad Street
Red Bank, New Jersey 07701
and

Mark J. Connot, Esq.
Kevin M. Sutehall, Esq.
FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135

*Attorneys for The Original Homestead
Restaurant, Inc.*

DATED February __, 2019

BARACK FERRAZZANO KIRSCHBAUM
& NAGELBERG LLP

By: _____
Nathan Q. Rugg, Esq.
200 West Madison Street, Suite 3900
Chicago, Illinois 60606

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

DATED February __, 2019

ADELMAN & GETTLEMAN, LTD.

By: _____
Steven B. Chaiken, Esq.
53 West Jackson Blvd., Suite 1050
Chicago, Illinois 60604

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

DATED February ¹⁷__, 2019

FENNEMORE CRAIG, P.C.

By: _____
Allen Wilt, Esq., Bar No.4798
John Tennert, Esq., Bar No.11728
FENNEMORE CRAIG, P.C.
300 East 2nd Street, Suite 1510
Reno, NV 89501

Attorneys for Gordon Ramsay

DATED February __, 2019

LEBENSFELD SHARON & SCHWARTZ
P.C.

By: _____
Alan Lebensfeld, Esq.
140 Broad Street
Red Bank, New Jersey 07701
and

Mark J. Connot, Esq.
Kevin M. Sutehall, Esq.
FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135

*Attorneys for The Original Homestead
Restaurant, Inc.*

DATED February __, 2019

BARACK FERRAZZANO KIRSCHBAUM
& NAGELBERG LLP

By: _____
Nathan Q. Rugg, Esq.
200 West Madison Street, Suite 3900
Chicago, Illinois 60606

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

DATED February __, 2019

ADELMAN & GETTLEMAN, LTD.

By: _____
Steven B. Chaiken, Esq.
53 West Jackson Blvd., Suite 1050
Chicago, Illinois 60604

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

DATED February __, 2019


FENNEMORE CRAIG, P.C.

By: _____
Allen Wilt, Esq., Bar No.4798
John Tennert, Esq., Bar No.11728
FENNEMORE CRAIG, P.C.
300 East 2nd Street, Suite 1510
Reno, NV 89501

Attorneys for Gordon Ramsay

DATED February 22, 2019

LEBENSFELD SHARON & SCHWARTZ
P.C.


By: 
Alan Lebensfeld, Esq.
140 Broad Street
Red Bank, New Jersey 07701
and

Mark J. Connot, Esq.
Kevin M. Sutehall, Esq.
FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135

*Attorneys for The Original Homestead
Restaurant, Inc.*

DATED February ²²__, 2019

ATKINSON LAW ASSOCIATES LTD.

By: 
Robert E. Atkinson, Esq. (SBN 9958)
376 E. Warm Springs Road, Suite 260130
Las Vegas, NV 8912389119
Attorney for J. Jeffrey Frederick

DATED February __, 2019

HEYMAN ENERIO GATTUSO &
HIRZEL LLP

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

Trustee for GR Burgr LLC

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

CAESARS ENTERTAINMENT
OPERATING COMPANY, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 15-01145 (ABG)

(Jointly Administered)

AGREED PROTECTIVE ORDER

The terms of this Agreed Protective Order (the "Protective Order") have been agreed to, as of May 4, 2015, by and among: (i) the above-captioned debtors and debtors in possession (the "Debtors"), (ii) the Official Committee of Second Priority Noteholders (the "Noteholder Committee"), (iii) the Statutory Committee of Unsecured Claimholders (the "Unsecured Committee"), (iv) Richard J. Davis, the Court-appointed examiner for the Debtors (the "Examiner"), (v) the Ad Hoc Committee of First Lien Bank Lenders (the "Ad Hoc Bank Group"), (vi) the Ad Hoc Committee of First Lien Noteholders (the "First Lien Notes Committee") (vii) UMB Bank, N.A., solely in its capacity as successor indenture trustee for the Debtors' first lien notes (the "First Lien Notes Trustee"), (viii) Caesars Entertainment Corporation, (ix) TPG Global, LLC, (x) Apollo Global Management, LLC, and (xi) the Ad Hoc Committee of 12.75% Second Lien Bonds in the above-captioned cases (each a "Party" and collectively, the "Parties"). The term "Party" as it applies to the Noteholder Committee, the Unsecured Committee, the Ad Hoc Bank Group, the First Lien Notes Committee, the First Lien Notes Trustee, and the Ad Hoc Committee of 12.75% Second Lien Bonds includes the members

¹ Due to the large number of Debtors in these jointly-administered cases, a complete list of the Debtors is not provided herein, but is available at <https://cases.primeclerk.com/CEOC>, the website of the Debtors' claims and noticing agent.

of each as applicable. The Parties, by and through their respective attorneys of record and subject to Court approval, have agreed to the entry of the Protective Order pursuant to 11 U.S.C. §107(b), Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 9018, and Federal Rule of Civil Procedure 26(c), and, with respect to any existing or future contested matter, pursuant to Bankruptcy Rules 7026 and 9014.

IT IS HEREBY AGREED AND ORDERED that the following terms will govern any discovery conducted in this bankruptcy case by the parties and any other party who agrees to be bound by this Order:

1. Scope. This Protective Order applies to any information, document or thing that has been or will be produced in discovery or otherwise (the "Discovery Materials") in the above-captioned cases or any adversary proceedings related to the above-captioned cases (collectively, the "Proceedings"). Discovery Materials also include, without limitation, deposition testimony and exhibits; answers to interrogatories and requests for admission; documents and things produced in discovery or voluntarily or pursuant to any other type of request; and documents and things provided pursuant to subpoena in connection with the Proceedings. Discovery Materials also include all information, filings, documents, and things derived from, based on or incorporating any of the foregoing material.

2. This Protective Order governs the production or provision of Discovery Materials and does not affect, amend or modify any existing confidentiality agreements, intercreditor agreements, or protective orders applicable to the Parties, and nothing in this Protective Order constitutes a waiver of any rights under such agreements or orders.

3. Discovery Materials, or information derived therefrom, will be used solely in connection with the Proceedings, and will not be used in any other proceeding or for any other

purpose, unless the Discovery Materials fall within the provisions of subparagraphs 6(a) to (d) below; provided, however, that nothing herein will preclude or otherwise prevent any person who receives and/or reviews Discovery Materials from participating in any other proceeding.

4. Designation of Discovery Materials as Confidential. Any Party or non-Party providing Discovery Materials (the "Designating Party") may designate as "Confidential" that portion of any Discovery Materials produced or disclosed in the Proceedings (whether or not the Designating Party is the Party or non-Party that produced or disclosed those Discovery Materials) that the Designating Party in good faith believes meets the criteria in paragraph 5 below.

5. A Designating Party only may designate as "Confidential" any Discovery Materials, or any portion thereof, that are proprietary or commercially sensitive, contain private personal information, contain non-public financial information, or are subject to protection under applicable law or regulation ("Confidential Information"). Confidential Information includes, but is not limited to, the following types of information:

- (a) non-public information that is of a personal nature;
- (b) non-public information that is of a research, technical, financial, or commercial nature, the disclosure of which may, in the reasonable judgment of the Designating Party, result in potential harm;
- (c) non-public information that constitutes confidential research or business development, confidential technical information and data, or trade secrets that the party has maintained as confidential;
- (d) non-public information relating to finances, employee compensation, or taxes concerning one or more of the Parties, its affiliates, employees, or clients; and;

(e) information that a Party is required by contract, law or regulation to protect from disclosure.

6. Confidential Information does not include:

(a) information that is at any time independently developed by the Receiving Party (as defined in paragraph 9 below) without use of or reliance upon any Discovery Materials;

(b) information that was, prior to its disclosure in these Proceedings, rightfully in the possession of the Receiving Party and not otherwise subject to a duty of confidentiality;

(c) information that is publicly available in substantially the same form in which it was provided by the Party producing or disclosing the information; and

(d) information that was, is, or becomes available to the public, other than in violation of this Protective Order.

7. The designation of a document as Confidential Information, Advisors' Eyes Only (as defined in paragraph 10, *infra*), or Privileged Discovery Material (as defined in paragraph 11, *infra*) is a certification by an attorney or a party appearing pro se that the document contains Confidential Information or Privileged Discovery Material as defined in this order.²

² An attorney who reviews the documents and designates them as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER, as defined in paragraph 8, ADVISORS' EYES ONLY - SUBJECT TO PROTECTIVE ORDER, as defined in paragraph 10, or as PRIVILEGED - EXAMINER'S EYES ONLY - SUBJECT TO PROTECTIVE ORDER," as defined in paragraph 11, must be admitted to the Bar of at least one state but need not be admitted to practice in the Northern District of Illinois unless the lawyer is generally appearing in the case on behalf of a party. By designating documents as containing Confidential Information or Privileged Discovery Material pursuant to this Order, counsel submits to the jurisdiction and sanctions of this Court on the subject matter of the designation.

8. The Designating Party will designate Discovery Materials as Confidential by applying the legend "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" to the Discovery Materials and on all copies thereof in a manner that will not interfere with the legibility of the document. As used in this Protective Order, "copies" includes electronic images, duplicates, extracts, summaries or descriptions that contain Confidential Information. In the case of data stored in electronic form, the legend will be printed on the cover or container of the disk, tape or other medium in which the electronic data is produced. Documents produced in native format may be designated as Confidential by including the term "CONFID - SUBJECT TO PO" (or similar term) in the file name. The marking "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" shall be applied prior to or at the time the documents are produced or disclosed. Applying the marking "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" does not mean that the document has any status or protection by statute or otherwise except to the extent and for the purposes of this Protective Order. Any copies that are made of any documents marked "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" shall also be so marked, except that indices, electronic databases or lists of documents that do not contain substantial portions or images of the text of marked documents and do not otherwise disclose the substance of the Confidential Information are not required to be marked. Where the Designating Party was not the Party that produced or disclosed the Discovery Materials, the Designating Party will designate Discovery Materials as Confidential by written notice to all other Parties.

9. Non-Disclosure of Confidential Information. Confidential Information will be maintained in confidence and will not be shared by any Party that receives the Confidential Information (the "Receiving Party") with any person other than:

(a) the Receiving Party's counsel (including in-house and local counsel) participating in the Proceedings and their legal, clerical, or support staff, including temporary or contract staff, as well as their professional vendors, such as discovery vendors, to whom disclosure is necessary for the Proceedings;

(b) the Receiving Party's present (at the time this Order is entered) or future officers, directors, trustees, partners, managers, members or employees, as necessary (as determined in the reasonable discretion of the Receiving Party) in connection with the Proceedings;

(c) other Parties to this Protective Order (at which time, such Party will be considered a Receiving Party);

(d) expert witnesses or consultants who are employed or retained by the Receiving Party or its counsel in connection with the Proceedings, provided that counsel, in good faith, requires their assistance, and further provided that any report created by such expert or consultant disclosing or incorporating Confidential Information in whole or in part will be designated as Confidential Information by the Party responsible for its creation;

(e) any person indicated on the face of the document to be the author or prior recipient of the Confidential Information;

(f) deponents, witnesses, and prospective witnesses in the Proceedings, where such disclosure is reasonably necessary (as determined in the reasonable discretion of the Receiving Party) for the purposes of trial preparation, factual investigation, or discovery;

(g) the United States Bankruptcy Court for the Northern District of Illinois (the "Court") and its personnel, subject to paragraph 18 below;

(h) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for purposes of the Proceedings; and

(i) any other person, with the express written authorization of the Designating Party, or upon order of the Court.

10. Advisors' Eyes Only. Notwithstanding the other provisions of this Protective Order, including paragraph 9, a Designating Party may designate certain Confidential Information as "ADVISORS' EYES ONLY - SUBJECT TO PROTECTIVE ORDER." Confidential Information designated as "Advisors' Eyes Only" may only be disclosed to and viewed by a Receiving Party's counsel participating in the Proceedings (and their legal, clerical, or support staff, including temporary or contract staff, as well as their professional vendors, such as discovery vendors, to whom disclosure is necessary for the Proceedings), the Receiving Party's other outside advisors that have executed Exhibit A, another Party's counsel participating in the Proceedings (and their legal, clerical, or support staff, including temporary or contract staff, as well as their professional vendors, such as discovery vendors, to whom disclosure is necessary for the Proceedings) (at which point, such Party will become a Receiving Party), and the individuals identified in paragraphs 9(d), (f) (but excluding potential witnesses), and (g)-(i) and subject to paragraph 18. Such Confidential Information may not otherwise be disclosed. "Advisors' Eyes Only" means that subset of Confidential Information, as defined in paragraph 5 above, that would not normally be disclosed to the Parties or to the public at large, that would be maintained in confidence, and that the Designating Party in good faith believes is so personally, economically, or competitively sensitive that disclosure to the category of persons identified in paragraph 9 above would risk substantial injury to the Designating Party's personal, business, commercial or financial interests. Such Confidential Information includes, but is not limited to,

trade secrets or other highly sensitive competitive personal, financial, commercial or proprietary research and development information. The provisions of paragraphs 6(a) to (d) and 8 above are hereby incorporated by reference and will apply to such Advisors' Eyes Only Information produced in the Proceedings, except that the marking will state: "ADVISORS' EYES ONLY - SUBJECT TO PROTECTIVE ORDER" and documents produced in native format may be designated as Advisors' Eyes Only by including the term "ADV_EYES_ONLY - SUBJECT TO PO" (or similar term) in the file name.

11. Privileged Discovery Material. Notwithstanding the other provisions of this Protective Order, including paragraphs 9 and 10, a Designating Party (including the Debtors) may designate certain Discovery Material produced to the Examiner as "PRIVILEGED – EXAMINER'S EYES ONLY - SUBJECT TO PROTECTIVE ORDER" if the Discovery Material contains material that the Designating Party reasonably believes in good faith to be covered by the attorney-client privilege, work product doctrine, or any other applicable privilege, protection or immunity from disclosure ("Privileged Discovery Material"). Discovery Material designated as "Privileged – Examiner's Eyes Only" will be disclosed only to the Examiner and the persons specified in paragraphs 9(a), (d), (e), (f) (but only to the extent such deponents, witnesses and prospective witnesses are employed by the Designating Party or its counsel and advisors), (g) and (h) who are employed, retained or identified by the Examiner, or to whom disclosure has been authorized by the Designating Party or the Court pursuant to paragraph 9(i). Any Discovery Material designated as Privileged – Examiner's Eyes Only will not be deposited in the Document Depository to be established pursuant to the Order (I) Approving Protocol and Procedures Governing Examiner Discovery, (II) Approving Establishment of Document Depository, and (III) Granting Related Relief ("Examiner Discovery Protocol") or otherwise

shared with the Initial Depository Access Parties or Depository Designees (as those terms are defined in the Examiner Discovery Protocol) or disclosed in any manner in these Chapter 11 Cases or otherwise unless so ordered by the Court or agreed in writing by the Designating Party.

12. The Designating Party will designate Discovery Material as “Privileged – Examiner’s Eyes Only” by applying the legend “PRIVILEGED – EXAMINER’S EYES ONLY - SUBJECT TO PROTECTIVE ORDER” to the Privileged Discovery Material. In the case of data stored in electronic form, the legend will be printed on the cover or container of the disk, tape or other medium in which the electronic data is produced and/or by including the term “PRIV_EXMR_EYES_ONLY - SUBJECT TO PO” (or similar term) in the file name. When producing a multi-page document (including a pleading), all of which a Designating Party contends is Privileged Discovery Material, a Party may designate the entire document by designating it as “PRIVILEGED – EXAMINER’S EYES ONLY - SUBJECT TO PROTECTIVE ORDER” (or similar legend) on the cover page.

13. Disclosure of Privileged Discovery Material to the Examiner, his Advisors³ or any of the individuals set forth in paragraph 11 above will not waive any applicable privilege, protection or immunity from disclosure in the Proceedings or any other action or proceeding.

14. Nothing herein will preclude any party in interest from challenging at any time the designation of any Discovery Material as Privileged Discovery Material or from claiming that any privilege, work product doctrine or other immunity applicable to Privileged Discovery Material has been waived in any manner other than through its production to the Examiner and his Advisors.

³ The Examiner’s Advisors refers to the Examiner’s counsel, consultants, accountants, experts, auditors, examiners, financial advisors, appraisers or other agents or professionals in connection with the Examiner’s investigation in the Chapter 11 Cases (the “Investigation”).

15. Other Information and Testimony. Any person who ^{wishes to} attends a deposition or transcribed interview ^{must} will become a party to this Protective Order prior to the deposition or interview. Any Party will have the right to designate on the record, or within ten (10) business days following receipt of the final transcript of the deposition or interview, any portion of the transcript as Confidential Information, Advisors' Eyes Only Information and/or Privileged – Examiner's Eyes Only Information, subject to the guidelines established in paragraphs 5, 10 and 11 above. Transcripts of testimony or portions thereof so designated during the deposition or interview may, at the option of any Party, be appropriately marked and bound separately. AEL

16. Examiner's Use of Designated Discovery Material. Notwithstanding any other provision in this Protective Order, prior to the publication or filing of any report, the Examiner will give notice to Designating Parties of his intent to disclose in the Examiner's report information that has been designated as Confidential, Advisors' Eyes Only or Privileged – Examiner's Eyes Only. Should the Designating Party object to such disclosure, and the Examiner disagrees with the Designating Party's designation of such Discovery Material, counsel for the Designating Party and the Examiner will meet and confer in good faith to resolve the issue no later than five (5) business days following the date the disagreement arose. Absent a consensual resolution, the Examiner will submit a motion to the Court not to exceed five (5) pages in length describing the dispute and seeking resolution of the matter. Each such motion must be accompanied by a competent declaration that affirms that the Examiner has complied with the meet and confer requirements of this procedure. Notice of such motion shall not be governed by the Case Management Procedures Order entered in these Chapter 11 Cases; instead, the notice requirements for motions pursuant to Local Bankruptcy Rule 9013-1 shall apply. Such motions may be noticed for hearing on any day the Court ordinarily hears motions in

Chapter 11 cases. Any response filed by the Designating Party will not exceed five (5) pages in length. The material in question will be treated as it was initially designated by the Designating Party pending resolution of the motion. The Designating Party will bear the burden of establishing that any Discovery Material is entitled to the designation assigned by the Designating Party.

17. Non-Disclosure Declaration. Counsel for a Receiving Party, including the Examiner, will provide a copy of this Protective Order to a representative of any professional firm or individual who is (a) retained in connection with the Proceedings and (b) otherwise entitled to receive Confidential Information, Advisors' Eyes Only Information and/or Examiner's Eyes Only Information pursuant to the terms of this Protective Order (the "Permitted Recipient"), and the Permitted Recipient must execute a Non-Disclosure Declaration in the form annexed as Exhibit A hereto prior to receiving any Confidential Information.

18. Filing of Confidential Information. This Protective Order does not, by itself, authorize the filing of any document under seal. Any Party seeking to file a document designated as Confidential Information, Advisors' Eyes Only Information or Privileged – Examiner's Eyes Only in connection with a motion, brief or other submission to the Court must comply with Local Bankruptcy Rule 5005-4, provided, however, that if a Party seeks a Restricting Order (as defined in Local Bankruptcy Rule 5005-4(A)(4)) on notice to the Producing Party with respect to any document proposed to be submitted as a Sealed Document (as defined in Local Bankruptcy Rule 5005-4(A)(3)) or filed as a Redacted Document (as defined in Local Bankruptcy Rule 5005-4(A)(2)), and the Court denies the request for a Restricting Order other than on procedural grounds, then in such case, and notwithstanding any provision in this Protective Order to the contrary, the Party that sought the Restricting Order with respect to

any document will be authorized to file such document on the public docket. For the avoidance of doubt, any requests for a Restricting Order must satisfy the requirements of any applicable law, including, but not limited to, 11 U.S.C. § 107(b).

19. Disclosure in Court Proceedings. Nothing in this Protective Order will be construed to affect the use of any Discovery Material at any trial or hearing. A Party that intends to present or that anticipates that another Party may present Confidential Information or Advisors' Eyes Only Information at a hearing or trial will either (a) obtain the advance written consent to such use from the Designating Party (through the Designating Party's counsel), or (b) bring that issue to the Court's and Parties' attention by motion or in a pretrial memorandum without disclosing the Confidential Information or Advisors' Eyes Only Information. The Court may thereafter make such orders as are necessary to govern the use of such documents or information at any hearing or trial, provided, however, that if the Court denies any request to close any hearing or trial to the public, the Party seeking to disclose the Confidential Information or Advisors' Eyes Only Information will be authorized to do so, notwithstanding any provision in this Protective Order to the contrary.

20. Disclosure Required by Law. In the event that a Receiving Party or a Permitted Recipient is required, by interrogatories, document requests, subpoena, civil investigative demand, demand from a regulatory body, or similar legal process or applicable law or regulation, to disclose any Confidential Information or Advisors' Eyes Only Information, the Receiving Party or Permitted Recipient, if so entitled given the nature of the legal process, demand, or request at issue, will provide the Designating Party with prompt notice of such event, which notice must include a copy of the subpoena, process, or court order, so that the Designating Party may seek a protective order or other appropriate remedy or waive compliance with the applicable

provisions of this Protective Order. The Receiving Party or Permitted Recipient must also inform the party who caused the subpoena, process, or order to issue in the other proceeding that some or all of the material covered by the subpoena, process, or order is subject to this Protective Order and provide such party with a copy of this Protective Order. In the event that the Designating Party or another Party determines to seek such protective order or other remedy, the Receiving Party or Permitted Recipient will reasonably cooperate with the Party seeking the protective order or other remedy, provided that the terms of the relief sought by the applying Party will not narrow the scope of this Protective Order. In the event such protective order or other remedy is not obtained and disclosure of Confidential Information or Advisors' Eyes Only Information is required under law, or all of the Parties grant a waiver hereunder, the Receiving Party or Permitted Recipient (i) may, without liability hereunder, furnish the Confidential Information or Advisors' Eyes Only Information that the Receiving Party or Permitted Recipient is legally required to disclose, and (ii) will exercise its commercially reasonable efforts to have confidential treatment accorded to the Confidential Information and Advisors' Eyes Only Information so furnished. Nothing herein will be construed as requiring the Receiving Party or anyone else covered by this Order to challenge or appeal any order directing production of Confidential Information or Advisors' Eyes Only Information covered by this Protective Order, or to subject himself or itself to any penalties for non-compliance with any legal process or order, or to seek any relief from this Court.

21. No Waiver. The inadvertent failure to designate any Discovery Materials as Confidential or Advisors' Eyes Only does not constitute a waiver of such claim. If at any time any Party determines or realizes that certain testimony or some portion of Discovery Materials that was previously produced should be designated as Confidential Information or Advisors'

Eyes Only Information, that Party may notify all of the other Parties in writing, and such designated testimony or portion of Discovery Materials will thereafter be treated as Confidential Information or Advisors' Eyes Only Information under the terms of this Protective Order, provided that the Party designating the Confidential Information or Advisors' Eyes Only Information will, at its cost, provide the other Parties with substitute copies, bearing the appropriate legend, of any such Discovery Materials. If such information has been disclosed by a Receiving Party between the time of production or receipt and the time at which a Party gives notice that the Discovery Materials are to be designated as Confidential Information or Advisors' Eyes Only Information, such disclosure does not constitute a violation of this Protective Order.

22. Disputes over Designation of Discovery Materials. In the event that any Party objects to any designation of testimony or Discovery Materials as Confidential Information or Advisors' Eyes Only Information (the "Objecting Party"), the Objecting Party will notify the other Parties in writing, which may be by e-mail, identifying with specificity (i.e., by document control numbers, deposition transcript page and line reference, or other means sufficient to locate such materials) each document bearing a disputed Confidential Information or Advisors' Eyes Only Information designation. The Objecting Party and the Designating Party are to meet and confer in an attempt to resolve the dispute no later than five (5) business days after the Objecting Party provides such notice, during which time the Designating Party will provide the Objecting Party with the basis for its designation. If the dispute is not resolved by the meet and confer, the Objecting Party will file with the Court a motion not to exceed five (5) pages in length describing the dispute and seeking resolution of the matter. Each such motion must be accompanied by a competent declaration that affirms that the Objecting Party has complied with the meet and confer requirements of this procedure. Notice of such motion shall not be be

governed by the Case Management Procedures Order entered in these Chapter 11 Cases; instead, the notice requirements for motions pursuant to Local Bankruptcy Rule 9013-1 shall apply. Such motions may be noticed for hearing on any day the court ordinarily hears motions in Chapter 11 cases. Any response filed by the Designating Party will not exceed five (5) pages in length. In connection with any such application for a ruling on the disputed designation, the burden will be on the Designating Party to establish the grounds for the claimed confidentiality. No Confidential Information or Advisors' Eyes Only Information will be filed in the public record prior to such a determination by the Court.

23. Inadvertent Production. In the event that any Party inadvertently produces any material that it determines is privileged or otherwise immune from discovery, in whole or in part, pursuant to the attorney-client privilege, work product doctrine, or any other applicable privilege or protection from disclosure (the "Inadvertently Producing Party"), such materials ("Protected Information") may be retrieved by the Inadvertently Producing Party by giving written notice to the other Parties receiving such Protected Information. Inadvertent production of Protected Information will not be deemed a waiver of, or estoppel as to, any claim asserted by the Inadvertently Producing Party that the materials in question constitute Protected Information. Upon receipt of written notice that an Inadvertently Producing Party intends to retrieve Protected Information, the other Parties or any other persons who have received a copy of the Protected Information will promptly return all copies of such Protected Information to the Inadvertently Producing Party, or will promptly destroy all copies of such Protected Information and certify such destruction to the Inadvertently Producing Party (or, in the case of electronic material (whether or not originally produced that way), promptly delete the Protected Information. The terms of this paragraph will not be deemed a waiver of the other Parties' right to challenge the

Inadvertently Producing Party's designation of materials as Protected Information (provided, however, that any such challenge to the designation may be made only following the return or destruction of such identified documents to the Inadvertently Producing Party). The Parties will not use any inadvertently produced Protected Information, or information gleaned exclusively from any inadvertently produced Protected Information, in connection with the Proceedings or any other actions. Pursuant to the agreement of the Parties under Fed. R. Evid. 502(e) and by Protective Order of this Court under Fed. R. Evid. 502(d), no inadvertent disclosure, production, or exchange of Discovery Materials in this case will constitute a waiver of any applicable attorney-client privilege, any applicable work product protection or any other privilege in this or any other federal or state proceeding.

24. No Bar to Use of Party's Own Discovery Material. This Protective Order has no effect on, and will not apply to, a producing Party's use or disclosure of its own Discovery Materials for any purposes whatsoever.

25. Binding Effect. The provisions of this Protective Order will, absent written consent of all of the Parties or further order of the Court, continue to be binding throughout the conclusion of the Proceedings and any related litigation, including without limitation any appeals therefrom. Within sixty (60) calendar days after receiving notice of an entry of an order, judgment, or decree finally disposing of the Proceedings and any related litigation, including the exhaustion of all possible appeals and other review, the Parties other than the Examiner will, upon written request by any Designating Party, either (i) return all Confidential Information or Advisors' Eyes Only Information and all copies thereof (including summaries and excerpts and including all such material provided by a Party to any other persons, whether or not in accordance herewith) to counsel for the Party that produced or disclosed such materials, or (ii)

destroy or cause to be destroyed all Confidential Information, and Advisors' Eyes Only Information; provided, however, that any Party hereunder may seek an order from the Court requiring any Receiving Party to comply with either subparagraph 25(i) or 25(ii) at any time following plan confirmation. As to documents that have been received electronically and that cannot be returned, deleted, or destroyed, the recipient must take reasonable measures to ensure that unauthorized persons do not have access to Confidential Information or Advisors' Eyes Only Information present on the recipient's computer, server, or any backup media.

Notwithstanding the foregoing, counsel to any Party will be entitled to retain court papers, deposition and court transcripts, and attorney work product that refer to or relate to Confidential Information and Advisors' Eyes Only Information. Additionally, the Parties and Permitted Recipients will be entitled to maintain Confidential Information or Advisors' Eyes Only Information to the extent required by law or regulation (including regulations of a stock exchange or a self-regulatory body), or internal document retention policies; provided, however, that such information will remain subject to the terms of this Protective Order.

26. Effectiveness of Document Depository. Subject to further Court order, the Examiner need not return or destroy any Discovery Materials pursuant to the terms of Paragraph 25 above. However, following the date that is ninety (90) days from the date of the issuance of the Examiner's final report pursuant to Paragraph 5 of the Examiner Order (the "Final Report"), the Examiner may, on fourteen (14) days' notice to the Parties, (i) deactivate and terminate the Document Depository or (ii) transition control of the Document Depository to the Debtors. The Examiner and the Examiner's Advisors will have no continuing duty to maintain or retain or make available to any other person any Discovery Materials produced to the Examiner during the course of his examination.

27. Notice. Notice required or permitted to be given for any purpose under this Protective Order must be delivered to the following Parties in writing by electronic mail and U.S. Mail as follows: (i) the Examiner, by and through his counsel, Winston & Strawn LLP, 200 Park Avenue, New York, New York 10166 (Attn: Jill K. Freedman, jfreedman@winston.com); (ii) the Debtors, by and through its counsel, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654 (Attn: Jeffrey J. Zeiger, jeffrey.zeiger@kirkland.com); (iii) the Official Committee of Second Priority Noteholders, by and through its counsel, Jones Day, 555 S. Flower St., 50th Floor, Los Angeles, California 90071 (Attn: Joshua M. Mester, jmester@jonesday.com) (iv) the Statutory Committee of Unsecured Claimholders, by and through its counsel, Proskauer Rose, Eleven Times Square, New York, NY 10036 (Attn: Philip Abelson, pabelson@proskauer.com), (v) the Ad Hoc Bank Group, by and through its counsel, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, New York 10038 (Attn: Kenneth Pasquale, kpasquale@stroock.com); (vi) the First Lien Notes Committee, by and through its counsel, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036 (Attn: Daniel M. Eggermann, deggermann@kramerlevin.com); (vii) the First Lien Notes Trustee, by and through its counsel Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, New York 10022 (Attn: David A. Crichlow, david.crichlow@kattenlaw.com); (viii) Caesars Entertainment Corporation, by and through its counsel Paul, Weiss, Rifkind, Wharton & Garrison, LLP, 1285 Avenue of the Americas, New York, NY 10019 (Attn: Jonathan Hurwitz, jhurwitz@paulweiss.com; Christopher L. Filburn, cfilburn@paulweiss.com); (ix) TPG Global, LLC, by and through its counsel Kasowitz, Benson, Torres & Friedman LLP, 1633 Broadway, New York, NY 10019 (Attn: Joshua Greenblatt, jgreenblatt@kasowitz.com; David Rosner, drosner@kasowitz.com); (x) Apollo Global Management, LLC, by and through its counsel Akin,

Gump, Strauss, Hauer & Feld LLP, One Bryant Park, Bank of America Tower, New York, NY 10036 (Attn: David Zensky; dzensky@akingump.com; Abid Qureshi; aqureshi@akingump.com; and (xi) the Ad Hoc Committee of 12.75% Second Lien Bonds, by and through its counsel Mintz Levin Cohn Ferris Glovsky and Popeo PC, Chrysler Center, 666 Third Avenue, New York, NY 10017 (Attn: John H. Bae; jhbae@mintz.com). These designations can be changed by providing notice to the Parties in writing by electronic mail and U.S. Mail in accordance with this paragraph.

28. Additional Parties. Additional parties may be added to this Protective Order in the future in the following manner: Any additional party that has executed and delivered to all existing Parties a complete and executed Acknowledgment in the form attached hereto as Exhibit B will become subject to all of the provisions of this Protective Order and any resulting Protective Order as if the additional party were an original Party.

29. Information Blocking Procedures Order. Nothing in this Order will relieve any member of the Noteholder Committee of its obligations, if any, under the *Order Approving Specified Information Blocking Procedures And Permitting Trading Of The Caesars' Securities Upon Establishment Of A Screening Wall* (ECF No. 583).

30. Continuing Jurisdiction. This Protective Order shall be subject to modification by the Court on its own initiative or on motion of a party or any other person with standing concerning the subject matter. The Court retains exclusive jurisdiction to enforce, modify, or vacate all or any portion of this Protective Order upon appropriate motion by a party in interest. Nothing herein will preclude any party from seeking to amend or modify the terms of this Protective Order upon appropriate motion and order of the Court.


31. No Prior Judicial Determination. This Protective Order is entered based on the representations and agreements of the Parties and for the purpose of facilitating discovery. Nothing herein will be construed or presented as a judicial determination that any document or material designated Confidential Information by counsel or the Parties is entitled to protection under Rule 26(c) of the Federal Rules of Civil Procedure, Rule 9018 of the Federal Rules of Bankruptcy Procedure, or otherwise until such time as the Court may rule on a specific document or issue.

32. Challenges by Members of the Public to Sealing Orders. A party or interested member of the public has a right to challenge the sealing of particular documents that have been filed under seal, and the party asserting confidentiality will have the burden of demonstrating the propriety of filing under seal.

33. Advice of Counsel. Nothing herein will prevent or otherwise restrict counsel from rendering advice to their clients in connection with the Proceedings and, in the course thereof, relying on examination of Discovery Materials.

34. Comenity Documents. Notwithstanding anything to the contrary herein or in the Order (I) Approving Protocol and Procedures Governing Examiner Discovery, (II) Approving Establishment of a Document Depository, and (III) Granting Related Relief, the production of any agreement between the Debtors and Comenity Bank ("Comenity") and/or any related documents or correspondence (collectively, the "Comenity Documents") is subject to the following procedure: (i) Within five business days of any discovery request requiring the production of any Comenity Documents, CEOC shall provide Comenity and its counsel with written notice of such request and a copy thereof; (ii) All Comenity Documents produced by CEOC shall be designated as "Advisors' Eyes Only"; (iii) CEOC (after consultation with Comenity) will redact from any production all information identified by Comenity as Comenity's trade secrets and/or other confidential research, development, commercial, competitive, personal, financial, or proprietary information, including but not limited to pricing information and related matters. Only redacted documents may be placed in the Document Depository; however, an unredacted copy of such documents will be provided to the Examiner as Privileged - Examiner's Eyes Only and will not be placed in the Document Depository; (iv) If any party seeks to review the redacted portions of the Comenity Documents without Comenity's permission, that party will file a motion to request access, setting forth the need to review Comenity's redacted information. Comenity will be given notice and the opportunity to object to such request. Prior to the filing of any such motion, Comenity and the party seeking access to the redacted information will make a good faith effort to reach an agreement with respect to the requested disclosure; and (v) All of Comenity's rights under any agreement and/or applicable law are preserved.

Dated: May 18, 2015


The Honorable A. Benjamin Goldgar
United States Bankruptcy Judge

Accepted and agreed:

THE DEBTORS

By: /s/ Jeffrey J. Zeiger
Name: Jeffrey J. Zeiger
KIRKLAND & ELLIS LLP

Date: May 17, 2015

**OFFICIAL COMMITTEE OF
SECOND PRIORITY NOTEHOLDERS**

By: /s/ Joshua M. Mester
Name: Joshua M. Mester
JONES DAY

Date: May 17, 2015

**STATUTORY COMMITTEE OF
UNSECURED CLAIMHOLDERS**

By: /s/ Scott A. Eggers
Name: Scott A. Eggers
PROSKAUER ROSE LLP

Date: May 17, 2015

THE EXAMINER

By: /s/ Richard W. Reinthaler
Name: Richard W. Reinthaler
WINSTON & STRAWN LLP

Date: May 17, 2015

**AD HOC GROUP OF
FIRST LIEN BANK LENDERS**

By: /s/ Kenneth Pasquale
Name: Kenneth Pasquale
STROOCK & STROOCK & LAVAN LLP

Date: May 17, 2015

**AD HOC COMMITTEE OF
FIRST LIEN NOTEHOLDERS**

By: /s/ Kenneth Eckstein
Name: Kenneth Eckstein
KRAMER LEVIN NAFTALIS & FRANKEL LLP

Date: May 17, 2015

**UMB BANK, N.A.,
SOLELY IN ITS CAPACITY AS
SUCCESSOR INDENTURE TRUSTEE**

By: /s/ David A. Crichlow
Name: David A. Crichlow
KATTEN MUCHIN ROSENMAN LLP

Date: May 17, 2015

CAESARS ENTERTAINMENT CORPORATION

By: /s/ Jonathan H. Hurwitz
Name: Jonathan H. Hurwitz
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Date: May 17, 2015

TPG GLOBAL, LLC

By: /s/ Joshua Greenblatt
Name: Joshua Greenblatt
KASOWITZ, BENSON, TORRES AND FRIEDMAN

Date: May 17, 2015

APOLLO GLOBAL MANAGEMENT, LLC

By: /s/ David M. Zensky
Name: David M. Zensky
AKIN GUMP STRAUSS HAUER & FELD LLP

Date: May 17, 2015

AD HOC COMMITTEE OF 12.75% SECOND LIEN BONDS

By: /s/ John H. Bae
Name: John H. Bae
MINTZ LEVIN COHN FERRIS BLOVSKY AND POPEO PC

Date: May 17, 2015

EXHIBIT A

NON-DISCLOSURE DECLARATION

I, _____, declare under penalty of perjury, the following:

I reside at in the City/ County of _____ and State of _____;

I have read the annexed Protective Order, dated _____, 2015, in the above-captioned matter.

I am fully familiar with and agree to comply with and be bound by the provisions of that Protective Order and consent to the jurisdiction of the United States Bankruptcy Court for the Northern District of Illinois.

I will not divulge to persons other than those specifically authorized by the Protective Order, and will not copy or use, except solely for the purpose of this proceeding, any information designated as Confidential, Advisors' Eyes Only or Privileged – Examiner's Eyes Only.¹

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

Dated: _____

¹ Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Protective Order.

EXHIBIT B

ACKNOWLEDGMENT

The undersigned hereby acknowledges and agrees to the following terms and conditions:

I have read the annexed Protective Order, dated _____, 2015, in the above-captioned matter.

I am fully familiar with and agree to comply with and be bound by the provisions of that Protective Order and consent to the jurisdiction of the United States Bankruptcy Court for the Northern District of Illinois.

I will not divulge to persons other than those specifically authorized by the Protective Order, and will not copy or use, except solely for the purpose of this proceeding, any information designated as Confidential, Advisors' Eyes Only or Privileged -- Examiner's Eyes Only.¹

Dated: _____

Notice must be delivered to the parties set forth in Paragraph 27 of the Agreed Protective Order.

¹ Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Protective Order.

EXHIBIT 2

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 ***

4
5 TPOV ENTERPRISES 16, LLC,

6 Plaintiff,

7 vs.

8 PARIS LAS VEGAS OPERATING COMPANY,
9 LLC,

10 Defendant.

2:17-cv-00346-JCM-VCF

**ORDER REGARDING THE STIPULATED
CONFIDENTIALITY AGREEMENT AND
PROTECTIVE ORDER**

11
12 Before the Court is the Joint Status Report Concerning a Stipulated Protective Order (ECF No.
13 28), which the Court has modified and approves as follows:

14 Plaintiff TPOV Enterprises 16, LLC ("TPOV 16"), by and through its undersigned counsel of
15 record, and Paris Las Vegas Operating Company, LLC ("Paris"), by and through its undersigned counsel
16 of record, hereby enter into this Stipulated Confidentiality Agreement and Protective Order pursuant to
17 Fed. R. Civ. P. 26(c) and Fed. R. Civ. P. 29. TPOV 16 and Paris are collectively referred to as the "Parties"
18 in this Stipulation and individually as "Party." Whereas, the Parties desire to produce certain documents
19 or other material which may contain proprietary and/or confidential information, it is hereby stipulated
20 and agreed, by and between the Parties hereto, through their respective counsel of record, that:

21 **1. Applicability of this Protective Order:** Subject to Section 2 below, this Protective Order does
22 not and will not govern any trial proceedings in this action but will otherwise be applicable to and govern
23 the handling of documents, depositions, deposition exhibits, interrogatory responses, responses to requests
24 for admissions, responses to requests for production of documents, and all other discovery obtained
25

1 pursuant to Federal Rules of Civil Procedure or other legal process by or from, or produced on behalf of,
2 a party or witness in connection with this action. Such information hereinafter shall be referred to as
3 "Discovery Material." Additionally, as used herein, "Producing Party" or "Disclosing Party" shall refer to
4 the parties and nonparties that give testimony or produce documents or other information in connection
5 with this action; "Receiving Party" shall refer to the parties in this action that receive such information,
6 and "Authorized Recipient" shall refer to any person or entity authorized by Sections 12 and 13 of this
7 Protective Order to obtain access to Confidential Information, Highly Confidential Information, or the
8 contents of such Discovery Material.

9 **2. No Waiver.** This Protective Order is entered solely for the purpose of facilitating the exchange
10 of documents and information among the parties to this action without involving the Court unnecessarily
11 in the process. Nothing in this Protective Order, nor the production of any information or document under
12 the terms of this Protective Order, nor any proceedings pursuant to this Protective Order shall be deemed
13 to be a waiver of any rights or objections to challenge the authenticity or admissibility of any document,
14 testimony, or other evidence at trial. Additionally, this Protective Order will not prejudice the right of any
15 party or nonparty to oppose production of any information on the ground of attorney-client privilege, work
16 product doctrine, or any other privilege or protection provided under the law.

17 **3. Designation of Information:** Any Producing Party may designate Discovery Material that is in
18 its possession, custody, or control produced to a Receiving Party as "Confidential" or "Highly
19 Confidential" under the terms of this Protective Order if the Producing Party in good faith reasonably
20 believes that such Discovery Material contains nonpublic, confidential information as defined in Sections
21 5 and 6 below.

22 **4. Exercise of Restraint and Care in Designating Material for Protection:** Each Producing
23 Party that designates information or items for protection under this Protective Order must take care to
24 limit any such designation to specific material that qualifies under the appropriate standards.
25 Indiscriminate designations are prohibited.

1 **5. Confidential Information:** For purposes of this Protective Order, "Confidential Information"
2 means all information and information that constitutes, reflects, or discloses nonpublic information, trade
3 secrets, know-how, or other financial, proprietary, commercially sensitive, confidential business,
4 marketing, regulatory, or strategic information (regarding business plans or strategies, technical data, and
5 nonpublic designs), the disclosure of which the Producing Party believes in good faith might reasonably
6 result in economic or competitive, or business injury to the Producing Party (or its affiliates, personnel, or
7 clients) and which is not publicly known and cannot be ascertained from an inspection of publicly
8 available sources, documents, material, or devices. "Confidential Information" shall also include sensitive
9 personal information that is not otherwise publicly available, such as home addresses; social security
10 numbers; dates of birth; employment personnel files; medical information; home telephone
11 records/numbers; employee disciplinary records; court documents sealed by another court or designated
12 Confidential by agreement of the parties in another matter; wage statements or earnings statements;
13 employee benefits data; tax records; and other similar personal financial information. A party may also
14 designate as "CONFIDENTIAL" compilations of publicly available discovery materials, which would not
15 be known publicly in a compiled form and the disclosure of which the Producing Party believes in good
16 faith might reasonably result in economic or competitive, or business injury to the Producing Party.

17 **6. Highly Confidential Information:** For purposes of this Protective Order, "Highly Confidential
18 Information" is any Protected Data and/or Confidential Information as defined in Section 5 above that also
19 includes (a) extremely sensitive, highly confidential, nonpublic information, consisting either of trade
20 secrets or proprietary or other highly confidential business, financial, regulatory, private, or strategic
21 information (including information regarding business plans, technical data, and nonpublic designs), the
22 disclosure of which would create a substantial risk of competitive, business, or personal injury to the
23 Producing Party, and/or (b) nonpublic documents or information reflecting the substance of conduct or
24 communications that are the subject of state, federal, or foreign government investigations. Certain
25 Protected Data may compel alternative or additional protections beyond those afforded Highly

1 Confidential Information, in which event the parties shall meet and confer in good faith, and, if
2 unsuccessful, the party seeking any greater protection shall move the Court for appropriate relief. A party
3 may re-designate material originally "CONFIDENTIAL" as "HIGHLY CONFIDENTIAL" by giving
4 notice of such a re-designation to all parties.

5 **7. Designating Confidential Information or Highly Confidential Information.** If any party in
6 this action determines in good faith that any information, documents, things, or responses produced in the
7 course of discovery in this action should be designated as Confidential Information or Highly Confidential
8 Information (the "Designating Party"), it shall advise any party receiving such material of this fact, and
9 all copies of such documents, things, or responses, or portions thereof deemed to be confidential shall be
10 marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" (whether produced in hard copy or
11 electronic form) at the expense of the designating party and treated as such by all parties. A Designating
12 Party may inform another party that a document is Confidential or Highly Confidential by providing the
13 Bates number of the document in writing. If Confidential or Highly Confidential Information is produced
14 via an electronic form on a computer readable medium (e.g., CD-ROM), other digital storage medium, or
15 via Internet transmission, the Producing Party or Designating Party shall affix in a prominent place on the
16 storage medium or container file on which the information is stored, and on any container(s) for such
17 medium, the legend "Includes CONFIDENTIAL INFORMATION" or "Includes HIGHLY
18 CONFIDENTIAL INFORMATION." Nothing in this section shall extend confidentiality or the
19 protections associated therewith to any information that does not otherwise constitute "Confidential
20 Information" or "Highly Confidential Information" as defined in Sections 5 and 6 herein.

21 **8. Redaction Allowed:** Any Producing Party may redact from the documents or things it produces
22 matter that the Producing Party claims is subject to the attorney-client privilege, the work product doctrine,
23 a legal prohibition against disclosure, or any other privilege from disclosure. Any Producing Party also
24 may redact information that is both personal and nonresponsive, such as a social security number. A
25 Producing Party may not withhold nonprivileged, responsive information solely on the grounds that such

1 information is contained in a document that includes privileged information. The Producing Party shall
2 mark each redaction with a legend stating "REDACTED," and include an annotation indicating the
3 specific reason for the redaction (e.g., "REDACTED—Work Product"). All documents redacted based on
4 attorney client privilege or work product immunity shall be listed in an appropriate log in conformity with
5 federal law and Federal Rule of Civil Procedure 26(b)(5). Where a document consists of more than one
6 page, the page on which information has been redacted shall so be marked. The Producing Party shall
7 preserve an unredacted version of such document.

8 **9. Use of Confidential Information or Highly Confidential Information.** Except as provided
9 herein, Confidential Information and Highly Confidential Information designated or marked shall be
10 maintained in confidence, used solely for the purposes of this action, to the extent not otherwise prohibited
11 by an order of the Court, shall be disclosed to no one except those persons identified herein in Sections
12 12 and 13, and shall be handled in such manner until such designation is removed by the Designating
13 Party or by order of the Court. Confidential or Highly Confidential information produced by another party
14 shall not be used by any Receiving Party for any commercial, competitive or personal purpose. Nothing
15 in this Protective Order shall govern or restrict a Producing Party's use of its own Confidential or Highly
16 Confidential Information in any way.

17 10. Once the Court enters this Protective Order, a party shall have forty-five (45) calendar days to
18 designate as Confidential or Highly Confidential any documents previously produced in this action, which
19 it can do by stamping "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" on the document, or
20 informing the other parties of the Bates-numbers of the documents so designated.

21 **11. Use of Confidential Information and Highly Confidential Information in Depositions.**
22 Counsel for any party shall have the right to disclose Confidential or Highly Confidential Information at
23 depositions, provided that such disclosure is consistent with this Protective Order, including Sections 12
24 and 13. Any counsel of record may request that all persons not entitled under Sections 12 or 13 of this
25 Protective Order to have access to Confidential Information or Highly Confidential Information leave the

1 deposition room during the confidential portion of the deposition. Failure of such other persons to comply
2 with a request to leave the deposition shall constitute substantial justification for counsel to advise the
3 witness that the witness need not answer the question where the answer would disclose Confidential
4 Information or Highly Confidential Information. Additionally, at any deposition session, (1) upon inquiry
5 with regard to the content of any discovery material(s) designated or marked as "CONFIDENTIAL" or
6 "HIGHLY CONFIDENTIAL;" (2) whenever counsel for a party deems that the answer to a question may
7 result in the disclosure or revelation of Confidential or Highly Confidential Information; and/or (3)
8 whenever counsel for a party deems that the answer to any question has resulted in the disclosure or
9 revelation of Confidential or Highly Confidential Information, counsel to any party may designate
10 portions of a deposition transcript and/or video of any deposition (or any other testimony) as containing
11 Confidential or Highly Confidential Information in accordance with this Order by a statement on the
12 record during the deposition or by notifying all other parties in writing, within thirty (30) calendar days
13 of receiving the transcript or video that it contains Confidential or Highly Confidential Information and
14 designating the specific pages, lines, and/or counter numbers as containing Confidential or Highly
15 Confidential Information. If a designation is made via a statement on the record during a deposition,
16 counsel must follow up in writing within thirty (30) calendar days of receiving the transcript or video,
17 identifying the specific pages, lines, and/or counter numbers containing the Confidential or Highly
18 Confidential Information. If no confidentiality designations are made within the thirty (30) day period, the
19 entire transcript shall be considered non-confidential. During the thirty (30) day period, the entire
20 transcript and video shall be treated as Highly Confidential Information. All originals and copies of
21 deposition transcripts that contain Confidential Information or Highly Confidential Information shall be
22 prominently marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL " on the cover thereof and, if
23 and when filed with the Court, the portions of such transcript so designated shall be filed under seal.
24 Counsel must designate portions of a deposition transcript as "CONFIDENTIAL" or "HIGHLY
25 CONFIDENTIAL" within thirty (30) calendar days of receiving the transcript. Any DVD or other digital

1 storage medium containing Confidential or Highly Confidential deposition testimony shall be labeled in
2 accordance with the provisions of Section 7.

3 **12. Persons Authorized to Receive Confidential Information.** Confidential Information
4 produced pursuant to this Protective Order may be disclosed or made available only to the Court, its
5 employees, other court personnel, any discovery referee, mediator or other official who may be appointed
6 by the Court, and to the persons below:

7 (a) A party, or officers, directors, employees, and agents of a party deemed necessary by counsel
8 to aid in the prosecution, defense, or settlement of this action;

9 (b) Counsel for a party (including in house attorneys, outside attorneys associated with a law
10 firm(s) of record, and paralegal, clerical, and secretarial staff employed by such counsel);

11 (c) Persons retained by a party to provide litigation support services (photocopying, videotaping,
12 translating, preparing exhibits or demonstrations, organizing, storing, retrieving data in any form or
13 medium, etc.);

14 (d) Consultants or expert witnesses (together with their support staff) retained for the prosecution
15 or defense of this litigation, provided that such an expert or consultant is not a current employee of a direct
16 competitor of a party named in this action;¹

17 (e) Court reporter(s) and videographers(s) employed in this action;

18 (f) Any authors or recipients of the Confidential Information;

19 (g) A witness at any deposition or other proceeding in this action, who shall sign the
20 Confidentiality Agreement attached as "Exhibit A" to this Protective Order before being shown a
21 confidential document; and

22 (h) Any other person as to whom the parties in writing agree or that the Court in these proceedings
23 so designates.

24
25 ¹ A party may seek leave of court to provide information to a consultant
employed by a competitor.

1 Any person to whom Confidential Information is disclosed pursuant to subparts (a) through (h)
2 hereinabove shall be advised that the Confidential Information is being disclosed pursuant to an order of
3 the Court, that the information may not be disclosed by such person to any person not permitted to have
4 access to the Confidential Information pursuant to this Protective Order, and that any violation of this
5 Protective Order may result in the imposition of such sanctions as the Court deems proper. Any person to
6 whom Confidential Information is disclosed pursuant to subpart (c), (d), (g), or (h) of this section shall
7 also be required to execute a copy of the form Exhibit A. The persons shall agree in writing to be bound
8 by the terms of this Protective Order by executing a copy of Exhibit A (which shall be maintained by the
9 counsel of record for the party seeking to reveal the Confidential Information) in advance of being shown
10 the Confidential Information. No party (or its counsel) shall discourage any persons from signing a copy
11 of Exhibit A. If a person refuses to execute a copy of Exhibit A, the party seeking to reveal the Confidential
12 Information shall seek an order from the Court directing that the person be bound by this Protective Order.
13 In the event of the filing of such a motion, Confidential Information may not be disclosed to such person
14 until the Court resolves the issue. Proof of each written agreement provided for under this Section shall
15 be maintained by each of the parties while this action is pending and disclosed to the other parties upon
16 good cause shown and upon order of the Court.

17 **13. Persons Authorized to Receive Highly Confidential Information.** "HIGHLY
18 CONFIDENTIAL" documents and information may be used only in connection with this case and may
19 be disclosed only to the Court and the persons listed in subsections (b) to (c), (e) and (g) to (h) of Section
20 12 above, but shall not be disclosed to a party, or an employee of a party, unless otherwise agreed or
21 ordered. With respect to sub-section (f), the parties will consider disclosure of Highly Confidential
22 Information to an author or recipient on a case by case basis. Any person to whom Highly Confidential
23 Information is disclosed pursuant to sub-sections (c), (d), (g) or (h) of Section 12 above shall also be
24 required to execute a copy of the form Exhibit A.
25

1 **14. Filing of Confidential Information or Highly Confidential Information With Court.** Any
2 party seeking to file or disclose materials designated as Confidential Information or Highly Confidential
3 Information with the Court in this Action must seek to file such Confidential or Highly Confidential
4 Information under seal pursuant to LR IA 10-5 of the U.S. District Court Rules for the District of Nevada
5 for Sealing Court Records. The Designating Party will have the burden to provide the Court with any
6 information necessary to support the designation as Confidential or Highly Confidential Information.

7 **15. Notice to Nonparties.** Any party issuing a subpoena to a nonparty shall enclose a copy of this
8 Protective Order and advise the nonparty that it may designate any Discovery Material it produces
9 pursuant to the terms of this Protective Order, should the nonparty producing party wish to do so. This
10 Order shall be binding in favor of nonparty designating parties to the maximum extent permitted by law.
11 Any nonparty invoking the Protective Order shall comply with, and be subject to, all applicable sections
12 of the Protective Order.

13 **16. Knowledge of Unauthorized Use or Possession.** If a party receiving Confidential Information
14 or Highly Confidential Information learns of any possession, knowledge, use or disclosure of any
15 Confidential Information or Highly Confidential Information in violation of the terms of this Protective
16 Order, the Receiving Party shall immediately notify in writing the party that produced the Confidential
17 Information or Highly Confidential Information. The Receiving Party shall promptly furnish the
18 Producing Party the full details of such possession, knowledge, use or disclosure. With respect to such
19 unauthorized possession, knowledge, use or disclosure the Receiving Party shall assist the Producing Party
20 in remedying the disclosure (e.g., by retrieving the Confidential Information from an unauthorized
21 recipient) and/or preventing its recurrence.

22 **17. Copies, Summaries or Abstracts.** Any copies, summaries, abstracts or exact duplications of
23 Confidential Information or Highly Confidential Information shall be marked "CONFIDENTIAL" or
24 "HIGHLY CONFIDENTIAL" and shall be considered Confidential Information or Highly Confidential
25 Information subject to the terms and conditions of this Protective Order. Attorney-client communications

1 and attorney work product regarding Confidential Information or Highly Confidential Information shall
2 not be subject to this section,
3 regardless of whether they summarize, abstract, paraphrase, or otherwise reflect Confidential Information
4 or Highly Confidential Information.

5 **18. Information Not Confidential.** The restrictions set forth in this Protective Order shall not be
6 construed to apply to any information or materials that:

7 (a) Were lawfully in the Receiving Party's possession prior to such information being designated
8 as Confidential or Highly Confidential Information in this action, and that the Receiving Party is not
9 otherwise obligated to treat as confidential;

10 (b) Were obtained without any benefit or use of Confidential or Highly Confidential Information
11 from a third party having the right to disclose such information to the Receiving Party without restriction
12 or obligation of confidentiality;

13 (c) Were independently developed after the time of disclosure by persons who did not have access
14 to the Producing Party's Confidential or Highly Confidential Information;

15 (d) Have been or become part of the public domain by publication or otherwise and not due to any
16 unauthorized act or omission on the part of a Receiving Party; or

17 (e) Under law, have been declared to be in the public domain.

18 **19. Challenges to Designations.** Any party may object to the designation of Confidential
19 Information or Highly Confidential Information on the ground that such information does not constitute
20 Confidential Information or Highly Confidential Information by serving written notice upon counsel for
21 the Producing Party within ninety (90) calendar days of the date the item(s) was designated, specifying
22 the item(s) in question and the grounds for the objection. The Producing Party shall have thirty (30)
23 calendar days to respond to the challenge of designation. If a party objects to the designation of any
24 materials as Confidential or Highly Confidential Information, the party challenging the designation shall
25 arrange for meet and confer to be held within ten (10) court days of service of the response to the

1 designation challenge by the Producing Party to attempt to informally resolve the dispute. If the parties
2 cannot resolve the matter, the party making the designation may file a motion with the Court to resolve
3 the dispute. Such motions must be filed within ten (10) court days of the meet and confer. This Protective
4 Order will not affect the burden of proof on any such motion, or impose any burdens upon any party that
5 would not exist had the Protective Order not been entered; as a general matter, the burden shall be on the
6 person making the designation to establish the propriety of the designation. Any contested information
7 shall continue to be treated as confidential and subject to this Protective Order until such time as such
8 motion has been ruled upon.

9 **20. Use in Court.** If any Confidential Information or Highly Confidential Information is used in
10 any pretrial Court proceeding in this action, it shall not necessarily lose its confidential status through such
11 use, and the party using such information shall take all reasonable steps consistent with the U.S. District
12 Court Rules for the District of Nevada governing Sealing Court Records and LR IC 6-1 to maintain its
13 confidentiality during such use.

14 **21. Reservation of Rights.** The parties each reserve the right to seek or oppose additional or
15 different protection for particular information, documents, materials, items or things, including but not
16 limited to, items which they consider to be attorney's eyes only in nature. This Stipulation shall neither
17 enlarge nor affect the proper scope of discovery in this Action. In addition, this Stipulation shall not limit
18 or circumscribe in any manner any rights the Parties (or their respective counsel) may have under common
19 law or pursuant to any state, federal, or foreign statute or regulation, and/or ethical rule.

20 **22. Inadvertent Failure to Designate.** The inadvertent failure to designate information produced
21 in discovery as Confidential or Highly Confidential shall not be deemed, by itself, to be a waiver of the
22 right to so designate such discovery materials as Confidential Information or Highly Confidential
23 Information. Within a reasonable time of learning of any such inadvertent failure, the Producing Party
24 shall notify all Receiving Parties of such inadvertent failure and take such other steps as necessary to
25 correct such failure after becoming aware of it. Disclosure of such discovery materials to any other person

1 prior to later designation of the discovery materials in accordance with this section shall not violate the
2 terms of this Protective Order. However, immediately upon being notified of an inadvertent failure to
3 designate, all parties shall treat such information as though properly designated, and shall take any actions
4 necessary to prevent any future unauthorized disclosure, use, or possession.

5 **23. No Waiver of Privilege:** Disclosure (including production) of information after the parties'
6 entry of this Protective Order that a party or nonparty later claims was inadvertent and should not have
7 been disclosed because of a privilege, including, but not limited to, the attorney-client privilege or work
8 product doctrine ("Privileged Information"), shall not constitute a waiver of, or estoppel as to, any claim
9 of attorney-client privilege, attorney work product, or other ground for withholding production as to which
10 the Disclosing or Producing Party would be entitled in this action.

11 **24. Effect of disclosure of Privileged Information:** The Receiving Party hereby agrees to
12 promptly return, sequester, or destroy any Privileged Information disclosed or produced by Disclosing or
13 Producing Party upon request by Disclosing or Producing Party regardless of whether the Receiving Party
14 disputes the designation of Privileged Information. The Receiving Party may sequester (rather than return
15 or destroy) such Privileged Information only if it contends that the information itself is not privileged or
16 otherwise protected and it challenges the privilege designation, in which case it may only sequester the
17 information until the claim of privilege or other protection is resolved. If any party disputes the privilege
18 claim ("Objecting Party"), that Objecting Party shall object in writing by notifying the Producing Party of
19 the dispute and the basis therefore. The parties thereafter shall meet and confer in good faith regarding the
20 disputed claim within fourteen (14) business days after service of the written objection. In the event that
21 the parties do not resolve their dispute, the Objecting Party may bring a motion for a determination of
22 whether a privilege applies within fourteen (14) business days of the meet and confer session, but may
23 only contest the asserted privileges on ground other than the inadvertent production of such document(s).
24 In making such a motion, the Objecting Party shall not disclose the content of the document(s) at issue,
25 but may refer to the information contained on the privilege log. Nothing herein shall relieve counsel from

1 abiding by applicable ethical rules regarding inadvertent disclosure and discovery of inadvertently
2 disclosed privileged or otherwise protected material. The failure of any party to provide notice or
3 instructions under this Paragraph shall not constitute a waiver of, or estoppel as to, any claim of attorney-
4 client privilege, attorney work product, or other ground for withholding production as to which the
5 Disclosing or Producing Party would be entitled in this action.

6 **25. Inadvertent Production of Non-Discoverable Documents.** If a Producing Party
7 inadvertently produces a document that contains no discoverable information, the Producing Party may
8 request in writing that the Receiving Party return the document, and the Receiving Party will return the
9 document. A Producing Party may not request the return of a document pursuant to this section if the
10 document contains any discoverable information. If a Producing Party inadvertently fails to redact
11 personal information (e.g., a social security number), the Producing Party may provide the Receiving Party
12 a substitute version of the document that redacts the personal information, and the Receiving Party shall
13 return the original, unredacted document to the Producing Party.

14 **26. Return of Information.** Within thirty (30) days after the final disposition of this action, all
15 Confidential Material and/or Highly Confidential Material produced by an opposing party or nonparty
16 (including, without limitation, any copies, extracts or summaries thereof) as part of discovery in this action
17 shall be destroyed by the parties to whom the Confidential Material and/or Highly Confidential Material
18 was produced, and each counsel shall, by declaration delivered to all counsel for the Producing Party,
19 affirm that all such Confidential Material and/or Highly Confidential Material (including, without
20 limitation, any copies, extracts or summaries thereof) has been destroyed; provided, however, that each
21 counsel shall be entitled to retain pleadings, motions and memoranda in support thereof, declarations or
22 affidavits, deposition transcripts and videotapes, or documents reflecting attorney work product or
23 consultant or expert work product, even if such material contains or refers to Confidential Material and/or
24 Highly Confidential Material, but only to the extent necessary to preserve a litigation file with respect to
25 this action.

1 **27. Attorney's Fees.** Nothing in this Protective Order is intended to either expand or limit a
2 prevailing party's right under the Federal Rules of Civil Procedure or other applicable state or federal law
3 to pursue costs and attorney's fees incurred related to confidentiality designations or the abuse of the
4 process described herein.

5 **28. Injunctive Relief and Sanctions Available for Unauthorized Disclosure or Use of**
6 **Confidential Information or Highly Confidential Information.** The Parties and/or nonparties shall not
7 utilize any Confidential Information and/or Highly Confidential Information for their own personal and/or
8 business advantage or gain, aside from purpose(s) solely related to the instant litigation. The Parties and
9 nonparties acknowledge and agree that unauthorized use and/or disclosure of Confidential Information
10 and/or Highly Confidential Information beyond this litigation shall subject the offending party or nonparty
11 to sanctions contemplated in Fed. R. Civ. P. 37(b)(2)(A), up to and including entry of judgment against
12 the offending party in circumstances involving willful disobedience with this order. Further, the Parties
13 and/or nonparties receiving or being given access to Confidential Information and/or Highly Confidential
14 Information acknowledge that monetary remedies would be inadequate to protect each party in the case
15 of unauthorized disclosure or use of Confidential Information or Highly Confidential Information that the
16 Receiving Party only received through discovery in this action and that injunctive relief would be
17 necessary and appropriate to protect each party's rights in the event there is any such unauthorized
18 disclosure or use of Confidential Information or Highly Confidential Information. The availability of
19 injunctive relief to protect against the unauthorized disclosure or use of Confidential Information or
20 Highly Confidential Information shall not be exclusive.

21 **29. Other Actions and Proceedings.** If a Receiving Party (a) is subpoenaed in another action,
22 investigation, or proceeding, (b) is served with a demand in another action, investigation, or proceeding,
23 or (c) is served with any legal process by one not a party to this Protective Order, seeking materials which
24 were produced or designated as Confidential or Highly Confidential pursuant to this Protective Order, the
25 Receiving Party shall give prompt actual written notice by electronic transmission to counsel of record for

1 such Producing Party within five (5) business days of receipt of such subpoena, demand or legal process,
2 or such shorter notice as may be required to provide other parties with the opportunity to object to the
3 immediate production of the requested discovery materials to the extent permitted by law. The burden of
4 opposing enforcement of the subpoena shall fall upon the party or nonparty who produced or
5 designated the Discovery Material as Confidential or Highly Confidential Information. Unless the party
6 or nonparty who produced or designated the Confidential or Highly Confidential Information obtains an
7 order directing that the subpoena not be complied with, and serves such order upon the Receiving Party
8 prior to production pursuant to the subpoena, the Receiving Party shall be permitted to produce documents
9 responsive to the subpoena on the subpoena response date. Compliance by the Receiving Party with any
10 order directing production pursuant to a subpoena of any Confidential or Highly Confidential Information
11 shall not constitute a violation of this Protective Order. Nothing in this Protective Order shall be construed
12 as authorizing a party to disobey a lawful subpoena issued in another action.

13 **30. Execution in Counterparts.** This Protective Order may be signed in counterparts, and a fax
14 or "PDF" signature shall have the same force and effect as an original ink signature.

15 **31. Order Survives Termination.** This Protective Order shall survive the termination of this
16 action, and the Court shall retain jurisdiction to resolve any dispute concerning the use of information
17 disclosed hereunder.

18 DATED this 8th day of June, 2017.


19 
20 _____
21 CAM FERENBACH
22 UNITED STATES MAGISTRATE JUDGE
23
24
25

EXHIBIT "A"

CONFIDENTIALITY AGREEMENT

I, _____ do hereby acknowledge and agree, under penalty of perjury, as follows:

1. I have read the Stipulated Confidentiality Agreement and Protective Order ("the Protective Order") entered in *TPOV Enterprises 16, LLC. v. Paris Las Vegas Operating Company, LLC*, 2:17-cv-00346 on _____, _____, and I fully understand its contents.

2. I hereby agree and consent to be bound by the terms of the Protective Order and to comply with it in all respects, and to that end, I hereby knowingly and voluntarily submit and subject myself to the personal jurisdiction of the United States District Court, District of Nevada so that the said court shall have the power and authority to enforce the Protective Order and to impose appropriate sanctions upon me for knowingly violating the Protective Order, including punishment for contempt of court for a knowing violation of the Protective Order.

3. I understand that by signing this instrument, I will be eligible to receive "Confidential Information" and/or "Highly Confidential Information" under the terms and conditions of the Protective Order. I further understand and agree that I must treat any "Confidential Information" and/or "Highly Confidential Information" in accordance with the terms and conditions of the Protective Order, and that, if I should knowingly make a disclosure of any such information in a manner unauthorized by the Protective Order, I will have violated a court order, will be in contempt of court, and will be subject to punishment by the court for such conduct.

DATED: _____

(Signature)

(Printed Name)

(Address)

EXHIBIT 3



James J. Pisanelli, Esq., Bar No. 4027
jjp@pisanellibice.com
Debra L. Spinelli, Esq., Bar No. 9695
dls@pisanellibice.com
M. Magali Mercera, Esq., Bar No. 11742
MMM@pisanellibice.com
Brittnie T. Watkins, Esq., Bar No. 13612
BTW@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100
Facsimile: 702.214.2101

Jeffrey J. Zeiger, P.C., Esq. (admitted *pro hac vice*)
William E. Arnault, IV, Esq. (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
Telephone: 312.862.2000

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED MATTERS

Case No.: A-17-751759

Dept. No.: XVI

Consolidated with A-17-760537-B

**STIPULATED CONFIDENTIALITY
AGREEMENT AND PROTECTIVE
ORDER**

COME NOW, 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" and collectively with Caesars Palace, Paris and Planet Hollywood, "Caesars"); Rowen Seibel ("Seibel"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), TPOV Enterprises, LLC ("TPOV"), TPOV 16 Enterprises, LLC ("TPOV 16") and DNT Acquisition, LLC ("DNT") (collectively the "Seibel Entities"); Gordon Ramsay ("Ramsay"), GR Burgr LLC ("GR Burgr"), Jeffrey Frederick ("Frederick") and Old Homestead Restaurant, Inc. ("OHR"); by and through their undersigned counsel of record, hereby enter into this Stipulated Confidentiality Agreement and Protective Order pursuant to NRCP 26(c) and NRCP 29. Planet Hollywood, Caesars Palace, Paris, CAC, Seibel, LLTQ, LLTQ 16, FERG, FERG 16, MOTI, MOTI 16, TPOV, TPOV 16, DNT, GR Burgr, Frederick, and OHR are collectively referred to as the "Parties" in this Stipulation and individually as "Party."

Whereas, the Parties desire to produce certain documents or other material which may contain proprietary and/or confidential information, it is hereby stipulated and agreed, by and between the Parties hereto, through their respective counsel of record, that:

1. **Applicability of this Protective Order:** Subject to Section 2 below, this Protective Order does not and will not govern any trial proceedings in this action, but will otherwise be applicable to and govern the handling and production of documents, depositions, deposition exhibits, interrogatory responses, responses to requests for admissions, responses to requests for production of documents, and all other discovery obtained pursuant to Nevada Rules of Civil Procedure or other legal process by or from, or produced on behalf of, a Party or witness in connection with this action. Such information hereinafter shall be referred to as "Discovery Material." Additionally, as used herein, "Producing Party" or "Disclosing Party" shall refer to the Parties and non-parties that give testimony or produce documents or other information in connection with this action; "Receiving Party" shall refer to the Parties in this action that receive such information; and "Authorized Recipient" shall refer to any person or entity authorized by Sections 12 and 13 of this Protective Order to obtain access to Confidential Information, Highly Confidential Information, or the contents

1 of such Discovery Material. Discovery Material produced in accordance with this Stipulation may
2 be used in other actions as permitted by the Global Agreement for the Utilization of Discovery
3 Across Cases entered into between the Parties (the "Global Utilization Agreement").

4 2. **No Waiver.** This Protective Order is entered solely for the purpose of facilitating the
5 exchange of documents and information among the Parties to this action without involving the Court
6 unnecessarily in the process. Nothing in this Protective Order, nor the production of any information
7 or document under the terms of this Protective Order, nor any proceedings pursuant to this Protective
8 Order, shall be deemed to be a waiver of any rights or objections to challenge the authenticity or
9 admissibility of any document, testimony, or other evidence at trial. Additionally, this Protective
10 Order will not prejudice the right of any party or non-party to oppose production of any information
11 on the ground of attorney-client privilege, work product doctrine, or any other privilege or protection
12 provided under the law.

13 3. **Designation of Information:** Any Producing Party may designate Discovery
14 Material that is in its possession, custody, or control produced to a Receiving Party as "Confidential"
15 or "Highly Confidential" under the terms of this Protective Order, but only if the Producing Party in
16 good faith reasonably believes that such Discovery Material contains non-public, confidential
17 information as defined in Sections 5 and 6 below.

18 4. **Exercise of Restraint and Care in Designating Material for Protection:** Each
19 Producing Party that designates information or items for protection under this Protective Order must
20 take care to limit any such designation to specific material that qualifies under the appropriate
21 standards. Indiscriminate designations are prohibited.

22 5. **Confidential Information:** For purposes of this Protective Order, "Confidential
23 Information" means all information that constitutes, reflects, or discloses non-public information,
24 trade secrets, know-how, or other financial, proprietary, commercially sensitive, confidential
25 business, marketing, regulatory, or strategic information (regarding business plans or strategies,
26 technical data, and non-public designs), the disclosure of which the Producing Party believes in good
27 faith might reasonably result in economic, competitive or business injury to the Producing Party (or
28 its affiliates, personnel, or clients) and which is not publicly known and cannot be ascertained from

1 an inspection of publicly available sources, documents, material, or devices. "Confidential
2 Information" shall also include sensitive personal information that is not otherwise publicly
3 available, such as home addresses; social security numbers; dates of birth; employment personnel
4 files; medical information; home telephone records/numbers; employee disciplinary records; court
5 documents sealed by another court or designated Confidential by agreement of the Parties in another
6 matter; wage statements or earnings statements; employee benefits data; tax records; and other
7 similar personal financial information. A Party may also designate as "CONFIDENTIAL"
8 compilations of publicly available discovery materials, which would not be known publicly in a
9 compiled form and the disclosure of which the Producing Party believes in good faith might
10 reasonably result in economic, competitive or business injury to the Producing Party.

11 6. **Highly Confidential Information:** For purposes of this Protective Order, "Highly
12 Confidential Information" is any Confidential Information as defined in Section 5 above that also
13 includes (a) extremely sensitive, highly confidential, non-public information, consisting either of
14 trade secrets or proprietary or other highly confidential business, financial, regulatory, private, or
15 strategic information (including information regarding business plans, technical data, and non-public
16 designs), the disclosure of which would create a substantial risk of competitive, business, or personal
17 injury to the Producing Party, and/or (b) non-public documents or information reflecting the
18 substance of conduct or communications that are the subject of then ongoing state, federal, or foreign
19 government investigations. Certain Confidential Information may compel alternative or additional
20 protections beyond those afforded Highly Confidential Information, in which event the Parties shall
21 meet and confer in good faith, and, if unsuccessful, the Party seeking any greater protection shall
22 move the Court for appropriate relief. A Party may re-designate material originally
23 "CONFIDENTIAL" as "HIGHLY CONFIDENTIAL" by giving notice of such a re-designation to
24 all Parties.

25 7. **Designating Confidential Information or Highly Confidential Information.** If
26 any Party in this action determines in good faith that any information, documents, things, or
27 responses produced in the course of discovery in this action should be designated as Confidential
28 Information or Highly Confidential Information (the "Designating Party"), it shall advise any Party

1 receiving such material of this fact, and all copies of such documents, things, or responses, or
2 portions thereof deemed to be confidential shall be marked "CONFIDENTIAL" or "HIGHLY
3 CONFIDENTIAL" (whether produced in hard copy or electronic form) at the expense of the
4 Designating Party and treated as such by all Parties. A Designating Party may inform another Party
5 that a document is Confidential or Highly Confidential by providing the Bates number of the
6 document in writing. If Confidential or Highly Confidential Information is produced via an
7 electronic form on a computer readable medium (*e.g.*, CD-ROM), other digital storage medium, or
8 via Internet transmission, the Producing Party or Designating Party shall affix in a prominent place
9 on the storage medium or container file on which the information is stored, and on any container(s)
10 for such medium, the legend "Includes CONFIDENTIAL INFORMATION" or "Includes HIGHLY
11 CONFIDENTIAL INFORMATION." Nothing in this section shall extend confidentiality or the
12 protections associated therewith to any information that does not otherwise constitute "Confidential
13 Information" or "Highly Confidential Information" as defined in Sections 5 and 6 herein.

14 8. **Redaction Allowed:** Any Producing Party may redact from the documents or things
15 it produces matter that the Producing Party reasonably claims in good faith is subject to the attorney-
16 client privilege, the work product doctrine, a legal prohibition against disclosure, or any other
17 privilege from disclosure. Any Producing Party also may redact information that is both personal
18 and non-responsive, such as a social security number. A Producing Party may not withhold non-
19 privileged, responsive information solely on the grounds that such information is contained in a
20 document that includes privileged information. The Producing Party shall mark each redaction with
21 a legend stating "REDACTED," and include an annotation indicating the specific reason for the
22 redaction (*e.g.*, "REDACTED—Work Product"). All documents redacted based on attorney client
23 privilege or work product immunity shall be listed in an appropriate log in conformity with Nevada
24 law and Nevada Rule of Civil Procedure 26(b)(5). Where a document consists of more than one
25 page, the page on which information has been redacted shall so be marked. The Producing Party
26 shall preserve an unredacted version of such document.

27 9. **Use of Confidential Information or Highly Confidential Information.** Except as
28 provided herein, Confidential Information and Highly Confidential Information designated or

1 marked shall be maintained in confidence, used solely for the purposes of this action (except as
2 permitted by the Global Utilization Agreement), and to the extent not otherwise prohibited by an
3 Order of the Court, shall be disclosed to no one except those persons identified herein in Sections
4 12 and 13, and shall be handled in such manner until such designation is removed by the Designating
5 Party, or by Order of the Court. Confidential or Highly Confidential information produced by
6 another Party shall not be used by any Receiving Party for any commercial, competitive or personal
7 purpose. Nothing in this Protective Order shall govern or restrict a Producing Party's use of its own
8 Confidential or Highly Confidential Information in any way.

9 10. Once the Court enters this Protective Order, a Party shall have forty-five (45) calendar
10 days to designate as Confidential or Highly Confidential any documents previously produced in this
11 action, which it can do by stamping "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" on the
12 document, or informing the other Parties of the Bates numbers of the documents so designated.

13 11. **Use of Confidential Information and Highly Confidential Information in**
14 **Depositions.** Counsel for any Party shall have the right to disclose Confidential or Highly
15 Confidential Information at depositions, provided that such disclosure is consistent with this
16 Protective Order, including Sections 12 and 13 hereof. Any counsel of record may request that all
17 persons not entitled under Sections 12 or 13 of this Protective Order to have access to Confidential
18 Information or Highly Confidential Information, leave the deposition room during the confidential
19 portion of the deposition. Failure of such persons to comply with a request to leave the deposition
20 room shall constitute substantial justification for counsel to advise the witness that the witness need
21 not answer the question where the answer would disclose Confidential Information or Highly
22 Confidential Information. Additionally, at any deposition session: (1) upon inquiry with regard to
23 the content of any discovery material(s) designated or marked as "CONFIDENTIAL" or "HIGHLY
24 CONFIDENTIAL;" (2) whenever counsel for a party deems that the answer to a question may result
25 in the disclosure or revelation of Confidential or Highly Confidential Information; and/or (3)
26 whenever counsel for a Party deems that the answer to any question has resulted in the disclosure or
27 revelation of Confidential or Highly Confidential Information, counsel to any Party may designate
28 those portions of a deposition transcript and/or video of any deposition (or any other testimony) as

1 containing Confidential or Highly Confidential Information in accordance with this Order, either by
2 placing a statement on the record during the deposition, or by notifying all other Parties in writing
3 within thirty (30) calendar days of receiving the transcript or video that it contains Confidential or
4 Highly Confidential Information and designating the specific pages, lines, and/or counter numbers
5 as containing Confidential or Highly Confidential Information. If a designation is made via a
6 statement on the record during a deposition, counsel must follow-up in writing within thirty (30)
7 calendar days of receiving the transcript or video, identifying the specific pages, lines, and/or counter
8 numbers containing the Confidential or Highly Confidential Information. If no confidentiality
9 designations are made within said thirty (30) day period, the entire transcript shall be considered
10 non-confidential. During the thirty (30) day period, the entire transcript and video shall be treated
11 as Highly Confidential Information. All originals and copies of deposition transcripts that contain
12 Confidential Information or Highly Confidential Information shall be prominently marked
13 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" on the cover thereof and, if and when filed
14 with the Court, the portions of such transcript so designated shall be filed under seal. Counsel must
15 designate portions of a deposition transcript as "CONFIDENTIAL" or "HIGHLY
16 CONFIDENTIAL" within thirty (30) calendar days of receiving the transcript. Any DVD or other
17 digital storage medium containing Confidential or Highly Confidential deposition testimony shall
18 be labeled in accordance with the provisions of Section 7.

19 **12. Persons Authorized to Receive Confidential Information.** Confidential
20 Information produced pursuant to this Protective Order may be disclosed or made available only to
21 the Court, its employees, other court personnel, any discovery referee, mediator or other official who
22 may be appointed by the Court, and to the persons below:

- 23 (a) A Party, or officers, directors, employees, and agents of a Party deemed necessary by counsel
24 to aid in the prosecution, defense, or settlement of this action;
- 25 (b) Counsel for a Party (including in-house attorneys, outside attorneys associated with a law
26 firm(s) of record, and paralegal, clerical, and secretarial staff employed by such counsel);

(c) Persons retained by a Party to provide litigation support services (photocopying, videotaping, translating, preparing exhibits or demonstrations, organizing, storing, retrieving data in any form or medium, etc.);

(d) Consultants or expert witnesses (together with their support staff) retained by a Party or its counsel for the prosecution or defense of this litigation, provided that such an expert or consultant is not a current employee of a direct competitor of a Party named in this action;¹

(e) Court reporter(s) and videographers(s) employed in this action;

(f) Any authors or recipients of the Confidential Information;

(g) A witness at any deposition or other proceeding in this action, who shall sign the Confidentiality Agreement attached as "Exhibit A" to this Protective Order before being shown a confidential document; and

(h) Any other person as to whom the Parties in writing agree, or that the Court in these proceedings so designates.

Any person to whom Confidential Information is disclosed pursuant to subparts (a) through (h) hereinabove shall be advised that the Confidential Information is being disclosed pursuant to an Order of the Court; that the information may not be disclosed by such person to any person not permitted to have access to the Confidential Information pursuant to this Protective Order; and that any violation of this Protective Order may result in the imposition of such sanctions as the Court deems proper. Any person to whom Confidential Information is disclosed pursuant to subpart (c), (d), (g), or (h) of this section shall also be required to execute a copy of the form Exhibit A. The persons shall agree in writing to be bound by the terms of this Protective Order by executing a copy of Exhibit A (which shall be maintained by the counsel of record for the Party seeking to reveal the Confidential Information) in advance of being shown the Confidential Information. No Party (or its counsel) shall discourage any persons from signing a copy of Exhibit A. If a person refuses to execute a copy of Exhibit A, the Party seeking to reveal the Confidential Information shall seek an

¹ A party may seek leave of court to provide information to a consultant employed by a competitor.

1 Order from the Court directing that the person be bound by this Protective Order. In the event of
2 the filing of such a motion, Confidential Information may not be disclosed to such person until the
3 Court resolves the issue. Proof of each written agreement provided for under this Section shall be
4 maintained by each of the Parties while this action is pending and disclosed to the other Parties upon
5 good cause shown and upon Order of the Court.

6 **13. Persons Authorized to Receive Highly Confidential Information.** "HIGHLY
7 CONFIDENTIAL" documents and information may be used only in connection with this case
8 (except as permitted by the Global Utilization Agreement), and may be disclosed only to the Court
9 and the persons listed in subsections (b) to (e) and (g) to (h) of Section 12 above, but shall not be
10 disclosed to a Party, or an employee of a Party unless otherwise agreed in writing by the Parties or
11 ordered by the Court. With respect to sub-section (f), the parties will consider disclosure of Highly
12 Confidential Information to an author or recipient on a case by case basis. Any person to whom
13 Highly Confidential Information is disclosed pursuant to sub-sections (c), (d), (g) or (h) of Section
14 12 above shall also be required to execute a copy of the form Exhibit A.

15 **14. Filing of Confidential Information or Highly Confidential Information With**
16 **Court.** Any Party seeking to file or disclose materials designated as Confidential Information or
17 Highly Confidential Information with the Court in this action (or with the court in another action as
18 permitted by the Global Utilization Agreement) must seek to file such Confidential or Highly
19 Confidential Information under seal pursuant to Rule 3 of the Nevada Rules for Sealing and
20 Redacting Court Records (or, if in another action permitted by the Global Utilization Agreement, in
21 accordance with the rules and procedures of that court). The Designating Party will have the burden
22 to provide the Court with any information necessary to support the designation as Confidential or
23 Highly Confidential Information.

24 **15. Notice to Nonparties.** Any Party issuing a subpoena to a non-party shall enclose a
25 copy of this Protective Order and advise the non-party that it may designate any Discovery Material
26 it produces pursuant to the terms of this Protective Order as Confidential Information or Highly
27 Confidential Information, should the non-party wish to do so. This Order shall be binding in favor
28

1 of non-parties to the maximum extent permitted by law. Any non-party invoking the Protective
2 Order shall comply with, and be subject to, all applicable sections of the Protective Order.

3 16. **Knowledge of Unauthorized Use or Possession.** If a Party receiving Confidential
4 Information or Highly Confidential Information learns of any possession, knowledge, use or
5 disclosure of any Confidential Information or Highly Confidential Information in violation of the
6 terms of this Protective Order, the Receiving Party shall immediately notify in writing the Party that
7 produced the Confidential Information or Highly Confidential Information. The Receiving Party
8 shall promptly furnish the Producing Party with the full details of such possession, knowledge, use
9 or disclosure. With respect to such unauthorized possession, knowledge, use or disclosure, the
10 Receiving Party shall assist the Producing Party in remedying the disclosure (*e.g.*, by retrieving the
11 Confidential Information from an unauthorized recipient), and/or by preventing its recurrence.

12 17. **Copies, Summaries or Abstracts.** Any copies, summaries, abstracts or exact
13 duplications of Confidential Information or Highly Confidential Information shall be marked
14 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," and shall be considered Confidential
15 Information or Highly Confidential Information subject to the terms and conditions of this Protective
16 Order. Attorney-client communications and attorney-work product regarding Confidential
17 Information or Highly Confidential Information, as permitted by this Protective Order, shall not be
18 subject to this section, regardless of whether they summarize, abstract, paraphrase, or otherwise
19 reflect Confidential Information or Highly Confidential Information.

20 18. **Information Not Confidential.** The restrictions set forth in this Protective Order
21 shall not be construed to apply to any information or materials that:

- 22 (a) Were lawfully in the Receiving Party's possession prior to such information being
23 designated as Confidential or Highly Confidential Information in this action, and that
24 the Receiving Party is not otherwise obligated to treat as confidential;
- 25 (b) Were obtained without any benefit or use of Confidential or Highly Confidential
26 Information from a third party having the right to disclose such information to the
27 Receiving Party without restriction or obligation of confidentiality;
- 28

1 (c) Were independently developed after the time of disclosure by persons who did not
2 have access to the Producing Party's Confidential or Highly Confidential
3 Information;

4 (d) Have been or become part of the public domain by publication or otherwise and not
5 due to any unauthorized act or omission on the part of a Receiving Party; or

6 (e) Under law, have been declared to be in the public domain.

7 19. **Challenges to Designations.** Any Party may object to the designation of
8 Confidential Information or Highly Confidential Information on the ground that such information
9 does not constitute Confidential Information or Highly Confidential Information, by serving written
10 notice upon counsel for the Producing Party within ninety (90) calendar days of the date the item(s)
11 was designated, specifying the item(s) in question and the ground(s) for the objection. The
12 Producing Party shall have thirty (30) calendar days to respond to the challenge of designation. If a
13 Party objects to the designation of any materials as Confidential Information or Highly Confidential
14 Information, the Party challenging the designation shall arrange for a meet and confer to be held
15 within ten (10) court days of service of the response to the designation challenge by the Producing
16 Party, to attempt to informally resolve the dispute. If the Parties cannot resolve the matter, the Party
17 challenging the designation may file a motion with the Court to resolve the dispute. Such motions
18 must be filed within ten (10) court days following the meet and confer. This Protective Order shall
19 not affect the burden of proof on any such motion, or impose any burdens upon any Party that would
20 not exist had the Protective Order not been entered; as a general matter, the burden shall be on the
21 person making the designation to establish the propriety of the designation. Any contested
22 information shall continue to be treated as Confidential Information or Highly Confidential
23 Information and subject to this Protective Order until such time as such motion has been ruled upon.

24 20. **Use in Court.** If any Confidential Information or Highly Confidential Information
25 is used in any pretrial Court proceeding in this action (or used in another action as permitted by the
26 Global Utilization Agreement), it shall not necessarily lose its confidential status through such use,
27 and the party using such information shall take all reasonable steps consistent with the Nevada
28 Supreme Court Rules Governing Sealing and Redacting Court Records (or, if used in another action

1 as permitted by the Global Utilization Agreement, in accordance with the rules and procedures of
2 that court governing sealing and redacting), to maintain its confidentiality during such use.

3 21. **Reservation of Rights.** The Parties each reserve the right to seek or oppose
4 additional or different protection for particular information, documents, materials, items or things,
5 including but not limited to, items which they consider to be attorney's eyes only in nature. This
6 Stipulation shall neither enlarge, nor affect, the proper scope of discovery in this Action. In addition,
7 this Stipulation shall not limit or circumscribe in any manner any rights the Parties (or their
8 respective counsel) may have under common law or pursuant to any state, federal, or foreign statute
9 or regulation, and/or ethical rule.

10 22. **Inadvertent Failure to Designate.** The inadvertent failure to designate information
11 produced in discovery as Confidential or Highly Confidential shall not be deemed, by itself, to be a
12 waiver of the right to so designate such Discovery Materials as Confidential Information or Highly
13 Confidential Information. Within a reasonable time of learning of any such inadvertent failure, the
14 Producing Party shall notify all Receiving Parties of such inadvertent failure and shall take such
15 other steps as necessary to correct such failure after becoming aware of it. Disclosure of such
16 Discovery Materials to any other person prior to later designation of the Discovery Materials in
17 accordance with this section shall not violate the terms of this Protective Order. However,
18 immediately upon being notified of an inadvertent failure to designate, all Parties shall treat such
19 information as though properly designated, and shall take any actions necessary to prevent any future
20 unauthorized disclosure, use, or possession.

21 23. **No Waiver of Privilege:** Disclosure (including production) of information after the
22 Parties' entry of this Protective Order that a Party or non-party later claims was inadvertent and
23 should not have been disclosed because of a privilege, including, but not limited to, the
24 attorney-client privilege or work product doctrine ("Privileged Information"), shall not constitute a
25 waiver of, or estoppel as to, any claim of attorney-client privilege, attorney work product, or other
26 ground for withholding production as to which the Disclosing or Producing Party would be entitled
27 in this action.
28

1 24. **Effect of disclosure of Privileged Information:** The Receiving Party hereby agrees
2 to promptly return, sequester, or destroy any Privileged Information disclosed or produced by a
3 Disclosing or Producing Party upon request by the Disclosing or Producing Party, regardless of
4 whether the Receiving Party disputes the designation of Privileged Information. The Receiving
5 Party may sequester (rather than return or destroy) such Privileged Information only if it contends
6 that the information itself is not privileged or otherwise protected, and it challenges the privilege
7 designation, in which case it may only sequester the information until the claim of privilege or other
8 protection is resolved. If any Party disputes the privilege claim ("Objecting Party"), that Objecting
9 Party shall object in writing by notifying the Producing Party of the dispute and the basis therefore.
10 The Parties thereafter shall meet and confer in good faith regarding the disputed claim within
11 fourteen (14) business days after service of the written objection. In the event that the Parties do not
12 resolve their dispute, the Objecting Party may bring a motion for a determination of whether a
13 privilege applies within fourteen (14) business days following the meet and confer session, but may
14 only contest the asserted privileges on grounds other than the inadvertent production of such
15 document(s). In making such a motion, the Objecting Party shall not disclose the content of the
16 document(s) at issue, but may refer to the information contained on the privilege log. Nothing herein
17 shall relieve counsel from abiding by applicable ethical rules regarding inadvertent disclosure and
18 discovery of inadvertently disclosed privileged or otherwise protected material. The failure of any
19 Party to provide notice or instructions under this section shall not constitute a waiver of, or estoppel
20 as to, any claim of attorney-client privilege, attorney work product, or other ground for withholding
21 production as to which the Disclosing or Producing Party would be entitled in this action.

22 25. **Inadvertent Production of Non-Discoverable Documents.** If a Producing Party
23 inadvertently produces a document that contains no discoverable information, the Producing Party
24 may request in writing that the Receiving Party return the document, and the Receiving Party shall
25 return the document. A Producing Party may not request the return of a document pursuant to this
26 section if the document contains any discoverable information. If a Producing Party inadvertently
27 fails to redact personal information (e.g., a social security number), the Producing Party may provide
28 the Receiving Party a substitute version of the document that redacts the personal information, and

1 the Receiving Party shall return the original, unredacted document to the Producing Party.

2 26. **Return of Information.** Within thirty (30) days after the final disposition of this
3 action (or the final disposition of any other action as permitted by the Global Utilization Agreement),
4 all Discovery Materials containing Confidential Information and/or Highly Confidential Information
5 produced by an opposing Party or non-party (including, without limitation, any copies, extracts or
6 summaries thereof) as part of discovery in this action shall be destroyed by the Parties to whom the
7 Discovery Materials containing Confidential Information and/or Highly Confidential Information
8 was produced, and each counsel shall, by declaration delivered to all counsel for the Producing Party,
9 affirm that all such Discovery Materials containing Confidential Information and/or Highly
10 Confidential Information (including, without limitation, any copies, extracts or summaries thereof)
11 has been destroyed; provided, however, that each counsel shall be entitled to retain pleadings,
12 motions and memoranda in support thereof, declarations or affidavits, deposition transcripts and
13 videotapes, or documents reflecting attorney work product or consultant or expert work product,
14 even if such material contains or refers to Discovery Materials containing Confidential Information
15 and/or Highly Confidential Information, but only to the extent necessary to preserve a litigation file
16 with respect to this action (or another action as permitted by the Global Utilization Agreement).
17 Counsel are not required to destroy or certify destruction of Confidential Information or Highly
18 Confidential Information replicated on automatic archival or data backup systems maintained by
19 Counsel.

20 27. **Attorney's Fees.** Nothing in this Protective Order is intended to either expand or
21 limit a prevailing party's right under the Nevada Rules of Civil Procedure or other applicable state
22 or federal law to pursue costs and attorney's fees incurred related to confidentiality designations or
23 the abuse of the process described herein.

24 28. **Injunctive Relief and Sanctions Available for Unauthorized Disclosure or Use of**
25 **Confidential Information or Highly Confidential Information.** The Parties and/or non-parties
26 shall not utilize any Confidential Information and/or Highly Confidential Information for their own
27 personal and/or business advantage or gain, aside from purpose(s) solely related to the instant
28 litigation (or to other litigations as permitted by the Global Utilization Agreement). The Parties and

1 non-parties acknowledge and agree that the unauthorized use and/or disclosure of Confidential
2 Information and/or Highly Confidential Information beyond this litigation (or beyond other
3 litigations as permitted by the Global Utilization Agreement) shall subject the offending Party or
4 non-party to sanctions contemplated in NRCP 37(b)(2)(A)-(D) (or pursuant to the rules and
5 procedures of the courts in litigations governed by the Global Utilization Agreement), up to and
6 including entry of judgment against the offending Party or non-party in circumstances involving
7 willful disobedience with this Order. Further, the Parties and/or non-parties receiving or being given
8 access to Confidential Information and/or Highly Confidential Information acknowledge that
9 monetary remedies would be inadequate to protect each Party in the case of unauthorized disclosure
10 or use of Confidential Information or Highly Confidential Information that the Receiving Party only
11 received through discovery in this action (or in other actions governed by the Global Utilization
12 Agreement), and that injunctive relief would be necessary and appropriate to protect each Party's
13 rights in the event there is any such unauthorized disclosure or use of Confidential Information or
14 Highly Confidential Information. The availability of injunctive relief to protect against the
15 unauthorized disclosure or use of Confidential Information or Highly Confidential Information shall
16 not be exclusive.

17 29. **Other Actions and Proceedings.** If a Receiving Party (a) is subpoenaed in another
18 action, investigation, or proceeding, (b) is served with a demand in another action, investigation, or
19 proceeding, or (c) is served with any legal process by one not a Party to this Protective Order, seeking
20 materials which were produced or designated as Confidential or Highly Confidential pursuant to this
21 Protective Order, the Receiving Party shall give prompt actual written notice by electronic
22 transmission to counsel of record for such Producing Party within five (5) business days of receipt
23 of such subpoena, demand or legal process, or such shorter notice as may be required to provide
24 other Parties with the opportunity to object to the immediate production of the requested Discovery
25 Materials to the extent permitted by law. The burden of opposing enforcement of the subpoena shall
26 fall upon the Party or non-party who produced or designated the Discovery Material as Confidential
27 Information or Highly Confidential Information. Unless the Party or non-party who produced or
28 designated the Confidential Information or Highly Confidential Information obtains an Order

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

1 directing that the subpoena not be complied with, and serves such Order upon the Receiving Party
2 prior to production pursuant to the subpoena, the Receiving Party shall be permitted to produce
3 documents responsive to the subpoena on the subpoena response date. Compliance by the Receiving
4 Party with any Order directing production pursuant to a subpoena of any Confidential Information
5 or Highly Confidential Information shall not constitute a violation of this Protective Order. Nothing
6 in this Protective Order shall be construed as authorizing a Party to disobey a lawful subpoena issued
7 in another action.

8 30. **Execution in Counterparts.** This Protective Order may be signed in counterparts,
9 and a fax or "PDF" signature shall have the same force and effect as an original ink signature.

10 31. **Order Survives Termination.** This Protective Order shall survive the termination
11 of this action (or of the other actions governed by the Global Utilization Agreement), and the Court
12 shall retain jurisdiction to resolve any dispute concerning the use of information disclosed hereunder.

13 DATED ^{March} February 11, 2019

14 PISANELLI BICE PLLC

15 By: 

16 James J. Pisanelli, Esq., Bar No. 4027
17 Debra L. Spinelli, Esq., Bar No. 9695
18 M. Magali Mercera, Esq., Bar No. 11742
19 Brittne T. Watkins, Esq., Bar No. 13612
20 400 South 7th Street, Suite 300
21 Las Vegas, NV 89101

22 and

23 Jeffrey J. Zeiger, P.C., Esq.
24 (admitted *pro hac vice*)
25 William E. Arnault, IV, Esq.
26 (admitted *pro hac vice*)
27 KIRKLAND & ELLIS LLP
28 300 North LaSalle
Chicago, IL 60654
Telephone: 312.862.2000

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

DATED February 26th 2019

MCNUTT LAW FIRM, P.C.

By: 

Daniel R. McNutt, Esq. (SBN 7815)
Matthew C. Wolf, Esq. (SBN 10801)
625 South Eighth Street
Las Vegas, Nevada 89101

and

Paul Sweeney, Esq.,
(admitted *pro hac vice*)
CERTILMAN BALIN ADLER & HYMAN, LLP
90 Merrick Avenue
East Meadow, NY 11554

*Attorneys for Plaintiff Rowen Seibel/Defendants
Rowen Seibel; LLTQ Enterprises, LLC;
LLTQ Enterprises 16, LLC; FERG, LLC;
FERG 16, LLC; MOTI Partners, LLC;
MOTI Partners 16, LLC; TPOV Enterprises,
LLC; and TPOV Enterprises 16, LLC*

31. **Order Survives Termination.** This Protective Order shall survive the termination of this action (or of the other actions governed by the Global Utilization Agreement), and the Court shall retain jurisdiction to resolve any dispute concerning the use of information disclosed hereunder.

DATED February __, 2019

PISANELLI BICE PLLC

By: _____
James J. Pisanelli, Esq., Bar No. 4027
Debra L. Spinelli, Esq., Bar No. 9695
M. Magali Mercera, Esq., Bar No. 11742
Brittanie T. Watkins, Esq., Bar No. 13612
400 South 7th Street, Suite 300
Las Vegas, NV 89101

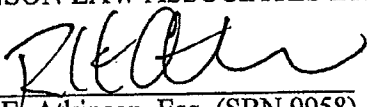
and

Jeffrey J. Zeiger, P.C., Esq.
(admitted *pro hac vice*)
William E. Arnault, IV, Esq.
(admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
Telephone: 312.862.2000

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

DATED February 22, 2019

ATKINSON LAW ASSOCIATES LTD.

By: 
Robert E. Atkinson, Esq. (SBN 9958)
376 E. Warm Springs Road, Suite 130
Las Vegas, NV 89119

*Attorney for Defendant
J. Jeffrey Frederick*

DATED February __, 2019

DATED February __, 2019

MCNUTT LAW FIRM, P.C.

By: _____
Daniel R. McNutt, Esq. (SBN 7815)
Matthew C. Wolf, Esq. (SBN 10801)
625 South Eighth Street
Las Vegas, Nevada 89101

and

Paul Sweeney, Esq.,
(admitted *pro hac vice*)
CERTILMAN BALIN ADLER & HYMAN, LLP
90 Merrick Avenue
East Meadow, NY 11554

*Attorneys for Plaintiff Rowen Seibel/Defendants
Rowen Seibel; LLTQ Enterprises, LLC;
LLTQ Enterprises 16, LLC; FERG, LLC;
FERG 16, LLC; MOTI Partners, LLC;
MOTI Partners 16, LLC; TPOV Enterprises,
LLC; and TPOV Enterprises 16, LLC*

DATED February __, 2019

FENNEMORE CRAIG, P.C.

By: _____
Allen Wilt, Esq. (SBN 4798)
John Tennert, Esq. (SBN 11728)
FENNEMORE CRAIG, P.C.
300 East 2nd Street, Suite 1510
Reno, NV 89501

Attorneys for Defendant Gordon Ramsay

DATED February __, 2019

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2 ATKINSON LAW ASSOCIATES LTD.

3 By: _____
4 Robert E. Atkinson, Esq. (SBN 9958)
5 376 E. Warm Springs Road, Suite 130
6 Las Vegas, NV 89119

7 *Attorney for Defendant*
8 *J. Jeffrey Frederick*

9 DATED February __, 2019

10 BARACK FERRAZZANO KIRSCHBAUM &
11 NAGELBERG LLP

12 By: _____
13 Nathan Q. Rugg, Esq.
14 (admitted *pro hac vice*)
15 200 W. Madison St., Suite 3900
16 Chicago, IL 60606

17 and

18 Steven B. Chaiken, Esq.
19 ADELMAN & GETTLEMAN, LTD.
20 53 W. Jackson Blvd., Suite 1050
21 Chicago, IL 60604

22 *Attorneys for Defendants LLTQ Enterprises,*
23 *LLC; LLTQ Enterprises 16, LLC, FERG, LLC;*
24 *FERG 16, LLC; MOTI Partners, LLC; and*
25 *MOTI Partners 16, LLC.*

DATED February 19, 2019

FENNEMORE CRAIG, P.C.

By: _____
Allen Wilt, Esq. (SBN 4798)
John Tennert, Esq. (SBN 11728)
FENNEMORE CRAIG, P.C.
300 East 2nd Street, Suite 1510
Reno, NV 89501

Attorneys for Defendant Gordon Ramsay

DATED February __, 2019

LEBENSFELD SHARON & SCHWARTZ
P.C., LLP

By: _____
Alan M. Lebensfeld, Esq.
(admitted *pro hac vice*)
140 Broad Street
Red Bank, New Jersey 07701
and

Mark J. Connot, Esq.
Kevin M. Sutehall, Esq.
FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135

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

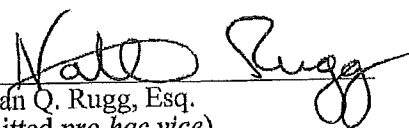
1 DATED February __, 2019
2 ATKINSON LAW ASSOCIATES LTD.

3
4 By: _____
Robert E. Atkinson, Esq. (SBN 9958)
376 E. Warm Springs Road, Suite 130
5 Las Vegas, NV 89119

6 *Attorney for Defendant*
7 *J. Jeffrey Frederick*

8 DATED February __, 2019

9 BARACK FERRAZZANO KIRSCHBAUM &
10 NAGELBERG LLP

11 By: 
12 Nathan Q. Rugg, Esq.
(admitted pro hac vice)
200 W. Madison St., Suite 3900
13 Chicago, IL 60606

14 and

15 Steven B. Chaiken, Esq.
ADELMAN & GETTLEMAN, LTD.
16 53 W. Jackson Blvd., Suite 1050
Chicago, IL 60604

17 *Attorneys for Defendants LLTQ Enterprises,*
18 *LLC; LLTQ Enterprises 16, LLC, FERG, LLC;*
19 *FERG 16, LLC; MOTI Partners, LLC; and*
20 *MOTI Partners 16, LLC.*

DATED February __, 2019
FENNEMORE CRAIG, P.C.

By: _____
Allen Wilt, Esq. (SBN 4798)
John Tennert, Esq. (SBN 11728)
FENNEMORE CRAIG, P.C.
300 East 2nd Street, Suite 1510
Reno, NV 89501

Attorneys for Defendant Gordon Ramsay

DATED February __, 2019

LEBENSFELD SHARON & SCHWARTZ
P.C.

By: _____
Alan M. Lebensfeld, Esq.
(admitted pro hac vice)
140 Broad Street
Red Bank, New Jersey 07701
and

Mark J. Connot, Esq.
Kevin M. Sutehall, Esq.
FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135

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

1 BARACK FERRAZZANO KIRSCHBAUM &
2 NAGELBERG LLP


3 By: _____
4 Nathan Q. Rugg, Esq.
5 (admitted *pro hac vice*)
6 200 W. Madison St., Suite 3900
7 Chicago, IL 60606

8 and

9 Steven B. Chaiken, Esq.
10 ADELMAN & GETTLEMAN, LTD.
11 53 W. Jackson Blvd., Suite 1050
12 Chicago, IL 60604

13 *Attorneys for Defendants LLTQ Enterprises,*
14 *LLC; LLTQ Enterprises 16, LLC, FERG,*
15 *LLC; FERG 16, LLC; MOTI Partners, LLC;*
16 *and MOTI Partners 16, LLC.*

LEBENSFELD SHARON & SCHWARTZ
P.C.

By: 
Alan M. Lebensfeld, Esq.
(admitted *pro hac vice*)
140 Broad Street
Red Bank, New Jersey 07701
and

Mark J. Connot, Esq.
Kevin M. Sutehall, Esq.
FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135

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

17 DATED February __, 2019

18 HEYMAN ENERIO GATTUSO &
19 HIRZEL LLP

20 By: _____
21 Kurt Heyman, Esq.
22 300 Delaware Ave., Suite 200
23 Wilmington, DE 19801

24 *Trustee for GR Burger LLC*

ORDER

25 IT IS SO ORDERED.

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DATED February __, 2019

HEYMAN ENERIO GATTUSO &
HIRZEL LLP

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

Trustee for GR Burgr LLC

ORDER

IT IS SO ORDERED.



THE HONORABLE TIMOTHY C. WILLIAMS
DISTRICT COURT JUDGE

DATED: 3/12/19

EXHIBIT "A"

CONFIDENTIALITY AGREEMENT

I, _____ do hereby acknowledge and agree, under penalty of perjury, as follows:

1. I have read the Stipulated Confidentiality Agreement and Protective Order ("the Protective Order") entered in *Rowen Seibel v. PHWLTV, LLC, A-17-751759-B, consolidated with Case No. A-17-760537-B* on _____, _____, and I fully understand its contents.

2. I hereby agree and consent to be bound by the terms of the Protective Order and to comply with it in all respects, and to that end, I hereby knowingly and voluntarily submit and subject myself to the personal jurisdiction of the Eighth Judicial District Court, State of Nevada so that the said court shall have the power and authority to enforce the Protective Order and to impose appropriate sanctions upon me for knowingly violating the Protective Order, including punishment for contempt of court for a knowing violation of the Protective Order.

3. I understand that by signing this instrument, I will be eligible to receive "Confidential Information" and/or "Highly Confidential Information" under the terms and conditions of the Protective Order. I further understand and agree that I must treat any "Confidential Information" and/or "Highly Confidential Information" in accordance with the terms and conditions of the Protective Order, and that, if I should knowingly make a disclosure of any such information in a manner unauthorized by the Protective Order, I will have violated a court order, will be in contempt of court, and will be subject to punishment by the court for such conduct.

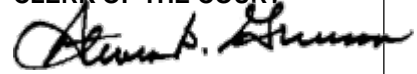
DATED: _____

(Signature)

(Printed Name)

(Address)

TAB 86



JOPP

John D. Tennert III (SBN 11728)
Wade Beavers (SBN 13451)
Austin M. Maul (SBN 15596)
FENNEMORE CRAIG, P.C.
7800 Rancharra Pkwy
Reno, Nevada 89511
Telephone: (775) 788-2200
Facsimile: (775) 786-1177
Email: jtennert@fclaw.com
wbeavers@fclaw.com
amaul@fclaw.com

Attorneys for Defendant Gordon Ramsay

DISTRICT COURT

CLARK COUNTY, NEVADA

ROWEN SEIBEL, an individual and citizen of
New York, derivatively as Nominal Plaintiff 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;

Defendant,

GR BURGR LLC, a Delaware limited liability
company,

Nominal Defendant.

AND ALL RELATED MATTERS.

CASE NO: A-17-751759-B
DEPT NO: XVI

Consolidated with:
Case No: A-17-760537-B

**DEFENDANT GORDAN RAMSAY'S
JOINDER IN THE CAESARS PARTIES'
OPPOSITION TO 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**

**HEARING DATE: September 22, 2021
HEARING TIME: 9:00 a.m.**

Defendant Gordon Ramsay, by and through his counsel, Fennemore Craig, P.C., hereby
joins in Caesars' opposition to the Seibel Parties' *Motion to Compel The Return, Destruction, Or
Sequestering Of The Court's August 19, 2021, Minute Order Containing Privileged Attorney-
Client Communication*. Ramsay incorporates all arguments and points and authorities stated in

FENNEMORE CRAIG, P.C.
7800 Rancharra Pkwy
Reno, Nevada 89511
Tel: (775) 788-2200 Fax: (775) 786-1177

Caesars' opposition by reference. Additionally, Ramsay respectfully requests clarification of the August 18, 2021 Minute Order (the "Minute Order").

The Minute Order states, in part: "this matter shall remain highly confidential and the documents submitted for in-camera review shall be produced to Defendant Caesars and *for the eyes of counsel* and/or Defendant Caesars' experts only." (emphasis added). Ramsay interprets the text "*for the eyes of counsel*" to include **all** counsel for parties to these proceedings – including Defendant Ramsay's counsel. Ramsay is not only a party to the above-captioned action but also a party to Stipulated Confidentiality Agreement and Protective Order entered on March 12, 2019. Ramsay has produced and received documents designated "Confidential" and "Highly Confidential" in these proceedings in compliance with the protective order.

To the extent necessary, and to resolve any doubt, Ramsay requests that the Court confirm that the documents subject to its Minute Order shall be delivered to Caesars and that **all** counsel for parties to these proceedings shall be permitted to view and use the documents subject to this Court's highly confidential designation.

Dated: September 20, 2021

FENNEMORE CRAIG, P.C.

By: /s/ John D. Tennert
John D. Tennert III (SBN 11728)
Wade Beavers (SBN 13451)
Austin M. Maul (SBN 15596)
7800 Rancharra Pkwy
Reno, Nevada 89511
Telephone: (775) 788-2200
Facsimile: (775) 786-1177
Email: jtennert@fclaw.com
wbeavers@fclaw.com
amaul@fclaw.com

Attorneys for Gordon Ramsay

CERTIFICATE OF SERVICE

I certify that I am an employee of FENNEMORE CRAIG, P.C., and that on this date, pursuant to NRCP 5(b), I caused to be served via the Court's e-filing /e-service system a true and correct copy of the above and foregoing DEFENDANT GORDAN RAMSAY'S JOINDER IN DEFENDANT PHWLTV, LLC'S OPPOSITION TO 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 COMMUNICATION to the following:

DATED: September 20, 2021

John R. Bailey, Esq.
Dennis L. Kennedy, Esq.
Joshua P. Gilmore, Esq.
Paul C. Williams, Esq.
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, NV 89148-1302

*Attorneys for Rowen Seibel, Craig Green,
Moti Partners, LLC, Moti Partner 16s, LLC,
LLTQ Enterprises, LLC, LLTQ Enterprises
16, LLC, TPOV Enterprises, LLC, TPOV
Enterprises 16, LLC, FERG, LLC, FERG 16,
R Squared Global Solutions, LLC derivatively
and on behalf of Inc. DNT Acquisition, LLC*

James J. Pisanelli, Esq.
Debra Spinelli, Esq.
M. Magali Mercera, Esq.
Brittanie T. Watkins, Esq.
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Jeffrey J. Zeiger, Esq.
William E. Arnault, IV, Esq.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654

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

Alan Lebensfeld, Esq.
Lawrence J. Sharon, Esq.
LEBENSFELD SHARON & SCHWARTZ, P.C.
140 Broad Street
Red Bank, NJ 07701

Mark J. Connot, Esq.
Kevin M. Sutehall, Esq.
FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135

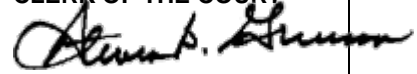
*Attorneys for The Original Homestead
Restaurant, Inc*

Jeffrey J. Zeiger, Esq.
William E. Arnault, IV, Esq.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654

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

/s/ Shawna Braselton
An employee of FENNEMORE CRAIG, P.C.

TAB 87



RIS (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

Nevada Bar No. 12524

BAILEY ♦ KENNEDY

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

JBailey@BaileyKennedy.com

DKennedy@BaileyKennedy.com

JGilmore@BaileyKennedy.com

PWilliams@BaileyKennedy.com

*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

**REPLY IN SUPPORT OF 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**

Date of Hearing: September 22, 2021

Time of Hearing: 9:00 a.m.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Caesars¹ and Ramsay² miss the mark in opposing the Motion to Compel.

First, Caesars and Ramsay argue that this Court’s decision—that the crime-fraud exception applies—was correct, and therefore, this Court was justified in disclosing privileged communications to counsel for Caesars and Ramsay *before* the Development Parties could seek appellate review. The merits of this Court’s decision are irrelevant to the Motion to Compel. What matters is that this Court should not have disclosed privileged communications without first giving the Development Parties an opportunity to seek appellate review. Neither Caesars nor Ramsay cites any authority to the contrary.

Second, Caesars and Ramsay argue that the Development Parties waived the privilege by not exercising a claw-back provision in the Stipulated Confidentiality Agreement and Protective Order (the “Stipulated Protective Order”), which enables a *producing party* to claw back *its own inadvertent disclosure* of privileged communications. This argument fails for numerous reasons, including because the claw-back provision does not apply to this Court’s intentional disclosure of Seibel’s privileged communications and, regardless, the Motion to Compel clearly constituted a written request for all parties who received the Minute Order to immediately return, destroy, or sequester it.

For the reasons set forth below and in the Motion to Compel, this Court should compel the individuals who received the Minute Order to return, destroy, or sequester it, and prohibit them from utilizing the Minute Order, including the privileged communications quoted in it, for any purpose pending the resolution of the Development Parties’ forthcoming writ petition.

¹ See Opp. to the Development Entities, Rowen Seibel, & Craig Green’s Mot. to Compel the Return, Destruction, or Sequestering of the Court’s Aug. 19, 2021, Minute Order Containing Privileged Attorney-Client Communications, filed Sept. 20, 2021.

² See Def. Gordon Ramsay’s Joinder in the Caesars Parties’ Opp. to the Development Entities, Rowen Seibel, & Craig Green’s Mot. to Compel the Return, Destruction, or Sequestering of the Court’s Aug. 19, 2021, Minute Order Containing Privileged Attorney-Client Communications on Order Shortening Time, filed Sept. 20, 2021.

II. ARGUMENT

A. The Merits of this Court’s Decision are Irrelevant to the Motion to Compel; the Development Parties Should Have Been Given an Opportunity to Seek Appellate Review of the Court’s Decision Before Disclosure.

Caesars and Ramsay contend that this Court’s decision—that the crime-fraud exception applies—is correct, and therefore, the privileged communications that are quoted in the Minute Order are not actually privileged and could be freely disclosed to Caesars and Ramsay. (Caesars’ Opp. at 3:14 – 5:5.) This argument misses the point.

As detailed in the Motion to Compel, 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, e.g., In re GMC*, 153 F.3d 714, 717 (8th Cir. 1998); *Haines v. Liggett Grp., Inc.*, 975 F.2d 81, 97 (3d Cir. 1992); *Walanpatrias Found. v. AMP Servs.*, 964 So. 2d 903, 905 (Fla. Dist. Ct. App. 2007); *accord In re Grand Jury Subpoena*, 190 F.3d 375, 388 (5th Cir. 1999). ***Caesars and Ramsay do not cite any legal authority to the contrary.*** Not a single case.

The merits of this Court’s decision are irrelevant to the Motion to Compel. Neither Caesars nor Ramsay denies that the Development Parties may seek appellate review of this Court’s decision requiring them to disclose privileged communications. *See, e.g., In re GMC*, 153 F.3d at 717; *Haines*, 975 F.2d at 97. Simply because Caesars and Ramsay believe that the documents are not privileged does not mean that the Development Parties’ right to seek appellate review is eliminated.

Under Caesars and Ramsay’s logic, no party would ever be entitled to appellate review of a decision so long as the decision is “correct.” Taking this logic to its natural extreme, a defendant who is sentenced to death could be executed before seeking appellate review so long as the trial court’s decision is “correct.” Obviously, that is not how the judicial system works. Yet here, this Court effectively imposed its sentence—disclosure of privileged communications—without affording the Development Parties an opportunity to seek appellate review, despite a wealth of Nevada case law saying that a decision addressing privileged communications should be reviewed through a petition for extraordinary writ relief given that the proverbial bell, once run, cannot be

un-rung. *Cotter v. Eighth Jud. Dist. Ct.*, 134 Nev. 235, 249, 416 P.3d 228, 231 (2018) (“[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.”); *accord Las Vegas Sands Corp. v. Eighth Jud. Dist. Ct.*, 130 Nev. 118, 122, 319 P.3d 618, 621 (2014); *Wardleigh v. Second Jud. Dist. Ct.*, 111 Nev. 345, 350-51, 891 P.2d 1180, 1183-84 (1995).

In sum, this Court’s disclosure of privileged communications was, respectfully, inappropriate and the individuals who received the Minute Order should be compelled to return, destroy, or sequester it and should be prohibited from using it (or its contents) pending the outcome of the Development Parties’ forthcoming writ petition.

B. The Development Parties Have Not Waived Privilege; They Could Not Have Availed Themselves of the Stipulated Protective Order Because They Were Not the Disclosing Party—this Court Disclosed the Privileged Communications.

Caesars and Ramsay contend that the Development Parties have waived the privilege by not exercising a claw-back provision of the Stipulated Protective Order, which enables a *producing party* to claw back *its own inadvertent disclosure* of privileged communications. (Caesars Opp. at 5:6 – 6:17.) This argument fails for numerous reasons.

Initially, the first sentence of the claw-back provision—which Caesars strategically does not quote in its Opposition—explains that it applies only to “*Privileged Information disclosed or produced by a Disclosing or Producing Party upon request by the Disclosing or Producing Party.*” (Stip. Prot. Order at 23:1-4 (emphasis added).) Here, because this Court—not the Development Parties—disclosed the privileged communications, and because the Development Parties—not this Court—seek to compel the return, destruction, or sequestering of the Minute Order, the claw-back provision is inapplicable.

Second, even if the claw-back provision applied, the Motion to Compel plainly constitutes a written request for Caesars and Ramsay to “promptly return, sequester, or destroy” the privileged communications at issue. (*Id.*) Indeed, the Stipulated Protective Order does not provide for any specific form for a request to “return, sequester, or destroy” privileged communications that were inadvertently produced by a party. (*Id.*) After the Development Parties’ notice (via the Motion to Compel), Caesars and Ramsay were obligated to return, sequester, or destroy the privileged

1 communications. (*Id.*) If they disputed the Development Parties’ privilege claim, they then had to
2 “object in writing by notifying the Producing Party of the dispute and the basis thereof.” (*Id.* at
3 23:8-9.) They have done so through their Opposition, and the issue is now before this Court.

4 Third, even if the claw-back provision applied and the Motion to Compel did not constitute
5 notice to Caesars and Ramsay, the last sentence of the claw-back provision unequivocally states
6 that the “failure of any Party to provide notice or instructions under this section shall not constitute
7 a waiver of, or estoppel as to, any claim of attorney-client privilege ... for withholding production
8 as to which the Designating or Producing Party would be entitled in this action.” (*Id.* at 23:18-21
9 (emphasis added).) The parties have agreed, and this Court has ordered, that the failure by a party
10 to invoke the claw-back provision “shall not constitute a waiver of ... any claim of attorney-client
11 privilege.” (*Id.*) It is unknown why Caesars and Ramsay declined to mention such anti-waiver
12 language in their Opposition and Joinder, respectively.

13 Finally, even if the claw-back provision applied, even if the Motion to Compel did not
14 constitute notice to Caesars and Ramsay, and even if the anti-waiver language is inapplicable, the
15 Development Parties’ filing of the Motion to Compel is antithetical to “conduct which evidences an
16 intention to waive a right or ... conduct which is inconsistent with any other intention than to waive
17 a right.” *McKellar v. McKellar*, 110 Nev. 200, 202, 871 P.2d 296, 297 (1994). Stated simply, the
18 filing of the Motion to Compel negates any alleged implied waiver.³

19 In sum, it is wrong for Caesars and Ramsay to claim that the Development Parties waived
20 their right to challenge this Court’s disclosure of privileged communications in its Minute Order.

21 III. CONCLUSION

22 For the reasons set forth above and in the Motion to Compel, this Court should compel all
23 individuals who received the Minute Order (other than counsel for the Development Parties, the
24 Court, and Court personnel) to return, destroy, or sequester the Minute Order pending the

25 _____
26 ³ Caesars and Ramsay’s waiver argument also demonstrates unfortunate gamesmanship. Specifically, counsel for
27 Caesars requested, as a professional courtesy, to reschedule the hearing on the Motion to Compel due to scheduling
28 conflicts. (Stip. & Order to Continue the Hearing on the Motion to Compel, Sept. 15, 2021.) Counsel for the
Development Parties agreed. (*Id.*) Caesars and Ramsay now attempt to use the delay for their own benefit to argue that
the Development Parties delayed in taking action on the Minute Order (despite filing the Motion to Compel) and
somehow waived the privilege. Such gamesmanship should not be condoned by this Court.

1 Development Parties' forthcoming writ petition.⁴ Further, all such individuals should be prohibited
2 from using the contents of the Minute Order (or the privileged communications contained within it)
3 for any purpose until the Nevada Supreme Court decides the writ petition.

4 DATED this 21st day of September, 2021.

5 BAILEY ♦ KENNEDY

6
7 By: 

8 JOHN R. BAILEY
9 DENNIS L. KENNEDY
10 JOSHUA P. GILMORE
11 PAUL C. WILLIAMS

12 *Attorneys for the Development Parties*
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28 ⁴ The Development Parties expressly reserve the right to seek other remedies necessitated by the disclosure.

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 21st day of September, 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
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 Defendants/Counterclaimant Desert Palace, Inc.; Paris Las Vegas Operating Company, LLC; PHWL, LLC; and Boardwalk Regency Corporation

JOHN D. TENNERT
FENNEMORE CRAIG, P.C.
7800 Rancharra Parkway
Reno, NV 89511

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

ALAN LEBENSFELD
BRETT SCHWARTZ
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/ Sharon Murnane
Employee of BAILEY ♦ KENNEDY

TAB 88

1 IN THE DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 ---o0o---

4 ROWEN SEIBEL, et al.,)

5 Plaintiff,)

Case Number

6 A-17-751759-B

7 vs.)

8 PHWLTV, LLC, et al.,)

9 Defendant.)

10 _____)
11
12 Reporter's Transcript of Telephonic Proceedings

13 Wednesday, September 22, 2021

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16 BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

17 DISTRICT COURT JUDGE
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24 Reported By: Rhonda Aquilina, Nevada Certified #979, RMR, CRR
25 Court Reporter

APPEARANCES:

(PURSUANT TO ADMINISTRATIVE ORDER 20-24, ALL MATTERS IN
DEPARTMENT 16 ARE BEING HEARD VIA TELEPHONIC APPEARANCE)

For Plaintiffs:

BAILEY, KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, NV 89148-1302
BY: DENNIS KENNEDY
ATTORNEY AT LAW

For Defendants PHWLTV, LLC, Desert Palace, Paris Las Vegas
Operating Company, LLC, Boardwalk Regency:

PISANELLI BICE, PLLC
400 South 7th Street, Ste. 300
Las Vegas, NV 89101
BY: MAGALI MERCERA
ATTORNEY AT LAW

For Defendant Gordon Ramsay:

FENNEMORE, CRAIG, P.C.
7800 Rancharra Pkwy
Reno, NV 89511
BY: JOHN D. TENNERT
ATTORNEY AT LAW

Wednesday, September 22, 2021

10:27 a.m.

P R O C E E D I N G S

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THE COURT: Next up on the calendar will be page 13,
Rowen Seibel versus PHWLTV, LLC.

Let's go ahead and set forth our appearances for the
record.

MR. KENNEDY: Good morning, Your Honor. Dennis
Kennedy for the moving parties.

THE COURT: Okay. Good morning.

MS. MERCERA: Good morning, Your Honor. Magali
Mercera on behalf of PHWLTV, Desert Palace, Inc, Paris Las Vegas
Operating Company, and Boardwalk Regency Corporation.

MR. TENNERT: Good morning, Your Honor. John Tennert
on behalf of Gordon Ramsay.

THE COURT: And does that cover all appearances? I
think it does.

THE CLERK: Everyone checked in, yes.

THE COURT: All right. And do we want to have this
matter reported?

MR. KENNEDY: Yes. This is Dennis Kennedy. We do,
Your Honor.

THE COURT: Okay. Mr. Kennedy, we shall do that for
you, sir.

All right. Sir, you do have the floor.

Rhonda Aquilina, Nevada Certified Reporter #979

1 **MR. KENNEDY:** All right. Your Honor, everything
2 pertaining to this motion is fully briefed and set forth. I
3 can cut to the chase on it pretty easily.

4 In an order that the Court entered, a minute order
5 requiring the -- making some findings with respect to some
6 privilege issues, the Court in the minute order quoted from
7 several of the documents that were at issue, and in the minute
8 order recited some of the material that some of the
9 attorney-client communications that the Court had found not to
10 be privileged, and that minute order was circulated to a number
11 of persons, including counsel for Caesar's.

12 Now, we had -- the moving parties had gone to the
13 Supreme Court earlier on a writ petition, and the Supreme Court
14 declined to rule on the writ petition at that point, saying
15 it -- you can come back after the Court conducts its in-camera
16 review. The Court did the in-camera review and made a ruling,
17 and of course that ruling is not subject to this motion. What
18 is the subject of this motion is the Court's quoting certain
19 attorney-client communications in the minute order. And what we
20 have asked the Court to do is to withdraw that minute order and
21 say to the other parties who received it, Look, you've got to
22 sequester it, you've got to destroy it, you can't use it because
23 it is quite certain that the moving parties here are going to
24 file another writ petition with the Supreme Court, and the
25 quotations that the Court put in the minute order are of the --

1 are some of the privileged communications, and those should not
2 be made available to the other parties in this litigation until
3 the Supreme Court has an opportunity to rule on the writ
4 petition, which is forthcoming.

5 Now, this is an issue of course that our Supreme Court
6 has never taken up, but we quoted a number of cases to Your
7 Honor from federal court --

8 **THE COURT:** I don't want to cut you off, but I think
9 it's important to point out a couple of factors. Number one,
10 we did file that minute order under seal. I don't know if you
11 knew that or not.

12 **MR. KENNEDY:** Correct, that's right.

13 **THE COURT:** And I think -- and maybe we made an error,
14 but our intent was only to serve the parties to that specific
15 issue. Now, if we inadvertently sent it to someone that should
16 not have received it, there was no intent on our part. We were
17 trying to make it very limited to your client and opposing
18 party -- opposing counsel, and that was it. That was our
19 intent.

20 **MR. KENNEDY:** I know that, and I would never imply --

21 **THE COURT:** I'm trying to make the job easier. That
22 was our intent.

23 **MR. KENNEDY:** Okay. And so I will narrow this issue
24 down and tell you, Your Honor, that the Caesar's party should
25 not have received the substance of the communication. And the

1 cases we cited to the Court, and these are just what the
2 authorities said, is if the Court -- if it looks as though the
3 party whose communications are being revealed is going to
4 either take an appeal or seek other remedies, the Court should
5 not disclose the substance of the communications but should be
6 careful or should be careful not to, and the Court could do
7 other things in entering its order that don't disclose the
8 substance of the communications, saying, for example, document
9 number 1, paragraph 2, the second sentence, or something like
10 that, so that the Supreme Court knows exactly what the Court is
11 focused on.

12 But what happened here is those communications, the
13 attorney-client communications which are at issue have been
14 disclosed to the opposing party, to Caesar's, and now they have
15 those communications. They shouldn't have the substance of the
16 communications until the Supreme Court has ruled.

17 **THE COURT:** I understand what you're saying, sir, I
18 do.

19 **MR. KENNEDY:** And I know you do, so I'm done. Yeah,
20 I'm done.

21 **THE COURT:** I agree. Thank you.

22 We'll hear from the opposition.

23 **MS. MERCERA:** Thank you, Your Honor. Good morning.

24 By their motion, the Seibel parties are seeking to
25 impose a requirement upon this Court that simply doesn't exist

1 under Nevada law. There is no automatic review of a district
2 court's discovery decision even on these privileged issues.

3 Caesar's has long suspected every course of action
4 that Mr. Seibel has taken surrounding his criminal conviction
5 has been a fraud. We know Mr. Seibel lied about the creation,
6 purpose, and effect of both the family trust and his prenuptial
7 agreement. Through this entire motion practice, Caesar's
8 long-held suspicions have simply proven to be true. The fraud
9 which was effectuated upon Caesar's and this Court opens up the
10 disputed records discovery under the Crime-Fraud Exception. By
11 their very nature, they are not privileged.

12 Now, Your Honor, no one in this case disputes that the
13 law protects communications between a client and their attorney
14 made for the purposes of facilitating the rendition of legal
15 services, that's codified in the statute. But the
16 attorney-client privilege is a statutory privilege and it is
17 not absolute. The Nevada statutory scheme specifically
18 addresses the Crime-Fraud Exception and states, and I'm quoting
19 from NRS 49.115, subsection 1: There is no privilege under NRS
20 49.095 if the services of the lawyer were sought or obtained to
21 enable or aid anyone to commit or plan to commit what the
22 client knew or reasonably should have known to be a crime or
23 fraud. The relevant case law supports this authority as well
24 under the law to establish that a Crime-Fraud Exception
25 applies, a party is only required to satisfy a two-part test.

1 First as this Court knows, Caesar's was required to
2 show that Seibel was engaged in a plan or committing a fraud or
3 fraudulent scheme. The Court established that through its
4 June 8th findings of fact and conclusions of law; it determined
5 that Caesar's had met that burden. Then the next step that
6 Caesar's is required to show was to demonstrate that the
7 attorney-client communications for which production was sought
8 were sufficiently related to or made in furtherance of that
9 fraud. That second step is accomplished through the Court's
10 in-camera review.

11 Now, those two steps are all that's required. With
12 their motion -- and in fact any basis in Nevada law -- the
13 Seibel parties are essentially arguing that there's this third
14 step: That this Court's order must be reviewed by the
15 appellate court before the documents are turned over to
16 Caesar's. That's simply not true. The Seibel parties already
17 asked for similar relief from the Nevada Supreme Court
18 following this Court's June 8th findings of fact and
19 conclusions of law, and the Supreme Court denied their writ
20 petition. There is simply no automatic review required of this
21 Court's discovery minute order.

22 The Seibel parties can certainly once again attempt to
23 seek relief from the Supreme Court, but there's no guarantee
24 that, one, the Supreme Court is going to accept their writ
25 petition, or, number two, to actually grant the relief

1 requested.

2 The Supreme Court in fact emphasized in their order
3 denying the prior writ petition, that whether to entertain a
4 petition for extraordinary writ relief is discretionary with
5 that court, and the Seibel parties would have to demonstrate
6 that extraordinary relief is warranted.

7 On top of that, even if the Supreme Court does accept
8 their writ petition, the Seibel parties would have to show that
9 this court abused its discretion. They simply cannot and have
10 not shown that, Your Honor.

11 I would be remiss not to address the Seibel party's
12 comparison in their motion that this issue somehow is similar
13 to a death penalty case. While I can definitely understand
14 that the Seibel parties are frustrated at having their
15 fraudulent scheme uncovered, there is no comparison, Your
16 Honor, between a discovery dispute like the one before this
17 Court and a criminal death penalty case where the life of a
18 person hangs in the balance. The law is different, standards
19 are different. Other than for shock value, I think that that
20 comparison has no place in this debate.

21 This issue was extensively vetted. The Court
22 considered briefing, oral argument, took the matter under
23 advisement, and reviewed the records in-camera. After that
24 extensive process and that extensive analysis, the Court
25 determined that Caesar's satisfied its burden and that the

1 Crime-Fraud Exception applied in accordance with the two-step
2 analysis - all that's required under the law. There's no
3 requirement for appellate review before the documents can be
4 disclosed to Caesar's. As a result, Your Honor, there's simply
5 no basis to claw back the Court's minute order on this
6 decision.

7 Now, importantly, Your Honor, even if appellate review
8 were appropriate, we argue that the Seibel parties have waived
9 their right to seek that appellate review, because they waived
10 the privilege, if any existed in the first place.

11 As this Court will recall, in March of 2019 the
12 parties entered into a stipulated confidentiality agreement and
13 protective order and, as with any large case, that order sets
14 forth a procedure to deal with the disclosure of privileged
15 communications. Specifically, after notifying a party that a
16 privileged disclosure has occurred, the receiving party has an
17 obligation, even if they dispute the claim of privilege, to
18 sequester the documents to allow the parties to resolve that
19 issue.

20 As in any large case, Your Honor, that issue has come
21 up in this case. Both the Seibel parties and Caesar's have
22 invoked that provision in the past. But in this case the
23 Seibel parties did nothing to notify Caesar's or the other
24 third parties that a disclosure took place that they intended
25 to challenge. Counsel for the Seibel parties knew of the

1 provision and they simply didn't use it.

2 Now, they attempt to argue in their reply that the
3 motion was an attempt under the protective order to claw back,
4 but, Your Honor, that's simply not true. Review of the motion
5 shows that that's just not the case. First of all, the motion
6 is directed at this Court, not Caesar's or any other party;
7 second, the Seibel parties never cite to the protective order
8 anywhere in their motion; they certainly could have, but they
9 didn't, and that failure acts as a waiver.

10 Finally, Your Honor, as this Court expects of all the
11 parties in this case, you know, personal attacks have no place
12 in a debate such as this one. Nevertheless, the Seibel parties
13 in their reply attack Caesar's counsel by arguing that we used
14 a request for extension due to an emergency to argue waiver in
15 our opposition. I understand that Seibel's counsel worked very
16 quickly to get their reply in yesterday after our late Monday
17 afternoon filing of the opposition. You know, perhaps in their
18 haste they misread or misunderstood our argument about waiver.
19 At no point did we argue or do we currently argue that the
20 one-week extension that counsel graciously extended serves as a
21 basis for waiver. Despite, you know, the very contentious
22 nature of this litigation, Your Honor, counsel has always
23 worked respectfully and professionally throughout this process,
24 and I am hopeful that that would continue. So I just want to
25 be clear that our waiver argument is not based in any way on

1 that one-week extension, but solely based on the Seibel's party
2 failure to invoke section 24 of the protective order.

3 Your Honor, to briefly address the other parties --
4 the other Caesar's parties, if you will, that received the
5 minute order. Counsel complains of two additional sets, one
6 being Ms. Watkins and lawyers from Kirkland & Ellis who
7 withdrew its representation for Caesar's. The minute order was
8 served on Ms. Watkins at her pisanellibice email account. That
9 email account is not forwarded to Ms. Watkins in her current
10 role as a member of the Nevada Game and Control Board, so she
11 did not receive that order, Your Honor.

12 Additionally, as to prior counsel for Caesar's, they
13 actually are current counsel for Caesar's in certain bankruptcy
14 matters pending before the Illinois court. Mr. Seibel's
15 counsel, not present counsel but other Seibel counsel is also a
16 party to that litigation. Under the terms of both the
17 protective order and a global discovery agreement that the
18 parties entered into, that counsel would nevertheless be
19 entitled to highly confidential information. So there's been no
20 outside Caesar's counsel, if you will, that has been in receipt
21 of that minute order.

22 In conclusion, Your Honor, Mr. Seibel has --

23 **THE COURT:** I'm sorry, I don't want to cut you off,
24 but, I mean, for the record, once again, I just want to make
25 sure everyone understands this. We did make a conscious

1 decision to limit my decisions as far as how it would be
2 dispersed to the parties by notice. Because I did talk to my
3 court clerk and what we wanted to do, just to make sure that it
4 was counsel on behalf of Seibel and the Caesar's party, was
5 based upon I guess the -- we looked at the docket and the
6 current lawyers that were listed on behalf of Caesar's; is that
7 correct, Mr. Clerk?

8 **THE CLERK:** Yes.

9 **THE COURT:** And we thought about this. And also I
10 asked them, I said, Look, I don't know what you do from a
11 technical perspective, but make sure when we file the minute
12 order it's not subject to public viewing, and the like, and
13 that's what we did; is that correct, sir?

14 **THE CLERK:** Yes, Judge.

15 **THE COURT:** And so I guess in spirit I tried to make
16 sure I was in compliance with any orders that were in place,
17 and I kept the communications confidential and between the
18 parties.

19 Just as important, too -- and this is another question
20 I have from an appellate purpose -- if they're prevented from
21 using or prohibited from using the contents of the minute order
22 for any purpose, how do they -- how does Caesar's respond to an
23 appeal in this case?

24 **MS. MERCERA:** Well, Your Honor --

25 **MR. KENNEDY:** We just -- go ahead. Go ahead.

1 **MS. MERCERA:** Your Honor, if I may, actually, under
2 the terms of the protective order, highly confidential
3 information is similarly allowed to be used and filed with the
4 Court. So the minute order simply would have to be filed under
5 seal with the Nevada Supreme Court. That would in no way be a
6 violation of the protective order in this case.

7 And to address your comment, Your Honor, about
8 ensuring that counsel for Caesar's would be the only one who
9 received the minute order, my argument is simply to state that
10 that in fact is true, that only counsel, active counsel for
11 Caesar's received the minute order. So the Court's intent was
12 effectuated.

13 **THE COURT:** All right. Anything else, ma'am?

14 **MS. MERCERA:** Yes, Your Honor, just briefly.

15 In conclusion, this Court has determined now through
16 two minute orders, detailed findings of fact and conclusions of
17 law that this is a case for application of the Crime-Fraud
18 Exception. There's no basis to claw back this Court's minute
19 order, and the parties should be permitted to use it in
20 accordance with the protective order as they prepare their order
21 memorializing the Court's decision.

22 And unless the Court has any further questions for me,
23 I would submit it on the pleadings.

24 **THE COURT:** Okay. Thank you, ma'am.

25 Mr. Kennedy, sir, you have the floor. And thank you

1 for your patience.

2 **MR. KENNEDY:** No problem, Your Honor.

3 The argument you just heard really misses the point of
4 this motion. We're not rearguing what the Court decided. The
5 Court's made a decision, and it has held that certain documents
6 are not privileged or certain parts of certain documents are not
7 privileged because of the Crime-Fraud Exception, and we accept
8 that.

9 The Court, however, has quoted from those documents
10 and provided those quotes to counsel for Caesar's, and it was
11 pretty apparent that there was going to be writ relief sought
12 in the Supreme Court. And what has happened is that the actual
13 privileged communications have now been turned loose to
14 Caesar's when appellate review is going to be sought, and that
15 is a little premature because now the privileged communications
16 are out there and the bell has been rung.

17 We're asking the Court to unring the bell, if the
18 Court can make a determination as to which communications are no
19 longer subject to the attorney-client privilege without quoting
20 them, and that's what the cases that we've cited to the Court
21 say, because there's going to be appellate review sought. And
22 the Court can say to the Supreme Court, Look, here are the
23 documents, the paragraphs, and the sentences, and can say to the
24 Supreme Court this is what I find, and the Supreme Court can
25 then look at those. And if the Supreme Court then says, okay,

1 we have a question, and it orders the response to the writ, the
2 Supreme Court will have to decide what to do from there.

3 But the authorities that we've cited to this Court
4 said if that review is being sought, the trial court should be
5 very, very careful and cautious in entering its order to not
6 disclose the substance of those communications, because that, in
7 essence, deprives the party of its right to appellate review or
8 to writ review, and that's what we're saying.

9 And I emphasize, Your Honor, I know you were careful
10 in what you did, because we know what the issue is and how
11 important that the privilege is, and I am in no way arguing or
12 implying that the Court did anything that was consciously wrong.
13 It's just that the Court should have been a little more careful
14 in identifying the quotes and the substance of the
15 communications, because it was clear that appellate review or
16 writ review in this case was going to be sought. And that's
17 what we're asking the Court to do, is to withdraw that minute
18 order and to make the order not any less specific, but to make
19 it specific without disclosing the substance of the
20 communications, and that's all we're asking the Court to do
21 because it's obvious that we are -- we are going to seek
22 appellate writ review on this.

23 Finally, with respect to the protective order, the
24 protective order and its clawback provision deals with
25 documents by its own terms that are mistakenly produced by a

1 party to another party. The protective order does not deal
2 with parts of the trial court's orders, because a party doesn't
3 have any right under a protective order to deal with what a
4 court says. However, we do have the right to ask the Court to
5 revise the order, and we've cited the Court a good deal of
6 authority on that proposition. And those propositions and the
7 relief we seek is entirely consistent with the authority of the
8 Nevada Supreme Court, which says these communications have to
9 be protected until the Supreme Court can review them or decide
10 to review them, because otherwise the privilege is lost and
11 there's no way to unring the bell.

12 That concludes my argument.

13 **THE COURT:** Well, here's my question, though, and this
14 is what is unclear to me. Hypothetically, an order to
15 meaningfully deal with any appellate issue, wouldn't Caesar's
16 have to know the content of the alleged documents as it
17 pertains to the potential Crime-Fraud Exception?

18 **MR. KENNEDY:** Yes, Your Honor, and here's what happens
19 when it gets to the Supreme Court. If the Supreme Court looks
20 at the writ petition and says, Yes, there is a question and we
21 order a response to the writ petition, then Caesar's, if it
22 cannot respond, has to say to the Supreme Court, Look, we need
23 some idea of what these statements are in order to respond, and
24 the Supreme Court ultimately has to make that determination,
25 and that's what the authorities are that we cited to this

1 Court. It says the trial court has to be careful and
2 circumspect if review is going to be sought, and if the Supreme
3 Court says, Yep, we need to look at these things to make this
4 determination, then Caesar's can say, Well, you either have to
5 give them to us or give us some clue as to what we're
6 responding to. And because the Supreme Court is ultimately
7 going to make the decision, they can decide what gets seen,
8 what gets disclosed.

9 But for this Court, this Court should just say, Look,
10 if there's going to be appellate review, here are the statements
11 that I'm relying on, here's my reasoning, but I'm not going to
12 disclose those statements or the substance of them, because then
13 the privilege is gone and there's really no meaningful
14 opportunity for appellate review. And that's what we're saying,
15 is if the Supreme Court says we want to look at this, then they
16 will make the determination of what should or should not be
17 disclosed. And since they're the final authority, that will be
18 fine with everybody. But right now the substance of the
19 communications has been disclosed, and these moving parties have
20 effectively - if those statements are out there - been denied
21 the right of appellate review to them. And that's all we're
22 asking the Court to do.

23 **THE COURT:** And so --

24 **MS. MERCERA:** Your Honor --

25 **THE COURT:** Go ahead. I mean, this is -- I'm going to

1 let you -- and, ma'am, you know I'm going to let you say what
2 you have to say.

3 **MS. MERCERA:** Thank you, Your Honor.

4 **THE COURT:** But I was thinking about it from a
5 procedural perspective -- and understand this, I don't know the
6 answer to this and that's why I'm asking the question. Was
7 there any sort of request made at the time the initial motions
8 were being filed in this matter and the oppositions as to
9 specifically how I should handle it? Because I don't remember
10 that, and it was -- I apologize I overlooked it.

11 But what I was trying -- because I'm looking at some
12 of the cases, and it does say here -- "We stress -- for example,
13 this is the *GMC* case out of the Eighth circuit, a 1998 case: We
14 stress that the district court ultimately determines the
15 Crime-Fraud Exceptions applies. They should keep privileged
16 communications under seal to prevent further disclosure until
17 all the avenues of appeal have been exhausted. And that's a
18 little broad, but in many respects that's what I thought I was
19 doing by sealing it and making sure the decision is only given
20 to the parties that were subject to the motion.

21 And the reason why I kind of bring it up, I just kind
22 of look back, and maybe this goes a little bit further, but I
23 remember I just got that decision back from the Nevada Supreme
24 Court as it pertains to that arbitration case involving the Las
25 Vegas Sun and Las Vegas Review Journal regarding private

1 arbitration in which it became public. And one of the things
2 they said is this -- and I understand why we go to arbitration,
3 but the basis of my decision I just felt I had to give to the
4 parties involved. And I do understand your position, though,
5 sir, I do, but those are my thoughts.

6 Ma'am, I know you wanted to say something. And I even
7 thought about it, should there have been a Rule 37 along with
8 this type of relief? I mean, I don't know.

9 But, ma'am, you can go ahead.

10 **MS. MERCERA:** Thank you, Your Honor.

11 Three points, briefly. Number one, what counsel for
12 the Seibel parties is essentially arguing right now is a motion
13 for reconsideration to modify the Court's order, and they
14 didn't cite any authority or case law in their motion to meet
15 that standard.

16 Second, there is no Nevada authority holding that
17 appellate review is in fact required following the district
18 Court's determination on this type of discovery dispute. As I
19 said earlier in my argument, what the Seibel parties are
20 essentially advocating for, Your Honor, is a three-step
21 analysis that is found nowhere in the applicable case law in
22 Nevada. Moreover, the Supreme Court doesn't automatically
23 grant review for every discovery issue.

24 And as Your Honor so eloquently put, your order also
25 provides Caesar's the basis to be able to not only prepare the

1 findings of fact and conclusions of law in support of the
2 Court's decision, but it provides the basis by which this Court
3 found that those documents didn't meet the privilege requirement
4 and were available to be disclosed pursuant to the Crime-Fraud
5 Exception. Without that, what Mr. Kennedy is arguing is that we
6 would basically have to go to the Supreme Court, come back to
7 get additional findings then from you, Your Honor, when we would
8 not be able to explain how we are entitled to those
9 communications, and then again go back to the Supreme Court.
10 That's not how the process works, respectfully, Your Honor.

11 We think your order complied with the applicable case
12 law in Nevada and even with the cases that Mr. Kennedy cites.
13 Your Honor didn't publicly file the minute order. The parties
14 have a stipulated protective order in this case that allows them
15 to deal with this highly confidential information under seal to
16 be able to provide it to both the Court and proceed to use it in
17 the appellate process if it comes to that.

18 **MR. KENNEDY:** Your Honor, this is Dennis Kennedy. If
19 I could make one statement in conclusion.

20 **THE COURT:** You sure can.

21 **MR. KENNEDY:** We understand that there is no automatic
22 review. What we are asking the Court to do is to deal this
23 completely, and then if the Supreme Court says we want to
24 review this, then the matter goes to the Supreme Court and they
25 can decide whether or not Caesar's was entitled to get

1 additional information to respond. But all we're asking the
2 Court to do is please don't disclose the substance of the
3 communications until the Supreme Court has a chance to decide
4 whether it's going to review this. That is the very narrow
5 request we're making.

6 **THE COURT:** And lastly, what would you anticipate from
7 a procedural perspective as to how the Supreme Court would
8 handle this? Because wouldn't they want briefing from Caesar's
9 also to make that determination?

10 **MR. KENNEDY:** Yes, they would. If the Supreme Court
11 says we're going to take it up and they would say, Caesar's,
12 you have to respond. Typically, the Supreme Court, in asking
13 for a response to a writ petition, will specify what it wants
14 addressed. It rarely says to a party, just respond. Typically
15 they say, Respond, tell us why writ intervention is appropriate
16 or inappropriate, and then they give specific issues that they
17 want a response to. Caesar's could very well say to them, We
18 need to see the substance or the summary or some evidence of
19 what those communications are. And the Supreme Court is pretty
20 good on this stuff, if you say I need some assistance in doing
21 my response.

22 And typically the responses to writ petitions come out
23 within 30 days. I mean, the Supreme Court is really good on
24 that. I do a lot of writ work, and those things come out -- I
25 mean, the first one in this case came out in about a week, I

1 think.

2 And if Caesar's needs additional information, the
3 Supreme Court will deal with that, because the Supreme Court is
4 very well aware that if you give the information and there's too
5 much, the privilege can be gone. And we're just asking this
6 Court to say to the Supreme Court, Here's what I decided; now
7 you go ahead and see if I was right or wrong.

8 **MR. TENNERT:** And, Your Honor, this is John Tennert on
9 behalf of Gordon Ramsay. If I could be heard for a brief
10 moment.

11 **THE COURT:** Yes, you can, sir.

12 **MR. TENNERT:** So we filed a joinder to Caesar's
13 opposition, and, you know, we just wanted to clarify one point
14 in the minute order, is that once the documents are ultimately
15 produced, and that may be following a writ petition, that the
16 documents shall be produced for the eyes of counsel only. We
17 interpret that meaning the eyes of counsel for parties of
18 record to this case, including my client Gordon Ramsay, who is
19 an adverse party. I don't think that's an issue of -- a
20 disputed issue. I just wanted to raise that before the Court
21 for purposes of, you know, when Caesar's counsel is drafting a
22 findings of fact and conclusions of law, that the documents,
23 the way which read it, shall be produced to Caesar's counsel
24 and for the eyes of counsel to parties to this case who are all
25 parties to this Court's stipulated protective order and also

1 the global discovery agreement.

2 **MR. KENNEDY:** Your Honor, Dennis Kennedy again.
3 That's not an issue here that we've raised. It's something
4 that will be taken up when this issue is concluded. I'm not
5 for it or against it, I just haven't raised it.

6 **THE COURT:** Here's my final question. As far as the
7 writ petition is concerned, what type of time frame are we
8 talking about here? Because when I look at this matter -- let
9 me look at the calendar and see where we're at.

10 Okay. I see we have a status check coming up. And I
11 have just one final question. At any point during the law and
12 motion on this specific issue, was it suggested to me that I
13 should follow this three-part analysis, or three-step?

14 **MS. MERCERA:** Your Honor, this is Magali Mercera on
15 behalf of the Caesar's parties. I can answer both of those
16 questions.

17 With respect to your second question about whether any
18 of the case law that the Seibel parties now cite, that is not --
19 that was never brought up before. The parties were following
20 the *In Re Napster* standard, which is that two-step test under
21 the Ninth Circuit.

22 And, second, in terms of timing, Your Honor, I just
23 wanted to address something that Mr. Kennedy said as well. The
24 writ petition dealing with this issue was filed on an emergency
25 basis before, and the Supreme Court did deal with it pretty

1 quickly. It was because the Seibel parties were trying to not
2 give the documents to the Court for in-camera review.

3 We do have another writ petition currently pending
4 before the Nevada Supreme Court that was filed in February of
5 this year. It's been fully briefed, but we still have no
6 decision. So I know the Court is concerned about timing. I
7 wanted to give it some perspective as to other timing that we're
8 dealing with in terms of getting appellate review.

9 **THE COURT:** Mr. Kennedy, last word, sir. I think I
10 know what I'm going to do. Go ahead.

11 **MR. KENNEDY:** Your Honor, as soon as the Court decides
12 this issue, we are going to file the writ petition as soon as
13 we can. I mean, we're not going to sit on it. It's a very
14 important issue, and we're going to do it as soon as we can.

15 **THE COURT:** I understand. All right. Anyway, this is
16 what I'm going to do, because I want to make sure you can do it
17 as soon as you can.

18 Regarding the motion to compel the return, destruction
19 or sequestering of the Court's order of August 19, 2021, I'm
20 going to grant it in part and deny it in part. And this is
21 what I'm going to do: As far as -- because let's face it, I
22 think, in a general sense, Caesar's has a fairly good
23 understanding as to the basis for my decision, based upon the
24 minute order that was issued under seal in this case, so they
25 know what decision I made and why I made the decision.

1 It just seems to me that from a procedural perspective
2 it would be a waste of time to have to run up to the Nevada
3 Supreme Court for purposes of the writ petition and ask for
4 permission of what they already know, because, I mean,
5 hypothetically, it probably would have been recommended earlier
6 on: Judge, you should do this three-step process. I might have
7 accepted that, because I am concerned about the privilege
8 issues, and that's why I tried to be very careful when I issued
9 the minute order, that it was under seal, and I just wanted to
10 make sure that only the parties that were part and parcel of the
11 motion were involved.

12 And so I'm going to slightly change the order in this
13 regard. Of course in the spirit of the protective orders and
14 the like are in place, if Caesar's has to respond to a writ
15 petition, they can, without seeking some sort of relief from
16 the Nevada Supreme Court, they can rely upon my decision that I
17 made in this case. It just seems to me that makes more sense.
18 But more importantly, they can't use it for other purposes as
19 far as the case is concerned until we get an ultimate decision
20 by the Nevada Supreme Court regarding my decision.

21 And so Caesar's can use the minute order, I guess, for
22 appellate purposes and/or writ review purposes only for now,
23 and that will be my decision.

24 And Mr. Kennedy, can you prepare an order in that
25 regard?

1 **MR. KENNEDY:** Sir, we will and notify counsel.

2 **THE COURT:** Yes, ma'am.

3 **MS. MERCERA:** Your Honor -- I'm so sorry, Mr. Kennedy,
4 I just want to make sure we have clarification, because we do
5 have to prepare a findings of fact and conclusion of law to
6 effectuate the Court's minute order.

7 Is Caesar's entitled to -- allowed to, I should say,
8 rely on that minute order to prepare the findings of fact that
9 will ultimately be the subject of the writ petition?

10 **THE COURT:** I think -- you know, I guess it has to be,
11 right? At the end of the day they have to have something to
12 review. But my -- yes, you could do that, ma'am. But the
13 usage shall be limited for now solely to the opposition to the
14 writ petition. After our Nevada Supreme Court makes a
15 decision, then we'll cross that road.

16 Because what I anticipate is going to happen in this
17 case, in fact I know it will, hypothetically, if the documents
18 are produced, I would anticipate that -- and understand I'm not
19 an accountant, I was a business major. Interestingly, I became
20 a tort lawyer, but I have a lot of interest in estate planning
21 and those types of things. In fact, I was enrolled in that LLM
22 program of taxation before I moved to Las Vegas, and I ended up
23 in court. But I just want to make it limited for now.

24 **MS. MERCERA:** Understood, Your Honor.

25 **THE COURT:** The documents won't be turned over. The

1 minute order is what it is.

2 Ma'am, you can set forth findings of fact and
3 conclusions of law, and you can incorporate by reference the
4 minute order. Maybe we could do it that way and you don't have
5 to put it in a minute order -- I'm sorry, in a formal order.
6 But everyone knows what it means, because I think my minute
7 order was actually pretty clear as to some of entries that I
8 relied upon in making my decision; all right?

9 **MS. MERCERA:** Understood, Your Honor, yes. Thank you,
10 Your Honor.

11 **MR. KENNEDY:** Thank you, Your Honor.

12 **THE COURT:** Yes, sir. Everyone, enjoy your day.

13 **MR. KENNEDY:** All right. See you.

14 (Proceedings adjourned at 11:08 a.m.)

15 ---o0o---

Reporter's Certificate

State of Nevada)
)
County of Clark)

I, Rhonda Aquilina, Certified Shorthand Reporter, do hereby certify that I took down in stenotype all of the proceedings had in the before-entitled matter at the time and place indicated, and that thereafter said stenotype notes were transcribed into typewriting at and under my direction and supervision and the foregoing transcript constitutes a full, true and accurate record to the best of my ability of the proceedings had.

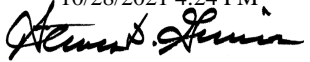
In witness whereof, I have hereunto subscribed my name in my office in the County of Clark, State of Nevada.

Dated: October 27, 2021



Rhonda Aquilina, RMR, CRR, Cert. #979

TAB 89


CLERK OF THE COURT

James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
Debra L. Spinelli, Esq., Bar No. 9695
DLS@pisanellibice.com
M. Magali Mercera, Esq., Bar No. 11742
MMM@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100
Facsimile: 702.214.2101

*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 criminal
13 conduct and in an effort to conceal his criminal conviction while still reaping the benefits of his
14 relationship with Caesars – ten days before entering his guilty plea – Seibel informed Caesars that
15 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 19. THE COURT FURTHER FINDS THAT at or around the same time that Seibel set-
2 up the new entities and purported to assign the Seibel Agreements to these new entities, Seibel was
3 secretly negotiating a prenuptial agreement with Dorfman that, by its plain terms, would require
4 Dorfman to share the distributions she received from the Seibel Family 2016 Trust with Seibel and
5 ensure that the entities assigned to the Trust would remain Seibel's separate property;

6 20. THE COURT FURTHER FINDS THAT the prenuptial agreement has not been
7 amended or nullified;

8 21. THE COURT FURTHER FINDS THAT Seibel used his lawyers to obtain advice
9 about setting up the trust and its interplay with the prenuptial agreement;

10 22. THE COURT FURTHER FINDS THAT Seibel and his attorneys falsely represented
11 to Caesars that Seibel was disconnected from receiving benefits from the Seibel Family 2016 Trust
12 and the business interests with Caesars;

13 23. THE COURT FURTHER FINDS THAT the prenuptial agreement demonstrates that
14 Seibel always had an interest in receiving distributions from the Seibel Family 2016 Trust – a direct
15 contradiction to the false representations made to Caesars and this Court;

16 24. THE COURT FURTHER FINDS THAT all of the statements made to Caesars about
17 Seibel's purported disassociation were false when made and designed exclusively for the purpose
18 of defrauding Caesars so that Seibel could continue to benefit from the relationship despite his
19 unsuitability to conduct business with a gaming licensee;

20 25. THE COURT FURTHER FINDS THAT, on June 8, 2021, this Court entered its first
21 Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion to Compel Documents
22 Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception (the
23 "June 8, 2021 Order"). In that order, the Court held that Caesars had met its initial burden of proof
24 and established that Seibel's representations as to the independence of the Seibel Family 2016 Trust
25 were unfounded, and Seibel could continue to benefit from the Seibel Agreements despite his
26 unsuitability to conduct business with a gaming licensee. As a result, communications seeking
27 legal advice for creation of the prenuptial agreement and the Seibel Family 2016 Trust are
28

discoverable under the crime-fraud exception (NRS § 49.115(1)) as they were made in furtherance of a scheme to defraud Caesars;

26. THE COURT FURTHER FINDS THAT, pursuant to the June 8, 2021 Order, the Court ordered the Seibel Parties to submit the following documents from their privilege log to the Court for an *in camera* review: 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; CTRL00145759; CTRL00145772; CTRL00145774; CTRL00145775; CTRL00145777; CTRL00145789; CTRL00145790; CTRL00145791; CTRL00145792; CTRL00145877; CTRL00145878; CTRL00145879; CTRL00145895; CTRL00145896; CTRL00145897; CTRL00177870; CTRL00177871; CTRL00177872; CTRL00177873; CTRL00177874; CTRL00178124; CTRL00178125; CTRL00178141; CTRL00178153; CTRL00178156; CTRL00178158; CTRL00178163; CTRL00178164; CTRL00178165; CTRL00178166; CTRL00178167; CTRL00178168; CTRL00178169; CTRL00178173; CTRL00178174; CTRL00178175; CTRL00178176; CTRL00178177; CTRL00178178; CTRL00178179; CTRL00178238; CTRL00333064; CTRL00333065; CTRL00333066; CTRL00333067; CTRL00333068; CTRL00334493; CTRL00334494; CTRL00334495; CTRL00334496; CTRL00335096; CTRL00335097; CTRL00335098; CTRL00336394; CTRL00336395; CTRL00366278; CTRL00366279; CTRL00366280; CTRL00366281; CTRL00366614; CTRL00366615; CTRL00366616; CTRL00111325; CTRL00114114; CTRL00114410; CTRL00114429;

CTRL00114432; CTRL00114445; CTRL00114604; CTRL00114844; CTRL00114870;
CTRL00114989; CTRL00120720; CTRL00120721; CTRL00120723; 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 (collectively the "Crime/Fraud Documents");

27. THE COURT FURTHER FINDS THAT the Seibel Parties submitted the Crime/Fraud Documents to this Court for *in camera* review on June 18, 2021;

28. THE COURT FURTHER FINDS THAT, following its review of the Crime/Fraud Documents, the Court issued a minute order on August 18, 2021 (the "Minute Order");²

29. THE COURT FURTHER FINDS THAT, following its review of the Crime/Fraud Documents, the Court determined that the Seibel prenuptial agreement was not legitimately prepared for estate purposes; and

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

² The Court *sua sponte* sealed the August 18, 2021 Minute Order. The Minute Order is incorporated herein by reference as if restated in its entirety.

CONCLUSIONS OF LAW

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

6 2. "The purpose of the attorney-client privilege 'is to encourage clients to make full
7 disclosures to their attorneys in order to promote the broader public interests of recognizing the
8 importance of fully informed advocacy in the administration of justice.'" *Canarelli v. Eighth*
9 *Judicial Dist. Ct.*, 464 P.3d 114, 119 (2020) (quoting *Wynn Resorts, Ltd. v. Eighth Judicial Dist.*
10 *Ct.*, 133 Nev. 369, 374, 399 P.3d 334, 341 (2017)). "The party asserting the privilege has the burden
11 to prove that the material is in fact privileged." *Id.* at 120 (citing *Ralls v. United States*, 52 F.3d 223,
12 225 (9th Cir. 1995)). However, "[i]t is well settled that privileges, whether creatures of statute or
13 the common law, should be interpreted and applied narrowly." *Id.* at 120 (quoting *Clark Cty. Sch.*
14 *Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 705, 429 P.3d 313, 318 (2018)).

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

18 4. "The 'crime-fraud exception' to the privilege protects against abuse of the attorney-
19 client relationship." *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078, 1090 (9th Cir. 2007),
20 *abrogated on other grounds by Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100 (2009).
21 Specifically, "where the client seeks the advice for 'future wrongdoing,' the crime-fraud exception
22 will not protect communications 'made for the purpose of getting advice for the commission of a
23 fraud or crime.'" *Hernandez v. Creative Concepts, Inc.*, No. 2:10-CV-02132-PMP, 2013 WL
24 1405776, at *4 (D. Nev. Apr. 5, 2013) (quoting *United States v. Zolin*, 491 U.S. 554, 562-63
25 (1989)); *see also In re Grand Jury Investigation*, 810 F.3d 1110, 1113 (9th Cir. 2016) (internal
26 quotations omitted) ("Under the crime-fraud exception, communications are not privileged when
27 the client consults an attorney for advice that will serve him in the commission of a fraud or
28 crime."); *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090 (quoting *Clark v. United States*, 289

U.S. 1, 15 (1933)) ("The privilege takes flight if the relation is abused. A client who consults an attorney for advice that will serve him in the commission of a fraud will have no help from the law. He must let the truth be told.").

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

1 the attorney's services were utilized in furtherance of an ongoing unlawful scheme." *Id.* (citing *In*
2 *re Napster Inc. Copyright Litig.*, 479 F.3d at 1090).

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

11 9. Caesars met its initial burden of proof showing that Seibel was engaged in a
12 fraudulent scheme when he sought the advice of his counsel to further the scheme. *See In re*
13 *Napster, Inc. Copyright Litig.*, 479 F.3d at 1090 (internal quotations omitted). Specifically, Caesars
14 established that Seibel's representations as to the independence of the Seibel Family 2016 Trust
15 were unfounded, and Seibel could continue to benefit from the Seibel Agreements despite his
16 unsuitability to conduct business with a gaming licensee.

17 10. Following the Court's *in camera* review of the Crime/Fraud Documents, the Court
18 has determined that the Crime/Fraud Documents are sufficiently related to and were made in
19 furtherance of intended, or present, continuing fraud. *See In re Grand Jury Investigation*, 810 F.3d
20 at 1113. It appears to the Court that the documents are related to and were made in furtherance of
21 Seibel's fraudulent scheme. Accordingly, the Court determines that Caesars has met its second
22 burden of demonstrating that the Crime/Fraud Exception applies. Specifically, Caesars has
23 established that the Crime/Fraud Documents are sufficiently related to and were made in
24 furtherance of Seibel's intended fraudulent scheme that he could continue to benefit from the Seibel
25 Agreements despite his unsuitability to conduct business with a gaming licensee

26 11. Thus, the Crime/Fraud Documents are discoverable and subject to production under
27 the crime-fraud exception (NRS § 49.115(1)) as they were made in furtherance of a scheme to
28 defraud Caesars.

ORDER

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

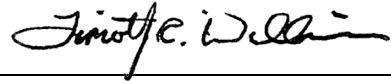
IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the Seibel Parties shall produce the Crime/Fraud Documents³ to the parties in this action within fourteen (14) days of notice of entry of this Order;

³ The Crime-Fraud Documents include documents from the Seibel Parties' privilege log bearing numbers 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; CTRL00145759; CTRL00145772; CTRL00145774; CTRL00145775; CTRL00145777; CTRL00145789; CTRL00145790; CTRL00145791; CTRL00145792; CTRL00145877; CTRL00145878; CTRL00145879; CTRL00145895; CTRL00145896; CTRL00145897; CTRL00177870; CTRL00177871; CTRL00177872; CTRL00177873; CTRL00177874; CTRL00178124; CTRL00178125; CTRL00178141; CTRL00178153; CTRL00178156; CTRL00178158; CTRL00178163; CTRL00178164; CTRL00178165; CTRL00178166; CTRL00178167; CTRL00178168; CTRL00178169; CTRL00178173; CTRL00178174; CTRL00178175; CTRL00178176; CTRL00178177; CTRL00178178; CTRL00178179; CTRL00178238; CTRL00333064; CTRL00333065; CTRL00333066; CTRL00333067; CTRL00333068; CTRL00333493; CTRL00333494; CTRL00333495; CTRL00333496; CTRL00333509; CTRL003335097; CTRL003335098; CTRL003336394; CTRL003336395; CTRL003366278; CTRL003366279; CTRL003366280; CTRL003366281; CTRL003366614; CTRL003366615; CTRL003366616; CTRL00111325; CTRL00114114; CTRL00114410; CTRL00114429; CTRL00114432; CTRL00114445; CTRL00114604; CTRL00114844; CTRL00114870; CTRL00114989; CTRL00120720; CTRL00120721; CTRL00120723; CTRL00120724; CTRL00120726; CTRL00145197; CTRL00145198; CTRL00145784; CTRL00145876; CTRL00173347; CTRL00173350; CTRL00173352; CTRL00178020; CTRL00178080; CTRL00178092; CTRL00178094; CTRL00178115; CTRL00178120; CTRL00178137; CTRL00178140; CTRL00178155; CTRL00178162; CTRL00178191; CTRL00178227; CTRL00333242; CTRL00333310; CTRL003366304; CTRL003366305; CTRL00338414; CTRL00338425; CTRL00338426; CTRL00338511; CTRL00338513; CTRL00338611; CTRL00338612; CTRL00339801; CTRL00339802; CTRL00339803; CTRL00339848; CTRL00339849; CTRL00340482; CTRL00346870; CTRL00346871; CTRL00346875; CTRL00367769; CTRL00367770;

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED the Seibel Parties may produce the Crime-Fraud Documents under the Highly Confidential designation set forth in the Stipulated Confidentiality Agreement and Protective Order entered by this Court on March 12, 2019 (the "Stipulated Protective Order").

IT IS SO ORDERED.

Dated this 28th day of October, 2021



MH

Respectfully submitted by:

279 FE0 F29F EFA0
Approved as to form and content by:
Timothy C. Williams
District Court Judge
DATED October 27, 2021

DATED October 27, 2021

PISANELLI BICE PLLC

LEBENSFELD SHARON & SCHWARTZ P.C.

By: /s/ M. Magali Mercera
James J. Pisanelli, Esq., Bar No. 4027
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
Alan M. Lebensfeld, Esq.
(admitted *pro hac vice*)
140 Broad Street
Red Bank, New Jersey 07701

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

Mark J. Connot, Esq.
Kevin M. Sutehall, Esq.
FOX ROTHCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135

Attorneys for The Original Homestead Restaurant

Approved as to form and content by:

DATED October 27, 2021

FENNEMORE CRAIG, P.C.

By: /s/ John D. Tennert
John D. Tennert, Esq. (SBN 11728)
Wade Beavers, Esq. (SBN 13451)
7800 Rancharran Parkway
Reno, NV 89511
Attorneys for Gordon Ramsay

CTRL00367771; CTRL00367772; CTRL00338593; CTRL00113723; CTRL00113754;
CTRL00113762; CTRL00113768; CTRL00114321; CTRL00114322; CTRL00145645;
CTRL00145661; CTRL00145662; CTRL00145663; CTRL00178086; CTRL00178090; and
CTRL00178092.

Cinda C. Towne

From: Tennert, John <jtennert@fennemorelaw.com>
Sent: Wednesday, October 27, 2021 10:45 AM
To: Magali Mercera; Joshua Gilmore; Paul Williams; Beavers, Wade; Alan Lebensfeld; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

CAUTION: This message is from an EXTERNAL SENDER.

Magali,

You may apply my e-signature to the attached form of order.

Thanks,
John

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.

From: Magali Mercera <mmm@pisanellibice.com>
Sent: Wednesday, October 27, 2021 9:47 AM
To: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Josh/Paul –

Following our discussion yesterday, while we disagree that additional time is needed to produce the Crime/Fraud documents to the parties, we can agree that the order provide for fourteen (14) days with compliance. We have made the noted change and attached the order here.

Cinda C. Towne

From: Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Sent: Wednesday, October 27, 2021 11:22 AM
To: Magali Mercera; Joshua Gilmore; Paul Williams; Tennert, John; Beavers, Wade; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

CAUTION: This message is from an EXTERNAL SENDER.

You may, thanks

From: Magali Mercera <mmm@pisanellibice.com>
Sent: Wednesday, October 27, 2021 12:47 PM
To: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Josh/Paul –

Following our discussion yesterday, while we disagree that additional time is needed to produce the Crime/Fraud documents to the parties, we can agree that the order provide for fourteen (14) days with compliance. We have made the noted change and attached the order here.

Nevertheless, following our discussion yesterday, we understand that you also disagree with the findings in the order and intend to submit a competing order. Accordingly, since we are unable to agree on a form of order, we will submit our own as well.

John and Alan – Please confirm that we may apply your e-signature to the attached form of order.

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.

From: Joshua Gilmore <JGilmore@baileykennedy.com>
Sent: Tuesday, October 26, 2021 1:54 PM
To: Magali Mercera <mmm@pisanellibice.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John

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: 10/28/2021

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 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

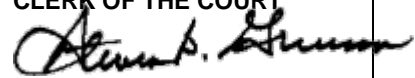
25 PB Lit . lit@pisanellibice.com

| | | |
|----|----------------------|--------------------------------------|
| 1 | Paul Williams | pwilliams@baileykennedy.com |
| 2 | Dennis Kennedy | dkennedy@baileykennedy.com |
| 3 | Joshua Gilmore | jgilmore@baileykennedy.com |
| 4 | John Bailey | jbailey@baileykennedy.com |
| 5 | Bailey Kennedy, LLP | bkfederaldownloads@baileykennedy.com |
| 6 | Magali Mercera | mmm@pisanellibice.com |
| 7 | Cinda Towne | cct@pisanellibice.com |
| 8 | Daniel McNutt | drm@cmlawnv.com |
| 9 | Paul Sweeney | PSweeney@certilmanbalin.com |
| 10 | Nathan Rugg | nathan.rugg@bfkn.com |
| 11 | Steven Chaiken | sbc@ag-ltd.com |
| 12 | Alan Lebensfeld | alan.lebensfeld@lsandspc.com |
| 13 | Brett Schwartz | brett.schwartz@lsandspc.com |
| 14 | Doreen Loffredo | dloffredo@foxrothschild.com |
| 15 | Mark Connot | mconnot@foxrothschild.com |
| 16 | Joshua Feldman | jfeldman@certilmanbalin.com |
| 17 | Nicole Milone | nmilone@certilmanbalin.com |
| 18 | Karen Hippner | karen.hippner@lsandspc.com |
| 19 | Lawrence Sharon | lawrence.sharon@lsandspc.com |
| 20 | Emily Buchwald | eab@pisanellibice.com |
| 21 | Cinda Towne | Cinda@pisanellibice.com |
| 22 | Litigation Paralegal | bknotices@nv-lawfirm.com |
| 23 | Shawna Braselton | sbraselton@fennemorelaw.com |
| 24 | | |
| 25 | | |
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| | |
|-----------------|-----------------------------|
| Christine Gioe | christine.gioe@lsandspc.com |
| Trey Pictum | trey@mcnuttlawfirm.com |
| Monice Campbell | monice@envision.legal |
| Wade Beavers | wbeavers@fclaw.com |
| Sarah Hope | shope@fennemorelaw.com |

TAB 90



James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
Debra L. Spinelli, Esq., Bar No. 9695
DLS@pisanellibice.com
M. Magali Mercera, Esq., Bar No. 11742
MMM@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100
Facsimile: 702.214.2101

*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 October 28, 2021, a true and correct copy of which is attached hereto.

DATED this 28th day of October 2021.

PISANELLI BICE PLLC

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

*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 28th day of October 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:

John R. Bailey, Esq.
Dennis L. Kennedy, Esq.
Joshua P. Gilmore, Esq.
Paul C. Williams, Esq.
Stephanie J. Glantz, Esq.
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, NV 89148-1302
JBailey@BaileyKennedy.com
DKennedy@BaileyKennedy.com
JGilmore@BaileyKennedy.com
PWilliams@BaileyKennedy.com
SGlantz@BaileyKennedy.com

*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, and FERG 16, LLC; and R Squared
Global Solutions, LLC, Derivatively on Behalf of
DNT Acquisition, LLC, and Nominal Plaintiff
GR Burgr LLC*

John D. Tennert, Esq.
Wade Beavers, Esq.
FENNEMORE CRAIG, P.C.
7800 Rancharrah Parkway
Reno, NV 89511
jtennert@fclaw.com
wbeavers@fclaw.com

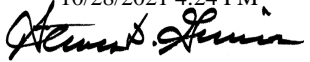
Attorneys for Gordon Ramsay

Alan Lebensfeld, Esq.
LEBENSFELD SHARON &
SCHWARTZ, P.C.
140 Broad Street
Red Bank, NJ 07701
alan.lebensfeld@lsandspc.com

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

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

/s/ Cinda Towne
An employee of PISANELLI BICE PLLC


CLERK OF THE COURT

James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
Debra L. Spinelli, Esq., Bar No. 9695
DLS@pisanellibice.com
M. Magali Mercera, Esq., Bar No. 11742
MMM@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100
Facsimile: 702.214.2101

*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

**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

PHWLV, 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 criminal
13 conduct and in an effort to conceal his criminal conviction while still reaping the benefits of his
14 relationship with Caesars – ten days before entering his guilty plea – Seibel informed Caesars that
15 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 19. THE COURT FURTHER FINDS THAT at or around the same time that Seibel set-
2 up the new entities and purported to assign the Seibel Agreements to these new entities, Seibel was
3 secretly negotiating a prenuptial agreement with Dorfman that, by its plain terms, would require
4 Dorfman to share the distributions she received from the Seibel Family 2016 Trust with Seibel and
5 ensure that the entities assigned to the Trust would remain Seibel's separate property;

6 20. THE COURT FURTHER FINDS THAT the prenuptial agreement has not been
7 amended or nullified;

8 21. THE COURT FURTHER FINDS THAT Seibel used his lawyers to obtain advice
9 about setting up the trust and its interplay with the prenuptial agreement;

10 22. THE COURT FURTHER FINDS THAT Seibel and his attorneys falsely represented
11 to Caesars that Seibel was disconnected from receiving benefits from the Seibel Family 2016 Trust
12 and the business interests with Caesars;

13 23. THE COURT FURTHER FINDS THAT the prenuptial agreement demonstrates that
14 Seibel always had an interest in receiving distributions from the Seibel Family 2016 Trust – a direct
15 contradiction to the false representations made to Caesars and this Court;

16 24. THE COURT FURTHER FINDS THAT all of the statements made to Caesars about
17 Seibel's purported disassociation were false when made and designed exclusively for the purpose
18 of defrauding Caesars so that Seibel could continue to benefit from the relationship despite his
19 unsuitability to conduct business with a gaming licensee;

20 25. THE COURT FURTHER FINDS THAT, on June 8, 2021, this Court entered its first
21 Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion to Compel Documents
22 Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception (the
23 "June 8, 2021 Order"). In that order, the Court held that Caesars had met its initial burden of proof
24 and established that Seibel's representations as to the independence of the Seibel Family 2016 Trust
25 were unfounded, and Seibel could continue to benefit from the Seibel Agreements despite his
26 unsuitability to conduct business with a gaming licensee. As a result, communications seeking
27 legal advice for creation of the prenuptial agreement and the Seibel Family 2016 Trust are
28

discoverable under the crime-fraud exception (NRS § 49.115(1)) as they were made in furtherance of a scheme to defraud Caesars;

26. THE COURT FURTHER FINDS THAT, pursuant to the June 8, 2021 Order, the Court ordered the Seibel Parties to submit the following documents from their privilege log to the Court for an *in camera* review: 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; CTRL00145759; CTRL00145772; CTRL00145774; CTRL00145775; CTRL00145777; CTRL00145789; CTRL00145790; CTRL00145791; CTRL00145792; CTRL00145877; CTRL00145878; CTRL00145879; CTRL00145895; CTRL00145896; CTRL00145897; CTRL00177870; CTRL00177871; CTRL00177872; CTRL00177873; CTRL00177874; CTRL00178124; CTRL00178125; CTRL00178141; CTRL00178153; CTRL00178156; CTRL00178158; CTRL00178163; CTRL00178164; CTRL00178165; CTRL00178166; CTRL00178167; CTRL00178168; CTRL00178169; CTRL00178173; CTRL00178174; CTRL00178175; CTRL00178176; CTRL00178177; CTRL00178178; CTRL00178179; CTRL00178238; CTRL00333064; CTRL00333065; CTRL00333066; CTRL00333067; CTRL00333068; CTRL00334493; CTRL00334494; CTRL00334495; CTRL00334496; CTRL00335096; CTRL00335097; CTRL00335098; CTRL00336394; CTRL00336395; CTRL00366278; CTRL00366279; CTRL00366280; CTRL00366281; CTRL00366614; CTRL00366615; CTRL00366616; CTRL00111325; CTRL00114114; CTRL00114410; CTRL00114429;

CTRL00114432; CTRL00114445; CTRL00114604; CTRL00114844; CTRL00114870;
CTRL00114989; CTRL00120720; CTRL00120721; CTRL00120723; 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 (collectively the "Crime/Fraud Documents");

27. THE COURT FURTHER FINDS THAT the Seibel Parties submitted the Crime/Fraud Documents to this Court for *in camera* review on June 18, 2021;

28. THE COURT FURTHER FINDS THAT, following its review of the Crime/Fraud Documents, the Court issued a minute order on August 18, 2021 (the "Minute Order");²

29. THE COURT FURTHER FINDS THAT, following its review of the Crime/Fraud Documents, the Court determined that the Seibel prenuptial agreement was not legitimately prepared for estate purposes; and

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

² The Court *sua sponte* sealed the August 18, 2021 Minute Order. The Minute Order is incorporated herein by reference as if restated in its entirety.

CONCLUSIONS OF LAW

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

6 2. "The purpose of the attorney-client privilege 'is to encourage clients to make full
7 disclosures to their attorneys in order to promote the broader public interests of recognizing the
8 importance of fully informed advocacy in the administration of justice.'" *Canarelli v. Eighth*
9 *Judicial Dist. Ct.*, 464 P.3d 114, 119 (2020) (quoting *Wynn Resorts, Ltd. v. Eighth Judicial Dist.*
10 *Ct.*, 133 Nev. 369, 374, 399 P.3d 334, 341 (2017)). "The party asserting the privilege has the burden
11 to prove that the material is in fact privileged." *Id.* at 120 (citing *Ralls v. United States*, 52 F.3d 223,
12 225 (9th Cir. 1995)). However, "[i]t is well settled that privileges, whether creatures of statute or
13 the common law, should be interpreted and applied narrowly." *Id.* at 120 (quoting *Clark Cty. Sch.*
14 *Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 705, 429 P.3d 313, 318 (2018)).

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

18 4. "The 'crime-fraud exception' to the privilege protects against abuse of the attorney-
19 client relationship." *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078, 1090 (9th Cir. 2007),
20 *abrogated on other grounds by Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100 (2009).
21 Specifically, "where the client seeks the advice for 'future wrongdoing,' the crime-fraud exception
22 will not protect communications 'made for the purpose of getting advice for the commission of a
23 fraud or crime.'" *Hernandez v. Creative Concepts, Inc.*, No. 2:10-CV-02132-PMP, 2013 WL
24 1405776, at *4 (D. Nev. Apr. 5, 2013) (quoting *United States v. Zolin*, 491 U.S. 554, 562-63
25 (1989)); *see also In re Grand Jury Investigation*, 810 F.3d 1110, 1113 (9th Cir. 2016) (internal
26 quotations omitted) ("Under the crime-fraud exception, communications are not privileged when
27 the client consults an attorney for advice that will serve him in the commission of a fraud or
28 crime."); *In re Napster, Inc. Copyright Litig.*, 479 F.3d at 1090 (quoting *Clark v. United States*, 289

U.S. 1, 15 (1933)) ("The privilege takes flight if the relation is abused. A client who consults an attorney for advice that will serve him in the commission of a fraud will have no help from the law. He must let the truth be told.").

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

1 the attorney's services were utilized in furtherance of an ongoing unlawful scheme." *Id.* (citing *In*
2 *re Napster Inc. Copyright Litig.*, 479 F.3d at 1090).

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

11 9. Caesars met its initial burden of proof showing that Seibel was engaged in a
12 fraudulent scheme when he sought the advice of his counsel to further the scheme. *See In re*
13 *Napster, Inc. Copyright Litig.*, 479 F.3d at 1090 (internal quotations omitted). Specifically, Caesars
14 established that Seibel's representations as to the independence of the Seibel Family 2016 Trust
15 were unfounded, and Seibel could continue to benefit from the Seibel Agreements despite his
16 unsuitability to conduct business with a gaming licensee.

17 10. Following the Court's *in camera* review of the Crime/Fraud Documents, the Court
18 has determined that the Crime/Fraud Documents are sufficiently related to and were made in
19 furtherance of intended, or present, continuing fraud. *See In re Grand Jury Investigation*, 810 F.3d
20 at 1113. It appears to the Court that the documents are related to and were made in furtherance of
21 Seibel's fraudulent scheme. Accordingly, the Court determines that Caesars has met its second
22 burden of demonstrating that the Crime/Fraud Exception applies. Specifically, Caesars has
23 established that the Crime/Fraud Documents are sufficiently related to and were made in
24 furtherance of Seibel's intended fraudulent scheme that he could continue to benefit from the Seibel
25 Agreements despite his unsuitability to conduct business with a gaming licensee

26 11. Thus, the Crime/Fraud Documents are discoverable and subject to production under
27 the crime-fraud exception (NRS § 49.115(1)) as they were made in furtherance of a scheme to
28 defraud Caesars.

ORDER

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

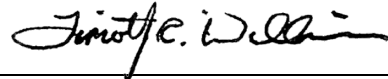
IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the Seibel Parties shall produce the Crime/Fraud Documents³ to the parties in this action within fourteen (14) days of notice of entry of this Order;

³ The Crime-Fraud Documents include documents from the Seibel Parties' privilege log bearing numbers 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; CTRL00145759; CTRL00145772; CTRL00145774; CTRL00145775; CTRL00145777; CTRL00145789; CTRL00145790; CTRL00145791; CTRL00145792; CTRL00145877; CTRL00145878; CTRL00145879; CTRL00145895; CTRL00145896; CTRL00145897; CTRL00177870; CTRL00177871; CTRL00177872; CTRL00177873; CTRL00177874; CTRL00178124; CTRL00178125; CTRL00178141; CTRL00178153; CTRL00178156; CTRL00178158; CTRL00178163; CTRL00178164; CTRL00178165; CTRL00178166; CTRL00178167; CTRL00178168; CTRL00178169; CTRL00178173; CTRL00178174; CTRL00178175; CTRL00178176; CTRL00178177; CTRL00178178; CTRL00178179; CTRL00178238; CTRL00333064; CTRL00333065; CTRL00333066; CTRL00333067; CTRL00333068; CTRL00333493; CTRL00333494; CTRL00333495; CTRL00333496; CTRL00333509; CTRL003335097; CTRL003335098; CTRL003336394; CTRL003336395; CTRL0033366278; CTRL0033366279; CTRL0033366280; CTRL0033366281; CTRL0033366614; CTRL0033366615; CTRL0033366616; CTRL00111325; CTRL00114114; CTRL00114410; CTRL00114429; CTRL00114432; CTRL00114445; CTRL00114604; CTRL00114844; CTRL00114870; CTRL00114989; CTRL00120720; CTRL00120721; CTRL00120723; CTRL00120724; CTRL00120726; CTRL00145197; CTRL00145198; CTRL00145784; CTRL00145876; CTRL00173347; CTRL00173350; CTRL00173352; CTRL00178020; CTRL00178080; CTRL00178092; CTRL00178094; CTRL00178115; CTRL00178120; CTRL00178137; CTRL00178140; CTRL00178155; CTRL00178162; CTRL00178191; CTRL00178227; CTRL00333242; CTRL00333310; CTRL003336304; CTRL003336305; CTRL003338414; CTRL003338425; CTRL003338426; CTRL003338511; CTRL003338513; CTRL003338611; CTRL003338612; CTRL003339801; CTRL003339802; CTRL003339803; CTRL003339848; CTRL003339849; CTRL00340482; CTRL00346870; CTRL00346871; CTRL00346875; CTRL00367769; CTRL00367770;

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED the Seibel Parties may produce the Crime-Fraud Documents under the Highly Confidential designation set forth in the Stipulated Confidentiality Agreement and Protective Order entered by this Court on March 12, 2019 (the "Stipulated Protective Order").

IT IS SO ORDERED.

Dated this 28th day of October, 2021



MH

Respectfully submitted by:

279 FE0 F29F EFA0
Timothy C. Williams
District Court Judge
Approved as to form and content by:
DATED October 27, 2021

DATED October 27, 2021

PISANELLI BICE PLLC

LEBENSFELD SHARON & SCHWARTZ P.C.

By: /s/ M. Magali Mercera
James J. Pisanelli, Esq., Bar No. 4027
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
Alan M. Lebensfeld, Esq.
(admitted *pro hac vice*)
140 Broad Street
Red Bank, New Jersey 07701

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

Mark J. Connot, Esq.
Kevin M. Sutehall, Esq.
FOX ROTHCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135

Attorneys for The Original Homestead Restaurant

Approved as to form and content by:

DATED October 27, 2021

FENNEMORE CRAIG, P.C.

By: /s/ John D. Tennert
John D. Tennert, Esq. (SBN 11728)
Wade Beavers, Esq. (SBN 13451)
7800 Rancharran Parkway
Reno, NV 89511
Attorneys for Gordon Ramsay

CTRL00367771; CTRL00367772; CTRL00338593; CTRL00113723; CTRL00113754;
CTRL00113762; CTRL00113768; CTRL00114321; CTRL00114322; CTRL00145645;
CTRL00145661; CTRL00145662; CTRL00145663; CTRL00178086; CTRL00178090; and
CTRL00178092.

Cinda C. Towne

From: Tennert, John <jtennert@fennemorelaw.com>
Sent: Wednesday, October 27, 2021 10:45 AM
To: Magali Mercera; Joshua Gilmore; Paul Williams; Beavers, Wade; Alan Lebensfeld; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

CAUTION: This message is from an EXTERNAL SENDER.

Magali,

You may apply my e-signature to the attached form of order.

Thanks,
John

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.

From: Magali Mercera <mmm@pisanellibice.com>
Sent: Wednesday, October 27, 2021 9:47 AM
To: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Josh/Paul –

Following our discussion yesterday, while we disagree that additional time is needed to produce the Crime/Fraud documents to the parties, we can agree that the order provide for fourteen (14) days with compliance. We have made the noted change and attached the order here.

Cinda C. Towne

From: Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Sent: Wednesday, October 27, 2021 11:22 AM
To: Magali Mercera; Joshua Gilmore; Paul Williams; Tennert, John; Beavers, Wade; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

CAUTION: This message is from an EXTERNAL SENDER.

You may, thanks

From: Magali Mercera <mmm@pisanellibice.com>
Sent: Wednesday, October 27, 2021 12:47 PM
To: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Josh/Paul –

Following our discussion yesterday, while we disagree that additional time is needed to produce the Crime/Fraud documents to the parties, we can agree that the order provide for fourteen (14) days with compliance. We have made the noted change and attached the order here.

Nevertheless, following our discussion yesterday, we understand that you also disagree with the findings in the order and intend to submit a competing order. Accordingly, since we are unable to agree on a form of order, we will submit our own as well.

John and Alan – Please confirm that we may apply your e-signature to the attached form of order.

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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From: Joshua Gilmore <JGilmore@baileykennedy.com>
Sent: Tuesday, October 26, 2021 1:54 PM
To: Magali Mercera <mmm@pisanellibice.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John

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: 10/28/2021

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 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

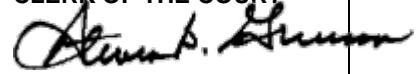
25 PB Lit . lit@pisanellibice.com

| | | |
|----|----------------------|--------------------------------------|
| 1 | Paul Williams | pwilliams@baileykennedy.com |
| 2 | Dennis Kennedy | dkennedy@baileykennedy.com |
| 3 | Joshua Gilmore | jgilmore@baileykennedy.com |
| 4 | John Bailey | jbailey@baileykennedy.com |
| 5 | Bailey Kennedy, LLP | bkfederaldownloads@baileykennedy.com |
| 6 | Magali Mercera | mmm@pisanellibice.com |
| 7 | Cinda Towne | cct@pisanellibice.com |
| 8 | Daniel McNutt | drm@cmlawnv.com |
| 9 | Paul Sweeney | PSweeney@certilmanbalin.com |
| 10 | Nathan Rugg | nathan.rugg@bfkn.com |
| 11 | Steven Chaiken | sbc@ag-ltd.com |
| 12 | Alan Lebensfeld | alan.lebensfeld@lsandspc.com |
| 13 | Brett Schwartz | brett.schwartz@lsandspc.com |
| 14 | Doreen Loffredo | dloffredo@foxrothschild.com |
| 15 | Mark Connot | mconnot@foxrothschild.com |
| 16 | Joshua Feldman | jfeldman@certilmanbalin.com |
| 17 | Nicole Milone | nmilone@certilmanbalin.com |
| 18 | Karen Hippner | karen.hippner@lsandspc.com |
| 19 | Lawrence Sharon | lawrence.sharon@lsandspc.com |
| 20 | Emily Buchwald | eab@pisanellibice.com |
| 21 | Cinda Towne | Cinda@pisanellibice.com |
| 22 | Litigation Paralegal | bknotices@nv-lawfirm.com |
| 23 | Shawna Braselton | sbraselton@fennemorelaw.com |
| 24 | | |
| 25 | | |
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| | |
|-----------------|-----------------------------|
| Christine Gioe | christine.gioe@lsandspc.com |
| Trey Pictum | trey@mcnuttlawfirm.com |
| Monice Campbell | monice@envision.legal |
| Wade Beavers | wbeavers@fclaw.com |
| Sarah Hope | shope@fennemorelaw.com |

TAB 91



NOTC (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

Nevada Bar No. 12524

BAILEY ♦ KENNEDY

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

JBailey@BaileyKennedy.com

DKennedy@BaileyKennedy.com

JGilmore@BaileyKennedy.com

PWilliams@BaileyKennedy.com

*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

**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**

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 hereby give notice that they have submitted a proposed competing order concerning this Court's 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 (the "Proposed Supplemental Crime-Fraud Order"). A copy of an explanatory letter concerning the Proposed Supplemental Crime-Fraud Order is attached hereto as Exhibit A; a copy of the Proposed Supplemental Crime-Fraud Order is attached to the explanatory letter as Exhibit 1.

DATED this 28th day of October, 2021.

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

JOHN R. BAILEY

DENNIS L. KENNEDY

JOSHUA P. GILMORE

PAUL C. WILLIAMS

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 28th day of October, 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
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 Defendants/Counterclaimant Desert Palace, Inc.; Paris Las Vegas Operating Company, LLC; PHWL, LLC; and Boardwalk Regency Corporation

JOHN D. TENNERT
FENNEMORE CRAIG, P.C.
7800 Rancharra Parkway
Reno, NV 89511

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

ALAN LEBENSFELD
BRETT SCHWARTZ
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/ Sharon Murnane
Employee of BAILEY ♦ KENNEDY

EXHIBIT A

October 27, 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
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

Dear Judge Williams:

Despite their good faith efforts, the parties were unable to reach an agreement on the language of the Supplemental Findings of Fact, Conclusions of Law, and Order Granting Caesars'¹ Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception (the "Supplemental Crime-Fraud Order"). The Development Parties² hereby submit their competing version of the Supplemental Crime-Fraud Order to this Court for consideration, which is attached hereto as **Exhibit 1**. This explanatory letter is being provided consistent with your Department Guidelines for handling Contested Orders.

Procedural History

On June 8, 2021, this Court entered its 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 "Initial Crime-Fraud Order"). In the Initial

¹ 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."

² Rowen Seibel ("Seibel"); Craig Green ("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 ("GRB") are collectively referred to as the "Development Parties."

The Honorable Timothy C. Williams

October 27, 2021

Page 2

Crime-Fraud Order, this Court made various findings and determined that it was appropriate to conduct an *in camera* review of certain attorney-client privileged communications to determine whether they were subject to the crime-fraud exception. (*See* Initial Crime-Fraud Order.)

On June 16, 2021, the Development Parties filed a Petition for Extraordinary Writ Relief (the “Initial Writ Petition”) concerning the Initial Crime-Fraud Order, prior to this Court’s *in camera* review. (*See* Notice of Filing Petition for Extraordinary Writ Relief, June 17, 2021, Ex. A, Writ Petition.) The Nevada Supreme Court denied the Initial Writ Petition as premature as this Court had not yet conducted its *in camera* review—noting that the Development Parties could “seek writ relief in the event [Seibel] is ordered to disclose the subject documents to [Caesars].” (*See* Order Denying Petition for Writ of Prohibition, *Rowen Seibel v. Eighth Jud. Dist. Ct.*, Case No. 83071, June 18, 2021, at 2.)

On June 18, 2021, the Development Parties submitted the privileged communications for this Court’s *in camera* review. (*See* Notc. of Compliance, June 18, 2021.) On August 18, 2021, this Court issued a minute order (the “Minute Order”) concerning its *in camera* review. (*See generally* Minute Order.) In the Minute Order, this Court held that all privileged communications were to be produced to counsel for Caesars. (*Id.* at 1.) This Court quoted from two of the privileged communications and stated that the same quoted language appeared in a third privileged communication. (*Id.*) The Development Parties moved to claw back the Minute Order through their Motion to Compel the Return, Destruction, or Sequestering of the Court’s August 19, 2021, Minute Order Containing Privileged Attorney-Client Communications (the “Claw-Back Motion”). At the hearing held on September 22, 2021, concerning the Claw-Back Motion, this Court authorized Caesars to use the privileged communications quoted in the Minute Order for purposes of the Development Parties’ forthcoming writ petition.

Competing Order

As noted above, the parties were unable to agree to the language of the Supplemental Crime-Fraud Order. A copy of email correspondence between counsel for the parties concerning the Supplemental Crime-Fraud Order is attached as **Exhibit 2**. The parties’ dispute with respect to the Supplemental Crime-Fraud Order is two-fold.

First, the Development Parties object to Caesars’ proposed order because it restates the same findings of fact and conclusions of law from the Initial Crime-Fraud Order. The Development Parties believe that repeating the prior findings of fact and conclusions of law is unnecessary, as the Supplemental Crime-Fraud Order is intended to supplement, rather than

The Honorable Timothy C. Williams

October 27, 2021

Page 3

replace, the Initial Crime-Fraud Order. Further, this Court did not say, in its Minute Order, that it intended for the Supplemental Crime Fraud Order to replace the Initial Crime Fraud Order.

The Development Parties previously objected to the findings of fact and conclusions of law contained in Caesars' version of the Initial Crime-Fraud Order (which this Court ultimately adopted). The Development Parties object to the findings of fact and conclusions of law contained in Caesars' version of the Supplemental Crime-Fraud Order for the same reasons set forth in their correspondence to this Court dated June 4, 2021—which is hereby incorporated by reference. (*See* Mot. to Stay Compliance with the Court's June 8, 2021 Order Pending Petition for Extraordinary Writ Relief, June 10, 2021, at Ex. A, June 4, 2021 Letter.)

Second, the Development Parties object to the timeframe for the Development Parties to provide the privileged communications to Caesars in their version of the Supplemental Crime-Fraud Order: ***fourteen (14) days***. As Caesars is aware, the Development Parties intend to seek appellate review (through a writ petition) of both the Initial and Supplemental Crime-Fraud Orders given that the subject matter involves attorney-client privileged communications. As a part of that effort, the Development Parties intend to seek a stay of the deadline to produce the privileged communications pending a ruling from the Nevada Supreme Court. To that end, requiring compliance with the Supplemental Crime-Fraud Order within 14 days will hamper the Development Parties' ability to seek a stay from this Court absent a hearing on an expedited basis and, depending on this Court's schedule, may necessitate seeking emergency relief from the Nevada Supreme Court.

Further, Caesars' proposed order is contrary to this Court's directive at the status check on October 27, 2021, during which this Court stated that the Development Parties shall have twenty-one (21) days within which to file a motion to stay. If the Development Parties are only given ***fourteen (14) days*** to provide the privileged communications, they will likely not have sufficient time to seek a stay from this Court and instead, will be forced to seek emergency relief from the Nevada Supreme Court. Accordingly, the Development Parties respectfully request that even if this Court is inclined to adopt Caesars' version of the Supplemental Crime-Fraud Order, it should modify the deadline for compliance ***from fourteen (14) days to twenty-eight (28) days***.

The Honorable Timothy C. Williams
October 27, 2021
Page 4

For these reasons, the Development Parties respectfully request that this Court sign their version of the Supplemental Crime-Fraud Order. Alternatively, if this Court is inclined to sign Caesars' version of the order, the Development Parties respectfully request that this Court modify the deadline for compliance from *fourteen (14) days* to *twenty-eight (28) days*.

Sincerely,



Paul C. Williams

cc: All counsel (via email)
Attachments (2)

Exhibit 1

Exhibit 1

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

**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**

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 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 Brittnie 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 "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 Supplemental Findings of Fact and Conclusions of Law:

SUPPLMENTAL FINDINGS OF FACT

1. THE COURT FINDS THAT, on June 8, 2021, the Court entered its initial Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion to Compel (the "June 8, 2021 Order");

2. THE COURT FURTHER FINDS THAT, pursuant to the June 8, 2021 Order, the Court ordered the Development Parties to submit the following documents from their privilege log to the Court for an *in camera* review: 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; CTRL00145759; CTRL00145772; CTRL00145774; CTRL00145775; CTRL00145777; CTRL00145789; CTRL00145790; CTRL00145791; CTRL00145792; CTRL00145877; CTRL00145878;

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

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

27 3. THE COURT FURTHER FINDS THAT, the Development Parties submitted the
28 Contested Documents to the Court for *in camera* review on June 18, 2021; and

1 4. THE COURT FURTHER FINDS THAT, following its review of the Contested
2 Documents, the Court issued a minute order on August 18, 2021 (the "Minute Order").²

3 **SUPPLEMENTAL CONCLUSIONS OF LAW**

4 1. Following the Court's *in camera* review of the Contested Documents, the Court has
5 determined that the Contested Documents are sufficiently related to and were made in furtherance
6 of intended, or present, continuing fraud. *See In re Grand Jury Investigation*, 810 F.3d 1110, 1113
7 (9th Cir. 2016).

8 2. The Court determines that Caesars has met its second burden of demonstrating that
9 the crime-fraud exception (NRS § 49.115(1)) applies to the Contested Documents.

10 3. Thus, the Contested Documents are discoverable and subject to production under
11 the crime-fraud exception (NRS § 49.115(1)) as they were made in furtherance of a scheme to
12 defraud Caesars.

13 **ORDER**

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

16 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the
17 Development Parties shall produce the Contested Documents³ to the parties in this action within
18 twenty-eight (28) days of notice of entry of this Order.

19 _____
20 ² The Court *sua sponte* sealed the August 18, 2021 Minute Order, which is incorporated
21 herein by reference as if restated in its entirety.

22 ³ The Contested Documents are documents from the Development Parties' privilege log
23 bearing numbers CTRL00111548; CTRL00111549; CTRL00112143; CTRL00112144;
24 CTRL00112145; CTRL00112146; CTRL00112147; CTRL00113142; CTRL00113288;
25 CTRL00113763; CTRL00113764; CTRL00113765; CTRL00113766; CTRL00113767;
26 CTRL00113774; CTRL00113775; CTRL00113832; CTRL00113833; CTRL00113840;
27 CTRL00113841; CTRL00113843; CTRL00114161; CTRL00114162; CTRL00114164;
28 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; CTRL00145759; CTRL00145772;

1 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the
2 Development Parties may produce the Contested Documents under the Highly Confidential
3 designation set forth in the Stipulated Confidentiality Agreement and Protective Order entered by
4 this Court on March 12, 2019 (the "Stipulated Protective Order").

5 IT IS SO ORDERED.
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14 CTRL00145774; CTRL00145775; CTRL00145777; CTRL00145789; CTRL00145790;
15 CTRL00145791; CTRL00145792; CTRL00145877; CTRL00145878; CTRL00145879;
16 CTRL00145895; CTRL00145896; CTRL00145897; CTRL00177870; CTRL00177871;
17 CTRL00177872; CTRL00177873; CTRL00177874; CTRL00178124; CTRL00178125;
18 CTRL00178141; CTRL00178153; CTRL00178156; CTRL00178158; CTRL00178163;
19 CTRL00178164; CTRL00178165; CTRL00178166; CTRL00178167; CTRL00178168;
20 CTRL00178169; CTRL00178173; CTRL00178174; CTRL00178175; CTRL00178176;
21 CTRL00178177; CTRL00178178; CTRL00178179; CTRL00178238; CTRL00333064;
22 CTRL00333065; CTRL00333066; CTRL00333067; CTRL00333068; CTRL00334493;
23 CTRL00334494; CTRL00334495; CTRL00334496; CTRL00335096; CTRL00335097;
24 CTRL00335098; CTRL00336394; CTRL00336395; CTRL00366278; CTRL00366279;
25 CTRL00366280; CTRL00366281; CTRL00366614; CTRL00366615; CTRL00366616;
26 CTRL00111325; CTRL00114114; CTRL00114410; CTRL00114429; CTRL00114432;
27 CTRL00114445; CTRL00114604; CTRL00114844; CTRL00114870; CTRL00114989;
28 CTRL00120720; CTRL00120721; CTRL00120723; 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;
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CTRL00340482; CTRL00346870; CTRL00346871; CTRL00346875; CTRL00367769;
CTRL00367770; CTRL00367771; CTRL00367772; CTRL00338593; CTRL00113723;
CTRL00113754; CTRL00113762; CTRL00113768; CTRL00114321; CTRL00114322;
CTRL00145645; CTRL00145661; CTRL00145662; CTRL00145663; CTRL00178086;
CTRL00178090; and CTRL00178092.

1 Respectfully submitted by:

2 BAILEY ♦ KENNEDY

3 By: /s/ Paul C. Williams
4 John R. Bailey, Esq., Bar No. 0137
5 Dennis L. Kennedy, Esq., Bar No. 1462
6 Joshua P. Gilmore, Esq., Bar No. 11576
7 Paul C. Williams, Esq., Bar No. 12524
8 8984 Spanish Ridge Avenue
9 Las Vegas, Nevada 89148
10 *Attorneys for Rowen Seibel; Moti Partners, LLC;*
11 *Moti Partners 16, LLC; LLTQ Enterprises, LLC;*
12 *LLTQ Enterprises 16, LLC; TPOV Enterprises, LLC;*
13 *TPOV Enterprises 16, LLC; FERG, LLC; FERG 16,*
14 *LLC; Craig Green; R Squared Global Solutions,*
15 *LLC, Derivatively on Behalf of DNT Acquisition,*
16 *LLC; and GR Burgr, LLC*
17
18
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27
28

Exhibit 2

Exhibit 2

Paul Williams

From: Magali Mercera <mmm@pisanellibice.com>
Sent: Wednesday, October 27, 2021 12:15 PM
To: Paul Williams
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo; Joshua Gilmore; Tennert, John; Beavers, Wade; Alan Lebensfeld; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Hi Paul –

Your email implies that the Court granted a *de facto* limited stay to allow the Seibel Parties to file a motion to stay. Not so. As you know, the Court stated that the Seibel Parties could file a motion *within* the next three weeks and he would consider a request for an order shortening time. However, the Court did not grant a temporary stay and did not order any specific time for compliance within the competing orders. Indeed, none of those issues were properly before the Court this morning.

Even though we are submitting competing orders, we accommodated your request for additional time and, indeed, doubled the amount of time contemplated in our initial order. As we have stated previously, you have already compiled the Crime/Fraud documents and it should not take much time to produce them to us. Further, as I mentioned yesterday, if after the Court enters an order, you need additional time, we are happy to consider your request and are generally always willing to extend professional courtesies as needed.

However, while we understand that your client disagrees with Judge Williams' order – despite the detailed and thorough analysis – we also cannot prejudice our clients' rights to obtain the documents that they have successfully compelled. As you know, we now have the hearing on motions for summary judgment set for December 6 and we are entitled to receive the documents in advance thereof.

We will submit our competing order as circulated and approved by Alan and John.

Additionally, as an update, this morning we received the transcript related to the order you circulated on Monday and anticipate turning that around to you shortly.

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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From: Paul Williams <PWilliams@baileykennedy.com>
Sent: Wednesday, October 27, 2021 10:31 AM

To: Magali Mercera <mmm@pisanellibice.com>

Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com

Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

CAUTION: This message is from an EXTERNAL SENDER.

Hi Magali,

At the status check we attended this morning, the Judge directed that the Development Parties have 21 days to file a motion to stay. Based on that, the deadline for compliance should be, minimally, 21 days. A 14-day deadline for compliance would likely render the Court's directive meaningless. Accordingly, we respectfully request that you change the deadline to at least 21 days.

Otherwise, you are correct; we intend to submit a competing order.

Thank you,

Paul C. Williams
Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
(702) 562-8820 (Main)
(702) 789-4552 (Direct)
(702) 301-2725 (Cell)
(702) 562-8821 (Fax)
PWilliams@BaileyKennedy.com

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From: Magali Mercera <mmm@pisanellibice.com>

Sent: Wednesday, October 27, 2021 9:47 AM

To: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com

Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>

Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Josh/Paul –

Following our discussion yesterday, while we disagree that additional time is needed to produce the Crime/Fraud documents to the parties, we can agree that the order provide for fourteen (14) days with compliance. We have made the noted change and attached the order here.

Nevertheless, following our discussion yesterday, we understand that you also disagree with the findings in the order and intend to submit a competing order. Accordingly, since we are unable to agree on a form of order, we will submit our own as well.

John and Alan – Please confirm that we may apply your e-signature to the attached form of order.

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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From: Joshua Gilmore <JGilmore@baileykennedy.com>

Sent: Tuesday, October 26, 2021 1:54 PM

To: Magali Mercera <mmm@pisanellibice.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com

Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>

Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

CAUTION: This message is from an EXTERNAL SENDER.
How does 3:30 PM work for you?

Joshua P. Gilmore, Esq. | Bailey Kennedy, LLP
8984 Spanish Ridge Avenue, Las Vegas, Nevada 89148-1302
(702) 562-8820 (main) | (702) 562-8821 (fax) | (702) 789-4547 (direct) | JGilmore@BaileyKennedy.com
www.BaileyKennedy.com

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From: Magali Mercera <mmm@pisanellibice.com>

Sent: Tuesday, October 26, 2021 12:57 PM

To: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com

Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>

Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Josh –

Let's set-up a call to discuss. Are you available this afternoon?

Thanks,

M. Magali Mercera

PISANELLI BICE, PLLC

Telephone: (702) 214-2100

mmm@pisanellibice.com | www.pisanellibice.com



Please consider the environment before printing.

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From: Joshua Gilmore <JGilmore@baileykennedy.com>

Sent: Monday, October 25, 2021 4:47 PM

To: Magali Mercera <mmm@pisanellibice.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com

Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>

Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

CAUTION: This message is from an EXTERNAL SENDER.

Magali,

Good afternoon. Please find attached, in redline, our proposed edits to the draft Order, along with a clean copy for ease of review. In brief, we do not believe that the prior Findings and Conclusions should be restated. From our perspective, this Order supplements, rather than replaces, the prior Order.

In terms of timing, we would sincerely appreciate the Order requiring 28 days for compliance, so that we may have time to file a writ petition together with a motion to stay. Assuming the Order is entered this Wednesday, 7 days gives us very little time to get a writ petition, together with a stay motion, on file (and it would further limit the time for Caesars to file a response to the stay motion). As a practical matter, I am in depositions Thursday and Friday of this week and Monday of next week, and it is Halloween this weekend, which will limit the amount of time that can be spent working on this matter due to family commitments. Although we understand the need to move this process along, because it has been a couple of months since the Court finished its in camera review, we would really hope that Caesars would be willing to grant the additional 21 days.

Relatedly, please find attached the draft Order regarding the Motion to Compel the Return, Destruction, or Sequestering of the Minute Order. Please review and let us know if you have any proposed revisions or changes.

We will make ourselves available tomorrow for a call to discuss.

Thanks.

Josh

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

8984 Spanish Ridge Avenue, Las Vegas, Nevada 89148-1302

(702) 562-8820 (main) | (702) 562-8821 (fax) | (702) 789-4547 (direct) | JGilmore@BaileyKennedy.com

www.BaileyKennedy.com

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From: Magali Mercera <mmm@pisanellibice.com>

Sent: Friday, October 22, 2021 2:38 PM

To: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com

Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>

Subject: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

All –

In accordance with the Court's August 18th minute order, attached please find 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*. Please let us know by close of business on Monday, October 25, 2021 if you have any changes.

Otherwise, if acceptable, please confirm that we may apply your e-signature.

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

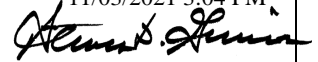
mmm@pisanellibice.com | www.pisanellibice.com



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TAB 92


CLERK OF THE COURT

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

ORDR (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

Nevada Bar No. 12524

BAILEY ♦ KENNEDY

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

JBailey@BaileyKennedy.com

DKennedy@BaileyKennedy.com

JGilmore@BaileyKennedy.com

PWilliams@BaileyKennedy.com

SGlantz@BaileyKennedy.com

*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

**ORDER GRANTING IN PART, AND
DENYING IN PART, 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**

This matter came before this Court on September 22, 2021, at 9:00 a.m., for a hearing on Rowen Seibel; Craig Green; 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; and GR Burgr, LLC's (collectively, the "Development Parties") Motion to Compel the Return, Destruction, or Sequestering of the Court's August 19, 2021, Minute Order Containing Privileged Attorney-Client Communications (the "Clawback Motion").

APPEARANCES

- Dennis L. Kennedy of Bailey ♦ Kennedy on behalf of the Development Parties;
- M. Magali Mercera of PISANELLI BICE, PLLC on behalf of Desert Palace Inc; Paris Las Vegas Operating Company, LLC; PHWLTV, LLC; and Boardwalk Regency Corporation d/b/a Caesars Atlantic City (collectively, "Caesars"); and
- John D. Tennert on behalf of Gordon Ramsay ("Ramsay").

ORDER

The Court, having examined the briefs of the parties, the records and documents on file, and having heard argument of counsel, being fully advised of the premises, and good cause appearing,

IT IS HEREBY ORDERED that the Clawback Motion is GRANTED, in part, and DENIED, in part.

IT IS FURTHER ORDERED that Caesars may utilize—subject to the provisions of the Stipulated Confidentiality Agreement and Protective Order entered on March 12, 2019—this Court's minute order dated August 18, 2021 (the "Minute Order"), for appellate purposes and/or in responding to the Development Parties' anticipated petition for writ relief concerning this Court's orders on Caesars' Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception (the "Crime-Fraud Motion").

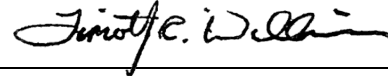
IT IS FURTHER ORDERED that, except as noted herein, the Minute Order may not be used for any other purpose pending a decision from the Nevada Supreme Court on the anticipated forthcoming writ related to the Crime-Fraud Motion.

1 IT IS FUTHER ORDERED the Minute Order does not need to be returned, sequestered,
2 and/or otherwise destroyed by any party who received the Minute Order.

3 IT IS FUTHER ORDERED that the Minute Order may be incorporated, by reference, in the
4 forthcoming Findings of Fact, Conclusions of Law, and Order concerning the Crime-Fraud Motion.

5 IT IS SO ORDERED.

Dated this 3rd day of November, 2021



MH

CD9 496 9062 7A25
Timothy C. Williams
District Court Judge

6
7
8
9
10 Respectfully Submitted By:

Approved as to Form and Content:

11 BAILEY ♦ KENNEDY

PISANELLI BICE PLLC

12 By: /s/ Paul C. Williams

By: /s/ M. Magali Mercera

13 JOHN R. BAILEY
14 DENNIS L. KENNEDY
15 JOSHUA P. GILMORE
16 PAUL C. WILLIAMS

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

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

Attorneys for Caesars

18 Approved as to Form and Content:

Approved as to Form and Content:

19 LEBENSFELD SHARON & SCHWARTZ, P.C.

FENNEMORE CRAIG, P.C.

20 By: /s/ Alan M. Lebensfeld

By: /s/ John D. Tennert

21 ALAN M. LEBENSFELD (*Pro Hac Vice*)
22 140 Broad Street
23 Red Bank, New Jersey 07701
24 Telephone: (732) 530-4600
25 Facsimile: (732) 530-4601

JOHN D. TENNERT (#11728)
WADE BEAVERS (#13451)
7800 Rancharra Parkway
Reno, Nevada 89511
Telephone: (775) 788-2200
Facsimile: (775) 786-1177

26 *Attorneys for OHR*

Attorneys for Ramsay

Paul Williams

From: Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Sent: Tuesday, November 2, 2021 5:09 PM
To: Paul Williams; Magali Mercera
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Tennert, John; Cinda C. Towne; Susan Russo; Joshua Gilmore; Beavers, Wade; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

You may. Thank you.

From: Paul Williams <PWilliams@baileykennedy.com>
Sent: Tuesday, November 02, 2021 6:38 PM
To: Magali Mercera <mmm@pisanellibice.com>
Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Hi all,

I am following up on the proposed order (a copy of which is attached for your convenience). Please let us know—by Noon tomorrow—if we may affix your electronic signature and submit it to the Court.

Thank you,

Paul C. Williams
Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
(702) 562-8820 (Main)
(702) 789-4552 (Direct)
(702) 301-2725 (Cell)
(702) 562-8821 (Fax)
PWilliams@BaileyKennedy.com

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From: Paul Williams
Sent: Monday, November 1, 2021 4:53 PM
To: Magali Mercera <mmm@pisanellibice.com>
Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John

Paul Williams

From: Magali Mercera <mmm@pisanellibice.com>
Sent: Wednesday, November 3, 2021 10:42 AM
To: Paul Williams
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Alan Lebensfeld; Tennert, John; Cinda C. Towne; Susan Russo; Joshua Gilmore; Beavers, Wade; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Hi Paul –

You may apply my e-signature.

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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From: Paul Williams <PWilliams@baileykennedy.com>
Sent: Tuesday, November 2, 2021 3:38 PM
To: Magali Mercera <mmm@pisanellibice.com>
Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

CAUTION: This message is from an EXTERNAL SENDER.

Hi all,

I am following up on the proposed order (a copy of which is attached for your convenience). Please let us know—by Noon tomorrow—if we may affix your electronic signature and submit it to the Court.

Thank you,

Paul C. Williams
Bailey Kennedy, LLP
8984 Spanish Ridge Avenue

Paul Williams

From: Tennert, John <jtennert@fennemorelaw.com>
Sent: Wednesday, November 3, 2021 10:44 AM
To: Paul Williams; Magali Mercera
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Alan Lebensfeld; Cinda C. Towne; Susan Russo; Joshua Gilmore; Beavers, Wade; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents [FC-Email.FID7746767]

Hi Paul,

You my affix my e-signature.

Thanks,
John

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.

From: Paul Williams <PWilliams@baileykennedy.com>
Sent: Tuesday, November 2, 2021 3:38 PM
To: Magali Mercera <mmm@pisanellibice.com>
Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Hi all,

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 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:

14 Service Date: 11/3/2021

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 .

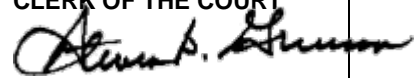
lit@pisanellibice.com

| | | |
|----|----------------------|--------------------------------------|
| 1 | Paul Williams | pwilliams@baileykennedy.com |
| 2 | Dennis Kennedy | dkennedy@baileykennedy.com |
| 3 | Joshua Gilmore | jgilmore@baileykennedy.com |
| 4 | John Bailey | jbailey@baileykennedy.com |
| 5 | Bailey Kennedy, LLP | bkfederaldownloads@baileykennedy.com |
| 6 | Magali Mercera | mmm@pisanellibice.com |
| 7 | Cinda Towne | cct@pisanellibice.com |
| 8 | Daniel McNutt | drm@cmlawnv.com |
| 9 | Paul Sweeney | PSweeney@certilmanbalin.com |
| 10 | Nathan Rugg | nathan.rugg@bfkn.com |
| 11 | Steven Chaiken | sbc@ag-ltd.com |
| 12 | Alan Lebensfeld | alan.lebensfeld@lsandspc.com |
| 13 | Brett Schwartz | brett.schwartz@lsandspc.com |
| 14 | Doreen Loffredo | dloffredo@foxrothschild.com |
| 15 | Mark Connot | mconnot@foxrothschild.com |
| 16 | Joshua Feldman | jfeldman@certilmanbalin.com |
| 17 | Nicole Milone | nmilone@certilmanbalin.com |
| 18 | Karen Hippner | karen.hippner@lsandspc.com |
| 19 | Lawrence Sharon | lawrence.sharon@lsandspc.com |
| 20 | Emily Buchwald | eab@pisanellibice.com |
| 21 | Cinda Towne | Cinda@pisanellibice.com |
| 22 | Litigation Paralegal | bknotices@nv-lawfirm.com |
| 23 | Shawna Braselton | sbraselton@fennemorelaw.com |
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| | |
|-----------------|-----------------------------|
| Christine Gioe | christine.gioe@lsandspc.com |
| Trey Pictum | trey@mcnuttlawfirm.com |
| Monice Campbell | monice@envision.legal |
| Wade Beavers | wbeavers@fclaw.com |
| Sarah Hope | shope@fennemorelaw.com |

TAB 93



NEOJ (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

Nevada Bar No. 12524

BAILEY ♦ KENNEDY

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

JBailey@BaileyKennedy.com

DKennedy@BaileyKennedy.com

JGilmore@BaileyKennedy.com

PWilliams@BaileyKennedy.com

*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 ENTRY OF ORDER
GRANTING IN PART, AND DENYING IN
PART, 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**

1 PLEASE TAKE NOTICE that an Order Granting in Part, and Denying in Part, the
2 Development Entities, Rowen Seibel, and Craig Green's Motion to Compel the Return, Destruction,
3 or Sequestering of the Court's August 19, 2021, Minute Order Containing Privileged Attorney-
4 Client Communications was entered in the above-captioned action on November 3, 2021, a true and
5 correct copy of which is attached hereto.

6 DATED this 3rd day of November, 2021.

7 BAILEY ♦ KENNEDY

8 By: /s/ Paul C. Williams

9 JOHN R. BAILEY

DENNIS L. KENNEDY

JOSHUA P. GILMORE

10 PAUL C. WILLIAMS

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

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 3rd day of November, 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
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 Defendants/Counterclaimant Desert Palace, Inc.; Paris Las Vegas Operating Company, LLC; PHWL, LLC; and Boardwalk Regency Corporation

JOHN D. TENNERT
FENNEMORE CRAIG, P.C.
7800 Rancharrah Parkway
Reno, NV 89511

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

ALAN LEBENSFELD
BRETT SCHWARTZ
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.

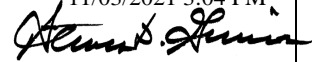
JEFFREY J. ZEIGER
WILLIAM E. ARNAULT, IV
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654

Via U.S. Mail and
Email: JZeiger@kirkland.com
WArnault@kirkland.com

AARON D. LOVAAS
NEWMYER & DILLON
3800 Howard Hughes Pkwy.,
#700
Las Vegas, NV 89169

Via U.S. Mail and
Email: aaron.lovaasndlf.com

/s/ Sharon Murnane
Employee of BAILEY ♦ KENNEDY


CLERK OF THE COURT

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

ORDR (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

Nevada Bar No. 12524

BAILEY ♦ KENNEDY

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

JBailey@BaileyKennedy.com

DKennedy@BaileyKennedy.com

JGilmore@BaileyKennedy.com

PWilliams@BaileyKennedy.com

SGlantz@BaileyKennedy.com

*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.

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

Defendants,

And

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED CLAIMS.

Case No. A-17-751759-B

Dept. No. XVI

Consolidated with A-17-760537-B

**ORDER GRANTING IN PART, AND
DENYING IN PART, 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**

This matter came before this Court on September 22, 2021, at 9:00 a.m., for a hearing on Rowen Seibel; Craig Green; 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; and GR Burgr, LLC's (collectively, the "Development Parties") Motion to Compel the Return, Destruction, or Sequestering of the Court's August 19, 2021, Minute Order Containing Privileged Attorney-Client Communications (the "Clawback Motion").

APPEARANCES

- Dennis L. Kennedy of Bailey ♦ Kennedy on behalf of the Development Parties;
- M. Magali Mercera of PISANELLI BICE, PLLC on behalf of Desert Palace Inc; Paris Las Vegas Operating Company, LLC; PHWLTV, LLC; and Boardwalk Regency Corporation d/b/a Caesars Atlantic City (collectively, "Caesars"); and
- John D. Tennert on behalf of Gordon Ramsay ("Ramsay").

ORDER

The Court, having examined the briefs of the parties, the records and documents on file, and having heard argument of counsel, being fully advised of the premises, and good cause appearing,

IT IS HEREBY ORDERED that the Clawback Motion is GRANTED, in part, and DENIED, in part.

IT IS FURTHER ORDERED that Caesars may utilize—subject to the provisions of the Stipulated Confidentiality Agreement and Protective Order entered on March 12, 2019—this Court's minute order dated August 18, 2021 (the "Minute Order"), for appellate purposes and/or in responding to the Development Parties' anticipated petition for writ relief concerning this Court's orders on Caesars' Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception (the "Crime-Fraud Motion").

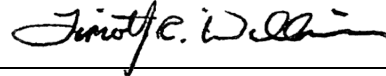
IT IS FURTHER ORDERED that, except as noted herein, the Minute Order may not be used for any other purpose pending a decision from the Nevada Supreme Court on the anticipated forthcoming writ related to the Crime-Fraud Motion.

1 IT IS FUTHER ORDERED the Minute Order does not need to be returned, sequestered,
2 and/or otherwise destroyed by any party who received the Minute Order.

3 IT IS FUTHER ORDERED that the Minute Order may be incorporated, by reference, in the
4 forthcoming Findings of Fact, Conclusions of Law, and Order concerning the Crime-Fraud Motion.

5 IT IS SO ORDERED.

Dated this 3rd day of November, 2021



MH

CD9 496 9062 7A25
Timothy C. Williams
District Court Judge

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7
8
9
10 Respectfully Submitted By:

Approved as to Form and Content:

11 BAILEY ♦ KENNEDY

PISANELLI BICE PLLC

12 By: /s/ Paul C. Williams

By: /s/ M. Magali Mercera

13 JOHN R. BAILEY
14 DENNIS L. KENNEDY
15 JOSHUA P. GILMORE
16 PAUL C. WILLIAMS

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

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

Attorneys for Caesars

19 Approved as to Form and Content:

Approved as to Form and Content:

20 LEBENSFELD SHARON & SCHWARTZ, P.C.

FENNEMORE CRAIG, P.C.

21 By: /s/ Alan M. Lebensfeld

By: /s/ John D. Tennert

22 ALAN M. LEBENSFELD (*Pro Hac Vice*)
23 140 Broad Street
24 Red Bank, New Jersey 07701
25 Telephone: (732) 530-4600
26 Facsimile: (732) 530-4601

JOHN D. TENNERT (#11728)
WADE BEAVERS (#13451)
7800 Rancharran Parkway
Reno, Nevada 89511
Telephone: (775) 788-2200
Facsimile: (775) 786-1177

27 *Attorneys for OHR*

Attorneys for Ramsay

Paul Williams

From: Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Sent: Tuesday, November 2, 2021 5:09 PM
To: Paul Williams; Magali Mercera
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Tennert, John; Cinda C. Towne; Susan Russo; Joshua Gilmore; Beavers, Wade; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

You may. Thank you.

From: Paul Williams <PWilliams@baileykennedy.com>
Sent: Tuesday, November 02, 2021 6:38 PM
To: Magali Mercera <mmm@pisanellibice.com>
Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Hi all,

I am following up on the proposed order (a copy of which is attached for your convenience). Please let us know—by Noon tomorrow—if we may affix your electronic signature and submit it to the Court.

Thank you,

Paul C. Williams
Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
(702) 562-8820 (Main)
(702) 789-4552 (Direct)
(702) 301-2725 (Cell)
(702) 562-8821 (Fax)
PWilliams@BaileyKennedy.com

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From: Paul Williams
Sent: Monday, November 1, 2021 4:53 PM
To: Magali Mercera <mmm@pisanellibice.com>
Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John

Paul Williams

From: Magali Mercera <mmm@pisanellibice.com>
Sent: Wednesday, November 3, 2021 10:42 AM
To: Paul Williams
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Alan Lebensfeld; Tennert, John; Cinda C. Towne; Susan Russo; Joshua Gilmore; Beavers, Wade; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Hi Paul –

You may apply my e-signature.

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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Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

CAUTION: This message is from an EXTERNAL SENDER.

Hi all,

I am following up on the proposed order (a copy of which is attached for your convenience). Please let us know—by Noon tomorrow—if we may affix your electronic signature and submit it to the Court.

Thank you,

Paul C. Williams
Bailey Kennedy, LLP
8984 Spanish Ridge Avenue

Paul Williams

From: Tennert, John <jtennert@fennemorelaw.com>
Sent: Wednesday, November 3, 2021 10:44 AM
To: Paul Williams; Magali Mercera
Cc: James Pisanelli; Debra Spinelli; Emily A. Buchwald; Alan Lebensfeld; Cinda C. Towne; Susan Russo; Joshua Gilmore; Beavers, Wade; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents [FC-Email.FID7746767]

Hi Paul,

You my affix my e-signature.

Thanks,
John

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.

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Subject: RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Hi all,

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**

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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:

14 Service Date: 11/3/2021

| | |
|---------------------------------|-----------------------------|
| 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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|----|----------------------|--------------------------------------|
| 1 | Paul Williams | pwilliams@baileykennedy.com |
| 2 | Dennis Kennedy | dkennedy@baileykennedy.com |
| 3 | Joshua Gilmore | jgilmore@baileykennedy.com |
| 4 | John Bailey | jbailey@baileykennedy.com |
| 5 | Bailey Kennedy, LLP | bkfederaldownloads@baileykennedy.com |
| 6 | Magali Mercera | mmm@pisanellibice.com |
| 7 | Cinda Towne | cct@pisanellibice.com |
| 8 | Daniel McNutt | drm@cmlawnv.com |
| 9 | Paul Sweeney | PSweeney@certilmanbalin.com |
| 10 | Nathan Rugg | nathan.rugg@bfkn.com |
| 11 | Steven Chaiken | sbc@ag-ltd.com |
| 12 | Alan Lebensfeld | alan.lebensfeld@lsandspc.com |
| 13 | Brett Schwartz | brett.schwartz@lsandspc.com |
| 14 | Doreen Loffredo | dloffredo@foxrothschild.com |
| 15 | Mark Connot | mconnot@foxrothschild.com |
| 16 | Joshua Feldman | jfeldman@certilmanbalin.com |
| 17 | Nicole Milone | nmilone@certilmanbalin.com |
| 18 | Karen Hippner | karen.hippner@lsandspc.com |
| 19 | Lawrence Sharon | lawrence.sharon@lsandspc.com |
| 20 | Emily Buchwald | eab@pisanellibice.com |
| 21 | Cinda Towne | Cinda@pisanellibice.com |
| 22 | Litigation Paralegal | bknotices@nv-lawfirm.com |
| 23 | Shawna Braselton | sbraselton@fennemorelaw.com |
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| | |
|-----------------|-----------------------------|
| Christine Gioe | christine.gioe@lsandspc.com |
| Trey Pictum | trey@mcnuttlawfirm.com |
| Monice Campbell | monice@envision.legal |
| Wade Beavers | wbeavers@fclaw.com |
| Sarah Hope | shope@fennemorelaw.com |