

CASE NO. 86462

IN THE SUPREME COURT OF NEVADA

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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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Notice of Entry of Omnibus Order Granting the Development Entities, Rowen Seibel, and Craig Green's Motions to Seal and Redact, filed May 27, 2021	31	110	AA06438-AA06452

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Notice of Entry of 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 February 4, 2021	13	86	AA02665-AA02675
Notice of Entry of Order (Omnibus Order Granting the Development Parties' Motions to Seal and Redact), filed February 9, 2022	33	127	AA07039-AA07050
Notice of Entry of Order Denying Motion to Amend LLTQ/FERG Defendants' Answer, Affirmative Defenses and Counterclaims, filed November 25, 2019	4	44	AA00763-AA00769
Notice of Entry of Order Granting Craig Green's Motion to Seal Exhibits 1-6 and 9-11 to His Motion for Summary Judgment, filed August 16, 2022	38	149	AA08091-AA08100
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	125	AA07017-AA07029

<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 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

<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 Caesars' 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) and Seal Exhibits 39-43 and 45-47 Thereto; and to Redact Reply in Support of PHWLTV, LLC's Motion for Attorneys' Fees and to Seal Exhibit 4 thereto, filed March 17, 2023	42	167	AA09054-AA09065
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 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	33	121	AA06980-AA06992
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
Objections to Evidence Offered by Caesars in Support of its Motions for Summary Judgment, filed March 30, 2021	20	98	AA04118-AA04125

<u>Document Title:</u>	<u>Vol. No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
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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
Omnibus Order Granting the Development Entities, Rowen Seibel, and Craig Green’s Motions to Seal and Redact, filed May 26, 2021	31	109	AA06426-AA06437

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Omnibus Order Granting the Development Parties' Motions to Seal and Redact, filed February 8, 2022	33	126	AA07030-AA07038
Opposition to Caesars Motion for Leave to File First Amended Complaint, filed December 23, 2019 – FILED UNDER SEAL	5	47	AA00935-AA01009
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 Craig Green's Motion to Seal Exhibits 1-6 and 9-11 to His Motion for Summary Judgment, filed August 15, 2022	38	148	AA08084-AA08090
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 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) and Seal Exhibits 39-43 and 45-47 Thereto; and to Redact Reply in Support of PHWLTV, LLC's Motion for Attorneys' Fees and to Seal Exhibit 4 thereto, filed March 16, 2023	42	165	AA09033-AA09041
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

<u>Document Title:</u>	<u>Vol. No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
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
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Reporter's Transcript, taken September 23, 2020	7	67	AA01389- AA01462
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

<u>Document Title:</u>	<u>Vol. No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
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

<u>Document Title:</u>	<u>Vol. No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
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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PHWLV, LLC; and Boardwalk Regency
Corporation*

/s/ Susan Russo

Employee of BAILEY ❖ KENNEDY

TAB 80

1 CASE NO. A-17-751759-B

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3 DEPT. XVI

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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* * * * *

9

ROWEN SEIBEL,

)

10

Plaintiff,

)

11

vs.

)

12

PHWLTV LLC,

)

13

Defendant.

)

14

15

REPORTER'S TRANSCRIPT
OF
HEARING

16

17

18

(TELEPHONIC HEARING)

19

20

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

21

DISTRICT COURT JUDGE

22

23

DATED MONDAY, DECEMBER 14, 2020

24

25

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541

Peggy Isom, CCR 541, RMR

(702)671-4402 - DEPT16REPORTER@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.

AA02498

1 APPEARANCES:

2 (PURSUANT TO ADMINISTRATIVE ORDER 20-10, ALL MATTERS IN
3 DEPARTMENT 16 ARE BEING HEARD VIA TELEPHONIC
4 APPEARANCE)

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Pursuant to NRS 239.053, illegal to copy without payment.

AA02500

1 LAS VEGAS, NEVADA; MONDAY, DECEMBER 14, 2020

2 9:30 A.M.

3 P R O C E E D I N G S

4 * * * * *

09:25:45 5
6 THE COURT: I want to say good morning and
7 welcome to the Monday, December 14th, 2020 9:30 a.m.
8 session in the Seibel et al. versus PHWLIV LLC matter.

9 And let's go ahead and place our appearances on the
09:30:41 10 record. We'll start first with the plaintiff and then
11 we'll go through formally and place our appearances on
12 the record. We'll go to the defense after that. So
13 let's start with the plaintiffs.

14 MR. WILLIAMS: Good morning, your Honor. This
09:30:54 15 is Paul Williams on behalf of Rowen Seibel and the
16 development entities and Craig Green.

17 MR. PISANELLI: Good morning, your Honor.
18 James Pisanelli on behalf of the Caesars entities.

19 MS. WATKINS: Good morning, your Honor. This
09:31:08 20 is Brittnie Watkins on behalf of the Caesars entities.

21 MR. TENNERT: Good morning, your Honor. This
22 is John Tennert on behalf of Gordon Ramsey.

23 THE COURT: All right. Does that include all
24 appearances?

09:31:35 25 MR. TENNERT: Yes, your Honor.

09:31:36 1 THE COURT: Okay. Anyway and we'll move on.
2 Next, do you want to have this matter reported? If so,
3 let me know.

4 MR. PISANELLI: Your Honor, James Pisanelli
09:31:46 5 for Caesars entities. I think we have at least one
6 privilege issue, so that would probably be a good idea
7 to have it reported.

8 THE COURT: All right. And so that's what
9 we'll do. And okay. Let's go ahead and deal with
09:32:00 10 what's calendared for today. We have the development
11 entities Rowen Seibel and Craig Green's motion for
12 leave to take Caesars' 30(b)(6) deposition and to
13 compel written responses to discovery. And then it's
14 my recollection we also had a countermotion. And so
09:32:23 15 let's go ahead and get started with the plaintiffs.

16 MR. WILLIAMS: Good morning again, your Honor.
17 This is Paul Williams on behalf of the development
18 entities Rowen Seibel and Craig Green.

19 First I just know -- I want to say thank you
09:32:35 20 because I know you're hearing this as a special matter
21 today, and I know both sides are grateful for you
22 taking out the time to do that.

23 We're asking the Court to do two things today.
24 First is to grant my client's leave to take the
09:32:49 25 30(b)(6) deposition of Caesars as noticed by our

09:32:52 1 offices. And two, to compel Caesars to fully respond
2 to the interrogatories and request for production that
3 are identified on the first few pages of the motion,
4 pages 1 and 2 of the motion to compel.

09:33:07 5 Let me get started with the 30(b)(6)
6 deposition notices.

7 The argument here is really pretty
8 straightforward. My clients previously took the
9 depositions of Caesars' 30(b)(6) representative. And
09:33:23 10 at that point in time Caesars had only made claims for
11 declaratory relief against my clients, and to fit with
12 that time only as to the development entities and Rowen
13 Seibel.

14 After that, this Court gave Caesars leave to
09:33:37 15 file its first amended complaint. And as I'm sure this
16 Court can recall based on all the recent briefing, that
17 first amended complaint asserted coercive claims for
18 relief against my client and add a new party Craig
19 Green.

09:33:54 20 These new deposition notices that are at issue
21 on the motion to compel are basically directed towards
22 defending against these newly asserted claims that
23 Caesars made in its first amended complaint.

24 To be clear we're not asking the Court to --
09:34:10 25 for permission to redepose Caesars on things that the

09:34:15 1 initial claims were -- the initial claims Caesars made
2 in its initial complaint were based on, the declaratory
3 relief basically.

4 THE COURT: Well --

09:34:25 5 MR. WILLIAMS: What we're asking the Court
6 today is to give us permission to take the deposition
7 of Caesars on matters that are relevant to our defenses
8 to Caesars newly asserted claims.

9 Now let's have a brief discussion on what
09:34:40 10 those newly asserted claims are. And let's set aside
11 all the hyperbolic rhetoric from Caesars which really
12 is just designed to take away focus from Caesars and
13 try to put focus on my clients. As, again, that's --
14 that's been a strategy throughout this process.

09:34:59 15 These new claims involve allegations that two
16 nonparty entities BR 23 Venture and Future Star
17 Hospitality should have shared marketing fees that they
18 received from vendors with Caesars who were selling
19 product to Caesars.

09:35:18 20 So at its core the alleged wrong is that for
21 every dollar that was paid by a vendor to BR 23 Venture
22 and Future Star Hospitality that 50 cents of that
23 dollar should have gone to Caesars. That's it.

24 Now, I am sure you are going to hear from the
09:35:37 25 other side an extensive amount of argument today about

09:35:42 1 those payments being kickbacks, illegal commercial
2 bribery, and all the like. Again, that's all argument
3 that is just trying to distract and paint my client in
4 a negative light.

09:35:55 5 The reality is in discovery -- discovery will
6 show that Mr. Seibel disclosed the arrangement to
7 Caesars. Caesars investigated it. And Caesars took no
8 future action. But none of that matters right now.

9 Just for the purposes of this discovery
09:36:10 10 motion, we're not here today on a motion for summary
11 judgment. None of that -- we're not here to ferret out
12 exactly the nature of that arrangement and what Caesars
13 is and isn't entitled to. All that matters is that
14 this Court understands the nature of these newly
09:36:30 15 asserted claims so that it can have context for our --
16 for my client's defenses that we're serving in response
17 to those claims.

18 And, your Honor, the big picture is this:
19 Rule 26, Rule 30, and the case law all underlying from
09:36:45 20 the motion to compel, require that my clients should be
21 allowed to take another deposition of Caesars in light
22 of filing the first amended complaint.

23 Now, Caesars agrees with this in general that
24 there should be another deposition but wants to narrow
09:37:00 25 the scope of that deposition to topics that they

09:37:03 1 believe squarely addressed their new claims. And as
2 you may recall from reading the motion to compel, some
3 of the topics directly cite to various parts of the
4 first amended complaint.

09:37:16 5 However, although they agree to that, they
6 don't want my clients to be able to seek critical
7 information they need to support their defenses to
8 those new claims.

9 And, you know, that's just not how -- that's
09:37:28 10 not how relevance works. And that's not how Rule 26
11 works. Rule 26 allows discovery of matters relevant to
12 any claim or to defense. And I trust that last part or
13 defense because that's what the 30(b)(6) notice is
14 directed at.

09:37:44 15 You know, my clients are entitled to conduct
16 discovery on their defenses. Meaning that they don't
17 have to limit the discovery they propound to the claims
18 that Caesars make. They also can conduct discovery on
19 their defenses.

09:37:59 20 Now, with that in mind, we crafted the
21 30(b)(6) deposition notices to address the new
22 allegations that Caesars made in its first amended
23 complaint and my client's defenses to those claims.

24 Now, just for ease if the Court wants to
09:38:17 25 follow along, I would direct the Court to the 30(b)(6)

09:38:21 1 notice to Boardwalk Regency Corporation which starts at
2 pages 12 through 13 of the motion and can be found at
3 Exhibit 42. The other notices are the same, albeit
4 references to -- they reference other restaurants
09:38:38 5 involved in this matter.

6 The topics that are at issue that Caesars
7 refuses to put up a 30(b)(6) representative on concern
8 how Caesars deals with benefits that it received from
9 vendors. Now Caesars argues that those topics are not
09:38:55 10 relevant or proportional because my clients have not
11 made, you know, hyperbolic allegations that Caesars --
12 the benefits they received were kickbacks or commercial
13 bribery. That they're -- that they're trying to
14 basically define in a way that they're two separate
09:39:11 15 things.

16 But, again, this Court needs to remember that
17 Caesars' claims are based on the notion that it was
18 entitled to receive half of the benefits from BR 23 and
19 Future Star, half of the funds that they received from
09:39:24 20 vendors. And really that's it. That's what it boils
21 down to.

22 So with that in mind, if Caesars' position is
23 true that it's entitled to half of the funds that were
24 received by BR 23 and Future Star, then the same goes
09:39:39 25 for Caesars. Any benefits they receive from vendors

09:39:42 1 should have been included on the other side of the
2 ledger.

3 And as a result, the benefits that Caesars
4 received from vendors and how they accounted for them
09:39:51 5 is both relevant and proportional to the needs of this
6 case.

7 Among other things, the information that my
8 clients are seeking goes to the party's course of
9 dealing. It goes to my client's defense to Caesars'
09:40:05 10 new claims.

11 And I'll give you an example. If Caesars did,
12 in fact, not account for benefits it received from
13 vendors, such as refunds or rebates, then my clients
14 should be entitled to -- they are entitled to argue an
09:40:20 15 offset at trial in response to Caesars' implied
16 covenant and unjust enrichment claim.

17 Essentially if Caesars did not do the things
18 that they are accusing my clients of not doing, of
19 including these payments in the -- not sharing in these
09:40:36 20 benefits, the same goes for Caesars, and we're entitled
21 to an offset.

22 Now, with that all generally, let me get into
23 a few specifics on the topics themselves. The first
24 topic in each notice relates to Caesars' policies and
09:40:51 25 procedures for dealing with the benefits. You know,

09:40:55 1 tracking the benefits, how they accounted for the
2 benefits, things of that nature.

3 We know that Caesars has a policy for dealing
4 with the benefits that they receive from vendors. And
09:41:05 5 it's in its compliance plan which we attached as
6 Exhibit 50 to the appendix. Just real simple, my
7 client needs to know how Caesars treats monies it
8 receives from vendors to defend against Caesars'
9 claims.

09:41:20 10 If Caesars is upset about not receiving, you
11 know, the benefit, half of the benefits that BR 23 and
12 Future Star received, we want to know how Caesars
13 treated the benefits it received from vendors.

14 The next topic addresses benefits received by
09:41:37 15 Caesars for the restaurants involved in this matter.

16 THE COURT: Okay. And I have a question for
17 you.

18 MR. WILLIAMS: Sure.

19 THE COURT: Going back to the benefits issue,
09:41:45 20 are you requesting -- I'm looking here at -- on page 12
21 of the motion as you suggested. And, I guess, it
22 starts at, let me see here, looks like between line 16
23 and 17. And you talk about recorded benefits by
24 employees and officers.

09:42:05 25 And it doesn't appear to me that that has --

09:42:10 1 is that limited in scope?

2 MR. WILLIAMS: Your Honor, so there is
3 limitation. If you're on page 12 there and you go to
4 Footnote 5.

09:42:19 5 THE COURT: Right. I'm looking at that.

6 MR. WILLIAMS: Yeah. It guess down to:
7 "Following the parties meet and confers, the
8 development entities, Seibel and Green, agree to a
9 minimum monetary threshold of \$250."

09:42:30 10 Basically we're not -- you know, we're not
11 looking for a de minimis gift. Like, if a vendor took
12 an employee out to lunch or, you know, got him a small
13 gift, that's not -- we're not going there. We
14 understand that, you know, that -- we're limiting
09:42:45 15 our -- the scope of this deposition to major gifts.
16 The things that are above \$250. And that \$250 number
17 actually comes directly from the compliance plan.
18 Which the compliance plan requires employees to report
19 any gifts above \$250.

09:43:03 20 There's actually another policy that seems to
21 indicate the threshold is really \$100. But we will
22 agree to go with the \$250 threshold to narrow the scope
23 down so that it's not trying to track down, you know,
24 cup of coffee, a lunch, or anything along those lines.

09:43:19 25 Does that answer your question, your Honor?

09:43:20 1 THE COURT: Well, it does in a way. But
2 explain to me how that would be an offset.

3 MR. WILLIAMS: Sure, so --

4 THE COURT: Go ahead.

09:43:28 5 MR. WILLIAMS: So, your Honor, the -- when --
6 so what they're claiming is that BR 23 and Future Star,
7 two nonparties to this litigation, received marketing
8 fees from the vendors and that they should be entitled
9 to share in those funds. So basically that there's
09:43:49 10 these benefits that were received, they allege by my
11 clients but in reality it was by the two nonparties,
12 that they're entitled to share in.

13 So the benefits that Caesars received, its
14 employees, the entities, any of those things this
09:44:04 15 could -- again, this could be in the form of, you know,
16 rebates that it received, that Caesars receives from a
17 vendor. It could be in the form of, you know, other
18 benefits that Caesars receives overall, perhaps free
19 products, things of that nature that it can use in
09:44:24 20 other stores. Those benefits can take different forms,
21 and it's not just limited to necessarily direct
22 monetary payment.

23 So that is -- that is the scope -- the scope
24 is -- the scope relates back to what their claims are
09:44:38 25 because the claims are the same. It's -- you know,

09:44:41 1 they're claiming we received benefits, that my clients
2 received benefits from vendors. And we're looking into
3 what benefits that Caesars received from vendors. And,
4 you know, it -- essentially if their theory is true,
09:44:53 5 then my clients are also entitled to that same -- that
6 same partaking in the amount of benefits that they
7 received.

8 Any further questions on that, your Honor?

9 THE COURT: No, sir. Thank you.

09:45:07 10 MR. WILLIAMS: Okay.

11 So we're just talking about the compliance
12 plan and that it treats any benefits received by
13 employees that there's that \$250 threshold. And if --
14 let me -- and let me give an example here so -- on
09:45:32 15 these topics.

16 If Caesars receives, say, a \$5 million rebate
17 from Pepsi at the end of the fiscal year based on
18 purchasing some threshold amount. Maybe there's some
19 triggering amount of product from Pepsi that gets a --
09:45:47 20 gets a rebate from -- that Caesars receives. We want
21 to know how that refund hits the bottom line for each
22 particular Caesars entities.

23 And, for example, if the rebate was given to
24 Caesars Entertainment, the parent company, did that
09:46:04 25 initially make its way down to the financial records

09:46:08 1 for the restaurants at issue here?

2 Now, there are certain, you know, did they use
3 accounting procedures? Did they use generally accepted
4 accounting principles, GAAP, to basically account for
09:46:22 5 that rebate received on an -- on an enterprise level
6 down to the individual restaurants? Did they do that?
7 We don't know.

8 Did Caesars -- you know, did -- the issue here
9 is with Caesars being the large entity, it's likely
09:46:43 10 that the individual restaurants contract with vendors
11 that Caesars uses on an enterprise-wide basis, like
12 Pepsi, or Coors, or vendors of that nature.

13 It matters. It matters to us since those
14 refunds would have increased in that process of the
09:47:01 15 restaurant. So did Caesars account for those benefits
16 in its calculation of the net profits? And the point
17 is this: Did Caesars do the same thing that it says is
18 wrong for my clients to do? Which again, the benefits
19 are not received by my clients, but by the two nonparty
09:47:18 20 entities.

21 But did they do the same thing they're
22 accusing my client of doing, which is not accounting
23 for benefits they received from vendors? You know, it
24 seems like an obvious line of inquiry to us in
09:47:30 25 defending against these newly asserted claims because

09:47:33 1 it's dealing with the same subject matter.

2 THE COURT: Well, I'm trying to understand
3 this, though. For example, if the entire hotel has a
4 contract with one of the entities you described, and
09:47:46 5 they were receiving some sort of benefit, you know,
6 food and beverage division for the hotel was receiving
7 some sort of the benefit from the vendors, how is that
8 germane to what was transpiring at the restaurant?

9 MR. WILLIAMS: Your Honor, and I can -- I can
09:48:05 10 try to go through one of the examples of the contracts,
11 but things of that -- basically the calculation of net
12 profits, it does discuss that those -- there are
13 certain things that should be included in that. And so
14 that's part of it. But the other part of it is, again,
09:48:23 15 there's really -- Caesars is not basing their theory
16 on, you know, contractual entitlement to the funds
17 received by my clients.

18 They are saying that, you know, this is a
19 breach of the implied covenant of good faith and fair
09:48:38 20 dealing. That it's a civil conspiracy. That it's
21 fraud. That they've -- but they -- but they're still
22 asserting that they're entitled to half of those
23 things.

24 And my clients are saying that, Okay, well,
09:48:51 25 you know, if it's this thing that's not directly

09:48:54 1 related to, you know, the calculated -- that's not
2 included in the parties' contract that you're basing it
3 on, if you're going outside of that, then the same
4 should go for my client. And, you know, the example
09:49:05 5 you give of one of the hotels receiving a benefit that
6 is from a vendor, if Caesars' theory is true, then it
7 also applies to my client. They should receive that
8 same benefit.

9 THE COURT: But and the reason why I keep
09:49:20 10 focusing on that, for example, I mean, I don't know how
11 it is now, but there was a time when Caesars was pretty
12 well known for their buffet. I don't know how much
13 traffic the buffet would have on a day-to-day basis,
14 but I would anticipate it would be fairly significant.
09:49:36 15 So I'm trying to figure out any benefits Caesars might
16 have received from vendors as it relates to the
17 operation of its buffet would be germane or relevant to
18 what's in dispute in this case on any level.

19 MR. WILLIAMS: To the extent the benefit only
09:49:58 20 pertained to the buffet, I agree, your Honor. That's
21 not -- that would not be relevant. It's only relevant
22 to the extent that it can be attributed to these
23 restaurants that are at issue. And we're -- to be
24 clear, we are limiting it in scope to that.

09:50:10 25 And the example I would give is if Coors,

09:50:13 1 which provides -- which Caesars, from what we
2 understand, contracts with -- has a certain -- you
3 know, gets a -- gives a rebate to Caesars on a global
4 scale, year-end enterprise or per hotel, that Coors is
09:50:29 5 also served at restaurant at issue here. So it does
6 pertain to the restaurants here.

7 Now, if there's some product that is only
8 served at the buffet that vendors have a contract with
9 the buffet, agree with you, your Honor. That's not
09:50:44 10 relevant to -- we're not -- we're not looking for that.
11 That's not what -- we're only looking for things that
12 are germane to the restaurants here. And the 30(b)(6)s
13 are limited to -- the 30(b)(6) responses are limited to
14 the data on that, on the things that pertain to that.

09:51:00 15 And let me read for you real quick on page 12
16 top of number two, says: All benefits that CAC
17 received from vendors for Gordon Ramsey, Pub & Grill in
18 Atlantic City, whether directly or indirectly, as part
19 of Caesars Entertainment from May 2014 to the present.

09:51:26 20 (Reporter clarification)

21 MR. WILLIAMS: My apologies. So I -- again,
22 so number two, it's number two which is on page 12,
23 specifically represents -- sorry, specifically directs
24 the scope of the -- of the topic to vendors for the
09:51:44 25 restaurants that are at issue.

09:51:46 1 So I agree with, your Honor. If there's -- if
2 there's a vendor that has no impact on any of the
3 restaurants at issue, or if one of the restaurants, for
4 example, doesn't serve that particular vendor, then,
09:51:57 5 yes, that's not -- that's not something that we're
6 looking for. We're only looking for the particular
7 data as it pertains to those -- to the restaurants that
8 are at issue.

9 So an example you gave of the buffet. If
09:52:13 10 there's a vendor that's limited to that, then, yeah,
11 then we're not looking for that.

12 Now, if there's a vendor that pertains to the
13 both of them, then that -- how they account for that is
14 relevant to our defenses because they -- you know, they
09:52:30 15 received, again, a corporate-wide rebate, for example,
16 how they account for that in calculating the net
17 revenue for our restaurant is very germane to the
18 issues that are at issue here. Because if they didn't,
19 they're doing what they accused my client of doing.

09:52:49 20 Any further questions on that, your Honor?

21 THE COURT: Yeah. I want to make sure I
22 understand. How did this -- how does this transaction
23 work?

24 MR. WILLIAMS: I'm sorry, your Honor. Can
09:52:58 25 repeat that? It cut out for me.

09:53:02 1 THE COURT: I'm trying to figure out how these
2 transactions work when it comes to vendors as far as it
3 relates to the specific restaurants at issue. And I
4 think it's important for me to understand that.

09:53:15 5 I mean, I can understand -- I can
6 hypothetically see where the restaurants at issue,
7 maybe they use Pepsi as a vendor, as a soft drink
8 vendor, and maybe Caesars uses Pepsi also.

9 And so I'm trying to figure out how -- how
09:53:35 10 does this transaction work where you can assert that
11 what Caesars is doing is somehow germane to the
12 transaction between the restaurants and the vendors in
13 this case? That's what I'm trying to figure out.
14 What's going on from a mode of operation perspective
09:53:57 15 from a business perspective that would make this
16 somehow relevant to this case?

17 MR. WILLIAMS: So, your Honor, the specific
18 question -- in response to that from my understanding
19 of how this operates is that no vendors directly
09:54:15 20 contract with the restaurants.

21 THE COURT: Okay.

22 MR. WILLIAMS: The vendors contract with
23 Caesars. And there are certain agreements. And,
24 again, this is from my understanding. And
09:54:26 25 Mr. Pisanelli can correct me if I'm wrong. But there

09:54:27 1 are certain vendors that, for example, have exclusive
2 agreements with Caesars to provide their product, like,
3 for example, Pepsi or Coke, perhaps, you know,
4 whichever one they utilize as an exclusivity that only
09:54:42 5 their product will be sold throughout Caesars
6 properties.

7 And the other example I gave is Coors, where
8 Coors, you know, for -- I assume for only domestic
9 beers, that those -- or they have an exclusive
09:54:56 10 arrangement for that to be served in the various
11 restaurants.

12 So they can -- the vendors contract with
13 either -- I don't know if it's Caesars Entertainment on
14 the corporate scale or if it is each individual
09:55:09 15 property, and it may vary by both.

16 But from what we understand there are -- there
17 are contractors that have, you know, enterprise-wide
18 agreements with Caesars to provide products. And
19 our -- what we're trying to find out is, okay, if
09:55:25 20 there's a product that is sold within the restaurants
21 that Caesars has a contractual relationship with that
22 vendor, is there -- are there benefits that Caesars
23 receives? And if so, how did it account for them in
24 net profits?

09:55:39 25 And again, if, say, just as an example, 100

09:55:48 1 kegs of Coors beer are sold at a restaurant at issue
2 here, and then Coors at the end the year gives, you
3 know, a certain bonus -- a certain bonus or rebate to
4 Caesars based on the number of kegs of beer that it
09:56:04 5 sold, is that accounted for in net profits? Did
6 Caesars -- did Caesars account for that? And if not,
7 then that's exactly what they're accusing my clients of
8 doing, and what they're saying is wrong. So my clients
9 would be entitled to an offset of that same thing.

09:56:21 10 But to be clear, we're not, you know --
11 there -- yes, there must be a connection between the
12 vendor and the restaurant at issue in Caesars.

13 If they're, you know, if it's unrelated to the
14 restaurants, I agree with your Honor, that's not
09:56:36 15 pertinent to -- not pertinent to this matter. But
16 that's not what we're looking for. We're looking for
17 vendors for the restaurants.

18 And, again, it's my understanding that these
19 are done by a property basis or enterprise-wide basis,
09:56:49 20 but those vendors contract with Caesars. And my
21 clients are entitled to find out what it did with
22 those -- with those things -- with those rebates.

23 I mean, otherwise you can flip that same
24 question on what Caesars is alleging against my client.
09:57:03 25 What, you know, what's the -- it's the same connection

09:57:06 1 as their claims against my clients.

2 Anything further on that, your Honor?

3 THE COURT: Not at this time, sir.

4 MR. WILLIAMS: Okay. Okay. I already
09:57:23 5 explained, and I just want to reiterate, again, we're
6 not looking for de minimis benefits. You know, there's
7 the \$250 minimum, the threshold that Caesars' own
8 policies and procedures dictates. That's from their
9 compliance plans.

09:57:39 10 The next set of topics concerns benefits --
11 benefits and have to do with the communications from
12 those benefits. If Caesars internally discussed
13 rebates or refunds from vendors, again, at the
14 restaurants at issue, they should have known, they
09:57:57 15 should have been accounted for on Caesars' books and in
16 the records for the restaurants. We should be entitled
17 to that discovery.

18 The same is true if Caesars discussed those
19 rebates or benefits with Ramsey, or even our own
09:58:09 20 clients, again, if these are vendors that pertain to
21 the restaurants at issue here that are at issue in this
22 litigation.

23 And the final topics relate to negotiation
24 over pricing for goods. And these topics concern
09:58:27 25 Caesars' alleged damages on its new claims in the first

09:58:29 1 amended complaint.

2 Caesars claims that it was harmed by the
3 alleged wrongful acts that were allegedly committed by
4 my clients in dealing with vendors. To that end, we
09:58:44 5 are entitled to find out Caesars' conversations with
6 vendors discussing pricing because that's the basis of
7 their alleged damages. That but for my client's
8 alleged actions, their pricing would have been lower
9 presumably.

09:58:59 10 So we -- we get -- we should be entitled to
11 know what efforts did Caesars make to negotiate pricing
12 from vendors? Did vendors tell Caesars that they were
13 paying marketing fees to BR 23 and Future Star as part
14 of the negotiations that, you know, that affected the
09:59:21 15 pricing. We don't know. And, again, these are topics
16 that are very relevant to their alleged damages and the
17 allegations in their first amended complaint -- first
18 amended complaint and my client's defenses.

19 You know, your Honor, I -- the deposition
09:59:37 20 notices here are tailored and targeted to the newly
21 asserted claims. And I understand your Honor's
22 questions as it relates to what is the scope of these.
23 And, again, the scope of these are only for vendors
24 that contract -- that provide product to the
09:59:58 25 restaurants and have a contractual relationship with

10:00:00 1 Caesars. That is what -- that's what it is targeted
2 to.

3 I agree with you that to the extent a vendor
4 does not contract with the restaurants at issue here,
10:00:10 5 or that somehow pertains to a different contract
6 unrelated to the one with the restaurants at issue
7 here, that's not relevant and that's not what we're
8 looking for.

9 And if -- and if you'll look at the topics
10:00:23 10 you'll see that they are directed towards vendors for
11 the restaurants.

12 So, in essence, you know, Caesars obtained
13 leave to file its first amended complaint. Now, my
14 clients need to be able to conduct discovery in order
10:00:37 15 to defend against those new claims.

16 You know, and the burden is on Caesars to
17 explain why these topics are not relevant to its claims
18 or to my client's defenses, and Caesars can't meet that
19 burden.

10:00:52 20 So our motion for leave to depose Caesars
21 should be granted as they were noticed.

22 And, your Honor, unless you have any other
23 questions about the 30(b)(6) notices, I'll move on to
24 the other relief that we are seeking in the motion.

10:01:11 25 THE COURT: I have no additional questions at

10:01:12 1 this time, sir.

2 MR. WILLIAMS: Okay. So the other question --
3 the other relief sought by my client concerns written
4 discovery to Caesars and their responses.

10:01:25 5 So there are basically three categories of
6 information at issue. And the first one relates to
7 benefits from vendors and documentation of pricing of
8 goods purchased from vendors. And if this Court wants
9 some examples to take a look at for -- to take a look
10 at, there are the interrogatories from Mr. Seibel to
11 Planet Hollywood which are on pages 23 through 24.
12 Those pertain to benefits received by vendors. There
13 are requests for production numbers 63, 64, and 65.
14 Those are quoted at pages 41 through 43.

10:02:11 15 Those concern documents communications on the
16 benefits. And another category is, a good example of
17 those is request for production 68 through 69. Those
18 are on pages 43 through 44. And those are documents --
19 those are seeking documents regarding the pricing for
10:02:35 20 goods.

21 And then our request for production numbers
22 112 through 113 those are at pages 47 and 48. And
23 those discuss accounting for the benefits in the
24 financials.

10:02:50 25 So, again, I won't rehash the same arguments I

1 just made previously on the 30(b)(6) notices, but,
2 again, these are all directed to the restaurants that
3 are at issue, the restaurants that are at issue in this
4 litigation.

5 We're wanting to know for the vendors that
6 Caesars uses for those restaurants that contract with
7 Caesars, how did it account for benefits it received
8 from those benefits -- from those vendors.

9 Did -- you know, did accounting at Caesars --
10 did Caesars receive a rebate at the corporate level or
11 at the property level? And then made -- ensure that
12 whether that rebate -- what the amount of that rebate
13 was attributed, whatever the portion would, you know,
14 using, again, using GAAP, did it make its way into the
15 net -- the calculation for net revenue for the
16 restaurants?

17 And, again, it only relates to the vendors
18 that are at issue for these restaurants and the ones
19 that Caesars has contractual relationships with. We're
20 not looking for the vendor, a vendor that was exclusive
21 to the buffet. Don't -- that doesn't pertain to --
22 that's not relevant to what we're looking at here.

23 We're looking at vendors for the restaurants
24 at issue and how that -- basically, did Caesars do the
25 same thing that they accused my clients of doing:

10:04:22 1 receiving a benefit from a vendor and not sharing in it
2 with the other parties.

3 It's the same conduct. And no matter how they
4 try to frame it as commercial bribery or, you know, as
10:04:35 5 illegal, it's the same conduct. And we're entitled to
6 know that information so that we can defend ourselves
7 against Caesars' claims.

8 Again, course of dealing. My client's
9 defenses such as they're entitlement to an offset is
10:04:48 10 relevant to all those things. And it's critical for my
11 client to be able to defend against Caesars' new
12 claims. And, again, I'm not going to -- I won't rehash
13 the relevancy on that point.

14 Unless you have any questions on that one,
10:05:00 15 your Honor, I'll move to the next topic.

16 THE COURT: Sir, I don't have any questions at
17 this time.

18 MR. WILLIAMS: So the next category is gaming
19 employees. And this relates to how Caesars treated its
10:05:18 20 gaming employees. And if you want an example, you can
21 look at the interrogatories from Mr. Seibel to Caesars
22 Palace which are quoted at pages 30 through 31. And
23 what these basically ask are did any gaming employees
24 have a felony conviction? And if so, what did Caesars
10:05:41 25 do about it?

10:05:42 1 And as explained in the motion to compel, and
2 that's at the beginning of page 58. Gaming employees
3 is a statutorily defined category of -- sorry.
4 Statutorily defined category of employees that are
10:05:59 5 subject to suitability requirements.

6 And actually their suitability requirements
7 are higher. They have more requirements than someone
8 that would have been in my client's position. You
9 know, a third party that, that Caesars contracts with.

10:06:15 10 So in brief, Caesars argues that it had to
11 disassociate from the development entities because
12 Mr. Seibel was an unsuitable person who had -- as a
13 result of his felony conviction, and they believed he
14 was still associated with the development entities.

10:06:36 15 Okay. If that's true, let's see if Caesars has or had
16 gaming employees that have felony convictions. And if
17 so, what do you do about it? Did Caesars fire them?
18 Did Caesars retain them? That's what we want to know.

19 And to be clear we don't -- we did not ask for
10:07:00 20 and we do not need to know the names of the particular
21 gaming employees. That doesn't matter.

22 What matters is whether Caesars retained
23 gaming employees who had been convicted of felonies.
24 And if that's the case, that would clearly support our
10:07:17 25 argument that Caesars terminated the development

10:07:21 1 agreements for pretextual reasons.

2 In essence, that some of Caesars' -- some of
3 Caesars' employees have described a felony as a, you
4 know, a show stopper or something along those lines.

10:07:37 5 That basically it's a critical -- it's a thing that
6 Caesars looks at as a critical fact. And meaning that
7 if they -- if someone is convicted with a felony, then
8 they're not suitable. Okay. So if that's the case,
9 let's see if there are any gaming employees that have
10:07:53 10 felony convictions. And if so, what did Caesars do
11 about it?

12 Now to be clear, the answer could be a simple
13 no. And if that's the case, then, you know, we'll move
14 on. But either way, we're entitled to find out because
10:08:05 15 it goes to our client's contention that the termination
16 of the development agreements was pretextual.

17 Unless your Honor has any questions on that
18 category, I'll move on to the final category.

19 THE COURT: Sir, I don't have any questions at
10:08:27 20 this time on that category.

21 MR. WILLIAMS: Thank you, your Honor.

22 The final category as the written discovery
23 relates to Caesars' communications with Ramsey that
24 took place in late August and early September 16.

10:08:45 25 Some of those communications have been

1 withheld by Caesars on the basis of the common interest
2 privilege. If you want an example, you can look at
3 request for production numbers 15 and 80. And those
4 are quoted on pages 34 and then 45 through 46.

5 We already know that Caesars and Ramsey had
6 discussions prior to August 2016 about wanting to
7 basically oust the development entity from their
8 agreements with Caesars. You know, saying things like,
9 "We don't need him anymore", and they're referencing
10 Mr. Seibel. And saying things they want Mr. Seibel out
11 of the dealings. That's -- I believe that's a
12 statement from Mr. Ramsey's -- from working for
13 Mr. Ramsey. Those are in Exhibit 52 and 54 to the
14 motion to compel.

15 Caesars had discussions with Ramsey and
16 Ramsey's team prior to sending -- prior to Caesars
17 sending its formal termination notice on September 2nd,
18 2016.

19 We then know that additional discussions
20 between Caesars and Ramsey took place in early to
21 mid-September 2016. Again, these communications are
22 outlined in the motion to compel.

23 Caesars has withheld those communications
24 contending that it had a common interest privilege with
25 Ramsey. If that's true -- well, so they assert the

10:10:29 1 common interest privilege; however, what they can't
2 really claim is when there is a palpable threat of
3 litigation.

4 And to be clear, the standard of when a party
10:10:39 5 can assert the common interest privilege is not just
6 one side's subjective belief that there is a mere
7 possibility that litigation might occur, you know, at
8 some time in the future. It's not -- that's not
9 sufficient to trigger the application of common
10:10:55 10 interest privilege.

11 In fact, a standard like that would be
12 difficult, you know, if not -- it would be impossible
13 to predict what would fall within a common interest
14 privilege and what would not. I mean, anybody could
10:11:08 15 argue that they possibly anticipate litigation in any
16 commercial arrangement. So it's just not a -- it's not
17 a subjective rule. A subjective approach just wouldn't
18 be workable.

19 And I want to talk briefly about the Cotter
10:11:21 20 case from the Nevada Supreme Court. Caesars says
21 that -- uses that in their opposition to try to argue
22 that any anticipation of litigation can trigger the
23 common interest privilege.

24 However, in Cotter, what that case involves
10:11:37 25 was a former CEO of a company that asserted the common

10:11:42 1 interest privilege for work product documents that he
2 had provided to shareholders of that same company. The
3 former CEO and the shareholders had a common adversary,
4 the company.

10:11:55 5 However, in Cotter, the time for triggering
6 the common interest privilege wasn't at issue at all.
7 The CEO had already initiated litigation against the
8 company when he shared the work product with the
9 shareholders.

10:12:12 10 And in Cotter, the Nevada Supreme Court did
11 not address when the common interest privilege is
12 triggered. I mean, clearly when there's ongoing
13 litigation that it can be triggered. That's not in
14 dispute.

10:12:25 15 So what we need to do is we need to look to
16 other jurisdictions that pertain to when the common
17 interest privilege is triggered. And the cases say
18 that it triggers when there is a palpable threat of
19 litigation. And in the motion, we've -- we've set
10:12:41 20 forth the facts showing when it was fair for the
21 parties to seriously contemplate litigation when it
22 became palpable, and that's September 16, 2016. That's
23 Exhibit 57 to our motion. It's a letter that basically
24 contemplates potential litigation.

10:13:01 25 From that point onward, we don't dispute that

10:13:04 1 Caesars and Ramsey can assert the common interest
2 privilege assuming the other elements were met. You
3 know, assuming all the other elements of common
4 interest privilege are met.

10:13:16 5 However, we are saying that pre-September 16,
6 2016, communications cannot fall within the common
7 interest privilege because there just wasn't a palpable
8 threat of litigation.

9 Unless -- if Caesars essentially wants to --
10:13:33 10 you know, if Caesars is taking the position that the
11 moment, you know, they learned of the conviction of
12 Mr. Seibel and decided at that point they were going to
13 terminate the development agreements and not give the
14 development entities any opportunity to cure, which
10:13:57 15 they were contractually obligated to do, if

16 basically -- if they're taking the position that they
17 weren't going to abide by the contract, just we're
18 going to use the conviction as pretext, that's going to
19 create other issues for them. But clearly, the parties
10:14:12 20 prior to September 16, 2016, were having discussions on
21 hearings, on cure, and just on basically what the
22 impact of that, the conviction was. And there was --
23 there was not a palpable threat of litigation at that
24 time. Neither party had asserted that it was going to
10:14:35 25 file a lawsuit. None. There just -- it wasn't there

1 yet because there was still an opportunity for the
2 development entities to cure.

3 So based on that, the communications from that
4 time frame, from August up to September 16, 2016,
5 there's not a valid common interest privilege to be
6 asserted there.

7 And just finally, your Honor, one more common
8 interest privileges issue. Caesars withheld a document
9 based upon the common interest privilege from
10 February 2016 based on what it alleges was a common
11 interest with Ramsey in the bankruptcy. It's on
12 page 76 of the privilege log which is Exhibit 58.

13 In the bankruptcy, Ramsey was a creditor of
14 Caesars. How can a creditor share a joint legal
15 interest with a debtor in a bankruptcy? Simply they
16 can't. So this Court should compel them to produce
17 that withheld document as well.

18 And unless your Honor has any questions on the
19 discovery requests, we ask the Court to compel Caesars
20 to fully respond to them and to give our -- give my
21 clients leave to take the 30(b)(6) depositions as
22 noticed.

23 THE COURT: All right. And the reason for the
24 pause is I have difficulty sometimes unmuting. Sir, at
25 this point, I don't have any questions for you. We'll

10:16:29 1 hear from Caesars.

2 MR. WILLIAMS: Thank you, your Honor.

3 MR. PISANELLI: Thank you, your Honor. James
4 Pisanelli on behalf of the Caesars entities.

10:16:37 5 Your Honor, there is so much wrong with what's
6 going on here. It's really hard for me to focus on
7 where to begin, so I'll ask you in advance to forgive
8 me if I'm a little bit redundant because some of these
9 same themes seems to keep coming up over and over.

10:16:57 10 Your Honor, one thing I think is important
11 before we start analyzing what was just said and what
12 was written in this motion is to keep a focus on what
13 is not in this case.

14 What is not is a claim by Mr. Seibel and his
10:17:17 15 entities for an accounting they claim for an audit.
16 And more importantly, there's not a single allegation
17 anywhere, not in the pleading and certainly not in this
18 debate, that they're aware of irregularities.

19 So what does that tell us? No claims, no
10:17:34 20 allegations, no evidence of an awareness of
21 irregularities. It means that we find ourselves
22 unfortunately at the conclusion of, you know, the
23 cliché that this is a classic textbook fishing
24 expedition. But I think it's even worse than that. We
10:17:54 25 have seen, your Honor, and have reported back to you

10:17:57 1 that Mr. Seibel's M.O. in dealing with this litigation
2 is the same that he had in connection with the
3 businesses themselves. He's not forthright. He's an
4 obstructionist. And he's retaliatory. And that's
10:18:10 5 really what this feels like.

6 Remember during his depositions he showed up
7 prepared with this agenda to give these bad acts, he
8 thought anyway, about everyone in the room, all of the
9 parties. He had researched people. Digging up dirt.
10:18:27 10 He talked about issues like infidelity of Caesars'
11 experts -- I'm sorry, executives that he was going to
12 expose during this litigation. He even researched me
13 and told me all that he had found about me in
14 newspapers and my -- some of my former clients and
10:18:43 15 cases. Again, trying to intimidate me and Caesars,
16 that we would pay the price for having the audacity to
17 litigate against him. And this sure feels like this is
18 part of that playbook again. And let's -- let's, you
19 know, take it apart and see why.

10:19:01 20 If there's anything that shows us that this is
21 both a fishing speculation and retaliation it's what we
22 just heard from counsel with all due respect. When he
23 gave all these different examples about rebates, what
24 did he say at the end of every single example he gave a
10:19:24 25 hypothetical of what he would like to know? We don't

10:19:26 1 know, he said.

2 We don't know how they accounted for rebates.

3 We don't even know if there were rebates. We don't

4 know, he said, whether the Pepsi hypothetical vendors

10:19:39 5 or Coors Light, whatever he used, gave rebates at the

6 property level, gave rebates at the corporate level, or

7 gave rebates at all. And if they did, we don't know

8 how they were accounted for. Whether they are

9 generally accounting, accepted accounting principles

10:19:56 10 that were employed, whether there was a trickle down of

11 the rebates into the individual properties so that we'd

12 know X amount of pennies per drink in every restaurant

13 is in the books. I don't know, we don't know is what

14 he said over and over.

10:20:12 15 If there's any red flag that tells us that a

16 party is involved in a fishing speculation either just

17 purely to try to find something or, you know, in order

18 to increase the cost of litigation, in other words the

19 pain of litigation, is when counsel and their clients

10:20:30 20 tell us that the foundation of the request they're

21 asking for comes from a place of ignorance. And that's

22 exactly what we were just told in this hearing. We

23 don't know if any of these things happened.

24 So what we would like you to do, Caesars, is

10:20:46 25 to turn your company upside down and search for perks

10:20:50 1 and gifts -- and I'm reading from the request and the
2 30(b)(6) notice -- gift cards, you know, things -- and
3 they said, you know, they didn't do it de minimis.
4 They were very magnanimous in telling us that they
10:21:04 5 weren't going to look for de minimis gifts like a
6 lunch, but, you know, really expensive important stuff
7 like \$250. So if you have a bottle of wine, we're
8 going to want to know what the value of that wine was.

9 Think of what we're doing here. And, again,
10:21:19 10 what this is, is a fishing expedition for bad acts.
11 That's it. Bad acts. Did you get a gift? And did you
12 report it? That's another, you know, part of this
13 entire exercise they want us to do is uncover every
14 \$250 benefit, perc, gift card and then produce all of
10:21:37 15 the communications surrounding it, and then let us know
16 what the reporting happened inside the company for each
17 employee. Because if any of those things have a little
18 stink to it, we're going to claim it's a bad acts.

19 Well, bad acts we know, your Honor, are not
10:21:53 20 admissible in a case. They're not admissible to show
21 anything in this case unless something, somehow,
22 somewhere that specific bad acts has something to do
23 with a claim. And these have nothing to do with any
24 claim whatsoever.

10:22:08 25 Are we really going to turn this case upside

10:22:10 1 down and have a mini trial on every gift card, on every
2 dinner, on every bottle of wine to trace all these
3 things, I just -- starting with its value. Is that
4 what they're hoping to do? And I think they are as I
10:22:26 5 said because this is not only fishing for bad things,
6 but it's retaliation.

7 So if we have to spend that much money tracing
8 every single thing from God knows how many different
9 employees just to find out if anything even exists in
10:22:40 10 the first place, then I think it's mission accomplished
11 from their perspective because they can't really find a
12 place that any of that evidence would even fit into
13 that case.

14 And here's why. Not only is the issues of bad
10:22:53 15 acts generally irrelevant. What do they have to do
16 with this case, right?

17 We keep hearing from counsel during his
18 argument, we saw it again in the papers that they want
19 to know if there's a setoff. A setoff as a defense
10:23:12 20 because if we were doing the exact same thing, I think
21 is what his phrase was. And let's take a minute to
22 talk about the exact same thing.

23 A rebate to a purchaser of goods, in other
24 words, I'm a vendor; if you buy X amount of volume of
10:23:29 25 my product, I can give you a rebate thereby lowering

10:23:33 1 your cost of the good. Sometimes, you know, even with
2 automobiles it's done with -- to promote sales.
3 Doesn't even have to be a volume. If you buy a car
4 before December 31st, sometimes you get a
10:23:45 5 manufacturer's rebate after you pay the full price to
6 the dealer --

7 A rebate goes back to the purchaser. We're
8 not talking about a rebate that Mr. Seibel extorted
9 from the vendors. He took money having never paid for
10:24:03 10 anything in the first place. And he did so under
11 threat of falsely threatening these vendors that he had
12 the power to pull the account from Caesars even though
13 he didn't. So he told the meat provider, he told
14 certain alcohol providers that he wanted a percentage
10:24:24 15 of everything that they were selling; otherwise, they'd
16 lose the account. That's not a rebate. That's
17 extortion.

18 And so what we're talking about here, again,
19 is not even apples and oranges. We're talking about
10:24:37 20 felony versus traditional business relationships.
21 There is nothing. There's nothing close to it at all.
22 And even, you know, as a worst-case scenario, a holiday
23 expression of appreciation. We do it as a law firm.
24 We send a client, a colleague, co-counsel somewhere a
10:24:56 25 bottle of wine. That's not the same as extortion of

10:25:00 1 someone that you have no financial interest in you're
2 not paying for any of those goods. You're just
3 extorting a cut off the top.

4 So this suggestion that they're searching for
10:25:13 5 the exact same thing is just plainly untrue. There's
6 nothing similar to what they're looking for. And,
7 therefore, nothing -- there's no place in this case
8 where a bottle of wine to someone at Caesars from a
9 vendor would be a defense to Rowen Seibel extorting
10:25:34 10 money from vendors.

11 And let's not lose focus of this fact either,
12 your Honor. Now he says, counsel does as does
13 Mr. Seibel, these were marketing fees. But when
14 pressed in his deposition only days ago, he had to
10:25:50 15 concede there was no such marketing. Didn't do any
16 marketing. Didn't have to do any marketing. Just got
17 the fees. Then what exactly were you getting paid for?
18 We all know what it was. It was for the extortion.

19 And so this isn't an issue that we wanted to
10:26:05 20 share, Mr. Seibel, in your marketing fees. This is an
21 issue that you never should have been in possession of
22 one single dollar in the first place. This false
23 analogy that is a foundation of all of these requests
24 makes everything clear that this is all about fishing
10:26:25 25 and it's all about harassment. Because there -- even

10:26:30 1 if you made us turn this company upside down and spend
2 God knows how much money searching for every gift card
3 that was ever sent to somebody, as they have asked,
4 there would be no place for that information in this
10:26:42 5 case.

6 And that probably is the most important thing
7 we can say about any of these things. When we know
8 that modern rules of discovery in every court of this
9 nation take proportionality into consideration. You
10:26:57 10 know, what is the value of this evidence you are
11 seeking versus the cost to find it? You know, from
12 somebody in a construction case saying I want to see
13 the size of every nail put into that building knowing
14 that the size of the nails isn't going to have any
10:27:16 15 impact on the value of the building. You know, the
16 proportionality is way out of whack.

17 We're going to tear this building party to get
18 evidence that has no real value, you know, to the
19 defect claim or the value claimed in the end of the
10:27:30 20 analysis. And that's exactly what's going on here.
21 Let's turn this company upside down, which is huge in
22 its proportion and its expense and the time it's going
23 to take both during discovery and during trial.

24 And then the other side of the scale what is
10:27:46 25 the value to the case is below zero because it has no

10:27:51 1 evidentiary value. It just has burden on our side.

2 So, you know, when you take that into consideration, it
3 really becomes clear what's going on here.

4 You know, your Honor, if this had -- this
10:28:05 5 concept had any legitimacy at all, you have sat through
6 more discovery disputes than I think -- it must be
7 because you do it on a daily basis -- than all of us
8 combined, so I don't need to tell you this. But when
9 there is a legitimate issue having to do with
10:28:23 10 discovery, 100 percent of the time there is a
11 foundation for the request.

12 Your Honor, I'm being accused, my client is
13 being accused of extortion. But we have uncovered
14 evidence that Caesars takes this skim off the top of
10:28:41 15 the same exact vendors. All right. Now let's take a
16 look into that so long as they can tie it to a defense
17 or something in the case.

18 But here, they not only failed to say that
19 they're suspicious that they have evidence, a Rule 11
10:28:58 20 threshold that there is something to be found, they
21 don't even tell you how it fits into the case because
22 it cannot.

23 Instead, they use this false equivalency of a
24 rebate on being -- or some type of benefit going back
10:29:14 25 to the actual purchaser of the goods for someone who is

1 not purchasing anything but is threatening and
2 extorting that vendor in order to basically get a
3 bribe. There is no connection in the two, and,
4 therefore, there cannot be any connection in the case.

5 It has no place in the case. Obviously, it is abusive.

6 I know counsel has said it before. He doesn't
7 like when we bring up the hard-core facts in this case.
8 That they get offended that we bring up that Mr. Seibel
9 is convicted of a felony. And I can't apologize for
10 that because it's at the core of the real issues in the
11 case. It's the reason he was found unsuitable and had
12 to leave this relationship with us.

13 Now they don't like that we're saying that we
14 have caught him red-handed in a kickback scheme. Oh,
15 its hyperbole. They're just trying to distract from
16 the issues. Well, wait a minute. It is the core of a
17 claim against him that he was engaged in a secret
18 kickback scheme which he pretended were marketing fees
19 only now to admit there was no marketing going on nor
20 was marketing a condition of his fees. So I know they
21 don't like it, but there's no escaping what the client
22 was up to.

23 So what do we have then? There's this
24 suggestion that we are the obstructionist, and that's
25 just not us, respectfully. We did not tell them, "no",

10:30:40 1 we're going to give you no discovery to try to defend
2 yourself.

3 We said the exact opposite. We said, Listen,
4 we have new kickback -- renewed claims for the kickback
10:30:51 5 scheme that your client was involved in. And we showed
6 you in your papers, your Honor, that we have agreed for
7 the third deposition 30(b)(6) of Caesars that will show
8 up yet again.

9 Now, how we can be accused of bad faith when
10:31:07 10 we are the ones agreeing to show up for the third time,
11 I don't understand. But let's put that aside.

12 So what we did is we identified everything
13 that actually goes to what counsel said today. The
14 actual allegations of kickback.

10:31:24 15 Interestingly, counsel says that they have --
16 that Mr. Seibel put Caesars on notice that he was
17 obtaining kickbacks and they had evidence that Caesars
18 investigated it, and they had evidence, if I understood
19 correctly, that Caesars approved it.

10:31:43 20 Okay. That sounds like pretty strong evidence
21 that someone would want to defend a claim like this.

22 It made me question immediately when I heard
23 it, well, then what do you need all this other noise
24 for if you actually have evidence that goes to the
10:31:58 25 heart of the defense.

10:31:59 1 But let's assume counsel might be engaged in a
2 little hyperbole himself. Okay. We still didn't say,
3 well, you have it already. We'll shut you down. We
4 gave him and agreed to a number categories that go
10:32:13 5 directly to the issues he brought up today including
6 communications about our investigations, communications
7 about our notice that he was up to, facts supporting
8 our contentions that we suffered damages. We said,
9 fine. We'll show up. We'll give you a 30(b)(6)
10:32:33 10 designee and talk about those topics.

11 So to claim that they are being stripped of an
12 ability to defend themselves is just not true. Caesars
13 is the party that is doing all it can to not only
14 narrowly prosecute its claim but to give fair
10:32:49 15 opportunity to the other side to present real defenses.
16 This fishing expedition, this retaliatory abusive
17 discovery is where we draw the line. We're not going
18 to put up with that. We ask your Honor not to promote
19 it or allow it to go any further.

10:33:04 20 Now, interestingly, we asked counsel for his
21 other client, Mr. Green, who's a party to this case,
22 that we want to depose him on these kickback
23 allegations. And they said "no". No. That they were
24 not going to allow Mr. Green, an alleged conspirator in
10:33:27 25 this case, to be deposed again because he's already

10:33:29 1 been deposed. But they said, We will give him up if
2 you give us all of the categories and documents that we
3 want, including all of these abusive fishing
4 expeditions we've talked about today.

10:33:45 5 Sounds like the same type of obstructionist
6 and vexatious strategies that Mr. Seibel has been
7 applying all along. We're going to give you, we say, a
8 third 30(b)(6) depo on these kickback claims, but
9 you're not going to give Mr. Green up for his testimony

10:34:08 10 unless you get all of your abusive requests? That's
11 not how this process works. And that's why we've asked
12 you to make Mr. Green show up and give his best sworn
13 testimony on these claims. There's no quid pro quo
14 here. Your Honor will decide what they get from us.

10:34:24 15 They don't get to bargain in that respect. So we'd ask
16 you to shut that down as well.

17 So, your Honor, yeah, again, I'm not a person
18 that needs to tell you about the rules of discovery
19 that while broad they're not limitless. We take into
10:34:44 20 consideration relevance. We take into consideration
21 what actual claims are pending, what defenses are
22 pending, and, of course, proportionality to determine
23 what will this issue do to this case. What they're
24 doing is not only going to blowup the discovery period,
10:35:02 25 blowup the discovery expenses, they're going to turn

10:35:05 1 what was probably a two or three-week trial into a
2 six-month trial, and we do mini trials and defenses for
3 gift cards that was ever given, every bottle of wine
4 that was ever given. And then do a complete audit of
10:35:19 5 every single vendor we have at corporate or property
6 level as they're asking us to do only to find, to see
7 if we can find something that they're looking for but
8 they don't know what that is, and they don't know it
9 exists. That's not how discovery works. And we ask
10:35:38 10 you to shut that down immediately.

11 Information about gaming employees, again,
12 we've gone down this path before. We went down this
13 path in federal court where they were shut down, and
14 here we go again.

10:35:53 15 Starting first with the relevance. Let's say
16 for the sake of argument, and I don't think this is
17 true, but lets say for the sake of argument there is a
18 person, a gaming employee as they described who had a
19 conviction. We don't know when it was. We don't know
10:36:13 20 what it was about. Whether it was about a crime of
21 dishonesty. That is most important in the gaming
22 industry, et cetera.

23 So, again, we're inviting a process to have a
24 mini trial on every one, if any, that we find. And
10:36:30 25 when we do a complete audit and vetting of all of these

10:36:34 1 employees in this company to see and go through all the
2 investigative files that would have -- we would have to
3 do to uncover all of this information, only to get
4 where? To say, well, Mr. Seibel, first of all, none of
10:36:51 5 those gaming employees have a contractual provision
6 like you do. Your contractual provision says that you
7 would be subject to our suitability determinations.
8 You would not have the right to challenge them, and it
9 would be solely up to us as a self-policing licensee.

10:37:08 10 That's his contract. That's what he agreed
11 to. These gaming employees, are they subject to the
12 same terms? Are we going to have, again, a subtrial on
13 all of them to see what they do. Even if we do, at the
14 end does it make Mr. Seibel any less of a felon than he
10:37:24 15 is as we sit here today if there is another felon
16 somewhere else?

17 Does another felon somewhere else screw up
18 Caesars? And all the parties to the agreement
19 including Mr. Ramsey and his entities, does it strip us
10:37:38 20 of the rights in our development contracts to self
21 police to protect or licenses under the Gaming Control
22 Board, who, by the way, approved the expulsion of
23 Mr. Seibel.

24 This is a fishing expedition where, number
10:37:53 25 one, they admit again that they don't know if there are

10:37:56 1 any gaming employees that have a felony conviction.
2 And even if they did, they don't know what those
3 convictions were, what gaming control may have said
4 about them, whether it falls within the category of a
10:38:08 5 bright line disqualification factor, et cetera. It is
6 simply a fishing expedition for harassment that has no
7 place, not only in discovery, but will have no place in
8 trial.

9 Mr. Seibel cannot do anything to change the
10:38:22 10 fact that because of his own actions he was convicted
11 of a felony. That's it.

12 Let's assume again, for the sake of discussion
13 that Caesars is sloppy. It's not, but just for the
14 sake of this discussion, that Caesars is -- doesn't
10:38:37 15 have enough staff. Any number of reasons why a
16 perfectly consistent application of one set of rules
17 dealing with employees versus different set of the
18 rules dealing with vendors. Let's just assume there is
19 inconsistency in both. Where does that take this case?
10:38:55 20 It doesn't mean anything because our contract stays the
21 same. And Mr. Seibel in the beginning, in the middle,
22 and in the end of this debate will always be a felon.
23 And he will be one that didn't report his behavior nor
24 did he report his conviction to Caesars.

10:39:13 25 Instead, he attempted to commit a fraud

10:39:17 1 against Caesars by hiding it and trying to hide his
2 interest in the companies that he could remain the
3 beneficial owner of the interest notwithstanding that
4 he had been expelled by his own behavior.

10:39:28 5 So, again, your Honor, this concept of turn
6 your company upside down, review every investigative
7 file of every gaming employee for the past nine years,
8 whatever that long broad scope is, doesn't help this
9 case. All it does is impose a burden on Caesars and
10:39:45 10 shouldn't be allowed.

11 Finally, your Honor, this concept of common
12 interest privileges. It really highlights, you know,
13 the importance of meaningful meet and confers. You
14 know, we see in these papers for first time, Seibel
10:40:02 15 parties identifying three communications from January
16 and February of 2016 that had they called us and talked
17 to us about it, we'd see their point. And we've done
18 that in a sense agreed to at least and including this
19 issues he just -- counsel just raised to you in
10:40:17 20 connection with the bankruptcy case.

21 But, you know, more importantly, counsel
22 overlooks a couple of key facts. One, in August of
23 2016, after Caesars learned of Seibel's conviction,
24 they say that shouldn't be covered because litigation
10:40:41 25 is not contemplated. I don't know how they can say

10:40:44 1 that. When we knew at the time that we learned that he
2 had been convicted, that he had also been committing a
3 fraud against us, and that besides just a general
4 understanding of Mr. Seibel's litigious behavior. If
10:41:01 5 you want to call the standard, you know, palpable or
6 whatever, you know, the phrase different courts may
7 use, it's pretty clear that when you discover -- any
8 party discovers that they've got an unsuitable person
9 in their midst, and he's been committing a fraud
10:41:19 10 leading up to your own discovery of his felony
11 conviction, you would have to put blinders on not to
12 know that you're headed to litigation.

13 So there just is no question that both parties
14 immediately when they learned about the felony
10:41:36 15 conviction knew what was coming. They anticipated it
16 was coming. Maybe they would have been happy for sure
17 if it didn't, but they were right. They anticipated
18 it, and it did.

19 Now what's also interesting about this
10:41:48 20 hypocrisy of Mr. Seibel on this point to, maybe, your
21 Honor, if you point out in our papers, the Seibel
22 parties themselves had asserted that they contemplated
23 litigation as early as April. They are criticizing us
24 for saying that when we learned in August of that same
10:42:04 25 year we anticipated litigation, that they say that they

10:42:08 1 anticipated it in April.

2 So, you know, that double standard shows a
3 lot. There's some equitable estoppel principles that
4 probably apply to that. But we don't even need to go
10:42:20 5 that far.

6 We can simply say and see that, you know, if
7 it's good for you that you can see it coming, then
8 we're a lot of things at Caesars, but stupid is not one
9 of them.

10:42:31 10 We knew who Mr. Seibel was. We knew what he
11 had been up to. We knew we had been defrauded when
12 found out that he had been hiding his felony conviction
13 from us.

14 So the August time frame is fair by any
10:42:45 15 standard. And when filtered through the very standard
16 that the Seibel parties use that set their privilege
17 all the way back to April, I think we have to realize
18 that that's not a serious argument.

19 I've already addressed the issue about
10:43:00 20 Mr. Green's deposition. Fairness dictates that he show
21 up to this deposition and he not use that simple common
22 notion of, you know, both common sense and fairness as
23 a way to leverage inappropriate discovery from us.

24 So, your Honor, in totality, you know, I'm
10:43:19 25 kind of compelled to quote Judge Gordon over in the

10:43:23 1 federal court when he was recently dealing with one of
2 the election lawsuits where he said at what point does
3 this become ridiculous? And that's how this feels for
4 us. These requests dig in so deep into gift cards,
10:43:40 5 into what they pat themselves on the back for as being
6 a serious threshold of \$250. This comparison of a
7 rebate going back to a purchaser versus a
8 non-purchaser, extorting someone under the false threat
9 that he had the ability to pull the contract, we're
10:44:00 10 reaching the point of ridiculousness with this.

11 And we're at the end of the discovery period.
12 These parties are supposed to be moving toward, you
13 know, as we're doing this week our expert depositions,
14 summary judgment cutoffs are coming, getting ready for
10:44:15 15 trial. This is a huge distraction. It's abusive, and
16 we ask you to shut it down right now.

17 THE COURT: Thank you, sir.

18 And we'll go ahead and hear from the Seibel
19 parties.

10:44:32 20 MR. WILLIAMS: Thank you, your Honor. And,
21 again, this is Paul Williams on behalf of the Seibel --
22 Seibel, the development entities, and Mr. Green.

23 Overall, I want to just discuss something
24 globally and that is this notion that my clients are
10:44:49 25 engaged in a fishing expedition.

10:44:53 1 That we, you know, we don't have -- we don't
2 know what Caesars has done and hasn't done with respect
3 to a lot of these categories of information. You know,
4 one interesting thing here is that these claims --
10:45:05 5 Caesars new claims in their first amended complaint
6 arrive from discovery that it conducted prior to
7 possibly being able to make those claim in the first
8 amended complaint.

9 So when Caesars was conducting discovery on
10:45:22 10 what it calls the kickback and the commercial bribery
11 and all that, it did not have any claims against my
12 clients for those things.

13 But that's completely normal because that's
14 part of the discovery process. My -- Caesars claims it
10:45:39 15 did not know, in fact, when it moved for leave to file
16 its first amended complaint, which was filed after the
17 deadline to amend pleadings had already closed. They
18 told this Court and said to the Court, we couldn't file
19 this amended complaint because we had to conduct
10:45:57 20 discovery on these allegations before we could amend
21 our complaint.

22 And that is just part of the process. So this
23 is not -- the point is this not a fishing expedition.
24 We don't -- yeah, we don't know whether Caesars had a
10:46:16 25 rebate that it received from vendors on a global scale,

10:46:18 1 and did it account for them in the calculation of
2 profit. Right, because we need to conduct discovery on
3 that very issue.

4 And this would have not been an issue but for
10:46:29 5 Caesars amending its complaint to add allegations and
6 claims against my clients. And my clients are entitled
7 to take discovery to make defenses against those
8 claims.

9 And so just a few points, your Honor. They
10:46:45 10 argue that, you know, my clients don't have been any
11 claims, any allegations in their pleadings, or any
12 specific claims on that. That's correct. And the
13 reason that's correct is because before Caesars amended
14 its first amended complaint this was not at issue.

10:47:01 15 This was not -- this was not a thing at issue. But,
16 however, now it is. So my clients should be entitled
17 to conduct discovery on the things that they need to
18 defend themselves on these new claims.

19 And the reason why this is so late in the
10:47:16 20 process is because they -- they sought and obtained
21 leave late in the process. So that's just a
22 consequence of what they did and when they did it.

23 It's not -- it's not wrongful to try to find
24 out what information the other party has. And that's
10:47:33 25 the whole point of discovery. This just isn't a

10:47:36 1 fishing expedition.

2 What we're trying to discover is, is Caesars,
3 who now has a new theory of liability, are they doing
4 the same thing? And, you know, as Mr. Pisanelli
10:47:49 5 stated, they may not be. We don't know the answer to
6 that. It doesn't make any a fishing expedition. It's
7 just part of discovery to ferret out your defenses and
8 discover information in support of them. That doesn't
9 make it a fishing expedition to not know.

10:48:04 10 That's -- again, that's the whole point of
11 discovery is to discover facts. That's the whole point
12 of it.

13 Let's talk about the perks, the idea that
14 we're trying to find -- we're going to turn this case
10:48:15 15 upside down, we're trying to find gift cards, and
16 bottles of wine, and things of that nature. And, oh,
17 the \$250 threshold really is meaningless. That's not
18 true. The \$250 threshold comes from their own
19 compliance plan. If an employee receives a gift that's
10:48:33 20 in value that's -- that exceeds \$250, it must be
21 reported. That's in their compliance plan.

22 So to suggest that we're going to turn this
23 case upside down, that's just not true. The
24 information would have been reported, should have been
10:48:47 25 reported to the compliance department. And so that

10:48:51 1 information should be readily available. We're not
2 going to go -- we're not going to ask Caesars to go
3 interview every employee, every, you know, manager of
4 the properties to go, you know, see if they got a gift
10:49:03 5 card, a bottle of wine with lunch, a cup of coffee. No
6 we're tying it to their own compliance plan, which that
7 leads me to the second point. There is a discussion
8 about proportionality as it pertains to the benefits.

9 You know, yeah, the standard is relevant and
10:49:21 10 proportional. Here it's proportional because they've
11 excused my clients of wrongfully receiving benefits
12 from vendors and that they should have been entitled to
13 share in those.

14 And so we are entitled to know if that's your
10:49:38 15 theory. If you believe that legally you are entitled
16 to those things, then so should we. Because it's the
17 same relationship.

18 If you were receiving benefits from vendors,
19 we should be entitled to share in those benefits as
10:49:51 20 well. Again, that's their own theory. This isn't a
21 fishing expedition. We are testing out -- we are
22 asking, what's the basis of your theory. And it's
23 that, you know, that we shared -- that we did not share
24 benefits we received from vendors. And we should know
10:50:06 25 did they do the same thing?

10:50:08 1 If so, yes, we're entitled to an offset.
2 We're entitled to offset against their claims that,
3 okay, I suppose they prevail on their theory that they
4 should have shared in the benefits received by BR 23
10:50:23 5 and Future Star, even though they're not parties to
6 this case. Okay, they prevail. Then we should be
7 entitled to an offset for the very same thing that they
8 have done. Just not accounting for benefits they
9 received from vendors.

10:50:35 10 THE COURT: But that's --

11 MR. WILLIAMS: It's direct --

12 THE COURT: I have a question for you, though.
13 But that's not what they're really alleging, is it?
14 Because they're alleging an illegal arrangement to
10:50:44 15 coerce Caesars' vendors to pay them a portion of funds
16 for products Caesars had purchased. That's -- that's
17 much different than a bottle of wine, or some sort of
18 rebate, or any of those things. I mean, that's --
19 that's a much different relationship.

10:51:04 20 MR. WILLIAMS: Understood, your Honor. And
21 there are allegation, yes, that they used the -- they
22 used the term illegal, and that it's a criminal
23 activity. But all you need to do is look at their
24 claims. Their claims say that we received this
10:51:17 25 benefit. You know, their claims were not for

10:51:20 1 commercial bribery, or for, you know, illegal kickback
2 scheme because those aren't claims for relief.

3 Their claims against my clients are for the
4 implied breach of the implied covenant of good faith
10:51:31 5 and fair dealing, fraud, and conspiracy.

6 So but let's focus on the -- the claim for
7 breach before the implied covenant of good faith and
8 fair dealing. Did they allege a direct breach of
9 contract on behalf -- against the development entities?

10:51:51 10 No.

11 It's only -- they're arguing that it was --
12 you know, it was a breach of the implied covenant.
13 Which possibly every contract has an implied covenant
14 of good faith and fair dealing, and understand that.

10:52:02 15 But --

16 THE COURT: But here's my point. Wait, wait.
17 Factually, if under the facts of this case, say, one of
18 the vendors, a food and beverage vendor walked in, and
19 they say, Well, you know, we've had a really good
10:52:17 20 relationship here, Mr. Seibel. I want to give you this
21 bottle of, this fine cognac, or Louis, whatever, XIV --
22 I forget the names, but, nonetheless, the fine cognac;
23 right -- and they gave it to him. It's worth \$3-, \$4-,
24 \$500, maybe more than that. That's much different than
10:52:35 25 saying, Look, either you do X, Y, and Z or I'm going to

10:52:40 1 make sure -- give me some money, I'm going to make sure
2 your contract is terminated with Caesars Palace.
3 That's different.

4 MR. WILLIAMS: Your Honor, I understand that
10:52:53 5 there -- so they're alleging that, yes, my -- that
6 they're alleging that my clients engaged in whatever,
7 call it an illegal kickback scheme, extortion. That's
8 not -- that's not their claim. Their claim is not for
9 extortion. I understand what the basis of their
10:53:12 10 allegations are now.

11 Now, instead of --

12 THE COURT: But don't -- but don't -- but
13 they're not alleging that, for example, a food and
14 beverage vendor fair gave their client or someone a
10:53:25 15 bottle of Louis XIV cognac. And that was an improper
16 benefit.

17 MR. WILLIAMS: Your Honor, I could put it -- I
18 understand what you're saying, your Honor. And I
19 think -- I think of it this way: If they had -- so
10:53:40 20 suppose my clients had received gift cards instead of,
21 you know, funds, and my client didn't receive the
22 funds. It was nonparty entities. If my client
23 received them in gift cards or giant boxes of the very
24 expensive wines they can resell, that's still just
10:53:57 25 something of value. I don't -- the focus on their

10:53:59 1 claim is not that it's funds.

2 THE COURT: It's a transaction; right? And
3 going to the illegality potentially of the transaction.
4 If someone wants to give a benefit to your client
10:54:13 5 because they liked them or they had a fairly decent
6 business relationship going on, I don't think this
7 would be an issue in this case. I really and truly
8 don't.

9 However, if the allegation focuses on alleged
10:54:28 10 illegal arrangement to coerce Caesars' vendors to pay
11 them a portion of the funds for products that Caesars
12 purchased, it's a totally different animal. It just
13 is. No matter how you look at it. That's a different
14 traction.

10:54:46 15 MR. WILLIAMS: Your Honor, I understand. And
16 I understand what you're saying. I -- and again, our
17 point is that, ultimately -- I understand the
18 allegations they make in their first amended complaint
19 and that they call this, you know, illegal and
10:55:01 20 coercion. That's not what their claims are for. Their
21 claims are not for illegal kickbacks, or for
22 contribution, or for --

23 THE COURT: But here's my next question. For
24 example, that might be a breach of the covenant of good
10:55:15 25 faith and fair dealings implied in all contracts under

10:55:17 1 the Butch Lewis case, right?

2 MR. WILLIAMS: Right.

3 THE COURT: In contrast, a gift given or
4 gratuity given by a vendor. And if they were making
10:55:27 5 that a basis as their breach of the covenant of good
6 faith and fair dealing, that, yeah, one of the food and
7 beverage vendors dropped off a fine bottle of scotch or
8 something like that, I think that might be problematic
9 for Caesars.

10:55:44 10 And that's not what they're alleging. They're
11 not. Because at the end of the day there could be many
12 facts, for example, that rise to the level that breach
13 the covenant of good faith and fair dealing that
14 applied in all contracts. Right?

10:55:58 15 MR. WILLIAMS: I understand, your Honor. And
16 I agree that, right, the covenant of implied good faith
17 and fair dealing. The question is what is -- the
18 question is what is the basis of their claim. And I
19 understand they're making these -- again, they use the
10:56:12 20 hyperbolic language. And we disagree obviously
21 strenuously that what they did was illegal or wrongful.
22 However, they are claiming that they're entitled to a
23 portion of those. And I disagree with that. It should
24 be limited to the notion of funds. You know, that it
10:56:27 25 shouldn't be other things of value. But even then, I

10:56:31 1 don't see us using that same logic if we were to limit
2 it to that. Then still rebates that Caesars received
3 from vendors and how those rebates were -- how they
4 were treated is the same -- is the same conduct.

10:56:45 5 It's a payment of money based on the amount of
6 product sold, and how was it accounted for by Caesars.
7 So even if you are -- even if you are inclined to
8 restrict it to monetary payments, I still think there
9 are other --

10:57:00 10 THE COURT: No, no. I'm not looking at it --
11 I just want to make sure I -- I'm clear on this. We're
12 not limiting it to payments, goods, services, or any of
13 these things. I'm focusing on the type of transaction
14 that was involved. Hypothetically, like I said before,
10:57:17 15 food and beverage manager said, Look, I like you guys.
16 You know what, we've had a real solid relationship, and
17 they wanted to drop off a fine bottle of Macallan
18 scotch, you know, some sort of rare cask or something
19 like that, fine, you know. I don't think that would be
10:57:41 20 a breach of the covenant of good faith and fair
21 dealings. I just wouldn't.

22 But that's not what they're alleging here.
23 They're not focusing just on benefits. They're
24 focusing on the type of transaction or arrangement
10:57:52 25 that -- that occurred, and they're alleged coercion of

10:57:57 1 Caesars' vendors, which would be in violation of,
2 allegedly, the covenant of good faith and fair dealing,
3 maybe fraud, and I understand the other. I understand
4 what's going on. But that's my point it's not just the
10:58:13 5 benefit. It's the transaction or the coercion
6 involved.

7 Because the reason why I bring that up, maybe
8 hypothetically the scenario was different, look, you're
9 doing to a lot of business with us. I'm going to get
10:58:26 10 you fired unless you bring in ten cases of this type of
11 scotch that's very expensive. You know, it's not
12 focused -- that would be potentially problematic too.

13 MR. WILLIAMS: I understand, your Honor. And
14 I see where you're going with that, but I would note
10:58:43 15 that I think there is a distinction there on the --
16 like you said, on the type of transaction. And I
17 understand you're focusing on, okay, what their
18 allegations are. Not necessarily what their claims
19 are, but what their allegations are.

10:58:56 20 I think the claims are you did -- we should
21 have shared in the amount that you received from the
22 vendors. So at the very least, I think even if you are
23 going to exclude other types of transactions that we
24 feel are entitled to take discovery into things like
10:59:14 25 rebates or refunds that should have been included in

10:59:17 1 the calculation of net profits. And, you know, I
2 understand they're saying there's no direct claims or
3 allegations that we have made on that point.

4 However, we are, you know, it's a liberal
10:59:28 5 pleading state, and we do have a claim they breached
6 the contract. And that would certainly be a breach of
7 the contract, either directly or by the implied
8 covenant of good faith and fair dealing, if they were
9 receiving, you know, large refunds and rebates from the
10:59:44 10 vendors yet not accounting for those refunds or rebates
11 in the calculation of net profits under the development
12 agreements.

13 So I think I understand the distinction you're
14 making, your Honor. But I think they're still, within
10:59:57 15 that, a different category. And maybe it's not, you
16 know, the \$250, but more about focusing on what refunds
17 or rebates did each property or Caesars as a whole
18 receive from the vendors. And I don't think that would
19 require any level of great investigation on their part
11:00:17 20 to find out. That's something we can find out through
21 accounting.

22 THE COURT: Say that again. I want to make
23 sure what I understand what you're saying.

24 MR. WILLIAMS: Sure.

11:00:25 25 THE COURT: That last.

11:00:26 1 MR. WILLIAMS: Sure, your Honor. And I'm
2 trying to -- I understand what your thoughts are on
3 this. But I still think there's a separate category
4 of, you know, rebates and refunds that Caesars received
11:00:38 5 from vendors. You know, and we gave you an example
6 before. If Pepsi or Coors is giving a large refund or
7 a rebate to Caesars and then Caesars is not accounting
8 for that refund or rebate in its calculation of net
9 revenue under the development agreements, then at the
11:01:00 10 very least that would be a breach of the implied
11 covenant of good faith and fair dealing as to my
12 clients, and they would be entitled to either pursue
13 discovery on that as their claims or as a defense to
14 Caesars' allegations -- Caesars' claim for breach of
11:01:15 15 the implied covenant of good faith and fair dealing.

16 THE COURT: Okay.

17 MR. WILLIAMS: So I understand your thoughts
18 on the other aspects of it as far as, you know, maybe
19 there's a gift for \$500 for a bottle of cognac. Okay,
11:01:30 20 you know, I understand and respect where your Honor's
21 thoughts are on for that, but I think there's a
22 separate category of rebates and refunds that would be
23 much, much larger than that on an enterprise basis.
24 And did they account for those in calculating net
11:01:44 25 revenue?

11:01:45 1 Because if not, then they're still engaging in
2 the same conduct which is the same conduct that they're
3 accusing us of which is you didn't tell us you were
4 receiving these rebates or refunds from vendors and
11:02:00 5 didn't account -- we couldn't account for them in our
6 calculation of net revenue. Well, we should be
7 entitled to and use that is a defense that they did the
8 same thing.

9 MR. PISANELLI: Your Honor, may I be heard on
11:02:11 10 this?

11 THE COURT: I'm going to let you be heard,
12 Mr. Pisanelli. You know I don't -- I like a
13 well-developed record. I do. And more than anything I
14 do enjoy, I don't mind saying this, law and motion in
11:02:25 15 this regard.

16 You know, I can read the points and
17 authorities, but they're not nuanced enough for me. I
18 want to listen to what you have to say. And when I
19 listen I really -- I'm educated significantly on what's
11:02:39 20 going on as far as cases are concerned. That's
21 probably the best way I can say it.

22 But I'll let him finish, but I'm going to --
23 Mr. Pisanelli, don't let me forget. I'm going to let
24 you comment on that without question.

11:02:51 25 MR. PISANELLI: Thank you, sir.

11:02:53 1 MR. WILLIAMS: Okay. So unless you have any
2 further questions on that, your Honor, I can move on.

3 THE COURT: Yes, you can.

4 MR. WILLIAMS: All right, your Honor.

11:03:02 5 The other thing that was discussed was this
6 notion that we are looking for evidence of bad acts and
7 bad acts are not admissible. We're not -- we're not
8 looking for bad acts evidence. We are looking for
9 evidence that will support or defenses and support our
11:03:17 10 claims in this case that, you know, there are -- that
11 Caesars received -- you know, did Caesars receive these
12 rebates or refunds, you know, other than the value.
13 Again, I understand we're not -- where your Honor's
14 thoughts are on that.

11:03:35 15 But we're not looking for evidence of bad
16 acts. We're trying to find -- we're trying to defend
17 our -- we're trying to defend against Caesars' claims
18 against my clients that they did not disclose or let
19 Caesars share in benefits they received from vendors,
11:03:49 20 and it's the same conduct. But it's not about bad
21 acts.

22 You know, there's a lot of discussion about
23 their allegations against my clients. I, again, as I
24 stated -- as I stated at the outset, what we're
11:04:07 25 focusing on here is, is the information sought relevant

11:04:11 1 and proportional to my client's -- to the claims and
2 defenses that are at issue here.

3 And I understand --

4 THE COURT: Now, here's -- and I don't want to
11:04:20 5 cut you off. But has setoff been raised as an
6 affirmative defense in this case in the answer?

7 MR. WILLIAMS: Your Honor, I will -- so I --
8 there -- in between the filing of this motion and
9 subsequently where we're at now there is a -- this
11:04:36 10 Court has issued its decision on the motion to strike
11 the counterclaim, so I will -- I will go back and look.
12 But I will -- I will reference that I'm -- from my
13 recollection, there is an affirmative defense that goes
14 to equitable defenses like that. I don't -- I don't
11:04:54 15 recall that exact verbiage was used. I'll have to go
16 back and review that.

17 THE COURT: Okay.

18 MR. WILLIAMS: But I do believe, yes, it would
19 be subject to an affirmative defense. But I also
11:05:05 20 believe that regardless of that, it would go to course
21 of conduct to show what the parties believed was
22 something, was what type of benefits what type of funds
23 and rebates they feel they had to disclose to one
24 another. And that would go straight to the elements of
11:05:23 25 their defense.

11:05:25 1 THE COURT: Okay. Go ahead.

2 MR. WILLIAMS: And the -- so there's a lot of
3 discussion. I understand that Caesars has made
4 allegations against my clients. Again, we're not here
11:05:35 5 on a motion for summary judgment. We're just looking
6 at what is relevant to the claims and defenses
7 asserted. And, again, especially as defenses because
8 my clients need to be able to defend against Caesars'
9 claim.

11:05:48 10 And I don't think there is any dispute that
11 there's an entitlement to a setoff if Caesars was
12 engaging in similar conduct. But I'll let
13 Mr. Pisanelli speak to that.

14 THE COURT: The reason why I raise that, I
11:06:00 15 mean, typically in many cases setoff will be an
16 affirmative defense that has -- that would have to be,
17 you know, set forth in the answer.

18 But go ahead, sir.

19 MR. WILLIAMS: Understand, your Honor. And
11:06:11 20 I -- you know, it wasn't something that has the -- as
21 part of the meet and confer process, that was not
22 raised as an issue which is the only reason why, I
23 apologize, your Honor, I'm not ready to address it
24 right now. It's something that has not been raised and
11:06:24 25 I will -- I can go try to take a look and determine

11:06:27 1 that. But --

2 THE COURT: The only reason I raise that is if
3 it wasn't, it makes my decision real easy. But go
4 ahead, sir.

11:06:34 5 MR. WILLIAMS: Understood, your Honor.

6 So I talked about the notion of
7 proportionality and that basically the information we
8 sought has no evidentiary value. Again, we dispute
9 that. If -- especially if, as your Honor based on what

11:06:48 10 your statements and our discussions are inclined to do,
11 if you're looking to limit this to a higher threshold
12 than specifically to rebates or refunds that Caesars
13 received that's not going to be -- you know, this isn't
14 going to require Caesars to track down and speak to
11:07:06 15 every employee. Again, that 250 threshold comes from
16 their own compliance plan.

17 So employees should have been reporting any of
18 those gifts to the compliance department, and the
19 records of that should exist already.

11:07:20 20 That being said, as to the rebates and refunds
21 from vendors that should be something that's even
22 easier to find from accounting to make sure that
23 those -- that Caesars was accounting for those in its
24 calculation of net revenue.

11:07:39 25 And then I just want to talk about one thing

11:07:41 1 with the vendor pricing, your Honor. That goes
2 directly to the notion of their damages. Their damages
3 are, we should have basically received the half of what
4 BR 23 and Future Star received from the vendors. And
11:08:01 5 they also assert they're damaged because theoretically
6 they should have had lower prices. Basically if the
7 rebates had -- if BR 23 and Future Star, the fees that
8 they received from the vendors was included in the
9 calculation of net revenue, it would have benefited
11:08:18 10 them. It would have benefited Caesars.

11 So we should be entitled to know, well, did
12 Caesars actually engage in negotiations over pricing.
13 If not, then that element of their damages, the amount
14 of pricing they paid to vendors, just that's a nullity.
11:08:34 15 It doesn't apply if they didn't actually engage in
16 pricing discussions with the vendor, so we should be
17 able to know that.

18 Before I move on to the -- well, you know, I
19 will take this in a different order.

11:08:46 20 Talking about the gaming employees. You know,
21 Mr. Pisanelli said we got shut down in federal court
22 over the same subject matter. However, as we quoted in
23 the brief, the Court actually compelled Caesars,
24 specifically Paris, to provide information for certain
11:09:03 25 individuals that it had found, that Paris had found or

11:09:06 1 that Caesars had found not suitable.

2 Here we're talking about employees not
3 independent contractors. And Mr. Pisanelli tries to
4 make the distinction that, well, employees don't have a
11:09:22 5 contractual provision that allow Caesars to make
6 findings of unsuitability and terminate on that basis.

7 Well, again, as your Honor has stated
8 throughout this hearing, there is an obligation of good
9 faith and fair dealing. And one of our allegations is
11:09:39 10 that Caesars did not exercise that provision to
11 terminate the development agreement in good faith.

12 Based on that allegation, we should be allowed to
13 conduct discovery into whether there are any gaming
14 employees that have felony convictions. Because if
11:09:56 15 there are gaming employees that have felony

16 convictions, that would tend to show that Caesars'
17 decision to terminate the development agreement, this
18 purported basis of the decision was not made in good
19 faith. Because, in essence, as discussed in the
11:10:12 20 motion, I don't think it's really a dispute that gaming
21 employees are subject to a higher level of suitability
22 from the gaming control board and the gaming
23 commission.

24 So that is, that is highly relevant to my
11:10:26 25 client's claim that Caesars did not act in good faith

11:10:30 1 to -- in terminating the development agreements.

2 Let me discuss now the common interest
3 privilege. There is a lot of discussion that if the

4 meet and confer process was not sufficient; however,

11:10:43 5 I'll just note that at the -- during the meet and

6 confer process we essentially set a cutoff of

7 September 16, 2016, or after -- or before as the basis

8 of the documents we were disputing, so those were

9 easily findable within the privilege log.

11:11:05 10 And Mr. Pisanelli is correct that there was an
11 identification of some of those documents, and they did
12 agree to subsequently produce them. That's great.

13 However, the issue here is when was there a
14 palpable threat of litigation such that Ramsey and

11:11:19 15 Caesars had a joint legal interest to assert the common

16 interest privilege. And I understand the position.

17 The position taken is that well, as soon as they

18 discover the conviction that that triggers the

19 threat -- the potential for litigation.

11:11:37 20 But the standard is more strict than that.

21 You know, again, the cases talk about there being a

22 palpable threat of litigation. The mere fact there

23 could be litigation, that is not a palpable threat of

24 litigation.

11:11:51 25 And, again, we would point out that not until

11:11:54 1 September, the September letter that there could be a
2 palpable threat of litigation before that time. So we
3 disagree. We believe that there are communications
4 that were withheld improperly between Mr. Ramsey and
11:12:13 5 Caesars based on the common interest privilege. Again,
6 considering that there really seasonably wasn't a
7 palpable threat of litigation at that time.

8 Again, unless Caesars is stating that it has
9 zero intent of giving the development entities any
11:12:28 10 opportunity to cure and that that was just a completely
11 sham arrangement, that they had no intent to give the
12 development entities a right to -- the development
13 entities an opportunity to cure the alleged
14 unsuitability that they were entitled to do under the
11:12:45 15 contract, okay.

16 Finally, I just want to address the deposition
17 of Mr. Green. This is not a tit for tat. This was a
18 situation where we had -- we had agreed that Mr. Green
19 would sit for an additional deposition because we, yes,
11:13:05 20 thought that the fact that there are these new claims
21 meant that the parties should engage in additional
22 depositions on these claims.

23 However, and, I believe, it's in an email from
24 Mr. Gilmore to someone at Mr. Pisanelli's office, the
11:13:18 25 point is we wanted to get this Court's input first as

11:13:21 1 to what it thought was the relevant scope before we
2 were going to agree to have Mr. Green sit for an
3 additional deposition. Which is notable because
4 Mr. Green has had his deposition taken numerous times
11:13:35 5 in this case, both as individual capacity and as a
6 30(b)(6) for some of the development entities. And
7 many questions were asked to Mr. Green concerning the
8 marketing fees received by BR 23 and Future Star.
9 Again, a lot from -- I can go back and point out the
11:13:55 10 dates, your Honor, but this occurred before Caesars was
11 given leave to file its first amended complaint.

12 So, again, that just goes to show that Caesars
13 itself was conducting discovery as to things that were
14 not claims or allegations asserted in this complaint
11:14:14 15 against my clients. Yet, now it's trying to say to
16 this Court, well, you shouldn't allow my clients to
17 conduct discovery into points that are not direct
18 allegations or claims, you should not allow them to do
19 that.

11:14:27 20 But, again, that's not how discovery works.
21 Discovery, under discovery principles, we're allowed to
22 probe and see if there's information available there.
23 It's not a fishing expedition. It's, hey, Caesars, you
24 are now claiming this legal theory. And, again, going
11:14:42 25 back to the benefits here, your Honor. You're claiming

11:14:45 1 this legal theory that you entitled to the benefits
2 that we received that BR 23 and Future Star received
3 from vendors outside of the contractual relationship.
4 You're saying I'm entitled to that. Caesars I'm
11:14:59 5 entitled to those funds. I'm entitled to a portion of
6 them. Okay. If your legal theory is true, then my
7 clients, the development entities, are entitled to
8 similar payments that they received, that Caesars
9 received from vendors outside of what was accounted for
11:15:15 10 in the contractual relationship.

11 And I -- again, I understand, your Honor, the
12 distinction between the type of allegations made as far
13 as, yeah, we're -- we're not asserting an illegal
14 kickback scheme against Caesars or that this is
11:15:32 15 commercial bribery.

16 But that, again, I ask this Court to go back
17 and look at the claims themselves especially as it
18 relates to the implied covenant of good faith and --
19 the implied covenant of good faith and fair dealing
11:15:44 20 made by Caesars that that demonstrate the basis of the
21 claims is really about funds received from vendors that
22 were not accounted for in the parties' relationship.
23 That's what it's about.

24 And I would submit that that same issue is
11:16:00 25 what we're seeking with these, with this discovery as

11:16:03 1 it relates to the benefits. What did Caesars receive
2 from vendors and did it account for them in the party's
3 relationship?

4 And with that, your Honor, unless you have any
11:16:15 5 further questions I will turn it over.

6 THE COURT: Okay. And none at this time. I
7 just have one additional comment. As far as setoff
8 being an "affirmative defense", I mean, I looked at
9 that because I thought about it when I was reviewing
11:16:29 10 the points and authorities in this case. For example,
11 and I looked at Nevada Rules of Civil Procedure 8 -- I
12 think it's 8(c)(1). It wasn't listed there as one of
13 the, quote, "affirmative defenses". And I did -- I
14 just did a real cursory search on this topic.

11:16:45 15 For example, in California it's considered an
16 affirmative defense. It's my recollection, Illinois,
17 no. Because it's not set forth in their Rules of Civil
18 Procedure as an affirmative defense, and they look at
19 it as a counterclaim. I just want to tell you that
11:16:59 20 because I thought about this issue. Because to me it
21 appeared to -- any time you're conducting discovery the
22 threshold matter the discovery has to be, you know,
23 relevant to the claims and defenses, counterclaims, or
24 affirmative defenses in the case.

11:17:16 25 And that's one of the -- I don't mind telling

11:17:19 1 you, that was one of my thoughts as I was reviewing the
2 points and authorities.

3 And so all I'm saying is this. My mind is not
4 made up as to how Nevada would approach it. Is it an
11:17:30 5 affirmative defense or counterclaim? Potentially -- I
6 haven't dug that deep. Potentially that's up in the
7 air right now. And I haven't made that sort of
8 decision. I just wanted to make sure that if somewhere
9 down the road someone says, well, Judge, you said it
11:17:45 10 was an affirmative defense, no. Maybe it's an
11 affirmative defense. Maybe it's a counterclaim.

12 I just want to be clear on that.

13 Mr. Pisanelli, sir.

14 MR. PISANELLI: Thank you, your Honor. So I
11:17:56 15 don't -- I'm very appreciative of your remarks on the
16 setoff because -- and I think it's clear that no matter
17 what standard, we would say in Nevada, is likely to
18 adopt or which already exists to be relevant, the issue
19 has to be either an affirmative defense or a
11:18:19 20 counterclaim. It is neither in this case.

21 It is not asserted as an affirmative defense
22 by Mr. Seibel, nor is it a counterclaim. It has no
23 place in this case. And I will give counsel credit
24 that it is not because it doesn't belong in this case.

11:18:37 25 And here's what I mean by this:

11:18:41 1 We have, your Honor, a scheme by Mr. Seibel
2 that you've heard about for this kickback. For taking
3 money from vendors that it's based upon the volume that
4 Caesars is purchasing. Didn't do anything for it.
11:18:55 5 Called it marketing, but admitted that wasn't true.

6 Even if there was a setoff somehow alleged as
7 a claim for affirmative defense what we do on our side
8 of the transaction as the purchasing party is not a
9 setoff to what is plain and unadulterated theft.

11:19:17 10 We know from the discovery that we've taken,
11 your Honor, that at least one, maybe more, I just don't
12 recall off the top of my head, but we have found
13 evidence from the victims, the other victims, the
14 vendors of this coercive extortion scheme that there
11:19:41 15 were some internal communication we found from our
16 subpoenas where they're saying, well, you know, this
17 can't and this isn't a 1099 situation. It's a price
18 reduction. And that was the words that were used by
19 the vendors. It's price reduction.

11:19:55 20 So in other words, Caesars was paying more for
21 the product than it was obligated to. And that price
22 reduction, and this is the whole point of kickbacks
23 being commercial bribery and a crime, is there --
24 there's a presumption, and here, actual evidence, that
11:20:15 25 this was money that should have been the benefit of the

11:20:18 1 purchaser. But instead the party was coercing that
2 vendor basically skimmed it off the top for himself.
3 That can never be -- there can never be a defense that
4 I get to offset what I stole from your accounting
11:20:35 5 irregularity.

6 If you have your own claim for an accounting
7 or for damages for breach of contract, then allege it.
8 But one has nothing to do with the other.

9 Under these two circumstances, we could
11:20:49 10 potentially have competing judgments in this
11 hypothetical. One, for the extortion for what was
12 disgorged as a result of the extortion for punitive
13 damages as a result of the extortion, and then some
14 counterclaim saying that there were accounting mistakes
11:21:06 15 or irregularities that the partnership itself would
16 possess. Not Mr. Seibel. Mr. Seibel wouldn't get the
17 offset as a trickle-down beneficiary through all these
18 LLCs to offset what he stole. It's a complete
19 disconnect, and one can never meet the other. They are
11:21:26 20 two independent issues.

21 That Mr. Seibel has not asserted a setoff as
22 an affirmative defense nor has he set forth as a
23 counterclaim tells us all we need to know about this.

24 Now what we just heard in the rebuttal from
11:21:41 25 counsel is a complete abandonment of the entire theory

11:21:45 1 that we heard during the meet and confer. An entire
2 abandonment of the theory that was briefed.

3 And they said, well, your Honor, these rebates
4 should be a breach of contract. And, you know, we're
11:22:01 5 in a notice pleading state, so all we really need was
6 the heading "breach of contract", and we can now say
7 that because you didn't do a pro rata allocation of
8 every restaurant, every sale of every glass of Pepsi
9 throughout the entire Caesars entertainment enterprise
11:22:23 10 that there is a breach of contract, and that falls
11 under our breach of contract which is very specific
12 about the termination of the development agreement.

13 In other words they are asking for an order to
14 justify this harassing and very difficult and
11:22:41 15 challenging voluminous discovery. They're asking for a
16 de facto amendment to their pleading to now shift from
17 a breach of contract based solely upon the termination
18 of the contract now, with not one allegation anywhere,
19 simply say that we want an accounting of all of the
11:23:01 20 vendors that are in this company at the corporate or
21 property level.

22 That's ridiculous. And that there is nothing
23 in their pleadings. And counsel, quite frankly with
24 all due respect, made up that theory on the fly because
11:23:17 25 your Honor was not buying what he was selling as it

11:23:21 1 relates to this parallel between, you know, coercion
2 and blackmail and kickbacks on the one hand versus
3 legitimate arm's length transactions between a buyer
4 and a vendor. So he shifted to say, well, it's a
11:23:37 5 breach of contract so let me explore it under that
6 context. It's not a breach of contract. It's
7 certainly not a breach of contract in this case. It's
8 nowhere in this case, and so it should not be allowed.
9 That's issue number one.

11:23:51 10 The next issue is the proportionality.
11 Counsel says, based upon absolutely nothing, that this
12 is just a couple of keyboard punches and clicks, and
13 this should be easy to find. And I wonder where that
14 came from.

11:24:13 15 Think about what they're asking to do. Even
16 if they had a claim for breach of contract or a claim
17 for accounting, they're asking for one of the largest
18 gaming companies in the world to go find, over a long
19 period of time, and review every contract from every
11:24:37 20 vendor that provides anything that could have shown up
21 inside one these restaurants. Whether it be linen
22 supplier, glassware, food, God knows the different
23 varieties of food and beverage that could cross the
24 threshold of one of these restaurants. Trace every
11:24:58 25 single purchased product in every one of these

11:25:03 1 restaurants, trace it all the way through the
2 purchasing department. Find out where the underlying
3 purchasing contract lies. Is it at the property level?
4 Is it corporate level.

11:25:14 5 And then from there now trace back in all of
6 the invoicing on an annual basis, maybe a quarterly
7 basis for nine years and figure out if there ever was a
8 volume discount? And if there was a volume discount,
9 now compare that volume discount to the proportionality
11:25:32 10 of how many glasses of Pepsi were sold in one of their
11 restaurants versus glasses of Pepsi that were sold
12 company wide or property wide. And suggest that after
13 all of that is done to your Honor to say it's just a
14 couple of key punches, no big deal. Based upon
11:25:51 15 absolutely nothing.

16 It is a tremendous effort with zero benefits
17 to this case to go down that path. Even if they had a
18 claim, even if they had a setoff, and even if either of
19 those could have anything to do with an illegal
11:26:07 20 enterprise of extortion it is an extraordinary amount
21 of work to make us go back and do that this late in
22 this game. And they shouldn't be given any relief
23 whatever.

24 I'd also say this. We haven't heard any, any
11:26:25 25 justification whatsoever other than blanket denial that

11:26:29 1 this is a fishing expedition except this: We heard
2 counsel say several times basically that what's good
3 for the goose type of argument; right?

4 They said, Well, they did discovery on the
11:26:42 5 kickbacks before they amended the complaint. If they
6 were entitled to discover something before it's in the
7 pleading then why aren't we? Again, this phrase keeps
8 coming up. It's the exact same thing. No, it's not.
9 And here's the key difference.

11:26:58 10 We didn't conduct discovery wondering if there
11 were kickbacks. We didn't conduct discovery in order
12 to just fish around for bad acts.

13 Remember when we came back to you, your Honor,
14 they were all up in arms because we had done this very
11:27:13 15 limited discovery, and we pointed out to you then
16 because it's true that we conducted some very limited
17 inquiry based upon documents that we'd seen. One
18 document in particular. One email which was suggesting
19 to us, wait a minute, there's something here. Have
11:27:30 20 these guys been involved in this illegal scheme? And
21 then we brought that to your Honor and said, Look what
22 we have uncovered, your Honor, and these documents. We
23 need to do some depositions, and we need to amend our
24 complaint for what we found out through the documents
11:27:44 25 that were produced.

11:27:46 1 Now, let's take that activity and see if
2 counsel is correct when he said it's the exact same
3 thing. Does he have documents that there has somehow
4 been an accounting irregularity that would somehow,
11:27:59 5 under a law none of us are aware of, would be an offset
6 to an illegal scheme? No. He openly tells you over
7 and over again "we don't know."

8 But if Caesars dedicates hundreds if not
9 thousands of man hours to go do our work for us, maybe
11:28:15 10 we'll come up with a nugget that will show a bad act
11 that won't make our guy look as bad as he is. And
12 that, your Honor, is not how it works.

13 He has by his own words admitted that his
14 client is on a fishing expedition. He has absolutely
11:28:30 15 no basis to ask for these things, let alone the claims
16 or defenses. And there is no parallel whatsoever to
17 what happened with the kickbacks. The kickbacks, the
18 genesis of the kickbacks were actual evidence, actual
19 evidence that they produced and that we then drilled
11:28:49 20 down with subpoenas to the vendors. There is no
21 parallel here.

22 So on the employees, your Honor, there's an
23 interesting dynamic being argued here. Counsel has
24 said today, and they have said in earlier hearings in
11:29:06 25 the papers that we want to know -- first it was the

11:29:09 1 vendors. We want to know other vendors that you kicked
2 out for felony conviction. Now we want you to go
3 through employee files. Investigate the files for
4 hundreds if not thousands of employees and find out if
11:29:22 5 somebody else had a conviction but didn't get fired.
6 Because, they say, it would be evidence of violation of
7 the good faith and fair dealing.

8 Here's the flaw in that theory. Gaming
9 regulations are pretty strict. They are black and
11:29:40 10 white and for the most part leave no gray area.

11 You don't get to tell Nevada gaming regulators
12 that we're going to keep this employee. We're going to
13 keep this vendor on within our ranks because it might
14 not look good in our litigation.

11:30:02 15 Or it might be, you know, an issue of good
16 faith and fair dealing with a contract we have because
17 you have allowed us to keep this vendor, this
18 entertainer, this person here, and so we're just going
19 to violate the mandates of your laws and regulations
11:30:20 20 because we're afraid of that contract provision being
21 good faith and fair dealing. Again, that's not how it
22 works.

23 Gaming regulations are not subject to a
24 party's other independent contracts. They're not
11:30:34 25 conditioned by them, and they were certainly not waived

11:30:36 1 by them. We don't interpret a gaming licensee's
2 obligations based upon what another contract says and
3 whether it would be good-faith or bad faith to keep
4 this person on. That's not how it works. And that is
11:30:49 5 why this contract with Rowen Seibel and these entities,
6 like every contract, every gaming licensee has with a
7 vendor, empowers one side, one side only, the licensee,
8 to exercise its discretion solely with no input from
9 the other side and to strip the other side of the
11:31:11 10 ability to challenge when it does. That's how it
11 works. Whether we have other employees or other
12 vendors doesn't matter. Gaming regulations are not
13 modified by Rowen Seibel's contracts and that's why
14 that is a complete red herring.

11:31:28 15 Finally, this common interest privilege,
16 counsel did not address their hypocrisy of how they
17 could have anticipated litigation so early in the year
18 but that our litigation -- anticipation of litigation
19 against a party who had defrauded us, and a party with
11:31:47 20 a long litigious history, and a party who we knew
21 instantly from experience if this is a felony
22 conviction he was going to have to go, he has not
23 explained why they have the foresight to anticipate
24 litigation in April, but we have to be strapped to a
11:32:05 25 letter campaign in September, a month after we learned

1 of his felony conviction.

2 Once again, that's not how it works. The
3 standard is in anticipate of litigation. We have given
4 you a record that is sufficient to say when a gaming
5 licensee finds out two things: It has been defrauded
6 by one of its vendors, that's number one; and, number
7 two, by and through the hiding of felony conviction.
8 That is enough to put anybody who has spent ten minutes
9 in the gaming industry on notice that you are about to
10 enter into a perilous time in that relationship that
11 will in all likelihood include litigation.

12 And naturally Caesars was right. So there is
13 no foundation to conveniently and opportunistically
14 move the date back for us to September so that they can
15 get their hands on privilege documents but maintain the
16 earlier dates for themselves all the way back to April.

17 Thank you, your Honor.

18 MR. WILLIAMS: Your Honor, if I can just
19 make -- make a few things clear.

20 THE COURT: Yes. Yes, sir.

21 MR. WILLIAMS: Thank you. Thank you, your
22 Honor.

23 So just a few things so the record is clear.
24 Mr. Pisanelli stated that we have had a complete
25 abandonment of the theories under the -- that we made

11:33:28 1 on the motion to compel and is briefed entirely, that
2 in all the briefings and the meet and confer and the
3 like. Just so the record is clear, we have not done a
4 complete abandonment of those arguments. And I thought
11:33:41 5 I made myself pretty clear that I understand your
6 Honor's thinking as it relates to the benefits. That
7 being said I -- we still believe in the merits of the
8 positions that we've asserted and we still -- we are
9 still making them. It's not a complete abandonment of,
11:33:57 10 you know, that we believe these -- the benefits relate
11 to my client's defenses to Caesars new claims.

12 So I just want to make sure that is clear for
13 the record.

14 Second, as to this notion of the setoff as far
11:34:11 15 as whether or not it was asserted as an affirmative
16 defense, I have not had a chance to look at the
17 pleadings to make that determination. But I will --
18 Mr. Pisanelli stated that it's not in there. It's not
19 asserted as an affirmative defense. However, I would
11:34:26 20 note that from my recollection there are other
21 affirmative defenses that deal with equitable remedies
22 that would include that whether it's entitled as a
23 setoff or not.

24 That the fact that Caesars may have, you know,
11:34:42 25 breached its own -- breached the agreement, I think

11:34:44 1 that could be entitled to a setoff. But I just want
2 that record to be clear that it's not -- you know, yes,
3 we've been using the language "setoff"; however, prior
4 to today that was not really at dispute whether or not
11:34:56 5 we were entitled to a setoff. And I just want to make
6 clear that there could be other affirmative defenses
7 that that same theory fits into. So it's not
8 necessarily limited to a, you know, a direct equitable
9 remedy of setoff. That there are other equitable
11:35:09 10 remedies that it could apply to.

11 And Mr. Pisanelli stated that, you know, the
12 notion that this is also relevant to perhaps some of
13 the development entitlements' counterclaims, it's a new
14 theory. I would note on page 11 of the motion to
11:35:27 15 compel we reference the amended counterclaims. And
16 specifically on lines 23 through 25 it discusses --I'm
17 sorry. In that, on page 11 starting on line, it is
18 line 23 that there's an alleged breach of the
19 development agreement and the implied covenant by,
11:35:55 20 among other acts, failing to pay the development
21 entities monies owed under the development agreement.

22 So I -- as far as it being down, being further
23 in the brief I don't recall that right now. And I've
24 not found that in there. But I do recall that from my
11:36:11 25 recollection that was the discussion that did relate to

11:36:14 1 potentially our counterclaims. And I believe that may
2 have been mentioned in some of the meeting
3 correspondence.

4 But I just want to also make clear that, yes,
11:36:22 5 I mean, you know, oral argument. We're having as
6 the -- as your Honor stated, I like to have a
7 discussion and sort of ferret these issues out. Yes, I
8 want to point out that there's another potential ground
9 that these claims could relate -- that the benefits
11:36:36 10 could be relevant to my -- the development entities'
11 counterclaims. Just to show that based on their, you
12 know, alleging a breach of the agreement.

13 That being said, I think we've had a
14 sufficient back and forth on the benefits. Again, the
11:36:55 15 one thing I do want to point out based on
16 Mr. Pisanelli's last argument is this notion of a
17 proportionality.

18 He talked about, you know, all the work that
19 has to be done to make these determinations. I think
11:37:08 20 what that ignores is that this determination could
21 start with going and talking to the people at
22 accounting at purchasing to find out what is done and
23 what -- you know, are these -- are there these
24 enterprise-wide refunds or rebates? And if so, how are
11:37:26 25 they accounted for?

11:37:28 1 And that's a way you can start. And if it
2 turns out that there's no -- yeah, there is not going
3 to be an -- there's not going to be a deep dive that's
4 going to require the company to, you know, turn things
11:37:41 5 upside down to make -- to find out the information as
6 it relates to these rebates or refunds. So I just
7 don't think that's accurate. I think there's different
8 ways that can be handled to make sure it's not an
9 overly burdensome process. And that would be one way
11:37:55 10 of doing it.

11 As the issue of gaming employees, I
12 understand, you know, that Caesars' position is that
13 vendors are a different category and that this is all
14 about the gaming regulations. But, again, my clients
11:38:13 15 have a claim that Caesars did not act in good faith
16 when it terminated the development agreement. That it
17 essentially used Mr. Seibel's conviction as a pretext
18 to terminate the agreement. And their basis was, okay,
19 Seibel was a convicted felon; therefore, gaming would
11:38:35 20 find him unsuitable.

21 And I'm aware of the contractual language
22 that's contained in the development agreement; however,
23 the covenant of good faith and fair dealing would
24 require that Caesars exercise that in good faith. And
11:38:45 25 if Caesars has gaming employees that have been

11:38:48 1 convicted of felonies, that would tend to show that
2 they've not exercised that provision in good faith
3 because they knew they could have gaming employees that
4 were suitable that were convicted felons. And it's
11:39:01 5 really that simple.

6 As to the common interest privilege,
7 Mr. Pisanelli was discussing the assertion of the
8 common interest privilege by my clients. Again, that's
9 not an issue on this motion, and if Caesars would like
11:39:16 10 to have a meet and confer on that issue, we're happy to
11 do so. But, you know, again, we're -- what's at issue
12 here is not that. This is about what is relevant to
13 the claims and defenses that are at issue in this
14 matter.

11:39:29 15 And unless your Honor has any other further
16 questions, I will turn it over.

17 THE COURT: And I don't think I do at this
18 point. And this is what I'm going to do. I'm going to
19 try to button this up today and if I can.

11:39:45 20 Regarding the motion to compel itself as it
21 pertains to benefits, I'm going to deny that for a
22 couple of reasons.

23 Number one, I think the record is pretty clear
24 in this respect. That I'm making a distinction between
11:40:05 25 rebates or some sort of gratuities freely given by a

11:40:10 1 vendor to potentially an employer of Caesars versus
2 coercive conduct, which are totally different
3 transactions. They just are. And I don't see how that
4 would be relevant to the issues that are at hand.

11:40:30 5 Just as important too, I do -- I am concerned
6 about proportionality and what types of efforts it
7 would take. Notwithstanding that, I just don't see the
8 relevance. Just as important too, although this is
9 preliminary and I haven't made a determination as a
11:40:45 10 matter of law, it just appears to me that if setoffs
11 aren't set forth in the answering papers to the
12 counterclaim asserted in this case, and what I'm really
13 focusing on is whether setoff was set forth as an
14 affirmative defense, and it's probably a counterclaim,
11:41:11 15 and it wasn't, how that's relevant in this case. And I
16 don't think it is both factually and, I guess, as a
17 matter of law.

18 Regarding the gaming employees, understand
19 this, the gaming employees are -- that's a different
11:41:29 20 category. They're employees. They have personnel
21 files. Typically, those files are confidential. And I
22 just -- and to be candid, I don't see how they're
23 relevant. I just don't under the facts of this case.
24 Because we're talking about employees. And how Caesars
11:41:51 25 handles their employees as it relates to felony

11:41:59 1 convictions and the like, I just don't see how that's
2 germane to this case.

3 As far as common interest privilege is
4 concerned, it's my understanding that the controlling
11:42:12 5 date -- someone can correct me if I'm wrong or not --
6 being asserted by Caesars would be August 19, 2016.
7 And that apparently is the date they found out about
8 the issues pertaining to Mr. Seibel.

9 And so as far as that date is concerned, as it
11:42:31 10 pertains to the common interest privilege and in the
11 anticipation of litigation, typically it could be the
12 standard that would apply, I'm going to use that as the
13 controlling date in this case.

14 Last, but not least, we have the limited
11:42:57 15 30(b)(6) deposition of Mr. Green. And I don't remember
16 much discussion on that, but it's my understanding
17 there would be a limited deposition, and so I'm going
18 to permit that to occur.

19 And have I covered all issues?

11:43:17 20 MR. PISANELLI: I believe so, your Honor.

21 THE COURT: Yeah.

22 MR. WILLIAMS: Your Honor, just -- thank you,
23 your Honor. Just so the record is clear, there are --
24 there are certain categories that Caesars agreed to
11:43:26 25 produce a 30(b)(6) on. And I assume that based on your

11:43:30 1 court's ruling that we will just be -- we will reach
2 out to Caesars and discuss dates for the depo topics
3 they agreed to produce the 30(b)(6) on for those
4 depositions to proceed, even if those depositions are
11:43:45 5 going to occur after the close of discovery which is
6 this Friday. And I want that just to be clear on the
7 record.

8 THE COURT: And that's fine. I mean, we do
9 have scheduling orders in place. But, typically, when
11:43:59 10 it comes to issues like that, if the parties agree, I
11 have no problem with that at all. I just don't.
12 You're in a much better position than I am to know the
13 timing of your discovery and what can be done from a
14 pragmatic and practical perspective and logistics that
11:44:18 15 are required. And so I'll honor whatever agreements
16 you have in that regard, sir. I just want to tell you
17 that.

18 MR. WILLIAMS: And, Jim, I just want to make
19 sure for the record that is correct, right? I
11:44:28 20 believe -- I don't know unless I know -- discuss the
21 dates that those will proceed on.

22 MR. PISANELLI: You know, we'll have to get
23 Magali in that conversation, you know, even for
24 determining what was an agreement. Because as I
11:44:41 25 understood it, Paul, you rejected everything we

11:44:44 1 proposed. But we'll come back to the table and see if
2 we can't work it out.

3 THE COURT: All right. And lastly,
4 Mr. Pisanelli, sir, can you prepare an order regarding
11:44:53 5 today's hearing with some specific finding and some
6 discussion we've had on the record. And I just want to
7 make sure it's clear in this regard. Because I always
8 place this at the end of the minute order. My
9 decisions are based upon not just our discussion, but I
11:45:11 10 also rely inherently on the points and authorities that
11 are on file herein in this case. Because it would take
12 me -- and this comes up from time to time. When I
13 issue a minute order, I try to hit the highlights. But
14 if I issued -- if I had to issue orders like they do in
11:45:26 15 federal court, I need two or three more law clerks.

16 MR. PISANELLI: Yes, we will. Your Honor, we
17 will certainly do that. And as always we'll run it
18 past counsel first to see if we can't all come to an
19 accord for the best form of order to present to you.

11:45:44 20 THE COURT: Yes. Please do that, sir. All
21 right. Well, I guess, I'm so glad we did this before
22 kicking it or punting it to next year because this is
23 something that had to be done. And I didn't want it to
24 impact your schedule that's currently in place.

11:45:56 25 And last, but not least, if you agree and you

1 want to move things around a little bit and expand it,
2 I have no problem with that. I never have.

3 MR. PISANELLI: We appreciate that, your
4 Honor. And then allow me just to join counsel's
5 opening statement to you that this was out of the
6 ordinary course. We know you had to cram it into a
7 busy schedule, and we too are appreciative of your
8 time. Thank you for that.

9 THE COURT: You're welcome. And everyone,
10 enjoy your day and have a safe day. And if I don't --
11 of course, I won't see you, but Merry Christmas to
12 everybody. Happy Holiday, Happy Hanukkah and all those
13 wonderful things.

14 MR. PISANELLI: Same to you, your Honor.
15 Thank you.

16 MR. WILLIAMS: Thank you, your Honor.

17 MS. WATKINS: Merry Christmas, your Honor.

18 THE COURT: All right. Okay.

19
20
21
22 (Proceedings were concluded.)
23

24 * * * * *
25

REPORTER'S CERTIFICATE

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
TELEPHONIC PROCEEDINGS HAD IN THE BEFORE-ENTITLED
MATTER AT THE TIME AND PLACE INDICATED, AND THAT
THEREAFTER SAID STENOGRAPHY NOTES WERE TRANSCRIBED INTO
TYPEWRITING AT AND UNDER MY DIRECTION AND SUPERVISION
AND THE FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE
AND ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
NEVADA.

PEGGY ISOM, RMR, CCR 541

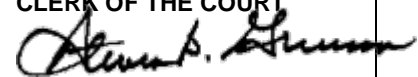
Peggy Isom, CCR 541, RMR

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TAB 81



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Corporation d/b/a Caesars Atlantic City*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

AND ALL RELATED MATTERS

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

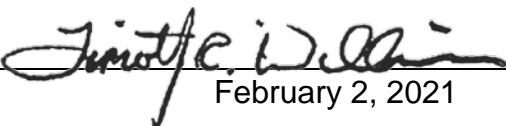
**ORDER GRANTING MOTION TO
REDACT CAESARS' OPPOSITION TO
THE DEVELOPMENT ENTITIES,
ROWEN SEIBEL, AND CRAIG GREEN'S
MOTION (1) FOR LEAVE TO TAKE
CAESARS' NRCP 30(B)(6)
DEPOSITIONS; AND (2) TO COMPEL
RESPONSES TO WRITTEN DISCOVERY
ON ORDER SHORTENING TIME; AND
COUNTERMOTION FOR PROTECTIVE
ORDER AND FOR LEAVE TO TAKE
LIMITED DEPOSITION OF CRAIG
GREEN AND SEAL EXHIBITS 3-6, 8-11,
13, 15, AND 16 THERETO**

PHWLV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las Vegas Operating Company, LLC ("Paris"), Boardwalk Regency Corporation d/b/a Caesars Atlantic City's ("CAC," and collectively, with Caesars Palace, Paris, and Planet Hollywood, "Caesars,") *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, 15, and 16 Thereto* (the "Motion to Seal"), filed on December 4, 2020, came before this Court for hearing on January 6, 2021. M. Magali Mercera, Esq., and Brittanie T. Watkins, Esq. of the law firm PISANELLI BICE PLLC, appeared telephonically on behalf of Caesars. Paul Williams, Esq. of the law firm BAILEY KENNEDY, appeared telephonically on behalf of Rowen Seibel ("Seibel"), TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), Craig Green ("Green"), and R Squared Global Solutions, LLC, derivatively on behalf of DNT Acquisition, LLC ("DNT").

Upon review of the papers and pleadings on file in this matter, as proper service of the Motion to Seal has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20(e), the Motion to Seal is deemed unopposed. The Court finds that Exhibits 3-6, 8-11, 13, 15, and 16 to 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 contain commercially sensitive information creating a compelling interest in protecting the filing and information from widespread dissemination to the public which outweighs the public disclosure of said information in accordance with Rule 3(4) of the Nevada Supreme Court's Rules Governing Sealing and Redacting of Court Records. Therefore, good cause appearing therefor:

THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES that the Motion to Seal shall be, and hereby is, GRANTED.

IT IS SO ORDERED.


February 2, 2021 ZJ

Respectfully submitted by:

Approved as to form and content by:

DATED January 25, 2021

DATED January 14, 2021

PISANELLI BICE PLLC

BAILEY ♦ KENNEDY

By: /s/ Brittanie T. Watkins
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By: /s/ Paul C. Williams
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*Attorneys for Rowen Seibel, Craig Green
Moti Partners, LLC, Moti Partner 16, LLC,
LLTQ Enterprises, LLC,
LLTQ Enterprises 16, LLC,
TPOV Enterprises, LLC,
TPOV Enterprises 16, LLC,
FERG, LLC, and FERG 16, LLC; and R
Squared Global Solutions, LLC, Derivatively
on Behalf of DNT Acquisition, LLC*

Approved as to form and content by:

DATED January 25, 2021

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By: /s/ Alan M. Lebensfeld

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*Attorneys for The Original Homestead
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Approved as to form and content by:

DATED January 20, 2021

FENNEMORE CRAIG, P.C.

By: /s/ John Tennert

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Wade Beavers, Esq. (SBN 13451)
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Reno, NV 89511

Attorneys for Gordon Ramsay

Approved as to form and content by:

DATED January 14, 2021

NEWMAYER & DILLION LLP

By: /s/ Aaron D. Lovaas

Aaron D. Lovaas, Esq. (SBN 5701)
3800 Howard Hughes Pkwy, Suite 700
Las Vegas, Nevada 89169

Attorneys for GR Burgr, LLC

Cinda C. Towne

From: Paul Williams <PWilliams@baileykennedy.com>
Sent: Thursday, January 14, 2021 8:35 AM
To: Brittanie T. Watkins
Cc: Debra Spinelli; Magali Mercera; Robert A. Ryan; Emily A. Buchwald; Cinda C. Towne; Joshua Gilmore; Stephanie Glantz; Sharon Murnane; Susan Russo; Tennert, John; Alan Lebensfeld; Aaron D. Lovaas
Subject: RE: Order Granting Caesars' Motion to Seal

CAUTION: External Email

Hi Brittanie,

You may affix my electronic signature.

Thank you,

Paul C. Williams
Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
(702) 562-8820 (Main)
(702) 789-4552 (Direct)
(702) 301-2725 (Cell)
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From: Brittanie T. Watkins <BTW@pisanellibice.com>
Sent: Wednesday, January 13, 2021 2:21 PM
To: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Sharon Murnane <SMurnane@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>
Cc: Debra Spinelli <dls@pisanellibice.com>; Magali Mercera <mmm@pisanellibice.com>; Robert A. Ryan <RR@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>
Subject: Order Granting Caesars' Motion to Seal

Counsel,

Please find attached a proposed order granting Caesars' motion to seal and redact and let us know if we may apply your electronic signature.

Best regards,

Brittnie T. Watkins
PISANELLI BICE PLLC

Cinda C. Towne

From: Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>
Sent: Thursday, January 14, 2021 10:27 AM
To: Brittanie T. Watkins; Joshua Gilmore; Paul Williams; Stephanie Glantz; Sharon Murnane; Susan Russo; Tennert, John; Alan Lebensfeld
Cc: Debra Spinelli; Magali Mercera; Robert A. Ryan; Emily A. Buchwald; Cinda C. Towne
Subject: RE: [EXTERNAL]:Order Granting Caesars' Motion to Seal

CAUTION: External Email

You may apply my e-signature. Thanks.

Aaron D. Lovaas
702.777.7519 | Aaron.Lovaas@ndlf.com
[Newmeyer & Dillion LLP](#)

From: Brittanie T. Watkins <BTW@pisanellibice.com>
Sent: Wednesday, January 13, 2021 2:21 PM
To: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Sharon Murnane <SMurnane@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>
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Best regards,

Brittanie T. Watkins
PISANELLI BICE PLLC

Cinda C. Towne

From: Tennert, John <jtennert@fennemorelaw.com>
Sent: Wednesday, January 20, 2021 6:42 PM
To: Brittanie T. Watkins
Cc: Alan Lebensfeld; Debra Spinelli; Magali Mercera; Robert A. Ryan; Emily A. Buchwald; Cinda C. Towne; Aaron D. Lovaas; Joshua Gilmore; Paul Williams; Stephanie Glantz; Sharon Murnane; Susan Russo
Subject: Re: [EXTERNAL]:Order Granting Caesars' Motion to Seal

CAUTION: External Email

Hi Brittanie, you may add my signature.
John

Sent from my iPhone

John D. Tennert III, Director

FENNEMORE.

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



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On Jan 20, 2021, at 5:51 PM, Brittanie T. Watkins <BTW@pisanellibice.com> wrote:

Good evening, John and Alan,

I am following up on the below. Please let us know if we may apply your electronic signature.

Best regards,

Brittanie T. Watkins

From: "Aaron D. Lovaas" <Aaron.Lovaas@ndlf.com>

Date: Thursday, January 14, 2021 at 10:27 AM

To: "Brittnie T. Watkins" <BTW@pisanellibice.com>, Joshua Gilmore <JGilmore@baileykennedy.com>, Paul Williams <PWilliams@baileykennedy.com>, Stephanie Glantz <SGLantz@baileykennedy.com>, Sharon Murnane <SMurnane@baileykennedy.com>, Susan Russo <SRusso@baileykennedy.com>, "Tennert, John" <jtennert@fennemorelaw.com>, Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>

Cc: Debra Spinelli <dls@pisanellibice.com>, Magali Mercera <mmm@pisanellibice.com>, "Robert A. Ryan" <RR@pisanellibice.com>, "Emily A. Buchwald" <eab@pisanellibice.com>, "Cinda C. Towne" <cct@pisanellibice.com>

Subject: RE: [EXTERNAL]:Order Granting Caesars' Motion to Seal

CAUTION: External Email

You may apply my e-signature. Thanks.

Aaron D. Lovaas

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From: Brittnie T. Watkins <BTW@pisanellibice.com>

Sent: Wednesday, January 13, 2021 2:21 PM

To: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Stephanie Glantz <SGLantz@baileykennedy.com>; Sharon Murnane <SMurnane@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>

Cc: Debra Spinelli <dls@pisanellibice.com>; Magali Mercera <mmm@pisanellibice.com>; Robert A. Ryan <RR@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>

Subject: [EXTERNAL]:Order Granting Caesars' Motion to Seal

Counsel,

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Best regards,

Brittnie T. Watkins
PISANELLI BICE PLLC

Cinda C. Towne

From: Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Sent: Monday, January 25, 2021 12:19 PM
To: Brittnie T. Watkins
Cc: Debra Spinelli; Magali Mercera; Robert A. Ryan; Emily A. Buchwald; Cinda C. Towne; Aaron D. Lovaas; Joshua Gilmore; Paul Williams; Stephanie Glantz; Sharon Murnane; Susan Russo; Tennert, John
Subject: RE: [EXTERNAL]:Order Granting Caesars' Motion to Seal

CAUTION: External Email

You may. Thanks

From: Brittnie T. Watkins [mailto:BTW@pisanellibice.com]
Sent: Monday, January 25, 2021 2:48 PM
To: Alan Lebensfeld
Cc: Debra Spinelli; Magali Mercera; Robert A. Ryan; Emily A. Buchwald; Cinda C. Towne; Aaron D. Lovaas; Joshua Gilmore; Paul Williams; Stephanie Glantz; Sharon Murnane; Susan Russo; Tennert, John
Subject: Re: [EXTERNAL]:Order Granting Caesars' Motion to Seal

Thank you, John, Aaron, and Paul.

Alan—please let us know if we may apply your electronic signature.

Best regards,

Brittnie T. Watkins
PISANELLI BICE PLLC

From: "Brittnie T. Watkins" <BTW@pisanellibice.com>
Date: Wednesday, January 20, 2021 at 5:50 PM
To: "Tennert, John" <jtennert@fennemorelaw.com>, Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Cc: Debra Spinelli <dls@pisanellibice.com>, Magali Mercera <mmm@pisanellibice.com>, "Robert A. Ryan" <RR@pisanellibice.com>, "Emily A. Buchwald" <eab@pisanellibice.com>, "Cinda C. Towne" <cct@pisanellibice.com>, "Aaron D. Lovaas" <Aaron.Lovaas@ndlf.com>, Joshua Gilmore <JGilmore@baileykennedy.com>, Paul Williams <PWilliams@baileykennedy.com>, Stephanie Glantz <SGlantz@baileykennedy.com>, Sharon Murnane <SMurnane@baileykennedy.com>, Susan Russo <SRusso@baileykennedy.com>
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Best regards,

Brittnie T. Watkins
PISANELLI BICE PLLC

From: "Aaron D. Lovaas" <Aaron.Lovaas@ndlf.com>

Date: Thursday, January 14, 2021 at 10:27 AM

To: "Brittnie T. Watkins" <BTW@pisanellibice.com>, Joshua Gilmore <JGilmore@baileykennedy.com>, Paul Williams <PWilliams@baileykennedy.com>, Stephanie Glantz <SGlantz@baileykennedy.com>, Sharon Murnane <SMurnane@baileykennedy.com>, Susan Russo <SRusso@baileykennedy.com>, "Tennert, John" <jtennert@fennemorelaw.com>, Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>

Cc: Debra Spinelli <dls@pisanellibice.com>, Magali Mercera <mmm@pisanellibice.com>, "Robert A. Ryan" <RR@pisanellibice.com>, "Emily A. Buchwald" <eab@pisanellibice.com>, "Cinda C. Towne" <cct@pisanellibice.com>

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Aaron D. Lovaas

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From: Brittnie T. Watkins <BTW@pisanellibice.com>

Sent: Wednesday, January 13, 2021 2:21 PM

To: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Sharon Murnane <SMurnane@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>

Cc: Debra Spinelli <dls@pisanellibice.com>; Magali Mercera <mmm@pisanellibice.com>; Robert A. Ryan <RR@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>

Subject: [EXTERNAL]:Order Granting Caesars' Motion to Seal

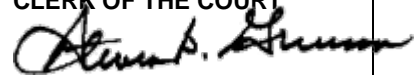
Counsel,

Please find attached a proposed order granting Caesars' motion to seal and redact and let us know if we may apply your electronic signature.

Best regards,

Brittnie T. Watkins
PISANELLI BICE PLLC

TAB 82



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
Brittanie T. Watkins, Esq., Bar No. 13612
BTW@pisanellibice.com
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Jeffrey J. Zeiger, P.C., Esq. (admitted *pro hac vice*)
JZeiger@kirkland.com
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WArnault@kirkland.com
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: 312.862.2000

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

Case No.: A-17-751759-B
Dept. No.: XVI

Consolidated with A-17-760537-B

**NOTICE OF ENTRY OF 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, 15, AND 16 THERETO**

AND ALL RELATED MATTERS

1 PLEASE TAKE NOTICE that an Order Granting Motion to Redact Caesars' Opposition to
2 the Development Entities, Rowen Seibel, and Craig Green's Motion (1) for Leave to Take
3 Caesars' NRCP 30(b)(6) Depositions; and (2) to Compel Responses to Written Discovery on
4 Order Shortening Time; and Countermotion for Protective Order and for Leave to Take Limited
5 Deposition of Craig Green and Seal Exhibits 3-6, 8-11, 13, 15, and 16 Thereto was entered in the
6 above-captioned matter on February 2, 2021, a true and correct copy of which is attached hereto.

7 DATED this 3rd day of February 2021.

8 PISANELLI BICE PLLC

9 By: /s/ Brittanie T. Watkins
10 James J. Pisanelli, Esq., #4027
11 Debra L. Spinelli, Esq., #9695
12 M. Magali Mercera, Esq., #11742
13 Brittanie T. Watkins, Esq., #13612
14 400 South 7th Street, Suite 300
15 Las Vegas, Nevada 89101

16 Jeffrey J. Zeiger, P.C., Esq.
17 (admitted *pro hac vice*)
18 William E. Arnault, IV, Esq.
19 (admitted *pro hac vice*)
20 KIRKLAND & ELLIS LLP
21 300 North LaSalle
22 Chicago, Illinois 60654

23 *Attorneys for Desert Palace, Inc.;*
24 *Paris Las Vegas Operating Company, LLC;*
25 *PHWLV, LLC; and Boardwalk Regency*
26 *Corporation d/b/a Caesars Atlantic City*
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 3rd day of February 2021, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF 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, 15, AND 16 THERETO** to the following:

John R. Bailey, Esq.
Dennis L. Kennedy, Esq.
Joshua P. Gilmore, Esq.
Paul C. Williams, Esq.
Stephanie J. Glantz, Esq.
BAILEY KENNEDY
8984 Spanish Ridge Avenue
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JBailey@BaileyKennedy.com
DKennedy@BaileyKennedy.com
JGilmore@BaileyKennedy.com
PWilliams@BaileyKennedy.com
SGlantz@BaileyKennedy.com

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

John D. Tennert, Esq.
Wade Beavers, Esq.
FENNEMORE CRAIG, P.C.
7800 Rancharrah Parkway
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Attorneys for Gordon Ramsay

Alan Lebensfeld, Esq.
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SCHWARTZ, P.C.
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alan.lebensfeld@lsandspc.com

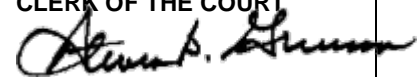
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1980 Festival Plaza Drive, #700
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mconnot@foxrothschild.com
ksutehall@foxrothschild.com

*Attorneys for Plaintiff in Intervention
The Original Homestead Restaurant, Inc.*

Aaron D. Lovaas, Esq.
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aaron.lovaas@ndlf.com

*Attorneys for Nominal Plaintiff
GR Burgr LLC*

/s/ Cinda Towne
An employee of PISANELLI BICE PLLC



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Debra L. Spinelli, Esq., Bar No. 9695
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Telephone: 312.862.2000

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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.: XVI

Consolidated with A-17-760537-B

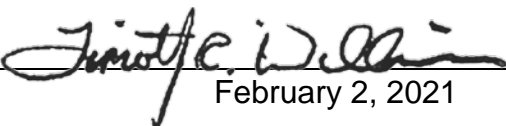
**ORDER GRANTING MOTION TO
REDACT CAESARS' OPPOSITION TO
THE DEVELOPMENT ENTITIES,
ROWEN SEIBEL, AND CRAIG GREEN'S
MOTION (1) FOR LEAVE TO TAKE
CAESARS' NRCP 30(B)(6)
DEPOSITIONS; AND (2) TO COMPEL
RESPONSES TO WRITTEN DISCOVERY
ON ORDER SHORTENING TIME; AND
COUNTERMOTION FOR PROTECTIVE
ORDER AND FOR LEAVE TO TAKE
LIMITED DEPOSITION OF CRAIG
GREEN AND SEAL EXHIBITS 3-6, 8-11,
13, 15, AND 16 THERETO**

PHWLV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las Vegas Operating Company, LLC ("Paris"), Boardwalk Regency Corporation d/b/a Caesars Atlantic City's ("CAC," and collectively, with Caesars Palace, Paris, and Planet Hollywood, "Caesars,") *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, 15, and 16 Thereto* (the "Motion to Seal"), filed on December 4, 2020, came before this Court for hearing on January 6, 2021. M. Magali Mercera, Esq., and Brittanie T. Watkins, Esq. of the law firm PISANELLI BICE PLLC, appeared telephonically on behalf of Caesars. Paul Williams, Esq. of the law firm BAILEY KENNEDY, appeared telephonically on behalf of Rowen Seibel ("Seibel"), TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), Craig Green ("Green"), and R Squared Global Solutions, LLC, derivatively on behalf of DNT Acquisition, LLC ("DNT").

Upon review of the papers and pleadings on file in this matter, as proper service of the Motion to Seal has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20(e), the Motion to Seal is deemed unopposed. The Court finds that Exhibits 3-6, 8-11, 13, 15, and 16 to 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 contain commercially sensitive information creating a compelling interest in protecting the filing and information from widespread dissemination to the public which outweighs the public disclosure of said information in accordance with Rule 3(4) of the Nevada Supreme Court's Rules Governing Sealing and Redacting of Court Records. Therefore, good cause appearing therefor:

THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES that the Motion to Seal shall be, and hereby is, GRANTED.

IT IS SO ORDERED.


February 2, 2021 ZJ

Respectfully submitted by:

Approved as to form and content by:

DATED January 25, 2021

DATED January 14, 2021

PISANELLI BICE PLLC

BAILEY ♦ KENNEDY

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

By: /s/ Paul C. Williams
John R. Bailey (SBN 0137)
Dennis L. Kennedy (SBN 1462)
Joshua P. Gilmore (SBN 11576)
Paul C. Williams (SBN 12524)
Stephanie J. Glantz (SBN 14878)
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(admitted *pro hac vice*)
William E. Arnault, IV, Esq.
(admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654

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

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

Approved as to form and content by:

DATED January 25, 2021

LEBENSFELD SHARON & SCHWARTZ P.C.

By: /s/ Alan M. Lebensfeld

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

Mark J. Connot, Esq. (SBN 10010)
Kevin M. Sutehall, Esq. (SBN 9437)
FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135

*Attorneys for The Original Homestead
Restaurant, Inc*

Approved as to form and content by:

DATED January 20, 2021

FENNEMORE CRAIG, P.C.

By: /s/ John Tennert

John Tennert, Esq. (SBN 11728)
Wade Beavers, Esq. (SBN 13451)
7800 Rancharra Pkwy
Reno, NV 89511

Attorneys for Gordon Ramsay

Approved as to form and content by:

DATED January 14, 2021

NEWMAYER & DILLION LLP

By: /s/ Aaron D. Lovaas

Aaron D. Lovaas, Esq. (SBN 5701)
3800 Howard Hughes Pkwy, Suite 700
Las Vegas, Nevada 89169

Attorneys for GR Burgr, LLC

Cinda C. Towne

From: Paul Williams <PWilliams@baileykennedy.com>
Sent: Thursday, January 14, 2021 8:35 AM
To: Brittanie T. Watkins
Cc: Debra Spinelli; Magali Mercera; Robert A. Ryan; Emily A. Buchwald; Cinda C. Towne; Joshua Gilmore; Stephanie Glantz; Sharon Murnane; Susan Russo; Tennert, John; Alan Lebensfeld; Aaron D. Lovaas
Subject: RE: Order Granting Caesars' Motion to Seal

CAUTION: External Email

Hi Brittanie,

You may affix my electronic signature.

Thank you,

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

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

From: Brittanie T. Watkins <BTW@pisanellibice.com>
Sent: Wednesday, January 13, 2021 2:21 PM
To: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Sharon Murnane <SMurnane@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>
Cc: Debra Spinelli <dls@pisanellibice.com>; Magali Mercera <mmm@pisanellibice.com>; Robert A. Ryan <RR@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>
Subject: Order Granting Caesars' Motion to Seal

Counsel,

Please find attached a proposed order granting Caesars' motion to seal and redact and let us know if we may apply your electronic signature.

Best regards,

Brittnie T. Watkins
PISANELLI BICE PLLC

Cinda C. Towne

From: Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>
Sent: Thursday, January 14, 2021 10:27 AM
To: Brittanie T. Watkins; Joshua Gilmore; Paul Williams; Stephanie Glantz; Sharon Murnane; Susan Russo; Tennert, John; Alan Lebensfeld
Cc: Debra Spinelli; Magali Mercera; Robert A. Ryan; Emily A. Buchwald; Cinda C. Towne
Subject: RE: [EXTERNAL]:Order Granting Caesars' Motion to Seal

CAUTION: External Email

You may apply my e-signature. Thanks.

Aaron D. Lovaas
702.777.7519 | Aaron.Lovaas@ndlf.com
[Newmeyer & Dillion LLP](#)

From: Brittanie T. Watkins <BTW@pisanellibice.com>
Sent: Wednesday, January 13, 2021 2:21 PM
To: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Sharon Murnane <SMurnane@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>
Cc: Debra Spinelli <dls@pisanellibice.com>; Magali Mercera <mmm@pisanellibice.com>; Robert A. Ryan <RR@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>
Subject: [EXTERNAL]:Order Granting Caesars' Motion to Seal

Counsel,

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Best regards,

Brittanie T. Watkins
PISANELLI BICE PLLC

Cinda C. Towne

From: Tennert, John <jtennert@fennemorelaw.com>
Sent: Wednesday, January 20, 2021 6:42 PM
To: Brittanie T. Watkins
Cc: Alan Lebensfeld; Debra Spinelli; Magali Mercera; Robert A. Ryan; Emily A. Buchwald; Cinda C. Towne; Aaron D. Lovaas; Joshua Gilmore; Paul Williams; Stephanie Glantz; Sharon Murnane; Susan Russo
Subject: Re: [EXTERNAL]:Order Granting Caesars' Motion to Seal

CAUTION: External Email

Hi Brittanie, you may add my signature.
John

Sent from my iPhone

John D. Tennert III, Director

FENNEMORE.

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



Fennemore has expanded to California. [Read more here.](#)

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

On Jan 20, 2021, at 5:51 PM, Brittanie T. Watkins <BTW@pisanellibice.com> wrote:

Good evening, John and Alan,

I am following up on the below. Please let us know if we may apply your electronic signature.

Best regards,

Brittanie T. Watkins

From: "Aaron D. Lovaas" <Aaron.Lovaas@ndlf.com>

Date: Thursday, January 14, 2021 at 10:27 AM

To: "Brittnie T. Watkins" <BTW@pisanellibice.com>, Joshua Gilmore <JGilmore@baileykennedy.com>, Paul Williams <PWilliams@baileykennedy.com>, Stephanie Glantz <SGLantz@baileykennedy.com>, Sharon Murnane <SMurnane@baileykennedy.com>, Susan Russo <SRusso@baileykennedy.com>, "Tennert, John" <jtennert@fennemorelaw.com>, Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>

Cc: Debra Spinelli <dls@pisanellibice.com>, Magali Mercera <mmm@pisanellibice.com>, "Robert A. Ryan" <RR@pisanellibice.com>, "Emily A. Buchwald" <eab@pisanellibice.com>, "Cinda C. Towne" <cct@pisanellibice.com>

Subject: RE: [EXTERNAL]:Order Granting Caesars' Motion to Seal

CAUTION: External Email

You may apply my e-signature. Thanks.

Aaron D. Lovaas

702.777.7519 | Aaron.Lovaas@ndlf.com

[Newmeyer & Dillion LLP](#)

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Sent: Wednesday, January 13, 2021 2:21 PM

To: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Stephanie Glantz <SGLantz@baileykennedy.com>; Sharon Murnane <SMurnane@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>

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Subject: [EXTERNAL]:Order Granting Caesars' Motion to Seal

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Brittnie T. Watkins
PISANELLI BICE PLLC

Cinda C. Towne

From: Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Sent: Monday, January 25, 2021 12:19 PM
To: Brittanie T. Watkins
Cc: Debra Spinelli; Magali Mercera; Robert A. Ryan; Emily A. Buchwald; Cinda C. Towne; Aaron D. Lovaas; Joshua Gilmore; Paul Williams; Stephanie Glantz; Sharon Murnane; Susan Russo; Tennert, John
Subject: RE: [EXTERNAL]:Order Granting Caesars' Motion to Seal

CAUTION: External Email

You may. Thanks

From: Brittanie T. Watkins [mailto:BTW@pisanellibice.com]
Sent: Monday, January 25, 2021 2:48 PM
To: Alan Lebensfeld
Cc: Debra Spinelli; Magali Mercera; Robert A. Ryan; Emily A. Buchwald; Cinda C. Towne; Aaron D. Lovaas; Joshua Gilmore; Paul Williams; Stephanie Glantz; Sharon Murnane; Susan Russo; Tennert, John
Subject: Re: [EXTERNAL]:Order Granting Caesars' Motion to Seal

Thank you, John, Aaron, and Paul.

Alan—please let us know if we may apply your electronic signature.

Best regards,

Brittanie T. Watkins
PISANELLI BICE PLLC

From: "Brittanie T. Watkins" <BTW@pisanellibice.com>
Date: Wednesday, January 20, 2021 at 5:50 PM
To: "Tennert, John" <jtennert@fennemorelaw.com>, Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Cc: Debra Spinelli <dls@pisanellibice.com>, Magali Mercera <mmm@pisanellibice.com>, "Robert A. Ryan" <RR@pisanellibice.com>, "Emily A. Buchwald" <eab@pisanellibice.com>, "Cinda C. Towne" <cct@pisanellibice.com>, "Aaron D. Lovaas" <Aaron.Lovaas@ndlf.com>, Joshua Gilmore <JGilmore@baileykennedy.com>, Paul Williams <PWilliams@baileykennedy.com>, Stephanie Glantz <SGlantz@baileykennedy.com>, Sharon Murnane <SMurnane@baileykennedy.com>, Susan Russo <SRusso@baileykennedy.com>
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PISANELLI BICE PLLC

From: "Aaron D. Lovaas" <Aaron.Lovaas@ndlf.com>

Date: Thursday, January 14, 2021 at 10:27 AM

To: "Brittnie T. Watkins" <BTW@pisanellibice.com>, Joshua Gilmore <JGilmore@baileykennedy.com>, Paul Williams <PWilliams@baileykennedy.com>, Stephanie Glantz <SGlantz@baileykennedy.com>, Sharon Murnane <SMurnane@baileykennedy.com>, Susan Russo <SRusso@baileykennedy.com>, "Tennert, John" <jtennert@fennemorelaw.com>, Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>

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Subject: RE: [EXTERNAL]:Order Granting Caesars' Motion to Seal

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You may apply my e-signature. Thanks.

Aaron D. Lovaas

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[Newmeyer & Dillion LLP](#)

From: Brittnie T. Watkins <BTW@pisanellibice.com>

Sent: Wednesday, January 13, 2021 2:21 PM

To: Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Sharon Murnane <SMurnane@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>

Cc: Debra Spinelli <dls@pisanellibice.com>; Magali Mercera <mmm@pisanellibice.com>; Robert A. Ryan <RR@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>

Subject: [EXTERNAL]:Order Granting Caesars' Motion to Seal

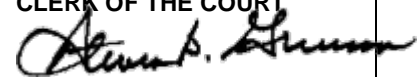
Counsel,

Please find attached a proposed order granting Caesars' motion to seal and redact and let us know if we may apply your electronic signature.

Best regards,

Brittnie T. Watkins
PISANELLI BICE PLLC

TAB 83



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Corporation d/b/a Caesars Atlantic City*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

PHWL, 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.: XVI

Consolidated with A-17-760537-B

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
CAESARS' MOTION TO STRIKE THE
SEIBEL-AFFILIATED ENTITIES'
COUNTERCLAIMS, AND/OR IN THE
ALTERNATIVE, MOTION TO DISMISS**

Date of Hearing: September 23, 2020

Time of Hearing: 9:00 a.m.

PHWLV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las Vegas Operating Company, LLC ("Paris"), and Boardwalk Regency Corporation d/b/a Caesars Atlantic City's ("CAC," and collectively, with Caesars Palace, Paris, and Planet Hollywood, "Caesars,") *Motion to Strike the Seibel-Affiliated Entities' Counterclaims, and/or in the Alternative, Motion to Dismiss* (the "Motion to Strike"), filed on July 15, 2020, came before this Court for hearing on September 23, 2020, at 9:00 a.m. James J. Pisanelli, Esq., Debra L. Spinelli, Esq., and Brittanie T. Watkins, Esq. of the law firm PISANELLI BICE PLLC, appeared telephonically on behalf of Caesars. John R. Bailey, Esq. and Paul C. Williams, Esq. of the law firm BAILEY KENNEDY, appeared telephonically on behalf of TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), and DNT Acquisition, LLC ("DNT"), appearing derivatively by and through R Squared Global Solutions, LLC ("R Squared"), (collectively the "Development Entities"), Rowen Seibel ("Seibel"), and Craig Green ("Green").¹ John Tennert, Esq., of the law firm FENNEMORE CRAIG, appeared telephonically on behalf of Gordon Ramsay ("Ramsay"). Aaron D. Lovaas, Esq. of the law firm NEWMAYER & DILLION LLP, appeared telephonically on behalf of GR Burgr, LLC ("GRB").

The Court having considered the Motion to Strike, the opposition thereto, as well as argument of counsel presented at the hearing, and good cause appearing therefor, enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. THE COURT FINDS THAT, Caesars filed its Complaint in Case No. A-17-760537-B on August 25, 2017 (the "Original Complaint"), setting forth three causes of action against Seibel and the Development Entities relating to the termination of the

¹ Seibel, Green, and the Development Entities are collectively referred to herein as the "Development Parties."

1 Development Agreements,² including: (1) declaratory judgment declaring that Caesars properly
2 terminated all of the Development Agreements; (2) declaratory judgment declaring that Caesars
3 does not have any current or future obligations to Defendants under the Development Agreements;
4 and (3) declaratory judgment declaring that the Development Agreements do not prohibit or limit
5 existing or future restaurant ventures between Caesars and Ramsay.

6 2. THE COURT FURTHER FINDS THAT, Case No A-17-760537-B was
7 consolidated with and into Case No. A-17-751759-B on or about February 9, 2018, pursuant to a
8 stipulation and order. (Stipulation & Order to Consolidate Case No. A-17-760537-B with & into
9 Case No. A-17-751759-B, Feb. 9, 2018, on file.)

10 3. THE COURT FURTHER FINDS THAT, on or about July 6, 2018, LLTQ, LLTQ
11 16, FERG, FERG 16, and DNT, derivatively by R Squared, filed answers to Caesars' Original
12 Complaint and counterclaims against Caesars. (LLTQ/FERG Defs.' Answer & Affirmative
13 Defenses to Pl.'s Compl. & Countercls., July 6, 2018, on file; Def. DNT's Answer to Pl.'s Compl.
14 & Coutnercls., July 6, 2018, on file.)

15 4. THE COURT FURTHER FINDS THAT, on or about July 6, 2018, TPOV, TPOV
16 16, MOTI, and MOTI 16 filed answers only to Caesars' Original Complaint. (MOTI Defs.' Answer
17 & Affirmative Defenses to Pl.'s Compl., July 6, 2018; Defs. TPOV & TPOV 16's Answer to Pl.'s
18 Compl., July 6, 2018, on file.)

19 5. THE COURT FURTHER FINDS THAT, on or about October 31, 2018, the Court
20 issued a scheduling order setting, among other things, the deadline to amend pleadings or add
21 _____

22 ² The Development Agreements include: (1) a Development, Operation and License
23 Agreement between MOTI Partners, LLC and Desert Palace, Inc., dated March 2009 (the "MOTI
24 Agreement"); (2) a Development, Operation and License Agreement between DNT Acquisition,
25 LLC, the Original Homestead Restaurant, Inc., and Desert Palace, Inc., dated June 21, 2011 (the
26 "DNT Agreement"); (3) a Development and Operation Agreement between TPOV and Paris, dated
27 November 2011 (the "TPOV Agreement"); (4) a Development and Operation Agreement between
28 LLTQ Enterprises, LLC and Desert Palace, Inc., dated April 4, 2012 (the "LLTQ Agreement"); (5)
a Development, Operation and License Agreement between PHW Las Vegas, LLC dba Planet
Hollywood by its manager, PHW Manager, LLC, GR BURGR, LLC, and Gordon Ramsay, dated
December 13, 2012 (the "GR Burgr Agreement"); and (6) a Consulting Agreement between FERG,
LLC and Boardwalk Regency Corporation dba Caesars Atlantic City, dated May 16, 2014 (the
"FERG Agreement").

1 parties for February 4, 2019. (Business Court Scheduling Order Setting Civil Jury Trial & Pre-Trial
2 Conference Calendar Call, Oct. 31, 2018, on file, at 2:3.)

3 6. THE COURT FURTHER FINDS THAT, the deadline to amend pleadings or add
4 parties was never extended or otherwise modified beyond February 4, 2019.

5 7. THE COURT FURTHER FINDS THAT, on or about October 2, 2019, nearly eight
6 months after the deadline to amend pleadings expired, LLTQ, LLTQ 16, FERG, and FERG 16 (the
7 "LLTQ/FERG Defendants") moved this Court for leave to amend their counterclaims to add claims
8 in their counterclaims related to a Gordon Ramsay Steak Restaurant located in Atlantic City as well
9 as additional restaurants in the United States involving Gordon Ramsay and Caesars or its affiliates
10 (Mot. to Amend LLTQ/FERG Defendants' Answer, Affirmative Defenses & Countercls., Oct. 2,
11 2019, on file.)

12 8. THE COURT FURTHER FINDS THAT, the Court denied the LLTQ/FERG
13 Defendants' request to amend, finding that the LLTQ/FERG Defendants had failed to meet their
14 "burden and ha[d] not demonstrated that good cause exists to permit amendment of their
15 counterclaim." (Order Denying Mot. to Amend LLTQ/FERG Defs.' Answer, Affirmative Defenses,
16 & Countercls., at 3:4-6, Nov. 25, 2019, on file.) The Court specifically held that "[t]he LLTQ/FERG
17 Defendants were aware of the facts they sought to include in their amended counterclaim before
18 the deadline to amend expired and they delayed seeking leave to amend their counterclaim." (*Id.* at
19 3:6-8.)

20 9. THE COURT FURTHER FINDS THAT, on or about December 12, 2019, ten
21 months after the deadline to amend pleadings expired, Caesars moved to amend its Original
22 Complaint to add new allegations and claims pertaining to an alleged kickback scheme it claimed
23 to have uncovered following discovery and depositions and to add Green as a defendant. (Caesars'
24 Mot. for Leave to File 1st Am. Compl., Dec. 12, 2019, on file.)

25 10. THE COURT FURTHER FINDS THAT, on or about March 10, 2020, this Court
26 granted Caesars' motion to amend, finding that "Caesars demonstrated good cause [to permit
27 amendment after the deadline to amend expired] because depositions had to be taken in order to
28

1 understand the documents produced by the parties." (Order Granting Caesars' Mot. for Leave to
2 File 1st Am. Compl., at 3:6-9, Mar. 10, 2020, on file.)

3 11. THE COURT FURTHER FINDS THAT, on or about March 11, 2020, Caesars filed
4 its First Amended Complaint, asserting five new claims, including (1) civil conspiracy against
5 Seibel and Green, (2) breaches of the implied covenants of good faith and fair dealing against the
6 Development Entities; (3) unjust enrichment against Seibel and Green, (4) intentional interference
7 with contractual relations against Seibel and Green, and (5) fraudulent concealment against Seibel
8 and Green. (First Am. Compl., Mar. 11, 2020, ¶¶ 171-206, on file.)

9 12. THE COURT FURTHER FINDS THAT, all of Caesars' new allegations and claims
10 were limited to an alleged kickback scheme Caesars claimed to have uncovered in discovery during
11 the litigation.

12 13. THE COURT FURTHER FINDS THAT, Caesars did not make changes to any of
13 the claims or allegations surrounding Caesars' termination of the Development Agreements as
14 pleaded in the Original Complaint.

15 14. THE COURT FURTHER FINDS THAT, on or about April 8, 2020, the
16 Development Parties filed a Motion to Dismiss Counts IV, V, VI, VII, and VIII of Caesars' First
17 Amended Complaint (the "Development Parties' Motion to Dismiss").

18 15. THE COURT FURTHER FINDS THAT, Caesars' First Amended Complaint
19 withstood the Rule 12(b)(5) challenge and the Development Parties' Motion to Dismiss was denied.
20 (Order Denying without Prejudice Rowen Seibel, the Development Entities, & Craig Green's
21 Motion to Dismiss Counts IV, V, VI, VII, & VIII of Caesars' 1st Am. Compl., May 29, 2020, on
22 file.)

23 16. THE COURT FURTHER FINDS THAT, on or about June 19, 2020, the
24 Development Parties filed a consolidated Answer to Caesars' First Amended Complaint and
25 Counterclaims. (The Development Entities, Seibel, & Green's Answer to Caesars' 1st Am. Compl.
26 & Countercls., June 19, 2020, on file.)

27 17. THE COURT FURTHER FINDS THAT, in their counterclaims filed June 19, 2020,
28 all of the Development Entities asserted claims for breach of contract and breach of the implied

1 covenant of good faith and fair dealing against Caesars concerning the termination of the
2 Development Agreements as first alleged in Caesars' Original Complaint brought nearly three years
3 prior.

4 18. THE COURT FURTHER FINDS THAT, the counterclaims filed June 19, 2020
5 included claims from TPOV, TPOV 16, MOTI, and MOTI 16, entities that did not previously assert
6 any counterclaims in response to Caesars' Original Complaint.

7 19. THE COURT FURTHER FINDS THAT, none of the Development Entities'
8 counterclaims filed June 19, 2020 pertain to the new claims (the alleged kickback scheme) brought
9 by Caesars in its First Amended Complaint.

10 20. THE COURT FURTHER FINDS THAT, the Development Entities did not move to
11 amend their initial counterclaims filed July 6, 2018 before filing their counterclaims on June 19,
12 2020, nor did they seek reconsideration of this Court's prior order denying the LLTQ/FERG
13 Defendants' previous motion to amend.

14 CONCLUSIONS OF LAW

15 1. There are three Nevada Rules of Civil Procedure ("NRCP") that are implicated by
16 the instant motion: Rule 12(f), which governs motions to strike, Rule 15(a), which governs
17 amendments to pleadings, and former Rule 13(f), which governed the addition of omitted
18 counterclaims.

19 2. The 2019 Amendments to the NRCPs changed Rule 15(a) and abrogated Rule 13(f)
20 (consistent with the Federal Rules of Civil Procedure).

21 3. Pursuant to NRCP 12(f), a "court may strike from a pleading an insufficient defense
22 or any redundant, immaterial, impertinent, or scandalous matter." *See also Russell Rd. Food &*
23 *Beverage, LLC v. Galam*, No. 2:13-CV-0776-JCM-NJK, 2013 WL 6684631, at *1 (D. Nev. Dec.
24 17, 2013 (internal quotations omitted) ("A motion to strike material from a pleading is made
25 pursuant to Rule 12(f), which allows courts to strike an insufficient defense or any redundant,
26 immaterial, impertinent or scandalous matter.").

27 4. "The essential function of a Rule 12(f) motion is to 'avoid the expenditure of time
28 and money that may arise from litigating spurious issues by dispensing with those issues prior to

trial." *Russell Rd. Food & Beverage, LLC*, 2013 WL 6684631, at *1 (quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993)); *see also Bolick v. Pasioneck*, No. 2:10-CV-00353-KJD, 2011 WL 742237, at *3 (D. Nev. Feb. 24, 2011) (citations omitted) ("The Court is cautious of transparent attempts to prolong litigation, open up spurious discovery issues, or that may unnecessarily waste time, expense, resources or cause undue prejudice.").

5. "In considering a motion to strike, 'the court views the pleadings in the light most favorable to the non-moving party, and resolves any doubt as to the relevance of the challenged allegations or sufficiency of a defense in [non-moving party's] favor.'" *Genlyte Thomas Grp., LLC v. Covelli*, No. 208CV01350KJDPAL, 2009 WL 10709254, at *4 (D. Nev. Aug. 7, 2009) (quoting *State of Cal. Dep't of Toxic Substances Control v. Alco Pac., Inc.*, 217 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002)).

6. There is no Nevada case law directly addressing whether a defendant may file amended counterclaims in response to an amended complaint without leave of court. Therefore, the Court turns to federal case law addressing the analogous Federal Rules of Civil Procedure.

7. Federal case law has recognized three separate approaches, which have been characterized as narrow, permissive, and moderate.

8. Under the narrow approach, "counterclaims as of right are allowed only if they are 'strictly confined to the new issues raised by the amended complaint.'" *Bibb Cnty. Sch. Dist. v. Dallemand*, Civil Action No. 5:26-cv-549, 2019 WL 1519299, at *3 n.6 (M.D. GA Apr. 8, 2019) (quoting *S. New England Tel. Co v. Glob. NAPS, Inc.*, Civil Action No. 3:04-cv-2075 (JCH), 2007 WL 521162, at *2-3 (D. Con. Feb. 14, 2007)). The abrogation of FRCP 13(f) in 2009; and consequently NRCP 13(f) in 2019 would supersede cases following the narrow approach. *See Sierra Dev. Co. v. Chartwell Advisory Grp. Ltd.*, No. 13-cv-602-BEN-VPC, 2016 U.S. Dist. LEXIS 160308, at *11 (D. Nev. Nov. 18, 2016).

9. "Under the 'permissive' approach, 'once a plaintiff amends a complaint, the defendant always has the right to amend to bring new counterclaims, without regard to the scope of the amendments.'" *Cieutat v. HPCSP Invs., LLC*, No. CV 20-0012-WS-B, 2020 WL 4004806, at *3 (S.D. Ala. July 15, 2020) (quoting *Bern Unlimited, Inc. v. Burton Corp.*, 25 F. Supp. 3d 170,

1 178 (D. Mass. 2014)). Courts have found that the permissive approach deprives a court of the ability
2 to manage the litigation. *See Sierra Dev. Co.*, 2016 U.S. Dist. LEXIS 160308, at *11. Under Nevada
3 law, the permissive approach would contradict NRCP 16, which the Nevada Supreme Court
4 implemented to ensure trial judges actively managed their cases in an orderly manner.

5 10. Under the moderate approach, courts have held that the breadth of the amended
6 counterclaim's changes must reflect the breadth of the changes in the amended complaint. Under
7 this approach, the Development Entities' counterclaims would not be permitted because the breadth
8 of the changes in their Amended Counterclaims do not reflect the breadth of the changes in Caesars'
9 First Amended Complaint (*i.e.*, the alleged kick-back scheme). Instead, the Amended
10 Counterclaims relate to Caesars' termination of the Development Agreements. Moreover, this Court
11 already rejected the LLTQ/FERG Defendants' efforts to file similar amended counterclaims, finding
12 that they failed to show good cause after the deadline to amend had expired.

13 11. Pursuant to NRCP 15(a), a party should be granted leave to amend a pleading when
14 justice so requires, and the proposed amendment is not futile. However, when a party seeks leave
15 to amend a pleading after the deadline previously set for seeking such amendment has expired,
16 NRCP 16(b) requires a showing of "good cause" for missing the deadline. *See Nutton v. Sunset*
17 *Station*, 131 Nev. 279, 28, 357 P.3d 966, 970-71 (Nev. App. 2015).

18 12. This Court has considered the three approaches described under federal law;
19 however, this Court will follow the NRCP 16 mandate, which specifically requires a showing of
20 good cause to amend the pleadings after the time for doing so set forth in the court's scheduling
21 order has expired.

22 13. "Where a scheduling order has been entered, the lenient standard under Rule 15(a),
23 which provides leave to amend 'shall be freely given,' must be balanced against the requirement
24 under Rule 16(b) that the Court's scheduling order shall not be modified except upon a showing of
25 good cause." *Nutton*, 131 Nev. at 285, 357 P.3d at 971 (quoting *Grochowski v. Phoenix Constr.*,
26 318 F.3d 80, 86 (2d Cir. 2003)). "Disregard of the [scheduling] order would undermine the court's
27 ability to control its docket, disrupt the agreed-upon course of the litigation, and reward the indolent
28

1 and the cavalier." *Id.* at 285–86, 357 P.3d at 971 (quoting *Johnson v. Mammoth Recreations, Inc.*,
2 975 F.2d 604, 610 (9th Cir. 1992)).

3 14. Consequently, the Amended Counterclaims are time-barred by this Court's prior
4 scheduling order and the previous denial of the LTTQ/FERG Defendants' Motion to Amend.

5 15. Caesars' First Amended Complaint did not open the door for the Development
6 Entities to expand the scope of the litigation beyond its current parameters. Thus, the Development
7 Entities' counterclaims filed June 19, 2020 must be stricken.

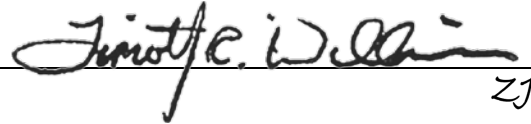
8 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Motion to Strike
9 shall be, and hereby is, GRANTED.

10 IT IS HEREBY FURTHER ORDERED that the Development Entities' Amended
11 Counterclaims are STRICKEN in their entirety.

1 IT IS HEREBY FURTHER ORDERED that the Development Entities shall file a
2 responsive pleading consistent with this order (as well as any and all applicable prior orders).

3 IT IS SO ORDERED.

4 DATED this 3rd day of ~~January~~ February 2021.

5
6  ZJ

8 Respectfully submitted by:

Approved as to form and content by:

9 DATED January 27, 2021

DATED January 27, 2021

10 PISANELLI BICE PLLC

FENNEMORE CRAIG, P.C.

11 By: /s/ M. Magali Mercera
12 James J. Pisanelli, Esq., Bar No. 4027
13 Debra L. Spinelli, Esq., Bar No. 9695
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26 *Attorneys for Desert Palace, Inc.;*
27 *Paris Las Vegas Operating*
28 *Company, LLC; PHWLTV, LLC; and*
Boardwalk Regency
Corporation d/b/a Caesars Atlantic City

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Approved as to form and content by:

DATED January 27, 2021

LEBENSFELD SHARON & SCHWARTZ P.C.

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*Attorneys for The Original Homestead
Restaurant, Inc*

Approved as to form and content by:

DATED January 27, 2021

NEWMAYER & DILLION LLP

By: /s/ Aaron D. Lovaas
Aaron D. Lovaas, Esq.
3800 Howard Hughes Pkwy, Suite 700
Las Vegas, Nevada 89169

Attorneys for GR Burgr, LLC

Cinda C. Towne

From: Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Sent: Wednesday, January 27, 2021 12:19 PM
To: Magali Mercera; Paul Williams
Cc: Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Brittnie T. Watkins; James Pisanelli; Aaron D. Lovaas; Tennert, John; Joshua Gilmore; Stephanie Glantz; Sharon Murnane; Susan Russo; Beavers, Wade
Subject: RE: [EXTERNAL]:RE: Notification of Service for Case: A-17-751759-B, Rowen Seibel, Plaintiff(s) vs.PHWLV LLC, Defendant(s) for filing Service Only, Envelope Number: 6981047 [FC-Email.FID7746767]

CAUTION: External Email

Magali, you have my authority to apply my signature to the Order.

Thank you.

Alan

From: Magali Mercera [mailto:mmm@pisanellibice.com]
Sent: Wednesday, January 27, 2021 2:36 PM
To: Paul Williams
Cc: Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Brittnie T. Watkins; James Pisanelli; Aaron D. Lovaas; Tennert, John; Joshua Gilmore; Stephanie Glantz; Sharon Murnane; Susan Russo; Beavers, Wade; Alan Lebensfeld
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Thanks, Paul. As discussed during our meet and confer, we believe that your proposal narrows the court's ruling, which limits any new allegations and counterclaims to the kickback scheme. Since we are at an impasse, we will proceed with submitting competing orders. We will plan to send ours this afternoon and copy counsel on the submission.

John, Alan, and Aaron – I assume we still have your approval to apply your e-signatures to this version. If that is not correct, please let us know promptly.

Once we have final confirmation from John, Alan, and Aaron, we will plan to submit the order and note in the body of the email that a competing version is being submitted by you as well. We would request that you similarly copy us on the submission.

Thanks,

M. Magali Mercera
PISANELLI BICE, PLLC
Telephone: (702) 214-2100
mmm@pisanellibice.com | www.pisanellibice.com



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Cinda C. Towne

From: Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>
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Confirming my previous authorization to affix my e-signature.

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[Newmeyer & Dillion LLP](#)

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Cc: Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Robert A. Ryan <RR@pisanellibice.com>; Brittnie T. Watkins <BTW@pisanellibice.com>; James Pisanelli <jjp@pisanellibice.com>; Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>; Tennert, John <jtennert@fennemorelaw.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Sharon Murnane <SMurnane@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
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Please consider the environment before printing.

Cinda C. Towne

From: Tennert, John <jtennert@fennemorelaw.com>
Sent: Wednesday, January 27, 2021 11:40 AM
To: Magali Mercera; Paul Williams
Cc: Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Brittnie T. Watkins; James Pisanelli; Aaron D. Lovaas; Joshua Gilmore; Stephanie Glantz; Sharon Murnane; Susan Russo; Beavers, Wade; Alan Lebensfeld
Subject: RE: [EXTERNAL]:RE: Notification of Service for Case: A-17-751759-B, Rowen Seibel, Plaintiff(s) vs.PHWLV LLC, Defendant(s) for filing Service Only, Envelope Number: 6981047 [FC-Email.FID7746767]

CAUTION: External Email

Magali,
Yes, you still have my approval to apply my e-signature to Caesars' version.
Thanks,
John

John D. Tennert III, Director
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jtennert@fennemorelaw.com

From: Magali Mercera <mmm@pisanellibice.com>
Sent: Wednesday, January 27, 2021 11:36 AM
To: Paul Williams <PWilliams@baileykennedy.com>
Cc: Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Robert A. Ryan <RR@pisanellibice.com>; Brittnie T. Watkins <BTW@pisanellibice.com>; James Pisanelli <jjp@pisanellibice.com>; Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>; Tennert, John <jtennert@fennemorelaw.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Sharon Murnane <SMurnane@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Subject: RE: [EXTERNAL]:RE: Notification of Service for Case: A-17-751759-B, Rowen Seibel, Plaintiff(s)vs.PHWLV LLC, Defendant(s) for filing Service Only, Envelope Number: 6981047 [FC-Email.FID7746767]

Thanks, Paul. As discussed during our meet and confer, we believe that your proposal narrows the court's ruling, which limits any new allegations and counterclaims to the kickback scheme. Since we are at an impasse, we will proceed with submitting competing orders. We will plan to send ours this afternoon and copy counsel on the submission.

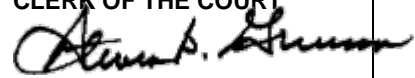
John, Alan, and Aaron – I assume we still have your approval to apply your e-signatures to this version. If that is not correct, please let us know promptly.

Once we have final confirmation from John, Alan, and Aaron, we will plan to submit the order and note in the body of the email that a competing version is being submitted by you as well. We would request that you similarly copy us on the submission.

Thanks,

M. Magali Mercera
PISANELLI BICE, PLLC

TAB 84



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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

Case No.: A-17-751759-B
Dept. No.: XVI

Consolidated with A-17-760537-B

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER GRANTING CAESARS' MOTION
TO STRIKE THE SEIBEL-AFFILIATED
ENTITIES' COUNTERCLAIMS, AND/OR
IN THE ALTERNATIVE, MOTION TO
DISMISS**

AND ALL RELATED MATTERS

PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion to Strike the Seibel-Affiliated Entities' Counterclaims, and/or in the Alternative, Motion to Dismiss was entered in the above-captioned matter on February 3, 2021, a true and correct copy of which is attached hereto.

DATED this 3rd day of February 2021.

PISANELLI BICE PLLC

By: /s/ M. Magali Mercera
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PHWL, LLC; and Boardwalk Regency
Corporation d/b/a Caesars Atlantic City*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 3rd day of February 2021, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING CAESARS' MOTION TO STRIKE THE SEIBEL-AFFILIATED ENTITIES' COUNTERCLAIMS, AND/OR IN THE ALTERNATIVE, MOTION TO DISMISS** to the following:

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

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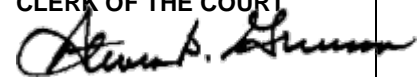
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/s/ Cinda Towne
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*Attorneys for Desert Palace, Inc.;
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PHWL, LLC; and Boardwalk Regency
Corporation d/b/a Caesars Atlantic City*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

PHWL, 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.: XVI

Consolidated with A-17-760537-B

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
CAESARS' MOTION TO STRIKE THE
SEIBEL-AFFILIATED ENTITIES'
COUNTERCLAIMS, AND/OR IN THE
ALTERNATIVE, MOTION TO DISMISS**

Date of Hearing: September 23, 2020

Time of Hearing: 9:00 a.m.

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's ("CAC," and collectively, with Caesars Palace, Paris, and Planet Hollywood, "Caesars,") *Motion to Strike the Seibel-Affiliated Entities' Counterclaims, and/or in the Alternative, Motion to Dismiss* (the "Motion to Strike"), filed on July 15, 2020, came before this Court for hearing on September 23, 2020, at 9:00 a.m. James J. Pisanelli, Esq., Debra L. Spinelli, Esq., and Brittanie T. Watkins, Esq. of the law firm PISANELLI BICE PLLC, appeared telephonically on behalf of Caesars. John R. Bailey, Esq. and Paul C. Williams, Esq. of the law firm BAILEY KENNEDY, appeared telephonically on behalf of TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), and DNT Acquisition, LLC ("DNT"), appearing derivatively by and through R Squared Global Solutions, LLC ("R Squared"), (collectively the "Development Entities"), Rowen Seibel ("Seibel"), and Craig Green ("Green").¹ John Tennert, Esq., of the law firm FENNEMORE CRAIG, appeared telephonically on behalf of Gordon Ramsay ("Ramsay"). Aaron D. Lovaas, Esq. of the law firm NEWMAYER & DILLION LLP, appeared telephonically on behalf of GR Burgr, LLC ("GRB").

The Court having considered the Motion to Strike, the opposition thereto, as well as argument of counsel presented at the hearing, and good cause appearing therefor, enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. THE COURT FINDS THAT, Caesars filed its Complaint in Case No. A-17-760537-B on August 25, 2017 (the "Original Complaint"), setting forth three causes of action against Seibel and the Development Entities relating to the termination of the

¹ Seibel, Green, and the Development Entities are collectively referred to herein as the "Development Parties."

Development Agreements,² including: (1) declaratory judgment declaring that Caesars properly terminated all of the Development Agreements; (2) declaratory judgment declaring that Caesars does not have any current or future obligations to Defendants under the Development Agreements; and (3) declaratory judgment declaring that the Development Agreements do not prohibit or limit existing or future restaurant ventures between Caesars and Ramsay.

2. THE COURT FURTHER FINDS THAT, Case No A-17-760537-B was consolidated with and into Case No. A-17-751759-B on or about February 9, 2018, pursuant to a stipulation and order. (Stipulation & Order to Consolidate Case No. A-17-760537-B with & into Case No. A-17-751759-B, Feb. 9, 2018, on file.)

3. THE COURT FURTHER FINDS THAT, on or about July 6, 2018, LLTQ, LLTQ 16, FERG, FERG 16, and DNT, derivatively by R Squared, filed answers to Caesars' Original Complaint and counterclaims against Caesars. (LLTQ/FERG Defs.' Answer & Affirmative Defenses to Pl.'s Compl. & Countercls., July 6, 2018, on file; Def. DNT's Answer to Pl.'s Compl. & Coutnercls., July 6, 2018, on file.)

4. THE COURT FURTHER FINDS THAT, on or about July 6, 2018, TPOV, TPOV 16, MOTI, and MOTI 16 filed answers only to Caesars' Original Complaint. (MOTI Defs.' Answer & Affirmative Defenses to Pl.'s Compl., July 6, 2018; Defs. TPOV & TPOV 16's Answer to Pl.'s Compl., July 6, 2018, on file.)

5. THE COURT FURTHER FINDS THAT, on or about October 31, 2018, the Court issued a scheduling order setting, among other things, the deadline to amend pleadings or add

² The Development Agreements include: (1) a Development, Operation and License Agreement between MOTI Partners, LLC and Desert Palace, Inc., dated March 2009 (the "MOTI Agreement"); (2) a Development, Operation and License Agreement between DNT Acquisition, LLC, the Original Homestead Restaurant, Inc., and Desert Palace, Inc., dated June 21, 2011 (the "DNT Agreement"); (3) a Development and Operation Agreement between TPOV and Paris, dated November 2011 (the "TPOV Agreement"); (4) a Development and Operation Agreement between LLTQ Enterprises, LLC and Desert Palace, Inc., dated April 4, 2012 (the "LLTQ Agreement"); (5) a Development, Operation and License Agreement between PHW Las Vegas, LLC dba Planet Hollywood by its manager, PHW Manager, LLC, GR BURGR, LLC, and Gordon Ramsay, dated December 13, 2012 (the "GR Burgr Agreement"); and (6) a Consulting Agreement between FERG, LLC and Boardwalk Regency Corporation dba Caesars Atlantic City, dated May 16, 2014 (the "FERG Agreement").

parties for February 4, 2019. (Business Court Scheduling Order Setting Civil Jury Trial & Pre-Trial Conference Calendar Call, Oct. 31, 2018, on file, at 2:3.)

6. THE COURT FURTHER FINDS THAT, the deadline to amend pleadings or add parties was never extended or otherwise modified beyond February 4, 2019.

7. THE COURT FURTHER FINDS THAT, on or about October 2, 2019, nearly eight months after the deadline to amend pleadings expired, LLTQ, LLTQ 16, FERG, and FERG 16 (the "LLTQ/FERG Defendants") moved this Court for leave to amend their counterclaims to add claims in their counterclaims related to a Gordon Ramsay Steak Restaurant located in Atlantic City as well as additional restaurants in the United States involving Gordon Ramsay and Caesars or its affiliates (Mot. to Amend LLTQ/FERG Defendants' Answer, Affirmative Defenses & Countercls., Oct. 2, 2019, on file.)

8. THE COURT FURTHER FINDS THAT, the Court denied the LLTQ/FERG Defendants' request to amend, finding that the LLTQ/FERG Defendants had failed to meet their "burden and ha[d] not demonstrated that good cause exists to permit amendment of their counterclaim." (Order Denying Mot. to Amend LLTQ/FERG Defs.' Answer, Affirmative Defenses, & Countercls., at 3:4-6, Nov. 25, 2019, on file.) The Court specifically held that "[t]he LLTQ/FERG Defendants were aware of the facts they sought to include in their amended counterclaim before the deadline to amend expired and they delayed seeking leave to amend their counterclaim." (*Id.* at 3:6-8.)

9. THE COURT FURTHER FINDS THAT, on or about December 12, 2019, ten months after the deadline to amend pleadings expired, Caesars moved to amend its Original Complaint to add new allegations and claims pertaining to an alleged kickback scheme it claimed to have uncovered following discovery and depositions and to add Green as a defendant. (Caesars' Mot. for Leave to File 1st Am. Compl., Dec. 12, 2019, on file.)

10. THE COURT FURTHER FINDS THAT, on or about March 10, 2020, this Court granted Caesars' motion to amend, finding that "Caesars demonstrated good cause [to permit amendment after the deadline to amend expired] because depositions had to be taken in order to

1 understand the documents produced by the parties." (Order Granting Caesars' Mot. for Leave to
2 File 1st Am. Compl., at 3:6-9, Mar. 10, 2020, on file.)

3 11. THE COURT FURTHER FINDS THAT, on or about March 11, 2020, Caesars filed
4 its First Amended Complaint, asserting five new claims, including (1) civil conspiracy against
5 Seibel and Green, (2) breaches of the implied covenants of good faith and fair dealing against the
6 Development Entities; (3) unjust enrichment against Seibel and Green, (4) intentional interference
7 with contractual relations against Seibel and Green, and (5) fraudulent concealment against Seibel
8 and Green. (First Am. Compl., Mar. 11, 2020, ¶¶ 171-206, on file.)

9 12. THE COURT FURTHER FINDS THAT, all of Caesars' new allegations and claims
10 were limited to an alleged kickback scheme Caesars claimed to have uncovered in discovery during
11 the litigation.

12 13. THE COURT FURTHER FINDS THAT, Caesars did not make changes to any of
13 the claims or allegations surrounding Caesars' termination of the Development Agreements as
14 pleaded in the Original Complaint.

15 14. THE COURT FURTHER FINDS THAT, on or about April 8, 2020, the
16 Development Parties filed a Motion to Dismiss Counts IV, V, VI, VII, and VIII of Caesars' First
17 Amended Complaint (the "Development Parties' Motion to Dismiss").

18 15. THE COURT FURTHER FINDS THAT, Caesars' First Amended Complaint
19 withstood the Rule 12(b)(5) challenge and the Development Parties' Motion to Dismiss was denied.
20 (Order Denying without Prejudice Rowen Seibel, the Development Entities, & Craig Green's
21 Motion to Dismiss Counts IV, V, VI, VII, & VIII of Caesars' 1st Am. Compl., May 29, 2020, on
22 file.)

23 16. THE COURT FURTHER FINDS THAT, on or about June 19, 2020, the
24 Development Parties filed a consolidated Answer to Caesars' First Amended Complaint and
25 Counterclaims. (The Development Entities, Seibel, & Green's Answer to Caesars' 1st Am. Compl.
26 & Countercls., June 19, 2020, on file.)

27 17. THE COURT FURTHER FINDS THAT, in their counterclaims filed June 19, 2020,
28 all of the Development Entities asserted claims for breach of contract and breach of the implied

1 covenant of good faith and fair dealing against Caesars concerning the termination of the
2 Development Agreements as first alleged in Caesars' Original Complaint brought nearly three years
3 prior.

4 18. THE COURT FURTHER FINDS THAT, the counterclaims filed June 19, 2020
5 included claims from TPOV, TPOV 16, MOTI, and MOTI 16, entities that did not previously assert
6 any counterclaims in response to Caesars' Original Complaint.

7 19. THE COURT FURTHER FINDS THAT, none of the Development Entities'
8 counterclaims filed June 19, 2020 pertain to the new claims (the alleged kickback scheme) brought
9 by Caesars in its First Amended Complaint.

10 20. THE COURT FURTHER FINDS THAT, the Development Entities did not move to
11 amend their initial counterclaims filed July 6, 2018 before filing their counterclaims on June 19,
12 2020, nor did they seek reconsideration of this Court's prior order denying the LLTQ/FERG
13 Defendants' previous motion to amend.

14 CONCLUSIONS OF LAW

15 1. There are three Nevada Rules of Civil Procedure ("NRCP") that are implicated by
16 the instant motion: Rule 12(f), which governs motions to strike, Rule 15(a), which governs
17 amendments to pleadings, and former Rule 13(f), which governed the addition of omitted
18 counterclaims.

19 2. The 2019 Amendments to the NRCPs changed Rule 15(a) and abrogated Rule 13(f)
20 (consistent with the Federal Rules of Civil Procedure).

21 3. Pursuant to NRCP 12(f), a "court may strike from a pleading an insufficient defense
22 or any redundant, immaterial, impertinent, or scandalous matter." *See also Russell Rd. Food &*
23 *Beverage, LLC v. Galam*, No. 2:13-CV-0776-JCM-NJK, 2013 WL 6684631, at *1 (D. Nev. Dec.
24 17, 2013 (internal quotations omitted) ("A motion to strike material from a pleading is made
25 pursuant to Rule 12(f), which allows courts to strike an insufficient defense or any redundant,
26 immaterial, impertinent or scandalous matter.").

27 4. "The essential function of a Rule 12(f) motion is to 'avoid the expenditure of time
28 and money that may arise from litigating spurious issues by dispensing with those issues prior to

trial." *Russell Rd. Food & Beverage, LLC*, 2013 WL 6684631, at *1 (quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993)); *see also Bolick v. Pasioneck*, No. 2:10-CV-00353-KJD, 2011 WL 742237, at *3 (D. Nev. Feb. 24, 2011) (citations omitted) ("The Court is cautious of transparent attempts to prolong litigation, open up spurious discovery issues, or that may unnecessarily waste time, expense, resources or cause undue prejudice.").

5. "In considering a motion to strike, 'the court views the pleadings in the light most favorable to the non-moving party, and resolves any doubt as to the relevance of the challenged allegations or sufficiency of a defense in [non-moving party's] favor.'" *Genlyte Thomas Grp., LLC v. Covelli*, No. 208CV01350KJDPAL, 2009 WL 10709254, at *4 (D. Nev. Aug. 7, 2009) (quoting *State of Cal. Dep't of Toxic Substances Control v. Alco Pac., Inc.*, 217 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002)).

6. There is no Nevada case law directly addressing whether a defendant may file amended counterclaims in response to an amended complaint without leave of court. Therefore, the Court turns to federal case law addressing the analogous Federal Rules of Civil Procedure.

7. Federal case law has recognized three separate approaches, which have been characterized as narrow, permissive, and moderate.

8. Under the narrow approach, "counterclaims as of right are allowed only if they are 'strictly confined to the new issues raised by the amended complaint.'" *Bibb Cnty. Sch. Dist. v. Dallemand*, Civil Action No. 5:26-cv-549, 2019 WL 1519299, at *3 n.6 (M.D. GA Apr. 8, 2019) (quoting *S. New England Tel. Co v. Glob. NAPS, Inc.*, Civil Action No. 3:04-cv-2075 (JCH), 2007 WL 521162, at *2-3 (D. Con. Feb. 14, 2007)). The abrogation of FRCP 13(f) in 2009; and consequently NRCP 13(f) in 2019 would supersede cases following the narrow approach. *See Sierra Dev. Co. v. Chartwell Advisory Grp. Ltd.*, No. 13-cv-602-BEN-VPC, 2016 U.S. Dist. LEXIS 160308, at *11 (D. Nev. Nov. 18, 2016).

9. "Under the 'permissive' approach, 'once a plaintiff amends a complaint, the defendant always has the right to amend to bring new counterclaims, without regard to the scope of the amendments.'" *Cieutat v. HPCSP Invs., LLC*, No. CV 20-0012-WS-B, 2020 WL 4004806, at *3 (S.D. Ala. July 15, 2020) (quoting *Bern Unlimited, Inc. v. Burton Corp.*, 25 F. Supp. 3d 170,

1 178 (D. Mass. 2014)). Courts have found that the permissive approach deprives a court of the ability
2 to manage the litigation. *See Sierra Dev. Co.*, 2016 U.S. Dist. LEXIS 160308, at *11. Under Nevada
3 law, the permissive approach would contradict NRCP 16, which the Nevada Supreme Court
4 implemented to ensure trial judges actively managed their cases in an orderly manner.

5 10. Under the moderate approach, courts have held that the breadth of the amended
6 counterclaim's changes must reflect the breadth of the changes in the amended complaint. Under
7 this approach, the Development Entities' counterclaims would not be permitted because the breadth
8 of the changes in their Amended Counterclaims do not reflect the breadth of the changes in Caesars'
9 First Amended Complaint (*i.e.*, the alleged kick-back scheme). Instead, the Amended
10 Counterclaims relate to Caesars' termination of the Development Agreements. Moreover, this Court
11 already rejected the LLTQ/FERG Defendants' efforts to file similar amended counterclaims, finding
12 that they failed to show good cause after the deadline to amend had expired.

13 11. Pursuant to NRCP 15(a), a party should be granted leave to amend a pleading when
14 justice so requires, and the proposed amendment is not futile. However, when a party seeks leave
15 to amend a pleading after the deadline previously set for seeking such amendment has expired,
16 NRCP 16(b) requires a showing of "good cause" for missing the deadline. *See Nutton v. Sunset*
17 *Station*, 131 Nev. 279, 28, 357 P.3d 966, 970-71 (Nev. App. 2015).

18 12. This Court has considered the three approaches described under federal law;
19 however, this Court will follow the NRCP 16 mandate, which specifically requires a showing of
20 good cause to amend the pleadings after the time for doing so set forth in the court's scheduling
21 order has expired.

22 13. "Where a scheduling order has been entered, the lenient standard under Rule 15(a),
23 which provides leave to amend 'shall be freely given,' must be balanced against the requirement
24 under Rule 16(b) that the Court's scheduling order shall not be modified except upon a showing of
25 good cause." *Nutton*, 131 Nev. at 285, 357 P.3d at 971 (quoting *Grochowski v. Phoenix Constr.*,
26 318 F.3d 80, 86 (2d Cir. 2003)). "Disregard of the [scheduling] order would undermine the court's
27 ability to control its docket, disrupt the agreed-upon course of the litigation, and reward the indolent
28

1 and the cavalier." *Id.* at 285–86, 357 P.3d at 971 (quoting *Johnson v. Mammoth Recreations, Inc.*,
2 975 F.2d 604, 610 (9th Cir. 1992)).

3 14. Consequently, the Amended Counterclaims are time-barred by this Court's prior
4 scheduling order and the previous denial of the LTTQ/FERG Defendants' Motion to Amend.

5 15. Caesars' First Amended Complaint did not open the door for the Development
6 Entities to expand the scope of the litigation beyond its current parameters. Thus, the Development
7 Entities' counterclaims filed June 19, 2020 must be stricken.

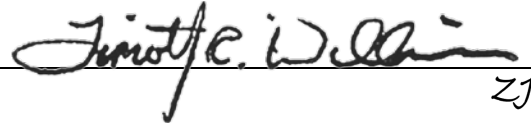
8 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Motion to Strike
9 shall be, and hereby is, GRANTED.

10 IT IS HEREBY FURTHER ORDERED that the Development Entities' Amended
11 Counterclaims are STRICKEN in their entirety.

1 IT IS HEREBY FURTHER ORDERED that the Development Entities shall file a
2 responsive pleading consistent with this order (as well as any and all applicable prior orders).

3 IT IS SO ORDERED.

4 DATED this 3rd day of ~~January~~ February 2021.

5
6  ZJ

8 Respectfully submitted by:

Approved as to form and content by:

9 DATED January 27, 2021

DATED January 27, 2021

10 PISANELLI BICE PLLC

FENNEMORE CRAIG, P.C.

11 By: /s/ M. Magali Mercera
12 James J. Pisanelli, Esq., Bar No. 4027
13 Debra L. Spinelli, Esq., Bar No. 9695
14 M. Magali Mercera, Esq., Bar No. 11742
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By: /s/ John D. Tennert
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7800 Rancharra Parkway
Reno, NV 89511

Attorneys for Gordon Ramsay

18 and

19 Jeffrey J. Zeiger, P.C., Esq.
20 (admitted *pro hac vice*)
21 William E. Arnault, IV, Esq.
22 (admitted *pro hac vice*)
23 KIRKLAND & ELLIS LLP
24 300 North LaSalle
25 Chicago, IL 60654

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

1 Approved as to form and content by:

2 DATED January 27, 2021

3 LEBENSFELD SHARON & SCHWARTZ P.C.

4 By: /s/ Alan M. Lebensfeld

5 Alan M. Lebensfeld, Esq.
6 (admitted *pro hac vice*)
7 140 Broad Street
8 Red Bank, New Jersey 07701

9 Mark J. Connot, Esq.
10 Kevin M. Sutehall, Esq.
11 FOX ROTHSCHILD LLP
12 1980 Festival Plaza Drive, #700
13 Las Vegas, NV 89135

14 *Attorneys for The Original Homestead*
15 *Restaurant, Inc*

Approved as to form and content by:

DATED January 27, 2021

NEUMEYER & DILLION LLP

By: /s/ Aaron D. Lovaas

Aaron D. Lovaas, Esq.
3800 Howard Hughes Pkwy, Suite 700
Las Vegas, Nevada 89169

Attorneys for GR Burgr, LLC

Cinda C. Towne

From: Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Sent: Wednesday, January 27, 2021 12:19 PM
To: Magali Mercera; Paul Williams
Cc: Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Brittnie T. Watkins; James Pisanelli; Aaron D. Lovaas; Tennert, John; Joshua Gilmore; Stephanie Glantz; Sharon Murnane; Susan Russo; Beavers, Wade
Subject: RE: [EXTERNAL]:RE: Notification of Service for Case: A-17-751759-B, Rowen Seibel, Plaintiff(s) vs.PHWLV LLC, Defendant(s) for filing Service Only, Envelope Number: 6981047 [FC-Email.FID7746767]

CAUTION: External Email

Magali, you have my authority to apply my signature to the Order.

Thank you.

Alan

From: Magali Mercera [mailto:mmm@pisanellibice.com]
Sent: Wednesday, January 27, 2021 2:36 PM
To: Paul Williams
Cc: Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Brittnie T. Watkins; James Pisanelli; Aaron D. Lovaas; Tennert, John; Joshua Gilmore; Stephanie Glantz; Sharon Murnane; Susan Russo; Beavers, Wade; Alan Lebensfeld
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John, Alan, and Aaron – I assume we still have your approval to apply your e-signatures to this version. If that is not correct, please let us know promptly.

Once we have final confirmation from John, Alan, and Aaron, we will plan to submit the order and note in the body of the email that a competing version is being submitted by you as well. We would request that you similarly copy us on the submission.

Thanks,

M. Magali Mercera
PISANELLI BICE, PLLC
Telephone: (702) 214-2100
mmm@pisanellibice.com | www.pisanellibice.com



Please consider the environment before printing.

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

Cinda C. Towne

From: Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>
Sent: Wednesday, January 27, 2021 12:28 PM
To: Magali Mercera; Paul Williams
Cc: Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Brittnie T. Watkins; James Pisanelli; Tennert, John; Joshua Gilmore; Stephanie Glantz; Sharon Murnane; Susan Russo; Beavers, Wade; Alan Lebensfeld
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CAUTION: External Email

Confirming my previous authorization to affix my e-signature.

Aaron D. Lovaas
702.777.7519 | Aaron.Lovaas@ndlf.com
[Newmeyer & Dillion LLP](#)

From: Magali Mercera <mmm@pisanellibice.com>
Sent: Wednesday, January 27, 2021 11:36 AM
To: Paul Williams <PWilliams@baileykennedy.com>
Cc: Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Robert A. Ryan <RR@pisanellibice.com>; Brittnie T. Watkins <BTW@pisanellibice.com>; James Pisanelli <jjp@pisanellibice.com>; Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>; Tennert, John <jtennert@fennemorelaw.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Sharon Murnane <SMurnane@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
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Telephone: (702) 214-2100
mmm@pisanellibice.com | www.pisanellibice.com



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Sent: Wednesday, January 27, 2021 11:40 AM
To: Magali Mercera; Paul Williams
Cc: Debra Spinelli; Emily A. Buchwald; Robert A. Ryan; Brittnie T. Watkins; James Pisanelli; Aaron D. Lovaas; Joshua Gilmore; Stephanie Glantz; Sharon Murnane; Susan Russo; Beavers, Wade; Alan Lebensfeld
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CAUTION: External Email

Magali,
Yes, you still have my approval to apply my e-signature to Caesars' version.
Thanks,
John

John D. Tennert III, Director
T: 775.788.2212 | F: 775.788.2213
jtennert@fennemorelaw.com

From: Magali Mercera <mmm@pisanellibice.com>
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Cc: Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Robert A. Ryan <RR@pisanellibice.com>; Brittnie T. Watkins <BTW@pisanellibice.com>; James Pisanelli <jjp@pisanellibice.com>; Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>; Tennert, John <jtennert@fennemorelaw.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Sharon Murnane <SMurnane@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
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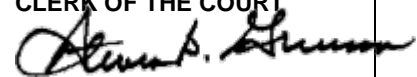
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Thanks,

M. Magali Mercera
PISANELLI BICE, PLLC

TAB 85



James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
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*Attorneys for Desert Palace, Inc.;
Paris Las Vegas Operating Company, LLC;
PHWLTV, LLC; and Boardwalk Regency
Corporation d/b/a Caesars Atlantic City*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,
v.

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.: XVI

Consolidated with A-17-760537-B

**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**

Date of Hearing: December 14, 2020

Time of Hearing: 9:30 a.m.

The Development Entities,¹ Rowen Seibel ("Seibel"), and Craig Green's ("Green") Motion: (1) For Leave to Take Caesars' NRCP 30(b)(6) Depositions; and (2) to Compel Responses to Written Discovery on Order Shortening Time ("Motion to Compel"), filed on November 20, 2020, and Caesars'² Countermotion for Protective Order and for Leave to Take Limited Deposition of Craig Green ("Countermotion"), filed December 4, 2020, came before this Court for hearing on December 14, 2020, at 9:30 a.m. James J. Pisanelli, Esq. and Brittanie T. Watkins, Esq. of the law firm PISANELLI BICE PLLC, appeared telephonically on behalf of Caesars. Paul C. Williams, Esq. of the law firm BAILEY KENNEDY, appeared telephonically on behalf of the Seibel Parties.³

The Court having considered the Motion to Compel, the Countermotion, the Points and Authorities contained therein, and the oppositions and reply thereto, as well as argument of counsel presented at the hearing, and good cause appearing therefor,

THE COURT FINDS as follows:

1. The Seibel Parties' requests for production, interrogatories, and NRCP 30(b)(6) topics at issue in their Motion to Compel are not relevant to this case and disproportionate under NRCP 26;

2. There is a distinction between the rebates or gratuities about which the Seibel Parties seek discovery, on the one hand, and the coercive conduct that Caesars alleges the Seibel Parties engaged in, on the other hand;

3. Discovery into the rebates, gratuities, or Caesars' accounting practices related to rebates are not relevant. Additionally, discovery for purposes of a purported set-off is not relevant;

¹ TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), and R Squared Global Solutions, LLC ("R Squared"), derivatively on behalf of DNT Acquisition, LLC ("DNT"), are collectively referred to herein as the "Development Entities."

² PHWLTV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las Vegas Operating Company, LLC ("Paris"), Boardwalk Regency Corporation d/b/a Caesars Atlantic City's ("CAC") are collectively referred to herein as Caesars.

³ The Development Entities, Green, and Seibel are collectively referred to herein as the "Seibel Parties."

4. The discovery sought by the Seibel Parties related to felony convictions of Caesars' employees is not relevant or germane to the case; and

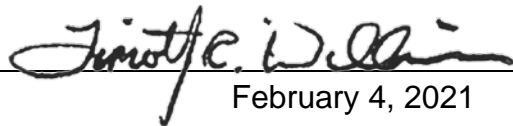
5. Caesars anticipated litigation when it became aware of Seibel's guilty plea on or about August 19, 2016. Therefore, August 19, 2016 is the controlling date for the common-interest privilege between Caesars and Gordon Ramsay.

In light of the foregoing, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. The Seibel Parties' Motion to Compel shall be, and hereby is, DENIED; and

2. Caesars' Countermotion, shall be, and hereby is, GRANTED.

IT IS SO ORDERED.


February 4, 2021

ZJ

Respectfully submitted by:

Approved as to form and content by:

DATED February 3, 2021

DATED February 1, 2021

PISANELLI BICE PLLC

BAILEY ♦ KENNEDY

By: /s/ Emily A. Buchwald, Bar #13442
James J. Pisanelli, Esq., Bar No. 4027
Debra L. Spinelli, Esq., Bar No. 9695
M. Magali Mercera, Esq., Bar No. 11742
Brittanie T. Watkins, Esq., Bar No. 13612
400 South 7th Street, Suite 300
Las Vegas, NV 89101

By: /s/ Paul C. Williams
John R. Bailey (SBN 0137)
Dennis L. Kennedy (SBN 1462)
Joshua P. Gilmore (SBN 11576)
Paul C. Williams (SBN 12524)
Stephanie J. Glantz (SBN 14878)
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Las Vegas, Nevada 89148

Jeffrey J. Zeiger, P.C., Esq.
(admitted *pro hac vice*)
William E. Arnault, IV, Esq.
(admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654

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

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

1 Approved as to form and content by:

2 DATED February 3, 2021

3 FENNEMORE CRAIG, P.C.

4
5 By: /s/ John D. Tennert
6 John D. Tennert, Esq. (SBN 11728)
7 Wade Beavers, Esq. (SBN 13451)
8 7800 Rancharrah Parkway
9 Reno, NV 89511

10 *Attorneys for Gordon Ramsay*

11 Approved as to form and content by:

12 DATED February 3, 2021

13 LEBENSFELD SHARON & SCHWARTZ
14 P.C.

15 By: /s/ Alan M. Lebensfeld
16 Alan M. Lebensfeld, Esq.
17 (admitted *pro hac* vice)
18 140 Broad Street
19 Red Bank, New Jersey 07701

20 Mark J. Connot, Esq.
21 Kevin M. Sutehall, Esq.
22 FOX ROTHSCHILD LLP
23 1980 Festival Plaza Drive, #700
24 Las Vegas, NV 89135

25 *Attorneys for The Original Homestead*
26 *Restaurant, Inc*

Approved as to form and content by:

DATED February 3, 2021

NEWMAYER & DILLION LLP

By: /s/ Aaron D. Lovaas
Aaron D. Lovaas, Esq.
3800 Howard Hughes Pkwy, Suite 700
Las Vegas, Nevada 89169

Attorneys for GR Burgr, LLC

Cinda C. Towne

From: Emily A. Buchwald
Sent: Wednesday, February 3, 2021 9:19 AM
To: Paul Williams
Cc: James Pisanelli; Debra Spinelli; Robert A. Ryan; Brittnie T. Watkins; Cinda C. Towne; Susan Russo; Magali Mercera; Joshua Gilmore; Stephanie Glantz; John Bailey; 'jtennert@fclaw.com'; Alan Lebensfeld; mconnot@foxrothschild.com; ksutehall@foxrothschild.com; Aaron.Lovaas@ndlf.com
Subject: RE: Desert Palace v. Seibel: Draft Order Denying Motion to Compel and Granting Countermotion

Paul,

We can accept your revision, and will apply your e-signature. John, Alan, and Aaron, do we have your permission to affix your e-signature to the order?

Emily A. Buchwald

PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Tel: (702) 214-2100
Fax: (702) 214-2101
eab@pisanellibice.com | www.pisanellibice.com

From: Paul Williams <PWilliams@baileykennedy.com>
Sent: Monday, February 1, 2021 5:38 PM
To: Emily A. Buchwald <eab@pisanellibice.com>
Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Robert A. Ryan <RR@pisanellibice.com>; Brittnie T. Watkins <BTW@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Magali Mercera <mmm@pisanellibice.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; John Bailey <JBailey@baileykennedy.com>; 'jtennert@fclaw.com' <jtennert@fclaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; mconnot@foxrothschild.com; ksutehall@foxrothschild.com; Aaron.Lovaas@ndlf.com
Subject: RE: Desert Palace v. Seibel: Draft Order Denying Motion to Compel and Granting Countermotion

CAUTION: External Email

Hi Emily,

Attached is a redline with one revision to your last version. The Court did not find that the discovery concerning benefits was irrelevant based on a failure to allege offset as an affirmative defense or counterclaim. Neither Caesars nor the Development Parties had briefed that issue—the Judge raised it as a potential issue sua sponte, though ultimately did not make that particular finding in his decision.

If you are okay with this revision, you may affix my electronic signature and submit it the court.

Thank you,

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

Cinda C. Towne

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CAUTION: External Email

Hi Emily,
You may affix my e-signature.
Thanks,
John

John D. Tennert III, Director

FENNEMORE.

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



Fennemore has expanded to California. [Read more here.](#)

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

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Paul,

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Sent: Wednesday, February 3, 2021 9:26 AM
To: Emily A. Buchwald; Paul Williams
Cc: James Pisanelli; Debra Spinelli; Robert A. Ryan; Brittnie T. Watkins; Cinda C. Towne; Susan Russo; Magali Mercera; Joshua Gilmore; Stephanie Glantz; John Bailey; 'jtennert@fclaw.com'; Alan Lebensfeld; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
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Aaron D. Lovaas
702.777.7519 | Aaron.Lovaas@ndlf.com
[Newmeyer & Dillion LLP](#)

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Sent: Wednesday, February 3, 2021 10:37 AM
To: Cinda C. Towne
Subject: Fwd: Desert Palace v. Seibel: Draft Order Denying Motion to Compel and Granting Countermotion

Begin forwarded message:

From: Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Subject: RE: Desert Palace v. Seibel: Draft Order Denying Motion to Compel and Granting Countermotion
Date: February 3, 2021 at 10:29:30 AM PST
To: "Emily A. Buchwald" <eab@pisanellibice.com>

CAUTION: External Email

Yes, thanks.

From: Emily A. Buchwald [<mailto:eab@pisanellibice.com>]
Sent: Wednesday, February 03, 2021 12:19 PM
To: Paul Williams
Cc: James Pisanelli; Debra Spinelli; Robert A. Ryan; Brittanie T. Watkins; Cinda C. Towne; Susan Russo; Magali Mercera; Joshua Gilmore; Stephanie Glantz; John Bailey; 'jtennert@fclaw.com'; Alan Lebensfeld; mconnot@foxrothschild.com; ksutehall@foxrothschild.com; Aaron.Lovaas@ndlf.com
Subject: RE: Desert Palace v. Seibel: Draft Order Denying Motion to Compel and Granting Countermotion

Paul,

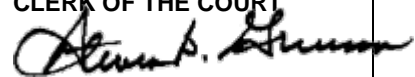
We can accept your revision, and will apply your e-signature. John, Alan, and Aaron, do we have your permission to affix your e-signature to the order?

Emily A. Buchwald

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400 South 7th Street, Suite 300
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eab@pisanellibice.com | www.pisanellibice.com

From: Paul Williams <PWilliams@baileykennedy.com>
Sent: Monday, February 1, 2021 5:38 PM
To: Emily A. Buchwald <eab@pisanellibice.com>
Cc: James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Robert A. Ryan <RR@pisanellibice.com>; Brittanie T. Watkins <BTW@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Magali Mercera <mmm@pisanellibice.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Stephanie Glantz

TAB 86



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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability
company,

Nominal Plaintiff.

Case No.: A-17-751759-B
Dept. No.: XVI

Consolidated with A-17-760537-B

**NOTICE OF ENTRY OF 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**

AND ALL RELATED MATTERS

1 PLEASE TAKE NOTICE that an Order (i) Denying the Development Entities, Rowen
2 Seibel, and Craig Green's Motion: (1) for Leave to Take Caesars' NRCP 30(b)(6) Depositions;
3 and (2) to Compel Responses to Written Discovery on Order Shortening Time; and (ii) Granting
4 Caesars' Countermotion for Protective Order and for Leave to Take Limited Deposition of Craig
5 Green was entered in the above-captioned matter on February 4, 2021, a true and correct copy of
6 which is attached hereto.

7 DATED this 4th day of February 2021.

8 PISANELLI BICE PLLC

9 By: /s/ Emily A. Buchwald, Bar #13442

10 James J. Pisanelli, Esq., #4027
11 Debra L. Spinelli, Esq., #9695
12 M. Magali Mercera, Esq., #11742
13 Brittnie T. Watkins, Esq., #13612
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16 Jeffrey J. Zeiger, P.C., Esq.
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21 300 North LaSalle
22 Chicago, Illinois 60654

23 *Attorneys for Desert Palace, Inc.;*
24 *Paris Las Vegas Operating Company, LLC;*
25 *PHWLV, LLC; and Boardwalk Regency*
26 *Corporation d/b/a Caesars Atlantic City*
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 4th day of February 2021, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF 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** to the following:

John R. Bailey, Esq.
Dennis L. Kennedy, Esq.
Joshua P. Gilmore, Esq.
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LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC,
TPOV Enterprises, LLC, TPOV Enterprises 16, LLC,
FERG, LLC, and FERG 16, LLC; and R Squared
Global Solutions, LLC, Derivatively on Behalf of
DNT Acquisition, LLC*

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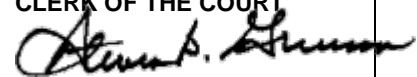
Mark J. Connot, Esq.
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*Attorneys for Nominal Plaintiff
GR Burgr LLC*

/s/ Cinda Towne
An employee of PISANELLI BICE PLLC



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Corporation d/b/a Caesars Atlantic City*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ROWEN SEIBEL, an individual and citizen of
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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.: XVI

Consolidated with A-17-760537-B

**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**

Date of Hearing: December 14, 2020

Time of Hearing: 9:30 a.m.

The Development Entities,¹ Rowen Seibel ("Seibel"), and Craig Green's ("Green") Motion: (1) For Leave to Take Caesars' NRCP 30(b)(6) Depositions; and (2) to Compel Responses to Written Discovery on Order Shortening Time ("Motion to Compel"), filed on November 20, 2020, and Caesars'² Countermotion for Protective Order and for Leave to Take Limited Deposition of Craig Green ("Countermotion"), filed December 4, 2020, came before this Court for hearing on December 14, 2020, at 9:30 a.m. James J. Pisanelli, Esq. and Brittanie T. Watkins, Esq. of the law firm PISANELLI BICE PLLC, appeared telephonically on behalf of Caesars. Paul C. Williams, Esq. of the law firm BAILEY KENNEDY, appeared telephonically on behalf of the Seibel Parties.³

The Court having considered the Motion to Compel, the Countermotion, the Points and Authorities contained therein, and the oppositions and reply thereto, as well as argument of counsel presented at the hearing, and good cause appearing therefor,

THE COURT FINDS as follows:

1. The Seibel Parties' requests for production, interrogatories, and NRCP 30(b)(6) topics at issue in their Motion to Compel are not relevant to this case and disproportionate under NRCP 26;

2. There is a distinction between the rebates or gratuities about which the Seibel Parties seek discovery, on the one hand, and the coercive conduct that Caesars alleges the Seibel Parties engaged in, on the other hand;

3. Discovery into the rebates, gratuities, or Caesars' accounting practices related to rebates are not relevant. Additionally, discovery for purposes of a purported set-off is not relevant;

¹ TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG, LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), MOTI Partners 16, LLC ("MOTI 16"), and R Squared Global Solutions, LLC ("R Squared"), derivatively on behalf of DNT Acquisition, LLC ("DNT"), are collectively referred to herein as the "Development Entities."

² PHWLTV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las Vegas Operating Company, LLC ("Paris"), Boardwalk Regency Corporation d/b/a Caesars Atlantic City's ("CAC") are collectively referred to herein as Caesars.

³ The Development Entities, Green, and Seibel are collectively referred to herein as the "Seibel Parties."

4. The discovery sought by the Seibel Parties related to felony convictions of Caesars' employees is not relevant or germane to the case; and

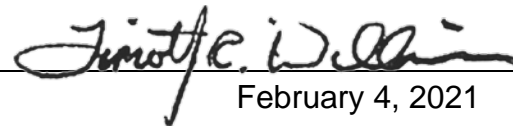
5. Caesars anticipated litigation when it became aware of Seibel's guilty plea on or about August 19, 2016. Therefore, August 19, 2016 is the controlling date for the common-interest privilege between Caesars and Gordon Ramsay.

In light of the foregoing, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. The Seibel Parties' Motion to Compel shall be, and hereby is, DENIED; and

2. Caesars' Countermotion, shall be, and hereby is, GRANTED.

IT IS SO ORDERED.



February 4, 2021

ZJ

Respectfully submitted by:

Approved as to form and content by:

DATED February 3, 2021

DATED February 1, 2021

PISANELLI BICE PLLC

BAILEY ♦ KENNEDY

By: /s/ Emily A. Buchwald, Bar #13442
James J. Pisanelli, Esq., Bar No. 4027
Debra L. Spinelli, Esq., Bar No. 9695
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By: /s/ Paul C. Williams
John R. Bailey (SBN 0137)
Dennis L. Kennedy (SBN 1462)
Joshua P. Gilmore (SBN 11576)
Paul C. Williams (SBN 12524)
Stephanie J. Glantz (SBN 14878)
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(admitted *pro hac vice*)
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Moti Partners, LLC, Moti Partners 16, LLC,
LLTQ Enterprises, LLC,
LLTQ Enterprises 16, LLC,
TPOV Enterprises, LLC,
TPOV Enterprises 16, LLC,
FERG, LLC, and FERG 16, LLC; and
R Squared Global Solutions, LLC, Derivatively
on Behalf of DNT Acquisition, LLC*

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

1 Approved as to form and content by:

2 DATED February 3, 2021

3 FENNEMORE CRAIG, P.C.

4
5 By: /s/ John D. Tennert
6 John D. Tennert, Esq. (SBN 11728)
7 Wade Beavers, Esq. (SBN 13451)
8 7800 Rancharrah Parkway
9 Reno, NV 89511

10 *Attorneys for Gordon Ramsay*

11 Approved as to form and content by:

12 DATED February 3, 2021

13 LEBENSFELD SHARON & SCHWARTZ
14 P.C.

15 By: /s/ Alan M. Lebensfeld
16 Alan M. Lebensfeld, Esq.
17 (admitted *pro hac* vice)
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19 Red Bank, New Jersey 07701

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25 *Attorneys for The Original Homestead*
26 *Restaurant, Inc*

Approved as to form and content by:

DATED February 3, 2021

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Las Vegas, Nevada 89169

Attorneys for GR Burgr, LLC

Cinda C. Towne

From: Emily A. Buchwald
Sent: Wednesday, February 3, 2021 9:19 AM
To: Paul Williams
Cc: James Pisanelli; Debra Spinelli; Robert A. Ryan; Brittnie T. Watkins; Cinda C. Towne; Susan Russo; Magali Mercera; Joshua Gilmore; Stephanie Glantz; John Bailey; 'jtennert@fclaw.com'; Alan Lebensfeld; mconnot@foxrothschild.com; ksutehall@foxrothschild.com; Aaron.Lovaas@ndlf.com
Subject: RE: Desert Palace v. Seibel: Draft Order Denying Motion to Compel and Granting Countermotion

Paul,

We can accept your revision, and will apply your e-signature. John, Alan, and Aaron, do we have your permission to affix your e-signature to the order?

Emily A. Buchwald

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Fax: (702) 214-2101
eab@pisanellibice.com | www.pisanellibice.com

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Sent: Monday, February 1, 2021 5:38 PM
To: Emily A. Buchwald <eab@pisanellibice.com>
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Subject: RE: Desert Palace v. Seibel: Draft Order Denying Motion to Compel and Granting Countermotion

CAUTION: External Email

Hi Emily,

Attached is a redline with one revision to your last version. The Court did not find that the discovery concerning benefits was irrelevant based on a failure to allege offset as an affirmative defense or counterclaim. Neither Caesars nor the Development Parties had briefed that issue—the Judge raised it as a potential issue sua sponte, though ultimately did not make that particular finding in his decision.

If you are okay with this revision, you may affix my electronic signature and submit it the court.

Thank you,

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

Cinda C. Towne

From: Tennert, John <jtennert@fennemorelaw.com>
Sent: Wednesday, February 3, 2021 9:28 AM
To: Emily A. Buchwald; Paul Williams
Cc: James Pisanelli; Debra Spinelli; Robert A. Ryan; Brittnie T. Watkins; Cinda C. Towne; Susan Russo; Magali Mercera; Joshua Gilmore; Stephanie Glantz; John Bailey; Alan Lebensfeld; mconnot@foxrothschild.com; ksutehall@foxrothschild.com; Aaron.Lovaas@ndlf.com
Subject: RE: Desert Palace v. Seibel: Draft Order Denying Motion to Compel and Granting Countermotion

CAUTION: External Email

Hi Emily,
You may affix my e-signature.
Thanks,
John

John D. Tennert III, Director

FENNEMORE.

7800 Rancharrah Parkway, Reno, NV 89511
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jtennert@fennemorelaw.com | [View Bio](#)



Fennemore has expanded to California. [Read more here.](#)

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

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Subject: RE: Desert Palace v. Seibel: Draft Order Denying Motion to Compel and Granting Countermotion

Paul,

Cinda C. Towne

From: Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>
Sent: Wednesday, February 3, 2021 9:26 AM
To: Emily A. Buchwald; Paul Williams
Cc: James Pisanelli; Debra Spinelli; Robert A. Ryan; Brittnie T. Watkins; Cinda C. Towne; Susan Russo; Magali Mercera; Joshua Gilmore; Stephanie Glantz; John Bailey; 'jtennert@fclaw.com'; Alan Lebensfeld; mconnot@foxrothschild.com; ksutehall@foxrothschild.com
Subject: RE: [EXTERNAL]:RE: Desert Palace v. Seibel: Draft Order Denying Motion to Compel and Granting Countermotion

CAUTION: External Email

You may apply my e-signature.

Aaron D. Lovaas
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Cinda C. Towne

From: Emily A. Buchwald
Sent: Wednesday, February 3, 2021 10:37 AM
To: Cinda C. Towne
Subject: Fwd: Desert Palace v. Seibel: Draft Order Denying Motion to Compel and Granting Countermotion

Begin forwarded message:

From: Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Subject: RE: Desert Palace v. Seibel: Draft Order Denying Motion to Compel and Granting Countermotion
Date: February 3, 2021 at 10:29:30 AM PST
To: "Emily A. Buchwald" <eab@pisanellibice.com>

CAUTION: External Email

Yes, thanks.

From: Emily A. Buchwald [<mailto:eab@pisanellibice.com>]
Sent: Wednesday, February 03, 2021 12:19 PM
To: Paul Williams
Cc: James Pisanelli; Debra Spinelli; Robert A. Ryan; Brittanie T. Watkins; Cinda C. Towne; Susan Russo; Magali Mercera; Joshua Gilmore; Stephanie Glantz; John Bailey; 'jtennert@fclaw.com'; Alan Lebensfeld; mconnot@foxrothschild.com; ksutehall@foxrothschild.com; Aaron.Lovaas@ndlf.com
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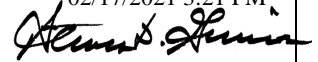
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TAB 87


CLERK OF THE COURT

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702.562.8820

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DENNIS L. KENNEDY

Nevada Bar No. 1462

JOSHUA P. GILMORE

Nevada Bar No. 11576

PAUL C. WILLIAMS

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LLC; 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

**STIPULATION AND ORDER FOR A
LIMITED EXTENSION OF THE
DISPOSITIVE MOTION DEADLINE**

1 The Development Entities;¹ Rowen Seibel (“Seibel”); Craig Green (“Green”); Caesars;²
2 Gordon Ramsay (“Ramsay”); Original Homestead Restaurant, Inc. (“OHR”); and GR Burgr, LLC
3 (“GRB”) (collectively, the “Parties”), by and through their undersigned counsel of record, hereby
4 stipulate and agree as follows:

5 1. On November 20, 2020, the Development Entities, Seibel and Green filed a Motion:
6 (1) For Leave to Take Caesars’ NRCP 30(b)(6) Depositions; and (2) to Compel Responses to
7 Written Discovery on Order Shortening Time (“Motion to Compel”).

8 2. On December 4, 2020, Caesars filed its Opposition to the Motion to Compel and a
9 Countermotion for Protective Order and for Leave to Take Limited Deposition of Craig Green
10 (“Countermotion”).

11 3. On December 14, 2020, the Court held a hearing on the Motion to Compel and
12 Countermotion.

13 4. On February 4, 2021, the Court entered its Order denying the Development Entities,
14 Seibel, and Green’s Motion to Compel and granting Caesars’ Countermotion.

15 5. Caesars has agreed to a limited NRCP 30(b)(6) deposition on the five (5) topics,
16 without waiving any specific objections thereto, that were not at issue in the Motion to Compel
17 (e.g., the topics that did not address benefits).

18 6. Due to scheduling conflicts, the parties have been unable to schedule the individual
19 deposition of Green or the deposition of Caesars’ NRCP 30(b)(6) designee(s).

20 7. Currently, the deadline to file dispositive motions is February 18, 2021.

21 8. The deadline to file dispositive motions—only as it relates to Counts IV, V, VI, VII
22 and VIII from Caesars’ First Amended Complaint—shall be extended from February 18, 2021, to
23 seven (7) days after completion of the limited depositions of Green and Caesars’ NRCP 30(b)(6)
24 designee(s).

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”); and R Squared Global
Solutions, LLC (“R Squared”), derivatively on behalf of DNT Acquisition LLC (“DNT”).

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”).

9. The deadline to file all other dispositive motions shall remain as February 18, 2021.

10. This Stipulation is entered into in good faith and not for purposes of delay.

Dated this 16th day of February, 2021.

Dated this 16th day of February, 2021.

BAILEY ♦ KENNEDY

PISANELLI BICE PLLC

By: /s/ Joshua P. Gilmore

By: /s/ M. Magali Mercera

JOHN R. BAILEY
DENNIS L. KENNEDY
JOSHUA P. GILMORE
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STEPHANIE J. GLANTZ

JAMES J. PISANELLI (#4027)
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M. MAGALI MERCERA (#11742)
BRITTNIE T. WATKINS (#13612)
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

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

Attorneys for Caesars

Dated this 16th day of February, 2021.

Dated this 16th day of February, 2021.

LEBENSFELD SHARON & SCHWARTZ, P.C.

FENNEMORE CRAIG, P.C.

By: /s/ Alan M. Lebensfeld

By: /s/ John D. Tennert

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Attorneys for Ramsay

Attorneys for OHR

Dated this 16th day of February, 2021.

NEWMAYER & DILLION, LLP

By: /s/ Aaron D. Lovaas

AARON D. LOVAAS (#5701)
3800 Howard Hughes Parkway, Suite 700
Las Vegas, Nevada 89169

Attorneys for GRB

ORDER

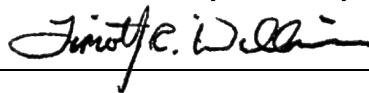
Based on the foregoing Stipulation of the Parties and good cause appearing,

IT IS HEREBY ORDERED that the deadline to file dispositive motions concerning Counts IV, V, VI, VII and VIII from Caesars' First Amended Complaint shall be extended from February 18, 2021, to seven (7) days after completion of the limited depositions of Green and Caesars' NRCP 30(b)(6) designee(s).

IT IS FURTHER ORDERED that the deadline to file all other dispositive motions shall remain as February 18, 2021.

IT IS SO ORDERED.

Dated this 17th day of February, 2021



LB

659 DB8 4653 645F
Timothy C. Williams
District Court Judge

Respectfully submitted by:

BAILEY ♦ KENNEDY

By: /s/ Joshua P. Gilmore

JOHN R. BAILEY

DENNIS L. KENNEDY

JOSHUA P. GILMORE

PAUL C. WILLIAMS

STEPHANIE J. GLANTZ

Attorneys for the Development Entities, Seibel, and Green

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To: Joshua Gilmore; Tennert, John; Alan Lebensfeld; Aaron D. Lovaas
Cc: Paul Williams; Stephanie Glantz; Brittnie T. Watkins; Emily A. Buchwald; Susan Russo; Cinda C. Towne
Subject: RE: Seibel adv. Caesars

No objection to those changes, Josh. You may apply my e-signature.

M. Magali Mercera
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To: Magali Mercera <mmm@pisanellibice.com>; Tennert, John <jtennert@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>
Cc: Paul Williams <PWilliams@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Brittnie T. Watkins <BTW@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Cinda C. Towne <cct@pisanellibice.com>
Subject: RE: Seibel adv. Caesars

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Aaron/John – assuming you have no further edits/changes, please confirm that we may apply your e-signatures.

Thanks everyone. Josh

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Cc: Paul Williams; Stephanie Glantz; Brittnie T. Watkins; Emily A. Buchwald; Susan Russo; Cinda C. Towne
Subject: RE: [EXTERNAL]:RE: Seibel adv. Caesars

Confirmed – you may apply my e-signature.

Thanks.

Aaron D. Lovaas
702.777.7519 | Aaron.Lovaas@ndlf.com
[Newmeyer & Dillion LLP](#)

From: Joshua Gilmore <JGilmore@baileykennedy.com>
Sent: Tuesday, February 16, 2021 11:16 AM
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Cc: Paul Williams <PWilliams@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Brittnie T. Watkins <BTW@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Cinda C. Towne <cct@pisanellibice.com>
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Aaron/John – assuming you have no further edits/changes, please confirm that we may apply your e-signatures.

Thanks everyone. Josh

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Cc: Paul Williams <PWilliams@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Brittnie T. Watkins <BTW@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Cinda C. Towne <cct@pisanellibice.com>
Subject: RE: Seibel adv. Caesars

From: Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Sent: Tuesday, February 16, 2021 10:15 AM
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Cc: Joshua Gilmore; Tennert, John; Aaron D. Lovaas; Paul Williams; Stephanie Glantz; Brittnie T. Watkins; Emily A. Buchwald; Susan Russo; Cinda C. Towne
Subject: Re: Seibel adv. Caesars

Magali you may affix my signature to the Stip. thank you

Sent From AML iPhone

On Feb 16, 2021, at 1:10 PM, Magali Mercera <mmm@pisanellibice.com> wrote:

Josh –

Thank you for sending the draft stipulation. Attached please find our proposed revisions. I am also looping in Alan Lebensfeld and Aaron Lovaas as they will need to sign off as well.

If our changes are acceptable, you may apply my e-signature to this version.

Thanks,

M. Magali Mercera

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Magali,

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Cc: Paul Williams; Stephanie Glantz; Brittnie T. Watkins; Emily A. Buchwald; Susan Russo; Cinda C. Towne
Subject: RE: Seibel adv. Caesars

Josh,
Please apply my e-signature.
Thanks,
John

John D. Tennert III, Director

FENNEMORE.

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Cc: Paul Williams <PWilliams@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Brittnie T. Watkins <BTW@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Cinda C. Towne <cct@pisanellibice.com>
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Aaron/John – assuming you have no further edits/changes, please confirm that we may apply your e-signatures.

Thanks everyone. Josh

Joshua P. Gilmore, Esq. | Bailey Kennedy, LLP

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Rowen Seibel, Plaintiff(s)

CASE NO: A-17-751759-B

7 vs.

DEPT. NO. Department 16

8 PHWL V LLC, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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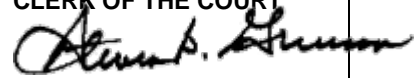
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TPOV Enterprises 16, LLC; FERG, LLC; FERG 16, LLC; Craig Green;
and R Squared Global Solutions, LLC, Derivatively On Behalf of DNT
Acquisition, LLC*

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

**NOTICE OF ENTRY OF
STIPULATION AND ORDER FOR A
LIMITED EXTENSION OF THE
DISPOSITIVE MOTION DEADLINE**

1 PLEASE TAKE NOTICE that an Order Granting the Stipulation and Order for a Limited
2 Extension of the Dispositive Motion Deadline was entered in the above-entitled action on
3 February 17, 2021, a true and correct copy of which is attached hereto.

4 DATED this 18th day of February, 2021.

5 BAILEY ♦ KENNEDY

6 By: /s/ Joshua P. Gilmore

7 JOHN R. BAILEY

8 DENNIS L. KENNEDY

9 JOSHUA P. GILMORE

10 PAUL C. WILLIAMS

11 STEPHANIE J. GLANTZ

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

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 18th day of February, 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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Attorneys for Plaintiff in Intervention The Original Homestead Restaurant, Inc.

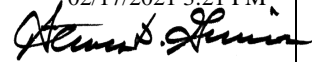
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/s/ Susan Russo
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LLTQ Enterprises, LLC; LLTQ Enterprises 16, LLC; TPOV Enterprises,
LLC; TPOV Enterprises 16, LLC; FERG, LLC; FERG 16, LLC; Craig Green
and R Squared Global Solutions, LLC, Derivatively 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

**STIPULATION AND ORDER FOR A
LIMITED EXTENSION OF THE
DISPOSITIVE MOTION DEADLINE**

1 The Development Entities;¹ Rowen Seibel (“Seibel”); Craig Green (“Green”); Caesars;²
2 Gordon Ramsay (“Ramsay”); Original Homestead Restaurant, Inc. (“OHR”); and GR Burgr, LLC
3 (“GRB”) (collectively, the “Parties”), by and through their undersigned counsel of record, hereby
4 stipulate and agree as follows:

5 1. On November 20, 2020, the Development Entities, Seibel and Green filed a Motion:
6 (1) For Leave to Take Caesars’ NRCP 30(b)(6) Depositions; and (2) to Compel Responses to
7 Written Discovery on Order Shortening Time (“Motion to Compel”).

8 2. On December 4, 2020, Caesars filed its Opposition to the Motion to Compel and a
9 Countermotion for Protective Order and for Leave to Take Limited Deposition of Craig Green
10 (“Countermotion”).

11 3. On December 14, 2020, the Court held a hearing on the Motion to Compel and
12 Countermotion.

13 4. On February 4, 2021, the Court entered its Order denying the Development Entities,
14 Seibel, and Green’s Motion to Compel and granting Caesars’ Countermotion.

15 5. Caesars has agreed to a limited NRCP 30(b)(6) deposition on the five (5) topics,
16 without waiving any specific objections thereto, that were not at issue in the Motion to Compel
17 (e.g., the topics that did not address benefits).

18 6. Due to scheduling conflicts, the parties have been unable to schedule the individual
19 deposition of Green or the deposition of Caesars’ NRCP 30(b)(6) designee(s).

20 7. Currently, the deadline to file dispositive motions is February 18, 2021.

21 8. The deadline to file dispositive motions—only as it relates to Counts IV, V, VI, VII
22 and VIII from Caesars’ First Amended Complaint—shall be extended from February 18, 2021, to
23 seven (7) days after completion of the limited depositions of Green and Caesars’ NRCP 30(b)(6)
24 designee(s).

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”); and R Squared Global
Solutions, LLC (“R Squared”), derivatively on behalf of DNT Acquisition LLC (“DNT”).

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”).

9. The deadline to file all other dispositive motions shall remain as February 18, 2021.

10. This Stipulation is entered into in good faith and not for purposes of delay.

Dated this 16th day of February, 2021.

Dated this 16th day of February, 2021.

BAILEY ♦ KENNEDY

PISANELLI BICE PLLC

By: /s/ Joshua P. Gilmore

By: /s/ M. Magali Mercera

JOHN R. BAILEY
DENNIS L. KENNEDY
JOSHUA P. GILMORE
PAUL C. WILLIAMS
STEPHANIE J. GLANTZ

JAMES J. PISANELLI (#4027)
DEBRA L. SPINELLI (#9695)
M. MAGALI MERCERA (#11742)
BRITTNIE T. WATKINS (#13612)
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

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

Attorneys for Caesars

Dated this 16th day of February, 2021.

Dated this 16th day of February, 2021.

LEBENSFELD SHARON & SCHWARTZ, P.C.

FENNEMORE CRAIG, P.C.

By: /s/ Alan M. Lebensfeld

By: /s/ John D. Tennert

ALAN M. LEBENSFELD (*Pro Hac Vice*)
140 Broad Street
Red Bank, New Jersey 07701

JOHN D. TENNERT (#11728)
WADE BEAVERS (#13451)
7800 Rancharran Parkway
Reno, Nevada 89511

MARK J. CONNOT (#10010)
KEVIN M. SUTEHALL (#9437)
FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135

Attorneys for Ramsay

Attorneys for OHR

Dated this 16th day of February, 2021.

NEWMAYER & DILLION, LLP

By: /s/ Aaron D. Lovaas

AARON D. LOVAAS (#5701)
3800 Howard Hughes Parkway, Suite 700
Las Vegas, Nevada 89169

Attorneys for GRB

ORDER

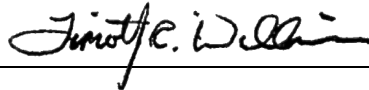
Based on the foregoing Stipulation of the Parties and good cause appearing,

IT IS HEREBY ORDERED that the deadline to file dispositive motions concerning Counts IV, V, VI, VII and VIII from Caesars' First Amended Complaint shall be extended from February 18, 2021, to seven (7) days after completion of the limited depositions of Green and Caesars' NRCP 30(b)(6) designee(s).

IT IS FURTHER ORDERED that the deadline to file all other dispositive motions shall remain as February 18, 2021.

IT IS SO ORDERED.

Dated this 17th day of February, 2021



LB

659 DB8 4653 645F
Timothy C. Williams
District Court Judge

Respectfully submitted by:

BAILEY ♦ KENNEDY

By: /s/ Joshua P. Gilmore

JOHN R. BAILEY

DENNIS L. KENNEDY

JOSHUA P. GILMORE

PAUL C. WILLIAMS

STEPHANIE J. GLANTZ

Attorneys for the Development Entities, Seibel, and Green

From: Magali Mercera <mmm@pisanellibice.com>
Sent: Tuesday, February 16, 2021 1:48 PM
To: Joshua Gilmore; Tennert, John; Alan Lebensfeld; Aaron D. Lovaas
Cc: Paul Williams; Stephanie Glantz; Brittnie T. Watkins; Emily A. Buchwald; Susan Russo; Cinda C. Towne
Subject: RE: Seibel adv. Caesars

No objection to those changes, Josh. You may apply my e-signature.

M. Magali Mercera
PISANELLI BICE, PLLC
Telephone: (702) 214-2100
mmm@pisanellibice.com | www.pisanellibice.com



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To: Magali Mercera <mmm@pisanellibice.com>; Tennert, John <jtennert@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>
Cc: Paul Williams <PWilliams@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Brittnie T. Watkins <BTW@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Cinda C. Towne <cct@pisanellibice.com>
Subject: RE: Seibel adv. Caesars

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Magali: These changes are acceptable. (For consistency's sake, I added Bar numbers for Mark and Kevin at Fox Rothschild in their signature block.) Assuming that's acceptable to you, I'll apply your e-signature.

Aaron/John – assuming you have no further edits/changes, please confirm that we may apply your e-signatures.

Thanks everyone. Josh

Joshua P. Gilmore, Esq. | Bailey Kennedy, LLP
8984 Spanish Ridge Avenue, Las Vegas, Nevada 89148-1302
(702) 562-8820 (main) | (702) 562-8821 (fax) | (702) 789-4547 (direct) | JGilmore@BaileyKennedy.com

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Sent: Tuesday, February 16, 2021 12:50 PM
To: Joshua Gilmore; Magali Mercera; Tennert, John; Alan Lebensfeld
Cc: Paul Williams; Stephanie Glantz; Brittnie T. Watkins; Emily A. Buchwald; Susan Russo; Cinda C. Towne
Subject: RE: [EXTERNAL]:RE: Seibel adv. Caesars

Confirmed – you may apply my e-signature.

Thanks.

Aaron D. Lovaas
702.777.7519 | Aaron.Lovaas@ndlf.com
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From: Joshua Gilmore <JGilmore@baileykennedy.com>
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To: Magali Mercera <mmm@pisanellibice.com>; Tennert, John <jtennert@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>
Cc: Paul Williams <PWilliams@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Brittnie T. Watkins <BTW@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Cinda C. Towne <cct@pisanellibice.com>
Subject: [EXTERNAL]:RE: Seibel adv. Caesars

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Aaron/John – assuming you have no further edits/changes, please confirm that we may apply your e-signatures.

Thanks everyone. Josh

Joshua P. Gilmore, Esq. | Bailey Kennedy, LLP
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Cc: Paul Williams <PWilliams@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Brittnie T. Watkins <BTW@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Cinda C. Towne <cct@pisanellibice.com>
Subject: RE: Seibel adv. Caesars

From: Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>
Sent: Tuesday, February 16, 2021 10:15 AM
To: Magali Mercera
Cc: Joshua Gilmore; Tennert, John; Aaron D. Lovaas; Paul Williams; Stephanie Glantz; Brittnie T. Watkins; Emily A. Buchwald; Susan Russo; Cinda C. Towne
Subject: Re: Seibel adv. Caesars

Magali you may affix my signature to the Stip. thank you

Sent From AML iPhone

On Feb 16, 2021, at 1:10 PM, Magali Mercera <mmm@pisanellibice.com> wrote:

Josh –

Thank you for sending the draft stipulation. Attached please find our proposed revisions. I am also looping in Alan Lebensfeld and Aaron Lovaas as they will need to sign off as well.

If our changes are acceptable, you may apply my e-signature to this version.

Thanks,

M. Magali Mercera

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Cc: Paul Williams <PWilliams@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Brittnie T. Watkins <BTW@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Cinda C. Towne <cct@pisanellibice.com>
Subject: RE: Seibel adv. Caesars

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Magali,

From: Tennert, John <jtennert@fennemorelaw.com>
Sent: Tuesday, February 16, 2021 11:33 AM
To: Joshua Gilmore; Magali Mercera; Alan Lebensfeld; Aaron D. Lovaas
Cc: Paul Williams; Stephanie Glantz; Brittnie T. Watkins; Emily A. Buchwald; Susan Russo; Cinda C. Towne
Subject: RE: Seibel adv. Caesars

Josh,
Please apply my e-signature.
Thanks,
John

John D. Tennert III, Director

FENNEMORE.

7800 Rancharrah Parkway, Reno, NV 89511

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



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From: Joshua Gilmore <JGilmore@baileykennedy.com>
Sent: Tuesday, February 16, 2021 11:16 AM
To: Magali Mercera <mmm@pisanellibice.com>; Tennert, John <jtennert@fennemorelaw.com>; Alan Lebensfeld <Alan.Lebensfeld@Isandspc.com>; Aaron D. Lovaas <Aaron.Lovaas@ndlf.com>
Cc: Paul Williams <PWilliams@baileykennedy.com>; Stephanie Glantz <SGlantz@baileykennedy.com>; Brittnie T. Watkins <BTW@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>; Cinda C. Towne <cct@pisanellibice.com>
Subject: RE: Seibel adv. Caesars

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Aaron/John – assuming you have no further edits/changes, please confirm that we may apply your e-signatures.

Thanks everyone. Josh

Joshua P. Gilmore, Esq. | Bailey Kennedy, LLP

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Rowen Seibel, Plaintiff(s)

CASE NO: A-17-751759-B

7 vs.

DEPT. NO. Department 16

8 PHWL V LLC, Defendant(s)

9
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Robert Ryan	rr@pisanellibice.com

TAB 89

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