

IN THE SUPREME COURT OF THE STATE OF NEVADA

MEI-GSR HOLDINGS, LLC., a Nevada limited liability company; GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation; GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC., a Nevada limited liability company; and AM-GSR HOLDINGS, LLC., a Nevada limited liability company,

Appellants,

vs.

ALBERT THOMAS, individually, *et al.*,

Respondent.

No 84143

Electronically Filed
Mar 04 2022 07:20 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District County Second Department OJ37
County Washoe Judge Nancy Saitta
District Ct. Case No. CV12-02222

2. Attorney filing this docketing statement:

Attorney Daniel F. Polsenberg, Abraham G. Smith, Jennifer K. Hostetler, and Dale Kotchka-Alanes

Telephone 702-949-8200

Firm LEWIS ROCA ROTHGERBER CHRISTIE LLP

Address 3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

Attorney Abran Vigil, Ann Hall, and David C. McElhinney

Telephone 562-454-9786

Firm MERUELO GROUP, LLC

Address Legal Services Department
5th Floor Executive Offices
2535 Las Vegas Boulevard South
Las Vegas, Nevada 89109

Client(s) MEI-GSR Holdings, LLC; AM-GSR Holdings, LLC; Grand Sierra Resort Unit Owners' Association; and Gage Village Commercial Development, LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney G. David Robertson, Jarrad C. Miller, and Jonathan J. Tew

Telephone 775-329-5600

Firm ROBERTSON, JOHNSON, MILLER & WILLIAMSON

Address 50 West Liberty Street, Suite 600
Reno, Nevada 89501

Attorney Robert L. Eisenberg Telephone 775-786-6868

Firm LEMONS, GRUNDY & EISENBERG

Address 6005 Plumas Street, Third Floor
Las Vegas, Nevada 89519

Client(s) Albert Thomas; Jane Dunlap; John Dunlap; Barry Hay; Marie-Anne Alexander, as Trustee of the Marie-Annie Alexander Living Trust; Melissa Vagujhelyi and George Vagujhelyi, as Trustees of the George Vagujhelyi and Melissa Vagujhelyi 2001 Family Trust Agreement, u/t/a April 13, 2001; D' Arcy Nunn; Henry Nunn; Madelyn Van Der Bokke; Lee Van Der Bokke; Donald Schreifels; Robert R. Pederson, individually and as Trustee of the Pederson 1990 Trust; Lou Ann Pederson, individually and as Trustee of the Pederson 1990 Trust; Lori Ordovery; William A. Henderson, individually; Christine E. Henderson; Loren D. Parker; Suzanne C. Parker; Michael Izady; Steven Takaki; Farad Torabkhan; Sahar Tavakol; M&Y Holdings, LLC; JL&YL Holdings, LLC; Sandi Raines; R. Raghuram; Usha Raghuram; Lori K. Tokutomi; Garret Tom; Anita Tom; Ramon Fadrilan; Faye Fadrilan; Peter K. Lee and Monica L. Lee, as Trustees of the Lee Family 2002 Revocable Trust; Dominic Yin; Elias Shamieh; Jeffrey Quinn; Barbara Rose Quinn; Kenneth Riche; Maxine Riche; Norman Chandler; Benton Wan; Timothy D. Kaplan; Silkscape Inc.; Peter Cheng; Elisa Cheng; Greg A. Cameron; TMI Property Group, LLC; Richard Lutz; Sandra Lutz; Mary A. Kossick; Melvin Cheah; Di Shen; Nadine's Real Estate Investments, LLC; Ajit Gupta; Seema Gupta; Fredrick Fish; Lisa Fish; Robert A. Williams; Jacquelin Pham; May Ann Hom, as Trustee of the May Ann Hom Trust; Michael Hurley; Dominic Yin; Duane Windhorst; Marilyn Windhorst; Vinod Bhan; Anne Bhan; Guy P. Browne; Garth A. Williams; Pamela Y. Aratani; Darlene Lindgren; Laverne Roberts; Doug Mecham; Chrisine Mecham; Kwangsoo Son; Soo Yeun Moon; Johnson Akindodunse; Irene Weiss, as Trustee of the Weiss Family Trust; Pravesh Chopra; Terry Pope; Nancy Pope; James Taylor; Ryan Taylor; Ki Ham; Young Ja Choi; Sang Dae Sohn; Kuk Hyung (Connie); Sang (Mike) Yoo; Brett Menmuir, as Trustee of the Cayenne Trust; William Miner, Jr.; Chanh Truong; Elizabeth Anders Mecua; Shepherd Mountain, LLC; Robert Brunner; Amy Brunner; Jeff Riopelle; Patricia M. Moll; and Daniel Moll

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

☐ Judgment after bench trial

☐ Dismissal:

☐ Judgment after jury verdict

☐ Lack of jurisdiction

☐ Summary judgment

☐ Failure to state a claim

- | | |
|---|--|
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify) |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Modification |
| | <input checked="" type="checkbox"/> Other disposition (specify):
Orders granting fees and costs
and denying a stay |

5. Does this appeal raise issues concerning any of the following? No.

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

MEI-GSR Holdings, LLC v. Thomas, Case No. 69184
Thomas v. MEI-GSR Holdings, LLC, Case No. 70498

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. Nature of the action. Briefly describe the nature of the action and the result below:

This action stems from an ongoing dispute over awarded and alleged continuing damages based upon loss of rental income from hotel-condominium units and depreciation in the value of those units. The parties' rights and responsibilities are largely governed by a Unit Rental Agreement, Unit Maintenance Agreement and CC&Rs, (collectively referred to as "Governing Documents"). On January 4, 2022, the district court entered seven separate orders. Defendants appealed.

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

1. Whether the district court abused its discretion in awarding sanctions in the form of attorney's fees.
2. Whether the district court erred in its determination that defendants' interfered with an existing order taking effect, which then resulted in unnecessary and duplicative litigation.
3. Whether the district court awarded an excessive amount of attorneys' fees.
4. Whether the district erred in denying as moot an extension of the stay of enforcement of the disgorgement order pending final disposition.
5. Whether the district court erred in determining all authority to manage and control the GSRUOA was immediately transferred from the GSRUOA's Board of Directors, managers, officers, the Declarant and other agents to the Receiver upon entry of the January 7, 2015 Order Appointing Receiver.
6. Whether the district court erred by directing the Receiver to take possession of and deposit unit rental revenue, which is not the property of the receivership estate, into the receivership account.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

- ☒ N/A
☐ Yes
☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☒ A substantial issue of first impression
- ☒ An issue of public policy
- ☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

This appeal raises an important issue of public policy—the extent to which a court can award sanctions in the form of attorneys' fees.

13. Assignment to the Court of Appeals or Retention in the Supreme Court.

Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court under NRAP 17(a)(11) and NRAP 17(a)(12).

14. Trial. If this action proceeded to trial, how many days did the trial last?

N/A

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 1/4/22 (Exhibits A–G)

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 1/4/22 (Exhibit H)

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing. N/A

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. __, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion

(c) Date written notice of entry of order resolving tolling motion was served

Was service by: N/A

☐ Delivery

☐ Mail/Electronic/Fax

19. Date notice of appeal filed 1/18/22 (Exhibit I)_____

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

The time limit for filing the notice of appeal from a judgment is governed by NRAP 4(a)(1).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

- (a) ☐ NRAP 3A(b)(1) ☐ NRS 38.205
☐ NRAP 3A(b)(2) ☐ NRS 233B.150
☒ NRAP 3A(b)(3) ☐ NRS 703.376
☒ Other (specify) (see below)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

(1) Order Granting Receiver's Motion for Orders & Instructions: This order seeks to expand and amend the power and authority of the Receiver in the January 7, 2015 Order Appointing Receiver. For example, the order finds that upon the appointment of the Receiver, all authority to manage and control the GSRUOA was immediately transferred from the GSRUOA's Board of Directors, managers, officers, the Declarant and other agents to the Receiver. This extreme change in the authority of the Receiver is akin to an order appointing or amending the appointment of a receiver and is appealable under NRAP 3A(b)(4). It is also appealable under NRAP 3A(b)(3), as the order prohibits and thus enjoins defendants from taking action under the Governing Documents especially as it relates to the Reserve Study, the Special Assessment, and Ninth Amended CC&Rs. Finally, it is appealable under NRAP 3(A)(b)(8) as a special order entered after an appealable order (e.g., Order Appointing Receiver), as it affects the rights incorporated in the Order Appointing Receiver. See *Gumm v. Mainor*, 118 Nev. 912, 914, 59 P.3d 1220, 1221 (2002) (“[A] special order made after final judgment must be an order affecting the rights of some party to the

action, growing out of the judgment previously entered.”); NRCP 54(a) (“‘Judgment’ as used in these rules includes a decree and any order from which an appeal lies.”); *Lytle v. Rosemere Estates Prop. Owners*, 129 Nev. 923, 926, 314 P.3d 946, 948 (2013) (citing NRCP 54(a) and NRAP 8A(b)(8) and concluding that, “[a]pplying the definition that judgment includes any appealable order, a motion to alter or amend is permitted as to any appealable order, not just final judgments”); *accord Barbara Ann Hollier Tr. v. Shack*, 131 Nev. 582, 590, 356 P.3d 1085, 1090 (2015).

(2) Order Granting Plaintiffs’ Motion for Instructions to Receiver: The order provides similar relief to the Order Granting Receiver’s Motion for Orders & Instructions. Therefore, this order is appealable pursuant to NRAP 3(A)(b)(3), (b)(4), and (b)(8).

(3) Order Granting Plaintiffs’ Motion to Stay Special Assessment: This order effectively enjoins Defendants from issuing the Special Assessment issued by the Board of the GSRUOA to pay for the Receiver’s fees and other operating expenses of the GSRUOA. Thus, the order is appealable under NRAP 3(A)(b)(3).

In addition, this order substantially expands and amends the authority of the Receiver in the Order Appointing Receiver by finding that all authority vested in the GSRUOA’s Board of Directors, managers, the Declarant, and other decision makers transferred to the Receiver upon his appointment and therefore, any decision of the GSRUOA Board of Directors since January 7, 2015 is void. The order also directs the Receiver to take possession of and deposit unit rental revenue, which is not the property of the receivership estate, into the receivership account. As a result, the it is also appealable under NRAP 3(A)(b)(4).

(4) Order Approving Receiver’s Request to Approve Updated Fees: This order acts as an injunction, effectively invalidating the Ninth Amended CC&Rs and requiring Defendants to apply the Receiver’s fee calculations based upon the Seventh Amended CC&Rs retroactive to January 2020. It is an appealable determination under NRAP 3A(b)(3).

As defendants are required to issue any amounts owed under the new calculations to plaintiffs within 30 days, the payment requirement is appealable under NRAP 3(A)(b)(5) as an order of attachment.

(5) Order Directing Receiver to Prepare Report on Defendants’ Request for Reimbursement of 2020 Capital Expenditures: This order seeks to expand the authority of the Receiver and grant him the authority to exercise a judiciary function by recommending to the Court which items contained in Defendants’ request for reimbursement can be reimbursed under the Governing Documents. It is appealable under NRAP 3A(b)(4). The order may also be deemed a special order entered after appointment of the Receiver under NRAP 3A(b)(8), which addresses a matter collateral to the appealable Order Appointing Receiver.

(6) Order Denying as Moot Defendants’ Emergency Motion to Extend Stay Pending Final Disposition of the Motion for Reconsideration: This order is a special order entered after an appealable order under NRAP 3A(b)(8). This order denies Defendants a stay, finding the request moot although the Court has failed to rule on the merits of the underlying motion for reconsideration of the sanctions order.

(7) Order Granting Plaintiffs’ Supplemental Motion for Fees Pursuant to the Court’s December 24, 2020 Order Granting Motion for Clarification and Sanctioning the Defendants: The order is akin to a motion for attorneys’ fees after final judgment and thus, it is appealable under NRAP 3A(b)(8) as a special order entered after an appealable order. *See Mona v. Eighth Judicial. Dist. Ct.*, 132 Nev. 719, 724, 380 P.3d 836, 840 (2016) (“A sanctions order is final and appealable.”)

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

MEI-GSR Holdings, LLC
Grand Sierra Resort Unit Owners’ Association
Gage Village Commercial Development, LLC
AM-GSR Holdings, LLC
Albert Thomas
Jane Dunlap
John Dunlap
Barry Hay
Marie-Anne Alexander, as trustee of the Marie-Anne Alexander Living Trust
Melissa Vagujhel Yi
George Vagujhel Yi, as trustees of the George Vagujhel Yi and Melissa Vagujhel Yi 2001 Family Trust Agreement u/t/a April 13, 2001
D’Arcy Nunn
Henry Nunn
Madelyn Van Der Bokke
Lee Van Der Bokke
Donald Schreifels
Robert R. Pederson, individually and as trustee of the Pederson 1990 Trust
Lou Ann Pederson, individually and as trustee of the Pederson 1990 Trust
Lori Ordoover
William A. Henderson
Christine E. Henderson
Loren D. Parker
Suzanne C. Parker
Michael Izady
Steven Takaki, as trustee of the Steven W. Takaki & Frances S. Lee Revocable Trust Agreement, UTD January 11, 2000
Farad Torabkhan
Sahar Tavakol

M&Y Holdings, LLC
 JL& YL Holdings, LLC
 Sandi Raines
 R. Raghuram, as Trustee of the Raj and Usha Raghuram Living Trust
 Dated April 25, 2001
 Usha Raghuram, as trustee of the Raj and Usha Raghuram Living Trust
 Dated April 25, 2001
 Lori K. Tokutomi
 Garret Tom, as trustee of the Garret and Anita Tom Trust, Dated
 5/14/2006
 Anita Tom, as trustee of the Garret and Anita Tom Trust, Dated
 5/14/2006
 Ramon Fadrilan
 Faye Fadri Lan
 Peter K. Lee
 Monica L. Lee, as trustees of the Lee Family 2002 Revocable Trust
 Dominic Yin
 Elias Shamieh
 Jeffrey Quinn
 Barbara Rose Quinn
 Kenneth Riche
 Maxine Riche
 Norman Chandler
 Benton Wan
 Timothy D. Kaplan
 Silkscape Inc.
 Peter Cheng
 Elisa Cheng
 Greg A. Cameron
 TMI Property Group. LLC
 Richard Lutz
 Sandra Lutz
 Mary A. Kossick
 Melvin H. Cheah,
 Di Shen
 Nadine's Real Estate Investments, LLC
 Ajit Gupta
 Seema Gupta
 Fredrick Fish
 Lisa Fish
 Robert A. Williams
 Jacquelin Pham, as manager of Condotel 1906, LLC
 May Anne Hom, as trustee of the May Anne Hom Trust
 Michael Hurley
 Duane Windhorst, trustee of Duane Windhorst Trust U/A DTD,
 01/15/2003 and Marilyn Windhorst Trust U/A DTD, 01/015/2003
 Marilyn Windhorst, as trustee of Duane Windhorst Trust U/A DTD,
 01/15/2003 and Marilyn L. Windhorst Trust U/A DTD, 01/15/2003
 Vinod Bhan
 Anne Bhan
 Guy P. Browne
 Garth A. Williams
 Pamela Y. Aratani

Darleen Lindgren
Laverne Roberts
Doug Mecham
Chrisine Mecham
Kwang Soon Son
Soo Yeu Moon
Johnson Akindodunse
Irene Weiss, as trustee of the Weiss Family Trust
Pravesh Chopra
Terry Pope
Nancy Pope
James Taylor
Ryan Taylor
Ki Nam Choi
Young Ja Choi
Sang Dae Sohn
Kuk Hyun (Connie) Yoo
Sang Soon (Mike) Yoo
Brett Menmuir, as manager of Carrera Properties, LLC
William Miner, Jr.
Chanh Truong
Elizabeth Anders Mecua
Shepherd Mountain, LLC
Robert Brunner
Amy Brunner
Jeff Riopelle, as trustee of the Riopelle Family Trust
Patricia M. Moll
Daniel Moll

- (b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiffs collectively sued Grand Sierra Resort Association for appointment of a receiver, money damages and equitable relief. (Exhibit J.)

Plaintiffs collectively sued MEI-GSR for money damages and equitable relief. (Exhibit J.)

Plaintiffs collectively sued Gage Village Development for equitable relief. (Exhibit J.)

Defendants filed counterclaims against all plaintiffs for damages, declaratory relief and injunctive relief. (Exhibit K.)

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered “No” to question 24, complete the following:

(a) Specify the claims remaining pending below:

All claims remain pending.

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

Each of the seven orders are independently appealable, as described in Question 21(b) above.

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims

- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

MEI-GSR Holdings, LLC; AM-GSR
Holdings, LLC; Grand Sierra Resort Unit
Owners' Association; and Gage Village
Commercial Development, LLC
Name of appellants

Abraham G. Smith
Name of counsel of record

/s/ Abraham G. Smith
Signature of counsel of record

March 4, 2022
Date

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I hereby certify that this “Docketing Statement” was filed electronically with the Nevada Supreme Court on the 4th day of March, 2022. Electronic service of the foregoing “Docketing Statement” shall be made in accordance with the Master Service List as follows:

G. David Robertson
Jarrad C. Miller
Jonathan J. Tew
ROBERTSON, JOHNSON, MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, Nevada 89501

Robert L. Eisenberg
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, Nevada 89519

Dated this 4th day of March, 2022.

/s/ Cynthia Kelley
An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT A TO
DOCKETING
STATEMENT

1 CODE: 3060

2
3
4
5
6
7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
20 LLC, a Nevada limited liability company; and
21 DOE DEFENDANTS 1 THROUGH 10,
22 inclusive,

23 Defendants.

24 **ORDER GRANTING RECEIVER'S MOTION FOR ORDERS & INSTRUCTIONS**

25 Presently before the Court is the Receiver's Motion for Orders & Instructions, filed
26 October 18, 2021 ("Motion"). Plaintiffs filed Plaintiffs' Joinder to Receiver's Motion for Orders
27 & Instructions on October 22, 2021 ("Plaintiff's Joinder"). Defendants filed Defendants'
28 Opposition to Receiver's Motion for Orders & Instructions on October 22, 2021 ("Defendants'
Opposition"). The Receiver then filed Receiver's Reply in Support of Motion for Orders &
Instructions on October 25, 2021 ("Receiver's Reply"). The Motion was submitted for
consideration on October 25, 2021.

1 Case-concluding sanctions were entered against the Defendants for abuse of discovery
2 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
3 Terminating Sanctions, filed October 3, 2014 at 12.) See Young v. Johnny Ribeiro Bldg., Inc.,
4 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
5 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. See
6 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.

7 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
8 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
9 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"). (See
10 Appointment Order at 1:23-26.) The receivership was implemented "for the purpose of
11 implementing compliance, among all condominium units, including units owned by any
12 Defendant in this action . . . with the Covenants, Codes and Restrictions recorded against the
13 condominium units, the Unit Maintenance Agreements and the original Unit Rental Agreements
14 (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25, 2019, Richard
15 Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order Granting Motion to
16 Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed January 25, 2019.)

17 In 2021, the Defendants undertook to have a reserve study done by a third party, which
18 was then to be utilized by the Receiver to calculate those fees to be charged to Plaintiffs
19 (including the Daily Use Fees ("DUF"), Shared Facility Use Expenses ("SFUE"), and Hotel
20 Expenses ("HE")). The Receiver states that various orders of this Court, including the
21 Appointment Order, provide authority solely to Receiver to order and oversee any reserve studies
22 done. (Reply at 2:27-3:5.) Defendants argue that no such orders nor the Governing Documents
23 provide the Receiver with such authority. (Defendants' Opposition at 3:19-24.) Instead,
24 Defendants argue that any attempt by the Receiver to order or oversee the reserve study would be
25 an "impermissibl[e] expan[sion] of his authority." (Id. at 3:20.)

26 The Court issued its Findings of Fact, Conclusions of Law and Order granting in part
27 Defendants' Motion for Leave to File Motion for Reconsideration of December 24, 2020 Order
28 Granting Motion for Clarification and Request for Hearing, on September 29, 2021. Therein, the

1 Court struck the disgorgement order granted in the December 24, 2020 Order Granting
2 Clarification (“December 24, 2020 Order”). Whereas the Court originally instructed that “[u]ntil
3 the DUF, the [HE], and [SFUE] are recalculated by the Receiver, the fees calculated by the past
4 receiver shall be applied,” the revised order struck this reversion to the prior receiver’s
5 calculations. Thus, the Receiver states he is now without direction as to which calculations are
6 to be applied until he is able to redo his own calculations. (See December 24, 2020 Order at
7 3:23-4:10 (where the Court informs the Receiver his calculations for 2020 are incorrect and
8 invalid under the Governing Documents and they must be redone).) Defendants argue the
9 Receiver’s prior calculations, which were in place until the December 24, 2020 Order was
10 issued, should be utilized. Notably, this directly contradicts the Court’s December 24, 2020
11 Order, is inequitable, and thus is denied outright. (Id.)

12 The Appointment Order provides the Receiver authority to take control of “all accounts
13 receivable, payments, rents, including all statements and records of deposits, advances, and
14 prepaid contracts or rents” (Appointment Order at 3:15-18.) Defendants are also ordered to
15 cooperate with the Receiver and not “[i]nterfer[e] with the Receiver, directly or indirectly.” (Id.
16 at 8:2-15.) The Receiver has informed the parties of his intent to open a separate account into
17 which all rents and other proceeds from the units will be deposited, and now requests the Court’s
18 permission to open such an account. (Motion at 11:19; Motion to Stay Special Assessment, filed
19 August 20, 2021 at Ex. 2.) Defendants have refused to cooperate with the Receiver’s request to
20 turnover various proceeds, in violation of the Appointment Order, and now object to Receiver’s
21 authority to open a separate account. (Appointment Order at 8:2-15; Defendant’s Opposition at
22 6:14-7:21.)

23 Pursuant to the Governing Documents, Defendants have implemented a room rotation
24 program whereunder bookings for the units owned by Plaintiffs and Defendants should be
25 equally distributed such that Plaintiffs and Defendants, as individual unit owners, are earning
26 roughly equal revenue. The Receiver contends this room rotation program is flawed and has
27 resulted in a greater number of Defendants’ units being rented than Plaintiffs’ units during
28 various periods through August 2021. (Motion at 14:14-17.)

1 Among the Governing Documents with which the Receiver is ordered to implement
2 compliance is the Seventh Amendment to Condominium Declaration of Covenants, Conditions,
3 Restrictions and Reservations of Easements for Hotel-Condominiums at Grand Sierra Resort,
4 recorded June 27, 2007 (“Seventh Amended CC&Rs”). Defendants, however, after representing
5 to the Court that the Seventh Amended CC&Rs needed to be amended in order to comply with
6 NRS 116B, unilaterally revised and recorded the Ninth Amendment to Condominium
7 Declaration of Covenants, Conditions, and Restrictions and Reservations of Easements for
8 Hotel-Condominiums at Grand Sierra Resort (“Ninth Amended CC&Rs”) to overhaul the fee
9 structure and radically expand the fees chargeable to the Plaintiffs. The Ninth Amended
10 CC&Rs, according to Plaintiffs, substantially increase the expenses to be included in fees
11 charged to Plaintiffs – thus making ownership of the units unviable.

12 Finally, Defendants have communicated with Receiver *ex parte* through a variety of
13 individuals. The Receiver now requests that all communications be funneled through a single
14 individual: Reed Brady. (Motion at 17:4-8.)

15 The Motion requests the Court order (1) that the Notice of Special Assessments and the
16 Reserve Studies sent to the unit owners by Defendants on August 24, 2021 be immediately
17 withdrawn; (2) that the Defendants be ordered to send out a notice to all unit owners of said
18 withdrawal; and (3) that this Court confirm the Receiver’s authority over the Reserve Studies.
19 (Motion at 3:11-14.) The Motion further requests the Court order that the Receiver is to
20 recalculate the charges for the DUF, SFUE, and HE for 2020 based upon the same methodology
21 as has been used in calculating the fee charges for 2021, once the Court approves that
22 methodology. (*Id.* at 8:10-13.) The Motion further requests the Court approve the opening of an
23 account for the Receivership, with the Receiver having sole signatory authority over the account,
24 and order that all rents received by Defendants currently and in the future, generated from either
25 all 670 condominium units or the Plaintiff-owned units, net of the total charges for the DUF,
26 SFUE, and HE fees and for reserves combined, are to be deposited into the account, that the
27 receiver be authorized to make the necessary disbursements to the relevant unit owners at three
28 (3) month intervals, that any disgorgement amounts owed by Defendants be deposited into the

1 Receivership account to be distributed by the Receiver, and that, if the Court orders the current
2 credit balances in the Plaintiffs' accounts are to be deposited in to the Receiver's bank account
3 then, to the extent that such credit balances are to be disgorged, Defendants will pay such credit
4 balances to the Receiver for deposit, and the Receiver will distribute such funds appropriately.
5 (Id. at 11:21-12:13.) The Motion further requests the Court order Defendants to provide the
6 Receiver with the information and documentation he has requested relating to the room rotation
7 program within ten (10) days of this Order. (Id. at 14:20-24.) The Motion further requests the
8 court expedite the determination of the Plaintiffs' Motion for Instructions, filed October 18, 2021
9 and submitted for consideration on October 25, 2021. (Id. at 17:1-3.) Finally, the Motion
10 requests the Court instruct Defendants to funnel all communications to the Receiver through a
11 single individual: Reed Brady. (Id. at 7:5-8.)

12 As this Court has stated previously, "[a] receiver is appointed to maintain the status quo
13 regarding the property in controversy and to safeguard said property from being dissipated while
14 the plaintiff is pursuing his remedy." (Order Denying Motion to Terminate Rental Agreement,
15 filed October 12, 2020 (citing Milo v. Curtis, 100 Ohio App.3d 1, 9, 651 N.E.2d 1340, 1345
16 (Ohio Ct. App. 1994).) This Court reiterated this premise in another order, stating that "[o]ne of
17 the purposes of the [Appointment] Order was to preserve the status quo of the parties during the
18 pendency of the action. Another purpose was to enforce [the] agreements." (Order, filed
19 November 23, 2015 at 1:22-23.) Nevada law supports this obligation of the Receiver. See
20 Johnson v. Steel, Inc., 100 Nev 181, 183, 678 P.2d 767, 678 (1984) (the appointment of a
21 receiver is a "remedy used to preserve the value of assets pending outcome of the principal case"
22 and is "a means of preserving the status quo"), overruled on other grounds by Shoen v. SAC
23 Holding Corp., 122 Nev. 621, 137 P.3d 1171 (2006); accord Dunphy v. McNamara, 50 Nev. 113,
24 252 P. 943, 944 (1927) (a court of equity has "ample authority" to utilize a receiver to preserve
25 the status quo).

26 Furthermore, upon the appointment of the Receiver, all authority to manage and control
27 the GSRUOA was immediately transferred from the GSRUOA's Board of Directors, managers,
28 officers, the Declarant, and other agents to the Receiver. Francis v. Camel Point Ranch, Inc.,

1 2019 COA 108M, ¶¶ 6-10, 487 P.3d 1089, 1092-93, as modified on denial of reh'g (Colo. Ct.
2 App. Sept. 19, 2019) (noting that “[u]pon the receiver’s appointment, [Defendant’s] corporate
3 officers and directors lost all authority to control the corporation”); First Sav. & Loan Ass’n v.
4 First Fed. Sav. Loan Ass’n, 531 F. Supp. 251, 255 (D. Haw. 1981) (“When a receiver is
5 appointed for a corporation, the corporation’s management loses the power to run its affairs and
6 the receiver obtains all of the corporation’s powers and assets.”). “Simply put, corporate
7 receivership is a court-mandated change in corporate management.” Francis, 487 P.3d 1089 at
8 1092-93.

9 Thus, upon appointment of the Receiver, the GSRUOA’s Board of Directors was
10 divested of the authority it has errantly exercised to issue that Notice of Special Assessment and
11 the Reserve Studies which was sent to all unit owners on August 24, 2021. Accordingly, such
12 Notice of Special Assessment and any actual imposition of special assessment is *void ab initio*
13 and therefore invalid. Only the Receiver can impose special assessments.

14 Next, the Findings of Fact, Conclusions of Law and Judgement issued on October 9,
15 2015 (“FFCLJ”), explicitly ordered the Receiver to calculate “a reasonable amount of FF&E,
16 shared facilities and hotel reserve fees” and other necessary fees to be assessed against Plaintiffs.
17 (FFCLJ at 22:25-27.) Accordingly, the Receiver is to calculate the DUF, SFUE, and HE for
18 2020. Such calculations should be based upon the same methodology as used for the 2021 fees,
19 once the Court has approved of such methodology.

20 The Appointment Order expressly allows for the Receiver to open an account for the
21 Receivership. (Appointment Order at 6:26 (the Receiver is allowed to “open and utilize bank
22 accounts for receivership funds”).) Indeed, the Appointment Order also expressly calls for the
23 Receiver to collect proceeds from the Property (defined as the 670 condominium units),
24 including, but not limited to, rent earned therefrom. (Id. at 5:17-19.) It logically follows then
25 that the Receiver may open a separate account for the Receivership in which it may hold all rents
26 from the Property, as defined in the Receivership Order.

27 The Appointment Order also expressly calls for Defendants to cooperate with the
28 Receiver and refrain from taking any actions which will interfere with the Receiver’s ability to

1 perform his duties. (Id. at 8:2-15.) Accordingly, Defendants should supply the Receiver with all
2 information, explanation, and documentation the Receiver may request regarding the room
3 rotation program and apparent inadequacy thereof.

4 The Receiver was specifically tasked with implementing compliance with the Governing
5 Documents, including the Seventh Amended CC&Rs. (Appointment Order at 1:27-2:3.)
6 Reading this obligation to implement compliance with the Seventh Amended CC&Rs with the
7 obligation to maintain the status quo, this Court finds that the Seventh Amended CC&Rs cannot
8 be amended, repealed, nor replaced until the Receiver is relieved of his duties by the Court. The
9 continuance of this specific Governing Document will ensure the status quo, as is the purpose of
10 a receivership. Johnson, 100 Nev. at 183, 678 P.2d at 678; Dunphy, 50 Nev. 113, 252 P. at 944.
11 The automatic and immediate transfer of control over the GSRUOA to the Receiver therefore
12 divested the GSRUOA's Board of Directors from any authority it had to propose, enact, and
13 otherwise make effective the Ninth Amended CC&Rs. The Ninth Amended CC&Rs are thus
14 *void ab initio*, as they were enacted without proper authority. Accordingly, the Ninth Amended
15 CC&Rs are *void ab initio*, and even if they were not, the Ninth Amended CC&Rs would be
16 improper and thus subject to rescission or cancellation.

17 Finally, the Court finds it appropriate for Defendants to funnel all communication with
18 the Receiver through a single individual. For the time being, such individual shall be Reed
19 Brady. Mr. Brady may delegate tasks to others, however, only Mr. Brady should communicate
20 answers, conclusions, or other findings to the Receiver.

21 **IT IS HEREBY ORDERED** that Receiver's Motion is granted **in full**.

22 **IT IS FURTHER ORDERED** (i) that the Notice of Special Assessments and the
23 Reserve Studies sent to the unit owners by the Defendants on August 24, 2021 shall be
24 immediately withdrawn; (ii) that the Defendants shall send out a notice to all unit owners of said
25 withdrawal within ten (10) days of this Order; (iii) that any amounts paid by unit owners
26 pursuant to the Notice of Special Assessment shall be refunded within ten (10) days of this
27 Order; and (iv) that the Receiver has sole authority to order and oversee reserve studies related to
28 Defendants' property and under the Governing Documents.

1 **IT IS FURTHER ORDERED** that the Receiver shall recalculate the DUF, SFUE, and
2 HE based on the same methodology as has been used in calculating the fee charges for 2021,
3 subject to Court approval of such methodology. Those fees in place prior to the Court's
4 September 27, 2021 Order shall remain in place until the fees for 2020 are recalculated and
5 approved by this Court such that only a single account adjustment will be necessary.

6 **IT IS FURTHER ORDERED** that the Receiver shall open a separate account on which
7 Receiver has sole signatory authority, and into which all rents received by Defendants currently
8 for all 670 condominium units, net of total charges for DUF, SFUE, and HE fees and reserves,
9 are to be deposited. The Receiver shall disburse the revenue collected to the parties according to
10 the Governing Documents. In the event the Court requires a disgorgement by Defendants to
11 Plaintiffs, Receiver shall deposit such disgorgements into this separate account and disburse the
12 same to Plaintiffs appropriately.

13 **IT IS FURTHER ORDERED** that Defendants shall provide Receiver with any
14 information, explanation, and documentation he may request regarding the room rotation
15 program and any perceived discrepancies therewith, until Receiver is either satisfied with the
16 adequacy of the program or until Receiver deems it appropriate to seek judicial intervention.

17 **IT IS FURTHER ORDERED** that the Ninth CC&Rs are *void ab initio* and the Seventh
18 CC&Rs are to be resurrected as though they had not been withdrawn or superseded.

19 **IT IS FURTHER ORDERED** that Defendants shall funnel all communication with the
20 Receiver through Reed Brady. Defendants and Receiver may mutually agree to choose an
21 alternative representative through which communication shall be directed. Mr. Brady, and any
22 subsequent representative, may delegate requests, questions, or other tasks necessary to respond
23 to Receiver's communications, but any answers, conclusions, or other results shall be
24 communicated back to Receiver through only Mr. Brady and no other individual.

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Submitted by:

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Jarrad C. Miller, Esq.
Jonathan Joel Tew, Esq.
Attorneys for Plaintiffs

EXHIBIT B TO
DOCKETING
STATEMENT

1 CODE: 3060
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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
LLC, a Nevada limited liability company; and
DOE DEFENDANTS 1 THROUGH 10,
inclusive,

Defendants.

20 **ORDER GRANTING PLAINTIFFS' MOTION FOR INSTRUCTIONS TO RECEIVER**

21 Presently before the Court is Plaintiff's Motion for Instructions to Receiver, filed
22 September 28, 2021 ("Motion"). Defendants filed Defendants' Opposition to Plaintiffs' Motion
23 for Instructions to Receiver on October 12, 2021 ("Opposition"). Plaintiffs filed their Reply in
24 Support of Motion for Instructions to Receiver on October 25, 2021. The Motion was submitted
25 for consideration on October 25, 2021.

26 Case-concluding sanctions were entered against the Defendants for abuse of discovery
27 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
28 Terminating Sanctions, filed October 3, 2014 at 12.) See also Young v. Johnny Ribeiro Bldg.

1 Inc., 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
2 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. (See
3 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

4 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
5 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
6 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"), the
7 rental and other revenues from the condominiums, as well as other property of the non-
8 GSRUOA Defendants. (See Appointment Order at 1:23-26.) The receivership was implemented
9 "for the purpose of implementing compliance, among all condominium units, including units
10 owned by any Defendant in this action . . . with the Covenants, Codes and Restrictions recorded
11 against the condominium units, the Unit Maintenance Agreements and the original Unit Rental
12 Agreements (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25,
13 2019, Richard Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order
14 Granting Motion to Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed
15 January 25, 2019.)

16 Among the Governing Documents with which the Receiver is ordered to implement
17 compliance is the Seventh Amendment to Condominium Declaration of Covenants, Conditions,
18 Restrictions and Reservations of Easements for Hotel-Condominiums at Grand Sierra Resort,
19 recorded June 27, 2007 ("Seventh Amended CC&Rs"). Defendants, however, after representing
20 to the Court that the Seventh Amended CC&Rs needed to be amended in order to comply with
21 NRS 116B, unilaterally revised and recorded the Ninth Amendment to Condominium
22 Declaration of Covenants, Conditions, and Restrictions and Reservations of Easements for
23 Hotel-Condominiums at Grand Sierra Resort to overhaul the fees chargeable to the unit owners.
24 ("Ninth Amended CC&Rs"). The Ninth Amended CC&Rs, according to Plaintiffs, substantially
25 increase the expenses to be included in fees charged to Plaintiffs – thus making ownership of the
26 units unviable. (Reply at 7:17-21.)

27 Additionally, the Defendants undertook to have a reserve study done by a third party,
28 which was then to be utilized by the Receiver to calculate those fees to be charged to Plaintiffs.

1 Plaintiffs argue this reserve study was not only done without proper authority, but also that it was
2 patently erroneous in that it includes a variety of expenses which are not chargeable to the
3 Plaintiffs under the Seventh Amended CC&Rs. (Motion at 4:3-13.)

4 The Motion requests the Court instruct the Receiver to (1) determine that the amendment
5 process was invalid and void actions improperly taken by the GSRUOA Board of Directors, (2)
6 maintain the status quo by enforcing the Appointment Order and apply the Seventh Amended
7 CC&Rs, and (3) disqualify the 2021 reserve study and prepare a new reserve study completed
8 with the Receiver's direction and input. (Motion at 2:27-3:4, 4:12-13.)

9 As this Court has stated previously, "[a] receiver is appointed to maintain the status quo
10 regarding the property in controversy and to safeguard said property from being dissipated while
11 the plaintiff is pursuing his remedy." (Order Denying Motion to Terminate Rental Agreement,
12 filed October 12, 2020 (citing Milo v. Curtis, 100 Ohio App.3d 1, 9, 651 N.E.2d 1340, 1345
13 (Ohio Ct. App. 1994).) This Court reiterated this premise in a subsequent order, stating that
14 "[o]ne of the purposes of the [Appointment] Order was to preserve the status quo of the parties
15 during the pendency of the action. Another purpose was to enforce [the] agreements." (Order,
16 filed November 23, 2015 at 1:22-23.) Nevada law supports this obligation of the Receiver. See
17 Johnson v. Steel, Inc., 100 Nev 181, 183, 678 P.2d 767, 678 (1984) (the appointment of a
18 receiver is a "remedy used to preserve the value of assets pending outcome of the principal case"
19 and is "a means of preserving the status quo"), overruled on other grounds by Shoen v. SAC
20 Holding Corp., 122 Nev. 621, 137 P.3d 1171 (2006); accord Dunphy v. McNamara, 50 Nev. 113,
21 252 P. 943, 944 (1927) (a court of equity has "ample authority" to utilize a receiver to preserve
22 the status quo).

23 In this case, the Receiver was specifically tasked with implementing compliance with the
24 Governing Documents, including the Seventh Amended CC&Rs. (Appointment Order at 1:27-
25 2:3.) Reading this obligation to implement compliance with the Seventh Amended CC&Rs with
26 the obligation to maintain the status quo, this Court finds that the Seventh Amended CC&Rs
27 cannot be amended, repealed, nor replaced until the Receiver is relieved of his duties by the
28 Court. The continuance of this specific Governing Document will ensure the status quo, as is the

1 purpose of a receivership and the Appointment Order. See Johnson, 100 Nev. at 183, 678 P.2d at
2 678; Dunphy, 50 Nev. 113, 252 P. at 944.

3 Furthermore, upon the appointment of the Receiver, all authority to manage and control
4 the GSRUOA was immediately transferred from the GSRUOA's Board of Directors, managers,
5 officers, the Declarant, and other agents to the Receiver. Francis v. Camel Point Ranch, Inc.,
6 2019 COA 108M, ¶¶ 6-10, 487 P.3d 1089, 1092-93, as modified on denial of reh'g (Colo. Ct.
7 App. Sept. 19, 2019) (noting that "[u]pon the receiver's appointment, [Defendant's] corporate
8 officers and directors lost all authority to control the corporation"); First Sav. & Loan Ass'n v.
9 First Fed. Sav. Loan Ass'n, 531 F. Supp. 251, 255 (D. Haw. 1981) ("When a receiver is
10 appointed for a corporation, the corporation's management loses the power to run its affairs and
11 the receiver obtains all of the corporation's powers and assets."). "Simply put, corporate
12 receivership is a court-mandated change in corporate management." Francis, 487 P.3d 1089 at
13 1092-93.

14 This automatic and immediate transfer of control over the GSRUOA to the Receiver
15 therefore divested the GSRUOA's Board of Directors from any authority it had to propose,
16 enact, and otherwise make effective the Ninth Amended CC&Rs. The Ninth Amended CC&Rs
17 are thus *void ab initio*, as they were enacted without proper authority.

18 Accordingly, the Ninth Amended CC&Rs are *void ab initio*, and even if they were not,
19 the Ninth Amended CC&Rs would be improper and thus subject to rescission or cancellation.¹

20 Next, Plaintiffs have moved the Court to instruct the Receiver to reject the reserve study
21 completed by Defendants without any input from Receiver, and order and oversee a separate
22 reserve study. (Motion at 11:25-14:19.) The Court has explicitly found that the Receiver "will
23 determine a reasonable amount of FF&E, shared facilities and hotel reserve fees." (Findings of
24 Fact, Conclusions of Law and Judgement, Filed October 9, 2015 at 22:25-26.) This implies that

25
26 ¹ Defendants argue any challenge to the Ninth Amended CC&Rs must be brought pursuant to the ADR provision
27 therein. The Court rejects this argument *in toto* considering the Appointment Order, the purpose of the Appointment
28 Order, and binding Nevada law which all dictate the receivership is intended to maintain the status quo – not allow
for a key Governing Document to be unilaterally amended by Defendants. Further, the claim for a Receivership was
brought in the Second Amended Complaint and the Nevada Supreme Court has already found that the District Court
has subject matter jurisdiction over the action.

1 the Receiver will also be tasked with ordering and overseeing the reserve study – as that study
2 will dictate the FF&E, shared facilities, and hotel reserve fees. Thus, the Receiver alone has the
3 authority to direct and audit the reserve study, not the Defendants.

4 Moreover, the Defendants have acknowledged this reality to the Court:

5 Mr. McElhinney: Are you instructing the receiver to use the 2016
6 reserve study in rendering his calculation? The Court: I think he
7 can. Mr. McElhinney: Up to him? The Court: Yeah, it's up to
8 him. If there's some reason that Mr. Teichner believes that the
9 premise or the data that's collected therein is inappropriate, then
10 obviously he can just go back to the 2014 study, but if he wants to
11 use it and he believes that it's statistical or evidentiarily valid, then
12 he can use that in making those determinations.

13 (Motion at Ex. 3 at 141:24-142:11.)

14 Plaintiffs further object to the Defendants' reserve study because it has included expenses
15 which are clearly erroneous. (Motion at 4:6-13 (noting public pool expenses that were included
16 while the Governing Documents and Court orders exclude any revenue-generating expenses).)
17 The reserve study is to be limited as directed in previous Court orders and the Governing
18 Documents. The reserve study provided by Defendants clearly shows at least one basic,
19 elementary example of expenses which are included but should not be. (Id.) Accordingly, the
20 Court finds the Defendants' reserve study to be flawed and untrustworthy, and finds the Receiver
21 has the proper (and sole) authority to order, oversee, and implement a new reserve study.

22 **IT IS HEREBY ORDERED** that Plaintiffs' Motion is granted.

23 **IT IS FURTHER ORDERED** that the Ninth Amended CC&Rs shall be withdrawn and
24 the Seventh Amended CC&Rs shall be reinstated as though never superseded.

25 **IT IS FURTHER ORDERED** that Receiver shall not utilize the Defendants' reserve
26 study in calculating those fees which are to be assessed to Plaintiffs. Instead, the Receiver shall
27 order, oversee, and implement a new reserve study which is in accordance with the Governing
28 Documents.

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1 **IT IS SO ORDERED.**

2 DATED 12.21.21

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5 _____
6 SENIOR JUSTICE
7 Nancy Saitta

8 Submitted by:

9 ROBERTSON, JOHNSON,
10 MILLER & WILLIAMSON

11 _____
12 /s/ Jarrad C. Miller

13 Jarrad C. Miller, Esq.
14 Jonathan Joel Tew, Esq.
15 Attorneys for Plaintiffs

EXHIBIT C TO
DOCKETING
STATEMENT

CODE: 3060

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

Case No. CV12-02222
Dept. No. OJ37

MEI-GSR Holdings, LLC, a Nevada limited liability company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada limited liability company; AM-GSR HOLDINGS, LLC, a Nevada limited liability company; and DOE DEFENDANTS 1 THROUGH 10, inclusive,

Defendants.

ORDER GRANTING PLAINTIFFS' MOTION TO STAY SPECIAL ASSESSMENT

Presently before the Court is Plaintiffs' Motion to Stay Special Assessment, filed August 20, 2021 ("Motion").¹ Defendants filed Defendants' Opposition to Motion to Stay Special Assessment on September 3, 2021 ("Opposition"). Plaintiffs filed their Reply in Support of

¹ Plaintiffs filed an initial version of this motion on July 30, 2021. (Motion to Stay Special Assessment and Renewed Request to Replace Receiver, filed July 30, 2021.) Plaintiffs withdrew this motion without prejudice on August 17, 2021. (Notice of Withdrawal of Motion to Stay Special Assessment and Renewed Request to Replace Receiver, filed August 17, 2021.)

1 Motion to Stay Special Assessment on September 17, 2021. The Motion was submitted for
2 consideration on September 22, 2021.

3 Case-concluding sanctions were entered against the Defendants for abuse of discovery
4 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
5 Terminating Sanctions, filed October 3, 2014 at 12.) See also Young v. Johnny Ribeiro Bldg.,
6 Inc., 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
7 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. (See
8 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

9 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
10 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
11 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"). (See
12 Appointment Order at 1:23-26.) The receivership was implemented "for the purpose of
13 implementing compliance, among all condominium units, including units owned by any
14 Defendant in this action . . . with the Covenants, Codes and Restrictions recorded against the
15 condominium units, the Unit Maintenance Agreements and the original Unit Rental Agreements
16 (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25, 2019, Richard
17 Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order Granting Motion to
18 Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed January 25, 2019.)

19 The Appointment Order provides that the Receiver and his agents are to be "pa[id] and
20 discharge[d] out of the Property's rents and/or GSRUOA monthly dues collections. . . ." (Appointment Order at 6:12-16.) It is thus clear that the Receiver's invoices are to be paid
21 through either (or collectively) the Property's rents collected or the GSRUOA monthly dues and
22 not from any other source of funds without approval of this Court.
23

24 On June 16, 2021, the Receiver provided notice to the Court that GSRUOA was insolvent
25 and requested a hearing to address this issue. (Motion at 1:2-4.) After the parties discussed
26 potential solutions to this issue, the Defendants, over Plaintiffs' objection, on July 12, 2021 voted
27 to impose a special assessment against all unit owners which would raise about \$100,000 to pay
28 the Receiver's invoices and other expenses ("Special Assessment"). (Opposition at 2:3-11.)

1 The Motion requests that the Court: (1) enforce the Appointment Order; (2) stay the
2 Special Assessment; (3) direct the Receiver to pay the expenses of the receivership through the
3 new receivership account; and (4) order the Defendants to stop interfering with the receivership
4 and the orders governing same. (Motion at 2:6-9.) The Opposition argues the Special
5 Assessment was appropriate under the Seventh Amendment to Condominium Declaration of
6 Covenants, Conditions, Restrictions and Reservations of Easements for hotel Condominiums at
7 Grand Sierra Resort ("CC&Rs") and necessary in order to both fund the Receiver's invoices as
8 well as the GSRUOA's operations through the remainder of 2021. (Opposition at 2:24-3:6.)

9 To begin, the appointment of a receiver terminates the authority of an entity's officers
10 and directors, and places all such authority in the receiver alone. Francis v. Camel Point Ranch,
11 Inc., 2019 COA 108M, ¶¶6-10, 487 P.3d 1089, 1092-9 (Colo. App. Sept. 19, 2019) (noting that
12 "[u]pon the receiver's appointment, [Defendant's] corporate officers and directors lost all
13 authority to control the corporation"); McDougal v. Huntingdon & Broad Top Mountain RR. &
14 Coal Co., 294 Pa. 108, 143 A.574, 577 (1928) (the receiver exercises the functions of the board
15 of directors, managers and officers, takes possession of corporate income, property, and assets,
16 directs not only in its operation, but, while in control, its policies on all lines"); see First Sav &
17 Loan Ass'n v. First Fed. Sav. Loan Ass'n, 531 F. Supp. 251, 255 (D. Haw. 1981) ("When a
18 receiver is appointed for a corporation, the corporation's management loses the power to run its
19 affairs and the receiver obtains all of the corporation's powers and assets"); see also U.S. v.
20 Powell, 95 F.2d 752, 754 (4th Cir. 1938). Thus, when the Appointment Order was issued, all
21 authority vested in GSRUOA's Board of Directors, managers, the Declarant, and other decision
22 makers was transferred to the Receiver and the Board of Directors, managers, the Declarant, and
23 other decision makers were divested of such authority.

24 It follows then that any decision of GSRUOA's Board of Directors since the
25 Appointment Order, including the July 12, 2021 decision to impose the Special Assessment, is
26 void as GSRUOA's Board of Directors had no authority to make such a decision or impose such
27 an assessment. (Id.)

1 Defendants argue that because the Receiver apparently did not object to the GSRUOA's
2 Board of Directors' decision to impose the Special Assessment, the Special Assessment is
3 proper. (Opposition at 4:17-18 ("The Board voted unanimously to approve and implement the
4 Special Assessment and the Receiver agreed with the action.")) This argument falls flat,
5 however, in light of the Receiver's limited authority. Anes v. Crown P'ship, Inc., 113 Nev. 195,
6 201-02, 932 P.2d 1067, 1071 (1997) ("a receiver must not exceed the limits of the authority
7 granted by the court"). The Appointment Order specifically dictates the source of funds to pay
8 the Receiver's invoices: "the Property's rents and/or GSRUOA monthly dues." (Appointment
9 Order at 6:12-16.) The Appointment Order does not provide that the Receiver can be funded
10 from any special assessments imposed upon the unit owners. Accordingly, any such special
11 assessment imposed to fund the Receiver's invoices is improper and exceeds authority vested in
12 the Receiver alone. Anes, 113 Nev. at 201-02, 932 P.2d at 1071; Fullerton v. Second Jud. Dist.
13 Ct. in & for Cty. of Washoe, 111 Nev 391, 400, 892 P.2d 935, 941 (1995) ("a receiver must not
14 exceed the limits of the authority granted"); accord Clay Expl., Inc. v. Santa Rosa Operating,
15 LLC, 442 S.W.3d 795, 800 (Tex. App. 2014) (a receiver only has that authority conferred by the
16 Court's order appointing him); Price v. Howsen, 197 Iowa 324, 197 N.W. 62, 63 (1924) ("It is a
17 familiar rule that 'the extent of a receiver's authority is always to be measured by the order of
18 appointment'"); Citibank, N.A. v. Nyland (CF 8), Ltd., 839 F.2d 93, 98 (2d Cir. 1988)
19 ("[The receiver's] authority is wholly determined by the order of the appointment court"); In re
20 Lamplight Condo. Ass'n, Inc., No. 17-20078 (JJT), 2017 WL 184510, at *2 (Bankr. D. Conn.
21 May 5, 2017) ("The source of the Receiver's authority and the process by which it was bound
22 and governed is the Appointment Order, which, as a stipulation, is [] a . . . limitation of the
23 Receiver's power, authority and process.").

24 Moreover, the Receiver has now indicated that he intends to open a separate account to
25 collect rental revenues from the Property and distribute the same to the appropriate unit owners.
26 (Motion at Ex. 2 (email in which Receiver's counsel states "The Receiver is going to open a
27 separate account for the Receivership as soon as possible. . . . As of September 1st, all of the
28 revenue from the Summit Rooms (the units in the Hotel Condominium) will be deposited into

1 the account.”.) If the Receiver so opens this account to collect rental revenue, the Special
2 Assessment will become unnecessary to pay the Receiver’s invoices as Receiver will have access
3 to all rental revenue from the relevant units with which the Receiver may pay his invoices. The
4 Court finds this action by the Receiver is both necessary and allowed under the Appointment
5 Order. (See Appointment Order at 3:7-10, 3:15-18.)

6 Accordingly, the Court finds the Special Assessment exceeded the authority of the
7 GSRUOA’s Board of Directors as well as the authority of the Receiver. Thus, the Special
8 Assessment shall be rescinded and deemed void.

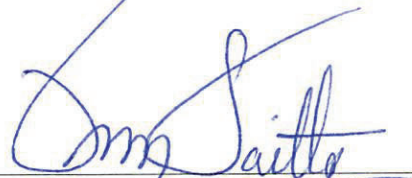
9 **IT IS HEREBY ORDERED** that Plaintiffs’ Motion is granted.

10 **IT IS FURTHER ORDERED** that Defendants shall rescind the Special Assessment and
11 refund any unit owners who have paid the Special Assessment within twenty (20) days of this
12 Order.

13 **IT IS FURTHER ORDERED** that the Receiver shall open a separate account into
14 which all rental revenue from the units in the Hotel Condominium (as defined in the CC&Rs) is
15 deposited and may be utilized to pay the Receiver’s invoices and otherwise operate the
16 GSRUOA. The Defendants are ordered to comply with the Appointment Order’s direction to
17 cooperate with the Receiver to effect the dictates of this order.

18 **IT IS SO ORDERED.**

19 DATED 12-21-21.



SENIOR JUSTICE
Nancy Saitta

22 Submitted by:

23 ROBERTSON, JOHNSON,
24 MILLER & WILLIAMSON

25 /s/ Jarrad C. Miller

26 Jarrad C. Miller, Esq.
27 Jonathan Joel Tew, Esq.
28 Attorneys for Plaintiffs

EXHIBIT D TO
DOCKETING
STATEMENT

1 CODE: 2777
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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9 ALBERT THOMAS, individually; *et al.*,

10 Plaintiffs,

11 vs.

Case No. CV12-02222
Dept. No. OJ37

12 MEI-GSR Holdings, LLC, a Nevada limited
13 liability company, GRAND SIERRA
14 RESORT UNIT OWNERS'
15 ASSOCIATION, a Nevada nonprofit
16 corporation, GAGE VILLAGE
17 COMMERCIAL DEVELOPMENT, LLC, a
18 Nevada limited liability company; AM-GSR
HOLDINGS, LLC, a Nevada limited liability
company; and DOE DEFENDANTS 1
THROUGH 10, inclusive,

Defendants.

19 **ORDER APPROVING RECEIVER'S REQUEST TO APPROVE UPDATED FEES**

20 Before the Court is the Receiver's Receiver Analysis and Calculation of Daily Use Fee,
21 Shared Facilities Unit Expense Fee and Hotel Expense Fee with Request to Approve updated
22 Fees and for Court to Set Effective Date for New Fees, filed August 16, 2021 ("Receiver
23 Analysis"). Defendants filed Defendants' Objection to Receiver's Analysis and Calculation of
24 Daily Use Fee, Shared Facilities Unit Expense Fees and for Court to Set Effective Date for New
25 Fees on September 17, 2021. Plaintiffs filed Plaintiffs' Response to Receiver Analysis and
26 Calculation of Daily Use Fee, Shared Facilities Unit Expense Fee and Hotel Expense Fee with
27 Request to Approve Updated Fees and for Court to Set Effective Date for New Fees on
28

1 September 17, 2021. The Receiver Analysis was submitted for consideration on
2 September 22, 2021.

3 **IT IS HEREBY ORDERED** that (1) The Receiver's new fee calculations as submitted
4 to the Court should immediately be applied retroactive to January 2020 and going forward until a
5 subsequent order from the Court is issued; (2) the amounts owed to Plaintiffs under those fee
6 calculations should be paid to Plaintiffs within thirty (30) days in accordance with the Governing
7 Documents; (3) the Receiver should be permitted to calculate the 2020 fee calculation using the
8 same methodology – and once those calculations are completed, the Receiver can reconcile the
9 unit owner accounts to reflect the difference between the 2020 and 2021 fee calculations; and (4)
10 after Defendants produce to Plaintiffs all actual documents that support the Receiver's 2020 and
11 2021 calculations, and depositions are taken (limited in scope) to verify that the calculations are
12 based on actual expenses as provided for under the Governing Documents, the briefing on the
13 issue of the accuracy of the fees should recommence. Any adjustments to the fees as a result of
14 motion practice by the parties shall be credited or debited accordingly, but in the interim, rental
15 revenue shall be calculated based upon the Receiver's 2021 calculations.

16 **IT IS SO ORDERED.**

17 DATED 12-21-21.

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19 

20 SENIOR JUSTICE

Nancy Saitta

21 Submitted by:

22 ROBERTSON, JOHNSON,
23 MILLER & WILLIAMSON

24 /s/ Jarrad C. Miller

25 Jarrad C. Miller, Esq.
26 Jonathan Joel Tew, Esq.
27 Attorneys for Plaintiffs
28

EXHIBIT E TO
DOCKETING
STATEMENT

CODE: 3370

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

Case No. CV12-02222
Dept. No. OJ37

MEI-GSR Holdings, LLC, a Nevada limited liability company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada limited liability company; AM-GSR HOLDINGS, LLC, a Nevada limited liability company; and DOE DEFENDANTS 1 THROUGH 10, inclusive,

Defendants.

ORDER DIRECTING RECEIVER TO PREPARE REPORT ON DEFENDANTS'
REQUEST FOR REIMBURSEMENT OF 2020 CAPITAL EXPENDITURES

Presently before the Court is Defendants' Motion for Instructions Regarding Reimbursement of 2020 Capital Expenditures, filed June 24, 2021 ("Motion"). Plaintiffs filed their Opposition to Defendants' Motion for Instructions Regarding Reimbursement of 2020 Capital Expenditures on October 11, 2021. Defendants then filed Defendants' Reply in Support of Motion for Instructions Regarding Reimbursement of 2020 Capital Expenditures on November 2, 2021. The Motion was submitted for consideration on November 3, 2021.

1 Case-concluding sanctions were entered against the Defendants for abuse of discovery
2 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
3 Terminating Sanctions, filed October 3, 2014 at 12.) See also Young v. Johnny Ribeiro Bldg.,
4 Inc., 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
5 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. (See
6 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

7 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
8 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
9 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"). The
10 receivership was implemented "for the purpose of implementing compliance, among all
11 condominium units, including units owned by any Defendant in this action . . . with the
12 Covenants, Codes and Restrictions recorded against the condominium units, the Unit
13 Maintenance Agreements and the original Unit Rental Agreements (the "Governing
14 Documents"). (Appointment Order at 1:27-28, 2:1-3.) On January 25, 2019, Richard Teichner
15 was substituted in Mr. Proctor's place in the Order Granting Motion to Substitute Receiver.

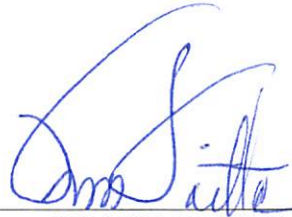
16 In the Motion, Defendants ask the Court to instruct Mr. Teichner ("Receiver") to
17 reimburse Defendants a total of \$1,614,505, comprised of \$1,409,637 from the Capital Reserves
18 for Common Area expenses and \$208,868 from the Hotel Reserves for Hotel Related expenses.
19 (Motion at 6:23-26.) The Motion further requests the Court instruct Receiver to impose any
20 special assessments necessary to bring the respective reserve accounts back to the required
21 levels. (Id. at 6:26-7:3.) Plaintiffs' Opposition argues the expenditures for which Defendants
22 seek reimbursement are not included in the Governing Documents which explicitly describe each
23 expense the Plaintiffs agreed to pay. (Opposition at 3:1-18.) Plaintiffs argue further that the
24 reserves study Defendants rely upon is fatally flawed as it also includes a variety of inappropriate
25 expenses and plainly obvious and elementary mistakes. (Id. at 2:14-26.)

26 The Court finds the Receiver is charged with implementing compliance with the
27 Governing Documents and was appointed for a reason. (See generally Appointment Order.)
28 Therefore, the Court orders the Receiver to provide a report to the Court within ninety (90) days

1 from the date of this Order recommending which items contained within Defendants' request for
2 reimbursement of capital expenditures can be reimbursed under the Governing Documents and
3 this Court's existing orders.

4 **IT IS SO ORDERED.**

5 DATED 12-21-21.



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7
8 SENIOR JUSTICE
Nancy Saitta

9 Submitted by:

10 ROBERTSON, JOHNSON,
11 MILLER & WILLIAMSON

12 /s/ Jarrad C. Miller

13 Jarrad C. Miller, Esq.
14 Jonathan Joel Tew, Esq.
15 Attorneys for Plaintiffs
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EXHIBIT F TO
DOCKETING
STATEMENT

CODE: 2842

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

Case No. CV12-02222
Dept. No. OJ37

MEI-GSR Holdings, LLC, a Nevada limited liability company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada limited liability company; AM-GSR HOLDINGS, LLC, a Nevada limited liability company; and DOE DEFENDANTS 1 THROUGH 10, inclusive,

Defendants.

ORDER DENYING AS MOOT DEFENDANTS' EMERGENCY MOTION TO EXTEND STAY PENDING FINAL DISPOSITION OF THE MOTION TO RECONSIDER

Presently before the Court is Defendants' Emergency Motion to Extend Stay Pending Final Disposition of the Motion to Reconsider, filed June 10, 2021 ("Motion"). Plaintiffs filed their Opposition to Defendants' Emergency Motion to Extend Stay Pending Final Disposition of the Motion to Reconsider (Oral Argument Requested) on June 23, 2021. Defendants filed Defendants' Reply in Support of Emergency Motion to Extend Stay Pending Final Disposition of the Motion to Reconsider on June 30, 2021. The Motion was submitted for consideration on July 1, 2021.

1 In the Motion, Defendants request the Court extend the stay of enforcement of the
2 disgorgement order within the Court's Order Granting Motion for Clarification, filed December
3 24, 2020 (the "December 24, 2020 Order") beyond June 10, 2021, such that the Court could
4 issue a ruling on Defendants' Motion for Leave to File Motion for Reconsideration of December
5 24, 2020, Order Granting Motion for Clarification and Request for Hearing ("Defendants'
6 Motion for Reconsideration"). (Motion at 2:13-22.) The December 24, 2020 Order ordered that:
7 (1) "[a]mounts charged since January of 2020 under the improper fee allocations shall be
8 disgorged to the Plaintiffs, and the new fee allocations shall not go into effect until calculated
9 (they will not be retroactively applied);" and (2) "the Defendants shall pay to the Plaintiffs the
10 reasonable attorneys' fees and costs they incurred in filing the Motion [for Clarification] and
11 Reply [in support thereof]." (December 24, 2020 Order at 4:12-16.)

12 Prior to enforcing the December 24, 2020 Order, the Court granted in part Defendants'
13 Motion for Reconsideration on September 29, 2021. (See Findings of Fact, Conclusions of Law
14 and Order, filed September 29, 2021 ("FFCLO").) In the FFCLO, the Court struck the portion of
15 the December 24, 2020 Order requiring the Defendants to disgorge the improper fee allocation
16 charges. (*Id.* at 6:2-11.)

17 **IT IS HEREBY ORDERED** that Defendants' Motion is denied as moot.

18 **IT IS SO ORDERED.**

19 DATED 12-21-21.



20
21
22 SENIOR JUSTICE
Nancy Saitta

23 Submitted by:

24 ROBERTSON, JOHNSON,
25 MILLER & WILLIAMSON

26 /s/ Jarrad C. Miller

27 Jarrad C. Miller, Esq.
Jonathan Joel Tew, Esq.
28 Attorneys for Plaintiffs

EXHIBIT G TO
DOCKETING
STATEMENT

1 CODE: 3060
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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
20 LLC, a Nevada limited liability company; and
21 DOE DEFENDANTS 1 THROUGH 10,
22 inclusive,

23 Defendants.
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ORDER GRANTING PLAINTIFFS' SUPPLEMENTAL MOTION FOR FEES
PURSUANT TO THE COURT'S DECEMBER 24, 2020 ORDER GRANTING MOTION
FOR CLARIFICATION AND SANCTIONING THE DEFENDANTS

29 Presently before the Court is Plaintiffs' Supplemental Motion for Fees Pursuant to the
30 Court's December 24, 2020 Order Granting Motion for Clarification and Sanctioning the
31 Defendants, filed April 7, 2021 ("Motion"). Defendants filed Defendants' Opposition to
32 Supplemental Motion for Fees Pursuant to the Court's December 24, 2020 Order Granting
33 Motion for Clarification and Sanctioning the Defendants on April 20, 2021 ("Opposition").
34 Plaintiffs filed their Reply in Support of Supplemental Motion for Fees Pursuant to the Court's

1 December 24, 2020 Order Granting Motion for Clarification and Sanctioning the Defendants on
2 April 30, 2021. The Motion was submitted for consideration by the Court on May 4, 2021.

3 The Motion sets forth Plaintiffs' supplemental request for fees incurred in (a) submitting
4 their motion for fees ("Fees Motion") pursuant to the Court's December 24, 2020 Order Granting
5 Clarification ("December 24, 2020 Order"), (b) filing a reply to Defendants' opposition to the
6 Fees Motion, and (c) opposing Defendants' Motion for Leave to File Motion for Reconsideration
7 of the Court's December 24, 2020 Order ("Defendants' Motion for Reconsideration"), which
8 largely attempted to rehash and relitigate previously rejected arguments. (Motion at 2:7-12.)
9 Plaintiffs' total requested fees for these tasks is \$17,885. Defendants argue the requested fees
10 are unreasonably excessive and that Nevada law does not permit recovery thereof. (Opposition
11 at 2:14-18, 3:3-10.) Defendants further argue that the Defendants' Motion for Reconsideration
12 may very well render Plaintiffs' Fees Motion and Motion moot.¹ (Id. at 3:3-10; see also
13 Defendants' Motion for Reconsideration, filed January 7, 2020.)

14 Case-concluding sanctions were entered against the Defendants for abuse of discovery
15 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
16 Terminating Sanctions, filed October 3, 2014 at 12.) See Young v. Johnny Ribeiro Bldg., Inc.,
17 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
18 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. (See
19 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

20 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
21 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
22 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA") and
23 the rental revenue and certain other property interests relating to the other Defendants. (See
24 Appointment Order at 1:23-26.) The receivership was implemented "for the purpose of
25 implementing compliance, among all condominium units, including units owned by any
26 Defendant in this action . . . with the Covenants, Codes and Restrictions recorded against the
27

28 ¹ Defendants' Motion for Reconsideration stands fully briefed and submitted at the time of this Order.

1 condominium units, the Unit Maintenance Agreements and the original Unit Rental Agreements
2 (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25, 2019, Richard
3 Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order Granting Motion to
4 Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed January 25, 2019.)

5 The Court's December 24, 2020 Order includes two distinct portions: first, that the
6 Receiver was to recalculate certain fees in a specific way and that the improper fee allocations
7 were to be disgorged to Plaintiffs, and second, that the Defendants were to pay Plaintiffs'
8 attorneys' fees and costs incurred in briefing the motion which ultimately resulted in the
9 December 24, 2020 Order. This sanction was imposed as a result of "Defendants' attempt to
10 advance their interpretation of the Court's orders to the [R]eceiver [which] interfered with the
11 October Order taking effect and resulted in unnecessarily duplicative litigation." (December 24,
12 2020 order at 3:17-19.) Plaintiffs filed their motion for fees ("Fees Motion") pursuant to the
13 December 24, 2020 Order, to which Defendants filed an opposition. (See Motion for Fees
14 Pursuant to the Court's December 24, 2020 Order Granting Motion for Clarification, filed
15 January 4, 2021; Defendants' objection to Plaintiffs' Motion for Fees Pursuant to the Court's
16 December 24, 2020 Order Granting Motion for Clarification, filed January 14, 2021.)

17 The instant Motion requests a supplemental award of fees incurred in actions taking place
18 after the December 24, 2020 Order was issued. The Motion states Plaintiffs incurred a total of
19 \$17,885 in attorneys' fees as a result of (1) preparing the Fees motion, (2) preparing a reply to
20 Defendants' opposition to the Fees Motion, and (3) preparing an opposition to Defendants'
21 largely duplicative motion for reconsideration. (Motion at 6:9-12, 7:1-3.) Fees incurred as a
22 result of preparing a motion for fees are recoverable. See Rosenfeld v. United States DOJ, 903
23 F. Supp. 2d 859, 878 (N. D. Cal. 2012) ("Plaintiffs may recover attorney's fees for time
24 reasonably expended on a motion for attorney's fees and costs."). Furthermore, because the fee
25 award was a sanction for Defendants' attempt to convince the Receiver of their clearly inaccurate
26 interpretation of the Court's orders, and the motion for reconsideration largely furthered those
27 inaccurate arguments, the continued arguments, and Plaintiffs' fees incurred to address them, are
28

1 included by the December 24, 2020 Order's sanction. Accordingly, the Court finds such fees are
2 recoverable as a general matter.

3 Nevada uses the lodestar formula to determine the appropriate amount of attorney fees.
4 Hsu v. Clark County, 123 Nev. 625, 636, 173 P.3d 724, 732 (2007). The lodestar formula calls
5 for the number of hours reasonably spent on the motion to be multiplied by a reasonable hourly
6 rate. Id. at 637, 173 P.3d at 733.

7 Plaintiffs have provided that their counsel spent a total of 24.6 hours on the Fees Motion
8 briefing, including preparation of the Fees Motion, researching authority cited in Defendants'
9 opposition thereto, and preparing a reply in support of the Fees Motion. (Motion at 5:26-6:4.)
10 Defendants argue Plaintiffs' hours expended are excessive. (Opposition at 9:6-9.) The Court
11 finds the number of hours expended by Plaintiffs' counsel on the Fees Motion briefing to be
12 reasonable in light of the procedural history of this case and the issues raised by the Fees Motion
13 and Defendants' opposition thereto.

14 Plaintiffs have provided that their counsel spent a total of 31.6 hours on their opposition
15 to Defendants' Motion for Reconsideration. (Motion at 7:1-3.) Defendants, again, argue this
16 number of hours is excessive and not warranted. (Opposition at 9:9-21.) Although the
17 Defendants attempt to minimize the complexity of the issues set forth in the Defendants' Motion
18 for Reconsideration and the necessity to set forth the complex procedural background within
19 Defendants' opposition thereto, the Court does not agree that the Defendants' Motion for
20 Reconsideration, nor the Plaintiffs' opposition thereto, was as simplistic as Defendants state.
21 Instead, the Defendants' Motion for Reconsideration set forth a variety of fallacious legal
22 arguments and misconstrued the factual and procedural background of this case, therefore
23 requiring Plaintiffs to expend numerous pages refuting the same. Thus, the Court finds the
24 number of hours expended by Plaintiffs' counsel on this task reasonable.

25 Defendants also argue that Plaintiffs' time entries are inadequate. (Opposition at 10:17-
26 11:25.) Defendants argue the entries are "so vaguely generic that the [C]ourt cannot determine
27 with certainty whether the activities they purport to describe were necessary and reasonable."
28 (Id. at 11:21-23.) After reviewing the time entries in full, the Court finds the entries are adequate

1 and provide the Court sufficient information to determine that the tasks undertaken by Plaintiffs'
2 counsel were both necessary and reasonable.

3 Accordingly, the Court finds the number of hours expended by Plaintiffs' counsel on
4 those tasks for which Plaintiffs seek to recover attorneys' fees were reasonable.

5 Next, Plaintiffs have set forth their counsels' hourly rate. These rates range from \$425 to
6 \$335 for attorneys and are \$135 for paralegals.² (Motion at 6:9-12, 7:1-3.) Defendants do not
7 appear to dispute the reasonableness of such hourly rates. The Court therefore finds such hourly
8 rates are reasonable.

9 Under the lodestar formula, the Court finds the hours reportedly spent by Plaintiffs'
10 counsel and their hourly rates are reasonable, and thus the lodestar award is \$17,885.

11 The Court must next consider the Brunzell factors to determine the appropriateness of the
12 lodestar amount. Accordingly, to determine whether any adjustments to the lodestar amount are
13 necessary, the Court must consider:

14 (1) the qualities of the advocate: his ability, his training, education,
15 experience, professional standing and skill; (2) the character of the
16 work to be done: its difficulty, its intricacy, its importance, time
17 and skill required, the responsibility imposed and the prominence
18 and character of the parties where they affect the importance of the
litigation; (3) the work actually performed by the lawyer: the skill,
time and attention given to the work; (4) the result: whether the
attorney was successful and what benefits were derived.

19 Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31, 33 (1969). The Court finds all of
20 these factors weigh against any adjustment to the lodestar amount and in favor of awarding
21 Plaintiffs the full lodestar amount.

22 First, the Court is acutely aware of the high quality of Plaintiffs' counsel, and thus
23 concludes this factor is in favor of awarding Plaintiffs the entire lodestar amount.

24 Second, the Court finds the character of the work to be done to be especially important.
25 The Court's December 24, 2020 Order imposed sanctions upon Defendants for attempting to
26 mislead the Receiver into accepting a clearly faulty interpretation of the Court's previous orders.

27
28 ² Plaintiffs note the hourly fees underwent a routine annual increase, which is why they are different from previous
fees applications. (Motion at 6, fn.2.)

1 (See Order Granting Clarification, filed December 24, 2020 at 3:17-19 (“The Defendants’
2 attempt to advance their interpretation of the Court’s orders to the [R]eceiver interfered with the
3 October Order taking effect and resulted in unnecessarily duplicative litigation. Therefore, the
4 Court exercises its inherent authority to require the Defendants to pay for the fees the Plaintiffs
5 were unnecessarily forced to incur in filing the Motion and the Reply.”).) Thus, the time spent in
6 drafting the Fees Motion – which was ordered by the Court – is certainly important. The
7 sanction within the December 24, 2020 Order was intended to penalize Defendants’
8 wrongdoings. If the Court were to limit the Plaintiffs’ recovery of their attorneys’ fees incurred
9 as a result of Defendants’ wrongdoings, the sanction would have no teeth. Accordingly, the
10 second factor also weighs in favor of awarding the entire lodestar amount.

11 Third, the work actually performed by Plaintiffs’ counsel is evidenced by the billing
12 records submitted with the Motion. (Motion at Ex. 1.) Each time entry reflects work which was
13 necessary and that the individual whose time is reflected dedicated ample skill, time, and
14 attention to the task at hand. Brunzell, 85 Nev. at 349, 455 P.2d at 33. This factor thus also
15 weighs in favor of awarding the full lodestar amount.

16 Fourth and finally, the Court must consider the result. The Court finds this factor weighs
17 in favor of awarding the entire lodestar amount as well. The Court clearly agreed with Plaintiffs’
18 positions taken in the briefing which resulted in the December 24, 2020 Order imposing
19 sanctions. (See generally Order Granting Reconsideration, filed December 24, 2020.) Thus,
20 Plaintiffs have obtained a successful result. This factor weighs in favor of granting the full
21 lodestar amount to Plaintiffs.

22 The Brunzell factors clearly indicate that the lodestar amount is appropriate and requires
23 no adjustments. The Court therefore finds an award of the entire lodestar amount is proper.

24 **IT IS HEREBY ORDERED** that Plaintiffs’ Motion is granted in full.

25 **IT IS FURTHER ORDERED** that Defendants shall pay to the Plaintiffs the sum of
26 \$17,885 within thirty (30) days of this Order.

27 //

28 //

1 **IT IS SO ORDERED.**

2 DATED 12-21-21.

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5 _____
6 SENIOR JUSTICE
7 Nancy Saitta

8 Submitted by:

9 ROBERTSON, JOHNSON,
10 MILLER & WILLIAMSON

11 _____
12 /s/ Jarrad C. Miller

13 Jarrad C. Miller, Esq.
14 Jonathan Joel Tew, Esq.
15 Attorneys for Plaintiffs
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EXHIBIT H TO
DOCKETING
STATEMENT

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G. David Robertson, Esq. (NV Bar No. 1001)
Jarrad C. Miller, Esq. (NV Bar No. 7093)
Jonathan J. Tew, Esq. (NV Bar No. 11874)
Robertson, Johnson, Miller & Williamson
50 West Liberty Street, Suite 600
Reno, Nevada 89501
(775) 329-5600
gdavid@nvlawyers.com
jarrad@nvlawyers.com
jon@nvlawyers.com

Robert L. Eisenberg, Esq., (NV Bar No. 0950)
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
Telephone: (775) 786-6868
Facsimile: (775) 786-9716
rle@lge.net

Attorneys for Plaintiffs

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

Case No. CV12-02222
Dept. No. OJ37

MEI-GSR Holdings, LLC, a Nevada limited
liability company, GRAND SIERRA
RESORT UNIT OWNERS' ASSOCIATION,
a Nevada nonprofit corporation, GAGE
VILLAGE COMMERCIAL
DEVELOPMENT, LLC, a Nevada limited
liability company; AM-GSR HOLDINGS,
LLC, a Nevada limited liability company; and
DOE DEFENDANTS 1 THROUGH 10,
inclusive,

Defendants.

NOTICE OF ENTRY OF ORDERS

PLEASE TAKE NOTICE that on January 4, 2022, the above Court issued the
following Orders:

1 1. Order Granting Receiver's Motion for Orders & Instructions, a copy of which is
2 attached hereto as Exhibit "1" and made a part hereof by reference.

3 2. Order Granting Plaintiffs' Motion for Instructions to Receiver, a copy of which is
4 attached hereto as Exhibit "2" and made a part hereof by reference.

5 3. Order Granting Plaintiffs' Motion to Stay Special Assessment, a copy of which is
6 attached hereto as Exhibit "3" and made a part hereof by reference.

7 4. Order Approving Receiver's Request to Approve Updated Fees, a copy of which
8 is attached hereto as Exhibit "4" and made a part hereof by reference.

9 5. Order Directing Receiver to Prepare Report on Defendants' Request for
10 Reimbursement of 2020 Capital Expenditures, a copy of which is attached hereto as Exhibit "5"
11 and made a part hereof by reference.

12 6. Order Denying as Moot Defendants' Emergency Motion to Extend Stay Pending
13 Final Disposition of the Motion to Reconsider, a copy of which is attached hereto as Exhibit "6"
14 and made a part hereof by reference.

15 7. Order Granting Plaintiffs' Supplemental Motion for Fees Pursuant to the Court's
16 December 24, 2020 Order Granting Motion for Clarification and Sanctioning the Defendants, a
17 copy of which is attached hereto as Exhibit "7" and made a part hereof by reference.

18 **AFFIRMATION:** Pursuant to NRS § 239B.030, the undersigned does hereby affirm that
19 the preceding document does not contain the social security number of any person.

20 RESPECTFULLY SUBMITTED this 4th day of January, 2022.

21 ROBERTSON, JOHNSON,
22 MILLER & WILLIAMSON

23 By: /s/ Jarrad C. Miller
24 Jarrad C. Miller, Esq.
25 Jonathan J. Tew, Esq.
26 Attorneys for Plaintiffs
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson,
3 Miller & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of
4 18, and not a party within this action. I further certify that on the 4th day of January, 2022, I
5 electronically filed the foregoing **NOTICE OF ENTRY OF ORDERS** with the Clerk of the
6 Court by using the ECF system which served the following parties electronically:

7 Daniel F. Polsenberg, Esq.
8 Jennifer K. Hostetler, Esq.
9 Dale Kotchka-Alaines, Esq.
10 Lewis Roca Rothgerber Christie, LLP
11 One East Liberty Street Suite 300
12 Reno, NV 89501
13 *Attorneys for Defendants*

F. DeArmond Sharp, Esq.
Stefanie T. Sharp, Esq.
Robison, Sharp Sullivan & Brust
71 Washington Street
Reno, NV 89503
Attorneys for Receiver
Richard M. Teichner

12 Abran Vigil, Esq.
13 Meruelo Group, LLC
14 Legal Services Department
15 5th Floor Executive Offices
16 2535 Las Vegas Boulevard South
17 Las Vegas, NV 89109
18 *Attorneys for Defendants*

David C. McElhinney, Esq.
Meruelo Group, LLC
2500 E. 2nd Street
Reno, NV 89595
Attorney for Defendants

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24
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28

/s/ Teresa W. Stovak
An Employee of Robertson, Johnson,
Miller & Williamson

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EXHIBIT “1”

EXHIBIT “1”

EXHIBIT “1”

1 CODE: 3060

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6
7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
20 LLC, a Nevada limited liability company; and
21 DOE DEFENDANTS 1 THROUGH 10,
22 inclusive,

23 Defendants.

24 **ORDER GRANTING RECEIVER'S MOTION FOR ORDERS & INSTRUCTIONS**

25 Presently before the Court is the Receiver's Motion for Orders & Instructions, filed
26 October 18, 2021 ("Motion"). Plaintiffs filed Plaintiffs' Joinder to Receiver's Motion for Orders
27 & Instructions on October 22, 2021 ("Plaintiff's Joinder"). Defendants filed Defendants'
28 Opposition to Receiver's Motion for Orders & Instructions on October 22, 2021 ("Defendants'
Opposition"). The Receiver then filed Receiver's Reply in Support of Motion for Orders &
Instructions on October 25, 2021 ("Receiver's Reply"). The Motion was submitted for
consideration on October 25, 2021.

1 Case-concluding sanctions were entered against the Defendants for abuse of discovery
2 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
3 Terminating Sanctions, filed October 3, 2014 at 12.) See Young v. Johnny Ribeiro Bldg., Inc.,
4 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
5 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. See
6 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.

7 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
8 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
9 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"). (See
10 Appointment Order at 1:23-26.) The receivership was implemented "for the purpose of
11 implementing compliance, among all condominium units, including units owned by any
12 Defendant in this action . . . with the Covenants, Codes and Restrictions recorded against the
13 condominium units, the Unit Maintenance Agreements and the original Unit Rental Agreements
14 (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25, 2019, Richard
15 Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order Granting Motion to
16 Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed January 25, 2019.)

17 In 2021, the Defendants undertook to have a reserve study done by a third party, which
18 was then to be utilized by the Receiver to calculate those fees to be charged to Plaintiffs
19 (including the Daily Use Fees ("DUF"), Shared Facility Use Expenses ("SFUE"), and Hotel
20 Expenses ("HE")). The Receiver states that various orders of this Court, including the
21 Appointment Order, provide authority solely to Receiver to order and oversee any reserve studies
22 done. (Reply at 2:27-3:5.) Defendants argue that no such orders nor the Governing Documents
23 provide the Receiver with such authority. (Defendants' Opposition at 3:19-24.) Instead,
24 Defendants argue that any attempt by the Receiver to order or oversee the reserve study would be
25 an "impermissibl[e] expan[sion] of his authority." (Id. at 3:20.)

26 The Court issued its Findings of Fact, Conclusions of Law and Order granting in part
27 Defendants' Motion for Leave to File Motion for Reconsideration of December 24, 2020 Order
28 Granting Motion for Clarification and Request for Hearing, on September 29, 2021. Therein, the

1 Court struck the disgorgement order granted in the December 24, 2020 Order Granting
2 Clarification (“December 24, 2020 Order”). Whereas the Court originally instructed that “[u]ntil
3 the DUF, the [HE], and [SFUE] are recalculated by the Receiver, the fees calculated by the past
4 receiver shall be applied,” the revised order struck this reversion to the prior receiver’s
5 calculations. Thus, the Receiver states he is now without direction as to which calculations are
6 to be applied until he is able to redo his own calculations. (See December 24, 2020 Order at
7 3:23-4:10 (where the Court informs the Receiver his calculations for 2020 are incorrect and
8 invalid under the Governing Documents and they must be redone).) Defendants argue the
9 Receiver’s prior calculations, which were in place until the December 24, 2020 Order was
10 issued, should be utilized. Notably, this directly contradicts the Court’s December 24, 2020
11 Order, is inequitable, and thus is denied outright. (Id.)

12 The Appointment Order provides the Receiver authority to take control of “all accounts
13 receivable, payments, rents, including all statements and records of deposits, advances, and
14 prepaid contracts or rents” (Appointment Order at 3:15-18.) Defendants are also ordered to
15 cooperate with the Receiver and not “[i]nterfer[e] with the Receiver, directly or indirectly.” (Id.
16 at 8:2-15.) The Receiver has informed the parties of his intent to open a separate account into
17 which all rents and other proceeds from the units will be deposited, and now requests the Court’s
18 permission to open such an account. (Motion at 11:19; Motion to Stay Special Assessment, filed
19 August 20, 2021 at Ex. 2.) Defendants have refused to cooperate with the Receiver’s request to
20 turnover various proceeds, in violation of the Appointment Order, and now object to Receiver’s
21 authority to open a separate account. (Appointment Order at 8:2-15; Defendant’s Opposition at
22 6:14-7:21.)

23 Pursuant to the Governing Documents, Defendants have implemented a room rotation
24 program whereunder bookings for the units owned by Plaintiffs and Defendants should be
25 equally distributed such that Plaintiffs and Defendants, as individual unit owners, are earning
26 roughly equal revenue. The Receiver contends this room rotation program is flawed and has
27 resulted in a greater number of Defendants’ units being rented than Plaintiffs’ units during
28 various periods through August 2021. (Motion at 14:14-17.)

1 Among the Governing Documents with which the Receiver is ordered to implement
2 compliance is the Seventh Amendment to Condominium Declaration of Covenants, Conditions,
3 Restrictions and Reservations of Easements for Hotel-Condominiums at Grand Sierra Resort,
4 recorded June 27, 2007 (“Seventh Amended CC&Rs”). Defendants, however, after representing
5 to the Court that the Seventh Amended CC&Rs needed to be amended in order to comply with
6 NRS 116B, unilaterally revised and recorded the Ninth Amendment to Condominium
7 Declaration of Covenants, Conditions, and Restrictions and Reservations of Easements for
8 Hotel-Condominiums at Grand Sierra Resort (“Ninth Amended CC&Rs”) to overhaul the fee
9 structure and radically expand the fees chargeable to the Plaintiffs. The Ninth Amended
10 CC&Rs, according to Plaintiffs, substantially increase the expenses to be included in fees
11 charged to Plaintiffs – thus making ownership of the units unviable.

12 Finally, Defendants have communicated with Receiver *ex parte* through a variety of
13 individuals. The Receiver now requests that all communications be funneled through a single
14 individual: Reed Brady. (Motion at 17:4-8.)

15 The Motion requests the Court order (1) that the Notice of Special Assessments and the
16 Reserve Studies sent to the unit owners by Defendants on August 24, 2021 be immediately
17 withdrawn; (2) that the Defendants be ordered to send out a notice to all unit owners of said
18 withdrawal; and (3) that this Court confirm the Receiver’s authority over the Reserve Studies.
19 (Motion at 3:11-14.) The Motion further requests the Court order that the Receiver is to
20 recalculate the charges for the DUF, SFUE, and HE for 2020 based upon the same methodology
21 as has been used in calculating the fee charges for 2021, once the Court approves that
22 methodology. (*Id.* at 8:10-13.) The Motion further requests the Court approve the opening of an
23 account for the Receivership, with the Receiver having sole signatory authority over the account,
24 and order that all rents received by Defendants currently and in the future, generated from either
25 all 670 condominium units or the Plaintiff-owned units, net of the total charges for the DUF,
26 SFUE, and HE fees and for reserves combined, are to be deposited into the account, that the
27 receiver be authorized to make the necessary disbursements to the relevant unit owners at three
28 (3) month intervals, that any disgorgement amounts owed by Defendants be deposited into the

1 Receivership account to be distributed by the Receiver, and that, if the Court orders the current
2 credit balances in the Plaintiffs' accounts are to be deposited in to the Receiver's bank account
3 then, to the extent that such credit balances are to be disgorged, Defendants will pay such credit
4 balances to the Receiver for deposit, and the Receiver will distribute such funds appropriately.
5 (Id. at 11:21-12:13.) The Motion further requests the Court order Defendants to provide the
6 Receiver with the information and documentation he has requested relating to the room rotation
7 program within ten (10) days of this Order. (Id. at 14:20-24.) The Motion further requests the
8 court expedite the determination of the Plaintiffs' Motion for Instructions, filed October 18, 2021
9 and submitted for consideration on October 25, 2021. (Id. at 17:1-3.) Finally, the Motion
10 requests the Court instruct Defendants to funnel all communications to the Receiver through a
11 single individual: Reed Brady. (Id. at 7:5-8.)

12 As this Court has stated previously, "[a] receiver is appointed to maintain the status quo
13 regarding the property in controversy and to safeguard said property from being dissipated while
14 the plaintiff is pursuing his remedy." (Order Denying Motion to Terminate Rental Agreement,
15 filed October 12, 2020 (citing Milo v. Curtis, 100 Ohio App.3d 1, 9, 651 N.E.2d 1340, 1345
16 (Ohio Ct. App. 1994).) This Court reiterated this premise in another order, stating that "[o]ne of
17 the purposes of the [Appointment] Order was to preserve the status quo of the parties during the
18 pendency of the action. Another purpose was to enforce [the] agreements." (Order, filed
19 November 23, 2015 at 1:22-23.) Nevada law supports this obligation of the Receiver. See
20 Johnson v. Steel, Inc., 100 Nev 181, 183, 678 P.2d 767, 678 (1984) (the appointment of a
21 receiver is a "remedy used to preserve the value of assets pending outcome of the principal case"
22 and is "a means of preserving the status quo"), overruled on other grounds by Shoen v. SAC
23 Holding Corp., 122 Nev. 621, 137 P.3d 1171 (2006); accord Dunphy v. McNamara, 50 Nev. 113,
24 252 P. 943, 944 (1927) (a court of equity has "ample authority" to utilize a receiver to preserve
25 the status quo).

26 Furthermore, upon the appointment of the Receiver, all authority to manage and control
27 the GSRUOA was immediately transferred from the GSRUOA's Board of Directors, managers,
28 officers, the Declarant, and other agents to the Receiver. Francis v. Camel Point Ranch, Inc.,

1 2019 COA 108M, ¶¶ 6-10, 487 P.3d 1089, 1092-93, as modified on denial of reh'g (Colo. Ct.
2 App. Sept. 19, 2019) (noting that “[u]pon the receiver’s appointment, [Defendant’s] corporate
3 officers and directors lost all authority to control the corporation”); First Sav. & Loan Ass’n v.
4 First Fed. Sav. Loan Ass’n, 531 F. Supp. 251, 255 (D. Haw. 1981) (“When a receiver is
5 appointed for a corporation, the corporation’s management loses the power to run its affairs and
6 the receiver obtains all of the corporation’s powers and assets.”). “Simply put, corporate
7 receivership is a court-mandated change in corporate management.” Francis, 487 P.3d 1089 at
8 1092-93.

9 Thus, upon appointment of the Receiver, the GSRUOA’s Board of Directors was
10 divested of the authority it has errantly exercised to issue that Notice of Special Assessment and
11 the Reserve Studies which was sent to all unit owners on August 24, 2021. Accordingly, such
12 Notice of Special Assessment and any actual imposition of special assessment is *void ab initio*
13 and therefore invalid. Only the Receiver can impose special assessments.

14 Next, the Findings of Fact, Conclusions of Law and Judgement issued on October 9,
15 2015 (“FFCLJ”), explicitly ordered the Receiver to calculate “a reasonable amount of FF&E,
16 shared facilities and hotel reserve fees” and other necessary fees to be assessed against Plaintiffs.
17 (FFCLJ at 22:25-27.) Accordingly, the Receiver is to calculate the DUF, SFUE, and HE for
18 2020. Such calculations should be based upon the same methodology as used for the 2021 fees,
19 once the Court has approved of such methodology.

20 The Appointment Order expressly allows for the Receiver to open an account for the
21 Receivership. (Appointment Order at 6:26 (the Receiver is allowed to “open and utilize bank
22 accounts for receivership funds”).) Indeed, the Appointment Order also expressly calls for the
23 Receiver to collect proceeds from the Property (defined as the 670 condominium units),
24 including, but not limited to, rent earned therefrom. (Id. at 5:17-19.) It logically follows then
25 that the Receiver may open a separate account for the Receivership in which it may hold all rents
26 from the Property, as defined in the Receivership Order.

27 The Appointment Order also expressly calls for Defendants to cooperate with the
28 Receiver and refrain from taking any actions which will interfere with the Receiver’s ability to

1 perform his duties. (Id. at 8:2-15.) Accordingly, Defendants should supply the Receiver with all
2 information, explanation, and documentation the Receiver may request regarding the room
3 rotation program and apparent inadequacy thereof.

4 The Receiver was specifically tasked with implementing compliance with the Governing
5 Documents, including the Seventh Amended CC&Rs. (Appointment Order at 1:27-2:3.)
6 Reading this obligation to implement compliance with the Seventh Amended CC&Rs with the
7 obligation to maintain the status quo, this Court finds that the Seventh Amended CC&Rs cannot
8 be amended, repealed, nor replaced until the Receiver is relieved of his duties by the Court. The
9 continuance of this specific Governing Document will ensure the status quo, as is the purpose of
10 a receivership. Johnson, 100 Nev. at 183, 678 P.2d at 678; Dunphy, 50 Nev. 113, 252 P. at 944.
11 The automatic and immediate transfer of control over the GSRUOA to the Receiver therefore
12 divested the GSRUOA's Board of Directors from any authority it had to propose, enact, and
13 otherwise make effective the Ninth Amended CC&Rs. The Ninth Amended CC&Rs are thus
14 *void ab initio*, as they were enacted without proper authority. Accordingly, the Ninth Amended
15 CC&Rs are *void ab initio*, and even if they were not, the Ninth Amended CC&Rs would be
16 improper and thus subject to rescission or cancellation.

17 Finally, the Court finds it appropriate for Defendants to funnel all communication with
18 the Receiver through a single individual. For the time being, such individual shall be Reed
19 Brady. Mr. Brady may delegate tasks to others, however, only Mr. Brady should communicate
20 answers, conclusions, or other findings to the Receiver.

21 **IT IS HEREBY ORDERED** that Receiver's Motion is granted **in full**.

22 **IT IS FURTHER ORDERED** (i) that the Notice of Special Assessments and the
23 Reserve Studies sent to the unit owners by the Defendants on August 24, 2021 shall be
24 immediately withdrawn; (ii) that the Defendants shall send out a notice to all unit owners of said
25 withdrawal within ten (10) days of this Order; (iii) that any amounts paid by unit owners
26 pursuant to the Notice of Special Assessment shall be refunded within ten (10) days of this
27 Order; and (iv) that the Receiver has sole authority to order and oversee reserve studies related to
28 Defendants' property and under the Governing Documents.

1 **IT IS FURTHER ORDERED** that the Receiver shall recalculate the DUF, SFUE, and
2 HE based on the same methodology as has been used in calculating the fee charges for 2021,
3 subject to Court approval of such methodology. Those fees in place prior to the Court's
4 September 27, 2021 Order shall remain in place until the fees for 2020 are recalculated and
5 approved by this Court such that only a single account adjustment will be necessary.

6 **IT IS FURTHER ORDERED** that the Receiver shall open a separate account on which
7 Receiver has sole signatory authority, and into which all rents received by Defendants currently
8 for all 670 condominium units, net of total charges for DUF, SFUE, and HE fees and reserves,
9 are to be deposited. The Receiver shall disburse the revenue collected to the parties according to
10 the Governing Documents. In the event the Court requires a disgorgement by Defendants to
11 Plaintiffs, Receiver shall deposit such disgorgements into this separate account and disburse the
12 same to Plaintiffs appropriately.

13 **IT IS FURTHER ORDERED** that Defendants shall provide Receiver with any
14 information, explanation, and documentation he may request regarding the room rotation
15 program and any perceived discrepancies therewith, until Receiver is either satisfied with the
16 adequacy of the program or until Receiver deems it appropriate to seek judicial intervention.

17 **IT IS FURTHER ORDERED** that the Ninth CC&Rs are *void ab initio* and the Seventh
18 CC&Rs are to be resurrected as though they had not been withdrawn or superseded.

19 **IT IS FURTHER ORDERED** that Defendants shall funnel all communication with the
20 Receiver through Reed Brady. Defendants and Receiver may mutually agree to choose an
21 alternative representative through which communication shall be directed. Mr. Brady, and any
22 subsequent representative, may delegate requests, questions, or other tasks necessary to respond
23 to Receiver's communications, but any answers, conclusions, or other results shall be
24 communicated back to Receiver through only Mr. Brady and no other individual.

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SENIOR JUSTICE
Nancy Saitta

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON

Jarrad C. Miller, Esq.
Jonathan Joel Tew, Esq.
Attorneys for Plaintiffs

EXHIBIT “2”

EXHIBIT “2”

EXHIBIT “2”

1 CODE: 3060

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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
LLC, a Nevada limited liability company; and
DOE DEFENDANTS 1 THROUGH 10,
inclusive,

Defendants.

20 **ORDER GRANTING PLAINTIFFS' MOTION FOR INSTRUCTIONS TO RECEIVER**

21 Presently before the Court is Plaintiff's Motion for Instructions to Receiver, filed
22 September 28, 2021 ("Motion"). Defendants filed Defendants' Opposition to Plaintiffs' Motion
23 for Instructions to Receiver on October 12, 2021 ("Opposition"). Plaintiffs filed their Reply in
24 Support of Motion for Instructions to Receiver on October 25, 2021. The Motion was submitted
25 for consideration on October 25, 2021.

26 Case-concluding sanctions were entered against the Defendants for abuse of discovery
27 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
28 Terminating Sanctions, filed October 3, 2014 at 12.) See also Young v. Johnny Ribeiro Bldg.

1 Inc., 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
2 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. (See
3 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

4 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
5 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
6 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"), the
7 rental and other revenues from the condominiums, as well as other property of the non-
8 GSRUOA Defendants. (See Appointment Order at 1:23-26.) The receivership was implemented
9 "for the purpose of implementing compliance, among all condominium units, including units
10 owned by any Defendant in this action . . . with the Covenants, Codes and Restrictions recorded
11 against the condominium units, the Unit Maintenance Agreements and the original Unit Rental
12 Agreements (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25,
13 2019, Richard Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order
14 Granting Motion to Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed
15 January 25, 2019.)

16 Among the Governing Documents with which the Receiver is ordered to implement
17 compliance is the Seventh Amendment to Condominium Declaration of Covenants, Conditions,
18 Restrictions and Reservations of Easements for Hotel-Condominiums at Grand Sierra Resort,
19 recorded June 27, 2007 ("Seventh Amended CC&Rs"). Defendants, however, after representing
20 to the Court that the Seventh Amended CC&Rs needed to be amended in order to comply with
21 NRS 116B, unilaterally revised and recorded the Ninth Amendment to Condominium
22 Declaration of Covenants, Conditions, and Restrictions and Reservations of Easements for
23 Hotel-Condominiums at Grand Sierra Resort to overhaul the fees chargeable to the unit owners.
24 ("Ninth Amended CC&Rs"). The Ninth Amended CC&Rs, according to Plaintiffs, substantially
25 increase the expenses to be included in fees charged to Plaintiffs – thus making ownership of the
26 units unviable. (Reply at 7:17-21.)

27 Additionally, the Defendants undertook to have a reserve study done by a third party,
28 which was then to be utilized by the Receiver to calculate those fees to be charged to Plaintiffs.

1 Plaintiffs argue this reserve study was not only done without proper authority, but also that it was
2 patently erroneous in that it includes a variety of expenses which are not chargeable to the
3 Plaintiffs under the Seventh Amended CC&Rs. (Motion at 4:3-13.)

4 The Motion requests the Court instruct the Receiver to (1) determine that the amendment
5 process was invalid and void actions improperly taken by the GSRUOA Board of Directors, (2)
6 maintain the status quo by enforcing the Appointment Order and apply the Seventh Amended
7 CC&Rs, and (3) disqualify the 2021 reserve study and prepare a new reserve study completed
8 with the Receiver's direction and input. (Motion at 2:27-3:4, 4:12-13.)

9 As this Court has stated previously, "[a] receiver is appointed to maintain the status quo
10 regarding the property in controversy and to safeguard said property from being dissipated while
11 the plaintiff is pursuing his remedy." (Order Denying Motion to Terminate Rental Agreement,
12 filed October 12, 2020 (citing Milo v. Curtis, 100 Ohio App.3d 1, 9, 651 N.E.2d 1340, 1345
13 (Ohio Ct. App. 1994).) This Court reiterated this premise in a subsequent order, stating that
14 "[o]ne of the purposes of the [Appointment] Order was to preserve the status quo of the parties
15 during the pendency of the action. Another purpose was to enforce [the] agreements." (Order,
16 filed November 23, 2015 at 1:22-23.) Nevada law supports this obligation of the Receiver. See
17 Johnson v. Steel, Inc., 100 Nev 181, 183, 678 P.2d 767, 678 (1984) (the appointment of a
18 receiver is a "remedy used to preserve the value of assets pending outcome of the principal case"
19 and is "a means of preserving the status quo"), overruled on other grounds by Shoen v. SAC
20 Holding Corp., 122 Nev. 621, 137 P.3d 1171 (2006); accord Dunphy v. McNamara, 50 Nev. 113,
21 252 P. 943, 944 (1927) (a court of equity has "ample authority" to utilize a receiver to preserve
22 the status quo).

23 In this case, the Receiver was specifically tasked with implementing compliance with the
24 Governing Documents, including the Seventh Amended CC&Rs. (Appointment Order at 1:27-
25 2:3.) Reading this obligation to implement compliance with the Seventh Amended CC&Rs with
26 the obligation to maintain the status quo, this Court finds that the Seventh Amended CC&Rs
27 cannot be amended, repealed, nor replaced until the Receiver is relieved of his duties by the
28 Court. The continuance of this specific Governing Document will ensure the status quo, as is the

1 purpose of a receivership and the Appointment Order. See Johnson, 100 Nev. at 183, 678 P.2d at
2 678; Dunphy, 50 Nev. 113, 252 P. at 944.

3 Furthermore, upon the appointment of the Receiver, all authority to manage and control
4 the GSRUOA was immediately transferred from the GSRUOA's Board of Directors, managers,
5 officers, the Declarant, and other agents to the Receiver. Francis v. Camel Point Ranch, Inc.,
6 2019 COA 108M, ¶¶ 6-10, 487 P.3d 1089, 1092-93, as modified on denial of reh'g (Colo. Ct.
7 App. Sept. 19, 2019) (noting that "[u]pon the receiver's appointment, [Defendant's] corporate
8 officers and directors lost all authority to control the corporation"); First Sav. & Loan Ass'n v.
9 First Fed. Sav. Loan Ass'n, 531 F. Supp. 251, 255 (D. Haw. 1981) ("When a receiver is
10 appointed for a corporation, the corporation's management loses the power to run its affairs and
11 the receiver obtains all of the corporation's powers and assets."). "Simply put, corporate
12 receivership is a court-mandated change in corporate management." Francis, 487 P.3d 1089 at
13 1092-93.

14 This automatic and immediate transfer of control over the GSRUOA to the Receiver
15 therefore divested the GSRUOA's Board of Directors from any authority it had to propose,
16 enact, and otherwise make effective the Ninth Amended CC&Rs. The Ninth Amended CC&Rs
17 are thus *void ab initio*, as they were enacted without proper authority.

18 Accordingly, the Ninth Amended CC&Rs are *void ab initio*, and even if they were not,
19 the Ninth Amended CC&Rs would be improper and thus subject to rescission or cancellation.¹

20 Next, Plaintiffs have moved the Court to instruct the Receiver to reject the reserve study
21 completed by Defendants without any input from Receiver, and order and oversee a separate
22 reserve study. (Motion at 11:25-14:19.) The Court has explicitly found that the Receiver "will
23 determine a reasonable amount of FF&E, shared facilities and hotel reserve fees." (Findings of
24 Fact, Conclusions of Law and Judgement, Filed October 9, 2015 at 22:25-26.) This implies that

25 _____
26 ¹ Defendants argue any challenge to the Ninth Amended CC&Rs must be brought pursuant to the ADR provision
27 therein. The Court rejects this argument *in toto* considering the Appointment Order, the purpose of the Appointment
28 Order, and binding Nevada law which all dictate the receivership is intended to maintain the status quo – not allow
for a key Governing Document to be unilaterally amended by Defendants. Further, the claim for a Receivership was
brought in the Second Amended Complaint and the Nevada Supreme Court has already found that the District Court
has subject matter jurisdiction over the action.

1 the Receiver will also be tasked with ordering and overseeing the reserve study – as that study
2 will dictate the FF&E, shared facilities, and hotel reserve fees. Thus, the Receiver alone has the
3 authority to direct and audit the reserve study, not the Defendants.

4 Moreover, the Defendants have acknowledged this reality to the Court:

5 Mr. McElhinney: Are you instructing the receiver to use the 2016
6 reserve study in rendering his calculation? The Court: I think he
7 can. Mr. McElhinney: Up to him? The Court: Yeah, it's up to
8 him. If there's some reason that Mr. Teichner believes that the
9 premise or the data that's collected therein is inappropriate, then
10 obviously he can just go back to the 2014 study, but if he wants to
11 use it and he believes that it's statistical or evidentiarily valid, then
12 he can use that in making those determinations.

13 (Motion at Ex. 3 at 141:24-142:11.)

14 Plaintiffs further object to the Defendants' reserve study because it has included expenses
15 which are clearly erroneous. (Motion at 4:6-13 (noting public pool expenses that were included
16 while the Governing Documents and Court orders exclude any revenue-generating expenses).)
17 The reserve study is to be limited as directed in previous Court orders and the Governing
18 Documents. The reserve study provided by Defendants clearly shows at least one basic,
19 elementary example of expenses which are included but should not be. (Id.) Accordingly, the
20 Court finds the Defendants' reserve study to be flawed and untrustworthy, and finds the Receiver
21 has the proper (and sole) authority to order, oversee, and implement a new reserve study.

22 **IT IS HEREBY ORDERED** that Plaintiffs' Motion is granted.

23 **IT IS FURTHER ORDERED** that the Ninth Amended CC&Rs shall be withdrawn and
24 the Seventh Amended CC&Rs shall be reinstated as though never superseded.

25 **IT IS FURTHER ORDERED** that Receiver shall not utilize the Defendants' reserve
26 study in calculating those fees which are to be assessed to Plaintiffs. Instead, the Receiver shall
27 order, oversee, and implement a new reserve study which is in accordance with the Governing
28 Documents.

//

//

//

1 **IT IS SO ORDERED.**

2 DATED 12.21.21

3
4 

5 _____
6 SENIOR JUSTICE
7 Nancy Saitta

8 Submitted by:

9 ROBERTSON, JOHNSON,
10 MILLER & WILLIAMSON

11 _____
12 /s/ Jarrad C. Miller

13 Jarrad C. Miller, Esq.
14 Jonathan Joel Tew, Esq.
15 Attorneys for Plaintiffs

EXHIBIT “3”

EXHIBIT “3”

EXHIBIT “3”

1 CODE: 3060

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6
7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
20 LLC, a Nevada limited liability company; and
21 DOE DEFENDANTS 1 THROUGH 10,
22 inclusive,

23 Defendants.
24
25

26 **ORDER GRANTING PLAINTIFFS' MOTION TO STAY SPECIAL ASSESSMENT**

27 Presently before the Court is Plaintiffs' Motion to Stay Special Assessment, filed August
28 20, 2021 ("Motion").¹ Defendants filed Defendants' Opposition to Motion to Stay Special
Assessment on September 3, 2021 ("Opposition"). Plaintiffs filed their Reply in Support of

¹ Plaintiffs filed an initial version of this motion on July 30, 2021. (Motion to Stay Special Assessment and Renewed Request to Replace Receiver, filed July 30, 2021.) Plaintiffs withdrew this motion without prejudice on August 17, 2021. (Notice of Withdrawal of Motion to Stay Special Assessment and Renewed Request to Replace Receiver, filed August 17, 2021.)

1 Motion to Stay Special Assessment on September 17, 2021. The Motion was submitted for
2 consideration on September 22, 2021.

3 Case-concluding sanctions were entered against the Defendants for abuse of discovery
4 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
5 Terminating Sanctions, filed October 3, 2014 at 12.) See also Young v. Johnny Ribeiro Bldg.,
6 Inc., 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
7 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. (See
8 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

9 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
10 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
11 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"). (See
12 Appointment Order at 1:23-26.) The receivership was implemented "for the purpose of
13 implementing compliance, among all condominium units, including units owned by any
14 Defendant in this action . . . with the Covenants, Codes and Restrictions recorded against the
15 condominium units, the Unit Maintenance Agreements and the original Unit Rental Agreements
16 (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25, 2019, Richard
17 Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order Granting Motion to
18 Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed January 25, 2019.)

19 The Appointment Order provides that the Receiver and his agents are to be "pa[id] and
20 discharge[d] out of the Property's rents and/or GSRUOA monthly dues collections. . . ." (Appointment Order at 6:12-16.) It is thus clear that the Receiver's invoices are to be paid
21 through either (or collectively) the Property's rents collected or the GSRUOA monthly dues and
22 not from any other source of funds without approval of this Court.

23
24 On June 16, 2021, the Receiver provided notice to the Court that GSRUOA was insolvent
25 and requested a hearing to address this issue. (Motion at 1:2-4.) After the parties discussed
26 potential solutions to this issue, the Defendants, over Plaintiffs' objection, on July 12, 2021 voted
27 to impose a special assessment against all unit owners which would raise about \$100,000 to pay
28 the Receiver's invoices and other expenses ("Special Assessment"). (Opposition at 2:3-11.)

1 The Motion requests that the Court: (1) enforce the Appointment Order; (2) stay the
2 Special Assessment; (3) direct the Receiver to pay the expenses of the receivership through the
3 new receivership account; and (4) order the Defendants to stop interfering with the receivership
4 and the orders governing same. (Motion at 2:6-9.) The Opposition argues the Special
5 Assessment was appropriate under the Seventh Amendment to Condominium Declaration of
6 Covenants, Conditions, Restrictions and Reservations of Easements for hotel Condominiums at
7 Grand Sierra Resort ("CC&Rs") and necessary in order to both fund the Receiver's invoices as
8 well as the GSRUOA's operations through the remainder of 2021. (Opposition at 2:24-3:6.)

9 To begin, the appointment of a receiver terminates the authority of an entity's officers
10 and directors, and places all such authority in the receiver alone. Francis v. Camel Point Ranch,
11 Inc., 2019 COA 108M, ¶¶6-10, 487 P.3d 1089, 1092-9 (Colo. App. Sept. 19, 2019) (noting that
12 "[u]pon the receiver's appointment, [Defendant's] corporate officers and directors lost all
13 authority to control the corporation"); McDougal v. Huntingdon & Broad Top Mountain RR. &
14 Coal Co., 294 Pa. 108, 143 A.574, 577 (1928) (the receiver exercises the functions of the board
15 of directors, managers and officers, takes possession of corporate income, property, and assets,
16 directs not only in its operation, but, while in control, its policies on all lines"); see First Sav &
17 Loan Ass'n v. First Fed. Sav. Loan Ass'n, 531 F. Supp. 251, 255 (D. Haw. 1981) ("When a
18 receiver is appointed for a corporation, the corporation's management loses the power to run its
19 affairs and the receiver obtains all of the corporation's powers and assets"); see also U.S. v.
20 Powell, 95 F.2d 752, 754 (4th Cir. 1938). Thus, when the Appointment Order was issued, all
21 authority vested in GSRUOA's Board of Directors, managers, the Declarant, and other decision
22 makers was transferred to the Receiver and the Board of Directors, managers, the Declarant, and
23 other decision makers were divested of such authority.

24 It follows then that any decision of GSRUOA's Board of Directors since the
25 Appointment Order, including the July 12, 2021 decision to impose the Special Assessment, is
26 void as GSRUOA's Board of Directors had no authority to make such a decision or impose such
27 an assessment. (Id.)

1 Defendants argue that because the Receiver apparently did not object to the GSRUOA's
2 Board of Directors' decision to impose the Special Assessment, the Special Assessment is
3 proper. (Opposition at 4:17-18 ("The Board voted unanimously to approve and implement the
4 Special Assessment and the Receiver agreed with the action.")) This argument falls flat,
5 however, in light of the Receiver's limited authority. Anes v. Crown P'ship, Inc., 113 Nev. 195,
6 201-02, 932 P.2d 1067, 1071 (1997) ("a receiver must not exceed the limits of the authority
7 granted by the court"). The Appointment Order specifically dictates the source of funds to pay
8 the Receiver's invoices: "the Property's rents and/or GSRUOA monthly dues." (Appointment
9 Order at 6:12-16.) The Appointment Order does not provide that the Receiver can be funded
10 from any special assessments imposed upon the unit owners. Accordingly, any such special
11 assessment imposed to fund the Receiver's invoices is improper and exceeds authority vested in
12 the Receiver alone. Anes, 113 Nev. at 201-02, 932 P.2d at 1071; Fullerton v. Second Jud. Dist.
13 Ct. in & for Cty. of Washoe, 111 Nev 391, 400, 892 P.2d 935, 941 (1995) ("a receiver must not
14 exceed the limits of the authority granted"); accord Clay Expl., Inc. v. Santa Rosa Operating,
15 LLC, 442 S.W.3d 795, 800 (Tex. App. 2014) (a receiver only has that authority conferred by the
16 Court's order appointing him); Price v. Howsen, 197 Iowa 324, 197 N.W. 62, 63 (1924) ("It is a
17 familiar rule that 'the extent of a receiver's authority is always to be measured by the order of
18 appointment'"); Citibank, N.A. v. Nyland (CF 8), Ltd., 839 F.2d 93, 98 (2d Cir. 1988)
19 ("[The receiver's] authority is wholly determined by the order of the appointment court"); In re
20 Lamplight Condo. Ass'n, Inc., No. 17-20078 (JJT), 2017 WL 184510, at *2 (Bankr. D. Conn.
21 May 5, 2017) ("The source of the Receiver's authority and the process by which it was bound
22 and governed is the Appointment Order, which, as a stipulation, is [] a . . . limitation of the
23 Receiver's power, authority and process.").

24 Moreover, the Receiver has now indicated that he intends to open a separate account to
25 collect rental revenues from the Property and distribute the same to the appropriate unit owners.
26 (Motion at Ex. 2 (email in which Receiver's counsel states "The Receiver is going to open a
27 separate account for the Receivership as soon as possible. . . . As of September 1st, all of the
28 revenue from the Summit Rooms (the units in the Hotel Condominium) will be deposited into

1 the account.”.) If the Receiver so opens this account to collect rental revenue, the Special
2 Assessment will become unnecessary to pay the Receiver’s invoices as Receiver will have access
3 to all rental revenue from the relevant units with which the Receiver may pay his invoices. The
4 Court finds this action by the Receiver is both necessary and allowed under the Appointment
5 Order. (See Appointment Order at 3:7-10, 3:15-18.)

6 Accordingly, the Court finds the Special Assessment exceeded the authority of the
7 GSRUOA’s Board of Directors as well as the authority of the Receiver. Thus, the Special
8 Assessment shall be rescinded and deemed void.

9 **IT IS HEREBY ORDERED** that Plaintiffs’ Motion is granted.

10 **IT IS FURTHER ORDERED** that Defendants shall rescind the Special Assessment and
11 refund any unit owners who have paid the Special Assessment within twenty (20) days of this
12 Order.

13 **IT IS FURTHER ORDERED** that the Receiver shall open a separate account into
14 which all rental revenue from the units in the Hotel Condominium (as defined in the CC&Rs) is
15 deposited and may be utilized to pay the Receiver’s invoices and otherwise operate the
16 GSRUOA. The Defendants are ordered to comply with the Appointment Order’s direction to
17 cooperate with the Receiver to effect the dictates of this order.

18 **IT IS SO ORDERED.**

19 DATED 12-21-21.



SENIOR JUSTICE
Nancy Saitta

22 Submitted by:

23 ROBERTSON, JOHNSON,
24 MILLER & WILLIAMSON

25 /s/ Jarrad C. Miller

26 Jarrad C. Miller, Esq.
27 Jonathan Joel Tew, Esq.
28 Attorneys for Plaintiffs

EXHIBIT “4”

EXHIBIT “4”

EXHIBIT “4”

1 CODE: 2777
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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9 ALBERT THOMAS, individually; *et al.*,

10 Plaintiffs,

11 vs.

Case No. CV12-02222
Dept. No. OJ37

12 MEI-GSR Holdings, LLC, a Nevada limited
13 liability company, GRAND SIERRA
14 RESORT UNIT OWNERS'
15 ASSOCIATION, a Nevada nonprofit
16 corporation, GAGE VILLAGE
17 COMMERCIAL DEVELOPMENT, LLC, a
18 Nevada limited liability company; AM-GSR
HOLDINGS, LLC, a Nevada limited liability
company; and DOE DEFENDANTS 1
THROUGH 10, inclusive,

Defendants.

19 **ORDER APPROVING RECEIVER'S REQUEST TO APPROVE UPDATED FEES**

20 Before the Court is the Receiver's Receiver Analysis and Calculation of Daily Use Fee,
21 Shared Facilities Unit Expense Fee and Hotel Expense Fee with Request to Approve updated
22 Fees and for Court to Set Effective Date for New Fees, filed August 16, 2021 ("Receiver
23 Analysis"). Defendants filed Defendants' Objection to Receiver's Analysis and Calculation of
24 Daily Use Fee, Shared Facilities Unit Expense Fees and for Court to Set Effective Date for New
25 Fees on September 17, 2021. Plaintiffs filed Plaintiffs' Response to Receiver Analysis and
26 Calculation of Daily Use Fee, Shared Facilities Unit Expense Fee and Hotel Expense Fee with
27 Request to Approve Updated Fees and for Court to Set Effective Date for New Fees on
28

1 September 17, 2021. The Receiver Analysis was submitted for consideration on
2 September 22, 2021.

3 **IT IS HEREBY ORDERED** that (1) The Receiver's new fee calculations as submitted
4 to the Court should immediately be applied retroactive to January 2020 and going forward until a
5 subsequent order from the Court is issued; (2) the amounts owed to Plaintiffs under those fee
6 calculations should be paid to Plaintiffs within thirty (30) days in accordance with the Governing
7 Documents; (3) the Receiver should be permitted to calculate the 2020 fee calculation using the
8 same methodology – and once those calculations are completed, the Receiver can reconcile the
9 unit owner accounts to reflect the difference between the 2020 and 2021 fee calculations; and (4)
10 after Defendants produce to Plaintiffs all actual documents that support the Receiver's 2020 and
11 2021 calculations, and depositions are taken (limited in scope) to verify that the calculations are
12 based on actual expenses as provided for under the Governing Documents, the briefing on the
13 issue of the accuracy of the fees should recommence. Any adjustments to the fees as a result of
14 motion practice by the parties shall be credited or debited accordingly, but in the interim, rental
15 revenue shall be calculated based upon the Receiver's 2021 calculations.

16 **IT IS SO ORDERED.**

17 DATED 12-21-21.

18
19 

20 SENIOR JUSTICE

Nancy Saitta

21 Submitted by:

22 ROBERTSON, JOHNSON,
23 MILLER & WILLIAMSON

24 /s/ Jarrad C. Miller

25 Jarrad C. Miller, Esq.
26 Jonathan Joel Tew, Esq.
27 Attorneys for Plaintiffs
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EXHIBIT “5”

EXHIBIT “5”

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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
20 LLC, a Nevada limited liability company; and
21 DOE DEFENDANTS 1 THROUGH 10,
22 inclusive,

23 Defendants.

24 **ORDER DIRECTING RECEIVER TO PREPARE REPORT ON DEFENDANTS'**
25 **REQUEST FOR REIMBURSEMENT OF 2020 CAPITAL EXPENDITURES**
26

27 Presently before the Court is Defendants' Motion for Instructions Regarding
28 Reimbursement of 2020 Capital Expenditures, filed June 24, 2021 ("Motion"). Plaintiffs filed
their Opposition to Defendants' Motion for Instructions Regarding Reimbursement of 2020
Capital Expenditures on October 11, 2021. Defendants then filed Defendants' Reply in Support
of Motion for Instructions Regarding Reimbursement of 2020 Capital Expenditures on
November 2, 2021. The Motion was submitted for consideration on November 3, 2021.

1 Case-concluding sanctions were entered against the Defendants for abuse of discovery
2 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
3 Terminating Sanctions, filed October 3, 2014 at 12.) See also Young v. Johnny Ribeiro Bldg.,
4 Inc., 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
5 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. (See
6 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

7 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
8 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
9 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"). The
10 receivership was implemented "for the purpose of implementing compliance, among all
11 condominium units, including units owned by any Defendant in this action . . . with the
12 Covenants, Codes and Restrictions recorded against the condominium units, the Unit
13 Maintenance Agreements and the original Unit Rental Agreements (the "Governing
14 Documents"). (Appointment Order at 1:27-28, 2:1-3.) On January 25, 2019, Richard Teichner
15 was substituted in Mr. Proctor's place in the Order Granting Motion to Substitute Receiver.

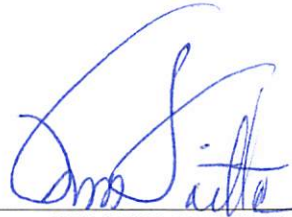
16 In the Motion, Defendants ask the Court to instruct Mr. Teichner ("Receiver") to
17 reimburse Defendants a total of \$1,614,505, comprised of \$1,409,637 from the Capital Reserves
18 for Common Area expenses and \$208,868 from the Hotel Reserves for Hotel Related expenses.
19 (Motion at 6:23-26.) The Motion further requests the Court instruct Receiver to impose any
20 special assessments necessary to bring the respective reserve accounts back to the required
21 levels. (Id. at 6:26-7:3.) Plaintiffs' Opposition argues the expenditures for which Defendants
22 seek reimbursement are not included in the Governing Documents which explicitly describe each
23 expense the Plaintiffs agreed to pay. (Opposition at 3:1-18.) Plaintiffs argue further that the
24 reserves study Defendants rely upon is fatally flawed as it also includes a variety of inappropriate
25 expenses and plainly obvious and elementary mistakes. (Id. at 2:14-26.)

26 The Court finds the Receiver is charged with implementing compliance with the
27 Governing Documents and was appointed for a reason. (See generally Appointment Order.)
28 Therefore, the Court orders the Receiver to provide a report to the Court within ninety (90) days

1 from the date of this Order recommending which items contained within Defendants' request for
2 reimbursement of capital expenditures can be reimbursed under the Governing Documents and
3 this Court's existing orders.

4 **IT IS SO ORDERED.**

5 DATED 12-21-21.



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7
8 SENIOR JUSTICE
Nancy Saitta

9 Submitted by:

10 ROBERTSON, JOHNSON,
11 MILLER & WILLIAMSON

12 /s/ Jarrad C. Miller

13 Jarrad C. Miller, Esq.
14 Jonathan Joel Tew, Esq.
15 Attorneys for Plaintiffs
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EXHIBIT “6”

EXHIBIT “6”

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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
20 LLC, a Nevada limited liability company; and
21 DOE DEFENDANTS 1 THROUGH 10,
22 inclusive,

23 Defendants.

24 **ORDER DENYING AS MOOT DEFENDANTS' EMERGENCY MOTION TO EXTEND**
25 **STAY PENDING FINAL DISPOSITION OF THE MOTION TO RECONSIDER**
26

27 Presently before the Court is Defendants' Emergency Motion to Extend Stay Pending
28 Final Disposition of the Motion to Reconsider, filed June 10, 2021 ("Motion"). Plaintiffs filed
their Opposition to Defendants' Emergency Motion to Extend Stay Pending Final Disposition of
the Motion to Reconsider (Oral Argument Requested) on June 23, 2021. Defendants filed
Defendants' Reply in Support of Emergency Motion to Extend Stay Pending Final Disposition of
the Motion to Reconsider on June 30, 2021. The Motion was submitted for consideration on
July 1, 2021.

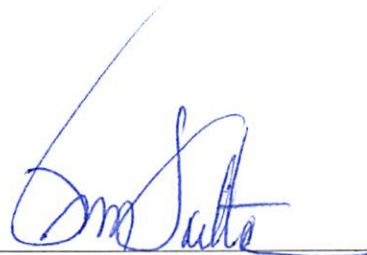
1 In the Motion, Defendants request the Court extend the stay of enforcement of the
2 disgorgement order within the Court's Order Granting Motion for Clarification, filed December
3 24, 2020 (the "December 24, 2020 Order") beyond June 10, 2021, such that the Court could
4 issue a ruling on Defendants' Motion for Leave to File Motion for Reconsideration of December
5 24, 2020, Order Granting Motion for Clarification and Request for Hearing ("Defendants'
6 Motion for Reconsideration"). (Motion at 2:13-22.) The December 24, 2020 Order ordered that:
7 (1) "[a]mounts charged since January of 2020 under the improper fee allocations shall be
8 disgorged to the Plaintiffs, and the new fee allocations shall not go into effect until calculated
9 (they will not be retroactively applied);" and (2) "the Defendants shall pay to the Plaintiffs the
10 reasonable attorneys' fees and costs they incurred in filing the Motion [for Clarification] and
11 Reply [in support thereof]." (December 24, 2020 Order at 4:12-16.)

12 Prior to enforcing the December 24, 2020 Order, the Court granted in part Defendants'
13 Motion for Reconsideration on September 29, 2021. (See Findings of Fact, Conclusions of Law
14 and Order, filed September 29, 2021 ("FFCLO").) In the FFCLO, the Court struck the portion of
15 the December 24, 2020 Order requiring the Defendants to disgorge the improper fee allocation
16 charges. (*Id.* at 6:2-11.)

17 **IT IS HEREBY ORDERED** that Defendants' Motion is denied as moot.

18 **IT IS SO ORDERED.**

19 DATED 12-21-21.



20
21
22 SENIOR JUSTICE
Nancy Saitta

23 Submitted by:

24 ROBERTSON, JOHNSON,
25 MILLER & WILLIAMSON

26 /s/ Jarrad C. Miller

27 Jarrad C. Miller, Esq.
Jonathan Joel Tew, Esq.
28 Attorneys for Plaintiffs

EXHIBIT “7”

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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
20 LLC, a Nevada limited liability company; and
21 DOE DEFENDANTS 1 THROUGH 10,
22 inclusive,

23 Defendants.

24 **ORDER GRANTING PLAINTIFFS' SUPPLEMENTAL MOTION FOR FEES**
25 **PURSUANT TO THE COURT'S DECEMBER 24, 2020 ORDER GRANTING MOTION**
26 **FOR CLARIFICATION AND SANCTIONING THE DEFENDANTS**
27

28 Presently before the Court is Plaintiffs' Supplemental Motion for Fees Pursuant to the
Court's December 24, 2020 Order Granting Motion for Clarification and Sanctioning the
Defendants, filed April 7, 2021 ("Motion"). Defendants filed Defendants' Opposition to
Supplemental Motion for Fees Pursuant to the Court's December 24, 2020 Order Granting
Motion for Clarification and Sanctioning the Defendants on April 20, 2021 ("Opposition").
Plaintiffs filed their Reply in Support of Supplemental Motion for Fees Pursuant to the Court's

1 December 24, 2020 Order Granting Motion for Clarification and Sanctioning the Defendants on
2 April 30, 2021. The Motion was submitted for consideration by the Court on May 4, 2021.

3 The Motion sets forth Plaintiffs' supplemental request for fees incurred in (a) submitting
4 their motion for fees ("Fees Motion") pursuant to the Court's December 24, 2020 Order Granting
5 Clarification ("December 24, 2020 Order"), (b) filing a reply to Defendants' opposition to the
6 Fees Motion, and (c) opposing Defendants' Motion for Leave to File Motion for Reconsideration
7 of the Court's December 24, 2020 Order ("Defendants' Motion for Reconsideration"), which
8 largely attempted to rehash and relitigate previously rejected arguments. (Motion at 2:7-12.)
9 Plaintiffs' total requested fees for these tasks is \$17,885. Defendants argue the requested fees
10 are unreasonably excessive and that Nevada law does not permit recovery thereof. (Opposition
11 at 2:14-18, 3:3-10.) Defendants further argue that the Defendants' Motion for Reconsideration
12 may very well render Plaintiffs' Fees Motion and Motion moot.¹ (Id. at 3:3-10; see also
13 Defendants' Motion for Reconsideration, filed January 7, 2020.)

14 Case-concluding sanctions were entered against the Defendants for abuse of discovery
15 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
16 Terminating Sanctions, filed October 3, 2014 at 12.) See Young v. Johnny Ribeiro Bldg., Inc.,
17 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
18 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. (See
19 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

20 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
21 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
22 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA") and
23 the rental revenue and certain other property interests relating to the other Defendants. (See
24 Appointment Order at 1:23-26.) The receivership was implemented "for the purpose of
25 implementing compliance, among all condominium units, including units owned by any
26 Defendant in this action . . . with the Covenants, Codes and Restrictions recorded against the
27

28 ¹ Defendants' Motion for Reconsideration stands fully briefed and submitted at the time of this Order.

1 condominium units, the Unit Maintenance Agreements and the original Unit Rental Agreements
2 (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25, 2019, Richard
3 Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order Granting Motion to
4 Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed January 25, 2019.)

5 The Court's December 24, 2020 Order includes two distinct portions: first, that the
6 Receiver was to recalculate certain fees in a specific way and that the improper fee allocations
7 were to be disgorged to Plaintiffs, and second, that the Defendants were to pay Plaintiffs'
8 attorneys' fees and costs incurred in briefing the motion which ultimately resulted in the
9 December 24, 2020 Order. This sanction was imposed as a result of "Defendants' attempt to
10 advance their interpretation of the Court's orders to the [R]eceiver [which] interfered with the
11 October Order taking effect and resulted in unnecessarily duplicative litigation." (December 24,
12 2020 order at 3:17-19.) Plaintiffs filed their motion for fees ("Fees Motion") pursuant to the
13 December 24, 2020 Order, to which Defendants filed an opposition. (See Motion for Fees
14 Pursuant to the Court's December 24, 2020 Order Granting Motion for Clarification, filed
15 January 4, 2021; Defendants' objection to Plaintiffs' Motion for Fees Pursuant to the Court's
16 December 24, 2020 Order Granting Motion for Clarification, filed January 14, 2021.)

17 The instant Motion requests a supplemental award of fees incurred in actions taking place
18 after the December 24, 2020 Order was issued. The Motion states Plaintiffs incurred a total of
19 \$17,885 in attorneys' fees as a result of (1) preparing the Fees motion, (2) preparing a reply to
20 Defendants' opposition to the Fees Motion, and (3) preparing an opposition to Defendants'
21 largely duplicative motion for reconsideration. (Motion at 6:9-12, 7:1-3.) Fees incurred as a
22 result of preparing a motion for fees are recoverable. See Rosenfeld v. United States DOJ, 903
23 F. Supp. 2d 859, 878 (N. D. Cal. 2012) ("Plaintiffs may recover attorney's fees for time
24 reasonably expended on a motion for attorney's fees and costs."). Furthermore, because the fee
25 award was a sanction for Defendants' attempt to convince the Receiver of their clearly inaccurate
26 interpretation of the Court's orders, and the motion for reconsideration largely furthered those
27 inaccurate arguments, the continued arguments, and Plaintiffs' fees incurred to address them, are
28

1 included by the December 24, 2020 Order's sanction. Accordingly, the Court finds such fees are
2 recoverable as a general matter.

3 Nevada uses the lodestar formula to determine the appropriate amount of attorney fees.
4 Hsu v. Clark County, 123 Nev. 625, 636, 173 P.3d 724, 732 (2007). The lodestar formula calls
5 for the number of hours reasonably spent on the motion to be multiplied by a reasonable hourly
6 rate. Id. at 637, 173 P.3d at 733.

7 Plaintiffs have provided that their counsel spent a total of 24.6 hours on the Fees Motion
8 briefing, including preparation of the Fees Motion, researching authority cited in Defendants'
9 opposition thereto, and preparing a reply in support of the Fees Motion. (Motion at 5:26-6:4.)
10 Defendants argue Plaintiffs' hours expended are excessive. (Opposition at 9:6-9.) The Court
11 finds the number of hours expended by Plaintiffs' counsel on the Fees Motion briefing to be
12 reasonable in light of the procedural history of this case and the issues raised by the Fees Motion
13 and Defendants' opposition thereto.

14 Plaintiffs have provided that their counsel spent a total of 31.6 hours on their opposition
15 to Defendants' Motion for Reconsideration. (Motion at 7:1-3.) Defendants, again, argue this
16 number of hours is excessive and not warranted. (Opposition at 9:9-21.) Although the
17 Defendants attempt to minimize the complexity of the issues set forth in the Defendants' Motion
18 for Reconsideration and the necessity to set forth the complex procedural background within
19 Defendants' opposition thereto, the Court does not agree that the Defendants' Motion for
20 Reconsideration, nor the Plaintiffs' opposition thereto, was as simplistic as Defendants state.
21 Instead, the Defendants' Motion for Reconsideration set forth a variety of fallacious legal
22 arguments and misconstrued the factual and procedural background of this case, therefore
23 requiring Plaintiffs to expend numerous pages refuting the same. Thus, the Court finds the
24 number of hours expended by Plaintiffs' counsel on this task reasonable.

25 Defendants also argue that Plaintiffs' time entries are inadequate. (Opposition at 10:17-
26 11:25.) Defendants argue the entries are "so vaguely generic that the [C]ourt cannot determine
27 with certainty whether the activities they purport to describe were necessary and reasonable."
28 (Id. at 11:21-23.) After reviewing the time entries in full, the Court finds the entries are adequate

1 and provide the Court sufficient information to determine that the tasks undertaken by Plaintiffs'
2 counsel were both necessary and reasonable.

3 Accordingly, the Court finds the number of hours expended by Plaintiffs' counsel on
4 those tasks for which Plaintiffs seek to recover attorneys' fees were reasonable.

5 Next, Plaintiffs have set forth their counsels' hourly rate. These rates range from \$425 to
6 \$335 for attorneys and are \$135 for paralegals.² (Motion at 6:9-12, 7:1-3.) Defendants do not
7 appear to dispute the reasonableness of such hourly rates. The Court therefore finds such hourly
8 rates are reasonable.

9 Under the lodestar formula, the Court finds the hours reportedly spent by Plaintiffs'
10 counsel and their hourly rates are reasonable, and thus the lodestar award is \$17,885.

11 The Court must next consider the Brunzell factors to determine the appropriateness of the
12 lodestar amount. Accordingly, to determine whether any adjustments to the lodestar amount are
13 necessary, the Court must consider:

14 (1) the qualities of the advocate: his ability, his training, education,
15 experience, professional standing and skill; (2) the character of the
16 work to be done: its difficulty, its intricacy, its importance, time
17 and skill required, the responsibility imposed and the prominence
18 and character of the parties where they affect the importance of the
litigation; (3) the work actually performed by the lawyer: the skill,
time and attention given to the work; (4) the result: whether the
attorney was successful and what benefits were derived.

19 Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31, 33 (1969). The Court finds all of
20 these factors weigh against any adjustment to the lodestar amount and in favor of awarding
21 Plaintiffs the full lodestar amount.

22 First, the Court is acutely aware of the high quality of Plaintiffs' counsel, and thus
23 concludes this factor is in favor of awarding Plaintiffs the entire lodestar amount.

24 Second, the Court finds the character of the work to be done to be especially important.
25 The Court's December 24, 2020 Order imposed sanctions upon Defendants for attempting to
26 mislead the Receiver into accepting a clearly faulty interpretation of the Court's previous orders.

27
28 ² Plaintiffs note the hourly fees underwent a routine annual increase, which is why they are different from previous
fees applications. (Motion at 6, fn.2.)

1 (See Order Granting Clarification, filed December 24, 2020 at 3:17-19 (“The Defendants’
2 attempt to advance their interpretation of the Court’s orders to the [R]eceiver interfered with the
3 October Order taking effect and resulted in unnecessarily duplicative litigation. Therefore, the
4 Court exercises its inherent authority to require the Defendants to pay for the fees the Plaintiffs
5 were unnecessarily forced to incur in filing the Motion and the Reply.”).) Thus, the time spent in
6 drafting the Fees Motion – which was ordered by the Court – is certainly important. The
7 sanction within the December 24, 2020 Order was intended to penalize Defendants’
8 wrongdoings. If the Court were to limit the Plaintiffs’ recovery of their attorneys’ fees incurred
9 as a result of Defendants’ wrongdoings, the sanction would have no teeth. Accordingly, the
10 second factor also weighs in favor of awarding the entire lodestar amount.

11 Third, the work actually performed by Plaintiffs’ counsel is evidenced by the billing
12 records submitted with the Motion. (Motion at Ex. 1.) Each time entry reflects work which was
13 necessary and that the individual whose time is reflected dedicated ample skill, time, and
14 attention to the task at hand. Brunzell, 85 Nev. at 349, 455 P.2d at 33. This factor thus also
15 weighs in favor of awarding the full lodestar amount.

16 Fourth and finally, the Court must consider the result. The Court finds this factor weighs
17 in favor of awarding the entire lodestar amount as well. The Court clearly agreed with Plaintiffs’
18 positions taken in the briefing which resulted in the December 24, 2020 Order imposing
19 sanctions. (See generally Order Granting Reconsideration, filed December 24, 2020.) Thus,
20 Plaintiffs have obtained a successful result. This factor weighs in favor of granting the full
21 lodestar amount to Plaintiffs.

22 The Brunzell factors clearly indicate that the lodestar amount is appropriate and requires
23 no adjustments. The Court therefore finds an award of the entire lodestar amount is proper.

24 **IT IS HEREBY ORDERED** that Plaintiffs’ Motion is granted in full.


25 **IT IS FURTHER ORDERED** that Defendants shall pay to the Plaintiffs the sum of
26 \$17,885 within thirty (30) days of this Order.

27 //

28 //

1 **IT IS SO ORDERED.**

2 DATED 12-21-21.

3
4 

5 _____
6 SENIOR JUSTICE
7 Nancy Saitta

8 Submitted by:

9 ROBERTSON, JOHNSON,
10 MILLER & WILLIAMSON

11 _____
12 /s/ Jarrad C. Miller

13 Jarrad C. Miller, Esq.
14 Jonathan Joel Tew, Esq.
15 Attorneys for Plaintiffs
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT I TO
DOCKETING
STATEMENT

\$2515

DANIEL F. POLSENBERG, ESQ.
Nevada Bar No. 2376
JENNIFER K. HOSTETLER, ESQ.
Nevada Bar No. 11994
DALE KOTCHKA-ALANES, ESQ.
Nevada Bar No. 13168
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
Tel: 702.949.8200
Fax: 702.949.8398
dpolsenberg@lewisroca.com
jhostetler@lewisroca.com
mkotchkaalanes@lewisroca.com

Attorneys for Defendants

ABRAN VIGIL, ESQ.
Nevada Bar No. 7548
ANN HALL, ESQ.
Nevada Bar No. 5447
DAVID C. MCELHINNEY, ESQ.
Nevada Bar No. 0033
MERUELO GROUP, LLC
Legal Services Department
5th Floor Executive Offices
2535 Las Vegas Boulevard South
Las Vegas, NV 89109
Tel: (562) 454-9786
abran.vigil@meruelogroup.com
ann.hall@meruelogroup.com
david.mcelhinney@meruelogroup.com

Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; JANE
DUNLAP, individually; JOHN DUNLAP,
individually; BARRY HAY, individually;
MARIE-ANNE ALEXANDER, as Trustee of
the MARIE-ANNIE ALEXANDER LIVING
TRUST; MELISSA VAGUJHELYI and
GEORGE VAGUJHELYI, as Trustees of the
GEORGE VAGUJHELYI AND MELISSA
VAGUJHELYI 2001 FAMILY TRUST
AGREEMENT, U/T/A APRIL 13, 2001; D'
ARCY NUNN, individually; HENRY NUNN,
individually; MADELYN VAN DER BOKKE,
individually; LEE VAN DER BOKKE,
individually; DONALD SCHREIFELS,
individually; ROBERT R. PEDERSON,
individually and as Trustee of the PEDERSON
1990 TRUST; LOU ANN PEDERSON,
individually and as Trustee of the PEDERSON
1990 TRUST; LORI ORDOVER, individually;
WILLIAM A. HENDERSON, individually;
CHRISTINE E. HENDERSON, individually;
LOREN D. PARKER, individually;
SUZANNE C. PARKER, individually;
MICHAEL IZADY, individually; STEVEN
TAKAKI, individually; FARAD
TORABKHAN, individually; SAHAR

Case No. CV12-02222

Dept No. OJ37

NOTICE OF APPEAL

1 TAVAKOL, individually; M&Y HOLDINGS,
2 LLC; JL&YL HOLDINGS, LLC; SANDI
3 RAINES, individually; R. RAGHURAM,
4 individually; USHA RAGHURAM,
5 individually; LORI K. TOKUTOMI,
6 individually; GARRET TOM, individually;
7 ANITA TOM, individually; RAMON
8 FADRILAN, individually; FAYE
9 FADRILAN, individually; PETER K. LEE and
10 MONICA L. LEE, as Trustees of the LEE
11 FAMILY 2002 REVOCABLE TRUST;
12 DOMINIC YIN, individually; ELIAS
13 SHAMIEH, individually; JEFFREY QUINN
14 individually; BARBARA ROSE QUINN
15 individually; KENNETH RICHE, individually;
16 MAXINE RICHE, individually; NORMAN
17 CHANDLER, individually; BENTON WAN,
18 individually; TIMOTHY D. KAPLAN,
19 individually; SILKSCAPE INC.; PETER
20 CHENG, individually; ELISA CHENG,
21 individually; GREG A. CAMERON,
22 individually; TMI PROPERTY GROUP, LLC;
23 RICHARD LUTZ, individually; SANDRA
24 LUTZ, individually; MARY A. KOSSICK,
25 individually; MELVIN CHEAH, individually;
26 DI SHEN, individually; NADINE'S REAL
27 ESTATE INVESTMENTS, LLC; AJIT
28 GUPTA, individually; SEEMA GUPTA,
individually; FREDRICK FISH, individually;
LISA FISH, individually; ROBERT A.
WILLIAMS, individually; JACQUELIN
PHAM, individually; MAY ANN HOM, as
Trustee of the MAY ANN HOM TRUST;
MICHAEL HURLEY, individually;
DOMINIC YIN, individually; DUANE
WINDHORST, individually; MARILYN
WINDHORST, individually; VINOD BHAN,
individually; ANNE BHAN, individually;
GUY P. BROWNE, individually; GARTH A.
WILLIAMS, individually; PAMELA Y.
ARATANI, individually; DARLENE
LINDGREN, individually; LAVERNE
ROBERTS, individually; DOUG MECHAM,
individually; CHRISINE MECHAM,
individually; KWANGSOO SON,
individually; SOO YEUN MOON,
individually; JOHNSON AKINDODUNSE,
individually; IRENE WEISS, as Trustee of the
WEISS FAMILY TRUST; PRAVESH
CHOPRA, individually; TERRY POPE,

individually; NANCY POPE, individually;
JAMES TAYLOR, individually; RYAN
TAYLOR, individually; KI HAM,
individually; YOUNG JA CHOI, individually;
SANG DAE SOHN, individually; KUK
HYUNG (CONNIE), individually; SANG
(MIKE) YOO, individually; BRETT
MENMUIR, as Trustee of the CAYENNE
TRUST; WILLIAM MINER, JR.,
individually; CHANH TRUONG, individually;
ELIZABETH ANDERS MECUA,
individually; SHEPHERD MOUNTAIN, LLC;
ROBERT BRUNNER, individually; AMY
BRUNNER, individually; JEFF RIOPELLE,
individually; PATRICIA M. MOLL,
individually; DANIEL MOLL, individually;
and DOE PLAINTIFFS 1 THROUGH 10,
inclusive ,

Plaintiffs,

v.

MEI-GSR HOLDINGS, LLC., a Nevada Limited
Liability Company, AM-GSR Holdings, LLC., a
Nevada Limited Liability Company, GRAND
SIERRA RESORT UNIT OWNERS'
ASSOCIATION, a Nevada Nonprofit
Corporation, GAGE VILLAGE COMMERCIAL
DEVELOPMENT, LLC., a Nevada Limited
Liability Company, and DOES I-X inclusive,

Defendants.

NOTICE OF APPEAL

Please take notice that defendants MEI-GSR Holdings, LLC, AM-GSR Holdings, LLC,
Grand Sierra Resort Unit Owners' Association, and Gage Village Commercial Development, LLC,
hereby appeal to the Supreme Court of Nevada from:

1. All judgments and orders in this case;
2. "Order Granting Receiver's Motion for Orders & Instructions," filed on January 4,
2022 (Exhibit 1), notice of entry of which was filed on January 4, 2022 (Exhibit 8);
3. "Order Granting Plaintiffs' Motion for Instructions to Receiver," filed on January
4, 2022 (Exhibit 2), notice of entry of which was filed on January 4, 2022 (Exhibit 8);
4. "Order Granting Plaintiffs' Motion to Stay Special Assessment," filed on January

1 4, 2022 (Exhibit 3), notice of entry of which was filed on January 4, 2022 (Exhibit 8);

2 5. “Order Approving Receiver’s Request to Approve Updated Fees,” filed on January
3 4, 2022 (Exhibit 4), notice of entry of which was filed on January 4, 2022 (Exhibit 8);

4 6. “Order Directing Receiver to Prepare Report on Defendants’ Request for
5 Reimbursement of 2020 Capital Expenditures,” filed on January 4, 2022 (Exhibit 5), notice of
6 entry of which was filed on January 4, 2022 (Exhibit 8);

7 7. “Order Denying as Moot Defendants’ Emergency Motion to Extend Stay Pending
8 Final Disposition of the Motion to Reconsider,” filed on January 4, 2022 (Exhibit 6), notice of
9 entry of which was filed on January 4, 2022 (Exhibit 8);

10 8. “Order Granting Plaintiffs’ Supplemental Motion for Fees Pursuant to the Court’s
11 December 24, 2020 Order Granting Motion for Clarification and Sanctioning the Defendants,”
12 filed on January 4, 2022 (Exhibit 7), notice of entry of which was filed on January 4, 2022
13 (Exhibit 8); and

14 9. All rulings and interlocutory orders made appealable by any of the foregoing.

15 **AFFIRMATION**
16 **Pursuant to NRS 239B.030**

17 The undersigned does hereby affirm that this document does not contain the social
18 security number of any person.

19 DATED this 18th day of January, 2022.

20 LEWIS ROCA ROTHGERBER CHRISTIE LLP

21 By: /s/ Daniel F. Polsenberg

22 Daniel F. Polsenberg, SBN 2376
23 Jennifer K. Hostetler, SBN 11994
24 Dale Kotchka-Alanes, SBN 13168
25 3993 Howard Hughes Pkwy., Suite 600
26 Las Vegas, Nevada 89169

27 MERUELO GROUP, LLC
28 Abran Vigil, SBN 7548
Ann Hall, SBN 5447
David C. McElhinney, SBN 0033
Legal Services Department
5th Floor Executive Offices
2535 Las Vegas Boulevard South
Las Vegas, NV 89109

Attorneys for Defendants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP and that on this 18th day of January, 2022, I served a true and correct copy of the foregoing **NOTICE OF APPEAL** to the parties listed below, via electronic service through the Second Judicial District Court's eFlex Electronic Filing system.

G. David Robertson, Esq., SBN 1001
Jarrad C. Miller, Esq., SBN 7093
Jonathan J. Tew, Esq., SBN 11874
ROBERSTON, JOHNSON, MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, Nevada 89501
Tel: (775) 329-5600
jon@nvlawyers.com
jarrad@nvlawyers.com

F. DeArmond Sharp, Esq., SBN 780
Stefanie T. Sharp, Esq. SBN 8661
ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503
Tel: (775) 329-3151
Tel: (775) 329-7169
dsharp@rssblaw.com
ssharp@rssblaw.com

Attorneys for the Receiver Richard M. Teichner

Robert L. Eisenberg, Esq., SBN 0950
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, Nevada 89519
Telephone: (775) 786-6868
Facsimile: (775) 786-9716
rle@lge.net

Attorneys for Plaintiffs

I declare under penalty of perjury under the laws of the State of Nevada, that the foregoing is true and correct.

Dated this 18th day of January, 2022.

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

INDEX OF EXHIBITS

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4	Order Approving Receiver's Request to Approve Updated Fees	2
5	Order Directing Receiver to Prepare Report on Defendants' Request for Reimbursement of 2020 Capital Expenditures	3
6	Order Denying as Moot Defendants' Emergency Motion to Extend Stay Pending Final Disposition of the Motion to Reconsider	2
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8	Notice of Entry of Orders	45

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CV12-02222
2022-01-18 06:08:07 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8849087 : yvilorla

EXHIBIT 1

EXHIBIT 1

CODE: 3060

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

Case No. CV12-02222
Dept. No. OJ37

MEI-GSR Holdings, LLC, a Nevada limited liability company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada limited liability company; AM-GSR HOLDINGS, LLC, a Nevada limited liability company; and DOE DEFENDANTS 1 THROUGH 10, inclusive,

Defendants.

ORDER GRANTING RECEIVER'S MOTION FOR ORDERS & INSTRUCTIONS

Presently before the Court is the Receiver's Motion for Orders & Instructions, filed October 18, 2021 ("Motion"). Plaintiffs filed Plaintiffs' Joinder to Receiver's Motion for Orders & Instructions on October 22, 2021 ("Plaintiff's Joinder"). Defendants filed Defendants' Opposition to Receiver's Motion for Orders & Instructions on October 22, 2021 ("Defendants' Opposition"). The Receiver then filed Receiver's Reply in Support of Motion for Orders & Instructions on October 25, 2021 ("Receiver's Reply"). The Motion was submitted for consideration on October 25, 2021.

1 Case-concluding sanctions were entered against the Defendants for abuse of discovery
2 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
3 Terminating Sanctions, filed October 3, 2014 at 12.) See Young v. Johnny Ribeiro Bldg., Inc.,
4 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
5 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. See
6 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.

7 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
8 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
9 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"). (See
10 Appointment Order at 1:23-26.) The receivership was implemented "for the purpose of
11 implementing compliance, among all condominium units, including units owned by any
12 Defendant in this action . . . with the Covenants, Codes and Restrictions recorded against the
13 condominium units, the Unit Maintenance Agreements and the original Unit Rental Agreements
14 (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25, 2019, Richard
15 Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order Granting Motion to
16 Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed January 25, 2019.)

17 In 2021, the Defendants undertook to have a reserve study done by a third party, which
18 was then to be utilized by the Receiver to calculate those fees to be charged to Plaintiffs
19 (including the Daily Use Fees ("DUF"), Shared Facility Use Expenses ("SFUE"), and Hotel
20 Expenses ("HE")). The Receiver states that various orders of this Court, including the
21 Appointment Order, provide authority solely to Receiver to order and oversee any reserve studies
22 done. (Reply at 2:27-3:5.) Defendants argue that no such orders nor the Governing Documents
23 provide the Receiver with such authority. (Defendants' Opposition at 3:19-24.) Instead,
24 Defendants argue that any attempt by the Receiver to order or oversee the reserve study would be
25 an "impermissibl[e] expan[sion] of his authority." (Id. at 3:20.)

26 The Court issued its Findings of Fact, Conclusions of Law and Order granting in part
27 Defendants' Motion for Leave to File Motion for Reconsideration of December 24, 2020 Order
28 Granting Motion for Clarification and Request for Hearing, on September 29, 2021. Therein, the

1 Court struck the disgorgement order granted in the December 24, 2020 Order Granting
2 Clarification (“December 24, 2020 Order”). Whereas the Court originally instructed that “[u]ntil
3 the DUF, the [HE], and [SFUE] are recalculated by the Receiver, the fees calculated by the past
4 receiver shall be applied,” the revised order struck this reversion to the prior receiver’s
5 calculations. Thus, the Receiver states he is now without direction as to which calculations are
6 to be applied until he is able to redo his own calculations. (See December 24, 2020 Order at
7 3:23-4:10 (where the Court informs the Receiver his calculations for 2020 are incorrect and
8 invalid under the Governing Documents and they must be redone).) Defendants argue the
9 Receiver’s prior calculations, which were in place until the December 24, 2020 Order was
10 issued, should be utilized. Notably, this directly contradicts the Court’s December 24, 2020
11 Order, is inequitable, and thus is denied outright. (Id.)

12 The Appointment Order provides the Receiver authority to take control of “all accounts
13 receivable, payments, rents, including all statements and records of deposits, advances, and
14 prepaid contracts or rents” (Appointment Order at 3:15-18.) Defendants are also ordered to
15 cooperate with the Receiver and not “[i]nterfer[e] with the Receiver, directly or indirectly.” (Id.
16 at 8:2-15.) The Receiver has informed the parties of his intent to open a separate account into
17 which all rents and other proceeds from the units will be deposited, and now requests the Court’s
18 permission to open such an account. (Motion at 11:19; Motion to Stay Special Assessment, filed
19 August 20, 2021 at Ex. 2.) Defendants have refused to cooperate with the Receiver’s request to
20 turnover various proceeds, in violation of the Appointment Order, and now object to Receiver’s
21 authority to open a separate account. (Appointment Order at 8:2-15; Defendant’s Opposition at
22 6:14-7:21.)

23 Pursuant to the Governing Documents, Defendants have implemented a room rotation
24 program whereunder bookings for the units owned by Plaintiffs and Defendants should be
25 equally distributed such that Plaintiffs and Defendants, as individual unit owners, are earning
26 roughly equal revenue. The Receiver contends this room rotation program is flawed and has
27 resulted in a greater number of Defendants’ units being rented than Plaintiffs’ units during
28 various periods through August 2021. (Motion at 14:14-17.)

1 Among the Governing Documents with which the Receiver is ordered to implement
2 compliance is the Seventh Amendment to Condominium Declaration of Covenants, Conditions,
3 Restrictions and Reservations of Easements for Hotel-Condominiums at Grand Sierra Resort,
4 recorded June 27, 2007 (“Seventh Amended CC&Rs”). Defendants, however, after representing
5 to the Court that the Seventh Amended CC&Rs needed to be amended in order to comply with
6 NRS 116B, unilaterally revised and recorded the Ninth Amendment to Condominium
7 Declaration of Covenants, Conditions, and Restrictions and Reservations of Easements for
8 Hotel-Condominiums at Grand Sierra Resort (“Ninth Amended CC&Rs”) to overhaul the fee
9 structure and radically expand the fees chargeable to the Plaintiffs. The Ninth Amended
10 CC&Rs, according to Plaintiffs, substantially increase the expenses to be included in fees
11 charged to Plaintiffs – thus making ownership of the units unviable.

12 Finally, Defendants have communicated with Receiver *ex parte* through a variety of
13 individuals. The Receiver now requests that all communications be funneled through a single
14 individual: Reed Brady. (Motion at 17:4-8.)

15 The Motion requests the Court order (1) that the Notice of Special Assessments and the
16 Reserve Studies sent to the unit owners by Defendants on August 24, 2021 be immediately
17 withdrawn; (2) that the Defendants be ordered to send out a notice to all unit owners of said
18 withdrawal; and (3) that this Court confirm the Receiver’s authority over the Reserve Studies.
19 (Motion at 3:11-14.) The Motion further requests the Court order that the Receiver is to
20 recalculate the charges for the DUF, SFUE, and HE for 2020 based upon the same methodology
21 as has been used in calculating the fee charges for 2021, once the Court approves that
22 methodology. (*Id.* at 8:10-13.) The Motion further requests the Court approve the opening of an
23 account for the Receivership, with the Receiver having sole signatory authority over the account,
24 and order that all rents received by Defendants currently and in the future, generated from either
25 all 670 condominium units or the Plaintiff-owned units, net of the total charges for the DUF,
26 SFUE, and HE fees and for reserves combined, are to be deposited into the account, that the
27 receiver be authorized to make the necessary disbursements to the relevant unit owners at three
28 (3) month intervals, that any disgorgement amounts owed by Defendants be deposited into the

1 Receivership account to be distributed by the Receiver, and that, if the Court orders the current
2 credit balances in the Plaintiffs' accounts are to be deposited in to the Receiver's bank account
3 then, to the extent that such credit balances are to be disgorged, Defendants will pay such credit
4 balances to the Receiver for deposit, and the Receiver will distribute such funds appropriately.
5 (Id. at 11:21-12:13.) The Motion further requests the Court order Defendants to provide the
6 Receiver with the information and documentation he has requested relating to the room rotation
7 program within ten (10) days of this Order. (Id. at 14:20-24.) The Motion further requests the
8 court expedite the determination of the Plaintiffs' Motion for Instructions, filed October 18, 2021
9 and submitted for consideration on October 25, 2021. (Id. at 17:1-3.) Finally, the Motion
10 requests the Court instruct Defendants to funnel all communications to the Receiver through a
11 single individual: Reed Brady. (Id. at 7:5-8.)

12 As this Court has stated previously, "[a] receiver is appointed to maintain the status quo
13 regarding the property in controversy and to safeguard said property from being dissipated while
14 the plaintiff is pursuing his remedy." (Order Denying Motion to Terminate Rental Agreement,
15 filed October 12, 2020 (citing Milo v. Curtis, 100 Ohio App.3d 1, 9, 651 N.E.2d 1340, 1345
16 (Ohio Ct. App. 1994).) This Court reiterated this premise in another order, stating that "[o]ne of
17 the purposes of the [Appointment] Order was to preserve the status quo of the parties during the
18 pendency of the action. Another purpose was to enforce [the] agreements." (Order, filed
19 November 23, 2015 at 1:22-23.) Nevada law supports this obligation of the Receiver. See
20 Johnson v. Steel, Inc., 100 Nev 181, 183, 678 P.2d 767, 678 (1984) (the appointment of a
21 receiver is a "remedy used to preserve the value of assets pending outcome of the principal case"
22 and is "a means of preserving the status quo"), overruled on other grounds by Shoen v. SAC
23 Holding Corp., 122 Nev. 621, 137 P.3d 1171 (2006); accord Dunphy v. McNamara, 50 Nev. 113,
24 252 P. 943, 944 (1927) (a court of equity has "ample authority" to utilize a receiver to preserve
25 the status quo).

26 Furthermore, upon the appointment of the Receiver, all authority to manage and control
27 the GSRUOA was immediately transferred from the GSRUOA's Board of Directors, managers,
28 officers, the Declarant, and other agents to the Receiver. Francis v. Camel Point Ranch, Inc.,

1 2019 COA 108M, ¶¶ 6-10, 487 P.3d 1089, 1092-93, as modified on denial of reh'g (Colo. Ct.
2 App. Sept. 19, 2019) (noting that “[u]pon the receiver’s appointment, [Defendant’s] corporate
3 officers and directors lost all authority to control the corporation”); First Sav. & Loan Ass’n v.
4 First Fed. Sav. Loan Ass’n, 531 F. Supp. 251, 255 (D. Haw. 1981) (“When a receiver is
5 appointed for a corporation, the corporation’s management loses the power to run its affairs and
6 the receiver obtains all of the corporation’s powers and assets.”). “Simply put, corporate
7 receivership is a court-mandated change in corporate management.” Francis, 487 P.3d 1089 at
8 1092-93.

9 Thus, upon appointment of the Receiver, the GSRUOA’s Board of Directors was
10 divested of the authority it has errantly exercised to issue that Notice of Special Assessment and
11 the Reserve Studies which was sent to all unit owners on August 24, 2021. Accordingly, such
12 Notice of Special Assessment and any actual imposition of special assessment is *void ab initio*
13 and therefore invalid. Only the Receiver can impose special assessments.

14 Next, the Findings of Fact, Conclusions of Law and Judgement issued on October 9,
15 2015 (“FFCLJ”), explicitly ordered the Receiver to calculate “a reasonable amount of FF&E,
16 shared facilities and hotel reserve fees” and other necessary fees to be assessed against Plaintiffs.
17 (FFCLJ at 22:25-27.) Accordingly, the Receiver is to calculate the DUF, SFUE, and HE for
18 2020. Such calculations should be based upon the same methodology as used for the 2021 fees,
19 once the Court has approved of such methodology.

20 The Appointment Order expressly allows for the Receiver to open an account for the
21 Receivership. (Appointment Order at 6:26 (the Receiver is allowed to “open and utilize bank
22 accounts for receivership funds”).) Indeed, the Appointment Order also expressly calls for the
23 Receiver to collect proceeds from the Property (defined as the 670 condominium units),
24 including, but not limited to, rent earned therefrom. (Id. at 5:17-19.) It logically follows then
25 that the Receiver may open a separate account for the Receivership in which it may hold all rents
26 from the Property, as defined in the Receivership Order.

27 The Appointment Order also expressly calls for Defendants to cooperate with the
28 Receiver and refrain from taking any actions which will interfere with the Receiver’s ability to

1 perform his duties. (Id. at 8:2-15.) Accordingly, Defendants should supply the Receiver with all
2 information, explanation, and documentation the Receiver may request regarding the room
3 rotation program and apparent inadequacy thereof.

4 The Receiver was specifically tasked with implementing compliance with the Governing
5 Documents, including the Seventh Amended CC&Rs. (Appointment Order at 1:27-2:3.)
6 Reading this obligation to implement compliance with the Seventh Amended CC&Rs with the
7 obligation to maintain the status quo, this Court finds that the Seventh Amended CC&Rs cannot
8 be amended, repealed, nor replaced until the Receiver is relieved of his duties by the Court. The
9 continuance of this specific Governing Document will ensure the status quo, as is the purpose of
10 a receivership. Johnson, 100 Nev. at 183, 678 P.2d at 678; Dunphy, 50 Nev. 113, 252 P. at 944.
11 The automatic and immediate transfer of control over the GSRUOA to the Receiver therefore
12 divested the GSRUOA's Board of Directors from any authority it had to propose, enact, and
13 otherwise make effective the Ninth Amended CC&Rs. The Ninth Amended CC&Rs are thus
14 *void ab initio*, as they were enacted without proper authority. Accordingly, the Ninth Amended
15 CC&Rs are *void ab initio*, and even if they were not, the Ninth Amended CC&Rs would be
16 improper and thus subject to rescission or cancellation.

17 Finally, the Court finds it appropriate for Defendants to funnel all communication with
18 the Receiver through a single individual. For the time being, such individual shall be Reed
19 Brady. Mr. Brady may delegate tasks to others, however, only Mr. Brady should communicate
20 answers, conclusions, or other findings to the Receiver.

21 **IT IS HEREBY ORDERED** that Receiver's Motion is granted **in full**.

22 **IT IS FURTHER ORDERED** (i) that the Notice of Special Assessments and the
23 Reserve Studies sent to the unit owners by the Defendants on August 24, 2021 shall be
24 immediately withdrawn; (ii) that the Defendants shall send out a notice to all unit owners of said
25 withdrawal within ten (10) days of this Order; (iii) that any amounts paid by unit owners
26 pursuant to the Notice of Special Assessment shall be refunded within ten (10) days of this
27 Order; and (iv) that the Receiver has sole authority to order and oversee reserve studies related to
28 Defendants' property and under the Governing Documents.

1 **IT IS FURTHER ORDERED** that the Receiver shall recalculate the DUF, SFUE, and
2 HE based on the same methodology as has been used in calculating the fee charges for 2021,
3 subject to Court approval of such methodology. Those fees in place prior to the Court's
4 September 27, 2021 Order shall remain in place until the fees for 2020 are recalculated and
5 approved by this Court such that only a single account adjustment will be necessary.

6 **IT IS FURTHER ORDERED** that the Receiver shall open a separate account on which
7 Receiver has sole signatory authority, and into which all rents received by Defendants currently
8 for all 670 condominium units, net of total charges for DUF, SFUE, and HE fees and reserves,
9 are to be deposited. The Receiver shall disburse the revenue collected to the parties according to
10 the Governing Documents. In the event the Court requires a disgorgement by Defendants to
11 Plaintiffs, Receiver shall deposit such disgorgements into this separate account and disburse the
12 same to Plaintiffs appropriately.

13 **IT IS FURTHER ORDERED** that Defendants shall provide Receiver with any
14 information, explanation, and documentation he may request regarding the room rotation
15 program and any perceived discrepancies therewith, until Receiver is either satisfied with the
16 adequacy of the program or until Receiver deems it appropriate to seek judicial intervention.

17 **IT IS FURTHER ORDERED** that the Ninth CC&Rs are *void ab initio* and the Seventh
18 CC&Rs are to be resurrected as though they had not been withdrawn or superseded.

19 **IT IS FURTHER ORDERED** that Defendants shall funnel all communication with the
20 Receiver through Reed Brady. Defendants and Receiver may mutually agree to choose an
21 alternative representative through which communication shall be directed. Mr. Brady, and any
22 subsequent representative, may delegate requests, questions, or other tasks necessary to respond
23 to Receiver's communications, but any answers, conclusions, or other results shall be
24 communicated back to Receiver through only Mr. Brady and no other individual.

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SENIOR JUSTICE
Nancy Saitta

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON

Jarrad C. Miller, Esq.
Jonathan Joel Tew, Esq.
Attorneys for Plaintiffs

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EXHIBIT 2

EXHIBIT 2

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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
LLC, a Nevada limited liability company; and
DOE DEFENDANTS 1 THROUGH 10,
inclusive,

Defendants.

20 **ORDER GRANTING PLAINTIFFS' MOTION FOR INSTRUCTIONS TO RECEIVER**

21 Presently before the Court is Plaintiff's Motion for Instructions to Receiver, filed
22 September 28, 2021 ("Motion"). Defendants filed Defendants' Opposition to Plaintiffs' Motion
23 for Instructions to Receiver on October 12, 2021 ("Opposition"). Plaintiffs filed their Reply in
24 Support of Motion for Instructions to Receiver on October 25, 2021. The Motion was submitted
25 for consideration on October 25, 2021.

26 Case-concluding sanctions were entered against the Defendants for abuse of discovery
27 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
28 Terminating Sanctions, filed October 3, 2014 at 12.) See also Young v. Johnny Ribeiro Bldg.

1 Inc., 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
2 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. (See
3 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

4 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
5 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
6 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"), the
7 rental and other revenues from the condominiums, as well as other property of the non-
8 GSRUOA Defendants. (See Appointment Order at 1:23-26.) The receivership was implemented
9 "for the purpose of implementing compliance, among all condominium units, including units
10 owned by any Defendant in this action . . . with the Covenants, Codes and Restrictions recorded
11 against the condominium units, the Unit Maintenance Agreements and the original Unit Rental
12 Agreements (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25,
13 2019, Richard Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order
14 Granting Motion to Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed
15 January 25, 2019.)

16 Among the Governing Documents with which the Receiver is ordered to implement
17 compliance is the Seventh Amendment to Condominium Declaration of Covenants, Conditions,
18 Restrictions and Reservations of Easements for Hotel-Condominiums at Grand Sierra Resort,
19 recorded June 27, 2007 ("Seventh Amended CC&Rs"). Defendants, however, after representing
20 to the Court that the Seventh Amended CC&Rs needed to be amended in order to comply with
21 NRS 116B, unilaterally revised and recorded the Ninth Amendment to Condominium
22 Declaration of Covenants, Conditions, and Restrictions and Reservations of Easements for
23 Hotel-Condominiums at Grand Sierra Resort to overhaul the fees chargeable to the unit owners.
24 ("Ninth Amended CC&Rs"). The Ninth Amended CC&Rs, according to Plaintiffs, substantially
25 increase the expenses to be included in fees charged to Plaintiffs – thus making ownership of the
26 units unviable. (Reply at 7:17-21.)

27 Additionally, the Defendants undertook to have a reserve study done by a third party,
28 which was then to be utilized by the Receiver to calculate those fees to be charged to Plaintiffs.

1 Plaintiffs argue this reserve study was not only done without proper authority, but also that it was
2 patently erroneous in that it includes a variety of expenses which are not chargeable to the
3 Plaintiffs under the Seventh Amended CC&Rs. (Motion at 4:3-13.)

4 The Motion requests the Court instruct the Receiver to (1) determine that the amendment
5 process was invalid and void actions improperly taken by the GSRUOA Board of Directors, (2)
6 maintain the status quo by enforcing the Appointment Order and apply the Seventh Amended
7 CC&Rs, and (3) disqualify the 2021 reserve study and prepare a new reserve study completed
8 with the Receiver's direction and input. (Motion at 2:27-3:4, 4:12-13.)

9 As this Court has stated previously, "[a] receiver is appointed to maintain the status quo
10 regarding the property in controversy and to safeguard said property from being dissipated while
11 the plaintiff is pursuing his remedy." (Order Denying Motion to Terminate Rental Agreement,
12 filed October 12, 2020 (citing Milo v. Curtis, 100 Ohio App.3d 1, 9, 651 N.E.2d 1340, 1345
13 (Ohio Ct. App. 1994).) This Court reiterated this premise in a subsequent order, stating that
14 "[o]ne of the purposes of the [Appointment] Order was to preserve the status quo of the parties
15 during the pendency of the action. Another purpose was to enforce [the] agreements." (Order,
16 filed November 23, 2015 at 1:22-23.) Nevada law supports this obligation of the Receiver. See
17 Johnson v. Steel, Inc., 100 Nev 181, 183, 678 P.2d 767, 678 (1984) (the appointment of a
18 receiver is a "remedy used to preserve the value of assets pending outcome of the principal case"
19 and is "a means of preserving the status quo"), overruled on other grounds by Shoen v. SAC
20 Holding Corp., 122 Nev. 621, 137 P.3d 1171 (2006); accord Dunphy v. McNamara, 50 Nev. 113,
21 252 P. 943, 944 (1927) (a court of equity has "ample authority" to utilize a receiver to preserve
22 the status quo).

23 In this case, the Receiver was specifically tasked with implementing compliance with the
24 Governing Documents, including the Seventh Amended CC&Rs. (Appointment Order at 1:27-
25 2:3.) Reading this obligation to implement compliance with the Seventh Amended CC&Rs with
26 the obligation to maintain the status quo, this Court finds that the Seventh Amended CC&Rs
27 cannot be amended, repealed, nor replaced until the Receiver is relieved of his duties by the
28 Court. The continuance of this specific Governing Document will ensure the status quo, as is the

1 purpose of a receivership and the Appointment Order. See Johnson, 100 Nev. at 183, 678 P.2d at
2 678; Dunphy, 50 Nev. 113, 252 P. at 944.

3 Furthermore, upon the appointment of the Receiver, all authority to manage and control
4 the GSRUOA was immediately transferred from the GSRUOA's Board of Directors, managers,
5 officers, the Declarant, and other agents to the Receiver. Francis v. Camel Point Ranch, Inc.,
6 2019 COA 108M, ¶¶ 6-10, 487 P.3d 1089, 1092-93, as modified on denial of reh'g (Colo. Ct.
7 App. Sept. 19, 2019) (noting that "[u]pon the receiver's appointment, [Defendant's] corporate
8 officers and directors lost all authority to control the corporation"); First Sav. & Loan Ass'n v.
9 First Fed. Sav. Loan Ass'n, 531 F. Supp. 251, 255 (D. Haw. 1981) ("When a receiver is
10 appointed for a corporation, the corporation's management loses the power to run its affairs and
11 the receiver obtains all of the corporation's powers and assets."). "Simply put, corporate
12 receivership is a court-mandated change in corporate management." Francis, 487 P.3d 1089 at
13 1092-93.

14 This automatic and immediate transfer of control over the GSRUOA to the Receiver
15 therefore divested the GSRUOA's Board of Directors from any authority it had to propose,
16 enact, and otherwise make effective the Ninth Amended CC&Rs. The Ninth Amended CC&Rs
17 are thus *void ab initio*, as they were enacted without proper authority.

18 Accordingly, the Ninth Amended CC&Rs are *void ab initio*, and even if they were not,
19 the Ninth Amended CC&Rs would be improper and thus subject to rescission or cancellation.¹

20 Next, Plaintiffs have moved the Court to instruct the Receiver to reject the reserve study
21 completed by Defendants without any input from Receiver, and order and oversee a separate
22 reserve study. (Motion at 11:25-14:19.) The Court has explicitly found that the Receiver "will
23 determine a reasonable amount of FF&E, shared facilities and hotel reserve fees." (Findings of
24 Fact, Conclusions of Law and Judgement, Filed October 9, 2015 at 22:25-26.) This implies that

25 _____
26 ¹ Defendants argue any challenge to the Ninth Amended CC&Rs must be brought pursuant to the ADR provision
27 therein. The Court rejects this argument *in toto* considering the Appointment Order, the purpose of the Appointment
28 Order, and binding Nevada law which all dictate the receivership is intended to maintain the status quo – not allow
for a key Governing Document to be unilaterally amended by Defendants. Further, the claim for a Receivership was
brought in the Second Amended Complaint and the Nevada Supreme Court has already found that the District Court
has subject matter jurisdiction over the action.

1 the Receiver will also be tasked with ordering and overseeing the reserve study – as that study
2 will dictate the FF&E, shared facilities, and hotel reserve fees. Thus, the Receiver alone has the
3 authority to direct and audit the reserve study, not the Defendants.

4 Moreover, the Defendants have acknowledged this reality to the Court:

5 Mr. McElhinney: Are you instructing the receiver to use the 2016
6 reserve study in rendering his calculation? The Court: I think he
7 can. Mr. McElhinney: Up to him? The Court: Yeah, it's up to
8 him. If there's some reason that Mr. Teichner believes that the
9 premise or the data that's collected therein is inappropriate, then
10 obviously he can just go back to the 2014 study, but if he wants to
11 use it and he believes that it's statistical or evidentiarily valid, then
12 he can use that in making those determinations.

13 (Motion at Ex. 3 at 141:24-142:11.)

14 Plaintiffs further object to the Defendants' reserve study because it has included expenses
15 which are clearly erroneous. (Motion at 4:6-13 (noting public pool expenses that were included
16 while the Governing Documents and Court orders exclude any revenue-generating expenses).)
17 The reserve study is to be limited as directed in previous Court orders and the Governing
18 Documents. The reserve study provided by Defendants clearly shows at least one basic,
19 elementary example of expenses which are included but should not be. (Id.) Accordingly, the
20 Court finds the Defendants' reserve study to be flawed and untrustworthy, and finds the Receiver
21 has the proper (and sole) authority to order, oversee, and implement a new reserve study.

22 **IT IS HEREBY ORDERED** that Plaintiffs' Motion is granted.

23 **IT IS FURTHER ORDERED** that the Ninth Amended CC&Rs shall be withdrawn and
24 the Seventh Amended CC&Rs shall be reinstated as though never superseded.

25 **IT IS FURTHER ORDERED** that Receiver shall not utilize the Defendants' reserve
26 study in calculating those fees which are to be assessed to Plaintiffs. Instead, the Receiver shall
27 order, oversee, and implement a new reserve study which is in accordance with the Governing
28 Documents.

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1 **IT IS SO ORDERED.**

2 DATED 12.21.21

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5 _____
6 SENIOR JUSTICE
7 Nancy Saitta

8 Submitted by:

9 ROBERTSON, JOHNSON,
10 MILLER & WILLIAMSON

11 _____
12 /s/ Jarrad C. Miller

13 Jarrad C. Miller, Esq.

14 Jonathan Joel Tew, Esq.

15 Attorneys for Plaintiffs
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EXHIBIT 3

EXHIBIT 3

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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

Case No. CV12-02222
Dept. No. OJ37

MEI-GSR Holdings, LLC, a Nevada limited liability company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada limited liability company; AM-GSR HOLDINGS, LLC, a Nevada limited liability company; and DOE DEFENDANTS 1 THROUGH 10, inclusive,

Defendants.

ORDER GRANTING PLAINTIFFS' MOTION TO STAY SPECIAL ASSESSMENT

Presently before the Court is Plaintiffs' Motion to Stay Special Assessment, filed August 20, 2021 ("Motion").¹ Defendants filed Defendants' Opposition to Motion to Stay Special Assessment on September 3, 2021 ("Opposition"). Plaintiffs filed their Reply in Support of

¹ Plaintiffs filed an initial version of this motion on July 30, 2021. (Motion to Stay Special Assessment and Renewed Request to Replace Receiver, filed July 30, 2021.) Plaintiffs withdrew this motion without prejudice on August 17, 2021. (Notice of Withdrawal of Motion to Stay Special Assessment and Renewed Request to Replace Receiver, filed August 17, 2021.)

1 Motion to Stay Special Assessment on September 17, 2021. The Motion was submitted for
2 consideration on September 22, 2021.

3 Case-concluding sanctions were entered against the Defendants for abuse of discovery
4 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
5 Terminating Sanctions, filed October 3, 2014 at 12.) See also Young v. Johnny Ribeiro Bldg.,
6 Inc., 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
7 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. (See
8 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

9 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
10 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
11 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"). (See
12 Appointment Order at 1:23-26.) The receivership was implemented "for the purpose of
13 implementing compliance, among all condominium units, including units owned by any
14 Defendant in this action . . . with the Covenants, Codes and Restrictions recorded against the
15 condominium units, the Unit Maintenance Agreements and the original Unit Rental Agreements
16 (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25, 2019, Richard
17 Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order Granting Motion to
18 Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed January 25, 2019.)

19 The Appointment Order provides that the Receiver and his agents are to be "pa[id] and
20 discharge[d] out of the Property's rents and/or GSRUOA monthly dues collections. . . ." (Appointment Order at 6:12-16.) It is thus clear that the Receiver's invoices are to be paid
21 through either (or collectively) the Property's rents collected or the GSRUOA monthly dues and
22 not from any other source of funds without approval of this Court.
23

24 On June 16, 2021, the Receiver provided notice to the Court that GSRUOA was insolvent
25 and requested a hearing to address this issue. (Motion at 1:2-4.) After the parties discussed
26 potential solutions to this issue, the Defendants, over Plaintiffs' objection, on July 12, 2021 voted
27 to impose a special assessment against all unit owners which would raise about \$100,000 to pay
28 the Receiver's invoices and other expenses ("Special Assessment"). (Opposition at 2:3-11.)

1 The Motion requests that the Court: (1) enforce the Appointment Order; (2) stay the
2 Special Assessment; (3) direct the Receiver to pay the expenses of the receivership through the
3 new receivership account; and (4) order the Defendants to stop interfering with the receivership
4 and the orders governing same. (Motion at 2:6-9.) The Opposition argues the Special
5 Assessment was appropriate under the Seventh Amendment to Condominium Declaration of
6 Covenants, Conditions, Restrictions and Reservations of Easements for hotel Condominiums at
7 Grand Sierra Resort ("CC&Rs") and necessary in order to both fund the Receiver's invoices as
8 well as the GSRUOA's operations through the remainder of 2021. (Opposition at 2:24-3:6.)

9 To begin, the appointment of a receiver terminates the authority of an entity's officers
10 and directors, and places all such authority in the receiver alone. Francis v. Camel Point Ranch,
11 Inc., 2019 COA 108M, ¶¶6-10, 487 P.3d 1089, 1092-9 (Colo. App. Sept. 19, 2019) (noting that
12 "[u]pon the receiver's appointment, [Defendant's] corporate officers and directors lost all
13 authority to control the corporation"); McDougal v. Huntingdon & Broad Top Mountain RR. &
14 Coal Co., 294 Pa. 108, 143 A.574, 577 (1928) (the receiver exercises the functions of the board
15 of directors, managers and officers, takes possession of corporate income, property, and assets,
16 directs not only in its operation, but, while in control, its policies on all lines"); see First Sav &
17 Loan Ass'n v. First Fed. Sav. Loan Ass'n, 531 F. Supp. 251, 255 (D. Haw. 1981) ("When a
18 receiver is appointed for a corporation, the corporation's management loses the power to run its
19 affairs and the receiver obtains all of the corporation's powers and assets"); see also U.S. v.
20 Powell, 95 F.2d 752, 754 (4th Cir. 1938). Thus, when the Appointment Order was issued, all
21 authority vested in GSRUOA's Board of Directors, managers, the Declarant, and other decision
22 makers was transferred to the Receiver and the Board of Directors, managers, the Declarant, and
23 other decision makers were divested of such authority.

24 It follows then that any decision of GSRUOA's Board of Directors since the
25 Appointment Order, including the July 12, 2021 decision to impose the Special Assessment, is
26 void as GSRUOA's Board of Directors had no authority to make such a decision or impose such
27 an assessment. (Id.)

1 Defendants argue that because the Receiver apparently did not object to the GSRUOA's
2 Board of Directors' decision to impose the Special Assessment, the Special Assessment is
3 proper. (Opposition at 4:17-18 ("The Board voted unanimously to approve and implement the
4 Special Assessment and the Receiver agreed with the action.")) This argument falls flat,
5 however, in light of the Receiver's limited authority. Anes v. Crown P'ship, Inc., 113 Nev. 195,
6 201-02, 932 P.2d 1067, 1071 (1997) ("a receiver must not exceed the limits of the authority
7 granted by the court"). The Appointment Order specifically dictates the source of funds to pay
8 the Receiver's invoices: "the Property's rents and/or GSRUOA monthly dues." (Appointment
9 Order at 6:12-16.) The Appointment Order does not provide that the Receiver can be funded
10 from any special assessments imposed upon the unit owners. Accordingly, any such special
11 assessment imposed to fund the Receiver's invoices is improper and exceeds authority vested in
12 the Receiver alone. Anes, 113 Nev. at 201-02, 932 P.2d at 1071; Fullerton v. Second Jud. Dist.
13 Ct. in & for Cty. of Washoe, 111 Nev 391, 400, 892 P.2d 935, 941 (1995) ("a receiver must not
14 exceed the limits of the authority granted"); accord Clay Expl., Inc. v. Santa Rosa Operating,
15 LLC, 442 S.W.3d 795, 800 (Tex. App. 2014) (a receiver only has that authority conferred by the
16 Court's order appointing him); Price v. Howsen, 197 Iowa 324, 197 N.W. 62, 63 (1924) ("It is a
17 familiar rule that 'the extent of a receiver's authority is always to be measured by the order of
18 appointment'"); Citibank, N.A. v. Nyland (CF 8), Ltd., 839 F.2d 93, 98 (2d Cir. 1988)
19 ("[The receiver's] authority is wholly determined by the order of the appointment court"); In re
20 Lamplight Condo. Ass'n, Inc., No. 17-20078 (JJT), 2017 WL 184510, at *2 (Bankr. D. Conn.
21 May 5, 2017) ("The source of the Receiver's authority and the process by which it was bound
22 and governed is the Appointment Order, which, as a stipulation, is [] a . . . limitation of the
23 Receiver's power, authority and process.").

24 Moreover, the Receiver has now indicated that he intends to open a separate account to
25 collect rental revenues from the Property and distribute the same to the appropriate unit owners.
26 (Motion at Ex. 2 (email in which Receiver's counsel states "The Receiver is going to open a
27 separate account for the Receivership as soon as possible. . . . As of September 1st, all of the
28 revenue from the Summit Rooms (the units in the Hotel Condominium) will be deposited into

1 the account.”.) If the Receiver so opens this account to collect rental revenue, the Special
2 Assessment will become unnecessary to pay the Receiver’s invoices as Receiver will have access
3 to all rental revenue from the relevant units with which the Receiver may pay his invoices. The
4 Court finds this action by the Receiver is both necessary and allowed under the Appointment
5 Order. (See Appointment Order at 3:7-10, 3:15-18.)

6 Accordingly, the Court finds the Special Assessment exceeded the authority of the
7 GSRUOA’s Board of Directors as well as the authority of the Receiver. Thus, the Special
8 Assessment shall be rescinded and deemed void.

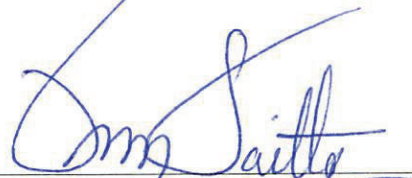
9 **IT IS HEREBY ORDERED** that Plaintiffs’ Motion is granted.

10 **IT IS FURTHER ORDERED** that Defendants shall rescind the Special Assessment and
11 refund any unit owners who have paid the Special Assessment within twenty (20) days of this
12 Order.

13 **IT IS FURTHER ORDERED** that the Receiver shall open a separate account into
14 which all rental revenue from the units in the Hotel Condominium (as defined in the CC&Rs) is
15 deposited and may be utilized to pay the Receiver’s invoices and otherwise operate the
16 GSRUOA. The Defendants are ordered to comply with the Appointment Order’s direction to
17 cooperate with the Receiver to effect the dictates of this order.

18 **IT IS SO ORDERED.**

19 DATED 12-21-21.



SENIOR JUSTICE
Nancy Saitta

22 Submitted by:

23 ROBERTSON, JOHNSON,
24 MILLER & WILLIAMSON

25 /s/ Jarrad C. Miller

26 Jarrad C. Miller, Esq.
27 Jonathan Joel Tew, Esq.
28 Attorneys for Plaintiffs

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Alicia L. Lerud
Clerk of the Court
Transaction # 8849087 : yvilorla

EXHIBIT 4

EXHIBIT 4

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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9 ALBERT THOMAS, individually; *et al.*,

10 Plaintiffs,

11 vs.

Case No. CV12-02222
Dept. No. OJ37

12 MEI-GSR Holdings, LLC, a Nevada limited
13 liability company, GRAND SIERRA
14 RESORT UNIT OWNERS'
15 ASSOCIATION, a Nevada nonprofit
16 corporation, GAGE VILLAGE
17 COMMERCIAL DEVELOPMENT, LLC, a
18 Nevada limited liability company; AM-GSR
HOLDINGS, LLC, a Nevada limited liability
company; and DOE DEFENDANTS 1
THROUGH 10, inclusive,

Defendants.

19 **ORDER APPROVING RECEIVER'S REQUEST TO APPROVE UPDATED FEES**

20 Before the Court is the Receiver's Receiver Analysis and Calculation of Daily Use Fee,
21 Shared Facilities Unit Expense Fee and Hotel Expense Fee with Request to Approve updated
22 Fees and for Court to Set Effective Date for New Fees, filed August 16, 2021 ("Receiver
23 Analysis"). Defendants filed Defendants' Objection to Receiver's Analysis and Calculation of
24 Daily Use Fee, Shared Facilities Unit Expense Fees and for Court to Set Effective Date for New
25 Fees on September 17, 2021. Plaintiffs filed Plaintiffs' Response to Receiver Analysis and
26 Calculation of Daily Use Fee, Shared Facilities Unit Expense Fee and Hotel Expense Fee with
27 Request to Approve Updated Fees and for Court to Set Effective Date for New Fees on
28

1 September 17, 2021. The Receiver Analysis was submitted for consideration on
2 September 22, 2021.

3 **IT IS HEREBY ORDERED** that (1) The Receiver's new fee calculations as submitted
4 to the Court should immediately be applied retroactive to January 2020 and going forward until a
5 subsequent order from the Court is issued; (2) the amounts owed to Plaintiffs under those fee
6 calculations should be paid to Plaintiffs within thirty (30) days in accordance with the Governing
7 Documents; (3) the Receiver should be permitted to calculate the 2020 fee calculation using the
8 same methodology – and once those calculations are completed, the Receiver can reconcile the
9 unit owner accounts to reflect the difference between the 2020 and 2021 fee calculations; and (4)
10 after Defendants produce to Plaintiffs all actual documents that support the Receiver's 2020 and
11 2021 calculations, and depositions are taken (limited in scope) to verify that the calculations are
12 based on actual expenses as provided for under the Governing Documents, the briefing on the
13 issue of the accuracy of the fees should recommence. Any adjustments to the fees as a result of
14 motion practice by the parties shall be credited or debited accordingly, but in the interim, rental
15 revenue shall be calculated based upon the Receiver's 2021 calculations.

16 **IT IS SO ORDERED.**

17 DATED 12-21-21.

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19 

20 SENIOR JUSTICE

Nancy Saitta

21 Submitted by:

22 ROBERTSON, JOHNSON,
23 MILLER & WILLIAMSON

24 /s/ Jarrad C. Miller

25 Jarrad C. Miller, Esq.
26 Jonathan Joel Tew, Esq.
27 Attorneys for Plaintiffs
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Clerk of the Court
Transaction # 8849087 : yvilorla

EXHIBIT 5

EXHIBIT 5

CODE: 3370

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

Case No. CV12-02222
Dept. No. OJ37

MEI-GSR Holdings, LLC, a Nevada limited liability company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada limited liability company; AM-GSR HOLDINGS, LLC, a Nevada limited liability company; and DOE DEFENDANTS 1 THROUGH 10, inclusive,

Defendants.

ORDER DIRECTING RECEIVER TO PREPARE REPORT ON DEFENDANTS'
REQUEST FOR REIMBURSEMENT OF 2020 CAPITAL EXPENDITURES

Presently before the Court is Defendants' Motion for Instructions Regarding Reimbursement of 2020 Capital Expenditures, filed June 24, 2021 ("Motion"). Plaintiffs filed their Opposition to Defendants' Motion for Instructions Regarding Reimbursement of 2020 Capital Expenditures on October 11, 2021. Defendants then filed Defendants' Reply in Support of Motion for Instructions Regarding Reimbursement of 2020 Capital Expenditures on November 2, 2021. The Motion was submitted for consideration on November 3, 2021.

1 Case-concluding sanctions were entered against the Defendants for abuse of discovery
2 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
3 Terminating Sanctions, filed October 3, 2014 at 12.) See also Young v. Johnny Ribeiro Bldg.,
4 Inc., 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
5 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. (See
6 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

7 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
8 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
9 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"). The
10 receivership was implemented "for the purpose of implementing compliance, among all
11 condominium units, including units owned by any Defendant in this action . . . with the
12 Covenants, Codes and Restrictions recorded against the condominium units, the Unit
13 Maintenance Agreements and the original Unit Rental Agreements (the "Governing
14 Documents"). (Appointment Order at 1:27-28, 2:1-3.) On January 25, 2019, Richard Teichner
15 was substituted in Mr. Proctor's place in the Order Granting Motion to Substitute Receiver.

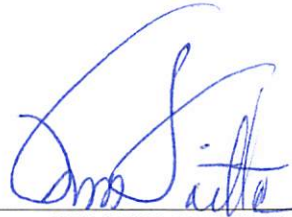
16 In the Motion, Defendants ask the Court to instruct Mr. Teichner ("Receiver") to
17 reimburse Defendants a total of \$1,614,505, comprised of \$1,409,637 from the Capital Reserves
18 for Common Area expenses and \$208,868 from the Hotel Reserves for Hotel Related expenses.
19 (Motion at 6:23-26.) The Motion further requests the Court instruct Receiver to impose any
20 special assessments necessary to bring the respective reserve accounts back to the required
21 levels. (Id. at 6:26-7:3.) Plaintiffs' Opposition argues the expenditures for which Defendants
22 seek reimbursement are not included in the Governing Documents which explicitly describe each
23 expense the Plaintiffs agreed to pay. (Opposition at 3:1-18.) Plaintiffs argue further that the
24 reserves study Defendants rely upon is fatally flawed as it also includes a variety of inappropriate
25 expenses and plainly obvious and elementary mistakes. (Id. at 2:14-26.)

26 The Court finds the Receiver is charged with implementing compliance with the
27 Governing Documents and was appointed for a reason. (See generally Appointment Order.)
28 Therefore, the Court orders the Receiver to provide a report to the Court within ninety (90) days

1 from the date of this Order recommending which items contained within Defendants' request for
2 reimbursement of capital expenditures can be reimbursed under the Governing Documents and
3 this Court's existing orders.

4 **IT IS SO ORDERED.**

5 DATED 12-21-21.



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7
8 SENIOR JUSTICE
Nancy Saitta

9 Submitted by:

10 ROBERTSON, JOHNSON,
11 MILLER & WILLIAMSON

12 /s/ Jarrad C. Miller

13 Jarrad C. Miller, Esq.
14 Jonathan Joel Tew, Esq.
15 Attorneys for Plaintiffs
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Alicia L. Lerud
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Transaction # 8849087 : yvilorla

EXHIBIT 6

EXHIBIT 6

CODE: 2842

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

Case No. CV12-02222
Dept. No. OJ37

MEI-GSR Holdings, LLC, a Nevada limited liability company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada limited liability company; AM-GSR HOLDINGS, LLC, a Nevada limited liability company; and DOE DEFENDANTS 1 THROUGH 10, inclusive,

Defendants.

ORDER DENYING AS MOOT DEFENDANTS' EMERGENCY MOTION TO EXTEND STAY PENDING FINAL DISPOSITION OF THE MOTION TO RECONSIDER

Presently before the Court is Defendants' Emergency Motion to Extend Stay Pending Final Disposition of the Motion to Reconsider, filed June 10, 2021 ("Motion"). Plaintiffs filed their Opposition to Defendants' Emergency Motion to Extend Stay Pending Final Disposition of the Motion to Reconsider (Oral Argument Requested) on June 23, 2021. Defendants filed Defendants' Reply in Support of Emergency Motion to Extend Stay Pending Final Disposition of the Motion to Reconsider on June 30, 2021. The Motion was submitted for consideration on July 1, 2021.

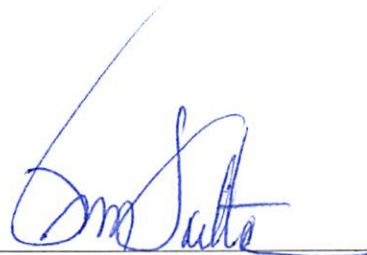
1 In the Motion, Defendants request the Court extend the stay of enforcement of the
2 disgorgement order within the Court's Order Granting Motion for Clarification, filed December
3 24, 2020 (the "December 24, 2020 Order") beyond June 10, 2021, such that the Court could
4 issue a ruling on Defendants' Motion for Leave to File Motion for Reconsideration of December
5 24, 2020, Order Granting Motion for Clarification and Request for Hearing ("Defendants'
6 Motion for Reconsideration"). (Motion at 2:13-22.) The December 24, 2020 Order ordered that:
7 (1) "[a]mounts charged since January of 2020 under the improper fee allocations shall be
8 disgorged to the Plaintiffs, and the new fee allocations shall not go into effect until calculated
9 (they will not be retroactively applied);" and (2) "the Defendants shall pay to the Plaintiffs the
10 reasonable attorneys' fees and costs they incurred in filing the Motion [for Clarification] and
11 Reply [in support thereof]." (December 24, 2020 Order at 4:12-16.)

12 Prior to enforcing the December 24, 2020 Order, the Court granted in part Defendants'
13 Motion for Reconsideration on September 29, 2021. (See Findings of Fact, Conclusions of Law
14 and Order, filed September 29, 2021 ("FFCLO").) In the FFCLO, the Court struck the portion of
15 the December 24, 2020 Order requiring the Defendants to disgorge the improper fee allocation
16 charges. (*Id.* at 6:2-11.)

17 **IT IS HEREBY ORDERED** that Defendants' Motion is denied as moot.

18 **IT IS SO ORDERED.**

19 DATED 12-21-21.



20
21
22 SENIOR JUSTICE
Nancy Saitta

23 Submitted by:

24 ROBERTSON, JOHNSON,
25 MILLER & WILLIAMSON

26 /s/ Jarrad C. Miller

27 Jarrad C. Miller, Esq.
Jonathan Joel Tew, Esq.
28 Attorneys for Plaintiffs

FILED
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Alicia L. Lerud
Clerk of the Court
Transaction # 8849087 : yvilorla

EXHIBIT 7

EXHIBIT 7

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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
20 LLC, a Nevada limited liability company; and
21 DOE DEFENDANTS 1 THROUGH 10,
22 inclusive,

23 Defendants.
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29 **ORDER GRANTING PLAINTIFFS' SUPPLEMENTAL MOTION FOR FEES**
30 **PURSUANT TO THE COURT'S DECEMBER 24, 2020 ORDER GRANTING MOTION**
31 **FOR CLARIFICATION AND SANCTIONING THE DEFENDANTS**

32 Presently before the Court is Plaintiffs' Supplemental Motion for Fees Pursuant to the
33 Court's December 24, 2020 Order Granting Motion for Clarification and Sanctioning the
34 Defendants, filed April 7, 2021 ("Motion"). Defendants filed Defendants' Opposition to
35 Supplemental Motion for Fees Pursuant to the Court's December 24, 2020 Order Granting
36 Motion for Clarification and Sanctioning the Defendants on April 20, 2021 ("Opposition").
37 Plaintiffs filed their Reply in Support of Supplemental Motion for Fees Pursuant to the Court's
38

1 December 24, 2020 Order Granting Motion for Clarification and Sanctioning the Defendants on
2 April 30, 2021. The Motion was submitted for consideration by the Court on May 4, 2021.

3 The Motion sets forth Plaintiffs' supplemental request for fees incurred in (a) submitting
4 their motion for fees ("Fees Motion") pursuant to the Court's December 24, 2020 Order Granting
5 Clarification ("December 24, 2020 Order"), (b) filing a reply to Defendants' opposition to the
6 Fees Motion, and (c) opposing Defendants' Motion for Leave to File Motion for Reconsideration
7 of the Court's December 24, 2020 Order ("Defendants' Motion for Reconsideration"), which
8 largely attempted to rehash and relitigate previously rejected arguments. (Motion at 2:7-12.)
9 Plaintiffs' total requested fees for these tasks is \$17,885. Defendants argue the requested fees
10 are unreasonably excessive and that Nevada law does not permit recovery thereof. (Opposition
11 at 2:14-18, 3:3-10.) Defendants further argue that the Defendants' Motion for Reconsideration
12 may very well render Plaintiffs' Fees Motion and Motion moot.¹ (Id. at 3:3-10; see also
13 Defendants' Motion for Reconsideration, filed January 7, 2020.)

14 Case-concluding sanctions were entered against the Defendants for abuse of discovery
15 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
16 Terminating Sanctions, filed October 3, 2014 at 12.) See Young v. Johnny Ribeiro Bldg., Inc.,
17 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
18 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. (See
19 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

20 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
21 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
22 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA") and
23 the rental revenue and certain other property interests relating to the other Defendants. (See
24 Appointment Order at 1:23-26.) The receivership was implemented "for the purpose of
25 implementing compliance, among all condominium units, including units owned by any
26 Defendant in this action . . . with the Covenants, Codes and Restrictions recorded against the

27
28 ¹ Defendants' Motion for Reconsideration stands fully briefed and submitted at the time of this Order.

1 condominium units, the Unit Maintenance Agreements and the original Unit Rental Agreements
2 (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25, 2019, Richard
3 Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order Granting Motion to
4 Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed January 25, 2019.)

5 The Court's December 24, 2020 Order includes two distinct portions: first, that the
6 Receiver was to recalculate certain fees in a specific way and that the improper fee allocations
7 were to be disgorged to Plaintiffs, and second, that the Defendants were to pay Plaintiffs'
8 attorneys' fees and costs incurred in briefing the motion which ultimately resulted in the
9 December 24, 2020 Order. This sanction was imposed as a result of "Defendants' attempt to
10 advance their interpretation of the Court's orders to the [R]eceiver [which] interfered with the
11 October Order taking effect and resulted in unnecessarily duplicative litigation." (December 24,
12 2020 order at 3:17-19.) Plaintiffs filed their motion for fees ("Fees Motion") pursuant to the
13 December 24, 2020 Order, to which Defendants filed an opposition. (See Motion for Fees
14 Pursuant to the Court's December 24, 2020 Order Granting Motion for Clarification, filed
15 January 4, 2021; Defendants' objection to Plaintiffs' Motion for Fees Pursuant to the Court's
16 December 24, 2020 Order Granting Motion for Clarification, filed January 14, 2021.)

17 The instant Motion requests a supplemental award of fees incurred in actions taking place
18 after the December 24, 2020 Order was issued. The Motion states Plaintiffs incurred a total of
19 \$17,885 in attorneys' fees as a result of (1) preparing the Fees motion, (2) preparing a reply to
20 Defendants' opposition to the Fees Motion, and (3) preparing an opposition to Defendants'
21 largely duplicative motion for reconsideration. (Motion at 6:9-12, 7:1-3.) Fees incurred as a
22 result of preparing a motion for fees are recoverable. See Rosenfeld v. United States DOJ, 903
23 F. Supp. 2d 859, 878 (N. D. Cal. 2012) ("Plaintiffs may recover attorney's fees for time
24 reasonably expended on a motion for attorney's fees and costs."). Furthermore, because the fee
25 award was a sanction for Defendants' attempt to convince the Receiver of their clearly inaccurate
26 interpretation of the Court's orders, and the motion for reconsideration largely furthered those
27 inaccurate arguments, the continued arguments, and Plaintiffs' fees incurred to address them, are
28

1 included by the December 24, 2020 Order's sanction. Accordingly, the Court finds such fees are
2 recoverable as a general matter.

3 Nevada uses the lodestar formula to determine the appropriate amount of attorney fees.
4 Hsu v. Clark County, 123 Nev. 625, 636, 173 P.3d 724, 732 (2007). The lodestar formula calls
5 for the number of hours reasonably spent on the motion to be multiplied by a reasonable hourly
6 rate. Id. at 637, 173 P.3d at 733.

7 Plaintiffs have provided that their counsel spent a total of 24.6 hours on the Fees Motion
8 briefing, including preparation of the Fees Motion, researching authority cited in Defendants'
9 opposition thereto, and preparing a reply in support of the Fees Motion. (Motion at 5:26-6:4.)
10 Defendants argue Plaintiffs' hours expended are excessive. (Opposition at 9:6-9.) The Court
11 finds the number of hours expended by Plaintiffs' counsel on the Fees Motion briefing to be
12 reasonable in light of the procedural history of this case and the issues raised by the Fees Motion
13 and Defendants' opposition thereto.

14 Plaintiffs have provided that their counsel spent a total of 31.6 hours on their opposition
15 to Defendants' Motion for Reconsideration. (Motion at 7:1-3.) Defendants, again, argue this
16 number of hours is excessive and not warranted. (Opposition at 9:9-21.) Although the
17 Defendants attempt to minimize the complexity of the issues set forth in the Defendants' Motion
18 for Reconsideration and the necessity to set forth the complex procedural background within
19 Defendants' opposition thereto, the Court does not agree that the Defendants' Motion for
20 Reconsideration, nor the Plaintiffs' opposition thereto, was as simplistic as Defendants state.
21 Instead, the Defendants' Motion for Reconsideration set forth a variety of fallacious legal
22 arguments and misconstrued the factual and procedural background of this case, therefore
23 requiring Plaintiffs to expend numerous pages refuting the same. Thus, the Court finds the
24 number of hours expended by Plaintiffs' counsel on this task reasonable.

25 Defendants also argue that Plaintiffs' time entries are inadequate. (Opposition at 10:17-
26 11:25.) Defendants argue the entries are "so vaguely generic that the [C]ourt cannot determine
27 with certainty whether the activities they purport to describe were necessary and reasonable."
28 (Id. at 11:21-23.) After reviewing the time entries in full, the Court finds the entries are adequate

1 and provide the Court sufficient information to determine that the tasks undertaken by Plaintiffs'
2 counsel were both necessary and reasonable.

3 Accordingly, the Court finds the number of hours expended by Plaintiffs' counsel on
4 those tasks for which Plaintiffs seek to recover attorneys' fees were reasonable.

5 Next, Plaintiffs have set forth their counsels' hourly rate. These rates range from \$425 to
6 \$335 for attorneys and are \$135 for paralegals.² (Motion at 6:9-12, 7:1-3.) Defendants do not
7 appear to dispute the reasonableness of such hourly rates. The Court therefore finds such hourly
8 rates are reasonable.

9 Under the lodestar formula, the Court finds the hours reportedly spent by Plaintiffs'
10 counsel and their hourly rates are reasonable, and thus the lodestar award is \$17,885.

11 The Court must next consider the Brunzell factors to determine the appropriateness of the
12 lodestar amount. Accordingly, to determine whether any adjustments to the lodestar amount are
13 necessary, the Court must consider:

14 (1) the qualities of the advocate: his ability, his training, education,
15 experience, professional standing and skill; (2) the character of the
16 work to be done: its difficulty, its intricacy, its importance, time
17 and skill required, the responsibility imposed and the prominence
18 and character of the parties where they affect the importance of the
litigation; (3) the work actually performed by the lawyer: the skill,
time and attention given to the work; (4) the result: whether the
attorney was successful and what benefits were derived.

19 Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31, 33 (1969). The Court finds all of
20 these factors weigh against any adjustment to the lodestar amount and in favor of awarding
21 Plaintiffs the full lodestar amount.

22 First, the Court is acutely aware of the high quality of Plaintiffs' counsel, and thus
23 concludes this factor is in favor of awarding Plaintiffs the entire lodestar amount.

24 Second, the Court finds the character of the work to be done to be especially important.
25 The Court's December 24, 2020 Order imposed sanctions upon Defendants for attempting to
26 mislead the Receiver into accepting a clearly faulty interpretation of the Court's previous orders.

27
28 ² Plaintiffs note the hourly fees underwent a routine annual increase, which is why they are different from previous
fees applications. (Motion at 6, fn.2.)

1 (See Order Granting Clarification, filed December 24, 2020 at 3:17-19 (“The Defendants’
2 attempt to advance their interpretation of the Court’s orders to the [R]eceiver interfered with the
3 October Order taking effect and resulted in unnecessarily duplicative litigation. Therefore, the
4 Court exercises its inherent authority to require the Defendants to pay for the fees the Plaintiffs
5 were unnecessarily forced to incur in filing the Motion and the Reply.”).) Thus, the time spent in
6 drafting the Fees Motion – which was ordered by the Court – is certainly important. The
7 sanction within the December 24, 2020 Order was intended to penalize Defendants’
8 wrongdoings. If the Court were to limit the Plaintiffs’ recovery of their attorneys’ fees incurred
9 as a result of Defendants’ wrongdoings, the sanction would have no teeth. Accordingly, the
10 second factor also weighs in favor of awarding the entire lodestar amount.

11 Third, the work actually performed by Plaintiffs’ counsel is evidenced by the billing
12 records submitted with the Motion. (Motion at Ex. 1.) Each time entry reflects work which was
13 necessary and that the individual whose time is reflected dedicated ample skill, time, and
14 attention to the task at hand. Brunzell, 85 Nev. at 349, 455 P.2d at 33. This factor thus also
15 weighs in favor of awarding the full lodestar amount.

16 Fourth and finally, the Court must consider the result. The Court finds this factor weighs
17 in favor of awarding the entire lodestar amount as well. The Court clearly agreed with Plaintiffs’
18 positions taken in the briefing which resulted in the December 24, 2020 Order imposing
19 sanctions. (See generally Order Granting Reconsideration, filed December 24, 2020.) Thus,
20 Plaintiffs have obtained a successful result. This factor weighs in favor of granting the full
21 lodestar amount to Plaintiffs.

22 The Brunzell factors clearly indicate that the lodestar amount is appropriate and requires
23 no adjustments. The Court therefore finds an award of the entire lodestar amount is proper.

24 **IT IS HEREBY ORDERED** that Plaintiffs’ Motion is granted in full.


25 **IT IS FURTHER ORDERED** that Defendants shall pay to the Plaintiffs the sum of
26 \$17,885 within thirty (30) days of this Order.

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1 **IT IS SO ORDERED.**

2 DATED 12-21-21.

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5 _____
6 SENIOR JUSTICE
7 Nancy Saitta

8 Submitted by:

9 ROBERTSON, JOHNSON,
10 MILLER & WILLIAMSON

11 _____
12 /s/ Jarrad C. Miller

13 Jarrad C. Miller, Esq.
14 Jonathan Joel Tew, Esq.
15 Attorneys for Plaintiffs
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EXHIBIT 8

EXHIBIT 8

2540
G. David Robertson, Esq. (NV Bar No. 1001)
Jarrad C. Miller, Esq. (NV Bar No. 7093)
Jonathan J. Tew, Esq. (NV Bar No. 11874)
Robertson, Johnson, Miller & Williamson
50 West Liberty Street, Suite 600
Reno, Nevada 89501
(775) 329-5600
gdavid@nvlawyers.com
jarrad@nvlawyers.com
jon@nvlawyers.com

Robert L. Eisenberg, Esq., (NV Bar No. 0950)
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
Telephone: (775) 786-6868
Facsimile: (775) 786-9716
rle@lge.net

Attorneys for Plaintiffs

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; *et al.*,

Plaintiffs,

vs.

Case No. CV12-02222
Dept. No. OJ37

MEI-GSR Holdings, LLC, a Nevada limited
liability company, GRAND SIERRA
RESORT UNIT OWNERS' ASSOCIATION,
a Nevada nonprofit corporation, GAGE
VILLAGE COMMERCIAL
DEVELOPMENT, LLC, a Nevada limited
liability company; AM-GSR HOLDINGS,
LLC, a Nevada limited liability company; and
DOE DEFENDANTS 1 THROUGH 10,
inclusive,

Defendants.

NOTICE OF ENTRY OF ORDERS

PLEASE TAKE NOTICE that on January 4, 2022, the above Court issued the
following Orders:

1 1. Order Granting Receiver's Motion for Orders & Instructions, a copy of which is
2 attached hereto as Exhibit "1" and made a part hereof by reference.

3 2. Order Granting Plaintiffs' Motion for Instructions to Receiver, a copy of which is
4 attached hereto as Exhibit "2" and made a part hereof by reference.

5 3. Order Granting Plaintiffs' Motion to Stay Special Assessment, a copy of which is
6 attached hereto as Exhibit "3" and made a part hereof by reference.

7 4. Order Approving Receiver's Request to Approve Updated Fees, a copy of which
8 is attached hereto as Exhibit "4" and made a part hereof by reference.

9 5. Order Directing Receiver to Prepare Report on Defendants' Request for
10 Reimbursement of 2020 Capital Expenditures, a copy of which is attached hereto as Exhibit "5"
11 and made a part hereof by reference.

12 6. Order Denying as Moot Defendants' Emergency Motion to Extend Stay Pending
13 Final Disposition of the Motion to Reconsider, a copy of which is attached hereto as Exhibit "6"
14 and made a part hereof by reference.

15 7. Order Granting Plaintiffs' Supplemental Motion for Fees Pursuant to the Court's
16 December 24, 2020 Order Granting Motion for Clarification and Sanctioning the Defendants, a
17 copy of which is attached hereto as Exhibit "7" and made a part hereof by reference.

18 **AFFIRMATION:** Pursuant to NRS § 239B.030, the undersigned does hereby affirm that
19 the preceding document does not contain the social security number of any person.

20 RESPECTFULLY SUBMITTED this 4th day of January, 2022.

21 ROBERTSON, JOHNSON,
22 MILLER & WILLIAMSON

23 By: /s/ Jarrad C. Miller
24 Jarrad C. Miller, Esq.
25 Jonathan J. Tew, Esq.
26 Attorneys for Plaintiffs
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson,
3 Miller & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of
4 18, and not a party within this action. I further certify that on the 4th day of January, 2022, I
5 electronically filed the foregoing **NOTICE OF ENTRY OF ORDERS** with the Clerk of the
6 Court by using the ECF system which served the following parties electronically:

7 Daniel F. Polsenberg, Esq.
8 Jennifer K. Hostetler, Esq.
9 Dale Kotchka-Alaines, Esq.
10 Lewis Roca Rothgerber Christie, LLP
11 One East Liberty Street Suite 300
12 Reno, NV 89501
13 *Attorneys for Defendants*

F. DeArmond Sharp, Esq.
Stefanie T. Sharp, Esq.
Robison, Sharp Sullivan & Brust
71 Washington Street
Reno, NV 89503
Attorneys for Receiver
Richard M. Teichner

12 Abran Vigil, Esq.
13 Meruelo Group, LLC
14 Legal Services Department
15 5th Floor Executive Offices
16 2535 Las Vegas Boulevard South
17 Las Vegas, NV 89109
18 *Attorneys for Defendants*

David C. McElhinney, Esq.
Meruelo Group, LLC
2500 E. 2nd Street
Reno, NV 89595
Attorney for Defendants

17 /s/ Teresa W. Stovak
18 An Employee of Robertson, Johnson,
19 Miller & Williamson
20
21
22
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INDEX OF EXHIBITS

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EXHIBIT “1”

EXHIBIT “1”

EXHIBIT “1”

1 CODE: 3060
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6

7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
20 LLC, a Nevada limited liability company; and
21 DOE DEFENDANTS 1 THROUGH 10,
22 inclusive,

23 Defendants.

24 **ORDER GRANTING RECEIVER'S MOTION FOR ORDERS & INSTRUCTIONS**

25 Presently before the Court is the Receiver's Motion for Orders & Instructions, filed
26 October 18, 2021 ("Motion"). Plaintiffs filed Plaintiffs' Joinder to Receiver's Motion for Orders
27 & Instructions on October 22, 2021 ("Plaintiff's Joinder"). Defendants filed Defendants'
28 Opposition to Receiver's Motion for Orders & Instructions on October 22, 2021 ("Defendants'
Opposition"). The Receiver then filed Receiver's Reply in Support of Motion for Orders &
Instructions on October 25, 2021 ("Receiver's Reply"). The Motion was submitted for
consideration on October 25, 2021.

1 Case-concluding sanctions were entered against the Defendants for abuse of discovery
2 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
3 Terminating Sanctions, filed October 3, 2014 at 12.) See Young v. Johnny Ribeiro Bldg., Inc.,
4 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
5 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. See
6 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.

7 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
8 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
9 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"). (See
10 Appointment Order at 1:23-26.) The receivership was implemented "for the purpose of
11 implementing compliance, among all condominium units, including units owned by any
12 Defendant in this action . . . with the Covenants, Codes and Restrictions recorded against the
13 condominium units, the Unit Maintenance Agreements and the original Unit Rental Agreements
14 (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25, 2019, Richard
15 Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order Granting Motion to
16 Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed January 25, 2019.)

17 In 2021, the Defendants undertook to have a reserve study done by a third party, which
18 was then to be utilized by the Receiver to calculate those fees to be charged to Plaintiffs
19 (including the Daily Use Fees ("DUF"), Shared Facility Use Expenses ("SFUE"), and Hotel
20 Expenses ("HE")). The Receiver states that various orders of this Court, including the
21 Appointment Order, provide authority solely to Receiver to order and oversee any reserve studies
22 done. (Reply at 2:27-3:5.) Defendants argue that no such orders nor the Governing Documents
23 provide the Receiver with such authority. (Defendants' Opposition at 3:19-24.) Instead,
24 Defendants argue that any attempt by the Receiver to order or oversee the reserve study would be
25 an "impermissibl[e] expan[sion] of his authority." (Id. at 3:20.)

26 The Court issued its Findings of Fact, Conclusions of Law and Order granting in part
27 Defendants' Motion for Leave to File Motion for Reconsideration of December 24, 2020 Order
28 Granting Motion for Clarification and Request for Hearing, on September 29, 2021. Therein, the

1 Court struck the disgorgement order granted in the December 24, 2020 Order Granting
2 Clarification (“December 24, 2020 Order”). Whereas the Court originally instructed that “[u]ntil
3 the DUF, the [HE], and [SFUE] are recalculated by the Receiver, the fees calculated by the past
4 receiver shall be applied,” the revised order struck this reversion to the prior receiver’s
5 calculations. Thus, the Receiver states he is now without direction as to which calculations are
6 to be applied until he is able to redo his own calculations. (See December 24, 2020 Order at
7 3:23-4:10 (where the Court informs the Receiver his calculations for 2020 are incorrect and
8 invalid under the Governing Documents and they must be redone).) Defendants argue the
9 Receiver’s prior calculations, which were in place until the December 24, 2020 Order was
10 issued, should be utilized. Notably, this directly contradicts the Court’s December 24, 2020
11 Order, is inequitable, and thus is denied outright. (Id.)

12 The Appointment Order provides the Receiver authority to take control of “all accounts
13 receivable, payments, rents, including all statements and records of deposits, advances, and
14 prepaid contracts or rents” (Appointment Order at 3:15-18.) Defendants are also ordered to
15 cooperate with the Receiver and not “[i]nterfer[e] with the Receiver, directly or indirectly.” (Id.
16 at 8:2-15.) The Receiver has informed the parties of his intent to open a separate account into
17 which all rents and other proceeds from the units will be deposited, and now requests the Court’s
18 permission to open such an account. (Motion at 11:19; Motion to Stay Special Assessment, filed
19 August 20, 2021 at Ex. 2.) Defendants have refused to cooperate with the Receiver’s request to
20 turnover various proceeds, in violation of the Appointment Order, and now object to Receiver’s
21 authority to open a separate account. (Appointment Order at 8:2-15; Defendant’s Opposition at
22 6:14-7:21.)

23 Pursuant to the Governing Documents, Defendants have implemented a room rotation
24 program whereunder bookings for the units owned by Plaintiffs and Defendants should be
25 equally distributed such that Plaintiffs and Defendants, as individual unit owners, are earning
26 roughly equal revenue. The Receiver contends this room rotation program is flawed and has
27 resulted in a greater number of Defendants’ units being rented than Plaintiffs’ units during
28 various periods through August 2021. (Motion at 14:14-17.)

1 Among the Governing Documents with which the Receiver is ordered to implement
2 compliance is the Seventh Amendment to Condominium Declaration of Covenants, Conditions,
3 Restrictions and Reservations of Easements for Hotel-Condominiums at Grand Sierra Resort,
4 recorded June 27, 2007 (“Seventh Amended CC&Rs”). Defendants, however, after representing
5 to the Court that the Seventh Amended CC&Rs needed to be amended in order to comply with
6 NRS 116B, unilaterally revised and recorded the Ninth Amendment to Condominium
7 Declaration of Covenants, Conditions, and Restrictions and Reservations of Easements for
8 Hotel-Condominiums at Grand Sierra Resort (“Ninth Amended CC&Rs”) to overhaul the fee
9 structure and radically expand the fees chargeable to the Plaintiffs. The Ninth Amended
10 CC&Rs, according to Plaintiffs, substantially increase the expenses to be included in fees
11 charged to Plaintiffs – thus making ownership of the units unviable.

12 Finally, Defendants have communicated with Receiver *ex parte* through a variety of
13 individuals. The Receiver now requests that all communications be funneled through a single
14 individual: Reed Brady. (Motion at 17:4-8.)

15 The Motion requests the Court order (1) that the Notice of Special Assessments and the
16 Reserve Studies sent to the unit owners by Defendants on August 24, 2021 be immediately
17 withdrawn; (2) that the Defendants be ordered to send out a notice to all unit owners of said
18 withdrawal; and (3) that this Court confirm the Receiver’s authority over the Reserve Studies.
19 (Motion at 3:11-14.) The Motion further requests the Court order that the Receiver is to
20 recalculate the charges for the DUF, SFUE, and HE for 2020 based upon the same methodology
21 as has been used in calculating the fee charges for 2021, once the Court approves that
22 methodology. (*Id.* at 8:10-13.) The Motion further requests the Court approve the opening of an
23 account for the Receivership, with the Receiver having sole signatory authority over the account,
24 and order that all rents received by Defendants currently and in the future, generated from either
25 all 670 condominium units or the Plaintiff-owned units, net of the total charges for the DUF,
26 SFUE, and HE fees and for reserves combined, are to be deposited into the account, that the
27 receiver be authorized to make the necessary disbursements to the relevant unit owners at three
28 (3) month intervals, that any disgorgement amounts owed by Defendants be deposited into the

1 Receivership account to be distributed by the Receiver, and that, if the Court orders the current
2 credit balances in the Plaintiffs' accounts are to be deposited in to the Receiver's bank account
3 then, to the extent that such credit balances are to be disgorged, Defendants will pay such credit
4 balances to the Receiver for deposit, and the Receiver will distribute such funds appropriately.
5 (Id. at 11:21-12:13.) The Motion further requests the Court order Defendants to provide the
6 Receiver with the information and documentation he has requested relating to the room rotation
7 program within ten (10) days of this Order. (Id. at 14:20-24.) The Motion further requests the
8 court expedite the determination of the Plaintiffs' Motion for Instructions, filed October 18, 2021
9 and submitted for consideration on October 25, 2021. (Id. at 17:1-3.) Finally, the Motion
10 requests the Court instruct Defendants to funnel all communications to the Receiver through a
11 single individual: Reed Brady. (Id. at 7:5-8.)

12 As this Court has stated previously, "[a] receiver is appointed to maintain the status quo
13 regarding the property in controversy and to safeguard said property from being dissipated while
14 the plaintiff is pursuing his remedy." (Order Denying Motion to Terminate Rental Agreement,
15 filed October 12, 2020 (citing Milo v. Curtis, 100 Ohio App.3d 1, 9, 651 N.E.2d 1340, 1345
16 (Ohio Ct. App. 1994).) This Court reiterated this premise in another order, stating that "[o]ne of
17 the purposes of the [Appointment] Order was to preserve the status quo of the parties during the
18 pendency of the action. Another purpose was to enforce [the] agreements." (Order, filed
19 November 23, 2015 at 1:22-23.) Nevada law supports this obligation of the Receiver. See
20 Johnson v. Steel, Inc., 100 Nev 181, 183, 678 P.2d 767, 678 (1984) (the appointment of a
21 receiver is a "remedy used to preserve the value of assets pending outcome of the principal case"
22 and is "a means of preserving the status quo"), overruled on other grounds by Shoen v. SAC
23 Holding Corp., 122 Nev. 621, 137 P.3d 1171 (2006); accord Dunphy v. McNamara, 50 Nev. 113,
24 252 P. 943, 944 (1927) (a court of equity has "ample authority" to utilize a receiver to preserve
25 the status quo).

26 Furthermore, upon the appointment of the Receiver, all authority to manage and control
27 the GSRUOA was immediately transferred from the GSRUOA's Board of Directors, managers,
28 officers, the Declarant, and other agents to the Receiver. Francis v. Camel Point Ranch, Inc.,

1 2019 COA 108M, ¶¶ 6-10, 487 P.3d 1089, 1092-93, as modified on denial of reh'g (Colo. Ct.
2 App. Sept. 19, 2019) (noting that “[u]pon the receiver’s appointment, [Defendant’s] corporate
3 officers and directors lost all authority to control the corporation”); First Sav. & Loan Ass’n v.
4 First Fed. Sav. Loan Ass’n, 531 F. Supp. 251, 255 (D. Haw. 1981) (“When a receiver is
5 appointed for a corporation, the corporation’s management loses the power to run its affairs and
6 the receiver obtains all of the corporation’s powers and assets.”). “Simply put, corporate
7 receivership is a court-mandated change in corporate management.” Francis, 487 P.3d 1089 at
8 1092-93.

9 Thus, upon appointment of the Receiver, the GSRUOA’s Board of Directors was
10 divested of the authority it has errantly exercised to issue that Notice of Special Assessment and
11 the Reserve Studies which was sent to all unit owners on August 24, 2021. Accordingly, such
12 Notice of Special Assessment and any actual imposition of special assessment is *void ab initio*
13 and therefore invalid. Only the Receiver can impose special assessments.

14 Next, the Findings of Fact, Conclusions of Law and Judgement issued on October 9,
15 2015 (“FFCLJ”), explicitly ordered the Receiver to calculate “a reasonable amount of FF&E,
16 shared facilities and hotel reserve fees” and other necessary fees to be assessed against Plaintiffs.
17 (FFCLJ at 22:25-27.) Accordingly, the Receiver is to calculate the DUF, SFUE, and HE for
18 2020. Such calculations should be based upon the same methodology as used for the 2021 fees,
19 once the Court has approved of such methodology.

20 The Appointment Order expressly allows for the Receiver to open an account for the
21 Receivership. (Appointment Order at 6:26 (the Receiver is allowed to “open and utilize bank
22 accounts for receivership funds”).) Indeed, the Appointment Order also expressly calls for the
23 Receiver to collect proceeds from the Property (defined as the 670 condominium units),
24 including, but not limited to, rent earned therefrom. (Id. at 5:17-19.) It logically follows then
25 that the Receiver may open a separate account for the Receivership in which it may hold all rents
26 from the Property, as defined in the Receivership Order.

27 The Appointment Order also expressly calls for Defendants to cooperate with the
28 Receiver and refrain from taking any actions which will interfere with the Receiver’s ability to

1 perform his duties. (Id. at 8:2-15.) Accordingly, Defendants should supply the Receiver with all
2 information, explanation, and documentation the Receiver may request regarding the room
3 rotation program and apparent inadequacy thereof.

4 The Receiver was specifically tasked with implementing compliance with the Governing
5 Documents, including the Seventh Amended CC&Rs. (Appointment Order at 1:27-2:3.)
6 Reading this obligation to implement compliance with the Seventh Amended CC&Rs with the
7 obligation to maintain the status quo, this Court finds that the Seventh Amended CC&Rs cannot
8 be amended, repealed, nor replaced until the Receiver is relieved of his duties by the Court. The
9 continuance of this specific Governing Document will ensure the status quo, as is the purpose of
10 a receivership. Johnson, 100 Nev. at 183, 678 P.2d at 678; Dunphy, 50 Nev. 113, 252 P. at 944.
11 The automatic and immediate transfer of control over the GSRUOA to the Receiver therefore
12 divested the GSRUOA's Board of Directors from any authority it had to propose, enact, and
13 otherwise make effective the Ninth Amended CC&Rs. The Ninth Amended CC&Rs are thus
14 *void ab initio*, as they were enacted without proper authority. Accordingly, the Ninth Amended
15 CC&Rs are *void ab initio*, and even if they were not, the Ninth Amended CC&Rs would be
16 improper and thus subject to rescission or cancellation.

17 Finally, the Court finds it appropriate for Defendants to funnel all communication with
18 the Receiver through a single individual. For the time being, such individual shall be Reed
19 Brady. Mr. Brady may delegate tasks to others, however, only Mr. Brady should communicate
20 answers, conclusions, or other findings to the Receiver.

21 **IT IS HEREBY ORDERED** that Receiver's Motion is granted **in full**.

22 **IT IS FURTHER ORDERED** (i) that the Notice of Special Assessments and the
23 Reserve Studies sent to the unit owners by the Defendants on August 24, 2021 shall be
24 immediately withdrawn; (ii) that the Defendants shall send out a notice to all unit owners of said
25 withdrawal within ten (10) days of this Order; (iii) that any amounts paid by unit owners
26 pursuant to the Notice of Special Assessment shall be refunded within ten (10) days of this
27 Order; and (iv) that the Receiver has sole authority to order and oversee reserve studies related to
28 Defendants' property and under the Governing Documents.

1 **IT IS FURTHER ORDERED** that the Receiver shall recalculate the DUF, SFUE, and
2 HE based on the same methodology as has been used in calculating the fee charges for 2021,
3 subject to Court approval of such methodology. Those fees in place prior to the Court's
4 September 27, 2021 Order shall remain in place until the fees for 2020 are recalculated and
5 approved by this Court such that only a single account adjustment will be necessary.

6 **IT IS FURTHER ORDERED** that the Receiver shall open a separate account on which
7 Receiver has sole signatory authority, and into which all rents received by Defendants currently
8 for all 670 condominium units, net of total charges for DUF, SFUE, and HE fees and reserves,
9 are to be deposited. The Receiver shall disburse the revenue collected to the parties according to
10 the Governing Documents. In the event the Court requires a disgorgement by Defendants to
11 Plaintiffs, Receiver shall deposit such disgorgements into this separate account and disburse the
12 same to Plaintiffs appropriately.

13 **IT IS FURTHER ORDERED** that Defendants shall provide Receiver with any
14 information, explanation, and documentation he may request regarding the room rotation
15 program and any perceived discrepancies therewith, until Receiver is either satisfied with the
16 adequacy of the program or until Receiver deems it appropriate to seek judicial intervention.

17 **IT IS FURTHER ORDERED** that the Ninth CC&Rs are *void ab initio* and the Seventh
18 CC&Rs are to be resurrected as though they had not been withdrawn or superseded.

19 **IT IS FURTHER ORDERED** that Defendants shall funnel all communication with the
20 Receiver through Reed Brady. Defendants and Receiver may mutually agree to choose an
21 alternative representative through which communication shall be directed. Mr. Brady, and any
22 subsequent representative, may delegate requests, questions, or other tasks necessary to respond
23 to Receiver's communications, but any answers, conclusions, or other results shall be
24 communicated back to Receiver through only Mr. Brady and no other individual.

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SENIOR JUSTICE
Nancy Saitta

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON

Jarrad C. Miller, Esq.
Jonathan Joel Tew, Esq.
Attorneys for Plaintiffs

EXHIBIT “2”

EXHIBIT “2”

EXHIBIT “2”

1 CODE: 3060

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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222

Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
20 LLC, a Nevada limited liability company; and
21 DOE DEFENDANTS 1 THROUGH 10,
22 inclusive,

23 Defendants.

24 **ORDER GRANTING PLAINTIFFS' MOTION FOR INSTRUCTIONS TO RECEIVER**

25 Presently before the Court is Plaintiff's Motion for Instructions to Receiver, filed
26 September 28, 2021 ("Motion"). Defendants filed Defendants' Opposition to Plaintiffs' Motion
27 for Instructions to Receiver on October 12, 2021 ("Opposition"). Plaintiffs filed their Reply in
28 Support of Motion for Instructions to Receiver on October 25, 2021. The Motion was submitted
for consideration on October 25, 2021.

Case-concluding sanctions were entered against the Defendants for abuse of discovery
and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
Terminating Sanctions, filed October 3, 2014 at 12.) See also Young v. Johnny Ribeiro Bldg.

1 Inc., 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
2 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. (See
3 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

4 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
5 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
6 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"), the
7 rental and other revenues from the condominiums, as well as other property of the non-
8 GSRUOA Defendants. (See Appointment Order at 1:23-26.) The receivership was implemented
9 "for the purpose of implementing compliance, among all condominium units, including units
10 owned by any Defendant in this action . . . with the Covenants, Codes and Restrictions recorded
11 against the condominium units, the Unit Maintenance Agreements and the original Unit Rental
12 Agreements (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25,
13 2019, Richard Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order
14 Granting Motion to Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed
15 January 25, 2019.)

16 Among the Governing Documents with which the Receiver is ordered to implement
17 compliance is the Seventh Amendment to Condominium Declaration of Covenants, Conditions,
18 Restrictions and Reservations of Easements for Hotel-Condominiums at Grand Sierra Resort,
19 recorded June 27, 2007 ("Seventh Amended CC&Rs"). Defendants, however, after representing
20 to the Court that the Seventh Amended CC&Rs needed to be amended in order to comply with
21 NRS 116B, unilaterally revised and recorded the Ninth Amendment to Condominium
22 Declaration of Covenants, Conditions, and Restrictions and Reservations of Easements for
23 Hotel-Condominiums at Grand Sierra Resort to overhaul the fees chargeable to the unit owners.
24 ("Ninth Amended CC&Rs"). The Ninth Amended CC&Rs, according to Plaintiffs, substantially
25 increase the expenses to be included in fees charged to Plaintiffs – thus making ownership of the
26 units unviable. (Reply at 7:17-21.)

27 Additionally, the Defendants undertook to have a reserve study done by a third party,
28 which was then to be utilized by the Receiver to calculate those fees to be charged to Plaintiffs.

1 Plaintiffs argue this reserve study was not only done without proper authority, but also that it was
2 patently erroneous in that it includes a variety of expenses which are not chargeable to the
3 Plaintiffs under the Seventh Amended CC&Rs. (Motion at 4:3-13.)

4 The Motion requests the Court instruct the Receiver to (1) determine that the amendment
5 process was invalid and void actions improperly taken by the GSRUOA Board of Directors, (2)
6 maintain the status quo by enforcing the Appointment Order and apply the Seventh Amended
7 CC&Rs, and (3) disqualify the 2021 reserve study and prepare a new reserve study completed
8 with the Receiver's direction and input. (Motion at 2:27-3:4, 4:12-13.)

9 As this Court has stated previously, "[a] receiver is appointed to maintain the status quo
10 regarding the property in controversy and to safeguard said property from being dissipated while
11 the plaintiff is pursuing his remedy." (Order Denying Motion to Terminate Rental Agreement,
12 filed October 12, 2020 (citing Milo v. Curtis, 100 Ohio App.3d 1, 9, 651 N.E.2d 1340, 1345
13 (Ohio Ct. App. 1994).) This Court reiterated this premise in a subsequent order, stating that
14 "[o]ne of the purposes of the [Appointment] Order was to preserve the status quo of the parties
15 during the pendency of the action. Another purpose was to enforce [the] agreements." (Order,
16 filed November 23, 2015 at 1:22-23.) Nevada law supports this obligation of the Receiver. See
17 Johnson v. Steel, Inc., 100 Nev 181, 183, 678 P.2d 767, 678 (1984) (the appointment of a
18 receiver is a "remedy used to preserve the value of assets pending outcome of the principal case"
19 and is "a means of preserving the status quo"), overruled on other grounds by Shoen v. SAC
20 Holding Corp., 122 Nev. 621, 137 P.3d 1171 (2006); accord Dunphy v. McNamara, 50 Nev. 113,
21 252 P. 943, 944 (1927) (a court of equity has "ample authority" to utilize a receiver to preserve
22 the status quo).

23 In this case, the Receiver was specifically tasked with implementing compliance with the
24 Governing Documents, including the Seventh Amended CC&Rs. (Appointment Order at 1:27-
25 2:3.) Reading this obligation to implement compliance with the Seventh Amended CC&Rs with
26 the obligation to maintain the status quo, this Court finds that the Seventh Amended CC&Rs
27 cannot be amended, repealed, nor replaced until the Receiver is relieved of his duties by the
28 Court. The continuance of this specific Governing Document will ensure the status quo, as is the

1 purpose of a receivership and the Appointment Order. See Johnson, 100 Nev. at 183, 678 P.2d at
2 678; Dunphy, 50 Nev. 113, 252 P. at 944.

3 Furthermore, upon the appointment of the Receiver, all authority to manage and control
4 the GSRUOA was immediately transferred from the GSRUOA's Board of Directors, managers,
5 officers, the Declarant, and other agents to the Receiver. Francis v. Camel Point Ranch, Inc.,
6 2019 COA 108M, ¶¶ 6-10, 487 P.3d 1089, 1092-93, as modified on denial of reh'g (Colo. Ct.
7 App. Sept. 19, 2019) (noting that "[u]pon the receiver's appointment, [Defendant's] corporate
8 officers and directors lost all authority to control the corporation"); First Sav. & Loan Ass'n v.
9 First Fed. Sav. Loan Ass'n, 531 F. Supp. 251, 255 (D. Haw. 1981) ("When a receiver is
10 appointed for a corporation, the corporation's management loses the power to run its affairs and
11 the receiver obtains all of the corporation's powers and assets."). "Simply put, corporate
12 receivership is a court-mandated change in corporate management." Francis, 487 P.3d 1089 at
13 1092-93.

14 This automatic and immediate transfer of control over the GSRUOA to the Receiver
15 therefore divested the GSRUOA's Board of Directors from any authority it had to propose,
16 enact, and otherwise make effective the Ninth Amended CC&Rs. The Ninth Amended CC&Rs
17 are thus *void ab initio*, as they were enacted without proper authority.

18 Accordingly, the Ninth Amended CC&Rs are *void ab initio*, and even if they were not,
19 the Ninth Amended CC&Rs would be improper and thus subject to rescission or cancellation.¹

20 Next, Plaintiffs have moved the Court to instruct the Receiver to reject the reserve study
21 completed by Defendants without any input from Receiver, and order and oversee a separate
22 reserve study. (Motion at 11:25-14:19.) The Court has explicitly found that the Receiver "will
23 determine a reasonable amount of FF&E, shared facilities and hotel reserve fees." (Findings of
24 Fact, Conclusions of Law and Judgement, Filed October 9, 2015 at 22:25-26.) This implies that

25
26 ¹ Defendants argue any challenge to the Ninth Amended CC&Rs must be brought pursuant to the ADR provision
27 therein. The Court rejects this argument *in toto* considering the Appointment Order, the purpose of the Appointment
28 Order, and binding Nevada law which all dictate the receivership is intended to maintain the status quo – not allow
for a key Governing Document to be unilaterally amended by Defendants. Further, the claim for a Receivership was
brought in the Second Amended Complaint and the Nevada Supreme Court has already found that the District Court
has subject matter jurisdiction over the action.

1 the Receiver will also be tasked with ordering and overseeing the reserve study – as that study
2 will dictate the FF&E, shared facilities, and hotel reserve fees. Thus, the Receiver alone has the
3 authority to direct and audit the reserve study, not the Defendants.

4 Moreover, the Defendants have acknowledged this reality to the Court:

5 Mr. McElhinney: Are you instructing the receiver to use the 2016
6 reserve study in rendering his calculation? The Court: I think he
7 can. Mr. McElhinney: Up to him? The Court: Yeah, it's up to
8 him. If there's some reason that Mr. Teichner believes that the
9 premise or the data that's collected therein is inappropriate, then
10 obviously he can just go back to the 2014 study, but if he wants to
11 use it and he believes that it's statistical or evidentiarily valid, then
12 he can use that in making those determinations.

13 (Motion at Ex. 3 at 141:24-142:11.)

14 Plaintiffs further object to the Defendants' reserve study because it has included expenses
15 which are clearly erroneous. (Motion at 4:6-13 (noting public pool expenses that were included
16 while the Governing Documents and Court orders exclude any revenue-generating expenses).)
17 The reserve study is to be limited as directed in previous Court orders and the Governing
18 Documents. The reserve study provided by Defendants clearly shows at least one basic,
19 elementary example of expenses which are included but should not be. (Id.) Accordingly, the
20 Court finds the Defendants' reserve study to be flawed and untrustworthy, and finds the Receiver
21 has the proper (and sole) authority to order, oversee, and implement a new reserve study.

22 **IT IS HEREBY ORDERED** that Plaintiffs' Motion is granted.

23 **IT IS FURTHER ORDERED** that the Ninth Amended CC&Rs shall be withdrawn and
24 the Seventh Amended CC&Rs shall be reinstated as though never superseded.

25 **IT IS FURTHER ORDERED** that Receiver shall not utilize the Defendants' reserve
26 study in calculating those fees which are to be assessed to Plaintiffs. Instead, the Receiver shall
27 order, oversee, and implement a new reserve study which is in accordance with the Governing
28 Documents.

//

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//

1 **IT IS SO ORDERED.**

2 DATED 12.21.21

3
4 

5 _____
6 SENIOR JUSTICE
7 Nancy Saitta

8 Submitted by:

9 ROBERTSON, JOHNSON,
10 MILLER & WILLIAMSON

11 _____
12 /s/ Jarrad C. Miller

13 Jarrad C. Miller, Esq.
14 Jonathan Joel Tew, Esq.
15 Attorneys for Plaintiffs

EXHIBIT “3”

EXHIBIT “3”

EXHIBIT “3”

1 CODE: 3060
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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
20 LLC, a Nevada limited liability company; and
21 DOE DEFENDANTS 1 THROUGH 10,
22 inclusive,

23 Defendants.
24
25

26 **ORDER GRANTING PLAINTIFFS' MOTION TO STAY SPECIAL ASSESSMENT**

27 Presently before the Court is Plaintiffs' Motion to Stay Special Assessment, filed August
28 20, 2021 ("Motion").¹ Defendants filed Defendants' Opposition to Motion to Stay Special
Assessment on September 3, 2021 ("Opposition"). Plaintiffs filed their Reply in Support of

¹ Plaintiffs filed an initial version of this motion on July 30, 2021. (Motion to Stay Special Assessment and Renewed Request to Replace Receiver, filed July 30, 2021.) Plaintiffs withdrew this motion without prejudice on August 17, 2021. (Notice of Withdrawal of Motion to Stay Special Assessment and Renewed Request to Replace Receiver, filed August 17, 2021.)

1 Motion to Stay Special Assessment on September 17, 2021. The Motion was submitted for
2 consideration on September 22, 2021.

3 Case-concluding sanctions were entered against the Defendants for abuse of discovery
4 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
5 Terminating Sanctions, filed October 3, 2014 at 12.) See also Young v. Johnny Ribeiro Bldg.,
6 Inc., 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
7 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. (See
8 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

9 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
10 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
11 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"). (See
12 Appointment Order at 1:23-26.) The receivership was implemented "for the purpose of
13 implementing compliance, among all condominium units, including units owned by any
14 Defendant in this action . . . with the Covenants, Codes and Restrictions recorded against the
15 condominium units, the Unit Maintenance Agreements and the original Unit Rental Agreements
16 (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25, 2019, Richard
17 Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order Granting Motion to
18 Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed January 25, 2019.)

19 The Appointment Order provides that the Receiver and his agents are to be "pa[id] and
20 discharge[d] out of the Property's rents and/or GSRUOA monthly dues collections. . . ." (Appointment Order at 6:12-16.) It is thus clear that the Receiver's invoices are to be paid
21 through either (or collectively) the Property's rents collected or the GSRUOA monthly dues and
22 not from any other source of funds without approval of this Court.

23
24 On June 16, 2021, the Receiver provided notice to the Court that GSRUOA was insolvent
25 and requested a hearing to address this issue. (Motion at 1:2-4.) After the parties discussed
26 potential solutions to this issue, the Defendants, over Plaintiffs' objection, on July 12, 2021 voted
27 to impose a special assessment against all unit owners which would raise about \$100,000 to pay
28 the Receiver's invoices and other expenses ("Special Assessment"). (Opposition at 2:3-11.)

1 The Motion requests that the Court: (1) enforce the Appointment Order; (2) stay the
2 Special Assessment; (3) direct the Receiver to pay the expenses of the receivership through the
3 new receivership account; and (4) order the Defendants to stop interfering with the receivership
4 and the orders governing same. (Motion at 2:6-9.) The Opposition argues the Special
5 Assessment was appropriate under the Seventh Amendment to Condominium Declaration of
6 Covenants, Conditions, Restrictions and Reservations of Easements for hotel Condominiums at
7 Grand Sierra Resort ("CC&Rs") and necessary in order to both fund the Receiver's invoices as
8 well as the GSRUOA's operations through the remainder of 2021. (Opposition at 2:24-3:6.)

9 To begin, the appointment of a receiver terminates the authority of an entity's officers
10 and directors, and places all such authority in the receiver alone. Francis v. Camel Point Ranch,
11 Inc., 2019 COA 108M, ¶¶6-10, 487 P.3d 1089, 1092-9 (Colo. App. Sept. 19, 2019) (noting that
12 "[u]pon the receiver's appointment, [Defendant's] corporate officers and directors lost all
13 authority to control the corporation"); McDougal v. Huntingdon & Broad Top Mountain RR. &
14 Coal Co., 294 Pa. 108, 143 A.574, 577 (1928) (the receiver exercises the functions of the board
15 of directors, managers and officers, takes possession of corporate income, property, and assets,
16 directs not only in its operation, but, while in control, its policies on all lines"); see First Sav &
17 Loan Ass'n v. First Fed. Sav. Loan Ass'n, 531 F. Supp. 251, 255 (D. Haw. 1981) ("When a
18 receiver is appointed for a corporation, the corporation's management loses the power to run its
19 affairs and the receiver obtains all of the corporation's powers and assets"); see also U.S. v.
20 Powell, 95 F.2d 752, 754 (4th Cir. 1938). Thus, when the Appointment Order was issued, all
21 authority vested in GSRUOA's Board of Directors, managers, the Declarant, and other decision
22 makers was transferred to the Receiver and the Board of Directors, managers, the Declarant, and
23 other decision makers were divested of such authority.

24 It follows then that any decision of GSRUOA's Board of Directors since the
25 Appointment Order, including the July 12, 2021 decision to impose the Special Assessment, is
26 void as GSRUOA's Board of Directors had no authority to make such a decision or impose such
27 an assessment. (Id.)

1 Defendants argue that because the Receiver apparently did not object to the GSRUOA's
2 Board of Directors' decision to impose the Special Assessment, the Special Assessment is
3 proper. (Opposition at 4:17-18 ("The Board voted unanimously to approve and implement the
4 Special Assessment and the Receiver agreed with the action.")) This argument falls flat,
5 however, in light of the Receiver's limited authority. Anes v. Crown P'ship, Inc., 113 Nev. 195,
6 201-02, 932 P.2d 1067, 1071 (1997) ("a receiver must not exceed the limits of the authority
7 granted by the court"). The Appointment Order specifically dictates the source of funds to pay
8 the Receiver's invoices: "the Property's rents and/or GSRUOA monthly dues." (Appointment
9 Order at 6:12-16.) The Appointment Order does not provide that the Receiver can be funded
10 from any special assessments imposed upon the unit owners. Accordingly, any such special
11 assessment imposed to fund the Receiver's invoices is improper and exceeds authority vested in
12 the Receiver alone. Anes, 113 Nev. at 201-02, 932 P.2d at 1071; Fullerton v. Second Jud. Dist.
13 Ct. in & for Cty. of Washoe, 111 Nev 391, 400, 892 P.2d 935, 941 (1995) ("a receiver must not
14 exceed the limits of the authority granted"); accord Clay Expl., Inc. v. Santa Rosa Operating,
15 LLC, 442 S.W.3d 795, 800 (Tex. App. 2014) (a receiver only has that authority conferred by the
16 Court's order appointing him); Price v. Howsen, 197 Iowa 324, 197 N.W. 62, 63 (1924) ("It is a
17 familiar rule that 'the extent of a receiver's authority is always to be measured by the order of
18 appointment'"); Citibank, N.A. v. Nyland (CF 8), Ltd., 839 F.2d 93, 98 (2d Cir. 1988)
19 ("[The receiver's] authority is wholly determined by the order of the appointment court"); In re
20 Lamplight Condo. Ass'n, Inc., No. 17-20078 (JJT), 2017 WL 184510, at *2 (Bankr. D. Conn.
21 May 5, 2017) ("The source of the Receiver's authority and the process by which it was bound
22 and governed is the Appointment Order, which, as a stipulation, is [] a . . . limitation of the
23 Receiver's power, authority and process.").

24 Moreover, the Receiver has now indicated that he intends to open a separate account to
25 collect rental revenues from the Property and distribute the same to the appropriate unit owners.
26 (Motion at Ex. 2 (email in which Receiver's counsel states "The Receiver is going to open a
27 separate account for the Receivership as soon as possible. . . . As of September 1st, all of the
28 revenue from the Summit Rooms (the units in the Hotel Condominium) will be deposited into

1 the account.”.) If the Receiver so opens this account to collect rental revenue, the Special
2 Assessment will become unnecessary to pay the Receiver’s invoices as Receiver will have access
3 to all rental revenue from the relevant units with which the Receiver may pay his invoices. The
4 Court finds this action by the Receiver is both necessary and allowed under the Appointment
5 Order. (See Appointment Order at 3:7-10, 3:15-18.)

6 Accordingly, the Court finds the Special Assessment exceeded the authority of the
7 GSRUOA’s Board of Directors as well as the authority of the Receiver. Thus, the Special
8 Assessment shall be rescinded and deemed void.

9 **IT IS HEREBY ORDERED** that Plaintiffs’ Motion is granted.

10 **IT IS FURTHER ORDERED** that Defendants shall rescind the Special Assessment and
11 refund any unit owners who have paid the Special Assessment within twenty (20) days of this
12 Order.

13 **IT IS FURTHER ORDERED** that the Receiver shall open a separate account into
14 which all rental revenue from the units in the Hotel Condominium (as defined in the CC&Rs) is
15 deposited and may be utilized to pay the Receiver’s invoices and otherwise operate the
16 GSRUOA. The Defendants are ordered to comply with the Appointment Order’s direction to
17 cooperate with the Receiver to effect the dictates of this order.

18 **IT IS SO ORDERED.**

19 DATED 12-21-21.



20
21 SENIOR JUSTICE
22 Nancy Saitta

23 Submitted by:

24 ROBERTSON, JOHNSON,
25 MILLER & WILLIAMSON

26 /s/ Jarrad C. Miller

27 Jarrad C. Miller, Esq.
Jonathan Joel Tew, Esq.
Attorneys for Plaintiffs

EXHIBIT “4”

EXHIBIT “4”

EXHIBIT “4”

1 CODE: 2777
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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9 ALBERT THOMAS, individually; *et al.*,

10 Plaintiffs,

11 vs.

Case No. CV12-02222
Dept. No. OJ37

12 MEI-GSR Holdings, LLC, a Nevada limited
13 liability company, GRAND SIERRA
14 RESORT UNIT OWNERS'
15 ASSOCIATION, a Nevada nonprofit
16 corporation, GAGE VILLAGE
17 COMMERCIAL DEVELOPMENT, LLC, a
18 Nevada limited liability company; AM-GSR
HOLDINGS, LLC, a Nevada limited liability
company; and DOE DEFENDANTS 1
THROUGH 10, inclusive,

Defendants.

19 **ORDER APPROVING RECEIVER'S REQUEST TO APPROVE UPDATED FEES**

20 Before the Court is the Receiver's Receiver Analysis and Calculation of Daily Use Fee,
21 Shared Facilities Unit Expense Fee and Hotel Expense Fee with Request to Approve updated
22 Fees and for Court to Set Effective Date for New Fees, filed August 16, 2021 ("Receiver
23 Analysis"). Defendants filed Defendants' Objection to Receiver's Analysis and Calculation of
24 Daily Use Fee, Shared Facilities Unit Expense Fees and for Court to Set Effective Date for New
25 Fees on September 17, 2021. Plaintiffs filed Plaintiffs' Response to Receiver Analysis and
26 Calculation of Daily Use Fee, Shared Facilities Unit Expense Fee and Hotel Expense Fee with
27 Request to Approve Updated Fees and for Court to Set Effective Date for New Fees on
28

1 September 17, 2021. The Receiver Analysis was submitted for consideration on
2 September 22, 2021.

3 **IT IS HEREBY ORDERED** that (1) The Receiver's new fee calculations as submitted
4 to the Court should immediately be applied retroactive to January 2020 and going forward until a
5 subsequent order from the Court is issued; (2) the amounts owed to Plaintiffs under those fee
6 calculations should be paid to Plaintiffs within thirty (30) days in accordance with the Governing
7 Documents; (3) the Receiver should be permitted to calculate the 2020 fee calculation using the
8 same methodology – and once those calculations are completed, the Receiver can reconcile the
9 unit owner accounts to reflect the difference between the 2020 and 2021 fee calculations; and (4)
10 after Defendants produce to Plaintiffs all actual documents that support the Receiver's 2020 and
11 2021 calculations, and depositions are taken (limited in scope) to verify that the calculations are
12 based on actual expenses as provided for under the Governing Documents, the briefing on the
13 issue of the accuracy of the fees should recommence. Any adjustments to the fees as a result of
14 motion practice by the parties shall be credited or debited accordingly, but in the interim, rental
15 revenue shall be calculated based upon the Receiver's 2021 calculations.

16 **IT IS SO ORDERED.**

17 DATED 12-21-21.

18
19 

20 SENIOR JUSTICE

Nancy Saitta

21 Submitted by:

22 ROBERTSON, JOHNSON,
23 MILLER & WILLIAMSON

24 /s/ Jarrad C. Miller

25 Jarrad C. Miller, Esq.
26 Jonathan Joel Tew, Esq.
27 Attorneys for Plaintiffs
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EXHIBIT “5”

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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
20 LLC, a Nevada limited liability company; and
21 DOE DEFENDANTS 1 THROUGH 10,
22 inclusive,

23 Defendants.

24 **ORDER DIRECTING RECEIVER TO PREPARE REPORT ON DEFENDANTS'**
25 **REQUEST FOR REIMBURSEMENT OF 2020 CAPITAL EXPENDITURES**
26

27 Presently before the Court is Defendants' Motion for Instructions Regarding
28 Reimbursement of 2020 Capital Expenditures, filed June 24, 2021 ("Motion"). Plaintiffs filed
their Opposition to Defendants' Motion for Instructions Regarding Reimbursement of 2020
Capital Expenditures on October 11, 2021. Defendants then filed Defendants' Reply in Support
of Motion for Instructions Regarding Reimbursement of 2020 Capital Expenditures on
November 2, 2021. The Motion was submitted for consideration on November 3, 2021.

1 Case-concluding sanctions were entered against the Defendants for abuse of discovery
2 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
3 Terminating Sanctions, filed October 3, 2014 at 12.) See also Young v. Johnny Ribeiro Bldg.,
4 Inc., 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
5 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. (See
6 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

7 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
8 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
9 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA"). The
10 receivership was implemented "for the purpose of implementing compliance, among all
11 condominium units, including units owned by any Defendant in this action . . . with the
12 Covenants, Codes and Restrictions recorded against the condominium units, the Unit
13 Maintenance Agreements and the original Unit Rental Agreements (the "Governing
14 Documents"). (Appointment Order at 1:27-28, 2:1-3.) On January 25, 2019, Richard Teichner
15 was substituted in Mr. Proctor's place in the Order Granting Motion to Substitute Receiver.

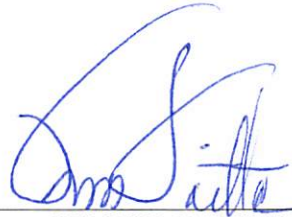
16 In the Motion, Defendants ask the Court to instruct Mr. Teichner ("Receiver") to
17 reimburse Defendants a total of \$1,614,505, comprised of \$1,409,637 from the Capital Reserves
18 for Common Area expenses and \$208,868 from the Hotel Reserves for Hotel Related expenses.
19 (Motion at 6:23-26.) The Motion further requests the Court instruct Receiver to impose any
20 special assessments necessary to bring the respective reserve accounts back to the required
21 levels. (Id. at 6:26-7:3.) Plaintiffs' Opposition argues the expenditures for which Defendants
22 seek reimbursement are not included in the Governing Documents which explicitly describe each
23 expense the Plaintiffs agreed to pay. (Opposition at 3:1-18.) Plaintiffs argue further that the
24 reserves study Defendants rely upon is fatally flawed as it also includes a variety of inappropriate
25 expenses and plainly obvious and elementary mistakes. (Id. at 2:14-26.)

26 The Court finds the Receiver is charged with implementing compliance with the
27 Governing Documents and was appointed for a reason. (See generally Appointment Order.)
28 Therefore, the Court orders the Receiver to provide a report to the Court within ninety (90) days

1 from the date of this Order recommending which items contained within Defendants' request for
2 reimbursement of capital expenditures can be reimbursed under the Governing Documents and
3 this Court's existing orders.

4 **IT IS SO ORDERED.**

5 DATED 12-21-21.



6
7
8 SENIOR JUSTICE
Nancy Saitta

9 Submitted by:

10 ROBERTSON, JOHNSON,
11 MILLER & WILLIAMSON

12 /s/ Jarrad C. Miller

13 Jarrad C. Miller, Esq.
14 Jonathan Joel Tew, Esq.
15 Attorneys for Plaintiffs
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EXHIBIT “6”

EXHIBIT “6”

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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
20 LLC, a Nevada limited liability company; and
21 DOE DEFENDANTS 1 THROUGH 10,
22 inclusive,

23 Defendants.

24 **ORDER DENYING AS MOOT DEFENDANTS' EMERGENCY MOTION TO EXTEND**
25 **STAY PENDING FINAL DISPOSITION OF THE MOTION TO RECONSIDER**
26

27 Presently before the Court is Defendants' Emergency Motion to Extend Stay Pending
28 Final Disposition of the Motion to Reconsider, filed June 10, 2021 ("Motion"). Plaintiffs filed
their Opposition to Defendants' Emergency Motion to Extend Stay Pending Final Disposition of
the Motion to Reconsider (Oral Argument Requested) on June 23, 2021. Defendants filed
Defendants' Reply in Support of Emergency Motion to Extend Stay Pending Final Disposition of
the Motion to Reconsider on June 30, 2021. The Motion was submitted for consideration on
July 1, 2021.

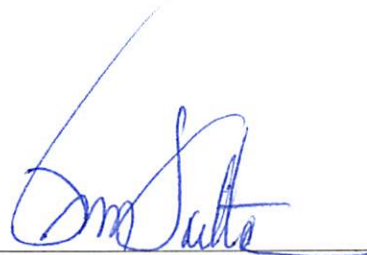
1 In the Motion, Defendants request the Court extend the stay of enforcement of the
2 disgorgement order within the Court's Order Granting Motion for Clarification, filed December
3 24, 2020 (the "December 24, 2020 Order") beyond June 10, 2021, such that the Court could
4 issue a ruling on Defendants' Motion for Leave to File Motion for Reconsideration of December
5 24, 2020, Order Granting Motion for Clarification and Request for Hearing ("Defendants'
6 Motion for Reconsideration"). (Motion at 2:13-22.) The December 24, 2020 Order ordered that:
7 (1) "[a]mounts charged since January of 2020 under the improper fee allocations shall be
8 disgorged to the Plaintiffs, and the new fee allocations shall not go into effect until calculated
9 (they will not be retroactively applied);" and (2) "the Defendants shall pay to the Plaintiffs the
10 reasonable attorneys' fees and costs they incurred in filing the Motion [for Clarification] and
11 Reply [in support thereof]." (December 24, 2020 Order at 4:12-16.)

12 Prior to enforcing the December 24, 2020 Order, the Court granted in part Defendants'
13 Motion for Reconsideration on September 29, 2021. (See Findings of Fact, Conclusions of Law
14 and Order, filed September 29, 2021 ("FFCLO").) In the FFCLO, the Court struck the portion of
15 the December 24, 2020 Order requiring the Defendants to disgorge the improper fee allocation
16 charges. (*Id.* at 6:2-11.)

17 **IT IS HEREBY ORDERED** that Defendants' Motion is denied as moot.

18 **IT IS SO ORDERED.**

19 DATED 12-21-21.



20
21
22 SENIOR JUSTICE
Nancy Saitta

23 Submitted by:

24 ROBERTSON, JOHNSON,
25 MILLER & WILLIAMSON

26 /s/ Jarrad C. Miller

27 Jarrad C. Miller, Esq.
Jonathan Joel Tew, Esq.
28 Attorneys for Plaintiffs

EXHIBIT “7”

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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 ALBERT THOMAS, individually; *et al.*,

11 Plaintiffs,

12 vs.

Case No. CV12-02222
Dept. No. OJ37

13 MEI-GSR Holdings, LLC, a Nevada limited
14 liability company, GRAND SIERRA
15 RESORT UNIT OWNERS' ASSOCIATION,
16 a Nevada nonprofit corporation, GAGE
17 VILLAGE COMMERCIAL
18 DEVELOPMENT, LLC, a Nevada limited
19 liability company; AM-GSR HOLDINGS,
20 LLC, a Nevada limited liability company; and
21 DOE DEFENDANTS 1 THROUGH 10,
22 inclusive,

23 Defendants.

24 **ORDER GRANTING PLAINTIFFS' SUPPLEMENTAL MOTION FOR FEES**
25 **PURSUANT TO THE COURT'S DECEMBER 24, 2020 ORDER GRANTING MOTION**
26 **FOR CLARIFICATION AND SANCTIONING THE DEFENDANTS**
27

28 Presently before the Court is Plaintiffs' Supplemental Motion for Fees Pursuant to the
Court's December 24, 2020 Order Granting Motion for Clarification and Sanctioning the
Defendants, filed April 7, 2021 ("Motion"). Defendants filed Defendants' Opposition to
Supplemental Motion for Fees Pursuant to the Court's December 24, 2020 Order Granting
Motion for Clarification and Sanctioning the Defendants on April 20, 2021 ("Opposition").
Plaintiffs filed their Reply in Support of Supplemental Motion for Fees Pursuant to the Court's

1 December 24, 2020 Order Granting Motion for Clarification and Sanctioning the Defendants on
2 April 30, 2021. The Motion was submitted for consideration by the Court on May 4, 2021.

3 The Motion sets forth Plaintiffs' supplemental request for fees incurred in (a) submitting
4 their motion for fees ("Fees Motion") pursuant to the Court's December 24, 2020 Order Granting
5 Clarification ("December 24, 2020 Order"), (b) filing a reply to Defendants' opposition to the
6 Fees Motion, and (c) opposing Defendants' Motion for Leave to File Motion for Reconsideration
7 of the Court's December 24, 2020 Order ("Defendants' Motion for Reconsideration"), which
8 largely attempted to rehash and relitigate previously rejected arguments. (Motion at 2:7-12.)
9 Plaintiffs' total requested fees for these tasks is \$17,885. Defendants argue the requested fees
10 are unreasonably excessive and that Nevada law does not permit recovery thereof. (Opposition
11 at 2:14-18, 3:3-10.) Defendants further argue that the Defendants' Motion for Reconsideration
12 may very well render Plaintiffs' Fees Motion and Motion moot.¹ (Id. at 3:3-10; see also
13 Defendants' Motion for Reconsideration, filed January 7, 2020.)

14 Case-concluding sanctions were entered against the Defendants for abuse of discovery
15 and disregard for the judicial process. (See Order Granting Plaintiffs' Motion for Case-
16 Terminating Sanctions, filed October 3, 2014 at 12.) See Young v. Johnny Ribeiro Bldg., Inc.,
17 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990) (discussing discovery sanctions). The Court
18 ultimately entered a judgment in favor of the Plaintiffs for \$8,318,215.55 in damages. (See
19 Findings of Fact, Conclusions of Law and Judgment, filed October 9, 2015.)

20 On January 7, 2015, the Court entered the Order Appointing Receiver and Directing
21 Defendants' Compliance ("Appointment Order"). The Appointment Order appointed James
22 Proctor as receiver over the Grand Sierra Resort Unit Owners' Association ("GSRUOA") and
23 the rental revenue and certain other property interests relating to the other Defendants. (See
24 Appointment Order at 1:23-26.) The receivership was implemented "for the purpose of
25 implementing compliance, among all condominium units, including units owned by any
26 Defendant in this action . . . with the Covenants, Codes and Restrictions recorded against the
27

28 ¹ Defendants' Motion for Reconsideration stands fully briefed and submitted at the time of this Order.

1 condominium units, the Unit Maintenance Agreements and the original Unit Rental Agreements
2 (the "Governing Documents"). (Appointment Order at 1:27-2:3.) On January 25, 2019, Richard
3 Teichner ("Receiver") was substituted in Mr. Proctor's place in the Order Granting Motion to
4 Substitute Receiver. (Order Granting Motion to Substitute Receiver, filed January 25, 2019.)

5 The Court's December 24, 2020 Order includes two distinct portions: first, that the
6 Receiver was to recalculate certain fees in a specific way and that the improper fee allocations
7 were to be disgorged to Plaintiffs, and second, that the Defendants were to pay Plaintiffs'
8 attorneys' fees and costs incurred in briefing the motion which ultimately resulted in the
9 December 24, 2020 Order. This sanction was imposed as a result of "Defendants' attempt to
10 advance their interpretation of the Court's orders to the [R]eceiver [which] interfered with the
11 October Order taking effect and resulted in unnecessarily duplicative litigation." (December 24,
12 2020 order at 3:17-19.) Plaintiffs filed their motion for fees ("Fees Motion") pursuant to the
13 December 24, 2020 Order, to which Defendants filed an opposition. (See Motion for Fees
14 Pursuant to the Court's December 24, 2020 Order Granting Motion for Clarification, filed
15 January 4, 2021; Defendants' objection to Plaintiffs' Motion for Fees Pursuant to the Court's
16 December 24, 2020 Order Granting Motion for Clarification, filed January 14, 2021.)

17 The instant Motion requests a supplemental award of fees incurred in actions taking place
18 after the December 24, 2020 Order was issued. The Motion states Plaintiffs incurred a total of
19 \$17,885 in attorneys' fees as a result of (1) preparing the Fees motion, (2) preparing a reply to
20 Defendants' opposition to the Fees Motion, and (3) preparing an opposition to Defendants'
21 largely duplicative motion for reconsideration. (Motion at 6:9-12, 7:1-3.) Fees incurred as a
22 result of preparing a motion for fees are recoverable. See Rosenfeld v. United States DOJ, 903
23 F. Supp. 2d 859, 878 (N. D. Cal. 2012) ("Plaintiffs may recover attorney's fees for time
24 reasonably expended on a motion for attorney's fees and costs."). Furthermore, because the fee
25 award was a sanction for Defendants' attempt to convince the Receiver of their clearly inaccurate
26 interpretation of the Court's orders, and the motion for reconsideration largely furthered those
27 inaccurate arguments, the continued arguments, and Plaintiffs' fees incurred to address them, are
28

1 included by the December 24, 2020 Order's sanction. Accordingly, the Court finds such fees are
2 recoverable as a general matter.

3 Nevada uses the lodestar formula to determine the appropriate amount of attorney fees.
4 Hsu v. Clark County, 123 Nev. 625, 636, 173 P.3d 724, 732 (2007). The lodestar formula calls
5 for the number of hours reasonably spent on the motion to be multiplied by a reasonable hourly
6 rate. Id. at 637, 173 P.3d at 733.

7 Plaintiffs have provided that their counsel spent a total of 24.6 hours on the Fees Motion
8 briefing, including preparation of the Fees Motion, researching authority cited in Defendants'
9 opposition thereto, and preparing a reply in support of the Fees Motion. (Motion at 5:26-6:4.)
10 Defendants argue Plaintiffs' hours expended are excessive. (Opposition at 9:6-9.) The Court
11 finds the number of hours expended by Plaintiffs' counsel on the Fees Motion briefing to be
12 reasonable in light of the procedural history of this case and the issues raised by the Fees Motion
13 and Defendants' opposition thereto.

14 Plaintiffs have provided that their counsel spent a total of 31.6 hours on their opposition
15 to Defendants' Motion for Reconsideration. (Motion at 7:1-3.) Defendants, again, argue this
16 number of hours is excessive and not warranted. (Opposition at 9:9-21.) Although the
17 Defendants attempt to minimize the complexity of the issues set forth in the Defendants' Motion
18 for Reconsideration and the necessity to set forth the complex procedural background within
19 Defendants' opposition thereto, the Court does not agree that the Defendants' Motion for
20 Reconsideration, nor the Plaintiffs' opposition thereto, was as simplistic as Defendants state.
21 Instead, the Defendants' Motion for Reconsideration set forth a variety of fallacious legal
22 arguments and misconstrued the factual and procedural background of this case, therefore
23 requiring Plaintiffs to expend numerous pages refuting the same. Thus, the Court finds the
24 number of hours expended by Plaintiffs' counsel on this task reasonable.

25 Defendants also argue that Plaintiffs' time entries are inadequate. (Opposition at 10:17-
26 11:25.) Defendants argue the entries are "so vaguely generic that the [C]ourt cannot determine
27 with certainty whether the activities they purport to describe were necessary and reasonable."
28 (Id. at 11:21-23.) After reviewing the time entries in full, the Court finds the entries are adequate

1 and provide the Court sufficient information to determine that the tasks undertaken by Plaintiffs'
2 counsel were both necessary and reasonable.

3 Accordingly, the Court finds the number of hours expended by Plaintiffs' counsel on
4 those tasks for which Plaintiffs seek to recover attorneys' fees were reasonable.

5 Next, Plaintiffs have set forth their counsels' hourly rate. These rates range from \$425 to
6 \$335 for attorneys and are \$135 for paralegals.² (Motion at 6:9-12, 7:1-3.) Defendants do not
7 appear to dispute the reasonableness of such hourly rates. The Court therefore finds such hourly
8 rates are reasonable.

9 Under the lodestar formula, the Court finds the hours reportedly spent by Plaintiffs'
10 counsel and their hourly rates are reasonable, and thus the lodestar award is \$17,885.

11 The Court must next consider the Brunzell factors to determine the appropriateness of the
12 lodestar amount. Accordingly, to determine whether any adjustments to the lodestar amount are
13 necessary, the Court must consider:

14 (1) the qualities of the advocate: his ability, his training, education,
15 experience, professional standing and skill; (2) the character of the
16 work to be done: its difficulty, its intricacy, its importance, time
17 and skill required, the responsibility imposed and the prominence
18 and character of the parties where they affect the importance of the
litigation; (3) the work actually performed by the lawyer: the skill,
time and attention given to the work; (4) the result: whether the
attorney was successful and what benefits were derived.

19 Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31, 33 (1969). The Court finds all of
20 these factors weigh against any adjustment to the lodestar amount and in favor of awarding
21 Plaintiffs the full lodestar amount.

22 First, the Court is acutely aware of the high quality of Plaintiffs' counsel, and thus
23 concludes this factor is in favor of awarding Plaintiffs the entire lodestar amount.

24 Second, the Court finds the character of the work to be done to be especially important.
25 The Court's December 24, 2020 Order imposed sanctions upon Defendants for attempting to
26 mislead the Receiver into accepting a clearly faulty interpretation of the Court's previous orders.

27
28 ² Plaintiffs note the hourly fees underwent a routine annual increase, which is why they are different from previous
fees applications. (Motion at 6, fn.2.)

1 (See Order Granting Clarification, filed December 24, 2020 at 3:17-19 (“The Defendants’
2 attempt to advance their interpretation of the Court’s orders to the [R]eceiver interfered with the
3 October Order taking effect and resulted in unnecessarily duplicative litigation. Therefore, the
4 Court exercises its inherent authority to require the Defendants to pay for the fees the Plaintiffs
5 were unnecessarily forced to incur in filing the Motion and the Reply.”).) Thus, the time spent in
6 drafting the Fees Motion – which was ordered by the Court – is certainly important. The
7 sanction within the December 24, 2020 Order was intended to penalize Defendants’
8 wrongdoings. If the Court were to limit the Plaintiffs’ recovery of their attorneys’ fees incurred
9 as a result of Defendants’ wrongdoings, the sanction would have no teeth. Accordingly, the
10 second factor also weighs in favor of awarding the entire lodestar amount.

11 Third, the work actually performed by Plaintiffs’ counsel is evidenced by the billing
12 records submitted with the Motion. (Motion at Ex. 1.) Each time entry reflects work which was
13 necessary and that the individual whose time is reflected dedicated ample skill, time, and
14 attention to the task at hand. Brunzell, 85 Nev. at 349, 455 P.2d at 33. This factor thus also
15 weighs in favor of awarding the full lodestar amount.

16 Fourth and finally, the Court must consider the result. The Court finds this factor weighs
17 in favor of awarding the entire lodestar amount as well. The Court clearly agreed with Plaintiffs’
18 positions taken in the briefing which resulted in the December 24, 2020 Order imposing
19 sanctions. (See generally Order Granting Reconsideration, filed December 24, 2020.) Thus,
20 Plaintiffs have obtained a successful result. This factor weighs in favor of granting the full
21 lodestar amount to Plaintiffs.

22 The Brunzell factors clearly indicate that the lodestar amount is appropriate and requires
23 no adjustments. The Court therefore finds an award of the entire lodestar amount is proper.

24 **IT IS HEREBY ORDERED** that Plaintiffs’ Motion is granted in full.

25 **IT IS FURTHER ORDERED** that Defendants shall pay to the Plaintiffs the sum of
26 \$17,885 within thirty (30) days of this Order.

27 //

28 //

1 **IT IS SO ORDERED.**

2 DATED 12-21-21.

3
4 

5 _____
6 SENIOR JUSTICE
7 Nancy Saitta

8 Submitted by:

9 ROBERTSON, JOHNSON,
10 MILLER & WILLIAMSON

11 _____
12 /s/ Jarrad C. Miller

13 Jarrad C. Miller, Esq.
14 Jonathan Joel Tew, Esq.
15 Attorneys for Plaintiffs
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EXHIBIT J TO
DOCKETING
STATEMENT

1 CODE: 1090
2 G. David Robertson, Esq. (NV Bar No. 1001)
3 Jarrad C. Miller, Esq. (NV Bar No. 7093)
4 Jonathan J. Tew, Esq. (NV Bar No. 11874)
5 Robertson, Johnson, Miller & Williamson
6 50 West Liberty Street, Suite 600
7 Reno, Nevada 89501
8 (775) 329-5600
9 Attorneys for Plaintiffs

6 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF WASHOE**

9 ALBERT THOMAS, individually; JANE
10 DUNLAP, individually; JOHN DUNLAP,
11 individually; BARRY HAY, individually;
12 MARIE-ANNE ALEXANDER, as Trustee of
13 the MARIE-ANNIE ALEXANDER LIVING
14 TRUST; MELISSA VAGUJHELYI and
15 GEORGE VAGUJHELYI, as Trustees of the
16 GEORGE VAGUJHELYI AND MELISSA
17 VAGUJHELYI 2001 FAMILY TRUST
18 AGREEMENT, U/T/A APRIL 13, 2001; D'
19 ARCY NUNN, individually; HENRY
20 NUNN, individually; MADELYN VAN DER
21 BOKKE, individually; LEE VAN DER
22 BOKKE, individually; DONALD
23 SCHREIFELS, individually; ROBERT R.
24 PEDERSON, individually and as Trustee of
25 the PEDERSON 1990 TRUST; LOU ANN
26 PEDERSON, individually and as Trustee of
27 the PEDERSON 1990 TRUST; LORI
28 ORDOVER, individually; WILLIAM A.
HENDERSON, individually; CHRISTINE E.
HENDERSON, individually; LOREN D.
PARKER, individually; SUZANNE C.
PARKER, individually; MICHAEL IZADY,
individually; STEVEN TAKAKI,
individually; FARAD TORABKHAN,
individually; SAHAR TAVAKOL,
individually; M&Y HOLDINGS, LLC;
JL&YL HOLDINGS, LLC; SANDI RAINES,
individually; R. RAGHURAM, individually;
USHA RAGHURAM, individually; LORI K.
TOKUTOMI, individually; GARRET TOM,
individually; ANITA TOM, individually;
RAMON FADRILAN, individually; FAYE
FADRILAN, individually; PETER K. LEE
and MONICA L. LEE, as Trustees of the LEE
FAMILY 2002 REVOCABLE TRUST;
DOMINIC YIN, individually; ELIAS
SHAMIEH, individually; JEFFREY QUINN,

Case No. CV12-02222
Dept. No. 10

SECOND AMENDED COMPLAINT

1 individually; BARBARA ROSE QUINN
individually; KENNETH RICHE,
2 individually; MAXINE RICHE, individually;
NORMAN CHANDLER, individually;
3 BENTON WAN, individually; TIMOTHY D.
KAPLAN, individually; SILKSCAPE INC.;
4 PETER CHENG, individually; ELISA
CHENG, individually; GREG A.
5 CAMERON, individually; TMI PROPERTY
GROUP, LLC; RICHARD LUTZ,
6 individually; SANDRA LUTZ, individually;
MARY A. KOSSICK, individually; MELVIN
7 CHEAH, individually; DI SHEN,
individually; NADINE'S REAL ESTATE
8 INVESTMENTS, LLC; AJIT GUPTA,
individually; SEEMA GUPTA, individually;
9 FREDRICK FISH, individually; LISA FISH,
individually; ROBERT A. WILLIAMS,
10 individually; JACQUELIN PHAM,
individually; MAY ANN HOM, as Trustee of
11 the MAY ANN HOM TRUST; MICHAEL
HURLEY, individually; DOMINIC YIN,
12 individually; DUANE WINDHORST,
individually; MARILYN WINDHORST,
13 individually; VINOD BHAN, individually;
ANNE BHAN, individually; GUY P.
14 BROWNE, individually; GARTH A.
WILLIAMS, individually; PAMELA Y.
15 ARATANI, individually; DARLENE
LINDGREN, individually; LAVERNE
16 ROBERTS, individually; DOUG MECHAM,
individually; CHRISINE MECHAM,
17 individually; KWANGSOO SON,
individually; SOO YEUN MOON,
18 individually; JOHNSON AKINDODUNSE,
individually; IRENE WEISS, as Trustee of
19 the WEISS FAMILY TRUST; PRAVESH
CHOPRA, individually; TERRY POPE,
20 individually; NANCY POPE, individually;
JAMES TAYLOR, individually; RYAN
21 TAYLOR, individually; KI HAM,
individually; YOUNG JA CHOI,
22 individually; SANG DAE SOHN,
individually; KUK HYUNG (CONNIE),
23 individually; SANG (MIKE) YOO,
individually; BRETT MENMUIR, as Trustee
24 of the CAYENNE TRUST; WILLIAM
MINER, JR., individually; CHANH
25 TRUONG, individually; ELIZABETH
ANDERS MECUA, individually;
26 SHEPHERD MOUNTAIN, LLC; ROBERT
BRUNNER, individually; AMY BRUNNER,
27 individually; JEFF RIOPELLE, individually;
PATRICIA M. MOLL, individually;
28 DANIEL MOLL, individually; and DOE

1 PLAINTIFFS 1 THROUGH 10, inclusive,

2 Plaintiffs,

3 vs.

4 MEI-GSR Holdings, LLC, a Nevada Limited
5 Liability Company, GRAND SIERRA
6 RESORT UNIT OWNERS' ASSOCIATION,
7 a Nevada nonprofit corporation, GAGE
8 VILLAGE COMMERCIAL
9 DEVELOPMENT, LLC, a Nevada Limited
10 Liability Company and DOE DEFENDANTS
11 1 THROUGH 10, inclusive,

12 Defendants.

13 COME NOW Plaintiffs ("Plaintiffs" or "Individual Unit Owners"), by and through their
14 counsel of record, Robertson, Johnson, Miller & Williamson, and for their causes of action
15 against Defendants hereby complain as follows:

16 **GENERAL ALLEGATIONS**

17 **The Parties**

18 1. Plaintiff Albert Thomas is a competent adult and is a resident of the State of
19 California.

20 2. Plaintiff Jane Dunlap is a competent adult and is a resident of the State of
21 California.

22 3. Plaintiff John Dunlap is a competent adult and is a resident of the State of
23 California.

24 4. Plaintiff Barry Hay is a competent adult and is a resident of the State of
25 California.

26 5. Plaintiff Marie-Annie Alexander, as Trustee of the Marie-Annie Alexander Living
27 Trust, is a competent adult and is a resident of the State of California.

28 6. Plaintiff Melissa Vagujhelyi, as Co-Trustee of the George Vagujhelyi and Melissa
Vagujheyli 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a
resident of the State of Nevada.

1 7. Plaintiff George Vagujhelyi, as Co-Trustee of the George Vagujhelyi and Melissa
2 Vagujhelyi 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a
3 resident of the State of Nevada.

4 8. Plaintiff D'Arcy Nunn is a competent adult and is a resident of the State of
5 California.

6 9. Plaintiff Henry Nunn is a competent adult and is a resident of the State of
7 California.

8 10. Plaintiff Lee Van Der Bokke is a competent adult and is a resident of the State of
9 California.

10 11. Plaintiff Madelyn Van Der Bokke is a competent adult and is a resident of the
11 State of California.

12 12. Plaintiff Donald Schreifels is a competent adult and is a resident of the State of
13 Minnesota.

14 13. Plaintiff Robert R. Pederson, individually and as Trustee of the Pederson 1990
15 Trust, is a competent adult and is a resident of the State of California.

16 14. Plaintiff Lou Ann Pederson, individually and as Trustee of the Pederson 1990
17 Trust, is a competent adult and is a resident of the State of California.

18 15. Plaintiff Lori Ordoover is a competent adult and is a resident of the State of
19 Connecticut.

20 16. Plaintiff William A. Henderson is a competent adult and is a resident of the State
21 of California.

22 17. Plaintiff Christine E. Henderson is a competent adult and is a resident of the State
23 of California.

24 18. Plaintiff Loren D. Parker is a competent adult and is a resident of the State of
25 Washington.

26 19. Plaintiff Suzanne C. Parker is a competent adult and is a resident of the State of
27 Washington.

- 1 20. Plaintiff Michael Izady is a competent adult and is a resident of the State of New
2 York.
- 3 21. Plaintiff Steven Takaki is a competent adult and is a resident of the State of
4 California.
- 5 22. Plaintiff Farad Torabkhan is a competent adult and is a resident of the State of
6 New York.
- 7 23. Plaintiff Sahar Tavakol is a competent adult and is a resident of the State of New
8 York.
- 9 24. Plaintiff M&Y Holdings is a Nevada Limited Liability Company with its
10 principal place of business in Nevada.
- 11 25. Plaintiff JL&YL Holdings, LLC is a Nevada Limited Liability Company with its
12 principal place of business in Nevada.
- 13 26. Plaintiff Sandi Raines is a competent adult and is a resident of the State of
14 Minnesota.
- 15 27. Plaintiff R. Raghuram is a competent adult and is a resident of the State of
16 California.
- 17 28. Plaintiff Usha Raghuram is a competent adult and is a resident of the State of
18 California.
- 19 29. Plaintiff Lori K. Tokutomi is a competent adult and is a resident of the State of
20 California.
- 21 30. Plaintiff Garrett Tom is a competent adult and is a resident of the State of
22 California.
- 23 31. Plaintiff Anita Tom is a competent adult and is a resident of the State of
24 California.
- 25 32. Plaintiff Ramon Fadrilan is a competent adult and is a resident of the State of
26 California.
- 27 33. Plaintiff Faye Fadrilan is a competent adult and is a resident of the State of
28 California.

1 34. Plaintiff Peter K. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a
2 competent adult and is a resident of the State of California.

3 35. Plaintiff Monica L. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a
4 competent adult and is a resident of the State of California.

5 36. Plaintiff Dominic Yin is a competent adult and is a resident of the State of
6 California.

7 37. Plaintiff Elias Shamieh is a competent adult and is a resident of the State of
8 California.

9 38. Plaintiff Nadine's Real Estate Investments, LLC, is a North Dakota Limited
10 Liability Company.

11 39. Plaintiff Jeffery James Quinn is a competent adult and is a resident of the State of
12 Hawaii.

13 40. Plaintiff Barbara Rose Quinn is a competent adult and is a resident of the State of
14 Hawaii.

15 41. Plaintiff Kenneth Riche is a competent adult and is a resident of the State of
16 Wisconsin.

17 42. Plaintiff Maxine Riche is a competent adult and is a resident of the State of
18 Wisconsin.

19 43. Plaintiff Norman Chandler is a competent adult and is a resident of the State of
20 Alabama.

21 44. Plaintiff Benton Wan is a competent adult and is a resident of the State of
22 California.

23 45. Plaintiff Timothy Kaplan is a competent adult and is a resident of the State of
24 California.

25 46. Plaintiff Silkscape Inc. is a California Corporation.

26 47. Plaintiff Peter Cheng is a competent adult and is a resident of the State of
27 California.

1 48. Plaintiff Elisa Cheng is a competent adult and is a resident of the State of
2 California.

3 49. Plaintiff Greg A. Cameron is a competent adult and is a resident of the State of
4 California.

5 50. Plaintiff TMI Property Group, LLC is a California Limited Liability Company.

6 51. Plaintiff Richard Lutz is a competent adult and is a resident of the State of
7 California.

8 52. Plaintiff Sandra Lutz is a competent adult and is a resident of the State of
9 California.

10 53. Plaintiff Mary A. Kossick is a competent adult and is a resident of the State of
11 California.

12 54. Plaintiff Melvin H. Cheah is a competent adult and is a resident of the State of
13 California.

14 55. Plaintiff Di Shen is a competent adult and is a resident of the State of Texas.

15 56. Plaintiff Ajit Gupta is a competent adult and is a resident of the State of
16 California.

17 57. Plaintiff Seema Gupta is a competent adult and is a resident of the State of
18 California.

19 58. Plaintiff Fredrick Fish is a competent adult and is a resident of the State of
20 Minnesota.

21 59. Plaintiff Lisa Fish is a competent adult and is a resident of the State of Minnesota.

22 60. Plaintiff Robert A. Williams is a competent adult and is a resident of the State of
23 Minnesota.

24 61. Plaintiff Jacquelin Pham is a competent adult and is a resident of the State of
25 California.

26 62. Plaintiff May Ann Hom, as Trustee of the May Ann Hom Trust, is a competent
27 adult and is a resident of the State of California.

28

1 63. Plaintiff Michael Hurley is a competent adult and is a resident of the State of
2 Minnesota.
3 64. Plaintiff Dominic Yin is a competent adult and is a resident of the State of
4 California.
5 65. Plaintiff Duane Windhorst is a competent adult and is a resident of the State of
6 Minnesota.
7 66. Plaintiff Marilyn Windhorst is a competent adult and is a resident of the State of
8 Minnesota.
9 67. Plaintiff Vinod Bhan is a competent adult and is a resident of the State of
10 California.
11 68. Plaintiff Anne Bhan is a competent adult and is a resident of the State of
12 California.
13 69. Plaintiff Guy P. Browne is a competent adult and is a resident of the State of
14 California.
15 70. Plaintiff Garth Williams is a competent adult and is a resident of the State of
16 California.
17 71. Plaintiff Pamela Y. Aratani is a competent adult and is a resident of the State of
18 California.
19 72. Plaintiff Darleen Lindgren is a competent adult and is a resident of the State of
20 Minnesota.
21 73. Plaintiff Laverne Roberts is a competent adult and is a resident of the State of
22 Nevada.
23 74. Plaintiff Doug Mecham is a competent adult and is a resident of the State of
24 Nevada.
25 75. Plaintiff Chrisine Mecham is a competent adult and is a resident of the State of
26 Nevada.
27 76. Plaintiff Kwangsoo Son is a competent adult and is a resident of Vancouver,
28 British Columbia.

1 77. Plaintiff Soo Yeun Moon is a competent adult and is a resident of Vancouver,
2 British Columbia.

3 78. Plaintiff Johnson Akindodunse is a competent adult and is a resident of the State
4 of California.

5 79. Plaintiff Irene Weiss, as Trustee of the Weiss Family Trust, is a competent adult
6 and is a resident of the State of Texas.

7 80. Plaintiff Pravesh Chopra is a competent adult and is a resident of the State of
8 California.

9 81. Plaintiff Terry Pope is a competent adult and is a resident of the State of Nevada.

10 82. Plaintiff Nancy Pope is a competent adult and is a resident of the State of Nevada.

11 83. Plaintiff James Taylor is a competent adult and is a resident of the State of
12 California.

13 84. Plaintiff Ryan Taylor is a competent adult and is a resident of the State of
14 California.

15 85. Plaintiff Ki Ham is a competent adult and is a resident of Surry B.C.

16 86. Plaintiff Young Ja Choi is a competent adult and is a resident of Coquitlam, B.C.

17 87. Plaintiff Sang Dae Sohn is a competent adult and is a resident of Vancouver, B.C.

18 88. Plaintiff Kuk Hyung (“Connie”) is a competent adult and is a resident of
19 Coquitlam, B.C.

20 89. Plaintiff Sang (“Mike”) Yoo is a competent adult and is a resident of Coquitlam,
21 British Columbia.

22 90. Plaintiff Brett Menmuir, as Trustee of the Cayenne Trust, is a competent adult and
23 is a resident of the State of Nevada.

24 91. Plaintiff William Miner, Jr., is a competent adult and is a resident of the State of
25 California.

26 92. Plaintiff Chanh Truong is a competent adult and is a resident of the State of
27 California.

1 93. Plaintiff Elizabeth Anders Mecua is a competent adult and is a resident of the
2 State of California.

3 94. Plaintiff Shepherd Mountain, LLC is a Texas Limited Liability Company with its
4 principal place of business in Texas.

5 95. Plaintiff Robert Brunner is a competent adult and is a resident of the State of
6 Minnesota.

7 96. Plaintiff Amy Brunner is a competent adult and is a resident of the State of
8 Minnesota.

9 97. Plaintiff Jeff Riopelle is a competent adult and is a resident of the State of
10 California.

11 98. Plaintiff Patricia M. Moll is a competent adult and is a resident of the State of
12 Illinois.

13 99. Plaintiff Daniel Moll is a competent adult and is a resident of the State of Illinois.

14 100. Plaintiffs are informed and believe and thereon allege that at all relevant times
15 herein, Defendant MEI-GSR Holdings, LLC (“MEI-GSR”) is a Nevada Limited Liability
16 Company with its principal place of business in Nevada.

17 101. Plaintiffs are informed and believe and thereon allege that at all relevant times
18 herein, Defendant Gage Village Commercial Development, LLC (“Gage Village”) is a Nevada
19 Limited Liability Company with its principal place of business in Nevada.

20 102. Plaintiffs are informed and believe and thereon allege that Gage Village is related
21 to, controlled by, affiliated with, and/or a subsidiary of MEI-GSR.

22 103. Plaintiffs are informed and believe and thereon allege that at all relevant times
23 herein, Defendant Grand Sierra Resort Unit Owners’ Association (the “Unit Owners’
24 Association”) is a Nevada nonprofit corporation with its principal place of business in Nevada.

25 104. The true names and capacities whether individual, corporate, associate or
26 otherwise of Plaintiff Does and Defendant Does 1 through 10, are unknown to Plaintiffs, and
27 Plaintiffs therefore include them by such fictitious names. Plaintiffs will amend this Complaint
28 to allege their true names and capacities when such are ascertained. Plaintiffs are informed and

believe and thereon allege that each of the fictitiously named Defendant Does is liable to Plaintiffs in some manner for the occurrences that are herein alleged.

MEI-GSR's Control of the Unit Owners' Association is to Plaintiffs' Detriment

105. The Individual Unit Owners re-allege each and every allegation contained in paragraphs 1 through 102 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

106. The Grand Sierra Resort Condominium Units ("GSR Condo Units") are part of the Grand Sierra Unit Owners Association, which is an apartment style hotel condominium development of 670 units in one 27-story building. The GSR Condo Units occupy floors 17 through 24 of the Grand Sierra Resort and Casino, a large-scale hotel casino, located at 2500 East Second Street, Reno, Nevada.

107. All of the Individual Unit Owners: hold an interest in, own, or have owned, one or more GSR Condo Units.

108. Defendants Gage Village and MEI-GSR own multiple GSR Condo Units.

109. Defendant MEI-GSR owns the Grand Sierra Resort and Casino.

110. Under the Declaration of Covenants, Conditions, Restrictions and Reservations of Easements for Hotel-Condominiums at Grand Sierra Resort ("CC&Rs"), there is one voting member for each unit of ownership (thus, an owner with multiple units has multiple votes).

111. Because Defendants MEI-GSR and Gage Village control more units of ownership than any other person or entity, they effectively control the Unit Owners' Association by having the ability to elect Defendant MEI-GSR's chosen representatives to the Board of Directors (the governing body over the GSR Condo Units).

112. As a result of Defendants MEI-GSR and Gage Village controlling the Unit Owners' Association, the Individual Unit Owners effectively have no input or control over the management of the Unit Owners' Association.

113. Defendants MEI-GSR and Gage Village have used, and continue to use, their control over the Defendant Unit Owners' Association to advance Defendants MEI-GSR and Gage Villages' economic objectives to the detriment of the Individual Unit Owners.

1 114. Defendants MEI-GSR and Gage Villages' control of the Unit Owners'
2 Association violates Nevada law as it defeats the purpose of forming and maintaining a
3 homeowners' association.

4 115. Further, the Nevada Division of Real Estate requires a developer to sell off the
5 units within 7 years, exit and turn over the control and management to the owners.

6 116. Under the CC&Rs, the Individual Unit Owners are required to enter into a "Unit
7 Maintenance Agreement" and participate in the "Hotel Unit Maintenance Program," wherein
8 Defendant MEI-GSR provides certain services (including, without limitation, reception desk
9 staffing, in-room services, guest processing services, housekeeping services, Hotel Unit
10 inspection, repair and maintenance services, and other services).

11 117. The Unit Owners' Association maintains capital reserve accounts that are funded
12 by the owners of GSR Condo Units. The Unit Owners' Association collects association dues of
13 approximately \$25 per month per unit, with some variation depending on a particular unit's
14 square footage.

15 118. The Individual Unit Owners pay for contracted "Hotel Fees," which include taxes,
16 deep cleaning, capital reserve for the room, capital reserve for the building, routine maintenance,
17 utilities, etc.

18 119. Defendant MEI-GSR has systematically allocated and disproportionately charged
19 capital reserve contributions to the Individual Unit Owners, so as to force the Individual Unit
20 Owners to pay capital reserve contributions in excess of what should have been charged.

21 120. Defendants MEI-GSR and Gage Development have failed to pay proportionate
22 capital reserve contribution payments in connection with their Condo Units.

23 121. Defendant MEI-GSR has failed to properly account for, or provide an accurate
24 accounting for the collection and allocation of the collected capital reserve contributions.

25 122. The Individual Unit Owners also pay "Daily Use Fees" (a charge for each night a
26 unit is occupied by any guest for housekeeping services, etc.).

27 123. Defendants MEI-GSR and Gage Village have failed to pay proportionate Daily
28 Use Fees for the use of Defendants' GSR Condo Units.

124. Defendant MEI-GSR has failed to properly account for the contracted “Hotel Fees” and “Daily Use Fees.”

125. Further, the Hotel Fees and Daily Use Fees are not included in the Unit Owners' Association's annual budget with other assessments that provide the Individual Unit Owners' the ability to reject assessment increases and proposed budget ratification.

126. Defendant MEI-GSR has systematically endeavored to increase the various fees that are charged in connection with the use of the GSR Condo Units in order to devalue the units owned by Individual Unit Owners.

127. The Individual Unit Owners' are required to abide by the unilateral demands of MEI-GSR, through its control of the Unit Owners' Association, or risk being considered in default under Section 12 of the Agreement, which provides lien and foreclosure rights pursuant to Section 6.10(f) of the CC&R's.

128. Defendants MEI-GSR and/or Gage Village have attempted to purchase, and purchased, units devalued by their own actions, at nominal, distressed prices when Individual Unit Owners decide to, or are effectively forced to, sell their units because the units fail to generate sufficient revenue to cover expenses.

129. Defendant MEI-GSR and/or Gage Village have, in late 2011 and 2012, purchased such devalued units for \$30,000 less than the amount they purchased units for in March of 2011.

130. The Individual Unit Owners effectively pay association dues to fund the Unit Owners' Association, which acts contrary to the best interests of the Individual Unit Owners.

131. Defendant MEI-GSR's interest in maximizing its profits is in conflict with the interest of the Individual Unit Owners. Accordingly, Defendant MEI-GSR's control of the Unit Owners' Association is a conflict of interest.

MEI-GSR's Rental Program

132. As part of Defendant MEI-GSR's Grand Sierra Resort and Casino business operations, it rents: (1) hotel rooms owned by Defendant MEI-GSR that are not condominium

1 units; (2) GSR Condo Units owned by Defendant MEI-GSR and/or Gage Village; and (3) GSR
2 Condo Units owned by the Individual Condo Unit Owners.

3 133. Defendant MEI-GSR has entered into a Grand Sierra Resort Unit Rental
4 Agreement with Individual Unit Owners.

5 134. Defendant MEI-GSR has manipulated the rental of the: (1) hotel rooms owned by
6 Defendant MEI-GSR; (2) GSR Condo Units owned by Defendant MEI-GSR and/or Gage
7 Village; and (3) GSR Condo Units owned by Individual Condo Unit Owners so as to maximize
8 Defendant MEI-GSR's profits and devalue the GSR Condo Units owned by the Individual Unit
9 Owners.

10 135. Defendant MEI-GSR has rented the Individual Condo Units for as little as \$0.00
11 to \$25.00 a night.

12 136. Yet, MEI-GSR has charged "Daily Use Fees" of approximately \$22.38, resulting
13 in revenue to the Individual Unit Owners as low as \$2.62 per night for the use of their GSR
14 Condo Unit (when the unit was rented for a fee as opposed to being given away).

15 137. By functionally, and in some instances actually, giving away the use of units
16 owned by the Individual Unit Owners, Defendant MEI-GSR has received a benefit because those
17 who rent the Individual Units frequently gamble and purchase food, beverages, merchandise, spa
18 services and entertainment access from Defendant MEI-GSR.

19 138. Defendant MEI-GSR has rented Individual Condo Units to third parties without
20 providing Individual Unit Owners with any notice or compensation for the use of their unit.

21 139. Further, Defendant MEI-GSR has systematically endeavored to place a priority on
22 the rental of Defendant MEI-GSR's hotel rooms, Defendant MEI-GSR's GSR Condo Units, and
23 Defendant Gage Village's Condo Units.

24 140. Such prioritization effectively devalues the units owned by the Individual Unit
25 Owners.

26 141. Defendants MEI-GSR and Gage Village intend to purchase the devalued units at
27 nominal, distressed prices when Individual Unit Owners decide to, or are effectively forced to,
28

1 sell their units because the units fail to generate sufficient revenue to cover expenses and have no
2 prospect of selling their persistently loss-making units to any other buyer.

3 142. Some of the Individual Unit Owners have retained the services of a third party to
4 market and rent their GSR Condo Unit(s).

5 143. Defendant MEI-GSR has systematically thwarted the efforts of any third party to
6 market and rent the GSR Units owned by the Individual Unit Owners.

7 144. Defendant MEI-GSR has breached the Grand Sierra Resort Unit Rental
8 Agreement with Individual Condo Unit Owners by failing to follow its terms, including but not
9 limited to, the failure to implement an equitable Rotational System as referenced in the
10 agreement.

11 145. Defendant MEI-GSR has failed to act in good faith in exercising its duties under
12 the Grand Sierra Resort Unit Rental Agreements with the Individual Unit Owners.

13 **FIRST CLAIM FOR RELIEF**
14 **(Petition for Appointment of Receiver as to**
15 **Defendant Grand Sierra Resort Unit Owners' Association)**

16 146. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
17 143 of this Complaint as though fully stated herein and hereby incorporate them by this reference
18 as if fully set forth below.

19 147. Because Defendant MEI-GSR and/or Gage Village controls more units of
20 ownership than any other person or entity, Defendant MEI-GSR and Gage Village effectively
21 control the Grand Sierra Resort Unit Owners' Association by having the ability to elect
22 Defendant MEI-GSR's chosen representatives to the Board of Directors (the governing body
23 over the GSR Condo Units).

24 148. As a result of Defendant MEI-GSR controlling the Grand Sierra Resort Unit-
25 Owners' Association, Plaintiffs effectively have no input or control over the management of the
26 Unit Owners' Association.

1 149. Defendant MEI-GSR has used, and continues to use, its control over the
2 Defendant Grand Sierra Resort Unit Owners' Association to advance Defendant MEI-GSR's
3 economic objectives to the detriment of Plaintiffs.

4 150. Plaintiffs are entitled to a receiver pursuant to NRS § 32.010.

5 151. Pursuant to NRS § 32.010, the appointment of a receiver is appropriate in this
6 case as a matter of statute and equity.

7 152. Unless a receiver is appointed, Defendant MEI-GSR will continue to control the
8 Unit Owners' Association to advance Defendant MEI-GSR's economic objections to the
9 detriment of Plaintiffs.

10 153. Without the grant of the remedies sought in this Complaint, Plaintiffs have no
11 adequate remedy at law to enforce their rights and Plaintiffs will suffer irreparable harm unless
12 granted the relief as prayed for herein.

13 **WHEREFORE**, Plaintiffs request judgment against the Defendant Grand Sierra Resort
14 Unit Owners' Association, as set forth below.

15 **SECOND CLAIM FOR RELIEF**
16 **(Intentional and/or Negligent Misrepresentation as to Defendant MEI-GSR)**

17 154. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
18 151 of this Complaint as though fully stated herein and hereby incorporate them by this reference
19 as if fully set forth below.

20 155. Defendant MEI-GSR made affirmative representations to Plaintiffs regarding the
21 use, rental and maintenance of the Individual Unit Owners' GSR Condo Units.

22 156. Plaintiffs are now informed and believe, and thereon allege, that these
23 representations were false.

24 157. The Defendant MEI-GSR knew that the affirmative representations were false, in
25 the exercise of reasonable care should have known that they were false, and/or knew or should
26 have known that it lacked a sufficient basis for making said representations.

1 158. The representations were made with the intention of inducing Plaintiffs to
2 contract with Defendant MEI-GSR for the marketing and rental of Plaintiffs' GSR Condo Units
3 and otherwise act, as set out above, in reliance upon the representations.

4 159. Plaintiffs justifiably relied upon the affirmative representations of Defendant
5 MEI-GSR in contracting with Defendant MEI-GSR for the rental of their GSR Condo Units.

6 160. As a direct and proximate result of Defendant MEI-GSR's misrepresentations,
7 Plaintiffs have been, and will continue to be, harmed in the manner herein.

8 161. Plaintiffs are further informed and believe, and thereon allege, that said
9 representations were made by Defendant MEI-GSR with the intent to commit an oppression
10 directed toward Plaintiffs by intentionally devaluing there GSR Condo Units. As a result,
11 Plaintiffs are entitled to an award of exemplary damages against the Defendant, according to
12 proof at the time of trial.

13 162. In addition, as a direct, proximate and necessary result of Defendant MEI-GSR's
14 bad faith and wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees and
15 thus Plaintiffs hereby seek an award of said costs and attorneys' fees as damages pursuant to
16 statute, decisional law, common law and this Court's inherent powers.

17 **WHEREFORE**, Plaintiffs request judgment against Defendant MEI-GSR, as set forth
18 below.

19 **THIRD CLAIM FOR RELIEF**
20 **(Breach of Contract as to Defendant MEI-GSR)**

21 163. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
22 160 of this Complaint as though fully stated herein and hereby incorporate them by this reference
23 as if fully set forth below.

24 164. Defendant MEI-GSR has entered into a Grand Sierra Resort Unit Rental
25 Agreement (the "Agreement") with Individual Condo Unit Owners.

26 165. Defendant MEI-GSR has breached the Agreement with Individual Unit Owners
27 by failing to follow its terms, including but not limited to, the failure to implement an equitable
28 Rotational System as referenced in the agreement.

1 166. The Agreement is an enforceable contract between Defendant MEI-GSR and
2 Plaintiffs.

3 167. Plaintiffs have performed all of their obligations and satisfied all of their
4 conditions under the Agreement, and/or their performance and conditions were excused.

5 168. As a direct and proximate result of Defendant MEI-GSR's breaches of the
6 Agreement as alleged herein, Plaintiffs have been, and will continue to be, harmed in the manner
7 herein alleged.

8 169. In addition, as a direct, proximate and necessary result of Defendant's bad faith
9 and wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees which they
10 are entitled to recover under the terms of the Agreement.

11 **WHEREFORE**, Plaintiffs request judgment against Defendant MEI-GSR, as set forth
12 below.

13 **FOURTH CLAIM FOR RELIEF**
14 **(Quasi-Contract/Equitable Contract/Detrimental Reliance as to Defendant MEI-GSR)**

15 170. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
16 167 of this Complaint as though fully stated herein and hereby incorporate them by this reference
17 as if fully set forth below.

18 171. Defendant MEI-GSR is contractually obligated to Plaintiffs. The contractual
19 obligations are based upon the underlying agreements between Defendant MEI-GSR and
20 Plaintiffs, and principles of equity and representations made by MEI-GSR.

21 172. Plaintiffs relied upon the representations of Defendant MEI-GSR and trusted
22 Defendant MEI-GSR with the marketing and rental of their GSR Condo Units.

23 173. Due to the devaluation of the GSR Condo Units caused by Defendant MEI-GSR's
24 actions, the expenses they have had to incur, and their inability to sell the Property in its current
25 state, Plaintiffs have suffered damages.

26 174. Defendant MEI-GSR was informed of, and in fact knew of, Plaintiffs' reliance
27 upon its representations.

1 185. Every contract in Nevada has implied into it, a covenant that the parties thereto
2 will act in the spirit of good faith and fair dealing.

3 186. Defendant MEI-GSR has breached this covenant by intentionally making false
4 and misleading statements to Plaintiffs, and for its other wrongful actions as alleged in this
5 Complaint.

6 187. As a direct and proximate result of Defendant MEI-GSR's breaches of the implied
7 covenant of good faith and fair dealing, Plaintiffs have been, and will continue to be, harmed in
8 the manner herein alleged.

9 188. In addition, as a direct, proximate and necessary result of Defendant MEI-GSR's
10 bad faith and wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees
11 and thus Plaintiffs hereby seek an award of said costs and attorneys' fees as damages pursuant to
12 statute, decisional law, common law and this Court's inherent powers.

13 **WHEREFORE**, Plaintiffs request judgment against Defendant MEI-GSR, as set forth
14 below.

15 **SIXTH CLAIM FOR RELIEF**
16 **(Consumer Fraud/Nevada Deceptive Trade Practices Act Against Defendant MEI-GSR)**

17 189. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
18 186 of this Complaint as though fully stated herein and hereby incorporate them by this reference
19 as if fully set forth below.

20 190. NRS § 41.600(1) provides that "[a]n action may be brought by any person who is
21 a victim of consumer fraud."

22 191. NRS § 41.600(2) explains, in part, "'consumer fraud' means . . . [a] deceptive
23 trade practice as defined in NRS §§ 598.0915 to 598.0925, inclusive."

24 192. NRS Chapter 598 identifies certain activities which constitute deceptive trade
25 practices; many of those activities occurred in MEI-GSR's dealings with Plaintiffs.

26 193. Defendant MEI-GSR, in the course of its business or occupation, knowingly made
27 false representations and/or misrepresentations to Plaintiffs.

1 194. Defendant MEI-GSR failed to represent the actual marketing and rental practices
2 implemented by Defendant MEI-GSR, as the Defendant was contractually and legally required
3 to do.

4 195. Defendant MEI-GSR's conduct, as described in this Complaint, constitutes
5 deceptive trade practices and is in violation of, among other statutory provisions and
6 administrative regulations, NRS §§ 598.0915 to 598.0925.

7 196. As a direct and proximate result of Defendant MEI-GSR's deceptive trade
8 practices, Plaintiffs have suffered damages.

9 197. Plaintiffs are also entitled to recover their costs in this action and reasonable
10 attorneys' fees, as allowed by law.

11 **WHEREFORE**, Plaintiffs request judgment against Defendant MEI-GSR, as set forth
12 below.

13 **SEVENTH CLAIM FOR RELIEF**
14 **(Declaratory Relief as to Defendant MEI-GSR)**

15 198. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
16 195 of this Complaint as though fully stated herein and hereby incorporate them by this reference
17 as if fully set forth below.

18 199. As alleged hereinabove, an actual controversy has arisen and now exists between
19 Plaintiffs and Defendant MEI-GSR, regarding the extent to which Defendant MEI-GSR has the
20 legal right to control the Grand Sierra Resort Unit-Owners' Association to advance Defendant
21 MEI-GSR's economic objections to the detriment of Plaintiffs.

22 200. The interests of Plaintiffs and Defendant MEI-GSR are completely adverse as to
23 the Plaintiffs.

24 201. Plaintiffs have a legal interest in this dispute as they are the owners of record of
25 certain GSR Condo Units.

26 202. This controversy is ripe for judicial determination in that Plaintiffs have alluded to
27 and raised this issue in this Complaint.

1 203. Accordingly, Plaintiffs seek a judicial declaration that Defendant MEI-GSR
2 cannot control the Grand Sierra Resort Unit-Owners' Association to advance Defendant MEI-
3 GSR's economic objectives to the detriment of Plaintiffs.

4 **WHEREFORE**, the Plaintiffs request judgment against Defendant MEI-GSR, as set
5 forth below.

6 **EIGHTH CLAIM FOR RELIEF**
7 **(Conversion as to Defendant MEI-GSR)**

8 204. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
9 201 of this Complaint as though fully stated herein and hereby incorporate them by this reference
10 as if fully set forth below.

11 205. Defendant MEI-GSR wrongfully committed a distinct act of dominion over the
12 Plaintiffs' property by renting their GSR Condo Units both at unreasonably low rates so as to
13 only benefit Defendant MEI-GSR, and also renting said units without providing any
14 compensation or notice to Plaintiffs.

15 206. Defendant MEI-GSR's acts were in denial of, or inconsistent with, Plaintiffs' title
16 or rights therein.

17 207. Defendant MEI-GSR's acts were in derogation, exclusion, or defiance of the
18 Plaintiffs' title or rights therein.

19 **WHEREFORE**, Plaintiffs request judgment against the Defendant MEI-GSR, as set
20 forth below.

21 **NINTH CLAIM FOR RELIEF**
22 **(Demand for Accounting as to Defendant MEI-GSR and Defendant Grand Sierra Unit**
23 **Owners Association)**

24 208. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
25 205 of this Complaint as though fully stated herein and hereby incorporate them by this reference
26 as if fully set forth below.

27 209. The Nevada Revised Statutes impose certain duties and obligations upon trustees,
28 fiduciaries, managers, advisors, and investors.

1 210. Defendant MEI-GSR has not fulfilled its duties and obligations.

2 211. Plaintiffs are informed and believe, and thereon allege, that they are interested
3 parties in the Defendant Grand Sierra Unit Owners Association and Defendant MEI-GSR's
4 endeavors to market, maintain, service and rent Plaintiffs' GSR Condo Units.

5 212. Among their duties, Defendant Grand Sierra Unit Owners Association and
6 Defendant MEI-GSR are required to prepare accountings of their financial affairs as they pertain
7 to Plaintiffs.

8 213. Defendant Grand Sierra Unit Owners Association and Defendant MEI-GSR have
9 failed to properly prepare and distribute said accountings.

10 214. Accordingly, Plaintiffs are entitled to a full and proper accounting.

11 **WHEREFORE**, Plaintiffs request judgment against the Defendants MEI-GSR and the
12 Grand Sierra Unit Owners Association, as set forth below.

13 **TENTH CLAIM FOR RELIEF**
14 **(Specific Performance Pursuant to NRS 116.112, Unconscionable Agreement)**

15 215. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
16 212 of this Complaint as though fully stated herein and hereby incorporate them by this reference
17 as if fully set forth below.

18 216. As alleged herein, Plaintiffs entered into one or more contracts with Defendant
19 MEI-GSR, including the Grand Sierra Resort Unit Rental Agreement and the Unit Maintenance
20 Agreement.

21 217. The Grand Sierra Resort Unit Rental Agreement is unconscionable pursuant to
22 NRS § 116.112 because MEI-GSR has manipulated the rental of the: (1) hotel rooms owned by
23 Defendant MEI-GSR; (2) GSR Condo Units owned or controlled by Defendant MEI-GSR; and
24 (3) GSR Condo Units owned by Individual Unit Owners so as to maximize Defendant MEI-
25 GSR's profits and devalue the GSR Condo Units owned by the Individual Unit Owners.

26 218. The Unit Maintenance Agreement is unconscionable pursuant to NRS § 116.112
27 because of the excessive fees charged and the Individual Unit Owners' inability to reject fee
28 increases.

1 **WHEREFORE**, Plaintiffs request judgment against the Defendant MEI-GSR, as set
2 forth below.

3 **ELEVENTH CLAIM FOR RELIEF**
4 **(Unjust Enrichment / Quantum Meruit against Defendant Gage Village**
5 **Development)**

6 219. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
7 216 of this Complaint as though fully stated herein and hereby incorporate them by this reference
8 as if fully set forth below.

9 220. Defendant Gage Village has unjustly benefited from MEI-GSR's devaluation of
10 the GSR Condo Units.

11 221. Defendant Gage Village has unjustly benefited from prioritization of its GSR
12 Condo Units under MEI-GSR's rental scheme to the immediate detriment of the Individual Unit
13 Owners.

14 222. It would be inequitable for the Defendant Gage Village to retain those benefits
15 without full and just compensation to the Individual Unit Owners.

16 **WHEREFORE**, Plaintiffs request judgment against the Defendant Gage Village, as set
17 forth below.

18 **TWELFTH CLAIM FOR RELIEF**
19 **(Tortious Interference with Contract and /or Prospective Business Advantage**
20 **against Defendants MEI-GSR and Gage Development)**

21 223. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
22 220 of this Complaint as though fully stated herein and hereby incorporate them by this reference
23 as if fully set forth below.

24 224. Individual Unit Owners have contracted with third parties to market and rent their
25 GSR Condo Units.

26 225. Defendant MEI-GSR has systematically thwarted the efforts of those third parties
27 to market and rent the GSR Condo Units owned by the Individual Unit Owners.

28 226. Defendant MEI-GSR has prioritized the rental of GSR Condo Units Owned by
Defendant Gage Village to the economic detriment of the Individual Unit Owners.

227. Defendant Gage Village has worked in concert with Defendant MEI-GSR in its scheme to devalue the GSR Condo Units and repurchase them.

WHEREFORE, Plaintiffs request judgment against the Defendants as follows:

1. For the appointment of a neutral receiver to take over control of Defendant Grand Sierra Unit Owners' Association;
2. For compensatory damages according to proof, in excess of \$10,000.00;
3. For punitive damages according to proof;
4. For attorneys' fees and costs according to proof;
5. For declaratory relief;
6. For specific performance;
7. For an accounting; and
8. For such other and further relief as the Court may deem just and proper.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that this document does not contain the social security number of any person.

RESPECTFULLY SUBMITTED this 26th day of March, 2013.

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, Nevada 89501

By: /s/ Jarrad C. Miller
G. David Robertson, Esq.
Jarrad C. Miller, Esq.
Jonathan J. Tew, Esq.
Attorneys for Plaintiffs

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Sean L. Brohawn, Esq.
50 W. Liberty Street, Suite 1040
Reno, NV 89501
Attorneys for Defendants / Counterclaimants

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EXHIBIT K TO
DOCKETING
STATEMENT

1085

Sean L. Brohawn, Esq.
Nevada Bar No. 7618
SEAN L. BROHAWN, PLLC
50 West Liberty Street, Suite 1040
Reno, Nevada 89501
Telephone: (775) 453-1505
Facsimile: (775) 453-1537
Sean@brohawnlaw.com

Attorneys for Defendants /
Counterclaimants

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; JANE
DUNLAP, individually; JOHN DUNLAP,
individually; BARRY HAY, individually;
MARIE-ANNE ALEXANDER, as Trustee of the
MARIE-ANNIE ALEXANDER LIVING
TRUST; MELISSA VAGUJHELYI and GEORGE
VAGUJHELYI, as Trustees of the GEORGE
VAGUJHELYI AND MELISSA VAGUJHELYI
2001 FAMILY TRUST AGREEMENT, U/T/A
APRIL 13, 2001; D' ARCY NUNN, individually;
HENRY NUNN, individually; MADELYN VAN
DER BOKKE, individually; LEE VAN DER
BOKKE, individually; DONALD SCHREIFELS,
individually; ROBERT R. PEDERSON,
individually and as Trustee of the PEDERSON
1990 TRUST; LOU ANN PEDERSON,
individually and as Trustee of the PEDERSON
1990 TRUST; LORI ORDOVER, individually;
WILLIAM A. HENDERSON, individually;
CHRISTINE E. HENDERSON, individually;
LOREN D. PARKER, individually; SUZANNE
C. PARKER, individually; MICHAEL IZADY,
individually; STEVEN TAKAKI, individually;
FARAD TORABKHAN, individually; SAHAR
TAVAKOL, individually; M&Y HOLDINGS,
LLC; JL&YL HOLDINGS, LLC; SANDI
RAINES, individually; R. RAGHURAM,
individually; USHA RAGHURAM, individually;
LORI K. TOKUTOMI, individually; GARRET
TOM, individually; ANITA TOM, individually;
RAMON FADRILAN, individually; FAYE
FADRILAN, individually; PETER K. LEE and

Case No.: CV12-02222

Dept. No.:10

ANSWER TO SECOND AMENDED
COMPLAINT AND COUNTERCLAIM

1 MONICA L. LEE, as Trustees of the LEE
2 FAMILY 2002 REVOCABLE TRUST;
3 DOMINIC YIN, individually; ELIAS SHAMIEH,
4 individually; JEFFREY QUINN, individually;
5 BARBARA ROSE QUINN individually;
6 KENNETH RICHE, individually; MAXINE
7 RICHE, individually; NORMAN CHANDLER,
8 individually; BENTON WAN, individually;
9 TIMOTHY D. KAPLAN, individually;
10 SILKSCAPE INC.; PETER CHENG, individually;
11 ELISA CHENG, individually; GREG A.
12 CAMERON, individually; TMI PROPERTY
13 GROUP, LLC; RICHARD LUTZ, individually;
14 SANDRA LUTZ, individually; MARY A.
15 KOSSICK, individually; MELVIN CHEAH,
16 individually; DI SHEN, individually; NADINE'S
17 REAL ESTATE INVESTMENTS, LLC; AJIT
18 GUPTA, individually; SEEMA GUPTA,
19 individually; FREDRICK FISH, individually;
20 LISA FISH, individually; ROBERT A.
21 WILLIAMS, individually; JACQUELIN PHAM,
22 individually; MAY ANN HOM, as Trustee of the
23 MAY ANN HOM TRUST; MICHAEL HURLEY,
24 individually; DOMINIC YIN, individually;
25 DUANE WINDHORST, individually; MARILYN
26 WINDHORST, individually; VINOD BHAN,
27 individually; ANNE BHAN, individually; GUY P.
28 BROWNE, individually; GARTH A. WILLIAMS,
individually; PAMELA Y. ARATANI, individually;
DARLENE LINDGREN, individually; LAVERNE
ROBERTS, individually; DOUG MECHAM,
individually; CHRISINE MECHAM, individually;
KWANGSOO SON, individually; SOO YEUN
MOON, individually; JOHNSON AKINDODUNSE,
individually; IRENE WEISS, as Trustee of the
WEISS FAMILY TRUST; PRAVESH CHOPRA,
individually; TERRY POPE, individually; NANCY
POPE, individually; JAMES TAYLOR,
individually; RYAN TAYLOR, individually; KI
HAM, individually; YOUNG JA CHOI,
individually; SANG DEE SOHN, individually;
KUK HYUNG (CONNIE), individually;
SANG (MIKE) YOO, individually; BRETT
MENMUIR, as Trustee of the CAYENNE TRUST;
WILLIAM MINER, JR., individually; CHANH
TRUONG, individually; ELIZABETH ANDERS
MECUA, individually; SHEPHERD MOUNTAIN,
LLC; ROBERT BRUNNER, individually; AMY
BRUNNER, individually; JEFF RIOPELLE,
individually; PATRICIA M. MOLL, individually;
DANIEL MOLL, individually; and DOE
PLAINTIFFS 1 THROUGH 10, inclusive,

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FADRILAN, individually; PETER K. LEE and
MONICA L. LEE, as Trustees of the LEE
FAMILY 2002 REVOCABLE TRUST;
JEFFREY QUINN, individually; BARBARA
ROSE QUINN individually; KENNETH RICHE,
individually; MAXINE RICHE, individually;
NORMAN CHANDLER, individually; BENTON
WAN, individually; TIMOTHY D. KAPLAN,
individually; SILKSCAPE INC.; GREG A.
CAMERON, individually; TMI PROPERTY
GROUP, LLC; NADINE'S REAL ESTATE
INVESTMENTS, LLC; ROBERT A.
WILLIAMS, individually; DUANE
WINDHORST, individually; MARILYN
WINDHORST, individually; GARTH A.
WILLIAMS, individually; PAMELA Y.
ARATANI, individually; DARLENE
LINDGREN, individually; SOO YEUN MOON,
individually; IRENE WEISS, as Trustee of the
WEISS FAMILY TRUST; PRAVESH
CHOPRA, individually; TERRY POPE,
individually; NANCY POPE, individually; KI
NAM CHOI, individually; YOUNG JA CHOI,
individually; KUK HYUNG (CONNIE) YOO,
individually; SANG (MIKE) YOO, individually;
BRETT MENMUIR, as Trustee of the
CAYENNE TRUST; CHANH TRUONG,
individually; SHEPHERD MOUNTAIN, LLC;
ROBERT BRUNNER, individually; AMY
BRUNNER, individually; JEFF RIOPELLE,
individually; and DOES 1
through 200, inclusive,

Counter-Defendants

ANSWER

Defendants, MEI-GSR HOLDINGS, LLC, a Nevada limited liability company ("GSR"),
GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation
("GSR UOA"), GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada Limited
Liability Company ("Gage Village") (collectively "Defendants"), by and through their counsel of
record, SEAN L. BROHAWN, PLLC, for their answer to Plaintiffs' Second Amended
Complaint, allege as follows:

1 1. Defendants are without knowledge or information sufficient to form a belief as to
2 the truth of the allegations contained in Paragraphs 1 through 99 and, therefore, the same are
3 denied.

4 2. Defendants admit the allegations of Paragraph 100.

5 3. Defendants deny the allegations of Paragraph 101.

6 4. Defendants deny the allegations of Paragraph 102.

7 5. Defendants admit the allegations of Paragraph 103.

8 6. Answering the allegations of Paragraph 104, Defendants are without knowledge
9 or information sufficient to form a belief as to the truth of the allegations contained in Paragraph
10 104 and, therefore, the same are denied.

11 7. Answering the allegations of Paragraph 105, Defendants incorporate the
12 preceding allegations of this Answer, as if the same were set forth at length herein.

13 8. Answering the allegations of paragraph 106, Defendants admit that the GSR
14 Condo Units are part of the Grand Sierra Resort Unit-Owners' Association, and that the GSR
15 Condo Units are located on floors 17 through 24 of the hotel tower of the Grand Sierra Resort &
16 Casino, at 2500 East Second Street, Reno, Nevada. Defendants deny the remaining allegations of
Paragraph 106.

17 9. Defendants admit the allegations of 107.

18 10. Defendants admit the allegations of Paragraph 108.

19 11. Defendants deny the allegations of Paragraph 109.

20 12. Defendants admit the allegations of Paragraph 110.

21 13. Defendants admit the allegations of Paragraph 111.

22 14. Defendants deny the allegations of Paragraph 112.

23 15. Defendants deny the allegations of Paragraph 113.

24 16. Defendants deny the allegations of Paragraph 114.

25 17. Defendants deny the allegations of Paragraph 115.

26 18. Defendants admit the allegations of Paragraph 116.

27 19. Answering the allegations of Paragraph 117, Defendants admit that the Unit
28 Owners' Association maintains a capital reserve account, and that the Unit Owners' Association
collects association dues that vary depending upon the size of the unit, as provided in the

1 CC&Rs. Defendants deny the remaining allegations of Paragraph 117.

2 20. Answering the allegations of Paragraph 118, Defendants admit that the Unit
3 Owners pay for certain taxes, unit cleaning services, capital reserve funding for components
4 within the units and for identified elements and systems of the building, routine maintenance of
5 each unit and utilities that service each unit. Defendants deny the remaining allegations of
6 Paragraph 118.

7 21. Defendants deny the allegations of Paragraph 119.

8 22. Defendants deny the allegations of Paragraph 120.

9 23. Defendants deny the allegations of Paragraph 121.

10 24. Defendants admit the allegations of Paragraph 122.

11 25. Defendants deny the allegations of Paragraph 123.

12 26. Defendants deny the allegations of Paragraph 124.

13 27. Answering the allegations of Paragraph 125, Defendants admit that certain fees
14 paid by Unit Owners are not included within the budget of the Unit Owners' Association, as
15 provided in the CC&Rs. Defendants deny the remaining allegations of Paragraph 125.

16 28. Defendants deny the allegations of Paragraph 126.

17 29. Defendants deny the allegations of Paragraph 127.

18 30. Defendants deny the allegations of Paragraph 128.

19 31. Defendants deny the allegations of Paragraph 129.

20 32. Defendants deny the allegations of Paragraph 130.

21 33. Defendants deny the allegations of Paragraph 131.

22 34. Answering the allegations of Paragraph 132, Defendants admit that GSR rents
23 GSR Condo Units owned by GSR and Gage Village, as well as some of the GSR Condo Units
24 owned by certain individual condo Unit owners. Defendants deny the remaining allegations of
Paragraph 132.

25 35. Answering the allegations of Paragraph 133, Defendants admit that GSR has
26 entered into Unit Rental Agreements with certain individual condo Unit owners. Defendants
27 deny the remaining allegations of Paragraph 133.

28 36. Defendants deny the allegations of Paragraph 134.

37. Defendants are without knowledge or information sufficient to form a belief as to

1 the truth of the allegations contained in Paragraph 135 and, therefore, the same are denied.

2 38. Defendants are without knowledge or information sufficient to form a belief as to
3 the truth of the allegations contained in Paragraph 136 and, therefore, the same are denied.

4 39. Defendants are without knowledge or information sufficient to form a belief as to
5 the truth of the allegations contained in Paragraph 137 and, therefore, the same are denied.

6 40. Defendants are without knowledge or information sufficient to form a belief as to
7 the truth of the allegations contained in Paragraph 138 and, therefore, the same are denied.

8 41. Defendants deny the allegations of Paragraph 139.

9 42. Defendants deny the allegations of Paragraph 140.

10 43. Defendants deny the allegations of Paragraph 141.

11 44. Defendants admit the allegations of Paragraph 142.

12 45. Defendants deny the allegations of Paragraph 143.

13 46. Defendants deny the allegations of Paragraph 144.

14 47. Defendants deny the allegations of Paragraph 145.

15 **FIRST CLAIM FOR RELIEF**

16 48. Answering the allegations of Paragraph 146, Defendants incorporate the
preceding allegations of this Answer, as if the same were set forth at length herein.

17 49. Defendants admit the allegations of Paragraph 147.

18 50. Defendants deny the allegations of Paragraph 148.

19 51. Defendants deny the allegations of Paragraph 149.

20 52. Defendants deny the allegations of Paragraph 150.

21 53. Defendants deny the allegations of Paragraph 151.

22 54. Defendants deny the allegations of Paragraph 152.

23 55. Defendants deny the allegations of Paragraph 153.

24 **SECOND CLAIM FOR RELIEF**

25 56. Answering the allegations of Paragraph 154, Defendants incorporate the
26 preceding allegations of this Answer, as if the same were set forth at length herein.

27 57. Defendants admit the allegations of Paragraph 155.

28 58. Defendants deny the allegations of Paragraph 156.

59. Defendants deny the allegations of Paragraph 157.

1 60. Defendants deny the allegations of Paragraph 158.

2 61. Defendants deny the allegations of Paragraph 159.

3 62. Defendants deny the allegations of Paragraph 160.

4 63. Defendants deny the allegations of Paragraph 161.

5 64. Defendants deny the allegations of Paragraph 162.

6 **THIRD CLAIM FOR RELIEF**

7 65. Answering the allegations of Paragraph 163, Defendants incorporate the
8 preceding allegations of this Answer, as if the same were set forth at length herein.

9 66. Answering the allegations of Paragraph 164, Defendants admit that GSR has
10 entered into Unit Rental Agreements with certain individual condo Unit owners. Defendants
11 deny the remaining allegations of Paragraph 164.

12 67. Defendants deny the allegations of Paragraph 165.

13 68. Answering the allegations of Paragraph 166, Defendants admit that GSR has
14 entered into individual Unit Rental Agreements with certain individual condo Unit owners, but
15 has not entered into a global agreement regarding Unit rental with Unit Owners as a whole.
16 Defendants admit that each individual existing rental agreement is enforceable. Defendants deny
17 the remaining allegations of Paragraph 166.

18 69. Defendants deny the allegations of Paragraph 167.

19 70. Defendants deny the allegations of Paragraph 168.

20 71. Defendants deny the allegations of Paragraph 169.

21 **FOURTH CLAIM FOR RELIEF**

22 72. Answering the allegations of Paragraph 170, Defendants incorporate the
23 preceding allegations of this Answer, as if the same were set forth at length herein.

24 73. Answering the allegations of Paragraph 171, Defendants admit that GSR and
25 Plaintiffs are contractually obligated to each other, under one or more types of agreements
26 between them. Defendants deny the remaining allegations of Paragraph 171.

27 74. Defendants are without knowledge or information sufficient to form a belief as to
28 the truth of the allegations contained in Paragraph 172 and, therefore, the same are denied.

 75. Defendants deny the allegations of Paragraph 173.

 76. Defendants deny the allegations of Paragraph 174.

1 77. Defendants deny the allegations of Paragraph 175.

2 78. Defendants deny the allegations of Paragraph 176.

3 79. Defendants deny the allegations of Paragraph 177.

4 80. Defendants deny the allegations of Paragraph 178.

5 81. Defendants deny the allegations of Paragraph 179.

6 82. Defendants deny the allegations of Paragraph 180.

7 **FIFTH CLAIM FOR RELIEF**

8 83. Answering the allegations of Paragraph 181, Defendants incorporate the
9 preceding allegations of this Answer, as if the same were set forth at length herein.

10 84. Answering the allegations of Paragraph 182, Defendants admit that GSR and
11 Plaintiffs are contractually obligated to each other, under one or more types of agreements
12 between them. Defendants deny the remaining allegations of Paragraph 182.

13 85. Answering the allegations of Paragraph 183, Defendants admit that individual
14 rental agreements require GSR to market and rent individually owned units. Defendants deny
15 the remaining allegations of Paragraph 183.

16 86. Defendants deny the allegations of Paragraph 184.

17 87. Defendants deny the allegations of Paragraph 185.

18 88. Defendants deny the allegations of Paragraph 186.

19 89. Defendants deny the allegations of Paragraph 187.

20 90. Defendants deny the allegations of Paragraph 188.

21 **SIXTH CLAIM FOR RELIEF**

22 91. Answering the allegations of Paragraph 189, Defendants incorporate the
23 preceding allegations of this Answer, as if the same were set forth at length herein.

24 92. Answering the allegations of Paragraph 190, Defendants assert that NRS 41.600
25 speaks for itself. Defendants deny the remaining allegations of Paragraph 190.

26 93. Answering the allegations of Paragraph 191, Defendants assert that NRS 41.600
27 speaks for itself. Defendants deny the remaining allegations of Paragraph 191.

28 94. Answering the allegations of Paragraph 192, Defendants assert that NRS Chapter
598 speaks for itself. Defendants deny the remaining allegations of Paragraph 192.

 95. Defendants deny the allegations of Paragraph 193.

1 96. Defendants deny the allegations of Paragraph 194.

2 97. Defendants deny the allegations of Paragraph 195.

3 98. Defendants deny the allegations of Paragraph 196.

4 99. Defendants deny the allegations of Paragraph 197.

5 **SEVENTH CLAIM FOR RELIEF**

6 100. Answering the allegations of Paragraph 198, Defendants incorporate the
7 preceding allegations of this Answer, as if the same were set forth at length herein.

8 101. Defendants are without knowledge or information sufficient to form a belief as to
9 the truth of the allegations contained in Paragraph 199 and, therefore, the same are denied.

10 102. Defendants are without knowledge or information sufficient to form a belief as to
11 the truth of the allegations contained in Paragraph 200 and, therefore, the same are denied.

12 103. Defendants are without knowledge or information sufficient to form a belief as to
13 the truth of the allegations contained in Paragraph 201 and, therefore, the same are denied.

14 104. Defendants are without knowledge or information sufficient to form a belief as to
15 the truth of the allegations contained in Paragraph 202 and, therefore, the same are denied.

16 105. Defendants are without knowledge or information sufficient to form a belief as to
17 the truth of the allegations contained in Paragraph 203 and, therefore, the same are denied.

18 **EIGHTH CLAIM FOR RELIEF**

19 106. Answering the allegations of Paragraph 204, Defendants incorporate the
20 preceding allegations of this Answer, as if the same were set forth at length herein.

21 107. Defendants deny the allegations of Paragraph 205.

22 108. Defendants deny the allegations of Paragraph 206.

23 109. Defendants deny the allegations of Paragraph 207.

24 **NINTH CLAIM FOR RELIEF**

25 110. Answering the allegations of Paragraph 208, Defendants incorporate the
26 preceding allegations of this Answer, as if the same were set forth at length herein.

27 111. Defendants are without knowledge or information sufficient to form a belief as to
28 the truth of the allegations contained in Paragraph 209 and, therefore, the same are denied.

 112. Defendants deny the allegations of Paragraph 210.

 113. Defendants are without knowledge or information sufficient to form a belief as to

1 the truth of the allegations contained in Paragraph 211 and, therefore, the same are denied.

2 114. Defendants deny the allegations of Paragraph 212.

3 115. Defendants deny the allegations of Paragraph 213.

4 116. Defendants deny the allegations of Paragraph 214.

5 **TENTH CLAIM FOR RELIEF**

6 117. Answering the allegations of Paragraph 215, Defendants incorporate the
7 preceding allegations of this Answer, as if the same were set forth at length herein.

8 118. Answering the allegations of Paragraph 216, Defendants admit that GSR and
9 Plaintiffs are contractually obligated to each other, under one or more types of agreements
10 between them. Defendants deny the remaining allegations of Paragraph 216.

11 119. Defendants deny the allegations of Paragraph 217.

12 120. Defendants deny the allegations of Paragraph 218.

13 **ELEVENTH CLAIM FOR RELIEF**

14 121. Answering the allegations of Paragraph 219, Defendants incorporate the
15 preceding allegations of this Answer, as if the same were set forth at length herein.

16 122. Defendants deny the allegations of Paragraph 220.

17 123. Defendants deny the allegations of Paragraph 221.

18 124. Defendants deny the allegations of Paragraph 222.

19 **TWELFTH CLAIM FOR RELIEF**

20 125. Answering the allegations of Paragraph 223, Defendants incorporate the
21 preceding allegations of this Answer, as if the same were set forth at length herein.

22 126. Defendants are without knowledge or information sufficient to form a belief as to
23 the truth of the allegations contained in Paragraph 224 and, therefore, the same are denied.

24 127. Defendants deny the allegations of Paragraph 225.

25 128. Defendants deny the allegations of Paragraph 226.

26 129. Defendants deny the allegations of Paragraph 227.

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1 **AFFIRMATIVE DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSE**

3 The Complaint fails to state a claim or cause of action against Defendants for which relief
4 can be granted.

5 **SECOND AFFIRMATIVE DEFENSE**

6 Plaintiffs have failed to mitigate their damages and, to the extent of such failure of such
7 mitigation, are precluded from recovery herein.

8 **THIRD AFFIRMATIVE DEFENSE**

9 Defendants allege that the incidents referred to in the Complaint, and any and all injuries
10 and damages resulting therefrom, if any occurred, were caused or contributed to by the acts or
11 omissions of a third party over whom Defendants had no control.

12 **FOURTH AFFIRMATIVE DEFENSE**

13 Defendants allege that the injuries or damages suffered by Plaintiffs, if any, were caused
14 in whole or in part by an independent intervening cause over which these Defendants had no
15 control.

16 **FIFTH AFFIRMATIVE DEFENSE**

17 The injuries or damages, if any, sustained by Plaintiffs were caused in whole, or in part,
18 through the negligence of others who were not the agents of these Defendants or acting on behalf
19 of the these Defendants.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 The injuries or damages, if any, suffered by Plaintiffs, were caused in whole, or in part,
22 or were contributed to by reason of the negligence of Plaintiffs.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 Plaintiffs' claims are barred by one or more statutes of limitations.

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 Plaintiffs assumed the risk of injury by virtue of its own conduct.

27 **NINTH AFFIRMATIVE DEFENSE**

28 Plaintiffs waived the causes of action asserted herein.

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WHEREFORE, Defendants pray that:

1. Plaintiffs' Complaint be dismissed, with prejudice.
2. For all litigation expenses, costs, attorney's fees, and other damages incurred in defending against the Complaint; and
3. For such other and further relief as the Court deems proper.

Counterclaimant MEI-GSR HOLDINGS, LLC, a Nevada limited liability company (“GSR”), for its counterclaim against Counter-Defendants, alleges as follows:

2. The Counter-Defendants referred to herein as DOES 1 through 200 are as yet unknown parties to the UMAs an/or CC&Rs referred to herein, or are current or former owners of one or more hotel-condominiums within the Project, and as such owe duties to GSR under such contracts, or based upon other causes of action. GSR will seek leave of this Court to amend this Counterclaim to name such parties at such time as their identities become known to GSR.

4. GSR has demanded that Counter-Defendants pay the full amount of dues and fees owed by them under the CC&Rs and/or the UMAs, but to date, Counter-Defendants have failed or refused to make all such payments.

13

1 information to GSR, as a source for payment of certain expenses incurred by the unit owner.

2 6. Some of the Counter-Defendants have failed or refused to provide active credit
3 card information to GSR, in compliance with the UMAs.

4 7. Prior to bringing this Counterclaim, GSR provided notice to each Counter-
5 Defendant of the above breaches of the UMAs, and provided each Counter-Defendant with at
6 least 60 days within which to cure such breaches, however, Counter-Defendants have failed or
7 refused to cure all such breaches.

8 **FIRST CAUSE OF ACTION**
9 (Breach of Contract)

10 8. GSR incorporates by reference the preceding Paragraphs of this Counterclaim as
11 if set forth at length herein.

12 9. GSR and Counter-Defendants are parties to the CC&Rs and UMAs.

13 10. GSR has performed all obligations required to be performed by it under the
14 CC&Rs and UMAs, or was excused from performance of such obligations due to Counter-
15 Defendants' conduct.

16 11. Counter-Defendants have breached the CC&Rs and UMAs by failing to pay all
17 sums when due under those agreements and/or by failing to provide active credit card
18 information as required by the UMAs, despite individual written demands by GSR.

19 12. Counter-Defendants' breaches of the CC&Rs and UMAs have foreseeably caused
20 GSR damages in an amount in excess of \$10,000, subject to proof at trial.

21 **SECOND CAUSE OF ACTION**
22 (Declaratory Relief)

23 13. GSR incorporates by reference the preceding paragraphs of this Counterclaim as
24 if set forth at length herein.

25 14. GSR asserts that the CC&Rs and UMAs are valid and existing contracts to which
26 each Counter-Defendant is a party, and that Counter-Defendants owe duties to GSR under those
27 contracts. On information and belief, Counter-Defendants deny that they owe duties to GSR
28 under the C&Rs and UMAs.

15. An actual controversy has arisen and now exists between GSR and Counter-Defendants concerning their respective rights, entitlements, obligations and duties under the CC&Rs and UMAs.

16. GSR therefore requests a declaratory judgment determining the parties' rights under the CC&Rs and UMAs.

THIRD CAUSE OF ACTION (Injunctive Relief)

17. GSR incorporates by reference the preceding paragraphs of this Counterclaim as if set forth at length herein.

18. Counter-Defendants are obligated under each UMA to provide active credit card information to GSR to help defray charges incurred under each UMA. Several of the Counter-Defendants have failed or refused to provide such credit card information to GSR.

19. GSR therefore requests that this Court enter a mandatory injunction requiring Counter-Defendants to provide active credit card information to GSR, as required by the UMAs.

WHEREFORE, GSR requests relief against Counter-Defendants as follows:

1. That GSR be granted judgment for all past due dues, fees, and related charges owed by Counter-Defendants under the CC&Rs and UMAs, in an amount in excess of \$10,000, subject to proof at trial;

2. That this Court enter a declaratory judgment determining the parties' rights under the CC&Rs and UMAs;

3. That this Court enter a mandatory injunction requiring Counter-Defendants to provide active credit card information to GSR, as required by the UMAs;

4. For costs of suit incurred herein, interest, and attorneys' fees; and

5. For such other and further relief as the Court deems proper.

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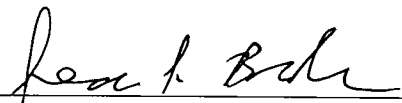
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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 23rd day of May, 2013,

SEAN L. BROHAWN, PLLC

By: 
Sean L. Brohawn, Esq.
Nevada Bar #7618

50 West Liberty Street, Suite 1040
Reno, NV 89501
Telephone: (775) 453-1505
Facsimile: (775) 453-1537
Sean@brohawnlaw.com

Attorneys for Defendants /
Counterclaimant

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of SEAN L. BROHAWN, PLLC, and that on the date shown below, I caused service of a true and correct copy of the attached:

ANSWER TO SECONDN AMENDED COMPLAINT AND COUNTERCLAIM

to be completed by:

- _____ personally delivering
- _____ sending via Federal Express or other overnight delivery service
- _____ depositing for mailing in the U.S. mail with sufficient postage affixed thereto
- _____ delivery via facsimile machine to fax no. _____
- X delivery via e-mail/Electronic court filing

addressed to:

G. David Robertson, Esq. (NV Bar No. 1001) (775) 329-5600 Attorneys for
Jarrad C. Miller, Esq. (NV Bar No. 7093) Plaintiffs
Jonathan J. Tew, Esq. (NV Bar No. 11874)
Robertson, Johnson, Miller & Williamson
50 West Liberty Street, Suite 600
Reno, Nevada 89501

DATED this 23rd day of May, 2013.

