

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 19 OF 34

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APPENDIX OF EXHIBITS TO APPELLANTS' OPENING BRIEF

VOLUME 19 OF 34

TABLE OF CONTENTS

<u>Document Title:</u>	<u>Vol. No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
Appendix to Defendant Gordon Ramsay's Motion for Summary Judgment, Volume II of II, filed February 26, 2021 - Part 2 of 2 - FILED UNDER SEAL	19	65	AA03687-AA03791
Gordon Ramsay's Request for Judicial Notice, filed February 26, 2021	19	66	AA03792-AA03795
Objections to Evidence Offered by Gordon Ramsay in Support of His Motion for Summary Judgment, filed March 30, 2021	19	67	AA03796-AA03800
Objections to Evidence Offered by Caesars in Support of its Motions for Summary Judgment, filed March 30, 2021	19	68	AA03801-AA03808
Opposition to Caesars' Motion for Summary Judgment No. 2, filed March 30, 2021 – FILED UNDER SEAL	19	69	AA03809-AA03860
Opposition to Gordon Ramsay's Motion for Summary Judgment, filed March 30, 2021 – FILED UNDER SEAL	19	70	AA03861-AA03906

INDEX

<u>Document Title:</u>	<u>Vol. No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
2 nd Amended Order Setting Civil Jury Trial, Pre-Trial, Calendar Call, and Deadlines for Motions; Amended Discovery Scheduling Order Call, filed August 19, 2019	8	48	AA01680- AA01685
3 rd Amended Order Setting Civil Jury Trial, Pre-Trial, Calendar Call, and Deadlines for Motions; Amended Discovery Scheduling Order Call, filed October 15, 2019	8	49	AA01686- AA01691
4 th Amended Order Setting Civil Jury Trial, Pre-Trial, Calendar Call, and Deadlines for Motions; Amended Discovery Scheduling Order Call, filed January 10, 2020	8	50	AA01692- AA01697
5 th Amended Order Setting Civil Jury Trial, Pre-Trial, Calendar Call, and Deadlines for Motions; Amended Discovery Scheduling Order Call, filed April 17, 2020	8	51	AA01698- AA01703
6 th Amended Order Setting Civil Jury Trial, Pre-Trial, Calendar Call, and Deadlines for Motions; Amended Discovery Scheduling Order Call, filed June 18, 2020	8	53	AA01705- AA01710
7 th Amended Order Setting Civil Jury Trial, Pre-Trial, Calendar Call, and Deadlines for Motions; Amended Discovery Scheduling Order Call, filed October 15, 2020	8	54	AA01711- AA01714
Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call, filed March 13, 2019	8	47	AA01675- AA01679

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

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

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

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

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

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

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

<u>Document Title:</u>	<u>Vol. No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
Appendix to Defendant Gordon Ramsay's Motion for Summary Judgment, Volume II of II, filed February 26, 2021 - Part 2 of 2 - FILED UNDER SEAL	19	65	AA03687-AA03791
Business Court Order, filed August 16, 2018	8	43	AA01616-AA01621
Business Court Order, filed July 28, 2017	6	25	AA01262-AA01266
Business Court Scheduling Order and Order Setting Civil Jury Trial, Pre-Trial Conference and Conference Call, filed September 1, 2017	6	27	AA01273-AA01276
Business Court Scheduling Order Setting Civil Jury Trial and Pre-Trial Conference/Calendar Call, filed October 31, 2018	8	44	AA01622-AA01627
Caesars' Motion for Summary Judgment No. 2, filed February 25, 2021- FILED UNDER SEAL	8	55	AA01715-AA01740
Caesars' Reply in Support of Motion for Summary Judgment No. 2, filed November 30, 2021 – FILED UNDER SEAL	30	82	AA06190-AA06212
Caesars' Reply to the Development Parties' Omnibus Supplement to Their Oppositions to Motions for Summary Judgment filed by Caesars and Ramsay, filed January 13, 2022 – FILED UNDER SEAL	32	93	AA06749-AA06758
Caesars' Response to Objections to Evidence Offered in Support of Motions for Summary Judgment, filed November 30, 2021 – FILED UNDER SEAL	31	86	AA06545-AA06555

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

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

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

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

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

<u>Document Title:</u>	<u>Vol. No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
Objections to Exhibits Offered in Support of Plaintiffs' Omnibus Supplement to Their Oppositions to Motions For Summary Judgment, filed January 13, 2022	32	94	AA6759-AA06762
Objections to Exhibits Offered in Support of the Seibel Parties' Oppositions to Caesars' Motions for Summary Judgment, filed November 30, 2021	31	85	AA6537-AA06544
Omnibus Order Granting the Development Parties' Motions to Seal and Redact, filed February 7, 2022	33	99	AA06870-AA06872
Omnibus Reply in Support of Plaintiff's Motion for Preliminary Injunction, filed March 21, 2017	5	10	AA00864-AA00935
Opposition to Caesars' Motion for Summary Judgment No. 2, filed March 30, 2021 – FILED UNDER SEAL	19	69	AA03809-AA03860
Opposition to Gordon Ramsay's Motion for Summary Judgment, filed March 30, 2021 – FILED UNDER SEAL	19	70	AA03861-AA03906
Order Denying Plaintiff's Motion for Preliminary Injunction, filed April 12, 2017	5	14	AA01054-AA01057
Order Granting in Part and Denying in Part Planet Hollywood's Motion to Dismiss, filed June 15, 2017	6	20	AA01170-AA01173

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

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

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

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

CERTIFICATE OF SERVICE

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

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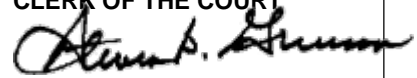
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Employee of BAILEY ❖ KENNEDY

TAB 65

Part 2 of 2

**FILED UNDER
SEAL PURSUANT
TO PENDING
MOTION TO SEAL
FILED
CONCURRENTLY
HEREWITH**

TAB 66



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13 *Attorneys for Defendant Gordon Ramsay*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

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

20 Plaintiff,

21 vs.

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

24 Defendant,

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

27 Nominal Defendant.

28 AND ALL RELATED MATTERS.

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

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

GORDON RAMSAY'S REQUEST FOR
JUDICIAL NOTICE

24 Pursuant to NRS 47.130, Defendant Gordon Ramsay respectfully requests that this Court
25 take judicial notice of the public filings and Court orders entered in the dissolution proceedings of
26 Nominal Defendant GR BURGR, LLC ("GRB") currently pending in the Delaware Court of
27 Chancery, *In re GR BURGR, LLC*, No. 12825-VCS (the "Delaware Dissolution Proceedings") and
28 Plaintiff Seibel's criminal proceedings *United States of America v. Rowen Seibel*, Case No. 1:16-

1 cr-00279-WHP (the “Seibel Criminal Proceedings”).

2 The Delaware Dissolution Proceedings are closely related to GRB’s relationship with
3 Seibel and GRB’s relationship with Defendant PHWL, LLC (“PH”) and non-party GR US
4 Licensing, LP (“GRUS”). *See Mack v. Estate of Mack*, 125 Nev. 80, 91–92, 206 P.3d 98, 106
5 (2009) (taking judicial notice of documents filed in a prior case because the prior case was closely
6 related to the case currently before that court). Specifically, Ramsay requests judicial notice of the
7 following documents attached to Ramsay’s Appendix to his Motion for Summary Judgment
8 (“GR’s App.”) at Exhibit 26: (1) Memorandum of Opinion dated August 25, 2017; (2) Order
9 Dissolving GR BURGR, LLC and Appointing Liquidating Trustee dated October 25, 2017; (4)
10 Appointment Order dated December 11, 2017; (5) Report and Proposed Liquidation Plan for GR
11 BURGR, LLC (Public Version) dated March 30, 2020; and (6) Letter Opinion of Vice Chancellor
12 Joseph R. Slight dated October 13, 2020. These documents are publicly available online at the
13 Delaware Court’s website <https://courts.delaware.gov/> and are capable of accurate and ready
14 determination. NRS 42.130(2).

15 Ramsay also requests that this Court take judicial notice of the public filings and orders
16 entered in the Seibel Criminal Proceedings, which directly relate to Seibel’s unsuitability and the
17 facts that gave rise to this action. Specifically, Ramsay requests judicial notice of the following
18 documents attached to Ramsay’s Appendix to his Motion for Summary Judgment: (1) Ex. 10,
19 Information filed April 18, 2016 [ECF No. 2]; (2) Ex. 16, Notice of Intent to File Information filed
20 February 29, 2016 [ECF No. 1]; (3) Ex. 17, Plea Hearing Transcript filed April 25, 2016 [ECF No.
21 7]; (4) Ex. 18, Ltr. from R. Fink to Hon. J. Pauley filed August 5, 2016 [ECF 14]; (5) Ex. 19, Ltr.
22 from R. Fink to Hon. J. Pauley filed August 16, 2016 [ECF 16]; and (6) Ex. 20, Sentencing
23 Hearing Transcript filed September 13, 2016 [ECF 18]. These documents are available on the
24 federal government’s PACER website and are capable of accurate and ready determination. NRS
25 42.130(2).

26 CONCLUSION

27 For the reasons set forth above, Ramsay respectfully requests that this Court take judicial
28 notice of the public filings referenced above.

Dated: February 26, 2021

FENNEMORE CRAIG, P.C.

By: /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 NRCP 5(b), I caused to be served via the Court's e-filing /e-service system a true and correct copy of the above and foregoing GORDON RAMSAY'S REQUEST FOR JUDICIAL NOTICE to the following:

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LLC, and R Squared Global Solutions, LLC,
Derivatively on Behalf of Inc. DNT
Acquisition LLC*

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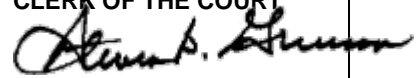
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DATED: February 26, 2021

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

TAB 67



OBJ (CIV)

JOHN R. BAILEY

Nevada Bar No. 0137

DENNIS L. KENNEDY

Nevada Bar No. 1462

JOSHUA P. GILMORE

Nevada Bar No. 11576

PAUL C. WILLIAMS

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants,

And

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED CLAIMS.

Case No. A-17-751759-B

Dept. No. XVI

Consolidated with A-17-760537-B

**OBJECTIONS TO EVIDENCE OFFERED BY
GORDON RAMSAY IN SUPPORT OF HIS
MOTION FOR SUMMARY JUDGMENT**

HEARING NOT REQUESTED

Rowen Seibel and GR Burger, LLC (“GRB”), by and through their counsel, object to the following evidence submitted by Gordon Ramsay with his Appendix of Exhibits in support of his Motion for Summary Judgment, filed March 26, 2021 (the “Motion”):

1. **Exhibit 13:** The document contains inadmissible hearsay. NRS 51.035; NRS 51.065(1). Ramsay seeks to offer the document to prove the truth of the matters asserted. Further, Seibel and GRB were unable to cross-examine Rob W. Morey, Assistant U.S. Attorney, and Paul Krieger, Deputy Chief, Complex Frauds & Cybercrime Unit, who handled Seibel’s criminal matter, making it unfair for the Court to consider out-of-court statements from them. In addition, the document contains argument of counsel, which is not evidence. *See, e.g., McKenna v. State*, 114 Nev. 1044, 1053, 968 P.2d 739, 745 (1998). Further, Ramsay did not lay a proper foundation for the document—it is not signed by Seibel or his counsel. *Frias v. Valle*, 101 Nev. 219, 221-22, 698 P.2d 875, 876-77 (1985). Moreover, the document references inadmissible settlement communications. NRS 48.045(1). Finally, Exhibit 13’s probative value (if any) is substantially outweighed by the danger of unfair prejudice, confusion of the issues or of misleading the jury. NRS 48.035(1). For these reasons, the Court should disregard Exhibit 13.

2. **Exhibit 14:** The document contains inadmissible hearsay. NRS 51.035; NRS 51.065(1). Ramsay seeks to offer the document to prove the truth of the matters asserted. Further, Seibel and GRB were unable to cross-examine Messrs. Morey and Krieger who handled Seibel’s criminal matter, making it unfair for the Court to consider out-of-court statements from them. In addition, the document contains argument of counsel, which is not evidence. *See, e.g., McKenna*, 114 Nev. at 1053, 968 P.2d at 745. Further, Ramsay did not lay a proper foundation for the document—it is not signed by Seibel or his counsel. *Frias*, 101 Nev. at 221-22, 698 P.2d at 876-77. Moreover, the document references inadmissible settlement communications. NRS 48.045(1). Finally, Exhibit 14’s probative value (if any) is substantially outweighed by the danger of unfair prejudice, confusion of the issues or of misleading the jury. NRS 48.035(1). For these reasons, the Court should disregard Exhibit 14.

3. **Exhibit 17:** The document is incomplete, precluding the Court from ensuring that it is what Ramsay claims it to be. NRS 52.015(1). That aside, the document contains inadmissible

1 hearsay. NRS 51.035; NRS 51.065(1). Other than statements made by Mr. Seibel or his counsel,
2 the Court should disregard statements by others in Exhibit 17.

3 4. **Exhibit 20:** The document is incomplete, precluding the Court from ensuring that it
4 is what Ramsay claims it to be. NRS 52.015(1). That aside, the document contains inadmissible
5 hearsay. NRS 51.035; NRS 51.065(1). Other than statements made by Seibel or his counsel, the
6 Court should disregard statements by others in Exhibit 20.

7 5. **Exhibit 27:** The document is irrelevant, and thus, inadmissible. NRS 48.025(2).
8 The document is a redacted, public version of a March 30, 2020 Report and Proposed Liquidation
9 Plan for GR Burger, LLC (the “Report”) prepared by the Liquidating Trustee (Kurt Heyman, Esq.)
10 for GRB and filed in *In re: GR Burgr, LLC*, C.A. No. 12825-VCS, Court of Chancery, State of
11 Delaware. As set forth in Seibel and GRB’s Opposition to Ramsay’s Motion, the various opinions
12 and legal conclusions contained in the Report do not constitute judicial admissions. Caesars cites
13 no authority indicating that a court may defer to the findings of a court-appointed trustee in
14 assessing the merits of a party’s claims where those claims were assigned by the trustee to a former
15 member of the party. Next, Ramsay did not lay a proper foundation upon which Mr. Heyman
16 rendered his opinions and made various legal conclusions in his Report. Specifically, Ramsay did
17 not show which documents were reviewed by Mr. Heyman and which witnesses were interviewed
18 by Mr. Heyman. It is undisputed that Mr. Heyman lacks personal knowledge of the underlying
19 facts—he was appointed as the Receiver for GRB *after* Planet Hollywood terminated the GRB
20 Agreement. Absent a proper foundation, the Report is not properly before the Court. *Frias*, 101
21 Nev. at 221-22, 698 P.2d at 876-77. Finally, the Report is inadmissible hearsay. NRS 51.035; NRS
22 51.065(1). The Report contains out-of-court statement from the Trustee being offered by Ramsay
23 to prove the truth of the matters asserted. Ramsay cites no authority providing that statements made
24 by a court-appointed receiver for a dissolved entity constitute party admissions for purposes of the
25 hearsay rule. Because the Report contains opinions and legal conclusions from the Receiver based
26 on information to which he lacks personal knowledge, it should be excluded. *See also FTC v. Data*
27 *Med. Capital, Inc.*, SA CV 99-1266 AHS (EEx), 2010 U.S. Dist. LEXIS 3344, at *80 (C.D. Cal.
28 Jan. 15, 2010) (finding that a receiver’s report constituted hearsay “insofar as the Court is asked to

1 make factual findings based on the various conclusions drawn by the Receiver”). For these reasons,
2 the Court should disregard Exhibit 27.

3 6. **Exhibit 30:** The document is parol evidence and is being used to contradict the
4 express and implied obligations undertaken by Ramsay in the GRB Agreement. *Kaldi v. Farmers*
5 *Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001). Thus, the Court should disregard Exhibit 30.

6 7. **Exhibit 32:** The document contains inadmissible hearsay. NRS 51.035; NRS
7 51.065(1). Thus, the Court should disregard Exhibit 32.

8 8. **Exhibit 34:** The document contains inadmissible hearsay. NRS 51.035; NRS
9 51.065(1). Thus, the Court should disregard Exhibit 34.

10 9. **Exhibit 37:** The document contains inadmissible hearsay. NRS 51.035; NRS
11 51.065(1). Other than statements made by Seibel or his counsel, the Court should disregard
12 statements by others (such as statements by Stuart Gillies, Michael Thomas, Esq., and Amie Sabo,
13 Esq.) in Exhibit 37.

14 Because the above exhibits are not admissible and/or not properly before the Court (whether
15 because they contain inadmissible hearsay or settlement communications or because Ramsay did
16 not lay a proper foundation for them), they should be ignored by the Court in deciding Ramsay’s
17 Motion. Seibel and GRB reserve the right to assert additional objections—including, but not
18 limited to, if and when Ramsay seeks to use the Appendices for purposes other than those provided
19 in the Motion.

20 DATED this 30th day of March, 2021.

21 BAILEY ♦ KENNEDY

22 By: /s/ Joshua P. Gilmore

23 JOHN R. BAILEY
24 DENNIS L. KENNEDY
25 JOSHUA P. GILMORE
26 PAUL C. WILLIAMS
27 STEPHANIE J. GLANTZ

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

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 30th day of March, 2021, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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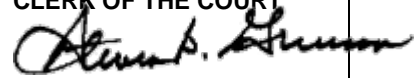
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/s/ Susan Russo
Employee of BAILEY ♦ KENNEDY

TAB 68



OBJ (CIV)

JOHN R. BAILEY

Nevada Bar No. 0137

DENNIS L. KENNEDY

Nevada Bar No. 1462

JOSHUA P. GILMORE

Nevada Bar No. 11576

PAUL C. WILLIAMS

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants,

And

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED CLAIMS.

Case No. A-17-751759-B

Dept. No. XVI

Consolidated with A-17-760537-B

**OBJECTIONS TO EVIDENCE OFFERED BY
CAESARS IN SUPPORT OF ITS MOTIONS
FOR SUMMARY JUDGMENT**

HEARING NOT REQUESTED

1 Rowen Seibel and the Development Entities¹ (collectively, the “Development Parties”), by
2 and through their counsel, object to the following evidence submitted by Caesars² with its
3 Appendix of Exhibits in support of its Motions for Summary Judgment Nos. 1 and 2, filed March
4 25, 2021 (the “Motions”):

5 1. **Exhibit 16:** The document is irrelevant, and thus, inadmissible. NRS 48.025(2). In
6 or around September 2016, Caesars determined that Seibel was unsuitable and, further, that The
7 Seibel Family 2016 Trust (the “Trust”) was unsuitable due to Seibel’s relationships with its
8 Trustees and Beneficiaries. Seibel’s prenuptial agreement is not relevant to assist the jury in
9 assessing these suitability determinations, particularly because it was not considered at the time by
10 Caesars. Further, because the prenuptial agreement was nullified by Seibel and his wife (Bryn
11 Dorfman), its probative value is substantially outweighed by the danger of unfair prejudice,
12 confusion of the issues or of misleading the jury. NRS 48.035(1). In addition, its probative value is
13 substantially outweighed by a needless presentation of cumulative evidence. NRS 48.035(2). For
14 these reasons, the Court should disregard Exhibit 16.

15 2. **Exhibit 22:** The document contains inadmissible hearsay. NRS 51.035; NRS
16 51.065(1). Other than statements made by Seibel or his counsel, the Court should disregard
17 statements by others in Exhibit 22.

18 3. **Exhibit 24:** Caesars failed to lay a proper foundation for this document—neither Mr.
19 Seibel nor his counsel authored the document. *Frias v. Valle*, 101 Nev. 219, 221-22, 698 P.2d 875,
20 876-77 (1985). Further, the document contains inadmissible hearsay; it is being offered by Caesars
21 to prove the truth of the matters asserted. Further, attached to the document is an affidavit from a
22 non-party (inadmissible hearsay) that itself contains inadmissible hearsay, as well as various
23 newspaper articles containing inadmissible hearsay. NRS 51.035; NRS 51.065(1); NRS 51.067.
24 For these reasons, the Court should disregard Exhibit 24.

25 ¹ “Development Entities” refers to Moti Partners, LLC (“Moti”); Moti Partners 16, LLC (“Moti 16”); LLTQ
26 Enterprises, LLC (“LLTQ”); LLTQ Enterprises 16, LLC (“LLTQ 16”); TPOV Enterprises, LLC (“TPOV”); TPOV
27 Enterprises 16, LLC (“TPOV 16”); FERG, LLC (“FERG”); FERG 16, LLC (“FERG 16”); R Squared Global Solutions,
LLC (“R Squared”), derivatively on behalf of DNT Acquisition LLC (“DNT”); and GR Burgr LLC (“GRB”).

28 ² “Caesars” refers to PHWLTV, LLC (“Planet Hollywood”), Desert Palace, Inc. (“Caesars Palace”), Paris Las
Vegas Operating Company, LLC (“Paris”), and Boardwalk Regency Corporation d/b/a Caesars Atlantic City (“CAC”).

1 4. **Exhibit 25:** The document contains inadmissible hearsay. NRS 51.035; NRS
2 51.065(1). Other than statements made by Seibel or his counsel, the Court should disregard
3 statements by others in Exhibit 25.

4 5. **Exhibit 26:** The document contains inadmissible hearsay. NRS 51.035; NRS
5 51.065(1). Embedded within the email is a newspaper article containing inadmissible hearsay. As
6 a result, the Court should disregard Exhibit 26.

7 6. **Exhibit 27:** The document contains inadmissible hearsay. NRS 51.035; NRS
8 51.065(1). The document includes out-of-court statements from an employee of the Nevada
9 Gaming Control Board (“NGCB”) to Caesars as well as internal statements between and among
10 employees and members of the NGCB—all of which are being offered by Caesars to prove the truth
11 of the matters asserted. Further, due to the gaming privilege, the Development Parties were unable
12 to cross-examine those employees and members of the NGCB regarding this matter. NRS
13 463.120(5); *see also* NRS 49.285 (codifying the public officer privilege). It would be unfair for the
14 Court to consider out-of-court statements from employees and/or members of the NGCB regarding
15 this matter. Further, Exhibit 27’s probative value (if any) is substantially outweighed by the danger
16 of unfair prejudice, confusion of the issues or of misleading the jury. NRS 48.035(1). For these
17 reasons, the Court should disregard Exhibit 27.

18 7. **Exhibit 37:** The document contains inadmissible hearsay. NRS 51.035; NRS
19 51.065(1). Caesars may offer the document solely for purposes of establishing the fact that GR US
20 Licensing, LP initiated a dissolution proceeding of GRB in Delaware; the allegations within the
21 petition are inadmissible hearsay and should not be considered by the Court.

22 8. **Exhibit 40:** The document contains inadmissible hearsay. NRS 51.035; NRS
23 51.065(1). The document is a letter containing out-of-court statements from an attorney for Caesars
24 (Mark Clayton, Esq.) being offered by Caesars to prove the truth of the matters asserted. Next, the
25 letter attaches a transcript (separately attached to Caesars’ Motions as Exhibit 25). The
26 Development Parties incorporate herein by reference the objections set forth above to Exhibit 25.
27 Further, the letter attaches a copy of the initial Complaint filed in this matter by Caesars, which is
28 inadmissible hearsay. As to the letter itself, during Mr. Clayton’s deposition on September 20,

2019, Caesars instructed him to not answer any questions relating to the letter. (*See* Excerpt of Dep. of Mark Clayton, Esq., Appx., Ex. 620, at 100:18-104:17.) Because the Development Parties were unable to cross-examine Mr. Clayton regarding this letter, it would be unfair for the Court to consider it (or its various attachments). For these reasons, the Court should disregard Exhibit 40.

9. **Exhibit 41:** The document contains inadmissible hearsay. NRS 51.035; NRS 51.065(1). The document includes out-of-court statements from a former member of the NGCB (A.G. Burnett, Esq.) being offered by Caesars to prove the truth of the matters asserted. Further, due to the gaming privilege, the Development Parties were unable to cross-examine Mr. Burnett regarding this matter. NRS 463.120(5); *see also* NRS 49.285 (codifying the public officer privilege). That is particularly significant because the Development Parties were unable to determine what information, if any, was reviewed by Mr. Burnett before he prepared and sent his letter to Mr. Clayton. During Mr. Clayton's deposition on September 20, 2019, Caesars instructed him to not answer any questions relating to information that he may have provided to Mr. Burnett prior to his receipt of this letter. (*See* Excerpt of Dep. of Mark Clayton, Esq., Appx., Ex. 120, at 104:19-107:20.) Because the Development Parties were unable to cross-examine Mr. Clayton regarding this letter, it would be unfair for the Court to consider it. Next, Caesars did not lay a proper foundation upon which Mr. Burnett made his statements. Specifically, Caesars did not show what evidence was reviewed by Mr. Burnett (if any) and which witnesses were interviewed by Mr. Burnett (if any). It is undisputed that Mr. Burnett lacks personal knowledge of the underlying facts. Absent a proper foundation, the letter should not be considered by the Court. *Frias*, 101 Nev. at 221-22, 698 P.2d at 876-77. In addition, it appears from public record that Mr. Burnett began representing Caesars after he retired from the NGCB, questioning his impartiality. (*See, e.g., Stutz, Howard, Nevada Oks Caesars' ownership of William Hill; CEO says it will sell bookmaker's international business*, CDC Gaming Reports Inc. (Mar. 19, 2021), *available at* <https://www.cdcgamingreports.com/nevada-oks-caesars-ownership-of-william-hill-ceo-says-it-will-sell-bookmakers-inernational-buiness.html> (last visited Mar. 25, 2021).³) Further, given Mr.

³ The Court may consider this newspaper article because it is not being offered to prove the truth of the matters asserted (e.g., information related to a recent acquisition) but simply to show Mr. Burnett's role as counsel for Caesars.

1 Burnett's lack of knowledge of the issues, Exhibit 41's probative value is substantially outweighed
2 by the danger of unfair prejudice, confusion of the issues or of misleading the jury. NRS 48.035(1).
3 Finally, the document contains an ultimate conclusion to be made by the jury in this case – e.g.,
4 whether Caesars acted appropriately and met its duty to deal fairly and in good faith with the
5 Development Parties when terminating the various agreements at issue. For these reasons, the
6 Court should disregard Exhibit 41.

7 10. **Exhibits 42-44:** The document contains inadmissible hearsay. NRS 51.035; NRS
8 51.065(1). Further, the documents were not disclosed pursuant to NRCP 16.1 and are not otherwise
9 subject to judicial notice. NRCP 37(c)(1). In addition, the documents are not relevant (when GRB
10 filed an Answer to Caesars' Complaint has nothing to do with the pursuit of GRB's claims against
11 Caesars), and thus, are inadmissible. NRS 48.025(2). For these reasons, the Court should disregard
12 Exhibits 42-44.

13 11. **Exhibit 45:** Attached to this letter is a copy of Mr. Clayton's October 23, 2017 letter
14 to Mr. Burnett (separately attached to Caesars' Motions as Exhibit 40) and Mr. Burnett's November
15 6, 2017 letter to Mr. Clayton (separately attached to Caesars' Motions as Exhibit 41). The
16 Development Parties incorporate herein by reference the objections set forth above to Exhibits 40
17 and 41 and request the Court to disregard those two letters.

18 12. **Exhibits 49 and 54-58:** The documents contain inadmissible hearsay. NRS 51.035;
19 NRS 51.065(1). Further, the documents were not disclosed pursuant to NRCP 16.1 and are not
20 otherwise subject to judicial notice. NRCP 37(c)(1). In addition, the documents primarily consist
21 of argument of counsel, which is not evidence. *See, e.g., McKenna v. State*, 114 Nev. 1044, 1053,
22 968 P.2d 739, 745 (1998). In addition, the documents are not relevant (when GRB filed an Answer
23 to Caesars' Complaint has nothing to do with the pursuit of GRB's claims against Caesars), and
24 thus, are inadmissible. NRS 48.025(2). Finally, the documents reference inadmissible settlement
25
26

27 *See Jones v. Raymer Metals, Inc.*, No. CV 17-00546-BRO (MRWx), 2017 U.S. Dist. LEXIS 223587, *15 (C.D. Cal.
28 May 31, 2017) ("Generally, courts may take judicial notice of newspaper articles... for the fact that [a subject] was in the
public realm....").

1 communications. NRS 48.045(1). For these reasons, the Court should disregard Exhibits 49 and
2 54-58.

3 13. **Exhibit 59:** The document is irrelevant, and thus, inadmissible. NRS 48.025(2).
4 The document is a redacted, public version of a March 30, 2020 Report and Proposed Liquidation
5 Plan for GR Burger, LLC (the “Report”) prepared by the Liquidating Trustee (Kurt Heyman, Esq.)
6 for GRB and filed in *In re: GR Burgr, LLC*, C.A. No. 12825-VCS, Court of Chancery, State of
7 Delaware. As set forth in the Development Parties’ Opposition to Caesars’ Motion for Summary
8 Judgment No. 2, the various opinions and legal conclusions contained in the Report do not
9 constitute judicial admissions. Caesars cites no authority indicating that a court may defer to the
10 findings of a court-appointed trustee in assessing the merits of a party’s claims where those claims
11 were assigned by the trustee to a former member of the party. Next, Caesars did not lay a proper
12 foundation upon which Mr. Heyman rendered his opinions and made various legal conclusions in
13 his Report. Specifically, PH did not show which documents were reviewed by Mr. Heyman and
14 which witnesses were interviewed by Mr. Heyman. It is undisputed that Mr. Heyman lacks
15 personal knowledge of the underlying facts—he was appointed as the Receiver for GRB *after* PH
16 terminated the GRB Agreement. Absent a proper foundation, the Report is not properly before the
17 Court. *Frias*, 101 Nev. at 221-22, 698 P.2d at 876-77. Finally, the Report is inadmissible hearsay.
18 NRS 51.035; NRS 51.065(1). The Report contains out-of-court statement from the Trustee being
19 offered by Caesars to prove the truth of the matters asserted. Caesars cites no authority providing
20 that statements made by a court-appointed receiver for a dissolved entity constitute party
21 admissions for purposes of the hearsay rule. Because the Report contains opinions and legal
22 conclusions from the Receiver based on information to which he lacks personal knowledge, it
23 should be excluded. *See also FTC v. Data Med. Capital, Inc.*, SA CV 99-1266 AHS (EEx), 2010
24 U.S. Dist. LEXIS 3344, at *80 (C.D. Cal. Jan. 15, 2010) (finding that a receiver’s report constituted
25 hearsay “insofar as the Court is asked to make factual findings based on the various conclusions
26 drawn by the Receiver”). For these reasons, the Court should disregard Exhibit 59.

27 14. **Exhibits 64:** The document contains inadmissible hearsay. NRS 51.035; NRS
28 51.065(1). Further, the document was not disclosed pursuant to NRCP 16.1 and is not otherwise

1 subject to judicial notice. NRCP 37(c)(1). For these reasons, the Court should disregard Exhibit
2 64.

3 15. **Exhibit 69:** This document constitutes a supplemental NRCP 16.1 disclosure served
4 by Caesars, which is inadmissible hearsay. NRS 51.035; NRS 51.065(1). Further, the document
5 consists of nothing more than argument of counsel, which is not evidence. *See, e.g., McKenna*, 114
6 Nev. at 1053, 968 P.2d at 745. For these reasons, the Court should disregard Exhibit 69.

7 Because the above exhibits are not admissible and/or not properly before the Court (whether
8 because they contain inadmissible hearsay or settlement communications or because Caesars did
9 not lay a proper foundation for them), they should be ignored by the Court in deciding Caesars'
10 Motions. The Development Parties reserve the right to assert additional objections—including, but
11 not limited to, if and when Caesars seeks to use the Appendices for purposes other than those
12 provided in the Motions.

13 DATED this 30th day of March, 2021.

14 BAILEY❖KENNEDY

15 By: /s/ Joshua P. Gilmore

16 JOHN R. BAILEY

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24 *LLC; FERG, LLC; FERG 16, LLC; Craig Green; R Squared*
25 *Global Solutions, LLC, Derivatively On Behalf of DNT*
26 *Acquisition, LLC; and GR Burgr, LLC*
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 30th day of March, 2021, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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TAB 69

**FILED UNDER
SEAL PURSUANT
TO PENDING
MOTION TO SEAL
FILED
CONCURRENTLY
HEREWITH**

TAB 70

**FILED UNDER
SEAL PURSUANT
TO PENDING
MOTION TO SEAL
FILED
CONCURRENTLY
HEREWITH**