CASE NO. 84934

IN THE SUPREME COURT OF NEVADA

ROWEN SEIBEL AND GR BURGR, LLC,

Appellants,

vs.

PHWLV, LLC, AND GORDON RAMSAY,

Respondents,

District Court Case No. A-17-751759-B

APPENDIX TO APPELLANTS' OPENING BRIEF

VOLUME 2 OF 34

CASE NO. 84934

IN THE SUPREME COURT OF NEVADA

ROWEN SEIBEL AND GR BURGLR, LLC,

Appellants,

vs.

PHWLV, LLC, AND GORDON RAMSAY,

Respondents,

District Court Case No. A-17-751759-B

APPENDIX TO APPELLANTS' OPENING BRIEF

VOLUME 2 OF 34

JOHN R. BAILEY
NEVADA BAR NO. 0137
DENNIS L. KENNEDY
NEVADA BAR NO. 1462
JOSHUA P. GILMORE
NEVADA BAR NO. 11576
PAUL C. WILLIAMS
NEVADA BAR NO. 12524
BAILEY❖KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
TELEPHONE: (702) 562-8820
FACSIMILE: (702) 562-8821
JBAILEY@BAILEYKENNEDY.COM
DKENNEDY@BAILEYKENNEDY.COM
JGILMORE@BAILEYKENNEDY.COM
PWILLIAMS@BAILEYKENNEDY.COM

Attorneys for Appellants

APPENDIX OF EXHIBITS TO APPELLANTS' OPENING BRIEF

VOLUME 2 OF 34

TABLE OF CONTENTS

INDEX

Document Title:	**Vol. No.:**	**Tab No.:**	**Page Nos.:**
Answer to First Amended Complaint and Counterclaim, filed July 21, 2017	6	24	AA01237-AA01261
Appendix of Exhibits in Support of Caesars' Motions for Summary Judgment – Volume 1 of 5, filed February 25, 2021**- FILED UNDER SEAL**	9	56	AA01741-AA01907
Appendix of Exhibits in Support of Caesars' Motions for Summary Judgment – Volume 2 of 5, filed February 25, 2021**- FILED UNDER SEAL**	10	57	AA01908-AA02109
Appendix of Exhibits in Support of Caesars' Motions for Summary Judgment – Volume 3 of 5, filed February 25, 2021**- FILED UNDER SEAL**	11	58	AA02110-AA02346
Appendix of Exhibits in Support of Caesars' Motions for Summary Judgment – Volume 4 of 5, filed February 25, 2021**- Part 1 of 2 - FILED UNDER SEAL**	12	59	AA02347-AA02579
Appendix of Exhibits in Support of Caesars' Motions for Summary Judgment – Volume 4 of 5, filed February 25, 2021 **- Part 2 of 2 - FILED UNDER SEAL**	13	59	AA02580-AA02817
Appendix of Exhibits in Support of Caesars' Motions for Summary Judgment – Volume 5 of 5, filed February 25, 2021**- Part 1 of 2 - FILED UNDER SEAL**	14	60	AA02818-AA03060

Document Title:	**Vol. No.:**	**Tab No.:**	**Page Nos.:**
Appendix of Exhibits in Support of Caesars' Motions for Summary Judgment – Volume 5 of 5, filed February 25, 2021**- Part 2 of 2 - FILED UNDER SEAL**	15	60	AA03061-AA03075
Appendix of Exhibits in Support of Caesars' Replies in Support of its Motions for Summary Judgment, filed November 30, 2021 **– Part 1 of 2 - FILED UNDER SEAL**	30	83	AA06213-AA06403
Appendix of Exhibits in Support of Caesars' Replies in Support of its Motions for Summary Judgment, filed November 30, 2021 **– Part 2 of 2 - FILED UNDER SEAL**	31	83	AA06404-AA06528
Appendix of Exhibits in Support of Motion for Preliminary Injunction, filed March 6, 2017	1	3	AA00060-AA00246
Appendix of Exhibits to (1) The Development Entities and Rowen Seibel's Opposition to Caesars Motion for Summary Judgment No. 1; (2) Opposition to Caesars' Motion for Summary Judgment No. 2; and (3) Opposition to Gordon Ramsay's Motion for Summary Judgment, filed March 30, 2021 – Volume 1 of 9	20	71	AA03907-AA04111
Appendix of Exhibits to (1) The Development Entities and Rowen Seibel's Opposition to Caesars Motion for Summary Judgment No. 1; (2) Opposition to Caesars' Motion for Summary Judgment No. 2; and (3) Opposition to Gordon Ramsay's Motion for Summary Judgment, filed March 30, 2021 – Volume 2 of 9 **- Part 1 of 2 FILED UNDER SEAL**	21	72	AA04112-AA04334

Document Title:	**Vol. No.:**	**Tab No.:**	**Page Nos.:**
Appendix of Exhibits to (1) The Development Entities and Rowen Seibel's Opposition to Caesars Motion for Summary Judgment No. 1; (2) Opposition to Caesars' Motion for Summary Judgment No. 2; and (3) Opposition to Gordon Ramsay's Motion for Summary Judgment, filed March 30, 2021 – Volume 2 of 9 **- Part 2 of 2 FILED UNDER SEAL**	22	72	AA04335-AA04368
Appendix of Exhibits to (1) The Development Entities and Rowen Seibel's Opposition to Caesars Motion for Summary Judgment No. 1; (2) Opposition to Caesars' Motion for Summary Judgment No. 2; and (3) Opposition to Gordon Ramsay's Motion for Summary Judgment, filed March 30, 2021 – Volume 3 of 9 **- Part 1 of 2 FILED UNDER SEAL**	22	73	AA04369-AA04576
Appendix of Exhibits to (1) The Development Entities and Rowen Seibel's Opposition to Caesars Motion for Summary Judgment No. 1; (2) Opposition to Caesars' Motion for Summary Judgment No. 2; and (3) Opposition to Gordon Ramsay's Motion for Summary Judgment, filed March 30, 2021 – Volume 3 of 9 **- Part 2 of 2 FILED UNDER SEAL**	23	73	AA04577-AA04629

Document Title:	**Vol. No.:**	**Tab No.:**	**Page Nos.:**
Appendix of Exhibits to (1) The Development Entities and Rowen Seibel's Opposition to Caesars Motion for Summary Judgment No. 1; (2) Opposition to Caesars' Motion for Summary Judgment No. 2; and (3) Opposition to Gordon Ramsay's Motion for Summary Judgment, filed March 30, 2021 – Volume 4 of 9 **– Part 1 of 2 FILED UNDER SEAL**	23	74	AA04630-AA04824
Appendix of Exhibits to (1) The Development Entities and Rowen Seibel's Opposition to Caesars Motion for Summary Judgment No. 1; (2) Opposition to Caesars' Motion for Summary Judgment No. 2; and (3) Opposition to Gordon Ramsay's Motion for Summary Judgment, filed March 30, 2021 – Volume 4 of 9 **– Part 2 of 2 FILED UNDER SEAL**	24	74	AA04825-AA04889
Appendix of Exhibits to (1) The Development Entities and Rowen Seibel's Opposition to Caesars Motion for Summary Judgment No. 1; (2) Opposition to Caesars' Motion for Summary Judgment No. 2; and (3) Opposition to Gordon Ramsay's Motion for Summary Judgment, filed March 30, 2021 – Volume 5 of 9 **– Part 1 of 2 - FILED UNDER SEAL**	24	75	AA04890-AA05037

Document Title:	**Vol. No.:**	**Tab No.:**	**Page Nos.:**
Appendix of Exhibits to (1) The Development Entities and Rowen Seibel's Opposition to Caesars Motion for Summary Judgment No. 1; (2) Opposition to Caesars' Motion for Summary Judgment No. 2; and (3) Opposition to Gordon Ramsay's Motion for Summary Judgment, filed March 30, 2021 – Volume 5 of 9 **– Part 2 of 2 - FILED UNDER SEAL**	25	75	AA05038-AA05161
Appendix of Exhibits to (1) The Development Entities and Rowen Seibel's Opposition to Caesars Motion for Summary Judgment No. 1; (2) Opposition to Caesars' Motion for Summary Judgment No. 2; and (3) Opposition to Gordon Ramsay's Motion for Summary Judgment, filed March 30, 2021 – Volume 6 of 9 **– Part 1 of 2 - FILED UNDER SEAL**	25	76	AA05162-AA05282
Appendix of Exhibits to (1) The Development Entities and Rowen Seibel's Opposition to Caesars Motion for Summary Judgment No. 1; (2) Opposition to Caesars' Motion for Summary Judgment No. 2; and (3) Opposition to Gordon Ramsay's Motion for Summary Judgment, filed March 30, 2021 – Volume 6 of 9 **– Part 1 of 2 - FILED UNDER SEAL**	26	76	AA05283-AA05422

Document Title:	**Vol. No.:**	**Tab No.:**	**Page Nos.:**
Appendix of Exhibits to (1) The Development Entities and Rowen Seibel's Opposition to Caesars Motion for Summary Judgment No. 1; (2) Opposition to Caesars' Motion for Summary Judgment No. 2; and (3) Opposition to Gordon Ramsay's Motion for Summary Judgment, filed March 30, 2021 – Volume 7 of 9 **– FILED UNDER SEAL**	27	77	AA05423-AA05670
Appendix of Exhibits to (1) The Development Entities and Rowen Seibel's Opposition to Caesars Motion for Summary Judgment No. 1; (2) Opposition to Caesars' Motion for Summary Judgment No. 2; and (3) Opposition to Gordon Ramsay's Motion for Summary Judgment, filed March 30, 2021 – Volume 8 of 9 **– Part 1 of 2 - FILED UNDER SEAL**	28	78	AA05671-AA05905
Appendix of Exhibits to (1) The Development Entities and Rowen Seibel's Opposition to Caesars Motion for Summary Judgment No. 1; (2) Opposition to Caesars' Motion for Summary Judgment No. 2; and (3) Opposition to Gordon Ramsay's Motion for Summary Judgment, filed March 30, 2021 – Volume 8 of 9 **– Part 2 of 2 - FILED UNDER SEAL**	29	78	AA05906-AA05927

Document Title:	**Vol. No.:**	**Tab No.:**	**Page Nos.:**
Appendix of Exhibits to (1) The Development Entities and Rowen Seibel's Opposition to Caesars Motion for Summary Judgment No. 1; (2) Opposition to Caesars' Motion for Summary Judgment No. 2; and (3) Opposition to Gordon Ramsay's Motion for Summary Judgment, filed March 30, 2021 – Volume 9 of 9 **– FILED UNDER SEAL**	29	79	AA05928-AA06156
Appendix of Exhibits to Defendant Gordon Ramsay's Opposition to Plaintiff's Motion for Preliminary Injunction, filed March 20, 2017 – Part 1 of 2	3	9	AA00455-AA00673
Appendix of Exhibits to Defendant Gordon Ramsay's Opposition to Plaintiff's Motion for Preliminary Injunction, filed March 20, 2017 – Part 2 of 2	4	9	AA00674-AA00863
Appendix to Defendant Gordon Ramsay's Motion for Summary Judgment, Volume I of II, filed February 26, 2021 **- Part 1 of 2 - FILED UNDER SEAL**	16	64	AA03126-AA03369
Appendix to Defendant Gordon Ramsay's Motion for Summary Judgment, Volume I of II, filed February 26, 2021 **- Part 2 of 2 - FILED UNDER SEAL**	17	64	AA03370-AA03452
Appendix to Defendant Gordon Ramsay's Motion for Summary Judgment, Volume II of II, filed February 26, 2021 **- Part 1 of 2 - FILED UNDER SEAL**	18	65	AA03453-AA03686

Document Title:	**Vol. No.:**	**Tab No.:**	**Page Nos.:**
Declaration of M. Magali Mercera, Esq. in Support of Appendix of Exhibits in Support of Caesars' Replies in Support of its Motions for Summary Judgment, filed November 30, 2021	31	84	AA06529-AA06536
Declaration of M. Magali Mercera, Esq. in Support of Caesars' Motions for Summary Judgment, filed February 25, 2021	15	61	AA03076-AA03089
Defendant Gordon Ramsay's Amended Opposition to Plaintiff's Motion for Partial Summary Judgment Concerning (1) The Payment of the License Fee Through March 31, 2017, and (2) The Breach of § 14.21 of the Development Agreement, filed October 6, 2017	8	33	AA01512-AA01574
Defendant Gordon Ramsay's Answer and Affirmative Defenses to First Amended Verified Complaint, filed July 21, 2017	6	23	AA01215-AA01236
Defendant Gordon Ramsay's Joinder to PHWLV, LLC's Motion to Dismiss Plaintiff's Claims, filed April 7, 2017	5	13	AA01050-AA01053
Defendant Gordon Ramsay's Opposition to Motion for Preliminary Injunction, filed March 17, 2017	2	5	AA00343-AA00371
Defendant Gordon Ramsay's Opposition to Plaintiff's Motion for Partial Summary Judgment Concerning (1) the Payment of the License Fee Through March 31, 2017, and (2) the Breach of § 14.21 of the Development Agreement, filed October 6, 2017	7	32	AA01450-AA01511

Document Title:	**Vol. No.:**	**Tab No.:**	**Page Nos.:**
Defendant Gordon Ramsay's Reply in Support of Joinder to PHWLV LLC's Motion to Dismiss Plaintiff's Claims, filed May 10, 2017	6	18	AA01138-AA01145
Errata to Plaintiff's Motion for Preliminary Injunction, filed March 7, 2017	2	4	AA00247-AA00342
Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion for Summary Judgment No. 2, filed May 31, 2022	33	103	AA06913-AA06932
Findings of Fact, Conclusions of Law, and Order Granting Gordon Ramsay's Motion for Summary Judgment, filed May 25, 2022	33	102	AA06886-AA06912
First Amended Verified Complaint, filed June 28, 2017	6	22	AA01180-AA01214
Gordon Ramsay's Motion for Summary Judgment, filed February 26, 2021 – **FILED UNDER SEAL**	15	63	AA03094-AA03125
Gordon Ramsay's Reply in Support of His Motion for Summary Judgment, filed November 29, 2021– **FILED UNDER SEAL**	30	81	AA06169-AA06189
Gordon Ramsay's Reply to the Development Parties' Omnibus Supplement to Their Oppositions to Motions for Summary Judgment filed by Caesars and Ramsay, filed January 13, 2022	32	95	AA06763-AA06767
Gordon Ramsay's Request for Judicial Notice, filed February 26, 2021	19	66	AA03792-AA03795

Document Title:	**Vol. No.:**	**Tab No.:**	**Page Nos.:**
Gordon 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, filed November 29, 2021 – **FILED UNDER SEAL**	30	80	AA06157-AA06168
Initial Appearance Fee Disclosure (PHWLV, LLC), filed March 20, 2017	2	8	AA00454
Initial Appearance Fee Disclosure (Ramsay), filed March 17, 2017	2	7	AA00451-AA00453
Minute Order Re: Motion for Partial Summary Judgment, filed November 7, 2017	8	35	AA01591-AA01592
Minute Order Re: Sealing Motions, filed March 9, 2022	33	101	AA06885
Minute Order Re: Status Check, filed April 29, 2020	8	52	AA01704
Minute Order Re: Status Check, filed December 5, 2017	8	36	AA01593
Minute Order Re: Status Check, filed February 6, 2018	8	38	AA01595
Minute Order Re: Status Check, filed January 9, 2018	8	37	AA01594
Motion for Preliminary Injunction on Order Shortening Time, filed March 6, 2017	1	2	AA00037-AA00059
Notice of Appeal, filed June 28, 2022 – Part 1 of 3	33	106	AA06987-AA07002

Document Title:	**Vol. No.:**	**Tab No.:**	**Page Nos.:**
Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Gordon Ramsay's Motion for Summary Judgment, filed June 2, 2022	33	104	AA06933-AA06963
Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion for Summary Judgment No. 2, filed June 3, 2022	33	105	AA06964-AA06986
Notice of Entry of Order (Omnibus Order Granting the Development Parties' Motions to Seal and Redact), filed February 9, 2022	33	100	AA06873-AA06884
Notice of Entry of Order Denying Plaintiff's Motion for Preliminary Injunction, filed April 13, 2017	5	15	AA01058-AA01063
Notice of Entry of Order Granting in Part and Denying in Part Planet Hollywood's Motion to Dismiss, filed June 16, 2017	6	21	AA01174-AA01179
Notice of Entry of Order Granting Motion to Redact Caesars' Motion for Summary Judgment No. 1 and Motion for Summary Judgment No. 2 and to Seal Exhibits 1-36, 38, 40-42, 45-46, 48, 50, 66-67, 73, and 76-80 to the Appendix of Exhibits in Support of Caesars' Motions for Summary Judgment, filed January 28, 2022	33	98	AA06857-AA06869
Notice of Entry of Order Granting Motion to Redact Caesars' Response to Objections to Evidence Offered in Support of Motions for Summary Judgment, filed July 26, 2022	34	108	AA07012-AA07023

Document Title:	**Vol. No.:**	**Tab No.:**	**Page Nos.:**
Notice of Entry of Order Granting Motion to Redact Replies in Support of Caesars' Motion for Summary Judgment No. 1 and Motion for Summary Judgment No. 2 and to Seal Exhibits 82, 84-87, 90, 82, 99-100, and 109-112 to the Appendix of Exhibits in Support of Caesars' Replies in Support of its Motions for Summary Judgment, filed January 4, 2022	32	92	AA06736-AA06748
Notice of Entry of Order Granting the Development Parties' Motion for Leave to File a Supplement to Their Opposition to Motions for Summary Judgment, filed December 27, 2021	32	89	AA06701-AA06712
Notice of Entry of Order Vacating Plaintiff's Motion for Partial Summary Judgment, filed March 8, 2018	8	42	AA01610-AA01615
Notice of Entry of Stipulated Confidentiality Agreement and Protective Order, filed March 12, 2019	8	46	AA01650-AA01674
Notice of Entry of Stipulation and Order to Consolidate Case No. A-17-760537-B with and into Case No. A-17-751759-B, filed February 13, 2018	8	40	AA01600-AA01606
Objections to Evidence Offered by Caesars in Support of its Motions for Summary Judgment, filed March 30, 2021	19	68	AA03801-AA03808
Objections to Evidence Offered by Gordon Ramsay in Support of His Motion for Summary Judgment, filed March 30, 2021	19	67	AA03796-AA03800

Document Title:	**Vol. No.:**	**Tab No.:**	**Page Nos.:**
Order Granting Motion to Redact Caesars' Motion for Summary Judgment No. 1 and Motion for Summary Judgment No. 2 and to Seal Exhibits 1-36, 38, 40-42, 45-46, 48, 50, 66-67, 73, and 76-80 to the Appendix of Exhibits in Support of Caesars' Motions for Summary Judgment, filed January 28, 2022	33	97	AA06847-AA06856
Order Granting Motion to Redact Caesars' Response to Objections to Evidence Offered in Support of Motions for Summary Judgment, filed July 26, 2022	33	107	AA07003-AA07011
Order Granting Motion to Redact Replies in Support of Caesars' Motion for Summary Judgment No. 1 and Motion for Summary Judgment No. 2 and to Seal Exhibits 82, 84-87, 90, 82, 99-100, and 109-112 to the Appendix of Exhibits in Support of Caesars' Replies in Support of its Motions for Summary Judgment, filed January 3, 2022	32	91	AA06726-AA06735
Order Granting the Development Parties' Motion for Leave to File a Supplement to Their Opposition to Motions for Summary Judgment, filed December 27, 2021	32	88	AA06692-AA06700
Order Vacating Plaintiff's Motion for Partial Summary Judgment, filed March 7, 2018	8	41	AA01607-AA01609

Document Title:	**Vol. No.:**	**Tab No.:**	**Page Nos.:**
PHWLV, LLC's Objection to Evidence Offered in Support of Plaintiff's Motion for Partial Summary Judgment Concerning (1) the Payment of the License Fee Through March 31, 2017, and (2) the Breach of § 14.21 of the Development Agreement, filed October 5, 2017	7	31	AA01447-AA01449
PHWLV, LLC's Opposition to Plaintiff's Motion for Partial Summary Judgment Concerning (1) the Payment of the License Fee Through March 31, 2017, and (2) the Breach of § 14.21 of the Development Agreement, filed October 5, 2017	7	29	AA01347-AA01443
Plaintiff's Motion For Partial Summary Judgment Concerning (1) The Payment Of The License Fee Through March 31, 2017, and (2) The Breach of § 14.21 Of The Development Agreement, filed September 18, 2017	7	28	AA01277-AA01346
Plaintiff's Opposition to Planet Hollywood's Partial Motion to Dismiss, filed April 24, 2017	6	16	AA01064-AA01124
Plaintiff's Reply to Defendant PHWLV, LLC's Counterclaims, filed August 25, 2017	6	26	AA01267-AA01272
Planet Hollywood's Motion to Dismiss Plaintiff's Claims, filed April 7, 2017	5	12	AA00985-AA01049
Planet Hollywood's Opposition to Plaintiff's Motion for Preliminary Injunction, filed March 17, 2017	2	6	AA00372-AA00450

Document Title:	**Vol. No.:**	**Tab No.:**	**Page Nos.:**
Reply in Support of Plaintiff's Motion for Partial Summary Judgment Concerning (1) The Payment of the License fee Through March 31, 2017 and (2) The Breach of § 14.21 of the Development Agreement, filed October 17, 2017	8	34	AA01575-AA01590
Reply in Support of Planet Hollywood's Motion to Dismiss Plaintiff's Claims, filed May 10, 2017	6	17	AA01125-AA01137
Request for Judicial Notice of Exhibits 39, 59, and 62 in Appendix of Exhibits in Support of Caesars' Motions for Summary Judgment, filed February 25, 2021	15	62	AA03090-AA03093
Request for Judicial Notice, filed October 5, 2017	7	30	AA01444-AA01446
Stipulated Confidentiality Agreement and Protective Order, filed March 12, 2019	8	45	AA01628-AA01649
Stipulation and Order to Consolidate Case No. A-17-760537-B with and into Case No. A-17-751759-B, filed February 9, 2018	8	39	AA01596-AA01599
The Development Parties' Omnibus Supplement to Their Oppositions to Motions for Summary Judgment Filed by Caesars and Ramsay, filed December 30, 2021	32	90	AA06713-AA06725
Transcript of Proceedings, taken December 6, 2021	32	87	AA06556-AA06691
Transcript of Proceedings, taken January 20, 2022	33	96	AA06768-AA06846

Document Title:	**Vol. No.:**	**Tab No.:**	**Page Nos.:**
Transcript of Proceedings, taken March 22, 2017	5	11	AA00936-AA00984
Transcript of Proceedings, taken May 17, 2017	6	19	AA01146-AA01169
Verified Complaint and Demand for Jury Trial, filed February 28, 2017	1	1	AA00001-AA00036

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 10th day of March, 2023, service of the foregoing was made by mandatory electronic service through the Nevada Supreme Court's electronic filing system and/or by email as agreed by the parties, and addressed to the following at their last known email address:

JAMES J. PISANELLI DEBRA L. SPINELLI M. MAGALI MERCERA **PISANELLI BICE PLLC** 400 South 7th Street, Suite 300 Las Vegas, NV 89101	Email: JJP@pisanellibice.com DLS@pisanellibice.com MMM@pisanellibice.com *Attorneys for Respondent PHWLV, LLC*
JOHN D. TENNERT GEENAMARIE CARUCCI WADE BEAVERS **FENNEMORE CRAIG, P.C.** 7800 Rancharrah Parkway Reno, NV 89511	Email: jtennert@fennemorelaw.com wbeavers@fennemorelaw.com gcarucci@fennemorelaw.com *Attorneys for Respondent Gordon Ramsay*

/s/ Susan Russo
Employee of BAILEY❖KENNEDY

TAB 4

Electronically Filed
03/07/2017 02:42:22 PM

CLERK OF THE COURT

ERR
DANIEL R. MCNUTT (SBN 7815)
MATTHEW C. WOLF (SBN 10801)
CARBAJAL & MCNUTT, LLP
625 South Eighth Street
Las Vegas, Nevada 89101
Tel. (702) 384-1170 / Fax. (702) 384-5529
drm@cmlawnv.com
mcw@cmlawnv.com
Attorneys for Plaintiff

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.: 15 **ERRATA TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff Rowen Seibel hereby submits his Errata to his Motion for Preliminary Injunction. Footnotes were inadvertently deleted from the final version submitted to the Court. As a result, exhibits 20-22 were also omitted. A corrected version is attached hereto with the additional exhibits.

DATED March 7, 2017.

CARBAJAL & MCNUTT, LLP

/s/ Dan McNutt
DANIEL R. MCNUTT (SBN 7815)
MATTHEW C. WOLF (SBN 10801)
625 South Eighth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

OST
DANIEL R. MCNUTT (SBN 7815)
MATTHEW C. WOLF (SBN 10801)
CARBAJAL & MCNUTT, LLP
625 South Eighth Street
Las Vegas, Nevada 89101
Tel. (702) 384-1170 / Fax. (702) 384-5529
drm@cmlawnv.com
mcw@cmlawnv.com
Attorneys for Plaintiff

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. PHWLV, LLC, a Nevada limited liability company; GORDON RAMSAY, an individual; Defendants, and GR BURGR LLC, a Delaware limited liability company, Nominal Defendant.	Case No.: A-17-751759-B Dept. No.: 15 **MOTION FOR PRELIMINARY INJUNCTION ON ORDER SHORTENING TIME**

Plaintiff Rowen Seibel, a member and manager of GR Burgr LLC ("GRB") appearing derivatively on its behalf, respectfully requests an order (**1**) preliminarily enjoining Defendant PHWLV, LLC ("PH") until after trial from terminating the written contract it entered with GRB and Gordon Ramsay; or alternatively, (**2**) preliminarily enjoining PH and its affiliates until after trial from (i) using the proprietary system, concept, ingredients, menu items, menus, methods of inventory, operations control, equipment, design, methods of preparation, recipes, signature products, specifications for food products and beverages (hereinafter, the "General GR Materials"),[1] and GRB

[1] The Complaint defines the phrase "Intellectual Property." (*See* Compl. ¶ 21.) Hereinafter, the phrase "Intellectual Property" is used herein as defined the Complaint.

Marks, for the restaurant known as "BURGR Gordon Ramsay" (hereinafter, the "Restaurant") inside the PH hotel in Las Vegas, Nevada; and (**ii**) operating the Restaurant or a similar restaurant in the restaurant premises.

Injunctive relief is appropriate because the Parties in this matter have contractually stipulated that such relief is appropriate in the circumstances presented to this Court. Specifically, the contract between the Parties expressly states the following:

> Notwithstanding any other provision of this Agreement, the parties acknowledge and agree that monetary damages would be inadequate in the case of any breach by [PH] of Article 6 . . . . Accordingly, each party shall be entitled, without limiting its other remedies and without the necessity of proving actual damages or posting any bond, to equitable relief, including the remedy of specific performance or injunction, with respect to any breach or threatened breach of such covenants and each party (on behalf of itself and its Affiliates) consents to the entry thereof in any affected jurisdiction. In the event that any proceeding is brought in equity to enforce the provisions of this Agreement, no party hereto shall allege, and each party hereto hereby waives the defense or counterclaim that there is an adequate remedy at law.

(Ex. 1, Development Agreement at pg. 30, ¶ 14.10.2.) PH is in clear breach of Article 6 and other provisions of the agreement, thereby warranting injunctive relief.

DATED February 28, 2017.

CARBAJAL & MCNUTT, LLP

DANIEL R. MCNUTT (SBN 7815)
MATTHEW C. WOLF (SBN 10801)
625 South Eighth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

DECLARATION OF DANIEL R. MCNUTT, ESQ.

I, Daniel R. McNutt, hereby declare the following:

1. I am an adult and competent to testify to all matters herein and am familiar with all issues and papers herewith.

2. I am making this declaration based upon my personal knowledge.

3. I am a duly licensed attorney at law and am admitted to practice in all courts in the State of Nevada.

4. I am a partner with the law firm Carbajal & McNutt, LLP, counsel for Plaintiff.

5. On January 11, 2017, Plaintiff filed a complaint in the United States District Court for the District of Nevada against Defendants PHWLV, LLC ("PH") and Gordon Ramsay as case 2:17-cv-00091 (hereinafter, the "Federal Case"). That same day, Plaintiff filed a motion for preliminary injunction in the Federal Case (hereinafter, the "Federal Motion"). PH and Ramsay separately opposed the Federal Motion on January 31, 2017.

6. In the Federal Case, the parties became involved in a disagreement concerning whether the District of Nevada had subject matter jurisdiction, and the Honorable Jennifer A. Dorsey, the judge presiding over the Federal Case, requested briefs from the parties on that issue and indicated her desire to resolve that issue before considering the merits of the Federal Motion.

7. Plaintiff vehemently disagreed with PH's assertion that the District of Nevada lacked subject matter jurisdiction. Nonetheless, so as not to further delay having the Federal Motion heard on its merits, Plaintiff proposed to stipulate to dismiss the Federal Case without prejudice in order to refile it in the Eighth Judicial District Court of Clark County, Nevada. Accordingly, on February 21, 2017, the Federal Case was voluntarily dismissed without prejudice via stipulation.

8. On February 28, 2017, Plaintiff refiled with the Eighth Judicial District Court a complaint against PH and Ramsay that is substantially similar to the one from the Federal Case. Furthermore, Plaintiff's foregoing Motion for Preliminary Injunction is substantially similar to the Federal Motion.

9. Because Plaintiff's Complaint and Motion for Preliminary Injunction are substantially similar to its filings in the Federal Case and PH and Ramsay already opposed the Federal Motion in ordinary course, neither PH nor Ramsay would be prejudiced by an order shortening time.

10. Moreover, in its opposition to the Federal Motion, PH disclosed to Plaintiff for the first time that on or before March 31, 2017, it plans to rebrand the restaurant at issue. In Plaintiff's foregoing Motion for Preliminary Injunction, part of Plaintiff's alternative relief for relief is to enjoin the opening and operation of that rebranded restaurant until trial. Accordingly, it is imperative that Plaintiff's Motion for Preliminary Injunction be heard before March 31, 2017.

11. For these reasons, Plaintiff respectfully requests that its Motion for Preliminary Injunction be heard on order shortening time.

On this 2nd day of March, 2017, in Las Vegas, Nevada, it is declared under penalty of perjury under the law of the State of Nevada and the United States that the foregoing is true and correct.

DANIEL R. MCNUTT

ORDER SHORTENING TIME

Good cause appearing, it is hereby ordered that the foregoing **MOTION FOR PRELIMINARY INJUNCTION ON ORDER SHORTENING TIME** will be heard on order shortening time on the 22nd day of March, 2017, at 9:00 a.m. / p.m. o'clock.

DATED this 3d day of March, 2017.

DISTRICT COURT JUDGE

TM

Respectfully Submitted:

CARBAJAL & MCNUTT, LLP

DANIEL R. MCNUTT (SBN 7815)
MATTHEW C. WOLF (SBN 10801)
625 South Eighth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Rowen Seibel is a restaurant entrepreneur who has been involved with development and opening of numerous successful restaurants. For a long period of time, Seibel was the business partner of British celebrity chef Gordon Ramsay ("Ramsay"). In 2012, Seibel and Ramsay, through GR US Licensing LP ("GRUS"), formed GRB.[2] GRB was formed by Seibel and Ramsay to own and establish a restaurant that would be operated at PH in Las Vegas, Nevada, with the intention that further similar restaurants would be opened worldwide.[3] The restaurant "concept" as developed by GRB was a casual, burger-centric restaurant, with a menu that featured burgers, fries, and shakes, as well as other specialty dishes, using the freshest and highest quality ingredients, accompanied by specially created condiments with a unique presentation. The restaurant would have its own proprietary "look and feel," featuring an open, exposed kitchen where the burgers and other items are grilled on an open, wood fire. The restaurant décor would include vivid colors and dark wood furnishings in modern design set that incorporated a flame-theme that was featured throughout the Restaurant.

GRB owns the trademarked name "BURGR."[4] GRB is also the exclusive licensee of the mark "BURGR Gordon Ramsay." In 2012, GRB and GRUS, an entity controlled by Ramsay, entered an exclusive license agreement (hereinafter, the "License Agreement") pursuant to which GRUS licensed to GRB the distinctive mark "BURGR Gordon Ramsay" (hereinafter, the "GRB Mark").[5] It allowed GRB to use and/or to sublicense the GRB Mark for the operation of the GRB burger-themed restaurant.[6]

GRB also developed and owns the system and concept for a burger-themed restaurant that would use the trademarked name, and it developed and owns the ingredients, menu items, menus, methods of inventory, operations control, equipment, design, methods of preparation, recipes,

---

2 Ex. 2, Seibel Decl. ¶¶ 6-7.
3 *Id.* ¶ 7.
4 *Id.* ¶ 8.
5 *Id.* ¶ 11.
6 *Id.* ¶ 13.

signature products, specifications for food products and beverages for the BURGR restaurant.

In December 2012, GRB, Ramsay, and PHW Las Vegas, LLC ("PHW Las Vegas") entered an agreement (hereinafter, the "Development Agreement") concerning the design, development, construction, and operation of the Restaurant inside the PH hotel in Las Vegas, Nevada.[7] PHW Las Vegas later assigned the agreement to PH.[8] As was originally conceived, the Restaurant is a causal, burger-centric restaurant, with a menu that featured burgers, fries, and shakes, as well as other specialty dishes, using the freshest and highest quality ingredients. The menu utilizes the recipes specifically created for the Restaurant, and includes items such as "Beer Battered Maui Onion Rings", "Hog Burger", "Uber Cheese Burger", "Chanterelle Burger", "Southern Yardbird Burger", "Fish and Crisp Sandwich", "Truffle Parmesan Fries", and shakes and desserts that feature a variety of pudding flavors. The Restaurant has its own distinctive "look and feel," featuring an open, exposed kitchen where the burgers and other items are grilled on an open, wood fire. The Restaurant décor includes vivid colors and dark wood furnishings in modern design set that incorporates a flame-theme featured throughout the Restaurant. Photographs of the Restaurant are attached hereto as Exhibit 6.[9]

Under the Development Agreement, GRB licensed the GRB Marks, the General GR Materials, and the Intellectual Property to PH to use in connection with the Restaurant in exchange for the payment of a license fee (hereinafter, the "License Fee").[10] The Development Agreement obligates PH to cease operating the Restaurant and using the GRB Marks, the General GR Materials, and the Intellectual Property upon the termination of the Development Agreement.[11] It also obligates PH to pay the License Fee to GRB for as long as it continues to operate the Restaurant.[12]

The menu has changed very little since opening.[13] A copy of the menu from June 2013 is attached as Exhibit 7. A copy of the menu currently found on the restaurant's website is attached as

---

7 *Id.* ¶ 17.
8 *Id.* ¶ 18.
9 *Id.* ¶ 26.
10 *Id.* ¶ 19.
11 *Id.* ¶ 22.
12 *Id.* ¶ 23.
13 *Id.* ¶ 27.

Exhibit 8, and a copy of the menu obtained directly from the Restaurant on January 3, 2017, is attached as Exhibit 9. As these menus show, the vast majority of menu items using GRB's recipes have remained the same over the years, although GRB provided some additional recipes for new menu items over the years.

The Restaurant has been very successful since its opening.[14] It received numerous positive reviews in the press. The Restaurant generated approximately $17 million in revenues annually and generated profits of over $4 million per year. In addition, the Restaurant has generated an average of $1 million annual licensing fee paid by PH to GRB.

PH, together with Ramsay, began efforts in 2016 to force Seibel out of the Restaurant without paying any consideration and to misappropriate the Restaurant for themselves. On April 7, 2016, Ramsay informed Seibel that without the consent of Seibel, PH had been unilaterally instructed to pay 50% of monies due to GRB under the Development Agreement directly to one of Ramsay's entities instead of to GRB. In contravention of the Development Agreement, PH agreed. Around April 11, 2016, Seibel attempted to transfer his interest in GRB to The Seibel Family 2016 Trust, but GRUS rejected that attempted transfer without basis.[15] On information and belief, PH was aware of Ramsay's baseless rejection of Seibel's transfer and conspired with Ramsay to cause the rejection.

That baseless rejection of Seibel's transfer provided PH with an excuse to further its efforts to force Seibel out of the Restaurant when on August 19, 2016, judgment was entered on Seibel's guilty plea in the Southern District of New York to one count of obstructing or impeding the due administration of the internal revenue laws under 26 U.S.C. § 7212(a).[16] On September 2, 2016, Caesars Entertainment Corporation ("Caesars") sent a letter to GRB demanding that within ten business days, it terminate its relationship with Seibel and provide written evidence of the same.[17] During that time period, Seibel's counsel attempted to communicate with Caesars concerning Seibel's desire to transfer his interest in GRB to The Seibel Family 2016 Trust or another acceptable party, but

---

14 *Id.* ¶ 28.
15 *Id.* ¶ 42.
16 Seibel had pled guilty to the charge on April 18, 2016.
17 Seibel Decl. ¶ 56(b).

Caesars refused to communicate.[18]

On September 15, 2016, GRUS's counsel informed PH that it had rejected Seibel's attempted transfer of his interest in GRB and "asked" if PH would do the same. Not surprisingly, PH informed Ramsay that it too would reject Seibel's transfer. This exchange of letters was a charade intended to cover-up the fact that Caesars, PH, and Ramsay had conspired together to oust Seibel from the Restaurant. Accordingly, on September 21, 2016, PHW Las Vegas purportedly terminated the Development Agreement on the alleged grounds that Seibel is an unsuitable person, as that phrase is defined in the Development Agreement.[19] ***Critically though,*** the actual party to the contract, PH, has not terminated the Development Agreement. Additionally, on September 22, 2016, Ramsay, through GRUS, purported to terminate the license agreement between GRUS and GRB.[20]

Following the purported and wrongful termination of the Development Agreement, PH has flatly refused to honor its contractual obligations under the Development Agreement. Specifically, it is continuing to operate the Restaurant and use the GRB Marks, the General GR Materials, and the Intellectual Property while refusing to pay the License Fee to GRB.[21] It also continues to operate the Restaurant with Ramsay using the GRB Marks, the General GR Materials, and the Intellectual Property.

In fact, on January 31, 2017, PH and Ramsay disclosed to Seibel for the first time that by March 31, 2017, they intend to rebrand the Restaurant (hereinafter, the "Rebranded Restaurant") and continue operating the Rebranded Restaurant without GRB or Seibel. In clear breach of the Development Agreement, PH and Ramsay intend to use the GRB Marks, the General GR Materials, and the Intellectual Property, including but not limited to the Restaurant's menu items and recipes, for the Rebranded Restaurant. In fact, as shown by trademark applications recently Ramsay had submitted to the USPTO, PH and Ramsay merely intend to change the name of the Restaurant from

---

[18] *Id.* ¶ 56(e).

[19] *Id.* ¶ 56(f).

[20] Seibel is contesting that improper termination. GRUS purported to terminate the License Agreement on the grounds that the Development Agreement had been terminated and such termination "defeats the purpose" of the License Agreement. That is not a valid basis for termination under the License Agreement. Indeed, in light of the fact that PH's purported termination was improper and ineffective, GRUS's purported basis for terminating the License Agreement is illusory.

[21] Seibel Decl. ¶ 59.

"BURGR Gordon Ramsay" to "Gordon Ramsay Burger."[22] Ironically, while PH and Ramsay undoubtedly will claim in their opposition that the Rebranded Restaurant will be entirely different from the Restaurant, the USPTO rejected Ramsay's trademark applications because "Gordon Ramsay Burger" is too similar to "BURGR Gordon Ramsay."[23]

Under the Development Agreement, PH cannot simply terminate the Development Agreement and then operate essentially the exact same restaurant with Ramsay using the rights belonging to GRB, the licensed name, and the same concept, menus, recipes and design. In addition, the Development Agreement expressly precludes PH from operating another restaurant in the same premises that uses the "Restaurant's food and beverage menus or recipes developed by GRB and/or Gordon Ramsay or use any of the GRB Marks of General GR Materials."[24] Yet, that is exactly what PH is doing. PH's conduct left GRB with no choice but to file this instant lawsuit.

Plaintiff seeks to enjoin PH until after trial from terminating the Development Agreement, or alternatively, from operating the Restaurant and the Rebranded Restaurant and from using the GRB Marks, the General GR Materials, and the Intellectual Property. In its Complaint, Plaintiff has asserted claims for (i) breach of contract; (ii) breach of the implied covenant; (iii) unjust enrichment; and (iv) civil conspiracy. Plaintiff also requests (a) specific performance; (b) declaratory relief concerning the validity of the alleged termination of the Development Agreement; (c) declaratory relief concerning the parties' rights and obligations under the Development Agreement; and (d) a restraining order or an injunction.

As demonstrated herein, Plaintiff has a reasonable probability of succeeding on one or more of these claims because PH (i) undeniably is in breach of the Development Agreement; (ii) has acted arbitrarily, capriciously, and in bad faith during the course of its business relationship with Plaintiff; and (iii) has been unjustly enriched through its retention of the License Fee and the GRB Marks, the General GR Materials, and the Intellectual Property. Injunctive relief is proper in this case because the parties have already stipulated that in the event such a dispute arises, that injunctive relief is

---

22 Ex. 20, Trademark Applications.
23 Ex. 21, Trademark Application Rejections.
24 *Id.* ¶ 22; Development Agreement Sec. 4.3.2(e).

appropriate.

As stated above, in the Development Agreement, PH expressly stipulated that in the event of a breach, GRB would not have an adequate legal remedy, could not be made whole through monetary damages, and would not be required to post a bond for an injunction.[25] The balance of potential hardships strongly favors Plaintiff because without injunctive relief it suffers the following harm: (i) the GRB Marks, the General GR Materials, and the Intellectual Property are being used in an infringing manner; (ii) its very existence has been threatened by PH's conduct because the Restaurant is its sole source of income and GRUS has started a judicial proceeding pending in Delaware to dissolve GRB based entirely on PH's purported termination; and (iii) it has not been compensated for PH's ongoing use of the GRB Marks, the General GR Materials, and the Intellectual Property. On the other hand, an injunction creates little or no hardship for PH because if termination is enjoined nothing will change – the Restaurant will continue to operate – except that PH will have to pay the required License Fees to GRB. Alternatively, if the Court required the Restaurant to close, PH still would have eleven other restaurants at which its hotel and casino guests can dine.

Public interest also favors injunctive relief because (i) the public has a strong interest in enforcing contracts; and (ii) the public has a strong interest in prohibiting the misappropriation of GRB's proprietary GR Materials and GRB Marks. For these reasons, this Court should temporarily enjoin PH and its affiliates from using the GRB Marks, the General GR Materials, and the Intellectual Property.

II. STANDARD OF REVIEW.

To obtain a preliminary injunction under NEV. REV. STAT. § 33.010, a plaintiff must establish (i) a threat of irreparable harm; (ii) a likelihood of success on the merits; (iii) that the balance of interests favor the plaintiff; and (iv) that issuance of an injunction is in the public's best interest.[26]

---

[25] Ex. 1, Development Agreement at pg. 30, ¶ 14.10.2.

[26] NEV. REV. STAT. § 33.010; *see also Clark County Sch. Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996); *S.O.C., Inc. v. The Mirage Casino-Hotel*, 23 P.3d 243, 246 (Nev. 2001); *Dangberg Holdings v. Douglas Co.*, 978 P.2d 311, 322 (1999); *Dixon v. Thatcher*, 103 Nev. 415, 742 P.2d 1029 (1987); *Pickett v. Comanche Construction, Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 44 (1992); *Number One Rent A Car v. Ramada Inns, Inc.*, 94 Nev. 779, 780-781, 587 P.2d 1329, 1330 (1978).

As for the "irreparable harm" element, injunctive relief is appropriate where damages would be an inadequate remedy.[27] The availability of a legal remedy will not defeat an injunction if the remedy would be inadequate.[28] Establishing a "reasonable probability of success on the merits" requires the moving party to demonstrate the existence of a legal claim and a likelihood of prevailing on it.[29] Upon a showing of likelihood of success and irreparable injury, a preliminary injunction should be issued to preserve the status quo until trial.[30] Alas, it should be noted that because NEV. R. CIV. P. 65 is modeled after FED. R. CIV. P. 65, federal cases interpreting FED. R. CIV. P. 65 are "strong persuasive authority."[31]

As demonstrated herein, each of the four elements for an injunction has been satisfied, and this is especially true in light of the fact that the Parties contractually stipulated that injunctive relief would be appropriate in such circumstances.

III. LEGAL ARGUMENTS.

A. At the Onset, this Court Must Address Whether the Development Agreement Was Validly Terminated.

As a preliminary matter, this Court must determine the status of the Development Agreement – *i.e.*, whether it was validly terminated or remains in full force and effect. It was not validly terminated because it was not terminated by PH.

As previously indicated, GRB originally entered the Development Agreement with PHW Las Vegas. The Development Agreement identified PHW Manager LLC ("PHWM") as the manager of PHW Las Vegas.[32] It collectively defined PHW Las Vegas and PHWM as "PH."[33] PHW Las Vegas

---

[27] *Dixon v. Thatcher*, 103 Nev. 414, 416, 742 P.2d 1029, 1030 (1987).

[28] *Czipott v. Fleigh*, 87 Nev. 496, 498–99, 489 P.2d 681, 683 (1971) ("Although this court has been reluctant to approve injunctive relief where damages may be assessed and recovered the mere availability of a legal remedy is not enough. The remedy must be adequate.")

[29] *State Farm v. Jafbros, Inc.*, 109 Nev. 926, 928, 860 P.2d 176, 178 (1993).

[30] *Number One Rent-A-Car v. Ramada Inns, Inc.*, 94 Nev. 779, 780-81, 587 P.2d 1329, 1330 (1978) ("A preliminary injunction to preserve the status quo is normally available upon a showing that the party seeking it enjoys a reasonable probability of success on the merits and that the defendant's conduct, if allowed to continue, will result in irreparable harm for which compensatory damages is an inadequate remedy.")

[31] *Las Vegas Novelty, Inc. v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990).

[32] Ex. 1, Development Agreement at pg. 1, Intro. Paragraph.

[33] *Id.*

later assigned the Development Agreement to PH in 2013. Three years later, the termination letter was sent in September 2016. It used the term "Caesars" to refer collectively to PHW Las Vegas and PHWM.[34] In the termination letter, "Caesars" purportedly terminated the Development Agreement under Section 4.2.5 of the Development Agreement.[35] This purported termination was invalid and ineffective because in 2013, PHW Las Vegas had previously assigned the Development Agreement to PH. Following that assignment, neither PHW Las Vegas nor PHWM had rights under the Development Agreement and did not have any right to terminate the Agreement. In addition, as set forth below, the purported termination violated the implied covenant of good faith and fair dealing and was thereby invalid. For those reasons, the Development Agreement was not validly terminated and remains in full force and effect.

B. This Court Should Enjoin PH Until After Trial from Terminating the Development Agreement or, Alternatively, from Operating the Restaurant and the Rebranded Restaurant and Using the GRB Marks, the General GR Materials, and the Intellectual Property.

As its primary request for relief, GRB respectfully requests an Order enjoining PH from terminating the Development Agreement until after trial. As demonstrated below, GRB likely will succeed on the merits of its claims against PH. GRB has satisfied the irreparable harm prong because the parties contractually stipulated to the existence of irreparable harm, and PH's conduct threatens GRB's very existence. As for the latter point, if PH were enjoined from terminating the Development Agreement until after trial and were required to pay the License Fee to GRB during that time, then those facts would weigh heavily against GRUS's proceeding pending in Delaware to dissolve GRB. Injunctive relief would not harm PH because the current status quo would remain the same until after trial – *i.e.*, PH would continue operating the Restaurant and using the GRB Marks, the General GR Materials, and the Intellectual Property while paying the License Fee to GRB.

For the very same reasons, this Court could alternatively enjoin PH until after trial from

---

[34] Ex. 10, Sept. 21, 2016 Termination Letter at pg. 1.

[35] Ex. 10, Sept. 21, 2016 Termination Letter at pg. 2 ("Caesars hereby terminates the [GRB] Agreement pursuant to Section 4.2.5 of the [GRB] Agreement, effective immediately.") (emphasis added).

operating the Restaurant and the Rebranded Restaurant and using the GRB Marks, the General GR Materials, and the Intellectual Property.

1. *GRB Will Succeed on the Merits of Its Claims.*

To obtain injunctive relief, a plaintiff must demonstrate a likelihood of success on at least one claim.[36] A likelihood of success simply means a reasonable probability of success.[37] As demonstrated below, Plaintiff has far more than a reasonable probability of success.

a. *The Request for Declaratory Relief that the Contract Has Not Been Terminated.*

In its Complaint, Plaintiff seeks a declaration that the Development Agreement was not validly terminated. For the aforementioned reasons, Plaintiff has a reasonable probability of success because the Development Agreement was purportedly terminated by the wrong party.

In addition, the purported termination violates the implied covenant of good faith and fair dealing. "Nevada law recognizes the existence of an implied covenant of good faith and fair dealing in every contract."[38] The implied covenant was breached in a number of ways.

First, the implied covenant is breached when a party fails to perform discretionary powers in good faith.[39] In this case, Paragraph 11.2 of the Development Agreement permitted PH to terminate the contract if it were to determine that GRB's relationship with an unsuitable person is not curable.[40]

---

[36] *See, e.g., Alabama v. U.S. Army Corps of Engineers*, 424 F.3d 1117, 1134 (11th Cir. 2005) ("To secure preliminary injunctive relief, a petitioner must demonstrate a substantial likelihood of prevailing on at least one of the causes of action he has asserted."); *see also Cuscinetti v. Beaver Precision Prod.*, 1995 WL 686371, at *2 (N.D. Cal. Nov. 13, 1995); *MedSpring Grp., Inc. v. Feng*, 368 F. Supp. 2d 1270, 1276 (D. Utah 2005); *One Stop Deli, Inc. v. Franco's, Inc.*, 1993 WL 513298, at *8 (W.D. Va. Dec. 7, 1993).

[37] *Likelihood-of-Success-on-the-Merits Test*, Black's Law Dictionary (10th ed. 2014).

[38] *Pulley v. Preferred Risk Mut. Ins. Co.*, 897 P.2d 1101, 1103 n.1 (Nev. 1995).

[39] *California Lettuce Growers v. Union Sugar Co.*, 289 P.2d 785, 791 (Cal. 1955) ("[W]here a contract confers on one party a discretionary power affecting the rights of the other, a duty is imposed to exercise that discretion in good faith and in accordance with fair dealing."); *see also Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 791 F.2d 1356, 1361 (9th Cir. 1986); *Carma Developers (Cal.), Inc. v. Marathon Dev. California, Inc.*, 826 P.2d 710, 726 (Cal. 1992); *BA Mortg. & Int'l Realty Corp. v. Am. Nat. Bank & Trust Co. of Chicago*, 706 F. Supp. 1364, 1376–77 (N.D. Ill. 1989); *Dalton v. Educ. Testing Serv.*, 663 N.E.2d 289, 291 (N.Y. 1995); *Hamilton v. Suntrust Mortg. Inc.*, 6 F. Supp. 3d 1300, 1311 (S.D. Fla. 2014); *Cook v. Zions First Nat. Bank*, 919 P.2d 56, 60 (Utah Ct. App. 1996).

[40] Ex. 1, Development Agreement at pg. 26, ¶ 11.2 ("[I]f such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b), as determined by [PH] in its sole discretion, [PH] shall, without prejudice to any other rights or remedies of [PH] including at law or in

PH's termination based on 11.2 was in bad faith for a number of reasons:

- PH and Ramsay had already been conspiring to force Seibel out of the Restaurant, as part of a larger scheme to force Seibel out of all the restaurants the parties had together, including Gordon Ramsay Pub & Grill restaurants in Las Vegas and Atlantic City, without paying any consideration to Seibel.[41]
- In June 2015, Caesars Entertainment Operating Company, Inc. attempted to reject in a bankruptcy proceeding an agreement relating to the development and operation of the Gordon Ramsay Pub and Grill at Caesars Palace in Las Vegas, Nevada.[42]
- In late 2015 and early 2016, PH and Ramsay began discussing a scheme by which they would open new burger-centric/burger-themed restaurants together without Seibel.[43]
- Furthermore, in furtherance of their scheme, PH and Ramsay had agreed in April 2016 to pay Ramsay directly 50% the license fees instead of paying all license fees to GRB as required under the Development Agreement.[44]
- In July 2016, Caesars filed pleadings in case no. 15-01145 in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, indicating that Caesars would formally reject the operating and license agreement for the Serendipity restaurant in Las Vegas, Nevada.[45] Not surprisingly, Seibel learned from press reports that the new restaurant in the same space will be a Gordon Ramsay restaurant.[46]
- PH and Ramsay conspired to reject Seibel's proposed transfer of his interest in GRB without any basis to do so.[47] Had they permitted the transfer, they would have had no basis to terminate under 11.2.
- When it deemed Seibel "unsuitable', PH did not in good faith anticipate that it or its

---

equity, have the right to terminate this Agreement and its relationship with Gordon Ramsay and GRB.")

41 Ex. 2, Seibel Decl. ¶¶ 32, 33.
42 *Id.* at ¶¶ 34, 35.
43 Ex. 2, Seibel Decl. ¶ 39.
44 Ex. 2, Seibel Decl. ¶¶ 40, 41.
45 *Id.* at ¶ 37.
46 *Id.*
47 *Id.* ¶¶ 32-55.

affiliates would be subject to disciplinary actions relating to its gaming or alcohol licenses; had Seibel nor GRB has been found to be an "unsuitable person" by the Nevada Gaming Control Board; PH had not been sanctioned, fined, reprimanded by the Nevada Gaming Control Board, or any other Nevada Gaming Authority, as a result of Seibel's association with GRB.

- PH failed, however, to provide GRB with a reasonable, fair, and good faith opportunity to cure its relationship with Seibel.[48] Rather, it demanded that GRB disassociate from Seibel in a mere ten business days and then refused to communicate with Seibel's counsel during that time frame concerning his efforts to disassociate.[49]

Second, the implied covenant "prohibits arbitrary or unfair acts by one party that work to the disadvantage of the other."[50] PH has acted arbitrarily by promoting and continually doing business, directly or indirectly, with certain persons who are known criminals with long histories of arrests and convictions, including but not limited to the rapper Clifford Joseph Harris Jr., better known as "T.I."[51] Caesars and other affiliates of PH also have a long history of contracting with and promoting professional boxers and boxing promoters who had extensive arrest and criminal conviction records to financially gain not just from the boxing matches but also from the additional activity such matches would attract to their casinos. Caesars and other affiliates of PH also have a long history of continuing to do business with persons to operate restaurants or clubs in spite of indictments and/or felony convictions of such parties without any disciplinary action to Caesars or PH.

In fact, PH is a joint venture between Caesars Acquisition Company and Caesars Entertainment Corporation. The certificate of incorporation for Caesars Entertainment Corporation expressly allows the company to redeem the stock of unsuitable persons:

> The Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person shall be redeemable by the Corporation or the applicable Affiliated Company, out of funds legally available therefor, as directed by a Gaming Authority and, if not so directed, as and to the extent deemed necessary or advisable by the Board of Directors, in which event the Corporation shall deliver a Redemption Notice to the

---

48 *Id.* ¶¶ 48-49.
49 *Id.* ¶¶ 56(b-e).
50 *Nelson v. Heer*, 123 Nev. 217, 226, 163 P.3d 420, 427 (2007).
51 Ex. 2, Seibel Decl. ¶ 54.

> Unsuitable Person or its Affiliate and shall redeem or purchase or cause one or more Affiliated Companies to purchase the Securities on the Redemption Date and for the Redemption Price set forth in the Redemption Notice.[52]

Since Caesar's own certificate of incorporation provides for paying funds to unsuitable persons, PH cannot reasonably claim it is prohibited from paying GRB the License Fee. PH has no legitimate justification or excuse for having failed to pay the License Fee to GRB. For these reasons, Plaintiff has a reasonable probability of success that the Development Agreement was not terminated.

b. The Breach of Contract Claim.

In Nevada, "[t]o prove a breach of contract, the plaintiff must show an existing valid agreement with the defendant, the defendant's material breach, and damages."[53] PH breached the Development Agreement in four ways. ***First,*** although Plaintiff contends that the termination was invalid, upon its purported termination, the Development Agreement obligates PH to cease operating the Restaurant and using the GRB Marks, the General GR Materials, and the Intellectual Property.[54] PH continues, however, to operate the Restaurant and use the GRB Marks, the General GR Materials, and the Intellectual Property.[55] While PH *may* continue to operate the Restaurant after termination, it may only do so for a limited period of time and only if it continues to pay the License Fee to GRB for as long as it continues to operate the Restaurant.[56] PH has failed to pay the License Fee to GRB for

---

[52] Caesars Entertainment Corporation's Feb. 8, 2012 Second Amended and Restated Certificate of Incorporation at § 5.4. This document is attached as Exhibit 22 and is available online at http://files.shareholder.com/downloads/ABEA-5FED0N/3790400667x0x541648/F92C4084-AC6E-4173-9D7B-C258A903DBE4/Certificate_of_Incorporation-2-8-2012.pdf.

[53] *Brochu v. Foote Enterprises, Inc.*, 381 P.3d 596, 2012 WL 5991571, at *5 (Nev. 2012).

[54] Ex. 1, Development Agreement at pgs. 13-14, ¶ 4.3.2(a) ("Upon expiration or termination of this Agreement . . . [PH] shall cease operation of the Restaurant and its use of any GRB Marks and GR Materials . . . ."); *see also Id.* at pg. 14, 4.3.2(e) ("[PH] shall have the right, but not the obligation, immediately or at any time after such expiration or termination, to operate a restaurant in the Restaurant Premises; provided, however, such restaurant shall not use the Restaurant's food and beverage menus or recipes developed by GRB and/or Gordon Ramsay or use any of the GRB Marks or General GR Materials."); *Id.* at pg. 14, ¶ 4.3.3(b) ("Upon expiration or termination of this Agreement . . . Gordon Ramsay and/or GRB shall retain all right, title and interest in and to the GRB Marks and General GR Materials and all right title and interest in and to the Restaurant's food and beverage menus and recipes developed by GRB and/or Gordon Ramsay.")

[55] Ex. 2, Seibel Decl. ¶ 59.

[56] Ex. 1, Development Agreement at pgs. 13-14, ¶ 4.3.2(a) ("[D]uring the applicable post-termination period during which [PH] is operating the Restaurant, [PH] shall continue to be obligated to pay GRB all amounts due GRB hereunder that accrue during such period in accordance with the terms of this Agreement as if this Agreement had not been terminated . . . .")

the period of time it has operated the Restaurant and used the GRB Marks, the General GR Materials, and the Intellectual Property.[57]

Second, the Development Agreement obligated PH to pay the License Fee to GRB.[58] The Development Agreement does not give GRUS, Ramsay, or an affiliate of Ramsay any right to receive the License Fee. Around April 2016, PH colluded with Ramsay to begin paying part of the License Fee to Ramsay or an affiliate and, after termination, has continued to pay the License Fee due to GRB to Ramsay.[59]

Third, upon its purported termination of the Development Agreement, PH is also obligated to terminate its relationship with Ramsay with regard to the Restaurant. To date, PH has not terminated its relationship with Ramsay and, in fact, has continued to divert monies owed to GRB and given them to Ramsay or an entity that he controls. According to PH, the Development Agreement was purportedly terminated under ¶ 4.2.5.[60] That paragraph allowed PH to terminate the agreement under ¶ 11.2,[61] which obligated PH to terminate its business relationship with Ramsay.[62] Following the purported termination of the Development Agreement under ¶ 11.2, PH continues to do business with Ramsay and to operate the Restaurant with him.[63]

Fourth, by continuing to use the trademark BURGR and the BURGR Gordon Ramsay name without paying GRB for it, PH is infringing on GRB's intellectual property.

Fifth, PH and Ramsay are planning to open another similar restaurant, the Rebranded Restaurant, without entering into an agreement with GRB, as PH is required to do under ¶14.21 of the Development Agreement. For these reasons, Plaintiff has more than a reasonable probability of success on its breach of contract claim.

---

[57] Ex. 2, Seibel Decl. ¶ 59.
[58] Ex. 1, Development Agreement at pg. 21, ¶ 8.1.1 ("[PH] shall pay to GRB a fee . . . .")
[59] Ex. 2, Seibel Decl. ¶ 40.
[60] Ex. 10, M. Clayton Sept. 21, 2016 Letter.
[61] Ex. 1, Development Agreement at pg. 12, ¶ 4.2.5 ("This Agreement may be terminated by [PH] . . . as contemplated by Section 11.2.")
[62] *Id.* at pg. 26, ¶ 11.2 (PH "shall, without prejudice to any other rights or remedies of [PH] including at law or in equity, have the right to terminate this Agreement and its relationship with Gordon Ramsay and GRB.") (emphasis added
[63] Ex. 2, Seibel Decl. ¶ 59.

c. The Implied Covenant Claim.

First, the implied covenant is breached when a party unduly delays performance or payment. In *Morris v. Bank of Am. Nevada*, the Nevada Supreme Court said the plaintiff stated a cognizable claim for breach of the implied covenant when he alleged a "[b]ank delayed and denied payments that the [b]ank was clearly obliged to make, while it tried to coerce additional security out of [the plaintiff]."[64] As previously explained, PH is contractually obligated to pay GRB the License Fee for the period of time it has operated the Restaurant and used the GRB Marks, the General GR Materials, and the Intellectual Property. By refusing to pay the License Fee, PH has breached the implied covenant of good faith and fair dealing that it owes to GRB. The fact that PH has diverted some of the license fee to a third party, Ramsay or his affiliate, further evidences that PH is in breach of the implied covenant because it clearly seeks to favor a third party while breaching its contractual obligations to GRB.

Second, the implied covenant is breached "[w]hen 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 . . . ."[65] As previously explained, based upon the plain, clear, and unambiguous terms of the Development Agreement, GRB justifiably expected that either (i) upon termination of the agreement, PH would cease operating the Restaurant, using the GRB Marks, the General GR Materials, and the Intellectual Property, and doing business with Ramsay; or (ii) PH would operate the Restaurant for the limited time allowed for in the Development Agreement but would continue to pay the License Fee to GRB for the period of time it has operated the Restaurant and used the GRB Marks, the General GR Materials, and the Intellectual Property. GRB further justifiably expected that at all times License Fees were due that PH would pay the License Fee in its entirety to GRB, not to Ramsay or an affiliate. PH unfaithfully performed the Development Agreement, thereby frustrating these justified expectations. For each of these reasons, Plaintiff will prevail on its implied covenant claim.

---

[64] 886 P.2d 454, 457 (Nev. 1994); *see also Guar. Nat. Ins. Co. v. Potter*, 912 P.2d 267, 272 (Nev. 1996) (addressing an insurer's breach of the implied covenant due to a "delay in payment of a valid claim.")

[65] *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 808 P.2d 919, 923 (Nev. 1991).

d. *The Request for Specific Performance.*

The Complaint contains a request for an order compelling PH to pay the License Fee to GRB. Under Nevada law, "Specific performance is available when [i] the terms of the contract are definite and certain, [ii] the remedy at law is inadequate, [iii] the plaintiff has tendered performance, and [iv] the court is willing to order it."[66] In plain, clear, unambiguous, definitive, and certain language, the Development Agreement requires PH to pay the License Fee to GRB while the Restaurant continues to operate after the termination of the Development Agreement. (*See* Development Agreement at ¶ 4.3.2(a).) Though it continues to operate the Restaurant following the alleged termination of the Development Agreement, PH refuses to pay the License Fee to GRB. PH claims it is withholding the License Fee due to alleged suitability concerns related to Seibel, but the Development Agreement does not contain any provisions allowing PH to withhold the License Fee for any such reason. GRB has no other way than a Court-order to obtain the License Fee. Accordingly, Plaintiff likely will prevail on its request for specific performance.

e. *The Unjust Enrichment Claim.*

In Nevada, unjust enrichment occurs when the defendant receives, retains, and appreciates a benefit, money, or property from another in violation of notions of justice, equity, and good conscience.[67] As previously explained, PH is in possession of License Fees due and owing to Plaintiff. Moreover, PH is presently using the GRB Marks, the General GR Materials, and the Intellectual Property for the operation of the Restaurant without any right to do so, and generating profits for itself. For these reasons, Plaintiff will prevail on its unjust enrichment claim.

f. *The Request for Declaratory Relief re: the Contractual Rights and Obligations.*

In its Complaint, Plaintiff seeks a declaration that PH must (i) cease using the GRB Marks,

---

[66] *Carcione v. Clark*, 96 Nev. 808, 811, 618 P.2d 346, 348 (1980) (internal citations omitted); *see also Mayfield v. Koroghli*, 124 Nev. 343, 351, 184 P.3d 362, 367 (2008); *Serpa v. Darling*, 107 Nev. 299, 305, 810 P.2d 778, 782 (1991).

[67] *Topaz Mut. Co. v. Marsh*, 108 Nev. 845, 856, 839 P.2d 606, 613 (1992) ("'Unjust enrichment is the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience.' . . . [T]he essential elements of unjust enrichment 'are a benefit conferred on the defendant by the plaintiff, appreciation by the defendant of such benefit, and acceptance and retention by the defendant of such benefit.'") (internal citations omitted).

the General GR Materials, and the Intellectual Property, and cease operating the Restaurant following the termination of the Development Agreement; (ii) pay the License Fee to GRB, and not to any third parties, for the period of time it has operated the Restaurant and used the GRB Marks, the General GR Materials, and the Intellectual Property; and (iii) provide GRB with a reasonable and good faith opportunity to cure its purported association or affiliation with any unsuitable persons. As previously explained in relation to Plaintiff's breach of contract and implied covenant claims, the plain, clear, and ordinary language of the Development Agreement entitles Plaintiff to seek such a declaration. Plaintiff therefore will prevail on its declaratory relief claim.

g. *The Request for an Injunction / Restraining Order.*

PH's wrongful attempt to terminate the Development Agreement plainly causes irreparable harm to GRB. The Restaurant at PH is GRB's only restaurant, and its closure could result in the termination of all GRB's business. The purported termination is the basis for GRUS's dissolution proceeding in Delaware. As addressed further herein, actions that would put a company out of business cause irreparable harm.

The Development Agreement permits GRB to seek an injunction following a breach of Article 6.[68] In Article 6, GRB agreed to license the GRB Marks, the General GR Materials, and the Intellectual Property to PH in exchange for the payment of the License Fee.[69] PH also contractually acknowledged in Article 6 that it has no ownership interest in the GRB Marks, the General GR Materials, and the Intellectual Property. PH has breached Article 6 by refusing to pay the License Fee to GRB and wrongfully retaining and using the GRB Marks, the General GR Materials, and the Intellectual Property.[70] PH's breach of Article 6 of the Development Agreement entitles GRB to seek

---

[68] Ex. 1, Development Agreement at pg. 30, ¶ 14.10.2.

[69] *Id.* at pg. 18, ¶ 6.3 ("Subject to section 6.1 and to the payment of the License Fee and compliance with the terms of this Agreement, each of Gordon Ramsay and GRB as necessary hereby grants to [PH] and its Affiliates a non-exclusive, non-transferable, limited, non-sublicensable right and license, during the Term (the 'License'), to use and employ GRB Marks and the General GR Materials solely on and in connection with the operation of the Restaurant in the Restaurant Premises and the marketing and promotion thereof, and in connection with the marketing, promotion and retail sale of certain products in the Restaurant Premises as is contemplated in Section 3.4 under the terms and conditions set forth in this Agreement.")

[70] *Id.* at pg. 17, ¶ 6.2.1 ("[PH] acknowledges and agrees that GRB is the owner of the GRB Marks and the General GR Materials and any modification, adaptation, improvement or derivative of or to the foregoing. [PH] acknowledges and agrees and that all use of the GRB Marks and General

an injunction prohibiting PH and its affiliates from using the GRB Marks, the General GR Materials, and the Intellectual Property. The injunctive relief provision in ¶ 14.10.2 references the covenants in Article 6 of the Development Agreement.[71]

Additionally, under Section 4.3.2(e) of the Development Agreement, even after termination PH is prohibited from operating a restaurant in the same premises that uses the GRB Marks, the General GR Materials, and the Intellectual Property.[72] PH is also prohibited from opening another similar restaurant, such as the Rebranded Restaurant, without entering into an agreement with GRB under Section 14.21 of the Development Agreement. GRB therefore is entitled to an injunction prohibiting PH from continuing to operate the Restaurant or a similar restaurant in the restaurant premises.

In addition to PH's blatant breaches of the Development Agreement and the fact the parties stipulated to the injunctive relief in the Development Agreement, Plaintiff has also satisfied all of the elements for injunctive relief. Plaintiff therefore will prevail on its claim for injunctive relief.

h. *The Request for an Accounting.*

The Development Agreement allows GRB to request and conduct an audit concerning the monies owed under the agreement.[73] At all relevant times, GRB has entrusted and relied upon PH to maintain accurate and complete records and to compute the amount of monies due under the Development Agreement.[74] Without an accounting, GRB would be unable to verify independently the accuracy of any prior payments of the License Fee and the amount of the License Fee owed based upon PH's ongoing use of the GRB Marks, the General GR Materials, and the Intellectual Property

---

GR Materials (including any goodwill generated by such use) shall inure to the benefit of GRB and, except for the limited License set forth in this Agreement [PH] shall not have or obtain any right, title or interest in or to any of the GRB Marks or General GR Materials.")

[71] *Id.* at pg. 30, ¶ 14.10.2 ("Notwithstanding any other provision of this Agreement, the parties acknowledge and agree that monetary damages would be inadequate in the case of any breach by [PH] of Article 6 or Section 14.17 or Gordon Ramsay or GRB, as applicable, of the covenants contained in Section 2.3, 2.4, or 14.18 or Article 6 of this Agreement.")

[72] ¶ 4.3.2(e) of the Development Agreement expressly states that upon the termination of the Development Agreement, PH may open another restaurant in the premises, but such restaurant "shall not use the Restaurant's food and beverage menus or recipes developed by GRB and/or Gordon Ramsay or use any of the GRB Marks or General Materials."

[73] *Id.* at pg. 22, ¶ 8.4.

[74] Ex. 2, Seibel Decl. ¶ 21.

and operation of the Restaurant.[75] For these reasons, Plaintiff will prevail on its accounting claim.

i. *The Conspiracy Claim.*

In Nevada, "[a]n actionable civil conspiracy 'consists of a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and damage results from the act or acts.'"[76] "[A] plaintiff must provide evidence of an explicit or tacit agreement between the alleged conspirators."[77] In its eighth cause of action, GRB alleges Ramsay and PH conspired to breach the Development Agreement and oust GRB and Seibel from the Restaurant. GRB likely will succeed on this claim.

In late 2015 and early 2016, PH and Ramsay began planning to open new burger-centric/burger-themed restaurants together without Seibel.[78] Seibel objected to these efforts, thereby causing PH and Ramsay to begin their plans to oust GRB and Seibel from the Restaurant.[79] Subsequently, Seibel attempted to dissociate from GRB by transferring his membership interest to The Seibel Family 2016 Trust and appointing Craig Green as a replacement manager, but in a letter sent through GRUS on April 13, 2016, Ramsay rejected Seibel's attempt to dissociate from GRB.[80] It is important to note that at that time, neither Ramsay nor PH was aware of the investigation that resulted in the conviction against Seibel.[81] Ramsay therefore cannot use the investigation or conviction as a feigned excuse for that rejection.

Moreover, while simultaneously blocking Seibel's effort to disassociate from GRB, Ramsay, through GRUS, disingenuously demanded that Seibel disassociate from GRB.[82] Given Ramsay's simultaneous efforts to block Seibel from dissociating from GRB, this demand was a facade made in

---

[75] *Id.*

[76] *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (quoting *Hilton Hotels v. Butch Lewis Productions*, 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (1993)).

[77] *Guilfoyle v. Olde Monmouth Stock Transfer Co.*, 130 Nev. Adv. Op. 78, 335 P.3d 190, 198 (2014).

[78] Ex. 2, Seibel Decl. ¶ 39.

[79] *Id.*

[80] Ex. 14, April 13, 2016 Letter.

[81] Ex. 2, Seibel Decl. ¶ 45.

[82] Ex. 16, Sept. 12, 2016 Letter from K. Gaut to B. Ziegler (in this letter, GRUS demanded that Seibel disassociate from GRB).

bad faith for the sole purpose of furthering Ramsay and PH's conspiracy to oust GRB and Seibel from the Restaurant. In other words, Ramsay made these demands for Seibel to dissociate from GRB solely to create a paper trail that would later be used in a fabricated effort to justify Ramsay and PH's plan to oust GRB and Seibel from the Restaurant.

Thereafter, in a letter sent on September 15, 2016, Ramsay and GRUS falsely told PHW Las Vegas that Seibel is an unsuitable person and his affiliation with GRB and the Restaurant could not be cured.[83] Specifically, Ramsay and GRUS claimed the transfer of Seibel's interest in GRB to The Seibel Family 2016 Trust would "not definitively terminate any direct or indirect involvement or influence in [GRB] by Mr. Seibel."[84] Ramsay and GRUS further claimed the assignment "provide[d] no method by which [PHW Las Vegas] or a gaming regulatory agency could be confident that Mr. Seibel did not retain the ability, through a family member or a retained attorney, to be involved with, or profit from, a continuing business relationship with [PHW Las Vegas] under the [GRB] Agreement."[85] These assertions were false because as Ramsay and PH were informed through legal counsel, Seibel neither would have had any direct or indirect involvement or influence over The Seibel Family 2016 Trust nor would have retain any ability, directly or indirectly, to be involved with or profit from a continuing business relationship.[86]

Ramsay also went as far as to request in writing that PH also reject Seibel's attempt to dissociate from GRB.[87] PH quickly granted Ramsay his wish by rejecting the potential transfers.[88] PH did so without ever requesting the documents it would have needed to have genuinely evaluated the proposed transfer.[89] It also failed and refused to communicate with Seibel's counsel concerning

---

[83] Ex. 11, Sept. 15, 2016 Letter.

[84] *Id.*

[85] *Id.*

[86] Ex. 19, Sept. 16, 2016 Letter from B. Ziegler to M. Clayton ("[I]n creating the trust document, great care was taken to ensure that the trust would never have an unpermitted association with an Unsuitable Person . . . ."); *see also* Sept. 8, 2016 Letter from B. Ziegler to K. Gaut ("[O]n or about April 11, 2016, Mr. Seibel sought to transfer his membership interest in GRB. The intended transferee was The Seibel Family 2016 Trust of which Craig Green and I are the sole trustees. The sole beneficiaries of said trust are Bryn Dorfman and Netty Wachtel Slushay (and potential descendants of Rowen Seibel, none of which exist as of the date hereof).")

[87] Ex. 2, Seibel Decl. ¶ 43.

[88] *Id.*

[89] Ex. 19, B. Ziegler Sept. 16, 2016 Letter to M. Clayton at pg. 2 ("Had your clients actually conducted an internal compliance process they may have asked for a copy of the trust document.")

the issue.[90] As a result of these events, GRB is no longer receiving the License Fee. Based upon this evidence, GRB likely will prevail on its claim that Ramsay and PH engaged in a civil conspiracy to oust GRB and Seibel from the Restaurant to increase their profits.

2. *The Irreparable Harm Prong Has Been Satisfied.*

A party seeking an injunction must demonstrate that without injunctive relief, irreparable harm is likely.[91] Plaintiff has satisfied the irreparable harm prong for three reasons. ***First***, in ¶ 14.10.2 of the Development Agreement, PH waived any right to argue monetary damages would make GRB whole or that GRB has an adequate legal remedy.[92] Nevada has a strong public policy favoring the freedom of parties to contract as they so choose.[93] Plaintiff is entitled to injunctive relief based upon the parties' contractual provision stipulating to the existence of irreparable harm.[94]

Second, PH's conduct threatens the very existence of GRB because GRB's other member, GRUS, seeks to dissolve GRB on the based solely on PH purported termination of the Development Agreement. The Ninth Circuit has said "[t]he threat of being driven out of business is sufficient to establish irreparable harm."[95] As aforementioned, GRB's equal members are Seibel and GRUS.[96] On

---

[90] Ex. 2, Seibel Decl. ¶ 56(e).

[91] *U.S. Bank, N.A. v. SFR Investments Pool 1, LLC*, 124 F. Supp. 3d 1063, 1069–70 (D. Nev. 2015).

[92] Ex. 1, Development Agreement at pg. 30, ¶ 14.10.2 ("[T]he parties acknowledge and agree that monetary damages would be inadequate in the case of any breach by [PH] of Article 6 . . . ."); *see also Id.* ("[N]o party hereto shall allege, and each party hereto hereby waives the defense or counterclaim that there is an adequate remedy at law.")

[93] *See, e.g., Holcomb Condo. Homeowners' Ass'n, Inc. v. Stewart Venture, LLC*, 300 P.3d 124, 128 (Nev. 2013); *see also Miller v. A & R Joint Venture*, 636 P.2d 277, 278 (Nev. 1981).

[94] *See, e.g., Realnetworks, Inc. v. DVD Copy Control Ass'n*, 641 F. Supp. 2d 913, 953–54 (N.D. Cal. 2009) (relying on a stipulated irreparable injury provision); *see also Am. Impex Corp. v. Int'l Ace Tex, Inc.*, 2009 WL 3963791, at *3 (C.D. Cal. Nov. 16, 2009) (there was a likelihood of irreparable harm when the parties expressly acknowledged in their settlement agreement that any breach would cause immediate and irreparable injury); *Martin Marietta Materials, Inc. v. Vulcan Materials Co.*, 68 A.3d 1208, 1226 (Del. 2012) (contractual stipulations as to irreparable harm are binding); *Sorensen v. New Koosharem Corp.*, 2016 WL 4942327, at *5 (C.D. Cal. Mar. 2, 2016); *LocusPoint Networks, LLC v. D.T.V. LLC*, 2015 WL 5043261, at *19 (N.D. Cal. Aug. 26, 2015).

[95] *Am. Passage Media Corp. v. Cass Commc'ns, Inc.*, 750 F.2d 1470, 1474 (9th Cir. 1985); *see also Champion-Cain v. MacDonald*, 2015 WL 4393303, at *10 (S.D. Cal. July 15, 2015) (denying a preliminary injunction but stating if the "evidence suggested that, absent an injunction, Defendants' actions were likely to put Plaintiffs out of business, the Court's decision might be different."); *Auntie Anne's, Inc. v. Wang*, 2014 WL 11728722, at *10 (C.D. Cal. July 16, 2014) (irreparable harm present when "defendants will shortly be forced to close the Ontario stores"); *Drakes Bay Oyster Co. v. Salazar*, 921 F. Supp. 2d 972, 995 (N.D. Cal. 2013) (irreparable harm present amid an "immediate shutdown" and inability to "effectively resum[e] operations"); *CogniMem Techs., Inc. v. Paillet*, 2013

October 13, 2016, GRUS filed a complaint in Delaware to dissolve GRB (hereinafter, the "Dissolution Complaint").[97] GRUS alleges GRB's sole business purpose and source of income was to license the GRB Marks, the General GR Materials, and the Intellectual Property under the Development Agreement.[98] It claims a judicial dissolution is necessary following PH's termination of the Development Agreement and refusal to pay the License Fee to GRB.[99]

Delaware law permits the Delaware Chancery Court to "decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement."[100] This law is intended to provide "an avenue of relief when an LLC cannot continue to function in accordance with its chartering agreement."[101] "In determining whether it is reasonably practicable to carry on the business of the LLC, the [Delaware Chancery] Court must look to the purpose clause set forth in the [LLC's] governing agreements. . . ."[102]

GRB's limited liability company agreement (hereinafter, the "GRB Operating Agreement") authorizes GRB to conduct any lawful business activity.[103] Though not articulated with great clarity,

---

WL 2245450, at *5 (E.D. Cal. May 21, 2013) ("[A] showing that a company's very business existence is threatened is sufficient to show irreparable harm."); *Am. Rena Int'l Corp v. Sis-Joyce Int'l Co.*, 2012 WL 12538385, at *9 (C.D. Cal. Oct. 15, 2012) ("There can be no doubt that the 'threat of being driven out of business is sufficient to establish irreparable harm."); *Phany Poeng v. United States*, 167 F. Supp. 2d 1136, 1143 (S.D. Cal. 2001) (considering the plaintiff's contention he would be forced out of business, the court said "[t]he majority of district courts addressing this issue have concluded that a loss of at least thirty percent of a plaintiff's business can constitute irreparable harm.")

[96] Ex. 2, Seibel Decl. ¶ 6; *see also* Ex. 5, GRB Operating Agreement.

[97] Ex. 18, Dissolution Compl.

[98] *Id.* at ¶ 1 (alleging "it is no longer reasonably practicable for GRB to carry on its business" due to the termination of the Development Agreement); *see also Id.* at ¶ 7 (alleging that "[s]ince its formation, [GRB has] had no other business aside from the [Development Agreement]."); *Id.* ¶ 22 (alleging the termination of the Development Agreement "terminat[ed] the only income generating agreement that GRB had."); *Id.* ¶ 24 (alleging "GRB has no other restaurants or business activity" other than the Development Agreement and the Restaurant); *Id.* ¶ 25 ("Without the [Development Agreement], GRB has no business.").

[99] *Id.*

[100] 6 Del.C. § 18-802.

[101] *Haley v. Talcott*, 864 A.2d 86, 94 (Del. Ch. 2004).

[102] *In re Seneca Investments LLC*, 970 A.2d 259, 263 (Del. Ch. 2008); *see also Id.* at 263-64 (the Delaware Chancery Court "will also not attempt to divine some other business purpose by interpreting provisions of the governing documents other than the purpose clause.")

[103] Ex. 3, Operating Agreement at pg. 3, ¶ 4 (GRB's business "shall be to engage in any lawful activity for which a limited liability company may be organized under" Delaware law.)

one of GRUS's theories as to why GRB purportedly cannot carry on its business purpose under the GRB Operating Agreement essentially is that GRB's sole income-generating assets – *i.e.*, the GRB Marks, the General GR Materials, and the Intellectual Property – is no longer generating income for GRB due to PH's purported termination of the Development Agreement.[104] If this Court were to enjoin PH from terminating the Development Agreement until after trial and require PH to pay the License Fee to GRB during that time period (as PH is so obligated under the Development Agreement), then GRB's sole assets – *i.e.*, the GRB Marks, the General GR Materials, and the Intellectual Property – would generate income. Alternatively, if this Court were to enjoin PH from using the GRB Marks, the General GR Materials, and the Intellectual Property, then GRB's income-generating asset would be returned to it. Because the GRB Operating Agreement allows GRB to conduct any lawful business activity, GRB is entitled to continue operating for the purpose of being a holding company for the GRB Marks, the General GR Materials, and the Intellectual Property.[105] For these reasons, injunctive relief would protect GRB from the threat of being dissolved, which would be an irreparable harm.

Third, as the exclusive owner of the GRB Marks, the General GR Materials, and the Intellectual Property, GRB has the right to control the use of the GRB Marks, the General GR Materials, and the Intellectual Property. Presently, GRB has no ability to control how PH is using the GRB Marks, the General GR Materials, and the Intellectual Property. If PH were to misuse the GRB Marks, the General GR Materials, and the Intellectual Property, then such misuse could irreparably harm the material's reputation, brand name, and goodwill. For each of these three reasons, Plaintiff has satisfied the irreparable harm prong.

---

[104] *Id.* ¶ 31 ("GRB's sole income generating asset — the [Development Agreement] — was terminated, and GRB as an entity has no income and cannot continue its operations without the [Development Agreement].")

[105] *See, e.g., In re Seneca Investments LLC*, 970 A.2d 259, 261-63 (Del. Ch. 2008) (when a charter authorized a LLC "to engage in any lawful act or activity" and the LLC presently did "no more than take and hold title to tangible investments", judgment on the pleadings was warranted on a dissolution complaint because it did "nothing more than allege that [the LLC] is functioning as a passive instrumentality that is holding title to assets, a corporate function that is both lawful and common.")

3. *The Potential Hardships and the Public's Interests Favor an Injunction.*

Both a balancing of potential hardships and the public's interests strongly favor injunctive relief. The balance of potential hardships strongly favors Plaintiff. If this Court were to enjoin PH from terminating the Development Agreement, then PH would not suffer any harm because the current status quo would remain unchanged – *i.e.*, until after trial, PH would continue operating the Restaurant and using the GRB Marks, the General GR Materials, and the Intellectual Property while paying the License Fee to GRB.

Alternatively, if this Court were to enjoin PH from operating the Restaurant and using the GRB Marks, the General GR Materials, and the Intellectual Property until after trial, then PH still would not suffer any harm because it has at least eleven other restaurants besides the Restaurant at which its hotel and casino guests can dine.[106] If the Restaurant were closed, then those guests likely would choose to dine at one of these other restaurants, thereby minimizing the economic harm, if any, to PH from an injunction. In contrast, PH is infringing upon the GRB Marks, the General GR Materials, and the Intellectual Property and Plaintiff's intellectual property, and Plaintiff does not have the ability to control PH's use of the same. Furthermore, as previously explained, PH's conduct threatens the very existence of GRB and alone favors an injunction.[107]

As for the public's interests, it is not in the public's interest for a party to be allowed to breach its contractual obligations.[108] As previously explained, PH is brazenly violating its clear and unambiguous contractual obligations. Furthermore, there is a strong public interest in protecting misappropriation of proprietary rights and protecting trademarks from infringement.[109] PH is

---

[106] *See* https://www.caesars.com/planet-hollywood/restaurants (last accessed on Nov. 28, 2016). These eleven restaurants include (1) Spice Market Buffet; (2) Ringer Wings, Pizza & Sliders; (3) Pin-Up Pizza; (4) Strip House; (5) Planet Dailies; (6) P.F. Chang's; (7) Pink's Hot Dogs; (8) Starbucks; (9) Yolos; (10) Earl of Sandwich; and (11) Koi.

[107] *Red's Trading Post, Inc. v. Van Loan*, 2007 WL 1302761, at *5 (D. Idaho Apr. 30, 2007).

[108] *See, e.g., McCall v. Carlson*, 172 P.2d 171, 188 (Nev. 1946) (Nevada courts "must maintain the necessary certainty, stability and integrity of contractual rights and obligations."); *see also Ellis v. McDaniel*, 596 P.2d 222, 224 (Nev. 1979) (the public has an interest in protecting the freedom to contract and in enforcing contractual rights); *NAC Found., LLC v. Jodoin*, 2016 WL 4059648, at *2 (D. Nev. July 26, 2016); *BZ Clarity Tent Sub LLC v. Ross Mollison Int'l Party, Ltd.*, 2015 WL 3657249, at *7 (D. Nev. June 12, 2015); *H&R Block Enterprises, Inc. v. Roberts*, 2011 WL 666034, at *4 (D. Nev. Feb. 14, 2011).

[109] *Seed Servs., Inc. v. Winsor Grain, Inc.*, 868 F. Supp. 2d 998, 1006 (E.D. Cal. 2012); *see also Brookfield Commc'ns, Inc. v. W. Coast Entm't Corp.*, 174 F.3d 1036, 1066 (9th Cir. 1999);

presently using the GRB Marks, the General GR Materials, and the Intellectual Property by continuing to operate the Restaurant without GRB's permission or approval. For these reasons, the potential hardships and the public's interests favor injunctive relief.

4. *The Parties Stipulated that No Security Bond is Required.*

NEV. R. CIV. P. 65(c) states, "No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant . . . ." "The expressed purpose of posting a security bond is to protect a party from damages incurred as a result of a wrongful injunction . . . ."[110] Plaintiff recognizes that in Nevada, "[i]t is the rule [of] this state that under the mandatory provisions of the statute the requirement for the filing of a bond is essential to the validity of an injunction."[111] This Court, however, should not require any security for two reasons.

First, in ¶ 14.10.2 of the Development Agreement, PH waived any need for GRB to post security to obtain injunctive relief.[112] Plaintiff is unaware of any Nevada state cases addressing a written waiver of NEV. R. CIV. P. 65(c), but many cases within the Ninth Circuit have allowed a written waiver to excuse a movant from having to post securities under Rule 65(c).[113] Because federal jurisprudence construing FED. R. CIV. P. 65 is strong persuasive authority in Nevada, the Nevada Supreme Court likely would follow these cases.

Borinquen Biscuit Corp. v. M.V. Trading Corp., 443 F.3d 112, 115 (1st Cir. 2006); *Gen. Elec. Co. v. Sung*, 843 F. Supp. 776, 778 (D. Mass. 1994); *Microsoft Corp. v. Premier Selling Techs.*, 2015 WL 1408915, at *3 (W.D. Wash. Mar. 26, 2015); *Nikas v. Vietnam Veterans of Am., Inc.*, 1992 WL 336495, at *5 (D.D.C. Nov. 6, 1992); *Englert, Inc. v. LeafGuard USA, Inc.*, 2009 WL 5031309, at *6 (D.S.C. Dec. 14, 2009); *Twentieth Century Fox Film Corp. v. Rock & Roll Plus*, 1990 WL 69078, at *4 (E.D. Pa. May 22, 1990); *Gucci Am., Inc. v. Li*, 2015 WL 7758872, at *5 (S.D.N.Y. Nov. 30, 2015).

[110] *Am. Bonding Co. v. Roggen Enterprises*, 109 Nev. 588, 591, 854 P.2d 868, 870 (1993).

[111] *Brunzell Const. Co., of Nev. v. Harrah's Club*, 81 Nev. 414, 420, 404 P.2d 902, 905 (1965).

[112] Ex. 1, Development Agreement at pg. 30, ¶ 14.10.2 ("[E]ach party shall be entitled, without . . . the necessity of . . . posting any bond, to equitable relief . . . .")

[113] *Just Tacos, Inc. v. Zezulak*, 2011 WL 6140866, at *11 (D. Haw. Dec. 9, 2011) (citing *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009)) (a bond was not required when it was waived in the parties' franchise agreement); *see also 2Die4Kourt v. Hillair Capital Mgmt., LLC*, 2016 WL 4487895, at *11 (C.D. Cal. Aug. 23, 2016); *Glycobiosciences, Inc. v. Woodfield Pharm., LLC*, 2016 WL 1702674, at *9 (S.D. Tex. Apr. 27, 2016); *Cellairis Franchise, Inc. v. Duarte*, 2015 WL 6517487, at *9 (N.D. Ga. Oct. 21, 2015); *IP, LLC v. Interstate Vape, Inc.*, 2014 WL 5791353, at *9 (W.D. Ky. Nov. 6, 2014); *Singas Famous Pizza Brands Corp. v. N.Y. Advert. LLC*, 2011 WL 497978, at *12 (S.D.N.Y. Feb. 10, 2011); *Concord Steel, Inc. v. Wilmington Steel Processing Co.*, 2008 WL 902406, at *12, n.92 (Del. Ch. Apr. 3, 2008); *Centennial Broad., LLC v. Burns*, 2006 WL 733945, at *3 (W.D. Va. Mar. 20, 2006).

Second, in the Ninth Circuit "[t]he district court may dispense with the filing of a bond [under FED. R. CIV. P. 65(c)] when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct."[114] It should be noted that when the Nevada Supreme Court said in 1965 in *Brunzell* that a bond is mandatory under Rule 65(c), it cited to Ninth Circuit precedent as it existed at that time for support.[115] Because Ninth Circuit precedent no longer supports *Brunzell*, the Nevada Supreme Court likely would no longer follow it. As previously explained, there is no realistic likelihood of harm to PH because it has eleven other restaurants for its guests. Accordingly, this Court should grant the injunctive relief with no requirement that Plaintiff post a security bond.

IV. CONCLUSION.

Based on the undisputed fact that the Parties have contractually stipulated to injunctive relief and because the Plaintiff has separately demonstrated that injunctive relief is appropriate, it is respectfully requested that this Court enjoin PH and its affiliates until after trial from (i) terminating the Development Agreement, or alternatively, (ii) enjoining PH from using the GRB Marks, the General GR Materials, and the Intellectual Property and enjoining PH from operating the Restaurant or a similarly themed burger restaurant in the premises.

DATED February 28, 2017.

CARBAJAL & MCNUTT, LLP

/s/ Dan McNutt
DANIEL R. MCNUTT (SBN 7815)
MATTHEW C. WOLF (SBN 10801)
625 South Eighth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

---

114 *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003).

115 *Brunzell Const. Co., of Nev. v. Harrah's Club*, 81 Nev. 414, 420, 404 P.2d 902, 905 (1965) ("[T]he circuit courts of appeal for the third, seventh and ninth circuits are in accord with the construction placed on NRCP 65(c) by this court.")

Exhibit 20

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Wed Feb 1 02:21:03 EST 2017

GORDON RAMSAY BURGER

Word Mark **GORDON RAMSAY** BURGER

Goods and Services IC 043. US 100 101. G & S: Services for providing of food and drink; restaurant, café, bar and catering services; hotel services; advisory services relating to café, restaurant, bar, catering and hotel services; consultation in the field of the selection, preparation and serving of food and beverages and restaurant, café, bar, catering; self-service restaurants; takeaway, cafe, cafeteria, canteen, coffee shop and snack-bar services; wine bar services; catering services for the provision of food and drink; club services for the provision of food and drink; provision of information relating to bars and restaurants; provision of information relating to the preparation of food and drink; information services relating to all the aforesaid services

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 87208916

Filing Date October 19, 2016

Current 1B

Basis	
Original Filing Basis	1B
Owner	(APPLICANT) Ramsay, Gordon INDIVIDUAL UNITED KINGDOM 539-547 Wandsworth Road London UNITED KINGDOM SW83JD
Attorney of Record	Evan M. Kent
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Wed Feb 1 02:21:03 EST 2017

GORDON RAMSAY BURGER

Word Mark **GORDON RAMSAY** BURGER

Goods and Services IC 016. US 002 005 022 023 029 037 038 050. G & S: Printed matter; printed publications; instructional and teaching materials; books, recipe books, recipe cards and cookery books; booklets; books; calendars; cardboard cake boxes; cardboard boxes; cards; book covers, book marks; magazines, newspapers, newsletters, periodicals, comics, pamphlets; manuals, catalogues; stationery; diaries; greeting cards; paper articles; cardboard articles; maps, charts, posters, paintings, drawings, photographs, prints, pictures; handkerchiefs; paper napkins, paper tablecloths, coasters made from cardboard or paper, paper place mats; paper and plastic bags; bags for microwave cooking; writing pads; note pads; paperweights; writing Instruments; posters

IC 021. US 002 013 023 029 030 033 040 050. G & S: Aluminium bakeware; Aluminium cookware; Bakeware; Baking dishes; Baking dishes made of earthenware; Baking dishes made of glass; Baking mats; Baking dishes made of porcelain; Baking tins; Beer jugs; Beer mugs; Beverage glassware; Bowls; Bread boards; Bread boxes; Cake moulds; Cake brushes; Candy boxes; Cheese graters; Chopsticks; sushi rolling mat, bento boxes; Cocktail shakers; Coffee cups; Colanders; Coffee grinders; Cookery moulds; Cooking pot sets; Cooking utensils; Corkscrews; Cups and mugs; Decanters; Dishware; Earthenware; Egg cups; Egg poachers; Ice cube trays; Jugs; Lunchboxes; Mugs; Pepper mills; Pepper pots; Salt mills; Salad spinners; Sandwich boxes; sushi rolling equipment; Tableware,

	cookware and containers; Utensil jars; paper cups; paper plates; woks; Picnic crockery; Picnic boxes; Fitted picnic baskets IC 025. US 022 039. G & S: Clothing, footwear and headgear; articles of outer clothing; articles of underclothing; headgear; scarves; boxer shorts; socks; t-shirts, hats and caps, jackets, pyjamas, slippers; wristbands, headbands, ties, shirts, pullovers, skirts, dresses, trousers, coats, jackets, belts, scarves, gloves, neckties, socks, swimsuits; caps; athletics shoes; dance shoes; leather shoes; high heeled shoes; sandals and beach shoes; hats; baseball caps; aprons
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	87252882
Filing Date	November 30, 2016
Current Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) Ramsay, Gordon INDIVIDUAL UNITED KINGDOM 539-547 Wandsworth Road London UNITED KINGDOM SW83JD
Attorney of Record	Evan M. Kent
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Wed Feb 1 02:21:03 EST 2017

GORDON RAMSAY burger

Word Mark **GORDON RAMSAY** BURGER

Goods and Services IC 016. US 002 005 022 023 029 037 038 050. G & S: Printed matter; printed publications; instructional and teaching materials; books, recipe books, recipe cards and cookery books; booklets; books; calendars; cardboard cake boxes; cardboard boxes; cards; book covers, book marks; magazines, newspapers, newsletters, periodicals, comics, pamphlets; manuals, catalogues; stationery; diaries; greeting cards; paper articles; cardboard articles; maps, charts, posters, paintings, drawings, photographs, prints, pictures; handkerchiefs; paper napkins, paper tablecloths, coasters made from cardboard or paper, paper place mats; paper and plastic bags; bags for microwave cooking; writing pads; note pads; paperweights; writing Instruments; posters

IC 021. US 002 013 023 029 030 033 040 050. G & S: Aluminium bakeware; Aluminium cookware; Bakeware; Baking dishes; Baking dishes made of earthenware; Baking dishes made of glass; Baking mats; Baking dishes made of porcelain; Baking tins; Beer jugs; Beer mugs; Beverage glassware; Bowls; Bread boards; Bread boxes; Cake moulds; Cake brushes; Candy boxes; Cheese graters; Chopsticks; sushi rolling mat, bento boxes; Cocktail shakers; Coffee cups; Colanders; Coffee grinders; Cookery moulds; Cooking pot sets; Cooking utensils; Corkscrews; Cups and mugs; Decanters; Dishware; Earthenware; Egg cups; Egg poachers; Ice cube trays; Jugs; Lunchboxes; Mugs; Pepper mills; Pepper pots; Salt mills; Salad spinners; Sandwich boxes; sushi rolling equipment; Tableware,

cookware and containers; Utensil jars; paper cups; paper plates; woks; Picnic crockery; Picnic boxes; Fitted picnic baskets

IC 025. US 022 039. G & S: Clothing, footwear and headgear; articles of outer clothing; articles of underclothing; headgear; scarves; boxer shorts; socks; t-shirts, hats and caps, jackets, pyjamas, slippers; wristbands, headbands, ties, shirts, pullovers, skirts, dresses, trousers, coats, jackets, belts, scarves, gloves, neckties, socks, swimsuits; caps; athletics shoes; dance shoes; leather shoes; high heeled shoes; sandals and beach shoes; hats; baseball caps; aprons

IC 043. US 100 101. G & S: Services for providing of food and drink; restaurant, café, bar and catering services; hotel services; advisory services relating to café, restaurant, bar, catering and hotel services; consultation in the field of the selection, preparation and serving of food and beverages and restaurant, café, bar, catering; self-service restaurants; takeaway, cafe, cafeteria, canteen, coffee shop and snack-bar services; wine bar services; catering services for the provision of food and drink; club services for the provision of food and drink; provision of information relating to bars and restaurants; provision of information relating to the preparation of food and drink; information services relating to all the aforesaid services

Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s) 26.17.05 - Bands, horizontal; Bars, horizontal; Horizontal line(s), band(s) or bar(s); Lines, horizontal
Serial Number	87252896
Filing Date	November 30, 2016
Current Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) Ramsay, Gordon INDIVIDUAL UNITED KINGDOM 539-547 Wandsworth Road London UNITED KINGDOM SW83JD
Attorney of Record	Evan M. Kent
Description of Mark	Color is not claimed as a feature of the mark. The mark consists of the mark GORDON RAMSAY burger in stylized letters with a line between "GORDON RAMSAY" and "burger".
Type of Mark	TRADEMARK. SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

Exhibit 21

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 87252896

MARK: GORDON RAMSAY BURGER

87252896

CORRESPONDENT ADDRESS:
EVAN M. KENT
MITCHELL SILBERBERG & KNUPP LLP
11377 WEST OLYMPIC BOULEVARD
LOS ANGELES, CA 90064-1683

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: Ramsay, Gordon

CORRESPONDENT'S REFERENCE/DOCKET NO :
46198

CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE:

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issues below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SECTION 2(D) REFUSAL – LIKELIHOOD OF CONFUSION – CLASS 25 AND 43 ONLY

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 4614406. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the attached registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). A determination of likelihood of confusion under Section 2(d) is made on a case-by case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) aid in this determination. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the *du Pont* factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

Applicant's mark is GORDON RAMSAY BURGER for, in relevant part, "Clothing, footwear and headgear; articles of outer clothing; articles of underclothing; headgear; scarves; boxer shorts; socks; t-shirts, hats and caps, jackets, pyjamas, slippers; wristbands, headbands, ties, shirts, pullovers, skirts, dresses, trousers, coats, jackets, belts, scarves, gloves, neckties, socks, swimsuits; caps; athletics shoes; dance shoes; leather shoes; high heeled shoes; sandals and beach shoes; hats; baseball caps; aprons" and "Services for providing of food and drink; restaurant, café, bar and catering services; hotel services; advisory services relating to café, restaurant, bar, catering and hotel services; consultation in the field of the selection, preparation and serving of food and beverages and restaurant, café, bar, catering; self-service restaurants; takeaway, cafe, cafeteria, canteen, coffee shop and snack-bar services; wine bar services; catering services for the provision of food and drink; club services for the provision of food and drink; provision of information relating to bars and restaurants; provision of information relating to the preparation of food and drink; information services relating to all the aforesaid services."

The registered mark is BURGR GORDON RAMSAY with a flame design for "Clothing, namely, T-shirts; headgear, namely, hats" and "Restaurant, café, bar and catering services."

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services. *See In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.* , 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.*

Comparison of the Marks

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F. 3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) (citing *In re 1st USA Realty Prof'ls, Inc.* , 84 USPQ2d 1581, 1586 (TTAB 2007)); *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988)); TMEP §1207.01(b).

In this case, the name GORDON RAMSAY is a dominant feature of both marks and both marks also include the word BURGER, albeit intentionally misspelled, in the registration. Consumers seeing the same name, both in connection with foods related services, are likely to believe that the services emanate from a common source.

Marks may be confusingly similar in appearance where similar terms or phrases or similar parts of terms or phrases appear in the compared marks and create a similar overall commercial impression. *See Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce* , 228 USPQ 689, 690-91 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n* , 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMCASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (finding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (finding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii).

Comparison of the Goods and Services

Applicant's goods and services include all of the goods and services identified in the cited registration and also include some related other clothing and food and beverage services and information and consultation related thereto.

The goods and/or services of the parties need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) ("[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods."); TMEP §1207.01(a)(i).

The respective goods and/or services need only be "related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

Because the marks are substantially similar and the goods and services are in part identical and in part very closely related, registration of applicant's mark is refused.

Note that any doubt regarding a likelihood of confusion is resolved in favor of the prior registrant. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); TMEP §§1207.01(d)(i).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

POSSIBLE COMMON OWNERSHIP

If the mark in the cited registration has been assigned to applicant, applicant may provide evidence of ownership of the mark by satisfying one of the following:

(1) Record the assignment with the USPTO's Assignment Recordation Branch (ownership transfer documents such as assignments can be filed online at http://etas.uspto.gov) and promptly notify the trademark examining attorney that the assignment has been duly recorded.

(2) Submit copies of documents evidencing the chain of title.

(3) Submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **"Applicant is the owner of U.S. Registration No. 4614406."** To provide this statement using the Trademark Electronic Application System (TEAS), use the "Response to Office Action" form; answer "yes" to wizard questions #3 and #10; then, continuing on to the next portion of the form, in the "Additional Statement(s)" section, find "Active Prior Registration(s)" and insert the U.S. registration numbers in the data fields; and follow the instructions within the form for signing. The form must be signed twice; a signature is required both in the "Declaration Signature" section and in the "Response Signature" section.

TMEP §812.01; *see* 15 U.S.C. §1060; 37 C.F.R. §§2.193(e)(1), 3.25, 3.73(a)-(b); TMEP §502.02(a).

Recording a document with the Assignment Recordation Branch does not constitute a response to an Office action. TMEP §503.01(d).

If applicant responds to the refusal, applicant must also respond to the four requirements set forth below.

NAME INQUIRY

Applicant must clarify whether the name Gordon Ramsay in the mark identifies a particular living individual. *See* 37 C.F.R. §2.61(b); TMEP §§813, 1206.03. In this case, the application neither specifies whether the name in the mark identifies a particular living individual nor includes a written consent. *See* TMEP §§813.01(a)-(b), 1206.04(a), 1206.05.

To register a mark that consists of or comprises the name of a particular living individual, including a first name, pseudonym, stage name, or nickname, an applicant must provide a written consent personally signed by the named individual. 15 U.S.C. §1052(c); TMEP §§813, 1206.04(a).

Accordingly, if the name in the mark does not identify a particular living individual, applicant must submit a statement to that effect (e.g., "The name shown in the mark does not identify a particular living individual.").

However, if the name in the mark does identify a particular living individual, applicant must submit both of the following:

(1) The following **statement**: "The name shown in the mark identifies a living individual whose consent to register is made of record."

(2) **A written consent**, personally signed by the named individual, as follows: "I, Gordon Ramsay, consent to the use and registration of my name, Gordon Ramsay, as a trademark and/or service mark with the USPTO."

For an overview of the requirements pertaining to names appearing in marks, and instructions on how to satisfy this requirement online using the Trademark Electronic Application System (TEAS) response form, please go to http://www.uspto.gov/trademarks/law/consent.jsp.

Failing to respond to this inquiry may result in a refusal to register the mark. *See In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); TMEP §814.

DISCLAIMER

Applicant must disclaim the wording "BURGER" because it merely describes a feature of applicant's services, and thus is an unregistrable component of the mark. *See* 15 U.S.C. §§1052(e)(1), 1056(a); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); TMEP §§1213, 1213.03(a).

The attached evidence about applicant's restaurants shows that applicant's services feature burgers. Therefore, the wording merely describes features of the services. Additionally, applicant's goods are broadly identified and include clothing, printed material and household goods, which could be offered at or in connection with applicant's restaurant and thus related to burgers. Further, many of applicant's paper and printed goods and household products could be for use with burgers or on the subject of burgers.

An applicant may not claim exclusive rights to terms that others may need to use to describe their goods and/or services in the marketplace. *See Dena Corp. v. Belvedere Int'l, Inc.* , 950 F.2d 1555, 1560, 21 USPQ2d 1047, 1051 (Fed. Cir. 1991); *In re Aug. Storck KG*, 218 USPQ 823, 825 (TTAB 1983). A disclaimer of unregistrable matter does not affect the appearance of the mark; that is, a disclaimer does not physically remove the disclaimed matter from the mark. *See Schwarzkopf v. John H. Breck, Inc.*, 340 F.2d 978, 978, 144 USPQ 433, 433 (C.C.P.A. 1965); TMEP §1213.

If applicant does not provide the required disclaimer, the USPTO may refuse to register the entire mark. *See In re Stereotaxis Inc.*, 429 F.3d 1039, 1040-41, 77 USPQ2d 1087, 1088-89 (Fed. Cir. 2005); TMEP §1213.01(b).

Applicant should submit a disclaimer in the following standardized format:

No claim is made to the exclusive right to use "BURGER" apart from the mark as shown.

For an overview of disclaimers and instructions on how to satisfy this disclaimer requirement online using the Trademark Electronic Application System (TEAS) form, please go to http://www.uspto.gov/trademarks/law/disclaimer.jsp.

IDENTIFICATION OF GOODS AND SERVICES

Applicant has identified its goods and services as set forth below. The terms appearing in bold letters in the identification of goods and services are unacceptable because they are indefinite, overly broad and could include goods or services in multiple classes as more fully explained in the parenthetical information following each listing. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01.

Class 16: ***Printed matter****{Applicant must specify the printed matter items with particularity, e.g., printed certificates, printed flip charts, printed menus, printed paper labels.}*; ***printed publications****{Applicant must specify the types of publications and the subject matter of the content, e.g., printed guides in the field of cooking, printed booklets featuring recipes.}*; ***instructional and teaching materials****{Applicant must specify that the goods are "printed" for proper classification in Class 16 and must specify the subject matter of the materials with particularity, e.g., printed instructional and teaching materials in the field of restaurant management.}*; ***books****{Applicant must specify the subject matter of the books, e.g., books in the field of cooking.}*, recipe books, ***recipe cards****{Applicant must specify that the goods are printed.}* and ***cookery books****{Applicant must clarify whether "cookery" is the subject matter of the books, e.g., "books in the field of cookery."}* ; ***booklets****{Applicant*

must specify the subject matter of the booklets, e.g., booklets in the field of cooking.}; ***books****{Duplicate entry. Duplicates will be deleted.}*; calendars; cardboard cake boxes; cardboard boxes; ***cards****{Applicant must specify the types of cards with particularity, e.g., holiday cards, index cards, flash cards.}*; book covers, book marks; ***magazines****{Applicant must specify the subject matter of the magazines, e.g., magazines in the field of cooking.}*, newspapers, ***newsletters****{Applicant must specify the subject matter of the newsletters, e.g., newsletters in the field of cooking.}*, ***periodicals****{Applicant must indicate that the goods are "printed" and must specify the subject matter of the periodicals, e.g., printed periodicals in the field of cooking.}*, comics, ***pamphlets****{Applicant must specify the subject matter of the pamphlets, e.g., pamphlets in the field of cooking.}*; ***manuals****{Applicant must specify the subject matter of the manuals, e.g., manuals in the field of cooking.}*, ***catalogues****{Applicant must specify the subject matter of the catalogues, e.g., catalogues in the field of cooking.}*; stationery; diaries; greeting cards; ***paper articles****{Applicant must specify the articles with particularity, e.g., paper bibs, paper boxes, drawing paper, paper bunting, paper bags.}*; ***cardboard articles****{Applicant must specify the articles with particularity, e.g., cardboard containers, cardboard gift boxes, cardboard mailing tubes.}*; maps, ***charts****{Applicant must specify the types of charts, e.g., charts in the field of cooking, printed flip charts, score charts.}*, posters, paintings, drawings, photographs, prints, pictures; ***handkerchiefs****{Applicant must specify that the goods are paper handkerchiefs for proper classification in Class 16.}*; paper napkins, paper tablecloths, coasters made from cardboard or paper, paper place mats; paper and ***plastic bags****{Applicant must specify the purpose for the bags for proper classification in Class 16, e.g., general purpose plastic bags in Class 16, plastic garbage bags in Class 16.}*; bags for microwave cooking; writing pads; note pads; paperweights; writing Instruments; ***posters****{Duplicate entry. Duplicates will be deleted.}*

Class 21: Aluminium bakeware; ***Aluminium cookware****{Applicant must specify the types of cookware in Class 21 with particularity, e.g., pots and pans.}*; Bakeware; Baking dishes; Baking dishes made of earthenware; Baking dishes made of glass; Baking mats; Baking dishes made of porcelain; ***Baking tins****{Applicant must specify the function of the tins, e.g., cake tins, pie tins, muffin tins.}*; Beer jugs; Beer mugs; Beverage glassware; Bowls; Bread boards; Bread boxes; Cake moulds; Cake brushes; Candy boxes; Cheese graters; Chopsticks; sushi rolling mat, bento boxes; Cocktail shakers; Coffee cups; Colanders; ***Coffee grinders****{Applicant must specify that the goods are hand-operated for proper classification in Class 21.}*; Cookery moulds; Cooking pot sets; ***Cooking utensils****{Applicant must specify the utensils in Class 21 with particularity, e.g., spatula, turner, strainer, grater.}*; Corkscrews; Cups and mugs; Decanters; Dishware; ***Earthenware****{Applicant must specify the articles with particularity, e.g., earthenware saucepans in Class 21.}*; Egg cups; Egg poachers; Ice cube trays; Jugs; Lunchboxes; Mugs; Pepper mills; Pepper pots; Salt mills; Salad spinners; Sandwich boxes; ***sushi rolling equipment****{Applicant must clarify the nature of the goods to indicate that the "equipment" is hand operated for proper classification in Class 21.}*; ***Tableware, cookware and containers****{Applicant must specify the types of tableware, cookware and containers with particularity for proper classification, e.g., pots and pans in Class 21, containers for household use in Class 21, tea services in Class 21, knives, forks and spoons in Class 8.}*; Utensil jars; paper cups; paper plates; woks; ***Picnic crockery****{Applicant must specify the articles of crockery with particularity, e.g., pots, dishes, bowls.}*; ***Picnic boxes****{Applicant must specify that the goods are sold empty for proper classification in Class 21.}*; Fitted picnic baskets

Class 25: ***Clothing****{Applicant must specify the articles of clothing with particularity, e.g., shirts, pants, coats.}*, footwear and ***headgear****{Applicant must specify the headgear in Class 25 with particularity or applicant may amend to "headwear" if accurate.}*; ***articles of outer clothing****{Applicant must specify the articles of outer clothing with particularity, e.g., jackets, coats, blazers.}*; articles of underclothing; ***headgear****{Duplicate entry. Duplicates will be deleted.}*; scarves; boxer shorts; socks; t-shirts, hats and caps, jackets, pyjamas, slippers; wristbands, headbands, ties, shirts, pullovers, skirts, dresses, trousers, coats, ***jackets****{Duplicate entry. Duplicates will be deleted.}*, belts, ***scarves****{Duplicate entry. Duplicates will be deleted.}*, gloves, neckties, ***socks****{Duplicate entry. Duplicates will be deleted.}*, swimsuits; ***caps****{Duplicate entry. Duplicates will be deleted.}*; athletics shoes; dance shoes; leather shoes; high heeled shoes; sandals and beach shoes; ***hats****{Duplicate entry. Duplicates will be deleted.}*; baseball caps; aprons

Class 43: Services for providing of food and drink; restaurant, café, bar and catering services; hotel services; advisory services relating to café, restaurant, bar, catering and hotel services; consultation in the field of the selection, preparation and serving of food and beverages and restaurant, café, bar, catering; self-service restaurants; ***takeaway***, cafe, cafeteria, canteen, coffee shop and snack-bar services*{The services identified as "takeaway" are not definite in Class 43. Applicant may amend to "takeaway restaurant" services if accurate.}* ; wine bar services; catering services for the provision of food and drink; club services for the provision of food and drink; provision of information relating to bars and restaurants; provision of information relating to the preparation of food and drink; information services relating to all the aforesaid services

Additionally, applicant must list the goods and/or services separated by international class number in ascending numerical order. TMEP §§801.01(b) and 1403.01.

Applicant may adopt the following identification of goods and services, if accurate:

Class 16: Printed matter, namely, printed certificates, printed flip charts, printed menus, printed paper labels; printed publications, namely, printed guides in the field of cooking, printed booklets featuring recipes; printed instructional and teaching materials in the field of restaurant management; books in the field of cooking, recipe books, printed recipe cards{Applicant must specify that the goods are printed and books in the field of cookery; booklets in the field of cooking.; calendars; cardboard cake boxes; cardboard boxes; cards, namely, holiday cards, index cards, flash cards; book covers, book marks; magazines in the field of cooking, newspapers, newsletters in the field of cooking, printed periodicals in the field of cooking, comics, pamphlets in the field of cooking; manuals in the field of cooking, catalogues in the field of cooking; stationery; diaries; greeting cards; paper articles, namely, paper bibs, paper boxes, drawing paper, paper bunting, paper bags; cardboard articles, namely, cardboard containers, cardboard gift boxes, cardboard mailing tubes; maps, charts, namely, charts in the field of cooking, printed flip charts, score charts, posters, paintings, drawings, photographs, prints, pictures; paper handkerchiefs; paper napkins, paper tablecloths, coasters made

from cardboard or paper, paper place mats; general purpose paper and plastic bags; bags for microwave cooking; writing pads; note pads; paperweights; writing instruments

Class 21: Aluminium bakeware; Aluminium cookware, namely, pots and pans; Bakeware; Baking dishes; Baking dishes made of earthenware; Baking dishes made of glass; Baking mats; Baking dishes made of porcelain; Baking tins, namely, cake tins, pie tins, muffin tins; Beer jugs; Beer mugs; Beverage glassware; Bowls; Bread boards; Bread boxes; Cake moulds; Cake brushes; Candy boxes; Cheese graters; Chopsticks; sushi rolling mat, bento boxes; Cocktail shakers; Coffee cups; Colanders; Hand-operated coffee grinders; Cookery moulds; Cooking pot sets; Cooking utensils, namely, spatulas, strainers, graters; Corkscrews; Cups and mugs; Decanters; Dishware; Earthenware saucepans; Egg cups; Egg poachers; Ice cube trays; Jugs; Lunchboxes; Mugs; Pepper mills; Pepper pots; Salt mills; Salad spinners; Sandwich boxes; hand-operated sushi rolling equipment; Tableware, cookware and containers, namely, pots and pans, containers for household use, tea service; Utensil jars; paper cups; paper plates; woks; Picnic crockery, namely, pots, dishes, bowls.}; Picnic boxes sold empty; Fitted picnic baskets

Class 25: Clothing, namely, shirts, pants, coats; footwear and headwear; articles of outer clothing, namely, jackets, coats, blazers; articles of underclothing; scarves; boxer shorts; socks; t-shirts, hats and caps, jackets, pyjamas, slippers; wristbands, headbands, ties, shirts, pullovers, skirts, dresses, trousers, coats, belts, gloves, neckties, swimsuits; athletics shoes; dance shoes; leather shoes; high heeled shoes; sandals and beach shoes; baseball caps; aprons

Class 43: Services for providing of food and drink; restaurant, café, bar and catering services; hotel services; advisory services relating to café, restaurant, bar, catering and hotel services; consultation in the field of the selection, preparation and serving of food and beverages and restaurant, café, bar, catering; self-service restaurants; takeaway restaurant, cafe, cafeteria, canteen, coffee shop and snack-bar services; wine bar services; catering services for the provision of food and drink; club services for the provision of food and drink; provision of information relating to bars and restaurants; provision of information relating to the preparation of food and drink; information services relating to all the aforesaid services

TMEP §§1402.01 and 1402.03.

Applicant's goods and/or services may be clarified or limited, but may not be expanded beyond those originally itemized in the application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Applicant may clarify or limit the identification by inserting qualifying language or deleting items to result in a more specific identification; however, applicant may not substitute different goods and/or services or add goods and/or services not found or encompassed by those in the original application or as acceptably amended. *See* TMEP §1402.06(a)-(b). The scope of the goods and/or services sets the outer limit for any changes to the identification and is generally determined by the ordinary meaning of the wording in the identification. TMEP §§1402.06(b), 1402.07(a)-(b). Any acceptable changes to the goods and/or services will further limit scope, and once goods and/or services are deleted, they are not permitted to be reinserted. TMEP §1402.07(e).

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable *U.S. Acceptable Identification of Goods and Services Manual*. *See* TMEP §1402.04.

ADDITIONAL FEE REQUIRED TO ADD CLASSES

The application identifies goods and/or services that could be classified in at least 6 classes; however, the fees submitted are sufficient for only 4 classes. In a multiple-class application, a fee for each class is required. 37 C.F.R. §2.86(a)(2); TMEP §§810-810.01 and 1403.01.

Therefore, applicant must either: (1) restrict the application to the number of classes covered by the fees already paid, or (2) submit the fees for the additional class(es).

If applicant prosecutes this application as a combined, or multiple-class application, then applicant must comply with each of the following for those goods and/or services based on an intent to use the mark in commerce under Trademark Act Section 1(b):

(1) Applicant must list the goods and/or services by international class with the classes listed in ascending numerical order. TMEP § 1403.01; and

(2) Applicant must submit a filing fee for each international class of goods and/or services not covered by the fee already paid (current fee information should be confirmed at http://www.uspto.gov). 37 C.F.R. §2.86(a)(2); TMEP §§810 and 1403.01.

The fees for adding classes to a regular TEAS application are $325 per class when the fee is paid using the Trademark Electronic Application System (TEAS) and $375 per class when the fee is paid in a paper submission. *See* 37 C.F.R. §2.6(a)(1)(i)-(ii); TMEP §§810, 1403.02(c).

CLARIFICATION OF THE COLOR IN THE MARK REQUIRED

The drawing shows the mark in color; however, the application includes a statement that color is not claimed as a feature of the mark and does not include a color claim or mark description referencing color. Applicant must clarify whether color is in fact a part of the mark. *See* 37 C.F.R. §2.61(b).

Generally, if an applicant submits a color drawing, the applicant must claim color as a feature of the mark, providing a complete list of all the colors claimed, and include a description of the literal and design elements that specifies where the colors appear in those elements. *See* 37 C.F.R. §§2.37, 2.52(b)(1); TMEP §§807.07(a) *et. seq.* However, an applicant may amend the mark to delete color if it would not materially alter the mark as originally filed. *See* 37 C.F.R. §2.72(a)(2); TMEP §§807.07(c), 807.14 *et seq.* In this case, an amendment to delete color from the mark would not be considered a material alteration and is permitted. If color is not claimed, the drawing must be depicted in black and white only. 37 C.F.R. §2.52(b).

Therefore, applicant must clarify if color is being claimed as a feature of the mark and may respond by satisfying one of the following:

(1) **If color is not a feature of the proposed mark**, submit a new drawing showing the mark only in black and white. Amendments or changes to the mark will not be accepted if the changes would materially alter the mark. 37 C.F.R. §2.72(a)(2); TMEP §807.14.

(2) **If color is a feature of the proposed mark**, provide a complete list of all the colors claimed as a feature of the mark *and* a mark description of the literal and design elements that specifies where all the colors appear in those elements. 37 C.F.R. §§2.37, 2.52(b)(1); *see* TMEP §807.07(a)-(a)(ii). Generic color names must be used to describe the colors in the mark, e.g., magenta, yellow, turquoise. TMEP §807.07(a)(i)-(ii). If black, white, and/or gray are not being claimed as a color feature of the mark, applicant must exclude them from the color claim and include in the mark description a statement that the colors black, white, and/or gray represent background, outlining, shading, and/or transparent areas and are not part of the mark. *See* TMEP §807.07(d).

The following color claim and mark description are suggested, if accurate:

Color claim: **The colors black and red are claimed as a feature of the mark.**

Mark description: **The mark consists of the wording "GORDON RAMSAY burger" in stylized black letters with a red line between "GORDON RAMSAY" and "burger."**

See TMEP §807.07(a)(i), (b).

RESPONSE TO THIS ACTION

Applicant should include the following information on all correspondence with the Office: (1) the name and law office number of the trademark examining attorney, (2) the serial number and filing date of the application, (3) the date of issuance of this Office action, (4) applicant's name, address, telephone number and e-mail address (if applicable), and (5) the mark. 37 C.F.R. §2.194(b)(1); TMEP §302.03(a).

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

/Charlotte K. Corwin/

Trademark Examining Attorney

Law Office 119

Charlotte.Corwin@USPTO.GOV

(571) 270-1532

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at http://tsdr.uspto.gov/. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see http://www.uspto.gov/trademarks/process/status/.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at http://www.uspto.gov/trademarks/teas/correspondence.jsp.

DESIGN MARK

Serial Number
85802746

Status
REGISTERED

Word Mark
BURGR GORDON RAMSAY

Standard Character Mark
No

Registration Number
4614406

Date Registered
2014/09/30

Type of Mark
TRADEMARK; SERVICE MARK

Register
PRINCIPAL

Mark Drawing Code
(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner
GR US Licensing LP LIMITED PARTNERSHIP DELAWARE c/o Corporation Service Company 2711 Centerville Road, Suite 400 City of Wilmington DELAWARE 19808

Goods/Services
Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothing, namely, T-shirts; headgear, namely, hats. First Use: 2012/12/00. First Use In Commerce: 2012/12/00.

Goods/Services
Class Status -- ACTIVE. IC 043. US 100 101. G & S: Restaurant, café, bar and catering services. First Use: 2012/12/00. First Use In Commerce: 2012/12/00.

Disclaimer Statement
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BURGER" AS TO CLASS 43. APART FROM THE MARK AS SHOWN.

Name/Portrait Statement
The name "GORDON RAMSAY" identifies a living individual whose consent is of record.

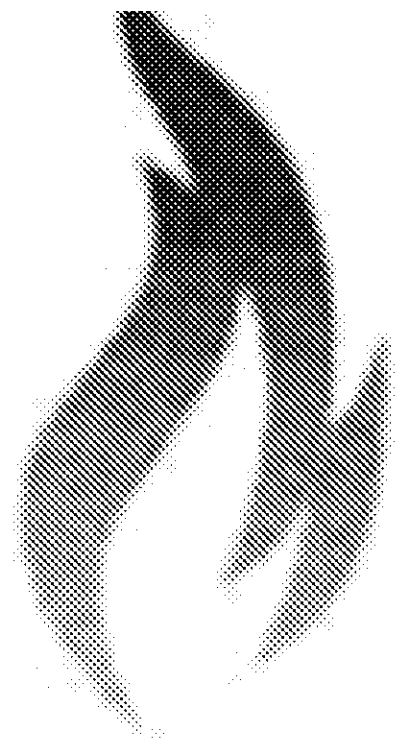
Description of Mark
The mark consists of "BURGR" with an image of flame above the letters "G" and "R" in "BURGR"; the name "Gordon Ramsay" is shown below "BURGR".

Colors Claimed
Color is not claimed as a feature of the mark.

Filing Date
2012/12/14

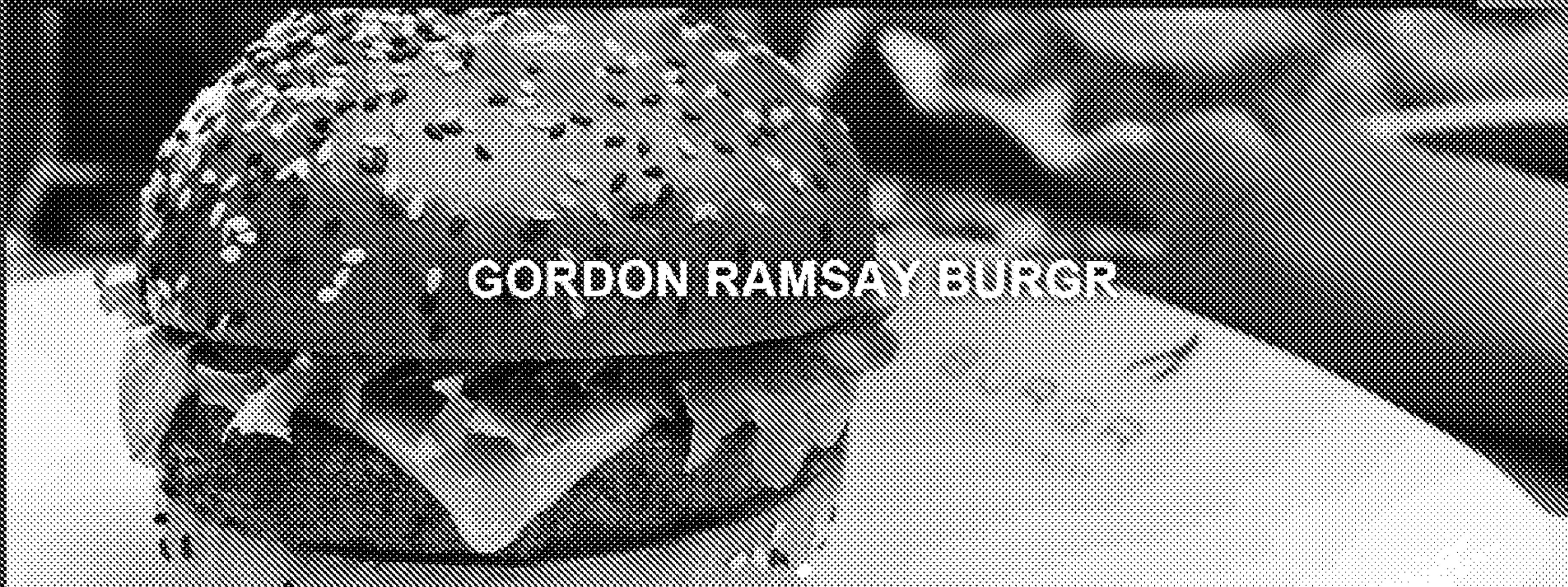
Examining Attorney
WYNNE, MORGAN

Attorney of Record
William C. Wright



BURGR

GORDON RAMSAY



GORDON RAMSAY BURGR

Gordon Ramsay BurGR at Planet Hollywood Resort & Casino in Las Vegas, a play on Gordon's initials, focuses on traditional burgers, fries and milkshakes, with an extra special touch using the best ingredients. The gourmet beef patties are cooked over an open flame using prime cuts of meat. The milkshakes combine traditional shake ingredients with creamy pudding for an indulgent dessert experience and the drinks menu features an extensive selection of cocktails as well as craft and bottled beers.

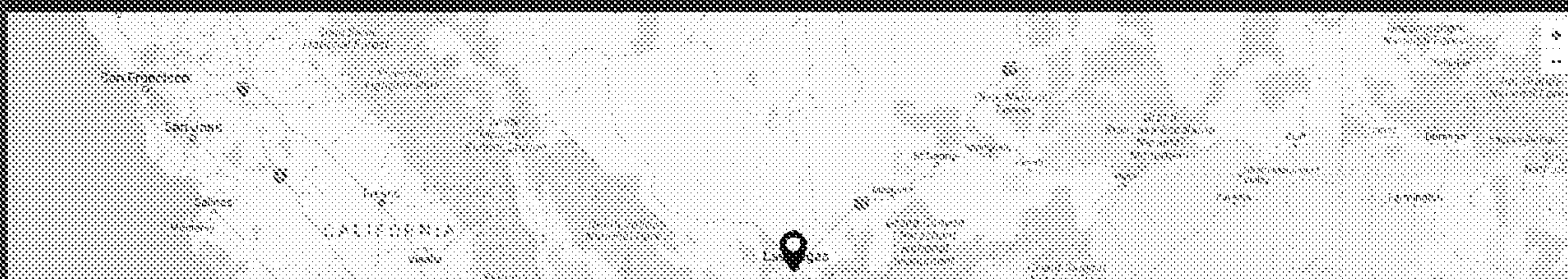
A 30-foot fire feature takes centre stage at Gordon Ramsay BurGR, within a vividly coloured room which seats 200 people. The room has been designed with a stylish and modern ambience drawing on the energy of both the casino and the nearby Miracle Mile shops.

From traditional to unique burgers, the menu items at this Las Vegas restaurant use the freshest, quality ingredients. Beef patties are cooked over an open flame fueled by hard woods — Gordon Ramsay BurGR is the only gourmet burger restaurant on the Strip to use this method — creating a more complex and powerful flavor. In addition to juicy burgers, this popular Vegas restaurant also offers sweet potato fries with vanilla powdered sugar and pork belly bao buns. Looking for some spice? The Devil Dog will do it. These all-beef dogs are simmered in devilish hot sauce, then fire-kissed on the open grill. You'll taste a consistent fiery spice throughout.

There's even a delicious meat-free substitute. The savory, mouthwatering Portobello mushroom option allows vegetarians to join in on the fun. Make it vegan and go for

FIND OUT MORE →

About cookies: our website uses cookies to improve your experience. **Find out more**



About cookies: our website uses cookies to improve your experience. **Find out more**

CONTACT US

OPENING TIMES

MENUS

Phone:
702 - 785 - 5555

Dress code:
Business casual

Seating is on a first come, first served basis.
For parties of 12 or more, please call 866-753-5827 or 702-731-7773 or send an email.

TRAVELLING TO LONDON THIS CHRISTMAS?

About cookies: our website uses cookies to improve your experience. **Find out more**

If you or your loved ones are travelling to London for the festive season, why not buy a Christmas gift to remember with a Gordon Ramsay Gift Experience? From Michelin star dining experiences and chef's masterclasses to tasting menus and Gordon Ramsay gift vouchers - redeemable across our 14 restaurants - we've got something for all appetites. Shop our voucher collection today.

BUY A GIFT →

NEWSLETTER SIGN UP ↓

About cookies: our website uses cookies to improve your experience. **Find out more**

About cookies: our website uses cookies to improve your experience. **Find out more**

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 87252882

MARK: GORDON RAMSAY BURGER

87252882

CORRESPONDENT ADDRESS:
EVAN M. KENT
MITCHELL SILBERBERG & KNUPP LLP
11377 WEST OLYMPIC BOULEVARD
LOS ANGELES, CA 90064-1683

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: Ramsay, Gordon

CORRESPONDENT'S REFERENCE/DOCKET NO :
46198

CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE:

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issues below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION – CLASS 25 ONLY

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 4614406. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the attached registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). A determination of likelihood of confusion under Section 2(d) is made on a case-by case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) aid in this determination. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the *du Pont* factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

Applicant's mark is GORDON RAMSAY BURGER for, in relevant part, "Clothing, footwear and headgear; articles of outer clothing; articles of underclothing; headgear; scarves; boxer shorts; socks; t-shirts, hats and caps, jackets, pyjamas, slippers; wristbands, headbands, ties, shirts, pullovers, skirts, dresses, trousers, coats, jackets, belts, scarves, gloves, neckties, socks, swimsuits; caps; athletics shoes; dance shoes; leather shoes; high heeled shoes; sandals and beach shoes; hats; baseball caps; aprons."

The registered mark is BURGR GORDON RAMSAY with a flame design for, in relevant part, "Clothing, namely, T-shirts; headgear, namely, hats."

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services. *See In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.* , 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.*

Comparison of the Marks

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F. 3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) (citing *In re 1st USA Realty Prof'ls, Inc.* , 84 USPQ2d 1581, 1586 (TTAB 2007)); *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988)); TMEP §1207.01(b).

In this case, the name GORDON RAMSAY is a dominant feature of both marks and both marks also include the word BURGER, albeit intentionally misspelled, in the registration. Consumers seeing the same name, both in connection with foods related services, are likely to believe that the services emanate from a common source.

Marks may be confusingly similar in appearance where similar terms or phrases or similar parts of terms or phrases appear in the compared marks and create a similar overall commercial impression. *See Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce* , 228 USPQ 689, 690-91 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n* , 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMCASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (finding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (finding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii).

Comparison of the Goods

Applicant's goods include all of the goods identified in the cited registration and also include some related other clothing.

Neither the application nor the registration contains any limitations regarding trade channels for the goods and therefore it is assumed that registrant's and applicant's goods are sold everywhere that is normal for such items, i.e., clothing and department stores. Thus, it can also be assumed that the same classes of purchasers shop for these items and that consumers are accustomed to seeing them sold under the same or similar marks. *See Kangol Ltd. v. KangaROOS U.S.A., Inc.*, 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992); *In re Smith & Mehaffey*, 31 USPQ2d 1531 (TTAB 1994); TMEP §1207.01(a)(iii).

Decisions regarding likelihood of confusion in the clothing field have found many different types of apparel to be related goods. *Cambridge Rubber Co. v. Cluett, Peabody & Co.*, 286 F.2d 623, 624, 128 USPQ 549, 550 (C.C.P.A. 1961) (women's boots related to men's and boys' underwear); *Jockey Int'l, Inc. v. Mallory & Church Corp.* , 25 USPQ2d 1233, 1236 (TTAB 1992) (underwear related to neckties); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991) (women's pants, blouses, shorts and jackets related to women's shoes); *In re Pix of Am., Inc.*, 225 USPQ 691, 691-92 (TTAB 1985) (women's shoes related to outer shirts); *In re Mercedes Slacks, Ltd.*, 213 USPQ 397, 398-99 (TTAB 1982) (hosiery related to trousers); *In re Cook United, Inc.*, 185 USPQ 444, 445 (TTAB 1975) (men's suits, coats, and trousers related to ladies' pantyhose and hosiery); *Esquire Sportswear Mfg. Co. v. Genesco Inc.*, 141 USPQ 400, 404 (TTAB 1964) (brassieres and girdles related to slacks for men and young men).

Because the marks are substantially similar and the goods are in part identical and in part very closely related, registration of applicant's mark is refused.

Note that any doubt regarding a likelihood of confusion is resolved in favor of the prior registrant. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); TMEP §§1207.01(d)(i).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

POSSIBLE COMMON OWNERSHIP

If the mark in the cited registration has been assigned to applicant, applicant may provide evidence of ownership of the mark by satisfying one of the following:

(1) Record the assignment with the USPTO's Assignment Recordation Branch (ownership transfer documents such as assignments can be filed online at http://etas.uspto.gov) and promptly notify the trademark examining attorney that the assignment has been duly recorded.

(2) Submit copies of documents evidencing the chain of title.

(3) Submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **"Applicant is the owner of U.S. Registration No. 4614406."** To provide this statement using the Trademark Electronic Application System (TEAS), use the "Response to Office Action" form; answer "yes" to wizard questions #3 and #10; then, continuing on to the next portion of the form, in the "Additional Statement(s)" section, find "Active Prior Registration(s)" and insert the U.S. registration numbers in the data fields; and follow the instructions within the form for signing. The form must be signed twice; a signature is required both in the "Declaration Signature" section and in the "Response Signature" section.

TMEP §812.01; *see* 15 U.S.C. §1060; 37 C.F.R. §§2.193(e)(1), 3.25, 3.73(a)-(b); TMEP §502.02(a).

Recording a document with the Assignment Recordation Branch does not constitute a response to an Office action. TMEP §503.01(d).

If applicant responds to the refusal, applicant must also respond to the three requirements set forth below.

NAME INQUIRY

Applicant must clarify whether the name Gordon Ramsay in the mark identifies a particular living individual. *See* 37 C.F.R. §2.61(b); TMEP §§813, 1206.03. In this case, the application neither specifies whether the name in the mark identifies a particular living individual nor includes a written consent. *See* TMEP §§813.01(a)-(b), 1206.04(a), 1206.05.

To register a mark that consists of or comprises the name of a particular living individual, including a first name, pseudonym, stage name, or nickname, an applicant must provide a written consent personally signed by the named individual. 15 U.S.C. §1052(c); TMEP §§813, 1206.04(a).

Accordingly, if the name in the mark does not identify a particular living individual, applicant must submit a statement to that effect (e.g., "The name shown in the mark does not identify a particular living individual.").

However, if the name in the mark does identify a particular living individual, applicant must submit both of the following:

(1) The following **statement**: "The name shown in the mark identifies a living individual whose consent to register is made of record."

(2) **A written consent**, personally signed by the named individual, as follows: "I, Gordon Ramsay, consent to the use and registration of my name, Gordon Ramsay, as a trademark and/or service mark with the USPTO."

For an overview of the requirements pertaining to names appearing in marks, and instructions on how to satisfy this requirement online using the Trademark Electronic Application System (TEAS) response form, please go to http://www.uspto.gov/trademarks/law/consent.jsp.

Failing to respond to this inquiry may result in a refusal to register the mark. *See In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); TMEP §814.

DISCLAIMER

Applicant must disclaim the wording "BURGER" because it merely describes a feature of applicant's services, and thus is an unregistrable component of the mark. *See* 15 U.S.C. §§1052(e)(1), 1056(a); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); TMEP §§1213, 1213.03(a).

Applicant's goods are broadly identified and include clothing, printed material and household goods, which could be offered at or in connection with applicant's restaurant and thus related to burgers. Further, many of applicant's paper and printed goods and household products could be for use with burgers or on the subject of burgers.

An applicant may not claim exclusive rights to terms that others may need to use to describe their goods and/or services in the marketplace. *See Dena Corp. v. Belvedere Int'l, Inc.* , 950 F.2d 1555, 1560, 21 USPQ2d 1047, 1051 (Fed. Cir. 1991); *In re Aug. Storck KG*, 218 USPQ 823, 825 (TTAB 1983). A disclaimer of unregistrable matter does not affect the appearance of the mark; that is, a disclaimer does not physically remove the disclaimed matter from the mark. *See Schwarzkopf v. John H. Breck, Inc.*, 340 F.2d 978, 978, 144 USPQ 433, 433 (C.C.P.A. 1965); TMEP §1213.

If applicant does not provide the required disclaimer, the USPTO may refuse to register the entire mark. *See In re Stereotaxis Inc.*, 429 F.3d 1039, 1040-41, 77 USPQ2d 1087, 1088-89 (Fed. Cir. 2005); TMEP §1213.01(b).

Applicant should submit a disclaimer in the following standardized format:

No claim is made to the exclusive right to use "BURGER" apart from the mark as shown.

For an overview of disclaimers and instructions on how to satisfy this disclaimer requirement online using the Trademark Electronic Application System (TEAS) form, please go to http://www.uspto.gov/trademarks/law/disclaimer.jsp.

IDENTIFICATION OF GOODS

Applicant has identified its goods as set forth below. The terms appearing in bold letters in the identification of goods are unacceptable because they are indefinite, overly broad and could include goods in multiple classes as more fully explained in the parenthetical information following each listing. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01.

Class 16: ***Printed matter****{Applicant must specify the printed matter items with particularity, e.g., printed certificates, printed flip charts, printed menus, printed paper labels.}*; ***printed publications****{Applicant must specify the types of publications and the subject matter of the content, e.g., printed guides in the field of cooking, printed booklets featuring recipes.}*; ***instructional and teaching materials****{Applicant must specify that the goods are "printed" for proper classification in Class 16 and must specify the subject matter of the materials with particularity, e.g., printed instructional and teaching materials in the field of restaurant management.}*; ***books****{Applicant must specify the subject matter of the books, e.g., books in the field of cooking.}*, recipe books, ***recipe cards****{Applicant must specify that the goods are printed.}* and ***cookery books****{Applicant must clarify whether "cookery" is the subject matter of the books, e.g., "books in the field of cookery."}* ; ***booklets****{Applicant must specify the subject matter of the booklets, e.g., booklets in the field of cooking.}*; ***books****{Duplicate entry. Duplicates will be deleted.}*;

calendars; cardboard cake boxes; cardboard boxes; ***cards****{Applicant must specify the types of cards with particularity, e.g., holiday cards, index cards, flash cards.}*; book covers, book marks; ***magazines****{Applicant must specify the subject matter of the magazines, e.g., magazines in the field of cooking.}*, newspapers, ***newsletters****{Applicant must specify the subject matter of the newsletters, e.g., newsletters in the field of cooking.}*, ***periodicals****{Applicant must indicate that the goods are "printed" and must specify the subject matter of the periodicals, e.g., printed periodicals in the field of cooking.}*, comics, ***pamphlets****{Applicant must specify the subject matter of the pamphlets, e.g., pamphlets in the field of cooking.}*; ***manuals****{Applicant must specify the subject matter of the manuals, e.g., manuals in the field of cooking.}*, ***catalogues****{Applicant must specify the subject matter of the catalogues, e.g., catalogues in the field of cooking.}*; stationery; diaries; greeting cards; ***paper articles****{Applicant must specify the articles with particularity, e.g., paper bibs, paper boxes, drawing paper, paper bunting, paper bags.}*; ***cardboard articles****{Applicant must specify the articles with particularity, e.g., cardboard containers, cardboard gift boxes, cardboard mailing tubes.}*; maps, ***charts****{Applicant must specify the types of charts, e.g., charts in the field of cooking, printed flip charts, score charts.}*, posters, paintings, drawings, photographs, prints, pictures; ***handkerchiefs****{Applicant must specify that the goods are paper handkerchiefs for proper classification in Class 16.}*; paper napkins, paper tablecloths, coasters made from cardboard or paper, paper place mats; paper and ***plastic bags****{Applicant must specify the purpose for the bags for proper classification in Class 16, e.g., general purpose plastic bags in Class 16, plastic garbage bags in Class 16.}*; bags for microwave cooking; writing pads; note pads; paperweights; writing Instruments; ***posters****{Duplicate entry. Duplicates will be deleted.}*

Class 21: Aluminium bakeware; ***Aluminium cookware****{Applicant must specify the types of cookware in Class 21 with particularity, e.g., pots and pans.}*; Bakeware; Baking dishes; Baking dishes made of earthenware; Baking dishes made of glass; Baking mats; Baking dishes made of porcelain; ***Baking tins****{Applicant must specify the function of the tins, e.g., cake tins, pie tins, muffin tins.}*; Beer jugs; Beer mugs; Beverage glassware; Bowls; Bread boards; Bread boxes; Cake moulds; Cake brushes; Candy boxes; Cheese graters; Chopsticks; sushi rolling mat, bento boxes; Cocktail shakers; Coffee cups; Colanders; ***Coffee grinders****{Applicant must specify that the goods are hand-operated for proper classification in Class 21.}*; Cookery moulds; Cooking pot sets; ***Cooking utensils****{Applicant must specify the utensils in Class 21 with particularity, e.g., spatula, turner, strainer, grater.}*; Corkscrews; Cups and mugs; Decanters; Dishware; ***Earthenware****{Applicant must specify the articles with particularity, e.g., earthenware saucepans in Class 21.}*; Egg cups; Egg poachers; Ice cube trays; Jugs; Lunchboxes; Mugs; Pepper mills; Pepper pots; Salt mills; Salad spinners; Sandwich boxes; ***sushi rolling equipment****{Applicant must clarify the nature of the goods to indicate that the "equipment" is hand operated for proper classification in Class 21.}*; ***Tableware, cookware and containers****{Applicant must specify the types of tableware, cookware and containers with particularity for proper classification, e.g., pots and pans in Class 21, containers for household use in Class 21, tea services in Class 21, knives, forks and spoons in Class 8.}*; Utensil jars; paper cups; paper plates; woks; ***Picnic crockery****{Applicant must specify the articles of crockery with particularity, e.g., pots, dishes, bowls.}*; ***Picnic boxes****{Applicant must specify that the goods are sold empty for proper classification in Class 21.}*; Fitted picnic baskets

Class 25: ***Clothing****{Applicant must specify the articles of clothing with particularity, e.g., shirts, pants, coats.}*, footwear and ***headgear****{Applicant must specify the headgear in Class 25 with particularity or applicant may amend to "headwear" if accurate.}*; ***articles of outer clothing****{Applicant must specify the articles of outer clothing with particularity, e.g., jackets, coats, blazers.}*; articles of underclothing; ***headgear****{Duplicate entry. Duplicates will be deleted.}*; scarves; boxer shorts; socks; t-shirts, hats and caps, jackets, pyjamas, slippers; wristbands, headbands, ties, shirts, pullovers, skirts, dresses, trousers, coats, ***jackets****{Duplicate entry. Duplicates will be deleted.}*, belts, ***scarves****{Duplicate entry. Duplicates will be deleted.}*, gloves, neckties, ***socks****{Duplicate entry. Duplicates will be deleted.}*, swimsuits; ***caps****{Duplicate entry. Duplicates will be deleted.}*; athletics shoes; dance shoes; leather shoes; high heeled shoes; sandals and beach shoes; ***hats****{Duplicate entry. Duplicates will be deleted.}*; baseball caps; aprons

Additionally, applicant must list the goods and/or services separated by international class number in ascending numerical order. TMEP §§801.01(b) and 1403.01.

Applicant may adopt the following identification of goods, if accurate:

Class 16: Printed matter, namely, printed certificates, printed flip charts, printed menus, printed paper labels; printed publications, namely, printed guides in the field of cooking, printed booklets featuring recipes; printed instructional and teaching materials in the field of restaurant management; books in the field of cooking, recipe books, printed recipe cards{Applicant must specify that the goods are printed and books in the field of cookery; booklets in the field of cooking.; calendars; cardboard cake boxes; cardboard boxes; cards, namely, holiday cards, index cards, flash cards; book covers, book marks; magazines in the field of cooking, newspapers, newsletters in the field of cooking, printed periodicals in the field of cooking, comics, pamphlets in the field of cooking; manuals in the field of cooking, catalogues in the field of cooking; stationery; diaries; greeting cards; paper articles, namely, paper bibs, paper boxes, drawing paper, paper bunting, paper bags; cardboard articles, namely, cardboard containers, cardboard gift boxes, cardboard mailing tubes; maps, charts, namely, charts in the field of cooking, printed flip charts, score charts, posters, paintings, drawings, photographs, prints, pictures; paper handkerchiefs; paper napkins, paper tablecloths, coasters made from cardboard or paper, paper place mats; general purpose paper and plastic bags; bags for microwave cooking; writing pads; note pads; paperweights; writing instruments

Class 21: Aluminium bakeware; Aluminium cookware, namely, pots and pans; Bakeware; Baking dishes; Baking dishes made of earthenware; Baking dishes made of glass; Baking mats; Baking dishes made of porcelain; Baking tins, namely, cake tins, pie tins, muffin tins; Beer jugs; Beer mugs; Beverage glassware; Bowls; Bread boards; Bread boxes; Cake moulds; Cake brushes; Candy boxes; Cheese graters; Chopsticks; sushi rolling mat, bento boxes; Cocktail shakers; Coffee cups; Colanders; Hand-operated coffee grinders; Cookery moulds; Cooking pot sets; Cooking utensils, namely, spatulas, strainers, graters; Corkscrews; Cups and mugs; Decanters; Dishware; Earthenware saucepans; Egg

cups; Egg poachers; Ice cube trays; Jugs; Lunchboxes; Mugs; Pepper mills; Pepper pots; Salt mills; Salad spinners; Sandwich boxes; hand-operated sushi rolling equipment; Tableware, cookware and containers, namely, pots and pans, containers for household use, tea service; Utensil jars; paper cups; paper plates; woks; Picnic crockery, namely, pots, dishes, bowls.}; Picnic boxes sold empty; Fitted picnic baskets

Class 25: Clothing, namely, shirts, pants, coats; footwear and headwear; articles of outer clothing, namely, jackets, coats, blazers; articles of underclothing; scarves; boxer shorts; socks; t-shirts, hats and caps, jackets, pyjamas, slippers; wristbands, headbands, ties, shirts, pullovers, skirts, dresses, trousers, coats, belts, gloves, neckties, swimsuits; athletics shoes; dance shoes; leather shoes; high heeled shoes; sandals and beach shoes; baseball caps; aprons

TMEP §§1402.01 and 1402.03.

Applicant's goods and/or services may be clarified or limited, but may not be expanded beyond those originally itemized in the application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Applicant may clarify or limit the identification by inserting qualifying language or deleting items to result in a more specific identification; however, applicant may not substitute different goods and/or services or add goods and/or services not found or encompassed by those in the original application or as acceptably amended. *See* TMEP §1402.06(a)-(b). The scope of the goods and/or services sets the outer limit for any changes to the identification and is generally determined by the ordinary meaning of the wording in the identification. TMEP §§1402.06(b), 1402.07(a)-(b). Any acceptable changes to the goods and/or services will further limit scope, and once goods and/or services are deleted, they are not permitted to be reinserted. TMEP §1402.07(e).

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable *U.S. Acceptable Identification of Goods and Services Manual*. *See* TMEP §1402.04.

ADDITIONAL FEE REQUIRED TO ADD CLASSES

The application identifies goods and/or services that could be classified in at least 5 classes; however, the fees submitted are sufficient for only 3 classes. In a multiple-class application, a fee for each class is required. 37 C.F.R. §2.86(a)(2); TMEP §§810-810.01 and 1403.01.

Therefore, applicant must either: (1) restrict the application to the number of classes covered by the fees already paid, or (2) submit the fees for the additional class(es).

If applicant prosecutes this application as a combined, or multiple-class application, then applicant must comply with each of the following for those goods and/or services based on an intent to use the mark in commerce under Trademark Act Section 1(b):

(1) Applicant must list the goods and/or services by international class with the classes listed in ascending numerical order. TMEP § 1403.01; and

(2) Applicant must submit a filing fee for each international class of goods and/or services not covered by the fee already paid (current fee information should be confirmed at http://www.uspto.gov). 37 C.F.R. §2.86(a)(2); TMEP §§810 and 1403.01.

The fees for adding classes to a regular TEAS application are $325 per class when the fee is paid using the Trademark Electronic Application System (TEAS) and $375 per class when the fee is paid in a paper submission. *See* 37 C.F.R. §2.6(a)(1)(i)-(ii); TMEP §§810, 1403.02(c).

RESPONSE TO THIS ACTION

Applicant should include the following information on all correspondence with the Office: (1) the name and law office number of the trademark examining attorney, (2) the serial number and filing date of the application, (3) the date of issuance of this Office action, (4) applicant's name, address, telephone number and e-mail address (if applicable), and (5) the mark. 37 C.F.R. §2.194(b)(1); TMEP §302.03(a).

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02,

709.06.

/Charlotte K. Corwin/

Trademark Examining Attorney

Law Office 119

Charlotte.Corwin@USPTO.GOV

(571) 270-1532

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at http://tsdr.uspto.gov/. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see http://www.uspto.gov/trademarks/process/status/.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at http://www.uspto.gov/trademarks/teas/correspondence.jsp.

DESIGN MARK

Serial Number
85802746

Status
REGISTERED

Word Mark
BURGR GORDON RAMSAY

Standard Character Mark
No

Registration Number
4614406

Date Registered
2014/09/30

Type of Mark
TRADEMARK; SERVICE MARK

Register
PRINCIPAL

Mark Drawing Code
(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner
GR US Licensing LP LIMITED PARTNERSHIP DELAWARE c/o Corporation Service Company 2711 Centerville Road, Suite 400 City of Wilmington DELAWARE 19808

Goods/Services
Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothing, namely, T-shirts; headgear, namely, hats. First Use: 2012/12/00. First Use In Commerce: 2012/12/00.

Goods/Services
Class Status -- ACTIVE. IC 043. US 100 101. G & S: Restaurant, café, bar and catering services. First Use: 2012/12/00. First Use In Commerce: 2012/12/00.

Disclaimer Statement
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BURGER" AS TO CLASS 43. APART FROM THE MARK AS SHOWN.

Name/Portrait Statement
The name "GORDON RAMSAY" identifies a living individual whose consent is of record.

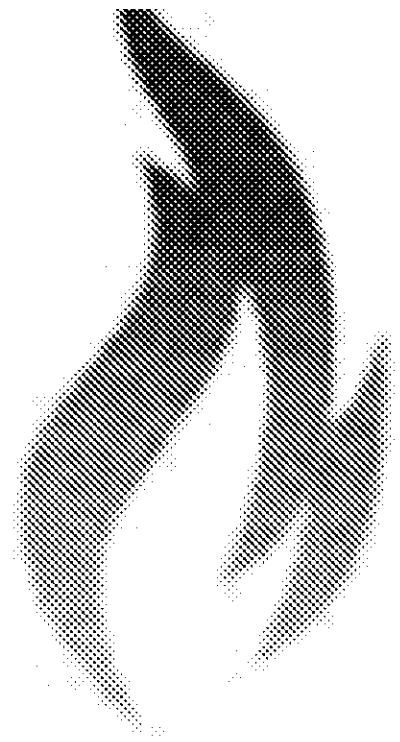
Description of Mark
The mark consists of "BURGR" with an image of flame above the letters "G" and "R" in "BURGR"; the name "Gordon Ramsay" is shown below "BURGR".

Colors Claimed
Color is not claimed as a feature of the mark.

Filing Date
2012/12/14

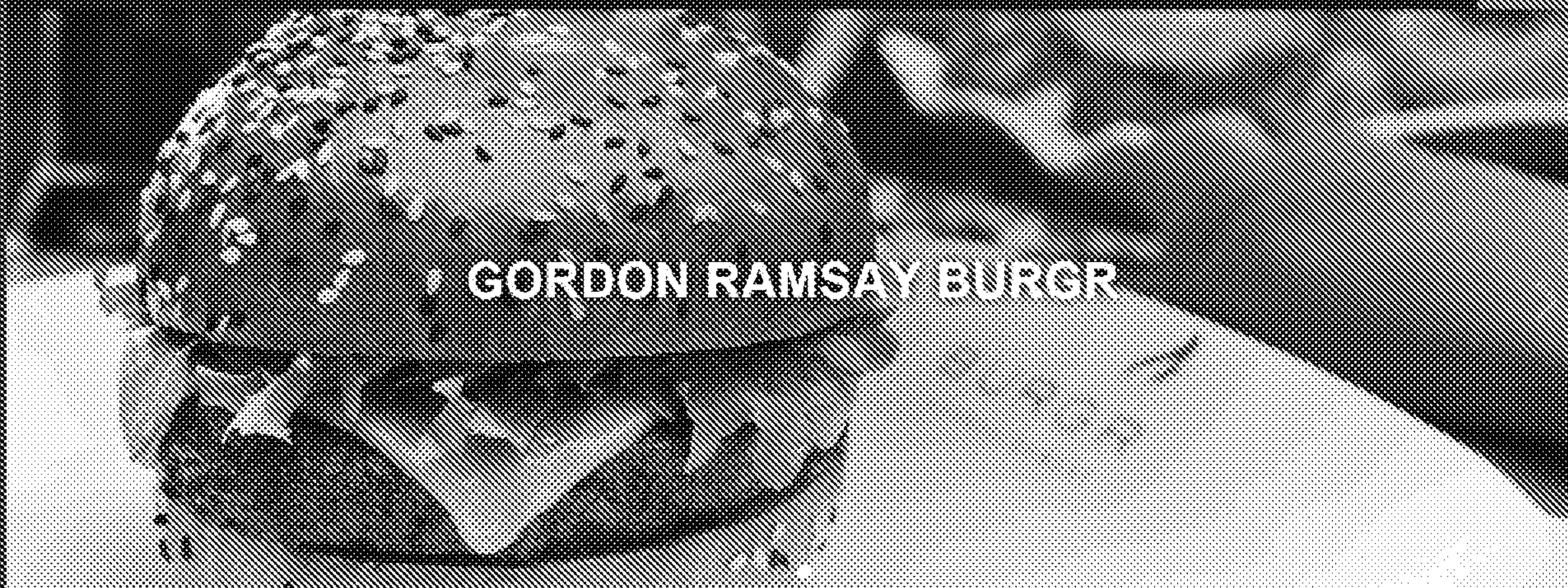
Examining Attorney
WYNNE, MORGAN

Attorney of Record
William C. Wright



BURGR

GORDON RAMSAY



Gordon Ramsay BurGR at Planet Hollywood Resort & Casino in Las Vegas, a play on Gordon's initials, focuses on traditional burgers, fries and milkshakes, with an extra special touch using the best ingredients. The gourmet beef patties are cooked over an open flame using prime cuts of meat. The milkshakes combine traditional shake ingredients with creamy pudding for an indulgent dessert experience and the drinks menu features an extensive selection of cocktails as well as craft and bottled beers.

A 35-foot fire feature takes centre stage at Gordon Ramsay BurGR, within a vividly coloured room which seats 200 people. The room has been designed with a stylish and modern ambience drawing on the energy of both the casino and the nearby Miracle Mile shops.

From traditional to unique burgers, the menu items at this Las Vegas restaurant use the freshest, quality ingredients. Beef patties are cooked over an open flame fueled by hard woods — Gordon Ramsay BurGR is the only gourmet burger restaurant on the Strip to use this method — creating a more complex and powerful flavor. In addition to juicy burgers, this popular Vegas restaurant also offers sweet potato fries with vanilla powdered sugar and pork belly bao buns. Looking for some spice? The Devil Dog will do it. These all-beef dogs are simmered in devilish hot sauce, then fire-kissed on the open grill. You'll taste a consistent fiery spice throughout.

There's even a delicious meat-free substitute. The savory, mouthwatering Portobello mushroom option allows vegetarians to join in on the fun. Make it vegan and go for

FIND OUT MORE →

About cookies: our website uses cookies to improve your experience. **Find out more**

About cookies: our website uses cookies to improve your experience. **Find out more**

CONTACT US

OPENING TIMES

MENUS

Phone:
702 - 785 - 8555

Dress code:
Business casual

Seating is on a first come, first served basis.
For parties of 12 or more, please call 866-733-5827 or 702-731-7773 or send an email.

TRAVELLING TO LONDON THIS CHRISTMAS?

About cookies: our website uses cookies to improve your experience. **Find out more**

If you or your loved ones are travelling to London for the festive season, why not buy a Christmas gift to remember with a Gordon Ramsay Gift Experience? From Michelin star dining experiences and chef's masterclasses to tasting menus and Gordon Ramsay gift vouchers - redeemable across our 14 restaurants - we've got something for all appetites. Shop our voucher collection today.

BUY A GIFT →

NEWSLETTER SIGN UP ↓

About cookies: our website uses cookies to improve your experience. **Find out more**

About cookies: our website uses cookies to improve your experience. **Find out more**

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 87208916

MARK: GORDON RAMSAY BURGER

87208916

CLICK HERE TO RESPOND TO THIS LETTER:

http://www.uspto.gov/trademarks/teas/response_forms.jsp

CORRESPONDENT ADDRESS:
EVAN M. KENT
MITCHELL SILBERBERG & KNUPP LLP
11377 WEST OLYMPIC BOULEVARD
LOS ANGELES, CA 90064-1683

APPLICANT: Ramsay, Gordon

CORRESPONDENT'S REFERENCE/DOCKET NO :
46198

CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE:

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issues below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 4614406. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the attached registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). A determination of likelihood of confusion under Section 2(d) is made on a case-by case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) aid in this determination. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the *du Pont* factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

Applicant's mark is GORDON RAMSAY BURGER for "Services for providing of food and drink; restaurant, café, bar and catering services; hotel services; advisory services relating to café, restaurant, bar, catering and hotel services; consultation in the field of the selection, preparation and serving of food and beverages and restaurant, café, bar, catering; self-service restaurants; takeaway, cafe, cafeteria, canteen, coffee shop and snack-bar services; wine bar services; catering services for the provision of food and drink; club services for the provision of food and drink; provision of information relating to bars and restaurants; provision of information relating to the preparation of food and drink; information services relating to all the aforesaid services."

The registered mark is BURGR GORDON RAMSAY with a flame design for, in relevant part, Restaurant, café, bar and catering services.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services. *See In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.* , 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.*

Comparison of the Marks

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F. 3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) (citing *In re 1st USA Realty Prof'ls, Inc.* , 84 USPQ2d 1581, 1586 (TTAB 2007)); *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988)); TMEP §1207.01(b).

In this case, the name GORDON RAMSAY is a dominant feature of both marks and both marks also include the word BURGER, albeit intentionally misspelled in the registration. Consumers seeing the same name, both in connection with foods related services, are likely to believe that the services emanate from a common source.

Marks may be confusingly similar in appearance where similar terms or phrases or similar parts of terms or phrases appear in the compared marks and create a similar overall commercial impression. *See Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce* , 228 USPQ 689, 690-91 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n* , 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMCASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (finding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (finding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii).

Comparison of the Services

Applicant's services include all of the services identified in the cited registration and also include some related other food and beverage services and information and consultation related thereto.

The goods and/or services of the parties need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) ("[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods."); TMEP §1207.01(a)(i).

The respective goods and/or services need only be "related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

Because the marks are substantially similar and the services are in part identical and in part very closely related, registration of applicant's mark is refused.

Note that any doubt regarding a likelihood of confusion is resolved in favor of the prior registrant. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988);

TMEP §§1207.01(d)(i).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

POSSIBLE COMMON OWNERSHIP

If the mark in the cited registration has been assigned to applicant, applicant may provide evidence of ownership of the mark by satisfying one of the following:

(1) Record the assignment with the USPTO's Assignment Recordation Branch (ownership transfer documents such as assignments can be filed online at http://etas.uspto.gov) and promptly notify the trademark examining attorney that the assignment has been duly recorded.

(2) Submit copies of documents evidencing the chain of title.

(3) Submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **"Applicant is the owner of U.S. Registration No. 4614406."** To provide this statement using the Trademark Electronic Application System (TEAS), use the "Response to Office Action" form; answer "yes" to wizard questions #3 and #10; then, continuing on to the next portion of the form, in the "Additional Statement(s)" section, find "Active Prior Registration(s)" and insert the U.S. registration numbers in the data fields; and follow the instructions within the form for signing. The form must be signed twice; a signature is required both in the "Declaration Signature" section and in the "Response Signature" section.

TMEP §812.01; *see* 15 U.S.C. §1060; 37 C.F.R. §§2.193(e)(1), 3.25, 3.73(a)-(b); TMEP §502.02(a).

Recording a document with the Assignment Recordation Branch does not constitute a response to an Office action. TMEP §503.01(d).

If applicant responds to the refusal, applicant must also respond to the three requirements set forth below.

NAME INQUIRY

Applicant must clarify whether the name Gordon Ramsay in the mark identifies a particular living individual. *See* 37 C.F.R. §2.61(b); TMEP §§813, 1206.03. In this case, the application neither specifies whether the name in the mark identifies a particular living individual nor includes a written consent. *See* TMEP §§813.01(a)-(b), 1206.04(a), 1206.05.

To register a mark that consists of or comprises the name of a particular living individual, including a first name, pseudonym, stage name, or nickname, an applicant must provide a written consent personally signed by the named individual. 15 U.S.C. §1052(c); TMEP §§813, 1206.04(a).

Accordingly, if the name in the mark does not identify a particular living individual, applicant must submit a statement to that effect (e.g., "The name shown in the mark does not identify a particular living individual.").

However, if the name in the mark does identify a particular living individual, applicant must submit both of the following:

(1) The following **statement**: "The name shown in the mark identifies a living individual whose consent to register is made of record."

(2) **A written consent**, personally signed by the named individual, as follows: "I, Gordon Ramsay, consent to the use and registration of my name, Gordon Ramsay, as a trademark and/or service mark with the USPTO."

For an overview of the requirements pertaining to names appearing in marks, and instructions on how to satisfy this requirement online using the Trademark Electronic Application System (TEAS) response form, please go to http://www.uspto.gov/trademarks/law/consent.jsp.

Failing to respond to this inquiry may result in a refusal to register the mark. *See In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); TMEP §814.

DISCLAIMER

Applicant must disclaim the wording "BURGER" because it merely describes a feature of applicant's services, and thus is an unregistrable component of the mark. *See* 15 U.S.C. §§1052(e)(1), 1056(a); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); TMEP §§1213, 1213.03(a).

The attached evidence about applicant's restaurants shows that applicant's services feature burgers. Therefore, the wording merely describes features of the services.

An applicant may not claim exclusive rights to terms that others may need to use to describe their goods and/or services in the marketplace. *See Dena Corp. v. Belvedere Int'l, Inc.* , 950 F.2d 1555, 1560, 21 USPQ2d 1047, 1051 (Fed. Cir. 1991); *In re Aug. Storck KG*, 218 USPQ 823, 825 (TTAB 1983). A disclaimer of unregistrable matter does not affect the appearance of the mark; that is, a disclaimer does not physically remove the disclaimed matter from the mark. *See Schwarzkopf v. John H. Breck, Inc.*, 340 F.2d 978, 978, 144 USPQ 433, 433 (C.C.P.A. 1965); TMEP §1213.

If applicant does not provide the required disclaimer, the USPTO may refuse to register the entire mark. *See In re Stereotaxis Inc.*, 429 F.3d 1039, 1040-41, 77 USPQ2d 1087, 1088-89 (Fed. Cir. 2005); TMEP §1213.01(b).

Applicant should submit a disclaimer in the following standardized format:

No claim is made to the exclusive right to use "BURGER" apart from the mark as shown.

For an overview of disclaimers and instructions on how to satisfy this disclaimer requirement online using the Trademark Electronic Application System (TEAS) form, please go to http://www.uspto.gov/trademarks/law/disclaimer.jsp.

IDENTIFICATION OF SERVICES

The identification of services is indefinite and must be clarified because "takeaway" services are not definite services in commerce. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01. Applicant may amend to specify that the services are takeaway restaurant services for proper classification in Class 43.

Applicant may adopt the following identification of services, if accurate:

Class 43: Services for providing of food and drink; restaurant, café, bar and catering services; hotel services; advisory services relating to café, restaurant, bar, catering and hotel services; consultation in the field of the selection, preparation and serving of food and beverages and restaurant, café, bar, catering; self-service restaurants; takeaway restaurant, cafe, cafeteria, canteen, coffee shop and snack-bar services; wine bar services; catering services for the provision of food and drink; club services for the provision of food and drink; provision of information relating to bars and restaurants; provision of information relating to the preparation of food and drink; information services relating to all the aforesaid services

TMEP §§1402.01 and 1402.03.

Applicant's goods and/or services may be clarified or limited, but may not be expanded beyond those originally itemized in the application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Applicant may clarify or limit the identification by inserting qualifying language or deleting items to result in a more specific identification; however, applicant may not substitute different goods and/or services or add goods and/or services not found or encompassed by those in the original application or as acceptably amended. *See* TMEP §1402.06(a)-(b). The scope of the goods and/or services sets the outer limit for any changes to the identification and is generally determined by the ordinary meaning of the wording in the identification. TMEP §§1402.06(b), 1402.07(a)-(b). Any acceptable changes to the goods and/or services will further limit scope, and once goods and/or services are deleted, they are not permitted to be reinserted. TMEP §1402.07(e).

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable *U.S. Acceptable Identification of Goods and Services Manual*. *See* TMEP §1402.04.

RESPONSE TO THIS ACTION

Applicant should include the following information on all correspondence with the Office: (1) the name and law office number of the trademark examining attorney, (2) the serial number and filing date of the application, (3) the date of issuance of this Office action, (4) applicant's name, address, telephone number and e-mail address (if applicable), and (5) the mark. 37 C.F.R. §2.194(b)(1); TMEP §302.03(a).

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

/Charlotte K. Corwin/

Trademark Examining Attorney

Law Office 119

Charlotte.Corwin@USPTO.GOV

(571) 270-1532

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at http://tsdr.uspto.gov/. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see http://www.uspto.gov/trademarks/process/status/.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at http://www.uspto.gov/trademarks/teas/correspondence.jsp.

DESIGN MARK

Serial Number
85802746

Status
REGISTERED

Word Mark
BURGR GORDON RAMSAY

Standard Character Mark
No

Registration Number
4614406

Date Registered
2014/09/30

Type of Mark
TRADEMARK; SERVICE MARK

Register
PRINCIPAL

Mark Drawing Code
(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner
GR US Licensing LP LIMITED PARTNERSHIP DELAWARE c/o Corporation Service Company 2711 Centerville Road, Suite 400 City of Wilmington DELAWARE 19808

Goods/Services
Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothing, namely, T-shirts; headgear, namely, hats. First Use: 2012/12/00. First Use In Commerce: 2012/12/00.

Goods/Services
Class Status -- ACTIVE. IC 043. US 100 101. G & S: Restaurant, café, bar and catering services. First Use: 2012/12/00. First Use In Commerce: 2012/12/00.

Disclaimer Statement
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BURGER" AS TO CLASS 43. APART FROM THE MARK AS SHOWN.

Name/Portrait Statement
The name "GORDON RAMSAY" identifies a living individual whose consent is of record.

Description of Mark
The mark consists of "BURGR" with an image of flame above the letters "G" and "R" in "BURGR"; the name "Gordon Ramsay" is shown below "BURGR".

Colors Claimed
Color is not claimed as a feature of the mark.

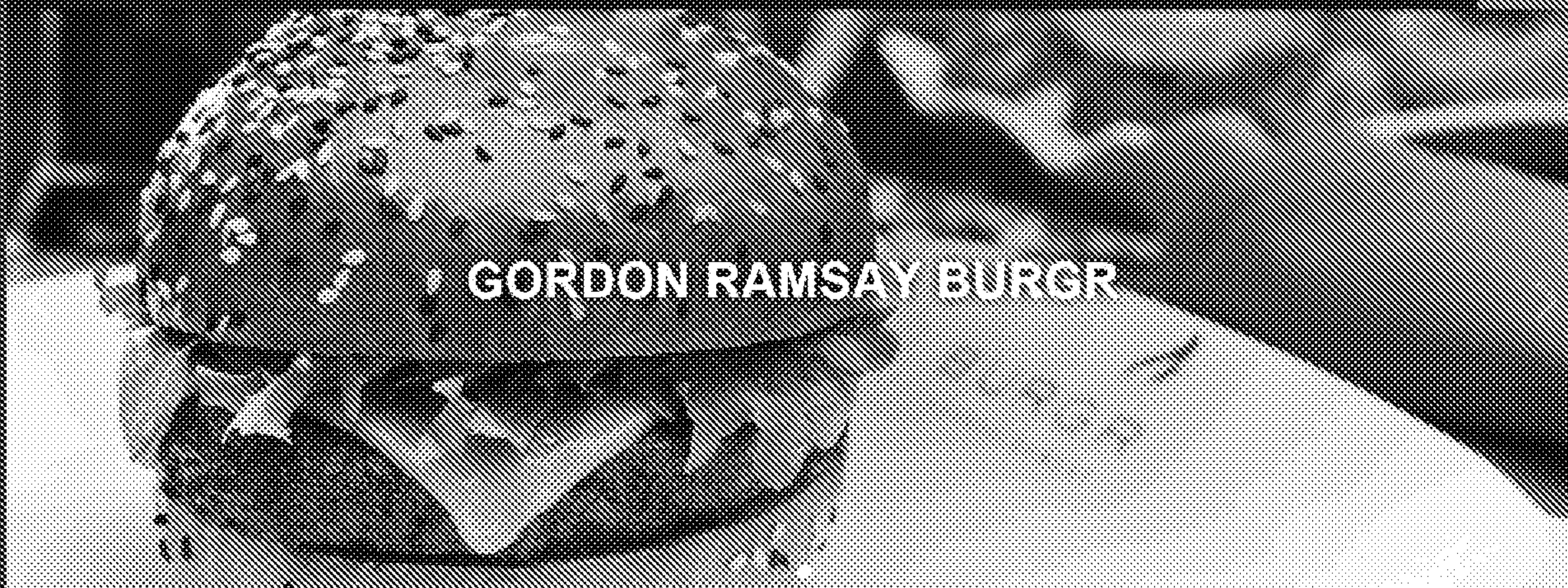
Filing Date
2012/12/14

Examining Attorney
WYNNE, MORGAN

Attorney of Record
William C. Wright

BURGR

GORDON RAMSAY



Gordon Ramsay BurGR at Planet Hollywood Resort & Casino in Las Vegas, a play on Gordon's initials, focuses on traditional burgers, fries and milkshakes, with an extra special touch using the best ingredients. The gourmet beef patties are cooked over an open flame using prime cuts of meat. The milkshakes combine traditional shake ingredients with creamy pudding for an indulgent dessert experience and the drinks menu features an extensive selection of cocktails as well as craft and bottled beers.

A 30-foot fire feature takes centre stage at Gordon Ramsay BurGR, within a vividly coloured room which seats 200 people. The room has been designed with a stylish and modern ambience drawing on the energy of both the casino and the nearby Miracle Mile shops.

From traditional to unique burgers, the menu items at this Las Vegas restaurant use the freshest, quality ingredients. Beef patties are cooked over an open flame fueled by hard woods — Gordon Ramsay BurGR is the only gourmet burger restaurant on the Strip to use this method — creating a more complex and powerful flavor. In addition to juicy burgers, this popular Vegas restaurant also offers sweet potato fries with vanilla powdered sugar and pork belly bao buns. Looking for some spice? The Devil Dog will do it. These all-beef dogs are simmered in devilish hot sauce, then fire-kissed on the open grill. You'll taste a consistent fiery spice throughout.

There's even a delicious meat-free substitute. The savory, mouthwatering Portobello mushroom option allows vegetarians to join in on the fun. Make it vegan and go for

FIND OUT MORE →

About cookies: our website uses cookies to improve your experience. **Find out more**

About cookies: our website uses cookies to improve your experience. **Find out more**

CONTACT US | OPENING TIMES | MENUS

Phone:
702 - 785 - 5555

Dress code:
Business casual

Seating is on a first come, first served basis.
For parties of 12 or more, please call 866-755-5827 or 702-731-7773 or send an email.

TRAVELLING TO LONDON THIS CHRISTMAS?

About cookies: our website uses cookies to improve your experience. **Find out more**

If you or your loved ones are travelling to London for the festive season, why not buy a Christmas gift to remember with a Gordon Ramsay Gift Experience? From Michelin star dining experiences and chef's masterclasses to tasting menus and Gordon Ramsay gift vouchers - redeemable across our [illegible] restaurants - we've got something for all appetites. Shop our voucher collection today.

BUY A GIFT →

NEWSLETTER SIGN UP ↓

About cookies: our website uses cookies to improve your experience. **Find out more**

About cookies: our website uses cookies to improve your experience. **Find out more**

Exhibit 22

EX-3.7 2 d268435dex37.htm SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

Exhibit 3.7

SECOND AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

CAESARS ENTERTAINMENT CORPORATION

Dated as of February 8, 2012

CAESARS ENTERTAINMENT CORPORATION, a Delaware corporation (the "Corporation"), does hereby certify that:

FIRST: The present name of the Corporation is "CAESARS ENTERTAINMENT CORPORATION". The Corporation was originally incorporated by the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware (the "DE Secretary") on November 2, 1989 under the name "THE PROMUS COMPANIES INCORPORATED".

SECOND: An Amended Certificate of Incorporation of the Corporation was filed with the DE Secretary on January 28, 2008.

THIRD: An Amended and Restated Certificate of Incorporation (the "Amended and Restated Certificate") was filed with the DE Secretary on November 22, 2010.

FOURTH: This Second Amended and Restated Certificate of Incorporation (this "Certificate") amends and restates in its entirety the Amended and Restated Certificate, and has been approved in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware and by the stockholders of the Corporation in accordance with Sections 228 and 245 of the General Corporation Law of the State of Delaware.

FIFTH: This Certificate shall become effective immediately upon its filing with the DE Secretary.

SIXTH: Upon the filing of this Certificate with the DE Secretary, the Amended and Restated Certificate shall be amended and restated in its entirety to read as set forth on Exhibit A attached hereto.

* * * * *

IN WITNESS WHEREOF, the undersigned, being the Vice President, Associate General Counsel and Corporate Secretary of the Corporation, DOES HEREBY CERTIFY that the facts hereinabove stated are truly set forth and, accordingly, such officer has hereunto set his hand as of the date first above written.

CAESARS ENTERTAINMENT CORPORATION

By: /s/ Michael D. Cohen
Name: Michael D. Cohen
Title: Senior Vice President, Deputy General Counsel and Corporate Secretary

Exhibit A

SECOND AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

CAESARS ENTERTAINMENT CORPORATION

ARTICLE I
NAME OF THE CORPORATION

The name of the corporation (the "Corporation") is: Caesars Entertainment Corporation.

ARTICLE II
REGISTERED OFFICE; REGISTERED AGENT

The address of the registered office of the Corporation in the State of Delaware is: 2711 Centerville Road, Suite 400, Wilmington, New Castle County, DE 19808. The name of the registered agent of the Corporation at such address is Corporation Service Company.

ARTICLE III
PURPOSE

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

ARTICLE IV
CAPITAL STOCK

Section 4.1 Authorized Shares; Stock Split. The total number of shares of capital stock which the Corporation shall have authority to issue is 1,375,000,000 shares of capital stock, consisting of 1,250,000,000 shares of common stock, par value $.01 per share (the "Common Stock"), and 125,000,000 shares of preferred stock, par value $.01 per share (the "Preferred Stock"). Upon the filing of this Second Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware (the "Effective Time") each share of Common Stock outstanding immediately prior thereto (the "Old Common Stock") shall automatically, without further action on the part of the Corporation or any holder of such Common Stock, be reclassified as and shall become 1.742 validly issued, fully paid and nonassessable shares of Common Stock, as constituted following the Effective Time. The reclassification of the Old Common Stock into such new number of shares of Common Stock will be deemed to occur at the Effective Time, regardless of when any certificates previously representing such shares of Old Common Stock (if such shares are held in certificated form) are physically surrendered to the Corporation in exchange for certificates representing such new number of shares of Common Stock. After the Effective Time, certificates previously representing shares of Old Common Stock (if such shares are held in certificated form) will, until

such shares are surrendered to the Corporation in exchange for certificates representing such new number of shares of Common Stock, represent the number of shares of Common Stock into which such shares of Old Common Stock shall have been reclassified pursuant to this Section 4.1. In any case in which the reclassification of shares of Old Common Stock into shares of Common Stock would otherwise result in any holder of Common Stock holding a fractional share, the Corporation shall, in lieu of issuing any such fractional share, round such fractional interest up to the nearest whole number of shares of Common Stock.

Section 4.2 Preferred Stock. The Board of Directors is expressly authorized to provide for the issuance of all or any shares of the Preferred Stock in one or more series, to fix the number of shares constituting such series, and to increase or decrease the number of shares of any such series (but not below the number of shares thereof then outstanding) and to fix for each such series such voting powers, full or limited, or no voting powers, and such distinctive designations, powers, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such series including, without limitation, the authority to provide that any such series may be (a) subject to redemption at such time or times and at such price or prices; (b) entitled to receive dividends (which may be cumulative or non-cumulative) at such rates, on such conditions, and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or any other series; (c) entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the Corporation; or (d) convertible into, or exchangeable for, shares of any other class or classes of stock, or of any other series of the same or any other class or classes of stock, of the Corporation at such price or prices or at such rates of exchange and with such adjustments, all as may be stated in such resolution or resolutions. Notwithstanding the foregoing, the rights of each holder of Preferred Stock shall be subject at all times to compliance with all gaming and other statutes, laws, rules and regulations applicable to the Corporation and such holder at that time.

Section 4.3 Common Stock.

(a) Dividends. Subject to the rights of holders of Preferred Stock, if any, when, as and if dividends are declared on the Common Stock, whether payable in cash, in property or in securities of the Corporation, the holders of Common Stock shall be entitled to share equally, share for share, in such dividends.

(b) Liquidation or Dissolution. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, holders of Common Stock shall receive a pro rata distribution of any remaining assets after payment of or provision for liabilities and the liquidation preference on Preferred Stock, if any.

(c) Voting Rights. The holders of Common Stock shall be entitled to one vote per share on all matters to be voted on by the stockholders of the Corporation. No holder of shares of Common Stock shall have the right to cumulate votes.

(d) Consideration for Shares. The Common Stock and Preferred Stock authorized by this Article shall be issued for such consideration as shall be fixed, from time to time, by the Board of Directors.

(e) Assessment of Stock. The capital stock of the Corporation, after the amount of the subscription price has been fully paid in, shall not be assessable for any purpose, and no stock issued as fully paid shall ever be assessable or assessed. No stockholder of the Corporation, to the fullest extent permitted by law, shall be individually liable for the debts or liabilities of the Corporation.

(f) Preemptive Rights. No stockholder of the Corporation shall have any preemptive rights by virtue of this Second Amended and Restated Certificate of Incorporation.

ARTICLE V
GAMING AND REGULATORY MATTERS

Section 5.1 Definitions. For purposes of this Article V, the following terms shall have the meanings specified below:

(a) "Affiliate" (and derivatives of such term) shall have the meaning ascribed to such term under Rule 12b-2 promulgated by the SEC under the Exchange Act.

(b) "Affiliated Company" shall mean any partnership, corporation, limited liability company, trust or other entity directly or indirectly Affiliated or under common Ownership or Control with the Corporation including, without limitation, any subsidiary, holding company or intermediary company (as those or similar terms are defined under the Gaming Laws of any applicable Gaming Jurisdictions), in each case that is registered or licensed under applicable Gaming Laws.

(c) "Control" (and derivatives of such term) (i) with respect to any Person, shall have the meaning ascribed to such term under Rule 12b-2 promulgated by the SEC under the Exchange Act, (ii) with respect to any Interest, shall mean the possession, directly or indirectly, of the power to direct, whether by agreement, contract, agency or otherwise, the voting rights or disposition of such Interest, and (iii) as applicable, the meaning ascribed to the term "control" (and derivatives of such term) under the Gaming Laws of any applicable Gaming Jurisdictions).

(d) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time.

(e) "Gaming" or "Gaming Activities" shall mean the conduct of gaming and gambling activities, race books and sports pools, or the use of gaming devices, equipment and supplies in the operation of a casino, simulcasting facility, card club or other enterprise, including, without limitation, slot machines, gaming tables, cards, dice, gaming chips, player tracking systems, cashless wagering systems, mobile gaming systems, inter-casino linked systems and related and associated equipment, supplies and systems.

(f) "Gaming Authorities" shall mean all international, national, foreign, domestic, federal, state, provincial, regional, local, tribal, municipal and other regulatory and licensing bodies, instrumentalities, departments, commissions, authorities, boards, officials, tribunals and agencies with authority over or responsibility for the regulation of Gaming within any Gaming Jurisdiction.

(g) "Gaming Jurisdictions" shall mean all jurisdictions, domestic and foreign, and their political subdivisions, in which Gaming Activities are or may be lawfully conducted, including, without limitation, all Gaming Jurisdictions in which the Corporation or any of the Affiliated Companies currently conducts or may in the future conduct Gaming Activities.

(h) "Gaming Laws" shall mean all laws, statutes and ordinances pursuant to which any Gaming Authority possesses regulatory, permit and licensing authority over the conduct of Gaming Activities, or the Ownership or Control of an Interest in an entity which conducts Gaming Activities, in any Gaming Jurisdiction, all orders, decrees, rules and regulations promulgated thereunder, all written and unwritten policies of the Gaming Authorities and all written and unwritten interpretations by the Gaming Authorities of such laws, statutes, ordinances, orders, decrees, rules, regulations and policies.

(i) "Gaming Licenses" shall mean all licenses, permits, approvals, orders, authorizations, registrations, findings of suitability, franchises, exemptions, waivers, concessions and entitlements issued by any Gaming Authority necessary for or relating to the conduct of Gaming Activities by any Person or the Ownership or Control by any Person of an Interest in an entity that conducts or may in the future conduct Gaming Activities.

(j) "Interest" shall mean the stock or other securities of an entity or any other interest or financial or other stake therein, including, without limitation, the Securities.

(k) "Own" or "Ownership" (and derivatives of such terms) shall mean (i) ownership of record, (ii) "beneficial ownership" as defined in Rule 13d-3 or Rule 16a-1(a)(2) promulgated by the SEC under the Exchange Act, and (iii) as applicable, the meaning ascribed to the terms "own" or "ownership" (and derivatives of such terms) under the Gaming Laws of any applicable Gaming Jurisdictions.

(l) "Person" shall mean an individual, partnership, corporation, limited liability company, trust or any other entity.

(m) "Redemption Date" shall mean the date set forth in the Redemption Notice by which the Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person are to be redeemed by the Corporation or any of its Affiliated Companies, which redemption date shall be determined in the sole and absolute discretion of the Board of Directors of the Corporation but which shall in no event be fewer than 45 calendar days following the date of the Redemption Notice, unless (i) otherwise required by a Gaming Authority or pursuant to any applicable Gaming Laws, (ii) prior to the expiration of such 45-day period, the Unsuitable Person shall have sold (or otherwise fully transferred or otherwise disposed of its Ownership of) its Securities to a Person that is not an Unsuitable Person (in which case, such Redemption Notice will only apply to those Securities that have not been sold or

otherwise disposed of) by the selling Unsuitable Person and, commencing as of the date of such sale, the purchaser or recipient of such Securities shall have all of the rights of a Person that is not an Unsuitable Person), or (iii) the cash or other Redemption Price necessary to effect the redemption shall have been deposited in trust for the benefit of the Unsuitable Person or its Affiliate and shall be subject to immediate withdrawal by such Unsuitable Person or its Affiliate upon (x) surrender of the certificate(s) evidencing the Securities to be redeemed accompanied by a duly executed stock power or assignment or (y) if the Securities are uncertificated, upon the delivery of a duly executed assignment or other instrument of transfer.

(n) "Redemption Notice" shall mean that notice of redemption delivered by the Corporation pursuant to this Article to an Unsuitable Person or an Affiliate of an Unsuitable Person if a Gaming Authority so requires the Corporation, or if the Board of Directors deems it necessary or advisable, to redeem such Unsuitable Person's or Affiliate's Securities. Each Redemption Notice shall set forth (i) the Redemption Date, (ii) the number and type of Securities to be redeemed, (iii) the Redemption Price and the manner of payment therefor, (iv) the place where any certificates for such Securities shall be surrendered for payment, and (v) any other requirements of surrender of the certificates, including how such certificates are to be endorsed, if at all.

(o) "Redemption Price" shall mean the price to be paid by the Corporation for the Securities to be redeemed pursuant to this Article, which shall be that price (if any) required to be paid by the Gaming Authority making the finding of unsuitability, or if such Gaming Authority does not require a certain price to be paid (including if the finding of unsuitability is made by the Board of Directors alone), that amount determined by the Board of Directors to be the fair value of the Securities to be redeemed; provided, that unless a Gaming Authority requires otherwise, the Redemption Price shall in no event exceed (i) the lowest closing price of such Securities reported on any of the domestic securities exchanges on which such Securities are listed on the date of the Redemption Notice or, if there have been no sales on any such exchange on such day, the average of the highest bid and lowest ask prices on all such exchanges at the end of such day, or (ii) if such Securities are not then listed for trading on any national securities exchange, then the mean between the representative bid and the ask price as quoted by another generally recognized reporting system, or (iii) if such Securities are not so quoted, then the average of the highest bid and lowest ask prices on such day in the domestic over-the-counter market as reported by Pink OTC Markets Inc. or any similar successor organization, or (v) if such Securities are not quoted by any recognized reporting system, then the fair value thereof, as determined in good faith and in the reasonable discretion of the Board of Directors. The Corporation may pay the Redemption Price in any combination of cash and/or promissory note as required by the applicable Gaming Authority and, if not so required (including if the finding of unsuitability is made by the Board of Directors alone), as determined by the Board of Directors, provided, that in the event the Corporation elects to pay all or any portion of the Redemption Price with a promissory note, such promissory note shall have a term of ten years, bear interest at a rate equal to three percent (3)%) per annum and amortize in 120 equal monthly installments, and shall contain such other terms and conditions as the Board of Directors determines, in its discretion, to be necessary or advisable.

(p) "SEC" shall mean the U.S. Securities and Exchange Commission.

(q) "Securities" shall mean the capital stock of the Corporation and the capital stock, member's interests or membership interests, partnership interests or other equity securities of any Affiliated Company.

(r) "Transfer" shall mean the sale and every other method, direct or indirect, of transferring or otherwise disposing of an Interest, or the Ownership, Control or possession thereof, or fixing a lien thereupon, whether absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings, as a conveyance, sale, payment, pledge, mortgage, lien, encumbrance, gift, security, or otherwise (including by merger or consolidation).

(s) "Unsuitable Person" shall mean a Person who (i) fails or refuses to file an application, or has withdrawn or requested the withdrawal of a pending application, to be found suitable by any Gaming Authority or for any Gaming License, (ii) is denied or disqualified from eligibility for any Gaming License by any Gaming Authority, (iii) is determined by a Gaming Authority to be unsuitable or disqualified to Own or Control any Securities, (iv) is determined by a Gaming Authority to be unsuitable to be Affiliated, associated or involved with a Person engaged in Gaming Activities in any Gaming Jurisdiction, (v) causes any Gaming License of the Corporation or any Affiliated Company to be lost, rejected, rescinded, suspended, revoked or not renewed by any Gaming Authority, or causes the Corporation or any Affiliated Company to be threatened by any Gaming Authority with the loss, rejection, rescission, suspension, revocation or non-renewal of any Gaming License (in each of (ii) through (v) above, regardless of whether such denial, disqualification or determination by a Gaming Authority is final and/or non-appealable), or (vi) is deemed likely, in the sole and absolute discretion of the Board of Directors, to (A) preclude or materially delay, impede, impair, threaten or jeopardize any Gaming License held by the Corporation or any Affiliated Company or the Corporation's or any Affiliated Company's application for, right to the use of, entitlement to, or ability to obtain or retain, any Gaming License, (B) cause or otherwise result in, the disapproval, cancellation, termination, material adverse modification or non-renewal of any material contract to which the Corporation or any Affiliated Company is a party, or (C) cause or otherwise result in the imposition of any materially burdensome or unacceptable terms or conditions on any Gaming License of the Corporation or any Affiliated Company.

Section 5.2 Compliance with Gaming Laws. All Securities shall be held subject to the restrictions and requirements of all applicable Gaming Laws. All Persons Owning or Controlling Securities shall comply with all applicable Gaming Laws, including any provisions of such Gaming Laws that require such Person to file applications for Gaming Licenses with, and provide information to, the applicable Gaming Authorities. Any Transfer of Securities may be subject to the prior approval of the Gaming Authorities and/or the Corporation or the applicable Affiliated Company, and any purported Transfer thereof in violation of such requirements shall be void *ab initio*.

Section 5.3 Ownership Restrictions. Any Person who Owns or Controls five percent (5%) or more of any class or series of the Corporation's Securities shall promptly notify the Corporation of such fact. In addition, any Person who Owns or Controls any shares of any class or series of the Corporation's Securities may be required by Gaming Law to (1) provide to the Gaming Authorities in each Gaming Jurisdiction in which the Corporation or any subsidiary thereof either conducts Gaming or has a pending application for a Gaming License all

information regarding such Person as may be requested or required by such Gaming Authorities and (2) respond to written or oral questions or inquiries from any such Gaming Authorities. Any Person who Owns or Controls any shares of any class or series of the Corporation's Securities, by virtue of such Ownership or Control, consents to the performance of any personal background investigation that may be required by any Gaming Authorities.

Section 5.4 Finding of Unsuitability.

(a) The Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person shall be redeemable by the Corporation or the applicable Affiliated Company, out of funds legally available therefor, as directed by a Gaming Authority and, if not so directed, as and to the extent deemed necessary or advisable by the Board of Directors, in which event the Corporation shall deliver a Redemption Notice to the Unsuitable Person or its Affiliate and shall redeem or purchase or cause one or more Affiliated Companies to purchase the Securities on the Redemption Date and for the Redemption Price set forth in the Redemption Notice. From and after the Redemption Date, such Securities shall no longer be deemed to be outstanding, such Unsuitable Person or Affiliate of such Unsuitable Person shall cease to be a stockholder, member, partner or owner, as applicable, of the Corporation and/or Affiliated Company with respect to such Securities, and all rights of such Unsuitable Person or Affiliate of such Unsuitable Person in such Securities, other than the right to receive the Redemption Price, shall cease. In accordance with the requirements of the Redemption Notice, such Unsuitable Person or its Affiliate shall surrender the certificate(s), if any, representing the Securities to be so redeemed.

(b) Commencing on the date that a Gaming Authority serves notice of a determination of unsuitability or disqualification of a holder of Securities, or the Board of Directors otherwise determines that a Person is an Unsuitable Person, and until the Securities Owned or Controlled by such Person are Owned or Controlled by a Person who is not an Unsuitable Person, it shall be unlawful for such Unsuitable Person or any of its Affiliates to and such Unsuitable Person and its Affiliates shall not: (i) receive any dividend, payment, distribution or interest with regard to the Securities, (ii) exercise, directly or indirectly or through any proxy, trustee, or nominee, any voting or other right conferred by such Securities, and such Securities shall not for any purposes be included in the Securities of the Corporation or the applicable Affiliated Company entitled to vote, or (iii) receive any remuneration that may be due to such Person, accruing after the date of such notice of determination of unsuitability or disqualification by a Gaming Authority, in any form from the Corporation or any Affiliated Company for services rendered or otherwise, or (iv) be or continue as a manager, officer, partner or director of the Corporation or any Affiliated Company.

Section 5.5 Notices. All notices given by the Corporation or an Affiliated Company pursuant to this Article, including Redemption Notices, shall be in writing and shall be deemed given when delivered by personal service, overnight courier, first-class mail, postage prepaid, addressed to the Person at such Person's address as it appears on the books and records of the Corporation or Affiliated Company.

Section 5.6 Indemnification. Any Unsuitable Person and any Affiliate of an Unsuitable Person shall indemnify and hold harmless the Corporation and its Affiliated

Companies for any and all losses, costs, and expenses, including attorneys' costs, fees and expenses, incurred by the Corporation and its Affiliated Companies as a result of, or arising out of, such Unsuitable Person's continuing Ownership or Control of Securities, failure or refusal to comply with the provisions of this Article, or failure to divest himself, herself or itself of any Securities when and in the specific manner required by the Gaming Authorities or this Article.

Section 5.7 Injunctive Relief. The Corporation shall be entitled to injunctive or other equitable relief in any court of competent jurisdiction to enforce the provisions of this Article and each Person who Owns or Controls Securities shall be deemed to have consented to injunctive or other equitable relief and acknowledged, by virtue of such Ownership or Control, that the failure to comply with this Article will expose the Corporation and the Affiliated Companies to irreparable injury for which there is no adequate remedy at law and that the Corporation and the Affiliated Companies shall be entitled to injunctive or other equitable relief to enforce the provisions of this Article.

Section 5.8 Non-Exclusivity of Rights. The right of the Corporation or any Affiliated Company to redeem Securities pursuant to this Article shall not be exclusive of any other rights the Corporation or any Affiliated Company may have or hereafter acquire under any agreement, provision of the bylaws of the Corporation or such Affiliated Company or otherwise. To the extent permitted under applicable Gaming Laws, the Corporation shall have the right, exercisable in the sole discretion of the Board of Directors, to propose that the parties, immediately upon the delivery of the Redemption Notice, enter into an agreement or other arrangement, including, without limitation, a divestiture trust or divestiture plan, which will reduce or terminate an Unsuitable Person's Ownership or Control of all or a portion of its Securities.

Section 5.9 Further Actions. Nothing contained in this Article shall limit the authority of the Board of Directors to take such other action, to the extent permitted by law, as it deems necessary or advisable to protect the Corporation or the Affiliated Companies from the denial or loss or threatened denial or loss of any Gaming License of the Corporation or any of its Affiliated Companies. Without limiting the generality of the foregoing, the Board of Directors may conform any provisions of this Article to the extent necessary to make such provisions consistent with Gaming Laws. In addition, the Board of Directors may, to the extent permitted by law, from time to time establish, modify, amend or rescind bylaws, regulations, and procedures of the Corporation not inconsistent with the express provisions of this Article for the purpose of determining whether any Person is an Unsuitable Person and for the orderly application, administration and implementation of the provisions of this Article. Such procedures and regulations shall be kept on file with the Secretary of the Corporation, the secretary of each of the Affiliated Companies and with the transfer agent, if any, of the Corporation and/or any Affiliated Companies, and shall be made available for inspection and, upon reasonable request, mailed to any record holder of Securities.

Section 5.10 Authority of the Board of Directors. The Board of Directors shall have exclusive authority and power to administer this Article and to exercise all rights and powers specifically granted to the Board of Directors or the Corporation, or as may be necessary or advisable in the administration of this Article. All such actions which are done or made by the Board of Directors in good faith shall be final, conclusive and binding on the Corporation and all

other Persons; provided, that the Board of Directors may delegate all or any portion of its duties and powers under this Article to a committee of the Board of Directors as it deems necessary or advisable.

Section 5.11 Severability. If any provision of this Article or the application of any such provision to any Person or under any circumstance shall be held invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Article.

Section 5.12 Termination and Waivers. Except as may be required by any applicable Gaming Law or Gaming Authority, the Board of Directors may waive any of the rights of the Corporation or any restrictions contained in this Article in any instance in which and to the extent the Board of Directors determines that a waiver would be in the best interests of the Corporation. Except as required by a Gaming Authority, nothing in this Article shall be deemed or construed to require the Corporation to repurchase any Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person.

Section 5.13 Legend. The restrictions set forth in this Article shall be noted conspicuously on any certificate evidencing the Securities in accordance with the requirements of the DGCL and any applicable Gaming Laws.

Section 5.14 Required New Jersey Charter Provisions.

(a) This Second Amended and Restated Certificate of Incorporation shall be deemed to include all provisions required by the New Jersey Casino Control Act, N.J.S.A. 5:12-1 et seq., as amended from time to time (the "New Jersey Act") and, to the extent that anything contained herein or in the bylaws of the Corporation is inconsistent with the New Jersey Act, the provisions of the New Jersey Act shall govern. All provisions of the New Jersey Act, to the extent required by law to be stated in this Second Amended and Restated Certificate of Incorporation, are incorporated herein by this reference.

(b) This Second Amended and Restated Certificate of Incorporation shall be subject to the provisions of the New Jersey Act and the rules and regulations of the New Jersey Casino Control Commission (the "New Jersey Commission") promulgated thereunder. Specifically, and in accordance with the provisions of Section 82(d)(7) of the New Jersey Act, the Securities of the Corporation are held subject to the condition that, if a holder thereof is found to be disqualified by the New Jersey Commission pursuant to the provisions of the New Jersey Act, the holder must dispose of such Securities in accordance with Section 5.4(a) of this Article and shall be subject to Section 5.4(b) of this Article.

(c) Any newly elected or appointed director or officer of, or nominee to any such position with, the Corporation, who is required to qualify pursuant to the New Jersey Act, shall not exercise any powers of the office to which such individual has been elected, appointed or nominated until such individual has been found qualified to hold such office or position by the New Jersey Commission in accordance with the New Jersey Act or the New Jersey Commission permits such individual to perform duties and exercise powers relating to any such position pending qualification, with the understanding that such individual will be immediately removed from such position if the New Jersey Commission determines that there is reasonable cause to believe that such individual may not be qualified to hold such position.

ARTICLE VI
MEETINGS; BOOKS AND RECORDS

Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. For so long as Apollo Management VI, L.P. and/or TPG Capital, L.P. and/or any of their respective affiliates owns or controls a majority in voting power of the outstanding capital stock of the Corporation entitled to vote, any action to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding Common Stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of Common Stock entitled to vote thereon were present and voted and shall be delivered to the Corporation. From and after such time as Apollo Management VI, L.P. and/or TPG Capital, L.P., and/or any of their respective affiliates cease to beneficially own or control a majority in voting power of the outstanding capital stock of the Corporation entitled to vote, the stockholders may not in any circumstance take action by written consent in lieu of a meeting.

Subject to any rights of the holders of Preferred Stock as may be authorized by the Board of Directors in accordance with Section 4.2, unless otherwise prescribed by law, special meetings of stockholders, for any purpose or purposes, may only be called by a majority of the entire Board of Directors, and no other party shall be entitled to call special meetings.

The books of the Corporation may be kept (subject to any provision contained in the DGCL) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

ARTICLE VII
AMENDMENTS; BY-LAWS

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Second Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation. Any amendment, alteration, change or repeal (whether by merger, consolidation or otherwise) of Articles VI, VII and VIII of this Second Amended and Restated Certificate of Incorporation, or of the By-Laws of the Corporation, shall require the affirmative vote of the stockholders holding at least two-thirds (2/3) of the outstanding voting power of the Corporation, voting together as a single class. Notwithstanding the foregoing and in furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to make, adopt, alter, amend, change or repeal the By-Laws by resolution adopted by the affirmative vote of at least two-thirds (2/3) of the members of the entire Board of Directors.

ARTICLE VIII
DIRECTORS; CLASSIFIED BOARD

(a) Unless and except to the extent that the By-Laws of the Corporation shall so require, elections of directors need not be by written ballot. At all meetings of the stockholders for the election of directors at which a quorum is present, directors shall be elected by a plurality of the votes cast by the holders of the shares entitled to vote thereat.

(b) Subject to the rights of the holders of Preferred Stock as may be authorized by the Board of Directors in accordance with Section 4.2, the number of directors may be fixed from time to time only pursuant to a resolution adopted by two-thirds (2/3) of the members of the entire Board of Directors.

(c) Subject to the rights of the holders of Preferred Stock as may be authorized by the Board of Directors in accordance with Section 4.2, if any, upon the effectiveness of the Corporation's registration statement on Form S-1 with respect to its initial public offering of Common Stock, the directors shall be classified, with respect to the time for which they shall hold their respective offices, by dividing them into three (3) classes, to be known as "Class I," "Class II" and "Class III", with each class to be apportioned as nearly equal in number as possible. Directors shall be assigned to each class in accordance with a resolution or resolutions adopted by the Board of Directors. Directors of Class I shall hold office until the next annual meeting of stockholders after such effectiveness and until their successors are duly elected and qualified, directors of Class II shall hold office until the second annual meeting of the stockholders after such effectiveness and until their successors are duly elected and qualified and directors of Class III shall hold office until the third annual meeting of stockholders after such effectiveness and until their successors are duly elected and qualified. At each annual meeting of stockholders following such effectiveness, successors to the directors of the class whose term of office expires at such annual meeting shall be elected to hold office until the third succeeding annual meeting of stockholders, so that the term of office of only one class of directors shall expire at each annual meeting.

(d) In the case of any increase or decrease, from time to time, in the number of directors of the Corporation, the number of directors (other than the directors elected by any series of Preferred Stock) in each class shall be apportioned as nearly equal as possible among the classes of directors. No decrease in the number of directors shall shorten the term of any incumbent director.

(e) Any director of any class elected to fill a vacancy resulting from an increase in the number of directors of such class shall hold office for a term that shall coincide with the remaining term of that class. Any director elected or appointed to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of his or her predecessor. The term of each director shall continue until the annual meeting for the year in which his or her term expires and until his or her successor shall be duly elected and shall qualify, subject to such director's earlier death, resignation or removal in accordance with this Second Amended and Restated Certificate of Incorporation.

(f) Subject to any rights of the holders of Preferred Stock as may be authorized by the Board of Directors in accordance with Section 4.2, and except as otherwise prescribed by law, any vacancy in the Board of Directors that results from an increase in the number of directors, from the death, resignation or removal of any director or from any other cause shall be filled solely by a majority of the total number of directors then in office, even if less than a quorum, or by a sole remaining director.

(g) Notwithstanding the foregoing provisions of this Article VIII, whenever the holders of any one or more series of Preferred Stock have the right, voting separately by class or series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of this Second Amended and Restated Certificate of Incorporation and terms of such Preferred Stock applicable thereto, and such directors so elected shall not be divided into classes pursuant to this Article VIII unless expressly provided by the terms of such series of Preferred Stock.

(h) Upon the effectiveness of the Corporation's registration statement on Form S-1 with respect to its initial public offering of Common Stock, subject to any rights of the holders of Preferred Stock as may be authorized by the Board of Directors in accordance with Section 4.2, any director or the entire Board of Directors may be removed from office at any time, but only for cause and only by affirmative vote of at least two-thirds (2/3) of the total voting power of the outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE IX
INDEMNIFICATION; ADVANCEMENT OF EXPENSES; EXCULPATION

(a) Right to Indemnification. The Corporation shall indemnify and hold harmless to the fullest extent permitted under and in accordance with the laws of the State of Delaware, as the same exists or may hereafter be amended, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) (hereinafter a "proceeding") by reason of the fact that the person is or was a director, officer or employee of the Corporation, or is or was serving at the request of the Corporation as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer or employee while serving as a director, officer or employee, against all expenses and loss (including attorneys' fees, judgments, fines, amounts paid or to be paid in settlement, and excise taxes or penalties arising under the Employee Retirement Income Security Act of 1974) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer or employee and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in paragraph (c) hereof, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board.

(b) The Corporation shall indemnify and hold harmless any person who was or is a party or is threatened to be made a party to any threatened, pending or completed proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer or employee of the Corporation, or is or was serving at the request of the Corporation as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer or employee, while serving as a director, officer or employee,

against all expenses and loss (including attorneys' fees, judgments, fines, amounts paid or to be paid in settlement, and excise taxes or penalties arising under the Employee Retirement Income Security Act of 1974), reasonably incurred or suffered by such person in connection with the defense or settlement of such proceeding and such indemnification shall continue as to a person who has ceased to be a director, officer or employee and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in paragraph (c) hereof, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board; provided, further, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

(c) Right of Claimant to Bring Suit. If a claim under paragraph (a) or (b) of this Section is not paid in full by the Corporation within thirty (30) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such proceeding (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the DGCL for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such proceeding that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the proceeding or create a presumption that the claimant has not met the applicable standard of conduct.

(d) Advancement of Expenses. Expenses incurred in defending a civil or criminal action, suit or proceeding shall (in the case of any action, suit or proceeding against a director of the Corporation) or may as authorized by the Board, to the fullest extent not prohibited by law (in the case of any action, suit or proceeding against an officer, trustee, employee or agent), be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the indemnified person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article IX.

(e) Non-Exclusivity of Rights; Indemnification of Persons other than Directors, Officers and Employees. The indemnification and other rights set forth in this Article IX shall not be exclusive of any provisions with respect thereto in any statute, provision of this

Second Amended and Restated Certificate of Incorporation, the By-Laws of the Corporation or any other contract or agreement between the Corporation and any officer, director or employee. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any agent of the Corporation or any person (other than a person who is entitled to indemnification under clauses (a) or (b) of this Article IX) who was serving at the request of the Corporation as a director, officer, manager, employee, agent or trustee of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, to the fullest extent of the provisions of this Article IX with respect to the indemnification and advancement of expenses of directors, officers and employees of the Corporation.

(f) Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise, against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

(g) Amendment. Neither the amendment nor repeal of this Article IX (by merger, consolidation or otherwise), nor the adoption of any provision of this Second Amended and Restated Certificate of Incorporation inconsistent with Article IX, shall eliminate or reduce the effect of this Article IX in respect of any matter occurring before such amendment, repeal or adoption of an inconsistent provision or in respect of any cause of action, suit or claim relating to any such matter which would have given rise to a right of indemnification or right to receive expenses pursuant to this Article IX if such provision had not been so amended or repealed or if a provision inconsistent therewith had not been so adopted.

(h) Exculpation. No director shall be personally liable to the Corporation or any stockholder for monetary damages for breach of fiduciary duty as a director; provided, however, that the foregoing shall not eliminate or limit the liability of a director:

(i) for any breach of the director's duty of loyalty to the Corporation or its stockholders;

(ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

(iii) under Section 174 of the DGCL; or

(iv) for any transaction from which the director derived an improper personal benefit.

If the DGCL is amended after the date hereof to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

The rights to indemnification and advancement of expenses conferred upon directors and officers of the Corporation in this Article IX shall be contract rights, shall vest

when such person becomes a director or officer of the Corporation and shall continue as vested contract rights. Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a director or officer of the Corporation existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

ARTICLE X
NO CONFLICT

Neither any contract or other transaction between the Corporation and any other corporation, partnership, limited liability company, joint venture, firm, association, or other entity (an "Entity"), nor any other acts of the Corporation with relation to any other Entity will, in the absence of fraud, to the fullest extent permitted by applicable law, in any way be invalidated or otherwise affected by the fact that any one or more of the directors or officers of the Corporation are pecuniarily or otherwise interested in, or are directors, officers, partners, or members of, such other Entity (such directors, officers, and Entities, each a "Related Person"). Any Related Person may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Corporation, provided that the fact that person is a Related Person is disclosed or is known to the Board or a majority of directors present at any meeting of the Board at which action upon any such contract or transaction is taken, and any director of the Corporation who is also a Related Person may be counted in determining the existence of a quorum at any meeting of the board of directors during which any such contract or transaction is authorized and may vote thereat to authorize any such contract or transaction, with like force and effect as if such person were not a Related Person. Any director of the Corporation may vote upon any contract or any other transaction between the Corporation and any subsidiary or affiliated entity without regard to the fact that such person is also a director or officer of such subsidiary or affiliated entity.

Any contract, transaction or act of the Corporation or of the directors that is ratified at any annual meeting of the stockholders of the Corporation, or at any special meeting of the stockholders of the Corporation called for such purpose, will, insofar as permitted by applicable law, be as valid and as binding as though ratified by every stockholder of the Corporation; provided, however, that any failure of the stockholders to approve or ratify any such contract, transaction or act, when and if submitted, will not be deemed in any way to invalidate the same or deprive the Corporation, its directors, officers or employees, of its or their right to proceed with such contract, transaction or act.

Subject to any express agreement that may from time to time be in effect, (x) any director or officer of the Corporation who is also an officer, director, employee, managing director or other affiliate of either Apollo Management VI, L.P., on behalf of its investment funds ("Apollo"), and/or TPG Capital, L.P. ("TPG") or any of their respective affiliates (collectively, the "Managers") and (y) the Managers and their affiliates, may, and shall have no duty not to, in each case on behalf of the Managers or their affiliates (the persons and entities in clauses (x) and (y), each a "Covered Manager Person"), to the fullest extent permitted by applicable law, (i) carry on and conduct, whether directly, or as a partner in any partnership, or as a joint venturer in any joint venture, or as an officer, director or stockholder of any corporation, or as a participant in any syndicate, pool, trust or association, any business of any kind, nature or description, whether or not such business is competitive with or in the same or similar lines of business as the Corporation, (ii) do business with any client, customer, vendor or

lessor of any of the Corporation or its affiliates, and (iii) make investments in any kind of property in which the Corporation may make investments. To the fullest extent permitted by Section 122(17) of the DGCL, the Corporation hereby renounces any interest or expectancy of the Corporation to participate in any business of the Managers or their affiliates, and waives any claim against a Covered Manager Person and shall indemnify a Covered Manager Person against any claim that such Covered Manager Person is liable to the Corporation or its stockholders for breach of any fiduciary duty solely by reason of such person's or entity's participation in any such business.

In the event that a Covered Manager Person acquires knowledge of a potential transaction or matter which may constitute a corporate opportunity for both (x) the Covered Manager Person, in his or her Apollo-related capacity or TPG-related capacity, as the case may be, or Apollo or TPG, as the case may be, or its affiliates and (y) the Corporation, the Covered Manager Person shall not, to the fullest extent permitted by applicable law, have any duty to offer or communicate information regarding such corporate opportunity to the Corporation. To the fullest extent permitted by Section 122(17) of the DGCL, the Corporation hereby renounces any interest or expectancy of the Corporation in such corporate opportunity and waives any claim against each Covered Manager Person and shall indemnify a Covered Manager Person against any claim, that such Covered Manager Person is liable to the Corporation or its stockholders for breach of any fiduciary duty solely by reason of the fact that such Covered Manager Person (i) pursues or acquires any corporate opportunity for its own account or the account of any affiliate, (ii) directs, recommends, sells, assigns, or otherwise transfers such corporate opportunity to another person or (iii) does not communicate information regarding such corporate opportunity to the Corporation, provided, however, in each case, that any corporate opportunity which is expressly offered to a Covered Manager Person in writing solely in his or her capacity as an officer or director of the Corporation shall belong to the Corporation.

Any person or entity purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article X.

This Article X may not be amended, modified or repealed without the prior written consent of each of the Managers.

ARTICLE XI
FORUM SELECTION

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (c) any action asserting a claim arising pursuant to any provision of the DGCL or the Corporation's certificate of incorporation or bylaws, (d) any action to interpret, apply, enforce or determine the validity of the Corporation's certificate of incorporation or bylaws or (e) any action asserting a claim governed by the internal affairs doctrine, in each such case subject to such Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XI.

ARTICLE XII

The Corporation expressly elects not to be governed by Section 203 of the DGCL.

TAB 5

OPPM
ALLEN J. WILT, ESQ. (SBN 4798)
JOHN D. TENNERT III, ESQ. (SBN 11728)
FENNEMORE CRAIG, P.C.
300 East Second Street, Suite 1510
Reno, NV 89501
Telephone: (775) 788-2200
Facsimile: (775) 786-1177
e-mail: awilt@fclaw.com
jtennert@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.

PHWLV, LLV, 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.: XV

DEFENDANT GORDON RAMSAY'S OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant Gordon Ramsay ("Ramsay") respectfully submits his opposition to the motion for preliminary injunction (the "Motion") filed by Plaintiff Rowen Seibel ("Seibel"), appearing derivatively on behalf of GR BURGR LLC ("GRB").

INTRODUCTION

This case represents an attempt by a convicted felon to avoid the necessary effects of his conviction and to circumvent the ongoing dissolution proceedings of GRB in Delaware Chancery Court. Now some six months after PHWLV, LLC ("PH") deemed Seibel, and by extension GRB,

"Unsuitable Persons" and terminated the restaurant agreement between PH and GRB, Seibel comes to this Court seeking extraordinary equitable relief. But he comes too late. Seibel seeks to either: (1) force PH to reinstate a terminated contract with GRB, a deadlocked entity now in dissolution proceedings; or, (2) in the alternative, accelerate the wind-up of the BURGR Gordon Ramsay restaurant. (*See* Mot. at 1-2.) Seibel then adds on to his request for injunctive relief a request that the Court also prohibit PH from opening any similar restaurant in the restaurant premises. Seibel's first two requests fail to satisfy the stringent standards for extraordinary equitable relief, and his third fails as it is supported by no evidentiary or legal basis whatsoever.

Termination of the Development Agreement was occasioned by Seibel's own deceit and criminal acts which had continued for many years and his resulting felony conviction and felony sentence. Any harm that may have befallen GRB is attributable to Seibel's acts and omissions alone. In turn, those acts have damaged both his innocent business associate Gordon Ramsay, and the party invested in running BURGR Gordon Ramsay, PH. In essence, Seibel asks this Court to excuse him from the fallout from his felony conviction and his designation as an "Unsuitable Person" for purposes of associating with a Nevada gaming licensee. This Court should not, and cannot excuse Seibel. Seibel does not come to Court with clean hands.

The relief requested in the Motion is directed at PH—not Ramsay. However, the injunction requested would also have a substantial and detrimental effect on Ramsay, who operates several restaurants at properties owned by Caesars Entertainment Corporation, or its affiliates (collectively, "Caesars"). Ramsay cannot continue to do business with a convicted felon like Seibel without impairing his own ability to pursue business relationships with Caesars and similarly regulated parties. Seibel's request for extraordinary equitable relief should be denied for each of the following reasons.

First, Seibel's request to "enjoin termination of the Development Agreement" is moot because the Development Agreement has already been terminated. Further, GRB is deadlocked and is soon to be dissolved. A deadlocked entity cannot perform the obligations under the Development Agreement. Moreover, GRB is **no longer** the exclusive licensee of the mark "BURGR Gordon Ramsay" and has lost all rights in and to the mark. The license agreement

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

between GRUS and GRB (the "License Agreement") was terminated on September 22, 2016—the day after the Development Agreement was terminated by PH. (*See* App. at Ex. A, Decl. of Gaut and Ex. 1 thereto; *see also* Mot. at 8.) Even if the Court could reinstate the Development Agreement—and it shouldn't—termination of the License Agreement also makes performance under the Development Agreement and continued operation by GRB of BURGR Gordon Ramsay impossible.

Second, there is no basis to support Seibel's alternative request to enjoin PH and Ramsay from operating a new restaurant in the space currently occupied by BURGR Gordon Ramsay. The Development Agreement permits PH to immediately open a new restaurant post-termination, provided that it does not use the marks or materials that GRB licensed to PH. Seibel has not presented, and cannot present any evidence to support his belief that the new restaurant will use material licensed by GRB to PH under the Development Agreement.

Third, Seibel cannot establish that GRB will suffer immediate, irreparable injury if the preliminary injunction is denied. The only injury detailed in the Motion is lost license fees allegedly incurred prior to, and post-termination. These fees are plainly compensable in monetary damages, and therefore, not irreparable. Moreover, Seibel's extensive delay in filing suit weighs heavily against any finding of immediate, irreparable harm.

Fourth, the balance of harms tips sharply in favor of denying the requested injunction. To start, PH, and by extension Caesars, would face significant harm were the Motion to be granted, since an injunction would reinstate a relationship with a convicted felon in violation Caesars' compliance program and thereby jeopardize its gaming license. So, too, would the requested injunction jeopardize Ramsay's ability to continue or pursue business associations with regulated gaming and alcoholic licensees or their affiliates. In comparison, GRB is deadlocked and will likely be dissolved by a Delaware court regardless of whether or not this Court enters an injunction. Seibel's alternative request that the Court enjoin PH from operating a similar themed burger restaurant at the premises threatens a massive economic harm to PH and to Ramsay, who are trying to mitigate the harm inflicted by Seibel's criminal conduct, with no corresponding benefit to what remains of GRB.

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

Fifth, Seibel has no likelihood of success on the merits of the derivative claims purportedly brought on behalf of GRB as they relate to wrongful termination of the Development Agreement. Moreover, dissolution of GRB is imminent. Post-dissolution, a court-appointed receiver will then have standing to pursue claims of GRB, if any.

Finally, granting a preliminary injunction to the benefit of a convicted felon so that he may continue to profit from his relationship with an unwilling Nevada gaming licensee is not in the public interest.

For all of these reasons, and each of them, the Court should deny Seibel's Motion.

FACTUAL BACKGROUND

Ramsay's opposition is best understood in the context of: (1) the creation of GRB and its relationship with PH; (2) the relevant gaming commission regulations and their impact on the Development Agreement; (3) the deteriorating relationship between Ramsay and Seibel and the resulting deadlock at GRB; (4) Seibel's felony conviction and termination of the Development Agreement and License Agreement; (5) GRB's Delaware dissolution proceedings; and (6) Seibel's extensive delay in moving for preliminary injunction.

I. THE CREATION OF GRB AND ITS RELATIONSHIP WITH PH

GRB is a Delaware LLC, formed in December 2012 by celebrity chef Gordon Ramsay, through GRUS Licensing, LP ("GRUS") and Seibel. (*See* Ex. 3 to Pls.' App. at 64.) GRB is governed by the Limited Liability Company Agreement of GR BURGR, LLC (the "GRB Operating Agreement"). (*See id.* at Recitals at 64-65.) GRUS and Seibel each own a 50% member interest in GRB. (*Id.* at 69, § 7.2.)[1] GRB was formed to develop or license the rights to develop, first-class, burger-themed restaurants utilizing limited rights to use Mr. Ramsay's name and celebrity cachet in conjunction with the word BURGR. (*See* Ex. 3 to Pls.' App. at 64-65 & 65-66, § 4.) To this end, as contemplated by the GRB Operating Agreement, contemporaneous with the execution of the GRB Operating Agreement, GRUS and GRB executed the License Agreement.

[1] GRUS is a Delaware limited partnership consisting of Kavalake Ltd., Ramsay, and GR US General Partner LLC. (*See* App., Ex. B, Kerr Decl. at 1, ¶ 5.)

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

A. The License Agreement

Under the License Agreement GRUS granted GRB an exclusive license to use and/or sublicense the "BURGR Gordon Ramsay" trademark in the operation of its business—specifically to use the mark in connection with the development and operation of restaurants solely under the name "BURGR Gordon Ramsay." (*See* Ex. 4 to Pls.' App. at 111-112, § 1.1.) The License Agreement makes clear that the "BURGR Gordon Ramsay" mark is the "sole and exclusive property" of GRUS, (*id.* at 111, § 1.4), and that all rights not granted by GRUS to GRB are expressly reserved to GRUS. (*Id.* at 115, § 7.5(a)). Additionally, "[a]ll specially created designs, and any and all copyrights and other intangible property rights in them and in any package design, label, package insert, signage, advertising, promotional or other material displaying the [BURGR Gordon Ramsay mark] will be property of [GRUS]" even if not created by GRUS and shall be deemed "works for hire" for GRUS if created by any other party. (*Id.* at 115, § 7.5(a).)

The License Agreement further clarified that GRUS and 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." (*Id.* at 110, § 1.1.) In sum, GRUS owns the "BURGR Gordon Ramsay" mark and merely *licensed* it to GRB for the limited purposes. (*See id.*) Upon termination of the License Agreement, all of GRB's rights to the "BURGR Gordon Ramsay" mark, including anything created using the mark, terminated and reverted back to GRUS. (*Id.* at 117, § 11.) Gordon Ramsay and his entities remained and are free to use his name in conjunction with any other restaurant including burger restaurants without fetter or inhibition.

B. The Development Agreement

In connection with the formation of GRB and execution of the License Agreement, GRB entered into a Development, Operation and License Agreement (the "Development Agreement") with Ramsay and PHW Manager, LLC on behalf of PHW las Vegas, LLC DBA PH. (*See* Ex. 1 to Pls.' App.) Under the Development Agreement, GRB agreed to sublicense the name "BURGR Gordon Ramsay" (defined in the Development Agreement as the "GRB Marks") and license the concept, system, menus and recipes created by Ramsay or GRB (defined in the Development

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

Agreement as the "General GR Materials") to PH for use in a burger-themed restaurant named "BURGR Gordon Ramsay" in the Planet Hollywood Resort & Casino in Las Vegas, Nevada. (*See id.* at 6 (Recitals) & 22-24 (Article 6).) In exchange for this sub-license and license, PH agreed to pay GRB a fee based on a percentage of gross restaurant and merchandise sales. (*See id.* at 26 (§ 8.1).) GRB cannot grant greater rights than it obtained from GRUS and may only do so subject to the License Agreement.

Since its inception, GRB's only business, and it sole income generating asset, has been through the Development Agreement and the operation of the BURGR Gordon Ramsay restaurant in the Planet Hollywood casino. (*See* Ex. 18 to Pls.' App. at 222-223 (¶¶ 24-25).)

II. THE RELEVANT NEVADA GAMING COMMISSION REGULATIONS AND THEIR IMPACT ON THE DEVELOPMENT AGREEMENT

As a public gaming company, PH is a highly regulated business, subject to and existing because of privileged licenses, including those issued by the Nevada Gaming Commission (the "Commission"). (*See* Ex. 4 to Pls.' App. at 30-31 (§ 11.2).) As a condition of licensing and registration by the Commission, PH is required to have a compliance review and reporting system (a "Compliance Program"). (*Id.*; *see also* NEV. GAMING COMM'N REG. 5.045(1).) Among the subjects that a Compliance Program must monitor and routinely report to the Commission are "[a]ssociations with persons . . . who may be deemed to be unsuitable to be associated with a licensee or registrant." NEV. GAMING COMM'N REG. 5.045(6)(a). Failure to take action to eliminate an unsuitable association and make timely reports of the action to the Commission can result in fines or the suspension, limitation, or revocation of licenses and registrations. *See* NEV. REV. STAT. §§ 463.225, .310 & .360.

Given this regulatory framework, the Development Agreement was expressly conditioned on PH being satisfied that GRB, its members and managers and their respective affiliates are not at any time "Unsuitable Persons." (*See* Ex. 1 to Pls.' App. at 11, § 2.2.) An "Unsuitable Person," as defined in the Development Agreement, is a person "whose association with [PH] or its Affiliates could be anticipated to result in a disciplinary action relating to, or the loss of, inability to reinstate or failure to obtain" gaming and alcohol

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

licenses held by PH. (*Id.*) An Unsuitable Person also includes any person "who is or might be engaged in or about to be engaged in any activity which could adversely impact the business or reputation of PH or its Affiliates." (*Id.*) The Development Agreement granted PH the sole and exclusive judgment to determine whether any person associated with GRB, its members and managers, or its affiliates is an Unsuitable Person. (*Id.* at 30-31, § 11.2.)

Upon such a determination of unsuitability of any person associated with GRB, PH had the right to terminate the Development Agreement upon written notice and a subsequent failure by GRB to cease its relationship with such person to PH's satisfaction. (*Id.*) The Development Agreement provides PH with complete discretion as to such a termination, providing that "[a]ny termination by [PH] pursuant to this Section 11.2 shall not be subject to dispute by Gordon Ramsay or GRB." (*Id.*)

In the event of an early termination of the Development Agreement, to avoid an immediate closing of the BURGR Gordon Ramsay restaurant, PH is entitled to "operate the Restaurant and use the License for one hundred twenty (120) days from such termination to orderly and properly wind-up operations of the Restaurant." (*Id.* at 18-19, § 4.3.2(a).)

III. THE DETERIORATING RELATIONSHIP BETWEEN RAMSAY AND SEIBEL AND THE RESULTING DEADLOCK AT GRB

The BURGR Gordon Ramsay restaurant has been a success despite the increasingly dysfunctional and acrimonious relationship between Ramsay and Seibel. Ramsay and Seibel have been engaged in contentious litigation since 2014 in the Supreme Court of the State of New York relating to a separate restaurant joint venture in Los Angeles called Fat Cow (the "New York Action"). (*See* App., Ex. C, Dudderar Decl. and Seibel's verified counterclaims filed in the Delaware Proceedings attached thereto at 80-81, ¶¶ 37-42.) That litigation involves mutual allegations by Seibel and Ramsay of breaches of contract and fiduciary duty, as well as a claim by Ramsay that Seibel committed fraud. (*See id.*)

In response to a petition to dissolve GRB in Delaware, Seibel filed a one hundred and three paragraph counterclaim alleging an outlandish conspiracy theory pursuant to which Ramsay and Caesars conspired to render Seibel unsuitable for purposes of the relevant agreements and

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

asserting breach of contract and fiduciary duty claims against GRUS purportedly on behalf of GRB. (*See id.*) Seibel asserts essentially the same claims and allegations against Ramsay and Caesars in this lawsuit.

Seibel thus admits, as he must, that the parties' relationship is severely damaged and has undermined their ability to work together in GRB. (*See id* at 34, ¶ 43.) As such, beginning in late 2013, the managers have rarely met or discussed business issues with each other. (*See id*. 35-36, ¶¶ 46-47; Ex. 18 to Pls.' App. at 222, ¶ 26 ("the Managers of GRB do not meet and do not speak").) Because the GRB Operating Agreement requires the unanimous agreement of the two managers for all decisions other than those related to the License Agreement, this has resulted in a complete stalemate as to all decisions on behalf of GRB, with no means of breaking the deadlock. (*See* Ex. 18 to Pls.' App. at 222, ¶ 26.)

IV. SEIBEL'S CRIMINAL ACTIVITIES LEAD TO THE TERMINATION OF THE DEVELOPMENT AGREEMENT

On April 11, 2016, Seibel sent a letter to GRUS requesting, in a single paragraph, that GRUS consent to a transfer of his membership interests in GRB to "The Seibel Family 2016 Trust," resign as manager, and appoint a new manager in his place. (*See* Ex. 13 to Pls.' App. at 146-156.) Seibel provided no reason for the requests, and did not inform GRUS of the then pending criminal proceedings in the Southern District of New York. (*See id.*) In his Motion, Seibel argues, wrongly, that "GRUS rejected that attempted transfer without basis." (Mot. at 7.) Actually, GRUS (aware of the obligations to PH for full due diligence and disclosure) responded to Seibel's request in writing and noted that it was unable to consent to the membership assignment taking place *immediately*, but noted that "[w]e would however be willing to consider the proposed Membership Assignment and in order for us to do so, the following information is required is soon as possible:

a. details of the ownership structure of The Seibel Family 2016 Trust (the "Trust");

b. details of, and your relationship/affiliation with, the trustee(s) and beneficiary(ies) and the ultimate beneficial owner of the Trust;

c. details of any appointed representatives/agents of the Trust;

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

d. certified copies of constitutional documents relating to the Trust, including but not limited to the Certificate of Incorporation and the constitution/bylaws of the equivalent governing documents;

e. clarification of the commercial rationale for the proposed Membership Assignment; and

f. any other material information which might assist us with consideration of the proposed Membership Assignment.

(Ex. 14 to Pls.' App. at 155.)

GRUS requested that Seibel provide this critical information within five days. (*Id.* at 156.) Seibel never responded. Instead, on April 18, 2016, Seibel pled guilty to a one-count felony criminal information charging him with impeding the administration of the Internal Revenue Code (26 U.S.C. § 7212) by using undeclared Swiss bank accounts and a Panamanian shell company to hide more than $1 million in taxable income. (*See* App., Ex. C at 98-123 (Hr'g Tr. S.D.N.Y., Aug. 19, 2016); Compl. ¶ 36.)

On August 19, 2016, Judge William H. Pauley, III of the United States District Court for the Southern District of New York sentenced Seibel to one month of imprisonment, six months of home detention, and 300 hours of community service, and ordered restitution. (*See* App., Ex. C at 120 (Hr'g Tr. 22:8-21).) Judge Pauley described Seibel's actions as "a serious crime against the United States" and found that "the fact is that [Seibel] knew very well what [he was] doing was wrong." (*Id.* at 113 (15:15) and 119-120 (21:25-22:1).) Judge Pauley further stated, "[w]hatever the motivation for getting involved in this scheme and, more importantly, for continuing in the scheme for as long as he did . . . the fact is that it continued for many years, and he made a whole series of corrupt and misguided decisions to perpetuate it." (*Id.* at 119 (21:10-15).) In pleading with the Court for a minimal sentence, Seibel's counsel asserted correctly: "He's branded a felon and will be branded a felon for his entire life." (*Id.* at 103 (5:1-2).)

This event and the realization that it had arisen over many years and been hidden from GRUS and PH struck at the heart of GRB's ability to continue the business operations that it was formed to pursue. On September 2, 2016, GRUS's counsel sent a letter to Seibel's counsel expressing outrage that Seibel had failed to disclose the IRS investigation and subsequent conviction and prison sentence and that GRUS had only heard about Seibel's criminal acts through

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

public news sources. (*See* App. at Ex. A, p 6-8, Ltr. from K Gaut to B. Ziegler (Sept. 2, 2016).) Next, Caesars' counsel sent notice to GRB, Seibel's attorney, and Ramsay on September 2, 2016, stating that, in Caesars' judgment, which judgment is deemed to be contractually conclusive, the conviction rendered Seibel an "Unsuitable Person" under the Development Agreement. (*See* Ex 15 to Pls.' App. at 158-159.) Caesars' counsel demanded that GRB cease any relationship with Seibel within ten days, warning that if GRB failed to terminate the relationship to Caesars' satisfaction, Caesars would be required to terminate the Development Agreement pursuant to Section 4.2.5 thereof. (*See id.*) On September 6, 2016, GRUS requested that Seibel terminate his relationship with GRB and that he sign all necessary documents confirming such termination. (*See* App., Ex. A at 9-11, Ltr. from K Gaut to B. Ziegler (Sept. 6, 2016).)

In response to Caesars' September 2, 2016 notice, Seibel proposed to disassociate himself from GRB by transferring his interest in GRB to his family trust. (*See* App., Ex. A at 12-14, Ltr. from B. Ziegler to K. Gaut (Sept. 8, 2016).) On September 12, 2016, Caesars informed Seibel's counsel that it rejected this proposal because, in Caesars' judgment, the proposed assignees would have direct and/or indirect relationships with Seibel thereby rendering them "Unsuitable Persons" under the Development Agreement. (*See* Ex. 12 to Pls.' App at 145.) GRUS thereupon reiterated its demand that Seibel completely disassociate from GRB. (Ex. 16 to Pls.' App. at 160-163.) Seibel demurred. On September 21, 2016, Caesars terminated the Development Agreement pursuant to Sections 4.2.5 and 11.2 thereof. (Ex. 10 to Pls.' App. at 138-140.)

Ramsay has no obligation to do business with anyone other than those parties that he or his entities have contracted with. The basis for the rejection of Seibel's proposed assignment stems not only from Seibel failure to completely dissociate himself from GRB, but also from Ramsay's right to choose whom to partner with in a venture where his name and reputation constitute the enterprise.

V. GRUS TERMINATES THE LICENSE AGREEMENT AND GRB OPERATING AGREEMENT

On September 22, 2016, GRUS sent notice to GRB that it was terminating the License Agreement because the termination of the Development Agreement defeated the purpose of the

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

License Agreement, and because Seibel had failed to disclose and/or made misrepresentations concerning his criminal activities. (*See* App., Ex. A at 4-5, Ltr. from K Gaut to GRB & B. Ziegler (Sept. 22, 2016).) The termination was effective as of or before the date that Caesars' terminated the Caesars' Agreement. (*See id.*)

On September 27, 2016, GRUS provided notice to Seibel and GRB that it terminated and/or rescinded the GRB Operating Agreement, effective as of or before the termination of the Development Agreement on September 21, 2016. (*See* App., Ex. A at 4-5, Ltr. from K Gaut to R. Seibel & B. Ziegler (Sept. 27, 2016).) On October 4, 2016, counsel for GRUS provided written notice to Caesars' counsel that it had terminated the License Agreement and GRB Operating Agreement. (*Id.* at 18-19, Ltr. from D. Reaser to M. Clayton (Oct. 4, 2016).)

VI. THE DELAWARE DISSOLUTION PROCEEDINGS

On October 13, 2016, GRUS commenced a proceeding for judicial dissolution ("Dissolution Proceedings") of GRB on the ground of shareholder deadlock pursuant to 6 Del. C. § 18-802 and the terms of the GRB Operating Agreement. (*See* Ex. 18 to Pls.' App. at 167-169.) On November 23, 2016, Seibel filed a verified answer to the dissolution petition and verified counterclaims against GRUS, asserting various derivative claims purportedly on behalf of GRB. (*See* App., Ex. C at 51-97.) GRUS filed a motion for judgment on the pleadings on December 13, 2016 seeking judgment as a matter of law with respect to the Dissolution Petition (the "MJOP"), (*see* id., at 124-127), and moved to dismiss or, in the alternative, to sever or stay the Counterclaims, (*id.* at 128-131). The Delaware Court stayed all activity in the Delaware Proceedings until it considers and rules on the MJOP and decides whether to dissolve GRB. The MJOP is fully briefed and set for hearing on June 12, 2017.

VII. THE NEVADA FEDERAL COURT PROCEEDINGS

On January 11, 2017, Seibel filed a derivative action on behalf of GRB against PH and Ramsay in the U.S. District of Nevada ("Federal Court"), Case No. 2:17-cv-00091-JAD-PAL. Notwithstanding the fact that the Development Agreement had been terminated for over three months, Seibel also filed a motion for preliminary injunction that is substantially similar to the motion now before this Court. Both PH and Ramsay filed opposition briefs that raised the fact that

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

the Federal Court lacked subject matter jurisdiction because the parties lacked complete diversity of citizenship. (ECF Nos. 17, 19.) In short both Ramsay and GRB are British Citizens. (*See* ECF No. 17.) In an attempt to cure the diversity issue, Seibel voluntarily dismissed Ramsay from the federal action on the eve of the preliminary injunction hearing. (ECF No. 25.)

At the February 13, 2017 preliminary injunction hearing, the Federal Court did not address the merits of Seibel's motion; but rather, requested additional briefing on whether Ramsay and GRUS were necessary and indispensable parties to the case. (*See* ECF No. 29.) Seibel and PH stipulated to dismissal of the federal case on February 21, 2017 and the Federal Court dismissed the action the next day. (*See* ECF Nos. 30, 31.) Seibel filed this action on February 28, 2017, and his motion for preliminary injunction on March 6, 2017.

PRELIMINARY INJUNCTION STANDARDS

"A preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Hakkasan LV, LLC v. Miller*, No. 2:15-CV-290-JAD-PAL, 2015 WL 751094, at *1 (D. Nev. Feb. 23, 2015) (emphasis in original) (quotation omitted).[2] Thus, "[i]njunctive relief is never granted as of right." *Id.* To obtain preliminary injunctive relief, the plaintiff bears the burden to demonstrate each of the following four factors: (1) a likelihood of success on the merits, (2) irreparable injury absent preliminary injunction, (3) that the balance of hardships tips in their favor, and (4) that injunctive relief in in the public's interest. *Univ. & Cmty. Coll. Sys. of Nevada v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004) (internal citations omitted.) "The moving party bears the burden of providing testimony, exhibits, or documentary evidence to support its request for an injunction." *Hosp. Int'l Grp. v. Gratitude Grp., LLC*, 387 P.3d 208 (Nev. 2016)(citing *Coronet Homes, Inc. v. Mylan*, 84 Nev. 435, 437, 442 P.2d 901, 902 (1968)).

Where, as here, the plaintiff seeks a mandatory rather than a prohibitory injunction, the

[2] In reviewing preliminary injunction requests, the Nevada Supreme Court finds that federal cases interpreting Fed. R. Civ. P. 65 "are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts." *Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119 (1990); *Hosp. Int'l Grp. v. Gratitude Grp.*, LLC, 387 P.3d 208 (Nev. 2016) (same).

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

"preliminary relief is subject to heightened scrutiny and should not be issued unless the facts and law clearly favor the moving party." *HPEV, Inc. v. Spirit Bear Ltd.*, No. 2:13-CV-01548-JAD, 2014 WL 3845126, at *3 (D. Nev. Aug. 5, 2014) (quotation omitted). Seibel asks this Court to compel Caesars to reinstate a terminated contractual relationship with GRB, a soon-to-be dissolved entity, which no longer even has the right to sublicense the "BURGER Gordon Ramsay" trademarks. Such extraordinary relief, if even possible, would dramatically alter the status quo and is "particularly disfavored." *E.g., Am. Freedom Def. Initiative v. King Cty.*, 796 F.3d 1165, 1173 (9th Cir. 2015); *Leonard v. Stoebling*, 102 Nev. 543, 551, 728 P.2d 1358, 1363 (1986) ("A mandatory injunction is a stern remedy" and courts must "exercise restraint and caution" in altering the status quo). Even the prohibitory relief sought by Seibel would alter the status quo because it would shutter the transforming restaurant.

Seibel cannot establish a single factor, let alone clear the high bar of obtaining the mandatory injunctive relief he seeks on behalf of GRB.

ARGUMENT

I. SEIBEL'S REQUEST TO ENJOIN TERMINATION IS MOOT BECAUSE PH HAS ALREADY TERMINATED THE DEVELOPMENT AGREEMENT

Seibel's request for mandatory injunction should be denied as moot because the requested relief is no longer available. Specifically, Seibel seeks to enjoin PH from terminating the Development Agreement that has already been terminated. It is axiomatic that the Court cannot enjoin an event that has already occurred. Indeed, "injunctive relief is available to prevent threatened injury and is not a remedy designed to right completed wrong." *E.g., Madrid v. Perot Sys. Corp.*, 130 Cal. App. 4th 440, 464–65, 30 Cal. Rptr. 3d 210, 228 (2005). "If there is no longer a possibility that [a litigant] can obtain relief for his claim, that claim is moot and must be dismissed for lack of jurisdiction." *Ruvalcaba v. City of Los Angeles*, 167 F.3d 514, 521 (9th Cir.1999). For example, the Nevada Supreme Court has held that a claim to enjoin foreclosure is moot when a foreclosure sale has already occurred. *Centeno v. Nat'l Default Servicing Corp.*, No. 61416, 2013 WL 3325017, at *1 (Nev. Apr. 12, 2013) (affirming district court's denial of motion preliminary injunction). When injunctive relief is moot, only claims for monetary damages, if any,

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

may survive. *See Doe v. Madison Sch. Dist. No. 321*, 177 F.3d 789, 798 (9th Cir. 1999) (en banc).

Seibel inaccurately suggests that injunctive relief is appropriate because, if issued, the "current status quo would remain unchanged" through trial. (Mot. at 27.) Not so. The Development Agreement was terminated more than five months before Seibel filed this lawsuit. Shortly after the Agreement was terminated, GRUS terminated its License Agreement with GRB and all rights in and to the "BURGR Gordon Ramsay" trademark and anything containing it reverted back to GRUS. Thus, GRB no longer has any right to sublicense the "BURGER Gordon Ramsay" trademark to Caesars—under the terminated Development Agreement or otherwise. Seibel obliquely claims that he "is contesting that improper termination," but GRUS is not a party to this action and Seibel has not asserted any claims to "contest" termination of the License Agreement. (*See* Mot. at 8 n. 20.) This Court has no jurisdiction over GRUS to reinstate the License Agreement—nor is there any basis to do so. Put simply, GRB has no right whatsoever to the "BURGR Gordon Ramsay" mark or any property developed using that mark. Without the intellectual property provided by GRUS to GRB, the requested mandatory injunctive relief is impossible. As noted in Seibel's motion, PH is in the process of winding up the GR BURGR Restaurant with an expected transition date of March 31, 2017.

The status quo is that the Development Agreement has been terminated, the license between GRUS and GRB necessary for GRB to perform under the Development Agreement has been terminated with reversion of rights to GRUS, GRB is deadlocked and soon to be dissolved by a Delaware Court, and development of the new restaurant that will replace BURGR Gordon Ramsay is underway. Because the Development Agreement was terminated several months before Seibel initiated this lawsuit, and non-parties have taken action in reliance on that termination, Seibel's request for mandatory injunctive relief is moot and should be denied. GRB's remedy, if any, for PH's alleged breach of contract for wrongful termination or continued use of GRB's property beyond the 120-day post-termination period is monetary damages. Injunctive relief is unavailable.

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

II. THERE IS NO BASIS TO ENJOIN PH FROM OPERATING A NEW RESTAURANT WITH RAMSAY

As an alternative request, Seibel asks the Court to enjoin PH and Ramsay and from operating a new restaurant in the space currently occupied by BURGR Gordon Ramsay (the "Restaurant Premises"). The Development Agreement does not prohibit PH from opening a new restaurant involving Ramsay in the Restaurant Premises. Section 4.3.2(e) gives PH "the right, but not the obligation, immediately or at any time after such expiration or termination, to operate a restaurant in the Restaurant Premises. . . ." (Ex. 1 to Pls.' App. at 19.) There is no restriction on the type of restaurant that PH may operate in the Restaurant Premises; nor is there any restriction on the persons that PH may partner with to operate a new restaurant. (*See id.*) Section 4.3.2(e) does, however, preclude PH from operating a restaurant that uses (1) "[BURGR Gordon Ramsay's] food and beverage menus or recipes developed by GRB and/or Gordon Ramsay" or (2) "any of the GRB Marks or General GR Materials." (*Id.*)

Seibel presents no testimony, exhibits, or documentary evidence to support his contention that PH and Ramsay intend to "rebrand" BURGR Gordon Ramsay and actually use the GRB Marks, General GR Materials, or menus or recipes developed by GRB and/or Gordon Ramsay under the Development Agreement. Instead, Seibel surmises that any new restaurant developed by PH and Ramsay will be "similar" to the Restaurant because the USPTO rejected a trademark application for the mark "Gordon Ramsay Burger," finding it was too similar to the GRUS-owned BURGR Gordon Ramsay mark. (*See* Mot. at 9.) That's it. Seibel can point to no documentary evidence to support his request that the Court enjoin PH from opening a new restaurant named Gordon Ramsay Burger.

Nothing in the Development Agreement prohibits PH and Ramsay from opening a new restaurant named "Gordon Ramsay Burger." The term "Gordon Ramsay Burger" is neither a GRB Mark nor General GR Material. The fact that the USPTO found a likelihood of confusion with "BURGR Gordon Ramsay" has no relevance to PH's post-termination right to operate a new restaurant named "Gordon Ramsay Burger" at the Restaurant Premises. Section 4.3.2(e) only prohibits use of the *actual* GRB Marks and General GR Materials in a new restaurant. (*See* Ex. 1

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

to Pls.' App. at 19, § 4.3.2(e).) To the extent that Seibel argues this provision is ambiguous – it is not – the provision must be construed against Seibel as he drafted the Development Agreement. *See Anvui, LLC v. G.L. Dragon, LLC*, 123 Nev. 212, 215–16, 163 P.3d 405, 407 (2007) (providing that ambiguities in a contract are generally construed against the drafter).

Seibel has presented no evidence that the new restaurant will use any of the GRB Marks, General GR Materials, or menus and recipes developed by GRB and Ramsay for the BURGR Gordon Ramsay restaurant in violation of Section 4.3.2(e). As the movant for extraordinary relief, Seibel failed to carry his burden of proof and the Court must deny Seibel's requested injunction.

A. PH Is Not Required to Enter Into An Agreement With GRB to Operate a New Restaurant

Seibel also argues that Section 14.21 of the Development Agreement prohibits PH from operating *any* burger themed restaurant without entering into an agreement with GRB in perpetutity. (Mot. at 21.) Not so. Section 14.21 governs "Additional Restaurant Projects" and states: "If PH 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, operating and license agreement generally on the same terms and conditions as this Agreement. . . ." (*See* Ex. 1 to Pls.' App. at 34, § 14.21.) Section 14.21 represents an obligation of GRB—not PH. If PH elects to pursue additional restaurants with GRB, section 14.21 obligates GRB, or its Affiliate(s), to enter into an agreement with PH. Section 14.21 does not obligate PH to partner with GRB to operate a burger related venture.

B. PH Is Not Required to Terminate Its Relationship with Ramsay

Seibel also argues that when PH terminated the Development Agreement it was "obligated" to terminate any business relationship with Ramsay. (Mot. at 17.) Seibel claims Section 11.2 supports this result. It does not. Section 11.2 addresses PH's status as a privileged licensee and provides that PH shall have the right, "in its sole discretion" to deem any GR Associate, including Seibel, an Unsuitable Person. (*See* Ex. 1 to Pls.' App. at 31, § 11.) If PH deems any GR Associate an Unsuitable Person, GRB and/or Ramsay must terminate any relationship with that person to PH's satisfaction. (*Id.*) If the relationship between GRB or

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

Ramsay and an unsuitable GR Associate is not ended, § 11.2 states "as determined by PH *in its sole discretion*, PH shall, without prejudice to any other rights or remedies of PH including at law or in equity, have the right to terminate this Agreement and its relationship with Gordon Ramsay and GRB." (*Id.*)

As a result of Seibel's felony conviction for tax fraud, PH deemed Seibel and Unsuitable Person—not Ramsay. PH demanded that GRB terminate its relationship with Seibel—not Ramsay. After it was confirmed that Seibel would not completely dissociate himself from GRB, PH exercised its discretionary right to terminate the Development Agreement, only. Section 11.2 provides PH with complete discretion to continue business with Ramsay, or any other persons or entities that it deems suitable.

III. SEIBEL HAS NOT DEMONSTRATED IRREPARABLE INJURY

Seibel cannot establish any likelihood of immediate, irreparable harm. "An essential prerequisite to the granting of a preliminary injunction is a showing of irreparable injury to the moving party in its absence." *Dollar Rent a Car of Wash., Inc. v. Travelers Indem. Co.*, 774 F.2d 1371, 1375 (9th Cir. 1985). Harm is "irreparable" if it cannot adequately be remedied by compensatory damages. *Hamm v. Arrowcreek Homeowners' Ass'n*, 124 Nev. 290, 297, 183 P.3d 895, 901 (2008). Courts require that "a plaintiff cannot simply state or argue that they will suffer irreparable harm, they must proffer evidence sufficient to establish a likelihood of irreparable harm." *Dryden v. Nevada*, No. 2:16-CV-01227-JAD-GWF, 2016 WL 3660130, at *2 (D. Nev. July 7, 2016).

Seibel's claim of irreparable harm fails for at least three reasons. *First*, the only injury that Seibel alleges GRB has sustained is financial and therefore compensable in monetary damages. *Second*, Seibel's substantial delay in moving for injunction relief—several months after the Development Agreement was terminated—weighs heavily against finding immediate, irreparable harm. *Third*, Seibel's arguments for irreparable harm lack merit.

A. Seibel Alleges Only Financial Injury For Lost Revenue, Which Cannot Constitute Irreparable Harm

Should this case proceed to trial, GRB has an adequate remedy at law. The only harm

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

alleged is financial injury in the form of license fees unpaid to GRB and/or paid to Ramsay and/or his entities. It is well-established that this type of injury is compensable in monetary damages, and thus, not irreparable. *E.g.*, *Los Angeles Memorial Coliseum Comm'n v. National Football League*, 634 F.2d 1197, 1202 (9th Cir.1980) (noting that monetary injury due to lost revenues is not normally considered irreparable); *Rimlinger v. Shenyang 245 Factory*, No. 2:13-CV-2051-JAD-NJK, 2014 WL 2527147, at *6 (D. Nev. June 4, 2014) ("A plaintiff is not entitled to an injunction if money damages would fairly compensate him for any wrong he may have suffered.") Where, as here, adequate compensatory relief will be available in the course of litigation, "[m]ere financial injury will not constitute irreparable harm." *People of State of Cal. ex rel. Van De Kamp v. Tahoe Regional Planning Agency*, 766 F.2d 1316 (9th Cir. 1985).

Seibel alleges claims against Defendants for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and civil conspiracy. For each of these claims, Seibel requests "damages exceeding $10,000.00" for post-termination revenue allegedly owed to GRB. (*See* Compl. ¶¶ 70, 76, 83, 90.) It is fatally contradictory to argue that the only adequate remedy for GRB's claims is to enjoin PH from terminating the Development Agreement when Seibel expressly requests money damages for those same claims.

Seibel specifically alleges that "GRB licensed the GRB Marks, the General GR Materials and Intellectual Property to PH to use in the connection with the Restaurant in exchange for the *payment of a license fee* (the 'License Fee')." (Mot. at 6 (emphasis added).) The specific amount of the License Fee payable to GRB, should Seibel prevail on his claims, is easily ascertainable based on the percentages of gross sales as set forth in Seibel's Complaint. (*See* Compl. ¶¶ 23-24.) Additionally, Seibel seeks to "recover those monies" that Seibel contends were paid directly to Ramsay beginning in 2016. (*See* Ex. 1 to Compl., Seibel Verification Decl. at 5-6, ¶¶ 23-26.) For support, Seibel includes a declaration that identifies all payments – to the penny – that GRB received under the Development Agreement. (*See id.*) In sum, Seibel seeks past revenue that he claims GRB is owed and future revenue that he alleges GRB has lost following his criminal conviction and subsequent termination of the Development Agreement. For Seibel's contract-based claims, money damages are available. Injunctive relief is not.

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

1. Seibel's "Request" for Specific Performance, Declaratory Relief, and Injunction Merely Restate Seibel's Claims for Money Damages

Seibel also asserts two "requests" for declaratory judgment, one "request" for injunctive relief, and one "request" for specific performance that are wholly duplicative of his underlying claims for breach of contract, breach of the covenant of good faith and fair dealing, unjust enrichment, and civil conspiracy. (*See* Compl. ¶¶ 91-121.) "Declaratory relief, like injunctive relief, is a remedy, not an underlying substantive claim" and are therefore, "not proper causes of action." *Int'l Game Tech., Inc. v. Fed. Ins. Co.*, No. 3:13-CV-00026-RCJ, 2014 WL 580876, at *6 (D. Nev. Feb. 13, 2014) (dismissing, with prejudice, declaratory and injunctive relief claims that repeat the allegations supporting the underlying substantive claims). As plead, Seibel's declaratory relief and specific performance "requests" merely repeat the allegations of the underlying breach of contract claims and, thus, rise and fall with those claims. (*See generally* Compl.); *see SVI, Inc. v. Supreme Corp.*, No. 216CV01098-JAD-NJK, 2016 WL 7190548, at *6 (D. Nev. Dec. 12, 2016). Likewise, GRB's request for injunctive relief is a remedy for an alleged breach of Article 6 of the Development Agreement, (*see* Compl. ¶ 119), and not an independent cause of action. *See In re Wal-Mart Wage & Hour Employment Practices Litig.*, 490 F. Supp. 2d 1091, 1130 (D. Nev. 2007) (injunctive relief standing alone is not an independent cause of action). GRB's duplicative "requests" for specific performance, declaratory judgment, and injunctive relief are merely repetitive of GRB's claims for money damages for alleged wrongful termination of contract, and cannot serve as a basis for the preliminary relief sought here.

B. Seibel's Delay in Seeking a Preliminary Injunction Weighs Heavily Against a Finding of Immediate, Irreparable Harm

It is axiomatic that "delay before seeking a preliminary injunction implies a lack of urgency and irreparable harm." *Oakland Tribune, Inc. v. Chronicle Pub'g Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985) (citing *Lydo Enterprises, Inc. v. City of Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984) ("[a] preliminary injunction is sought upon the theory that there is an urgent need for speedy action to protect the plaintiff's rights. By sleeping on its rights a plaintiff demonstrates the lack of need for speedy action.") The Ninth Circuit has noted that "unreasonable delay can defeat irreparable

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

injury and the length of time need not be great." *Garcia v. Google, Inc.*, 786 F.3d 733, 746 (9th Cir. 2015) (quotation omitted). Accordingly, federal district courts routinely deny injunctive relief where the plaintiff has delayed filing suit or seeking preliminary relief. *See e.g.*, *JL Beverage Co., LLC v. Beam, Inc.*, 899 F. Supp. 2d 991, 1011 (D. Nev. 2012) (delay in filing preliminary injunction motion of several months weighed against granting relief); *Valeo Intellectual Prop., Inc. v. Data Depth Corp.*, 368 F. Supp. 2d 1121, 1128 (W.D. Wash. 2005) ("three-month delay in seeking injunctive relief is inconsistent with [plaintiff's] insistence that it faces irreparable harm").

Where, as here, injunctive relief is sought in response to related proceedings, the delayed request further "suggests that the preliminary injunction is more a litigation strategy than a device to protect against harms not redressable by standard means." *Russell Rd. Food & Beverage, LLC v. Spencer*, No. 2:12-CV-01514-LRH, 2013 WL 321666, at *5 (D. Nev. Jan. 28, 2013) (request for injunction in response to declaratory action coupled with five month delay negated claim of irreparable harm).

Here, Seibel waited *over four months* after he received notice that his felony conviction rendered him, and by extension GRB, an "Unsuitable Person" under the Development Agreement to file his Federal Court complaint. (*See* Ex 15 to Pls.' App., Ltr from M. Clayton to GRB, B. Ziegler, GRB, and M. Thomas (Sept. 2, 2016); Ex. 19 to Pls.' App., Ltr. from B. Ziegler to M. Clayton (Sept. 16, 2016) (Seibel's attorney acknowledging receipt of Caesars' Sept. 2 notice).) On September 2, 2016, Caesars warned GRB, Seibel, and Ramsay that if GRB failed to terminate the relationship with Seibel, Caesars would be required to terminate the Development Agreement pursuant to Section 4.2.5. (*See* Ex. 15 to Pls.' App.) Yet, Seibel took no action. By letter dated September 12, 2016, Caesars rejected Seibel's proposal to disassociate himself from GRB by transferring his interest in GRB to his family trust [and in no uncertain terms restated its intention to terminate the Development Agreement]. (*See* Ex. 19 to Pls.' App., Ltr. from B. Ziegler to M. Clayton (Sept. 16, 2012).) Still, Seibel took no action. On September 21, 2016, Caesars terminated the Development Agreement pursuant to Sections 4.2.5 and 11.2. (*See* Ex. 10 to Pls.' App.) Again, Seibel failed to act.

On October 13, 2016, GRUS initiated the Dissolution Proceedings. On November 23,

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

2016, Seibel filed an answer and verified counterclaims against GRUS, asserting various derivative claims, based on the same factual allegations that Seibel parrots here. In was not until the Delaware Court stayed litigation on Seibel's counterclaims on January 3, 2017 and set a briefing schedule on GRUS's dispositive motion to dissolve GRB that Seibel took action in Nevada Federal Court. On January 11, 2017, Seibel initiated the federal lawsuit and filed a motion for preliminary injunction. Seibel requested a hearing on the motion for February 13, 2017—the same date that briefing on the GRB's dissolution would be submitted to the Delaware Court. In a letter to the Delaware Court attempting to explain that Seibel's Nevada filings were not a transparent attempt to circumvent the Delaware Court's stay of litigation, Seibel's counsel stated that: "***Undersigned counsel is personally aware that the action in Nevada was in the works in November 2016, at the latest***." (*See* App., Ex. C at 165-215, Letter from P. Brown, attorney for Seibel, to Vice Chancellor J. Slights III, DE Court of Chancery (January 19, 2017).) Yet, Seibel continued to sit on his hands for several months before seeking an injunction. This deliberate delay clearly "implies a lack of urgency and irreparable harm." *Oakland Tribune*, 762 F.2d at 1377.

Even after it became clear to Seibel that the Federal Court lacked subject matter jurisdiction in late January, Seibel exercised no urgency in dismissing the federal action to move for relief in the proper court.

C. Seibel's Arguments of Irreparable Harm Lack Merit

In his Motion, Seibel half-heartedly argues that GRB will suffer irreparable harm absent injunctive relief for three reasons. *First*, Seibel points to a clause in the terminated Development Agreement that money damages would be inadequate to remedy a breach of Article 6 of that agreement. (Mot. at 24.) *Next*, Seibel argues that GRB would dissolve absent a mandatory injunction. (*Id.* at 24-26.) *Finally*, Seibel contends that GRB would lose control over the use of the General GR Materials and GRB Marks. (*Id.* at 26). But, as noted above, GRB does not own the principal mark that is the name and identity of the restaurant—"BURGR Gordon Ramsay," nor does it today have any right to sublicense that mark to PH. None of these arguments demonstrates that GRB will suffer immediate, irreparable harm.

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

1. Contractual Concession of Irreparable Harm is Not Controlling

Seibel contends that Section 14.10.2 of the Development Agreement entities GRB to the presumption of equitable relief he seeks. Not so. Courts provide "little weight," if any, to contractual clauses that pre-declare that any breach will result in irreparable harm. *See e.g.*, *La Jolla Cove Inv'rs, Inc. v. GoConnect Ltd.*, No. 11CV1907 JLS JMA, 2012 WL 1580995, at *4 (S.D. Cal. May 4, 2012) ("[t]his Court agrees with other district courts in this circuit and 'gives little weight to the clause in the [funding agreement] that pre-declares that any breach of the Agreement will result in irreparable harm.'"); *Riverside Publ'g Co. v. Mercer Publ'g LLC,* No. C 11–1249, 2011 WL 3420421, at *8 (W.D.Wash. Aug. 4, 2011) (citing cases in other circuits declining to presume irreparable harm based on a contract clause).

Following the U.S. Supreme Court's decision in *Winter v. Natural Resources Defense Council*, which emphasized the need for a plaintiff to "demonstrate a likelihood of irreparable injury—not just a possibility—in order to obtain preliminary relief," district courts have noted that contractual provisions may not serve as an admission of irreparable harm. *See La Jolla Cove Inv'rs, Inc.*, 2012 WL 1580995, at *4 n.2 ("By extension of the reasoning in *Winter*, the Court finds the view in [pre-*Winter* cases] that a contractual provision could serve as an admission of irreparable harm unsound.") Thus, section 14.10.2 would not relieve Seibel from demonstrating actual irreparable harm. *See Riverside Publ'g Co* , 2011 WL 3420421, at *8; *see also Smith, Bucklin & Assocs., Inc. v. Sonntag*, 83 F.3d 476, 481 (D.C.Cir.1996) (finding that contractual concession of irreparable harm is an "insufficient prop").

2. GRB is Deadlocked and Will Dissolve if Injunction is Issued

Seibel next argues that GRUS "seeks to dissolve GRB based solely on PH['s] purported termination the Development Agreement" to imply that "injunctive relief would protect GRB from the threat of being dissolved." (Mot. at 24-26.) But Seibel mischaracterizes the Dissolution Proceedings and omits the fact that the managers of GRB are deadlocked and the GRB Operating Agreement provides no means of resolving the impasse. The requested injunction would neither resolve the deadlock nor halt dissolution. In its Delaware Petition for Dissolution, GRUS alleged:

All decisions of the Company must be made by a majority vote of the Managers of

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

> GRB, and Seibel, as one of the Company's two Managers, has refused all requests to cooperate in terminating his association with GRB. As such, the Managers are deadlocked as to the future of the Company. Moreover, the Managers of GRB do not meet and do not speak due to Seibel's criminal activities and his designation as an Unsuitable Person. There is no mechanism in the [GRB Operating Agreement] to resolve this deadlock.

(*See* Ex. 18 to Pls.' App. at 177, ¶ 26.)

Under Delaware law, the existence of such a deadlock, even where the business of the company could otherwise reasonably continue, has been held sufficient grounds for judicial dissolution of 50/50 LLCs such as GRB where there is no means of resolving the deadlock under the LLC's operating agreement. *See Vila v. BVWebTies LLC*, 2010 WL 3866098, at *6-7 (Del. Ch.) (noting that an unbreakable deadlock among 50/50 managers "provides an indisputable basis for dissolution" under the Act); *Phillips v. Hove*, 2011 WL 4404034, at *26-27 (Del. Ch.) (ordering dissolution where two co-equal managers were "deadlocked with no effective mechanism to break the deadlock," and noting that the fact that the LLC continued to operate marginally was irrelevant to determining the existence of deadlock).

Even before Seibel's felonious actions came to light, the Delaware pleadings make clear that the working relationship between GRB's owners and appointed managers had broken down and reached an impasse requiring judicial dissolution. (*See generally* Ex. 18 to Pls.' App. (Dissolution Petition).) While Seibel attempts to deny or downplay the existence of an insuperable deadlock, he at the same time bases his argument for demand futility on the fact that a deadlock exists and the managers are not speaking. (*See* Ex. 1 to Compl., Seibel Verification Decl. ¶¶ 10-14.) Seibel and Ramsay have been engaged in contentious litigation in the context of their business relationship since 2014, in the Supreme Court of the State of New York related to their other restaurant joint venture in Los Angeles, Fat Cow. (*See* App., Ex. C, Seibel's Verified Delaware counterclaims at 80-81, ¶¶ 37-42.) Seibel concedes that the parties' acrimonious relationship concerning "the Fat Cow restaurant litigation bled over into Seibel's and Ramsay's other ventures, including the one at issue here." (*See id.* at 81, ¶ 43.) Dissolution of GRB is imminent, regardless of whether or not the requested injunction is issued.

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

IV. THE BALANCE OF HARDSHIPS DISFAVORS AN INJUNCTION

"An injunction should not be granted if its impact on the enjoined party would be more severe than the injury the moving party would suffer if it is not granted." *Litton Sys. Inc. v. Sundstrand Corp.*, 750 F.2d 952, 959 (Fed. Cir. 1984). The harm that would visit both PH and Ramsay should the requested injunctive relief issue is substantially greater than any possible harm to GRB if the Motion is denied. Under the Commission's regulations, Nevada gaming and alcohol beverage licensees can face serious penalties for doing business with unsuitable persons. *See* NRS §§ 463.225, .310 & .360. So too does Gordon Ramsay risk serious damage to his brand and ability to contract with regulated entities should he be deemed to be unsuitable himself through continued business dealings with Mr. Seibel.

Seibel offers no evidence to suggest that the balance of hardships favors injunction. Seibel argues, wrongly, that if an injunction is issued "PH would not suffer any harm because the current status quo would remain unchanged." (Mot. at 27.) The status quo would change drastically. If PH were forced to reinstate a relationship with a convicted felon, PH, and by extension Caesars, may be placed in jeopardy of Nevada law and put at risk its valuable gaming license. Likewise, Ramsay, through entities owned and operated by him, including GRUS, have or may pursue business associations with Nevada gaming and alcoholic licensees or their affiliates. If the Court were to reinstate the Development Agreement and compel Ramsay into a continuing business association with Seibel, this relationship may be a source of concern to other licensees and registrants besides Caesars because Ramsay would remain in an indirect relationship with a convicted felon. The Court should not enjoin Ramsay's necessary efforts to disassociate from Seibel and thereby jeopardize Ramsay's other business dealings with regulated entities.

Seibel also ignores the termination of the License Agreement, through which GRUS licensed certain trademarks to GRB, including the name of the BURGR Gordon Ramsay restaurant and the reversion of all such rights to GRUS. Without the intellectual property provided by Ramsay, through GRUS, to GRB, GRB cannot perform that agreement, and the Development Agreement fails.

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

V. GRB IS NOT LIKELY TO SUCCEED ON THE MERITS OF THE CLAIMS UPON WHICH IT BASES IS REQUEST FOR INJUNCTIVE RELIEF

Because Seibel's requested injunction is moot, he has not established irreparable harm, and the balance of hardships does not favor injunction, injunctive relief is not viable and the Court need not consider the likelihood of success factor. To the extent that it does, Seibel has failed to make a showing that his claims and conspiracy theories warrant extraordinary relief. In his Motion, Seibel addresses the likelihood of success on all of the claims that he asserted against PH. But the breach of contract claims against PH are the only claims that could conceivably provide a basis for Seibel's request for a provisional remedy. Based on the plain terms of that agreement, however, Seibel is not likely to succeed on his claims for breach of contract for wrongful termination.

A. GRB's Imminent Dissolution May Impair Seibel's Derivative Action

As a threshold issue, none of the derivative claims asserted by Seibel is likely to succeed on the merits because the dissolution of GRB is imminent. In the Delaware Dissolution Proceedings, the Delaware Court has the power to appoint a liquidating trustee to wind up an LLC's business. *See* Del. Code § 18-803(a). Upon dissolution, the liquidating trustee winding up the business has the power to "prosecute and defend" suits in the name of the company until the filing of a certificate of cancellation. *See* Del. Code § 18-803(b). Should the Delaware Court find that dissolution of GRB is warranted, then the authority to pursue any and all claims belonging to the GRB would be vested in a court-appointed receiver.

B. GRB Will Not Succeed on its Claims of Wrongful Termination

To state a claim for breach of contract against PH, Seibel must demonstrate (1) the existence of a valid contract; (2) that GRB performed or was excused from performance; (3) that PH breached; and (4) that GRB sustained damages. *Seiler v. JPMorgan Chase Bank, N.A.*, No. 2:10-CV-01405-KJD-RJJ, 2012 U.S. Dist. LEXIS 7094, at *17-18 (D. Nev. Jan. 23, 2012) (citing *Saini v. Int'l Game Tech.*, 434 F.Supp.2d 913, 919-20 (D. Nev. 2006)). Seibel's felony conviction placed GRB in breach of the suitability covenants clearly outlined in the Development Agreement. Thus, GRB's breach of contract claim fails. *Saini*, 434 F.Supp.2d at 923 ("Failure to perform

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

one's obligations within the express terms of an agreement constitutes a literal breach of contract.").

The Development Agreement was expressly conditioned on PH being satisfied that GRB, its members and managers (including Seibel), and their respective affiliates are not at any time "Unsuitable Persons." (Ex. 1 to Pls.' App. at 11, § 2.2.) An "Unsuitable Person," as defined in the Development Agreement, is a person "whose affiliation with [PH] or its [a]ffiliates could be anticipated to result in a disciplinary action relating to, or the loss of, inability to reinstate or failure to obtain" gaming and alcohol licenses held by PH. (*Id.* at § 1.) An Unsuitable Person also includes any person "who is or might be engaged in or about to be engaged in any activity which could adversely impact the business or reputation of PH or its Affiliates." (*Id.*) The Development Agreement granted PH the sole and exclusive judgment to determine whether any person associated with GRB, its members and managers, or its affiliates is an Unsuitable Person. (*Id.* at 30-31, § 11.2.) Upon such a determination of unsuitability of any person associated with GRB, PH had the right to terminate the Development Agreement upon written notice and a subsequent failure by GRB to cease its relationship with such person to PH' satisfaction. (*Id.*) That is exactly what PH did following Seibel's conviction and refusal to disassociate with GRB. There can be no breach by PH for taking action that was expressly contemplated for in the Development Agreement.

Also, Seibel cannot invoke the implied covenant where, as here, the parties have a written contract expressly covering the terms allegedly breached. *See, e.g., Allied Capital Corp. v. GC-Sun Holdings, L.P.*, 910 A.2d 1020, 1032-33 (Del. Ch. 2006) (where a specific, negotiated provision directly treats the subject of the alleged wrong and has been found to have not been violated, a court will not find by implication a contractual obligation of a different kind that has been breached)). Allowing Seibel to circumvent the covenants of suitability through the implied covenant of good faith and fair dealing would violate the fundamental principle that "contracts are enforceable at law according to their terms." *E.g., Price v. Wells Fargo Bank*, 213 Cal.App.3d 465, 479-480 (Cal.App.1.Dist. 1989).

Seibel's allegations that do not pertain to termination of the Development Agreement

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

have no relevance to whether the Court should enjoin termination of the Development Agreement, and should be disregarded. For the reasons set forth at Section II above, Seibel's alternative request to enjoin PH from operating a new restaurant at the Restaurant Premises is also without merit. Because Seibel is not likely to prevail on his claims that PH wrongfully terminated the Development Agreement, injunctive relief is unavailable.

VI. INJUNCTION WOULD BE CONTRARY TO THE PUBLIC INTEREST

Granting injunctive relief in this cause would not be in the public interest. "The public interest inquiry primarily addresses impact on non-parties rather than parties." *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 974 (9th Cir. 2002). Seibel contends that the public interest weighs in favor of enforcing contractual obligations. (Mot. at 27.) It is Seibel's acts, however, that have caused GRB to breach its contractual obligations to PH. PH exercised its contractual rights and declared Seibel an "Unsuitable Person" as that term is defined in the Development Agreement. The public interest will not be served if the Court were to compel a regulated Nevada gaming entity to continue its business relationship with an entity that is owned and managed by a convicted felon. *See Kraft v. Jacka*, 872 F.2d 862, 873 (9th Cir. 1989) ("The state of Nevada has a significant interest in ensuring that only suitable individuals will have control of gaming operations."). The requested injunction will also impact a non-party, GRUS, as well as Ramsay himself.

To enjoin PH from determining Seibel, a felon convicted of tax fraud, an "unsuitable person" and force an unsuitable contract on a Nevada gaming licensee as well as an unwilling business partner, would set a damaging precedent that would chill private determinations of suitability that are necessary to maintain the integrity of the Nevada gaming industry.

VII. NEVADA LAW PROHIBITS INJUNCTION ABSENT A BOND

In the event the Court issues a preliminary injunction, the Court must require Seibel to post adequate security. In Nevada, a preliminary injunction is void as a matter of law if security is not posted. *Hemmer v. Barger*, No. 69974, 2017 WL 881952, at *1 (Nev. App. Feb. 28, 2017)("As a matter of law, an injunction is void if not supported by a bond."). NRCP 65(c) provides that "[n]o . . . preliminary injunction shall issue except upon the giving of security by the application."

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

Seibel acknowledges Nevada law, but points to non-controlling federal authority to suggest that the Nevada Supreme Court may break from precedent and not enforce NRCP 65(c)'s non-waivable security requirement as written. (Mot. at 28-29.) The Court should disregard Seibel's proffered authority and must apply binding Nevada Supreme Court precedent interpreting NRCP 65(c): "[w]here a bond is required by statute before the issuance of an injunction, ***it must be exacted or the order will be absolutely void***." *Strickland v. Griz Corp.*, 92 Nev. 322, 323, 549 P.2d 1406, 1407 (1976) (quoting *Shelton v. District Court*, 64 Nev. 487, 494, 185 P.2d 320, 323-324 (1947)) (emphasis added); *Dangberg Holdings Nevada, L.L.C. v. Douglas Cty. & its Bd. of Cty. Comm'rs*, 115 Nev. 129, 145, 978 P.2d 311, 320 (1999) (same); *Corpolo Ave. Trust v. Ahmead*, No. 63264, 2015 WL 409641, at *1 (Nev. Jan. 26, 2015) (same); *Dill v. Vega*, No. 68199, 2016 WL 1189934, at *2 (Nev. App. Mar. 17, 2016) (same). The law in Nevada is unequivocal. An injunction may not issue without posting security.

Under NRCP 65(c), that security must be set "in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." If Seibel is to prevail on his request to enjoin PH from operating the "rebranded restaurant," he must post security sufficient to protect both PH and Ramsay from lost revenues and other damages from the date that the injunction to the time of trial in this case. *See American Bonding Co. v. Roggen Enterprises*, 109 Nev. 588, 591, 854 P.2d 868, 870 (1993).

CONCLUSION

Seibel has not satisfied his burden of clearly showing GRB's entitlement to injunctive relief. For the foregoing reasons, Seibel's Motion should be denied.

DATED this 17th day of March, 2017.

FENNEMORE CRAIG, P.C.

/s/ John D. Tennert
ALLEN J. WILT, SBN 4798
JOHN D. TENNERT III, SBN 11728

Attorneys for Gordon Ramsay

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

CERTIFICATE OF SERVICE

I certify that I am an employee of FENNEMORE CRAIG, P.C., and that on this date, pursuant to FRCP 5(b), I am serving a true and correct copy of the attached DEFENDANT GORDON RAMSAY'S OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION on the parties set forth below by:

_____ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices

_____ Certified Mail, Return Receipt Requested

_____ Via Facsimile (Fax)

_____ Placing an original or true copy thereof in a sealed envelope and causing the same to be personally Hand Delivered

_____ Federal Express (or other overnight delivery)

__X__ E-service effected by WIZNET

addressed as follows:

Daniel R. McNutt
Matthew C. Wolf
CARBAJAL & MCNUTT, LLP
625 South Eighth Street
Las Vegas, NV 89101
Tel: (702) 384-1170
Fax: (702) 384-5529
Emails: drm@cmlawnv.com
mcw@cmlawnv.com

Attorneys for Plaintiff

Dated: March 17, 2017

/s/ Meg Byrd
An employee of FENNEMORE CRAIG, P.C.

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

TAB 6

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

Counsel for Defendant PHWLV, LLC

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. PHWLV, LLC, a Nevada limited liability company; GORDON RAMSAY, an individual; Defendants, and GR BURGR, LLC, a Delaware limited liability company, Nominal Defendant.	Case No.: A-17-751759-B Dept. No.: XV **PLANET HOLLYWOOD'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** Date of Hearing: March 22, 2017 Time of Hearing: 9:00 a.m.

I. INTRODUCTION

By all measures, Plaintiff Rowen Seibel ("Seibel") filed this (and its predecessor federal) action, and is prosecuting this objectively stale Motion for Preliminary Injunction, to create bargaining leverage against his partner, Gordon Ramsay, in the Delaware dissolution proceeding of Plaintiff and Nominal Defendant GR BURGR, LLC ("GRB"). Indeed, the crux of Seibel's motion (filed nearly five months after acts about which he complains) is a request to inflict harm on Defendants (particularly PHWLV, LLC ("Planet Hollywood")) rather than obtain any cognizable benefit for the putative plaintiff he purports to represent. Leverage in the dissolution action is the only plausible explanation for this peculiar motion.

At the heart of this dispute is the undisputable fact that some time ago, Planet Hollywood did nothing more than exercise its express contractual right and obligation as a gaming licensee to

terminate its agreement with GRB due to Seibel's unsuitability (*i.e.*, felony conviction, *inter alia*). That is it. All of Seibel's allegations and "evidence" must be weighed against this backdrop. In so doing, it is beyond clear Seibel is ineligible for relief from this Court.

As set forth throughout this Memorandum, Seibel's motion should be denied for the following, equally compelling, reasons: (1) he enjoys virtually no chance of success on the merits of his claims, as they are contradicted by both the black letter of the controlling agreement and the express authorizations of GRB itself; (2) the harm, if any, Seibel claims to have suffered was either self-inflicted due to his dishonest or felonious conduct or compensable through money damages; (3) Seibel comes to this Court with unclean hands, as he defrauded the United States (which serves as the foundation for his unsuitability finding), and is guilty of laches related to the prosecution of this action; (4) the balance of equities weighs sharply in favor of Planet Hollywood, as neither Seibel nor GRB as a nominal plaintiff can reap benefit from the requested relief, but can only inflict substantial harm on Planet Hollywood if relief is granted; and (5) public policy weighs in favor of denying Seibel's motion because Planet Hollywood is a gaming licensee legally entitled and obligated to self-police against any relationship with persons unfit to conduct business. For these reasons and more, Planet Hollywood respectfully requests this Court deny Seibel's motion for preliminary injunction in its entirety.

II. STATEMENT OF RELEVANT FACTS

A. Planet Hollywood Brings Chef Gordon Ramsay to the Las Vegas Strip.

On December 13, 2012, Planet Hollywood entered into a Development, Operation and License Agreement (the "Development Agreement") with renowned chef, Gordon Ramsay, and GRB[1] for the development and operation of a burger-themed restaurant to be housed in Planet Hollywood in a prime location within the hotel, with an entrance right off the Las Vegas Strip. Indeed, the marquis location was reflective of Planet Hollywood's intention to promote the restaurant as a key element of the hotel's amenities and a central attraction for its customers. When a Planet Hollywood guest walks in the doors right off the Las Vegas Strip, they

[1] GRB is a Delaware limited liability company with two members, Rowen Seibel ("Seibel"), and GR US, LLC ("GRUS"), a Delaware limited liability partnership associated with Gordon Ramsay.

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

are greeted by Gordon Ramsay Burgr (the "Burgr Restaurant"), a restaurant unmistakably linked to *the* Gordon Ramsay, star of the hit TV show "Hell's Kitchen."

B. The Suitability Provision and Planet Hollywood's Sole and Exclusive Discretion.

Planet Hollywood is a gaming licensee, and thus subject to rigorous regulation. Nevada calls on its licensees to police themselves and their affiliates to ensure unwavering compliance with gaming regulations. As part of its compliance program, Planet Hollywood conducts background checks on its vendors and requires various disclosures to ensure that the entities with which it does business are suitable. Planet Hollywood's contracts with third parties are clear: Planet Hollywood will not risk its gaming license(s) by associating with unsuitable persons and thus it expressly contracts for sole and exclusive discretion with regard to decisions that it believes necessary to protect its gaming licenses.

Section 12 of the Development Agreement is one of several key provisions governing the parties' rights as they relate to suitability. There, Planet Hollywood expressly contracted for the sole and absolute discretion to terminate the Development Agreement should GRB or its Affiliates – a term that includes Seibel – diverge from Planet Hollywood's suitability standards. (Ex. 1 § 11.2) Via Section 11.2 of the Development Agreement, Ramsay and GRB expressly "acknowledge[d] that PH and PH's Affiliates are businesses that are or may be subject to and exist because of privileged licenses . . . ." (Ex. 1 § 11.2.)

Prior to the Development Agreement's execution and the issuance of any payments by Planet Hollywood to GRB, GRB was required to disclose information about itself and GR Associates (as defined in the Development Agreement) for Planet Hollywood to perform its suitability diligence. (*Id.*) Based on prior disclosures of both Seibel and Gordon Ramsay, Caesars Entertainment's ("Caesars") corporate investigation team relied on the information it had on file to determine that GRB was suitable. (Ex. A, Declaration of Richard Casto ("Casto Decl."), ¶ 7.) The Development Agreement also required GR Associates to update the disclosures if anything became inaccurate or material changes occurred. (*Id.* ¶ 8.) Because issues of suitability affect Planet Hollywood's primary business – its gaming license – the parties

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

expressly contracted that "[t]he Agreement may be terminated by PH upon written notice to GRB and Gordon Ramsay having immediate effect as contemplated by Section 11.2." (Ex. 2 § 4.2.5 (emphasis in original).) Without its license, Planet Hollywood could not operate and would not be able to perform the Development Agreement or any other contract. Therefore, Section 11.2 provides that Planet Hollywood has the right, in its "***sole and exclusive judgment***," to determine that a GR Associate is an Unsuitable Person under the Development Agreement. (*Id.* § 11.2 (emphasis added).)

Most importantly, the Development Agreement expressly provides that if the unsuitable activity or relationship is not subject to cure "***as determined by PH in its sole discretion***," then Planet Hollywood "shall . . . have the right to terminate this Agreement and its relationship with Gordon Ramsay and GRB." (*Id.* § 11.2 (emphasis added).) The Development Agreement leaves no doubt as to Planet Hollywood's "sole" and "exclusive judgment" with a final statement that a termination pursuant to the suitability provisions in Section 11.2 "shall not be subject to dispute by Gordon Ramsay or GRB . . . ." (*Id.*)

C. Seibel Pleads Guilty to a Felony in April and Conceals it from Planet Hollywood.

Although now removed from this state court filing, in his recently dismissed federal claim, Seibel testified that "[a]round August 2016, [he] pled guilty to one count of obstructing or impeding the due administration of the internal revenue laws under 26 U.S.C. § 7212(a)," a Class E felony. (Ex. 2, Seibel Decl., ¶ 30, n.21.) But this testimony was not ***exactly*** complete, nor true. Later, he testified more truthfully that "on August 19, 2016, ***judgment*** was entered on [his] guilty plea in the Southern District of New York . . . ." (*Id.* ¶ 44.) However, as he confesses even further into his declaration, in yet another footnote, ***he actually pleaded guilty to the charge months before, on April 18, 2016.*** (*Id.* ¶ 44, n.22.)

While unimportant to Seibel – so de minimis that he avoids mentioning it in this state court action – the fact that he pleaded guilty to a ***felony*** is an important factor on the issue of his unsuitability. To be clear, while it is an important factor, it is not the only factor. Equally

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

important is the undisputed fact that Seibel concealed his troubles from Planet Hollywood over the span of years. (Ex. A, Casto Decl. ¶¶ 8-10.)

As a GR Associate, the Development Agreement required Seibel to disclose his underlying criminal conduct. (Ex. 1 § 11.2.) He failed to do so. (Ex. A, Casto Decl. ¶¶ 8-9.) As a GR Associate, the Development Agreement obligated Seibel to disclose the fact that he was planning to and then did plead guilty to a felony in April of 2016. (Ex. 1 § 11.2.) He failed to do so. (Ex. A, Casto Decl. ¶¶ 8-9.) And, as a GR Associate, the Development Agreement required Seibel to disclose that judgment was entered on his guilty plea on August 19, 2016. (Ex. 1 § 11.2.) Again, he failed to do so. (Ex. A, Casto Decl. ¶¶ 8-9.) In his Complaint, Seibel ***never*** testifies to these truths, nor does he dispute them. Instead, he treats the Court the way he treated Planet Hollywood – with half-truths and incomplete (and therefore, misleading) facts. (*See generally* Ex. 2.)

Remarkably, Planet Hollywood learned of Seibel's felonious conduct and conviction from news articles.[2] (Ex. A, Casto Decl. ¶ 10.) Seibel apparently acted with the same level of candor in his dealings with Gordon Ramsay and the other GRB member, who also learned of Seibel's conduct through the press. (Ex. G, at 9/2/16 Ltr. from K. Gaut to B. Zeigler ("We are deeply concerned, and indeed outraged, that we first heard about Mr. Seibel's tax fraud conviction and prison sentence through public news sources.").) It was only ***after*** the articles came out that Seibel, through counsel, reached out to Caesars (and thereby Planet Hollywood) to try to save himself and rescue his ventures from termination. (Ex. H, 8/30/16 Ltr. from B. Zeigler to A. Sabo.)

D. Planet Hollywood Exercises its Sole and Exclusive Discretion and Terminates the Development Agreement Because of Seibel's Unsuitability and GRB's Inability to Disassociate.

Pursuant to Section 11.2 of the Development Agreement, Planet Hollywood informed Gordon Ramsay and GRB that it was aware of Seibel's felony conviction, and was exercising its

---

[2] *E.g.*, Ex. D, B. Martin, IRS Busts Caesars Palace's Serendipity 3 Owner Rowen Seibel, Eater Las Vegas, Aug. 22, 2016; Ex. E, J. Drucker & C. Berthelsen, *Restaurateur Seibel Sent to Jail, Then Kitchen, in Tax Scam*, Bloomberg, Aug. 19, 2016; Ex. F, Gordon Ramsay's Business Partner Gets Jail Time for Tax Evasion Scheme, Page Six, Aug. 20, 2016,

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

right under Section 11.2. Planet Hollywood demanded GRB terminate its relationship with Seibel and provide written proof thereof within ten (10) business days. (Ex. 18.) Planet Hollywood was unequivocal that "[i]f GRB fails to terminate the relationship with Seibel, [Planet Hollywood] will be required to terminate the Development Agreement pursuant to Section 4.2.5 of the Development Agreement." (*Id.*)

Rather than disassociate from GRB, Seibel attempted more deception. He argued to Planet Hollywood that he had "assigned" his interests and therefore was not associated with GRB any further. This was not truthful. Seibel's purported assignments were shams, and Caesars so advised Seibel on two occasions. (Ex. I, 9/2/16 Ltr. from M. Clayton to B. Zeigler; Ex. J, 9/12/16 Ltr. from M. Clayton to B. Zeigler.) The purported assignees had either direct or indirect relationships with Seibel, the unsuitable person. Planet Hollywood informed GRB that it rejected Seibel's ruse: "Pursuant to the Letter Agreement, dated May 16, 2014, [Caesars] is not satisfied, in its sole and reasonable discretion, that the purported assignee and its Associates are not Unsuitable Persons and (ii) the Compliance Committee has not approved the proposed assignee and its Associates." (Ex. J.; *see also* Ex. K, 5/16/14 Ltr. Agreement.)[3]

After Caesars twice rejected Seibel's argument about a purported assignment in the September 2 and 12 letters, in their September 15 letter, Gordon Ramsay and GRUS stated that they, too, had rejected Seibel's proposal "to transfer his interest in [GRB] to a Family Trust that will be subject to control by his spouse and an attorney." (Ex. G.) They stated their belief that the purported assignment "does not definitively terminate any direct or indirect involvement or influence in [GRB] by Mr. Seibel." (*Id.*)

Because Seibel refused to disassociate with GRB, and his co-member does not have legal authority to compel Seibel's disassociation to Planet Hollywood's satisfaction, Planet Hollywood

---

[3] Although Seibel excluded from his Motion the letter exchanges between Seibel and Ramsay/GRUS enclosed in their September 15, 2016 letter to Planet Hollywood, those enclosures reveal GRB's internal dispute. (*Compare* Ex. 12, *with* Ex. G.) Those letters also reveal several important facts: (1) Seibel concealed his felonious conduct, guilty plea, and conviction from his GRB co-member; (2) he tried to assign his GRB interest to close relations back in April 2016 without providing the reasons for his desired assignment; and (3) his co-member never accepted the assignment and asked a series of questions that Seibel failed to answer. (Ex. G.) In short, Seibel never assigned his ownership or membership in GRB, as Seibel argued to Caesars.

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

determined "in its sole discretion" that Seibel's relationship with GRB was not subject to cure, and exercised its contractual right, pursuant to Sections 4.2.5[4] and 11.2 of the Development Agreement to terminate the Development Agreement. (*Id.* §§ 4.2.5, 11.2(c); Ex. 11.)

E. <u>The Wind Up of Operations for the Burgr Restaurant and the License Fees.</u>

The parties contemplated how they would proceed in the event of an early termination by Planet Hollywood. Section 4.3.2 of the Development Agreement grants certain rights to Planet Hollywood in the event of early termination: Planet Hollywood is "entitled to operate the Restaurant and use the License for one hundred and twenty (120) days from such termination to orderly and properly wind up operations of the Restaurant . . . ." (Ex. 1 § 4.3.2.) Because of Seibel's felony conviction (and his related failures to disclose) and GRB's inability to disassociate with Seibel without court action in Delaware, Planet Hollywood terminated the Development Agreement on September 21, 2016. (Ex. 11.)

Planet Hollywood worked diligently to wind up the Restaurant operations. (Ex. B, Declaration of Tim Bowen ("Bowen Decl.", ¶ 2.) The wind up period for the Burgr Restaurant is lengthier than for other Seibel-related restaurants in the Caesars Entertainment enterprise. (*Id.* ¶¶ 3-4.) This is because the Burgr Restaurant was more aggressively branded. (*Id.* ¶ 3.) Everything needed to be replaced and rebranded, from logo plates to beverage coasters, cocktail napkins, dinner napkins, to go bags, to go cups, burger picks, cocktail picks, fry cones, pens, beer glasses, retail sale hats, shirts, menus, all employee uniforms, and restaurant and identity signage both inside and outside of the restaurant and casino. (*Id.*) Despite the challenge, the work of rebranding was taken up promptly and with great diligence. (*Id.* ¶ 2.) Planet Hollywood has replaced its wall painting, incorporated its new logo on the patches of employee uniforms, substituted cook coats, changed signage in nine places throughout the hotel, and is now retailing new and different items, such as shirts and hats that exhibit the new concept. (*Id.* ¶¶ 2, 5.)

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

---

[4] Section 4.25 provides as follows: "<u>Unsuitability</u>. This Agreement may be terminated by PH upon written notice to GRB and Gordon Ramsay having immediate effect as contemplated by <u>Section 11.2</u>." (Ex. 1 § 4.25 (emphasis in original).)

Upon realization that more time was required than the 120 days permitted in the Development Agreement, on or about January 5, 2017, Planet Hollywood told GRUS, the only suitable member of GRB, that additional time was needed, and that it would complete the process as expeditiously as possible, and by or before March 31, 2017. (*Id.* ¶ 5.) GRUS did not object, and Planet Hollywood proceeded in its diligence under the belief that the extended time was acceptable. (*Id.* ¶ 6.) For his part, Seibel did not object until he did so in the complaint he filed on January 11, 2017. (*Id.*)

Because of Seibel's unsuitability, requiring Planet Hollywood to terminate the Development Agreement, Planet Hollywood had concerns about making License Fee payments to GRB for use of the GRB Marks and General GR Materials during the wind up period given GRB's inability to disassociate with Seibel. (Ex. C, Declaration of Boris Petkov ("Petkov Decl."), ¶¶ 2, 4.) Accordingly, Planet Hollywood accrued the License Fee for their use during the wind up period. (*Id.* ¶ 3.) Planet Hollywood is ready, willing, and able to place those funds in escrow pending resolution of this action. (*Id.* ¶ 5.) If this Court concludes that Seibel is entitled to recover those License Fees, any purported damage is remedied by releasing the funds from escrow, *i.e.*, money damages.[5]

III. ANALYSIS

A. Plaintiff is Not Entitled to the Extraordinary Relief He Seeks.

1. The standard for injunctive relief.

The "purpose in ordering [a] preliminary injunction [is] to maintain the status quo." *All Minerals Corp. v. Kunkle*, 105 Nev. 835, 838, 784 P.2d 2, 4 (1989). A preliminary injunction is an extraordinary measure that should be granted only where the need has been sufficiently proven. *Thorn v. Sweeney*, 12 Nev. 251, 256, 1877 WL 4351, at *4 (1877) (providing that the "extraordinary remedy by injunction" must be sufficiently proven); *Wells, Fargo & Co. v.*

---

[5] In January, weeks after receiving the original Motion for Preliminary Injunction in federal court, and when finalizing the Opposition, it came to Planet Hollywood's attention *that day* that just *the day before* – on the 30th day of the month of the last quarter – the accounting department mistakenly transferred payment of the accrued License Fee to GRUS. Demand was immediately made on GRUS to return the mistaken funds. GRUS returned the funds on February 6, 2017, and they remain accrued. (Ex. C, Petkov Decl. ¶ 7.)

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

Dayton, 11 Nev. 161, 166, 1876 WL 4544, at *4 (1876) (noting that there must exist special circumstances before the "extraordinary and preventive remedy of injunction can be invoked"). In every case, the court must examine the "balance of hardships." *Indep. Asphalt Consultants, Inc. v. Studebaker*, 126 Nev. 722, 367 P.3d 781 (2010).

To prevail on his motion for extraordinary relief, Seibel must demonstrate that: (1) GRB has a reasonable likelihood of success on the merits; (2) absent a preliminary injunction, GRB will suffer irreparable harm; and (3) compensatory damages would not suffice to remedy such a harm. *Excellence Cmty. Mgmt. v. Gilmore*, 131 Nev., Adv. Op. 38, 351 P.3d 720, 722 (2015). The court may also consider any public policy concerns. *See Hansen v. Edwards*, 83 Nev. 189, 193, 426 P.2d 792, 794 (1967) (limiting a lower court's injunction order enforcing a non-compete covenant between a doctor and health clinic where the particular medical services provided were scarce in the community); *Camco, Inc. v. Baker*, 113 Nev. 512, 518, 936 P.2d 829, 832 (1997) (considering public policy in an injunction order). Seibel cannot demonstrate any of the elements that would entitle GRB to injunctive relief.

2. GRB, through Seibel, is unlikely to succeed on the merits of his claim that termination of the Development Agreement was ineffective.

Seibel's request for an injunction based on Planet Hollywood's termination of the Development Agreement being ineffective is substantively unsound. Not only did Seibel know that Planet Hollywood was terminating the Development Agreement, but Planet Hollywood substantially complied with the termination provision and ratified the termination.

a. Substantial compliance rendered the notice of termination effective.

Substantial compliance with contractual provisions renders performance of a contract effective. *Holland v. Rock*, 50 Nev. 340, 259 P. 415, 416 (1927) (finding no error in a district court's fact-based determination that a promisor had substantially complied with the contract in question); *Virginia & T.R. Co. v. Lyon County Com'rs*, 6 Nev. 68, 72, 1870 WL 2408, at *3 (1870) (noting that the standard for compliance is substantial compliance). Similarly, substantial compliance renders termination of a contract effective. *Del Lago Ventures, Inc. v. QuikTrip Corp.*, 764 S.E.2d 595, 598 (Ga. Ct. App. 2014) ("The general rule in determining contract

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

compliance is substantial compliance, not strict compliance, and this rule applies to a contract's termination clause as well."). Notice is ***the*** paramount consideration. *See Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 280, 21 P.3d 16, 20 (2001) (addressing the issue of notice as a central concern in the validity of a contract termination); *Adams v. Nev. Sys. of Higher Educ.*, 127 Nev. 1113, 373 P.3d 889 (2011) (same).

Here, Planet Hollywood substantially complied with the termination provision because notice was given. Section 4.2.5 provides that Planet Hollywood may terminate the contract upon written notice. (Ex. 1 § 4.2.5.) The termination letter sent on September 21, 2016 fulfilled the written notice requirement. (Ex. 11.) The letter made clear its intent to terminate the "Development, Operation and License Agreement by and among PHW Las Vegas, LLC dba Planet Hollywood by its manager, PHW Manager LLC ("Caesars"), GR BURGR, LLC ("GRB"), and Gordon Ramsay, and individual dated December 13, 2012 ("Agreement")." (*Id.*) Thus, it cannot be, and Seibel does not contend, that he was confused as to which contract was terminated and by whom. That Caesars rather than Planet Hollywood sent the letter is immaterial. Notably, there was no mention of any such concern or confusion in the letters from Seibel's counsel that followed. (*E.g.*, Ex. 20; Ex. L, 9/7/2016 Ltr. from B. Zeigler to M. Clayton.)

b. <u>Planet Hollywood ratified the contract termination</u>.

Even if Planet Hollywood had not substantially complied with the termination provision (which it did), Planet Hollywood's ratification of the termination letter sent by Caesars rendered the termination valid. "Ratification, the confirmation by one of an act performed by another without authority," is accomplished when the principal has full knowledge of the material facts and accepts and retains the benefit. *Hendrix v. First Bank of Savannah*, 394 S.E.2d 134, 135 (Ga. Ct. App. 1990); *see also Clarke v. Lyon County*, 7 Nev. 75, 77, 1871 WL 3379, at *1 (1871) ("A county may ratify a contract of an unauthorized agent made in its behalf, the contract being one which the county could make in the first instance."). In particular, where an entity without the requisite authority performs an obligatory act, a principal corporation may later ratify that act. *Jacobson v. Stern*, 96 Nev. 56, 60-61, 605 P.2d 198, 201 (1980) (holding that if a

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

pre-incorporation contract is made by a promoter and when formed, the corporation expressly or impliedly ratifies the contract, it becomes a valid obligation of the corporation).

Substantial compliance with the Development Agreement's termination provision is sufficient to terminate the contract alone. Also, standing alone, Planet Hollywood's ratification is sufficient to achieve the termination. Combined, the two means taken up to achieve termination demonstrate intent, and indeed, a mandate that the contract be and is terminated.

3. Plaintiff is also unlikely to succeed on the merits of any of his other claims.

In addition to his disingenuous argument about an ineffective termination, Seibel asserts seven causes of action, all of which are based on four main factual arguments:

a. Seibel's challenge to Planet Hollywood's exercise of its express contractual right to terminate the Development Agreement based upon its sole and exclusive judgment;[6]

b. Planet Hollywood's operation of the Burgr Restaurant and related use of the GRB Marks and General GR Materials during the wind up period post-termination;[7]

c. Payment of the License Fee for use of the GR Marks during the post-termination wind up period;[8] and

d. An alleged conspiracy between Planet Hollywood and Gordon Ramsay to "oust" Seibel.[9]

Each is addressed below in turn, demonstrating that neither Seibel nor GRB via Seibel can show a likelihood of success on the merits of any of their causes of action.

---

[6] Second Cause of Action for Breach of Contract; Third Cause of Action for Breach of the Implied Covenant of Good Faith & Fair Dealing; Fifth Cause of Action for Declaratory Relief.

[7] Second Cause of Action for Breach of Contract; Third Cause of Action for Breach of the Implied Covenant of Good Faith & Fair Dealing; Fifth Cause of Action for Declaratory Relief; Sixth Cause of Action for Injunctive Relief.

[8] Second Cause of Action for Breach of Contract; Third Cause of Action for Breach of the Implied Covenant of Good Faith & Fair Dealing; Fourth Cause of Action for Unjust Enrichment; Fifth Cause of Action for Declaratory Relief; Sixth Cause of Action for Injunctive Relief; Seventh Cause of Action for an Accounting.

[9] Second Cause of Action for Breach of Contract; Third Cause of Action for Breach of the Implied Covenant of Good Faith & Fair Dealing; Fifth Cause of Action for Declaratory Relief; Eighth Cause of Action for Civil Conspiracy.

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

a. Planet Hollywood's express contractual right to terminate the Development Agreement based upon unsuitability.

"It has long been the policy in Nevada that absent some countervailing reason, contracts will be construed from the written language and enforced as written." *Kaldi v. Farmers Ins. Exchange*, 21 P.3d 16, 20, 117 Nev. 273, 278 (2001) (quoting *Ellison v. C.S.A.A.*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990)). Here, Section 11.2 of the Development Agreement is very clear, and explicitly provides Planet Hollywood the "***sole and exclusive judgment***" to determine that a GR Associate is an Unsuitable Person under the Development Agreement. (*Id.* § 11.2 (bold emphasis added).) Planet Hollywood exercised its contractual right to determine, in its "sole and exclusive judgment," that Seibel was and is an unsuitable person, per the Development Agreement. (Ex. 11; Ex. 16.)

Seibel argues that GRB was not given a reasonable opportunity to cure its defect – *i.e.*, GRB's association with him. This is incorrect. The Development Agreement provided two opportunities for GRB to cure the concerning issue about its association with an unsuitable person. GRB could cure by "(a) . . . terminat[ing] any relationship with [Seibel,] the source of such issue, (b) . . . ceas[ing] the activity or relationship [*i.e.*, Seibel] creating the issue ***to PH's satisfaction, in PH's sole judgment*** . . . ." (*Id.* (emphasis added).) Neither of these opportunities was accomplished.

Only after the press reported of his felony guilty conviction did Seibel approach Planet Hollywood about his unsuitability. At that time he made reference to proposed transfer documents from earlier in the year, which purported to transfer his interests into a Seibel Family 2016 Trust. Notably, (1) Seibel never sent one of these documents for GRB (Ex. A, Casto Decl. ¶ 11); and (2) in any event, the proposed transfers he did send failed to meet Caesars' internal compliance criteria (Ex. I; Ex. J). In short, both Caesars and GRB rejected Seibel's purported transfers because he was merely transferring his interests to a family trust controlled by his counsel and family members. (Ex. G; Ex. I; Ex. J.) Consistent with its express contractual right, Planet Hollywood determined in its "sole judgment" that GRB did not terminate its relationship with Seibel "***to PH's satisfaction***." (Ex. 1 § 11.2.) Accordingly, Planet Hollywood

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

terminated the Agreement, as it was entitled to do. (Ex. 11; Ex. 16.) Thus, Seibel has not established and cannot establish a likelihood of success on the merits of his First Cause of Action for Breach of Contract based on these allegations.

To get around the express contract provisions, Seibel argues that Planet Hollywood exercised its sole and absolute judgment in bad faith, and asserts that Planet Hollywood's suitability determination and its termination of the Development Agreement thus constitute breaches of the implied covenant of good faith and fair dealing. But Seibel is incorrect on the facts and the law.

While every agreement does have an implied covenant of good faith and fair dealing, that implied covenant cannot contradict an express contract provision. *See, e.g., Kuiava v. Kwasniewski*, 126 Nev. 731, 367 P.3d 791, 2010 WL 3385533, at *1 (2010) (table), *citing with approval Kucharczyk v. Regents of Univ. of Cal.*, 946 F. Supp. 1419, 1432 (N.D. Cal.1996) (noting that the implied covenant of good faith and fair dealing may not be used to imply a term that is contradicted by an express term of the contract); *O'Connor v. Uber Techs., Inc.*, 58 F. Supp. 3d 989, 1001 (N.D. Cal. 2014); *Tollefson v. Roman Catholic Bishop*, 268 Cal. Rptr. 550 (Cal. Ct. App. 1990) ("[T]here simply cannot exist a valid express contract on one hand and an implied contract on the other, each embracing the identical subject but requiring different results and treatment.") (overturned on other grounds).

Seibel asks this Court to find that GRB has a likelihood of success on the merits of his Third Cause of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing, and also on his Fifth Cause of Action for Declaratory Relief even though the acts about which he complains are authorized in express contract provisions. This, he cannot do. The law offers no safe harbor for him to circumvent the suitability requirements of the Development Agreement, and he cannot argue around the plain and determinative facts that he is a convicted felon. Without a legal basis to re-write or strike the suitability provisions, Seibel's claim must fail.

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

b. Planet Hollywood's operation of the Burgr Restaurant and related use of the GRB Marks and General GR Materials during the wind up period.

Seibel also asserts a number of causes of action based on Planet Hollywood continuing to operate the Burgr Restaurant after the September 21, 2016 termination, and its use of the GRB Marks and General GR Materials following the termination. In other words, he seeks to enjoin the use of the marks and materials during an extended wind up period. While he claims this conduct: (1) breaches the Development Agreement; (2) breaches the implied covenant of good faith and fair dealing; (3) entitles GRB to declaratory relief related to the purported breaches; and (4) entitles GRB to injunctive relief, Seibel cannot establish a likelihood of success on the merits of any of those claims on GRB's behalf.

As provided, Planet Hollywood worked diligently to wind up the Restaurant operations within the 120-day wind up period. (Ex. B, Bowen Decl. ¶¶ 2, 5.) But the Burgr Restaurant was aggressively branded. (*Id.* ¶¶ 3-4.) Therefore, unlike in the other Seibel-related restaurant where contract termination and complete rebranding was required due to Seibel's unsuitability, everything needed to be replaced and rebranded, from plates and coasters to uniforms and signage. (*Id.* ¶ 4.) Planet Hollywood has replaced logos, cook coats, exterior signage, and retail items. (Id. ¶ 2.) However, it has taken longer for other aspects of the rebranding to take effect. (*Id.* ¶ 4.) Thus, a longer wind up process was necessary.[10]

When Planet Hollywood realized additional time was necessary, it promptly provided notice. (*Id.* ¶ 5.) Specifically, understanding the stalemate within GRB and the ongoing dissolution proceedings, Planet Hollywood provided notice to GRUS, the only suitable GRB member, that while it was proceeding as expeditiously as possible, it would complete the wind up process by or before March 31, 2017. (*Id.*) GRUS did not object. (*Id.* ¶ 6.) As Planet Hollywood could not reach out to Seibel given his unsuitability, it proceeded to work diligently to complete the wind up process as quickly as possible under the circumstance.

[10] In total, Caesars had to terminate six (6) agreements with Seibel (Caesars LV Gordon Ramsay Pub & Grill, Caesars AC Pub, Paris Gordon Ramsay Steak, Caesars LV Serendipity 3, Caesars LV Old Homestead, and Planet Hollywood GR BRGR) due to his unsuitability. Only two required complete rebranding.

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

(*Id.* ¶¶ 5-6.) Planet Hollywood only received an objection from Seibel via his federal court complaint.[11]

As is apparent, the members of GRB disagree on how best to conduct business. The correspondence between GRB's members make this clear, as does the pending dissolution proceeding. (Ex. G; Ex. 19.) But Planet Hollywood provided notice to the only suitable member of GRB, GRUS. And, having received no objection, Planet Hollywood reasonably proceeded to work diligently to complete the rebranding process by or before March 31, 2017.[12]

Seibel takes issue with Planet Hollywood's rebranding, arguing that Planet Hollywood intends to operate the same restaurant by using GRB Marks and General GR Materials in the new restaurant. Seibel's presumptions are unfounded. The layout, color, and feel of the new restaurant are grounded in new concepts. (Ex. B, Bowen Decl. ¶¶ 2.) Moreover, Seibel does not own Gordon Ramsay's name and he certainly does not own the right to serve burgers at a restaurant. Thus, the fact that Planet Hollywood's new restaurant serves burgers and uses Ramsay's name is insufficient to allege infringement.

c. Payment of the License Fee during the wind up period.

Planet Hollywood understands that, during the wind up period, "PH shall continue to be obligated to pay GRB all amounts due GRB hereunder that accrue during such period in accordance with the terms of the Development Agreement as if this Agreement had not been terminated." (Ex. 1 § 4.3.2.) Consistent with this obligation, Planet Hollywood accrued the payments for the License Fee. (Ex. C, Petkov. ¶ 3.) However, because of GRB's association with an unsuitable person (Seibel), Planet Hollywood had not transferred those payments to GRB.

---

[11] Understanding that there is a stalemate within GRB given that its Operating Agreement requires a decision of the majority to make decisions on behalf of the LLC (Ex. 3 § 8.1), Planet Hollywood does not understand how Seibel has the ability to bring a derivative suit on GRB's behalf. More specifically, if Seibel, a 50% member, can make a decision on behalf of GRB, it may be that GRUS, also a 50% member, can also make decisions on GRB's behalf, including extending the wind up period.

[12] To the extent Seibel is damaged by the additional 73 days of wind up, any damage is compensable at law through money damages, as discussed in more detail below. In addition, and also as discussed below, the balance of equities tips in favor of Planet Hollywood, the gaming licensee who took preventative measures per its express contractual rights, to disassociate with an unsuitable person.

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

(*Id.* ¶¶ 2-3.)[13] As stated above, Planet Hollywood is ready, willing and able to place those funds in escrow pending resolution of this action. (*Id.* ¶ 5.) If this Court concludes that Seibel is entitled to recover those License Fees, any purported damage is remedied by releasing the funds from escrow, *i.e.*, money damages.

In any event, Seibel has placed Planet Hollywood in an untenable position: Planet Hollywood must make payments to an unsuitable person (and put its gaming license in jeopardy) or breach the Development Agreement.[14]

d. An alleged conspiracy between Planet Hollywood and Gordon Ramsay.

To establish a viable claim for civil conspiracy, GRB must establish that Planet Hollywood and Gordon Ramsay, by acting in concert, intended to accomplish an unlawful objective for the purpose of harming GRB, and that GRB sustained damage resulting from the act. *Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 971 P.2d 1251 (1991). The gist of a conspiracy claim is the harm to the plaintiff, *Eikelberger v. Tolotti*, 96 Nev. 525, 611 P.2d 1086 (1980). Revealing his actual motivation for filing a derivative suit on behalf of GRB, Siebel alleges harm to "GRB ***and Seibel's rights, entitlements, and justified expectations under the GRB Agreement.***" (*E.g.*, Compl. ¶ 109 (emphasis added).) Seibel manufactures arguments based on his "belief" but offers no admissible evidence of any purported agreement to oust him. At all times, Planet Hollywood acted to protect its gaming licenses and to enforce its express contractual right to exercise its sole and exclusive judgment to terminate the Development Agreement because of Seibel's unsuitability and GRB's inability to disassociate to

---

[13] See *supra* note 5.

[14] In fact, in entering into the Development Agreement in the first place, Planet Hollywood conditioned its performance on GRB and the GR Associates' suitability. (Ex. 1 § 2.2 (""the rights and obligations of each party . . . is conditioned upon . . . "PH being satisfied, in its sole discretion, that no GR Associate is an Unsuitable Person.").) Seibel's conduct violated a promise and express condition of the contract, and prevented Planet Hollywood from performance as intended. *See, e.g., Graham v. Kim*, 111 Nev. 1039, 1041, 899 P.2d 1122, 1124 (1995) (discussing impossibility, prevention of performance, and commercial frustration).

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

Planet Hollywood's satisfaction and in Planet Hollywood's sole judgment. No injunction can lie for this authorized conduct.

i. Planet Hollywood's relationship with Gordon Ramsay.

Seibel self-servingly misinterprets the Development Agreement broadly to argue that Planet Hollywood can have no relationship with Gordon Ramsay because (1) Planet Hollywood determined that Seibel was unsuitable, and (2) Planet Hollywood can no longer do business with GRB because it could not, without court intervention, disassociate with Seibel. What Seibel overlooks is that Ramsay and GRUS made clear to Planet Hollywood that they had no knowledge of Seibel's criminal activity, guilty plea, or felony conviction. (Ex. G.) Upon learning of these facts through the press, Ramsay and GRUS took immediate action to demand that Seibel disassociate from GRB so that the Development Agreement would not be affected. (*Id.*) Seibel refused to do so. (*Id.*) The only way for Ramsay's entities to disassociate with Seibel was to commence proceedings in Delaware to dissolve GRB per the terms of its operating agreement, and Ramsay's affiliates did so. (*Id.*; *see also* Ex. 19.)

The relationship between Planet Hollywood and GRB has been terminated but for those actions necessary to wind up the operations of the Burgr Restaurant. There is no requirement, contractual or otherwise, that Planet Hollywood terminate all relationships, past or future, with Ramsay or any of his affiliated entities unless, of course, they associate with others that Planet Hollywood and/or Caesars determines to be unsuitable.

ii. Payment to Ramsay's affiliates – pre and post termination.

Seibel, on behalf of GRB, claims that Planet Hollywood violated the Development Agreement by diverting all or part of the License Fee to Gordon Ramsay and/or his affiliated entities. He also argues these incorrect facts are evidence of a conspiracy to breach the Development Agreement and "oust" Seibel. These argument are also factually and legally incorrect.

With regard to the License Fee post-termination, as discussed above, Planet Hollywood has accrued the License Fee payments since it terminated the Development Agreement on September 21, 2016. (Ex. C, Petkov Decl. ¶ 3.) With regard to the License Fee pre-termination,

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

due to Seibel's unsuitability, Planet Hollywood paid the License Fee as the Development Agreement required. Specifically, up to and until March 2016, Planet Hollywood paid the License Fee to GRB. (*Id.* ¶ 6.) At or around March 8, 2016, GRUS requested that its share of the License Fee be paid to GRUS directly. (*Id.*; Ex. M, 3/8/16 Ltr. from S. Gillies to Planet Hollywood.) GRB's Managing Member, Stuart Gillies, made the request on GRB's behalf. (Ex. M; Ex. C, Petkov Decl. ¶ 6.) The request referred to Section 8.2 of the Development Agreement, which provides that Planet Hollywood is to pay the License Fee to GRB, "as directed by GRB, from time to time." (Ex. M; Ex. C, Petkov Decl. ¶ 6; *see also* Ex. 1 § 8.2.) The request further directed Planet Hollywood to "take this as [GRB's] instruction with immediate effect for [Planet Hollywood] to pay 50% of the sums due to [GRB] to the existing bank account and details you have for the Seibel entities and 50% to the following bank account on behalf of the Ramsay entities . . . ." (Ex. M.) Planet Hollywood did as GRB directed. (Ex. C, Petkov Decl. ¶ 6.) There was no conspiracy. Rather, there was an instruction from a GRB Managing Member that referred to an express contract provision that permitted the request, and Planet Hollywood acted in accordance with the instruction, as contractually required.

iii. GRUS and Planet Hollywood's separate rejections of Seibel's proposed transfers/assignments.

Seibel next argues that because both Planet Hollywood and GRUS rejected his attempts to transfer his interest and ownership in GRB to his family trust, there must be a conspiracy to "oust" him from GRB. The only "evidence" he offers is his own testimony that he "believe[s]" that Planet Hollywood was aware that Gordon Ramsay had rejected his attempted assignment or transfer back in April 2016. (Ex. 2, Seibel Decl. ¶ 42.) But he offers no factual basis for his belief, and it is not true. (Ex. A, Casto Decl. ¶ 14.) More problematic for Seibel's conspiracy theory is his testimony that his "suspicion [about a conspiracy] was confirmed" when he received "Ramsay and Planet Hollywood's correspondence in September 2016." (Ex. 2, Seibel Decl. ¶ 43.) While in their September 15, 2016 letter, Gordon Ramsay and GRUS did, indeed, inform Planet Hollywood that they rejected Seibel's requested transfer/assignment (Ex. 12), Planet Hollywood had ***already twice*** informed Seibel that it had rejected his requested

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

assignment. (Ex. H; Ex. J.) In its September 16 letter to Gordon Ramsay and GRUS, Planet Hollywood merely informed Ramsay and GRUS of its own determination that Seibel's proposed transfer and the fact that it had ***already been communicated to Seibel four days before,*** on September 12. (Ex. 13.) Seibel mischaracterizes the correspondence, which contradicts the picture that Seibel wants to paint to this Court.

iv. Caesars' bankruptcy proceeding and Seibel-related contracts.

Finally, to manufacture a conspiracy claim, Seibel also mischaracterizes various actions in the Caesars bankruptcy action related to other contracts between Caesars entities and Seibel-related entities. Seibel claims that Caesars and/or its affiliate Desert Palace, Inc. ("DPI") "wrongfully moved to reject an agreement between DPI and LLTQ Enterprises, a Seibel affiliated entity, related to the development and operation of the Gordon Ramsay Pub and Grill at Caesars Palace in Las Vegas. (Ex. 2, Seibel Decl. ¶ 35.) Seibel also claims that Caesars and its affiliate Boardwalk Regency Corporation "engaged in a similar scheme" with Seibel's affiliated entity, FERG, LLC, related to the Gordon Ramsay Pub and Grill at Caesars Atlantic City, and Serendipity in Las Vegas. (Ex. 2, Seibel Decl. ¶¶ 36-37.)

Rather than a conspiracy to "oust" Seibel, Caesars moved to reject the various agreements within the bankruptcy action because they were not beneficial to the estate and they were costing the estate money. The details of the motions to reject and related discovery are being conducted within the bankruptcy action, and are not subject to litigation here.[15] But, for purposes of Seibel's claims purportedly on GRB's behalf, Caesars' motions to reject non-beneficial contracts (unrelated to GRB) is not evidence of a conspiracy to "oust" Seibel; they are merely evidence that Caesars is exercising its rights afforded under the law.

4. Plaintiff will not and has not suffered any irreparable harm.

a. Plaintiff has an adequate remedy at law for any purported damage.

Each of Seibel's claims come down to whether GRB is entitled to collect license fees for the use of certain marks during an interim wind-down period following Planet Hollywood's

---

[15] In fact, as a result, the conspiracy-related cause of action should be stayed pending factual determinations in the bankruptcy proceeding.

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

termination of the Development Agreement. But, to obtain injunctive relief, a party must make a persuasive showing of irreparable harm. It is well-established that a monetary injury is not normally considered an irreparable injury. *Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657, 6 P.2d 982, 986 (2000); *see also Walters v. Reno*, 145 F.3d 1032, 1048 (9th Cir. 1998) ("Injunctive relief is proper only if monetary damages or other legal remedies will not compensate the plaintiffs for their injuries."). "The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." *Sampson v. Murray*, 415 U.S. 61, 90 (1974). Here, Seibel claims that GRB is entitled to payment of the License Fee during the wind up period. Planet Hollywood does not dispute that GRB is entitled to receipt of the License Fee for use of the marks during the wind up period. As discussed above, Planet Hollywood accrued those fees for payment, if so ordered by a court of competent jurisdiction. Planet Hollywood could not act otherwise by making payment to the GRB account, which it knew would go to an unsuitable person, because of its concern that payment to an unsuitable person may jeopardize its gaming license.

If this Court determines that Seibel has properly asserted a viable derivative claim on GRB's behalf, the remedy for Seibel, whether through GRUS or through Planet Hollywood, is money damages. Because there is an adequate remedy at law, injunctive relief is neither necessary nor proper.

b. <u>An Irreparable harm contract provision is insufficient without more.</u>

Plaintiff argues that GRB satisfies the irreparable harm prong because "the parties stipulated to the existence of irreparable harm" in 14.10.2 of the Development Agreement. (Mot. 9:7-9.) This is insufficient on two grounds. First, "[a] preliminary injunction is an extraordinary remedy never awarded as a right." *Winter*, 555 U.S. at 24. Second, such contractual provisions are insufficient for the issuance of injunctive relief. A contract provision does not abrogate an obligation to demonstrate irreparable injury. *Michael A. Baron, M.D., Ltd. v. Gerson*, 124 Nev. 1451, 238 P.3d 794, 2008 WL 6043843, at *1 (2008) ("[T]he language in the parties' non-compete agreements stating that irreparable harm is agreed upon if the non-compete agreement is violated does not provide a sufficient basis to meet the necessary requirements.");

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

Int'l Ass'n of Plumbing & Mech. Officials v. Int'l Conference of Bldg. Officials, No. 95-55944, 1996 WL 117447, at *2 (9th Cir. 1996) (noting that a contractual provision does not abrogate "[Plaintiff's] obligation to demonstrate a particular threatened irreparable injury, nor the district court's obligation to make specific factual findings that such injury (1) is in fact irreparable and (2) might actually occur absent an injunction"); *Baker's Aid, a Division of M. Raubvogel Co., Inc. v. Hussmann Foodservice Co.*, 830 F.2d 13, 16 (2d Cir.1987) ("[C]ontractual language declaring money damages inadequate in the event of a breach does not control the question whether preliminary injunctive relief is appropriate."); *Firemen's Ins. Co. of Newark, N.J. v. Keating*, 753 F. Supp. 1146, 1154 (S.D.N.Y. 1990) ("The [contractual provision], likewise, does not, by its mere presence in the [contracts], satisfy the requirement that plaintiff make a showing of likely irreparable harm before the Court will grant its motion for a preliminary injunction. To the contrary, ***the Court must fully apply the same test for irreparable harm that it would were the [provision] not to exist.***") (emphasis added).)

c. GRB's existence may be threatened, but because of Seibel's actions, not the actions of Planet Hollywood.

Seibel also claims to satisfy the irreparable harm element because, according to him, "Planet Hollywood's conduct threatens GRB's very existence." (Mot. 9:9.) Seibel has his facts very wrong since it is his actions that "threaten[ ] GRB's very existence."

While the dissolution of GRB may very well be imminent, it is not because Planet Hollywood acted improperly when it exercised its contractual right to terminate the Development Agreement in its sole and exclusive discretion due to Seibel's unsuitability. Planet Hollywood does not control GRUS, and thus, GRUS acts of its own volition with regard to the parties' internal business dispute. While Seibel wants the entity to continue to exist, his co-members want to dissolve the entity "because [it] has ceased to do business and its ability to carry on any future business is not reasonably practicable in light of the felony conviction of Rowen Seibel, a 50% member and manager of GRB, and his designation as an "Unsuitable Person" . . . ." (Ex. 19, p. 1.)

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

The dissolution will occur because Seibel's felonious acts leave him unqualified to do business. An injunction cannot issue ***against Planet Hollywood to protect GRB from Seibel's misconduct*** in violation of Planet Hollywood's express contractual rights. Planet Hollywood is not a wrongdoer; Seibel is. GRB is entitled to no relief as against Planet Hollywood. Seibel's grievance is one to be decided more properly by the Delaware court.

Moreover, Seibel cannot rely on *American Passage Media Corp. v. Cass Communications, Inc.*, to establish that the threat of going out of business is sufficient to establish irreparable harm. 750 F.2d 1470, 1474. In *Passage Media*, the issue concerned two competing companies. *Id.* at 1473. One communications company complained of another's law violations that included enforcing certain exclusive dealing contracts that quashed competition in the market. *Id.* Here, however, the adverse parties are contracting parties that explicitly bargained for the right to terminate. Seibel's claim of regret over the bargained-for provision and attenuated consequences is not what the *Passage Media* court has in mind. Such a low standard for irreparable harm would mean that whoever can fathom a negative consequence to their business after agreeing to the cause of that consequence has met their burden. Therefore, Seibel's allegations of business harm must fail, as did the allegations in *Passage Media*, the case Seibel cites for his proposition.[16]

5. The balance of equities favors Planet Hollywood, not GRB (via Seibel).

To qualify for injunctive relief, Seibel must establish that "the balance of equities favors [GRB]." *State Farm Mut. Auto. Ins. Co. v. Jafbros Inc.*, 109 Nev. 926, 928, 860 P.2d 176, 178 (1993); *Winter,* 555 U.S. at 20. To determine whether Seibel has met this burden, the Court has a duty to balance the interests of all parties. *Indep. Asphalt Consultants, Inc. v. Studebaker*, 126 Nev. 722, 367 P.3d 781 (2010). Here, the balance of equities most certainly tips in Planet Hollywood's favor.

---

[16] Seibel also attempts to establish irreparable harm by claiming that GRB has exclusive rights to the GRB Marks and General GR Materials, and that if Planet Hollywood were to misuse those marks and materials, GRB's reputation might be harmed. However, this assertion is nonsensical. First, the necessary attenuation is palpable. Second, if Planet Hollywood were to misuse the marks and materials even while the parties were in a contractual relationship, it might bring reputational harm. This complaint is not rooted in termination of the contract, and thus, the same should not be prohibited.

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

a. Seibel has unclean hands.

Seibel seeks equitable relief from this court with unclean hands, but such relief is unavailable to him for the very reason that Planet Hollywood terminated the Development Agreement – he defrauded the IRS and concealed it when entering into negotiations with Planet Hollywood. A plaintiff like Seibel is precluded from attaining an equitable remedy when he has violated equitable principles in his prior conduct related to the action. *Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 275, 182 P.3d 764 (2008) ("The unclean hands doctrine generally bars a party from receiving equitable relief because of that party's own inequitable conduct." (quotations omitted)); *Truck Ins. Exch. v. Palmer J. Swanson, Inc.*, 124 Nev. 629, 637-38, 189 P.3d 656, 662 (2008) ("The doctrine bars relief to a party who has engaged in improper conduct in the matter in which that party is seeking relief."). Seibel has done just that.

b. Seibel is guilty of laches.

The doctrine of laches also precludes granting the equitable relief Seibel seeks. *See State v. Rosenthal*, 107 Nev. 772, 778, 819 P.2d 1296, 1301 (1991) (noting that laches is delay that works to the disadvantage of another). Granting Seibel relief would be inequitable because Seibel inexcusably delayed asserting his claim that the wrong entity sent the termination, and that therefore, the termination was invalid. *Miller v. Burk*, 124 Nev. 579, 598, 188 P.3d 1112, 1125 (2008) (noting that this court considers whether the party inexcusably delayed bringing the challenge). It has been almost 5 months since Planet Hollywood sent the termination letter and Planet Hollywood has proceeded to pursue other business ventures. (Ex. 11; Ex. B, Bowen Decl. ¶¶ 2, 5.) In short, Planet Hollywood reasonably relied on the validity of the termination, as it appeared that Seibel had acquiesced. After all, he agreed to the terms. Planet Hollywood continued in the ordinary course of business to negotiate new business dealings based on its assumption that the Development Agreement was terminated, and is thereby prejudiced in the absence of termination. *Miller*, 124 Nev. at 598, 188 P.3d at 1125 (providing that courts also consider whether the delay constitutes acquiescence and was prejudicial).

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

c. Planet Hollywood would be substantially harmed by equitable relief.

Planet Hollywood expended considerable effort and resources to develop and operate a first class restaurant for its customers. It housed the Burgr Restaurant in a prime location where customers see the restaurant right as they walk in the doors off the Las Vegas Strip. The restaurant was aggressively branded to promote the relationship with Gordon Ramsay. And, although Planet Hollywood bargained for the right to terminate the Development Agreement in its sole and exclusive discretion in the event an affiliate was determined to be unsuitable, it acted and devoted resources and effort to take the Development Agreement to term and operate the Burgr Restaurant with great success. Now, however, Planet Hollywood must transition to a new restaurant due to Seibel's bad acts.

If an injunction issues requiring Planet Hollywood to cease immediate operations of the Burgr restaurant, it is Planet Hollywood that would suffer irreparable harm. It would have a shuttered restaurant in a prime and central location right through its doors off the Las Vegas Strip, which would destroy business goodwill, its customer relations, and the jobs of its trained and valued employees. *See Romper Room, Inc. v. Winmark Corp.*, 60 F. Supp.3d 993, 997-99 (E.D. Wis. 2014) (threatened loss of employees is one of the factors weighing in favor of issuing injunction because "[e]mployees who are laid off upon termination (of the contract) may also be difficult to bring back, especially if they have found new jobs"); *Am. Standard, Inc. v. Meehan*, 517 F. Supp. 2d 976, 989 (N.D. Ohio 2007) ("[T]he more compelling prospect of the loss of livelihood on the part of [defendant's] employees, tips the balance on the issue of irreparable harm in [defendant's] favor."). Indeed, the "loss of customer goodwill often amounts to irreparable injury because the damage is flowing from such losses are difficult to compute. *Id.* at 988. "[T]he loss of customers and goodwill is an irreparable injury." *Bell South Telecom, Inc. v. MCI Metro Access Transmission Servs.*, LLC, 425 F.3d 964, 970 (11th Cir. 2005) (quoting *Ferrero v. Associated Materials Inc.*, 923, F.2d 1441, 1449 (11th Cir. 1991)).

In contrast, if an injunction does ***not*** issue as Seibel requests, there is little to no harm to GRB, and it certainly is not irreparable. Its dissolution proceedings would continue in Delaware

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

as a result of Seibel's misconduct. And, the license fees for use of the GR Marks during the wind up period will be allocated by either this Court or the Delaware court. The balance of the equities in Planet Hollywood's favor is quite clear, and warrants denying the requested injunctive relief.

C. <u>The Public Interest Factor Also Favors Denial of Plaintiff's Demanded Relief.</u>

As a final factor, courts may weigh the public interest, if any, implicated by the requested injunction. *Winter*, 555 U.S. at 20; *Clark County Sch. Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719, 113 Ed. Law Rep. 930 (1996). To the extent this contract dispute implicates the public interest, it favors the denial of extraordinary relief Seibel seeks on GRB's behalf. As stated above, Planet Hollywood and Caesars Entertainment is a gaming licensee in the State of Nevada. The Nevada Legislature codified that "[t]he gaming industry is vitally important to the economy of the State and the general welfare of the inhabitants." NRS 463.0129(1)(a). It also recognized that [t]he continued growth and success of gaming is dependent upon public confidence and trust . . . and that gaming is free from criminal and corruptive elements." NRS 463.0129(1)(b). "Public confidence and trust can only be maintained by strict regulation of all persons . . . associations and activities related to the operation of licensed gaming establishments . . . ." NRS 463.0129(1)(c).

Planet Hollywood has acted consistent with its obligations as a privileged gaming licensee. It contracted with GRB and Gordon Ramsay that it could take what actions were necessary to protect its gaming license. Not only was it within Planet Hollywood's contractual rights to terminate the Development Agreement based on Seibel's unsuitability, it was in the public interest to do so. That Seibel will not disassociate with GRB and is, in fact, prosecuting this action purportedly on behalf of GRB without the support of his co-member further demonstrates that Planet Hollywood's contractual decisions were not only within its authority, but also were the right decisions for Planet Hollywood and the public interest.

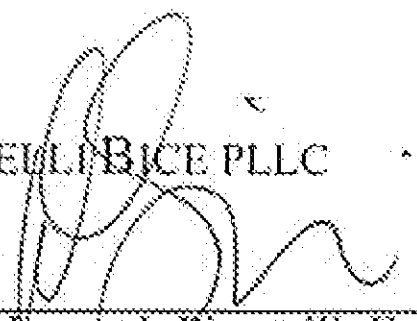
PISANELLI BICE
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

IV. CONCLUSION

Based on the foregoing, Planet Hollywood respectfully requests that this Court deny Plaintiff's Motion for Preliminary Injunction

DATED this 17th day of March, 2017.

PISANELLI BICE PLLC

By: 

James J. Pisanelli, Esq., Bar No. 4027
Debra L. Spinelli, Esq., Bar No. 9695
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Counsel for Defendant PHWLV, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 17th day of March, 2017, I caused to be e-filed/e-served through the Court's CM/ECF system true and correct copies of the above and foregoing **PLANET HOLLYWOOD'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** to the following:

Allen J. Wilt, Esq.
John D. Tennert, Esq.
FENNEMORE CRAIG, P.C.
300 East Second Street – Suite 1510
Reno, NV 89501
awilt@fclaw.com
jtennert@fclaw.com

Daniel R. McNutt, Esq.
Matthew C. Wolf, Esq.
CARBAJAL & MCNUTT, LLP
625 South Eighth Street
Las Vegas, NV 89101
drm@cmlawnv.com
mcw@cmlawnv.com

An employee of Pisanelli Bice PLLC

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

EXHIBIT A

DECLARATION OF RICHARD CASTO

I, Richard Casto, declare as follows:

1. I am the Director of Corporate Compliance and Investigations for Caesars Enterprise Services, LLC, and act on behalf of each of the properties within that enterprise, including the Planet Hollywood Las Vegas Resorts & Casino, operated by PHWLV, LLC ("Planet Hollywood"). I have served in this capacity since November 3, 2014. I am competent to testify to the facts stated herein as those facts are based upon my personal knowledge or information that is within the possession, custody, and control of Planet Hollywood. I make this declaration in support of Planet Hollywood's Opposition to Plaintiff's Motion for Preliminary Injunction.

2. Planet Hollywood is a Nevada gaming licensee.

3. Pursuant to Nevada Gaming Commission Regulation 3.080, Planet Hollywood's gaming license may be revoked based on its associations with unsuitable persons:

> The commission may deny, revoke, suspend, limit, condition, or restrict any registration or finding of suitability or application therefor upon the same grounds as it may take such action with respect to licenses, licensees and licensing; without exclusion of any other grounds. ***The commission may take such action on the grounds that the registrant or person found suitable is associated with, or controls, or is controlled by, or is under common control with, an unsuitable person.***

(Emphasis added.)

4. Consistent with its compliance program, mandated by Nevada gaming regulations, Planet Hollywood made a determination that Seibel was an Unsuitable Person, as that term is specifically defined in the Development Agreement:

> "Unsuitable Person" is any Person (a) whose association with PH or its Affiliates could be anticipated to result in a disciplinary action relating to, or the loss of, inability to reinstate or failure to obtain, any registration, application or license or any other rights or entitlements held or required to be held by PH or any of its Affiliates under any United States, state, local or foreign laws, rules or regulations relating to gaming or the sale of alcohol, (b) whose association or relationship with PH or its Affiliates could be anticipated to violate any United States, state, local or foreign laws, rules or regulations relating to gaming or

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, THIRD FLOOR
LAS VEGAS, NEVADA 89101

> the sale of alcohol to which PH or its Affiliates are subject, (c) who is or might be engaged or about to be engaged in any activity which could adversely impact the business or reputation of PH or its Affiliates, or (d) who is required to be licensed, registered, qualified or found suitable under any United States, state, local or foreign laws, rules or regulations relating to gaming or the sale of alcohol under which PH or any of its Affiliates is licensed, registered, qualified or found suitable, and such Person is not or does not remain so licensed, registered, qualified or found suitable.

(Ex. 1, Development Agreement, § 1 Definitions, p. 6.)

5. Seibel asserts that Planet Hollywood improperly terminated the Development Agreement because Planet Hollywood's termination of the Development Agreement based upon its determination that Seibel was "unsuitable" was made in bad faith. Seibel's assertion lacks understanding of a gaming licensee's duties and obligations to comply with Nevada gaming regulations, as well as the express language of the contract. The Development Agreement's suitability provisions and the express authority therein for Planet Hollywood to take action it deems necessary in its sole and exclusive judgment to protect its gaming license by disassociating with unsuitable persons is not limited to a decision by the gaming regulators alone. Rather, the express language in the Development Agreement related to suitability also allows Planet Hollywood to take action in advance of an actual administrative determination by gaming authorities. The express contractual language serves to fulfill Planet Hollywood's obligations under Nevada gaming laws and regulations to self-police, and to take independent, proactive, and preventative measures related to unsuitable persons. In short, the Development Agreement's suitability provisions reduce the risk that Planet Hollywood will be swept up in disciplinary actions, or worse – have its license revoked—based on the conduct of its associates.

6. Planet Hollywood anticipated that Seibel's association with Planet Hollywood could result in a disciplinary action relating to its gaming license, but Planet Hollywood also found Seibel to be an Unsuitable Person because he was engaged in activity that could adversely impact the business or reputation of Planet Hollywood or its affiliates.

7. Seibel put Planet Hollywood's gaming license at risk by misrepresenting his suitability. Initially, Caesars' corporate investigation team relied on the information it had on file

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, THIRD FLOOR
LAS VEGAS, NEVADA 89101

from Seibel and Gordon Ramsay's most recent disclosures to make a determination that GRB was suitable.

8. Although the Development Agreement required that Seibel and GRB update the disclosures if anything became inaccurate or other material changes occurred, which includes prosecution for criminal conduct, (Ex. 1 § 11.2), Seibel did not reveal his criminal conduct when he entered into the Development Agreement, nor did he reveal any criminal activities throughout the term of the Development Agreement.

9. The Development Agreement obligated Seibel to disclose to Planet Hollywood, among other things, the federal investigations surrounding his illegal banking activities overseas, his application for and denial of amnesty for those illegal activities, his intent to plead guilty to a felony, his felony guilty plea in April 2016, that judgment was entered on his guilty plea on August 19, 2016, and that he was convicted in the Southern District of New York of felony tax evasion pursuant to 26 U.S.C. § 7212(a), in an amount of more than $1 million, and was ordered to serve time. Seibel disclosed none of these things to Planet Hollywood.

10. Planet Hollywood first learned of Seibel's felonious conduct and guilty conviction from news articles, like Eater Las Vegas, which published an article with a title directly related to Seibel's affiliation with Caesars enterprises: "IRS Busts Caesars Palace's Serendipity 3 Owner Rowen Seibel."

11. When Planet Hollywood learned of Seibel's felony conviction and related conduct, Planet Hollywood promptly exercised its express contractual right to protect its gaming license and terminate the Development Agreement via letters sent on September 2 and September 21, 2016.

12. In early April 2016, apparently prior to his pleading guilty to a felony charge, Seibel sent a number of assignment documents related to his interests in entities doing business with Caesars. The assignments purported to transfer his interests to The Seibel Family 2016 Trust. To my knowledge and on information and belief, none of the assignment agreements Seibel sent in April 2016 related to GRB and/or the Gordon Ramsay Burgr Restaurant at Planet Hollywood.

13. Seibel never revealed to Planet Hollywood or Caesars that the purported assignments were motivated by his then-forthcoming guilty plea.

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, THIRD FLOOR
LAS VEGAS, NEVADA 89101

14. Until receipt of the September 15, 2016 letter from counsel for Gordon Ramsay and GRB member, GRUS, neither Planet Hollywood nor Caesars was aware that GRUS had rejected Seibel's proposed assignment of his interest in GRB, either in the post-conviction time frame or in April when GRUS apparently asked Seibel questions about his desired transfer and Seibel did not respond.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct and that I executed this declaration on this 17th day of March, 2017.

/s/ Richard Casto
RICHARD CASTO

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, THIRD FLOOR
LAS VEGAS, NEVADA 89101

EXHIBIT B

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, THIRD FLOOR
LAS VEGAS, NEVADA 89101

DECLARATION OF TIM BOWEN

I, Tim Bowen, declare as follows:

1. I am the Vice President of Food & Beverage for Caesars Enterprise Services, LLC, and act on behalf of each of the properties within that enterprise, including the Planet Hollywood Las Vegas Resorts & Casino, operated by PHWLV, LLC ("Planet Hollywood"). I have served in this capacity since November 2014. I am competent to testify to the facts stated herein, as those facts are based upon my personal knowledge or information that is within the possession, custody, and control of Planet Hollywood. I make this declaration in support of Planet Hollywood's Opposition to Plaintiff's Motion for Preliminary Injunction.

2. Since Planet Hollywood's September 21, 2016 termination of the Development, Operation and License Agreement (the "Development Agreement") for the Gordon Ramsay BurGR Restaurant (the "Burgr Restaurant" or the "Restaurant"), Planet Hollywood has worked diligently to wind up the Restaurant's operations and move forward with other ventures without closing the restaurant and leaving a prime space vacant. To date, Planet Hollywood has changed signage in nineteen places inside and outside the restaurant, substituted cook coats, and is now retailing new and different items, such as shirts and hats that exhibit the new concept. Other changes are in the process, such as replacing menu items, china, and server shirts with the new logo and colors. Those changes will be complete by March 24, 2017. A new wall painting will be complete on March 21, 2017. The look, color scheme, and marketing pieces of the new restaurant are significantly different and continue to evolve.

3. The Burgr Restaurant was aggressively branded. Therefore, as part of the wind up of the operations, everything needed to be replaced and rebranded, from logo plates to beverage coasters, cocktail napkins, dinner napkins, to go bags, to go cups, burger picks, cocktail picks, fry cones, pens, beer glasses, retail sale hats, shirts, menus, all employee uniforms, and restaurant and identity signage both inside and outside of the restaurant and casino.

4. Because of the aggressive branding and the necessary time to order and receive replacements, the wind up period at the Burgr Restaurant has taken longer than that of the other Seibel-related restaurant formerly associated with Caesars, Serendipity 3. Serendipity 3 was not as

aggressively branded as the Burgr Restaurant, and the wind up of operations took place within a similar contractual 120-day period.

5. As Planet Hollywood worked diligently through the steps of the wind up process at the Burgr Restaurant, it was obvious that more than a 120 day wind up period was necessary. Upon realization that more time was required, on or about January 5, 2017, Planet Hollywood told counsel for GRUS, the only suitable member of GRB, that additional time was needed and that it would complete the process as expeditiously as possible, by or before March 31, 2017.

6. GRUS did not object, and Planet Hollywood proceeded in its diligence under the belief that the extended time was acceptable. For his part, Seibel did not object until he did so in the complaint he filed on January 11, 2017.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct and that I executed this declaration on this 17th day of March, 2017.

/s/ Time Bowen
TIM BOWEN

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, THIRD FLOOR
LAS VEGAS, NEVADA 89101

EXHIBIT C

DECLARATION OF BORIS PETKOV

I, Boris Petkov, declare as follows:

1. I am the Vice President of Finance for Caesars Enterprise Services, LLC, and act on behalf of each of the properties within that enterprise, including the Planet Hollywood Las Vegas Resorts & Casino, operated by PHWLV, LLC ("Planet Hollywood"). I have served in this capacity since 2013. I am competent to testify to the facts stated herein, as those facts are based upon my personal knowledge or information that is within the possession, custody, and control of Planet Hollywood. I make this declaration in support of Planet Hollywood's Opposition to Plaintiff's Motion for Preliminary Injunction.

2. Because of Seibel's unsuitability requiring Planet Hollywood to terminate the Development, Operation and License Agreement (the "Development Agreement") on September 21, 2016, Planet Hollywood had concerns about making License Fee payments to GRB for use of the GR Marks during the wind up period given GRB's inability to disassociate with Seibel.

3. Therefore, since the termination of the Development Agreement, Planet Hollywood has accrued the License Fee for use of the GRB Marks (as defined therein) up to and including the present during the wind up of the operations of the Gordon Ramsay BurGR restaurant in the Planet Hollywood hotel.

4. Planet Hollywood cannot, without court order, make payments to an individual or entity associated with an unsuitable person without jeopardizing its license.

5. Although it was never requested, Planet Hollywood is ready, willing, and able to place the accrued license fees in escrow pending resolution of this matter or resolution of the GRB dissolution proceedings.

6. Planet Hollywood paid the License Fee as the Development Agreement required up to and until the termination, when it began accruing the fees, as discussed above. Up to March 8, 2016, the entire License Fee was paid to GRB and, upon information and belief, distributed to its two members equally. After March 8, 2016, Planet Hollywood paid 50% of the License Fee to a GRB bank account for distribution to Seibel, and the other 50% was paid to a different bank account

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, THIRD FLOOR
LAS VEGAS, NEVADA 89101

for distribution to GRB's other 50% member, GRUS. This was done at the instruction of Stuart Gillies, GRB's Managing Member, per the Development Agreement.

7. In January, weeks after receiving the original Motion for Preliminary Injunction in federal court, and when finalizing the Opposition, it came to Planet Hollywood's attention *that day* that just *the day before* – on the 30th day of the month of the last quarter – the accounting department mistakenly transferred payment of the accrued License Fee to GRUS. Demand was immediately made on GRUS to return the mistaken funds. GRUS returned the funds on February 6, 2017, and they remain accrued.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct and that I executed this declaration on this 17th day of March, 2017.

/s/ Boris Petkov
BORIS PETKOV

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, THIRD FLOOR
LAS VEGAS, NEVADA 89101

EXHIBIT D

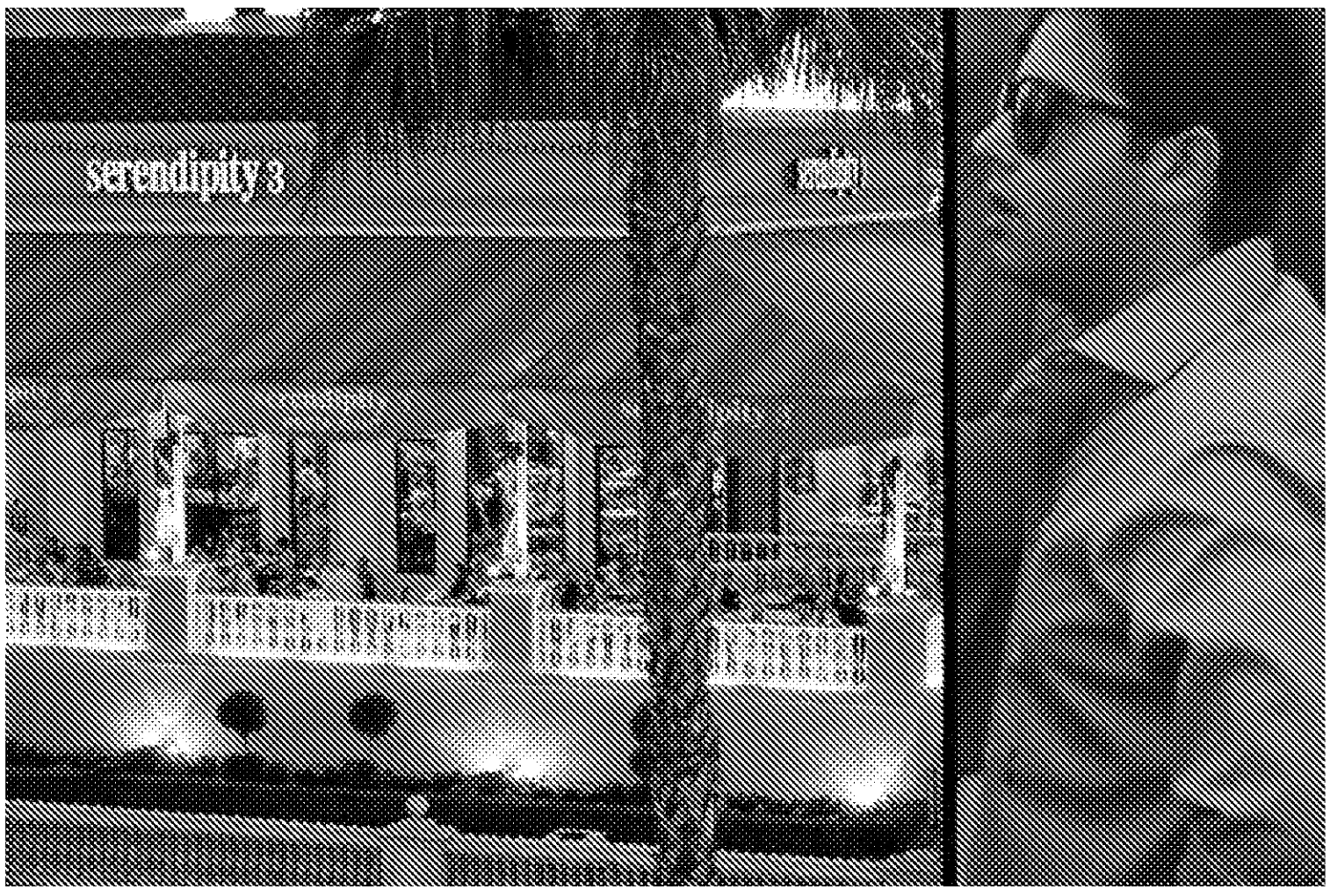
EATER LAS VEGAS

CRIMEWIRE

IRS Busts Caesars Palace's Serendipity 3 Owner Rowen Seibel

The Gordon Ramsay partner will serve one month in prison.

by Bradley Martin | Aug 22, 2016, 1:00pm PDT



RowenSeibelandSerendipity3 ; facebookandsusanstapleton

Averdicthandeddowninthecaseof"TheUnitedStatesofAmericavRowenSeibel"hasput theownerofTheStrip 'sSerendipity3behindbars.Seibel—whohasbeencalled "inept"and "fraudulent"byformercolleaguecelebritychef GordonRamsay—iscurrentlyservinga month-longjailsentenceforhidingatleast$1,011,279intaxableearningsfromtheIRS.The judgeinthecaseshortenedthesentencefromthefederallyrecommended12to18months becauseitwasSeibel'smotherwhoestablishedtheaccount.Themoneywashiddenawayin undeclared"SwissbankaccountsandaPanamanianshellcompany."

AccordingtoBloombergandPageSix,Seibelsaidincourt,"Icontinuetoobsessoverwhata terribledisappointmentIamtomyselfandmyfamily."Hehadbecome"sostressedoutbyhis arrestthathehasgainedweightandtakenupdrinking."

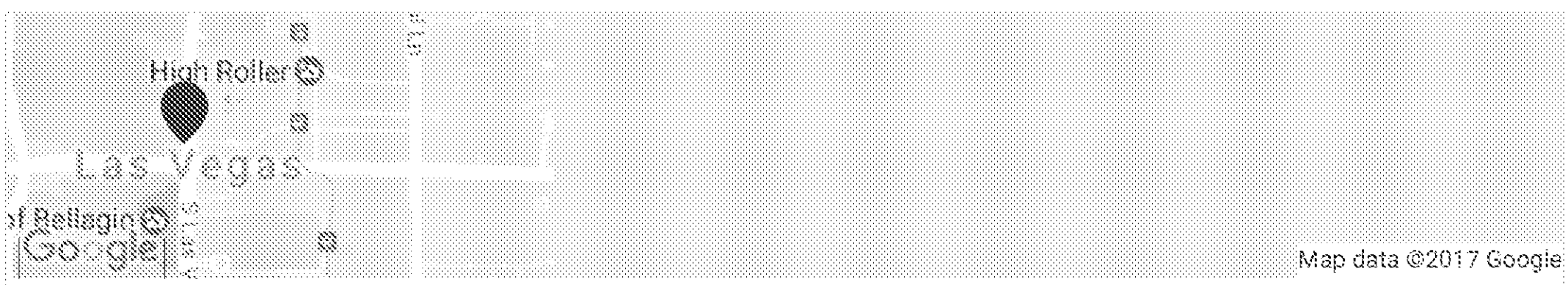
Seibelworkedverycloselywithformer Caesarsvicepresidentoffoodandbeverage **Jeffrey Frederick** onmultiplerestaurantprojects,includingGordonRamsayPub&GrillatCaesars Palace,GordonRamsaySteakatParisLasVegas,andGordonRamsayBurGRatPlanet HollywoodResort.

Meanwhile,RamsayandSeibelarestilldeepintoa$10million legalwaroverwhowas responsibleforthecollapseoftheir **FatCow** eateryinLosAngeles.Rasmay' steamoflawyers havetauntedtheiradversary,repeatedlyreferringtohis"shortfalls,"butmoreseriouslyclaim "Mr.Seibelstolefromtherestaurantaccount"andusedhisconnectionwithRamsaytosecure otherdeals,ashe"traveledthroughouttheworldblatantlymischaracterizinghisrightsunder agreementsgoverningrestaurantventuresinvolvingMr.Ramsay."

Ramsayalsonceplannedtoopenthe underconstruction **GordonRamsayFish&Chips** at TheLinqwithSeibelandJeffreyFrederickaspartners,butnowonlyFrederick'sEliteBrand Hospitalityispartofthefastcasualspot,stillpromisedtodebutin"latesummer."

Followinghisrelease,U.S.DistrictJudgeWilliamPauleyhasorderedSeibelto"complete300 hoursdoingfoodpreparationinanunderprivilegedneighborhood"andtocompletesixmonths ofhomedetention.

CaesarsEntertainmenthasyettoreleaseastatementrevealingitsfutureworkingrelationship withthenewconvict.Seibel'sdessert-focusedrestaurantSerendipity3remainsopenfor businessinfrontoftheCaesarsPalaceresort.



Strip Side Cafe & Bar

FOURSQUARE OPENTABLE

3570LasVegasBoulevardS.,LasVegas,NV89109
702-731-7266
VisitWebsite

- VIA: AllCoverageofRowenSeibel[ELV] , RestaurateurSeibelSenttoJail,ThenKitchen,inTaxScam[Bloomberg], GordonRamsey' s businesspartnergetsjailtimefortaxevasionscheme[PageSix], GordonRamsayembroiledinlegalfightwithbusinesspartnerRowenSeibel [LVSun]

EXHIBIT E

Restaurateur Seibel Sent to Jail, Then Kitchen, in Tax Scam

by **Jesse Drucker** and **Christian Berthelsen**
August 19, 2016, 2:00 AM PDT
Updated on August 19, 2016, 1:19 PM PDT

- Guilty plea came after years-long U.S. push on Swiss secrecy
- Rowen Seibel battled chef Gordon Ramsay for restaurant control

Restaurateur Rowen Seibel has made the gossip pages for getting socked by Diane von Furstenburg's son and multimillion-dollar court fights he's waging with celebrity chef Gordon Ramsay.

On Friday, the 34-year-old New Yorker was sentenced to one month behind bars for using undeclared Swiss bank accounts and a Panamanian shell company to hide more than $1 million from the Internal Revenue Service.

Rowen Seibel Photographer: Michael Loccisano/Getty Images for UNICEF

And when he gets out: he must complete 300 hours doing food preparation in an underprivileged neighborhood, the judge said.

Seibel, who opened restaurants in New York, Washington, and Las Vegas, pleaded guilty in April. At his sentencing in Manhattan, U.S. District Judge William Pauley rejected his plea that he remain out of prison because it was his mother who established the account. But the judge also showed leniency, imposing a sentence far less than the 12 to 18 months recommended by federal guidelines.

"I stand before you today deeply saddened, humbled and heartbroken," Seibel, crying, said in court. "I continue to obsess over what a terrible disappointment I am to myself and my family."

He represents the trailing end of a wave of prosecutions of Americans accused of hiding money in Switzerland -- a sprawling investigation that began in 2007 and has resulted in big fines for Swiss banks and more than 150 cases against alleged tax dodgers and their enablers. Many have ended with financial penalties, and some with prison time.

More than 54,000 Americans avoided prosecution through an amnesty program that let them voluntarily disclose their previously secret accounts, ponying up $8 billion in back taxes, penalties and interest.

Absolute No-No

Seibel tried to join the amnesty program but the IRS turned him down, court records show. He acknowledged one secret account -- but only after stealthily moving his money to another undeclared account at a different bank.

That type of move is an absolute no-no. "It is an essential component of the IRS's voluntary disclosure policy that a taxpayer coming forward must be truthful and complete," said Scott Michel, a criminal tax defense attorney at Caplin & Drysdale in Washington. "Anyone who doesn't follow that rule will undoubtedly anger the IRS and, depending on the circumstances, perhaps be committing a separate crime."

In sentencing Seibel, Pauley quoted Oliver Wendell Holmes, saying: "Taxes are what we pay for a civilized society," and emphasized the importance of "wealthy and sophisticated" members of society contributing their share. He also insisted that prison time be part of the sentence, over the objections of defense lawyers who asked the judge to allow the time to be served in home detention.

"This is an offense that can't just be disposed of like a business debt as a cost of doing business," he said.

Still, he said he was lowering the sentence because of evidence that Seibel's mother and her lawyer played a role in setting up the account and filing the amnesty claim with the government.

Prosecutors say Seibel's Swiss banking began back in 2004. The then-23-year-old, fresh out of New York University's business school, Seibel flew with his mother to UBS Group AG's offices in Switzerland to open an account, the government says. The account was not in his name, but identified in internal bank records with the phrase "CQUE."

For more on Swiss bank secrecy, click here.

For an additional fee, Seibel made sure the bank wouldn't mail any account information to him in the U.S., since that could risk exposure to the IRS, say prosecutors.

The account was opened with $25,000, and over the next year, his mother arranged for cash and checks totaling about $1 million to be deposited. Over the next several years, prosecutors say, Seibel actively monitored and managed the account. Seibel's lawyer, Robert Fink, said his mother is too ill to respond to questions on the matter.

As it happened, the UBS banker who helped the Seibels was Bradley Birkenfeld, who blew the whistle in 2007 on how his employer helped thousands of Americans evade taxes. He later was sentenced to 40 months in prison and earned a $104 million whistle-blower award from the IRS for exposing the bank's schemes.

Since then, more than 80 banks, including UBS and Credit Suisse Group AG, have agreed to pay about $6 billion to the U.S. in penalties and fines.

Birkenfeld said in an interview that he remembered meeting with them and believed he had set up the account. In early May 2008, news broke that Birkenfeld had been indicted and was cooperating with U.S. investigators. Three weeks later, prosecutors say, Seibel went to Switzerland to shut down his UBS account.

Shell Company

But he didn't move his money back into the U.S. and declare it to authorities. Instead, he set up a Panamanian shell company, opened yet another account at a different Swiss bank -- Banque J. Safra -- and moved all $1.3 million into the new Safra account, held by the Panamanian entity.

"This was a shrewd move by Seibel to avoid detection by U.S. authorities," prosecutors wrote in an Aug. 12 court filing.

Later that year, Seibel opened his first restaurant, Serendipity 3, in New York City. He opened a second restaurant, with the same name, at Caesars Palace in Las Vegas in 2009 and a third in Washington two years after that. He also went into business with Ramsay in a series of

restaurants in Las Vegas and Los Angeles.

Ramsay Partnership

Ramsay, the host of Master Chef and Hell's Kitchen, has accused Seibel in a lawsuit of inept management. Seibel, in his lawsuit, says Ramsay took his investment to open a different restaurant.

It wasn't Seibel's first turn in the gossip pages. Back in 2003, he allegedly flirted with the fiancee of Alex von Furstenburg, the son of the legendary fashion designer. Von Furstenburg slammed his car into Seibel's. "I hurt my knuckle, probably when I hit him in the head," von Furstenburg told police, according to press reports.

In 2009, the government introduced its first offshore voluntary disclosure program, allowing U.S. taxpayers to avoid prosecution and pay reduced penalties for declaring their hidden accounts.

'Otherwise Disappeared'

Seibel's mother didn't qualify, her then-lawyer told her, because IRS agents had already questioned her about Birkenfeld, prosecutors say in a filing. Her attorney, however, suggested that her son could, according to the filing.

In October 2009, Seibel applied for amnesty but said he didn't know the status of his UBS account until he asked about it -- more than a year after he transferred the money to the Safra account. He claimed that the deposits had "been stolen or otherwise disappeared."

Today, Seibel splits time between a 19th-floor apartment on Central Park South in Manhattan and a $3 million home in Las Vegas, according to court filings and public records. On Friday, he was also ordered to pay a $15,000 fine by the judge.

U.S. prosecutors have been unsuccessful getting prison terms for many Americans who hid the most money in offshore accounts -- even sums far larger than Seibel's. Fink cited H. Ty Warner, the billionaire creator of Beanie Babies, who evaded almost $5.6 million in taxes on an undisclosed account with as much as $107 million. Warner's evasion was the largest of more than 100 cases in a crackdown against taxpayers and enablers who used offshore accounts to cheat the IRS. He was sentenced to probation and community service.

EXHIBIT F

Gordon Ramsey's business partner gets jail time for tax evasion scheme

By KajaWhitehouse

August20,2016 | 6:41pm

RowenSeibel(left)andGordonRamsey

AwealthyManhattanrestaurateurwassentencedtoamonthintheslammerforlyingtothelRSaboutmorethan$1millionhestashedin Switzerlandaspartofayears-longtaxevasionscheme.

RowenSeibel ,whooncepartneredwithcelebritychefGordonRamsey,bawledasheпromisedManhattanfederalcourtJudgeWilliam Pauleythathewould"neverbeintroubleagain."

Seibel,34,wholivesintheCentralParkSouthapartmentcomplexwherehegrewup,saidhehasbeensostressedoutbyhisarrestthathe hasgainedweightandtakenupdrinking.

Buthistearsfailedtoswaythejudge.

"Thisisanoffensethatcan'tjustbedisposedoflikeabusinessdebt—asthecostofdoingbusiness,"JudgePauleysaid."Thefactthatyou areawealthyandsuccessfulbusinessmanshouldnotexcludeyoufromacustodialsentence."

ThejudgealsoorderedSeibeltosixmonthshomedetentionand300hoursofcommunityservice,whichhesuggestedbecarriedoutby feedingtheneedy.

Thesentencewasfarlessthanthe1to11/2yearsthegovernmentwasseeking.Still,Seibel'swife,Bryn,ranoutofthecourtroomwobbling onstilettoswhensheheardherhusbandofjustfivemonthswouldbelockedup.

Seibel,openedtheSerendipity3restaurantatCesarsPalaceinLasVegasin2009,wasarrestedinAprilover$1.3millionheaccumulated overseasstartingin2004.

SeiebelhidthemoneyfromtheIRSuntil2009whentheaccount'sfinancialadvisor,BradleyBirkenfeld,famouslyhelpedtheDepartmentof Justicecutadealthatresulted inSwissbankUBSspillingthebeansaboutAmericantaxcheats.

Seibelhadanopportunitytocomecleanthatyearthroughavoluntarydisclosureprogram.Instead,hetoldtheIRSthathehadlosttrackof themoneyandbelievedithadbeenstolen"orotherwisedisappeared."

Inreality,SeibeltraveledtoSwitzerlandtheyearbefore,whenthegovernment'staxprobewasmakingheadlines,toclosehisUBSaccount andre-openitelsewhere.

Atthetime,hewithdrew$175,000ofthemoneytobuyaPatekPhilippewatchforhimself,prosecutorssaid.

FILED UNDER GORDON RAMSAY, IRS, RESTAURANTS, TAXES

EXHIBIT G

FENNEMORE CRAIG, P.C.

300 E. Second Street
Suite 1510
Reno, Nevada 89501
(775) 788-2200

Dan R. Reaser
Direct Phone: (775) 788-2226
Direct Fax: (775) 788-2227
dreaser@fclaw.com

Law Offices

Denver	(303) 291-3200
Las Vegas	(702) 692-8000
Nogales	(520) 281-3480
Phoenix	(602) 916-5000
Reno	(775) 788-2200
Tucson	(520) 879-6800

September 15, 2016

ELECTRONIC & U.S. MAIL

Mark A. Clayton, Esq.
GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas Nevada 89169

Re: **GR BURGR, LLC**
DEVELOPMENT, OPERATION AND LICENSING AGREEMENT
Determination of Unsuitability and Demand for Termination of Association with Rowan Seibel

Dear Mark:

We represent Gordon Ramsay and GR US Licensing, L.P. ("GRUS"). This letter is further to your correspondence dated September 2, 2016, notifying Mr. Ramsay and GRUS that PHW Las Vegas, LLC ("PHW"), had determined that Rowan Seibel is an "Unsuitable Person" as defined in Section 1 of that certain Development, Operation and Licensing Agreement dated December 13, 2012 (the "Agreement"), among Mr. Ramsay, GR Burgr, LLC (the "Company"), and PHW. In your correspondence dated September 2, 2016, PHW demands that on or before September 20, 2016, Mr. Ramsay and the Company terminate any relationship with Mr. Seibel based on his status as an Unsuitable Person. Failing such disassociation, PHW advised that Mr. Ramsay and the Company will face termination of the Agreement under Section 4.2.5 of that contract.

By this letter, we advise PHW that Mr. Ramsay and GRUS have made demand upon Mr. Seibel that he terminate his interest in and association with the Company. Mr. Seibel has declined to accede to this demand as of the date of this letter. While Mr. Ramsay and GRUS are hopeful that Mr. Seibel will timely respond favorably to that request, neither Mr. Ramsay nor GRUS can provide any assurance that PHW's demand will be satisfied by September 20, 2016. In an effort to demonstrate to PHW that Mr. Ramsay and GRUS consider seriously this

situation, we enclose with this letter copies of correspondence exchanged with counsel for Mr. Seibel.

As PHW may surmise from the accompanying correspondence, while GRUS is a member of the Company, GRUS and Mr. Ramsay do not have the legal authority to unilaterally terminate Mr. Seibel's interest and membership in the Company. To accomplish that end will require either his assent or a legal proceeding dissolving the Company. PHW also will discern from this course of correspondence with Mr. Seibel's representative, that Mr. Seibel has proposed to transfer his interest in the Company to a Family Trust that will be subject to control by his spouse and an attorney. Our clients have rejected this proposal as a solution to PHW's demand for disassociation with Mr. Seibel. That decision was reached because this arrangement does not definitively terminate any direct or indirect involvement or influence in the Company by Mr. Seibel. Further, the arrangement provides no method by which PHW or a gaming regulatory agency could be confident that Mr. Seibel did not retain the ability, through a family member or a retained attorney, to be involved with, or profit from, a continuing business relationship with PHW under the Agreement. Please confirm that PHW is of the same view.

What Mr. Ramsay and GRUS can assure PHW is that (i) Mr. Ramsay and GRUS have since your letter avoided, and will continue to avoid, any other association with Mr. Seibel; and, (ii) absent Mr. Seibel's timely voluntary termination of his interest in the Company, both Mr. Ramsay and GRUS will undertake to terminate their singular association with Mr. Seibel through the Company using available legal and equitable remedies under applicable law.

Mr. Ramsay and GRUS commit to keep PHW promptly apprised of any material developments in the continuing efforts to comply with PHW's demand. Please advise should have any questions.

Sincerely,

Dan R. Reaser

Dan R. Reaser

Enclosures (4)
cc: Michael Thomas, Esq.
Kevin Gaut, Esq.

msk
MITCHELL SILBERBERG & KNUPP LLP
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Kevin E. Gaut
A Professional Corporation
(310) 312-3179 Phone
(310) 231-8379 Fax
keg@msk.com

September 2, 2016

Brian K. Ziegler, Esq.
Certilman Balin Adler & Hyman, LLP
90 Merrick Avenue, 9th Floor
East Meadow, NY 11554

Re: Rowen Seibel's Tax Fraud Conviction

Dear Mr. Ziegler:

We are deeply concerned, and indeed outraged, that we first heard about Mr. Seibel's tax fraud conviction and prison sentence through public news sources. Mr. Seibel at all times owed Mr. Ramsay and his related entities fiduciary obligations to disclose the highly relevant facts as soon as known. Mr. Seibel instead fraudulently concealed those facts. These fraudulent concealments are particularly egregious under the following circumstances, among others:

1. Mr. Seibel knew he was under IRS investigation and had committed corrupt criminal acts before entering into any business relationships with Mr. Ramsay or his entities. Mr. Seibel also knew that disclosure of his criminal activities and the then pending IRS investigation were material and important, and that Mr. Ramsay would never have entered into any business ventures with Mr. Seibel had he known of that conduct and Mr. Seibel's exposure to an IRS criminal investigation. Mr. Seibel was obligated to forthrightly disclose these facts but failed to do so. Instead, he intentionally hid all of this from Mr. Ramsay. Honesty and integrity are of paramount importance in all business dealings. You and Mr. Seibel have always known in particular that any dealings with a United States casino group require meeting exacting standards before entering into an agreement, at the time of entering into an agreement, and at all times during the term of an agreement.

2. These fraudulent concealments were exacerbated by Mr. Seibel's affirmative misrepresentations to Planet Hollywood ("PH") and others in the required written disclosure documents for the GR Burgr, LLC ("GRB") and other transactions. Mr. Seibel knew that suitability rules applicable to casinos made particularly necessary full disclosure of his tax situation and any criminal activity. You personally were also aware of these obligations at all times, and their impact on GRB, on Mr. Ramsay and his entities, and on PH. Indeed, you negotiated and participated in drafting the agreement between GRB and PH.

3. Mr. Seibel, with your help, recently sought to transfer membership interests or management responsibilities in various entities involved with restaurants associated with Mr. Ramsay. In retrospect, these actual or purported transfers were plainly an attempt fraudulently to limit the effects of the ensuing tax conviction. The transfers were requested without disclosing their intent or the imminent tax convictions. The actual or purported transfers are not only transparently ineffective to insulate Mr. Seibel or his contracts from the consequences of his

behavior, but actually make the situation worse and constitute separate fraudulent misconduct. Specifically as to GRB, when we asked you in several letters for details about the purported transfers, an honest answer to which would have required disclosure of the imminent tax convictions, you stonewalled and to this day have failed to respond in any way – another blatant act of intentional and fraudulent concealment.

4. You have personally been integrally involved in these fraudulent concealments and misrepresentations, including through the request for transfers described in paragraph 3 above. You and your client were fully aware at all times of the effect of your client's conduct and the jeopardy placed on GRB given his membership and management interests in that entity, and the representations made and contractual provisions entered into by that entity. My clients should never have been put in this position by you and your client.

This conduct is abhorrent and will have severe financial and other consequences. We fully expect to receive from PH a notice, under Section 11 of the agreement between GRB and PH, of unsuitability and of termination or other action. This has been caused by Mr. Seibel's criminal activity and conviction, and he will be fully responsible for any and all resulting damages to Mr. Ramsay and related entities.

We demand now full disclosure of the facts that should have been disclosed by both you and Mr. Seibel years ago. When and how did you and Mr. Seibel first learn or suspect a tax investigation? Why weren't those facts earlier disclosed to Mr. Ramsay and his related entities? Why did your client deliberately conceal his activities from Caesars and Planet Hollywood?

Failure to now forthrightly make honest, full, and frank disclosure and answer these inquiries will only worsen the expected damage and prove an ongoing course of fraudulent intent.

Nothing in this letter is a waiver of any rights, claims, or remedies or an admission of any fact.

Sincerely,

Kevin E. Gaut
A Professional Corporation of
MITCHELL SILBERBERG & KNUPP LLP

KEG/jda

cc: Michael Thomas

8098755.1/45623-00002

msk
MITCHELL SILBERBERG & KNUPP LLP
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Kevin E. Gaut
(310) 312-3179 Phone
(310) 231-8379 Fax
keg@msk.com

September 6, 2016

VIA E-MAIL ONLY (BZIEGLER@CERTILMANBALIN.COM)

Brian K. Ziegler
Certilman Balin Adler & Hyman, LLP
90 Merrick Avenue
East Meadow, NY 11554

Re: Rowen Seibel's Tax Fraud Conviction

Dear Mr. Ziegler:

We received no response to my letter dated September 2, 2016.

However, we have now received the expected formal notice from Caesars of Mr. Seibel's unsuitability. We attach a copy of that notice, which we assume you also received.

As the notice makes plain, because of his federal criminal felony conviction for corrupt tax practices, Mr. Seibel has been determined to be "unsuitable" as defined in the Planet Hollywood agreement referenced in the attached notice, and Caesars has given GR Burgr, LLC ("GRB") ten days to terminate Mr. Seibel's association with GRB.

There is obviously extreme urgency here. Please confirm within 24 hours that, as demanded by Caesars, Mr. Seibel will "terminate ***any*** relationship" with GR Burgr, LLC, and sign all necessary documents to confirm such termination.

Should Mr. Seibel refuse to do so, Caesars will then terminate its agreement with GRB and Mr. Seibel will be fully liable for the millions of dollars in resulting damages.

GR US Licensing and Mr. Ramsay fully reserve all other rights, including the rights to rescind the GRB agreement and the licensing agreement between GR US Licensing and GRB because, among other things, those agreements (as well as the agreement with Planet Hollywood) were induced by Mr. Seibel's blatant lies, concealments, and misrepresentations. Mr. Seibel failed to disclose and affirmatively misrepresented the facts concerning his felonious criminal conduct and the resulting investigation leading to his guilty plea, knowing full well that such facts made him unsuitable and precluded any agreement with Planet Hollywood or indeed any casino chain. This conduct also patently breached Mr. Seibel's fiduciary and other obligations to GRB. The consequences of this egregious misconduct have been catastrophic, and Mr. Seibel cannot profit or benefit from his wrongdoing.

Nothing in this letter is an admission against our clients, or a waiver of any of their rights or remedies, all of which are preserved.

Sincerely,

Kevin E. Gaut
A Professional Corporation of
MITCHELL SILBERBERG & KNUPP LLP

KEG/jda

GT GreenbergTraurig

Mark A. Clayton
Tel 702.792.3773
Fax 702.792.9002
claytonm@gtlaw.com

September 2, 2016

VIA OVERNIGHT COURIER

Gordon Ramsay
Stuart Gilles
c/o Gordon Ramsay Holdings Limited
1 Catherine Place
London SW1E6X
United Kingdom

GR BURGR, LLC
c/o: Rowen Seibel
200 Central Park South, 19th Floor
New York, NY 10019

Brian Ziegler
Certilman Balin Adler & Hyman, LLP
90 Merrick Avenue, 9th Floor
East Meadow, NY 11554

Michael Thomas
Sheridans Solicitors
Alfred Place
London WC1E 7EA
United Kingdom

Re: Development, Operation and License Agreement by and among PHW Las Vegas, LLC dba Planet Hollywood by its manager, PHW Manager LLC ("Caesars"), GR BURGR, LLC ("GRB"), and Gordon Ramsay, an individual dated December 13, 2012 ("Agreement")

To whom it may concern:

For purposes of this letter, capitalized terms not defined herein have the meaning set forth in the Agreement.

Pursuant to Section 11.2 of the Agreement, GRB has acknowledged and agrees that Caesars and/or its affiliates conduct business that are or may be subject to and exist because of privileged licenses issued by governmental authorities. Additionally, Section 11.2 provides that if Caesars determines, in its sole and absolute judgment, that any GR Associate is an Unsuitable Person, GRB shall cease the activity or relationship creating the issue.

Caesars is aware that Rowen Seibel, who is a GR Associate under the Agreement, has recently pleaded guilty to a one-count criminal information charging him with impeding the administration of the Internal Revenue Code (26 U.S.C. § 7212) (corrupt endeavor to obstruct and impede the due

administration of the Internal Revenue Laws), a Class E Felony. Such felony conviction renders Rowen Seibel an Unsuitable Person.

Therefore, GRB shall, within 10 business days of the receipt of this letter, terminate any relationship with Mr. Seibel and provide Caesars with written evidence of such terminated relationship. If GRB fails to terminate the relationship with Mr. Seibel, Caesars will be required to terminate the Agreement pursuant to Section 4.2.5 of the Agreement.

Lastly, Caesars reserves and retains all other rights and remedies available under the Agreement.

Sincerely,

Mark A. Clayton
Shareholder

MAC/

CERTILMANBALIN

90 MERRICK AVENUE, 9TH FLOOR
EAST MEADOW, NY 11554
PHONE: 516.296.7000 • FAX: 516.296.7111
www.certilmanbalin.com

BRIAN ZIEGLER
PARTNER
DIRECT DIAL 516.296.7046
bziegler@certilmanbalin.com

September 8, 2016

Via Email

Kevin E. Gaut, Esq.
Mitchell Silberberg & Knupp LLP
11377 West Olympic Boulevard
Los Angeles, California 90064-1683

Re: GR BURGR, LLC

Dear Mr. Gaut:

I refer to your letter to me of September 2, 2016. Your letter is full of inaccurate facts, erroneous assumptions and wrong conclusions, starting in the very first line where you refer to Mr. Seibel's "tax fraud" conviction (that was not what he was convicted of), and is rejected. Without limiting the foregoing, your letter is totally off base as to what Mr. Seibel knew and the time line for him becoming aware of such information. There was no concealment nor any obligation to disclose, as you allege in your first two numbered paragraphs. In fact, there was nothing to disclose at such times.

Your letter makes it apparent that you and/or your client have engaged in conversations or communications with Planet Hollywood and/or its representatives concerning this matter and the GR BURGR restaurant in general. Since your client's relationship with Planet Hollywood is through GR BURGR, LLC ("GRB"), we demand that you immediately forward to us, as representative of the other 50% owner of GRB, copies of any such communications and inform us of the details of any conversations.

We also refer to the letter from Mark Clayton of September 2, 2016 and to your letter of September 6, 2016 which is also filled with inaccurate facts, erroneous assumptions and wrong conclusions. Mr. Clayton's letter provides that "GRB shall, within 10 business days of the receipt of this letter, terminate any relationship with Mr. Seibel." As you are fully aware, on or about April 11, 2016, Mr. Seibel sought to transfer his membership interest in GRB. The intended transferee was The Seibel Family 2016 Trust of which Craig Green and I are the sole trustees. The sole beneficiaries of said trust are Bryn Dorfman and Netty Wachtel Slushay (and potential descendants of Rowen Seibel, none of which exist as of the date hereof). Mr. Seibel also requested your client's consent to his designee as a replacement for him as manager of GRB. Had your client consented, as would have been reasonable, GRB would have, in April, terminated any relationship with Mr. Seibel. However, your client responded by conditioning approval on unreasonable demands including that Mr. Green enter into a consultancy agreement

in the form and on terms approved by your client, something not required of any other manager and unheard of with respect to managers serving limited liability companies, especially where there is an operating agreement that has provisions governing managers and management. You will also recall that we have, on numerous occasions, attempted to schedule a meeting of the managers of GRB but you have repeatedly advised us that your client would not attend any such meeting.

At this point, it is clear that (unless it is your client's intention to improperly try to do an end run around GRB and enter a separate agreement with Planet Hollywood to the exclusion of GRB and my client) it is in the best interests of GRB and your client to immediately consider the contemplated transfer of the Seibel membership interest in GRB and the approval of the replacement manager that was proposed in April, 2016 and/or consider and discuss another acceptable method of terminating Mr. Seibel's relationship with GRB in a fair and workable manner to all parties. As such, I would like to suggest a conference call meeting with clients and counsel to discuss the foregoing as soon as possible. We can schedule it for tomorrow, 12 noon Eastern time to accommodate you in California and your client in England. We can use call in number 516-296-7833 access number 0142469. Please advise if you and your client can and plan to attend. If that is too short notice or if the timing does not work please suggest a couple of alternate times. Thank you.

Very truly yours,

Brian K. Ziegler

BKZ/bgh

msk

MITCHELL SILBERBERG & KNUPP LLP
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Kevin E. Gaut
(310) 312-3179 Phone
(310) 231-8379 Fax
keg@msk.com

September 12, 2016

VIA E-MAIL ONLY (BZIEGLER@CERTILMANBALIN.COM)

Brian K. Ziegler
Certilman Balin Adler & Hyman, LLP
90 Merrick Avenue
East Meadow, NY 11554

Re: GR Burgr, LLC

I am in receipt of your letter to me dated September 8, 2016. Your client must disassociate from GR Burgr LLC (the "Company"), and fully comply with Caesars' requirements within their timeline. The consequences to the Company and my clients from Mr. Seibel's failure to do so will only further complicate his situation.

In your letter you make your now customary remarks with respect to inaccurate facts, assumptions and conclusions without substantive response to any points in my letter. Notably, you fail to identify a single of these claimed inaccuracies, erroneous assumptions, or wrong conclusions.

We need not quibble. The facts in this matter relating to Mr. Seibel are clear and are a matter of public record as disclosed by the press reports and the court record. Mr. Seibel is a convicted felon and he going to serve time in federal custody. The publicly available information confirms the circumstances of and shows the duration of Mr. Seibel's nefarious activities. Importantly, as established by the Court record, Mr. Seibel "allocuted to acting ***corruptly***" [emphasis added]. As to Mr. Seibel's excuses, the presiding federal judge observed "[w]hatever the motivation for getting involved in this scheme and, more importantly, for continuing in the scheme for as long as he did, . . . ***the fact is that it continued for years***, and he made a whole series of corrupt and misguided decisions to perpetuate it" [emphasis added]. Mr. Seibel was engaged in those corrupt activities at the very time he formed the Company with my clients and signed the December 13, 2012, Development, Operation and Licensing Agreement (the "Caesars Agreement") with PHW Las Vegas, LLC ("Caesars"). This information is readily available to Caesars, as well as gaming and alcoholic beverage control regulatory officials, thus ending any foreseeable prospect for Mr. Seibel to have business associations with a gaming licensee.

Under these facts, your disclaimer of concealment and of any disclosure obligation, as well as the assertion that there is "nothing to disclose," is a remarkable admission of your client's disregard of his legal obligations as an officer of the Company and in relation to the contractual commitments made in the agreement with Caesars, a highly regulated gaming business operating a hotel casino chain. Based on the very terms of the Caesars Agreement, neither Mr. Seibel nor you can credibly assert such a position.

The first correspondence my clients received in this matter was Mr. Clayton's letter of September 2, 2016. We wrote to you on that very same day as my clients also had seen the public statements relating to your client's conviction and jail sentence. Inexplicably, neither you nor your client brought this highly material development adversely impacting the Company's business and assets to my clients' attention.

It is clear from the Caesars Agreement what options they have open to them. In the circumstances, your client is in no position to demand anything at all from my clients. Mr. Seibel has destroyed the business of the Company and placed my clients in significant jeopardy through association with your client, all of which is a situation wholly created by Mr. Seibel's criminal conduct and conviction, breach of the Caesars Agreement, and misrepresentation. Mr. Seibel's actions and omissions alone have led to his conviction and his resulting designation by Caesars as an Unsuitable Person. My clients shoulder no responsibility here, but will bear significant loss because Mr. Seibel is a convicted felon. Your effort to project to others responsibility for the predicament caused by Mr. Seibel's criminal behavior is disingenuous.

Your letter contains many other misstatements that should be countered. It is not correct to say that the relationship with Caesars is alone through the Company. GR US Licensing LP ("GR US"), is a 50 percent owner of the Company and Mr. Ramsay is a party to the Caesars Agreement. As such my clients are also in a business association with Caesars and a convicted felon thanks to Mr. Seibel's conduct. To avoid also being declared unsuitable, my clients must disassociate and terminate any relationship with Mr. Seibel following his conviction and designation as an Unsuitable Person. I would note that any communications with Caesars have been on behalf of Mr. Ramsay and GRUS, not the Company.

As noted above, public record refutes, to the extent your letter intends to so claim, that Mark Clayton's letter of September 2, 2016, is filled with inaccurate facts, erroneous assumptions and wrong conclusions The situation in which Mr. Seibel has placed my clients' business and reputation is very serious indeed, and my clients will undertake to separately reply to Mr. Clayton with respect to their contractual obligations to Caesars, their need to disassociate from Mr. Seibel, and their efforts to address the harm inflicted on others by him. The thought that my clients would trust Mr. Seibel or you to protect their interest based on this history warrants no response. As Mr. Seibel and you both know, Caesars is under active supervision by gaming regulators through a mandatory compliance system, and Caesars and the gaming and alcoholic beverage control regulators will promptly require that all parties with a continuing business association with a gaming licensee have disassociated from Mr. Seibel following his conviction as a felon and designation as an Unsuitable Person.

The record regarding your client's request to transfer his membership interest in the Company is inconsistent with your efforts to otherwise characterize events and the situation. Neither you nor your client ever replied to the proper and reasonable request for information, and consequently no approvals were given. You did not reply because it now appears you were concealing your client's criminal conduct and conviction amongst other things. As you are fully aware, there is

no obligation for any contracting party to agree that their contracting partners be substituted with other entities or persons with whom they do not agree to transact business or with persons incapable of satisfying all the objects of the contractual obligations. The Company's Operating Agreement that your office prepared clearly requires that any transferee of the membership interest of GR US or Seibel must be to an entity controlled by them. Because this provision mandates Mr. Seibel must control any entity to which his interest is transferred, your proposal is no solution because as an Unsuitable Person he would retain control and influence. Thus, a trust with his wife as a beneficiary managed by you is not an acceptable substitute and is clearly connected with Mr. Seibel. I would refer to the letters in respect of mitigating Mr. Seibel's sentence sent to Judge Pauley which clearly identify the closeness of these relationships and the many connections.

With respect to Mr. Green, my clients are perfectly entitled to conduct due diligence. Mr. Green is not a signatory party to the Company's Operating Agreement. The Caesars Agreement is the basis for the only operating asset of the Company, and to perform under that agreement the Company and its owners, officers and employees must be suitable. Consequently, my clients most reasonably sought diligence to ascertain the suitability of Mr. Green. I note, and your firm is aware, that Mr. Green stated under oath in a recent deposition that he together with Mr. Seibel organized and received rebates from alcohol suppliers *inter alia* to the restaurant Gordon Ramsay Pub & Grill. This fact alone demonstrates that my clients' need for diligence concerning Mr. Green was wholly proper and he may himself be an unsuitable candidate for involvement in a regulated business.

In summary, Mr. Seibel is a convicted felon guilty of acting "corruptly" for many years. Knowing this, and with neither disclosure nor compliance with the Company's Operating Agreement or the Caesars Agreement, my clients received a request to allow the resignation of Rowen Seibel and the transfer of his membership interest. Neither you nor your client answered my clients' legitimate questions and concerns about the proposal, further hiding relevant information about Mr. Seibel's criminality. Your proposed transfer of Mr. Seibel's interest is no solution because it does not truly end his association. The Company and my clients are on notice to disassociate and terminate any relationship with Mr. Seibel and that they must do to preserve their own reputations and business. In the event Mr. Seibel fails to timely surrender his interest in the Company, Caesars obviously will terminate the Caesars Agreement with the Company. That contract's termination and all the associated consequences will be attributed to Mr. Seibel's acts and omissions alone. We will soon learn the true measure of Mr. Seibel's contrition.

Sincerely,

Kevin E. Gaut
A Professional Corporation of
MITCHELL SILBERBERG & KNUPP LLP

EXHIBIT H

CERTILMAN BALIN ATTORNEYS

90 MERRICK AVENUE, 9TH FLOOR
EAST MEADOW, NY 11554
PHONE: 516.296.7000 • FAX: 516.296.7111
www.certilmanbalin.com

BRIAN ZIEGLER
PARTNER
DIRECT DIAL 516.296.7046
bziegler@certilmanbalin.com

August 30, 2016

Caesars Entertainment Corporation
One Caesars Palace Drive
Las Vegas, NV 89109
Attention: Amie Sabo, Esq.

Re: Rowen Seibel

Dear Amie:

I know that you have heard and/or read about the recent sentencing of Rowen in connection with his entering of a guilty plea resulting in his conviction of a felony. While I am happy to discuss the facts with you, to the extent I know them, I should also advise you that many of the press reports that I have read have been filled with inaccurate information. If you would like to have that conversation with me, please feel free to give me a call.

In the meantime, I call to your attention the series of letters/notices provided to you and/or your clients on or about April 8, 2016, prior to Rowen's conviction, pursuant to which Rowen divested himself (with one exception) of (i) any ownership in the entities doing business with your clients and (ii) any involvement with the subject restaurants.

You should also be aware that with respect to the Old Homestead Restaurant, you were provided with notice, on or about April 8, 2016, that Rowen's obligations and duties would be performed by J. Jeffrey Frederick. However, at the same time, Rowen divested himself of any ownership in DNT Acquisition, LLC ("DNT") the entity that contracted with Desert Palace, Inc. Rowen's interest in DNT had been owned through an entity called R Squared Global Solutions, LLC, but Rowen transferred his interest in R Squared Global Solutions, LLC to The Seibel Family 2016 Trust, the same trust referenced in the April 8, 2016 notices to you and/or your clients. As there was no DNT Change of Control as a result of the transfer of the interest in R Squared Global Solutions, LLC and your client's agreement with DNT remained unaffected by this transfer, notice of this transfer was not included with the notices provided to you in April, 2016.

Please reach out to me if you would like to discuss any of the above.

Thank you.

Very truly yours,

Brian K. Ziegler

4210952.1

EXHIBIT I

GreenbergTraurig

Mark A. Clayton
Tel 702.792.3773
Fax 702.792.9002
claytonm@gtlaw.com

September 2, 2016

VIA UPS OVERNIGHT

Brian Ziegler
Certilman Balin Adler & Hyman, LLP
90 Merrick Avenue, 9th Floor
East Meadow, NY 11554

Re: August 30, 2016 Correspondence

Dear Mr. Ziegler

Reference is made to your correspondence, dated August 30, 2016, to Caesars Entertainment Corporation regarding Rowen Seibel.

The purported assignments did not meet the internal compliance criteria set forth in (1)(ii)(A)-(D) of the Letter Agreement dated May 26, 2014. Therefore, such purported assignments are void.

Please feel free to contact me if you would like to discuss the foregoing.

Sincerely,

Mark A. Clayton
Shareholder

MAC/

GREENBERG TRAURIG, LLP ✱ ATTORNEYS AT LAW ✱ WWW.GTLAW.COM
3773 Howard Hughes Parkway ✱ Suite 400 North ✱ Las Vegas, NV 89169 ✱ Tel 702.792.3773 ✱ Fax 702.792.9002

EXHIBIT J

Mark A. Clayton
Tel 702.792.3773
Fax 702.792.9002
claytonm@gtlaw.com

September 12, 2016

VIA OVERNIGHT COURIER
VIA E-MAIL

Brian K. Ziegler
Certilman Balin
90 Merrick Ave., 9th Floor
East Meadow, NY 11554

Re: Rowen Seibel

Dear Mr. Ziegler:

Reference is made to your correspondence, dated September 7, 2016, regarding Rowen Seibel.

We note that the proposed assignee and its Associates have direct or indirect relationships with Rowen Seibel. Based on the Company's experiences with the Nevada Gaming Control Board and other gaming regulatory authorities which regulate the Company and its affiliates (collectively, "Gaming Regulatory Authorities"), the Company believes that such relationships with Mr. Seibel would be unacceptable to the Gaming Regulatory Authorities. Further, the Company believes that a commercial relationship with the proposed assignee and its Associates, because of their relationships with Mr. Seibel, would also be unacceptable to the Gaming Regulatory Authorities. Lastly, we note the Mr. Seibel failed, through the applicable entity, to affirmatively update prior disclosures to the Company, which updated disclosure is required and directly bears on his suitability.

Based on the foregoing, the Company reasonably believes the commercial relationship with the proposed assignee and its Associates would result in a disciplinary action by one or more of the Gaming Regulatory Authorities, which could jeopardize the Company's privileged licenses. Therefore, the Company has determined that the proposed assignee and its Affiliates are Unsuitable Persons.

Pursuant to the Letter Agreement, dated May 16, 2014, (i) the Company is not satisfied, in its sole reasonable discretion, that the proposed assignee and its Associates are not Unsuitable Persons and (ii) the Compliance Committee has not approved the proposed assignee and its Associates.

Sincerely,

Mark A. Clayton
Shareholder

EXHIBIT K

May 16, 2014

Desert Palace, Inc.
3570 Las Vegas Boulevard South
Las Vegas, Nevada 89109

Paris Las Vegas Operating Company, LLC
3655 Las Vegas Boulevard South
Las Vegas, Nevada 89109

Ladies and Gentlemen:

Reference is made to the following (as any of the same may have been amended):

(a) The Development, Operation and License Agreement, dated as of March ___, 2009, by and between Moti Partners, LLC ("Moti") and Desert Palace, Inc. d/b/a Caesars Palace (the "First Agreement");

(b) The Development, Operation and License Agreement, dated as of June 21, 2011, by and among DNT Acquisition LLC ("DNT"), Desert Palace, Inc., The Original Homestead Restaurant, Inc., d/b/a the "Old Homestead Steakhouse," Marc Sherry, Greg Sherry and Rowen Seibel (the "Second Agreement");

(c) The Development and Operation Agreement, dated as of November ___, 2011, by and between TPOV Enterprises, LLC ("TPOV") and Paris Las Vegas Operating Company, LLC ("PLV" and, collectively with Desert Palace, Inc., "Caesars") (the "Third Agreement"); and

(d) The Development and Operation Agreement, dated as of April 4, 2012, by and between LLTQ Enterprises, LLC ("LLTQ") and Desert Palace, Inc. (the "Fourth Agreement" and, collectively with the First Agreement, Second Agreement and Third Agreement, the "Agreements").

The following provisions of this letter (this "Letter Agreement") shall confirm our mutual understanding that:

1. Notwithstanding anything to the contrary in the Agreements, each of Moti, DNT, TPOV and LLTQ (the "Entities") and/or each individual, corporation, proprietorship, firm, partnership, limited partnership, limited liability company, trust, association or other entity (each a "Person") holding an interest in any of the Entities, without the consent of but with notice to Desert Palace, Inc. or PLV, as applicable, shall be permitted to issue, sell, assign or transfer interests in any of the Entities to any Person or assign any of the Agreements, so long as: (i) the receiving Person or assignee or any of such Person's or assignee's Affiliates is not a Competitor of Caesars or any of its Affiliates; and (ii) each receiving Person holding and/or proposed to hold any interest in any of the Entities or the assignee shall be subject to the internal compliance process of Caesars and/or its Affiliates by (A) submitting written disclosure regarding all of the proposed transferee's or assignee's Associates, (B) submitting all information reasonably requested by Caesars regarding the proposed transferee's or assignee's Associates, (C) Caesars being satisfied, in its sole reasonable discretion, that neither the proposed transferee or assignee nor any of their respective Associates is an Unsuitable Person and (D) the Compliance Committee's reasonable approval of the proposed transferee and the proposed transferee not being deemed by Caesars, its Affiliates or any Gaming Authority as an Unsuitable Person. Additionally, notwithstanding anything to the contrary in the Agreements, any obligations and/or duties of Moti, DNT, TPOV, LLTQ and/or Rowen Seibel that are specifically designated to be performed by Rowen Seibel are assignable or delegable by Moti, DNT, TPOV, LLTQ and/or Rowen Seibel without the consent of but with notice to Desert Palace, Inc. or PLV, as applicable, so long as the Person to whom such obligations and/or duties are assigned or delegated is reasonably qualified to carry out

such obligations and/or duties. Subject to the foregoing, this Letter Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective permitted successors, assigns and delagees.

2. For purposes of this Letter Agreement, (i) the term "Competitor" means a Person that, or a Person that has an Affiliate that, in each case directly or indirectly, whether as owner, operator, manager, licensor or otherwise: (A) derives twenty percent (20%) or more of its revenues, operating income or net profits from one or more Gaming Businesses; or (B) has as its primary purpose the conduct of one or more Gaming Businesses and (ii) the term "Gaming Business" means the ownership, operation or management of one or more casinos, video lottery terminal facilities, racetracks, on-line gaming businesses or other business involving gaming or wagering. Capitalized terms used in this Letter Agreement and not otherwise defined herein shall have the meaning ascribed to them in the First Agreement, Second Agreement, Third Agreement or Fourth Agreement, as applicable, or, if not defined therein, in the Consulting Agreement, dated as of May 16, 2014, by and between FERG, LLC and Boardwalk Regency Corporation d/b/a Caesars Atlantic City.

3. This Letter Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Letter Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Letter Agreement. This Letter Agreement shall serve as an amendment to each of the Agreements.

If the terms of this Letter Agreement are acceptable, kindly so indicate by signing where indicated below and returning a copy of this Letter Agreement to us. Thank you.

Very truly yours,

MOTI PARTNERS, LLC

By: Rowen Seibel
Name: Rowen Seibel
Title: Managing Member

DNT ACQUISITION, LLC

By: Rowen Seibel
Name: Rowen Seibel
Title: Manager

TPOV ENTERPRISES, LLC

By: Rowen Seibel
Name: Rowen Seibel
Title: Manager

LLTQ ENTERPRISES, LLC

By: Rowen Seibel
Name: Rowen Seibel
Title: Manager

ACCEPTED AND AGREED:

DESERT PALACE, INC.

By: _____
Name: Gary Selesner
Title: President

Legal Department

Digitally signed by Legal Department
DN: cn=Legal Department, o, ou, email=a@bcgcasars.com, c=US
Date: 2014.05.15 22:22:40 -07'00'

PARIS LAS VEGAS OPERATING COMPANY, INC.

By: _____
Name:
Title:

2845977.3

ACCEPTED AND AGREED:

DESERT PALACE, INC.

Legal Department

Digitally signed by Legal Department
DN: cn=Legal Department, o, ou, email=asabo@caesars.com, c=US
Date: 2014.05.15 22:22:40 -07'00'

By: _____
Name:
Title:

PARIS LAS VEGAS OPERATING COMPANY, INC.

By: _____
Name: David Abenemeyer
Title: Sr. VP and GM

2845977.3

EXHIBIT L

CERTILMAN BALIN
ATTORNEYS

90 MERRICK AVENUE, 9TH FLOOR
EAST MEADOW, NY 11554
PHONE: 516.296.7000 • FAX: 516.296.7111
www.certilmanbalin.com

BRIAN ZIEGLER
PARTNER
DIRECT DIAL 516.296.7046
bziegler@certilmanbalin.com

September 7, 2016

Via Email and Regular Mail

Mark A. Clayton, Esq.
Greenberg Traurig
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169

Dear Mr. Clayton:

I am in receipt of your letter to me of September 2, 2016 referencing "August 30, 2016 Correspondence."

Please advise as to why you believe the purported assignments did not meet the internal compliance criteria set forth in (1)(ii)(A)-(D) of the Letter Agreement dated May 26, 2014.

Contrary to your assertions, we believe that the assignments were effective assignments and were effectuated exactly as contemplated by the Letter Agreement. Moreover, your client has acknowledged the assignments and has been making payments to the assignee entities.

I look forward to hearing from you soon.

Very truly yours,

Brian K. Ziegler

BKZ/bgh

EXHIBIT M

FROM: **Stuart Gillies, Managing Member**
GR BURGR, LLC

TO: **PHW MANAGER, LLC on behalf of PHW LAS VEGAS, LLC (d/b/a Planet Hollywood)**
3667 Las Vegas Boulevard South
Las Vegas
NV 89109

Dated: 8th March 2016

Dear Sirs

Development, Operation and License Agreement dated as of December 13, 2012 by and among Gordon Ramsay, GR BURGR, LLC and PHW Manager, LLC, on behalf of PHW LAS VEGAS, LLC (d/b/a Planet Hollywood) ("the Agreement")

Reference is made to the Agreement between us dated 13 December 2012. Pursuant to clause 8.1 of the Agreement payments of the Licence Fee are made to us and as you are aware are subsequently shared equally between the Seibel and the Ramsay participants.

Pursuant to clause 8.2 you make payment of the funds to such address or accounts located in the USA as directed by us from time to time. Please take this as our instruction with immediate effect for you to pay 50% of the sums due to GR BURGR, LLC to the existing bank account and details you have for the Seibel entities and 50% to the following bank account on behalf of the Ramsay entities:

Account Name: GR US Licensing LP

Account No: 123954947

Bank: City National Bank
400 N. Roxbury Drive
Beverly Hills, CA 90210

Routing: #122016066

Swift Number: CINAUS6L (For International Wires Only)

We thank you for your co-operation.

Yours faithfully,

.....
Stuart Gillies for an on behalf of
GR BURGR, LLC

TAB 7

IAFD
ALLEN J. WILT, SBN 4798
JOHN D. TENNERT, III, SBN 11728
FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Telephone: (775) 788-2200
Facsimile: (775) 786-1177
Email: awilt@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.

PHWLV, LLV 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.: XV

INITIAL APPEARANCE FEE DISCLOSURE

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, the filing fee is submitted for the party appearing in the above entitled action as indicated below:

/ / /

/ / /

/ / /

/ / /

/ / /

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

GORDON RAMSAY	$1,483.00
TOTAL REMITTED:	$ 1,483.00

Dated: March 17, 2017

FENNEMORE CRAIG, P.C.

/s/ *John D. Tennert*

ALLEN J. WILT, SBN 4798
JOHN D. TENNERT III, SBN 11728
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200
Fax: (775) 786-1177

Attorneys for Gordon Ramsay

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

CERTIFICATE OF SERVICE

I certify that I am an employee of FENNEMORE CRAIG, P.C., and that on this date, pursuant to FRCP 5(b), I am serving a true and correct copy of the attached INITIAL APPEARANCE FEE DISCLOSURE on the parties set forth below by:

_____ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices

_____ Certified Mail, Return Receipt Requested

_____ Via Facsimile (Fax)

_____ Placing an original or true copy thereof in a sealed envelope and causing the same to be personally Hand Delivered

_____ Federal Express (or other overnight delivery)

__X__ E-service effected by WIZNET

addressed as follows:

Daniel R. McNutt
Matthew C. Wolf
CARBAJAL & MCNUTT, LLP
625 South Eighth Street
Las Vegas, NV 89101
Tel: (702) 384-1170
Fax: (702) 384-5529
Emails: drm@cmlawnv.com
mcw@cmlawnv.com

Attorneys for Plaintiff

Dated: March 17, 2017

/s/ Meg Byrd
An employee of FENNEMORE CRAIG, P.C.

FENNEMORE CRAIG, P.C.
300 East Second Street - Suite 1510
Reno, Nevada 89501
Tel: (775) 788-2200 Fax: (775) 786-1177

TAB 8

Electronically Filed
03/20/2017 09:40:13 AM

CLERK OF THE COURT

IAFD
James J. Pisanelli, Esq., #4027
Debra L. Spinelli, Esq., #9695
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

DISTRICT COURT

CLARK COUNTY, NEVADA

ROWEN SEIBEL, et al.,

Plaintiffs,

-vs-

PHWLV, LLC and GORDON RAMSAY,

Defendants,

and

GR BURGR, LLC,

Nominal Defendant

CASE NO. A751759

DEPT. NO. XV

INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above entitled action as indicated below:

New Complaint Fee	**1st Appearance Fee**
☐ $1530 ☐ $520 ☐ $299 ☐ $270.00	☒ $1483.00 ☐ $473.00 ☐ $223.00

Name: PHWLV, LLC

☐ $30

☐ Total of Continuation Sheet Attached ☐ $1483

TOTAL REMITTED: (Required) Total Paid $ _____

DATED this 20th day of March, 2017.

/s/ Debra L. Spinelli

Initial Appearance Fee Disclosure (1).doc/3/20/2017