

**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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| Declaration of M. Magali Mercera, Esq. in Support of Appendix of Exhibits in Support of Caesars' Replies in Support of its Motions for Summary Judgment, filed November 30, 2021   | 32                      | 113                    | AA06793-AA06800          |
| Declaration of M. Magali Mercera, Esq. in Support of Caesars' Motions for Summary Judgment, filed February 25, 2021  | 20                      | 95                     | AA04062-AA04075          |
| Declaration of M. Magali Mercera, Esq. in Support of 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 | 35                      | 140                    | AA07476-AA07484          |
| Declaration of M. Magali Mercera, Esq. in Support of 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                            | 39                      | 159                    | AA08453-AA08457          |
| Defendant DNT Acquisition, LLC's Answer to Plaintiffs' Complaint and Counterclaims, filed July 6, 2018   | 2                       | 21                     | AA00283-AA00306          |
| Defendant Gordon Ramsay's Answer and Affirmative Defenses to First Amended Verified Complaint, filed July 21, 2017   | 1                       | 5                      | AA00076-AA00097          |

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| Defendant J. Jeffrey Frederick's Answer to Plaintiff's Complaint, filed September 29, 2017   | 1                       | 14                     | AA00181-AA00195          |
| Defendant Rowen Seibel's Answer to Plaintiffs' Complaint, filed July 3, 2018   | 1                       | 18                     | AA00225-AA00245          |
| Defendants TPOV Enterprises, LLC and TPOV Enterprises 16, LLC's Answer to Plaintiffs' Complaint, filed July 6, 2018  | 2                       | 20                     | AA00264-AA00282          |
| 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 on February 3, 2021  | 13                      | 83                     | AA02626-AA02639          |
| Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion for Summary Judgment No. 1, filed on May 31, 2022   | 34                      | 129                    | AA07052-AA07071          |
| Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion for Summary Judgment No. 2, filed on May 31, 2022   | 34                      | 130                    | AA07072-AA07091          |
| 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-VIII of the First Amended Complaint), filed on March 22, 2023 | 42                      | 168                    | AA09066-AA09083          |

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| First Amended Complaint, filed March 11, 2020  | 5                       | 53                     | AA01101-<br>AA01147      |
| First Amended Verified Complaint, filed June 28, 2017  | 1                       | 4                      | AA00041-<br>AA00075      |
| Initial Appearance Fee Disclosure (PHWLTV, LLC), filed March 20, 2017  | 1                       | 3                      | AA00040                  |
| Initial Appearance Fee Disclosure (Ramsay), filed March 17, 2017   | 1                       | 2                      | AA00037-<br>AA00039      |
| LLTQ/FERG Defendants' Answer and Affirmative Defenses to Plaintiffs' Complaint and Counterclaims, filed July 6, 2018 | 2                       | 22                     | AA00307-<br>AA00338      |
| Minute Order Re: Sealing Motions, filed March 9, 2022  | 33                      | 128                    | AA07051                  |
| Minute Order Re: Status Check, filed April 29, 2020  | 5                       | 59                     | AA01169                  |
| Moti Defendants' Answer and Affirmative Defenses to Plaintiff's Complaint, filed July 6, 2018                        | 2                       | 19                     | AA00246-<br>AA00263      |
| Motion to Amend LLTQ/FERG Defendants' Answer, Affirmative Defenses, and Counterclaims, filed October 2, 2019         | 3                       | 38                     | AA00488-<br>AA00604      |
| Nominal Plaintiff, GR Burgr, LLC's Answer to First Amended Complaint, filed June 19, 2020                            | 6                       | 63                     | AA01282-<br>AA01302      |
| Notice of Appeal, filed April 21, 2023   | 42                      | 170                    | AA09105-<br>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          |



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

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| Notice of Entry of Order Granting Motion to Redact Caesars' 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          |



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| Order Granting Motion to Redact Replies in Support of Caesars' Motion for Summary Judgment No. 1 and Motion for Summary Judgment No. 2 and to Seal Exhibits 82, 84-87, 90, 82, 99-100, and 109-112 to the Appendix of Exhibits in Support of Caesars' Replies in Support of its Motions for Summary Judgment, filed January 3, 2022 | 33                      | 120                    | AA06970-AA06979          |
| Order Granting Motion to Seal Exhibit 23 to Caesars' Reply in Support of its Motion for Leave to File First Amended Complaint, filed April 13, 2020   | 5                       | 56                     | AA01152-AA01155          |
| Order Granting Proposed Plaintiff in Intervention The Original Homestead Restaurant, Inc. d/b/a The Old Homestead Steakhouse's Motion to Intervene, filed October 23, 2018  | 2                       | 26                     | AA00381-AA00382          |
| Order Granting the Development Parties' Motion for Leave to File a Supplement to Their Opposition to Motions for Summary Judgment, filed December 27, 2021  | 33                      | 117                    | AA06936-AA06944          |
| Order Granting the Development Parties' Motion to Redact Their Oppositions to the Counter-Motion and Cross-Motion for Summary Judgment and to Seal All or Portions of Exhibits A-2, A-3, B, D-F, and I-N to the Appendix of Exhibits Supporting the Oppositions, filed October 26, 2022   | 41                      | 161                    | AA08862-AA08868          |
| Plaintiff's Reply to Defendant PHWLTV, LLC's Counterclaims, filed August 25, 2017   | 1                       | 9                      | AA00168-AA00173          |

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| Reply in Support of (1) Counter-Motion for Summary Judgment Against Craig Green and (2) Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VIII of the First Amended Complaint), filed October 12, 2022 – <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-<br>AA00758      |
| Reporter's Transcript, taken September 23, 2020  | 7                       | 67                     | AA01389-<br>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-<br>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-<br>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-<br>AA08150      |

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| Response to Objections to Evidence Offered by Caesars in Support of Its Opposition to Craig Green’s Motion for Summary Judgment; Counter-Motion for Summary Judgment Against Craig Green; and Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VIII of the First Amended Complaint), filed October 12, 2022 | 39                      | 156                    | AA08423-AA08431          |
| Rowen Seibel and the Development Entities’ Opposition to Caesars’ Cross-Motion for Summary Judgment, filed August 31, 2022 – <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          |

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| Substitution of Attorneys for GR Burger, LLC, filed March 17, 2021  | 20                      | 97                     | AA04080-AA04417          |
| The Development Entities and Rowen Seibel's Opposition to Caesars' Motion for Summary Judgment No. 1, filed March 30, 2021 – <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          |

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|---|-------------------------|------------------------|--------------------------|
| The Development Parties' Omnibus Supplement to Their Oppositions to Motions for Summary Judgment Filed by Caesars and Ramsay, filed December 30, 2021 | 33                      | 119                    | AA06957-AA06969          |
| Verified Complaint and Demand for Jury Trial, filed February 28, 2017   | 1                       | 1                      | AA00001-AA00036          |

## **CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ❖ KENNEDY and that on the 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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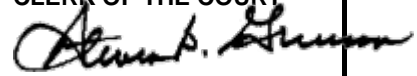
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PHWLV, LLC; and Boardwalk Regency  
Corporation*

/s/ Susan Russo

Employee of BAILEY ❖ KENNEDY

**TAB 163**





TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

|                                      |   |                         |
|--------------------------------------|---|-------------------------|
| ROWEN SEIBEL,                        | ) |                         |
|                                      | ) |                         |
| Plaintiff,                           | ) | CASE NOS. A-17-751759-B |
|                                      | ) | A-17-760537-B           |
|                                      | ) | DEPT NO. XVI            |
| vs.                                  | ) |                         |
|                                      | ) |                         |
| PHWLV LLC,                           | ) |                         |
|                                      | ) |                         |
|                                      | ) | <b>TRANSCRIPT OF</b>    |
|                                      | ) | <b>PROCEEDINGS</b>      |
| Defendant.                           | ) |                         |
|                                      | ) |                         |
| <u>AND RELATED CASES AND PARTIES</u> | ) |                         |

BEFORE THE HONORABLE TIMOTHY C. WILLIAMS, DISTRICT COURT JUDGE

TUESDAY, NOVEMBER 22, 2022

**TRANSCRIPT OF PROCEEDINGS RE:**

**SEE NEXT PAGE FOR MATTERS**

**APPEARANCES:**

|   |   |
|---|---|
| FOR ROWEN SEIBEL, MOTI ENTITIES,<br>LLTQ ENTITIES, TPOV ENTITIES,<br>FERG ENTITIES, CRAIG GREEN,<br>R SQUARED GLOBAL SOLUTIONS,<br>GR BURGR, LLC: | JOSHUA P. GILMORE, ESQ.<br>PAUL C. WILLIAMS, ESQ.     |
| FOR PHWLTV, DESERT PALACE,<br>PARIS OPERATING COMPANY,<br>BOARDWALK REGENCY:  | JAMES J. PISANELLI, ESQ.<br>MARIA MAGALI MERCERA ESQ. |
| FOR GORDON RAMSAY:  | JOHN D. TENNERT III, ESQ.                             |

RECORDED BY: MARIA GARIBAY, COURT RECORDER  
TRANSCRIBED BY: JD REPORTING, INC.

**M A T T E R S**

CRAIG GREEN'S MOTION FOR SUMMARY JUDGMENT

DEFENDANT'S OPPOSITION TO CRAIG GREEN'S MOTION FOR SUMMARY JUDGMENT; COUNTER-MOTION FOR SUMMARY JUDGMENT AGAINST CRAIG GREEN; AND CROSS-MOTION FOR SUMMARY JUDGMENT AGAINST ROWAN SEIBEL AND THE SEIBEL-AFFILIATED ENTITIES (RELATED TO COUNTS IV-VIII OF THE FIRST AMENDED COMPLAINT)

PHWLTV, LLC'S MOTION FOR ATTORNEYS' FEES

GORDON RAMSAY'S MOTION FOR ATTORNEYS' FEES

ROWAN SEIBEL AND GR BURGR, LLC'S MOTION TO RETAX AND SETTLE THE COSTS CLAIMED BY GORDON RAMSAY

ROWAN SEIBEL AND GR BURGR, LLC'S MOTION TO RETAX AND SETTLE THE COSTS CLAIMED BY PHWLTV, LLC

ROWAN SEIBEL AND GR BURGR, LLC'S (i) OPPOSITION TO GORDON RAMSAY'S MOTION FOR ATTORNEYS' FEES; AND (ii) COUNTERMOTION TO DEFER A RULING ON GORDON RAMSAY'S MOTION FOR ATTORNEYS' FEES PENDING OUTCOME OF APPEAL FROM DISTRICT COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING GORDON RAMSAY'S MOTION FOR SUMMARY JUDGMENT

ROWAN SEIBEL AND GR BURGR, LLC's (i) OPPOSITION TO PHWLTV, LLC's MOTION FOR ATTORNEYS' FEES; AND (ii) COUNTERMOTION TO DEFER A RULING ON PHWLTV, LLC's MOTION FOR ATTORNEYS' FEES PENDING OUTCOME OF APPEAL FROM DISTRICT COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING CAESARS' MOTION FOR SUMMARY JUDGMENT NO. 2

1 **LAS VEGAS, CLARK COUNTY, NEVADA, NOVEMBER 22, 2022, 1:34 P.M.**

2 \* \* \* \* \*

3 THE COURT: All right. I just want to say good  
4 afternoon to everyone and welcome you to the afternoon  
5 calendar. And I think we just had one matter on calendar this  
6 afternoon. That's the Seibel versus PHWLTV, LLC, matter.

7 Let's go ahead and set forth our appearances for the  
8 record. Let's start first with the plaintiff, and then we'll  
9 move to the defense.

10 MS. MERCERA: Good morning, Your Honor -- or good  
11 afternoon actually. Magali Mercera on behalf of Desert Palace,  
12 Inc., Paris Las Vegas Operating Company, PHWLTV and Desert -- or  
13 excuse me, Boardwalk Regency Corporation.

14 THE COURT: All right. And good afternoon, ma'am.

15 MR. PISANELLI: Good afternoon, Your Honor. James  
16 Pisanelli on behalf of the same entities.

17 THE COURT: All right. And good afternoon, sir.

18 MR. PISANELLI: Thank you, sir.

19 MR. GILMORE: Good afternoon, Your Honor. Joshua  
20 Gilmore, also with Paul Williams, on behalf of Rowan Seibel,  
21 Craig Green and the Development entities.

22 THE COURT: Okay. And does that cover all  
23 appearances?

24 MR. TENNERT: Good afternoon, Your Honor. John  
25 Tennert on behalf of Gordon Ramsay.

1 THE COURT: And good afternoon, sir.

2 Okay. And I guess we'll try to work through what we  
3 can this afternoon and potentially reschedule.

4 And in taking a look at the calendar, it's my  
5 understanding the first matter up would be Craig Green's motion  
6 for summary judgment; is that correct?

7 MS. MERCERA: Yes, Your Honor.

8 MR. GILMORE: Yes, Your Honor.

9 THE COURT: And then there's a countermotion; right?

10 MR. GILMORE: A countermotion and a cross motion to  
11 that, yes.

12 THE COURT: Right. Okay.

13 Ma'am, you have the floor. Oh, okay. You, sir.

14 MR. GILMORE: Thank you, Your Honor. Again, Joshua  
15 Gilmore here initially on behalf of Craig Green.

16 This motion initially brought on behalf of Mr. Green,  
17 and as you pointed out, we also had a countermotion against  
18 Mr. Green as well as a cross motion against Mr. Seibel and the  
19 development entities that was brought by Caesars.

20 But I'm going to start with the focus on Mr. Green,  
21 and this is a motion that we brought just on his behalf.  
22 Someone who, by all accounts was working as a consultant for  
23 Mr. Seibel and companies that he owned and controlled. And  
24 it's important and we stressed this in our moving papers and  
25 our reply that Mr. Green was working for Mr. Seibel and his

1 companies, not with him, for him.

2 Now, if there's one thing I ask this Court to take  
3 away from this motion and from the opposition and countermotion  
4 filed by Caesars, one thing is there is no evidence before this  
5 court from Caesars saying we were unaware of these fees being  
6 paid to companies owned and controlled by Mr. Seibel. Three  
7 words: We didn't know. You can look for those words an  
8 affidavit from Caesars attached either to their opposition to  
9 this motion brought for Mr. Green or attached to the reply to  
10 their countermotion and cross motion, and yet you don't see it,  
11 an affidavit with three words saying we didn't know, right.  
12 And I stress that, and again I say if there's nothing else the  
13 Court takes from today, it's the absence of that evidence, the  
14 absence of an affidavit from Caesars saying we didn't know.  
15 And I say it --

16 THE COURT: And why is that important?

17 MR. GILMORE: That's important, Your Honor, because  
18 every one of these claims, the conspiracy claim, unjust  
19 enrichment, intentional interference and fraud are all premised  
20 on a factual finding that Caesars was unaware that these fees  
21 were being paid to these companies.

22 And you take the fraud; right? That's the most  
23 obvious. Fraud by definition is deceit; right? It's the  
24 omission of a material fact that caused someone to act  
25 differently than they otherwise would have, right, and the

1 argument here by Caesars is there was a fraud-based duty to  
2 disclose that these fees were being paid to these marketing  
3 companies, and Caesars was unaware that these fees were being  
4 paid. That's not in this record, Your Honor. That's not  
5 before this Court.

6 We're here on summary judgment deciding if there's  
7 sufficient evidence to go to trial on these claims against  
8 Mr. Green. Now, is the time to come forth with that evidence  
9 saying we didn't know, right -- whether an affidavit from Tom  
10 Jenkin, who was the global president of Caesars at the time;  
11 Gary Selesner, the president of Caesars Palace, one of the  
12 properties that had some of these restaurants; Jeff Frederick,  
13 the Vice President of food and beverage, the individual who by  
14 all accounts was the counterpart to Mr. Seibel during the  
15 course of the contractual relationship here, right; chefs from  
16 any of these restaurants, the individuals who were ordering  
17 product from these vendors at the time who were responsible for  
18 the day-to-day operations of these restaurants -- none of them  
19 has come forward with an affidavit for Your Honor to consider  
20 saying we didn't know. So I want to stress that, Your Honor.  
21 And again if there's nothing else you were to take from this  
22 motion today.

23 As I said when I got started, Mr. Green was a  
24 consultant for Mr. Seibel working for companies that were owned  
25 and controlled by Mr. Seibel and almost obvious --

1 THE COURT: There's a difference between being a  
2 consultant and an employee. Was he an employee?

3 MR. GILMORE: He was not an employee of Mr. Seibel,  
4 right. He was not an employee. He was a consultant for a  
5 company that he had formed, right, but as we point out in the  
6 *Collins* case from the Nevada Supreme Court, whether you're an  
7 agent or an employee, you still get the benefit, and this turns  
8 to my first argument which is the Intracorporate Conspiracy  
9 Doctrine, right. If you're an agent, it's just the same. The  
10 protection still exists, and there's no dispute that he was an  
11 agent communicating on behalf of Mr. Seibel, the development  
12 entities when he's communicating with different employees from  
13 Caesars, when he's communicating with vendors for the  
14 restaurants. So there's no dispute that he is acting in that  
15 capacity.

16 Mr. Green has no personal benefit that he is deriving  
17 from these relationships. These relationships predate him. If  
18 you look at the relationship with Pat LaFrieda, that's the meat  
19 supplying company, that relationship --

20 THE COURT: Is there any issue regarding whether or  
21 not there was a payment scheme of some sort as it pertains to  
22 vendors? Is that uncontroverted.

23 MR. GILMORE: Well, you say a payment scheme. I  
24 think it's uncontroverted that --

25 THE COURT: Well, I didn't want to call it a kickback

1 scheme because that's what they said, but some sort of payment  
2 scheme, some sort of arrangement where Seibel was receiving  
3 monies from the vendors?

4 MR. GILMORE: So I don't want to use the word scheme.  
5 I'll use the word arrangement as you just --

6 THE COURT: Arrangement. I mean, that's why I didn't  
7 want to be argumentative. That's why I said this alleged --

8 MR. GILMORE: Sure.

9 THE COURT: Yeah.

10 MR. GILMORE: So to that point, Your Honor, it's  
11 undisputed that there were four vendors that paid fees to two  
12 different companies, right, that those two companies, BR 23 and  
13 Future Star as they're referred to in the opposition and in the  
14 motion, neither of which is a party to this case, neither BR 23  
15 nor Future Star.

16 It is also undisputed that no money was paid to  
17 Mr. Green, and no money was paid to Mr. Seibel. In fact,  
18 during the 30(b)(6) deposition of Caesars, which we attached  
19 that excerpt to our motion, that's Exhibit 11, we asked the  
20 most obvious question: Do you have evidence that Mr. Green  
21 benefited from these relationships? The answer, no, we don't  
22 have evidence of that.

23 So, yes, there are fees that were paid to these two  
24 entities, right, but that's not a scheme. It's not a kickback.  
25 It's not commercial bribery, the different ways Caesars tries



1 to coin or characterize those payments.

2 THE COURT: What is it?

3 MR. GILMORE: What's that?

4 THE COURT: What is it then?

5 MR. GILMORE: They're marketing fees paid to  
6 companies owned and controlled by Mr. Seibel for introducing  
7 vendors to these restaurants.

8 THE COURT: Was there a preexisting relationship?

9 MR. GILMORE: Between Mr. Seibel and the vendors or  
10 between Caesars and the vendors?

11 THE COURT: Between Caesars and the vendors.

12 MR. GILMORE: No. The evidence before this Court is  
13 that Mr. Seibel introduced these vendors to Caesars.

14 THE COURT: Okay.

15 MR. GILMORE: That's the testimony that's before this  
16 Court. There is no competing testimony from a manager, from a  
17 restaurant operator, from the director of food and beverage  
18 saying we knew Pat LaFrieda. We knew Innis & Gunn. We were  
19 buying products from these vendors. The evidence before this  
20 Court is that Mr. Seibel introduced these vendors to Caesars.

21 So I want to focus on the claims that we have against  
22 Mr. Green. The first claim for conspiring with Mr. Seibel to  
23 harm Caesars, and we brought forward two independent bases for  
24 dismissing that claim, Your Honor. The first one, the  
25 Intracorporate Conspiracy Doctrine, as a matter of law, if

1 someone is working as an agent of someone else, and that  
2 someone else is accused of conspiring with that person, it's a  
3 legal impossibility.

4 And here the evidence is before this Court showing  
5 Mr. Green in his affidavit attached to the motion, in the  
6 testimony he was deposed a number of times, both individually  
7 as well as a 30(b)(6) designee for the different entities that  
8 are at issue in this lawsuit, and he testified, I was working  
9 at Mr. Seibel's direction. I was doing what he told me; right?  
10 This is somebody who was hired to work as a consultant for  
11 these companies. Caesars is only interfacing with him because  
12 he's being asked to do so on behalf of the development  
13 entities.

14 So the Intracorporate Conspiracy Doctrine, based on  
15 the evidence, mandates dismissal of the claim for conspiracy  
16 against Mr. Green.

17 The arguments are made, well, he's personally  
18 benefiting from these relationships, which takes them out of  
19 the protections of the Intracorporate Conspiracy Doctrine, but  
20 again, the evidence before the Court is there's not a dollar  
21 paid to Mr. Green.

22 THE COURT: So factually, does Mr. Green, under the  
23 facts of this case, meet the elements for a intracorporate  
24 conspiracy?

25 MR. GILMORE: The evidence, it does, Your Honor.

1 He -- by all accounts, Caesars doesn't dispute that he's acting  
2 for his individual advantage. Well, I'll be more specific:  
3 Caesars doesn't present evidence that he's acting for his  
4 individual advantage because that's what takes you outside of  
5 the corporate -- Intracorporate Conspiracy Doctrine; right? If  
6 you're acting as an agent, and the evidence before this Court  
7 is he was acting as an agent. He was doing what he was told,  
8 right, by the person who hired him, and for these companies  
9 that he was working for. And so as a matter of law, based on  
10 the evidence that's in this record.

11 THE COURT: What about the relationship with  
12 Mr. Seibel?

13 MR. GILMORE: In terms of whether the Intracorporate  
14 Conspiracy Doctrine protects him or not?

15 THE COURT: Yes.

16 MR. GILMORE: Mr. Seibel would be subject to the same  
17 protections as the Intracorporate Conspiracy Doctrine.

18 THE COURT: But I'm talking about vis-à-vis Seibel  
19 and Green.

20 MR. GILMORE: Both of these individuals, right,  
21 Mr. Seibel, if you look at the relationship, he's the principal  
22 of the development entities.

23 THE COURT: Right.

24 MR. GILMORE: The development entities are alleged to  
25 have breached the implied covenant of good faith and fair

1 dealing, right, by not sharing these marketing fees with  
2 Caesars. Well, the entities, of course, can only act through  
3 those who work for it, here that being Mr. Seibel and  
4 Mr. Green. So you have one side of the equation on these  
5 development entities who are only able to act through  
6 Mr. Seibel and Mr. Green. So that's why the Intracorporate  
7 Conspiracy Doctrine applies because you don't have an outsider.  
8 You don't have a third party who's disconnected from this  
9 relationship.

10 THE COURT: But Mr. Green is not an employee; right?  
11 Is he an employee?

12 MR. GILMORE: He's an agent.

13 THE COURT: Okay.

14 MR. GILMORE: He's an agent.

15 THE COURT: So he's not an employee. We know that.

16 MR. GILMORE: Correct. But the *Collins* case from the  
17 Nevada Supreme Court says the Intracorporate Conspiracy  
18 Doctrine applies to agents and employees. So it's not so  
19 limited as to somebody who's getting a W-2, is being paid a  
20 salary every two weeks, and there's no dispute that Mr. Green  
21 is communicating with Caesars on behalf of --

22 THE COURT: Could it be argued that under a lot of  
23 conditions that individuals working in concert, one could  
24 always be alleged to be an agent of someone else?

25 MR. GILMORE: Well, they can allege that, right, but

1 we have to see what evidence is before the Court.

2 THE COURT: Okay, but, I mean, that's what I'm trying  
3 to make sure that we're clear. We know he's not an employee,  
4 and if he's an agent, and I don't remember seeing this, but did  
5 we have some sort of written agreement between Green and  
6 Mr. Seibel? As far as their relationship's concerned, anything  
7 like that?

8 MR. GILMORE: In terms of like a written contract  
9 memorializing his services?

10 THE COURT: Yes.

11 MR. GILMORE: Nothing to my knowledge, Your Honor,  
12 but the testimony from him, which is unrefuted by Caesars, is  
13 that he was working at Mr. Seibel's direction.

14 And you look at it from a practical perspective. Why  
15 else would he even know to communicate with Caesars?

16 THE COURT: But the only reason I bring that up, in  
17 almost any conspiracy, typically you have a ring leader or a  
18 leader, and a lot of individuals that are part of the  
19 conspiracy are working at the direction of somebody; right?  
20 And that's the only reason I bring that up. I'm trying to  
21 figure out --

22 MR. GILMORE: No, I appreciate that, and if you have  
23 somebody on the outside, I think that's the way you look at it.  
24 If you have somebody on the outside, right, a third party  
25 that's working in tandem in a sense or in concert, as you used

1 those words, Your Honor, if you have an outsider who's working  
2 in concert with employees of a company that's accused of  
3 wrongdoing, then you might have a basis to get outside of the  
4 Intracorporate Conspiracy Doctrine.

5 THE COURT: Now here's my next question: Acting  
6 within the scope of their employment, I hear you say is a legal  
7 impossibility, but if something is being done illegally, how is  
8 that within the course and scope of employment?

9 MR. GILMORE: Well, so that's Caesars' argument, that  
10 this is illegal; right?

11 THE COURT: Right.

12 MR. GILMORE: And there's no evidence that this is an  
13 illegal arrangement that existed between these marketing  
14 companies and the vendors for the restaurants.

15 THE COURT: But we can agree to this one fact that if  
16 it is illegal, then it wouldn't be acting within the course and  
17 scope of the employment relationship or the employmentlike  
18 relationship.

19 MR. GILMORE: Fair. So if it's illegal, right, but  
20 that's a legal conclusion that Your Honor has to draw, not a  
21 fact that Caesars can attempt to present to avoid summary  
22 judgment. So what facts do you have to show that this is  
23 illegal; right? And the answer is none.

24 THE COURT: Don't they cite a statute?

25 MR. GILMORE: They cite a statute about calling this

1 commercial bribery, right, and they have to fit the definition  
2 of that, which would involve money being paid by an employee at  
3 Caesars, right, and you look at that and you say, okay, do you  
4 have Mr. Seibel talking to let's say the manager for one of  
5 these restaurants saying, buy product from Innis & Gunn because  
6 I'll get some money from them, and then I'll split that with  
7 you; right? That's where you would be fitting within the  
8 definition of that statute. It doesn't apply here.

9           So then what we do have and what I argued in the  
10 reply from Mr. Green as well as the opposition to the  
11 cross-motion is we look at the four corners of the contract,  
12 right, because that's what -- that's what frames our  
13 relationship. That's what guides us in this context, right.  
14 It creates the duties and responsibilities that flow between  
15 Caesars and the development entities and vice versa; right?

16           And what do we know from that contract? We're not  
17 partners. We're not joint ventures, and the significance of  
18 that then is you say what happens if business opportunities are  
19 presented during the course of this contractual relationship?  
20 Are parties supposed to present those to the other side before  
21 pursuing them themselves; right? I mean, your traditional  
22 partnership, for example, you have the requirement, most often  
23 unless you carve it out, to say a business opportunity that  
24 would be in furtherance of the purposes of the partnership  
25 needs to be presented to the other partners, right, before

1 you -- before you pursue it yourself.

2 Here we're not partners, so the inverse. You have to  
3 have a clause that says business opportunities need to be  
4 presented to either side before one can pursue it without  
5 involving the other, and you don't have that here. These  
6 development agreements don't have what are referred to as  
7 noncircumvention clauses. That's just one way they refer to  
8 those clauses. Presenting business opportunities, right. So  
9 you look at the contracts, and you say is this prohibited under  
10 the contracts; right? No. The answer is no.

11 THE COURT: Is it prohibited under NRS 207.295?

12 MR. GILMORE: I don't have the statute in front of  
13 me, Your Honor, but the answer from when we looked at it before  
14 is no, this is not illegal conduct, right.

15 You have somebody who has introduced a vendor to a  
16 restaurant, right, who's made an introduction, a vendor from  
17 New York who's not selling product to a restaurant in  
18 Las Vegas, and in exchange for that introduction there's a fee  
19 that's going to be paid as a percentage of sales by that  
20 vendor.

21 The testimony from Mr. Seibel is that's common in the  
22 industry and from Mr. Green as well. To his knowledge, that is  
23 common in the industry.

24 THE COURT: Is that common in the industry in  
25 Las Vegas in the state of Nevada and specifically as it



1 pertains to NRS 207.295?

2 MR. GILMORE: Well, then you turn to Caesars and say  
3 do you have evidence that you presented to this Court saying  
4 that's uncommon in the industry? No, we don't have an expert  
5 who came in and said that. We don't have an expert who came in  
6 on behalf of Caesars for these particular claims and said not  
7 only is it uncommon it's illegal, and not that an expert could  
8 go that far, right, but we have --

9 THE COURT: Tell me why I wouldn't give the jury  
10 instruction as it pertains to commercial bribery if this case  
11 went to trial, a special instruction and ultimately the jury  
12 would make that determination?

13 MR. GILMORE: Well, my response, Your Honor, there's  
14 not a private cause of action, one, for allegedly violating  
15 Chapter 207. The claim here is not a private right of action  
16 to seek redress under that statute.

17 And second, as I mentioned, we don't have payments  
18 being paid by Caesars, right, somebody coordinating with  
19 somebody on the inside, so to speak.

20 THE COURT: But we have payments made by the vendor;  
21 right?

22 MR. GILMORE: Correct.

23 THE COURT: Okay.

24 MR. GILMORE: So I submit, Your Honor, this is not --  
25 the claim here is not you violated NRS 207, right. So as a

1 result we get to seek damages for doing that. The claims are  
2 civil conspiracy, fraud --

3 THE COURT: But wouldn't this potentially come under  
4 a civil conspiracy claim, a fraud claim? That's my question,  
5 and the reason why I bring it up, I mean, for example, you talk  
6 about private right of actions, but, for example, the rules of  
7 the road, and specifically we deal with what the statutes are  
8 regarding the operation of a motor vehicle. That's not a  
9 private cause of action, but that can be the basis for  
10 liability in a tort case, right, if you're driving too fast for  
11 the conditions, potentially you commit negligence, and you can  
12 be responsible for that.

13 MR. GILMORE: So I think to that point, Your Honor,  
14 the statute then would help guide us on evidence of the  
15 standard of care, right. So I guess the question here is does  
16 NRS 207 create a standard of care, but then we don't have a  
17 negligence claim, and I would submit we can't --

18 THE COURT: But we have a claim for -- I get that we  
19 don't have a negligence claim, but we have a claim for civil  
20 conspiracy.

21 MR. GILMORE: We do, but I don't think that claim is  
22 meant as a backdoor way to create a private cause of action for  
23 violating any statute here in Nevada.

24 THE COURT: The only reason I bring it up, I mean, I  
25 didn't make it up. They brought it up. I read it, all right.

1 MR. GILMORE: No, understood, Your Honor. They have  
2 argued that this is illegal conduct.

3 THE COURT: Yeah. Yeah, they did.

4 MR. GILMORE: I understand, right. But it's -- but  
5 we're past arguing something on the 12(b)(5) motion to dismiss.  
6 We're here on evidence; right? What is the evidence to show  
7 illegal conduct here; that we don't have. That we don't have.  
8 We don't have any money being paid to Mr. Green by anybody  
9 within Caesars in exchange for agreeing to buy products from  
10 these vendors; right? We don't even have --

11 THE COURT: But do we have this, Seibel and Green  
12 sought and/or coerced payments from vendors who had agreements  
13 with Caesars for the sale of certain products to Caesars'  
14 restaurants?

15 MR. GILMORE: So I'll break that down. We don't have  
16 any evidence of threats; right? Where is the affidavit or depo  
17 testimony from any vendor saying I was threatened, I was  
18 coerced. We can get a lot of depositions taken in this case.  
19 These are vendors that work with Caesars; right? Readily  
20 available and accessible to Caesars to speak with their  
21 vendors. None. We don't have any of that evidence before this  
22 Court, right. You have Mr. Green's deposition --

23 THE COURT: Don't we have Green's deposition? I'm  
24 looking at page 6 of the opposition. It says Green went as far  
25 as to encourage threats against vendors who did not want to pay

1 kickbacks. Now I'm not saying it's a kickback, but that's what  
2 they're arguing, and then it's taken from the -- I think this  
3 is from -- whose deposition is this? I guess it's Exhibit 15,  
4 but it looks like testimony to me:

5 Question: And then you wrote should the vendor try  
6 and play hardball, the threat is to pull products from our  
7 stores altogether. Do you remember writing that?

8 Answer, yes.

9 What do you mean by that?

10 I guess -- and this is the answer, I guess I was  
11 saying that if you don't want to create a relationship, then  
12 perhaps it would be best to find somebody else to create a  
13 relationship with.

14 MR. GILMORE: So that is in reference to internal  
15 e-mails, right, so e-mails between Mr. Green and Mr. Seibel as  
16 well as another individual. I don't remember her name that was  
17 also working as a consultant, right, poor choice of words was  
18 Mr. Green's phraseology.

19 THE COURT: But here's the thing. This is my point.  
20 I'm not here to weigh and balance what the meaning of a poor  
21 choice of words, if they were or not, I don't know. But it  
22 seems to me potentially that might go to a jury to make that  
23 ultimate determination under the facts of this case.

24 MR. GILMORE: Well, it's got to be a material fact,  
25 right, and that's why we stressed was that ever conveyed to a

1 vendor? Is there evidence before Your Honor showing that that  
2 statement was ever conveyed to a vendor; right? Otherwise  
3 we're suing people for thoughts, bad thoughts, right, but it's  
4 actions that we're worried about.

5 And so the question before this Court is do I have  
6 evidence that Mr. Green threatened a vendor? The answer to  
7 that is no. And again they had the ability to depose every one  
8 of these vendors to get an affidavit from the principals of any  
9 of these vendors. They didn't do any of that. None of that is  
10 before this Court in response to this motion, and that's the  
11 point; right? You come forward and you say here's what the  
12 testimony will look like at trial. Here's what the vendor will  
13 say.

14 THE COURT: But, I mean, do we always need testimony  
15 from vendors if Mr. Green and/or Mr. Seibel admit to the  
16 conduct?

17 MR. GILMORE: Well, they denied that they threatened  
18 any vendor, Your Honor. So those again, you're looking at  
19 testimony about an internal e-mail between Mr. Seibel and  
20 Mr. Green; right? You're not looking at an e-mail from  
21 Mr. Green to a vendor saying I'm going to pull your product.  
22 Listen to me, if you don't pay X dollars, you're done; right?  
23 And Caesars stressed during the deposition with Mr. Green he  
24 didn't have control over whether Caesars purchased products  
25 from these vendors or not. That was within the exclusive

1 control of Caesars. So again, we have to look at the evidence  
2 that's been presented to this Court. That's what we're focused  
3 on right now, and the evidence is absent in terms of threats  
4 coercing vendors to pay fees to these vehicles, these marketing  
5 companies that were set up as vehicles to support the payment  
6 of these fees. We don't have that evidence.

7 So going back then, Your Honor, to the conspiracy  
8 claim. Both the Intracorporate Conspiracy Doctrine as well as  
9 the second argument, which I've gone through some of the  
10 evidence now is that some of the argument about the evidence is  
11 there's no evidence of an intent to harm Caesars, okay.

12 From Mr. Green's perspective, he understood that  
13 Caesars is aware of these relationships, right, and again, you  
14 look and you say he's working for someone else. He's working  
15 for someone else. These relationships predate his retention as  
16 a consultant. Is that reason for him to suddenly raise a red  
17 flag and call Caesars and say, hey, you're aware of this;  
18 right? You know what's going on? The answer is no.

19 His knowledge, which again we put forward with our  
20 motion, is, as far as he knows, Caesars is aware of these  
21 relationships and hasn't done anything. And again, I take that  
22 back to where's the affidavit from Caesars saying I don't know.

23 So, Your Honor, for those two reasons, we submit that  
24 the conspiracy claim should be dismissed on summary judgment.

25 Turning to the unjust enrichment claim, unless Your

1 Honor has --

2 THE COURT: Well, we know Gordon Ramsay wasn't aware;  
3 right? His deposition was taken.

4 MR. GILMORE: Yeah, but Gordon Ramsay didn't bring  
5 this claim.

6 THE COURT: I understand, but --

7 MR. GILMORE: Caesars did. So Caesars can't prove a  
8 lack of knowledge by showing Mr. Ramsay had a lack of  
9 knowledge.

10 Caesars also presented evidence saying Sherry's, the  
11 Sherry brothers weren't aware. Again, the Sherry brothers  
12 didn't sue for these fees, Caesars did.

13 THE COURT: Are you saying that it's proper  
14 inappropriate to have this scheme or agreement in place and,  
15 notwithstanding the fact that Caesars didn't approve it and/or  
16 know about it?

17 MR. GILMORE: Well, I respectfully take issue with it  
18 being a scheme, Your Honor. I understand Caesars has alleged  
19 that. So that's why I go back to the contracts didn't prohibit  
20 it. The testimony is Caesars was aware of it, and this is  
21 common in the industry. So where is Caesars with their  
22 affidavit saying we weren't aware of it?

23 THE COURT: Well, wouldn't it be problematic as it  
24 relates to the covenant of good faith and fair dealings  
25 potentially?

1 MR. GILMORE: Well, and that's a separate claim that  
2 they brought right? So --

3 THE COURT: No, I understand, but, I mean, it also  
4 goes part and parcel. Just because something is not  
5 necessarily set forth in a contract doesn't stand for the  
6 proposition that it's okay. Certain conduct isn't.

7 MR. GILMORE: So then that raises a host of other  
8 questions; right? And two of them I would point out. One, we  
9 can't convert contract claims into tort claims, and that's  
10 exactly what we've done here; right? Because on the one hand  
11 we're saying, we being Caesars, this is a breach of the implied  
12 covenant of good faith and fair dealing.

13 THE COURT: Right.

14 MR. GILMORE: And on the other hand we're saying, and  
15 it's fraud and intentional interference and conspiracy and  
16 unjust enrichment. So you can take the -- right? How can it  
17 be both? You can't convert a contract claim against the  
18 company into a tort claim against the individuals, especially  
19 if you're arguing that the obligation arises from the contract;  
20 right? The --

21 THE COURT: But there's, depending on the  
22 relationship, for example, if there's a fiduciary-like  
23 relationship, that can be the basis for a tort claim as set  
24 forth in the contract. It happens all the time in insurance  
25 bad faith; right?



1 MR. GILMORE: So fair, in an insurance bad faith  
2 context, you got a fiduciary relationship; right?

3 THE COURT: Right.

4 MR. GILMORE: Not here. And, in fact, one of the  
5 things we affirmatively said in our motion, let's focus on the  
6 fraud claim, is there has to be a fiduciary or confidential  
7 relationship that arises between the parties to create, you  
8 know, what is referred to as a fraud-based duty to disclose.  
9 Caesars did not argue that any such relationship presented in  
10 their opposition.

11 THE COURT: Can you have a fraud-based claim even if  
12 there's no fiduciary relationship? It seems to me you can. I  
13 mean, it's not limited. Fraud is fraud. You can have no  
14 relationship and fraud; right?

15 MR. GILMORE: No relationship and fraud, absolutely.  
16 We have a contract here that governs the parties' relationship  
17 though; right?

18 THE COURT: But a contract doesn't insulate or isn't  
19 a shield against a fraud claim if fraud has been committed.

20 MR. GILMORE: Not necessarily; right? But then you  
21 have to ask yourself is there a fraud-based duty to disclose?  
22 Because that's separate and distinct from a contractual-based  
23 duty to disclose; right? It has to be. You have to have two  
24 different sources of authority to impose a fraud-based duty to  
25 disclose upon an individual whose company is under contract

1 with the opposing party; right? And here there's no evidence  
2 that would support a fraud-based duty to disclose.

3           Caesars cited -- I think it's the *Villalon* case, I  
4 might be mispronouncing that, from the Nevada Supreme Court  
5 saying if something is peculiarly within the knowledge of one  
6 side and it cannot be disclosed, or discovered rather, by the  
7 other side, that may give rise to a fraud-based duty to  
8 disclose, not will, may, right.

9           So we responded in our reply saying that that doesn't  
10 fit these facts here because Caesars has the ability to  
11 communicate with its own vendors about whatever relationships  
12 those vendors may have with Mr. Seibel and the companies that  
13 he owns and controls, right. And we see from at least two  
14 e-mails that were produced in discovery that this was brought  
15 to Caesars' attention. So it's not something that's peculiarly  
16 within something that only Mr. Green, for example, would be  
17 aware of to where an argument could be made that there's some  
18 fraud-based duty to disclose that's owed to Caesars here.

19           So I go back to Your Honor without a fraud-based duty  
20 to disclose, you can't convert what is a contract claim here  
21 against the development entities into a fraud claim against  
22 Mr. Green.

23           So then the other point I want to make, Your Honor,  
24 is you brought up the implied covenant claim right. As you  
25 said, well, it might not be spelled out in the contract, but

1 maybe it covers it; right? We don't know; right? And this  
2 dovetails into my opposition to their countermotion to say,  
3 well, do we know what the expectations of the parties are under  
4 this contract with regard to these fees? Well, there's an  
5 absence of a noncircumvention clause. So I think that speaks  
6 pretty clearly to what the parties expected.

7           Caesars had every ability when they're drafting these  
8 contracts to do one of two things; either impose the  
9 requirement to present business opportunities, a different way  
10 to refer to a noncircumvention clause, or to say, we're  
11 partners. We're going to be partners in this restaurant;  
12 right? Caesars did the exact opposite. They said we're not  
13 partners. We're not partners.

14           So now the argument is being made that the implied  
15 covenant will create a right that doesn't otherwise exist under  
16 this contract, which we know from prior argument in this case  
17 that the Court shouldn't do that. Don't impose obligations  
18 under this contract that don't exist.

19           THE COURT: So tell me this though, as far as Seibel  
20 and Green are concerned, I just want to make sure the record is  
21 clear I understand this, whatever amounts they paid were not  
22 for products they had purchased; is that correct?

23           MR. GILMORE: That's correct. They're not purchasing  
24 the product.

25           THE COURT: And Caesars was purchasing the product;

1 is that correct?

2 MR. GILMORE: That's correct.

3 THE COURT: Okay. And you feel that it's acceptable  
4 under that factual scenario for Seibel and Green to receive  
5 some sort of monetary compensation for products purchased by  
6 Caesars and not disclose that fact to Caesars?

7 MR. GILMORE: So that falls apart for a couple of  
8 reasons. Again, we don't have evidence that it wasn't  
9 disclosed. There's no evidence in this record to show that.  
10 We also know that Mr. Green did not receive a dime from these  
11 entities. In fact, their 30(b)(6) testified to that.

12 THE COURT: Didn't the money -- where did the money  
13 go?

14 MR. GILMORE: The two companies, Your Honor, BR 23  
15 and Future Star.

16 THE COURT: Right. Right.

17 MR. GILMORE: So you say one --

18 THE COURT: Who is the principal in those two  
19 companies?

20 MR. GILMORE: Mr. Seibel.

21 THE COURT: Okay.

22 MR. GILMORE: Well, that's important though; right?  
23 Mr. Seibel is not Mr. Green. We're talking about two different  
24 people here. We can't conflate those two individuals. We have  
25 to separate the two, and I think that's important; right? I

1 bought this motion on behalf of Mr. Green appreciating that  
2 there is a distinction between those two individuals, right,  
3 and I understand that the cross-motion and a countermotion was  
4 brought, right, but we're looking at Mr. Green right now, who  
5 is not an owner of Future Star until 2018, which is two years  
6 after Caesars is even still under contract with the development  
7 of these; right?

8           He's a consultant for that company prior in time.  
9 He's not an owner. He does become an owner of BR 23 in 2014,  
10 right, as a function of getting health insurance, but there's  
11 no distributions that are being paid from either BR 23 or  
12 Future Star once Mr. Green became an owner. Also undisputed.

13           So again we're trying to now impose liability on  
14 Mr. Green as a consultant for money being paid to these  
15 companies without an alter ego claim, and we don't have -- we  
16 don't have a claim pled for alter ego. We don't have evidence  
17 of alter ego. A lot of discovery was conducted in this case,  
18 but we certainly did not have discovery presented to this Court  
19 showing that Mr. Green is an alter ego of these two entities,  
20 and that matters for Nevada law. That certainly matters. We  
21 have to distinguish between these two companies, and I think  
22 that's why the unjust enrichment --

23           THE COURT: What about encouraging threats against  
24 vendors? Did that happen by Mr. Green? Was he encouraging  
25 that?

1 MR. GILMORE: The argument, Your Honor, he put in his  
2 affidavit no, I did not threaten any vendor.

3 THE COURT: What about his testimony?

4 MR. GILMORE: Testimony, they were asking him about  
5 those e-mails, that he did write internally. So again, I can't  
6 dispute that those e-mails were circulated internally, right,  
7 but it never happened. So you've got an internal e-mail that  
8 in many ways perhaps is reflecting someone's thought processes.  
9 Are we going to sue someone and expose them to liability for a  
10 thought rather than an action? When it was as simple --

11 THE COURT: Well, what happens when we have thoughts  
12 coupled with potential facts? Because I would anticipate in  
13 this case there is evidence that vendors were paying Seibel's  
14 entities; right?

15 MR. GILMORE: Well, we can't have potential facts.  
16 We have to have evidence before this Court --

17 THE COURT: Well, I'm trying -- I'm trying -- don't  
18 quibble with me. I'm trying to do it in the best way for you.  
19 In essence, there's facts being presented by the adverse party  
20 that, you know what, there were threats being made to the  
21 vendors, and the threats would be this to try and play hardball  
22 and pull product from the stores if they didn't do business.  
23 It's kind of like -- I remember in the Godfather. What was his  
24 name? Luca Brasi, right, and he would go around from store to  
25 store, and if you didn't play right, and he didn't make

1 threats, but you knew when Luca showed up there were problems,  
2 and if you didn't pay and play, there were problems.

3 And so my question is this, I mean, really and truly:  
4 We have statements made by internal e-mails regarding potential  
5 threats, right, and I'll call them threats because I'm not  
6 going to categorize them. I'm not going to say schemes and all  
7 those things. They allege schemes. That's why I said  
8 potential threats, but we have that, and then we have payments  
9 made to three Seibel entities -- two Seibel entities, right,  
10 from vendors of Caesars. That's uncontroverted; right?

11 MR. GILMORE: The payments being made to the two  
12 entities, that's correct, Your Honor.

13 THE COURT: Okay.

14 MR. GILMORE: I don't dispute that, right.

15 But to your point on the Godfather movie, why don't  
16 we have deposition testimony from the vendors saying he came  
17 and made it very well known perhaps in not so many words that  
18 if I didn't pay him this money my product wasn't going to be  
19 sold to Caesars. Why not? Again, I think there was in excess  
20 of 30 depositions taken in this case or even an affidavit;  
21 right? Reach out to the vendor. These are people that are  
22 selling their product to Caesars. There's really not --

23 THE COURT: Remember this, and I give a jury  
24 instruction on this. There's two types of evidence, right  
25 direct and circumstantial, and it could be argued that under

1 the facts of this case you have circumstantial evidence on that  
2 issue assuming -- I'll hear from the other side -- but just  
3 those statements themselves, he has internal e-mails, and I  
4 don't think it was just by goodwill that vendors wanted to say,  
5 hey, look, we'll give you a little extra, you know, because we  
6 feel good about this great product and this great service.  
7 We're just going to give you fortuitously money to your two  
8 LLCs. I don't think it works that way. But go ahead.

9 MR. GILMORE: Well, let's take the fraud claim, Your  
10 Honor, right. That's clear and convincing evidence. So I  
11 appreciate there are two types of evidence, direct and  
12 circumstantial, and I agree with that, right, but you have to  
13 have clear and convincing evidence for fraud. So that's --  
14 it's a little bit more, right, than preponderance. We know  
15 that, and at best, Caesars is relying on, as you put it,  
16 circumstantial evidence to support fraud; right? That which  
17 has serious implications in and of itself, a fraud claim  
18 against someone who's working for someone else that's under --  
19 that owns a company that's under contract with Caesars.

20 THE COURT: But here's the thing. I mean, I give  
21 jury instructions, right, but I don't make the facts or a  
22 determination. A jury could look at clear and convincing and  
23 say, yeah, there was a payment made, and I'm looking at the  
24 e-mails, and that's enough for us to make that determination  
25 that it was fraudulent.



1           See, I'm not making -- I'm not making factual  
2 determinations. I can't weigh and balance the evidence at  
3 the -- unless it's uncontroverted, but if there's a dispute,  
4 I've got to do what I've got to do, and typically disputes go  
5 to the jury. That's my point.

6           MR. GILMORE: Understood, Your Honor. Well, I guess  
7 I, on that point, I would leave it with it is disputed that any  
8 vendor was threatened; right?

9           THE COURT: Oh, I understand. Okay. I got you.

10          MR. GILMORE: So we'll leave it at that, right.

11          THE COURT: And you can make that argument too, no  
12 question about it.

13          MR. GILMORE: So that's certainly a disputed point;  
14 right.

15           Okay. Let me go back briefly, Your Honor, to the  
16 unjust enrichment claim, right, because we have to have a  
17 benefit conferred on Mr. Green by Caesars. We don't have that.  
18 Mr. Green is not under contract with Caesars. You raised this  
19 earlier. Is Mr. Green selling product to Caesars? No. Is  
20 Mr. Green buying product? No. Right? So the unjust  
21 enrichment --

22          THE COURT: And I want to make sure I'm clear on the  
23 claims for Mr. Green, to be fair. As far as he's concerned, we  
24 have the civil conspiracy.

25          MR. GILMORE: We have civil conspiracy, Your Honor.

1 We have unjust enrichment.

2 THE COURT: Okay. I'm with you.

3 MR. GILMORE: We have intentional interference with  
4 existing contractual relations and fraud.

5 THE COURT: All right. I just want to make sure I'm  
6 not missing anything.

7 MR. GILMORE: Those are the four -- I think it's 4,  
8 5, 7 and 8, or 4, 6, 7 and 8.

9 The only other claim that I didn't mention that's not  
10 against Mr. Green is the implied covenant claim, which is  
11 against the development entities. So the other four claims are  
12 against both Mr. Green as well as Mr. Seibel.

13 THE COURT: I understand your argument as far as  
14 unjust enrichment. There's no evidence he received something.  
15 Is that what you're saying?

16 MR. GILMORE: Correct.

17 THE COURT: I gotcha.

18 MR. GILMORE: No evidence that he received something.  
19 He's not under contract with Caesars where he's benefiting from  
20 these relationships, and so nothing that would support an  
21 unjust enrichment claim against him.

22 Moving to the intentional interference claim, Your  
23 Honor, which the first argument which is similar to the  
24 conspiracy argument, is referred to as the stranger rule,  
25 right, that you have to have someone who's a stranger to these

1 contracts in order to support unintentional interference claim.

2 And again, you marry that with the implied covenant  
3 claim, and you say, well, Caesars is saying that these entities  
4 breached the implied covenant of good faith and fair dealing by  
5 not sharing these marketing fees. Well, then by definition, if  
6 we're arguing that there were acts undertaken for these  
7 entities, you can't tortiously interfere with those contracts  
8 at the same time.

9 So as a matter of law, the stranger rule bars the  
10 intentional interference claim.

11 Similar arguments then otherwise, Your Honor, in  
12 terms of the evidence, no active concealment here by Mr. Green.  
13 We don't have evidence. We don't have an affidavit from  
14 someone at Caesars saying Mr. Green lied to me about, you know,  
15 why he was sending me e-mails, what he said he was doing, his  
16 discussions with me about vendors. We don't have an affidavit  
17 from anyone at Caesars to support active concealment on his  
18 part. And again, the no circumvention clause, which I've  
19 covered with Your Honor as well.

20 And then for the fraud claim, Your Honor, I've talked  
21 about it already. We don't have a fraud based duty to disclose  
22 owed by Mr. Green. Again, I want to focus on Mr. Green here.  
23 This is not Mr. Seibel. So Mr. Seibel being the principal of  
24 the development entities, Mr. Green not, while these fees are  
25 being paid. So I think that's an important distinction to draw

1 here when you're looking at this fraud claim.

2 And similar arguments, no evidence that he's  
3 intending to defraud Caesars, concealing information from  
4 Caesars, hiding anything from Caesars.

5 Again, I go back to no affidavit saying we didn't  
6 know.

7 So, Your Honor, I think we've belabored these claims.

8 In terms of the evidence, these claims were brought  
9 against Mr. Seibel and Mr. Green. We have brought forth a  
10 motion for summary judgment on behalf of Mr. Green based on --

11 THE COURT: I understand.

12 MR. GILMORE: -- acts he took as directed by someone  
13 else. We submit that summary judgment should be granted for  
14 him.

15 THE COURT: Thank you, sir.

16 And we'll hear from the opposition.

17 MS. MERCERA: Thank you, Your Honor.

18 Your Honor, this is not a case about disputed facts,  
19 and I will tell you, while opposing counsel was up here, he  
20 said there's no evidence, there's no evidence, there's no  
21 evidence. I will point you to every point of evidence that we  
22 have in this case, starting with the first one, which is that  
23 Mr. Gilmore says that there was no evidence that they were  
24 trying to hide this from Caesars. I would point the Court to  
25 Exhibit 17, which shows Mr. Green telling a vendor that they

1 specifically did not want to go through Harrah's, which was  
2 Caesars at the time.

3 From the time that Caesars sought to amend its  
4 complaint, Green, Seibel and the Seibel affiliated entities  
5 have admitted that they solicited and obtain these payments  
6 from vendors, that Caesars purchased products from. This is a  
7 case where defendants are asking the Court to simply make  
8 unreasonable inferences.

9 Your Honor knows the standard for summary judgment  
10 better than any of us, and Your Honor knows that the law  
11 requires that when reviewing a motion for summary judgment, the  
12 evidence and any reasonable inferences drawn from it must be  
13 viewed in the light most favorable to the nonmoving party.

14 But the key to that, Your Honor, is that the Court  
15 need not draw all inferences in favor of the nonmoving party  
16 but rather all reasonable inferences.

17 Now, Your Honor, I'm wearing a black blouse, okay.  
18 Not only a I telling you that I'm wearing a black blouse, you  
19 can see with your own two eyes that I am wearing a black  
20 blouse. If we were to move for summary judgment that I am  
21 wearing a black blouse, but Mr. Green filed a declaration  
22 saying that I am wearing a red blouse, this Court is not  
23 required to infer that I am, in fact, wearing a red blouse.

24 Now, I know that sounds completely ridiculous, but  
25 that is where we are, Your Honor. On the face of the documents

1 and from the admission of their own counsel that these were  
2 smoking gun documents, we can see that this was a kickback  
3 scheme, and yet defendants ask this Court to infer that this  
4 was a quote, unquote marketing agreement, and that's simply not  
5 the case, Your Honor.

6 As with nearly every argument that I've made before  
7 you, I'm going to ask Your Honor --

8 THE COURT: Well, I think that if there was a  
9 marketing agreement, I would hope that there would be a  
10 contract signed with Caesars vis-à-vis the agreement; right?

11 MS. MERCERA: I agree with you 100 percent, Your  
12 Honor, and if you look at Exhibit 43 to our reply, our 30(b)(6)  
13 designee and for purchasing, Ms. Medeirosman testified that  
14 when you do have brand ambassadors, they disclose that position  
15 up front to Caesars, and Caesars knows that it is dealing with  
16 a brand ambassador. That's not what we have here, Your Honor.

17 And not only do we not have a marketing contract, we  
18 don't have any marketing deliverables. I haven't seen a  
19 campaign, a promotion. I haven't seen so much as an Instagram  
20 post, Your Honor, that shows that Seibel or Green were  
21 providing any marketing services to these vendors in exchange  
22 for these fees.

23 Now, let's back up and start from the beginning here,  
24 Your Honor. As this Court knows well, Caesars is a gaming  
25 licensee, and it's subject to rigorous regulations to ensure

1 that it's upholding those standards. It has entered into a  
2 compliance plan, and that compliance plan, which is  
3 Exhibit 3 to our countermotion and cross-motion for summary  
4 judgment provides that bribes, influence payments or kickbacks  
5 may never be provided to or accepted from any person, including  
6 in the form of gifts, hospitality or similar benefits. The  
7 plan, importantly, requires that all vendors abide by it as  
8 well. So if you're doing business with Caesars, you're not  
9 allowed to solicit and seek kickbacks either.

10 In each of the six agreements that Caesars entered  
11 into with the Seibel affiliated entities, there was a  
12 requirement that they each uphold and act with the highest  
13 standards of integrity and honesty, quality and courtesy so as  
14 to maintain and enhance the reputation and goodwill of Caesars.

15 Further, under each of those agreements, Caesars was  
16 solely responsible for the day-to-day operations of the  
17 restaurants.

18 That's important, Your Honor, because Caesars was the  
19 one buying the product. Caesars was the one buying the beer.  
20 Caesars was the one buying the meat. Caesars was the one  
21 actually paying these vendors for their product.

22 And under each of those agreements, as you noted in  
23 our briefing, all those credits and balances were required to  
24 be accounted for in the financials so that they could be  
25 appropriately split with the different partners for the

1 restaurants.

2           So in other words, if there were rebates, legitimate  
3 rebates to be had, Caesars expected to know about them so that  
4 they could be appropriately accounted for.

5           Now, turning to the kickback scheme, Your Honor, they  
6 try to say it was marketing, and I would point the Court to the  
7 actual evidence in this case.

8           First of all, these were not for introductions.  
9 Mr. Green and Mr. Seibel in their briefing make the point that  
10 these fees were paid to provide introductions and ongoing  
11 marketing to the vendors for Caesars; however, if you look at  
12 page 5 of our reply, specifically Exhibits 11, 15 and 16,  
13 you'll see that they were demanding retroactive payment. How  
14 can you claim that a payment was for an introduction when  
15 you're making the demand in 2013 for payments that were made in  
16 2012? That simply is illogical.

17           Further, Your Honor, if you look at the testimony in  
18 this case, specifically Exhibit 41, which is the testimony of  
19 Rowan Seibel, we asked him, Did you have a responsibility to  
20 continue to market the Pat LaFrieda products?

21           I don't believe so, no.

22           In other words, it wasn't a condition of payment?

23           Answer: No.

24           So, Your Honor, further, if you look at Exhibit 16,  
25 they would say what they're interested in is a 15 percent



1 rebate check. Exhibit 39, we see this as a rebate between you  
2 and us. That's an e-mail from Craig Green to a vendor.

3 Exhibit 11, we are completely content with the  
4 15 percent rebate on each keg price.

5 Exhibit 12: I would suggest having BR 23 Venture,  
6 LLC, be the vehicle to continue to receive the, quote, unquote,  
7 rebates.

8 Exhibit 15, what we expect in return is the  
9 following, a 15 percent rebate on total orders during that  
10 month.

11 Exhibit 40: As far as a 1099, I checked with  
12 accounting. A rebate is actually considered a price reduction,  
13 not income. So there is no 1099 on that.

14 Exhibits 11, Your Honor, Rowen is adamant about this  
15 being retroactive from January 1st, 2013. We are willing to  
16 completely ignore 2012 when it comes to GR Steak; however, we  
17 feel it is only fair to include Pub, Burger and GR Steak.

18 Now, Your Honor asked Mr. Gilmore if there was any  
19 evidence of threats actually conveyed to the vendors. The  
20 answer is yes. So we can start with Exhibit 15, Your Honor.  
21 That is an internal e-mail between Craig Green and Danielle  
22 Abraham, where he provides a script with basically fill in the  
23 blanks, Your Honor, about how they make these demands of  
24 vendors, and the line in there about halfway down the page  
25 says, should the vendor try and play hardball, the threat is to

1 pull their product from our stores altogether.

2           If you look at Exhibit 16, from Craig Green to Donna  
3 Bimbo, who represented Sysco, one of the vendors for water. He  
4 tells her, please let me know when a good time to talk is. I  
5 am getting pressure to make a change at all Gordon Ramsay  
6 restaurants with vendors willing to partner with us.

7           There is further evidence of threats made where on  
8 exhibit, excuse me -- on Exhibit 43, again, another e-mail from  
9 Craig Green to Donna Bimbo. We love the brand and how well it  
10 fits with our brand; however, quote, there are many others  
11 ready and willing to step in immediately.

12           So threats were, in fact, made that the product would  
13 be pulled if the vendors were unwilling to quote, unquote, play  
14 ball.

15           Your Honor, turning then to the basic point, there is  
16 no undisputed fact here. We have presented evidence after  
17 evidence showing that they engaged in a quote, unquote,  
18 kickback scheme, and the reason I say kickback, Your Honor, is  
19 because as counsel admitted, neither Green nor Seibel nor where  
20 the Seibel affiliated entities paid for this product. That is  
21 by definition, and we actually quote *Black's Law Dictionary* in  
22 our briefing, Your Honor. That's what a kickback is:  
23 Demanding payment by threats of violence or other harm.

24           Turning to the --

25           THE COURT: I don't think it's a marketing technique.

1 I mean, I don't see how it's a marketing technique. I have an  
2 undergraduate degree in marketing and business from Indiana  
3 University. I don't remember that being taught.

4 MS. MERCERA: Same, Your Honor. My marketing degree  
5 is from UNR, but same thing.

6 I missed that course if it was taught that day.

7 Turning to the excuses as to why summary judgment is  
8 not appropriate, frankly, Your Honor, they don't apply here.  
9 Summary judgment is, in fact, appropriate, but it's against  
10 Seibel, against Green and against the Seibel affiliated  
11 entities and in favor of Caesars.

12 To address briefly the excuse of the Intracorporate  
13 Corporate Doctrine, that doesn't apply here, Your Honor. As  
14 the testimony in this case shows, Mr. Green was never employed  
15 by Mr. Seibel. In fact, we cited testimony in our briefing  
16 where he admits that since 2011 he has only been employed by  
17 his entity CBG Hospitality Group, and he was never an employee  
18 of Seibel.

19 In our original motion, Your Honor, we cited  
20 testimony from Mr. Seibel saying that he was never an employee,  
21 just a friend.

22 And Your Honor hit the point head on when simply  
23 because he was acting at the direction of Seibel doesn't make  
24 it any less culpable. If someone tells you to rob the bank and  
25 you go and do it, you can't blame the other guy for telling you

1 to rob the bank. You're just as liable. So that excuse, Your  
2 Honor, frankly falls flat. The Intracorporate Conspiracy  
3 Doctrine is inapplicable here for what we're talking about.

4 And there was an improper and frankly illegal act  
5 committed in the solicitation of kickbacks by, as we have seen,  
6 the threat of harm against these vendors.

7 Turning then to the unjust enrichment claim, Your  
8 Honor, the argument that Mr. Green and Mr. Seibel did not  
9 receive a personal benefit is just again unsupported by the  
10 evidence, and I will cite to you again the specific evidence  
11 that supports our argument.

12 If you look at Exhibit 32, which is the deposition  
13 testimony of LLTQ Enterprises 16, we can see that greens  
14 admit -- Green admits that BR 23 Venture was the entity that  
15 paid for his health insurance, and this is the entity that he  
16 funneled or directed vendors to funnel their payments to. So  
17 he did receive a benefit. I think it would be laughable in our  
18 day and age to argue that health insurance is not a benefit and  
19 that having health insurance is not a good thing.

20 We also point to the fact that he became a part owner  
21 of BR 23 Venture, again, the entity that he directed payment  
22 to.

23 And you can see that he directs payment to this  
24 entity in Exhibit 15 at the very bottom of that e-mail. That  
25 is the entity that he tells people to make their payments to.

1           As for Seibel, he also received a benefit from  
2 soliciting these kickbacks in the form of income. You'll see  
3 we attached as Exhibit 46 to our reply, Your Honor, a chart  
4 where it shows that Seibel considered the income derived from  
5 BR 23 as his own, and he identifies it as his own income, and  
6 he also reports BR 23 Venture's income on his own tax return  
7 demonstrating that he does, in fact, receive a benefit.

8           Neither Green nor Seibel purchased the product that  
9 they were demanding payment for. So there is truly no  
10 legitimate dispute here that they received a benefit and were  
11 unjustly enriched by this scheme.

12           Next, Your Honor, turning to the intentional  
13 interference claim. In defense of this claim, Green and Seibel  
14 simply argue that they cannot interfere with their own  
15 contracts, but the contracts, Your Honor, weren't with Green  
16 individually or with Seibel individually. They were with the  
17 Seibel affiliated entities, and under each of those agreements,  
18 which I believe are Exhibits 4 through 9 in our original  
19 motion, each and every one of those contracts required that  
20 rebates be accounted for legitimately and disclosed in the  
21 financials. By Seibel and Green interfering with that process,  
22 they interfered with the operation of the restaurants and  
23 interfered with the Seibel agreements, Your Honor.

24           Interestingly enough, in the e-mails that we have  
25 again from Green and Seibel themselves, I'm looking at

1 Exhibit 16, there's an e-mail from the vendor to Green that  
2 says, I've sent many e-mails to Sysco advising that we need to  
3 give you a 20 percent discount on pricing. So that was an  
4 amount that Caesar should have been entitled to, that they  
5 would have gotten had they been aware that this was going on  
6 and would have obtained the benefit of purchasing the product  
7 at a lesser cost.

8 Now, turning to the last claim that only involves  
9 Seibel and Green, Your Honor, they intentionally and wrongfully  
10 concealed the kickback scheme. We cited the case the *Villalon*  
11 *versus Bowen*, excuse me, and there it says even in the absence  
12 of a fiduciary or confidential relationship and where the  
13 parties are dealing at arms length, an obligation to speak can  
14 arise from the existence of material facts within the knowledge  
15 of the parties sought to be charged, and not within the fair  
16 and reasonable reach of the other party.

17 Of the dozens of e-mails that we attached to our  
18 briefing, Your Honor, at no point was Caesars copied on any of  
19 those demands for payment. To the contrary, as cited in my  
20 earlier exhibit, Green and Seibel went out of their way to tell  
21 the vendors not to contact Caesars, as they did not want to go  
22 through them. They wanted to deal exclusively with them so  
23 that they could get the benefit themselves to the detriment of  
24 Caesars.

25 There was no way that Caesars could have known that

1 this was going on. I mean, if we're going to impose on a party  
2 an obligation that they should know and always suspect that  
3 their business partners, their vendors are engaged in kickback  
4 schemes, that's a very tall order that I think would hamper  
5 business in the State, frankly, Your Honor.

6 And further, Caesars did have safeguards in place.  
7 We, one, had the provision in the contracts that required  
8 rebates -- that addressed how appropriate rebates were to be  
9 handled, and we also required vendors to promise to act with  
10 the highest standards of integrity and honesty.

11 I think engaging in a kickback scheme is as far away  
12 from that standard as you can get.

13 Finally, Your Honor, summary judgment is appropriate  
14 in favor of Caesars on its claim for the breach of the implied  
15 covenant of good faith. The contract doesn't specifically  
16 prohibit seeking kickbacks. That is a point that opposing  
17 counsel made. That is correct. It doesn't prohibit.

18 THE COURT: But didn't they have a duty to disclose?

19 MS. MERCERA: They did have a duty to disclose, but  
20 the duty to disclose wasn't the -- them or their affiliated  
21 persons were engaged in illegal or improper conduct. So there  
22 would have been a duty to disclose that, and also --

23 THE COURT: Pursuant to the terms and conditions of  
24 the contract too; right?

25 MR. GILMORE: Correct.

1 But the specific kickback, that scheme, Your Honor,  
2 was not specifically outlined that that was prohibited conduct,  
3 but the parties contemplated that appropriate and legitimate  
4 rebates would be tallied appropriately, and by going and  
5 circumventing that process, that's how they breached the  
6 implied covenant of good faith and fair dealing of those Seibel  
7 agreements.

8 Now, Your Honor, finally, one point that you asked  
9 and that opposing counsel responded to was whether these types  
10 of relationships were common in the industry, and they're not.  
11 I would cite you again to Exhibit 42 to our reply. These are  
12 not common in the industry. What is common is brand  
13 ambassadors, and in that case, there is full disclosure of that  
14 up front so that Caesars knows who we're dealing with.

15 And in particular, I also want to point out that the  
16 kickbacks here were sought from beer vendors, and that is  
17 particularly problematic because there are specific rules and  
18 regulations governing how marketing fees are handled for  
19 alcohol providers, and Ms. Medeirosman testifies to that fact.  
20 So the fact that they were seeking and obtaining kickbacks for  
21 a quote, unquote, marketing related fees from a beer vendor,  
22 Innis & Gunn is especially problematic, and no, Your Honor,  
23 it's not common in the industry.

24 Your Honor, I have cited specific pieces of evidence  
25 supporting each and every one of our claims against these



1 entities and these individuals. Respectfully, the evidence  
2 here is undisputed. Asking the Court to make unreasonable  
3 inferences that these were, quote, unquote, marketing fees is  
4 not an appropriate way to defeat summary judgment.

5 In fact, I will point, as a final point to Exhibit 38  
6 of our reply. If Your Honor will recall, back when we brought  
7 the initial motion to amend our complaint, counsel for the  
8 Seibel parties opposed our motion, and they opposed it because  
9 they said it was untimely because we should've known about  
10 these kickbacks schemes, because I quote, the documents on  
11 their face clearly show a rebate being paid. Their own  
12 attorneys admit these documents are smoking guns.

13 Your Honor, the interests of justice here demands  
14 that judgment be entered in favor of Caesars and against the  
15 Seibel entities, Mr. Green and Mr. Seibel.

16 THE COURT: Thank you, ma'am.

17 And I guess we -- in that regard, we did address  
18 the -- let me make sure here I'm correct -- the countermotion  
19 too; right?

20 MS. MERCERA: Yes, Your Honor. Unless Your Honor has  
21 any specific questions, that was a countermotion and  
22 cross-motion.

23 THE COURT: Right. Okay. Sir.

24 MR. GILMORE: All right, Your Honor. So there's a  
25 couple of parts to that. We have again both our affirmative

1 motion for Mr. Green and then our defensive response on behalf  
2 of Mr. Seibel and the development entities, right.

3 So Caesars here not only says summary judgment should  
4 not be entered for Mr. Green but turns around and says the  
5 facts are undisputed such that summary judgment should be  
6 entered against Mr. Green, right, which you and I had some  
7 dialogue here for a while earlier about potential questions of  
8 fact over some of this conduct.

9 But what you're hearing from Caesars is, no, actually  
10 there are no questions of fact. So we've got a little -- a  
11 little a two-sided there. It's either, either there's  
12 questions of fact that negate summary judgment for Mr. Green,  
13 or Caesars agrees that the facts are undisputed as we're  
14 relating to Mr. Green.

15 So starting with Mr. Green again, I heard it in  
16 counsel's argument, these are partners. Where does it say that  
17 in the contract? In fact, the contracts say the exact  
18 opposite. We're not partners. You had the ability to contract  
19 to be a partner. The argument is we're partners, but the  
20 evidence is that we're not partners. That's under every one of  
21 these development agreements. There's a specific clause that  
22 says we're neither partners nor joint ventures.

23 So the argument cannot be accepted in the face of  
24 competing evidence that these companies and the individuals  
25 working for these companies are not partners with Caesars.

1           We also hear, well, the evidence apparently is  
2 undisputed that Caesars didn't know. If it's undisputed, where  
3 is the affidavit; right? So to you point earlier, Your Honor,  
4 well, you can produce something directly or circumstantially.

5           So I understand attempting to oppose a motion with  
6 circumstantial evidence saying, well, here's what we can piece  
7 together, but Caesar says, no, in fact, I want summary judgment  
8 against Mr. Green based on now what, circumstantial evidence  
9 only and ask this Court to find as a matter of law that the  
10 evidence is that Caesars didn't know? I submit that if you're  
11 affirmatively seeking summary judgment against Mr. Green, you  
12 would have those three words in an affidavit from somebody: We  
13 didn't know. We don't have that evidence.

14           So to come in and not only oppose the entry of  
15 summary judgment for Mr. Green, but to affirmatively argue that  
16 summary judgment should be entered against him without that  
17 evidence, again, the crux behind every one of these claims I  
18 submit would absolutely be improper.

19           Also, where's the evidence that we were buying from  
20 these vendors? Again, not discussed here in counsel's argument  
21 today because it's not in this record.

22           We hear argument about threats of violence or harm to  
23 these vendors. I mean, I understand we had the analogy about,  
24 you know, the guy going store to store with a baseball bat to  
25 make it clear you're going to play. We don't have threats of

1 violence or harm here, which is why this is not acts of  
2 extortion.

3 THE COURT: Well, what about threats regarding  
4 potentially future business? That's somewhat of a significant  
5 issue I would think based upon probably volume of some of these  
6 restaurants. Because, for example, if you're a beef vendor, I  
7 would think steaks, chops, burgers and things like that, these  
8 restaurants would be one of your more important customers;  
9 right?

10 MR. GILMORE: Right. So I think there's two answers  
11 to, right.

12 THE COURT: Okay.

13 MR. GILMORE: One, are they -- is that e-mail saying  
14 I'm going to tell Caesars to pull your product? No. It's  
15 making a representation that there are other vendors out there  
16 who would love to sell to Caesars. So to your point, Your  
17 Honor, these are good clients. Boy, there's a lot of companies  
18 who would like to sell product to Caesars; right?

19 But then say that in response to Mr. Green's motion.  
20 To affirmatively seek summary judgment and ask you to draw the  
21 inference that that's a guy standing there with a baseball bat  
22 and in not so many words is making it clear to this vendor  
23 what's going to happen, to their point, you can't draw  
24 unreasonable inferences, and Caesars is asking you to draw that  
25 inference affirmatively in the face of affidavits from

1 Mr. Green and Mr. Seibel saying we didn't threaten any vendors.  
2 I submit you can't do that. You certainly can't do that on  
3 summary judgment.

4 Your Honor, asked earlier about NRS Chapter 207.295  
5 that was cited, and I talked about this in my argument.

6 THE COURT: Right.

7 MR. GILMORE: So that statute says, and this was  
8 quoted actually in Caesars' opposition here at page 16: Any  
9 person who with corrupt intent, and it goes on -- offers,  
10 confers or agrees to confer any benefit upon any employee,  
11 agent or fiduciary without the consent of the employer or  
12 principal of that employee, agent or fiduciary in order to  
13 influence adversely that person's conduct in relation to the  
14 commercial affairs of his or her employer or principal,  
15 commercial bribery is guilty of a misdemeanor.

16 So as I said in my argument, Your Honor, that  
17 requires evidence that there's an employee at Caesars who's  
18 working with Mr. Green and Mr. Seibel, the guy who makes the  
19 decision to buy product from Innis & Gunn, to buy product from  
20 Pat LaFrieda or at least makes the recommendation to the person  
21 at Caesars who gets to pull the trigger on that decision;  
22 right? That's what that statute requires on its face. You  
23 have to be working with an employee of the employer conducting  
24 business. We don't have that here.

25 Now, Ms. -- opposing counsel also talked about, and

1 again, I'm focusing on Mr. Green, Mr. Seibel paid the taxes  
2 that flowed through these LLCs, okay. Well, yeah, they're  
3 LLCs. That's how the taxes work, but it makes the point why  
4 Mr. Green should not be the subject of these claims.

5 They're arguing Mr. Seibel is having to pay the taxes  
6 for this income, which by the way, is reported as ordinary  
7 income, right, which so then in response to the motion I say to  
8 characterize this as illegal commercial bribery, again, that  
9 guy with the baseball bat, when he pockets the money from that  
10 small shop doesn't go report it to the IRS.

11 It doesn't work that way. You don't report bribes.  
12 You don't report acts of commercial extortion. So as they  
13 argue and as the evidence reflects, this is reported as  
14 ordinary income; right? But again, to the point for Mr. Green,  
15 it's reported as ordinary income by Mr. Seibel as a function of  
16 him owning these companies, not Mr. Green owning these  
17 companies. You know, and then --

18 THE COURT: And what about the insurance issue?  
19 Because he does receive a benefit there as it relates to health  
20 insurance.

21 MR. GILMORE: So for Mr. Green on health insurance,  
22 Your Honor, by that token, anybody working for any company can  
23 be tagged with wrongdoing because they're being benefitted  
24 somehow by that company; right? Well, the health insurance is  
25 being paid --

1 THE COURT: Well, that's a little bit different. I  
2 think your argument was he hadn't received anything, and they  
3 brought up the health insurance issue specifically as it  
4 related to the claim for relief for unjust enrichment. That's  
5 what my recollection was.

6 MR. GILMORE: Sure. So you have to have some value,  
7 right, but can we tie -- do they tie the health insurance to  
8 the monies that's paid by the vendors? No. We don't know the  
9 source of payment for this health insurance, whether it's  
10 coming from these restaurants, whether it's coming from money  
11 that the development entities were receiving under these  
12 restaurants, whether it's coming from other entities that  
13 Mr. Seibel owns or Mr. Seibel personally; right? We don't have  
14 evidence of that to connect health insurance, right.

15 All Mr. Green said in his depo was, yeah, they paid  
16 my health insurance. Okay. Is that a benefit that's tied to  
17 this alleged scheme? No. We don't have evidence. And again,  
18 we asked, that's the point of discovery; right? We asked the  
19 30(b) (6) for Caesars now is the time. You're here. What  
20 evidence do you have that Mr. Green benefited from these  
21 arrangements? Answer: None. None.

22 So now we have argument in response to a motion to  
23 avoid summary judgment, but when the time came for evidence, it  
24 wasn't there. The evidence wasn't there.

25 So I submit, Your Honor, for Mr. Green, again, this

1 is somebody working for somebody else, not getting the benefit  
2 of these arrangements. Again, Mr. Seibel is reporting this as  
3 income tax, not Mr. Green, working for someone else, someone  
4 who has the relationships, not Mr. Green's relationships.

5 As far as he's aware, Caesars knows of these  
6 relationships and hasn't taken any adverse action in response  
7 to them, no countervailing evidence on that point. I submit  
8 summary judgment is appropriate for Mr. Green.

9 So then, Your Honor, I'll turn to the response for  
10 Mr. Seibel and the development entities, right, because not  
11 only does Caesars seek summary judgment against Mr. Green,  
12 Caesars also affirmatively seeks summary judgment against  
13 Mr. Seibel and the development entities.

14 Briefly, on the implied covenant of good faith and  
15 fair dealing claim, Your Honor, how could it not be a question  
16 of fact whether these contracts require the disclosure and  
17 sharing of these fees with Caesars? They don't point to a  
18 direct contractual provision that requires this money to be  
19 shared with Caesars. What they do is they point to a  
20 definition of operating expenses, which actually, as we point  
21 out in our response, varies by contract. It's not a consistent  
22 definition, right, and they point to a definition in the  
23 schedule to these contracts about what operating expenses are  
24 as a way to affirmatively create a disclosure duty whereas, as  
25 I pointed out, there's a clause that specifically negates the



1 idea that they're partners, and there is the absence of a  
2 noncircumvention clause.

3           So at best, looking just at the face of these  
4 contracts, if you're going to affirmatively seek summary  
5 judgment on an implied covenant of good faith and fair dealing,  
6 which the Nevada Supreme Court has said is often a question of  
7 fact, because we're trying to understand what shapes the  
8 party's expectations, what did you expect under this contract,  
9 I don't see how you can get summary judgment based on this  
10 evidence again without an affidavit from Caesars. Set aside I  
11 didn't know. Where is the affidavit from Caesar saying here's  
12 what we understood what happened under this contract; right?  
13 To speak to this very argument that they're making right now.  
14 Where is Mr. Jenkins, the guy in charge at the time, saying  
15 here's what I understood.

16           THE COURT: What about the rebate provision under the  
17 contract?

18           MR. GILMORE: So that's the operating expenses, Your  
19 Honor, right. So they're quoting from a definition of  
20 operating expenses, right.

21           So the argument is that affirmatively creates this  
22 requirement to share in monies that are paid by these vendors.  
23 That's a definition. It's not a here's what is going to have  
24 to happen under these contracts. So I don't think that is  
25 enough --

1           THE COURT: So if our vendors are paying -- and I  
2 won't get into classifying the transactions, but I'll call it  
3 this business model, this Seibel business model where  
4 apparently the vendors would make payments to him or his -- one  
5 of his entities unknown to Caesars, are you saying that that's  
6 fine to do? Because in a general sense, if that's being  
7 required of all the vendors, wouldn't that drive up the price  
8 of inventory?

9           MR. GILMORE: So let's take it backwards. That  
10 question, right, did anybody ask a vendor? Did you pay more  
11 because you had to pay a marketing fee? No.

12           THE COURT: Didn't they admit this is what they were  
13 doing as far as -- and it's not a marketing fee. I mean, I  
14 know a little bit about marketing. That's not marketing.  
15 That's a business model. I'm not going to call it a kickback.  
16 I'll call it the Seibel business model. That's not marketing.  
17 That's not a marketing strategy where you say, hey, look, if  
18 you want to do business with this restaurant, I want  
19 10 percent. That's not a marketing fee.

20           MR. GILMORE: Let me -- I'll give this analogy, Your  
21 Honor, and this is the problem that we had, and it's not  
22 addressed in argument today is damages, right, because if  
23 Caesars is going to affirmatively move for summary judgment,  
24 right, say that's it, we're done, we don't need to go to trial.  
25 We don't need to put a witness in the chair and have a jury in

1 the box. You need evidence of damages, right?

2 What do we have? Well, we could have bought this  
3 product for less. We don't know. We don't know. Where's the  
4 affidavit again from somebody at Caesars? How hard is that? I  
5 mean, this is a company with thousands of employees. You could  
6 line the courtroom here with employees from Caesars. Not one  
7 is here today.

8 But my point is this, right, and I gave an analogy.  
9 You go buy a new house. If you show up yourself, right, you  
10 pay one price. You show up yourself with a realtor, the  
11 company selling that house has to pay a percentage to the  
12 realtor; right? Whatever the rate is, but the sale price is  
13 the same.

14 THE COURT: No. No. It can vary. It depends on how  
15 it was negotiated. Typically if you don't have a realtor you  
16 pay more. I mean, that's kind of what happens; right?

17 MR. GILMORE: But we have to have evidence, right, to  
18 say what is the homebuyer's guide? What do they do when they  
19 sell directly to a buyer or somebody buying a house with or  
20 without a realtor? Do we have evidence?

21 THE COURT: But don't we have evidence that payments  
22 pursuant to the Seibel business model were being paid to his  
23 LLCs that should not have been paid to his LLCs? Isn't that  
24 essentially what the issue is there; right? And don't we --

25 MR. GILMORE: The second part is contested. That

1 should not have been paid. That's the contested part; right?

2 THE COURT: Pursuant to what contract or obligation  
3 was Seibel permitted to conduct this type of business model?  
4 Now, understand I'm not saying kickbacks or whatever. I'm  
5 talking about his business model, the Seibel business model.  
6 What contract or portion of the contracts he entered into with  
7 Caesars Palace permits that?

8 And the reason why I think this is important to point  
9 out, once again, we're getting back to this is the most highly  
10 regulated industry probably in the country next to a nuclear  
11 power plant, right. That's probably the most highly regulated  
12 industry. And here's my point. You have gaming in Nevada,  
13 highly regulated, highly controlled, and it appears to me that  
14 this is not necessarily the type of conduct that the Nevada  
15 Gaming Board would want regarding anybody affiliated with  
16 gaming in the state of Nevada.

17 And I think that's getting overlooked here because it  
18 appears to me that potentially this was the type of conduct  
19 that was occurring back in the '40s and '50s, in the early  
20 age of Las Vegas because I'm trying to figure out where this  
21 business model would be acceptable because it's not a form of  
22 marketing.

23 MR. GILMORE: So it's not --

24 THE COURT: It's a business model. I'm not going to  
25 say -- I'm not going to say anything disparaging regarding it,

1 but it's a business model where vendors who are supplying  
2 product to Caesars that Caesars is paying for has to pay  
3 somebody else on top of -- in order to do business, right. I'm  
4 trying to figure out what's appropriate with that business  
5 model.

6 MR. GILMORE: So let's take that line, Your Honor,  
7 because that then requires you right now to construe that  
8 business model. To affirmatively grant summary judgment, you  
9 have to do that. You have to characterize it the way they want  
10 you to, which you can't do on summary judgment.

11 Now, on the gaming part, right, you're sitting there  
12 and you're saying, I can't imagine gaming would want that to  
13 happen, okay. Caesars had a gaming expert in this case, Scott  
14 Scheer (phonetic). Why didn't he speak to this issue? Where's  
15 his report? We don't have it. This is not my burden, right.  
16 These are their claims. So you're pointing out ways for them  
17 to prove that claim, but that time has lapsed.

18 THE COURT: Actually, I'm pointing out facts as it  
19 pertains to the business model where vendors are making  
20 payments to the Seibel entities, unknown to or without the  
21 consent of Caesars Palace based upon the opportunity to conduct  
22 or do business with Caesars.

23 MR. GILMORE: And I'll stress, Your Honor, there's  
24 again no evidence that this was unknown to Caesars.

25 So, Your Honor, we have not only affirmatively moved

1 for summary judgment on behalf of Mr. Green, but we opposed the  
2 entry of summary judgment against Mr. Seibel and the  
3 development entities. I covered the implied covenant claim.

4 As I mentioned earlier, Mr. Seibel is similarly the  
5 subject of the other four claims that we talked about.

6 THE COURT: Do you think Mr. Seibel had a duty or  
7 responsibility, pursuant to the covenant of good faith and fair  
8 dealings to disclose this to Caesars Palace?

9 MR. GILMORE: So his testimony was he did. His  
10 testimony was he disclosed it to Gary Selesner. His testimony  
11 was he disclosed it to Mr. Jenkin. And I believe the  
12 gentleman's name was Terrence O'Donnell, and we submitted that  
13 evidence, the deposition testimony, right.

14 Now, Your Honor's saying, well, do I have to believe  
15 Mr. Seibel; right?

16 THE COURT: No. No. Just -- no, my question was did  
17 he have a duty to disclose pursuant to the covenant of good  
18 faith and fair dealing? Because it --

19 MR. GILMORE: I think that's an open question, but  
20 let's assume he did. His testimony was he told --

21 THE COURT: And the only reason I say that is this  
22 because it's my recollection when it comes to issues regarding  
23 duties, typically that's an issue of law for the Court to make  
24 a determination on is whether there's a duty or not.

25 But go ahead.

1 MR. GILMORE: Understood. So, Your Honor, may sit  
2 there and say does Mr. Seibel have a duty under this contract  
3 as the principal of the development entities to make this  
4 disclosure for purposes of the implied covenant claim; right?

5 THE COURT: Right.

6 MR. GILMORE: Okay. So you look at that and say  
7 despite them not being partners, despite the absence of a  
8 circumvention clause, you're going to impose a duty to  
9 disclose. So that's a contractual duty to disclose, right. So  
10 then as an aside, they can't simultaneously be a fraud based  
11 duty to disclose. That has to be extraneous from the contract.  
12 So we can't have both.

13 But let's assume you say there's a contractual based  
14 duty to disclose to Mr. Seibel. By Mr. Seibel, right. The  
15 testimony in front of this Court for this motion is he did  
16 disclose it to Caesars, okay, and again I don't belabor this,  
17 but that's why that affidavit is so important. That's how you  
18 create an issue of fact; right? You say, well, he said this,  
19 she says this, and the Court's not going to say I agree with  
20 you or I believe you, and I don't believe you or I disagree  
21 with you.

22 So to your point, Your Honor, Mr. Seibel's testimony  
23 was, I did tell Caesars. They did know, and we submitted the  
24 two e-mails that support that testimony where Mr. Frederick at  
25 the time, the VP is saying we're finding this out. We're

1 investigating. That's three years before these contracts are  
2 terminated.

3 So I don't think, as a matter of law, if Your Honor  
4 finds that there's a contract based duty to disclose that Your  
5 Honor can also find that there was no disclosure here.

6 The intentional interference claim, Your Honor, for  
7 Mr. Seibel, again, he's being confused accused of interfering  
8 with a contract in which he is the principal, right. These are  
9 contracts between the development entities and Caesars.

10 Mr. Green is removed from that, but there's no dispute that  
11 Mr. Seibel is the principal of these contracts -- or these  
12 entities rather. Those entities can only act through him. He  
13 can't as a matter of law interfere with his own company's  
14 contracts with Caesars. So the interference claim, that  
15 doesn't work.

16 THE COURT: But isn't the interference claim related  
17 to Caesars and its relationship with its vendors?

18 MR. GILMORE: The argument here is you're interfering  
19 with rights under this contract to share in this money. That's  
20 the argument. That's the allegation. We should've got this  
21 money.

22 THE COURT: Right, and I get that, but that focuses  
23 on the relationship that Caesars Palace had with its vendors  
24 because these were Caesars Palace vendors; right?

25 MR. GILMORE: These are vendors purchasing product



1 from Caesars.

2 THE COURT: Right.

3 MR. GILMORE: Yes. But the argument here is that  
4 interferes with our right under this contract with your company  
5 to get this money. That's how this is framed. That's how the  
6 claim was brought, right.

7 I think if we take it to Your Honor's point is  
8 Caesars is -- Mr. Seibel is interfering with contracts between  
9 Caesars and vendors. Well, then again we need evidence that  
10 what would've been different; right? Would we have paid less?  
11 Would we have seen you at all? Because again the testimony is  
12 Mr. Seibel introduced these vendors, not Caesars. Mr. Seibel  
13 introduced them to Pat LaFrieda.

14 So if you want to argue that we interfered with  
15 contracts -- if Mr. Seibel interfered with contracts between  
16 Caesars and Pat LaFrieda, to your point we've never seen those  
17 contracts. So they've certainly not been produced in  
18 opposition and a countermotion here, right, and we don't have  
19 evidence of what would've been different under those  
20 arrangements between Caesars and the vendors, assuming they  
21 would have ever existed because I think, but for here would be  
22 absent since Mr. Seibel is the one who made these  
23 introductions.

24 So the intentional interference claim, Your Honor,  
25 we've simply converted the implied covenant claim into an

1 intentional interference claim against Mr. Seibel, but you  
2 can't do that. If you want to call this wrongdoing, it's  
3 wrongdoing against the entities perhaps, although I submit  
4 that's a question of fact, as we've talked about here, if this  
5 money should be shared by these companies with Caesars.

6 So the intentional interference claim should be  
7 dismissed against Mr. Seibel.

8 Conspiracy, it's the same logic under the age  
9 appropriate conspiracy doctrine.

10 The fraud claim, and the duty to disclose here, a  
11 fraud based duty to disclose doesn't exist in this case.  
12 Mr. Seibel is not partners with Caesars, nor are the  
13 development entities partners with Caesars.

14 The unjust enrichment claim, right, Mr. Seibel has  
15 not directly seen any of this money. It's not being paid to  
16 him. It's being paid to these companies, but it's a question  
17 of fact at best whether you would call that a benefit to him.  
18 So I don't think summary judgment would affirmatively be  
19 appropriate on the unjust enrichment claim.

20 And then finally, Your Honor, I'll talk about  
21 damages, and I mentioned this before. We have to have evidence  
22 of damages. Caesars says, we want every dollar that we've  
23 disclosed in our disclosures, but that's not evidence of  
24 damages. A prove-up hearing, if you were doing that, would not  
25 just a -- a pleading from counsel saying here's how much money

1 we think we're owed; right? We don't actually have evidence of  
2 here's what Caesars would have paid absent these arrangements.  
3 And under their logic, the money would have been split. So  
4 they have disclosed, not proven, but disclosed north of  
5 \$300,000. By their own logic, their damage is half of that;  
6 right? But again, that's a question of fact what these damages  
7 are.

8 So I'll close, Your Honor.

9 THE COURT: But what about the argument on page 12  
10 that Seibel and Green had solicited and received illegal  
11 kickbacks totaling \$326,046.87?

12 MR. GILMORE: So they're citing their disclosure.  
13 They're citing a disclosure. That's not evidence; right?  
14 That's not evidence of damages. We put our interrogatories in,  
15 but those numbers differ from the numbers that Caesars is  
16 presenting to you.

17 So we don't have evidence before this Court to  
18 support the amount that they're seeking.

19 And second, Your Honor, why would it be full boat in  
20 a sense; right? Because the argument is that should go toward  
21 expenses to reduce operating expenses so that we see a larger  
22 share of the profits, but these are 50-50 arrangements with the  
23 development entities, right, there's, with a couple of  
24 exceptions, that they're sharing the net profits 50-50.

25 So if you say, well, wait a minute, you know, we've

1 got a dollar. I should've seen 50 cents of that because it  
2 would have applied toward the books, and I'd get 50 cents. So  
3 they're asking for the entire dollar where under their own  
4 theory it would only be 50 cents because they're arguing it  
5 should have been shared with Caesars when they were calculating  
6 operating expenses under these contracts.

7 I submit, Your Honor, it's a question of fact  
8 certainly what the damages are that you would argue in this  
9 case.

10 So unless Your Honor has any other questions, I don't  
11 think it's appropriate to enter summary judgment against either  
12 Mr. Seibel or the development entities.

13 THE COURT: Thank you, sir.

14 MR. GILMORE: Thank you, Your Honor.

15 MS. MERCERA: Your Honor, on our cross-motion and  
16 counter-motion, just briefly.

17 THE COURT: No, ma'am, you have the floor.

18 MS. MERCERA: Thank you.

19 Your Honor, in our briefing we cited *United States*  
20 *versus 1,020,378.05 U.S. Currency*, which is 26 F.3d 134 from  
21 the Ninth Circuit. And I just want to start with that because  
22 I think it frames what the issue is here:

23 A court normally views factual inferences  
24 in the light most favorable to the nonmoving  
25 party. It may be unreasonable, however, to draw

1 an inference contrary to the movant's  
2 interpretation of the facts where overwhelming  
3 evidence favors the moving party from the party  
4 opposing summary judgment fails to produce any  
5 significant evidence to combat summary judgment.

6 All we've heard here today, Your Honor, is they  
7 haven't shown this; they haven't shown this; they haven't shown  
8 this. But I pointed out with explicit citations to the record  
9 where we've proven our claims. And at summary judgment is not  
10 the phase to say they didn't do this without actually  
11 presenting admissible evidence to the Court to find contrary.

12 Now, they claim that we have not proven our damages.  
13 As Your Honor pointed out on page 12, yes, we do cite our  
14 disclosures, but that's just for ease of mathematical  
15 computation, Your Honor, because they're formatted nicely in  
16 there, but what we actually cite to in terms of evidence is  
17 Exhibit 28, which are the interrogatories from Mr. Green  
18 outlining the amounts received by BR 23 Venture for these  
19 kickback schemes.

20 Now, to say that there's no evidence in the record  
21 that Caesars would have received these amounts or would be  
22 entitled to these damages again is also simply not true.  
23 Looking at specifically in the record Bates Number 0562 of our  
24 appendix, it's an e-mail from Debbie Graham -- and I'm going to  
25 mispronounce this company Sabrett, or the hotdog company -- to

1 Danielle Abraham, who worked with Mr. Green, and they were  
2 talking -- requesting a 1099 for the kickbacks that they had  
3 received. And Ms. Graham says:

4                   The check was mailed out yesterday. As far  
5 as the 1099, I checked with accounting. A  
6 rebate is actually considered a price reduction,  
7 not income. So there is no 1099 on that.

8                   In other words, had Caesars known about these  
9 rebates, quote, unquote, rebates, it would have been entitled  
10 to a price reduction on product it had purchased. In other  
11 words, Seibel, Green and the development entities were  
12 specifically taking money out of Caesars' pockets because  
13 Caesars was paying for the product and then Seibel was going  
14 around threatening the vendors that they would go with others,  
15 even though he had no authority to do so, if they didn't kick  
16 back a certain amount to him.

17                   Your Honor, respectfully, I think the evidence in  
18 this case is overwhelming that this was a kickback scheme. If  
19 we want to call it the Seibel business model, we can use that,  
20 but in any event, no business in Nevada --

21                   THE COURT: Well, as a trial judge, I have to be  
22 neutral. I'm not argumentative. You know that.

23                   MS. MERCERA: Fair point, Your Honor. But if we want  
24 to characterize it as the Seibel business model, at the end of  
25 the day, Your Honor is completely right that in a highly

1 regulated industry, like the gaming industry, we cannot have  
2 our vendors going to our other vendors seeking a 20, 15,  
3 however much percentage kickback and threatening them that the  
4 casinos will no longer do business with them if they don't play  
5 ball. That's simply inappropriate. And to characterize it any  
6 other way or as marketing is frankly offensive, Your Honor.

7 I think the evidence is clear here. Summary judgment  
8 should be granted in Caesars favor.

9 THE COURT: All right. Okay. Is there --  
10 Do we have a couple other matters on this morning --  
11 I mean, this afternoon. We have fees; right?

12 MS. MERCERA: Yes. We have an attorneys' fees  
13 motion -- well, excuse me, two attorneys' fees motion for PHWLTV  
14 as well as Gordon Ramsay's attorney fee motion, and then we  
15 also have the Seibel parties motion to retax.

16 MR. GILMORE: And the counter motions to defer. So  
17 technically six, I think left still, Your Honor.

18 UNIDENTIFIED SPEAKER: Is now a good time for a  
19 break, Your Honor?

20 THE COURT: Yeah, it is, but how quickly can we get  
21 through those six, do you think?

22 MR. GILMORE: Well, if you defer, I think it'll take  
23 about 30 seconds, but I don't know that you're going to do that  
24 yet.

25 THE COURT: What do you mean I can defer. What do

1 you mean by that?

2 MS. MERCERA: There's a countermotion filed by the  
3 Seibel parties to defer ruling on the attorneys' fees motion.

4 THE COURT: Oh, okay. I understand. I gotcha.

5 MS. MERCERA: So if we can take that one first.

6 THE COURT: Yeah, we'll take a quick break, and then  
7 we'll come back. I understand what you're saying, sir.

8 MR. GILMORE: So five, ten minutes, Your Honor?

9 THE COURT: We'll take ten.

10 MR. GILMORE: Okay.

11 MS. MERCERA: Thank you, Your Honor.

12 THE COURT: All right.

13 (Proceedings recessed at 3:09 p.m., until 3:25 p.m.)

14 THE COURT: All right. And so I just want to make  
15 sure we go to the right place.

16 Okay. Where do we go from here?

17 MR. GILMORE: As she said, we have the motions to  
18 retax, Your Honor. I think those are pretty short. You know,  
19 and some of it is I think swallowed up because then there was a  
20 follow-up motion for fees and costs, so there was, you know,  
21 costs such as --

22 THE COURT: It appears that way, yes, it does.

23 MR. GILMORE: Yeah. So however Your Honor wants to  
24 proceed, but I think the retax motions are pretty short. And  
25 then the fees motions may be a little bit longer.



1 THE COURT: All right.

2 MS. MERCERA: Okay. My only comment to that, Your  
3 Honor, is I would suggest the motion for attorneys' fees, since  
4 they do kind of encompass the motions to retax. We may have --  
5 not need much on the motions to retax if we consider those  
6 first.

7 MR. GILMORE: And on that, Your Honor, she's right.  
8 If you want to even take the motion for fees, then I'm happy to  
9 argue the motion to retax as part of responding to the request  
10 for fees. I'm happy to do that as well to try to be efficient.

11 THE COURT: We can do that because I was sitting here  
12 thinking about it because ultimately we have a firm trial  
13 setting right after the first of the year, don't we?

14 MS. MERCERA: Yes, we do, Your Honor, on January  
15 9th.

16 THE COURT: Right. And this has to be buttoned up  
17 within the next 10 days or so; right?

18 MS. MERCERA: Correct, Your Honor.

19 MR. GILMORE: On summary judgment at least. These  
20 fees are different, right. This --

21 THE COURT: Well, I understand. I do. But I was  
22 just saying what the overall, because I was actually looking at  
23 my calendar, and I can't tell you why we're so busy, but we  
24 are. You know, it's just business court is pretty busy right  
25 now. It must be good for the bar. A lot going on. That's the

1 best I can say.

2 MR. GILMORE: On that, Your Honor, we take it you may  
3 be taking the summary judgment motions under advisement today?

4 THE COURT: Yeah, I will because I want to make  
5 sure -- I mean, I have some general ideas, but I have to -- I  
6 want to look at -- dig a little deeper, and just to make sure  
7 the way I want to go I'm correct. That's the best way to say  
8 it because I don't want to waste anybody's time with appeals  
9 and all that unless I feel it's on solid ground. That's  
10 probably the best way to say it.

11 MS. MERCERA: We appreciate that, Your Honor. On  
12 that point, the parties had discussed we were hoping to have  
13 some clarity on summary judgment as we proceed with motions in  
14 limine. So we were planning on --

15 THE COURT: What are those currently? Are you  
16 currently set?

17 MS. MERCERA: Motions in limine are currently due  
18 today actually, Your Honor, but we had agreed amongst ourselves  
19 to file them once we had a ruling on summary judgment.

20 THE COURT: Okay. Because was the firm trial setting  
21 the 9th, first up, right?

22 THE CLERK: Yes.

23 MR. GILMORE: Although based on that point, I would  
24 say there's certainly flexibility on moving the trial date to  
25 accommodate.

1 THE COURT: No, no, don't. We've got to get things  
2 done. That's probably the best way to say it at this --

3 MS. MERCERA: Correct, Your Honor.

4 THE COURT: Yes. Because this case has been around  
5 for a long time; right?

6 MS. MERCERA: Yep.

7 MR. GILMORE: Yes.

8 THE COURT: It is what it is. I think the big issue  
9 is the holidays, right. And for me unfortunately, I was in  
10 there looking at my calendar. I think I have -- Monday we have  
11 motions; right?

12 THE CLERK: Uh-huh.

13 THE COURT: Tuesday is our regular law and motion  
14 calendar motions, and Wednesday, same thing, and then Thursday  
15 we start a jury trial; right?

16 UNIDENTIFIED SPEAKER: Yes.

17 MS. MERCERA: I think under the current scheduling  
18 that we have for motions in limine, we have a hearing set -- is  
19 December 14th?

20 MR. GILMORE: I think, yeah, it's mid December.

21 THE COURT: That's the pretrial calendar call day.

22 MR. GILMORE: So I don't know, if Your Honor is  
23 willing to move that a little, we'll keep sticking with that  
24 January 9, but we'll work backwards of course too for, you  
25 know, how soon you need motions in limine fully briefed to

1 decide, and then maybe the parties can work out a briefing  
2 schedule that still accommodates Your Honor.

3 THE COURT: You know what I'm thinking just in  
4 order --

5 (Pause in the proceedings.)

6 THE COURT: Okay. Well, I think, and just to give  
7 you a little bit more clarity, I guess, right now I have no  
8 choice but try to get a decision done Monday afternoon. I was  
9 looking at my calendar trying to figure out what to do, right,  
10 because apparently Monday morning I have what?

11 THE CLERK: A bunch of motions.

12 THE COURT: I have a status check and a bunch of  
13 motions, right. So I've got to get -- I have to make a  
14 decision.

15 MR. GILMORE: Is it easier for us to have a hearing?  
16 I know sometimes writing an order takes longer than telling us  
17 on the record. If you want to set --

18 THE COURT: Well, it kind of depends.

19 MR. GILMORE: I don't know if you want to set a  
20 status check to just tell us what the decision is even if you  
21 expect us, one side or the other to write the order. I don't  
22 know if that makes it easier for Your Honor.

23 THE COURT: Let me see here. Status check  
24 telephonically Wednesday, how's that?

25 MS. MERCERA: That works, Your Honor.

1 MR. GILMORE: And that's the --

2 THE COURT: I mean, you don't have to come down for  
3 that unless you're here.

4 MR. GILMORE: Yeah, that is just --

5 THE COURT: Just Wednesday, 9:00 a.m. That way it's  
6 a status check. You're first up. You don't have to spend a  
7 lot of time in court.

8 MS. MERCERA: Wednesday the 30th, Your Honor?

9 THE COURT: Yes. I'm here the 30th; right?

10 THE CLERK: Yes.

11 MS. MERCERA: Yes.

12 THE COURT: And the reason why I have to get this  
13 done, I don't mind telling you, is not just -- we got the  
14 trial, and then there's holidays, and I don't mind telling you  
15 this, but there's a certain portion of the holiday season I  
16 won't be here. So I've got to get things done.

17 MR. GILMORE: Is this court dark like the last two  
18 weeks of December?

19 THE COURT: Yes. And just as important too, you know  
20 what we'll do at the status check we'll talk about hearing  
21 motions in limine, give you a date for hearing those, and we  
22 just have to get it done.

23 And as far as this matter, this is number one on the  
24 stack.

25 Did we give a firm date starting on the 9th? Is that

1 it or have we not set the trial date yet?

2 MR. GILMORE: We have not set the trial.

3 THE COURT: Okay.

4 MR. GILMORE: And we're on that stack, and I think  
5 we're the oldest. So that makes us first.

6 THE COURT: Well, I can tell you this. This actually  
7 gives us a little bit of breathing room. If you're the number  
8 one case on the stack, I've historically always conducted my  
9 pretrial calendar calls in this regard. The first case up  
10 get's the first choice on the stack. How's that?

11 MS. MERCERA: That works, Your Honor.

12 THE COURT: That kind of helps out a little bit.

13 MR. GILMORE: So I guess if we bumped a couple weeks  
14 within the stack and then that --

15 THE COURT: Oh, you could do whatever -- oh,  
16 absolutely.

17 MR. GILMORE: Then that gives breathing room to Your  
18 Honor and gives breathing room to us on motions in limine.

19 MS. MERCERA: (indiscernible) file our motions.  
20 Uh-huh.

21 THE COURT: All right. Yeah. So and the stack runs  
22 from when to when, just for the record?

23 THE CLERK: The stack runs from starting on January  
24 (inaudible).

25 THE COURT: It's a four-week stack through

1 February 6. So you could potentially plan on going I guess --  
2 I don't have the -- well, I guess I've got January here,  
3 assuming this is '23, I think it is. I mean, hypothetically  
4 you could start the 16th or the 23rd, something like that.

5 MR. GILMORE: Then I think maybe what we'll do is  
6 we'll try to put together a briefing schedule with that in  
7 mind, Your Honor. We'll check the calendars --

8 MS. MERCERA: Yeah, following Wednesday. So we'll  
9 figure out --

10 MR. GILMORE: After we have the status check, then  
11 that will give us guidance on (indiscernible).

12 THE COURT: All right. That's what we'll do.

13 MS. MERCERA: Perfect.

14 THE COURT: Because I don't want to keep balls in the  
15 air with that trial date looming; right?

16 MS. MERCERA: We appreciate that, Your Honor, one way  
17 or the other.

18 THE COURT: I wouldn't want to know -- I mean, I  
19 would want to know what's going and what's going to get tried.

20 As far as the fees and costs, let's go.

21 MR. GILMORE: So if we're going to combine the retax  
22 and fees --

23 THE COURT: Yeah, we might as well combine them all.

24 MR. GILMORE: Yeah. So then I guess it's whether  
25 Caesars or Mr. Ramsay goes first.

1 THE COURT: Who filed first?

2 MR. GILMORE: That I don't know.

3 MS. MERCERA: I think Ramsay did by a day actually.

4 MR. TENNERT: Okay, Your Honor.

5 (Video interference).

6 THE COURT: Yes.

7 MR. TENNERT: So this is John Tennert on behalf of  
8 Gordon Ramsay on Mr. Ramsay's motions for attorneys' fees and  
9 costs.

10 As the prevailing party, Mr. Ramsay is entitled to an  
11 award of his fees, costs and expenses under Section 14.13 of  
12 the development agreement. Additionally, Mr. Ramsay is  
13 entitled to recover his attorneys' fees under NRS 18.010(2) (b)  
14 because Mr. Seibel maintained this action without factual or  
15 legal basis.

16 Mr. Ramsay respectfully requests that this Court  
17 grant his motion in full and award Mr. Ramsay \$2,643,232 in  
18 reasonable attorneys' fees as evidenced by his counsel's actual  
19 verified invoices.

20 Mr. Ramsay further requests \$246,000 -- 246,700 in  
21 costs and expenses, which are itemized in Mr. Ramsay's verified  
22 memorandum of costs and disbursements that was filed May 31,  
23 2020, and a supplement filed June 16th, 2020.

24 Mr. Seibel now and has always been the plaintiff in  
25 this case. He is the sole assignee of GR Burger, LLC's or GRB's



1 rights. (Video interference) in interest to the failed  
2 derivative claims.

3 As a plaintiff and assignee of GRB's rights,  
4 Mr. Seibel is personally liable for payment of Mr. Ramsay's  
5 fees and costs under both contractual and statutory law, but  
6 I'll start with the development agreement, Your Honor, and  
7 sometimes this is referred to in the briefs also as the GRB  
8 agreement, and it's the agreement between Planet Hollywood and  
9 Mr. Ramsay and GRB.

10 Section 14.13 of the parties' development agreement  
11 is clear and unambiguous. The prevailing party is entitled to  
12 recover all of his expenses, including, without limitation  
13 attorneys' fees and costs incurred in the defense of an action  
14 relating to the development agreement.

15 First, there is no dispute that Mr. Seibel's four  
16 causes of action and request for equitable relief arise  
17 directly out of the development agreement. In fact,  
18 Mr. Seibel's verified amended complaint specifically alleges  
19 that this action arises out of that agreement, and if he were  
20 to succeed, he would personally recover his fees and costs.  
21 Mr. Seibel did not succeed.

22 Second, there is no dispute that Mr. Ramsay prevailed  
23 on each and every cause of action. After five years of  
24 protracted litigation, Mr. Ramsay secured dismissal of the  
25 entire case as to him and judgment as a matter of law.

1 In doing so, Mr. Ramsay successfully defeated  
2 Mr. Seibel's claims seeking more than \$8 million in alleged  
3 lost profits from a restaurant that bears Mr. Ramsay's name.

4 More important, Mr. Ramsay also defeated Mr. Seibel's  
5 punitive demands for injunction and declaratory relief, which  
6 requested that Mr. Ramsay cease several successful business  
7 ventures with Caesars.

8 Mr. Seibel does not and cannot dispute that  
9 Mr. Ramsay is the prevailing party and entitled to his  
10 reasonable fees and costs under the development agreements of  
11 fee shifting.

12 In addition to the contractual fee shifting  
13 provision, Mr. Seibel is statutorily liable for Mr. Ramsay's  
14 attorneys' fees under NRS 18.010(2)(b). NRS 18.010(2)(b) makes  
15 an award of an attorneys' fees to the prevailing party  
16 appropriate when the Court finds that the action was, quote,  
17 brought or maintained without reasonable ground, end quote.

18 The decision to award statutory fees is within  
19 established precedent (video interference) Court; however,  
20 (video interference) required by statute to quote, liberally  
21 construe, end quote, the provisions of NRS 18.010 in favor of  
22 awarding attorneys' fees in all appropriate situations to  
23 punish and deter frivolous or vexatious claims and defenses.

24 Now, Your Honor, from the outset, Mr. Seibel's claims  
25 against Mr. Ramsay were without merit and have always been

1 unjustifiable.

2           The clear factual defects in Mr. Seibel's claims are  
3 demonstrated early and often. First, when this Court denied  
4 Mr. Seibel's motion for preliminary injunction, then again when  
5 the Delaware liquidating trustee opted to not pursue the  
6 claims.

7           In fact, Your Honor, when the liquidating trustee  
8 abandoned the claims to Mr. Seibel, he opined that the  
9 derivative claims lacked merit and were likely to fail.

10           The lack of legal merit was conclusively demonstrated  
11 by this Court's finding in granting summary judgment, that  
12 despite presentation of thousands of pages of evidence and  
13 deposition testimony there existed not a single genuine issue  
14 of material fact to justify proceeding to trial. It's only  
15 fair and reasonable that Mr. Seibel personally bears  
16 responsibility for Mr. Ramsay's expenses incurred in defending  
17 meritless claims brought and prosecuted by Mr. Seibel.

18           On to my next point, Your Honor, which is discussed  
19 in our brief. As a plaintiff and assignee of GRB's claims,  
20 Mr. Seibel is personally liable for any fee award.

21           Now, Mr. Seibel does not argue, nor can it be  
22 reasonably argued that he cannot be subject to a fee award as a  
23 nonparty to the development agreement. That contract makes no  
24 such exemptions. From the outset of this case, Mr. Seibel  
25 expressly pleaded for recovery of his own personal attorneys'

1 fees pursuant to Section 1413 of the agreement.

2 As the assignment of GRB's rights and claims against  
3 Mr. Ramsay, Mr. Seibel now stands directly in the shoes of GRB  
4 as the assignor and is personally bound by Section 14.13's fee  
5 shifting provision. Again, Mr. Seibel is and has always been  
6 the plaintiff in this action. Before its cancellation, GRB was  
7 merely a nominal party.

8 Now, in his opposition, Mr. Seibel opines that his  
9 personal liability for any fee award should be limited to those  
10 amounts incurred after March 17th, 2021, which is when the  
11 Delaware Court formally assigned Mr. Seibel's derivative claims  
12 to Mr. Seibel.

13 Of course, the Delaware order does not limit  
14 Mr. Seibel's liability whatsoever for an adverse judgment in  
15 connection with the pursuit of his claims. Mr. Seibel had no  
16 obligation to accept assignment of the claims. In doing so, he  
17 accepted any adverse liability associated with the failed  
18 pursuit of those claims.

19 In any event, (video interference) required that an  
20 individual derivative plaintiff is personally liable for the  
21 prevailing party's attorney fees in an action to enforce an  
22 agreement between the company and a third party that contains a  
23 fee shifting provision.

24 Or to enforce the fee shifting provision against the  
25 individual shareholder even though that the shareholder is not

1 a signatory to the contract that's at issue in the action, and  
2 we cited those cases for Your Honor (video interference) in the  
3 Footnote 5 of our motion.

4 Mr. Seibel -- the bottom line is Mr. Seibel's  
5 personally liable for Mr. Ramsay's fees and costs incurred in  
6 this action.

7 Your Honor, both in our motion and our reply we  
8 address the four Brunzell factors. In his opposition,  
9 Mr. Seibel does not appear to contest the qualities of the  
10 advocate, the character of the work to be done or actually  
11 performed or the result. Instead, Mr. Seibel generally  
12 complains about the total amount of time that Mr. Ramsay's  
13 attorneys incurred to obtain a complete defense of the case.

14 Mr. Seibel appears to forget that it is he to who  
15 commence and maintained a costly, protracted litigation  
16 campaign against Mr. Ramsay and Caesars.

17 Mr. Seibel also appears to forget that it was his own  
18 criminal conduct and felony conviction that resulted in the  
19 termination of the contract at issue and the demise of GRB.

20 Mr. Ramsay actually incurred more than \$2.8 million  
21 in fees and costs over the course of five years to successfully  
22 defend the case where Mr. Seibel brought damages against  
23 Mr. Ramsay exceeding 8 million.

24 In addition, Mr. Seibel sought injunction -- sought  
25 an injunction prohibiting Caesars and Mr. Ramsay from

1 maintaining any business relationship.

2 Mr. Ramsay's aggressive defense of this case was not  
3 only reasonable but necessary, Your Honor.

4 As noted in our motion and as the Court is well  
5 aware, this consolidated matter has been ongoing for several  
6 years and has resulted in numerous hearings on discovery and  
7 dispositive motion. Mr. Ramsay's defenses depended on critical  
8 factual development or exhaustive written discovery and dozens  
9 of depositions.

10 Mr. Ramsay has documented his fee request with the  
11 best evidence there is, specifically, the invoices actually  
12 generated for the services rendered and paid. Mr. Seibel  
13 generally complains of block billing, excessive redactions,  
14 over staffing and big time entries, but at no point does  
15 Mr. Seibel quote or direct the Court to any precise entry in  
16 the record that he contests is improper.

17 So, Your Honor, I'll note that we did apply some  
18 redactions (video interference) actual (video interference)  
19 with the actual invoices rather than summaries. So we did  
20 redact some information that we deemed as privileged.

21 Mr. Seibel also complains about Mr. Ramsay's request  
22 to recover time billed by Mr. Ramsay's UK counsel Sheridan  
23 Solicitors. He claims that's unreasonable here. And I'll  
24 submit to you, Your Honor, that Nevada counsel relied upon  
25 Sheridan as the primary point of contact for Mr. Ramsay in the

1 UK and consulted with Sheridan's attorneys related to strategy  
2 and matters pertaining to Ramsay's business dealings of which  
3 he had many with Caesars related to this litigation. This  
4 communication was essential in the effective and accurate  
5 planning of the defense for Mr. Ramsay's perspective.

6 Sheridan has never held itself out as appearing for  
7 Ramsay in the Nevada court. He's never signed any pleadings or  
8 papers. He's simply Ramsay's counsel in the UK who was  
9 instrumental in, one, communicating with Ramsay; but two, also  
10 participating in the recovery of documents for production in  
11 this case, which was substantial. Those documents were all  
12 housed on UK servers.

13 Finally, Mr. Seibel complains that the fees  
14 incurred -- for fees incurred by Nevada's counsel in connection  
15 with related lawsuits as unreasonable here, yet Mr. Seibel does  
16 not specifically identify any time entries that relate to other  
17 cases. As set forth in the motion and supporting exhibits,  
18 approximately \$168,000 in time entries that were directly  
19 related to time spent by Ramsay's counsel in connection with  
20 other matters besides this lawsuit have been redacted and  
21 removed from the billings and the fee request. And that's in  
22 both our motion and in my declaration, Your Honor.

23 All fees requested in this motion were incurred in  
24 connection in pursuing Mr. Ramsay's defense of this case.

25 In conclusion, Mr. Ramsay respectfully requests an

1 order from the Court rendering an award in Ramsay's favor and  
2 against Mr. Seibel personally for attorneys' fees incurred by  
3 Fennemore Craig, the fees incurred by Sheridans and the  
4 litigation costs pursuant to the prevailing party provision of  
5 the development agreement and NRS 18.010(2)(b).

6 THE COURT: All right. And thank you, sir.

7 MR. GILMORE: Thank you, Your Honor. Joshua Gilmore  
8 on behalf of Mr. Seibel and GRB.

9 I will start out with our countermotion because it  
10 gets in front of this, and I know Mr. Tennert will address it  
11 when he argues again.

12 So we brought a countermotion to defer a decision on  
13 the request for fees and costs that is currently being made by  
14 Gordon Ramsay. As we noted in our countermotion, Rule 54 uses  
15 the word may, and the comments to the federal rule, which our  
16 rule is based off of talk about that that gives courts and  
17 District Judges such as yourself an opportunity to defer while  
18 an appeal from the merit's ruling is made to the appellate  
19 court.

20 In doing that, a number of courts have said it's far  
21 more economical and efficient. That way the Court takes up  
22 fees all at once, and that way parties appeal fees at one time.  
23 And when you look at that here, the argument is being made, and  
24 I'll get to it in a minute, that we get fees under NRS 18.010  
25 and under the contract. So depending on what the Court does,



1 let's take the contract, for example. If some fees are awarded  
2 under the contract, we take up the appeal. Even if they  
3 prevail in defending the summary judgment ruling, they've  
4 already said they will be back in here on a post appeal motion  
5 for attorneys' fees.

6 So depending on what happens there, there will be  
7 another appeal taken. So there may be two appeals now and  
8 later on fees. And so Courts say, let's take that up later.  
9 Then I can address it all at once and conserve resources for  
10 the Court and decide fees when it is the appropriate time.

11 And so here, knowing how much is at stake on appeal  
12 already, the number of issues that have been presented, we  
13 argue that a stay is appropriate. And the response is well --  
14 excuse me. We argue deferral is appropriate, and the  
15 responses, well, you're staying a decision in terms of  
16 enforcement, but those are two different issues. That's a  
17 Rule 62 issue versus this being a Rule 54 issue, and so it's  
18 not a function of denying it. It's simply saying I'm going to  
19 stay a decision on whether you're going to get fees and costs  
20 under the contract under the statute until the appeal is  
21 resolved.

22 We've cited it's not a unique concept. It comes from  
23 the comments to the federal rule and a number of Judges, courts  
24 that have decided summary judgment have elected to defer ruling  
25 on motions for attorneys' fees and costs until the merits

1 appeal is decided. And so our countermotion on that point is  
2 that the Court should defer on the request for fees and costs  
3 here.

4 Not knowing what Your Honor is going to do, turning  
5 to the merits of the motion for fees and costs. So as counsel  
6 pointed out, fees are being requested under NRS 18.010 as well  
7 as under the GRB development agreement. We don't dispute that  
8 there is some right to fees under the development agreement.

9 In terms of NRS 18.010, we do dispute that there  
10 would be a right to fees for Mr. Ramsay under the statute. The  
11 argument being made that there was no credible evidence to  
12 support these claims. I mean, counsel even said here in  
13 argument today there were thousands of pages of documents  
14 presented in opposition to their motion for summary judgment.  
15 Right. There was a lot of issues in this case. This Court  
16 decided against my client on those issues, but by definition,  
17 having summary judgment entered against you does not mean  
18 you're now subject to fees under NRS 18.010.

19 So this is not a case where literally we went through  
20 discovery, and we did not have any evidence that we could  
21 present to support the claims against Gordon Ramsay. The Court  
22 viewed the evidence differently than we did, but to find that  
23 there is no credible evidence to support the claims would  
24 ignore everything that was before this Court. It was a nine  
25 volume appendix of documents, testimony from a number of

1 witnesses, expert witnesses, e-mails that were produced.

2           So to find that there was no credible evidence which  
3 is the predicate to getting fees under 18.010 as being argued  
4 by Mr. Ramsay, I don't think it's met here.

5           The references made to the liquidating trustees  
6 report saying that the claims were not worth pursuing, well,  
7 that's actually not completely accurate because we know the  
8 trustee said certain claims are worth pursuing. Now, he viewed  
9 it as certain claims that were worth pursuing and certain  
10 claims are not worth pursuing. And then, of course, the  
11 Delaware Court said I'll leave it to the Nevada Judge to  
12 decide, you know, whether the claims go to trial or not.

13           So if we look at nothing else, we know from the  
14 trustee's report himself, he said that these claims are  
15 worth -- certain claims were worth pursuing. So that alone  
16 negates Mr. Ramsay's argument that none of these claims were  
17 worth pursuing and fees should be awarded under NRS 18.010.

18           So we submit, if Your Honor is going to entertain the  
19 request for fees and costs as opposed to deferring, that any  
20 fees that are awarded, it would only be awarded under the GRB  
21 operating agreement.

22           Turning then briefly to Mr. Seibel's liability, it's  
23 spelled out in the assignment order, and that assignment order  
24 was something that Mr. Ramsay's counsel had input in.  
25 Mr. Ramsay was a party to the dissolution proceeding in

1 Delaware and signed off on the very order that says Mr. Seibel  
2 shall hereafter be liable for fees and costs if he pursues  
3 these claims. That's the language of the order, and it  
4 similarly talks about if Mr. Seibel is going to continue to  
5 defend the claims that are brought against GRB by PHWLTV, that  
6 on and after the date of substitution of counsel being filed  
7 he'll be responsible for fees and costs. That's the order.  
8 It's an order that Mr. Ramsay's own counsel approved and was  
9 entered by the Delaware Court.

10           So to now come in and say this Court should attach  
11 fees and costs to Mr. Seibel from the date of the filing of  
12 this litigation to the present is really a request for  
13 reconsideration of the assignment order that was entered in the  
14 Delaware Court. And if that's the relief that Mr. Ramsay is  
15 going to seek, then I submit he needs to go to the Delaware  
16 Court to ask for that relief because the assignment order  
17 certainly, Mr. Seibel is bound by it, and it says, if you're  
18 going to pursue these claims, which were derivative claims,  
19 again certain claims that the trustee said were worth pursuing,  
20 but if you are going to take them yourself, this assignment  
21 order says you will then be liable hereafter for fees and  
22 costs.

23           So to now find that Mr. Seibel was going to be liable  
24 for fees and costs incurred prior to the assignment order would  
25 contradict sort of one of the terms that was imposed upon

1 Mr. Seibel by the Judge presiding over the dissolution  
2 proceeding when saying to Mr. Seibel if you're going to pursue  
3 these claims as opposed to them being abandoned without a  
4 plaintiff, this is the condition for doing that.

5 So Mr. Seibel points to the assignment order to  
6 explain why any fees and costs that may be awarded in favor of  
7 Mr. Ramsay, the larger award would be against GRB, but  
8 Mr. Seibel can only be liable for fees and costs incurred from  
9 March, I believe March 17, 2021, to the present, Your Honor,  
10 which is the formal date of the substitution of counsel filed  
11 by my office in this case when Mr. Seibel accepted the  
12 assignment and pursued the claims for GRB in his own right.

13 Turning then to the fees and costs that were  
14 requested by Mr. Ramsay. We point out in our opposition that  
15 if you're going to seek fees for attorneys who aren't of  
16 record, who aren't *pro hac'd* into this case, you've got to show  
17 that they didn't do a whole lot. And here we know it's north  
18 of 25 percent of the hours incurred by Mr. Ramsay's counsel  
19 were by lawyers who weren't *pro hac'd* in this case. And we  
20 have a lawyer listening today from the UK. They've had a  
21 lawyer every time there's a substantive hearing, depositions.  
22 He attends that hearing, right, but he's not *pro hac'd* in.  
23 He's a UK attorney. There's no evidence that he could have  
24 been *pro hac'd* in, but the authority says if you're using  
25 lawyers who aren't licensed in the jurisdiction where the case

1 is pending and they have an active role in the litigation,  
2 that's a problem. Why? Because then the Court doesn't have  
3 authority over them, or there's an open question perhaps  
4 whether the Court has authority over them or not.

5         So we explained in our opposition, UK counsel has a  
6 tremendous amount of time working on this case, and it's not  
7 just being a point of contact with Nevada counsel. It's  
8 reviewing briefs. It's attending depositions. It's preparing  
9 for depositions, attending hearings, strategizing on the case,  
10 helping coordinate discovery.

11         So we have active counsel, and you can contrast that  
12 with Caesars had lawyers from Kirkland & Ellis who were *pro*  
13 *hac'd* into this case for a period of time. So they at least  
14 followed the rules. And you've got another law firm working on  
15 the case that at least recognizes if we're going to have an  
16 active role we're going to come before Your Honor and ask for  
17 *pro hac vice* admission. That didn't happen here. So based on  
18 the active involvement of UK counsel without getting *pro hac'd*,  
19 that portion of the fee request should be denied.

20         I understand that they served as the primary point of  
21 contact for Mr. Ramsay. Maybe he preferred that, but you can't  
22 then add a layer of attorneys to the case and then expect the  
23 other side to pay for it, whether Mr. Ramsay did or did not  
24 want to talk to his Nevada counsel, right, he chose to add a  
25 layer to it. That's at his own expense.

1           If Your Honor is going to entertain awarding UK fees,  
2 we have another problem. We don't know anything about these  
3 lawyers. You look at the time sheets, they're numbers. I  
4 don't know who they are. It's 281, 109. I mean, I don't want  
5 to belabor --

6           THE COURT: What see total number of the split or  
7 percentage of the fee request related to the UK?

8           MR. WILLIAMS: I know. I have it written down, Your  
9 Honor. That's 26 percent of the hours. I can look up the  
10 total amount sought for the UK fees. I don't have that in my  
11 notes here, but -- and I'm sure Mr. Ramsay's counsel can tell  
12 us. They separated Fennemore Craig's invoices from the UK  
13 counsel Sheridan's invoices. So I'm happy to get that number,  
14 Your Honor, perhaps while I step down so that you have that in  
15 front of you.

16           But the point is, Your Honor I'm sure has seen  
17 thousands of fee applications. You've got to know who's asking  
18 for fees. Who are you; right? What did you do? How long have  
19 you been practicing? What do you charge? And I don't know why  
20 we don't have an affidavit from the lawyer at the UK firm  
21 saying those exact things. Those are basics.

22           THE COURT: I mean, I'll just be candid with you.  
23 I'm looking at it slightly different than that. I don't know  
24 if I can rightfully award fees for lawyers not licensed in the  
25 United States and haven't been *pro hac viced* in.

1 MR. GILMORE: And I agree you don't even get to  
2 reviewing their fees, Your Honor, because that's a problem in  
3 and of itself.

4 THE COURT: Right. I mean, that's something I just  
5 thought of. You always know whether you win or lose. I'm  
6 going to tell you what I'm thinking of, right?

7 MR. GILMORE: No, and again, if you think about it,  
8 when a lawyer is *pro hac*'d in front of you, then they have to  
9 appear in front of you if there's a problem; right? You have  
10 authority over that attorney. So again, at least for what it's  
11 worth, the Kirkland and Ellis' lawyers *pro hac*'d into this  
12 case.

13 THE COURT: Right.

14 MR. GILMORE: So if they did something or you had an  
15 issue, you could hail them into court. You can't do that with  
16 lawyers who are working behind the scenes, let alone in a  
17 foreign country, right. So and the case law on this is clear.  
18 If you've got active out of country attorneys, you can't award  
19 them fees. So I agree with that, Your Honor. So I won't  
20 belabor the point on the UK lawyers except you don't know who  
21 they are, what they're doing and whether their rates are  
22 reasonable with Nevada rates because we don't have any of that  
23 evidence before this court.

24 We do have a declaration from --

25 THE COURT: Well, I think it's even more nuanced than



1 that in this regard. Yes, they might be important from a  
2 communications perspective, but are they actually performing  
3 lawyer like tasks in this case? And I think in order to do  
4 that, you have to be, I would anticipate on Nevada law, Nevada  
5 corporate law structure, those types of things, and I respect  
6 the men and women that are solicitors and barristers in  
7 England, but I don't know what they do. I know there's a  
8 difference. I don't know what the requirement is. There's  
9 probably a higher educational standard as it relates to  
10 barristers. I mean, I don't know everything. I read about it  
11 a little bit a long time ago, but --

12 MR. GILMORE: I too, Your Honor. I know they have  
13 more of like a mentoring to become an attorney.

14 THE COURT: Yes.

15 MR. GILMORE: You tend to shadow people for a while I  
16 think it is, versus more of the traditional law school approach  
17 that we have here. Candidly, I don't know. I don't ever see  
18 myself practicing out there, but I agree that's a fundamental  
19 problem that we have here. We have UK lawyers, and this goes  
20 to one of the other points. I mean, looking through some of  
21 their invoices, there were at least one or two entries where it  
22 was just thoughts, and that was it, and time was billed for  
23 thoughts. I don't know what those thoughts were, or what they  
24 were in regard to, but that's what they billed for, thoughts.  
25 And so to your point, Your Honor, we don't know what these

1 lawyers are doing. So I think the request --

2 THE COURT: I guess my ex partner Roy Smith did get  
3 his LLM in Cambridge. I mean, that's about all I know.

4 MR. GILMORE: There you go. Well, and these lawyers'  
5 education here we don't know --

6 THE COURT: I don't know.

7 MR. GILMORE: -- because we don't have a declaration.  
8 Even with -- even after we pointed it out, right, even in the  
9 reply they could've said fine, here's the declaration that says  
10 who we are and where we went to law school, what do we know  
11 about Nevada corporate law, all of those things. Even then  
12 they didn't take up the opportunity, grounds to deny the UK  
13 fees.

14 So then I'll turn, Your Honor, to the fees for Nevada  
15 counsel. So we have the declaration from Mr. Tennert, who is  
16 the lead attorney for Fennemore Craig representing Mr. Ramsay  
17 in this matter.

18 We do point out, Your Honor, when a Court is tasked  
19 with doing a reasonableness analysis and we're doing it based  
20 on lodestar here, right, rates, times, hours. So we look at  
21 the hours, and, yes, there are issues with the redactions. It  
22 makes it difficult to know what's going on, and that's -- you  
23 know, you want to redact the invoices because you're concerned  
24 with protecting attorney work product, but that impedes my  
25 side. It impedes Your Honor from then doing a reasonableness

1 analysis.

2 I'm faulted saying, well, you don't point out which  
3 specific entry you say is unrelated or unnecessary. Right,  
4 because it's redacted, and I can't tell, and I don't have the  
5 benefit of being able to see behind the redaction. But the  
6 redactions leave it where you've got entries that say  
7 preparing. That's it. You have entries that say revised.  
8 That's it. Legal research, that's it. Read. That's it.

9 So when redactions like that are made combined with  
10 vague entries, Courts apply a percentage reduction to the  
11 request for fees, and that's what -- that's what we submit  
12 should happen in this case, Your Honor.

13 A couple of other quick points that I will make.  
14 There's no dispute. They admitted in their reply that their  
15 fees and costs are related to the dissolution proceeding, are  
16 related to The Fat Cow litigation. I mean, they billed for  
17 attending The Fat Cow litigation in New York, right. There's  
18 fees and costs they admit relate to the federal case that's  
19 still pending between Mr. Seibel and GRUS.

20 So it's admitted on their side. I understand you're  
21 seeking fees related to the Burgr case because summary judgment  
22 was entered in favor of Mr. Ramsay on the Burgr case, but if  
23 you were going to seek fees in the dissolution proceeding and  
24 The Fat Cow litigation in the federal court, that's where you  
25 go seek those fees. It's not an open opportunity because you

1 prevailed in this action to encompass all the fees that were  
2 incurred in a different action.

3 And so it's another reason when you combine that with  
4 the redactions and how vague these time entries are, the only  
5 solution, Your Honor, is to apply a percentage reduction, which  
6 is what we requested in our opposition to this motion for  
7 attorneys' fees because that's how Courts address massive fee  
8 applications, which is what exactly what we have here.

9 And costs are the same. They admit that there are  
10 costs that are incurred related to other actions, and this  
11 prevailing in the Burgr case, seeking fees under the Burgr  
12 contract does not give rise to requesting fees or costs for  
13 other actions.

14 Final point I want to make, Your Honor, which they're  
15 still silent on is were these fees and costs paid? I don't  
16 know. I don't know. We don't have evidence that I've seen at  
17 least saying these fees and costs were actually paid, and I say  
18 that because under the contract, you're going -- we're not here  
19 to award a windfall. This isn't a statutory fee request in a  
20 discrimination case where a Court might say, I'm going to award  
21 fees even if, you know, the plaintiff didn't pay; right?

22 This is we're getting fees under a contract. So  
23 we're not going to award a windfall here, and yet Mr. Ramsay  
24 didn't disclose whether the dollar amount that he's asking this  
25 Court to award has been paid or if something less than that was

1 paid. I don't know; right? But I think that's important if  
2 we're going to award any fees under this contract to know have  
3 you actually paid these fees? And again, maybe it's a simple  
4 answer, but we point it out in our opposition, and I don't see  
5 an affidavit with a reply saying, yes, we paid these fees and  
6 costs.

7           So, Your Honor, we submit you should defer ruling on  
8 the request for fees and costs. If you take it up fees only  
9 awarded under the contract for a limited period of time against  
10 Mr. Seibel, the UK fees should be denied, and the Fennemore  
11 Craig fee should be reduced based on the issues we've  
12 identified.

13           THE COURT: What's your recommendation as far as  
14 reduction is concerned?

15           MR. GILMORE: We requested a 75 percent reduction,  
16 Your Honor.

17           THE COURT: Yeah, I saw that. I just wanted to make  
18 sure I didn't misinterpret that.

19           MR. GILMORE: Yes. And if Your Honor thinks that's  
20 aggressive, you know, I would submit that that is within the  
21 realm of what Courts will do when you have serious issues with  
22 the fee application, as we've (indiscernible).

23           THE COURT: Thank you.

24           MR. GILMORE: Thank you, Your Honor.

25           THE COURT: Okay. Let's hear from the reply.

1 MS. MERCERA: He's muted.

2 MR. TENNERT: My apologies, Your Honor. I was muted.

3 THE COURT: Oh, that's fine.

4 MR. TENNERT: Well, I'll go ahead and address it in  
5 order (video interference) Gilmore's arguments. I'll start off  
6 with a countermotion, and I think maybe you can just maybe to  
7 (video interference) make it a point, just so we're clear.

8 The fees that we submitted and request in our motion  
9 have actually been incurred and paid, and so we can get that  
10 right (video interference).

11 And I guess I'll just kind of start with the  
12 countermotion to defer ruling, and I'll start off saying that  
13 the Court should deny Mr. Seibel's request to defer today's  
14 hearing. The motions are fully briefed. His request is simply  
15 another delay tactic in a long line of delay tactics, and it's  
16 devoid of any practical or logical consideration.

17 Mr. Ramsay's fee motion filed months ago was fully  
18 briefed. Mr. Seibel's motion to retax costs is fully briefed.  
19 The only matter remaining is for this Court to hear an oral  
20 motion today.

21 Now, there's no rule -- there's no Nevada rule that  
22 specifically authorizes (video interference) fee award as  
23 Mr. Seibel seeks here. (Video interference) provided by Nevada  
24 law upheld judgments that are seeking to prevent enforcement of  
25 award is to seek a stay and post a supersedeas bond under NRCP

1 62 (video interference).

2 NRCP 54 does not provide a mechanism to seek a  
3 deferral, and there is no Nevada case law supporting a request  
4 for deferral.

5 Mr. Seibel denies relies on federal case law  
6 interpreting FRCP 54 D weighs heavily against granting  
7 Mr. Seibel's request for (video interference).

8 The federal courts have discretion to defer a motion  
9 while appeal is pending. The overwhelming weight of authority  
10 is that the reasonable course is for the Court to consider  
11 attorneys' fees promptly after a merits decision.

12 Even so, federal courts consider four factors to  
13 determine whether to stay an award of attorneys' fees  
14 pending -- and costs pending appeal, and those factors are,  
15 one, whether the stay applicant has made a strong showing that  
16 he is likely to succeed on the merits; two, whether the  
17 applicant will be irreparably injured, absent a stay; three,  
18 whether issuance of the stay will substantially injure the  
19 other parties and four (video interference).

20 As for the first factor, Your Honor, Mr. Seibel makes  
21 no showing whatsoever that he's likely to succeed on appeal  
22 other than to suggest that it is theoretically possible his  
23 appeal will be successful. A remote possibility of reversal is  
24 not a strong showing that federal courts require (video  
25 interference) to say a ruling on attorneys' fees.

1           As to the second factor, Mr. Seibel will not be  
2 irreparably harmed if the fee motion is decided today. These  
3 motions are fully briefed and ready for a decision. Mr. Seibel  
4 didn't file this motion to defer ruling, you know, within 21  
5 days (video interference) under the statutory time to file a  
6 motion (video interference) countermotion in response and  
7 opposition (video interference).

8           As for the third factor, Mr. Ramsay will be harmed if  
9 yet another stay is issued in this case, which has been pending  
10 for over five years.

11           Mr. Seibel is confident that he will prevail on  
12 appeal, he would post a bond to stay enforcement of the terms.

13           As to the final factor, there is no public interest  
14 in further delaying (video interference) that Mr. Seibel may  
15 pursue or threaten endless appeals without any consequence.  
16 Judicial economy is not a factor, as the (video interference)  
17 are fully briefed, and we are all here ready for a decision.

18           With respect to the argument and we request that the  
19 Court deny Mr. Seibel's request to defer ruling and rule on the  
20 motions.

21           THE COURT: And I'll make it real clear for you as  
22 far as the request to stay the ultimate decision as it pertains  
23 to the fee motion, I'm going to deny that. I mean, I  
24 considered likelihood of success on the merits, irreparable  
25 harm, public interest, balanced the hardships, all those



1 things. I'm going to hear it, and I'm going to decide it.

2 What about the issue as it pertains to learned  
3 counsel from England? What about that?

4 MR. TENNERT: Yes, Your Honor, thank you.

5 You know, and I've feel like Mr. Gilmore had I think  
6 slightly misrepresented the evidence that we had presented to  
7 the Court. I did present my own affidavit or declaration  
8 authenticating the invoices received from Sheridan's.

9 Now, Sheridan solicitors and the lead counsel  
10 Mr. Thomas are counsel for Mr. Ramsay, his various entities in  
11 the United Kingdom. He is also counsel who's been involved  
12 with Mr. Ramsay and his contracts with Caesars. He serves as a  
13 primary point of contact not only for Mr. Ramsay, but also the  
14 Ramsay entities in the UK.

15 Now, we're not requesting these fees as though he's  
16 a, you know, practicing Nevada law or is appearing in this case  
17 or any of the other considerations that are at issue in some of  
18 the cases cited by Mr. Seibel.

19 We're seeking the award of these fees as expenses  
20 under the contract, under the (video interference) agreement,  
21 which is much more broad than simply fees incurred in a  
22 litigation proceeding.

23 This, as you heard, this has been ongoing for some  
24 time. There has been litigation both in the Nevada state  
25 court, (video interference) federal courts by Mr. Seibel

1 relating to this agreement. So we do have the actual invoices  
2 that are submitted. They are what they are, Your Honor. I'll  
3 submit that Mr. Thomas, the lead counsel at Sheridan's, we  
4 converted their -- the amounts billed and paid from British  
5 pounds to U.S. dollars, as I note in my declaration, but it is  
6 evident that the time bill, the time entries and the full  
7 amount.

8           So this isn't a case where, you know, similar to the  
9 case you know as Kirkland & Ellis appearing on behalf of  
10 Caesars. I understand Kirkland & Ellis was bankruptcy counsel  
11 for Caesars, but appearing in this case and pro hac in.  
12 Mr. Gilmore (video interference) argued that Mr. Thomas is  
13 practicing Nevada law in any way whatsoever or had pro hac'd  
14 into this case, but there are fees that were necessary incurred  
15 by Mr. Ramsay in complying with the, both the discovery  
16 obligations in this case (video interference).

17           THE COURT: And what is the language under  
18 Section 14.3 -- 13.

19           MR. TENNERT: Yes, Your Honor. Let me -- right. And  
20 so (video interference) not being requested under the eighth  
21 (video interference).

22           All right, Your Honor, it's at page 5 of our motion.

23           THE COURT: All right. And I saw that  
24 (indiscernible) answer the question. That was redacted on  
25 page 5.

1 MR. TENNERT: Oh, okay. Thank you. Yeah, (video  
2 interference) read to Your Honor. Section 14.13 states and I  
3 quote, the prevailing party in any dispute, any dispute that  
4 arises out of or relates to making or enforcement of the terms  
5 of this agreement shall be entitled to receive an award of its  
6 expenses incurred in pursuit of -- pursuit or defense of (video  
7 interference) including without limitation attorney fees and  
8 costs incurred in such action (video interference) expenses  
9 incurred in pursuit or performance of said claim (video  
10 interference) attorneys' fees and costs incurred (video  
11 interference) such action.

12 And I apologize if that sounds a little bit  
13 redundant. That may be a direct quote or maybe a typo in here,  
14 but nonetheless, it's related to extensive (video interference)  
15 in pursuit of the defense of said claim.

16 THE COURT: Go ahead, sir.

17 MR. TENNERT: Okay, Your Honor. If you have any more  
18 questions on the Sheridan's issue, I'm happy to answer that,  
19 but I'd like move on to some of the other points.

20 THE COURT: Yeah, you can move on, sir.

21 MR. TENNERT: Okay. And I just wanted to point out  
22 to you, I believe the Fennemore fees are approximately  
23 1.9 million. Sheridan's were 716,000. I don't have the  
24 percentage.

25 I'll address briefly the NRS .010(2)(b) request, and

1 so we are requesting that in addition to the contractual  
2 language. I think that as we've argued here today and as we  
3 pointed out, Mr. Seibel would be personally liable under both  
4 provisions.

5 But as to the 18.010(2)(b), Mr. Seibel points out or  
6 Mr. Gilmore points out, well, you know, these claims are well  
7 founded because there were volumes of evidence produced. I  
8 mean, there was a lot of depositions taken, and I think they  
9 even quoted the number of the appendices attached to his  
10 opposition to summary judgment.

11 Well, I would argue the contrary that, you know,  
12 notwithstanding all of the discovery that was produced in this  
13 case and pursued in this case, even with the presentation of  
14 all that evidence, there was not a single -- there's not a  
15 single disputed fact that would prevent entry of summary  
16 judgment.

17 And if Your Honor will recall, I mean, not quite --  
18 not quite a year ago, we had argument on Mr. Ramsay's motion  
19 for summary judgment, and what this case really ultimately  
20 boiled down to was a simple interpretation of contract. I  
21 mean, the contract said what it said, the date the case was  
22 filed, and it said what it said the date that we had argument  
23 on the motion for summary judgment and it was court entered  
24 findings of fact and conclusions of law.

25 Now, I recall at that hearing Your Honor asking

1 Mr. Seibel's counsel, where in this contract, can you point me  
2 to where in this contract that there's a provision that  
3 Mr. Ramsay breached or obligated him (video interference) in  
4 some way to assist (video interference), following Mr. Seibel's  
5 felony conviction? And the response to that was something  
6 along the lines of, well, no, you know, this really isn't a  
7 contract case, and there's some other claims that we're  
8 pursuing, which was not the case.

9 And so I would submit to you, Your Honor, that even  
10 after all the discovery that was presented, there is no  
11 evidence supporting the claims that were made against  
12 Mr. Ramsay.

13 So I would submit to you that under NRS 18.010 that  
14 this case was brought without legal and factual basis, and  
15 attorneys' fees are -- Mr. Seibel is subject to attorneys' fees  
16 award under that provision in addition to the development  
17 agreement.

18 Now I'll move on to the Delaware Court order, and  
19 Mr. Seibel had -- argues that the Delaware Court order somehow  
20 absolves him of any type of liability for accepting assignment  
21 of the claims. I guess first of all, I want to point out the  
22 fact that these are derivative claims that were brought by  
23 Mr. Seibel, who is a 50 percent member of GR Burgr, LLC.

24 On the day he filed this case, he has always been the  
25 plaintiff here. GRB is a nominal party in this derivative

1 action, and we've cited Your Honor to cases where Courts will  
2 award fees and costs against the derivative plaintiff, the  
3 party -- the (video interference) shareholder who brings the  
4 action on behalf of (video interference). So from day one,  
5 Mr. Seibel has been the plaintiff here.

6 Now, in the Delaware dissolution proceedings -- I  
7 also want to point out another fact and just to correct  
8 something for the record. Mr. Gilmore had referenced to the  
9 Court that Mr. Ramsay was a party to the Delaware proceedings  
10 and that Mr. Ramsay is a party to the assignment order and  
11 Mr. Ramsay signed off on the assignment order. That is all  
12 incorrect. Mr. Ramsay has never been a party to the Delaware  
13 dissolution proceedings. Mr. Ramsay is not a member of GRB.  
14 Mr. Ramsay is not a manager of GRB, and so that's just simply  
15 false, Your Honor.

16 The Delaware assignment order assigning the claims to  
17 Mr. Seibel assigned the claims as they were, but what the Court  
18 in Delaware was doing was assigning the derivative claims that  
19 were brought by Mr. Seibel to pursue on his own dime and his  
20 own cost is what the order says.

21 And what that means, Your Honor, is that if  
22 Mr. Seibel wants to continue to pursue those claims or accept  
23 assignments of those claims, he would then do it on his own  
24 dime. He would pay his own money to pursue those claims. It  
25 wasn't going to be the Delaware liquidated trustee.

1           And so the Delaware order does not say that  
2 Mr. Seibel is somehow limited to any exposure if his claims  
3 were to fail or with a fee shifting provisions in the  
4 Delaware -- or in the development agreement that Mr. Seibel was  
5 suing under. For all intents and purposes, Mr. Seibel stepped  
6 into the shoes of GRB with all the rights and liabilities that  
7 go along with that.

8           Now, the Delaware Court ordered -- the Delaware Court  
9 order that relates to the parties to that case, which is GRUS  
10 licensing, that limited partnership, and Mr. Seibel. That's  
11 it. Mr. Ramsay is not a party to those proceedings. Caesars  
12 or Planet Hollywood is not a party to those proceedings, and  
13 the Delaware Court order simply doesn't say what Mr. Gilmore is  
14 asking you to, I guess believe that it says.

15           The Delaware Court order is simply assigning the  
16 claims as they existed. Mr. Seibel had the opportunity to  
17 either accept the assignment or decline the assignment. He  
18 accepted the assignment and pursued the claims.

19           And so, Your Honor, respectfully, there's no  
20 limitation on the Delaware order that will limit any adverse  
21 fee award as to (video interference).

22           And then I kind of finally want to just address again  
23 the argument about the excessive fees and redactions.

24           When the fees sought here between the 1.9 million  
25 from Nevada counsel and 700,000 from counsel in the UK, again,

1 this is a case of complex litigation that has been gone ongoing  
2 for several years. The amount in controversy far exceeds the  
3 attorneys' fees that are sought here. And we agree. I mean,  
4 this litigation in and of itself is excessive, and but for  
5 Mr. Seibel pursuing these claims, Mr. Ramsay would not have  
6 incurred these fees.

7 We do recognize that when we did -- we did redact as  
8 to privilege, but we did (video interference) we did carefully  
9 go through the redactions. You know, if there's a question  
10 this Court may have or this Court would like to see unredacted  
11 copies, we'd be happy to provide them, but even given that, we  
12 submit, Your Honor, that the redacted invoices we're able to  
13 reasonably determine what was going on, you know, for the  
14 several entries that are not redacted. Again we're talking  
15 about 600 pages of invoices over the course of several years.

16 I think the last point we touched on was the, I guess  
17 that the premise that there are fees in connection with  
18 litigating other matters that are being requested in the fee  
19 application, and I'll submit, Your Honor, that simply there are  
20 not.

21 The fact that some of the invoices, some of the time  
22 entries may reference The Fat Cow case or may reference the  
23 Delaware dissolution proceedings is my firm, as Nevada counsel  
24 not participating in those actions but either monitoring them  
25 to the extent necessary that is relevant to the proceedings



1 here.

2 As I've stated in my declaration and in our motion,  
3 we redacted over \$168,000 in fees that were related to another  
4 matter that Mr. Seibel has filed against a Ramsay entity. So  
5 those are not included.

6 As far as The Fat Cow case and other, you know,  
7 litigation that's not related to this case directly, there are  
8 counsel in those cases. So it's not as though, you know, my  
9 firm as counsel in this case and we're seeking fees there.

10 And I'll submit to you that to the extent that there  
11 are references to other cases, it's minimal.

12 Finally, I think that one of the points that  
13 Mr. Seibel is trying to get out here is that this is a  
14 consolidated action, Your Honor, where Mr. Ramsay (video  
15 interference) a party to the case involving the Burgr Gordon  
16 Ramsay restaurant, and then the other cases relate to Caesars  
17 and other restaurants that have Ramsay's name on them as well.  
18 All of the cases are really (video interference) with the fact  
19 that the crux of Mr. Seibel's (video interference) as  
20 Mr. Ramsay is that Mr. Ramsay conspired with Caesars to oust  
21 Mr. Seibel from all of his businesses, including the  
22 restaurants at issue in the consolidated case. So I think when  
23 Mr. Gilmore is referencing, well, it's admitted that there are,  
24 for example, costs for attending depositions that relate to,  
25 say, Gordon Ramsay's Steak. Well, of course, there are. We

1 participated in all of those depositions as well.

2 And, you know, also I think Your Honor should be  
3 aware of that there is a global discovery agreement between the  
4 parties that all transcripts, all discovery requests and  
5 responses and all produced documents in the various other  
6 cases, which don't even -- which go beyond the consolidated  
7 cases here, but also the federal court case between Caesars and  
8 one of Mr. Seibel's entities TPOV, that all of the discovery  
9 would be able to be used in this case.

10 Mr. Ramsay is also a party to that.

11 So respectfully, Your Honor, to the extent that we  
12 have sought fees in this case, they relate directly to this  
13 case. They're necessary to prepare Mr. Ramsay's defense in  
14 this case. Mr. Ramsay is the prevailing party, and we ask that  
15 the Court grant Mr. Ramsay's motion.

16 THE COURT: All right. This is what I'm going to do,  
17 and I have a couple of comments, and I think it's important to  
18 point out regarding the fee request. I understand it's  
19 pursuant to Section 14.13 pursuant to the development agreement  
20 and also NRS 18.010 (2) (b). I have a couple of comments, and  
21 I think this is really important to point out, and, of course,  
22 this is in deference to out-of-country counsel, but I feel that  
23 it would be problematic if I awarded attorneys' fees for the  
24 work performed by out-of-state counsel, and specifically not  
25 award them in this case.

1 I understand that communications are at issue. I did  
2 think about the contract, and it does appear to be a little --  
3 no, I should say somewhat broad in nature, but nonetheless, it  
4 appears to me that ultimately it relates to attorneys' fees and  
5 costs. So I'm excluding the award of out-of-country counsel.

6 As far as the fee request by Pisanelli Bice and  
7 Kirkland & Ellis, it's my understanding the fee is what, one --  
8 I'm sorry, \$3,158,657.75; is that correct?

9 MR. GILMORE: We're on the Fennemore Craig motion  
10 right now, Your Honor. So that's coming up next.

11 THE COURT: Okay. All right. There's a lot of  
12 motions.

13 MR. GILMORE: There are.

14 MS. MERCERA: There are.

15 THE COURT: Yeah. Let me get to that real quick.  
16 Make sure I have it. I just want to make sure I get the  
17 numbers right.

18 And, sir, once again, that amount is? I want to make  
19 sure I'm clear.

20 MR. TENNERT: For Sheridan, Your Honor?

21 THE COURT: Yes.

22 I'm sorry. No. I'm not going to award -- Sheridan's  
23 is out of country; right?

24 MR. GILMORE: Yes. So I've --

25 Not to speak for you, Mr. Tennert. On page 15 of his

1 motion, as he said, it was \$716,767.74 for Sheridan's. And  
2 then for Fennemore Craig, it's \$1,926,464.50.

3 THE COURT: Correct.

4 MR. TENNERT: That is correct. That's in the  
5 declaration as well.

6 THE COURT: All right. I just wanted to make sure we  
7 were clear on that.

8 And as far as the fee request is concerned, I think I  
9 talked briefly about the section pursuant to the development  
10 agreement, and that was Section 14.13; right?

11 MR. TENNERT: Correct, Your Honor.

12 THE COURT: And in conducting an analysis under  
13 NRS 18.010, award of attorneys' fees, and that would be  
14 Section (2) (b), I must point out that, Number 1, as far as the  
15 application of the statute, my decision is going to be simply  
16 this. I'm not going to make a determination that the claim was  
17 brought to harass the prevailing party, but without reasonable  
18 grounds, that's going to be the basis for my decision.

19 Just as important too, the Court shall liberally  
20 construe the provisions of this paragraph in favor of awarding  
21 attorneys' fees in all appropriate situations. I think this is  
22 an appropriate situation in light of the granting of the motion  
23 for summary judgment.

24 What I'm going to do as far as the award of fees are  
25 concerned, I'm going to go ahead and grant that, both pursuant

1 to the statute and the provision under the development  
2 agreement; however, there won't be an award for out-of-country  
3 counsel. I just want to make sure I'm clear on that.

4 MR. TENNERT: Thank you, Your Honor.

5 Your Honor, would that also encompass the costs?

6 THE COURT: We didn't talk about costs, did we?  
7 Retax; right?

8 MR. GILMORE: So we filed a --

9 MR. TENNERT: Yeah. So we -- yeah, we had the -- so  
10 the costs were the same, basically the same facts as the motion  
11 for attorneys' fees and costs. And so, you know, I think the  
12 request --

13 THE COURT: Slightly -- slightly different analysis;  
14 right?

15 MR. GILMORE: It is, Your Honor. I would submit that  
16 they asked for costs under the statute as the prevailing party,  
17 and then they asked for costs under NRS 18.010 and under the  
18 contract, right. So I guess you would say three bases for  
19 seeking costs.

20 THE COURT: Right.

21 MR. GILMORE: The costs under the statute as the  
22 prevailing party I'd argue should be denied because they did  
23 not submit justifying documentation to support the request.

24 THE COURT: That's *Bobby Berosini*; right?

25 MR. GILMORE: Correct.

1 THE COURT: *Bobby Berosini?*

2 MR. GILMORE: Yes, Your Honor. So they may have  
3 cured that for the request for fees under the agreement, but  
4 when it came time to file the memo of costs and seek costs as  
5 the prevailing party, Nevada law is very clear on this. The  
6 argument was made is we didn't know. I don't think we can make  
7 that argument. You know you have to submit documentation with  
8 the request for costs.

9 THE COURT: And that's *Berosini*.

10 MR. GILMORE: Yes. So they didn't do that, Your  
11 Honor. So costs should be denied under the statute for that  
12 reason.

13 THE COURT: Okay. Let's hear the response to that.

14 MR. TENNERT: Yeah. So I guess we're focused on we  
15 have the motion to retax under the statute. So, you know, Your  
16 Honor, we did within five days of the entry of judgment, we did  
17 submit a -- our memo of costs which did include unredacted,  
18 detailed invoices that (video interference) for each and every  
19 cost that we thought.

20 Now, that came with my verification as well that  
21 these are the actual invoices. These aren't summaries of costs  
22 that were incurred. They're for deposition transcripts. It  
23 says right there in the invoices these costs were incurred and  
24 paid. These are paid by -- the costs were paid by Fennemore  
25 Craig, directly, my firm on which we submitted.

1           In opposition or in -- excuse me, in Mr. Seibel's  
2 motion to retax, he points out and says, well, you know, these  
3 actual fees aren't sufficient. In response, we provided -- you  
4 know, I guess in response we argued that, you know, we did  
5 provide actual invoices. These aren't summaries. These are  
6 invoices that are costs that were incurred and paid by  
7 Fennemore Craig.

8           Nonetheless, in opposition to the motion to retax, we  
9 did provide, we supplemented our memorandum of costs, and we  
10 included every conceivable backup we could think of. We had  
11 canceled checks. We had the invoices and so on and so fourth,  
12 volumes of documentation, but, you know, (video interference)  
13 to the actual invoices, but that even further back to the  
14 actual invoices.

15           There's nothing problematic with that, Your Honor.  
16 We cited case law that Courts are free to consider additional  
17 evidence that's presented in opposition to a motion to retax,  
18 but I think going back to the first point, Your Honor, we did  
19 submit sufficient evidence with declaration of counsel of costs  
20 that are actually incurred and paid, paid by my firm Fennemore  
21 Craig, along with my declaration.

22           So Your Honor has before the Court volumes of  
23 documentation both in the memorandum of costs and also in the  
24 supplement to the memorandum. So we'd submit, Your Honor, that  
25 under -- under the statute on the memorandum of costs that

1 these are statutorily taxable costs in addition to the requests  
2 made under the (video interference) prevailing party.

3 THE COURT: And I just want to make sure I have  
4 everything in this regard. I have the opposition to Rowen  
5 Seibel and GR Burger, LLC's motion to retax and settle costs  
6 claimed by Gordon Ramsay; right? Isn't that the appropriate  
7 document? And I'm looking here, and I just want to make sure  
8 I'm not missing anything.

9 Do we have all of the invoices and all of those  
10 things that normally you see as it pertains to --

11 MR. GILMORE: So that wasn't included with the memo  
12 of costs, right, which is what triggered in part our motion to  
13 retax.

14 THE COURT: No, I understand. Was it supplemented?  
15 Because I want to make sure I have everything.

16 MR. GILMORE: Yes, they supplemented after, after we  
17 brought that to their attention, and our argument, Your Honor,  
18 simply is the statute sets forth that time by which that needs  
19 to be done.

20 THE COURT: I got it. I understand. All right. I  
21 do.

22 MR. TENNERT: And, Your Honor --

23 THE COURT: I have it. I have it. I have it.

24 And for the record, that would be PHWLTV, LLC's  
25 memorandum of costs. Is that correct, sir.



1 MS. MERCERA: That one's ours, Your Honor.

2 THE COURT: Oh, yours, okay.

3 Where's the other one? I don't know if I have it?

4 Fennemore Craig? Where is that? Do I have it?

5 MR. TENNERT: You should have it, Your Honor,  
6 (video interference). We have our verified memorandum of costs  
7 and disbursement filed May 31st, 2022.

8 THE COURT: I mean, I have the opposition.

9 MR. TENNERT: And then so you have it, Your Honor, we  
10 supplemented the memorandum of costs and disbursements on June  
11 16th, 2022.

12 (Pause in the proceedings.)

13 THE COURT: Let's move on to the next issue.

14 MR. GILMORE: The only thing, Your Honor, I'd asked  
15 for clarification. You granted the motion. Are you imposing  
16 liability on Mr. Seibel from the start of the case or from the  
17 date of the substitution of counsel?

18 THE COURT: What do you mean by that? Clarify that.

19 MR. GILMORE: So I understand you're granting the  
20 motion for fees for the \$1.9 million for Mr. Ramsay's Nevada  
21 counsel.

22 THE COURT: Correct.

23 MR. GILMORE: The argument -- and so not accepting  
24 any of the reductions. The argument we made in our opposition  
25 was that the entire fee award would be against GR Burgr, and

1 then a portion would be against Mr. Seibel based on the  
2 language of the assignment order from the date he substituted  
3 in to pursue these claims in his place instead of GRB to the  
4 present. So I can give you what that number looks like, but he  
5 would basically be responsible for a portion of the  
6 \$1.9 million that you ordered.

7 THE COURT: Okay. And what is that number?

8 MR. TENNERT: Your Honor.

9 THE COURT: I'll hear from you, sir.

10 MR. TENNERT: So if I may, so the Delaware -- the  
11 Delaware assignment order that was entered, you know, sometime  
12 in 2021, that has no limitation whatsoever upon Mr. Seibel's  
13 liability. Mr. Ramsay is not a party to those proceedings.  
14 It's a Delaware order that relates simply to the assignment of  
15 the claims for the purposes of GR Burgr being canceled.  
16 GR Burgr does not exist anymore.

17 We're seeking claims -- we're seeking the fees in  
18 this case for the entirety of the case. These are claims again  
19 brought by Mr. Seibel as the plaintiff here. GRB has always  
20 been a nominal party to this extent it existed. It no longer  
21 existed. The Delaware Court order assigning the claims to  
22 Seibel -- to Mr. Seibel were for him to pursue in his own -- in  
23 his own right, I mean, the point of it being that GRB is  
24 canceled.

25 Now, we cited case law in our brief that relates to

1 the liability of the derivative plaintiff in a failed  
2 derivative action and also the simple fact that as the assignee  
3 of these claims he's the assignee of the -- for all intents and  
4 purposes, the development agreement, the claims under the  
5 development agreement. Mr. Seibel steps into the shoes of GRB.  
6 He did not have to continue to pursue this.

7 Now, at the time he took the claims, he may have been  
8 confident that he was going to prevail, and he was going to --  
9 he was seeking millions of dollars in damages, but along with  
10 that goes the fee shifting provision. And so there's nothing  
11 in the Delaware Court order that limits Mr. Seibel's liability  
12 or restricts the development agreement and specifically  
13 Section 13 or 14.13.

14 MR. PISANELLI: Your Honor, this is James Pisanelli  
15 for Caesars. May I be heard on this issue? Because it does  
16 apply to Caesars application as well.

17 THE COURT: I understand. Go ahead.

18 MR. PISANELLI: And just very briefly, I think  
19 Mr. Tennert has set it out properly. I would just add this.  
20 What's clear from the record is that Mr. Seibel, the original  
21 plaintiff in this case just shifted his role. On the one hand  
22 he was declared to be initially when he brought the lawsuit a  
23 derivative plaintiff. He was funding -- moving the case  
24 forward. He was in charge of it. And the other time, after  
25 assignment from the trustee, it became his personal claim. It

1 was no longer derivative, but he was the one personally  
2 responsible for inflicting I will call the pain of this  
3 litigation on all parties.

4 And the absurdity of the position that counsel for  
5 Mr. Seibel is asserting, I would just give (video  
6 interference). When someone brings a derivative action that is  
7 clearly I will even go so far as to say a Rule 11 violation,  
8 clearly vexatious, Mr. Seibel's position, Counsel's position is  
9 that person gets to walk away from the case scot-free, no  
10 problem. Go send the attorneys' fees (video interference) for  
11 the harm that I have and inflicted through this vexatious  
12 litigation to the company I (video interference) on behalf of  
13 who more often than not had refused to bring the claim on its  
14 own, and that's why somebody brings it derivatively.

15 So it's a little nonsensical, and, quite frankly, I  
16 mean, bordering on bad faith to suggest that Mr. Seibel gets to  
17 walk away from it (video interference) for this case when he  
18 brought it as a derivative plaintiff in the first instance.

19 Mr. Tennert is exactly correct. GRB was only in this  
20 case as a nominal plaintiff from the beginning. Mr. Seibel's  
21 fingerprints have been all over this case from day one.

22 THE COURT: All right.

23 MR. GILMORE: Your Honor, if I can --

24 THE COURT: Absolutely.

25 MR. TENNERT: If I may add, Your Honor, just looking

1 at my -- Mr. Ramsay's reply brief, we do cite to a District of  
2 Nevada federal case *Weinfeld v. Minor* that deals with this  
3 exact situation. And in that case, the District Court looked  
4 at NRS 18.010 and it awarded fees and costs against the actual  
5 plaintiff, the derivative plaintiff in a derivative action  
6 where it found the derivative claims were groundless. And that  
7 case were kicked out on summary judgment.

8 But that's a very similar case here. So whether the  
9 award is under the development agreement and certainly under  
10 NRS 18.010, it's entirely proper for a derivative plaintiff  
11 face the liability for attorneys' fees when there's a party  
12 under 18-point (video interference).

13 MR. GILMORE: So, Your Honor, briefly in response.  
14 This assignment order trumps whatever the common law rule may  
15 be because the assignment order is what gave Mr. Seibel the  
16 authority to bring these claims in the first place, right, and  
17 he had a choice to make when that assignment order was entered.  
18 You can bring these claims, and if you do, you will, quote,  
19 hereafter be liable for fees and costs; right? So he could  
20 look at that and say you know what --

21 THE COURT: But here's my question, and I thought  
22 about this issue because I was listening. Why would an order  
23 issued by, and I respect comity. I respect, of course, the  
24 Delaware Courts of Chancery, but why would that control the  
25 award of fees and costs in this Court?

1 MR. GILMORE: Well, it's what gives Mr. Seibel  
2 standing to come before you to say these are his claims.

3 THE COURT: Right. He filed the claims; right?

4 MR. GILMORE: Derivatively on behalf of GRB. So they  
5 weren't his claims initially. These are GRB's claims. Right?  
6 That's how derivative claims work. It's they technically  
7 belong --

8 THE COURT: No, I understand that. I do. I get  
9 that. I understand what a nominal -- I mean, I get it. But my  
10 point is this. He filed the claims and but for him filing the  
11 claims, the lawsuit would've never been filed; right? So at  
12 the end of the day, I have to make a determination as to  
13 whether there was a proper basis for it.

14 I do understand there was an assignment conducted or  
15 done in a sister state, but nonetheless, he started the  
16 litigation. So you're telling me that what I should do is  
17 this, once they make their determination as to when the  
18 assignment occurs, he can't be responsible for any fees and  
19 costs incurred prior thereto?

20 MR. GILMORE: Yeah. And the reason for that, Your  
21 Honor, is if he did not get that assignment order, these claims  
22 would have been dismissed because he wouldn't have standing to  
23 bring them.

24 THE COURT: But then it would have been a baseless  
25 lawsuit, and then he wouldn't he have been on the hook for fees

1 and costs under those circumstances?

2 MR. GILMORE: Well, we haven't briefed that issue;  
3 right? These claims --

4 THE COURT: But I would think, I mean, if you filed a  
5 lawsuit and you don't have standing and the case is ultimately  
6 dismissed --

7 MR. GILMORE: Well, the trustee was pursuing them,  
8 right, for a period of time.

9 THE COURT: Yeah, but --

10 MR. GILMORE: And then ultimately the trustee said I  
11 don't have the money to pursue this. So said to the Delaware  
12 Court, you let Mr. Seibel decide whether he wants to do it or  
13 if the claims are going to be dismissed; right? That's what he  
14 was left with, and the Delaware Court said, I'll assign  
15 Mr. Seibel the right to bring these claims, but if you're going  
16 to do that, hereafter, you're going to be liable for the fees  
17 and costs, and related to defending against the affirmative  
18 claims that PHWLTV brought. It says you shall solely be  
19 responsible for all costs and expenses related to such defense  
20 on and after the date of the substitution of counsel.

21 THE COURT: And what was that date?

22 MR. GILMORE: The March 17, 2021.

23 THE COURT: Okay.

24 MR. GILMORE: So that -- the significance here is  
25 simply of the 1.9 million that you'd award against GRB,

1 \$307,915 would be Mr. Seibel's responsibility. That's no  
2 reductions. That's the full amount of what Fennemore Craig  
3 billed from March 17, 2021, to the present.

4 THE COURT: And I want to --

5 MR. PISANELLI: Your Honor, like so much in this  
6 case, Mr. Seibel argues that he's a victim, and once again he  
7 argues that he's a victim of his own decisions and his own  
8 behavior. He's asking you to make his date of responsibility  
9 the time where he owned the complaint in 2021 rather than the  
10 time he filed and prosecuted the complaint in 2017.

11 He can't burn his house down and then come in and  
12 claim that he's homeless. He created this problem. He's been  
13 responsible for this problem. Even if the Delaware action had  
14 never existed, as the derivative (video interference) person  
15 pushing the derivative case forward, he would have been  
16 responsible for the fees.

17 How we somehow get into a convoluted argument that he  
18 had dual standing throughout the case and therefore gets a free  
19 pass going back to 2017 just doesn't make a lot of sense, and  
20 it's certainly not supported by the law.

21 THE COURT: All right. I understand. And I'm going  
22 to make sure you get the last word. I just want to hear any  
23 other comments.

24 MR. TENNERT: Your Honor, just so we are on the same  
25 page here, Mr. Gilmore has made several representations about



1 the assignment order, and the assignment order is frankly  
2 irrelevant. It's irrelevant under the development agreement.  
3 It's certainly irrelevant under Your Honor's order under NRS 18  
4 (video interference).

5 And since we are talking about the Delaware order,  
6 the Delaware order does not say that upon assignment of the  
7 claims Mr. Seibel is liable here forth. It does not say that.  
8 (video interference), but what it does say, Your Honor, it  
9 says --

10 THE COURT: I mean, and, sir, I don't want to cut you  
11 off, but I think ultimately when it comes to the determination  
12 as to whether or not fees and/or costs are going to be awarded,  
13 I think it would stem directly from when the lawsuit was filed  
14 in this case, number one.

15 Secondly, my interpretation and application of  
16 NRS 18.010.

17 Third, I guess germane to this case, Section 4.13  
18 under the development agreement; right?

19 MR. TENNERT: That's correct, Your Honor, yes.

20 THE COURT: Yeah.

21 You get the last word, Mr. Gilmore.

22 MR. GILMORE: Understood.

23 THE COURT: Always go back to formality. I want to  
24 make sure you get the last word.

25 MR. GILMORE: Fair enough. I will stand on the

1 assignment order. From our perspective imposes liability from  
2 March 17, 2021, to the present.

3 THE COURT: All right. And thank you, sir. I just  
4 want to make sure the record is clear so the Supreme Court  
5 and/or Court of Appeals has an opportunity to review our  
6 rigorous discussion.

7 And I'm going to go back to, I think, and I think  
8 this makes the most sense. You filed a lawsuit. Things don't  
9 go appropriately. You get stuck. It's really that simple, and  
10 I don't think decisions made by -- and trust me, I respect the  
11 Delaware Court, but when it comes to this Court's jurisdiction,  
12 the filing of the original complaint back in 2017, and what has  
13 transpired subsequent thereto and the award of fees and costs  
14 clearly come under this Court's jurisdiction.

15 And so I'm not going to -- I'm not going to follow  
16 counsel's lead and start where the fee award and/or cost award  
17 starts running in 2019. That starts from the time the lawsuit  
18 was filed, which was in 2017; correct?

19 MS. MERCERA: Correct.

20 THE COURT: All right.

21 All I can say is this, and I'm going to award costs.  
22 It won't take me long, but I feel compelled to go through the  
23 seven or eight pages -- 7 or 8 inches of documents. I'm going  
24 to award costs; I'm just going to make sure everything is  
25 appropriately documented, and this goes specifically to

1 Fennemore Craig. All right.

2 MR. TENNERT: Thank you, Your Honor.

3 THE COURT: Okay. Okay. You got 15 minutes.

4 MR. PISANELLI: Well, also, Your Honor, the last  
5 thing before you is largely and nearly, but not completely  
6 redundant debate this time for Caesars for attorneys' fees and  
7 costs.

8 I am looking at the clock on my computer, and I see  
9 12 minutes before 5:00. I'm respectful of your time and your  
10 staff's time. So I'm not going to repeat what Mr. Tennert so  
11 artfully laid out for you.

12 We too have filed an application for fees and costs  
13 under (video interference) and also under 18.010, sub 2, sub b.  
14 I will assume for the sake of discussion, Your Honor, because  
15 the analysis of those provisions, obviously would be the same  
16 whether it's through the filter of a Caesars' motion or the  
17 filter of a Ramsay motion so I won't repeat why they apply, and  
18 I'll also assume that Your Honor has already made that  
19 conclusion. If you have a sense that it might not apply to us,  
20 then I'm happy to address it, but I don't want to be redundant  
21 in what you've already heard. I have other --

22 THE COURT: And there's no need to be redundant.  
23 Let's just talk about the amount.

24 MR. PISANELLI: Yeah. So our amount, Your Honor, is  
25 for attorneys' fees is \$3,944,282.25 in fees and 168,797 cents

1 23 -- \$797.23 in costs.

2           Going through the *Brunzell* factors again from, as  
3 Mr. Tennert set forth, we have let you know the skill and the  
4 experience of all of the litigators that were involved in this  
5 case. We have been teamed up with Kirkland and Ellis, a  
6 national firm. They did get admitted *pro hac vice*. While we  
7 did the lion share of the work, they certainly were a part of  
8 the team, and I think you'll see in even a summary review or in  
9 detail that the assignment of responsibilities throughout this  
10 case was taken very professionally and reasonably to make sure,  
11 for instance, that the highest billing rate was not doing  
12 things that someone at a lesser billing rate could do, and the  
13 overwhelming amount of work done by my colleague Ms. Mercera,  
14 with 13 years of experience herself, highly recognized as a  
15 very skilled attorney in this marketplace was responsible for  
16 the management and assignment of things to make sure that our  
17 client wasn't overpaying or double paying or triple paying or  
18 any of those things, and that would become a part of this fee  
19 application.

20           It seemed to me from a review of the opposition that  
21 there was just a couple of primary objections to our  
22 application. One is the rates, and I don't want to be  
23 sarcastic here, but it's always rich to me when somebody  
24 complains about the rates of an attorney when their own firm is  
25 charging more rates in the same marketplace -- or higher rates

1 I should say.

2           You'll see from our filings, Bailey Kennedy's counsel  
3 charges higher rates than I do. I'm the highest rate together  
4 with Todd Bice in our firm. We've been approved time and again  
5 at different courts, both federal court and State court as  
6 being consistent in the marketplace for our rates, and I will  
7 note considerably less than some of the senior partners or at  
8 least one of the senior partners at Bailey Kennedy, all within  
9 the same month. So I'm not sure (video interference) time.

10           The second is the amount, and that's always a -- the  
11 total amount, that's always a frustrating thing to debate, even  
12 sometimes with clients, when you hear from a client, and Your  
13 Honor may recall from your day when you were practicing and  
14 somebody has a little sticker shock from the amount. Well,  
15 that doesn't help you much unless you're very specific about  
16 well, what is the complaint. What is the complaint,  
17 Mr. Seibel, about the amount?

18           I'll note, years ago Your Honor may recall that  
19 Mr. Seibel has had a revolving door of attorneys in this case,  
20 and that's always a red flag from a vexations litigation  
21 perspective analysis, but let's put that aside.

22           Years ago there was fees, and attorneys' fees being  
23 charged against his case and his new counsel for just around  
24 \$2 million. So comparing or juxtaposing that to what we're  
25 asking for now at the end of this case, after summary judgment

1 has been obtained, again kind of throws some shade on the  
2 suggestion that just the overall amount was too much without  
3 really getting specific about what was too much. Was it all of  
4 the discovery effort that we had to put into this case to track  
5 down Mr. Seibel's misstatements and outright lies during  
6 discovery about the prenuptial agreement? Was it we spent too  
7 much time on having to litigate an actual crime fraud exception  
8 to the discovery in this case which Your Honor had ordered?  
9 Was it we spent too much time tracking down the kickback scheme  
10 that he had kept from us all this time?

11           There are so many vexatious strategic decisions he  
12 made in this case that we had to track down and defeat only to  
13 get, as Mr. Tennert rightly characterized to you, to a place in  
14 this case where there wasn't a single factual issue left for  
15 debate. In other words, there never was a real dispute here,  
16 and now Mr. Seibel is complaining that he inflicted too much on  
17 Caesars, and Caesars should have to bear that responsibility  
18 itself, again, a nonsensical position.

19           If there was something specific in the opposition,  
20 then that's an easy debate to have, but just to simply say,  
21 well, your rate was too high and your total was too much  
22 doesn't move the needle at all.

23           Your Honor has already addressed virtually every  
24 other legal issue Mr. Tennert artfully laid it all out for Your  
25 Honor, and it sounds like you've ruled on everything.

1           It makes me sleepless to think that I'm going to see  
2 the floor to hear the opposition when I haven't really gone  
3 through an analysis, but having watched you, Your Honor,  
4 preside over this entire debate, it does make more sense now at  
5 this point to hear what specifically perhaps counsel has to  
6 complain about so we can get to the heart of it.

7           MR. GILMORE: Well, I hope I'm not bothering  
8 Mr. Pisanelli with opposing his motion despite the tone there.

9           The deferral, Your Honor, I understand your ruling on  
10 that. The only element to that equation that differs here is  
11 the second case is still pending. And by all accounts, we have  
12 fees here that are related to the second case, which we still  
13 have the claims you've several hours removed now, but that's  
14 still an open ruling.

15           And so at a minimum, deferring until the second case  
16 is done one way or the other avoids you having to go through  
17 and apportion fees between the first case and the second case.  
18 And we see that there were depositions for which time is sought  
19 related to the Seibel business model claims, as you called them  
20 earlier. They're included in this application. There's no  
21 right to fees yet in the second case. So, Your Honor, should  
22 defer, at a minimum, not until the conclusion of an appeal. I  
23 understand you don't want to do that, but at least defer until  
24 the second case is done.

25           THE COURT: And as far as fees are concerned, and

1 tell me if this makes sense, because I do have, it's my  
2 recollection I have pending motions for summary judgment;  
3 right? And that's what you're referring to.

4 MR. GILMORE: I am. And so I think at a minimum we  
5 should let that play its course before you decide fees because  
6 you may find one way or another on those claims, and then we  
7 have to figure out how to apportion fees. So we can't do that  
8 analysis until the second case is done. So that's what's  
9 different from Mr. Tennert's client, because Mr. Ramsay is not  
10 a party in the second case, but PHWLTV is.

11 THE COURT: All right.

12 MR. GILMORE: So I think --

13 THE COURT: So is -- I understand what you're saying,  
14 sir.

15 MR. GILMORE: You'd be deferring for --

16 THE COURT: No, I get it. I get it. I understand  
17 what you're saying.

18 MR. GILMORE: Fair enough.

19 On NRS 18.010, I appreciate Mr. Pisanelli wanting to  
20 piggyback onto Mr. Tennert's argument, but if you go through  
21 their motion, they cite NRS 18.010 and don't discuss it at all.  
22 And in their reply, it doesn't even come up. So to say, well,  
23 hey, we get the benefit of 18.010, right, because Mr. Tennert  
24 got the benefit of 18.010, no. You have to argue it. He  
25 didn't argue it.



1 THE COURT: Here's a question I have for you, and I'm  
2 concerned about efficiency. And the reason for it is, and I  
3 guess this sometimes happens, but I always believe in letting  
4 the lawyers, you know, define or -- I should say control their  
5 destiny, and I realize a lot of discovery had to be conducted  
6 in this case.

7 Does it make sense for me to, because while I'm close  
8 to this case, first I have to decide the summary judgment  
9 motion depending on how I go depends on what I do the next  
10 step. Does it make sense to, depending on how I go,  
11 potentially I just set it aside, and I don't have to make that  
12 decision; however, if I do have to make that decision, should I  
13 make it shortly thereafter? Do you need to --

14 MR. PISANELLI: Your Honor, may I answer that  
15 question?

16 THE COURT: Yes.

17 MR. PISANELLI: I can see why you would ask it based  
18 upon the premise that was offered by counsel that our fees  
19 include the attorneys' fees and costs incurred in connection  
20 with the kickback scheme. And respectfully, he's just wrong.  
21 Those fees have been carved out. Now, while there may be some  
22 work that overlapped because so much of this case overlaps with  
23 each other, but Ms. Mercera and our team have carefully carved  
24 those fees out.

25 This application does not impact what is still before

1 you on summary judgment. And if we do win summary judgment or  
2 if we have to go to trial, and win there, then we'll have a  
3 second fee application to modify the judgment or otherwise, but  
4 we've (video interference) in front of that issue, and he's  
5 mistaken when he suggests to you that it's all lumped together.

6 MR. GILMORE: So I'll read from their own motion,  
7 right, because I think that's perhaps the most telling. Page  
8 6, Footnote 2.

9 Because of the overlapping questions of law and fact  
10 between the first action and second action, there is some  
11 overlap in fees incurred between the two actions, paren, which  
12 were --

13 MR. PISANELLI: That's right.

14 MR. GILMORE: -- which were combined into the  
15 consolidated action, close paren.

16 MR. PISANELLI: And that's what I just said, Your  
17 Honor, that there's some work that applies to both, but we have  
18 carved out the work for the kickback scheme claims.

19 MR. GILMORE: Well, it's not just the kickback scheme  
20 claims, Your Honor, as he so happily refers to it.

21 It also is the discovery related to the other  
22 contracts. It's undisputed they deposed every 30(b)(6)  
23 designee for each development entity, but here we are only  
24 dealing with GRB. So they'd be asking for fees deposing MOTI,  
25 deposing FERG, deposing TPOV.

1           That time will come later if at all; right? They  
2 have prevailed. If nothing changes in the second case, we will  
3 be before you on the motion for attorneys' fees related to that  
4 second case.

5           So what I'm saying is wait the three months or six  
6 months or depending on what happens on summary judgment and  
7 trial, if nothing else changes, we'll be back in front of you  
8 to decide that, and then I don't have to say to Your Honor we  
9 need to apportion these fees between the first case and the  
10 second case, and --

11           MR. PISANELLI: Once again (video interference).

12           MR. GILMORE: -- and the same --

13           MR. PISANELLI: I'm sorry, Judge. And once again,  
14 Your Honor, counsel has made an argument based upon a false  
15 premise that the 30(b)(6) of other entities is unrelated to the  
16 applications in this case. Just as Mr. Tennert appropriately  
17 explained in his argument, simply because there are different  
18 claims and sometimes even in a different courtroom doesn't mean  
19 that those actions and those activities don't directly impact  
20 what's going on in this case.

21           There is no question that there is some work that was  
22 done by every lawyer in this case that touched upon every claim  
23 in every court that there is, including even the dissolution  
24 proceedings. But that's not to say that therefore you have to  
25 have separate applications because they all applied to the work

1 that got summary judgment in this case. All of the work  
2 applied.

3 Now, what will never happen, Your Honor, is that if  
4 there is a separate application for the kickback scheme or  
5 there's a separate application in federal court, there will  
6 never be an attempt to get paid twice for the same work that  
7 applied to those different actions, that applied to those  
8 different claims.

9 But if that work, as we have set forth in our  
10 declarations and in our submittals, if that work touched upon  
11 and supported what we had to do to defend the vexatious  
12 claims from Mr. Seibel and to prosecute, that our positions  
13 were that largely (video interference), then they are  
14 appropriately before you now.

15 There will be no segregation. We will not be  
16 separating them all out by separate entities because they all  
17 applied to this case. And if Mr. Gilmore actually believed  
18 that there were entries in there, then he would have specific  
19 entries to say this one was mistakenly put in this application.  
20 This entry is mistaken. They put in this application.

21 But instead this is the same stall tactic that we've  
22 seen over and over and over from Mr. Seibel when it comes time  
23 to step up and accept his responsibility for the harm that he's  
24 caused all these different parties in this case and delay  
25 becomes the primary objective and the primary tactic, and

1 that's what this is again.

2           There is no reason not to proceed with this  
3 application because there is no duplication, and there is no  
4 inappropriate insertion of work from another case that had  
5 nothing to do with this case, none. It does not exist.

6           THE COURT: You get the last word, Mr. Gilmore.

7           MR. GILMORE: Thank you, Your Honor.

8           I'll also point out I mentioned in our opposition,  
9 starting -- well, they initially had two matters open, it looks  
10 like from what I can tell from the invoices. One called  
11 PHWLTV, LLC, paren, Planet Hollywood versus Rowen Seibel and  
12 another called Desert Palace versus Rowen Seibel.

13           But starting in 2019 we only had invoices from Desert  
14 Palace versus Rowen Seibel. So you used to have a matter open  
15 for PHWLTV versus Rowen Seibel, but we don't have those invoices  
16 from '19, '20, '21 or '22. So, you know, it sounds like at  
17 first was no, we haven't included any of that time. Well, you  
18 must have because we don't have the invoices from '19 to '22  
19 for PHWLTV, LLC, versus Rowen Seibel. I'm not necessarily  
20 faulting them that they billed it under one matter, but you  
21 tell me we've excluded all of that time doesn't make sense  
22 based on the invoices that they submitted. So that's what I've  
23 seen.

24           MR. PISANELLI: Your Honor, it does make sense, and  
25 counsel is at a disadvantage because he wasn't in this case,

1 but as you recall, the cases were ultimately consolidated, and  
2 once the consolidation (video interference), and that's why  
3 he's (video interference) the full record he has.

4 MR. GILMORE: So I think we've belabored that point,  
5 Your Honor. I'll briefly discuss --

6 THE COURT: Yeah. Go ahead, sir.

7 MR. GILMORE: I'll briefly mention there's a  
8 discussion about Pisanelli Bice's rates; right? But not  
9 discussed is the Kirkland & Ellis rates, which even exceed both  
10 Mr. Kennedy's rate at my firm and Mr. Pisanelli and Mr. Bice's  
11 rate at their firm.

12 So I understand your argument Your Honor might find  
13 that Pisanelli Bice's rates are reasonable, but there is no  
14 evidence to support the reasonableness of the rates from  
15 Kirkland & Ellis, which for the partner there is 1300 an hour,  
16 I believe, and the associates were 7-, 8- and \$900 an hour.  
17 That is not something -- no evidence has been presented to this  
18 court to support rates that high for this Nevada litigation.

19 So as we set forth in our opposition, if these are  
20 going to be awarded for Kirkland & Ellis, they need to be  
21 recalculated and be matched up what we believe the rate should  
22 be commensurate with, and Mr. Pisanelli is probably to the  
23 highest pillar at Kirkland & Ellis and then working down from  
24 there so that you're able to stick within what Courts have  
25 found as reasonable in Nevada for attorneys' fees. There's no

1 evidence that those rates are reasonable.

2 We've otherwise made similar arguments, Your Honor,  
3 that we did with Mr. Tennert and his client. I know it's late  
4 in the hour. So I won't belabor those anymore.

5 THE COURT: All right. And this is what I'm going to  
6 do. I'm going to conduct the same, I should say a similar  
7 review as it pertains to this pending motion. Just to make  
8 sure you have some clarity when you leave, I'm going to grant  
9 fees. I'm going to go back and review them just to make sure.

10 Along with that, is there issues regarding costs? I  
11 know there are. I'm going to review everything, but --

12 MR. GILMORE: I would say the apportionment issue,  
13 Your Honor.

14 THE COURT: Okay. I'll take a look at that too.

15 But what my goal is really three things, I guess. I  
16 have the retaxing of costs as it pertains to I think Fennemore  
17 Craig; right? And then I have the motion for summary judgment,  
18 and I have the fee award and also the cost award regarding  
19 what's been currently decided and the motions currently  
20 pending.

21 MS. MERCERA: Correct, Your Honor. And on the motion  
22 to retax against PHWLTV's fee request, I just wanted to address  
23 one point that I don't think was addressed during the argument.

24 On the apportionment, Your Honor, they have -- Seibel  
25 and GRB have appealed, and in their docketing statement they

1 themselves have appealed issues that quote, unquote, will be  
2 part of the second action. So even by their own accounts they  
3 cannot be apportioned. They have to appeal the entire thing.  
4 So for them to now come to Planet Hollywood and say that we  
5 should apportion things that they themselves haven't been able  
6 to apportion, seems a little nonsensical.

7 THE COURT: All right.

8 MR. GILMORE: And I'll just say there's a difference  
9 between the cost for Mr. Seibel's depo, which both cases, and a  
10 depo that's only related to the second case.

11 THE COURT: I understand.

12 MR. GILMORE: Thank you, Your Honor.

13 THE COURT: Thank you, sir. And so I'll see you  
14 again on Wednesday; is that correct?

15 MS. MERCERA: Yes, Your Honor.

16 MR. GILMORE: Telephonically it sounds like.

17 THE COURT: Yes.

18 MR. GILMORE: As I recall.

19 / / /

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1 THE COURT: I'll try to get all this wrapped up  
2 before Wednesday.

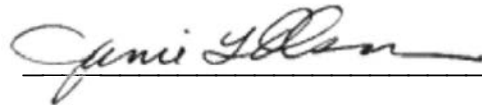
3 Everyone enjoy -- happy Thanksgiving.

4 MS. MERCERA: Thank you, Your Honor. Happy  
5 Thanksgiving.

6 (Proceedings concluded at 5:07 p.m.)

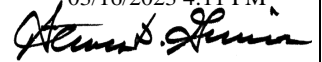
7 -oOo-

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

11  
12 

13 Janie L. Olsen  
14 Transcriber  
15  
16  
17  
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22  
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25

**TAB 164**

  
CLERK OF THE COURT

**OGM**

James J. Pisanelli, Esq., Bar No. 4027  
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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  
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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.

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**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 2-13, 15-18, 21,  
23-28, 31 AND 33 IN APPENDIX  
THERE TO**

Date of Hearing: September 21, 2022

Time of Hearing: Chambers

AND ALL RELATED MATTERS

PHWLTV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las  
Vegas Operating Company, LLC ("Paris"), Boardwalk Regency Corporation d/b/a Caesars Atlantic

PISANELLIBICE PLLC  
400 SOUTH 7TH STREET, SUITE 300  
LAS VEGAS, NEVADA 89101

1 City's ("CAC," and collectively, with Caesars Palace, Paris, and Planet Hollywood, "Caesars,")  
2 *Motion to Redact Opposition to Craig Green's Motion for Summary Judgment; Counter-Motion for*  
3 *Summary Judgment Against Craig Green; and Cross-Motion for Summary Judgment Against*  
4 *Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VIII of the First Amended*  
5 *Complaint) and Seal Exhibits 2-13, 15-18, 21, 23-28, 31 and 33 in Appendix Thereto* (the "Motion  
6 to Seal"), filed on July 14, 2022, came before this Court for hearing on September 21, 2022 in  
7 Chambers.

8 This Court issued a Minute Order dated September 21, 2022, addressing the Motion to Seal.  
9 Upon review of the papers and pleadings on file in this matter, as proper service of the Motion to  
10 Seal has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to  
11 EDCR 2.20(e), the Motion to Seal is deemed unopposed.

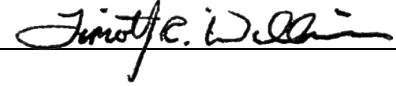
12 The Court finds that Caesars' Opposition to Craig Green's Motion for Summary Judgment;  
13 Counter-Motion for Summary Judgment Against Craig Green; and Cross-Motion for Summary  
14 Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VIII of  
15 the First Amended Complaint) contains commercially sensitive information creating a compelling  
16 interest in protecting the information from widespread dissemination to the public which outweighs  
17 the public disclosure of said information in accordance with Rule 3(4) of the Nevada Supreme  
18 Court's Rules Governing Sealing and Redacting of Court Records. Therefore, good cause appearing  
19 therefor:

20 ///

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

IT IS SO ORDERED.

Dated this 16th day of March, 2023



JM

**D28 167 D760 E7D7**  
**Timothy C. Williams**  
**District Court Judge**

Respectfully submitted: March 15, 2023

Approved as to form and content by:

PISANELLI BICE PLLC

BAILEY ♦ KENNEDY

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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By: /s/ Joshua P. Gilmore  
John R. Bailey, Esq., #0137  
Dennis L. Kennedy, Esq., #1462  
Joshua P. Gilmore, Esq., #11576  
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8984 Spanish Ridge Avenue  
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Paris Las Vegas Operating  
Company, LLC; PHWL, 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:

FENNEMORE CRAIG, P.C.

By: /s/ John D. Tennert  
John D. Tennert, Esq., #11728  
Wade Beavers, Esq., #13451  
Geenamarie V. Carucci-Vance, Esq., #153  
7800 Rancharra Parkway  
Reno, NV 89511

*Attorneys for Gordon Ramsay*

## Cinda C. Towne

---

**From:** Joshua Gilmore <JGilmore@baileykennedy.com>  
**Sent:** Friday, March 10, 2023 6:25 PM  
**To:** Magali Mercera; Paul Williams; Tennert, John; Beavers, Wade; Carucci, Geenamarie  
**Cc:** James Pisanelli; Debra Spinelli; Cinda C. Towne  
**Subject:** RE: Desert Palace/Seibel: Orders Granting Motions to Seal

CAUTION: This message is from an EXTERNAL SENDER.

You may affix my e-signature to these sealing/redaction orders. Thanks. Josh

Joshua P. Gilmore, Esq. | Bailey Kennedy, LLP  
8984 Spanish Ridge Avenue, Las Vegas, Nevada 89148-1302  
(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:** Friday, March 3, 2023 5:44 PM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Carucci, Geenamarie <gcarucci@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>  
**Subject:** Desert Palace/Seibel: Orders Granting Motions to Seal

All –

Attached please find drafts of the:

1. 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 2-13, 15-18, 21, 23-28, 31 and 33 in Appendix Thereto;
2. 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;
3. Order Granting Motion to Redact Opposition to Rowen Seibel and Gr Burgr, LLC's Motion to Retax and Settle the Costs Claimed By PHWLTV, LLC and Seal Exhibit C Thereto; and
4. Order Granting Motion to Redact PHWLTV, LLC's Motion for Attorneys' Fees and Seal Exhibit 1 Thereto

Please let us know whether you have any comments or suggested changes. Otherwise, if acceptable, please confirm that we may apply your e-signature.

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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## Cinda C. Towne

---

**From:** Tennert, John <jtennert@fennemorelaw.com>  
**Sent:** Wednesday, March 15, 2023 11:53 AM  
**To:** Magali Mercera; Joshua Gilmore; Paul Williams; Beavers, Wade; Carucci Vance, Geenamarie  
**Cc:** James Pisanelli; Debra Spinelli; Cinda C. Towne  
**Subject:** RE: Desert Palace/Seibel: Orders Granting Motions to Seal

CAUTION: This message is from an EXTERNAL SENDER.

Hi Magali,

Please update FC's signature block consistent with the Judgment and 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:** Wednesday, March 15, 2023 11:16 AM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Carucci Vance, Geenamarie <gcarucci@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>  
**Subject:** RE: Desert Palace/Seibel: Orders Granting Motions to Seal

Thanks, Josh.

John/Wade -May we apply your e-signature to these?

**M. Magali Mercera**  
PISANELLI BICE, PLLC  
400 South 7th Street, Suite 300  
Las Vegas, Nevada 89101  
Telephone: (702) 214-2100



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 Granting Motion was served via the court's electronic eFile  
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 3/16/2023

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

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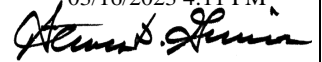
**AA09030**

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| Emily Buchwald     | eab@pisanellibice.com        |
| Cinda Towne        | Cinda@pisanellibice.com      |
| John Tennert       | jtennert@fennemorelaw.com    |
| Debbie Sorensen    | dsorensen@fclaw.com          |
| Wade Beavers       | wbeavers@fclaw.com           |
| Geenamarie Carucci | gcarucci@fennemorelaw.com    |
| Susan Whitehouse   | swhitehouse@fennemorelaw.com |

TAB 165

  
CLERK OF THE COURT

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JJP@pisanellibice.com  
Debra L. Spinelli, Esq., Bar No. 9695  
DLS@pisanellibice.com  
M. Magali Mercera, Esq., Bar No. 11742  
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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

**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 PHWLV LLC'S MOTION  
FOR ATTORNEYS' FEES AND TO  
SEAL EXHIBIT 4 THERETO**

Date of Hearing: November 8, 2022

Time of Hearing: Chambers

AND ALL RELATED MATTERS

PISANELLIBICE PLLC  
400 SOUTH 7TH STREET, SUITE 300  
LAS VEGAS, NEVADA 89101

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 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 PHWLV LLC's Motion for Attorneys' Fees and to Seal Exhibit 4 Thereto* (the "Motion to Seal"), filed on October 12, 2022, came before this Court for hearing on November 8, 2022 in Chambers.

This Court issued a Minute Order dated November 8, 2022, addressing the Motion to Seal. Upon review of the papers and pleadings on file in this matter, as proper service of the Motion to Seal has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20(e), the Motion to Seal is deemed unopposed.

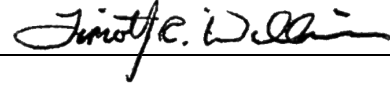
The Court finds that Caesars' Reply in Support of (1) Counter-Motion for Summary Judgment Against Craig Green and (2) Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VIII of the First Amended Complaint) and the Reply in Support of PHWLV LLC's Motion for Attorneys' Fees contain commercially sensitive information creating a compelling interest in protecting the information from widespread dissemination to the public which outweighs the public disclosure of said information in accordance with Rule 3(4) of the Nevada Supreme Court's Rules Governing Sealing and Redacting of Court Records. Therefore, good cause appearing therefor:

///

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

IT IS SO ORDERED.

Dated this 16th day of March, 2023



JM

1C9 430 8A20 F47F  
Timothy C. Williams  
District Court Judge

Respectfully submitted: March 15, 2023

Approved as to form and content by:

PISANELLI BICE PLLC

BAILEY ♦ KENNEDY

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, NV 89101

By: /s/ Joshua P. Gilmore  
John R. Bailey, Esq., #0137  
Dennis L. Kennedy, Esq., #1462  
Joshua P. Gilmore, Esq., #11576  
Paul C. Williams, Esq., #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:

FENNEMORE CRAIG, P.C.

By: /s/ John D. Tennert  
John D. Tennert, Esq., #11728  
Wade Beavers, Esq., #13451  
Geenamarie V. Carucci-Vance, Esq., #153  
7800 Rancharra Parkway  
Reno, NV 89511

*Attorneys for Gordon Ramsay*

## Cinda C. Towne

---

**From:** Joshua Gilmore <JGilmore@baileykennedy.com>  
**Sent:** Friday, March 10, 2023 6:25 PM  
**To:** Magali Mercera; Paul Williams; Tennert, John; Beavers, Wade; Carucci, Geenamarie  
**Cc:** James Pisanelli; Debra Spinelli; Cinda C. Towne  
**Subject:** RE: Desert Palace/Seibel: Orders Granting Motions to Seal

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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)

[www.BaileyKennedy.com](http://www.BaileyKennedy.com)

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---

**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Friday, March 3, 2023 5:44 PM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Carucci, Geenamarie <gcarucci@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>  
**Subject:** Desert Palace/Seibel: Orders Granting Motions to Seal

All –

Attached please find drafts of the:

1. 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 2-13, 15-18, 21, 23-28, 31 and 33 in Appendix Thereto;
2. 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;
3. Order Granting Motion to Redact Opposition to Rowen Seibel and Gr Burgr, LLC's Motion to Retax and Settle the Costs Claimed By PHWLTV, LLC and Seal Exhibit C Thereto; and
4. Order Granting Motion to Redact PHWLTV, LLC's Motion for Attorneys' Fees and Seal Exhibit 1 Thereto



Please let us know whether you have any comments or suggested changes. Otherwise, if acceptable, please confirm that we may apply your e-signature.

Best,

**M. Magali Mercera**

PISANELLI BICE, PLLC

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

Telephone: (702) 214-2100

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[mmm@pisanellibice.com](mailto:mmm@pisanellibice.com) | [www.pisanellibice.com](http://www.pisanellibice.com)



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

## Cinda C. Towne

---

**From:** Tennert, John <jtennert@fennemorelaw.com>  
**Sent:** Wednesday, March 15, 2023 11:53 AM  
**To:** Magali Mercera; Joshua Gilmore; Paul Williams; Beavers, Wade; Carucci Vance, Geenamarie  
**Cc:** James Pisanelli; Debra Spinelli; Cinda C. Towne  
**Subject:** RE: Desert Palace/Seibel: Orders Granting Motions to Seal

CAUTION: This message is from an EXTERNAL SENDER.

Hi Magali,

Please update FC's signature block consistent with the Judgment and 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:** Wednesday, March 15, 2023 11:16 AM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Carucci Vance, Geenamarie <gcarucci@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>  
**Subject:** RE: Desert Palace/Seibel: Orders Granting Motions to Seal

Thanks, Josh.

John/Wade -May we apply your e-signature to these?

**M. Magali Mercera**  
PISANELLI BICE, PLLC  
400 South 7th Street, Suite 300  
Las Vegas, Nevada 89101  
Telephone: (702) 214-2100

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 Granting Motion was served via the court's electronic eFile  
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 3/16/2023

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robert@nv-lawfirm.com

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lit@pisanellibice.com

18 "John Tennert, Esq." .

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21 Debra L. Spinelli .

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23 Lisa Anne Heller .

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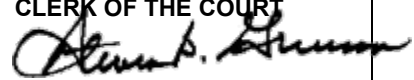
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| Susan Whitehouse   | swhitehouse@fennemorelaw.com |

TAB 166



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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 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-  
13, 15-18, 21, 23-28, 31 AND 33 IN  
APPENDIX THERETO**

AND ALL RELATED MATTERS

PLEASE TAKE NOTICE that an *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*

1 *Entities (Related to Counts IV-VIII of the First Amended Complaint) and Seal Exhibits 2-13, 15-*  
2 *18, 21, 23-28, 31 and 33 in Appendix Thereto* was entered in the above-captioned matter on  
3 March 16, 2023, a true and correct copy of which is attached hereto.

4 DATED this 17th day of March 2023.

5 PISANELLI BICE PLLC

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

10 *Attorneys for Desert Palace, Inc.;*  
11 *Paris Las Vegas Operating Company, LLC;*  
12 *PHWLV, LLC; and Boardwalk Regency*  
13 *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 17th day of March 2023, 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 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 2-13, 15-18, 21, 23-28, 31 AND 33 IN APPENDIX THERETO** to the following:

John R. Bailey, Esq.  
Dennis L. Kennedy, Esq.  
Joshua P. Gilmore, Esq.  
Paul C. Williams, Esq.

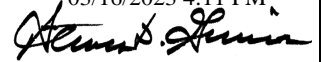
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[gcarucci@fennemorelaw.com](mailto:gcarucci@fennemorelaw.com)

*Attorneys for Gordon Ramsay*

*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*

/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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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**

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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

**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 2-13, 15-18, 21,  
23-28, 31 AND 33 IN APPENDIX  
THERE TO**

Date of Hearing: September 21, 2022

Time of Hearing: Chambers

AND ALL RELATED MATTERS

PHWLTV, LLC ("Planet Hollywood"), Desert Palace, Inc. ("Caesars Palace"), Paris Las  
Vegas Operating Company, LLC ("Paris"), Boardwalk Regency Corporation d/b/a Caesars Atlantic

PISANELLIBICE PLLC  
400 SOUTH 7TH STREET, SUITE 300  
LAS VEGAS, NEVADA 89101

1 City's ("CAC," and collectively, with Caesars Palace, Paris, and Planet Hollywood, "Caesars,")  
2 *Motion to Redact Opposition to Craig Green's Motion for Summary Judgment; Counter-Motion for*  
3 *Summary Judgment Against Craig Green; and Cross-Motion for Summary Judgment Against*  
4 *Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VIII of the First Amended*  
5 *Complaint) and Seal Exhibits 2-13, 15-18, 21, 23-28, 31 and 33 in Appendix Thereto* (the "Motion  
6 to Seal"), filed on July 14, 2022, came before this Court for hearing on September 21, 2022 in  
7 Chambers.

8 This Court issued a Minute Order dated September 21, 2022, addressing the Motion to Seal.  
9 Upon review of the papers and pleadings on file in this matter, as proper service of the Motion to  
10 Seal has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to  
11 EDCR 2.20(e), the Motion to Seal is deemed unopposed.

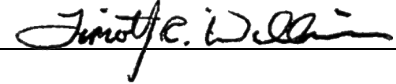
12 The Court finds that Caesars' Opposition to Craig Green's Motion for Summary Judgment;  
13 Counter-Motion for Summary Judgment Against Craig Green; and Cross-Motion for Summary  
14 Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VIII of  
15 the First Amended Complaint) contains commercially sensitive information creating a compelling  
16 interest in protecting the information from widespread dissemination to the public which outweighs  
17 the public disclosure of said information in accordance with Rule 3(4) of the Nevada Supreme  
18 Court's Rules Governing Sealing and Redacting of Court Records. Therefore, good cause appearing  
19 therefor:

20 ///

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

IT IS SO ORDERED.

Dated this 16th day of March, 2023



JM

**D28 167 D760 E7D7**  
**Timothy C. Williams**  
**District Court Judge**

Respectfully submitted: March 15, 2023

Approved as to form and content by:

PISANELLI BICE PLLC

BAILEY ♦ KENNEDY

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, NV 89101

By: /s/ Joshua P. Gilmore  
John R. Bailey, Esq., #0137  
Dennis L. Kennedy, Esq., #1462  
Joshua P. Gilmore, Esq., #11576  
Paul C. Williams, Esq., #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:

FENNEMORE CRAIG, P.C.

By: /s/ John D. Tennert  
John D. Tennert, Esq., #11728  
Wade Beavers, Esq., #13451  
Geenamarie V. Carucci-Vance, Esq., #153  
7800 Rancharra Parkway  
Reno, NV 89511

*Attorneys for Gordon Ramsay*

## Cinda C. Towne

---

**From:** Joshua Gilmore <JGilmore@baileykennedy.com>  
**Sent:** Friday, March 10, 2023 6:25 PM  
**To:** Magali Mercera; Paul Williams; Tennert, John; Beavers, Wade; Carucci, Geenamarie  
**Cc:** James Pisanelli; Debra Spinelli; Cinda C. Towne  
**Subject:** RE: Desert Palace/Seibel: Orders Granting Motions to Seal

CAUTION: This message is from an EXTERNAL SENDER.

You may affix my e-signature to these sealing/redaction orders. 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:** Friday, March 3, 2023 5:44 PM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Carucci, Geenamarie <gcarucci@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>  
**Subject:** Desert Palace/Seibel: Orders Granting Motions to Seal

All –

Attached please find drafts of the:

1. 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 2-13, 15-18, 21, 23-28, 31 and 33 in Appendix Thereto;
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4. Order Granting Motion to Redact PHWLTV, LLC's Motion for Attorneys' Fees and Seal Exhibit 1 Thereto

Please let us know whether you have any comments or suggested changes. Otherwise, if acceptable, please confirm that we may apply your e-signature.

Best,

**M. Magali Mercera**

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Fax: (702) 214-2101

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## Cinda C. Towne

---

**From:** Tennert, John <jtennert@fennemorelaw.com>  
**Sent:** Wednesday, March 15, 2023 11:53 AM  
**To:** Magali Mercera; Joshua Gilmore; Paul Williams; Beavers, Wade; Carucci Vance, Geenamarie  
**Cc:** James Pisanelli; Debra Spinelli; Cinda C. Towne  
**Subject:** RE: Desert Palace/Seibel: Orders Granting Motions to Seal

CAUTION: This message is from an EXTERNAL SENDER.

Hi Magali,

Please update FC's signature block consistent with the Judgment and you may apply my e-signature.

Thanks!

John D. Tennert III  
Director

---

# FENNEMORE.

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



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---

**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Wednesday, March 15, 2023 11:16 AM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Carucci Vance, Geenamarie <gcarucci@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>  
**Subject:** RE: Desert Palace/Seibel: Orders Granting Motions to Seal

Thanks, Josh.

John/Wade -May we apply your e-signature to these?

**M. Magali Mercera**  
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Telephone: (702) 214-2100

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 Granting Motion was served via the court's electronic eFile  
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 3/16/2023

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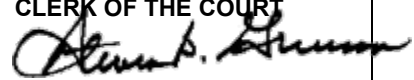


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PHWLTV, LLC; and Boardwalk Regency  
Corporation d/b/a Caesars Atlantic City*

**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.

AND ALL RELATED MATTERS

Case No.: A-17-751759-B

Dept. No.: XVI

Consolidated with A-17-760537-B

**NOTICE OF ENTRY 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**

PLEASE TAKE NOTICE that an *Order Granting Motion to Redact Caesars' Reply in  
Support of (1) Counter-Motion for Summary Judgment Against Craig Green and (2) Cross-Motion*

1 *for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts*  
2 *IV-VIII of the First Amended Complaint) and Seal Exhibits 39-43 and 45-47 Thereto; and to Redact*  
3 *Reply in Support of PHWLV LLC's Motion for Attorneys' Fees and to Seal Exhibit 4 Thereto* was  
4 entered in the above-captioned matter on March 16, 2023, a true and correct copy of which is  
5 attached hereto.

6 DATED this 17th day of March 2023.

7 PISANELLI BICE PLLC

8  
9 By: /s/ M. Magali Mercera  
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11 Debra L. Spinelli, Esq., #9695  
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16 *Paris Las Vegas Operating Company, LLC;*  
17 *PHWLV, LLC; and Boardwalk Regency*  
18 *Corporation d/b/a Caesars Atlantic City*  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 17th day of March 2023, 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 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** to the following:

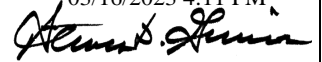
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LLTQ Enterprises, LLC, LLTQ Enterprises 16, LLC,  
TPOV Enterprises, LLC, TPOV Enterprises 16, LLC,  
FERG, LLC, and FERG 16, LLC; and R Squared  
Global Solutions, LLC, Derivatively on Behalf of  
DNT Acquisition, LLC, and Nominal Plaintiff  
GR Burgr LLC*

/s/ Cinda Towne  
An employee of PISANELLI BICE PLLC

  
CLERK OF THE COURT

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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

**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**

Date of Hearing: November 8, 2022

Time of Hearing: Chambers

AND ALL RELATED MATTERS

PISANELLIBICE PLLC  
400 SOUTH 7TH STREET, SUITE 300  
LAS VEGAS, NEVADA 89101

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 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 PHWLV LLC's Motion for Attorneys' Fees and to Seal Exhibit 4 Thereto* (the "Motion to Seal"), filed on October 12, 2022, came before this Court for hearing on November 8, 2022 in Chambers.

This Court issued a Minute Order dated November 8, 2022, addressing the Motion to Seal. Upon review of the papers and pleadings on file in this matter, as proper service of the Motion to Seal has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20(e), the Motion to Seal is deemed unopposed.

The Court finds that 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 the Reply in Support of PHWLV LLC's Motion for Attorneys' Fees contain commercially sensitive information creating a compelling interest in protecting the information from widespread dissemination to the public which outweighs the public disclosure of said information in accordance with Rule 3(4) of the Nevada Supreme Court's Rules Governing Sealing and Redacting of Court Records. Therefore, good cause appearing therefor:

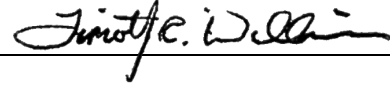
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THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES that the Motion to Seal shall be, and hereby is, GRANTED.

IT IS SO ORDERED.

Dated this 16th day of March, 2023



JM

1C9 430 8A20 F47F  
Timothy C. Williams  
District Court Judge

Respectfully submitted: March 15, 2023

Approved as to form and content by:

PISANELLI BICE PLLC

BAILEY ♦ KENNEDY

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Boardwalk Regency  
Corporation d/b/a Caesars Atlantic City*

*Attorneys for Rowen Seibel, Craig Green  
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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:

FENNEMORE CRAIG, P.C.

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Wade Beavers, Esq., #13451  
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*Attorneys for Gordon Ramsay*

## Cinda C. Towne

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**From:** Joshua Gilmore <JGilmore@baileykennedy.com>  
**Sent:** Friday, March 10, 2023 6:25 PM  
**To:** Magali Mercera; Paul Williams; Tennert, John; Beavers, Wade; Carucci, Geenamarie  
**Cc:** James Pisanelli; Debra Spinelli; Cinda C. Towne  
**Subject:** RE: Desert Palace/Seibel: Orders Granting Motions to Seal

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You may affix my e-signature to these sealing/redaction orders. Thanks. Josh

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**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Friday, March 3, 2023 5:44 PM  
**To:** Joshua Gilmore <JGilmore@baileykennedy.com>; Paul Williams <PWilliams@baileykennedy.com>; Tennert, John <jtennert@fennemorelaw.com>; Beavers, Wade <WBeavers@fennemorelaw.com>; Carucci, Geenamarie <gcarucci@fennemorelaw.com>  
**Cc:** James Pisanelli <jjp@pisanellibice.com>; Debra Spinelli <dls@pisanellibice.com>; Cinda C. Towne <cct@pisanellibice.com>  
**Subject:** Desert Palace/Seibel: Orders Granting Motions to Seal

All –

Attached please find drafts of the:

1. 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 2-13, 15-18, 21, 23-28, 31 and 33 in Appendix Thereto;
2. 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;
3. Order Granting Motion to Redact Opposition to Rowen Seibel and Gr Burgr, LLC's Motion to Retax and Settle the Costs Claimed By PHWLTV, LLC and Seal Exhibit C Thereto; and
4. Order Granting Motion to Redact PHWLTV, LLC's Motion for Attorneys' Fees and Seal Exhibit 1 Thereto

Please let us know whether you have any comments or suggested changes. Otherwise, if acceptable, please confirm that we may apply your e-signature.

Best,

**M. Magali Mercera**

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## Cinda C. Towne

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**From:** Tennert, John <jtennert@fennemorelaw.com>  
**Sent:** Wednesday, March 15, 2023 11:53 AM  
**To:** Magali Mercera; Joshua Gilmore; Paul Williams; Beavers, Wade; Carucci Vance, Geenamarie  
**Cc:** James Pisanelli; Debra Spinelli; Cinda C. Towne  
**Subject:** RE: Desert Palace/Seibel: Orders Granting Motions to Seal

CAUTION: This message is from an EXTERNAL SENDER.

Hi Magali,

Please update FC's signature block consistent with the Judgment and you may apply my e-signature.

Thanks!

John D. Tennert III  
Director

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**Subject:** RE: Desert Palace/Seibel: Orders Granting Motions to Seal

Thanks, Josh.

John/Wade -May we apply your e-signature to these?

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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 Granting Motion was served via the court's electronic eFile  
13 system to all recipients registered for e-Service on the above entitled case as listed below:

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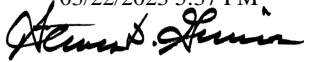
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**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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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:**

**(1) DENYING CRAIG GREEN'S  
MOTION FOR SUMMARY  
JUDGMENT;**

**(2) GRANTING CAESARS'  
COUNTER-MOTION FOR  
SUMMARY JUDGMENT  
AGAINST CRAIG GREEN; AND**

**(1) GRANTING CAESARS' CROSS-  
MOTION FOR SUMMARY  
JUDGMENT AGAINST ROWEN  
SEIBEL AND THE SEIBEL-  
AFFILIATED ENTITIES  
(RELATED TO COUNTS IV-VIII  
OF THE FIRST AMENDED  
COMPLAINT)**

Date of Hearing: November 22, 2022

Time of Hearing: 1:30 p.m.

AND ALL RELATED MATTERS

PISANELLIBICE PLLC  
400 SOUTH 7TH STREET, SUITE 300  
LAS VEGAS, NEVADA 89101

Craig Green's ("Green") *Motion for Summary Judgment* (the "Green Motion for Summary Judgment"), filed on June 17, 2022; 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,") *Counter-Motion for Summary Judgment Against Craig Green* (the "Counter-Motion for Summary Judgment"), filed on July 14, 2022; and Caesars' *Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VIII of the First Amended Complaint)* (the "Cross-Motion for Summary Judgment"), filed on July 14, 2022, came before this Court for hearing on November 22, 2022, at 1:30 p.m.

James J. Pisanelli, Esq., and M. Magali Mercera, Esq., of the law firm PISANELLI BICE PLLC, appeared on behalf of Caesars. Joshua P. Gilmore, Esq., and Paul C. Williams, Esq., of the law firm BAILEY KENNEDY, appeared on behalf of TPOV Enterprises, LLC ("TPOV"), LLTQ Enterprises, LLC ("LLTQ"), FERG, LLC ("FERG"), MOTI Partners, LLC ("MOTI"), 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 Green.<sup>1</sup>

The Court having considered the Green Motion for Summary Judgment, the Counter-Motion for Summary Judgment, the Cross-Motion for Summary Judgment, the oppositions and replies 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:

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

1 **FINDINGS OF FACT<sup>2</sup>**

2 The Court HEREBY FINDS AS FOLLOWS:

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

5 2. These gaming licenses are not a right, but rather a privilege that Caesars must earn  
6 and continually show it remains suitable to hold.

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

13 4. As a result, Caesars is required to self-police and ensure it is not engaged in  
14 unsuitable practices or doing business with unsuitable persons.

15 5. To ensure it is upholding the standards expected of a gaming licensee, Caesars  
16 maintains an Ethics and Compliance Program (the "Compliance Plan").

17 6. Under the express and unequivocal terms of its Compliance Plan, Caesars'  
18 employees are instructed "to avoid acts and situations that are improper, might give an appearance  
19 of impropriety, or might impair their good judgment when acting on behalf of" Caesars. The  
20 Compliance Plan also explicitly states that "[b]ribes, influence payments or kickbacks may never  
21 be provided to or accepted from any Person, including in the form of gifts, hospitality, or similar  
22 benefits."

23 7. Importantly, Caesars' Compliance Plan requires that, "[a]ll vendors, suppliers,  
24 tenants, business partners, independent agents/junket representatives, lobbyists, and consultants  
25  
26

27  
28 2 Any stated findings of fact which constitute conclusions of law shall be treated as  
conclusions of law, and any conclusions of law which constitute findings of fact shall be treated as  
findings of fact.

1 who represent or have relationships with [Caesars] or any of its Affiliates must agree to meet the  
2 standards, business ethics, and principles that govern the [Caesars'] Employees."

3 8. Thus, Caesars' vendors are prohibited from engaging in illegal conduct, including,  
4 but not limited to, the procurement or acceptance of kickbacks.

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

8 10. In total, Caesars and the Seibel-Affiliated Entities entered into six agreements as  
9 follows:

10 (1) A Development, Operation and License Agreement between MOTI Partners, LLC  
11 and Desert Palace, Inc. dated March 2009 related to the Serendipity restaurant in  
Las Vegas (the "MOTI Agreement");

12 (2) A Development, Operation and License Agreement between DNT Acquisition,  
13 LLC, the Original Homestead Restaurant, Inc., and Desert Palace, Inc., dated June  
14 21, 2011, dated June 21, 2011 related to the Original Homestead Restaurant in Las  
Vegas (the "DNT Agreement");

15 (3) A Development and Operation Agreement between TPOV and Paris dated  
16 November 2011 related to the Gordon Ramsay Steak restaurant at the Paris Las  
Vegas (the "TPOV Agreement");

17 (4) A Development and Operation Agreement between LLTQ Enterprises, LLC and  
18 Desert Palace, Inc. dated April 4, 2012 related to the Gordon Ramsay Pub & Grill  
at Caesars Palace in La Vegas (the "LLTQ Agreement");

19 (5) A Development, Operation and License Agreement between PHW Las Vegas, LLC  
20 dba Planet Hollywood by its manager, PHW Manager, LLC, GR BURGR, LLC, and  
Gordon Ramsay, dated December 13, 2012 related to the GR Burgr restaurant at  
Planet Hollywood in Las Vegas (the "GRB Agreement"); and

21 (6) A Consulting Agreement between FERG, LLC and Boardwalk Regency  
22 Corporation dba Caesars Atlantic City, dated May 16, 2014 related to the Gordon  
Ramsay Pub & Grill at Caesars Atlantic City (the "FERG Agreement").

23 11. Each of the agreements (collectively the "Seibel Agreements") required the Seibel-  
24 Affiliated Entities to acknowledge that Caesars' properties were "exclusive first-class resort hotels  
25 casinos" and each of the restaurants governed by the agreements would be "an exclusive first-class  
26 restaurant."

27 12. Caesars' reputation and the goodwill of its guests and invitees were of the utmost  
28 importance and, as such, each of the Seibel-Affiliated Entities agreed to conduct themselves "with

1 the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the  
2 reputation and goodwill of" Caesars.

3 13. Under each of the Seibel Agreements, Caesars was solely responsible for the day-  
4 to-day operations of the restaurants, which included purchasing necessary items for the  
5 establishments.

6 14. Further, the Seibel Agreements provide that any rebates obtained be appropriately  
7 accounted for in the restaurants' financials for the benefit of the operations.

8 15. Importantly, under the Seibel Agreements, an "Unsuitable Person" is defined to  
9 include:

10 Any Person (a) whose association with Caesars could be anticipated to result in a  
11 disciplinary action relating to, or the loss of, inability to reinstate or failure to  
12 obtain, any registration, application or license or any other rights or entitlements  
13 held or required to be held by Caesars or any of its Affiliates under any United  
14 States, state, local or foreign laws, rules or regulations relating to gaming or the sale  
15 of alcohol, (b) whose association or relationship with Caesars or its Affiliates could  
16 be anticipated to violate any United States, state, local or foreign laws, rules or  
17 regulations relating to gaming or the sale of alcohol to which Caesars or its  
18 Affiliates are subject, (c) who is or might be engaged or about to be engaged in any  
19 activity which could adversely impact the business or reputation of Caesars or its  
20 Affiliates, or (d) who is required to be licensed, registered, qualified or found  
21 suitable under any United States, state, local, or foreign laws, rules or regulations  
22 relating to gaming or the sale of alcohol under which Caesars or any of its Affiliates  
23 is licensed, registered, qualified or found suitable, and such Person is not or does  
24 not remain so licensed, registered, qualified or found suitable.

18 16. Unbeknownst to Caesars at the time, the Seibel Parties developed a scheme to  
19 undermine the Seibel Agreements in order to reap kickbacks, for their own benefit.

20 17. Specifically, Green and Seibel secretly contacted Caesars' vendors and unilaterally  
21 extorted kickbacks for items Caesars purchased. They specifically demanded a percentage  
22 "reimbursement" for any sales the vendors made to Caesars' restaurants not only for future  
23 purchases by Caesars, but also retroactively for product Caesars had previously purchased.

24 18. Green specifically directed others to seek kickbacks and went as far as to encourage  
25 threats against vendors who did not want to pay any kickbacks to the Seibel Parties. If vendors were  
26 not willing to engage in the scheme, the Seibel Parties threatened to remove them from the  
27 restaurants they were already selling to.

28

1           19.     The Seibel Parties admit that the kickback scheme – demanding payment from  
2     Caesars' vendors without Caesars' knowledge for product that Caesars purchased – occurred but  
3     argue that these "arrangements" were marketing.

4           20.     The Court rejects the Seibel Parties' arguments. There has been no evidence of a  
5     marketing agreement, marketing activation, branding, or any marketing deliverables. Further Seibel  
6     admits there was no obligation to market nor were any marketing efforts undertaken.

7           21.     The Seibel Parties kept Caesars and their other business partners, like Gordon  
8     Ramsay and the Sherry brothers, in the dark about their kickback scheme. In fact, Green explicitly  
9     instructed Caesars' vendors not to provide the kickback amounts to Harrah's and directed that they  
10    instead go directly to one of his companies.

11          22.     For his part, Green engaged in this kickback scheme in his own capacity. Green was  
12    not an employee of Seibel or any of the Seibel-Affiliated Entities and he admits that he provided  
13    consulting services to Seibel through Green's company, CBG Hospitality Consulting, LLC., *i.e.*, a  
14    separate legal entity. Seibel also describes his relationship with Green as a friendship and business  
15    associate, not as an employer-employee.

16          23.     Caesars initiated this litigation in August 2017 seeking declaratory relief from this  
17    Court related to Seibel's concealment of his criminal conviction which made him unsuitable to do  
18    business with Caesars, a gaming licensee subject to rigorous regulation. (Compl., Aug. 25, 2017,  
19    on file).

20          24.     Discovery in the litigation revealed that Seibel was engaged in further criminal  
21    activity.

22          25.     Caesars discovered that Seibel and his friend Green engaged in commercial bribery  
23    by soliciting and accepting kickbacks from Caesars' vendors and resorted to extortion when vendors  
24    attempted to play "hardball."

25          26.     Upon its discovery, Caesars moved to amend its complaint. (Caesars' Mot. for Leave  
26    to File 1st Am. Compl.; Ex-Parte Appl. for Order Shortening Time, Dec. 12, 2019, on file).

28. On March 11, 2020, Caesars amended its complaint to add claims for civil conspiracy, unjust enrichment, intentional interference with contractual relations, and fraudulent concealment against Seibel and Green and a claim for breaches of implied covenants of good faith and fair dealing against the Seibel-Affiliated Entities.

29. In total, discovery revealed that Seibel and Green have solicited and received illegal kickbacks totaling \$326,046.87, as follows:

- (1) Kickbacks received from Innis & Gunn USA, Inc. in the amount of \$25,671.75;
- (2) Kickbacks received from LaFrieda Meats in the amount of \$278,507.08;
- (3) Kickbacks received from Tynant/Sysco in the amount of \$11,411.94; and
- (4) Kickbacks received from Marathon Enterprises, Inc. in the amount of \$10,456.10.

## CONCLUSIONS OF LAW

1. Pursuant to Nevada law, "[s]ummary judgment is appropriate and shall be rendered forthwith when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (internal quotations omitted); NRCp 56. "The purpose of summary judgment is to avoid unnecessary trials when there is no dispute over the facts before the court." *Winnemucca Farms, Inc. v. Eckersell*, No. 3:05-CV-385-RAM, 2010 WL 1416881, at \*2 (D. Nev. Mar. 31, 2010) (citing *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994)).

2. "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. "[T]o defeat summary judgment, the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence,

1 introduce specific facts that show a genuine issue of material fact." *Id.*, 172 P.3d 131, 134 (2007)  
2 (citation omitted).

3 3. "[T]he nonmoving party may not defeat a motion for summary judgment by relying  
4 on the gossamer threads of whimsy, speculation and conjecture." *Wood*, 121 Nev. at 731, 121 P.3d  
5 at 1030 (internal quotation omitted).

6 4. "General allegations and conclusory statements do not create genuine issues of fact."  
7 *Saticoy Bay LLC Series 9641 Christine View v. Fed. Nat'l Mortg. Ass'n*, 134 Nev. 270, 271, 417  
8 P.3d 363, 366 (2018) (citations omitted).

9 5. "The substantive law controls which factual disputes are material and will preclude  
10 summary judgment; other factual disputes are irrelevant." *Wood*, 121 Nev. at 731, 121 P.3d at 1031.

11 6. Under Nevada law, "[a]n actionable civil conspiracy is a combination of two or more  
12 persons who, by some concerted action, intend to accomplish some unlawful objective for the  
13 purpose of harming another which results in damage." *Collins v. Union Fed. Sav. & Loan Ass'n*, 99  
14 Nev. 284, 303, 662 P.2d 610, 622 (1983) (citations omitted).

15 7. "[A] plaintiff must provide evidence of an explicit or tacit agreement between the  
16 alleged conspirators." *Guilfoyle v. Olde Monmouth Stock Transfer Co.*, 130 Nev. 801, 813, 335  
17 P.3d 190, 198 (2014). But, "it has long been the rule that it is not necessary for all joint tortfeasors  
18 to be named as defendants in a single lawsuit." *Temple v. Synthes Corp., Ltd.*, 498 U.S. 5, 7 (1990).

19 8. Generally, "[a]gents and employees of a corporation cannot conspire with their  
20 corporate principal or employer where they act in their official capacities on behalf of the  
21 corporation and not as individuals for their individual advantage." *Collins*, 99 Nev. at 303, 662 P.2d  
22 at 622 (citations omitted). "This limitation, known as the intracorporate conspiracy doctrine,  
23 prevents a finding of liability for conspiracy between co-employees without a showing that the  
24 employees were acting as individuals and for their individual advantage." *U-Haul Co. of Nev. v.*  
25 *United States*, No. 2:08 CV-729-KJD-RJJ, 2012 WL 3042908, at \*2 (D. Nev. July 25, 2012) (citing  
26 *Collins*, 99 Nev. at 303, 662 P.2d at 622).

27 9. However, the intra-corporate conspiracy doctrine does not apply to corporate  
28 employees acting outside of the scope of their employment. *See Collins*, 99 Nev. at 303, 662 P.2d



1 at 622. Indeed, "employees of a corporation may be deemed to be conspirators with their employer  
2 corporation when they act "as individuals for their individual advantage." *Loc. Ad Link, Inc. v.*  
3 *AdzZoo, LLC*, No. 209CV01564RCJLRL, 2009 WL 10694069, at \*9 (D. Nev. Dec. 15, 2009)  
4 (quoting *Collins*, 99 Nev. at 303, 662 P.2d at 622).

5 10. Seibel and Green engaged in civil conspiracy against Caesars. The documentary  
6 evidence in this case is undisputed and overwhelmingly demonstrates that Seibel and Green entered  
7 into agreements with different Caesars' vendors to obtain a percentage kickback of the amounts  
8 sold to, or purchased by, Caesars. Each and every communication with the vendors make clear that  
9 Seibel and Green were soliciting and coercing kickbacks for their own individual benefits.

10 11. Specifically, Seibel and Green sought and coerced payment from vendors who had  
11 agreements with Caesars for the sale of certain products to Caesars' restaurants. If the vendors  
12 refused, they were threatened with having their relationship with Caesars severed. By actively  
13 pursuing such arrangements – to Caesars' detriment – Green and Seibel are liable for civil  
14 conspiracy.

15 12. Importantly, separate and apart from any obligation or duty to disclose owed to  
16 Caesars, Seibel and Green's conduct was illegal on its own. Indeed, neither Seibel, Green, nor any  
17 of their companies purchased any of the goods for which they demanded money. Instead, Seibel  
18 and Green sought and/or coerced payment from vendors who had agreements with Caesars for the  
19 sale of certain products to Caesars' restaurants. *See, e.g.*, NRS 207.295(1) ("Any person who, with  
20 corrupt intent . . . [o]ffers, confers or agrees to confer any benefit upon any employee, agent or  
21 fiduciary without the consent of the employer or principal of that employee, agent or fiduciary in  
22 order to influence adversely that person's conduct in relation to the commercial affairs of his or her  
23 employer or principal . . . commits commercial bribery and is guilty of a misdemeanor.").

24 13. Further, the intracorporate conspiracy doctrine is inapplicable here as Green was not  
25 an employee of Seibel or any of the Seibel-Affiliated Entities.

26 14. "[U]njust enrichment occurs 'when ever [sic] a person has and retains a benefit which  
27 in equity and good conscience belongs to another.'" *Leasepartners Corp. v. Robert L. Brooks Tr.*  
28

1 *Dated Nov. 12, 1975*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997) (quoting *Unionamerica Mtg. v.*  
2 *McDonald*, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981)).

3 15. "Unjust enrichment exists when the plaintiff confers a benefit on the defendant, the  
4 defendant appreciates such benefit, and there is acceptance and retention by the defendant of such  
5 benefit under circumstances such that it would be inequitable for him to retain the benefit without  
6 payment of the value thereof." *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 381,  
7 283 P.3d 250, 257 (2012) (internal quotations omitted). "[B]enefit in the unjust enrichment context  
8 can include services beneficial to or at the request of the other, denotes any form of advantage, and  
9 is not confined to retention of money or property." *Id.* at 382, 283 P.3d at 257 (internal quotations  
10 omitted).

11 16. Seibel and Green individually benefitted and were unjustly enrichment by their  
12 kickback scheme. By his own testimony, Green admitted that BR 23 Venture, the entity to which  
13 he funneled the kickbacks paid for his health insurance and at one point became part owner of said  
14 entity. For his part, Seibel reported BR 23 Venture's income on his tax return demonstrating that he  
15 obtained income – a benefit – from the entity and Seibel treated BR 23's Venture's income as his  
16 own. Both Seibel and Green are liable for unjust enrichment against Caesars.

17 17. Under Nevada law, to prove a claim for intentional interference with contractual  
18 relations, "a plaintiff must establish (1) a valid and existing contract; (2) the defendant's knowledge  
19 of the contract; (3) intentional acts intended or designed to disrupt the contractual relationship; (4)  
20 actual disruption of the contract; and (5) resulting damage." *J.J. Indus., LLC v. Bennett*, 119 Nev.  
21 269, 274, 71 P.3d 1264, 1267 (2003) (citations omitted).

22 18. "[I]n Nevada, a party cannot, as a matter of law, tortiously interfere with his own  
23 contract." *Klein v. Freedom Strategic Partners, LLC*, 595 F. Supp. 2d 1152, 1163 (D. Nev. 2009)  
24 (internal quotations omitted). However, an "agent may be an interfering third party if the agent was  
25 acting outside the scope of the agency, was not acting in the principal's interest, or was motivated  
26 by malice towards one or both of the contracting parties." *From the Future, LLC v. Flowers, No.*  
27 *206CV00203PMPRJJ*, 2009 WL 10709083, at \*8 (D. Nev. Apr. 20, 2009). "[A]n agent is  
28 privileged to interfere with his principal's contract 'unless the agent acts to serve the agent's own

1 interests or for another wrongful purpose.'" *Id.* (quoting Restatement (Third) of Agency § 7.01 cmt.  
2 E). Indeed, "[i]f the agent is acting predominantly in his own interest, he effectively exceeds the  
3 scope of the agency or he no longer is acting in the principal's interest, and he thus may be liable to  
4 a third party for tortious interference with his principal's contract." *Id.*

5 19. The Seibel Agreements were valid and existing contracts between Caesars and its  
6 vendors. Seibel and Green were aware of the Seibel Agreements and that their kickback scheme  
7 was designed to disrupt those agreements. Specifically, Green and Seibel were aware that the Seibel  
8 Agreements required rebates for items purchased for the restaurants to be accounted for and they  
9 nevertheless sought kickbacks from the vendors. The Seibel Agreements were disrupted as amounts  
10 that should have been accounted as "rebates" under the Seibel Agreements were instead syphoned  
11 to Green and Seibel for their own benefit. Further, by the very act of engaging in a kickback scheme  
12 whereby they sought to coerce certain fees from vendors for product they sold to Caesars, Green  
13 and Seibel lost the ability to claim that any "agent status" precluded their liability. Seibel and Green  
14 are liable for intentional interference with contractual relations.

15 20. Under Nevada law, to establish a claim for fraudulent concealment, a plaintiff must  
16 show "(1) the defendant concealed or suppressed a material fact; (2) the defendant was under a duty  
17 to disclose the fact to the plaintiff; (3) the defendant intentionally concealed or suppressed the fact  
18 with the intent to defraud the plaintiff; that is, the defendant concealed or suppressed the fact for  
19 the purpose of inducing the plaintiff to act differently than she would have if she had known the  
20 fact; (4) the plaintiff was unaware of the fact and would have acted differently if she had known of  
21 the concealed or suppressed fact; (5) and, as a result of the concealment or suppression of the fact,  
22 the plaintiff sustained damages." *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1485, 970 P.2d 98,  
23 110 (1998), *abrogated, in part on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11  
24 (2001) (citation omitted).

25 21. "Nondisclosure will become the equivalent of fraudulent concealment when it  
26 becomes the duty of a person to speak in order that the party with whom he is dealing may be placed  
27 on an equal footing with him." *Id.* at 1486, 970 P.2d at 110 (quoting *Mackintosh v. Jack Matthews*  
28 & Co., 109 Nev. 628, 634 35, 855 P.2d 549, 553 (1993)).

22. "Even when the parties are dealing at arm's length, a duty to disclose may arise from the existence of material facts peculiarly within the knowledge of the party sought to be charged and not within the fair and reasonable reach of the other party." *Id.* at 1486, 970 P.2d at 110 (quoting *Villalon v. Bowen*, 70 Nev. 456, 467-68, 273 P.2d 409, 415 (1954)).

23. "Under such circumstances the general rule is that a deliberate failure to correct an apparent misapprehension or delusion may constitute fraud." *Villalon*, 70 Nev. at 468, 273 P.2d at 415. "This would appear to be particularly so where the false impression deliberately has been created by the party sought to be charged." *Id.*, 273 P.2d at 415.

24. Caesars was unaware that Seibel and Green were engaged in a kickback scheme as the scheme was a scenario entirely of Seibel and Green's own making. Indeed, given all of the safeguards in the Seibel Agreements meant to thwart dishonest or illegal conduct, Caesars cannot be faulted for failing to guess that Green and Seibel were soliciting kickbacks.

25. Neither Seibel nor Green informed Caesars of the kickback scheme and instead actively took steps to conceal it from Caesars.

26. Additionally, the Seibel Agreements further obligated Seibel to disclose the illegal kickback conduct. Under the terms of the Seibel Agreements, the Seibel Affiliates Entities and their Associates – a definition that encompasses Seibel – were obligated to inform Caesars about any events that could threaten Caesars' gaming license within ten days. Thus, Seibel was required to inform Caesars if he became an Unsuitable Person. Separate and apart from his unsuitability as a result of his felony conviction, Seibel also became an Unsuitable Person by engaging in the kickback scheme. The Seibel Agreements define an Unsuitable Person to include "[a]ny person . . . who is or might be engaged or about to be engaged in any activity which could adversely impact the business or reputation of Caesars." The very act of soliciting kickbacks is illegal and thus could unquestionably "adversely impact the business or reputation of Caesars." As a result, Seibel had a duty to disclose his involvement in the kickback scheme to Caesars.

27. Seibel and Green's failure to disclose the kickback scheme to Caesars makes them liable for fraudulent concealment.

28. "An implied covenant of good faith and fair dealing exists in every Nevada contract and essentially forbids arbitrary, unfair acts by one party that disadvantage the other." *Frantz v. Johnson*, 116 Nev. 455, 465 n.4, 999 P.2d 351, 358 n.4 (2000) (citing *Consol. Generator v. Cummins Engine*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998)). "A breach of the [implied] covenant [of good faith and fair dealing] occurs '[w]here the terms of a contract are literally complied with but one party to the contract deliberately contravenes the intention and spirit of the contract. . . .'" *Gamboa v. World Sav. Bank*, FSB, No. 3:10-CV-454-ECR-VPC, 2010 WL 5071166, at \*2 (D. Nev. Dec. 6, 2010) (quoting *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 232, 808 P.2d 919, 922-23 (1991)).

29. "When one party performs a contract in a manner that is unfaithful to the purpose of the contract and the justified expectations of the other party are thus denied, damages may be awarded against the party who does not act in good faith." *Hilton*, 107 Nev. at 234, 808 P.2d at 923 (emphasis added).

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

31. The Seibel Agreements were valid and existing contracts. Under the terms of the Seibel Agreements, the Seibel-Affiliated Entities agreed to hold their Associates (which includes Seibel) to the suitability standards of the various agreements. Nevertheless, aware that Seibel was soliciting kickbacks and thus double-dipping in amounts received from vendors, the Seibel-Affiliated Entities did nothing to inform Caesars of the illegal kickback scheme.

32. At no time did any of the Seibel-Affiliated Entities notify any of their business partners that their Associated Persons were engaging in this illegal conduct. By failing to report their conduct, the Seibel Affiliated Entities were also continuing to benefit from the Seibel Agreements which likely would have been terminated had Caesars become aware of the illegal activity at the time. This conduct was not only in bad faith, but also in direct contravention of the spirit, intent, and justified expectations under the Seibel Agreements, which required the Seibel-Affiliated Entities to conduct themselves "with the highest standards of honesty, integrity, quality

1 and courtesy so as to maintain and enhance the reputation and goodwill of" Caesars. As a result,  
2 the Seibel-Affiliated Entities breached the implied covenant of good faith and fair dealing.

3 33. Caesars suffered damages as a result of the Seibel Parties' actions totaling  
4 \$326,046.87.

5 **ORDER**

6 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Green's Motion for  
7 Summary Judgment is DENIED;

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Caesars' Counter-  
9 Motion for Summary Judgment shall be, and hereby is, GRANTED in its entirety and that judgment  
10 is entered in favor of Caesars on Counts IV, VI, VII, and VII of Caesars First Amended Complaint  
11 against Green;

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Caesars' Cross-Motion  
13 for Summary Judgment shall be, and hereby is, GRANTED in its entirety and that judgment is  
14 entered in favor of Caesars on Counts IV, VI, VII, and VII of Caesars First Amended Complaint  
15 against Seibel

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Caesars' Cross-Motion  
17 for Summary Judgment shall be, and hereby is, GRANTED in its entirety and that judgment is  
18 entered in favor of Caesars on V of Caesars First Amended Complaint against the TPOV  
19 Enterprises, LLC, LLTQ Enterprises, LLC, FERG, LLC, MOTI Partners, LLC, GR Burgr, LLC,  
20 and DNT Acquisition, LLC; and

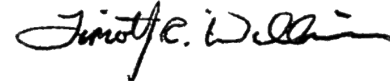
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1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is entered in  
2 favor of Caesars and against the Seibel Parties in the amount of \$326,046.87 plus pre- and post-  
3 judgment interest, with Seibel and Green being jointly and severally liable for the amount awarded  
4 to Caesars.

5 IT IS SO ORDERED.

6 Dated this 22nd day of March, 2023

7 

8 5A8 E80 15B3 8074  
9 Timothy C. Williams  
District Court Judge

JM

10 Respectfully submitted by:

11 DATED: March 21, 2023

12 PISANELLI BICE PLLC

13 By: /s/ M. Magali Mercera  
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15 Debra L. Spinelli, Esq., Bar No. 9695  
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18 *Paris Las Vegas Operating*  
19 *Company, LLC; PHWLTV, LLC; and*  
*Boardwalk Regency*  
*Corporation d/b/a Caesars Atlantic City*

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: 3/22/2023

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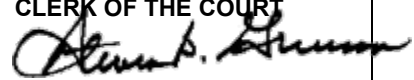


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*Attorneys for Desert Palace, Inc.;  
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PHWLTV, LLC; and Boardwalk Regency  
Corporation d/b/a Caesars Atlantic City*

**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.

AND ALL RELATED MATTERS

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:**

**(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-VIII OF THE FIRST  
AMENDED COMPLAINT)**

PLEASE TAKE NOTICE that the *Findings of Fact, Conclusions of Law, and Order:* (1)  
*Denying Craig Green's Motion for Summary Judgment; (2) Granting Caesars' Counter-Motion for*

1 *Summary Judgment Against Craig Green; and (3) Granting Caesars' Cross-Motion for Summary*  
2 *Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VIII of the*  
3 *First Amended Complaint)* was entered in the above-captioned matter on March 22, 2023, a true  
4 and correct copy of which is attached hereto.

5 DATED this 28th day of March 2023.

6 PISANELLI BICE PLLC

7  
8 By: /s/ M. Magali Mercera  
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15 *Paris Las Vegas Operating Company, LLC;*  
16 *PHWLV, LLC; and Boardwalk Regency*  
17 *Corporation d/b/a Caesars Atlantic City*  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 28th day of March 2023, 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: (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-VIII OF THE FIRST AMENDED COMPLAINT)** to the following:

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Joshua P. Gilmore, Esq.  
Paul C. Williams, Esq.

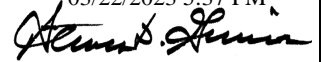
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*Attorneys for Gordon Ramsay*

*Attorneys for Rowen Seibel, Craig Green  
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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*

/s/ Cinda Towne  
An employee of PISANELLI BICE PLLC

  
CLERK OF THE COURT

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Corporation d/b/a Caesars Atlantic City*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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:**

**(1) DENYING CRAIG GREEN'S  
MOTION FOR SUMMARY  
JUDGMENT;**

**(2) GRANTING CAESARS'  
COUNTER-MOTION FOR  
SUMMARY JUDGMENT  
AGAINST CRAIG GREEN; AND**

**(1) GRANTING CAESARS' CROSS-  
MOTION FOR SUMMARY  
JUDGMENT AGAINST ROWEN  
SEIBEL AND THE SEIBEL-  
AFFILIATED ENTITIES  
(RELATED TO COUNTS IV-VIII  
OF THE FIRST AMENDED  
COMPLAINT)**

Date of Hearing: November 22, 2022

Time of Hearing: 1:30 p.m.

AND ALL RELATED MATTERS

PISANELLIBICE PLLC  
400 SOUTH 7TH STREET, SUITE 300  
LAS VEGAS, NEVADA 89101

Craig Green's ("Green") *Motion for Summary Judgment* (the "Green Motion for Summary Judgment"), filed on June 17, 2022; 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,") *Counter-Motion for Summary Judgment Against Craig Green* (the "Counter-Motion for Summary Judgment"), filed on July 14, 2022; and Caesars' *Cross-Motion for Summary Judgment Against Rowen Seibel and the Seibel-Affiliated Entities (Related to Counts IV-VIII of the First Amended Complaint)* (the "Cross-Motion for Summary Judgment"), filed on July 14, 2022, came before this Court for hearing on November 22, 2022, at 1:30 p.m.

James J. Pisanelli, Esq., and M. Magali Mercera, Esq., of the law firm PISANELLI BICE PLLC, appeared on behalf of Caesars. Joshua P. Gilmore, Esq., and Paul C. Williams, Esq., of the law firm BAILEY KENNEDY, appeared on behalf of TPOV Enterprises, LLC ("TPOV"), LLTQ Enterprises, LLC ("LLTQ"), FERG, LLC ("FERG"), MOTI Partners, LLC ("MOTI"), 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 Green.<sup>1</sup>

The Court having considered the Green Motion for Summary Judgment, the Counter-Motion for Summary Judgment, the Cross-Motion for Summary Judgment, the oppositions and replies 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:

///

---

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



**FINDINGS OF FACT<sup>2</sup>**

The Court HEREBY FINDS AS FOLLOWS:

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

2. These gaming licenses are not a right, but rather a privilege that Caesars must earn and continually show it remains suitable to hold.

3. Nevada's gaming regulations make clear 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).

4. As a result, Caesars is required to self-police and ensure it is not engaged in unsuitable practices or doing business with unsuitable persons.

5. To ensure it is upholding the standards expected of a gaming licensee, Caesars maintains an Ethics and Compliance Program (the "Compliance Plan").

6. Under the express and unequivocal terms of its Compliance Plan, Caesars' employees are instructed "to avoid acts and situations that are improper, might give an appearance of impropriety, or might impair their good judgment when acting on behalf of" Caesars. The Compliance Plan also explicitly states that "[b]ribes, influence payments or kickbacks may never be provided to or accepted from any Person, including in the form of gifts, hospitality, or similar benefits."

7. Importantly, Caesars' Compliance Plan requires that, "[a]ll vendors, suppliers, tenants, business partners, independent agents/junket representatives, lobbyists, and consultants

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<sup>2</sup> Any stated findings of fact which constitute conclusions of law shall be treated as conclusions of law, and any conclusions of law which constitute findings of fact shall be treated as findings of fact.

1 who represent or have relationships with [Caesars] or any of its Affiliates must agree to meet the  
2 standards, business ethics, and principles that govern the [Caesars'] Employees."

3 8. Thus, Caesars' vendors are prohibited from engaging in illegal conduct, including,  
4 but not limited to, the procurement or acceptance of kickbacks.

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

8 10. In total, Caesars and the Seibel-Affiliated Entities entered into six agreements as  
9 follows:

10 (1) A Development, Operation and License Agreement between MOTI Partners, LLC  
11 and Desert Palace, Inc. dated March 2009 related to the Serendipity restaurant in  
Las Vegas (the "MOTI Agreement");

12 (2) A Development, Operation and License Agreement between DNT Acquisition,  
13 LLC, the Original Homestead Restaurant, Inc., and Desert Palace, Inc., dated June  
21, 2011, dated June 21, 2011 related to the Original Homestead Restaurant in Las  
14 Vegas (the "DNT Agreement");

15 (3) A Development and Operation Agreement between TPOV and Paris dated  
November 2011 related to the Gordon Ramsay Steak restaurant at the Paris Las  
16 Vegas (the "TPOV Agreement");

17 (4) A Development and Operation Agreement between LLTQ Enterprises, LLC and  
Desert Palace, Inc. dated April 4, 2012 related to the Gordon Ramsay Pub & Grill  
18 at Caesars Palace in La Vegas (the "LLTQ Agreement");

19 (5) A Development, Operation and License Agreement between PHW Las Vegas, LLC  
20 dba Planet Hollywood by its manager, PHW Manager, LLC, GR BURGR, LLC, and  
Gordon Ramsay, dated December 13, 2012 related to the GR Burgr restaurant at  
Planet Hollywood in Las Vegas (the "GRB Agreement"); and

21 (6) A Consulting Agreement between FERG, LLC and Boardwalk Regency  
22 Corporation dba Caesars Atlantic City, dated May 16, 2014 related to the Gordon  
Ramsay Pub & Grill at Caesars Atlantic City (the "FERG Agreement").

23 11. Each of the agreements (collectively the "Seibel Agreements") required the Seibel-  
24 Affiliated Entities to acknowledge that Caesars' properties were "exclusive first-class resort hotels  
25 casinos" and each of the restaurants governed by the agreements would be "an exclusive first-class  
26 restaurant."

27 12. Caesars' reputation and the goodwill of its guests and invitees were of the utmost  
28 importance and, as such, each of the Seibel-Affiliated Entities agreed to conduct themselves "with

1 the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the  
2 reputation and goodwill of" Caesars.

3 13. Under each of the Seibel Agreements, Caesars was solely responsible for the day-  
4 to-day operations of the restaurants, which included purchasing necessary items for the  
5 establishments.

6 14. Further, the Seibel Agreements provide that any rebates obtained be appropriately  
7 accounted for in the restaurants' financials for the benefit of the operations.

8 15. Importantly, under the Seibel Agreements, an "Unsuitable Person" is defined to  
9 include:

10 Any Person (a) whose association with Caesars could be anticipated to result in a  
11 disciplinary action relating to, or the loss of, inability to reinstate or failure to  
12 obtain, any registration, application or license or any other rights or entitlements  
13 held or required to be held by Caesars or any of its Affiliates under any United  
14 States, state, local or foreign laws, rules or regulations relating to gaming or the sale  
15 of alcohol, (b) whose association or relationship with Caesars or its Affiliates could  
16 be anticipated to violate any United States, state, local or foreign laws, rules or  
17 regulations relating to gaming or the sale of alcohol to which Caesars or its  
18 Affiliates are subject, (c) who is or might be engaged or about to be engaged in any  
19 activity which could adversely impact the business or reputation of Caesars or its  
20 Affiliates, or (d) who is required to be licensed, registered, qualified or found  
21 suitable under any United States, state, local, or foreign laws, rules or regulations  
22 relating to gaming or the sale of alcohol under which Caesars or any of its Affiliates  
23 is licensed, registered, qualified or found suitable, and such Person is not or does  
24 not remain so licensed, registered, qualified or found suitable.

18 16. Unbeknownst to Caesars at the time, the Seibel Parties developed a scheme to  
19 undermine the Seibel Agreements in order to reap kickbacks, for their own benefit.

20 17. Specifically, Green and Seibel secretly contacted Caesars' vendors and unilaterally  
21 extorted kickbacks for items Caesars purchased. They specifically demanded a percentage  
22 "reimbursement" for any sales the vendors made to Caesars' restaurants not only for future  
23 purchases by Caesars, but also retroactively for product Caesars had previously purchased.

24 18. Green specifically directed others to seek kickbacks and went as far as to encourage  
25 threats against vendors who did not want to pay any kickbacks to the Seibel Parties. If vendors were  
26 not willing to engage in the scheme, the Seibel Parties threatened to remove them from the  
27 restaurants they were already selling to.

28

1           19.     The Seibel Parties admit that the kickback scheme – demanding payment from  
2     Caesars' vendors without Caesars' knowledge for product that Caesars purchased – occurred but  
3     argue that these "arrangements" were marketing.

4           20.     The Court rejects the Seibel Parties' arguments. There has been no evidence of a  
5     marketing agreement, marketing activation, branding, or any marketing deliverables. Further Seibel  
6     admits there was no obligation to market nor were any marketing efforts undertaken.

7           21.     The Seibel Parties kept Caesars and their other business partners, like Gordon  
8     Ramsay and the Sherry brothers, in the dark about their kickback scheme. In fact, Green explicitly  
9     instructed Caesars' vendors not to provide the kickback amounts to Harrah's and directed that they  
10    instead go directly to one of his companies.

11          22.     For his part, Green engaged in this kickback scheme in his own capacity. Green was  
12    not an employee of Seibel or any of the Seibel-Affiliated Entities and he admits that he provided  
13    consulting services to Seibel through Green's company, CBG Hospitality Consulting, LLC., *i.e.*, a  
14    separate legal entity. Seibel also describes his relationship with Green as a friendship and business  
15    associate, not as an employer-employee.

16          23.     Caesars initiated this litigation in August 2017 seeking declaratory relief from this  
17    Court related to Seibel's concealment of his criminal conviction which made him unsuitable to do  
18    business with Caesars, a gaming licensee subject to rigorous regulation. (Compl., Aug. 25, 2017,  
19    on file).

20          24.     Discovery in the litigation revealed that Seibel was engaged in further criminal  
21    activity.

22          25.     Caesars discovered that Seibel and his friend Green engaged in commercial bribery  
23    by soliciting and accepting kickbacks from Caesars' vendors and resorted to extortion when vendors  
24    attempted to play "hardball."

25          26.     Upon its discovery, Caesars moved to amend its complaint. (Caesars' Mot. for Leave  
26    to File 1st Am. Compl.; Ex-Parte Appl. for Order Shortening Time, Dec. 12, 2019, on file).

28. On March 11, 2020, Caesars amended its complaint to add claims for civil conspiracy, unjust enrichment, intentional interference with contractual relations, and fraudulent concealment against Seibel and Green and a claim for breaches of implied covenants of good faith and fair dealing against the Seibel-Affiliated Entities.

29. In total, discovery revealed that Seibel and Green have solicited and received illegal kickbacks totaling \$326,046.87, as follows:

- (1) Kickbacks received from Innis & Gunn USA, Inc. in the amount of \$25,671.75;
- (2) Kickbacks received from LaFrieda Meats in the amount of \$278,507.08;
- (3) Kickbacks received from Tynant/Sysco in the amount of \$11,411.94; and
- (4) Kickbacks received from Marathon Enterprises, Inc. in the amount of \$10,456.10.

## CONCLUSIONS OF LAW

1. Pursuant to Nevada law, "[s]ummary judgment is appropriate and shall be rendered forthwith when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (internal quotations omitted); NRCp 56. "The purpose of summary judgment is to avoid unnecessary trials when there is no dispute over the facts before the court." *Winnemucca Farms, Inc. v. Eckersell*, No. 3:05-CV-385-RAM, 2010 WL 1416881, at \*2 (D. Nev. Mar. 31, 2010) (citing *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994)).

2. "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. "[T]o defeat summary judgment, the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence,

1 introduce specific facts that show a genuine issue of material fact." *Id.*, 172 P.3d 131, 134 (2007)  
2 (citation omitted).

3 3. "[T]he nonmoving party may not defeat a motion for summary judgment by relying  
4 on the gossamer threads of whimsy, speculation and conjecture." *Wood*, 121 Nev. at 731, 121 P.3d  
5 at 1030 (internal quotation omitted).

6 4. "General allegations and conclusory statements do not create genuine issues of fact."  
7 *Saticoy Bay LLC Series 9641 Christine View v. Fed. Nat'l Mortg. Ass'n*, 134 Nev. 270, 271, 417  
8 P.3d 363, 366 (2018) (citations omitted).

9 5. "The substantive law controls which factual disputes are material and will preclude  
10 summary judgment; other factual disputes are irrelevant." *Wood*, 121 Nev. at 731, 121 P.3d at 1031.

11 6. Under Nevada law, "[a]n actionable civil conspiracy is a combination of two or more  
12 persons who, by some concerted action, intend to accomplish some unlawful objective for the  
13 purpose of harming another which results in damage." *Collins v. Union Fed. Sav. & Loan Ass'n*, 99  
14 Nev. 284, 303, 662 P.2d 610, 622 (1983) (citations omitted).

15 7. "[A] plaintiff must provide evidence of an explicit or tacit agreement between the  
16 alleged conspirators." *Guilfoyle v. Olde Monmouth Stock Transfer Co.*, 130 Nev. 801, 813, 335  
17 P.3d 190, 198 (2014). But, "it has long been the rule that it is not necessary for all joint tortfeasors  
18 to be named as defendants in a single lawsuit." *Temple v. Synthes Corp., Ltd.*, 498 U.S. 5, 7 (1990).

19 8. Generally, "[a]gents and employees of a corporation cannot conspire with their  
20 corporate principal or employer where they act in their official capacities on behalf of the  
21 corporation and not as individuals for their individual advantage." *Collins*, 99 Nev. at 303, 662 P.2d  
22 at 622 (citations omitted). "This limitation, known as the intracorporate conspiracy doctrine,  
23 prevents a finding of liability for conspiracy between co-employees without a showing that the  
24 employees were acting as individuals and for their individual advantage." *U-Haul Co. of Nev. v.*  
25 *United States*, No. 2:08 CV-729-KJD-RJJ, 2012 WL 3042908, at \*2 (D. Nev. July 25, 2012) (citing  
26 *Collins*, 99 Nev. at 303, 662 P.2d at 622).

27 9. However, the intra-corporate conspiracy doctrine does not apply to corporate  
28 employees acting outside of the scope of their employment. *See Collins*, 99 Nev. at 303, 662 P.2d

1 at 622. Indeed, "employees of a corporation may be deemed to be conspirators with their employer  
2 corporation when they act "as individuals for their individual advantage." *Loc. Ad Link, Inc. v.*  
3 *AdzZoo, LLC*, No. 209CV01564RCJLRL, 2009 WL 10694069, at \*9 (D. Nev. Dec. 15, 2009)  
4 (quoting *Collins*, 99 Nev. at 303, 662 P.2d at 622).

5 10. Seibel and Green engaged in civil conspiracy against Caesars. The documentary  
6 evidence in this case is undisputed and overwhelmingly demonstrates that Seibel and Green entered  
7 into agreements with different Caesars' vendors to obtain a percentage kickback of the amounts  
8 sold to, or purchased by, Caesars. Each and every communication with the vendors make clear that  
9 Seibel and Green were soliciting and coercing kickbacks for their own individual benefits.

10 11. Specifically, Seibel and Green sought and coerced payment from vendors who had  
11 agreements with Caesars for the sale of certain products to Caesars' restaurants. If the vendors  
12 refused, they were threatened with having their relationship with Caesars severed. By actively  
13 pursuing such arrangements – to Caesars' detriment – Green and Seibel are liable for civil  
14 conspiracy.

15 12. Importantly, separate and apart from any obligation or duty to disclose owed to  
16 Caesars, Seibel and Green's conduct was illegal on its own. Indeed, neither Seibel, Green, nor any  
17 of their companies purchased any of the goods for which they demanded money. Instead, Seibel  
18 and Green sought and/or coerced payment from vendors who had agreements with Caesars for the  
19 sale of certain products to Caesars' restaurants. *See, e.g.*, NRS 207.295(1) ("Any person who, with  
20 corrupt intent . . . [o]ffers, confers or agrees to confer any benefit upon any employee, agent or  
21 fiduciary without the consent of the employer or principal of that employee, agent or fiduciary in  
22 order to influence adversely that person's conduct in relation to the commercial affairs of his or her  
23 employer or principal . . . commits commercial bribery and is guilty of a misdemeanor.").

24 13. Further, the intracorporate conspiracy doctrine is inapplicable here as Green was not  
25 an employee of Seibel or any of the Seibel-Affiliated Entities.

26 14. "[U]njust enrichment occurs 'when ever [sic] a person has and retains a benefit which  
27 in equity and good conscience belongs to another.'" *Leasepartners Corp. v. Robert L. Brooks Tr.*  
28

1 *Dated Nov. 12, 1975*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997) (quoting *Unionamerica Mtg. v.*  
2 *McDonald*, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981)).

3 15. "Unjust enrichment exists when the plaintiff confers a benefit on the defendant, the  
4 defendant appreciates such benefit, and there is acceptance and retention by the defendant of such  
5 benefit under circumstances such that it would be inequitable for him to retain the benefit without  
6 payment of the value thereof." *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 381,  
7 283 P.3d 250, 257 (2012) (internal quotations omitted). "[B]enefit in the unjust enrichment context  
8 can include services beneficial to or at the request of the other, denotes any form of advantage, and  
9 is not confined to retention of money or property." *Id.* at 382, 283 P.3d at 257 (internal quotations  
10 omitted).

11 16. Seibel and Green individually benefitted and were unjustly enrichment by their  
12 kickback scheme. By his own testimony, Green admitted that BR 23 Venture, the entity to which  
13 he funneled the kickbacks paid for his health insurance and at one point became part owner of said  
14 entity. For his part, Seibel reported BR 23 Venture's income on his tax return demonstrating that he  
15 obtained income – a benefit – from the entity and Seibel treated BR 23's Venture's income as his  
16 own. Both Seibel and Green are liable for unjust enrichment against Caesars.

17 17. Under Nevada law, to prove a claim for intentional interference with contractual  
18 relations, "a plaintiff must establish (1) a valid and existing contract; (2) the defendant's knowledge  
19 of the contract; (3) intentional acts intended or designed to disrupt the contractual relationship; (4)  
20 actual disruption of the contract; and (5) resulting damage." *J.J. Indus., LLC v. Bennett*, 119 Nev.  
21 269, 274, 71 P.3d 1264, 1267 (2003) (citations omitted).

22 18. "[I]n Nevada, a party cannot, as a matter of law, tortiously interfere with his own  
23 contract." *Klein v. Freedom Strategic Partners, LLC*, 595 F. Supp. 2d 1152, 1163 (D. Nev. 2009)  
24 (internal quotations omitted). However, an "agent may be an interfering third party if the agent was  
25 acting outside the scope of the agency, was not acting in the principal's interest, or was motivated  
26 by malice towards one or both of the contracting parties." *From the Future, LLC v. Flowers, No.*  
27 *206CV00203PMPRJJ*, 2009 WL 10709083, at \*8 (D. Nev. Apr. 20, 2009). "[A]n agent is  
28 privileged to interfere with his principal's contract 'unless the agent acts to serve the agent's own



1 interests or for another wrongful purpose.'" *Id.* (quoting Restatement (Third) of Agency § 7.01 cmt.  
2 E). Indeed, "[i]f the agent is acting predominantly in his own interest, he effectively exceeds the  
3 scope of the agency or he no longer is acting in the principal's interest, and he thus may be liable to  
4 a third party for tortious interference with his principal's contract." *Id.*

5 19. The Seibel Agreements were valid and existing contracts between Caesars and its  
6 vendors. Seibel and Green were aware of the Seibel Agreements and that their kickback scheme  
7 was designed to disrupt those agreements. Specifically, Green and Seibel were aware that the Seibel  
8 Agreements required rebates for items purchased for the restaurants to be accounted for and they  
9 nevertheless sought kickbacks from the vendors. The Seibel Agreements were disrupted as amounts  
10 that should have been accounted as "rebates" under the Seibel Agreements were instead syphoned  
11 to Green and Seibel for their own benefit. Further, by the very act of engaging in a kickback scheme  
12 whereby they sought to coerce certain fees from vendors for product they sold to Caesars, Green  
13 and Seibel lost the ability to claim that any "agent status" precluded their liability. Seibel and Green  
14 are liable for intentional interference with contractual relations.

15 20. Under Nevada law, to establish a claim for fraudulent concealment, a plaintiff must  
16 show "(1) the defendant concealed or suppressed a material fact; (2) the defendant was under a duty  
17 to disclose the fact to the plaintiff; (3) the defendant intentionally concealed or suppressed the fact  
18 with the intent to defraud the plaintiff; that is, the defendant concealed or suppressed the fact for  
19 the purpose of inducing the plaintiff to act differently than she would have if she had known the  
20 fact; (4) the plaintiff was unaware of the fact and would have acted differently if she had known of  
21 the concealed or suppressed fact; (5) and, as a result of the concealment or suppression of the fact,  
22 the plaintiff sustained damages." *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1485, 970 P.2d 98,  
23 110 (1998), *abrogated, in part on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11  
24 (2001) (citation omitted).

25 21. "Nondisclosure will become the equivalent of fraudulent concealment when it  
26 becomes the duty of a person to speak in order that the party with whom he is dealing may be placed  
27 on an equal footing with him." *Id.* at 1486, 970 P.2d at 110 (quoting *Mackintosh v. Jack Matthews*  
28 & Co., 109 Nev. 628, 634 35, 855 P.2d 549, 553 (1993)).

22. "Even when the parties are dealing at arm's length, a duty to disclose may arise from the existence of material facts peculiarly within the knowledge of the party sought to be charged and not within the fair and reasonable reach of the other party." *Id.* at 1486, 970 P.2d at 110 (quoting *Villalon v. Bowen*, 70 Nev. 456, 467-68, 273 P.2d 409, 415 (1954)).

23. "Under such circumstances the general rule is that a deliberate failure to correct an apparent misapprehension or delusion may constitute fraud." *Villalon*, 70 Nev. at 468, 273 P.2d at 415. "This would appear to be particularly so where the false impression deliberately has been created by the party sought to be charged." *Id.*, 273 P.2d at 415.

24. Caesars was unaware that Seibel and Green were engaged in a kickback scheme as the scheme was a scenario entirely of Seibel and Green's own making. Indeed, given all of the safeguards in the Seibel Agreements meant to thwart dishonest or illegal conduct, Caesars cannot be faulted for failing to guess that Green and Seibel were soliciting kickbacks.

25. Neither Seibel nor Green informed Caesars of the kickback scheme and instead actively took steps to conceal it from Caesars.

26. Additionally, the Seibel Agreements further obligated Seibel to disclose the illegal kickback conduct. Under the terms of the Seibel Agreements, the Seibel Affiliates Entities and their Associates – a definition that encompasses Seibel – were obligated to inform Caesars about any events that could threaten Caesars' gaming license within ten days. Thus, Seibel was required to inform Caesars if he became an Unsuitable Person. Separate and apart from his unsuitability as a result of his felony conviction, Seibel also became an Unsuitable Person by engaging in the kickback scheme. The Seibel Agreements define an Unsuitable Person to include "[a]ny person . . . who is or might be engaged or about to be engaged in any activity which could adversely impact the business or reputation of Caesars." The very act of soliciting kickbacks is illegal and thus could unquestionably "adversely impact the business or reputation of Caesars." As a result, Seibel had a duty to disclose his involvement in the kickback scheme to Caesars.

27. Seibel and Green's failure to disclose the kickback scheme to Caesars makes them liable for fraudulent concealment.

28. "An implied covenant of good faith and fair dealing exists in every Nevada contract and essentially forbids arbitrary, unfair acts by one party that disadvantage the other." *Frantz v. Johnson*, 116 Nev. 455, 465 n.4, 999 P.2d 351, 358 n.4 (2000) (citing *Consol. Generator v. Cummins Engine*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998)). "A breach of the [implied] covenant [of good faith and fair dealing] occurs '[w]here the terms of a contract are literally complied with but one party to the contract deliberately contravenes the intention and spirit of the contract. . . .'" *Gamboa v. World Sav. Bank*, FSB, No. 3:10-CV-454-ECR-VPC, 2010 WL 5071166, at \*2 (D. Nev. Dec. 6, 2010) (quoting *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 232, 808 P.2d 919, 922-23 (1991)).

29. "When one party performs a contract in a manner that is unfaithful to the purpose of the contract and the justified expectations of the other party are thus denied, damages may be awarded against the party who does not act in good faith." *Hilton*, 107 Nev. at 234, 808 P.2d at 923 (emphasis added).

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

31. The Seibel Agreements were valid and existing contracts. Under the terms of the Seibel Agreements, the Seibel-Affiliated Entities agreed to hold their Associates (which includes Seibel) to the suitability standards of the various agreements. Nevertheless, aware that Seibel was soliciting kickbacks and thus double-dipping in amounts received from vendors, the Seibel-Affiliated Entities did nothing to inform Caesars of the illegal kickback scheme.

32. At no time did any of the Seibel-Affiliated Entities notify any of their business partners that their Associated Persons were engaging in this illegal conduct. By failing to report their conduct, the Seibel Affiliated Entities were also continuing to benefit from the Seibel Agreements which likely would have been terminated had Caesars become aware of the illegal activity at the time. This conduct was not only in bad faith, but also in direct contravention of the spirit, intent, and justified expectations under the Seibel Agreements, which required the Seibel-Affiliated Entities to conduct themselves "with the highest standards of honesty, integrity, quality

1 and courtesy so as to maintain and enhance the reputation and goodwill of" Caesars. As a result,  
2 the Seibel-Affiliated Entities breached the implied covenant of good faith and fair dealing.

3 33. Caesars suffered damages as a result of the Seibel Parties' actions totaling  
4 \$326,046.87.

5 **ORDER**

6 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Green's Motion for  
7 Summary Judgment is DENIED;

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Caesars' Counter-  
9 Motion for Summary Judgment shall be, and hereby is, GRANTED in its entirety and that judgment  
10 is entered in favor of Caesars on Counts IV, VI, VII, and VII of Caesars First Amended Complaint  
11 against Green;

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Caesars' Cross-Motion  
13 for Summary Judgment shall be, and hereby is, GRANTED in its entirety and that judgment is  
14 entered in favor of Caesars on Counts IV, VI, VII, and VII of Caesars First Amended Complaint  
15 against Seibel

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Caesars' Cross-Motion  
17 for Summary Judgment shall be, and hereby is, GRANTED in its entirety and that judgment is  
18 entered in favor of Caesars on V of Caesars First Amended Complaint against the TPOV  
19 Enterprises, LLC, LLTQ Enterprises, LLC, FERG, LLC, MOTI Partners, LLC, GR Burgr, LLC,  
20 and DNT Acquisition, LLC; and

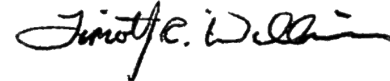
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1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is entered in  
2 favor of Caesars and against the Seibel Parties in the amount of \$326,046.87 plus pre- and post-  
3 judgment interest, with Seibel and Green being jointly and severally liable for the amount awarded  
4 to Caesars.

5 IT IS SO ORDERED.

6 Dated this 22nd day of March, 2023

7 

8 5A8 E80 15B3 8074  
9 Timothy C. Williams  
District Court Judge

JM

10 Respectfully submitted by:

11 DATED: March 21, 2023

12 PISANELLI BICE PLLC

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18 *Paris Las Vegas Operating*  
19 *Company, LLC; PHWLTV, LLC; and*  
*Boardwalk Regency*  
*Corporation d/b/a Caesars Atlantic City*

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

14 DISTRICT COURT  
CLARK COUNTY, NEVADA

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

18 Plaintiff,

19 vs.

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

22 Defendants,

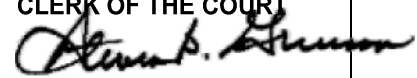
23 And

24 GR BURGR LLC, a Delaware limited liability  
company,

25 Nominal Plaintiff.

26 AND ALL RELATED CLAIMS.  
27  
28

Electronically Filed  
4/21/2023 10:34 AM  
Steven D. Grierson  
CLERK OF THE COURT



Electronically Filed  
Apr 27 2023 08:41 AM  
Elizabeth A. Brown  
Clerk of Supreme Court

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

Consolidated with A-17-760537-B

**NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that, pursuant to NRAP 3(a)(1) and 3A(b)(1), Rowen Seibel (“Mr. Seibel”); Craig Green (“Mr. Green”); 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<sup>1</sup> (“GRB,” and together with Mr. Seibel, Mr. Green, Moti, Moti 16, LLTQ, LLTQ 16, TPOV, TPOV 16, FERG, FERG 16, and R Squared, the “Appellants”), by and through their counsel, hereby appeal to the Supreme Court of Nevada from the final judgment and all other interlocutory orders and rulings entered by the District Court made appealable by entry of final judgment, including, but not limited to:<sup>2</sup>

- 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-VIII of the First Amended Complaint), filed on March 22, 2023, notice of entry of which was filed on March 28, 2023;<sup>3</sup>
- Findings of Fact, Conclusions of Law, and Order Granting Caesars’ Motion for Summary Judgment No. 1, filed on May 31, 2022, notice of entry of which was filed on June 3, 2022;<sup>4</sup>

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<sup>1</sup> GRB was formed as a Delaware limited liability company in 2012. GRB was judicially dissolved in 2018, and a certificate of cancellation was filed in 2021. Notwithstanding, because claims in this matter were filed against GRB, and because Mr. Seibel was judicially authorized to defend those claims on behalf of GRB pursuant to a proceeding in the Delaware Court of Chancery, this appeal is being filed on behalf of GRB (among others) as a matter of caution.

<sup>2</sup> Case No. A-17-760537-B (the “Second Case”), from which this appeal is currently being taken, was previously consolidated with Case No. A-17-751759-B (the “First Case”) pursuant to an order entered on February 9, 2018. The Second Case was finally resolved by order entered on March 22, 2023, thereby authorizing the filing of this appeal. A separate appeal was already taken in the First Case and remains pending (Nevada Supreme Court Case No. 84934). *See Matter of Estate of Sarge*, 134 Nev. 866, 866, 432 P.3d 718, 720 (2018) (holding that an order “finally resolving a constituent consolidated case is immediately appealable as a final judgment even where the other constituent case or cases remain pending”).

<sup>3</sup> See Exhibit A.

<sup>4</sup> See Exhibit B.

- 1 - Order (i) Denying the Development Entities, Rowen Seibel, and Craig Green's Motion:  
2 (1) For Leave to Take Caesars' NRCP 30(b)(6) Depositions; and (2) to Compel  
3 Responses to Written Discovery on Order Shortening Time; and (ii) Granting Caesars'  
4 Countermotion for Protective Order and for Leave to Take Limited Deposition of Craig  
5 Green, filed on February 4, 2021, notice of entry of which was filed on February 4,  
6 2021;<sup>5</sup>  
7 - Findings of Fact, Conclusions of Law, and Order Granting Caesars' Motion to Strike the  
8 Seibel-Affiliated Entities' Counterclaims, and/or in the Alternative, Motion to Dismiss,  
9 filed on February 3, 2021, notice of entry of which was filed on February 3, 2021;<sup>6</sup> and  
10 - Order Denying Motion to Amend LLTQ/FERG Defendants' Answer, Affirmative  
11 Defenses and Counterclaims, filed on November 25, 2019, notice of entry of which also  
12 was filed on November 25, 2019.<sup>7</sup>

13 DATED this 21<sup>st</sup> day of April, 2023.

14 BAILEY ♦ KENNEDY

15 By: /s/ Joshua P. Gilmore

16 JOHN R. BAILEY  
17 DENNIS L. KENNEDY  
18 JOSHUA P. GILMORE  
19 PAUL C. WILLIAMS

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22 *16, LLC; TPOV Enterprises, LLC; TPOV Enterprises 16,*  
23 *LLC; FERG, LLC; FERG 16, LLC; Craig Green; R Squared*  
24 *Global Solutions, LLC, Derivatively on Behalf of DNT*  
25 *Acquisition, LLC; and GR Burgr, LLC*

26 \_\_\_\_\_  
27 <sup>5</sup> See Exhibit C.

28 <sup>6</sup> See Exhibit D.

<sup>7</sup> See Exhibit E.

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 21<sup>st</sup> day of April, 2023, 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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/s/ Susan Russo  
Employee of BAILEY ♦ KENNEDY