

**CASE NO. 86462**

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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.*

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

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**APPENDIX OF EXHIBITS TO APPELLANT'S OPENING BRIEF**

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## APPENDIX OF EXHIBITS TO APPELLANTS' OPENING BRIEF

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Notice of Appeal, filed April 21, 2023	42	170	AA09105- AA09108

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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, filed February 3, 2021	13	84	AA02640-AA02656
Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion for Summary Judgment No. 1, filed June 3, 2022	34	134	AA07119-AA07141
Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion for Summary Judgment No. 2, filed June 3, 2022	34	135	AA07142-AA07164
Notice of Entry of Findings of Fact, Conclusions of Law, and Order: (1) Denying Craig Green's Motion for Summary Judgment; (2) Granting Caesars' Counter-Motion for Summary Judgment Against Craig Green; and (3) Granting Caesars' Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VII of the First Amended Complaint), filed March 28, 2023	42	169	AA09084-AA09104
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

<b><u>Document Title:</u></b>	<b><u>Vol. No.:</u></b>	<b><u>Tab No.:</u></b>	<b><u>Page Nos.:</u></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, 14, and 16 Thereto, filed February 3, 2021	13	82	AA02612-AA02625
Notice of Entry of Order Granting Motion to Redact Caesars' Opposition to the Development Parties' Motion For Leave to File A Supplement to their Oppositions to Motions for Summary Judgment on Order Shortening Time, filed July 26, 2022	38	147	AA08072-AA08083
Notice of Entry of Order Granting Motion to Redact Caesars' Reply to Development Parties' Omnibus Supplement to Their Oppositions to Motions for Summary Judgment Filed by Caesars and Ramsay and Seal Exhibit 115 Thereto, filed June 2, 2022	34	132	AA07101-AA07112



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Notice of Entry of Order Granting Motion to Redact Caesars' 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

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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	153	AA08151-AA08154
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 – <b>FILED UNDER SEAL</b>	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 – <b>FILED UNDER SEAL</b>	35	139	AA07450-AA07475
Opposition to Motion to Amend LLTQ/FERG Defendants' Answer, Affirmative Defenses and Counterclaims, filed on October 14, 2019	3	39	AA00605-AA00704
Order (i) Denying the Development Entities, Rowen Seibel, and Craig Green's Motion: (1) For Leave to Take Caesars' NRCP 30(b)(6) Depositions; and (2) to Compel Responses to Written Discovery on Order Shortening Time; and (ii) Granting Caesars' Countermotion for Protective Order and for Leave to Take Limited Deposition of Craig Green, filed on February 4, 2021	13	85	AA02657-AA02664
Order Denying Motion to Amend LLTQ/FERG Defendants' Answer, Affirmative Defenses and Counterclaims, filed on November 25, 2019	4	43	AA00759-AA00762

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Order Granting Caesars' Motion for Leave to File First Amended Complaint, filed March 10, 2020	5	51	AA01088-AA01092
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

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



<b><u>Document Title:</u></b>	<b><u>Vol. No.:</u></b>	<b><u>Tab No.:</u></b>	<b><u>Page Nos.:</u></b>
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 – <b>FILED UNDER SEAL</b>	39	158	AA08436-AA08452
Reply in Support of Craig Green’s Motion for Summary Judgment, filed October 12, 2022	39	155	AA08411-AA08422
Reply in Support of Motion to Amend LLTQ/FERG Defendants’ Answer, Affirmative Defenses and Counterclaims, filed on October 17, 2019	3	41	AA00711-AA00726
Reply to DNT Acquisition, LLC’s Counterclaims, filed July 25, 2018	2	23	AA00339-AA00350
Reply to LLTQ/FERG Defendants’ Counterclaims, filed July 25, 2018	2	24	AA00351-AA00374
Reporter’s Transcript, taken December 14, 2020	13	80	AA02498-AA02600
Reporter’s Transcript, taken December 6, 2021	33	116	AA06820-AA06935
Reporter’s Transcript, taken February 12, 2020	5	50	AA01060-AA01087
Reporter’s Transcript, taken May 20, 2020	6	60	AA01170-AA01224
Reporter’s Transcript, taken November 22, 2022	42	163	AA08879-AA09023

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Reporter's Transcript, taken November 6, 2019	4	42	AA00727- AA00758
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

<b><u>Document Title:</u></b>	<b><u>Vol. No.:</u></b>	<b><u>Tab No.:</u></b>	<b><u>Page Nos.:</u></b>
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 – <b>FILED UNDER SEAL</b>	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

<b><u>Document Title:</u></b>	<b><u>Vol. No.:</u></b>	<b><u>Tab No.:</u></b>	<b><u>Page Nos.:</u></b>
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 – <b>FILED UNDER SEAL</b>	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 – <b>FILED UNDER SEAL</b>	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

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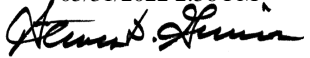
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PHWLV, LLC; and Boardwalk Regency  
Corporation*

/s/ Susan Russo

Employee of BAILEY ❖ KENNEDY

TAB 129

  
CLERK OF THE COURT

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PHWLV, 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.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability  
company,

Nominal Plaintiff.

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER GRANTING  
CAESARS' MOTION FOR SUMMARY  
JUDGMENT NO. 1**

Date of Hearing: December 6, 2021

Time of Hearing: 1:30 p.m.

AND ALL RELATED MATTERS

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 ("Caesars Atlantic City," and collectively, with Caesars Palace, Paris, and Planet Hollywood, "Caesars,") *Motion for Summary Judgment No. 1* (the "MSJ No. 1"), filed on February 25, 2021, came before this Court for hearing on December 6, 2021, at 1:30 p.m.

**AA07052**



James J. Pisanelli, Esq., and M. Magali Mercera, Esq., of the law firm PISANELLI BICE PLLC, appeared telephonically on behalf of Caesars. Joshua P. Gilmore, 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"), GR Burgr, LLC ("GRB"), and DNT Acquisition, LLC ("DNT"), appearing derivatively by and through R Squared Global Solutions, LLC ("R Squared") (collectively the "Seibel-Affiliated Entities"), Rowen Seibel ("Seibel"), and Craig Green ("Green").<sup>1</sup> John Tennert, Esq., of the law firm FENNEMORE CRAIG, appeared telephonically on behalf of Gordon Ramsay ("Ramsay"). Alan Lebensfeld, of the law firm LEBENSFELD SHARON & SCHWARTZ P.C., appeared telephonically on behalf of The Original Homestead Restaurant.

The Court having considered MSJ No. 1, the opposition thereto, as well as argument of counsel presented at the hearing, taken the matter under advisement, and good cause appearing therefor, enters the following Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

The Court HEREBY FINDS AS FOLLOWS:

1. Caesars and its affiliates hold gaming licenses in Nevada and other jurisdictions across the country.

2. Nevada's gaming regulations provide that a gaming license will not be awarded unless the Nevada Gaming Commission is satisfied that the gaming license applicant (a) is "of good character, honesty, and integrity" (b) with "background, reputation and associations [that] will not result in adverse publicity for the State of Nevada and its gaming industry; and" (c) someone who "[h]as adequate business competence and experience for the role or position for which application is made." Nev. Gaming Regul. 3.090(1).

---

<sup>1</sup> Seibel, Green, and the Seibel-Affiliated Entities are collectively referred to herein as the "Seibel Parties."

1           3.       Nevada gaming licensees are required to self-police and to act promptly if they learn  
2 of derogatory information about their own operations or those of their business associates.

3           4.       Caesars has established and operates an Ethics and Compliance Program (the  
4 "Compliance Plan") requiring Caesars to maintain the highest standards of conduct and association  
5 and guard its reputation to avoid even the slightest appearance of impropriety. To that end, Caesars  
6 is further required to avoid questionable associations with Unsuitable Persons which could tarnish  
7 Caesars' image, jeopardize its gaming licenses, or hamper its ability to expand into new markets.

8           5.       Pursuant to Caesars' Compliance Plan, Caesars' vendors, suppliers, and business  
9 partners, among others, must agree to abide by the same standards, business ethics, and principles  
10 expected of Caesars' employees. To that end, Caesars customarily includes clear and unambiguous  
11 language in its contracts with third parties that puts all such parties on notice that Caesars is in a  
12 highly regulated business and that such third parties must abide by suitability requirements.

13           6.       Beginning in 2009, Caesars began entering into contracts with Seibel and the Seibel-  
14 Affiliated Entities relating to the development, creation, and operation of various restaurants at  
15 Caesars properties in Las Vegas and Atlantic City.

16           7.       Caesars Palace and a Seibel-Affiliated Entity, MOTI, entered into an agreement on  
17 or about March 2009 relating to the Serendipity 3 restaurant in Las Vegas (the "MOTI Agreement").

18           8.       Caesars Palace and a Seibel-Affiliated Entity, DNT, entered into an agreement on  
19 or about June 2011 relating to the Original Homestead Restaurant in Las Vegas (the "DNT  
20 Agreement").

21           9.       Paris and a Seibel-Affiliated Entity, TPOV, entered into an agreement on or about  
22 November 2011 relating to the Gordon Ramsay Steak restaurant at the Paris Las Vegas (the "TPOV  
23 Agreement").

24           10.      Caesars Palace and a Seibel-Affiliated Entity, LLTQ, entered into an agreement on  
25 or about April 2012 relating to the Gordon Ramsay Pub & Grill at Caesars Palace in La Vegas (the  
26 "LLTQ Agreement").  
27  
28

11. Section 13.22 of the LLTQ Agreement contemplated potential future restaurants but Caesars Palace and LLTQ did not agree on material terms regarding future restaurants. Specifically, Section 13.22 provided that:

If Caesars elects under this Agreement to pursue any venture similar to (1) the Restaurant (i.e., any venture generally in the nature of a pub, bar, café, or tavern) or (ii) the "Restaurant" as defined in the development and operation agreement entered into December 5, 2011 between TPOV Enterprises, LLC (an affiliate of LLTQ), on the one hand, and Paris Las Vegas Operating Company, LLC, on the other hand (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), Caesars and LLTQ shall, or shall cause an Affiliate to, execute a development and operation agreement on the same terms and conditions as this Agreement, subject only to revisions proposed by Caesars or its Affiliate as are necessary to reflect the difference in location between the Restaurant and such other venture (including, for the avoidance of doubt, the Baseline Amount, permitted Operating Expenses and necessary Project Costs).

12. Planet Hollywood and a Seibel-Affiliated Entity, GRB, entered into an agreement on or about December 2012 relating to the GR Burgr restaurant at Planet Hollywood in Las Vegas (the "GRB Agreement").

13. Caesars Atlantic City and a Seibel-Affiliated Entity, FERG, entered into an agreement on or about May 2014 relating to the Gordon Ramsay Pub & Grill at Caesars Atlantic City (the "FERG Agreement").<sup>2</sup>

14. Section 4.1 of the FERG Agreement contemplated potential future restaurants but Caesars Atlantic City and FERG did not agree on material terms regarding future restaurants. Specifically, Section 4.1 provided that:

In the event, a new agreement is executed between [Caesars Atlantic City] and/or its Affiliate and Gordon Ramsay and/or his Affiliate relative to the Restaurant, or Restaurant Premises, this Agreement shall be in effect and binding on the parties during the term thereof.

15. Each of the Seibel Agreements contained representations, warranties, and conditions to ensure that Caesars was not involved in a business relationship with an unsuitable individual

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<sup>2</sup> The MOTI Agreement, DNT Agreement, TPOV Agreement, LLTQ Agreement, GRB Agreement, and FERG Agreement shall be collectively referred to hereinafter as the "Seibel Agreements."

1 and/or entity. Each of the Seibel agreements contained nearly identical language noting that each  
2 of the Seibel-Affiliated Entities acknowledged that Caesars and its affiliates were subject to and  
3 exists because of privileged licenses "issued U.S., state, local and foreign governmental, regulatory  
4 and administrative authorities, agencies, boards and officials (the "Gaming Authorities")  
5 responsible for or involved in the administration of application of laws, rules and regulations  
6 relating to gaming or gaming activities or the sale, distribution and possession of alcoholic  
7 beverages." (*See, e.g.*, Section 10.2 of the TPOV Agreement). The Seibel Agreements further  
8 provided that "[t]he Gaming Authorities require [Caesars], and [Caesars] deems it advisable, to  
9 have a compliance committee (the "Compliance Committee") that does its own background checks  
10 on, and issues approvals of Persons involved with [Caesars] and its Affiliates." (*See, e.g., id.*)

11 16. Each of the Seibel Agreements provided for severe consequences, up to and  
12 including termination of the agreements, if the Seibel-Affiliated Entities failed to abide their  
13 suitability obligations.

14 17. Under each of the Seibel Agreements, Caesars reserved the right in its sole and  
15 exclusive judgment to determine whether any Seibel-Affiliated Entity or Associate was an  
16 Unsuitable Person.

17 18. The Seibel Agreements also contained suitability disclosure obligations requiring  
18 the Seibel-Affiliated Entities to disclose certain information. Each of the Seibel Agreements  
19 contained nearly identical language providing that prior to the execution of the agreement and "on  
20 each anniversary of the Opening Date during the Term, (a) [the Seibel-Affiliated Entities] shall  
21 provide to [Caesars] written disclosure regarding the [Seibel-Affiliated Entities] Associates, and (b)  
22 the Compliance Committee shall have issued approvals of the [Seibel-Affiliated Entities]  
23 Associates." (*See, e.g.*, Section 10.2 of the TPOV Agreement). Further, "during the Term, on ten  
24 (10) calendar days written request by [Caesars] to [the Seibel-Affiliated Entities], [the Seibel-  
25 Affiliated Entities] shall disclose to [Caesars] all [the Seibel-Affiliated Entities] Associates." (*See,*  
26 *e.g., id.*) If any such disclosures became inaccurate, "within ten (10) calendar days from that event,  
27 update the prior disclosure without [Caesars] making any further request [the Seibel-Affiliated  
28 Entities] shall cause all [the Seibel-Affiliated Entities] Associates to provide all requested

information and apply for and obtain all necessary approvals required or requested by [Caesars] or the Gaming Authorities." (*See, e.g., id.*)

19. Caesars required that the Seibel-Affiliated Entities complete and submit to Caesars Business Information Forms ("BIFs"). In the BIFs, the Seibel-Affiliated Entities were required to disclose potentially derogatory information about their background and their suitability. Among other things, the BIFs required Seibel and the Seibel-Affiliated Entities to disclose whether any of their associated persons, including Seibel, had been convicted of any crimes, engaged in criminal activity, or were the subject of any criminal investigation.

20. In accordance with the MOTI Agreement, MOTI submitted a BIF (the "MOTI BIF").

21. The MOTI BIF did not disclose any criminal activities by Seibel.

22. In accordance with the DNT Agreement, DNT submitted a BIF (the "DNT BIF"). The DNT BIF did not disclose any criminal activity by Seibel.

23. As set forth in the Seibel Agreements, the suitability disclosures (*e.g.*, the BIFs) were required to be updated. Nevertheless, following submittal of the MOTI BIF and DNT BIF, neither MOTI nor DNT updated their respective BIFs to disclose any criminal activity by Seibel.

24. Neither Seibel nor the Seibel-Affiliated Entities submitted a BIF in connection with the TPOV Agreement, the LLTQ Agreement, the GRB Agreement, or the FERG Agreement. Caesars did not waive, release, or modify the disclosure obligations for any of the Seibel-Affiliated Entities.

25. Pursuant to the Seibel Agreements, if the Seibel-Affiliated Entities failed to comply with their disclosure obligations, Caesars reserved the right, in its sole discretion, to terminate the Seibel Agreements and its relationship with any of the Seibel Affiliated Entities. Specifically, each of the Seibel Agreements contained nearly identical language providing, in pertinent part, that:

If any [Seibel-Affiliated Entity] Associate fails to satisfy or such requirement, if [Caesars] or any of [Caesars'] Affiliates are directed to cease business with any [Seibel-Affiliated Entity] Associate by any Gaming Authority, or if [Caesars] shall determine, in [Caesars'] sole and exclusive judgment, that any [Seibel-Affiliated Entity] Associate is an Unsuitable Person, whether as a result of a [Seibel-Affiliated Entity] Change of Control or otherwise, then (a) [the Seibel-Affiliated Entity] shall terminate any relationship with the Person who is the source of such issue, (b) [the

Seibel-Affiliated Entity] shall cease the activity or relationship creating the issue to [Caesars'] satisfaction, in [Caesars'] sole judgment, or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b), as determined by [Caesars] in its sole discretion, [Caesars] shall, without prejudice to any other rights or remedies of [Caesars] including at law or in equity, have the right to terminate th[e] Agreement and its relationship with [the Seibel-Affiliated Entity]. [The Seibel-Affiliated Entity] further acknowledges that [Caesars] shall have the absolute right to terminate this Agreement in the event any Gaming Authority requires [Caesars] or one of its Affiliates to do so. Any termination by [Caesars] pursuant to this Section . . . shall not be subject to dispute by [the Seibel-Affiliated Entity] and shall not be the subject of any proceeding . . . .

26. Per the express language of the Seibel Agreements, Caesars' determination and termination of the Seibel Agreements were not subject to dispute by the Seibel-Affiliated Entities

27. In April 2016, Seibel pleaded guilty to one count of corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws because, in Seibel's own words, he was in fact guilty of the crime.

28. Prior to his guilty plea, and despite a January 2016 tolling agreement with the U.S. government entered into to allow Seibel "to manage his financial affairs in an optimal way prior to entering a guilty plea," neither Seibel nor any of the Seibel-Affiliated Entities notified Caesars of any of the facts underlying the charges against him, or that Seibel planned to plead guilty to a felony. Siebel did not update any of the mandatory suitability disclosures.

29. Rather than disclosing these crimes to Caesars, before pleading guilty, Seibel undertook at scheme to create the appearance of disassociating from certain Seibel Agreements<sup>3</sup> by (1) creating new entities to which he was purportedly assigning the interests in the Seibel Agreements; (2) creating the Seibel Family 2016 Trust to receive the income from said entities; and (3) entering into a prenuptial agreement with his soon to be wife.

30. Seibel, with his attorneys, and Green, created new entities to which he purportedly assigned the Seibel Agreements.

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<sup>3</sup> As set forth in the Court's Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion for Summary Judgment No. 2, Seibel attempted to assign his interest in GRB to The Seibel Family 2016 Trust (the "Trust"). In order to do so, Seibel needed GRUS, the other member of GRB, to consent to such an assignment. However, Seibel did not inform GRUS or Gordon Ramsay that the reason he sought to assign his interest was because he planned to plead guilty to a felony in the coming week and GRUS did not consent to the assignment.

1           31. While not mentioning or disclosing his criminal activity or impending guilty plea,  
2 Seibel sent letters to Caesars representing that the Seibel Agreements would be assigned to those  
3 new entities whose membership interests were mostly owned by the Seibel Family 2016 Trust.

4           32. Seibel represented to Caesars that the sole beneficiaries of the Seibel Family 2016  
5 Trust were Netty Wachtel Slushny, Bryn Dorfman, and potential descendants of Seibel, and that  
6 "[o]ther than the parties described in th[e] letter[s], there [were] no other parties that have any  
7 management rights, powers or responsibilities regarding, or equity or financial interests in" the new  
8 entities.

9           33. Those representations were all false and were made with the intent to deceive  
10 Caesars.

11           34. At or around the same time, Seibel negotiated a prenuptial agreement with his soon-  
12 to-be wife that would require her to share distributions she received from the Seibel Family 2016  
13 Trust with Seibel and ensure that the entities assigned to the Trust would remain Seibel's separate  
14 property. Seibel did not disclose this association with Caesars.

15           35. On or about August 19, 2016, Seibel was sentenced for his crimes, served time in a  
16 federal penitentiary, and was required to pay fines and restitution, and perform community service.

17           36. At the time Caesars entered into the Seibel Agreements, Seibel did not disclose to  
18 Caesars that he had been engaged in criminal activity.

19           37. At the time Seibel became aware that he was being investigated for crimes related  
20 to violations of federal tax laws, Seibel did not disclose to Caesars that he was being investigated  
21 for engaging in criminal activity.

22           38. Seibel did not disclose to Caesars that he pleaded guilty to one count of corrupt  
23 endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. §  
24 7212, a Class E Felony.

25           39. Seibel did not disclose to Caesars that he was sentenced to serve time in federal  
26 prison as a result of his guilty plea and conviction for engaging in a corrupt endeavor to obstruct  
27 and impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212, a Class E  
28 Felony.

44. The Nevada gaming regulators agreed with Caesars' actions, concluding that Caesars appropriately addressed the matter as the Nevada gaming regulators would expect from a gaming licensee.

1. Pursuant to Nevada law, summary judgment is appropriate and shall be rendered when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); NRCP 56(c). "The party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007) (citation omitted). "If such a showing is made, then the party opposing summary judgment assumes a burden of production to show the existence of a genuine issue of material fact." *Id.*, 172 P.3d at 134.

2. "[T]o defeat summary judgment, the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact." *Id.*, 172 P.3d 131, 134 (2007) (citation omitted). Importantly, the nonmoving party can no longer merely raise the "slightest doubt" to avoid summary judgment. *Wood*, 121 Nev. at 731, 121 P.3d at 1031. Rather, the nonmoving party must present genuine issues of material fact to



1 avoid summary judgment. *Id.*, 121 P.3d at 1031. The nonmoving party cannot merely "build a case  
2 on the gossamer threads of whimsy, speculation, and conjecture." *Id.*, 121 P.3d at 1031

3 3. Under Nevada law, "[a]ny person interested under [a written contract] or whose  
4 rights, status or other legal relations are affected by a [contract] may have determined any question  
5 of construction or validity arising under the [contract] and obtain a declaration of rights, status or  
6 other legal relations thereunder." NRS § 30.040(1). "In the absence of ambiguity or other factual  
7 complexities, contract interpretation presents a question of law that the district court may decide on  
8 summary judgment." *Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013)  
9 (citations omitted). "As a general rule, [courts] construe unambiguous contracts . . . according to  
10 their plain language." *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 487–88, 117 P.3d  
11 219, 223–24 (2005).

12 4. Each of the Seibel Agreements contains valid and enforceable provisions that  
13 Caesars reserved the right to terminate the agreements if it found, in its sole and exclusive  
14 discretion, that any of the Seibel Affiliated Entities or their associates were an Unsuitable Person.

15 5. Caesars' determination that the Seibel-Affiliated Entities were unsuitable based on  
16 Seibel's admitted criminal activities, *i.e.*, a felony conviction for engaging in corrupt endeavor to  
17 obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212, and  
18 sentence to serve prison time for the same, was within Caesars' sole discretion under the Seibel  
19 Agreements.

20 6. Caesars properly exercised its discretion in terminating the Seibel Agreements.

21 7. Caesars did not breach the Seibel Agreements.

22 8. Seibel and the Seibel entities breached the Seibel Agreements by not disclosing that  
23 Seibel had engaged in criminal activities, pleaded guilty to and been convicted of engaging in  
24 corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26  
25 U.S.C. § 7212, and been sentenced to serve prison as a result of that crime.

26 9. Seibel and the Seibel-Affiliated Entities purported to "cure" the unsuitability through  
27 the creation of new entities, but Seibel secretly continued to hold both a beneficial and actual  
28 ownership interest in the new entities. However, the Seibel Agreements (1) do not provide Seibel

1 or the Seibel-Affiliated Entities with an opportunity to cure; (2) nor do they provide Seibel or a  
2 Seibel-Affiliated Entity with a unilateral right to sell Seibel's interests to a third party.

3 10. Even if the Seibel Agreements provided Seibel or the Seibel-Affiliated Entities a  
4 right to cure his unsuitability, which the Court finds it did not, Seibel and the Seibel-Affiliated  
5 Entities forfeited any such right through the fraudulent cure scheme and Seibel's continued  
6 association with the Seibel-Affiliated Entities.

7 11. "A breach of the [implied] covenant [of good faith and fair dealing] occurs '[w]here  
8 the terms of a contract are literally complied with but one party to the contract deliberately  
9 contravenes the intention and spirit of the contract. . . .'" *Gamboa v. World Sav. Bank, FSB*, No.  
10 3:10-CV-454-ECR-VPC, 2010 WL 5071166, at \*2 (D. Nev. Dec. 6, 2010) (quoting *Hilton Hotels*  
11 *Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 232, 808 P.2d 919, 922-23 (1991)). "[W]hen there  
12 is no factual basis for concluding that a defendant acted in bad faith, a court may determine the  
13 issue of bad faith as a matter of law." *Tennier v. Wells Fargo Bank, N.A.*, No. 3:14-CV-0035-LRH-  
14 VPC, 2015 WL 128672, at \*7 (D. Nev. Jan. 8, 2015) (quoting *Andrew v. Century Sur. Co.*, No.  
15 2:12-cv-0978, 2014 WL 1764740, at \*10 (D. Nev. Apr. 29, 2014).

16 12. While every agreement has an implied covenant of good faith and fair dealing, that  
17 implied covenant generally cannot contradict an *express* contract provision. *See, e.g., Kuiava v.*  
18 *Kwasniewski*, 126 Nev. 731, 367 P.3d 791 (2010) (unpublished disposition), citing with approval  
19 *Kucharczyk v. Regents of Univ. of Cal.*, 946 F. Supp. 1419, 1432 (N.D. Cal. 1996) (noting that the  
20 implied covenant of good faith and fair dealing may not be used to imply a term that is contradicted  
21 by an express term of the contract); *see also Gerdlund v. Elec. Dispensers Int'l*, 235 Cal. Rptr. 279,  
22 286 (Ct. App. 1987) (internal quotations omitted) ("No obligation can be implied, however, which  
23 would result in the obliteration of a right expressly given under a written contract.")

24 13. "There cannot be a valid express contract and an implied contract, each embracing  
25 the same subject, but requiring different results." *Gerdlund*, 235 Cal. Rptr. at 286 (internal  
26 quotations omitted); *see also Melnick v. State Farm Mut. Auto. Ins. Co.*, 749 P.2d 1105, 1110 (N.M.  
27 1988) ("We cannot change or modify the language of an otherwise legal contract for the benefit of  
28 one party and to the detriment of another.").

14. Moreover, "one generally cannot base a claim for breach of the implied covenant on conduct authorized by the terms of the agreement." *Miller v. FiberLight, LLC*, 808 S.E.2d 75, 87 (Ga. App. Ct. 2017) (quoting *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 441 (Del. 2005)); see also *Vitek v. Bank of Am., N.A.*, No. 8:13-CV-816-JLS ANX, 2014 WL 1042397, at \*5 (C.D. Cal. Jan. 23, 2014) (citation omitted) ("In general, acting in accordance with an express contractual provision does not amount to bad faith."). "In other words, 'a party does not act in bad faith by relying on contract provisions for which that party bargained where doing so simply limits advantages to another party.'" *Miller*, 343 Ga. App. at 607–08, 808 S.E.2d at 87 (quoting *Alpha Balanced Fund, LLLP v. Irongate Performance Fund, LLC*, 802 S.E.2d 357 (Ga. 2017)).

15. Importantly, "when there is no factual basis for concluding that a defendant acted in bad faith, a court may determine the issue of bad faith as a matter of law." *Tennier v. Wells Fargo Bank, N.A.*, No. 3:14-CV-0035-LRH-VPC, 2015 WL 128672, at \*7 (D. Nev. Jan. 8, 2015) (quoting *Andrew v. Century Sur. Co.*, No. 2:12-cv-0978, 2014 WL 1764740, at \*10 (D. Nev. Apr. 29, 2014)).

16. The "implied promise of good faith and fair dealing is 'reciprocal,' a 'two-way street' which demands mutual compliance from the contracting parties." *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 791 F.2d 1356, 1361 (9th Cir. 1986) (citation omitted). Indeed, there is "no justice in permitting a plaintiff to complain of unfair dealing in a [t]ransaction when he himself has not fulfilled in good faith his contractual obligations with regard to that transaction." *Id.* at 1362 (citation omitted).

17. Caesars' termination of the Seibel Agreements after learning that Seibel had engaged in criminal activities, pleaded guilty to and been convicted of engaging in corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212, and been sentenced to serve prison as a result of that crime, does not constitute a breach of the covenant of good faith and fair dealing.

18. In addition, Seibel and the Seibel-Affiliated Entities are barred from arguing Caesars acted in bad faith by their committing the first breach and Seibel's own acts of bad faith, including

not only the felony conviction and the conduct leading up to it, but also the misrepresentation of purported disassociation through the new entities to which he purported to assign his interests.

19. Finally, Seibel's unsuitability renders the future restaurant provisions void as a result of his unsuitability to do business with a gaming licensee.

20. Under Nevada law, that "[a]n agreement to agree at a future time is nothing and will not support an action for damages." *City of Reno v. Silver State Flying Serv., Inc.*, 84 Nev. 170, 176, 438 P.2d 257, 261 (1968) (quoting *Salomon v. Cooper*, 98 Cal. App. 2d 521, 220 P.2d 774 (1950)). "There is no dispute that neither law nor equity provides a remedy for breach of an agreement to agree in the future." *Autry v. Republic Prods.*, 30 Cal. 2d 144, 151, 180 P.2d 888, 893 (1947). Indeed, "[s]uch a contract cannot be made the basis of a cause of action." *Id.*, 180 P.2d at 893 (citations omitted). "Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting of the minds, and consideration." *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). "With respect to contract formation, preliminary negotiations do not constitute a binding contract unless the parties have agreed to all material terms." *Id.*, 119 P.3d at 1257.

21. Section 13.22 of the LLTQ Agreement has indefinite and open terms and thus is an invalid and unenforceable agreement to agree. As such, this provision fails as a matter of law.

22. Section 4.2 of the FERG Agreement has indefinite and open terms and thus is an invalid and unenforceable agreement to agree. As such, this provision fails as a matter of law.

23. Section 13.22 of the LLTQ Agreement and Section 4.2 of the FERG Agreement are further unenforceable because the Seibel-Affiliated Entities would be unable to comply with the suitability obligations required by contract and gaming regulations rendering them agreements against public policy and void as a matter of law.

### ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Caesars' MSJ No. 1 shall be, and hereby is, GRANTED in its entirety and that judgment is entered in favor of Caesars on Counts I, II, and III of Caesars First Amended Complaint.

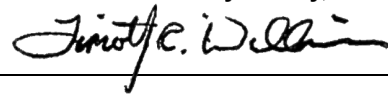
1 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Caesars is  
2 entitled to declarations that:

- 3 (1) Caesars Palace properly terminated the MOTI Agreement, the DNT  
4 Agreement, and the LLTQ Agreement;
- 5 (2) Paris properly terminated the TPOV Agreement;
- 6 (3) PHWLV properly terminated the GRB Agreement;
- 7 (4) Caesars Atlantic City properly terminated the FERG Agreement;
- 8 (5) Caesars does not have any current or future financial obligations or  
9 commitments to Seibel or any of the Seibel-Affiliated Entities;
- 10 (6) Section 13.22 of the LLTQ Agreement is unenforceable and Caesars does  
11 not have any current or future obligations pursuant to that provision or  
12 otherwise that would prohibit or limit existing or future restaurant ventures  
13 between Caesars and Gordon Ramsay; and
- 14 (7) Section 4.1 of the FERG Agreement is unenforceable and Caesars does not  
15 have any current or future obligations pursuant to that provision or  
16 otherwise that would prohibit or limit existing or future restaurant ventures  
17 between Caesars and Gordon Ramsay.

18 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is  
19 entered in favor Caesars on Counts I and II of DNT's counterclaim, and on Counts I, II, III and IV  
20 of LLTQ, LLTQ 16, FERG, and FERG 16's counterclaims, which seek an accounting of monies  
21 purportedly owed under the DNT, LLTQ, and FERG Agreements and allege breaches of contract  
22 related to the ongoing operation of certain restaurants. Because all Seibel Agreements were properly  
23 terminated by Caesars as found herein, these counterclaims fail as a matter of law and judgment is  
24 appropriate in favor of Caesars.

25 IT IS SO ORDERED.

Dated this 31st day of May, 2022



MH

2AA A93 02DD E0B1  
Timothy C. Williams  
District Court Judge

Respectfully submitted by:

DATED May 25, 2022

PISANELLI BICE PLLC

By: /s/ M. Magali Mercera  
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*Attorneys for Desert Palace, Inc.;  
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Company, LLC; PHWLTV, LLC; and  
Boardwalk Regency  
Corporation d/b/a Caesars Atlantic City*

Approved as to form and content by:

DATED May 25, 2022

LEBENSFELD SHARON & SCHWARTZ P.C.

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DATED May 25, 2022

FENNEMORE CRAIG, P.C.

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*Attorneys for Gordon Ramsay*

## Cinda C. Towne

---

**From:** Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>  
**Sent:** Wednesday, May 25, 2022 4:36 PM  
**To:** Magali Mercera; Joshua Gilmore; Paul Williams; Tennert, John; Beavers, Wade  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

CAUTION: This message is from an EXTERNAL SENDER.

You may, thanks

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**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Wednesday, May 25, 2022 5:11 PM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

Understood, Josh.

John and Alan – We updated our draft proposed findings of fact and conclusions of law to remove Bailey Kennedy from the signature block in light of their objections to the orders and updated the date to May. Please confirm that we may affix your e-signatures to these versions.

Thanks,

**M. Magali Mercera**

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**From:** Joshua Gilmore <[JGilmore@baileykennedy.com](mailto:JGilmore@baileykennedy.com)>  
**Sent:** Tuesday, April 26, 2022 2:03 PM  
**To:** Magali Mercera <[mmm@pisanellibice.com](mailto:mmm@pisanellibice.com)>; Paul Williams <[PWilliams@baileykennedy.com](mailto:PWilliams@baileykennedy.com)>; Alan Lebensfeld <[Alan.Lebensfeld@lsandspc.com](mailto:Alan.Lebensfeld@lsandspc.com)>; Tennert, John <[jtennert@fennemorelaw.com](mailto:jtennert@fennemorelaw.com)>; Beavers, Wade <[WBeavers@fennemorelaw.com](mailto:WBeavers@fennemorelaw.com)>  
**Cc:** James Pisanelli <[jjp@pisanellibice.com](mailto:jjp@pisanellibice.com)>; Debra Spinelli <[dls@pisanellibice.com](mailto:dls@pisanellibice.com)>; Emily A. Buchwald <[eab@pisanellibice.com](mailto:eab@pisanellibice.com)>; Cinda C. Towne <[cct@pisanellibice.com](mailto:cct@pisanellibice.com)>; Susan Russo <[SRusso@baileykennedy.com](mailto:SRusso@baileykennedy.com)>  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

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## Cinda C. Towne

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**From:** Tennert, John <jtennert@fennemorelaw.com>  
**Sent:** Wednesday, May 25, 2022 2:44 PM  
**To:** Magali Mercera; Joshua Gilmore; Paul Williams; Alan Lebensfeld; Beavers, Wade  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

CAUTION: This message is from an EXTERNAL SENDER.

Hi Magali,

You may affix my e-signature to both proposed orders.

Thanks,  
John

John D. Tennert III, Director

---

**FENNEMORE.**

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**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Wednesday, May 25, 2022 2:11 PM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

Understood, Josh.

John and Alan – We updated our draft proposed findings of fact and conclusions of law to remove Bailey Kennedy from the signature block in light of their objections to the orders and updated the date to May. Please confirm that we may affix your e-signatures to these versions.

Thanks,

**M. Magali Mercera**  
PISANELLI BICE, PLLC



1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA  
4

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**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the  
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
case as listed below:

14 Service Date: 5/31/2022

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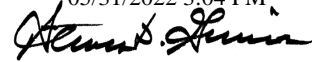
AA07069

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**TAB 130**

  
CLERK OF THE COURT

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*Attorneys for Desert Palace, Inc.;  
Paris Las Vegas Operating Company, LLC;  
PHWLV, 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.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability  
company,

Nominal Plaintiff.

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER GRANTING  
CAESARS' MOTION FOR SUMMARY  
JUDGMENT NO. 2**

Date of Hearing: December 6, 2021

Time of Hearing: 1:30 p.m.

AND ALL RELATED MATTERS

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 ("Caesars Atlantic City," and collectively, with Caesars Palace, Paris, and Planet Hollywood, "Caesars,") *for Summary Judgment No. 2* (the "MSJ No. 2"), filed on February 25, 2021, came before this Court for hearing on December 6, 2021, at 1:30 p.m.

**AA07072**

James J. Pisanelli, Esq., and M. Magali Mercera, Esq., of the law firm PISANELLI BICE PLLC, appeared telephonically on behalf of Caesars. Joshua P. Gilmore, 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"), GR Burgr, LLC ("GRB"), and DNT Acquisition, LLC ("DNT"), appearing derivatively by and through R Squared Global Solutions, LLC ("R Squared") (collectively the "Seibel-Affiliated Entities"), Rowen Seibel ("Seibel"), and Craig Green ("Green").<sup>1</sup> John Tennert, Esq., of the law firm FENNEMORE CRAIG, appeared telephonically on behalf of Gordon Ramsay ("Ramsay"). Alan Lebensfeld, of the law firm LEBENSFELD SHARON & SCHWARTZ P.C., appeared telephonically on behalf of The Original Homestead Restaurant.

The Court having considered MSJ No. 2, the opposition thereto, as well as argument of counsel presented at the hearing, taken the matter under advisement, and good cause appearing therefor, enters the following Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

The Court HEREBY FINDS AS FOLLOWS:

1. Planet Hollywood and its affiliates hold gaming licenses in Nevada and other jurisdictions across the country.

2. Nevada's gaming regulations provide that a gaming license will not be awarded unless the Nevada Gaming Commission is satisfied that the gaming license applicant (a) is "of good character, honesty, and integrity" (b) with "background, reputation and associations [that] will not result in adverse publicity for the State of Nevada and its gaming industry; and" (c) someone who "[h]as adequate business competence and experience for the role or position for which application is made." Nev. Gaming Regul. 3.090(1).

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<sup>1</sup> Seibel, Green, and the Seibel-Affiliated Entities are collectively referred to herein as the "Seibel Parties."

1           3.       Nevada gaming licensees are required to self-police and to act promptly if they learn  
2 of derogatory information about their own operations or those of their business associates.

3           4.       Caesars has established and operates an Ethics and Compliance Program (the  
4 "Compliance Plan") requiring Caesars to maintain the highest standards of conduct and association  
5 and guard its reputation to avoid even the slightest appearance of impropriety. To that end, Caesars  
6 is further required to avoid questionable associations with Unsuitable Persons which could tarnish  
7 Caesars' image, jeopardize its gaming licenses, or hamper its ability to expand into new markets.

8           5.       Pursuant to Caesars' Compliance Plan, Caesars' vendors, suppliers, and business  
9 partners, among others, must agree to abide by the same standards, business ethics, and principles  
10 expected of Caesars' employees. To that end, Planet Hollywood includes clear and unambiguous  
11 language in its contracts with third parties that puts all such parties on notice that Planet Hollywood  
12 is in a highly regulated business and that such third parties must abide by gaming suitability  
13 requirements.

14           6.       Beginning in 2009, Caesars began entering into contracts with Seibel and the Seibel-  
15 Affiliated Entities relating to the development, creation, and operation of various restaurants in Las  
16 Vegas and Atlantic City (the "Seibel Agreements").

17           7.       Planet Hollywood, GRB (a Seibel-Affiliated Entity), and Gordon Ramsay, entered  
18 into an agreement on or about December 2012 relating to the GR Burgr restaurant at Planet  
19 Hollywood in Las Vegas (the "GRB Agreement"). Section 14.21 of the GRB Agreement  
20 contemplated potential future restaurants but the parties did not agree on material terms regarding  
21 future restaurants. Specifically, Section 14.21 provided that:

22           If [Planet Hollywood] elects to pursue any venture similar to the Restaurant  
23 (i.e., any venture generally in the nature of a burger centric or burger themed  
24 restaurant), GRB shall, or shall cause an Affiliate to, execute a development,  
25 operation and license agreement generally on the same terms and conditions as this  
26 Agreement, subject only to revisions agreed to by the parties, including revisions  
27 as are necessary to reflect the differences in such things as location, Project Costs,  
28 Initial Capital Investment, Operating Expenses and the potential for Gross  
Restaurant Sales between the Restaurant and such other venture and any resulting  
Section 8.1 threshold adjustments

1           8.       The GRB Agreement also contained representations, warranties, and conditions to  
2 ensure that Planet Hollywood was not involved in a business relationship with an unsuitable  
3 individual and/or entity.

4           9.       Section 11.2 of the GRB Agreement provided, in pertinent part:

5           Each of Gordon Ramsay and GRB acknowledges that [Planet Hollywood] and PH's  
6 Affiliates are businesses that are or may be subject to and exist because of  
7 privileged licenses issued U.S., state, local and foreign governmental, regulatory  
8 and administrative authorities, agencies, boards and officials (the "Gaming  
9 Authorities") responsible for or involved in the administration of application of  
10 laws, rules and regulations relating to gaming or gaming activities or the sale,  
distribution and possession of alcoholic beverages. The Gaming Authorities require  
PH, and [Planet Hollywood] deems it advisable, to have a compliance committee  
(the "Compliance Committee") that does its own background checks on, and issues  
approvals of, Persons involved with [Planet Hollywood] and its Affiliates.

11           10.       Because issues of suitability affect Planet Hollywood's gaming license, Planet  
12 Hollywood expressly contracted for the sole and absolute discretion to terminate the GRB  
13 Agreement should GRB or its Affiliates — a term that includes Seibel — become an "Unsuitable  
14 Person."

15           11.       Specifically, Section 4.2.5 of the GRB Agreement provides that the "[a]greement  
16 may be terminated by [Planet Hollywood] upon written notice to GRB and Gordon Ramsay having  
17 immediate effect as contemplated by Section 11.2." In turn, Section 11.2 explicitly provides that  
18 Planet Hollywood has the right, in its "sole and exclusive judgment," to determine that a GR  
19 Associate is an Unsuitable Person under the Agreement.

20           12.       Section 11.2 of the GRB Agreement further required that Gordon Ramsay and GRB  
21 update their disclosures without Planet Hollywood prompting if anything became inaccurate or  
22 material changes occurred. Specifically, the GRB Agreement required that prior to the execution of  
23 the agreement and

24           on each anniversary of the Opening Date during the Term, (a) each of  
25 Gordon Ramsay and GRB shall provide to PH written disclosure regarding  
26 the GR Associates, and (b) the Compliance Committee shall have issued  
27 approvals of the LLTQ Associates. Additionally, during the Term, on ten  
28 (10) calendar days written request by PH to Gordon Ramsay and GRB,  
Gordon Ramsay and GRB shall disclose to Caesars all GR Associates. To  
the extent that any prior disclosure becomes inaccurate, Gordon Ramsay  
and GRB shall, within ten (10) calendar days from that event, update the  
prior disclosure without PH making any further request. Each of Gordon



Ramsay and GRB shall cause all GR Associates to provide all requested information and apply for and obtain all necessary approvals required or requested by PH or the Gaming Authorities.

13. Planet Hollywood did not waive, release, or modify the disclosure obligations for Ramsay or GRB.

14. In April 2016, Seibel pleaded guilty to one count of corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws because, in Seibel's own words, he was in fact guilty of the crime.

15. Prior to his guilty plea, and despite a January 2016 tolling agreement with the U.S. government entered into to allow Seibel "to manage his financial affairs in an optimal way prior to entering a guilty plea," neither Seibel nor any of the Seibel-Affiliated Entities notified Planet Hollywood of any of the facts underlying the charges against him, or that Seibel planned to plead guilty to a felony. Seibel did not update any of the mandatory suitability disclosures.

16. Before news of Seibel's conviction became public, and one week prior to pleading guilty, Seibel attempted to assign his interest in GRB to The Seibel Family 2016 Trust (the "Trust"). In order to do so, Seibel needed GRUS, the other member of GRB, to consent to such an assignment. However, Seibel did not inform GRUS or Gordon Ramsay that the reason he sought to assign his interest was because he planned to plead guilty to a felony in the coming week. Ultimately, GRUS did not consent to the assignment.

17. On or about August 19, 2016, Seibel was sentenced for his crimes, served time in a federal penitentiary, and was required to pay fines and restitution, and perform community service. Following Seibel's sentencing, Planet Hollywood found out through news reports that Seibel pleaded guilty to a felony and was sentenced to serve time in federal prison as a result of his crimes.

18. After learning of Seibel's guilty plea and conviction, Planet Hollywood determined that Seibel was unsuitable pursuant to the GRB Agreement and applicable Nevada gaming laws and regulations.

19. After determining that Seibel was unsuitable, Planet Hollywood exercised its contractual right to terminate the GRB Agreement as it was expressly allowed to do under Section 11.2 after GRB did not disassociate from Seibel.

20. Upon discovering Seibel's unsuitability, Planet Hollywood self-reported and disclosed the information of Seibel's unsuitability to Nevada gaming regulators, including its termination of the GRB Agreement and disassociation with an unsuitable person.

21. The Nevada gaming regulators agreed with Planet Hollywood's actions, concluding that Planet Hollywood appropriately addressed the matter as the Nevada gaming regulators would expect from a gaming licensee.

22. After Planet Hollywood terminated the GRB Agreement, GRUS filed a petition for judicial dissolution on or about October 13, 2016, in the Court of Chancery of the State of Delaware.

23. On February 28, 2017, Seibel filed a complaint purportedly derivatively on behalf of GRB against Planet Hollywood and Ramsay for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and civil conspiracy.

24. On August 25, 2017, Caesars filed its complaint for declaratory relief against the Seibel-Affiliated Entities,<sup>2</sup> including GRB (the "DP Original Complaint").

25. On or about October 5, 2017, the Delaware court appointed a liquidating trustee to oversee the dissolution of GRB. Neither Caesars nor Ramsay were parties to the dissolution proceedings.

26. Following certain motion practice in this Court, Planet Hollywood and Ramsay raised concerns about Seibel's ability to act derivatively on behalf of GRB in light of the Delaware proceedings.

27. The Order Dissolving GR BURGR LLC & Appointing Liquidating Trustee, [hereinafter "Dissolution Order"], provides that the Trustee "shall have all powers generally available to a trustee, custodian, or receiver appointed pursuant to 6 *Del. C.* § 18-803,<sup>3</sup> unless the

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<sup>2</sup> GRB, 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") are collectively referred to herein as the "Seibel-Affiliated Entities."

<sup>3</sup> 6 *Del. C.* § 18-803 provides that "[u]pon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in § 18-203 of this title, the persons winding up

exercise of any said power would be inconsistent with any specific provision of this Order or any other Order entered by the Court in this action."

28. The proposed trustee officially accepted appointment to represent GRB on December 13, 2017

29. After the Trustee was appointed, he requested an indefinite extension to respond to Caesars' complaint, but Caesars advised that it was unable to agree to an indefinite extension. Caesars offered to extend GRB's time to answer the complaint until February 15, 2018. The Trustee did not agree, and GRB failed to answer the complaint at that time.

30. On March 11, 2020, Caesars amended its complaint ("DP First Amended Complaint").

31. Despite serving the Trustee with a copy of the DP First Amended Complaint, the Trustee continued to refuse to participate in the litigation.

32. On April 6, 2020, a Report and Proposed Liquidation Plan for GRB was publicly filed in Delaware (the "GRB Report"). In the GRB Report, the GRB trustee identified claims not worth pursuing in the Nevada litigation, including claims related to (1) wrongful termination of the GRB Agreement; (2) breach of the implied covenant of good faith and fair dealing and the purported scheme to oust Seibel; and (3) breach of Section 14.21 of the GRB Agreement.

33. The Delaware court fully adopted the GRB Report on October 13, 2020.

34. On May 20, 2020, Caesars filed a notice of intent to take default against GRB. In response, the Trustee sent correspondence to this Court and the Delaware Court requesting that the courts "communicate and coordinate with each so that the proceedings in the two courts can be completed in an orderly fashion without the possibility of inconsistent adjudications relating to GRB." The trustee further stated that "GRB has never appeared in the Nevada litigation," "GRB has no discovery to offer," GRB has no assets to defend itself or to retain counsel to respond to a

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the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal or administrative . . . ."

1 default motion, and that the Delaware action should be allowed to proceed before actions are taken  
2 against GRB in Nevada.

3 35. At the risk of default, and after almost three years of litigation, on June 9, 2020,  
4 GRB filed a notice of appearance of counsel in this Court.

5 36. On June 19, 2020, GRB filed an answer to the DP First Amended Complaint.

6 37. On July 24, 2020, GRB served its initial disclosures, disclosing that (1) GRB has no  
7 witnesses; (2) GRB has no documents to produce; and (3) "GRB asserts no affirmative claims on  
8 its own behalf."

9 38. GRB never attended depositions and repeatedly refused to engage in discovery.

### 10 CONCLUSIONS OF LAW

11 1. Pursuant to Nevada law, summary judgment is appropriate and shall be rendered  
12 when the pleadings and other evidence on file demonstrate that no genuine issue as to any material  
13 fact remains and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*,  
14 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); NRCP 56(c). "The substantive law controls which  
15 factual disputes are material," not the party opposing summary judgment. *Wood*, 121 Nev. at 731,  
16 121 P.3d at 1031. Further, while all facts and evidence must be viewed in the light most favorable  
17 to the non-moving party, the opposing party may not build its case on the "gossamer threads of  
18 whimsy, speculation and conjecture." *Id.* at 731, 121 P.3d at 1030 (footnote and citations omitted).

19 2. "To successfully oppose a motion for summary judgment, the non-moving party  
20 must show specific facts, rather than general allegations and conclusions, presenting a genuine issue  
21 of material fact for trial." *LaMantia v. Redisi*, 118 Nev. 27, 29, 38 P.2d 877, 879 (2002). "The party  
22 opposing summary judgment must be able to point to specific facts showing that there is a genuine  
23 issue for trial." *Michael v. Sudeck*, 107 Nev. 332, 334, 810 P.2d 1212, 1213 (1981).

24 3. "The purpose of summary judgment is to avoid a needless trial when an appropriate  
25 showing is made in advance that there is no genuine issue of fact to be tried, and the movant is  
26 entitled to judgment as a matter of law." *McDonald v. D. Alexander & Las Vegas Boulevard, LLC*,  
27 121 Nev. 812, 815, 123 P. 3d 748, 750 (2005) (internal quotations omitted).

1           4.       Judicial admissions are defined as "deliberate, clear, unequivocal statements by a  
2 party about a concrete fact within that party's knowledge." *Reyburn Lawn & Landscape Designers,*  
3 *Inc. v. Plaster Dev. Co.*, 127 Nev. 331, 343, 255 P.3d 268, 276 (2011). They have "the effect of  
4 withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." *In re*  
5 *Barker*, 839 F.3d 1189, 1195 (9th Cir. 2016) (quoting *Am. Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d  
6 224, 226 (9th Cir. 1988)). "What constitutes a judicial admission should be determined by the  
7 circumstances of each case and evaluated in relation to the other testimony presented in order to  
8 prevent disposing of a case based on an unintended statement made by a nervous party." *Reyburn*,  
9 127 Nev. at 343, 255 P.3d at 276.

10           5.       "Judicial admissions are 'conclusively binding on the party who made them.'" *Id.*  
11 (quoting *Am. Title*, 861 F.2d at 226).

12           6.       "[S]tatements of fact contained in a brief may be considered admissions of the party  
13 in the discretion of the district court." *Am. Title*, 861 F.2d at 227. "For purposes of summary  
14 judgment, the courts have treated representations of counsel in a brief as admissions even though  
15 not contained in a pleading or affidavit." *Id.* at 226.

16           7.       Additionally, NRS 51.035(3), provides an exception to hearsay where a statement  
17 being offered against a party is:

- 18                   a. The party's own statement, in either the party's individual or a  
19                   representative capacity;
- 20                   b. A statement of which the party has manifested adoption or belief in  
21                   its truth;
- 22                   c. A statement by a person authorized by the party to make a statement  
23                   concerning the subject;
- 24                   d. A statement by the party's agent or servant concerning a matter  
25                   within the scope of the party's agency or employment, made before  
26                   the termination of the relationship; or
- 27                   e. A statement by a coconspirator of a party during the course and in  
28                   furtherance of the conspiracy.

26           8.       Courts "construe unambiguous contracts . . . according to their plain language."  
27 *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 487–88, 117 P.3d 219, 223–24 (2005).

28           9.       Here, GRB admitted that it has no affirmative claims in its initial disclosures.

1           10. In the GRB Report, the GRB trustee (*i.e.*, GRB's authorized agent) recognized that  
2 GRB's claims for breach of contract related to Caesars' proper and contractually authorized  
3 termination of the GRB Agreement, breach of the implied covenant of good faith and fair dealing,  
4 civil conspiracy, and breach of Section 14.21 of the GRB Agreement are "not worth pursuing."

5           11. Pursuant to Section 4.2.5, which governs termination resulting from unsuitability,  
6 the GRB "Agreement may be terminated by [Planet Hollywood] upon written notice to GRB and  
7 Gordon Ramsay having immediate effect as contemplated by Section 11.2."

8           12. Pursuant to Section 11.2, Caesars is granted the express right to determine whether  
9 a GR Associate is an Unsuitable Person, and whether the GRB Agreement must be terminated in  
10 its "sole discretion."

11           13. Planet Hollywood's determination that GRB was unsuitable based on Seibel's  
12 admitted criminal activities, felony conviction of engaging in corrupt endeavor to obstruct and  
13 impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212, and sentence to  
14 serve prison time for the same, was within Planet Hollywood's sole discretion under the  
15 GRB Agreement.

16           14. Seibel purported to "cure" the unsuitability through the creation of new entities, but  
17 Seibel secretly continued to hold both a beneficial and actual ownership interest in the new entities.  
18 However, the GRB Agreement (1) does not provide Seibel or GRB with an opportunity to cure; (2)  
19 nor does it provide Seibel or GRB with a unilateral right to sell Seibel's interests to a third party.

20           15. Even if the GRB provided Seibel or GRB with a right to cure his unsuitability, which  
21 the Court finds it did not, Seibel and GRB forfeited any such right through the fraudulent cure  
22 scheme and Seibel's continued association with the Seibel-Affiliated Entities.

23           16. Further, the GRB trustee agreed that "Caesars likely had the right to terminate the  
24 [GRB] Agreement because, in the Court's words, the situation is one of Seibel's 'own making" and  
25 "Caesars validly exercised its bargained-for discretion and Seibel's claim for the improper  
26 termination of the [GRB] Agreement is not likely to survive summary judgment."  
27  
28

1 17. GRB's admissions and contractual analysis, and this Court's prior rulings<sup>4</sup> support  
2 an order granting Planet Hollywood summary judgment on GRB's claim for breach of contract.

3 18. The covenant of good faith and fair dealing does not call for a different result.

4 19. An implied covenant of good faith and fair dealing exists in every Nevada contract  
5 and essentially forbids arbitrary, unfair acts by one party that disadvantage the other. " *Frantz v.*  
6 *Johnson*, 116 Nev. 455, 465, 999 P.2d 351, 358 (2000) (citing *Consol. Generator v. Cummins*  
7 *Engine*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998).

8 20. "When one party performs a contract in a manner that is unfaithful to the purpose of  
9 the contract and the justified expectations of the other party are thus denied, damages may be  
10 awarded against the party who does not act in good faith." *Hilton Hotels Corp. v. Butch Lewis*  
11 *Prods., Inc.*, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991).

12 21. "Reasonable expectations are to be 'determined by the various factors and special  
13 circumstances that shape these expectations.'" *Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d 335,  
14 338 (1995) (quoting *Hilton*, 107 Nev. at 234, 808 P.2d at 924).

15 22. Moreover, "one generally cannot base a claim for breach of the implied covenant on  
16 conduct authorized by the terms of the agreement." *Miller v. FiberLight, LLC*, 808 S.E.2d 75, 87  
17 (Ga. App. Ct. 2017) (quoting *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 441 (Del.  
18 2005)); *see also Vitek v. Bank of Am., N.A.*, No. 8:13-CV-816-JLS ANX, 2014 WL 1042397, at \*5  
19 (C.D. Cal. Jan. 23, 2014) (citation omitted) ("In general, acting in accordance with an express  
20 contractual provision does not amount to bad faith.").

21 23. In other words, 'a party does not act in bad faith by relying on contract provisions  
22 for which that party bargained where doing so simply limits advantages to another party.'" *Miller*,

23  
24  
25 <sup>4</sup> The Court granted in part and denied in part Planet Hollywood's Motion to Dismiss claims  
26 brought by Seibel on behalf of GRB stating that Seibel "failed to plead facts sufficient to support a  
27 breach of contract claim against Planet Hollywood for: (1) continuing to do business with Ramsay;  
28 (2) refusing to provide [GRB] with an opportunity to cure its affiliation with [Seibel]; and (3)  
attempting and/or planning to operate a rebranded restaurant. The plain language of the [GRB  
Agreement] precludes these claims as a matter of law. They must therefore be dismissed." (Order  
Granting in Part and Denying in part Planet Hollywood's Mot. to Dismiss, June 15, 2017, on file.)

1 343 Ga. App. at 607–08, 808 S.E.2d at 87 (quoting *Alpha Balanced Fund, LLLP v. Irongate*  
2 *Performance Fund, LLC*, 342 Ga. App. 93, 102–103 (1), 802 S.E.2d 357 (2017)).

3 24. Importantly, "when there is no factual basis for concluding that a defendant acted  
4 in bad faith, a court may determine the issue of bad faith as a matter of law." *Tennier v. Wells Fargo*  
5 *Bank, N.A.*, No. 3:14-CV-0035-LRH-VPC, 2015 WL 128672, at \*7 (D. Nev. Jan. 8, 2015) (quoting  
6 *Andrew v. Century Sur. Co.*, No. 2:12-cv- 0978, 2014 WL 1764740, at \*10 (D. Nev. Apr. 29,  
7 2014)).

8 25. Planet Hollywood did not violate the covenant of good faith and fair dealing when  
9 it terminated the GRB Agreement as a result of Seibel's unsuitability.

10 26. An actionable civil conspiracy 'consists of a combination of two or more persons  
11 who, by some concerted action, intend to accomplish an unlawful objective for the purpose of  
12 harming another, and damage resulting from the act or acts.'" *Consol. Generator-Nev., Inc. v.*  
13 *Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (quoting *Hilton*  
14 *Hotels*, 109 Nev. at 1048, 862 P.2d at 1210). "Summary judgment is appropriate if there is no  
15 evidence of an agreement or intent to harm the plaintiff." *Guilfoyle v. Olde Monmouth Stock*  
16 *Transfer Co., Inc.*, 130 Nev. 801, 813, 335 P.3d 190, 199 (2014).

17 27. Here, GRB failed to present any evidence to support its claim for civil conspiracy.  
18 Planet Hollywood complied with the express terms of the GRB Agreement when it determined that  
19 Seibel was an Unsuitable Person, that the conduct was not subject to cure and terminated the GRB  
20 Agreement. As a result, there was no unlawful objective upon which to anchor a conspiracy claim  
21 and GRB's civil conspiracy claim fails as a matter of law.

22 28. It is also well settled under Nevada law, that "[a] valid contract cannot exist when  
23 material terms are lacking or are insufficiently certain and definite." *May v. Anderson*, 121 Nev.  
24 668, 672, 119 P.3d 1254, 1257 (2005). "An agreement to agree at a future time is nothing and will  
25 not support an action for damages." *City of Reno v. Silver State Flying Serv., Inc.*, 84 Nev. 170,  
26 176, 438 P.2d 257, 261 (1968) (internal quotation omitted).

27 29. Additionally, "[i]t cannot be doubted at this day, nor is it denied, that a contract will  
28 not be enforced if it is against public policy, or that, if a part of the consideration of an entire contract



1 is illegal as against public policy or sound morals, the whole contract is void." *Gaston v. Drake*, 14  
2 Nev. 175, 181 (1879).

3 30. Section 14.21 of the GRB Agreement has indefinite and open terms and thus is an  
4 invalid and unenforceable agreement to agree. As such, this provision fails as a matter of law.

5 31. Further, any future agreement with GRB would violate gaming laws and put Planet  
6 Hollywood's gaming license in jeopardy, requiring Caesars to again terminate the agreement under  
7 the terms of Section 11.2. The benefits of not requiring a gaming licensee to contract with an  
8 Unsuitable Person clearly outweigh the benefits of enforcement, rendering Section 14.21  
9 unenforceable.

10 32. The Court has inherent authority to dismiss claims for lack of prosecution. *Hunter*  
11 *v. Gang*, 132 Nev. 249, 256, 377 P.3d 448, 453 (Nev. App. 2016) (citing *Harris v. Harris*, 65 Nev.  
12 342, 345-50, 196 P.2d 402, 403-06 (1948)). "The element necessary to justify failure to prosecute  
13 for lack of diligence on the part of the plaintiff, whether individually or through counsel." *Moore v.*  
14 *Cherry*, 90 Nev. 930, 935, 528 P.2d 1018, 1021 (1974). Importantly, "[t]he duty rests upon the  
15 plaintiff to use diligence and to expedite his case to a final determination." *Id.* at 395, 528 P.2d at  
16 1022; *see also Raine v. Ennor*, 39 Nev. 365, 372, 158 P. 133, 134 (1916).

17 33. Summary judgment is further appropriate against GRB on all its claims based on  
18 want of prosecution and/or the failure of GRB to actively prosecute its claims for relief for four (4)  
19 years.

20 34. To prevail on a claim for fraudulent concealment, the plaintiff must show that: "(1)  
21 the defendant concealed or suppressed a material fact; (2) the defendant was under a duty to disclose  
22 the fact to the plaintiff; (3) the defendant intentionally concealed or suppressed the fact with the  
23 intent to defraud the plaintiff; that is, the defendant concealed or suppressed the fact for the purpose  
24 of inducing the plaintiff to act differently than she would have if she had known the fact; (4) the  
25 plaintiff was unaware of the fact and would have acted differently if she had known of the concealed  
26 or suppressed fact; (5) and, as a result of the concealment or suppression of the fact, the plaintiff  
27 sustained damages." *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1485, 970 P.2d 98, 109–10 (1998),  
28

1 *abrogated on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (2001) (citing *Nev.*  
2 *Power Co. v. Monsanto Co.*, 891 F. Supp. 1406, 1415 (D.Nev.1995)).

3 35. As discussed above, "an actionable civil conspiracy 'consists of a combination of  
4 two or more persons who, by some concerted action, intend to accomplish an unlawful objective  
5 for the purpose of harming another, and damage results from the act or acts.'" *Consol. Generator-*  
6 *Nev., Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998)  
7 Importantly, "[a]ll conspirators need not be joined in an action to hold any of the conspirators liable,  
8 because conspiracy results in joint and several liability." *Envirotech, Inc. v. Thomas*, 259 S.W.3d  
9 577, 587 (Mo. Ct. App. 2008).

10 36. The express terms of the GRB Agreement required Seibel to disclose his criminal  
11 activities and conviction and Seibel admits that he did not disclose his guilty plea or the criminal  
12 conduct that led to it to Planet Hollywood. Summary judgment is thus appropriate for Planet  
13 Hollywood on its fraudulent concealment counterclaim and civil conspiracy counterclaim against  
14 Seibel based on Seibel's concealment of material facts regarding his federal prosecution and  
15 conviction.

16 37. Planet Hollywood suffered damages as a result of Seibel's actions and the necessary  
17 rebranding of the restaurant totaling \$168,781.00.

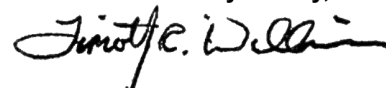
### 18 ORDER

19 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Caesars' MSJ No. 2  
20 shall be, and hereby is, GRANTED in its entirety and that judgment is entered in favor of Caesars  
21 and against GRB on all of GRB's claims.

22 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is  
23 entered in favor of Caesars and against Seibel on Caesars's fraudulent concealment counterclaim  
24 and civil conspiracy counterclaim against Seibel in the amount of \$168,781 plus pre and post-  
25 judgment interest.

26 IT IS SO ORDERED.

Dated this 31st day of May, 2022



D08 4B2 1DFF 6BFC  
Timothy C. Williams  
District Court Judge

AA07085

MH

Respectfully submitted by:

DATED May 25, 2022

PISANELLI BICE PLLC

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

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

Approved as to form and content by:

DATED May 25, 2022

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.  
Kevin M. Sutehall, Esq.  
FOX ROTHSCHILD LLP  
1980 Festival Plaza Drive, #700  
Las Vegas, NV 89135

*Attorneys for The Original Homestead Restaurant,*

Approved as to form and content by:

DATED May 25, 2022

FENNEMORE CRAIG, P.C.

By: /s/ John D. Tennert  
John D. Tennert, Esq. (SBN 11728)  
Wade Beavers, Esq. (SBN 13451)  
7800 Rancharra Parkway  
Reno, NV 89511  
*Attorneys for Gordon Ramsay*

## Cinda C. Towne

---

**From:** Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>  
**Sent:** Wednesday, May 25, 2022 4:36 PM  
**To:** Magali Mercera; Joshua Gilmore; Paul Williams; Tennert, John; Beavers, Wade  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

CAUTION: This message is from an EXTERNAL SENDER.

You may, thanks

---

**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Wednesday, May 25, 2022 5:11 PM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

Understood, Josh.

John and Alan – We updated our draft proposed findings of fact and conclusions of law to remove Bailey Kennedy from the signature block in light of their objections to the orders and updated the date to May. Please confirm that we may affix your e-signatures to these versions.

Thanks,

**M. Magali Mercera**

PISANELLI BICE, PLLC  
400 South 7th Street, Suite 300  
Las Vegas, Nevada 89101  
Telephone: (702) 214-2100  
Fax: (702) 214-2101  
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**From:** Joshua Gilmore <[JGilmore@baileykennedy.com](mailto:JGilmore@baileykennedy.com)>  
**Sent:** Tuesday, April 26, 2022 2:03 PM  
**To:** Magali Mercera <[mmm@pisanellibice.com](mailto:mmm@pisanellibice.com)>; Paul Williams <[PWilliams@baileykennedy.com](mailto:PWilliams@baileykennedy.com)>; Alan Lebensfeld <[Alan.Lebensfeld@lsandspc.com](mailto:Alan.Lebensfeld@lsandspc.com)>; Tennert, John <[jtennert@fennemorelaw.com](mailto:jtennert@fennemorelaw.com)>; Beavers, Wade <[WBeavers@fennemorelaw.com](mailto:WBeavers@fennemorelaw.com)>  
**Cc:** James Pisanelli <[jjp@pisanellibice.com](mailto:jjp@pisanellibice.com)>; Debra Spinelli <[dls@pisanellibice.com](mailto:dls@pisanellibice.com)>; Emily A. Buchwald <[eab@pisanellibice.com](mailto:eab@pisanellibice.com)>; Cinda C. Towne <[cct@pisanellibice.com](mailto:cct@pisanellibice.com)>; Susan Russo <[SRusso@baileykennedy.com](mailto:SRusso@baileykennedy.com)>  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

CAUTION: This message is from an EXTERNAL SENDER.

## Cinda C. Towne

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**From:** Tennert, John <jtennert@fennemorelaw.com>  
**Sent:** Wednesday, May 25, 2022 2:44 PM  
**To:** Magali Mercera; Joshua Gilmore; Paul Williams; Alan Lebensfeld; Beavers, Wade  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

CAUTION: This message is from an EXTERNAL SENDER.

Hi Magali,

You may affix my e-signature to both proposed orders.

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](mailto:jtennert@fennemorelaw.com) | [View Bio](#)



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---

**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Wednesday, May 25, 2022 2:11 PM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

Understood, Josh.

John and Alan – We updated our draft proposed findings of fact and conclusions of law to remove Bailey Kennedy from the signature block in light of their objections to the orders and updated the date to May. Please confirm that we may affix your e-signatures to these versions.

Thanks,

**M. Magali Mercera**  
PISANELLI BICE, PLLC

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**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the  
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
case as listed below:

14 Service Date: 5/31/2022

15 Robert Atkinson robert@nv-lawfirm.com

16 Kevin Sutehall ksutehall@foxrothschild.com

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25 PB Lit . lit@pisanellibice.com

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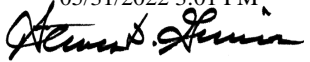
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3	Joshua Gilmore	jgilmore@baileykennedy.com
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**TAB 131**

  
CLERK OF THE COURT

**OGM**

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

*Attorneys for Desert Palace, Inc.;  
Paris Las Vegas Operating Company, LLC;  
PHWLV, 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.

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' REPLY TO  
DEVELOPMENT PARTIES' OMNIBUS  
SUPPLEMENT TO THEIR  
OPPOSITIONS TO MOTIONS FOR  
SUMMARY JUDGMENT FILED BY  
CAESARS AND RAMSAY AND SEAL  
EXHIBIT 115 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' Reply to Development Parties' Omnibus Supplement to their  
Oppositions to Motions for Summary Judgment Filed by Caesars and Ramsay and Seal Exhibit 115*

1 *There to* (the "Motion to Seal"), filed on January 13, 2022, came before this Court for hearing on  
2 March 9, 2022. M. Magali Mercera, Esq. of the of the law firm PISANELLI BICE PLLC, appeared  
3 on behalf of Caesars. Joshua P. Gilmore, Esq. of the law firm BAILEY KENNEDY, appeared on  
4 behalf of Rowen Seibel ("Seibel"), TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC  
5 ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG,  
6 LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), MOTI Partners 16,  
7 LLC ("MOTI 16"), Craig Green ("Green"), GR Burgr, LLC, and R Squared Global Solutions, LLC,  
8 derivatively on behalf of DNT Acquisition, LLC ("DNT"). John Tennert, Esq. of the law firm  
9 FENNEMORE CRAIG, appeared on behalf of Gordon Ramsay.

10       Upon review of the papers and pleadings on file in this matter, as proper service of the  
11 Motion to Seal has been provided, this Court notes no opposition has been filed. Accordingly,  
12 pursuant to EDCR 2.20(e), the Motion to Seal is deemed unopposed. The Court finds that portions  
13 of Caesars' Reply to Development Parties' Omnibus Supplement to their Oppositions to Motions  
14 for Summary Judgment, and Exhibit 115 thereto contain commercially sensitive information  
15 creating a compelling interest in protecting the information from widespread dissemination to the  
16 public which outweighs the public disclosure of said information in accordance with Rule 3(4) of  
17 the Nevada Supreme Court's Rules Governing Sealing and Redacting of Court Records. Therefore,  
18 good cause appearing:

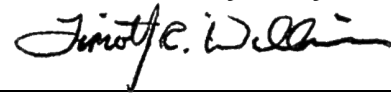
19       THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES that the Motion to Seal  
20 shall be, and hereby is, GRANTED as follows: Exhibit 115 to Caesars' Reply to Development  
21 Parties' Omnibus Supplement to their Oppositions to Motions for Summary Judgment is SEALED  
22 given the sensitive private, confidential and/or commercial information contained in the document,  
23 and the identified portions of the redacted version of Caesars' Reply to Development Parties'

24 ///

Omnibus Supplement to their Oppositions to Motions for Summary Judgment are APPROVED.

Dated this 31st day of May, 2022

IT IS SO ORDERED.



MH

**479 95F 65D7 AA62**

**Timothy C. Williams**  
**District Court Judge**

Respectfully submitted by:

Approved as to form and content by:

DATED May 26, 2022.

DATED May 26, 2022.

PISANELLI BICE PLLC

BAILEY ♦ KENNEDY

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

By: /s/ Joshua P. Gilmore  
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Dennis L. Kennedy, Esq., Bar No. 1462  
Joshua P. Gilmore, Esq., Bar No. 11576  
Paul C. Williams, Esq., Bar No. 12524  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148

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

Approved as to form and content by:

Approved as to form and content by:

DATED May 26, 2022.

DATED May 26, 2022.

LEBENSFELD SHARON & SCHWARTZ P.C.

FENNEMORE CRAIG, P.C.

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

By: /s/ John D. Tennert  
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Wade Beavers, Esq., Bar No. 13451  
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1980 Festival Plaza Drive, #700  
Las Vegas, NV 89135

*Attorneys for Gordon Ramsay*

*Attorneys for The Original Homestead  
Restaurant, Inc*

## Cinda C. Towne

---

**From:** Joshua Gilmore <JGilmore@baileykennedy.com>  
**Sent:** Thursday, May 26, 2022 9:07 AM  
**To:** Magali Mercera; Paul Williams; Alan Lebensfeld; Tennert, John; Beavers, Wade  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: Order Granting MTSR Caesars' Reply

CAUTION: This message is from an EXTERNAL SENDER.  
You may apply my e-signature. Thanks. Josh

Joshua P. Gilmore, Esq. | Bailey Kennedy, LLP  
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(702) 562-8820 (main) | (702) 789-4547 (direct) | [JGilmore@BaileyKennedy.com](mailto:JGilmore@BaileyKennedy.com)

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---

**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Wednesday, May 25, 2022 6:11 PM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>  
**Subject:** RE: Desert Palace v. Seibel: Order Granting MTSR Caesars' Reply

Thanks, Josh. I've made your requested changes as well as a few additional nits. Clean and redline versions are attached. Please advise if we may apply your e-signature.

Thanks,

**M. Magali Mercera**

PISANELLI BICE, PLLC  
400 South 7th Street, Suite 300  
Las Vegas, Nevada 89101  
Telephone: (702) 214-2100  
Fax: (702) 214-2101  
[mmm@pisanellibice.com](mailto:mmm@pisanellibice.com) | [www.pisanellibice.com](http://www.pisanellibice.com)



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---

**From:** Joshua Gilmore <JGilmore@baileykennedy.com>  
**Sent:** Wednesday, May 25, 2022 3:48 PM

## Cinda C. Towne

---

**From:** Tennert, John <jtennert@fennemorelaw.com>  
**Sent:** Thursday, May 26, 2022 10:28 AM  
**To:** Magali Mercera; Joshua Gilmore; Paul Williams; Alan Lebensfeld; Beavers, Wade  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: Order Granting MTSR Caesars' Reply

CAUTION: This message is from an EXTERNAL SENDER.

Hi Magali, you may apply my e-signature. Thanks,

John D. Tennert III, Director

---

# FENNEMORE.

7800 Rancharrah Parkway, Reno, NV 89511

T: 775.788.2212 | F: 775.788.2213

[jtennert@fennemorelaw.com](mailto:jtennert@fennemorelaw.com) | [View Bio](#)



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---

**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Thursday, May 26, 2022 10:20 AM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>  
**Subject:** RE: Desert Palace v. Seibel: Order Granting MTSR Caesars' Reply

Thanks, Josh.

John/Alan – May we apply your e-signatures?

### M. Magali Mercera

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## Cinda C. Towne

---

**From:** Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>  
**Sent:** Thursday, May 26, 2022 1:23 PM  
**To:** Magali Mercera  
**Cc:** Joshua Gilmore; Paul Williams; Tennert, John; Beavers, Wade; James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo  
**Subject:** Re: Desert Palace v. Seibel: Order Granting MTSR Caesars' Reply

CAUTION: This message is from an EXTERNAL SENDER.  
Yes

Sent From AML iPhone

On May 26, 2022, at 1:20 PM, Magali Mercera <mmm@pisanellibice.com> wrote:

Thanks, Josh.

John/Alan – May we apply your e-signatures?

**M. Magali Mercera**

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Las Vegas, Nevada 89101  
Telephone: (702) 214-2100  
Fax: (702) 214-2101  
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---

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**Sent:** Thursday, May 26, 2022 9:07 AM  
**To:** Magali Mercera <mmm@pisanellibice.com>; Paul Williams <PWilliams@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>  
**Subject:** RE: Desert Palace v. Seibel: Order Granting MTSR Caesars' Reply

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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**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order to Seal was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 5/31/2022

15 Robert Atkinson

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18 "John Tennert, Esq." .

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19 Brittnie T. Watkins .

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20 Dan McNutt .

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21 Debra L. Spinelli .

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24 Matt Wolf .

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25 PB Lit .

lit@pisanellibice.com

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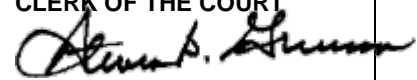


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Wade Beavers	wbeavers@fclaw.com
Sarah Hope	shope@fennemorelaw.com

TAB 132



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MMM@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.

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' REPLY TO DEVELOPMENT  
PARTIES' OMNIBUS SUPPLEMENT TO  
THEIR OPPOSITIONS TO MOTIONS  
FOR SUMMARY JUDGMENT FILED BY  
CAESARS AND RAMSAY AND SEAL  
EXHIBIT 115 THERETO**

AND ALL RELATED MATTERS

PLEASE TAKE NOTICE that an 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 was entered in the

above-captioned matter on May 31, 2022, a true and correct copy of which is attached hereto.

DATED this 2nd day of June 2022.

PISANELLI BICE PLLC

By: /s/ M. Magali Mercera  
James J. Pisanelli, Esq., #4027  
Debra L. Spinelli, Esq., #9695  
M. Magali Mercera, Esq., #11742  
400 South 7th Street, Suite 300  
Las Vegas, Nevada 89101

*Attorneys for Desert Palace, Inc.;  
Paris Las Vegas Operating Company, LLC;  
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 2nd day of June 2022, 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' REPLY TO DEVELOPMENT PARTIES' OMNIBUS SUPPLEMENT TO THEIR OPPOSITIONS TO MOTIONS FOR SUMMARY JUDGMENT FILED BY CAESARS AND RAMSAY AND SEAL EXHIBIT 115 THERETO** to the following:

John R. Bailey, Esq.  
Dennis L. Kennedy, Esq.  
Joshua P. Gilmore, Esq.  
Paul C. Williams, Esq.  
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[PWilliams@BaileyKennedy.com](mailto:PWilliams@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, and Nominal Plaintiff  
GR Burgr LLC*

John D. Tennert, Esq.  
Wade Beavers, Esq.  
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Reno, NV 89511  
[jtennert@fclaw.com](mailto:jtennert@fclaw.com)  
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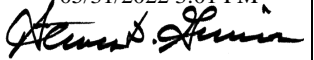
*Attorneys for Gordon Ramsay*

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Red Bank, NJ 07701  
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Mark J. Connot, Esq.  
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Las Vegas, NV 89135  
[mconnot@foxrothschild.com](mailto:mconnot@foxrothschild.com)  
[ksutehall@foxrothschild.com](mailto:ksutehall@foxrothschild.com)

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

/s/ Cinda Towne  
An employee of PISANELLI BICE PLLC

  
CLERK OF THE COURT

**OGM**

James J. Pisanelli, Esq., Bar No. 4027  
JJP@pisanellibice.com  
Debra L. Spinelli, Esq., Bar No. 9695  
DLS@pisanellibice.com  
M. Magali Mercera, Esq., Bar No. 11742  
MMM@pisanellibice.com  
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400 South 7th Street, Suite 300  
Las Vegas, Nevada 89101  
Telephone: 702.214.2100

*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' REPLY TO  
DEVELOPMENT PARTIES' OMNIBUS  
SUPPLEMENT TO THEIR  
OPPOSITIONS TO MOTIONS FOR  
SUMMARY JUDGMENT FILED BY  
CAESARS AND RAMSAY AND SEAL  
EXHIBIT 115 THERETO**

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," and collectively, with Caesars Palace, Paris, and Planet Hollywood, "Caesars,")  
*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*

1 *There to* (the "Motion to Seal"), filed on January 13, 2022, came before this Court for hearing on  
2 March 9, 2022. M. Magali Mercera, Esq. of the of the law firm PISANELLI BICE PLLC, appeared  
3 on behalf of Caesars. Joshua P. Gilmore, Esq. of the law firm BAILEY KENNEDY, appeared on  
4 behalf of Rowen Seibel ("Seibel"), TPOV Enterprises, LLC ("TPOV"), TPOV Enterprises 16, LLC  
5 ("TPOV 16"), LLTQ Enterprises, LLC ("LLTQ"), LLTQ Enterprises 16, LLC ("LLTQ 16"), FERG,  
6 LLC ("FERG"), FERG 16, LLC ("FERG 16"), MOTI Partners, LLC ("MOTI"), MOTI Partners 16,  
7 LLC ("MOTI 16"), Craig Green ("Green"), GR Burgr, LLC, and R Squared Global Solutions, LLC,  
8 derivatively on behalf of DNT Acquisition, LLC ("DNT"). John Tennert, Esq. of the law firm  
9 FENNEMORE CRAIG, appeared on behalf of Gordon Ramsay.

10       Upon review of the papers and pleadings on file in this matter, as proper service of the  
11 Motion to Seal has been provided, this Court notes no opposition has been filed. Accordingly,  
12 pursuant to EDCR 2.20(e), the Motion to Seal is deemed unopposed. The Court finds that portions  
13 of Caesars' Reply to Development Parties' Omnibus Supplement to their Oppositions to Motions  
14 for Summary Judgment, and Exhibit 115 thereto contain commercially sensitive information  
15 creating a compelling interest in protecting the information from widespread dissemination to the  
16 public which outweighs the public disclosure of said information in accordance with Rule 3(4) of  
17 the Nevada Supreme Court's Rules Governing Sealing and Redacting of Court Records. Therefore,  
18 good cause appearing:

19       THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES that the Motion to Seal  
20 shall be, and hereby is, GRANTED as follows: Exhibit 115 to Caesars' Reply to Development  
21 Parties' Omnibus Supplement to their Oppositions to Motions for Summary Judgment is SEALED  
22 given the sensitive private, confidential and/or commercial information contained in the document,  
23 and the identified portions of the redacted version of Caesars' Reply to Development Parties'

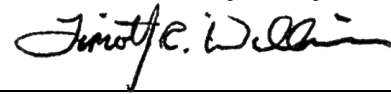
24 ///



Omnibus Supplement to their Oppositions to Motions for Summary Judgment are APPROVED.

Dated this 31st day of May, 2022

IT IS SO ORDERED.



MH

**479 95F 65D7 AA62**

**Timothy C. Williams**  
**District Court Judge**

Respectfully submitted by:

Approved as to form and content by:

DATED May 26, 2022.

DATED May 26, 2022.

PISANELLI BICE PLLC

BAILEY ♦ KENNEDY

By: /s/ M. Magali Mercera  
James J. Pisanelli, Esq., Bar No. 4027  
Debra L. Spinelli, Esq., Bar No. 9695  
M. Magali Mercera, Esq., Bar No. 11742  
400 South 7<sup>th</sup> Street, Suite 300  
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Joshua P. Gilmore, Esq., Bar No. 11576  
Paul C. Williams, Esq., Bar No. 12524  
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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*

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

Approved as to form and content by:

Approved as to form and content by:

DATED May 26, 2022.

DATED May 26, 2022.

LEBENSFELD SHARON & SCHWARTZ P.C.

FENNEMORE CRAIG, P.C.

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

By: /s/ John D. Tennert  
John D. Tennert, Esq., Bar No. 11728  
Wade Beavers, Esq., Bar No. 13451  
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Mark J. Connot, Esq.  
Kevin M. Sutehall, Esq.  
FOX ROTHSCHILD LLP  
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Las Vegas, NV 89135

*Attorneys for Gordon Ramsay*

*Attorneys for The Original Homestead  
Restaurant, Inc*

## Cinda C. Towne

---

**From:** Joshua Gilmore <JGilmore@baileykennedy.com>  
**Sent:** Thursday, May 26, 2022 9:07 AM  
**To:** Magali Mercera; Paul Williams; Alan Lebensfeld; Tennert, John; Beavers, Wade  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: Order Granting MTSR Caesars' Reply

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You may apply my e-signature. Thanks. Josh

Joshua P. Gilmore, Esq. | Bailey Kennedy, LLP  
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---

**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Wednesday, May 25, 2022 6:11 PM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>  
**Subject:** RE: Desert Palace v. Seibel: Order Granting MTSR Caesars' Reply

Thanks, Josh. I've made your requested changes as well as a few additional nits. Clean and redline versions are attached. Please advise if we may apply your e-signature.

Thanks,

**M. Magali Mercera**

PISANELLI BICE, PLLC  
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Las Vegas, Nevada 89101  
Telephone: (702) 214-2100  
Fax: (702) 214-2101  
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---

**From:** Joshua Gilmore <JGilmore@baileykennedy.com>  
**Sent:** Wednesday, May 25, 2022 3:48 PM

## Cinda C. Towne

---

**From:** Tennert, John <jtennert@fennemorelaw.com>  
**Sent:** Thursday, May 26, 2022 10:28 AM  
**To:** Magali Mercera; Joshua Gilmore; Paul Williams; Alan Lebensfeld; Beavers, Wade  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: Order Granting MTSR Caesars' Reply

CAUTION: This message is from an EXTERNAL SENDER.

Hi Magali, you may apply my e-signature. Thanks,

John D. Tennert III, Director

---

# FENNEMORE.

7800 Rancharrah Parkway, Reno, NV 89511

T: 775.788.2212 | F: 775.788.2213

[jtennert@fennemorelaw.com](mailto:jtennert@fennemorelaw.com) | [View Bio](#)



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**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Thursday, May 26, 2022 10:20 AM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>  
**Subject:** RE: Desert Palace v. Seibel: Order Granting MTSR Caesars' Reply

Thanks, Josh.

John/Alan – May we apply your e-signatures?

### M. Magali Mercera

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## Cinda C. Towne

---

**From:** Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>  
**Sent:** Thursday, May 26, 2022 1:23 PM  
**To:** Magali Mercera  
**Cc:** Joshua Gilmore; Paul Williams; Tennert, John; Beavers, Wade; James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo  
**Subject:** Re: Desert Palace v. Seibel: Order Granting MTSR Caesars' Reply

CAUTION: This message is from an EXTERNAL SENDER.  
Yes

Sent From AML iPhone

On May 26, 2022, at 1:20 PM, Magali Mercera <mmm@pisanellibice.com> wrote:

Thanks, Josh.

John/Alan – May we apply your e-signatures?

**M. Magali Mercera**

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---

**From:** Joshua Gilmore <JGilmore@baileykennedy.com>  
**Sent:** Thursday, May 26, 2022 9:07 AM  
**To:** Magali Mercera <mmm@pisanellibice.com>; Paul Williams <PWilliams@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>  
**Subject:** RE: Desert Palace v. Seibel: Order Granting MTSR Caesars' Reply

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(702) 562-8820 (main) | (702) 789-4547 (direct) | [JGilmore@BaileyKennedy.com](mailto:JGilmore@BaileyKennedy.com)

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
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**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order to Seal was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

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24 Matt Wolf .

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25 PB Lit .

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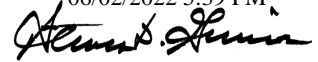
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John Tennert	jtennert@fennemorelaw.com
Wade Beavers	wbeavers@fclaw.com
Sarah Hope	shope@fennemorelaw.com

**TAB 133**



  
CLERK OF THE COURT

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

**STIPULATION AND ORDER OF  
DISMISSAL WITH PREJUDICE**

Desert Palace, Inc. ("Caesars Palace") and The Original Homestead Restaurant, Inc. ("OHR") have entered into a Settlement Agreement dated May 25, 2022 (the "Settlement Agreement"). Caesars Palace and OHR, by and through their undersigned counsel, hereby stipulate, pursuant to NRCP 41, to the dismissal with prejudice of OHR's Complaint in Intervention against Caesars Palace filed in the above-captioned action on October 24, 2018, including all claims asserted therein, with Caesars Palace and OHR each to bear their own fees and costs. Nothing in this Stipulation shall prevent Caesars Palace from prosecuting its claims against the remaining parties in this Action.

DATED this 27th day of May 2022.

PISANELLI BICE PLLC

LEBENSFELD SHARON & SCHWARTZ  
P.C.

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

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

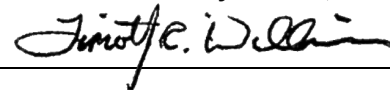
*Attorneys for Desert Palace, Inc.;  
Paris Las Vegas Operating Company, LLC;  
PHWL, LLC; and Boardwalk Regency  
Corporation d/b/a Caesars Atlantic City*

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

**ORDER**

IT IS SO ORDERED.

Dated this 2nd day of June, 2022



MH

9E9 FEB 0502 5597  
Timothy C. Williams  
District Court Judge

## Cinda C. Towne

---

**From:** Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>  
**Sent:** Friday, May 27, 2022 6:39 AM  
**To:** Magali Mercera  
**Cc:** ksutehall@foxrothschild.com; James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne  
**Subject:** Re: OHR v. DP: SAO to Dismiss Complaint in Intervention  
**Attachments:** SAO to Dismiss Complaint in Intervention - final.doc

CAUTION: This message is from an EXTERNAL SENDER.  
You may and thank you again for your assistance in getting this done.

Sent From AML iPhone

On May 26, 2022, at 8:54 PM, Magali Mercera <mmm@pisanellibice.com> wrote:

Hi Alan –

Attached please find the final stipulation to dismiss the complaint in intervention. I added the date of the settlement agreement (May 25, 2022) and I removed “or about” from page 2, line so that sentence reads that “filed in the above-captioned action *on October 24, 2018*” instead of “filed in the above-captioned action on or about October 24, 2018.”

Please confirm that we may apply your e-signature to the stipulation and we will submit it to the Court.

Best,

**M. Magali Mercera**

PISANELLI BICE, PLLC  
400 South 7th Street, Suite 300  
Las Vegas, Nevada 89101  
Telephone: (702) 214-2100  
Fax: (702) 214-2101  
[mmm@pisanellibice.com](mailto:mmm@pisanellibice.com) | [www.pisanellibice.com](http://www.pisanellibice.com)



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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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12 Court. The foregoing Stipulation and Order was served via the court's electronic eFile system  
13 to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 6/2/2022

15 Robert Atkinson robert@nv-lawfirm.com

16 Kevin Sutehall ksutehall@foxrothschild.com

17 "James J. Pisanelli, Esq." . lit@pisanellibice.com

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21 Debra L. Spinelli . dls@pisanellibice.com

22 Diana Barton . db@pisanellibice.com

23 Lisa Anne Heller . lah@cmlawnv.com

24 Matt Wolf . mcw@cmlawnv.com

25 PB Lit . lit@pisanellibice.com

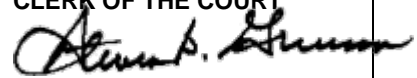
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8	Steven Chaiken	sbc@ag-ltd.com
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10	Brett Schwartz	brett.schwartz@lsandspc.com
11	Doreen Loffredo	dloffredo@foxrothschild.com
12	Mark Connot	mconnot@foxrothschild.com
13	Joshua Feldman	jfeldman@certilmanbalin.com
14	Nicole Milone	nmilone@certilmanbalin.com
15	Karen Hippner	karen.hippner@lsandspc.com
16	Lawrence Sharon	lawrence.sharon@lsandspc.com
17	Bailey Kennedy, LLP	bkfederaldownloads@baileykennedy.com
18	Magali Mercera	mmm@pisanellibice.com
19	Cinda Towne	cct@pisanellibice.com
20	Litigation Paralegal	bknotices@nv-lawfirm.com
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Monice Campbell	monice@envision.legal
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John Tennert	jtennert@fennemorelaw.com
Wade Beavers	wbeavers@fclaw.com
Sarah Hope	shope@fennemorelaw.com

**TAB 134**



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  
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Las Vegas, Nevada 89101  
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Facsimile: 702.214.2101

*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  
FOR SUMMARY JUDGMENT NO. 1**

AND ALL RELATED MATTERS

PLEASE TAKE NOTICE that a Findings of Fact, Conclusions of Law, and Order  
Granting Caesars' Motion for Summary Judgment No. 1 was entered in the above-captioned



1 matter on May 31, 2022, a true and correct copy of which is attached hereto.

2 DATED this 3rd day of June 2022.

3 PISANELLI BICE PLLC

4  
5 By: /s/ M. Magali Mercera  
6 James J. Pisanelli, Esq., #4027  
7 Debra L. Spinelli, Esq., #9695  
8 M. Magali Mercera, Esq., #11742  
9 400 South 7th Street, Suite 300  
10 Las Vegas, Nevada 89101

11 *Attorneys for Desert Palace, Inc.;*  
12 *Paris Las Vegas Operating Company, LLC;*  
13 *PHWLV, LLC; and Boardwalk Regency*  
14 *Corporation d/b/a Caesars Atlantic City*  
15  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 3rd day of June 2022, 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 FOR SUMMARY JUDGMENT NO. 1** to the following:

John R. Bailey, Esq.  
Dennis L. Kennedy, Esq.  
Joshua P. Gilmore, Esq.  
Paul C. Williams, 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, and Nominal Plaintiff  
GR Burgr LLC*

John D. Tennert, Esq.  
Wade Beavers, Esq.  
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[wbeavers@fclaw.com](mailto:wbeavers@fclaw.com)

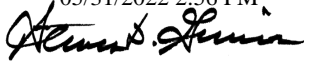
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*Attorneys for Plaintiff in Intervention  
The Original Homestead Restaurant, Inc.*

/s/ Cinda Towne  
An employee of PISANELLI BICE PLLC

  
CLERK OF THE COURT

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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

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER GRANTING  
CAESARS' MOTION FOR SUMMARY  
JUDGMENT NO. 1**

Date of Hearing: December 6, 2021

Time of Hearing: 1:30 p.m.

AND ALL RELATED MATTERS

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 ("Caesars Atlantic City," and collectively, with Caesars Palace, Paris, and Planet Hollywood, "Caesars,") *Motion for Summary Judgment No. 1* (the "MSJ No. 1"), filed on February 25, 2021, came before this Court for hearing on December 6, 2021, at 1:30 p.m.

**AA07122**

James J. Pisanelli, Esq., and M. Magali Mercera, Esq., of the law firm PISANELLI BICE PLLC, appeared telephonically on behalf of Caesars. Joshua P. Gilmore, 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"), GR Burgr, LLC ("GRB"), and DNT Acquisition, LLC ("DNT"), appearing derivatively by and through R Squared Global Solutions, LLC ("R Squared") (collectively the "Seibel-Affiliated Entities"), Rowen Seibel ("Seibel"), and Craig Green ("Green").<sup>1</sup> John Tennert, Esq., of the law firm FENNEMORE CRAIG, appeared telephonically on behalf of Gordon Ramsay ("Ramsay"). Alan Lebensfeld, of the law firm LEBENSFELD SHARON & SCHWARTZ P.C., appeared telephonically on behalf of The Original Homestead Restaurant.

The Court having considered MSJ No. 1, the opposition thereto, as well as argument of counsel presented at the hearing, taken the matter under advisement, and good cause appearing therefor, enters the following Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

The Court HEREBY FINDS AS FOLLOWS:

1. Caesars and its affiliates hold gaming licenses in Nevada and other jurisdictions across the country.

2. Nevada's gaming regulations provide that a gaming license will not be awarded unless the Nevada Gaming Commission is satisfied that the gaming license applicant (a) is "of good character, honesty, and integrity" (b) with "background, reputation and associations [that] will not result in adverse publicity for the State of Nevada and its gaming industry; and" (c) someone who "[h]as adequate business competence and experience for the role or position for which application is made." Nev. Gaming Regul. 3.090(1).

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<sup>1</sup> Seibel, Green, and the Seibel-Affiliated Entities are collectively referred to herein as the "Seibel Parties."

1           3.       Nevada gaming licensees are required to self-police and to act promptly if they learn  
2 of derogatory information about their own operations or those of their business associates.

3           4.       Caesars has established and operates an Ethics and Compliance Program (the  
4 "Compliance Plan") requiring Caesars to maintain the highest standards of conduct and association  
5 and guard its reputation to avoid even the slightest appearance of impropriety. To that end, Caesars  
6 is further required to avoid questionable associations with Unsuitable Persons which could tarnish  
7 Caesars' image, jeopardize its gaming licenses, or hamper its ability to expand into new markets.

8           5.       Pursuant to Caesars' Compliance Plan, Caesars' vendors, suppliers, and business  
9 partners, among others, must agree to abide by the same standards, business ethics, and principles  
10 expected of Caesars' employees. To that end, Caesars customarily includes clear and unambiguous  
11 language in its contracts with third parties that puts all such parties on notice that Caesars is in a  
12 highly regulated business and that such third parties must abide by suitability requirements.

13           6.       Beginning in 2009, Caesars began entering into contracts with Seibel and the Seibel-  
14 Affiliated Entities relating to the development, creation, and operation of various restaurants at  
15 Caesars properties in Las Vegas and Atlantic City.

16           7.       Caesars Palace and a Seibel-Affiliated Entity, MOTI, entered into an agreement on  
17 or about March 2009 relating to the Serendipity 3 restaurant in Las Vegas (the "MOTI Agreement").

18           8.       Caesars Palace and a Seibel-Affiliated Entity, DNT, entered into an agreement on  
19 or about June 2011 relating to the Original Homestead Restaurant in Las Vegas (the "DNT  
20 Agreement").

21           9.       Paris and a Seibel-Affiliated Entity, TPOV, entered into an agreement on or about  
22 November 2011 relating to the Gordon Ramsay Steak restaurant at the Paris Las Vegas (the "TPOV  
23 Agreement").

24           10.      Caesars Palace and a Seibel-Affiliated Entity, LLTQ, entered into an agreement on  
25 or about April 2012 relating to the Gordon Ramsay Pub & Grill at Caesars Palace in La Vegas (the  
26 "LLTQ Agreement").  
27  
28

11. Section 13.22 of the LLTQ Agreement contemplated potential future restaurants but Caesars Palace and LLTQ did not agree on material terms regarding future restaurants. Specifically, Section 13.22 provided that:

If Caesars elects under this Agreement to pursue any venture similar to (1) the Restaurant (i.e., any venture generally in the nature of a pub, bar, café, or tavern) or (ii) the "Restaurant" as defined in the development and operation agreement entered into December 5, 2011 between TPOV Enterprises, LLC (an affiliate of LLTQ), on the one hand, and Paris Las Vegas Operating Company, LLC, on the other hand (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), Caesars and LLTQ shall, or shall cause an Affiliate to, execute a development and operation agreement on the same terms and conditions as this Agreement, subject only to revisions proposed by Caesars or its Affiliate as are necessary to reflect the difference in location between the Restaurant and such other venture (including, for the avoidance of doubt, the Baseline Amount, permitted Operating Expenses and necessary Project Costs).

12. Planet Hollywood and a Seibel-Affiliated Entity, GRB, entered into an agreement on or about December 2012 relating to the GR Burgr restaurant at Planet Hollywood in Las Vegas (the "GRB Agreement").

13. Caesars Atlantic City and a Seibel-Affiliated Entity, FERG, entered into an agreement on or about May 2014 relating to the Gordon Ramsay Pub & Grill at Caesars Atlantic City (the "FERG Agreement").<sup>2</sup>

14. Section 4.1 of the FERG Agreement contemplated potential future restaurants but Caesars Atlantic City and FERG did not agree on material terms regarding future restaurants. Specifically, Section 4.1 provided that:

In the event, a new agreement is executed between [Caesars Atlantic City] and/or its Affiliate and Gordon Ramsay and/or his Affiliate relative to the Restaurant, or Restaurant Premises, this Agreement shall be in effect and binding on the parties during the term thereof.

15. Each of the Seibel Agreements contained representations, warranties, and conditions to ensure that Caesars was not involved in a business relationship with an unsuitable individual

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<sup>2</sup> The MOTI Agreement, DNT Agreement, TPOV Agreement, LLTQ Agreement, GRB Agreement, and FERG Agreement shall be collectively referred to hereinafter as the "Seibel Agreements."

1 and/or entity. Each of the Seibel agreements contained nearly identical language noting that each  
2 of the Seibel-Affiliated Entities acknowledged that Caesars and its affiliates were subject to and  
3 exists because of privileged licenses "issued U.S., state, local and foreign governmental, regulatory  
4 and administrative authorities, agencies, boards and officials (the "Gaming Authorities")  
5 responsible for or involved in the administration of application of laws, rules and regulations  
6 relating to gaming or gaming activities or the sale, distribution and possession of alcoholic  
7 beverages." (*See, e.g.*, Section 10.2 of the TPOV Agreement). The Seibel Agreements further  
8 provided that "[t]he Gaming Authorities require [Caesars], and [Caesars] deems it advisable, to  
9 have a compliance committee (the "Compliance Committee") that does its own background checks  
10 on, and issues approvals of Persons involved with [Caesars] and its Affiliates." (*See, e.g., id.*)

11 16. Each of the Seibel Agreements provided for severe consequences, up to and  
12 including termination of the agreements, if the Seibel-Affiliated Entities failed to abide their  
13 suitability obligations.

14 17. Under each of the Seibel Agreements, Caesars reserved the right in its sole and  
15 exclusive judgment to determine whether any Seibel-Affiliated Entity or Associate was an  
16 Unsuitable Person.

17 18. The Seibel Agreements also contained suitability disclosure obligations requiring  
18 the Seibel-Affiliated Entities to disclose certain information. Each of the Seibel Agreements  
19 contained nearly identical language providing that prior to the execution of the agreement and "on  
20 each anniversary of the Opening Date during the Term, (a) [the Seibel-Affiliated Entities] shall  
21 provide to [Caesars] written disclosure regarding the [Seibel-Affiliated Entities] Associates, and (b)  
22 the Compliance Committee shall have issued approvals of the [Seibel-Affiliated Entities]  
23 Associates." (*See, e.g.*, Section 10.2 of the TPOV Agreement). Further, "during the Term, on ten  
24 (10) calendar days written request by [Caesars] to [the Seibel-Affiliated Entities], [the Seibel-  
25 Affiliated Entities] shall disclose to [Caesars] all [the Seibel-Affiliated Entities] Associates." (*See,*  
26 *e.g., id.*) If any such disclosures became inaccurate, "within ten (10) calendar days from that event,  
27 update the prior disclosure without [Caesars] making any further request [the Seibel-Affiliated  
28 Entities] shall cause all [the Seibel-Affiliated Entities] Associates to provide all requested

information and apply for and obtain all necessary approvals required or requested by [Caesars] or the Gaming Authorities." (*See, e.g., id.*)

19. Caesars required that the Seibel-Affiliated Entities complete and submit to Caesars Business Information Forms ("BIFs"). In the BIFs, the Seibel-Affiliated Entities were required to disclose potentially derogatory information about their background and their suitability. Among other things, the BIFs required Seibel and the Seibel-Affiliated Entities to disclose whether any of their associated persons, including Seibel, had been convicted of any crimes, engaged in criminal activity, or were the subject of any criminal investigation.

20. In accordance with the MOTI Agreement, MOTI submitted a BIF (the "MOTI BIF").

21. The MOTI BIF did not disclose any criminal activities by Seibel.

22. In accordance with the DNT Agreement, DNT submitted a BIF (the "DNT BIF"). The DNT BIF did not disclose any criminal activity by Seibel.

23. As set forth in the Seibel Agreements, the suitability disclosures (*e.g.*, the BIFs) were required to be updated. Nevertheless, following submittal of the MOTI BIF and DNT BIF, neither MOTI nor DNT updated their respective BIFs to disclose any criminal activity by Seibel.

24. Neither Seibel nor the Seibel-Affiliated Entities submitted a BIF in connection with the TPOV Agreement, the LLTQ Agreement, the GRB Agreement, or the FERG Agreement. Caesars did not waive, release, or modify the disclosure obligations for any of the Seibel-Affiliated Entities.

25. Pursuant to the Seibel Agreements, if the Seibel-Affiliated Entities failed to comply with their disclosure obligations, Caesars reserved the right, in its sole discretion, to terminate the Seibel Agreements and its relationship with any of the Seibel Affiliated Entities. Specifically, each of the Seibel Agreements contained nearly identical language providing, in pertinent part, that:

If any [Seibel-Affiliated Entity] Associate fails to satisfy or such requirement, if [Caesars] or any of [Caesars'] Affiliates are directed to cease business with any [Seibel-Affiliated Entity] Associate by any Gaming Authority, or if [Caesars] shall determine, in [Caesars'] sole and exclusive judgment, that any [Seibel-Affiliated Entity] Associate is an Unsuitable Person, whether as a result of a [Seibel-Affiliated Entity] Change of Control or otherwise, then (a) [the Seibel-Affiliated Entity] shall terminate any relationship with the Person who is the source of such issue, (b) [the



Seibel-Affiliated Entity] shall cease the activity or relationship creating the issue to [Caesars'] satisfaction, in [Caesars'] sole judgment, or (c) if such activity or relationship is not subject to cure as set forth in the foregoing clauses (a) and (b), as determined by [Caesars] in its sole discretion, [Caesars] shall, without prejudice to any other rights or remedies of [Caesars] including at law or in equity, have the right to terminate th[e] Agreement and its relationship with [the Seibel-Affiliated Entity]. [The Seibel-Affiliated Entity] further acknowledges that [Caesars] shall have the absolute right to terminate this Agreement in the event any Gaming Authority requires [Caesars] or one of its Affiliates to do so. Any termination by [Caesars] pursuant to this Section . . . shall not be subject to dispute by [the Seibel-Affiliated Entity] and shall not be the subject of any proceeding . . . .

26. Per the express language of the Seibel Agreements, Caesars' determination and termination of the Seibel Agreements were not subject to dispute by the Seibel-Affiliated Entities

27. In April 2016, Seibel pleaded guilty to one count of corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws because, in Seibel's own words, he was in fact guilty of the crime.

28. Prior to his guilty plea, and despite a January 2016 tolling agreement with the U.S. government entered into to allow Seibel "to manage his financial affairs in an optimal way prior to entering a guilty plea," neither Seibel nor any of the Seibel-Affiliated Entities notified Caesars of any of the facts underlying the charges against him, or that Seibel planned to plead guilty to a felony. Siebel did not update any of the mandatory suitability disclosures.

29. Rather than disclosing these crimes to Caesars, before pleading guilty, Seibel undertook at scheme to create the appearance of disassociating from certain Seibel Agreements<sup>3</sup> by (1) creating new entities to which he was purportedly assigning the interests in the Seibel Agreements; (2) creating the Seibel Family 2016 Trust to receive the income from said entities; and (3) entering into a prenuptial agreement with his soon to be wife.

30. Seibel, with his attorneys, and Green, created new entities to which he purportedly assigned the Seibel Agreements.

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<sup>3</sup> As set forth in the Court's Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion for Summary Judgment No. 2, Seibel attempted to assign his interest in GRB to The Seibel Family 2016 Trust (the "Trust"). In order to do so, Seibel needed GRUS, the other member of GRB, to consent to such an assignment. However, Seibel did not inform GRUS or Gordon Ramsay that the reason he sought to assign his interest was because he planned to plead guilty to a felony in the coming week and GRUS did not consent to the assignment.

1           31. While not mentioning or disclosing his criminal activity or impending guilty plea,  
2 Seibel sent letters to Caesars representing that the Seibel Agreements would be assigned to those  
3 new entities whose membership interests were mostly owned by the Seibel Family 2016 Trust.

4           32. Seibel represented to Caesars that the sole beneficiaries of the Seibel Family 2016  
5 Trust were Netty Wachtel Slushny, Bryn Dorfman, and potential descendants of Seibel, and that  
6 "[o]ther than the parties described in th[e] letter[s], there [were] no other parties that have any  
7 management rights, powers or responsibilities regarding, or equity or financial interests in" the new  
8 entities.

9           33. Those representations were all false and were made with the intent to deceive  
10 Caesars.

11           34. At or around the same time, Seibel negotiated a prenuptial agreement with his soon-  
12 to-be wife that would require her to share distributions she received from the Seibel Family 2016  
13 Trust with Seibel and ensure that the entities assigned to the Trust would remain Seibel's separate  
14 property. Seibel did not disclose this association with Caesars.

15           35. On or about August 19, 2016, Seibel was sentenced for his crimes, served time in a  
16 federal penitentiary, and was required to pay fines and restitution, and perform community service.

17           36. At the time Caesars entered into the Seibel Agreements, Seibel did not disclose to  
18 Caesars that he had been engaged in criminal activity.

19           37. At the time Seibel became aware that he was being investigated for crimes related  
20 to violations of federal tax laws, Seibel did not disclose to Caesars that he was being investigated  
21 for engaging in criminal activity.

22           38. Seibel did not disclose to Caesars that he pleaded guilty to one count of corrupt  
23 endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. §  
24 7212, a Class E Felony.

25           39. Seibel did not disclose to Caesars that he was sentenced to serve time in federal  
26 prison as a result of his guilty plea and conviction for engaging in a corrupt endeavor to obstruct  
27 and impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212, a Class E  
28 Felony.

44. The Nevada gaming regulators agreed with Caesars' actions, concluding that Caesars appropriately addressed the matter as the Nevada gaming regulators would expect from a gaming licensee.

1. Pursuant to Nevada law, summary judgment is appropriate and shall be rendered when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); NRCP 56(c). "The party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007) (citation omitted). "If such a showing is made, then the party opposing summary judgment assumes a burden of production to show the existence of a genuine issue of material fact." *Id.*, 172 P.3d at 134.

2. "[T]o defeat summary judgment, the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact." *Id.*, 172 P.3d 131, 134 (2007) (citation omitted). Importantly, the nonmoving party can no longer merely raise the "slightest doubt" to avoid summary judgment. *Wood*, 121 Nev. at 731, 121 P.3d at 1031. Rather, the nonmoving party must present genuine issues of material fact to

1 avoid summary judgment. *Id.*, 121 P.3d at 1031. The nonmoving party cannot merely "build a case  
2 on the gossamer threads of whimsy, speculation, and conjecture." *Id.*, 121 P.3d at 1031

3 3. Under Nevada law, "[a]ny person interested under [a written contract] or whose  
4 rights, status or other legal relations are affected by a [contract] may have determined any question  
5 of construction or validity arising under the [contract] and obtain a declaration of rights, status or  
6 other legal relations thereunder." NRS § 30.040(1). "In the absence of ambiguity or other factual  
7 complexities, contract interpretation presents a question of law that the district court may decide on  
8 summary judgment." *Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013)  
9 (citations omitted). "As a general rule, [courts] construe unambiguous contracts . . . according to  
10 their plain language." *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 487–88, 117 P.3d  
11 219, 223–24 (2005).

12 4. Each of the Seibel Agreements contains valid and enforceable provisions that  
13 Caesars reserved the right to terminate the agreements if it found, in its sole and exclusive  
14 discretion, that any of the Seibel Affiliated Entities or their associates were an Unsuitable Person.

15 5. Caesars' determination that the Seibel-Affiliated Entities were unsuitable based on  
16 Seibel's admitted criminal activities, *i.e.*, a felony conviction for engaging in corrupt endeavor to  
17 obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212, and  
18 sentence to serve prison time for the same, was within Caesars' sole discretion under the Seibel  
19 Agreements.

20 6. Caesars properly exercised its discretion in terminating the Seibel Agreements.

21 7. Caesars did not breach the Seibel Agreements.

22 8. Seibel and the Seibel entities breached the Seibel Agreements by not disclosing that  
23 Seibel had engaged in criminal activities, pleaded guilty to and been convicted of engaging in  
24 corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26  
25 U.S.C. § 7212, and been sentenced to serve prison as a result of that crime.

26 9. Seibel and the Seibel-Affiliated Entities purported to "cure" the unsuitability through  
27 the creation of new entities, but Seibel secretly continued to hold both a beneficial and actual  
28 ownership interest in the new entities. However, the Seibel Agreements (1) do not provide Seibel

1 or the Seibel-Affiliated Entities with an opportunity to cure; (2) nor do they provide Seibel or a  
2 Seibel-Affiliated Entity with a unilateral right to sell Seibel's interests to a third party.

3 10. Even if the Seibel Agreements provided Seibel or the Seibel-Affiliated Entities a  
4 right to cure his unsuitability, which the Court finds it did not, Seibel and the Seibel-Affiliated  
5 Entities forfeited any such right through the fraudulent cure scheme and Seibel's continued  
6 association with the Seibel-Affiliated Entities.

7 11. "A breach of the [implied] covenant [of good faith and fair dealing] occurs '[w]here  
8 the terms of a contract are literally complied with but one party to the contract deliberately  
9 contravenes the intention and spirit of the contract. . . .'" *Gamboa v. World Sav. Bank, FSB*, No.  
10 3:10-CV-454-ECR-VPC, 2010 WL 5071166, at \*2 (D. Nev. Dec. 6, 2010) (quoting *Hilton Hotels*  
11 *Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 232, 808 P.2d 919, 922-23 (1991)). "[W]hen there  
12 is no factual basis for concluding that a defendant acted in bad faith, a court may determine the  
13 issue of bad faith as a matter of law." *Tennier v. Wells Fargo Bank, N.A.*, No. 3:14-CV-0035-LRH-  
14 VPC, 2015 WL 128672, at \*7 (D. Nev. Jan. 8, 2015) (quoting *Andrew v. Century Sur. Co.*, No.  
15 2:12-cv-0978, 2014 WL 1764740, at \*10 (D. Nev. Apr. 29, 2014).

16 12. While every agreement has an implied covenant of good faith and fair dealing, that  
17 implied covenant generally cannot contradict an *express* contract provision. *See, e.g., Kuiava v.*  
18 *Kwasniewski*, 126 Nev. 731, 367 P.3d 791 (2010) (unpublished disposition), citing with approval  
19 *Kucharczyk v. Regents of Univ. of Cal.*, 946 F. Supp. 1419, 1432 (N.D. Cal. 1996) (noting that the  
20 implied covenant of good faith and fair dealing may not be used to imply a term that is contradicted  
21 by an express term of the contract); *see also Gerdlund v. Elec. Dispensers Int'l*, 235 Cal. Rptr. 279,  
22 286 (Ct. App. 1987) (internal quotations omitted) ("No obligation can be implied, however, which  
23 would result in the obliteration of a right expressly given under a written contract.")

24 13. "There cannot be a valid express contract and an implied contract, each embracing  
25 the same subject, but requiring different results." *Gerdlund*, 235 Cal. Rptr. at 286 (internal  
26 quotations omitted); *see also Melnick v. State Farm Mut. Auto. Ins. Co.*, 749 P.2d 1105, 1110 (N.M.  
27 1988) ("We cannot change or modify the language of an otherwise legal contract for the benefit of  
28 one party and to the detriment of another.").

14. Moreover, "one generally cannot base a claim for breach of the implied covenant on conduct authorized by the terms of the agreement." *Miller v. FiberLight, LLC*, 808 S.E.2d 75, 87 (Ga. App. Ct. 2017) (quoting *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 441 (Del. 2005)); *see also Vitek v. Bank of Am., N.A.*, No. 8:13-CV-816-JLS ANX, 2014 WL 1042397, at \*5 (C.D. Cal. Jan. 23, 2014) (citation omitted) ("In general, acting in accordance with an express contractual provision does not amount to bad faith."). "In other words, 'a party does not act in bad faith by relying on contract provisions for which that party bargained where doing so simply limits advantages to another party.'" *Miller*, 343 Ga. App. at 607–08, 808 S.E.2d at 87 (quoting *Alpha Balanced Fund, LLLP v. Irongate Performance Fund, LLC*, 802 S.E.2d 357 (Ga. 2017)).

15. Importantly, "when there is no factual basis for concluding that a defendant acted in bad faith, a court may determine the issue of bad faith as a matter of law." *Tennier v. Wells Fargo Bank, N.A.*, No. 3:14-CV-0035-LRH-VPC, 2015 WL 128672, at \*7 (D. Nev. Jan. 8, 2015) (quoting *Andrew v. Century Sur. Co.*, No. 2:12-cv- 0978, 2014 WL 1764740, at \*10 (D. Nev. Apr. 29, 2014)).

16. The "implied promise of good faith and fair dealing is 'reciprocal,' a 'two-way street' which demands mutual compliance from the contracting parties." *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 791 F.2d 1356, 1361 (9th Cir. 1986) (citation omitted). Indeed, there is "no justice in permitting a plaintiff to complain of unfair dealing in a [t]ransaction when he himself has not fulfilled in good faith his contractual obligations with regard to that transaction." *Id.* at 1362 (citation omitted).

17. Caesars' termination of the Seibel Agreements after learning that Seibel had engaged in criminal activities, pleaded guilty to and been convicted of engaging in corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212, and been sentenced to serve prison as a result of that crime, does not constitute a breach of the covenant of good faith and fair dealing.

18. In addition, Seibel and the Seibel-Affiliated Entities are barred from arguing Caesars acted in bad faith by their committing the first breach and Seibel's own acts of bad faith, including

not only the felony conviction and the conduct leading up to it, but also the misrepresentation of purported disassociation through the new entities to which he purported to assign his interests.

19. Finally, Seibel's unsuitability renders the future restaurant provisions void as a result of his unsuitability to do business with a gaming licensee.

20. Under Nevada law, that "[a]n agreement to agree at a future time is nothing and will not support an action for damages." *City of Reno v. Silver State Flying Serv., Inc.*, 84 Nev. 170, 176, 438 P.2d 257, 261 (1968) (quoting *Salomon v. Cooper*, 98 Cal. App. 2d 521, 220 P.2d 774 (1950)). "There is no dispute that neither law nor equity provides a remedy for breach of an agreement to agree in the future." *Autry v. Republic Prods.*, 30 Cal. 2d 144, 151, 180 P.2d 888, 893 (1947). Indeed, "[s]uch a contract cannot be made the basis of a cause of action." *Id.*, 180 P.2d at 893 (citations omitted). "Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting of the minds, and consideration." *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). "With respect to contract formation, preliminary negotiations do not constitute a binding contract unless the parties have agreed to all material terms." *Id.*, 119 P.3d at 1257.

21. Section 13.22 of the LLTQ Agreement has indefinite and open terms and thus is an invalid and unenforceable agreement to agree. As such, this provision fails as a matter of law.

22. Section 4.2 of the FERG Agreement has indefinite and open terms and thus is an invalid and unenforceable agreement to agree. As such, this provision fails as a matter of law.

23. Section 13.22 of the LLTQ Agreement and Section 4.2 of the FERG Agreement are further unenforceable because the Seibel-Affiliated Entities would be unable to comply with the suitability obligations required by contract and gaming regulations rendering them agreements against public policy and void as a matter of law.

### ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Caesars' MSJ No. 1 shall be, and hereby is, GRANTED in its entirety and that judgment is entered in favor of Caesars on Counts I, II, and III of Caesars First Amended Complaint.

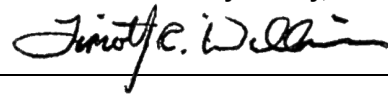
1 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Caesars is  
2 entitled to declarations that:

- 3 (1) Caesars Palace properly terminated the MOTI Agreement, the DNT  
4 Agreement, and the LLTQ Agreement;
- 5 (2) Paris properly terminated the TPOV Agreement;
- 6 (3) PHWLV properly terminated the GRB Agreement;
- 7 (4) Caesars Atlantic City properly terminated the FERG Agreement;
- 8 (5) Caesars does not have any current or future financial obligations or  
9 commitments to Seibel or any of the Seibel-Affiliated Entities;
- 10 (6) Section 13.22 of the LLTQ Agreement is unenforceable and Caesars does  
11 not have any current or future obligations pursuant to that provision or  
12 otherwise that would prohibit or limit existing or future restaurant ventures  
13 between Caesars and Gordon Ramsay; and
- 14 (7) Section 4.1 of the FERG Agreement is unenforceable and Caesars does not  
15 have any current or future obligations pursuant to that provision or  
16 otherwise that would prohibit or limit existing or future restaurant ventures  
17 between Caesars and Gordon Ramsay.

18 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is  
19 entered in favor Caesars on Counts I and II of DNT's counterclaim, and on Counts I, II, III and IV  
20 of LLTQ, LLTQ 16, FERG, and FERG 16's counterclaims, which seek an accounting of monies  
21 purportedly owed under the DNT, LLTQ, and FERG Agreements and allege breaches of contract  
22 related to the ongoing operation of certain restaurants. Because all Seibel Agreements were properly  
23 terminated by Caesars as found herein, these counterclaims fail as a matter of law and judgment is  
24 appropriate in favor of Caesars.

25 IT IS SO ORDERED.

Dated this 31st day of May, 2022



MH

2AA A93 02DD E0B1  
Timothy C. Williams  
District Court Judge



Respectfully submitted by:

DATED May 25, 2022

PISANELLI BICE PLLC

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

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

Approved as to form and content by:

DATED May 25, 2022

LEBENSFELD SHARON & SCHWARTZ P.C.

By: /s/ Alan M. Lebensfeld  
Alan M. Lebensfeld, Esq.  
(admitted *pro hac vice*)  
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Red Bank, New Jersey 07701

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

*Attorneys for The Original Homestead Restaurant*

Approved as to form and content by:

DATED May 25, 2022

FENNEMORE CRAIG, P.C.

By: /s/ John D. Tennert  
John D. Tennert, Esq. (SBN 11728)  
Wade Beavers, Esq. (SBN 13451)  
7800 Rancharra Parkway  
Reno, NV 89511  
*Attorneys for Gordon Ramsay*

## Cinda C. Towne

---

**From:** Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>  
**Sent:** Wednesday, May 25, 2022 4:36 PM  
**To:** Magali Mercera; Joshua Gilmore; Paul Williams; Tennert, John; Beavers, Wade  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

CAUTION: This message is from an EXTERNAL SENDER.

You may, thanks

---

**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Wednesday, May 25, 2022 5:11 PM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

Understood, Josh.

John and Alan – We updated our draft proposed findings of fact and conclusions of law to remove Bailey Kennedy from the signature block in light of their objections to the orders and updated the date to May. Please confirm that we may affix your e-signatures to these versions.

Thanks,

**M. Magali Mercera**

PISANELLI BICE, PLLC  
400 South 7th Street, Suite 300  
Las Vegas, Nevada 89101  
Telephone: (702) 214-2100  
Fax: (702) 214-2101  
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---

**From:** Joshua Gilmore <[JGilmore@baileykennedy.com](mailto:JGilmore@baileykennedy.com)>  
**Sent:** Tuesday, April 26, 2022 2:03 PM  
**To:** Magali Mercera <[mmm@pisanellibice.com](mailto:mmm@pisanellibice.com)>; Paul Williams <[PWilliams@baileykennedy.com](mailto:PWilliams@baileykennedy.com)>; Alan Lebensfeld <[Alan.Lebensfeld@lsandspc.com](mailto:Alan.Lebensfeld@lsandspc.com)>; Tennert, John <[jtennert@fennemorelaw.com](mailto:jtennert@fennemorelaw.com)>; Beavers, Wade <[WBeavers@fennemorelaw.com](mailto:WBeavers@fennemorelaw.com)>  
**Cc:** James Pisanelli <[jjp@pisanellibice.com](mailto:jjp@pisanellibice.com)>; Debra Spinelli <[dls@pisanellibice.com](mailto:dls@pisanellibice.com)>; Emily A. Buchwald <[eab@pisanellibice.com](mailto:eab@pisanellibice.com)>; Cinda C. Towne <[cct@pisanellibice.com](mailto:cct@pisanellibice.com)>; Susan Russo <[SRusso@baileykennedy.com](mailto:SRusso@baileykennedy.com)>  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

CAUTION: This message is from an EXTERNAL SENDER.

## Cinda C. Towne

---

**From:** Tennert, John <jtennert@fennemorelaw.com>  
**Sent:** Wednesday, May 25, 2022 2:44 PM  
**To:** Magali Mercera; Joshua Gilmore; Paul Williams; Alan Lebensfeld; Beavers, Wade  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

CAUTION: This message is from an EXTERNAL SENDER.

Hi Magali,

You may affix my e-signature to both proposed orders.

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](mailto:jtennert@fennemorelaw.com) | [View Bio](#)



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---

**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Wednesday, May 25, 2022 2:11 PM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

Understood, Josh.

John and Alan – We updated our draft proposed findings of fact and conclusions of law to remove Bailey Kennedy from the signature block in light of their objections to the orders and updated the date to May. Please confirm that we may affix your e-signatures to these versions.

Thanks,

**M. Magali Mercera**  
PISANELLI BICE, PLLC

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**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the  
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
case as listed below:

14 Service Date: 5/31/2022

15 Robert Atkinson robert@nv-lawfirm.com

16 Kevin Sutehall ksutehall@foxrothschild.com

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18 "John Tennert, Esq." . jtennert@fclaw.com

19 Brittanie T. Watkins . btw@pisanellibice.com

20 Dan McNutt . drm@cmlawnv.com

21 Debra L. Spinelli . dls@pisanellibice.com

22 Diana Barton . db@pisanellibice.com

23 Lisa Anne Heller . lah@cmlawnv.com

24 Matt Wolf . mcw@cmlawnv.com

25 PB Lit . lit@pisanellibice.com

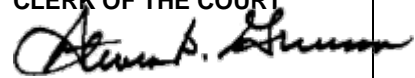
26  
27  
28 **AA07139**

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TAB 135



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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  
FOR SUMMARY JUDGMENT NO. 2**

AND ALL RELATED MATTERS

PLEASE TAKE NOTICE that a Findings of Fact, Conclusions of Law, and Order  
Granting Caesars' Motion for Summary Judgment No. 2 was entered in the above-captioned



matter on May 31, 2022, a true and correct copy of which is attached hereto.

DATED this 3rd day of June 2022.

PISANELLI BICE PLLC

By: /s/ M. Magali Mercera  
James J. Pisanelli, Esq., #4027  
Debra L. Spinelli, Esq., #9695  
M. Magali Mercera, Esq., #11742  
400 South 7th Street, Suite 300  
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*Attorneys for Desert Palace, Inc.;  
Paris Las Vegas Operating Company, LLC;  
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 June 2022, 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 FOR SUMMARY JUDGMENT NO. 2** to the following:

John R. Bailey, Esq.  
Dennis L. Kennedy, Esq.  
Joshua P. Gilmore, Esq.  
Paul C. Williams, Esq.  
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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, and Nominal Plaintiff  
GR Burgr LLC*

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Wade Beavers, Esq.  
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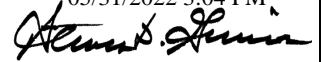
*Attorneys for Gordon Ramsay*

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[ksutehall@foxrothschild.com](mailto:ksutehall@foxrothschild.com)

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

/s/ Cinda Towne  
An employee of PISANELLI BICE PLLC

  
CLERK OF THE COURT

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*Attorneys for Desert Palace, Inc.;  
Paris Las Vegas Operating Company, LLC;  
PHWLV, 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.

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

Defendants,

and

GR BURGR LLC, a Delaware limited liability  
company,

Nominal Plaintiff.

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER GRANTING  
CAESARS' MOTION FOR SUMMARY  
JUDGMENT NO. 2**

Date of Hearing: December 6, 2021

Time of Hearing: 1:30 p.m.

AND ALL RELATED MATTERS

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 ("Caesars Atlantic City," and collectively, with Caesars Palace, Paris, and Planet Hollywood, "Caesars,") *for Summary Judgment No. 2* (the "MSJ No. 2"), filed on February 25, 2021, came before this Court for hearing on December 6, 2021, at 1:30 p.m.

**AA07145**

James J. Pisanelli, Esq., and M. Magali Mercera, Esq., of the law firm PISANELLI BICE PLLC, appeared telephonically on behalf of Caesars. Joshua P. Gilmore, 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"), GR Burgr, LLC ("GRB"), and DNT Acquisition, LLC ("DNT"), appearing derivatively by and through R Squared Global Solutions, LLC ("R Squared") (collectively the "Seibel-Affiliated Entities"), Rowen Seibel ("Seibel"), and Craig Green ("Green").<sup>1</sup> John Tennert, Esq., of the law firm FENNEMORE CRAIG, appeared telephonically on behalf of Gordon Ramsay ("Ramsay"). Alan Lebensfeld, of the law firm LEBENSFELD SHARON & SCHWARTZ P.C., appeared telephonically on behalf of The Original Homestead Restaurant.

The Court having considered MSJ No. 2, the opposition thereto, as well as argument of counsel presented at the hearing, taken the matter under advisement, and good cause appearing therefor, enters the following Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

The Court HEREBY FINDS AS FOLLOWS:

1. Planet Hollywood and its affiliates hold gaming licenses in Nevada and other jurisdictions across the country.

2. Nevada's gaming regulations provide that a gaming license will not be awarded unless the Nevada Gaming Commission is satisfied that the gaming license applicant (a) is "of good character, honesty, and integrity" (b) with "background, reputation and associations [that] will not result in adverse publicity for the State of Nevada and its gaming industry; and" (c) someone who "[h]as adequate business competence and experience for the role or position for which application is made." Nev. Gaming Regul. 3.090(1).

---

<sup>1</sup> Seibel, Green, and the Seibel-Affiliated Entities are collectively referred to herein as the "Seibel Parties."

1           3.       Nevada gaming licensees are required to self-police and to act promptly if they learn  
2 of derogatory information about their own operations or those of their business associates.

3           4.       Caesars has established and operates an Ethics and Compliance Program (the  
4 "Compliance Plan") requiring Caesars to maintain the highest standards of conduct and association  
5 and guard its reputation to avoid even the slightest appearance of impropriety. To that end, Caesars  
6 is further required to avoid questionable associations with Unsuitable Persons which could tarnish  
7 Caesars' image, jeopardize its gaming licenses, or hamper its ability to expand into new markets.

8           5.       Pursuant to Caesars' Compliance Plan, Caesars' vendors, suppliers, and business  
9 partners, among others, must agree to abide by the same standards, business ethics, and principles  
10 expected of Caesars' employees. To that end, Planet Hollywood includes clear and unambiguous  
11 language in its contracts with third parties that puts all such parties on notice that Planet Hollywood  
12 is in a highly regulated business and that such third parties must abide by gaming suitability  
13 requirements.

14           6.       Beginning in 2009, Caesars began entering into contracts with Seibel and the Seibel-  
15 Affiliated Entities relating to the development, creation, and operation of various restaurants in Las  
16 Vegas and Atlantic City (the "Seibel Agreements").

17           7.       Planet Hollywood, GRB (a Seibel-Affiliated Entity), and Gordon Ramsay, entered  
18 into an agreement on or about December 2012 relating to the GR Burgr restaurant at Planet  
19 Hollywood in Las Vegas (the "GRB Agreement"). Section 14.21 of the GRB Agreement  
20 contemplated potential future restaurants but the parties did not agree on material terms regarding  
21 future restaurants. Specifically, Section 14.21 provided that:

22           If [Planet Hollywood] elects to pursue any venture similar to the Restaurant  
23 (*i.e.*, any venture generally in the nature of a burger centric or burger themed  
24 restaurant), GRB shall, or shall cause an Affiliate to, execute a development,  
25 operation and license agreement generally on the same terms and conditions as this  
26 Agreement, subject only to revisions agreed to by the parties, including revisions  
27 as are necessary to reflect the differences in such things as location, Project Costs,  
28 Initial Capital Investment, Operating Expenses and the potential for Gross  
Restaurant Sales between the Restaurant and such other venture and any resulting  
Section 8.1 threshold adjustments

1           8.       The GRB Agreement also contained representations, warranties, and conditions to  
2 ensure that Planet Hollywood was not involved in a business relationship with an unsuitable  
3 individual and/or entity.

4           9.       Section 11.2 of the GRB Agreement provided, in pertinent part:

5           Each of Gordon Ramsay and GRB acknowledges that [Planet Hollywood] and PH's  
6 Affiliates are businesses that are or may be subject to and exist because of  
7 privileged licenses issued U.S., state, local and foreign governmental, regulatory  
8 and administrative authorities, agencies, boards and officials (the "Gaming  
9 Authorities") responsible for or involved in the administration of application of  
10 laws, rules and regulations relating to gaming or gaming activities or the sale,  
distribution and possession of alcoholic beverages. The Gaming Authorities require  
PH, and [Planet Hollywood] deems it advisable, to have a compliance committee  
(the "Compliance Committee") that does its own background checks on, and issues  
approvals of, Persons involved with [Planet Hollywood] and its Affiliates.

11           10.       Because issues of suitability affect Planet Hollywood's gaming license, Planet  
12 Hollywood expressly contracted for the sole and absolute discretion to terminate the GRB  
13 Agreement should GRB or its Affiliates — a term that includes Seibel — become an "Unsuitable  
14 Person."

15           11.       Specifically, Section 4.2.5 of the GRB Agreement provides that the "[a]greement  
16 may be terminated by [Planet Hollywood] upon written notice to GRB and Gordon Ramsay having  
17 immediate effect as contemplated by Section 11.2." In turn, Section 11.2 explicitly provides that  
18 Planet Hollywood has the right, in its "sole and exclusive judgment," to determine that a GR  
19 Associate is an Unsuitable Person under the Agreement.

20           12.       Section 11.2 of the GRB Agreement further required that Gordon Ramsay and GRB  
21 update their disclosures without Planet Hollywood prompting if anything became inaccurate or  
22 material changes occurred. Specifically, the GRB Agreement required that prior to the execution of  
23 the agreement and

24           on each anniversary of the Opening Date during the Term, (a) each of  
25 Gordon Ramsay and GRB shall provide to PH written disclosure regarding  
26 the GR Associates, and (b) the Compliance Committee shall have issued  
27 approvals of the LLTQ Associates. Additionally, during the Term, on ten  
28 (10) calendar days written request by PH to Gordon Ramsay and GRB,  
Gordon Ramsay and GRB shall disclose to Caesars all GR Associates. To  
the extent that any prior disclosure becomes inaccurate, Gordon Ramsay  
and GRB shall, within ten (10) calendar days from that event, update the  
prior disclosure without PH making any further request. Each of Gordon

Ramsay and GRB shall cause all GR Associates to provide all requested information and apply for and obtain all necessary approvals required or requested by PH or the Gaming Authorities.

13. Planet Hollywood did not waive, release, or modify the disclosure obligations for Ramsay or GRB.

14. In April 2016, Seibel pleaded guilty to one count of corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws because, in Seibel's own words, he was in fact guilty of the crime.

15. Prior to his guilty plea, and despite a January 2016 tolling agreement with the U.S. government entered into to allow Seibel "to manage his financial affairs in an optimal way prior to entering a guilty plea," neither Seibel nor any of the Seibel-Affiliated Entities notified Planet Hollywood of any of the facts underlying the charges against him, or that Seibel planned to plead guilty to a felony. Seibel did not update any of the mandatory suitability disclosures.

16. Before news of Seibel's conviction became public, and one week prior to pleading guilty, Seibel attempted to assign his interest in GRB to The Seibel Family 2016 Trust (the "Trust"). In order to do so, Seibel needed GRUS, the other member of GRB, to consent to such an assignment. However, Seibel did not inform GRUS or Gordon Ramsay that the reason he sought to assign his interest was because he planned to plead guilty to a felony in the coming week. Ultimately, GRUS did not consent to the assignment.

17. On or about August 19, 2016, Seibel was sentenced for his crimes, served time in a federal penitentiary, and was required to pay fines and restitution, and perform community service. Following Seibel's sentencing, Planet Hollywood found out through news reports that Seibel pleaded guilty to a felony and was sentenced to serve time in federal prison as a result of his crimes.

18. After learning of Seibel's guilty plea and conviction, Planet Hollywood determined that Seibel was unsuitable pursuant to the GRB Agreement and applicable Nevada gaming laws and regulations.

19. After determining that Seibel was unsuitable, Planet Hollywood exercised its contractual right to terminate the GRB Agreement as it was expressly allowed to do under Section 11.2 after GRB did not disassociate from Seibel.

20. Upon discovering Seibel's unsuitability, Planet Hollywood self-reported and disclosed the information of Seibel's unsuitability to Nevada gaming regulators, including its termination of the GRB Agreement and disassociation with an unsuitable person.

21. The Nevada gaming regulators agreed with Planet Hollywood's actions, concluding that Planet Hollywood appropriately addressed the matter as the Nevada gaming regulators would expect from a gaming licensee.

22. After Planet Hollywood terminated the GRB Agreement, GRUS filed a petition for judicial dissolution on or about October 13, 2016, in the Court of Chancery of the State of Delaware.

23. On February 28, 2017, Seibel filed a complaint purportedly derivatively on behalf of GRB against Planet Hollywood and Ramsay for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and civil conspiracy.

24. On August 25, 2017, Caesars filed its complaint for declaratory relief against the Seibel-Affiliated Entities,<sup>2</sup> including GRB (the "DP Original Complaint").

25. On or about October 5, 2017, the Delaware court appointed a liquidating trustee to oversee the dissolution of GRB. Neither Caesars nor Ramsay were parties to the dissolution proceedings.

26. Following certain motion practice in this Court, Planet Hollywood and Ramsay raised concerns about Seibel's ability to act derivatively on behalf of GRB in light of the Delaware proceedings.

27. The Order Dissolving GR BURGR LLC & Appointing Liquidating Trustee, [hereinafter "Dissolution Order"], provides that the Trustee "shall have all powers generally available to a trustee, custodian, or receiver appointed pursuant to 6 *Del. C.* § 18-803,<sup>3</sup> unless the

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<sup>2</sup> GRB, 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") are collectively referred to herein as the "Seibel-Affiliated Entities."

<sup>3</sup> 6 *Del. C.* § 18-803 provides that "[u]pon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in § 18-203 of this title, the persons winding up



exercise of any said power would be inconsistent with any specific provision of this Order or any other Order entered by the Court in this action."

28. The proposed trustee officially accepted appointment to represent GRB on December 13, 2017

29. After the Trustee was appointed, he requested an indefinite extension to respond to Caesars' complaint, but Caesars advised that it was unable to agree to an indefinite extension. Caesars offered to extend GRB's time to answer the complaint until February 15, 2018. The Trustee did not agree, and GRB failed to answer the complaint at that time.

30. On March 11, 2020, Caesars amended its complaint ("DP First Amended Complaint").

31. Despite serving the Trustee with a copy of the DP First Amended Complaint, the Trustee continued to refuse to participate in the litigation.

32. On April 6, 2020, a Report and Proposed Liquidation Plan for GRB was publicly filed in Delaware (the "GRB Report"). In the GRB Report, the GRB trustee identified claims not worth pursuing in the Nevada litigation, including claims related to (1) wrongful termination of the GRB Agreement; (2) breach of the implied covenant of good faith and fair dealing and the purported scheme to oust Seibel; and (3) breach of Section 14.21 of the GRB Agreement.

33. The Delaware court fully adopted the GRB Report on October 13, 2020.

34. On May 20, 2020, Caesars filed a notice of intent to take default against GRB. In response, the Trustee sent correspondence to this Court and the Delaware Court requesting that the courts "communicate and coordinate with each so that the proceedings in the two courts can be completed in an orderly fashion without the possibility of inconsistent adjudications relating to GRB." The trustee further stated that "GRB has never appeared in the Nevada litigation," "GRB has no discovery to offer," GRB has no assets to defend itself or to retain counsel to respond to a

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the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal or administrative . . . ."

1 default motion, and that the Delaware action should be allowed to proceed before actions are taken  
2 against GRB in Nevada.

3 35. At the risk of default, and after almost three years of litigation, on June 9, 2020,  
4 GRB filed a notice of appearance of counsel in this Court.

5 36. On June 19, 2020, GRB filed an answer to the DP First Amended Complaint.

6 37. On July 24, 2020, GRB served its initial disclosures, disclosing that (1) GRB has no  
7 witnesses; (2) GRB has no documents to produce; and (3) "GRB asserts no affirmative claims on  
8 its own behalf."

9 38. GRB never attended depositions and repeatedly refused to engage in discovery.

### 10 CONCLUSIONS OF LAW

11 1. Pursuant to Nevada law, summary judgment is appropriate and shall be rendered  
12 when the pleadings and other evidence on file demonstrate that no genuine issue as to any material  
13 fact remains and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*,  
14 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); NRCP 56(c). "The substantive law controls which  
15 factual disputes are material," not the party opposing summary judgment. *Wood*, 121 Nev. at 731,  
16 121 P.3d at 1031. Further, while all facts and evidence must be viewed in the light most favorable  
17 to the non-moving party, the opposing party may not build its case on the "gossamer threads of  
18 whimsy, speculation and conjecture." *Id.* at 731, 121 P.3d at 1030 (footnote and citations omitted).

19 2. "To successfully oppose a motion for summary judgment, the non-moving party  
20 must show specific facts, rather than general allegations and conclusions, presenting a genuine issue  
21 of material fact for trial." *LaMantia v. Redisi*, 118 Nev. 27, 29, 38 P.2d 877, 879 (2002). "The party  
22 opposing summary judgment must be able to point to specific facts showing that there is a genuine  
23 issue for trial." *Michael v. Sudeck*, 107 Nev. 332, 334, 810 P.2d 1212, 1213 (1981).

24 3. "The purpose of summary judgment is to avoid a needless trial when an appropriate  
25 showing is made in advance that there is no genuine issue of fact to be tried, and the movant is  
26 entitled to judgment as a matter of law." *McDonald v. D. Alexander & Las Vegas Boulevard, LLC*,  
27 121 Nev. 812, 815, 123 P. 3d 748, 750 (2005) (internal quotations omitted).

1           4.       Judicial admissions are defined as "deliberate, clear, unequivocal statements by a  
2 party about a concrete fact within that party's knowledge." *Reyburn Lawn & Landscape Designers,*  
3 *Inc. v. Plaster Dev. Co.*, 127 Nev. 331, 343, 255 P.3d 268, 276 (2011). They have "the effect of  
4 withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." *In re*  
5 *Barker*, 839 F.3d 1189, 1195 (9th Cir. 2016) (quoting *Am. Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d  
6 224, 226 (9th Cir. 1988)). "What constitutes a judicial admission should be determined by the  
7 circumstances of each case and evaluated in relation to the other testimony presented in order to  
8 prevent disposing of a case based on an unintended statement made by a nervous party." *Reyburn*,  
9 127 Nev. at 343, 255 P.3d at 276.

10           5.       "Judicial admissions are 'conclusively binding on the party who made them.'" *Id.*  
11 (quoting *Am. Title*, 861 F.2d at 226).

12           6.       "[S]tatements of fact contained in a brief may be considered admissions of the party  
13 in the discretion of the district court." *Am. Title*, 861 F.2d at 227. "For purposes of summary  
14 judgment, the courts have treated representations of counsel in a brief as admissions even though  
15 not contained in a pleading or affidavit." *Id.* at 226.

16           7.       Additionally, NRS 51.035(3), provides an exception to hearsay where a statement  
17 being offered against a party is:

- 18                   a. The party's own statement, in either the party's individual or a  
19                   representative capacity;
- 20                   b. A statement of which the party has manifested adoption or belief in  
21                   its truth;
- 22                   c. A statement by a person authorized by the party to make a statement  
23                   concerning the subject;
- 24                   d. A statement by the party's agent or servant concerning a matter  
25                   within the scope of the party's agency or employment, made before  
26                   the termination of the relationship; or
- 27                   e. A statement by a coconspirator of a party during the course and in  
28                   furtherance of the conspiracy.

26           8.       Courts "construe unambiguous contracts . . . according to their plain language."  
27 *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 487–88, 117 P.3d 219, 223–24 (2005).

28           9.       Here, GRB admitted that it has no affirmative claims in its initial disclosures.

1           10. In the GRB Report, the GRB trustee (*i.e.*, GRB's authorized agent) recognized that  
2 GRB's claims for breach of contract related to Caesars' proper and contractually authorized  
3 termination of the GRB Agreement, breach of the implied covenant of good faith and fair dealing,  
4 civil conspiracy, and breach of Section 14.21 of the GRB Agreement are "not worth pursuing."

5           11. Pursuant to Section 4.2.5, which governs termination resulting from unsuitability,  
6 the GRB "Agreement may be terminated by [Planet Hollywood] upon written notice to GRB and  
7 Gordon Ramsay having immediate effect as contemplated by Section 11.2."

8           12. Pursuant to Section 11.2, Caesars is granted the express right to determine whether  
9 a GR Associate is an Unsuitable Person, and whether the GRB Agreement must be terminated in  
10 its "sole discretion."

11           13. Planet Hollywood's determination that GRB was unsuitable based on Seibel's  
12 admitted criminal activities, felony conviction of engaging in corrupt endeavor to obstruct and  
13 impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212, and sentence to  
14 serve prison time for the same, was within Planet Hollywood's sole discretion under the  
15 GRB Agreement.

16           14. Seibel purported to "cure" the unsuitability through the creation of new entities, but  
17 Seibel secretly continued to hold both a beneficial and actual ownership interest in the new entities.  
18 However, the GRB Agreement (1) does not provide Seibel or GRB with an opportunity to cure; (2)  
19 nor does it provide Seibel or GRB with a unilateral right to sell Seibel's interests to a third party.

20           15. Even if the GRB provided Seibel or GRB with a right to cure his unsuitability, which  
21 the Court finds it did not, Seibel and GRB forfeited any such right through the fraudulent cure  
22 scheme and Seibel's continued association with the Seibel-Affiliated Entities.

23           16. Further, the GRB trustee agreed that "Caesars likely had the right to terminate the  
24 [GRB] Agreement because, in the Court's words, the situation is one of Seibel's 'own making" and  
25 "Caesars validly exercised its bargained-for discretion and Seibel's claim for the improper  
26 termination of the [GRB] Agreement is not likely to survive summary judgment."  
27  
28

1 17. GRB's admissions and contractual analysis, and this Court's prior rulings<sup>4</sup> support  
2 an order granting Planet Hollywood summary judgment on GRB's claim for breach of contract.

3 18. The covenant of good faith and fair dealing does not call for a different result.

4 19. An implied covenant of good faith and fair dealing exists in every Nevada contract  
5 and essentially forbids arbitrary, unfair acts by one party that disadvantage the other. " *Frantz v.*  
6 *Johnson*, 116 Nev. 455, 465, 999 P.2d 351, 358 (2000) (citing *Consol. Generator v. Cummins*  
7 *Engine*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998).

8 20. "When one party performs a contract in a manner that is unfaithful to the purpose of  
9 the contract and the justified expectations of the other party are thus denied, damages may be  
10 awarded against the party who does not act in good faith." *Hilton Hotels Corp. v. Butch Lewis*  
11 *Prods., Inc.*, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991).

12 21. "Reasonable expectations are to be 'determined by the various factors and special  
13 circumstances that shape these expectations.'" *Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d 335,  
14 338 (1995) (quoting *Hilton*, 107 Nev. at 234, 808 P.2d at 924).

15 22. Moreover, "one generally cannot base a claim for breach of the implied covenant on  
16 conduct authorized by the terms of the agreement." *Miller v. FiberLight, LLC*, 808 S.E.2d 75, 87  
17 (Ga. App. Ct. 2017) (quoting *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 441 (Del.  
18 2005)); *see also Vitek v. Bank of Am., N.A.*, No. 8:13-CV-816-JLS ANX, 2014 WL 1042397, at \*5  
19 (C.D. Cal. Jan. 23, 2014) (citation omitted) ("In general, acting in accordance with an express  
20 contractual provision does not amount to bad faith.").

21 23. In other words, 'a party does not act in bad faith by relying on contract provisions  
22 for which that party bargained where doing so simply limits advantages to another party.'" *Miller*,

23  
24  
25 <sup>4</sup> The Court granted in part and denied in part Planet Hollywood's Motion to Dismiss claims  
26 brought by Seibel on behalf of GRB stating that Seibel "failed to plead facts sufficient to support a  
27 breach of contract claim against Planet Hollywood for: (1) continuing to do business with Ramsay;  
28 (2) refusing to provide [GRB] with an opportunity to cure its affiliation with [Seibel]; and (3)  
attempting and/or planning to operate a rebranded restaurant. The plain language of the [GRB  
Agreement] precludes these claims as a matter of law. They must therefore be dismissed." (Order  
Granting in Part and Denying in part Planet Hollywood's Mot. to Dismiss, June 15, 2017, on file.)

1 343 Ga. App. at 607–08, 808 S.E.2d at 87 (quoting *Alpha Balanced Fund, LLLP v. Irongate*  
2 *Performance Fund, LLC*, 342 Ga. App. 93, 102–103 (1), 802 S.E.2d 357 (2017)).

3 24. Importantly, "when there is no factual basis for concluding that a defendant acted  
4 in bad faith, a court may determine the issue of bad faith as a matter of law." *Tennier v. Wells Fargo*  
5 *Bank, N.A.*, No. 3:14-CV-0035-LRH-VPC, 2015 WL 128672, at \*7 (D. Nev. Jan. 8, 2015) (quoting  
6 *Andrew v. Century Sur. Co.*, No. 2:12-cv- 0978, 2014 WL 1764740, at \*10 (D. Nev. Apr. 29,  
7 2014)).

8 25. Planet Hollywood did not violate the covenant of good faith and fair dealing when  
9 it terminated the GRB Agreement as a result of Seibel's unsuitability.

10 26. An actionable civil conspiracy 'consists of a combination of two or more persons  
11 who, by some concerted action, intend to accomplish an unlawful objective for the purpose of  
12 harming another, and damage resulting from the act or acts.'" *Consol. Generator-Nev., Inc. v.*  
13 *Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (quoting *Hilton*  
14 *Hotels*, 109 Nev. at 1048, 862 P.2d at 1210). "Summary judgment is appropriate if there is no  
15 evidence of an agreement or intent to harm the plaintiff." *Guilfoyle v. Olde Monmouth Stock*  
16 *Transfer Co., Inc.*, 130 Nev. 801, 813, 335 P.3d 190, 199 (2014).

17 27. Here, GRB failed to present any evidence to support its claim for civil conspiracy.  
18 Planet Hollywood complied with the express terms of the GRB Agreement when it determined that  
19 Seibel was an Unsuitable Person, that the conduct was not subject to cure and terminated the GRB  
20 Agreement. As a result, there was no unlawful objective upon which to anchor a conspiracy claim  
21 and GRB's civil conspiracy claim fails as a matter of law.

22 28. It is also well settled under Nevada law, that "[a] valid contract cannot exist when  
23 material terms are lacking or are insufficiently certain and definite." *May v. Anderson*, 121 Nev.  
24 668, 672, 119 P.3d 1254, 1257 (2005). "An agreement to agree at a future time is nothing and will  
25 not support an action for damages." *City of Reno v. Silver State Flying Serv., Inc.*, 84 Nev. 170,  
26 176, 438 P.2d 257, 261 (1968) (internal quotation omitted).

27 29. Additionally, "[i]t cannot be doubted at this day, nor is it denied, that a contract will  
28 not be enforced if it is against public policy, or that, if a part of the consideration of an entire contract

1 is illegal as against public policy or sound morals, the whole contract is void." *Gaston v. Drake*, 14  
2 Nev. 175, 181 (1879).

3 30. Section 14.21 of the GRB Agreement has indefinite and open terms and thus is an  
4 invalid and unenforceable agreement to agree. As such, this provision fails as a matter of law.

5 31. Further, any future agreement with GRB would violate gaming laws and put Planet  
6 Hollywood's gaming license in jeopardy, requiring Caesars to again terminate the agreement under  
7 the terms of Section 11.2. The benefits of not requiring a gaming licensee to contract with an  
8 Unsuitable Person clearly outweigh the benefits of enforcement, rendering Section 14.21  
9 unenforceable.

10 32. The Court has inherent authority to dismiss claims for lack of prosecution. *Hunter*  
11 *v. Gang*, 132 Nev. 249, 256, 377 P.3d 448, 453 (Nev. App. 2016) (citing *Harris v. Harris*, 65 Nev.  
12 342, 345-50, 196 P.2d 402, 403-06 (1948)). "The element necessary to justify failure to prosecute  
13 for lack of diligence on the part of the plaintiff, whether individually or through counsel." *Moore v.*  
14 *Cherry*, 90 Nev. 930, 935, 528 P.2d 1018, 1021 (1974). Importantly, "[t]he duty rests upon the  
15 plaintiff to use diligence and to expedite his case to a final determination." *Id.* at 395, 528 P.2d at  
16 1022; *see also Raine v. Ennor*, 39 Nev. 365, 372, 158 P. 133, 134 (1916).

17 33. Summary judgment is further appropriate against GRB on all its claims based on  
18 want of prosecution and/or the failure of GRB to actively prosecute its claims for relief for four (4)  
19 years.

20 34. To prevail on a claim for fraudulent concealment, the plaintiff must show that: "(1)  
21 the defendant concealed or suppressed a material fact; (2) the defendant was under a duty to disclose  
22 the fact to the plaintiff; (3) the defendant intentionally concealed or suppressed the fact with the  
23 intent to defraud the plaintiff; that is, the defendant concealed or suppressed the fact for the purpose  
24 of inducing the plaintiff to act differently than she would have if she had known the fact; (4) the  
25 plaintiff was unaware of the fact and would have acted differently if she had known of the concealed  
26 or suppressed fact; (5) and, as a result of the concealment or suppression of the fact, the plaintiff  
27 sustained damages." *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1485, 970 P.2d 98, 109–10 (1998),  
28

1 *abrogated on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (2001) (citing *Nev.*  
2 *Power Co. v. Monsanto Co.*, 891 F. Supp. 1406, 1415 (D.Nev.1995)).

3 35. As discussed above, "an actionable civil conspiracy 'consists of a combination of  
4 two or more persons who, by some concerted action, intend to accomplish an unlawful objective  
5 for the purpose of harming another, and damage results from the act or acts.'" *Consol. Generator-*  
6 *Nev., Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998)  
7 Importantly, "[a]ll conspirators need not be joined in an action to hold any of the conspirators liable,  
8 because conspiracy results in joint and several liability." *Envirotech, Inc. v. Thomas*, 259 S.W.3d  
9 577, 587 (Mo. Ct. App. 2008).

10 36. The express terms of the GRB Agreement required Seibel to disclose his criminal  
11 activities and conviction and Seibel admits that he did not disclose his guilty plea or the criminal  
12 conduct that led to it to Planet Hollywood. Summary judgment is thus appropriate for Planet  
13 Hollywood on its fraudulent concealment counterclaim and civil conspiracy counterclaim against  
14 Seibel based on Seibel's concealment of material facts regarding his federal prosecution and  
15 conviction.

16 37. Planet Hollywood suffered damages as a result of Seibel's actions and the necessary  
17 rebranding of the restaurant totaling \$168,781.00.

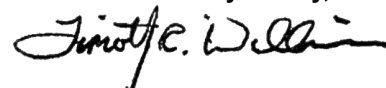
### 18 ORDER

19 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Caesars' MSJ No. 2  
20 shall be, and hereby is, GRANTED in its entirety and that judgment is entered in favor of Caesars  
21 and against GRB on all of GRB's claims.

22 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is  
23 entered in favor of Caesars and against Seibel on Caesars's fraudulent concealment counterclaim  
24 and civil conspiracy counterclaim against Seibel in the amount of \$168,781 plus pre and post-  
25 judgment interest.

26 IT IS SO ORDERED.

Dated this 31st day of May, 2022



D08 4B2 1DFF 6BFC  
Timothy C. Williams  
District Court Judge

AA07158

MH



Respectfully submitted by:

DATED May 25, 2022

PISANELLI BICE PLLC

By: /s/ M. Magali Mercera  
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Debra L. Spinelli, Esq., Bar No. 9695  
M. Magali Mercera, Esq., Bar No. 11742  
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*Attorneys for Desert Palace, Inc.;  
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Company, LLC; PHWLTV, LLC; and  
Boardwalk Regency  
Corporation d/b/a Caesars Atlantic City*

Approved as to form and content by:

DATED May 25, 2022

LEBENSFELD SHARON & SCHWARTZ P.C.

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Approved as to form and content by:

DATED May 25, 2022

FENNEMORE CRAIG, P.C.

By: /s/ John D. Tennert  
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Wade Beavers, Esq. (SBN 13451)  
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*Attorneys for Gordon Ramsay*

## Cinda C. Towne

---

**From:** Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>  
**Sent:** Wednesday, May 25, 2022 4:36 PM  
**To:** Magali Mercera; Joshua Gilmore; Paul Williams; Tennert, John; Beavers, Wade  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

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You may, thanks

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**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Wednesday, May 25, 2022 5:11 PM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

Understood, Josh.

John and Alan – We updated our draft proposed findings of fact and conclusions of law to remove Bailey Kennedy from the signature block in light of their objections to the orders and updated the date to May. Please confirm that we may affix your e-signatures to these versions.

Thanks,

**M. Magali Mercera**

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---

**From:** Joshua Gilmore <[JGilmore@baileykennedy.com](mailto:JGilmore@baileykennedy.com)>  
**Sent:** Tuesday, April 26, 2022 2:03 PM  
**To:** Magali Mercera <[mmm@pisanellibice.com](mailto:mmm@pisanellibice.com)>; Paul Williams <[PWilliams@baileykennedy.com](mailto:PWilliams@baileykennedy.com)>; Alan Lebensfeld <[Alan.Lebensfeld@lsandspc.com](mailto:Alan.Lebensfeld@lsandspc.com)>; Tennert, John <[jtennert@fennemorelaw.com](mailto:jtennert@fennemorelaw.com)>; Beavers, Wade <[WBeavers@fennemorelaw.com](mailto:WBeavers@fennemorelaw.com)>  
**Cc:** James Pisanelli <[jjp@pisanellibice.com](mailto:jjp@pisanellibice.com)>; Debra Spinelli <[dls@pisanellibice.com](mailto:dls@pisanellibice.com)>; Emily A. Buchwald <[eab@pisanellibice.com](mailto:eab@pisanellibice.com)>; Cinda C. Towne <[cct@pisanellibice.com](mailto:cct@pisanellibice.com)>; Susan Russo <[SRusso@baileykennedy.com](mailto:SRusso@baileykennedy.com)>  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

CAUTION: This message is from an EXTERNAL SENDER.

## Cinda C. Towne

---

**From:** Tennert, John <jtennert@fennemorelaw.com>  
**Sent:** Wednesday, May 25, 2022 2:44 PM  
**To:** Magali Mercera; Joshua Gilmore; Paul Williams; Alan Lebensfeld; Beavers, Wade  
**Cc:** James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne; Susan Russo  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

CAUTION: This message is from an EXTERNAL SENDER.

Hi Magali,

You may affix my e-signature to both proposed orders.

Thanks,  
John

John D. Tennert III, Director

---

**FENNEMORE.**

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**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Wednesday, May 25, 2022 2:11 PM  
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**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Emily A. Buchwald <eab@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>; Susan Russo <SRusso@baileykennedy.com>  
**Subject:** RE: Desert Palace v. Seibel: FFCL Granting Caesars' MSJ No. 1 and MSJ No. 2

Understood, Josh.

John and Alan – We updated our draft proposed findings of fact and conclusions of law to remove Bailey Kennedy from the signature block in light of their objections to the orders and updated the date to May. Please confirm that we may affix your e-signatures to these versions.

Thanks,

**M. Magali Mercera**  
PISANELLI BICE, PLLC

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**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the  
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
case as listed below:

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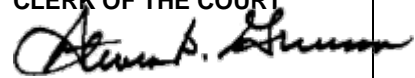
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*Attorneys for Desert Palace, Inc.;  
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PHWLTV, LLC; and Boardwalk Regency  
Corporation d/b/a Caesars Atlantic City*

**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 STIPULATION  
AND ORDER OF DISMISSAL WITH  
PREJUDICE**

AND ALL RELATED MATTERS

PLEASE TAKE NOTICE that a Stipulation and Order of Dismissal with Prejudice was  
entered in the above-captioned matter on June 2, 2022, a true and correct copy of which is



1 attached hereto.

2 DATED this 3rd day of June 2022.

3 PISANELLI BICE PLLC

4 By: /s/ M. Magali Mercera  
5 James J. Pisanelli, Esq., #4027  
6 Debra L. Spinelli, Esq., #9695  
7 M. Magali Mercera, Esq., #11742  
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8 *Attorneys for Desert Palace, Inc.;*  
9 *Paris Las Vegas Operating Company, LLC;*  
10 *PHWLV, LLC; and Boardwalk Regency*  
11 *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 June 2022, 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 STIPULATION AND ORDER OF DISMISSAL WITH PREJUDICE** 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, and Nominal Plaintiff  
GR Burgr LLC*

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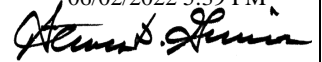
*Attorneys for Gordon Ramsay*

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

/s/ Cinda Towne  
An employee of PISANELLI BICE PLLC

  
CLERK OF THE COURT

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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

**STIPULATION AND ORDER OF  
DISMISSAL WITH PREJUDICE**

Desert Palace, Inc. ("Caesars Palace") and The Original Homestead Restaurant, Inc. ("OHR") have entered into a Settlement Agreement dated May 25, 2022 (the "Settlement Agreement"). Caesars Palace and OHR, by and through their undersigned counsel, hereby stipulate, pursuant to NRCP 41, to the dismissal with prejudice of OHR's Complaint in Intervention against Caesars Palace filed in the above-captioned action on October 24, 2018, including all claims asserted therein, with Caesars Palace and OHR each to bear their own fees and costs. Nothing in this Stipulation shall prevent Caesars Palace from prosecuting its claims against the remaining parties in this Action.

DATED this 27th day of May 2022.

PISANELLI BICE PLLC

LEBENSFELD SHARON & SCHWARTZ  
P.C.

By: /s/ M. Magali Mercera  
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By: /s/ Alan M. Lebensfeld  
Alan M. Lebensfeld, Esq.  
(admitted *pro hac vice*)  
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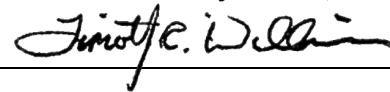
*Attorneys for Desert Palace, Inc.;  
Paris Las Vegas Operating Company, LLC;  
PHWL, LLC; and Boardwalk Regency  
Corporation d/b/a Caesars Atlantic City*

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Kevin M. Sutehall, Esq.  
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1980 Festival Plaza Drive, #700  
Las Vegas, NV 89135

**ORDER**

IT IS SO ORDERED.

Dated this 2nd day of June, 2022



MH

9E9 FEB 0502 5597  
Timothy C. Williams  
District Court Judge

## Cinda C. Towne

---

**From:** Alan Lebensfeld <Alan.Lebensfeld@lsandspc.com>  
**Sent:** Friday, May 27, 2022 6:39 AM  
**To:** Magali Mercera  
**Cc:** ksutehall@foxrothschild.com; James Pisanelli; Debra Spinelli; Emily A. Buchwald; Cinda C. Towne  
**Subject:** Re: OHR v. DP: SAO to Dismiss Complaint in Intervention  
**Attachments:** SAO to Dismiss Complaint in Intervention - final.doc

CAUTION: This message is from an EXTERNAL SENDER.  
You may and thank you again for your assistance in getting this done.

Sent From AML iPhone

On May 26, 2022, at 8:54 PM, Magali Mercera <mmm@pisanellibice.com> wrote:

Hi Alan –

Attached please find the final stipulation to dismiss the complaint in intervention. I added the date of the settlement agreement (May 25, 2022) and I removed “or about” from page 2, line so that sentence reads that “filed in the above-captioned action *on October 24, 2018*” instead of “filed in the above-captioned action on or about October 24, 2018.”

Please confirm that we may apply your e-signature to the stipulation and we will submit it to the Court.

Best,

**M. Magali Mercera**

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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**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Stipulation and Order was served via the court's electronic eFile system  
13 to all recipients registered for e-Service on the above entitled case as listed below:

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**AA07171**

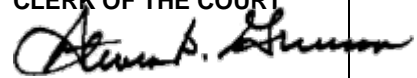
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R Squared Global Solutions, LLC, Derivatively on Behalf of DNT Acquisition,  
LLC; and GR Burgr, LLC*

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants,

And

GR BURGR LLC, a Delaware limited liability  
company,

Nominal Plaintiff.

AND ALL RELATED CLAIMS.

Case No. A-17-751759-B

Dept. No. XVI

Consolidated with A-17-760537-B

**CRAIG GREEN'S MOTION FOR SUMMARY  
JUDGMENT**

**HEARING REQUESTED**

Pursuant to NRCP 56(a), Craig Green moves for summary judgment in his favor against Caesars<sup>1</sup> with respect to the Fourth, Sixth, Seventh, and Eighth Causes of Action in Caesars' First Amended Complaint. (The Fifth Cause of Action is against the Development Entities.<sup>2</sup>)

This Motion is made and based on the papers and pleadings on file, the following Memorandum of Points and Authorities and exhibits attached thereto, and any oral argument as may be heard by the Court.

DATED this 17<sup>th</sup> day of June, 2022.

BAILEY ♦ KENNEDY

By: /s/ Joshua P. Gilmore

JOHN R. BAILEY  
DENNIS L. KENNEDY  
JOSHUA P. GILMORE  
PAUL C. WILLIAMS

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

<sup>1</sup> PHWL, 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") are collectively referred to as "Caesars."

<sup>2</sup> Moti Partners, LLC ("Moti"); Moti Partners 16, LLC ("Moti 16"); LLTQ Enterprises, LLC ("LLTQ"); LLTQ Enterprises 16, LLC ("LLTQ 16"); TPOV Enterprises, LLC ("TPOV"); TPOV Enterprises 16, LLC ("TPOV 16"); FERG, LLC ("FERG"); FERG 16, LLC ("FERG 16"); R Squared Global Solutions, LLC ("R Squared"), derivatively on behalf of DNT Acquisition LLC ("DNT"); and GR Burgr LLC ("GRB") are collectively referred to as the "Development Entities."

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Caesars seeks to affix liability to Mr. Green under various theories of tort law for acts that he committed in his representative capacity during the course of the contractual relationship between Caesars and the Development Entities. Each of Caesars' claims against Mr. Green fails as a matter of law and should be dismissed.

*First*, Caesars alleges that Mr. Green conspired with Rowen Seibel to secretly obtain money from vendors of various restaurants operated by Caesars. The claim fails as a matter of law because the evidence shows that Mr. Green was at all times acting in his capacity as an agent of Mr. Seibel and companies owned or controlled by Mr. Seibel that were under contract with Caesars.

*Second*, Caesars alleges that Mr. Green was unjustly enriched by accepting, appreciating, and retaining the money paid by these vendors. The claim fails as a matter of law because the evidence shows that Caesars did not confer a benefit on Mr. Green and, regardless, Mr. Green did not, directly or indirectly, receive any money from vendors.

*Third*, Caesars alleges that Mr. Green intentionally interfered with Caesars' alleged contractual right to share in rebates received from vendors. The claim fails as a matter of law because the evidence shows that Mr. Green worked for the Development Entities, and therefore, he could not legally interfere with Caesars' contracts with the Development Entities. The claim also fails because Caesars lacks evidence showing that Mr. Green knowingly took steps to actively interfere with Caesars' contracts with the Development Entities.

*Finally*, Caesars alleges that Mr. Green fraudulently concealed from Caesars that he was receiving money from vendors. The claim fails as a matter of law because the evidence shows that Mr. Green did not have a special relationship with Caesars and, again, he did not receive any money from vendors. The claim also fails because Caesars cannot show, by clear and convincing evidence, that Mr. Green concealed information from Caesars (let alone intentionally).

In sum, Caesars lacks evidence supporting its claims against Mr. Green. Because there are no genuine issues of material fact, the Court should grant this Motion in its entirety and enter summary judgment, in Mr. Green's favor, on Caesars' claims against him.

## II. FACTS

Beginning in 2009, Caesars entered into various contracts (collectively, the “Development Agreements”) with the Development Entities to design, develop, and operate numerous restaurants in Las Vegas, Nevada, and Atlantic City, New Jersey (collectively, the “Restaurants”). (*See generally* Development Agreements,<sup>3</sup> attached as **Exhibits 1-6**.) Each Development Agreement stated—in no uncertain terms—that Caesars was not becoming a partner of, or a joint venturer with, the Development Entity. (*See* Ex. 1 § 12.1; Ex. 2 § 14.1; Ex. 3 § 13.1; Ex. 4 § 13.1; Ex. 5 § 14.1; Ex. 6 § 14.1.) Instead, each Development Entity was deemed to be an independent contractor of Caesars. (*See id.*)

Beginning in 2012, Mr. Green, through CBG Hospitality Consulting, LLC (“CBG”), began providing consulting services for companies owned or controlled by Mr. Seibel, including Moti, R Squared, LLTQ, TPOV, FERG, and GRB. (*See* Decl. of Craig Green, attached as **Exhibit 7**, ¶ 5.) Mr. Green deferred to Mr. Seibel in terms of which company paid his monthly consulting fee and health insurance. (*Id.* ¶ 5.)

Over time, Mr. Seibel tasked Mr. Green with communicating with Caesars about certain aspects of the Restaurants. (*Id.* ¶ 6.) Mr. Green did so in his capacity as a representative of the Development Entities. (*Id.*) But for Mr. Green’s role with the Development Entities, Caesars’ employees would have had no purpose in speaking to him. At all relevant times, decisions about the Restaurants were made by Mr. Seibel (on behalf of the Development Entities)—not Mr. Green.<sup>4</sup> (*Id.*)

Alongside communicating with Caesars about certain aspects of the Restaurants, Mr. Green, at the direction of Mr. Seibel, communicated with vendors with whom Mr. Seibel had existing or prospective relationships. (*Id.* ¶ 7; *see also* Craig Green Dep. Tr. (Sept. 5, 2019), attached as

---

<sup>3</sup> “Development Agreements” refers to the Moti Agreement, attached as **Exhibit 1**; the DNT Agreement, attached as **Exhibit 2**; the TPOV Agreement, attached as **Exhibit 3**; the LLTQ Agreement, attached as **Exhibit 4**; the FERG Agreement, attached as **Exhibit 5**; and the GRB Agreement, attached as **Exhibit 6**.

<sup>4</sup> Although Mr. Green became the Manager of the Development Entities in the spring of 2016, the alleged wrongful acts underlying Caesars’ claims occurred in 2015 and earlier, when Mr. Seibel—not Mr. Green—served as the Manager of the Initial Development Entities (Moti, LLTQ, TPOV, FERG, R Squared, and GRB) and before the New Development Entities (Moti 16, LLTQ 16, TPOV 16, and FERG 16) were formed. (Ex. 6 ¶¶ 14-15.)

1 **Exhibit 8**, 315:6-8 (“I would assist Mr. Seibel in sourcing vendors at his request.”).) Mr. Seibel  
2 offered services such as market activation, brand building, and strategic product placement and  
3 development to vendors in exchange for payment of a fee, typically in the form of a percentage of  
4 gross receipts made by vendors in selling their products or services to restaurants.<sup>5</sup> (Ex. 7 ¶ 7; *see*  
5 *also* Craig Green’s Responses to Caesars Palace’s First Set of Interrogs., attached as **Exhibit 9**, at  
6 7:1-8:17.) Business terms with the vendors were decided by Mr. Seibel—not Mr. Green. (Ex. 7  
7 ¶ 7; *see also* Craig Green Dep. Tr. (Apr. 23, 2021), attached as **Exhibit 10**, 596:20-597:8.)

8 As Mr. Green understood it, Caesars was aware of Mr. Seibel’s relationships with different  
9 vendors. (Ex. 7 ¶ 8.) Each of the relationships either had been created prior to Mr. Green’s  
10 retention (through CBG) as a consultant for Mr. Seibel and the Initial Development Entities, or  
11 were spearheaded by Mr. Seibel, not Mr. Green. (*Id.* ¶ 9; *see also* Ex. 10 at 529:6-25, 552:15-  
12 553:12, 581:23-583:2, 598:15-23.)

13 ***Mr. Green did not personally benefit from these relationships.*** (Ex. 7 ¶ 11.) As he  
14 explained – several times – in his deposition, Mr. Green communicated with vendors at Mr.  
15 Seibel’s direction. (*See* Ex. 10 at 500:8-15, 534:14-535:4, 536:17-23, 583:9-11, 589:20-590:20,  
16 631:11-18.) In his words, “I was strictly, you know, an employee handling the responsibilities that  
17 were requested of me.” (*Id.* at 537:21-23; *see also id.* at 561:11-12 (“I was a person working for  
18 Mr. Seibel at his direction.”).)

19 Vendors that worked with Mr. Seibel agreed to pay fees to the following companies that  
20 were created and owned, in whole or in part, by Mr. Seibel: BR 23 Venture, LLC (“BR 23”) and  
21 Future Star Hospitality Consulting, LLC (“Future Star”).<sup>6</sup> (Ex. 7 ¶ 10.) Mr. Green did not  
22 determine to which entity the fees would be paid by vendors. (*Id.*) He did not receive money from  
23 any vendor; and his compensation as a consultant was not dependent on the amount of fees paid by  
24 vendors (*e.g.*, his compensation was never increased due to amounts paid by vendors). (*Id.* ¶ 11.)

25  
26 <sup>5</sup> Mr. Green did not question such arrangements because in his experience, they are common and widespread in the hospitality industry. (Ex. 7 ¶ 8.)

27 <sup>6</sup> Although he became a minority owner of BR 23 in or around 2013 or 2014, he never received a distribution from BR 23. (*Id.* ¶ 12.) Further, Mr. Green did not become a minority owner of Future Star until in or around 2018—  
28 *after* Caesars had terminated the Development Agreements. (*Id.* ¶ 13.)

1 According to Caesars, Mr. Green “solicited and accepted payments from Caesars’ vendors  
2 for products those vendors sold to Caesars,” without knowledge of or approval from Caesars. (First  
3 Am. Compl., filed Mar. 11, 2020, ¶¶ 134-35.) Caesars asserted claims against Mr. Green for civil  
4 conspiracy, unjust enrichment, intentional interference with existing contractual relations, and  
5 fraudulent concealment. (*Id.* ¶¶ 171-76, 184-206.) Caesars claims that it was damaged due to  
6 payments made by three different vendors (*i.e.*, Innis & Gunn, Sysco, and Marathon Enterprises) to  
7 BR 23 between 2013 and 2015, and payments made by one vendor (*i.e.*, Pat LaFrieda) to Future  
8 Star between 2012 and 2015. (Ex. 9 at 7:1-8:17.)

### 9 III. ARGUMENT

#### 10 A. Standard of Decision.

11 “Summary judgment is appropriate . . . when the pleadings and other evidence on file  
12 demonstrate that no ‘genuine issue as to any material fact [remains] and that the moving party is  
13 entitled to a judgment as a matter of law.’” *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d  
14 1026, 1029 (2005) (quoting NRCP 56(c)). “The substantive law controls which factual disputes are  
15 material and will preclude summary judgment.” *Id.* at 731, 121 P.3d at 1031.

16 “The party moving for summary judgment bears the initial burden of production to show the  
17 absence of a genuine issue of material fact.” *Cuzze v. Univ. & Comm. College Sys. of Nev.*, 123  
18 Nev. 598, 602, 172 P.2d 131, 135 (2007). If the non-moving party “will bear the burden of  
19 persuasion at trial,” then the moving party “may satisfy the burden of production by either (1)  
20 submitting evidence that negates an essential element of the nonmoving party’s claim, or (2)  
21 pointing out ... that there is an absence of evidence to support the nonmoving party’s case.” *Id.*  
22 (quotation marks and internal citation omitted). The non-moving party must then respond to the  
23 motion by setting forth “specific facts that show a genuine issue of material fact” for trial. *Id.*

24 When deciding a motion for summary judgment, the Court “‘must view the evidence  
25 presented through the prism of the substantive evidentiary burden.’” *Ferguson v. LVMPD*, 131  
26 Nev. 939, 944, 364 P.3d 592, 595 (2015) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,  
27 254 (1986)). For example, where a defendant has shifted the burden to the plaintiff and the plaintiff  
28 ultimately bears the burden at trial to prove its claim by clear and convincing evidence, the plaintiff

1 must show a genuine issue of material fact for trial through the prism of clear and convincing  
2 evidence. *See Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 110-11, 825 P.2d 588, 592 (1992).

3 As shown below, because the material facts related to Caesars' claims against Mr. Green are  
4 not in dispute, he is entitled to summary judgment in his favor against Caesars with respect to the  
5 claims brought against him.

6 **B. Caesars Lacks Evidence Supporting its Conspiracy Claim Against Mr. Green.**

7 "Agents and employees of a corporation cannot conspire with their corporate principal or  
8 employer where they act in their official capacities on behalf of the corporation and not as  
9 individuals for their individual advantage." *Collins v. Union Fed. Savs. & Loan Ass'n*, 99 Nev.  
10 284, 303, 662 P.2d 610, 622 (1983); *see also Laxalt v. McClatchy*, 622 F. Supp. 737, 745 (D. Nev.  
11 1985) (stating that employees cannot conspire among themselves or with their corporate principal  
12 when acting in the course and scope of their employment). "*The law is well-settled . . . that a*  
13 *conspiracy between a corporation and its agents, acting within the scope of their employment, is*  
14 *a legal impossibility.*" *Marmott v. Maryland Lumber Co.*, 807 F.2d 1180, 1184 (4th Cir. 1986)  
15 (emphasis added); *see also Nanopierce Techs., Inc. v. Depository Trust & Clearing Corp.*, 123 Nev.  
16 362, 379 n.9, 168 P.3d 73, 85 n.9 (2007) (stating that a conspiracy between a parent company and  
17 its subsidiary appears to be impossible). Summary judgment is appropriate with respect to a  
18 conspiracy claim where the evidence shows that the alleged conspirators were acting in their  
19 representative – as opposed to individual – capacities. *Collins*, 99 Nev. at 303, 662 P.2d at 622; *see*  
20 *also Whitfield v. Trade Show Servs., Ltd.*, No. 2:10-CV-00905-LRH, 2012 WL 693569, at \*5 (D.  
21 Nev. Mar. 1, 2012) (granting summary judgment where the evidence showed that the alleged  
22 wrongs were committed by the conspirators "in their capacities as officers and managers of the  
23 corporation"); *TASER Int'l, Inc. v. Stinger Sys., Inc.*, No. 2:09-CV-00289-KJD, 2011 WL 3273881,  
24 at \*3 (D. Nev. July 29, 2011) (granting summary judgment where it was undisputed that the alleged  
25 conspirators were agents of the corporation charged with wrongdoing).<sup>7</sup>

26  
27 <sup>7</sup> The Nevada Supreme Court has said that "federal district court dispositions" may be cited "for their persuasive,  
28 if nonbinding, precedential value." *Schuck v. Signature Flight Support of Nevada, Inc.*, 126 Nev. 434, 440 n.2, 245 P.3d  
542, 546 n.2 (2010).



1 Here, the evidence demonstrates that Mr. Green was at all times acting in his capacity as an  
2 agent of Mr. Seibel and companies owned or controlled by Mr. Seibel. In his deposition, Mr. Green  
3 explained how he communicated with vendors at Mr. Seibel's direction on behalf of companies  
4 owned or controlled by Mr. Seibel. (Ex. 10 at 500:8-15, 534:14-535:4, 536:17-23, 537:21-23,  
5 561:11-12, 583:9-11, 589:20-590:20, 631:11-18; *see also* Ex. 7 ¶ 7.) The relationships that existed  
6 with these vendors had either been in place prior to Mr. Green's retention (as a consultant) for Mr.  
7 Seibel and his companies, or were spearheaded by Mr. Seibel, not Mr. Green. (Ex. 7 ¶ 9.)

8 Further, Mr. Green derived no personal benefit from Mr. Seibel's relationships with  
9 vendors. His income was not dependent upon fees paid by vendors for receiving services from BR  
10 23 and Future Star. (*Id.* ¶ 11.) And, he never received a dime – directly or indirectly – from any  
11 vendor. (*Id.*)

12 The conspiracy claim fails for an additional reason: Caesars lacks evidence showing an  
13 agreement between Mr. Green and Mr. Seibel to conceal from Caesars the receipt of fees from  
14 vendors by BR 23 and Future Star—an essential element of the claim. *Consol. Generator-Nevada,*  
15 *Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998). “***Summary***  
16 ***judgment is appropriate [with respect to a conspiracy claim] if there is no evidence of an***  
17 ***agreement or intent to harm the plaintiff.***” *Guilfoyle v. Olde Monmouth Stock Transfer Co.*, 130  
18 Nev. 801, 813, 335 P.3d 190, 198-99 (2014) (emphasis added).

19 Here, Caesars lacks evidence showing that Messrs. Seibel and Green reached an agreement  
20 to conceal from Caesars the payment of fees by vendors. Indeed, Mr. Green understood that  
21 Caesars was aware of Mr. Seibel's relationships with vendors. (Ex. 7 ¶ 9.)

22 Finally, Caesars' conspiracy claim is derivative of its tortious interference and fraudulent  
23 concealment claims. *Jordan v. State ex rel. DMV & Pub. Safety*, 121 Nev. 44, 74-75, 110 P.3d 30,  
24 51 (2005) (“[A]n underlying cause of action for fraud is a necessary predicate to a cause of action  
25 for conspiracy to defraud.”), *abrogated by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224,  
26 181 P.3d 670 (2008). Because those claims fail as shown further below, so, too, does the  
27 conspiracy claim. *Zic v. Italian Gov't Travel Office*, 130 F. Supp. 2d 991, 997 (N.D. Ill. 2001)  
28 (“Without a fraud, there can be no conspiracy to defraud.”); *Baty v. ProTech Ins. Agency*, 63

1 S.W.3d 841, 864 (Tex. App. 2001) (“Because the trial court properly granted summary judgment on  
2 [plaintiff]’s claims for tortious interference with existing contracts and inducing a breach of a  
3 fiduciary duty, [defendants] ... cannot be liable for civil conspiracy with respect to those claims.”).

4 In sum, because Caesars lacks evidence demonstrating (i) that Mr. Green acted to advance  
5 his own, individual interests, and (ii) that Mr. Green reached an agreement with Mr. Seibel to harm  
6 Caesars, the Court should grant summary judgment in favor of Mr. Green against Caesars with  
7 respect to Caesars’ Fourth Cause of Action in its First Amended Complaint.

8 **C. Caesars Lacks Evidence Supporting its Unjust Enrichment Claim Against Mr.**  
9 **Green.**

10 “Unjust enrichment exists when the plaintiff confers a benefit on the defendant, the  
11 defendant appreciates such benefit, and there is acceptance and retention by the defendant of such  
12 benefit under circumstances such that it would be inequitable for him to retain the benefit without  
13 payment of the value thereof.” *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 381,  
14 283 P.3d 250, 257 (2012). *Summary judgment is appropriate with respect to an unjust*  
15 *enrichment claim where the plaintiff is unable to prove these elements. Id.* at 545; *see also*  
16 *Chemeon Surface Tech., LLC v. Metalast Int’l, Inc.*, 312 F. Supp. 3d 944, 956 (D. Nev. 2018)  
17 (granting summary judgment where the plaintiff failed to set forth evidence supporting its unjust  
18 enrichment claim).

19 Here, Caesars lacks evidence supporting its unjust enrichment claim against Mr. Green. To  
20 begin, Caesars lacks evidence showing that it conferred a benefit on Mr. Green. This is in no small  
21 part because Caesars was not under contract with Mr. Green. To the contrary, Caesars was under  
22 contract with the Development Entities. (*See generally* Exs. 1-6.)

23 Next, Caesars lacks evidence showing that Mr. Green accepted, retained, and benefited from  
24 working with vendors. Most notably, Caesars admitted in its NRCP 30(b)(6) deposition that it does  
25 not have “any evidence of him personally receiving funds.” (*See* Caesars 30(b)(6) Dep. (Apr. 14,  
26 2021), attached as **Exhibit 11**, 191:15-192:16.) Of course not; as noted above, Mr. Green did not  
27 receive money from vendors. (Ex. 7 ¶ 11.) The mere fact that BR 23 and Future Star (companies  
28 that were majority owned and controlled by Mr. Seibel) may have benefited from the relationships

1 with vendors does not, absent an *alter ego* finding, mean that Mr. Green personally benefited from  
2 these same relationships. Such a finding would ignore the corporate veil in violation of Nevada  
3 law. *See LFC Mktg. Group, Inc. v. Loomis*, 116 Nev. 896, 903-04, 8 P.3d 841, 846 (2000) (noting  
4 that the corporate veil is not lightly thrown aside in Nevada). Because Mr. Green did not receive a  
5 dime – directly or indirectly – from any vendor, imposing liability upon him under a theory of  
6 unjust enrichment would leave him “worse off ... than if the transaction[s] with the [vendors] had  
7 never taken place”—contrary to the law of unjust enrichment in Nevada. *See Korte Constr. Co. v.*  
8 *State on Rel. of Bd. of Regents of Nevada Sys. of Higher Educ.*, 137 Nev. Adv. Op. 37, 492 P.3d  
9 540, 544 (2021).

10 In sum, Caesars lacks evidence supporting its unjust enrichment claim against Mr. Green.  
11 Therefore, Mr. Green is entitled to summary judgment in his favor against Caesars with respect to  
12 Caesars’ Sixth Cause of Action in its First Amended Complaint.

13 **D. Caesars Lacks Evidence Supporting its Intentional Interference Claim Against**  
14 **Mr. Green.**

15 “[A]gents acting within the scope of their employment, i.e. the principal’s interest, do not  
16 constitute intervening third parties, and therefore cannot tortiously interfere with a contract to which  
17 the principal is a party.” *Blanck v. Hager*, 360 F. Supp. 2d 1137, 1154 (D. Nev. 2005), *aff’d*, 220 F.  
18 App’x 697 (9th Cir. 2007) (interpreting Nevada law). California courts have reached the same  
19 conclusion.<sup>8</sup> *Shoemaker v. Myers*, 801 P.2d 1054, 1068 (Cal. 1990) (“It is also well established that  
20 corporate agents and employees acting for and on behalf of a corporation cannot be held liable for  
21 inducing a breach of the corporation’s contract.”); *see also Caliber Paving Co., Inc. v. Rexford*  
22 *Indus. Realty & Mgmt., Inc.*, 268 Cal. Rptr. 3d 443, 453 (Cal. Ct. App. 2020). ***Summary judgment***  
23 ***is appropriate with respect to an intentional interference claim where the alleged wrongful acts***  
24 ***were committed by agents of the contracting parties.*** *See, e.g., Home Gambling Network, Inc. v.*  
25 *Piche*, No. 2:05-CV-00610-DAE, 2013 WL 5492568, at \*12 (D. Nev. Sept. 30, 2013), *aff’d*, 563 F.  
26 App’x 771 (Fed. Cir. 2014); *Mitchell v. Beckett*, No. 2:05-CV-00185-PMP-GWF, 2008 WL

27 \_\_\_\_\_  
28 <sup>8</sup> The Nevada Supreme Court consulted California law when adopting the tort of intentional interference with  
existing contractual relations. *See Sutherland v. Gross*, 105 Nev. 192, 196, 772 P.2d 1287, 1290 (1989).

1 11450867, at \*5 (D. Nev. Mar. 6, 2008); *see also Alam v. Reno Hilton Corp.*, 819 F. Supp. 905, 911  
2 (D. Nev. 1993) (granting summary judgment on an intentional interference claim where the claim  
3 was against agents who were “acting in the scope of their principal’s ... interest”).

4 Here, the evidence demonstrates that Mr. Green worked with Caesars as an agent of Mr.  
5 Seibel and the Development Entities. (Ex. 7 ¶ 6.) Because the Development Entities could not  
6 tortiously interfere with their own contracts, neither could Mr. Green as their agent. *See Crockett &*  
7 *Myers, Ltd. v. Napier, Fitzgerald & Kirby, LLP*, 440 F. Supp. 2d 1184, 1194 (D. Nev. 2006), *aff’d*,  
8 583 F.3d 1232 (9th Cir. 2009).

9 Caesars’ inability to show that Mr. Green qualifies as an intervening third party  
10 notwithstanding, Caesars’ intentional interference claim fails for an additional reason: The lack of  
11 evidence showing an intent to cause a breach—essential element of the claim. *J.J. Indus., LLC v.*  
12 *Bennett*, 119 Nev. 269, 274, 71 P.3d 1264, 1267 (2003). ***Summary judgment is appropriate absent***  
13 ***“proof of intentional acts.”*** *See Lake at Las Vegas Invs. Grp., Inc. v. Pac. Malibu Dev. Corp.*, 867  
14 F. Supp. 920, 925 (D. Nev. 1994), *aff’d*, 78 F.3d 593 (9th Cir. 1996) (emphasis added).

15 Here, there is no evidence indicating that Mr. Green intended to cause the Development  
16 Entities to breach the Development Agreements. For example, Caesars is unable to prove that Mr.  
17 Green, as an agent of the Development Entities, knew that the Development Entities had an alleged  
18 duty to report to Caesars that BR 23 and Future Star were receiving fees from vendors and actively  
19 took steps to conceal such information from Caesars. Similarly, Caesars is unable to prove that Mr.  
20 Green misled employees of Caesars about the relationships that Mr. Seibel had with different  
21 vendors. To the contrary, Mr. Green understood that Caesars was aware of the relationships that  
22 Mr. Seibel had with different vendors. (Ex. 7 ¶ 9.)

23 Because Caesars lacks evidence demonstrating (i) that Mr. Green was an intervening third  
24 party (as opposed to an agent of companies under contract with Caesars) and (ii) that Mr. Green  
25 intended to cause the Development Entities to breach the Development Agreements, the Court  
26 should grant summary judgment in favor of Mr. Green against Caesars with respect to Caesars’  
27 Seventh Cause of Action in its First Amended Complaint.

28

**E. Caesars Lacks Evidence—Let Alone *Clear and Convincing Evidence*—Supporting its Fraudulent Concealment Claim Against Mr. Green.**

Caesars must prove its fraudulent concealment claim “by clear and convincing evidence.” *See Bulbman, Inc.*, 108 Nev. at 110-11, 825 P.2d at 592 (affirming summary judgment because plaintiff failed to show a genuine issue of material fact as to alleged fraud by clear and convincing evidence). Under Nevada law, for “a mere omission to constitute actionable fraud, a plaintiff must first demonstrate that the defendant had a duty to disclose the fact at issue” arising from a fiduciary relationship or a special relationship, *i.e.*, a relationship “where a party reasonably imparts special confidence in the defendant and the defendant would reasonably know of this confidence.” *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1486, 970 P.2d 98, 111 (1998), *overruled on other grounds* by *GES, Inc. v. Corbitt*, 117 Nev. 265, 270-71, 21 P.3d 11, 15 (2001). Importantly, a “straightforward vendor-vendee relationship” does not—as a matter of law—create a special relationship. *Nevada Power Co. v. Monsanto Co.*, 891 F. Supp. 1406, 1417 (D. Nev. 1995); *see also Kattawar v. Logistics & Distribution Servs.*, 111 F. Supp. 3d 838, 854-55 (W.D. Tenn. 2015) (noting “black-letter law” that a duty to disclose arising from a contractual relationship cannot support a fraudulent concealment claim).

“The existence of a duty to disclose is an essential element of fraudulent concealment.” *Nevada Power Co.*, 891 F. Supp. at 1417. ***Summary judgment is appropriate with respect to a fraudulent concealment claim where the plaintiff is unable to show the existence of a duty to disclose by the defendant.*** *See, e.g., Peri & Sons Farms, Inc. v. Jain Irr., Inc.*, 933 F. Supp. 2d 1279, 1293-94 (D. Nev. 2013).

Here, Caesars lacks evidence—let alone clear and convincing evidence—showing that it had a special relationship with Mr. Green. To argue as much would suggest that all employees of the Development Entities had special relationships with Caesars and, in turn, that all employees of Caesars had special relationships with the Development Entities. No law supports such an overtly expansive view of a contractual relationship between two parties.

Further, Caesars lacks evidence—let alone clear and convincing evidence—showing that it imparted special confidence in Mr. Green with respect to the Restaurants, and that Mr. Green had

1 reason to believe that Caesars was imparting special confidence in him. Under the Development  
2 Agreements, Caesars made all the decisions with respect to operations of the Restaurants, including  
3 from which vendors to purchase goods and services. (*See, e.g.*, Ex. 3 § 3.4; *see also id.* § 8.2  
4 (indicating that Caesars had final approval over operational matters).) Caesars did not hire Mr.  
5 Green to advise Caesars concerning the Restaurants—Caesars had its own employees to do that.

6 The lack of a duty to disclose notwithstanding, the fraudulent concealment claim fails for an  
7 additional reason: Absence of clear and convincing evidence indicating that Mr. Green  
8 “intentionally concealed or suppressed” the facts at issue with the intent to defraud Caesars—an  
9 essential element of the claim. *Nev. Power Co.*, 891 F. Supp. at 1415 (emphasis added). ***Summary***  
10 ***judgment is appropriate where the plaintiff is unable to demonstrate, by clear and convincing***  
11 ***evidence, that the defendant “intended to defraud [the] Plaintiff.”*** *See Gale v. CitiMortgage, Inc.*,  
12 No. 2:12-CV-02065-GMN, 2014 WL 4162258, at \*10 (D. Nev. Aug. 20, 2014) (emphasis added).

13 Here, Caesars lacks evidence—let alone clear and convincing evidence—showing that Mr.  
14 Green took steps to actively conceal from Caesars that BR 23 and Future Star were receiving fees  
15 from vendors. Nor will Caesars proffer such evidence in response to this Motion. Notably, Caesars  
16 at all times remained able to ask its vendors if they could reduce their prices or if they had  
17 arrangements with Mr. Seibel or his companies with respect to the Restaurants. In other words, the  
18 involvement of the vendors made it impossible to keep secret from Caesars the payment of fees to  
19 BR 23 and Future Star.

20 Finally, Caesars lacks evidence—let alone clear and convincing evidence—showing that  
21 Mr. Green sought to keep Caesars from learning that BR 23 and Future Star were receiving fees  
22 from vendors. Again, he understood that Caesars was aware of Mr. Seibel’s relationships with  
23 different vendors. (Ex. 7 ¶ 9.)

24 The purpose “behind the tort of fraudulent concealment” is not to turn “every breach of  
25 contract action [into] a claim for fraudulent misrepresentation when the defendant was aware that it  
26 was actively breaching the contract but remained silent.” *Reno Tech. Ctr. I, LLC. v. New Cingular*  
27 *Wireless PCS LLC*, No. 3:17-CV-00410-LRH-WGC, 2019 WL 507461, at \*8 (D. Nev. Feb. 7,  
28 2019). Caesars brought a claim against the Development Entities for breach of the implied

covenant of good faith and fair dealing arising out of the Development Agreements related to the fees paid by vendors to BR 23 and Future (the Second Cause of Action in Caesars' First Amended Complaint). (First. Am. Compl., filed Mar. 11, 2020, ¶¶ 177-83.) The law precludes Caesars from converting its contract claim against the Development Entities into a fraudulent concealment claim against Mr. Green. *See also Taizhou Zhongneng Imp. & Exp. Co. v. Koutsobinas*, 509 F. App'x 54, 57-58 (2d Cir. 2013) (holding that a "cause of action for negligent or fraudulent misrepresentation cannot arise out of the same facts that serve as the basis for ... causes of action for breach of contract") (internal quotation marks omitted); *Strum v. Exxon Co., USA*, 15 F.3d 327, 329 (4th Cir. 1994) (rejecting "attempt by the plaintiff to manufacture a tort dispute out of what is, at bottom, a simple breach of contract claim.").

Because Caesars lacks clear and convincing evidence supporting its fraudulent concealment claim against Mr. Green, summary judgment should be entered in Mr. Green's favor against Caesars with respect to Caesars' Eighth Cause of Action in its First Amended Complaint.

#### IV. CONCLUSION

Based on the evidence, Caesars has no legal basis for seeking to affix liability to Mr. Green for acts that he committed in his capacity as an agent of Mr. Seibel and companies that were majority owned and controlled by Mr. Seibel. There being no evidence to support Caesars' claims against Mr. Green, the Court should grant this Motion in its entirety.

DATED this 17<sup>th</sup> day of June, 2022.

BAILEY❖KENNEDY

By: /s/ Joshua P. Gilmore

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 17<sup>th</sup> day of June, 2022, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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TAB 138

Part 1 of 2

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