

CASE NO. 84934

IN THE SUPREME COURT OF NEVADA

ROWEN SEIBEL AND GR BURGR, LLC,

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Elizabeth A. Brown
Clerk of Supreme Court

Appellants,

vs.

PHWLTV, LLC, AND GORDON RAMSAY,

Respondents,

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

APPENDIX TO APPELLANTS' OPENING BRIEF

VOLUME 6 OF 34

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APPENDIX OF EXHIBITS TO APPELLANTS' OPENING BRIEF

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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:

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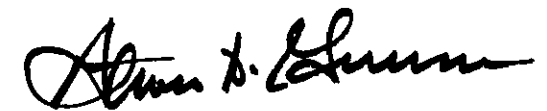
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TAB 16



CLERK OF THE COURT

OPPS

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

Case No.: A-17-751759-B

Dept. No.: 15

**PLAINTIFF'S OPPOSITION TO PLANET
HOLLYWOOD'S PARTIAL MOTION TO
DISMISS**

Hearing Date: 05/10/17

Hearing Time: 9:00 a.m.

On February 28, 2017, Plaintiff Rowen Seibel, a member and manager of GR Burgr LLC ("GRB"), appearing derivatively on its behalf, sued Defendants PHWLTV, LLC ("PH") and Gordon Ramsay (collectively, "Defendants"). On April 7, 2017, PH moved to partially dismiss the Complaint under Rule 12(b)(5).¹ Plaintiff respectfully opposes the Motion and Ramsay's Joinder.

In ruling upon the Motion, this Court must "recognize all factual allegations in [Plaintiff's]

¹ Although the word "partial" was not included in its title, the Motion is a partial motion to dismiss because it does not seek the dismissal of each of Plaintiff's claims and allegations. For example, in ¶ 68(a)-(h) of the Complaint, the breach of contract claim alleges eight different ways in which PH breached the Agreement. In its Motion, PH only seeks the dismissal of the allegations in ¶ 68(a), 68(e), 68(f), and 68(h). (Mot. 9:1-6.) The Motion also does not contest Plaintiff's requests for specific performance, Compl. ¶¶ 91-97, or an accounting, *Id.* ¶¶ 112-116.

1 complaint as true and draw all inferences in its favor.”² Additionally, this Court “may take into
2 account matters of public record, orders, items present in the record of the case, and any exhibits
3 attached to the complaint when ruling on a motion to dismiss [under Rule 12(b)(5)].”³ This Court
4 also can consider facts subject to judicial notice – *i.e.*, facts beyond reasonable dispute that are
5 “[c]apable of accurate and ready determination” by sources whose accuracy cannot be questioned.⁴
6 Plaintiff’s “complaint should be dismissed only if it appears beyond a doubt that [Plaintiff] could
7 prove no set of facts, which, if true, would entitle it to relief.”⁵ After Plaintiff’s allegations are
8 accepted as true, all inferences are drawn in Plaintiff’s favor, and the documents attached to or
9 incorporated in the Complaint are considered, it is certain Plaintiff can – and, in fact, will – prove at
10 trial myriad facts entitling it to relief on each of its claims. Hence, the Motion should be denied in its
11 entirety.

12 I. INTRODUCTION.

13 Selectively ignoring the facts that it has stolen GRB’s intellectual property, committed
14 numerous, material breaches of the parties’ contract, and admitted that it is in possession of hundreds
15 of thousands of dollars belonging to GRB, PH asks this Court to partially dismiss Plaintiff’s
16 Complaint under Rule 12(b)(5). The Motion is wholly devoid of merit. It repeatedly asks this Court
17 to assume Plaintiff’s allegations are untrue, relies upon numerous, alleged “facts” that are both false
18 and not contained in the Complaint, and intentionally misconstrues the parties’ contract and
19 applicable law. ***Furthermore, PH seeks a dismissal of the Complaint even though, as this Court***
20 ***may judicially notice,⁶ it previously admitted in the record for this action that it owes hundreds of***
21

22 ² *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

23 ³ *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).

24 ⁴ NEV. REV. STAT. § 47.130(2); *see also Stockmeier v. Nevada Dep’t of Corr. Psychological*
25 *Review Panel*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008) (affirming a Rule 12(b)(5) dismissal in a
26 case in which the district court took “judicial notice of facts in a related pending district court matter .
27 . . .”); *Walsh v. Green Tree Servicing, LLC*, 2015 WL 3370399, at *1 (Nev. May 20, 2015) (affirming
28 a Rule 12(b)(5) dismissal in a case in which the district court judicially noticed a deed of trust and
foreclosure documents); *ASARCO, LLC v. Union Pac. R. Co.*, 765 F.3d 999, 1009 n.2 (9th Cir. 2014)
(a settlement agreement filed with a bankruptcy court was a publically available record that could be
judicially noticed and “considered on a Rule 12(b)(6) motion to dismiss.”).

⁵ *Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672.

⁶ As aforementioned, in ruling upon a motion to dismiss under Rule 12(b)(5), this Court may
consider facts capable of judicial notice. Admissions in pleadings and other court records may be
judicially noticed. *See, e.g., 5-Star Mgmt., Inc. v. Rogers*, 940 F. Supp. 512, 518 (E.D.N.Y. 1996) (in

1 *thousands of dollars to Plaintiff.*⁷ This Court should deny the Motion in its entirety.

2 For background purposes, GRB is a Delaware limited liability company owned by Seibel and
3 GR US Licensing LP (“GRUS”), a Delaware limited partnership.⁸ Ramsay indirectly owns GRUS.⁹
4 Seibel is one of GRB’s two managers.¹⁰ Seibel is a restaurant entrepreneur who has developed and
5 opened numerous, highly acclaimed restaurants throughout the country. In 2012 or earlier, GRB
6 formulated the concept for a burger-centric/burger-themed restaurant that would sell reasonably-
7 priced, generously-portioned, casual American cuisine and attract customers by using the name of a
8 readily-recognizable celebrity chef (hereinafter, the “Concept”). As part of the development of the
9 Concept, GRB developed unique menus and menu items, ingredients, recipes, signature products,
10 methods of preparation, specifications for food products and beverages, methods of inventory,
11 operations control, equipment and design.

12 In pursuit of making the Concept a reality, GRB entered a license agreement (the “License
13 Agreement”) with GRUS in November 2012 to use Ramsay’s name for the Concept.¹¹ In the License
14 Agreement, GRUS acknowledged that GRB owned the Concept and the names “BURGR” and GR
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16

17
18 ruling upon a Rule 12(b)(6) motion to dismiss, the Eastern District of New York took judicial notice
19 of an admission by the plaintiff’s president in a hearing transcript); *see also Harris v. N.Y. State Dep’t*
20 *of Health*, 202 F. Supp. 2d 143, 173 n.13 (S.D.N.Y. 2002) (in considering a motion to dismiss, “the
21 Court may take judicial notice of admissions in pleadings and other documents in the public record
22 filed by a party in other judicial proceedings that contradict the party’s factual assertions in a
23 subsequent action.”); *Flint v. Beneficial Fin. I Inc.*, 2012 WL 3277109, at *3 (E.D. Cal. Aug. 9, 2012)
24 (the Eastern District of California cited *Harris v. N.Y. State Dep’t of Health* and other authorities
25 showing a district “may take judicial notice of admissions in pleadings” when considering a motion to
26 dismiss under Rule 12(b)(6)); *In re Wingard*, 382 B.R. 892, 897 n.1 (Bankr. W.D. Pa. 2008) (taking
27 “judicial notice of the various pleadings and admissions on file in this case.”).

28 PH’s March 17, 2017 Opp’n to Plf.’s Mot. for Prelim. Inj. 8:8-14 (in this Opposition, PH
admitted that under the Agreement, it owes post-termination monies to GRB, but it claimed it “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. Accordingly,
Planet Hollywood [has] accrued the License Fee for their use during the wind up period. Planet
Hollywood is ready, willing, and able to place those funds in escrow pending resolution of this
action.”) (internal citations omitted).

⁸ Compl. ¶ 9.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Compl. ¶ 17 (referring to the licensing arrangement between GRB and GRUS); *see also* Ex. 1,
License Agreement.

BURGR.”¹² It further acknowledged that GRB owned the “unique menus and menu items, ingredients, recipes, signature products, methods of preparation, specifications for food products and beverages, methods of inventory, operations control, equipment and design” for the Concept (hereinafter, the “General GR Materials”).¹³ GRUS gave GRB a license to use the name “BURGR Gordon Ramsay” to open a series of first class restaurants using the Concept and the General GR Materials.¹⁴

To effectuate the Concept in Las Vegas, GRB entered an agreement (the “Agreement”) in December 2012 with Ramsay and PHW Las Vegas, LLC (“PHW Las Vegas”) to design, develop, construct, and operate a restaurant in the Planet Hollywood hotel known as “BURGR Gordon Ramsay” (the “Restaurant”).¹⁵ Under the Agreement, PH licensed the General GR Materials from GRB.¹⁶ In return, the Agreement obligated PH to pay a fee to GRB (the “License Fee”).¹⁷

To a large extent, this lawsuit arises from the sections in the Agreement addressing the termination of the Agreement and Defendants’ permissible, post-termination conduct. One such critical and hotly contested section is § 11.2, which reads as follows, in relevant part:

[I]f [PH] shall determine, in [PH]’s sole and exclusive judgment, that any GR Associate is an Unsuitable Person, then immediately following notice by [PH] to Gordon Ramsay and GRB, (a) Gordon Ramsay and/or GRB shall terminate any relationship with

¹² *Id.* ¶ B (“[GRB] has developed, and owns and operates a burger-centric/burger-themed restaurant concept”); *see also Id.* ¶ C (“[GRB] is the owner of certain distinctive trade names, service marks, trademarks, logos, emblems, and indicia of origin, including but not limited to the marks set forth on Schedule B attached hereto, and such other trade names, service marks and trademarks as may be developed from time to time by [GRB] and its affiliates, which in no event include or shall at any time include the name ‘Gordon Ramsay’”); *Id.* at Schedule B (stating GRB owns the names “BURGR and GR BURGR, and, subject to Section 8(d) [in the License Agreement], any variation thereof, except with the name(s) or word(s) ‘Gordon Ramsay’, ‘Ramsay’ or ‘Gordon’.”)

¹³ *Id.* ¶ 1.5.

¹⁴ *Id.* ¶¶ A, D.

¹⁵ Compl. ¶ 19; *see also* Ex. 1 to Mot., the Agreement.

¹⁶ Ex. 1 to Mot., the Agreement at Pg. 1, ¶ D (“PH desires to obtain a license to use certain GRB Marks and General GR Materials from GRB and to retain GRB, Gordon Ramsay and/or his team to perform certain services and fulfill certain obligations with respect to consultation concerning the design, development, construction and operation of the Restaurant”); *see also Id.* at Pg. 3 (defining the “General GR Materials” as “the concept, system, menus and recipes designed for use in connection with the Restaurant that are (a) created by or for Gordon Ramsay or GRB or containing trade secrets of Gordon Ramsay or G RB as of the Effective Date and (b) as are provided from time to time by Gordon Ramsay or GRB to PH for the purposes of this Agreement.”)

¹⁷ Ex. 1 to Mot., the Agreement at pg. 21, ¶ 8.1.1 (“[PH] shall pay to GRB a fee”)

1 the Person who is the source of such issue, (b) Gordon Ramsay and/or GRB shall cease
2 the activity or relationship creating the issue to [PH]'s satisfaction, in [PH]'s sole
3 judgment, or (c) if such activity or relationship is not subject to cure as set forth in the
foregoing clauses (a) and (b), as determined by [PH] in its sole discretion, [PH] shall . . .
have the right to terminate this Agreement and its relationship with Gordon Ramsay and
GRB.¹⁸

4 As a preliminary matter, two important features of § 11.2 must be immediately noted. **First**, PH
5 could terminate the Agreement only if it determined in good faith that a Person was unsuitable and
6 GRB's association with an unsuitable person was "not subject to cure" under § 11.2(a) or (b).
7 **Second**, if PH elected to terminate the Agreement, then it had to terminate "its relationship with
8 Gordon Ramsay and GRB."¹⁹ In other words, § 11.2 expressly prohibited PH from terminating its
9 relationship with GRB while continuing to operate the Restaurant with Ramsay.

10 The Agreement further stated that upon termination, PH had to (i) cease operating the
11 Restaurant and using the General GR Materials within 120 days; (ii) continue paying the License Fee
12 to GRB for as long as PH continued to operate the Restaurant or use the General GR Materials; and
13 (iii) refrain from using the General GR Materials, including but not limited to the Restaurant's food
14 and beverage menus or recipes, for any future restaurants.²⁰

15 On April 11, 2016, Seibel attempted to transfer his interest in GRB to The Seibel Family 2016

17 ¹⁸ Ex. 1 to Mot., the Agreement at Pgs. 25-26, § 11.2.

18 ¹⁹ *Id.* (emphasis added).

19 ²⁰ *Id.* at Pg. 13, § 4.3.1 (Section 4.3 of the Agreement survives termination of the Agreement);
20 *see also Id.* at Pgs. 13-14, § 4.3.2(a) ("Upon expiration or termination of this Agreement[,] PH shall
21 cease operation of the Restaurant and its use of any GRB Marks and GR Materials; provided,
22 however, that (i) in the event of an early termination of this Agreement, other than pursuant to
23 Section 4.2.2, PH shall be entitled to operate the Restaurant and use the License for one hundred
24 twenty (120) days from such termination to orderly and properly wind-up operations of the
25 Restaurant; and (ii) in the event of an early termination of this Agreement pursuant to Section 4.2.2,
26 PH shall be entitled to operate the Restaurant and use the License for up to nine (9) months from such
27 termination to orderly and properly reconcept or wind-up operations of the Restaurant; provided that
28 in the event of a termination pursuant to clause (i) or (ii) during 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[.]"); *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) ("Subject to Section
4.3.2(a), 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.")

1 Trust (the “Trust”), but GRUS rejected that proposed transfer.²¹ One week later, on April 18, 2016,
2 Seibel pled guilty to one count of a corrupt endeavor to obstruct and impede the due administration of
3 the Internal Revenue Laws, 26 U.S.C. § 7212, a Class E Felony. The guilty plea arose from Seibel’s
4 failure to pay taxes in the United States for a Swiss bank account.

5 Subsequently, on September 21, 2016, Caesars Entertainment Corporation (“Caesars”)
6 terminated the Agreement under § 11.2 on the alleged grounds Seibel was an unsuitable person and
7 was associated with GRB.²² Prior to termination, Seibel asked PH to work with him to assign his
8 interest in GRB in a manner that would be acceptable to all parties, but PH simply ignored Seibel’s
9 request.²³ PH also ignored the inconvenient truth that GRB’s alleged association with Seibel was
10 curable through Seibel’s proposed transfer of his interest in GRB to the Trust.²⁴ Simply put, PH saw
11 Seibel’s guilty plea as a long-awaited opportunity to steal the Concept, the General GR Materials, and
12 GRB’s interest in the Restaurant for no consideration whatsoever, so as to maximize its own profits.²⁵

13 This lawsuit has been necessitated by PH and Ramsay’s numerous, material breaches of the
14 Agreement. In sum, PH and Ramsay wrongfully terminated the Agreement. Then, after the wrongful
15 termination, they didn’t try to buyout Seibel’s interest in GRB, or pay GRB for the General GR
16 Materials, but instead continued to operate the same Restaurant, using General GR Materials, and
17

18 ²¹ Compl. ¶ 35.

19 ²² Compl. ¶ 38; *see also* Ex. 2 to Mot., Sept. 21, 2016 Letter.

20 ²³ Compl. ¶¶ 46-47; *see also* Ex. 2, B. Ziegler Sept. 20, 2016 Email to M. Clayton (in this email
21 to Caesars’ attorney, Mark Clayton, Seibel’s attorney, Brian Ziegler, indicated that he had attempted
22 on two prior occasions to call Clayton but never received a return call over the course of several
23 weeks. Ziegler told Clayton, “I still welcome the opportunity to speak with you” concerning a
24 solution that would be acceptable to all parties. Rather than return Ziegler’s calls or respond to his
25 email, Clayton chose to send the termination letter the following day on September 21, 2016.) In its
26 Motion, PH correctly notes that this Court can consider Caesars’ termination letter under Rule
27 12(b)(5). (Mot. 8:11-14.) For the same reason, this Court also can consider Ziegler’s email to
28 Clayton.

24 ²⁴ Compl. ¶¶ 44; 48.

25 ²⁵ Section 11.2 of the Agreement expressly states that its purpose is to permit PH to avoid
26 running afoul of the Gaming Authorities. Ex. 1 to Mot., §11.2. The mere fact of Seibel’s guilty plea
27 did not render him “unsuitable” and no Gaming Authority ever deemed him to be unsuitable. Indeed,
28 PH did not believe in good faith that Seibel -- a behind the scenes member of a company that licensed
rights to PH for the operation of a Restaurant that has no role in any gaming activities -- would be
deemed unsuitable as a result of this felony conviction by the Gaming Authorities, or that his
continued connection to the Restaurant would jeopardize PH’s gaming license. Compl. ¶¶ 39-41, 52.
PH has a long history of continuing to do business with long criminal records and with people under
similar circumstances to those here without resulting any impact to its gaming license. *Id.* ¶50-52.

1 simply stopped paying GRB, resulting in a huge (and wrongfully obtained) windfall.

2 As aforementioned, § 11.2 allowed PH to terminate the Agreement only if GRB's relationship
3 with an unsuitable person was "not subject to cure" under § 11.2(a)-(b). Because PH never gave
4 GRB an opportunity to cure its relationship with Seibel and, furthermore, that relationship could have
5 been cured through Seibel's proposed transfer of his interest in GRB to the Trust, PH did not have the
6 right under § 11.2 to terminate the Agreement.

7 Furthermore, even if the termination was proper, which it was not, PH and Ramsay further
8 breached § 11.2 by continuing to operate the Restaurant together following the termination of the
9 Agreement.²⁶ Finally, following termination, PH continued to operate the Restaurant and use the
10 General GR Materials without paying the License Fee to GRB.²⁷ That conduct breached § 4.3, which
11 obligated PH to cease operating the Restaurant and using the General GR Materials following
12 termination and to continue paying the License Fee to GRB until it stopped those activities.

13 In an unsuccessful attempt to evade § 4.3, PH and Ramsay conspired to change the
14 Restaurant's name from "BURGR Gordon Ramsay" to "Gordon Ramsay Burger" (the "Rebranded
15 Restaurant") and continue operating the Rebranded Restaurant amongst themselves without GRB or
16 Seibel.²⁸ As aforementioned, § 4.3.2(a) obligated PH to wind up its operation of the Restaurant
17 within 120 days of termination, and the Agreement did not allow the parties to extend the wind up
18 period. To effectuate the transition of the Restaurant to the Rebranded Restaurant without having to
19 close the Restaurant, PH and Ramsay improperly agreed amongst themselves without the knowledge
20 or consent of Seibel or GRB to extend the wind up period.²⁹ That conduct further breached the
21 Agreement. In addition to breaching §4.3, the Rebranded Restaurant breaches §14.21, which
22 prohibits PH from operating "venture similar to the Restaurant (i.e. any venture generally in the
23 nature of a burger centric or burger themed restaurant)" without GRB.³⁰

24 Based upon PH and Ramsay's numerous, material breaches of the Agreement, Plaintiff sued
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26 ²⁶ *Id.* ¶ 68(a).

27 ²⁷ Compl. ¶¶ 53-57; 59; 68(b); 68(d).

28 ²⁸ Compl. ¶¶ 60-61.

29 ²⁹ *Id.* ¶ 62(b).

30 ³⁰ *Id.* ¶¶ 62(d), 74(n).

1 them on January 11, 2017, in the United States District Court for Nevada. The parties became
2 involved in a dispute over whether the District of Nevada had federal subject matter jurisdiction.
3 Wishing to avoid any delay that would have resulted from waiting for the District of Nevada to
4 resolve that dispute, Plaintiff stipulated on February 21, 2017, to dismiss the federal action without
5 prejudice. Plaintiff then promptly filed this action in the Eighth Judicial District Court on February
6 28, 2017.

7 PH's instant Partial Motion to Dismiss is nothing more than its latest endeavor to wrest the
8 Concept, the General GR Materials, and the Restaurant from GRB, so as to keep for itself the monies
9 that rightfully belong to GRB. This Court should deny the Motion for the following reasons:

10 **1.** *The Breach of Contract Claim is Viable* – This well-pleaded claim is viable
11 because (i) in plain, clear, and unambiguous language, § 11.2 obligated PH to
12 terminate its relationship with Ramsay, and PH breached § 11.2 by continuing to
13 operate the Restaurant with Ramsay; (ii) the Agreement obligated PH to pay the
14 entire License Fee to GRB and did not permit it to retain any portion of the fee, or
15 to pay any portion of the License Fee to any other party or nonparty, and PH
16 breached the Agreement by paying all or a portion of the License Fee to Ramsay
17 or an affiliate; (iii) § 11.2 permitted PH to terminate the Agreement only “if
18 [GRB’s] activity or relationship [with an unsuitable person] is not subject to cure”
19 under § 11.2(a)-(b), and PH breached § 11.2 by refusing to afford GRB a
20 reasonable, good faith opportunity to cure its alleged association with an
21 unsuitable person; (iv) by opening and operating the Rebranded Restaurant, PH
22 breached the Agreement because, *inter alia*, § 4.3.2(a) prohibited it from using the
23 General GR Materials after termination, and PH is using the General GR
24 Materials for the Rebranded Restaurant; and (v) by opening and operating a
25 “venture similar to the Restaurant”, i.e., another “burger centric or burger themed
26 restaurant”, without GRB’s participation in violation of §14.21.

27 **2.** *The Breach of Implied Covenant Claim is Viable* – This well-pleaded claim is
28 viable because it does not contradict the express terms of the Agreement, and PH

1 failed to exercise its discretionary, contractual powers in good faith.

2 **3. The Unjust Enrichment Claim is Viable** – This well-pleaded claim is viable
3 because (i) as this Court may judicially notice, PH already has admitted in the
4 record for this action that it owes hundreds of thousands of dollars to GRB but has
5 not paid those monies to GRB; (ii) Plaintiff is pursuing unjust enrichment in the
6 alternative to the contractual claims; and (iii) PH denies that it has any contractual
7 obligation to pay the License Fee to GRB for the Rebranded Restaurant, and an
8 unjust enrichment claim is viable when, as here, there is a dispute over the
9 existence of a contractual right or obligation.

10 **4. The Civil Conspiracy Claim is Viable** – This well-pleaded claim is viable because
11 it sufficiently alleges that PH and Ramsey engaged in concerted acts to
12 accomplish an unlawful objective (*i.e.*, ousting GRB and Seibel from the
13 Restaurant in violation of the Agreement and the implied covenant) for the
14 purpose of harming GRB, which resulted in damages to GRB.

15 **5. The Request for Declaratory Relief is Viable** – PH asks this Court to dismiss this
16 request for the same reasons as the breach of contract claim. To the contrary, this
17 request is viable for the same reasons as the breach of contract claim.

18 WHEREFORE, this Court should deny the Motion in its entirety.

19 **II. LEGAL ARGUMENTS.**

20 **A. Plaintiff's Breach of Contract Claim is Viable (Compl. ¶¶ 67-71).**

21 As aforementioned, PH does not seek the dismissal of Plaintiff's entire breach of contract
22 claim. (Mot. 9:1-6) (limiting PH's request for dismissal to the allegations in ¶¶ 68(a), (e), (f), and
23 (h).)³¹ As for the allegations in the breach of contract claim at issue in the Motion, those allegations
24 are viable and therefore should not be dismissed. Additionally, it is impossible for this Court to
25

26 ³¹ Specifically, PH does not contest Plaintiff's allegations that PH breached by Agreement by (i)
27 continuing to operate the Restaurant post-termination (Compl. ¶ 68(b)); (ii) continuing to use the
28 General GR Materials post-termination (*Id.* ¶ 68(c)); (iii) failing to pay the License Fee to GRB for
the post-termination period of time that it operated the Restaurant and used the General GR Materials
(*Id.* ¶ 68(d)); and (iv) improperly extending the 120 day wind up period for the Restaurant (*Id.* ¶
68(g)).

1 dismiss Plaintiff's breach of contract claim when, as this Court may judicially notice, PH already has
2 admitted in the record for this action that under the Agreement, it still owes hundreds of thousands of
3 dollars of post-termination monies to GRB, has not yet paid those monies to GRB, and allegedly "is
4 ready, willing, and able to place those funds in escrow pending resolution of this action."³²

5 **1. PH Breached § 11.2 of the Agreement by Continuing to Operate the Restaurant**
6 **with Ramsay (Compl. ¶ 68(a)) (Mot. 9:7 – 10:23).**

7 It is well-settled that the parties to an enforceable contract must live with the terms of their
8 agreement.³³ "[A] court will not rewrite a contract simply because one party is disappointed with its
9 results."³⁴ Nevada follows "the well-established principle that parties are free to contract in any
10 lawful matter"³⁵ So long as it is not illegal, a contract will be enforced in Nevada,³⁶ even if it is
11 one in which a party contracted away its rights, entitlements, or liberties.³⁷

12 PH claims § 11.2 allowed it to terminate its relationship with GRB while continuing to
13 operate the Restaurant with Ramsay. (Opp'n 9:7 – 10:23.) To the contrary, § 11.2 gave PH the right
14 under certain conditions to terminate "its relationship with Gordon Ramsay and GRB."³⁸ Based upon
15 that plain, clear, and unambiguous language, PH could not terminate its relationship with GRB while

16 ³² PH's March 17, 2017 Opp'n to Plf.'s Mot. for Prelim. Inj. 8:8-14.

17 ³³ See, e.g., *Enjoy Realty Corp. v. Van Wagner Commc'ns, LLC*, 4 N.E.3d 336, 343 (N.Y. 2013)
18 ("[T]he parties must live with the consequences of their agreement."); see also *Stanaland v. Jamison*,
19 268 S.E.2d 578, 579 (S.C. 1980) ("[W]hen the terms of a contract are clear, there is no room for
20 interpretation and the parties must live with the agreement which was made."); *Armenian Assembly of*
21 *Am., Inc. v. Cafesjian*, 772 F. Supp. 2d 129, 146 (D.D.C. 2011) (parties "must live with the
22 consequences of their bargained-for agreement.").

23 ³⁴ *Colorado Interstate Corp. v. CIT Grp./Equip. Fin., Inc.*, 775 F. Supp. 369, 371 (D. Colo.
1991); see also *Regensburger v. China Adoption Consultants, Ltd.*, 138 F.3d 1201, 1206 (7th Cir.
1998) ("After-the-fact disappointment with the results of a contract is not a ground for nullifying the
24 contract's express terms.").

25 ³⁵ *NAD, Inc. v. Dist. Ct.*, 115 Nev. 71, 77, 976 P.2d 994, 997 (1999); see also *Rivero v. Rivero*,
26 125 Nev. 410, 429, 216 P.3d 213, 226 (2009) ("Parties are free to contract, and the courts will enforce
27 their contracts if they are not unconscionable, illegal, or in violation of public policy.").

28 ³⁶ *Rivero*, 125 Nev. at 429, 216 P.3d at 226 (Nevada courts "will enforce" contracts that "are not
unconscionable, illegal, or in violation of public policy.").

³⁷ See, e.g., *Lowe Enterprises Residential Partners, L.P. v. Dist. Ct.*, 118 Nev. 92, 100, 40 P.3d
405, 410 (2002) (contractual jury trial waivers are enforceable); see also *Rivero v. Rivero*, 125 Nev.
410, 429, 216 P.3d 213, 227 (2009) ("[P]arties are free to agree to child custody arrangements and
those agreements are enforceable if they are not unconscionable, illegal, or in violation of public
policy."); *Hartz v. Mitchell*, 107 Nev. 893, 897, 822 P.2d 667, 670 (1991) (the lessor of a rental
vehicle is free to waive uninsured and underinsured coverage, and having freely exercised that right,
it cannot later complain about a lack of insurance coverage).

³⁸ Ex. 1 to Mot., the Agreement at Pgs. 25-26, § 11.2. (Emphasis added.)

1 continuing to operate the Restaurant with Ramsay. PH breached § 11.2 by continuing to operate the
2 Restaurant with Ramsay after it terminated its relationship with GRB.³⁹

3 PH cites numerous cases stating a party is free to associate and do business with whomever it
4 pleases. (Mot. 9:9-19.) That is true when the party otherwise has not freely entered an enforceable
5 contractual provision restricting that right. Notably, PH does not – and, indeed, cannot – cite a single
6 case in which a Nevada court has invalidated a contractual provision restricting with whom a party
7 may operate a restaurant. Because § 11.2 is not unconscionable, illegal, or in violation of public
8 policy under Nevada law, PH must live with its clear language.⁴⁰ Hence, this Court should not
9 dismiss ¶ 68(a).

10 **2. PH Breached the Agreement by Paying a Portion of the License Fee to GRUS**
11 **(Compl. ¶ 68(e)) (Mot. 10:24 – 11:13).**

12 “To succeed on a breach of contract claim, a plaintiff must show four elements: (1) formation
13 of a valid contract; (2) performance or excuse of performance by the plaintiff; (3) material breach by
14 the Defendant; and (4) damages.”⁴¹ The Complaint alleges (i) the Agreement is a valid and
15 enforceable contract between GRB, PH, and Ramsay;⁴² (ii) GRB performed the Agreement by
16 licensing the General GR Materials to PH;⁴³ (iii) the Agreement obligated PH to pay the License Fee
17 to GRB only and did not permit Ramsay or an affiliate to receive any portion of the License Fee;⁴⁴
18 (iv) PH breached the Agreement by paying a portion of the License Fee to Ramsay or an affiliate;⁴⁵
19 and (v) GRB has suffered damages as a result.⁴⁶ These allegations are sufficient to state a viable
20 claim that PH breached the Agreement by paying a portion of the License Fee to Ramsay or an
21 affiliate.

22
23 ³⁹ *Id.* ¶ 68(a).

24 ⁴⁰ *Rivero*, 125 Nev. at 429, 216 P.3d at 226 (Nevada courts “will enforce” contracts that “are not
unconscionable, illegal, or in violation of public policy.”)

25 ⁴¹ *Laguerre v. Nevada Sys. of Higher Educ.*, 837 F. Supp. 2d 1176, 1180 (D. Nev. 2011); *see*
also Padilla Constr. Co. of Nevada v. Big-D Constr. Corp., 386 P.3d 982, *1 (Nev. 2016) (citing
Laguerre, 837 F. Supp. 2d at 1180).

26 ⁴² Compl. ¶ 67.

27 ⁴³ *Id.* ¶ 21.

28 ⁴⁴ *Id.* ¶ 25.

⁴⁵ *Id.* ¶¶ 57; 68(e).

⁴⁶ *Id.* ¶ 70; *see also* Ex. 1 to Compl., Seibel Decl. ¶ 23 (identifying the payments GRB received
under the Agreement).

1 In its Motion, PH claims ¶ 68(e) of the Complaint fails because Plaintiff did not allege “that
2 GRB did not direct that payments be made to GRUS directly.” (Mot. 11:5-6.) That argument is
3 simply frivolous. To state a viable breach of contract claim, a plaintiff is not required to allege that it
4 did not grant the defendant permission to engage in the conduct at issue. Plaintiff is unaware of – and
5 PH notably fails to cite – a single Nevada case that has ever dismissed a breach of contract claim for
6 that reason. In fact, PH cites *Munda v. Summerlin Life & Health Ins. Co.* for the proposition “the
7 allegations [in a complaint] must be legally sufficient to constitute the elements of the claim
8 asserted.”⁴⁷ The allegations in the Complaint are more than sufficient to satisfy the necessary, *prima*
9 *facie* elements for a breach of contract claim.⁴⁸ Hence, this Court should not dismiss ¶ 68(e).

10 **3. PH Breached the Agreement by Failing to Provide GRB with a Reasonable,**
11 **Good Faith Opportunity to Cure its Purported Association with an Unsuitable**
12 **Person (Compl. ¶ 68(f)) (Mot. 11:14 – 12:3).**

13 Section 11.2 reads as follows, in relevant part:

14 If any GR Associate fails to satisfy any such requirement, if PH or any of PH’s
15 Affiliates are directed to cease business with any GR Associate by any Gaming
16 Authority, or if PH shall determine, in PH’s sole and exclusive judgment, that any GR
17 Associate is an Unsuitable Person, then immediately following notice by PH to Gordon
18 Ramsay and GRB, (a) Gordon Ramsay and/or GRB shall terminate any relationship with
19 the Person who is the source of such issue, (b) Gordon Ramsay and/or GRB shall cease
20 the activity or relationship creating the issue to PH’s satisfaction, in PH’s sole judgment,
21 **or (c) if such activity or relationship is not subject to cure as set forth in the**
22 **foregoing clauses (a) and (b)**, as determined by PH in its sole discretion, PH shall,
23 without prejudice to any other rights or remedies of PH including at law or in equity,
24 have the right to terminate this Agreement and its relationship with Gordon Ramsay and
25 GRB.⁴⁹

26 Relying solely upon the underlined language while ignoring the bold language, PH argues that GRB
27 was not entitled to an opportunity to cure its association with an unsuitable person. (Mot. 11:14 –
28 12:3.) That argument fails because per the bold language, § 11.2 intended for GRB to be given an
opportunity to cure its association with an unsuitable person, and PH could terminate the Agreement

⁴⁷ Mot. 11:7-10 (citing 127 Nev. 918, 923, 267 P.3d 771, 774 (2011)).

⁴⁸ PH ignores ¶ 33 of the Complaint, which plainly alleges that PH breached the Agreement when it consented to Ramsay’s – not GRB’s -- unilateral request to send license fees to GRUS directly.

⁴⁹ Ex. 1 to Mot., the Agreement at Pgs. 25-26, § 11.2 (emphasis added).

1 only if that association could not be cured. Section 11.2 was breached when Caesars terminated the
2 Agreement without giving GRB a reasonable, good faith opportunity to cure its purported association
3 with Seibel.⁵⁰ Hence, this Court should not dismiss ¶ 68(f).

4 **4. *PH Breached the Agreement by Opening the Rebranded Restaurant (Compl. ¶***
5 ***68(h)) (Mot. 12:4-19).***

6 In ¶ 68(h), the Complaint alleges PH breached the Agreement by “[a]ttempting and planning
7 to open and operate the Rebranded Restaurant with Ramsay or an affiliate, use the Intellectual
8 Property for the Rebranded Restaurant, and failing to enter a separate written agreement with GRB or
9 an affiliate concerning the Rebranded Restaurant.” In its Motion, PH claims this allegation should be
10 dismissed because of the “attempting and planning” phrase. (Mot. 12:4-15.)

11 As an initial matter, PH’s argument is frivolous because it completely ignores § 14.21, which
12 reads as follows:

13 If PH elects to pursue any venture similar to the Restaurant (i.e., any venture generally in
14 the nature of a burger centric or burger themed restaurant), GRB shall, or shall cause an
15 Affiliate to, execute a development, operation and license agreement generally on the
16 same terms and conditions as this Agreement, subject only to revisions agreed to by the
17 parties, including revisions as are necessary to reflect the differences in such things as
18 location, Project Costs, Initial Capital Investment, Operating Expenses and the potential
19 for Gross Restaurant Sales between the Restaurant and such other venture and any
20 resulting Section 8.1 threshold adjustments.⁵¹

21 It is obvious to any impartial observer that calling the Restaurant “Gordon Ramsay Burger”
22 instead of “BURGR Gordon Ramsay” doesn’t change the essential fact that it is still a “burger
23 centric” or “burger themed” restaurant. Thus, PH has breached § 14.21 by attempting and planning to
24 open the Rebranded Restaurant without first entering an agreement with GRB or an affiliate for the
25 Rebranded Restaurant. (Compl. ¶ 62(d).)

26 Additionally, this Court should judicially notice the following facts:

- 27 1. Plaintiff filed the Complaint on February 28, 2017.
- 28 2. When Plaintiff filed the Complaint, PH was still operating the Restaurant and was
in the process of opening but had not yet opened the Rebranded Restaurant.⁵²

50 Compl. ¶ 68(f).

51 Ex. 1 to Mot., the Agreement at Pg. 34, § 14.21.

52 See PH’s March 17, 2017 Opp’n to Pl.’s Mot. for Prel. Inj. 8:1-4 (“Upon realization that more
time was required than the 120 days permitted in the Development Agreement, on or about January 5,

1 Because the Rebranded Restaurant was being planned when the Complaint was filed but had not yet
2 opened, ¶ 68(h) alleges that PH was attempting and planning to open and operate the Rebranded
3 Restaurant rather than alleging that it had opened and operated the Rebranded Restaurant.

4 As pled, ¶ 68(h) may be construed as a claim for anticipatory breach of contract. “A breach of
5 contract can occur in one of two ways [under Nevada law]. The first is an actual breach of the
6 specific terms and obligations of the contract. The second is an anticipatory breach, or repudiation, of
7 the contract.”⁵³ “[W]hen one party engages in anticipatory breach, the other party may treat the
8 contract as ended and sue immediately.”⁵⁴ By making plans in February 2017 to open and operate the
9 Restaurant, PH anticipatorily breached the Agreement. For that reason, ¶ 68(h) is viable as pled.
10 Alternatively, if this Court were inclined to dismiss ¶ 68(h) because of the “attempting and planning”
11 phrase, then it should allow Plaintiff to amend that paragraph to reflect the fact PH has now opened
12 the Rebranded Restaurant.

13 In addition to requesting dismissal of ¶ 68(h) because of the “attempting and planning”
14 phrase, PH asks this Court to dismiss ¶ 68(h) on the alleged grounds “nothing in the Development
15 Agreement prohibits Planet Hollywood from opening or attempting to open a rebranded restaurant.”
16 (Mot. 12:16-17.) That argument is frivolous. Section 4.3.2(a) states that upon termination, “PH shall
17 cease operation of the Restaurant and its use of any” General GR Materials.⁵⁵ Section 4.3.2(e) further
18 prohibits PH from using the Restaurant’s food and beverage menus or recipes or any of the General
19 GR Materials for any subsequent restaurant.⁵⁶ Finally, as aforementioned, § 14.21 states that if PH
20 elects to pursue another burger-themed restaurant, then PH and GRB or a GRB-affiliate shall

21
22 2017, Planet Hollywood told GRUS, the only suitable member of GRB, that additional time was
23 needed, and that it would complete the process as expeditiously as possible, and by or before March
24 31, 2017.”); *see also* Pl.’s March 21, 2017 Reply for its Mot. for Prel. Inj. 2:21 – 3:1 (citing Ex. 2 to
the Reply) (showing that as of late March 2017, the Restaurant’s recipes remained identical to the
Restaurant’s menu in use prior to Caesars’ termination of the Agreement).

25 ⁵³ *Shaw v. CitiMortgage, Inc.*, 201 F. Supp. 3d 1222, 1248 (D. Nev. 2016) (internal citations
omitted).

26 ⁵⁴ *Schwartz v. Wasserburger*, 117 Nev. 703, 706, 30 P.3d 1114, 1116 n.5 (2001); *see also*
Finnell v. Bromberg, 79 Nev. 211, 225, 381 P.2d 221, 228 (1963).

27 ⁵⁵ Ex. 1 to Mot., the Agreement at Pg. 13, § 4.3.2(a).

28 ⁵⁶ *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.”)

1 “execute [an agreement] generally on the same terms and conditions as” the Agreement.⁵⁷

2 The Agreement prohibited PH from operating the Rebranded Restaurant because (i) in
3 violation of § 11.2, PH is operating the Rebranded Restaurant with Ramsay;⁵⁸ (ii) PH is using the
4 General GR Materials for the Rebranded Restaurant;⁵⁹ and (iii) the Rebranded Restaurant is a burger-
5 themed restaurant, and PH failed to enter an agreement with GRB or an affiliate under § 14.21.⁶⁰ For
6 these reasons, PH has breached the Agreement by opening the Rebranded Restaurant. Hence, this
7 Court should not dismiss ¶ 68(h) or, alternatively, should permit Plaintiff to amend it to reflect the
8 fact the Rebranded Restaurant was opened after Plaintiff filed the Complaint.

9 **B. Plaintiff’s Implied Covenant Claim is Viable (Compl. ¶¶ 72-77).**

10 The implied covenant is breached “[w]here the terms of a contract are literally complied with
11 but one party to the contract deliberately countervenes the intention and spirit of the contract”⁶¹

12 The Complaint alleges PH breached the implied covenant in fifteen ways:

- 13 1. **First**, it conspired with Ramsay to oust Seibel and GRB from the Restaurant to
14 increase PH’s profits. (Compl. ¶ 74(a).)
- 15 2. **Second**, it interfered with Seibel’s relationship with the Restaurant by diverting
16 funds away from GRB to Ramsay or an affiliate. (*Id.* ¶ 74(b).)
- 17 3. **Third**, it conspired with Ramsay to reject Seibel’s attempt to transfer his interest
18 in GRB and duties under the Agreement. (*Id.* ¶ 74(c).)
- 19 4. **Fourth**, it purported to terminate the Agreement on the alleged grounds GRB was
20 associated with an unsuitable person when, in fact, it was not. (*Id.* ¶ 74(d).)
- 21 5. **Fifth**, it continued to do business with Ramsay under the Agreement following
22 the alleged termination of the Agreement under § 11.2. (*Id.* ¶ 74(e).)
- 23 6. **Sixth**, it continued to operate the Restaurant following the alleged termination of
24 the Agreement. (*Id.* ¶ 74(f).)
- 25 7. **Seventh**, it continued to use the General GR Materials following the alleged
26 termination of the Agreement. (*Id.* ¶ 74(g).)
- 27 8. **Eighth**, it failed to pay the License Fee and other monies to GRB for the post-

26 ⁵⁷ *Id.* at Pg. 34, § 14.21.

27 ⁵⁸ Compl. ¶ 62(a).

28 ⁵⁹ *Id.* ¶ 62(c).

⁶⁰ *Id.* ¶ 62(d).

⁶¹ *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 232, 808 P.2d 919, 922–23 (1991).

1 termination period of time that it operated the Restaurant and used the General
2 GR Materials. (*Id.* ¶ 74(h).)

3 9. ***Ninth***, it paid all or a portion of the License Fee to Ramsay or an affiliate. (*Id.* ¶
4 74(i).)

5 10. ***Tenth***, it failed to provide GRB with a reasonable and good faith opportunity to
6 cure its purported association with an unsuitable person. (*Id.* ¶ 74(j).)

7 11. ***Eleventh***, the Agreement was terminated by Caesars, which did not have the
8 contractual right to terminate the Agreement under § 11.2. (*Id.* ¶ 74(k).)

9 12. ***Twelfth***, PH has selectively, arbitrarily, and capriciously done and continues to do
10 business with persons who have criminal records or are dishonest, immoral,
11 infamous, of ill-repute, or potentially or actually unsuitable. (*Id.* ¶ 74(l).)⁶²

12 13. ***Thirteenth***, PH extended the 120 day wind up period for the bad faith purposes of
13 opening the Rebranded Restaurant and operating the Restaurant for longer than
14 allowed under the Agreement. (*Id.* ¶ 74(m).)

15 14. ***Fourteenth***, PH made plans to open and operate the Rebranded Restaurant with
16 Ramsay or an affiliate and use the General GR Materials for the Rebranded
17 Restaurant, all while failing to enter an agreement with GRB or an affiliate for a
18 new burger-themed restaurant. (*Id.* ¶ 74(n).)

19 15. ***Fifteenth***, PH claimed Nevada gaming law and authorities prohibited it from
20 paying any monies to GRB or from allowing Seibel to assign his interest in GRB
21 to the Trust or another person or entity without any reasonable or good faith basis
22 for those assertions. (*Id.* ¶ 74(o).)⁶³

23 In its Motion, PH does not individually address each of these allegations. (Mot. 12:20 – 13:21.)
24 Instead, employing a “shotgun” approach, PH broadly argues that all of these allegations fail because
25 they allegedly contradict the Agreement. (*Id.*) That argument is meritless for two reasons.

26 ***First***, in its Motion, PH does not – and furthermore cannot – identify a single provision in the
27 Agreement contradicting Plaintiff’s allegations. PH vaguely claims § 11.2 contradicts the allegations
28

62 The implied covenant “prohibits arbitrary or unfair acts by one party that work to the
disadvantage of the other.” *Nelson v. Heer*, 163 P.3d 420, 427 (Nev. 2007).

63 In fact, as alleged in the Complaint, Caesars’ current certificate of incorporation expressly
allows it to redeem the stock of unsuitable persons. (Compl. ¶ 74(o); *see also* Ex. 3, Caesars’ Feb. 8,
2012 Second Amended and Restated Certificate of Incorporation at § 5.4) (“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.”)

1 in ¶¶ 74(b)-(d), (j)-(k). (Mot. 13:13-15.) Nothing in § 11.2 contradicts those allegations. As for the
2 allegations in ¶¶ 74(e), (l), and (n), PH claims § 11.2 allowed it to terminate its relationship with GRB
3 while continuing to operate the Restaurant with Ramsay. (*Id.* 13:15-17.) That is the exact opposite
4 of what § 11.2 actually says in plain, clear, and unambiguous language.

5 With respect to the allegation PH paid all or a portion of the License Fee to Ramsay or an
6 affiliate (Compl. ¶ 74(i)), PH claims this allegation fails because it allegedly “contradict[s] the
7 express provision of the Development Agreement providing that the license fee may be paid to an
8 account that GRB directs.” (Mot. 13:18-19.) That argument is frivolous because the Complaint does
9 not allege GRB directed PH to pay the License Fee to GRUS, rather that direction came from
10 Ramsay. (Compl. ¶ 33.) For these reasons, there is no merit to PH’s argument that the implied
11 covenant claim contradicts the Agreement.

12 **Second**, PH is correct that under § 11.2, it had the “sole and exclusive judgment” to determine
13 whether GRB was associated with an unsuitable person and also the “sole discretion” to decide
14 whether that association was curable. Nonetheless, as PH intentionally ignores, the implied covenant
15 obligates parties to exercise discretionary, contractual powers in good faith.⁶⁴ The Complaint
16 contains multiple specific allegations of how PH exercised its discretion in bad faith.⁶⁵ PH did not
17

18 ⁶⁴ See, e.g., *California Lettuce Growers v. Union Sugar Co.*, 289 P.2d 785, 791 (Cal. 1955)
19 (“[W]here a contract confers on one party a discretionary power affecting the rights of the other, a
20 duty is imposed to exercise that discretion in good faith and in accordance with fair dealing.”); see
21 also *Los Angeles Mem’l Coliseum Comm’n v. Nat’l Football League*, 791 F.2d 1356, 1361 (9th Cir.
22 1986) (discretionary contractual “powers must be exercised ‘within the parameters of the duty of
23 good faith.’”); *Carma Developers (Cal.), Inc. v. Marathon Dev. California, Inc.*, 826 P.2d 710, 726
24 (Cal. 1992) (“The covenant of good faith finds particular application in situations where one party is
25 invested with a discretionary power affecting the rights of another. Such power must be exercised in
26 good faith.”); *BA Mortg. & Int’l Realty Corp. v. Am. Nat. Bank & Trust Co. of Chicago*, 706 F. Supp.
27 1364, 1376–77 (N.D. Ill. 1989) (“Parties with unfettered contractual discretion cannot be allowed to
exercise that discretion in bad faith.”); *Dalton v. Educ. Testing Serv.*, 663 N.E.2d 289, 291 (N.Y.
1995) (“Where the contract contemplates the exercise of discretion, [the implied covenant] includes a
promise not to act arbitrarily or irrationally in exercising that discretion.”); *Hamilton v. Suntrust
Mortg. Inc.*, 6 F. Supp. 3d 1300, 1311 (S.D. Fla. 2014) (“[T]he implied covenant of good faith applies
‘even where the contractual obligation is one subject to the ‘sole discretion’ of one of the parties.’”);
Cook v. Zions First Nat. Bank, 919 P.2d 56, 60 (Utah Ct. App. 1996) (“When one party to a contract
retains power or sole discretion in an express contract, it must exercise that discretion reasonably and
in good faith.”)

28 ⁶⁵ For example, Plaintiff alleges PH (with Ramsay) concocted a plan to oust Seibel from the
Restaurant long before Seibel’s guilty plea. (Compl. ¶¶ 32, 74(a).) PH’s subsequent determination
that Seibel was “unsuitable” was illusory and in bad faith. (*Id.* ¶¶ 34-44, 74(d).) PH did not in good

1 exercise its discretionary powers in good faith and therefore breached the implied covenant.

2 As evident from the language in § 11.2 permitting PH to terminate the Agreement “if [GRB’s]
3 activity or relationship [with an unsuitable person] is not subject to cure” under § 11.2(a)-(b), the
4 intent and spirit of § 11.2 was for GRB to be afforded a reasonable, good faith opportunity to cure its
5 association with an unsuitable person. Prior to terminating the Agreement, Caesars simply ignored
6 Seibel’s desire to work together to formulate a solution that would be acceptable to all parties.⁶⁶ It
7 also simply ignored the inconvenient truth that GRB’s association with Seibel was curable through
8 Seibel’s desire to transfer his interest in GRB to the Trust.⁶⁷ Because PH failed to exercise its
9 discretionary, contractual powers in good faith, Plaintiff’s implied covenant claim is viable.

10 **C. Plaintiff’s Unjust Enrichment Claim is Viable (Compl. ¶¶ 78-83).**

11 This Court should deny PH’s request to dismiss the unjust enrichment claim for three reasons.
12 **First** and foremost, as this Court may judicially notice, PH already has admitted in the record for this
13 action that under the Agreement, it owes GRB hundreds of thousands of dollars.⁶⁸ It would be unjust,
14 unfair, and inequitable for PH to be permitted to retain these monies.

15 **Second**, although it is true unjust enrichment is not available when a written contract exists
16 (Mot. 13:22-15), it is further true that under NEV. R. CIV. P. 8(a), a plaintiff may pursue unjust
17 enrichment in the alternative to its contractual claims.⁶⁹ Plaintiff’s unjust enrichment claim was pled
18

19 faith believe that Seibel, a behind the scenes member of a company the licensed rights to PH for the
20 operation of a Restaurant, would be deemed unsuitable as a result of this felony conviction by the
21 Gaming Authorities, nor that his continued connection to the Restaurant jeopardize PH’s gaming
22 license. (Id. ¶¶ 39-41, 52, 74(c)(d).) PH has a long history of continuing to do business with people
23 long criminal records and continuing to do business with people under similar circumstances to those
24 here. *Id.* ¶¶50-52, 74(l).)

23 ⁶⁶ Compl. ¶¶ 46-47; *see also* Ex. 2, B. Ziegler Sept. 20, 2016 Email to M. Clayton.

24 ⁶⁷ Compl. ¶¶ 44; 48.

25 ⁶⁸ PH’s March 17, 2017 Opp’n to Plf.’s Mot. for Prelim. Inj. 8:8-14 (in this Opposition, PH
26 admitted that under the Agreement, it owes post-termination monies to GRB, but it claimed it “had
27 concerns about making License Fee payments to GRB for use of the GRB Marks and General GR
28 Materials during the wind up period given GRB’s inability to disassociate with Seibel. Accordingly,
Planet Hollywood [has] accrued the License Fee for their use during the wind up period. Planet
Hollywood is ready, willing, and able to place those funds in escrow pending resolution of this
action.”) (internal citations omitted).

⁶⁹ *See* NEV. R. CIV. P. 8(a) (“Relief in the alternative or of several different types may be
demanded.”); *see also In re Wal-Mart Wage & Hour Employment Practices Litig.*, 490 F. Supp. 2d
1091, 1117 (D. Nev. 2007) (“[T]he Court will not dismiss Plaintiff’s unjust enrichment claim, as

1 in the alternative. (Compl. ¶ 5.) It expressly states Plaintiff is pursuing unjust enrichment only if this
2 Court were to conclude the Agreement is no longer enforceable. (*Id.* ¶ 81.)

3 ***Third***, in its unjust enrichment claim, Plaintiff is seeking, in part, to recover the License Fee
4 due to PH's use of the General GR Materials for the Rebranded Restaurant. (Compl. ¶¶ 79-82.) PH
5 contends that it is under no contractual obligation to pay the License Fee to GRB for any reason
6 related to the Rebranded Restaurant. An unjust enrichment claim is viable when, here, there is a
7 dispute concerning the existence of a contractual right or obligation.⁷⁰ Hence, for these three reasons,
8 this Court should not dismiss Plaintiff's unjust enrichment claim.

9 **D. Plaintiff's Civil Conspiracy Claim is Viable (Compl. ¶¶ 84-90).**

10 In Nevada, "[a]n actionable civil conspiracy 'consists of a combination of two or more
11 persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of
12 harming another, and damage results from the act or acts.'"⁷¹ In its conspiracy claim, Plaintiff alleges
13 Ramsay and PH acted in concert to breach the Agreement and oust GRB and Seibel from the
14 Restaurant. (Compl. ¶ 84.) Their conduct was designed to disrupt GRB and Seibel's contractual
15 relationship with PH, inflict financial harm upon GRB and Seibel, and increase Ramsay and PH's
16 profits from the Restaurant. (*Id.* ¶ 85.) The objectives of their conspiracy violated GRB and Seibel's
17 rights, entitlements, and justified expectations under the Agreement and therefore were unlawful. (*Id.*
18 ¶ 85.)

19 Specifically, Ramsay blocked Seibel's efforts to disassociate from GRB. (Compl. ¶¶ 86-87.)

20 Plaintiff may plead it in the alternative to contractual allegations."); *George v. Morton*, 2007 WL
21 680788, at *9 (D. Nev. Mar. 1, 2007) (denying a motion to dismiss an unjust enrichment claim
22 because "Nevada's recognition of the rule disallowing recovery of equitable remedies where a
23 plaintiff has a full and adequate remedy at law has no bearing on a plaintiff's right to plead in the
24 alternative and to present evidence in support of all his well-pleaded claims for relief.").

25 ⁷⁰ See, e.g., *Mielke v. Standard Metals Processing, Inc.*, 2015 WL 1886709, at *4 (D. Nev. Apr.
26 24, 2015) (allowing an unjust enrichment claim to proceed in the alternative when "the parties dispute
27 whether any contract or agreement exists between [them]."); see also *Liggio v. Weigner*, 2016 WL
28 5661906, at *3 (D. Nev. Sept. 28, 2016) (a request for dismissal was "premature . . . particularly
where [the defendant] denies that the promissory notes are enforceable contracts."); *Kunio Tsutsumi*
v. Advanced Power Techs., Inc., 2013 WL 1953716, at *8 (D. Nev. May 10, 2013) ("[A] plaintiff
may plead an unjust enrichment claim in the alternative where the validity of a relevant contract is in
doubt.").

⁷¹ *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)).

1 He also falsely claimed Seibel was an unsuitable person and that GRB's association with Seibel could
2 not be cured. (*Id.*) PH also failed and refused to investigate, research, and consider in good faith
3 whether Seibel's association with GRB was curable. (*Id.* ¶ 88.) The objectives of the conspiracy
4 were accomplished when Caesars terminated the Agreement. (*Id.* ¶ 89.) As a result of the
5 conspiracy, Plaintiff suffered monetary damages. (*Id.* ¶ 90.) Pursuant to these well-pleaded
6 allegations, Plaintiff has stated a viable conspiracy claim under Nevada law.

7 PH essentially asks this Court to dismiss the conspiracy claim for the same reasons as the
8 breach of contract claim. Specifically, PH argues that it did not engage in any unlawful activities or
9 objectives because the Agreement allegedly permitted it to reject Seibel's proposed transfer of his
10 interest in GRB, as well as to terminate the Agreement under § 11.2. (Mot. 14:21-25.) To the
11 contrary, PH's conduct breached both the express language of the Agreement and the implied
12 covenant.

13 Specifically, PH argues that because § 14.2 gave the parties the "sole discretion" to reject any
14 proposed assignment of the Agreement, PH allegedly was under no obligation to consider Seibel's
15 proposed assignment of his interest in GRB to the Trust. (Mot. 15:1-9.) This argument intentionally
16 ignores the language in § 11.2 permitting PH to terminate the Agreement only "if [GRB's] activity or
17 relationship [with an unsuitable person] is not subject to cure" under § 11.2(a)-(b). Both the plain
18 language and the spirit and intent of § 11.2 obligated PH to afford GRB a reasonable, good faith
19 opportunity to cure its alleged association with an unsuitable person.

20 Rather than affording GRB any such opportunity, "PH refused and failed to investigate,
21 research, and consider in good faith whether Seibel would have an interest in or control over [the
22 Trust] and whether Seibel's association with GRB and the Restaurant could be cured. It further
23 refused and failed to communicate with Seibel's counsel concerning these matters." (Compl. ¶ 88.)
24 This conduct violated both the plain language of § 11.2 and the intent and spirit of that section, and it
25 did not constitute a good faith exercise of PH's discretionary powers. Because PH's conduct
26 breached the Agreement and the implied covenant, it was unlawful. Hence, the conspiracy claim is
27 viable.

1 **E. Plaintiff's Request for Declaratory Relief is Viable (Compl. ¶¶ 98-111).**

2 PH asks this Court to dismiss the request for declaratory relief for the same reasons as the
3 breach of contract claim. (Mot. 15:13-22.) For the same reasons it should deny the Motion with
4 respect to the breach of contract claim, this Court also should deny the Motion with respect to the
5 request for declaratory relief.

6 **F. Any Dismissal Should Be Without Prejudice.**

7 For the numerous, compelling reasons set forth herein, this Court should deny the Motion in
8 its entirety. Alternatively, if this Court were inclined to grant the Motion, then any dismissal should
9 be without prejudice. The purported defects alleged in the Motion could be cured through an
10 amended pleading. For example, when it filed the Complaint in February 2017, Plaintiff alleged that
11 PH was attempting and planning to open the Rebranded Restaurant because PH had not yet done so.
12 Although Plaintiff believes an amendment is unnecessary, that allegation can be amended to reflect
13 the fact PH has now opened the Rebranded Restaurant. Hence, any dismissal should be without
14 prejudice and subject to Plaintiff being allowed to seek leave to amend.

15 **III. CONCLUSION.**

16 WHEREFORE, this Court should deny the Motion in its entirety or, alternatively, should
17 grant the Motion without prejudice and subject to Plaintiff being allowed to seek leave to amend.

18 DATED April 24, 2017.

19 CARBAJAL & MCNUTT, LLP

20
21 /s/ Dan McNutt
22 DANIEL R. MCNUTT (SBN 7815)
23 MATTHEW C. WOLF (SBN 10801)
24 625 South Eighth Street
25 Las Vegas, Nevada 89101
26 *Attorneys for Plaintiff*
27
28

1 **CERTIFICATE OF MAILING**

2 I HEREBY CERTIFY that pursuant to Nev. R. Civ. P. 5(b) and EDCR 8.05 on April 24,
3 2017, I caused service of the foregoing **PLAINTIFF'S OPPOSITION TO PLANET**
4 **HOLLYWOOD'S PARTIAL MOTION TO DISMISS** to be made by depositing a true and
5 correct copy of same in the United States Mail, postage fully prepaid, addressed to the following
6 and/or via electronic mail through the Eighth Judicial District Court's E-Filing system to the
7 following at the e-mail address provided in the e-service list:

8 James Pisanelli, Esq. (SBN 4027)
9 Debra Spinelli, Esq. (SBN 9695)
10 Brittanie Watkins, Esq. (SBN 13612)
11 PISANELLI BICE PLLC
12 400 South 7th Street, Suite 300
13 Las Vegas, NV 89101
14 jjp@pisanellibice.com
15 dls@pisanellibice.com
16 btw@pisanellibice.com
17 Attorneys for Defendant
18 *PHWLTV, LLC*

14 Allen Wilt, Esq. (SBN 4798)
15 John Tennert, Esq. (SBN 11728)
16 FENNEMORE CRAIG, P.C.
17 300 East 2nd Street, Suite 1510
18 Reno, NV 89501
19 awilt@fclaw.com
20 jtennert@fclaw.com
21 Attorneys for Defendant
22 *Gordon Ramsay*

20 /s/ Lisa A. Heller
21 Employee of Carbajal & McNutt, LLP

Exhibit 1

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement"), effective as of the ____ day of November, 2012, is between GR US LICENSING, LP, a Delaware limited partnership ("Licensor") and GR BURGR, LLC, a Delaware limited liability company ("Licensee").

Recitals

A. Licensor is the owner of the distinctive trade name, service mark, trademark, logo, emblem, and indicia of origin, more particularly set forth on Schedule A attached hereto, (the "Mark").

B. Licensee has developed, and owns and operates a burger-centric/burger-themed restaurant concept ("Concept").

C. Licensee is the owner of certain distinctive trade names, service marks, trademarks, logos, emblems, and indicia of origin, including but not limited to the marks set forth on Schedule B attached hereto, and such other trade names, service marks and trademarks as may be developed from time to time by Licensee and its affiliates, which in no event include or shall at any time include the name "Gordon Ramsay" (the "Licensee Marks").

D. Licensor desires to grant Licensee an exclusive license to the Mark and permit Licensee to use the Mark solely in connection with the marketing and operation of restaurants and to sublicense the Mark to affiliated and unaffiliated third parties for the development, marketing and operation of first class restaurants under the name "BURGR Gordon Ramsay" subject to, and in accordance with, the terms and conditions set forth in this Agreement.

E. The Recitals are a material part of this Agreement.

NOW, THEREFORE, in consideration of the above recitals and of the mutual promises set forth below, the parties hereby agree as follows:

1. License.

1.1. Grant of License. Upon the terms and conditions set forth in this Agreement, Licensor hereby grants to Licensee the exclusive right to use the Mark for any and all purposes customarily necessary in connection with the development and operation of first class restaurants solely under the name "BURGR Gordon Ramsay" (the "Restaurant Operation") by Licensee, or by any Sublicensee (as hereinafter defined) which is approved by Licensor as set forth herein. The license granted hereunder is exclusive and Licensor shall not use, or license to any other person, the Mark for any purpose. The foregoing notwithstanding, Licensor and its affiliates are in no way limited or restricted in using and exploiting any other trademark or trade name that includes name "Gordon Ramsay" nor from using the name Gordon Ramsay without limitation. As between Licensor and Licensee all rights in and to the name Gordon Ramsay are expressly reserved to Licensor. All rights not expressly licensed to Licensee are reserved to Licensor. For the avoidance of any doubt Licensee shall have no rights to use the name Gordon Ramsay in

connection with the Licensee Marks or otherwise howsoever save as expressly set out herein or as approved in writing by Licensor.

1.2. Licensed Rights. The rights granted in Section 1.1 above are sometimes collectively referred to in this Agreement as the "Licensed Rights."

1.3. Right to Sublicense. Subject to the prior written approval by Licensor of each Sublicensee and the terms of each sublicense with such approved Sublicensee, which approvals shall not be unreasonably withheld, conditioned or delayed, Licensee shall have the right to sublicense the Licensed Rights for the development and operation of Restaurant Operations as determined by Licensee.

1.4. Property of Licensor. Without in any way limiting the scope of the Licensed Rights expressly granted herein, or the Licensee's discretion with respect to the use or sublicense of the Licensed Rights in connection with a Restaurant Operation and in accordance with the terms hereof, Licensee acknowledges and agrees that the Licensed Rights shall at all times during the Term be the sole and exclusive property of Licensor, subject to the License Agreement. Licensee further acknowledges and agrees that it has been granted the use of the Licensed Rights solely for the duration of the Term and that this Agreement is not intended as a transfer or sale to Licensee of any of the Licensed Rights.

1.5 Acknowledgement of System Ownership. Licensor hereby acknowledges that Licensee has developed and owns the Concept and a distinctive proprietary system for operating restaurants, including, without limitation the Restaurant Operation using the Concept, which system includes, without limitation, unique menus and menu items, ingredients, recipes, signature products, methods of preparation, specifications for food products and beverages, methods of inventory, operations control, equipment and design, other than the Mark or name "Gordon Ramsay" that may be included therein or thereon, all of which may be improved, furthered and developed from time to time by Licensee and its affiliates, (the "System"). Licensor further acknowledges that as between Licensor and Licensee the System is the sole and exclusive property of Licensee.

2. Quality Standards. Licensee will ensure that any Restaurant Operation that is either operated (a) by Licensee directly, or (b) by an affiliated or unaffiliated third party who has sublicensed the Marks from the Licensee and who has been approved by Licensor as set forth herein on terms approved by Licensor as set forth herein (each a "Sublicensee"), is operated in a high quality and first class manner. In addition, Licensee will ensure that all goods offered and services rendered by Licensee or a Sublicensee, as the case may be, in connection with any Restaurant Operation are of high quality. Licensor shall from time to time be provided with the reasonable opportunity to access any Restaurant Operation(s) which are developed and operated by Licensee, and Licensee shall use commercially reasonable efforts to cause Sublicensee(s) to provide Licensor with the reasonable opportunity to access any Restaurant Operation which is developed and operated by such Sublicensee(s), in connection with the Marks for the purpose of inspecting the Restaurant Operations to ensure Licensee's compliance with the applicable quality standards.

3. **Right to Control Restaurant Operation.** Subject only to the requirements set forth elsewhere in this Agreement (including but not limited to Section 2 with respect to the quality standards applicable to the Restaurant Operation), Licensors acknowledge that it is the intention of the parties that the Licensee shall have the right to use or sublicense (or not use or not sublicense) the Licensed Rights in connection with various aspects of the operation and management of Restaurant Operations that (a) the Licensor directly operates and manages or (b) that any Sublicensee operates and manages, in each case in conformity with this License Agreement. Additionally, Licensee agrees that it shall comply with all terms and obligations of Licensee set forth in any sublicense of the Licensed Rights approved hereunder.

4. **License Fee; Reimbursement of Certain Expenses.**

(a) Licensee shall pay Licensor a license fee pursuant to Section 7.4 of the Company's Limited Liability Company Agreement relating to the sublicense of the Mark, except with respect to any Restaurant Operations owned and operated by Caesars, Harrah's or Planet Hollywood in the USA.

(b) Licensor shall be entitled to reimbursement of all reasonable costs and expenses including for the provision of services by employees or consultants of Licensor or its affiliates directly incurred by Licensor or its affiliates in connection with Licensor's and/or its affiliates' fulfillment of his or its obligations under any sublicense with the Sublicensees for the Mark to the extent that such expenses are not reimbursed to such person by, or covered directly by, the Sublicensees, or otherwise covered pursuant to the Company's Limited Liability Company Agreement, which reimbursement shall be subject to the presentment to Licensee of back-up therefor which is reasonably satisfactory to Licensee.

(c) Licensee shall reimburse Licensor with any and all costs it incurs in relation to the application registration and administration of the Mark.

5. **Confidential Information.** Each party understands and acknowledges that it may have access to information of or concerning the other that is confidential or constitutes a trade secret, including without limitation, sales figures, operational and development plans, recipes, and formulas for certain signature menu items (collectively "Confidential Information"). Each party understands and agrees that maintaining the strict confidentiality of all Confidential Information of the other party during and after the Term is a material obligation of each party under this Agreement. Each party further acknowledges that it shall make no use of Confidential Information of the other party whatsoever except as such usage is permitted or reasonably contemplated by this Agreement or as may be reasonably necessary to perform its obligations hereunder. The term "Confidential Information" does not include, however, information that (i) becomes generally available to the public other than by reason of its disclosure by in violation of this Section 5; (ii) was known by a party prior to its being provided to such party pursuant to this Agreement; or (iii) becomes available to a party from a source other than the other party to this Agreement; provided that such receiving party has no reasonable grounds to believe that such source is bound by a confidentiality agreement or is otherwise under a duty to protect the confidentiality of such information.

6. **Representations of the Parties.**

6.1. **Licensor's General Representations.** Licensor represents to Licensee as follows:

(a) Licensor has all requisite power and authority to execute and deliver this Agreement and to perform its respective obligations hereunder. The execution and delivery of this Agreement by Licensor and the performance of its obligations hereunder have been duly authorized by all necessary corporate action. This Agreement has been duly executed and delivered by Licensor and constitutes the legal, valid and binding obligation of Licensor.

(b) The execution and delivery of this Agreement by Licensor does not, and the consummation of the performance of its obligations contemplated hereby will not, conflict with or violate any contract or agreement that is binding on Licensor or that relates to any material portion of the Licensed Rights.

6.2. **Licensee's General Representations.** Licensee represents and covenants to Licensor as follows:

(a) Licensee has all requisite power and authority to execute and deliver this Agreement and to perform its respective obligations hereunder. The execution and delivery of this Agreement by Licensee and the performance of its obligations hereunder have been duly authorized by all necessary corporate action. This Agreement has been duly executed and delivered by Licensee and constitutes the legal, valid and binding obligation of Licensee.

(b) The execution and delivery of this Agreement by Licensee does not, and the consummation of the performance of its obligations contemplated hereby will not, conflict with or violate any contract or agreement that is binding on Licensee.

6.3. **Ownership of the Licensed Rights.** Licensor represents to Licensee with respect to the Licensed Rights that Licensor is the owner of all right, title, and interest in and to the Marks. Notwithstanding anything to the contrary herein contained Licensee acknowledges that the Mark has not been registered in the US trade mark registry as at the date hereof. Licensor shall apply to register the Mark and will keep Licensee informed as to the progress with such application.

7. **Indemnification and Insurance.**

7.1 **Defense and Indemnity.**

(a) Licensee shall defend, indemnify and hold Licensor and their respective officers, directors, managers, stockholders, members, employees, agents, attorneys, representatives, affiliates, successors and assigns (collectively, an "**Indemnified Licensor Party**") harmless from and against any and all third party demands, claims, actions, causes of action, liabilities, suits, proceedings, judgments, investigations or inquiries, or any settlement thereto, and all related expenses, including, but not limited, to all litigation expenses (including reasonable attorneys' fees and court costs) and settlement amounts (collectively, "**Losses**"), that directly or indirectly arise from or in connection with the use by Licensee of the Mark or the

performance or nonperformance of Licensee's duties under this Agreement or under any sublicense with a Sublicensee, except to the extent Losses result from Licensor's misconduct, breach of this Agreement, any sublicensee with a Sublicensee, or negligence or are covered by Licensor's indemnity below. This paragraph shall survive the termination of this Agreement.

(b) Licensor shall defend, indemnify and hold Licensee and its officers, directors, stockholders, employees, agents, attorneys, representatives, affiliates, successors and assigns (collectively, an "Indemnified Licensee Party") and together with an Indemnified Licensor Party, an "Indemnified Party") harmless from and against any and all Losses that directly or indirectly arise from or in connection with claims by third parties that the use by Licensee of the Marks in accordance with this Agreement violates or infringes upon the rights of such third party, except to the extent Losses result from Licensee's misconduct, breach of this Agreement or negligence or are covered by Licensee's indemnity above. This paragraph shall survive the termination of this Agreement.

7.2 Method of Asserting Claims.

(a) In the event that any claim or demand for which Licensor or Licensee, as the case may be (the "Indemnifying Party"), would be liable to an Indemnified Party hereunder is asserted against or sought to be collected from an Indemnified Party by a third party, the Indemnified Party shall notify the Indemnifying Party promptly of such claim or demand, specifying the nature of such claim or demand and the amount or the estimated amount thereof to the extent then feasible (which estimate shall not be conclusive of the final amount of such claim and demand) (the "Claim Notice"). The failure to timely give a Claim Notice promptly shall not relieve the Indemnifying Party of its obligations hereunder except to the extent such delay is due to the negligence of the Indemnified Party. The Indemnifying Party shall thereupon, at its sole cost and expense (subject to Section 7.3 below), defend the Indemnified Party against such claim or demand with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party shall cooperate with the Indemnifying Party in connection therewith.

(b) The Indemnifying Party shall not, without the prior written consent of the Indemnified Party, consent to the entry of any judgment against the Indemnified Party or enter into any settlement or compromise which does not include, as an unconditional term thereof (i.e., there being no requirement that the Indemnified Party pay any amount of money or give any other consideration), the giving by the claimant or plaintiff to the Indemnified Party of a release, in form and substance reasonably satisfactory to the Indemnified Party, from all liability in respect of such claim or litigation. Except as otherwise provided for in Section 7.6, if any Indemnified Party desires to participate in, but not control, any such defense or settlement, it may do so at its sole cost and expense. If, in the reasonable opinion of the Indemnified Party, any such claim or demand or the litigation or resolution of any such claim or demand involves an issue or matter which could reasonably have a materially adverse effect on the business, operations, assets, properties or prospects of the Indemnified Party, as a whole, then, subject to the provisions of Section 7.7 with respect to the Marks, the Indemnified Party shall have the right to control the defense or settlement of any such claim or demand and its costs and expenses shall be included as part of the indemnification obligation of the Indemnifying Party hereunder;

provided, however, that the Indemnified Party shall not settle any such claim or demand without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. If the Indemnified Party should elect to exercise such right, the Indemnifying Party shall have the right to participate in, but not control, the defense or settlement of such claim or demand at its sole cost and expense.

7.3 Intellectual Property Notices. As a condition of this Agreement, Licensee will prominently place on all items displaying or embodying the Mark (or on their containers, labels, tags and the like), and on all advertising and promotional material, stationery and transaction documents displaying the Mark, the following: (a) an appropriate trademark notice to be provided by Licensor; (b) any appropriate copyright or design protection notice as provided by Licensor; and (c) any other legends, markings or notices required by any law or regulation or which Licensor reasonably may request.

7.4 Restrictions. Licensee shall not identify itself as the owner of the Mark or any right or interest therein or any registration or application for registration thereof, except as a licensee. Licensee shall not apply for or maintain the registration of any trademark which is the same as, confusingly similar to, or which incorporates the Mark anywhere in the world.

7.5 Ownership of Intellectual Property.

(a) Trademark Ownership. (i) All use of the Mark by Licensee or a sublicensee as a trademark will inure to the benefit of Licensor. All rights in the Mark other than those specifically granted in this Agreement are reserved for the use and benefit of Licensor. Licensee will not, during or after the Term, attack Licensor's title in and to the Mark or attack the validity of the license granted hereunder.

(b) Design Ownership. All 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 Mark, will be the property of Licensor. If not created by Licensor, they will be deemed "works made for hire" for Licensor within the meaning of the U.S. Copyright Law or any other applicable industrial or intellectual property law. If they do not so qualify, all such intangible property rights will be deemed transferred to Licensor.

(c) Registrations and Recordations. Licensee will not seek any copyright or trademark registration for the Mark. Licensee will cooperate fully with Licensor, in the execution, filing and prosecution of any trademark or copyright applications that Licensor may choose to file. Licensee will execute and deliver to Licensor, at any time whether during or after the Term, and at Licensor's expense, any documents which Licensor reasonably requests to confirm Licensor's ownership rights, to record this Agreement or to enter or terminate Licensee as a registered user.

7.6 Infringement: Actions. Licensee shall reasonably cooperate with Licensor, to protect and defend the Mark. Licensee shall promptly notify Licensor if any legal

action is instituted against Licensee relating to Licensee's use of the Mark or otherwise relating to other intellectual property rights of Licensor. Licensee shall also promptly notify Licensor and Licensor in writing of any counterfeiting or other infringement of the Mark or other intellectual property rights of Licensor or otherwise relating to intellectual property rights of Licensor of which Licensee becomes aware. Subject to the provisions of Section 7.1(b) hereof, Licensor shall have the right, but not the obligation, to institute legal action or take any other actions which it deems necessary to protect its interest in the Mark and other intellectual property rights, and Licensee shall cooperate with Licensor in any such action. All costs incurred shall be borne by Licensee save where incurred by breach of 7.1(b) by Licensor. Licensee shall not take any other action regarding such infringement without the prior written approval of Licensor and Licensor. With respect to all claims and suits, including suits relating to the Marks or any other intellectual property rights of Licensor, but other than direct claims asserted by Licensee against Licensor or Licensor, in which Licensee is joined as plaintiff, Licensor shall have the sole right to employ counsel and to direct the handling of the claim and litigation and any settlement thereof. Any monetary recovery resulting from any such action shall first be used to reimburse any costs incurred and thereafter shall belong solely to Licensor, except that, in accordance with Section 7.1(b) hereof, if Licensee is a plaintiff in an action and separately identified damages are determined to be due to Licensee for losses incurred by Licensee, and not to Licensor, then Licensee shall be entitled to recover such separately identified amount.

8. Right and Consent to Co-Exist.

(a) Licensee hereby acknowledges and agrees that Licensor owns shall have the right to use and exploit the Mark throughout the universe in perpetuity subject to the terms and conditions of this Agreement and Licensee's Limited Liability Company Agreement. Licensee shall not object to, oppose or otherwise seek to limit in any way Licensor's use or exploitation of the Mark in any manner which is consistent with the subject to the terms and conditions of this Agreement and Licensee's Limited Liability Company Agreement.

(b) Licensor hereby acknowledges and agrees that Licensee shall have the right to use and exploit the Licensee Marks throughout the universe in perpetuity subject to the terms and conditions of this Agreement and Licensee's Limited Liability Company Agreement. Except as otherwise provided for herein, Licensor shall not object to, oppose or otherwise seek to limit in any way Licensee's use or exploitation of the Licensee Marks, in any manner which is consistent with terms and conditions of this Agreement and Licensee's Limited Liability Company Agreement.

(c) The parties agree that in the event that any confusion arises between the Marks and the Licensee Marks, they will cooperate with each other and work in good faith to find ways to eliminate or minimize the confusion, without the obligation for either party to cease or further restrict their respective uses of the Mark and the Licensee Marks, as applicable.

(d) Neither party will apply to register any further trademark utilising the word BURGR without the consent and approval of the other, provided, however, Licensee may do so without the consent of Licensor so long as (i) such further trademark does not include the names or words "Gordon Ramsay", "Ramsay" or "Gordon", and (ii) Seibel and/or GRUS or their

respective affiliates control Licensee.

9. **Term.** The term of this Agreement shall be for twenty (20) years from the date hereof (the "**Term**") subject to earlier termination pursuant to Section 10 hereof. Provided that Licensee is not in breach of this Agreement, Licenser shall, at the request of Licensee, consider entering into a new license agreement for the Licensed Rights upon mutually agreeable terms negotiated in good faith. The foregoing notwithstanding, this Agreement shall continue in full force and effect in accordance with the terms and conditions hereof solely with respect to, and during the effectiveness of, any sublicense between the Licensee and any Sublicensees that exist or at the date the Term expires.

10. **Default and Termination.**

10.1. **Events of Default.** The following constitutes an event of default:

(a) If a party is in material default in the performance of an obligation under this Agreement, and such default continues for a period of thirty (30) days after written notice from the aggrieved party; provided, however, that if such default cannot by its nature reasonably be cured within such thirty (30) day period, an event of default will not occur if and so long as the defaulting party promptly commences and diligently pursues the curing of such default within a reasonable time thereafter.

10.2. **Rights Upon Event of Default.** Upon the occurrence of a continuing and uncured event of default under Section 10.1, the non-defaulting party may terminate this Agreement by providing written notice to the other party of its election to do so (a "Termination Notice"). The foregoing notwithstanding, if a non-defaulting party terminates this Agreement pursuant to this Section 10.2, this Agreement shall continue in full force and effect in accordance with the terms and conditions hereof with respect to, and during the effectiveness of, any sublicense between the Licensee and any Sublicensees that exists as of the date of the Termination Notice. A party that elects to exercise its termination right pursuant to this Section 10.2 reserves any and all other additional remedies that may be available to it under this Agreement and/or at law or in equity.

11. **Effect of Termination.** Upon termination of this Agreement, all of Licensee's rights to use the Licensed Rights will terminate and Licensee must immediately discontinue all use of the Mark. Licensee shall, upon the request of Licenser after such termination, take such actions and execute such documents, if any, as may be reasonably necessary or appropriate to reflect its surrender of any rights acquired by Licensee under this Agreement.

12. **Force Majeure.** No party will be deemed to be in default of its obligations under this Agreement if and to the extent that such party is unable to perform such obligation as a result of fire, flood, storm or other casualty, act of God, strike or other labor unrest, unavailability of materials, war, riot or other civil commotion or any other cause beyond the control of such party.

13. **Assignment.** This Agreement and the rights and obligations of the parties hereunder may not be assigned, sublicensed, delegated, sold, transferred, or otherwise disposed

of, by operation of law or otherwise, without the prior written consent of the other party, which shall not be unreasonable withheld, conditioned or delayed save that Licensor shall be able to assign the benefit but not its duties and obligations of this Agreement without fetter or inhibition. The parties agree that any permitted assignment or transfer (if any) shall (a) not relieve the assignor of any payment or other obligation under this Agreement, and (b) require the applicable assignee to be bound by all limitations, restrictions and quality control provisions set forth in this Agreement.

14. **Notices.** Any notice, statement or demand required to be given under this Agreement must be in writing, sent by certified mail, postage prepaid, return receipt requested, or by nationally-recognized overnight delivery service, receipt confirmed, addressed as follows:

to Licensor at:

1 Catherine Place
London, SW1E 6DX
United Kingdom
Attn: Stuart Gillies

to Licensee at:

200 Central Park South
19th Floor
New York, New York 10019, USA
Facsimile: (212) 315-1978
Attn: Rowen Seibel

or to such other addresses as parties may designate in the manner provided in this Section 14. Any notice or other communication will be deemed given (a) on the date that is 3 business days after it has been mailed if sent by certified mail, or (b) on the date received if it has been given to a nationally-recognized overnight delivery service.

15. **Additional Documents and Acts.** Each party agrees to cooperate and perform such additional acts or execute and deliver such additional documents as may be necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of this Agreement.

16. **Entire Agreement; Conflict.** This Agreement (including the recitals set forth on the initial page of this Agreement, which are hereby incorporated herein by reference) and its exhibits constitute the entire understanding between the parties relating to the subject matter hereof. No party will be bound by any representation or agreement other than as expressly stated in this Agreement or as subsequently set forth in writing and executed by a duly authorized officer of the party to be bound thereby. In the event that the terms and provisions of the Company's Limited Liability Company Agreement causes any ambiguity or conflict in the interpretation of the terms and provisions of this Agreement, the terms and provisions of this

Agreement will govern.

17. **Governing Law.** The validity, interpretation, and enforceability of this Agreement will be governed by the laws of the State of New York, without regard to its conflict of laws provisions.

18. **Resolution of Disputes.** Except as otherwise provided herein, each of the parties hereto (a) consents and submits to the jurisdiction of any state or federal court of competent jurisdiction located in the County of New York, in the State of New York, in any action or proceeding arising out of or relating in any manner to this Agreement, and (b) waives any claim that any such state or federal court is an inconvenient forum. Service of process in any such action or proceeding brought hereunder may be made by faxing and mailing copies of such process to the address of the parties provided for in Section 14, provided that nothing herein shall affect the right of any party to serve legal process in any other manner permitted by law.

19. **Equitable Relief.** In the event that a party violates or threatens to violate any applicable covenant (i) set forth in Section 5 or (ii) that is reasonably likely to negatively affect Licensor's interest in the Licensed Rights, each party agrees that the aggrieved party will be without an adequate remedy at law and will, therefore, be entitled to enforce such restrictions by preliminary, temporary and/or permanent injunction or mandatory relief in any court of competent jurisdiction without the necessity of proving damages, without the necessity of posting any bond or other security, and without prejudice to any other rights and remedies which the aggrieved party may have at law or in equity.

20. **Waiver and Amendment.** No waiver, amendment or modification or change of any provision of this Agreement shall be effective unless and until made in writing and signed by Licensor and Licensee. No waiver or forbearance by any party hereto of its right to enforce any provision of this Agreement shall be construed as constituting a continuing waiver or as a waiver in other instances. The failure of any party to assert any of its rights hereunder shall not constitute a waiver of any such rights. No course of conduct or method of doing business shall modify or amend the terms hereof.

21. **Severability.** If any provision of this Agreement shall be determined to be unenforceable to any extent, the remainder of this Agreement shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law. If any provision is held invalid as to duration, scope, activity, or subject, such provision shall be construed by limiting and reducing it so as to be enforceable to the extent compatible with applicable law.

22. **Counterparts and Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall become binding and enforceable upon a party at such time as a counterpart has been signed and transmitted either personally or via facsimile to the other party. Signatures hereon distributed by facsimile, PDF, electronic transmission or similar means of transmittal shall be deemed original signatures hereon.

23. **Binding Effect.** This Agreement is binding upon each party and permitted assignees.

24. **Terms of Agreement.** The parties agree that the terms of this Agreement shall not be divulged to any third party, other than a party's attorneys, accountants and other professionals with a reasonably need to know such information, without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned.

25. **Headings.** The headings are inserted for convenience only and do not affect the meaning of any provision of this Agreement. The Recitals are a material part of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year set forth below.

GR US LICENSING, LP

By: Kavalake Limited, Its General Partner

By: 
Name: Gordon Ramsay
Title: Director

GR BURGR, LLC

By: _____
Name: Rowen Seibel
Title: Manager

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year set forth below.

GR US LICENSING, LP

By: Kavalake Limited, Its General Partner

By: _____
Name: Gordon Ramsay
Title: Director

GR BURGR, LLC

By: Rowen Seibel
Name: Rowen Seibel
Title: Manager

Schedule A

Licensor Trademarks

BURGR Gordon Ramsay

Schedule B

Licensee Trademarks

BURGR and GR BURGR, and, subject to Section 8(d), any variation thereof, except with the name(s) or word(s) "Gordon Ramsay", "Ramsay" or "Gordon".

Exhibit 2

BRIAN ZIEGLER

From: BRIAN ZIEGLER
Sent: Tuesday, September 20, 2016 12:07 AM
To: 'claytonm@gtlaw.com'
Subject: Seibel / Caesars

Dear Mark:

Your 9/2/16 letter to me invited me to contact you if I wanted to discuss said letter. I called you earlier today and was advised that you were on the phone. I left you a voice message requesting that you call me back. I also called you and left a message on 9/9/16. However, we have not yet spoken.

On Friday 9/16/16, I sent you a detailed letter providing you with additional information of which you may not have been aware while at the same time asking some questions and making some reasonable requests. You have not yet responded to said letter.

Although I have learned of your background in the gaming regulatory industry, I also understand that you are acting as an advocate for your client. We have been advised by an independent experienced gaming consultant in Nevada that the Gaming Authorities would not require that the interests that were held by Seibel be eliminated as you suggest but rather the Gaming Authorities would likely provide additional time for the Seibel interests to be transferred in a fair and acceptable manner. So, if the trust, as is, was reasonably determined not to be acceptable (without acknowledging that would be the case), they would allow a reasonable time for appropriate adjustments and/or a sale of the interests to one or more third parties. However, they would not insist that the Seibel interests essentially be forfeited to his significant financial harm and the significant financial benefit to your client and/or Mr. Ramsay.

As to the trust, I hope that you saw that under its terms no one that is an Unsuitable Person could ever receive a distribution or other similar benefit from a business that holds a gaming license. So, if Rowen's wife is deemed to be an Unsuitable Person (without acknowledging that would be the case), under the trust, she could never benefit from any of the subject restaurants. So while she may remain a beneficiary of the trust and receive the benefits of other assets of the trust, for example, a dividend from stock in a public company that is held by the trust, she could never receive any distributions of income from, or have any interest in, any of the subject restaurants. There are similar safeguards with regard to the trustees.

I still welcome the opportunity to speak with you but if a solution, acceptable to all parties, cannot be reached, it seems that we will soon be headed for long, protracted and expensive litigation to the detriment of all – except maybe the attorneys handling it. I hope there is a better way to resolve this.

Brian

CERTILMANBALIN

Brian Ziegler
Certilman Balin Adler & Hyman, LLP
90 Merrick Avenue, 9th Floor
East Meadow, NY 11554

☎ Direct 516.296.7046 | ☎ Firm 516.296.7000 | ☎ Fax 516.296.7111

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Exhibit 3

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

**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.

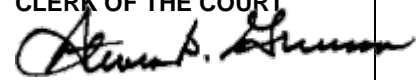
ARTICLE XI FORUM SELECTION

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 17



RIS

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants,

and

GR BURGR, LLC, a Delaware limited liability
company,

Nominal Defendant.

Case No.: A-17-751759-B

Dept. No.: XV

**REPLY IN SUPPORT OF
PLANET HOLLYWOOD'S
MOTION TO DISMISS
PLAINTIFF'S CLAIMS**

Date of Hearing: May 17, 2017

Time of Hearing: 9:00 a.m.

I. INTRODUCTION

Seibel's Opposition does nothing to diminish the lack of merit in the claims identified by Planet Hollywood's Motion to Dismiss. Seibel's portrayal of himself as a victim of a grand scheme, orchestrated by Planet Hollywood and Gordon Ramsay to oust him, is also a digression. The only scheme was of Seibel's making. He is no victim. Seibel is a sophisticated businessman who evaded paying U.S. taxes by hiding millions in a Swiss bank account, and "a restaurant entrepreneur who has developed and opened numerous, highly acclaimed restaurants throughout the country." (Pl.'s Opp'n to Def.'s Mot. to Dismiss 3:4-5, 6:2 - 4.) Seibel's claims here are

1 simply another scheme. This time, Seibel attempts to evade the plain language of his contract
2 with Planet Hollywood.

3 The parties agree that the Development Agreement was unambiguous. (Pl.'s Opp'n to
4 Def.'s Mot. to Dismiss 8:11, 10:15, 17:4.) Its interpretation, then, is a matter of law for this Court
5 to determine. And, as a matter of law, Seibel's failure to plead sufficient facts upon which relief
6 can be granted is fatal to certain of his claims for (1) breach of contract; (2) breach of the implied
7 covenant of good faith and fair dealing; (3) unjust enrichment; (4) civil conspiracy; and
8 (5) declaratory relief. These claims must be dismissed, with prejudice.

9 **II. ANALYSIS**

10 **A. Planet Hollywood's Motion to Dismiss Meets NRCP 12(b)(5)'s Standard.**

11 A court must dismiss a complaint that fails "to state a claim upon which relief can be
12 granted." NRCP 12(b)(5). Where the facts taken as true do not state a legally cognizable claim,
13 relief cannot be granted. *Munda v. Summerlin Life & Health Ins. Co.*, 127 Nev. 918, 923, 267
14 P.3d 771, 774 (2011) (providing that the claim must "be legally sufficient to constitute the
15 elements of the claim asserted"). As set out in Planet Hollywood's Motion to Dismiss, relief
16 cannot be granted on a number of Plaintiff's claims.

17 Plaintiff argues in his Opposition that Planet Hollywood "repeatedly asks this Court to
18 assume Plaintiff's allegations are untrue, relies upon numerous, alleged 'facts' that are both false
19 and not contained in the Complaint, and intentionally misconstrues the parties' contract and
20 applicable law." (Pl.'s Opp'n to Def.'s Mot. to Dismiss 2:16-19.) Tellingly, Plaintiff's Opposition
21 fails to identify any instances where Planet Hollywood asked this Court to assume allegations
22 alternative to what Plaintiff alleged. To the contrary, taking Plaintiffs' allegation as true, the
23 claim must be dismissed as evident from the plain language of the Development Agreement and
24 Plaintiff's Complaint alone.

25 **B. Plaintiff's Opposition Fails to Adequately Address Why His Breach of**
26 **Contract Claims Should Not Be Dismissed.**

27 The interpretation of a contract based on the plain language of an agreement is a
28 determination made as a matter of law. *LaForge v. State, Univ. & Cmty. Coll. Sys. of Nev.*,

116 Nev. 415, 422, 997 P.2d 130, 135 (2000). Under the plain language of the agreement, the following of Seibel's causes of action for breach of contract must be dismissed: (1) breach of contract for continuing to do business with Ramsay (Claim 68(a)); (2) breach of contract for paying all or a portion of the license fees to Ramsay (Claim 68(e)); (3) breach of contract for refusing to allow GRB to cure its unsuitability (Claim 68(f)); and (4) breach of contract for attempting or planning to open a rebranded restaurant (Claim 68(h)).

1. Plaintiff failed to state a claim for breach of the Development Agreement based on Planet Hollywood continuing to do business with Ramsay. (Claim 68(a).)

On this issue, Plaintiff's Opposition both misses the point and incorrectly interprets the Development Agreement. Planet Hollywood's position, put simply, is that the contract is plain. No language restricts Planet Hollywood's ability to associate or contract with Gordon Ramsay. And any contract that purports to limit the freedom to associate should certainly state so plainly.

Nonetheless, Plaintiff attempts to read into the following language an encroachment on the freedom to associate: "[A]s 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." (Pl.'s Opp'n to Def.'s Mot. to Dismiss 10:11-14 (citing Development Agreement ¶ 11.2, Ex. 1 to Def.'s Mot. to Dismiss).) Plaintiff argues that this is a conditional statement, *i.e.* if Planet Hollywood terminates its relationship with Seibel, then Planet Hollywood must also terminate its relationship with Gordon Ramsay. (Pl.'s Opp'n to Def.'s Mot. to Dismiss 10:11-14) But the language necessary to indicate such a condition, such as "on the condition that," "so long as," or even "if . . . then . . . " is notably absent from the Development Agreement. Plaintiffs' reading of these words as imposing a condition limiting Planet Hollywood's freedom to associate is disingenuous, at minimum. The parties did not plainly state, nor did they contemplate, such an imposition.

Rather than limiting Planet Hollywood's freedom to associate, as Seibel suggests, Paragraph 11.2 reinforces that right. It authorizes Planet Hollywood to act with "sole discretion" in determining whether it will terminate the Development Agreement, its relationship with Ramsay, its relationship with GRB, or all of the above. When Planet Hollywood terminated the

1 Development Agreement, the parties' obligations to one another ceased, except as to the surviving
2 provisions of the Development Agreement. Paragraph 11.2 was not one of them. (*See* Ex. 1 to
3 Def.'s Mot. to Dismiss ¶ 4.3.1.) Thus, Plaintiff's claim that Planet Hollywood breached the
4 Development Agreement by continuing, after termination, to associate with Ramsay must be
5 dismissed.

6 **2. *Plaintiff failed to state a claim for breach of the Development Agreement***
7 ***based on Planet Hollywood's payment of a portion of the license fee to***
8 ***Ramsay. (Claim 68(e).)***

8 Plaintiff's approach to this issue is to avoid the applicable law by narrowing the standard.
9 Despite Plaintiff's constricting premise, Planet Hollywood need not prove that a plaintiff's failure
10 to allege that no permission was given has led to dismissal. If the focus of controlling caselaw
11 were as narrow as Plaintiff attempts to assign, it is unlikely that any case would ever be
12 controlling, as the facts of each case, and more specifically, each contract, are different.

13 Rather, the standard Planet Hollywood must meet to succeed in dismissing this claim is to
14 demonstrate that Plaintiff has not sufficiently alleged a breach of contract. Among other things, a
15 cause of action for breach of contract must allege that a party to a contract violated the terms of
16 the contract. *Slaughter v. Coffing*, No. 68911, 2017 WL 462250, at *2 (Nev. App. Jan. 24, 2017)
17 (quoting *Saini v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 919-20 (D. Nev. 2006)) ("Nevada law
18 requires the plaintiff in a breach of contract action to show . . . a breach by the defendant . . .").
19 Thus, a plaintiff's allegation that the defendant acted consistent with the terms of a contract is
20 insufficient to properly allege a breach.

21 Here, Plaintiff alleges that Planet Hollywood breached the contract by "[p]aying all or a
22 portion of the License Fee to Ramsay or his affiliated entity." (Compl.¶ 68(a).) Such conduct is
23 consistent with the terms of the Development Agreement and therefore does not plead the "breach
24 by defendant" that is required by law. Indeed, Paragraph 8.2 of the Development Agreement
25 provides: "The License Fee shall be payable . . . to such address or account located within the
26 United States of America as directed by GRB, from time to time." (Ex. 1.) To allege conduct
27 inconsistent with the Development Agreement, Plaintiff must allege that Planet Hollywood paid
28 all or a portion of the license fee to an account located outside of the United States of America or

that GRB did not direct Planet Hollywood to make GRUS's portion of the payment to either Ramsay or GRUS, fifty percent owner of GRB. Because Plaintiff's allegation is consistent with the contract, rather than in violation of the contract, Plaintiff's claim that Planet Hollywood paid the license fee to "Ramsay or his affiliated entity" must be dismissed.

3. ***Plaintiff failed to state a claim for breach of the Development Agreement based on Planet Hollywood's termination. (Claim 68(f).)***

On this point, Plaintiff's Opposition is simply unresponsive, failing to address Planet Hollywood's actual assertion. Specifically, Plaintiff mischaracterizes Planet Hollywood's position and then argues against its mischaracterization. Seibel first proposes an emphasized Paragraph 11.2 of the Development Agreement, reproduced here for convenience:

If any GR Associate fails to satisfy any such requirement, if PH or any of PH's Affiliates are directed to cease business with any GR Associate by any Gaming Authority, or if PH shall determine, in PH's sole and exclusive judgment, that any GR Associate is an Unsuitable Person, then immediately following notice by PH to Gordon Ramsay and GRB, (a) Gordon Ramsay and/or GRB shall terminate any relationship with the Person who is the source of such issue, (b) Gordon Ramsay and/or ORB shall cease the activity or relationship creating the issue to PH's satisfaction, in PH's sole judgment, **or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b)**, as determined by 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.

(Pl.'s Opp'n to Def.'s Mot. to Dismiss 12:13-20.) Seibel argues that Planet Hollywood relied solely on the underlined language and ignored the bold language in determining that Plaintiff was not entitled to an opportunity to cure. (Pl.'s Opp'n to Def.'s Mot. to Dismiss 12:21-22.)

In fact, Planet Hollywood's reading of the contract relies on the bold language, not the underlined language, as stated in Planet Hollywood's Motion to Dismiss: "Consistent with its express contractual right . . . ***Planet Hollywood exercised its "sole discretion"*** to determine that GRB's unsuitability was ***"not subject to cure."*** (11:25-28 (emphasis added) (citing Ex. 1 to Def.'s Mot. to Dismiss ¶ 11.2).) Nonetheless, in complete evasion of the applicable text, Seibel argues that the intent of the parties under Paragraph 11.2 was that GRB be given an opportunity to cure. (Pl.'s Opp'n to Def.'s Mot. to Dismiss 12:23-13:1.) But to determine intent, the court looks first to

1 the plain language of the contract, and if the language is clear, the court enforces the contract as
2 written. *See Davis v. Beling*, 128 Nev., Adv. Op. 28, 278 P.3d 501, 515 (2012) ("The objective in
3 interpreting . . . contracts, is to discern the intent of the contracting parties. [T]raditional rules of
4 contract interpretation [are employed] to accomplish that result. Therefore, the initial focus is on
5 whether the language of the contract is clear and unambiguous; if it is, the contract will be
6 enforced as written." (Citations and quotations omitted)).

7 The language is clear. "If such activity or relationship is not subject to cure . . . as
8 determined by PH in its sole discretion, PH shall . . . have the right to terminate this Agreement
9 and its relationship with Gordon Ramsay and GRB." Planet Hollywood exercised that right.
10 Therefore, Plaintiff's claim that Planet Hollywood breached the Development Agreement by
11 terminating the contract without providing an opportunity to cure must be dismissed.

12 **4. *Plaintiff failed to state a claim for breach of the Development Agreement***
13 ***based on Planet Hollywood's attempting or planning to open a rebranded***
restaurant. (Claim 68(h).)

14 Plaintiff's claim that Planet Hollywood breached Paragraph 14.21 by attempting and
15 planning to open a rebranded restaurant without first entering an agreement with GRB or an
16 affiliate (*see* Compl. ¶ 62(d)) has no basis in the law. Nevada has not recognized a cause of
17 action for civil attempt. Thus, Plaintiff argues that his claim can be construed as one for
18 anticipatory breach of contract. (Pl.'s Opp'n to Def.'s Mot. to Dismiss 14:4-9.)

19 Anticipatory repudiation is inapplicable here for two reasons. First, Planet Hollywood did
20 not state, and Seibel did not plead, that Planet Hollywood would not comply with an existing
21 contract. Quite distinctly, Planet Hollywood stated that the contract is terminated. And if the
22 contract is terminated, there is no contract creating obligations with which either party must
23 comply.

24 Second, Plaintiff failed to state a claim for anticipatory repudiation in his Complaint.
25 *Covington Bros. v. Valley Plastering, Inc.*, 93 Nev. 355, 360, 566 P.2d 814, 817 (1977) ("A
26 contractual anticipatory repudiation must be clear, positive, and unequivocal. Whether specific
27 conduct or language is sufficiently clear to constitute an anticipatory repudiation must be decided
28

in light of the total factual context of the individual case."). Plaintiff's claim was only recently imagined in response to Planet Hollywood's Motion to Dismiss, and is insufficient.¹

C. **Plaintiff Failed to State Claims for Breach of the Implied Covenant of Good Faith and Fair Dealing Because His Claims Contradict the Contract.**

Plaintiff invites Planet Hollywood into a dispute over the facts of his implied covenant claims by alleging that Planet Hollywood failed to address each of his fifteen fact-filled breach of implied covenant claims separately. (Pl.'s Opp'n to Def.'s Mot. to Dismiss 14:4-9.) However, the standard on a motion to dismiss confines Planet Hollywood to addressing matters appropriately decided as a matter of law. *See, e.g., Simpson v. Mars Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997) (upholding as a matter of law the district court's dismissal pursuant to NRCp 12(b)(5)). Thus, Planet Hollywood requested what it is entitled to as a matter of law, dismissal of the following of Plaintiff's implied covenant claims: Paragraphs 74(b)-(e), (i)-(l), (n) of the Complaint.

As a matter of law, an implied covenant cannot contradict an express contract provision. *See, e.g., Kuiava v. Kwasniewski*, 126 Nev. 731, 367 P.3d 791 (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) *overturned on other grounds by Scott v. Pac. Gas & Elec. Co.*, 904 P.2d 834, 846 (Cal. 1995) ("[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.").

¹ Plaintiff's additional arguments claiming that Planet Hollywood attempted or planned to open a rebranded restaurant also lack merit. (Pl.'s Opp'n to Def.'s Mot. to Dismiss 13:15.) None of the contractual provisions set forth by Plaintiff provide that Planet Hollywood must enter into a relationship with Plaintiff if Planet Hollywood were "attempting or planning" to open a new restaurant. Even if a contractual provision could be interpreted to obligate Planet Hollywood to enter into a relationship with Seibel for "planning" to pursue a burger-themed restaurant, there is no time limitation set out in any of the identified provisions. Therefore, any such claim would not be ripe.

As provided in Planet Hollywood's Motion to Dismiss and above herein, Paragraph 11.2 – which authorizes Planet Hollywood to terminate its relationship with Seibel upon *Planet Hollywood's sole determination of unsuitability* – directly conflicts with the following of Seibel's implied covenant claims: Complaint Paragraphs 74(b), (c),(d), (j), (k). Moreover, the right to freely associate guaranteed by social contract cannot be implied absent a plain statement contracting away the same, and assuming such a contract is not illegal, dismissal of the following claims is a mandate: Complaint Paragraph 74(e), (l), (n). Finally, the implied covenant cannot contradict Paragraph 8.2 of the Development Agreement, providing that the license fee may be paid to an account that GRB directs, and thus the following claim must be dismissed: Complaint Paragraph 74(i). Based on the foregoing, each of the above cited claims for breach of the implied covenant must be dismissed.

D. Plaintiff Failed to State Claims for Unjust Enrichment Because His Claims Are Rooted in the Contract.

Plaintiff argues that this Court should deny Planet Hollywood's motion to dismiss the unjust enrichment claim because Planet Hollywood admitted that it owes GRB hundreds of thousands of dollars. (Pl.'s Opp'n to Def.'s Mot. to Dismiss 18:11-17 (citing Def.'s Opp'n to Plf.'s Mot. for Prelim. Inj. 8:8-14).) First, Plaintiff's statement is simply untrue. Planet Hollywood stated as follows:

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 ORB'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.

(Def.'s Opp'n to Plf.'s Mot. for Prelim. Inj. 8:8-16.)

Second, any license fees owed would originate from the Development Agreement, rendering the unjust enrichment claim unviable. *See Leasepartners Corp. v. Robert L. Brooks*

1 *Trust Dated Nov. 12, 1975*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997) (citation omitted) ("An
2 action based on a theory of unjust enrichment is not available when there is an express, written
3 contract, because no agreement can be implied when there is an express agreement.");
4 *Vill. Pointe, LLC v. Resort Funding, LLC*, 127 Nev. 1183, 373 P.3d 971 (2011) ("[Plaintiff]
5 acknowledges that its action based on a theory of unjust enrichment is not available [because]
6 there is an express, written contract, [and] no agreement can be implied when there is an express
7 agreement.").

8 Plaintiff also argues that he pled unjust enrichment in the alternative, in the event this
9 Court concludes that the Development Agreement is no longer enforceable. (Pl.'s Opp'n to Def.'s
10 Mot. to Dismiss 19:1-2.) However, even if the Development Agreement is no longer enforceable,
11 the fact that Plaintiff's claims arise from the Development Agreement remains unchanged, and
12 must therefore still be dismissed. CITE TO CASE LAW HERE. (*See, e.g.*, Claim 68(d)
13 (complaining that Planet Hollywood breached the Development agreement by "Failing and
14 refusing to pay the License Fee and other monies to GRB for the period of time it has operated the
15 Restaurant and used the Intellectual Property").)

16 Plaintiff's final argument concerning unjust enrichment simply proves Planet Hollywood's
17 point. Seibel argues that he "is seeking, in part, to recover the License Fee due to PH's use of the
18 General GR Materials for the Rebranded Restaurant." (Pl.'s Opp'n to Def.'s Mot. to
19 Dismiss ¶ 19:3-4.) Seibel claims to be owed these license fees under the Development
20 Agreement. (*See* Compl. ¶ 68(d).) Thus, any license fees owed cannot be labeled unjust
21 enrichment. For these reasons, Plaintiff's claims for unjust enrichment must be dismissed.

22 E. **Plaintiff Failed to State Claims for Civil Conspiracy Because He Alleged No**
23 **Unlawful Conduct and Planet Hollywood Cannot Conspire to Breach its Own**
24 **Contract.**

25 Plaintiff's civil conspiracy claim fails for two reasons. First, a civil action based on
26 conspiracy cannot exist unless action is taken that without the conspiracy would have given a
27 right of action. *Eikelberger v. Tolotti*, 96 Nev. 525, 531, 611 P.2d 1086, 1090 (1980) (concluding
28 that no claim for civil conspiracy existed where there was no civil liability for the underlying
action). In other words, to constitute an actionable civil conspiracy, the parties must "intend to

1 accomplish an unlawful objective," among other things. *Consol. Generator-Nev., Inc. v.*
2 *Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (quotations
3 omitted).

4 Here, Plaintiff relies partly on a breach of contract theory to fulfill its obligation to allege
5 unlawful action. However, as a matter of law, as explained above herein, Planet Hollywood's
6 actions were consistent with its contractual rights and obligations. Because there is no breach,
7 there can be no civil conspiracy based on a breach.

8 Seibel's claim of civil conspiracy based on an unlawful breach of contract fails for another
9 reason. As a matter of law, Planet Hollywood cannot conspire with itself to breach its own
10 contract. *Bartsas Realty, Inc. v. Nash*, 81 Nev. 325, 327, 402 P.2d 650, 651 (1965) ("[F]or the
11 defendants' breach of their own contract with the plaintiff is not a tort."); *see also Alghanim v.*
12 *Boeing Co* 477 F.2d 143, 149-50 (9th Cir. 1973) (concluding that the district court properly
13 dismissed plaintiff's claim that the defendant had conspired to interfere with its own
14 contract); *O'Neill v. ARA Servs., Inc.* 457 F. Supp. 182, 188 (E.D. Pa. 1978) ("[A]n employer
15 cannot be said to conspire to induce breach of its own employment contract or terminate its own
16 employment relationship."); *Harris v. Equitable Life Assurance Society* 147 F. Supp. 478,
17 478 (S.D. Iowa 1957) (citation omitted) ("Charges that a party to a contract colluded or conspired
18 with others in connection with its reach will not serve to convert what is essentially a separable
19 cause of action for a breach of contract into a joint cause of action for tort."); *Koehler v.*
20 *Cummings*, 380 F. Supp. 1294, 1313 (M.D. Tenn. 1971) ("Because Jamul under Tennessee law
21 cannot be liable for inducing his own breach of contract, the cause of action for inducing breach
22 of contract against defendant Jamul is hereby dismissed."); *Allison v. American Airlines*,
23 112 F. Supp. 37, 39 (N.D. Okla. 1953) ("[N]o person or company can be guilty of 'inducing'
24 himself or itself to breach his or its own contract; the person or company can only be liable for
25 a "'breach' of the contract and responsible for the damages flowing from such breach.").

26 For similar reasoning, Plaintiff's claim of civil conspiracy based interference with a
27 contractual relationship must fail. As a party to the contract, Planet Hollywood cannot conspire
28 with itself to interfere with it as matter of law. *Bartsas*, 81 Nev. at 327, 402 P.2d at 651

1 (concluding that a defendant could not tortuously interfere with a contract to which it was a
2 party). Thus, each of Plaintiff's underlying bases for its civil conspiracy claim must be dismissed.

3 **F. Plaintiff Failed to State Claims for Declaratory Relief Because Plaintiff Relies**
4 **on Misinterpretations of the Contract.**

5 Plaintiff espouses nothing new in his Opposition with regard to his request for declaratory
6 relief. (*See generally*, Pl.'s Opp'n to Def.'s Mot. to Dismiss 21:2-5.) As provided in
7 Planet Hollywood's Motion to Dismiss, if the language is plain, contracts must be enforced as
8 written. *Ringle v. Bruton*, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004). Pursuant to the plain
9 language of the Development Agreement, Planet Hollywood is not prohibited from associating
10 with Ramsay, (Compl. ¶ 110(a)), Planet Hollywood is not required to provide GRB with the
11 opportunity to cure its unsuitability, (Compl. ¶ 110(e)), and Planet Hollywood may plan to
12 operate a rebranded restaurant, (Compl. ¶ 110(f)). Plaintiff's claim for declaratory relief must be
13 dismissed.

14 **G. Plaintiff's Meritless Claims Should Be Dismissed with Prejudice.**

15 Plaintiff argues that his claims, if dismissed, should be dismissed without prejudice
16 because he asserts that the defects in his Complaint can be cured by an amended pleading.
17 However, that is not the case. Each of Planet Hollywood's requests for dismissal rely on the law
18 and the Development Agreement. Thus, to state sufficient claims upon which relief can be
19 granted, Plaintiff would need to amend the law, which he cannot do.

1 **III. CONCLUSION**

2 Based on the foregoing, Planet Hollywood restates its request that this Court dismiss the
3 aforementioned of Plaintiff's claims, with prejudice.

4 DATED this 10th day of May, 2017.

5 PISANELLI BICE PLLC

6 By: /s/ Debra L. Spinelli
7 James J. Pisanelli, Esq., Bar No. 4027
8 Debra L. Spinelli, Esq., Bar No. 9695
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13 *Counsel for Defendant Planet Hollywood Las Vegas*
14 *Operating Company, LLC*

CERTIFICATE OF SERVICE

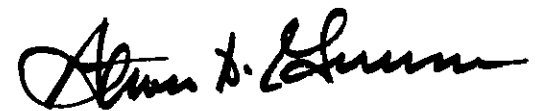
I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 10th day of May, 2017, I caused to be e-filed/e-served through the Court's CM/ECF system true and correct copies of the above and foregoing **REPLY IN SUPPORT OF PLANET HOLLYWOOD'S MOTION TO DISMISS PLAINTIFF'S CLAIMS** to the following:

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An employee of Pisanelli Bice PLLC

TAB 18



CLERK OF THE COURT

RPLY

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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;

CASE NO: A-17-751759-B

DEPT. NO.: XV

Plaintiff,

vs.

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

**DEFENDANT GORDON RAMSAY'S
REPLY IN SUPPORT OF JOINDER
TO PHWLTV LLC'S MOTION TO
DISMISS PLAINTIFF'S CLAIMS**

Defendant,

GR BURGR LLC, a Delaware limited liability
company,

Nominal Defendant.

/

Defendant Gordon Ramsay ("Ramsay"), by and through his undersigned counsel, hereby submits his reply in support of PHWLTV, LLC's ("PH") Motion to Dismiss Plaintiff's Claims ("Motion") filed on April 7, 2017 and joined by Ramsay that same day. As stated in Ramsay's Joinder, PH seeks dismissal of the several claims that Plaintiff asserts against both PH and Ramsay. Plaintiff's claims that are targeted against Ramsay arise from the same allegations asserted against PH and relate to the Development Agreement to which PH and Ramsay are

1 parties. The legal grounds advanced in the Motion and PH's reply filed on May 10, 2017 that
2 compel dismissal of Plaintiff's claims against PH, and each of them, also compel dismissal of
3 those claims against Ramsay.

4 In opposition, Plaintiff ignores the unambiguous text of the Development Agreement to
5 argue that it may maintain its "sub-claims" for breach of contract against PH for an alleged post-
6 termination business relationship with Ramsay, (Opp'n 10-11, 13), and by opening a new
7 restaurant in the space formerly occupied by the BURGR Gordon Ramsay restaurant without
8 GRB, (*id.* at 13). The Court need not look beyond the four corners of the Development Agreement
9 to dismiss Plaintiff's claims arising from PH's post-termination conduct, which are also asserted
10 directly against Ramsay.

11 **I. PH'S POST-TERMINATION RELATIONSHIP WITH RAMSAY IS NOT BARRED**
12 **BY THE DEVELOPMENT AGREEMENT**

13 PH moved to dismiss Plaintiff's claim that PH breached the Development Agreement by
14 "continuing" to do business with Ramsay following PH's termination of the Development
15 Agreement. (*See* Mot. at 9-10.) In response, Plaintiff argues that the text of § 11.2 "obligated" PH
16 to terminate *any* association with Ramsay, in perpetuity, as a result of Planet Hollywood's
17 determination that Seibel was an unsuitable person and subsequent termination of the
18 Development Agreement. (Opp'n 10-11.) It does not. Section 11.2 simply provides PH with the
19 right to terminate the Development Agreement and its relationship with GRB and Ramsay
20 thereunder, at its sole discretion. This is exactly what PH did when it terminated the Development
21 Agreement in September 2016. Section 4.3 of Development Agreement governs the "Effect of
22 Expiration or Termination" and, more specifically, "Termination of Obligations; Survival," and
23 provides that § 11.2 does not survive contract termination. (*See* Ex. 1 to Mot. at 13, § 4.3.1.) Thus,
24 Plaintiff's claim for breach of § 11.2 and his claims for breach of the covenant of good faith and
25 fair dealing and declaratory relief based on Plaintiff's allegations of PH's and Ramsay's post-
26 termination relationship fail as a matter of law.

27 //

28 //

1 **A. Section 11.2 Does Not Limit PH’s Right to Associate with Ramsay**

2 Section 11.2 addresses PH’s status as a privileged licensee and provides that PH shall have
3 the right, “*in its sole discretion*” to deem any GR Associate, including Seibel, an Unsuitable
4 Person. (*See* Ex. 1 to Mot. at 25-26.) If PH deems any GR Associate an Unsuitable Person, GRB
5 and/or Ramsay must terminate any relationship with that person to PH’s satisfaction. (*Id.*) If the
6 relationship between GRB or Ramsay and an unsuitable GR Associate is not ended, § 11.2 states
7 “as determined by PH in its sole discretion, PH shall, *without prejudice to any other rights or*
8 *remedies of PH including at law or in equity*, have the right to terminate this Agreement and its
9 relationship with Gordon Ramsay and GRB.” (*Id.* (emphasis added).)

10 In its opposition, Plaintiff intentionally omits the emphasized text when quoting § 11.2 in a
11 bid to suggest to the Court that § 11.2 somehow limits PH’s post-termination freedom of
12 association. To the contrary, § 11.2 reinforces PH’s right by providing PH with “sole discretion” to
13 terminate the Agreement on unsuitability grounds, and that such determination is “without
14 prejudice to any other rights” of PH—including its right to enter new business ventures with
15 Ramsay, or any other persons or entities that it deems suitable.

16 As a result of Seibel’s felony conviction for tax fraud and custodial sentence, PH deemed
17 Seibel an Unsuitable Person—not Ramsay. PH demanded that GRB terminate its relationship with
18 Seibel—not Ramsay. After it was confirmed that Seibel would not completely dissociate himself
19 from GRB, PH exercised its discretionary right to terminate the Development Agreement, only. As
20 parties to the terminated Development Agreement, the contractual relationship between Ramsay,
21 GRB and PH in relation to the BURGR Gordon Ramsay venture was, in fact, terminated. Nothing
22 in § 11.2 bars PH from entering into a new venture with Ramsay or a Ramsay affiliate following
23 termination of the Development Agreement. The Court must enforce the Development Agreement
24 as written, and dismiss Plaintiff’s claims against PH and Ramsay arising from allegations of a
25 post-termination relationship, with prejudice.

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B. Plaintiff's Textually Unsupported Interpretation of § 11.2 is Unenforceable As A Matter of Nevada Law

As an unreasonable restraint of trade, the Court must reject Plaintiff's plea that the Court ignore the text of § 11.2 to impose a prohibition upon Ramsay and PH from any post-termination business relationship. Under Nevada law, "[a] restraint of trade is unreasonable . . . if it is greater than is required for the protection of the person for whose benefit the restraint is imposed or imposes undue hardship upon the person restricted." *Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. Adv. Op. 49, 376 P.3d 151, 155 (2016). Time, territory, and actions to be restrained must be specific and narrowly tailored to be enforced under Nevada law. *See id.*; *see also Traffic Control Services, Inc. v. United Rentals Nw., Inc.*, 120 Nev. 168, 172, 87 P.3d 1054, 1057 (2004) (explaining that because "the loss of a person's livelihood is a very serious matter" anti-competitive covenants are closely scrutinized).

If Section 11.2 is read to prohibit Ramsay from *any* business relationship with PH post-termination, the provision is void as a matter of law because it lacks a durational term, geographical limitation or line of business from which Ramsay is prohibited from continuing with PH. *See JL Vodka, LLC v. JL Beverage Co., LLC*, 2015 WL 1854862, at *1 (Nev. 2015) (holding that injunction prohibiting competition unreasonably restrained appellant's ability to earn a living because it did not include a durational term or specify a line of business from which appellant was precluded from competing with respondent). Further, GRB is a single purpose entity that has one contract with PH—for the former BURGR Gordon Ramsay restaurant. (*See* Compl. ¶ 19.) Upon termination, GRB has no business in Nevada, no customers, no goodwill, and no products for Ramsay to compete against. To restrain Ramsay from any business with PH places severe harm on Ramsay with no benefit to GRB whatsoever. Thus, there is no legal justification for GRB to sustain *any* restrictive covenant against Ramsay and PH. *See Golden Rd. Motor Inn, Inc.*, 376 P.3d at 155 (restraint is void if it imposes undue hardship upon the person restricted with no benefit to the person seeking to imposing the restriction). Certainty not here, where the plain text of § 11.2 does not even implicate a restraint on the parties' post-termination conduct.

//

1 Even if the Court were persuaded that § 11.2 implies some broad restraint on trade between
2 the parties, the Court cannot “blue pencil” the provision to insert a non-compete or limit the scope
3 of any purported non-compete to the Planet Hollywood Casino or Restaurant Premises. *See*
4 *Golden Rd. Motor Inn, Inc.*, 376 P.3d at 159 (if a non-compete is overly broad the covenant is
5 void, the court cannot modify or narrow the scope to render the covenant reasonable). To the
6 extent that Plaintiff’s argues that § 11.2 bars PH and Ramsay from any post-termination
7 relationship, the provision, as written, is an unenforceable restraint of trade, and cannot serve as a
8 basis for Plaintiff’s claims against PH and Ramsay. *See id.*

9 **C. Section 11.2 Did Not Survive Termination of the Development Agreement**

10 Even if § 11.2 could support Plaintiff’s contradictory interpretation, and it does not, § 11.2
11 did not survive contract termination and does not restrict PH’s, or Ramsay’s, post-termination
12 rights to associate. Section 4.3.1 unequivocally states that no contractual obligations survive
13 termination except for the provisions of “Section 4.3 and Section 2.3.2, 6.2, 6.6, the last sentence
14 of Section 12.2.2 and Articles 13 and 14 (other than Section 14.16).” (*Id.* at 13.) The Agreement
15 contains no language that § 11.2 would survive termination and no language to suggest that § 11.2
16 remains in effect if PH terminates the Agreement. Thus, there can be no breach because the is no
17 post-termination obligation between PH and GRB arising from § 11.2. For this additional reason,
18 Plaintiff’s “sub-claim” for breach of § 11.2 premised on its allegation of PH’s post-termination
19 relationship with Ramsay fails as a matter of law, and must be dismissed.

20 **II. PH IS NOT REQUIRED TO ENTER INTO AN AGREEMENT WITH GRB TO**
21 **OPERATE A NEW RESTAURANT**

22 Plaintiff also argues that § 14.21 of the Development Agreement prohibits PH from
23 operating any burger-themed restaurant without entering into an agreement with GRB or an
24 affiliate of GRB. (*See* Opp’n. at 13-14.) Not so. Section 14.21 governs “Additional Restaurant
25 Projects” and states: “If PH elects to pursue any venture similar to the Restaurant (i.e. any venture
26 generally in the nature of a burger centric or burger themed restaurant), GRB shall, or shall cause
27 an Affiliate to, execute a development, operating and license agreement generally on the same
28 terms and conditions as this Agreement. . . .” (*See* Ex. 1 to Mot. at 34, § 14.21.) Section 14.21

1 represents an obligation of GRB—not PH. If PH elects to pursue additional restaurants with GRB,
2 § 14.21 obligates GRB, or its Affiliate(s), to enter into an agreement with PH. Section 14.21 does
3 not obligate PH to partner with GRB or an Affiliate to operate a burger related venture in
4 perpetuity. In construing § 14.21 as written, as it must, the Court should dismiss Plaintiff’s claims
5 that rely on Plaintiff’s incorrect interpretation that PH is prohibited from opening a restaurant that
6 serves hamburgers unless it contracts with GRB.

7 Even if § 14.21 did obligate PH to contract with GRB or an Affiliate, and it does not,
8 Plaintiff affirmatively alleges that PH did, in fact, enter into an agreement with an “Affiliate” as
9 that term is defined in the Development Agreement. Specifically, Plaintiff alleges that PH
10 breached § 14.21 by “[a]ttempting and planning to open and operate the Rebranded Restaurant
11 with Ramsay or an affiliate.” (Compl. ¶ 68(h).) Under the Development Agreement, Ramsay is an
12 “Affiliate” of GRB. The term “Affiliate” means “with respect to a specified Person, any other
13 Person who or which is directly or indirectly controlling, controlled by or under common control
14 with the specified Person, or any member, stockholder or comparable principal of, the specified
15 Person or such Person.” (See Ex. 1 to Mot. at 6-7, § 1.) Plaintiff alleges: (1) that GRB’s equal
16 members are Seibel and GR US Licensing LP (“GRUS”), (2) that GRUS’s limited partner is
17 Kavalake Limited (“Kavalake”), and (3) that Kavalake’s director is Ramsay. (Compl. ¶ 9.) Taking
18 Plaintiff’s allegations as true for purposes of PH’s Motion, Plaintiff cannot state a claim for breach
19 of § 14.21 because Plaintiff affirmatively alleges that PH entered into an agreement for a new
20 restaurant with Ramsay, an “Affiliate” of GRB.

21 CONCLUSION

22 For the forgoing reasons, and those set forth in the Motion, Ramsay’s Joinder, and PH’s
23 reply in support of the Motion, Ramsay requests that the Court dismiss Plaintiff’s claims
24 referenced in the Motion and Joinder against Ramsay, with prejudice, to the same extent that the

25 //

26 //

27 //

28 //

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Court dismisses those claims against PH.

Dated: 5/10/2017

FENNEMORE CRAIG, P.C.

/s/ John D. Tennert

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Attorneys for Gordon Ramsay

CERTIFICATE OF SERVICE

I certify that I am an employee of FENNEMORE CRAIG, P.C., and that on this date, pursuant to FRCP 5(b), I am serving a true and correct copy of the attached DEFENDANT GORDON RAMSAY'S REPLY IN SUPPORT OF JOINDER TO PLANET HOLLYWOOD'S MOTION TO DISMISS PLAINTIFF'S CLAIMS on the parties set forth below by:

- X 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:

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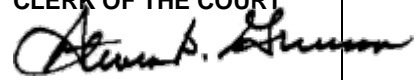
Attorneys for Plaintiff

Dated: 5/10/2017

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

AWILT/12873351.3/043695.0002

TAB 19



1 **RTRAN**

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 ROWEN SEIBEL,)
5 Plaintiff,) CASE NO. A-17-751759-B
6 vs.)
7 PHWLIV LLC,) DEPT. NO. XV
Defendant.)
_____)

8
9 BEFORE THE HONORABLE JOSEPH HARDY
DISTRICT COURT JUDGE

10
11 TUESDAY, MAY 17, 2017

12
13 **RECORDER'S TRANSCRIPT OF PROCEEDINGS:**
14 **ALL PENDING MOTIONS**

15
16 **APPEARANCES:**

17
18 For the Plaintiff(s):
19 DANIEL R. MCNUTT, ESQ.
MATTHEW C. WOLF, ESQ.

20
21 For the Defendant(s):
22 ALLEN J. WILT, ESQ.
JAMES J. PISANELLI, ESQ.
23 DEBRA L. SPINELLI, ESQ.
BRITTINEE T. WATKINS, ESQ.

24
25 RECORDED BY: MATTHEW YARBROUGH, COURT RECORDER

1 * * * * *

2 **LAS VEGAS, NEVADA, TUESDAY, MAY 17, 2017**

3 [Case called at 9:04 a.m.]

4 THE COURT: Okay. State your appearances, please.

5 MR. PISANELLI: Good morning, Your Honor. James
6 Pisanelli on behalf of Planet Hollywood.

7 MR. WILT: Good morning, Your Honor. Allen Wilt for
8 defendant Gordon Ramsay.

9 MS. SPINELLI: Good morning, Your Honor. Debra
10 Spinelli and Brittinee Watkins on behalf of Planet Hollywood.

11 MR. MCNUTT: Good morning, Your Honor. Dan McNutt and
12 Matt Wolf on behalf of the plaintiff.

13 THE COURT: Okay. So this is Planet Hollywood's
14 motion to dismiss as well as Gordon Ramsay's joinder against
15 opposition and reply, which I reviewed. Welcome arguments
16 beginning with whomever wants to begin on defendants' side.

17 MR. PISANELLI: Thank you, Your Honor. Good morning.
18 Your Honor, our position is set forth in our papers,
19 so I won't go through all of it. I will just highlight a
20 couple of points.

21 This is our Rule 12(b) motion and despite all of the
22 briefing, I think one can find some areas of this discussion
23 where we actually agree with one another.

24 And I think the most important of all of those is that
25 we agree that this contract that's governing the parties'

1 rights, the development agreement, we have both told you is
2 unambiguous. And what that means is, of course, that
3 Rule 12(b) is the appropriate platform for this debate because
4 the resolution of the meaning of an unambiguous contract is an
5 issue of law for Your Honor to determine. So that's probably
6 most important thing that we have agreed on.

7 But there is a couple more. One, of course, is we
8 both have offered the same theme to you, and that is --

9 THE COURT: The same what? I'm sorry.

10 MR. PISANELLI: We both have offered the same theme in
11 our papers.

12 THE COURT: Okay.

13 MR. PISANELLI: And that is parties have to live by
14 the letter of the agreements that they execute. So while we
15 disagree with what the contract says, we agree that whatever
16 Your Honor says it says, we have to live by that.

17 So this would be a different story. If the plaintiff
18 was coming in here and saying, well, the contract is ambiguous
19 or it has been revised or amended, either through actions or
20 otherwise or somehow discharged or even superseded, but they
21 don't allege any of those things. They just point to the
22 contract and say that they have causes of action. And this
23 split leads to the third thing that we've agreed upon, and
24 that is that the complaint controls.

25 Without the allegations about being superseded or

1 having been amended or any of that sort, we simply look to the
2 contract. That doesn't take us outside the four walls of the
3 complaint, but we do get to look at the development agreement
4 and see whether these contract causes of action in particular
5 survive scrutiny.

6 And with all due respect to plaintiff, I don't think
7 that they do.

8 So just a couple of highlights. Paragraph 68 sets
9 forth, it is one cause of action for breach of contract, but
10 it really arguably could have been pled as about 10 or so in
11 the subparagraphs. And we're not attacking every one of them,
12 but the ones that clearly are just simply based upon what the
13 contract says, we say the contract controls without an
14 amendment and the complaint can't go forward.

15 And the first one, of course, is paragraph 68(a) where
16 they are complaining about Planet Hollywood's continued
17 association with Gordon Ramsay. And the point there is very
18 simple. Section 11.2, the development agreement controls, it
19 does say that Planet Hollywood has the right to terminate this
20 relationship with Mr. Ramsay, but nowhere does it say nor can
21 it be reasonably interpreted to say that Planet Hollywood has
22 an obligation to terminate its relationship, any relationship
23 present, past, or future with Mr. Ramsay. And that is why, in
24 a nutshell, that claim has to fail.

25 The next one is the payment of the license fee to

1 Mr. Ramsay. These limited circumstances did occur, it was
2 alleged, but it is governed by paragraph 8.2. Here again, 8.2
3 tells us that we can direct payment as directed -- make
4 payment as directed by GRB. And the complaint specifically
5 says that Mr. Ramsay or that GRB generally had directed us to
6 make that payment. And so following the contract cannot be a
7 breach of the contract.

8 Paragraph 68(f) is really the cure issue. They are
9 complaining that they could have cured the unsuitability
10 problem stemming from plaintiffs' ownership. Plaintiff,
11 again, as you remember from our last hearing, has the
12 unfortunate circumstance on his resume now being a convicted
13 felon. And they say somehow that they should have been
14 granted an extra-contractual right to cure; whereas, or the
15 problem of course being that section 11.2 grants these to
16 Planet Hollywood. Express letter of the contract in its sole
17 discretion, it determines whether breaches are curable. And
18 it determined in its good business judgment and discretion
19 that being a convicted felon is not a curable problem, and
20 hiding the interest within a family trust was not even an
21 issue for great consideration. The point being, the contract
22 itself granted Planet Hollywood with that discretion and it
23 exercised it.

24 Finally, 68(h) complains about planning to do
25 something. And the law tells us that that is not good enough.

1 It doesn't -- the allegations don't even arise to an
2 anticipatory breach. It's just that we're planning to do
3 something if they claim that they have a contractual or
4 extra-contractual cause of action for our future developments
5 and then we can have that claim. But as alleged, we think
6 that it doesn't survive.

7 The breach of the implied covenant, second cause of
8 action really is tied up in the same arguments that you can't
9 have extra-contractual rights that are different or expressly
10 contradicted by the black letter of the agreement. And that
11 the breach of the implied covenant claim does just that. It
12 complains that we are doing things that the actual contract
13 said that we are entitled to do.

14 Failure to state a claim on unjust enrichment, very
15 simple position there is that we have a contract. We don't
16 have to go to equitable claims of unjust enrichment because
17 what, if anything, is owed to this plaintiff or to Mr. Ramsay
18 or anybody else for that matter. It is governed by the
19 development agreement, which they embrace in the complaint as
20 the controlling document that sets forth the parties'
21 perspective rights.

22 Same thing with civil conspiracy, which is the fourth
23 cause of action. Without a breach, there cannot be this
24 conspiracy to commit this unlawful act. And of course, more
25 importantly, Planet Hollywood can't conspire with itself.

1 The other claims really are just addressing the
2 remedies or the other portions of our motion, that there can't
3 be a remedy where there is no claim.

4 And so the point here, Your Honor, we wrote in our
5 opposition that these are incurable problems that shouldn't be
6 granted leave to amend.

7 I know whenever I say that at Rule 12, I am making a
8 record but I am standing on very thin ice. It's a rare day
9 that a plaintiff doesn't get at least a second shot. But if
10 they do get a second shot, it should be conditioned upon the
11 added needed allegations to go outside the black letter of the
12 contract.

13 Your Honor can see this contract says what it says.
14 It grants lots of power to Planet Hollywood because that's the
15 name of the game in the gaming industry. The licensee has to
16 have power to control its business so as to not lose its
17 license when being associated with unsuitable people or
18 entities.

19 And so if Your Honor, as I expect you probably will,
20 grant leave to amend, it should be with the direction that
21 just don't point to the same contract provisions with more
22 hyperbole and flowery language, which we all tend to do when
23 put in that position; but actually either allege that these
24 contract provisions have been amended, if you can, or move --
25 pull the complaint back to the core issues that are still

1 remaining after we get -- you know, cut through the contract
2 claims that we are just simply overreaching at this stage.

3 THE COURT: How do you -- in footnote seven in the
4 opposition, that's where they refer to the close termination
5 moneys owed to GRB.

6 MR. PISANELLI: Yeah.

7 THE COURT: Where would that fall?

8 MR. PISANELLI: Well, Your Honor, if there is -- that
9 can be a contract, a simple contract claim. That the contract
10 determines what Planet Hollywood owes for the benefits that it
11 was receiving from the development agreement, whether that be
12 the Association or the contribution from the contracting
13 entity or licensing or whatever it may be.

14 The parties did not have to sit down and negotiate.
15 They didn't have to go to an arbiter. They didn't have to
16 figure out by way of market values for payment entitlements.
17 They had a contract. And so if this contract says that this
18 plaintiff under these circumstances is entitled to payment and
19 they can allege that, they can allege a breach of contract,
20 and where their rights came from, and the facts that would
21 establish why they didn't get the appropriate payment.

22 Now, there is an issue here on payment in that it was
23 not necessarily disputed that payment may be owed, but the
24 timing of it and the manner of it was challenging because of
25 two things from Planet Hollywood's perspective. One, is

1 giving payment to an unsuitable character; and two, the GRB is
2 frozen until the dissolution proceedings I believe in
3 Delaware. And that they have 50/50 ownership who don't agree.
4 Mr. Ramsay and his entities on the one hand and Mr. Seibel and
5 his entity on the other hand have a company that has an
6 entitlement to payment that they can't seem to agree on the
7 time of day.

8 There will be a process through the dissolution
9 proceeding and from Your Honor that will say Planet Hollywood,
10 I understand your position. I understand you can't do
11 business with an unsuitable person, but there is money owed
12 under this contract. And here is the order or the direction
13 of how this should be.

14 Maybe it will come into this courtroom. Maybe it will
15 go into escrow. Maybe it will go to Mr. Ramsay, and it will
16 be his obligation to pay his partner. There is lots of ways
17 this can iron itself out. But in the end, to answer your
18 question, it's a contract claim.

19 THE COURT: Thank you.

20 MR. PISANELLI: Thank you, Your Honor.

21 MR. WILT: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MR. WILT: As to Gordon Ramsay, we did make a separate
24 joinder to the motion to dismiss for a couple of reasons. The
25 first, a technical one. The way that the -- both the breach

1 of contract and the breach of implied covenant claims were
2 pled, set out separately the claims as against Planet
3 Hollywood and as against Gordon Ramsay. They're, for the most
4 part, structurally identical. Although they are in different
5 paragraphs, and we wanted to be sure that we brought to the
6 attention of the Court that the corresponding arguments to
7 Planet Hollywood, as to breach of contract, as to Gordon
8 Ramsay would be in paragraph 69(a), (b), and (f), rather than
9 paragraph 68.

10 And as to the claims for breach of the implied
11 covenant of good faith, as against Ramsay, those are contained
12 in paragraph 75(b), (c), and (i).

13 The declaratory relief, unjust enrichment, and civil
14 conspiracy claims were lumped together as to both defendants.
15 So we would join in the briefing from Planet Hollywood on
16 those points.

17 And then Mr. Ramsay also joined to argue separately as
18 to two provisions. Because the Court is being asked at least
19 to make a legal determination at this stage as to the meaning
20 of two of the provisions in the contract that plaintiff
21 alleges bars Planet Hollywood from continuing to do business
22 with Gordon Ramsay. And that is equally important to
23 Mr. Ramsay as it is to Planet Hollywood in this circumstance.

24 As to section 11.2, as counsel pointed out, the
25 operative language in that provision allows Planet Hollywood,

1 as determined in its sole discretion, without prejudice to any
2 other rights or remedies of Planet Hollywood, including at law
3 or in equity, shall have the right to terminate the agreement
4 and its relationship with Gordon Ramsay and GRB.

5 In fact, in this case, Planet Hollywood did terminate
6 the agreement, not just as to GRB but as to all parties. And
7 it did terminate the contractual relationship among all three
8 parties in that agreement. So that provision was complied
9 with.

10 Section 11.2 does not say that Planet Hollywood must
11 never associate with Gordon Ramsay, nor would that make any
12 sense because Planet Hollywood, as part of Caesars, Caesars
13 has numerous contractual relationships with Mr. Ramsay and
14 restaurants and different properties. Even if the Court were
15 to agree with plaintiffs' reading of this provision, that it
16 prevents Planet Hollywood from having any relationship with
17 Gordon Ramsay, that bar would not be enforceable because this
18 invokes an unlawful restraint of trade. And we cited the
19 cases, many of which are based on noncompete covenants, but in
20 the *Golden Road Motor Inn* case on the *JL Vodka* case, the Court
21 places a strict scrutiny on clauses that restrict the parties'
22 ability to contract with another enterprise trade.

23 Finally, perhaps the simplest answer to that is that
24 section 11.2 is not one of the provisions that survives
25 termination of the contract. So provided the Court agrees

1 that the contract was actually terminated, that doesn't have
2 any application in this case at all.

3 Finally, as to section 14.21 of the development
4 agreement, that's the provision that provides -- if Planet
5 Hollywood elects to pursue any ventures similar to the
6 restaurant, i.e., any venture generally in the nature of a
7 burger-centric or burger-themed restaurant, GRB shall or shall
8 cause an affiliate to execute a development, operating, and
9 license agreement generally on the same terms and conditions
10 as the development agreement.

11 Here, on its face, that provision is an obligation of
12 Gordon Ramsay Burger. So it says: If Planet Hollywood
13 decides to go forward with another burger-themed restaurant,
14 GRB is obligated to execute the development, operating, or
15 license agreement. In this case, that is not a provision that
16 GRB would have the power to fulfill anyway because the license
17 agreement, as you recall from the last hearing between GR U.S.
18 and GRB for the use of the Gordon Ramsay marks, has been
19 terminated. So GRB couldn't perform that anyway.

20 Secondly, the provision on its face does not obligate
21 Planet Hollywood to partner with Gordon Ramsay Burger. And
22 even if it did, what it requires is that GRB shall -- or shall
23 cause an affiliate to execute the similar development
24 agreement.

25 And what they are complaining about in the complaint

1 is that Planet Hollywood has entered into an agreement with
2 Gordon Ramsay or an affiliate of his to operate a similar
3 restaurant. So as defined in the operating agreement itself,
4 Gordon Ramsay and his controlled entities are by definition
5 affiliates of GRB. So even if that provision did apply, it
6 has been strictly complied with.

7 Other than that, we'd rest on our brief, Your Honor.

8 THE COURT: Thank you.

9 MR. MCNUTT: Good morning, sir. Dan McNutt on behalf
10 of the plaintiff.

11 I note that in paragraph 68 and 69, for breach of
12 contract claims, what's complained of is almost that there is
13 too much detail. The comment was that there were 10 causes of
14 action that we alleged in subparts. And paragraph 68 says
15 Planet Hollywood breached the development agreement by
16 conduct, including but not limited to, and then we give
17 specific examples. We go through 10 of those or 11 of those
18 and we identify them.

19 Now, the Court can accept those allegations as true
20 and should accept those allegations as true, but additionally,
21 the Court for its own, as Mr. Pisanelli identified, can simply
22 consult the contract.

23 And so 4.3.2 is the relevant section of the contract
24 that says -- and let me back up for the facts, Your Honor.
25 They terminated in September. It is undisputed that they

1 continued to operate Burgr Gordon Ramsay through March 31st of
2 this year. It is also undisputed that Planet Hollywood has
3 not paid the license fee at least up through March 31st.

4 Now, we believe they still owe license fees even after
5 March 31st, but as far as undisputed facts, those things are
6 clear.

7 4.3.2 says: During the applicable post-termination
8 period, during which Planet Hollywood is operating the
9 restaurant, Planet Hollywood shall continue to be obligated to
10 pay -- and this is critical -- GRB, all amounts due GRB
11 hereunder that accrue during such period.

12 Section 8.2 says those amounts are due 30 days
13 following each calendar quarter.

14 So the representations made here this morning and in
15 the briefing is that, well, we did operate the restaurant as
16 Burgr Gordon Ramsay up through March 31st. We did not pay the
17 license fee up through March 31st. There is a subtle context
18 to it though, Your Honor, that Planet Hollywood paid part of
19 the license fee owed to GRB to Ramsay or his entity GR U.S.

20 Those are breaches of the very clear and unambiguous
21 contract. But it goes further. Post-March 31st, they are
22 continuing to operate the exact same restaurant, in the exact
23 same location, continuing to use the general GR materials to
24 operate the restaurant.

25 If Your Honor wanted to go to Gordon Ramsay Burger now

1 because it is called Gordon Ramsay Burger with an E now, and
2 have the Hell's Kitchen Burger, he can have it. If Your Honor
3 went to the former name of the restaurant, which was Burgr
4 Gordon Ramsay with no E in the name, he could've had the
5 Hell's Kitchen Burger.

6 So as a global matter, our complaint stands and should
7 stand because it is clear that whether you look at the --
8 merely the post-termination conduct up through March 31st,
9 they have breached the agreement; or if you look at the
10 post-March 31st conduct, they've also breached the agreement.

11 With respect to Ramsay and Planet Hollywood, there is
12 nothing in this agreement that allows Ramsay to direct Planet
13 Hollywood to pay him a portion of the moneys due to GRB. And
14 there is nothing in here upon which Planet Hollywood can hide
15 behind to say it was reasonable for us to think that Ramsay,
16 who they know is only a 50 percent member of GRB, can direct
17 funds that are owed by the contract to GRB.

18 Much has been made of section 11.2 this morning, and
19 it bears mention that we do not believe 11.2 is a restrictive
20 covenant against trade. When we say that the contract, when
21 Planet Hollywood is going to terminate the contract, and it
22 has to terminate its relationship with Gordon Ramsay for
23 purposes of this restaurant, and this restaurant being the
24 restaurant with the capital R, not some little R restaurant as
25 defined by the contract, that's what we are talking about.

1 There is nothing in this contract that would have precluded --
2 if they had terminated the relationship with GRB and Gordon
3 Ramsay for purposes of this restaurant called Burgr Gordon
4 Ramsay or Gordon Ramsay Burger, however you'd like to refer to
5 it, there would be nothing that would preclude them from
6 opening up, I suppose, Gordon Ramsay Sushi in that restaurant.

7 And we know that because not only the plain text of
8 the contract, but also we lead them to Ramsay's argument about
9 section 14.21. And 14.21 says in clear and unambiguous terms,
10 that if you are going to do another burger-centric or
11 burger-themed restaurant, then you've got to include us on
12 materially the same terms as this agreement.

13 Well, I would submit, Your Honor, I am no
14 restaurateur or expert, but when you call a restaurant Gordon
15 Ramsay Burger and you have more burger entries on your menu
16 today than you did when it was called Burgr Gordon Ramsay, I
17 am going out on a limb and saying that it is a burger-themed
18 or burger-centric restaurant.

19 So again, that's alleging the complaint as a breach of
20 the contract.

21 With respect to the implied covenant claims, Your
22 Honor, the distinction of the implied covenant claims is that
23 if the Court decides, as Mr. Pisanelli and Mr. Wilt suggest
24 that the contract was literally complied with, then under the
25 law regarding implied covenant claims, the Court looks at,

1 well, wait a minute. Did you use those expressed terms to
2 breach the spirit and intent of the contract?

3 So that is exactly how those claims survive. If the
4 Court says, well, in your sole and absolute discretion -- as
5 they continually say, we had the power to do all of these
6 things. Although, as we go further in this case, the Court
7 will hear expert testimony that they have so much power that
8 they have attempted to usurp things that are statutorily
9 reserved to the gaming commission, not to a private licensee.
10 But those are the types of things that are encompassed in our
11 breach of implied covenant claims.

12 With respect to the unjust enrichment claim, it is
13 simple. We pled it in the alternative. Again, if the Court
14 were to find and believe the argument of Planet Hollywood,
15 that they could literally terminate this contract, well, there
16 is no dispute that they owe us money at a minimum through
17 March 31st, so that claim would survive.

18 With respect to specific performance and the other
19 claims and the civil conspiracy claim, Your Honor, those
20 claims survive because as we have pled them, and every
21 complaint has to be looked at, at some level, temporally.
22 This is what we know when we filed the complaint.

23 In fact, to refresh Your Honor's memory, we had no
24 idea that they intended to, quote, rebrand the restaurant into
25 another burger restaurant until Planet Hollywood filed its

1 opposition in federal court regarding the motion for
2 preliminary injunction. That's when we learned.

3 So the complaint predates that. This is what we knew
4 then.

5 I am guessing that if I sent my client, Mr. Seibel,
6 into the restaurant, he would not be allowed to freely walk
7 around and inspect and take notes. He would probably have
8 security called because they claim he is an unsuitable person
9 and the contract has been terminated and he has no further
10 rights.

11 So with respect to those claims as to civil
12 conspiracy, it is not civil attempt. And it's not -- we now
13 know temporally as of May 2017, we know for a fact that they
14 have conspired to keep the exact same restaurant open today as
15 they claim to have terminated the contract under this
16 development.

17 So that's the prism through which the Court has to
18 view that. All of these arguments are coupled -- I have
19 focused mostly on Planet Hollywood, but they work for Gordon
20 Ramsay. And I will take the next 20 minutes and go through
21 those, Your Honor.

22 Unless the Court has questions, I will take my seat.

23 THE COURT: No. Thank you very much.

24 MR. MCNUTT: Thank you.

25 THE COURT: I appreciate that.

1 MR. PISANELLI: So apparently, we agree on more than I
2 thought. And here is my point. Most of counsel's argument
3 had to do with what he claims is the unfair use of
4 intellectual property rights in the restaurant, the new
5 restaurant, and failure to pay money. This is going to that
6 footnote that you directed me to.

7 But the point here, Your Honor, and where I think that
8 we agree, is we are not moving to dismiss the allegations
9 under paragraph 68(c), which is the intellectual property of
10 grievance or 68(d), which is a payment agreement. We
11 understand that is probably been fairly alleged. We at least
12 are on notice of what he is complaining about and we will
13 defend it. So there is a non-issue there, and we are not
14 asking you to dismiss the breach of contract under those
15 claims.

16 It's where he has over reached by saying we can't have
17 relationships at all with Mr. Ramsay or that any other of the
18 earlier arguments that I made to you, where all Your Honor has
19 to do is look at the contract to see that those rights don't
20 exist for the plaintiff in this case. So he did say that, you
21 know, some of these facts are undisputed.

22 I would only say all of the facts in this complaint
23 right now are undisputed. We are not disputing allegations.
24 We are simply saying that you cannot come into court, tell
25 Your Honor that you're obligated to accept an interpretation

1 of a contract when all parties agree it is unambiguous. That
2 is something you don't have to do. That is a conclusory -- it
3 is similar to a conclusory application that you are not
4 obligated to accept. But most importantly, when -- if the
5 contract interpretation is an issue of law, it's for Your
6 Honor to decide what the contract says regardless of what
7 argument may be or what the complaint says.

8 We also agree on the implied covenant issue that when
9 the parties agree to the expressed terms of the contract but
10 perhaps the spirit has been violated, there can lie a cause of
11 action there. I get that. And we agree with that generally
12 speaking.

13 But this cause of action complains about things that
14 are expressly governed by the development agreement. That's
15 where the line is drawn under the law. You can't say that you
16 have violated the spirit of the contract by following the
17 contract.

18 When they say that you should have done something
19 other than what the contract says, like give me more cure
20 rights, for instance, or never contract with Gordon Ramsay
21 again, that's when the law says, no, now you have taken it a
22 step too far and there is no implied covenant of good faith to
23 do something the parties expressly said would not be done.
24 That's the difference here.

25 And the civil conspiracy claim, I will just end on

1 this. It is a common practice in commercial litigation. No
2 one in this room is guilt-free of it, myself included. But
3 we, so often, take a commercial dispute that is based upon a
4 written contract and try and blow it up to something bigger.

5 Sometimes we see it in the context of a tortious
6 breach of implied covenant and good faith fair dealing, more
7 often, we see it in the civil conspiracy concept, that we want
8 to turn this agreement, this contract claim into a tort claim.
9 And once again, it is a step too far.

10 We have a development agreement. We are asking Your
11 Honor to tell us what it says, what the rights are. And lots
12 and lots of pieces will fall into place immediately upon a
13 ruling of that sort. Thank you.

14 THE COURT: Thank you.

15 MR. WILT: Your Honor, I will be very quick. The only
16 point that I thought needed a separate response is counsel's
17 drawing the Court's attention to section 11.2, and stating
18 that they don't read that as a restrictive covenant. The
19 reasoning given was that -- under their reading, it only
20 prevents Ramsay from operating another burger restaurant in
21 that location. It wouldn't apply, for example, to a sushi
22 restaurant.

23 If the provision means what plaintiffs are contending,
24 it is not that restricted. If it means what they say, it
25 prevents any relationship between Planet Hollywood and Gordon

1 Ramsay following the termination of the agreement.

2 And for the Court to narrow the reading of that
3 provision would be exactly the kind of blue-penciling that the
4 Supreme Court in the *Golden Road* case said you can't do.

5 THE COURT: Thank you.

6 I am going to grant in part and deny in part the
7 motion to dismiss. Both the -- excuse me. Both the granting
8 and denial are without prejudice. As counsel noted, we're
9 here on a motion to dismiss standard, so it is without
10 prejudice.

11 I am going to deny without prejudice the joinder, and
12 I will tell you why on both here. On the breach of contract,
13 in particular, paragraph 68, granted as to the alleged
14 breaches contained in paragraphs (a), (f), and (h). To me,
15 the plain language and clear reading of the operating
16 agreement precludes those from being breaches of contract.

17 (E) is questionable, but we're here again on the
18 motion to dismiss standard wherein I do accept all facts as
19 true as pleaded in the complaint. But I agree with defendants
20 when they say -- and I don't think plaintiff disputed either
21 that even on a motion to dismiss standard, it's appropriate to
22 consider the parties' written agreement that the complaint
23 relies upon. There's no dispute that the contract was entered
24 into and exists.

25 I am going to deny without prejudice the remainder of

1 the motion because I do believe that as pleaded, the remainder
2 that's sought to be dismissed, they do state claims upon which
3 relief may be granted under Nevada law. And so, in
4 particular, the applied covenant of good faith and fair
5 dealing does allege, at least on its face, you know, the
6 extra-contractual types of duties and breaches that would be
7 appropriate for that type of claim.

8 Unjust enrichment, yes, there is an operating
9 agreement; and, no, there is no dispute that it was entered
10 into. But Nevada law does allow alternative theories of
11 relief to be pleaded, alternative causes of action. And there
12 is, on its face, in particular with the license fee and the
13 retention of that, there may be a claim for unjust enrichment.
14 So that's denied without prejudice.

15 Then civil conspiracy and declaratory relief, same.
16 They do plead causes of action under Nevada law here.

17 As to the joinder with Mr. Ramsay, the breach of
18 contract claims as to him are different from those asserted
19 against Planet Hollywood. And again, we are on a motion to
20 dismiss standard and they do state claims upon which relief
21 may be granted under Nevada law.

22 So Mr. Pisanelli, if you could prepare that order,
23 submit it to everyone for review.

24 MR. PISANELLI: I will do that, Your Honor. Thank
25 you.

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THE COURT: Thank you.

MR. WILT: Thank you, Your Honor.

MR. MCNUTT: Thank you, Your Honor.

[Hearing concluded at: 9:40 a.m.]

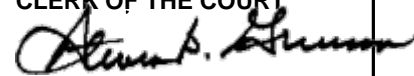
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ATTEST: I do hereby certify that I have truly and
correctly transcribed. The audio/video proceedings in the
above-entitled case to the best of my ability.

Kristy Giles

KRISTY GILES
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TAB 20



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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;

Case No.: A-17-751759-B

Dept. No.: XV

Plaintiff,
vs.

**ORDER GRANTING IN PART
AND DENYING IN PART
PLANET HOLLYWOOD'S
MOTION TO DISMISS**

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

Defendants,
and

GR BURGR, LLC, a Delaware limited liability
company,

Date of Hearing: May 17, 2017

Nominal Defendant.

Time of Hearing: 9:00 a.m.

Defendant PHWLTV, LLC's ("Planet Hollywood") Motion to Dismiss Plaintiff's Claims, dated April 7, 2017, came before this Court on May 17, 2017. James J. Pisanelli, Esq., Debra L. Spinelli, Esq., and Brittnie T. Watkins, Esq., of PISANELLI BICE PLLC, appeared on behalf of Planet Hollywood. Allen J. Wilt, Esq. of Fennemore Craig, PC, appeared on behalf of Defendant Gordon Ramsay ("Ramsay"). Daniel R. McNutt, Esq., and Matthew C. Wolfe, Esq., of Carbajal & McNutt, LLP appeared on behalf of Plaintiff Rowen Seibel ("Plaintiff").

The Court having considered the motion, the joinder filed by Ramsay on April 7, 2017, the opposition filed by Plaintiff on April 24, 2017, Planet Hollywood's reply in support of the

1 motion, and Ramsay's reply in support of the joinder to the motion, as well as the arguments of
2 counsel presented at the hearing, and good cause appearing therefor,

3 THE COURT HEREBY FINDS that Plaintiff failed to plead facts sufficient to support a
4 breach of contract claim against Planet Hollywood for: (1) continuing to do business with
5 Ramsay; (2) refusing to provide GR BURGR, LLC ("GRB") with an opportunity to cure its
6 affiliation with Plaintiff; and (3) attempting and/or planning to operate a rebranded restaurant.
7 The plain language of the agreement precludes these claims as a matter of law. They must
8 therefore be dismissed.

9 THE COURT HEREBY FURTHER FINDS that Plaintiff pleaded facts at the
10 NRCP 12(b)(5) stage sufficient to support: (1) a breach of contract claim for paying all or a
11 portion of the license fees to Ramsay or an affiliated entity; and (2) the remainder of the causes of
12 action upon which Planet Hollywood moved for dismissal. Plaintiff's cause of action for breach
13 of the implied covenant of good faith and fair dealing sufficiently alleges extra-contractual duties
14 and breaches thereof. Plaintiff's cause of action for unjust enrichment as an alternative cause of
15 action is sufficient under Nevada law. Additionally, Plaintiff's claims for civil conspiracy and
16 declaratory relief are sufficient such that, consistent with the standard for a motion to dismiss, if
17 taken as true, relief may be granted.

18 THE COURT HEREBY FURTHER FINDS as to Ramsay's joinder that the breach of
19 contract claims Plaintiff alleges against Ramsay are distinct from those Plaintiff alleges against
20 Planet Hollywood. Plaintiff's claims against Ramsay are also sufficiently stated such that relief
21 may be granted under Nevada law.

22 Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the
23 motion is granted in part, without prejudice, and denied in part, without prejudice, as follows:

24 1. GRANTED as to the claims at Paragraphs 68 A, F, and H of the Complaint; and
25
26
27
28

2. DENIED as to the claim at Paragraph 68 E and breach of the implied covenant of good faith and fair dealing, unjust enrichment, civil conspiracy, and declaratory relief causes of action.

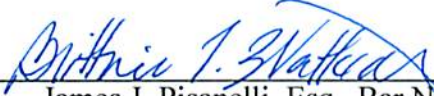
IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the joinder is denied without prejudice.

DATED: _____

THE HONORABLE JOSEPH HARDY
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:


PISANELLI BICE PLLC

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

Counsel for Defendant PHWLTV, LLC

APPROVED AS TO FORM AND CONTENT:

CARBAJAL & MCNUTT, LLP

By: 
Daniel R. McNutt, Esq., Bar No. 7815
Matthew C. Wolf, Esq., Bar No. 10801
625 South 8th Street
Las Vegas, NV 89101

Counsel for Plaintiff Rowen Seibel

FENNEMORE CRAIG, P.C.

By: _____
Allen J. Wilt, Esq., Bar No. 4798
John D. Tennert, Esq., Bar No. 11728
300 East Second Street – Suite 1510
Reno, NV 89501

Counsel for Defendant Gordon Ramsay

2. DENIED as to the claim at Paragraph 68 E and breach of the implied covenant of good faith and fair dealing, unjust enrichment, civil conspiracy, and declaratory relief causes of action.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the joinder is denied without prejudice.

DATED: June 1, 2017


THE HONORABLE JOSEPH HARDY
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

PISANELLI BICE PLLC

By: _____

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

Counsel for Defendant PHWL, LLC

APPROVED AS TO FORM AND CONTENT:

CARBAJAL & MCNUTT, LLP

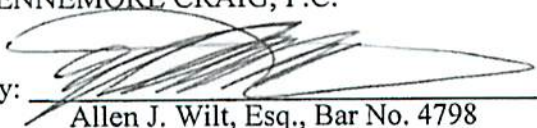
By: _____

Daniel R. McNutt, Esq., Bar No. 7815
Matthew C. Wolf, Esq., Bar No. 10801
625 South 8th Street
Las Vegas, NV 89101

Counsel for Plaintiff Rowen Seibel

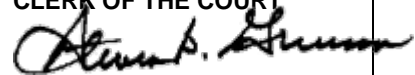
FENNEMORE CRAIG, P.C.

By: _____


Allen J. Wilt, Esq., Bar No. 4798
John D. Tennert, Esq., Bar No. 11728
300 East Second Street – Suite 1510
Reno, NV 89501

Counsel for Defendant Gordon Ramsay

TAB 21



James J. Pisanelli, Esq., Bar No. 4027
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Debra L. Spinelli, Esq., Bar No. 9695
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Brittnie Watkins, Esq., Bar No. 13612
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400 South 7th Street, Suite 300
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Telephone: 702.214.2100

Attorneys for Defendant PHWLTV, LLC

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

Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

Case No.: A-17-751759

Dept. No.: XV

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND DENYING IN
PART PLANET HOLLYWOOD'S
MOTION TO DISMISS**

Date of Hearing: May 17, 2017

Time of Hearing: 9:00 a.m.

PLEASE TAKE NOTICE that an "Order Granting in Part and Denying in Part
Planet Hollywood's Motion to Dismiss" was entered in the above-captioned matter on June 15,
2017, a true and correct copy of which is attached hereto.

DATED this 16th day of June, 2017.

PISANELLI BICE PLLC

By: /s/ Debra L. Spinelli

James J. Pisanelli, Esq., #4027
Debra L. Spinelli, Esq., #9695
Brittnie T. Watkins, Esq., #13612
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Defendant PHWLTV, LLC

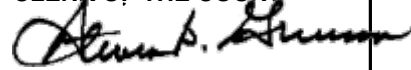
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 16th day of June, 2017, I caused to be served via the Court's e-filing/e-service system true and correct copies of the above and foregoing **NOTICE OF ENTRY OF ORDER** to the following:

Daniel R. McNutt, Esq.
Matthew C. Wolf, Esq.
CARBAJAL & McNUTT, LLP
625 South Eighth Street
Las Vegas, NV 89101

Allen J. Wilt, Esq.
John D. Tennert III, Esq.
300 East Second Street, Suite 1510
Reno, NV 89501

/s/ Kimberly Peets
An employee of Pisanelli Bice PLLC



ORDR

James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
Debra L. Spinelli, Esq., Bar No. 9695
DLS@pisanellibice.com
M. Magali Mercera, Esq., Bar No. 11742
MMM@pisanellibice.com
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BTW@pisanellibice.com
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Las Vegas, Nevada 89101
Telephone: 702.214.2100

Counsel for Defendant PHWLTV, 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;

Case No.: A-17-751759-B

Dept. No.: XV

Plaintiff,
vs.

**ORDER GRANTING IN PART
AND DENYING IN PART
PLANET HOLLYWOOD'S
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PHWLTV, LLC, a Nevada limited liability
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Nominal Defendant.

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The Court having considered the motion, the joinder filed by Ramsay on April 7, 2017, the opposition filed by Plaintiff on April 24, 2017, Planet Hollywood's reply in support of the

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2 counsel presented at the hearing, and good cause appearing therefor,

3 THE COURT HEREBY FINDS that Plaintiff failed to plead facts sufficient to support a
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7 The plain language of the agreement precludes these claims as a matter of law. They must
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22 Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the
23 motion is granted in part, without prejudice, and denied in part, without prejudice, as follows:

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2. DENIED as to the claim at Paragraph 68 E and breach of the implied covenant of good faith and fair dealing, unjust enrichment, civil conspiracy, and declaratory relief causes of action.

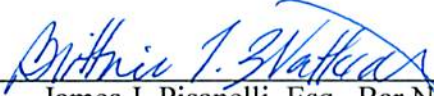
IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the joinder is denied without prejudice.

DATED: _____

THE HONORABLE JOSEPH HARDY
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:


PISANELLI BICE PLLC

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

Counsel for Defendant PHWLTV, LLC

APPROVED AS TO FORM AND CONTENT:

CARBAJAL & MCNUTT, LLP

By: 
Daniel R. McNutt, Esq., Bar No. 7815
Matthew C. Wolf, Esq., Bar No. 10801
625 South 8th Street
Las Vegas, NV 89101

Counsel for Plaintiff Rowen Seibel

FENNEMORE CRAIG, P.C.

By: _____
Allen J. Wilt, Esq., Bar No. 4798
John D. Tennert, Esq., Bar No. 11728
300 East Second Street – Suite 1510
Reno, NV 89501

Counsel for Defendant Gordon Ramsay

2. DENIED as to the claim at Paragraph 68 E and breach of the implied covenant of good faith and fair dealing, unjust enrichment, civil conspiracy, and declaratory relief causes of action.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the joinder is denied without prejudice.

DATED: June 1, 2017


THE HONORABLE JOSEPH HARDY
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

PISANELLI BICE PLLC

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

Counsel for Defendant PHWL, LLC

APPROVED AS TO FORM AND CONTENT:

CARBAJAL & MCNUTT, LLP

By: _____
Daniel R. McNutt, Esq., Bar No. 7815
Matthew C. Wolf, Esq., Bar No. 10801
625 South 8th Street
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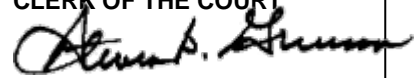
Counsel for Plaintiff Rowen Seibel

FENNEMORE CRAIG, P.C.

By:  _____
Allen J. Wilt, Esq., Bar No. 4798
John D. Tennert, Esq., Bar No. 11728
300 East Second Street – Suite 1510
Reno, NV 89501

Counsel for Defendant Gordon Ramsay

TAB 22



DANIEL R. MCNUTT (SBN 7815)
MATTHEW C. WOLF (SBN 10801)
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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.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

Case No.: A-17-751759-B

Dept. No.: 15

**FIRST AMENDED VERIFIED
COMPLAINT**

*Request for Assignment to Business Court Due
to Claims Involving Business Torts under EDCR
1.61(a)(2)(ii), Claims Involving an Interest in a
Business under EDCR 1.61(A)(2)(iii), and
Claims Involving Business Franchise
Transactions or Relationships under EDCR
1.61(a)(2)(iv)*

*Exempt from Arbitration Under NEV. REV.
STAT. § 38.255 and NAR 3(a) Due to Requests
for Equitable and Declaratory Relief and
Amount in Controversy*

*Exempt from Petition for Exemption from
Arbitration Requirements Under NAR 5(a) Due
to Requests for Equitable and Declaratory
Relief*

Plaintiff Rowen Seibel ("Seibel"), a member and manager of GR Burgr LLC ("GRB")
appearing derivatively on its behalf, hereby complains as follows:

I. PARTIES AND JURISDICTION.

1. Defendant PHWLTV, LLC ("PH") is a Nevada limited liability company. Its principal
place of business is in Clark County, Nevada. PH is owned, directly or indirectly, by Caesars
Entertainment Corporation ("Caesars").

2. Defendant Gordon Ramsay ("Ramsay") is an individual greater than eighteen years of

1 age and a citizen of the United Kingdom.

2 3. Clark County, Nevada, is a proper venue because the agreements, acts, events,
3 occurrences, decisions, transactions, or omissions giving rise to this lawsuit occurred or were
4 performed in Clark County, Nevada.

5 4. The identities of defendants DOES I through X and ROE CORPORATIONS I through
6 X are unknown at this time and may be person or entities who are responsible in some manner for
7 the losses, injuries, and damages herein alleged. The roles of these defendants may include, but is
8 not limited to, (1) owning or operating the restaurant(s) at issue; (2) directly or indirectly assisting
9 Defendants in breaching their contractual or common law duties; (3) directly or indirectly infringing
10 upon, misappropriating, or misusing GRB's intellectual property; (4) directly or indirectly assisting
11 Defendants with infringing upon, misappropriating, or misusing GRB's intellectual property; (5)
12 being employees, agents, servants, or joint ventures of the defendants named herein who are
13 responsible in some manner for the losses, injuries, and damages alleged herein; (6) being managers
14 with some control over and responsibility for the defendants named herein; (7) being business
15 entities controlled by or associated with the defendants named herein, including but not limited to
16 parent corporations, wholly owned subsidiaries, or alter egos; or (8) being employers, agents,
17 principals, masters, or joint ventures of the defendants named herein who are responsible in some
18 manner for the losses, injuries, and damages alleged herein.

19 5. To the extent two or more allegations, causes of action, or forms of relief or damages
20 alleged or requested herein are inconsistent or incompatible, each such allegation or cause of action is
21 pled in the alternative, and each such form of damages or relief is requested in the alternative.

22 6. To the extent the Court were to determine a cause of action alleged herein is a form of
23 relief and not an independent cause of action, Plaintiff respectfully requests that each such cause of
24 action be construed in the alternative as a request for relief.

25 7. To the extent the Court were to determine a form of relief requested herein should
26 have been pled as an independent cause of action, Plaintiff respectfully requests that each such form
27 of relief be construed in the alternative as an independent cause of action.
28

1 8. For each paragraph, allegation, and claim herein, Plaintiff repeats, re-alleges, and
2 expressly incorporates each and every preceding paragraph, allegation, and claim.

3 **II. DERIVATIVE ALLEGATIONS.**

4 9. GRB is a Delaware limited liability company. Its equal members are Seibel, a citizen
5 of New York, and GR US Licensing LP (“GRUS”), a Delaware limited partnership. GRUS’s
6 general partner is Kavalake Limited (“Kavalake”), and Kavalake’s director is Ramsay. GRB’s equal
7 managers are Seibel and Mr. Gillies. Seibel appointed himself as a manager of GRB, and GRUS
8 appointed Mr. Gillies.

9 10. As an active member and manager of GRB who has been a member and manager of
10 GRB at all relevant times, Seibel is pursuing this lawsuit derivatively on behalf of GRB.

11 11. GRB is a Delaware limited liability company, and its limited liability company
12 agreement (“GRB Operating Agreement”) is governed by Delaware law.

13 12. 6 DEL.C. § 18-1001 provides, “A member or an assignee of a limited liability
14 company interest may bring an action in the Court of Chancery in the right of a limited liability
15 company to recover a judgment in its favor if managers or members with authority to do so have
16 refused to bring the action or if an effort to cause those managers or members to bring the action is
17 not likely to succeed.”

18 13. 6 DEL.C. § 18-1002 also provides, “In a derivative action, the plaintiff must be a
19 member or an assignee of a limited liability company interest at the time of bringing the action and:
20 (1) [a]t the time of the transaction of which the plaintiff complains; or (2) [t]he plaintiff’s status as a
21 member or an assignee of a limited liability company interest had devolved upon the plaintiff by
22 operation of law or pursuant to the terms of a limited liability company agreement from a person
23 who was a member or an assignee of a limited liability company interest at the time of the
24 transaction.”

25 14. Paragraph 8.1 of GRB’s operating agreement states, “The Managers shall have the full
26 and exclusive right, power and authority to manage all of the business and affairs of the Company
27 with all the rights and powers generally conferred by law, or necessary, advisable or consistent
28

1 therewith. All decisions of the Managers shall be made by the approval or vote of a majority of all
2 Managers. Once a decision has been reached by the Managers in accordance with this Section, any
3 Manager is authorized to carry out the decision and execute any and all documents on behalf of the
4 Company necessary or appropriate in connection therewith.”

5 15. NEV. R. CIV. P. 23.1 states, “In a derivative action brought by one or more
6 shareholders or members to enforce a right of a corporation or of an unincorporated association, the
7 corporation or association having failed to enforce a right which may properly be asserted by it, the
8 complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time
9 of the transaction of which the plaintiff complains or that the plaintiff’s share or membership
10 thereafter devolved on the plaintiff by operation of law. The complaint shall also allege with
11 particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the
12 directors or comparable authority and, if necessary, from the shareholders or members, and the
13 reasons for the plaintiff’s failure to obtain the action or for not making the effort. The derivative
14 action may not be maintained if it appears that the plaintiff does not fairly and adequately represent
15 the interests of the shareholders or members similarly situated in enforcing the right of the
16 corporation or association. The action shall not be dismissed or compromised without the approval
17 of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or
18 members in such manner as the court directs.” Pursuant to this rule, a verification declaration by
19 Seibel is attached hereto as Exhibit 1. The contents of the Seibel declaration are expressly
20 incorporated into this Complaint as if fully set forth herein.
21

22 16. As established by Seibel’s declaration, demanding that Mr. Gillies authorize GRB to
23 file this lawsuit would be futile because (i) Mr. Gillies seeks to dissolve GRB and has caused a
24 judicial dissolution proceeding to be filed in Delaware; (ii) upon information and belief, Mr. Gillies is
25 aware, approves of and benefits from the suspected misappropriation by Ramsay or an affiliated
26 entity of monies belonging to GRB; and (iii) Mr. Gillies’ close relationship with and loyalty to
27 Ramsay creates a conflict of interest because this lawsuit seeks, in part, to recover those monies owed
28 to GRB that were wrongfully paid to Ramsay or an affiliated entity.

1 **III. THE BURGR RESTAURANT AT PLANET HOLLYWOOD.**

2 **A. The Intellectual Property.**

3 17. GRB owns the trademark “BURGR” and licenses the trademark “BURGR Gordon
4 Ramsay” from GRUS. GRB also owns rights relating to the burger-centric/burger-themed restaurant
5 system and concept utilizing the BURGR and/or BURGR Gordon Ramsay marks, and the recipes and
6 menus relating to the concept.

7 18. Although the GRB Operating Agreement recognizes that GRB owns the BURGR
8 marks, Ramsay wrongfully registered that mark in the name of his personal entity, Gordon Ramsay
9 Holdings LLC. Only after Seibel discovered that Ramsay had misappropriated the mark and
10 complained to Ramsay was the mark assigned to GRB in November 2014.

11 **B. The Parties Enter the Development Agreement and Open the Restaurant.**

12 19. In December 2012, Ramsay, GRB, and PHW Las Vegas, LLC (“PHW Las Vegas”)
13 entered a Development, Operation and License Agreement (the “Development Agreement”)
14 concerning the design, development, construction, and operation of a restaurant known as “BURGR
15 Gordon Ramsay” (hereinafter, the “Restaurant”) inside the Planet Hollywood hotel in Las Vegas,
16 Nevada.

17 20. Sometime around 2013, PHW Las Vegas assigned the Development Agreement to PH.

18 21. PH, through the Development Agreement, licensed from GRB the rights to use the
19 “GRB Marks,” as that phrase is defined in the Development Agreement (including the BURGR
20 Gordon Ramsay marks) and the “General GR Materials,” as that phrase is defined in the
21 Development Agreement, including the proprietary concepts, systems, menus, and recipes designed
22 for use in connection with the Restaurant. Hereinafter, the “Intellectual Property” refers collectively
23 to **(i)** the GRB Marks; **(ii)** the BURGR Gordon Ramsay marks; **(iii)** the General GR Materials; **(iv)**
24 the proprietary concepts, systems, menus, and recipes designed for use in connection with the
25 Restaurant; **(v)** the rights relating to the burger-centric/burger-themed restaurant system and concept
26 utilizing the BURGR and/or BURGR Gordon Ramsay marks, and the recipes and menus relating to
27 the concept; and **(vi)** all other rights, tradenames, trademarks, trade secrets, and intellectual property
28

1 licensed, sublicensed, leased, or loaned in the Development Agreement.

2 22. In exchange for a license fee (hereinafter, the “License Fee”) it was required to pay
3 GRB, PH had the right to use the Intellectual Property in conjunction with the operation and
4 advertising of the Restaurant and the sale of certain products at the Restaurant.

5 23. The License Fee owed to GRB is defined as “(a) four percent (4%) of Gross
6 Restaurant Sales up to ten million dollars (\$10,000,000); plus (b) six percent (6%) of Gross
7 Restaurant Sales greater than ten million dollars (\$10,000,000) up to twelve million dollars
8 (\$12,000,000); plus (c) eight percent (8%) of Gross Restaurant Sales greater than twelve million
9 dollars (\$12,000,000); plus (d) ten percent (10%) of all Gross Retail Sales.” Said amount is to be
10 paid prior to any capital repayment that may be owed.

11 24. After the repayment of PH’s initial capital investment, the License Fee required to be
12 paid by PH to GRB is increased to “(a) six percent (6%) of Gross Restaurant Sales up to twelve
13 million dollars (\$12,000,000); plus (b) eight percent (8%) of Gross Restaurant Sales greater than
14 twelve million dollars (\$12,000,000); plus (c) ten percent (10%) of all Gross Retail Sales.”

15 25. The Development Agreement obligated PH to pay the License Fee to GRB. It did not
16 give Ramsay or an affiliate any right to receive any independent portion of the License Fee.

17 26. For years, PH paid approximately one million dollars per year in License Fee to GRB
18 pursuant to the Development Agreement.

19 **C. PH and Ramsay Conspire to Oust Seibel and GRB from the Restaurant.**

20 27. PH, together with Ramsay, began efforts in 2016 to force Seibel out of the Restaurant
21 and misappropriate the Restaurant for themselves without paying any consideration to Seibel. These
22 efforts were part of a broader scheme by Caesars, its affiliates and Ramsay to force Seibel out of a
23 number of restaurants and misappropriate the revenues and profits from these restaurants for
24 themselves without paying any consideration to Seibel so that they did not have to share such
25 revenues and profits from of these very successful restaurants with Seibel.

26 28. In January 2015, Caesars Entertainment Operating Company, Inc. (“CEOC”) filed
27 for bankruptcy protection under Chapter 11 in United States Bankruptcy Court, Northern District of
28

1 Illinois, Eastern Division, together with a number of its subsidiaries and affiliates. PH was not part
2 of the bankruptcy proceeding. Thereafter, in or around June 2015, Caesars, CEOC, and their
3 affiliated companies, together with Ramsay, began to make concerted efforts to force Seibel and his
4 affiliates out of restaurant ventures they had together without paying any consideration to Seibel,
5 notwithstanding the fact that in some cases Seibel and/or his affiliated entities had invested 50% of
6 the capital required to develop and open the restaurant and the parties had contractually agreed that
7 restaurants of such type could not be operated without Seibel's affiliated entity that was the
8 contracting party.

9
10 29. For example, in June 2015, CEOC and/or its affiliate Desert Palace, Inc. ("DPI")
11 moved to reject, in the Chapter 11 proceedings, the Development and Operation Agreement between
12 LLTQ Enterprises, LLC ("LLTQ") a former affiliate of Seibel, and DPI relating to the development
13 and operation of the Gordon Ramsay Pub and Grill at Caesars Palace in Las Vegas for which LLTQ
14 had invested 50% of the capital required to open the restaurant. When LLTQ challenged the
15 rejection on the basis, among many other reasons, that the agreement between DPI and LLTQ was
16 integrated with the agreement between DPI and Ramsay (and its affiliate) and that DPI could not
17 reject one without the other or keep the restaurant open without LLTQ, DPI sought to reject the
18 corresponding Ramsay agreement and simultaneously obtain court approval for a brand new Ramsay
19 agreement, to the exclusion of LLTQ, that was less beneficial to DPI and its bankruptcy estate than
20 the prior Ramsay agreement. Notwithstanding LLTQ's significant investment, the foregoing acts
21 would rob LLTQ of 50% of the profits from such restaurants to which it was contractually entitled
22 and provide DPI and Ramsay with approximately \$2 million per annum that would otherwise be due
23 to LLTQ.

24 30. CEOC and its affiliate Boardwalk Regency Corporation engaged in a similar scheme
25 to take away the revenue stream of FERG, LLC (a former Seibel affiliate) with regard to FERG's
26 interest in the Gordon Ramsay Pub and Grill at Caesars Atlantic City.

27 31. PH and Ramsay are engaged in a similar scheme regarding the Restaurant.

28 32. In late 2015 and early 2016, PH and Ramsay began discussing a scheme by which

1 they would open new burger-centric/burger-themed restaurants together without Seibel's
2 participation contrary to the Development Agreement. When Seibel voiced his objection to this
3 scheme, PH and Ramsay began a scheme to force Seibel out of the Restaurant without paying Seibel
4 any consideration.

5 33. On April 7, 2016, Ramsay informed Seibel that he had unilaterally instructed PH to
6 pay Ramsay's entity, and not GRB, 50% of monies due GRB under the Development Agreement. In
7 contravention of the Development Agreement, PH agreed.

8 34. As a result, beginning in April 2016 PH paid 50% of monies due to GRB directly to
9 Ramsay. This arrangement, in violation of the Development Agreement (and the GRB Operating
10 Agreement), was intended as the first step in the joint effort by PH and Ramsay to wrest the
11 Restaurant from Seibel so that they did not have to share the revenues with him.

12 35. Around April 11, 2016, Seibel attempted to transfer his interest in GRB to The Seibel
13 Family 2016 Trust, but GRUS rejected that attempted transfer without basis. On information and
14 belief, PH was aware of Ramsay's baseless rejection of Seibel's transfer and conspired with Ramsay
15 to cause the rejection.

16 36. That baseless rejection of Seibel's transfer provided PH with a sham excuse to further
17 its efforts to force Seibel out of the Restaurant without paying any consideration when on August 19,
18 2016, judgment was entered on Seibel's guilty plea in the Southern District of New York to one
19 count of obstructing or impeding the due administration of the internal revenue laws under 26 U.S.C.
20 § 7212(a).

21 37. Neither Ramsay nor PH was aware in April 2016 of the tax investigation that resulted
22 in the judgment against Seibel's plea when they conspired to reject Seibel's proposed transfer. PH
23 and Ramsay conspired to reject the proposed transfer by Seibel in furtherance of their scheme to
24 exclude Seibel (or his transferee) from the financial benefits of the Restaurant.

25 38. Then, on or around September 21, 2016, a letter was sent by PHW Las Vegas dba
26 PHWM, defined in the letter as "Caesars," to GRB (hereinafter, the "Termination Letter") allegedly
27 terminating the Development Agreement under Section 4.2.5 for purported suitability reasons related
28

1 to Seibel. This termination was not valid because, among other reasons, it was not issued by PH.

2 39. The purported basis for this termination was illusory and in bad faith, as PH and
3 Ramsay had been planning since April 2016, at the latest, to force Seibel from his beneficial interest
4 in the Development Agreement and out of the Restaurant for no consideration.

5 40. The purported basis for this termination was illusory and in bad faith as PH did not in
6 good faith anticipate that it or its affiliates would be subject to disciplinary actions relating to its
7 gaming or alcohol licenses as a result of the judgment against Seibel.

8 41. Neither Seibel nor GRB has been found to be an “unsuitable person” by the Nevada
9 Gaming Control Board.

10 42. PH has never been sanctioned, fined, reprimanded by the Nevada Gaming Control
11 Board, or any other Nevada Gaming Authority, as a result of Seibel’s association with GRB.

12 43. PH has not sustained any monetary damages whatsoever as a result of Seibel’s
13 association with GRB.

14 44. The purported basis for this termination was illusory and in bad faith, as PH and
15 Ramsay schemed together to reject Seibel’s proposed transfer of his interest in GRB, which such
16 transfer would have cured any legitimate suitability concerns of PH.

17 45. Seibel remains ready, able, and willing to disassociate himself from GRB. In fact,
18 Seibel attempted to transfer his interests, but such transfer was unreasonably blocked by GRUS and
19 PH in furtherance of their scheme to force Seibel out of a number of restaurants and misappropriate
20 the revenues and profits from these restaurants for themselves so that they did not have to share such
21 revenues and profits from of these very successful restaurants with Seibel.

22 46. Prior to PH’s purported termination, Seibel requested that PH inform Seibel as to the
23 objections it had to the proposed transfer, but PH ignored Seibel’s request so that it alone, or with
24 Ramsay, could take Seibel’s share of the License Fee otherwise required to be paid to GRB.

25 47. Prior to PH’s purported termination, Seibel requested that PH work with Seibel to
26 arrive at an assignee that could be mutually agreeable to Seibel and PH but PH ignored Seibel’s
27 request so that PH alone, or with Ramsay, could take Seibel’s share of the License Fee otherwise
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1 required to be paid to GRB.

2 48. Removing Seibel from GRB dispositively cures any alleged problem identified by PH
3 as being the purported reason for terminating the Development Agreement.

4 49. However, PH and Gordon Ramsay have colluded to prevent Seibel from transferring
5 his interest in GRB thus evidencing both the fact that removing Seibel effectively cures any allegation
6 that Seibel is unsuitable and that the real reason to terminate the Development Agreement is
7 predicated upon PH's desire to retain Seibel's portion of the monies owed to GRB for itself.

8 50. The purported basis for this termination was illusory and in bad faith, since while
9 PHW Las Vegas was providing notice of termination allegedly because Seibel, a behind the scenes
10 50% member in a company that licensed certain rights to PH, allegedly became an unsuitable
11 person, Caesars and other affiliates of PH were engaged in relationships and were parties to contracts
12 with notorious criminals with long histories of arrests and convictions, including some for violent
13 crimes, the most recent of which appears to be the Rapper T.I. whose name is promoted all over Las
14 Vegas as a method to attract people to the club within a Caesars property where he is performing
15 with the obvious hope of the same also resulting in additional casino activity.

16 51. The purported basis for this termination was illusory and in bad faith, since while
17 PHW Las Vegas was providing notice of termination allegedly because Seibel, a behind the scenes
18 50% member in a company that licensed certain rights to PH, allegedly became an unsuitable
19 person, Caesars and other affiliates of PH had a long history of contracting with and promoting
20 professional boxers and boxing promoters who had extensive arrest and criminal conviction records
21 to financially gain not just from the boxing matches but also from the additional activity such
22 matches would attract to their casinos.

23 52. The purported basis for this termination was illusory and in bad faith, since while
24 PHW Las Vegas was providing notice of termination because Seibel, a behind the scenes 50%
25 member in a company that licensed certain rights to PH, allegedly became an unsuitable person,
26 Caesars and other affiliates of PH had a long history of continuing to do business with persons under
27 similar circumstances. Caesars and PH have in the past contracted with, or remained in contract
28 with parties to operate restaurants or clubs in spite of indictments and/or felony convictions of such

1 parties without any disciplinary action to Caesars or PH.

2 53. The purported termination is invalid and is a sham for the additional reason that PH
3 did not cease operations of the Restaurant after the purported termination.

4 54. Section 4.3.2(a) states that upon termination of the Development Agreement, PH
5 “shall cease operation of the Restaurant and its use of” the Intellectual Property. It also states that PH
6 may continue to operate the Restaurant after termination for up to 120 days, but as long as the
7 Restaurant is in operation, PH must continue to pay the License Fee to GRB.

8 55. Further, Section 4.3.2(e) expressly states that upon the termination of the Development
9 Agreement, PH “shall not use the Restaurant’s food and beverage menus or recipes developed by
10 GRB and/or Gordon Ramsay or use any of the GRB Marks or General GR Materials.”

11 56. However, to this day, despite its purported “termination,” the Restaurant remains open
12 for business and is generating millions of dollars in profits annually yet PH is not paying the License
13 Fee earned and due to GRB.

14 57. In fact, subsequent to the purported termination, PH continued to use the Intellectual
15 Property, GRB Marks, and General GR Materials in operating the Restaurant. But then, on
16 information and belief, instead of paying the monies due directly to GRB, PH and Ramsay colluded
17 and diverted payment of the License Fee away from GRB and made some portion of that payment
18 directly to Ramsay and/or GRUS or another affiliated entity in furtherance of their scheme to deprive
19 Seibel of his rights and revenue.

20 58. Furthermore, even Caesars’ Charter documents require or permit Caesars to pay
21 monies to certain shareholders found to be unsuitable persons by purchasing their shares at fair
22 market value.

23 59. Through its patent breach, PH has enriched itself by retaining Seibel’s share of the
24 monies due and owed to GRB as a result of the continued operation of the Restaurant.

25 **D. The Rebranded Restaurant.**

26 60. After wrongfully terminating the Development Agreement, PH and Ramsay have
27 continued to utilize the Intellectual Property and operate the Restaurant. However, PH and Ramsay
28 claim that the Restaurant is a “new” restaurant because they changed the name of the Restaurant

1 (hereinafter, the renamed Restaurant is the “Rebranded Restaurant”). Although the Rebranded
2 Restaurant is now called “Gordon Ramsay Burger” as opposed to “BURGR Gordon Ramsay” it is,
3 in fact, the exact same burger themed/burger centric restaurant and continues to utilize the
4 Intellectual Property.

5 61. Specifically, by way of example, the following methods, concepts and items that are
6 some of the foundational elements of operating the original restaurant, have remained exactly the
7 same for purposes of operating the Rebranded Restaurant: the casualized dining concept including
8 the open kitchen concept and design, cooking the burgers on hardwood, use of the original firewall
9 design, the uniform concept, the layout of the kitchen, the booth and table placement within the
10 restaurant, the metallic fry cones, the cocktail menu, the shake menu, the ordering system, the
11 recipes, including but not limited to the almost complete duplication of the top selling menu items
12 such as the Hells Kitchen Burger, the Hog Burger, Parmesan Truffel Fries, Beer Battered Onion
13 Rigns, Hellfire Chicken Wings, the Dawg hot dog.

14 62. Any changes made to the Rebranded Restaurant are superficial at best and reflect the
15 continued use of the Intellectual Property.

16 63. Around October 2016 and thereafter, Ramsay or an affiliate had several applications
17 submitted to the USPTO to trademark “Gordon Ramsay Burger.” Ramsay or an affiliate submitted
18 these applications to use the trademark “Gordon Ramsay Burger” at the Rebranded Restaurant, where
19 it is currently being used. Ramsay’s trademark applications violate GRB’s trademark rights and
20 rights under the license agreement with Ramsay.

21 64. PH and Ramsay’s conduct related to the Rebranded Restaurant violates the
22 Development Agreement and the implied covenant of good faith and fair dealing for reasons that
23 include, but are not limited to, the following:

24 a) Section 4.3.2(a) of the Development Agreement obligates PH to wind up its
25 operation of the Restaurant within 120 days of termination of the Development Agreement. The
26 Development Agreement does not contain any provisions by which this 120 day period can be
27 extended. Based upon information and belief, around January 2017, PH, GRUS, and Ramsay
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1 improperly agreed without the knowledge or consent of Seibel or GRB to extend this 120 day period.
2 Based further upon information and belief, the sole reason for this improper extension was to afford
3 additional time for Ramsay or an affiliate to resolve the trademark issues before the USPTO, so as to
4 allow the Restaurant to begin operating immediately as the Rebranded Restaurant without the
5 Restaurant ever being closed for any period of time.

6 b) In breach of the Development Agreement, PH and Ramsay are using the
7 Intellectual Property for the Rebranded Restaurant.

8 c) Upon information and belief, Ramsay and PH intend to open additional burger
9 themed or burger centric restaurants utilizing the Intellectual Property in breach of the Development
10 Agreement;

11 d) Section 14.21 of the Development Agreement obligates PH to enter a similar,
12 separate written agreement with GRB concerning the Rebranded Restaurant. PH and Ramsay have
13 breached § 14.21 of the Development Agreement by failing to enter a similar, separate written
14 agreement with GRB or an affiliate concerning the Rebranded Restaurant.

15 65. As a direct and proximate result of all of the conduct and events alleged in this
16 Complaint, Plaintiff has suffered over \$15,000.00 in actual damages, and such losses shall continue to
17 accrue pending judgment of this matter. But for the above-referenced events, Plaintiff would not have
18 suffered these injuries, losses, and damages.

19 66. Plaintiff also is seeking an award of its fees and costs under the fee-award provisions
20 in the Development Agreement. Section 14.13 states, “The prevailing party in any dispute that arises
21 out of or relates to the making or enforcement of the terms of this Agreement shall be entitled to
22 receive an award of its expenses incurred in pursuit or defense of said claim, including, without
23 limitation, attorneys’ fees and costs, incurred in such action.”

24 67. GRB also requests an accounting under Section 8.4 of the Development Agreement
25 and the laws of equity. Without an accounting, GRB may not have adequate remedies at law because
26 the exact amount of monies owed to it could be unknown. The accounts between the parties are of
27 such a complicated nature that an accounting is necessary and warranted. Furthermore, GRB has
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entrusted and relied upon PH to maintain accurate and complete records and to compute the amount of monies due under the Development Agreement.

68. Delaware law further provides that “[i]f a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorney’s fees, from any recovery in any such action or from a limited liability company.” 6 DEL.C. § 18-1004. Seibel requests an award of his fees and costs pursuant to this statute.

**FIRST CAUSE OF ACTION
Breaches of Contract
(Against All Defendants)**

69. The Development Agreement is a valid and enforceable contract between GRB, PH, and Ramsay.

70. PH breached the Development Agreement by engaging in conduct that includes, but is not limited to, the following:

a) Operating the Restaurant and the Rebranded Restaurant with Ramsay following the alleged termination of the Development Agreement;

b) Continuing to operate the Restaurant following the alleged termination of the Development Agreement;

c) Continuing to use the Intellectual Property following the alleged termination of the Development Agreement without paying the License Fee to GRB;

d) Failing and refusing to pay the License Fee and other monies to GRB for the period of time it has operated the Restaurant and used the Intellectual Property;

e) Paying all or a portion of the License Fee to Ramsay or his affiliated entity;

f) Allegedly extending the 120 day post-termination period to wind up the Restaurant and continuing to operate the Restaurant beyond the wind up deadline in the Development Agreement; *and*

g) Opening and operating the Rebranded Restaurant, which is unquestionably a “burger centric or burger themed” restaurant within the meaning of Section 14.21 of the Development

1 Agreement, with Ramsay or an affiliate, using the Intellectual Property for the Rebranded Restaurant,
2 and failing to enter a separate written agreement with GRB or an affiliate concerning the Rebranded
3 Restaurant and failing to pay the license fee for use of the Intellectual Property which is being utilized
4 to operate the Rebranded Restaurant.

5 71. Ramsay breached the Development Agreement by engaging in conduct that includes,
6 but is not limited to, the following:

7 a) Receiving, directly or indirectly, monies intended for and owed to GRB under
8 the Development Agreement;

9 b) Attempting to continue to do business with PH and operate the Restaurant with
10 PH in direct violation of the Development Agreement;

11 c) Continuing to use the Intellectual Property following the alleged termination of
12 the Development Agreement;

13 d) Continuing to use the Intellectual Property following the alleged termination of
14 the Development Agreement;

15 e) Allegedly extending the 120 day post-termination period to wind up the
16 Restaurant and continuing to operate the Restaurant beyond the wind up deadline in the Development
17 Agreement; *and*

18 f) Opening and operating the Rebranded Restaurant with PH or an affiliate, using
19 the Intellectual Property for the Rebranded Restaurant, and failing to enter a separate written
20 agreement with GRB or an affiliate concerning the Rebranded Restaurant.

21 72. As a direct and proximate result of the above-referenced events, GRB has suffered
22 injuries, losses, and damages exceeding \$15,000.00. But for the above-referenced events, GRB
23 would not have suffered these injuries, losses, and damages.

24 73. GRB also is seeking an award of its fees and costs under the fee-award provision in
25 the Development Agreement.
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27
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SECOND CAUSE OF ACTION
Contractual Breaches of the Implied Covenant of Good Faith and Fair Dealing
(Against All Defendants)

74. In Nevada, every contract imposes upon the parties an implied covenant of good faith and fair dealing. A party breaches the implied covenant by (1) performing a contract in a manner unfaithful to its purpose and that frustrates or denies the justified expectations of the other party; (2) interfering with or failing to cooperate with an opposing party with the performance of a contract; (3) acting arbitrarily, capriciously, or in bad faith; (4) failing to exercise and perform discretionary powers under a contract in good faith; (5) unduly delaying performance or payment under a contract; or (6) literally complying with the terms of a contract and therefore not technically breaching the contract but nevertheless violating the intent and spirit of the contract.

75. The Development Agreement constitutes a binding and enforceable contract that imposes an implied covenant of good faith and fair dealing upon PH and Ramsay.

76. In the event the Court were to conclude PH literally complied with any of the terms of the Development Agreement, PH breached the implied covenant by engaging in arbitrary, capricious, and bad faith conduct that includes, but is not limited to, the following:

a) Pursuing an arbitrary, capricious, and bad faith scheme with Ramsay to oust Seibel and GRB from the Restaurant to increase PH's profits;

b) Attempting to interfere with Seibel's relationship with the Restaurant by diverting funds away from GRB to Ramsay or an affiliate;

c) Conspiring with Ramsay to reject Seibel's attempted transfer of his interest in the Development Agreement;

d) Purporting to terminate the Development Agreement on the wholly illusory unsuitability grounds;

e) Continuing to do business with Ramsay in conjunction with the Development Agreement following the alleged termination of the Development Agreement;

f) Continuing to operate the Restaurant following the alleged termination of the Development Agreement;

1 g) Continuing to use the Intellectual Property following the alleged termination of
2 the Development Agreement;

3 h) Failing and refusing to pay the License Fee and other monies to GRB for the
4 period of time it has operated the Restaurant and used the Intellectual Property;

5 i) Paying all or a portion of the License Fee to Ramsay or an affiliated entity;

6 j) Failing and refusing to provide GRB with a reasonable and good faith
7 opportunity to cure its purported association or affiliation with any unsuitable persons, as
8 contemplated in Section 11.2 of the Development Agreement;

9 k) Purporting to terminate the Development Agreement on suitability grounds
10 through PHW Las Vegas and PHWM, which has no power or right to terminate the agreement on
11 suitability grounds;

12 l) Selectively, arbitrarily, and capriciously choosing to do business or enter
13 financial transactions, directly or indirectly, with persons who have criminal records (including but
14 not limited to the rapper Clifford Joseph Harris Jr., better known as “T.I.”) or are dishonest, immoral,
15 infamous, of ill-repute, or potentially or actually unsuitable;

16 m) Allegedly extending the 120 day post-termination period under the
17 Development Agreement to wind up the Restaurant for the bad faith purpose of opening the
18 Rebranded Restaurant and continuing to operate the Restaurant beyond the wind up deadline in the
19 Development Agreement;

20 n) Opening and operating the Rebranded Restaurant with Ramsay or an affiliate,
21 using the Intellectual Property for the Rebranded Restaurant, and failing to enter a separate written
22 agreement with GRB or an affiliate concerning the Rebranded Restaurant; *and*

23 o) Claiming Nevada gaming law and authorities would prohibit PH from paying
24 any monies to GRB or from allowing Seibel to assign his interest in GRB to The Seibel Family 2016
25 Trust or another person or entity when (i) no Nevada gaming laws prohibit the same; (ii) no Nevada
26 gaming authority has prohibited the same; (iii) no Nevada gaming authority has instituted any action
27 or threatened to institute any action against PH or an affiliate; (iv) Caesars’ current certificate of
28

1 incorporation expressly allows the company to redeem the stock of unsuitable persons; and (v)
2 historical precedent exists within the Nevada gaming community for allowing Seibel to assign his
3 interest in GRB to The Seibel Family 2016 Trust or another person or entity.

4 77. In the event the Court were to conclude Ramsay literally complied with any of the
5 terms of the Development Agreement, Ramsay breached the implied covenant by engaging in
6 conduct that includes, but is not limited to, the following:

7 a) Pursuing an arbitrary, capricious, and bad faith scheme with PH to oust Seibel
8 and GRB from the Restaurant to increase the profits of himself or an affiliate;

9 b) Receiving, directly or indirectly, monies intended for and owed to GRB under
10 the Development Agreement;

11 c) Attempting to continue to do business with PH and operate the Restaurant with
12 PH in direct violation of the Development Agreement;

13 d) Continuing to use the Intellectual Property following the alleged termination of
14 the Development Agreement;

15 e) Enticing and encouraging PH to breach its contractual obligations to GRB;

16 f) Refusing to allow assignments related to GRB to damage and harm GRB's
17 contractual rights;

18 g) Wrongfully representing to PH that Seibel is an unsuitable person and that his
19 affiliation with GRB cannot be cured;

20 h) Allegedly extending the 120 day post-termination period under the
21 Development Agreement to wind up the Restaurant for the bad faith purpose of opening the
22 Rebranded Restaurant and continuing to operate the Restaurant beyond the wind up deadline in the
23 Development Agreement;

24 i) Opening and Operating the Rebranded Restaurant with PH or an affiliate, using
25 the Intellectual Property for the Rebranded Restaurant, and failing to enter a separate written
26 agreement with GRB or an affiliate concerning the Rebranded Restaurant; *and*

27 j) Claiming Nevada gaming law and authorities would prohibit PH from paying
28

1 any monies to GRB or from allowing Seibel to assign his interest in GRB to The Seibel Family 2016
2 Trust or another person or entity when (i) no Nevada gaming laws prohibit the same; (ii) no Nevada
3 gaming authority has prohibited the same; (iii) no Nevada gaming authority has instituted any action
4 or threatened to institute any action against PH or an affiliate; (iv) Caesars' current certificate of
5 incorporation expressly allows the company to redeem the stock of unsuitable persons; and (v)
6 historical precedent exists within the Nevada gaming community for allowing Seibel to assign his
7 interest in GRB to The Seibel Family 2016 Trust or another person or entity.

8 78. As a direct and proximate result of the above-referenced events, GRB has suffered
9 injuries, losses, and damages exceeding \$15,000.00. But for the above-referenced events, GRB
10 would not have suffered these injuries, losses, and damages.

11 79. GRB also is seeking an award of its fees and costs under the fee-award provision in
12 the Development Agreement.

13 **THIRD CAUSE OF ACTION**
14 **Unjust Enrichment**
15 **(Against All Defendants)**

16 80. All preceding paragraphs are incorporated herein.

17 81. By licensing the Intellectual Property and the General GR Materials to PH and on
18 account of PH's failure to pay License Fees, GRB conferred benefits upon PH, and it accepted,
19 appreciated, and retained the benefits. Specifically, PH has unlawfully retained and used the
20 Intellectual Property for the Restaurant and the Rebranded Restaurant.

21 82. PH has failed to cease using the Intellectual Property and to pay to GRB the License
22 Fees and other monies owed to GRB for the period of time it has operated the Restaurant and used the
23 Intellectual Property.

24 83. In the event the Court were to conclude the Development Agreement is no longer valid
25 or enforceable, it would be unjust, unfair, and inequitable for PH and Ramsay to be permitted to
26 retain or use the Intellectual Property and monies owed to GRB for the period of time they have
27 operated the Restaurant and used the Intellectual Property. It would be further unjust, unfair, and
28 inequitable for PH and Ramsay to be permitted to use the Intellectual Property for the Rebranded

1 Restaurant without compensating GRB.

2 84. Ramsay, directly or indirectly, has wrongfully accepted and retained monies intended
3 for and owed to GRB under the Development Agreement. It would be unjust, unfair, and inequitable
4 for Ramsay or an affiliate to retain these monies.

5 85. As a direct and proximate result of the above-referenced events, GRB has suffered
6 injuries, losses, and damages exceeding \$15,000.00. But for the above-referenced events, GRB
7 would not have suffered these injuries, losses, and damages.

8
9 **FOURTH CAUSE OF ACTION**
10 **Civil Conspiracy**
11 **(Against All Defendants)**

12 86. Ramsay and PH acted in concert and had an explicit or tacit agreement between
13 themselves to breach the Development Agreement and oust GRB and Seibel from the Restaurant.

14 87. Ramsay and PH's conduct was designed and intended to disrupt GRB and Seibel's
15 contractual relationship with PH, inflict financial harm upon GRB and Seibel, and increase Ramsay
16 and PH's profits from the Restaurant. These objectives of the conspiracy were unlawful because they
17 violated GRB and Seibel's rights, entitlements, and justified expectations under the Development
18 Agreement.

19 88. To accomplish the objectives of the conspiracy, Ramsay, directly or indirectly, refused
20 to allow Seibel to transfer his interest in GRB to The Seibel Family 2016 Trust, resign as a manager
21 of GRB, and appoint Craig Green as a manager of GRB. While simultaneously blocking Seibel's
22 efforts to transfer his interest in GRB, resign as a manager, and appoint a replacement manager,
23 Ramsay and GRUS demanded that Seibel disassociate from GRB. This demand was a charade in
24 light of the fact Ramsay and GRUS blocked Seibel's very efforts to disassociate from GRB.

25 89. Furthermore, in a letter sent on or around September 15, 2016, Ramsay and GRUS
26 falsely told PHW Las Vegas that Seibel is an unsuitable person and his affiliation with GRB and the
27 Restaurant could not be cured. Specifically, Ramsay and GRUS claimed the transfer of Seibel's
28 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." Ramsay and GRUS further claimed the

1 assignment “provide[d] no method by which [PHW Las Vegas] or a gaming regulatory agency could
2 be confident that Mr. Seibel did not retain the ability, through a family member or a retained attorney,
3 to be involved with, or profit from, a continuing business relationship with [PHW Las Vegas] under
4 the [GRB] Agreement.” These assertions were false because Seibel neither would have had any
5 direct or indirect involvement or influence over The Seibel Family 2016 Trust nor would have retain
6 any ability, directly or indirectly, to be involved with or profit from a continuing business
7 relationship. These false statements were made in furtherance of Ramsay and PH’s conspiracy.

8 90. To accomplish the objectives of the conspiracy, PH refused and failed to investigate,
9 research, and consider in good faith whether Seibel would have an interest in or control over The
10 Seibel Family 2016 Trust and whether Seibel’s association with GRB and the Restaurant could be
11 cured. It further refused and failed to communicate with Seibel’s counsel concerning these matters.
12 This conduct was pursued in furtherance of Ramsay and PH’s conspiracy.

13 91. The objectives of the conspiracy were accomplished when, on or around September
14 21, 2016, the Development Agreement was terminated on the alleged grounds Seibel is an unsuitable
15 person and GRB purportedly failed to disassociate with Seibel.

16 92. As a direct and proximate result of the above-referenced events, GRB has suffered
17 injuries, losses, and damages exceeding \$15,000.00. But for the above-referenced events, GRB
18 would not have suffered these injuries, losses, and damages.

19 **IV. ADDITIONAL REQUESTS FOR RELIEF**

20 **A. Request for Specific Performance Against PH.**

21 93. Under Nevada law, “Specific performance is available when [**i**] the terms of the
22 contract are definite and certain, [**ii**] the remedy at law is inadequate, [**iii**] the plaintiff has tendered
23 performance, and [**iv**] the court is willing to order it.”

24 94. In plain, clear, unambiguous, definitive, and certain language, the Development
25 Agreement requires PH to pay the License Fee to GRB while the Restaurant continues to operate
26 after the termination of the Development Agreement. (See Development Agreement at ¶ 4.3.2(a).)

27 95. The Development Agreement does not contain any provisions allowing PH to
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1 withhold the License Fee due to any alleged suitability reasons.

2 96. Though it continues to operate the Restaurant following the alleged termination of the
3 Development Agreement, PH refuses to pay the License Fee to GRB.

4 97. Plaintiff does not have an adequate legal remedy to force PH to pay it the License Fee.

5 98. Plaintiff has performed its obligations under the Development Agreement.

6 99. Plaintiff requests an order compelling PH to perform its obligation under the
7 Development Agreement to pay the License Fee to GRB, as well as awarding any additional relief
8 authorized by the law or found fair, equitable, just, or proper by the Court, including but not limited
9 to attorney's fees, costs, and interest.

10 **B. Request for Declaratory Relief Against PH Under NEV. REV. STAT. § 30 re: the**
11 **Validity of the Alleged Termination of the Development Agreement.**

12 100. A justiciable controversy ripe for adjudication exists between the parties as to whether
13 the Development Agreement was properly terminated. Plaintiff seeks an order declaring that the
14 Development Agreement was not properly terminated and therefore remains in full force and effect.

15 101. GRB originally entered the Development Agreement with PHW Las Vegas.

16 102. The Development Agreement identified PHW Manager LLC ("PHWM") as the
17 manager of PHW Las Vegas.

18 103. PHW Las Vegas later assigned the Development Agreement to PH in 2013.

19 104. The Termination Letter was sent in September 2016. It used the term "Caesars" to
20 refer collectively to PHW Las Vegas and PHWM. In the Termination Letter, Caesars purportedly
21 terminated the Development Agreement under Section 4.2.5.

22 105. The purported termination of the Development Agreement by "Caesars" was invalid
23 and ineffective because in 2013, PHW Las Vegas assigned the Development Agreement to PH.
24 Following that assignment, PHW Las Vegas and PHWM had no interest in or rights regarding the
25 Development Agreement and therefore had no right to terminate the agreement.

26 106. The purported termination was invalid and ineffective for the additional reason that it
27 was issued in violation of PH's implied covenant of good faith and fair dealing. PH had been
28

1 attempting to wrongfully terminate Seibel's association with the Restaurant and enrich itself by
2 retaining Seibel's share of the monies due and owed to GRB as a result of the continued operation of
3 the Restaurant.

4 107. PH's purported termination was exercised in bad faith and was in furtherance of an
5 ongoing scheme to keep Seibel's share of the revenues from the Restaurant and had nothing to do any
6 good faith determination by PH that Seibel is an Unsuitable Person as that term is defined in the
7 Development Agreement

8 108. The purported termination was invalid and ineffective because upon issuance of the
9 purported termination notice PH continued to operate the Restaurant as if the Development
10 Agreement remain in effect and failed to comply with the required conduct in the event of a valid
11 termination of the Development Agreement.

12 109. For the above-stated reason, Plaintiff seeks an order declaring that the Development
13 Agreement was not properly terminated and therefore remains in full force and effect.

14 110. Plaintiff furthers request any additional relief authorized by the law or found fair,
15 equitable, just, or proper by the Court, including but not limited to attorney's fees, costs, and interest
16 under NEV. REV. STAT. § 30.120 or any other law or agreement allowing the same.

17
18 **C. Declaratory Relief Against All Defendants Under NEV. REV. STAT. § 30 re: the**
19 **Parties' Rights and Obligations Under the Development Agreement.**

20 111. PH and Ramsay's actions have created a justiciable controversy, and this controversy
21 is ripe for adjudication as a declaration by this Court.

22 112. GRB seeks a declaration concerning the following rights, remedies, duties, and
23 obligations:

24 a) That PH must cease doing business with Ramsay following the termination of
25 the Development Agreement;

26 b) That PH must cease operating the Restaurant following the termination of the
27 agreement;

28 c) That PH must cease using the Intellectual Property following the termination of

1 the agreement;

2 d) That PH must pay the License Fee and other monies to GRB for the period of
3 time it has operated the Restaurant and used the Intellectual Property;

4 e) That PH must provide GRB with a reasonable and good faith opportunity to
5 cure its purported association or affiliation with any unsuitable persons; *and*

6 f) That the Development Agreement precludes PH and Ramsay from opening and
7 operating the Rebranded Restaurant.

8 113. Plaintiff further request any additional relief authorized by the law or found fair,
9 equitable, just, or proper by the Court, including but not limited to attorney's fees, costs, and interest
10 under NEV. REV. STAT. § 30.120 or any other law or agreement allowing the same.

11 **D. Request for an Accounting from PH.**

12 114. The Development Agreement allows GRB to request and conduct an audit concerning
13 the monies owed under the agreement.

14 115. The laws of equity also allow for GRB to request an accounting of PH. Without an
15 accounting, GRB may not have adequate remedies at law because the exact amount of monies owed
16 to it could be unknown.

17 116. The accounts between the parties are of such a complicated nature that an accounting
18 is necessary and warranted.

19 117. GRB has entrusted and relied upon PH to maintain accurate and complete records and
20 to compute the amount of monies due under the Development Agreement.

21 118. GRB requests an accounting of the monies owed to it under the GRB agreement, as
22 well as all further relief found just, fair, and equitable.

23 **E. Request for an Injunction / Restraining Order Against All Defendants.**

24 119. Section 14.10.2 of the Development Agreement states, "Notwithstanding any other
25 provision of this Agreement, the parties acknowledge and agree that monetary damages would be
26 inadequate in the case of any breach by [PH] of Article 6 Accordingly, each party shall be
27 entitled, without limiting its other remedies and without the necessity of proving actual damages or
28

1 posting any bond, to equitable relief, including the remedy of specific performance or injunction, with
2 respect to any breach or threatened breach of such covenants and each party (on behalf of itself and
3 its Affiliates) consents to the entry thereof in any affected jurisdiction. In the event that any
4 proceeding is brought in equity to enforce the provisions of this Agreement, no party hereto shall
5 allege, and each party hereto hereby waives the defense or counterclaim that there is an adequate
6 remedy at law.”

7 120. PH has improperly purported to terminate the Development Agreement.

8 121. PH and Ramsay have breached Article 6 of the Development Agreement through
9 conduct that includes, but is not limited to, (1) continuing to use the Intellectual Property following
10 the termination of the License and the alleged termination of the Development Agreement; and (2)
11 failing to pay the License Fee and other monies to GRB for the period of time PH has operated the
12 Restaurant and used the Intellectual Property.

13 122. GRB seeks a permanent injunction or restraining order (i) prohibiting PH from
14 terminating the Development Agreement; or, in the alternative, prohibiting PH and Ramsay from (ii)
15 (a) using the Intellectual Property for the Restaurant or the Rebranded Restaurant; and (b) continuing
16 to operate the Restaurant or open and operate the Rebranded Restaurant.

17 123. GRB will succeed on the merits of its claims, the balance of equities tip in favor of
18 GRB, and public interests favor injunctive relief. Furthermore, GRB would suffer substantial and
19 irreparable harm if PH were permitted to terminate the Development Agreement or if Defendants
20 were permitted to (i) continue using the Intellectual Property; (ii) continue operating the Restaurant; or
21 (iii) open and operate the Rebranded Restaurant.

22 **V. PRAYER FOR RELIEF.**

23 WHEREFORE, Plaintiff prays for judgment as follows:

- 24 A. Monetary damages in excess of \$15,000.00;
25 B. Equitable relief;
26 C. Specific Performance;
27
28

- 1 D. Injunctive relief;
2 E. Declaratory relief;
3 F. Reasonable attorney's fees, costs, and interest associated with the prosecution of
4 this lawsuit; *and*
5 G. Any additional relief this Court may deem just and proper.

6 DATED June 28, 2017.

7 CARBAJAL & MCNUTT, LLP

8 /s/ Dan McNutt

9 DANIEL R. MCNUTT (SBN 7815)
10 MATTHEW C. WOLF (SBN 10801)
11 625 South Eighth Street
12 Las Vegas, Nevada 89101
13 *Attorneys for Plaintiff*
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Exhibit 1

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

3. The facts alleged in the Amended Complaint are true and correct to the best of my knowledge, except to matters alleged therein upon information and belief, and as to those matters, I believe them to be true and correct to the best of my knowledge, information, and belief.

4. I am a citizen of New York.

6. At all relevant times, GRB's equal members have been myself and GR US Licensing LP ("GRUS"), a Delaware limited liability partnership. GRUS's general partner is Kavalake Limited ("Kavalake"), and Kavalake's director is British celebrity chef Gordon Ramsay.

B. Asking Mr. Gillies to Authorize GRB to File the Amended Complaint Would Be Futile.

9. Demanding that Mr. Gillies authorize GRB to file the Amended Complaint would be futile

1 for the following reasons:

2 a. In 2016, GRUS filed a pending lawsuit in Delaware to dissolve GRB on the
3 purported grounds that a deadlock exists between me and Mr. Gillies concerning the future of GRB;

4 b. Mr. Gillies refused to attend a meeting of GRB's managers in 2016;

5 c. In 2016, GRUS and Mr. Gillies blocked my attempt to assign my membership
6 interest in GRB to The Seibel Family 2016 Trust and to appoint Craig Green as a manager of GRB; and

7 d. The Amended Complaint seeks, in part, to recover monies owed to GRB that
8 PHWLTV, LLC ("Planet Hollywood") or an affiliate wrongfully paid to Mr. Ramsay or an affiliate. It is
9 believed Mr. Gillies knew or should have known of those wrongful payments and explicitly or tacitly
10 approved them. Furthermore, as a close and long-term friend and business partner of Mr. Ramsay who has
11 received significant financial rewards from Mr. Ramsay's business ventures, Mr. Gillies would have a
12 conflict of interest if he were asked to authorize GRB to file the Amended Complaint to recover the
13 aforementioned monies. Mr. Gillies likely would put his friendship with and loyalty to Mr. Ramsay and
14 his personal interest in continuing to earn significant financial rewards from business ventures with Mr.
15 Ramsay above the interests of GRB.
16

17 **1. *The Dissolution Proceeding.***

18 10. On or around October 13, 2016, GRUS filed a lawsuit in the Court of Chancery for
19 Delaware as case no. 12825 seeking a judicial dissolution of GRB. In Paragraph 2, the complaint alleges
20 "[t]he Company's two managers (appointed by GRUS and Seibel, respectively) have reached a deadlock on
21 the future of the Company and the LLC Agreement provides no mechanism to resolve that deadlock"

22 11. Based upon the alleged deadlock (and without admitting a deadlock exists), it would be
23 futile to demand that Mr. Gillies authorize GRB to file the Amended Complaint.

24 **2. *Mr. Gillies Refused to Attend a Managers Meeting in 2016.***

25 12. Asking Mr. Gillies to authorize GRB to file the Amended Complaint also would be futile
26 based upon the fact Mr. Gillies refused in 2016 to attend a meeting of the managers of GRB.
27
28

1 13. In 2016, through counsel, I attempted to schedule one or more meetings of the managers of
2 GRB. One such meeting was scheduled in New York, New York, for July 12, 2016. Through counsel, Mr.
3 Gillies refused to attend. Mr. Gillies took the position in writing that he is not obligated under GRB's
4 operating agreement to attend any meetings.

5 14. Given the refusal of Mr. Gillies to attend any meetings, it would be futile to attempt to
6 schedule a meeting for the purpose of asking Mr. Gillies to authorize GRB to file the Amended Complaint.

7 **3. *GRUS and Mr. Gillies Blocked My Attempt to Assign My***
8 ***Membership Interest in GRB to The Seibel Family 2016 Trust***
9 ***and to Appoint Craig Green as a Manager of GRB.***

10 15. Paragraph 10.1(a) of GRB's operating agreement obligates me to obtain the approval of Mr.
11 Gillies to assign my membership interest in GRB. Paragraph 10.1(c), however, allows me to assign the
12 economic rights to my membership interest in GRB to certain relatives or a trust for their benefit without
13 the approval of GRUS or Mr. Gillies.

14 16. Paragraph 8.2 of GRB's operating agreement also allows me with the approval of GRUS to
15 replace myself as a manager. It further states GRUS's approval of the proposed replacement manager shall
16 not be unreasonably withheld, delayed or conditioned.

17 17. On or around April 11, 2016, I notified GRUS and Mr. Gillies in writing of my intent to (i)
18 transfer my membership interest in GRB to The Seibel Family 2016 Trust, (ii) resign as a manager of GRB,
19 and (iii) appoint Craig Green as a replacement manager. I enclosed a Membership Interest Assignment
20 Agreement and a Removal and Appointment of Manager of GRB and asked GRUS to execute and return
21 the documents to effectuate the assignment and the appointment of a replacement manager.

22 18. GRUS flatly and unreasonably refused to execute the above-referenced documents and to
23 approve the assignment and the appointment of a replacement manager. This is true even though GRB's
24 operating agreement expressly precluded GRUS from unreasonably withholding, delaying, or conditioning
25 its consent to the appointment of a replacement manager.

1 **4. *It is Believed Planet Hollywood Paid Mr. Ramsay or an Affiliate***
2 ***Monies Owed to GRB.***

3 19. Around December 2012, Mr. Ramsay, GRB, and PHW Las Vegas, LLC entered a
4 Development, Operation and License Agreement (the “Development Agreement”) concerning the design,
5 development, construction, and operation of a restaurant inside the Planet Hollywood hotel in Las Vegas,
6 Nevada, known as “BURGR Gordon Ramsay” (hereinafter, the “Restaurant”).

7 20. PHW Las Vegas, LLC later assigned the Development Agreement to Planet Hollywood.

8 21. The Development Agreement obligated Planet Hollywood to pay a license fee (the “License
9 Fee”) to GRB. It did not give Mr. Ramsay or an affiliate any right to receive any portion of the License
10 Fee.

11 22. In 2016, I received, through counsel, a letter indicating Mr. Ramsay and Planet Hollywood
12 had reached an agreement amongst themselves for Planet Hollywood to pay a portion of the License Fee to
13 Mr. Ramsay or an affiliate.

14 23. The following chart identifies the payments GRB received under the Development
15 Agreement:

Date	Amount
10/19/2016	\$115,789.44
7/15/2016	\$127,618.99
4/18/2016	\$124,615.99
1/15/2016	\$271,487.60
10/14/2015	\$283,560.76
7/15/2015	\$275,970.89
4/15/2015	\$255,832.40
1/13/2015	\$249,799.80
10/14/2014	\$214,587.90
7/16/2014	\$222,718.66
4/15/2014	\$213,142.54
1/16/2014	\$145,125.04
10/10/2013	\$292,231.58
7/12/2013	\$203,427.54
4/15/2013	\$118,688.59

1/18/2013

\$10,367.27

24. As evident from the above chart, around the time Mr. Ramsay and Planet Hollywood entered the aforementioned agreement, the amounts of the payments to GRB drastically decreased. It is believed those decreases were due to payments of the License Fee by Planet Hollywood to Mr. Ramsay or an affiliate.

25. In the Amended Complaint, GRB seeks, in part, to recover those monies.

5. *Because of His Close Personal and Professional Relationship with Mr. Ramsay and the Financial Rewards He Has Earned from His Business Ventures with Mr. Ramsay, Mr. Gillies Would Have a Conflict of Interest if He Were Asked to Authorize GRB to File the Amended Complaint.*

26. Based upon my personal knowledge, as well as information and belief and publically available sources, Mr. Gillies has a close and long-standing personal and professional relationship with Mr. Ramsay. This relationship is reflected by the following publically available sources:

a. In April 2014, it was reported Mr. Gillies first met Mr. Ramsay when they were young chefs in London and that Mr. Gillies joined Mr. Ramsay in 2002 to open Angela Hartnett's restaurant at the Connaught.¹ It also was reported that ten years after joining the entity that currently is the Gordon Ramsay Group ("GRG"), Mr. Gillies became its managing director.²

b. An October 2010 interview of Mr. Gillies referred to him as Mr. Ramsay's "right hand man."³ Mr. Gillies said during the interview, "As a boss [Mr. Ramsay is] more generous than you'd ever believe – trying to keep people happy and share the wealth of the company's success."⁴

c. In May 2015, it was reported Mr. Ramsay paid Mr. Gillies shares worth over two million pounds.⁵

¹ See <https://www.thecaterer.com/articles/352087/profile-stuart-gillies-managing-director-gordon-ramsay-group> (last accessed on Nov. 16, 2016).

² *Id.*
³ See <http://www.hot-dinners.com/Gastroblog/Interviews/gordons-right-hand-man-hot-dinners-talks-to-stuart-gillies-about-the-savoy-grill-and-bread-street-kitchen> (last accessed on Nov. 16, 2016).

⁴ *Id.*
⁵ See <http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/11610051/Gordon-Ramsay-pays-restaurant-boss-2.7m-bonus.html> (last accessed on Nov. 16, 2016); see also

1 d. In March 2016, it was reported Mr. Gillies had been promoted to CEO of GRG.⁶
2 Commenting on the promotion, Mr. Ramsay said Mr. Gillies had been “a driving force in [GRG’s]
3 international growth”⁷

4 e. In May 2016, Mr. Gillies said GRG was planning to open new restaurants in
5 England outside of London.⁸

6 27. Due to Mr. Gillies’ close and long-standing personal and professional relationship with Mr.
7 Ramsay, he would have a conflict of interest if he were asked to authorize GRB to file the Amended
8 Complaint seeking, in part, to recover monies that were improperly paid to Mr. Ramsay or an affiliate. Mr.
9 Gillies likely would put his friendship and loyalty with Mr. Ramsay, as well as his personal interest in
10 continuing to earn significant monies through business ventures with Mr. Ramsay, above his duties and
11 loyalty to GRB.

12 28. Moreover, based upon information and belief, Mr. Gillies is aware of and explicitly or
13 tacitly approved Planet Hollywood’s improper payments to Mr. Ramsay or an affiliate:

14 a. As a manager of GRB, Mr. Gillies knew or should have known that the payments
15 Planet Hollywood made to GRB during or around April and July 2016 were roughly half the amount of the
16 payments it made in 2014, 2015, and early 2016. As a manager of GRB, he should have inquired into why
17 the amount of those payments drastically decreased and taken appropriate action, but he failed to do so,
18 presumably to protect Mr. Ramsay; and

19 b. As the CEO of GRG and a close and long-time confidant of Mr. Ramsay, Mr. Gillies

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23 <http://www.londonlovesbusiness.com/business-news/gordon-ramsay-just-handed-out-a-27m-bonus-to-the-boss-of-his-restaurants/10311.article> (last accessed on Nov. 16, 2016).

24 ⁶ See, e.g., <https://www.thecaterer.com/articles/366132/flurry-of-senior-appointments-at-gordon-ramsay-group-as-stuart-gillies-promoted> (last accessed on Nov. 16, 2016); see also
25 <http://www.bighospitality.co.uk/People/Gordon-Ramsay-Group-announces-four-new-appointments> (last
accessed on Nov. 16, 2016).

26 ⁷ See <http://www.bighospitality.co.uk/People/Gordon-Ramsay-Group-announces-four-new-appointments> (last accessed on Nov. 16, 2016).

27 ⁸ See <https://www.theguardian.com/business/2016/may/30/gordon-ramsay-eyes-first-uk-restaurants-outside-london> (last accessed on Nov. 16, 2016).

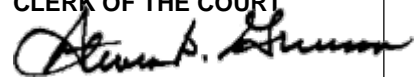
likely knows that Mr. Ramsay or an affiliate received monies from Planet Hollywood owed to GRB.

On the 28 day of June, 2017, 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 to the best of my knowledge, information, and belief.



ROWEN SEIBEL

TAB 23



ANS
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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;

CASE NO: A-17-751759-B

DEPT. NO.: XV

Plaintiff,

vs.

DEFENDANT GORDON RAMSAY'S
ANSWER AND AFFIRMATIVE
DEFENSES TO FIRST AMENDED
VERIFIED COMPLAINT

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

Defendant,

GR BURGR LLC, a Delaware limited liability
company,

Nominal Defendant.

/

Defendant Gordon Ramsay ("Ramsay"), by and through his undersigned counsel, without
admission of the legal sufficiency thereof and responding only to the factual allegations therein,
states as follows for his Answer and Affirmative Defenses to the First Amended Verified
Complaint (the "Complaint") filed by Rowen Seibel ("Seibel") derivatively on behalf of GR
BURGR, LLC ("GRB"):

//

I. PARTIES AND JURISDICTION

1
2 1. Ramsay is without sufficient information to admit or deny the allegations in
3 paragraph 1, and basing his denial on this ground, denies those allegations.

4 2. Ramsay admits the allegations in paragraph 2.

5 3. The allegations in paragraph 3 state legal conclusions to which no answer is
6 required. To the extent an answer is required, Ramsay admits that venue is proper in Clark County,
7 Nevada but denies the remainder of the allegations contained in paragraph 3.

8 4. The allegations contained in paragraph 4 are directed at unnamed entities or persons
9 and, therefore, no response is required. To an extent a response is required, Ramsay is without
10 sufficient information to admit or deny the allegations in paragraph 4 and therefore denies the
11 same. To the extent that the allegations are directed at Ramsay, Ramsay denies each and every
12 allegation in paragraph 4.

13 5. The allegations contained in paragraph 5 state legal conclusions to which no answer
14 is required. To the extent an answer is required, denied.

15 6. The allegations contained in paragraph 6 state legal conclusions to which no answer
16 is required. To the extent an answer is required, denied.

17 7. The allegations contained in paragraph 7 state legal conclusions to which no answer
18 is required. To the extent an answer is required, denied.

19 8. For each and every paragraph, allegation, and claim asserted in the Complaint,
20 Ramsay repeats, re-alleges, and expressly incorporates each and every answer set forth in the
21 preceding paragraphs.

II. DERIVATIVE ALLEGATIONS

22
23 9. Ramsay admits that (a) GRB is a Delaware limited liability company, (b) Seibel and
24 GRUS each owns a 50% membership interest in GRB, (c) GRUS is a Delaware limited partnership
25 (d) Kavalake is the general partner of GRUS, (e) Ramsay is a director of Kavalake, (f) Seibel and
26 Stuart Gillies are, or were, managers of GRB, and (g) Seibel appointed himself as manager of
27 GRB, and GRUS appointed Stuart Gillies as manager. Ramsay is without sufficient information to
28 admit or deny the allegations in paragraph 9 regarding Seibel's citizenship, and basing his denial

1 on this ground, denies that allegation.

2 10. Ramsay denies each and every allegation in paragraph 10, except Ramsay admits
3 that Seibel has been a member and manager of GRB at all relevant times and that Seibel claims to
4 pursue this lawsuit derivatively on behalf of GRB.

5 11. Ramsay admits the allegations in paragraph 11, but avers that operating agreement
6 was terminated on September 27, 2016.

7 12. Ramsay states that the Delaware Code section cited in paragraph 12 speaks for
8 itself and denies each and every allegation in paragraph 12 to the extent the allegations are
9 inconsistent with the Delaware Code.

10 13. Ramsay states that the Delaware Code section cited in paragraph 13 speaks for
11 itself and denies each and every allegation in paragraph 13 to the extent the allegations are
12 inconsistent with the Delaware Code.

13 14. Ramsay states that GRB's operating agreement speaks for itself and denies each
14 and every allegation in paragraph 14 to the extent inconsistent with GRB's operating agreement.

15 15. Ramsay states that Nev. R. Civ. P. 23.1 speaks for itself and denies each and every
16 allegation in paragraph 15 to the extent the allegations are inconsistent with Nev. R. Civ. P. 23.1.
17 Ramsay generally denies the contents of Seibel's declaration attached to the Complaint as Exhibit
18 1 to the extent that the allegations in paragraph 15 can be read to incorporate Seibel's declaration
19 into the Complaint.

20 16. Ramsay denies each and every allegation in paragraph 16, except Ramsay admits
21 that GRUS filed a petition for an order dissolving GRB in Delaware.

22 17. Ramsay denies each and every allegation in paragraph 17, except Ramsay admits
23 that GRB owns the trademark "BURGR."

24 18. Ramsay denies each and every allegation in paragraph 18, except Ramsay states
25 that the GRB Operating Agreement speaks for itself.

26 19. Ramsay admits that in December 2012, Ramsay, GRB, and PHW Las Vegas, LLC
27 d/b/a Planet Hollywood by its manager PHW Manager, LLC entered into the Development
28 Agreement. Ramsay states that the Development Agreement speaks for itself and denies each and

every allegation in paragraph 19 to the extent inconsistent with the Development Agreement.

20. Ramsay is without sufficient information to admit or deny the allegations in paragraph 20 and therefore denies the same.

21. Ramsay denies that the term "Intellectual Property" as defined in paragraph 21 accurately identifies the property or rights owned by GRB, or licensed by GRB to PH under the Development Agreement. As to the remaining allegations, Ramsay states that the Development Agreement speaks for itself and denies each and every allegation in paragraph 21 that is inconsistent with the Development Agreement.

22. Ramsay states that the Development Agreement speaks for itself and denies each and every allegation in paragraph 22 that is inconsistent with the Development Agreement.

23. Ramsay states that the Development Agreement speaks for itself and denies each and every allegation in paragraph 23 that is inconsistent with the Development Agreement.

24. Ramsay states that the Development Agreement speaks for itself and denies each and every allegation in paragraph 24 that is inconsistent with the Development Agreement.

25. Ramsay denies each and every allegation in paragraph 25.

26. Ramsay admits that GRB was paid the License Fee pursuant to the Development Agreement beginning in 2013 and continuing through a portion of 2016, and that the annualized total average License Fee paid during that period was approximately one million dollars per year. Ramsay denies each and every remaining allegation in paragraph 26.

27. Ramsay denies each and every allegation in paragraph 27.

28. Ramsay denies each and every allegation in paragraph 28, except Ramsay admits that (a) in January 2015, CEOC, and a number of its affiliates, filed for bankruptcy protection under Chapter 11 in the United States Bankruptcy Court, Northern District of Illinois, Eastern Division, and (b) PH was a not a debtor in the CEOC bankruptcy proceedings.

29. Ramsay denies each and every allegation in paragraph 29, except Ramsay admits: (a) that on June 8, 2015, Debtors in that jointly administered bankruptcy case *In re Caesars Entertainment Operating Company, Inc., et al.*, Case No 15-01145, pending in the United States Bankruptcy Court Northern District of Illinois Eastern Division, filed a motion to reject certain

1 executory contracts *nunc pro tunc*, including that certain Development and Operating Agreement,
2 dated as of April 4, 2012, by and between LLTQ Enterprises, LLC (“LLTQ”) and Desert Palace,
3 Inc. [ECF No. 1755]; and (b) that on June 15, 2015, LLTQ filed a preliminary objection to the
4 Debtors’ rejection motion [ECF No. 1774]; and (c) that on January 14, 2016, Debtors filed a
5 motion to reject certain existing restaurant agreements related to Ramsay and enter into new
6 restaurant agreements [ECF No. 3000]. Ramsay states that the publically-filed documents speak
7 for themselves and denies each and every allegation in paragraph 29 that is inconsistent with those
8 documents.

9 30. Ramsay is without sufficient information to admit or deny the allegations in
10 paragraph 30, and basing his denial on this ground, denies those allegations.

11 31. Ramsay denies each and every allegation in paragraph 31.

12 32. Ramsay denies each and every allegation in paragraph 32.

13 33. Ramsay denies each and every allegation in paragraph 33.

14 34. Ramsay denies each and every allegation in paragraph 34, except that Ramsay
15 admits that commencing with the payment for the first quarter of 2016, and continuing through
16 September 21, 2016, GRUS was paid directly 50% of the monies due under the Development
17 Agreement, and GRB was paid the remaining 50% of those monies for the account of Seibel.

18 35. Ramsay denies each and every allegation in paragraph 35, except Ramsay admits
19 that Seibel sent a letter dated April 11, 2016 to GRUS requesting that GRUS consent to, among
20 other things, a transfer of Seibel’s interest in GRB to The Seibel Family 2016 Trust.

21 36. Ramsay denies each and every allegation in paragraph 36, except Ramsay admits
22 that on August 19, 2016, judgment was entered on Seibel’s felony guilty plea in the Southern
23 District of New York. Ramsay states that the judgment speaks for itself and denies each and every
24 allegation in paragraph 36 that is inconsistent with that judgment.

25 37. Ramsay denies each and every allegation in paragraph 37 directed towards Ramsay,
26 except Ramsay admits that Seibel failed or refused to disclose—and as a result Ramsay was not
27 aware of—the tax investigation that resulted in the felony judgment against Seibel in April 2016.
28 Ramsay is without sufficient information to admit or deny the allegations in paragraph 37

1 regarding whether PH was aware of the tax investigation in April 2016, and basing his denial on
2 this ground, denies that allegation.

3 38. Ramsay denies each and every allegation in paragraph 38, except that Ramsay
4 states that the letter dated September 21, 2016 sent to GRB speaks for itself and denies each and
5 every allegation in paragraph 38 that is inconsistent with the letter.

6 39. Ramsay denies each and every allegation in paragraph 39.

7 40. Ramsay denies each and every allegation in paragraph 40.

8 41. Ramsay is without sufficient information to admit or deny the allegations in
9 paragraph 41, and basing his denial on this ground, denies those allegations.

10 42. Ramsay is without sufficient information to admit or deny the allegations in
11 paragraph 42, and basing his denial on this ground, denies those allegations.

12 43. Ramsay is without sufficient information to admit or deny the allegations in
13 paragraph 43, and basing his denial on this ground, denies those allegations.

14 44. Ramsay denies each and every allegation in paragraph 44.

15 45. Ramsay denies each and every allegation in paragraph 45, except that Ramsay
16 admits that GRUS did not consent to Seibel's proposal to transfer his interest in GRB to The
17 Seibel Family 2016 Trust.

18 46. Ramsay is without sufficient information to admit or deny the allegations directed
19 at PH in paragraph 46, and basing his denial on this ground, denies those allegations. Ramsay
20 denies each and every allegation in paragraph 46 to the extent those allegations are directed at
21 Ramsay.

22 47. Ramsay is without sufficient information to admit or deny the allegations directed
23 at PH in paragraph 47, and basing his denial on this ground, denies those allegations. Ramsay
24 denies each and every allegation in paragraph 47 to the extent those allegations are directed at
25 Ramsay.

26 48. Ramsay denies each and every allegation in paragraph 48.

27 49. Ramsay denies each and every allegation in paragraph 49.

28 50. Ramsay denies each and every allegation in paragraph 50, except that Ramsay is

1 without sufficient information to admit or deny the allegations directed at PH regarding the
2 relationships between Caesars and other affiliates of PH with persons or entities that are not parties
3 to this lawsuit, and therefore denies the same.

4 51. Ramsay denies each and every allegation in paragraph 51, except that Ramsay is
5 without sufficient information to admit or deny the allegations directed at PH regarding the
6 relationships between Caesars and other affiliates of PH with persons or entities that are not parties
7 to this lawsuit, and basing his denial on this ground, denies those allegations.

8 52. Ramsay denies each and every allegation in paragraph 52, except that Ramsay is
9 without sufficient information to admit or deny the allegations directed at PH regarding the
10 relationships between Caesars and other affiliates of PH with persons or entities that are not parties
11 to this lawsuit, and basing his denial on this ground, denies those allegations.

12 53. Ramsay denies each and every allegation in paragraph 53.

13 54. Ramsay states that the Development Agreement speaks for itself and denies each
14 and every allegation in paragraph 54 that is inconsistent with the Development Agreement.

15 55. Ramsay states that the Development Agreement speaks for itself and denies each
16 and every allegation in paragraph 55 that is inconsistent with the Development Agreement.

17 56. Ramsay denies each and every allegation in paragraph 56, except that Ramsay
18 admits that the Restaurant remained open for business through March 31, 2017 and that PH has
19 accrued but not paid the License Fee during the wind-up period. Ramsay is without sufficient
20 information to admit or deny the allegation regarding the annual profits generated by the
21 Restaurant during the wind-up period, and basing his denial on this ground, denies that allegation.

22 57. Ramsay denies each and every allegation in paragraph 57, except that Ramsay
23 admits that following termination of the Development Agreement the Restaurant remained open
24 and continued to use the GRB Marks and General GR Materials during the wind-up period, and
25 admits that some portion of the accrued license fees was paid to GRUS in error after this action
26 was filed, which payment was promptly returned by GRUS.

27 58. Ramsay is without sufficient information to admit or deny the allegations in
28 paragraph 58, and basing his denial on this ground, denies those allegations.

1 59. Ramsay denies each and every allegation in paragraph 59 to the extent those
2 allegations are directed at Ramsay.

3 60. Ramsay denies each and every allegation in paragraph 60, except that Ramsay
4 admits that PH is operating a new restaurant, called Gordon Ramsay Burger, at the location
5 previously occupied by the restaurant known as “BURGR Gordon Ramsay” and that neither GRB
6 nor Seibel has an interest in the new restaurant.

7 61. Ramsay admits that the new restaurant Gordon Ramsay Burger uses some of the
8 décor, kitchen and dining room equipment and features a limited number of menu items that were
9 previously offered at BURGR Gordon Ramsay, but denies the remaining allegations in Paragraph
10 61, and denies that any of the common elements constitute rights protected or protectable by GRB
11 pursuant to the Development Agreement.

12 62. Ramsay denies each and every allegation in paragraph 62.

13 63. Ramsay denies each and every allegation in paragraph 63, except that Ramsay
14 admits that Ramsay applied to the USPTO to trademark “GORDON RAMSAY BURGER” and
15 the USPTO refused the applied-for mark because of a likelihood of confusion with the registered
16 mark “BURGR GORDON RAMSAY” owned by GR US Licensing L.P. Ramsay avers that the
17 license agreement referred to in this paragraph was terminated on September 22, 2016.

18 64. Ramsay denies each and every allegation in paragraph 64, and more specifically:

19 a. Ramsay denies each and every allegation in paragraph 64(a), except that
20 Ramsay states that the Development Agreement speaks for itself and denies each and every
21 allegation in paragraph 64(a) that is inconsistent with the Development Agreement.

22 b. Ramsay denies each and every allegation in paragraph 64(b).

23 c. Ramsay denies each and every allegation in paragraph 64(c).

24 d. Ramsay denies each and every allegation in paragraph 64(d).

25 65. Ramsay denies each and every allegation in paragraph 65, except that Ramsay
26 admits that PH owes certain accrued, but unpaid, License Fees for a period of time that PH
27 operated the restaurant known as “BURGR Gordon Ramsay.”

28 66. Ramsay admits that Plaintiff is seeking an award of its fees and costs, but denies

1 that Plaintiff is entitled to the requested relief from Ramsay. Ramsay further states that the
2 Development Agreement speaks for itself and denies each and every allegation in paragraph 66
3 that is inconsistent with the Development Agreement.

4 67. Ramsay admits that GRB requests an accounting from PH. Ramsay denies each and
5 every remaining allegation of paragraph 67 to the extent those allegations are directed at Ramsay.

6 68. Ramsay admits that Seibel is requesting an award of his fees and costs, but denies
7 that Seibel is entitled to the requested relief. Ramsay states that the Delaware Code section cited in
8 paragraph 68 speaks for itself and denies each and every allegation in paragraph 68 to the extent
9 the allegations are inconsistent with the Delaware Code.

10 **FIRST CAUSE OF ACTION**
11 **Breaches of Contract**
(Against All Defendants)

12 69. The allegations contained in paragraph 69 state legal conclusions to which no
13 answer is required. To the extent an answer is required, Ramsay admits that the Development
14 Agreement was a valid and enforceable contract among GRB, PH, and Ramsay until it was
15 terminated on September 21, 2016, and denies each and every remaining allegation in paragraph
16 69.

17 70. The allegations in paragraph 70 are not directed at Ramsay, and therefore do not
18 require a response. Ramsay denies each and every allegation in paragraph 70 to the extent those
19 allegations are directed at Ramsay, and more specifically:

- 20 a. Ramsay denies each and every allegation in paragraph 70(a).
- 21 b. Ramsay denies each and every allegation in paragraph 70(b).
- 22 c. Ramsay denies each and every allegation in paragraph 70(c).
- 23 d. Ramsay denies each and every allegation in paragraph 70(d), except that
24 Ramsay admits that PH owes certain accrued, but unpaid, License Fees for a period of time that
25 PH operated the restaurant known as "BURGR Gordon Ramsay."
- 26 e. Ramsay denies each and every allegation in paragraph 70(e).
- 27 f. Ramsay denies each and every allegation in paragraph 70(f).
- 28 g. Ramsay denies each and every allegation in paragraph 70(g).

1 71. Ramsay denies each and every allegation in paragraph 71, and more specifically:

2 a. Ramsay denies each and every allegation in paragraph 71(a).

3 b. Ramsay denies each and every allegation in paragraph 71(b).

4 c. Ramsay denies each and every allegation in paragraph 71(c).

5 d. Ramsay denies each and every allegation in paragraph 71(d).

6 e. Ramsay denies each and every allegation in paragraph 71(e).

7 f. Ramsay denies each and every allegation in paragraph 71(f).

8 72. Ramsay denies each and every allegation in paragraph 72, except that Ramsay
9 admits that PH owes certain accrued, but unpaid, License Fees for a period of time that PH
10 operated the restaurant known as "BURGR Gordon Ramsay."

11 73. Ramsay admits that GRB is seeking an award of its fees and costs, but denies that
12 GRB is entitled to the requested relief from Ramsay.

13 **SECOND CAUSE OF ACTION**
14 **Contractual Breaches of the Implied Covenant of Good Faith and Fair Dealing**
15 **(Against All Defendants)**

16 74. The allegations contained in paragraph 74 state legal conclusions to which no
17 answer is required. To the extent an answer is required, Ramsay admits that Nevada recognizes the
18 implied covenant of good faith and fair dealing but denies that Ramsay violated any implied
19 covenant.

20 75. The allegations contained in paragraph 75 state legal conclusions to which no
21 answer is required. To the extent an answer is required, Ramsay admits that the Development
22 Agreement was a binding and enforceable contract that has been terminated and that Nevada
23 recognizes the implied covenant of good faith and fair dealing but denies that Ramsay violated any
24 implied covenant.

25 76. The allegations in paragraph 76 are not directed at Ramsay, and therefore do not
26 require a response. Ramsay denies each and every allegation in paragraph 76 to the extent those
27 allegations are directed at Ramsay, and more specifically:

28 a. Ramsay denies each and every allegation in paragraph 76(a).

b. Ramsay denies each and every allegation in paragraph 76(b).

- 1 c. Ramsay denies each and every allegation in paragraph 76(c).
- 2 d. Ramsay denies each and every allegation in paragraph 76(d).
- 3 e. Ramsay denies each and every allegation in paragraph 76(e).
- 4 f. Ramsay denies each and every allegation in paragraph 76(f).
- 5 g. Ramsay denies each and every allegation in paragraph 76(g).
- 6 h. Ramsay denies each and every allegation in paragraph 76(h), except that
- 7 Ramsay admits that PH owes certain accrued, but unpaid, License Fees for a period of time that
- 8 PH operated the restaurant known as "BURGR Gordon Ramsay."
- 9 i. Ramsay denies each and every allegation in paragraph 76(i).
- 10 j. Ramsay denies each and every allegation in paragraph 76(j).
- 11 k. Ramsay denies each and every allegation in paragraph 76(k).
- 12 l. Ramsay is without sufficient information to admit or deny the allegations in
- 13 paragraph 76(l), and basing his denial on this ground, denies those allegations.
- 14 m. Ramsay denies each and every allegation in paragraph 76(m).
- 15 n. Ramsay denies each and every allegation in paragraph 76(n).
- 16 o. The allegations in paragraph 76(o) state legal conclusions to which no
- 17 answer is required. To the extent an answer is required, Ramsay is without sufficient information
- 18 to admit or deny the allegations in paragraph 76(o) directed at PH, and basing his denial on this
- 19 ground, denies those allegations.
- 20 77. Ramsay denies each and every allegation in paragraph 77, and more specifically:
- 21 a. Ramsay denies each and every allegation in paragraph 77(a).
- 22 b. Ramsay denies each and every allegation in paragraph 77(b).
- 23 c. Ramsay denies each and every allegation in paragraph 77(c).
- 24 d. Ramsay denies each and every allegation in paragraph 77(d).
- 25 e. Ramsay denies each and every allegation in paragraph 77(e).
- 26 f. Ramsay denies each and every allegation in paragraph 77(f).
- 27 g. Ramsay denies each and every allegation in paragraph 77(g).
- 28 h. Ramsay denies each and every allegation in paragraph 77(h).

i. Ramsay denies each and every allegation in paragraph 77(i).

j. Ramsay denies each and every allegation in paragraph 77(j).

78. Ramsay denies each and every allegation in paragraph 78, except that Ramsay acknowledges that PH owes certain accrued, but unpaid, License Fees for a period of time that PH operated the restaurant known as "BURGR Gordon Ramsay."

79. Ramsay admits that GRB is seeking an award of its fees and costs, but denies that GRB is entitled to the requested relief from Ramsay.

THIRD CAUSE OF ACTION
Unjust Enrichment
(Against All Defendants)

80. Ramsay adopts and incorporates by reference his responses to the preceding paragraphs as if fully set out herein.

81. The allegations in paragraph 81 are not directed at Ramsay, and therefore do not require a response. In addition, the allegations contained in paragraph 81 state legal conclusions to which no answer is required. To the extent an answer is required, Ramsay admits the Development Agreement conferred certain benefits upon PH, but denies each and every remaining allegation in paragraph 81.

82. The allegations in paragraph 82 are not directed at Ramsay, and therefore do not require a response. To the extent an answer is required, Ramsay denies each and every allegation in paragraph 82, except that Ramsay acknowledges that PH owes certain accrued, but unpaid, License Fees for a period of time that PH operated the restaurant known as "BURGR Gordon Ramsay."

83. Ramsay denies each and every allegation in paragraph 83.

84. Ramsay denies each and every allegation in paragraph 84.

85. Ramsay denies each and every allegation in paragraph 85.

FOURTH CAUSE OF ACTION
Civil Conspiracy
(Against All Defendants)

86. Ramsay denies each and every allegation in paragraph 86.

87. Ramsay denies each and every allegation in paragraph 87.

1 88. Ramsay denies each and every allegation in paragraph 88, except Ramsay admits
2 that (a) GRUS did not consent to Seibel's proposal to transfer his interest in GRB to The Seibel
3 Family 2016 Trust, resign as manager of GRB, and appoint Craig Green as manager of GRB, and
4 (b) Ramsay and GRUS demanded that Seibel disassociate from GRB.

5 89. Ramsay denies each and every allegation in paragraph 89, except that Ramsay
6 states the letter dated September 15, 2016 from Dan R. Reaser to Mark A. Clayton speaks for itself
7 and denies each and every allegation in paragraph 89 that is inconsistent with that letter.

8 90. The allegations in paragraph 90 are not directed at Ramsay, and therefore do not
9 require a response. To the extent an answer is required, Ramsay denies each and every allegation
10 in paragraph 90.

11 91. Ramsay denies each and every allegation in paragraph 91, except that Ramsay
12 admits that the Development Agreement was terminated on September 21, 2016 pursuant to
13 Section 4.2.5 on grounds that GRB failed to dissociate with an Unsuitable Person.

14 92. Ramsay denies each and every allegation in paragraph 92.

15 **IV. ADDITIONAL REQUESTS FOR RELIEF**

16 **A. Request for Specific Performance Against PH**

17 93. The allegations contained in paragraph 93 state legal conclusions to which no
18 answer is required. Moreover, the quoted text set forth in paragraph 93 does not contain a citation
19 to the origin of the purported authority. To the extent an answer is required, Ramsay denies each
20 and every allegation in paragraph 93.

21 94. Ramsay states that the Development Agreement speaks for itself and denies each
22 and every allegation in paragraph 94 that is inconsistent with the Development Agreement.

23 95. The allegations contained in paragraph 95 state legal conclusions to which no
24 answer is required. To the extent an answer is required, Ramsay states that the Development
25 Agreement speaks for itself and denies each and every allegation in paragraph 95 that is
26 inconsistent with the Development Agreement.

27 96. Ramsay denies each and every allegation in paragraph 96, except that Ramsay
28 admits that PH owes certain accrued, but unpaid, License Fees for a period of time that PH

operated the restaurant known as “BURGR Gordon Ramsay.”

97. Ramsay denies each and every allegation in paragraph 97.

98. The allegations contained in paragraph 98 state legal conclusions to which no answer is required. To the extent an answer is required, Ramsay avers that GRB performed its obligations under the Development Agreement but that actions and inaction of Seibel provided grounds for PH to terminate the Development Agreement.

99. Ramsay admits that Plaintiff requests an order compelling PH to pay the License fee to GRB, and additional relief identified in paragraph 99. Ramsay denies each and every allegation in paragraph 99 to the extent those allegations are directed at Ramsay.

B. Request for Declaratory Relief Against PH Under Nev. Rev. Stat. § 30 re: the Validity of the Alleged Termination of the Development Agreement.

100. Ramsay denies each and every allegation in paragraph 100, except that Ramsay admits that Plaintiff seeks an order declaring that the Development Agreement was not properly terminated and that it therefore remains in full force and effect.

101. Ramsay admits the allegation in paragraph 101 that GRB entered into the Development Agreement with PHW Las Vegas, LLC dba Planet Hollywood by its manager, PHW Manager, LLC, and Ramsay.

102. Ramsay admits that the Development Agreement identified PHW Manager, LLC as the manager of PHW Las Vegas, LLC, and states that the Development Agreement speaks for itself and denies each and every allegation in paragraph 102 that is inconsistent with the Development Agreement.

103. Ramsay is without sufficient information to admit or deny the allegations in paragraph 103, and basing his denial on this ground, denies those allegations.

104. Ramsay states that the letter dated September 21, 2016 from M. Clayton to Ramsay, GRB, B. Ziegler, and M. Thomas speaks for itself and denies each and every allegation in paragraph 104 that is inconsistent with that letter.

105. The allegations contained in paragraph 105 state legal conclusions to which no answer is required. To the extent an answer is required, denied.

1 106. The allegations contained in paragraph 106 state legal conclusions to which no
2 answer is required. To the extent an answer is required, denied.

3 107. The allegations in paragraph 107 are not directed at Ramsay, and therefore do not
4 require a response. To the extent an answer is required, Ramsay denies each and every allegation
5 in paragraph 107.

6 108. The allegations contained in paragraph 108 state legal conclusions to which no
7 answer is required. To the extent an answer is required, denied.

8 109. Ramsay admits that Plaintiff seeks the relief identified in paragraph 109, but
9 Ramsay denies that Plaintiff is entitled to the relief sought.

10 110. Ramsay admits that Plaintiff requests additional relief identified in paragraph 110,
11 but Ramsay denies that Plaintiff is entitled to the relief sought.

12 **C. Declaratory Relief Against All Defendants Under Nev. Rev. Stat. § 30 re: the Parties’**
13 **Rights and Obligations Under the Development Agreement.**

14 111. Ramsay denies each and every allegation in paragraph 111.

15 112. Ramsay admits that Plaintiff seeks a declaration concerning the items identified in
16 paragraph 112(a)-(f), but generally denies that Plaintiff is entitled to the relief sought, specifically:

17 a. Ramsay denies each and every allegation in paragraph 112(a).

18 b. Ramsay denies each and every allegation in paragraph 112(b).

19 c. Ramsay denies each and every allegation in paragraph 112(c).

20 d. Ramsay states that the Development Agreement speaks for itself and denies
21 each and every allegation in paragraph 112(d) that is inconsistent with the Development
22 Agreement, but admits that PH owes certain accrued, but unpaid, License Fees for a period of time
23 that PH operated the restaurant known as “BURGR Gordon Ramsay.”

24 e. Ramsay denies each and every allegation in paragraph 112(e).

25 f. Ramsay denies each and every allegation in paragraph 112(f).

26 113. Ramsay admits that Plaintiff requests additional relief identified in paragraph 113,
27 but Ramsay denies that Plaintiff is entitled to the relief sought.

28 //

D. Request for an Accounting from PH.

114. Ramsay states that the Development Agreement speaks for itself and denies each and every allegation in paragraph 114 that is inconsistent with the Development Agreement.

115. The allegations in paragraph 115 are not directed at Ramsay, and therefore do not require a response. In addition, those allegations state legal conclusions to which no answer is required. To the extent an answer is required, Ramsay denies that Plaintiff is entitled to the relief sought.

116. Ramsay denies the allegations in paragraph 116.

117. Ramsay is without sufficient information to admit or deny the allegations in paragraph 117 directed at PH, and basing his denial on this ground, denies those allegations.

118. Ramsay admits that Plaintiff requests the relief identified in paragraph 118, but denies that Plaintiff is entitled to the relief sought from Ramsay.

E. Request for an Injunction / Restraining Order Against All Defendants

119. Ramsay states that the Development Agreement speaks for itself and denies each and every allegation in paragraph 119 that is inconsistent with the Development Agreement.

120. Ramsay denies each and every allegation in paragraph 120.

121. Ramsay denies each and every allegation in paragraph 121 that is directed at Ramsay. Ramsay also denies each and every allegation in paragraph 121 that is directed at PH, except that Ramsay acknowledges that PH owes certain accrued, but unpaid, License Fees for a period of time that PH operated the restaurant known as "BURGR Gordon Ramsay."

122. Ramsay admits that Plaintiff requests the relief identified in paragraph 122, but Ramsay denies that Plaintiff is entitled to the relief sought.

123. Ramsay denies each and every allegation in paragraph 123.

Ramsay denies each and every allegation set forth in the Complaint that is not expressly admitted above.

Ramsay denies that Plaintiff is entitled to the judgment or any further relief sought in its PRAYER FOR RELIEF set forth in paragraphs A-G on pages 25 of its Complaint against Ramsay.

1 **AFFIRMATIVE DEFENSES**

2 Ramsay's investigation of these claims is continuing. By this Answer, Ramsay waives no
3 affirmative defenses and reserves his right to amend the Answer to insert any subsequently
4 discovered and supported affirmative defenses.

5 **FIRST AFFIRMATIVE DEFENSE**

6 Plaintiff's Complaint and each and every claim for relief alleged therein fails to state a
7 claim against Ramsay upon which relief can be granted.

8 **SECOND AFFIRMATIVE DEFENSE**

9 Plaintiff's claims are barred, in whole or in part, because Seibel failed to comply with the
10 terms of the Development Agreement, including his failure to disclose that he was under
11 investigation by the Internal Revenue Service for violations of federal tax law, that he plead guilty
12 to violations of federal tax law, and that judgment was entered against him on his guilty plea in the
13 U.S. District Court for the Southern District of New York.

14 **THIRD AFFIRMATIVE DEFENSE**

15 Ramsay is entitled to rescission of the Development Agreement because his agreement was
16 obtained by fraudulent representations or omissions by Seibel regarding the fact that he had
17 committed, was committing, and was under investigation by the Internal Revenue Service for
18 violations of federal tax law at all relevant times, including on and before the effective date of the
19 Development Agreement.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 To the extent Plaintiff's claims are based in whole or in part on alleged oral promises or
22 statements, they are barred by the parol evidence rule, the doctrine of merger, integration, lack of
23 mutuality and failure of consideration.

24 **FIFTH AFFIRMATIVE DEFENSE**

25 Plaintiff's claims are barred, in whole or in part, because Ramsay performed any and all
26 contractual, statutory, or equitable duties or action required by the Development Agreement,
27 except for those duties that were discharged or excused from performance.

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SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of fraud, unilateral mistake and/or mutual mistake.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff has no right to the distinctive trade name, service mark, trademark, logo, emblem and indica or origin, in the mark "BURGR Gordon Ramsay," as more particularly set forth on Exhibit B to the Development Agreement, or the name "Gordon Ramsay," for any purpose whatsoever. Moreover, Plaintiff has no right whatsoever to any 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 mark "BURGR Gordon Ramsay."

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the terms of the License Agreement between GRUS and Plaintiff. Plaintiff is barred from taking any action regarding infringement of the mark "BURGR Gordon Ramsay" or any other intellectual property owned by GRUS without the consent of GRUS, which consent has not been obtained.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of impracticability, impossibility, and frustration of purpose.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrines of laches, estoppel, waiver, unjust enrichment, and/or unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claim for breach of the covenant of good faith and fair dealing is barred by Seibel's own breach of that covenant.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to join necessary and indispensable parties.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, estoppel, quasi-estoppel and detrimental reliance.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of ratification and consent.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of impracticability, impossibility, and frustration of purpose.

FIFTEENTH AFFIRMATIVE DEFENSE

Seibel lacks standing to assert claims on behalf of GRB.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to injunctive relief on grounds that its request to enjoin termination of the Development Agreement is moot; adequate legal remedies are available; and Plaintiff has no rights to the mark "BURGR Gordon Ramsay," including any specially created designs or other material displaying the mark "BURGR Gordon Ramsay," the name Gordon Ramsay, or the PH Marks or Materials as that term is defined in the Development Agreement.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because it has failed to mitigate any damages or losses allegedly suffered, if any.

EIGHTEENTH AFFIRMATIVE DEFENSE

The damages, if any, that were allegedly sustained by Plaintiff as a result of the acts described in the Complaint were caused in whole or were contributed to in part by reason of the acts, omissions, negligence, and/or intentional misconduct of Seibel.

NINETEENTH AFFIRMATIVE DEFENSE

The damages, if any, that were allegedly sustained by Plaintiff as a result of the acts described in the Complaint were caused in whole or were contributed to in part by reason of the

1 acts, omissions, negligence, and/or intentional misconduct of one or more third parties over whom
2 Ramsay had no control.

3 **TWENTIETH AFFIRMATIVE DEFENSE**

4 Plaintiff has failed to plead any alleged acts or omissions of Ramsay sufficient to warrant
5 the consideration of general, expectation, consequential or compensatory damages.

6 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

7 Plaintiff lacks standing because Plaintiff has no right to the distinctive trade name, service
8 mark, trademark, logo, emblem and indica or origin, in the mark "BURGR Gordon Ramsay," as
9 more particularly set forth on Exhibit B to the Development Agreement, or the name "Gordon
10 Ramsay," for any purpose whatsoever. Moreover, Plaintiff has no right whatsoever to any
11 specially created designs, and any and all copyrights and other intangible property rights in them
12 and in any package design, label, package insert, signage, advertising, promotional or other
13 material displaying the mark "BURGR Gordon Ramsay." Claims for infringement, if any, are may
14 only be asserted by GRUS.

15 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

16 Plaintiff is in breach of the Development Agreement and therefore cannot assert claims for
17 breach of the Development Agreement against Ramsay.

18 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

19 Ramsay specifically gives notice that he intends to rely upon such other defenses as may
20 become available by law, pursuant to statute, or during discovery proceedings of this action, and
21 hereby reserve the right to amend his Answer and assert such defenses.

22 WHEREFORE, Ramsay demands the following relief:

23 A. That Plaintiff take nothing on its Complaint against Ramsay, that the Complaint be
24 dismissed with prejudice as to Ramsay, and that judgment be entered for Ramsay;

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- B. That Ramsay be awarded his costs of suit and attorneys' fees; and
- C. That the Court grant such further relief as the Court may deem just and proper.

Dated: July 21, 2017

FENNEMORE CRAIG, P.C.

/s/ Allen J. Wilt
ALLEN J. WILT
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Attorneys for Gordon Ramsay

CERTIFICATE OF SERVICE

I certify that I am an employee of FENNEMORE CRAIG, P.C., and that on this date, pursuant to FRCP 5(b), I am serving a true and correct copy of the attached DEFENDANT GORDON RAMSAY'S ANSWER AND AFFIRMATIVE DEFENSES TO FIRST AMENDED VERIFIED COMPLAINT on the parties set forth below by:

- X 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 Eighth Judicial District Court E-Filing Service

addressed as follows:

Daniel R. McNutt
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Attorneys for Plaintiff

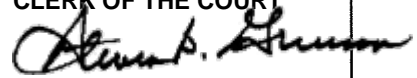
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Dated: July 21, 2017

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

TAB 24

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Counsel for Planet Hollywood PHWLTV, 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.

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

Defendants.

and

GR BURGR, LLC, a Delaware limited liability
company,

Nominal Defendant.

PHWLTV, LLC, a Nevada limited liability
company;

Counterclaimaint

v.

ROWEN SEIBEL, an individual and citizen of
New York, DOES I through X and ROE
CORPORATIONS XI through XX,

Counter-defendant

Case No.: A-17-751759-B

Dept. No.: XV

**ANSWER TO FIRST AMENDED
COMPLAINT AND COUNTERCLAIM**

PHWLTV, LLC ("Planet Hollywood"), by and through its undersigned counsel, hereby responds to the allegations set forth in the First Amended Complaint (the "Complaint") filed by Plaintiff/Counter-Defendant Rowen Seibel ("Seibel" or "Plaintiff") as follows:

I. PARTIES AND JURISDICTION

1. Planet Hollywood admits it is a Nevada liability company with its principal place of business in Clark County, Nevada. Planet Hollywood denies all other allegations contained therein.

2. Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 2 and therefore denies the same.

3. Planet Hollywood states that the allegations in Paragraph 3 are legal conclusions to which no responsive pleading is required. To the extent a response is required, Planet Hollywood admits that the venue is proper and denies any and all remaining allegations contained in Paragraph 3.

4. Planet Hollywood is without knowledge or information sufficient to admit or deny the allegations of Paragraph 4 and therefore denies the same.

5. Planet Hollywood states that the allegations in Paragraph 5 are legal conclusions to which no responsive pleading is required. To the extent a response is required, Planet Hollywood denies the allegations in Paragraph 5.

6. Planet Hollywood states that the allegations in Paragraph 6 are legal conclusions to which no responsive pleading is required. To the extent a response is required, Planet Hollywood denies the allegations in Paragraph 6.

7. Planet Hollywood states that the allegations in Paragraph 7 are legal conclusions to which no responsive pleading is required. To the extent a response is required, Planet Hollywood denies the allegations in Paragraph 7.

8. Planet Hollywood repeats and realleges each and every response to the proceeding Paragraphs as if set forth fully herein.

II. DERIVATIVE ALLEGATIONS

9. Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 9 and therefore denies the same.

10. Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 10 and therefore denies the same.

11. Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 11 and therefore denies the same.

12. Planet Hollywood states that the allegations in Paragraph 12 are legal conclusions to which no responsive pleading is required. To the extent a response is required, Planet Hollywood denies the allegations in Paragraph 12.

13. Planet Hollywood states that the allegations in Paragraph 13 are legal conclusions to which no responsive pleading is required. To the extent a response is required, Planet Hollywood denies the allegations in Paragraph 13.

14. To the extent Paragraph 14 purports to restate the terms of GRB's operating agreement, the document speaks for itself and no response is required. Planet Hollywood denies all other allegations contained therein.

15. Planet Hollywood does not respond to the legal conclusions in Paragraph 15 because no response is required. To the extent that a response is required, Planet Hollywood denies the allegations in Paragraph 15. Moreover, to the extent Paragraph 15 purports to incorporate the allegations of Seibel's declaration, Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein and therefore denies the same.

16. Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 16 and therefore denies the same.

III. THE BURGR RESTAURANT AT PLANET HOLLYWOOD.

A. The Intellectual Property.

17. Planet Hollywood is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 17 and therefore denies the same.

18. Planet Hollywood is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 18 and therefore denies the same.

B. The Parties Enter the Development Agreement and Open the Restaurant.

19. Planet Hollywood admits Ramsay, GRB, and PHW Las Vegas, LLC entered into the Development Agreement in December 2012. To the extent Paragraph 19 purports to restate the terms of the Development Agreement, the document speaks for itself and no response is required. Planet Hollywood denies all other allegations contained therein.

20. Planet Hollywood admits the allegations in Paragraph 20.

21. To the extent Paragraph 21 purports to restate the terms of the Development Agreement, the document speaks for itself and no response is required. Planet Hollywood denies all other allegations contained therein.

22. To the extent Paragraph 22 purports to restate the terms of the Development Agreement, the document speaks for itself and no response is required. Planet Hollywood denies all other allegations contained therein.

23. To the extent Paragraph 23 purports to restate the terms of the Development Agreement, the document speaks for itself and no response is required. Planet Hollywood denies all other allegations contained therein.

24. To the extent Paragraph 24 purports to restate the terms of the Development Agreement, the document speaks for itself and no response is required. Planet Hollywood denies all other allegations contained therein.

25. To the extent Paragraph 25 purports to restate the terms of the Development Agreement, the document speaks for itself and no response is required. Planet Hollywood denies all other allegations contained therein.

26. Planet Hollywood admits that it paid License Fees to GRB. Planet Hollywood denies all other allegations contained therein.

C. PH and Ramsay Conspire to Oust Seibel and GRB from the Restaurant.

27. Planet Hollywood denies the allegations in Paragraph 27.

1 28. Planet Hollywood admits that Caesars Entertainment Operating Company, Inc.
2 ("CEOC") filed for bankruptcy in the United States Bankruptcy Court for the Northern District of
3 Illinois in or around January 2015. Planet Hollywood further admits that Planet Hollywood was
4 not included in the bankruptcy. Planet Hollywood denies the remaining allegations in Paragraph
5 28.

6 29. Planet Hollywood is without knowledge or information sufficient to form a belief
7 as to the truth or falsity of the allegations in Paragraph 29 of the Complaint, and therefore denies
8 the same.

9 30. Planet Hollywood denies the allegations in Paragraph 30.

10 31. Planet Hollywood denies the allegations in Paragraph 31.

11 32. Planet Hollywood denies the allegations in Paragraph 32.

12 33. Planet Hollywood is without knowledge or information sufficient to form a belief
13 as to the truth or falsity of any communication between Ramsay and Seibel, and therefore denies
14 the same. Planet Hollywood denies the remaining allegations in Paragraph 33.

15 34. Planet Hollywood denies the allegations in Paragraph 34.

16 35. Planet Hollywood is without knowledge or information sufficient to form a belief
17 as to the truth or falsity of the allegation in Paragraph 35 concerning Siebel's attempt to transfer
18 his interest in GRB, and therefore denies the same. Planet Hollywood denies the remaining
19 allegations in Paragraph 35.

20 36. Planet Hollywood admits that in August 2016 it became aware of Seibel's guilty
21 plea in the Southern District of New York for felony tax evasion after it became public. Planet
22 Hollywood denies the remaining allegations in Paragraph 36.

23 37. Planet Hollywood admits that in April 2016 neither Seibel nor anyone else advised
24 Planet Hollywood that Seibel committed felony tax evasion. Planet Hollywood denies the
25 remaining allegations in Paragraph 37.

26 38. Planet Hollywood admits that it sent a letter dated September 21, 2016 to GRB
27 terminating the Development Agreement as a result of Seibel's unsuitability. Planet Hollywood
28 denies the remaining allegations in Paragraph 38.

- 1 39. Planet Hollywood denies the allegations in Paragraph 39.
- 2 40. Planet Hollywood denies the allegations in Paragraph 40.
- 3 41. Planet Hollywood is without knowledge or information sufficient to form a belief
- 4 as to the truth or falsity of the allegations in Paragraph 41, and therefore denies the same.
- 5 42. Planet Hollywood admits the allegations in Paragraph 42.
- 6 43. Planet Hollywood denies the allegations in Paragraph 43.
- 7 44. Planet Hollywood denies the allegations in Paragraph 44.
- 8 45. Planet Hollywood is without knowledge or information sufficient to form a belief
- 9 as to the truth or falsity of the allegations in Paragraph 45 of the Complaint, and therefore denies
- 10 the same.
- 11 46. Planet Hollywood denies the allegations in Paragraph 46.
- 12 47. Planet Hollywood denies the allegations in Paragraph 47.
- 13 48. Planet Hollywood denies the allegations in Paragraph 48.
- 14 49. Planet Hollywood denies the allegations in Paragraph 49.
- 15 50. Planet Hollywood denies the allegations in Paragraph 50.
- 16 51. Planet Hollywood denies the allegations in Paragraph 51.
- 17 52. Planet Hollywood denies the allegations in Paragraph 52.
- 18 53. Planet Hollywood denies the allegations in Paragraph 53.
- 19 54. To the extent Paragraph 54 purports to restate the terms of the Development
- 20 Agreement, the document speaks for itself and no response is required. Planet Hollywood denies
- 21 all other allegations contained therein.
- 22 55. To the extent Paragraph 55 purports to restate the terms of the Development
- 23 Agreement, the document speaks for itself and no response is required. Planet Hollywood denies
- 24 all other allegations contained therein.
- 25 56. Planet Hollywood denies the allegations in Paragraph 56.
- 26 57. Planet Hollywood admits it used the GRB Marks and General GR Materials for a
- 27 period of time subsequent to the termination of the Development Agreement. Planet Hollywood
- 28 denies the remaining allegations in Paragraph 57.

1 58. To the extent Paragraph 58 purports to restate the terms of Caesars' Charter
2 documents, the documents speak for themselves and no response is required. Planet Hollywood
3 denies all other allegations contained therein.

4 59. Planet Hollywood denies the allegations in Paragraph 59.

5 **D. The Rebranded Restaurant**

6 60. Planet Hollywood admits that Planet Hollywood and Ramsay are operating a new
7 restaurant called Gordon Ramsay Burger. Planet Hollywood denies the remaining allegations in
8 Paragraph 60.

9 61. Planet Hollywood admits that the new restaurant is located in the same space as
10 BURGR Gordon Ramsay, and thus, certain furniture and fixtures are located in the same space.
11 Planet Hollywood denies the remaining allegations in Paragraph 61.

12 62. Planet Hollywood denies the allegations in Paragraph 62.

13 63. Planet Hollywood is without knowledge or information sufficient to form a belief
14 as to the truth or falsity of the allegations in Paragraph 63, and therefore denies the same.

15 64. Planet Hollywood denies the allegations in Paragraph 64.

16 a) To the extent Paragraph 64(a) purports to restate the terms of the
17 Development Agreement, the document speaks for itself and no response is
18 required. Planet Hollywood denies the remaining allegations contained
19 therein.

20 b) Planet Hollywood denies the allegations in Paragraph 64(b).

21 c) Planet Hollywood denies the allegations in Paragraph 64(c).

22 d) To the extent Paragraph 64(d) purports to restate the terms of the
23 Development Agreement, the document speaks for itself and no response is
24 required. Planet Hollywood denies all other allegations contained therein.

25 65. Planet Hollywood denies the allegations in Paragraph 65.

26 66. To the extent Paragraph 66 purports to restate the terms of the Development
27 Agreement, the document speaks for itself and no response is required. Planet Hollywood denies
28 the remaining allegations contained therein.

68. Planet Hollywood states that the allegations in Paragraph 68 are legal conclusions to which no responsive pleading is required. To the extent a response is required, Planet Hollywood denies the allegations in Paragraph 68.

Breaches of Contract

69. Planet Hollywood admits the existence of the Development Agreement and refers to that agreement for a complete and accurate statement of the terms thereof. Planet Hollywood states that the remaining allegations in Paragraph 69 are legal conclusions to which no responsive pleading is required. To the extent a response is required, Planet Hollywood denies the allegations in Paragraph 69.

70. Planet Hollywood denies the allegations in Paragraph 70.

- a) Planet Hollywood denies the allegations in Paragraph 70(a).
- b) Planet Hollywood denies the allegations in Paragraph 70(b).
- c) Planet Hollywood denies the allegations in Paragraph 70(c).
- d) Planet Hollywood denies the allegations in Paragraph 70(d).
- e) Planet Hollywood denies the allegations in Paragraph 70(e).
- f) Planet Hollywood denies the allegations in Paragraph 70(f).
- g) Planet Hollywood denies the allegations in Paragraph 70(g).

71. In as much as the allegations in Paragraph 71 are not directed towards Planet Hollywood, no responsive pleading is required. To the extent a response is required, Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 71, and therefore denies the same.

- a) In as much as the allegations in Paragraph 71(a) are not directed towards Planet Hollywood, no responsive pleading is required. To the extent a

1 response is required, Planet Hollywood lacks knowledge or information
2 sufficient to form a belief as to the truth or falsity of the allegations in
3 Paragraph 71(a), and therefore denies the same.

4 b) In as much as the allegations in Paragraph 71(b) are not directed towards
5 Planet Hollywood, no responsive pleading is required. To the extent a
6 response is required, Planet Hollywood lacks knowledge or information
7 sufficient to form a belief as to the truth or falsity of the allegations in
8 Paragraph 71(b), and therefore denies the same.

9 c) In as much as the allegations in Paragraph 71(c) are not directed towards
10 Planet Hollywood, no responsive pleading is required. To the extent a
11 response is required, Planet Hollywood lacks knowledge or information
12 sufficient to form a belief as to the truth or falsity of the allegations in
13 Paragraph 71(c), and therefore denies the same.

14 d) In as much as the allegations in Paragraph 71(d) are not directed towards
15 Planet Hollywood, no responsive pleading is required. To the extent a
16 response is required, Planet Hollywood lacks knowledge or information
17 sufficient to form a belief as to the truth or falsity of the allegations in
18 Paragraph 71(d), and therefore denies the same.

19 e) In as much as the allegations in Paragraph 71(e) are not directed towards
20 Planet Hollywood, no responsive pleading is required. To the extent a
21 response is required, Planet Hollywood lacks knowledge or information
22 sufficient to form a belief as to the truth or falsity of the allegations in
23 Paragraph 71(e), and therefore denies the same.

24 f) In as much as the allegations in Paragraph 71(f) are not directed towards
25 Planet Hollywood, no responsive pleading is required. To the extent a
26 response is required, Planet Hollywood lacks knowledge or information
27 sufficient to form a belief as to the truth or falsity of the allegations in
28 Paragraph 71(f), and therefore denies the same.

72. Planet Hollywood denies the allegations in Paragraph 72.

73. Planet Hollywood denies the allegations in Paragraph 73.

SECOND CAUSE OF ACTION

Contractual Breaches of the Implied Covenant of Good Faith & Fair Dealing

(Against All Defendants)

74. Planet Hollywood states that the allegations in Paragraph 74 are legal conclusions to which no responsive pleading is required. To the extent a response is required, Planet Hollywood denies the allegations in Paragraph 74.

75. Planet Hollywood states that the allegations in Paragraph 75 are legal conclusions to which no responsive pleading is required. To the extent a response is required, Planet Hollywood denies the allegations in Paragraph 75.

76. Planet Hollywood denies the allegations in Paragraph 76.

- a) Planet Hollywood denies the allegations in Paragraph 76(a).
- b) Planet Hollywood denies the allegations in Paragraph 76(b).
- c) Planet Hollywood denies the allegations in Paragraph 76(c).
- d) Planet Hollywood denies the allegations in Paragraph 76(d).
- e) Planet Hollywood denies the allegations in Paragraph 76(e).
- f) Planet Hollywood denies the allegations in Paragraph 76(f).
- g) Planet Hollywood denies the allegations in Paragraph 76(g).
- h) Planet Hollywood denies the allegations in Paragraph 76(h).
- i) Planet Hollywood denies the allegations in Paragraph 76(i).
- j) Planet Hollywood denies the allegations in Paragraph 76(j).
- k) Planet Hollywood denies the allegations in Paragraph 76(k).
- l) Planet Hollywood denies the allegations in Paragraph 76(l).
- m) Planet Hollywood denies the allegations in Paragraph 76(m).
- n) Planet Hollywood denies the allegations in Paragraph 76(n).
- o) Planet Hollywood denies the allegations in Paragraph 76(o).

1 77. In as much as the allegations in Paragraph 77 are not directed towards Planet
2 Hollywood, no responsive pleading is required. To the extent a response is required, Planet
3 Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of
4 the allegations in Paragraph 77, and therefore denies the same.

5 a) In as much as the allegations in Paragraph 77(a) are not directed towards
6 Planet Hollywood, no responsive pleading is required. To the extent a
7 response is required, Planet Hollywood lacks knowledge or information
8 sufficient to form a belief as to the truth or falsity of the allegations in
9 Paragraph 77(a), and therefore denies the same.

10 b) In as much as the allegations in Paragraph 77(b) are not directed towards
11 Planet Hollywood, no responsive pleading is required. To the extent a
12 response is required, Planet Hollywood lacks knowledge or information
13 sufficient to form a belief as to the truth or falsity of the allegations in
14 Paragraph 77(b), and therefore denies the same.

15 c) In as much as the allegations in Paragraph 77(c) are not directed towards
16 Planet Hollywood, no responsive pleading is required. To the extent a
17 response is required, Planet Hollywood lacks knowledge or information
18 sufficient to form a belief as to the truth or falsity of the allegations in
19 Paragraph 77(c), and therefore denies the same.

20 d) In as much as the allegations in Paragraph 77(d) are not directed towards
21 Planet Hollywood, no responsive pleading is required. To the extent a
22 response is required, Planet Hollywood lacks knowledge or information
23 sufficient to form a belief as to the truth or falsity of the allegations in
24 Paragraph 77(d), and therefore denies the same.

25 e) In as much as the allegations in Paragraph 77(e) are not directed towards
26 Planet Hollywood, no responsive pleading is required. To the extent a
27 response is required, Planet Hollywood lacks knowledge or information
28

sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 77(e), and therefore denies the same.

f) In as much as the allegations in Paragraph 77(f) are not directed towards Planet Hollywood, no responsive pleading is required. To the extent a response is required, Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 77(f), and therefore denies the same.

g) In as much as the allegations in Paragraph 77(g) are not directed towards Planet Hollywood, no responsive pleading is required. To the extent a response is required, Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 77(g), and therefore denies the same.

h) In as much as the allegations in Paragraph 77(h) are not directed towards Planet Hollywood, no responsive pleading is required. To the extent a response is required, Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 77(h), and therefore denies the same.

i) In as much as the allegations in Paragraph 77(i) are not directed towards Planet Hollywood, no responsive pleading is required. To the extent a response is required, Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 77(i), and therefore denies the same.

j) In as much as the allegations in Paragraph 77(j) are not directed towards Planet Hollywood, no responsive pleading is required. To the extent a response is required, Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 77(j), and therefore denies the same.

78. Planet Hollywood denies the allegations in Paragraph 78.

1 79. Planet Hollywood denies the allegations in Paragraph 79.

2 **THIRD CAUSE OF ACTION**

3 **Unjust Enrichment**

4 **(Against All Defendants)**

5 80. Planet Hollywood repeats and realleges each and every response to paragraphs 1
6 through 79 above as if set forth fully herein.

7 81. Planet Hollywood denies the allegations in Paragraph 81.

8 82. Planet Hollywood denies the allegations in Paragraph 82

9 83. Planet Hollywood denies the allegations in Paragraph 83.

10 84. In as much as the allegations in Paragraph 84 are not directed towards Planet
11 Hollywood, no responsive pleading is required. To the extent a response is required, Planet
12 Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of
13 the allegations in Paragraph 84, and therefore denies the same.

14 85. Planet Hollywood denies the allegations in Paragraph 85.

15 **FOURTH CAUSE OF ACTION**

16 **Civil Conspiracy**

17 **(Against All Defendants)**

18 86. Planet Hollywood denies the allegations in Paragraph 86.

19 87. Planet Hollywood denies the allegations in Paragraph 87.

20 88. Planet Hollywood is without knowledge or information sufficient to form a belief
21 as to the truth or falsity of the allegations in Paragraph 88, and therefore denies the same.

22 89. Planet Hollywood admits that it received a letter from Gordon Ramsay dated on or
23 about September 15, 2016. To the extent Paragraph 89 purports to restate the terms of the letter,
24 the document speaks for itself and no response is required. Planet Hollywood denies the
25 remaining allegations contained therein.

26 90. Planet Hollywood denies the allegations in Paragraph 90.

27 91. Planet Hollywood denies the allegations in Paragraph 91.

28 92. Planet Hollywood denies the allegations in Paragraph 92.

ADDITIONAL REQUESTS FOR RELIEF

A. Request for Specific Performance Against PH.

93. Planet Hollywood states that the allegations in Paragraph 93 are legal conclusions to which no responsive pleading is required. To the extent a response is required, Planet Hollywood denies the allegations in Paragraph 93.

94. To the extent Paragraph 94 purports to restate the terms of the Development Agreement, the document speaks for itself and no response is required. Planet Hollywood denies the remaining allegations contained therein.

95. To the extent Paragraph 95 purports to restate the terms of the Development Agreement, the document speaks for itself and no response is required. Planet Hollywood denies the remaining allegations contained therein.

96. Planet Hollywood denies the allegations in Paragraph 96.

97. Planet Hollywood denies the allegations in Paragraph 97.

98. Planet Hollywood denies the allegations in Paragraph 98.

99. Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 99, and therefore denies the same.

B. Request for Declaratory Relief Against PH Under Nev. Rev. Stat. § 30 re: the Validity of the Alleged Termination of the Development Agreement.

100. Planet Hollywood admits that controversies exist between the parties. Planet Hollywood denies all other allegations contained in Paragraph 100.

101. Planet Hollywood admits the allegation in Paragraph 101.

102. To the extent Paragraph 102 purports to restate the terms of the Development Agreement, the document speaks for itself and no response is required. Planet Hollywood denies the remaining allegations contained therein.

103. Planet Hollywood admits PHW Las Vegas assigned the Development Agreement to Planet Hollywood. Planet Hollywood denies the remaining allegations contained in Paragraph 103.

1 104. Planet Hollywood admits that a letter terminating the Development Agreement
2 was dated September 21, 2016. To the extent Paragraph 104 purports to restate the terms of the
3 Development Agreement, the document speaks for itself and no response is required. Planet
4 Hollywood denies the remaining allegations contained therein.

5 105. Planet Hollywood denies the allegations in Paragraph 105.

6 106. Planet Hollywood denies the allegations in Paragraph 106.

7 107. Planet Hollywood denies the allegations in Paragraph 107.

8 108. Planet Hollywood denies the allegations in Paragraph 108.

9 109. Planet Hollywood states that the allegations in Paragraph 109 are legal conclusions
10 to which no responsive pleading is required. To the extent a response is required, Planet
11 Hollywood denies the allegations in Paragraph 109.

12 110. Planet Hollywood lacks knowledge or information sufficient to form a belief as to
13 the truth or falsity of the allegations in Paragraph 110, and therefore denies the same.

14 **C. Declaratory Relief Against All Defendants Under Nev. Rev. Stat. § 30 re: the Parties'**
15 **Rights and Obligations Under the Development Agreement.**

16 111. Planet Hollywood admits that controversies exist between the parties. Planet
17 Hollywood denies all other allegations contained in Paragraph 111.

18 112. Planet Hollywood lacks knowledge or information sufficient to form a belief as to
19 the truth or falsity of the allegations in Paragraph 112, and therefore denies the same.

20 a) Planet Hollywood lacks knowledge or information sufficient to form a
21 belief as to the truth or falsity of the allegations in Paragraph 112(a), and
22 therefore denies the same.

23 b) Planet Hollywood lacks knowledge or information sufficient to form a
24 belief as to the truth or falsity of the allegations in Paragraph 112(b), and
25 therefore denies the same.

26 c) Planet Hollywood lacks knowledge or information sufficient to form a
27 belief as to the truth or falsity of the allegations in Paragraph 112(c), and
28 therefore denies the same.

d) Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 112(d), and therefore denies the same.

e) Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 112(e), and therefore denies the same.

f) Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 112(f), and therefore denies the same.

113. Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 113, and therefore denies the same.

D. Request for an Accounting from PH.

114. To the extent Paragraph 114 purports to restate the terms of the Development Agreement, the document speaks for itself and no response is required. Planet Hollywood denies the remaining allegations contained therein.

115. Planet Hollywood states that the allegations in Paragraph 115 are legal conclusions to which no responsive pleading is required. To the extent a response is required, Planet Hollywood denies the allegations in Paragraph 115.

116. Planet Hollywood denies the allegations in Paragraph 116.

117. Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 117, and therefore denies the same.

118. Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 118, and therefore denies the same.

E. Request for an Injunction

119. To the extent Paragraph 119 purports to restate the terms of the Development Agreement, the document speaks for itself and no response is required. Planet Hollywood denies the remaining allegations contained therein.

120. Planet Hollywood denies the allegations in Paragraph 120.

121. Planet Hollywood denies the allegations in Paragraph 121.

122. Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 122, and therefore denies the same.

123. Planet Hollywood lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 123, and therefore denies the same.

GENERAL DENIAL

All allegations in the Complaint that have not been expressly admitted, denied, or otherwise responded to, are denied.

AFFIRMATIVE DEFENSES

Planet Hollywood asserts the following affirmative defenses and reserves the right to assert other defenses and claims, including, without limitation, counterclaims, crossclaims, and third-party claims, as and when appropriate and/or available in this or any other action. The statement of any defense herein does not assume the burden of proof for any issue as to which applicable law otherwise places the burden of proof on Planet Hollywood.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by his own conduct, including his failure to mitigate damages.

THIRD AFFIRMATIVE DEFENSE

Plaintiff failed to give timely notice to Planet Hollywood of any alleged breach of the covenant of good faith and fair dealing, if any.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, estoppel, laches, acquiescence, unclean hands, unjust enrichment, and/or ratification, as well as other applicable equitable doctrines.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's damages or harm, if any, were not caused by any conduct of Planet Hollywood.

SIXTH AFFIRMATIVE DEFENSE

Insofar as any alleged breach of contract is concerned, Plaintiff failed to give Planet Hollywood timely notice thereof.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff breached the Development Agreement, which excuses any failure to perform by Planet Hollywood.

EIGHTH AFFIRMATIVE DEFENSE

Planet Hollywood acted in good faith in all dealings with Plaintiff.

NINTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to any recovery because he failed to fulfill the terms of the Development Agreement.

TENTH AFFIRMATIVE DEFENSE

Plaintiff is guilty of fraudulent and deceitful conduct, which bars its right to recovery, if any, upon the Complaint on file herein.

ELEVENTH AFFIRMATIVE DEFENSE

The injuries to Plaintiff, if any, as alleged in the Complaint, were provoked and brought about by Plaintiff, and any actions taken by Planet Hollywood in response to Plaintiff's conduct were justified and privileged under the circumstances.

TWELFTH AFFIRMATIVE DEFENSE

All possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Planet Hollywood's Answer to Plaintiff's Complaint and therefore, Planet Hollywood reserves the right to amend its Answer to allege additional affirmative defenses if subsequent investigation so warrants.

THIRTEENTH AFFIRMATIVE DEFENSE

Planet Hollywood reserves the right to (a) rely upon such other affirmative defenses as may be supported by the facts to be determined through full and complete discovery, and (b) voluntarily withdraw any affirmative defense.

COUNTERCLAIM

Planet Hollywood, by and through its undersigned counsel, hereby brings its Counterclaims against Rowen Siebel ("Siebel") as follows:

THE PARTIES

1. Planet Hollywood PHWLTV, LLC ("Planet Hollywood") was, at all times relevant hereto, a Nevada limited liability company duly authorized to conduct business in Clark County, Nevada.

2. Upon information and belief, Seibel is and, at all times relevant hereto, was a citizen of New York conducting business in the State of Nevada.

3. The true names and capacities, whether individual, corporate, associate or otherwise, of the Defendants DOES I through X, inclusive, and ROE CORPORATIONS XI through XX, inclusive, and each of them, are unknown to Planet Hollywood at the present time, and Planet Hollywood therefore sues said Defendants by such fictitious names. Planet Hollywood is informed and believes and thereon alleges that each of the Defendants designated herein as DOES I through X and ROE CORPORATIONS XI through XX, are responsible for the claims and damages alleged herein. Once discovery has disclosed the true identities of such parties, Planet Hollywood will ask leave of this Court to amend its Counterclaim to insert the true names and capacities of said Defendants DOES I through X, inclusive, and ROE CORPORATIONS XI through XX, inclusive, and join such Defendants in this action.

4. Jurisdiction and venue are proper for these counterclaims because the action concerns the interpretation and enforcement of a contract with a jurisdiction selection clause identifying the Nevada State Court has having jurisdiction over the subject matter for disputes arising out of the contract.

GENERAL ALLEGATIONS

5. On or about December 13, 2012, PHW Las Vegas, LLC entered into a Development, Operation and License Agreement (the "Development Agreement") with Gordon Ramsay ("Ramsay") and GRB for the development and operation of a burger-themed restaurant to be housed in the Planet Hollywood – Resort & Casino in Las Vegas.

1 6. In or around 2013, PHW Las Vegas, LLC assigned the Development Agreement to
2 Planet Hollywood.

3 7. Planet Hollywood is a gaming licensee and thus subject to rigorous regulation.
4 Nevada requires its licensees to police themselves and their affiliates to ensure unwavering
5 compliance with gaming regulations.

6 8. As part of its compliance program, Planet Hollywood conducts suitability
7 investigations of potential vendors that meet certain criteria as outlined in its compliance program,
8 and requires various disclosures by vendors meeting such criteria to ensure that the entities with which
9 it does business are suitable.

10 9. Pursuant to the Development Agreement, GRB was required to disclose
11 information about itself and GR Associates (as defined in the Development Agreement) for Planet
12 Hollywood to perform its suitability diligence.

13 10. Based on prior disclosures of both Seibel and Ramsay, Caesars Entertainment's
14 ("Caesars") corporate investigation team used the information on file to determine that GRB was
15 suitable.

16 11. Paragraph 11.2 of the Development Agreement required GR Associates to update
17 the disclosures within ten days if anything became inaccurate or material changes occurred.

18 12. The Parties expressly contracted that the Agreement may be terminated by Planet
19 Hollywood upon written notice to GRB and Gordon Ramsay having immediate effect as
20 contemplated by Paragraph 11.2.

21 13. Specifically, Paragraph 11.2 provides that Planet Hollywood has the right, in its
22 "sole and exclusive judgment," to determine that a GR Associate is an Unsuitable Person under
23 the Development Agreement.

24 14. Paragraph 11.2 further provides expressly that if the unsuitable activity or
25 relationship is not subject to cure "as determined by PH in its sole discretion," then Planet
26 Hollywood "shall . . . have the right to terminate this Agreement and its relationship with Gordon
27 Ramsay and GRB."
28

1 15. Paragraph 11.2 leaves no doubt as to Planet Hollywood's sole and exclusive
2 judgment by additionally stating that a termination pursuant to the suitability provisions in
3 Paragraph 11.2 "shall not be subject to dispute by Gordon Ramsay or GRB"

4 16. Upon information and belief, prior to execution of the Development Agreement,
5 Seibel sought amnesty from the federal government for tax crimes.

6 17. Upon information and belief, on or about April 18, 2016, Seibel pleaded guilty to
7 one count of obstructing or impeding the due administration of the internal revenue laws under 26
8 U.S.C. § 7212(a), a Class E felony.

9 18. Upon information and belief, on or about August 19, 2016, judgment was entered
10 on Seibel's guilty plea in the Southern District of New York.

11 19. Seibel concealed his tax crimes from Planet Hollywood over the span of years.

12 20. It was not until Seibel's sentencing hearing was covered by the media that Planet
13 Hollywood learned of Seibel's conviction and events leading up to the conviction.

14 21. Pursuant to Paragraph 11.2 of the Development Agreement, Planet Hollywood
15 informed Gordon Ramsay and GRB that it was aware of Seibel's felony conviction and was
16 exercising its right under Paragraph 11.2.

17 22. Planet Hollywood demanded that GRB terminate its relationship with Seibel and
18 provide written proof thereof within ten (10) business days.

19 23. Planet Hollywood was unequivocal that if GRB failed to terminate the relationship
20 with Seibel, Planet Hollywood would be required to terminate the Development Agreement
21 pursuant to Paragraph 4.2.5 of the Development Agreement.

22 24. Rather than disassociate from GRB, Seibel attempted more deception. He argued
23 to Planet Hollywood that he had "assigned" his interests and therefore was not associated with
24 GRB any further, which was untrue.

25 25. Planet Hollywood determined "in its sole discretion" that Seibel's relationship with
26 GRB was not subject to cure, and exercised its contractual right, pursuant to Paragraphs 4.2.5 and
27 11.2 of the Development Agreement, to terminate the Development Agreement.
28

1 26. Planet Hollywood terminated the Development Agreement on or about September
2 2, 2016.

3 27. As a result of Siebel's conduct, Planet Hollywood has been forced to retain the
4 services of PISANELLI BICE PLLC to address the conduct complained of herein and is therefore
5 entitled to all of its attorneys' fees and costs associated with bringing this action.

6 **FIRST CAUSE OF ACTION**

7 ***(Fraudulent Concealment)***

8 28. Planet Hollywood hereby repeats, realleges, and incorporates all of the allegations
9 contained in the preceding Paragraphs as though fully set forth herein.

10 29. Siebel concealed material facts from Planet Hollywood, including that he sought
11 and was denied amnesty for tax evasion in 2009, that he was being investigated for tax evasion;
12 and that he pled guilty to one count of obstructing or impeding the due administration of the
13 internal revenue laws under 26 U.S.C. § 7212(a), a Class E felony on or about April 18, 2016.

14 30. Siebel was under a duty to disclose these wrongdoings to Caesars. Specifically, as
15 a GR Associate, Siebel was required to disclose these material facts before and after execution of
16 the Development Agreement and provide certain disclosures to Planet Hollywood to allow it to
17 complete suitability investigations.

18 31. Siebel intentionally concealed his wrongdoings from Planet Hollywood to avoid
19 termination of the Development Agreement.

20 32. Planet Hollywood was unaware until media reports surfaced that Siebel had
21 sought and was denied amnesty, that he was being investigated for tax evasion, or that he pled
22 guilty to one count of obstructing or impeding the due administration of the internal revenue laws
23 under 26 U.S.C. § 7212(a), a Class E felony on or about April 18, 2016.

24 33. Had Planet Hollywood been aware of Siebel's wrongdoings, it would have not
25 continued doing business with Siebel and would have terminated its relationship with Siebel and
26 his companies.

1 34. As a direct and proximate result of Siebel's acts and omissions, Planet Hollywood
2 has suffered and will continue to suffer damages in an amount to be proven at trial, but in any
3 event in excess of \$15,000.00.

4 35. As a result of Siebel's conduct, Planet Hollywood has been forced to retain the
5 services of PISANELLI BICE PLLC to address the conduct complained of herein and is therefore
6 entitled to all of its attorneys' fees and costs associated with bringing this action.

7 **SECOND CAUSE OF ACTION**

8 *(Civil Conspiracy)*

9 36. Planet Hollywood hereby repeats, realleges, and incorporates all of the allegations
10 contained in the preceding Paragraphs as though fully set forth herein.

11 37. Siebel and DOE and/or ROE Defendants knowingly acted in concert with each
12 other, intending to accomplish an unlawful objective for the purpose of harming Planet
13 Hollywood.

14 38. Specifically, Siebel and DOE and/or ROE Defendants conspired to conceal
15 material facts related to Siebel's wrongdoings, including, but not limited to, tax evasion in an
16 effort to harm Planet Hollywood.

17 39. As a direct and proximate result of Siebel's acts and omissions, Planet Hollywood
18 has suffered and will continue to suffer damages in an amount to be proven at trial, but in any
19 event in excess of \$15,000.00.

20 40. As a result of Counter-Defendants' conduct, Planet Hollywood has been forced to
21 retain the services of PISANELLI BICE PLLC to address the conduct complained of herein and is
22 therefore entitled to all of its attorneys' fees and costs associated with bringing this action.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Planet Hollywood prays for judgment against Siebel and demands as
25 follows:

26 1. That Siebel's Complaint be dismissed with prejudice, with Siebel taking nothing
27 thereby;

2. That judgment be entered in favor of Planet Hollywood and against Siebel on all of Plaintiff's claims;

3. For an award of special and compensatory damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), to be determined upon proof at trial, against Siebel;

4. For an award of pre- and post-judgment interest until the judgment is paid in full;

5. For declaratory relief as requested herein;

6. For an award of attorney fees and costs of suit; and

7. For such other and further relief as this Court deems just and proper.

DATED this 21st day of July 2017.

PISANELLI BICE PLLC

By: 

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

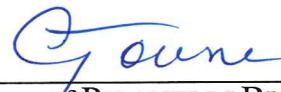
Attorneys for Planet Hollywood/Counterclaimant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 21st day of July 2017, I caused to be sent via the Court's E-Filing/E-Service system, a true and correct copy of the above and foregoing **ANSWER TO FIRST AMENDED COMPLAINT AND COUNTERCLAIM** properly addressed to the following:

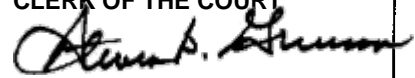
Allen J. Wilt, Esq.
John D. Tennert, Esq.
FENNEMORE CRAIG, P.C.
300 East Second Street – Suite 1510
Reno, NV 89501
awilt@fclaw.com
jtennert@fclaw.com
Attorneys for Defendant Gordon Ramsay

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Matthew C. Wolf, Esq.
CARBAJAL & MCNUTT, LLP
625 South Eighth Street
Las Vegas, NV 89101
drm@cmlawnv.com
mcw@cmlawnv.com
Attorneys for Plaintiff



An employee of PISANELLI BICE PLLC

TAB 25



BCO

DISTRICT COURT
CLARK COUNTY, NEVADA

ROWEN SEIBEL, et al.,)	CASE NO. A-17-751759-B
)	DEPT NO. XV
Plaintiff(s),)	
)	
v.)	
)	
PHWLV LLC, et al.,)	
)	
Defendant(s),)	
)	

BUSINESS COURT ORDER

This BUSINESS COURT ORDER ("Order") is entered to reduce the costs of litigation, to assist the parties in resolving their disputes if possible and, if not, to reduce the costs and difficulties of discovery and trial. This Order may be amended or modified by the Court upon good cause shown, and is made subject to any Orders that have heretofore been entered herein. This case is deemed "complex" and is automatically exempt from Arbitration.

IT IS HEREBY ORDERED:

I. MANDATORY RULE 16 CONFERENCE

A. A mandatory Rule 16 conference with the Court and counsel/parties in proper person will be held on **August 28, 2017, at 10:30 a.m.**, unless before then the record shows that this case is in the Court-Annexed Arbitration Program.

B. **The following persons are required to attend the conference;**

- (1) trial or lead counsel for all parties; and
- (2) parties may attend. If counsel feels that the requirement of attendance of the parties is beneficial, please contact the department to schedule a conference call with the Judge for a determination. The conference call must be scheduled at least two days prior to the conference.

1 C. 5 days prior to the scheduled Mandatory Rule 16 Conference, parties shall exchange
2 their 16.1 Initial Disclosures and file a notice of compliance with the Court.

3 D. The purpose of this conference is to streamline discovery, expedite settlement or other
4 appropriate disposition of the case. Counsel/parties in proper person must be prepared to discuss the
5 following:

- 6 (1) status of 16.1 settlement discussions and a review of possible court assistance;
- 7 (2) alternative dispute resolution appropriate to this case;
- 8 (3) simplification of issues;
- 9 (4) the nature and timing of all discovery;
- 10 (5) whether the parties believe an Electronic Filing and Service Order should be
11 entered;
- 12 (6) an estimate of the volume of documents and/or electronic information likely to
13 be the subject of discovery in the case from parties and nonparties and whether there are
14 technological means, including but not limited to production of electronic images rather than paper
15 documents and any associated protocol, that may render document discovery more manageable at an
16 acceptable cost;
- 17 (7) identify any and all document retention/destruction policies including
18 electronic data;
- 19 (8) whether the appointment of a special master or receiver is necessary and/or
20 may aid in the prompt disposition of this action;
- 21 (9) any special case management procedures appropriate to this case;
- 22 (10) trial setting;
- 23 (11) other matters as may aid in the prompt disposition of this action; and
- 24 (12) identify any unusual issues that may impact discovery.

25 E. Parties desiring a settlement conference before another judge shall so notify the court
26 at the setting.
27
28

1 F. The Plaintiff is responsible for serving a copy of this Order upon counsel for all parties
2 who have not formally appeared in this case as of the date of the filing of this order.

3 **II. PRETRIAL MOTIONS**

4 A. Any requests for injunctive relief must be made with notice to the opposing party
5 unless extraordinary circumstances exist. All parties shall advise the Court in writing if there is an
6 agreement to consolidate the trial on the merits with the preliminary injunction hearing pursuant to
7 NRCp 65(a)(2).

8 B. Any motions which should be addressed prior to trial – including motions for
9 summary judgment – shall be served, filed and scheduled for hearing no later than 45 days before
10 trial.

11 C. Motions in limine shall be served, filed and scheduled for hearing no later than 45
12 days before trial. Except upon a showing of unforeseen extraordinary circumstances, the Court will
13 not shorten time for the briefing of any pretrial motions or orally presented after these deadlines.

14 **III. DISCOVERY**

15 A. All discovery disputes in this matter will be handled by the District Court Judge rather
16 than the Discovery Commissioner.

17 B. A continuance of trial does not extend the deadline for completing discovery. A
18 request for an extension of the discovery deadline, if needed, must be presented in compliance with
19 EDCR 2.35.

20 C. A party objecting to a written discovery request must, in the original objection,
21 specifically detail the reasons that support the objection, and include affidavits or other evidence for
22 any factual assertions upon which an objection is based. The responding party must also state
23 whether any documents or categories of documents are being withheld, and if so, which of the
24 objections form the basis to withhold otherwise responsive documents or categories of documents.

25 D. Documents produced in compliance with NRCp 16.1 or in response to a written
26 discovery request, must be consecutively Bates stamped or numbered and accompanied by an index
27 with a reasonably specific description of the documents.
28

1 E. Any party whether in compliance with NRCP 16.1 or in a response to a written
2 discovery request not producing all documents in its possession, custody or control, shall:

3 (1) identify any documents withheld with sufficient particularity to support a
4 Motion to Compel; and

5 (2) state the basis for refusing to produce the documents(s).

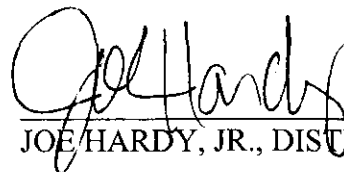
6 F. If photographs are produced in compliance with NRCP 16.1 or in a response to a
7 written discovery request, the parties are instructed to include one (1) set of color prints (Color laser
8 copies of sufficient clarity are acceptable), accompanied by a front page index, location depicted in
9 the photograph (with reasonable specificity) and the date the photograph was taken. If color laser
10 copies are deposited, any party wishing to view the original photographs shall make a request to do so
11 with the other party.

12 When a case is settled, counsel for the plaintiff and each unrepresented plaintiff of record shall
13 notify the District Court Judge within twenty-four (24) hours of the settlement and shall advise the
14 Court of the identity of the party or parties who will prepare and present the judgment, dismissal, or
15 stipulation of dismissal, which shall be presented within twenty (20) days of the notification of
16 settlement.

17 Failure to comply with any provision of this Pretrial Order may result in the imposition of
18 sanctions.

19 DATED this 28th day of July, 2017.

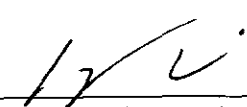
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JOE HARDY, JR., DISTRICT COURT

CERTIFICATE OF SERVICE

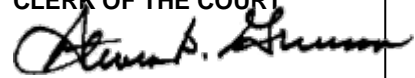
I hereby certify that on or about the date e-filed, the foregoing was e-served, e-mailed, mailed or a copy of the above document was placed in the attorney's folder in the Clerk's Office, or mailed to the following:

Daniel McNutt, Esq. drm@cmlawnv.com
James Pisanelli, Esq. jip@pisanellibice.com
Allen Wilt, Esq. awilt@fclaw.com



Judicial Executive Assistant

TAB 26



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.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED MATTERS

Case No.: A-17-751759-B

Dept. No.: 15

**PLAINTIFF'S REPLY TO DEFENDANT
PHWLTV, LLC'S COUNTERCLAIMS**

Plaintiff Rowen Seibel, individually and derivatively on behalf of GR BURGR LLC
("Plaintiff") hereby responds to the Counterclaims ("PH Counterclaims") of Defendant PHWLTV,
LLC ("PH") dated July 21, 2017, as follows:

1. Plaintiff admits the allegations contained in paragraph 1.
2. Plaintiff admits the allegations contained in paragraph 2.
3. Plaintiff denies knowledge or information sufficient to admit or deny the allegations
contained in Paragraph 3.
4. Paragraph 4 contains legal conclusions to which no response is required.

- 1 5. Plaintiff admits the allegations contained in paragraph 5.
- 2 6. Plaintiff admits the allegations contained in paragraph 6.
- 3 7. Plaintiff denies the allegations contained in paragraph 7, except admits, upon
4 information and belief, that PH is a Nevada gaming licensee and is subject to regulation of the
5 Nevada Gaming Commission.
- 6 8. Plaintiff denies knowledge or information sufficient to admit or deny the allegations
7 contained in Paragraph 8.
- 8 9. Plaintiff denies the allegations contained in paragraph 9, and refers to the
9 Development Agreement for the full and complete contents thereof.
- 10 10. Plaintiff denies knowledge or information sufficient to admit or deny the allegations
11 contained in Paragraph 10.
- 12 11. Plaintiff denies the allegations contained in paragraph 11, and refers to the
13 Development Agreement for the full and complete contents thereof.
- 14 12. Plaintiff denies the allegations contained in paragraph 12, and refers to the
15 Development Agreement for the full and complete contents thereof.
- 16 13. Plaintiff denies the allegations contained in paragraph 13, and refers to the
17 Development Agreement for the full and complete contents thereof.
- 18 14. Plaintiff denies the allegations contained in paragraph 14, and refers to the
19 Development Agreement for the full and complete contents thereof.
- 20 15. Plaintiff denies the allegations contained in paragraph 15, and refers to the
21 Development Agreement for the full and complete contents thereof.
- 22 16. Plaintiff denies the allegations contained in paragraph 16, except admits that in 2009
23 Plaintiff signed an application to participate in a voluntary disclosure program with the Internal
24 Revenue Service.
- 25 17. Plaintiff admits the allegations contained in paragraph 17.
- 26 18. Plaintiff admits the allegations contained in paragraph 18.
- 27 19. Plaintiff denies the allegations contained in paragraph 19.
- 28 20. Plaintiff denies the allegations contained in paragraph 20.

1 **AFFIRMATIVE AND OTHER DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSE**

3 1. The Counterclaims, and each cause of action contained therein, fail to state a cause of
4 action upon which relief may be granted.

5 **SECOND AFFIRMATIVE DEFENSE**

6 2. The claims set forth in the Counterclaims are barred, in whole or in part, by the
7 doctrine of estoppels.

8 **THIRD AFFIRMATIVE DEFENSE**

9 3. The claims set forth in the Counterclaims are barred, in whole or in part, by the
10 doctrine of unclean hands.

11 **FOURTH AFFIRMATIVE DEFENSE**

12 4. The claims set forth in the Counterclaims are barred, in whole or in part, by the
13 doctrine of unjust enrichment.

14 **FIFTH AFFIRMATIVE DEFENSE**

15 5. The claims set forth in the Counterclaims are barred, in whole or in part, by a failure to
16 mitigate its damages.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 6. The claims set forth in the Complaint are barred, in whole or in part, by virtue of PH's
19 breach of contract

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 7. Plaintiff's claims are barred by its own culpable conduct

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 8. At all relevant times, Plaintiff acted reasonably in good faith and with justification.

24 **NINTH AFFIRMATIVE DEFENSE**

25 9. PH's counterclaims are barred due to its breach of the implied covenant of good faith
26 and fair dealing.
27
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DATED: August 25, 2017.

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

1 **CERTIFICATE OF MAILING**

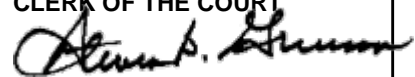
2 I HEREBY CERTIFY that pursuant to Nev. R. Civ. P. 5(b) and EDCR 8.05 on August 25,
3 2017, I caused service of the foregoing **PLAINTIFF'S REPLY TO DEFENDANT PHWL**
4 **LLC'S COUNTERCLAIMS** by mailing a copy by United States Postal Service, postage prepaid,
5 via email, and/or via electronic mail through the United States District Court's CM/ECF system to the
6 following at their last known address and e-mail:

7 James Pisanelli, Esq. (SBN 4027)
8 Debra Spinelli, Esq. (SBN 9695)
9 Brittnie Watkins, Esq. (SBN 13612)
10 PISANELLI BICE PLLC
11 400 South 7th Street, Suite 300
12 Las Vegas, NV 89101
13 jjp@pisanellibice.com
dls@pisanellibice.com
btw@pisanellibice.com
Attorneys for Defendant
PHWL, LLC

14 Allen Wilt, Esq. (SBN 4798)
15 John Tennert, Esq. (SBN 11728)
16 FENNEMORE CRAIG, P.C.
17 300 East 2nd Street, Suite 1510
18 Reno, NV 89501
awilt@fclaw.com
jtennert@fclaw.com
Attorneys for Defendant
Gordon Ramsay

19
20 /s/ Lisa A. Heller
21 An Employee of Carbajal & McNutt LLP
22
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TAB 27



BCO

DISTRICT COURT

CLARK COUNTY, NEVADA

ROWEN SEIBEL, et al.,)	Case No. A-17-751759-B
)	Dept No. XV
Plaintiff(s),)	
vs)	
)	
PHWLV LLC, et al.,)	
)	
Defendant(s),)	

**BUSINESS COURT SCHEDULING ORDER AND ORDER SETTING CIVIL JURY TRIAL,
PRE-TRIAL CONFERENCE AND CALENDAR CALL**

This BUSINESS COURT SCHEDULING ORDER AND TRIAL SETTING ORDER ("Scheduling Order") is entered following the Mandatory 16.1 Conference. Pursuant to NRCP 16.1(f) this case has been deemed complex and all discovery disputes will be resolved by this Court. This Order may be amended or modified by the Court upon good cause shown.

IT IS HEREBY ORDERED that the parties will comply with the following deadlines:

Discovery Cut-Off: **05/23/18¹**

Motions in Limine and Dispositive Motions to be filed by: **06/22/18**

IT IS HEREBY FURTHER ORDERED THAT:

A. The above entitled case is set to be tried to a jury on a **five week stack** to begin, **Tuesday, September 4, 2018, at 10:30 a.m.**

B. A Pre-Trial Conference with the designated attorney and/or parties in proper person will be held on **Monday, August 13, 2018, at 8:30 a.m.**

C. A calendar call will be held on **Wednesday, August 29, 2018, at 8:30 a.m.** Parties must bring to Calendar Call the following:

¹ Parties will coordinate dates that correlate with the discovery cut-off.

- (1) Typed exhibit lists;
- (2) List of depositions;
- (3) List of equipment needed for trial, including audiovisual equipment;² and
- (4) Courtesy copies of any legal briefs on trial issues.

D. Parties are to appear on **Monday, July 16, 2018, at 9:30 a.m.** for a Status Check on the matter.

E. The Pre-Trial Memorandum must be filed no later than **Friday, August 10, 2018, at 4:00 p.m.**, with a courtesy copy delivered to Department XV. All parties, (Attorneys and parties in proper person) **MUST** comply with **All REQUIREMENTS** of E.D.C.R. 2.67, 2.68 and 2.69. Counsel should include in the Memorandum an identification of orders on all motions in limine or motions for partial summary judgment previously made, a summary of any anticipated legal issues remaining, a brief summary of the opinions to be offered by any witness to be called to offer opinion testimony as well as any objections to the opinion testimony.

F. All original depositions anticipated to be used in any manner during the trial must be delivered to the clerk prior to the final Pre-Trial Conference. If deposition testimony is anticipated to be used in lieu of live testimony, a designation (by page/line citation) of the portions of the testimony to be offered must be filed and served by facsimile or hand, two (2) judicial days prior to the final Pre-Trial Conference. Any objections or counterdesignations (by page/line citation) of testimony must be filed and served by facsimile or hand, one (1) judicial day prior to the final Pre-Trial Conference commencement. Counsel shall advise the clerk prior to publication.

G. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits. All exhibits must comply with EDCR 2.27. Two (2) sets must be three hole punched placed in three ring binders along with the exhibit list. The sets must be delivered to the clerk prior to the final Pre-Trial Conference. Any demonstrative exhibits including exemplars anticipated to be used must be

² If counsel anticipate the need for audio visual equipment during the trial, a request must be submitted to the District Courts AV department following the calendar call. You can reach the AV Dept at 671-3300 or via E-Mail at CourtHelpDesk@ClarkCountyCourts.us

1 disclosed prior to the calendar call. Pursuant to EDCR 2.68, at the final Pre-Trial Conference,
2 counsel shall be prepared to stipulate or make specific objections to individual proposed exhibits.
3 Unless otherwise agreed to by the parties, demonstrative exhibits are marked for identification but
4 not admitted into evidence.

5 H. In accordance with EDCR 2.67, counsel shall meet, review, and discuss items to be
6 included in the Jury Notebook. Pursuant to EDCR 2.68, at the final Pre-Trial Conference, counsel
7 shall be prepared to stipulate or make specific objections to items to be included in the Jury
8 Notebook.

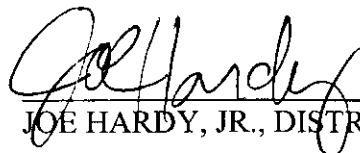
9 I. In accordance with EDCR 2.67, counsel shall meet and discuss preinstructions to the
10 jury, jury instructions, special interrogatories, if requested, and verdict forms. Each side shall
11 provide the Court, at the final Pre-Trial Conference, an agreed set of jury instructions and proposed
12 form of verdict along with any additional proposed jury instructions with an electronic copy in Word
13 format.

14 J. In accordance with EDCR 7.70, counsel shall file and serve by facsimile or hand, two
15 (2) judicial days prior to the final Pre-Trial Conference voir dire proposed to be conducted pursuant
16 to conducted pursuant to EDCR 2.68.

17 **Failure of the designated trial attorney or any party appearing in proper person to**
18 **appear for any court appearances or to comply with this Order shall result in any of the**
19 **following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation**
20 **of trial date; and/or any other appropriate remedy or sanction.**

21 Counsel is required to advise the Court immediately when the case settles or is otherwise
22 resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate whether
23 a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy
24 should be given to Chambers.

25 DATED this 31st day of August, 2017.

26 
27 JOE HARDY, JR., DISTRICT COURT
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on or about the date e-filed, the foregoing was e-served, e-mailed,
3 mailed or a copy of the above document was placed in the attorney's folder in the Clerk's Office, or
4 mailed to the following:

5 Daniel McNutt, Esq. drm@cmlawnv.com
6 James Pisanelli, Esq. jip@pisanellibice.com
7 Allen Wilt, Esq. awilt@felaw.com

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Judicial Executive Assistant