

IN THE SUPREME COURT OF THE  
STATE OF NEVADA

ROWEN SEIBEL, an individual, and GR  
BURGR LLC, a Delaware limited liability  
company,

Appellants,

vs.

PHWLTV, LLC, a Nevada limited liability  
company; and GORDON RAMSAY, an  
individual,

Respondents.

Supreme Court Case No. 84934

District Court Case No.

A-17-751759-B

Electronically Filed

Jul 19 2022 02:20 p.m.

Elizabeth A. Brown

Clerk of Supreme Court

**APPENDIX OF EXHIBITS TO  
DOCKETING STATEMENT, CIVIL  
APPEALS**

**VOLUME 2 OF 2**

**TABLE OF CONTENTS**

<b><u>Document Title:</u></b>	<b><u>Volume No.:</u></b>	<b><u>Tab No.:</u></b>	<b><u>Page Nos.:</u></b>
Order Granting in Part, and Denying in Part, the Development Entities, Rowen Seibel, and Craig Green's Motion to Compel the Return, Destruction, or Sequestering of the Court's August 19, 2021 Minute Order Containing Privileged Attorney-Client Communications, filed November 3, 2021	2	16	0238-0246
Notice of Entry of Order Granting in Part, and Denying in Part, the Development Entities, Rowen Seibel, and Craig Green's Motion to Compel the Return, Destruction, or Sequestering of the Court's August 19, 2021 Minute Order Containing Privileged Attorney-Client Communications, filed November 3, 2021	2	17	0247-0258

<b><u>Document Title:</u></b>	<b><u>Volume No.:</u></b>	<b><u>Tab No.:</u></b>	<b><u>Page Nos.:</u></b>
Findings of Fact, Conclusions of Law, and Order Granting Gordon Ramsay's Motion for Summary Judgment, filed May 25, 2022	2	18	0259-0285
Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion for Summary Judgment No. 2, filed May 31, 2022	2	19	0286-0305
Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Gordon Ramsay's Motion for Summary Judgment, filed June 2, 2022	2	20	0306-0336
Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion for Summary Judgment No. 2, filed June 3, 2022	2	21	0337-0359

## INDEX

<b><u>Document Title:</u></b>	<b><u>Volume No.:</u></b>	<b><u>Tab No.:</u></b>	<b><u>Page Nos.:</u></b>
Answer to First Amended Complaint and Counterclaim, filed July 21, 2017	1	8	0114-0138
Defendant Gordon Ramsay's Answer and Affirmative Defenses to First Amended Verified Complaint, filed July 21, 2017	1	7	0092-0113
Findings of Fact, Conclusions of Law, and Order Granting Caesars Motion to Compel Documents Withheld on the Basis of Attorney Client Privilege Pursuant to the Crime-Fraud Exception, filed October 28, 2021	1	1 4	0201-0217
Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, filed June 8, 2021	1	12	0164-0180
Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion for Summary Judgment No. 2, filed May 31, 2022	2	1 9	0286-0305
Findings of Fact, Conclusions of Law, and Order Granting Gordon Ramsay's Motion for Summary Judgment, filed May 25, 2022	2	1 8	0259-0285
First Amended Verified Complaint, filed June 28, 2017	1	6	0057-0091

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Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion to Compel Documents Withheld on the Basis of Attorney-Client Privilege Pursuant to the Crime-Fraud Exception, filed June 8, 2021	1	13	0181-0200
Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Caesars Motion to Compel Documents Withheld on the Basis of Attorney Client Privilege Pursuant to the Crime-Fraud Exception, filed October 28, 2021	1	15	0218-0237
Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Gordon Ramsay's Motion for Summary Judgment, filed June 2, 2022	2	20	0306-0336
Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion for Summary Judgment No. 2, filed June 3, 2022	2	21	0337-0359

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Notice of Entry of Order Denying Plaintiff's Motion for Preliminary Injunction, filed April 13, 2017	1	3	0041-0046
Notice of Entry of Order Granting in Part and Denying in Part Planet Hollywood's Motion to Dismiss, filed June 16, 2017	1	5	0051-0056
Notice of Entry of Order Granting in Part, and Denying in Part, the Development Entities, Rowen Seibel, and Craig Green's Motion to Compel the Return, Destruction, or Sequestering of the Court's August 19, 2021 Minute Order Containing Privileged Attorney-Client Communications, filed November 3, 2021	2	17	0247-0258

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Order Denying Plaintiff's Motion for Preliminary Injunction, filed April 12, 2017	1	2	0037-0040
Order Granting in Part and Denying in Part Planet Hollywood's Motion to Dismiss, filed June 15, 2017	1	4	0047-0050
Order Granting in Part, and Denying in Part, the Development Entities, Rowen Seibel, and Craig Green's Motion to Compel the Return, Destruction, or Sequestering of the Court's August 19, 2021 Minute Order Containing Privileged Attorney-Client Communications, filed November 3, 2021	2	16	0238-0246
Plaintiff's Reply to Defendant PHWL V, LLC's Counterclaims, filed August 25, 2017	1	9	0139-0144
Verified Complaint and Demand for Jury Trial, filed February 28, 2017	1	1	0001-0036

## **CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ❖ KENNEDY and that on the 19<sup>th</sup> day of July, 2022, service of the foregoing was made by mandatory electronic service through the Nevada Supreme Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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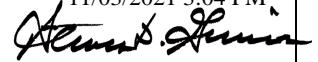
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8224 Blackburn Ave., #100	
Los Angeles, CA 90048	<i>Settlement Judge</i>

/s/ Susan Russo  
Employee of BAILEY ❖ KENNEDY

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants,

And

GR BURGR LLC, a Delaware limited liability  
company,

Nominal Plaintiff.

AND ALL RELATED CLAIMS.

Case No. A-17-751759-B

Dept. No. XVI

Consolidated with A-17-760537-B

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

This matter came before this Court on September 22, 2021, at 9:00 a.m., for a hearing on Rowen Seibel; Craig Green; Moti Partners, LLC; Moti Partners 16, LLC; LLTQ Enterprises, LLC; LLTQ Enterprises 16, LLC; TPOV Enterprises, LLC; TPOV Enterprises 16, LLC; FERG, LLC; FERG 16, LLC; R Squared Global Solutions, LLC, derivatively on behalf of DNT Acquisition LLC; and GR Burgr, LLC's (collectively, the "Development Parties") Motion to Compel the Return, Destruction, or Sequestering of the Court's August 19, 2021, Minute Order Containing Privileged Attorney-Client Communications (the "Clawback Motion").

### APPEARANCES

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

### ORDER

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

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

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

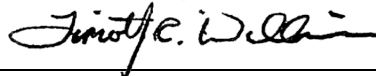
IT IS FURTHER ORDERED that, except as noted herein, the Minute Order may not be used for any other purpose pending a decision from the Nevada Supreme Court on the anticipated forthcoming writ related to the Crime-Fraud Motion.

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

3 IT IS FUTHER ORDERED that the Minute Order may be incorporated, by reference, in the  
4 forthcoming Findings of Fact, Conclusions of Law, and Order concerning the Crime-Fraud Motion.

5 IT IS SO ORDERED.

Dated this 3rd day of November, 2021



MH

CD9 496 9062 7A25  
Timothy C. Williams  
District Court Judge

6  
7  
8  
9  
10 Respectfully Submitted By:

Approved as to Form and Content:

11 BAILEY ♦ KENNEDY

PISANELLI BICE PLLC

12 By: /s/ Paul C. Williams

By: /s/ M. Magali Mercera

13 JOHN R. BAILEY  
14 DENNIS L. KENNEDY  
15 JOSHUA P. GILMORE  
16 PAUL C. WILLIAMS

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DEBRA L. SPINELLI (#9695)  
M. MAGALI MERCERA (#11742)  
400 South 7<sup>th</sup> Street, Suite 300  
Las Vegas, Nevada 89101

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

*Attorneys for Caesars*

19 Approved as to Form and Content:

Approved as to Form and Content:

20 LEBENSFELD SHARON & SCHWARTZ, P.C.

FENNEMORE CRAIG, P.C.

21 By: /s/ Alan M. Lebensfeld

By: /s/ John D. Tennert

22 ALAN M. LEBENSFELD (*Pro Hac Vice*)  
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Telephone: (775) 788-2200  
Facsimile: (775) 786-1177

27 *Attorneys for OHR*

*Attorneys for Ramsay*

## Paul Williams

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**From:** Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>  
**Sent:** Tuesday, November 2, 2021 5:09 PM  
**To:** Paul Williams; Magali Mercera  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Tennert, John; Cinda C. Towne; Susan Russo; Joshua Gilmore; Beavers, Wade; mconnot@foxrothschild.com; ksutehall@foxrothschild.com  
**Subject:** RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

You may. Thank you.

---

**From:** Paul Williams <PWilliams@baileykennedy.com>  
**Sent:** Tuesday, November 02, 2021 6:38 PM  
**To:** Magali Mercera <mmm@pisanellibice.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com  
**Subject:** RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Hi all,

I am following up on the proposed order (a copy of which is attached for your convenience). Please let us know—by Noon tomorrow—if we may affix your electronic signature and submit it to the Court.

Thank you,

Paul C. Williams  
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**From:** Paul Williams  
**Sent:** Monday, November 1, 2021 4:53 PM  
**To:** Magali Mercera <[mmm@pisanellibice.com](mailto:mmm@pisanellibice.com)>  
**Cc:** James Pisanelli <[jjp@pisanellibice.com](mailto:jjp@pisanellibice.com)>; Debra Spinelli <[dls@pisanellibice.com](mailto:dls@pisanellibice.com)>; Emily A. Buchwald <[eab@pisanellibice.com](mailto:eab@pisanellibice.com)>; Alan Lebensfeld <[Alan.Lebensfeld@lsandspc.com](mailto:Alan.Lebensfeld@lsandspc.com)>; Tennert, John

## Paul Williams

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**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Wednesday, November 3, 2021 10:42 AM  
**To:** Paul Williams  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Alan Lebensfeld; Tennert, John; Cinda C. Towne; Susan Russo; Joshua Gilmore; Beavers, Wade; mconnot@foxrothschild.com; ksutehall@foxrothschild.com  
**Subject:** RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Hi Paul –

You may apply my e-signature.

Thanks,

**M. Magali Mercera**

PISANELLI BICE, PLLC  
400 South 7th Street, Suite 300  
Las Vegas, Nevada 89101  
Telephone: (702) 214-2100  
Fax: (702) 214-2101  
[mmm@pisanellibice.com](mailto:mmm@pisanellibice.com) | [www.pisanellibice.com](http://www.pisanellibice.com)



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

CAUTION: This message is from an EXTERNAL SENDER.

Hi all,

I am following up on the proposed order (a copy of which is attached for your convenience). Please let us know—by Noon tomorrow—if we may affix your electronic signature and submit it to the Court.

Thank you,

Paul C. Williams  
Bailey Kennedy, LLP  
8984 Spanish Ridge Avenue

## Paul Williams

---

**From:** Tennert, John <jtennert@fennemorelaw.com>  
**Sent:** Wednesday, November 3, 2021 10:44 AM  
**To:** Paul Williams; Magali Mercera  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Alan Lebensfeld; Cinda C. Towne; Susan Russo; Joshua Gilmore; Beavers, Wade; mconnot@foxrothschild.com; ksutehall@foxrothschild.com  
**Subject:** RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents [FC-Email.FID7746767]

Hi Paul,

You my affix my e-signature.

Thanks,  
John

John D. Tennert III, Director

---

**FENNEMORE.**

7800 Rancharrah Parkway, Reno, NV 89511  
T: 775.788.2212 | F: 775.788.2213  
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---

**From:** Paul Williams <PWilliams@baileykennedy.com>  
**Sent:** Tuesday, November 2, 2021 3:38 PM  
**To:** Magali Mercera <mmm@pisanellibice.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com  
**Subject:** RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Hi all,

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Rowen Seibel, Plaintiff(s)

CASE NO: A-17-751759-B

7 vs.

DEPT. NO. Department 16

8 PHWL V LLC, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

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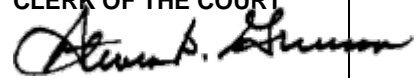
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TPOV Enterprises 16, LLC; FERG, LLC; FERG 16, LLC; Craig Green;  
R Squared Global Solutions, LLC, Derivatively on Behalf of DNT Acquisition,  
LLC; and GR Burgr, LLC*

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants,

And

GR BURGR LLC, a Delaware limited liability  
company,

Nominal Plaintiff.

AND ALL RELATED CLAIMS.

Case No. A-17-751759-B

Dept. No. XVI

Consolidated with A-17-760537-B

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

1 PLEASE TAKE NOTICE that an Order Granting in Part, and Denying in Part, the  
2 Development Entities, Rowen Seibel, and Craig Green's Motion to Compel the Return, Destruction,  
3 or Sequestering of the Court's August 19, 2021, Minute Order Containing Privileged Attorney-  
4 Client Communications was entered in the above-captioned action on November 3, 2021, a true and  
5 correct copy of which is attached hereto.

6 DATED this 3<sup>rd</sup> day of November, 2021.

7 BAILEY ♦ KENNEDY

8 By: /s/ Paul C. Williams

9 JOHN R. BAILEY

DENNIS L. KENNEDY

JOSHUA P. GILMORE

10 PAUL C. WILLIAMS

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

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 3<sup>rd</sup> day of November, 2021, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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

Email: JJP@pisanellibice.com  
DLS@pisanellibice.com  
MMM@pisanellibice.com  
*Attorneys for Defendants/Counterclaimant Desert Palace, Inc.; Paris Las Vegas Operating Company, LLC; PHWL, LLC; and Boardwalk Regency Corporation*

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

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

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BRETT SCHWARTZ  
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Red Bank, NJ 07701

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Brett.schwartz@lsandspc.com  
*Attorneys for Plaintiff in Intervention The Original Homestead Restaurant, Inc.*

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

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

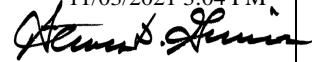
JEFFREY J. ZEIGER  
WILLIAM E. ARNAULT, IV  
**KIRKLAND & ELLIS LLP**  
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AARON D. LOVAAS  
**NEWMYER & DILLON**  
3800 Howard Hughes Pkwy.,  
#700  
Las Vegas, NV 89169

Via U.S. Mail and  
Email: aaron.lovaasndlf.com

/s/ Sharon Murnane  
Employee of BAILEY ♦ KENNEDY

  
CLERK OF THE COURT

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

**ORDR (CIV)**

JOHN R. BAILEY

Nevada Bar No. 0137

DENNIS L. KENNEDY

Nevada Bar No. 1462

JOSHUA P. GILMORE

Nevada Bar No. 11576

PAUL C. WILLIAMS

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**BAILEY ♦ KENNEDY**

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JGilmore@BaileyKennedy.com

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants,

And

GR BURGR LLC, a Delaware limited liability  
company,

Nominal Plaintiff.

AND ALL RELATED CLAIMS.

Case No. A-17-751759-B

Dept. No. XVI

Consolidated with A-17-760537-B

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

This matter came before this Court on September 22, 2021, at 9:00 a.m., for a hearing on Rowen Seibel; Craig Green; Moti Partners, LLC; Moti Partners 16, LLC; LLTQ Enterprises, LLC; LLTQ Enterprises 16, LLC; TPOV Enterprises, LLC; TPOV Enterprises 16, LLC; FERG, LLC; FERG 16, LLC; R Squared Global Solutions, LLC, derivatively on behalf of DNT Acquisition LLC; and GR Burgr, LLC's (collectively, the "Development Parties") Motion to Compel the Return, Destruction, or Sequestering of the Court's August 19, 2021, Minute Order Containing Privileged Attorney-Client Communications (the "Clawback Motion").

### APPEARANCES

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

### ORDER

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

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

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

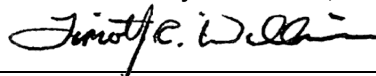
IT IS FURTHER ORDERED that, except as noted herein, the Minute Order may not be used for any other purpose pending a decision from the Nevada Supreme Court on the anticipated forthcoming writ related to the Crime-Fraud Motion.

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

3 IT IS FUTHER ORDERED that the Minute Order may be incorporated, by reference, in the  
4 forthcoming Findings of Fact, Conclusions of Law, and Order concerning the Crime-Fraud Motion.

5 IT IS SO ORDERED.

Dated this 3rd day of November, 2021



MH

CD9 496 9062 7A25  
Timothy C. Williams  
District Court Judge

6  
7  
8  
9  
10 Respectfully Submitted By:

Approved as to Form and Content:

11 BAILEY ♦ KENNEDY

PISANELLI BICE PLLC

12 By: /s/ Paul C. Williams

By: /s/ M. Magali Mercera

13 JOHN R. BAILEY  
14 DENNIS L. KENNEDY  
15 JOSHUA P. GILMORE  
16 PAUL C. WILLIAMS

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

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

*Attorneys for Caesars*

19 Approved as to Form and Content:

Approved as to Form and Content:

20 LEBENSFELD SHARON & SCHWARTZ, P.C.

FENNEMORE CRAIG, P.C.

21 By: /s/ Alan M. Lebensfeld

By: /s/ John D. Tennert

22 ALAN M. LEBENSFELD (*Pro Hac Vice*)  
23 140 Broad Street  
24 Red Bank, New Jersey 07701  
25 Telephone: (732) 530-4600  
26 Facsimile: (732) 530-4601

JOHN D. TENNERT (#11728)  
WADE BEAVERS (#13451)  
7800 Rancharrah Parkway  
Reno, Nevada 89511  
Telephone: (775) 788-2200  
Facsimile: (775) 786-1177

27 *Attorneys for OHR*

*Attorneys for Ramsay*



## Paul Williams

---

**From:** Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>  
**Sent:** Tuesday, November 2, 2021 5:09 PM  
**To:** Paul Williams; Magali Mercera  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Tennert, John; Cinda C. Towne; Susan Russo; Joshua Gilmore; Beavers, Wade; mconnot@foxrothschild.com; ksutehall@foxrothschild.com  
**Subject:** RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

You may. Thank you.

---

**From:** Paul Williams <PWilliams@baileykennedy.com>  
**Sent:** Tuesday, November 02, 2021 6:38 PM  
**To:** Magali Mercera <mmm@pisanellibice.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com  
**Subject:** RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Hi all,

I am following up on the proposed order (a copy of which is attached for your convenience). Please let us know—by Noon tomorrow—if we may affix your electronic signature and submit it to the Court.

Thank you,

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

\*\*\*\*\*This email is a confidential communication from Bailey Kennedy, LLP and is intended only for the named recipient(s) above and may contain information that is a trade secret, proprietary, privileged or attorney work product. If you have received this message in error, or are not the named or intended recipient(s), please immediately notify the sender at (702) 562-8820 and delete this email and any attachments from your workstation or network mail system.\*\*\*\*\*

---

**From:** Paul Williams  
**Sent:** Monday, November 1, 2021 4:53 PM  
**To:** Magali Mercera <[mmm@pisanellibice.com](mailto:mmm@pisanellibice.com)>  
**Cc:** James Pisanelli <[jjp@pisanellibice.com](mailto:jjp@pisanellibice.com)>; Debra Spinelli <[dls@pisanellibice.com](mailto:dls@pisanellibice.com)>; Emily A. Buchwald <[eab@pisanellibice.com](mailto:eab@pisanellibice.com)>; Alan Lebensfeld <[Alan.Lebensfeld@lsandspc.com](mailto:Alan.Lebensfeld@lsandspc.com)>; Tennert, John

## Paul Williams

---

**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Wednesday, November 3, 2021 10:42 AM  
**To:** Paul Williams  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Alan Lebensfeld; Tennert, John; Cinda C. Towne; Susan Russo; Joshua Gilmore; Beavers, Wade; mconnot@foxrothschild.com; ksutehall@foxrothschild.com  
**Subject:** RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Hi Paul –

You may apply my e-signature.

Thanks,

**M. Magali Mercera**

PISANELLI BICE, PLLC  
400 South 7th Street, Suite 300  
Las Vegas, Nevada 89101  
Telephone: (702) 214-2100  
Fax: (702) 214-2101  
[mmm@pisanellibice.com](mailto:mmm@pisanellibice.com) | [www.pisanellibice.com](http://www.pisanellibice.com)



*Please consider the environment before printing.*

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

---

**From:** Paul Williams <PWilliams@baileykennedy.com>  
**Sent:** Tuesday, November 2, 2021 3:38 PM  
**To:** Magali Mercera <mmm@pisanellibice.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com  
**Subject:** RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

CAUTION: This message is from an EXTERNAL SENDER.

Hi all,

I am following up on the proposed order (a copy of which is attached for your convenience). Please let us know—by Noon tomorrow—if we may affix your electronic signature and submit it to the Court.

Thank you,

Paul C. Williams  
Bailey Kennedy, LLP  
8984 Spanish Ridge Avenue

## Paul Williams

---

**From:** Tennert, John <jtennert@fennemorelaw.com>  
**Sent:** Wednesday, November 3, 2021 10:44 AM  
**To:** Paul Williams; Magali Mercera  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Alan Lebensfeld; Cinda C. Towne; Susan Russo; Joshua Gilmore; Beavers, Wade; mconnot@foxrothschild.com; ksutehall@foxrothschild.com  
**Subject:** RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents [FC-Email.FID7746767]

Hi Paul,

You my affix my e-signature.

Thanks,  
John

John D. Tennert III, Director

---

**FENNEMORE.**

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



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

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

---

**From:** Paul Williams <PWilliams@baileykennedy.com>  
**Sent:** Tuesday, November 2, 2021 3:38 PM  
**To:** Magali Mercera <mmm@pisanellibice.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com  
**Subject:** RE: Desert Palace v. Seibel: FFCL & Order Granting MCOM to Compel Crime-Fraud Documents

Hi all,

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Rowen Seibel, Plaintiff(s)

CASE NO: A-17-751759-B

7 vs.

DEPT. NO. Department 16

8 PHWL V LLC, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 11/3/2021

15 Robert Atkinson

robert@nv-lawfirm.com

16 Kevin Sutehall

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lit@pisanellibice.com

18 "John Tennert, Esq." .

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19 Brittnie T. Watkins .

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20 Dan McNutt .

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21 Debra L. Spinelli .

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22 Diana Barton .

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23 Lisa Anne Heller .

lah@cmlawnv.com

24 Matt Wolf .

mcw@cmlawnv.com

25 PB Lit .

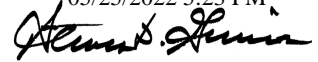
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3	Joshua Gilmore	jgilmore@baileykennedy.com
4	John Bailey	jbailey@baileykennedy.com
5	Bailey Kennedy, LLP	bkfederaldownloads@baileykennedy.com
6	Magali Mercera	mmm@pisanellibice.com
7	Cinda Towne	cct@pisanellibice.com
8	Daniel McNutt	drm@cmlawnv.com
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10	Nathan Rugg	nathan.rugg@bfkn.com
11	Steven Chaiken	sbc@ag-ltd.com
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15	Mark Connot	mconnot@foxrothschild.com
16	Joshua Feldman	jfeldman@certilmanbalin.com
17	Nicole Milone	nmilone@certilmanbalin.com
18	Karen Hippner	karen.hippner@lsandspc.com
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20	Emily Buchwald	eab@pisanellibice.com
21	Cinda Towne	Cinda@pisanellibice.com
22	Litigation Paralegal	bknotices@nv-lawfirm.com
23	Shawna Braselton	sbraselton@fennemorelaw.com
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Monice Campbell	monice@envision.legal
Wade Beavers	wbeavers@fclaw.com
Sarah Hope	shope@fennemorelaw.com

TAB 18

  
CLERK OF THE COURT

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

*Attorneys for Defendant Gordon Ramsay*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

PHWLTV, LLC a Nevada limited liability  
company; GORDON RAMSAY, an individual;

Defendant,

GR BURGR LLC, a Delaware limited liability  
company,

Nominal Defendant.

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

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

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER GRANTING GORDON  
RAMSAY'S MOTION FOR  
SUMMARY JUDGMENT**

Date of Hearing: January 20, 2022

Time of Hearing: 1:30 p.m.

AND ALL RELATED MATTERS.

On June 28, 2017, Rowen Seibel ("Mr. Seibel" or "Plaintiff"), filed his First Amended  
Verified Complaint ("First Amended Complaint") alleging causes of action derivatively on behalf  
of GR BURGR, LLC ("GRB") against Gordon Ramsay ("Mr. Ramsay"), for (1) breach of



1 contract; (2) contractual breach of the covenant of good faith and fair dealing; (3) unjust  
2 enrichment; and (4) civil conspiracy. Mr. Seibel also sought, as “Additional Requests for Relief,”  
3 specific performance and declaratory and injunctive relief. On February 25, 2021, Mr. Ramsay  
4 filed his Motion for Summary Judgment (“Ramsay Motion”) seeking judgment as a matter of law  
5 as to all of Mr. Seibel’s claims against him. On January 20, 2022, at 1:30 p.m., a hearing was held  
6 in Department XVI of the above-captioned court before the Honorable Timothy C. Williams with  
7 Joshua P. Gilmore and Paul C. Williams of the law firm of Bailey Kennedy present on behalf of  
8 Mr. Seibel; MOTI Partners, LLC; MOTI Partners 16, LLC; LLTQ Enterprises, LLC; LLTQ  
9 Enterprises 16, LLC; TPOV Enterprises, LLC’ TPOV Enterprises 16, LLC; FERG, LLC; FERG  
10 16, LLC; Craig Green; R Squared Global Solutions, LLC, derivatively on behalf of DNT  
11 Acquisition, LLC; and GR Burgr, LLC; John D. Tennert III and Wade Beavers of the law firm of  
12 Fennemore Craig, P.C., present on behalf of Mr. Ramsay; James J. Pisanelli and M. Magali  
13 Mercera of the law firm of Pisanelli Bice PLLC present on behalf of PHWLTV, LLC (“Planet  
14 Hollywood”), Desert Palace, Inc. (“Caesars Palace”), Paris Las Vegas Operating Company, LLC  
15 (“Paris”), and Boardwalk Regency Corporation d/b/a Caesars Atlantic City (“CAC,” and  
16 collectively, with Caesars Palace, Paris, and Planet Hollywood, “Caesars”); and Alan M.  
17 Lebensfeld of the law firm of Lebensfeld, Sharon & Schwartz, P.C. present on behalf of the Old  
18 Homestead Restaurant, Inc.

19 The Court, having reviewed the pleadings in this matter, as well as the Ramsay Motion,  
20 Mr. Ramsay’s Appendix to Defendant Gordon Ramsay’s Motion for Summary Judgment  
21 (“Ramsay Appendix”); Mr. Ramsay’s Request for Judicial Notice; Mr. Seibel’s Opposition to  
22 Gordon Ramsay’s Motion for Summary Judgment (“Seibel Opposition”); Mr. Seibel’s “Appendix  
23 of Exhibits to (1) the Development Entities and Rowen Seibel’s Opposition to Caesar’s Motion for  
24 Summary Judgment No. 1; (2) Opposition to Caesars’s Motion for Summary Judgment No. 2; and  
25 (3) Opposition to Gordon Ramsay’s Motion for Summary Judgment” (“Seibel Appendix”); Mr.  
26 Seibel’s Objections to Evidence Offered by Gordon Ramsay in Support of His Motion for  
27 Summary Judgment (“Objections to Evidence”); Mr. Ramsay’s Reply in Support of His Motion  
28 for Summary Judgment (“Reply”); and Mr. Ramsay’s Response to Rowen Seibel and GR

BURGR, LLC's Objections to Evidence Offered by Gordon Ramsay in Support of His Motion for Summary Judgment; and being familiar with the other papers on file in this matter, having heard the arguments of counsel at hearing, and being otherwise duly advised, **FINDS** and **ORDERS** as follows:

**I. Mr. Ramsay's Request for Judicial Notice**

In Mr. Ramsay's February 26, 2021, Request for Judicial Notice, he asks that the Court take judicial notice pursuant to NRS 47.130 of the factual matters set forth in certain documents included in the Ramsay Appendix filed in support of his Motion for Summary Judgment. Specifically, Mr. Ramsay asks that the Court take judicial notice of the matters of fact set forth in Ramsay Appendix Exhibit 10, (Information filed April 18, 2016 [ECF No. 1]); Ramsay Appendix Exhibit 16 (Notice of Intent to File Information filed February 29, 2016 [ECF No. 1]); Ramsay Appendix Exhibit 17 (Plea Hearing Transcript filed April 25, 2016 [ECF No. 7]); Ramsay Appendix Exhibit 18 (Ltr. From R. Fink to Hon. J. Pauley filed August 5, 2016 [ECF No. 14]); Ramsay Appendix Exhibit 19 (Ltr. From R. Fink to Hon. J. Pauley filed August 16, 2016 [ECF No. 16]); and Ramsay Appendix Exhibit 20 (Sentencing Hearing Transcript filed September 13, 2016 [ECF No. 18]). Mr. Ramsay argues that each of the documents identified is a publicly-available filing or order entered in the criminal proceedings in the United States District Court in the Southern District of New York, captioned *United States v. Seibel*, case number 16-cr-00279-WHP, available to the public through the U.S. government's PACER website for court filings, and that their contents are capable of accurate and ready determination pursuant to NRS 47.130(2).

Mr. Ramsay further requests that the Court take judicial notice of the matters of fact set forth in the documents attached to the Declaration of Timothy Dudderar, Esq., submitted as Ramsay Appendix Exhibit 26, consisting of (1) Memorandum of Opinion dated August 25, 2017; (2) Order Dissolving GR BURGR, LLC and Appointing Liquidating Trustee dated October 25, 2017; (3) Appointment Order dated December 11, 2017; (4) Report and Proposed Liquidation Plan for GR BURGR, LLC (Public Version) dated March 30, 2020; and (5) Letter Opinion of Vice Chancellor Joseph R. Slights dated October 13, 2020. Mr. Ramsay argues that each of these documents is a publicly-available filing or order entered in the corporate dissolution proceedings

1 in the Delaware Court of Chancery, captioned *In re GR Burgr, LLC*, C.A. No. 12825-VCS. Mr.  
2 Ramsay argues that the documents are presently available to the public through the online website  
3 of the Delaware Court of Chancery, that their contents are capable of accurate and ready  
4 determination pursuant to NRS 47.130(2), and that the dissolution proceedings are closely related  
5 to the contractual relationships among GRB, Mr. Seibel, and Planet Hollywood in this case.

6 The Court has not received a written opposition from Mr. Seibel to Mr. Ramsay's Request  
7 for Judicial Notice. Pursuant to this Court's local rules, "[f]ailure of the opposing party to serve  
8 and file written opposition may be construed as an admission that the motion ...is meritorious and  
9 a consent to granting the same." EDCR 2.20(e). Further, the Court agrees with Mr. Ramsay's  
10 arguments set forth in Mr. Ramsay's Request for Judicial Notice.

11 The Court finds that the contents of the documents identified in Mr. Ramsay's Request for  
12 Judicial Notice are the proper subject of judicial notice pursuant to NRS 47.130 to NRS 47.170,  
13 and does take judicial notice of the contents of those documents for the purposes of ruling on Mr.  
14 Ramsay's Motion for Summary Judgment.

## 15 II. Findings of Fact

16 1. Planet Hollywood operates a casino and resort in Las Vegas, the Planet Hollywood  
17 Resort & Casino. Planet Hollywood and its affiliates (collectively "Caesars") are gaming entities  
18 regulated by the State of Nevada.

19 2. Mr. Ramsay is a chef, businessperson, and media personality, who from time to  
20 time lends his personal name and brand to restaurant ventures.

21 3. Mr. Seibel is the Plaintiff in this action and at all relevant times was a member and  
22 manager of GRB.

23 4. In or around 2012, Mr. Seibel, Mr. Ramsay, and Planet Hollywood became  
24 involved, in various capacities, in the development of a new restaurant venture to open inside the  
25 Planet Hollywood Resort & Casino. The restaurant was to focus on serving hamburgers. The  
26 restaurant was to be named BURGR Gordon Ramsay ("BURGR Restaurant"). The trademark  
27 BURGR Gordon Ramsay was owned at all relevant times by GR US Licensing LP ("GRUS").  
28

1           5.       In connection with the formation of the restaurant, GRB was formed as a Delaware  
2 limited liability company in October 2012 by Mr. Seibel and GRUS. The management of GRB  
3 was governed by the Limited Liability Company Agreement of GR BURGR, LLC (“LLC  
4 Agreement”). GRUS and Seibel each own a 50% membership interest in GRB. Mr. Ramsay is  
5 not, personally, a member or manager of GRB.

6           6.       Contemporaneous with the formation of GRB, GRB and GRUS entered into a  
7 License Agreement (“GRUS License Agreement”) whereby GRUS conferred limited rights on  
8 GRB to use or sublicense the trademark BURGR Gordon Ramsay. The GRUS License  
9 Agreement clarified that GRUS and Mr. Ramsay “are in no way limited or restricted in using and  
10 exploiting any other trademark or trade name that includes the name ‘Gordon Ramsay’ nor from  
11 using the name Gordon Ramsay without limitation.” See Ramsay Appendix, Exhibit 5, GRUS  
12 License Agreement, at §1.1.

13           7.       GRB, Planet Hollywood, and Mr. Ramsay thereafter entered into a Development,  
14 Operation and License Agreement dated December 2012 (“Development Agreement”). Under the  
15 Development Agreement, GRB agreed to sublicense the BURGR Gordon Ramsay mark to Planet  
16 Hollywood for use in connection with the BURGR Restaurant, and Planet Hollywood agreed to  
17 pay to GRB a License Fee based on a percentage of gross sales from the BURGR Restaurant.

18           8.       Section 11.2 of the Development Agreement provided, among other things, that:

19           Privileged License.....[I]f [Planet Hollywood] shall determine, in [Planet  
20 Hollywood’s] sole and exclusive judgment, that any GR Associate is an  
21 Unsuitable Person, then immediately following notice by [Planet Hollywood] to  
22 Gordon Ramsay and GRB,(a) Gordon Ramsay and/or GRB shall terminate any  
23 relationship with the Person who is the source of such issue, (b) Gordon Ramsay  
24 and/or GRB shall cease the activity or relationship creating the issue to [Planet  
25 Hollywood]’s satisfaction, in [Planet Hollywood]’s sole judgment, or (c) if such  
activity or relationship is not subject to cure as set forth in the foregoing clauses  
(a) and (b), as determined by [Planet Hollywood] in its sole discretion, [Planet  
Hollywood] shall, without prejudice to any other rights or remedies of [Planet  
Hollywood] including at law or in equity, have the right to terminate this  
Agreement and its relationship with Gordon Ramsay and GRB.

26           See Ramsay Appendix, Exhibit 6, Development Agreement, at §11.2.

27           9.       The Development Agreement defined “Unsuitable Person” at Section 1 thereof to  
28 include any person “who is or might be engaged or about to be engaged in any activity which

1 could adversely impact the business or reputation of [Planet Hollywood] or its Affiliates.” *Id.* at  
2 §1 (“Unsuitable Person” defined). Mr. Seibel, as a member and manager of GRB, was a “GR  
3 Associate” as that term was defined in Section 2.2 of the Development Agreement.

4 10. Section 14.21 of the Development Agreement provided as follows:

5 Additional Restaurant Projects....If [Planet Hollywood] elects to pursue any  
6 venture similar to the Restaurant (i.e., any venture generally in the nature of a  
7 burger centric or burger themed restaurant), GRB shall, or shall cause an Affiliate  
8 to, execute a development, operation and license agreement generally on the same  
9 terms and conditions as this Agreement, subject only to revisions agreed to by the  
parties, including revisions as are necessary to reflect the differences in such  
things as location, Project Costs, Initial Capital Investment, Operating Expenses  
and the potential for Gross Restaurant Sales between the Restaurant and such  
other venture and any resulting Section 8.1 threshold adjustment.

10 See Ramsay Appendix, Exhibit 6, Development Agreement, at §14.21. The Development  
11 Agreement defined the “Restaurant” as “a restaurant featuring primarily burger centric food and  
12 beverages known as ‘BURGR Gordon Ramsay’” located on the premises at the Planet Hollywood  
13 Hotel & Casino. See *id.* at Recital C (defining the “Restaurant”).

14 Unbeknownst to GRUS and Mr. Ramsay at the time of the Development Agreement, Mr.  
15 Seibel had participated in an illegal scheme between 2004 and 2009 to conceal taxable income  
16 from the IRS. According to Seibel’s Criminal Information, from 2004 to 2008, Seibel (and his  
17 mother) deposited considerable sums into a numbered account that he maintained at Union Bank  
18 of Switzerland (“UBS”) that, for an additional fee, concealed his identity from U.S. tax  
19 authorities. See Ramsay Appendix, Exhibit 10, Information ¶¶ 4-7. Upon learning of a  
20 government investigation into UBS’s efforts to help wealthy Americans evade taxes, Seibel took  
21 the following actions to avoid detection: [1] he created a Panamanian shell company for himself,  
22 [2] he traveled to Switzerland to close the UBS account, [3] he opened an account in the name of  
23 the Panamanian shell company at another Swiss Bank, and [4] he deposited a \$900,000 check  
24 from UBS into the new account. See *id.* ¶¶ 8-9. During this time Seibel filed tax returns that failed  
25 to report his overseas income and falsely claimed that he did not have an interest or signatory  
26 authority over a financial account in a foreign country. See *id.* ¶¶ 10-11.

27 In 2009, Seibel applied for amnesty under the IRS’s Voluntary Disclosure Program. See *id.*  
28 ¶ 12. In furtherance of his scheme to defraud the United States Government, Seibel falsely stated

1 that he had been unaware, during the years 2004 and 2005, that his mother had made deposits into  
2 the account. *See id.* ¶ 13. Seibel also represented that he had been unaware, until he made  
3 inquiries of UBS in 2009, of the status of his account at UBS and had in fact over time reached  
4 “the conclusion that deposits (into his UBS account) had been stolen or otherwise disappeared.”  
5 *See id.* These statements were false. *See id.* Seibel did not disclose that he created a Panamanian  
6 shell company, opened another Swiss account for his benefit, and deposited the funds he claimed  
7 were “stolen” or “disappeared” into the account. *See id.*

8 11. At some time no later than 2013, Mr. Seibel became aware that he was the target of  
9 a federal criminal investigation into his tax improprieties. Between 2015 and March of 2016, Mr.  
10 Seibel was involved in discussions and negotiations with the United States Government relating to  
11 his crimes. On April 18, 2016, Mr. Seibel pleaded guilty to a one-count criminal information  
12 charging him with impeding the administration of the Internal Revenue Code relating to his  
13 criminal conduct.

14 12. On or about April 11, 2016, Mr. Seibel sent a letter to GRUS requesting GRUS’  
15 consent, pursuant to the terms of the LLC Agreement, to an assignment of Mr. Seibel’s  
16 membership interest in GRB to “The Seibel Family 2016 Trust” and to accept Mr. Seibel’s  
17 resignation as manager of GRB. Mr. Seibel did not explain in his letter the reason for the  
18 requested assignment and resignation. On or about April 14, 2016, GRUS responded and  
19 requested further information from Mr. Seibel about the proposed assignment. Mr. Seibel did not  
20 respond to GRUS’ request for further information or provide GRUS with the requested  
21 information.

22 13. On or about August 19, 2016, Judge William H. Pauley, III sentenced Mr. Seibel to  
23 one month of imprisonment, six months of home detention, and 300 hours of community service,  
24 and ordered restitution.

25 14. Mr. Ramsay first learned of Mr. Seibel’s felony conviction when it was reported in  
26 the press in or around late August 2016.

27 15. Mr. Seibel alleges that on August 30, 2016, he sent a letter to Planet Hollywood  
28 regarding his felony conviction and his intent to assign his interests in GRB to “The Seibel Family

2016 Trust.” In response, on September 2, 2016, Planet Hollywood informed Mr. Seibel that “The Seibel Family 2016 Trust” is not an acceptable assignee of his interests.

16. On September 2, 2016, Planet Hollywood’s counsel sent notice to GRB, Mr. Ramsay, and Mr. Seibel’s personal attorney stating that, in Planet Hollywood’s judgment, the conviction rendered Mr. Seibel an “Unsuitable Person” as that term is defined in the Development Agreement. Planet Hollywood demanded that GRB completely terminate any relationship with Mr. Seibel within ten days, and warned that if GRB failed to dissociate itself from Mr. Seibel, Planet Hollywood would terminate the Development Agreement.

17. On September 6, 2016, GRUS, as the 50% member of GRB, made a demand to Mr. Seibel that Mr. Seibel terminate his relationship with GRB. In response, on September 8, 2016, Mr. Seibel proposed to GRUS that he dissociate himself from GRB by transferring his membership interest to “The Seibel Family 2016 Trust.” Mr. Seibel made this request to GRUS notwithstanding the fact that Planet Hollywood had already informed him days earlier that “The Seibel Family 2016 Trust” is not an acceptable assignee.

18. On September 12, 2016, Planet Hollywood’s counsel confirmed to Mr. Seibel that Planet Hollywood had rejected Mr. Seibel’s proposed assignment to “The Seibel Family 2016 Trust” because it had determined, in its own judgment, that the proposed assignee and its associates would maintain an impermissible direct or indirect relationship with Mr. Seibel, thereby rendering the proposed assignee an “Unsuitable Person” under the Development Agreement.

19. In a letter dated September 12, 2016, GRUS renewed its demand to Mr. Seibel that Mr. Seibel completely disassociate from GRB to Caesars’ and Planet Hollywood’s satisfaction. Mr. Seibel did not dissociate from GRB. Mr. Seibel had the ability to voluntarily relinquish his interests in GRB and terminate his relationship with GRB, but Mr. Seibel refused. Mr. Ramsay did not prevent Mr. Seibel from dissociating from GRB.

20. On September 21, 2016, Planet Hollywood terminated the Development Agreement on grounds that GRB had failed to dissociate from Mr. Seibel, effectively ending the BURGR Restaurant enterprise. Neither Mr. Ramsay nor GRUS had any role in Planet Hollywood’s

1 suitability determination or Planet Hollywood's decision to terminate the Development  
2 Agreement.

3 21. On September 22, 2016, GRUS sent a letter notice to GRB that it was terminating  
4 the License Agreement between itself and GRB for use of the BURGR Gordon Ramsay mark. The  
5 termination of the License Agreement was effective as of Planet Hollywood's September 21, 2016  
6 termination of the Development Agreement.

7 22. In October 2016, GRUS commenced a proceeding for judicial dissolution of GRB  
8 in the Delaware Court of Chancery on grounds of the shareholder deadlock between Mr. Seibel  
9 and GRUS following Mr. Seibel's felony conviction. *See In re GR Burgr, LLC*, Delaware Court  
10 of Chancery C.A. No. 12825-VCS. On August 25, 2017, the Delaware Court of Chancery granted  
11 a dispositive motion by GRUS and dissolved GRB. *See In re: GR BURGR, LLC*, 2017 WL  
12 3669511, at \*7 ("While the working relationship between the parties [GRUS and Siebel] arguably  
13 had broken down prior to Seibel's felony conviction in 2016 ... whatever deadlock may have  
14 arisen prior to Seibel's conviction solidified to igneous rock thereafter.") In dissolving GRB, the  
15 Delaware Court noted that Mr. Seibel has no right to interfere with Mr. Ramsay's ability to engage  
16 "in some other burger venture that uses his name and likeness to capitalize on the celebrity and  
17 status Ramsay has spent his career building." *Id.* at, \*11. The Delaware Court held:

18 Seibel cannot reasonably expect that this court would indefinitely lock Ramsay in a  
19 failed joint venture and thereby preclude him from ever engaging in a business that  
20 bears resemblance to GRB—a restaurant business that exploits Ramsay's celebrity  
21 to sell one of the most popular and beloved food preparations in all of history. Any  
22 such result would be the antithesis of equitable.

22 *Id.* This Court agrees.

23 23. In February 2017, Planet Hollywood entered into a new contract to open a new  
24 restaurant at the Planet Hollywood Hotel & Casino called "Gordon Ramsay Burger" (the "New  
25 Restaurant"). Mr. Ramsay has licensed his personal name for use in connection with the New  
26 Restaurant. The New Restaurant does not use the "BURGR Gordon Ramsay" mark or the  
27 "BURGR" mark.  
28



24. Mr. Ramsay has not personally received payments from Planet Hollywood for the operations of the BURGR Restaurant or the New Restaurant, and Mr. Seibel has cited no evidence that Mr. Ramsay has otherwise received any direct (or even indirect) financial benefit from the operations of the New Restaurant.

25. Mr. Seibel initiated this matter by filing his Complaint on February 28, 2017, wherein he purported to assert various claims against Mr. Ramsay (as well as other claims) derivatively on behalf of GRB. Mr. Seibel filed his First Amended Verified Complaint on June 28, 2017, in which he again purported to assert derivative claims on behalf of GRB against Mr. Ramsay.

26. On March 8, 2021, the Delaware Court of Chancery issued an *Order Regarding Liquidating Receiver's Report and Recommendation* in the Delaware Proceedings, whereby it judicially assigned the derivative claims Mr. Seibel asserted on GRB's behalf in this proceeding against Mr. Ramsay to Mr. Seibel, personally, to pursue "directly on his own behalf as assignee of GRB (which entity shall be cancelled...) with all right, title, and interests in and to the [claims] held by GRB being hereby assigned and transferred to Seibel." *See* Seibel Appendix, Exhibit 525, Mar. 8, 2021 Order. The Delaware Order further provided "to the extent Seibel hereinafter pursues [the claims], he shall do so entirely at his own costs." *Id.* Thus, Mr. Seibel, as assignee, personally stepped into the shoes of GRB to pursue the damages claims arising out of or relating to the enforcement of the terms of the GRB Agreement. *See* Substitution of Attorneys for GR Burgr, LLC (filed March 17, 2021).

27. As of March 17, 2021, GRB was cancelled pursuant to a Certificate of Cancellation of Certificate of Formation filed by the Liquidating Trustee of GRB with the Secretary of State of Delaware. *See id.* GRB no longer exists.

### III. Legal Standard

Pursuant to Nevada Rule of Civil Procedure ("NRCP") 56(a), the court shall grant summary judgment on a claim if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to summary judgment as a matter of law. "A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for

1 the non-moving party.” *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 441-42  
2 (1993). When reviewing a motion for summary judgment, the evidence, and any reasonable  
3 inferences drawn from it, must be viewed in a light most favorable to the nonmoving party. *Wood*  
4 *v. Safeway*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). When a motion for summary  
5 judgment is made and supported as required by NRCP 56, the nonmoving party may not rest upon  
6 general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts  
7 demonstrating the existence of a genuine factual issue. *Pegasus v. Reno Newspapers, Inc.*, 118  
8 Nev. 706, 713-714, 57 P.3d 82, 87 (2002).

#### 9 IV. Mr. Seibel’s Claim For Breach of Contract

10 Mr. Ramsay moves for summary judgment on Mr. Seibel’s First Cause of Action for  
11 “Breaches of Contract” as set forth in the First Amended Complaint. Mr. Seibel brings his claim  
12 for breach of contract against Mr. Ramsay in his own name as GRB’s assignee. He has alleged  
13 that Mr. Ramsay breached the Development Agreement in a number of ways, including by,  
14 according to Mr. Seibel, continuing to do business with Planet Hollywood by participating in the  
15 operation of the New Restaurant; utilizing intellectual property of GRB in connection with the  
16 New Restaurant; “failing to enter into a separate written agreement with GRB or an affiliate”  
17 concerning the New Restaurant, “continuing to operate the Restaurant beyond the wind-up  
18 deadline in the Development Agreement”; and “[r]eceiving, directly or indirectly, monies intended  
19 for and owed to GRB under the Development Agreement.” *See* Am. Compl. at ¶71. Mr. Seibel  
20 argues more specifically that the alleged acts by Mr. Ramsay breached Section 14.21 of the  
21 Development Agreement, related to “Additional Restaurant Projects,” and Section 4.3.2 of the  
22 Development Agreement, related to “Certain Rights of [Planet Hollywood] Upon Expiration or  
23 Termination.” *See* Ramsay Appendix, Exhibit 6, §§4.3.3; 14.21.

24 Mr. Ramsay argues that summary judgment is appropriate because (a) he owed no  
25 contractual duties to GRB under the Development Agreement; (b) he did not accept or receive  
26 monies from Planet Hollywood that were owed to GRB; (c) the Development Agreement does not  
27 prohibit Mr. Ramsay from doing future business deals with Planet Hollywood following  
28 termination of the Development Agreement; (d) Mr. Ramsay is not using any “intellectual

property” of GRB, nor would his use of any such “intellectual property” be restricted by any express term of the Development Agreement; (e) Mr. Ramsay had no post-termination obligations with respect to a “wind-up” period; (f) Section 14.21 of the Development Agreement is an unenforceable agreement to agree; (g) Section 14.21 of the Development Agreement does not prohibit Mr. Ramsay from participating in the New Restaurant; and (h) enforcement of Section 14.21 of the Development Agreement was rendered impossible by GRB’s dissolution.

The Development Agreement contains a Nevada choice-of-law provision and none of the parties dispute that the validity, construction, performance and effect of the Development Agreement is governed by Nevada law. *See also* Ramsay Appendix at Ex. 6, Development Agreement, § 14.10.1. To survive summary judgment on his claim for breach of the Development Agreement under Nevada law, Mr. Seibel is required to show a genuine issue for trial as to each of the following elements: (1) the existence of a valid contract, (2) that GRB performed the contract or was excused from performance, (3) that Mr. Ramsay failed to perform the contract, and (4) that GRB suffered economic damages as a result of Mr. Ramsay’s alleged breach. *See State Dep’t of Transp. v. Eighth Jud. Dist. Ct.*, 133 Nev. 549, 554, 402 P.3d 677, 682 (2017).

“Breach of contract is the material failure to perform a duty arising under or imposed by agreement.” *Id.* (internal quotation marks omitted). “Contracts will be construed from the written language and enforced as written” and a court cannot “interpolate in a contract what the contract does not contain.” *Id.* (internal quotation marks omitted). “[W]hen a contract is clear, unambiguous, and complete, its terms must be given their plain meaning and the contract must be enforced as written; the court may not admit other evidence of the parties’ intent because the contract expresses their intent.” *Ringle v. Bruton*, 120 Nev. 82, 93, 86 P.3d 1032 (2004). Contract construction is a question of law and therefore “suitable for determination by summary judgment.” *Ellison v. California State Auto. Ass’n*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990).

As a threshold matter, the Court finds that while Mr. Ramsay is a party to the Development Agreement, his obligations thereunder are limited to those expressly set forth in the contract’s express language. The plain and unambiguous recitals to the Development Agreement state that Mr. Ramsay is a party to the Development Agreement “to the limited extent specifically provided

therein.” See Ramsay Appendix at Ex. 6, Development Agreement, Recitals. The Development Agreement imposes on Mr. Ramsay certain express obligations to provide consulting services, to permit the use of his personal name, and to make personal appearances in connection with the BURGR Restaurant. Mr. Ramsay’s limited obligations to Planet Hollywood are identified at Section 3.4.1, 7.1, and 7.2, as follows:

- 3.4.1 Menu Development. “Gordon Ramsay or members of his team shall develop the initial food and beverage menus of the Restaurant, the recipes for the same, and thereafter, Gordon Ramsay or members of his team shall revise the food and beverage menus of the Restaurant, and the recipes for same (the ‘Menu Development Services’).”
- 7.1 Initial Promotion. “During the period prior to the Opening Date, Gordon Ramsay shall, as reasonably required by PH ... engage in promotional activities for the Restaurant....” Ramsay agreed to visit the Restaurant before the Opening Date (“GR Promotional Visits”).
- 7.3 Subsequent Restaurant Visits. After the Opening Date, Ramsay agreed to visit the Restaurant for promotion purposes (“GR Restaurant Visits”).

See *id.* at §§ 3.4.1, 7.1, 7.2.

These are Mr. Ramsay’s only obligations under the Development Agreement. Absent from the plain language of the Development Agreement is any contractual obligation running from Mr. Ramsay, personally, to GRB, or any representation or warranty made by Mr. Ramsay to GRB.

The Court also finds that Section 14.21 of the Development Agreement—relied on by Mr. Seibel—is void and unenforceable as “an agreement to agree in the future.” “An agreement to agree at a future time is nothing and will not support an action for damages.” *City of Reno v. Silver State Flying Serv.*, 84 Nev. 170, 176, 438 P.2d 257, 261 (1968). “An agreement to agree on contract terms at a later date is not a binding contract in Nevada.” *Diamond Elec. Inc. v. Pace Pac. Corp.*, 346 Fed. App’x 186, 187 (9th Cir. 2009). The Court agrees with Mr. Ramsay that the plain language of Section 14.21 lacks any of the definite terms of a binding agreement, but instead leaves all material terms of any future, similar restaurant that Planet Hollywood may pursue open to further negotiation. The parties’ intent that the contract not bind them to a specific set of terms in the future is clear from the plain text stating that material terms of a future project, if any, must be “agreed to by the parties.” See Ramsay Appendix at Ex. 6, Development Agreement, §14.21. This void provision is separate and severable from the remainder of the Development Agreement

1 pursuant to Section 14.7 of the Development Agreement. *See id.* at §14.7 (“Severability”).  
2 Because Section 14.21 is unenforceable as a binding contractual provision, all of Mr. Seibel’s  
3 arguments predicated on that clause fail as a matter of law.

4 Moreover, even if Section 14.21 of the Development Agreement were enforceable, nothing  
5 in its plain language imposes any obligation whatsoever on Mr. Ramsay. If anything, the plain  
6 and unambiguous language of the provision compels GRB, (not Mr. Ramsay or Planet Hollywood  
7 or any other party) to take certain actions in the event Planet Hollywood “elects to pursue any  
8 venture similar to the” BURGR Restaurant. Mr. Ramsay, a party to the Development Agreement  
9 to the limited extent specifically provided therein, is not subject to a claim for breach of Section  
10 14.21 of the Development Agreement.

11 Mr. Seibel also argues that Mr. Ramsay breached Section 4.3.2(e) of the Development  
12 Agreement by allegedly using protected intellectual property of GRB in connection with the New  
13 Restaurant. The Court need not consider whether Mr. Seibel has submitted competent evidence of  
14 the existence of such intellectual property or its use (by Mr. Ramsay or others) in connection with  
15 the New Restaurant, as the Court agrees with Mr. Ramsay that Section 4.3.2(e) does not impose  
16 any obligations on Mr. Ramsay to take any action or to refrain from taking any action whatsoever.  
17 *See Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001) (courts are “not free to  
18 modify or vary the terms of an unambiguous agreement.”). Similarly, the Court agrees with Mr.  
19 Ramsay that the plain language of the Development Agreement does not impose any specific  
20 obligations on Mr. Ramsay with respect to the “wind-up” of the BURGR Restaurant described at  
21 Section 4.3.2(a) of the Development Agreement.

22 Mr. Seibel cites no other provision of the Development Agreement that would supposedly  
23 prevent Mr. Ramsay from doing any type of business with Planet Hollywood following Planet  
24 Hollywood’s termination of the Development Agreement, including that Mr. Seibel offers no  
25 contractual provision that should prevent Mr. Ramsay from permitting the use of his name in  
26 connection with the operation of the New Restaurant. The Court finds that GRB has no rights to  
27 Gordon Ramsay’s personal name, which only he (and not GRB) controls. As Mr. Seibel’s counsel  
28 conceded at hearing, Mr. Seibel does not argue that there is any legal basis to prevent Mr. Ramsay

1 from engaging in a restaurant business exploiting his celebrity that bears a resemblance to GRB's  
2 operation. *See* Tr. of Proceedings, 1/20/22; *Gordon Ramsay's Motion for Summary Judgment* at  
3 32:4-16. Accordingly, Mr. Seibel's claims that Mr. Ramsay has breached the Development  
4 Agreement by participating in the operation of the New Restaurant, doing business with Planet  
5 Hollywood on a new venture without including GRB, "using" any alleged intellectual property of  
6 GRB after termination of the Development Agreement, or failing to "wind up" the BURGR  
7 Restaurant after termination of the Development Agreement fail. The Court finds that there is no  
8 genuine issue of material fact and that Mr. Ramsay is entitled to judgment as a matter of law on  
9 the breach of contract claim pursuant to NRCP 56.<sup>1</sup>

10 **V. Mr. Seibel's Claim For Breach of the Covenant of Good Faith and Fair Dealing**

11 Mr. Ramsay moved for summary judgment on Mr. Seibel's Second Cause of Action for  
12 "Contractual Breach of the Implied Covenant of Good Faith and Fair Dealing" as set forth in the  
13 First Amended Complaint. Mr. Seibel brings his claim for contractual breach of the implied  
14 covenant of good faith and fair dealing in his own name as GRB's assignee. He has alleged that  
15 Mr. Ramsay breached the implied covenant of good faith and fair dealing in the Development  
16 Agreement in a number of ways, including by, according to Mr. Seibel, "[p]ursuing an arbitrary,  
17 capricious, and bad faith scheme with [Planet Hollywood] to oust Seibel and GRB from the  
18 [BURGR] Restaurant to increase the profits of himself or an affiliate"; "[e]nticing and  
19 encouraging [Planet Hollywood] to breach its contractual obligations to GRB"; "[r]efusing to  
20 allow assignments related to GRB to damage and harm GRB's contractual rights"; "[w]rongfully  
21 representing to [Planet Hollywood] that Seibel is an unsuitable person and that his affiliation with  
22 GRB cannot be cured"; and "[c]laiming Nevada gaming law and authorities would prohibit [Planet  
23 Hollywood] from paying any monies to GRB or from allowing Seibel to assign his interest in  
24 GRB to The Seibel Family 2016 Trust...."<sup>2</sup> *See* Am. Compl. at ¶77.

25  
26 <sup>1</sup> To the extent Mr. Seibel has alleged or argued any other supposed conduct by Mr. Ramsay that  
27 Mr. Seibel claims has breached the Development Agreement—including Mr. Seibel's  
28 allegations that Mr. Ramsay received "monies intended for and owed to GRB under the  
Development Agreement"—the Court has considered the record and the plain and unambiguous  
contract provisions at issue and finds that no reasonable jury could return a verdict in Mr.  
Seibel's favor on such claims, and therefore summary judgment is appropriate.

<sup>2</sup> To the extent Mr. Seibel has alleged other conduct in support of his claim for breach of the

1 Mr. Ramsay argues that summary judgment is appropriate because Mr. Seibel's claim is  
2 essentially a recast argument that Planet Hollywood improperly terminated the Development  
3 Agreement after deeming him an "Unsuitable Person." Mr. Ramsay notes the unambiguous  
4 language of the Development Agreement provides that Planet Hollywood had "sole and exclusive"  
5 discretion to determine "unsuitability" and to terminate the Development Agreement as it saw fit,  
6 and that Mr. Ramsay had no contractual or other role in Planet Hollywood's determination. Mr.  
7 Ramsay further argues that the Development Agreement imposes no obligation on Mr. Ramsay to  
8 assist Mr. Seibel with his attempt to transfer his interest in GRB to his family trust. This Court  
9 agrees.

10 The Court will apply Nevada law to this claim based on the choice of law provision in the  
11 Development Agreement. *See* Ramsay Appendix, Ex. 6, Development Agreement, § 14.10.1.  
12 Under Nevada law, a contractual breach of the implied covenant of good faith and fair dealing  
13 may occur where "one party performs a contract in a manner that is unfaithful to the purpose of  
14 the contract and the justified expectations of the other party are thus denied." *Hilton Hotels Corp.*  
15 *v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991). This claim lies only  
16 "[w]here the terms of a contract are literally complied with but one party to the contract  
17 deliberately contravenes the intention and spirit of the contract." *Id.* The "implication" of the  
18 covenant of good faith and fair dealing arises from a concern for advancing the "intention and  
19 spirit" of the contracting parties. *Id.*

20 The implied covenant may not be used to imply a term that is contradicted by an express  
21 term of the contract. *See, e.g., Kucharyk v. Regents of Univ.y of Cal.*, 946 F. Supp. 1419, 1432  
22 (N.D. Cal. 1996) (applying California law); *see also, e.g., Sessions, Inc. v. Morton*, 491 F.2d 854,  
23 857-858 (9th Cir. 1974) ("This covenant of good faith and fair dealing imposes a duty on each  
24

25 implied covenant of good faith and fair dealing in the Development Agreement that is  
26 duplicative of conduct he has alleged constitutes a breach of the Development Agreement, such  
27 conduct cannot serve as the basis for a claim for breach of the implied covenant, and summary  
28 judgment is appropriate as to such claims. *Cf. Am. Compl. at ¶71, ¶77; see also Ruggieri v.*  
*Hartford Ins. Co. of the Midwest*, Case No. 2:13-cv-00071-GMN-GWF, 2013 WL 2896967 at  
\*3 (D. Nev. June 12, 2013) ("[A]llegations that a defendant violated the actual terms of a  
contract are incongruent with [a claim for breach of the implied covenant of good faith and fair  
dealing] and insufficient to maintain a claim.").



1 party to do everything that the contract presupposes will be done in order to accomplish the  
2 purpose of the contract. However, this implied obligation must arise from the language used or it  
3 must be indispensable to effectuate the intention of the parties.”) (internal quotations omitted); *see*  
4 *also, Restatement (Second) of Contracts* § 205 (1981).

5 As noted above the intention and spirit of the contracting parties to the Development  
6 Agreement is demonstrated by the express language they chose to include in their contract. *See,*  
7 *e.g., Ringle*, 120 Nev. at 93, 86 P.3d at 1039. Here, the intention and spirit of the parties, as  
8 evidenced by the contractual language, afforded Planet Hollywood the “sole and exclusive  
9 judgment” to deem Mr. Seibel unsuitable under these circumstances, to reject his proposed  
10 “dissociation” from GRB by transfer of his membership interest to his family trust, and to  
11 terminate the Development Agreement upon GRB’s failure to timely comply with Planet  
12 Hollywood’s demands to terminate its relationship with Mr. Seibel. *See* Ramsay Appendix at Ex.  
13 6, Development Agreement at 25-26, § 11.1, 11.2. Similarly, the parties expressed their intention  
14 in the plain language of the Development Agreement that Mr. Ramsay’s obligations would be  
15 “limited” to those “specifically provided” in the Development Agreement. *See, e.g.,* Ramsay  
16 Appendix, Exhibit 6, Development Agreement at Recitals.

17 To hold that Mr. Ramsay should have an implied obligation to intervene in Planet  
18 Hollywood’s suitability determination as to Mr. Seibel, or to lobby on Mr. Seibel’s behalf for the  
19 benefit of GRB, as Mr. Seibel appears to suggest, would be to imply terms into the Development  
20 Agreement that contradict its express terms, which the Court cannot do. The Court finds that Mr.  
21 Ramsay had no obligation to take, or to refrain from taking, any particular action with respect to  
22 Planet Hollywood’s unsuitability determination or demand for dissociation to GRB.

23 Mr. Ramsay also had no express or implied contractual obligation to approve Mr. Seibel’s  
24 proposed transfer of his interest in GRB to Mr. Seibel’s family trust, or to somehow otherwise  
25 assist Mr. Seibel in selling his membership interest, as Mr. Seibel appears to argue. In fact, as Mr.  
26 Ramsay is not a member or manager of GRB, nor a party to the GRB LLC Agreement, he had no  
27 role or authority whatsoever in approving or disapproving a proposed transfer of interest by one of  
28



1 its members. Mr. Seibel made that request to GRUS, and more specifically GRUS' appointed  
2 manager of GRB, Stuart Gillies, who are not parties to this lawsuit.<sup>3</sup>

3 Moreover, the chain of events that led to Planet Hollywood's termination of the  
4 Development Agreement indisputably started with Mr. Seibel's own criminal conduct. His  
5 pleading guilty to a tax fraud felony, and subsequent refusal to dissociate himself from GRB to  
6 Planet Hollywood's satisfaction, severely altered GRB's "justified expectations" under its  
7 contract. Indeed, with one of its members acknowledging guilt of a serious criminal perpetration  
8 of fraud, GRB had no justified expectation that it could continue to do business with Planet  
9 Hollywood absent immediate and material corrective action by Mr. Seibel, which Mr. Seibel failed  
10 to undertake. The ultimate result here—the termination of the Development Agreement and  
11 closing of the BURGR Restaurant—is not attributable to Mr. Ramsay's alleged actions or  
12 nonactions. The Court finds that Planet Hollywood validly exercised its "absolute discretion" and  
13 determined in its "sole and exclusive judgment" that Mr. Seibel, and by extension GRB, is an  
14 "Unsuitable Person," a consequence that is entirely of Mr. Seibel's own doing.

15 Because Mr. Seibel cannot identify any implied obligation under the Development  
16 Agreement that Mr. Ramsay could have breached, and cannot show that any action of Mr. Ramsay  
17 caused GRB's "justified expectations" to be denied, his claim must fail. The Court finds that there  
18 is no genuine issue of material fact and that Mr. Ramsay is entitled to judgment as a matter of law  
19 on the claim for breach of the covenant of good faith and fair dealing pursuant to NRCP 56.

## 20 VI. Mr. Seibel's Claim for Unjust Enrichment

21 Mr. Ramsay moves for summary judgment on Mr. Seibel's Third Cause of Action for  
22 "Unjust Enrichment" as set forth in the First Amended Complaint. Mr. Seibel brings his claim for  
23

---

24 <sup>3</sup> The Court rejects Mr. Seibel's argument that GRUS (and by implication Mr. Ramsay) had any  
25 obligation to approve Mr. Seibel's proposed membership assignment. Paragraph 10.1(a) of  
26 GRB's LLC Agreement governs "Inter-Vivos Transfer" of GRB's membership interests. *See*  
27 Ramsay Appendix, Ex. 2 at ¶ 10.1(a). There is nothing in Paragraph 10.1(a) of GRB's LLC  
28 Agreement that required GRUS or GRUS's appointed manager to consider, much less approve,  
Mr. Seibel's request to transfer his membership interests in GRB to his family trust. Following  
Mr. Seibel's felony conviction neither Mr. Ramsay nor GRUS had any obligation, contractual or  
otherwise, to consider or approve Mr. Seibel's proposed assignment. In any event, Mr. Seibel's  
requested assignment would not have cured GRB's unsuitability because Planet Hollywood had  
already determined that The Seibel Family Trust 2016 was not a suitable assignee.

1 unjust enrichment in his own name as GRB’s assignee. He has alleged that Mr. Ramsay has been  
2 unjustly enriched because, according to Mr. Seibel, Mr. Ramsay “directly or indirectly, has  
3 wrongfully accepted and retained monies intended for and owed to GRB under the Development  
4 Agreement.” *See* Am. Compl. at ¶84. More specifically, Mr. Seibel argues that Mr. Ramsay has  
5 been unjustly enriched because Mr. Ramsay is “operating the same restaurant in the same space,”  
6 and that GRB is entitled to “fair value” from the operation of the New Restaurant, regardless  
7 whether Section 14.21 or any other provision of the Development Agreement is enforceable.

8 Mr. Ramsay argues that summary judgment is appropriate because the parties’ relationship  
9 is comprehensively governed by contract—the Development Agreement—and because Mr. Seibel  
10 cannot show that GRB conferred any benefit upon Mr. Ramsay or that Mr. Ramsay derived any  
11 benefit from the operation of the New Restaurant that has been “unjust.”

12 “The phrase ‘unjust enrichment’ is used in law to characterize the result or effect of a  
13 failure to make restitution or, or for, property or benefits received under such circumstances as to  
14 give rise to a legal or equitable obligation to account therefor.” 66 Am. Jur. 2d, *Restitution*, § 3  
15 (1973). Under Nevada law, “[u]njust enrichment exists when the plaintiff confers a benefit on the  
16 defendant, the defendant appreciates such benefit, and there is acceptance and retention by the  
17 defendant of such benefit under circumstances such that it would be inequitable for him to retain  
18 the benefit without payment of the value thereof.” *Certified Fire Prot., Inc. v. Precision Constr.,*  
19 *Inc.*, 128 Nev. 371, 381, 283 P.3d 250, 257 (2012). “For an enrichment to be inequitable to retain,  
20 the person conferring the benefit must have a reasonable expectation of payment and the  
21 circumstances are such that equity and good conscience require payment for the conferred  
22 benefit.” *Korte Constr. Co. v. State on Relation of Bd. of Regents of Nev. Sys. of Higher Educ.*,  
23 492 P.3d 540, 544, 137 Nev. Adv. Op. 37 (2021) (citing *Certified Fire Prot.*, 128 Nev. at 381, 283  
24 P.3d at 257)).

25 “An action based on a theory of unjust enrichment is not available when there is an  
26 express, written contract, because no agreement can be implied when there is an express  
27 agreement.” *Leasepartners Corp. v. Robert L. Brooks Trust Dated Nov. 12, 1975*, 113 Nev. 747,  
28 755-756, 942 P.2d 182, 187 (1997).

Here, the Court agrees with Mr. Ramsay that his relationship with GRB—including his obligations to GRB (or lack thereof) with respect to Mr. Ramsay’s future business ventures—were comprehensively governed by the parties’ contract, the Development Agreement. As described elsewhere in this Order, and as conceded by Mr. Seibel’s counsel at hearing, the plain language of the Development Agreement did not prohibit Mr. Ramsay from personally participating in the operation of the New Restaurant, or from participating in any future restaurant venture with Planet Hollywood involving Mr. Ramsay’s personal name. The Development Agreement does explicitly address issues relating to “intellectual property” and to GRB’s marks and materials, including at Sections 6. (“Intellectual Property License”); 6.2.1 (“Ownership...by GRB or Gordon Ramsay”); 6.2.2 (“Ownership...by [Planet Hollywood]”); and 6.5 (“Gordon Ramsay’s Rights in the Marks”). Section 4.3 of the Development Agreement governs the parties’ respective rights to the “Intellectual Property” upon termination of the Development Agreement, and Section 8 comprehensively governs “License and Service Fees.” *See, e.g.*, Ramsay Appendix, Exhibit 6, Development Agreement. Mr. Seibel does not argue that the plain language of any of these provisions bars Mr. Ramsay, personally, from participating in the operation of the New Restaurant, or any other venture.<sup>4</sup>

Instead, Mr. Seibel cites Section 14.21 of the Development Agreement and appears to argue that his unjust enrichment claim should serve as a failsafe claim in the event that this Court should find Section 14.21 is an unenforceable agreement to agree, but as the Court has held herein, even if it were enforceable, Section 14.21 would not bar Mr. Ramsay from participating in a new hamburger restaurant venture with Planet Hollywood (nor would any other term of the Development Agreement). To the contrary, the language of Section 14.21’s “agreement to agree” evidences no intent of the parties to impose binding obligations on Planet Hollywood with respect

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<sup>4</sup> GRB’s understanding of this absence of restrictions on Mr. Ramsay’s future business dealings is further demonstrated by its agreement, in the GRUS License Agreement (to which Mr. Ramsay is not a party), that notwithstanding the sublicense of the BURGR Gordon Ramsay mark to Planet Hollywood (through GRB), GRUS and Mr. Ramsay “are in no way limited or restricted in using and exploiting any other trademark or trade name that includes the name ‘Gordon Ramsay’ nor from using the name Gordon Ramsay without limitation.” *See* Ramsay Appendix, Exhibit 5, GRUS License Agreement, at §1.1.

1 to future restaurant ventures, and to impose no obligations whatsoever on Mr. Ramsay personally  
2 with respect to the same.

3 Because the relationship and obligations between GRB and Mr. Ramsay with respect to the  
4 operation of future hamburger restaurants at Planet Hollywood, and the use of Mr. Ramsay's name  
5 or derivations thereof, were comprehensively governed by the Development Agreement, Mr.  
6 Seibel's claim for unjust enrichment fails as a matter of law. Moreover, in light of the plain  
7 language of the parties' business contracts, Mr. Seibel has failed to identify evidence supporting  
8 that GRB has (or has ever had) any equitable entitlement to profits, or other monies or benefits,  
9 that may be derived by Mr. Ramsay from the use of his name, which only he owns, in connection  
10 with the operation of the New Restaurant, such that it would be an injustice for Mr. Ramsay to  
11 retain that benefit.

12 The Court finds that there is no genuine issue of material fact and that Mr. Ramsay is  
13 entitled to judgment as a matter of law on the unjust enrichment claim pursuant to NRCP 56.

#### 14 **VII. Mr. Seibel's Claim For Civil Conspiracy**

15 Mr. Ramsay moves for summary judgment on Mr. Seibel's Fourth Cause of Action for  
16 "Civil Conspiracy" as set forth in the First Amended Complaint. Mr. Seibel brings his claim for  
17 civil conspiracy in his own name as GRB's assignee. He has alleged that Mr. Ramsay formed an  
18 explicit or tacit agreement with Planet Hollywood to "breach the Development Agreement and  
19 oust Seibel from the Restaurant," and that in furtherance of the conspiracy Mr. Ramsay "directly  
20 or indirectly, refused to allow Seibel to transfer his interest in GRB to The Seibel Family Trust  
21 2016, resign as a manager of GRB, and appoint Craig Green as a manager of GRB" and that "in a  
22 letter sent on or around September 15, 2016, Ramsay and GRUS falsely told [Planet Hollywood]  
23 that Seibel is an unsuitable person and his affiliation with GRB and the Restaurant could not be  
24 cured." *See* Am. Compl. at ¶¶87-89.

25 Mr. Ramsay argues that summary judgment is appropriate because, as a matter of law, two  
26 parties to a contract cannot be liable for a conspiracy to breach it, and because there is no evidence  
27 of an unlawful or wrongful "overt act" by Mr. Ramsay in furtherance of any alleged conspiracy.  
28

1 A civil conspiracy “consists of a combination of two or more persons, who, by some  
2 concerted action, intend to accomplish an unlawful objective for the purpose of harming another,  
3 and damages results from the act or acts.” *Consol. Generator-Nev., Inc. v. Cummins Engine Co.*,  
4 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (internal quotations omitted).

5 Under Nevada law, conspiracy to breach the terms of a contract may only “lie where a  
6 contracting party and third parties conspire to frustrate the purpose of the contract.” *Tousa*  
7 *Homes, Inc. v. Phillips*, 363 F.Supp.2d 1274, 1282-83 (D. Nev. 2005) (citing *Hilton Hotels Corp.*  
8 *v. Butch Lewis Prods.*, 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (1993)). “[A] party cannot, as a  
9 matter of law, tortiously interfere with its own contract.” *Blanck v. Hager*, 360 F.Supp.2d 1137,  
10 1154 (D. Nev. 2005); *aff’d*, 220 Fed. Appx. 697 (9th Cir. 2007) (citing *Bartsas Realty, Inc. v.*  
11 *Nash*, 81 Nev. 325, 327, 402 P.2d 650, 651 (1965)). In line with these principles, courts have  
12 articulated that, in general, “[t]here can be no conspiracy by two or more parties to a contract to  
13 breach the contract.” *Logixx Automation v. Lawrence Michels Fam.*, 56 P.3d 1224, 1231 (Colo.  
14 App. 2002) (holding that “because the only duty a contracting party owes is to perform the  
15 contract according to its terms, a contracting party has no independent duty not to conspire to  
16 breach its own contract.”)

17 Here, Mr. Seibel’s claim is, at its base, an allegation that Mr. Ramsay tortiously interfered  
18 with his own contract, the Development Agreement, by allegedly encouraging Planet Hollywood  
19 to deem Mr. Seibel “unsuitable” and by allegedly encouraging Planet Hollywood to exercise its  
20 bargained-for termination rights. *Cf.* Am. Compl. at ¶89. Such a claim is not actionable, as it is  
21 the law of this State that a party cannot interfere with (or “conspire to breach”) its own contract,  
22 and Mr. Ramsay is indisputably a party to the Development Agreement. *See, e.g., Blanck*, 360  
23 F.Supp.2d at 1154. Mr. Seibel’s claim fails as a matter of law.

24 Even if such a claim were actionable, the Court agrees with Mr. Ramsay that the record  
25 lacks any evidence of an overt, “wrongful” act by Mr. Ramsay in furtherance of the alleged  
26 “conspiracy.” The Court has found that no action of Mr. Ramsay breached the Development  
27 Agreement. Mr. Ramsay had no obligation, express or implied, to communicate with (or refrain  
28 from communicating with) Planet Hollywood with respect to its exercise of its sole and absolute

1 discretion to deem Mr. Seibel “unsuitable.” Moreover, Mr. Ramsay had no contractual role or  
2 obligation with respect to Mr. Seibel’s request (just prior to his felony guilty plea and, again, after  
3 his conviction was discovered) to transfer his membership interest in GRB to “The Seibel Family  
4 2016 Trust.” Indeed, the approval of any assignment by a GRB member was not governed by the  
5 Development Agreement, but by the express terms of GRB’s LLC Agreement, to which Mr.  
6 Ramsay was not a party. It is undisputed that Mr. Seibel made his request to GRUS, not to Mr.  
7 Ramsay, pursuant to the terms of GRB’s LLC Agreement. Again, in reviewing the plain language  
8 of the agreements between the parties, the alleged actions (or non-actions) of Mr. Ramsay were  
9 neither wrongful nor in furtherance of any wrongful act. No claim for civil conspiracy may lie  
10 under such circumstances.

11 The Court finds that there is no genuine issue of material fact and that Mr. Ramsay is  
12 entitled to judgment as a matter of law on the civil conspiracy claim pursuant to NRCP 56.

13 **VIII. Mr. Seibel’s “Additional Requests” for Equitable Relief**

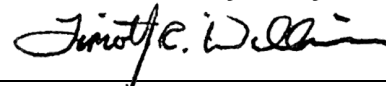
14 Mr. Ramsay moves for summary judgment as to Mr. Seibel’s “Additional Requests for  
15 Relief” as set forth at paragraphs 93-123 of his Amended Complaint, on grounds that the results of  
16 the Delaware Proceedings have rendered such requests for equitable relief “moot.” Mr. Seibel  
17 agrees that his requests for equitable relief are moot and does not oppose summary judgment  
18 thereon. Accordingly, the Court will grant the request for summary judgment on those requests.

19 Wherefore, based on the foregoing, **IT IS HEREBY ORDERED, ADJUDGED, AND**  
20 **DECREEED** that Gordon Ramsay’s Request for Judicial Notice is **GRANTED** in full, and Gordon  
21 Ramsay’s Motion for Summary Judgment is **GRANTED** in full. Pursuant to Nevada Rule of  
22 Civil Procedure 56, the Court hereby awards judgment as a matter of law in favor of Mr. Ramsay,  
23 and against Mr. Seibel, on all of Mr. Seibel’s claims against Mr. Ramsay asserted in Mr. Seibel’s  
24 First Amended Complaint.

25 **IT IS SO ORDERED.**

26 Dated: \_\_\_\_\_

Dated this 25th day of May, 2022



MH

1EA 5A2 2C7F D50A  
Timothy C. Williams  
District Court Judge

Respectfully submitted by:

DATED May 25, 2022.

FENNEMORE CRAIG, P.C.

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DATED May 25, 2022.

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Rowen Seibel, Plaintiff(s)

CASE NO: A-17-751759-B

7 vs.

DEPT. NO. Department 16

8 PHWL V LLC, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

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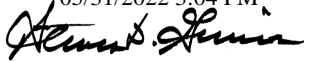


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Corporation d/b/a Caesars Atlantic City*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability  
company,

Nominal Plaintiff.

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER GRANTING  
CAESARS' MOTION FOR SUMMARY  
JUDGMENT NO. 2**

Date of Hearing: December 6, 2021

Time of Hearing: 1:30 p.m.

AND ALL RELATED MATTERS

PHWLV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las Vegas Operating Company, LLC ("Paris"), and Boardwalk Regency Corporation d/b/a Caesars Atlantic City's ("Caesars Atlantic City," and collectively, with Caesars Palace, Paris, and Planet Hollywood, "Caesars,") *for Summary Judgment No. 2* (the "MSJ No. 2"), filed on February 25, 2021, came before this Court for hearing on December 6, 2021, at 1:30 p.m.

PISANELLI BICE PLLC  
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James J. Pisanelli, Esq., and M. Magali Mercera, Esq., of the law firm PISANELLI BICE PLLC, appeared telephonically on behalf of Caesars. Joshua P. Gilmore, Esq., and Paul C. Williams, Esq., of the law firm BAILEY KENNEDY, appeared telephonically on behalf of TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), GR Burgr, LLC ("GRB"), and DNT Acquisition, LLC ("DNT"), appearing derivatively by and through R Squared Global Solutions, LLC ("R Squared") (collectively the "Seibel-Affiliated Entities"), Rowen Seibel ("Seibel"), and Craig Green ("Green").<sup>1</sup> John Tennert, Esq., of the law firm FENNEMORE CRAIG, appeared telephonically on behalf of Gordon Ramsay ("Ramsay"). Alan Lebensfeld, of the law firm LEBENSFELD SHARON & SCHWARTZ P.C., appeared telephonically on behalf of The Original Homestead Restaurant.

The Court having considered MSJ No. 2, the opposition thereto, as well as argument of counsel presented at the hearing, taken the matter under advisement, and good cause appearing therefor, enters the following Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

The Court HEREBY FINDS AS FOLLOWS:

1. Planet Hollywood and its affiliates hold gaming licenses in Nevada and other jurisdictions across the country.

2. Nevada's gaming regulations provide that a gaming license will not be awarded unless the Nevada Gaming Commission is satisfied that the gaming license applicant (a) is "of good character, honesty, and integrity" (b) with "background, reputation and associations [that] will not result in adverse publicity for the State of Nevada and its gaming industry; and" (c) someone who "[h]as adequate business competence and experience for the role or position for which application is made." Nev. Gaming Regul. 3.090(1).

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

1           3.       Nevada gaming licensees are required to self-police and to act promptly if they learn  
2 of derogatory information about their own operations or those of their business associates.

3           4.       Caesars has established and operates an Ethics and Compliance Program (the  
4 "Compliance Plan") requiring Caesars to maintain the highest standards of conduct and association  
5 and guard its reputation to avoid even the slightest appearance of impropriety. To that end, Caesars  
6 is further required to avoid questionable associations with Unsuitable Persons which could tarnish  
7 Caesars' image, jeopardize its gaming licenses, or hamper its ability to expand into new markets.

8           5.       Pursuant to Caesars' Compliance Plan, Caesars' vendors, suppliers, and business  
9 partners, among others, must agree to abide by the same standards, business ethics, and principles  
10 expected of Caesars' employees. To that end, Planet Hollywood includes clear and unambiguous  
11 language in its contracts with third parties that puts all such parties on notice that Planet Hollywood  
12 is in a highly regulated business and that such third parties must abide by gaming suitability  
13 requirements.

14           6.       Beginning in 2009, Caesars began entering into contracts with Seibel and the Seibel-  
15 Affiliated Entities relating to the development, creation, and operation of various restaurants in Las  
16 Vegas and Atlantic City (the "Seibel Agreements").

17           7.       Planet Hollywood, GRB (a Seibel-Affiliated Entity), and Gordon Ramsay, entered  
18 into an agreement on or about December 2012 relating to the GR Burgr restaurant at Planet  
19 Hollywood in Las Vegas (the "GRB Agreement"). Section 14.21 of the GRB Agreement  
20 contemplated potential future restaurants but the parties did not agree on material terms regarding  
21 future restaurants. Specifically, Section 14.21 provided that:

22           If [Planet Hollywood] elects to pursue any venture similar to the Restaurant  
23 (*i.e.*, any venture generally in the nature of a burger centric or burger themed  
24 restaurant), GRB shall, or shall cause an Affiliate to, execute a development,  
25 operation and license agreement generally on the same terms and conditions as this  
26 Agreement, subject only to revisions agreed to by the parties, including revisions  
27 as are necessary to reflect the differences in such things as location, Project Costs,  
28 Initial Capital Investment, Operating Expenses and the potential for Gross  
Restaurant Sales between the Restaurant and such other venture and any resulting  
Section 8.1 threshold adjustments

1           8.       The GRB Agreement also contained representations, warranties, and conditions to  
2 ensure that Planet Hollywood was not involved in a business relationship with an unsuitable  
3 individual and/or entity.

4           9.       Section 11.2 of the GRB Agreement provided, in pertinent part:

5           Each of Gordon Ramsay and GRB acknowledges that [Planet Hollywood] and PH's  
6 Affiliates are businesses that are or may be subject to and exist because of  
7 privileged licenses issued U.S., state, local and foreign governmental, regulatory  
8 and administrative authorities, agencies, boards and officials (the "Gaming  
9 Authorities") responsible for or involved in the administration of application of  
10 laws, rules and regulations relating to gaming or gaming activities or the sale,  
distribution and possession of alcoholic beverages. The Gaming Authorities require  
PH, and [Planet Hollywood] deems it advisable, to have a compliance committee  
(the "Compliance Committee") that does its own background checks on, and issues  
approvals of, Persons involved with [Planet Hollywood] and its Affiliates.

11           10.      Because issues of suitability affect Planet Hollywood's gaming license, Planet  
12 Hollywood expressly contracted for the sole and absolute discretion to terminate the GRB  
13 Agreement should GRB or its Affiliates — a term that includes Seibel — become an "Unsuitable  
14 Person."

15           11.      Specifically, Section 4.2.5 of the GRB Agreement provides that the "[a]greement  
16 may be terminated by [Planet Hollywood] upon written notice to GRB and Gordon Ramsay having  
17 immediate effect as contemplated by Section 11.2." In turn, Section 11.2 explicitly provides that  
18 Planet Hollywood has the right, in its "sole and exclusive judgment," to determine that a GR  
19 Associate is an Unsuitable Person under the Agreement.

20           12.      Section 11.2 of the GRB Agreement further required that Gordon Ramsay and GRB  
21 update their disclosures without Planet Hollywood prompting if anything became inaccurate or  
22 material changes occurred. Specifically, the GRB Agreement required that prior to the execution of  
23 the agreement and

24           on each anniversary of the Opening Date during the Term, (a) each of  
25 Gordon Ramsay and GRB shall provide to PH written disclosure regarding  
26 the GR Associates, and (b) the Compliance Committee shall have issued  
27 approvals of the LLTQ Associates. Additionally, during the Term, on ten  
28 (10) calendar days written request by PH to Gordon Ramsay and GRB,  
Gordon Ramsay and GRB shall disclose to Caesars all GR Associates. To  
the extent that any prior disclosure becomes inaccurate, Gordon Ramsay  
and GRB shall, within ten (10) calendar days from that event, update the  
prior disclosure without PH making any further request. Each of Gordon

Ramsay and GRB shall cause all GR Associates to provide all requested information and apply for and obtain all necessary approvals required or requested by PH or the Gaming Authorities.

13. Planet Hollywood did not waive, release, or modify the disclosure obligations for Ramsay or GRB.

14. In April 2016, Seibel pleaded guilty to one count of corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws because, in Seibel's own words, he was in fact guilty of the crime.

15. Prior to his guilty plea, and despite a January 2016 tolling agreement with the U.S. government entered into to allow Seibel "to manage his financial affairs in an optimal way prior to entering a guilty plea," neither Seibel nor any of the Seibel-Affiliated Entities notified Planet Hollywood of any of the facts underlying the charges against him, or that Seibel planned to plead guilty to a felony. Seibel did not update any of the mandatory suitability disclosures.

16. Before news of Seibel's conviction became public, and one week prior to pleading guilty, Seibel attempted to assign his interest in GRB to The Seibel Family 2016 Trust (the "Trust"). In order to do so, Seibel needed GRUS, the other member of GRB, to consent to such an assignment. However, Seibel did not inform GRUS or Gordon Ramsay that the reason he sought to assign his interest was because he planned to plead guilty to a felony in the coming week. Ultimately, GRUS did not consent to the assignment.

17. On or about August 19, 2016, Seibel was sentenced for his crimes, served time in a federal penitentiary, and was required to pay fines and restitution, and perform community service. Following Seibel's sentencing, Planet Hollywood found out through news reports that Seibel pleaded guilty to a felony and was sentenced to serve time in federal prison as a result of his crimes.

18. After learning of Seibel's guilty plea and conviction, Planet Hollywood determined that Seibel was unsuitable pursuant to the GRB Agreement and applicable Nevada gaming laws and regulations.

19. After determining that Seibel was unsuitable, Planet Hollywood exercised its contractual right to terminate the GRB Agreement as it was expressly allowed to do under Section 11.2 after GRB did not disassociate from Seibel.



20. Upon discovering Seibel's unsuitability, Planet Hollywood self-reported and disclosed the information of Seibel's unsuitability to Nevada gaming regulators, including its termination of the GRB Agreement and disassociation with an unsuitable person.

21. The Nevada gaming regulators agreed with Planet Hollywood's actions, concluding that Planet Hollywood appropriately addressed the matter as the Nevada gaming regulators would expect from a gaming licensee.

22. After Planet Hollywood terminated the GRB Agreement, GRUS filed a petition for judicial dissolution on or about October 13, 2016, in the Court of Chancery of the State of Delaware.

23. On February 28, 2017, Seibel filed a complaint purportedly derivatively on behalf of GRB against Planet Hollywood and Ramsay for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and civil conspiracy.

24. On August 25, 2017, Caesars filed its complaint for declaratory relief against the Seibel-Affiliated Entities,<sup>2</sup> including GRB (the "DP Original Complaint").

25. On or about October 5, 2017, the Delaware court appointed a liquidating trustee to oversee the dissolution of GRB. Neither Caesars nor Ramsay were parties to the dissolution proceedings.

26. Following certain motion practice in this Court, Planet Hollywood and Ramsay raised concerns about Seibel's ability to act derivatively on behalf of GRB in light of the Delaware proceedings.

27. The Order Dissolving GR BURGR LLC & Appointing Liquidating Trustee, [hereinafter "Dissolution Order"], provides that the Trustee "shall have all powers generally available to a trustee, custodian, or receiver appointed pursuant to 6 *Del. C.* § 18-803,<sup>3</sup> unless the

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<sup>2</sup> GRB, TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), and DNT Acquisition, LLC ("DNT"), appearing derivatively by and through R Squared Global Solutions, LLC ("R Squared") are collectively referred to herein as the "Seibel-Affiliated Entities."

<sup>3</sup> 6 *Del. C.* § 18-803 provides that "[u]pon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in § 18-203 of this title, the persons winding up

1 exercise of any said power would be inconsistent with any specific provision of this Order or any  
2 other Order entered by the Court in this action."

3 28. The proposed trustee officially accepted appointment to represent GRB on  
4 December 13, 2017

5 29. After the Trustee was appointed, he requested an indefinite extension to respond to  
6 Caesars' complaint, but Caesars advised that it was unable to agree to an indefinite extension.  
7 Caesars offered to extend GRB's time to answer the complaint until February 15, 2018. The Trustee  
8 did not agree, and GRB failed to answer the complaint at that time.

9 30. On March 11, 2020, Caesars amended its complaint ("DP First Amended  
10 Complaint").

11 31. Despite serving the Trustee with a copy of the DP First Amended Complaint, the  
12 Trustee continued to refuse to participate in the litigation.

13 32. On April 6, 2020, a Report and Proposed Liquidation Plan for GRB was publicly  
14 filed in Delaware (the "GRB Report"). In the GRB Report, the GRB trustee identified claims not  
15 worth pursuing in the Nevada litigation, including claims related to (1) wrongful termination of the  
16 GRB Agreement; (2) breach of the implied covenant of good faith and fair dealing and the purported  
17 scheme to oust Seibel; and (3) breach of Section 14.21 of the GRB Agreement.

18 33. The Delaware court fully adopted the GRB Report on October 13, 2020.

19 34. On May 20, 2020, Caesars filed a notice of intent to take default against GRB. In  
20 response, the Trustee sent correspondence to this Court and the Delaware Court requesting that the  
21 courts "communicate and coordinate with each so that the proceedings in the two courts can be  
22 completed in an orderly fashion without the possibility of inconsistent adjudications relating to  
23 GRB." The trustee further stated that "GRB has never appeared in the Nevada litigation," "GRB  
24 has no discovery to offer," GRB has no assets to defend itself or to retain counsel to respond to a  
25

26  
27  
28 the limited liability company's affairs may, in the name of, and for and on behalf of, the limited  
liability company, prosecute and defend suits, whether civil, criminal or administrative . . . ."

1 default motion, and that the Delaware action should be allowed to proceed before actions are taken  
2 against GRB in Nevada.

3 35. At the risk of default, and after almost three years of litigation, on June 9, 2020,  
4 GRB filed a notice of appearance of counsel in this Court.

5 36. On June 19, 2020, GRB filed an answer to the DP First Amended Complaint.

6 37. On July 24, 2020, GRB served its initial disclosures, disclosing that (1) GRB has no  
7 witnesses; (2) GRB has no documents to produce; and (3) "GRB asserts no affirmative claims on  
8 its own behalf."

9 38. GRB never attended depositions and repeatedly refused to engage in discovery.

### 10 CONCLUSIONS OF LAW

11 1. Pursuant to Nevada law, summary judgment is appropriate and shall be rendered  
12 when the pleadings and other evidence on file demonstrate that no genuine issue as to any material  
13 fact remains and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*,  
14 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); NRCP 56(c). "The substantive law controls which  
15 factual disputes are material," not the party opposing summary judgment. *Wood*, 121 Nev. at 731,  
16 121 P.3d at 1031. Further, while all facts and evidence must be viewed in the light most favorable  
17 to the non-moving party, the opposing party may not build its case on the "gossamer threads of  
18 whimsy, speculation and conjecture." *Id.* at 731, 121 P.3d at 1030 (footnote and citations omitted).

19 2. "To successfully oppose a motion for summary judgment, the non-moving party  
20 must show specific facts, rather than general allegations and conclusions, presenting a genuine issue  
21 of material fact for trial." *LaMantia v. Redisi*, 118 Nev. 27, 29, 38 P.2d 877, 879 (2002). "The party  
22 opposing summary judgment must be able to point to specific facts showing that there is a genuine  
23 issue for trial." *Michael v. Sudeck*, 107 Nev. 332, 334, 810 P.2d 1212, 1213 (1981).

24 3. "The purpose of summary judgment is to avoid a needless trial when an appropriate  
25 showing is made in advance that there is no genuine issue of fact to be tried, and the movant is  
26 entitled to judgment as a matter of law." *McDonald v. D. Alexander & Las Vegas Boulevard, LLC*,  
27 121 Nev. 812, 815, 123 P. 3d 748, 750 (2005) (internal quotations omitted).

1           4.       Judicial admissions are defined as "deliberate, clear, unequivocal statements by a  
2 party about a concrete fact within that party's knowledge." *Reyburn Lawn & Landscape Designers,*  
3 *Inc. v. Plaster Dev. Co.*, 127 Nev. 331, 343, 255 P.3d 268, 276 (2011). They have "the effect of  
4 withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." *In re*  
5 *Barker*, 839 F.3d 1189, 1195 (9th Cir. 2016) (quoting *Am. Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d  
6 224, 226 (9th Cir. 1988)). "What constitutes a judicial admission should be determined by the  
7 circumstances of each case and evaluated in relation to the other testimony presented in order to  
8 prevent disposing of a case based on an unintended statement made by a nervous party." *Reyburn*,  
9 127 Nev. at 343, 255 P.3d at 276.

10           5.       "Judicial admissions are 'conclusively binding on the party who made them.'" *Id.*  
11 (quoting *Am. Title*, 861 F.2d at 226).

12           6.       "[S]tatements of fact contained in a brief may be considered admissions of the party  
13 in the discretion of the district court." *Am. Title*, 861 F.2d at 227. "For purposes of summary  
14 judgment, the courts have treated representations of counsel in a brief as admissions even though  
15 not contained in a pleading or affidavit." *Id.* at 226.

16           7.       Additionally, NRS 51.035(3), provides an exception to hearsay where a statement  
17 being offered against a party is:

- 18                   a. The party's own statement, in either the party's individual or a  
19                   representative capacity;
- 20                   b. A statement of which the party has manifested adoption or belief in  
21                   its truth;
- 22                   c. A statement by a person authorized by the party to make a statement  
23                   concerning the subject;
- 24                   d. A statement by the party's agent or servant concerning a matter  
25                   within the scope of the party's agency or employment, made before  
26                   the termination of the relationship; or
- 27                   e. A statement by a coconspirator of a party during the course and in  
28                   furtherance of the conspiracy.

26           8.       Courts "construe unambiguous contracts . . . according to their plain language."  
27 *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 487–88, 117 P.3d 219, 223–24 (2005).

28           9.       Here, GRB admitted that it has no affirmative claims in its initial disclosures.

1           10. In the GRB Report, the GRB trustee (*i.e.*, GRB's authorized agent) recognized that  
2 GRB's claims for breach of contract related to Caesars' proper and contractually authorized  
3 termination of the GRB Agreement, breach of the implied covenant of good faith and fair dealing,  
4 civil conspiracy, and breach of Section 14.21 of the GRB Agreement are "not worth pursuing."

5           11. Pursuant to Section 4.2.5, which governs termination resulting from unsuitability,  
6 the GRB "Agreement may be terminated by [Planet Hollywood] upon written notice to GRB and  
7 Gordon Ramsay having immediate effect as contemplated by Section 11.2."

8           12. Pursuant to Section 11.2, Caesars is granted the express right to determine whether  
9 a GR Associate is an Unsuitable Person, and whether the GRB Agreement must be terminated in  
10 its "sole discretion."

11           13. Planet Hollywood's determination that GRB was unsuitable based on Seibel's  
12 admitted criminal activities, felony conviction of engaging in corrupt endeavor to obstruct and  
13 impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212, and sentence to  
14 serve prison time for the same, was within Planet Hollywood's sole discretion under the  
15 GRB Agreement.

16           14. Seibel purported to "cure" the unsuitability through the creation of new entities, but  
17 Seibel secretly continued to hold both a beneficial and actual ownership interest in the new entities.  
18 However, the GRB Agreement (1) does not provide Seibel or GRB with an opportunity to cure; (2)  
19 nor does it provide Seibel or GRB with a unilateral right to sell Seibel's interests to a third party.

20           15. Even if the GRB provided Seibel or GRB with a right to cure his unsuitability, which  
21 the Court finds it did not, Seibel and GRB forfeited any such right through the fraudulent cure  
22 scheme and Seibel's continued association with the Seibel-Affiliated Entities.

23           16. Further, the GRB trustee agreed that "Caesars likely had the right to terminate the  
24 [GRB] Agreement because, in the Court's words, the situation is one of Seibel's 'own making" and  
25 "Caesars validly exercised its bargained-for discretion and Seibel's claim for the improper  
26 termination of the [GRB] Agreement is not likely to survive summary judgment."  
27  
28

1 17. GRB's admissions and contractual analysis, and this Court's prior rulings<sup>4</sup> support  
2 an order granting Planet Hollywood summary judgment on GRB's claim for breach of contract.

3 18. The covenant of good faith and fair dealing does not call for a different result.

4 19. An implied covenant of good faith and fair dealing exists in every Nevada contract  
5 and essentially forbids arbitrary, unfair acts by one party that disadvantage the other. " *Frantz v.*  
6 *Johnson*, 116 Nev. 455, 465, 999 P.2d 351, 358 (2000) (citing *Consol. Generator v. Cummins*  
7 *Engine*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998).

8 20. "When one party performs a contract in a manner that is unfaithful to the purpose of  
9 the contract and the justified expectations of the other party are thus denied, damages may be  
10 awarded against the party who does not act in good faith." *Hilton Hotels Corp. v. Butch Lewis*  
11 *Prods., Inc.*, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991).

12 21. "Reasonable expectations are to be 'determined by the various factors and special  
13 circumstances that shape these expectations.'" *Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d 335,  
14 338 (1995) (quoting *Hilton*, 107 Nev. at 234, 808 P.2d at 924).

15 22. Moreover, "one generally cannot base a claim for breach of the implied covenant on  
16 conduct authorized by the terms of the agreement." *Miller v. FiberLight, LLC*, 808 S.E.2d 75, 87  
17 (Ga. App. Ct. 2017) (quoting *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 441 (Del.  
18 2005)); *see also Vitek v. Bank of Am., N.A.*, No. 8:13-CV-816-JLS ANX, 2014 WL 1042397, at \*5  
19 (C.D. Cal. Jan. 23, 2014) (citation omitted) ("In general, acting in accordance with an express  
20 contractual provision does not amount to bad faith.").

21 23. In other words, 'a party does not act in bad faith by relying on contract provisions  
22 for which that party bargained where doing so simply limits advantages to another party.'" *Miller*,

23  
24  
25 <sup>4</sup> The Court granted in part and denied in part Planet Hollywood's Motion to Dismiss claims  
26 brought by Seibel on behalf of GRB stating that Seibel "failed to plead facts sufficient to support a  
27 breach of contract claim against Planet Hollywood for: (1) continuing to do business with Ramsay;  
28 (2) refusing to provide [GRB] with an opportunity to cure its affiliation with [Seibel]; and (3)  
attempting and/or planning to operate a rebranded restaurant. The plain language of the [GRB  
Agreement] precludes these claims as a matter of law. They must therefore be dismissed." (Order  
Granting in Part and Denying in part Planet Hollywood's Mot. to Dismiss, June 15, 2017, on file.)

1 343 Ga. App. at 607–08, 808 S.E.2d at 87 (quoting *Alpha Balanced Fund, LLLP v. Irongate*  
2 *Performance Fund, LLC*, 342 Ga. App. 93, 102–103 (1), 802 S.E.2d 357 (2017)).

3 24. Importantly, "when there is no factual basis for concluding that a defendant acted  
4 in bad faith, a court may determine the issue of bad faith as a matter of law." *Tennier v. Wells Fargo*  
5 *Bank, N.A.*, No. 3:14-CV-0035-LRH-VPC, 2015 WL 128672, at \*7 (D. Nev. Jan. 8, 2015) (quoting  
6 *Andrew v. Century Sur. Co.*, No. 2:12-cv- 0978, 2014 WL 1764740, at \*10 (D. Nev. Apr. 29,  
7 2014)).

8 25. Planet Hollywood did not violate the covenant of good faith and fair dealing when  
9 it terminated the GRB Agreement as a result of Seibel's unsuitability.

10 26. An actionable civil conspiracy 'consists of a combination of two or more persons  
11 who, by some concerted action, intend to accomplish an unlawful objective for the purpose of  
12 harming another, and damage resulting from the act or acts.'" *Consol. Generator-Nev., Inc. v.*  
13 *Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (quoting *Hilton*  
14 *Hotels*, 109 Nev. at 1048, 862 P.2d at 1210). "Summary judgment is appropriate if there is no  
15 evidence of an agreement or intent to harm the plaintiff." *Guilfoyle v. Olde Monmouth Stock*  
16 *Transfer Co., Inc.*, 130 Nev. 801, 813, 335 P.3d 190, 199 (2014).

17 27. Here, GRB failed to present any evidence to support its claim for civil conspiracy.  
18 Planet Hollywood complied with the express terms of the GRB Agreement when it determined that  
19 Seibel was an Unsuitable Person, that the conduct was not subject to cure and terminated the GRB  
20 Agreement. As a result, there was no unlawful objective upon which to anchor a conspiracy claim  
21 and GRB's civil conspiracy claim fails as a matter of law.

22 28. It is also well settled under Nevada law, that "[a] valid contract cannot exist when  
23 material terms are lacking or are insufficiently certain and definite." *May v. Anderson*, 121 Nev.  
24 668, 672, 119 P.3d 1254, 1257 (2005). "An agreement to agree at a future time is nothing and will  
25 not support an action for damages." *City of Reno v. Silver State Flying Serv., Inc.*, 84 Nev. 170,  
26 176, 438 P.2d 257, 261 (1968) (internal quotation omitted).

27 29. Additionally, "[i]t cannot be doubted at this day, nor is it denied, that a contract will  
28 not be enforced if it is against public policy, or that, if a part of the consideration of an entire contract

1 is illegal as against public policy or sound morals, the whole contract is void." *Gaston v. Drake*, 14  
2 Nev. 175, 181 (1879).

3 30. Section 14.21 of the GRB Agreement has indefinite and open terms and thus is an  
4 invalid and unenforceable agreement to agree. As such, this provision fails as a matter of law.

5 31. Further, any future agreement with GRB would violate gaming laws and put Planet  
6 Hollywood's gaming license in jeopardy, requiring Caesars to again terminate the agreement under  
7 the terms of Section 11.2. The benefits of not requiring a gaming licensee to contract with an  
8 Unsuitable Person clearly outweigh the benefits of enforcement, rendering Section 14.21  
9 unenforceable.

10 32. The Court has inherent authority to dismiss claims for lack of prosecution. *Hunter*  
11 *v. Gang*, 132 Nev. 249, 256, 377 P.3d 448, 453 (Nev. App. 2016) (citing *Harris v. Harris*, 65 Nev.  
12 342, 345-50, 196 P.2d 402, 403-06 (1948)). "The element necessary to justify failure to prosecute  
13 for lack of diligence on the part of the plaintiff, whether individually or through counsel." *Moore v.*  
14 *Cherry*, 90 Nev. 930, 935, 528 P.2d 1018, 1021 (1974). Importantly, "[t]he duty rests upon the  
15 plaintiff to use diligence and to expedite his case to a final determination." *Id.* at 395, 528 P.2d at  
16 1022; *see also Raine v. Ennor*, 39 Nev. 365, 372, 158 P. 133, 134 (1916).

17 33. Summary judgment is further appropriate against GRB on all its claims based on  
18 want of prosecution and/or the failure of GRB to actively prosecute its claims for relief for four (4)  
19 years.

20 34. To prevail on a claim for fraudulent concealment, the plaintiff must show that: "(1)  
21 the defendant concealed or suppressed a material fact; (2) the defendant was under a duty to disclose  
22 the fact to the plaintiff; (3) the defendant intentionally concealed or suppressed the fact with the  
23 intent to defraud the plaintiff; that is, the defendant concealed or suppressed the fact for the purpose  
24 of inducing the plaintiff to act differently than she would have if she had known the fact; (4) the  
25 plaintiff was unaware of the fact and would have acted differently if she had known of the concealed  
26 or suppressed fact; (5) and, as a result of the concealment or suppression of the fact, the plaintiff  
27 sustained damages." *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1485, 970 P.2d 98, 109–10 (1998),  
28



1 *abrogated on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (2001) (citing *Nev.*  
2 *Power Co. v. Monsanto Co.*, 891 F. Supp. 1406, 1415 (D.Nev.1995)).

3 35. As discussed above, "an actionable civil conspiracy 'consists of a combination of  
4 two or more persons who, by some concerted action, intend to accomplish an unlawful objective  
5 for the purpose of harming another, and damage results from the act or acts.'" *Consol. Generator-*  
6 *Nev., Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998)  
7 Importantly, "[a]ll conspirators need not be joined in an action to hold any of the conspirators liable,  
8 because conspiracy results in joint and several liability." *Envirotech, Inc. v. Thomas*, 259 S.W.3d  
9 577, 587 (Mo. Ct. App. 2008).

10 36. The express terms of the GRB Agreement required Seibel to disclose his criminal  
11 activities and conviction and Seibel admits that he did not disclose his guilty plea or the criminal  
12 conduct that led to it to Planet Hollywood. Summary judgment is thus appropriate for Planet  
13 Hollywood on its fraudulent concealment counterclaim and civil conspiracy counterclaim against  
14 Seibel based on Seibel's concealment of material facts regarding his federal prosecution and  
15 conviction.

16 37. Planet Hollywood suffered damages as a result of Seibel's actions and the necessary  
17 rebranding of the restaurant totaling \$168,781.00.

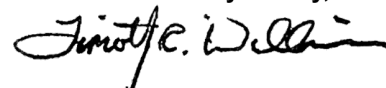
### 18 ORDER

19 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Caesars' MSJ No. 2  
20 shall be, and hereby is, GRANTED in its entirety and that judgment is entered in favor of Caesars  
21 and against GRB on all of GRB's claims.

22 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is  
23 entered in favor of Caesars and against Seibel on Caesars's fraudulent concealment counterclaim  
24 and civil conspiracy counterclaim against Seibel in the amount of \$168,781 plus pre and post-  
25 judgment interest.

26 IT IS SO ORDERED.

Dated this 31st day of May, 2022



D08 4B2 1DFF 6BFC  
Timothy C. Williams  
District Court Judge

MH

Respectfully submitted by:

DATED May 25, 2022

PISANELLI BICE PLLC

By: /s/ M. Magali Mercera  
James J. Pisanelli, Esq., Bar No. 4027  
Debra L. Spinelli, Esq., Bar No. 9695  
M. Magali Mercera, Esq., Bar No. 11742  
400 South 7<sup>th</sup> Street, Suite 300  
Las Vegas, NV 89101

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

Approved as to form and content by:

DATED May 25, 2022

LEBENSFELD SHARON & SCHWARTZ P.C.

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

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

*Attorneys for The Original Homestead Restaurant,*

Approved as to form and content by:

DATED May 25, 2022

FENNEMORE CRAIG, P.C.

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

## Cinda C. Towne

---

**From:** Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>  
**Sent:** Wednesday, May 25, 2022 4:36 PM  
**To:** Magali Mercera; Joshua Gilmore; Paul Williams; Tennert, John; Beavers, Wade  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

CAUTION: This message is from an EXTERNAL SENDER.

You may, thanks

---

**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Wednesday, May 25, 2022 5:11 PM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

Understood, Josh.

John and Alan – We updated our draft proposed findings of fact and conclusions of law to remove Bailey Kennedy from the signature block in light of their objections to the orders and updated the date to May. Please confirm that we may affix your e-signatures to these versions.

Thanks,

**M. Magali Mercera**

PISANELLI BICE, PLLC  
400 South 7th Street, Suite 300  
Las Vegas, Nevada 89101  
Telephone: (702) 214-2100  
Fax: (702) 214-2101  
[mmm@pisanellibice.com](mailto:mmm@pisanellibice.com) | [www.pisanellibice.com](http://www.pisanellibice.com)



*Please consider the environment before printing.*

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

---

**From:** Joshua Gilmore <[JGilmore@baileykennedy.com](mailto:JGilmore@baileykennedy.com)>  
**Sent:** Tuesday, April 26, 2022 2:03 PM  
**To:** Magali Mercera <[mmm@pisanellibice.com](mailto:mmm@pisanellibice.com)>; Paul Williams <[PWilliams@baileykennedy.com](mailto:PWilliams@baileykennedy.com)>; Alan Lebensfeld <[Alan.Lebensfeld@lsandspc.com](mailto:Alan.Lebensfeld@lsandspc.com)>; Tennert, John <[jtennert@fennemorelaw.com](mailto:jtennert@fennemorelaw.com)>; Beavers, Wade <[WBeavers@fennemorelaw.com](mailto:WBeavers@fennemorelaw.com)>  
**Cc:** James Pisanelli <[jjp@pisanellibice.com](mailto:jjp@pisanellibice.com)>; Debra Spinelli <[dls@pisanellibice.com](mailto:dls@pisanellibice.com)>; Emily A. Buchwald <[eab@pisanellibice.com](mailto:eab@pisanellibice.com)>; Cinda C. Towne <[cct@pisanellibice.com](mailto:cct@pisanellibice.com)>; Susan Russo <[SRusso@baileykennedy.com](mailto:SRusso@baileykennedy.com)>  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

CAUTION: This message is from an EXTERNAL SENDER.

## Cinda C. Towne

---

**From:** Tennert, John <jtennert@fennemorelaw.com>  
**Sent:** Wednesday, May 25, 2022 2:44 PM  
**To:** Magali Mercera; Joshua Gilmore; Paul Williams; Alan Lebensfeld; Beavers, Wade  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

CAUTION: This message is from an EXTERNAL SENDER.

Hi Magali,

You may affix my e-signature to both proposed orders.

Thanks,  
John

John D. Tennert III, Director

---

**FENNEMORE.**

7800 Rancharrah Parkway, Reno, NV 89511

T: 775.788.2212 | F: 775.788.2213

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



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

---

**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Wednesday, May 25, 2022 2:11 PM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

Understood, Josh.

John and Alan – We updated our draft proposed findings of fact and conclusions of law to remove Bailey Kennedy from the signature block in light of their objections to the orders and updated the date to May. Please confirm that we may affix your e-signatures to these versions.

Thanks,

**M. Magali Mercera**  
PISANELLI BICE, PLLC

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Rowen Seibel, Plaintiff(s)

CASE NO: A-17-751759-B

7 vs.

DEPT. NO. Department 16

8 PHWL V LLC, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 5/31/2022

15 Robert Atkinson

robert@nv-lawfirm.com

16 Kevin Sutehall

ksutehall@foxrothschild.com

17 "James J. Pisanelli, Esq." .

lit@pisanellibice.com

18 "John Tennert, Esq." .

jtennert@fclaw.com

19 Brittnie T. Watkins .

btw@pisanellibice.com

20 Dan McNutt .

drm@cmlawnv.com

21 Debra L. Spinelli .

dls@pisanellibice.com

22 Diana Barton .

db@pisanellibice.com

23 Lisa Anne Heller .

lah@cmlawnv.com

24 Matt Wolf .

mcw@cmlawnv.com

25 PB Lit .

lit@pisanellibice.com

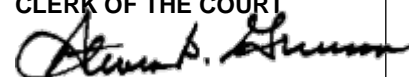
1	Paul Williams	pwilliams@baileykennedy.com
2	Dennis Kennedy	dkennedy@baileykennedy.com
3	Joshua Gilmore	jgilmore@baileykennedy.com
4	John Bailey	jbailey@baileykennedy.com
5	Daniel McNutt	drm@cmlawnv.com
6	Paul Sweeney	PSweeney@certilmanbalin.com
7	Nathan Rugg	nathan.rugg@bfkn.com
8	Steven Chaiken	sbc@ag-ltd.com
9	Alan Lebensfeld	alan.lebensfeld@lsandspc.com
10	Brett Schwartz	brett.schwartz@lsandspc.com
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13	Joshua Feldman	jfeldman@certilmanbalin.com
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18	Magali Mercera	mmm@pisanellibice.com
19	Cinda Towne	cct@pisanellibice.com
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22	Christine Gioe	christine.gioe@lsandspc.com
23	Trey Pictum	trey@mcnuttlawfirm.com
24		
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Sarah Hope	shope@fennemorelaw.com

TAB 20





1 **NEFF**

2 John D. Tennert III (SBN 11728)

3 Wade Beavers (SBN 13451)

4 Geenamarie Carucci (SBN 15393)

5 FENNEMORE CRAIG, P.C.

6 7800 Rancharra Pkwy

7 Reno, Nevada 89511

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9 Facsimile: (775) 786-1177

10 Email: jtennert@fennemorelaw.com

11 wbeavers@fennemorelaw.com

12 gcarucci@fennemorelaw.com

13 *Attorneys for Defendant Gordon Ramsay*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 ROWEN SEIBEL, an individual and citizen of  
17 New York, derivatively as Nominal Plaintiff on  
18 behalf of Real Party in Interest GR BURGR LLC,  
19 a Delaware limited liability company;

20 Plaintiff,

21 vs.

22 PHWLTV, LLC a Nevada limited liability  
23 company; GORDON RAMSAY, an individual;

24 Defendant,

25 GR BURGR LLC, a Delaware limited liability  
26 company,

27 Nominal Defendant.

28 **AND ALL RELATED MATTERS.**

CASE NO: A-17-751759-B

DEPT NO: XVI

Consolidated with:

Case No: A-17-760537-B

**NOTICE OF ENTRY OF FINDINGS  
OF FACT, CONCLUSIONS OF LAW,  
AND ORDER GRANTING GORDON  
RAMSAY'S MOTION FOR  
SUMMARY JUDGMENT**

TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

Pursuant to Nevada Rule of Civil Procedure 58, please take notice that the Findings of  
Fact, Conclusions of Law, and Order Granting Gordon Ramsay's Motion for Summary Judgment

1 was entered on May 25, 2022, a copy of which is attached hereto as **Exhibit 1**.

2 DATED this 2<sup>nd</sup> day of June, 2022.

3 **FENNEMORE CRAIG, P.C.**

4 /s/ Geenamarie Carucci

5 John D. Tennert III (SBN 11728)

6 Wade Beavers (SBN 13451)

7 Geenamarie Carucci (SBN 15393)

8 FENNEMORE CRAIG, P.C.

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11 Telephone: (775) 788-2200

12 Facsimile: (775) 786-1177

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14 wbeavers@fennemorelaw.com

15 gcarucci@fennemorelaw.com

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of FENNEMORE CRAIG, P.C., and that on this date, I caused to be served, via the Court's e-filing/e-service system, a true and correct copy of the above and foregoing NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING GORDON RAMSAY'S MOTION FOR SUMMARY JUDGMENT to the following:

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

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

Aaron D. Lovaas, Esq.  
NEWMYER & DILLION LLP  
3800 Howard Hughes Parkway, Suite 700  
Las Vegas, Nevada 89169

*Attorneys for GR Burgr, LLC*

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Lawrence J. Sharon, Esq.  
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SCHWARTZ, P.C.  
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Red Bank, NJ 07701

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Kevin M. Sutehall, Esq.  
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Las Vegas, NV 89135

*Attorneys for  
The Original Homestead Restaurant, Inc*

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M. Magali Mercera, Esq.  
Brittnie T. Watkins, Esq.  
PISANELLI BICE PLLC  
400 South 7 th Street, Suite 300  
Las Vegas, Nevada 89101

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

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

DATED: June 2, 2022.

/s/ Linda S. Bailey  
An employee of FENNEMORE CRAIG, P.C.

TABLE OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Pages</u>
1	Findings of Fact, Conclusions of Law, and Order Granting Gordon Ramsay's Motion for Summary Judgment	27

John D. Tennert III (SBN 11728)  
Wade Beavers (SBN 13451)  
Austin M. Maul (SBN 15596)  
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Reno, Nevada 89511  
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Facsimile: (775) 786-1177  
Email: jtennert@fclaw.com  
wbeavers@fclaw.com  
amaul@fclaw.com

*Attorneys for Defendant Gordon Ramsay*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

PHWLTV, LLC a Nevada limited liability  
company; GORDON RAMSAY, an individual;

Defendant,

GR BURGR LLC, a Delaware limited liability  
company,

Nominal Defendant.

AND ALL RELATED MATTERS.

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

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

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER GRANTING GORDON  
RAMSAY'S MOTION FOR  
SUMMARY JUDGMENT**

Date of Hearing: January 20, 2022

Time of Hearing: 1:30 p.m.

On June 28, 2017, Rowen Seibel ("Mr. Seibel" or "Plaintiff"), filed his First Amended  
Verified Complaint ("First Amended Complaint") alleging causes of action derivatively on behalf  
of GR BURGR, LLC ("GRB") against Gordon Ramsay ("Mr. Ramsay"), for (1) breach of

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

1 contract; (2) contractual breach of the covenant of good faith and fair dealing; (3) unjust  
2 enrichment; and (4) civil conspiracy. Mr. Seibel also sought, as “Additional Requests for Relief,”  
3 specific performance and declaratory and injunctive relief. On February 25, 2021, Mr. Ramsay  
4 filed his Motion for Summary Judgment (“Ramsay Motion”) seeking judgment as a matter of law  
5 as to all of Mr. Seibel’s claims against him. On January 20, 2022, at 1:30 p.m., a hearing was held  
6 in Department XVI of the above-captioned court before the Honorable Timothy C. Williams with  
7 Joshua P. Gilmore and Paul C. Williams of the law firm of Bailey Kennedy present on behalf of  
8 Mr. Seibel; MOTI Partners, LLC; MOTI Partners 16, LLC; LLTQ Enterprises, LLC; LLTQ  
9 Enterprises 16, LLC; TPOV Enterprises, LLC’ TPOV Enterprises 16, LLC; FERG, LLC; FERG  
10 16, LLC; Craig Green; R Squared Global Solutions, LLC, derivatively on behalf of DNT  
11 Acquisition, LLC; and GR Burgr, LLC; John D. Tennert III and Wade Beavers of the law firm of  
12 Fennemore Craig, P.C., present on behalf of Mr. Ramsay; James J. Pisanelli and M. Magali  
13 Mercera of the law firm of Pisanelli Bice PLLC present on behalf of PHWLTV, LLC (“Planet  
14 Hollywood”), Desert Palace, Inc. (“Caesars Palace”), Paris Las Vegas Operating Company, LLC  
15 (“Paris”), and Boardwalk Regency Corporation d/b/a Caesars Atlantic City (“CAC,” and  
16 collectively, with Caesars Palace, Paris, and Planet Hollywood, “Caesars”); and Alan M.  
17 Lebensfeld of the law firm of Lebensfeld, Sharon & Schwartz, P.C. present on behalf of the Old  
18 Homestead Restaurant, Inc.

19 The Court, having reviewed the pleadings in this matter, as well as the Ramsay Motion,  
20 Mr. Ramsay’s Appendix to Defendant Gordon Ramsay’s Motion for Summary Judgment  
21 (“Ramsay Appendix”); Mr. Ramsay’s Request for Judicial Notice; Mr. Seibel’s Opposition to  
22 Gordon Ramsay’s Motion for Summary Judgment (“Seibel Opposition”); Mr. Seibel’s “Appendix  
23 of Exhibits to (1) the Development Entities and Rowen Seibel’s Opposition to Caesar’s Motion for  
24 Summary Judgment No. 1; (2) Opposition to Caesars’s Motion for Summary Judgment No. 2; and  
25 (3) Opposition to Gordon Ramsay’s Motion for Summary Judgment” (“Seibel Appendix”); Mr.  
26 Seibel’s Objections to Evidence Offered by Gordon Ramsay in Support of His Motion for  
27 Summary Judgment (“Objections to Evidence”); Mr. Ramsay’s Reply in Support of His Motion  
28 for Summary Judgment (“Reply”); and Mr. Ramsay’s Response to Rowen Seibel and GR

BURGR, LLC's Objections to Evidence Offered by Gordon Ramsay in Support of His Motion for Summary Judgment; and being familiar with the other papers on file in this matter, having heard the arguments of counsel at hearing, and being otherwise duly advised, **FINDS** and **ORDERS** as follows:

**I. Mr. Ramsay's Request for Judicial Notice**

In Mr. Ramsay's February 26, 2021, Request for Judicial Notice, he asks that the Court take judicial notice pursuant to NRS 47.130 of the factual matters set forth in certain documents included in the Ramsay Appendix filed in support of his Motion for Summary Judgment. Specifically, Mr. Ramsay asks that the Court take judicial notice of the matters of fact set forth in Ramsay Appendix Exhibit 10, (Information filed April 18, 2016 [ECF No. 1]); Ramsay Appendix Exhibit 16 (Notice of Intent to File Information filed February 29, 2016 [ECF No. 1]); Ramsay Appendix Exhibit 17 (Plea Hearing Transcript filed April 25, 2016 [ECF No. 7]); Ramsay Appendix Exhibit 18 (Ltr. From R. Fink to Hon. J. Pauley filed August 5, 2016 [ECF No. 14]); Ramsay Appendix Exhibit 19 (Ltr. From R. Fink to Hon. J. Pauley filed August 16, 2016 [ECF No. 16]); and Ramsay Appendix Exhibit 20 (Sentencing Hearing Transcript filed September 13, 2016 [ECF No. 18]). Mr. Ramsay argues that each of the documents identified is a publicly-available filing or order entered in the criminal proceedings in the United States District Court in the Southern District of New York, captioned *United States v. Seibel*, case number 16-cr-00279-WHP, available to the public through the U.S. government's PACER website for court filings, and that their contents are capable of accurate and ready determination pursuant to NRS 47.130(2).

Mr. Ramsay further requests that the Court take judicial notice of the matters of fact set forth in the documents attached to the Declaration of Timothy Dudderar, Esq., submitted as Ramsay Appendix Exhibit 26, consisting of (1) Memorandum of Opinion dated August 25, 2017; (2) Order Dissolving GR BURGR, LLC and Appointing Liquidating Trustee dated October 25, 2017; (3) Appointment Order dated December 11, 2017; (4) Report and Proposed Liquidation Plan for GR BURGR, LLC (Public Version) dated March 30, 2020; and (5) Letter Opinion of Vice Chancellor Joseph R. Slights dated October 13, 2020. Mr. Ramsay argues that each of these documents is a publicly-available filing or order entered in the corporate dissolution proceedings

1 in the Delaware Court of Chancery, captioned *In re GR Burgr, LLC*, C.A. No. 12825-VCS. Mr.  
2 Ramsay argues that the documents are presently available to the public through the online website  
3 of the Delaware Court of Chancery, that their contents are capable of accurate and ready  
4 determination pursuant to NRS 47.130(2), and that the dissolution proceedings are closely related  
5 to the contractual relationships among GRB, Mr. Seibel, and Planet Hollywood in this case.

6 The Court has not received a written opposition from Mr. Seibel to Mr. Ramsay's Request  
7 for Judicial Notice. Pursuant to this Court's local rules, "[f]ailure of the opposing party to serve  
8 and file written opposition may be construed as an admission that the motion ...is meritorious and  
9 a consent to granting the same." EDCR 2.20(e). Further, the Court agrees with Mr. Ramsay's  
10 arguments set forth in Mr. Ramsay's Request for Judicial Notice.

11 The Court finds that the contents of the documents identified in Mr. Ramsay's Request for  
12 Judicial Notice are the proper subject of judicial notice pursuant to NRS 47.130 to NRS 47.170,  
13 and does take judicial notice of the contents of those documents for the purposes of ruling on Mr.  
14 Ramsay's Motion for Summary Judgment.

## 15 II. Findings of Fact

16 1. Planet Hollywood operates a casino and resort in Las Vegas, the Planet Hollywood  
17 Resort & Casino. Planet Hollywood and its affiliates (collectively "Caesars") are gaming entities  
18 regulated by the State of Nevada.

19 2. Mr. Ramsay is a chef, businessperson, and media personality, who from time to  
20 time lends his personal name and brand to restaurant ventures.

21 3. Mr. Seibel is the Plaintiff in this action and at all relevant times was a member and  
22 manager of GRB.

23 4. In or around 2012, Mr. Seibel, Mr. Ramsay, and Planet Hollywood became  
24 involved, in various capacities, in the development of a new restaurant venture to open inside the  
25 Planet Hollywood Resort & Casino. The restaurant was to focus on serving hamburgers. The  
26 restaurant was to be named BURGR Gordon Ramsay ("BURGR Restaurant"). The trademark  
27 BURGR Gordon Ramsay was owned at all relevant times by GR US Licensing LP ("GRUS").  
28



1           5.       In connection with the formation of the restaurant, GRB was formed as a Delaware  
2 limited liability company in October 2012 by Mr. Seibel and GRUS. The management of GRB  
3 was governed by the Limited Liability Company Agreement of GR BURGR, LLC (“LLC  
4 Agreement”). GRUS and Seibel each own a 50% membership interest in GRB. Mr. Ramsay is  
5 not, personally, a member or manager of GRB.

6           6.       Contemporaneous with the formation of GRB, GRB and GRUS entered into a  
7 License Agreement (“GRUS License Agreement”) whereby GRUS conferred limited rights on  
8 GRB to use or sublicense the trademark BURGR Gordon Ramsay. The GRUS License  
9 Agreement clarified that GRUS and Mr. Ramsay “are in no way limited or restricted in using and  
10 exploiting any other trademark or trade name that includes the name ‘Gordon Ramsay’ nor from  
11 using the name Gordon Ramsay without limitation.” See Ramsay Appendix, Exhibit 5, GRUS  
12 License Agreement, at §1.1.

13           7.       GRB, Planet Hollywood, and Mr. Ramsay thereafter entered into a Development,  
14 Operation and License Agreement dated December 2012 (“Development Agreement”). Under the  
15 Development Agreement, GRB agreed to sublicense the BURGR Gordon Ramsay mark to Planet  
16 Hollywood for use in connection with the BURGR Restaurant, and Planet Hollywood agreed to  
17 pay to GRB a License Fee based on a percentage of gross sales from the BURGR Restaurant.

18           8.       Section 11.2 of the Development Agreement provided, among other things, that:

19           Privileged License.....[I]f [Planet Hollywood] shall determine, in [Planet  
20 Hollywood’s] sole and exclusive judgment, that any GR Associate is an  
21 Unsuitable Person, then immediately following notice by [Planet Hollywood] to  
22 Gordon Ramsay and GRB, (a) Gordon Ramsay and/or GRB shall terminate any  
23 relationship with the Person who is the source of such issue, (b) Gordon Ramsay  
24 and/or GRB shall cease the activity or relationship creating the issue to [Planet  
25 Hollywood]’s satisfaction, in [Planet Hollywood]’s sole judgment, or (c) if such  
activity or relationship is not subject to cure as set forth in the foregoing clauses  
(a) and (b), as determined by [Planet Hollywood] in its sole discretion, [Planet  
Hollywood] shall, without prejudice to any other rights or remedies of [Planet  
Hollywood] including at law or in equity, have the right to terminate this  
Agreement and its relationship with Gordon Ramsay and GRB.

26           See Ramsay Appendix, Exhibit 6, Development Agreement, at §11.2.

27           9.       The Development Agreement defined “Unsuitable Person” at Section 1 thereof to  
28 include any person “who is or might be engaged or about to be engaged in any activity which

could adversely impact the business or reputation of [Planet Hollywood] or its Affiliates.” *Id.* at §1 (“Unsuitable Person” defined). Mr. Seibel, as a member and manager of GRB, was a “GR Associate” as that term was defined in Section 2.2 of the Development Agreement.

10. Section 14.21 of the Development Agreement provided as follows:

Additional Restaurant Projects....If [Planet Hollywood] elects to pursue any venture similar to the Restaurant (i.e., any venture generally in the nature of a burger centric or burger themed restaurant), GRB shall, or shall cause an Affiliate to, execute a development, operation and license agreement generally on the same terms and conditions as this Agreement, subject only to revisions agreed to by the parties, including revisions as are necessary to reflect the differences in such things as location, Project Costs, Initial Capital Investment, Operating Expenses and the potential for Gross Restaurant Sales between the Restaurant and such other venture and any resulting Section 8.1 threshold adjustment.

*See* Ramsay Appendix, Exhibit 6, Development Agreement, at §14.21. The Development Agreement defined the “Restaurant” as “a restaurant featuring primarily burger centric food and beverages known as ‘BURGR Gordon Ramsay’” located on the premises at the Planet Hollywood Hotel & Casino. *See id.* at Recital C (defining the “Restaurant”).

Unbeknownst to GRUS and Mr. Ramsay at the time of the Development Agreement, Mr. Seibel had participated in an illegal scheme between 2004 and 2009 to conceal taxable income from the IRS. According to Seibel’s Criminal Information, from 2004 to 2008, Seibel (and his mother) deposited considerable sums into a numbered account that he maintained at Union Bank of Switzerland (“UBS”) that, for an additional fee, concealed his identity from U.S. tax authorities. *See* Ramsay Appendix, Exhibit 10, Information ¶¶ 4-7. Upon learning of a government investigation into UBS’s efforts to help wealthy Americans evade taxes, Seibel took the following actions to avoid detection: [1] he created a Panamanian shell company for himself, [2] he traveled to Switzerland to close the UBS account, [3] he opened an account in the name of the Panamanian shell company at another Swiss Bank, and [4] he deposited a \$900,000 check from UBS into the new account. *See id.* ¶¶ 8-9. During this time Seibel filed tax returns that failed to report his overseas income and falsely claimed that he did not have an interest or signatory authority over a financial account in a foreign country. *See id.* ¶¶ 10-11.

In 2009, Seibel applied for amnesty under the IRS’s Voluntary Disclosure Program. *See id.* ¶ 12. In furtherance of his scheme to defraud the United States Government, Seibel falsely stated

1 that he had been unaware, during the years 2004 and 2005, that his mother had made deposits into  
2 the account. *See id.* ¶ 13. Seibel also represented that he had been unaware, until he made  
3 inquiries of UBS in 2009, of the status of his account at UBS and had in fact over time reached  
4 “the conclusion that deposits (into his UBS account) had been stolen or otherwise disappeared.”  
5 *See id.* These statements were false. *See id.* Seibel did not disclose that he created a Panamanian  
6 shell company, opened another Swiss account for his benefit, and deposited the funds he claimed  
7 were “stolen” or “disappeared” into the account. *See id.*

8 11. At some time no later than 2013, Mr. Seibel became aware that he was the target of  
9 a federal criminal investigation into his tax improprieties. Between 2015 and March of 2016, Mr.  
10 Seibel was involved in discussions and negotiations with the United States Government relating to  
11 his crimes. On April 18, 2016, Mr. Seibel pleaded guilty to a one-count criminal information  
12 charging him with impeding the administration of the Internal Revenue Code relating to his  
13 criminal conduct.

14 12. On or about April 11, 2016, Mr. Seibel sent a letter to GRUS requesting GRUS’  
15 consent, pursuant to the terms of the LLC Agreement, to an assignment of Mr. Seibel’s  
16 membership interest in GRB to “The Seibel Family 2016 Trust” and to accept Mr. Seibel’s  
17 resignation as manager of GRB. Mr. Seibel did not explain in his letter the reason for the  
18 requested assignment and resignation. On or about April 14, 2016, GRUS responded and  
19 requested further information from Mr. Seibel about the proposed assignment. Mr. Seibel did not  
20 respond to GRUS’ request for further information or provide GRUS with the requested  
21 information.

22 13. On or about August 19, 2016, Judge William H. Pauley, III sentenced Mr. Seibel to  
23 one month of imprisonment, six months of home detention, and 300 hours of community service,  
24 and ordered restitution.

25 14. Mr. Ramsay first learned of Mr. Seibel’s felony conviction when it was reported in  
26 the press in or around late August 2016.

27 15. Mr. Seibel alleges that on August 30, 2016, he sent a letter to Planet Hollywood  
28 regarding his felony conviction and his intent to assign his interests in GRB to “The Seibel Family

2016 Trust.” In response, on September 2, 2016, Planet Hollywood informed Mr. Seibel that “The Seibel Family 2016 Trust” is not an acceptable assignee of his interests.

16. On September 2, 2016, Planet Hollywood’s counsel sent notice to GRB, Mr. Ramsay, and Mr. Seibel’s personal attorney stating that, in Planet Hollywood’s judgment, the conviction rendered Mr. Seibel an “Unsuitable Person” as that term is defined in the Development Agreement. Planet Hollywood demanded that GRB completely terminate any relationship with Mr. Seibel within ten days, and warned that if GRB failed to dissociate itself from Mr. Seibel, Planet Hollywood would terminate the Development Agreement.

17. On September 6, 2016, GRUS, as the 50% member of GRB, made a demand to Mr. Seibel that Mr. Seibel terminate his relationship with GRB. In response, on September 8, 2016, Mr. Seibel proposed to GRUS that he dissociate himself from GRB by transferring his membership interest to “The Seibel Family 2016 Trust.” Mr. Seibel made this request to GRUS notwithstanding the fact that Planet Hollywood had already informed him days earlier that “The Seibel Family 2016 Trust” is not an acceptable assignee.

18. On September 12, 2016, Planet Hollywood’s counsel confirmed to Mr. Seibel that Planet Hollywood had rejected Mr. Seibel’s proposed assignment to “The Seibel Family 2016 Trust” because it had determined, in its own judgment, that the proposed assignee and its associates would maintain an impermissible direct or indirect relationship with Mr. Seibel, thereby rendering the proposed assignee an “Unsuitable Person” under the Development Agreement.

19. In a letter dated September 12, 2016, GRUS renewed its demand to Mr. Seibel that Mr. Seibel completely disassociate from GRB to Caesars’ and Planet Hollywood’s satisfaction. Mr. Seibel did not dissociate from GRB. Mr. Seibel had the ability to voluntarily relinquish his interests in GRB and terminate his relationship with GRB, but Mr. Seibel refused. Mr. Ramsay did not prevent Mr. Seibel from dissociating from GRB.

20. On September 21, 2016, Planet Hollywood terminated the Development Agreement on grounds that GRB had failed to dissociate from Mr. Seibel, effectively ending the BURGR Restaurant enterprise. Neither Mr. Ramsay nor GRUS had any role in Planet Hollywood’s

1 suitability determination or Planet Hollywood's decision to terminate the Development  
2 Agreement.

3 21. On September 22, 2016, GRUS sent a letter notice to GRB that it was terminating  
4 the License Agreement between itself and GRB for use of the BURGR Gordon Ramsay mark. The  
5 termination of the License Agreement was effective as of Planet Hollywood's September 21, 2016  
6 termination of the Development Agreement.

7 22. In October 2016, GRUS commenced a proceeding for judicial dissolution of GRB  
8 in the Delaware Court of Chancery on grounds of the shareholder deadlock between Mr. Seibel  
9 and GRUS following Mr. Seibel's felony conviction. *See In re GR Burgr, LLC*, Delaware Court  
10 of Chancery C.A. No. 12825-VCS. On August 25, 2017, the Delaware Court of Chancery granted  
11 a dispositive motion by GRUS and dissolved GRB. *See In re: GR BURGR, LLC*, 2017 WL  
12 3669511, at \*7 ("While the working relationship between the parties [GRUS and Siebel] arguably  
13 had broken down prior to Seibel's felony conviction in 2016 ... whatever deadlock may have  
14 arisen prior to Seibel's conviction solidified to igneous rock thereafter.") In dissolving GRB, the  
15 Delaware Court noted that Mr. Seibel has no right to interfere with Mr. Ramsay's ability to engage  
16 "in some other burger venture that uses his name and likeness to capitalize on the celebrity and  
17 status Ramsay has spent his career building." *Id.* at, \*11. The Delaware Court held:

18 Seibel cannot reasonably expect that this court would indefinitely lock Ramsay in a  
19 failed joint venture and thereby preclude him from ever engaging in a business that  
20 bears resemblance to GRB—a restaurant business that exploits Ramsay's celebrity  
21 to sell one of the most popular and beloved food preparations in all of history. Any  
22 such result would be the antithesis of equitable.

22 *Id.* This Court agrees.

23 23. In February 2017, Planet Hollywood entered into a new contract to open a new  
24 restaurant at the Planet Hollywood Hotel & Casino called "Gordon Ramsay Burger" (the "New  
25 Restaurant"). Mr. Ramsay has licensed his personal name for use in connection with the New  
26 Restaurant. The New Restaurant does not use the "BURGR Gordon Ramsay" mark or the  
27 "BURGR" mark.  
28

24. Mr. Ramsay has not personally received payments from Planet Hollywood for the operations of the BURGR Restaurant or the New Restaurant, and Mr. Seibel has cited no evidence that Mr. Ramsay has otherwise received any direct (or even indirect) financial benefit from the operations of the New Restaurant.

25. Mr. Seibel initiated this matter by filing his Complaint on February 28, 2017, wherein he purported to assert various claims against Mr. Ramsay (as well as other claims) derivatively on behalf of GRB. Mr. Seibel filed his First Amended Verified Complaint on June 28, 2017, in which he again purported to assert derivative claims on behalf of GRB against Mr. Ramsay.

26. On March 8, 2021, the Delaware Court of Chancery issued an *Order Regarding Liquidating Receiver's Report and Recommendation* in the Delaware Proceedings, whereby it judicially assigned the derivative claims Mr. Seibel asserted on GRB's behalf in this proceeding against Mr. Ramsay to Mr. Seibel, personally, to pursue "directly on his own behalf as assignee of GRB (which entity shall be cancelled...) with all right, title, and interests in and to the [claims] held by GRB being hereby assigned and transferred to Seibel." *See* Seibel Appendix, Exhibit 525, Mar. 8, 2021 Order. The Delaware Order further provided "to the extent Seibel hereinafter pursues [the claims], he shall do so entirely at his own costs." *Id.* Thus, Mr. Seibel, as assignee, personally stepped into the shoes of GRB to pursue the damages claims arising out of or relating to the enforcement of the terms of the GRB Agreement. *See* Substitution of Attorneys for GR Burgr, LLC (filed March 17, 2021).

27. As of March 17, 2021, GRB was cancelled pursuant to a Certificate of Cancellation of Certificate of Formation filed by the Liquidating Trustee of GRB with the Secretary of State of Delaware. *See id.* GRB no longer exists.

### III. Legal Standard

Pursuant to Nevada Rule of Civil Procedure ("NRC") 56(a), the court shall grant summary judgment on a claim if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to summary judgment as a matter of law. "A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for

1 the non-moving party.” *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 441-42  
2 (1993). When reviewing a motion for summary judgment, the evidence, and any reasonable  
3 inferences drawn from it, must be viewed in a light most favorable to the nonmoving party. *Wood*  
4 *v. Safeway*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). When a motion for summary  
5 judgment is made and supported as required by NRCP 56, the nonmoving party may not rest upon  
6 general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts  
7 demonstrating the existence of a genuine factual issue. *Pegasus v. Reno Newspapers, Inc.*, 118  
8 Nev. 706, 713-714, 57 P.3d 82, 87 (2002).

#### 9 IV. Mr. Seibel’s Claim For Breach of Contract

10 Mr. Ramsay moves for summary judgment on Mr. Seibel’s First Cause of Action for  
11 “Breaches of Contract” as set forth in the First Amended Complaint. Mr. Seibel brings his claim  
12 for breach of contract against Mr. Ramsay in his own name as GRB’s assignee. He has alleged  
13 that Mr. Ramsay breached the Development Agreement in a number of ways, including by,  
14 according to Mr. Seibel, continuing to do business with Planet Hollywood by participating in the  
15 operation of the New Restaurant; utilizing intellectual property of GRB in connection with the  
16 New Restaurant; “failing to enter into a separate written agreement with GRB or an affiliate”  
17 concerning the New Restaurant, “continuing to operate the Restaurant beyond the wind-up  
18 deadline in the Development Agreement”; and “[r]eceiving, directly or indirectly, monies intended  
19 for and owed to GRB under the Development Agreement.” *See* Am. Compl. at ¶71. Mr. Seibel  
20 argues more specifically that the alleged acts by Mr. Ramsay breached Section 14.21 of the  
21 Development Agreement, related to “Additional Restaurant Projects,” and Section 4.3.2 of the  
22 Development Agreement, related to “Certain Rights of [Planet Hollywood] Upon Expiration or  
23 Termination.” *See* Ramsay Appendix, Exhibit 6, §§4.3.3; 14.21.

24 Mr. Ramsay argues that summary judgment is appropriate because (a) he owed no  
25 contractual duties to GRB under the Development Agreement; (b) he did not accept or receive  
26 monies from Planet Hollywood that were owed to GRB; (c) the Development Agreement does not  
27 prohibit Mr. Ramsay from doing future business deals with Planet Hollywood following  
28 termination of the Development Agreement; (d) Mr. Ramsay is not using any “intellectual

property” of GRB, nor would his use of any such “intellectual property” be restricted by any express term of the Development Agreement; (e) Mr. Ramsay had no post-termination obligations with respect to a “wind-up” period; (f) Section 14.21 of the Development Agreement is an unenforceable agreement to agree; (g) Section 14.21 of the Development Agreement does not prohibit Mr. Ramsay from participating in the New Restaurant; and (h) enforcement of Section 14.21 of the Development Agreement was rendered impossible by GRB’s dissolution.

The Development Agreement contains a Nevada choice-of-law provision and none of the parties dispute that the validity, construction, performance and effect of the Development Agreement is governed by Nevada law. *See also* Ramsay Appendix at Ex. 6, Development Agreement, § 14.10.1. To survive summary judgment on his claim for breach of the Development Agreement under Nevada law, Mr. Seibel is required to show a genuine issue for trial as to each of the following elements: (1) the existence of a valid contract, (2) that GRB performed the contract or was excused from performance, (3) that Mr. Ramsay failed to perform the contract, and (4) that GRB suffered economic damages as a result of Mr. Ramsay’s alleged breach. *See State Dep’t of Transp. v. Eighth Jud. Dist. Ct.*, 133 Nev. 549, 554, 402 P.3d 677, 682 (2017).

“Breach of contract is the material failure to perform a duty arising under or imposed by agreement.” *Id.* (internal quotation marks omitted). “Contracts will be construed from the written language and enforced as written” and a court cannot “interpolate in a contract what the contract does not contain.” *Id.* (internal quotation marks omitted). “[W]hen a contract is clear, unambiguous, and complete, its terms must be given their plain meaning and the contract must be enforced as written; the court may not admit other evidence of the parties’ intent because the contract expresses their intent.” *Ringle v. Bruton*, 120 Nev. 82, 93, 86 P.3d 1032 (2004). Contract construction is a question of law and therefore “suitable for determination by summary judgment.” *Ellison v. California State Auto. Ass’n*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990).

As a threshold matter, the Court finds that while Mr. Ramsay is a party to the Development Agreement, his obligations thereunder are limited to those expressly set forth in the contract’s express language. The plain and unambiguous recitals to the Development Agreement state that Mr. Ramsay is a party to the Development Agreement “to the limited extent specifically provided



therein.” *See* Ramsay Appendix at Ex. 6, Development Agreement, Recitals. The Development Agreement imposes on Mr. Ramsay certain express obligations to provide consulting services, to permit the use of his personal name, and to make personal appearances in connection with the BURGR Restaurant. Mr. Ramsay’s limited obligations to Planet Hollywood are identified at Section 3.4.1, 7.1, and 7.2, as follows:

- 3.4.1 Menu Development. “Gordon Ramsay or members of his team shall develop the initial food and beverage menus of the Restaurant, the recipes for the same, and thereafter, Gordon Ramsay or members of his team shall revise the food and beverage menus of the Restaurant, and the recipes for same (the ‘Menu Development Services’).”
- 7.1 Initial Promotion. “During the period prior to the Opening Date, Gordon Ramsay shall, as reasonably required by PH ... engage in promotional activities for the Restaurant....” Ramsay agreed to visit the Restaurant before the Opening Date (“GR Promotional Visits”).
- 7.3 Subsequent Restaurant Visits. After the Opening Date, Ramsay agreed to visit the Restaurant for promotion purposes (“GR Restaurant Visits”).

*See id.* at §§ 3.4.1, 7.1, 7.2.

These are Mr. Ramsay’s only obligations under the Development Agreement. Absent from the plain language of the Development Agreement is any contractual obligation running from Mr. Ramsay, personally, to GRB, or any representation or warranty made by Mr. Ramsay to GRB.

The Court also finds that Section 14.21 of the Development Agreement—relied on by Mr. Seibel—is void and unenforceable as “an agreement to agree in the future.” “An agreement to agree at a future time is nothing and will not support an action for damages.” *City of Reno v. Silver State Flying Serv.*, 84 Nev. 170, 176, 438 P.2d 257, 261 (1968). “An agreement to agree on contract terms at a later date is not a binding contract in Nevada.” *Diamond Elec. Inc. v. Pace Pac. Corp.*, 346 Fed. App’x 186, 187 (9th Cir. 2009). The Court agrees with Mr. Ramsay that the plain language of Section 14.21 lacks any of the definite terms of a binding agreement, but instead leaves all material terms of any future, similar restaurant that Planet Hollywood may pursue open to further negotiation. The parties’ intent that the contract not bind them to a specific set of terms in the future is clear from the plain text stating that material terms of a future project, if any, must be “agreed to by the parties.” *See* Ramsay Appendix at Ex. 6, Development Agreement, §14.21. This void provision is separate and severable from the remainder of the Development Agreement

1 pursuant to Section 14.7 of the Development Agreement. *See id.* at §14.7 (“Severability”).  
2 Because Section 14.21 is unenforceable as a binding contractual provision, all of Mr. Seibel’s  
3 arguments predicated on that clause fail as a matter of law.

4 Moreover, even if Section 14.21 of the Development Agreement were enforceable, nothing  
5 in its plain language imposes any obligation whatsoever on Mr. Ramsay. If anything, the plain  
6 and unambiguous language of the provision compels GRB, (not Mr. Ramsay or Planet Hollywood  
7 or any other party) to take certain actions in the event Planet Hollywood “elects to pursue any  
8 venture similar to the” BURGR Restaurant. Mr. Ramsay, a party to the Development Agreement  
9 to the limited extent specifically provided therein, is not subject to a claim for breach of Section  
10 14.21 of the Development Agreement.

11 Mr. Seibel also argues that Mr. Ramsay breached Section 4.3.2(e) of the Development  
12 Agreement by allegedly using protected intellectual property of GRB in connection with the New  
13 Restaurant. The Court need not consider whether Mr. Seibel has submitted competent evidence of  
14 the existence of such intellectual property or its use (by Mr. Ramsay or others) in connection with  
15 the New Restaurant, as the Court agrees with Mr. Ramsay that Section 4.3.2(e) does not impose  
16 any obligations on Mr. Ramsay to take any action or to refrain from taking any action whatsoever.  
17 *See Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001) (courts are “not free to  
18 modify or vary the terms of an unambiguous agreement.”). Similarly, the Court agrees with Mr.  
19 Ramsay that the plain language of the Development Agreement does not impose any specific  
20 obligations on Mr. Ramsay with respect to the “wind-up” of the BURGR Restaurant described at  
21 Section 4.3.2(a) of the Development Agreement.

22 Mr. Seibel cites no other provision of the Development Agreement that would supposedly  
23 prevent Mr. Ramsay from doing any type of business with Planet Hollywood following Planet  
24 Hollywood’s termination of the Development Agreement, including that Mr. Seibel offers no  
25 contractual provision that should prevent Mr. Ramsay from permitting the use of his name in  
26 connection with the operation of the New Restaurant. The Court finds that GRB has no rights to  
27 Gordon Ramsay’s personal name, which only he (and not GRB) controls. As Mr. Seibel’s counsel  
28 conceded at hearing, Mr. Seibel does not argue that there is any legal basis to prevent Mr. Ramsay

1 from engaging in a restaurant business exploiting his celebrity that bears a resemblance to GRB's  
2 operation. *See* Tr. of Proceedings, 1/20/22; *Gordon Ramsay's Motion for Summary Judgment* at  
3 32:4-16. Accordingly, Mr. Seibel's claims that Mr. Ramsay has breached the Development  
4 Agreement by participating in the operation of the New Restaurant, doing business with Planet  
5 Hollywood on a new venture without including GRB, "using" any alleged intellectual property of  
6 GRB after termination of the Development Agreement, or failing to "wind up" the BURGR  
7 Restaurant after termination of the Development Agreement fail. The Court finds that there is no  
8 genuine issue of material fact and that Mr. Ramsay is entitled to judgment as a matter of law on  
9 the breach of contract claim pursuant to NRCP 56.<sup>1</sup>

10 **V. Mr. Seibel's Claim For Breach of the Covenant of Good Faith and Fair Dealing**

11 Mr. Ramsay moved for summary judgment on Mr. Seibel's Second Cause of Action for  
12 "Contractual Breach of the Implied Covenant of Good Faith and Fair Dealing" as set forth in the  
13 First Amended Complaint. Mr. Seibel brings his claim for contractual breach of the implied  
14 covenant of good faith and fair dealing in his own name as GRB's assignee. He has alleged that  
15 Mr. Ramsay breached the implied covenant of good faith and fair dealing in the Development  
16 Agreement in a number of ways, including by, according to Mr. Seibel, "[p]ursuing an arbitrary,  
17 capricious, and bad faith scheme with [Planet Hollywood] to oust Seibel and GRB from the  
18 [BURGR] Restaurant to increase the profits of himself or an affiliate"; "[e]nticing and  
19 encouraging [Planet Hollywood] to breach its contractual obligations to GRB"; "[r]efusing to  
20 allow assignments related to GRB to damage and harm GRB's contractual rights"; "[w]rongfully  
21 representing to [Planet Hollywood] that Seibel is an unsuitable person and that his affiliation with  
22 GRB cannot be cured"; and "[c]laiming Nevada gaming law and authorities would prohibit [Planet  
23 Hollywood] from paying any monies to GRB or from allowing Seibel to assign his interest in  
24 GRB to The Seibel Family 2016 Trust...."<sup>2</sup> *See* Am. Compl. at ¶77.

25  
26 <sup>1</sup> To the extent Mr. Seibel has alleged or argued any other supposed conduct by Mr. Ramsay that  
27 Mr. Seibel claims has breached the Development Agreement—including Mr. Seibel's  
28 allegations that Mr. Ramsay received "monies intended for and owed to GRB under the  
Development Agreement"—the Court has considered the record and the plain and unambiguous  
contract provisions at issue and finds that no reasonable jury could return a verdict in Mr.  
Seibel's favor on such claims, and therefore summary judgment is appropriate.

<sup>2</sup> To the extent Mr. Seibel has alleged other conduct in support of his claim for breach of the

Mr. Ramsay argues that summary judgment is appropriate because Mr. Seibel's claim is essentially a recast argument that Planet Hollywood improperly terminated the Development Agreement after deeming him an "Unsuitable Person." Mr. Ramsay notes the unambiguous language of the Development Agreement provides that Planet Hollywood had "sole and exclusive" discretion to determine "unsuitability" and to terminate the Development Agreement as it saw fit, and that Mr. Ramsay had no contractual or other role in Planet Hollywood's determination. Mr. Ramsay further argues that the Development Agreement imposes no obligation on Mr. Ramsay to assist Mr. Seibel with his attempt to transfer his interest in GRB to his family trust. This Court agrees.

The Court will apply Nevada law to this claim based on the choice of law provision in the Development Agreement. *See* Ramsay Appendix, Ex. 6, Development Agreement, § 14.10.1. Under Nevada law, a contractual breach of the implied covenant of good faith and fair dealing may occur where "one party performs a contract in a manner that is unfaithful to the purpose of the contract and the justified expectations of the other party are thus denied." *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991). This claim lies only "[w]here the terms of a contract are literally complied with but one party to the contract deliberately contravenes the intention and spirit of the contract." *Id.* The "implication" of the covenant of good faith and fair dealing arises from a concern for advancing the "intention and spirit" of the contracting parties. *Id.*

The implied covenant may not be used to imply a term that is contradicted by an express term of the contract. *See, e.g., Kucharyk v. Regents of Univ.y of Cal.*, 946 F. Supp. 1419, 1432 (N.D. Cal. 1996) (applying California law); *see also, e.g., Sessions, Inc. v. Morton*, 491 F.2d 854, 857-858 (9th Cir. 1974) ("This covenant of good faith and fair dealing imposes a duty on each

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implied covenant of good faith and fair dealing in the Development Agreement that is duplicative of conduct he has alleged constitutes a breach of the Development Agreement, such conduct cannot serve as the basis for a claim for breach of the implied covenant, and summary judgment is appropriate as to such claims. *Cf. Am. Compl. at ¶71, ¶77; see also Ruggieri v. Hartford Ins. Co. of the Midwest*, Case No. 2:13-cv-00071-GMN-GWF, 2013 WL 2896967 at \*3 (D. Nev. June 12, 2013) ("[A]llegations that a defendant violated the actual terms of a contract are incongruent with [a claim for breach of the implied covenant of good faith and fair dealing] and insufficient to maintain a claim.").

1 party to do everything that the contract presupposes will be done in order to accomplish the  
2 purpose of the contract. However, this implied obligation must arise from the language used or it  
3 must be indispensable to effectuate the intention of the parties.”) (internal quotations omitted); *see*  
4 *also, Restatement (Second) of Contracts* § 205 (1981).

5 As noted above the intention and spirit of the contracting parties to the Development  
6 Agreement is demonstrated by the express language they chose to include in their contract. *See,*  
7 *e.g., Ringle*, 120 Nev. at 93, 86 P.3d at 1039. Here, the intention and spirit of the parties, as  
8 evidenced by the contractual language, afforded Planet Hollywood the “sole and exclusive  
9 judgment” to deem Mr. Seibel unsuitable under these circumstances, to reject his proposed  
10 “dissociation” from GRB by transfer of his membership interest to his family trust, and to  
11 terminate the Development Agreement upon GRB’s failure to timely comply with Planet  
12 Hollywood’s demands to terminate its relationship with Mr. Seibel. *See* Ramsay Appendix at Ex.  
13 6, Development Agreement at 25-26, § 11.1, 11.2. Similarly, the parties expressed their intention  
14 in the plain language of the Development Agreement that Mr. Ramsay’s obligations would be  
15 “limited” to those “specifically provided” in the Development Agreement. *See, e.g.,* Ramsay  
16 Appendix, Exhibit 6, Development Agreement at Recitals.

17 To hold that Mr. Ramsay should have an implied obligation to intervene in Planet  
18 Hollywood’s suitability determination as to Mr. Seibel, or to lobby on Mr. Seibel’s behalf for the  
19 benefit of GRB, as Mr. Seibel appears to suggest, would be to imply terms into the Development  
20 Agreement that contradict its express terms, which the Court cannot do. The Court finds that Mr.  
21 Ramsay had no obligation to take, or to refrain from taking, any particular action with respect to  
22 Planet Hollywood’s unsuitability determination or demand for dissociation to GRB.

23 Mr. Ramsay also had no express or implied contractual obligation to approve Mr. Seibel’s  
24 proposed transfer of his interest in GRB to Mr. Seibel’s family trust, or to somehow otherwise  
25 assist Mr. Seibel in selling his membership interest, as Mr. Seibel appears to argue. In fact, as Mr.  
26 Ramsay is not a member or manager of GRB, nor a party to the GRB LLC Agreement, he had no  
27 role or authority whatsoever in approving or disapproving a proposed transfer of interest by one of  
28

1 its members. Mr. Seibel made that request to GRUS, and more specifically GRUS' appointed  
2 manager of GRB, Stuart Gillies, who are not parties to this lawsuit.<sup>3</sup>

3 Moreover, the chain of events that led to Planet Hollywood's termination of the  
4 Development Agreement indisputably started with Mr. Seibel's own criminal conduct. His  
5 pleading guilty to a tax fraud felony, and subsequent refusal to dissociate himself from GRB to  
6 Planet Hollywood's satisfaction, severely altered GRB's "justified expectations" under its  
7 contract. Indeed, with one of its members acknowledging guilt of a serious criminal perpetration  
8 of fraud, GRB had no justified expectation that it could continue to do business with Planet  
9 Hollywood absent immediate and material corrective action by Mr. Seibel, which Mr. Seibel failed  
10 to undertake. The ultimate result here—the termination of the Development Agreement and  
11 closing of the BURGR Restaurant—is not attributable to Mr. Ramsay's alleged actions or  
12 nonactions. The Court finds that Planet Hollywood validly exercised its "absolute discretion" and  
13 determined in its "sole and exclusive judgment" that Mr. Seibel, and by extension GRB, is an  
14 "Unsuitable Person," a consequence that is entirely of Mr. Seibel's own doing.

15 Because Mr. Seibel cannot identify any implied obligation under the Development  
16 Agreement that Mr. Ramsay could have breached, and cannot show that any action of Mr. Ramsay  
17 caused GRB's "justified expectations" to be denied, his claim must fail. The Court finds that there  
18 is no genuine issue of material fact and that Mr. Ramsay is entitled to judgment as a matter of law  
19 on the claim for breach of the covenant of good faith and fair dealing pursuant to NRCP 56.

## 20 VI. Mr. Seibel's Claim for Unjust Enrichment

21 Mr. Ramsay moves for summary judgment on Mr. Seibel's Third Cause of Action for  
22 "Unjust Enrichment" as set forth in the First Amended Complaint. Mr. Seibel brings his claim for  
23

---

24 <sup>3</sup> The Court rejects Mr. Seibel's argument that GRUS (and by implication Mr. Ramsay) had any  
25 obligation to approve Mr. Seibel's proposed membership assignment. Paragraph 10.1(a) of  
26 GRB's LLC Agreement governs "Inter-Vivos Transfer" of GRB's membership interests. *See*  
27 Ramsay Appendix, Ex. 2 at ¶ 10.1(a). There is nothing in Paragraph 10.1(a) of GRB's LLC  
28 Agreement that required GRUS or GRUS's appointed manager to consider, much less approve,  
Mr. Seibel's request to transfer his membership interests in GRB to his family trust. Following  
Mr. Seibel's felony conviction neither Mr. Ramsay nor GRUS had any obligation, contractual or  
otherwise, to consider or approve Mr. Seibel's proposed assignment. In any event, Mr. Seibel's  
requested assignment would not have cured GRB's unsuitability because Planet Hollywood had  
already determined that The Seibel Family Trust 2016 was not a suitable assignee.

1 unjust enrichment in his own name as GRB’s assignee. He has alleged that Mr. Ramsay has been  
2 unjustly enriched because, according to Mr. Seibel, Mr. Ramsay “directly or indirectly, has  
3 wrongfully accepted and retained monies intended for and owed to GRB under the Development  
4 Agreement.” *See* Am. Compl. at ¶84. More specifically, Mr. Seibel argues that Mr. Ramsay has  
5 been unjustly enriched because Mr. Ramsay is “operating the same restaurant in the same space,”  
6 and that GRB is entitled to “fair value” from the operation of the New Restaurant, regardless  
7 whether Section 14.21 or any other provision of the Development Agreement is enforceable.

8 Mr. Ramsay argues that summary judgment is appropriate because the parties’ relationship  
9 is comprehensively governed by contract—the Development Agreement—and because Mr. Seibel  
10 cannot show that GRB conferred any benefit upon Mr. Ramsay or that Mr. Ramsay derived any  
11 benefit from the operation of the New Restaurant that has been “unjust.”

12 “The phrase ‘unjust enrichment’ is used in law to characterize the result or effect of a  
13 failure to make restitution or, or for, property or benefits received under such circumstances as to  
14 give rise to a legal or equitable obligation to account therefor.” 66 Am. Jur. 2d, *Restitution*, § 3  
15 (1973). Under Nevada law, “[u]njust enrichment exists when the plaintiff confers a benefit on the  
16 defendant, the defendant appreciates such benefit, and there is acceptance and retention by the  
17 defendant of such benefit under circumstances such that it would be inequitable for him to retain  
18 the benefit without payment of the value thereof.” *Certified Fire Prot., Inc. v. Precision Constr.,*  
19 *Inc.*, 128 Nev. 371, 381, 283 P.3d 250, 257 (2012). “For an enrichment to be inequitable to retain,  
20 the person conferring the benefit must have a reasonable expectation of payment and the  
21 circumstances are such that equity and good conscience require payment for the conferred  
22 benefit.” *Korte Constr. Co. v. State on Relation of Bd. of Regents of Nev. Sys. of Higher Educ.*,  
23 492 P.3d 540, 544, 137 Nev. Adv. Op. 37 (2021) (citing *Certified Fire Prot.*, 128 Nev. at 381, 283  
24 P.3d at 257)).

25 “An action based on a theory of unjust enrichment is not available when there is an  
26 express, written contract, because no agreement can be implied when there is an express  
27 agreement.” *Leasepartners Corp. v. Robert L. Brooks Trust Dated Nov. 12, 1975*, 113 Nev. 747,  
28 755-756, 942 P.2d 182, 187 (1997).



Here, the Court agrees with Mr. Ramsay that his relationship with GRB—including his obligations to GRB (or lack thereof) with respect to Mr. Ramsay’s future business ventures—were comprehensively governed by the parties’ contract, the Development Agreement. As described elsewhere in this Order, and as conceded by Mr. Seibel’s counsel at hearing, the plain language of the Development Agreement did not prohibit Mr. Ramsay from personally participating in the operation of the New Restaurant, or from participating in any future restaurant venture with Planet Hollywood involving Mr. Ramsay’s personal name. The Development Agreement does explicitly address issues relating to “intellectual property” and to GRB’s marks and materials, including at Sections 6. (“Intellectual Property License”); 6.2.1 (“Ownership...by GRB or Gordon Ramsay”); 6.2.2 (“Ownership...by [Planet Hollywood]”); and 6.5 (“Gordon Ramsay’s Rights in the Marks”). Section 4.3 of the Development Agreement governs the parties’ respective rights to the “Intellectual Property” upon termination of the Development Agreement, and Section 8 comprehensively governs “License and Service Fees.” *See, e.g.*, Ramsay Appendix, Exhibit 6, Development Agreement. Mr. Seibel does not argue that the plain language of any of these provisions bars Mr. Ramsay, personally, from participating in the operation of the New Restaurant, or any other venture.<sup>4</sup>

Instead, Mr. Seibel cites Section 14.21 of the Development Agreement and appears to argue that his unjust enrichment claim should serve as a failsafe claim in the event that this Court should find Section 14.21 is an unenforceable agreement to agree, but as the Court has held herein, even if it were enforceable, Section 14.21 would not bar Mr. Ramsay from participating in a new hamburger restaurant venture with Planet Hollywood (nor would any other term of the Development Agreement). To the contrary, the language of Section 14.21’s “agreement to agree” evidences no intent of the parties to impose binding obligations on Planet Hollywood with respect

<sup>4</sup> GRB’s understanding of this absence of restrictions on Mr. Ramsay’s future business dealings is further demonstrated by its agreement, in the GRUS License Agreement (to which Mr. Ramsay is not a party), that notwithstanding the sublicense of the BURGR Gordon Ramsay mark to Planet Hollywood (through GRB), GRUS and Mr. Ramsay “are in no way limited or restricted in using and exploiting any other trademark or trade name that includes the name ‘Gordon Ramsay’ nor from using the name Gordon Ramsay without limitation.” *See* Ramsay Appendix, Exhibit 5, GRUS License Agreement, at §1.1.



1 to future restaurant ventures, and to impose no obligations whatsoever on Mr. Ramsay personally  
2 with respect to the same.

3 Because the relationship and obligations between GRB and Mr. Ramsay with respect to the  
4 operation of future hamburger restaurants at Planet Hollywood, and the use of Mr. Ramsay's name  
5 or derivations thereof, were comprehensively governed by the Development Agreement, Mr.  
6 Seibel's claim for unjust enrichment fails as a matter of law. Moreover, in light of the plain  
7 language of the parties' business contracts, Mr. Seibel has failed to identify evidence supporting  
8 that GRB has (or has ever had) any equitable entitlement to profits, or other monies or benefits,  
9 that may be derived by Mr. Ramsay from the use of his name, which only he owns, in connection  
10 with the operation of the New Restaurant, such that it would be an injustice for Mr. Ramsay to  
11 retain that benefit.

12 The Court finds that there is no genuine issue of material fact and that Mr. Ramsay is  
13 entitled to judgment as a matter of law on the unjust enrichment claim pursuant to NRCP 56.

#### 14 **VII. Mr. Seibel's Claim For Civil Conspiracy**

15 Mr. Ramsay moves for summary judgment on Mr. Seibel's Fourth Cause of Action for  
16 "Civil Conspiracy" as set forth in the First Amended Complaint. Mr. Seibel brings his claim for  
17 civil conspiracy in his own name as GRB's assignee. He has alleged that Mr. Ramsay formed an  
18 explicit or tacit agreement with Planet Hollywood to "breach the Development Agreement and  
19 oust Seibel from the Restaurant," and that in furtherance of the conspiracy Mr. Ramsay "directly  
20 or indirectly, refused to allow Seibel to transfer his interest in GRB to The Seibel Family Trust  
21 2016, resign as a manager of GRB, and appoint Craig Green as a manager of GRB" and that "in a  
22 letter sent on or around September 15, 2016, Ramsay and GRUS falsely told [Planet Hollywood]  
23 that Seibel is an unsuitable person and his affiliation with GRB and the Restaurant could not be  
24 cured." *See* Am. Compl. at ¶¶87-89.

25 Mr. Ramsay argues that summary judgment is appropriate because, as a matter of law, two  
26 parties to a contract cannot be liable for a conspiracy to breach it, and because there is no evidence  
27 of an unlawful or wrongful "overt act" by Mr. Ramsay in furtherance of any alleged conspiracy.  
28

1 A civil conspiracy “consists of a combination of two or more persons, who, by some  
2 concerted action, intend to accomplish an unlawful objective for the purpose of harming another,  
3 and damages results from the act or acts.” *Consol. Generator-Nev., Inc. v. Cummins Engine Co.*,  
4 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (internal quotations omitted).

5 Under Nevada law, conspiracy to breach the terms of a contract may only “lie where a  
6 contracting party and third parties conspire to frustrate the purpose of the contract.” *Tousa*  
7 *Homes, Inc. v. Phillips*, 363 F.Supp.2d 1274, 1282-83 (D. Nev. 2005) (citing *Hilton Hotels Corp.*  
8 *v. Butch Lewis Prods.*, 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (1993)). “[A] party cannot, as a  
9 matter of law, tortiously interfere with its own contract.” *Blanck v. Hager*, 360 F.Supp.2d 1137,  
10 1154 (D. Nev. 2005); *aff’d*, 220 Fed. Appx. 697 (9th Cir. 2007) (citing *Bartsas Realty, Inc. v.*  
11 *Nash*, 81 Nev. 325, 327, 402 P.2d 650, 651 (1965)). In line with these principles, courts have  
12 articulated that, in general, “[t]here can be no conspiracy by two or more parties to a contract to  
13 breach the contract.” *Logixx Automation v. Lawrence Michels Fam.*, 56 P.3d 1224, 1231 (Colo.  
14 App. 2002) (holding that “because the only duty a contracting party owes is to perform the  
15 contract according to its terms, a contracting party has no independent duty not to conspire to  
16 breach its own contract.”)

17 Here, Mr. Seibel’s claim is, at its base, an allegation that Mr. Ramsay tortiously interfered  
18 with his own contract, the Development Agreement, by allegedly encouraging Planet Hollywood  
19 to deem Mr. Seibel “unsuitable” and by allegedly encouraging Planet Hollywood to exercise its  
20 bargained-for termination rights. *Cf.* Am. Compl. at ¶89. Such a claim is not actionable, as it is  
21 the law of this State that a party cannot interfere with (or “conspire to breach”) its own contract,  
22 and Mr. Ramsay is indisputably a party to the Development Agreement. *See, e.g., Blanck*, 360  
23 F.Supp.2d at 1154. Mr. Seibel’s claim fails as a matter of law.

24 Even if such a claim were actionable, the Court agrees with Mr. Ramsay that the record  
25 lacks any evidence of an overt, “wrongful” act by Mr. Ramsay in furtherance of the alleged  
26 “conspiracy.” The Court has found that no action of Mr. Ramsay breached the Development  
27 Agreement. Mr. Ramsay had no obligation, express or implied, to communicate with (or refrain  
28 from communicating with) Planet Hollywood with respect to its exercise of its sole and absolute

1 discretion to deem Mr. Seibel “unsuitable.” Moreover, Mr. Ramsay had no contractual role or  
2 obligation with respect to Mr. Seibel’s request (just prior to his felony guilty plea and, again, after  
3 his conviction was discovered) to transfer his membership interest in GRB to “The Seibel Family  
4 2016 Trust.” Indeed, the approval of any assignment by a GRB member was not governed by the  
5 Development Agreement, but by the express terms of GRB’s LLC Agreement, to which Mr.  
6 Ramsay was not a party. It is undisputed that Mr. Seibel made his request to GRUS, not to Mr.  
7 Ramsay, pursuant to the terms of GRB’s LLC Agreement. Again, in reviewing the plain language  
8 of the agreements between the parties, the alleged actions (or non-actions) of Mr. Ramsay were  
9 neither wrongful nor in furtherance of any wrongful act. No claim for civil conspiracy may lie  
10 under such circumstances.

11 The Court finds that there is no genuine issue of material fact and that Mr. Ramsay is  
12 entitled to judgment as a matter of law on the civil conspiracy claim pursuant to NRCP 56.

13 **VIII. Mr. Seibel’s “Additional Requests” for Equitable Relief**

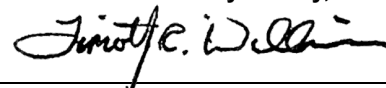
14 Mr. Ramsay moves for summary judgment as to Mr. Seibel’s “Additional Requests for  
15 Relief” as set forth at paragraphs 93-123 of his Amended Complaint, on grounds that the results of  
16 the Delaware Proceedings have rendered such requests for equitable relief “moot.” Mr. Seibel  
17 agrees that his requests for equitable relief are moot and does not oppose summary judgment  
18 thereon. Accordingly, the Court will grant the request for summary judgment on those requests.

19 Wherefore, based on the foregoing, **IT IS HEREBY ORDERED, ADJUDGED, AND**  
20 **DECREED** that Gordon Ramsay’s Request for Judicial Notice is **GRANTED** in full, and Gordon  
21 Ramsay’s Motion for Summary Judgment is **GRANTED** in full. Pursuant to Nevada Rule of  
22 Civil Procedure 56, the Court hereby awards judgment as a matter of law in favor of Mr. Ramsay,  
23 and against Mr. Seibel, on all of Mr. Seibel’s claims against Mr. Ramsay asserted in Mr. Seibel’s  
24 First Amended Complaint.

25 **IT IS SO ORDERED.**

26 Dated: \_\_\_\_\_

Dated this 25th day of May, 2022



MH

1EA 5A2 2C7F D50A  
Timothy C. Williams  
District Court Judge

Respectfully submitted by:

DATED May 25, 2022.

FENNEMORE CRAIG, P.C.

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Approved as to form and content by:

DATED May 25, 2022.

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Approved as to form and content by:

DATED May 25, 2022.

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1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Rowen Seibel, Plaintiff(s)

CASE NO: A-17-751759-B

7 vs.

DEPT. NO. Department 16

8 PHWL V LLC, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

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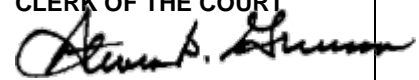
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**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability  
company,

Nominal Plaintiff.

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**NOTICE OF ENTRY OF FINDINGS OF  
FACT, CONCLUSIONS OF LAW, AND  
ORDER GRANTING CAESARS' MOTION  
FOR SUMMARY JUDGMENT NO. 2**

AND ALL RELATED MATTERS

PLEASE TAKE NOTICE that a Findings of Fact, Conclusions of Law, and Order  
Granting Caesars' Motion for Summary Judgment No. 2 was entered in the above-captioned

1 matter on May 31, 2022, a true and correct copy of which is attached hereto.

2 DATED this 3rd day of June 2022.

3 PISANELLI BICE PLLC

4 By: /s/ M. Magali Mercera  
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9 *Paris Las Vegas Operating Company, LLC;*  
10 *PHWL, LLC; and Boardwalk Regency*  
11 *Corporation d/b/a Caesars Atlantic City*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 3rd day of June 2022, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING CAESARS' MOTION FOR SUMMARY JUDGMENT NO. 2** to the following:

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TPOV Enterprises, LLC, TPOV Enterprises 16, LLC,  
FERG, LLC, and FERG 16, LLC; and R Squared  
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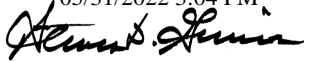
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/s/ Cinda Towne  
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Corporation d/b/a Caesars Atlantic City*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability  
company,

Nominal Plaintiff.

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER GRANTING  
CAESARS' MOTION FOR SUMMARY  
JUDGMENT NO. 2**

Date of Hearing: December 6, 2021

Time of Hearing: 1:30 p.m.

AND ALL RELATED MATTERS

PHWLV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las Vegas Operating Company, LLC ("Paris"), and Boardwalk Regency Corporation d/b/a Caesars Atlantic City's ("Caesars Atlantic City," and collectively, with Caesars Palace, Paris, and Planet Hollywood, "Caesars,") *for Summary Judgment No. 2* (the "MSJ No. 2"), filed on February 25, 2021, came before this Court for hearing on December 6, 2021, at 1:30 p.m.

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

James J. Pisanelli, Esq., and M. Magali Mercera, Esq., of the law firm PISANELLI BICE PLLC, appeared telephonically on behalf of Caesars. Joshua P. Gilmore, Esq., and Paul C. Williams, Esq., of the law firm BAILEY KENNEDY, appeared telephonically on behalf of TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), GR Burgr, LLC ("GRB"), and DNT Acquisition, LLC ("DNT"), appearing derivatively by and through R Squared Global Solutions, LLC ("R Squared") (collectively the "Seibel-Affiliated Entities"), Rowen Seibel ("Seibel"), and Craig Green ("Green").<sup>1</sup> John Tennert, Esq., of the law firm FENNEMORE CRAIG, appeared telephonically on behalf of Gordon Ramsay ("Ramsay"). Alan Lebensfeld, of the law firm LEBENSFELD SHARON & SCHWARTZ P.C., appeared telephonically on behalf of The Original Homestead Restaurant.

The Court having considered MSJ No. 2, the opposition thereto, as well as argument of counsel presented at the hearing, taken the matter under advisement, and good cause appearing therefor, enters the following Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

The Court HEREBY FINDS AS FOLLOWS:

1. Planet Hollywood and its affiliates hold gaming licenses in Nevada and other jurisdictions across the country.

2. Nevada's gaming regulations provide that a gaming license will not be awarded unless the Nevada Gaming Commission is satisfied that the gaming license applicant (a) is "of good character, honesty, and integrity" (b) with "background, reputation and associations [that] will not result in adverse publicity for the State of Nevada and its gaming industry; and" (c) someone who "[h]as adequate business competence and experience for the role or position for which application is made." Nev. Gaming Regul. 3.090(1).

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

1           3.       Nevada gaming licensees are required to self-police and to act promptly if they learn  
2 of derogatory information about their own operations or those of their business associates.

3           4.       Caesars has established and operates an Ethics and Compliance Program (the  
4 "Compliance Plan") requiring Caesars to maintain the highest standards of conduct and association  
5 and guard its reputation to avoid even the slightest appearance of impropriety. To that end, Caesars  
6 is further required to avoid questionable associations with Unsuitable Persons which could tarnish  
7 Caesars' image, jeopardize its gaming licenses, or hamper its ability to expand into new markets.

8           5.       Pursuant to Caesars' Compliance Plan, Caesars' vendors, suppliers, and business  
9 partners, among others, must agree to abide by the same standards, business ethics, and principles  
10 expected of Caesars' employees. To that end, Planet Hollywood includes clear and unambiguous  
11 language in its contracts with third parties that puts all such parties on notice that Planet Hollywood  
12 is in a highly regulated business and that such third parties must abide by gaming suitability  
13 requirements.

14           6.       Beginning in 2009, Caesars began entering into contracts with Seibel and the Seibel-  
15 Affiliated Entities relating to the development, creation, and operation of various restaurants in Las  
16 Vegas and Atlantic City (the "Seibel Agreements").

17           7.       Planet Hollywood, GRB (a Seibel-Affiliated Entity), and Gordon Ramsay, entered  
18 into an agreement on or about December 2012 relating to the GR Burgr restaurant at Planet  
19 Hollywood in Las Vegas (the "GRB Agreement"). Section 14.21 of the GRB Agreement  
20 contemplated potential future restaurants but the parties did not agree on material terms regarding  
21 future restaurants. Specifically, Section 14.21 provided that:

22           If [Planet Hollywood] elects to pursue any venture similar to the Restaurant  
23 (*i.e.*, any venture generally in the nature of a burger centric or burger themed  
24 restaurant), GRB shall, or shall cause an Affiliate to, execute a development,  
25 operation and license agreement generally on the same terms and conditions as this  
26 Agreement, subject only to revisions agreed to by the parties, including revisions  
27 as are necessary to reflect the differences in such things as location, Project Costs,  
28 Initial Capital Investment, Operating Expenses and the potential for Gross  
Restaurant Sales between the Restaurant and such other venture and any resulting  
Section 8.1 threshold adjustments

1           8.       The GRB Agreement also contained representations, warranties, and conditions to  
2 ensure that Planet Hollywood was not involved in a business relationship with an unsuitable  
3 individual and/or entity.

4           9.       Section 11.2 of the GRB Agreement provided, in pertinent part:

5           Each of Gordon Ramsay and GRB acknowledges that [Planet Hollywood] and PH's  
6 Affiliates are businesses that are or may be subject to and exist because of  
7 privileged licenses issued U.S., state, local and foreign governmental, regulatory  
8 and administrative authorities, agencies, boards and officials (the "Gaming  
9 Authorities") responsible for or involved in the administration of application of  
10 laws, rules and regulations relating to gaming or gaming activities or the sale,  
distribution and possession of alcoholic beverages. The Gaming Authorities require  
PH, and [Planet Hollywood] deems it advisable, to have a compliance committee  
(the "Compliance Committee") that does its own background checks on, and issues  
approvals of, Persons involved with [Planet Hollywood] and its Affiliates.

11           10.       Because issues of suitability affect Planet Hollywood's gaming license, Planet  
12 Hollywood expressly contracted for the sole and absolute discretion to terminate the GRB  
13 Agreement should GRB or its Affiliates — a term that includes Seibel — become an "Unsuitable  
14 Person."

15           11.       Specifically, Section 4.2.5 of the GRB Agreement provides that the "[a]greement  
16 may be terminated by [Planet Hollywood] upon written notice to GRB and Gordon Ramsay having  
17 immediate effect as contemplated by Section 11.2." In turn, Section 11.2 explicitly provides that  
18 Planet Hollywood has the right, in its "sole and exclusive judgment," to determine that a GR  
19 Associate is an Unsuitable Person under the Agreement.

20           12.       Section 11.2 of the GRB Agreement further required that Gordon Ramsay and GRB  
21 update their disclosures without Planet Hollywood prompting if anything became inaccurate or  
22 material changes occurred. Specifically, the GRB Agreement required that prior to the execution of  
23 the agreement and

24           on each anniversary of the Opening Date during the Term, (a) each of  
25 Gordon Ramsay and GRB shall provide to PH written disclosure regarding  
26 the GR Associates, and (b) the Compliance Committee shall have issued  
27 approvals of the LLTQ Associates. Additionally, during the Term, on ten  
28 (10) calendar days written request by PH to Gordon Ramsay and GRB,  
Gordon Ramsay and GRB shall disclose to Caesars all GR Associates. To  
the extent that any prior disclosure becomes inaccurate, Gordon Ramsay  
and GRB shall, within ten (10) calendar days from that event, update the  
prior disclosure without PH making any further request. Each of Gordon

Ramsay and GRB shall cause all GR Associates to provide all requested information and apply for and obtain all necessary approvals required or requested by PH or the Gaming Authorities.

13. Planet Hollywood did not waive, release, or modify the disclosure obligations for Ramsay or GRB.

14. In April 2016, Seibel pleaded guilty to one count of corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws because, in Seibel's own words, he was in fact guilty of the crime.

15. Prior to his guilty plea, and despite a January 2016 tolling agreement with the U.S. government entered into to allow Seibel "to manage his financial affairs in an optimal way prior to entering a guilty plea," neither Seibel nor any of the Seibel-Affiliated Entities notified Planet Hollywood of any of the facts underlying the charges against him, or that Seibel planned to plead guilty to a felony. Seibel did not update any of the mandatory suitability disclosures.

16. Before news of Seibel's conviction became public, and one week prior to pleading guilty, Seibel attempted to assign his interest in GRB to The Seibel Family 2016 Trust (the "Trust"). In order to do so, Seibel needed GRUS, the other member of GRB, to consent to such an assignment. However, Seibel did not inform GRUS or Gordon Ramsay that the reason he sought to assign his interest was because he planned to plead guilty to a felony in the coming week. Ultimately, GRUS did not consent to the assignment.

17. On or about August 19, 2016, Seibel was sentenced for his crimes, served time in a federal penitentiary, and was required to pay fines and restitution, and perform community service. Following Seibel's sentencing, Planet Hollywood found out through news reports that Seibel pleaded guilty to a felony and was sentenced to serve time in federal prison as a result of his crimes.

18. After learning of Seibel's guilty plea and conviction, Planet Hollywood determined that Seibel was unsuitable pursuant to the GRB Agreement and applicable Nevada gaming laws and regulations.

19. After determining that Seibel was unsuitable, Planet Hollywood exercised its contractual right to terminate the GRB Agreement as it was expressly allowed to do under Section 11.2 after GRB did not disassociate from Seibel.



20. Upon discovering Seibel's unsuitability, Planet Hollywood self-reported and disclosed the information of Seibel's unsuitability to Nevada gaming regulators, including its termination of the GRB Agreement and disassociation with an unsuitable person.

21. The Nevada gaming regulators agreed with Planet Hollywood's actions, concluding that Planet Hollywood appropriately addressed the matter as the Nevada gaming regulators would expect from a gaming licensee.

22. After Planet Hollywood terminated the GRB Agreement, GRUS filed a petition for judicial dissolution on or about October 13, 2016, in the Court of Chancery of the State of Delaware.

23. On February 28, 2017, Seibel filed a complaint purportedly derivatively on behalf of GRB against Planet Hollywood and Ramsay for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and civil conspiracy.

24. On August 25, 2017, Caesars filed its complaint for declaratory relief against the Seibel-Affiliated Entities,<sup>2</sup> including GRB (the "DP Original Complaint").

25. On or about October 5, 2017, the Delaware court appointed a liquidating trustee to oversee the dissolution of GRB. Neither Caesars nor Ramsay were parties to the dissolution proceedings.

26. Following certain motion practice in this Court, Planet Hollywood and Ramsay raised concerns about Seibel's ability to act derivatively on behalf of GRB in light of the Delaware proceedings.

27. The Order Dissolving GR BURGR LLC & Appointing Liquidating Trustee, [hereinafter "Dissolution Order"], provides that the Trustee "shall have all powers generally available to a trustee, custodian, or receiver appointed pursuant to 6 *Del. C.* § 18-803,<sup>3</sup> unless the

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<sup>2</sup> GRB, TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), and DNT Acquisition, LLC ("DNT"), appearing derivatively by and through R Squared Global Solutions, LLC ("R Squared") are collectively referred to herein as the "Seibel-Affiliated Entities."

<sup>3</sup> 6 *Del. C.* § 18-803 provides that "[u]pon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in § 18-203 of this title, the persons winding up

1 exercise of any said power would be inconsistent with any specific provision of this Order or any  
2 other Order entered by the Court in this action."

3 28. The proposed trustee officially accepted appointment to represent GRB on  
4 December 13, 2017

5 29. After the Trustee was appointed, he requested an indefinite extension to respond to  
6 Caesars' complaint, but Caesars advised that it was unable to agree to an indefinite extension.  
7 Caesars offered to extend GRB's time to answer the complaint until February 15, 2018. The Trustee  
8 did not agree, and GRB failed to answer the complaint at that time.

9 30. On March 11, 2020, Caesars amended its complaint ("DP First Amended  
10 Complaint").

11 31. Despite serving the Trustee with a copy of the DP First Amended Complaint, the  
12 Trustee continued to refuse to participate in the litigation.

13 32. On April 6, 2020, a Report and Proposed Liquidation Plan for GRB was publicly  
14 filed in Delaware (the "GRB Report"). In the GRB Report, the GRB trustee identified claims not  
15 worth pursuing in the Nevada litigation, including claims related to (1) wrongful termination of the  
16 GRB Agreement; (2) breach of the implied covenant of good faith and fair dealing and the purported  
17 scheme to oust Seibel; and (3) breach of Section 14.21 of the GRB Agreement.

18 33. The Delaware court fully adopted the GRB Report on October 13, 2020.

19 34. On May 20, 2020, Caesars filed a notice of intent to take default against GRB. In  
20 response, the Trustee sent correspondence to this Court and the Delaware Court requesting that the  
21 courts "communicate and coordinate with each so that the proceedings in the two courts can be  
22 completed in an orderly fashion without the possibility of inconsistent adjudications relating to  
23 GRB." The trustee further stated that "GRB has never appeared in the Nevada litigation," "GRB  
24 has no discovery to offer," GRB has no assets to defend itself or to retain counsel to respond to a  
25  
26

27 \_\_\_\_\_  
28 the limited liability company's affairs may, in the name of, and for and on behalf of, the limited  
liability company, prosecute and defend suits, whether civil, criminal or administrative . . . ."

1 default motion, and that the Delaware action should be allowed to proceed before actions are taken  
2 against GRB in Nevada.

3 35. At the risk of default, and after almost three years of litigation, on June 9, 2020,  
4 GRB filed a notice of appearance of counsel in this Court.

5 36. On June 19, 2020, GRB filed an answer to the DP First Amended Complaint.

6 37. On July 24, 2020, GRB served its initial disclosures, disclosing that (1) GRB has no  
7 witnesses; (2) GRB has no documents to produce; and (3) "GRB asserts no affirmative claims on  
8 its own behalf."

9 38. GRB never attended depositions and repeatedly refused to engage in discovery.

### 10 CONCLUSIONS OF LAW

11 1. Pursuant to Nevada law, summary judgment is appropriate and shall be rendered  
12 when the pleadings and other evidence on file demonstrate that no genuine issue as to any material  
13 fact remains and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*,  
14 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); NRCP 56(c). "The substantive law controls which  
15 factual disputes are material," not the party opposing summary judgment. *Wood*, 121 Nev. at 731,  
16 121 P.3d at 1031. Further, while all facts and evidence must be viewed in the light most favorable  
17 to the non-moving party, the opposing party may not build its case on the "gossamer threads of  
18 whimsy, speculation and conjecture." *Id.* at 731, 121 P.3d at 1030 (footnote and citations omitted).

19 2. "To successfully oppose a motion for summary judgment, the non-moving party  
20 must show specific facts, rather than general allegations and conclusions, presenting a genuine issue  
21 of material fact for trial." *LaMantia v. Redisi*, 118 Nev. 27, 29, 38 P.2d 877, 879 (2002). "The party  
22 opposing summary judgment must be able to point to specific facts showing that there is a genuine  
23 issue for trial." *Michael v. Sudeck*, 107 Nev. 332, 334, 810 P.2d 1212, 1213 (1981).

24 3. "The purpose of summary judgment is to avoid a needless trial when an appropriate  
25 showing is made in advance that there is no genuine issue of fact to be tried, and the movant is  
26 entitled to judgment as a matter of law." *McDonald v. D. Alexander & Las Vegas Boulevard, LLC*,  
27 121 Nev. 812, 815, 123 P. 3d 748, 750 (2005) (internal quotations omitted).

1           4.       Judicial admissions are defined as "deliberate, clear, unequivocal statements by a  
2 party about a concrete fact within that party's knowledge." *Reyburn Lawn & Landscape Designers,*  
3 *Inc. v. Plaster Dev. Co.*, 127 Nev. 331, 343, 255 P.3d 268, 276 (2011). They have "the effect of  
4 withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." *In re*  
5 *Barker*, 839 F.3d 1189, 1195 (9th Cir. 2016) (quoting *Am. Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d  
6 224, 226 (9th Cir. 1988)). "What constitutes a judicial admission should be determined by the  
7 circumstances of each case and evaluated in relation to the other testimony presented in order to  
8 prevent disposing of a case based on an unintended statement made by a nervous party." *Reyburn*,  
9 127 Nev. at 343, 255 P.3d at 276.

10           5.       "Judicial admissions are 'conclusively binding on the party who made them.'" *Id.*  
11 (quoting *Am. Title*, 861 F.2d at 226).

12           6.       "[S]tatements of fact contained in a brief may be considered admissions of the party  
13 in the discretion of the district court." *Am. Title*, 861 F.2d at 227. "For purposes of summary  
14 judgment, the courts have treated representations of counsel in a brief as admissions even though  
15 not contained in a pleading or affidavit." *Id.* at 226.

16           7.       Additionally, NRS 51.035(3), provides an exception to hearsay where a statement  
17 being offered against a party is:

- 18                   a. The party's own statement, in either the party's individual or a  
19                   representative capacity;
- 20                   b. A statement of which the party has manifested adoption or belief in  
21                   its truth;
- 22                   c. A statement by a person authorized by the party to make a statement  
23                   concerning the subject;
- 24                   d. A statement by the party's agent or servant concerning a matter  
25                   within the scope of the party's agency or employment, made before  
26                   the termination of the relationship; or
- 27                   e. A statement by a coconspirator of a party during the course and in  
28                   furtherance of the conspiracy.

26           8.       Courts "construe unambiguous contracts . . . according to their plain language."  
27 *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 487–88, 117 P.3d 219, 223–24 (2005).

28           9.       Here, GRB admitted that it has no affirmative claims in its initial disclosures.

1           10. In the GRB Report, the GRB trustee (*i.e.*, GRB's authorized agent) recognized that  
2 GRB's claims for breach of contract related to Caesars' proper and contractually authorized  
3 termination of the GRB Agreement, breach of the implied covenant of good faith and fair dealing,  
4 civil conspiracy, and breach of Section 14.21 of the GRB Agreement are "not worth pursuing."

5           11. Pursuant to Section 4.2.5, which governs termination resulting from unsuitability,  
6 the GRB "Agreement may be terminated by [Planet Hollywood] upon written notice to GRB and  
7 Gordon Ramsay having immediate effect as contemplated by Section 11.2."

8           12. Pursuant to Section 11.2, Caesars is granted the express right to determine whether  
9 a GR Associate is an Unsuitable Person, and whether the GRB Agreement must be terminated in  
10 its "sole discretion."

11           13. Planet Hollywood's determination that GRB was unsuitable based on Seibel's  
12 admitted criminal activities, felony conviction of engaging in corrupt endeavor to obstruct and  
13 impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212, and sentence to  
14 serve prison time for the same, was within Planet Hollywood's sole discretion under the  
15 GRB Agreement.

16           14. Seibel purported to "cure" the unsuitability through the creation of new entities, but  
17 Seibel secretly continued to hold both a beneficial and actual ownership interest in the new entities.  
18 However, the GRB Agreement (1) does not provide Seibel or GRB with an opportunity to cure; (2)  
19 nor does it provide Seibel or GRB with a unilateral right to sell Seibel's interests to a third party.

20           15. Even if the GRB provided Seibel or GRB with a right to cure his unsuitability, which  
21 the Court finds it did not, Seibel and GRB forfeited any such right through the fraudulent cure  
22 scheme and Seibel's continued association with the Seibel-Affiliated Entities.

23           16. Further, the GRB trustee agreed that "Caesars likely had the right to terminate the  
24 [GRB] Agreement because, in the Court's words, the situation is one of Seibel's 'own making" and  
25 "Caesars validly exercised its bargained-for discretion and Seibel's claim for the improper  
26 termination of the [GRB] Agreement is not likely to survive summary judgment."  
27  
28

1           17.     GRB's admissions and contractual analysis, and this Court's prior rulings<sup>4</sup> support  
2 an order granting Planet Hollywood summary judgment on GRB's claim for breach of contract.

3           18.     The covenant of good faith and fair dealing does not call for a different result.

4           19.     An implied covenant of good faith and fair dealing exists in every Nevada contract  
5 and essentially forbids arbitrary, unfair acts by one party that disadvantage the other. " *Frantz v.*  
6 *Johnson*, 116 Nev. 455, 465, 999 P.2d 351, 358 (2000) (citing *Consol. Generator v. Cummins*  
7 *Engine*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998).

8           20.     "When one party performs a contract in a manner that is unfaithful to the purpose of  
9 the contract and the justified expectations of the other party are thus denied, damages may be  
10 awarded against the party who does not act in good faith." *Hilton Hotels Corp. v. Butch Lewis*  
11 *Prods., Inc.*, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991).

12           21.     "Reasonable expectations are to be 'determined by the various factors and special  
13 circumstances that shape these expectations.'" *Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d 335,  
14 338 (1995) (quoting *Hilton*, 107 Nev. at 234, 808 P.2d at 924).

15           22.     Moreover, "one generally cannot base a claim for breach of the implied covenant on  
16 conduct authorized by the terms of the agreement." *Miller v. FiberLight, LLC*, 808 S.E.2d 75, 87  
17 (Ga. App. Ct. 2017) (quoting *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 441 (Del.  
18 2005)); *see also Vitek v. Bank of Am., N.A.*, No. 8:13-CV-816-JLS ANX, 2014 WL 1042397, at \*5  
19 (C.D. Cal. Jan. 23, 2014) (citation omitted) ("In general, acting in accordance with an express  
20 contractual provision does not amount to bad faith.").

21           23.     In other words, 'a party does not act in bad faith by relying on contract provisions  
22 for which that party bargained where doing so simply limits advantages to another party.'" *Miller*,

23  
24  
25           <sup>4</sup>     The Court granted in part and denied in part Planet Hollywood's Motion to Dismiss claims  
26 brought by Seibel on behalf of GRB stating that Seibel "failed to plead facts sufficient to support a  
27 breach of contract claim against Planet Hollywood for: (1) continuing to do business with Ramsay;  
28 (2) refusing to provide [GRB] with an opportunity to cure its affiliation with [Seibel]; and (3)  
attempting and/or planning to operate a rebranded restaurant. The plain language of the [GRB  
Agreement] precludes these claims as a matter of law. They must therefore be dismissed." (Order  
Granting in Part and Denying in part Planet Hollywood's Mot. to Dismiss, June 15, 2017, on file.)

1 343 Ga. App. at 607–08, 808 S.E.2d at 87 (quoting *Alpha Balanced Fund, LLLP v. Irongate*  
2 *Performance Fund, LLC*, 342 Ga. App. 93, 102–103 (1), 802 S.E.2d 357 (2017)).

3 24. Importantly, "when there is no factual basis for concluding that a defendant acted  
4 in bad faith, a court may determine the issue of bad faith as a matter of law." *Tennier v. Wells Fargo*  
5 *Bank, N.A.*, No. 3:14-CV-0035-LRH-VPC, 2015 WL 128672, at \*7 (D. Nev. Jan. 8, 2015) (quoting  
6 *Andrew v. Century Sur. Co.*, No. 2:12-cv- 0978, 2014 WL 1764740, at \*10 (D. Nev. Apr. 29,  
7 2014)).

8 25. Planet Hollywood did not violate the covenant of good faith and fair dealing when  
9 it terminated the GRB Agreement as a result of Seibel's unsuitability.

10 26. An actionable civil conspiracy 'consists of a combination of two or more persons  
11 who, by some concerted action, intend to accomplish an unlawful objective for the purpose of  
12 harming another, and damage resulting from the act or acts.'" *Consol. Generator-Nev., Inc. v.*  
13 *Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (quoting *Hilton*  
14 *Hotels*, 109 Nev. at 1048, 862 P.2d at 1210). "Summary judgment is appropriate if there is no  
15 evidence of an agreement or intent to harm the plaintiff." *Guilfoyle v. Olde Monmouth Stock*  
16 *Transfer Co., Inc.*, 130 Nev. 801, 813, 335 P.3d 190, 199 (2014).

17 27. Here, GRB failed to present any evidence to support its claim for civil conspiracy.  
18 Planet Hollywood complied with the express terms of the GRB Agreement when it determined that  
19 Seibel was an Unsuitable Person, that the conduct was not subject to cure and terminated the GRB  
20 Agreement. As a result, there was no unlawful objective upon which to anchor a conspiracy claim  
21 and GRB's civil conspiracy claim fails as a matter of law.

22 28. It is also well settled under Nevada law, that "[a] valid contract cannot exist when  
23 material terms are lacking or are insufficiently certain and definite." *May v. Anderson*, 121 Nev.  
24 668, 672, 119 P.3d 1254, 1257 (2005). "An agreement to agree at a future time is nothing and will  
25 not support an action for damages." *City of Reno v. Silver State Flying Serv., Inc.*, 84 Nev. 170,  
26 176, 438 P.2d 257, 261 (1968) (internal quotation omitted).

27 29. Additionally, "[i]t cannot be doubted at this day, nor is it denied, that a contract will  
28 not be enforced if it is against public policy, or that, if a part of the consideration of an entire contract

1 is illegal as against public policy or sound morals, the whole contract is void." *Gaston v. Drake*, 14  
2 Nev. 175, 181 (1879).

3 30. Section 14.21 of the GRB Agreement has indefinite and open terms and thus is an  
4 invalid and unenforceable agreement to agree. As such, this provision fails as a matter of law.

5 31. Further, any future agreement with GRB would violate gaming laws and put Planet  
6 Hollywood's gaming license in jeopardy, requiring Caesars to again terminate the agreement under  
7 the terms of Section 11.2. The benefits of not requiring a gaming licensee to contract with an  
8 Unsuitable Person clearly outweigh the benefits of enforcement, rendering Section 14.21  
9 unenforceable.

10 32. The Court has inherent authority to dismiss claims for lack of prosecution. *Hunter*  
11 *v. Gang*, 132 Nev. 249, 256, 377 P.3d 448, 453 (Nev. App. 2016) (citing *Harris v. Harris*, 65 Nev.  
12 342, 345-50, 196 P.2d 402, 403-06 (1948)). "The element necessary to justify failure to prosecute  
13 for lack of diligence on the part of the plaintiff, whether individually or through counsel." *Moore v.*  
14 *Cherry*, 90 Nev. 930, 935, 528 P.2d 1018, 1021 (1974). Importantly, "[t]he duty rests upon the  
15 plaintiff to use diligence and to expedite his case to a final determination." *Id.* at 395, 528 P.2d at  
16 1022; *see also Raine v. Ennor*, 39 Nev. 365, 372, 158 P. 133, 134 (1916).

17 33. Summary judgment is further appropriate against GRB on all its claims based on  
18 want of prosecution and/or the failure of GRB to actively prosecute its claims for relief for four (4)  
19 years.

20 34. To prevail on a claim for fraudulent concealment, the plaintiff must show that: "(1)  
21 the defendant concealed or suppressed a material fact; (2) the defendant was under a duty to disclose  
22 the fact to the plaintiff; (3) the defendant intentionally concealed or suppressed the fact with the  
23 intent to defraud the plaintiff; that is, the defendant concealed or suppressed the fact for the purpose  
24 of inducing the plaintiff to act differently than she would have if she had known the fact; (4) the  
25 plaintiff was unaware of the fact and would have acted differently if she had known of the concealed  
26 or suppressed fact; (5) and, as a result of the concealment or suppression of the fact, the plaintiff  
27 sustained damages." *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1485, 970 P.2d 98, 109–10 (1998),  
28



1 *abrogated on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (2001) (citing *Nev.*  
2 *Power Co. v. Monsanto Co.*, 891 F. Supp. 1406, 1415 (D.Nev.1995)).

3 35. As discussed above, "an actionable civil conspiracy 'consists of a combination of  
4 two or more persons who, by some concerted action, intend to accomplish an unlawful objective  
5 for the purpose of harming another, and damage results from the act or acts.'" *Consol. Generator-*  
6 *Nev., Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998)  
7 Importantly, "[a]ll conspirators need not be joined in an action to hold any of the conspirators liable,  
8 because conspiracy results in joint and several liability." *Envirotech, Inc. v. Thomas*, 259 S.W.3d  
9 577, 587 (Mo. Ct. App. 2008).

10 36. The express terms of the GRB Agreement required Seibel to disclose his criminal  
11 activities and conviction and Seibel admits that he did not disclose his guilty plea or the criminal  
12 conduct that led to it to Planet Hollywood. Summary judgment is thus appropriate for Planet  
13 Hollywood on its fraudulent concealment counterclaim and civil conspiracy counterclaim against  
14 Seibel based on Seibel's concealment of material facts regarding his federal prosecution and  
15 conviction.

16 37. Planet Hollywood suffered damages as a result of Seibel's actions and the necessary  
17 rebranding of the restaurant totaling \$168,781.00.

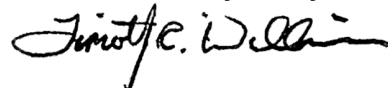
### 18 ORDER

19 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Caesars' MSJ No. 2  
20 shall be, and hereby is, GRANTED in its entirety and that judgment is entered in favor of Caesars  
21 and against GRB on all of GRB's claims.

22 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is  
23 entered in favor of Caesars and against Seibel on Caesars's fraudulent concealment counterclaim  
24 and civil conspiracy counterclaim against Seibel in the amount of \$168,781 plus pre and post-  
25 judgment interest.

26 IT IS SO ORDERED.

Dated this 31st day of May, 2022



D08 4B2 1DFF 6BFC  
Timothy C. Williams  
District Court Judge

MH

Respectfully submitted by:

DATED May 25, 2022

PISANELLI BICE PLLC

By: /s/ M. Magali Mercera  
James J. Pisanelli, Esq., Bar No. 4027  
Debra L. Spinelli, Esq., Bar No. 9695  
M. Magali Mercera, Esq., Bar No. 11742  
400 South 7<sup>th</sup> Street, Suite 300  
Las Vegas, NV 89101

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

Approved as to form and content by:

DATED May 25, 2022

LEBENSFELD SHARON & SCHWARTZ P.C.

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

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

*Attorneys for The Original Homestead Restaurant,*

Approved as to form and content by:

DATED May 25, 2022

FENNEMORE CRAIG, P.C.

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

## Cinda C. Towne

---

**From:** Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>  
**Sent:** Wednesday, May 25, 2022 4:36 PM  
**To:** Magali Mercera; Joshua Gilmore; Paul Williams; Tennert, John; Beavers, Wade  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

CAUTION: This message is from an EXTERNAL SENDER.

You may, thanks

---

**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Wednesday, May 25, 2022 5:11 PM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

Understood, Josh.

John and Alan – We updated our draft proposed findings of fact and conclusions of law to remove Bailey Kennedy from the signature block in light of their objections to the orders and updated the date to May. Please confirm that we may affix your e-signatures to these versions.

Thanks,

**M. Magali Mercera**

PISANELLI BICE, PLLC  
400 South 7th Street, Suite 300  
Las Vegas, Nevada 89101  
Telephone: (702) 214-2100  
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**From:** Joshua Gilmore <[JGilmore@baileykennedy.com](mailto:JGilmore@baileykennedy.com)>  
**Sent:** Tuesday, April 26, 2022 2:03 PM  
**To:** Magali Mercera <[mmm@pisanellibice.com](mailto:mmm@pisanellibice.com)>; Paul Williams <[PWilliams@baileykennedy.com](mailto:PWilliams@baileykennedy.com)>; Alan Lebensfeld <[Alan.Lebensfeld@lsandspc.com](mailto:Alan.Lebensfeld@lsandspc.com)>; Tennert, John <[jtennert@fennemorelaw.com](mailto:jtennert@fennemorelaw.com)>; Beavers, Wade <[WBeavers@fennemorelaw.com](mailto:WBeavers@fennemorelaw.com)>  
**Cc:** James Pisanelli <[jjp@pisanellibice.com](mailto:jjp@pisanellibice.com)>; Debra Spinelli <[dls@pisanellibice.com](mailto:dls@pisanellibice.com)>; Emily A. Buchwald <[eab@pisanellibice.com](mailto:eab@pisanellibice.com)>; Cinda C. Towne <[cct@pisanellibice.com](mailto:cct@pisanellibice.com)>; Susan Russo <[SRusso@baileykennedy.com](mailto:SRusso@baileykennedy.com)>  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

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## Cinda C. Towne

---

**From:** Tennert, John <jtennert@fennemorelaw.com>  
**Sent:** Wednesday, May 25, 2022 2:44 PM  
**To:** Magali Mercera; Joshua Gilmore; Paul Williams; Alan Lebensfeld; Beavers, Wade  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

CAUTION: This message is from an EXTERNAL SENDER.

Hi Magali,

You may affix my e-signature to both proposed orders.

Thanks,  
John

John D. Tennert III, Director

---

**FENNEMORE.**

7800 Rancharrah Parkway, Reno, NV 89511

T: 775.788.2212 | F: 775.788.2213

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



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**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Wednesday, May 25, 2022 2:11 PM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

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Thanks,

**M. Magali Mercera**  
PISANELLI BICE, PLLC

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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5  
6 Rowen Seibel, Plaintiff(s)

CASE NO: A-17-751759-B

7 vs.

DEPT. NO. Department 16

8 PHWL V LLC, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 5/31/2022

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robert@nv-lawfirm.com

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lit@pisanellibice.com

18 "John Tennert, Esq." .

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btw@pisanellibice.com

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drm@cmlawnv.com

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22 Diana Barton .

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23 Lisa Anne Heller .

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