

CASE NO. 86462

IN THE SUPREME COURT OF NEVADA

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,

Appellants,

vs.

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLTV, LLC; and BOARDWALK REGENCY CORPORATION,

Respondents.

District Court Case No. A-17-760537-B

APPENDIX OF EXHIBITS TO APPELLANT'S OPENING BRIEF

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APPENDIX OF EXHIBITS TO APPELLANTS' OPENING BRIEF

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Notice of Entry of Order Granting Motion to Redact Caesars' Opposition to the Development Entities, Rowen Seibel, and Craig Green's Motion: (1) For Leave to Take Caesars' NRCP 30(b)(6) Depositions; and (2) To Compel Responses to Written Discovery on Order Shortening Time; and Countermotion for Protective Order and for Leave to Take Limited Deposition of Craig Green and Seal Exhibits 3-6, 8-11, 13, 14, and 16 Thereto, filed February 3, 2021	13	82	AA02612-AA02625
Notice of Entry of Order Granting Motion to Redact Caesars' Opposition to the Development Parties' Motion For Leave to File A Supplement to their Oppositions to Motions for Summary Judgment on Order Shortening Time, filed July 26, 2022	38	147	AA08072-AA08083
Notice of Entry of Order Granting Motion to Redact Caesars' Reply to Development Parties' Omnibus Supplement to Their Oppositions to Motions for Summary Judgment Filed by Caesars and Ramsay and Seal Exhibit 115 Thereto, filed June 2, 2022	34	132	AA07101-AA07112

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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	38	145	AA08051-AA08062
Notice of Entry of Order Granting Motion to Redact Opposition to Craig Green's Motion for Summary Judgment; Countermotion for Summary Judgment Against Craig Green; and Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV – VIII of the First Amended Complaint) and Seal Exhibits 2-3, 15-18, 21, 23-28, 31 and 33 in Appendix Thereto, filed March 17, 2023	42	166	AA09042-AA09053

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Notice of Entry of Order Granting Motion to Seal Exhibit 23 to Caesars' Reply in Support of its Motion for Leave to File First Amended Complaint, filed April 13, 2020	5	57	AA01156-AA01162
Notice of Entry of Order Granting Proposed Plaintiff in Intervention The Original Homestead Restaurant, Inc. d/b/a The Old Homestead Steakhouse's Motion to Intervene, filed October 23, 2018	2	27	AA00383-AA00388
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	33	118	AA06945-AA06956
Notice of Entry of Order Granting the Development Parties' Motion to Redact Their Oppositions to the Counter-Motion and Cross-Motion for Summary Judgment and to Seal All or Portions of Exhibits A-2, A-3, B, D-F, and I-N to the Appendix of Exhibits Supporting the Oppositions, filed October 27, 2022	41	162	AA08869-AA08878

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Notice of Entry of Stipulated Confidentiality Agreement and Protective Order, filed March 12, 2019	2	33	AA00445-AA00469
Notice of Entry of Stipulation and Order for a Limited Extension of the Dispositive Motion Deadline, filed February 18, 2021	13	88	AA02687-AA02700
Notice of Entry of Stipulation and Order of Dismissal of J. Jeffrey Frederick With Prejudice, filed August 28, 2019	2	37	AA00483-AA00487
Notice of Entry of Stipulation and Order of Dismissal With Prejudice, filed June 3, 2022	34	136	AA07165-AA07173
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	1	17	AA00218-AA00224
Notice of Entry of Stipulation and Proposed Order to Extend Discovery Deadlines (Ninth Request), filed October 19, 2020	7	70	AA01494-AA01523
Notice of Order Granting Caesars' Motion for Leave to File First Amended Complaint, filed March 11, 2020	5	52	AA01093-AA01100
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Objections to Exhibits Offered in Support of Craig Green’s Motion for Summary Judgment, filed July 14, 2022	37	142	AA08034-AA08037
Objections to Exhibits Offered in Support of Craig Green’s Opposition to Caesars’ Counter-Motion for Summary Judgment and Rowen Seibel and the Development Entities’ Opposition to Caesars’ Cross-Motion for Summary Judgment, filed October 12, 2022	39	157	AA08432-AA08435
Objections to Exhibits Offered in Support of Plaintiffs’ Omnibus Supplement to Their Oppositions to Motions For Summary Judgment, filed January 13, 2022	33	123	AA07003-AA07006
Objections to Exhibits Offered in Support of the Seibel Parties’ Oppositions to Caesars’ Motions for Summary Judgment, filed November 30, 2021	32	114	AA06801-AA06808
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Opposition to Craig Green's Motion for Summary Judgment; Counter-Motion for Summary Judgment Against Craig Green; and Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VIII of the First Amended Complaint), filed July 14, 2022 – FILED UNDER SEAL	35	139	AA07450-AA07475
Opposition to Motion to Amend LLTQ/FERG Defendants' Answer, Affirmative Defenses and Counterclaims, filed on October 14, 2019	3	39	AA00605-AA00704
Order (i) Denying the Development Entities, Rowen Seibel, and Craig Green's Motion: (1) For Leave to Take Caesars' NRCP 30(b)(6) Depositions; and (2) to Compel Responses to Written Discovery on Order Shortening Time; and (ii) Granting Caesars' Countermotion for Protective Order and for Leave to Take Limited Deposition of Craig Green, filed on February 4, 2021	13	85	AA02657-AA02664
Order Denying Motion to Amend LLTQ/FERG Defendants' Answer, Affirmative Defenses and Counterclaims, filed on November 25, 2019	4	43	AA00759-AA00762

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Order Granting Caesars' Motion for Leave to File First Amended Complaint, filed March 10, 2020	5	51	AA01088-AA01092
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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	124	AA07007-AA07016
Order Granting Motion to Redact Caesars' Opposition to the Development Entities, Rowen Seibel, and Craig Green's Motion: (1) For Leave to Take Caesars' NRCP 30(b)(6) Depositions; and (2) To Compel Responses to Written Discovery on Order Shortening Time; and Countermotion for Protective Order and for Leave to Take Limited Deposition of Craig Green and Seal Exhibits 3-6, 8-11, 13, 14, and 16 Thereto, filed February 2, 2021	13	81	AA02601-AA02611
Order Granting Motion to Redact Caesars' Opposition to the Development Parties' Motion For Leave to File A Supplement to their Oppositions to Motions for Summary Judgment on Order Shortening Time, filed July 26, 2022	38	146	AA08063-AA08071

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Order Granting Motion to Redact Caesars' Reply to Development Parties' Omnibus Supplement to Their Oppositions to Motions for Summary Judgment Filed by Caesars and Ramsay and Seal Exhibit 115 Thereto, filed May 31, 2022	34	131	AA07092-AA07100
Order Granting Motion to Redact Caesars' Response to Objections to Evidence Offered in Support of Motions for Summary Judgment, filed July 26, 2022	38	144	AA08042-AA08050
Order Granting Motion to Redact Opposition to Craig Green's Motion for Summary Judgment; Countermotion for Summary Judgment Against Craig Green; and Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV – VIII of the First Amended Complaint) and Seal Exhibits 2-3, 15-18, 21, 23-28, 31 and 33 in Appendix Thereto, filed March 16, 2023	42	164	AA09024-AA09032

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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	33	120	AA06970-AA06979
Order Granting Motion to Seal Exhibit 23 to Caesars’ Reply in Support of its Motion for Leave to File First Amended Complaint, filed April 13, 2020	5	56	AA01152-AA01155
Order Granting Proposed Plaintiff in Intervention The Original Homestead Restaurant, Inc. d/b/a The Old Homestead Steakhouse’s Motion to Intervene, filed October 23, 2018	2	26	AA00381-AA00382
Order Granting the Development Parties’ Motion for Leave to File a Supplement to Their Opposition to Motions for Summary Judgment, filed December 27, 2021	33	117	AA06936-AA06944
Order Granting the Development Parties’ Motion to Redact Their Oppositions to the Counter-Motion and Cross-Motion for Summary Judgment and to Seal All or Portions of Exhibits A-2, A-3, B, D-F, and I-N to the Appendix of Exhibits Supporting the Oppositions, filed October 26, 2022	41	161	AA08862-AA08868
Plaintiff’s Reply to Defendant PHWLTV, LLC’s Counterclaims, filed August 25, 2017	1	9	AA00168-AA00173

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Reply in Support of (1) Counter-Motion for Summary Judgment Against Craig Green and (2) Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VIII of the First Amended Complaint), filed October 12, 2022 – FILED UNDER SEAL	39	158	AA08436-AA08452
Reply in Support of Craig Green’s Motion for Summary Judgment, filed October 12, 2022	39	155	AA08411-AA08422
Reply in Support of Motion to Amend LLTQ/FERG Defendants’ Answer, Affirmative Defenses and Counterclaims, filed on October 17, 2019	3	41	AA00711-AA00726
Reply to DNT Acquisition, LLC’s Counterclaims, filed July 25, 2018	2	23	AA00339-AA00350
Reply to LLTQ/FERG Defendants’ Counterclaims, filed July 25, 2018	2	24	AA00351-AA00374
Reporter’s Transcript, taken December 14, 2020	13	80	AA02498-AA02600
Reporter’s Transcript, taken December 6, 2021	33	116	AA06820-AA06935
Reporter’s Transcript, taken February 12, 2020	5	50	AA01060-AA01087
Reporter’s Transcript, taken May 20, 2020	6	60	AA01170-AA01224
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Request for Judicial Notice of Exhibit 30 in Appendix of Exhibits in Support of Caesars' Opposition to Craig Green's Motion for Summary Judgment; Counter-Motion for Summary Judgment Against Craig Green; and Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VIII of the First Amended Complaint), filed July 14, 2022	37	143	AA08038- AA08041
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	20	96	AA04076- AA04079
Response to Objections to Evidence Offered by Caesars in Support of its Opposition to Craig Green's Motion for Summary Judgment; Counter-Motion for Summary Judgment Against Craig Green; and Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VII of the First Amended Complaint), filed August 31, 2022	38	152	AA08146- AA08150

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Response to Objections to Evidence Offered by Caesars in Support of Its Opposition to Craig Green’s Motion for Summary Judgment; Counter-Motion for Summary Judgment Against Craig Green; and Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VIII of the First Amended Complaint), filed October 12, 2022	39	156	AA08423-AA08431
Rowen Seibel and the Development Entities’ Opposition to Caesars’ Cross-Motion for Summary Judgment, filed August 31, 2022 – FILED UNDER SEAL	38	151	AA08123-AA08145
Stipulated Confidentiality Agreement and Protective Order, filed March 12, 2019	2	32	AA00423-AA00444
Stipulation and Order for a Limited Extension of the Dispositive Motion Deadline, filed February 17, 2021	13	87	AA02676-AA02686
Stipulation and Order of Dismissal of J. Jeffrey Frederick With Prejudice, filed August 28, 2019	2	36	AA00481-AA00482
Stipulation and Order of Dismissal With Prejudice, filed June 2, 2022	34	133	AA07113-AA07118
Stipulation and Order to Consolidate Case No. A-17-760537-B with and into Case No. A-17-751759-B, filed February 9, 2018	1	16	AA00214-AA00217
Stipulation and Proposed Order to Extend Discovery Deadlines (Ninth Request), filed October 15, 2020	7	69	AA01467-AA01493

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Substitution of Attorneys for GR Burger, LLC, filed March 17, 2021	20	97	AA04080-AA04417
The Development Entities and Rowen Seibel's Opposition to Caesars' Motion for Summary Judgment No. 1, filed March 30, 2021 – FILED UNDER SEAL	20	99	AA04126-AA04175
The Development Entities, Rowen Seibel, and Craig Green's Answer to Caesars' First Amended Complaint and Counterclaims, filed June 19, 2020	6	62	AA01231-AA01281
The Development Entities, Rowen Seibel, and Craig Green's Motion: (1) For Leave to Take Caesars' NRCP 30(b)(6) Depositions; and (2) To Compel Responses to Written Discovery on Order Shortening Time, filed November 20, 2020 – FILED UNDER SEAL	7	71	AA01524-AA01591
The Development Entities, Rowen Seibel, and Craig Green's: (1) Reply in Support of Motion For Leave/ To Compel; (2) Opposition to Caesars' Countermotion for Protective Order; and (3) Opposition to Motion to Compel Deposition of Craig Green, filed December 7, 2020	12	78	AA02460-AA02469
The Development Entities' Opposition to Caesars' Motion to Strike Counterclaims, and/or in the Alternative, Motion to Dismiss, filed August 3, 2020	6	65	AA01316-AA01373

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The Development Parties' Omnibus Supplement to Their Oppositions to Motions for Summary Judgment Filed by Caesars and Ramsay, filed December 30, 2021	33	119	AA06957-AA06969
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 27th day of September, 2023, service of the foregoing was made by mandatory electronic service through the Nevada Supreme Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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Corporation*

/s/ Susan Russo

Employee of BAILEY ❖ KENNEDY

TAB *77*

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

TAB 78



RISM (CIV)

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

**THE DEVELOPMENT ENTITIES, ROWEN
SEIBEL, AND CRAIG GREEN'S:**

- (1) REPLY IN SUPPORT OF MOTION
FOR LEAVE/TO COMPEL;**
- (2) OPPOSITION TO CAESARS'
COUNTERMOTION FOR
PROTECTIVE ORDER; AND**
- (3) OPPOSITION TO MOTION TO
COMPEL DEPOSITION OF CRAIG
GREEN**

Hearing Date: December 8, 2020

Hearing Time: 1:30 p.m.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Any time the Development Entities, Seibel, and Green seek to conduct discovery into relevant topics, Caesars quickly looks to deflect back onto them. To begin, Caesars asserts claims against Seibel and Green related to benefits (i.e. marketing fees) that were paid by vendors to non-parties, but then argues that Seibel and Green cannot conduct discovery related to Caesars' treatment of benefits (such as rebates or gifts) it may have received from vendors. Next, Caesars asserts that it is entitled to a second deposition of Green concerning Caesars' newly-asserted claims, but then claims that the Development Entities, Seibel, and Green should not be allowed to take another 30(b)(6) deposition of Caesars related to those same claims (unless Caesars is allowed to control the deposition in order to focus attention away from itself). Further, Caesars has declared that it is entitled to discovery showing that its treatment of Seibel's felony conviction was warranted; yet, Caesars refuses to permit discovery intended to show that its treatment of Seibel's felony conviction was pretextual, unwarranted, and arbitrary. Finally, while Caesars has claimed that it acted appropriately in terminating the Development Agreements, it has hidden from the Development Entities its communications with Ramsay showing that Caesars was chomping at the bit to terminate those agreements in order to increase its profitability at least twofold.

Discovery is not a one-sided endeavor. The Development Entities, Seibel, and Green have a right to conduct discovery concerning their claims *and defenses* to Caesars' newly-asserted claims. Indeed, Caesars seems to forget that discovery is not limited to matters supporting each side's claims—this is evident from their attempt to avoid providing information related to benefits by arguing that the Development Entities have not asserted claims related to benefits by Caesars (ignoring that a valid and compelling defense to such claims can be established through evidence that Caesars received benefits from vendors without accounting for such benefits to the Development Entities). The discovery sought through this Motion is both critical and targeted; it is not overbroad in scope. With the extensive amount of discovery conducted thus far by Caesars (sparing no expense in the process), it is dishonest for Caesars to suggest that the Development Entities, Seibel, and Green are seeking discovery that is disproportionate to their needs.

1 Discovery cannot be used to give one side a broadsword while tying the other side's hand
2 behind its back. The fight must be fair. The Court should grant this Motion in its entirety and deny
3 Caesars' Countermotion for Protective Order.¹

4 II. ARGUMENT

5 A. *Benefits Received by Caesars from Vendors are Plainly Relevant Given* 6 *Caesars' Newly-Asserted Claims.*

7 Despite accusing the Development Entities, Seibel, and Green of "play[ing] with words,"
8 the distinction that Caesars attempts to make between the benefits received by non-parties to this
9 action and the benefits received by Caesars, which are the subject of the disputed discovery requests
10 and deposition notices involved in this Motion, is nothing more than that: words.² (Opp. at 2:14-
11 19.) The simple fact is that if Caesars was receiving benefits (such as rebates) from vendors that
12 were not allocated to those restaurants in which the Development Entities were receiving a share of
13 the profits, those "legitimate funds" operated no differently than those received by entities
14 associated with Seibel. Such discovery would serve to establish an offset to any damages Caesars
15 claims on account of its newly-asserted claims.³ *It is telling that Caesars makes no attempt to*
16 *deny that such a defense (among others) is available to the Development Entities, Seibel, and*
17 *Green in their Opposition to this Motion.*

18 Not only is the discovery sought regarding benefits entirely relevant, but the burden for
19 Caesars, particularly if Caesars complied with its own protocols, should be minimal. Caesars'
20 compliance plan requires that benefits over a threshold dollar amount be reported. (Ex. 50 to Mot.,
21 Excerpt of Caesars Entertainment Corporation Ethics & Compliance Program, at 0518.) The
22

23 ¹ Caesars is correct that the Development Entities, Seibel, and Green only object to another deposition of Green
24 if this Court limits the scope of the 30(b)(6) deposition of Caesars in the manner suggested by Caesars.

25 ² Caesars assertion that it was "in the dark" or "out of the loop" regarding Seibel's relationships with vendors is
26 disingenuous at best. (Ex. 59 to the Mot., Relevant Excerpts of the 30(b)(6) Deposition of FERG, LLC, Rowen Seibel
(DRAFT), at 127:12-129:18; 133:4-20.) Further, Seibel gave an abundance of testimony regarding the marketing services
that his companies provided to vendors. (*Id.* at 118:9-124:20; 131:11-133:3.)

27 ³ Caesars asserts that "the Seibel Parties have not and cannot at this state assert any claims related to Caesars
28 receipt, if any, of 'Benefits'" and that "[t]he law is clear that discovery must be related to the issues in the case." (Opp.
at 11:4-6.) This entirely ignores that the scope of discovery includes "any nonprivileged matter that is relevant to any
party's claims *or defenses*." NRCP 26(b)(1) (emphasis added).

1 Development Entities, Seibel, and Green offered to limit their requests to this same threshold to
2 help eliminate any undue burden on Caesars, (Ex. 2 to Mot., Decl. of Joshua P. Gilmore, Esq., at ¶
3 5); but Caesars still refused to produce this information altogether. That Caesars is pushing so hard
4 to avoid revealing whether and the extent to which it received benefits (such as rebates) from
5 vendors is indicative that Caesars has something to hide.

6 The discovery sought related to benefits is not part of a fishing expedition, but tailored to
7 the scope of Caesars' newly-asserted claims. This Court should compel Caesars to respond to those
8 Requests for Production and Interrogatories related to benefits and, further, grant leave to the
9 Development Entities, Seibel, and Green to depose Caesars concerning benefits.

10 **B. The Development Entities, Seibel, and Green Are Entitled to Take Another**
11 **Deposition of Caesars That Is Intended to Help Them Gather Facts in Support**
of their Defenses to Caesars' Newly-Asserted Claims.

12 Caesars appears to concede that the Development Entities, Seibel, and Green are entitled to
13 a subsequent 30(b)(6) deposition of Caesars regarding Caesars' newly-asserted claims. (Opp. at
14 8:24-25.) However, Caesars asserts—without further detail or explanation—that “nearly the
15 entirety” of the topics in the Notices of Taking Videotaped Depositions of Caesars pursuant to
16 NRCP 30(b)(6) (the “Notices”) are irrelevant. (*Id.* at 10:26-28; 11:11-12.) In essence, Caesars
17 wants to strip the Development Entities, Seibel, and Green of viable and persuasive defenses and
18 from taking a deposition that would help them gather evidence to support those defenses at trial.⁴
19 At the same time, Caesars argues that it is entitled to a second deposition of Green in furtherance of
20 gathering evidence related to its newly-asserted claims. (*Id.* at 16:1-9.) The double standard
21 advocated by Caesars might make sense if Rule 26(b)(1) limited discovery to non-privileged matter
22 related to a party's claims, but not a party's defenses. Of course, the rule is not so limited.

23 “As a general rule, courts will not grant protective orders that prohibit the taking of
24 deposition testimony.” *EEOC v. Caesars Entm't, Inc.*, 237 F.R.D. 428, 432 (D. Nev. 2006)
25 (superseded by statute on other grounds) (citing various sources). To obtain a protective order, the
26

27 _____
28 ⁴ Notably, Caesars does not argue that the individual topics are not stated with particularity; only that most of the
topics are somehow off limits.

1 moving party must “point to specific facts that support the request” as opposed to “broad
2 allegations of harm” that would allegedly be suffered without one.” *Id.*

3 ***Caesars did not, and cannot, point to any specific topic contained within the Notices and***
4 ***elaborate why that topic will result in some harm to Caesars warranting a protective order.***

5 Instead, Caesars makes a single, sweeping allegation that the majority of the topics involve nothing
6 more than a “fishing expedition” into benefits received by Caesars. (Opp. at 10:26 - 11:11.) This is
7 plainly insufficient to overcome the vast legal authority favoring discovery, and certainly is
8 insufficient to carry the burden needed to obtain a protective order. *See F.T.C. v. AMG Servs., Inc.*,
9 291 F.R.D. 544, 553 (D. Nev. 2013) (citations omitted) (“The party resisting discovery bears the
10 burden of showing why a discovery request should be denied.”); *see also Painters Joint Comm. v.*
11 *Emp. Painters Trust Health & Welfare Fund*, 2011 WL 4573349, at *5 (D. Nev. Sept. 29, 2011)
12 (“[T]he objecting party must specifically detail the reasons why each request is irrelevant.”). If
13 there is a reason that Caesars believes a particular topic would result in harm, so as to warrant a
14 protective order, it was Caesars’ burden to specifically detail the reasons why in its Opposition. It
15 did not.

16 Caesars’ Countermotion for leave to take another deposition of Green only further
17 highlights why the Development Entities, Seibel, and Green are entitled to take the 30(b)(6)
18 deposition of Caesars’ involving all the topics listed in the Notices. Simply put, if Caesars is
19 entitled to take a second deposition of Green “as to the new allegations against him,” he—as well as
20 Seibel and the Development Entities—should be permitted to do the same, which necessarily
21 includes questions that would support myriad defenses to Caesars’ newly-asserted claims.⁵

22 **C. Discovery Regarding Caesars’ Gaming Employees is Relevant.**

23 Caesars tacitly acknowledges its inconsistent positions in discovery related to suitability in
24 its Opposition. Specifically, Caesars admits that it previously “offered to provide TPOV 16 with
25 unsuitability determination information for the past 10 years including the date of such

26 _____
27 ⁵ Trying to play off of this Court’s recent minute Order granting Caesars’ Motion to Strike, Caesars argues that
28 the Notices seek information stricken from the Development Entities’ Amended Counterclaims. (Opp. at 11:6-7.) That
is only partially true; this Court’s ruling only impedes the Development Entities from asking about benefits associated
with certain restaurants.

1 determinations, the category (i.e., whether it was a restaurant, retail, joint venture, etc.), and the
2 reason why particular individuals/entities were found unsuitable.” (Opp. at 12:20-23.) Caesars
3 further admits that the U.S. Magistrate Judge concluded that Caesars’ proposal was not enough;
4 Caesars also needed to provide the contractual history of those unsuitability determinations,
5 assignment of the contracts, and ownerships by trusts.⁶ (Ex. 3 to Mot., Order on Motion to Compel,
6 June 21, 2018, at 5:5-9.) Yet, in the same proverbial breath, Caesars argues that suitability
7 information of those held to an even *higher standard* than those previously determined relevant, is
8 not relevant. (See Opp., at 13:3-5.)

9 Whether Caesars terminated employees subject to a *higher level* of suitability scrutiny than
10 Seibel, based on mandatory gaming statutes, is relevant in determining whether Caesars applied a
11 consistent bar of suitability to Seibel, or if Caesars terminated the Development Agreements in bad
12 faith. In other words, if Caesars terminated the Development Agreements, claiming that it was
13 compelled to do so under its own discretion (an arguably *lower* standard), but did *not* terminate
14 gaming employees held to a higher standard under the Nevada gaming law, such evidence would
15 demonstrate Caesars’ arbitrary and unfair treatment of the Development Entities. Indeed, the
16 *evidence thus far reveals that Caesars did not treat the Development Entities consistent with its*
17 *own internal process for determining suitability.* (See Ex. 51 to Mot., Randy Sayre Expert
18 Report).

19 Accordingly, requests related to inconsistent treatment of “unsuitable” individuals, is not a
20 fishing expedition, but proportional to the needs of this case and well within the scope of discovery.

21 **D. Anticipating Litigation for Purposes of the Common Interest Privilege Does Not**
22 **Mean Anticipating Any Possible Litigation, but that There Be a Palpable**
23 **Threat of Such Litigation.**

24 As a preliminary matter, Caesars attempts to assign fault to undersigned counsel by
25 suggesting that the parties did not sufficiently meet and confer related to Caesars’ assertion of the
26 common interest privilege. (Opp. at 13:17 - 14:2.) Not true; Caesars maintained, during the meet-

27 ⁶ As stated in the Motion, while this Court is not bound by the U.S. Magistrate Judge’s ruling, the parties have
28 agreed that discovery taken in this action may be used in the federal action (and vice versa). Accordingly, it is logical to
require Caesars to disclose the same information in this action, particularly because the federal action involves TPOV 16,
but not the remaining Development Entities.

1 and-confer process, that it would withhold communications, which pre-date September 16, 2016,
2 that it exchanged with Ramsay based on the common interest privilege. That the Development
3 Entities, Seibel, and Green may have omitted certain documents from the conversation is besides
4 the point—the issue presented is whether the common interest privilege should apply to *any*
5 communications that occurred prior to September 16, 2016.

6 Caesars is correct that parties must “anticipate litigation against a common adversary on the
7 same issue or issues” for the common interest privilege to apply. (Opp. at 14:19-15:3.) What
8 Caesars fails to recognize is that “anticipate litigation” does not mean anticipate any remote
9 possibility of litigation. Instead, the threat of litigation (that is “anticipated”) must be tangible, or
10 palpable, as the Development Entities, Seibel, and Green indicated in their Motion, not simply
11 conceivable.⁷ (Mot. at 29:8-19.) A palpable threat of litigation means more “than a mere
12 awareness that one’s questionable conduct might some day result in litigation” *In re Santa Fe*
13 *Int’l Corp.*, 272 F.3d 705, 710 (5th Cir. 2001); accord *United States v. Duke Energy Corp.*, 214
14 F.R.D. 383, 388-89 (M.D.N.C. 2003) (“Contemplated litigation means a palpable threat of
15 litigation. A palpable threat of litigation, in turn, would seem to be at least as stringent as the
16 anticipation of litigation standard used for work product in Rule 26(b)(3).”).⁸

17 At the time Caesars had these communications with Ramsay, the Development Entities were
18 attempting to work with Caesars in good faith to cure any suitability issue associated with Seibel.
19 (See Ex. 57 to Mot., Sept. 16, 2016 Letter from Brian K. Ziegler, Esq. to Mark A. Clayton, Esq.)
20 The Development Entities had an expectation that Caesars, and Ramsay for that matter, would be
21 working with them in good faith to resolve the problem in a way that mutually benefited all the
22 parties. If Caesars and Ramsay claim that there was a “palpable threat of litigation” at the time they
23 learned of Seibel’s guilty plea, then—unknownst to the Development Entities—Caesars was

24 ⁷ Caesars’ reliance on *Cotter v. Eighth Judicial District Court*, 134 Nev. 247, 416 P.3d 228 (2018), is misplaced.
25 (Opp. at 14:20 - 15:9.) In *Cotter*, the Nevada Supreme Court was not asked to address the *timing* for triggering application
of the common interest privilege.

26 ⁸ Caesars’ attempt to distinguish *In re Santa Fe Int’l Corp.* by pointing to the timeline therein makes no difference
27 to the rationale underlying the decision. (Opp. at 14 n.8.) The 17 days Caesars refers to was a crucial time-period to this
28 case, as it is the time-period during which Caesars determined it would refuse to offer the Development Entities an
opportunity to cure any potential suitability issue, terminate the Development Agreements, and continue to operate the
restaurants while pocketing the money previously paid to the Development Entities.

1 already gearing up for litigation (e.g., Caesars knew it was going to force the Development Entities
2 out of the restaurants, continue to operate them and retain the profits, and not repay any capital
3 reserves to the Development Entities) without intending to work in good faith with the
4 Development Entities (who, unlike Seibel, were never deemed to be unsuitable). This goes straight
5 to the heart of the Development Entities' claims against Caesars. Alternatively, if Caesars was not
6 so proceeding in late August and early September 2016, then Caesars cannot claim the common
7 interest privilege, as Caesars simply being aware that there was a remote possibility of litigation at
8 some point down the road based on Seibel's guilty plea is not a "palpable threat" of litigation
9 allowing it to conceal relevant communications with its co-conspirator.⁹

10 Caesars' self-servingly denies being involved in any scheme with Ramsay to deprive the
11 Development Entities of their contractual rights. (Opp. at 15:21.) Caesars makes no effort to
12 respond to the wealth of evidence proving otherwise presented with this Motion. Apparently, when
13 the facts are against Caesars, Caesars simply chooses to ignore them. Regardless, Caesars may not
14 assert the common interest privilege to communications that it had with Ramsay prior to September
15 16, 2016, and any such communications withheld by Caesars should be immediately produced.

16 **E. Deposition of Craig Green.**

17 Assuming this Court finds that discovery into *defenses to* Caesars' newly-asserted claims
18 should be allowed to proceed (as it should), the Development Entities, Seibel, and Green have no
19 objection to an additional deposition of Green related to Caesars' newly-asserted claims. However,
20 if this Court believes that the 30(b)(6) depositions of Caesars, as noticed, should not proceed, then it
21 should not compel Green to attend an additional deposition—especially considering that he has
22 already been asked numerous questions concerning the marketing fees received by the two non-
23 parties in multiple prior depositions, most recently in his capacity as a 30(b)(6) designee for FERG
24 16, LLC. To be clear, Caesars has deposed Green a whopping seven times so far in this case: in his
25 individual capacity (spanning over three days), in his capacity as a 30(b)(6) designee for LLTQ, in

26 _____
27 ⁹ Caesars' reference to a single document marked as work product on the Development Entities, Seibel, and
28 Green's privilege log before there was a palpable threat of litigation is nothing more than a red herring. (Opp. at 15:10-20.) If Caesars takes issue with certain entries on the Development Entities, Seibel, and Green's privilege log, they may bring those issues to their attention.

his capacity as a 30(b)(6) designee for LLTQ 16, in his capacity as a 30(b)(6) designee for MOTI, in his capacity as a 30(b)(6) designee for TPOV, in his capacity as a 30(b) designee for TPOV 16, and in his capacity as a 30(b)(6) designee for FERG 16 . Doing so again will subject him to unnecessary burden.

III. CONCLUSION

Caesars sought to add new claims and a new defendant; with that comes additional discovery. Caesars cannot claim that discovery is only allowed when it is sought by Caesars but subsequently refuse to permit comparable discovery when it is sought by the Development Entities, Seibel, and Green. They are entitled to conduct discovery into matters relevant to *defenses* that they have to Caesars' newly-asserted claims, which includes information about benefits received by Caesars from vendors. Similarly, Caesars does not get to pursue claims under the guise of suitability, yet refuse to produce documents regarding suitability.

Caesars has consistently employed a double standard in this case: from the time it terminated the Development Agreements to its most recent depositions. This Court should grant leave to the Development Entities, Seibel, and Green to take the 30(b)(6) depositions of Caesars, as noticed,¹⁰ and compel Caesars to comply with the Disputed Discovery Requests.

DATED this 7th day of December, 2020

BAILEY❖KENNEDY

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¹⁰ The Development Entities, Seibel, and Green acknowledge that information related to benefits associated with Gordon Ramsay Steak in Atlantic City and Gordon Ramsay Steak in Kansas City should not occur in light of this Court's recent ruling. (Opp. at 9:1-3.) However, information related to benefits associated with Gordon Ramsay Steak in Baltimore should occur (*contra id.*), because that restaurant is discussed in the LLTQ/FERG Defendants' Answer and Affirmative Defenses to Plaintiffs' Complaint and Counterclaims, filed July 6, 2018.

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 7th day of December, 2020, 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 79

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